

ODE-OEC MEMO #2016-3

To: Ohio Educational Agencies Serving Children with Disabilities
From: Sue Zake, Ph.D., Director of the Office for Exceptional Children
Date: December 8, 2016
Subject: **Requirements on the Use of Subminimum Wage to Youth with Disabilities under the Workforce Innovation and Opportunity Act**

Effective July 22, 2016, the Workforce Innovation and Opportunity Act of 2014 (WIOA) is a federal law that reauthorized the Workforce Investment Act of 1998, which includes the Rehabilitation Act.

Section 511 of Title IV of the WIOA implements new requirements on the payment of subminimum wage to individuals with disabilities by entities that hold a special wage certificate (also known as a 14(c) certificate) under the Fair Labor Standards Act (FLSA).

The purpose of Section 511 is to ensure that individuals with disabilities, especially youth with disabilities, have a meaningful opportunity to prepare for, obtain, maintain, advance in, or regain competitive integrated employment, including supported or customized employment. See Title 34 of the Code of Federal Regulations (CFR), Section 397.1.

This memo explains the responsibilities of a school district under Section 511. It is a subset of the [Employment First Taskforce Joint Guidance](#) document with a focus on the following:

- Responsibilities of a school district to youth with disabilities ages 14-24 who are known to be seeking subminimum wage employment.
- Contracting limitations which the Ohio Department of Education and school districts must follow.

Responsibilities of a school district to youth with disabilities who are known to be seeking subminimum wage employment

As appropriate, upon request, school districts must provide the proper documentation for a youth who is seeking subminimum wage employment. See 34 CFR 397.30. The Opportunities for Ohioans with Disabilities (OOD) is the designated State unit for obtaining this documentation and providing it to the youth seeking subminimum wage employment.

Before a youth with a disability can be paid a subminimum wage under a 14 (c) certificate, three steps must be completed. One of these required steps is to obtain documentation that pre-employment transition services as defined by WIOA or transition services under the Individuals with Disabilities Education Act (IDEA) have been completed. As a result, OOD may contact a school district and ask for documentation to show that a youth has completed transition services within the Individualized Education Program (IEP)

When requested, the school district must either

- Provide documentation of completed transition services within the IEP; or
- Provide documentation that the youth or, as applicable, the youth's parent/guardian refuses (through informed choice) participation in transition services.

The proper documentation provided must:

- Include a cover sheet that itemizes the documentation; and
- Contain, at a minimum, the following:
 - Youth's name;
 - Description of the transition service or activity completed/refused within the IEP. If transition services were refused, a reason for the refusal;
 - Name of the provider of the required service or activity;
 - Date that the required service or activity was completed/refused;
 - Signature of educational personnel documenting completion/refusal of the required service or activity;
 - Date of signature;
 - Signature of educational personnel transmitting documentation to OOD; and
 - Date and method (e.g., hand-delivered, faxed, mailed, e-mailed, etc.) by which the documentation was transmitted to OOD or the youth.

The proper documentation must also be:

- Provided in a manner that complies with the confidentiality requirements of the Family Education Rights and Privacy Act (FERPA) and the IDEA.
- Transmitted to OOD as soon as possible upon the completion of transition services, but no later than
 - 30 calendar days after the completion of the required activity or service; or
 - 60 calendar days after the completion of the required activity or service, if additional time is necessary due to extenuating circumstances (extenuating circumstances include unexpected lengthy absence due to illness or family emergency of the educational personnel); or
 - 5 calendar days after a youth has refused to participate in a required transition service.
 - Retained in a manner consistent with the federal record retention requirements of 2 CFR 200.333.

Contracting limitations on the Ohio Department of Education and school districts

The Department and school districts are prohibited from entering into a contract or other arrangements with entities that hold a special wage certificate for the purpose of paying subminimum wages to a youth with a disability. See 34 CFR 397.31.

Questions about work experiences taking place in your school district?

School districts should review current school-sponsored paid and unpaid work programs to ensure that these experiences are in compliance with all applicable labor laws and regulations.

School districts may direct specific questions to their legal counsel, or the [United States Department of Labor, Wage and Hour Division](#).

Please see the working document entitled [Unpaid Work Experiences, Volunteering, and Internships](#) created for The State Employment Leadership Network to learn definitions and implementation considerations for volunteer work, internships, and unpaid job exploration opportunities for individuals with disabilities.

As the United States Department of Education issues additional operating guidance to State Educational Agencies regarding the implementation of these requirements, additional guidance will be provided to school districts.

Please send general questions regarding this guidance to Exceptionalchildren@education.ohio.gov