

COOPERATIVE AGREEMENT BETWEEN  
THE WEST VIRGINIA DEPARTMENT OF EDUCATION  
AND  
THE WEST VIRGINIA DIVISION OF REHABILITATION SERVICES

PREAMBLE

This agreement is designed to improve the cooperative and collaborative efforts between the Department of Education (hereinafter "Education") and the Division of Rehabilitation Services (hereinafter "Rehabilitation") for the purpose of more effective and efficient service delivery to West Virginia youth with disabilities. The cooperative agreement shall assure that each student with a disability in the state who needs special education and/or vocational rehabilitation services is promptly identified and the appropriate transition services are made available to the individual. As used in this document, Education refers specifically to general education and special education.

AUTHORITY

Public Law 108-446, the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), mandates that the state and local education agencies provide a free appropriate public education (FAPE) which includes special education and related services in the least restrictive environment to meet their (students) unique special education needs and extends participation of related educational services and other public entities in the development of Individualized Education Programs (IEP) and transition services. The Rehabilitation Act of 1973 (Public Law 93-112), the Rehabilitation Act Amendments of 1998, and the State Plan for Vocational Rehabilitation and Supported Employment Services call for Rehabilitation to continue the development of cooperative relationships with school systems in serving the vocational needs of eligible students with IEPs, students with 504 plans and others with disabilities not currently receiving services. Each party will respect the importance of the legal responsibilities of the other.

DETERMINATION OF AGENCY RESPONSIBILITY

Education through participation in IDEA 2004 has assured the United States Department of Education (USDE) that it has established general supervisory authority over all education programs administered within the State. General supervisory authority means that:

1. All programs serving eligible students meet all requirements of IDEA 2004;

2. All programs serving eligible students within the state must meet State standards; and
3. Funds which support services to eligible school age students with disabilities, including state and local education funds and funds under Title V, Title VI, Title IX and Title XX of the Social Security Act, will continue to provide any and all services provided by these funds prior to the passage of IDEA 2004; and no program will alter eligibility requirements for participating in federal, state and local programs in order to increase the financial responsibility of agencies receiving IDEA 2004 funds. Part B of IDEA does not limit the responsibility of agencies other than educational agencies for providing for and paying for some or all of the costs of a free appropriate public education to students with disabilities in the State.

Education has responsibility for providing appropriate special education and related services for each eligible student with a disability, ages 3 to 21, enrolled in the public school system. For each eligible student with a disability at age 16 or younger, if determined appropriate, the transition service needs of the student must be identified including, interagency linkages. Students with disabilities shall have equal access to services, which are normally provided by public schools for non-disabled individuals, provided that reasonable accommodations or modifications can be made.

Transition services are defined in IDEA 2004 as a coordinated set of activities for a student with an exceptionality that are designed within a results-oriented process focused on improving the academic and functional achievement of the student to facilitate movement from school to post-school activities, including post-secondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living or community participation.

For students with disabilities, ages 16 to 21, who are preparing to graduate or have exited school, the responsibility for vocational services rests with Rehabilitation. This provision also applies to all other school age students who meet eligibility requirements for Rehabilitation services. Rehabilitation will provide services, which are legally the responsibility of Rehabilitation for those individuals determined to be eligible for services.

Eligibility for Rehabilitation services is determined by the following criteria:

- An individual must have a physical or mental impairment which, for that individual, constitutes or results in a substantial impediment for employment; and
- The individual can benefit in terms of an employment outcome from vocational rehabilitation services.

It is important that Education and Rehabilitation work together to determine logistics for providing transition services. The IEP and the Individualized Plan for Employment (IPE) must be developed with coordinated goals, objectives and planned services for effective and

successful transition to post-school settings. Each agency will cooperate to provide referral, support and assistance to the agency with responsibility for services.

IDEA 2004 and the Rehabilitation Act of 1973, as amended, require the individual's participation in the development of the IEP and IPE, respectively, and emphasize informed choice. Identification of transition services for the IEP is focused on a coordinated set of activities which considers the student's preferences and interests. Likewise, the IPE is developed with the assistance of a rehabilitation counselor who guides the individual in identifying goals through reviewing assessments, individual strengths, resources, interests and needs. Education must provide both awareness and exploration activities in the areas of living, learning and work to support decisions about post school outcomes. This interagency cooperation assures seamless transition services that prepare the student to pursue adult goals.

Rehabilitation and Education will assist students and parents in understanding the differences of entitlement services provided by Education and eligibility for Rehabilitation services. Every student is entitled to a Free Appropriate Public Education (FAPE) under IDEA 2004. The provision of Rehabilitation services is offered to individuals with disabilities based on a determination of their eligibility as previously defined. The participation of Rehabilitation counselors in the IEP process will assist students and parents in understanding the differences and facilitate the provision of educational and rehabilitation services. Rehabilitation and Education will utilize a variety of activities to provide outreach activities both jointly and individually for eligible students with IEPs, students with 504 plans and others with disabilities not currently receiving services. Activities may include participation in career/job fairs, presentations to students and parents, website links, brochures, surveys, conferencing between Rehabilitation School Counselors and School Counselors and regularly scheduled contact with individual schools. Professional development activities between Education and Rehabilitation shall be provided and facilitated by state staff, including support of regional transition teams, participating in topic specific learning events and book studies.

## FINANCIAL RESPONSIBILITY OF EDUCATION

Education assumes responsibility for all expenses incurred in the provision of special education and related services to achieve FAPE when those services, including assistive technology devices and services, are necessary for the student's educational program or course of study, as well as participation in school activities and during the pendency of any interagency dispute.

**Private Insurance Funds:** With regard to services required to provide FAPE to an eligible student under this part, Education may access a parent's private insurance only if the parent provides informed consent consistent with federal regulations pursuant to IDEA 2004. Each time Education proposes to access the parent's private insurance, it must:

1. Obtain written parental consent; and

2. Inform the parent that their refusal to permit the district to access the private insurance does not relieve the district of its responsibility to ensure that all required services are provided at no cost.

**Public Insurance Funds:** Education may use the Medicaid or other public insurance benefits programs in which a student participates to provide or pay for services required. With regard to services required to provide FAPE to an eligible student under this part, Education may not:

1. Require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under IDEA regulations;
2. Require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay incurred in filing a claim for services provided pursuant to this part, but, may pay the cost that the parent otherwise would be required to pay; and
3. Use a student's benefits under a public benefits or insurance program if that use would (a) decrease available lifetime coverage or any other insured benefit; (b) result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school; (c) increase premiums or lead to the discontinuation of benefits or insurance; or (d) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

To access a student's public insurance (e.g., Medicaid reimbursement), the district must obtain and maintain documentation of parent/adult student consent specifying the records to be disclosed, the services to be provided, and the extent, frequency and duration of the services. The district must also obtain parent/adult student consent if billable services (i.e., type, amount and/or duration) are revised at any time. The parents must be informed that their refusal to consent to the release of information does not relieve the district of its responsibility to ensure that all services are provided at no cost to the parents.

If Education is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parents would incur a cost for a service specified on their child's IEP, the district may use Part B funds to pay for services to ensure FAPE. To avoid financial cost to parents who otherwise would consent to use private insurance or public benefits or insurance if the parent would incur a cost, the district may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parents' benefits insurance (e.g., the deductible or co-pay amounts).

Proceeds from public or private insurance will not be treated as program income as pursuant to 34 CFR §80.25(2). If a district spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions of Part B of IDEA 2004.

## FINANCIAL RESPONSIBILITY OF REHABILITATION

Rehabilitation may be responsible for services that occur outside of the school environment that are vocationally oriented and are specifically intended to prepare the student for post-secondary training or work. Rehabilitation is not responsible for payment of any service that has not been directly agreed to during the development of a student's IEP and is not included as a service on a student's IPE for Rehabilitation services. Rehabilitation is not responsible for career development activities that are part of a School to Work initiative within the school system. The responsibility for implementing the requirements of Department of Education Policy 2510 remains with the school system.

The transference to the student of assistive technology devices that have been purchased by the Local Education Agency (LEA) will occur consistent with the surplus equipment policies and regulations in existence within each LEA. After the student has exited the school system, Rehabilitation may reimburse the LEA at a rate in accordance with the surplus equipment policy, dependent upon the student's continued need or desire for the equipment, the condition of the equipment and its future usefulness.

## CONFIDENTIALITY OF INFORMATION/SHARING OF INFORMATION

Personnel employed by Education and Rehabilitation are required to safeguard personally identifiable data, information and records of students that have been collected or maintained by each agency within the boundaries of the legal constraints of each agency. Communication between agency representatives and the sharing of pertinent educational, vocational, programmatic and diagnostic information is necessary for cooperative planning. Upon the duly approved cooperative agreement between Rehabilitation and the local education agency, rehabilitation counselors assigned as agents to the school system become an integral part of the educational process.

To expedite the provision of transition services Education and Rehabilitation shall work cooperatively to provide access to confidential information through obtaining written parental or adult student consent prior to referral (i.e., disclosure of personal information), to release of information and records and/or to invite agency personnel to the IEP meeting. A written consent from either agency will be honored for the purpose stated. A separate consent for the same purpose is not required from the other agency. This provision applies to students with disabilities under IDEA 2004 and all other general education students seeking rehabilitation services. As stated in the Rehabilitation Act of 1973, as amended, Rehabilitation may use existing information from Education in the determination of eligibility for services when appropriate.

## LOCAL AGREEMENTS

Providing transition services to youth with disabilities is a complex process requiring numerous services from different agencies. The establishment of interagency agreements promotes the effective, efficient and economical provision of services. Both Education and Rehabilitation will encourage and provide technical assistance toward the establishment of a

statement of cooperation between the Local Education Agencies and the District Rehabilitation Offices throughout the state. Each local area is encouraged to develop written agreements that clearly address the following issues:

- referral criteria;
- outreach and referral procedures;
- procedures for sharing of information;
- planning for transition services, including joint preparation of the IEP and the IPE;
- IEP Team meeting participation issues;
- provision of professional development activities between staff of the agencies;
- transfer of assistive technology during transition; and
- other areas where additional cooperation is desired.

Technical assistance in the development of local agreements will be available and provided jointly by Rehabilitation and Education.

The responsibility for coordinating the completion of the local agreements will fall with the District Manager within Rehabilitation and a designated representative of each LEA, frequently the Administrator of Special Education Programs. Each party will be expected to monitor the recency and appropriateness of the local agreement on an annual basis, to conduct regular reviews of the content of the agreement and to solicit technical assistance from the Office of Special Programs (Education) or the Office of Rehabilitation for clarification or guidance, if necessary. The local designees responsible for the local agreements will be notified of all changes occurring within the state level agreement in a timely manner to ensure that any revisions resulting from changes in law or regulations may be incorporated into the local agreements.

## DISPUTE RESOLUTION

Education and Rehabilitation recognize the possibility that during the administration of this agreement disputes might arise regarding financial responsibility for services to an individual student or group of students. It is mutually recognized that all attempts shall be made to resolve the dispute at the lowest level possible. A local dispute resolution committee will be established for this purpose. It is recognized that a local education agency official and/or a local rehabilitation representative can bring an issue to the dispute resolution committee. If a dispute cannot be resolved at the level of inception (Level I) both parties shall agree to send a written statement of the problem(s) causing the dispute to the designated Coordinator for the Office of Special Programs (Education) and to the Program Supervisor, Education Programs (Rehabilitation), who shall jointly attempt to resolve the dispute (Level II). If the dispute cannot be resolved at that level, the Executive Director of the Office of Special Programs shall meet with the Assistant Director of Field Services (Rehabilitation) to resolve the dispute (Level III). Any unresolved disputes at Level III will be referred to the State Superintendent of Schools or designee and the Director of the Division of Rehabilitation Services or designee for final resolution (Level IV). If the State Superintendent of schools or designee and the Director of the Division of Rehabilitation Services or designee are unable to agree upon a final and binding

resolution, the dispute shall be referred to the West Virginia State Board of Education and the Cabinet Secretary of Education and Arts for settlement.

#### CANCELLATION OF AGREEMENT

Either agency may cancel its participation in the Agreement upon sixty (60) days written notice to the other agency. When the cancellation is for cause, i.e., a material and significant breach of any of the provisions of this Agreement, it may be cancelled upon delivery of written notice to the other agency.

#### DURATION OF THE AGREEMENT

This agreement will commence on the 1<sup>st</sup> day of November, 2012, and shall remain in force and effect subject to annual review and renewal by mutual agreement both parties, or until the Agreement is cancelled by the Agencies in accordance with the terms set forth herein.

AGREED TO

Donna P. Ashworth 11-8-12  
Donna Ashworth, Acting Director Date  
Division of Rehabilitation Services

Pat Homberg 11-16-12  
Pat Homberg, Executive Director Date  
Office of Special Programs

Kay Goodwin 11-11-12  
Kay Goodwin Date  
Secretary, Education and Arts

Charles K. Heinlein 12-4-12  
Charles K. Heinlein Date  
State Superintendent of Schools