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To: RSA_VR_STATE_DIRECTORS@listserv.ed.gov

Cc: LaBreck, Janet; Ashby, Roseann; Dobak, Carol; Giancola, Melinda; Mitchell, Suzanne; Steele, David

Subject: Auxiliary Aids and Services for Students with Disabilities In the Provision of Pre-Employment Transition Services

Dear Director:

The purpose of this email is to respond to the many inquiries the Rehabilitation Services Administration (RSA) has received seeking clarification on whether States may expend funds reserved for the provision of pre-employment transition services on auxiliary aids and services for students with disabilities with sensory and communicative disorders who require such services to access pre-employment transition services. As RSA will explain in more detail below, auxiliary aids and services needed by a student with a disability to access or participate in pre-employment transition services would constitute allowable pre-employment transition services expenditures and, therefore, may be paid with the funds reserved for that purpose.

As you know, section 110(d)(1) of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by title IV of the Workforce Innovation and Opportunity Act (WIOA), requires States to reserve at least 15 percent of their Federal Vocational Rehabilitation (VR) grant allotment for the provision of pre-employment transition services to students with disabilities. To ensure the reserved funds are expended appropriately, VR agencies must analyze each cost to determine whether it:

- Fits within the scope of the pre-employment transition services activities described in section 113 of the Act and §361.48(a); and
- Was incurred solely for the benefit of a “student with a disability.”

Section 113(b) of the Rehabilitation Act and its implementing regulations at 34 CFR 361.48(a)(2) list the pre-employment transition services that must be provided to students with disabilities. These “required” services are:

- Job exploration counseling;
- Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment to the maximum extent possible;
- Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;
- Workplace readiness training to develop social skills and independent living; and
- Instruction in self-advocacy, which may include peer mentoring.

As public entities, defined in section 12131 of the Americans with Disabilities Act (ADA), and as recipients of Federal funds, State VR agencies must ensure that no qualified individual with a disability is excluded from participation in or be denied the benefits of services, programs, or activities on the basis of the individual’s disability (section 12132 of the ADA and section 504(a) of the Rehabilitation Act). Therefore, if a student with a disability requires an auxiliary aid or service to access or participate in any of the pre-employment transition services specified in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2) of its implementing

regulations (listed above), the VR agency must pay for such costs if no other public entity is required to provide such aid or service.

The ADA's title II implementing regulations define "auxiliary aids and services" in 28 CFR 35.104 as follows:

Auxiliary aids and services includes—

- (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;
- (2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
- (3) Acquisition or modification of equipment or devices; and
- (4) Other similar services and actions.

See also 34 CFR 104.44, which implements the requirements for the provision of auxiliary aids and services by recipients of Federal funds under section 504(a) of the Rehabilitation Act.

For purposes of the inquiries RSA has received, auxiliary aids and services ensure equal access to information, materials, services, and activities available to students with disabilities participating in pre-employment transition services. As such, expenditures incurred for the purchase or acquisition of auxiliary aids and services for students with disabilities needing such aids or services to access or participate in pre-employment transition services specified in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2) would constitute an allowable pre-employment transition services cost. Because auxiliary aids and services necessary for students with disabilities to access or participate in pre-employment transition services are an allowable cost, State VR agencies may use funds reserved for the provision of pre-employment transition services to pay for those auxiliary aids and services. For example, screen reading software programs could be purchased to enable an individual who is blind to access information on a computer during a work-based learning experience. As another example, for an individual who is deaf, interpreter services or video-based telecommunication products could be purchased to ensure access to information in activities related to job exploration counseling or other pre-employment transition services. It is important to note that the screen reader software for individuals who are blind or visually-impaired, not the computer on which it is installed, meets the definition of "auxiliary aids and services" for purposes of the ADA and section 504 of the Rehabilitation Act and, as such, could be paid with funds reserved for the provision of pre-employment transition services.

On the other hand, personal devices and services do not meet the definition of auxiliary aids and services under the ADA or section 504 of the Rehabilitation Act. Personal devices and services include individually-prescribed devices, such as prescription eyeglasses or hearing aids, readers

for personal use or study, or services of a personal nature (28 CFR 35.135 and 34 CFR 104.44(d)(2)). If a student with a disability requires personal devices or services or individually-prescribed assistive technology, the VR agency must work with the student to determine whether he or she meets the eligibility criteria of section 102(a) of the Rehabilitation Act and, if so, to develop an individualized plan for employment (IPE) in accordance with section 102(b) of the Rehabilitation Act for the provision of those additional services. Services not constituting pre-employment transition services or auxiliary aids and services necessary for a student to access or participate in those services may not be paid with funds reserved under section 110(d)(1) for the provision of pre-employment transition services. Rather, these additional services must be paid with non-reserved VR funds.

We hope this information is helpful as you continue to implement policies and procedures for the provision of pre-employment transition services to students with disabilities. If you have any further questions, please contact your RSA State Liaison.

Sincerely,

Janet L. LaBreck
Commissioner of the Rehabilitation Services
Administration
Office of Special Education and Rehabilitative Services
U.S. Department of Education