



## **Work-based Learning Experiences for Students with Disabilities: Information for School Personnel**

### **Introduction**

There are many benefits to work-based learning experiences for students with disabilities. Students who do not have an opportunity to participate in work experiences may have limited ideas as to what they might like to do after they graduate. Participation in work experiences during school encourages students to think about their work interests as well as their employment goals. They may learn about their skills and how these skills can contribute to working in a community business. Finally, research has shown that students with disabilities who participate in work-related experiences while in high school are more likely to obtain competitive integrated employment after graduation.

Schools must collaborate with community businesses to provide these work-based experiences to students with disabilities. These experiences may include work assessments (often called situational assessments), work exploration activities, and work skill training opportunities. This resource will provide an overview of some important things school personnel need to think about when setting up and maintaining work-based learning experiences for students with disabilities.

### **Work-based Learning Experiences**

Work-based learning experiences use settings, materials, employees, and job duties (tasks) within a business to assess and teach students work and work-related skills. Teachers, aides, employment specialists, and other support staff provide instruction and assessment within businesses instead of within the school setting. These experiences extend the classroom into the business to assist students in identifying their work interests, preferences, and skills for competitive integrated employment (CIE). The students with disabilities are not employees of these businesses and they may or may not be paid for these work experiences.

### **Non-Paid Work Experiences and the Fair Labor Standards Act**

The U.S. Department of Labor's Wage and Hour Division enforces the provisions of the Fair Labor Standards Act (FLSA), Section 14 (c) that apply to non-paid work experiences. You can find important guidelines for students who participate in work settings outside of their schools in Chapter 64 of The Field Operations Handbook (FOH), 64c08. The FOH is a manual of the Wage and Hour Division

(WHD) of the U.S. Department of Labor. These guidelines provide very important information on how students can participate in businesses outside of the school setting.

One way to make certain that students with disabilities can participate in non-paid work experiences is to ensure that a non-employment relationship exists between the students and the business. In other words, the work experiences are for training purposes and activities completed by the students with disabilities do not result in an “immediate advantage” to the business.

A number of factors should be considered when determining whether a business is benefiting from having students participate in work-based learning. It is very important for school personnel to understand the definition of an “*employment relationship*” under the Fair Labor Standards Act (FLSA) for students with disabilities who are participating in work experiences.

The following information is from: **64c08 Students with disabilities and workers with disabilities who are enrolled in individual rehabilitation programs.**

### **The conditions under which an employment relationship initially will not be asserted are:**

- (1) The activities are basically educational, are conducted primarily for the benefit of the participants, and comprise one of the facets of the educational opportunities provided to the students. The student may receive some payment for their work in order to have a more realistic work situation, or as an incentive to the student or to ensure that the employer will treat the student as a worker.*
- (2) The time in attendance at the school plus the time in attendance at the experience station (either in the school or with an outside employer) does not substantially exceed the time the student would be required to attend school if following a normal academic schedule. Time in excess of 1 hour beyond the normal school schedule or attendance at the experience station on days when school is not in session would be considered substantial.*
- (3) The student does not displace a regular employee or impair the employment opportunities of others by performing work which would otherwise be performed by regular employees who would be employed by the school or an independent contractor including, for example, employees of a contractor operating the food service facilities at the school.*
- (4) The shift to an employment relationship may occur shortly after the placement or it may occur later. As a general guide, work for a particular employer, either a private employer or the school, after 3 months will be assumed by the WHD to be part of an employment relationship unless the facts indicate that the training situation has not materially changed.*

If **all six** of the following criteria apply, the students are not employees within the meaning of the FLSA when participating in work-based learning experiences.

- (1) The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school.
- (2) The training is for the benefit of the trainees or students.
- (3) The trainees or students do not displace regular employees, but work under their close observation.
- (4) The employer that provides the training derives no immediate advantages from the activities of the trainees or students, and on occasion operations may actually be impeded.
- (5) The trainees or students are not necessarily entitled to a job at the conclusion of the training period.
- (6) The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

## **Scheduling Work-based Experiences**

Scheduling should focus on providing a variety of experiences across the school year. Each transition team should decide what experiences are appropriate to a student's long-term employment goals and objectives and make recommendations concerning different types of work experiences. For transition-age youth, information from work-based learning experiences can be used to determine the person's interests and strengths for CIE.

Often, school programs establish relationships and collaborate with businesses to provide work experiences to their students with disabilities. Businesses may be identified based on jobs that school personnel “expect” people with disabilities to be able to do when they leave school. As such, all students may rotate in the same work experiences rather than specific ones designed and arranged for their interests and preferences.

However, it is important to learn about each student’s preferences rather than assuming that all students are going to work in jobs typically obtained by adults with disabilities. Listen to the student. Listen to the family. What are they saying? What do they want? What do they need? Incorporating their needs and wishes is a critical feature of student-directed work-based learning experiences. Businesses should be targeted that provide a wide variety of experiences so that CIE in jobs of choice can be the outcome from work-based learning experiences.

## **Summary**

Work-based learning experiences can help students in identifying their employment and career goals. The focus is on getting to know the student's strengths, interests, and abilities. For students with disabilities, information from work-based learning experiences can be used to determine their interests and strengths for an integrated job in the community.

## Resources

### **Field Operations Handbook - Chapter 10**

#### **FLSA Coverage: Employment Relationship, Statutory Exclusions, Geographical Limits**

<https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-10>

### **Fact Sheet 13: Employment Relationship Under the Fair Labor Standards Act (FLSA)**

<https://www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship>

### **Fact Sheet #43: Child Labor Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations**

<https://www.dol.gov/agencies/whd/fact-sheets/43-child-labor-non-agriculture>

### **Chapter 64: Employment of Workers with Disabilities at Subminimum Wages under Section 14(c)**

[https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH\\_Ch64.pdf](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch64.pdf)

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(Authority: 20 U.S.C. §§ 1221e-3 and 3474)