



Disability Rights

F L O R I D A

Transition & Social Security Benefits for Students with Disabilities

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Advocacy. Equality. Dignity.

Learning Objectives

- After this workshop, you will be able to:
 - List what transition services are, who is required to provide them, and what they should help the student accomplish.
 - Identify priority issues to look for during the school-to-work transition for SSI and SSDI beneficiaries.
 - Locate organizations and resources to help manage potentially complicated transition issues for students.



Transition

What Does the Transition Process Accomplish?

- Takes young people with disabilities from childhood to adulthood
- Helps them move from being dependent to being independent both socially and financially
- Includes movement from IDEA services or 504 plans in education settings to vocational rehabilitation services, and
- May implicate Social Security benefits and health care benefits.

Who Provides Transition Services?

- Schools and vocational rehabilitation programs are both required to provide transition services to youth between the age of 16 and 22. See 20 U.S.C . § 1414(d)(1)(A)(i)(VIII); 29 U.S.C. § 723(a)(15).
- Services are provided pursuant to two documents: the IEP and the IPE
 - The Individualized Education Program (“IEP”) is developed at the school
 - The Individualized Plan for Employment (“IPE”) is developed with the vocational rehabilitation agency

How Does the Law Define Transition Services?

- “Transition services” means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

How Does the Law Define Transition Services? (continued)

- The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. 29 U.S.C. § 705(37).
 - IDEA definition does not vary in substance. See 20 U.S.C. § 1401(34).

What are Transition Services?

- May include:
 - guidance and counseling
 - on-the-job training experiences
 - vocational training programs (including college)
 - assistive technology devices
 - and many other services.

Transition Services Case Law

- K.C. v. Mansfield ISD, 52 IDELR 103; 618 F.Supp.2d 568 (N.D. Tex. 2009)
- Rosinsky v. Green Bay Area School District, 53 IDELR 193 (E.D.Wis. 2009)
- High v. Exeter Township School District, 54 IDELR 17 (E.D.Pa. 2010)
- Dracut School Committee v. Bureau of Special Education Appeals, 55 IDELR 66 (D.C. Mass. 2010)
- Marple Newtown School Dist. v. Rafael N., 48 IDELR 184 (E.D. Pa. 2007).



Florida's Vocational Rehabilitation Agencies

Florida's VR Agencies: DVR

- Division of Vocational Rehabilitation:
 - Provides services to individuals who (a) have a disability and (b) require vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment. See § 413.30(1), Fla. Stat. (2013).

Florida's VR Agencies: DBS

- Division of Blind Services:
 - Provide[s] services to individuals who are blind, meaning an individual having central visual acuity of 20/200 or less in the better eye with correcting glasses or a disqualifying field defect in which the peripheral field has contracted to such an extent that the widest diameter or visual field subtends an angular distance no greater than 20 degrees. See § 413.033(1), Fla. Stat. (2013).



Application, Eligibility, and IPE Planning

The Vocational Rehabilitation Process

Application for Services

- An application must be signed by the applicant.
 - DVR: <http://www.rehabworks.org/docs/VRapplication.pdf>
 - DBS: <http://dbs.myflorida.com/apply-for-services/application-english.doc>
- There is no requirement to submit the application prior to the initial meeting.

Application for Services (continued)

- An individual may select, or have appointed by a court, a personal representative.
- The application must be designated to a counselor.
- Disability Rights Florida can help with supervised referrals to ensure assignment of counselor and initial meeting.

Eligibility Determinations

- Determination must be made within 60 days regarding eligibility. 29 U.S.C. § 722(a)(6).
- An extension may be sought if there are exceptional and unforeseen circumstances—must be agreed to by client and include a timeframe for eligibility. 29 U.S.C. § 722(a)(6).

Eligibility Determinations (continued)

- Individuals must have legal status and authorization to work in the U.S. and
 - Must be present in the state, if not a resident of the state (i.e. college students from other states). See Fla. Admin. Code R. 6A-25.005.
 - Presumption of eligibility for Social Security beneficiaries. 29 U.S.C. § 722(a)(3).

Eligible Disabilities

1. Mental health disorder
2. Chemical dependency
3. Adjustment disorders (short-term mental health disorders)
4. Intellectual disability
5. Specific learning disabilities
6. Hearing, speech, or vision impairments
 - Specific documentation requirements for each disability type is outlined in Fla. Admin. Code R. 6A-25.005.

Order of Selection

- DVR has instituted an Order of Selection for eligible individuals. Fla. Admin. Code R. 6A-25.006.
 - Three categories:
 1. Most Significant Disability,
 2. Significant Disability, and
 3. Individual with a Disability.
- As of February 2015, Category 1 is now open.
- EXCEPTION: Individuals with IPEs signed prior to February 19, 2014 continued services uninterrupted.

Order of Selection: Disability Status

- Disability status is determined by the individual's limitations in functional capacities, the number of needed primary services, and the time those services need to be provided (i.e. more or less than 6 or 12 months). Fla. Admin. Code R. 6A-25006(1).
- If wait-listed while in school, contact the student's DVR counselor prior to exiting to determine if your category should change when he/she exits school.

Order of Selection: Functional capacities

- Mobility
- Communication
- Self-care
- Self-direction
- Interpersonal skills
- Work tolerance
- Work skills
 - Fla. Admin. Code R. 6A-25.006(4)

Order of Selection: Primary Services

- Counseling and guidance
- Training programs
- Physical restoration
- Mental restoration
- Supported employment or extended services
- Employment services
- Occupational licenses, tools, equipment, or initial supplies
- Prosthetics and orthotics
- Rehabilitation technology
- Interpreter services
- Self-employment services
- Community-based work experiences
 - Fla. Admin. Code R. 6A-25.006(3).

Individualized Plan for Employment

- Written document capturing the individual's specific employment outcome (job title), the services and service providers needed to reach the employment outcome, timeframes for service initiation and provision, responsibilities of the Division and the individual, as well as any third parties who provide comparable services. See 29 U.S.C. § 722(b).

Required Coordination

- “The IPE for a student with a disability who is receiving special education services must be coordinated with the IEP for that individual in terms of the goals, objectives, and services identified in the IEP.” 34 C.F.R. § 361.46(d).

Time Frames

- **DBS has a 60-day clock for IPE development** from determination of eligibility. See Division Policy 2.14 & Fla. Admin. Code R. 6A-18.052.
- **DVR has a 120-day clock for IPE development** from eligibility or activation from the waiting list. See Fla. Admin. Code R. 6A-25.007.



Ticket to Work Program

Ticket to Work Program

- **Social Security beneficiaries** between the ages of 18 and 64 may receive employment-related services and supports under the Ticket to Work and Work Incentives Improvement Act of 1999. *See* 42 U.S.C. § 1320b-19.
- **Social Security beneficiaries** are recipients of Social Security Disability Insurance (“SSDI”) or Supplemental Security Income (“SSI”).

Ticket to Work Program (continued)

- The Ticket (not a physical document) is a voucher for services that helps eligible beneficiaries transition to work through Employment Networks (“ENs”), which include both Florida vocational rehabilitation agencies, as well as private organizations and providers.
- The Social Security Administration reimburses ENs participating in the Ticket to Work Program when a client works at a sustained level.
- The Ticket program may provide protection from continuing disability reviews while working or going to school. See 42 U.S.C. § 1302b-19(i).



Work Incentives Planning and Assistance (WIPA) Programs

WIPA Programs

- Work incentives enable Social Security beneficiaries to transition from benefits to sustained earning through employment and continue to receive medical benefits while working.
- Programs use Community Work Incentives Coordinators who counsel Social Security beneficiaries on their benefits and possible impacts when working.

WIPA Programs (continued)

- Four WIPAs in Florida:
 1. Service Source/Abilities in Clearwater
 2. Brevard Achievement Center in Rockledge (outside of Cocoa)
 3. Center for Independent Living in Central Florida in Orlando
 4. Independent Living Resources of NE Florida/Opportunity Development in Jacksonville

SSDI Work Incentives: Trial Work Period

- **Trial work period:** Allows beneficiaries to try working without losing benefits. The period lasts 9 months (which may be non-consecutive) in a rolling 60 month period. A month counts towards the period when a beneficiary earns more than the monthly threshold for that year. In 2015, the monthly threshold is \$780.00. 42 U.S.C. § 422(c); 20 C.F.R. 404.1592; POMS DI 13010.035

SSDI Work Incentives: Extended Period of Eligibility

- **Extended period of eligibility:** After TWP is exhausted, there is a 36-month period where beneficiaries may still obtain benefits if where they don't earn more than substantial gainful activity (2015 -\$1090 for PWD, \$1820 for blind). Reapplication is not required for this benefit. 42 U.S.C. § 423(e)(1).

SSDI Work Incentives: Impairment related work expenses

- **Impairment related work expenses:** Expenses paid for by the beneficiary for their work, but are deducted from earned income. IRWEs may include service animals, medicine, medical supplies and devices, personal care assistants, transportation, and modifications to vehicles, none of which may be reimbursed by employer or others. 20 C.F.R. § 404.1576.

SSDI Work Incentives: Subsidy

- **Subsidy:** SSA determines the actual value of a beneficiary's work is; any excess amount paid by the employer is a subsidy. For example, a job coach may provide assistance which shifts some of the beneficiary's work onto the job coach. The value of work that is done by the job coach—no matter who is paying for the job coach—is subtracted from the earned income when determining a beneficiary's SGA. 20 C.F.R. § 404.1574(a)(2).

SSDI Work Incentives: Continuation of Medicare

- **Continuation of Medicare:** At the end of the Trial Work Period, if a beneficiary who is still disabled loses benefits due to exceeding SGA, Medicare part A (hospital, home health, nursing care) may continue for at minimum 93 consecutive months (seven years, nine months).
- Medicare for people with disabilities who work: Individuals with disabilities who are not yet age 65 may buy into Medicare Part A. Once Part A is purchased, Medicare Parts B & D are also available for purchase.

SSI Work Incentives: Earned Income Exclusion

- \$65 Earned Income Exclusion (“EIE”). POMS SI 00820.500.
- Student earned income exclusion (For 2015: \$1,780/month, \$7,180/year): Available to persons under age 22 regularly attending school. Regular school attendance is defined in POMS SI 00501.020.

SSI Work Incentives: Expenses

- **Impairment-related work expense:** Expenses paid for by beneficiaries related to their employment and their disabling condition. IRWEs are deducted from earned income and cannot be reimbursed by employer or others. 20 C.F.R. § 416.112(c)(6).
- **Blind work expense:** Expenses that are related to employment, but not necessarily blindness. These broader expenses may be applied to include earned income that pays income taxes and meals while working. 20 C.F.R. § 416.112(c)(8); POMS SI 00820.535.

Pop Quiz Question #1

- Arnold is receiving SSA disability benefits. He is working at Tri-County Sheltered Workshop and receiving an average of \$425.00 per month. Is he still eligible for benefits?
- No, Arnold is working in a sheltered workshop, He may or may not be earning the amounts that he is being paid. 20 CFR 404.1574
- The sheltered workshop may be operating at a loss or is receiving some charitable contributions or governmental aid.

Pop Quiz Question #2

- Arnold is working at the local Motel 6 earning the same income, would he be eligible for benefits?
- The earnings guidelines provide that income under \$1090.00 per month is presumed to not indicate the ability to engage in SGA. However, if Arnold is receiving SSI, then Arnold's benefits may be reduced for that month.

Plans to Achieve Self-Support (PASS)

- SSI recipients or possible recipients can **set aside other income** in pursuit of a work goal that will reduce or eliminate the beneficiary's Social Security benefits. 20 C.F.R. § 416.112(c)(6).
- Individuals receiving SSDI may become SSI eligible if they set aside SSDI funds in a PASS. POMS SI 00870.001 A.
- The PASS Cadre in Birmingham, Alabama can help set up a PASS.

Expedited Reinstatement

- This incentive becomes available after benefits are lost due to reaching substantial gainful activity. Within 5 years from the loss of benefits, they can be reinstated if a beneficiary can no longer work -- without need for a new application. Temporary benefits may be provided for up to 6 months while an eligibility determination is made. 42 U.S.C. § 423(i).
- Applicable to beneficiaries of both the SSDI and SSI programs.



SSI Redetermination

SSI Redetermination: Schedule

- At age 18, a review is scheduled to determine whether or not the condition or illness meets the Social Security Administration definition of disability for an adult. 20 C.F.R. § 416.987.

SSI Redetermination: Standard

- The adult standard includes showing an inability to perform any jobs that exist in substantial numbers in the national or local economy. See 40 U.S.C. § 416.920(c)-(g). To be found disabled under the adult standard, young adults must at least show that they are
 - Unable to meet the basic demands of at least sedentary work on a sustained basis or
 - Unable to meet the basic mental demands of simple, unskilled work.

SSI Redetermination: Evidence

- When the case is reviewed, evidence from all medical, vocational and educational sources should be obtained. The medical evidence can come from medical practitioners including doctors, nurse practitioners, physicians' assistants, naturopaths, chiropractors, therapists (physical, speech, and occupational) and psychiatric social workers (PSW). See 20 C.F.R. § 416.913 and SSR 09-2p.

SSI Redetermination: Recent Records

- Not having recent records of medical treatment, vocational services, or educational services may result in a finding that the illness or condition is no longer disabling for the SSI recipient.

SSI Redetermination: Transitioning Youth

- Transitioning youths should continue to:
 - See doctors and other medical professionals
 - Participate in appropriate educational or vocational training, especially if there is no recommended treatment for the disabling condition and
 - Provide the Social Security Administration with access to all medical, vocational, and educational reports.

SSI Redetermination SSA Regulations

- SSR 09-2p: Title XVI: Determining Childhood Disability – Documenting a Child's Impairment-Related Limitations
 - This regulation gives an extensive discussion of documenting childhood disability through the IEPs.
 - IEPs can be used to document the disability of a young adult who is 18 -22 years old who still in special education.

SSI Redetermination SSA Regulations Cont'd

- SSR 11-2p; Titles II and XVI: Documenting and Evaluating Disability in Young Adults
- This regulation considers individuals from 18-25 years old to be young adults. Therefore, SSA will use the same criteria for determining disability for older adults.
- However, SSA will take into consideration any documentation and information available from non-medical sources like social workers, therapists, vocational coaches, and family members.

SSI Redetermination: Warnings

- **WARNING:** Loss of SSI benefits through a finding that the youth is no longer disabled may result in the loss of Medicaid, as well as the loss of Medicaid Waiver services, including the Developmentally Disabled Waiver.
- **WARNING:** Living arrangements and food provided by family may be in-kind income that can affect SSI eligibility. Same applies to income from a parent or spouse that may be deemed to the youth. 20 C.F.R. § 416.1130.

Pop Quiz Question #3

- David, is a 19 year old student who still attends high school. He has an Intellectual Disability with Full Scale IQ of 65. What documentation can you use to determine that he is still eligible for SSA benefits?
- Medical records and reports from David's physicians, nurse-practitioner, physician's assistant, audiologist, occupational therapist, physical therapists, and psychiatric social workers.
- Any educational records including IEPs.



Continued Payment under a VR or Similar Program (Section 301)

Continued Payment

- If a finding is made that the person is considered no longer disabled, § 301 allows an SSI beneficiary to continue to receive SSI benefits, including ancillary benefits like Medicaid.
- SSI benefits may be protected when the youth participates in an appropriate vocational rehabilitation program or similar service. 42 U.S.C. § 425(b).

Continued Payment (continued)

- Appropriate vocational rehabilitation programs or similar services include
 - Ticket to Work
 - An IPE through a vocational rehabilitation agency
 - A Plan to Achieve Self-Support (PASS) or
 - An IEP for an individual between age 18 and 21. 20 C.F.R. § 416.1338.
- To be eligible for § 301 protection, an individual must already be participating in a vocational rehabilitation program or similar service at the time of the disability cessation. 20 C.F.R. § 416.1338(a)(2).



Protected Medicaid

Protected Medicaid

- If SSI cash benefits are lost because the Childhood Disability Benefit exceeds the income allowance for SSI, the ancillary benefit of Medicaid eligibility can be preserved. See 42 U.S.C. § 1383c(c)

Protected Medicaid (continued)

- Childhood Disability Benefit Eligibility
 - Formerly known as the Disabled Adult Child (“DAC”) benefit
 - 18 years of age or older and disabled before age 22
 - Parent(s) are disabled, retired, or deceased insured workers
 - Filed an application for child's benefits and
 - Unmarried (If an adult child marries, benefits end unless marriage is to another Social Security beneficiary). POMS DI 10115.001, 20 C.F.R. §§ 404.350-.352.

Eligibility

- Over age 18
- Has blindness or a disability which began before the age of 22
- Entitled to Title II benefits on a parent's record due to the disability, retirement, or death of a parent, and loses SSI due to either receipt of that benefit or increase in that benefit and
- SSI eligibility would continue in the absence of the Title II Childhood Disability Benefit or such increases to that benefit. 42 U.S.C. § 1383c(c)



1619(b) Medicaid While Working

1619(b) Medicaid While Working

- An individual who earns enough income to become ineligible for SSI can still maintain Medicaid health benefits. See 42 U.S.C. § 1382h(b).

1619(b) Medicaid While Working (continued)

- Receipt of 1619(b) Medicaid protects an individual for reinstatement of SSI benefits should countable income decline. It also can protect eligibility under the state's Medicaid waiver programs while working.

1619(b) Medicaid While Working: Eligibility

- To be eligible, an individual must
 - Have a disability
 - Meet all SSI eligibility requirements except for countable earned income
 - Have received SSI for a previous month in the eligibility period
 - Need Medicaid and
 - Not have earnings that would replace the SSI benefit, the Medicaid benefit and any personal care services paid for by public funds. See POMS SI 02302.010 C 1.



Postsecondary Education Services and Support

Extended Foster Care Program

- Started on Jan. 1, 2014.
- Youth will have the choice to stay in foster care until age 21.
- The program will give kids living options, and a support network in order to assist them with the transition to adulthood.
- Young adults with a diagnosed and documented disability may continue to reside in extended foster care up to their 22nd birthday.

Extended Foster Care Req.

- At the age of 18 have been residing in licensed foster care.

AND

- Attending high school or working on GED; or
- Enrolled in college or vocational education program; or
- Employed at least 80 hours per month; or
- Participating in a program designed to promote or eliminate barriers to employment.; or
- Have a diagnosed and documented disability that would prevent the young adult from participating in any of the activities listed above.



Checklist

Transition Checklist 1-3

- 1. Start planning early:** a well-managed transition provides the chance for the greatest possible independence, employment opportunity, and fulfillment preferably starting at the age of 14.
- 2. Apply** to the Division of Vocational Rehabilitation or the Division of Blind Services, as appropriate.
- 3. Invite** a representative from the appropriate vocational rehabilitation agency to IEP meetings. Ensure coordination of the IEP and the IPE through both the school and the vocational rehabilitation agency.

Transition Checklist 4-6

- 4. Apply** for available services and scholarships, i.e. waiver programs, VR services, RTI, etc.
- 5. Keep** a watchful eye and **seek assistance** with income and benefits issues; contact the WIPA programs or Disability Rights Florida with questions about the interplay of work, income, and benefits. Seek assistance in case of an overpayment of Social Security benefits.
- 6. Continue to see doctors** to understand disabling medical conditions.

Transition Checklist 7-9

7. **Determine** if the individual youth can handle their own Social Security & health benefits and who will assist them if they need help.
8. **Identify accommodations** the youth will need in employment or in post-secondary education programs.
9. **Remember** that earning wages causes SSI benefit to decrease, but **increases** overall income. Work puts a person with a disability on a path to being an insured worker.

How We Can Assist

- We advocate for the rights and needs of people with disabilities with both state Vocational Rehabilitation agencies:
 - Division of Blind Services
 - Division of Vocational Rehabilitation

Disability Rights Florida

- And we address other employment related issues:
 - Employment discrimination
 - Reasonable accommodation
 - Work-related transportation
 - Centers for Independent Living
 - Social Security work incentives and WIPAs
 - Employment Networks
 - Others barrier to employment

Contact Information

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- www.disabilityrightsflorida.org

Resources

- Bureau of Exceptional Education and Student Services
Florida Department of Education
325 W. Gaines Street, Suite 614
Tallahassee, FL 32399-0400 (850) 245-0475
www.fldoe.org/ease
- Section X: Florida Department of Education: Transition Services for Students with Disabilities
www.learningforlife.fsu.edu/mentalhealth/ses_workbook/pdfs/section10.pdf
- Division of Vocational Rehabilitation
Florida Department of Education
2002 Old Saint Augustine Road, Building A
Tallahassee, FL 32301 (850) 245-3360
www.rehabworks.org
- Project 10: Transition Education Network
University of South Florida
St. Petersburg 529 1st Street South
St. Petersburg, FL 33701 (727) 873-4661
(727) 873-4660 (Fax)
www.project10.info
- U.S Department of Education, Office of Civil Rights:
Transition of Students With Disabilities To Postsecondary Education: A Guide for High School Educators
<http://www2.ed.gov/about/offices/list/ocr/transitionguide.html>
- Transitioning Planning for Students with Disabilities: A Guide for Families
<http://www.fldoe.org/core/fileparse.php/7690/urlt/0070170-transitionguide.rtf>
- Florida Agency for Persons with Disabilities
Phone: (866) 273-2273
<http://apd.myflorida.com>
- U.S. Social Security Administration
Listing of Impairments – Adult
<http://ssa.gov/disability/professionals/bluebook/AdultListings.htm>