



# Work Based Learning Program Guidelines

*"A student must feel safe in school in order to fulfill his or her full academic potential." from U.S. Department of Education Dear Colleague letter dated Aug. 20, 2013*



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# WORK BASED LEARNING PROGRAM GUIDELINES

## BACKGROUND

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***It is essential that parents and guardians participate in public education.***

California Education Code Section 51100 states, in part, that “It is essential to our democratic form of government that parents and guardians of schoolage children attending public schools and other citizens participate in improving public education institutions. Specifically, involving parents and guardians of pupils in the education process is fundamental to a healthy system of public education.”

***Students have a right to a safe school environment.***

Article I, Section 28(c) of the California Constitution provides that all public school students “have the inalienable right to attend campuses which are safe, secure, and peaceful.”



Note that **[bracketed bold red]** comments in these Guidelines may be addressed by each District individually for inclusion or modification within its Board policies.

## GOAL

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**The goal of Work Based Learning (WBL) programs is to assist students with special needs to make the transition from school to work, post-secondary education, or training in a safe, secure manner.** These guidelines focus mainly on Workability 1, the major WBL program for secondary schools, but these guidelines are broadly applicable to the other forms of WBL programs. Workability 1<sup>1</sup> promotes independent living and provides comprehensive pre-employment services (assessment, career guidance, job search skills training, work experience/vocational training, and mobility training), employment services, worksite training, and follow-up services. Placement and follow-up are continuous until high school graduation. Wages may be subsidized by Workability 1 funds. Workability 1 is a program administered by the

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<sup>1</sup> The Mission of Workability 1 is to promote the involvement of key stakeholders including students, families, educators, employers, and other agencies in planning and implementing an array of services that will culminate in successful student transition to employment, lifelong learning, and quality of life.

California Department of Education, and it is sponsored by the State Department of Rehabilitation (DR) and the Employment Development Department.

Workability<sup>1</sup> is a training program for special education students ages 16 to 22<sup>2</sup>. It is designed to promote career awareness and exploration while students complete their secondary education program. Workability 1 provides students with opportunities for job shadowing, paid and non-paid work experience, and ongoing support and guidance from vocational personnel. Workability 1 is administered by the California Department of Education, Special Education Department.

Businesses that employ Workability 1 students benefit by having screened students ready to learn whose interests/skills are matched to employer's needs. The students receive ongoing support services through a job coach. This program provides a low-risk, low-cost job training for the employer who will have trained employees ready to hire at the end of the training period. Students benefit through this interagency collaboration by having the opportunity to explore careers while having a support system to help them make career decisions as they gain work experience.

## **WORKABILITY AND TRANSITION PROGRAMS**

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California WorkAbility and Transition programs provide comprehensive individual transition planning, pre-employment, employment and work-site training, and participant follow-up for people with disabilities who are making the transition from school to work. The focus of these programs is on paid, off-campus work experience, vocational training, and job placement. All secondary students, whether they have learning disabilities or physical disabilities, whether they are in or out of school, may be served by these programs.

The programs are sponsored and funded by the CDE (Special Education Division) and the DR. The California WorkAbility programs, which encompass four program models—WorkAbility I, II, III, and IV—and the Transition Partnership Project (TPP) are each described below. The WorkAbility and Transition programs model interdisciplinary approaches and interagency management; interagency agreements exist for each.

The goal of the programs is to provide a comprehensive employment preparation program which enables special needs students to secure and maintain unsubsidized employment in the private or public sectors. The primary focus of the models is to actively involve employers, parents, educators, and community and agency support

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<sup>2</sup> Some Districts have opted to begin this program in middle school, with starting ages of 12 or 14.

personnel in the training and placement of these students in order to promote and improve their community integration and vocational and personal independence.

**WorkAbility 1** began as a program in 1981 to test the concept of work experience with special education students. WorkAbility I is funded by both state and federal funds.

A WorkAbility 1 (WAI) program is a career awareness, exploration, and training program. WorkAbility 1 provides services to special education students ages [12, 14, 16] to 22, in middle school, secondary education, and young adult programs within the \_\_\_\_\_ District Special Education Local Plan Area (SELPA). WorkAbility 1 job developers provide students and teachers with career awareness and exploration activities through classroom career speakers, job shadowing opportunities, industry tours, and career fairs throughout the school year. Students identify their interests, transferable skills, and abilities with the help of WorkAbility 1. Hands-on, paid, job training at local businesses is a possible option to special education students 16 years and older who meet WAI guidelines. WorkAbility 1 job coaches give individual students on-the-job support and guidance to succeed as a productive member of the community.

**WorkAbility II**, enacted in the fall of 1985, was designed to enhance collaboration between the State Departments of Rehabilitation and Education and is established as the first official cooperative program between these two agencies. The program operates from Adult Schools and Regional Occupational Centers/Programs in conjunction with local offices of the DR to provide a blending of vocational services to adults and out-of-school youth who meet acceptance requirements. It has a combined funding base provided through the DR and Local Education Agencies.

**WorkAbility III** is the result of an interagency agreement initiated in 1985 between the California Community Colleges and the DR. WorkAbility III serves people with disabilities who are both community college students and DR clients desiring and in need of employment. WorkAbility III offers direct job placement, transition assistance into employment and support services. WorkAbility III is funded jointly by the DR and the local community colleges.

**WorkAbility IV** began operation in the 1992-93 year. WorkAbility IV sites are cooperative interagency programs between the DR and California State University (CSU) and University of California (UC) campuses. The purpose of the program is to assist persons with disabilities who are both UC/CSU students and DR clients in their transition from school to work.

**Transition Partnership Project (TPP)** was established in 1987 as a joint project of the DR and CDE. These programs serve disabled secondary students who have also become DR clients. The purpose of the project is to promote DR/CDE collaboration through local programs which assist the students/clients to prepare for and transition into competitive employment and/or post-secondary education. Transition is a purposeful, organized and outcome-oriented process designated to help "at risk" students<sup>3</sup> move from school to employment and a quality adult life. Expected student outcomes of a successful transition include meaningful employment, a further education, and participation in the community (for example, living arrangements, social activities, recreational activities, on-going educational opportunities, etc.).

A table summarizing these vocational training and placement programs is included at the end of these guidelines (see APPENDIX—WBL 1 Table of Vocational Training and Placement Programs).

The California educational system is responsible for providing quality educational opportunities and for coordinating with other service delivery systems to provide a broad array of services and activities to help the student move to a successful adult life.

Successful transition has several components:

### **Transition Foundation**

The foundation provides the opportunity for students to gain the skills necessary for successful involvement in employment and adult life. The foundation is laid as soon as special needs are identified and continues until the student completes movement from school to work and adult life. This could occur as early as one or two months of age and continue through age 21.

### **Transition Process**

The transition process begins by age 14 or the ninth grade. It involves the student, the family, key education, adult service, and other providers working together to assess needs, plan and implement education, training and other activities.

Planning is a critical part of the transition process. A written plan is developed and implemented for each student no later than age 14 or the ninth grade. Planning is a joint effort involving the student, the family, education personnel, adult service, and other providers.

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<sup>3</sup> "At risk" students are those who experience barriers to successful completion of school, including individuals with exceptional needs.

## **Transition Culmination**

The transition culmination refers to the span of time encompassing: (a) the last two years of secondary school, (b) the point of separation from school, and (c) the two years following separation. During this time, responsibility for transition management shifts from the educational system to the student, the family and/or the adult service delivery system. During this period the student engages in activities related to life in the community.

## **Transition Follow-up**

The California educational system is responsible for evaluating outcomes for "at risk" students for two years after movement into employment, further education and community life. Specific responsibilities include: monitoring and evaluating student outcomes; analyzing the implications of this evaluation for transition programs; and referring students and/or their families to other service providers if necessary.

## **WORKSITE PRE-SCREENING**

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Districts can choose viable Workability 1 worksite participants by:

- a) contacting and screening Workability 1 worksite prospective participants;
- b) interviewing potential Workability 1 worksite prospective participants;
- c) analyzing complementary job skills, conditions, and required standards of performance; and
- d) analyzing the critical functions of a job once the job and Workability 1 student have been matched.

## **Worksite Employee Screening**

Workability worksite supervisory employees should endeavor to not have private, one-to-one exposure or contact with Workability 1 participating students. For worksite supervisory employees, there should be no solitary time with Workability 1 participating students, and there should always be an unobstructed view of interactions with Workability 1 participating students.

For Workability 1 worksite supervisory employees, the following screening requirements should apply:

1. Be sponsored and approved by an authorized District employee.
2. Be able to present some form of current, government-issued photo identification (driver's license, passport, military ID, U.S. or other government identification). **[By**



**recommendation from the Department of Justice, Mexico identification and voter registration cards are not recognized. U.S. social security cards and birth certificates without an accompanying U.S. driver's license are also not recognized.]**

3. Complete and submit for approval the district Workability 1 Worksite Supervisory Employee Application (See **Sample District Form—WBL 3** near the end of these guidelines for a sample).
4. New Workability 1 Worksite Supervisory Employees should submit their fingerprints to both State and National databases.
5. New Workability 1 Worksite Supervisory Employees should be checked by designated site personnel against the California Department of Justice, Sexual Offender (Megan's Law) website.<sup>4</sup>
7. New Workability 1 Worksite Supervisory Employees should sign the Workability 1 Worksite Supervisory Employee Code of Conduct Form (See **Sample District Form—WBL 4** near the end of these guidelines for a sample).

### **Proper Interaction with Minors**

The District should require that all Workability 1 Worksite Supervisory Employees interact with minors in a safe and proper manner including:

- Eliminating the times when Workability 1 Worksite Supervisory Employees are alone with minors **[, not of family relations,]** without other adults being present, accessible, or in view. **Worksite employers should practice two-deep leadership, no one-to-one contact, respect for privacy, and prompt reporting of problems at all times with respect to interaction among adults and minors.**
- Never being with a minor in a concealed area, including a locked room or a place where other adults cannot see or hear an adult's interaction with a minor or minors;

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<sup>4</sup> **Live scan fingerprinting with DOJ and FBI criminal background checks.** Regular Workability 1 Worksite Supervisory Employees are required to be background checked for registered sex offender status and criminal backgrounds **[at their own cost]**. Locations of live scan fingerprint services can be obtained from the State of California Department of Justice, Office of the Attorney General, Applicant Live Scan Fingerprint Services at <http://ag.ca.gov/fingerprints/publications/contact.php> . Name checks for registered sex offenders can be obtained from the Dru Sjodin National Sex Offender Public Website at <http://www.nsopw.gov/?lang=ENGLISH&AspxAutoDetectCookieSupport=1> and the California Department of Justice Megan's Law Website at <http://www.meganslaw.ca.gov/disclaimer.aspx> . Any person who is required to register as a sex offender pursuant to Penal Code 290 shall not serve as a volunteer or as a volunteer nonteaching aide. (Education Code 35021)

- Never giving a minor a gift **[over [\$5, \$10] in value or money]** without the consent of District **[and the guardian or parents of the minor];**
- Never providing drugs or alcohol to minors or purchasing drugs or alcohol for minors;
- **[Never going to an event with a minor without receiving the written consent of the minor’s guardian or parents [and [District]]];**
- **[Never providing transportation to a minor or minors without approval of [District] [and consent of the minor’s guardians or parents][[and] without other adults being present][, and without current, District approved proof of automobile liability insurance on file with the District];**
- **[Never taking video or audio recordings, photographs, or otherwise capturing digital images of a minor without receiving the written consent of the minor’s guardian or parents [and [District]]];** and
- **[Never communicating to a minor on matters unrelated to performance of your duties as a volunteer; or inappropriately via phone, letter, instant messaging, social media, email or in a chat room [without the consent of the minor’s guardians or parents].]**

#### **FAIR LABOR STANDARDS ACT (FLSA) STANDARDS RELATED TO WORK BASED LEARNING (WBL)**

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Because Work Based Learning (WBL) activities take place in employment settings, these activities must comply with the provisions of the Fair Labor Standards Act (FLSA). The FLSA is the federal legislation establishing minimum wage, overtime pay, record-keeping requirements (i.e., personal employee information, wages, hours), and child labor. Employees are entitled to a regular wage of at least \$9.00 (the current, California minimum wage<sup>5</sup>) per hour and overtime pay of at least one and one-half times their regular wage for all hours more than 40 in a work week. In order to promote WBL programs to prepare youth with disabilities for productive, paid employment, the U.S. Departments of Labor and Education entered into an agreement in September 1992 and adopted the following Statement of Principle:

*The U.S. Departments of Labor and Education are committed to the continued development and implementation of individual education programs, in accordance with the Individuals with Disabilities Education Act (IDEA), that will facilitate the transition of students with disabilities from school to employment within their communities. This*

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<sup>5</sup> This increases to \$10.00 per hour on January 1, 2016. Note that some local areas may have higher minimum wages.

*transition must take place under conditions that will not jeopardize the protections afforded by the Fair Labor Standards Act to program participants, employees, employers, or programs providing rehabilitation services to individuals with disabilities.*

The Departments of Labor and Education joined this statement of principle with Policy Guidelines governing the participation of youth with disabilities in employment settings for career exploration, career assessment, and work-related training. Youth with disabilities who engage in nonpaid career exploration, career assessment, and work-related training activities are not considered employees of the businesses in which they receive these services only if they can demonstrate compliance with all of the guidelines below. When schools and employers engaging in these WBL activities with youth with disabilities adhere to all of the following guidelines, they do not violate the provisions of the FLSA. The guidelines are:

- Participants will be youth with physical and/or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of their disability, will need intensive ongoing support to perform in a work setting.
- Participation will be for career exploration, career assessment, or work-related training at a worksite placement under the general supervision of public school personnel.
- Worksite placements will be clearly defined components of Individualized Education Programs (IEPs) developed and designed for the benefit of each student. The statement of needed transition services established for the exploration, assessment, training, or cooperative work experience components will be included in the student's IEP.
- Information contained in a student's IEP will not have to be made available; however, documentation as to the student's enrollment in the work-based learning program will be made available to the Departments of Labor and Education. The student and his or her parent(s) or guardian(s) must be fully informed of the IEP and the career exploration, career assessment, or work-related training components and have indicated voluntary participation with the understanding that participation in these components does not entitle the student participant to wages or other compensation for duties performed at the worksite placement.
- The activities of the student at the worksite do not result in an immediate advantage to the business. The Department of Labor looks at the following factors to determine if this guideline is being met:

- ✓ There has been no displacement of employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the students are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.
- ✓ The students are under continued and direct supervision by either representatives of the school or by employees of the business. The student receives ongoing instruction and close supervision at the worksite during the entire experience, resulting in any tasks the student performs being offset by the burden to the employer of providing ongoing training and supervision.
- ✓ Such placements are made according to the requirements of the student's IEP and not to meet the labor needs of the business.
- ✓ The periods of time spent by the students at any one site or in any clearly distinguishable job classification are specifically limited by the IEP.
- While the existence of an employment relationship will not be determined exclusively on the basis of number of hours, as a general rule, each component will not exceed the following limitation during any one school year
  - ✓ Career exploration—5 hours per job experience
  - ✓ Career assessment—90 hours per job experienced
  - ✓ Work-Related training—120 hours per job experienced
- Students are not automatically entitled to employment at the business at the conclusion of their IEP. However, once a student has become an employee, the student cannot be considered a trainee at that particular worksite placement unless in a clearly different occupation. Schools and participating businesses are responsible for ensuring that all seven of these guidelines are met. If any of these guidelines are not met, an employment relationship exists, and participating businesses can be held responsible for full compliance with the FLSA.

Assume that a youth with a disability is paid for work performed in the employment setting as part of a WBL program. Then, an employment relationship exists, and the student is an employee entitled to the same wages as nondisabled employees performing the same tasks, and Districts and businesses are subject to all of the provisions of the FLSA, (i.e., minimum wage, overtime pay, record-keeping, and child labor). **This is true whether the student is paid by the business, school, or a third party.**

The FLSA contains several provisions addressing employees who are age 14 and 15, age 16 and older, or workers with disabilities. These provisions are described as follows.

- **Youth age 14 and 15:** Under the FLSA child labor provisions, these students may work in various jobs outside school hours no more than three hours on a school day with a limit of 18 hours in a school week; no more than eight hours on a nonschool day with a limit of 40 hours in a nonschool week; and not before 7:00 a.m. or after 7:00 p.m., except from June 1 through Labor Day, when the evening hour is extended to 9:00 p.m. These students may not work in jobs declared hazardous by the Secretary of Labor.
- **Youth age 16 and 17:** Under the FLSA child labor provisions, these students may work anytime for unlimited hours in all jobs not declared hazardous by the Secretary of Labor. (States often have limited hours for students age 16 and 17. The school and employer are responsible for knowing and enforcing the hours. When state rules are stricter than federal rules, state rules apply.)
- **18** is the minimum age for **employment in occupations declared hazardous** by the Secretary of Labor. For the purposes of this manual, a hazardous occupation is defined as an occupation that may be detrimental to the health and well being of children under 18 years of age or an occupation that may jeopardize their educational opportunities. The rules prohibiting working in hazardous occupations (HO) apply either on an industry or an occupational basis no matter what industry the job is in. Parents employing their own children are subject to these same rules. Some of these hazardous occupations have definitive exemptions. Youth age 18 and older may be placed in any hazardous occupation if it is developmentally appropriate for the youth.

#### **List of Hazardous Occupations**

- ✓ HO #1 Manufacturing and storing of explosives.
- ✓ HO #2 Driving a motor vehicle and being an outside helper on a motor vehicle.
- ✓ HO #3 Coal mining.
- ✓ HO #4 Logging and sawmilling.
- ✓ HO #5 Power-driven woodworking machines.
- ✓ HO #6 Exposure to radioactive substances.
- ✓ HO #7 Power-driven hoisting apparatuses.
- ✓ HO #8 Power-driven metal-forming, punching, and shearing machines.
- ✓ HO #9 Mining, other than coal mining.
- ✓ HO #10 Meat packing or processing (including the use of power-driven meat slicing machines).
- ✓ HO #11 Power-driven bakery machines.
- ✓ HO #12 Power-driven paper-product machines.

- ✓ HO #13 Manufacturing brick, tile, and related products.
- ✓ HO #14 Power-driven circular saws, band saws, and guillotine shears.
- ✓ HO #15 Wrecking, demolition, and ship breaking operations.
- ✓ HO #16 Roofing operations.
- ✓ HO #17 Excavation operations.
- Youth age 18 or older may perform any task, whether hazardous or not. **(It is also important to consider whether the job or occupation is developmentally appropriate.)** Youth age 16 or 17 may perform any nonhazardous job. Youth age 14 and 15 may not work in the manufacturing or mining industries or in any hazardous job. In addition, youth age 14 or 15 may not work in the following occupations:
  - ✓ Communications or public utilities jobs;
  - ✓ Construction or repair jobs;
  - ✓ Driving a motor vehicle or helping a driver;
  - ✓ Manufacturing and mining occupations;
  - ✓ Power-driven machinery or hoisting apparatuses other than typical office machines;
  - ✓ Processing occupations;
  - ✓ Public messenger jobs;
  - ✓ Transporting persons or property;
  - ✓ Workrooms where products are manufactured, mined, or processed; and
  - ✓ Warehousing and storage.
- A 14- or 15-year-old may work in retail stores, food service establishments, and gasoline service stations. However, a 14- or 15-year-old may not perform the following tasks in the retail and service industries:
  - ✓ Baking;
  - ✓ Boiler or engine room work, whether in or about;
  - ✓ Cooking, except at soda fountains, lunch counters, snack bars, and cafeteria counters;
  - ✓ Freezers or meat coolers work;
  - ✓ Loading or unloading goods on or off trucks, railcars, or conveyors;
  - ✓ Meat processing area work;
  - ✓ Maintenance or repair of a building or its equipment;
  - ✓ Operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers, grinders, choppers or cutters, and bakery mixers;
  - ✓ Outside window washing, or work standing on a window sill, ladder, scaffold, or similar equipment; and

- ✓ Warehouse work, except office and clerical work.
- A 14- or 15-year-old may perform these tasks in the retail and service industries:
  - ✓ Bagging and carrying customer's orders;
  - ✓ Cashiering, selling, modeling, art work, advertising, window trimming, or comparative shopping;
  - ✓ Cleaning fruits and vegetables;
  - ✓ Clean-up work and grounds maintenance (the young worker may use vacuums and floor waxers, but he or she cannot use power-driven mowers, cutters, and trimmers);
  - ✓ Delivery work by foot, bicycle, or public transportation;
  - ✓ Kitchen and other work in preparing and serving food and drinks, but not cooking or baking (see hazardous jobs);
  - ✓ Office and clerical work;
  - ✓ Pricing and tagging goods, assembling orders, packing, or shelving;
  - ✓ Pumping gas, cleaning and polishing cars and trucks (but the young worker cannot repair cars, use garage lifting rack, or work in pits);
  - ✓ Wrapping, weighing, pricing, and stocking any goods as long as the young worker does not work where meat is being prepared and does not work in freezers or meat coolers.
- **Student learners:** High-school students at least age 16 who are enrolled in career and technical education can be employed at a special minimum wage rate of not less than 75 percent of the minimum wage provided authority is obtained from the Department of Labor Regional Office of the Wage and Hour Division for each student before he/she begins employment.
- **Full-time student program:** Full-time students working in retail or service stores, agriculture, or colleges and universities can be employed at a special minimum wage of not less than 85 percent of the minimum wage. Employers must first obtain a certificate from the Department of Labor Regional Office of the Wage and Hour Division. This certificate also limits the number of hours a student may work to 8 hours per day and no more than 20 hours per week during the school year and 40 hours per week when school is out, and requires employers to follow all child labor laws.
- **Youth minimum wage:** Section 6(g) of the FLSA allows employers to pay employees under age 20 a youth minimum wage of not less than \$4.25 per hour for a limited time period of 90 consecutive calendar days, not work days. The 90-day period starts with and includes the first day of work. **Where state or local law (such as California)**

**requires payment of a minimum wage higher than \$4.25 an hour for employees under age 20, the higher state or local minimum wage rule applies.** A break of service does not affect the calculation of the 90-day period. For example, if a student initially worked for an employer over a period of 60 consecutive calendar days during the summer and then quits to return to school, the 90-day eligibility period ends for this employee with this employer 30 days after he/she quits (i.e., 90 consecutive calendar days after initial employment). If this same student returned later to work again for the same employer, the employer would not be able to pay the student the youth minimum wage. Individuals under age 20 may be paid the youth minimum wage for up to 90 consecutive calendar days after initial employment by more than one employer. Employers may not displace regular employees to hire someone at the youth wage.

- **Workers with disabilities in supported-work programs:** Section 14 of the FLSA allows workers with disabilities to be employed at wage rates that may be below the statutory minimum, but wages paid must always be commensurate with the workers' productivity as compared to the productivity of nondisabled workers performing the same tasks. To pay a wage rate below the statutory minimum, an employer must obtain a special minimum wage certificate from the Department of Labor Wage and Hour Midwest Regional Office (see Appendix A); the employer must obtain the certificate before employing a worker with a disability at less than the minimum wage.

Schools operating WBL programs should not rely solely on the preceding description of the FLSA provisions that apply when students participate in the cooperative work experience component of WBL. Schools and businesses may consult the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division Regional Office for additional guidance (see Appendix A) and state and local government agencies. With the issuance of policy guidelines governing the WBL components of career exploration, career assessment, and work-related training, the U.S. Departments of Labor and Education have cleared the way for schools to launch or expand their WBL programs for youth with disabilities. Several state and local education agencies have contacted the Office of Special Education Programs within the U.S. Department of Education with questions about applying the guidelines to their own WBL programs.

## **LAWS AND REGULATIONS FOR EMPLOYMENT OF MINORS**

A major responsibility of the District is knowledge of the laws and regulations relating to the employment of minors and Work Experience Education (WEE) Programs. For more



specific information relating to work permits and labor laws, Districts can refer to the California Department of Education's Work Permit Handbook for California Schools: Laws and Regulations Governing the Employment of Minors, 2009 and the Department of Industrial Relation's California Labor Laws, 2000.

### **Issuance of Work Permit**

Education Code, § 49110, states that those persons issuing work permits have a "working knowledge of California labor laws." The superintendent of any public school district may issue work permits or may authorize a certificated WEE coordinator, employee, or an educator who holds a Pupil Personnel Services credential to act as the issuing authority. It is most common that, when possible, the superintendent authorizes the WEE coordinator to act as the issuing authority.

The coordinator should act as a positive agent in helping both the student and the employer understand the provisions and purposes of the labor laws. While the coordinator's first consideration is protection of the student's safety and welfare, the coordinator also has a responsibility to be sensitive to the interests of the employer. More often than not, violations of the labor laws result from ignorance rather than intent. Thus, the WEE coordinator should inform and educate the employer regarding the legal regulations that are particularly applicable to that specific business.

When violations occur, the District may revoke a student's work permit (EC § 49164), cancel the training station and refuse to issue other work permits at the site unless assurance is given that future violations will not occur. The coordinator is legally responsible for notifying the local office of the Division of Labor Standards Enforcement within 48 hours of the known violations(s) (EC § 49180). When a wage dispute or nonpayment of wages occurs, the student must file a complaint with the same agency. Offices are listed in the "Government" section of the telephone directory, under "State," "Industrial Relations, Labor Standards Enforcement."

Forms and information about wages, discrimination/retaliation, bureau of field, and Child Labor can also be found at the California Division of Labor Standards Enforcement web site at [www.dir.ca.gov/dlse](http://www.dir.ca.gov/dlse)

The WEE coordinator should have the most recent editions of the Work Permit Handbook for California Public Schools and the California Labor Laws. Additional resources are available from the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, and the State of California Department of Industrial Relations, Division of Labor Standards Enforcement. The California Resource Network for Young

Worker Health and Safety has information about safety issues dealing with teenage workers.

### Special Work Permits

Students enrolled in a Work Experience Education Program may be issued a Special Work Permit, which will allow them to work later and longer hours, Monday through Thursday and more hours per week. The following table presents a comparison of the two types of Work Permits:

**Summary of School Work Permit Time Restrictions**

Hours worked	Regular Work	Regular Work	Special Work	Special Work
	Permit for students with ages of 14 to15	Permit for students with ages of 16 to 17	Permit for students with ages of 14 to 15 enrolled in WEE (principal approval)	Permit for students with ages of 16 to 17 enrolled in WEE*
Mon - Thurs when school in session	3	4	3	8*
Fri - Sun School not in session	8	8	8	8
Maximum hours when school not in session	40	48	40	48*
Total hours allowed on week when school is in session	18 hours per week	48 hours per week	23 hours per week*	48 hours per week*
Work must be performed between these hours when school is in session	7 a.m. – 7 p.m. but not when public school in session	5 a.m. – 10 p.m.	7 a.m. – 7 p.m.	5 a.m. – 12:30 a.m.*
When work day does not precede a school day	7 a.m. – 9 p.m. between Memorial Day and Labor Day	5 a.m. – 12:30 a.m.	7 a.m. – 9 p.m. between Memorial Day and Labor Day	5 a.m. – 12:30 a.m.

\* With the approval of the parents and the school district. See <http://www.dir.ca.gov/dlse/dlseformB1-1.pdf>.

School districts may impose their own restrictions on the number of hours a student is allowed to work in a school week. Twenty hours is the suggested number for students not enrolled in a WEE Program. Various studies on the effect of working and a student’s success in school shows that students, not enrolled in a WEE Program, show lower academic success when employed more than 20 hours per week.

### School Attendance

As described in the California Labor Laws Department of Industrial Relations Division of Labor Standards Child labor Pamphlet (download the complete pamphlet at [www.dir.ca.gov/d/se.childlaborpamphlet](http://www.dir.ca.gov/d/se.childlaborpamphlet) ), minors aged six through fifteen years must attend school full-time, unless the minor is a high school graduate (EC § 49110), attends an approved alternative school (EC § 48224), is tutored (EC § 48224), is on an approved

leave of absence (EC § 48232), has transferred from another state with less than 10 days left in the school year (EC § 48231), or has justifiable personal reasons requested by the parent and approved by the principal including, illness, court appearances, religious observances and retreats, funerals or employment conferences (EC § 48205). In rare circumstances, fourteen and fifteen year-olds enrolled in Work Experience Education may be granted a permit to work full-time during school hours (EC § 49130).<sup>6</sup>

Sixteen and seventeen-year-olds, who have not graduated from high school or who have not received a certificate of proficiency may opt to attend part-time classes. Those who are regularly employed must attend continuation classes for at least four hours per week. Those not regularly employed must attend continuation classes for at least fifteen hours per week (EC § 48400 and 48402). No minor may legally drop out of school entirely.

These Education Codes give school officials the authority to pull a minor's work permit if he/she is not attending school. Many school districts require a student to maintain a minimum grade point average and limit the number of trancies that a student may have. A student who has more than the minimum trancies or less than the minimum grade point average will have his/her work permit revoked. This policy should be outlined by the district and attached to every work permit application. This policy should also be included in the District Plan for Work Experience Education.

### **Processing Work Permits**

Many school districts have developed computer programs to help with the issuing of work permits. Another alternative is a commercial computer programs such as QuickPermit™ for issuance of work permits. Programs such as QuickPermit™ can create a data base, which makes issuing work permits faster, allows for monitoring of students with work permits, and will generate letters to employers, parents/legal guardians, and students on work permit related issues. Visit their web site at <http://www.TouchlineSoftware.com>.

### **High School Diploma**

A minor who has a high school diploma or High School Proficiency Certificate is still partially subject to the child labor laws although a work permit is not required by law. Most essential is the fact that the minor may not work at a hazardous occupation (FLSA regulations). The limit on hours worked on a school day and the spread of hours, which

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<sup>6</sup> Note: Schools may excuse the absences of a pupil who holds an entertainment work permit or who participates with a non-profit arts organization in a performance for a public school audience. For additional information, refer to the section entitled, "Excused School Absences," in Chapter 9 of the California Labor Laws, Department of Labor Standards Child Labor Pamphlet.

may be worked no longer, apply. The minor must be paid the same wages as adults who are doing the same work. (LC § 1391.2)

### **Continuation High School / Alternative High School**

The class schedule of a continuation or evening high school student might allow for work hours, which are different from those of students in the comprehensive high school. The continuation high school student, ages sixteen and seventeen not enrolled in a WEE Program, must be enrolled for fifteen hours of instruction each week and may work up to forty eight hours each week. Continuation students enrolled in a WEE Program must attend school for at least four hours per week.

### **Independent Study**

Minors enrolled in an independent student program are limited to the same hours of employment as a student enrolled in a comprehensive high school. Students enrolled in a work experience education program as part of their Independent Study Program may work the same hours as a WEE student enrolled in a comprehensive high school WEE Program.

### **Suspended or Expelled Students**

The law does not prohibit issuing a permit to an expelled minor. An expelled minor who does not attend school is in compliance with the law; therefore, issuance of a permit does not sanction a violation of compulsory school attendance laws. Whether issuing the permit is in the best interest of the minor is a matter of discretion for the school and should be carefully considered in the light of all factors.

A student suspended from school for a specific number of days may not work on those days unless a specific condition of the suspension states that the student may work on days when he/she does not attend school.

### **Home Schooling**

According to an opinion issued by the office of the CDE Deputy General Counsel, home schooling, “is a species of a private school. That being the case, principals of home schools may issue work permits to their enrolled students. However, parents and guardians may not issue work permit to their own children. (EC § 49110)

### **Emancipated Minor**

Emancipation is a legal process wherein the judicial system finds that the minor has the ability to be self supporting and to act in his/her own behalf. Emancipation does not release the minor from compulsory attendance laws nor does it exempt the minor from child labor laws.

As defined in the Civil Code § 62, “Any person under the age of 18 years who comes within the following description is an emancipated minor:

- a) Who has entered into a valid marriage, whether or not such marriage was terminated by dissolution; or
- b) Who is on active duty with any of the armed forces of the United States of America; or
- c) Who has received a declaration of emancipation pursuant to Civic Code.

For the school, emancipation means that the student may take action for him/herself that would otherwise be restricted to the parent/legal guardians. A work permit is still required but the student may sign in place of the parent. Although the student may work, other regulations relating to the employment of minors still apply.

The emancipated minor is not exempt from any obligations, rules, or laws. The compulsory school attendance laws as specified in the Education Code do not recognize emancipation as a condition for exemption from those rules. The child labor laws, as specified in the Labor Code, do not refer to emancipated minors. The definition, purpose, and liability of emancipation are found only in the Civil Code as amended by statute in 1979.

### **Alien Student Employment**

Any student enrolled in school and meeting the state compulsory attendance laws may be issued a work permit regardless of the parent/legal guardian’s legal immigration status. It is the responsibility of the employer to complete the “Employment Eligibility Verification (Form I-9).” Issuance of a work permit does not verify citizenship.

Immigrants are aliens who have been admitted for permanent residence to the United States of America and who have access to all privileges and rights of citizens. The only restriction is that they must comply with laws relating to alien registration, change of address, and annual reports.

Non-immigrant aliens are defined as persons admitted temporarily for specific purposes and periods of time. Except for non-immigrants who have been admitted specifically in order to work in this country, non-immigrant aliens are usually prohibited from employment in the United States. The exceptions to this rule are the students and exchange visitors who may work with specific written permission.

### **Legal Provisions and Requirements**

The welfare of employed minors is regulated by federal and state labor laws, which serve as guidelines for local regulations. The provisions generally become progressively more

restrictive from the federal to the local levels because they are often written to relate to specific needs or new developments. Some flexibility and interpretation is allowed locally for the “welfare of the minor.” However, federal and state laws are subject to strict interpretation and are applicable at the local level. When both federal and state laws apply, the higher standards and most restrictive regulations take precedence.

On the basis of consideration for a minor’s welfare, a school official may revoke his/her work permit, remove a student from a job or from the WEE Program if either interferes with the student’s schoolwork, health, or welfare. A parent conference and communication with the employer is strongly recommended before such a step is taken. A parent also has the legal right to restrict or revoke his/her child’s work permit.

Districts also have the right to place their own restrictions on the issuance of work permits. Some Districts require students to maintain a minimum grade point average and have no more than a certain number of truancies in a semester. Students should be made aware of these requirements before the work permit is issued.

### **Workers’ Compensation Insurance**

In California, an employer is required by law to carry Workers’ Compensation Insurance for employees in the event that they are injured during the course of their employment. Workers’ Compensation Insurance covers the employer’s full liability to employees for medical and hospital expenses and the liability for the employee’s loss of income. (LC § 3351 & 3351.5)

Students enrolled in a general or Career Technical WEE Program must be covered by their employer’s Worker’s Compensation Insurance. The employer is asked to give the name of the carrier on the student’s training agreement. Allowing a student to be enrolled in a WEE Program, without the employer stating the business has Worker’s Compensation on their employees, is exposing the school district to a possible lawsuit if the student is injured while enrolled in the program.

The Work Permit Application provided in QuickPermit™ and shown in The Work Permit Handbook for California Schools: Laws and Regulations Governing the Employment of Minors, 2009 asks for the employer’s signature as verification that the employee is covered by Worker’s Compensation Insurance.

Students in an Exploratory WEE Program who do not receive wages are covered by the school district’s insurance, unless the employer elects to provide coverage for that student. (EC § 51769)

## **Vehicle Code (VC)**

Generally speaking, automobile insurance policies specifically exclude students from driving a motor vehicle during the course of employment. Vehicle Code § 12515 states that:

- a) “No person under the age of 18 years shall be employed . . . for the purpose of driving a motor vehicle on the highways.
- b) No person under the age of 21 years shall be employed . . . to drive a motor vehicle . . . that is engaged in interstate commerce . . . or intrastate transportation of hazardous materials.”

Vehicle Code § 12515, 17706, and 17707 speak to the issue of the legality of a minor operating a motor vehicle and the liability for negligence as the result of a minor driving. The FLSA §33e02b, defines the term “driver” as one who drives at any time in the course of employment. This regulation further states that minors sixteen and seventeen years of age may drive on private property except as specifically prohibited. These code sections are printed in their entirety in the Work Permit Handbook for California Schools: Laws and Regulations Governing the Employment of Minors, 2009 and “The California Labor Laws for Minors,” booklet from the Department of Industrial Relations.

## **Employment of the Handicapped**

The Rehabilitation Act, Title 5 (PL 93-122) prohibits discrimination in the employment of the handicapped in any federally funded or assisted contract or project. The Companion Law (AB 803) of the State of California regulates employment based on the same restrictions. The Education for the Handicapped Act (PL 94-142) requires that the handicapped have free access to all services offered by any school receiving federal funds. These services include job training, job placement, and career development.

## **FREQUENTLY ASKED QUESTIONS AND ANSWERS ABOUT FSLA AND WBL PROGRAMS**

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The U.S. Departments of Labor and Education have policy guidelines that apply to youth with disabilities in nonpaid, non-employment relationships. A nonpaid, non-employment relationship may occur as part of the career exploration, career assessment, and work-related training components of WBL programs. Following are many questions frequently asked about these guidelines. Each question is followed by an answer developed by the U.S. Department of Education in collaboration with officials from the U.S. Department of Labor’s Wage and Hour Division.

## Requirements for Participation

1. *Which students may participate in work-based learning (WBL) programs under the - policy guidelines for nonpaid, non-employment relationships?*

Eligible participants must be youth with physical and/or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of their disability, will need intensive ongoing support to perform in a work setting. Their participation will be for career exploration, career assessment, or work-related training at a worksite placement under the general supervision of public school personnel. Their worksite placements will be clearly defined components of Individualized Education Programs (IEPs) developed and designed for the benefit of each student. The statement of needed transition services established for the exploration, assessment, training, or cooperative work experience components will be included in the student's IEP. Information contained in the student's IEP will not have to be made available; however, documentation as to the student's enrollment in the work-based learning program will be made available to the Departments of Labor and Education. The student and his or her parent(s) or guardian(s) must be fully informed of the IEP and the career exploration, career assessment, or work-related training components and have indicated voluntary participation with the understanding that participation in these components does not entitle the student participant to wages or other compensation for duties performed at the worksite placement. The activities of the student at the worksite must not result in an immediate advantage to the business. The Department of Labor looks at the following factors to determine if this guideline is being met:

- ✓ There has been no displacement of employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the students are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.
- ✓ The students are under continued and direct supervision by either representatives of the school or by employees of the business. The student receives ongoing instruction and close supervision at the worksite during the entire experience, resulting in any tasks the student performs being offset by the burden to the employer of providing ongoing training and supervision.
- ✓ Such placements are made according to the requirements of the student's IEP and not to meet the labor needs of the business.



- ✓ The periods of time spent by the students at any one site or in any clearly distinguishable job classification are specifically limited by the IEP.

While the existence of an employment relationship will not be determined exclusively on the basis of number of hours, as a general rule, each component will not exceed the following limitation during any one school year:

- ✓ Career exploration—5 hours per job experienced
- ✓ Career assessment—90 hours per job experienced
- ✓ Work-Related training—120 hours per job experienced

Students are not automatically entitled to employment at the business at the conclusion of their IEP. However, once a student has become an employee, the student cannot be considered a trainee at that particular worksite placement unless in a clearly different occupation. Schools and participating businesses are responsible for ensuring that all seven of these guidelines are met. If any of these guidelines are not met, an employment relationship exists, and participating businesses can be held responsible for full compliance with the FLSA.

*2. How is it determined which students might need to participate in a WBL program?*

The determination should be based on the individual student's needs, taking into account the student's preferences and interests. WBL is considered a major change in placement for most students and requires a change in the IEP. The District must invite the student to any meetings considering transition services or participation in work-related training.

*3. Does the term "physical and mental disabilities" mean that students with learning disabilities are excluded?*

No. Learning disabilities can have their origin in physical or mental disabilities. However, participation in WBL programs should not be determined by disability group but rather by individual needs and preferences.

*4. The policy guidelines indicate that nonpaid, non-employment work-related training is for individuals for whom employment is "not immediately obtainable." What does this mean?*

The "not immediately obtainable" language was placed in the guidelines to ensure that students would not have extended placements in the career exploration, career assessment, or work-related training components of WBL programs if they were capable of obtaining employment at or above the minimum wage level. Work-based learning is

an organized set of educational and skill-building activities intended to prepare students for paid employment while they are in school.

5. *The guidelines also indicate that work-related training is intended for students who will need “intensive ongoing support” to perform in a work setting. Does this mean that it is intended for students with more severe disabilities?*

While work-related training is intended for those students with more severe disabilities, it is appropriate for students with low to moderate disabilities when the intent is to move the student to paid employment as soon as the student is ready. Assessment of students’ needs must be based on skills and behaviors necessary to function in a work setting. Examples of ongoing support services include job redesign, job coaching to retain employment, environmental adaptations, personal assistance services, transportation, and social-skills training (Rehabilitation Act Amendments, S. Rep. 102-357, 1992).

6. *What vocational options should be available to students who do not need intensive ongoing support?*

Work-based learning programs are not intended to replace career and technical education, work study, or other vocational training and employment programs. WBL is intended as an option made available to students to expand the capacity of education agencies in assisting each student to achieve employment objectives. Collaboration with all programs/agencies can provide a student with the best opportunities.

### **Documentation**

7. *What type of documentation is needed?*

It is important that WBL programs document that all participants, including the student, the parent(s) or guardian(s), the employer, and instructional staff, understand that:

- ✓ If at any point the WBL activity is no longer a learning experience and the criteria for a nonpaid/volunteer WBL experience cannot be met, the activity is not a non-employment relationship;
- ✓ Students are not entitled to wages or other compensation for the time spent in the learning experience; and
- ✓ Students are not automatically entitled to employment at the worksite at the completion of the WBL experience.

Three types of documentation must be used to meet the requirements of these guidelines:

- i. An IEP reflecting instruction and training goals and objectives relevant to the work-related training experience;

- ii. A written individual training agreement outlining the U.S. Departments of Labor and Education requirements listed above and signed by all participants along with attached individual training plan; and
  - iii. Records of student experience (i.e., log of hours spent in WBL activities, progress reports, observation reports, safety training, and performance evaluations).
8. *Is there any additional documentation needed for the paid cooperative work experience component?*

Yes, in addition to the documents listed in Question 7 above, the following records should be kept on file:

- ✓ Hours and wage earnings;
- ✓ Copy of the employer's workers' compensation insurance verification; and
- ✓ A statement of assurance declaring compliance with FLSA and state laws governing working restrictions and hazardous occupations. The employer and work-based learning coordinator sign this document.

9. *Do the policy guidelines supersede individual state departments of labor regulations?*

No. WBL programs must comply with both U.S. Department of Labor regulations and state department of labor regulations. Where the two differ, the regulations with the most stringent requirements for protecting individuals in work settings must apply.

10. *What safety regulations apply to students in the workplace?*

The California Division of Occupational Safety and Health (DOSH), better known as Cal/OSHA, regulations that apply to a workplace also apply to a student participating in any WBL activity, whether nonpaid or paid. All students must be provided workplace safety training, protective equipment as required, and health and safety considerations.

11. *Is special or extra liability coverage for students required for a nonpaid, non-employment relationship?*

Work-based learning is considered part of the student's individualized education program. In nonpaid, non-employment relationships, the worksite is perceived as an extension of the school. In other words, the student is pursuing instructional objectives in a work setting. Since these students are not employees, they are not eligible for the usual workers' compensation or insurance coverage provided to employees.

If the student's participation in workplace activity can be considered instructional and part of a non-employment relationship, then the school may be responsible for liability coverage. Generally, the same insurance that applies to other off-site school

experiences (i.e., athletic events, field trips) applies; in other words, the coverage provided by the **ASCIP General and Automobile Liability Memorandum of Coverage (MOC)** should apply (Districts can verify with their ASCIP risk services consultants).

*12. What liability issues arise when a student is in a paid, cooperative work experience?*

When the student is a paid employee of a business, then the employer is responsible for offering him or her the same liability coverage offered to other employees, including coverage under the employer's workers' compensation plan. If the District is paying the student, the District must also include the student under its workers' compensation coverage; in other words, the coverage provided by the **ASCIP Workers' Compensation Memorandum of Coverage (MOC)** should apply (Districts can verify with their ASCIP risk services consultants).

*13. Do reports have to be made to the U.S. Department of Labor and/or the U.S. Department of Education?*

No. Reports to the U.S. Department of Labor or the U.S. Department of Education are not necessary. However, adequate records documenting your program's compliance with the guidelines for WBL activities, particularly nonpaid, work-related training and paid community work experience, must be maintained. In the event of a Department of Labor investigation of your program, this information must be made available to the Department of Labor.

*14. Can we share information from the WBL program with vocational rehabilitation agencies?*

Yes. Information from the WBL program can be shared with other agencies as long as confidentiality procedures are followed. In fact, rehabilitation services counselors may be actively involved in the process of WBL through consultation or funding.

*15. How should issues regarding confidentiality be addressed?*

Work-based learning programs should adhere to procedures typically followed regarding confidential information. These procedures are outlined in section 300.560-300.577 of the IDEA regulations and are incorporated into both state and local policies and procedures.

### **Program Supervision**

*16. What is meant by the term "under the general supervision" of public school personnel?*

This means that the public school or education agency has primary responsibility for the youth with disabilities WBL program. Under IDEA, failure to deliver free appropriate educational services constitutes a violation of the rights of youth with disabilities. This places responsibility for ensuring that WBL programs meet this mandate on the shoulders of public school personnel. While other agencies or groups may deliver these educational services, public school personnel must act as the central agency overseeing the program.

*17. How should educator document meeting the general supervision criteria?*

Educators can document the general supervision criteria by adequately developing the student's IEP and the individual training plan. If a third party, such as a community-based rehabilitation program, is used to carry out the provisions of the IE, it should be so noted. The education agency must ensure that these guidelines are fully understood and will be followed by the provider.

*18. What are the implications of the “continued and direct supervision” requirement for educators and employers?*

Participation in WBL programs is considered a valid part of a student instructional program. A student should be closely supervised by school staff or employees of the business. Direct supervision can include:

- a. one-to-one instruction,
- b. small group instruction,
- c. supervision in close proximity, and
- d. supervision in frequent, regular intervals. Supervision in frequent, regular intervals is permitted when the goal is to assess ability to work independently or to demonstrate mastery of an occupational or workplace skill.

*19. Is it necessary for someone to monitor the student at all times?*

**Students in WBL programs are to be monitored at all times.** However, the level of monitoring needed in a workplace setting is determined on an individual basis. The various components of WBL could require several monitoring strategies depending on the goals and objectives outlined in the IEP. For example, career exploration and career assessment may require closer monitoring than the work-related training component when the student is working toward more independence in job performance.

*20. What educational qualifications and/or certifications must education staff have in order to provide supervision in WBL programs as the education agency's representative?*

State and local education agencies must determine the educational qualifications necessary for school staff providing supervision in WBL programs.

### **Instructional Programming**

*21. Is a formal career assessment required to determine a student's interests and preferences?*

A formal career assessment may not be required to ascertain a student's preferences and interests if other alternatives are appropriate. However, as part of the overall decision-making process, needs for support services or assistive technology should be identified. These needs may be determined through ongoing assessment procedures within the various components of a WBL program.

*22. Is it necessary that the program follow sequential order (i.e., exploration, assessment, and training)?*

No. WBL activities do not need to follow a prescribed order. Given the nature of a student's needs, any of the three components may be excluded. The WBL program, however, must follow logical, generally agreed-upon instructional best practices. For example, assessment and exploration usually would not follow training in any single job classification.

*23. Is it necessary that the WBL goals and objectives in the IEP specify exact site placements?*

No. It is possible for the IEP to identify only general goals and objectives to be pursued (e.g., job clusters to explore, assessments of general work behavior skills, or training in a specific occupation). The IEP should, however, expressly limit the time students will spend at any one site or in any one job classification. Additional written agreements (i.e., individual training agreements, individual training plans) with parent(s) or guardian(s), students, and employers should reflect the exact location of WBL and document the specific nature of the education and training involved.

*24. Does the IEP team have to reconvene to approve multiple career explorations, career assessments, work-related training, and cooperative work experience?*

No. The transition IEP objectives and goals can be written broadly enough to incorporate these experiences.

*25. What is meant by the phrases "clearly distinguishable occupation" and "clearly distinguishable job classification"?*

The word occupation refers to a specific profession or career generally engaged in as a source of livelihood. Occupation and job classification are meant to be synonymous. Examples of occupations are shipping and receiving clerk, custodian, and painter. Often occupations are confused with specific work tasks that may be integral components of specific occupations. For example, work as a custodian involves sweeping, emptying trash, and mopping. Each of these work tasks must be considered as part of the clearly distinguishable occupation of custodian. If a student has received all allowable hours of nonpaid, work-related training in the job of school custodian, she/he should not be moved to a new site for another experience as a nonpaid, office-building custodian.

*26. Given the policy guidelines, could an employer move students around to different work stations or occupational areas not specified in their written agreement?*

No. General goals and objectives for the student are outlined in the IEP, and written training agreements and training plans between the student, parent(s) or guardian(s), employer, and school personnel detail specific activities for the WBL experience. Thus, WBL can be considered a valid educational experience under the supervision of school personnel. Employers must feel free to remove students from any work activity if they determine that removal is necessary for safety or other reasons. However, under no circumstances should the student be placed in a work station or occupational area not specifically outlined in the written training agreement. In the event there is a need for a new worksite or occupation, a new training agreement and training plan must be written and signed prior to placing a student in the new worksite or occupation.

*27. Can students work as volunteers or in service learning in a nonpaid, non-employment relationship?*

Yes, however it must be at a public agency site where the intent is to donate their services for the public good. These sites include charitable not-for-profit organizations, governmental agencies, hospitals, and nursing homes. Commercial businesses may not have unpaid volunteers. The student must choose to volunteer, all participants must agree this is voluntary, and all participants must agree the student is not entitled to wages.

*28. How will students receive academic credits for WBL?*

How students receive academic credit for occupational and work-related skills acquired in WBL programs is up to state and local education agencies. Many education agencies allow course credit for these community experiences since they help students achieve the transitional goals and objectives identified in their IEPs. Generally these experiences include concurrent classroom instruction by qualified personnel at the educational agency.

Frequently, the policy for academic credit in WBL programs will be consistent with the one used for career and technical education programs available to the general population.

*29. Do the policy guidelines refer to programs under special education and/or career and technical education?*

It does not matter whether the WBL program is offered through special education or career/technical education. However, participants in WBL programs under the criteria for nonpaid, non-employment relationships must be youth with disabilities as defined by the IDEA.

*29. Do the guidelines apply to work during the summer?*

Yes. These guidelines may apply to summer WBL programs if they are under the general supervision of school personnel. Many students have IEPs that call for an extended-year educational program. Other students may simply elect to enroll in summer school.

### **The Educational Relationship vs. the Employment Relationship**

*30. What is the difference between an educational relationship and an employment relationship?*

In an employment relationship such as cooperative work experience or youth apprenticeship, the student is providing services that benefit the employer. The student may be completing tasks normally completed by regular employees. As a result of the student's work, vacant paid positions in the business may remain unfilled, and regular employees may be displaced or relieved of their normally assigned duties. In an educational relationship such as work-related training, the student engages in work tasks as part of an organized educational activity designed to benefit the student. The guidelines on implementing WBL programs consistent with the FLSA outline the distinction between an employment relationship and a valid educational experience. If a student's involvement in WBL activities constitutes an employment relationship rather than part of an organized educational activity, then the participating business or school may be responsible for full compliance with the FLSA regulations. This would include compliance with the FLSA's minimum wage and overtime pay provisions.

*31. What is the distinction between benefit to student versus benefit to employer?*

A number of distinctions have been made between benefit to the employer and benefit to the student with regard to WBL programs. Benefit to the employer occurs when the employer recognizes an immediate advantage by having the WBL student working on the premises. An immediate advantage is increased profitability or production for the



business. Benefit to the student occurs when the WBL program is a valid educational experience for the student. For WBL to represent an educationally valid experience the following instructional practices should be implemented:

- ✓ Students receive adequate orientation and instruction before performing new tasks.
- ✓ Students' goals and objectives for the WBL program are clearly defined.
- ✓ Activities in the workplace setting relate directly to students' goals and objectives.
- ✓ Students' activities in the WBL program are closely monitored.
- ✓ Records of students' progress are maintained.
- ✓ The necessary support and time for students to develop proficiency at new tasks is provided. (In both situations, the student will benefit, however, the most important decisive factor is whether or not the employer or business receives any benefit.)

*32. What is the educator's role in assuring that regular employees will not be displaced by the student trainee in the workplace?*

The WBL experience must be primarily for the student's benefit. Also, regular employees must not be displaced or relieved of assigned duties, and vacant positions should not go unfilled. Two strategies are available to educators to ensure this criterion is met. First, the educator can confirm that all parties—the employer, the students, and the parent(s) or guardian(s)—understand that students in the WBL program must not displace regular employees. A written training agreement documenting this understanding should be signed by all involved. Secondly, those who supervise the student at the worksite may observe when employee displacement and other violations occur and take steps to correct the situation.

*33. If the activity is ordinarily not performed by employees and yet is beneficial to the business, can the student perform the activity?*

The student should neither perform the activity nor be paid appropriate wages. Although regular employees have not been displaced or relieved of assigned duties, the student is still providing services which benefit the business. Therefore, an employment relationship exists between the student and the employer. This would not be the case if the activity were of no benefit to the employer and consisted of "busywork" designed to develop or improve a student's skills. For example, reorganizing materials awaiting shipment into sets of five would not constitute an employment relationship if the business did not ship the materials in this manner.

*34. Can students accept an offer of paid employment at a worksite where they were placed for work-related training?*

Yes. Students can accept an offer of paid employment at a worksite where they received instruction and training. The student would then become an employee of the business, and an employment relationship would ensue. This means that the employer is responsible for full compliance with the FLSA, including minimum wage and overtime pay provisions.

*35. Could the student be paid less than the minimum wage?*

Yes. Paid employment below the minimum wage rate is permitted when a worker's disability impairs their ability to perform the job. This special minimum wage rate is based on the productivity of the worker with disabilities as compared to the productivity of a worker without disabilities. Employers must obtain a certificate from the Wage and Hour Division of the U.S. Department of Labor authorizing the payment of a special minimum wage to youth with disabilities participating in cooperative work experience or state approved career and technical education programs. Application must be made to the U.S. Department of Labor for authority to employ workers with disabilities at these special minimum wage rates.

## WBL—APPENDIX 1

### Table of Vocational Training and Placement Programs

Program	Workability I (WA I)	Workability II (WA II)	Workability III (WA III)	Workability IV (WA IV)	Transition Partnership Project (TPP)
<b>Characteristic</b>					
Most Recently Known Number of Programs	294	12	27	10	87
Most Recently Known Annual Funding Level	\$39,559,000	unknown	unknown	unknown	U nknown
Student Population	Secondary (Special Education/IEP)  Ages 12-22, Job programs, for 16 and older	ROC/Ps or Adult School serving primarily adults and out-of-school youth (drop-outs)  DR eligible	Community College  DR Eligible	CSU/UC  DR Eligible	Secondary  DR Clients
Source of Funding	State Dept. Of Education	State Dept. of Rehab. (Federal funds) plus 1/3 educational match (non-Federal)	State Dept. of Rehab. (Federal funds) plus 1/3 educational match (non-Federal)	State Dept. of Rehab. (Federal funds) plus 1/3 educational match (non-Federal)	State Dept. of Rehab. (Federal funds) plus 1/4 in-kind match (non-Federal)
DR Client	Not Required	Required	Required	Required	Required
Purpose/Goal	Pre-employment skills training, work experience, and employment placement	Unsubsidized employment for 60 days or longer	Unsubsidized employment for 60 days or longer	Unsubsidized employment for 60 days or longer	Unsubsidized employment for 60 days or longer
Pre-placement Service	Varies among sites, may include assessment, career guidance, work experience/vocational training, job search, skills training, and mobility training	Varies among WA II sites. May include assessment, career guidance, job skills training, job club/employment preparation, personal counseling	Varies with programs. May include assessment, career guidance, job skills training, job club/employment preparation, personal counseling	Varies with programs. May include assessment, career guidance, job skills training, job club/employment preparation, personal counseling	Varies with TPP sites. May include assessment, career guidance, job skills training, job club/employment preparation, personal counseling
Placement Follow-up	Continuous until graduation from high school while enrolled in WA I program	60 days	60 days	60 days	60 days
Wages	Varies among WA I sites, wages may be paid from WA I funds (or by employer when direct hire)	Wages are paid by employer (WA II does not cover wages, except for OJTs)	When wage are covered, they may come from work site employer or other local sponsor (WA III does not cover wages)	When wage are covered, they may come from work site employer or other local sponsor (WA III does not cover wages)	Wages are paid by employer (TPP does not cover wages, except for OJTs)



# SAMPLE DISTRICT FORM—WBL 2

## WorkAbility Training Agreement

<b>Student Name</b>	<b>School</b>	<b>Grade</b>
<b>Training Employer</b>	<b>Training Site</b>	<b>Supervisor Name</b>
<b>Address</b>	<b>City</b>	<b>ZIP</b>

**The purpose of this program is to assist the student in job training experience for employment in mutual agreement with the following responsibilities:**

**The Student is Participating in:**

- Exploratory unpaid work opportunity (i.e. internship volunteer program)
- Employer paid program
- WorkAbility subsidized program

**The Student Shall:**

1. Be at least 14 years of age and obtain necessary work permit
2. Have parent/guardian approval if under 18 years of age
3. Be a student of District.

**The Training Employer Shall:**

1. Have clear understanding of the program objectives and willingness to participate
2. Provide adequate supervision in job training experiences:
  - a) That students are in an occupation for which the program is approved
  - b) Will not endanger the health, safety, welfare or morals of the students
  - c) Have adequate equipment, materials and other resources that provide an appropriate learning opportunity
  - d) Are in compliance with Federal and State Labor Laws
3. Assist in developing student-training plans
4. Consult with the WorkAbility staff regarding the student's progress
5. Agree to hereby indemnify, hold harmless and defend the District, its Board of Trustees, officers, agents and employees from every claim or demand made and every liability, loss, damage or expense, of any nature whatsoever, which may be sustained by Training Employer or its employees arising out of in any way connected with the services covered by this Agreement, except for liability for damages referred to above which result from the sole negligence or willful misconduct or the District or its officers, employees or agents.
6. In the performance of this Agreement, shall be and act as an independent contractor. Training Employer understands and agrees that he/she and all of his/her employees or agents shall not be considered officers employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Training Employer assumes the full responsibility for the acts or omissions of its employees or agents as they relate to the service provided under this Agreement.

**The District Shall:**

1. Provide workers compensation insurance coverage for students employed in the WorkAbility program in accordance with the California Labor Code. The District may, in its sole discretion and with approval of the Department of Industrial Relations, self-insure against such losses.
2. Follow current California State Industrial Commission Orders.
3. Make visits to training sites for observation of overall performance and supervision.
4. Select and approve students who qualify for enrollment in the program.
5. Locate Training Sites.
6. Maintain status as employer of record as per agreement. Develop and keep records on file.

*Neither the School District nor the Training Employer shall discriminate against any student on the basis of race, color, national origin, sex, marital status, parental status, sexual orientation, religion or disability in regard to employment practices or on-the-job training experiences.*

<b>Student Name</b>	<b>Telephone Number</b>	<b>Date</b>
<b>Student Signature</b>	<b>Mobile Number</b>	<b>Date</b>
<b>Parent/Guardian Name(s)</b>	<b>Mobile Number</b>	<b>Date</b>
<b>Parent/Guardian Signature(s)</b>	<b>Mobile Number</b>	<b>Date</b>
<b>Training Employer Auth. Rep.</b>	<b>Mobile Number</b>	<b>Date</b>
<b>Training Employer Signature(s)</b>	<b>Mobile Number</b>	<b>Date</b>
<b>Workability District Rep.</b>	<b>Telephone Number</b>	<b>Date</b>
<b>Workability Signature(s)</b>	<b>Telephone Number</b>	<b>Date</b>

# SAMPLE DISTRICT FORM—WBL 3

## SCHOOL DISTRICT TRAINING EMPLOYER APPLICATION

DATE \_\_\_\_\_ DISTRICT SPONSOR \_\_\_\_\_ SCHOOL \_\_\_\_\_

FULL NAME \_\_\_\_\_  
(FIRST) (MIDDLE) (LAST)

ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
(STREET) (CITY) (ZIP) MO/DAY/YR

HOME PHONE \_\_\_\_\_ E-MAIL \_\_\_\_\_

Gov Issued ID Type \_\_\_\_\_ ID # \_\_\_\_\_

NOTIFY IN CASE OF EMERGENCY \_\_\_\_\_  
(NAME) (PHONE)

CURRENT EMPLOYMENT \_\_\_\_\_  
(EMPLOYER'S NAME) (ADDRESS) (PHONE)

PERSONAL REFERENCE \_\_\_\_\_  
(NAME) (ADDRESS) (PHONE)

Please check whether you are a new or returning training employer. \_\_\_ New \_\_\_ Returning  
Are you also a training employer at another District school? \_\_\_ YES \_\_\_ NO

If yes, please indicate the school(s): \_\_\_\_\_

Do you have any criminal charges pending against you? \_\_\_ YES \_\_\_ NO

Have you ever been convicted\* of a felony or misdemeanor? \_\_\_ YES \_\_\_ NO

Have you ever been convicted\* of a sex, drug or weapon related offense? \_\_\_ YES \_\_\_ NO

Are you required to register as a sex offender under Penal Code 290.95? \_\_\_ YES \_\_\_ NO

\*Conviction includes a finding of guilty by a court in a trial with or without a jury or a plea or verdict of guilty.

If "YES," please explain: \_\_\_\_\_

For security reasons, a background check must be conducted. Training employer assignments may be terminated if service is unsatisfactory or no longer needed by the District. You may not be a training employer if you are required to register as a sex offender under California law.

I give my permission to have my personal and professional references researched and hold the District and any individuals providing the District with information harmless. By signing my name below, I declare under penalty of perjury, that all the information on this application is true and correct. I also declare that I have read and agree to follow the "Training Employer Code of Conduct."

Training Employer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **SAMPLE DISTRICT FORM—WBL 4**

### **TRAINING EMPLOYER CODE OF CONDUCT**

**As a volunteer, I agree to abide by the following code of training employer conduct:**

1. I agree to never be alone with individual students who are not under the supervision of teachers, Workability 1 coordinators, or school authorities.
2. I will not contact students outside of school hours without permission from the students' parents.
3. I agree not to exchange telephone numbers, home addresses, e-mail addresses, or any other home directory information with students for any purpose unless it is required as part of my role as a training employer. I will exchange home directory information only with parental and administrative approval.
4. I will maintain confidentiality outside of school and will share with teachers and/or school administrators **any** concerns that I may have related to student performance, welfare, and/or safety.
5. I agree to not transport students without the written permission of parents or guardians or without the expressed permission of the school or district and will abide by District Administrative Procedures when transporting students.
6. I will not disclose, use, or disseminate student photographs or personal information about students, self, or others.
7. I agree to follow the district procedure for screening of training employers.
8. I agree to notify the school principal if I am arrested for a misdemeanor or felony sex-, drug-, or weapon-related offense.
9. I agree only to do what is in the best personal and educational interest of every child with whom I come into contact.

**I agree to follow the Training Employer Code of Conduct at all times or cease being a training employer immediately.**

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature





## SAMPLE DISTRICT FORM—WBL 6

### WORKABILITY 1 WORKSITE EVALUATION

**Student Name:** \_\_\_\_\_ **Date :** \_\_\_\_\_  
**Student ID #:** \_\_\_\_\_ **School:** \_\_\_\_\_  
**Site Supervisor:** \_\_\_\_\_ **Coordinator:** \_\_\_\_\_

Quality Evaluated	Excellent	Better than Average	Average	Worse than Average	Poor	Comments
Reports to work regularly						
Comes to work on time						
Follows directions						
Works accurately						
Shows interest in work						
Demonstrates poise and self confidence						
Works with minimum supervision						
Works well with co-workers						
Dresses appropriately for job						
Performs high-quality work						
Shows good judgment						
Possesses adequate skills for job						

Reviewed with student/employee?

**Student/Employee Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Worksite Supervisor Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_