

Supported Employment Liaisons Meeting

Top 10 Supported Employment Changes* (Updated 11/14/19)

Abbreviations

CCR	California Code of Regulations
CFR	Code of Federal Regulations
CIE	Competitive Integrated Employment
DDS	Department of Developmental Services
DOR	Department of Rehabilitation
IPE	Individualized Plan for Employment
VR	Vocational Rehabilitation
WINTAC	Workforce Innovation Technical Assistance Center

1. Customized Employment (34 CFR 361.5(c)(11))

Customized employment means competitive integrated employment designed for an individual with a significant disability.

Customized employment personalizes the employment terms between a job candidate and an employer in a way that meets the abilities of the individual and the needs of employer. It is carried out through flexible strategies including job exploration by the individual, working with an employer to facilitate placement, and services and supports at the job location.

- Limited demonstration projects are underway. Service components and costs, such as “Discovery,” are being shared with regional centers.
- The DOR is proposing to work with WINTAC and South Florida University to develop a training curriculum that would support building provider capacity.

**Based on the current Code of Regulations (CFR) for the vocational rehabilitation and supported employment programs.*

- Service Providers need special customized employment training.
- The DOR belongs to a national Community of Practice to support implementation of customized employment.

2. Competitive Integrated Employment (34 CFR 361.5(c)(9))

Competitive integrated employment (CIE) is full-time or part-time employment, within the competitive labor market, in which all of the following are true:

- 1) Disabled and nondisabled employees who have similar duties and backgrounds receive equal pay of at least the customary rate, which is no less than minimum wage, and have equal opportunities for advancement.
- 2) Disabled and nondisabled employees, who are similarly situated in similar occupations, work together for the same employer in an integrated setting.
- 3) Disabled and nondisabled employees are eligible for the same level of benefits.

3. Integrated Setting (34 CFR 361.5(c)(9))

The definition of CIE requires all employment outcomes to be in an integrated setting.

The VR teams must determine on a case-by-case basis if an employment setting is integrated. Considerations are the following:

- Setting Typically Found in the Community
- Level of Interaction
- Work Unit and Work Site
- [Exceptions for] Telecommuting, Temporary, or Work in Mobile or Scattered Work Locations

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Refer to [WIOA Guidance Circular January 9 2018: Determining Integrated Work Settings](#) (previously called WIOA Guidance Circular 2018-13) and [DR 380 Integrated Settings Checklist](#).

4. Integrated Settings in the Community

A. Comprehensive Assessment for Plan Development (34 CFR 361.5(c)(5)(ii)(E))

Policy: To the extent additional data are necessary to make a determination of the employment outcome and the nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE) of an eligible individual, the DOR shall conduct a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual.

When conducting the comprehensive assessment to determine the vocational rehabilitation needs and employment outcome for inclusion in the IPE, the DOR shall rely, to the maximum extent possible, on information obtained from experiences in integrated employment settings in the community and in other integrated community settings.

Note: Neither the Act nor the final regulations require that the individual be paid during these experiences. Therefore, section 7(2) of the Act and final §361.5(c)(5)(ii) do not prohibit DOR from using unpaid internships or work experiences during the assessment process.

B. Trial Work Experiences (34 CFR 361.42(e)(2)(i))

Policy: Prior to determining that the individual is not eligible for the VR program due to the severity of his or her disability, DOR must develop a written plan to assess the individual's abilities, capabilities, and capacity to perform in CIE work situations through trial work experiences, which must be provided in CIE settings to the maximum extent possible consistent with

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the individual's informed choice and rehabilitation needs.¹ The trial work experiences must be of "sufficient variety" and must provide the individual with the opportunity to "try different employment experiences" and "become employed in competitive integrated employment."

Consistent with the intent of the Act to provide individuals with disabilities the opportunity to achieve competitive integrated employment, DOR should exhaust all opportunities to provide trial work experiences through actual work experiences in integrated community environments to obtain the evidence necessary for making the determination of an individual's eligibility for vocational rehabilitation services. Clearly, trial work experiences in integrated settings, rather than simulated or mock experiences in sheltered environments, provide DOR with the best and most comprehensive evidence of an individual's capacity to achieve competitive integrated employment

Note: There is no mandate in section 102(a)(2) that all trial work experiences be in competitive integrated employment. In fact, the use of the phrases "sufficient variety" and "different employment opportunities" suggest the congressional understanding that some trial work experiences may need to be provided in a setting other than competitive integrated employment.

C. Work-Based Learning Experiences for Students with Disabilities (34 CFR §361.48 (a) (2) (ii))

Policy: The DOR shall, in collaboration with the local educational agencies involved, provide, or arrange for the provision of, DOR Student Services, including work-based learning experiences for all students with disabilities. Such services include work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional

¹ Section 102(a)(2)(B) of the Act, as amended by WIOA,

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school setting (including internships), that is provided in an integrated environment in the community to the maximum extent possible.”

Practice:

In California, DOR has been providing work-based learning experiences to students with disabilities in competitive integrated settings. Additionally, in California, individuals with intellectual and developmental disabilities receive services through the Lanterman Act. These services, provided through regional centers contracted with the Department of Developmental Services (DDS), may include pre-vocational foundational skills development. At times, DDS supports work experience in non-integrated settings, as appropriate to the individual case.

5. Time Period of Supported Employment Services (34 CFR 361.5(c)(54) and 34 CFR 363.53)

The DOR may provide supported employment services for a time period consistent with one of the following:

1. Up to 24 months, beginning at job placement, to help the individual achieve and maintain stable employment prior to transitioning to extended services, if necessary.
2. Longer than 24 months if all of the following are true:
 - Special circumstances mean that more time is necessary for the participant to achieve the employment outcome.
 - The participant and the Rehabilitation Counselor jointly agree to extend the time to achieve the employment outcome.
 - The participant’s IPE is amended to reflect the new time to achieve the employment outcome.

Note: The previous time period for supported employment was up to 18 months.

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6. Employment Outcome in Supported Employment (34 CFR 363.54 (c))

An individual with a most significant disability has achieved an employment outcome in supported employment when the following are true:

- The individual is employed in CIE (record of services may be closed if all other criteria are met)
- The individual has completed supported employment services.
- The individual has transitioned to an extended services provider, as follows:
 - Funded by DOR for youth with the most significant disabilities. ([See Item #8 below.](#))
 - Funded by another provider (such as a regional center or other source).
- The individual has maintained employment for an appropriate amount of time, but not less than 90 days after transitioning to extended services.

Note: Previously, this was 60 days. Now, after transition to extended services, the individual must maintain stable employment for 90 days.

There is no change to the stabilization criteria for transition to extended services. These are found in state statute and state regulations, in CCR 7179 (a) (4), as follows:

- A. No more than 20 percent for at least 60 days; or
- B. No more than 30 percent for at least 90 days; or
- C. No more than 30 percent for at least 120 days.

7. Requirements for Closing the Record of Services in a Supported Employment Setting (34 CFR 361.56) (34 CFR 363.55)

Scenario: Closure with an employment outcome.

The participant is working in CIE and all of the following are true:

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- The participant has met the closure requirements including that the job is stable, the participant is satisfied with the job, and that it is consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- The participant is not receiving extended services, or any other VR service, provided by DOR. They must be receiving extended sources from another funding stream.
- In the case of a youth with a most significant disability, the youth is no longer eligible to receive extended services funded by DOR or has transitioned to another extended services provider.

Scenario: Closure without an employment outcome.

Any of the following are true:

- The participant is working toward CIE for the appropriate time period that meets their individualized needs and does not achieve CIE within the temporary time period.
- The participant requires extended services for supported employment, and the extended services needed are not available.
- The individual meets any other reason identified for record of services closure.

Note! An individual who is working in subminimum wage employment when the record of services is closed **has not** achieved an 'employment outcome.'

8. Extended Services for Youth (34 CFR 361.5 (c) (19))

Subject to comparable services and benefits, DOR will make available extended services for youth with the most significant disabilities (ages 14-24) for up to four years or until age 25, whichever comes first.

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- The DOR may provide extended services only to youth who are eligible for VR services and are receiving services from DOR through an IPE, including youth with mental health disabilities and traumatic brain injury.
- Appropriate services are determined on a case-by-case basis.
- For youth who still require extended services beyond the 4 years or after age 25, the DOR must identify another source of extended services to ensure no interruption of services.
- Extended Services funded by DOR may not be provided to adults, age 25 and older.

9. **Semi-Annual and Annual Reviews in Extended Employment and Subminimum Wage (34 CFR 361.55(b))**

The semi-annual and annual reviews are also known as ‘Federal follow-up.’

The DOR will conduct a semi-annual review and reevaluation for the first two years and annually thereafter for an applicant or eligible individual under the VR program:

- Who has achieved employment in which the individual is compensated at **subminimum wage**.
- Who is in **extended employment** (sheltered work shop).
 - Includes individuals whose record of service is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome (as described in §361.5(c)(15)).
 - Includes individuals who made an informed choice to remain in extended employment.

Note: The prior federal regulations required only annual reviews.

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10. Section 511 – Limitations on Subminimum Wage

If a youth (age 24 and under) with a disability seeks subminimum wage employment, the following services must occur first, and necessary documentation must be issued to support the completion of:

- DOR Student Services or transition services under the IDEA, **and**
- Applied for VR services, **and**
 - The individual was determined ineligible for VR services and his/her case was closed, **or**
 - The individual was determined eligible for VR services, had an approved IPE, and the individual was unable to achieve an employment outcome in CIE after a reasonable period of time, and his/her case was closed, **and**
- Career counseling and information and referral services to federal and state programs to help the individual discover, experience and attain CIE was provided and the counseling and information was not for employment at subminimum wage.

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