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Stemming the School-to-Sheltered-Workshop Pipeline

BY RONALD M. HAGER

EDITOR'S NOTE: For this article, Ronald M. Hager adapted and updated his [The Transition from School to Work: The Special Education and State Vocational Rehabilitation Systems' Obligations to Prepare Students with Disabilities for the World of Work](#) (Cornell Work Incentive Support Center Jan. 2002).

The employment rate for people with disabilities continues to lag behind that of people who do not have disabilities despite over 40 years of federal legislation seeking to prepare people with disabilities for the world of work. The goal of the Rehabilitation Act of 1973 is to empower individuals with disabilities to maximize employability, economic self-sufficiency, independence, and integration into the workplace and community through “comprehensive and coordinated state-of-the-art programs.”¹ The purpose of the Individuals with Disabilities Education Act (IDEA), passed in 1975, is to ensure that all students with disabilities receive an appropriate education “designed to meet their unique needs and prepare them for further education, employment, and independent living.”²

Nevertheless, as of November 2013, the unemployment rate for people with disabilities is 12.3 percent compared to 6.4 percent for people who do not have disabilities, and only 19.6 percent of people with disabilities are participating in the workforce compared

to 68.4 percent of people without disabilities.³ Typically receiving far less than the minimum wage, approximately 400,000 workers with disabilities are segregated in sheltered workshops.⁴ All too often students with disabilities go directly into sheltered workshops when they exit the education system—a

Transition from Special Education to Adult Life

Federal law requires schools to begin planning for the transition of students with disabilities to the adult world beginning no later than the year the student turns 16. Transition planning was added to the IDEA only in 1990. However, the legislative his-

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trend that has been termed the school-to-sheltered-workshop pipeline.⁵

Here I review the transition provisions of the IDEA and the Rehabilitation Act from a hypothetical to concrete examples. I then analyze how the IDEA and vocational rehabilitation laws are intended to work together to ensure the smooth transition of students with disabilities from school to postschool activities, and I highlight that compliance with these laws will go a long way to stemming the school-to-sheltered-workshop pipeline. I conclude with a promising development under the Americans with Disabilities Act (ADA)—applying the “integration mandate” to unnecessary segregation in sheltered workshops.

3 Office of Disability Employment Policy, U.S. Department of Labor, [Current Disability Employment Statistics](#) (Nov. 2013).

4 National Disability Rights Network, [Beyond Segregated and Exploited: Update on the Employment of People with Disabilities](#) 4 (April 2012).

5 See Jason Langberg & Peggy Nicholson, [Racial Justice and the School-to-Prison Pipeline](#), 47 CLEARINGHOUSE REVIEW 204 (Sept.–Oct. 2013).

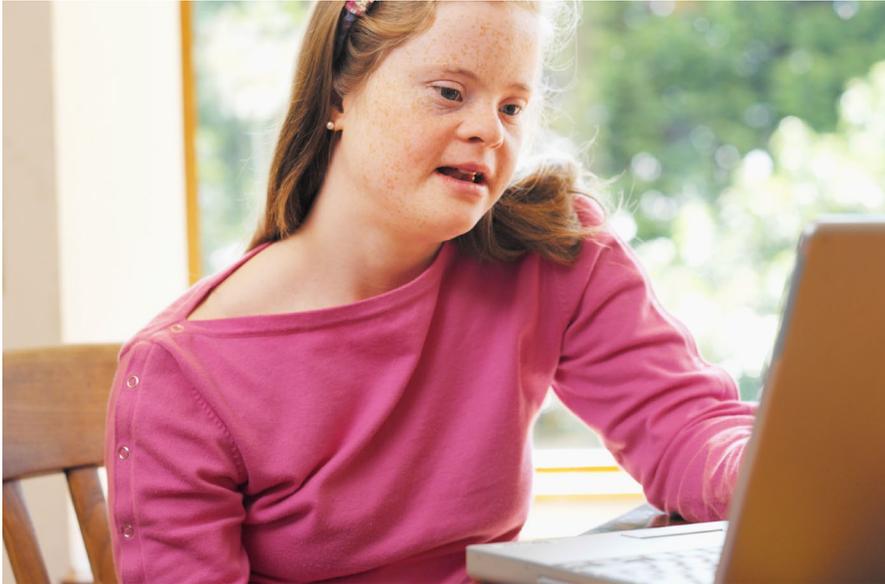
tory of the 1990 amendments specifically noted that the transition requirements “do not constitute new provisions of law. Rather, these inclusions provide a clarification and focus to already existing requirements of law dating back to the enactment of [Pub.] L. 94-142.”⁶ Nevertheless, the 1990 amendments were grounded in the strong sentiment that students with disabilities were not being adequately prepared for the adult world. The legislative history noted that of the 250,000 students who had disabilities, were 16 years old or older, and who exit the educational system, less than one-half graduate with a high school diploma and nearly 60,000 drop out.⁷ Noting that students who exit the special education system without a diploma meet with varying degrees of success, the legislative history cautions that there will be those who “will exit

6 H.R. REP. NO. 101-544, at 11 (1990), reprinted in 1990 U.S.C.C.A.N. 1733; [Education for All Handicapped Children Act of 1975](#), Pub. L. No. 94-142, 89 Stat. 773 (1975).

7 1990 U.S.C.C.A.N. at 1731.

1 Rehabilitation Act of 1973, 29 U.S.C. § 701(b)(1).

2 [Individuals with Disabilities Education Improvement Act of 2004](#) § 1400(d)(1)(A), 20 U.S.C. §§ 1400 et seq.



our nation's schools into nothing," with "[years of special education ... wasted."⁸

Accordingly, schools must develop a long-range plan to prepare students with disabilities for postschool life, begin to make connections with adult service providers while students are still in school, and look to others, such as the vocational rehabilitation system, to provide services. The promise of the 1990 transition planning requirement remains unfulfilled. Statistics for the 1996 through 1998 school years indicate that only about 27 percent of students who had disabilities, were 14 years old or older, and who exit school each year have a diploma, and that about one-third of these students either dropped out of school or moved and were not known to continue in school.⁹

A CASE STUDY. Sam received special education services from age 3 onward. As a high school student with a developmental disability, he was in a prevocational

"shop" and worked as a dishwasher in the high school cafeteria for one hour of each school day. When asked what sort of job he would like to have as an adult, he responded, "computer."

One year before aging out of school, he was referred by his special education teacher to the state vocational rehabilitation agency for an assessment and employment services. The vocational rehabilitation counselor contracted with a local rehabilitation agency for assessment. One month out of his last year in school Sam spent traveling to a sheltered workshop, where he sampled tasks in food service, light manufacturing, and janitorial areas for a \$5 weekly stipend.

The results of that assessment indicated that Sam would be ready for employment after six months of "personal adjustment" training, followed by six months of "work adjustment" training. Sam went back to school to complete his academic course work and left school at 21 without a high school diploma.

In July, after he had left school, Sam began his 12 months of training as a

dishwasher; the training was funded by the state vocational rehabilitation agency. He increased his productivity from 30 percent to 55 percent of competitive norms. Because the local threshold for entry into supported employment (community job placement and job coaching) services was 65 percent productivity, Sam would be placed on a waiting list for the sheltered workshop. At that time the waiting list for the sheltered workshop was estimated to be three years long.

Sam began receiving Supplemental Security Income (SSI) at 18 because of the nature of his disability and because his parents' income was no longer counted as available (or deemed) to him. Since he is living in a state where Medicaid is automatic for SSI recipients, he also became eligible for Medicaid at the same time.

Because Sam received Medicaid, he was provided with Medicaid home- and community-based waiver services that included weekly outings to practice shopping skills and to go bowling. Medicaid also paid for a services coordinator who managed Sam's referral paperwork, kept track of Sam's place on various waiting lists, and spent 30 minutes of time per month visiting with Sam.

Sam's parents are very concerned with Sam's long-term support and are equally concerned with the potential loss of SSI and Medicaid if he begins to work. They are very hesitant to have Sam work in any setting other than a sheltered workshop because they have been assured that

8 *Id.*

9 National Council on Disability & U.S. Social Security Administration, [Transition and Post-School Outcomes for Youths with Disabilities: Closing the Gaps to Post-Secondary Education and Employment](#) 7-8 (Nov. 1, 2000).

his earnings will never be high enough to disqualify him for SSI and Medicaid.¹⁰

TRANSITION SERVICES. One may be tempted to wonder how someone with a disability such as Sam's could pursue a computing career, but this should not preclude an individualized inquiry, as required by the statute. Might there not be some aspect of the computer field where Sam could be successful? Would not Sam's interests be the best place to start when preparing his transition plan?

Transition services are defined as a coordinated set of activities for a student; the services are designed to be results-oriented and to facilitate movement from school to postschool activities.

Preparation for postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation are areas of adult living to be considered.¹¹ Services are to be based on the student's needs and take into account the student's preferences and interests.¹²

Among others, the specific services to be offered are (1) instruction, (2) related services, (3) community experiences, (4) development of employment and other postschool adult living objectives, and (5), if appropriate, acquisition of daily living skills and a functional vocational evaluation.¹³ The list of activities is not intended

to be exhaustive.¹⁴ One court noted that specially designed instruction in driver's education, self-advocacy, and independent living skills such as cooking and cleaning were appropriate transition services for a student who had an orthopedic impairment and wanted to attend college.¹⁵

After he exited school, Sam began receiving Medicaid waiver services, such as trips to practice shopping skills and to go bowling. There is no indication that

social work services, rather than on the perceived availability of such services."¹⁷

Although Sam did begin receiving case management services after he left the educational system, there is no indication that while still in school he received these services. Had he, while still a student, begun to receive these services, perhaps there would have been an earlier and smoother linkage to adult service providers, and he would not now be on a three-year waiting

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he had these experiences while he was still a student, even though the transition guidelines specifically include community experiences and, if appropriate, acquisition of daily living skills. While the law does not specifically mention financial planning, the enumerated services are not intended to be exhaustive. Financial planning services should have been considered when developing Sam's transition plan, especially because his parents were concerned about how the services Sam would require as an adult would be funded.

The 1990 amendments to the IDEA added "social work services" to the definition of related services.¹⁶ The stated reason for this addition was to encourage educational agencies "to utilize social work services where needed" and to "base the [individualized education program (IEP)] recommendation on the individual student's need for

list. Also, his need for case management services might have been diminished.

The 1990 amendments added rehabilitation counseling services to the definition of related services.¹⁸ Rehabilitation counseling services are to focus specifically on career development, employment preparation, and achieving independence and integration in the workplace and community. They include vocational rehabilitation services provided to students with disabilities by state vocational rehabilitation agencies.¹⁹

The legislative history emphasizes the critical importance of rehabilitation counseling in transition:

School rehabilitation counseling is an important component of transition services...Furthermore, the rehabilitation counseling discipline embodies the wide range of knowledge needed for successful school-to-work transition, i.e., vocational implications of disability,

10 This hypothetical case study, slightly modified, is borrowed with permission from *The Transition from School to Work: The Special Education and State Vocational Rehabilitation Systems' Obligations to Prepare Students with Disabilities for the World of Work* (Cornell Work Incentive Support Center Jan. 2002), which, in turn, relied on Cornell University's Participant Manual, *The Right Start: Working Together with Public Schools* (1998).

11 20 U.S.C. § 1401(34); 34 C.F.R. § 300.43(a) (2013).

12 20 U.S.C. § 1401(34).

13 20 U.S.C. § 1401(34); 34 C.F.R. § 300.43(a).

14 *Assistance to States for the Education of Children with Disabilities and the Early Intervention Program for Infants and Toddlers with Disabilities*, 64 Fed. Reg. 12406, 12553 (March 12, 1999).

15 *Yankton School District v. Schramm*, 93 F.3d 1369, 1374 (8th Cir. 1996).

16 20 U.S.C. § 1401(26).

17 H.R. Rep. No. 101-54, at 7 (1990), reprinted in U.S.C.C.A.N. 1729.

18 *Id.*

19 34 C.F.R. § 300.34(c)(12) (2013).

career development, career counseling for individuals with disabilities, job placement, and job modification. Therefore, rehabilitation counselors are professionally prepared to ... ensure effective, planned transition services for students with disabilities.²⁰

The legislative history notes that not all students with disabilities may be eligible for rehabilitation counseling services from the vocational rehabilitation system and that rehabilitation counselors may be employed by school districts. Moreover, the addition of rehabilitation counseling to the definition of related services does not “relieve state [vocational rehabilitation] agencies or special education programs of their responsibilities of cooperative transition planning and programming.”²¹

For Sam, the effect of the failure to provide rehabilitation counseling early in his transition years is obvious. There is no indication that while a student he ever received any sort of vocational evaluation of his interests and abilities before he was placed in his dishwashing program. Nor is there any indication of any attempt to provide career counseling on his stated interest in computing. Assuming his desired goal within the computing field might have been unrealistic, this counseling could have identified a goal within this field that would have been appropriate or could have helped him develop another viable career goal in which he was interested.

DEVELOPING A TRANSITION SERVICES IEP.

If an IEP meeting is scheduled to consider transition services for a student with disabilities, the school must invite the student and a representative of any other agency that is likely to be responsible for

providing or paying for transition services.²² If the student does not attend the meeting, the school must take other steps to ensure that the student’s preferences and interests are considered.²³ If an invited representative does not attend the meeting, the school must take other steps to have that agency participate in transition planning.²⁴ Here again we have no indication of whether Sam was involved in developing his transition plan. Furthermore, since he did not start receiving services from community agencies until after he left school, none of these agencies was highly likely to have been involved in the process.

At least by the time a student turns 16, the student’s IEP must include “appropriate measurable goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills. It must also include the transition services needed related to reach those goals, including courses of study.”²⁵ Sam did begin a prevocational “shop” program while he was a high school student, and he worked as a dishwasher in the cafeteria. Although these are examples of curricular options that could be considered, there is no indication that the shop program and the dishwashing experience were interrelated. Moreover, there is no evidence that these school experiences were in any way connected with Sam’s stated interests. Even after the training in high school and for a year after leaving school, Sam was still not able to perform at a level sufficient for entry into a supported employment program. Schools must consider the

possibility of providing services before age 16 precisely for students such as Sam.²⁶

The legislative history refers to another group of students who have disabilities and for whom transition services may need to be provided before age 16: those at risk of dropping out.²⁷ For this group of students, the school district’s curriculum should be analyzed to “help reduce the number of students with disabilities who drop out.”²⁸ The IEP team should “work with each student with a disability and the student’s family to select courses of study that will be meaningful to the student’s future and motivate the student to complete his or her education.”²⁹

Any other agencies that may be responsible for providing or paying for transition services must be invited to the IEP team meeting.³⁰ The legislative history underscores two key principles behind this requirement. First, “the preparation of students with disabilities for movement from school to post-school environments [is] not ...the sole responsibility of public education.”³¹ On the one hand, “schools are not expected to become job placement centers”; on the other hand, “there are many employment and employment related activities which are appropriately provided by and funded through the” school districts.³²

Second, schools need to become familiar with the services available to students with disabilities in their communities and “make use of this information in transition

20 H.R. Rep. No. 101-54, at 7–8 (1990), reprinted in U.S.C.C.A.N. 1729–30.

21 *Id.*

22 34 C.F.R. § 300.321(b) (2013).

23 *Id.* § 300.321(b)(2).

24 *Id.* § 300.324(c)(1).

25 34 C.F.R. § 300.320(b) (2013).

26 H.R. Rep. No. 101-544, at 11 (1990), reprinted in U.S.C.C.A.N. 1732–33.

27 *Id.*

28 *Id.*

29 Assistance to States for the Education of Children with Disabilities and the Early Intervention Program for Infants and Toddlers with Disabilities, 64 Fed. Reg. at 12475.

30 34 C.F.R. § 300.321(b)(3) (2013).

31 H.R. Rep. No. 101-544, at 12 (1990), reprinted in U.S.C.C.A.N. 1734.

32 *Id.* at 11, 1733.

planning for students.”³³ Thus schools can connect with agencies when necessary and can inform students about admission requirements for different programs. Familiarity with service programs allows schools better to prepare students with disabilities to take advantage of these opportunities.³⁴ The U.S. Department of Education’s Office of Special Education Programs wrote a policy letter that could help stem the school-to-sheltered workshop pipeline.³⁵ The letter emphasizes that the least restrictive environment requirements are an integral part of the IDEA. Although the IDEA would not prohibit placement in segregated employment, the least restrictive environment provisions do apply to the employment portion of a student’s program just as much as they would to any other part of the student’s program. Before a student with a disability could be placed in a segregated employment program, the IEP team must consider any supplementary aids and services needed to enable the student to participate in an integrated program. Appropriate job training and supports, such as job coaches or other aids and services, could all meet the definition of supplementary aids and services that a school would have to provide in an integrated work placement as an alternative to a segregated work placement.

Recall that Sam ended up on a three-year waiting list for services. If his school had reached out to agencies while Sam was still a student, this delay could have been avoided. Also, recall that Sam’s parents were very concerned about Sam losing Supplemental Security Income (SSI) and Medicaid. Sam’s parents are not alone. Fear of losing benefits creates a significant barrier to people who have disabilities and contemplate working. However, in Sam’s case, these concerns were

based on false, or at least misleading, information. The comments referred to above make clear that the school district staff members would not necessarily

the community, and recreation; and (4) failed to meet his individual, unique needs and instead placed him in an existing generic program with minor adaptations.³⁸



need to become experts in the work incentives available for SSI recipients. However, they should become familiar with the community resources that could give Sam’s family this information.

As in other parts of the IEP, the transition planning requirements are much more than mere technicalities. In *East Penn School District v. Scott B.* the court found that a school district that provided only for a student’s vocational needs failed to meet its transition obligations.³⁶ The school district’s plan was not functional because it did not develop a plan to help the student “survive an adult life.”³⁷ The court noted that the school (1) did not identify any goals for the student for after he left school; (2) did not perform any transition evaluations other than a vocational evaluation; (3) did not provide “the full panoply of services that transition planning envisions” to prepare him for life outside school in such areas as personal needs, getting around

Sam’s school district apparently made some of the same errors as the district in the *Scott B.* case. Sam’s district did not supply linkages to community service agencies while Sam was still in school. Sam’s district also placed Sam in a preexisting shop and dishwashing training program without considering Sam’s unique needs and interests.

Likewise the court in *Dracut School Committee v. Bureau of Special Education Appeals of the Massachusetts Department of Elementary and Secondary Education* held that the school district did not provide appropriate transition services.³⁹ First, the court held that the transition components of the IEP were procedurally defective. Evaluations were not conducted until two years after the student was eligible for transition services. Second, the court held that the transition provisions in the IEP were substantively defective. The district provided no meaningful instruction in the area of

³³ *Id.*

³⁴ *Id.*

³⁵ *Letter to Spitzer-Resnick, Swedeen, and Pugh*, 52 Individuals with Disabilities Education Law Report 230, 112 LRP 32664 (OSEP June 22, 2012).

³⁶ *East Penn School District v. Scott B.*, No. 97-1989, 1999 U.S. Dist. LEXIS 2683 (E.D. Pa. Feb. 19, 1999), *aff’d*, 213 F.3d 628 (3d Cir. 2000).

³⁷ *Id.* at *17, n.8.

³⁸ *Id.* at *15.

³⁹ *Dracut School Committee v. Bureau of Special Education Appeals of the Massachusetts Department of Elementary and Secondary Education*, 737 F. Supp. 2d 35 (D. Mass. 2010).

pragmatic language skills—a central component of the student’s ability to transition. The district offered no community-based employment experiences, and it did not provide any services in consideration of the student’s independent-living skills.

Special Education and Vocational Rehabilitation Services Working Together

The vocational rehabilitation program is designed to prepare people with disabilities for employment. Employment outcomes include full- or part-time

tion agency must refer SSI and Social Security Disability Insurance recipients seeking long-term extended employment to the Social Security Administration for information about available work incentives.⁴⁶ The purpose of the referral to the Social Security Administration is to ensure that people with disabilities who chose extended employment are “informed of recent reforms that are designed to reduce a key work disincentive by enabling individuals with disabilities to work and continue receiving Social Security benefits.”⁴⁷

Rehabilitation counseling services are to focus specifically on career development, employment preparation, and achieving independence and integration in the workplace and community.

And, third, a federal district court in Alabama held that a student’s transition services plan violated the IDEA.⁴⁰ The court found that the school district had not conducted any transition assessments and did not develop an individualized transition IEP. Instead the school district used stock language that was not individualized to meet the student’s unique needs. The court also noted that the school district was disingenuous in arguing that the student was too disabled to benefit from transition services since the record indicated that the student “barely qualified” for special education services the year before.⁴¹ In another case, however, the Seventh Circuit held that the failure to have a transition plan was a procedural violation that did not automatically amount to a denial of the IDEA’s requirement of a free and appropriate public education. In the Seventh Circuit case the child could not benefit from an elaborate transition plan, and the services that the child was receiving in the IEP were all that she needed to receive a free and appropriate public education.⁴²

competitive employment in an integrated setting, supported employment, or other employment in an integrated setting such as self-employment, telecommuting, and business ownership; such other employment must be consistent with the individual’s strengths, abilities, interests, and informed choice.⁴³

Sheltered workshops, also referred to as “extended employment,” have been eliminated as an employment goal.⁴⁴ However, consistent with the principle of informed choice, extended employment remains a viable alternative. First, extended employment continues to be a vocational rehabilitation service as an interim step toward achieving integrated employment. Second, for those choosing extended employment as a long-term option, it remains available “outside the [vocational rehabilitation (VR)] program.”⁴⁵ In such cases the vocational rehabilitation agency must inform its clients that extended employment can be provided to prepare for employment in an integrated setting and that they may later return for vocational rehabilitation services to prepare for integrated employment. The vocational rehabilita-

Although vocational rehabilitation services may be denied if a person cannot benefit from them, a person is presumed capable of employment, despite the severity of a disability, unless the vocational rehabilitation agency shows by clear and convincing evidence by a high degree of certainty that the person cannot benefit.⁴⁸ Before the vocational rehabilitation agency can conclude that an individual is ineligible, the agency must first explore the individual’s work potential through a variety of trial work experiences, with appropriate supports. The work experiences must “be of sufficient variety and over a sufficient length of time to determine” whether the individual is eligible.⁴⁹ The only exception is for the “limited circumstances” in which the individual cannot take advantage of such experiences, even with support.⁵⁰

The vocational rehabilitation system also can prepare students for the world of work. In fact, vocational rehabilitation agencies must now be actively involved, in collaboration with school officials, in planning for and providing

40 *Jefferson County Board of Education v. Lolita S.*, No. CV-12-BE-2324-S (N.D. Ala. Sept. 30, 2013).

41 *Id.*

42 *Board of Education of Township High School District No. 211 v. Ross*, 486 F.3d 267 (7th Cir. 2007).

43 34 C.F.R. § 361.5(b)(16) (2013)

44 *State Vocational Rehabilitation Services Program*, 66 Fed. Reg. 7250 (Jan. 22, 2001) (amending prior regulations); 34 C.F.R. § 361.5(b)(19).

45 *State Vocational Rehabilitation Services Program*, 66 Fed. Reg. at 7254.

46 34 C.F.R. § 361.37(b)(5) (2013).

47 *State Vocational Rehabilitation Services Program*, 66 Fed. Reg. at 7257.

48 29 U.S.C. § 722(a)(2); 34 C.F.R. § 361.42(a)(2) (2013)

49 29 U.S.C. § 722(a)(2)(B).

50 *Id.*

services to students with disabilities during their transition years.

VOCATIONAL REHABILITATION OBLIGATIONS UNDER THE IDEA. The IDEA requires vocational rehabilitation agencies to be involved in both transition planning with schools and actual provision of services. Comments on the 1999 regulations note that “[b]ecause many students receiving services under IDEA will also receive services under the Rehabilitation Act, it is important, in planning for their future, to consider the impact of both statutes.”⁵¹

State vocational rehabilitation agencies are specifically referred to in the IDEA regulations. Rehabilitation counseling includes services provided by the vocational rehabilitation agency.⁵² The definition of assistive technology services includes coordinating other services with assistive technology devices “such as those associated with existing education and *rehabilitation* plans and programs.”⁵³ The special education regulations also note that nothing in the transition services requirements relieves any participating agency, “including a State [VR] agency,” of the responsibility to provide or pay for any transition service that the agency would otherwise provide.⁵⁴

The IDEA has strengthened the obligations of other public agencies to provide services to students while they are still in school. All states must now have interagency agreements to ensure that all public agencies that are responsible for providing services, that are also considered special education services, fulfill their responsibilities. Agencies that would meet this definition would include both Medicaid and the state vocational

The IDEA requires vocational rehabilitation agencies to be involved in both transition planning with schools and actual provision of services.

rehabilitation agency. The financial responsibility of these public agencies must precede that of the school. If an agency does not fulfill its obligation, the school must provide the needed services but has the right to seek reimbursement from the public agency. The agreement must also specify how the various agencies will cooperate to ensure the timely and appropriate delivery of services to students.⁵⁵

OBLIGATIONS UNDER THE VOCATIONAL REHABILITATION LAWS. The Rehabilitation Act contemplates that vocational rehabilitation agencies will play an active role in special education transition planning. Amendments to the Rehabilitation Act require vocational rehabilitation agencies to “increase their participation in transition planning and related activities.”⁵⁶ Accordingly, state vocational rehabilitation plans must have policies for coordination between vocational rehabilitation agencies and education officials to facilitate the transition from the special education system to the vocational rehabilitation system. This coordination must include the development of formal interagency agreements, with (1) provisions for consultation and assistance planning with educational agencies in transition planning, (2) the relative roles and financial responsibilities of the special education and vocational rehabilitation systems in providing services, and (3) provisions for outreach to and identifi-

cation of students who have disabilities and need transition services.⁵⁷

Vocational rehabilitation agencies are required to be actively involved with school districts in transition planning: (1) outreach to and identification of students who have disabilities and may need transition services, as early as possible during planning; (2) consultation and technical assistance for school personnel in transition planning; and (3) involvement with school personnel in transition planning that facilitates development of the special education IEP.⁵⁸

Recall that Sam was not referred to the vocational rehabilitation agency until his last year in school and that, as a result of the vocational rehabilitation assessment, he was identified for job training as a dishwasher. Had the vocational rehabilitation agency been involved earlier in transition planning, perhaps the agency’s staff could have assisted the school and family in locating a job that met his stated employment objective to work with computers.

The vocational rehabilitation system is also expected to provide services to at least some students with disabilities while they are still in school. Subject to the state vocational rehabilitation plan, the vocational rehabilitation agency is required to provide services to students to facilitate achievement of the employment outcome as spelled out in the individualized plan for employment.⁵⁹

51 Assistance to States for the Education of Children with Disabilities and the Early Intervention Program for Infants and Toddlers with Disabilities, 64 Fed. Reg. at 12474.

52 34 C.F.R. § 300.34(c)(12) (2013).

53 *Id.* § 300.6(d) (emphasis added).

54 *Id.* § 300.324(c)(2).

55 20 U.S.C. § 1412(a)(12).

56 [State Vocational Rehabilitation Services Program](#), 66 Fed. Reg. 4380, 4424 (Jan. 17, 2001) (amending prior regulations).

57 20 U.S.C. § 721(a)(11)(D).

58 34 C.F.R. § 361.22(b). The vocational rehabilitation agency should “participate actively throughout the transition planning process, not just when the student is nearing graduation” (66 Fed. Reg. at 4424).

59 H.R. Rep. No. 105-6693 tit. IV (1998).

Transition services are specifically listed in the vocational rehabilitation regulations as available services.⁶⁰

Outreach to students with disabilities is also required under the Rehabilitation Act. As early as possible during transition planning, the vocational rehabilitation agency must, as part of the mandated outreach, inform students with disabilities about the purpose of the vocational rehabilitation program, its application procedures and eligibility requirements, and the scope of services that may be available. This is necessary “to enable students with disabilities to make an informed choice on whether to apply for VR services while still in school.”⁶¹

Of course, when transition services are provided by the vocational rehabilitation system, as in any other vocational rehabilitation service, they must be designed to promote achievement of an employment outcome.⁶² Vocational rehabilitation transition services will be provided only to “students who have been determined eligible under the VR program and who have an approved [individualized plan for employment].”⁶³

What services the vocational rehabilitation agency will provide to students with disabilities and the circumstances under which they will be provided are to be consistent with the mandated state interagency agreement between the state vocational rehabilitation and special education systems.⁶⁴ That said, state vocational rehabilitation agencies “should not interpret the ‘interagency agreement’ provisions as shifting the obligation for paying for specific transition services normally provided by

those agencies to local school districts. State [VR] agencies still have that responsibility.”⁶⁵ Moreover, “the [individualized plan for employment] for a student with a disability who is receiving special education services must be coordinated with the IEP for the individual in terms of the goals, objectives, and services identified in the IEP.”⁶⁶

How will all of this play out for Sam? First, as part of the special education transition planning, an appropriate employment objective must be identified for him. And, second, potential locations for training him must be identified. Will the training location be a school program or one operated by a community agency? Will he need additional support services to make his experience a success? Once the location and types of services are identified, the next question is who will be responsible for paying for what services?

In answering this question, several factors must be considered. First, if the student is eligible for vocational rehabilitation services, the vocational rehabilitation laws make clear that the student and family have the right to decide whether to apply for vocational rehabilitation services while the student is still in school. Second, since both the IDEA and vocational rehabilitation laws require these systems to develop a state interagency plan, Sam’s family and school must look at the plan in his state.

And, third, for those students who have not received vocational rehabilitation services while they are still in school, the vocational rehabilitation system must determine service eligibility and develop an individualized plan for employment as soon as possible during transition planning—at the latest, by

the time the students leave the public school setting.⁶⁷ Having individualized plans for employment in place before students leave school helps students avoid unnecessary delays in services and helps students “continue the progress toward employment that they began making while in school.”⁶⁸

For Sam, although there was no delay in receiving his initial vocational rehabilitation services, once he completed his first year, he was placed on a three-year waiting list for any additional services. Given the severity of his disability and the amount of training he apparently needed to be job-ready, either he should have begun to receive services earlier, or the follow-up he might need after his first year of preparation should have been anticipated.

Using the ADA’s Integration Mandate to Stem the Pipeline

Making sure that school districts and state vocational rehabilitation agencies are complying with their transition obligations under the IDEA and the Rehabilitation Act, advocates may also use the ADA’s integration mandate as a tool in stemming the school-to-sheltered-workshop pipeline. The U.S. Department of Labor initiated an investigation into Training Thru Placement, the segregated workshop program of Providence, Rhode Island.⁶⁹ The Labor Department found that Training Thru Placement was in violation of the Fair Labor Standards Act in that it paid its employees subminimum wages, sometimes less than one dollar per hour. The Labor Department issued a retroactive revocation of the authorization to pay subminimum wages, thereby

60 34 C.F.R. § 361.48(r) (2013).

61 State Vocational Rehabilitation Services Program, 66 Fed. Reg. at 4424.

62 34 C.F.R. § 361.5(b)(55) (2013).

63 State Vocational Rehabilitation Services Program, 66 Fed. Reg. at 4424.

64 34 C.F.R. § 361.45(d)(8)(ii) (2013).

65 H.R. Rep. No. 105-6693 tit. IV.

66 34 C.F.R. § 361.46(d) (2013).

67 *Id.* § 361.22(a)(2).

68 State Vocational Rehabilitation Services Program, 66 Fed. Reg. at 4424.

69 Press Release, U.S. Department of Labor, [U.S. Labor Department Moves to Protect Workers with Disabilities in Crackdown on Rhode Island Employer: Wage and Hour Division Refers Case to U.S. Justice Department](#) (June 13, 2013).

forcing the program to give back pay for all hours worked since June 2010.⁷⁰ Many of the program's employees had been referred from a specific special education program, the Harold Birch Vocational Program; the Labor Department found and reported this suspected pipeline to the U.S. Department of Justice and the Education Department's Office of Special Education Programs.⁷¹

The Justice Department opened its own investigation into the Harold Birch Vocational Program and its interactions with the Training Thru Placement sheltered workshop. The Justice Department concluded that the Birch program was funneling students into Training Thru Placement through a lack of transition services in violation of the ADA and the IDEA.⁷²

Title II of the ADA prohibits discrimination based on disability by public entities, including public schools.⁷³ The ADA's integration mandate requires that services to people with disabilities are delivered in the most integrated setting appropriate for those individuals.⁷⁴ In *Olmstead v. L.C.* the U.S. Supreme Court held that, based on the ADA's integration mandate, public agencies were required to provide community-based services for individuals residing in nursing homes when residents did not oppose the move, such services were appropriate, and community-based services could be reasonably accommodated.⁷⁵ More recently, an Oregon district court found that the principles in *Olmstead* applied to segregated community-based day programs, such as sheltered workshops.⁷⁶

70 *Id.*

71 *Id.*

72 [Letter from Thomas E. Perez, Assistant Attorney General, Civil Rights Division U.S. Department of Justice, to Mary Ann Carroll](#) 3 (June 7, 2013).

73 42 U.S.C. §§ 12131–12134.

74 28 C.F.R. § 35.130(d) (2013).

75 *Olmstead v. L.C.*, 527 U.S. 581 (1999).

76 *Lane v. Kitzhaber*, 841 F. Supp. 2d 1199 (D. Or. 2012).

The Justice Department similarly applied the ADA to Birch and its transitional programs. The Justice Department found that, for almost 40 years, Birch had been servicing almost all Providence students who had intellectual or developmental disabilities. Of these students, only a handful did not land in a segregated employment setting.⁷⁷ The Birch program offered almost no appropriate transition services and did not link students to integrated postsecondary services such as supported employment.⁷⁸ Instead students were all but guaranteed to find themselves at Training Thru Placement upon aging out of public school. The city and the school district had funded and administered transition services that functioned like a pipeline from Birch to Training Thru Placement. Many Birch students could have worked in integrated settings with appropriate supports but were never offered that opportunity.⁷⁹ And the Rhode Island vocational rehabilitation agency, the Office of Rehabilitation Services, “had established no presence at Birch and that no vocational rehabilitation counselors presently service the program,” the Justice Department found.⁸⁰

The Justice Department ordered the district to take several remedial actions:⁸¹

- Ensure that sufficient integrated transition services are provided while people with disabilities are still in school to prepare them to participate in integrated employment and community services in the most integrated setting appropriate when they leave school.
- Ensure that these transition services are provided early enough and consistently throughout their time in school.

77 *Perez, supra* note 72, at 8.

78 *Id.* at 9.

79 *Id.* at 11.

80 *Id.* at 12.

81 *Id.* at 16–17.

- Ensure that the students with disabilities have the opportunity to engage in work in integrated settings prior to leaving school.
- Develop sufficient linkages to adult supported employment and integrated day service providers.
- Develop and implement effective transition assessment and planning to assist students in their transition to integrated programs consistent with their needs and informed choice.

The Rhode Island Disability Law Center's independent investigation of the seven developmental disabilities services agencies that operated sheltered workshops confirmed a number of the Justice Department's findings. The center interviewed 114 people receiving employment supports from the seven agencies; those in sheltered workshops were among the interviewees. The center found that a number were simultaneously working in integrated settings and sheltered workshops. Only 15 of the 114 interviewees had some knowledge of or contact with the Office of Rehabilitation Services.⁸²

A follow-up statewide investigation by the Justice Department confirmed what I believe is happening far too often throughout the country.⁸³ The Justice Department found that of the hundreds of youths who had intellectual or developmental disabilities and transferred from secondary school to adult day and employment providers in Rhode Island each year “only approximately 5%” transitioned into jobs in integrated settings between 2010 and 2012.⁸⁴ The Justice Department also noted that families they interviewed stated that the

82 E-mail from Anne Mulready, Rhode Island Disability Law Center, to me (Nov. 4, 2013).

83 [Letter from Jocelyn Samuels, Acting Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Mark DeSisto](#) (Jan. 6, 2014).

84 *Id.* at 27.

Rhode Island Office of Rehabilitation Services staff frequently failed to present transition-aged students who had intellectual and developmental disabilities “with viable alternatives to sheltered workshops.”⁸⁵ The Justice Department was also told “of a general lack of [Office of Rehabilitation Services] presence in schools across Rhode Island to assist with the [IEP] planning process.”⁸⁶

Why the Pipeline Persists and What Advocates Can Do

Far too many students with disabilities are transitioning into sheltered workshops instead of competitive employment; at sheltered workshops they earn wages well below the minimum. Four explanations behind the persistence of the school-to-sheltered-workshop pipeline are possible: (1) Too many school districts are not providing individual transition services based on students’ stated interests. Instead students are placed in generic, preexisting programs that are frequently not in the least restrictive environment. (2) Vocational agencies are seldom at the table with school districts to help districts identify appropriate career goals for students. (3) Families may fear that if students end up in competitive employment, they will lose their benefits. (4) Parents, school districts, and vocational rehabilitation agencies may be underestimating the work potential of transitioning students. Rather than complying with the vocational rehabilitation requirements to determine whether students are capable of benefitting from vocational rehabilitation services, school districts and vocational rehabilitation agencies are funneling these students directly into sheltered workshops.

Comprehensive advocacy efforts to enforce IDEA and Rehabilitation Act requirements for students in transition should significantly reduce the school-to-

sheltered-workshop pipeline. The recent Office of Special Education Programs policy letter reiterating that least restrictive environment principles apply to work preparation programs for students in transition as well as the Justice Department’s application of the ADA’s integration mandate to sheltered workshops provide new tools for advocates engaged in this work.

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⁸⁵ *Id.* at 28.

⁸⁶ *Id.*

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