

**STATE OF CALIFORNIA**  
**DEPARTMENT OF REHABILITATION**  
721 Capitol Mall  
Sacramento, California 95814

**Title 9. Rehabilitative and Developmental Services**  
**Division 3. Department of Rehabilitation**  
**Add Chapter 13, Articles 1 through 9, Sections 7370 through 7389**

**INITIAL STATEMENT OF REASONS**

**INTRODUCTION**

The Department of Rehabilitation (hereafter “the Department”) is responsible for administering the provision of vocational rehabilitation services for Californians with disabilities in accordance with sections 701 et seq. of title 29 of the United States Code, Welfare and Institutions Code sections 19150 et seq., and implementing federal and state regulations (34 C.F.R. 361 et seq. (2016); Cal. Code Regs., tit. 9, sections 7000 et seq.). The Department’s mission is to provide employment, independence, and equality to all individuals with disabilities throughout California.

In 2014, at the federal level, the Workforce Innovation Opportunity Act (WIOA) was passed, making widespread changes to the service delivery method and types of vocational rehabilitation services mandated in the Rehabilitation Act of 1973 (Pub. L. 93-112) as amended. This amendment presented the addition of pre-employment transition services to be provided to students with disabilities, including students who had not yet applied for, or been determined eligible for vocational rehabilitation services. In 2016, the United States Department of Education through the Rehabilitation Services Administration (RSA) summarized the final federal regulations implementing the WIOA. (81 Fed. Reg. 55682-55683 (August 19, 2016)) available at [Link](#).

Consequently, the Department must draft state regulations for the newly created federally mandated services.

## **PROBLEM STATEMENT**

The Department's current regulations do not contain provisions for pre-employment transition services, which are now mandated through the WIOA and the federal implementing regulations. In addition, the Department's current regulations only allow for services to be provided to individuals who have applied for and been determined eligible to receive the full range of vocational rehabilitation services. Under WIOA and the federal implementing regulations, the Department must ensure that pre-employment transition services are made available statewide to all students with disabilities. Therefore, it is necessary for the Department to specify a procedure for all students with disabilities to request and receive pre-employment transition services through the Department.

## **BENEFITS ANTICIPATED FROM REGULATORY ACTION**

The anticipated benefits of adding Chapter 13 to title 9 of the California Code of Regulations include notifying the public about specific services designed for and available to students with disabilities who are transitioning from school to postsecondary education and employment. Students with disabilities will be able to receive pre-employment transition services without having to apply for or be determined eligible to receive the full scope of vocational rehabilitation services. The benefit of this new method of service delivery is that less information and evaluation is needed before providing student services to students with disabilities. Adding Chapter 13 helps ensure that students with disabilities have opportunities to receive the training and other services necessary to achieve competitive integrated employment. Such pre-employment transition services are an early start at job exploration and assist students with identifying career interests to be further explored through additional vocational rehabilitation services. Pre-employment transition services include opportunities to practice and improve workplace skills through internships and other work-based learning opportunities.

All of the proposed regulations are consistent with the WIOA and implementing federal regulations, including reporting requirements of the Department's federal oversight agency, the RSA.

## CONSISTENCY

All changes in this proposed rulemaking package are consistent or compatible with existing laws and regulations.

## SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION AS REQUIRED BY GOVERNMENT CODE SECTION 11346.2(b)(1)

When a state agency's proposed regulation is identical to a previously adopted or amended federal regulation, Government Code section 11346.2(c) allows the agency to make a statement to that effect and to cite where an explanation of the federal regulation can be found to satisfy the requirements for rulemaking. Most of the proposed regulations are drafted to be consistent with the Rehabilitation Act, as amended by the WIOA. Explanations of the changes made can be found in the RSA's summary of the final federal regulations implementing the WIOA. (81 Fed. Reg. 55682-55683 (August 19, 2016)) available at [Link](#).

The specific purpose of each adoption, and the rationale that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the problem, administrative requirement, or adopted federal regulation is as follows:

### Article 1: Definitions and Terms

#### Section 7370. Eligible student with a disability

Purpose: The purpose is to define terms used only in this proposed chapter that are not defined elsewhere in the Department's regulations. This section defines eligible student with a disability.

Necessity: The definition of eligible student with a disability is necessary to delineate it from a "potentially eligible student," which is a term of art used by the federal government in administering WIOA. Discussion of the differences originated in the RSA's summary of the final federal regulations implementing the WIOA. (81 Fed. Reg. 55682-55683 (August 19, 2016)) available at [Link](#). An eligible student has been determined eligible for the vocational rehabilitation program by the Department.

### Section 7371. Potentially eligible student with a disability

Purpose: The purpose is to define terms used only in this proposed chapter that are not defined elsewhere in the Department's regulations. This section defines potentially eligible student with a disability.

Necessity: The definition of potentially eligible student is necessary as a term of art used by the federal government in administering WIOA and they are not commonly understood or defined otherwise. The term "potentially eligible student" originated in the RSA's summary of the final federal regulations implementing the WIOA. (81 Fed. Reg. 55682-55683 (August 19, 2016)) available at [Link](#).

The term has been continually used (although not formally defined in federal law or regulations) when referring to students receiving services who have not yet applied for and/or have not yet been determined eligible for the full range of vocational rehabilitation services.

### Section 7372. Student services plan

Purpose: The purpose is to define terms used only in this proposed chapter that are not defined elsewhere in the Department's regulations. This section defines a student services plan.

Necessity: The definition of a student services plan is necessary because it is novel and not commonly defined. This definition provides clarity for those potentially eligible students with disabilities who will be receiving services in a manner that is separate from individuals who have applied for and been determined eligible for the full range of vocational rehabilitation services. Individuals who have applied for and been determined eligible for the full range of vocational rehabilitation services are "clients" or "consumers," as defined in section 7005 of title 9 of the California Code of Regulations and they are receiving services through a more formalized Individualized Employment Plan (IPE). (Cal. Code Regs. tit. 9 section 7018). Discussion of the differences originated in the RSA's summary of the final federal regulations implementing the WIOA. (81 Fed. Reg. 55682-55683 (August 19, 2016)) available at [Link](#).

## Article 2. Provision and Receipt of Pre-employment Transition Services

### Section 7373. What are the general provisions of pre-employment transition services?

Purpose: The purpose of Article 2 is to specify that vocational rehabilitation services are available statewide to all students with disabilities, through two separate and distinct service delivery methods, as outlined in federal law and regulations in title 29 United States Code sections 705(30), 723(a)(15), and 733, and title 34 Code of Federal Regulations sections 361.5(c)(42) and 361.48(a).

Necessity: It is necessary to notify the public that the process for students to obtain vocational rehabilitation services while in secondary school or beyond, has expanded. It is further necessary to align the state regulations with federal law as discussed in the RSA's summary of the final federal regulations implementing the WIOA. (81 Fed. Reg. 55682-55683 (August 19, 2016)) available at [Link](#).

### Section 7374. What is the Department's role in the provision of pre-employment transition services?

Purpose: The purpose of this regulation is to lay out the actions the Department takes with schools and local education agencies, as discussed in the federal law and regulations, to bring vocational rehabilitation services to students.

Necessity: It is necessary to have this regulation made available to the public, so they understand the coordination between the Department and their local schools. This section has taken the language from federal law and regulation on pre-employment transition services. (29 U.S.C. section 733(d), 34 C.F.R. 361.48.) This coordination is a key mandate of the WIOA as discussed in the RSA's summary of the final federal regulations. (81 Fed. Reg. 55682-55683 (August 19, 2016)) available at [Link](#).

### Section 7375. What are the different ways to receive pre-employment transition services?

Purpose: The purpose of this regulation is to map out the different ways available to begin the process of obtaining pre-employment transition services.

Necessity: It is necessary to explain to the public how to begin that process since these services are relatively new to the state vocational rehabilitation programs under WIOA. A student can either request a student services plan from the Department or can apply for vocational rehabilitation services and go through the eligibility process. Either way, the regulations acknowledge that students with disabilities have unfettered access to services under the WIOA. Discussion of providing student services can be found in the RSA's summary of the final federal regulations implementing the WIOA. (81 Fed. Reg. 55682-55683 (August 19, 2016)) available at [Link](#).

### Article 3. The Rights and Responsibilities of Students Receiving Pre-Employment Transition Services

#### Section 7376. What are the rights of students?

Purpose: The purpose of this regulation is to establish what one can expect from the program. The process of disclosing to another party that one has a disability, even when seeking vocational rehabilitation services, is a delicate topic requiring respect and confidentiality between the Department and student or the client.

Necessity: The Department maintains the necessity of this regulation is to demonstrate to the student and the student's parent or guardian that the student will be treated as an informed and active participant in all services and that the student's personal information is kept confidential, in accordance with other Department regulations. Article 3 is also necessary to establish the responsibilities of potentially eligible students who receive student services. Having rights and responsibilities in Chapter 13 is necessary in order to distinguish these from the rights and responsibilities that are applicable to the Department "clients" as described in title 9 California Code of Regulations sections 7029.7 and 7029.9. The rights and responsibilities are narrower in scope in Chapter 13 since potentially eligible students will not be receiving the full range of vocational rehabilitation services.

#### Section 7377. What are the responsibilities of students?

Purpose: The purpose of this regulation is twofold. First is to identify what is expected of the student by the Department for clarity, preparation, and understanding between the parties. The second is to make the student

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aware of the information and participation necessary for the Department to provide the student services.

Necessity: It is necessary to make the regulations as easy to understand and navigate as possible. By listing rights and responsibilities of each party in the process, there are no surprises. Further, there are rights and responsibilities for individuals receiving vocational rehabilitation services in our current state regulations in sections 7029.7 and 7029.9 of title 9 of the California Code of Regulations. Because a student will not be receiving the full list of vocational rehabilitation services as an individual who has applied for and been determined eligible and is going through a transition from school to work, the rights and responsibilities are limited in scope and the addition of this section is to distinguish that there are differences in responsibilities for students.

Most of the responsibilities come from 29 U.S.C. section 733 where the state is required to work in conjunction with local schools in providing services, and the notification by the student of whether or not they are in school is necessary for the Department to function.

#### Article 4. The Record of Student Services

##### Section 7378. What documents are contained in the record of student services and who can see them?

Purpose: The purpose of this regulation is to notify the public what is contained within the record kept by the Department. The regulation also provides the public with the knowledge that privacy and confidentiality of the record is protected by state and federal law.

Necessity: It is necessary to notify the public of what will be kept in the record and what will not be kept in the record. Listing the contents encourages transparency and integrity at the Department level and helps to maintain public trust. The contents of the “Record of Service” have long been codified in the federal regulations as to applicants and eligible individuals, as in part 361.47 in title 34 of the Code of Federal Regulations. Likewise, there is a state regulation that follows the federal regulation at section 7122 in title 9 of the California Code of Regulations. To explain that the Department will also take care in the records of services for students and youth, we acknowledge that information provided to the Department while requesting pre-employment transition services will be kept

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confidential and that only a signed consent by the student and parent or guardian will allow release of the information to a third party, with listed exceptions as noted in section 7143. This language is required of the Department in part 361.38, title 34 of the Code of Federal Regulations to notify vocational rehabilitation applicants and eligible individuals of the protection, collection and release of their personal information and is extended to students in this regulation.

## Article 5. The Scope of Pre-Employment Transition Services

### Section 7379. What are available student services?

Purpose: The purpose of this section is to specify what constitutes required student services under state and federal law and regulations so that the public can easily access such information if they are looking for it.

Necessity: It is necessary to make the regulations as easy to understand and navigate as possible. By listing out possible services that the Department can provide or arrange with a third party, the Department can manage expectations of the students and their families. Because a student will not be receiving the full list of vocational rehabilitation services as an individual who has applied and been determined eligible, the services are limited in scope. Federal law and regulations set the bar by listing all possible student services. (29 U.S.C. section 705(30), 723(a)(15), and 733; 34 C.F.R. parts 361.5(c)(42) and 361.48(a)). This state regulation mirrors the language of the federal regulation. Discussion of the expansion of student services originated in the RSA's summary of the final federal regulations implementing the WIOA. (81 Fed. Reg. 55682-55683 (August 19, 2016)) available at [Link](#).

### Section 7380. What are additional activities that the Department is authorized to conduct?

Purpose: The purpose of this section is to specify what are considered authorized activities under federal law, meaning, what activities the federal funding will pay for.



Necessity: It is necessary to make the regulations as easy to understand and navigate as possible. By specifying the authorized activities that the Department can provide, the Department can manage expectations of the students and their families. Federal regulations list all possible authorized activities in section 361.48(a)(3) of title 34 of the Code of Federal Regulations. This state regulation mirrors the language of the federal regulation.

#### Section 7381. What coordination activities may the Department conduct?

Purpose: The purpose of this section is to describe for students and their families that the Department will be coordinating with their school and/or regional center so they may transition from school to postsecondary education and employment.

Necessity: This section is necessary to clarify for students with disabilities, schools, regional centers, local workforce development boards, one-stop centers, and employers that the Department will work with them to ensure that student services are available statewide and are well-sequenced. It is also necessary to clarify for students that the Department's staff are available, upon request, to participate in meetings with the student occurring outside the Department, including meetings involving local schools and regional centers. This section mirrors the language of the federal regulation, 34 C.F.R. part 361.48(a)(4).

#### Section 7382. What auxiliary aids and services will be provided to potentially eligible students?

Purpose: This section lists all the auxiliary aids and services that can be included as part of the pre-employment transition services to potentially eligible students.

Necessity: It is necessary to make the regulations as easy to understand and navigate as possible. By specifying the auxiliary aids and services that the Department can provide, the Department can manage expectations of the students and their family. This regulation used the federal regulation, which defines auxiliary aids and services, 28 C.F.R. part 35.104, as a guide. The auxiliary aids and services to be provided to potentially eligible

students are limited based on the implementing regulations of the Americans with Disabilities Act and the Rehabilitation Act. Discussion available at 87 Fed. Reg. 15889-15893 (March 31, 2022) or at [Link](#). This list of auxiliary aids and services has been provided by the RSA and is included in the rulemaking file. You can also find a discussion on the Department of Education's Office for Civil Rights' page here: [Link](#).

## Article 6. Making a Plan For Student Services

### Section 7383. How does a student request student services?

Purpose: This section lays out the roadmap for students to obtain student services with the Department.

Necessity: This section is necessary to explain the steps a student must take to obtain student services from the Department. By breaking down the steps in one regulation section, it makes the regulations easier to understand and navigate. This regulation notifies the student and their parent or guardian that the Department requires specific information that is discussed in section 7384. It is necessary to put them on notice of what is required ahead of time, so the student is prepared with the necessary documents. The regulation goes one step further and reminds the public that requesting a plan for student services is not the same as applying for vocational rehabilitation services. This regulation provides clarification to reduce confusion.

### Section 7384. What information is needed to request a plan of student services?

Purpose: This section establishes what personal and educational information the Department will need from the student to begin the process of providing student services.

Necessity: It is necessary for the Department to obtain personal, school, and medical information from the students in order to provide services to students. Further, federal law requires the Department to collect and produce specific data for the programs. (29 U.S.C. section 721(a)(10), and 3141(d)(2); 34 C.F.R. 361.38.) Personal information is necessary for the Department to ensure that the individual is correctly identified as multiple students may have the same name. It is also necessary so that the Department can communicate with the student about the services. The

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school and disability information are necessary to determine that the individual is a student with a disability, which is defined in section 7026.5 and in federal law. (29 U.S.C. section 705(37); 34 C.F.R. part 361.5(c)(51)). Most of the information requested is because of the Department's reporting requirements as mandated by federal administrative rules, found in 85 Fed. Reg. 46075-46079 (July 31, 2020) or here: [Link](#).

#### Section 7385. How is a plan for student services developed?

Purpose: This section describes how the plan for student services requires informed communication between the Department and the student.

Necessity: This section is necessary because federal law and regulations require the Department to engage with the student (as well as their parents or guardians) when planning for the student's services plan. It is a mandatory part of state vocational rehabilitation programs that recipients of services are provided information and support services to assist them in exercising informed choice throughout the process consistent with the provisions of section 102(d) of the Rehabilitation Act (29 U.S.C. § 722(d)). This informed choice requirement is also found in part 361.52 of title 34 of the Code of Federal Regulations and section 722(b) title 29 in the United States Code. This section also makes the student aware of the Department's role in making sure the student services plan includes all that is required under these regulations.

#### Article 7. Receiving Services Through an Individualized Plan for Employment (IPE)

##### Section 7386. Can a student receive student services through an IPE?

Purpose: The purpose of this section is to direct a student on how to receive the wider range of vocational rehabilitation services available to eligible individuals. It also describes what will happen if a student is already receiving pre-employment transition services, applies for vocational rehabilitation services, and then is determined eligible or ineligible.

Necessity: It is necessary to have this regulation to provide students with information as to how to receive the wider range of vocational rehabilitation services. It is in line with part 361.48 (a) of title 34 of the Code of Federal Regulations, which lists pre-employment transition services as one of the

services that may be provided for individuals who have applied for or been determined eligible for vocational rehabilitation services.

Section 7387. How will pre-employment transition services be provided after applying for vocational rehabilitation services?

Purpose: This regulation advises the public that if a student is receiving pre-employment transition services, they will continue to receive those services until they are determined eligible or ineligible for vocational rehabilitation services.

Necessity: It is necessary to explain how the receipt of pre-employment transition services relates to the application for vocational rehabilitation services. Part of the federal requirements in determining when an individual may receive vocational rehabilitation services is the concept of order of selection, or a way of prioritizing applicants in the event that services cannot be provided to all eligible individuals, as found in section 721(a)(5) of title 29 of the United States Code, and part 361.42 of title 34 of the Code of Federal Regulations. Consequently, it is necessary to explain this to the public for clarity and transparency.

Article 8. Discontinuation of Pre-Employment Transition Services

Section 7388. When will pre-employment transition services end?

Purpose: This section describes the different scenarios that will cause the provision of pre-employment transition services to end.

Necessity: It is necessary to let the public know how the provision of student services will come to an end. There are a few different circumstances under which the Department can discontinue offering student services to a potentially eligible student with a disability, which were formulated based off of this document, 81 Fed. Reg. 55682-55683 (August 19, 2016) available at [Link](#).

Article 9. Financial Participation; Comparable Services and Benefits

Section 7389. Does a student have to pay for services or find comparable benefits?

Purpose: This regulation is to let potentially eligible students know that they are not required to pay for any services or to attempt to obtain comparable services and benefits.

Necessity: This section is necessary to let potentially eligible students know they are not held to the same financial participation standards as clients in part 361.54 of title 34 of the Code of Federal Regulations, or to demonstrate comparable services and benefits as found in part 361.53 of title 34. Both of those regulations specifically only apply to “eligible individuals” and in the case of part 361.54, those eligible individuals receiving services in trial work experiences.

Studies, Reports, or Documents Relied Upon – Government Code section 11346.2(b)(3): The Department has relied upon federal law and regulations as found in the reference section above, as well as the following documents: The RSA’s guidance on student services under the 2014 WIOA amendment to the Rehabilitation Act, as discussion of the differences originated in the RSA’s summary of the final federal regulations implementing the WIOA. (81 Fed. Reg. 55682-55683 (August 19, 2016)) available at [Link](#). RSA guidance on funds to be used for pre-employment transition services at 87 Fed. Reg. 15889-15893 (March 31, 2022) or at [Link](#). Federal administrative rules on state vocational rehabilitation reporting requirements as found in 85 Fed. Reg. 46075-46079 (July 31, 2020) or here: [Link](#). RSA Policy Directive on Completion of the Case Report (RSA-911) for the State Vocational Rehabilitation Services Program and the State Supported Employment Services Program (RSA-PD-19-03 (May 6, 2019)). Finally, Department of Education’s Office for Civil Rights’ discussion of auxiliary aids and services are found here: [Link](#).

Reasonable Alternatives That Would Lessen the Impact on Small Businesses – Government Code section 11346.2(b)(4): The Department has determined that there will be no negative impact on small businesses from this proposed rulemaking. As such, no reasonable alternatives to lessen the negative impact on small business have been identified. Because this rulemaking codifies changes already made to federal regulations and already being utilized throughout the field offices, the

Department has not identified or been notified of any negative impacts associated with this regulation.

Evidence Relied Upon to Support the Initial Determination That the Regulation Will Not Have a Significant Adverse Economic Impact on Business – Government Code section 11346.2(b)(4): Since the adoption of the federal regulations in 2016, no businesses have had adverse economic impact as a result of the federal regulations becoming effective. Those are the same regulations we are adopting in this state regulation package. As a result, the Department finds that these regulations will not have a significant adverse economic impact on business.

Economic Impact Statement – Government Code section 11346.3(b)(1)(A) through (D): The proposed rulemaking will benefit members of the California public by adding consistency and clarity to the state regulations by codifying the changes in federal law and regulation of the vocational rehabilitation program that have been taking place in the program since the federal law changed in 2014. This increases transparency to the vocational rehabilitation process by having regulations that mirror the federal regulations. It will also benefit the public as they can see all that is available and possible once an individual applies for services.

The regulations in this rulemaking package only include changes relevant and necessary to adopt and align state regulations with the federal regulations that govern state vocational rehabilitation programs. As a result, there are no reasonable alternatives to adopting the federal regulations into our program.

These federal regulations were adopted the United States Department of Education in 2016. Since the changes in federal regulations governing state vocational rehabilitation programs have been in effect for over five years, there has been no evidence that the Department is aware of, that any businesses who are part of the vocational rehabilitation program were adversely or positively affected, were creating jobs, or eliminating jobs, or creating new business or eliminating other businesses since the federal regulations were adopted.

Likewise, the Department does not believe that California businesses will

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be adversely or positively affected, will create, or eliminate jobs or will create new business as a result of our adoption of the federal law into our regulations. Since the federal regulations have been enacted and enforced in 2016, there has been no evidence to demonstrate that there has been any economic impact on business.

The adoption of this rulemaking will have little to no impact to the environment. The Department does not anticipate any benefits to worker safety.