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Are Colorado Students on a Path to Independence?



FALL 2019 EDUCATION REPORT Promoting & Protecting Disability Rights

Disability Law Colorado
455 Sherman Street | Suite 130
Denver, Colorado 80203-4403
303.722.0300 TEL
303.722.0720 FAX
www.DisabilityLawCO.org

This report is the result of teamwork from staff, and particularly from P&A attorneys Jennifer Levin and Emily Harvey. An electronic version of this report is available on our website:

www.DisabilityLawCO.org/EducationReport2019

Disability Law Colorado protects and promotes the rights of people with disabilities and older people in Colorado through direct legal representation, advocacy, education and legislative analysis. We are committed to increasing opportunities for adults and children with disabilities to live, work and attend school in the community, enjoying independent and productive lives; and protecting the rights of people in institutions to be treated with dignity and respect.

Mary Anne Harvey | *Executive Director*

Alison L. Butler | *Director of Legal Services*

Mark Ivandick | *Denver Office Managing Attorney*

David Monroe | *Grand Junction Office Managing Attorney*

Kaytie Angeli | *Administrative Assistant & Intake Specialist*

Meghan Baker | *Facilities Attorney*

Jeremy Bell | *Ombudsman Program Manager*

Julie Z. Busby | *Office Manger*

Adriene Callahan | *Accounting Manager*

Bill DeSonier | *Representative Payee Investigator*

Vinni Ferrara | *Ombudsman Program Manager*

Anna French | *Program Coordinator, Rights Advocate*

Angela Garberding | *Senior Intake Specialist*

Emily Harvey | *Intake Team Leader, Attorney*

Georgia Kasow | *Administrative Assistant & Intake Specialist*

Liz Kenny | *Facilities Team Leader, Attorney*

Miriah Lawson | *Administrative Assistant & Intake Specialist*

Kelsey Lesco | *Legal Assistance Developer for Elders*

Jennifer Levin | *Education Team Leader, Attorney*

Shannon MacKenzie | *Community Integration Team Leader, Attorney*

Jim McBride | *Director of Administrative Services*

Leah McMahon | *State PACE Ombudsman*

Olivia Pilcher | *Rights Advocate in Grand Junction*

Jennifer Purrington | *Access Team Leader, Attorney*

Mike Robbins | *Director of Development & Marketing*

Elina Rodriguez | *Administrative Assistant - Development & Publications*



**DISABILITY LAW
COLORADO™**

Denver Office

455 Sherman St., Suite 130
Denver, CO 80203
303.722.0300 TEL

Grand Junction Office

322 North 8th St.
Grand Junction, CO 81501
970.241.6371 TEL

www.disabilitylawco.org

Connect With Us!

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[Disability Law Colorado' School Site Visit Project](#)

Disability Law Colorado (DLC) was established in 1976 by a group of parents who wanted to ensure that their children with disabilities could receive an education in the public school system in Colorado. Thereafter, in 1977, Governor Lamm designated Disability Law Colorado as Colorado's federally-mandated Protection and Advocacy System. Disability Law Colorado's mission is to protect and promote the rights of people with disabilities through direct legal representation, advocacy, education, and legislative analysis.

What is a P&A?

This refers to a Protection and Advocacy System. There is a P & A agency in every state and U.S. territory, as well as one serving the Native American population in the four corners region.

The P & A System was created by Congress in 1975 through the Developmental Disabilities Assistance and Bill of Rights Act following an explosive and heart-breaking report by Geraldo Rivera of the abuses that people with disabilities in institutions faced. The P & A system has grown over the last 40 years and now serves people with all types of disabilities in facilities and the community. Collectively, the P & A network is the largest provider of legally based advocacy services to people with disabilities in the United States.



One of Disability Law Colorado's tasks is to protect and promote the rights of children with disabilities in public school settings. To that end, last year Disability Law Colorado embarked on a project to monitor various public schools throughout the state of Colorado.

Recognizing the team could not visit all schools, they specifically chose 17 schools located in ten counties across the Denver metro area, the eastern plains, southern Colorado, and on the western slope, including both segregated facility schools and integrated public schools. The site visits were conducted under DLC's federal monitoring authority that enables Protection and Advocacy Systems to visit facilities and schools that serve people with disabilities and allows DLC to interview students and staff regarding services and supports.

Are Colorado Students on a Path to Independence?

Disability Law Colorado's work is rooted on a core philosophy that people with disabilities should be served and included in the most integrated settings possible. This integration should include meaningful opportunities to participate in society alongside people without disabilities to the maximum extent possible. Disability Law Colorado's programs are centered on this philosophy, which includes integration in all aspects of life, including education, housing, public accommodations, voting, and employment.

The purpose of DLC's school site visits was to ascertain the resources and efforts that the public schools and districts were putting into ensuring that students with disabilities were being prepared for life after school in a fully-integrated society. In Colorado, a transition plan is required beginning when the student turns fifteen (15), but no later than the end of 9th grade, or earlier if deemed appropriate by

the Individualized Education Program (IEP) team. This is a difficult, though essential, role of schools according to the Individuals with Disabilities Education Act (IDEA).

Unfortunately, the team found that though many resources exist to assist in transition



planning, many schools and districts are unaware of and/or under-utilizing those resources. As a result, students with disabilities are not receiving appropriate transition services to allow them to make a successful transition from school into the most integrated and meaningful pre-employment and employment opportunities possible.

This report will inform readers of the transition-related issues that exist within Colorado's school and adult services systems and will put forth specific recommendations for resources and guidance on how school districts, with assistance from the Colorado Department of Education (CDE) and the state's Division of Vocational Rehabilitation (DVR), can proactively address these issues.

What is DVR?

DVR – the Division of Vocational Rehabilitation – is a state agency that helps individuals with disabilities overcome barriers to employment. This can come in the form of training, education, work experiences, job coaching, providing assistive technology or many other things. As required by federal law, DVR dedicates a great deal of its resources to working with high school students who are transitioning from high school to post-secondary education and employment.

Specific Trends Observed During Site Visits

During the site visits, the DLC team interviewed school staff, including administrators, and made direct observations of students. The team was looking for district-wide concerns, rather than just issues at a particular location. Based on this information, DLC discerned the following trends:

- School district staff in the 17 schools routinely revealed that they were not fully aware of transition resources, particularly the specific resources available through the Division of Vocational Rehabilitation;
- School district staff in some of the areas visited expressed frustration that they felt working on meaningful transition plans was difficult because even when they knew of DVR, the DVR counselors were often unavailable to provide services and attend Individualized Education Program (IEP) meetings for students of transition age;
- Overall, among the 17 schools visited, there was a general lack of awareness regarding assistive technology, specifically how low-tech devices could qualify as assistive technology that could help students transition and be funded through Medicaid, private insurance, DVR, or other sources as deemed appropriate; and
- In general, segregation remains a concern even when the student is no longer in the classroom. Specifically, students are sometimes supported into “work centers” where the students have little to no interaction with non-disabled co-workers.

Recommendations to Strengthen the Path to Independence

Based on the trends observed after the site visits, Disability Law Colorado is concerned that students with disabilities are not receiving adequate services to allow them to transition to independence and integration after school. To reverse these concerning trends, Disability Law Colorado recommends that the following actions be taken:

1. School Districts Must Improve Their Communication with DVR

School districts must determine their specific contact at DVR and should work to develop that relationship to ensure that students are being served appropriately by DVR throughout the transition period. School district staff should determine when it is appropriate for DVR staff to attend IEP meetings and work with the DVR contact to ensure DVR’s participation – even by phone or video. When a student turns fourteen (14), school staff should notify the DVR point of contact to guarantee that the student can benefit from DVR’s services from the beginning of eligibility rather than waiting until the student is

about to graduate from high school. In the schools where DLC conducted site visits, it was made known that DVR typically did not attend IEP meetings for transition-aged students, even when requested to do so by school district staff. Whether this is due to DVR counselors' caseloads, poor communication, or some other reason, the bottom line is that school district staff need to be more adamant that DVR attend IEP meetings, when appropriate. School district staff should also encourage parents to contact DVR and request their attendance.



2. School Districts Should Collaborate with DVR and CDE to Develop and Disseminate Educational Materials on Transition Services to School Staff, Students, and Parents

Based on the site visits, DLC is comfortable stating that, overall, school district staff are not well-informed of all of the services that DVR can provide to schools and their students with disabilities. This means that schools are also not providing that information to parents and students. To help address this absence of information, school districts should partner with DVR to incorporate available transition services into trainings for school district staff and all DVR counselors, including specifics regarding who is responsible for tasks at each phase of the student's transition. In addition, school districts should ensure that their written materials for staff, parents, and students contain accurate information about available transition services and DVR. Providing such information in a student handbook could go a long way to ensure that parents and students know of these valuable services.

It is further DLC's recommendation that the Colorado Department of Education get more involved in this area. Specifically, CDE should look at developing uniform information on transition services and DVR to distribute to all school districts. This would ensure that all parents of students with disabilities – and the students themselves – are getting accurate information from the state entity responsible for ensuring compliance with the IDEA.

3. School Districts Should Educate Staff, Students, and Parents about Assistive Technology, Particularly Low-Tech Devices

Through the site visits, DLC staff also noticed that while many schools employed various assistive technology devices, oftentimes, school staff did not necessarily consider the low-tech devices to be "assistive technology." This is an important oversight because, based on how a device is categorized, it may be eligible to be funded for the student as the student transitions out of high school. This requires more education for school district staff and

collaboration with DVR. In fact, the U.S. Department of Education in a *Letter to Goodman* has indicated that:

... Coordination between school districts and state VR agencies to enable students with disabilities to continue using assistive technology devices as they move from one program to another is an efficient, cost-effective means of facilitating transition from school to work related services.

To facilitate this education and collaboration, school districts should provide educational resources for their staff explaining what qualifies as assistive technology, as well as potential funding sources for assistive technology. For example, a student with Attention Deficit Hyperactivity Disorder (ADHD) who benefits from alternative seating in the classroom, such as a swivel chair, may also benefit from this sort of assistive technology in an employment setting. DVR, Medicaid or even private insurance may be able to provide a swivel chair for employment if it was classified as assistive technology.

4. Integration Should Extend Beyond the Classroom: School Districts Must Implement Individualized Plans that Include Integrated Goals

In 1990, Congress passed the Americans with Disabilities Act (ADA) and in 1999 the U.S. Supreme Court ruled on *Olmstead v. L.C.*, a case interpreting the ADA. Together, these affirm that all people with disabilities deserve to live and be served in the most integrated setting possible. This includes housing, employment, and school. States and their agencies, including public schools, must ensure that they are providing services to individuals with disabilities in the most integrated setting possible. This becomes very important when students with disabilities are transitioning from school to employment. It is particularly important that students do not fall into work centers, sheltered workshops or enclaves.

What is a “Sheltered Workshop” or “Work Center”?

“Sheltered workshop” and “work center” are terms used by the Wage and Hour Division of the U.S. Department of Labor to refer to entities that are authorized to employ workers with disabilities and pay them less than minimum wage because the entity holds what is called a 14(c) Certificate. Sheltered workshops are generally entities that employ people with disabilities exclusively or primarily, which means the people with disabilities who work in these places are segregated from the general population and have little to no access to interact with people who do not have disabilities. As of the date of this report, there are 18 entities that hold 14(c) Certificates operating throughout the state of Colorado. For more information on these entities, please see DLC’s report titled *Quest for Equal Pay for Equal Work, Subminimum Wage Report, A Call to Action to End Subminimum Wage Practice*. Some of these entities operate sheltered workshops, enclaves, and work crews that are segregated – and all pay subminimum wage.



Although DVR has prohibited their services (called Individualized Plans for Employment) from including subminimum wage employment since 2012, Disability Law Colorado strongly urges school transition teams to apply this same practice to students receiving pre-employment transition services. Even if the team thinks the sheltered workshop, enclave, or work

center will be a temporary setting to enable a student to phase into a more integrated work environment, research shows otherwise. Rather, people entering sheltered workshops historically fail to gain skills that are useful in the general employment setting and instead end up staying in the segregated work environment. Thus, they spend their entire earning years being paid a mere fraction of minimum wage and being segregated from individuals without disabilities. School districts should be precluded from or strongly discouraged from ever including a sheltered workshop or other subminimum wage segregated setting in a student's IEP. Instead, school districts should follow the rule and spirit of the ADA and *Olmstead* and only include integrated work settings and experiences in IEPs.

Let's Get Started

Disability Law Colorado is happy to partner with school districts, CDE, DVR and parent groups to help implement the above recommendations. In order to get things started, the regulations that govern DVR working with transition-aged students, general information about DVR, and a list compiled by the Colorado Department of Education of DVR contacts for each school district region are attached to this report. Additionally, laws that apply to students with disabilities to ensure they receive all educational services to which they are entitled and that they are free from discrimination in school, employment, and the provision of services are listed below. These laws and legal precedents protect students with disabilities during their path from school to integrated employment.

Individuals with Disabilities Education Act (IDEA)

- Applies to a student's educational setting(s) until the student graduates with a high school diploma or reaches 21 years of age.
- When Congress re-authorized the Education for All Handicapped Children Act as the Individuals with Disabilities Education Act (IDEA) in 1997, Congress strengthened the requirements regarding providing students with disabilities access to the general education curriculum in regular classrooms.
- The Individualized Education Program (IEP) for each student with a disability must address transition services requirements beginning no later than the first IEP to be in effect when the child turns 16 ([the age is 15 under Colorado state law](#)), or younger if determined appropriate by the IEP team, and must be updated annually. The IEP must include:
 - Appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;
 - The transition services (including courses of study) needed to assist the student with a disability in reaching those goals; and
- The IEP must also provide each student with a disability with a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE) based on that student's needs.
- The Supreme Court recently held that to receive FAPE, the IEP must be "reasonably calculated to enable the child to make progress appropriate in light of his circumstances." This means more than *de minimus* progress. Additionally, the Court emphasized "every child should have the chance to meet challenging objectives" and that the IEP must be "appropriately ambitious in light of the student's circumstances." This language specifically addressed students who are not able to achieve on grade level.
- Students must be invited to attend their IEP meetings when it involves transition services.
- The Office of Special Education and Rehabilitative Services has also declared that transition services are integral to FAPE under the IDEA – [FAPE still applies on the path to independence!](#)

Olmstead vs. L.C., 527 U.S. 581 (1999)

- Supreme Court ruling holding that people with disabilities have a right to live, work, and receive services in the most integrated setting possible based on their needs.

Higher Education Opportunity Act (HEOA)

- Student must have been eligible for an IEP in high school to qualify.
- Student with Intellectual/ Developmental disabilities will receive a comprehensive Transition Program.
- There are model demonstration projects established throughout the country.
- There are coordinating centers established throughout the country, including in Colorado.
- Financial aid access is available to qualifying students.

Workforce Innovation and Opportunity Act (WIOA)

- WIOA provides many directives to State Divisions of Vocational Rehabilitation in transition planning for students with disabilities:
 - DVR must be actively involved with school districts in transition planning for students with disabilities;
 - DVR must provide outreach to school districts and assist in the identification of students who are eligible for DVR services, including students on 504 Plans and those students who are home-schooled;
 - DVR must provide consultation and technical assistance to schools regarding DVR services available to students who are receiving pre-employment planning services;
 - DVR must provide services while students are still in school, and 15% of DVR's resources must be spent on students in pre-employment transition services; and
 - DVR must reach out and have a point of contact within the school districts in the communities that they serve.
- WIOA also requires that DVR's transition planning consider and include:
 - Informed choice;
 - Economic self-sufficiency;
 - Pre-employment transition services;
 - Workplace readiness training;
 - Social skills;
 - Independent living skills;
 - Self-advocacy skills;
 - Person centered planning; and
 - Peer mentoring with people with disabilities who are working in competitive and integrated employment,
- The goal of WIOA is to acquire the skills and credentials students need to pursue in-demand jobs and obtain **COMPETITIVE** and **INTEGRATED** employment.

Americans with Disabilities Act (ADA) and the Rehabilitation Act

- Applies to places of public accommodation, state/local government, and employers.
- Requires reasonable accommodations in policies and procedures to accommodate people with disabilities, unless the accommodation would cause an undue burden or fundamental alteration of the program/services.
- May require testing accommodations such as extended time and note taking assistance in higher education, during standardized tests, and for licensing exams.
- Prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors.
- Authorizes a continuum of services, such as pre-employment transition services, transition services, job placement services, other vocational rehabilitation services, and supported employment services for students and youth with disabilities, as appropriate, to secure meaningful careers.
- States that transition services are a shared responsibility between a student's school and the State Division of Vocational Rehabilitation.
- The U.S. Office of Special Education and Rehabilitative Services has made these declarations in published guidelines on transition services.



Resources for Creating a Pathway to Independence

Below is a list of resources that students with disabilities and their parents should consider as they approach transition-age.

Employment Resources

- Division of Vocational Rehabilitation, www.colorado.gov/dvr - DVR works with people with disabilities to obtain employment based on informed choice and individual interests
- Independent Living Centers, coloradosilc.org/colorado-centers-for-independent-living/ - ILC's provide the following core services:
 - Information and referral;
 - Independent living skills training;

- Peer counseling;
- Individual and systems advocacy; and
- Services that facilitate transition from nursing homes and other institutions to the community, provide assistance to those at risk of entering institutions, and facilitate transition of youth to postsecondary life.
- Workforce Development System, www.colorado.gov/pacific/cdle/wfc -Workforce Centers provide a variety of free services to assist employers and job seekers alike. These include:
 - Job listings;
 - Computer & internet access;
 - Career counseling & training for job seekers;
 - Recruitment of workers, pre-screening & referral services;
 - Tax credits and training reimbursement for employers; and
 - Customers can choose either self-service or staff-assisted options to meet their employment needs.
- School to Work Alliance Programs (“SWAP”), www.colorado.gov/pacific/dvr/youth-and-transition-services - SWAP is a collaborative initiative between DVR and local school districts, and is supported by the Colorado Department of Education. SWAP provides case management and direct services to young adults with disabilities.
- Community Mental Health Centers, www.colorado.gov/pacific/cdphe/community-mental-health-centers - There are a variety of mental health centers throughout Colorado that will provide supports and services for individuals in need of mental health services.
- Colorado Community College System, www.cccs.edu - There are 13 community colleges with over 40 locations across the state. The campuses provide accessible learning environments that offer disability services so that students can learn in an educational environment free of barriers.

School Resources

- School to Work Alliance Programs
- Division of Vocational Rehabilitation
- Dual Enrollment Programs – College and High School
www.cde.state.co.us/postsecondary/concurrentenrollment - This program allows students in high school to enroll in college courses while earning credit at reduced or no tuition cost.
- Community Mental Health Centers, www.colorado.gov/pacific/cdphe/community-mental-health-centers.
- Colorado Community College System, www.cccs.edu.

Benefit Resources

- Ticket to Work Program ages 18-64, www.ssa.gov/work - This program is part of the Social Security Administration's Work Program that provides people with disabilities the opportunity to go to work while maintaining their Medicaid or Medicare benefits.
- Department of Labor, www.colorado.gov/cdle - The Colorado Department of Labor and Employment connects job seekers with jobs and assistance with fair labor practice issues.
- Colorado Department of Public Health and Environment, www.colorado.gov/cdphe - This agency oversees the local county departments of public health where people with disabilities can connect to community resources.
- Community Centered Boards ("CCB's"), www.colorado.gov/pacific/hcpf/community-centered-boards - CCB's connect people with Intellectual/Developmental disabilities to resources, including case management for Medicaid waivers and supports in the community.

Hands-on Experience

- Internships – Students can work in a setting of interest and gain important experience that will be beneficial for future job goals.
- Mentorships – Students work with peers and leaders who can guide them through a job experience while providing advice on how to succeed in the workplace.
- Job Corps, www.jobcorps.gov - Job Corps' mission is to help young people with vocational and academic training in order to attain a desired job and career goal.
- Youth Build, www.youthbuild.org - Low income young people learn construction skills while re-building structures, such as affordable housing and schools, within their own communities.
- Community Based Work – Volunteer or paid community work such as working with local shelters, parks, or food banks.

Higher Education Opportunity Act ("HEOA")Resources

- Think College – thinkcollege.net – A program created by HEOA, Think College improves the college experience for students with Intellectual/Developmental disabilities.
- Comprehensive Transition Program ("CTP") – studentaid.ed.gov/eligibility/intellectual-disabilities – This program, created by HEOA, gives students with Intellectual/Developmental disabilities the opportunity to apply for financial aid in colleges that qualify as CTP's.

Conclusion

Disability Law Colorado's goal in issuing this report is to inform students and parents about their right to services and resources available when transitioning out of high school. Furthermore, Disability Law Colorado strives to ensure that the Division of Vocational Rehabilitation, the Colorado Department of Education, and our state-wide public school system understand their respective legal obligations to support students who are transitioning out of high school. We are hopeful that this report, along with the attached list of resources, will help ensure that every student with a disability will be employed in competitive and integrated employment settings after transitioning out of high school.

Citations

1. Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et. seq* (2004)
2. Americans With Disabilities Act, 42 U.S.C. §12101, *et. seq.* (1990)
3. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794
4. A Transition Guide – To Postsecondary Education and Employment For Students and Youth with Disabilities, May 2017,
www2.ed.gov/about/offices/list/osers/transition/products/postsecondary-transition-guide-2017.pdf
5. Workforce Innovation and Opportunities Act, 29 U.S.C. §3101, *et. seq.*
6. *Olmstead vs. L.C.*, 527 U.S. 581 (1999)
7. *Quest for Equal Pay for Equal Work, Subminimum Wage Report, A Call to Action to End Subminimum Wage Practice*, see Disability Law Colorado's report at www.disabilitylawco.org/equalpay
8. Higher Education Opportunity Act, 20 U.S.C. §1001, *et. seq.* (2008)
9. Section 14(c) of the Fair Labor Standards Act, 29 U.S.C. § 214(c)(1)(A)-(C) (2006)
10. *Letter to Goodman*, Office of Special Education Programs, 1998, 30 IDELR 611

Jennifer Levin

Senior Attorney

455 Sherman Street, Suite 130

Denver, CO 80203

jlevin@disabilitylawco.org

303.722.0300

Disabilitylawco.org

Emily Harvey

Staff Attorney

455 Sherman Street, Suite 130

Denver, CO 80203

eharvey@disabilitylawco.org

303.722.0300

Disabilitylawco.org