

Oklahoma Employment Security Commission



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Oklahoma Employment and Training Issuance # 11-2010 Final State Policy

TO: WIA Board Staff
WIA Youth Service Providers

FROM: Richard J. Gilbertson, Director
Workforce Integrated Programs

DATE: June 2, 2010

SUBJECT: Reissuance of TEGL 12-01 Clarification on Selected Activities and Issues under the Workforce Investment Act (WIA)

PURPOSE: To redistribute Training and Employment Guidance Letter 12-01 (TEGL 12-01) which provides clarification on youth service issues identified by the WIA Readiness Reviews, to revise definitions listed in OETI 04-2002, and to add references to current policy documents.

ACTION REQUIRED: Workforce Investment Board Staff are requested to widely distribute copies of this issuance to staff within the Workforce Investment Area for WIA compliance. This is official state policy and should be kept in your permanent policy issuance file.

RESCISSIONS: This policy rescinds OETI 04-2002.

ATTACHMENTS: Training and Employment Guidance Letter No. 12-01

INQUIRIES: If you have any questions pertaining to this issuance, please contact Kim Braddy at (405) 557-5394, kim.braddy@oesc.state.ok.us, or Tami Decker at (405) 962-7595, tdecker@oesc.state.ok.us.

Clarification on Issues Identified by the Youth Services WIA Readiness Reviews

Issue: The Competitive Selection Process for Occupational Skills Providers and the use of the Eligible Training Provider (ETP) List for Youth

Section 123 (29 U.S.C. 2843) of the WIA mandates that all youth services be procured by a competitive process. This process requires that providers of youth services be selected as a result of RFP by the local boards after considering recommendations from the youth councils. Sole source procedures may be used to select a provider but only after a competitive process was unsuccessful in receiving a bidder. The only exception to the requirement for utilizing the competitive process would be for summer employment. TEGL 9-00 allows summer employment and design elements to be retained by the sub-recipient or the fiscal agent.

Once a provider has been selected through the competitive bidding process outlined in Section 123 of the WIA, the grant or contract may stipulate whether the service will be provided on a group size or individual referral basis. States and local boards may provide vouchers or “fee for service” funds to community colleges, vocational schools or other service providers in accordance with the participant’s objective and individual service strategy.

The selected provider may use the state Eligible Training Provider (ETP) list to identify potential providers in their area. Use of the list is helpful in identifying potentially eligible contractors of occupational skills training but does not eliminate the requirement that providers of youth services be selected by a competitive process.

Issue: The Definition of “Attending Any School”

Local areas must spend at least 30 percent of local formula funds to serve eligible out-of-school youth (OSY). Under the WIA, OSY is defined as an “eligible youth who is a school dropout or an eligible youth who has received a secondary school diploma or its equivalent, but is basic skills deficient, un employed or under employed” (WIA sec. 101 (33)).

A school dropout is defined by the WIA as an individual who is no longer “attending any school” and who has not received a secondary school diploma or its recognized equivalent (WIA sec. 101 (39)). A youth attending an alternative school at the time of registration is not a dropout. An individual who is out-of-school at the time of registration and subsequently placed in a school setting may be considered OSY for the purposes of the 30 percent expenditure requirement (20 CFR 664.310).

TEGL 12-01 states that there is no statutory definition of “attending any school” and that states and local areas have flexibility in defining what programs of study might be included or excluded in the definition. For the purpose of providing clarification in determining which youth participants are considered to be school dropouts, the State has defined terms associated with “school dropout,” including “attending any school,” in OETI 23-2009 *WIA Youth Glossary*. For convenience, these terms as defined in the *WIA Youth Glossary* have been provided below.

SCHOOL DROPOUT – The term “school dropout” means an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent. Youth enrolled in alternative schools are not school dropouts. A youth’s dropout status is determined at the time of application (eligibility) and remains in effect throughout her/his participation. An individual who

is out-of school at the time of application (eligibility) and subsequently enrolled in an alternative school, may be considered an out-of-school youth for purposes of the 30 percent expenditure requirement for out-of-school youth. [Reference: WIA Section 101(39) and Title 20 CFR Sections 664.300 & 664.310].

ATTENDING ANY SCHOOL – Defined as an individual attending any High School program seeking a High School diploma.

HIGH SCHOOL PROGRAMS – for the purpose of this program, shall be defined as programs administered by the Oklahoma Department of Education, chartered alternative schools, education at home leading to a high school diploma (home schools) pursuant to Section 4 of Article XIII of the Oklahoma Constitution, distant learning schools, correspondence and various religious schools that result in a high school diploma.

Note: This would exclude any person who is seeking or attending a school or classes to acquire a GED or any other Skills school or post secondary school that does not directly lead to a high school diploma.

Issue: Documentation and Verification of Youth Eligibility under the WIA

The issues related to eligibility discussed in TEG 12-01 have been addressed by OETI 22-2009 *WIA Youth Program Eligibility and Data Validation Policy*. The definition of additional barriers is to be defined by each local area with consideration of the target population to be served. The intent of WIA Title I Youth Services is to permit local areas the flexibility to establish their own policies and guidelines relating to program operations so long as they are consistent with the WIA, Regulations (20 CFR Part 652 et. seq), and federal and state statutes governing WIA and One-Stop partner programs.

Additionally, please note that although in some cases Self Attestation (also known as Self Certification) may be used for Data Validation procedures, the State has eliminated it for documenting Youth Program eligibility items. Please reference OETI 22-2009 *WIA Youth Program Eligibility and Data Validation Policy*, Attachment A, for the list of acceptable source documents for program eligibility items.

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. Department of Labor Washington, D.C. 20210	CLASSIFICATION WIA/Youth Services
	CORRESPONDENCE SYMBOL OYS
	DATE February 21, 2002

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 12-01

TO: ALL STATE WORKFORCE LIAISONS
 ALL STATE WORKER ADJUSTMENT LIAISONS
 ALL STATE WORKFORCE AGENCIES
 ALL ONE STOP CENTER SYSTEM LEADS

/s/
FROM: EMILY STOVER DeROCCO
 Assistant Secretary

SUBJECT: Clarification on Selected Activities and Issues under the Workforce Investment Act (WIA)

1. **Purpose.** To provide clarification to states on selected issues identified by the Youth Services WIA Readiness Reviews.

2. **Authorities and References.**

- a. Workforce Investment Act of 1998 (Pub. L 105-220), August 7, 1998.
- b. WIA Regulations, 20 CFR Part 652 et seq.

3. **Background.** The Employment and Training Administration (ETA) recently convened four workgroups comprised of local, state, and federal subject-area experts to examine the status of WIA implementation. These workgroups were tasked with identifying suggested strategies designed to assist the workforce investment system in addressing issues that have been identified as barriers to the successful implementation of the WIA. One of the four groups, the Youth Services WIA Readiness Workgroup, identified several issues that needed further clarification, of which three immediate ones will be addressed in this document.

Three areas in particular where questions have arisen regarding the requirements under the WIA relative to youth services include: 1) the competitive selection process for occupational skills

RESCISSIONS	EXPIRATION DATE Continuing
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providers and the use of eligible training provider lists for youth; 2) the definition of “attending any school”; and 3) cross-cutting youth/adult eligibility issues (i.e., self-certification/self attestation, presumptive eligibility/proxy measures, and risk analysis of data elements).

Based on the workgroup’s activities, we are providing the attached information and guidance around these issues in the following format: statement and discussion of the issue, followed by relevant questions and answers.

4. **General Guidance.** The Department of Labor’s (Department) role in implementing the WIA is one of leadership, guidance, oversight, and support. States and local areas have the primary responsibility and the flexibility to develop their own service delivery systems, policies, procedures, and interpretations, consistent with the WIA and its regulations, as provided in 20 CFR 661.110(b), and 661.120(a)(b). States and local areas are encouraged to develop interpretations, policies and procedures that support the successful implementation of youth activities in their local communities. If the state elects not to develop these types of guidance tools, then local areas should be encouraged to develop their own particular policies/procedures and other guidance mechanisms to assist them in effectively meeting the needs of their local youth under the WIA.

5. **Action Required.** States should: (a) share this guidance with the appropriate staff; (b) transmit this guidance to the Local Workforce Investment Boards as expeditiously as possible; (c) in the event that the states do not elect to develop such policies and procedures, instruct Local Workforce Investment Boards to provide guidance on the relevant issues presented in this document and provide such guidance to the local grant recipients and program operators; and (d) provide the necessary technical assistance to local areas in the development and implementation of new policies and procedures.

6. **Attachments.**

- A. Competitive Procurement Process for Occupational Skill Providers and the Use of the Eligible Provider Training List for Youth
- B. Definition of “Attending Any School”
- C. Cross-Cutting Eligibility, Documentation, and Verification Issues for Adults and Youth under WIA

Issue: The Competitive Selection Process for Occupational Skills Providers and the use of the Eligible Training Provider (ETP) List for Youth

Discussion. Section 123 (29 U.S.C. 2843) of the WIA requires the identification of eligible youth service providers by awarding grants and contracts on a competitive basis for youth activities and services. The competitive selection process under the WIA requires local boards to select youth program providers who can best serve local youth needs, after considering recommendations from the youth councils. TEGL No. 9-00 addressed a number of questions that have been posed about administrative procurement procedures and about the extent to which providers of youth services must be competitively procured (e.g., such as the program design framework component, the 10 program elements, and youth services delivered in a One-Stop setting). It also dealt with some commonly raised questions and consolidated earlier issues. Since the issuance of TEGL No. 9-00, additional questions have been raised related to the competitive selection process and possible waivers. These questions and our responses are presented below.

Question: Do competitively selected occupational skills training providers and providers of other services have to re-compete for each individual for whom training is provided?

Answer: No. Occupational skills training for youth program participants may be provided by a training provider (such as a community college or vocational school) that has been competitively selected to provide training for eligible youth on an individual referral basis. Once a provider has been competitively selected, whether for skills training or other authorized activities, the grant or contract may stipulate whether the services will be provided on a group-size or per slot (i.e., individual referral) basis. States and local boards are not limited to funding group size training, but may provide vouchers or “fee-for-service” funds to community colleges, vocational schools or other service providers, based on the participant’s objective and individual service strategy.

Question: Are there any circumstances when the Adult Services Eligible Training Provider (ETP) list may be used as a separate resource to identify training providers for youth?

Answer: The intent of the WIA section 123 (29 U.S.C. 2843), requiring local boards to identify eligible providers of youth activities by awarding grants and contracts on a competitive basis, is to provide flexibility in the development and design of comprehensive youth services and to increase the quality of youth services. This section differs from the requirements for identifying eligible providers of adult and dislocated worker training activities, which are found in the WIA section 122 (29 U.S.C. 2842). The eligible training provider (ETP) list is a statewide compilation of training providers that are approved to provide services to adults and dislocated workers and is not a substitute for the requirements for selections of eligible providers of youth activities under the WIA section 123. As state ETP systems evolve and become more sophisticated, the Department would support opportunities to more closely coordinate the competitive youth provider selection process with the ETP selection process. For example, if consistent with state and local procurement standards, the ETP selection process may provide a model for creating an index of pre-qualified providers of youth activities. This method is helpful to identify potentially

eligible contractors but does not eliminate the requirement that providers of youth services be competitively selected. In the short-term, for local boards seeking to publicize competitive opportunities for providers of the WIA youth program-funded training services to older youth, the ETP list may be one of many helpful resources for finding potential bidders.

In addition, the ETA will consider waivers on the regulatory prohibition of using Individual Training Accounts (ITAs) for older youth (20 CFR 664.510), which would allow those youth with the ITAs to select training providers from the ETP list. A precedent for these waivers has already been established by the state of Indiana, which was granted a waiver to allow the use of the ITAs for out-of-school youth. To be considered for waivers, states must address the following items: 1) what guidelines will be provided to the local areas on the use of the ITAs; 2) how these guidelines will be incorporated into local areas' service delivery plans for youth; 3) what criteria will be used for determining when the use of the ITAs is appropriate; and 4) what assistance will be provided to youth to assist them in choosing an appropriate service provider.

Issue: Definition of the phrase “Attending Any School”

Discussion. Local areas must spend at least 30 percent of local formula funds to help eligible out-of-school youth (OSY). Under the WIA, an OSY is defined as an eligible youth who is a school dropout or an eligible youth who has received a secondary school diploma or its equivalent, but is basic skills deficient, unemployed or underemployed (WIA sec. 101(33)). The WIA spending requirement is different than under the Job Training Partnership Act (JTPA), where not less than 50 percent of Title IIC (year-round) participants were required to be out-of-school. There was no proportion requirement on participants in the Title II-B (summer youth) program. In both programs, those youth attending an alternative school could be included within the definition of out-of-school. Under the WIA, a school dropout means an individual who is no longer “attending any school” and who has not received a secondary school diploma or its recognized equivalent (WIA sec. 101(39)). A youth attending an alternative school at the time of registration is not a dropout. An individual who is out of school at the time of registration and subsequently placed in a school setting may be considered OSY for the purposes of the 30 percent expenditure requirement (20 CFR 664.310).

Question: Do states and local areas have flexibility to develop policies regarding what types of programs of study (i.e., GED, skills training, or other remedial education programs offered by a community-based organization) could be excluded from the definition of “attending any school?”

Answer: There is no statutory definition of “attending any school.” State and local areas have some flexibility in defining what programs of study might be excluded from “attending any school,” such as the ones cited in the question. States and local areas are encouraged to develop their own policies and guidelines on implementing the definition of an out-of-school youth. Consistent with 20 CFR 661.120, the policies, guidelines, and definitions should not be inconsistent with the Act, the regulations, and other federal statutes and regulations governing One-Stop partner programs. Local areas should also ensure consistency with state policy. In addition, we recommend that such policies, guidelines, and definitions be consistent with established state or local education policies and rules. We caution against states and local areas developing any special rules or conditions that are solely for the purposes of meeting the 30 percent expenditure requirement under the WIA, and which are counter to existing state or local education policies. States which have experienced difficulty in meeting the 30 percent expenditure requirement could consider requesting a waiver to modify the definition of OSY. General waivers could be requested for the entire state or for one or more local areas. The process and criteria for waivers are found in 20 CFR 661.400 et seq.

Issue: Documentation and Verification of Youth Eligibility under the WIA

Discussion. To be eligible for youth services under the WIA, young people must be between the ages of 14 and 21, low-income, and meet at least one of the six specified barriers to employment (e.g., deficient in basic skills; a school dropout; homeless; a runaway, or a foster child; pregnant or parenting; an offender; or require additional assistance to complete their education or secure employment. Section 101 (25), defines a low-income individual as one who:

- 1) Receives, or is a member of a family that receives, cash payments under a federal, state, or local income-based public assistance program;
- 2) Received an income, or is a member of a family that received a total family income, for the 6-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, public assistance, and old-age and survivors insurance benefits received under section 202, of the Social Security Act) that, in relation to family size, does not exceed the higher of:
 - a. the poverty line, for an equivalent period; or
 - b. seventy percent of the lower living standard income level, for an equivalent period
- 3) Is a member of a household that receives (or has been determined within the six month period prior to application for the program involved to be eligible to receive) food stamps;
- 4) Qualifies as a homeless individual;
- 5) Is a foster child on behalf of whom state or local government payments are made; or
- 6) Is an individual with a disability whose own income meets the requirements of a program described in (1) or (2), but who is a member of a family whose income does not meet such requirements.

Many eligible youth have difficulty accessing paper records supporting their income eligibility, particularly those who are homeless, in foster care or in the juvenile justice system. Participation in the National School Lunch Program is no longer a substitute for income eligibility under the WIA. In addition to documenting low-income eligibility, many local areas are instituting overly stringent documentation requirements for other eligibility factors in order to reduce the risk of enrolling ineligible individuals, which may result in disallowed costs. Intake staff spend a substantial portion of time assisting youth in acquiring documentation, reducing staff time available for direct outreach and initial counseling with youth on program options. In many instances, youth must make repeat visits to complete the registration process, which delays the completion of their registration and diminishes service to these youth customers.

The criteria used to determine if youth are eligible for services under the WIA are similar to the Job Training Partnership Act's (JTPA) eligibility criteria, with one exception: the procedures for identifying the serious barriers that youth who do not meet the minimum eligibility income criteria may face regarding employment. Under the WIA, the local board has primary

responsibility for identifying these barriers (20 CFR 664.220 (h)). Under the JTPA, the service delivery areas were required to submit a request to the Governor identifying and justifying the additional category of youth with a poor work history or those that were unemployed. The Governor was responsible for approving the request and providing the approved request to the Secretary. Section 4(8), of the JTPA defines the term “economically disadvantaged” in much the same way as WIA defines the low-income individual.

Under the JTPA, a technical assistance guide (TAG) was issued in 1993, entitled “Title II Eligibility Documentation.” The guide defined acceptable documentation to support each element of eligibility for the youth programs established under that Title. The guide provided for either documentation of eligibility requirements or use of a random sampling method, for non-summer youth program participants. Since transitioning to WIA, many local areas continue to rely on the guidance in the JTPA TAG on eligibility documentation or have devised alternate methods that would provide more flexibility in determining those youth who are eligible to receive services under the WIA. The regulations (20 CFR 661.120) give states and local governments authority to establish their own policies and guidelines relating to verifying and documenting eligibility, as long as they are consistent with the statute, the regulations and other federal statutes.

Question: What further guidance can DOL provide on eligibility documentation, or what existing guidelines, including proxy measures, can be relied upon by the WIA system?

Answer: The Department does not plan to issue an eligibility documentation TAG under the WIA as it did under the JTPA. The regulations (20 CFR 661.120) give states and local governments authority to establish their own policies, interpretations, guidelines and definitions relating to program operations, such as verifying and documenting eligibility, as long as they are consistent with WIA, the regulations (20 CFR Part 652 et. seq), and federal statutes and regulations governing One-Stop partner programs. States and local areas can continue to use the JTPA TAG as a reference based on the areas that are relevant under the WIA. Some areas that may still be relevant include, but are not limited to, documenting low income eligibility, residence, age, selective service registration status, citizenship or eligibility to work, and barriers to employment. While states may incorporate areas that are still relevant, they are encouraged to develop their own policies and guidelines regarding eligibility.

One option to streamline the registration process for youth is to allow for self-certification to verify those eligibility items that, in some cases, are not verifiable or may cause undue hardship for individuals to obtain. When self-certification of eligibility is allowed, it is also important to incorporate a random sampling methodology to determine the accuracy of the self-certification method for determining WIA eligibility. The JTPA TAG included a sampling method for selecting self-certified participants who would be required to prove their eligibility. However, this method places a higher proportion of burden on smaller states than is necessary. The Department is currently exploring a sampling methodology that could be applied across the WIA adult, dislocated worker and youth programs. This approach is similar to the intake sampling method developed in 1990 by the Job Corps program that allows for self-certification by the non-

sampled group. At intake, a predetermined percentage is selected to document eligibility based on the size of the state (or local area, if required by the state). This sampling method would not be required, but could provide an effective approach for reducing the burden of requiring 100 percent eligibility documentation for every individual registered for WIA services.

Another way to help reduce the burden of documenting eligibility for individual service providers is for states and/or local areas to develop their own policies and guidance to determine acceptable eligibility documentation. States and/or local areas can specify the procedures and documentation required for eligibility verification as long as these policies and guidelines are consistent with the WIA, the regulations, and federal statutes and regulations governing One-Stop partner programs. Some states developed other references to assist local areas in developing their own TAGs, policies and procedures, such as the:

- *Workforce Investment Act Eligibility Technical Assistance Guide*, prepared by the California Employment Development Department (www.edd.ca.gov/rwiad01-w.pdf)*
- *Workforce Investment Information Notice No.3-99, Change 1*, prepared by the PA Department of Labor and Industry (www.paworkforce.state.pa.us/)*
- *Workforce Investment Act Eligibility Technical Assistance Guide*, prepared by the Texas Workforce Commission (www.twc.state.tx.us/boards/weletters/letters/77-99c2.pdf)*

All three of these guides include a listing of the eligibility criteria for each WIA funding stream; definitions of the criteria from the Act; other applicable federal and state regulations and/or requirements; and examples of acceptable definitions. To assist local areas in defining and documenting “low-income,” the California and Texas TAGs specifically define what sources of payments can be included and excluded from the calculation of income.

**NOTE: These state issued TAGs and information notices are referenced for purposes of illustration of what some states have done. Their mention in this document does not constitute an official endorsement by the ETA.*