



## *Topical Audio Teleconference Transcript*

# Ensuring Access, Equity, and Quality for Youth with Disabilities in School-to-Work Systems

*presented by*

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**Mary Mack:** Welcome. The topic of this call is *Ensuring Access, Equity, and Quality for Youth with Disabilities in School-to-Work Systems*. This call will introduce the principles as outlined in the forthcoming book, *Ensuring Access, Equity and Quality for Students with Disabilities in School-to-Work Systems: A Guide to Federal Law and Policies*, under development by the Center for Law and Education and the National Transition Network at the University of Minnesota. This publication is intended to help school-to-work administrators and policymakers to understand federal law and policies with respect to implementing school-to-work.

Our presenter today, Eileen Ordover, is the Staff Attorney for the Center for Law and Education. Eileen will give an overview of civil rights and career development laws and talk about the three guiding principles as set forth in the policy guide, as well as some proactive strategies for you to consider.

**Eileen Ordover:** Thank you. As Mary said, the subject today, like the subject of the forthcoming publication is merging quality and equity for students with disabilities in school-to-work systems and programs. And by this we mean ensuring equitable participation for youth with disabilities in the high quality programs that states and local partnerships are creating under the relevant federal career development laws. In view of the huge scope of this topic and the limited amount of time that we have this afternoon, I am not going to try to cover the whole gamut of rights of students with disabilities. But what I am going to do is talk about

some things that will be covered in much greater detail in the forthcoming publication. I will focus specifically on how five critical federal laws – School-to-Work Opportunities Act, Carl Perkins Vocational and Applied Technology Education Act, Section 504 of the Rehab Act, the Americans with Disabilities Act, and IDEA or Individuals with Disabilities Education Act – work together to assure full participation of students with disabilities in developing school-to-work systems. In this vein, I am going to focus – as does the forthcoming book – on three basic principles that emerge from the coming together of these five laws.

The first broad principle is that there must be **equity in program development**, meaning that states and school systems and local partnerships have to design their programs from the outset to address the needs of students with disabilities and assure full participation.

The second broad principle is **equity in admission criteria**, an issue that I'm sure many of you have seen arise in your work. And by this we mean making sure that admission criteria for both school-based learning components and work based components – internships, et cetera – of school-to-work programs do not discriminate against students with disabilities.

The third broad principle is **linkage with IDEA for quality and equity**, which goes to the notion of how the School-to-Work Act, Perkins, and IDEA interrelate and support each other. The School-to-Work Act, Perkins 504, and ADA all give

students with disabilities full participation rights that are independent of their rights under IDEA; and IDEA can be used as a tool for meeting the full participation requirements of these other four laws. Conversely, programs that are being created under the auspices of the School-to-Work Act can be a resource for the transition services that IDEA requires.

Those are the three broad principles. And what I am going to try to do is to briefly discuss the legal underpinnings of those principles, and then use some concrete examples to illustrate them.

### **Equity in Program Development**

Given the requirements of the School-to-Work Act, 504, ADA and Perkins, the only way to comply with those legal requirements as they go to quality and equity is to treat youth with disabilities as part of the core constituency of the programs that are designed for all students from step one. To refresh all of us briefly on the relevant pieces of the School-to-Work Act, first just let me step back and flag for you the key pieces of the law that go to this notion of equity in program development.

The School-to-Work Act, as I am sure you all are aware, requires states and local partnerships to build systems that integrate three broad program components: school-based learning, work-based learning at off-site workplaces or in school-based enterprises, and connecting activities that bridge those two settings. The entire law – as it refers to, describes, and requires these components – is written in terms of all students. All students is defined in the law to include students with disabilities, among others. So, all the planning requirements that we see in the School-to-Work Act at the state level and the local level are intended to be planning processes for serving all students. This makes it pretty clear that students with disabilities are part of the core constituency that these state and local systems must be designed to serve.

The School-to-Work Act in this regard

marries quality and equity. Programs have to simultaneously serve all students – there's our equity – and meet the quality criteria in the law. By quality criteria, I mean the three broad based components I mentioned – as well as things like occupational and academic integration, teaching in all aspects of the industry, mentoring, the opportunity to pursue career majors – that are listed in the act. Those of you who are implementing school-to-work have been working on putting these quality criteria into practice.

The School-to-Work Act is also very specific in terms of the outcomes that are expected for all students, meaning that these programs have to give students the opportunity to meet the same academic standards that are set by the state for all students, once those standards have been set under Goals 2000 or state law, whatever the process. So, quality under this act for all students, including students with disabilities, means high academic standards. It also means, under the School-to-Work Act, preparing all students for post secondary education as well as careers, so students will have options once they are finished with secondary school and out in the real world. So, under the School-to-Work Act, the big question isn't just whether students with disabilities are being served, but whether they are being served in high quality programs. In order to ensure that, planning for the needs of students with disabilities is going to have to be done at the outset.

We come to a similar result if we look at the Perkins Act. The reason it is important to look at Perkins is that most states are using funding that they get under the Perkins Act to help fund pieces of their school-to-work systems. All of the Perkins Act requirements are going to apply in those states or localities where Perkins funds are being used to finance pieces of the school-to-work system. The Perkins Act, like the School-to-Work Act, also marries quality and equity. The law specifically says that Perkins funded programs have to provide what

that law calls “special population” students, which includes students with disabilities, with equitable participation and high quality programs. School partnerships using Perkins funds can’t make some programs equitable, i.e., some programs open and fair to students with disabilities, and other programs high quality and rigorous. All of the programs have to be both high in quality and equitable for students with disabilities. This includes providing not only access, but as Perkins specifically requires independently of IDEA, support services, supplementary services that will allow students with disabilities to succeed.

Much like the School-to-Work Act, Perkins requires programs to integrate both occupational and academic learning and to teach not only occupational and career content, but also advanced academics, including providing students with strong experience and understanding in all aspects of whatever industry or occupational area they are studying. So, we are talking about sophisticated learning and issues like management, finance, principles of technology, environmental issues, health, safety, things like that. Again, we have a dual mandate for high quality as well as equity running through Perkins, just the way it runs through the School-to-Work Act. And Perkins, like the School-to-Work Act, has planning requirements and equity is infused in those planning requirements as well. So, for example, states have to do a self assessment and look at the ability of local districts to meet the needs of special population members, including students with disabilities, and then build plans around strategies for meeting those needs. Again, explicitly calling for equity in program development from the very beginning.

These are requirements quite apart from civil rights and anti-discrimination law, which I am using as shorthand for 504 and the ADA. And to just touch on some of the key pieces of this before we go to a concrete example of looking at equity in program development and the consequences of not

building equity in, let me just remind you briefly of some of the critical pieces of 504 and the ADA. Under these two laws any program that receives federal funds or anything that’s a public entity, which is going to include any local school district, state department of education or local partnership under the School-to-Work Act, cannot discriminate on the basis of disability. Also, under these statutes any student who could participate in a school-to-work program with or without – but critically for our purposes, with – modifications to rules and policies, or the provision of supplementary services and supports, is protected against discrimination and is entitled to participate. And there is an obligation to provide the kinds of support services that would make a student qualify to participate in these programs. So, if you think about what that means, we are talking about the vast, vast, vast, vast majority of students with disabilities being eligible and qualified to participate in this program with the appropriate supports as a matter of civil rights laws.

And if you step back and think about what that means, again the point about planning from day one to accommodate these students becomes critical and quite glaring. In looking at legal requirements for ensuring this kind of equity in program development under 504 and ADA, it’s important to keep in mind a couple of additional principles that come from the regulations that implement this law.

For example, it’s a prohibited discriminatory practice to deny a qualified student with a disability the opportunity to participate in a program, or to provide them with an opportunity that’s not equal to the opportunity that students without disabilities enjoy. It’s also illegal to provide an opportunity that is not equal to that which non-disabled students get in terms of affording a fair chance to obtain the same results, gain the same benefit, or reach the same level of achievement that other students have the opportunity to reach. I will

show you an example of that principle being abridged in a minute.

It is also illegal under both of these two laws to use methods of management and administration, or ways of organizing services, or a service delivery configuration that has the effect of defeating or impairing the objective of the educational program in regard to students with disabilities. And again, I will show you an example of that.

So, let's look at a concrete example. Think about a school system that has, say five school-to-work programs run by a local partnership funded under the auspices of the School-to-Work Act and using some Perkins funds as well. The programs are based in a few different high schools and the way students get in is that in eighth grade they submit a single application to some central office in the school system where they indicate their top three choices for which program they want to be when they start high school in the fall. This happens in February and they get notified of which one of their choices they have gotten in June. The school programs admit everyone on an interest-only basis. So, you get what you want unless one of the school-to-work programs is oversubscribed, in which case they hold a lottery. That is the selection process.

The students don't find out about which program they've been admitted to until June, but the school system – through its special education department – develops IEPs earlier in the year, in April and May, to start in the ninth grade year in September. The IEP is developed before the decisions come down about which school-to-work program a student is going to be in. Consequently, the students end up with IEPs that don't reflect their choice of a particular school-to-work program, don't include goals, specialized instruction, related services, and accommodations keyed to the actual school-to-work program that they will end up being in when they start ninth grade. As is the case in many school districts, IEP teams don't meet over the summer, so there is no opportunity to revise the

IEP once the results come down in June about who is going to be placed where. Students start in September with IEPs that are not necessarily geared to the actual program that they are in, and it is often months into the school year before IEP teams reconvene to revise the IEPs to be consistent with the program that the student is actually in.

So, we have IEPs that have been developed without information about the particular curriculum that the child is going to be pursuing. There is no opportunity to develop appropriate supports. Therefore, these students are going to be starting at a disadvantage and they are not going to have an equal opportunity to gain the same results, to learn as well, to acquire the skills being taught in that first semester, and to reach the same level of achievement as students without disabilities are going to have. This is a violation of the 504 and ADA anti-discrimination principles I just mentioned.

In addition, this whole way that the school system has organized itself – in terms of managing admissions and coordinating or not coordinating IEP development with School-to-Work Act program selection, et cetera – is an administrative method that has the effect of impairing the quality of the experience of students with disabilities once they do start in the school-to-work courses in the fall, undermining their learning, and more. Again, a violation of the 504 and ADA principles.

You can get to a similar legal result if you look at the requirements under Perkins and the School-to-Work Act. Both of these laws require equal access through the full range of programs. We have students starting at a disadvantage because their IEPs and services are not aligned with their program. They are not really given meaningful access to the full range of programs because they are starting off at a disadvantage. If you think back, Perkins also affirmatively requires that supplementary services be provided. We have a violation there as well because those services are not in place at the

beginning of the year.

To draw in IDEA, which I am somewhat de-emphasizing because I assume people are a lot more familiar with IDEA than these other laws, IDEA assumes and requires that an appropriate IEP matched to a student's actual placement be in place prior to the start of that placement. So, we have an IDEA issue as well.

Let me throw in a few other facts we could draw out from the other civil rights problems and problems under Perkins and School-to-Work Act. Assume also that the school-to-work programs in this school system don't have special educators or related service personnel as part of their instructional team and faculty. Instead, the school-to-work programs rely on a separate special educational department. The special education department, as is not uncommon, does not have people on staff who are knowledgeable about the content areas taught in the school-to-work program. So, for example, there is no one on the special ed staff who has a sufficient understanding of computer programming to develop strategies for teaching computer programming to students with specific learning disabilities who have enrolled in the communications technology program in the school-to-work system. Conversely, the communications technology faculty does not include people who are knowledgeable about teaching students with learning disabilities. So, you have a situation where there is no one and no mechanism to be able to come up with appropriate strategies and support services, and develop an appropriate IEP. Again, we have the same kind of lack of equal opportunity to benefit from and learn the content of the curriculum. New twists, new permutations on the same kind of legal violations that we flagged a few minutes ago.

I'd like to add one more twist on equity in program development and the pitfalls, in terms of what happens when you then try to solve this kind of problem after the horse has gotten so far out of the barn, because you didn't do equitable planning

in the first place. This school system wants to create meaningful opportunities for students with disabilities so they decide that they will hire one special educator to work with each of the school-to-work programs. They are going to bring in one person who will be responsible for convening IEP teams, coordinating services, and so forth. However, they have some budgetary constraints so, assuming there are five school-to-work programs in this district (in our example here), they are going to hire five special educators to be attached to each one of these programs. However, they have determined that each one of these individuals can only work effectively with ten students, so they are going to limit the enrollment in each of these programs to only ten students with disabilities. This flags some additional legal problems under the career development laws, as well as the civil rights laws.

First, under 504 and the ADA it is illegal to deny someone access to a vocational education career preparation program simply because they need special education in related services. The eleventh child, who doesn't get in because of the ID-student limit, is being subjected to illegal discrimination.

The second piece is that you are setting up a dual system of admissions. Students without disabilities are able to get in just by saying they are interested, and if the program is oversubscribed by winning a lottery. We're going to have students with disabilities, because of this cap, indicating their interest, winning a lottery if necessary, and still being denied admission, in effect because they have a disability. That's also going to be another form of illegal discrimination.

Looking at it through a Perkins lens, we are not having equal non-discriminatory access to the full range of programs for students with disabilities, which is an explicit legal requirement under the law. Similarly, if we look at it through a School-to-Work Act lens with a mandate to serve all students and afford all students the opportunity to participate in

programs that have components required under the School-to-Work Act, we see improper exclusion. The solution does not address the problem.

### **Equity in Admission Criteria**

I want to first say that this principle is going to apply to school-based learning, as well as work-based learning, such as internships. I am going to focus a little bit more on the school-based learning and then tell you a couple of things real quickly about work-based learning.

The two broad principles that we need to keep in mind are that first, it's really important to carefully scrutinize admission criteria to ensure that they are truly essential to participating in the program in question and that they don't have the effect of discriminating. In addition, on more of the micro level, with entrance criteria, even if they are valid, they may still have to be modified for individual students based on their particular needs on a case-by-case basis.

Let's take an example from school-based learning. Think about a district that has two food service programs. The Food Preparation Program teaches students how to cut vegetables, make simple recipes, and serve food, and it trains students to work in cafeterias and restaurant kitchens. There is another program, the Hotel and Restaurant Academy, that teaches students to learn how to manage restaurants and hotels. They learn how to keep accounts, to order supplies, to schedule work, to cater events, the whole gamut. The academy selects students based on reading level, which it measures by a standardized test. Let's say in our hypothetical school that there are a number of students with disabilities who apply to the academy – a student with a learning disability, a student who is deaf, a student who has been labeled as having a mild cognitive impairment. Yet, none of these students have the required reading test scores, and so they are all rejected from the academy for that reason and instead are urged to enroll in the food prepara-

tion program. The question is, do we have a problem here? The answer is, yes. We have a problem under all of these laws.

The test score requirement is clearly screening out broad categories of students with disabilities. Under the civil rights laws you cannot use this kind of criterion unless it has proven to be essential for participation in the program and there is no other equally valid criterion that could serve the purpose that doesn't discriminate, that doesn't have a disproportionate effect on students with disabilities. We would need a lot more information to really analyze this particular situation, but it is probably unlikely that the reading score requirement meets these standards, particularly if you think about the whole range of special education supports and related services that would be available under the law and required to be provided to these students that could assist them in benefiting and learning in a program despite any difficulties they might have with reading that may have been picked up by the standardized test. In terms of civil right laws, this is clearly a problem and again in terms of the mandate under Perkins and School-to-Work to serve all students, screening out large numbers of students is going to be an issue.

I would like to point out that one of the protected populations, in addition to students with disabilities, under Perkins, are students who are, "educationally disadvantaged," which is defined in the law as low achieving. So, we also have with this kind of reading requirement, probably illegal discrimination against another protected group, low achieving students. This entrance requirement to the academy is probably illegal on that basis.

Just another point to make before we leave this hypothetical scenario, is this. Think about the differences in quality between the Hotel and Restaurant Academy and the Food Preparation Program. Big differences in program quality in terms of the skills that are taught, future career employment options, and so forth. Therefore, the

two programs are not equally effective. They are not of equal quality, they don't afford equal opportunities to gain the same results in the end in terms of the academic and occupational skills and competencies, life skills, career options, et cetera. Therefore, to the extent that the school is steering students with disabilities into the Food Preparation Program as an alternative to the Hotel and Restaurant Academy, we have another civil rights problem.

Just a footnote: if you think back to the quality criteria under the School-to-Work Act and Perkins, the food preparation program is probably not legally sufficient to meet the School-to-Work and Perkins Act criteria for high quality programs.

In terms of equity, the second principle – equity in admission criteria – and how that pans out in work-based learning, a couple of things to emphasize. It is the obligation of the school and the local partnership to make sure not only that the school and the local partnership themselves are not discriminating in work-based learning, but to make sure that participating employers are not discriminating. For example, imagine a school-to-work program with an internship component where students apply for jobs, prepare resumes, and are interviewed and selected by employers. If you look at data and see that students with disabilities are not being accepted, are not being chosen by employers for internship opportunities, the program has an obligation – the school, the partnership – to step back and figure out what's happening, to rectify the situation, to determine whether in fact there is discrimination, whether it's deliberate or it's unintentional on the part of participating employers, and either work with the employers to stop that discrimination or divorce themselves from the discriminating employers. This is a requirement that comes straight out of Section 504 and the ADA and a special guidance on eliminating disability discrimination that was put out by the Office for Civil Rights at the Department of Education a number of years ago.

### **Linkage with IDEA for Quality and Equity**

Before we open it up for questions and discussion, I want to touch a little bit on the third broad principle, which is the notion of using IDEA processes to help make real the independent rights under the School-to-Work Act, Perkins and the civil rights law to be participating in these high quality programs. And how, conversely, School-to-Work Act programs can be used to meet IDEA transition service requirements. So, I just want to share with you a few ideas for linking School-to-Work Act components with IDEA.

One example is linking career exploration, career awareness, career counseling, and career major selection under the School-to-Work Act with IDEA transition planning and evaluation. Under School-to-Work, career exploration awareness and counseling have to begin no later than seventh grade, which is somewhat close to the point in time at which IDEA transition planning must begin. IDEA now requires that transition planning, especially as it has to do with the student's course of study, kick in at age fourteen. These two parallel requirements can be used to make one another more effective.

By participating in career exploration and so forth under School-to-Work Act, students with disabilities can start identifying the goals and interests on which IDEA transition planning can be based. IDEA's IEP process can be used to develop any specialized support the student might need to be able to participate effectively in career exploration, or in counseling, et cetera, under the School-to-Work Act. And you can also see how this can help when it comes time for students with disabilities who are participating in school-to-work to select career majors.

Another way of linking these pieces is aligning IEPs with school-based learning in the school-to-work program so that you develop IEPs that reflect student's choice of school-to-work

program and have that in place before the program begins. This can be accomplished by aligning the evaluations that have to be done under IDEA to the content of the school-to-work program. So, you are identifying through the evaluation process what the student will need in terms of learning issues and supports in order to succeed in the school-to-work program and learn what all students there are expected to learn. And then use that evaluation data as a basis for the IEP.

Similarly, you can use IDEA evaluations and IEP development as tools for ensuring equity and success in work-based learning. To figure out what a student will need to function effectively and learn well in the internship component that we were just talking about. Here you can bring together IEP teams, the school site mentors that are required under the School-to-Work Act, workplace mentors, and other school-to-work staff to plan for supports and accommodations.

The final idea I want to offer you on linking School-to-Work Act components with the IDEA processes to get us closer to quality and equity for all students is to think about the ongoing evaluation and problem-solving provisions under the School-to-Work Act on the one hand, and the IDEA provisions regarding IEP review and revisions on the other. Under School-to-Work, school-based learning has to include regularly scheduled student evaluations – this is for all students – to identify with students their academic strengths, weaknesses, progress, their workplace knowledge, their goals and the need for additional learning opportunities to master core academic and vocational skills. This matches up nicely with IDEA requirements for ongoing individualized problem-solving through requirements like periodic re-evaluations, and periodic IEP review and revision during the year when students are not making expected progress. And this can work very nicely when, for example, student evaluation called for by the School-to-Work Act reveals some problems with academic progress

in mastering the school-to-work curriculum, for example. The IEP team can then convene to discuss the difficulties and make any adjustments to the students specialized instruction, and support services necessary to address them. Where appropriate, special educators and school-to-work staff can then collaborate to develop appropriate additional learning opportunities geared at helping the student get up to speed and master the critical academic and vocational skills. If they know of these difficulties, IEP teams can arrange for an IDEA re-evaluation if it's necessary to get new data and to address issues that surface during the school-to-work evaluation process.

Which is sort of a nice segue to what I wanted to say in closing, which is infused in the notion of the three principles: equity in program development, equity in admission criteria, and linkage with IDEA for quality and equity. There is one glaring piece I think that comes out to anyone who works in education policy or works in schools, which is a need for very close collaboration between pieces of the system that are often walled off from each other (i.e., what has evolved in many places as a separate special education system and separate general education, school-to-work, and/or vocational education systems). And that none of the rights that are established by these laws, and certainly not the quality and equity that we are hoping to see from that, are going to happen unless those walls start coming down and we all see new ways of organization so we have cross fertilization and planning that can lead to the kind of coordinated program development and implementation that we have been talking about.

I encourage all of you to keep in touch with NTN in terms of when this document that we have been collaborating with will be available, because it explores these issues in much greater detail. And obviously, if you are reading it you can go at an easier pace than we have been able to do during this phone call.

Are there any questions or responses from the audience?

**Participant:** I have a question, this is Al Fleeder from Cedar Rapids, Iowa. Eileen, you gave some examples and referred to programs. Now, a lot of programs are just "rarely conceptualized and not at a point of delivery or even selection for who should participate. But what do you mean by programs, say in your example where there was a lottery. Are you thinking of a program with work-based learning opportunities, like job shadowing or internships?

**Eileen Ordovery:** It wouldn't be limited to this, but a program that captured all of the school-to-work components. For example, the Hotel and Restaurant Academy that I used –

**Participant (Al Fleeder - Iowa):** Located in a high school or in a community?

**Eileen Ordovery:** Could be either one.

**Mary Mack:** As you know, the School-to-Work Opportunities Act discusses the development of a comprehensive school-to-work system, with work-based, school-based and connecting activities. However, the difficulty is that when you get to the student level it means that students are going to participate in programs that are under this framework called School-to-Work. Eileen, am I correct in saying that what we are saying is that all of the programs emanating from that system really need to be concerned with all of these laws and others?

**Eileen Ordovery:** Right.

**Participant (Al Fleeder - Iowa):** And then you mentioned the regulations prohibition of unequal opportunity. We certainly understand that. I wasn't clear about what you said about the second part of prohibition of unequal results of benefits. Could you just speak to that a little bit?

**Eileen Ordovery:** Sure. I will tell you the requirement again. Part of the difficulty is these regulations are written in such broad generic language so that they will apply to such a wide range of situations that at some point they stop

sounding like English. And so if you are really trying to apply them to real life it can get dicey. But what this regulation says – and this is under both 504 and the ADA – is that it is considered a prohibited discriminatory practice to provide an aid, benefit, or service – which in our context of school can also include an educational program or an educational opportunity – that is not (to students with disabilities) equally effective in affording them an equal opportunity to obtain the same kind of results, gain the same benefits, or reach the same level of achievement as students without disabilities.

**Participant (Al Fleeder - Iowa):** I can understand the effectiveness part, but I could also see that people would be expecting guaranteed results. They are stopping short of that?

**Eileen Ordovery:** Correct.

**Participant (Al Fleeder - Iowa):** Thank you, that helps greatly. I don't want to take up too much time, but I have a question about the lottery as a method of selection. You know, if the lottery is truly objective and it is a way of selecting participants in a program that's oversubscribed, is the lottery a legitimate way of doing the selection now, in terms of the civil rights laws involved?

**Eileen Ordovery:** Well, in terms of disability discrimination, if it is neutral then it probably would not be a problem under the civil rights law.

**Participant (Al Fleeder - Iowa):** The lottery equalizes opportunity or takes away discrimination. I just wanted to clarify that.

**Eileen Ordovery:** There is another piece to that, a related piece if we bring IDEA into it. Imagine a situation where the only program that would provide a particular student with appropriate transition services happened to be an oversubscribed school-to-work program and there were no other alternatives. Then you might have a problem under IDEA, if the IEP team made that determination that that's where the student needed to be in order to receive a free appropriate public education under IDEA, including appropriate transition

services, and the student was then excluded because the program was oversubscribed, and she lost in the lottery.

**Participant** (Al Fleeder - Iowa): I could easily see a converse situation now. Obviously, we don't want to discriminate and we can't discriminate disabled students participating in programs which are hopefully created for all students in the beginning. But then there are some programs which are very good in transition created specifically for disabled students. Now, we probably couldn't keep general education students out of them either, could we? Please speak to that.

**Eileen Ordovery:** – That's an interesting question. There are no federal laws that explicitly address that situation. I think that the notion is what you hit on in the first place, that the most integrated inclusive programs as possible should be being created from the start.

**Participant** (Al Fleeder - Iowa): Right. I am just thinking that some of the special education programs – the transitioning, work experience, et cetera – are some of our models and I could envision non-disabled students wanting access to that service.

**Eileen Ordovery:** Certainly there is more of a recognition that that should be an important component of education for all students.

Let's have one more question.

**Participant** (Unidentified): Yes. Does the Center for Law and Education track litigations? Because basically these laws are only as good as they are when they are enforced. If a school district or even a state chooses to take a light side of enforcement, what is the penalty and what is case law building that addresses that kind of an issue?

**Eileen Ordovery:** There has been little litigation under Perkins or School-to-Work in terms of these issues.

**Participant** (Al Fleeder - Iowa): I think what you are doing here with this program is bringing to people the awareness, the importance of

getting it right from the beginning.

**Mary Mack:** Yes. Our intention is to help states think through the implications of not including youth with disabilities and other special populations from the very beginning. An integral part of this whole discussion includes the issue of standards-based education. These can be "high stakes" issues for students and families. As stakes increase, so does the opportunity for litigation, in which case everybody loses.

How do you feel about that, Eileen?

**Eileen Ordovery:** Well, I am a lawyer so I can't say that I think litigation is a bad idea. But seriously, our legal analysis is that the Perkins Act and School-to-Work Act are legally enforceable. To the extent that you can build systems from the start in a way that avoids the need for litigation, that's obviously a much better way to go and that's one of the reasons that I certainly appreciate having the opportunity to be able to discuss these issues with this network.

**Participant** (Al Fleeder - Iowa): Just one last question. Some of the collaborative organizations, the partnerships, really don't have any corporate basis, or... I don't know what you would call it. There are no articles of incorporation, no formal organization. Who would be responsible and liable if there was a problem. Is it the school?

**Eileen Ordovery:** Well, it's going to depend on what the nature of the violation is, and which law you're looking at, but there are levels of responsibility all the way up. The state and the state department of education have affirmative responsibilities to make sure that the local partnerships that they are giving subgrants to and local schools that they might be giving subgrants to comply with requirements under School-to-Work Act and under Perkins. And the civil rights laws are going to apply to everybody. So you would really need to look at the facts and the legal claim. But depending on the violation, there is potential legal liability up and down through all the layers.

**Participant** (Al Fleeder - Iowa): To my knowledge, many of these partnerships – local, regional, or state – have no formal organization and they are basically there to support and build capacity and to create programs to assist kids under these initiatives, those five federal initiatives that you referred to. And I am just thinking for sure the best way that we are all going to be happy in the long run is if we set it up so there is very little opportunity for problems. If there was, I don't know who would be responsible or liable since it's kind of an informal, well-intended collaborative.

**Mary Mack:** It's a good point. I would say that any agency, school, or other organization providing services is liable.

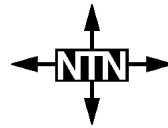
**Participant** (Al Fleeder - Iowa): Right.

**Mary Mack:** – and with that contract comes liability.

I am sorry but we are going to have to end this call. I appreciate you all for participating in this call. If you have specific questions, you may email me at [mackx012@tc.umn.edu](mailto:mackx012@tc.umn.edu) or call (612) 624-7579.

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