

**VOLUNTARY COMPLIANCE AGREEMENT**

BETWEEN THE

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS

AND THE

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF SOCIAL SERVICES

TRANSACTION NUMBERS:

07-59362

# VOLUNTARY COMPLIANCE AGREEMENT

Between the

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS**

And the

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF SOCIAL SERVICES**

## **I. Introduction**

- A. This Voluntary Compliance Agreement (hereinafter the Agreement) is entered into by the United States Department of Health and Human Services, Office for Civil Rights (OCR), and the North Carolina Department of Health and Human Services (DHHS-DSS) Division of Social Services to resolve a review of the DHHS-DSS administration of the Federally-funded Temporary Assistance to Needy Families (TANF) Program (known as Work First) to determine Work First's compliance with Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990.
- B. This Agreement resolves OCR Compliance Review No. 07-59362 initiated on July 24, 2006. OCR's review of the Work First program raised concerns about DHHS-DSS' compliance with Section 504 and the ADA because, among other things, DHHS-DSS:
- designates applicants as "job ready" without screening or assessing them to determine if any disability affects their ability to work;
  - has not developed and utilized effective screening tools;
  - has not sufficiently trained Work First Case Managers (WFCM)
  - has not afforded applicants and participants the opportunity for a timely comprehensive assessment when the intake interview indicates the presence of a disability;
  - has not developed guidelines as to what a comprehensive assessment should include;
  - has not provided reasonable accommodations to participants with disabilities and participants who have family members with disabilities;

- has not developed specialized education and training programs for participants with mental impairments and learning disabilities;
- has not adequately trained Work First Case Managers to work with applicants and participants with disabilities;
- does not regularly assess a participant's progress in activities to determine if a participant has a disability that requires reasonable accommodations, or whether the needs of a family member with a disability interfere with the participant's ability to participate in, and benefit from, the Work First Program.
- does not adequately train and oversee Work First Agencies with respect to compliance with Section 504 and the ADA, and otherwise fails to take corrective action with respect to Work First Agency compliance violations;
- does not provide written materials that contain adequate information regarding an applicant's or participant's rights under Section 504 and the ADA, including, but not limited to, the right to file a complaint;
- does not have in place sufficient intake, screening, and assessment procedures to properly identify and evaluate the needs of Work First applicants and participants with disabilities; and
- fails to ensure that the Work First Program is accessible to and accommodates persons with disabilities and persons who have household members with disabilities because DHHS-DSS:
  - fails to conduct proper reviews of the Work First Program's intake, screening and assessment procedures;
  - uses inadequate notices;
  - imposes excessive verification requirements;
  - fails to ensure appropriate assignments; and
  - implements inappropriate policies and practices regarding sanctions, case closures, and time limit extensions.

## **II. Parties to the Agreement**

- A. United States Department of Health and Human Services, Office for Civil Rights; and the
- B. State of North Carolina Department of Health and Human Services, the state agency responsible for the administration of the Work First Program, a program that is funded in part by the Temporary Assistance for Needy Families Block

Grant that provides services to low-income adults with custodial children to help them move toward self-sufficiency through employment.

### **III. Jurisdiction**

- A. OCR is the HHS office charged with enforcing civil rights laws as they pertain to programs funded by HHS, and so has jurisdiction over this compliance review pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulations at 45 C.F.R. Part 84 (collectively, "Section 504"). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. All entities that receive Federal financial assistance from HHS, either directly or indirectly, through a grant, contract, or subcontract, are obligated to comply with Section 504.
- B. In addition, OCR has jurisdiction pursuant to Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq., and its implementing regulations at 28 C.F.R. Part 35 (collectively, "the ADA"). The ADA prohibits discrimination on the basis of disability in State and local government programs and services and requires public entities to make reasonable modifications in policies, practices, and procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the program, service, or activity. OCR is the designated agency responsible for investigating ADA complaints against State and local governments with regard to the administration of social service programs or activities. *See* 28 C.F.R. § 35.190(b)(3).
- C. DHHS-DSS is responsible for administering the State of North Carolina's TANF Program. As an instrumentality of the State, DHHS-DSS is obligated to comply with the ADA. As a recipient of Federal financial assistance from HHS in the form of a TANF Block Grant, DHHS-DSS must comply with Section 504.
- D. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), 42 U.S.C. § 1305, specifically requires States to operate their TANF programs in compliance with Section 504 and the ADA.

### **IV. General Provisions**

- A. The terms of this Agreement do not prejudice any other issues, investigations, reviews, or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be currently pending before OCR. Any unrelated compliance matters arising from subsequent reviews or investigations may be resolved separately. Nothing in this Agreement shall be construed to limit or restrict OCR's statutory and regulatory authority to conduct future complaint investigations and compliance reviews related to DHHS-DSS and the subject matter of this Agreement.

- B. This Agreement does not address or resolve issues involved in any complaint investigation, compliance review, or administrative action under Federal laws by other Federal agencies, including any action or investigation under Title II of the ADA, or Section 504 of the Rehabilitation Act.
- C. DHHS-DSS' execution of this Agreement shall not be construed as an admission of liability by DHHS-DSS or as evidence that it has not complied with Section 504 or the ADA; and further shall not constitute a waiver of any defense DHHS-DSS may assert in any judicial or administrative proceedings.
- D. Nothing in this Agreement is intended to relieve DHHS-DSS of its obligation to comply with other applicable nondiscrimination statutes and their implementing regulations.
- E. When requested by DHHS-DSS, OCR will, at its discretion, provide technical assistance to assist DHHS-DSS in implementing this Agreement.
- F. OCR agrees to bring to the attention of DHHS-DSS any complaints, related to the matters herein and filed with OCR against DHHS-DSS, for the period of three (3) years from the Effective Date of this Agreement; and to attempt resolution of such complaints within the framework of this Agreement before initiating an investigation.
- G. DHHS-DSS shall not retaliate, intimidate, threaten, coerce, or discriminate against any person who has filed a complaint or grievance, or otherwise participated in any manner in the matters addressed in, or covered by, this Agreement.
- H. OCR places no restriction on the publication of the terms of this Agreement, and DHHS-DSS acknowledges that the Agreement may be published on OCR's website and disseminated by OCR to the public. In addition, OCR may be required to release the Agreement and all related materials to any person, upon request, consistent with the requirements of the Freedom of Information Act, 5 U.S.C. 552, and its implementing regulation, 45 C.F.R. Part 5. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals, or that if released, could constitute a clearly unwarranted invasion of personal privacy.
- I. OCR may, at any time, investigate DHHS-DSS's compliance with this Agreement.
- J. DHHS-DSS shall, if requested, provide OCR with access to information and resources that OCR deems necessary to determine DHHS-DSS's compliance with the terms of this Agreement. DHHS-DSS specifically shall permit OCR to

inspect premises, interview witnesses, and examine and copy documents as is necessary to monitor this Agreement.

- K. If at any time OCR determines that DHHS-DSS has failed to comply with the terms of this Agreement, OCR shall notify DHHS-DSS in writing. The parties will confer and attempt to reach agreement as to what steps may be necessary to resolve the compliance issues to both parties' satisfaction. If an agreement is not reached, OCR may terminate this Agreement and take appropriate measures to effectuate DCF's compliance with Section 504 and Title II of the ADA. These measures may include reopening OCR's review of DHHS-DSS's compliance with Section 504 and the ADA with respect to the Work First Program. If OCR reopens its review, it may incorporate into the reopened compliance review any relevant evidence of noncompliance with this Agreement, and any relevant evidence gathered by OCR prior to the signing of this Agreement.
- L. Failure by OCR to enforce this entire Agreement or any provision thereof, with respect to any deadline or any other provision herein, shall not be construed as a waiver of OCR's right to enforce other deadlines and provisions of this Agreement.
- M. This Agreement constitutes the entire agreement between DHHS-DSS and OCR on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement, shall be enforceable.
- N. This Agreement may be modified by mutual agreement of the parties in writing.
- O. This Agreement shall become effective on the date it is signed by OCR and DHHS-DSS (the "Effective Date") and shall remain in effect for three (3) years after the Effective Date, at which point, if OCR determines that DHHS-DSS has complied with this Agreement, OCR's review and monitoring of this Agreement shall terminate. Notwithstanding the time period for terminating the Agreement, DHHS-DSS acknowledges that it continues to be obligated to comply with Section 504 for as long as it continues to receive Federal financial assistance, and that it continues to be obligated to comply with the ADA as an entity of State government.<sup>1</sup>

## V. Definitions

In this Agreement, the terms listed below shall have the following meaning:

- A. Disability and Barrier to Participation in the Work First Program

1. The term “disability” in this Agreement is synonymous with the definition of “disability” contained in Section 504 and the ADA. 29 U.S.C. § 705(20) (B); 42 U.S.C. § 12102(2).
2. For purposes of this Agreement, the term “barrier to participation in the Work First program” would include, but not be limited to, situations where an applicant or participant has a family member living in the home who has a disability that poses a barrier to the applicant’s or participant’s participation in the Work First Program. Medical documentation must be provided to support the applicant’s or participant’s need to remain in the home to provide care for the family member.

B. Reasonable Accommodations

1. The term “reasonable accommodation” is defined as moderate changes or adjustments to a covered entity’s policies or procedures to avoid discrimination on the basis of disability and to afford qualified individuals with disabilities an equal opportunity to participate in and benefit from services provided under a covered program or activity. These terms are often used interchangeably in practice and may be used interchangeably in this Agreement.
2. The provision of reasonable accommodations may take many forms, including, but not limited to, assistance with the TANF application process, notifications to beneficiaries of their rights to reasonable accommodations, assistance in completing forms and collecting verifications, assistance in obtaining accessible transportation or the modification of meeting requirements, providing flexibility in appointment or waiting times, modification of work requirements, and the provision of auxiliary aids and services when necessary to ensure effective communication.

C. “Work First Program” refers to DHHS-DSS’ North Carolina TANF Program and its component parts

1. “Unsubsidized Employment” means full or part time employment in the public or private sector that is not subsidized by TANF or any other public program. In this context, tax credits received by the employer do not count as subsidies. This is employment that is paid 100% by the employer. Self-employment is included in the definition of unsubsidized employment
2. Subsidized Employment in the Public or Private Sector means employment for which the employer receives a subsidy from TANF,

MOE, or other public funds to offset some or all of the wages and costs of employing a recipient.

3. “Job search and job readiness” means the act of seeking or obtaining employment, preparation to seek or obtain employment, including life skills training, and substance abuse treatment, mental health treatment, or rehabilitation activities.
4. “On-the-Job Training (OJT) means training in the public or private sector that is given to a paid employee while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job.
5. “Work Experience” means a work activity in the Work First Program performed in return for welfare that provides an individual with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment.
6. “Community Service Programs mean structured programs and embedded activities in which TANF recipients perform work for the direct benefit of the community under the auspices of public or nonprofit organizations.
7. “Vocational Educational Training” means organized educational programs that are directly related to the preparation of individuals for employment in current or emerging occupations requiring career and technical education.
8. “Job Skills Training” means training or education for job skills required by an employer to provide an individual with the ability to obtain employment or to advance or adapt to the changing demands of the workplace.
9. “Education Directly Related to Employment” means education related to a specific occupation, job, or job offer.
10. “GED/HS Completion for Teen Heads of Households” means married Teens and Teen Heads of Households. Married Teens and Teen heads of households, through age 19 (through the month in which they turn 20), who maintain satisfactory secondary school attendance, including GED studies.
11. “State Work Activities” means additional work activities that do not meet the federal definitions are also supported. These activities may include but are not limited to: parenting training, behavioral development, family



violence counseling, substance abuse treatment, job retention and advancement.

12. "Post Secondary Education" means Work First participants may be enrolled, at least part-time, in a post-secondary education program.

D. Work First Agency

County DSS agencies refer to agencies that administer the Work First Program and related services to assist individuals to obtain full time employment. This includes but is not limited to local Department of Social Service offices that administer the Work First program.

E. Applicant and Participant

1. An "applicant" is someone who has applied for Work First benefits.
2. A "participant" is someone who is receiving Work First benefits.

F. Informal Assessment

"Informal Assessment" is a procedure for identifying an applicant's or participant's work history, recent job search efforts, education, job skills, interests, and abilities and other factors that will affect employment. The procedure also includes screening for potential disabilities or other specific limitations, as well as identifying a need for a formal assessment by a qualified assessing agency or individual. Informal assessments shall be completed by qualified Work First Agency staff and/or contractors, and are provided at no cost to the applicant or participant.

G. Formal Assessment

"Formal Assessment" is a procedure for determining the extent and severity of an applicant's or participant's limitation(s), including the presence of any disability or multiple disabilities. A formal assessment will help establish any alternative services or reasonable accommodations in unsubsidized employment or work assignments that might permit the applicant or participant to engage in work, either immediately or after services have been provided. All formal assessments shall be completed by a qualified assessing agency or individual, and are provided at no cost to the applicant or participant.

H. Qualified Assessing Agency or Individual

A “Qualified Assessing Agency or Individual” may include: a medical or mental health professional, social worker, psychologist, Division of Vocational Rehabilitation Services (DVR) counselor, or similar qualified assessing agency or individual. The Qualified Assessing Agency or Individual shall provide individualized written evaluation plan(s) so that DHHS-DSS can adapt Work First activities to accommodate the needs of the applicant or participant. Characteristics required of the Assessing Agency or Individual include:

1. Demonstrates a competency or successful completion of training in the appropriate field.
2. Demonstrates an understanding of the objectives of the formal assessment based on Work First referral information, referral questions, the initial interview, and the stated purpose of the valuation.

I. Work First Case Manager

1. A “Work First Case Manager” (WFCM) is a Work First Agency employee who makes an assessment of needs, performs initial referrals to service providers, and evaluates the need for Work First services. The WFCM provides eligibility determinations, job readiness screening, employability planning, financial and employment case management services, makes referrals to other public or private assistance programs or resources; and determine eligibility for supportive services, such as food and nutrition services, medical assistance, child care, and emergency assistance.

J. Mutual Responsibility Agreement

A “Mutual Responsibility Agreement Plan of Action” (MRA) is a written agreement developed by a WFCM in consultation with the participant. It is a case management tool that details a logical, sequential series of actions which becomes a blueprint for change to move the participant from dependency to self-sufficiency. The participant’s occupational goal, precise tasks required of both the Work First Agency and the participant, and the supportive services needed are identified in the MRA

K. Sanction

“Sanction refers to non-compliance by a Work First participant with any of the requirements on their MRA, which results in the loss of the full benefit check for one month or until compliance, whichever is longer.

**VI. Specific Provisions**

A. Notification of the Provisions of this Agreement

Within sixty (60) days of the Effective Date of this Agreement, DHHS-DSS shall provide notification in memorandum form to all Work First Agencies that identifies the terms of this Agreement including, but not limited to, the availability of informal and formal assessments as described below in Section VI (D)(2) and (3).

B. Section 504/ADA Compliance and Grievance Procedures

1. Within thirty (30) days of the Effective Date of this Agreement, DHHS-DSS agrees to designate a staff person to oversee DHHS-DSS compliance with Section 504 and the ADA in its implementation of the Work First Program (hereinafter the Equal Opportunity Specialist/Civil Rights Compliance Officer ("EOS/CROC")). The EOS/CROC shall report directly to the Division Director and notify the DHHS Compliance Attorney, to ensure that any issues of non-compliance with this Agreement are addressed in a timely and efficient manner.
2. The EOS/CROC shall, at a minimum, be responsible for:
  - a. conducting periodic reviews of DHHS-DSS policies and procedures to determine whether reasonable modifications of programs, policies, and procedures are required to ensure compliance with Section 504 and the ADA;
  - b. providing advice and technical assistance to Work First Agencies regarding compliance with Section 504 and the ADA;
  - c. overseeing the Section 504 grievance process and the ADA grievance process, including ensuring the appropriate and timely resolution of grievances, and submitting and implementing a corrective action plan if the grievance is determined to be well-founded;
  - d. maintaining records of all Section 504 grievances and ADA grievances filed with DHHS-DSS in relation to the Work First Program along with records showing resolution of those grievances;
  - e. assisting in the development and coordination of training of Work First Agency staff and/or contractors regarding the requirements of Section 504 and the ADA in the administration of the Work First Program; and

- f. monitoring DHHS-DSS compliance with the provisions of Section 504 and the ADA, and providing technical assistance to DHHS-DSS when necessary to obtain compliance.
  3. Within sixty (60) days of the Effective Date of this Agreement, DHHS-DSS shall review and revise (as necessary) its Section 504 Grievance Procedures and its ADA Grievance Procedures so that they meet the standards set forth in 45 C.F.R. Part 84 and 28 C.F.R. Part 35, respectively. The Section 504 Grievance Procedures and the ADA Grievance Procedures must be made available to applicants and participants to ensure that they are aware of their right to file grievances alleging denials of reasonable accommodations or equal opportunities to receive benefits or services under the Work First Program. DHHS-DSS shall present its Section 504 Grievance Procedures and its ADA Grievance Procedures in alternative formats so that they are accessible to persons with disabilities.
- C. Preventing and Addressing Allegations of Discrimination Based on Disability in Work First Programs
  1. Obligations

Within sixty (60) days of the Effective Date of this Agreement, DHHS-DSS shall ensure that its Work First policies and procedures conform at a minimum with the requirements enumerated below to ensure that all applicants and participants are afforded an equal opportunity to participate in the Work First Program, regardless of a disability or other barrier to participation in the Work First Program. DHHS-DSS shall further ensure that all applicants and participants are afforded individualized treatment and effective and meaningful opportunities under the Work First Program.

    - a. "Effective and meaningful opportunity" requires that: all applicants and participants be afforded the same opportunity to benefit from the Work First Program; all applicants and participants be provided meaningful access to the Work First Program; and the methods of administration utilized by Work First Agencies be non-discriminatory.
    - b. "Individualized treatment" requires that applicants and participants be treated on a case-by-case basis consistent with facts and objective evidence. Applicants and participants may not be treated on the basis of generalizations and stereotypes.
  2. Informal assessment

- a. DHHS-DSS shall require all Work First agencies to utilize the Substance Abuse Behavioral Indicator Checklist II (DSS-5325), Family Assessment of Strengths and Needs (DSS-5298), Work First Employment Services Assessment Form (DSS-6901), Family Violence Option (DSS-6965), Learning Needs Screening Tool (DSS-5327) and the Emotional Health Inventory screening tools to conduct informal assessments.
- b. DHHS-DSS shall require that all Work First Agencies offer to conduct an informal assessment of each applicant at the time the applicant submits his or her application to participate in the Work First Program to determine the applicant's strengths and weaknesses and to determine if the applicant has a disability or other barrier to participation in the Work First Program.
- c. DHHS-DSS shall require all Work First agencies to offer to informally assess a Work First applicant or participant in any of the following additional situations:
  - i. when the applicant or participant requests to have the informal assessment re-administered;
  - ii. when Work First Agency staff and/or contractors believe that re-administering the informal assessment may help identify a disability (for example, when there is a pattern of nonparticipation, behavioral cues, low test scores, or poor performance in school or work assignments);
  - iii. when the applicant or participant returns to the Work First Program after the applicant or participant's previous case has been closed for a period of one year or longer;
  - iv. before Work First Agency staff and/or contractors deny an initial 24-month or 60-month extension, unless the informal assessment has been completed or declined within 12 months of the 24<sup>th</sup> or 60<sup>th</sup> month; or
  - v. before Work First Agency staff and/or contractors close a Work First case for failure to cooperate, unless the informal assessment has been completed within the previous 12 months.
- d. DHHS-DSS shall require all Work First Agencies to offer to administer an informal assessment at no cost to the applicant or participant. In order to encourage participation by applicants and

participants, DHHS-DSS shall ensure that Work First Agency staff and/or contractors:

- i. explain the purpose of the informal assessment and medical capacity form to the applicant or participant, and state that they are voluntary and that the applicant or participant can decline to complete the informal assessment and/or medical capacity form in whole or in part, without penalty. However, if the applicant or participant declines to complete the informal assessment and/or medical capacity form and does not present adequate information that he or she has a disability or other barrier to participation in the Work First Program, then the applicant or participant may be precluded from receiving a reasonable accommodation;
- ii. inform the applicant or participant of the potential advantages of informal assessment, how it can benefit the applicant or participant by providing examples of reasonable modifications, and that it is offered at no cost to the applicant or participant;
- iii. describe the informal assessment in a manner that does not denigrate the process or dissuade the applicant or participant from participating in the informal assessment;
- iv. explain that the answers provided and the results of the informal assessment are confidential and will only be shared with other Work First Agencies;
- v. explain that if the applicant or participant is willing to be informally assessed, he or she will be asked to sign a release of information form that the Work First Agency and/or contractors shall review orally with him or her;
- vi. explain that if the applicant or participant is not willing to be informally assessed, he or she will indicate a waiver on the release of information form described above;
- vii. ensure that an applicant's or participant's file contains the signed consent or waiver of the informal assessment;
- viii. explain to the applicant or participant that if he or she declines the informal assessment, but presents other adequate information that indicates he or she has a disability or other barrier to participation in the Work First

Program, that such information will be used to determine the activities and services, including any reasonable accommodations, to be provided to the applicant or participant; and

ix. post notices in an open and apparent location in the waiting area of all Work First Agencies, advertising the availability of free informal assessments to all Work First Program applicants and participants.

e. If the applicant is willing to be assessed, DHHS-DSS shall require that an applicant be informally assessed prior to placement in Work First Employment Services.

f. Within sixty (60) days of the Effective Date of this Agreement, DHHS-DSS shall send written notice to all current Work First participants offering each the opportunity for an informal assessment, and shall establish and maintain policies and procedures, as necessary, for informally assessing all applicants and participants to identify a potential disability or other barrier to participation in the Work First Program.

3. Formal assessment

a. Within sixty (60) days of the Effective Date of this Agreement, DHHS-DSS shall require that all Work First Agencies offer a formal assessment to any applicant or participant, within thirty (30) days of any of the following situations:

i. when the results of the informal assessment or other process, indicates a need for further evaluation for identification of a disability;

ii. when Work First Agency staff and/or contactors observe behavior that indicates the need for a formal assessment;

iii. when an applicant or participant presents medical or other information, including the applicant's or participant's own statements that indicate he or she may have a disability.

b. A formal assessment, at a minimum, shall determine:

i. whether the applicant or participant has a disability;

- ii. if so, the nature of any disability of the applicant;
  - iii. the extent to which the applicant or participant is capable of employment or participation in employment-related (*e.g.*, job training or education) activities and under what conditions;
  - iv. the implications of the disability on finding and maintaining a job;
  - v. the appropriateness of a particular work assignment or plan for employment;
  - vi. the need for reasonable accommodations in program requirements or work plan requirements;
  - vii. the need for training and education prior to employment; and
  - viii. the applicability of work participation rules and time limits.
- c. DHHS-DSS shall require all Work First Agencies to administer the formal assessment at no cost to the applicant or participant. DHHS-DSS shall ensure that Work First Agency staff and/or contractors:
- i. explain the purpose of the formal assessment and medical capacity form to the applicant or participant and state that they are voluntary, and that the applicant or participant can decline to complete the formal assessment and/or medical capacity form in whole or in part, without penalty. However, if the applicant or participant declines to complete the formal assessment and/or medical capacity form and does not present adequate information that he or she has a disability, then the applicant or participant may be precluded from receiving a reasonable accommodation;
  - ii. inform the applicant or participant of the potential advantages of the formal assessment, how it can benefit the applicant or participant, and that it is offered at no cost to the applicant or participant;
  - iii. describe the formal assessment in a manner that does not denigrate the process or dissuade the applicant or participant from participating in the formal assessment;



- iv. explain that the answers provided and the results of the formal assessment are confidential and will only be shared with other Work First Agencies;
  - v. explain that if the applicant or participant is willing to be formally assessed, he or she will be asked to sign release of information form that Work First Agency staff and/or contractors shall review orally with him or her;
  - vi. explain that if the applicant or participant is not willing to be formally assessed, he or she will indicate a waiver on the release of information form described above; and
  - vii. ensure that an applicant's or participant's file contains the signed release of information form or waiver of the formal assessment.
- d. DHHS-DSS shall require that formal assessments to determine whether a person has a disability be conducted by a Qualified Assessing Agency or Individual. DHHS-DSS shall require that each Work First Agency employs and/or uses staff persons and/or contractors who are qualified to conduct formal assessments, or has access to agencies with individuals who are qualified to conduct such assessments. DHHS-DSS shall require that all Work First Agencies inform an applicant or participant of his or her right to receive reasonable accommodations for attendance at the formal assessment, and shall further provide or require the provision of such reasonable accommodations as needed.
- e. DHHS-DSS shall require Work First Agencies to ensure that an applicant's or participant's file contains the signed release of information form or waiver of the formal assessment. DHHS-DSS shall require Work First Agencies to make their staff and/or contractors available to explain the content of the consent or waiver form and the ramifications of signing the form in the event that an informal assessment indicates that an applicant or participant has a potential disability which could impact his or her ability to understand the information provided in the consent or waiver form.
- f. The terms of this Agreement shall not be construed as precluding DHHS-DSS from offering formal assessments to applicants or participants on any other basis consistent with DHHS-DSS's existing legal obligations.

4. Report on Medical Examination Form

DHHS-DSS requires that a Report on Medical Examination form (8655) be completed on behalf of a Work First participant by a medical provider. The Report on Medical Examination form identifies physical and mental health factors that are limitations and/or restrictions to employment-related activities. DHHS-DSS shall not use the Report on Medical Examination 8655 as a substitute for informal and/or formal assessment. However, DHHS-DSS may permit Work First Agencies to utilize the Report on Medical Examination Form as part of the informal and formal assessment process. In utilizing the Report on Medical Examination form, Work First Agencies shall consider all information provided on the submitted form in conducting the informal and formal assessments.

5. Mutual Responsibility Agreement (MRA) Plan of Action

- a. Within thirty (30) days of an applicant or participant receiving an informal and/or formal assessment, DHHS-DSS shall require Work First Agencies to develop or revise a MRA for an applicant or participant based on the informal and/or formal assessment(s), and in accordance with the requirements of Federal law. The MRA shall describe any necessary services, activities, and reasonable accommodations. When a Work First agency does not incorporate all of the recommendations of the participant's informal and/or formal assessment(s) into the participant's MRA, DHHS-DSS shall require the Work First agency to document in the participant's case file the reason(s) the recommendation(s) was/were not incorporated.
- b. DHHS-DSS shall require that Work First Agencies base work placement decisions on the "best information" available to them if an applicant or participant declines an informal and/or a formal assessment(s). "Best information" may include, but is not limited to: medical documents from the applicant, participant, or the applicant's or participant's medical treatment providers; information from social services and educational agencies; and observations by Work First Agency staff and/or contractors.
- c. DHHS-DSS shall require that no Work First Agency reduces a payment or otherwise sanctions a participant for the sole reason that the Work First Agency is waiting for the results of an informal and/or formal assessment or waiting for the development of MRA subsequent to an informal and/or formal assessment.

- d. DHHS-DSS shall emphasize through policy that informal and formal assessment is an on-going process and not a one-time event.
- e. If an applicant's or participant's case is transferred to another Work First Agency, Work First Agency staff person, or contractor, DHHS-DSS shall offer the newly-assigned Work First Agency, Work First Agency staff person, or contractor the results of the informal and/or formal assessments, medical documents, and other information relating to the applicant's or participant's disability or other barrier to participation in the Work First Program. DHHS-DSS shall require the transferring Work First Agency to cooperate in the transfer, and promptly forward copies of all file documents to the newly-assigned Work First Agency, staff person, or contractor.
- f. If a Work First applicant or participant receives services from the DHHS-DSS Division of Vocational Rehabilitation (DVR), DHHS-DSS shall require Work First Agencies to incorporate the training and work plan developed by DVR into the participant's case record.
- g. DHHS-DSS shall require that, prior to assigning applicants or participants to a Work First education, training, or a work site, Work First Agencies will advise the Work First education, training, or work site of any needed reasonable accommodations to the Work First education, training, or work site. Work First agencies shall monitor that participant's performance at the Work First education, training, or work site to ensure that previously specified services, or accommodations set forth in a participant's MRA are provided in accordance with this Agreement and Federal law. Specifically, DHHS-DSS shall require:
  - i. Work First Agencies to place MRAs in the applicant's or participant's case file in accordance with DHHS-DSS record retention policies; and
  - ii. Work First Agencies to include activities, reasonable accommodations that were requested and provided in the MRA as well as information about why requested accommodations were not provided.
- h. Within sixty (60) days of the Effective Date of this Agreement, DHHS-DSS shall review its decision notice forms used to inform applicants or participants about changes in their Work First status and/or benefits. This includes notices of Work First placements,

changes in placement, monetary sanctions, approval, and denial of Work First extensions and case closures. The review shall determine if the notice forms need to be revised to make them accessible to individuals with low literacy levels and/or disabilities so that they may understand the information provided in the notice forms.

6. Work First Agency Resources

Within sixty (60) days of the Effective Date of this Agreement, DHHS-DSS shall develop specific policies and procedures to ensure that Work First Agencies have the necessary resources to provide reasonable accommodations to applicants and participants with a disability or other barrier to participation in the Work First Program. Such policies and procedures shall include, but not be limited to, requirements that DHHS-DSS:

- a. provide information and resources to Work First Agencies that will assist in providing reasonable accommodations;
- b. utilize qualified and appropriate professionals in the formal assessment process;
- c. require that case files be documented regarding the need for reasonable accommodations, including any release of information form or waiver of the accommodations; and
- d. provide the accommodations based on an applicant's or participant's individual need.

7. Sanctions

Within sixty (60) days of the Effective Date of this Agreement, DHHS-DSS shall develop specific policies and procedures to ensure that issues related to a disability or other barrier to participation in the Work First Program are considered before sanctions are imposed on applicants and participants, including, but not limited to, ensuring that Work First Agencies:

- a. review all determinations of non-cooperation for issues related to a disability or other barrier to participation in the Work First Program that have not been previously identified;
- b. determine whether an applicant's or participant's non-cooperation was due to failure to offer or provide a reasonable accommodation;

- c. include a disability or other barrier to participation in the Work First Program as "good cause" reasons for non-cooperation;
- d. inform an applicant or participant of his or her right to file a grievance or complaint alleging discrimination based on disability when sanctions are imposed; and
- e. consider DHHS-DSS obligation to make and/or provide reasonable accommodations unless such action would result in a fundamental alteration of DHHS-DSS Work First services, programs, or activities or cause DHHS-DSS an undue financial or administrative burden.
- f. DHHS-DSS shall establish guidelines to determine when Work First Agency staff and/or contractors shall offer additional informal and formal assessments and intensive case management to participants who are being considered for sanctions.

8. Section 504 and ADA Training

DHHS-DSS shall require that all Work First Agency staff and/or contractors responsible for administering the Work First Program and related services receive initial and periodic training regarding the Work First Program's responsibility to provide equal opportunity for all Work First applicants and participants to receive program services and benefits. Within the one hundred eighty (180) days of the Effective Date of this Agreement, DHHS-DSS shall train all current Work First Agency staff. At a minimum, the training provided to Work First Agency staff shall include the following:

- a. information on various disabilities including, but not limited to, intellectual disabilities, mental disabilities, developmental disabilities, and physical disabilities;
- b. information on how to discuss offers of informal or formal assessments so that applicants and participants understand all necessary information, including confidentiality, and are not offended;
- c. information on how to conduct or access an informal assessment and make appropriate referrals for formal assessments when the informal assessment identifies a potential disability;
- d. information on how to provide or accommodations to applicants

and participants with a disability or other barrier to participation in the Work First Program;

- e. information on how to conduct appropriate follow-up for an applicant or participant who has been identified as a person with a disability or other barrier to participation in Work First program and employment;
- f. information on how to document the files when an applicant or participant is identified as a person with a disability or other barrier to participation in the Work First Program; and
- g. information on procedures established to resolve grievances based on disability or other barrier to participation in the Work First Program, and how to assist an applicant or participant with filing a grievance.

9. Monitoring

Within one hundred eighty (180) days of the Effective Date of this Agreement, DHHS-DSS shall monitor its compliance with the provisions of Section 504 and the ADA, in relation to the Work First Program and the provisions of this Agreement. DHHS-DSS shall ensure that:

- a. the EOS/CROC monitors Work First Agency staff and/or contractors for compliance with the policies and procedures developed pursuant to this Agreement;
- b. the EOS/CROC tracks, on an annual basis, statistical information from the informal assessment, the formal assessment and other sources that identify applicants and participants with disabilities, accommodations needed, accommodations provided, and outcomes achieved (e.g., completion of secondary studies, including G.E.D. programs, licensure programs, including certified nursing assistant; job training programs; certificates; and/or associates or bachelors degrees); and
- c. the EOS/CROC compiles and analyzes information from the tracking system and utilizes that information to conduct regular reviews of the Work First policies and procedures affecting applicants and participants with disabilities or with Work First group members who have disabilities, in order to determine if particular actions, including, but not limited to, actions such as, revising policies and procedures, additional training, or increased monitoring, need to be taken.

E. DHHS-DSS Work First Program Manuals

Within one hundred eighty (180) days from the Effective Date of this Agreement, DHHS-DSS shall review and update all Work First Program policy and procedure manuals to ensure that they reflect consistent and appropriate information regarding all aspects of the Work First Program's compliance with the requirements of Section 504, the ADA, and this Agreement.

**VII. Data Collection and Reporting Requirements**

A. DHHS-DSS shall provide the following information to OCR:

1. within thirty (30) days of the Effective Date of this Agreement, the name of the EOS/CROC and the EOS/CROC appointed to monitor DHHS-DSS compliance with this Agreement;
2. within sixty (60) days of the Effective Date of this Agreement, a copy of the notification memorandum sent to all Work First Agencies identifying the terms of this Agreement;
3. within sixty (60) days of the Effective Date of this Agreement, copies of grievance and complaint procedures established to resolve Section 504 and ADA grievances complaints for OCR's review and, if appropriate, comment. If OCR has concerns regarding the Section 504 or ADA procedures, OCR shall so notify DHHS-DSS;
4. within sixty (60) days of the Effective Date of this Agreement, a copy of the informal assessment tool currently utilized by DHHS-DSS. If OCR has concerns regarding DHHS-DSS current informal assessment tool, OCR shall so notify DHHS-DSS;
5. within sixty (60) days of the Effective Date of this Agreement, a copy of the formal assessment tools currently utilized by DHHS-DSS. If OCR has concerns regarding the current formal assessment tools, OCR shall so notify DHHS-DSS;
6. within ninety (90) days of the Effective Date of this Agreement, copies of all Work First policies and procedures and notices that have been revised updated and/or developed pursuant to this Agreement, including, but not limited to, DHHS-DSS policies and procedures related to informal and formal assessments. If OCR has concerns regarding any of the specified documents, OCR shall so notify DHHS-DSS;
7. within ninety(90) days of the Effective Date of this Agreement, a copy of

the written notice sent to current Work First participants offering the opportunity for formal assessment. If OCR has concerns regarding any of the specified documents, OCR shall so notify DHHS-DSS;

8. within ninety (90) days of the Effective Date of this Agreement, a copy of all the materials that DHHS-DSS will utilize in conducting training in accordance with this Agreement for review and, if appropriate, comment. If OCR has concerns regarding the training documents, OCR shall so notify DHHS-DSS;
9. within one hundred eighty (180) days from the Effective Date of this Agreement, verification that all Work First Agency staff have completed training;
10. within one hundred eighty (180) days of the Effective Date of this Agreement, copies of all changes and corrections to the Work First manual, arising from this Agreement. If OCR has concerns regarding any of the specified documents, OCR shall so notify DHHS-DSS;
11. within one (1) year, two (2) years, and two (2) years and nine (9) months from the Effective Date of this Agreement, a report on the monitoring required by this Agreement, including but not limited to verification that all new Work First Agency staff who were not part of the initial training reported in paragraph 12 above, have been trained.

B. Unless otherwise provided, DHHS-DSS obligation to report data and information to OCR shall terminate three (3) years from the Effective Date of this Agreement.

### VIII. Signatures

The individual signing this Agreement on behalf of DHHS-DSS represents that he/she is authorized to execute this Agreement and that the terms of the Agreement shall be legally binding on DHHS-DSS and its Work First agencies and contractors. The individual signing this Agreement on behalf of OCR represents that he/she is signing this Agreement in his official capacity and that he is authorized to execute this Agreement.

/s/

02/10/11

\_\_\_\_\_  
Director of NC Division of Social Services  
NC Department of Health and Human Services

\_\_\_\_\_  
Date

/s/

03/11/11

\_\_\_\_\_

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Roosevelt Freeman  
Regional Manager  
U.S. Department of Health and Human Services  
Office for Civil Rights (Region IV)

Date

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<sup>1</sup> OCR has issued policy guidance that clarifies the obligations Title II of the ADA and Section 504 impose on State and local government entities, and on recipients of Federal financial assistance from HHS involved in the administration of TANF programs. *See* U.S. Department of Health and Human Services, Office for Civil Rights *Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families)* (July 19, 2007) <<http://www.hhs.gov/ocr/prohibition.html>>, cited in Administration for Children and Families, U.S. Department of Health and Human Services, *Reauthorization of the Temporary Assistance for Needy Families (TANF) Program; Final Rule*, 73 Fed. Reg. 6772, 6775 (Feb. 5, 2008).