

Section 385.6 - Assessments and Employability Plans for Households with Dependent Children

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Part A - The Regulations

a) Assessments

- 1) The social services official shall ensure that an employability assessment is provided for each public assistance recipient who is a member of a household with dependent children and is:
 - i) 18 years or older; or
 - ii) is 16 or 17 years of age and not attending secondary school and has not completed high school or an equivalency program.
- 2) Such assessment shall include, but not be limited, to a review of the individual's:
 - i) education level, including literacy and English language proficiency;
 - ii) basic skills proficiency;
 - iii) child care and other supportive services needs;
 - iv) skills and prior work experience;
 - v) prior participation in education and training;
 - vi) training and vocational interests;
 - vii) family circumstances, including the special needs of a child; and
 - viii) eligibility for locally-available prenatal, infant and early childhood home visiting services.
- 3) The assessment shall be completed within 90 days of the date such recipient is determined to be eligible for public assistance pursuant to Part 351 of this Title.
- 4) The social services official shall encourage and may require a nonexempt recipient who has not attained a basic literacy level and who is not subject to the educational requirements of section 385.9 of this Part to enroll in a basic literacy program, high school equivalency program or other educational program in combination with other work activities. Any such assignment shall be consistent with the employability plan prepared pursuant to subdivision (b) of this section.
 - i) Basic literacy level for purposes of paragraph (4) of this subdivision is defined as a literacy level equivalent to the ninth grade.
 - ii) Such basic literacy level for nonexempt recipients of public assistance who have not obtained a high school diploma or the equivalent shall be established based on a test for basic literacy level as determined appropriate by the Education Department.

- 5) The social services official shall offer the option and may require a nonexempt recipient who has achieved a basic literacy level as defined in subparagraph (4)(i) of this subdivision, but has not attained a high school diploma or the equivalent and who is not subject to the educational requirements of section 385.9 of this Part to enroll in an educational program designed to improve the individual's literacy level and/or prepare the individual for attainment of a high school diploma or the equivalent in combination with other work activities as appropriate. Any such assignment shall be consistent with the employability plan prepared pursuant to subdivision (b) of this section.
- 6) An applicant or recipient may be assigned to work activities in accordance with the provisions of this Part prior to the completion of an assessment.
- 7) Applicants and recipients are required to participate in an assessment as assigned by the social services official.
 - i) An applicant who fails to comply with assessment requirements shall be ineligible for public assistance, provided, however, that the term applicant means the entire public assistance applicant household.
 - ii) A recipient who fails to comply with assessment requirements shall be subject to the provisions of sections 385.11 and 385.12 of this Part.
- 8) Where an assessment indicates that home visiting services would be appropriate and beneficial to the recipient, and such services are available, the social services official shall encourage the recipient to participate in such services. To the extent that such participant is interested in receiving home visiting services, the social services official shall assign the participant to a work activity in accordance with paragraph (6) or (13) of subdivision (a) of section 385.9 of this Part, where such home visiting services shall count towards the individual's work requirement hours.

b) Employability plan

- 1)
 - i) Based upon the assessment required pursuant to this section, an employability plan shall be developed in writing and in consultation with the recipient, which shall set forth:
 - (a) the services which the district will provide, including child care;
 - (b) the work activities to which the recipient will be assigned;
 - (c) the recipient's employment goal, which shall reflect, to the extent possible, the recipient's preferences to the extent they are consistent with the assessment;
 - ii) In developing the plan, the social services official shall take into account:
 - (a) the recipient's supportive services needs;

- (b) the available program opportunities;
 - (c) the local employment opportunities;
 - (d) if the recipient is assigned to an education program, the appropriateness of the educational activity based on the assessment completed pursuant to subdivision (a) of this section and the recipient's liability for student loans, grants and scholarship awards, and
 - (e) the recipient's participation in prior education and training activities.
- 2) Notwithstanding the requirements of paragraph (1) of this subdivision, the social services official must consider the need of the social services district to meet Federal and State work activity participation rates before completing an individual's employability plan.
 - 3) If a recipient's preferences cannot be accommodated in the employability plan, the plan shall record the reasons.
 - 4) The plan shall be explained to the recipient.
 - 5) Any change to the plan shall be discussed with the recipient and documented in writing.
 - 6) Participation in an educational and/or vocational training program, that includes but is not limited to, a two-year post-secondary degree program, which is necessary for the participant to attain their individual employment goal and is likely to lead to a degree or certification and sustained employment, shall be approved consistent with such individual's assessment and employability plan to the extent that such approval does not jeopardize the State's ability to comply with federal work participation rates.

(c) The social services official shall use designated trained staff or providers with demonstrated effectiveness in assessment and employability development to prepare the assessments and plans required by this section.

(d) Child care.

Assignments to work activities made pursuant to an employability plan can be made to the extent that child care is available in accordance with the provisions of this Part and Part 415 of this Title. The social services official shall provide information to the applicant or recipient either orally or in writing, as appropriate, regarding child care and methods of payment for such care.

(e) Social services officials may provide assessments which are more detailed and comprehensive than required by this section.

Part B - Department Policy

Assessment Overview

All recipients who reside in households with dependent children and who are adults 18 years of age or older, and those children who are 16 and 17 years old who are not attending secondary school and have not completed high school or an equivalency program, must be assessed. The assessments for these individuals must be completed no later than 90 days from when the individual is determined eligible for Temporary Assistance (TA) (see Social Services Law [SSL] §335 and 18 NYCRR 385.6). All individuals who are subject to completing an assessment are required to comply with assessment requirements.

As outlined in 18 NYCRR 385.10, districts are required to describe local assessment procedures in their biennial Temporary Assistance and Supplemental Nutrition Assistance Program (SNAP) Employment Plan, including when assessments are conducted and what information they collect. While districts are encouraged to provide assessments that are more detailed and comprehensive than what is required, the regulations list the seven required elements of an assessment at 18 NYCRR 385.6 subdivision (a)(2). Assessments must include, at a minimum, a review of an individual's:

- education level, including literacy and English language proficiency;
- basic skills proficiency;
- child care and other supportive service needs;
- skills and prior work experience;
- prior participation in education and training;
- training and vocational interests; and,
- family circumstances, including any special needs of a child.
- eligibility for locally-available prenatal, infant and early childhood home visiting services.

As described above, districts are required to complete employment assessments within 90 days of the date on which eligibility is determined for households with dependent children. However, districts are encouraged to complete the employment assessment as soon after an individual has applied for TA as is practicable and to thereafter reassess individual circumstances and work activity assignments as relevant changes occur, no less frequently than annually. Districts may choose to use the LDSS-4980, a locally developed assessment tool, the Welfare-to-Work Caseload Management System (WTWCMS) or New York City Work Accountability and You (NYCWAY) assessment functions to record the information gathered during the client assessment. Prior to the completion of the assessment, the district may assign the applicant or recipient to work activities.

Districts are strongly encouraged to use WTCMS to enter assessment and plan information as recommended in 11-ADM-06. The use of WTCMS will simplify data entry and will support improved reporting capabilities. Data identifying that the assessment and/or employment plan have been completed is sent from the WTCMS to the Welfare Reporting and Tracking System (WRTS) data base for reporting and tracking purposes. The benefits of utilizing WTCMS allow for quick and easy access to client information among staff, as needed. When case maintenance is required, updates/changes can be made as needed to family composition, work history, child care needs and other supportive services. By using WTCMS, all staff will see the latest updates.

Failure of an individual to comply with completing an assessment may result in non-compliance proceedings and/or sanction as indicated in 385.11 and 385.12. An applicant who fails to comply with assessment requirements shall be ineligible for public assistance. A recipient who fails to comply with assessment requirements shall be subject to the provisions of sections 385.11 and 385.12.

While conducting an assessment with a TA applicant or recipient, districts are required to consider whether the individual may be a candidate to receive voluntary parental, infant, and early childhood home visiting services. If they are eligible for such services and an appropriate home visiting program is available, the district worker should encourage participation and, if the client is interested, provide information and a referral. Districts must include the activity of home visiting in the individual's Employment Plan (EP) and hours the client self-attests for participation in home visits shall count towards the individual's work requirement hours as part of the job search and job readiness work activity definition. If an individual who is participating in a home visiting program fails to comply with the activity, the district is not permitted to initiate a conciliation or impose a sanction, as the activity is voluntary.

Employment Plan

Based on the assessment, a written employment plan should be developed in consultation with the individual and should reflect the individual's preferences whenever possible, consistent with the assessment.

The employment plan is composed of seven sections and addresses all of the required plan elements including the supportive services the district will provide, the work activity assignment(s) and the individual's employment goals. Additionally, the LDSS-4978 *New York State Employment Plan* includes a section to summarize an individual's challenges and barriers as determined through the employment assessment and describes how the barriers are to be addressed. The Outcomes and Client Activity Assignment(s) sections of the employment plan record the actions taken once the employment assessment and employment plan have been completed, including recording why an individual's preferences could not be accommodated, if applicable. Districts may choose to use the LDSS-4978 *New York State Employment Plan*, a locally developed plan or the WTCMS or NYCWAY employment plan functions to facilitate the use of information collected through the employment assessment to develop appropriate

employment plans intended to help individuals achieve economic independence. Assignments to work activities must be made at district discretion after considering the ability of the district to attain its participation rate. If an individual's preferences cannot be accommodated in the employment plan, the plan should record the reasons why.

The district does not necessarily need an individual's agreement with the finished plan but should strive to accommodate individual preferences where appropriate in order to increase success with meeting plan goals. The employment plan can be changed as needed as long as the local district informs the client in writing and provides thorough documentation in the case record. The client is not required to sign the employment plan under any circumstances, but may be encouraged to do so to indicate their participation in the development of the plan.

Policy Releases

- 11-ADM-06 New York State Employment Assessment
- 09-INF-20 Countability of Job Search and Job Readiness Training Activities
- 09-ADM-16 Enrollments in Educational Activities for Nonexempt Public Assistance Applicants and Recipients
- 08-ADM-07 Implementation of Final Temporary Assistance for Needy Families (TANF) Rule
- 10-INF-10 Temporary Assistance and Employment Program Requirements for Individuals 18 to 21 Years Old Residing With Their Parents
- 23-ADM-09 Post Secondary Education Work Activity Amendments to Social Services Law (SSL) as Authorized in the 2023-24 State Budget
- 23-ADM-10 Changes Authorized by Chapter 819 of the Laws of 2022 Regarding Home Visiting Services

Desk Guides and Forms

- LDSS-4978 - New York State Employment Plan
- LDSS-4979 - New York State Employment Assessment And Employment Plan Guide
- LDSS-4925 Employability code Desk Guide TANF and SNA MOE

Part C - Questions and Answers

Q.1 When should an assessment be completed and how often should an individual be re-assessed after the initial assessment is completed?

A.1. All TA recipients who reside in households with dependent children and who are adults 18 years of age or older, and those children who are 16 and 17 years old who are not attending secondary school and have not completed high school or an equivalency program, must be assessed within 90 days from when the individual is determined eligible for TA. Districts are encouraged to complete employment assessments as soon after an individual has applied for TA as is practicable and to thereafter reassess individual circumstances and activity assignments as circumstances warrant, no less frequently than annually.

Q.2 Can the district sanction an individual who refuses to comply with a work activity assigned in accordance with the employability plan, e.g., basic education, but who is willing to do another work activity, such as work experience?

A.2 Yes. If the district determines that the individual needs the activity assigned to reach self-sufficiency or the assignment is necessary for the district to meet its participation rate, then it can sanction the individual for refusing or failing to comply with the assignment. Of course, the procedure for conciliation must be followed (Section 385.11).

Q.3 What happens to an applicant or recipient who fails willfully and without good cause to attend an assessment?

A.3 Failure to comply with applicant assessment requirements results in denial of the TA application for the household. No conciliation is required. However, in those instances where the individual who failed to comply with applicant assessment requirements is not a legally responsible relative of another member of the assistance unit, only the individual should be denied (individual ineligible) TA. TA eligibility for the remaining household should be determined consistent with existing procedures. For example, a 19 year old individual who is residing with their parent and fails to comply with applicant assessment would be denied TA benefits, but the district would still determine the eligibility of the remaining household members who applied for TA.

A TA recipient who fails to comply with an employment assessment must be offered conciliation and would be subject to an employment sanction in accordance with 18 NYCRR §385.12, in those instances where the district determines that the individual willfully and without good cause failed to comply with employment assessment requirements.

Note: Unlike other employment sanctions which result in a prorata reduction in TA benefits, the change in TA benefits for the household when a non-legally responsible individual willfully and without good cause refuses or fails to comply with TA employment requirements other than applicant assessment or applicant job search would be an incremental reduction to remove the noncompliant individual from the TA budget. The district must notify the household of the employment sanction and the individual would be sanctioned from TA in accordance with the sanction progression for households with dependent children, if the household includes a dependent child or the sanction progression for households without dependent children, if the household does not include a dependent child as identified in 18 NYCRR §385.12. Essential persons receiving TA as part of a Family Assistance case would be considered to be residing in a household with dependent children for the purpose of determining the TA sanction progression under 18 NYCRR 385.12. A recipient who fails to comply with an assessment requirement is subject to the same conciliation and sanction as one who fails to comply with other work activity requirements.

Q.4 Are districts permitted to conduct an employment assessment by telephone if conducting an in-person assessment is not feasible?

A.4 Yes. Districts may conduct a staff-assisted assessment in person or by telephone.