

## § 397.5

### § 397.5 What definitions apply?

(a) The following terms have the meanings given to them in 34 CFR 361.5(c):

- (1) Act;
- (2) Competitive integrated employment;
- (3) Customized employment;
- (4) Designated State unit;
- (5) Extended services;
- (6) Individual with a disability;
- (7) Individual with a most significant disability;
- (8) Individual's representative;
- (9) Individualized plan for employment;
- (10) Pre-employment transition services;
- (11) Student with a disability;
- (12) Supported employment;
- (13) Vocational rehabilitation services; and
- (14) Youth with a disability.

(b) The following terms have the meanings given to them in 34 CFR part 300:

- (1) Local educational agency (§ 300.28);
- (2) State educational agency (§ 300.41); and
- (3) Transition services (§ 300.43).

(c) The following terms have the meanings given to them in 29 CFR 525.3 and section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)):

(1) *Federal minimum wage* has the meaning given to that term in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)); and

(2) *Special wage certificate* means a certificate issued to an employer under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)) and 29 CFR part 525 that authorizes payment of subminimum wages, wages less than the statutory minimum wage.

(d) *Entity* means an employer, or a contractor or subcontractor of that employer, that holds a special wage certificate described in section 14(c) of

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the Fair Labor Standards Act (29 U.S.C. 214(c)).

(Authority: Sections 7, 12(c), and 511(a) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705, 709(c), and 794g(a) and (f); sections 601 and 614(d) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401 and 1414(d); section 901 of the Elementary and Secondary Education Act of 1965, 20 U.S.C. 7801; and sections 6(a)(1) and 14(c) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1) and 29 U.S.C. 214(c))

### Subpart B—Coordinated Documentation Procedures Related to Youth with Disabilities

#### § 397.10 What documentation process must the designated State unit develop?

(a) The designated State unit, in consultation with the State educational agency, must develop a new process, or utilize an existing process, to document the completion of the actions described in § 397.20 and § 397.30 by a youth with a disability, as well as a process for the transmittal of that documentation from the educational agency to the designated State unit, consistent with confidentiality requirements of the Family Education Rights and Privacy Act (20 U.S.C. 1232g(b) and 34 CFR 99.30 and 99.31) and the Individuals with Disabilities Education Act (20 U.S.C. 1417(c) and 34 CFR 300.622).

(1) Such documentation must, at a minimum, contain the—

- (i) Youth's name;
- (ii) Determination made, including a summary of the reason for the determination, or description of the service or activity completed;
- (iii) Name of the individual making the determination or the provider of the required service or activity;
- (iv) Date determination made or required service or activity completed;
- (v) Signature of the designated State unit or educational personnel making the determination or documenting completion of the required services or activity;
- (vi) Date of signature described in paragraph (a)(1)(v) of this section;
- (vii) Signature of designated State unit personnel transmitting documentation to the youth with a disability; and

(viii) Date and method (*e.g.*, hand-delivered, faxed, mailed, emailed, etc.) by which document was transmitted to the youth.

(2) In the event a youth with a disability or, as applicable, the youth's parent or guardian, refuses, through informed choice, to participate in the activities required by this part, such documentation must, at a minimum, contain the—

- (i) Youth's name;
- (ii) Description of the refusal and the reason for such refusal;
- (iii) Signature of the youth or, as applicable, the youth's parent or guardian;
- (iv) Signature of the designated State unit or educational personnel documenting the youth's refusal;
- (v) Date of signatures; and
- (vi) Date and method (*e.g.*, hand-delivered, faxed, mailed, emailed, etc.) by which documentation was transmitted to the youth.

(3) The documentation process must include procedures for the designated State unit to retain a copy of all documentation required by this part in a manner consistent with the designated State unit's case management system and the requirements of 2 CFR 200.333.

(b) The documentation process must ensure that—

(1) A designated State unit provides, in the case of a student with a disability, documentation of completion of appropriate pre-employment transition services, in accordance with § 361.48(a) of this chapter and as required by § 397.20(a)(1);

(2) In the case of a student with a disability, for actions described in § 397.30—

(i) The appropriate school official, responsible for the provision of transition services, must provide the designated State unit documentation of completion of appropriate transition services under the Individuals with Disabilities Education Act, including those provided under section 614(d)(1)(A)(i)(VIII) (20 U.S.C. 1414(d)(1)(A)(i)(VIII));

(ii) The designated State unit must provide documentation of completion of the transition services, as documented and provided by the appropriate school official in accordance

with paragraph (b)(2) of this section, to the youth with a disability.

(c) The designated State unit must provide—

(1) Documentation required by this part in a form and manner consistent with this part and in an accessible format for the youth; and

(2)(i) Documentation required by paragraph (a)(1) of this section to a youth as soon as possible upon the completion of each of the required actions, but no later than—

(A) 45 calendar days after the determination or completion of the required activity or service; or

(B) 90 calendar days, if additional time is necessary due to extenuating circumstances, after the determination or completion of each of the required actions in § 397.20 and § 397.30(a). Extenuating circumstances should be interpreted narrowly to include circumstances such as the unexpected lengthy absence of the educational or designated State unit personnel necessary for the production of the documentation or the transmittal of that documentation due to illness or family emergency, or a natural disaster.

(ii) Documentation required by paragraph (a)(2) of this section, when a youth has refused to participate in an action required by this part, must be provided to the youth within 10 calendar days of the youth's refusal to participate.

(3) When transmitting documentation of the final determination or activity completed, as required by § 397.20 and § 397.30(a), the designated State unit must provide a coversheet that itemizes each of the documents that have been provided to the youth.

(Authority: Sections 12(c) and 511(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794g(d))