



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

June 15, 2015

Janet LaBreck  
U.S. Department of Education  
400 Maryland Avenue SW., Room 5086  
Potomac Center Plaza  
Washington, DC 20202-2800

Docket ID ED-2015-OSERS-0001

Commissioner LaBreck:

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Employment and Training Task Force [hereafter referred to as "the task force"] submit the following comments on the Notice of Proposed Rulemaking RIN 1820-AB70 concerning the State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage.

CCD is a coalition of more than 100 disability rights, advocacy, consumer, and provider organizations representing the 56 million Americans with disabilities. Most of its work is done through task forces and this task force is involved with policies, legislation and regulations affecting the workforce participation of and employment opportunities for people with disabilities.

The task force offers the following comments concerning applicable definitions, scope of vocational rehabilitation services for individuals with disabilities, and limitations on use of subminimum wage. Thank you for the opportunity to comment on these proposed regulations.

**Part 361 – State Vocational Rehabilitation Service Program  
Applicable Definitions (§361.5)**

***(9) Competitive Integrated Employment***

The CCD Employment and Training Task Force recommend that further clarification is necessary in order to determine the effect of the rule on integrated employment options. Some organizations supported the proposed regulatory definition and recommended no changes. Other organizations did not support the regulatory definition and proposed that the definition repeat the statutory language on competitive integrated employment.

The task force was unable to determine whether, under the rule, a "work unit" refers to all employees in a certain job category or program, or to groups of employees working together to accomplish tasks. The task force identified certain categories of employees (such as temporary office workers and certain kinds of contract workers) who regularly interact with others within the work site (including other employees, customers, or vendors), but do not work side by side or in collaboration with others within the same job category. Without further clarification, it is unclear

whether some job placement models - such as agencies that contract with workplaces to place individuals with disabilities in "scattered" positions throughout the workplace - would constitute competitive integrated employment.

**Task Force Recommendation:** The task force asks the Department to issue guidance in the final regulation summary and through follow-up with the designated State units for the VR program to address the definition of "work units" and their impact on the definition of competitive integrated employment.

**(11) Customized Employment**

The task force supports the addition of the regulatory language defining customized employment as the statute requires. The task force appreciates the new option for providing employment services to individuals with significant disabilities. The task force appreciates that the provision of services and supports at the job location is not subject to an arbitrary time limit. Customized employment is another strategy for assisting many individuals in finding competitive integrated employment.

**(15) Employment Outcome**

The task force supports the intent of the agency to eliminate uncompensated outcomes such as homemaker and unpaid family member, as described in the preamble to the NPRM. We support this change and assume that it is being accomplished by striking out "to the greatest extent practicable" from the existing regulations. The proposed regulations however should be clearer about this intent, perhaps by adding a note in the regulation explaining the change. In addition, the task force recognizes the intent of the agency to eliminate uncompensated outcomes such as homemaker and unpaid family member in order to align the definition more clearly with the goal of achieving competitive integrated employment, it is hoped that since the preamble to the proposed rule definition singles out individuals with blindness as being disproportionately impacted, subsequent guidance from the Department will provide greater clarity on how these individuals can still attain necessary services and supports to assist them as they adjust to becoming fully independent and a contributing member of her or his community that may choose employment after fully adjusted to having a disability.

**(19) Extended Services**

The task force supports the allowance for states to provide extended services to youth with significant disabilities for 4 years.

**Task Force Recommendation:** We propose that the agency modify the language to allow a reasonable amount of additional time if needed by the individual. This is consistent with the emphasis in the law on providing individualized services based on the individual's needs.

- The task force recommends instead the following modification:  
Revise §361.5(c)(19)

<b>Proposed Rule (page 21105)</b>	<b>CCD Recommended Language</b>
(19) Extended services means ongoing support services and other appropriate services that are— (i) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in supported employment; (ii) Organized or made available,	(19) Extended services means ongoing support services and other appropriate services that are— (i) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in supported employment; (ii) Organized or made available,

<p>singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment; (iii) Based on the needs of an eligible individual, as specified in an individualized plan for employment; (iv) Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the designated State unit; and (v) Provided to youth with the most significant disabilities by the designated State unit in accordance with requirements set forth in this part and part 363 for a period not to exceed 4 years. The designated State unit may not provide extended services to individuals with the most significant disabilities who are not youth with the most significant disabilities.</p>	<p>singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment; (iii) Based on the needs of an eligible individual, as specified in an individualized plan for employment; (iv) Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the designated State unit; and (v) Provided to youth with the most significant disabilities by the designated State unit in accordance with requirements set forth in this part and part 363 for a period not to exceed 4 years. <i>If necessary, it could be extended for a reasonable period of time (as defined in section 397.20) which must be consistent with the disability-related and vocational needs of the individual.</i> The designated State unit may not provide extended services to individuals with the most significant disabilities who are not youth with the most significant disabilities.</p>
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**(51) Student with a Disability**

**Task Force Recommendation:**

The task force recommends that the definition of student with a disability track the statutory definition and not include the modifier “is a student who.” The task force does not agree that Congress intended to limit these services only to in school youth.

- The task force recommends to strike out the modifier “*is a student who*”

<b>Proposed Rule (page 21108)</b>	<b>CCD Recommended Language</b>
<p>(51) Student with a disability means, in general, an individual with a disability who— (A)(1) Is not younger than the earliest age for the provision of transition services under section 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VIII)); or (2) If the State involved elects to use a lower minimum age for receipt of pre-employment transition services under this Act, is not younger than that minimum age; and (B)(1) Is not older than 21 years of age; or (2) If the State law for the State provides for a higher maximum age for receipt of services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), is not older than that maximum age; and (C)(1) Is eligible for, and receiving, special education or related services under Part B of</p>	<p>(51) Student with a disability means, in general, an individual with a disability who— (A)(1) Is not younger than the earliest age for the provision of transition services under section 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VIII)); or (2) If the State involved elects to use a lower minimum age for receipt of pre-employment transition services under this Act, is not younger than that minimum age; and (B)(1) Is not older than 21 years of age; or (2) If the State law for the State provides for a higher maximum age for receipt of services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), is not older than that maximum age; and (C)(1) Is eligible for, and receiving, special education or related</p>

the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or (2) Is a student who is an individual with a disability, for purposes of section 504.

services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or (2) ~~Is a student who~~ is an individual with a disability, for purposes of section 504.

**(54) Supported Employment Services**

The task force is proposing to strike from the regulation the language that was deleted from the law and replace it with the statutory language. If the Department believes additional clarifying language is needed it should describe what is meant by “if necessary” which should not be the language that was removed from the statute.

- The task force recommends instead the following modification:  
*Revise §361.5(c)(54)*

Proposed Rule (page 21109)	CCD Recommended Language
<p>(54) Supported employment services means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are— (i) Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment; (ii) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; (iii) Provided by the designated State unit for a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and (iv) Following transition, as postemployment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.</p>	<p>(54) Supported employment services means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are— (i) Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment; (ii) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; (iii) Provided by the designated State unit for a period of time not to exceed 24 months, <i>except that period may be extended, if necessary, in order to achieve the employment outcome identified in the individualized plan for employment;</i> <del>unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment;</del> and (iv) Following transition, as postemployment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.</p>

**Requirements for a State Rehabilitation Council (§361.17)**

The task force recommends an addition to and seeks clarification for §361.17, the proposed regulation that outlines requirements for a State Rehabilitation Council under Part 361 (Requirements for a State Rehabilitation Council).

**Task Force Recommendation:** The task force recommends the following modification to §361.17 to better ensure inclusivity of individuals with intellectual disability:

*Amend §361.17 by inserting “(including intellectual disability)” between “cognitive” and “, sensory”*

**Task Force recommendation:** The task force also recommends adding at least one representative of the Councils on Development Disabilities to the Council:

*Amend § 361.17 by inserting “At least one representative of the Councils on Developmental Disabilities established pursuant to Sec. 125 of 42 U.S.C. 15001 et. seq.”*

Proposed Rule (page 21112)	CCD Recommended Language
§361.17(b)(vii)(A) Individuals with physical, cognitive, sensory, and mental disabilities; and	§361.17(b)(vii)(A) Individuals with physical, cognitive (including intellectual disability), sensory, and mental disabilities; and
§361.17(b) <i>Composition</i>	§361.17(b)(xi) <i>At least one representative of the Councils on Developmental Disabilities established pursuant to Sec. 125 of 42 U.S.C. 15001 et. seq.”</i>

**Comprehensive System of Personnel Development (§361.18)**

The task force recommends an addition to and seeks clarification of §361.29 to ensure personnel are adequately qualified (Comprehensive system of personnel development).

**Task Force Recommendation:** The task force recommends the following modification to §361.18 to better ensure personnel are adequately qualified:

*Amend §361.18(c)(B) by inserting “and Demonstrated paid or unpaid experience, for not less than one year, consisting of (i) Direct work with individuals with disabilities in a setting such as an independent living center; (ii) Direct service or advocacy activities that provide such individual with experience and skills in working with individuals with disabilities; or (iii) Direct experience in competitive integrated employment environments as an employer, as a small business owner or operator, in in self-employment, or other experience in human resources or recruitment, or experience in supervising employees, training, or other activities” as found in §361.18(c)(1)(ii)(A)(1), after “and”*

Proposed Rule (page 21115)	CCD Recommended Language
§361.18(c)(B) Attainment of a master’s or doctoral degree in a field of study such as vocational rehabilitation counseling, law, social work, psychology, disability studies, business administration, human resources, special education, management, public administration, or another field that reasonably provides competence in the employment sector, in a disability field, or in both business-related and rehabilitation-related fields; and	§361.18(c)(B)(1) Attainment of a master’s or doctoral degree in a field of study such as vocational rehabilitation counseling, law, social work, psychology, disability studies, business administration, human resources, special education, management, public administration, or another field that reasonably provides competence in the employment sector, in a disability field, or in both business-related and rehabilitation-related fields;

	<p>and</p> <p>(2) Demonstrated paid or unpaid experience, for not less than one year, consisting of</p> <p>(i) Direct work with individuals with disabilities in a setting such as an independent living center;</p> <p>(ii) Direct service or advocacy activities that provide such individual with experience and skills in working with individuals with disabilities; or</p> <p>(iii) Direct experience in competitive integrated employment environments as an employer, as a small business owner or operator, in in self-employment, or other experience in human resources or recruitment, or experience in supervising employees, training, or other activities; and</p>
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**Task Force Recommendation:** The task force recommends the following modification to §361.18 to better ensure personnel are adequately qualified:

*Amend §361.18(2)(ii)(A) by inserting “, including the medical and social models of disability” after disabilities*

Proposed Rule (page 21115)	CCD Recommended Language
§361.18(2)(ii)(A) Understanding the medical and psychosocial aspects of various disabilities;	§361.18(2)(ii)(A) Understanding the medical and psychosocial aspects of various disabilities, including the medical and social models of disability;

Similarly, the task force recommends that the same personnel standards apply to contractors engaged in documentation review as noted in §397.50 (What is the role of the designated State unit in the review of documentation process under this part?)

**Task Force Recommendation:** The task force recommends the following modification to §397.50 to better ensure personnel are adequately qualified:

*Amend §397.5 by inserting “If a contractor is used to engage in the review of individual documentation as noted in §397.5, that contractor must meet the same personnel standards designated in §361.18(c).” after “part.”*

Proposed Rule (page 21146)	CCD Recommended Language
§397.5 The designated State unit, or a contractor working directly for the designated State unit is authorized to engage in the review of individual documentation required under this part that is maintained by entities, as defined at 397.5(d), under this part.	§397.5 The designated State unit, or a contractor working directly for the designated State unit is authorized to engage in the review of individual documentation required under this part that is maintained by entities, as defined at 397.5(d), under this part.

	(a) If a contractor is used to engage in the review of individual documentation as noted in §397.5, that contractor must meet the same personnel standards designated in §361.18(c).
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**Statewide Assessment** (§361.29)

The task force recommends an addition to and seeks clarification of §361.29 to ensure objective assessment of state vocational rehabilitation services (Statewide Assessment; annual estimates; annual State goals and priorities; strategies; and progress reports).

**Task Force Recommendation:** The task force recommends the following modification to §361.29 to better ensure an objective comprehensive statewide assessment:

*Amend §361.29(a)(1) by inserting “an independent and” between “results of” and “comprehensive”*

Proposed Rule (page 21119)	CCD Recommended Language
§361.29(a)(1) The results of a comprehensive statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the state has one) every three years.	§361.29(a)(1) The results of <b>an independent and</b> comprehensive statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the state has one) every three years.

**Innovation and expansion activities** (§361.35)

*Propose § 361.35* would clarify that the State must reserve a portion of its VR program funds to support the resource plan for the Statewide Independent Living Council, but it may choose not to use these funds if the Statewide Independent Living Council and the State decide to use other available resources to fund the resource plan for the Statewide Independent Living Council.

**Task Force Recommendation:** We are concerned that this provision may be used by the state in ways contrary to the intent of the law. As recognized by the department, “This statutory provision remains unchanged by WIOA”. The law is unchanged, the rule should remain unchanged. We recommend to strike out the *Propose § 361.35*.

This proposed change is consistent with the Department’s longstanding interpretation of section 101(a)(18) of the Act and current § 361.35. In the case of the State Rehabilitation Council, there is no other funding source available under the Act to support its resource plan. The funds for the State Rehabilitation Council must come from this section. On the other hand, the Statewide Independent Living Council has multiple funding sources that may be used to support the resource plan, including independent living funds under title VII, part B, of the Act; State-appropriated independent living funds; and other public and private sources, to the extent allowable by those sources. Therefore, our interpretation of the requirement has been that the State and the Statewide Independent Living Council may decide in the resource plan of the Statewide Independent Living Council to use funds under this section, but do not have to use these funds. They can use other sources of available funding to fund the Statewide Independent Living Council resource plan. This interpretation would have minimal impact on States since not all States use innovation and expansion funds to support the resource plan of the Statewide Independent Living Council.

**Ability to serve all eligible individual; Order of selection for services (§361.36)**

361.36(a)(3)(v) states whether the designated State unit will elect to serve, in its discretion, eligible individuals (whether or not the individuals are receiving vocational rehabilitation services under the order of selection) who require specific services or equipment to maintain employment, notwithstanding the assurance provided pursuant to paragraph (3)(iv)(A) of this section.

**Task Force Recommendation:**

The task force is concerned that the flexibility provided to the designated state unit, if used frequently, would make the order of selection meaningless. The task force recommends that the use of this be monitored at the state level. The State Rehabilitation Council reviews the state's order of selection policies and should be provided with information about how this policy is being implemented by the state and whether changes are needed.

**Task Force Recommendation:** The task force recommends the following modification to §361.36(f)

<b>Proposed Rule (page 21121)</b>	<b>CCD Recommended Language</b>
361.36(f) State Rehabilitation Council (f) State Rehabilitation Council. The designated State unit must consult with the State Rehabilitation Council, if the State unit has a Council, regarding the— (1) Need to establish an order of selection, including any reevaluation of the need under paragraph (c)(2) of this section; (2) Priority categories of the particular order of selection; (3) Criteria for determining individuals with the most significant disabilities; and (4) Administration of the order of selection.	361.36(f) State Rehabilitation Council (f) State Rehabilitation Council. The designated State unit must consult with the State Rehabilitation Council, if the State unit has a Council, regarding the— (1) Need to establish an order of selection, including any reevaluation of the need under paragraph (c)(2) of this section; (2) Priority categories of the particular order of selection; (3) Criteria for determining individuals with the most significant disabilities; and (4) Administration of the order of selection <i>including the use of the discretionary authority to provide services and equipment to individuals to maintain employment.</i>

**Assessment for determining eligibility and priority for services (§361.42)**

361.42(a)(2) Presumption of benefit. The designated State unit must presume that an applicant who meets the eligibility requirements in paragraphs (a)(1)(i) and (ii) of this section can benefit in terms of an employment outcome.

**Task Force Recommendation:**

The task force supports the regulatory language that mirrors the language in the law regarding the presumption of benefit. The task force urges the Department to clarify that this is a shift away from spending significant time and resources determining whether the severity of a person's disability is too severe to achieve an employment outcome. The law still allows that outcome but it should be used infrequently, given the assumptions in the Act that people can achieve competitive, integrated, employment. The task force urges the states to presume ability and severely limit the use of the trial work experiences for individuals with significant disabilities found in 361.42 (e). The trial work experience is intended to be a safeguard to ensure that people who have a significant disability and need services have this avenue to access services. However, this should not become a widespread practice. This safeguard could be strengthened with the following modifications to 361.42 (e) (2)(iii):



Proposed Rule (page 21125)	CCD Recommended Language
(iii) Trial work experiences must be of sufficient variety and over a sufficient period of time for the designated State unit to determine that there is sufficient evidence to conclude that the individual cannot benefit from the provision of vocational rehabilitation services in terms of a competitive integrated employment outcome; and	(iii) Trial work experiences must be of sufficient variety and over a sufficient period of time for the designated State unit to determine that there is <del>sufficient</del> <i>clear and convincing</i> evidence to conclude that the individual cannot benefit from the provision of vocational rehabilitation services in terms of a competitive integrated employment outcome; and

Clear and convincing evidence is a much stronger standard. State agencies should be familiar with the meaning of the standard and the high bar it sets, as described in the note on page 21125. This is an important consumer protection for the very limited number of people who may need to use the trial work experience to prove they can benefit from services, despite the severity of the disability. In determining that there is clear and convincing evidence that an individual cannot benefit from the provision of vocational rehabilitation services in terms of a competitive integrated employment outcome, the State unit must ensure that the individual has received all services and supports necessary to perform the work in each trial work experience. Supported employment services that are provided during these trial work periods must reflect evidence-based practices. It cannot be concluded that an individual is unable to benefit from vocational rehabilitation services if such services would assist the individual to perform the tasks essential to any job.

***Scope of Vocational Rehabilitation Services for Individuals with Disabilities (§361.48)***

***Pre-Employment Transition Services***

The task force strongly supports the pre-employment transition provisions in the law and regulation. The task force had advocated for an increased emphasis on the provision of services to youth with disabilities to attain employment outcomes. The task force agrees with the interpretation by the Administration that the students with disabilities being provided pre-employment transition services do not need to apply for VR services. The task force recognizes that many of the critical provisions in the NPRM mirror the law including:

- The required and authorized activities under pre-employment transition services;
- The prohibition against using the reservation of funds for pre-employment transition services on administrative costs;
- The requirement that these provisions do not supplant or replace the transitions services authorized by the IDEA.

The task force urges the Department to maintain and enforce these provisions.

***Required activities***

*Proposed §361.48(a)(2) Required activities* would specify the required pre-employment transition services that are provided directly to students with disabilities.

**Task Force Recommendation:** The task force recommends the following modification to §361.48(a)(2)(v) to clarify who is qualified to deliver self-advocacy training.

*Amend §361.48(a)(2)(v) by inserting “and is delivered by a recognized self-advocate leader or recognized self-advocacy group” after employment).*

Proposed Rule (page 21129)	CCD Recommended Language
§361.48(a)(2)(v) Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).	§361.48(a)(2)(v) Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment), <b>and is delivered by a recognized self-advocate leader or recognized self-advocacy group of the individual's choosing.</b>

**What are the responsibilities of a local educational agency to youth with disabilities who are known to be seeking subminimum wage employment? (§397.30)**

The task force recommends a modification and an addition within §397.30 under Subpart D, which describes the responsibilities of local educational agencies in documenting that a youth has received transition services.

**Task Force Recommendation:** The task force recommends the following modification to proposed §397.30:

*Amend §397.30 by deleting “who are known to be seeking subminimum wage employment”*

**Task Force Recommendation:** The task force recommends the following addition to §397.30 related to retention and availability of the local educational agency documentation.

*Amend § 397.5(b)(1) by inserting at the end the following: “The local educational agency shall retain copies of such documentation, including for review by the Client Assistance Program established under 34 CFR part 370 or a Protection and Advocacy agency established under 42 U.S.C. 15041 et. seq.”*

Proposed Rule (pages 21145 & 21146)	CCD Recommended Language
§ 397.30 What are the responsibilities of a local educational agency to youth with disabilities who are known to be seeking subminimum wage employment?  Of the documentation to demonstrate a youth with a disability’s completion of the actions described in §397.20(a) of this part, a local educational agency, as defined in §397.5(b)(1), can provide the youth with documentation that the youth has received transition services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), such as transition services available to the individual under section 614(d) of that act	§ 397.30 What are the responsibilities of a local educational agency to youth with disabilities <del>who are known to be seeking subminimum wage employment?</del>  Of the documentation to demonstrate a youth with a disability’s completion of the actions described in §397.20(a) of this part, a local educational agency, as defined in § 397.5(b)(1), can provide the youth with documentation that the youth has received transition services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), such as transition services available to the individual under section 614(d) of that act (20 U.S.C. 1414(d)). <b>The local educational agency shall retain copies</b>

(20 U.S.C. 1414(d)).	of such documentation, including for review by the Client Assistance Program established under 34 CFR part 370 or a Protection and Advocacy agency established under 42 U.S.C. 15041 et. seq.
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**§3971. Are there any contracting limitations on educational agencies under this part?**

The task force recommends an addition to and seeks clarifying guidance for §397.31, the proposed regulation that outlines contracting limitations on educational agencies under Part 397 (Limitations on the Use of Subminimum Wages).

**Task Force Recommendation:** The task force recommends the following modification to §397.31 to better ensure congressional intent:

*Amend §397.31 by inserting “, subcontract” between “contract” and “or other arrangements”*

Proposed Rule (page 21146)	CCD Recommended Language
<p>§397.31 Are there any contracting limitations on educational agencies under this part?</p> <p>Neither a local educational agency, as defined in §397.5(b)(1), nor a State educational agency, as defined in §397.5(b)(2), may enter into a contract or other arrangement with an entity, as defined in § 397.5(d), for the purpose of operating a program under which a youth with a disability is engaged in subminimum wage employment.</p>	<p>§397.31 Are there any contracting limitations on educational agencies under this part?</p> <p>Neither a local educational agency, as defined in §397.5(b)(1), nor a State educational agency, as defined in §397.5(b)(2), may enter into a contract, <b>subcontract</b> or other arrangement with an entity, as defined in § 397.5(d), for the purpose of operating a program under which a youth with a disability is engaged in subminimum wage employment. Nothing in this statute should be interpreted as precluding other types of contracts, subcontract or other arrangement with an entity, as defined in § 397.5(d), for other than operating a program under which a youth with a disability is engaged in subminimum wage employment.</p>

**Task Force Recommendation:** In follow up to the Department’s request (NPRM page 21090) for comments “ regarding the Department’s role and jurisdiction” with respect to the contracting limitation (§397.31), the task force asks the Department to issue guidance to local and State educational agencies that makes clear that contracting prohibitions with an entity, as defined in §397.5(d), only applies to contracts for the purposes of operating a program under which a youth with disability is engaged in subminimum wage employment. While this distinction appears clear in the statute and proposed regulation, we are aware of and concerned about misinterpretation and/or misrepresentation about the contracting limitations at the state and local levels.

*Clarify in the final regulation summary and issue follow-up guidance to State educational agencies and designated State units that the contracting limitation (§397.31) does not in any way prevent a*

*local and State educational agency from entering into a contract with an entity, as defined in §397.5(d), for transition and pre-employment transition services aimed at developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently, participate in postsecondary education experiences, and obtain and retain competitive integrated employment.*

Sincerely,

American Network of Community Options and Resources  
Association of Assistive Technology Act Programs (ATAP)  
Association of University Centers on Disabilities  
Autistic Self Advocacy Network  
Best Buddies International, Inc.  
Easter Seals Inc.  
Goodwill Industries International, Inc.  
Mental Health America  
National Association of Councils on Developmental Disabilities  
National Down Syndrome Congress  
National Organization on Disability  
Lutheran Services in America Disability Network  
Paralyzed Veterans of America  
RespectAbility  
SourceAmerica  
The Arc of the United States  
The National Council on Independent Living  
United Spinal Association