

84.128 Migrant & Seasonal Farm Workers 34CFR PART 369

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TITLE 34--EDUCATION

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Authority: 29 U.S.C. 711(c), 732, 750, 777(a)(1), 777b, 777f and 795g, unless otherwise noted.

Source: 46 FR 5417, Jan. 19, 1981, unless otherwise noted.

(a) These programs provide financial assistance for the support of special project activities for providing vocational rehabilitation

services and related services to individuals with disabilities and other persons.

(b) The Secretary awards financial assistance through the following programs--

(1) Vocational Rehabilitation Service Projects for American Indians with Disabilities (34 CFR part 371).

(2) Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities.

(3) Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers with Disabilities.

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(4) Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youths with Disabilities (34 CFR part 376).

(5) Projects for Initiating Special Recreation Programs for Individuals with Disabilities.

(6) Projects with Industry (34 CFR part 379).

(Authority: Secs. 112, 130, 305, 308, 311a, 311(a)(3), 311(a)(4), 312, 316, and 621 of the Act; 29 U.S.C. 732, 750, 775, 776, 777(a)(1), 777(a)(3), 777(a)(4), 777(b), 777f, and 795g)

[46 FR 5417, Jan. 19, 1981, as amended at 50 FR 9962, Mar. 12, 1985; 51 FR 3895, Jan. 30, 1986; 53 FR 17142, 17143, May 13, 1988; 59 FR 8335, Feb. 18, 1994; 62 FR 10403, Mar. 6, 1997]

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Subpart A_General

Sec. 369.2 Who is eligible for assistance under these programs?

(a) Vocational rehabilitation service projects for American Indians with disabilities. Governing bodies of Indian tribes and consortia of those governing bodies located on Federal and State reservations are eligible for assistance to support projects for providing vocational rehabilitation services to American Indians with disabilities.

(Authority: Sec. 130 of the Act; 29 U.S.C. 750)

(b) Special projects and demonstrations for providing vocational rehabilitation services to individuals with disabilities. States and

public and other nonprofit agencies and organizations are eligible for expanding or otherwise improving vocational rehabilitation services to individuals with disabilities.

(Authority: Sec. 311(a)(1) of the Act; 29 U.S.C. 777(a)(1))

(c) Vocational rehabilitation service projects for migratory agricultural workers and seasonal farmworkers with disabilities. State vocational rehabilitation agencies, local agencies administering vocational rehabilitation programs under written agreements with State agencies, and nonprofit agencies working in collaboration with State vocational rehabilitation agencies are eligible for assistance to support projects for providing vocational rehabilitation services to migratory agricultural workers or seasonal farmworkers with disabilities.

(Authority: Sec. 312 of the Act; 29 U.S.C. 777(b))

(d) Projects for initiating special recreation programs for individuals with disabilities. State and other public agencies and private nonprofit agencies and organizations are eligible for assistance to support projects for initiating special recreation programs for individuals with disabilities.

(Authority: Sec. 316 of the Act; 29 U.S.C. 777(f))

(e) Projects with industry. Any designated State unit, labor union, community rehabilitation program provider, Indian tribe or tribal organization employer, trade association, or other agency or organization with the capacity to create and expand job and career opportunities for individuals with disabilities is eligible for assistance to support a project with industry.

(Authority: Sec. 621 of the Act; 29 U.S.C. 795(g))

(f) Special projects and demonstrations for providing transitional rehabilitation services to youths with disabilities. State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Authority: Sec. 311(c) of the Act; 29 U.S.C. 777a(c))

[46 FR 5417, Jan. 19, 1981, as amended at 50 FR 9962, Mar. 12, 1985; 51 FR 3895, Jan. 30, 1986; 53 FR 17142, 17143, May 13, 1988; 59 FR 8335, Feb. 18, 1994; 62 FR 10403, Mar. 6, 1997]

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Sec. 369.3 What regulations apply to these programs?

The following regulations apply to the programs listed in Sec. 369.1(b):

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities); except the part 79 does not apply to the Vocational Rehabilitation Service Program for American Indians with Disabilities.

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(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act--Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 369.

(c) The regulations in 34 CFR parts 371, 372, 373, 374, 375, 376, 378, and 379, as appropriate.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

[51 FR 3895, Jan. 30, 1986, as amended at 55 FR 21714, May 25, 1990; 59 FR 8335, Feb. 18, 1994]

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Subpart A_General

Sec. 369.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR part 77 apply to the programs under Vocational Rehabilitation Service Projects--

Applicant
Application
Award
Budget Period
Department
EDGAR
Nonprofit
Profit
Project Period
Public
Secretary
Work of Art

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(b) The following definitions also apply to programs under Vocational Rehabilitation Service Projects:

Act means the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), as amended.

Community rehabilitation program means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement--

(1) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(2) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(3) Recreational therapy;

(4) Physical and occupational therapy;

- (5) Speech, language and hearing therapy;
- (6) Psychiatric, psychological and social services, including positive behavior management;
- (7) Assessment for determining eligibility and vocational rehabilitation needs;
- (8) Rehabilitation technology;
- (9) Job development, placement, and retention services;
- (10) Evaluation or control of specific disabilities;
- (11) Orientation and mobility services for individuals who are blind;
- (12) Extended employment;
- (13) Psychosocial rehabilitation services;
- (14) Supported employment services and extended services;
- (15) Services to family members when necessary to the vocational rehabilitation of the individual;
- (16) Personal assistance services; or
- (17) Services similar to the services described in paragraphs (1) through (16) of this definition.

(Authority: Sec. 7(25) of the Act; 29 U.S.C. 706(25))

Employment outcome means entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, the practice of a profession, self-employment, homemaking, farm or family work (including work for which payment is in kind rather than cash), extended employment in a community rehabilitation program, supported employment, or other gainful work.

(Authority: Sec 7(5) of the Act; 29 U.S.C. 706(5))

Individual who is blind means a person who is blind within the meaning of the

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law relating to vocational rehabilitation in each State.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Individual with a disability means any individual who--

- (1) Has a physical or mental impairment that for that individual constitutes or results in a substantial impediment to employment; and
- (2) Can benefit in terms of an employment outcome from vocational rehabilitation services provided under title I, III, VI, or VIII of the Act.

(Authority: Sec. 7(8)(A) of the Act; 29 U.S.C. 706(8)(A))

Individual with a severe disability means an individual with a disability--

- (1) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- (2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of

time; and

(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle-cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined to cause comparable substantial functional limitation.

(Authority: Sec. 7(15)(A) of the Act; 29 U.S.C. 706(15)(A))

Physical and mental restoration services means--

(1) Medical or corrective surgical treatment for the purpose of correcting or modifying substantially a physical or mental condition that is stable or slowly progressive and constitutes a substantial impediment to employment and that is likely, within a reasonable period of time, to be corrected or substantially modified as a result of the medical or surgical treatment;

(2) Diagnosis and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(3) Dentistry;

(4) Nursing services;

(5) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(6) Convalescent or nursing home care;

(7) Drugs and supplies;

(8) Prosthetic, orthotic, or other assistive devices, including hearing aids essential to obtaining or retaining employment;

(9) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by qualified persons under State licensure laws, that are selected by the individual;

(10) Podiatry;

(11) Physical therapy;

(12) Occupational therapy;

(13) Speech and hearing therapy;

(14) Psychological services;

(15) Therapeutic recreation services;

(16) Medical or medically related social work services;

(17) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment;

(18) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial

kidneys, and supplies; and

(19) Other medical or medically related rehabilitation services, including art therapy, dance therapy, music therapy, and psychodrama.

(Authority: Sec. 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

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Physical or mental impairment means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Authority: Sec. 7(8)(A) of the Act; 29 U.S.C. 706(8)(A))

Reservation means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Authority: Sec. 130(c) of the Act; 29 U.S.C. 750(c))

State agency means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: Sec. 7(3)(A) and 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

State plan means the State plan for vocational rehabilitation services. (34 CFR part 361)

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

State unit, State vocational rehabilitation unit or designated State unit means either--

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency that has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Authority: Sec. 7(3) of the Act; 29 U.S.C. 706(3))

Substantial impediment to employment means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) significantly restricts an individual's occupational performance by preventing his preparing for, obtaining, or retaining employment consistent with his capacities and abilities.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Vocational rehabilitation services: (1) When provided to an individual, means any goods or services necessary to render an individual with a disability employable, including, but not limited to, the following--

(i) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(ii) Counseling, guidance, and work-related placement services for individuals with disabilities, including job search assistance, placement assistance, job retention services, personal assistance services, and follow-up, follow-along, and specific diagnosis services necessary to assist such individuals to maintain, regain, or advance in employment;

(iii) Vocational and other training services for individuals with disabilities, including personal and vocational adjustment, books, or other training materials;

(iv) Services to the families of such individuals with disabilities, if necessary to the adjustment or rehabilitation of such individuals;

(v) Physical and mental restoration services;

(vi) Maintenance for additional costs incurred while participating in rehabilitation;

(vii) Interpreter services and note-taking services for individuals who are deaf, including tactile interpreting for individuals who are deaf-blind;

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(viii) Reader services and note-taking services for those individuals who are determined to be blind after an examination by qualified personnel under State licensure laws;

(ix) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety and law enforcement, and other appropriate service employment;

(x) Rehabilitation teaching services and orientation and mobility services for individuals who are blind;

(xi) Occupational licenses, tools, equipment, and initial stocks and supplies;

(xii) Transportation in connection with the rendering of any vocational rehabilitation service;

(xiii) Telecommunications, sensory, and other technological aids and devices;

(xiv) Rehabilitation technology services;

(xv) Referral and other services designed to assist individuals with disabilities in securing needed services from other agencies;

(xvi) Transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives;

(xvii) On-the-job or other related personal assistance services provided while an individual with a disability is receiving vocational

rehabilitation services; and

(xviii) Supported employment services.

(Authority: Sec. 103(a) of the Act; 29 U.S.C. 723(a))

(2) When provided for the benefit of groups of individuals, Vocational rehabilitation services also means--

(i) In the case of any type of small business enterprise operated by individuals with the most severe disabilities under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;

(ii) The establishment, development, or improvement of community rehabilitation programs, including, under special circumstances, the construction of a rehabilitation facility to provide services that promote integration and competitive employment;

(iii) The provision of services, including services provided at community rehabilitation programs, that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized written rehabilitation program of any one individual with disabilities;

(iv) The use of existing telecommunications systems;

(v) The use of services providing recorded material for persons who are blind and captioned films or video cassettes for persons who are deaf; and

(vi) Technical assistance and support services to businesses that are not subject to title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals with disabilities.

(Authority: Sec. 103(b) of the Act; 29 U.S.C. 723(b))

[46 FR 5417, Jan. 19, 1981, as amended at 50 FR 38630, Sept. 23, 1985; 53 FR 17143, May 13, 1988; 59 FR 8335, Feb. 18, 1994]

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Subpart C_How Does One Apply for a Grant?

Sec. 369.20 What are the application procedures for these programs?

The Secretary gives the appropriate State vocational rehabilitation unit an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are in EDGAR Sec. Sec. 75.155-75.159.

(Authority: Sec. 12)(c) of the Act; 29 U.S.C. 711(c))

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Sec. 369.21 What application requirement applies to these programs?

Each applicant for a grant under a program covered by this part must include in its application a description of the manner in which it will address the

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needs of individuals with disabilities from minority backgrounds.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: Sec. 21(b)(5) of the Act; 29 U.S.C. 718b)

[59 FR 8337, Feb. 18, 1994, as amended at 62 FR 10403, Mar. 6, 1997]

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Sec. 369.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR part 75.

(Authority: 29 U.S.C. 711(c))

[62 FR 10404, Mar. 6, 1997]

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Sec. 369.32 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria used in accordance with the procedures in 34 CFR part 75, the Secretary, in making awards under these programs, considers such factors as--

- (a) The geographical distribution of projects in each program category throughout the country; and
- (b) The past performance of the applicant in carrying out similar activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(a)).

[46 FR 5417, Jan. 19, 1981, as amended at 51 FR 3895, Jan. 30, 1986; 62 FR 10404, Mar. 6, 1997]

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Sec. 369.42 What special requirements affect provision of services to individuals with disabilities?

(a) Vocational rehabilitation services provided in projects assisted under these programs must be provided in the same manner as services provided under the State plan for vocational rehabilitation services under 34 CFR part 361.

(b) Each grantee under a program covered by this part must advise applicants for or recipients of services under its project, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the State's Client Assistance Program, including information on seeking assistance from that program.

(Authority: Secs. 20 and 306(h) of the Act; 29 U.S.C. 718a and 776(h))

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Sec. 369.43 What are the affirmative action plan requirements affecting grantees?

A recipient of Federal assistance must develop and implement an affirmative action plan to employ and advance in employment qualified individuals with disabilities. This plan must provide for specific action steps, timetables, and complaint and enforcement procedures necessary to assure affirmative action.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

[46 FR 5417, Jan. 19, 1981, as amended at 53 FR 17144, May 13, 1988; 59 FR 8335, Feb. 18, 1994]

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Sec. 369.45 What are the special requirements pertaining to the membership of project advisory committees?

If an advisory committee is established under a project, its membership must include persons with disabilities

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or their representatives and other individuals to be assisted within the

project, providers of services, and other appropriate individuals.
(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))
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Sec. 369.46 What are the special requirements pertaining to the
protection, use, and release of personal information?

(a) All personal information about individuals served by any project
under this part, including lists of names, addresses, photographs, and
records of evaluation, must be held confidential.

(b) The use of information and records concerning individuals must
be limited only to purposes directly connected with the project,
including project evaluation activities. This information may not be
disclosed, directly or indirectly, other than in the administration of
the project unless the consent of the agency providing the information
and the individual to whom the information applies, or his or her
representative, have been obtained in writing. The Secretary or other
Federal or State officials responsible for enforcing legal requirements
have access to this information without written consent being obtained.
The final product of the project may not reveal any personal identifying
information without written consent of the individual or his or her
representative.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))
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Sec. 369.47 What are the special requirements affecting the collection of data from State agencies?

If the collection of data is necessary either from individuals with disabilities being served by two or more State agencies or from employees of two or more of these agencies, the project director must Submit requests for the data to appropriate representatives of the affected agencies, as determined by the Secretary. This requirement also applies to employed project staff and individuals enrolled in courses of study supported under this part.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

[46 FR 5417, Jan. 19, 1981, as amended at 53 FR 17144, May 13, 1988; 59 FR 8335, Feb. 18, 1994. Redesignated at 59 FR 8337, Feb. 18, 1994]