New Mexico Commission for the Blind

MINUTES (Draft)

Regular Meeting Held Virtually

February 8, 2023 - 9:00 AM

1. Call to Order

Chairperson Lansing called the meeting to order at 9:01 AM.

2. Roll Call

Chairperson Lansing took roll, and Art Schreiber, Robert Reidy, and Urja Lansing were present.

3. Introduction of Guests and Staff

Staff included Greg Trapp, Executive Director; Jim Salas, Deputy Director for Vocational Rehabilitation and Independent Living; Patricia Savage, Executive Secretary; Kelly Burma, Skills Center Coordinator and SRC Liaison; Kevin Romero, Deputy Director for Finance and Administration; Jamie Sibson, Director of the Orientation Center; Daphne Mitchell, Vocational Rehabilitation Program Manager; Audrey Trujillo, Information Technology Manager; and Lucy Mallahan, Special Projects Manager. Also present was John Kreienkamp, Assistant Attorney General and Counsel to the Commission.

4. Approval of Possible Changes to the Agenda Order and Tabling of Agenda Items

There were no changes to the agenda.

5. Approval of Minutes for the Meeting of November 17, 2022

Dr. Reidy motioned to approve the November 17, 2022 minutes, and Mr. Schreiber seconded the motion. A roll call vote was taken, and the minutes were approved with Mr. Schreiber, Dr. Reidy and Chairperson Lansing all voting yes.

6. Chair Report, Shirley “Urja” Lansing

Chairperson Lansing said she attended the House Appropriations and Finance Committee meeting on January 24. She said Director Trapp did an excellent job explaining how the Commission manages its funds. Chairperson Lansing said she attended virtually the first part of the SRC meeting on January 26.

7. Director's Report, Greg Trapp

a. Major Trends and Developments, Greg Trapp

Mr. Trapp said he was sad to report the passing of Kathy Molina, saying she drove for the Commission for 23 years before she retired in 2021. He said the Commission appreciates her service, and our thoughts go out to her family.

Mr. Trapp said he is also sad to report the Commission will be losing John Kreienkamp as its Assistant Attorney General. Mr. Trapp said Mr. Kreienkamp has been a really great asset to the Commission. Mr. Schreiber agreed.

Mr. Kreienkamp thanked Mr. Trapp and Mr. Schreiber, and said it has been a pleasure being council to the Commission for the past five and a half years. He said he will miss everyone and the Commission.

Mr. Trapp said the month of February has been declared as Age-Related Macular Degeneration Awareness Month by Governor Lujan Grisham. Mr. Trapp asked Ms. Burma to read the proclamation. Ms. Burma read the proclamation, and Mr. Trapp thanked Ms. Burma for reading the proclamation. Mr. Trapp asked Chairperson Lansing for permission to attach a copy of the proclamation to the meeting minutes, and Chairperson Lansing agreed.

Mr. Trapp said he is distributing the proclamation and is planning to submit a guest column for the Albuquerque Journal.

Mr. Trapp said a study has come out saying people with age-related macular degeneration are at a higher risk of severe illness due to COVID, a risk that is higher than the risk factors of obesity and diabetes.

Dr. Reidy said he was pleased that the Commission is keeping awareness about macular degeneration in the public eye. He said there are demonstrable benefits of early diagnosis with respect to the medical intervention that is currently available.

Mr. Trapp said he is thrilled to have Jamie Sibson joining the agency as the new director of the Orientation Center. He welcomed Ms. Sibson and Ms. Sibson thanked Mr. Trapp for her welcoming.

Mr. Trapp said the House Appropriation and Finance Committee hearing was held on January 24. He said the Commission is not seeking an increase in general funds due to the large general fund balance. He said the fund balance is primarily due to the Commission’s receipt of program income. He said program income is what the Commission receives when consumers go off of social security disability benefits because of the vocational rehabilitation services they received. He said the agency is reimbursed by the Social Security Administration. He said program income has been going up due to higher wages and increased availability of health insurance. He said the agency is also using the Vocational Rehabilitation Client Earnings Report, which became available in May of 2020. He said the VRCER report allows the agency to receive reimbursements for cases that were closed and were no longer being tracked. He said the Commission’s program income has doubled and is now almost $450,000. He said the Commission asked the legislature for the authority to spend $400,000 in fund balance. He said the Commission plans to use that to hire an additional independent living teacher and to purchase better assistive technologies that we can make available such as desk size video magnifiers. Mr. Trapp said the Commission receives a positive recommendation from the Committee.

Mr. Trapp said he has been working with the Council of State Administrators of Vocational Rehabilitation, as well as the Vocational Rehabilitation Technical Assistance Center to provide information and education about program income. He said the critical issue is how program income is spent. He said he presented last Wednesday at the monthly CSAVR membership call about the monitoring workgroup. He said he talked about how agencies can expect to receive more program income, how they must be preparing to expend that program income, and how the receipt of more program income will inhibit VR spending.

Mr. Trapp said the State of New Mexico received a program determination letter that closed an audit finding issue with the Division of Vocational Rehabilitation related to the spending of the Pre-Employment Transition Services reserve. He said the program determination letter dealt with DVR not having met the 15 percent Pre-ETS reserve. He said the 15 percent reserve is a statewide requirement, which is why the Commission was copied. He said Chairperson Lansing also received the letter. He said it is an agenda item and will be covered later on in the agenda.

Mr. Trapp said February 2 was the date on which all State employees were required to physically return to work. He said all Commission employees are in their offices and providing services in-person.

Dr. Reidy commented on Mr. Trapp’s presentation at the House Appropriations and Finance Committee meeting, saying it was spectacular. He said Mr. Trapp explained a complex economic situation well, and it was clear, concise, and very effective.

Mr. Trapp said it was a difficult issue and he wanted to explain it in the way that also described the Commission’s services. He said the ability of the Commission to access its fund balance is going to help the Commission grow its program and do it in a way that leverages resources.

b. Administration and Finance, Kevin Romero

Mr. Romero said as of February 8, the Commission has expended $8,724,907and has encumbrances totaling $748,829. He said that this is a 7.5 percent increase in expenditures and encumbrances from February 2022 to February 2023. He said since the Commission began more in-person work more services are being provided to consumers. Mr. Romero said the remaining budget is $7,333,964, or 43.6 percent of the budget. He said the Commission is on track with where it should be in the fiscal year, and that projections indicate that the Commission will finish the year with the budget about $875,000 to about $1 million in the black. He said most of that is in the 200 or personnel category.

Mr. Romero said FY23 was a 50 percent year, and the Commission complied with the 50 percent rule. He said the rule is that the Commission could not expend or encumber more than 50 percent of its budget by December 31.

Mr. Romero said most of the projected budget balance is in the 200 category and is due to vacancies, turnovers and retirements. He said the Commission has 21 vacant positions, 12 of which are EXOT and nine of which are classified. He said this gives the agency a vacancy rate of 23.1 percent. He said the classified vacancy rate is 14.6 percent. He said the Commission is actively recruiting to fill seven of the nine classified positions and two of the EXOT positions. He said upon filling these positions the Commission will have a vacancy rate of around 13.3 percent.

Mr. Romero said the SFY22 audit has been completed and reviewed by the Office of the State Auditor. He said the audit was publicly released on January 19. He said a meeting is being planned for the audit to be presented to the Commission and at that time the Office of the State Auditor will present the final audit report. He said the Commission did have an unmodified opinion which is the highest opinion any agency can get and had no audit findings.

Mr. Romero said the Commission requested capital outlay requests for statewide renovations and repairs to its facilities in the amount of $835,257 over the course of four years. He said $300,705 is for FY24 and is currently being discussed during the legislative session. He said the Commission’s request is moving through the process and the amount has not been reduced. He said as Executive Director Trapp reported, the Commission had its House Appropriation and Finance Committee hearing, and that everything went well. He said that there were minor language adjustments that needed to be made between the Executive and the Legislative.

Chairperson Lansing thanked Mr. Romero and his staff for the incredible job they do keeping the Commission on track with the superb audit report over the recent years. Mr. Schreiber also thanked Mr. Romero and his staff and Mr. Trapp and his staff for a job well done. Mr. Romero thanked Ms. Lansing and Mr. Schreiber for their comments, and Mr. Trapp said the Commission has a great team and thanked the Commissioners for their comments.

c. Independent Living and Vocational Rehabilitation, Jim Salas

Mr. Salas said Emily Martin is the new VR Counselor in Roswell, coming to the agency with six years of VR Counselor experience having worked for DVR. Mr. Salas said Michael Kontur has recently joined the Assistive Technology team, and that he has a really good background in assistive technology. Mr. Salas said the Commission has a fully staffed VR Counselor team and a fully staffed Assistive Technology team for the first time in about 10 years.

Mr. Salas reported on the independent living program, saying over the last 15 months the Commission has lost four out of five of its teachers; Pat White, Rafael Aguirre, Linda Mascarenas, and John McNabb. He said that the positions have been filled in Roswell and in Albuquerque. He said Danielle Valdez transferred from the Skills Center to Independent Living. He said the Commission is recruiting to fill the other IL positions and also add a new IL teacher position. Mr. Salas said the Commission is still recruiting for a Business Consultant in the Business Enterprise Program. He said there are also secretary vacancies in Albuquerque and in Santa Fe.

Mr. Salas said the independent living program prepares federal reports in the fall and is now working on the 7OB Older Blind report and the 7O4 independent living report.

Mr. Salas said the agency conducted a customer satisfaction survey of independent living consumers that exited the program during FFY22. He said Ms. Mallahan helped conduct the survey. He said 124 cases were closed during FFY22, and that she interviewed 31 consumers, or 25 percent of the cases. He said eight were under age 55 and 23 were age 55 or over. He said there were 9 questions with answers ranging from very satisfied to very dissatisfied or not sure, and 1 question specifically for those age 55 and over with a yes or no answer, and two open-ended questions. Mr. Salas said the results overall expressed a high level of satisfaction. He said 65 percent were very satisfied, and 26 percent were satisfied, meaning 91 percent were satisfied. He said six percent were neither satisfied nor dissatisfied and only three percent were dissatisfied. Reporting on quality, he said 91 percent were very satisfied to satisfied; on timeliness 97 percent were very satisfied to satisfied; on satisfaction with teacher responses, 97 percent very satisfied to satisfied; on pace of services 81 percent were very satisfied to satisfied; on staff interaction 90 percent were very satisfied to satisfied; on teacher attention to feelings and concerns, 87 percent were very satisfied to satisfied; on independence and personal goals, 67 percent were very satisfied to satisfied; and on achievement of goals with training received, 68 percent were very satisfied to satisfied. Mr. Salas said 83 percent of individuals aged 55 or older said the services that they received from the Commission would help them avoid or delay moving into an assisted living facility or nursing home.

­Mr. Schreiber and Ms. Lansing thanked Mr. Salas and his staff for a great job on the survey and its impressive results.

Mr. Salas said for SFY23 year-to-date, the Commission has placed 11 individuals in competitive and integrated settings and placed one individual in self-employment, for a total of 12. He said the average wage was $20.96 per hour. He said for FFY23, the Commission has placed a total of five persons in competitive and integrated settings, with average wage of $18.79 per hour. He said the agency has 36 consumers in employment status, 23 in employment status with a stable date and 13 in employment status as Service E, without a stable date.

Dr. Reidy said the report makes him very proud to be a part of the Commission. He said these statistics show the benefit of services and the feedback from the consumers proves the Commission’s goals have been achieved. Dr. Reidy said everyone involved in this project needs to be appreciated and congratulated.

d. Orientation Center, Jamie Sibson

Chairperson Lansing introduced and welcomed Jamie Sibson to New Mexico and to the Commission. Ms. Sibson thanked Ms. Lansing for the welcome and said that it is really good to be back home in New Mexico after a 23 year stay in Texas. She said it is a pleasure to be part of the New Mexico Commission for the Blind and part of the Orientation Center.

Ms. Sibson said the Orientation Center is nearly fully staffed and will be posting a position for a part-time physical education teacher.

Ms. Sibson said the Center has six students in training, with the prospect of a new student coming on board soon. She said the staff is working on providing a tour date for two more students who are interested in training.

Ms. Sibson said two staff members just completed immersion training and one other staff member is currently going through immersion training. She said that in December 2022 one staff member sat for the National Certification in Unified English Braille exam and three staff members recently attended an NCUEB Prep Seminar in Albuquerque. She said those three staff will be sitting for the certification in the spring.

Ms. Sibson said the Center will be running an eight-week traditional STEP program in the summer. She said eligible students will be between the ages of 16 to 21. She said the students will participate in center training and activities in the community and will also have the opportunity to have a job in the community.

Ms. Sibson said the Center staff has been reviewing and making updates to the curriculum. Ms. Sibson said Soft Skills was added and will be used in training with every student. She said soft skills incorporate professionalism, planning and organization, flexibility, and adaptability. She said every student who comes to the Orientation Center for training is assigned to a staff member as their advisor, and all staff advisors meet with their students on a regular basis.

Ms. Sibson said the Center is preparing for CARF and NBPBC recertifications which are coming up in the spring. She said CARF monitors facilities to ensure that best practices are being followed, and that the last CARF accreditation was done in 2019.

Dr. Reidy asked Ms. Sibson what the maximum capacity for students is at the Center, and Ms. Sibson said the maximum capacity at the dorm is 16 students, but once the apartments are complete that number will increase to 20 students.

Mr. Trapp said the actual dorm capacity depends on the gender breakdown, and that the actual working capacity may be less if there is an over representation of one gender or another.

Mr. Trapp said it is going to take time for the Center to get up to full capacity. He said the Center was operating at reduced capacity because of the need to provide the necessary social distancing.

Chairperson Lansing said thank you to Ms. Sibson and her staff for all that they do to keep the students busy. She said she is looking forward to touring the Center once the apartments are complete.

e. Skills Center, Kelly Burma

Ms. Burma said the Skills Center is currently serving five students who are Pre-ETS eligible, and hoping to start two more very soon. She said the Skills Center is currently serving four adults.

Ms. Burma said the Skills Center served one person in Rio Rancho over the holidays in the Technology for Children program. She said the Skills Center is reviewing applications for two students from the southeastern part of the state, one in Albuquerque and one in Santa Fe. Ms. Burma said the Skills Center has recently completed work with the Department of Health to renew the Memorandum of Agreement.

Ms. Burma said the Skills Center will be holding the Creating Options program, touching especially on Age-Related Macular Degeneration.

Ms. Burma said the Skills Center will be going through an equipment update. She said the Skills Center is also working with Ms. Trujillo to have the wireless network system updated. Ms. Burma said the Skills Center will be replacing the gas stove with a flat top cook stove and oven combo. She said the Skills Center is also looking at replacing cabinets and counters to make a more functional teaching space.

Ms. Burma said the Commission hosted a seminar with Dr. Casey West Robertson from the National Blindness Professional Certification Board on February 2. She said the seminar was for teachers, vocational rehabilitation counselors, independent living teachers, and teachers at the School for the Blind and Visually Impaired. She said the Commission was also able to sponsor Dr. West Robertson to present at the New Mexico Association for Education and Rehabilitation Conference on February 3 and 4. She said Dr. West Robertson presented on the National Reading Media Assessment.

Mr. Trapp said that Ms. Burma did a great job organizing the AER conference, there was a tremendous turnout, and it was an exciting event. Ms. Burma said that 90 people registered for the conference.

Chairperson Lansing asked where the conference was held, and Ms. Burma said it was at the UNM Continuing Education Building.

Chairperson Lansing asked about the Technology for Children program, asking if the program is statewide and if Skills Center staff delivers equipment and offers training. Ms. Burma said yes, the Skills Center staff delivers the equipment to the homes and also to the schools so that the teachers can learn on the equipment to provide support.

8. Unfinished Business

a. Report on Apartment Construction at the Orientation Center, Lucy Mallahan

Ms. Mallahan recognized Ms. Sibson, saying it has been a pleasure working with her and she is looking forward to seeing where the programs at the Orientation Center will go under Ms. Sibson’s capable leadership.

Ms. Mallahan said smoke detectors and other equipment ordered for the apartment building have arrived and have been installed. She said that the alarm sound is now a chime making easier for a blind marshal to clear the building easily and safely. She said once the fire alarm equipment was installed, the fire marshal came and passed the apartment building. She said the Construction Industries Division made a site visit but did not issue the certificate of occupancy due to issues with the gutters. She said that at the beginning of February the gutters were repositioned and if substantial completion has taken place, CID may approve and grant a certificate of occupancy tomorrow. She said that furniture will not be moved in until a full certificate of occupancy is issued. She said once the full certificate of occupancy is issued and the Commission takes possession of the building, the Commission has one year to identify any problems caused through the construction process. She said that once those issues are identified, the contractor will come out and fix those issues. Ms. Mallahan said cameras have been installed around the apartment building that provide additional angles for viewing the area around the apartments and the rest of the Center. She said that this expands the existing camera system installed in 2013 and the 2013 camera system will also be replaced as equipment comes in. She said the new system will provide greater coverage with higher definition and will store up to 30 days of video for retrieval.

Ms. Mallahan said access control has also been installed at the apartment building. She said students and staff will need to use a keycard to open apartments, the commons, and the laundry room.

She said access controls will be added to keyed doors at the dorm and the administration building. She said a mailbox system was also installed.

Ms. Mallahan said FMD is helping with other projects at the Center, including canopies over the patio between the apartment building and the dorm, landscaping, and a new Wi-Fi system that will provide 15 wireless access points. Ms. Mallahan said she sent a request this morning to replace the sidewalk in front of the dormitory.

Ms. Savage asked Ms. Mallahan if she had a place in mind for the future time capsule. Ms. Mallahan said yes, and Mr. Trapp said the time capsule is a priority.

b. Report on the Combined State Plan, Process and Timelines, Greg Trapp, Jim Salas, and Kelly Burma

Mr. Trapp said the Commission is in the midst of submitting the combined State Plan and will be scheduling public meetings. He said the Commission met with the State Rehabilitation Council on January 26 and began the process, emphasizing the importance of the goals and priorities. He said the State Plan will be due to the Workforce Solutions Department at the beginning of October and the State Workforce Board will likely then take action around December. He said the State Plan will be due to the feds in March 2024. He said the Commission typically receives joint guidance that comes out later in the process from the department of labor and rehabilitation services administration.

Ms. Burma said the Commission is looking at the goals and priorities related to the needs and the opportunities that came up as part of the pandemic. She said the plan is to discuss the goals with the Council in the coming months and make sure the materials are distributed at the public meetings, which will be covering the State Plan and the Rate Setting Guide.

9. New Business

a. Update on Commission Annual Report, Greg Trapp

Mr. Trapp said the Annual Report was submitted to the office of the Governor and to the Rehabilitation Services Administration on December 29. He said he was pleased with how it came out. He said the information about the impact of COVID was very important, emphasizing the fact that the Commission is in a transitional phase and exiting out from the pandemic and being able to provide in-person services, but still very much needing to find ways to remediate the impact of the pandemic. Mr. Trapp expressed his appreciation to the SRC for their work on the report.

Mr. Trapp said the agency is working with Horizons of New Mexico, part of the State Use program, to produce printed copies of the Annual Report. He said the agency will be collecting photos and working to produce a printed report that is ready for distribution to the public. He said the electronic version of the Annual Report was posted on the Commission’s website, read on the Newsline system, sent to the SRC members, and also sent to the National Federation of the Blind. He said the printed version will be sent to State and Federal legislators, and to optometrist and ophthalmologists across the state.

b. Report of Property Disposition Committee, Kevin Romero

Mr. Romero said the Commission received a request from the Orientation Center to dispose of identified items, and the Property Disposition Committee is waiting for a response from State Surplus. He said this is just a status update.

c. Report on Rehabilitation Services Administration Annual Review and Pre-ETS Finding, Greg Trapp, Jim Salas, and Kevin Romero

Mr. Trapp said the program determination letter that was issued by the Rehabilitation Service Administration was follow by an annual review finding. He said the annual review finding was a part of Section 107 of the act which authorizes the Rehabilitation Services Administration to conduct annual reviews and periodic monitoring. He said the annual review was triggered by audits at DVR related to the requirement to reserve and spend at least 15 percent of VR funds on the provision of Pre-Employment Transition Services. He said that within the finding there are some nuances that he thinks are interesting; one being whether the reserve applies to the grant as a whole or the amount that was actually matched. He said it appears that RSA is applying the reserve to the amount that was actually matched. He said the annual review looked at whether the State in FFY20 met its requirement to spend and reserve at least 15 percent on Pre-ETS. He said that was the year in which the pandemic was at its highest, the State was on lock-down, State employees were told to remain at home and work remotely, schools were not open for in-person services, and STEP employment opportunities were not available. Mr. Trapp asked Mr. Romero to read the first part of the finding.

Mr. Romero read the annual review finding. A copy of the annual review finding is attached to the meeting minutes.

Mr. Trapp said the Commission is working with DVR and the agency’s Federal Fiscal Consultant, Seymour Levy, to respond to RSA. He believes FFY20 was an anomalous year due to the pandemic and reporting errors at DVR. He said looking at FFY19, FFY21 and FFY 22, the state is back on track to meeting the Pre-ETS requirement. He said that is a very important fact to communicate to the Rehabilitation services Administration. He said he does not believe corrective action is needed.

Mr. Romero said RSA considers the 15 percent requirement to be 15 percent of what was reported for VR funds spent.

d. Approval of Revision to Allowable Cost Policy and Procedure to Include Rate Setting Methods for Purchasing of VR Services and Systems and Other Technical Updates, Greg Trapp and Kevin Romero

Chairperson Lansing asked for a motion to approve the revisions to the Allowable Cost Policy and Procedure, saying she will call for discussion after the motion.

Mr. Schreiber motioned to authorize the Commission to update the Allowable Cost Policy and Procedure to include a rate setting methodology and to allow for technical amendments, and Dr. Reidy seconded the motion.

Mr. Trapp said the Allowable Cost Policy and Procedure was updated during the November meeting, but the new rate setting methodology came out after the meeting and the Commission needs to update the Allowable Cost Policy and Procedure to reflect the information contained in that rate setting methodology. He said the Commission needs to put in place a methodology for determining whether or not what is spent on vocational rehabilitation services is reasonable, necessary and appropriate. He said reasonable is what a person of ordinary prudence would do under the same or similar circumstances. He said factors to be considered in determining appropriateness of costs include urgency, costs depending upon geography, and also usage. He said the guide says to seek input from the State Rehabilitation Council, which was done at the January 26 SRC meeting. He said the guide also says agencies need to conduct Public Meetings to seek public input. He said the Commission will gather these comments and meet again with the SRC and put together a rate-setting methodology that looks at the needs, reasonableness, and procurement code.

Mr. Romero said the RSA guidance is an attempt to ensure that funds expended are reasonable, which he believes the Commission currently does, but RSA wants the procedure in written form.  The revised cost policy will show RSA that the Commission is in compliance with the uniform guidance.

Mr. Romero said the rate-setting guide has methods commonly used to determine price reasonableness. He said the methodologies in the guide include adequate price competition, which he said is currently covered in the New Mexico Procurement code. He said reasonableness can be based on the price paid by the Federal Government; what State Purchasing negotiates; comparison of what was paid for services before to what is being paid currently; comparison to in-house estimates; and other factors. He said the Commission is in compliance with the New Mexico Procurement code and he believes the Commission meets most if not all of the suggested methodologies under the Allowable Cost Policy. He said this addition to the Allowable Cost Policy documents the process the Commission will institute.

Mr. Trapp said when such a large amount of money is expected to be spent on Pre-ETS with the potential for a finding or sanction, it suddenly becomes more reasonable to spend a larger amount of money then might otherwise be the case. He said the Commission also has certain items that there is only a single vendor or only a single product when it comes to technologies that blind individuals use, so those are factors as well.

A roll call vote was taken, and the authorization for the Commission to update the Allowable Cost Policy and Procedure to include a rate setting methodology and to allow for technical amendments was approved with Mr. Schreiber, Dr. Reidy and Chairperson Lansing all voting yes.

e. Report on Section 107 Monitoring, Greg Trapp

Mr. Trapp said the Section 107 Monitoring review workgroup consisted of himself and four other agency directors who met with RSA on a weekly basis for two months. He said RSA was concerned about the inability of the VR program to spend all of the Federal grant. He said the Federal VR program gets $3.7 billion, and last year about half a billion dollars went unspent. He said the amount of money being unspent caught the attention of Congress, RSA and Stakeholders. He said RSA wanted the monitoring process to focus on how it can assist agencies to better spend more of the VR grant. He said there are a number of reasons why the grant has not been fully spent, and one of those is a declining workforce participation rate. He said New Mexico has one of the lowest workforce participation rates in the country. He said that is not to be confused with the unemployment rate, which is a measure of those individuals who are actively seeking to become employed. He said the workforce participation rate is a measure of those individuals of working age who are participating in the workforce. He said another factor is the requirement to reserve and spend at least 15 percent of the grant on pre-employment transition services. He said that has been difficult for agencies to do, and a number of agencies have left Pre-ETS money unspent. He said another factor is the very strict compliance rules. He said he believes the monitoring process itself has inhibited agencies from spending the grant because they become focused on compliance and end up hesitant to spend the grant for fear of violating a Federal fiscal rule. He said one item he was raising is program income, which must be spent before spending the VR grant. He said program income is increasing dramatically, and he believes that RSA is going to have to provide additional technical assistance on how agencies can expend their program income in a way that it is allowable. He said there are a host of Federal and State rules that have to be followed, and it is not always easy to expend a large amount of unexpected program income. He said agencies have to have in place ahead of time the contracts, request for proposals, employees hired, and technology purchased before the program income can be spent. He said he is providing some support and assistance to the VRTAC on the issue of program income and the complexity is really pretty intense. He said he will be having a meeting with the VRTAC on Friday to talk about what can be done to provide better technical assistance to states to expend program income.

Mr. Trapp said the Monitoring and Technical Assistance Guide was released in the middle of January. He said the MTAG focuses on assisting agencies to expend the grant and has a reduced focus on compliance findings. He said the states that were identified to be monitored were states that have not been able to expend all of their grant and states that present a higher risk based on the risk formula that RSA has developed. He said the Commission for the Blind was not chosen to be monitored. He said 12 states have been selected to be monitored.

Dr. Reidy asked about the consequences of the Commission not being selected for monitoring, and if there was a risk that years from now RSA might ask for their money back.

Mr. Trapp said RSA is electing not to monitor the Commission based on the fact that they are seeing our reports, they are seeing the compliance methods that are in place, and they are saying that the Commission presents less of a risk to the Federal interest. He said the Feds also look at single audits. He said the Commission also conducts internal monitoring reviews with its Federal fiscal consultant.

Mr. Schreiber asked about the Pandemic and Grant monitoring, and Mr. Trapp said RSA will identify three Federal fiscal years to be monitored. He said things that happened four or five years ago are likely outside the statute of limitations to recoup any disallowed costs. He said they also look to see whether or not there was a harm to the Federal interest. Mr. Trapp said to have a cost disallowance RSA has to show that a federal spending rule was violated, and the agency is very careful not to violate any spending rules. He said there also has to be a harm to the Federal interest. He said it is a benefit in this regard that the Commission does not have an order of selection. He said the Commission is serving all eligible individuals in the State and providing all of the required Pre-Employment Transition Services, so it would be difficult for the Feds to show a harm to the Federal interest even if they identified some area in which the Commission was not fully compliant. He said the pandemic is an anomaly, and that is something that does need to be taken into consideration.

f. Approval of Agency General Council Position

Mr. Trapp said in the November meeting he had mentioned that the Commission’s contract attorney, Jack Travers, had passed away. He said the Commission is in the process of advertising for a new contract attorney and an advertisement will go in the February 22 and March 8 edition of the Bar Bulletin. He said the agency will be doing a Request for Bids. He said the Commission also has the option of having an internal general counsel and he thinks that is an important discussion to have going forward.

Mr. Trapp said filling John Kreienkamp’s shoes is going to be very difficult since Mr. Kreienkamp has done such a great job. He said he would like the Commission to take a position to recognize that. Mr. Trapp asked Ms. Burma to read a Proclamation, and Ms. Burma read the Proclamation which expressed appreciation for the exceptional job that Mr. Kreienkamp has done in representing the Commission.

Dr. Reidy motioned to approve the Proclamation, and Mr. Schreiber seconded the motion. A roll call vote was taken, and the Proclamation was approved with Mr. Schreiber, Dr. Reidy and Chairperson Lansing all voting yes.

Mr. Kreienkamp thanked the Commission and said he was deeply moved and humbled. He said it has been a real honor and privilege to be the assigned counsel to the Commission for the Blind for the past five and a half years. He said he would like to thank everyone individually for working with him and it has been a real pleasure.

Mr. Trapp thanked Mr. Kreienkamp and said he really appreciated all he has done for the Commission.

Chairperson Lansing thanked Mr. Kreienkamp and said that his presence and participation will be greatly missed, and she wished him all the best in his new position.

Dr. Reidy also thanked Mr. Kreienkamp for his loyal service.

Ms. Burma, Mr. Salas, Mr. Romero, and Ms. Savage all thanked Mr. Kreienkamp for supporting the Commission.

Mr. Trapp said Mr. Kreienkamp will receive both Braille and print copies of the Proclamation.

Mr. Trapp said that he would like a copy of the Proclamation to be part of the minutes as well, and Chairperson Lansing agreed.

10. Commission Open Discussion

There was no open discussion.

11. Comments from the Audience

There were no audience comments.

12. Date and Location of Next Meeting

The next meeting will be held on April 25, at 9:00 AM. It will be held in Albuquerque and will be a hybrid meeting.

Mr. Trapp requested to schedule a virtual special meeting to accept the audit, and it was agreed that he would work with the Office of the State Auditor to identify a date.

13. Adjourn

The meeting was adjourned at 11:49 AM.

Approved and Electronically Signed this 24th Day of February 2023

Shirley “Urja” Lansing, Chairperson

New Mexico Commission for the Blind

Attachment 1: Commission Proclamation Thanking John Kreienkamp

PROCLAMATION

WHEREAS, John Kreienkamp has served as the Assistant Attorney General assigned to the Commission for the Blind since 2017, providing the Commission for the Blind with essential and vital legal representation as its General Counsel; AND

WHEREAS, John Kreienkamp has provided legal services to the Commission for the Blind with extraordinary dedication, knowledge, and ability; and

WHEREAS, the legal services provided by John Kreienkamp has enabled the Commission for the Blind to better and more appropriately serve New Mexicans who are Blind or visually impaired, including through the extraordinary and difficult circumstances of the pandemic;

NOW THEREFORE, the New Mexico Commission for the Blind, gathered in regular meeting held virtually this 8th day of February, 2023, does hereby express its most sincere appreciation and gratitude to John Kreienkamp for the exceptional services he has provided to the Commission for the Blind and to New Mexicans who are blind or visually impaired.

Signed and Executed this 8th Day of February, 2023

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Shirley Lansing, Commission Chairperson

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Arthur Schreiber, Commissioner

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Robert Reidy, Commissioner

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Greg Trapp, Executive Director

Attachment 2: RSA Annual Review Finding on Pre-ETS

UNITED STATES DEPARTMENT OF EDUCATION

 OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

 REHABILITATION SERVICES ADMINISTRATION

Electronically Sent - Confirmation of Receipt Requested

January 24, 2023

Casey Stone-Romero

Director

Division of Vocational Rehabilitation

New Mexico Public Education Department

435 St. Michaels Dr., Bldg. D

Santa Fe, NM 87505

Greg Trapp

Executive Director

New Mexico Commission for the Blind

2905 Rodeo Park Dr.

E. Bldg. 4 Suite 100 Santa Fe, NM 87505

RE: FFY 2020 Annual Review Finding regarding Noncompliance with Pre-Employment

 Transition Services Requirements

Dear Casey Stone-Romero and Greg Trapp:

This letter and enclosure presents the Rehabilitation Services Administration’s (RSA) annual review and finding regarding the State’s failure to satisfy requirements governing the provision of pre-employment transition services (pre-ETS) in Federal fiscal year (FFY) 2020, as determined by RSA in accordance with Section 107(a) of the Rehabilitation Act of 1973 (Rehabilitation Act).1 Pursuant to Section 107(a)(1) of the Rehabilitation Act, RSA conducts an annual review of the New Mexico Division of Vocational Rehabilitation (DVR) and the New Mexico Commission for the Blind (NMCB) to determine whether the State is substantially complying with the requirements of its Combined State Plan, including requirements governing the provision of pre-ETS to students with disabilities. The FFY 2020

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1 In a related matter, the Office of Special Education and Rehabilitative Services (OSERS) issued a Program Determination Letter (PDL) regarding audit finding 2018-004 for FFY 2018 related to pre-ETS, to DVR, on January 19, 2023, and that audit finding is considered closed (Audit Control Number 061899304, dated November 21, 2018).

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-2800

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The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Page 2 – Stone-Romero and Trapp

final financial reports submitted by DVR and NMCB, the most recent final financial reports available to RSA, demonstrate the State failed to satisfy the requirements of Section 110(d)(1) and 113 of the Rehabilitation Act by not reserving and expending at least 15 percent of its VR grant amount on the provision of pre-ETS for students with disabilities. For this reason, RSA is requiring DVR and NMCB to submit a response and corrective action plan, pursuant to Section 107(b)(2) of the Rehabilitation Act, as described further in the enclosure.

Thank you for your cooperation in the resolution of this finding. If we may be of further assistance, please contact David Steele, Fiscal Unit Chief, at (202) 245-6520 or at David.Steele@ed.gov.

Sincerely,

Carol L. Dobak

Deputy Commissioner,

delegated the authority to perform the

functions and duties of the Commissioner

Enclosure

cc: Sarah Michaud, DVR SRC Chair

 Shirley Lansing, NMCB Commission Chair

Enclosure

Annual Review of DVR’s and NMCB’s FFY 2020 Fiscal Data2

Short Summary:

RSA has determined, after conducting an annual review of DVR’s and NMCB’s final FFY 2020 SF-425s, pursuant to Section 107(a)(2) of the Rehabilitation Act, that the agencies failed to satisfy the requirements of Sections 110(d)(1) and 113(a) of the Rehabilitation Act (i.e., the reservation requirements) by not reserving and expending at least 15 percent of the State’s matched FFY 2020 VR grant funds on the provision of pre-employment transition services (pre-ETS) for students with disabilities. Pursuant to Section 107(b)(2) of the Rehabilitation Act, RSA requires DVR and NMCB to submit a response, including a corrective action plan (CAP), as described in more detail below. When developing the response and CAP, RSA recommends DVR and NMCB, despite being housed in two separate and distinct State agencies, develop the response and CAP jointly so the agencies can ensure they address the noncompliance on a statewide basis since the reservation requirements are satisfied at the State level.

Annual Review Requirements:

Section 107(a)(1) of the Rehabilitation Act requires RSA to conduct annual reviews and periodic onsite monitoring of the VR agencies to determine whether they are in substantial compliance with their approved State plan, including the VR services portion of that Plan. In conducting the annual reviews, RSA must consider, at a minimum, budget and financial management data ( Section 107(a)(2)(I) of the Rehabilitation Act). Pursuant to Section 107(a)(4)(B) of the Rehabilitation Act, RSA must examine the provision of services, including, pre-ETS.

Analysis of FFY 2020 Financial Data:

According to DVR’s and NMCB’s final FFY 2020 SF-425s, the combined total Federal VR allotment for the State was $27,300,014, all which DVR and NMCB matched.3 Therefore, DVR and NMCB were required to reserve a combined total of at least $4,095,002 for the provision of pre-ETS. DVR and NMCB reported on their respective final FFY 2020 SF-425s spending a combined total of $744,498 (2.7 percent of the State’s VR allotment) in Federal

2 Because the FFY 2020 data were not the subject of an audit finding, RSA is resolving the State’s noncompliance through its annual review and monitoring process pursuant to the requirements of Section 107 of the Rehabilitation Act.

3 Although DVR did not match $1 of its grant award, NMCB provided more than the amount it needed to match its own FFY 2019 VR grant award (i.e., $917 more than was required), thereby more than compensating for the $1 of DVR’s VR funds left unspent in its account at the time of grant closeout. Pursuant to Section 111(a)(1) of the Rehabilitation Act and 34 C.F.R. § 361.60, compliance with the match requirement is determined on a statewide basis, not on an individual VR agency basis. Therefore, the non-Federal expenditures incurred by NMCB compensated for the shortage of non-Federal expenditures incurred by DVR.

VR funds for pre-ETS and reported spending $979,657 (or 3.6 percent)[4](#bookmark0) of the State’s matched VR Federal funds on other allowable VR services that do not constitute pre-ETS. In addition, DVR and NMCB returned the balance of unused Federal matched funds at closeout of $2,370,847 (8.7 percent of the State’s matched VR allotment).

RSA’s Annual Review Finding:

As demonstrated by their final SF-425s for FFY 2020, DVR and NMCB reserved and expended a combined total of only 2.7 percent of their matched Federal VR funds, a decrease of 81.6 percent from the agencies’ expenditures for pre-ETS in FFY 2019 (i.e., 14.7 percent). RSA acknowledges DVR and NMCB continued to reserve an additional 8.7 percent of their matched Federal VR funds by leaving them unspent in their VR accounts at the time of grant closeout, thereby reserving a total of 11.4 percent in FFY 2020. Despite the additional funds reserved and left unspent at the time of grant close out, DVR and NMCB fell 3.6 percent short of reserving funds for pre-ETS, with DVR[5](#bookmark1) spending the entire shortage on other allowable VR services (i.e., non-pre-ETS). However, as noted above, DVR and NMCB spent only 2.7 percent on pre-ETS in FFY 2020.

Noncompliance with Approved State Plan:

Section 101(a)(25) of the Rehabilitation Act requires DVR and NMCB to assure in their Combined State Plan, with respect to students with disabilities, that the State has developed and implemented strategies to:

* address the needs identified in the assessments described in Section 101(a)(15) of the Rehabilitation Act;
* achieve the goals and priorities identified by the State in accordance with Section 101(a)(15) of the Rehabilitation Act to improve and expand VR services for students with disabilities on a statewide basis; and
* provide pre-ETS.

Pre-ETS, as defined at Section 7(30) of the Rehabilitation Act, “means services provided in accordance with section 113.” Section 113(a) of the Rehabilitation Act requires the State to ensure that DVR and NMCB will use the funds reserved under Section 110(d)(1) of the Rehabilitation Act to provide, or arrange for the provision of, pre-ETS to students with disabilities. Section 110(d)(1) of the Rehabilitation Act establishes the 15 percent minimum reservation requirement for the State from its VR allotment.

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4 According to the final SF-425s submitted by DVR and NMCB for FFY 2020, only DVR expended funds, which should have been reserved for the sole purpose of pre-ETS, on other allowable VR services (i.e., non-pre- ETS). None of NMCB’s reserved funds were spent on other allowable VR services.

5 As noted in footnote 4, NMCB did not expend any of its FFY 2020 reserved amount on the provision of other allowable VR services. Instead, NMCB left $574,453 unspent in its VR account, which was the exact amount that agency would have needed to expend to contribute its share of the State’s required 15 percent minimum

reservation amount.

Together, Sections 7(30), 101(a)(25), 110(d)(1), and 113 of the Rehabilitation Act create the statutory basis for the State Plan provisions governing pre-ETS. The VR services portions6 of the approved New Mexico Combined State Plan, submitted by and approved7 separately for DVR and NMCB, contained an assurance that mirrors Section 101(a)(25) of the Rehabilitation Act.8 In addition to the Assurances themselves, the lead-in sentence to the State Plan Assurances section states, in pertinent part:

The designated State agency or designated State unit, as appropriate and identified in the State certifications included with this VR services portion of the Unified or Combined State Plan and its supplement, through signature of the authorized individual, assures the Commissioner of the Rehabilitation Services Administration (RSA), that it will comply with all of the requirements of the VR services portion of the Unified or Combined State Plan and its supplement, as set forth in Sections 101(a) and 606 of the Rehabilitation Act....

At the end of the VR services portion of the State Plan, DVR and NMCB each must certify:9

As a condition for the receipt of Federal funds under title I of the Rehabilitation Act for the provision of VR services, [DVR or NMCB] agrees to operate and administer the State VR Services Program in accordance with the VR services portion of the Unified or Combined State Plan, the Rehabilitation Act, and all applicable regulations, policies, and procedures established by the Secretary of Education. Funds made available under Section 111 of the Rehabilitation Act are used solely for the provision of VR services and the administration of the VR services portion of the Unified or Combined State Plan[.]

Therefore, by signing the VR services portions of their State Plans, both DVR and NMCB certified that they would administer and operate the State VR program in accordance with the State Plan, Rehabilitation Act, applicable regulations, and policies and procedures established by the Secretary of Education, which include all requirements governing pre-

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6 Although New Mexico is required to submit a single Unified or Combined State Plan for all six core programs of the workforce development system, which includes the VR program, in accordance with Sections 102(a) and 103 of the Workforce Innovation and Opportunity Act (WIOA), each State also must submit a VR services portion of that Plan which satisfies all requirements of Section 101(a) of the Rehabilitation Act to receive VR funding under title I of the Rehabilitation Act (Section 101(a)(1)(A) of the Rehabilitation Act). Each State has the option of designating two VR agencies, as New Mexico has done, with one dedicated to serve individuals who are blind or visually impaired (Section 101(a)(2)(i) of the Rehabilitation Act). When a State elects to designate two State VR agencies, each must submit, and receive approval for, its own VR services portion of the Unified or Combined State Plan (Id. and 34 C.F.R. § 361.10(b)).

7 FFY 2020, the period covered by this RSA Annual Review Report, spans two different four-year State Plan cycles, one that took effect on July 1, 2016, and another on July 1, 2020. Section 102(b)(2)(B) of WIOA requires the RSA Commissioner to approve the VR services portion of each State Plan before the Secretaries of Education and Labor approve the Plans in their entirety.

8 The pre-ETS assurance is set forth at item (j) of the Assurances section of the VR services portion of the State Plan.

9 The quoted certification text from the VR services portion of the State Plan is verbatim but does not contain the accompanying footnotes as they are not necessary for our analysis.

ETS. As demonstrated by both DVR’s and NMCB’s final FFY 2020 SF-425s and described above, the agencies fell far short of satisfying these requirements that year. In so doing, DVR and NMCB also failed to satisfy a routine term and condition that appeared on each of their FFY 2020 VR Grant Award Notices regarding pre-ETS.[10](#bookmark0)

Response and Corrective Action Plan Required:

In accordance with Section 107(b)(2) of the Rehabilitation Act, the Commissioner requires that DVR and NMCB take the following actions to help ensure the State satisfies the pre- ETS reservation requirements as soon as practicable. While not required, RSA strongly encourages DVR and NMCB to collaborate on the development, submission, and implementation of the response and corrective action plan described below to ensure the State satisfies the reservation requirements on a State level, since that is how the statute mandates that compliance is determined.

First, RSA requires DVR and NMCB to develop and submit to RSA a written response describing the reasons for the State’s failure to comply with the reservation requirements in FFY 2020. In the response, RSA requires that DVR and NMCB be as descriptive as possible in explaining the actual circumstances affecting the State in FFY 2020, and address:

* what prevented the State from reaching and maintaining the compliance level of at least 15 percent, when it had achieved 14.7 percent in FFY 2019;
* what prevented the State from spending more than 2.7 percent of its reserved amount on pre-ETS for students with disabilities;
* what prevented the State from spending more of the 8.7 percent that remained reserved for pre-ETS, but was unspent at the time of grant closeout;
* what led to DVR spending 3.6 percent, which should have been reserved for pre- ETS, on other allowable VR services;
* what may have affected implementation of the initiatives and strategies used in FFYs 2018 and 2019, which led to the State’s improvements during those FFYs; and
* any other relevant factors or circumstances that DVR and NMCB believe help to explain the State’s failure to comply with the reservation requirements in FFY 2020.

In addition to the above specific details, RSA requires DVR and NMCB to describe:

* whether and, if so, how the COVID-19 pandemic affected the State’s ability to provide, or arrange for the provision of, pre-ETS to students with disabilities in FFY 2020;
* whether the State anticipates there will be a long-term effect of the COVID-19 pandemic on the State’s ability to provide pre-ETS to students with disabilities and, if so, for how long and why;

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10 The pre-ETS Attachment to the FFY 2020 Grant Award Notice, issued to each VR grantee, describes the reservation requirements of Sections 110(d) and 113 of the Rehabilitation Act in detail.

* the steps the State took, in real time, to meet the reservation requirements when each quarterly fiscal report demonstrated the State was not on track to satisfy the reservation requirements for FFY 2020;
* any barriers the State faces when implementing the reservation requirements (other than those related to the COVID-19 pandemic);
* technical assistance needed by the State with respect to overcoming those barriers;
* whether the State proactively implemented any corrective actions in FFY 2021 or 2022 to address the noncompliance;
* whether DVR and NMCB can provide fiscal data now to demonstrate that the State will comply with the reservation requirements in FFYs 2021 and 2022 when the agencies submit their final fiscal reports for those years; and
* whether the flexibilities RSA provided in its February 2020 [Notice of Interpretation](https://rsa.ed.gov/whats-new/rsa-issues-final-noi-regarding-pre-employment-transition-services), which expanded the types of costs that could be paid with reserved funds, will assist the State in satisfying the reservation requirements in the future.

Second, RSA requires DVR and NMCB to develop and implement a CAP that:

* + addresses the root cause of the State’s noncompliance with the reservation requirements;
	+ contains a solid, workable plan for action;
	+ contains a timeline for implementation that would be completed within a reasonable specific time;
	+ can be supported by documentation (i.e., fiscal reports) to show the agencies have implemented the actions; and
	+ provides a methodology that allows DVR and NMCB to review internally whether the corrective actions have resolved the root cause of the noncompliance with the reservation requirements and to review whether the actions are consistent with the progress needed to meet the key dates in the timeline.

It is important to note the CAP described above is required even if DVR and NMCB can demonstrate that the State is on track to satisfy the reservation requirements in FFYs 2021 and 2022. Given the State’s inconsistent history with the reservation requirements and the

81.6 percent decrease in pre-ETS expenditures in FFY 2020, RSA believes it is necessary that DVR and NMCB identify the root cause of the issue. In so doing, the agencies will be better positioned to develop a solid workable plan that could be implemented on a statewide basis collaboratively, as it appeared that was done in FFY 2019 when the percentage of pre- ETS expenditures by each agency was similar.

RSA requires DVR and NMCB to submit the above-described response and CAP to their RSA State liaison within 60 days of receipt of this letter. As noted above, although not required, RSA strongly encourages the two agencies to collaborate in the development of the response and CAP, as well as implementation of the CAP, to ensure statewide success.

Conclusion:

RSA has found, after conducting an annual review of DVR’s and NMCB’s final FFY 2020 SF-425s pursuant to Section 107 of the Rehabilitation Act, that the State did not satisfy the pre-ETS reservation requirements that year. Specifically, the State reserved only 11.4 percent of its Federal VR funds and spent only 2.7 percent on the provision of pre-ETS for students with disabilities. The State then spent the remaining 3.6 percent, which should have been reserved for pre-ETS, on other allowable VR services. Consequently, RSA requires DVR and NMCB submit a response and CAP to RSA, as described above, within 60 days of receipt of this letter.