New Mexico Commission for the Blind

State Rehabilitation Council

MINUTES (Draft)

Regular Meeting

Commission for the Blind Orientation Center

Alamogordo, New Mexico

April 5, 2023 - 1:00 PM

April 6, 2023 - 9:00 AM

1. Call to Order

The Council gathered for the meeting at 1:00 PM on April 5, and Chairperson Chavez formally called the meeting to order at 1:12 PM.

The Council gathered for the meeting at 9:00 AM on April 6, and Chairperson Katharine Chavez formally called the meeting to order at 9:13 AM.

2. Roll Call

Ms. Burma took roll on April 5. Physically present were Bernadine Chavez, Katharine Chavez, Mario Hooee, and Greg Trapp. Daphne Mitchell and Paula Seanez were present over Zoom. Lila Mae Martinez and Jeff Blair joined the meeting by Zoom later. Deborah Dominguez-Clark and Craig Cooper were absent.

Ms. Burma took roll on April 6. Physically present were Bernadine Chavez, Katharine Chavez, Mario Hooee, and Greg Trapp. Daphne Mitchell, Jeff Blair and Paula Seanez were present over Zoom. Lila Mae Martinez, Deborah Dominguez-Clark and Craig Cooper were absent.

3. Introduction of Guests and Staff

Staff present were Jim Salas, Deputy Director for Vocational Rehabilitation and Independent Living; Kelly Burma, Skills Center Coordinator and SRC Liaison; Jamie Sibson, Orientation Center Director; Patricia Savage, Executive Secretary; Daphne Mitchell, VR Program Manager; Audrey Trujillo, Information Technology Manager; Kevin Romero, Deputy Director for Finance and Administration; Leisa Sekhon, Orientation Center Secretary; Ryan Michanczyk, Orientation Center Dorm Supervisor; and Lucy Mallahan, Special Project Coordinator. The guests present were Commissioner Urja Lansing; Commissioner Art Schreiber; Peggy Hayes; and Diana Marquez.

4. Approval of Changes to the Order of the Agenda and Deletion of Agenda Items

There were no changes to the agenda.

5. Approval of Minutes for the Meeting of January 26, 2023

Ms. Bernadine Chavez made a motion to approve the minutes, and Mr. Hooee seconded the motion. A roll call vote was taken, and the minutes were approved with all members present voting yes. Mr. Trapp and Ms. Mitchell are ex officio and did not vote.

6. Client Assistance Program Report, Bernadine Chavez

Ms. Bernadine Chavez said one consumer from the Commission contacted CAP during the quarter. She said the Commission closed the case because the consumer did not want employment. She said CAP educated the consumer about vocational rehabilitation and the consumer decided he did not want to be employed.

7. Section 121 Project Report, Paula Seanez

Ms. Seanez said she represents the Navajo Nation, and she also has reports from Jemez Pueblo and Laguna-Acoma Connections. Ms. Seanez said Jemez Pueblo is in the second year of their grant, reporting on Project Hope, which Jemez Pueblo implemented for high school students. Ms. Seanez said the Jemez VR program has expanded their service area, serving in an 80-mile radius from Jemez Pueblo.

Ms. Seanez reported on Laguna-Acoma Connections, saying Petra Solimon is serving as the Interim-Superintendent for the Education Department. She said Ms. Solimon is working with her staff to do community outreach.

Ms. Seanez reported on the Navajo VR project, saying the project participated in a webinar about work-based learning initiatives with local school districts on March 8. She said information about Project Search was shared at the webinar. She said the Navajo VR project worked with the American Indian Disability Summit and the American Indian Disability Youth Summit on March 24. She said the Advisory Council President, Hoskie Benally, was the keynote speaker. She said Hoskie Benally was the Deputy Director in the early years of the Section 121 Project. Ms. Seanez concluded, saying the Navajo VR Project is working to get a Memorandum of Understanding with DVR.

8. Chairperson’s Report, Katharine Chavez

Ms. Katharine Chavez said she was acting as Chairperson, and said it was a pleasure to be meeting in-person, and thanked the SRC for allowing her to chair this meeting.

9. Election of Officers

Mr. Trapp said the election is needed because some of the officers terms expired. Ms. Burma said Bernadine Chavez, Katharine Chavez, Mario Hooee, Lila Martinez, and Paula Seanez were voting members and eligible to serve as officers, adding that Bernadine was one of the at large officers.

Chairperson Katharine Chavez said the floor was open for nominations for a new Chairperson. Ms. Bernadine Chavez nominated Ms. Katharine Chavez as Chairperson, and Ms. Seanez seconded the nomination. Acting Chairperson Katharine Chavez called three times for other nominations, there were no other nominations, and Ms. Bernadine Chavez moved that nominations cease, and Ms. Katharine Chavez be elected by acclamation, and Mr. Hooee seconded the motion. A roll call vote was taken, and the election of Ms. Katharine Chavez was approved unanimously, with Katharine Chavez, Bernadine Chavez, Mr. Hooee, Ms. Martinez, and Ms. Seanez voting yes.

Chairperson Chavez thanked everyone saying it was an honor to be elected. She said the floor was open for nominations for Vice Chairperson. Ms. Seanez nominated Mr. Hooee as Vice Chairperson, and Ms. Bernadine Chavez seconded the nomination. Chairperson Chavez called three times for other nominations, there were no other nominations, and Ms. Seanez moved that nominations cease, and Mr. Hooee be elected by acclamation, and Ms. Bernadine Chavez seconded the motion. A roll call vote was taken, and the election of Mr. Hooee was approved unanimously, with Ms. Bernadine Chavez, Ms. Katharine Chavez, Mr. Hooee, Ms. Martinez, and Ms. Seanez all voting yes.

Chairperson Chavez said the floor was open for nominations for Secretary. Ms. Seanez nominated Ms. Martinez as Secretary, and Ms. Bernadine Chavez seconded the nomination. Chairperson Katharine Chavez called three times for other nominations, there were no other nominations, and Ms. Seanez moved that nominations cease, and Ms. Martinez be elected by acclamation, and Ms. Bernadine Chavez seconded the motion. A roll call vote was taken, and the election of Ms. Martinez was approved unanimously, with Ms. Bernadine Chavez, Ms. Katharine Chavez, Mr. Hooee, Ms. Martinez, and Ms. Seanez all voting yes.

Chairperson Chavez said the floor was open for nominations for the open at large officer position.

Ms. Bernadine Chavez nominated Mr. Blair for the open at large officer position, and Ms. Seanez seconded the nomination. Chairperson Katharine Chavez called three times for other nominations, there were no other nominations, and Ms. Seanez moved that nominations cease, and Mr. Blair be elected by acclamation, and Ms. Bernadine Chavez seconded the motion. A roll call vote was taken, and the election of Mr. Blair was approved unanimously, with Ms. Bernadine Chavez, Ms. Katharine Chavez, Mr. Hooee, Ms. Martinez, and Ms. Seanez all voting yes.

10. Director's Report, Greg Trapp

a. Major Trends and Developments, Greg Trapp

Mr. Trapp said he spoke to Melissa Salazar at the Governor’s office about SRC reappointments. He said he was hoping to have the reappointments approved by today’s meeting. He said he hopes in the next couple weeks the council will be fully constituted.

Mr. Trapp said this is the first in-person council meeting since 2019. He said it is great to be at the Orientation Center for the opening of the apartments, a process that has taken over 20 years.

Mr. Trapp said the Legislative session has ended, saying the Commission did not request additional state dollars because the agency has a large fund balance. He said the Commission has asked for the authority to spend $400,000 from the fund balance. He said the $400,000 will be used to hire an additional independent living teacher, to purchase more sophisticated assistive technology equipment for the independent living program, as well as purchase other items that the Agency might need.

Mr. Trapp talked about tweaking the language that was in the budget for the program income that is transferred from DVR to the Commission. He said the Agency receives program income from the Social Security Administration whenever the Commission’s services enable a consumer to stop receiving Social Security disability benefits. He said DVR was needing to spend a large amount of program income about six years ago, and he recommended that DVR transfer some of their program income to the Commission and the Commission would transfer general fund back to DVR. He said under this arrangement DVR transfers $200,000 in program income to the Commission and the Commission transfers $100,000 in general funds to DVR. He said DVR can use this to match almost $370,000 in VR funds, giving DVR total funds of almost $470,000. He said between the Commission and DVR, the $200,000 turns into almost a million dollars in total funds. He said the language was adjusted to give DVR the flexibility should the Commission not be able to receive the program income when DVR is needing to spend it. He said program income must be spent before other federal funds can be drawn.

Mr. Trapp said that the Governor declared February as Macular Degeneration Awareness Month. He said that Commissioner Robert Reidy and himself wrote an article on macular degeneration which ran in the Albuquerque Journal on February 28. Mr. Trapp asked Mr. Romero to read the article. Mr. Trapp asked that a copy of the article be attached to the minutes.

Mr. Trapp said the Commission has been making efforts every year to focus on some aspect of blindness and visual impairment. He said the prior year it was Glaucoma Awareness Month. He said that in the fall he plans to focus on Diabetic Retinopathy. He said the goal is to make the public aware of Commission services and to inform the public that these conditions can often be avoided or mitigated.

Mr. Trapp said the Commission is in the midst of updating the Business Enterprise Program manual. He said the Commission is working with Perry Smith, and Lucy Mallahan is helping with the process, including working with the committee of blind vendors. He said the Commission will be submitting the revised manual to the Rehabilitation Services Administration for approval.

Mr. Trapp said the Commission is represented by the Office of the Attorney General, but there are areas that the Attorney General does not provide representation for, such as personal injury and employment claims. Mr. Trapp said the Commission is therefore in the process of contracting with a new Agency general counsel.

Mr. Blair joined the meeting at 2:13 PM.

Mr. Trapp said the Commission will have a large number of employees who will be attending the Spring Conference of the National Council of State Administrators of Vocational Rehabilitation, the National Council of State Agencies for the Blind, and the National Coalition of State Rehabilitation Councils. He said the CSAVR conference will be focused on fiscal matters, and it was important to have Commission employees attend. He said RSA is extremely strict with respect to the interpretation of fiscal rules. He said the Commission is also sponsoring Bernadine Chavez to attend the conference. Mr. Trapp said he will present to the CSAVR conference on Wednesday as part of a panel. He said he and Ms. Burma will also present to the NCSRC.

Ms. Bernadine Chavez said that Mr. Trapp and Ms. Burma will be talking about the State Plan and the SRC, and also how the VR Liaison is involved with the budget, state plan, and resource plan.

Mr. Trapp said the Commission will be conducting a review, or mock monitoring of the agency. He said the Commission’s Fiscal Consultant will be applying the Monitoring and Technical Assistance Guide. He said the Commission does this review periodically to help with internal controls and oversight. He said it has been 13 years since the Commission was last monitored by RSA. He said the new monitoring protocol looks at the risk that the Agency poses to the Federal interest and the amount of Federal dollars that are being left unspent. He said it could be many years before the Commission gets monitored next, so it is critical that the Commission has some way in the interim to ensure compliance. He said Seymour Levy is the Commission’s fiscal consultant.

Mr. Trapp talked about the meeting process, saying the SRC is using a Meeting Owl to help conduct the meeting. He said it is a little narrower and a little taller than a coffee can, and that it is sitting in the center of the table. He said it has a camera that swivels towards whoever is speaking, and encouraged members to only speak one at a time. He said the Public Emergency ended on March 31, and members are now expected to physically attend meetings unless it is difficult or impossible to attend. He said the Commission is taking advantage of the new technology to have council members attending when it is difficult or impossible for that individual to attend in-person. He said the Meeting Owl and Zoom will also help the public to better participate. He noted that Art Schreiber has been a long advocate for public participation and transparency as a member of the Foundation for Open Government.

b. Administration and Finance, Kevin Romero

Mr. Romero said the full return to office occurred for most State agencies on February 2, 2023.

Mr. Romero updated the SRC on agency finances for fiscal year 2023. He said as of noon today, the Commission had expended $11,776,033 and has encumbrances of $718,530, with a remaining balance of $4,313,137. He said that is 25.7 percent of the budget that was appropriated for FY23. He said the Commission was appropriated $16,807,701 to operate for this fiscal year, of that, about $150,000 was fund balance. He said the Commission projects to expend $15,941,700, or approximately 95% of the budget. He said the Commission’s current expenditures represent an increase of 14.1% from last year at this time, and the overall FY23 projected expenditures are expected to come in at a 10.3% increase. He said the Commission is projecting to spend an additional $1,487,900 more in FY23 than in FY22. He said the vast majority of this increase is related to services provided directly to consumers.

Mr. Romero said the Commission has 18 vacant positions, with 10 being Exempt/Other and eight being Classified. He said the overall Commission vacancy rate is 19.8 percent, and the Classified position vacancy rate is 12.4 percent. He said the Commission is recruiting to fill all eight classified positions. He said once the eight positions are filled, the Commission will be down to an 11 percent classified vacancy rate. He said last year at this time the Commission’s classified vacancy rate was around 15 to 16 percent, so the Commission has made substantial progress.

Mr. Romero said the Commission’s FY24 budget request went in as a flat request. He said the Commission asked for language to access more fund balance, and the budget is now awaiting the Governor's signature. He said House Bill 2 included a 6 percent pay increase for all State employees, but also a projected 10 percent premium increase.

Mr. Romero said the Commission requested $300,705 for FY24 to address facility renovations and repairs. He said the Commission is looking forward to working with the Facilities Management Division to address the identified needs as quickly and timely as possible. He said the Commission has a great working relationship with Facilities Management.

Mr. Romero said the Commission is working with DoIT to update telecom systems across all offices, with the goal of having greater accessibility and flexibility.

Mr. Blair thanked Mr. Romero for his report and said it answered his questions.

Ms. Mallahan joined the meeting in-person at 2:25 PM, and Mr. Trapp welcomed her to the meeting. Mr. Trapp also thanked Mr. Romero for his report. He said the Agency is very fortunate to have Mr. Romero and his team in Santa Fe helping to manage the finances, which are incredibly complicated. He said Mr. Romero and his team do a great job and the audits certainly reflect that, as does the fact that RSA has not elected to monitor the Commission.

c. Independent Living and Vocational Rehabilitation, Jim Salas

Mr. Salas said at the last meeting he talked about filling the VR Counselor and Assistive Technology Specialist positions, saying the Commission is now closing in on filling all the Blindness Skills Instructor positions. He said Anahi Munoz started as a Blindness Skills Instructor in Albuquerque on Monday. Mr. Salas said Gerrard McGill will be starting in a couple weeks at the Santa Fe office as a Blindness Skills Instructor. He said the vacant Business Enterprise Program Business Consultant position has been reposted. He said Sinai Ramirez will also be starting in a couple weeks as the Secretary for the Independent Living Program.

Mr. Salas said the Commission is working on changing the Business Enterprise Program rules and regulations manual. He said Lucy Mallahan is the Commission’s lead on that project. Mr. Salas said Ms. Mitchell conducted a Business Enterprise Program presentation last month during the VR Counselor in-person meeting in Albuquerque. Mr. Salas said there are a couple individuals who are working to join the Business Enterprise Program.

Ms. Mitchell said there are 31 STEP applicants, and that it looks like there will be a STEP program in Alamogordo this summer. She said about four or five students have signed up for the residential program at the Orientation Center. She said the other 27 students will be a part of the community-based program, or a part of the Albuquerque hybrid program. She said the STEP program will kick off on June 5 and go through August 12. She said the program will be paying the students $14.03 per hour, and that the students can work up to 24 hours per week.

Mr. Salas asked Ms. Mitchell to explain more about the workplace support aids wage of $37.50 per hour, and Ms. Mitchell said the Commission likes to make sure it is offering a competitive wage for individuals being hired. She said the Commission makes inquiries with DVR to see what the going wage is for their job coaches. She said that Christine Fuller, Supported Employment Coordinator at DVR confirmed the wage of $37.50 and Mr. Trapp approved that wage for the STEP program.

Mr. Trapp said there were a couple of factors, one being that the wage of $37.50 per hour does not include benefits. He said another factor is how difficult it is to hire individuals for only two months in the summer, and that the wage helps entice qualified individuals to look into the summer STEP job. He said this is part of the rate setting process which will be talked about later in the meeting.

Ms. Mitchell said only individuals ages 16 to 21 will participate in the residential program in Alamogordo. She said this is due to safety concerns. Ms. Burma added that the requirement to be at least 16 years old is starting to be a national trend.

Mr. Salas reported on employment for SFY23, saying 19 consumers are in competitive integrated settings, with one in self-employment, for a total of 20. He said the average wage was $20.91 per hour. He said for FFY23 to date, there are 13 consumers in competitive integrated settings with none in self-employment, for a total of 13. He said the average wage was $20.05 per hour. He said there are 24 consumers in employment status, which means they have a date at which their employment became stable, and another 15 in Service E, which means they are employed but their employment is not yet stable, for a total of 39. He said it is great to have such a high employment status number, and commended Ms. Mitchell and her team for such a great job.

Mr. Blair gave his applause for a job well done, and Mr. Trapp said being fully staffed has really helped the Commission to better serve its consumers.

d. Orientation Center, Jamie Sibson

Ms. Sibson welcomed council members and Commission employees to the Orientation Center.

Ms. Sibson said the Orientation Center is currently serving six students. She said there were two tours completed recently and both of those students have indicated that they would like to come to the center. She said she is happy to report that the Orientation Center tours and numbers are increasing. She said there is one staff member who will be completing training at the end of the week. She said two Blindness Skills Instructors will be starting immersion training in April.

Ms. Sibson reported on the installation of the Wi-Fi system, installation of cameras, installation of an electronic key fob system an electronic key fob scanner.

Ms. Sibson said the Commission on Accreditation of Rehabilitation Facilities recertification Survey was completed on April 3 and 4. She said it was quite the learning experience, and she is happy that the Orientation Center goes through this process. She said a debrief was done yesterday afternoon and Director Trapp was present during that meeting. She said she was very pleased with the results. She said there were just a handful of recommendations that were identified for the Orientation Center and once the report is received, the Orientation Center will have 90 days to prepare a quality improvement plan.

Mr. Trapp said Ms. Sibson and her team did a great job. He said CARF surveys over a thousand items, and that the Center only had five recommendations. He said none of the recommendations were serious, and that the Center had a good CARF survey.

Ms. Sibson said the next certification will be with the National Blindness Professional Certification Board. She said she anticipates the recertification to be scheduled towards the end of April or early May.

Ms. Sibson said the Orientation Center has recently completed staff training, including emergency safety procedures, first aid, structure discovery, and ethics. She said the staff completed online Civil Rights training and she is looking forward to more online training in the future. She said the next focus will be skills training for all staff.

Ms. Sibson said the Orientation Center is happy to be hosting the STEP program this summer, saying it will run from June 4 through August 4. She said the Orientation Center currently has five applications for STEP.

Ms. Sibson said the Orientation Center has made a change to the type of training shade that is used. She said this particular training shade is comfortable and has gotten good reviews from staff and students. She said it also accommodates various eye conditions by not putting pressure on the eye.

Mr. Trapp said he appreciates having Ms. Sibson as the new Director of the Orientation Center and he also thanked Ms. Mallahan for her work as Director. He said he is very optimistic about the future.

e. Skills Center, Kelly Burma

Ms. Burma said the Skill Center is currently serving three students who are Pre-ETS eligible and one adult. She said the Center is also providing services to other consumers who need technology services. She said students and families are gearing up for the STEP program. Ms. Burma said the Center staff is providing in-person services, virtual services, home visits, and office site visits. She said the Skills Center will also continue to provide services during the STEP program. She said the Skills Center has 12 STEP participants ready for hybrid training and one individual who will be participating in the statewide virtual training program. She said the Commission in encouraging the community-based program students to join as well.

Ms. Burma said both the Skills Center and the Orientation Center will be receiving a Meeting Owl to use for virtual training. She said both Centers will be offering an advanced Braille course and a Tuesday afternoon seminar throughout the STEP program.

Ms. Burma said the Commission will work with the National Blindness Professional Certification Board and will be scheduling exams for the National Certification in Unified English Braille. She said a UEB session was completed on February 2, with Casey West Robertson, with nine participants. She said exams will be scheduled in September or October.

Mr. Trapp complimented Ms. Burma on the great job she did on both the NMAER Conference and the NCUEB Seminar. He said it was great to see teachers back at the AER Conference.

Ms. Burma said there were 89 teachers in attendance on the first day of the AER conference. She said Ms. West Robertson conducted the presentation at the NCUEB seminar and also conducted presentations at the AER Conference. Ms. Burma said she did a presentation with a Doctoral Candidate from New Mexico State University on the use of the Abacus.

Ms. Burma said that she and Mr. Trapp participate in the diversity and inclusion collaboration specifically related to technology and the needs of individuals who need assistive technology. She said this is an effort to help the state improve accessibility to government services and is especially important as New Mexico widens its broadband access for residents across the state.

Ms. Bernadine Chavez asked Ms. Burma is she had thought about submitting a paper for the New Mexico Technology Assistance Program Conference. Ms. Burma said the New Mexico Technology Assistance Program will hold its conference on September 11 and 12.

Ms. Lila Martinez left the meeting at 3:30 PM.

11. Unfinished Business

a. Report on Orientation Center Apartments, Lucy Mallahan and Jamie Sibson

Ms. Mallahan said she is pleased to finally report that the Commission is in possession of an apartment building at 411 North New York. She said everyone will get to see the apartments tomorrow for the ribbon cutting ceremony at noon. She said she hopes everyone can join to celebrate this wonderful accomplishment.

Ms. Mallahan said permanent canopies will be installed on the patio area in July or August, and that the courtyard has been expanded so there is more room on the patio. She said a new Wi-Fi system and security cameras will be installed. She said these projects should be completed within the next several months.

Ms. Mallahan thanked the Facilities Management Division for coordinating with all the contractors and subcontractors and all that has been done in connection with the apartment complex.

Ms. Sibson said that mailboxes were installed on the patio, and all students living in the dorm and in the apartments will be receiving their mail there. Ms. Mallahan said there was also pea gravel added to the landscape as well as larger rocks over in the drainage area. She said one of the future projects is to get a landscape design to help tie the entire campus together.

Mr. Trapp thanked Ms. Sibson and Ms. Mallahan for all they have done.

Ms. Burma asked about the address of the apartment building, and Ms. Mallahan explained that the donated lot was too small to accommodate the 3800 square foot apartment building, so the Center abandoned the property line and combine the properties. She said the dorm address is 411 North New York Avenue and apartment building address is 411 A North New York Avenue, with the apartments being numbered as 101, 201, 301 and 401.

b. Report on Rehabilitation Services Administration Annual Review and Pre-ETS

Finding, Greg Trapp and Kevin Romero

Mr. Trapp said he reported at the last meeting on an RSA annual review finding and determination letter that the state received on January 26. He said the determination letter was directed to the state of New Mexico because of the statewide requirement that agencies spend 15 percent of the VR grant on the provision of Pre-Employment Transition Services. He said DVR had three annual state audits in which they were found to have just missed meeting the 15 percent requirement. He said audit findings involving federal funds are reported to the federal Audit Clearing House, and DVR had to work with RSA to clear those audit findings. He said the program determination letter cleared the last audit finding. He said the second letter was an annual review finding that was issued under Section 107 of the Rehabilitation Act. He said Section 107 authorizes RSA to annually monitor federal agencies. He said the annual review found that the state failed to meet the 15 percent Pre-ETS spending requirement, noting that the DVR Pre-ETS spending decreased from 14.7 percent to 2.7 percent. Mr. Trapp said the decrease in Pre-ETS spending was due to a reporting issue that DVR had. He said the Commission and DVR decided that the most appropriate response was to point out the significant progress that the state had since made in meeting the Pre-ETS reserve, noting that it was a reporting error that made it look as though the state was not spending as much on pre-employment transition services. He said the state received a letter from RSA on March 14 saying that RSA would respond shortly.

Mr. Romero said that RSA has still not responded. He said DVR and the Commission continue to monitor and track Pre-ETS spending to ensure that the funds are maximized as best as possible. He said the Commission and DVR are communicating on Pre-ETS spending and on MOE, and are working to be sure to identify any reporting errors.

Mr. Trapp said spending the full Pre-ETS reserve is very difficult for the Commission, even though new contracts are in place and the agency is making progress spending the Pre-ETS reserve. He said the annual review finding is included in the minutes of the Council’s February meeting.

c. Council Annual Report Update, Greg Trapp

Mr. Trapp said the Council Annual Report was submitted to the feds on December 29. He said the report is due 90 days after the close of the federal fiscal year, which happens on September 30. He said the Council submits the report electronically to the Department of Education and to the Governor's office. He said the Commission creates a print version of the Annual Report through the State Use Program and Horizons of New Mexico. He said the state use program enables people with disabilities to provide contract services to state and local public bodies. He said the Commission contracts with a Horizons member who has a visual impairment to create the printed version of the annual report. He said the annual report will be available to be handed out at the next Council meeting. He said it is a great way for Council members to help educate the public, and encouraged Council members to distribute the reports to schools, school districts, medical doctors, optometrists, and ophthalmologists.

Ms. Burma added that Mr. Trapp has been invited to speak to the Academy of Ophthalmology on September 2. Mr. Trapp said he will work with Dr. Reidy on the presentation to the Academy of Ophthalmology, and that he will distribute the annual report to those present. He said Ophthalmologists and Optometrists are the primary source of referrals to the Agency.

d. Report on Public Meetings on MOP Changes, Rate Settings, and State Plan, Greg Trapp, Jim Salas, and Kelly Burma

Mr. Trapp said the Commission is required to conduct public meetings when it makes changes to its policies and procedures. He said public meetings were held to collect public input on the Commission’s Manual of Operating Procedures, on the Commission’s Rate Setting methodology, and the Commission’s State Plan. He said the Commission held two virtual public meetings and one in-person hybrid meeting. He said the public meetings were focused on central, northern, and southern New Mexico.

Mr. Salas said that no one attended the southern New Mexico meeting. He thanked Ms. Bernadine Chavez from Disability Rights New Mexico for attending the central New Mexico meeting. He also thanked Mr. Tim Gardner from DRNM for attending the northern New Mexico meeting. He said that DRNM has always shown an interest in the Commission’s programs and giving feedback.

Mr. Trapp asked Ms. Burma to summarize the comments that were voiced at the public meetings. Ms. Burma said there was no participation or comment at the Southern meeting. Reporting on the central New Mexico meeting, She said Ms. Bernadine Chavez attended the meeting in-person, and that Commissioner Lansing and Council member Blair attended the meeting remotely. She said that several individuals from Los Alamos also attended the meeting. She said there was good discussion on the rate setting methodology item, especially about what should be paid for readers. She said there was discussion on how to attract individuals to provide reader service, how to manage the service, how to scale the wage based on professional experience and education, and also what to pay for transportation. She said there was discussion about independent living issues. She said the independent living comments were more focused on the northern New Mexico area and the difficulty of transportation in that area. She said this is important because it informs individuals who might be considering vocational rehabilitation after receiving independent living services. She said Hoskie Benally of the Native American Disability Law Center also attended the meeting, updating the agency on the activities being provided in the Four Corners area. She said there are a number of blind individuals who are struggling to get services in the Arizona side of the Navajo Nation.

Mr. Trapp said the Commission definitely wants to give the public an opportunity to comment. He asked the Council for ideas on how to get greater public participation. Ms. Burma said this is an issue that is being discussed by the National Coalition of State Rehabilitation Councils, and that it is difficult to get participation on state rehab councils. Ms. Bernadine Chavez agreed with Ms. Burma.

Mr. Trapp said he just received an email from the Governor’s office saying all appointment letters have gone out and the Council should be seeing new appointments.

e. Update on Establishment of Rates for Purchases of VR Services and Systems, Greg Trapp and Kevin Romero

Mr. Trapp said the Rehabilitation Services Administration and the Vocational Rehabilitation Technical Assistance Center-Quality Management recommended using public meetings to solicit input from the public and vendors on the rates set by the Commission for vocational rehabilitation services and systems. He said time was spent in the meetings discussing various factors to take into consideration on what is an appropriate and reasonable rate to pay for goods and services. He said one of the scenarios discussed was what to pay for a hot water heater at the Orientation Center. He said the factors to be considered include quality, size, cost, life span, geographic location, quickness of delivery, urgency, and installation costs. He said he and Ms. Sibson discussed using a preventative maintenance schedule to replace equipment on a regular basis so as to avoid the need for emergency purchases.

Mr. Romero said that the public input regarding the rate setting was very valuable. He said he and Mr. Trapp are looking at contracting legal counsel and have inquired as to what rates are being paid by other state agencies. He said that was another suggestion in the methodology guide. He said it is important to check to see what the going rate is in comparable geographic areas. He said the Commission takes all of this into consideration, as well as the State Procurement Code and the requirements of the Department of Finance and Administration.

Mr. Trapp said he thinks RSA has at times required VR agencies to comply in ways that are not set forth in fiscal regulations or even sub regulatory guidance. He said RSA seems to be taking a step back from that kind of very strict fiscal compliance with the new Section 107 monitoring process, and is now providing fewer compliance findings and more technical assistance. He said RSA is concerned that the VR program is not spending all of the VR grant, and that he hopes RSA is willing to accept a reasonable method of determining rates, and not require the most perfect method.

Mr. Romero said the Commission should make every effort to follow the guidance as best as possible within the Commission’s rules and regulations and provide the best service possible to all consumers.

Mr. Trapp asked the Council for questions or suggestions from the council on the rate setting guide.

Ms. Burma said one of the issues that came up at the central New Mexico public meeting was how much to pay for drivers. She said there is a big difference between the state and federal mileage reimbursement rate.

Mr. Trapp said an Agency must pay enough to attract individuals to want to provide driver service and be compliant with state law. He said right now the minimum wage that state agencies are allowed to pay is $15.

Ms. Bernadine Chavez said the feds do not realize what the needs are here in New Mexico. She said other states are not the same as New Mexico. She said the Veterans Administration is a good example. She said the feds are closing Veterans clinics in rural areas because the feds believe individuals can travel to urban areas in states like Rhode Island and Connecticut. She said here in New Mexico an individual may need to drive across the state for six hours due to the state being so rural, and it may cost a lot more in those instances.

Mr. Trapp said there is not a state that is a good analog for New Mexico. He said New Mexico is very rural, has a high level of poverty, is a minority majority state, has high levels of individuals with secondary disabilities, and is therefore in a unique situation.

12. New Business

a. Approval of Council Open Meetings Act Resolution, Greg Trapp

Mr. Trapp said public bodies that are covered by the Open Meetings Act are required to annually determine what constitutes reasonable notice for their meeting. Mr. Trapp said the Attorney General’s office states that a public body needs to be a creation of state law to be covered by the OMA. He said the SRC operates under the Commission for the Blind Act, which is state law. He said Council members are also reimbursed under the State Per Diem and Mileage Act. He said the SRC also works on the State Plan. He said the State Rehabilitation Council was created by the 1998 amendments to the Rehabilitation Act. He said before the 1998 amendments it was called the State Rehabilitation Advisory Council, or SRAC. He said the SRC is not just advisory, but now has specific tasks that it must perform, such as the goals and priorities, and the identification of hearing officers.

Mr. Trapp summarized the proposed Open Meetings Act Resolution, saying that it provides for 10 days of notice for a regular meeting. He said 10 days is considered reasonable notice for a regular meeting, adding that the notice must be published in a newspaper of general circulation. He said the Council’s Open Meetings Act Resolution says how meetings during times of public emergency are to be conducted.

Chairperson Katharine Chavez asked for a motion to approve the Council Open Meetings Act resolution. Mr. Blair made a motion to approve the Resolution, and Mr. Hooee seconded the motion. A roll call vote was taken, and the Resolution was approved with all members present voting yes. Mr. Trapp and Ms. Mitchell are ex officio and did not vote.

b. Approval of Identification of Hearing Officers, Greg Trapp

Mr. Trapp said one of the tasks of the Council is to identify Hearing Officers. He said the Commission has never had an impartial due process hearing, but the Commission is committed to making sure that its consumers have the opportunity for a hearing, and that means maintaining a pool of hearing officers.

Mr. Romero summarized the resume of Pilar Murray, saying she was educated at New Mexico State University, the University of California at Santa Cruz, Seattle University School of Law, and the Jerry Spence Trial Lawyers College. He said she has experience as a principal at Murray Law Firm, as a Deputy District Attorney, in employment law, and in personal injury and criminal cases.

Mr. Trapp said Ms. Murray has a strong background in special education, and she has a background in disability. He said she has litigated ADA, 504, and special education cases. He said she is also a member of the New Mexico Technology Assistance Program Coordinating Council. He said Ms. Murray would also receive additional training related to the Manual of Operating Procedures, on what the Commission does, and on blindness in particular.

Ms. Bernadine Chavez said she was very impressed with Ms. Murray’s resume and that she is certainly qualified. She said she thinks it is good to have a pool of hearing officers.

Ms. Bernadine Chavez made a motion to accept Ms. Pilar Murray as a hearing officer, and Ms. Seanez seconded the motion. A roll call vote was taken, and the motion was approved with all members present voting yes. Mr. Trapp and Ms. Mitchell are ex officio and did not vote.

c. Approval of Council Resource Plan, Greg Trapp and Kelly Burma

Mr. Trapp said that the Council currently has a resource plan that is good through March of 2024.

He said under the rehabilitation act, the agency is required to determine the support that the agency will provide to the Council. He described the technology that the agency will provide on behalf of the Council, including use of a Zoom license and the Meeting Owl. He said he also updated the resource plan to include RSA-TAC-12-01, which requires the rehabilitation agency to provide childcare support for Council members. He said 10 percent of Ms. Burma’s time is assigned to support the Council as a part of her serving as SRC Liaison. He said the agency supports with creation of minutes, publication of legal notices, and also per diem and mileage reimbursements.

Mr. Blair said the clarity and stability of the connection is very helpful. He said he is one of the individuals who really rely on the ability to participate via Zoom, and although he acknowledges that the technology is expensive, he would be in support of adding the expense to the resource plan.

Mr. Trapp said those suggestions will be taken into account. He said the Open Meetings Act requires members to meet in-person so that the public can see and hear the Council and see how the council is handling items of public concern. Is the public being taken seriously? Is the Council paying attention? Is the Council doing what is needed to be good stewards of the public trust?

Ms. Burma said the Meeting Owl allows individuals to see the council members as they vote and speak. She agreed with Mr. Trapp when he said there should be a virtual presence for the public to attend.

Mr. Salas asked Mr. Blair if he could hear everyone in the room equally well, given the distance away from the Meeting Owl. Mr. Blair said he could hear everyone equally well.

Mr. Trapp said another great resource for the council members to have would be business cards. He said the resource plan provides for 200 business cards for each member, and he asked members to get with Ms. Savage to order those.

Ms. Bernadine Chavez asked about getting some signature guides, and Mr. Trapp said the Commission has those available to all council members. He said the signature guides are a great item to give to doctors.

Chairperson Chavez asked for a motion to approve the Council Resource Plan, which will be good through April of 2026. Ms. Bernadine Chavez made a motion to approve the Council Resource Plan, and Ms. Seanez seconded the motion. A roll call vote was taken, and the Resource Plan was approved with all members present voting yes. Mr. Trapp and Ms. Mitchell are ex officio and did not vote.

d. Approval of Revisions to Manual of Operating Procedures: Revising Chapters 2

Informed Choice and the Individualized Plan for Employment; 4 Training; 5 Maintenance; 6 Transportation; 9 Support for Consumer Attendance at Consumer Conventions; 10 Other Services; 15 Consumer Rights; 16 Review of Determinations Made by Commission Personnel; and Case File Documentation, Jim Salas and Daphne Mitchell

Mr. Salas asked Ms. Mitchell to read the MOP summary changes document.

Ms. Mitchell said in Chapter Two, which is Informed Choice in the Individualized Plan for Employment, the Commission is proposing to revise the MOP so that a plan revision may be written in lieu of an amendment to the Individualized Plan for Employment. She said this would ensure more timely service delivery. She said the revised language changes integrated employment settings to competitive integrated settings. She said chapter Four revises language to reflect the apartments and possibility of offsite or onsite instruction. She said the revisions use gender inclusive language for the dormitory and apartments, Remove the costs for meals for family members, and redirect to chapter five on exact maintenance costs for center participation. She said the revisions refer to digital recorders instead of tape recorders. She said the changes include a section describing work-based learning experiences for adults. She said Chapter Five includes service formulas to derive allowable costs for short-term training and students enrolled in secondary education. She said the changes increase maintenance for center participation to one day's meal allowance per week.

Mr. Salas said the maintenance changes increase the meal allowance to $160 a month and for students in STEP up to $59 a week. He said this should help provide extra meals and greater flexibility.

Ms. Mitchell described the proposed MOP changes, including to maintenance and the revise timeline for completion of the financial summary to follow an eligibility determination. She said the changes Include fares for rideshare services as an approved transportation method, and Revise compensation for transport in a private vehicle to use mileage rates instead of gas costs. She described changes that reflect the new definition of post-employment status. She said the changes add a policy for the support of pre-employment transition students to attend consumer conventions in their entirety on an annual basis. She said the changes use a rate setting methodology to derive at a percentage above prevailing state minimum wage for reader services, with tier one and tier two levels. She described technical revisions, such as changing Recordings for the Blind to Learning Ally, and including Bookshare, and NLS. She said Chapter 15 is on Consumer Rights, and includes gender identity and sexual orientation in the list of protected categories. She said it also corrects the address for Disability Rights New Mexico. She said Chapter 16 is on Review of Determinations made by Commission Personnel, and changes the agency contact to request mediation to the Deputy Director for vocational rehabilitation. She said Chapter 17 is on case File Documentation, and Includes electronic communication for creation of a contact note, requires recording of contact notes within 21 days of occurrence, and deletes the documentation of economics needs tests since it is no longer required. She said the changes revise documentation of expenditures less than $250, and utilize gender neutral language throughout the MOP. She said the final change is to create Chapter 18, which authorizes rates for Various Services. She said this chapter uses applicable per diem, meal rates, mileage rates, New Mexico government minimum pay rates, and creates tier one and tier two rates for readers/tutor.

Mr. Salas said all the dollar figures were removed from chapters one through chapter seventeen and refer to Chapter 18 for the actual dollar figures. Mr. Salas said after discussion with Mr. Trapp, it was decided that the New Mexico state government minimum pay rate for state government employees of $15 an hour would be the Commission’s tier one rate for readers and tutors. He said the tier two rate is still being determined based on specialized knowledge or skills and abilities.

Mr. Trapp thanked everyone for attending today’s meeting, and Chairperson Chavez recessed the meeting at 5:05 PM.

Chairperson Chavez called the meeting to order on Thursday, April 6, at 9:13 AM.

Roll call was taken by Ms. Burma. Present over Zoom was Jeff Blair, Daphne Mitchell, Paula Seanez, Bernadine Chavez, Katharine Chavez, Mario Hooee, and Greg Trapp. Adelmo Vigil physically joined later as a guest.

Mr. Trapp said he appreciates the counsel’s input, and the knowledge, experience, and perspective of the council members that helps inform the process. He said there will be a few technical and clerical changes and modifications that will be made to the MOP. He said he believes all the changes will increase, improve, and enhance consumer services.

Ms. Bernadine Chavez said she believes the changes being made are very consumer driven and it speaks a lot about the services that the Commission provides and the priorities of the agency.

There was discussion among the council members regarding language changes in the MOP. Ms. Seanez asked about plan amendments and the use of a plan revision instead of an amendment, saying she thought it was a really good idea and really consumer focused. Ms. Seanez also noted that the MOP in item 4, Chapter 6, used “fair” when it intended “fare.”

Mr. Trapp noted that it was important that the original IPE included language saying that the IPE could be revised, and that the consumer was agreeing to the ability to amend the IPE through a plan revision. He said this avoids the need for a signed amendment.

Ms. Bernadine Chavez said that Adelmo Vigil has joined the meeting. Mr. Trapp welcomed Mr. Vigil, saying he is a former Director of the Orientation Center, and that He is currently President of the National Blindness Professional Certification Board and member of the National federation of the Blind board of directors. Mr. Vigil noted that he is also Vice President of the NFB of New Mexico.

Chairperson Chavez asked if there were any other questions about the MOP. With there being no questions, Mr. Trapp thanked Mr. Salas and Ms. Mitchell for their work on the MOP.

Ms. Seanez made a motion to approve the revised Manual of Operating Procedures. Ms. Burma asked if the motion needed to authorize the Executive Committee to make technical changes. Mr. Trapp agreed it was a good idea to authorize the Executive Committee to make non-substantive changes, adding that the Executive Committee consisted of the Chairperson, Vice Chairperson, and Secretary because the Council currently has less than ten members. Ms. Seanez amended her motion to authorize the Executive Committee to make final technical changes, and Mr. Hooee seconded the motion.

Chairperson Chavez asked for final discussion, and Mr. Blair said he thought the changes were a really positive addition to the MOP.

A roll call vote was taken, and the motion was approved with all members present voting yes. Ms. Martinez was not present for the vote. Mr. Trapp and Ms. Mitchell are ex officio and did not vote.

e. Approval of Goals and Priorities, Kelly Burma

Ms. Burma spoke about the goals and priorities for the Orientation Center, saying she sent out the goals and priorities last week. She Said she wanted to talk about goals G, H, and O as they pertain to the Orientation Center. She proceeded to read goals G, H, and O as follows:

g. Enhance the number and quality of employment outcomes by using the Orientation Center to provide employment preparation training for adults and transition students, including through the addition of an apartment training facility to be constructed adjacent to the Center. The proposed apartment facility will increase the capacity of the Orientation Center, will enable the Orientation Center to provide more realistic training, will eliminate the need to rent costly and less appropriate private apartments, and will reduce the number of instances in which costly out-of-state training will be necessary to meet the needs of consumers.

h. Enhance the number and quality of employment outcomes by using the Orientation Center to provide training for adults and transition students that is designed to remediate or mitigate any deficiencies in skills that may be related to the pandemic, and to take advantage of new telework opportunities.

o. Enhance the number and quality of employment outcomes through the provision of independent living training to vocational rehabilitation consumers, including through the proposed apartment training facility at the Orientation Center.

Ms. Burma said she thought goal O could be deleted as it pertained to the construction of the apartments.

Mr. Trapp said that the goals and priorities were the Council’s, and that they were a part of the State Plan and reflected what the Council thought the agency should be focusing on. He asked Ms. Burma to read the goals, which she did.

Ms. Sibson said she was excited to incorporate the apartments into the center training, saying they would provide more realistic training.

Mr. Blair asked why the goals included language about the pandemic, saying the state was about to exit from pandemic restrictions.

Ms. Burma said the pandemic created opportunities for telework, and Mr. Trapp said the pandemic would reverberate for years and decades to come in ways that will impact on services. He said students did not get the needed Braille instruction for two years, which will impact on their future literacy. He said this is especially true for grades 1 through 3. He said Mr. Blair did raise a good point because the active transmission phase has at least for now ended. Ms. Burma noted the medical consequences of COVID, including increased blindness.

Mr. Hooee said he did not think COVID would be going away, that there could be future diseases, and that there was a need for clients to protect themselves.

Mr. Trapp said there could also be more virulent strains of COVID. He said that having macular degeneration has also been shown to be the highest risk factor for severe COVID. He said what is not known is the impact of COVID on macular degeneration, and since COVID impacts the micro circulatory system will it make macular degeneration or diabetic retinopathy worse. He said COVID certainly causes more cases of diabetes, which will cause more cases of blindness.

Mr. Trapp asked the Council if they had any other goals and priorities related to the Orientation Center. He said the apartments will not necessarily entirely eliminate the need to rent apartments in the community, and Ms. Burma suggested using a term such as reduce.

Mr. Blair thanked Mr. Trapp and Ms. Burma for the conversation, saying it has helped him understand the reason for the pandemic language.

Mr. Vigil said the apartment project has been in the making for 30 years. He said it was a dream he has had since 1993 when he became Director of the Orientation Center. He said the property was donated to the Commission in 2002. Mr. Vigil also congratulated Mr. Trapp for hiring Ms. Martinez as the Director of the Orientation Center, saying the Center was in great hands.

Mr. Trapp thanked Mr. Vigil, saying that the agency was building upon Mr. Vigil’s own work and leadership at the Orientation Center.

Ms. Seanez said she thought the goals and priorities addressed the right items. She made a motion to approve the goals and priorities, eliminating goal O, and changing the letters of the remaining priorities. Mr. Blair seconded the motion. Ms. Burma asked for an amendment to the motion to revise goal g which talks about eliminating the need for costly apartment rentals and add language about realistic apartment training. Mr. Trapp asked that the motion also be clarified to state that the motion was to approve goals G and H, saying the other goals and priorities would be revisited later. Ms. Seanez retracted her original motion and moved to approve goals G and H, to eliminate goal O, change the lettering, and revise goal G as discussed. Mr. Blair seconded the revised motion. A roll call vote was taken, and the minutes were approved with all members present voting yes. Ms. Martinez was not present for the vote. Mr. Trapp and Ms. Mitchell are ex officio and did not vote.

13. Council Open Discussion

There was discussion about transportation in Albuquerque and Alamogordo. Mr. Trapp said Albuquerque was eliminating bus routes. Ms. Marquez said the fee in Albuquerque was eliminated, and that the city was moving to a system where riders would self-certify their disability. Mr. Blair said he was on the Para-Transit advisory Board, and he talked about the self-certification, saying there were issues with the ADA definition of disability and ridership eligibility. He said self-certification was a work in progress. Ms. Bernadine Chavez said there were issues using 311 to file complaints about the bus system. She said DRNM has also provided training to ABQ Ride. The discussion also included conversation about how public transit and rideshare in Alamogordo need to be improved for persons who are blind or visually impaired.

14. Comments from the Audience

There were no audience comments.

15. Date and Location of Next Meeting

The next meeting will start at 9:00 AM on July 20, and will be at the Commission’s Albuquerque office. Hybrid and virtual options will depend on the pandemic.

16. Adjourn

The meeting was adjourned at 10:58 AM.

Approved and Electronically Signed this 20th Day of July, 2023.

Chairperson

State Rehabilitation Council

New Mexico Commission for the Blind

Attachment: Annual Review Finding

NMVR 061899304 PETS only 107 report signature 1.24.23.CD.pdf

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

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).

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

Signed by CAROL DOBAK <Carol.Dobak@ed.gov> Time: 2023.01.24 13:19:18 -05'00'

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 Data

2

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.

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

VR funds for pre-ETS and reported spending $979,657 (or 3.6 percent)

4

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).

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.

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

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:

list of 3 items

• 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.

list end

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.

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 portions

6

of the approved New Mexico Combined State Plan, submitted by and approved

7

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:

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.

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-

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.

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

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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 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.

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:

list of 6 items

• 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.

list end

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

list of 7 items

• 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;

• 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,

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.

list end

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

list of 5 items

• 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.

list end

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.