

DISABILITY RIGHTS CENTER - NH

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[Sent VIA EMAIL to Melissa.M.Salmon2@livefree.nh.gov]

NH Dept. of Business and Economic Affairs
100 North Main Street, Suite 100
Concord, NH, 03301

Re: Written Comment to New Hampshire WIOA Combined State Plan

Disability Rights Center-NH is the federally designated Protection and Advocacy agency for New Hampshire authorized by federal statute to protect the civil rights of individuals with disabilities. As part of our federal mandate, we receive funds to protect and advocate for the employment rights of individuals with disabilities. As such, DRC-NH submits the following comments regarding the NHVR section of Program Core Requirements contained in Section VI (“Section VI”) of the WIOA Combined State Plan.¹

General Comments

Many of NHVR’s responses in the Plan are too broadly written to be meaningful. Examples of this are found in Section VI, (o), which asks NHVR to describe its strategies to achieve goals and priorities.² One of NHVR’s goals is to “Focus on Career Pathways within NH Sectors[.]” NHVR’s strategy to achieve this goal is to provide “Training for counselors and staff[.]” The response lacks any detail about what kind of training staff will receive, how it will be tracked, and how that training will be converted into practice to help channel VR participants into specific career pathways. Unfortunately, many of NHVR’s responses throughout the WIOA Plan are similarly vague.

When goals and priorities are too broad to be accurately assessed, it becomes impossible to measure how much progress is being achieved, and whether the progress is attributable to the listed strategies. This type of ambiguity also makes it difficult to identify when changes to programming and services are needed. An inevitable consequence of this lack of accountability is a stagnation or decline in employment outcomes for VR participants. We urge NHVR to make deliberate efforts to use more precise and measurable language going forward.

¹ Pages 147-194 of the New Hampshire WIOA Combined State Plan

² Section VI, (o), which is specifically concerned with NHVR’s goals and strategies provides the clearest example, but ambiguous language is found throughout the entirety of NHVR’s portion of the Plan.

In addition to overly broad goals, many other areas of the Plan lack thorough responses. This is best embodied by comparing NHVR's responses in Section VI, (d)(1) and Section VI, (d)(2)(C).³ Both sections contain 11 bullet points that are exactly the same. The only difference between the two sections that Section (d)(2)(C) adds a sentence to the end of the 11th bullet point and adds a 12th bullet point. It is unclear why both sections contain the exact same language, as each section asks a different question, but it suggests that efforts to provide detailed and responsive answers must be improved.

We support many of the comments and suggestions provided by the State Rehabilitation Council included in this plan.⁴ Specifically we echo the need for additional staff training in order to improve secondary transition services and to build expertise in the area of transition. Further, including a more comprehensive list of the programs and projects that VR undertakes and the underlying statistics and data about the effectiveness of those initiatives should be considered. We are concerned that NHVR has not made meaningful progress on these goals after 18 months.

Support for Existing Programs and Initiatives

DRC-NH commends NHVR's recent efforts in business development, including the use of innovative strategies to engage with potential employers. We also applaud NHVR for adding the Windmills disability awareness training program as a service to offer businesses in need of disability workplace etiquette. We are hopeful that NHVR's recent business development efforts will help employers meet their workforce needs, solidify long term employment connections, and improve the workplace environment for employees with disabilities.

Additionally, DRC-NH supports NVHR's implementation of the Talent Acquisition Portal ("TAP"), which allows NHVR clients to easily develop resumes and find connections with potential employers. DRC-NH hopes that NHVR continues to spread awareness of the TAP as an employment resource for VR-eligible individuals with stakeholders and partner agencies throughout the state.

NHVR's participation in the Project SEARCH and Project RENEW programs are also laudable. While the scope and scale of the respective programs are relatively limited (each region is limited to a handful of participants per program), both programs provide high quality vocational opportunities for transition age students. NHVR should continue to collaborate with other entities to develop similar programs designed to reach wider groups of students with disabilities.

Sections Requiring Improvements

Comprehensive Statewide Needs Assessment

The official findings of the 2019 Human Services Research Institute ("HSRI") comprehensive statewide needs assessment ("HSRI assessment") are not included in the Plan. Instead, Section VI, (j) only contains "elements of the draft [HSRI] report". This section needs to be updated to

³ Pages 151 and 153-54 of the Plan.

⁴Section VI, (a)(1)-(3).

reflect the actual findings and recommendations of the HSRI assessment, as many of the recommendations are prescient to the Plan. DRC-NH urges NHVR to review and adopt the recommendations in the HSRI assessment. Several recommendations from the assessment are referenced in the comments below.

Memorandum of Understanding

The Plan makes multiple references to a memorandum of Understanding (MOU) between NHVR and the New Hampshire Bureau of Developmental Services (BDS). In Section VI, (f), NHVR states that it expects a “finalized MOU with all of the Medicaid Agencies in Mid-2020.” However, to date, the MOU between NHVR and BDS has not been finalized. In fact, the annual report from the NH Employment Leadership Committee to the NH Developmental Service Quality Council on March 17, 2021, noted that this MOU was still under legal review.⁵ On multiple occasions, including on October 20, 2021, BDS informed our office that the MOU was still not finalized.

In addition, DRC-NH is not aware that NHVR has finalized the MOU with NH Bureau of Behavioral Health. The continued delays and lack of finalized MOUs with BDS and BBH are very concerning.

These MOUs are mandatory, not discretionary: WIOA requires an MOU between VR and the state agency responsible for administering the State Medicaid plan.⁶ Further, while DRC-NH is supportive of the five stated goals of the MOU outlined in the Plan, the goals are merely aspirational until an MOU is actually finalized.⁷ As such, we urge NHVR to redouble efforts to finalize its MOUs with BDS and BBH in order to increase efficiencies between the agencies and to bring NHVR into compliance with WIOA regulations.

Employment Leadership Committee

The Plan misrepresents the nature of the New Hampshire Employment Leadership Committee (“ELC”).⁸ The Plan describes the ELC as an organization that focuses on employment outcomes of “both populations” (i.e. individuals with developmental disabilities and individuals with behavioral health disabilities). The Plan also states that members of both DHHS bureaus attending. This is inaccurate: the ELC focuses on improving employment outcomes for employment for individuals with developmental disabilities, is hosted by the Bureau of Developmental Services, and has no current members from the Bureau of Behavioral Health involved.

⁵ <https://www.dhhs.nh.gov/dcbcs/bds/documents/annualreport2020.pdf>

⁶ 34 CFR §361.24(f)

⁷ The five stated goals are: (1) simplify the VR process and flow of services to participants and partners; (2) sharing aggregate priority data elements; (3) strengthening transition plans for securing long-term Medicaid waiver services; (4) sharing of resources; and (5) streamlining paperwork and improving efficiencies.

⁸ Section VI, (c)(1).

Transition Services Under WIOA

Transition services provide a foundation for secondary students with disabilities to develop the skills necessary to successfully participate in the workforce. Through WIOA, NHVR plays a vital role in helping to foster these skills by providing Pre-Employment Transition Services (“Pre-ETS”) and employment transition services to students with disabilities. However, based on conversations with clients, stakeholders, and review of recent assessments⁹, we feel that the Plan does not accurately reflect the experiences of many transition age students with disabilities. DRC-NH has concerns that NHVR is not dedicating sufficient attention or resources into the development, implementation, and delivery of the Pre-ETS expanded by WIOA.

WIOA made many significant changes to state vocational rehabilitation agency’s obligations to provide transition services. Perhaps the most significant change created by WIOA is the expansion of Pre-ETS, the importance of which cannot be understated. Pre-ETS provides students with resources to prepare them for employment or post-secondary education, which improve their quality of life and help to close the employment gap for individuals with disabilities. WIOA’s expansion of eligibility for Pre-ETS means that more students are able to access the services as part of transition planning. Further, WIOA now requires that 15% of a state’s public VR funds must be used for pre-employment transition services.¹⁰

Involvement of NHVR in IEP Transition Planning

In order to maximize impact for students in transition, Pre-ETS should be explicitly included in IEP transition plans. As NHVR acknowledges, Pre-ETS “have re-shaped transition and the collaboration with schools.”¹¹ Incorporating Pre-ETS into IEPs ensures that all interested students with disabilities have the opportunity to begin to prepare for post-secondary life. Having NHVR staff emphasize the importance of Pre-ETS by advocating for their inclusion in IEPs will help familiarize students, families and educators about the scope of services NHVR offers. Ultimately, this will increase the likelihood of positive employment outcomes. However, the NHVR Plan lacks critical details about the nature of the agency’s involvement in the planning of Pre-ETS or about how those services are actually delivered.

⁹ A significant portion of the HSRI assessment focuses on the need to improve transition services provided by NHVR, noting that “[s]tudents with disabilities and transition-age youth need better access to Pre-Transition Employment Specialists or Transition Specialists across the state and smoother transition between services and supports provided by the school system and the statewide vocational rehabilitation system” <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/nh-vr-csna-report-200723-508-compliant.pdf> (“HSRI Assessment”), x.

Similarly, a 2019 U.S. Dept. of Ed. Monitoring Report notes that NHVR provided pre-employment transition services to only 34.5 percent of students with disabilities that were reported by the agency. U.S. Dept. of Ed. Federal Fiscal Year 2019 Monitoring Report. Pg 10. <https://rsa.ed.gov/sites/default/files/publications/fy2019-nh-c.pdf>.

¹⁰ 34 CFR 361.65(a)(3).

¹¹ NHVR Section VI, (d)(1).

NHVR's Role in transition planning for students who are not VR participants is unclear. Section VI, (d)(2)(B) asks for a description of the role NHVR personnel play in the development and implementation of transition services in a student's individualized education program ("IEP"). However, NHVR's response largely ignores the substance of the question, and instead discusses the role agency staff play in developing an individual plan for employment ("IPE"). NHVR staff should advocate for the inclusion of employment-related transition services (including Pre-ETS) in a student's IEP. It is not clear whether NHVR staff take this step, but the agency's response makes it seem unlikely.

This response is particularly concerning because it indicates that NHVR staff only participate in IEP meetings after a student has applied for or has been found eligible for VR services. The response does not mention what role, if any, NHVR staff play in IEP meetings for students in transition who are not yet eligible (or have not applied) for VR services. Under WIOA, Pre-ETS must be made available to "all students with disabilities, regardless of whether the student has applied or been determined eligible" for VR Services.¹² If agency staff only regularly attend IEP meetings for students found eligible for VR services, it is a dereliction of NHVR's obligations to students in transition under WIOA. VR staff are required to attend IEP meetings for all pre-employment transition students, if invited.¹³

Clarify Pre-Employment Transition Services

The Plan needs to include a more detailed description of each type of Pre-ETS provided to students in transition and how each is delivered. The current Plan, which offers only a nominal description of Pre-ETS, notes that a 2019 "CRP program revamp" added a new service package for pre-employment activities to improve career exploration.¹⁴ We suggest NHVR add additional language expanding on the changes included in the new service package and how the new services improve career exploration opportunities.

The language in the Plan is unclear which of the five required Pre-ETS are being delivered by NHVR or by a community vendor.¹⁵ Contracting with a community vendor to provide Pre-ETS is not necessarily problematic if there is a system in place to track and measure effectiveness of

¹² 34 CFR § 361.48(a)(1).

¹³ 34 CFR § 361.48(a)(4).

¹⁴ Section VI, (g)(2) of the Plan states that NHVR is "creating programs with multiple partner agencies to provide Work Based learning opportunities" and "has focused on developing a menu of services and supports" but offers no specific examples of the types of services and supports that the vendors offer.

¹⁵ A 2019 U.S. Dept. of Ed. Monitoring Report notes that NHVR provides two (2) of the five (5) required Pre-ETS directly, and contracts with community vendors to provide the remaining three(3) pre-ETS. U.S. Dept. of Ed. Federal Fiscal Year 2019 Monitoring Report. Pg 11. <https://rsa.ed.gov/sites/default/files/publications/fy2019-nh-c.pdf>.

each vendor. However, the Plan is unclear if such metrics are in place.¹⁶ This response should be amended to explain how NHVR monitors the quality and effectiveness of Pre-ETS services provided by community vendors. At minimum, NHVR's description should offer more details about each specific service and identify who provides them to students.

The importance providing an accurate and detailed description of Pre-ETS is critical. Not only does an accurate description increase transparency and awareness for stakeholders, but it also affords NHVR a chance to reflect upon their current practices and make changes for future WIOA Plans. This review is particularly important because quality of Pre-ETS can vary greatly. We have heard from clients and stakeholders that Pre-ETS was only offered to groups of students (not to individuals), and was not helpful or effective.¹⁷ WIOA does not limit the provision of Pre-ETS to groups. In fact, WIOA's regulations describe Pre-ETS that can be provided individually or in groups.¹⁸ We suggest that NHVR can, and should, provide more individualized Pre-ETS to all eligible students with disabilities.

Coordination with Education Officials

The Plan acknowledges the need to increase and improve coordination with schools regarding the type and nature of Pre-ETS services offered by NHVR, but again offers few details for how that will be accomplished. The Plan does not specifically describe how NHVR will improve the coordination and efficiency between WIOA transition services (provided by NHVR) and IDEA vocational transition services (provided by LEAs). Similarly, the Plan does not offer a timeline for implementation or other measurable parameters to evaluate the effectiveness of NHVR's efforts.

In our experience with both individual clients as well as conversations with special educators, there is a dire need to increase and improve coordination and communication between NHVR Transition Specialists and individual LEAs regarding the Pre-ETS and transition services NHVR offers. For example, many special educators our office has spoken with did not realize that WIOA requires an NHVR representative to attend an IEP meeting if they are invited.

Instead of continuing its statewide and regional partnership approach to coordinate with LEAs as outlined in the Plan, a concerted effort to improve coordination on local, grassroots level should be considered. While it is laudable that NHVR participates in the NH Community of Practice on Transition ("CoP") as a way to increase coordination, many special educators and most parents of transition age children receiving special education do not regularly participate in CoP activities, including the annual transition summit.

¹⁶ Section VI, (e) briefly mentions a case management system called AWARE that is used to evaluate effectiveness. However, since many recipients of Pre-ETS are not VR clients, it seems unlikely that AWARE can be used to track the effectiveness of Pre-ETS provided by community vendors. Pg 155.

¹⁷ One example involved the NHVR Student Transition Specialist playing "The Game of Life" (a children's board game produced by Milton Bradley) with students as a fun way to "learn" about different career paths.

¹⁸ 34 CFR § 361.48(a)

A more locally tailored, grassroots approach would involve NHVR Student Transition Specialists visiting with special educators in each LEA within their catchment area on a routine basis. Placing emphasis on creating professional connections between STS and special educators allows for more robust discussions about how to address the unique needs of each LEA and strengthen existing relationships.

NHVR should also continue to work with the Workforce Innovation Technical Assistance Center (WINTAC) for resources and best practices for the provision of Pre-ETS and transition services. WINTAC's "Guide for Collaboration Among State Vocational Rehabilitation Agencies and Education Partners" provides a blueprint for improving communication and coordination between VR agencies and schools and should be essential reading for NHVR Student Transition Specialists.¹⁹

Coordination and Outreach to Students and Families

We encourage NHVR to increase its outreach to students and families. NHVR does not directly answer Section VI, (d)(2)(D), which requests a description of the "procedures for outreach and identification" of students who need transition services. Instead of describing NHVR's efforts to reach out and identify students, the agency lists the "various channels" by which it receives referrals. In terms of proactively identifying students, this response fails to describe any specific outreach procedures undertaken by the NHVR. The response contains only a general statement that counselors collaborate with school and education officials to identify students "as well as participating in outreach efforts."

The lack of specific outreach to families and students is troubling. The HRSI assessment recommends that NHVR "enhanc[e] the presence of the rehabilitation service system representatives such as transition specialists in school districts...to ensure that more students and families are aware of the rehabilitation service system and the supports it provides."²⁰ Moreover, there is very little material about NHVR's transition services that is publicly available or easily accessible.

We also recommend that NHVR coordinate with schools to reach out to students by at 14 at the latest. . There is no downside to making students aware of NHVR as they begin to receive transition services. Starting early is beneficial. Not only are students more prepared for post-secondary life, but there is less need for the LEA and VR to scramble during a student's last year of school to explore employment options.

Working with Minorities with Disabilities Seeking Employment

NHVR must make more concerted efforts to reach minorities with disabilities, particularly students who are eligible to receive transition services. The HSRI assessment identifies students who are minorities as a group that is "underserved" compared to their white, non-Hispanic

¹⁹ <http://wintac-s3.s3-us-west-2.amazonaws.com/topic-areas/ta01-pre-ets/VRED-GUIDE-WINTAC-FINAL.pdf>

²⁰ HSRI Assessment, xi.

peers.²¹ While the NHVR Plan identifies areas of the state where many of these minority residents are concentrated, the Plan lacks any detailed strategies that NHVR can pursue to strengthen its connections to individuals within these communities, especially students with disabilities.²²

NHVR must adopt strategies to increase existing minority outreach as part of its WIOA activities. The HSRI assessment suggests deliberately tailoring services to minorities with disabilities as well as working with the business community to increase the receptiveness of the labor market to minorities with disabilities seeking jobs.²³ Other strategies to better connect with minority residents of NH should also be considered. For example, partnering with state agencies that have existing relationships with minority communities, such as the NH Office of Health Equity.

Updating Marketing Material and Website

DRC-NH supports NHVR's effort to develop and implement marketing and outreach materials.²⁴ Our office has heard from special educators that do not have NHVR material to distribute to students and parents and were not able to find material on NHVR's website. Currently, NHVR's website is difficult to navigate, and online material is hard to find, if it is available at all. Making sure that marketing material is available to educators should be a priority for NHVR.

Unfortunately, much of the material available on NHVR's website concerning transition services is out of date and either predates or does not accurately reflect the agency's obligations under WIOA. NHVR should take steps to make all of their public-facing transition material easily accessible on their website. NHVR should also make efforts to ensure that all new marketing material improves the substance of its materials and is not just a "fresh coat of paint" on existing materials.

Finally, all of NHVR's print and electronic materials must be fully accessible to people with disabilities. This includes its website, videos and brochures events and all other marketing materials.

Client Assistance Program

The Plan does not discuss any role for the Client Assistance Program ("CAP"). While the CAP is a separate entity from NHVR, it plays a critical role to ensure that the rights of NHVR clients (and prospective clients) are protected, laws are followed, and practices are improved. The CAP must ensure effective provision of Pre-ETS and transition services, which are mandated by WIOA. The role of the CAP in providing advocacy and advice should be included somewhere in the Plan, potentially as a strategy to increase accountability and performance outcomes.

²¹ HSRI Assessment at 27

²² Section (o)(3)

²³ HSRI Assessment, pp. 38-39.

²⁴ Goal and Priority Area 5

Closing

We believe that the NHVR section of the current NH WIOA combined state plan is not sufficient to address the acute needs of students with disabilities in NH or hold NHVR accountable to meeting their employment needs.

As an example, it was extremely difficult to provide comments on the NHVR sections of the NH WIOA Combined state plan in this letter, published in March 2020 without any data related to progress on the vague objectives that it contains.

We encourage NHVR to devote sufficient resources to revise the current plan to create specific measurable goals for its work and to regularly report on progress in meeting these goals.

Sincerely,

James Ziegra
Staff Attorney