



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES  
REHABILITATION SERVICES ADMINISTRATION

## Electronically Sent - Confirmation of Receipt Requested

June 12, 2023

Drazen Elez  
Nevada Department of Employment, Training and Rehabilitation  
500 E 3rd St  
STE 200  
Carson City, NV 89713-0001

RE: FFY 2021 Annual Review Finding Regarding Noncompliance with Pre-Employment Transition Services Requirements

Dear Drazen Elez:

This letter 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) 2021, as determined by RSA in accordance with Section 107(a) of the Rehabilitation Act of 1973 (Rehabilitation Act). Pursuant to Section 107(a)(1) of the Rehabilitation Act, RSA conducts an annual review of Nevada Vocational Rehabilitation (NV VR) to determine whether the State is substantially complying with the requirements of its Unified or Combined State Plan, including requirements governing the provision of pre-ETS to students with disabilities. The FFY 2021 final financial report submitted by NV VR, the most recent final financial report available to RSA, demonstrates the State failed to satisfy the requirements of Sections 110(d)(1) and 113 of the Rehabilitation Act by not expending at least 15 percent of its vocational rehabilitation (VR) grant amount on the provision of pre-ETS for students with disabilities. For this reason, RSA is requiring NV VR to submit a response and corrective action plan (CAP) pursuant to Section 107(b)(2) of the Rehabilitation Act, as described further below.

### **Annual Review of NV VR's FFY 2021 Fiscal Data**

#### Short Summary:

RSA has determined, after conducting an annual review of NV VR's final FFY 2021 RSA-17, pursuant to Section 107(a)(2) of the Rehabilitation Act, that the agency failed to satisfy the requirements of Sections 110(d)(1) and 113(a) of the Rehabilitation Act (i.e., the expenditure requirements) by not expending at least 15 percent of the State's matched FFY 2021 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 NV VR to submit a response, including a corrective action plan, as described in more detail below.

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 2021 Financial Data:

According to NV VR's final FFY 2021 RSA-17, the net Federal VR allotment for the State was \$20,436,237, and final Federal expenditures were \$14,304,861.40. NV VR matched the full amount of final Federal expenditures. Therefore, NV VR was required to reserve and expend at least \$2,145,729.45 for the provision of pre-ETS. NV VR reported on their final FFY 2021 RSA-17 spending a total of \$1,810,310 (12.7 percent of the State's VR allotment) in Federal VR funds for pre-ETS. In addition, NV VR had \$6,154,789.60 in unmatched unused Federal funds remaining at the end of FFY 2021.

RSA's Annual Review Finding:

As demonstrated by their final RSA-17 for FFY 2021, NV VR reserved and expended a total of only 12.7 percent of their matched Federal VR funds.

The State was required to reserve its unexpended FFY 2021 pre-ETS funds (\$335,419.45) because those funds could only be used for allowable pre-ETS expenditures. However, NV VR expended the full amount of its FFY 2021 award which resulted in the State spending \$335,419.45 in VR Federal funds required to be reserved on pre-ETS on other VR services that do not constitute pre-ETS. This represents an unallowable use of pre-ETS funds. By not reserving the pre-ETS funds for the required purpose, the State did not comply with requirements of the Rehabilitation Act and the terms and conditions of the VR grant award. Similarly, in FFY 2020, NV VR spent \$1,239,432.91 of Federal funds required to be reserved for pre-ETS on services that did not constitute pre-ETS.

Noncompliance with Approved State Plan:

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

- address the needs identified in the assessments described in Section 101(a)(15) of the Rehabilitation Act;

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

Pre-ETS, as defined at Section 7(30) of the Rehabilitation Act, “means services provided in accordance with section 113.” Section 113(a) of the Rehabilitation Act requires the State to ensure that NV VR 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<sup>1</sup> of the approved Nevada State Plan, submitted by and approved<sup>2</sup> separately for NV VR, contained an assurance that mirrors Section 101(a)(25) of the Rehabilitation Act.<sup>3</sup> In addition to the Assurances themselves, the lead-in sentence to the State Plan Assurances section states, in pertinent part:

The designated State agency or designated State unit, as appropriate and identified in the State certifications included with this VR services portion of the Unified or Combined State Plan and its supplement, through signature of the authorized individual, assures the Commissioner of the Rehabilitation Services Administration 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, NV VR must certify:<sup>4</sup>

As a condition for the receipt of Federal funds under title I of the Rehabilitation Act for the provision of VR services, [NV VR] 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,

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<sup>1</sup> Although Nevada 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).

<sup>2</sup> FFY 2021, the period covered by this RSA Annual Review Report, spans one four-year State Plan cycle that took effect 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.

<sup>3</sup> The pre-ETS assurance is set forth at item (j) of the Assurances section of the VR services portion of the State Plan.

<sup>4</sup> 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.

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, NV VR 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 NV VR's final FFY 2021 RSA-17 and described above, the agency fell short of satisfying these requirements that year. In so doing, NV VR also failed to satisfy a routine term and condition that appeared on their FFY 2021 VR Grant Award Notification regarding pre-ETS.<sup>5</sup>

Response and Corrective Action Plan Required:

In accordance with Section 107(b)(2) of the Rehabilitation Act, the Commissioner requires that NV VR take the following actions to help ensure the State satisfies the pre-ETS expenditure requirements as soon as practicable.

First, RSA requires NV VR to develop and submit to RSA a written response describing the reasons for the State's failure to comply with the expenditure requirements in FFY 2021. In the response, RSA requires that NV VR be as descriptive as possible in explaining the actual circumstances affecting the State in FFY 2021 and address:

- what prevented the State from reaching and maintaining the compliance level of at least 15 percent;
- what prevented the State from spending more than 12.7 percent of its reserved amount on pre-ETS for students with disabilities; and
- any other relevant factors or circumstances that NV VR believe help to explain the State's failure to comply with the reservation requirements in FFY 2021.

In addition to the above specific details, RSA requires NV VR to describe:

- whether and, if so, how the COVID-19 pandemic affected the State's ability to provide, or arrange for the provision of, pre-ETS to students with disabilities in FFY 2021;
- whether the State anticipates there will be a long-term effect of the COVID-19 pandemic on the State's ability to provide pre-ETS to students with disabilities and, if so, for how long and why;

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<sup>5</sup> The pre-ETS Attachment to the FFY 2021 Grant Award Notification, issued to each VR grantee, describes the reservation requirements of Sections 110(d) and 113 of the Rehabilitation Act in detail.

- the steps the State took, in real time, to meet the reservation requirements when each quarterly fiscal report demonstrated the State was not on track to satisfy the reservation requirements for FFY 2021;
- 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 2022 or FFY 2023 to address the noncompliance;
- whether NV VR can provide fiscal data now to demonstrate that the State will comply with the expenditure requirements in FFYs 2022 and 2023 when the agency submits its 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.

Second, RSA requires NV VR to develop and implement a CAP that:

- addresses the root cause of the State’s noncompliance with the reservation requirements;
- contains a solid, workable plan for action;
- contains a timeline for implementation that would be completed by September 30, 2024;
- can be supported by documentation (i.e., fiscal reports) to show the agency has implemented the actions;
- demonstrates verifiable improvement toward meeting requirement on a quarterly basis;
- provides a methodology that allows NV VR 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;
- ensures Federal funds required to be reserved for pre-ETS are not used for other purposes; and
- ensures implementation of internal controls necessary for the agency to maintain compliance with the requirements on an ongoing basis.

It is important to note the CAP described above is required even if NV VR can demonstrate that the State is on track to satisfy the reservation requirements in FFYs 2022 and 2023. Given the State’s inconsistent history with the reservation requirements and the shortfall in required pre-ETS expenditures in FFY 2021, RSA believes it is necessary that NV VR identify the root cause of the issue. In so doing, the agency will be better positioned to develop a solid workable plan that could be implemented on a statewide basis collaboratively.

RSA requires NV VR to submit the above-described response and CAP to their RSA State liaison within 60 days of the date of issuance of this letter.

Conclusion:

RSA has found, after conducting an annual review of NV VR's final FFY 2021 RSA-17 pursuant to Section 107 of the Rehabilitation Act, that the State did not satisfy the pre-ETS expenditure requirements that year. Specifically, the State spent only 12.7 percent of its Federal funds on the provision of pre-ETS for students with disabilities. Consequently, RSA requires NV VR to submit a response and CAP to RSA, as described above, within 60 days of the date of issuance of this letter. In addition, NV VR must cease expending Federal funds required to be reserved for pre-ETS purposes for other VR services.

Thank you for your cooperation in the resolution of this finding. If we may be of further assistance, please contact Shannon Moler, Vocational Rehabilitation Program Specialist, at (202) 245-7499 or at [Shannon.Moler@Ed.Gov](mailto:Shannon.Moler@Ed.Gov).

Sincerely,

Carol L. Dobak  
Deputy Commissioner,  
delegated the authority to perform the  
functions and duties of the Commissioner

cc: Raquel O'Neill, SRC Chair