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KARA M. JENKINS
Administrator



COMMISSIONERS

Tiffany Young
Secretary/Acting Chair
Swadeep Nigam
Lauren Scott

D R A F T

Minutes

Of the

Nevada Equal Rights Commissioners' Meeting

On May 18, 2015

I. Call to Order.

Tiffany Young, Secretary/Acting Chair, called the meeting to order at 2:31 p.m.

II. Roll Call and Confirmation of Quorum, and Verification of Posting.

Norma Delaney, Administrative Assistant III, called roll and confirmed that a quorum was present, that the agenda was posted, and that certificates of posting are on file.

Members present: Tiffany Young, Secretary/Acting Chair; Swadeep Nigam; and Lauren Scott.

Staff present: Kara Jenkins, Nevada Equal Rights Commission, NERC Administrator; Michael Baltz, Chief Compliance Investigator, NERC; Rose Marie Reynolds, Deputy Attorney General (DAG); and Norma Delaney, Administrative Assistant III, NERC.

Public Present: Scott Youngs, Project Director, Nevada Assistive Technology Resource Center (NATRC), University of Nevada, Reno (UNR); and George McKinlay, Data Systems Manager and Project Director, NATRC, UNR.

III. First Public Comment Period.

IV. Approval of minutes – Commission meeting held on November 6, 2015.

Minutes approved with following changes:

Page 4, second line, change from "html5" to "HTML5" and;

Page 10, second paragraph, change from "sated" to "stated"

Mr. Nigam made motion to approve with corrections; Ms. Scott seconded.

V. Discussion regarding Administrator's Report.

A. Personnel Staffing; new Compliance Investigator

Ms. Jenkins advised that NERC is fully staffed at this time and that while NERC had lost an investigator since the last meeting, NERC was able to inherit an investigator from the Employment Security Department (ESD) which is part of the Department of Employment, Training & Rehabilitation (DETR), Khalid Tatum.

Ms. Jenkins stated that Mr. Tatum has been with NERC approximately two months and that he brings a lot of enthusiasm, lightheartedness and character to NERC. She advised that Mr. Tatum has a military background and was honorably discharged from the United States Air Force in 2008; that he began working on his Master's Degree in Public Administration at the University of Oklahoma; that a year after receiving his degree, he was hired by DETR as a Compliance Audit Investigator for ESD; and in 2015 he was hired by NERC.

Ms. Jenkins stated that Mr. Tatum is very active in the community and is a good addition to NERC staff.

Mr. Nigam commented that it is great NERC is fully staffed as individuals filing discrimination complaints and people losing their jobs is a very emotional issue.

Ms. Jenkins advised that there are 3 staff members in the Reno office and 13 in the Las Vegas office, and that while NERC is small in size, NERC provides statewide services. She added that she attempted to get the Compliance Investigators a 5% pay increase as an incentive for individuals to stay, but that effort was not successful yet on-going.

B. Federal Fiscal Year 2015 Equal Employment Opportunity Commission (EEOC) work sharing agreement contract closure numbers.

Ms. Jenkins advised that she received notice from the EEOC that they will award NERC approximately 574 cases to close by end of September 2015.

Ms. Jenkins reported that NERC has closed approximately 400 cases at this time. She added that once NERC has closed 500 cases, she will look at possibly asking for an upward modification.

Ms. Jenkins stated while the closure numbers have been reduced, the amount NERC is paid per case closure has increased from \$650 to \$700, which is approximately \$400,000+ for Federal Fiscal Year 2015 (FFY 15).

Ms. Jenkins added that when NERC agrees to renew the contract with the EEOC, it is not known what the closure award will be, and this information usually is not available until May/June; that during this time staff strives to close 600 cases by the end of the State Fiscal Year (July 1 to June 30) so NERC can invoice the EEOC for case closures. She stated that last federal fiscal year NERC closed 684 cases.

C. 2015 EEOC Conference Updates.

Ms. Jenkins advised that the EEOC conference is scheduled to be the first week of August 2015 in Atlanta, Georgia and that if any of the Commissioners are interested in attending, to let her know as it is possible registration fees may be waived. She added that last year the meeting was in San Diego and she was able to meet quite a few Administrators from different states, in addition to meeting with the EEOC Director and State/Local Coordinator. She added that on the last day, legal updates were provided. She concluded that Ms. Reynolds, DAG, was able to go to the meeting and also Dennis Perea, Deputy Director, DETR.

Ms. Young advised Ms. Jenkins that she may be there on behalf of her employer.

D. Budget – State Fiscal Year 2015

Ms. Jenkins referred the Commissioners to the budget handout provided the following:

- Column 1 under Total Revenues, the amount shown is \$1,415,237.00, and advised this is NERC's operating budget;
- Under Total Expenditures, the same amount is shown, \$1,415,237.00;
- Under Total Expenditures, Column 4, shows NERC has spent \$1,033,137.52;
- Under Total Expenditures, Column 8, the \$65,900.30 is money NERC has not spent and is being returned to the General Fund.

Ms. Jenkins added that should an agency need to request additional funds between sessions, the agency goes to the Interim Finance

Committee (IFC). She stated that this year NERC did have to go to the IFC for additional funds for training.

Ms. Jenkins referred to Tab 3 in the packet and indicated that this is the training budget, Category 30. She advised that she would not be going over this in great detail as it is always changing, but referred to the last line of the page – projected balance of \$36.41.

Mr. Nigam stated and then asked that he is aware when a state agency does not use funds, it has to be returned, but when you need it the following years, are agencies able to get it back?

Ms. Jenkins responded that she did not have an answer for him, just that agencies are told that if you don't use it, it is reverted back to the General Fund. Ms. Jenkins stated that NERC is pretty low maintenance; that NERC may have the opportunity to increase staff, enlarge office space, but that she did not know the ramifications at this point. She added that NERC has not overspent, and the only issue is Category 30, training money, at this time which will be resolved.

E. Performance Indicators.

Ms. Jenkins advised that Mr. Baltz, Chief Compliance Investigator, will provide updated information regarding the types of cases NERC has received.

Mr. Baltz referred to Tab 4 in the packet, Break Down of Complaints covering the period of July 1, 2015 through April 30, 2015, and provided the following based on the categories:

- **Race** – 191 in employment; 21 in public accommodation; and 8 housing complaints for a total of 220 intakes received alleging race discrimination and charges perfected (framed/notification mailed to Respondent). Mr. Baltz stated that race includes Asian, Black or African American, White, American Indian, Alaskan Native, Multi-Racial or Pacific Islander.
- **National Origin** – 200 in employment; 8 in public accommodation; and 0 in housing complaints for a total of 208 intakes received alleging discrimination based on national origin.

- **Gender** – 219 in employment; 5 in public accommodation; and 2 housing complaints for a total of 226 gender allegations and charges perfected (framed/notification mailed to Respondent). Mr. Baltz stated that gender includes sexual orientation and gender identity and/or expression which are protected under Title VII.
- **Religion** – 63 in employment; 0 in public accommodation; and 1 housing complaint for a total of 64 intakes receiving alleging religion and charges perfected (framed/notification mailed to Respondent).
- **Color** – 11 in employment; 4 in public accommodation; and 0 housing complaints for a total of 15 intakes received alleging discrimination based on color and charges perfected (framed/notification mailed to Respondent). Mr. Baltz stated that color is specific to skin pigmentation.
- **Age** – 146 in employment; 0 in public accommodation; and 0 housing complaints for a total of 146 intakes received alleging age discrimination and charges perfected (framed/notification mailed to Respondent). Mr. Baltz stated that age is 40 and over.
- **Disability** – 184 in employment; 23 in public accommodation; and 8 housing complaints for a total of 215 intakes received alleging discrimination based on disability and charges perfected (framed/notification mailed to Respondent). Mr. Baltz stated that disability can include actual and/or perceived disability, record of disability, or associated with someone who has a disability.
- **Retaliation** – 188 in employment; 0 in public accommodation; and 0 in housing for a total of 188 intakes received alleging discrimination based on retaliation. Mr. Baltz stated that retaliation is defined as participating in a protected activity (such as requesting a reasonable accommodation due to a disability; filing an employment discrimination complaint; being a witness in an employment discrimination complaint).
- **Equal Pay Act** – 7 cases in which an individual files based on the Equal Pay Act are automatically transferred to the federal Equal Employment Opportunity Commission (EEOC). Mr. Baltz stated these types of complaints are specific to gender based treatment in pay.

Mr. Baltz stated that he wanted to advise the Commissioners that since the start of the Federal Fiscal Year 2015 (covering the period of October 1, 2014 through September 30, 2015) NERC has obtained \$582,879.38 in settlements/conciliations.

Ms. Scott asked of the 184 complaints regarding disability, what type of disability is receiving the most complaints? Mr. Baltz responded that the computer system does not allow the breakdown by specific disability.

Mr. Nigam asked that in regards to the settlements, how many people received settlements, to which Mr. Baltz stated that the settlements were reached in approximately 100 cases.

Ms. Jenkins added she (Ms. Jenkins) will continue to promote NERCs settlement rate success, and that she reports this information quarterly to the Governor's Office.

Ms. Jenkins referenced Tab 4 in the packet, Performance Indicators, and advised that the first page is a summary, and that Performance Indicators are set by legislative and DETR guidance – the legislators want to know if NERC can meet these measures.

In regards to **Performance Indicator #1**, Ms. Jenkins stated that this is a tough standard to meet – the standard is the percent of cases formalized within 22 calendar days which means from the date the complaint form is received, scheduling intake appointment to go over paperwork to ensure NERC has jurisdiction, and the Charging Party signing the formalized Charge of Discrimination. Ms. Jenkins stated that this first appointment, to go over the paperwork, is scheduled approximately 5-6 weeks out before the individual can meet with the intake officer. Ms. Jenkins stated that in reviewing the second page of Performance Indicators, NERC is always in the red on this Performance Indicator.

Ms. Young stated that she believes changing the number of days had been addressed previously.

Ms. Jenkins indicated that Ms. Young was correct, and stated that she has been speaking with DETR management, but that she was advised this standard may or may not be able to be changed as it is set by the legislature to see how

NERC does. Ms. Jenkins stated that if it could be changed to 45 business days, there would be an improvement.

In regards to **Performance Indicator #2**, Ms. Jenkins stated that the goal for case closures is estimated at 624-660, and that while the report says NERC has closed 510 cases, which differs from the 400 closures she stated previously, she stated the difference is due to reporting for two separate fiscal years – the 510 closures covers the period of July 1, 2014 through current, which is reported to the legislature for the State Fiscal Year; however, the Federal Fiscal Year covers October 1, 2014 through current in which NERC has closed approximately 400 closures. She added that the EEOC is anticipating funding NERC at 92% of the 624 cases anticipated, which for Federal Fiscal Year 2015 would be 574 closures, and NERC is at approximately 400.

In regards to **Performance Indicator #3**, Ms. Jenkins stated that for the percent of cases resolved through mediation, NERC always does well; that the goal is 39% and NERC is at 86%, and the year is not over.

In regards to **Performance Indicator #4**, Ms. Jenkins stated that NERC is waiting for information at this time, contract award, but is on track to meet the 574, with 400 already closed.

Ms. Jenkins stated that she will follow-up with the Commissioners regarding Performance Indicator #1, whether the number of days can be changed.

Mr. Nigam asked Ms. Jenkins if additional investigators would be better than increasing the number of days.

Ms. Jenkins stated that NERC requested another position as it relates to the bullying bill discussed during the legislative session, and this position would be a Compliance Investigator for Minors position and would be primarily responsible for investigating discrimination complaints in regards to public accommodation, specifically schools, as the law includes public schools as a place of public accommodation. She stated that during the legislative session, the Governor had addressed that there were two families whose minor children were being bullied based on their sexual orientation or perceived sexual orientation – Ms. Jenkins stated that these two families filed discrimination complaints with NERC, rose to the level of litigation where the

ACLU (American Civil Liberties Union) named NERC in the lawsuit, but the case was closed due to a technicality. Ms. Jenkins stated that this new position will specifically focus on outreach/training, but also investigating cases of public accommodation and the individual will have to have experience with youth as often this position will be talking with minors. She stated she will ensure that the Commissioners meet this individual.

Ms. Jenkins added that in regards to SB504, essentially the schools will be accountable for notifying parents about a bullying incident within 48 hours, to hopefully prevent further bullying; possibly suicide.

Ms. Jenkins stated that NERC will maintain pamphlets in the lobby which includes telephone numbers for individuals to call who may be or know of individuals who are being trafficked; another is suicide prevention hotlines to help minors adjust to transitioning at school, places they can call such as youth centers, or places where transgender identity/expression individuals can call.

Ms. Scott stated she will provide Ms. Jenkins contact information for free brochures/information.

F. Outreach

Ms. Jenkins advised that NERC has reached over 400 individuals to date; that for the most part she provides the training, but that Lila Vizcarra, Supervisory Compliance Investigator, who is bilingual, provides training in Spanish, and Michael Baltz will provide training when she, Ms. Jenkins, is not available.

G. Commissioner Appointments

Ms. Jenkins advised that currently there are two vacancies and there are some interests (2 employment attorneys; faith based; and other state entities), but if any of the Commissioners know anyone, to please advise her. She advised that Mr. Nigam's term expires the end of October 2015, and that if he is interested in being reappointed, to also let her know.

Ms. Jenkins concluded her Administrator's Report.

VI. No agenda item VI (typographical error)

VII. Discussion of presentation on November 6, 2014 regarding Accessibility of State of Nevada Websites for People with Disabilities.

Ms. Jenkins stated that at the last meeting, former Commissioner Scott Youngs, presented a concern that state agencies do not have accessible mediums for individuals to use state websites and that the subject of screen readers was discussed and although money is an issue, it was a subject Mr. Youngs did not like to hear, rather, it is something the state should do (in his opinion). Ms. Jenkins stated that Mr. Youngs came to NERC as it was unclear who the correct agency to address these concerns was. Ms. Jenkins referred to the Commissioners for their guidance.

Mr. Nigam stated that while he was not at the last meeting, he read the minutes and that the first issue should be who is the right agency; is NERC going to take over this process; does NERC need to go to the state legislature for funding or will there be other agencies involved; should the Governor's Office be involved as other state agencies may be involved - what is the process to pursue further?

Ms. Scott added that it is her understanding that each state agency has an "ADHOC" team of programmers and, as discussed at the last meeting, there is at least a basic standard of what is accessible coding within "HTML5" and other "tagging" that can be done; that, if there can be an agreement on minimal standards issued to each agency's programming team asking them to consider this programming standard and try to meet it as best as possible without incurring a lot of expense, it would be a start; otherwise, it would probably be a full implementation of a standard and may involve a fair amount of money.

Ms. Jenkins commented that she likes Ms. Scott's suggestion – come up with basic standard coding and promote to other agencies.

Scott Youngs, Project Director, Nevada Assistive Technology Resource Center (NATRC), University of Nevada, Reno (UNR), stated that his first question is whether NERC is the appropriate agency to handle complaints in general, as there was not an agency that addresses this type of issue regarding individuals with disabilities, not only blind or visually impaired, but other disabilities as well. He stated that he was looking at NERC to be the liaison to help figure out the best solution instead of going to each agency's IT person, and did not know if this type of issue would be within the Commissioners' jurisdiction.

Ms. Jenkins advised that the Commissioners' foster the equal rights of Nevadans in the state and that to the extent the Commissioners can, they can strongly encourage a particular model/tool for individuals to be accessible, and that they are a great resource for Mr. Youngs. She added that if he makes a proposal to them as a Commission, they can decide how to promote the idea with their recommendation.

Mr. Youngs asked how public accommodation is defined in NRS under NERC's jurisdiction, as under ADA it is defined as a private entity that offers a service to the public; that under the ADA, a school is not a place of public accommodation but a public entity under Title II. He asked if a state website was a place of public accommodation.

Ms. Reynolds, DAG, responded that NRS 651 defines place of public accommodations as establishments or places to which the public is invited (such as a hotel, motel, gas station) and that an agency could be defined as a place of public accommodation, but a website itself is not a place of public accommodation.

There was discussion regarding businesses that promote for on-line services, such as Amazon and E-Bay; whether video poker would/would not be covered under public accommodation; a physical business address verses internet only. Ms. Reynolds stated that the way NRS 651 is written, a place of public accommodation is any establishment that serves patrons; that the law was written in the 1960's and the internet was not in existence. Ms. Reynolds stated that Nevada's public accommodation law is written in terms of places of public accommodation, which is a defined term under 651. Ms. Reynolds indicated she would check into the issue of websites and get back to the Commissioners/Mr. Youngs.

Ms. Young asked if someone would like to put a motion on the table for the next meeting as an agenda item. Ms. Scott made the motion to follow-up on web access for government agencies; Mr. Nigam seconded the motion. Motion approved.

VIII. Discussion regarding location and time of next meeting and agenda items.

It was agreed that Norma Delaney would contact Commissioners regarding possible dates after session is over; next meeting to be held in August 2015.

IX. Second Public Comment Period.

None.

X. Adjournment.

Mr. Nigam made motion to adjourn; Ms. Scott seconded motion – meeting adjourned.

Respectfully submitted,

Tiffany Young,
Secretary, Acting Chair

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