

[EXT] proposed repeal of 6.101.2 NMAC, Fair Hearings Related to Vocational Rehabilitation to be replaced with 6.101.2 NMAC,

Sarah Michaud <smichaud@newvistas.org>

Mon 8/3/2020 1:27 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

The NM State Rehabilitation Council would like to provide the following feedback on the proposed repeal and replace of 6.101.2 in the NMAC for DVR.

Definitions of both fair hearing and mediation should be included in the NMAC to ensure consumer understanding of the difference options available for dispute resolution.

The NMAC should include information on qualifications of hearing officers and mediators to further inform consumers regarding the dispute resolution process.

The SRC thanks NMDVR and PED for their work updating the NMAC to reflect current practices and better align with federal regulations regarding this important protection for consumer rights.

Thank you-

Sarah Michaud
SRC Chair

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New Vistas partners with and supports people with disabilities and families of children with special needs to enrich their quality of life in New Mexico.

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[EXT] Proposed Rulemaking 6.101.2 NMAC

Don Priola <dpriola@drnm.org>

Tue 8/25/2020 12:58 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Cc:Jason Gordon <jgordon@drnm.org>; Chavez, Bernadine <Bchavez@drnm.org>;

 1 attachment

dvrcomments82520t.pdf;

Dear Mr. Sena,

Please find attached DRNM's comments on the proposed rulemaking for 6.101.2 NMAC

Sincerely,

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Gary Housepian, Chief Executive Officer

Promoting and Protecting the Rights of Persons with Disabilities

August 25, 2020

Mr. John Sena
Policy Division
New Mexico Public Education Department
300 Don Gaspar Ave.
Room 121
Santa Fe, NM 87501

SUBMITTED VIA EMAIL AS PDF ATTACHMENT TO: rule.feedback@state.nm.us

RE: Proposed Rulemaking 6.101.2 NMAC Fair Hearings and Alternative Dispute Resolutions Related to Vocational Rehabilitation.

Dear Mr. Sena,

Disability Rights New Mexico (“DRNM”) is the designated protection and advocacy agency in New Mexico whose purpose is to protect, promote, and expand the rights of individuals with disabilities. DRNM also serves as the Client Assistance Program (“CAP”) for the state. The purpose of CAP, which is established by the Rehabilitation Act, is to assist individuals with disabilities to obtain vocational rehabilitation services. This mandate includes representing clients who have disputes with the New Mexico Division of Vocational Rehabilitation (“DVR”) over issues such as the provision of and eligibility for services. The CAP represents DVR clients at every level of the dispute resolution system, and as a result is in a unique position to offer comments on the proposed regulation.

DRNM/CAP commends DVR and the Public Education Department for many of the changes outlined in the proposed regulation. The addition of language in 6.101.2 NMAC specifically outlining the mediation process that has long been an option for DVR program participants is a welcome development. Similarly, the addition of proposed language stating that a request for a fair hearing or mediation will be construed liberally to fully permit DVR clients to pursue relief for agency decisions that are in dispute is enthusiastically supported by DRNM/CAP. Making the appeals process highly accessible to all is crucial to ensure that all who seek to avail themselves of DVR services are treated fairly and in accordance with law.

DRNM/CAP submits the following suggestions for amendments to the proposed rule in the hope that they will be helpful in making the DVR appeals process even more responsive to and accessible for clients seeking vocational rehabilitation services.

1. DVR should consider adding language that would toll the deadline for when a fair hearing must be completed if the client is engaged in mediation and the client requests a delay in the fair hearing proceedings.

Proposed 6.101.2.9(C) NMAC lays out the timeline during which a fair hearing must take place once it is requested: the proceedings shall be held no later than 60 days from the date a DVR client asks for one. Further, this timeline can be extended by the hearing officer for good cause shown by either party, or after an agreement by both parties. Even with the possibility of the time extension already in the proposed regulation, DVR should consider including language granting a continuance of the fair hearing proceedings at the request of a client who has requested a fair hearing, but has also chosen to engage in mediation in an attempt to resolve the issue in dispute.

Mediation is a process that can be beneficial to both DVR and program participants. It is an opportunity to resolve disputes at the lowest possible level, allowing clients to continue moving toward their vocational goals in situations where a disputed issue can be resolved without a hearing or more formal litigation. It is very important that the option of mediation be kept as accessible as possible for DVR clients who wish to use it.

Proposed 6.101.2.10(C) lays out a timeline for when a requested mediation must occur that is identical to the fair hearing timeline: the proceedings shall be held no later than 60 days from the date a DVR client asks for one. The timeline can be extended by the mediator for good cause shown by either party, or after an agreement by both parties. But the proposed appeal process regulations do not explicitly state that one reason that a fair hearing deadline can be extended for good cause is a pending mediation requested by a DVR program participant.

Unfortunately, DRNM/Cap has encountered situations where DVR felt that they could not honor a client's request to participate in mediation because the 60 day fair hearing deadline was rapidly approaching. This causes a situation that is regrettable for all parties, as the mediation option can be a valuable tool for resolution if the client wishes to pursue it. So, while it is clear that a hearing officer can extend hearing timelines for good cause or agreement of the parties that might encompass pending mediation, that possibility has not always been enough to prevent DVR from opposing or discouraging mediation in the past.

For these reasons, DVR should consider including explicit language in the revised regulations that include pending mediation as good cause for a fair hearing delay if that delay is requested by the DVR client. It is essential that this potential provision be limited to requests for a hearing continuance by the client, because the timelines exist to ensure that a client's appeal is addressed in a reasonably prompt manner. But a specific assurance that a client can request a fair hearing without closing off the possibility of participation in mediation will ensure that this vital form of alternative dispute resolution remains open to all.

2. DVR must include more detail concerning when and how it must notify clients of the availability of information and advocacy through CAP.

6.101.2.8 NMAC of the proposed regulation mandates that DVR must provide information about CAP to all DVR clients and applicants for vocational rehabilitation services.

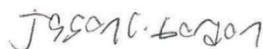
Making sure that individuals seeking to utilize DVR services have access to advocacy through CAP is an essential component to ensuring that needed vocational rehabilitation services remain fully and fairly available to all. However, the proposed language does not do enough to ensure that DVR program participants and applicants are informed about CAP, because it does not outline when and how notification must be provided.

DRNM CAP asserts that the following provisions must be added to complete 6.101.2.8 NMAC: Notification of the availability of services through the CAP program must be provided to DVR clients and advocates *in writing*. The notification must be provided in a manner that is adequately understood by each individual participant. Further, notice of CAP services must be made available to DVR program participants: a. When an application for DVR services is submitted, b. When an applicant is placed into an Order of Selection category, c. Any time a requested service is denied, reduced, suspended, terminated or unduly delayed, d. When eligibility is denied, e. at case closure.

The specific notification urged by DRNM/CAP is consistent with both DVR's current Manual of Operating Procedures and federal law. It is also essential in order to ensure a functioning appeal process that benefits anyone seeking or utilizing DVR services. DRNM/CAP asserts that expanding 6.101.2.8 NMAC as described above is absolutely necessary to ensure that DVR clients have access to critical advocacy services, and strongly recommends that the changes outlined above be implemented.

DRNM/CAP appreciates the opportunity to provide input on the proposed revisions to 6.101.2 NMAC.

Sincerely,



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