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AGENCY REVIEW

DIVISION OF REHABILITATION SERVICES

AUDIT OVERVIEW

Twenty-Two (22) Percent of the Division of Rehabilitation Services' Cases That It Reported as Achieving Employment Goals in CY 2014 Did Not Achieve the Specified Employment Goals. Also, Inactive Cases Remain Open for Years Before They Are Closed, and in Many Cases There Was a Lack of Documentation on How the Agency Confirmed Employment Outcomes Other Than the Clients' Statements



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Note: On Monday, February 6, 2017, the Legislative Manager/Legislative Auditor's wife, Elizabeth Summit, began employment as the Governor's Deputy Chief Counsel. Most or all the actions discussed and work performed in this report occurred after this date. However, the Governor's Deputy Chief Counsel was not involved in the subject matter of this report, nor did the audit team have any communications with her regarding the report. As Deputy Chief Counsel, the Legislative Auditor's wife is not in a policy making position within the Executive Branch. Therefore, the Performance Evaluation and Research Division does not believe there are any threats to independence with regard to this report as defined in A3.06.a and A3.06.b of the Generally Accepted Government Auditing Standards. Furthermore, the Legislative Auditor has instructed the Director of Performance Evaluation and Research Division to document and discuss any issues he believes are a threat to the division's independence with the President of the Senate and the Speaker of the House due to Ms. Summit's position.

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EXECUTIVE SUMMARY

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted an Agency Review of the Department of Education and the Arts pursuant to *West Virginia Code §4-10-8*. As part of the process, a performance review of the Division of Rehabilitation Services (DRS) was conducted. The objective of the audit was to assess if the DRS' process for assisting clients to achieve employment goals are effective and efficient in terms of accomplishing the goals in a cost-effective and timely manner.

Frequently Used Acronyms in this Report:

PERD- Performance Evaluation and Research Division

IPE- Individualized Plan for Employment

DRS- Division of Rehabilitation Services

RSA- Rehabilitation Services Administration

WIOA- Workforce Innovation and Opportunity Act

VR - Vocational Rehabilitation

Report Highlights:

Issue 1: Twenty-Two (22) Percent of the Division of Rehabilitation Services' Cases That It Reported as Achieving Employment Goals in FY 2014 Did Not Achieve the Specified Employment Goals. Also, Inactive Cases Remain Open for Years Before They Are Closed, and in Many Cases There Was a Lack of Documentation on How the Agency Confirmed Employment Outcomes Other Than Clients' Verbal Statements.

Issue Summary

- PERD found that DRS is closing cases as being successfully rehabilitated that are not according to federal regulations.
- DRS' policy does not comply with the federal regulations which state that a case may only be deemed a success if an individual has achieved an employment outcome that is described within the Individualized Plan for Employment.
- The DRS allowed some cases to remain open for extended periods of time with no progress made by the clients to achieve employment, even after multiple letters were mailed and telephone calls made requesting contact were unanswered.

- The number of cases that have remained open due to a lack of contact, if closed, would lead to greater efficiency and effectiveness of the program.
- The DRS is currently limited in access to key interchange data systems and therefore confirms employment outcomes primarily by clients' verbal statements. In order for the DRS to meet federal reporting requirements of the Workforce Innovation and Opportunity Act, it will need to address its data collection limitations in the near future.

PERD's Response to the Agency's Written Response

PERD received the DRS' response to the draft copy of the Agency Review on November 17, 2017. The DRS' response can be found in Appendix F. The DRS agreed with recommendations two and four. However, it did not agree completely with recommendations one and three. Regarding recommendation one, the DRS reported that they "...believe that it is appropriate to recognize any employment chosen by some consumers as a successful outcome." The DRS reported that this practice is not unique as "Several states close VR cases as successful even though the employment does not "match" the occupation identified in the IPE." However, federal language reports that an employment outcome is not only achieved or deemed successful by obtaining employment but when, "The individual has achieved the employment outcome that is described in the individual's IPE..." Therefore, utilizing the federal language, it is the Legislative Auditor's opinion that simply achieving an employment outcome is not compliant with federal regulations. Ultimately, in response to the Agency's written response to recommendation one, PERD maintains that the DRS should accurately report cases as unsuccessful when the outcome does not meet the employment goal.

Regarding recommendation three, the DRS agrees that cases should be closed in a timely manner. However, the DRS reports that the reasons for PERD's original draft recommendation are inaccurate because individuals on a waitlist are made active when DRS determines that there are sufficient human and fiscal resources available to serve all individuals in the category and because "Individuals on the waitlist, however, represent an anticipated encumbrance. When the DRS has very limited fiscal resources, it is unable to activate those on the waitlist as a result, even on an individual basis." PERD acknowledged the DRS' response regarding the waitlist and amended the recommendation for the final report to state that the DRS should establish benchmarks to close files in a timelier manner to facilitate greater efficiency and effectiveness in the vocational rehabilitation process. It is the Legislative Auditor's opinion that the DRS' practice of keeping cases open when clients have not maintained contact with DRS staff is a decision to avoid reporting negative performance indicators. Therefore, it is PERD's opinion that not closing files in a timelier manner creates a culture within the agency and with clients to allow unnecessary extensions of cases. This decision ultimately leads to ineffective management of case files and inefficient use of program resources.

Recommendations

1. *DRS should accurately report cases as unsuccessful when the outcome does not meet the employment goal.*

2. *DRS should establish a set number of request-for-contact letters that can be sent before ultimately closing the case.*
3. *DRS should establish benchmarks which will close files in a timelier manner to facilitate greater efficiency and effectiveness in the vocational rehabilitation process.*
4. *The DRS should continue to make progress in addressing the issue of data limitations in order to be able to completely and accurately report performance data as required in the Workforce Innovation and Opportunity Act.*

ISSUE1

Twenty-Two (22) Percent of the Division of Rehabilitation Services' Cases That It Reported as Achieving Employment Goals in FY 2014 Did Not Achieve the Specified Employment Goals. Also, Inactive Cases Remain Open for Years Before They Are Closed, and in Many Cases There Was a Lack of Documentation on How the Agency Confirmed Employment Outcomes Other Than Clients' Verbal Statements.

Issue Summary

The Performance Evaluation and Research Division (PERD) randomly sampled 357 cases from the 5,153 vocational rehabilitation cases that DRS closed in calendar year 2014. Table 1 below shows the results of PERD's analysis of the sampled cases. The DRS listed 159 closed cases as achieving the employment outcome as described in a client's Individualized Plan for Employment (IPE), but PERD found that 35 of these cases did not achieve the employment goal per the IPE. This represents 22 percent of the sampled cases closed as successfully rehabilitated. Projecting the results of the sample to the total population of eligible applicants indicates that the percentage of closed cases reported as meeting their IPE goals would have been 51 percent, which would not meet the federal performance requirement of 55.8 percent.¹ In addition, PERD found that when clients are inactive in pursuing their employment plans, the DRS keeps many of these cases open for an extended period of time before closing them. By not closing these cases in a reasonable timeframe, DRS is not facilitating efficiency and effectiveness in its vocational rehabilitation process. Finally, PERD found that many cases lacked documentation on how the DRS confirmed employment status, duration of employment and earnings other than a form that reports what the client verbally reported to the DRS counselor.

The DRS listed 159 closed cases as achieving the employment outcome as described in a client's Individualized Plan for Employment (IPE), but PERD found that 35 of these cases did not achieve the employment goal per the IPE.

Projecting the results of the sample to the total population indicates that the percentage of closed cases reported as meeting IPE goals would have been 51 percent, which would not meet the federal performance requirement of 55.8 percent.

¹ The U.S. Department of Education's Rehabilitation Services Administration compiles state level data and calculates the success rate on the federal fiscal year (October 1 through September 30), thus DRS's reported success rate for FFY 2014 was 68%.

Table 1
Sample of Calendar Year 2014 Closed Cases
DRS Reported vs. PERD Analysis

Closed Case Category	DRS Number of Cases	PERD Analysis
Achieved Employment Outcome Per IPE	159	124*
Did Not Achieve Employment Outcome Per IPE	86	121**
Closed Before IPE Was Written	112	112
Total	357	357

Source: PERD analysis of a sample of DRS calendar year 2014 closed cases.

**PERD found 35 cases that did not achieve the employment goal of the IPE.*

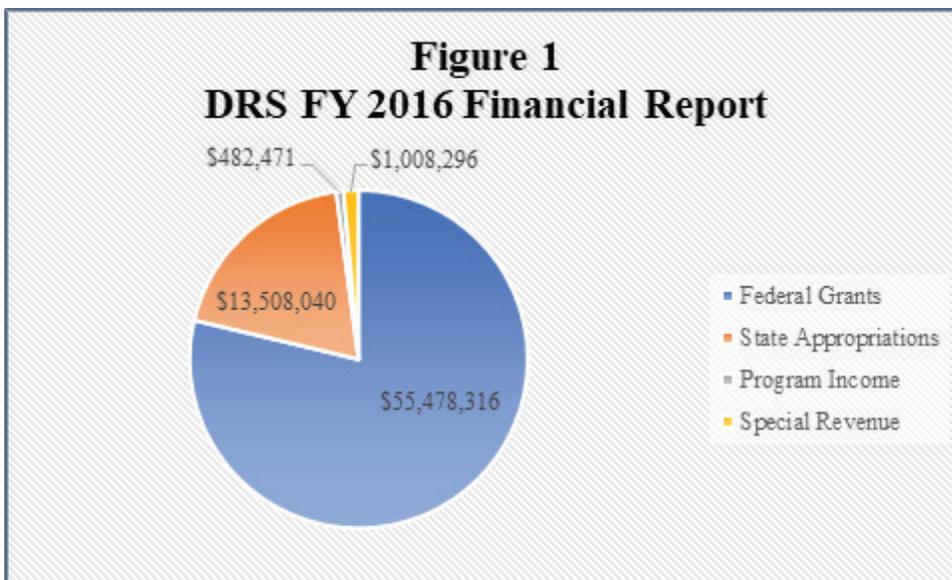
***Includes the 35 cases that did not achieve the employment goal of the IPE.*

DRS Provides Vocational Rehabilitation Services to Eligible Disabled Individuals for Assistance in Obtaining or Retaining Employment.

The DRS, within the Department of Education and the Arts, administers the State's vocational rehabilitation programs and services to eligible disabled individuals (see Appendix A). Vocational rehabilitation (VR) services are services found to be necessary to offset a disabled individual's employment barrier and to enter employment. DRS provides a variety of services to help eligible disabled individuals achieve their employment goals. The services provided to a client are determined by his or her unique employment barriers, chosen employment goal, and individual circumstances. Over ninety-percent of the eligible individuals that DRS provides services to are categorized as significantly disabled in which the individual has a permanent physical or mental impairment which seriously limits one or more functional capacities in terms of an employment outcome. According to the DRS 2016 Annual Report, the primary disability of individuals vocationally rehabilitated are physical impairments, hearing and communicative impairments, visual impairments, cognitive impairments and psychological impairments. DRS is therefore, reliant on the rehabilitation counselor to take into account each individual's impairment and needs to structure the appropriate IPE that will ultimately lead to a successful employment outcome.

The DRS vocational rehabilitation program is funded with state and federal funds. The federal government provides reimbursement for 78.7 percent of eligible rehabilitation expenditures up to the total annual federal grant for West Virginia, which was \$55.4 million in FY 2016. The State provides matching funds of 21.3 percent (\$13.5 million) for these federal dollars through the state general revenue fund and local government funds (see Figure 1). During FY 2016, state appropriations and special revenue totaled \$14.5 million. In total, the DRS was funded over \$70 million, of which \$25.2 million was used to purchase case services within the vocational rehabilitation program.

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The DRS Will Need to Enhance Data Collection of Performance Data Under the New Workforce Innovation and Opportunity Act

PERD conducted research on state and national reports to gain an understanding of current issues within vocational rehabilitation programs. PERD found that at the federal level there are concerns with the overall quality and uniformity of performance data, in terms of consistency and validity for vocational rehabilitation services, adult education and other workforce development programs. This concern is a focal point of the Workforce Innovation and Opportunity Act (Public Law No. 113-128), which brought about changes in 2014 to the Workforce Investment Act of 1998. The new law requires the implementation of a common

performance accountability system for all six core workforce development programs, one of which includes vocational rehabilitation services. Beginning in July 2016, states are required to report six performance indicators for each core program, including:

1. employment status in the second quarter after exit,
2. employment status in the fourth quarter after exit,
3. earnings,
4. attainment of a credential or diploma,
5. skills gained in education or training, and
6. effectiveness in serving employers.

Some of these performance data are new to VR. For example, VR programs generally report employment and earnings outcomes at a single point in time for participants, usually once participants reach 90 days of employment. Since some reporting requirements under the WIOA are new to state VR programs and require more earning data to be collected, they may face more substantial changes to collecting and reporting performance data.

The Workforce Innovation and Opportunity Act (WIOA) required the United States Government Accountability Office (GAO) to examine federal and state databases and data exchange agreements for job training information relevant to the WIOA. The GAO examined how states currently report performance data for core job training programs, changes select states will need to make to collect and report performance information, the challenges these states will face related to performance reporting, and what practices are used to safeguard personal information. In 2016, the GAO reported that there have been concerns of the accuracy of performance indicators provided to the federal government by VR programs. The GAO also identified that challenges existed related to data quality and sharing, and the protection of personal information. The GAO indicated that some states have expressed facing difficulties reporting the new WIOA performance indicators.

The DRS indicated that its primary source for employment and wage data is from clients, but that it also uses on a limited basis the WorkForce WV Unemployment (UI) system data to research wage data. This practice is relatively common among other states. However, according to the agency, the data provided by the UI system are limited for DRS' purposes because the system covers West Virginia and requests cannot be made for multiple clients. The DRS would like access to the data from the Wage Record Interchange System (WRIS) and the Wage

Beginning in July 2016, states are required to report six performance indicators for each core program, including employment status in the second quarter after exit, employment status in the fourth quarter after exit, earnings, attainment of a credential or diploma, skills gained in education or training, and effectiveness in serving employers.

In 2016, the GAO reported that there have been concerns of the accuracy of performance indicators provided to the federal government by DRS programs.

Record Interchange System 2 (WRIS2), which provides wage data for all states; however, the agency presently does not have access to WRIS or WRIS2. The DRS indicated that it has requested access to these systems but has yet to receive. The WorkForce WV has access to WRIS but the State does not have access to WRIS2. The DRS is like other state programs that have developed their own data systems for case management. In order for the DRS to be able to meet federal reporting requirements, it will need to address its data collection limitations in the near future.

DRS Is Closing Cases as Meeting IPE Goals Even Though Client Employment Outcomes Did Not Meet the Employment Goals.

As stated previously, PERD randomly sampled 357 case files from the 5,153 vocational rehabilitation cases that DRS closed in calendar year 2014.² DRS can close cases for a variety of reasons, but PERD chose to sample only cases closed after applicants were deemed eligible. Once eligible, cases may be closed as:

- meeting the employment goal of the IPE,
- not meeting the employment goal of the IPE, or
- closed after eligibility has been determined but before an IPE is written.

PERD chose a random sample of closed cases to provide a statistically significant sample with a 95 percent confidence level. Table 2 shows that for CY 2014, the DRS reported 159 closed cases as achieving IPE employment goals compared to PERD's analysis of 124, which is a difference of 35 cases. PERD's analysis finds that the manner in which the DRS closes cases as meeting IPE goals would suggest a success rate of 64 percent for CY 2014. However, PERD's analysis of properly closed cases indicates a success rate of 51 percent.³

In order for the DRS to be able to meet federal reporting requirements, it will need to address its data collection limitations in the near future.

PERD's analysis finds that the manner in which the DRS closes cases as meeting IPE goals would suggest a success rate of 64 percent for CY 2014. However, PERD's analysis of properly closed cases indicates a success rate of 51 percent.

² In addition to the 5,153 cases that were closed in CY 2014, an additional 916 applications were received but determined to be ineligible for services and another 11 were voluntarily closed by applicants who decided they did not wish to pursue services prior to DRS determining their eligibility.

³ Percent is calculated from closed cases after an employment plan was written.

Table 2			
CY 2014 Closed Cases Listed as Achieving Employment Goal			
DRS Reported vs. PERD Analysis			
	DRS Reported	PERD Analysis	Difference Between DRS Reported and PERD Analysis
Closed Cases Listed as Achieving Employment Goal	159	124	35
<i>Source: PERD analysis of DRS calendar year 2014 sampled closed cases.</i>			

Table 3 documents cost data for the number of cases PERD identified in its sample that were deemed to have met the employment goal of the IPE and that were inconsistent with individuals' employment plan. Projecting the results of the sample to the total population of cases closed as meeting IPE goals in CY 2014 indicates that an estimated 485 cases did not have employment outcomes as described in the IPE, thus reducing the agency reported rehabilitation rate to 50 percent. This would not meet the federal performance requirement of 55.8 percent.⁴

⁴ The U.S. Department of Education's Rehabilitation Services Administration compiles state level data and calculates the success rate on a federal fiscal year (October 1 through September 30), thus DRS's reported success rate for FFY 2014 was 68%.

<p align="center">Table 3</p> <p align="center">Calendar Year 2014 Cases Closed as Successful with Employment Outcomes Inconsistent with the Goal Stated in the Employment Plan</p>							
	Number of Cases	Percent of Cases	Total Cost	Average Total Cost of Purchased Case Services Per Case File	Average Number of Months	Most Expensive Case	Longest Opened Files (in Months)
Outcome is Inconsistent with Goal	35	22%	\$257,290	\$7,351	44	\$34,606	103
Outcome is Consistent with Goal	124	78%	\$822,465	\$6,632	25	\$36,193	130
Total	159	100%	\$1,079,755				

Source: PERD analysis of DRS calendar year 2014 sampled successfully closed cases.

The following are some examples that are indicative of the 35 cases that PERD identified as closed without achieving the employment goal of the IPE.

- Client 1’s IPE goal was to attend school in order to work as an audio and video equipment technician. The client did not finish school. However, the DRS counselor closed the case as achieving the employment goal after the client worked 90-days at Lowes Home Improvement. DRS spent \$3,820 on services for the client.
- Client 2’s IPE goal was to work in law enforcement as a detective and criminal investigator. The client obtained an associates degree, but did not fulfill the goal of a four-year degree or working in the field of criminal justice. The DRS counselor closed the case as achieving the employment goal after the client worked 90-days at Lowes Home Improvement. DRS spent \$13,678 on services for the client.
- Client 3’s IPE goal was to become a Registered Nurse. Later, the client’s employment plan was amended to become a secondary school teacher, then amended again to become a medical and

health service manager. The client obtained a four-year degree. However, DRS closed the case as achieving the employment goal after the client obtained employment as a pipe layer for 90-days. DRS spent \$7,678 on services for the client.

- Client 4's IPE goal was stated as an Animal Breeder where the client went to school to study Equine Science. The client graduated with a B.S. in Animal Science, with a concentration in Horse Science and attended graduate school. In February of 2013, the client requested assistance with school loan repayment, but was told that DRS does not help with that. After that communication, the client did not reply to numerous contact requests and on October 1, 2013 DRS was to close the case as unsuccessful. However, DRS did not include a closure date in closure notification sent to client. A 10-day closure letter was then sent to the client. On December 5, 2013, the client notified DRS that the client was employed at a grocery store 20-hours a week and as a substitute teacher an average of one-day a week. On February 25, 2014, DRS closed the case as achieving the employment goal due to the client maintaining employment at the grocery store and the client's average one-day per week working as a substitute teacher. DRS paid \$5,884 on services for the client.
- Client 5's IPE goal was to return to working as a Physician Assistant. The client had previously worked as a Physician's Assistant but needed to take board exams to become re-certified. After failing the Physician's Assistant National Certification Exam a few times, the client decided to work part-time (7-11 hours per week) at a library and pursue the goal of working as a Physician's Assistant later. After working at the library for 90-days, DRS closed the client's case as achieving the employment goal. DRS spent \$1,570 on services for the client.
- Client 6's IPE goal was listed as working as an Advertising Sales Agent (Graphic Arts). The client did not complete the college program for Graphic Design. After leaving school, the client obtained a customer service representative position working for AT&T. After 90-days of employment, DRS closed the case as achieving the employment goal. DRS spent \$19,948 on services for the client.

Client 6's IPE goal was listed as working as an Advertising Sales Agent (Graphic Arts). The client did not complete the college program for Graphic Design. After leaving school, the client obtained a customer service representative position working for AT&T. After 90-days of employment, DRS closed the case as achieving the employment goal. DRS spent \$19,948 on services for the client.

Utilizing the total number of cases deemed unsuccessful and successful (245) from Table 1, if accurately closed per federal guidelines, the number DRS' cases closed is successfully rehabilitated in CY14 would fall from 65 to 51 percent. Fifty-one (51) percent would not have met the federal

benchmark (55.8 percent) for the percentage of individuals exiting the program who achieved their employment outcome. As described in cases 1-6, although DRS provided services, they are not demonstrated to have contributed to the employment goal which was identified within the employment plan. **Therefore, it is the Legislative Auditor's opinion that DRS should accurately and appropriately report closed cases as either achieving or not achieving the employment goal of the IPE.**

DRS' Policy for Closing Cases Is Inconsistent With Federal Regulations

One of the performance areas reviewed by the Rehabilitation Services Administration (RSA) are rehabilitation rates. Rehabilitation rates are the percentage of individuals exiting the program during the current year who achieved their IPE employment goal⁵ after receiving vocational rehabilitation services. The RSA requires for all states that 55.8 percent of individuals exiting the program are to achieve the employment outcome of their IPE after receiving services. If a state does not achieve this rate consistently and does not meet other federal performance standards (see Appendix B), the federal government can require the state to develop a program improvement plan for improving the state's performance. Also, the federal government has the authority to withhold or limit payments if the state plan has been changed so that it no longer conforms to the federal requirements of the program or if there has been a failure by the State to comply substantially with any provision of that plan. DRS reported in its annual reports achieving this performance standard in recent years with a high mark of 75.4 percent in FY 2013 and 54.4 percent in FY 2016⁶. However, since FY 2009, the DRS has averaged 68 percent.

The RSA monitors and evaluates DRS' performance on meeting or exceeding standard measures. According to DRS' policy regarding employment services,

Throughout the rehabilitation process, the Counselor will emphasize the goal of competitive employment in the integrated labor market to the greatest extent practicable as the culmination of all services provided to the client.

However, it is important to note that simply achieving an employment outcome is not compliant with federal regulations. The DRS must achieve the employment goal of the IPE. According to the United States 34 C.F.R. §361.56(a), an employment outcome is not only achieved or

The RSA requires for all states that 55.8 percent of individuals exiting the program are to achieve the employment outcome of their IPE after receiving services.

It is important to note that simply achieving an employment outcome is not compliant with federal regulations. The DRS must achieve the employment goal of the IPE.

⁵ The IPE outlines the client's employment goal, the services that the individual needs to achieve his or her employment goal, the estimated length of time it will take to complete the planned services and the estimated costs of the planned services.

⁶ The figures from DRS annual reports are un-audited.

deemed successful by obtaining employment, but when “*The individual has achieved the employment outcome that is described in the individual’s IPE*”

DRS policy does not comply with federal requirements. Table 4 compares the requirements under federal regulations for determining if a case can be considered successfully rehabilitated with DRS’s stated policy and a quality assurance training document DRS uses for training new counselors and support staff. Federal regulation has three requirements that must be met for a case to be considered successfully rehabilitated: (1) the client achieved the employment outcome that is described in the client’s employment plan; (2) the client has maintained employment for a minimum of ninety days; and, (3) the counselor and client agree that the employment outcome is satisfactory and that the client is performing well. The federal regulation requires the client to be involved in the decision-making process up to the final decision to close the case file. Additionally, the federal regulation requires that the employment outcome must match the goal listed in the employment plan. DRS’ official policy for determining whether a client has been successfully rehabilitated is similar to federal policy but contains weaker requirements. First, it only requires that the client have completed the program, but does not require that the individual achieve the employment goal as described in the IPE. Furthermore, DRS’ policy does not mention anything about the client and counselor agreeing that the client is performing well. Instead, DRS policy states that the case can be closed as a success if the client “...[h]as received substantial services that contributed in an identifiably positive way toward achievement of an employment outcome.” DRS policy is thus saying that the client only need to find a job (an employment outcome) rather than achieving the goal described in the employment plan.

Federal regulation has three requirements that must be met for a case to be considered successfully rehabilitated: (1) the client achieved the employment outcome that is described in the client’s employment plan; (2) the client has maintained employment for a minimum of ninety days; and, (3) the counselor and client agree that the employment outcome is satisfactory and that the client is performing well.

The far-right column of Table 4 illustrates how DRS determines it is appropriate to close a case as successful. An internal DRS quality assurance document for training new vocational rehabilitation staff dictates DRS’ process for determining if a case file can be closed as successfully rehabilitated. This document states that it is appropriate for a counselor to close a case file if the vocational rehabilitation staff can determine if the client has obtained a job and has been working ninety days. This can be determined by the DRS checking tax records through a “wage check.” If a client is employed, then the counselor will attempt to contact the client again. However, if the client does not respond, then the counselor is to close the case or wait until the client has been employed for ninety days then close the case as successful. New vocational rehabilitation staff are told that it is preferable for the client to inform the counselor, but not required.

Table 4

Comparison of Federal Regulation, Agency Policy, and Agency Practice for Determining If a Vocational Rehabilitation Case File is Successfully Rehabilitated

Federal Regulations ¹	DRS Policy ²	DRS Quality Assurance Document ³
<p>The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:</p> <p>(a) The individual has achieved the employment outcome that is described in the individual’s employment plan... and is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.</p> <p>(b) The individual has maintained the employment for an appropriate period of time but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.</p> <p>(c) The individual and the... counselor employed by the designated State unit consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.</p>	<p>The Rehabilitation Counselor will close an individual’s record of services as “rehabilitated” when the individual:</p> <p>(a) Was declared eligible for services;</p> <p>(b) Received appropriate assessment and related services;</p> <p>(c) Had a program for rehabilitation services formulated;</p> <p>(d) Completed the program;</p> <p>(e) Received vocational counseling and guidance;</p> <p>(f) Has been determined to be suitably employed for a minimum of 90 days; and,</p> <p>(g) Has received substantial services that contributed in an identifiably positive way toward achievement of an employment outcome.</p>	<p>It is appropriate to close a case as successful when:</p> <ul style="list-style-type: none"> • Client informed Counselor/RSA of employment-<i>preference is client contact.</i> • Employment verified by Counselor, Employment Specialist or Rehabilitation Service Associate. • Verification through wage data check. • Client received services on employment plan and either voluntarily discontinued or completed the necessary services leading to job placement or retention. • There is verifiable evidence (progress reports and documentation) that services provided by DRS assisted the client in obtaining/maintaining employment. • Client has maintained consistent employment for 90 days.

Sources:

¹ Code of Federal Regulation 34 C.F.R. §361.56.

² Division of Rehabilitation Services, Policy 3006 “Rehabilitated Closure (Status 26).”

³ Division of Rehabilitation Services, “Decision Tree Training 2015: [Quality Assurance] Trainer Notes.”. Internal document provided to PERD from DRS.

While an individual may gain employment, there is insufficient evidence to determine that employment was the result of DRS' services. A successful outcome is defined by the employment goal, not simply a client obtaining employment, such as in the 35 cases identified by PERD. In order to gain a better understanding of the federal guidelines related to closing a case when the client has achieved an employment outcome, PERD obtained a legal opinion from the Legislative Services Division within the Office of the Legislative Auditor. (See Appendix E for the entire opinion.) Legislative Services noted that,

...under federal law, IPEs must contain a description of a specific employment outcome, which may be any employment in an integrated setting. The statutes and regulations are unclear as to the level of description necessary to satisfy this requirement-whether IPEs must describe a specific category of employment (such as "legal professional," which may include being a paralegal, legal librarian, lawyer, etc.) or a specific job title (such as "paralegal").

The legal opinion indicates that although the federal regulations are unclear as to the level of description of the employment outcome, the description must allow services to be designed to achieve it (29 U.S.C.S. §722(b)(3)E(ii)). While states may vary in the interpretation of this language, DRS utilizes Standard Occupational Classification (SOC) codes for describing employment outcomes within each IPE, and once the case is closed, the SOC code for the employment achieved is recorded in the file. In evaluating DRS closed cases, PERD compared the SOC codes within the IPE to the SOC code of the employment achieved when the case was closed. The cases that PERD determined did not meet the employment outcome as described in IPEs were diametrically outside of the SOC codes described in the IPE.

PERD also identified eight cases in which DRS used the unemployment data system to determine if a client who no longer maintained contact with DRS had received wages so that the cases could be closed as meeting the employment outcomes of the IPEs. Four examples of these cases are as follows:

- In one example, a counselor requested a wage check on December 12, 2014 for a client who had not been in contact since July. During the last contact, the client informed the counselor that he had found employment as a shift supervisor at a fast-food restaurant. Then between August and December, the counselor sent two letters and called the client once to request an update, but the client never responded. On the last contact attempt, the counselor notes that he, "requested a wage check be completed, so the case can be closed successfully, if the client has been able to maintain employment." Three days later (December 15), the

A successful outcome is defined by the employment goal, not simply a client obtaining employment, such as in the 35 cases identified by PERD.

PERD also identified eight cases in which DRS used the unemployment data system to determine if a client who no longer maintained contact with DRS had received wages so that the cases could be closed as meeting the employment outcomes of the IPEs.

counselor received confirmation that the client had been employed for over 90 days and closed the case as rehabilitated, without the client's agreement.

- In another example, a wage check was requested for a client who had not been in contact with DRS for eight months. At the time of the last contact, the client had informed that counselor that he had not obtained a Mining Inspector Certification as required for his IPE employment goal; however, he had obtained the same employment he had before he was laid off as a Mine Electrician. After the eight months from when DRS was notified by the client that he had obtained employment, DRS closed the case on receipt of the wage check without contact with the client or achievement of the client's IPE employment goal.
- In another example, a wage check was used to close a client's case as rehabilitated after the client had stopped communicating with DRS for 11 months in addition to not responding to multiple contact requests. During the 11 months without communication, from September 2013 to August 2014, DRS mailed 10-day closure letters in June and July of 2014 with no response from the client. Nevertheless, DRS did not close the case as indicated in those letters and ultimately closed the case as rehabilitated after the counselor had requested and received a wage check indicating that the client was employed. According to the documentation provided by DRS, it is unclear how it determined that the client had been working for 90 days.
- In the last example, DRS used a wage check to close a case for a client who had not been in contact with DRS for over a year and three months; the last contact was only two months after the case had been opened. From the time of the last recorded contact with the client in April 2013 to July 2014 when DRS closed the case, DRS indicated in its case action statements that a closure letter was to be sent out in October 2013 if there was no contact, and again in May 2014. According to the action statements, there was no response to either. In June 2014, according to DRS, it requested and received a wage check that indicates that the client had been employed since July 2013. After receiving the wage check, DRS attempted to contact the client and the indicated employer to confirm employment with no response. Ultimately, DRS closed the case as rehabilitated on July 25, 2014.

DRS' choice to close these case files as successes based on wages, is in violation of federal regulations, yet DRS mandates the practice.

During the 11 months without communication, from September 2013 to August 2014, DRS mailed 10-day closure letters in June and July of 2014 with no response from the client. Nevertheless, DRS did not close the case as indicated in those letters and ultimately closed the case as rehabilitated after the counselor had requested and received a wage check indicating that the client was employed.

DRS used a wage check to close a case for a client who had not been in contact with DRS for over a year and three months; the last contact was only two months after the case had been opened.

DRS Does Not Close Cases in a Timely Manner and Does Not Follow Its Own Protocols for Closing Case Files When Clients Fail to Maintain Contact.

The primary goal of DRS' vocational rehabilitation program is to achieve successful employment outcomes for its clients. Counselors and clients begin the vocational rehabilitation process with an employment plan, which details the services that individuals need to achieve their goal. In addition to an employment goal a client's employment plan is to also include an estimated length of time it will take the to complete the planned vocational rehabilitation services. Federal regulations, United States 34 C.F.R. §361.50 (d), indicate that,

The State unit may establish reasonable time periods for the provision of services provided that the time periods are (i) Not so short as to effectively deny an individual a necessary service; and (ii) Not absolute and permit exceptions so that individual needs can be addressed.

PERD utilized the sample cases that ended as successfully and unsuccessfully closed to review how often target timeframes for completion of service were achieved. Table 5 shows the number and percentage of those cases from the PERD sample that did and did not achieve the estimated time frame documented within the employment plan.

In addition to an employment goal a client's employment plan is to also include an estimated length of time it will take the to complete the planned vocational rehabilitation services.

<p align="center">Table 5</p> <p align="center">Comparison of Successful and Unsuccessful Sampled Calendar Year 2014 Cases</p> <p align="center">Timeframe to Meet Expected Completion Date</p>						
Timeframe for Closed Case	Successful	Percent of Successful	Unsuccessful	Percent of Unsuccessful	Total Number of Cases	Percent
Cases closed before expected completion date	52	21%	41	17%	93	38%
Less Than One Month	5	2%	4	2%	9	4%
1 to 3 Months	14	6%	3	1%	17	7%
3+ to 6 Months	20	8%	3	1%	23	9%
6+ to 9 Months	15	6%	2	1%	17	7%
9+ to 12 Months	14	6%	4	2%	18	7%
1 Year to 1.5 Years	13	5%	9	4%	22	9%
1.5+ to 2 Years	6	2%	4	2%	10	4%
2+ Years	19	8%	16	7%	35	14%
Total	158*	65%	86	35%	244	100%
<p><i>Source: PERD analysis of DRS calendar year 2014 sampled closed cases.</i></p> <p><i>*Number is not 159 due to estimated timeframe being inaccessible within one file.</i></p>						

Table 5 documents the successfully and unsuccessfully closed cases that remained in the DRS program for extended periods of time beyond their completion date. From the sample, 19 of the successful files took 2 or more years past the estimated completion date to reach the employment goal, and 4 of those cases extended more than 5 years past the estimated completion date. From the unsuccessful files of the 86 clients who did not meet their employment goal, 16 took more than 2 years to close. Of the 16 that took longer than 2 years, 12 took longer than 5 years (see Table 6). In total, 27 percent of the cases that had an IPE remained open a year or more beyond the expected completion date, without an amendment to the employment plan’s timeframe. With more than a quarter of case files with employment plans going well beyond their completion dates, DRS is either inaccurately estimating the timeframes or is not managing the cases according to the clients’ employment plans. If the problem is with the time estimations, then DRS should be amending the employment plans to reflect the new timeframes. PERD did not identify cases that were amended solely to update the expected completion date. Therefore, the Legislative Auditor concludes that DRS is not requiring the counselors nor its clients meet the goals in a timely manner as spelled out in the client’s employment plan.

From the unsuccessful files of the 86 clients who did not meet their employment goal, 16 took more than 2 years to close. Of the 16 that took longer than 2 years, 12 took longer than 5 years.

Table 6**Reasons for Closure of Calendar Year 2014 Unsuccessfully Rehabilitated Cases Which Took Longer Than 5 Years**

Case	Months to Close	Reason for Closure
Case 1	139	Client unable to work due to health issues.
Case 2	132	Client Stopped Communicating.
Case 3	100	Client Stopped Communicating.
Case 4	100	Client Incarcerated.
Case 5	99	Client Stopped Communicating.
Case 6	99	Client No Longer Interested in Services.
Case 7	78	Client Stopped Communicating.
Case 8	78	Client Stopped Communicating
Case 9	72	Client Stopped Communicating
Case 10	70	Client Did Not Complete IPE Successfully.
Case 11	68	Client Stopped Communicating.
Case 12	66	Client no longer interested in services.

Source: PERD analysis of DRS calendar year 2014 sampled closed cases.

DRS also does not close case files when the client did not demonstrate an interest in continuing the vocational rehabilitation program in accordance with its own policy. Out of the 86 sampled unsuccessful closed case files from calendar year 2014, 66 percent were closed due to the client failing to maintain contact with the DRS counselor. In these cases, the client does not call or meet with his or her counselor and does not respond to DRS's request for updates and meetings. When this occurs, the counselor is supposed to close the file as an unsuccessful rehabilitation, but only after the counselor has attempted to locate the individual to determine if they wish to continue working towards their employment goal. According to DRS policy, prior to closing a case as unsuccessful for any other reason other than death or institutionalization, the "...case must be staffed with the district's Placement Team to determine if all attempts have been exhausted to locate individuals who have relocated and to determine if there are any viable actions that may be taken to assist in a positive employment outcome.... If the expected reason for the closure is the refusal of services, or failure to cooperate, the individual must be provided advance notice of the pending closure along with the reason for the closure and offered a reasonable opportunity to remedy the problem."

PERD's review of the closed files deemed unsuccessful found numerous cases in which DRS had mailed multiple letters requesting that the client contact his or her counselor or the case would be closed. In

Out of the 86 of the sampled unsuccessful closed case files from calendar year 2014, 66 percent were closed due to the client failing to maintain contact with the DRS counselor. In these cases, the client does not call or meet with his or her counselor and does not respond to DRS's request for updates and meetings.

some instances, the contact letter contained no closure warning, while those that did contain a closure warning allowed anywhere between 7 to 30 days to respond with most allowing 10 to 15 days to contact the counselor.

For example, in one case a counselor sent a letter stating that if the client did not contact DRS within 30 days then his case would be closed. The letter was sent on December 4, 2012, 34 days after the last client-counselor contact. The case should have been closed on January 3, 2013 but remained opened. The counselor called the client again on February 28, 2013 and left a message requesting a return call. The client did not return the counselor's telephone call. Then on March 15, 2013, the counselor saw the client during lunch, at which time the client informed the counselor that the client had stopped attending the DRS paid-for HVAC program. The client stated that he was near completion of another unspecified program. An additional 129 days passed before, on July 22, 2013, the client telephoned the counselor to state that the client was enrolling in a computer science program at a state community college. The counselor informed the client that DRS would not be able to assist with tuition since DRS paid for the non-completed HVAC program, but offered career placement services once the computer science program was completed. The client requested his case be kept open. Then an additional 263 days passed until the counselor called the client's home and left a voicemail message requesting a return call. The client never responded to the voicemail and, on May 30, 2014 the counselor closed the case as unsuccessfully rehabilitated.

In a second example, a counselor sent a contact letter without a closure notification on February 8, 2013 to a client who the counselor had not spoken to since November 6, 2012. The client telephoned the counselor on March 14, 2013 requesting to have a meeting to discuss the case. The client's original goal was to become a receptionist and the client wanted to change it after visiting the local community college. The counselor's notes do not specify the client's new goal, but state that the client had not followed through with some of the requirements in the employment plan, failed to maintain contact or attend scheduled meetings with the counselor. The counselor notes that she will contact the client again and schedule a meeting to discuss the client's case and a new training program. Following that contact, the counselor called the client twice in August with no response. Then on November 18, 2013, the counselor sent a contact letter with a 30-day closure notification if contact was not made. The 30 days passed without contact from the client. However, instead of closing the case, the counselor sent another contact letter with a 15-day closure notification. Once again, the client did not respond and the case was finally closed as unsuccessfully rehabilitated on January 6, 2014.

It is the Legislative Auditor's opinion that continued multiple request for contact letters being sent to an unresponsive client extends

The counselor informed the client that DRS would not be able to assist with tuition since DRS paid for the non-completed HVAC program, but offered career placement services once the computer science program was completed. The client requested his case be kept open. Then an additional 274 days passed until the counselor called the client's home and left a voicemail message requesting a return call. The client never responded to the voicemail and, on May 30, 2014 the counselor closed the case as unsuccessfully rehabilitated.

a case unnecessarily. Currently, DRS does not have a threshold or benchmark on the number of requests for contact letters to be sent prior to closing the case. **Therefore, it is the Legislative Auditor's opinion that to discontinue the unnecessary extension of cases, the DRS should establish a set number of requests for contact letters that can be sent before ultimately closing the case.**

The large percentage of cases that go well beyond their expected completion dates and the practice of sending numerous contact letters to disinterested clients show that DRS is not managing its vocational rehabilitation program efficiently and effectively. Establishing expected completion dates for case files to be closed provides a level of accountability for both the client and the counselor to gauge the client's progress towards meeting his or her goal throughout the rehabilitation process. As PERD's analysis of the cases that extended past their expected completion date shows, DRS is not utilizing the established dates and therefore is not able to close cases efficiently. By allowing the cases of clients who have not demonstrated an interest in continuing the vocational rehabilitation program to remain open and then making continual attempts to continue the case despite the client's stop in communication, these cases serve as a burden on the productivity of the counselor and the program as a whole. When clients can receive services indefinitely without sufficient procedures to ensure reasonableness, it reduces the efficiency and effectiveness of DRS' vocational and rehabilitation program. **Therefore, it is the Legislative Auditor's opinion that once DRS has made the established contacts with no response from the client, the case should be closed to facilitate greater efficiency and effectiveness in the vocational rehabilitation process.**

Performance Reviews of Vocational Rehabilitation Programs in Other States Identified Data Reliability Issues and Inconsistencies in Reported Employment Outcomes

DRS' issues with closing case files are not unique. PERD's review of performance audit reports from other states found three reports that address similar issues in other states' vocational rehabilitation programs (see Table 7). Like PERD, the audit teams in Colorado and Pennsylvania found case files that were closed as successes even though the employment outcome did not match the goal. Additionally, Arizona, Colorado and Pennsylvania found that case files were not being closed in a timely manner. Pennsylvania's audit team determined the cause for the delay in case closures. As stated in Pennsylvania's Office of the Inspector General's 2012-2013 report:

"OIG received information that district offices were instructed to hold successful case closures once a fiscal year goal was met, in an effort to 'stockpile' successful

It is the Legislative Auditor's opinion that continued multiple request for contact letters being sent to an unresponsive client extends a case unnecessarily. Currently, DRS does not have a threshold or benchmark on the number of requests for contact letters to be sent prior to closing the case.

The audit teams in Colorado and Pennsylvania found case files that were closed as successes even though the employment outcome did not match the goal. Additionally, Arizona, Colorado and Pennsylvania found that case files were not being closed in a timely manner.

case closures for the following fiscal year. OIG analyzed monthly successful case closures for five fiscal years and found a significant disparity between percentage of total cases closed in the first month of the fiscal year (October) and percentage of cases closed in the last month of the fiscal year (September).”

<p align="center">Table 7</p> <p align="center">Performance Reviews of Vocational Rehabilitation Programs in Other States and Their Relevant Findings</p>		
State	Year Issued	Relevant Finding(s)
Colorado	2013	<ul style="list-style-type: none"> • The Division has not ensured participants meet their employment goals in a timely manner nor has it limited the duration of their Program services. There was no evidence that eight sampled participants met their employment goals although they received Program services for 5 or more years. Fiscal Year 2013 participants had been in the Program for an average of 1.8 years, but the range was 2 weeks to 32 years. • The Division has not established reasonable limits on the dollar amount or number of services participants may receive.
Pennsylvania	2013	OVR’s procedures for reporting case closures revealed stock-piling of cases and other deviations from applicable program requirements.
Arizona	2017	Although federal law allows states to establish reasonable expenditure and time limits for clients to receive services, the Department has not established such limits.

Conclusion

The Legislative Auditor concludes that the inconsistency between the employment goals and outcomes in the 35 cases identified by PERD shows that DRS is focusing on simply getting clients employed rather than meeting their employment goal listed in the employment plan as required by federal regulations. Whereas the federal regulation requires that an employment outcome must meet three conditions to be consider a successful outcome (see Table 4), DRS’ policy and its quality assurance training document indicate that DRS’ considers obtaining any job after receiving services to be a successful employment outcome. In effect, DRS is diluting the vocation rehabilitation program’s purpose. Therefore,

it is the Legislative Auditor's concern that DRS is closing cases as successful to meet the performance measure created by the RSA. By closing unsuccessful cases as successfully rehabilitated and allowing cases where clients no longer show interest in completing the program to remain open, DRS is not ensuring federal and state funds are used appropriately and efficiently. Paying for services for clients who are not making sufficient progress toward meeting employment goals within reasonable timeframes is not an appropriate or prudent use of program funds. By addressing the issues identified in this report, DRS could better serve its clients by ensuring that those clients are being successfully rehabilitated.

Recommendations

1. *DRS should accurately report cases as unsuccessful when the outcome does not meet the employment goal.*
2. *DRS should establish a set number of request-for-contact letters that can be sent before ultimately closing the case.*
3. *DRS should establish benchmarks to close files in a timelier manner to facilitate greater efficiency and effectiveness in the vocational rehabilitation process.*
4. *The DRS should continue to make progress in addressing the issue of data limitations in order to be able to completely and accurately report performance data as required in the Workforce Innovation and Opportunity Act.*

By closing unsuccessful cases as successfully rehabilitated and allowing cases where clients no longer show interest in completing the program to remain open, DRS is not ensuring federal and state funds are used appropriately and efficiently.

Appendix A Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

November 3, 2017

Gayle C. Manchin, Cabinet Secretary
Department of Education and the Arts
Building 5, Room 205
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Secretary Manchin:

This is to transmit a draft copy of the Agency Review of the Division of Rehabilitation Services (DRS). This report is tentatively scheduled to be presented during the December 3-5, 2017 interim meetings of the Joint Committee on Government Operations, and the Joint Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions committee members may have during or after the meeting.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting on or before Friday, November 17, 2017. Please notify us to schedule an exact time. In addition, we need your written response by noon on Tuesday, November 21, 2017 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 304-340-3192 by Thursday, November 30, 2017 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,


John Sylvia

Enclosure

cc: Marijane K. Waldron, Director, Division of Rehabilitation Services

Joint Committee on Government and Finance

Appendix B

Objective, Scope and Methodology

The Performance Evaluation and Research Division (PERD) with the Office of the Legislative Auditor conducted an Agency Review of the Department of Education and the Arts pursuant to *West Virginia Code §4-10-8*. As part of the process, a performance review of the Division of Rehabilitation Services (DRS) was conducted. As established in West Virginia Code §18-10A, the DRS was established to provide vocational rehabilitation services to eligible disabled individuals.

Objective

Objectives of the audit were to assess if the DRS' process for assisting clients to achieve employment goals are effective and efficient in terms of accomplishing the goals in a cost-effective and timely manner.

Scope

The scope of the audit included only the vocational rehabilitation services of DRS and not the disability determination section. The scope included a random, statistically significant sample of cases closed in calendar year 2014. The scope included a review of sampled clients Individualized Plan for Employment (IPE) and expenditures. Finally, PERD used information from the DRS' internet based electronic case management system (iECM) and its client authorization payment system (CAPS) as a means to obtain and analyze the closed cases.

Methodology

PERD gathered and analyzed several sources of information and conducted audit procedures to assess the sufficiency and appropriateness of the information used as audit evidence. The information gathered and audit procedures are described below.

The audit team used a random sample of the DRS' vocational rehabilitation case files from its Electronic Case Management System closed in calendar year 2014 as its primary source of information to conduct the performance review. The audit team reviewed 357 of the 5,164 cases that were closed after the client was determined to be eligible and have an IPE completed. The DRS told the audit team it could not provide digital copies of case files. This required the team to printout the documentation associated with each casefile at the DRS' headquarters in Charleston, West Virginia. The case files included basic information on the client, the eligibility determination, the IPE, the counselors' notes (called action statements), closure notification, case status reports, the record of services provided, the employment verification forms, amendments, and, the authorizations from the CAPS system. PERD staff then reviewed and inputted each casefile into a Microsoft Access database to conduct the analyzes used in the report.

The review of casefiles provided assurance that the information in the files was consistent; however, the audit team did not conduct any additional steps to determine the accuracy or validity of the casefile information. Once all the files were inputted into PERD's database, the team conducted queries to identify errors such as incorrect date, created by manual entry. Additionally, the audit team reviewed the paper copies of files for the employment goal outcome analysis, the contact analysis in Table 4, and the closure reason in

unsuccessful cases (Table 5). The audit team did not identify any issues with the data in the paper files that would have required additional verification of the electronic records in the iECM system. Therefore, PERD determined that this data were sufficient and appropriate.

In addition to the casefile review, the audit team completed several additional activities as part of the performance review of the DRS. For instance, the audit team interviewed members of the DRS administrative staff as well as the United States Department of Education's Rehabilitation Services Administration (RSA). The audit team also reviewed the sections of the U.S. Code of Federal Regulations related to the State Rehabilitation Services Program and the Workforce Innovation and Opportunity Act, West Virginia State Code, DRS' policy manuals and training documents, performance reviews of the vocational rehabilitation programs in other states, RSA policy statements; performance reviews of RSA and state vocational rehabilitation programs conducted by the U.S. Government Accountability Office and the U.S. Department of Education's Office of Inspector General.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C

DRS Rehabilitation Service Process

DRS Rehabilitation Service Process

DRS' Service Policy:

Application

To apply for vocational rehabilitation services, a West Virginian must submit an application to DRS and complete the eligibility assessment process. According to United States 34 C.F.R. §361.42, in order to be considered eligible for services, individuals must have a physical or mental impairment, have an impairment that constitutes a substantial impediment to employment, and be determined by a qualified counselor employed by DRS that the applicant requires the service to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Severity of Disability

Once an applicant is determined eligible, a DRS vocational rehabilitation counselor (counselor) must assess the severity of the individual's disability. The severity is determined by the extent to which the counselor determines the individual's disability impacts his or her functional capacity, the number of vocational services needed, and the time in service required to complete those services. DRS then classifies each eligible individual's disability as non-significant, significant, or most significant. In some instances, eligible applicants must be placed on a wait list for services. Federal regulations (United States 34 C.F.R. §361.36) require states to have an "order of selection," or a wait list, which is a process that prioritizes services to clients when projected fiscal and personnel resources for vocational services are not sufficient to serve all eligible individuals. DRS has prioritized those individuals with the most significant disabilities to be served first, followed by applicants with significant disabilities, applicants with non-significant disabilities which result in permanent functional limitations and then finally those applicants with disabilities which do not result in permanent functional limitations.

Comprehensive Assessment

After the application process, obtaining eligibility and determining the severity of the disability the counselor will conduct a comprehensive assessment of the unique strengths, resources, priorities, interests, and needs of an eligible individual. The scope of the assessment is limited to information that is necessary to identify the rehabilitation needs of the eligible client and to develop the rehabilitation program and vocational goal. The assessment may include an analysis of pertinent medical, psychiatric, psychological, neuropsychological, vocational, educational, cultural, social, recreational, environmental factors and related functional limitations that effect the client's employment and rehabilitation needs. In order to determine the most appropriate vocational pursuits, assessments may include a vocational evaluation, a functional capacities study and a community based assessment. Each enables the counselor to identify the specific or range of jobs for which the client is best suited for considering the individual's capabilities, limitations, interests, work habits and employment locale.

Individualized Plan for Employment

Each client works with DRS staff to establish a program outcome or goal. The DRS counselor and client work together to formulate an Individualized Plan for Employment (IFE) which documents the program or employment goal and a timeframe to achieve this goal. Goals for

clients include securing both full-time and part-time employment in all types of vocations from fast food worker to medical doctor. The counselor will offer information and technical assistance to eligible clients which can assist in developing the IPE. The IPE shall include the employment goal, the timeframe to achieve the goal, intermediate goals, the specific services needed to achieve the goal, post-employment services, financial arrangements and client comments.

Rehabilitation Services Provided

Once the IPE is established, to obtain or retain employment the services that could be provided by DRS are as follows:

- A. Physical Restoration and Mental Health Services;
- B. Diagnosis of and treatment for mental and emotional disorders by a licensed psychiatrist, licensed psychologist, or a psychologist employed by a school system;
- C. Dental Services;
- D. Nursing Services;
- E. Necessary hospitalization in connection with therapeutic treatment;
- F. Medication and medical supplies;
- G. Prosthetic, orthotic, or other assistive devices, including hearing aids;
- H. Eyeglasses and visual services;
- I. Podiatry;
- J. Physical Therapy;
- K. Occupational therapy;
- L. Speech or hearing therapy;
- M. Mental health services; or
- N. Intercurrent illness;
- O. Vocational and other training services;
- P. Interpreter services of individuals who are deaf and tactile interpreting services for individuals who are deafblind;
- Q. Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind;
- R. Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate public service employment;
- S. Job search and placement assistance and job retention services;
- T. Supported employment services;
- U. Specific post-employment services necessary to assist clients to maintain, regain, or advance in employment;
- V. Occupational licenses, tools, equipment, initial stocks and supplies;
- W. Rehabilitation technology services, telecommunications, sensory, and other technological aids and devices;
- X. Transition services;
- Y. Vehicular modification;
- Z. Other goods and services determined necessary for the individual with a disability to achieve an employment outcome; and Support Services such as transportation or personal assistance services.

Appendix D Rehabilitation Act Amendments of 1998

Rehabilitation Act Amendments of 1998

The Rehabilitation Act Amendments of 1998 require the federal Rehabilitation Services Administration to establish standards and performance indicators that DRS is expected to annually meet. To successfully meet these requirements, DRS must pass four of the six employment outcome indicators (Indicators 1.1 to 1.6) and pass two of the three primary indicators (Indicators 1.3, 1.4, and 1.5). DRS must also pass the equal access indicator (Indicator 2.1). The standards are as follows:

Performance Indicator 1.1-Change in Employment Outcomes

The number of individuals who achieved an employment outcome in the current year must equal or exceed the number from the previous year.

Performance Indicator 1.2-Percent of Employment Outcomes

The percentage of individuals exiting the program during the current year who have achieved an employment outcome after receiving services. (Federal Requirement-55.8%)

Performance Indicator 1.3-Competitive Employment Outcomes

The percentage of individuals who achieved an employment outcome and are earning at least the minimum wage. (Federal Requirement-72.6%)

Performance Indicator 1.4-Significance of Disability

Of those earning at least the minimum wage, the percentage who have significant disabilities. (Federal Requirement-62.4%)

Performance Indicator 1.5-Earnings Ratio

The ratio of the average hourly earnings of all individuals earning at least the minimum wage to the average hourly earnings of all employed individuals in the state. (Federal Requirement-Ratio of .52)

Performance Indicator 1.6-Self-Support

Of those earning at least the minimum wage, the difference in the percentage of individuals who at program entry reported their income as the largest single source of support, and the percentage that reported income as the largest single source of support at program exit. (Federal Requirement-53% mathematical differences)

Performance Indicator 2.1-Minority Background Service Rate

The service rate for individuals with disabilities from minority backgrounds as a ratio to the service rate for all non-minorities with disabilities. (Federal Requirement-Ratio of .80)

Appendix E Legal Opinion

I N T E R

**LEGISLATIVE
SERVICES**

O F F I C E

MEMO

To: Brandon Burton, Research Manager, PERD
From: C. Casey Forbes, Staff Attorney
Subject: PERD Question Regarding Employee Outcomes v. Employee Goals in DRS Cases
Date: October 4, 2017

QUESTION PRESENTED

This memo is in response to your request—dated September 28, 2017, and sent to Director Rich Olsen—for an answer to the following question:

Can PERD say that the Division of Rehabilitation Services (DRS) cannot close a case as having met the employment outcome if it does not match the Individualized Plan of Employment (IPE) employment goal due to the language within United States C.F.R. §361.56(a)?²

DISCUSSION

Vocational rehabilitative services are governed by Title I of the Rehabilitation Act of 1973, 29 U.S.C.S. §§720 to 751 (as amended on July 22, 2014), as well as its related federal regulations located at 34 C.F.R. §§361.1 to 361.65. As indicated in your request, 34 C.F.R. §361.56 provides “[r]equirements for closing the record of services of an individual who has achieved an employment outcome[.]” Under that

²Your request noted that the 37 cases at issue were closed in the 2014 fiscal year. No other dates were provided (including the dates upon which the cases were opened). The relevant federal statutes and regulations have been amended multiple times in their histories. Therefore, without more definite dates, it is unclear which version of the relevant federal statutes and regulations apply to each, individual case. As such, for the purposes of this memo, the federal statutes and regulations in effect during the majority of the 2014 fiscal year will be employed.

regulation, the record of services may only be closed when four factors are met. The first requisite factor for closing a record of services is that “[t]he individual has achieved the employment outcome that is described in the individual’s IPE in accordance with [34 C.F.R.] §361.46(a)(1) and is consistent with the individual’s strengths, resources, priorities, concerns, capabilities, interests, and informed choice.” 34 C.F.R. §361.56(a).

In turn, 34 C.F.R. §361.46(a)(1) requires that IPEs include “[a] description of the specific employment outcome, as defined in § 361.5(b)(16), that is chosen by the eligible individual and is consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice.” Further, 29 U.S.C.S. §722(b)(4) provides as follows:

[IPEs] shall, at a minimum, contain mandatory components consisting of—(A) a description of the specific employment outcome that is chosen by the eligible individual, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual, consistent with the general goal of competitive integrated employment (except that in the case of an eligible individual who is a student, the description may be a description of the student’s projected postschool employment outcome[.]

The phrase “employment outcome” is defined as “entering or retaining full-time or, if appropriate, part-time competitive employment, as defined in §361.5(b)(11), in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership[.]” 34 C.F.R. §361.5(b)(16); see also 29 U.S.C.S. §705(11) (similarly defining “employment outcome”). The eligible individual’s choice of employment outcome must be an “informed choice” and must be approved and signed by a qualified vocational rehabilitation counselor employed by the “State unit.” 29 U.S.C.S. §722(b)(3); 34 C.F.R. §361.52.

Additionally, IPEs must be reviewed at least annually, and they may be amended “if there are substantive changes in the employment outcome[.]” 29 U.S.C.S. §722(b)(3)(E); 34 C.F.R. §361.45(d)(5)-(7). Amendments may be made by the eligible individual, or representative, in collaboration with the State agency’s representative or a qualified vocational rehabilitation counselor. 29 U.S.C.S. §722(b)(3)(E)(ii); 34 C.F.R. §361.45(d)(6). Amendments require the agreement and signature of the eligible individual, or representative, and the agreement and signature of a qualified vocational rehabilitation counselor employed by the “State unit.” 29 U.S.C.S. §722(b)(3)(E)(ii); 34 C.F.R. §361.45(d)(6).

Therefore, under federal law, IPEs must contain a description of a specific employment outcome, which may be any employment in an integrated setting. The statutes and regulations are unclear as to the level of description necessary to satisfy this requirement—whether IPEs must describe a specific category of employment (such as “legal professional,” which may include being a paralegal, legal librarian, lawyer, etc.) or a specific job title (such as “paralegal”). However, the description must allow services to be designed to achieve it. See 29 U.S.C.S. §722(b)(3)(E)(ii) (“Vocational rehabilitation services provided under this title . . . are any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an

employment outcome"; 29 U.S.C.S. §722(b)(4)(B) (IPEs must include description of services needed to achieve employment outcome). Further, the employment outcome chosen by the individual may change during the service period, if the IPE is amended.

CONCLUSION

Based on statutes and regulations, PERD's proposed statement is unnecessarily broad. PERD cannot say that the DRS "cannot close a case as having met the employment outcome if it does not match the Individualized Plan of Employment (IPE) employment goal due to the language within United States C.F.R. §361.56(a)." (Emphasis added.) Neither the statutes nor the regulations governing this process use the phrase "match the [IPE's] employment goal[.]" Instead, the relevant language in the regulation is that "[t]he individual has achieved the employment outcome that is described in the individual's IPE[.]" (Emphasis added.) The phrase "that is described in" is not further defined by the statutes, regulations, or case law in this jurisdiction. It is plausible that an employment outcome may be "described in" the IPE, but not exactly match the IPE's employment goal. Therefore, the answer to the question presented is technically no. Instead, PERD should mirror the language of the regulation.

If you have any questions or concerns, please contact me at any time. Thank you,

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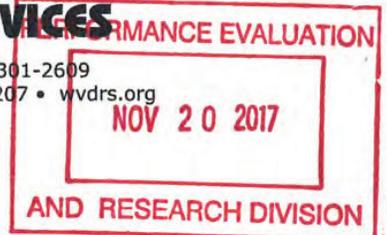
Appendix F Agency Response



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Marijane K. Waldron, Director



MEMORANDUM

To: The Performance Evaluation and Research Division (PERD)
 From: Marijane K. Waldron, Director, WVDRS *Marijane K. Waldron*
 Subject: Response to PERD Agency Review of the Division of Rehabilitation Services
 Date: November 17, 2017

The West Virginia Division of Rehabilitation Services (DRS) continues to serve individuals with significant and most significant disabilities in its mission to enable and empower individuals with disabilities to work and to live independently. The DRS is proud of its achievements in assisting our consumers to achieve competitive, integrated employment outcomes in 2014. During this time, it was one of the most successful vocational rehabilitation (VR) agencies in the nation, as reported on the federal Rehabilitation Services Administration’s Wall Chart of State Vocational Rehabilitation Performance.

The DRS appreciates the feedback from the Performance Evaluation and Research Division (PERD) of the West Virginia Legislature, as well as the opportunity to review and respond to the PERD’s report. The DRS will continue to develop and implement policy changes, as appropriate, to enhance DRS performance to better serve consumers with significant disabilities in WV.

Following an analysis of a random sample of 357 (out of 5,153) cases that the DRS closed in calendar year 2014, the PERD identified the following issue:

Twenty-Two (22) Percent of the Division of Rehabilitation Services’ Cases That It Reported as Achieving Employment Goals in FY 2014 Did Not Achieve the Specified Employment Goals. Also, Inactive Cases Remain Open for Years Before They Are Closed, and in Many Cases There Was a Lack of Documentation on How the Agency Confirmed Employment Outcomes Other Than Clients’ Verbal Statements.

Additionally, the PERD made the following recommendations based on their conclusions (The DRS response immediately follows each numbered recommendation):

- 1. DRS should accurately report cases as unsuccessful when the outcome does not meet the employment goal.***

It is the agency’s policy to ensure that a consumer’s Individualized Plan for Employment (IPE) and its amendments identify a vocational goal that is based on that consumer’s choice.

DRS Client Services Manual, Sec. 2703.3 – Contents

*A. Employment Goal. The IPE shall be developed to achieve the client’s rehabilitation goal for employment, consistent with that individual’s unique strengths, resources, priorities, needs, concerns, abilities, and capabilities. **The rehabilitation goal will***

Enabling and empowering individuals with disabilities to work and to live independently

be based on the assessment for determining eligibility and priority of services, assessment for determining rehabilitation needs, and the client's informed choice.

DRS Client Services Manual, Sec. 2703.8 – Amendment

- A. When Required. The IPE will be amended when:***
- 1. Major service(s) is/are deleted and/or added;***
 - 2. The vocational goal is revised;***
 - 3. There is a change in financial participation;***
 - 4. There is a change in the client's responsibilities as an active participant in the rehabilitation effort;***
 - 5. The client requests other substantive changes;***
 - 6. The client enters employment, changes vocational goals, changes jobs, or changes employers; and/or,***
 - 7. The case is closed rehabilitated with a change in vocational goal.***

The DRS will continue to strive to ensure that the employment goal of the final amended IPE is descriptive of the consumer's chosen employment outcome. The DRS will reinforce training that is consistent with the agency's policies and federal regulations. The DRS will also strive to maintain accurate reporting, including that of the employment outcomes of consumers. The DRS believes that the attainment of employment after receiving VR services is a successful outcome, as it represents an individual with a disability in the labor force, having the ability to earn an income, pay taxes, and contribute to society. The DRS does not force any individuals into a specific occupation; the employment that a consumer obtains is ultimately that consumer's decision. In addition to services that enable consumers with disabilities to overcome barriers to employment, the DRS provides consumers with skills and incentive to work, which are some of the intermediate outcomes requisite for competitive, integrated employment. Further, individuals with significant disabilities frequently face many employment barriers. With that in mind, as well as consideration of the fact that limited resources are spent on VR services according to the Individualized Plan for Employment (IPE), the DRS believes that it is appropriate to recognize any employment chosen by some consumers as a successful outcome. Finally, as indicated by the PERD, this practice is not unique to the West Virginia DRS. Several states close VR cases as successful even though the employment outcome does not "match" the occupation identified in the IPE. Obtaining employment is more important to some of these VR consumers than being able to obtain a specific occupation.

2. DRS should establish a set number of request for contact letters that can be sent before ultimately closing the case.

The DRS concurs with the PERD's recommendation and is reinstating closure procedures which will necessitate contact between consumers and DRS staff at a minimum of every 90 days. If a consumer does not maintain contact with DRS staff after 90 days, that consumer will receive a letter requesting contact within the next 30 days. If contact has not been made within that 30-day period, the consumer will receive a second letter indicating that if they do not make contact

Maryanne K. Waddock

within the next 14 days, the case will be closed. If the consumer fails to make contact within that 14-day period, he or she will receive a notification letter indicating that his or her case is closed.

3. DRS should establish various benchmarks which will close files in a timelier manner, to allow for those eligible individuals on a waitlist to obtain services earlier.

The DRS appreciates the PERD's feedback on this matter and concurs that cases should be closed in a timely manner. However, the reasons for the PERD's recommendation are inaccurate due to 1) the PERD's misunderstanding of the DRS waitlist process and 2) an implied assumption of the PERD's recommendation that the amount of resources needed to close cases that should be closed is identical to the amount of resources needed for a new case.

When the agency is operating under an Order of Selection (OS), individuals without significant disabilities are put on a waitlist following their determination of eligibility due to a lack of human or fiscal resources. These individuals are placed on the waitlist based on their OS category (determined by the severity and permanence of the disability, the number of services that will be needed, and the estimated length of time in service) and are not removed from the waitlist simply as a result of an active case being closed. Individuals on the waitlist are made active on an OS category-wide basis, when the DRS determines that there are sufficient human and fiscal resources to serve all individuals in the category.

The PERD's recommendation implicitly and incorrectly assumes that the continued costs of maintaining a case that should be closed is the same as the costs of a case that is on the waitlist and is subsequently activated. In general, cases that require imminent closure have already received the services and resources that they will ever receive from the DRS. Individuals on the waitlist however, represent an anticipated encumbrance. When the DRS has very limited fiscal resources, it is unable to activate those on the waitlist as a result, even on an individual basis.

4. The DRS should continue to make progress in addressing the issue of data limitations in order to be able to completely and accurately report performance data as required in the Workforce Innovation and Opportunity Act.

The DRS concurs with this recommendation by the PERD and has worked diligently since the passing of the Workforce Innovation and Opportunity Act (WIOA) in July 2014 to establish proper data collection and data sharing methods, in cooperation with its WIOA partners, pursuant to the legislation. As a result of a data sharing agreement between the DRS and WorkForce WV, the DRS now has access to unemployment insurance (U/I) data. Required data for federal reporting that is not obtainable via U/I data will be replaced by data from consumers, as directed by federal guidance pursuant to WIOA (RSA Technical Assistance Circulars 17-01 and 17-04).





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