

BRIAN SANDOVAL
Governor

DON SODERBERG
Director

KARA M. JENKINS
Administrator



COMMISSIONERS
Tiffany Young,
Secretary/Acting Chair
Swadeep Nigam
Lauren Scott

Minutes
of the
Nevada Equal Rights Commissioner's Meeting
On November 6, 2014

I. Call to Order

Patricia Cafferata, Chair, called the meeting to order at 3:05 p.m.

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

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

Members Present: Patricia Cafferata, Chair, James Campos; Lauren Scott; Tiffany Young, Secretary.

Staff Present: Kara Jenkins, Administrator, Nevada Equal Rights Commission (NERC); Sophia Long, Deputy Attorney General (DAG); Michael J. Baltz, Chief Compliance Investigator, NERC; Javier Fernandez, Administrative Assistant II, NERC; and Norma Delaney, Administrative Assistant III, NERC.

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

III. First Public Comment Period.

None.

IV. Approval of minutes – Commission meeting held on April 29, 2014.

Minutes approved with following changes:

Page 2, under Section 5, first paragraph, change the word "outrageous" to "outstanding" and Page 3, second paragraph, change wording "minutes approved" to "minutes approved as amended."

V. Presentation regarding the Accessibility of State of Nevada Websites for People with Disabilities.

Scott Youngs stated that he is the Project Director for ADA Nevada and the Nevada Assistive Technology Resource Center, University of Nevada, Reno and that he has worked with NERC for over 20 years in various capacities and collaborations; that he was a former Commissioner for a few months; and that in 2008, he took over a tech project and has been doing this for approximately 5-6 years. He stated that both he and George McKinley, also present, are with the Nevada Assistive Technology Resource Center which is a project of the NV Center for Excellence in Disabilities at the University of Nevada, Reno (UNR). He advised that Mr. McKinley primarily deals with data systems management and development and he (Scott Youngs) runs the other projects mentioned.

Mr. Youngs stated that the Nevada Center for Excellence in Disabilities is a grant funded office and money comes primarily from the Administration on Intellectual and Developmental Disabilities; that there are several other grants and projects that are ongoing such as Customizing Employment, Self-determination and Advocacy for People with Developmental Disabilities, and a Positive Behavior Support Program which is a large statewide program.

Mr. Youngs stated that in the last 3-4 years, from his perspective, that when they are serving people with disabilities, they are serving *all* individuals with disabilities, no matter what the disability may be. He stated that in the past few years, there has been a huge increase in the use of devices – specifically mobile devices, mobile computing, tablets - especially in the area of those that are blind/visually impaired, and with those technologies, the level of questioning and accessibility has arisen.

Mr. Youngs stated that the discussion/presentation will be in regards to the accessibility of State of Nevada web sites. He advised that in attempting to find out who he should talk to about the accessibility of state web sites so that he did not have to go to each individual state agency, he had been in contact with the State of Nevada EEO officer, who advised that they handle employment discrimination complaints for the State of Nevada employees. Mr. Youngs stated that he advised the EEO officer regarding his concern is that people who want to do business with the state and/or state agencies and have a lack of equal access to the web site or printed material.

Mr. Youngs stated that because no one knew where to refer him, that NERC was the default agency.

Mr. Youngs stated that he knows NERC and the Commissioners are not the correct agency, but that NERC could possibly act as a liaison to parties they need to speak with to address these issues to help develop accessibility policies that are inclusive and universally designed for all state agencies.

Mr. Youngs concluded by stating that George McKinlay will be providing a short presentation on the issues and provide the Commission with some of the difficulties individuals may be experiencing.

Mr. McKinlay stated that in addition to working with the Center, he also teaches courses as well on disabilities studies; that his interest in technology has dated back to 1997 to ensure there are accessible web browsers to allow people with visual disabilities as well as physical impairments to browse the web. He added that technology changes very fast, and that he will talk about usability vs. accessibility rather than dwell on specific instances/areas.

Mr. McKinlay provided a slide presentation regarding accessibility in which the Department of Justice (DOJ) had indicated that web sites, mobile applications (apps), and point of sale (POS) devices need to be accessible to work in, not just a web site. He stated that there is not a single state web site that is fully accessible. He used the example of a web site "logo" and/or "button" – that while it looks nice, it does not tell someone who cannot see what it is – visually impaired cannot see. He stated that in regards to a "heading" structure, while an individual who can see can read what the site provides - an individual who is visually impaired cannot see. He added the same with "forms," these are usually in a "pdf" format where an individual completes the form and submits/mails in - however, individuals who are visually impaired cannot see to navigate.

Lauren Scott, Commissioner, commented that a lot of these tools are built in "HTML 5" and they exist – it's just a matter of someone implementing that coding standard, not that someone needs to change standards, it's just good "HTML 5" programming. She added that with the "pdf generation mechanism," there are tools that allow accessibility devices to extract text or not, depending on how you create the "pdf" document, you just have to choose to use it or not.

Mr. McKinlay agreed with Ms. Scott, adding that "pdf" is outdated technology, and that "HTML5" and "CSS3" has taken over – in other words, he would rather see state web sites be web based, forms engaging, rather than "pdf" format. He added that it is not just making the web accessible, but how do you move away from a "digitally closed" notion of what is being done on the web. He added that the state web sites are basically glorified brochures of what the agency is and what it does, it's not about business. Mr. McKinley added that the DMV is a great interactive web site, and that there are some state web sites that have not been changed in over 10 years, no enhancements, only word content may change. Mr. McKinley indicated that web sites should be a self-service site; the web sites need to be interactive; web sites need to be data interactive, you can save and/or pause and come back later.

Mr. McKinlay stated that he wants to explain the difference between usability vs. accessibility – that if you focus on usability, with accessibility in the back of your mind, services will be explained to ensure accessibility – that usability will improve and accessibility needs are encompassed in that environment.

Mr. McKinlay concluded by stating as technology changes, portable devices are great and can be used for navigation, such as "smart" devices, as the universal designs allow those visually impaired, or with dyslexia as another example, have the information read to them in the appropriate format. He stated that he has provided ADA training for approximately 18 years; has worked with the Governor's council; they want to move forward in a collaborative environment, not go to each agency IT person; that where ADA was 20 years ago trying to get curb ramps and parking, this is where they are at in regards to accessible web sites and social media; and that this is a 5 year goal for the Resource Center – web accessibility plus usability.

Mr. Youngs asked the Commissioners if they had any ideas on how to pursue this, as based on his experience in trying to find out who or what agency to go to he found very frustrating. He added that they are seeing/hearing this from consumers in the public – that they want to help the individuals not just from the top down, but also from the bottom up, too.

Mr. Youngs added that he had provided handouts as to what a picture/words look like in a "pdf" file – while you may see a photograph/words, it does not

mean it can be seen. Mr. Youngs added that he is aware of three user groups in Northern Nevada that get together to show people how to use devices, and that there is pressure for accessibility from the National Federation for the Blind.

Kara Jenkins, Administrator, NERC, asked Mr. Youngs in regards to screen readers, what some of the technologies, mechanisms, or solutions that he and/or Mr. McKinley have found in their research that will help the visually impaired or those individuals covered under the ADA to access these web sites and the cost.

Mr. McKinlay responded that the technology for the visually impaired is a screen reader, which is the responsibility of the operating system manufacturer to ensure what is on the screen is accessible; however, the **portable screen reader** devices are much easier to use. He explained that a screen reader takes what is on the screen and reads it to the individual, but the individual has to be able to interact with it, be able to navigate. He added that there are individuals/businesses that indicate why do it for only 2% of the population; can't they find someone to read for them; or do we have to do it – it is still a learning area.

Mr. Youngs, in also providing a response, commented that he is trying to find the correct words and be polite, but that as an advocate for 25 years, he does not like it when people focus on the dollar amount; that they are in business to provide equal access and they are trying to bring this to the attention of the right people to work together; and that equal access is required by the law and part of doing business. He added that he is aware that items must be built into the budget as it is the law.

Ms. Scott asked if there are federal funds available for these types of projects and if they can be accessed if made a priority.

Mr. McKinlay stated there are steps to obtain the federal funds, but it has not happened in Nevada. He added that they (ADA Nevada and the Nevada Assistive Technology Resource Center, and the Nevada Center for Excellence in Disabilities) want to be partners, not operate from a business aspect.

Ms. Cafferata asked if there were any suggestions that he would like them to consider?

Mr. Youngs asked that in the statute if there was any authority that mandates NERC handle this type of complaint.

Ms. Jenkins stated that the charge of the Commission is to foster and ensure the equal rights of the citizens of the state; that one of the things this Commission can do is entertain and/or take action on ideas to promote equal rights for everybody in the state. She advised Mr. Youngs that if he has any ideas for the Commissioners so that they in their own individual capacity or the NERC Commission can move, that would be best.

Mr. Youngs commented that he is looking for help from the Commission and the state to come up with an accessibility policy that discusses web sites and printed materials for people with disabilities, whether vision/learning, and that the policy be adopted statewide by all agencies. He stated he can review other policies that are out there and possibly use some of their language. He concluded by stating this would be a start point and it would be greatly appreciated so that more people become knowledgeable on this issue.

Ms. Cafferata stated that if he had a proposal that Ms. Jenkins would be happy to facilitate.

Mr. Youngs commented that he would be happy to put some information together.

OFF RECORD FOR APPROXIMATELY 7 MINUTES TO ALLOW EQUIPMENT TO BE TAKEN DOWN BY PRESENTERS

Back on record, Ms. Cafferata indicated that Norma Delaney, Administrative Assistant III, had a question of Mr. Youngs and that the DAG thought it best to be on record.

Ms. Delaney asked Mr. Youngs what the difference from what Services to the Blind provides vs. their program.

Mr. Youngs commented that, in his perspective, provides limited amount of services to people who are ready to go to work – orientation, technical/mobility

training regarding what that person will need to get to work. He stated that the services his agency provides is to anyone regardless of their disability, not specifically focuses on blind/visually impaired individuals. He added that it is a community based project that provides services such as training/education, and that the main "nuts and bolts" of their project is their "loan library," adding that there are approximately 600 items in their loan library that can be loaned to anyone with a disability in the state of Nevada or any service provider to check out any items to learn about accessibility. He concluded by stating it is a complimentary service to answer Ms. Delaney's question, and that they try and not duplicate services.

VI. Discussion Regarding Administrator's Report.

Ms. Jenkins advised the Commissioners that for Federal Fiscal Year 14 (FFY14) which ended September 30, 2014, NERC met contract despite staff turnover and clerical shortage.

A. Personnel – Staffing

Ms. Jenkins advised that two clerical had been hired the end of June 2014 and wanted to thank Norma Delaney and Javier Fernandez for their support with the clerical shortage and the training they both provided.

B. Federal Fiscal Year 2013/2014 (FFY13/14) Equal Employment Opportunity Commission (EEOC) work sharing agreement contract closure numbers

Ms. Jenkins reiterated that NERC closed 684 cases and 60 intakes, and is in the process of invoicing the EEOC federal government for \$447,600. She added that she has been with NERC for a little more than a year and is very proud of all staff.

C. 2014 EEOC Conference/Updates

Ms. Jenkins stated that in August 2014, she had attended the EEOC/FEPA Training Conference to learn what is trending with the EEOC, and that Dennis Perea, DETR Deputy Director, and Rose Marie Reynolds, DAG, attended also. She advised that NERC likes to get the law updates to be in line with the EEOC's strategic plan regarding investigations. She stated that it was the 50th anniversary of the Civil Rights Act passage and that Ms. Myrlie Evers-Williams was a guest speaker at the conference. She also talked about her role with the NAACP as an advocate.

Ms. Jenkins added that the EEOC's strategic plan really focused on the *Equal Pay Act* - pay inequities between men and women; *Human Trafficking* – individuals not getting benefits from their employer. She stated that the EEOC referenced the Henry's Turkey Service case which was the largest litigation award ever that the EEOC was able to get – the award was for \$240 million for approximately 32 men who were disabled and unable to comprehend what they should have received for compensation. Ms. Jenkins added that the ADA continues to be a priority for the EEOC; and Pregnancy discrimination – that women should be accommodated

D. Sunset Committee Recommendations

Ms. Jenkins reminded the Commissioners that at their last meeting, April 29, 2014, she advised she would be appearing/testifying before the Sunset Committee as they wanted information as to what the Commission (board panel) does, the benefits of keeping this Commission and/or combining with another Commission, or deleting the Commission altogether. She stated that both Ms. Cafferata and herself appeared/testified and they approved the continuance as they felt it was necessary to have a Commission represent the people of the state.

Ms. Jenkins advised of the following Sunset Committee's recommendations:

- 1) They were asking about the size of NERC, that with two offices and the number of complaints received, that customer service must suffer, and that they thought it would be a great idea if there was a formal process to receive customer feedback, possibly reporting to a sub-committee. Ms. Jenkins stated she advised the Committee that NERC has a staff of approximately 15 between the two offices and with more than 700 complaints coming in, intake appointment being scheduled approximately eight weeks out, that customer service does suffer. She advised that constituents are very vocal if unhappy and that she receives complaints regarding investigations/investigators and also calls from the Governor's office regarding complaints they may receive regarding NERC. Ms. Jenkins stated she also advised the Committee that their board panel consists of 5 members.

- 2) The next recommendation was to increase appropriations for more staff to handle more complaints – she added that this is something NERC will hopefully get this next legislation.
- 3) The last recommendation, by Senator Spearman, was for the Commission panel to research the possibility of creating legislation to penalize/fine employers who willfully violate TVII for NERC and who do business with the State of Nevada. Ms. Jenkins added that it is too late to create a bill as the session is getting ready to start. She added that willful misconduct is very difficult to prove and NERC is an administrative agency, as are the Commission panel, and asked if they really want to get into that realm of having a hearing and sitting in judgment of employers. She stated that NERC is a neutral agency regarding employment, public accommodation, and housing complaints and if NERC/Commissioners did create this type of legislation and employers became aware that a civil penalty could be imposed, would that put a chill on businesses coming to Nevada.

Ms. Jenkins concluded that the Committee likes what NERC is doing and they understand the importance of the Commission, that you are to make recommendations so people have equal rights such as to push policy like Mr. Youngs stated to ensure state web sites are ADA accessible.

Ms. Cafferata commented that it would not be a fine as that is a criminal term, but it would be a civil penalty that some state agencies have that ability to hold hearings and if it willful misconduct is found, then a penalty can be imposed. She added that she believes it would require a change in the law on their part to hold a hearing and she does not know if they (Commissioners) what to sit in judgment.

Ms. Scott commented that there is potential to be fined or sued through the judicial system, and agrees with Ms. Jenkins statement that it may scare businesses aware from Nevada.

E. NERC complaint statistics for Transgender/Religious categories

Ms. Jenkins stated that at the last meeting, Commissioner Scott asked about statistics regarding transgender complaints filed with NERC, and

that she (Ms. Jenkins) also included religion as it is a highly sensitive area also. Ms. Jenkins had provided a handout which provided the following information:

	TRANSGENDER	RELIGION
Employment Public	5	26
Accommodation Housing	3 1	0 0
TOTAL	9	26
% of total charges framed	.012%	.036%

Ms. Jenkins stated that to create a regulation for less than 1% of complaints received, NERC does not see a strong business need right now.

Ms. Scott asked if there had been any issues raised by law enforcement about clarifying the guidelines regarding gender identity/gender expression or have these issues been handled through existing policy.

Ms. Jenkins stated she received a call from the Las Vegas Sun and was asked if NERC received any calls regarding same sex couples for marriage in light of recent legislation, to which she had stated she had not.

Ms. Cafferata thanked Ms. Jenkins and stated it is a good base line for future discussion.

F. Budget – State Fiscal Year 2014/2015

Ms. Jenkins stated that she provided a budget handout and advised that NERC's budget is approximately \$1.4 million. Under the Revenue column, \$995,137 is designated through the general funds, the other \$418,900 is from the EEOC – as stated previously, NERC has met contract and will be invoicing EEOC for the funds.

Ms. Jenkins stated that NERC's budget is operating very well; that the EEOC is happy with NERC, and that she was able to get a \$1,000 grant from the EEOC to do more companion cases with the Las Vegas EEOC.

Ms. Scott asked where the funds to travel to the conference comes from as there is no out of state travel funds.

Ms. Jenkins advised that it is part of the Work Share Agreement between EEOC and NERC, and that NERC has been stipend \$1,300 to attend the conference – once the trip is completed and travel claim submitted, EEOC is invoiced for reimbursement.

Ms. Cafferata asked what Expenditure 81, Department Cost Allocation means, to which Ms. Jenkins advised that she believes it is the cost for NERC doing business with DETR.

G. Performance Indicators

Ms. Jenkins stated that there are two handouts regarding Performance Indicators and advised that she created a shortened version titled NERC FY 2014 Performance Indicator Summary. She stated that:

1. Percent of cases formalized – 22 calendar days

Goal is 82% - Actual is 19% of cases formalized within 22 days. Ms. Jenkins stated that NERC never meets this goal and that there was discussion at the last Commissioners' Meeting to have this changed to 45 calendar days, even though currently when a person files a complaint it is 8 weeks before the individual has an appointment to meet with the intake officer to go over their paperwork. She stated that she brought this to the attention of Financial Management/Statistical staff and they stated this is what the legislature wants. She advised that this is a standard the legislature set to reflect success and NERC did meet its contract closure amount.

Ms. Cafferata commented that she remembers this issue being addressed in a prior meeting, and Commissioner Young agreed, and stated that when Ms. Jenkins goes to session she should raise this issue.

2. Percent of cases open 6 months or less

Goal is 59% - Actual is 46% of cases open 6 months or less. Ms. Jenkins stated that while NERC did not meet this standard, 46% of cases are closed within 6 months

3. Percent of internet inquiries

Goal is 30% - Actual is 41% received via the internet. Ms. Jenkins stated that the web site explains who NERC is and also contains bio's on the Commissioners and herself, and NERC exceeds this goal.

4. Percent of cases resolved through Mediation

Goal is 39% - Actual is 88% of cases resolved through mediation. Ms. Jenkins added that NERC is successful on settlements so individuals do not have to go through the court system which can take about 2-3 years, and NERC exceeds this performance indicator.

5. Percent of EEOC contract met

Ms. Jenkins stated that this is the most important performance indicator and that NERC did meet contract.

Ms. Jenkins stated that Michael Baltz, Chief Compliance Officer, has additional information regarding the types of cases NERC has received and/or closed and deferred to Mr. Baltz.

Michael Baltz, Chief Compliance Investigator, advised that there is a handout titled Break Down of Cases Investigated for State Fiscal Year 2014, which covers the time period of July 1, 2013 through June 30, 2014. Mr. Baltz summarized the following:

- Race – NERC received a total of 165 complaints alleging race;
- National Origin – NERC received a total of 133 complaints alleging national origin;
- Gender – NERC received a total of 24 complaints alleging gender discrimination – which includes male/female, pregnancy, sexual orientation, and gender identity or expression);
- Retaliation – NERC received a total of 157 complaints alleging retaliation;

- Color – NERC received a total of 4 complaints alleging color as reason for discrimination and explained that color is defined a skin pigmentation within the same racial group (example given was a light skinned black individual vs. a dark skinned black individual);
- Age – NERC received a total of 155 age complaints;
- Disability – NERC received a total of 180 complaint alleging disability as the reason for filing a discrimination complaint;
- Equal Pay – NERC processed 5 cases alleging a violation of the Equal Pay Act – these cases are forwarded to the EEOC as NERC does not have jurisdiction on this basis.

H. Outreach 2014/15

Ms. Jenkins advised that the outreach training provided by NERC, either by Mr. Baltz, Lila Vizcarra, or herself, reached approximately 400 individuals; that some training was provided to Spanish speaking individuals and Ms. Vizcarra, Supervisory Compliance Investigator, was able to provide this training as she is bilingual. She stated that in regards to providing training to employees, it is to explain what their rights are with the most asked questions/training being provided regarding sexual harassment, harassment, and hostile work environment. Ms. Jenkins stated that for the most part, she provides training to upper management as to what is required of them when an employee files an internal complaint; that employers need to be aware of the interactive process – meaning, how are you as the employer, helping this individual; that often times NERC is providing training to the employer's trainer.

I. Commissioner appointments expiring October 31, 2014

Ms. Jenkins advised that three of the Commissioners have terms that expired on October 31, 2014, and that if those individuals are interested in being reappointed, to send her an email and she will forward to DETR Director Don Soderberg, but until reappointed or new member appointed, you continue as a Commissioner.

VII. Discussion regarding certified Spanish translators for Nevada Equal Rights.

Ms. Cafferata advised Commissioner Campos that this items has been addressed in prior minutes and if this is something he wants to pursue

more formally as NERC has staff who speak Spanish and, if so, it needs to be an action item on the agenda.

Mr. Campos responded that it was more a thought than a proposal; that if NERC is taking complaints in Spanish, it is important that there be an individual who translates correctly due to the various dialects; that in his former position at Consumer Affairs, this issue was addressed and due to costs and extra layers of bureaucracy it would create, he had elected to not go forward – the same with goes with NERC. He added that individuals may be illiterate in their own language and the intake/investigator while Spanish speaking, may not be translating accurately.

Ms. Jenkins advised that NERC has forms in Spanish and on letters that are mailed out to individuals there is a paragraph in Spanish advising the individual to have someone translate for them; that the DAG had advised NERC that any legal binding documents, NERC will not interpret.

Mr. Baltz advised that during the complaint process, individuals are offered the opportunity to be face to face vs. over the phone due to language barrier and/or education, often times more is relayed in person than over the phone.

Ms. Delaney added that due to the various languages, NERC contacts Clark County Court Interpreters and has been successful so far.

Ms. Cafferata stated that what she has discovered is that often times the interpreter cannot translate legal terms, or if there are two different Spanish interpreters at the same time, there can still be a language barrier.

Mr. Campos concluded that this issue gets more complex but agrees with Ms. Cafferata, Chair, that providing sensitivity towards issues and understanding of individuals is the best until better means can be facilitated.

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

Through open discussion, it was agreed that the next meeting would be in January 2015, prior to Ms. Jenkins going to the legislative session, and that Ms. Delaney would contact the members for date availability.

Agenda items: discussion on legislative items; follow-up with Scott Youngs with policy on web site; discussion regarding medical marijuana.

IX. Second Public Comment Period.

None.

X. Adjournment.

Ms. Cafferata asked for a motion for adjournment; Ms. Young made motion; Ms. Scott and Mr. Campos seconded motion at same time – meeting adjourned.

Respectfully submitted,

Tiffany Young
Secretary