

Southwestern Area Workforce Development Board

Special Executive Committee Meeting Agenda

Virtual Meeting via Zoom or Phone

To join meeting by phone, dial: 253-215-8782, then enter Meeting ID: 323 813 951

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Thursday, April 2, 2020 at 3:00 pm

*Mr. Joshua Orozco—Chair
Mr. Michael Olguin, Jr.—Vice Chair*

- I. Call to Order**
- II. Welcome and Introductions**
- III. Roll Call and Abstentions**
- IV. *Public Comment (3-Minute Limit)**
- V. Approval of Agenda**
- VI. Discussion, Consideration and Possible Action Regarding**
 - a. Approval of the February 7, 2020 meeting summary
 - b. Resolution 19 – 42 approves the amendment to the On-the-Job Training Policy, 17-03.4
 - c. Resolution 19 – 43 approves the amendment to the Youth Activities Policy, 18-04.1
 - d. Resolution 19 – 44 approves a temporary process for future policy and sub-recipients contract modifications necessary for the continuation of services while under the State of New Mexico’s Emergency Declaration
- VII. Member Input**
- VIII. **Public Comment (3-Minute Limit)**
- IX. Adjournment**

**Public comments can be emailed to angela1@sccog-nm.com before April 2, 2020 at 3:00 pm. All public comments will be read at the meeting in the order received.*

***Public comments may also be emailed during the meeting to angela1@sccog-nm.com. All public comments will be read at the meeting in the order received.*

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DRAFT OF MEETING SUMMARY

Meeting	:	Special Executive Committee
Date and time	:	February 7, 2020 at 4:00 p.m.
Location of Meeting	:	Mesilla Community Center 2251 Calle de Santiago Mesilla, NM
Chair Person	:	Joshua Orozco
Members Attending	:	Present: Marcos Martinez (by phone), Michael Olguin (by phone), Joshua Orozco, Erik Padilla (by phone), Kim Skinner, Debbie Schoonover, Gary Whitehead Absent: None Staff: Steve Duran, Angela Longovia
Guests in Attendance	:	Eric Rivera, ResCare A/DW; Patrick Madrid, ResCare A/DW
Summary submitted by/Signature	:	Angela Longovia, Communications Specialist
Next Meeting	:	No date set

#	Agenda Item	Summary
1.	Call to order	Meeting was called to order at 4:03 p.m. by Mr. Orozco
2.	Welcome and Introductions	Mr. Orozco welcomed the attendees and asked for introductions
3.	Roll Call & Abstentions	Ms. Longovia called roll a) Ms. Schoonover made a motion to allow members to participate telephonically, seconded by Mr. Orozco. By unanimous consent, motion passed.
4.	Public Comment	No public comment
5.	Approval of Agenda	Ms. Schoonover made a motion to approve the agenda, seconded by Mr. Martinez. By unanimous consent, motion passed.
6.	Discussion or Motion for Recommendation Items	a) Approval of the December 31, 2019 meeting summary • Ms. Schoonover made a motion to accept the summary, seconded by Mr. Padilla. Mr. Orozco abstained. By unanimous consent, motion passed. b) Resolution 19 – 35 approves the Board Chair’s committee appointments, per SAWDB Bylaws • Mr. Duran presented the need to add committee members to the Planning Committee prompted the action of adding members to other committees, including new Policy Committee and ad-hoc Outreach Committee. • Mr. Martinez made a motion to approve Resolution 19 – 35, seconded by Ms. Padilla. By unanimous consent, motion passed. • Approved appointments are as follows: i. Planning Committee: Joe Gristy, Michael Olguin ii. Monitoring Committee: Alonzo Gonzales, Gary Whitehead iii. Policy Committee: Christ Boston, Erik Padilla, Sharon Thomas iv. Outreach Committee: Jacqueline Fryar, Gary Whitehead

#	Agenda Item	Summary
		<p>c) Resolution 19 – 36 approves the amendment to the Electronic Files Content & Records Retentions Management Policy, 17 – 19.1</p> <ul style="list-style-type: none"> • Mr. Duran indicated that this is a policy revision to comply with the USDOL monitoring requirements • Ms. Schoonover made a motion to approve Resolution 19 – 36, seconded by Mr. Whitehead. By unanimous consent, motion passed. <p>d) Resolution 19 – 37 authorizes the SAWDB to cost share security guard services for the New Mexico Workforce Connection center in Las Cruces</p> <ul style="list-style-type: none"> • Mr. Duran and Ms. Lopez, One-Stop Operator presented information on the need and costs for the security guard services for co-located partners at the Las Cruces office • The Department of Workforce Solutions is seeking to invoke its part of its in-kind credit of \$27,100 to pay for its share of \$16,073 for the security guard services. • The Board would pay \$16,073 with its administrative funds to not impact the other co-located partners with additional costs. • Member discussion included exploring to see if a security guard policy may need to be adopted, training staff, and determining whether security guard services need to be provided at the other workforce centers in the region • Mr. Whitehead joined the meeting in-person during the discussion. Ms. Schoonover made a motion to approve Resolution 19 – 37, seconded by Mr. Padilla. Mr. Martinez abstained. Motion passed.
7.	Member Input	No member input
8.	Public Comment	No public comment
9.	Adjournment	Meeting was adjourned at 4:34 p.m.

Attested: _____

Date _____

AGENDA ITEM SUMMARY

Special Executive Committee Meeting	April 2, 2020
Agenda Item Resolution 19 – 42 approves the amendment to the On-the-Job Training Policy, 17 – 03.4	
SUMMARY OF AGENDA ITEM <ul style="list-style-type: none"> This item is presented for your review and consideration to add an addendum to the On-the-Job Training Policy. The purpose of this addendum is to temporarily waive the 30 hour per week minimum for on-the-job participant training. The waiver is as a result of COVID-19 and the public health emergency declaration. Due to COVID-19, some employers who are contracted under WIOA are forced to layoff employees or reduce their work hours. Subsequently, this addendum permits WIOA OJT participants to continue their training at a reduced number of training hours per week and supports the needs of their employer. The effective date is retroactive to the NM Governor's Public Health Emergency Declaration on March 11, 2020 and will expire until the New Mexico Department of Workforce Solutions rescinds their OJT work hours waiver, or if rescinded by the SAWDB at an earlier date. It's applicable to the WIOA Adult and Dislocated Worker Programs and waives the first sentence on Section Y.25 on page 3 of the OJT Policy stating: <i>"The reimbursement for training cost will be based on the employer's normal full week, at 30 hours per week."</i> 	
RECOMMENDATION A motion to approve Resolution 19 – 42.	
OPTIONS ARE TO <ol style="list-style-type: none"> Accept the recommendation Amend the recommendation Reject the recommendation Table the item Take no action on the item 	
DEPENDING ON ACTION TAKEN, ITEM MAY BE REFERRED OR REPORTED TO <ul style="list-style-type: none"> Staff or committee, as directed. 	
THIS ITEM SUPPORTS STRATEGIC PLAN GOAL(S) <ul style="list-style-type: none"> Supports all strategic plan goals 	
LIST OF SUPPORTING INFORMATION FOR YOUR REVIEW <ul style="list-style-type: none"> Addendum #1 to the On-the-Job Training Policy, 17 – 03.4 On-the-Job Training Policy, 17 – 03.4 	

**ADDENDUM #1
ON-THE-JOB TRAINING
POLICY 17-03.4**

Issue Date: April 2, 2020

Effective Date: Retroactive to the NM Governor's Public Health Emergency Declaration on March 11, 2020

Sunset Date: This addendum remains in effect until the New Mexico Department of Workforce Solutions rescinds their OJT work hours waiver, or if rescinded by the SAWDB at an earlier date.

Applicability: WIOA Adult and Dislocated Worker Programs

Purpose: This addendum temporarily waives the 30 hour per week minimum for on-the-job participant training. The waiver is as a result of COVID-19 and the public health emergency declaration. Due to COVID-19, some employers who are contracted under WIOA are forced to layoff employees or reduce their work hours. Subsequently, this addendum permits WIOA OJT participants to continue their training at a reduced number of training hours per week and supports the needs of their employer.

Action: The first sentence on Section Y.25 on page 3 of the OJT Policy stating: "*The reimbursement for training cost will be based on the employer's normal full week, at 30 hours per week.*", is waived.

Inquires: Questions related to this policy should be directed to the Administrative Entity at (575) 744-4857.

Attested: This policy was adopted by Board Resolution on the issue date as stated in the section above.

Board Chair or Vice Chair

SOUTHWESTERN AREA WORKFORCE DEVELOPMENT BOARD

ON-THE-JOB TRAINING POLICY 17-03.4

DATE OF ISSUE

April 25, 2019

EFFECTIVE DATE

May 1, 2019

APPLICABILITY

This applies to Southwestern Area Workforce Development Board's (SAWDB) Adult, Dislocated Worker, and Youth service providers providing On-the-Job training. OJT is an allowable activity for youth but should be discouraged when it conflicts with educational goals and achievements.

PURPOSE

The objective of this rule is to establish requirements for the SAWDB in the delivery of on-the-job training services under the Workforce Innovation & Opportunity Act (WIOA). Priority of service for Adult funds must be given as defined in TEGL 3-15.

BACKGROUND

On-the-job training (OJT) provides WIOA participants the opportunity to receive training while employed and to be paid wages and benefits comparable to other similar positions. OJT also provides employers the opportunity to be reimbursed a percentage of the wages paid to WIOA participants who are engaged in productive work.

ACTION

OJT services shall be provided by an employer or a registered apprenticeship program sponsor in the public, private non-profit or private for-profit sector with payment for WIOA participant(s) engaged in productive work that: (a) an official employer orientation shall be provided and documented before the OJT contract period begins, including review of OJT contract, training plan, progress

report/invoice forms, and contact information; (b) provides knowledge or skills essential to full and adequate performance of the job; (c) provides reimbursement to the employer of up to 75% of the participant's wage rate (excluding benefits) for the extraordinary costs of providing training; for employers with 50 or fewer employees and up to 50% for employers with fifty-one (51) or more employees as defined in CFR 680.730(d) is limited in duration as appropriate to the occupation and considering the individual's prior work experience and employment development plan; must also be no less than 160 hours; and (e) prepares the participant for long-term, unsubsidized employment; any individual referred to a center by an employer (commonly referred to as a "reverse referral") shall go through the system in the same manner as other job seekers and be determined to be eligible and in need of training in order to participate in OJT.

PARTICIPANT ELIGIBILITY

OJT Training as defined by the WIOA, who are unemployed or underemployed and additionally meet ALL of the following:

- A. All eligibility requirements for WIOA and Training services
- B. Enrollment into WIOA prior to beginning OJT contract
- C. Determined to be in need of training to meet self-sufficient level of income
- D. Determined to be a good candidate for the position described in the Individual Employment Plan

WIOA mandates that training services for OJT training be provided through the use of a contract.

- A. Each OJT contract shall be designed for a particular participant and employer. Procurement of OJT contracts is conducted through non-competitive negotiations.

Documentation detailing how the price was derived must be developed and maintained in contract.

- B. Contracts shall not be written for seasonal, intermittent, or other types of temporary employment and must not involve payment in the form of a commission, tip, or similar kinds of payments. Occupations which have not traditionally required specific occupational training as a prerequisite for performance, such as porters, janitors, stackers, laborers, etc. (Adult & Dislocated Worker Technical Assistance Guidance Pg17). Generally, contracts should be written for full-time employment; the standard for what constitutes "full-time" employment may vary depending on the occupation, industry or needs of the participant.
- C. OJT contracts may be issued within the local area in any occupation in which an employer provides employment and training in a permanent, full-time position with reasonable expectation of retention in unsubsidized employment upon successful completion of training.
- D. Service providers must have adequate internal controls, such as a participant roster with their estimated earnings or other system, to determine whether an OJT contract can be issued for less than their "Median Earnings" performance measure. This is to ensure that the overall negotiated performance measure for "Median Earnings" is being met.
- E. The local workforce development board shall make efforts to assure that the occupations and positions are those which afford adults and dislocated workers the opportunity to become self-sufficient as defined in the local four-year plan.

The service provider shall ensure that OJT contracts are not written with employers who have had two or more previous OJT's and exhibited a pattern of failing to provide participants with continued, long-term (9 months or longer)

employment as regular employees with wages and working conditions the same as other employees. The service provider must consider whether the OJT participant quit voluntarily, was fired for cause or if business conditions changed the employment opportunities with the employer. Employers may be sanctioned and determined ineligible for no less than 6 months but not longer than 18 months. Employers may appeal the service provider decisions following WIOA Program Complaint Resolution Procedures.

The service provider shall ensure that OJT contracts are not written with employers which has relocated within the last 120 days and dislocated workers at its previous location.

The service provider shall ensure that OJT contracts are not written with employers in which the participants will be employed to carry out the construction, operation, or maintenance of any part of a facility that is used or to be used for sectarian instruction or as a place for religious worship. Adult and Dislocated Worker Services Technical Assistance Guidance page 17.

OJT contracts may also be written for eligible employed workers. An eligible employed worker is an individual who is job attached but in need of skills upgrade and not earning a self-sufficient wage as determined by the SAWDB. Contracts must relate to the introduction of new technologies, introduction to new production or service procedure, upgrading to new jobs that require additional skills, workplace literacy.

TRAINING ORIENTATION

An official participant orientation shall be provided and documented before the OJT contract begins. At a minimum, the orientation should include the following: 1) OJT training plan review; 2) participation requirements; 3) time sheet tracking and payroll verification requirements including OJT progress report and invoice form; 4) information regarding additional services and activities, including supportive services available through the workforce system, to ensure successful

participation. Specific Vocational Preparation (SVP) is available either through the O*Net or New Mexico Workforce Connection Online System (NMWCOS)

OJT participants allowed with an employer: No more than 50% of the number of the employer's full-time workforce at the location where training is to take place may be trained under OJT at any one time. An employer having a regular full-time workforce of one may train one individual under OJT.

OJT TRAINING CONTRACT

The SAWDB shall ensure that OJT contracts include, at a minimum, the following contract elements:

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| <ul style="list-style-type: none"> A. Job description (using O-Net [http://online.onetcenter.org] or other source) training online or curriculum, including provision for any required classroom/adult basic education/or vocational training as established by the needs assessment. B. participant hourly wage rate and allowable training hours (work zones as noted on O- Net); C. provision for wage increases based upon successful achievement of training goals as provided to other similar employees, if applicable; D. provision for assurances not to reduce wage rates after completion of training contract; E. agreement on the maximum amount of reimbursement and/or allowable costs of training; F. provisions for participant time off, if necessary; to attend WIOA sponsored meetings, workshops, classes or other events; G. duration of contract; H. a provision for recoupment of overpayments; I. a provision for termination due to lack of funds or lack of participant attendance or unsatisfactory progress; J. a provision for termination due to failure of | <ul style="list-style-type: none"> the employer to comply with initial or upgraded employment requirement (OJT for employed workers only); K. a provision for allowing for SAWDB or their designee, state and federal staff monitoring and review of training records; L. a provision for meeting record retention requirements; M. identification and reporting of new employees versus employed workers (OJT for employed workers only); N. employer requirement to maintain attendance and payroll records to support requests for reimbursement; O. provision for the submittal of participant reimbursement/progress evaluations on a timely basis; P. state and federal taxpayer identification numbers for payment of state gross receipt tax and unemployment compensation tax; Q. worker's compensation coverage; (not required for exempt employers) R. a provision for equal employment opportunity; S. a provision for drug-free workplace; T. a provision for debarment and suspension, where applicable; U. a requirement that the service providers report program outcomes; V. a requirement for job retention beyond the training period; and W. 23) other provisions as required by local policies and procedures; X. 24) signatures and dates must be in place on OJT contracts before the participant begins training; Y. 25) The reimbursement for training cost will be based on the employer's normal full week, at 30 hours per week. Reimbursement claim can not be for time trainee is absent from training |
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including illness, holiday, plant down time or any other time no training occurs.

Note: New employees hired under OJT must at a minimum be paid the employer's usual entrance wage rate for the occupation in which they are to be training and employed, which must not be lower than the federal, state, or local minimum wage rate.

Service Providers will use the following forms that are located on nmemploy.com and uploaded to participants file in NMWCOS.

- A. OJT Pre-Award Survey Checklist
- B. OJT Employer Contract
- C. OJT Training Plan
- D. OJT Training Plan Modification
- E. OJT Progress Report and Invoice Forms
- F. OJT Contract Assurances

OJT TRAINING DURATION

The Maximum duration of an OJT contract is 1040 training hours. Determining length of training should include the following

- A. Skill gap is the gap between the skills of a participant and the skills needed for the job.
- B. The skill gap will determine the number of training hours for which an employer will be reimbursed
- C. Training plan shall be consistent with the duration of the contract
- D. Specific Vocational Preparation (SVP) is defined as the amount of time required to learn techniques for a specific job

Exception: Training can exceed 1040 hours based on the need for individuals with a documented disability to obtain the skills necessary for the job.

SVP	Number of Training hours
2	160
3	320
4	640
5	800
6	960
7	1040

In determining an employer's viability for a contract, the employer's past history with OJT and must be considered. The SAWDB may also consider the employer's finances, lay-offs, relocation, labor disputes, as well as the occupational and industry outlook.

SAWDB Administrative Entity or designee shall make provisions for the maintenance and retention of all on-the-job training records, including systems of issuance, funding obligations/expenditures, oversight, and completion in accordance with WIOA record retention requirements. Such records shall be retained for a period of three (3) program years from the date the individual participant exits unless an unresolved audit is pending. In that case, records must be retained until final resolution of the audit.

SAWDB Administrative Entity or designee shall establish and collect relevant performance criteria/program outcomes for each of their service providers.

SAWDB Administrative Entity or designee shall ensure that, career services are made available to individuals in One Stop Centers.

SAWDB Administrative Entity or their designee shall ensure that selected training providers are afforded appropriate training and technical assistance necessary to deliver the required WIOA services.

SAWDB Administrative Entity or their designee shall review each OJT contract on-site to determine that payroll and time and attendance records

substantiate amounts claimed for reimbursement and that training, wages, hours, benefits, and working conditions are provided in accordance with the contract.

INQUIRIES

Questions related to this policy should be directed to the Administrative Entity at (575) 744-4857.

ATTESTED

This policy was reviewed and approved by the SAWDB on April 25, 2019

SAWDB Chairman

Date

AGENDA ITEM SUMMARY

Special Executive Committee Meeting	April 2, 2020
Agenda Item Resolution 19 – 43 approves the amendment to the Youth Activities Policy, 18-04.1	
SUMMARY OF AGENDA ITEM <ul style="list-style-type: none"> This item is presented for your consideration to approve an addendum to the Youth Activities Policy. The purpose is to include stipends to be authorized as a result of the NM Governor's public health emergency declaration. After researching our policy, it does not include how stipends can be paid. This is a permanent addendum to the policy and will remain in effect post COVID – 19. Below is the directive for paying incentives for the period of the emergency declaration. The effective date is retroactive to the NM Governor's Public Health Emergency Declaration on March 11, 2020. It's applicable to the WIOA Adult, Dislocated Worker, and Youth Programs and allows the use of stipends. The stipends are computed at an hourly rate may be paid directly to participants in the following areas: <ol style="list-style-type: none"> 1) Educational Development/Enhancement: Post-testing, academic remediation, academic and/or career counseling, tutorial assistance and related enhancement skills training. 2) Occupational Life Skills Training: Financial planning, job search skills, resume and job application development, consumer education, personal health and hygiene instruction; or 3) Occupation Related Training: GED/HSE preparation, computer literacy and related office/technical skills, test preparation, and other similar short-term training activities. Payment of Stipends Computed at an Hourly Rate – Such payments shall be made to a participant only for actual hours of attendance, not including holidays, and as reflected in the Time and Attendance form. Proof of hourly attendance must also be provided, such as hours worked on a computer program, etc. Payments will not exceed 80 hours within a two-week time period, and no overtime will be paid. Hourly Wage Rate will be the same as the Work Experience Wage Rate. All documentation will need to be scanned into NMWCOS. 	
RECOMMENDATION A motion to approve Resolution 19 – 43.	
OPTIONS ARE TO <ol style="list-style-type: none"> 1. Accept the recommendation 2. Amend the recommendation 3. Reject the recommendation 4. Table the item 5. Take no action on the item 	
DEPENDING ON ACTION TAKEN, ITEM MAY BE REFERRED OR REPORTED TO <ul style="list-style-type: none"> Staff or committee, as directed. 	

THIS ITEM SUPPORTS STRATEGIC PLAN GOAL(S)

- Supports all strategic plan goals

LIST OF SUPPORTING INFORMATION FOR YOUR REVIEW

- Addendum #1 to Youth Activities Policy, 18 – 04.1
- Youth Activities Policy, 18 – 04.1

ADDENDUM #1
YOUTH ACTIVITIES - STIPENDS
POLICY 18-04.1

Issue Date: April 2, 2020

Effective Date: Retroactive to the NM Governor's Public Health Emergency Declaration on March 11, 2020

Applicability: WIOA Adult, Dislocated Worker, and Youth Programs

Purpose: A request has been made to the SAWDB to include stipends to be authorized as a result of the NM Governor's public health emergency declaration. After researching our policy, it does not include how stipends can be paid. This is a permanent addendum to the policy and will remain in effect post COVID – 19. Below is the directive for paying incentives for the period of the emergency declaration.

Action: Stipends Computed at an Hourly Rate – Stipends computed at an hourly rate may be paid directly to participants in the following areas:

- a) Educational Development/Enhancement: Post-testing, academic remediation, academic and/or career counseling, tutorial assistance and related enhancement skills training.
- b) Occupational Life Skills Training: Financial planning, job search skills, resume and job application development, consumer education, personal health and hygiene instruction; or
- c) Occupation Related Training: GED/HSE preparation, computer literacy and related office/technical skills, test preparation, and other similar short-term training activities.

Payment of Stipends Computed at an Hourly Rate – Such payments shall be made to a participant only for actual hours of attendance, not including holidays, and as reflected in the Time and Attendance form. Proof of hourly attendance must also be provided, such as hours worked on a computer program, etc. Payments will not exceed 80 hours within a two-week time period, and no overtime will be paid. Hourly Wage Rate will be the same as the Work Experience Wage Rate. All documentation will need to be scanned into NMWCOS.

Inquires: Questions related to this policy should be directed to the Administrative Entity at (575) 744-4857.

Attested: This policy was adopted by Board Resolution on the issue date as stated in the section above.

Board Chair or Vice Chair

SOUTHWESTERN AREA WORKFORCE DEVELOPMENT BOARD

YOUTH ACTIVITIES POLICY 18-04.1

DATE OF ISSUE

April 25, 2019

EFFECTIVE DATE

May 1, 2019

APPLICABILITY

This applies to Southwestern Area Workforce Development Board (SAWDB) providers of Workforce Innovation and Opportunity Act (WIOA) youth training and employment services

PURPOSE

To support in-school youth (ISY) and out-of-school youth (OSY) by providing high-quality services beginning with career exploration and guidance, continued support for educational attainment, opportunities for skills training, such as pre-apprenticeships or internships for in-demand industries and occupations and culminating with employment, enrollment in post-secondary education, or a registered apprenticeship. TEGL 23-14

BACKGROUND

These funds are used to develop WIOA youth programs to improve the long-term prospects of young people, giving them basic educational, occupational and citizenship skills. Local communities collaborate and establish partnerships, bringing together local workforce training providers, schools, human services, housing organizations, and other entities to create community assistance strategies.

PROGRAM DESIGN

The primary focus of WIOA youth services are to support the educational and career success of out-of-school youth. A minimum of 75 percent of the Youth funds allocated to States and local areas,

except for the local area expenditures for administration, *MUST* be used to provide services to OSY. It creates opportunities for youth that move beyond traditional employment and training services and infuses such principles as preparation for post-secondary education and employment opportunities, linkages between academic and occupational learning, connections to the local job market, and needed follow-up services for youth served under the Act. Work experience is a critical element to the WIOA program. A minimum of 20% of non-administrative local area funds will be used for work experience. [CFR § 681.590(a)] Paid and unpaid work experience may include: summer employment opportunities, other employment opportunities throughout the school year, pre-apprenticeship programs, internships, job shadowing, and on-the-job training.

ELIGIBILITY CRITERIA

Under WIOA as defined in 20CFR 681.210, an OSY is an individual who is:

- A. Not attending any school;
- B. Not younger than 16 or older than 24 at the time of enrollment. Because age eligibility is based on age at enrollment, participants may continue to receive services beyond the age of 24 once they are enrolled in the program; and
- C. One or more of the following apply:
 - 1) A school dropout;
 - 2) A youth who is within the age of compulsory school attendance, but has not attended school for at least the most recent complete school year calendar quarter, based on local school definitions;
 - 3) A recipient of a secondary school diploma or it's recognized equivalent, who is a low-

income individual and is either basic skills deficient or an English language learner;

- 4) An offender, an individual who has been subject to any stage of the criminal justice process;
- 5) A homeless individual, a homeless child, or a runaway;
- 6) An individual who is in foster care or has aged out the foster care system or who has attained 16 years of age and left foster care for kinship guardianship or adoption, a child eligible for assistance under section 477 of the Social Security Act, or an individual who is an out-of-home placement;
- 7) An individual who is pregnant or parenting;
- 8) An individual with a disability;
- 9) A low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment.

Under WIOA, as defined in 20 CFR 681.220, and ISY is an individual who is:

- A. Attending school, including secondary and post-secondary school;
- B. Not younger than age 14 or (unless an individual with a disability who is attending school under State law) older than age 21 at time of enrollment. Because age eligibility is based on age at enrollment, participants may continue to receive services beyond the age of 21 once they are enrolled in the program;
- C. A low-income individual; and
- D. One or more of the following:
 - 1) Basic skills deficient;
 - 2) An English language learner;
 - 3) An offender, an individual who has been subject to any stage of the criminal justice system;

- 4) A homeless individual, a homeless child, or a runaway;
- 5) An individual who is in foster care or has aged out the foster care system or who has attained 16 years of age and left foster care for kinship guardianship or adoption, a child eligible for assistance under section 477 of the Social Security Act, or an individual who is an out-of-home placement;
- 6) An individual who is pregnant or parenting;
- 7) An individual with a disability;
- 8) A low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment.

Note: A youth may be considered OSY for the purposes of eligibility if they are attending Adult Education provided under Title II of WIOA, Youth Build, or Job Corps. Further definition of these terms can be found in TEGL 23-14

ASSESSMENTS

The WIOA youth program requires an objective assessment of academic levels, skill levels, and service needs of each participant, which includes a review of basic skills, occupational skills, prior work experience, employability, interests, aptitudes, supportive service needs, and developmental needs. Assessments must also consider a youth's strengths rather than just focusing on areas that need improvement.

NOTE: A new assessment of a participant is not required if a recent assessment has been made in the last six (6) months as part of another education or training program but updated as appropriate.

- A. Basic Skills: An objective assessment will be conducted to include a review of basic skills. It is not required to use assessments approved for use in the Department of Education's National Reporting System (NRS), nor is it required to determine an individual's grade level equivalent or educational functioning level (EFL), although use of these tools is permitted.

Other formalized testing instruments designed to measure skills-related gains may be used. It does need to be valid, reliable, appropriate, fair, cost effective, easy to administer and interpret results.

If you are measuring EFL gains *AFTER* enrollment under the measurable skill gains indicator, you must use an NRS approved assessment for both the EFL pre- and post-test to determine an individual's educational functioning level

- B. Career-Related Assessments: All youth can benefit from participation in career assessment activities, including assessment of prior work experience, employability, interests, and aptitudes. The Career assessment help youth understand how a variety of their personal attributes (e.g. interests, values, preferences, motivations, aptitudes, and skills) affect their potential success and satisfaction with different career options and work environments. Youth need access to reliable information about career opportunities, based on labor market information, that provide a living wage, including information about education, entry requirements, and income potential.

Youth with disabilities also need information on benefits planning, work place supports and accommodations. This group may also benefit from less formalized career-related assessments such as discovery techniques. These assessments may be provided directly through WIOA youth program staff, and/or through referrals to national and community-based partners and resources.

- C. Individual Employment Plan (IEP): An IEP will be developed to outline a service strategy to identify educational training, employment goals, appropriate achievement objectives, and appropriate services for the participant based on the results of the assessment. The IEP will be a joint effort between the youth and the youth program provider. When appropriate, the

IEP should include specific literacy and numeracy goals, as well as steps for attainment of the desired goals. A new service strategy for a participant is not required if the provider determines a recent service strategy developed for the participant under an existing education or training program is still valid and all the required elements have been addressed

- D. Serving 18-24-Year-Old Youth: To adequately serve 18 to 24-year-old youth, consideration can be given to enroll them to participate in WIOA Title I adult and youth programs concurrently. Such individuals must be eligible under the youth or adult eligibility criteria applicable to the services received. Local providers may determine the best mix of services under both programs.

School status at time of enrollment may determine which program options are appropriate for this population because young adults who are in school are only eligible for the Title I youth program if they are 21 or younger at the time of enrollment.

Some 18-24-year old's may be ready for adult services based on life experiences, prior work experiences, adult schedules, family responsibilities, and individual needs. Others need specific youth services covered in the 14 WIOA youth program elements, such as maturity, drug and alcohol abuse, homelessness, foster care status, family abuse/neglect, career readiness, literacy, and supportive service needs.

Determining School Status

For the Purpose of determining ISY and OSY eligibility, a child is "attending school" if, at the time the eligibility determination portion of program enrollment in WIOA is made, the young person:

- A. Is enrolled in a school, including any of the following:
- 1) Public school
 - 2) Charter school;

- 3) Private school; or
- 4) Disciplinary alternative education program (DAEP)
- 5) Is homeschooled;
- 6) Is attending high school equivalency programs funded by the K-12 system;
- 7) Is a high school graduate who has registered for postsecondary classes, even if not yet attending postsecondary classes;
- 8) Is attending postsecondary school classes; or
- 9) Is in between postsecondary school semesters and has registered for classes for a future semester or had paid all or part of the tuition for a future semester

B. The following programs are not considered “school” under WIOA:

- 1) Adult education provided under Title II of WIOA
- 2) Youth Build Programs
- 3) Job Corps programs
- 4) High school equivalency programs (not funded by the public K-12 system)
- 5) Dropout re-engagement programs

Note: Once the school status of a youth is determined, that school status remains the same until exit from the WIOA youth program.

The local provider must identify and track the funding streams which pay the costs of services provided to participants who are enrolled in both programs concurrently and ensure no duplication of services.

C. ISY Exceptions and Limitations

- 1) Additional Assistance Limitation – In each local area, not more than 5 percent of the ISY assisted under this section may be eligible under “individual who requires additional assistance” to complete an

education program or to secure or hold employment. (WIOA §129(3)(B))

- 2) Low-Income Exception – Not more than 5 percent of the ISY assisted can be individuals that are not low income WIOA §129(3)(A)(ii)

D. OSY Exceptions and Limitations

- 1) Low-Income Exception – Not more than 5 percent of OSY individuals in the following categories can be considered eligible and not meet the low-income criteria:
A recipient of secondary school diploma or its recognized equivalent who is low-income and is basic skills deficient;
- 2) An English language learner;
- 3) A low-income individual but requires additional assistance to enter or complete education program or to secure or hold employment may not be low-income individuals. WIOA §129(3)(A)(ii)
- 4) Co-enrollment Provision – Individuals ages 18 through 24 may be eligible for both adult and Youth programs if they meet the respective eligibility requirements for both programs.
- 5) Authorization to Work – Authorization to work in the United States can be verified through eligibility for UI benefits.
- 6) Nondiscrimination – WIOA Section 188(a)(5) contains a specific nondiscrimination provision that provides that participant under the WIOA is available to citizens and nationals of the United States; lawfully admitted permanent resident aliens, refugees, asylees or parolees; and other immigrants authorized by the Attorney General to work in the United States. Individuals with employment authorization qualify under this provision as “immigrants authored by the Attorney General to work in the United States.” This includes “Deferred Action for Childhood Arrivals” (DACA).

Note: All eligibility and miscellaneous documents will need to be scanned using the New Mexico Workforce Connection Online System. Documents need to be named correctly using the most recent Document Tag List.

PROGRAM ELEMENTS REQUIRED UNDER WIOA SECTION 129(c)(2) AND CFR 681.410 AND TEGL 21-16:

- A. Tutoring, study skills training, instruction, and evidence-based dropout prevention services and recovery strategies: This element will lead to completion of the requirements for a secondary school diploma or its recognized equivalent or for a recognized post-secondary credential.

Achievement of a high school diploma are reported under this element. Such services focus on providing academic support, helping a youth identify areas of academic concern, assisting with overcoming learning obstacles, and providing tools and resources to develop learning strategies. These can be provided one on one, in a group setting, through resources and workshops.

Secondary school dropout prevention strategies intended to lead to a high school diploma are reported under this element. These strategies include services and activities that keep a young person in school and engaged in a formal learning and/or training setting. This can include tutoring, literacy development, active learning experiences, after-school opportunities, and individualized instruction.

For documentation purposes, those services aimed at getting a youth who has dropped out of secondary education back into a secondary school or an alternative secondary school/high school equivalency program and preparing them for high school equivalency attainment, should be counted under program element 2. (20 CFR § 681.460(a)(2)).

Furthermore, while the statutory and regulatory language for both program elements 1 and 4 include language discussing services leading to recognized post-secondary credentials, training services that lead to recognized post-secondary credentials should be reported under program element 4, occupational skills training to avoid duplicated reporting services.

- B. Alternative secondary school services or drop-out recovery services: Alternative secondary school services, such as basic education skills training, individualized academic instruction, and English as a second language training, are those that assist youth who have struggled in traditional secondary education. Drop-out recovery services, such as credit recovery, counseling, and educational plan development, are those that assist youth who have dropped out of school. While the activities within both types of services may overlap, each are provided with the goal of helping youth to re-engage and persist in education that leads to the completion of a recognized high school equivalent.
- C. Paid and unpaid work experience: Work experience is defined as a “planned, structured learning experience that takes place in a workplace for a limited period of time.” The maximum hours for Work Experience is 720 hours. It may take place in the private for-profit sector, the non-profit sector, or the public sector. Funds provided for work experiences may not be used to directly or indirectly aid in the filling of a job opening that is vacant because the former occupant is on strike or is being locked out during a labor dispute involving a work stoppage.

WIOA and 20 CFR § 681.590(a) require that a minimum of 20 percent of local area funds for the Title I Youth program be spent on work experience. Local area administrative costs are not subject to the 20 percent minimum work experience expenditure requirement.

Leveraged resources cannot be used to fulfill any part of the 20 percent minimum.

Allowable expenditures that may be counted toward the work experience expenditure requirement can be more than just wages paid to youth in work experience. Allowable work experience expenditures include the following:

- 1) Wages/stipends paid for the participation in a work experience;
- 2) Staff time working to identify and develop a work experience opportunity, including staff time spent working with employers to identify and develop work experience;
- 3) Staff time spent working with employers to ensure a successful work experience, including staff time spent managing the work experience;
- 4) Staff time spent evaluating the work experience;
- 5) Participant work experience orientation sessions;
- 6) Employer work experience orientation sessions;
- 7) Classroom training or the required academic education component directly related to the work experience;
- 8) Incentive payment directly tied to the completion of work experience; and
- 9) Employability skills/job readiness training to prepare youth for a work experience

Supportive services are a separate program element and cannot be counted toward the work experience expenditure requirement even if supportive services assist the youth in participating in the work experience.

Work experience must include academic and occupational education. This may occur inside or outside the work site and may occur concurrently or sequentially with work experience. The work experience employer can provide the academic and occupational

component or can be a combination of classroom, through work or some other means.

Academic and occupational education refers to contextual learning that accompanies a work experience. For instance, if a youth is in a hospital setting, an example of occupational education would be to introduce them to the other positions within the hospital settings. The academic portion would explain why a blood test is needed for a patient, what is the name of a specific bone in the body, or the function of a particular ligament.

WIOA recognizes four categories of work experience.

- 1) Summer employment opportunities and other employment opportunities throughout the school year;
- 2) Pre-apprenticeship programs;
- 3) Internships and job shadowing; and
- 4) On-the-job training (OJT) as defined in WIOA Section 3(44) and in 20 CFR § 680.700.

D. Occupational Skills Training: This is an organized program of study that provides specific vocational skills that lead to proficiency in performing actual tasks and technical functions required by certain occupational fields at entry, intermediate, or advanced levels. Such training must:

- 1) Be outcome-oriented and focused on an occupational goal specified in the individual service strategy;
- 2) Be of sufficient duration to impart the skills needed to meet the occupational goal; and
- 3) Lead to the attainment of a recognized post-secondary credential.

In addition, the chosen occupational skills training must meet the quality standards in WIOA Section 123.

To enhance individual participant choice in education and training plans, and provide flexibility to service providers, use WIOA Individual Training Accounts (ITs) for OSY,

ages 16-24 using WIOA youth funds, is allowed when appropriate. To receive funds from an ITA, the training provider must be on the Eligible Training Provider list as outlined in § 680.400 and § 680.410.

ISY youth cannot use youth program funded ITAs. However, ISY between the ages of 18 and 21 may co-enroll in the WIOA Adult program if the young adult's individual needs, knowledge, skills, and interests align with the WIOA adult program and may receive training services through an ITA funded by the adult program.

- E. Education offered concurrently with workforce preparation and training for a specific occupation: 20 CFR § 681-630 states this element reflects an integrated education and training model and describes how workforce preparation activities, basic academic skills, and hands-on occupational skills training are taught within the same time frame and connected to training in a specific occupation, occupational cluster, or career pathway.

While programs developing basic academic skills (element 2), workforce preparation activities (element 3), and occupational skills training (element 4) can all occur separately and at different times (thus counted under separate program elements), this element refers to the concurrent delivery of these services which make up an integrated education and training model.

- F. Leadership development opportunities: This element is designed to encourage responsibility, confidence, employability, self-determination, and other positive social behaviors such as:

- 1) Exposure to post-secondary educational possibilities;
- 2) Community service and learning projects;
- 3) Peer-centered activities, including peer mentoring and tutoring;
- 4) Organizational and team work training, including team leadership training;

- 5) Training in decision-making, including determining priorities;
- 6) Citizenship training, including life skills training such as parenting and work behavior training;
- 7) Civic engagement activities to promote the quality of life in a community; and
- 8) Other leadership activities that place youth in a leadership role such as serving on youth leadership committees.

- G. Supportive Services: Supportive services for youth are defined in 20 CFR § 68.570 in WIOA Sec. 3(59). These services enable an individual to participate in WIOA activities and they include, but are not limited to:

- 1) Linkages to community services;
- 2) Assistance with transportation;
- 3) Assistance with child care and dependent care;
- 4) Assistance with housing;
- 5) Needs-related payments;
- 6) Assistance with educational testing;
- 7) Reasonable accommodations for youth with disabilities;
- 8) Legal aid services;
- 9) Referrals to health care;
- 10) Assistance with uniforms or other appropriate work attire and work-related tools, including eyeglasses and protective eye wear;
- 11) Assistance with books, fees, school supplies, and other necessary items for students enrolled in post-secondary education classes; and
- 12) Payment and fees for employment and training-related applications, tests and certifications.

- H. Adult mentoring: May take place both during the program and following exit from the program and must last at least 12 months. It must be a formal relationship between a youth participant and an adult mentor that includes

structured activities, guidance, support, and encouragement to develop the competence and character of the youth. At a minimum, group mentoring activities and electronic means are allowable. However, the program must match the youth with an individual mentor to interact on a face-to-face basis. Mentoring can also include workplace mentoring.

In cases where finding a mentor presents a burden to the program, case managers can serve in this capacity.

- I. Follow-up services: Provides a critical step in following a youth's exit from the program to ensure the youth is successful in employment and/or post-secondary education and training. The follow-up may include regular contact with a youth participants employer, including assistance in addressing work-related problems that arise.

Follow-up services begin immediately following the last expected date of service in the Youth program when no future services are scheduled. Follow-up services do not cause the exit date to change and do not trigger re-enrollment in the program.

The exit date is determined when the participant has not received services in the Youth program of any other DOL funded program in which the participant is co-enrolled for 90 days and no additional services are scheduled. At that point, the date of exit is applied retroactively to the last day of service. Once 90 days of no services, other than follow-up, self-service, and information-only services and activities, has elapsed and an official exit date has been established, the program continues to provide follow-up services for the remaining 275 days of the 12-month follow-up requirement, completion taking place 12 months one year from the exit date.

Follow-up services may include:

- 1) Supportive Services;
- 2) Adult mentoring;

- 3) Financial literacy education;
- 4) Providing labor market and employment information about in-demand sectors, career awareness, career counseling, and career exploration services; and
- 5) Activities that prepare youth for and transition to post-secondary education and training.

These elements must be coded as follow-up services to clearly differentiate follow-up services from those services provided prior to exit. They should be documented in the case file that they were provided as follow-up services *POST* exit.

All youth participants must be offered an opportunity to receive follow-up services that align with their individual service strategies. If the youth cannot be located for follow-up or if they opt out of the service, the 12-month follow-up requirement does not apply. There must be more than one documented contact attempted or made for securing documentation to report a performance outcome. If the youth opts out of the follow-up it must be documented in the case file.

- J. Comprehensive Guidance and counseling: Guidance and counseling will be individualized to the participant. It includes drug and alcohol abuse counseling, mental health counseling, and referral to partner programs, as appropriate. If a referral is made, coordination with the organization is necessary to ensure continuity of service. If the local program offers these services, counseling services can be provided directly to the participant rather than to refer to another organization.
- K. Financial literacy education: This may include the following activities:
 - 1) Support the ability of participants to create budgets, initiate checking and savings accounts at banks, and make informed financial decisions;

- 2) Support participants in learning how to effectively manage spending, credit, and debt, including student loans, consumer credit, and credit cards;
 - 3) Teach participants about the significance of credit reports and scores, what their rights are regarding their credit and financial information, how to determine the accuracy of a credit report, how to correct inaccuracies, and how to maintain good credit;
 - 4) Support a participant's ability to understand, evaluate and compare financial products, services, and opportunities, and to make informed financial decisions;
 - 5) Educate participants about identity theft, ways to protect themselves, and how to resolve cases of identity theft and understand their rights and protections related to personal identity and financial data;
 - 6) Support activities that address the financial literacy of youth with disabilities, including connecting them to benefits planning and work incentive counseling;
 - 7) Support activities that address the financial literacy needs of non-English speakers, including providing the support through the development and distribution of multilingual financial literacy and education materials; and
 - 8) Provide customized financial education that is high quality, age appropriate, timely, relevant, provides opportunities to put lessons into practice, and to help youth gain the knowledge, skills, and confidence to make informed financial decisions that enable them to attain greater financial health and stability.
- L. Entrepreneurial skills training. To develop the skills associated with starting and operating a small business. Such skills may include the ability to:
- 1) Take initiative;
 - 2) Creatively seek out and identify business opportunities;
 - 3) Develop budgets and forecast resource needs;
 - 4) Understand various options for acquiring capital and the trade-offs associated with each option; and
 - 5) Communicate effectively and market oneself and one's ideas.
- Approaches to teach this skill may include:
- a) Education to introduce the values and basics of starting and running a business, development of a business plan, and simulations of business start-up and operation;
 - b) Provide support and services to incubate their own business, access to small loans or grants, and individualized attention to the development of viable business ideas; and
 - c) Experiential programs to provide youth with experience in the day-to-day operations of a business. It can include development of a youth-run business that youth participating in the program work in and manage. Placement in apprentice or internship positions with adult entrepreneurs in the community.
- M. Services that provide labor market information: To impart to youth the body of knowledge that describes the relationship between labor supply and demand and how it relates to the job market in the local community. This may include career awareness, career counseling, career exploration services, and identifying an in-demand occupation that is of interest to the youth. Career counseling may include resume preparation, interview skills, opportunities for job shadowing, and the long-term benefits of post-secondary education and training. One

tool to use is labor market information (LMI). In addition to identifying in-demand occupations, it details job market expectations including education, skill requirements, longevity, and potential earnings.

- N. Post-secondary preparation and transition activities: These activities prepare both ISY and OSY for advancement to post-secondary education and training after attainment of a high school diploma or recognized equivalent. This could include technical training schools, community colleges, four-year colleges and universities, and registered apprenticeship. Other activities may include, assisting youth to prepare for SAT/ACT testing, college admission applications, searching for and applying for scholarships and grants, filling out the proper Financial Aid applications and adhering to changing guidelines, and connecting youth to post-secondary education programs.

NOTE: Documenting receipt of program elements is critical to ensure youth who are actively participating in programs are not unintentionally exited due to 90 days of no service. All 14 WIOA youth elements are contained in the PIRL and services received must be reported in the applicable program element. Case management is not considered a program element.

Performance Measures: Measuring the success and overall effectiveness of youth programs is a critical but challenging responsibility. Local boards will consider the overall goals of the program and demonstrate that funded activities lead to outcomes which contribute to these goals. Under waiver authority, New Mexico replace the statutory performance measures with common measures. Local boards and service providers will monitor common measures, output, and additional outcomes to evaluate program effectiveness.

- A. Common measures for youth consist of three measures:
- 1) Placement in employment or education
 - 2) Attainment of a degree or certificate

3) Literacy/Numeracy measurement

- B. Output measures are evidence that a service has been provided. Participation by itself is an output. For example, "sixty percent of youth will be engaged in community service projects" indicates an activity took place. It is an indication that the program provided service. Output alone does not demonstrate the success of a program.
- C. Outcome is a measure of the change that occurs in a participant because of program activities. Attaining a skill is an example of such a change. Programs should specify a benchmark of the number or percentage of participants who achieve a particular outcome.

Performance Accountability: Under section 116(b)(2)(A)(ii) of WIOA, there are six primary indicators of performance for youth:

- A. *Employment/Education/Training Rate-2nd Quarter After Exit*: The percentage of participants who are in education or training activities, or in unsubsidized employment during the second quarter after exit from the program.
- B. *Employment/Education/Training Rate-4th Quarter After Exit*: The percentage of participants who are in education or training activities, or in unsubsidized employment during the fourth quarter after exit from the program.
- C. *Median Earnings-2nd Quarter After Exit*: The median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program.
- D. *Credential Attainment*: The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training (OJT) and customized training) who attain a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within one year after exit from the program. A participant who has attained a secondary

school diploma or its recognized equivalent, is included in the percentage of participants who have attained a secondary school diploma or its recognized equivalent, only if the participant also is employed or is enrolled in an education or training program leading to a recognized post-secondary credential within one year after exit from the program.

E. *Measurable Skill Gains:* The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational, or other forms of progress, towards a credential or employment. Depending on the type of education or training program, documented progress is defined as one of the following:

- 1) Documented achievement of at least one educational function level of a participant who is receiving instruction below post-secondary education level;
- 2) Documented attainment of a secondary school diploma or its recognized equivalent; secondary or post-secondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards;
- 3) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of one year of an apprenticeship program or similar milestones, from an employer or training provider who is conducting training; or
- 4) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks, such as knowledge-based exams.

F. *Effectiveness in Serving Employers:* This is a workforce system measure and is not specific to the WIOA youth program alone. DOL is piloting three approaches designed to gauge three critical workforce needs of the business community.

- 1) Approach 1: Retention with the same employer-addresses the programs' efforts to provide employers with skilled workers.
- 2) Approach 2: Repeat business customers-addresses the programs' efforts to provide quality engagement and services to employers and sectors and establish productive relationships with employers and sectors over extended periods of time.
- 3) Approach 3: Employer penetration rate-addresses the programs' efforts to provide quality engagement and services to all employers and sectors within a State and local economy.

Additional information on performance indicators and reporting can be found in TEGL No. 10-16 at: <https://wdr.doleta.gov/directives>

SELECTION OF SERVICE PROVIDERS:

Youth service providers will be competitively procured in accordance with local, state and federal procurement practices. Acceptable local procurement practice cannot be less restrictive than Federal or State requirements in the awarding of grants or contracts. In no instance will a local procurement process violate New Mexico procurement policies.

INQUIRIES

Questions related to this policy should be directed to the Administrative Entity at (575) 744-4857.

ATTESTED

This policy was reviewed and approved by the
SAWDB on April 25, 2019

SAWDB Chairman

Date

AGENDA ITEM SUMMARY

Special Executive Committee Meeting	April 2, 2020
Agenda Item Resolution 19 – 44 approves a temporary process for future policy and sub-recipients contract modifications necessary for the continuation of services while under the State of New Mexico's Emergency Declaration	
SUMMARY OF AGENDA ITEM <ul style="list-style-type: none"> This item is presented for your review and consideration to discuss a temporary process for future policy and sub-recipients contract modifications necessary for the continuation of services while under the State of New Mexico's Emergency Declaration. The New Mexico Attorney General's Office has issue guidance to governing bodies that meeting be postponed or cancelled. It recommends government bodies meet virtually if there are time sensitive items. In these unprecedented times, the participants we serve are being affected and need to navigate quickly through their situations and service providers are also limited to their scope of work and may need to include alternative service delivery methods. How would the executive committee prefer to address these situations given the attorney general's guidance and the participant's needs? There are a couple of options to consider: 1) The executive committee has special meetings when situations arise, or 2) it authorizes the Chair to make changes recommended by the administrative entity or fiscal agent. There may also be other options that the executive committee members may have at the meeting. 	
RECOMMENDATION A motion to approve Resolution 19 – 44.	
OPTIONS ARE TO <ol style="list-style-type: none"> Accept the recommendation Amend the recommendation Reject the recommendation Table the item Take no action on the item 	
DEPENDING ON ACTION TAKEN, ITEM MAY BE REFERRED OR REPORTED TO <ul style="list-style-type: none"> Staff or committee, as directed. 	
THIS ITEM SUPPORTS STRATEGIC PLAN GOAL(S) <ul style="list-style-type: none"> Supports all strategic plan goals 	
LIST OF SUPPORTING INFORMATION FOR YOUR REVIEW <ul style="list-style-type: none"> NM Attorney General's Guidance 	



HECTOR H. BALDERAS
ATTORNEY GENERAL

**Open Government Division Advisory
During COVID-19 State of Public Health Emergency**

On March 11, 2020, Governor Michelle Lujan Grisham declared a state of emergency in New Mexico, issued under Executive Order 2020-004. The Attorney General, through the Open Government Division is statutorily tasked with enforcing the Open Meetings Act, NMSA 1978, NMSA 1978, §§ 10-15-1 to -4 (1974, as amended) and the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -14 (1947, as amended). As such, Attorney General Balderas issues the following guidance to public entities across the State of New Mexico regarding their ongoing obligations to comply with the Open Meetings Act (OMA) and the Inspection of Public Records Act (IPRA) during the state of emergency in New Mexico.

The Office of the Attorney General's Open Government Division (OGD) advises all public entities subject to the OMA to first and foremost follow the guidance of the Department of Health and other health officials to ensure the health and safety of both members of the entity and the public. Accordingly, the most prudent thing to do to ensure compliance with OMA would be to postpone/cancel a public meeting. If, however, a board or commission has a time-sensitive matter to attend to, it may proceed with a virtual meeting, provided its notice of meeting contains detailed information (password, phone number, etc.) about how members of the public may attend and listen via telephone, live streaming or other similar technologies. More specifically, if a public body decides to proceed with a virtual meeting, it should:

- At the start of the meeting, the chair should announce the names of those members of the public body participating remotely.
- All members of the public body participating remotely must identify themselves whenever they speak and must be clearly audible to the other members of the public body and to the public.
- Members of the public should be afforded remote access, via live stream or other similar technology, if possible, or call-in number for listening by phone.
- Chair should suspend discussion if the audio or video is interrupted.
- All votes of the public body must be by roll call vote.

- The public body should produce and maintain a recording of the open session of the meeting.

Additionally, we are assuming the public body's staff also would be working remotely; otherwise, the staff at least theoretically would have the ability to set up a physical location for the public to listen in. In sum, we believe OMA would require that public bodies cancel or reschedule their meetings whenever possible and opt for a virtual format only as a matter of last resort during the pendency of the public health emergency.

To maintain compliance with the Inspection of Public Records Act, OGD recommends that agencies in the first instance continue to satisfy IPRA's deadlines and fulfill IPRA requests electronically, if possible.

Pursuant to public health guidelines and the closure of many public entities' physical locations during the state of emergency, public entities should suspend all in-person inspection of public records during the pendency of the state of emergency. Acknowledging that there may be limited circumstances where records are not available electronically, an agency may designate a request as excessively burdensome or broad, which would allow an agency obtain more time to respond and/or compile documents. We also acknowledge there may be circumstances in which an agency may not be able to provide certain records because employees normally in possession of those records are working from home and do not have the requested records readily available.

In short, IPRA all deadlines should still be satisfied. Where the state of the public health emergency hampers an agency's ability to respond, we urge the agency nonetheless to communicate promptly with the requester to make alternative arrangements to allow for the inspection of records, in keeping with the general spirit of the law.

In addition, with respect to professional licenses issued under the Uniform Licensing Act, NMSA 1978, NMSA 1978, §§ 61-1-1 to -34 (1957, as amended), after consultation with OGD, we understand that the Boards & Commissions Division of the New Mexico Regulation and Licensing Department will be reaching out to the chairpersons of the various professional licensing boards administratively attached to RLD to get approval for the following:

- (1) Boards and Commissions staff will process renewals without the proof of continuing CE credit needed for renewal during the pendency of the public health emergency instituted by Executive Order 2020-004.
- (2) Licensees submitting renewals without the sufficient CE credits will be required to give notice to the board or commission through the notice procedures established by the Boards and Commissions Division dated March 16, 2020 (also attached hereto).
- (3) If all other license renewal requirements are met, licenses will be renewed without proof of CE credits.

(4) When the public health emergency is lifted, Boards and Commissions staff will send out a notice to licensees stating that the licensee has 3 to 6 months, depending upon the Board or Commission, to submit their proof of CE or be subject to discipline by the Board.

Without purporting to provide legal advice to outside entities, the OAG and OGD remain available to answer general questions regarding compliance with OMA and other laws of general application, as appropriate.