Texas Governor’s Committee on People with Disabilities

**DRAFT SUMMARY MINUTES**

October 27, 2021

Workforce Solutions Capital Area, North

9001 N IH 35, Suite 110, Austin, TX 78753

And Videoconference Meeting via ZOOM

Meeting Materials: <https://gov.texas.gov/organization/disabilities/committee-meetings>

**Call to Order**

Chair Aaron Bangor verified quorum was present. Dylan Rafaty motioned to convene the meeting; seconded by Ellen Bauman. Members approved the motion by roll call vote. The meeting began at 8:32 a.m.

**Members Present**

Aaron Bangor, PhD; Kori Allen; Ellen Bauman; Evelyn Cano; Kristie Orr, PhD; Dylan Rafaty; Emma Faye Rudkin; Eric Lindsay, Richard Martinez, Joseph Muniz, Kris Workman

**Exofficio Representatives Present**

Roxann Medina, Health and Human Services Commission; Marsha Godeaux, Texas Department of Licensing and Regulation; Sandra Breitengross Bitter, Texas State Independent Living Council; Claudia Peden, Texas Workforce Commission; Kelly Goodman, Texas Education Agency; Jonathan Lathem, Department of Family and Protective Services

**Approval of Committee Member** **Absence**

Elyse Lieberman, PhD, was absent due to an employer conflict. Eric Lindsay motioned approval of her absence as excused; seconded by Evelyn Cano. Members approved the motion by roll call vote.

**Staff Present**

Ron Lucey, Executive Director; Randi Turner; Nancy Van Loan; Monica Villarreal

**Invited Presenters**

Emily Robinson and Jerry Klekotta, Texas Education Agency; Linda Litzinger, Texas Parent to Parent; Judge Jason Cox, Harris County Probate Court #3; Elizabeth Hart, Tarrant County Probate Court #2; Chance Freeman, Behavioral Health Services, Health and Human Services Commission; and Dr. Altaf Choudhury

**Visitors**

Luis Salinas and Family; Beth Hamilton, Texas Association of the Deaf; Steven Aleman, Disability Rights Texas

**Approval of July 29-30, 2021 Summary Meeting Minutes**

Dylan Rafaty motioned to approve the Summary Minutes as submitted, seconded by Ellen Bauman. Members approved the motion by roll call vote.

**Public Comment**

Luis Salinas and family spoke about their son, Bubba, whom deserves to be an active member of his high school band and experience all the relevant social opportunities. As a drummer, Bubba attended summer camp, UIL rehearsals and football games. He taught himself the choreography. Bubba is in 10th grade, is nonverbal and has an IEP. Fine Arts credit should be modifiable for everyone, including students with disabilities.

Beth Hamilton, Texas Association of the Deaf, said House Bill 548 (86R) is missing wording about race and identity that can affect language acquisition of children who are deaf or hard of hearing. To avoid misinterpretation, it would be beneficial to have HB 548 alongside House Bill 255. She would like to see changes in data collection to allow comparison. Deaf leadership should provide equal contributions. Special Education Language Assessment, an annual data collection system, does not provide direction. Texas Education Agency is in the process of implementing HB 548.

**Reports from Invited Exofficio Agency Representatives**

Texas State Independent Living Council (Texas SILC)

Executive Director Sandra Breitengross Bitter shared highlights from the report. Included in last legislative session’s budget, Rider 83 is an independent living services review to assess the needs of Texans with disabilities. It aligns closely to the Sunset Commission’s 2015 review to move independent living services to centers for independent living (CILs). Texas SILC received funding for Covering All of Texas, a grant related to COVID vaccination logistics and adequate transportation, focusing on the underserved; Inclusive Services for Survivors, a grant for sexual assault survivors with disabilities and survivors who are deaf; and Good Measure, a community-based evaluation project to develop methods to expand disability community partners. Texas SILC is recruiting for Project Advisory Members.

Ms. Rudkin asked how SILC is communicating with rape crisis centers in interacting with individuals of varying disabilities. She suggested adding proactive measures such as a prevention component. Ms. Breitengross Bitter replied the first step will be a needs assessment in CILs and crisis centers with a goal of cross coordination of services. Dr. Orr commented that more people would engage if the level of available services was communicated and presented in an accessible manner. Mr. Martinez suggested forming a subcommittee designed to address these issues. Input from a female committee member would be beneficial.

Richard Martinez motioned to create a subcommittee on abuse, and include this topic for further discussion at a future meeting; seconded by Dylan Rafaty. Members approved the motion by roll call vote.

Department of Family and Protective Services (DFPS)

Jonathan Lathem discussed the report’s executive summary. Child Protective Services (CPS) regional disability specialists will receive training from Texas School for the Deaf on guardianship, Supplemental Security Income, mental health, waiver programs, and Section 811 program on services for clients and their families with intellectual and developmental disability (I/DD). Ms. Rudkin remarked this should be required training. DFPS published a strategic plan for their Prevention and Early Intervention division, and Children Without Placement and Community-based Care reports. Dr. Bangor asked how DFPS defines “minority children” and if the term includes children with disabilities. He sought advice on how GCPD could better serve children with disabilities in Texas foster care.

CPS Developmental Disability Specialists will provide information on I/DD and waiver programs at 2021 Children’s Commission Child Welfare Judges conference. A pilot program will create a paid workforce for certified person-centered peer partners to provide support for individuals transitioning into the community from institutions and residential treatment centers. The Youth Peer Partnering Together workgroup is working under the Money Follows the Person capacity-building grant on transitioning. In response to previous requests, CPS provided to the Committee a contact list for regional developmental disability specialists. Subject matter experts from DFPS and HHSC attended the guardianship subcommittee meeting, facilitated by Committee members Bauman and Cano.

Ms. Bauman brought forth a concern of children in the foster care system living in abysmal conditions in Hill County and asked what remedies DFPS is considering. Is there a contingency plan to address case overload and employee shortages during a pandemic? [The Child Without Placement](https://www.dfps.state.tx.us/About_DFPS/Reports_and_Presentations/CPS/documents/2021/2021-09-14-DFPS_CWOP_Report.pdf) report references information on emergency placement. Robert Schuller can provide clarity and additional resources from Child Protective Services and Child Protective Investigations.

Health and Human Services Commission (HHSC)

Roxann Medina, Office of Disability Services Coordination (ODSC), gave the report. HHSC has 250+ programs. Community programs managed out of the Access and Eligibility Services division (Texas 2-1-1, Aging and Disability Resource Centers, Area Agencies on Aging) will be included in future reports. White Cane Day events were celebrated in October; HHSC launched a video highlighting the day’s importance.

The U.S. Department of Health and Human Services extended the federal public health emergency through January 13, 2022. HHSC continues to respond to COVID-19 in partnership with Department of State Health Services (DSHS) and following CDC guidelines. Section 9817 of the American Rescue Plan Act (ARPA) provides states with a temporary increase of ten percentage points to the federal medical assistance percentage (FMAP) for Medicaid Home and Community-Based Services (HCBS), if certain requirements are met. States must use funds equivalent to the amount of federal funds attributable to the increased FMAP to implement activities that enhance or strengthen Medicaid HCBS. HHSC received partial approval of the initial spending plan submitted to the Centers for Medicare and Medicaid Services. HHSC is waiting for full federal and state approval before spending any of the money described in the plan.

Texas has 29 Money Follows the Person demonstration projects at various stages of implementation. The focus of the funding is increasing the use of community-based services, promoting independence and increasing educational efforts. Through a rebalancing funds request, HHSC was awarded $4.7 million to be used for the STAR+PLUS program, a person-centered practice and planning project, and the Direct Service Workforce (DSW) initiative. A provider fair occurs twice a year at each state supported living center for residents and staff to explore community options.

In response to Rider 157, HHSC published the Community Attendant Workforce Strategic Plan in 2020 that launched in March 2021. A long-term goal was to establish a taskforce to explore alternative strategies to recruitment and retention of community attendants. The taskforce will focus on identifying data collection methods and improving recruitment and retention. ODSC was awarded $2.03 million for a Money Follows the Person demonstration project for this purpose. The majority of those funds will be seed grants to 11 local workforce development boards. Mr. Lucey asked if HHSC is exploring a plan for realistically increasing personal attendant pay, currently $8.11 per hour. HHSC acknowledges the attendant shortages and is having conversations about data collection in support of the Legislative Appropriation Request. The DSW task force is considering a wage equity study, insurance, and connecting to community colleges. HHSC provided a thorough update on their Direct Service Workforce Development Taskforce as of July, 2021. HHSC is working on the intent of Senate Bill 8 (87th, 3rd C.S.) potentially using ARPA funds for personal care attendants. Ms. Cano suggested developing a short informational awareness piece in addition to the flyer and video.

Texas Department of Licensing and Regulation (TDLR)

Marsha Godeaux, representing the Elimination of Architectural Barriers program, reported House Bill 1560 (87R) continued the agency functions until 2033. TDLR has 35+ advisory boards. The Elimination of Architectural Barriers Advisory Committee has not met since COVID began. Senate Bill 40 (87R) authorizes telehealth services for certain healthcare professionals. The Architectural Barriers program is taking advantage of delays in construction projects to work on a backlog of over 60,000 notices to owners about overdue inspections that will help with violation corrections. Texas Accessibility Academy provides training that helps Registered Accessibility Specialists obtain licensure. Ms. Rudkin asked about legislation for licensing of captioners. Mr. Lucey asked if the International Building Code applies to construction projects in Texas, in relation to Texas Accessibility Standards.

Texas Education Agency (TEA)

Kelly Goodman is Manager of Communications and Outreach for TEA’s Office of Special Populations, and Director of Supplemental Special Education Services (SSES). During the last year TEA did not see a decline for evaluations due to COVID, instead numbers increased due to the level of Child Find activities, and letters of findings. Funding for students identified by special education increased at the state level 27 percent in the last four years. A large growth area is students identified with Dyslexia. State Board of Education approved changes to the Dyslexia Handbook. TEA submitted clarifying documentation requested by OSEP on monitoring activities.

SSES began as way to help approximately 93,000 students with significant cognitive disabilities. In November of 2021, eligibility criteria extended to all special education students with an IEP (not including students served by Section 504) and enrolled in a Texas public school. SSES is a one-time $1,500 grant to families to spend through an online marketplace including educational goods and services for students such as therapies or tutoring. Local education agencies (LEAs) are required to notify eligible families who then receive at least five reminders about the application process. As of October, there were 16,362 students with approved accounts. The application is available online; there are no plans for a paper version. If a family does not have access to the internet or has trouble with technology, LEAs provide feedback. A one-page flyer is available in English, Spanish, Arabic, Vietnamese, and simplified Chinese or Mandarin. TEA partners with SPEDTex’s call center. TEA staff handle all purchases or denials, technical assistance, and provider background and certification checks. TEA offers an appeal process if an account is suspended. Key items from rule making and Senate Bill 1716 are still in process. After the Rule is in place, an education service center will take over operational supports for the marketplace.

Texas Workforce Commission (TWC)

Claudia Peden reported TWC created a new customer care division, led by Tom McCarty, to increase outreach for TWC’s full array of services and improve customer service. The Office of Employer Initiatives is expanding a strategic outreach function. Rider 48 requires an inventory of apprenticeship and internship programs by October 2022, including opportunities for Texans with disabilities. A TWC staff workgroup will compile the inventory. Ms. Peden will confirm if opportunities are from both private and public sectors.

An October update to the Standards for Providers in Manual includes an increase of rates paid for employment services, pre-employment transition services and autism spectrum disorder services. TWC approved a 22.5 percent increase. The project will continue to seek feedback from providers in the community and will include a periodic review.

The new pre-employment transition service launched in August of 2021, for students with disabilities during the school day. Start My VR is an online entry portal for vocational rehabilitation services. August data indicated 947 individuals benefited from this program. The nomination period for TWC’s recognition program, WeHireAbility, is now open year round. Ms. Peden will confirm the award’s event date. The Business Enterprise of Texas program closed during the pandemic, with some businesses reopening weekly.

An update was provided about the “State as a Model Employer” and measuring the hiring of people with disabilities in state government. TWC human resources director Jerry White chairs the State Agency Coordinating Council HR committee. Every state agency has their own HR system, so data is hard to capture. Mr. White welcomes conversations with GCPD. Disclosure of disability is voluntary. A revised version of WorkInTexas job search tool removed a check box that now allows a potential job candidate to go through the interview process before discussing accommodations.

**Implementation of House Bill 548 (86R) – Language Acquisition for Deaf Students** – Emily Robinson, TEA, said the purpose of HB 548 is to generate and monitor data on the language acquisition of children eight years of age or younger who are deaf, hard of hearing, or deaf-blind. TEA has a memorandum of understanding between local education agencies, HHSC and Early Childhood Intervention, and Texas School for the Deaf to assign tasks and duties. Appropriations for HB 548 applied to building a new data system. Nineteen of the required 28 data elements have been collected; there will be adjustments to the collection process so accurate, appropriate data will be available for 2022. A language assessment committee with representatives from Texas School for the Deaf, National Association of the Deaf, Early Childhood Intervention program, regional day school program, the education service center, and experts in speech and language pathology and linguistics are meeting to discuss data collected. A statewide report for the 2020-2021 school year includes a core collection of 2,586 students; 68% tested below expectations for language acquisition based on their age and other factors.

There are 24 assessments tailored to each child’s needs, including early vocabulary knowledge of those who use or are learning ASL. However, without permission from a parent or guardian there is no opportunity to do the testing. The three types of assessments are proficiency, diagnostic, and achievement. A standardized Visual Communication and Sign Language checklist tracks language milestones. The publisher of the assessments provides training. LEAs will compare state results to individual students’ testing results for discussion at ARD meetings and then document any changes in an Individualized Education Program (IEP). Virtual assessments conducted during the COVID pandemic might show regression of spoken language skills. TEA will compare findings of other states with similar legislation. Members asked for a review of HB 548 for clarity on including students under the Section 504 umbrella, and about available training for those providing assessments.

**Policy Recommendation Development based on the Committee’s Issue Areas**

Guardianship and Alternatives to Guardianship

Subcommittee co-chairs Ellen Bauman and Evelyn Cano presented four policy recommendations for discussion. Linda Litzinger gave background information. One of the purposes of the subcommittee was to identify resources for improvement to guardianship proceedings and supportive decision-making agreements and to ensure judges, attorneys, physicians, families and teachers are aware of training opportunities. Texas courts have the authority to appoint a guardian over a person who is incapacitated. Guardianship should be only as restrictive as indicated by the person’s mental or physical limitations.

Elizabeth Hart discussed recommendation #1 focusing on a Physician’s Certificate of Medical Examination (CME) form used in cases related to intellectual disability, traumatic brain injury and age-related neurocognitive orders. The CME includes a question the physician responds to about a person’s determination of intellectual disability (DID). Attorneys ad litem and court staff have a definition of incapacity, but not the effectiveness or duration of a DID. The subcommittee suggests adding a reference to a physician’s medical specialty when evaluating a person’s DID status to Texas statute. The notation on the CME would be visible to the court. There is also a need for a continuing education requirement for physicians before they complete assessments determining someone’s capacity.

Recommendation 1. Physician’s Certificate of Medical Evaluation (CME) during Guardianship Proceedings. Eric Lindsay motioned approval; seconded by Evelyn Cano. Members approved the motion by roll call vote.

Judge Jason Cox discussed recommendation #2 about continuing the use of remote technology in guardianship and probate hearings. The most important caveat being a court should strive to allow a personal appearance if someone chooses to be present. When court procedures are conducted virtually, it is beneficial for a judge to have a proposed ward’s participation. Particularly during the pandemic, hearings conducted via remote technology made courthouse visits more convenient for witnesses and attorneys. Additionally, having a hearing broadcast over the Internet fulfills the court’s open court requirement. There should be formal guidance about immediately erasing the recording and to ensure the court reporter’s record is the official record of the hearing. Live hearings are always ideal when communication occurs personally.

Recommendation 2. Use of Remote Technology when Conducting Guardianship or Probate Proceedings. Dylan Rafaty motioned approval; seconded by Ellen Bauman. Members approved the motion by roll call vote.

Elizabeth Hart read Lauren Gerken’s comment on the topic of restoration requirements. Historically, guardianship is established as a permanent option. Guardianship policy must also account for external growth and technological advances. There is no form used across the state for restoration or modification of guardianship. Only a physician can provide evidence to help someone get out of guardianship. The subcommittee recommends that licensed psychologists be given that authority. In 2015, huge strides were made in guardianship law, ie: language changes in the Texas Estates Code and having sufficient capacity with supports and services. The evidence and burden of proof to the hearing restoration reads that the court shall consider only evidence regarding the proposed ward’s mental or physical capacity at the time of the hearing. For example, the language talks about a condition such as autism that might not be a consideration a few years later as someone matures. To promote the recommendations, the subcommittee could draft a standalone report. The subcommittee will continue to address the scope of training. Judge Cox agreed to assist drafting a guide for an attorney ad litem within the Texas Bar Association.

Recommendations 3 and 4. Restoration Requirements based on a Proposed Ward’s Capacity; and Allowing Licensed Psychologists Authority to Offer Evidence for Hearings of Individuals with Intellectual or Developmental Disabilities. Dylan Rafaty motioned to approve recommendations 3 and 4; seconded by Ellen Bauman. Members approved the motion by roll call vote.

**GCPD’s Disaster Behavioral Health Recommendations to the 87th Texas Legislature** – Chance Freeman, Director of Disaster, HHSC’s Behavior Health Services (BHS) gave an overview of this state program that is responsible for all hazard disaster behavior health planning and recovery. BHS works in coordination with Department of State Health Services and the Division of Emergency Management. Focus is on early response utilizing a network of local resources then coordinating long-term recovery, including continuity of care. As BHS becomes aware of an incident, a network of 39 local behavioral health authorities and providers connect to the local operation’s command center. City or county-operated shelters have the ability to send behavioral health providers to serve individuals experiencing stress or trauma resulting from a disaster. The goal is to guide stress management strategies to prevent people in distress from entering formal behavioral health services. BHS receives federal funds from FEMA or through the governor’s Criminal Justice Division Recovery program for behavioral health and crisis counseling. There are opportunities for growth with HHS and Disaster Behavior Health Consortium. BHS has staff with expertise in communicating with people with IDD and behavioral health conditions. An informal workgroup made up of TDEM’s Division of Emergency Management, TEA, Texas Psychological Association, Association of Social Workers, the Law Enforcement Management Institute at Sam Houston State University and DSHS are having conversations about resources and needed training. An operating guide is in the review process. Dr. Orr shared about Project REDD, from Texas A&M University, including Mobile Tips for First Responders.

**Texas as a Model Employer** – Dr. Bangor continued a previous discussion on the concept of state government hiring people with disabilities and reviewed his draft policy recommendation proposal. People with disabilities are historically and continue to be chronically unemployed and under employed, and out of the workforce. US Department of Labor is the source for statistics on the policy recommendation. Encouraging self-identification as a best practice could be restricted because disability is a protected status. Data needs to be collected to measure it. He suggested validating a job application and on-boarding processes to include accessible vocational testing. After hearing from Ms. Peden earlier, the proposal’s second bullet should be removed because TWC has revised the “WorkInTexas” online application and no longer collects disability status data. Establish a voluntary self-identification program for job applicants and current staff modeled from private industry. Disability:In and Employer Assistance Research Network publish best practices. A new bullet should be included to the proposed recommendation: adding “disability” as another protected class in the data that TWC’s Office of Civil Rights collects from state agencies.

**Policies of Teacher Retirement System of Texas** - Altaf Choudhury, MD, has knowledge of patients who have dementia and the level of difficulty they experience to be as independent as possible. Dr. Choudhury described the complexities his father encountered when applying to receive the pension he earned from Teacher Retirement System (TRS). The process is bureaucratic and lengthy. Substantially, TRS seems to operate as an agency that is not held accountable to any other outside supervision. Individuals have no recourse. Dr. Choudhury alleged TRS has an organizational problem that needs further investigation and many changes to make sure vulnerable people with dementia have access to their earned benefits. TRS is the second largest financial institution in Texas, serving 1.7 million teachers and retirees. Dr. Bangor asked him to work with GCPD staff to hone in on a disability capacity.

***Governor’s Disability Task Force on Disaster Issues Affecting Persons who are Older and Persons with Disabilities* Report to the Governor and Texas Legislature** – Stephanie Duke, Attorney, Disability Rights Texas. Due to time limitations, members did not discuss this topic. Richard Martinez motioned to move this presentation to a future meeting; seconded by Dylan Rafaty. Members approved the motion by roll call vote.

**Individual Member Reports**

Due to time limitations, members did not provide reports of activities in their respective communities.

**Executive Director Report and Staff Updates (Fiscal Year 2021, 4th Quarter)**

Ron Lucey directed members to the written report, including quarterly performance measures. He highlighted the Driving with Disabilities initiative, formerly named Driving with Autism. Billboards along I-35 and public service announcements support an awareness campaign. Randi Turner is planning a webinar, An Update to Services for Texas Veterans with assistance from Eric Lindsay, and a webinar on Paratransit with assistance from Richard Martinez. One of the GCPD’s partners at HHSC requested help in conducting a survey on Aging on Low vision Services, in the capacity of serving older, blind Texans. Monica Villarreal is responsible for this engagement with stakeholders.

**Future Meeting**

Staff suggested potential communities of Abilene, Big Spring, Deep East Texas region, Kerrville or Fredericksburg. Aaron Bangor motioned for staff to consider these as options for the January 2022 business meeting. Dylan Rafaty seconded. Members approved the motion by roll call vote.

**Adjournment**

[Dylan](mailto:gcpd@governor.state.tx.us) Rafaty motioned to adjourn the meeting of the Governor’s Committee on People with Disabilities; seconded by Eric Lindsay. Chair Bangor adjourned the meeting at 4:58 p.m.

Submitted by Nancy Van Loan, Recorder

**Follow Up Items**

DFPS: Agenda topics and meeting materials for the Nov. 4 meeting of the Advisory Committee for Promoting Adoption of Minority Children. How does DFPS define “minority children”

DFPS: date for 2021 Children’s Commission Child Welfare Judges conference

DFPS: advice to GCPD on better serving children with disabilities in Texas foster care

HHSC: What is HHSC’s plan for a realistic increase in attendant pay? What is the intent of Senate Bill 8 (87, 3rd C.S.) and potentially using ARPA funds for attendants?

HHSC: In response to Rider 157, there was a suggestion to create a simplified one-page reference to distribute to various potential sources, ie colleges/universities or mayors’ committees for people with disabilities, as part of the required awareness campaign

HHSC: An offer to include more about the Money Follows the Person demonstration projects in future reports

HHSC: request for an update on Rider 83 (2022)

HHSC: seeking clarification on ECI Funding, does the information from the report reflect cost or funding per child? Is there an explanation for the downward trend?

HHSC: did the regulatory services division provide testimony on Proposition 6 related to designated caregivers for immediate and long-term care facilities?

TDLR: legislation for licensing of captioners

TDLR: how the International Building Code applies to construction projects in Texas, in relation to the Texas Accessibility Standards

TEA: options to provide public commentary on SSES

TWC: Will apprenticeship and internship programs represent public and/or private sectors?

TWC: date for WeHireAbiity annual event