January 27, 2014

EMPLOYMENT FIRST OVERSIGHT COMMISSION 2013 REPORT

MINORITY REPORT

To Whom It May Concern:

This Minority Report is offered in response to the 2013 Employment First Commission report and represents my perspective regarding the efforts, activities and accomplishments of State agencies as they endeavor to implement the policy set forth in the Employment First Initiative Act. I am Michael Donnelly and I was appointed to the Employment First Oversight Commission in late November 2013. I am the director of Rehabilitation Services, a division of the Kansas Department for Children and Families (DCF). Rehabilitation Services operates the Vocational Rehabilitation (VR) program in Kansas, an employment program for Kansans with disabilities.

First I want to be very clear that I wholeheartedly support the policy hat Kansans with disabilities are offered the opportunity to receive the supports necessary to obtain and maintain competitive integrated employment. In fact, it is my view that not should individuals with disabilities be offered the choice, but I strongly believe that every working age adult, regardless of disability has the expectation that they be employed. People with disabilities who work are less likely to live in poverty, experience improve mental and physical health, feel much less isolated in their community, less likely to abuse substances, and benefit greatly from the improved self-esteem, lifestyle choices and wider personal networks in tier community. Employment simply opens up a world of opportunities.

My first meeting with the Commission as a member was Dec. 2, 2013. Commission members who were present at a Dec. 12, 2013 meeting approved the 2013 report that was distributed to the Kansas Legislature on Jan. 13, 2014. I expressed my strong objections regarding the report in an email dated Dec. 24, 2013. In my view, the report focuses on opinions, hearsay, assumed and anecdotal information for which no effort was made to verify the factual basis for that feedback.

As stated above, my disagreement was expressed on Dec. 24, 2013. My disagreement with the report was met with the following email response on the same day, from Commission Chairman Rocky Nichols to the Commission members:

“Let me remind everyone that these recommendations have been available for commissioners to review for quite some time.  Earlier this year we asked for recommendations from stakeholders.  We obtained, and shared with the Commission, copies of the comprehensive recommendations from stakeholders prior to the November Commission meeting (recommendations from the Big Tent Coalition and the Kansas Developmental Disabilities Coalition).  At the November Commission meeting we discussed the areas we wanted to write recommendations for in our report.  They included the specific areas contained in the stakeholder recommendations.  At the December 2nd Commission meeting copies were again shared of the stakeholder recommendations.”

According to Mr. Nichols, the report and recommendations are based on “people who testified and provided input to the commission over the past year.” As you will note from his email quoted above, the input was provided by two organizations or associations to which he and other Commission members belong.

In spite of my concerns, the report was distributed to the Kansas Legislature on Jan.13, 2014. Since this report is now a part of the public discussion on Employment First in Kansas, I believe it is incumbent upon me, as a member of the Commission, to provide a more complete picture of the efforts underway in State government to implement the Employment First policy. In the following paragraphs, this Minority Report will provide objective and factual information to be considered in measuring the progress of the Kansas Employment First policy.

\*\*\*The sections below each begin with the overall recommendation excerpted from the Commission’s report (bold type). For quotes and other information contained in the Commission’s report, an italicized font is used.

**“Incentivize the Goal of Employment First – The State of Kansas needs to adjust the way employment and support services are funded in order to incentivize the outcome of increasing numbers of Kansans with disabilities in quality competitive and integrated employment. The system needs to use this opportunity to develop new business models where these services can be successful and based on the outcome of competitive and integrated employment.”**

In its first group of recommendations, the Commission’s report recommends that the State modify the funding structure of employment services, incentivize the employment services provided, help providers develop new business models, increase service payment rates and maintain the existing *“rates for day services.”* It is difficult to identify from the report which funding structures need to be amended, except for the use of the terms *“discovery model”* and *“day rates.”* By using these terms, it appears the report is primarily, although not exclusively, focused on services for Kansans eligible for the Home and Community Based Services (HCBS) waiver for individuals with intellectual and /or developmental disabilities. The report does not directly address the employment services systems that focus on Kansans with mental illness, with physical or sensory disabilities, autism spectrum disorders, or traumatic brain injuries.

This section of the report suggests payments to providers are insufficient to cover the costs of services but offers neither objective information regarding which rates do not fully cover costs nor any recommendations that explain how other models would cover costs of the providers. The recommendations here suggest a *“more effective outcomes-based business model,”* but do not offer an explanation of where or how current outcomes-based payment strategies fall short. Please see the discussion concerning rates below.

In these recommendations the Commission suggests that state agencies provide incentives to encourage competitive integrated employment. The commission does not address the types of incentives it recommends, nor does it address the barriers that come with federal funding. For example, at times advocates have suggested that “bonus” payments be made when a provider obtains a certain outcome or group of outcomes. The vast majority of federal funding regulations, e.g., education and VR, prohibit such expenditures.

One incentive for Kansans with disabilities for the intellectual and developmental disabilities waiver waiting list has been in place for three years. The incentive is described in the contracts with community developmental disability organizations (gatekeepers for the HCBS ID/DD waiver). The section V, e 4 of the contract states:

“Persons who are listed on the statewide waiting list for HCBS/MRDD services, referred to RS for employment services and successfully closed from Vocational Rehabilitation Services as competitively employed, will have access to HCBS/MRDD Supported Employment waiver funding needed to successfully maintain their employment, not to exceed the actual level of disability-related support needed to maintain their job. Should they cease to be employed by that employer, the person would no longer be eligible to retain waiver funded services that they received to maintain that job and would remain on the HCBS/MRDD waiting list.”

This provision is a great opportunity for individuals on the waiting list. Fewer than 25 Kansans have exercised their options under this provision.

The Commission’s report recommends a task force be established to design a new system which mirrors the work and composition of the Employment First Workgroup that wrestled with these very issues for as many as five years, only to be thwarted by those advocating to keep the current funding systems and structures in place. It would be advisable for the Commission to obtain commitments from the provider community to truly engage in a system re-design effort.

**“Ensure Employment First Consistently Occurs – Establish proper accountability measures and gate keeping to help ensure that competitive and integrated employment is truly the first option.”**

Through its report, the majority of Commission members state, *“the current system is not leading to consistent competitive and integrated employment outcomes for people with disabilities.”* The report offers no documentation or facts to back up its claim. The Commission goes on to recommend *“gatekeepers”* as a solution to the reported lack of consistency. The exact role of these gatekeepers is unclear, but as described, would create a host of potential conflicts of interest as the potential gatekeeping functions would be embedded in the type of organizations listed who often also provide job preparation, job placement and supported employment services already.

The recommendations in this section also state that the Kansas State Department of Education (KSDE) *“needs”* to provide technical assistance to locally operated schools to implement the Employment First policy. KSDE does, through its special education services division, provide technical assistance on transition to students with disabilities and their families through contracts with Families Together, Inc. and Kansas Secondary Connections. The Commission report does not recognize these efforts.

**“Change the Rate Structure – Disability service and support rates and the entire rate structure needs to be changed. Current system is insufficient to obtain effective outcomes.”**

In this section of its report, the Commission criticizes only one area of “rate structure” that is focused on the manner in which the VR program purchases employment services from community providers. It must be noted that although VR is an important program for employment of Kansans with disabilities, it is by regulation a short-term provider of employment focused services. VR is also the program with the least resources to assist Kansans to become employed and to maintain their employment. It is unfortunate that the authors of the Commission’s report do not address the funding, methodology, responsibilities, or structures of the other programs wherein employment services and supports are available, e.g., HCBS waiver services or sheltered workshops.

Specifically, the report criticizes the *“pay for performance”* rates set by VR for achievement of certain activities, benchmarks and outcomes in its purchase of job placement and employment supports purchased. Further, the report identifies access to job coaching as an example of a service that must be made more readily available as was “learned by the Great Expectations Initiative and something promoted by consultants and experts.” Additionally, this section of the report demands that VR release more information about its clients when a referral is made to an employment placement and supports vendor.

Rate structure and rates: VR is one of several programs that provide and/or purchase job preparation, job placement and support services for Kansans with disabilities seeking meaningful employment. VR began using “pay-for-performance” provider agreements and contracts in 2004 as its preferred method of purchasing the services needed to assist its clients to get and keep jobs. VR moved to this method of purchasing services after years of substandard outcomes achieved by grantee agencies. The Commission’s report does not cite the current VR model’s outcomes or challenge the successes of the VR service and rate structure.

The most recent iteration of its pay-for-performance contracts was put in place in 2008, after 18 months or more of feedback from community providers, advocates and VR staff. Although providers often comment that they are not paid enough to cover the costs of the services provided, none have been able to present objective cost data to document their costs of serving VR clients. As a result, Rehabilitation Services entered into a contract with Public Consulting Group, Inc. in August 2013, to conduct a performance and cost study of the following seven services purchased from community providers across Kansas: Community-Based Work Assessment; Vocational Assessment, Community-Based Job Try-Out; Job Preparation; Guided Placement; Customized Placement; Job Coaching; and Discovery/Supported Employment Great Expectations Initiative. The performance and cost study will be completed by or before June 30, 2014, and will inform the VR program in its endeavor to provide the best and most cost effective services to its clients. Multiple members serving on the Commission, and who authored their report are aware of this study. Others are also participating in the study. Information about the cost and performance study has also been discussed in meetings of the Statewide Rehabilitation Council and the disability sub-cabinet.

The report recommends that VR make job coaching more available to clients in need of supported employment as *“learned by the Great Expectations Initiative (GEI) and something promoted by consultants and experts.”* The report authors imply that job coaching, therefore, is not readily available but do not credit a source for the allegation that job coaching is not available to those who need that service, nor does the report include any factual data to which one can be directed. Here are the facts as known to the VR program:

1. 738 individuals received some degree of job coaching in federal fiscal year 2013 (FFY 2013).
2. VR paid $34 per hour to local job coaching providers for a total of $557,500, or 18,177 hours in FFY 2013.
3. 37 of those 738 were GEI clients who received a total of 1,732 job coaching hours ($58,885).
4. The 16 GEI clients that closed successfully in FFY 2013 required on average only 35 hours of job coaching.
5. Finally, in their final report, the contracted project evaluation consultants for the GEI project made no mention of VR “restricting” job coaching hours. The recommendation espoused in the Commission report is not present in the GEI consultants’ report.
6. Sedgwick County CDDO conducted a non-scientific poll of employment provider staff wages in 2012, and found that job placement and job coaching staff earned between $8 and $16 per hour. VR pays $34 per hour for job coaching on top of the benchmark payments.

The third and final recommendation provided in this section of the Commission’s report speaks to the referral processes from the VR program to community providers. Section 1, part 7 of the RS policy manual details the VR program confidentiality of information requirements. All VR staff and providers are responsible to adhere to these policies and the federal regulations from which they emanate. In many cases, a provider may “want” to know but not “need” to know many details about a particular client. The VR counselor is responsible to protect that information and only disclose what is necessary for the purpose of job placement and supports.

In summary, the recommendations and statements made in this section by the authors of the Commission’s 2013 report are not complete, are anecdotal at best, and do not recognize the regulations, best practices rand safeguards required to provide, either directly or indirectly through contracted providers. A different approach would be to identify the facts and identify the effective practices State agencies are implementing. For example, rather than the anecdotal statement above regarding the GEI project, recognize the Kansas VR approach as described by the technical assistance and program evaluation experts from the University of Kansas in their final report for the GEI project: “The KRS pay-for-performance supplement to the fee-for-service payments moves the KRS payment system towards an outcome-oriented approach that is mutually beneficial to the funding agency (KRS), the Community Rehabilitation Services Programs (CRSP), and to the individuals with a disability receiving services. KRS has initiated a service description and funding arrangement for discovery and supported employment services that has the potential to be a model best practice approach.” (emphasis added)

**“Transition Services – Funding & services must better support the transition from school to work”**

This section of the Commission’s report attempts to address the needs of youth with disabilities who access special education services and for whom there is an Individual Education Plan (IEP). By way of background, Kansas law and regulation requires schools to begin planning for a special education student’s transition from school to the adult world at age 14. According to both federal and state law, the school is required to begin providing transition services to students at age 16 who have IEPs. In this section, the Commission only addresses involvement of the KSDE and VR programs.

The Commission’s report states that “*parents and students have long complained*” about transition plans written and implemented by local school personnel. The Commission fails to recognize the many efforts KSDE has put forward to improve local school personnel’s skills and approach to transition planning. Further, the Commission chooses not to recognize the years of support and funding to the state’s recognized parent education and training center, Families Together and other organizations supporting students with disabilities and their families. They also elect to ignore the many statewide technical assistance initiatives to transfer knowledge from more skilled transition professionals to those seeking to improve. This mentoring initiative has been immensely effective in improving transition planning. These are just a few of the efforts KSDE has undertaken to make systems change.

This section of the Commission report also demands that the VR program provide job placement services during the final year of high school (and as young as 14), that the school, VR and long-term care programs “braid” (mix) funding, and provide staff and services for students participating in school-sponsored activities. This recommendation demonstrates the complete lack of knowledge and recognition of the Commission regarding the use of education, Medicaid and VR funds. More specifically, the recommendation here does not give any consideration of the prohibitions on use of the funds found in authorizing legislation and implementing regulations. This section also ignores the many students with disabilities in Kansas schools who do not have an IEP and may only have a 504 plan.

It is important to recognize the rules about use of state and federal funds for the VR and KSDE services and the coordination of those services. The VR program regulations can be found in 34 C.F.R. 361. Among the regulations affecting use of funds is 34 CFR 361.22 (b) which requires the state VR agency to enter into and abide by a written agreement with the state education agency. Section 3 of that regulation states the agreement must detail, “The roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services.” Additionally, 34 CFR 361.53 requires the VR agency to use “comparable services and benefits” before spending the VR dollars on any client. VR federal regulations clearly prohibit use of federal funds to serve individuals not determined eligible, and who do not have an agreed to Individual Plan for Employment (IPE).

The same is true for education. KSDE may not use education funds to serve individuals who are not eligible. If a student is not eligible, does not have a signed IEP or is no longer in school as a result of age, education or residency, KSDE funding regulations prohibit the expenditure of funds on those individuals.

Medicaid regulations also contain limitations as to who can be served and benefit from the expenditure of funds. The person served under Medicaid must be eligible, the service must be medically necessary, must be on an approved plan of care (if applicable) and in most cases, Medicaid must be the last dollar used.

The bottom line is that recommendations that suggest state agencies simply “braid” funds and serve individuals regardless of eligibility and regardless of the purpose for which the state receives those funds, are neither helpful nor productive.

The Commission’s report authors go on to cite Project Search as a program in which VR should *“fund provider staff”* to serve students during their school activity. Again, regulations do not allow such uses of VR funds. The Commission’s insistence on VR funding Project Search activities also ignores the Memorandum of Understanding (MOU) between KSDE and Rehabilitation Services, as required by 34 CFR 361.22 (b). It also ignores the MOU each school district conducting a Project Search program has agreed to, including the responsibilities for services to students by VR.

Both Congress and the U.S. Department of Education Office of Special Education and Rehabilitation Services (OSERS) have weighed in on the subject of which program (VR or education) is responsible to pay for the services provided to students while still in school and participating in a school program or activity. Both put heavy importance on the agreed to MOUs between VR and the state education and local agencies. For example, in its Committee Report, Congress discusses amendments to the Rehabilitation Act of 1973, as amended, and the division of responsibilities for the VR and state education agency. Congress states:

“The overall purpose of transition services, as defined by the Rehabilitation Act and implementing regulations, is to ensure that all students who require VR services receive these services in a timely manner. There should be no gap in services between the education system and the VR system. **These provisions are not intended in any way to shift the responsibility of service delivery from education to VR during the transition years**. (emphasis added) School officials will continue to be responsible for providing a free and appropriate public education as defined by the IEP. The role of the VR system is primarily one of planning for the student’s years after leaving school.” Reference: Senate Report No. 102-357

In a December 2000 letter from Dr. Judith Heumann, Assistant Secretary for the OSERS, the importance of compliance with agreed upon MOUs between VR and the state education agency (SEA) and local education agencies was again emphasized.

“Although these provisions of the IDEA (Individuals with Disabilities Education Act) and the Rehabilitation Act may at first seem in conflict, no conflict exists because these provisions are read in concert with each other and with our pertinent provisions of both laws. The SEA is responsible for providing and paying for services required to be provided to students with disabilities who are eligible for services under the IDEA, and the State Vocational Rehabilitation agency is responsible for providing and paying for the services agreed to in an eligible individual’s IPE. (See Section 612(a)(11) of the IDEA and Section 101(a)(9) of the Rehabilitation Act.) When the responsibility of these agencies for serving students with disabilities appears to overlap, the IDEA and the Rehabilitation Act require the SEA and the State Vocational Rehabilitation agency to develop an interagency agreement to determine the financial responsibility of each public agency.

“The formal interagency agreement between the SEA and, as appropriate, one or more local educational agencies (LEA’s), and the VR program defines the parameters for collaboration in the delivery of transition services.” (emphasis added)

To be clear, the 6th section of the Project Search MOUs identify the “responsibilities” of VR.

VR agrees to:

* “Provide VR services for students in accordance with KRS policy under the following conditions:
  + The student has been determined eligible for VR and can be served within the Order of Selection.
  + The student (and his/her parents or representative if appropriate) and the VR counselor have agreed to an IPE.
  + The goods or services provided will be necessary for post-high school training or employment, and will substantially contribute to achievement of the competitive, integrated employment object on the IPE.  Employment or post-secondary services provided by VR must occur outside the established school sessions.  “School sessions” refers not only to the school semester or term, but also to the school day.
  + Consideration of comparable benefits and application of the economic need policy are required.”

In a message from me to one Project Search program on March 5, 2013, I clarified the intent behind Section 6 to ensure all involved would understand that VR can and does provide supports and services for after school and weekend jobs.

“Additionally, the RS policy manual supports this language.”

“Here is an excerpt from Section 3/Part 12:

* Vocational goals/objectives: In development of the IPE for students, the vocational goal will be as specific as reasonably possible. If the student is uncertain of the vocational goal, a more general goal, such as a general job group of “clerical,” may be indicated. In such instances, assessment services should be considered as services on the IPE to help identify a more specific vocational objective. Once the specific vocational objective is identified, the IPE should be amended
* Purchase of equipment or provision of VR services while the student is still in school: Local education authorities continue to be responsible for providing a free and appropriate education as defined by the IEP during the transition years.
* However, if equipment is needed for post-high school training or a job and cannot be funded through other sources, counselors have the flexibility to authorize such purchases for eligible students while they are still in school as long as the service is identified on the IPE. (Note that the IPE being in place means that the student is NOT on a waiting list through Order of Selection).
* Services may be initiated while an eligible student is still in school provided that the services are identified on the IPE and related to achievement of employment. For example, on-the-job training, community job tryouts, work experience, referral to community resources, benefits analysis/planning, and career counseling and guidance, may be provided while the student is still in school if this will result in work skills consistent with the vocational objective on the IPE. As with any IPE, RS will consider availability of appropriate comparable benefits in the provision of services.
* Effective Date: April 10, 2006

That clarification is in keeping with both Congress’ and OSER’s policy positions as described above and was distributed by me to VR staff. It was also distributed among Project Search sites. VR does and will continue to serve high school students with disabilities within the context of its federal regulations, policies and resources.

The Commission goes on to recommend that VR services begin at age 14. VR regulations governing eligibility require that a client be able to benefit “in terms of an employment outcome.” Given that 14-year-olds generally cannot legally work under the fair labor standards act (FLSA), they are by definition, unable to achieve an employment outcome.

The Commission’s report also demands that the VR staff be present at IEP meetings of students preparing to exit high school to the adult world. It is unfortunate that once again, the authors of the Commission’s report do not call on community providers, other advocates and disability programs to participate effectively in IEP transition planning meetings to assist with employment planning. Instead, they call on the smallest program to resolve the needs of students with disabilities. Again, the Commission does not recognize the realities of this recommendation. One basic reality is the number of students with disabilities who exited high school in 2013, was approximately 5,400. Given that a number of those were dropouts, students who moved, etc., it can be estimated that about 4,400 of those exited high school as planned, e.g., graduation, certificate, GED, etc. In addition to that number, those who invite VR participation in their transition planning as early as 18 months prior to exiting high school causes that number to more than double.

In an earlier recommendation, the Commission suggests VR begin providing services to students with disabilities at age 14 which brings the number of potential student applicants to nearly 31,000 and for whom the Commission demands VR be present for their IPE transition planning meetings and activities. RS employs between 75 and 80 qualified VR counselors who served close to 15,000 Kansans in FFY 2013. VR counselors average about 130 open cases at any given point in their year. To add the number of VR staff necessary to meet the demands of the Commission and this recommendation would simply overwhelm the budget with personnel costs, resulting in an absence of VR service dollars and therefore very long waiting lists for VR services.

**“Track Data to Show Improvement in Employment First – Kansas State agencies must effectively track data specifically detailing the numbers and percentages of Kansans with disabilities in competitive and integrated employment.”**

In this group of recommendations, the Commission alleges that few State programs track employment data regarding people with disabilities. The Commission does not identify which agencies or programs do or do not record or report this information. In truth, many State agencies providing employment services to Kansans with disabilities track and report data on employment outcomes, e.g., DCF, KDHE, KDADS, Commerce. Additionally, the Commission demands that KSDE report the numbers and costs of students exiting high school and beginning to spend their day in sheltered workshops. KSDE annually assesses the transition outcomes of students with disabilities one year after exiting high school. The annual data collected provides the percent of students who go into competitive employment each year as part of Indicator 14 which is part of the Kansas State Performance Plan reported annually in the Kansas Annual Performance Report. Perhaps a better source for those data sets is the network of community providers who provide and promote sheltered employment programs and are reporting to the Community Developmental Disability Organizations (CDDOs).

KSDE data is available to anyone who is interested simply by going to their website, [www.KSDE.org](http://www.KSDE.org). The site offers data for both general and special education including their post-school outcomes data.

The Kansas Department of Commerce is another example of a State agency that reports its data and makes it available to the public through the State’s Workforce Board website. The agency’s most recent quarterly reports can be found at:  [http://www.kansasworksstateboard.org/News/performanceReports/Pages/default.aspx](https://email.dcf.ks.gov/owa/redir.aspx?C=c4013cbe8f774da8ab1fc4c574fab90a&URL=http%3a%2f%2fwww.kansasworksstateboard.org%2fNews%2fperformanceReports%2fPages%2fdefault.aspx).

VR data is available on the DCF/Rehabilitation Services public website in the annual state plan report on goals and indicators, [www.dcf.ks.gov](http://www.dcf.ks.gov).

I recommend the Commission take the time to explore the facts available to it by examining the many reports state agencies produce and publish regularly and that are available from the various agency public websites.

**“Prove Measurable Progress – State agencies need to issue a yearly report to the people of Kansas proving measurable progress and full implementation of the Employment First law by detailing specific strategies and changes that the agencies have made at the program, policy, procedure, funding and systemic levels. The Employment First Oversight Commission would like to receive a copy of that yearly report and pledges to help the State promote and distribute it to Kansas stakeholders.”**

During the 2012 and 2013 Kansas legislative sessions, state agencies reported on progress toward the goals laid out in the statute. Each applicable agency also reports on progress for the disability sub-cabinet each quarter. Lastly, the progress and achievements of each State agency and program providing employment services to Kansans with disabilities was reported to the National Council on Disability in its quarterly meeting held in Topeka in December 2013. Progress being made by State agencies has consistently been reported in multiple venues.

**“Make the Business Case – The State needs to make the business case for employing people with disabilities in competitive and integrated settings, including**

**Find and Engage Businesses – The State needs to find and engage business to help promote the employment of people with disabilities in competitive and integrated settings, including**

**Support Businesses - The State needs to support business in these efforts, including:”**

In these three recommendations, the Commission report demands that State agencies employ staff dedicated solely to employer development, development of business leadership networks (BLN), and to gather input from employers and, provide job coaching. The report also calls on State agencies to set aside funds specifically to support individuals with disabilities to maintain employment. The authors of the Commission’s report fail to provide details of State agency activities that address this need, although several members knew or should have known of the efforts being undertaken. For example: DCF provided testimony during the 2013 Kansas Legislature that included efforts of the agency to conduct more effective employer development and job placement. Similar testimony was provided to the National Council on Disability in December 2013.

DCF has been actively pursuing this strategy for nearly a year, a fact ignored by the Commission in its report. RS has initiated an employer development and marketing initiative in collaboration of members of the Statewide Rehabilitation Council, a fact known to the Commission chairman. A position is currently in recruitment for an Employer Development and Marketing Specialist to coordinate and implement this VR initiative. DCF’s Economic and Employment Services division hired five employment program services directors in early 2013—one position in DCF central office and four positions located in the field offices of DCF. It is also worth noting that DCF offers employment as the first service to Kansans seeking public assistance benefits to both those with and without disabilities.

RS launched a demonstration project (Great Expectations Initiative (GEI)) in 2010. During that project the GEI contract for Sedgwick County Developmental Disability Organization (SCDDO) funded two important activities: first, SCDDO completed a marketing survey of Wichita area employers on their perspectives regarding employment of individuals with disabilities; second, through that same contract, RS funded activities needed to develop a business leadership network (BLN) for the Wichita metropolitan area which was completed through a sub-contract to KETCH. The BLN was established in part due to the commitment of resources from both RS and the Kansas Commission on Disability Concerns. The survey completed by SCDDO confirmed findings of several much larger studies that have taken place over the last decade and will continue to inform DCF in its efforts to carryout employer development and marketing strategies.

The Kansas Department of Commerce conducts outreach and assistance services to employers throughout Kansas. Among the newer development incentives offered employers is the KANSASWORKS Employer Partner Incentive program established by Governor Brownback and in cooperation with DCF. Commerce also established the Disability Employment Initiative in 2010 to improve practices of the Kansas workforce service centers to assist Kansans with disabilities to find and keep jobs. Commerce has been an active partner in the development of business leadership network in other communities in Kansas. The Kansas Commission on Disability Concerns has been an important partner in that effort as well. It is disheartening that the Commission only chose to cite these efforts as *“supportive”* of Employment First, when in fact they are major initiatives by the Administration and State agencies.

These five activities are just a few of the efforts put forth by state agencies to improve the employment outcomes of Kansans with disabilities. The Commission report’s authors go on to make recommendations for the state to provide services for skill development, on-going job coaching and funds to be awarded to employment services providers to “support business.” Kansas has multiple programs that offer those services today including, but not limited to, VR services, rehabilitation services in the HCBS waiver programs, mental health employment services programs, workforce system services, and the vast resources paid to providers for services not available within the context of the Medicaid programs.

**“Support Self Employment - The State needs to support self-employment for persons with disabilities.”**

The Commission’s report recommends continued *“resources and services through vocational rehabilitation for entrepreneurs starting and running their own businesses.”* During FFY 2009 to 2013, the VR program successfully supported 165 individuals with disabilities in pursuing their own business. Those 165 individuals earned a total of $59,715 per week in wages (or $3,105,180 annually) at the time their VR case was closed. VR has a long history of successfully supporting entrepreneurs with disabilities to begin and sustain their own businesses. Many of the success stories featured on the Kansas Employment First website are former clients of the Kansas VR program who obtained necessary assistance starting and building their businesses. The Employment First website is funded by the Kansas Council on Developmental Disabilities and can be found at [www.employment1st.org](http://www.employment1st.org).

**“Benefits Planning: a Key to Unlock Employment – Because effective benefits planning is important for people with disabilities to obtain employment, the State of Kansas needs to ensure a comprehensive network of benefits planning is available.**

**Better Integration of Benefits Planning in State Programs and Services.”**

Benefits counseling is key to the success of many Kansans with disabilities in their pursuit of competitive integrated employment. However, it is important to recognize the limitations of that service. The report as it stands, does not describe the numbers and types of persons who might benefit from benefits planning, the focus of the planning they’re recommending, or the anticipated outcome of benefits planning. For example, the Commission’s report fails to explain that, generally speaking, benefits planning is intended to provide recipients of Supplemental Security Income (SSI) and beneficiaries of the Social Security Disability Insurance (SSDI) programs a plan to exit those systems as a result of earned income.

The Commission fails to address the realities that many disability services providers strongly encourage their clients to plan NOT TO EXIT the benefits systems for a variety of reasons. All too often, a provider’s interest is continuing to earn income by maintaining the services already in place for that client and paid for by those very benefits systems on which they’re supposed to counsel the person. The Commission also fails to recognize the importance and success of KDHE’s Working Healthy Medicaid buy-in program which allows Kansans with disabilities to retain the very important publically funded health coverage that provides those medically necessary services often not covered by private health coverage, e.g., personal assistance, medications not included in other formularies, assistive devices, etc.

As stated above, benefits counseling that empowers a person with disabilities to maintain employment and exit the benefits systems, is very important. Unfortunately, the number of Kansans with disabilities who have either SSI/SSDI and who are seeking competitive integrated work is a relatively small percentage of those seeking employment services from state agencies. The Social Security Administration (SSA) reports that more than 100,000 Kansans have received their “Ticket to Work.” A Ticket is provided to every individual who SSA determines is disabled, and based on a variety of factors, may be able to go to work or return to work with the right services and supports. More than 90 percent of Tickets are assigned to the VR program rather than other employment networks. The number of ticket holders assigning their ticket and seeking employment services is very low.

For example, 5,418 eligible VR clients served in FFY 2013 had SSI, SSDI or both. That’s fewer than 40 percent of those served. The number of persons with SSI, SSDI or both and receiving services from a Workforce Center is also very limited. The Kansas Department of Commerce reports that in one month, only 268 individuals receiving SSI, SSDI or both received services along with 76 receiving some other type of disability benefits, e.g., private disability insurance. That compares to the average 32,500 (390,000 annually) Kansans seeking employment services from that system in a given month.

The Commission’s report recommends that Commerce *“needs to reaffirm to all its KANSASWORKS employment counselors the importance of effective benefits counseling as part of the employment plan for all customers with disabilities seeking employment.”* The report goes on to say*, “. . . individuals with disabilities have access to the employment counseling services of the KANSASWORKS system of twenty-plus workforce centers and its website to support their active job seeking.”*

The Commission fails to recommend any strategies that address the underlying issue that those who have SSI, SSDI or both, or those receiving certain long-term care services are simply not pursuing competitive integrated employment that leads to self-sufficiency. Increasing the number of benefits planners alone simply does not accomplish that goal. Nor does the Commission make any recommendations to address the real challenge that long term dependence on public disability programs and inclusion in the disability industrial complex creates.

The report recommends that all VR *“reaffirm”* the need for benefits planning in all VR case plans and contracted provider services. First, the report assumes VR counselors are unaware of the need for effective planning. And secondly, this section of the report recommends VR require all contracted providers to offer the service as well. In addition to the cost of such a recommendation, the Commission does not address the all too often conflict for the disability service provider who is also the provider of other services the person receives. The conflict of interest is apparent and inappropriate.

The Commission’s recommendation that all employment services be offered in such a way as to reach “optimum level of sustainable financial self-sufficiency,” is simply a restatement of the purposes of each of the employment services offered directly by State agencies.

This recommendation by the Commission is unclear. All eligible Kansans seeking employment have access the network of workforce Centers and their staff either at one of their 25 local offices or through their interactive video network at other access sites around the state. Commerce also provides two mobile units for workforce development activities. Further, the KANSASWORKS web-based services are available to all.

**“Managed Care Contracts and Outcomes need to support Benefits Planning”**

The State has recognized and emphasized the importance of employment by including in all three KanCare contracts pay- for- performance measures for gaining and maintaining competitive and integrated employment for individuals. Even though contracts with the Managed Care Organizations (MCOs) have already been determined and agreed upon, the State has and will continue to be in conversations with the MCOs about the best practices and strategies to help accomplish these employment goals.  In fact, the state has already participated in conversations with the MCOs to discuss if benefit planning services could be a possible value added service. Given the current contractual situation, this collaborative and advisory role is more helpful and appropriate.

**“Innovate with a 1915i application – The State of Kansas needs to apply for a 1915i State Plan Option to provide employment services, focused on competitive and integrated employment, for persons with disabilities not otherwise eligible for the 1915c HCBS Waiver.”**

As members of the Commission know, Kansas’ focus is on the KanCare 1115 waiver and intends to move away from 1915c waivers over the next few years. The 1115 provides the State with flexibility not found in the 1915c waiver system. The focus of our State and the Commission needs to be centered on increasing competitive and integrated employment services through KanCare for Kansans eligible for the HCBS.  We have placed a new emphasis on this through KanCare pay-for-performance measures for gaining and maintaining competitive and integrated employment.

**“Build on the Successful WORK program – There should be an examination of whether the WORK program requirements could be adjusted so that a person with a disability who meets the SSI definition of disability and is employed could still qualify for and receive services from this helpful program. If this change is possible, then this policy should change.”**

The KDHE Medicaid state plan program, Work Opportunities Reward Kansans (WORK) is a very successful personal assistance program for eligible workers with disabilities. This recommendation is admirable but is hobbled by the rules and regulations of the Medicaid program. SSI recipients are automatically eligible for Medicaid and do not need access through the Medicaid buy-in program, Working Healthy. Therefore, SSI recipients who need personal assistance services in order to become and stay employed, have access to those services through one of the HCBS waiver programs. An SSI recipient who engages in employment and exits the SSI program, can shift to the Working Healthy program and continue to receive the necessary personal assistance services needed to maintain employment.

**“Help Make Project SEARCH even more Successful – KSDE should make adjustments to allow rural communities to benefit more from Project SEARCH.”**

The Commission’s report authors recommend the KSDE allow smaller, rural school districts to use special education funds to provide Project Search to students who have exited school and are no longer eligible for services. KSDE, like other heavily federally-funded programs is prohibited from providing services to individuals who are not eligible by law and regulation. KSDE is a strong supporter and promoter of Project Search. A stronger recommendation might be that the Kansas Council on Developmental Disabilities (as the primary sponsor of Project Search activities) re-direct a portion its funding from lower priority initiatives to include sufficient funding to rural schools looking to implement or expand Project Search to local youth no longer in school.

In closing, the Commission’s report that was distributed lacked any mention of the members of the Commission. Kansans and policy members should know just who is making these recommendations. The list of members as of Dec. 31, 2013 is as follows:

Rocky Nichols, Chairman Barney Mayse, Vice-Chairman

Topeka Overland Park

Ron Pasmore Wendy Parent-Johnson

Wichita Sioux Falls, South Dakota

Senator Dan Kerschen Robert Hull

Garden Plain Wichita

Michael Donnelly

Lawrence