

DEPARTMENT OF DEFENSE**Office of the Secretary****National Defense Panel Meeting**

AGENCY: DoD, National Defense Panel.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on November 13 and 14, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public from 0900-1700, November 13 and 14, 1997 in order for the Panel to discuss classified material.

DATES: November 13 and 14, 1997.

ADDRESSES: Suite 532, 1931 Jefferson Davis Hwy, Arlington VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104-201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

Proposed Schedule and Agenda

The National Defense Panel will meet in closed session from 0900-1700 on November 13 and 14. During the closed session on November 13th from 0900-1700 the NDP staff will present the Panel with status updates on Counterproliferation, WMD Deterrence, and Humint at the Crystal Mall 3 office. On November 14th from 0900 to 1700 the NDP will hear staff presentations on Nuclear Policy, Issue Brief on Industrial Base and the Rollout Update at the Crystal Mall 3 office.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

FOR FURTHER INFORMATION: Please contact the National Defense Panel at (703) 602-4176/6.

Dated: October 30, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-29185 Filed 11-4-97; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF EDUCATION**Direct Grant Programs and Fellowship Programs**

AGENCY: Department of Education.

ACTION: Correction; Notice.

SUMMARY: On October 7, 1997, the Education Department published in the **Federal Register** (62 FR 52429) a notice announcing direct grant programs and fellowship programs under which the Secretary has invited or expects to invite applications for new awards for fiscal year 1998. This notice corrects a telephone number listed in Chart 5 of the October 7 notice. On page 52441, the telephone number (202) 205-9182 for the Grants and Contracts Services Team, Office of Special Education and Rehabilitative Services, Office of Special Education Programs is corrected to (202) 260-9182.

FOR FURTHER INFORMATION CONTACT: Art Stewart, U. S. Department of Education, 600 Independence Avenue, S.W., Room 3652, ROB-3, Washington, DC 20202-4248. Telephone: (202) 708-8515. Internet: (Arthur—Stewart@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number, if any, listed in the individual application notices. If a TDD number is not listed for a given program, individuals who use a TDD may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: October 30, 1997.

Donald Rappaport,

Chief Financial and Chief Information Officer.

[FR Doc. 97-29199 Filed 11-4-97; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION**Arbitration Panel Decision Under the Randolph-Sheppard Act**

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on June 6, 1997, an arbitration panel

rendered a decision in the matter of *Richard Fracasso v. Rhode Island Department of Human Services, Office of Rehabilitation Services (Docket No. R-S/94-2)*. This panel was convened by the U. S. Department of Education pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioner, Richard Fracasso.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arnsnow, U. S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Mary E. Switzer Building, Washington D.C. 20202-2738. Telephone: (202) 205-9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8298.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may also view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

<http://gcs.ed.gov/fedreg.htm>
<http://www.ed.gov/news.html>

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1-888-293-6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219-1511 or, toll free, 1-800-222-4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Mr. Richard Fracasso, a blind licensee, completed the Randolph-Sheppard vending facility training program under the auspices of the Rhode Island Department of Human Services, Office of Rehabilitation

Services, the State licensing agency (SLA).

Mr. Fracasso was placed on the Graduate Permanent Transfer Seniority List, effective November 22, 1991. The SLA, according to section IX of its Rules and Regulations governing the Randolph-Sheppard vending program in Rhode Island, maintains two lists regarding vendor transfer and promotions. One list is a Vendor Permanent Transfer Seniority List, which ranks licensed operators based on the length of time the licensee actually has operated a vending facility. The other is a Graduate Permanent Transfer Seniority List, which ranks graduate licensees awaiting a vending facility location by seniority, based upon each person's graduation date from the vending facility training program.

In May 1993, the Woonsocket Post Office vending facility became open for bid, and complainant decided not to submit a bid for this location. Also, no other licensed operator or licensee awaiting a vending assignment submitted a bid at the time of the bid closing. Subsequently, the SLA assigned another recent licensee to this location, which placed the new graduate on the Vendor Permanent Transfer Seniority List.

In July 1993 the Providence Health Lab came up for bid, and Mr. Fracasso submitted his bid for this location. The official bidding period closed, and the SLA notified complainant that the Providence Health Lab had been awarded to the licensee who had been assigned to operate the Woonsocket Post Office.

Mr. Fracasso requested and received on December 16, 1993, a State fair hearing regarding the placement of the other new licensee at the Providence Health Lab. The complainant alleged that the SLA illegally awarded that location to the other vendor since the other new vendor never actually operated the Woonsocket Post Office vending facility. Mr. Fracasso further alleged that the SLA's action in placing the new graduate on the Vendor Permanent Transfer Seniority List gave that vendor an unfair advantage over complainant in his bid on the Providence Health Lab.

On March 4, 1994, the Hearing Officer issued his opinion affirming the SLA's decision to place the other new graduate at the Woonsocket Post Office since no one else from either of the two transfer seniority lists had placed a bid on the facility. The Hearing Officer also concluded that "when the health laboratory vending facility became subject to a bid solicitation, the award was granted to the most senior vendor

who bid. The most senior vendor who bid was the recent graduate from the training activity who had been awarded the vending facility in Woonsocket, R.I. on July 12, 1993."

The SLA adopted the Hearing Officer's decision as final agency action, and it was this decision that Mr. Fracasso sought to have reviewed by a Federal arbitration panel. A Federal arbitration hearing was held on December 4, 1995, concerning this complaint. On December 20, 1996, the panel reconvened, one panel member dissenting, at the request of the complainant to hear additional evidence.

The issues heard by the arbitration panel were—(1) Whether the SLA violated its bidding procedures in a manner that adversely affected Mr. Fracasso; (2) If the SLA were found in violation of its bidding procedures, whether an arbitration panel convened by an administrative agency of the Executive branch of government could order a State to pay money damages to a private individual under the Randolph-Sheppard Act; and (3) If the SLA were found in violation of its bidding procedures, what other remedies, if any, would be appropriate to redress the deprivation caused by the SLA of the complainant's enforceable rights.

Arbitration Panel Decision

Based upon the evidence presented at the hearing on this matter, the majority of the arbitration panel concurred with the SLA's acknowledgement that it had violated its own bidding procedures in awarding the Providence Health Lab vending facility to another vendor.

While admitting the violation, the SLA stated that the violation was not intentional and was a result of a bureaucratic error. The complainant, on the other hand, argued that the violation was intentional and was specifically directed in favor of the other vendor. On this point, the majority of the panel ruled that there was no compelling evidence presented to support the complainant's contention that the SLA intentionally favored the other vendor.

The panel next took up the issue of what remedies, if any, exist once a finding has been made that the SLA violated its bidding procedures.

The majority of the panel ruled, after extensive review of case law, that any award that required the State of Rhode Island to compensate Mr. Fracasso for misdeeds committed against him is barred by the sovereign immunity principle contained in the Eleventh Amendment to the United States Constitution despite the fact that the

SLA had violated its own bidding procedures.

The panel noted further that the United States Court of Appeals for the Eighth Circuit in *McNabb v. U.S. Department of Education*, 862 F.2d 681 (8th Cir. 1988), has allowed prospective damages—those that accrue after initiation of the arbitration—but not retrospective damages. However, the panel found that the complainant did not continue to incur damages as a result of the SLA's violation of the Act. In addition, the panel found that, while the complainant could be awarded costs under section 107d-2(d) of the Act, these costs did not include attorney's fees.

Concerning the remedy for the SLA's violation affecting complainant's seniority rights, the majority of the arbitration panel ruled that the Eleventh Amendment presented no bar because payment of money damages was not involved. The majority of the panel found that complainant was entitled to be reinstated to his appropriate place on the SLA's seniority list, and the SLA was directed to take any and all steps necessary to reinstate him.

One panel member dissented from the majority opinion.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: October 31, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97-29270 Filed 11-4-97; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy

ACTION: Notice of open meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATE: Wednesday, November 19, 1997: 6:00 p.m.–8:56 p.m. (Mountain Daylight Time).

ADDRESSES: Los Duranes Community Center, 2920 Leopoldo NW, Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager,