

Administrative Guidance for Regional Water Planning Group Sponsors (Designated Political Subdivisions)

Sixth Cycle of Regional Water Planning

Water Supply Planning Division

Regional Water Planning

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1 Introduction

The purpose of this guide is to provide an orientation to the responsibilities of acting as a regional water planning group's (RWPG) designated political subdivision, i.e. the Sponsor for the RWPG. Included below are best administrative practices that may be used by a Sponsor in the execution of their duties on behalf of the RWPG.

Each five-year planning cycle, an RWPG must designate a political subdivision to sponsor/administer the planning process, apply for and manage a contract for grant funds from the Texas Water Development Board (TWDB), and procure and manage a contract with technical consultant(s) to develop a regional water plan on behalf of the planning group. Examples of RWPG sponsors include river authorities, municipalities, or councils of governments.

Key responsibilities of the RWPG's sponsor include the following tasks:

- Apply for and receive financial assistance from the TWDB for the development of a regional water plan or a plan revision
- Execute and administer the Regional Water Planning Grant contract with the TWDB, including invoicing and payment for eligible activities
- Procure the technical consultant(s) that will assist the RWPG with plan development
- Execute and administer the subcontract(s) between the RWPG political subdivision and the technical consultant(s)
- Organize the RWPG meeting locations, public notices, agendas, meeting presentations, handouts, meeting minutes, and new member solicitations
- Maintain RWPG member contact information
- Maintain RWPG website
- Ensure all regular, committee, and subcommittee meetings of the RWPG are posted and held in accordance with the Texas Open Meetings Act, the Texas Public Information Act, statute, and rules
- Deliver the regional water plan on behalf of the RWPG every five years

In addition to this guide, the RWPG sponsors should familiarize themselves with and utilize the RWPG administrative resources located on the TWDB's Regional Water Planning (RWP) Sixth Cycle Working Documents webpage. Hyperlinks to useful TWDB webpages and documents mentioned throughout this guide are found in Section 6.

2 **TWDB Rule and Contract Requirements**

RWPGs and their sponsors must adhere to the TWDB's rules on regional water planning and regional water planning grants, as well as requirements in the TWDB grant contracts. This section highlights the specific responsibilities within the TWDB's rules and notable grant contract requirements that are directly applicable to the political subdivisions.

2.1 Sponsor responsibilities from TWDB rules (31 Texas Administrative Code Chapters 355 and 357) and TWDB contracts

- 1. Obtain designation by the RWPG as the political subdivision to be eligible to apply for, receive, and administer TWDB funds on behalf of the region (§357.12(a)(4); §355.90(b)(5)).
 - a. This process must occur at the beginning of each new five-year planning cycle.

- b. The RWPG must ensure that the political subdivision has the legal authority to conduct the procurement of professional services and enter into the contracts necessary for regional water planning.
- c. The RWPG must provide a written designation to the TWDB Executive Administrator (EA) naming their designated political subdivision.
- d. The RWPG may, at its own discretion, select a different political subdivision at any time.

2. Apply for planning grant funds through a formal Request for Application (RFA) process (§355.91).

- a. The TWDB will notify RWPGs that funds are available and that applications will be accepted from RWPG sponsors for grants to develop. A formal RFA will be posted on the TWDB website with application instructions and supporting documentation during each RFA process.
- b. Sponsors are responsible for following all application instructions and submitting a complete application.
- c. Once the application is submitted, the EA may request clarification to evaluate the application. Incomplete applications may be rejected and returned to the applicant.
- d. The TWDB's Board may approve, deny, amend, or continue consideration of an application. If the Board approves an application for funding, the sponsor will be notified of the amount of funds available and the deadline for executing a contract with the Board. If the applicant does not enter into a contract by the specified deadline, then the Board's approval expires, and no funds will be provided.

3. Procure technical consultant(s) at the beginning of each planning cycle to assist the group in developing or revising a regional water plan (§355.92(d)).

a. The RWPG sponsor must follow state procurement requirements in Texas Government Code Chapter 2254.

4. Execute the following contracts:

- a. The initial regional water planning grant contract with TWDB and all subsequent contract amendments that are issued during the planning cycle. TWDB contracts and amendments must be executed by specified deadlines.
- b. The subcontract and subcontract amendments between the RWPG sponsor and the technical consultant(s).
 - i. Note that all subcontracts must be updated to reflect changes or additions to the TWDB contract. Subcontracts and subsequent amendments must be submitted to <u>contracts@twdb.texas.gov</u> for TWDB review and acceptance.
 - ii. Always include the TWDB/political subdivision contract number in the email subject line and cc your region's TWDB Planner when submitting to the TWDB contracts inbox. Complete subcontracting guidelines are available on the <u>TWDB</u> website.
 - iii. Subcontracts should reflect the estimated total study cost allocated for tasks, as applicable; however, contractors are responsible for managing expenses within the committed amount. Clauses may be added to subcontracts limiting reimbursement up to committed amounts.

- 5. Adhere to the limitations of use of contractual funds that are identified in the contracts and submit either advance or reimbursement payment requests with all necessary backup documentation to the TWDB on a guarterly basis as stated in the TWDB contract.
 - a. Payment requests and progress reports are due on a minimum quarterly basis as specified in the TWDB/political subdivision contract.
 - Advance/reimbursement request packets should be emailed to <u>invoice@twdb.texas.gov</u> and include copies of invoices, receipts, and statements. Provide details of travel information and proof of payment to subcontractors. Progress reports should be submitted as a separate PDF file with your payment packet.
 - Always include the TWDB/political subdivision contract number in the email subject line and cc your region's TWDB planner when submitting to the TWDB Invoice inbox
 - iii. The TWDB will provide a payment request form to the political subdivision (a template is available <u>online</u>).
 - iv. If the political subdivision chose the "advance" method of distributing RWP funds, then these advances must be deposited into a separate interest-bearing account and the "interest earned" amount must be recorded on the payment request checklist.
 - v. Advance requests must be submitted quarterly, but a new advance will be not be issued until 90 percent of the previous advance has been expensed. Advances are distributed on a 20 percent maximum of total committed funds basis.
 - b. Adjustments may be applied to the TWDB/political subdivision contract task or expense budget, in line with the following contract requirements:
 - i. If a requested adjustment exceeds the 35 percent threshold of either a task's total budget or expense line amount, the political subdivision must submit a request for a Budget Memorandum and obtain approval from the TWDB. The RWPG must provide approval for the political subdivision to request adjustments to the TWDB/political subdivision contract task or expense budgets at a regular meeting. The political subdivision may then send the request by email to the region's TWDB planner. The request should include a written documentation of why the revision is necessary, the date the planning group approved the budget memorandum request, and a table showing the current budget and the proposed revision (contact the regional planner for a budget memorandum template).
 - c. Be aware that some task budgets may require scoping and a written "Notice to Proceed" prior to commencing reimbursable work, as noted in the contract.
- 6. Develop and maintain a RWPG website or a RWPG-dedicated webpage on the political subdivision's website for posting planning group meeting notices, agenda, materials, and plan information (§357.21(b)).
- 7. Ensure all meetings of the RWPG, committees, and subcommittees are posted and held in accordance with the Texas Open Meetings Act and additional Chapter 357 public notice requirements for specific RWPG activities (§357.21).
 - a. Notices, meeting agendas, and materials must be posted in accordance with §357.21. A Regional Water Planning Public Notification Quick Reference document and a Public

Notification Quick-Reference spreadsheet tool are available on the TWDB's RWP Sixth Cycle Working Documents webpage, under 'Administrative Documents', to help illustrate notice requirements and calculate when various notices and/or documentation should be provided for RWPG meetings and activities.

- b. At a minimum, all meeting notices must be posted on the RWPG website and on the Texas Secretary of State's website and must include
 - i. the date, time, and location of the meeting;
 - ii. a summary of the proposed action(s) to be taken;
 - iii. the name, telephone number, email address, and physical address of a contact person to whom questions or requests for additional information may be submitted; and
 - iv. a statement of how and when comments will be received from the members and public.
- c. Notification lists for surface water rights holders, public water utilities, and general/special law districts and river authorities may be obtained from the TWDB's RWP Sixth Cycle Working Documents webpage.

8. Maintain RWPG membership contact information and provide membership lists to the TWDB (§357.11(f)).

- a. Provide a current list of voting and non-voting positions to the TWDB. The list must identify each required position, any other positions added by the RWPG, and the individual member's name that fills each position.
- b. Since most planning group communications occur via email, it is recommended that the political subdivision request updated email address information from planning group members at every RWPG meeting.
- c. Maintain and use contact lists (depending on the activity) for voting and non-voting RWPG members, any person or entity who has requested notice of RWPG activities, county clerks within the regional water planning area (RWPA), each mayor of a municipality that is located in whole or in part of the RWPA with a population of 1,000 or more or which is a county seat, and each county judge of a country located in whole or in part of the RWPA.

9. Provide a copy of RWPG's bylaws to the TWDB (§357.11(c)).

a. It is recommended that the RWPGs review and/or update their bylaws at least at the beginning of each planning cycle to account for legislative or other changes that may have occurred since the previous bylaws update.

10. Submit draft and final regional water plans in accordance with requirements in §357.50.

- a. The RWPG must adopt their draft and regional water plans by a vote and submit their final adopted regional water plan to the TWDB for approval.
- b. Prior to adopting a final regional water plan, the RWPG must consider written or oral comments received from the public and the TWDB on the draft plan in accordance with TWDB rules.

3 Recommended Best Practices for RWPG Sponsors

This section includes recommendations and information for RWPG sponsors related to communication, new member orientation, administrative costs, web posting and maintenance, and use of committees.

3.1 Communication with RWPG members

- 1. Request updated planning group member contact information at each RWPG meeting.
- TWDB regularly emails broadcast communications and newsletters to all RWPG members, sponsors, and technical consultants. The RWPG sponsor should mail these communications to any members who do not have email. The RWPG sponsor may also forward additional TWDB communications sent to political subdivisions and consultants regarding plan development to RWPG members as appropriate.
- 3. Coordinate with adjacent RWPGs to keep liaison information current. Each RWPG must have a liaison that serves as a non-voting member to each adjacent region. Forward meeting notices and agendas to neighboring planning group liaisons. Liaisons should then pass along this information to their respective RWPGs.
- 4. During development of the draft RWPG meeting agenda, it is recommended that the RWPG sponsor solicit comments from the planning group chair and/or officers, consultants, and the TWDB planner in order to ensure that the final agenda will meet necessary action item requirements.
 - a. Include a standing agenda item for updates from groundwater management area representatives, liaisons, and other non-voting members.
 - b. Include a standing agenda item to receive public input. RWPGs may want to consider the practice of handling items on the agenda so that members of the public have an opportunity to address the RWPG on an item before a vote is taken.
 - c. Encourage the technical consultant to provide a planning process recap and next steps during each full RWPG meeting.
- The RWP <u>Public Notification Quick-Reference tool</u> on the TWDB's RWP Sixth Cycle Working Documents webpage may be used for calculating public notice deadlines for various types of meeting requirements, comment period requirements, and for scheduling RWPG sponsor tasks prior to an RWPG meeting.
- 6. Encourage technical consultants and any other presenters to provide meeting materials to the political subdivision as far in advance as possible to allow for website posting or sharing via email attachments, so members have additional time to review and digest the material to make informed decisions.
 - d. It is recommended for this to occur at least one week before the meeting via email attachments or email links to the RWPG's website.
- 7. Communicate with the RWPG members to encourage review of meeting materials prior the scheduled meetings.
- 8. Encourage appropriate time for agenda item discussion.
- 9. Survey RWPG members occasionally to determine how frequently they feel the group should meet, within budget limitations, in order to effectively develop their regional water plan.
- 10. Survey RWPG members occasionally to determine the preferred location, acknowledging facility constraints, to hold planning group meetings.
- 11. Ensure that the RWPG's required website is kept up to date and that members are able to successfully navigate the website and access documents. Some RWPGs have the RWPG sponsor directly perform the ongoing maintenance of the planning group's website while others delegate the maintenance to the consultants.

- 12. Ensure that planning group members are aware of how they can access the groups bylaws.
- 13. Ensure that planning group members are aware of the RWPG's terms of office and process for selecting new members.
- 14. Encourage all planning group members to attend committee meetings to assist with informed decision making.
- 15. Facilitate interregional cooperation as appropriate.

3.2 New member orientation

Planning groups have different methods of orienting new members. Many RWPG sponsor either call or hold meetings with new members to provide such orientations. Orientations may occur during planning group meetings or be held separately for the new members. If new member orientation is held separately, be mindful of Open Meetings Act requirements. Examples of new member orientation topics include an overview of the state and regional water planning process, planning group history, open meetings requirements, groundwater and surface water law, and environmental flows. Examples of documents provided to new members include a copy of the region's bylaws, previous meeting packages or presentations, a copy of the current regional water plan or plan summary (available online), a list of members and consultants, a map of the region, and the TWDB regional water planning rules pamphlet.

A <u>new member guide</u> maintained by the TWDB includes information on the regional water planning process, key roles and responsibilities, funding the planning process, required planning considerations, plan contents, and TWDB resources. The TWDB website includes a dedicated <u>new RWPG member page</u>. RWPG's are encouraged to coordinate with the TWDB for assistance with orientation material.

3.3 RWPG websites

RWPGs create and maintain an external website to make information available to the public. Required RWPG external website content includes RWPG meeting notices, agendas, materials, and plan information. Materials could include presentations, handouts, and meeting minutes. It is recommended that the RWPG website also provide up to date membership information and information on how to submit public comments to the RWPG.

To save time and storage space, the RWPG may post additional links to relevant materials available on the TWDB website, such as links to the current adopted regional water plans, the 2022 State Water Plan, Interactive State Water Plan, current planning cycle information, and water planning data. RWPG website information should be reviewed and updated on a regular basis.

3.4 Use of Committees

At its discretion and in accordance with RWPG bylaws, RWPGs may establish committees and subcommittees to assist and advise the RWPG in development of their regional water plan. Use of committees can allow for focused discussion on different aspects of the planning process outside of regular RWPG meetings. Committees typically meet between scheduled meetings of the RWPG to review and discuss relevant information. Then, at full RWPG meetings, committee representatives provide updates and present recommendations to the RWPG for further discussion and action. As a best practice, many RWPGs utilize committees in development of their regional water plan.

Examples of common RWPG committees include:

• Executive Committee – members serve in individual officer roles. The committee vets new member nominations and makes recommendations. The committee meets prior to full RWPG meetings to organize the meeting agenda and materials.

- Bylaws Committee meets at least once per planning cycle to review the RWPG bylaws and make recommendations on potential revisions/updates.
- Technical Committee meets on an as needed basis to focus on specific technical components of the regional water plan such as water availability, water demands, or water management strategies.
- Policy Committee meets once or twice per cycle to review and address policy recommendations.
- Coordination Committee meets as needed to conduct coordination on behalf of the RWPG.

4 **Open Meetings Act and Public Information Act**

Pursuant to Texas Water Code §16.053(h)(12), all RWPG, committees, and subcommittees are subject to the Texas Government Code (Government Code) §§ 551 and 552 (Texas Open Meetings Act and the Public Information Act). This is of particular importance with regard to interactions between RWPG members outside of their publicly posted meetings.

The TWDB does not provide legal advice to the RWPGs. Therefore, RWPG members may wish to consult with attorneys from their organizations or their planning group sponsor for guidance. Members may also find the following helpful resources:

- Texas Open Meetings Act: <u>http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.551.htm</u>
- Open Meetings Act Handbook: <u>https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/openmeetings_hb.pdf</u>
- Texas Public Information Act: <u>http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.552.htm</u>
- Public Information Act Handbook: <u>https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/publicinfo_hb.pdf</u>
- Open Government Hotline for Public Information Act or Open Meetings Act questions and information: (877)-673-6839

4.1 Training requirements

RWPG voting members and their alternates should complete the following trainings within 90 days from the date of their membership and preferably before their first planning group meetings.

- Open Meetings Act training required by Government Code §551.005
- Public Information Act training required by Government Code §552.012

Individuals may comply with the requirements by watching training videos on the Attorney General's (AG's) website and printing completion certificates: <u>Public Information Act and Open Meetings Act</u> <u>Training Resources</u>. RWPGs must maintain and make available for public inspection the record of its members' completion of training.

The Open Meetings Act and Public Information Act both state that completing the training in one capacity satisfies the requirement in all capacities, so RWPG members who have completed these trainings as part of their outside employment with cities, water supply corporations receiving TWDB funds, groundwater conservation districts, etc., would not need to complete them again as RWPG members.

Additionally, for the Public Information Act training, the members of a governmental body may appoint a "public information coordinator" to attend training in their place so long as the designee is the person primarily responsible for the processing of open records requests for the governmental body.

It is the TWDB's interpretation that these training requirements only apply to voting members of the RWPGs and their alternates. However, the RWPGs may wish to require all members of the RWPGs and their alternates to attend or watch the training. The RWPGs may wish to consult with the attorneys for their organizations to discuss this question further. Each RWPG may have different rules and customs regarding non-voting members. Any individual who wishes to take the training may do so.

4.2 Meeting quorums and minutes

Government Code §551.001(6) defines a quorum as a majority of a governmental body unless otherwise defined by applicable law or rule of the charter of the governmental body. The Open Meetings Act requires that a quorum of members be present for a meeting to occur, regardless of whether or not there are action items agenda. It is a best practice for RWPGs to ask members to confirm in advance whether or not they will be attending a meeting in order to better plan for a quorum. An RWPG meeting should not begin until a quorum of members is present.

Additionally, TWC §16.053(h)(12) (as added by SB 347) states that each RWPG <u>and any committee or</u> <u>subcommittee</u> of a RWPG are subject to the Open Meetings Act. Therefore, committee and subcommittee quorums should be calculated based on the membership of the committee or subcommittee, **not the RWPG as a whole**. For example, if an RWPG has 30 members and its Executive Committee is made up of 5 members, a quorum of the Executive Committee requires 3 members to be present (not the RWPG quorum of 16). Please see Section V(D) of the AG's Open Meetings Act Handbook for more information on this subject.

Pursuant to Government Code §551.021 and §551.022, minutes of meetings or recordings must be taken of each meeting and those minutes or recordings are considered public records that must be made available for public inspection. The Open Meetings Act does not require minutes or recordings of closed (executive) sessions, but rather requires a certified agenda of those meetings.

4.3 Additional guidance

The following information is based on questions TWDB staff has received. The RWPGs may wish to consult with the attorneys for their organizations on these questions.

- 1. Would a conference call (generally to discuss agenda setting) with Executive Committee members or pre-meeting "huddle" with Executive Committee members to discuss how the meeting will be run subject to the Open Meetings Act?
 - A call or "huddle" would be a meeting subject to the Open Meetings Act if it meets the definition of "meeting" in Government Code §551.001(4). This analysis also requires an analysis of the definition of "deliberation" in Government Code §551.001(2). Please see Section VI of the AG's Open Meetings Act Handbook and the cases and AG Opinions cited in that section for more information on this issue. Section VI(E) provides important information on "walking quorums," which are serial meetings of less than a quorum. Additionally, see Section 4.2 of this document regarding calculation of quorum for committees.
- 2. May RWPGs meet via telephone or video conference calls?

- Yes, meetings via telephone conference calls and video conference calls are permitted under the Open Meetings Act (Government Code §551.125 and §551.127) in limited circumstances. Please be aware that there are specific requirements and procedures that must be met to comply with the law such as special requirements for notice, recordkeeping, and two-way communication between meeting locations.
- Please review the requirements in full before deciding whether to hold a meeting via teleconference or video conference. Existing Open Meetings Act requirements for video conferences have been provided to RWPGs and are available here: <u>Reminder for RWPGs on Open Meetings Act requirements for video-conferences</u>
- Please see Section VI of the AG's Open Meetings Act Handbook for more information on the issues of both telephone and video conference calls, including references to cases and AG Opinions that may be helpful.
- <u>https://www2.texasattorneygeneral.gov/opinions/opinions/49cornyn/op/2001/pdf/jc0352.</u> pdf
- 3. Are email discussions subject to the Open Meetings Act, if all member emails are visible in the "to" or "cc" fields?
 - An email discussion is subject to the Open Meetings Act and may violate the Act if the discussion involves matters under the RWPG's responsibility or jurisdiction. This analysis also requires an analysis of the definition of "deliberation" in Government Code §551.001(2). The Open Meetings Act does not provide that the words exchanged must be spoken in person; members of a governmental body need not be in each other's physical presence to constitute a quorum. A deliberation may include an exchange of written materials or electronic mail. The definition of meeting reaches gatherings of a quorum of a governmental body even when the members of the quorum do not participate in deliberations among themselves or third parties; the governmental body may be subject to the Open Meetings Act when it merely listens to a third party speak at a gathering the governmental body conducts or for which the governmental body is responsible. An email discussion could be a meeting subject to the Open Meetings Act if a quorum of the RWPG (or committee/subcommittee) were in the to, cc, or bcc fields. Please see Section VI of the AG's Open Meetings Act Handbook and the cases and AG Opinions cited in that section for more information in this issue. Section VI(E) provides important information on "walking quorums," which are serial meetings of less than a quorum.
 - Note: Attorney General (AG) Opinion GA-0896 specifically discusses questions regarding email exchanges.

4. What are record-keeping expectations for RWPGs as they are subject to the Public Information Act?

• The RWPGs should consult with the attorneys for their designated political subdivisions to determine what laws or rules governing the preservation of records would apply to the RWPG. Please see Section IX of the AG's Public Information Act Handbook and the cases and AG Opinions cited in that section for more information on this issue.

5. Can staff from the RWPG's sponsor be appointed as the Public Information Act public information coordinator?

• The Public Information Act states that "A public official may designate a public information coordinator to satisfy the training requirements of this section for the public official if the

public information coordinator is primarily responsible for administering the responsibilities of the public official or governmental body under this chapter..." (Government Code §552.012). It is the discretion of the RWPG who they choose to be the designated coordinator, if one is designated. It is also up to the RWPGs if they desire additional individuals to complete the training than required by the Public Information Act.

- 6. Can older training certificates be accepted for maintaining the record of members' completion of training?
 - The Open Meetings Act and Public Information Act both state that completing the training in one capacity satisfies the requirement in all capacities, so RWPG members who have completed these trainings as part of their outside employment with cities, water supply corporations receiving TWDB funds, groundwater conservation districts, etc., would not need to complete them again as RWPG members. The Acts simply require public officials to complete the training within 90 days of taking office/assuming responsibilities as a member of the governmental body; it does not specify repeat training requirements.

7. Would a notarized statement affirming training completion be acceptable if a member has taken the training but cannot locate the completion certificate?

• It will be up to the RWPGs to prove compliance with the Act if they are questioned on it. It is up to the RWPG to prove compliance however they see fit.

8. Are "workgroups" formed by the RWPG subject to the Open Meetings Act?

• The AG's Open Meetings Act Handbook states that when a governmental body appoints a committee that includes less than a quorum of the parent body and grants it authority to supervise or control public business or public policy, the committee may itself be a governmental body subject to the Act (see Section V(D) and (E) of the AG's Open Meetings Act Handbook). It further states that the fact that a committee is called an advisory committee does not necessarily mean it is considered an advisory committee under the Act. Based on the language in the AG's Open Meetings Act Handbook, the TWDB believes the more conservative interpretation would be to treat a workgroup in the same way as a committee.

9. Is telephonic texting between individual RWPG members during public meetings allowed under the Texas Open Meeting Act?

a. No. Any communications related to the business of the RWPG must be made available to the public under the Texas Open Meetings Act and the Texas Public Information Act.

5 Useful TWDB webpage and document links

Rules and contract related links

- <u>31 Texas Administrative Code §355, Subchapter C</u>
- <u>31 Texas Administrative Code §357</u>
- Water Planning Rules and Texas Statute Reference Pamphlet
- <u>Regional Water Planning Public Notification Quick-Reference Document</u>
- <u>TWDB Subcontracting Guidelines</u>
- Regional Water Planning Advance Request Checklist
- TWDB Regional Water Planning Contracts Webinar

State and regional water planning related links

- Sixth Cycle of Regional Water Planning homepage
- <u>Sixth Cycle Working Documents Page</u>
- 2021 Approved Regional Water Plans
- 2022 State Water Plan
- Interactive State Water Plan
- Water Planning Data
- Water Supply Planning Staff Contact List
- <u>Regional Water Planning Groups</u>
- <u>New RWPG Member page</u>

Please feel free to ask your region's <u>TWDB regional water planner</u> for assistance navigating any of the resources provided above.