



Pennsylvania Rehabilitation Council (PaRC)

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OVR Impartial Hearing Officers (IHO)/Mediators Ad hoc Committee Meeting Minutes for April 4, 2023 2:30 PM to 3:30 PM

Members Present (P)

Not Present (NP)

Andrew Pennington (P)
Lynn Heitz (P)

Jessica Keogh (NP)
Susan Tomasic (NP)

Michelle Paonessa (P)
Paul Fogle (P)

Office of Vocational Rehabilitation (OVR) Staff Present: Cheryl Novak, James Whitonis, Ralph Roach

Interpreter Present: Jill Buracker

PaRC Staff Present: Chris Todd

CALL TO ORDER

This meeting was conducted through Zoom. Mr. Andrew Pennington called the meeting to order at 2:30 PM after quorum was established.

ADDITIONS TO THE AGENDA

There were no additions to the agenda.

DISCUSSION AND POSSIBLE ACTION ITEMS:

Review Statutory requirements for Impartial Hearing Officers / Mediators

- Mr. Ralph Roach explained that he is providing information today as a part of the OVR management team and that the information provided is not intended as legal guidance or legal authority.
 - Written policy and procedure were approved by the OVR Board in August 2015. Essential procedures are outlined in the Rehab Act of 1973:
 - [34 C.F.R. § 361.5\(c\)\(24\)](#) Impartial hearing officer
 - [34 C.F.R. § 361.5\(c\)\(35\)](#) Mediation
 - [34 C.F.R. § 361.5\(c\)\(43\)](#) Qualified and impartial mediator
 - Requirements for qualified Impartial Hearing Officers (IHO) and Mediators are

defined by PA Labor and Industry (L&I), Office of Chief Counsel (OCC) as "Interested individuals must be knowledgeable about the federal laws and regulations governing the provision of vocational rehabilitation services, including the federal Rehabilitation Act of 1973, as amended, 29 U.S.C. §701 et. seq. and governing regulations 35 CFR Part 361. They must also have experience presiding over or participating in administrative proceedings."

- OVR employees cannot perform functions of IHO or mediator, IHO/Mediators are not Commonwealth employees they are independent contractors, L&I OCC will provide orientation and training to all Commonwealth approved IHOs and Mediators.
- **Impartial Hearing Officers Qualifications per 4 C.F.R. § 361.5(c)(24):**
 - (i) *Impartial hearing officer* means an individual who -
 - (A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);
 - (B) Is not a member of the State Rehabilitation Council for the designated State unit;
 - (C) Has not been involved previously in the vocational rehabilitation of the applicant or recipient of services;
 - (D) Has knowledge of the delivery of vocational rehabilitation services, the vocational rehabilitation services portion of the Unified or Combined State Plan, and the Federal and State regulations governing the provision of services;
 - (E) Has received training with respect to the performance of official duties; and
 - (F) Has no personal, professional, or financial interest that could affect the objectivity of the individual.
 - (ii) An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.
 - (Authority: Sections 7(16) and 12(c) of the Rehabilitation Act of 1973, as amended; [29 U.S.C. 705\(16\)](#) and [709\(c\)](#))
- Mr. Andrew Pennington stated that he is concerned with "(F) Has no personal, professional, or financial interest that could affect the objectivity of the individual." If a candidate is currently contracted with OVR there is personal, professional, and financial interest with regard to conducting business. Concern would be that the Designated State Unit (DSU) would be the conflict, not so much the individual.
- Mr. Roach reported that L&I OCC saw no conflict of interest in the three candidates being reviewed because they can recuse themselves and did not see that as barring someone that has worked for OVR, providing indirect services as one candidate has, or in being involved as the CEO of an entity that may serve OVR Customers. This is based upon the training they will receive and their requirement ethically to recuse themselves in any case they cannot maintain impartiality. Impartial Mediators Qualifications per [34 C.F.R. § 361.5\(c\)\(43\)](#) were reviewed and are similar to those of the IHO listed.
- Ms. Michelle Paonessa inquired if an IHO/Mediator had to recuse themselves how

would that work in that situation.

- Mr. Roach reported that in the 1990's there were more than 30 candidates, and they are currently down to 4 candidates that are willing to provide these services and that number would go up to 7 if the three current applicants were to be approved. The way candidates are assigned to a case are based on geographic location. If a candidate recuses themselves, they will move on to the next candidate available in the same geographic location. Some candidates have indicated they are available for cases statewide and others for specific counties/regions.

Review of Current Applicants being Voted on for Hearing Officer / Mediator

- Members reviewed the application documents and qualifications of Mr. Paul Stengle, Executive Director of Arc Alliance. Mr. Paul Fogle stated that based on his resume he seems very qualified for IHO/Mediators position but does have questions about the conflict of interest.
- Ms. Heitz shared concerns about the spelling and grammar errors of the cover letter of the applicant and inquired about OVR's process in reviewing applications.
- Mr. Roach reported on the recruitment process for IHO/Mediators which involves an announcement, role description, request for resume/letter of intent, and acknowledgment of receiving the applicant's information. 7 total candidates applied within the last year and 4 had to disqualify themselves once they learned more about the position as there were no hearings/mediations in 2022 and a few in 2021. Other potential candidates were not eligible due to a conflict of interest from their job within the Federal Government. Prior recruitment resulted in 0 applicants in years past. Due to a lack of candidates, they moved forward with those qualified individuals that applied. Vetting process involves sharing applicant information with L&I OCC, the Council, and if either entity rejects the applicants they are not accepted. Those accepted have to become a vendor and submit documentation to become a contractor for the Commonwealth. L&I OCC will then arrange training for the candidates.
- Members reviewed application documents and qualifications of Ms. Charlotte Andrews. Mr. Pennington stated that they seem to be qualified and again there are concerns regarding the conflict of interest due to their professional involvement with OVR.
- Members reviewed application documents and qualifications of Ms. Patricia Kennedy. Mr. Pennington explained that the resume and letter of intent include extensive knowledge of the law regarding juvenile justice but the legal requirement of having knowledge of the Rehab Act, State Plan, or laws that guide services of OVR is not mentioned within the applicant's documents. Inquired if that knowledge is required.
- Mr. Roach explained that he doesn't believe the individuals have a threshold of knowledge they must meet. This individual does have experience regarding legal knowledge and case law representing a defendant which could apply to the requirements of the CFR along with the proceeding and procedures of the IHO/Mediators position.

Discussion of Potential Conflicts of Interest Regarding Current Applicants

- Ms. Heitz stated that she personally feels that an IHO/Mediator that has any ability to gain a financial benefit from OVR should not oversee any cases that could potentially cost OVR money. Questioned if these individuals can maintain the best interest of both OVR and the customer. Inquired who is responsible for recusing and will there be research if the IHO had any dealings with each particular customer. Inquired if the customer should have a say in who the IHO/Mediator is going to be for their case.
- Mr. Roach stated that if there is any conflict of interest the IHO/Mediator should be recused. L&I OCC would enforce and ensure that the contractor would be the best individual to maintain impartiality. Explained that the customer should have good representation, possibly including Client Assistance Program (CAP) and that there is no reason the customer would not have a say in requesting IHO/Mediator recusal. The language regarding hearings and mediation provide objectivity with the assumption that the customer has been wrongly denied services.
- Mr. Fogle inquired who would hear the customer's appeal regarding a specific IHO/Mediator.
- Mr. Roach explained that an appeal would go to Ms. Catherine Lantzey, L&I OCC and OVR Executive Director, Mr. Ryan Hyde.
- Mr. Pennington explained that researching two of the candidates, he found they have direct professional relationships with OVR and would assume that they would not be considered impartial due to their professional relationship with OVR.
- Ms. Heitz explained that she has experience with impartial hearings and in both cases did not know who the IHO was going to be until arriving at the hearing. Members inquired if that was common practice.
- Mr. Roach explained that is not the procedure. At the moment the individual decides if they want to deny an Informal Administrative Review (IAR) concerning their complaint and that it goes, at their preference, to mediation and then potentially to an Impartial Hearing Review (IHR). The procedure should include a document from the IHO to the customer acknowledging the time and location. A customer should be made aware of the individual serving as IHO/Mediator along with correspondence to the customer that informs them of their rights, including the utilization of services from CAP and what to expect during the hearing which should include the name of the IHO.
- Members agreed that more information is needed to decide on current applicants and overall policies and procedures regarding the issue of conflict of interest and also the PaRC's role in the process of reviewing applicants to better make a timely decision. Inquired if L&I OCC could attend the next meeting to answer these questions.
- Mr. Roach stated that he will provide contact information for staff to include L&I OCC in the polling for the next committee meeting.

Adjourn

MOTION was made by Ms. Heitz to adjourn. Mr. Fogle seconded the motion. The meeting was adjourned.