



# Pennsylvania Rehabilitation Council (PaRC)

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## **OVR Impartial Hearing Officers (IHO)/Mediators Ad hoc Committee Meeting Minutes for May 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 (NP)  
Paul Fogle (P)

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

**Guests Present:** Catherine Lantzy, Labor and Industry, Office of Chief Counsel

**Interpreter Present:** Laura Schupp

**PaRC Staff Present:** Chris Todd, Michelle Gerrick

### **CALL TO ORDER**

This meeting was conducted through Zoom. Mr. Andrew Pennington called the meeting to order at 2:30 PM. Quorum was not established.

### **ADDITIONS TO THE AGENDA**

There were no additions to the agenda.

### **DISCUSSION AND POSSIBLE ACTION ITEMS:**

#### **Discussion of Potential Conflicts of Interest Regarding Current OVR Impartial Hearing Officer (IHO)/Mediator Applicants**

- Mr. Andrew Pennington reviewed concerns members have regarding applicants of IHO and Mediator positions meeting the requirements provided in the Code of Federal Regulations (CFR).
- Ms. Catherine Lantzy stated that based upon the requirements of having an understanding of the Rehabilitation Act and associated laws, Vocational

Rehabilitation, the current applicant does not meet the requirements and does not think they should be considered for a position.

- Mr. Paul Fogle stated that he agrees with that assessment, is not opposed to IHO/Mediators receiving training and has questions and concerns regarding who would be implementing the training. Explained that the pool for applicants is very small but would like to ensure that candidates can remain neutral and may hold impartial and fair hearings/mediation.
- Ms. Lantzy explained that in the past trainings were a combined effort between the Client Assistance Program (CAP) and PA Department of Labor and Industry's Office of Chief Counsel (L&I OCC). Trainings did not include information on the law but were more focused on information on how to hold a hearing and related procedures. If trainings were to be focused on the law, suggested either finding a neutral third party or utilizing a combined effort of CAP and OCC. If a combined training between CAP and OCC is not acceptable to the Council, they could research availability of a third party.
- Mr. Roach shared that there are training materials prepared by CSAVR that may be helpful for Council members to review.
- Mr. Pennington explained that a training on the law, policies, regulations, and VR process would be fact based. Materials on those topics are readily available and could be accessed by an IHO/Mediator as needed based upon the specific topics of a hearing or mediation. An IHO/Mediator would also be expected to remain educated on VR related information such as a newly published State Plan or changes in the policies/law/regulations. Reviewed concerns members have regarding applicants' conflict of interest as listed in the CFR as (F) Has no personal, professional, or financial interest that could affect the objectivity of the individual. Being a direct provider of OVR services through Supported Employment and/or Pre-employment Transition Services would be a financial interest and inquired about OCC opinion.
- Ms. Lantzy stated that she would agree that would be a conflict of interest and was not aware that the applicants were employees of a contracted provider that are providing services to the agency. As they are receiving payment from the agency lends itself to the appearance of a conflict with the question, what if they were to rule against the agency and consequently no longer receive work.
- Members inquired if applicants were already vetted by OVR Executive and Legal teams.
- Mr. Roach reported that as applicant resumes and information were received, they were forwarded to the Executive and Legal teams for review. OCC provided concerns regarding lack of qualifications / knowledge of VR but did not interpret that as a full rejection for that applicant. Conversations resulted in the understanding that trainings would compensate for the lack of that particular

knowledge. Applicants' general legal knowledge as attorneys was regarded as a great asset.

## **Discussion of Overall Policies and Procedures Regarding Conflict of Interest for OVR IHO/Mediators**

- Members explained that the Council's role in the process for review and making a determination on IHO/Mediator applicants began to come into question more than a year ago and inquired how to best move forward with and define this process.
- Mr. Roach explained that he received guidance from Rehabilitation Services Administration (RSA) advising him to look at the CFR and utilize an appeals advisory board or continue with independent contractors. The general role of the Council of advising OVR is required when hiring/maintaining a list of IHO/Mediators but specifics on how to define that process is not provided by the CFR or RSA.
- Members requested to receive an updated list of IHO/Mediators and inquired who picks a mediator for a specific case, if there have been virtual hearings, and if the Council can have access to findings or data related to cases/hearings.
- Ms. Lantzy stated that the Rehab Act includes requirements that OVR needs to maintain a list of IHO, and they must be jointly identified by the SRC and DSU. The process has not been undertaken since her employment. IHO/Mediators are selected by OVR randomly based upon availability and geographic location of customer and IHO/Mediator. Hearings have always been in person. One hearing was held by telephone at the start of the shutdown. Virtual hearings have not been held. In-person hearings are best regarding concerns surrounding communication with client and attorney. Case information would need to be redacted but a brief legal issue could be provided to the Council.
- Mr. Roach inquired if the Council and OVR will be moving forward with any of the three applicants being reviewed. Based upon discussion today it sounds as though Council is recommending to not accept any of the three applicants. Ms. Patricia Kennedy based upon lack of qualifications, Mr. Paul Stengle because of a conflict of interest as his agency may contract with OVR, though he doesn't directly as the CEO, and Ms. Charlotte Andrews because she may be contracted directly with OVR providing Pre-ETs Services as this would also be a conflict of interest. That would leave the current list at 4 independent contractors. Reported that he plans to consult with the Council, L&I OCC, and OVR Leadership on the best way to proceed recruiting additional candidates. Inquired if there is a role for the Disability Rights of PA with assisting the Council and/or OVR in an advisory or recruitment capacity.
- Mr. Fogle explained the committee will need to make a recommendation at a Full Council meeting that they do not recommend any of the three applicants. Explained that the Council does need to continue working with OVR and L&I to ensure that there is a way to recruit, train, and have a process in place.

## **Discussion of the PaRC's Role for the Process of Future Review of Potential Applicants for OVR IHO/Mediators**

- Mr. Pennington suggested that for the next meeting the committee review any laws involving IHO/Mediators, not just requirements but including the Council in the recruitment process to ensure members can make an informed decision on each applicant.
- Members agreed that the term jointly identify included in the Rehab Act would necessitate the Council be included in the first step of the process and throughout, in recruiting and maintaining a list of IHO/Mediators. Inquired about next steps and how to best facilitate this process in the best way possible. Requested receiving materials used in solicitation of candidates.
- Mr. Roach explained that it may be helpful to recirculate to the committee the current written procedures for complaints, current process/steps used for identifying the independent contractor that would be used in the appeals process and providing the written letters that go out to maintain communication and impartiality. Will be glad to share recruitment materials with the Council, agrees it would be helpful to open recruitment to a broader group of OVR stakeholders to improve recruitment, and would be helpful to receive suggestions on language and recruitment from the Council. Reported that there are four open cases and expects many to be resolved in an Informal Administrative Review (IAR).
- Ms. Heitz inquired if there has been any outreach to Social Security attorneys in private practice to be IHOs.
- There has not been outreach to private attorneys. There was an initial plan to provide outreach to the Bar Association, but the shutdown put that on hold. Recruitment for PA and County Bar Associations could be very beneficial. OVR and PaRC could work together on developing a notice to identify the unique skill set needed.

### **Adjourn**

The meeting was adjourned at 3:35 PM.