



Pennsylvania Rehabilitation Council (PaRC)

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OVR Impartial Hearing Officers (IHO)/Mediators Ad hoc Committee Meeting Minutes for September 7, 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 (P)

Michelle Paonessa (NP)
Paul Fogle (NP)

Office of Vocational Rehabilitation (OVR) Staff Present: Cheryl Novak, Ralph Roach, Chris Harbert

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 after quorum was established.

ADDITIONS TO THE AGENDA

There were no additions to the agenda.

MOTION was made by Ms. Susan Tomasic for approval of the agenda and past meeting minutes. Mr. Andrew Pennington seconded the motion. All were in favor.

DISCUSSION AND POSSIBLE ACTION ITEMS:

Review and discussion of laws and policies involving IHO/Mediators provided by OVR

- Mr. Andrew Pennington reviewed premeeting material provided to attendees including the legal rights of appealing an OVR case and their policy, including the 60-day timeframe that an Impartial Hearing has to be carried out. Due process is in place and is laid out in OVR fact sheets provided to the Committee. PaRC's role regarding the selection process of OVR Impartial Hearing Officers (IHO)/Mediators was previously agreed upon and should include the Council being provided a list of current IHO/Mediators, keeping the Council informed about changes to

IHO/Mediators status, involving the Council in the first steps of the selection of IHO/Mediators and throughout the entirety of that process. Members asked previously if there had been any outreach to Social Security private practice attorneys to become IHO/Mediators which has not been utilized to date and is an important suggestion as that resource may yield candidates to fill those roles. The purpose of this Committee was not only to provide recommendation on previous candidates but also on the Council's role and how to move forward in the selection process including how much notification the Council should receive in regard to candidates, what the selection process looks like, and if members can be involved in the initial steps of the selection process.

- Mr. Ralph Roach explained that Office of Chief Counsel (OCC) and others had previously conducted outreach to the Pennsylvania Bar Association, member's suggestion to reach out to a list of Social Security attorneys was well received, of the existing five individuals one IHO/Mediator is not an attorney and provides services during appeals for individuals who are deaf and hard of hearing. Provided an update of current list of IHO/Mediators and their experience/ qualifications/ participation.

Determine next steps for PaRC involvement of recruitment process and maintaining list of IHO/Mediators

- Mr. Pennington explained that during the recruitment process just as there are requirements listed, there should also be information included for potential candidates to learn what is not acceptable in terms of legal requirements and allow the person to disqualify themselves prior to applying. This would include listing that the candidate should have no financial ties to OVR, should have no potential conflict that would create a situation where a decision being made would be clouded by any relationship with the customer or Designated State Unit (DSU) to ensure a neutral process.
- Mr. Roach agreed and explained that the initial thought was that IHO/Mediators could recuse themselves. The Council has provided a great service in taking a closer look into the legal requirements regarding potential conflicts in recommending a broad based prohibition of candidates with any financial or professional ties to OVR. Office of Chief Counsel (OCC) has agreed with that position. A recruitment notice could include language that lists those who could not apply due to conflicts of interest such as working with a vendor of OVR.
- Ms. Susan Tomasic inquired who would prepare the recruitment document draft for potential applicants. The Council needs to have some input with that. Members agreed that the Council does not need to create the draft but should have time to review and provide input prior to its release.
- Mr. Roach agreed with that request and that the Council should be providing oversight and guidance to those materials to provide review, updates, and edits to those letters being sent for recruitment of potential candidates.
- Ms. Heitz provided concerns about OVR and OCC's initial review of candidates and inquired if OVR would consider having a Council member on the Committee that reviews the initial applications received by OVR. Members inquired what the role of

the OCC has in the process and if it is OVR's role to select which candidates are qualified that apply for IHO/Mediators. Mr. Pennington stated that the Council must vote on potential candidates and inquired if the Council's decision about a candidate could be made in jest and inquired who makes the final determination for the hiring of an IHO/Mediator.

- Mr. Roach explained that he was informed in his new role in the review of recent candidates by OVR Leadership and OCC that they could potentially be hired with the understanding that they may recuse themselves if there was a conflict. During the last meeting with the Committee upon further questioning of the Council, OCC agreed with the Council that the conflicts of interest would disqualify those candidates from being selected. Federal regulations are not specific on granular issues, the Council may want to request a legal opinion, there are references that the DSU is responsible to maintain IHO/Mediators but also includes the role of the SRC in advising. The DSU should have guidance and engagement in the selection and recruitment process from the SRC from the beginning. Currently there is not a committee for this process, it is handled by Mr. Roach, OVR Executive Director, and OVR staff.
- Ms. Tomasic explained that if the Council did not approve of a candidate, that OVR should perceive that lack of recommendation as a disqualification and not proceed with hiring that candidate. Shared concerns about hiring someone that is not an attorney and counting on them to know when to recuse themselves due to conflict of interest.
- Mr. Pennington explained that if there was a Council member involved at the onset of the process there would be no surprises and the Council could be informed about applicants from the start.
- Mr. Roach explained that he feels it has been determined that any conflict of interest will result in any potential applicant not being selected as a vendor/contractor for IHO/Mediator and explained he felt that OVR Executive Director, Mr. Ryan Hyde would be very responsive to any guidance or recommendations that the Council makes in this regard.
- Members agreed that during the next meeting there should be further discussion about the legal requirements for the PaRC's role in the selection process, there should be a policy in place moving forward, the policy should be formalized so that the same path that is already created does not need to be reestablished. Inquired if that policy would be drafted by OVR or the PaRC.
- Mr. Roach agreed with that direction and informed members that OVR does not have a policy but does have procedures which were shared with the Committee. Recommended that the role of the State Rehabilitation Council be inserted into that document and then if a policy would need to be identified or modified also encourage that to occur. An Executive Director has the authority to issue a dated procedure until an existing policy can be amended to strengthen the role of the SRC.
- Mr. Chris Harbert confirmed with members on what is to be formalized within the PaRC's role to include:
 - Language defining the conflicts of interest for IHO/Mediator applicants.
 - Confirming minimum qualifications or experience of IHOs/Mediators and additional preferred qualifications.

- Confirm what level or what weight of consideration the PaRC's vote would have, were a candidate for IHO/Mediator to be approved.
- If a PaRC member is able to be involved in the screening of IHO/Mediator vendors.
- Formalizing these policies into writing, further solidifying an agreement between PaRC and OVR as to what the expectations are for each party

Development of a notice to identify IHO/Mediators unique skill set and requirements

- Mr. Pennington explained that his understanding of the most important skills for this position include knowledge of the Rehab Act, understanding of OVR services, and the ability to not be swayed by either party involved, maintain 100% impartiality, preliminarily making evidence based decisions, and inquired if there are any other additions to those skills that OVR sees outside of what is included in the original framework.
- Mr. Roach explained that if the Committee wanted to provide any notes, revisions, or insert language to the draft of the Recruitment Notice, OVR would welcome any edits the Committee would like to provide, and then OVR would provide the heavy lift of the drafting of the document which would then be recirculated to members and OVR Leadership to ensure consent and approval of Full Council. The 5 mediators that are currently in place are not going anywhere but we do need to quickly get some replacements as the group was previously at 20 or 25.
- Mr. Pennington explained that the Committee would like to be informed of what all is involved in the scope of training for IHOs/Mediators including further clarity or transparency on training materials and who is doing the training to ensure a level playing field for both the customer and OVR. If OVR is handling the training, how impartiality is maintained during the process of the training.
- Mr. Roach explained that the OCC takes on that responsibility which would currently be Ms. Deb Schwartz. The Committee may want to consider requesting that an observer be present during trainings, that a curriculum meets the standards that RSA is expecting, that objectivity and impartiality is part of the Due Process that is required and be implemented, and perhaps a member of the Committee sitting in as an observer of the trainings.
- Mr. Pennington requested those considerations regarding trainings be added as discussion points for the next meeting agenda. Inquired if there is written documentation of a pledge of impartiality an IHO/Mediator is required to make when they are initially brought into the role and if that is revisited during their tenure as IHO/Mediator.
- The requirements pertaining to impartiality are included within the Code of Federal Regulations (CFR), if a customer feels that the hearing process was less than impartial, they have the right to appeal and if that does not result in a change the decision the CFR includes language about the right to pursue civil litigation.
- A paper review of an appeal is performed by a separate individual from the initial IHO/Mediator. If the customer or DSU challenges the ruling the case goes to another Informal Administrative Review (IAR).

Adjourn

MOTION was made by Ms. Lynn Heitz to adjourn. Ms. Susan Tomasic seconded the motion. The meeting was adjourned.