# XIV. DUE PROCESS


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# XIV. DUE PROCESS

Due Process begins once an applicant/client makes a request verbally or in writing. The request starts the 60-day clock to complete steps 1-5 below. Due Process will normally progress in the following sequence:

| STEPS | PROCEDURES |
|---|---|
| 1 | Applicant/client will discuss the issue(s) with the Counselor and ask for a decision in writing. The counselor will advise the applicant/client of the Client Assistance Program (CAP.) |
| 2 | If dissatisfied, applicant/client can ask for an informal administrative review meeting from a Unit Supervisor (Vocational Rehabilitation Services or Blind Services). |
| 3 Optional | Mediation process is available. |
| 4 | If dissatisfied, applicant/client can ask for an impartial hearing from an administrative law judge (ALJ) with the District of Columbia Office of Administrative Hearings. |
| 5 | If dissatisfied with the ALJ's decision, applicant/client can file civil action in court. |

## IMPACT ON PROVISION OF SERVICES

Unless an applicant/client or their representative so requests, DCRSA shall not institute a suspension, reduction, or termination of services being provided for the individual (including evaluation and assessment services and plan development) while a decision through due process is pending. Such services can be suspended, reduced or terminated if obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual, or the individual's representative.

## NOTIFICATION OF RIGHTS

NOTE: The applicant/client is notified of their rights at each step in the due process procedure:

The right to be represented by an attorney, Client Assistance Program, parent or guardian, friend, relative, or any other representative of his/her choice.

(NOTE: DCRSA cannot provide reimbursement for attorney's fee.)

Impartial Due Process Hearing: the right to present evidence, call witnesses, and to cross-examine all witnesses and other relevant sources of information and evidence.

The right to have reasonable accommodations (i.e. an interpreter/reader) if notice is given to the Office of Quality Assurance and Federal Compliance at least five (5) working days prior to the Administrative Review. Applicant or client must contact the Office of Administrative Hearings to request reasonable accommodations during an impartial hearing, including an interpreter upon receipt of the Scheduling/Case Management Order.

The ALJ will issue a written decision to all parties within thirty (30) days of the hearing.

## STEP 1 – DECISION OF COUNSELOR

If a DCRSA staff member has any indication an applicant or client has a concern with DCRSA, they must inform their Unit Supervisor immediately. DCRSA staff may receive a verbal, e-mail or written request from an applicant, client or their representative, to appeal a DCRSA decision. If a verbal request is received, DCRSA staff will assure the correct form is completed. This may require the DCRSA staff to assist the applicant or client to fill out the appropriate form. The form must include the day of the verbal request. The counselor will advise the applicant/client of the Client Assistance Program (CAP). All forms completed for appeal will immediately be given to the Office of Quality Assurance and Federal Compliance.

## STEP 2 – INFORMAL ADMINISTRATIVE REVIEW MEETING

The Office of Quality Assurance and Federal Compliance will schedule the Informal Administrative Review Meeting to be conducted within fifteen (15) working days of initial date of request at a time and place convenient to the applicant/client (usually during business hours at DCRSA's main office location:

The OQAFC will send by registered mail a notice of the time and place of the review meeting to the applicant/client and the issues which are the subject of the review to the applicant/client and his or her representative at least five (5) working days prior to the administrative review meeting, except for good cause shown by a party or at the request of both parties and;

The review meeting will be held by supervisory staff members who has no direct personal knowledge of the details involved in the matter and has not participated in the decision being reviewed.

The applicant/client will receive a decision in writing from the person conducting the Administrative Review Meeting within five working (5) days following the review meeting.

## STEP 3 - MEDIATION POLICY (OPTIONAL)

It is the policy of DCRSA to provide mediation as a dispute resolution process. Mediation shall be available before a hearing is requested. Mediation is not used to

deny or delay the right of an individual to a hearing or to deny any other right afforded in federal and state law or DCRSA Policy.

## MEDIATION PROCEDURES

## PURPOSE

This process allows an opportunity for parties, applicants or clients and the District of Columbia Rehabilitation Services Administration (DCRSA), to resolve disputes involving the determinations that affect the provision of vocational rehabilitation services.

Mediation is an informal, non-adversarial process whose objective is the encouragement and facilitation of a mutually acceptable agreement based on the parties self-determined needs, interest and values. All parties may present whatever evidence they wish in support of their position in a neutral setting. The process relies on the good faith efforts of the participants communicating together to reach their own agreement as to how the dispute should be resolved.

## INFORMING APPLICANTS AND CLIENTS

DCRSA is required, at the minimum, to inform in writing applicants, clients, or their representatives of mediation:

When an individual applies for vocational rehabilitation services.

When the time Order of Selection is utilized.

When an individualized plan for employment is developed.

When an individual is determined ineligible, or when services are reduced, suspended or terminated.

## VOLUNTARY

Mediation, in the Rehabilitation Act, is voluntary for both parties. At any time during the mediation process, either party or the mediator may elect to terminate the mediation. (See Due Process form WD) In the event that the mediation is terminated, either party may pursue resolution through an impartial hearing.

**IMPORTANT NOTE - Once a request is made for any type of review, which may include mediation, the appeal process through an impartial hearing must be completed within 60 calendar days.**

Mediation does not involve findings of facts or the strict weighing of evidence as a formal review process requires. Although mediation does not lead to fact finding, mediation participants should be prepared to describe the factual background behind the dispute and to discuss the desired outcome.

DCRSA participants must be prepared to describe the disagreement with the decision made regarding the provision of services and provide factual details of the situation. All parties should be prepared to discuss and consider each other's viewpoints and be willing to cooperate in seeking a resolution acceptable to both parties. The focus of mediation is on resolution, not which party is right or wrong.

## REQUEST FOR MEDIATION

The form "Request for Mediation" is completed. Provide the consumer with the handout "Consumer Information on Mediation". The form on Request for Mediation is to be submitted from the Unit Supervisor to the Chief of Vocational Rehabilitation Services Division (VRSD). If Chief of VRSD is unavailable, the form must be submitted to the Chief of Quality Assurance and Federal Compliance (QAFC). The DCRSA Chief of VRSD and/or Chief QAFC will review the complete file of the individual requesting mediation within five (5) working days. Both the applicant or consumer and the Chief, VRSD may end the mediation at any time. If the issue cannot be resolved through the mediation process, a certified letter will be sent to the applicant/client within five (5) working days informing them of their right to request an impartial hearing.

After reviewing the case file, the Request for Mediation form is sent to the Chief of QAFC to coordinate the mediation session. QAFC staff assures the Due Process requirements are met and the applicant/client is informed of their rights during this process. The applicant or client has the right to be represented at the mediation session, although the mediator will encourage the individual to speak for himself/herself as much as possible to re-establish a relationship between the DCRSA staff and the individual. The Office of Quality Assurance and Federal Compliance is responsible for all Mediation forms after a request is received.

QAFC staff communicates with the applicant/client, DCRSA staff, and mediator to establish a date, place, time, and who will participate in the session. These meetings will be set up as expeditiously as possible. QAFC complete form "Mediation Scheduling." The required DCRSA staff needed for mediation may have to reschedule their appointments to be available on the day established.

## AGREEMENT TO MEDIATE

**QAFC staff is responsible for the completion of form "Agreement to Mediate" with signature by all parties.**

## MEDIATION WITHDRAWAL

An applicant/client may withdraw from the Mediation Process at any time by completing the form "Cancellation of an Appeal."

## MEDIATOR

The mediation process is conducted by a qualified and impartial mediator as required by § 361.5(b) (43) of Title 34, Part 361 "State Vocational Rehabilitation Services Program" who meets mediator qualifications recommended by the American Bar Association and

the Association for Conflict Resolution. QAFC will maintain a mediator panel and will randomly select mediators as requested.

## MEDIATOR'S ROLE

In mediation, decision-making authority rests with the parties agreeing to mediate. The role of the mediator, includes, but is not limited to assisting the parties in identifying the issues; facilitating communications, focusing the parties on their interests, maximizing the exploration of alternatives, and helping the parties reach voluntary agreements. The mediator may offer options for the parties to consider as resolution options, but may not decide the resolution.

MEDIATION DAY

What the parties can expect to happen:

Introduction of the parties involved and the mediator.

The mediator discusses their neutrality in the session and confidentiality for all parties involved.

The mediator discloses potential conflict of interest.

The mediator may establish ground rules for the session as agreed by the parties. The mediator makes an opening statement, which describes the mediation process and the mediation options – settlement, no settlement.

1) The mediator will provide a full opportunity for mediation participants to discuss their issues and concerns about the service dispute.

2) At any time during the process, the mediator may ask clarifying questions or seek additional relevant information. The parties may ask clarifying questions of each other if desired.

3) The mediator facilitates the conversation between the parties by providing summaries and/or feedback to the parties throughout the mediation process.

5) The mediator will facilitate the parties communication to develop wish list, options and, or compromises for resolution, which may require the mediator to hold private caucusing meetings with the separate parties.

5) The mediator will produce a written mediation agreement with the assistance of the parties involved.

When reaching an agreement, all parties must have a clear understanding of what each will do in carrying out the agreement. The mediator will compose the agreement and ask the parties to sign a written mediation agreement (Mediation Agreement Form). . QAFC staff will review the mediation agreement in order to ensure mediation is complete and meets established quality standards. The agreement will be implemented as soon as possible. After the agreement is initiated, the office of QAFC will send a "DCRSA Mediation Feedback Survey" form to the applicant/client, their representative, DCRSA staff involved and the mediator.

## NO AGREEMENT REACHED

If the parties are unable to resolve the service dispute through mediation, the applicant or client has the right to request an Impartial Hearing by completing and submitting a written request to the D.C. Office of Administrative Hearing. **This form must be filed with the D.C. Office of Administrative Hearings. At the conclusion of the mediation if resolution is unsuccessful, QAFC will provide information and forms for filing an impartial hearing request with the OAH (e.g., full name of office, OAH form, telephone numbers, and address).**

For more information on these Mediation process contact the Chief, Office of Quality Assurance and Federal Compliance on 442-8670.

## STEP 4 - IMPARTIAL HEARING POLICY

Each applicant/client has the right for review, through an impartial hearing, of determinations made by DCRSA personnel that affect the provision of vocational rehabilitation services to applicants/clients. The Impartial Hearing will be completed no later than sixty (60) days from the date of initial request made verbally or in writing.

The Impartial Hearing will be conducted by an administrative law judge with the D.C. Office of Administrative Hearings. (Written information on due process rights should include info on how to file with Office of Administrative Hearings). Recommend the following is included on the due process rights "The written request for a hearing shall be submitted personally or be certified mail, return receipt requested to the D.C. Office of Administrative Hearings, located at 825 North Capitol Street, N.E. , Suite 4150,Washington, DC 20002; telephone: (202) 547-4747, TDD (202) 547-2657, and facsimile: (20) 547-2662.

## IMPARTIAL HEARING PROCEDURE

When an applicant/client or his/her representative wishes to request an impartial hearing, he/she may do so by submitting a request in writing signed by the applicant/client or on the applicant's or client's behalf by an authorized representative, personally or by certified mail return receipt requested to the Office of Administrative Hearings. The form "Request for Impartial Hearing" is completed upon receipt. The request must be made no later than fifteen (15) working days of the administrative review meeting decision.

When the Office of Administrative Hearings receives a request for an impartial hearing, the Office of Quality Assurance and Federal Compliance will request a copy of the client's complete file from the Unit Supervisor. If the request for a hearing has not been requested within the fifteen (15) day timeframe, the Office of Administrative Hearings should notify the Office of Quality Assurance and Federal Compliance. The Impartial Hearing will be completed no later than sixty (60) days from the date of a written request for hearing filed with the OAH. OAH rules require submission of a petition—can be on the OAH form or a one sentence request on a piece of paper, but writing is required.

The counselor's case file will contain a memorandum summarizing the basis for the administrative review meeting decision. It will also contain a statement of issues and a summary of all facts supporting the administrative review decision provided by the Chief of either Vocational Rehabilitation Services or the Blind Services Division. All statements should be written in simple language. Ambiguous and technical words and phrases shall be avoided. The memorandum should be prepared in triplicate. The original memorandum is sent to the applicant/client, with a copy to the appropriate Rehabilitation Staff member, and a copy to the Office of Quality Assurance and Federal Compliance.

The applicant/client and/or his/her representative have the right to go to the Rehabilitation Services Administration to review the client's record of services. The applicant/client will be advised of this fact by letter.

## IMPARTIAL HEARING WITHDRAWAL

An applicant/client may withdraw from the Hearing Process at any time by completing the form "Cancellation of an Appeal."

## REQUEST FOR WITNESSES

The OAH ALJ will issue a Scheduling Order or Case Management Order, which will establish the timeframes for submitting witness lists.

## THE ALJ WILL PROVIDE WRITTEN NOTICE OF THE TIME, DATE, AND LOCATION OF THE HEARING.

## NON-ATTENDANCE AT HEARING

Requests for rescheduling of the hearing may be made by any party to the ALJ. The ALJ will determine if good cause exists for rescheduling the hearing. If the applicant/client fails to appear for the hearing, and does not provide notice prior to the date of the hearing, the appeal may be dismissed at the discretion of the administrative law judge. If an emergency arises, the applicant/client must justify in writing his/her reasons for non-appearance.

## DCRSA RESPONSIBILITIES

.The DDS/RSA staff will be responsible for providing all case files to the Office of the General Counsel for providing legal representation before the Office of Administrative Hearings or other civil court proceedings. The staff usually includes the Rehabilitation Counselor and/or the Unit Supervisor. The Office of the General Counsel provides legal representation in impartial hearings and related civil court actions.

## CONFIDENTIALITY REQUIREMENTS

The District of Columbia Municipal Regulations, 29 D.C.M.R. Chapter 1, § 118 requires that DDS/RSA maintain the confidentiality of applicant and client information. All information regarding an applicant or eligible individual provided to or created by DDS/RSA is privileged and confidential.

## CONDUCT OF HEARING

The hearing will be conducted by an administrative law judge, in accordance with the D.C. Administrative Procedure Act, OAH rules, and applicable federal and District regulations. The ALJ's responsibility is to maintain a professional atmosphere and to ensure the proceedings are conducted in a fair and impartial manner. The ALJ will conduct himself/herself in accordance with the judicial code of conduct .The ALJ will explain hearing procedures and swear in witnesses. The hearing shall provide both parties with the opportunity to be heard and to present their evidence and testimony. The applicant/client may have an attorney or representative present testimony on their behalf. An applicant/client may have his interpreter or personal care attendant present. The applicant/client or representative and DCRSA will be given the opportunity to present witnesses, offer evidence, and to cross-examine any witness or information

introduced. The ALJ can pose questions at any time during the proceedings. The ALJ is to ensure only relevant information is permitted at the hearing. The District of Columbia Rules of Evidence will serve as general guidance as to the admissibility of evidence.

## ALJ.

The role of the ALJ includes;

hearing both sides;

limiting evidence that is presented at the hearing to relevant information;

making a decision based on evidence presented; the applicable law and regulations

making findings of fact and conclusions of law.

The decision of the ALJ must be provided to the applicant/client within thirty (30) days from the date the hearing was conducted. A decision made through an impartial hearing shall be a final administrative hearing.

## OPENING STATEMENT ON BEHALF OF BOTH PARTIES

Both parties will state their name and whom they represent, and their address. Only one person shall make an opening statement on behalf of a party.

The DCRSA opening statement will be a summary of the applicant/client's rehabilitation case and the reason for any decisions made.

The applicant/client's opening statement will be a summary of his/her reasons for requesting a hearing and the issues related to this decision.

## QUESTIONS FOR THE RECORD (DCRSA)

If records, reports, and files were requested, were they made available?

Are copies available for the record?

Are all appropriate personnel in attendance?

Was applicant/client informed in writing that he/she has the right:

- to bring counsel, or client representative;
- to provide witnesses;
- to examine all DCRSA records upon which the Agency based its decisions;
- to request that certain DCRSA personnel be present at the hearing and of their right to cross examine the Agency witnesses; and

## QUESTIONS FOR THE RECORD (APPLICANT/CLIENT)

Have you had an opportunity to examine your VR Record of Services, reports and files regarding your rehabilitation status?

Have you had an opportunity for an informal administrative review meeting with the Chief of either Blind Services Division or Vocational Rehabilitation Services Division?

Has DCRSA assured you that your rehabilitation status would not change until all proceedings were completed?

## STEP 5 - CIVIL ACTION

An applicant/client who is not satisfied by the final decision from an impartial hearing may bring a civil action for review of such decision. The action may be brought in the District of Columbia in Superior Court for the District of Columbia and/or the Court of Appeals for the District of Columbia.

# THE DISTRICT OF COLUMBIA REHABILITATION SERVICES ADMINISTRATION

## REQUEST FOR ADMINISTRATIVE REVIEW MEETING

Name_____ (last 4 digits of SS#) _____

Counselor_____ Counselor #_____

Please list the decision(s) you want resolved:

I have been advised that I can seek assistance from the Client Assistance Program.

Washington, D.C. 20002

Telephone: (202) 547-4747

TDD (202) 547-2657

Fax 202 547-2662

_____ _____

Applicant/Client Date

# THE DISTRICT OF COLUMBIA REHABILITATION SERVICES ADMINISTRATION

## REQUEST FOR MEDIATION

Name_____ Social Security _____

Counselor_____ Counselor #_____

Please list the counselor's decision(s) with which you disagree. What services are affected?

I have been advised that I can seek assistance from the Client Assistance Program,

Address:

University Legal Services – Client Assistance Program

220 I Street, N.E. Suite 130

Washington, D.C. 20024

Telephone: (202) 547-4747

TDD (202) 547-2657

Fax 202 547-2662

I have been advised that I may file a request for an impartial hearing at any time I have a dispute about service provision. Since I have requested mediation, I understand that I may file a request for an impartial hearing with the OAH after conclusion of mediation if no resolution is resolved, or I may end the mediation and file a request for an impartial hearing.

D.C. Office of Administrative Hearings, located at 825 North Capitol Street, N.E. , Suite 4150,Washington, DC 20002; telephone: (202) 547-4747, TDD (202) 547-2657, and facsimile: (20) 547-2662.

_____ _____

Applicant/Client Date

# THE DISTRICT OF COLUMBIA REHABILITATION SERVICES ADMINISTRATION

## REQUEST FOR AN IMPARTIAL HEARING (THIS FORM MUST BE SUBMITTED TO THE OFFICE OF ADMINISTRATIVE HEARING OFFICE)

Name_____ Social Security _____

Counselor_____ Counselor #_____

Please list the decision(s) you want resolved:

I have been advised that I can seek assistance from the Client Assistance Program.

ADDRESS:

University Legal Services – Client Assistance Program

220 I Street, N.E., Suite 130

Washington, D.C. 20002

Telephone: (202) 547-4747

TDD (202) 547-2657

Fax 202 547-2662

_____ _____

Applicant/Client Date

# DCRSA REHABILITATION SERVICES

# AGREEMENT TO MEDIATE

This is an agreement between the Parties/their representative, The Rehabilitation Services Administration (DCRSA) and _____, and mediator _____ _____. This agreement governs the terms and conditions of the mediation and describes the process of mediation to be used by DCRSA, the applicant/client and the mediator in attempting to resolve the dispute regarding _____ _____. The Parties voluntarily consent to participate in a good faith effort for mediating their dispute to a resolution of this matter. The Parties understand that any party may withdraw from the mediation at any time by notifying the mediator and all other Parties. The Parties and mediator agree as follows:

## THE MEDIATION PROCESS

The mediator, who is qualified and knowledgeable in the area, will assist the Parties to resolve their dispute by helping them to communicate their needs and interests, to explore solutions and to reach an agreement satisfactory to both parties. The mediator will function as a neutral third party facilitator and will not decide the disputable issues or impose an agreement upon the Parties. The Parties understand the mediator does not act as an advocate or attorney for any party and each party has the right to have representation during the mediation. If the parties reach agreement, the mediator will prepare a written mediation agreement for review and signature by all parties.

## CONFIDENTIALITY

The entire mediation process is confidential. The mediator agrees not to reveal any information conveyed by either party during private caucus sessions. The Parties, the mediator and all mediation participants agree not to disclose any information made by any Parties or their representatives, whether oral or written. This information includes, but is not limited to: offers, promises, statements made, or settlement terms made or rejected, evaluations regarding the parties, their good faith efforts, and in the case of mediation session being terminated before a resolution is achieved. No record (stenographic, written, electronic, video or otherwise) shall be made of the proceeding.

The Parties will not introduce communications made during the mediation session as evidence in any administrative, civil, judicial or other forum. Each Party will not subpoena the mediator, mediator assistants or mediator notes in any subsequent investigation, action or proceeding arising out of this mediation session. The Parties acknowledge they have read and agree to abide by the confidentiality regulations found in, 34 CFR § 361.38, and other applicable laws or regulations.

## DUTIES AND OBLIGATIONS

When a settlement is reached, the Agreement shall be placed in writing. The Parties understand that no participant will be bound by anything said or done in mediation until there is a written mediation agreement reached and executed (signed) by all Parties.

Applicant/Client Date

Representative Date

DCRSA Representative Date

DCRSA Representative Date

Mediator Date

Other (Define Relationship) Date

Other Date Other Date

Other Date Other Date

Other Date Other Date

OQAFC Form

# THE DISTRICT OF COLUMBIA REHABILITATION SERVICES ADMINISTRATION

## CANCELLATION OF AN APPEAL

I am withdrawing my request for the following type of review:

_____ Administrative Review Meeting

_____ Mediation _____ Impartial Hearing

because my concerns with DCRSA have been successfully resolved through the following means:

_____ Administrative Review Meeting

_____ Mediation _____ Other_____

Or:

_____ Terminated without a resolution.

I understand that this withdrawal does not prevent me from requesting an appeal at a later date if I again have a dispute with DCRSA regarding my vocational rehabilitation program and if it is filed in accordance with the regulations.

_____

Client signature Date

# MEDIATION AGREEMENT FORM

Date: _____

Division of Blind Services_____

Division of Vocational Rehabilitation Services Division_____

Randolph-Sheppard Vending Facilities Program (training dispute) _____

Party Requesting Mediation/Name: _____

In the matter of mediation between _____and DCRSA Rehabilitation Services a final agreement has been reached.

We, the parties in this mediation, having been informed of the objective's of the mediation, the voluntary nature of this mediation and having had the opportunity to discuss all relevant issues of concern have voluntarily agreed to:

This agreement constitutes a full and final mediation agreement as to all issues arising out of this matter. This Agreement does not constitute an admission of wrongdoing on the part of any party. If the consumer is not satisfied, s/he may pursue a hearing.

_____

Consumer (print and sign) Date

_____

Consumer's Representative/Attorney Date

_____

Mediator Date

# MEDIATION SCHEDULING

DATE:

TO: Names and addresses of all participants

FROM: Special Program Administrator

RE: Mediation Scheduled on (date and time)

This is to confirm your agreement to participate in a mediation session on (date and time) to discuss the issue(s) involving the people listed above. The length of each mediation session is different. Please plan to be at a mediation session for at least two hours. The mediator will meet with the parties jointly and separately as appropriate. The parties should arrive at _____.

The mediation will take place at_____. The mediation session be held in the _____floor conference room.

At the mediation, you will be able to ask the mediator questions about how mediation works. The mediator will complete the enclosed form and you will be asked to sign it.

If you have any questions, before the mediation session or if you are unable to attend the mediation session as scheduled, please call _____.

This OQAFC form will be provided to any consumer who requests Mediation.

## CONSUMER INFORMATION ON MEDIATION

**Q. What is mediation?** Mediation is an optional and voluntary process offered to clients of The District of Columbia Rehabilitation Services Administration (DCRSA). It is a way to resolve concerns or disagreements about services and related issues. An impartial third party called a "mediator" helps you and your counselor to develop solutions to the concerns and to reach an agreement.

**Q. Do I have to do it?** No and not every concern or disagreement should go to mediation. The law offers it as an option before going into an impartial hearing. You and your counselor must both agree to go to mediation. DCRSA sees it as a tool to solve concerns or disagreements that might not need to go to a hearing. It is a proven way to resolve concerns or disagreements and improve the working relationships between individuals. It allows you to have serious input into the options to settle the concern or disagreement.

**Q. Who pays for it?** DCRSA Rehabilitation Services

**Q. Where does it happen?** The mediation will be held at a convenient location, typically the DDS/RSA headquarters.

**Q. What happens if I need accommodations for my disability to participate?** You must inform DCRSA of your need. If the need is a disability accommodation DCRSA will assist you in locating the services and for paying for it. For example, if you need a sign language interpreter DCRSA can provide that need and/or pay for it.

**Q. Who can I bring?** You can bring someone to support you, a guardian, representative, advocate and witnesses. The advocate might be the Client Assistance Program (CAP) staff, a case manager, or a representative from a program you believe can help you to participate in the process. No witnesses in mediation—it is an informal process-a formal discussion. You have a right to have legal counsel at your own expense.

**Q. How does it work?** You request mediation from your counselor or their supervisor. You must complete and sign a form for mediation. Both you and your counselor or DCRSA must agree to mediation. A mediator is randomly selected from the mediator list maintained by OQAFC. Once the mediator is selected, they will contact you and set up the day, time and location of the medication session that will be convenient for everyone involved.

**Q. What do mediators actually do?** Mediators are trained to encourage open communication in a confidential setting. The mediator assists the individuals with concerns or disagreements to a solution through different ways. Since there is no one method available to solve these concerns or disagreements, the mediator will be flexible

in his/her approach to explore options and to respect the different individual personalities involved in the session.

**Q. Is mediation confidential?** Yes in most instances. There are situations, which may not be covered by confidentiality, but the mediator will explain those to you.

**Q. What do I get out of mediation?** If successful you will receive a written agreement that states the solution to your concern or disagreement. This agreement may be used in the development of your Individualized Plan for Employment (IPE) or require a change in your present IPE.

## MEDIATION DAY - WHAT THE PARTIES CAN EXPECT

1. Introduction of the parties involved and the mediator.

2. The mediator discusses their neutrality in the session and confidentiality for all parties involved.

3. The mediator discloses potential conflict of interest.

4. The mediator and the parties will set the ground rules for the session.

5. Open statements – Both parties will be afforded the opportunity to explain their position on why this session is being held.

6. At any time during the process, the mediator may ask clarifying questions. The parties may ask clarifying questions of each other.

7. The mediator will provide a summary or feedback to the parties.

8. The mediator will facilitate the parties' communication to develop a wish list, options and or compromises for settlement agreement, which may require the Mediator to hold private caucusing meetings with the separate parties.

9The mediator will produce a written formal agreement with the assistance of the parties involved.

For more information, contact the Chief of the Office of Quality Assurance and Federal Compliance at (202) 442-8670(Voice/TDD)

## MEDIATOR GUIDELINES

A mediator adheres to the District of Columbia Alternative Dispute Resolution Commissions Requirements for the Conduct of Mediation and Mediators and the ABA Guidelines for Mediators Skills and Qualifications.

A mediator does not render a decision on the issues in dispute. The primary responsibility for the resolution of a dispute rests with the parties. A mediator may make suggestions, but the parties will reach a voluntary resolution.

**1. Mediator Conduct** - A mediator should protect the integrity and confidentiality of the mediation process. The duty to protect the integrity and confidentiality of the mediation process commences with the first communication of the mediator, is continuous in nature, and does not terminate upon the conclusion of the mediation.

**2. Disclosure of Possible Conflicts** - Prior to commencing the mediation, the mediator should make full disclosure of any known relationships with the parties or their counsel that may affect or give the appearance of affecting the mediator's neutrality. A mediator should not serve in the matter if a party makes an objection to the mediator based upon a conflict or perceived conflict. If after commencement of the mediation the mediator discovers that such a relationship exists, the mediator should make full disclosure as soon as practicable.

**3. Neutrality/Impartiality** - A mediator should be neutral /impartial toward all parties. If a mediator or the parties find that the mediator's neutrality/impartiality has been compromised, the mediator shall withdraw from the mediation process. Neutrality/Impartiality means freedom from favoritism or bias in word, action, and appearance.

**4. The Mediation Process** - A mediator should inform and discuss with the participants the rules and procedures pertaining to the mediation process. A mediator should inform the parties about the mediation process no later than the opening session.

At a minimum, the mediator should inform the parties of the following:

the mediation is private unless otherwise agreed by the participants. Only the mediator, the parties and their representatives are allowed to attend;

the mediation is informal and there are no court reporters present, no record is made of the proceedings, no subpoena or other service of process is allowed, and no rulings are made on the issues or the merits of the case; and,

the mediation is confidential to the extent provided by law.

**5. Convening the Mediation** - Unless the parties agree otherwise, the mediator should not convene a mediation session unless all parties represented to the mediator possess the adequate authority to negotiate a resolution. The mediation should not begin is the

mediator has reason to believe that a *pro se* party does not understand the mediation process and cannot meaningfully participate in the mediation.

**7. Confidentiality** - A mediator should not reveal information made available in the mediation process, which information is privileged and confidential, unless the affected parties agree otherwise or as may be required by law. A mediator should not permit recordings or transcripts to be made of mediation proceedings. A mediator should maintain confidentiality in the storage and disposal of records and should render anonymous all identifying information when materials are used for federal reporting, research, and educational or other informational purposes. Unless authorized by the disclosing party, a mediator should not disclose to the other parties information given in confidence by the disclosing party and should maintain confidentiality with respect to communications relating to the subject matter of the dispute. The mediator should report to DCRSA whether or not the mediation occurred, and that the mediation either resulted in a resolution or an impasse, or that the mediation was either recessed or rescheduled. In certain instances, applicable law may require disclosure of information revealed in the mediation process, such as: if a person is harmful to themselves or others. If confidential information is disclosed, the mediator should advise the parties that disclosure is required and will be made.

**8. Professional Advice** - A mediator should not give legal or other professional advice to the parties. In appropriate circumstances, a mediator should encourage the parties to seek assistance from a disability advocate, legal, or other professional advice before, during, or after the mediation process. A mediator should explain generally to *pro se* parties that there may be risks in proceeding without independent counsel or other professional advisors.

**9. Disclosure and Exchange of Information** - A mediator should encourage the disclosure of information and should assist the parties in considering the benefits, risks, and the alternatives available to them.

**10. Termination of Mediation Session** - A mediator may make a determination that the mediation process is inappropriate for resolution of the issues. This termination would exist if it is apparent to the mediator that the case is inappropriate for mediation or one or more of the parties is unwilling or unable to participate meaningfully in the mediation process or if the mediation process is being used to further illegal conduct.

**11. Agreements in Writing** - A mediator will assist the parties to reduce all mediation agreements to writing.

For more information review the Mediation Procedure, especially page 3 on the "Mediation Day - What the parties can expect to happen."

**OQAFC Form**

# DCRSA MEDIATION FEEDBACK SURVEY

Please take a few minutes to answer some questions about the mediation session you have just finished. Your answers will help improve mediation for others in the future. DCRSA Office of Quality Assurance and Federal Compliance will analyze this survey. Your mediators will not see this form. Reports based on these surveys will not identify any individual. *Thanks for your help.*

Please circle the number that best answers the question for you.

1. What Division was involved: VR_____ Blind Services_____

RSVFP (training issue)_____

2. Issues mediated:_____

_____

3. Were you satisfied with the mediation process? _____Yes _____No

_____

_____

4. Would you use mediation again?

_____

_____

5. Please rate the following items on a scale of 1 to 5 by circling the number that represents your choice.

1 = strongly disagree

2 = somewhat disagree

3 = neither agree or disagree

4 = somewhat agree

5 = strongly agree

N = don't know or are unable to determine

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a) The mediation process was impartial 1 2 3 4 5 N

b) The right parties were at the table 1 2 3 4 5 N

c) Both sides negotiated in good faith 1 2 3 4 5 N

d) Mediation was appropriate for this matter 1 2 3 4 5 N

e) Were you able to present fully your case? 1 2 3 4 5 N

f) The mediator helped create realistic options for this matter 1 2 3 4 5 N

g) The mediator helped create a positive atmosphere 1 2 3 4 5 N

h) The mediator was impartial 1 2 3 4 5 N

i) The mediator participated the right amount 1 2 3 4 5 N

j) The mediator listened well 1 2 3 4 5 N

k) The mediator explained the process well 1 2 3 4 5 N

l) The mediator was fair 1 2 3 4 5 N

m) The mediator was effective 1 2 3 4 5 N

Please provide any additional comments.

Please return to the OQUAFC.