

## **ARIZONA DEPARTMENT OF ECONOMIC SECURITY**

**Program Name:** Vocational Rehabilitation (VR)

**Policy Number:** VR-15.3-v3

**Effective Date:** July 1, 2008

**Last Revision:**

**CHAPTER 15:** Appeals

**Section 15.3:** Mediation

### **I. Policy Statement**

This policy outlines the Mediation process of a Request for Appeal.

### **II. Authority**

Authority for policies contained in this document includes the following:

- Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. § 3101 et seq.
- Title IV Amendments to the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.
- State Vocational Rehabilitation Services Program, 34 CFR § 361.57 (d), Review of determination made by designated State unit personnel.
- Arizona Revised Statutes:
  - § 23-502, and
  - § 23-503.
- Arizona Administrative Code, Title 6, Chapter 4, § R6-4-210, Appeal Resolution Options.

### **III. Applicability**

This policy applies when an applicant/client selects Mediation in a Request for Appeal.

### **IV. Standards**

#### **A. General Provisions**

1. An applicant/client must submit a Request for Appeal as outlined in Section 15.1 Overview of Appeals of this policy manual.

2. Request for Mediation is voluntary for both the applicant/client and Vocational Rehabilitation (VR).
3. If Mediation is pursued, VR staff cannot decline to participate in Mediation.
4. An applicant's/client's selection of the Mediation process must not be used to deny or delay the applicant's/client's right to pursue resolution of the dispute through a Fair Hearing held within 60 calendar days of the Request for Appeal, unless the parties agree to a specific extension of time.
5. VR is responsible for resolving a Mediation request in conjunction with the Arizona State Attorney General's Office, Civil Rights Division.
6. The RSA Ombudsman must contact the Arizona State Attorney General's Office, Civil Rights Division Resolution Coordinator, to request a Mediation with a Qualified and Impartial Mediator, within seven (7) calendar days of receiving a written Request for Appeal for Mediation.
7. The RSA Ombudsman must contact all parties involved, including the Arizona State Attorney General's Office, Civil Rights Division Resolution Coordinator, VR Staff who made the decision being appealed, the VR Staff's supervisor, the applicant/client, and legal guardian, if applicable, to schedule an appointment to conduct Mediation.
8. An applicant's/client's legal guardian must be present in all Mediations.
9. VR staff involved in the decision-making process must agree to participate in Mediation regardless of whether they can change or mediate the decision made by a higher authority or superseding law.
10. The VR Program Supervisor, or the upline manager, and an RSA Ombudsman Unit staff member must be present at all Mediation proceedings.
11. The authority to approve the outcome of the Mediation proceeding is delegated to the VR Assistant Program Manager or VR Regional Program Manager when such decisions are outside the scope of the VR Program Supervisor.
12. Discussions that occur during the Mediation process are confidential and must not be used as evidence in any subsequent Hearing or civil proceeding.
13. Mediator Selection: The Mediation process is conducted by a qualified and Impartial Mediator, who must be selected from a list of qualified and Impartial Mediators maintained by the Arizona State Attorney General's Office, Civil Rights Division.

14. VR is not responsible for any costs associated with legal representation of an applicant/client during the Mediation process.

**B. Election to End Mediation**

1. At any point during the Mediation process, either party or the Impartial Mediator may elect to terminate the Mediation.
2. If the applicant/client decides to end the Mediation process, they must contact the RSA Ombudsman to withdraw their Mediation request and submit a written withdrawal request.
3. The RSA Ombudsman will submit the withdrawal request to the Conflict Resolution Coordinator.
4. If Mediation is terminated, either party may request a resolution through a Fair Hearing.

**C. Mediation Results in an Agreement**

1. If Mediation results in an agreement that resolves the issues, a Mediation agreement must be completed as follows:
  - a) The Impartial Mediator must prepare a Mediation agreement document that outlines the agreement and send it to the RSA Ombudsman for review,
  - b) The RSA Ombudsman must review the Mediation agreement to ensure it complies with the law and policy, and that it can be implemented,
  - c) All parties must sign the Mediation agreement, and
  - d) All parties must receive a copy of the signed agreement.

**D. Mediation Does Not Result in an Agreement**

1. If Mediation does not result in an agreement or if the applicant/client, without notice, fails to appear at a scheduled Mediation, the Qualified and Impartial Mediator shall close the Mediation request and submit a notice to the applicant/client and VR that the Mediation was closed.
2. The applicant/client may contact the RSA Ombudsman or the Qualified and Impartial Mediator to request to reschedule the Mediation within 20 calendar days of the date of the originally scheduled Mediation, or
3. The applicant/client may contact the RSA Ombudsman or the Office of Appeals to request, within 20 calendar days of the originally scheduled Mediation, to schedule a Fair Hearing. The applicant/client can submit the request for a Fair Hearing in writing, including email, webform, or verbally.

The RSA Ombudsman will initiate the written request to the DES Office of Appeals upon the applicant's/client's request for a Fair Hearing.

4. If an applicant/client does not request to reschedule a Mediation or to schedule a Fair Hearing within 20 calendar days after no agreement is reached in Mediation, or if they fail to appear at a scheduled Mediation, the Qualified and Impartial Mediator will notify VR that the Mediation has been closed.

**V. Procedure**

- A. Refer to IV.(A)(2)-(5), (9)-(11) above.
- B. Refer to Standard Work, if available.

**VI. Documentation Requirements**

The applicant's/client's electronic case file (ECF) must include the following, if applicable:

- A. Request for Appeal, and
- B. Mediation Agreement.