

## **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 with the decision, applicant/client can ask for an administrative review from a District Manager.
3 Optional	Mediation process is available.
4	If dissatisfied with the decision, applicant/client can ask for an impartial hearing.
5	If dissatisfied with the decision, applicant/client can file civil action in court.

### IMPACT ON PROVISION OF SERVICES

Unless an applicant/client or their representative so requests, ARS 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:** ARS cannot provide reimbursement for attorney's fee.)

The rights to present evidence and witnesses and to cross examine all witnesses and other relevant sources of information and evidence.

The right to prohibit the introduction of evidence not discussed at least five days prior to hearing.

The right to have reasonable accommodations: i.e. an interpreter/reader, if notice is given to ARS at least **three (3) working days prior to the impartial hearing should be given in scheduling an interpreter.**

The right to a written report of the findings of fact and conclusions shall be provided to all parties within thirty (30) days of the hearing.

## **STEP 1 – DECISION OF COUNSELOR**

If an ARS staff member has any indication an applicant or client has a concern with ARS, they must inform their District Manager immediately. ARS staff may receive a verbal, e-mail or written request from an applicant, client or their representative, to appeal an ARS decision. If a verbal request is received, ARS staff will assure the correct form is completed. This may require the ARS 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 District Manager.

## **STEP 2 –ADMINISTRATIVE REVIEW**

The District Manager will schedule the Administrative Review to be conducted within ten (10) days of initial date of request:

At a date, time and place convenient to the applicant/client (usually during business hours at the local ARS office), and conducted by a supervisory staff member who has no previous knowledge of the details involved in the matters that are related to the decision being reviewed, can conduct the administrative review in an unbiased way, and has a broad working knowledge of the ARS policies and procedures and the State Plan for VR services.

The applicant/client will receive a decision in writing from the supervisory staff member conducting the Administrative Review within five (5) days following the review.

## **STEP 3 - MEDIATION POLICY (OPTIONAL)**

Mediation ensures that policy and procedures are established to allow that all ARS applicants/clients have the opportunity to resolve disputes through a mediation 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 ARS Policy.

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.

## **MEDIATION PURPOSE**

This process allows an opportunity for, applicants or clients and/or their representative and Arkansas Rehabilitation Services (ARS), to resolve disputes involving the determinations that affect the provisions 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.

## **MEDIATION PROCEDURES**

### **INFORMING APPLICANTS AND CLIENTS**

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

1. An individual applies for vocational rehabilitation services.
2. Order of Selection is utilized.
3. An individualized plan for employment is developed.
4. The 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: PPD&E Cancellation of an Appeal form) In the event that the mediation is terminated, either party may pursue a 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.

ARS participants must be prepared to describe the legal policy context around which the dispute arose, as well as 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 District Manager to Chief of Field Services. If Chief of Field Services is unavailable, the form must be submitted to the Deputy Chief of Field Services or designated staff. The ARS Chief of Field Services and/or the Deputy Chief of Field Services or designated staff will review the complete file of the individual requesting mediation within five (5) working days and determine whether the agency wishes to resolve the dispute through the mediation process. 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 Electronic Case File (ECF), the Request for Mediation form is sent to Program Planning Development & Evaluation (PPD&E) Section to coordinate the mediation session. PPD&E staff assures the Due Process requirements are met and the applicant/client is informed of their rights. The applicant or client has the right to be represented at the mediation session, although the mediator will encourage the individual to speak for themselves as much as possible to re-establish a relationship between the ARS staff and the individual. The PPD&E Section is responsible for all Mediation forms after a request is received.

PPD&E staff communicates with the applicant/client, ARS 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. The PPD&E staff completes the form "Mediation Scheduling." The required ARS staff needed for mediation may have to reschedule their appointments to be available on the day established.

## **AGREEMENT TO MEDIATE**

PPD&E 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**

A pool of mediators is established and agreed upon by the Commissioner and the Rehabilitation Council. The PPD&E Section keeps a list of mediators for review by the applicant or client, so they can choose a mediator. PPD&E staff will present no more than five names of mediators and their qualifications to an applicant/client for their choice. If an applicant or client does not have a preference, the mediator will be randomly selected from the available list. The mediator will be an independent qualified neutral third party facilitator.

## **MEDIATOR'S ROLE**

In mediation, decision-making authority rests with the parties agreeing to mediate. The mediator will set the stage that promotes a reasonable coming together in disclosure, understanding, trust, acceptance and cooperation as necessary for the parties to defend making decisions for settlement purposes. The role of the mediator, includes, but is not limited to; assisting the parties to identifying issues, facilitating communication, 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 settlement terms, but is not to recommend, judge, or impose settlement terms on the parties.

## **MEDIATION DAY**

What the parties can expect to happen:

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.

The mediator will set the ground rules for the session.

1. Open statements – Both parties will be afforded the opportunity to explaining their positions on why this session is being held.
2. The mediator will provide an opportunity for witnesses and/or evidence to be presented.
3. At any time during the process, the mediator may ask questions for clarification or to obtain more information. The mediator may allow the parties to ask clarifying questions of each other.
4. The mediator will provide a summary or feedback to the parties.
5. The mediator will facilitate the parties' communication to develop options or compromises for a settlement agreement, which may require the mediator to hold private caucusing meetings with the separate parties.
6. The mediator will produce a written formal agreement with the assistance of the Parties' involve.

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 (Final Mediation Agreement Form) before leaving the mediation session. The agreement will be implemented as soon as possible. After the agreement is initiated the PPD&E section will send the "ARS Mediation Feedback Survey" form to the applicant/client, their representative, ARS staff involved and the mediator. The written mediation agreement will be attached to the ECF.

## **NO AGREEMENT REACHED**

The applicant or client has the right to request an Impartial Hearing by completing the form "Request for an Impartial Hearing". **This form must be sent to the PPD&E Section immediately** due to the requirement to complete all appeals within 60-day time frame of the initial request.

For more information on these Procedures contact the PPD&E Section at Central Office 501.296.1600.

## **STEP 4 - IMPARTIAL HEARING POLICY**

Each applicant/client has the right for review, through an impartial hearing, of determinations made by ARS 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 Impartial Hearing Officer (IHO). The PPD&E Section will maintain a list of qualified impartial hearing officers, who are knowledgeable in laws and regulations relating to the provision of vocational rehabilitation services. The IHO will not be an employee of a public agency or a member of the State Rehabilitation Council. The IHO shall be selected on a random basis from a pool of qualified persons identified jointly by ARS Commissioner and the Rehabilitation Council.

## **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 to the ARS Commissioner, the form "Request for Impartial Hearing" is completed. The request must be made no later than five (5) days of the administrative review decision.

When the ARS Commissioner receives a request for an impartial hearing, the Program Planning, Development and Evaluation Section will request information from the clients' ECF from the District Manager. If the request for a hearing has not been requested within the five-day timeframe, the District Manager should electronically notify the Program Planning, Development and Evaluation Section. The Impartial Hearing will be completed no later than sixty (60) days from the date of initial request whether verbal or written.

The counselors' ECF will contain a memorandum summarizing the basis for the administrative review decision. It will also contain a statement of issues and a summary of all facts supporting the administrative review decision. The counselors' memorandum will be sent to the applicant/client, and a copy to the appropriate ARS Staff member, and a copy to the Program Planning, Development and Evaluation Section.

The applicant/client and/or their representative have the right to review the client's ECF at the local ARS field office. The counselor shall be advised to inform the applicant/client of this fact in writing and a copy sent to the Program Planning, Development and Evaluation Section.

## **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 applicant/client and/or their representative will be advised in a certified letter with a return receipt requested, that he/she has ten (10) days to request witnesses in writing by mail, fax or email from the date of signature on the ARS certified mail receipt.

The District Manager must advise the ARS Commissioner of any witnesses he/she wishes to appear in order to document the action or to support an administrative decision.

## **SCHEDULING THE HEARING**

The Program Planning, Development and Evaluation Section will communicate with the applicant/client, ARS staff and the Impartial Hearing Officer to coordinate a date, time and place of the hearing. The scheduling letter advises the applicant/client of the time, date, place of hearing, and the name of the IHO who will conduct the hearing.

## **PLACE OF HEARING**

The hearing will normally be held in the local ARS field office. It may be held in another location if requested by either party and approved by the Commissioner.

## **NON-ATTENDANCE AT HEARING**

A request for rescheduling by either ARS staff or the applicant/client prior to the date of the hearing is submitted to the ARS Commissioner to determine if good cause exists for such a request. A hearing can be rescheduled for good cause and if mutually agreed upon. 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 IHO. If an emergency arises, the applicant/client must justify in writing his/her reasons for non-appearance.

## **ARS RESPONSIBILITIES**

It is the responsibility of the Program Planning, Development and Evaluation Section to communicate with the District Manager to arrange for an office to conduct the hearing.

The appropriate ARS staff will be responsible for presenting ARS' case and answering any questions regarding the issue. The staff usually includes the counselor and/or the District Manager. The applicant/client and/or representative have the right to cross-examine the ARS representatives.

ARS may request legal assistance in preparing for the hearing by contacting the Arkansas Attorney General.

## **CONFIDENTIALITY REQUIREMENTS**

Arkansas Code 20-79-216 states that it is unlawful, except for purposes directly connected with the administration of ARS programs, to disclose the names or refer to the names of persons applying to receive services.

To ensure the confidentiality of a closed hearing, the IHO shall inquire if there is anyone present with whom the applicant/client is not familiar. Should an applicant/client indicate in the affirmative, the party in question will come forward, identify himself/herself and state the reason for his/her presence.

Should there be objection on the part of the applicant/client to the relevance of this person's attendance at the hearing, the IHO will have the responsibility to rule on the individual's presence.

## **CONDUCT OF HEARING**

The hearing will be conducted by the IHO. The IHO's responsibility is to maintain a professional atmosphere and to ensure the proceedings are conducted in a fair and impartial manner. The IHO 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 ARS representative will be given the opportunity to present witnesses, offer evidence, and to cross-examine any witness or information introduced. The IHO can pose questions at any time during the proceedings. Questioning of all parties will be confined to the issue(s) involved. The IHO is to ensure only relevant information is permitted at the hearing. Arkansas Rules of Evidence will serve as general guidance as to the admissibility of evidence. The IHO shall not fraternize with either party prior to or during the hearing. The IHO is restricted from communicating with either party privately. The IHO may need to explain all facts are to be heard by both parties to assure impartiality. The IHO should provide for reasonable recesses in lengthy hearings.

## **IHO OPENING STATEMENT**

An IHO opening statement will include:

1. IHO self-introduction and statement of impartiality,
2. function, role and authority,
3. confidentiality,
4. reason for hearing, and ;
5. citing of applicant/client request.

## **OPENING STATEMENT ON BEHALF OF BOTH PARTIES**

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

The ARS opening statement will be a summary of the applicant/clients rehabilitation case and the reason for any decisions made.

The applicant/clients 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 (ARS)**

1. If records, reports, and files were requested, were they made available?
2. Are copies available for the record?
3. Are all appropriate personnel in attendance?
4. Was applicant/client informed in writing that he/she has the right:
  - a. to bring counsel, or a representative;
  - b. to provide witnesses;
  - c. to examine all ARS records upon which the Agency based its decisions;
  - d. to request certain ARS personnel be present at the hearing and of their right to cross examine the Agency witnesses; and
  - e. The role of the IHO includes:
    - f. hearing both sides;
    - g. limiting evidence presented at the hearing to relevant information;
    - h. making a decision based on evidence presented; and
    - i. engage in fact finding.

## **QUESTIONS FOR THE RECORD (APPLICANT/CLIENT)**

1. Have you had an opportunity to examine your VR Record of Services, reports and files regarding your rehabilitation status?
2. Have you had an opportunity for an informal administrative review by the District Manager?
3. Have you had an opportunity to call witnesses?
4. Have ARS assured you that your rehabilitation status would not change until all proceedings were completed?

## **IHO DECISION**

The IHO will prepare the decision based on a comprehensive review of the information presented at the hearing. The format will consist of an Introduction, Findings of Fact, Conclusion of Law, and a Decision. The decision will be based on the provisions of the approved State Plan and the Rehabilitation Act. The decision of the IHO 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 final.

## **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 any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction, without regard to the amount in controversy.

**ARKANSAS REHABILITATION SERVICES  
REQUEST FOR ADMINISTRATIVE REVIEW**

Name \_\_\_\_\_ Social Security \_\_\_\_\_

Counselor \_\_\_\_\_

Please list the decision(s) you want resolved:

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

Disability Rights Center  
1100 N. University, Suite 201  
Little Rock, AR 72207  
Telephone: (501) 296-1775  
1-800-482-1174

\_\_\_\_\_  
Applicant/Client

\_\_\_\_\_  
Date

**ARKANSAS REHABILITATION SERVICES  
REQUEST FOR MEDIATION**

Name \_\_\_\_\_ Social Security \_\_\_\_\_

Counselor \_\_\_\_\_

Please list the decision(s) you want resolved:

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

Disability Rights Center  
1100 N. University, Suite 201  
Little Rock, AR 72207  
Telephone: (501) 296-1775  
1-800-482-1174

\_\_\_\_\_  
Applicant/Client

\_\_\_\_\_  
Date

**ARKANSAS REHABILITATION SERVICES  
REQUEST FOR AN IMPARTIAL HEARING**

Name \_\_\_\_\_ Social Security \_\_\_\_\_

Counselor \_\_\_\_\_

Please list the decision(s) you want resolved:

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

Disability Rights Center  
1100 N. University, Suite 201  
Little Rock, AR 72207  
Telephone: (501) 296-1775  
1-800-482-1174

\_\_\_\_\_  
Applicant/Client

\_\_\_\_\_  
Date

## ARKANSAS REHABILITATION SERVICES AGREEMENT TO MEDIATE

This is an agreement between the Parties/their representative, Arkansas Rehabilitation Services (ARS) and \_\_\_\_\_, and mediator \_\_\_\_\_. This agreement governs the terms and conditions of the mediation and describes the process of mediation to be used by ARS, 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 is not going to act as an advocate or attorney for any party and each party has the right to have representation during the mediation. At the conclusion of the mediation session(s) 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 settlement agreement is reached and executed (signed) by all Parties.

\_\_\_\_\_  
Applicant/Client                      Date

\_\_\_\_\_  
Representative                      Date

\_\_\_\_\_  
ARS Representative                      Date

\_\_\_\_\_  
ARS Representative                      Date

\_\_\_\_\_  
Mediator                      Date

\_\_\_\_\_  
Other (Define Relationship)                      Date

\_\_\_\_\_  
Other                      Date

\_\_\_\_\_  
Other                      Date

\_\_\_\_\_  
Other                      Date

\_\_\_\_\_  
Other                      Date

**ARKANSAS REHABILITATION SERVICES  
CANCELLATION OF AN APPEAL**

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

\_\_\_\_ Administrative Review with the District Manager

\_\_\_\_ Mediation

\_\_\_\_ Impartial Hearing

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

\_\_\_\_ Administrative Review with the District Manager

\_\_\_\_ 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 ARS regarding my vocational rehabilitation program.

\_\_\_\_\_  
Applicant/Client

\_\_\_\_\_  
Date



## MEDIATION SCHEDULING

DATE:

TO: Names and addresses of all participants

FROM: ARS

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. Under the standard practice, the mediators will first meet privately with each party. The parties should arrive at \_\_\_\_\_.

The mediation will take place at \_\_\_\_\_. The mediation session will be held in the 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 501.296.1600.

This PPD&E 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 Arkansas Rehabilitation Services (ARS). 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. ARS 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?** Arkansas Rehabilitation Services

**Q. Where does it happen?** You get to choose the location.

**Q. What happens if I need accommodations for my disability to participate?** You must inform ARS of your need. If the need is a disability accommodation ARS will assist you in locating the services and for paying for it. For example, if you need a sign language interpreter ARS 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. You have the right to bring witnesses. 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 ARS must agree to mediation. Once everyone agrees to mediate, you are given a list of mediators to choose from. If for some reason you do not want to choose, a mediator is randomly selected from the list. Once the mediator is selected, ARS will contact you and set up the day, time and location of the mediation 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 their approach to explore options and to respect the different individual personalities involved in the session.

**Q. Is mediation confidential?** In most instances, yes. 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, 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 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. The mediator will provide an opportunity for witnesses and/or evidence to be presented.
7. At any time during the process, the mediator may ask questions for clarification or to get more information. The mediator may allow the parties to ask clarifying questions of each other.
8. The mediator will provide a summary or feedback to the parties.
9. 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.
10. The mediator will produce a written formal agreement with the assistance of the parties involved.

For more information contact the Arkansas Rehabilitation Services Program Planning, Development and Evaluation Section at 501.296.1600.

## MEDIATOR GUIDELINES

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

A mediator should 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 all settlement decisions are to be made voluntarily by the parties themselves.

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 neutrality/impartial toward all parties. If a mediator or the parties find that the mediator's neutrality/impartiality has been compromised, the mediator should offer to withdraw from the mediation process. Neutrality/Impartiality means freedom from favoritism or bias in word, action, and appearance; it implies a commitment to aid all parties in reaching a settlement.
4. **Mediator Qualifications** – Upon request, a mediator's qualifications and experience constitute the foundation upon which the mediation process depends; therefore, if there is any objection to the mediator's qualifications to mediate the dispute, the mediator should withdraw from the mediation. Likewise, the mediator should decline to serve if the mediator feels unqualified to do so.
5. **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:

1. the mediation is private (Unless otherwise agreed by the participants, only the mediator, the parties and their representatives are allowed to attend.);
2. the mediation is informal (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.

6. **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 settlement, and an adequate amount of time has been reserved by all to allow the mediation process to be productive. A mediator should not convene the mediation if the mediator has reason to believe that a pro se party fails to understand that the mediator is not providing legal representation for the pro se party.
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 ARS whether or not the mediation occurred, and that the mediation either resulted in a settlement 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 should postpone, recess, or terminate the mediation process. 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 settlement agreements to writing.

**PPD&E Form**

**ARS 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. ARS Program Planning, Development and Evaluation Section 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.

	Very dissatisfied	somewhat dissatisfied	somewhat satisfied	very satisfied	satisfied	no opinion
Overall, how satisfied are you with today's mediation?	1	2	3	4	5	0
How satisfied are you with the assistance provided by the mediator?	1	2	3	4	5	0

	Not at all					a great deal
How much did the other party(ies) understand your feelings and ideas today?	1	2	3	4	5	0
Did you get the information you wanted in the mediation?	1	2	3	4	5	0
Did you feel justice was done in the mediation?	1	2	3	4	5	0
Did you feel the agency accepted their responsibility in the mediation?	1	2	3	4	5	0
How appropriate is the agreement reached today? (Leave blank if there is no agreement.)	1	2	3	4	5	0
I would recommend mediation for Similar cases in the future.	1	2	3	4	5	0

What was your role in the mediation?  
 Questions required for federal reporting are:

- ARS customer
- Advocate
- Other
- Agency Staff

- Gender**
- Female
  - Male

- Race**
- African American
  - Asian/Pacific Islander
  - Hispanic
  - Native American
  - Caucasian
  - Other

Today's date \_\_\_\_\_