

TITLE 192 - NEBRASKA COMMISSION FOR THE BLIND & VISUALLY IMPAIRED

CHAPTER 2 - PROCEDURES FOR FORMAL REVIEW OF VOCATIONAL REHABILITATION DETERMINATIONS

001. GENERAL INFORMATION.

01.01. PURPOSE OF THIS CHAPTER. This chapter provides procedures for the formal review of written determinations by Nebraska Commission for the Blind and Visually Impaired (NCBVI) personnel concerning the provision of vocational rehabilitation services to blind individuals. This chapter is intended to implement the requirements of 29 U.S.C. 701 et.seq., 34 CFR Part 361 et.seq., Nebraska Revised Statute Sections 71-8601 to 71-8616 and the Nebraska Administrative Procedures Act.

01.02. DEFINITIONS. The following definitions shall apply as used throughout Chapter 2 of these rules and regulations.

001.02A. BOARD shall mean the governing board of NCBVI, to be appointed by the Governor of Nebraska according to state law.

001.02B. BLIND INDIVIDUAL shall mean any individual who has sight so defective as to seriously limit his or her ability to engage in the ordinary vocations and activities of life.

001.02C. CONTESTED CASE shall mean a proceeding before NCBVI in which the legal rights, duties, or privileges of specific parties are required by Title I of the Vocational Rehabilitation Act of 1973, as amended, or by Nebraska Revised Statute 71-8614, to be determined after a hearing before a hearing officer.

001.02D. DIRECTOR shall mean the Executive Director of the Nebraska Commission for the Blind and Visually Impaired.

001.02E. EX PARTE COMMUNICATION shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communication shall not include:

001.02E1. COMMUNICATIONS which do not pertain to the merits of a contested case;

001.02E2. COMMUNICATIONS required for the disposition of ex parte matters as authorized by law;

001.02E3. COMMUNICATIONS in a ratemaking or rulemaking proceeding; and

001.02E4. COMMUNICATIONS to which all parties have given consent.

001.02F. FAMILY MEMBER shall mean any relative by blood, adoption, or marriage of a blind individual and other individual living in the same household with whom the blind individual has a close interpersonal relationship.

001.02G. HEARING OFFICER shall mean the person or persons conducting a hearing pursuant to this Chapter whether designated as the presiding officer, administrative law judge, or some other title designation.

001.02H. NCBVI shall mean the Nebraska Commission for the Blind and Visually Impaired, which is administered by the Director and the governing Board.

001.02I. NCBVI PERSONNEL shall mean any NCBVI staff specialist assigned to work with the applicant or recipient.

001.02J. PARTY means the person by or against whom a contested case is brought or a person allowed to intervene in a contested case.

001.02K. PETITION means the initial document filed with the Director that sets forth a claim and request for action by NCBVI.

001.02L. PETITIONER shall mean a blind individual who is an applicant for, or recipient of, NCBVI Services who is dissatisfied with any written determination made by NCBVI personnel concerning the provision of vocational rehabilitation services, and shall include the applicant's representative, if the applicant or recipient lacks capacity.

001.02M. PREFERRED FORMAT shall mean the format individually preferred to assure accessibility of written materials; to include print, large print, Braille, electronic audio and text formats.

001.02N. RESPONDENT shall mean the Nebraska Commission for the Blind and Visually Impaired (NCBVI).

002. PROHIBITIONS AGAINST EX PARTE COMMUNICATIONS.

002.01. PROHIBITIONS; WHEN APPLICABLE. The prohibitions found in this section shall apply beginning at the time notice for hearing is given.

002.02. PROHIBITIONS; TO WHOM APPLICABLE.

002.02A. PARTIES AND PUBLIC. No party in a contested case or other person outside NCBVI having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer.

002.02B. PERSONS IN DECISION MAKING ROLES. No hearing officer shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside NCBVI having an

interest in the contested case.

002.02C. INVESTIGATORS. The Director or employees engaged in the investigation or enforcement of a contested case shall not make or knowingly cause to be made an ex parte communication to a hearing officer.

002.03. DISCLOSURE OF CONTACTS. The hearing officer who receives or who makes or knowingly causes to be made an ex parte communication set forth in subsections 002.02A through 002.02C shall file in the record of the contested case:

002.03A. All such written communications;

002.03B. Memoranda stating the substance of all such oral communications; and

002.03C. All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.

002.03D. The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

002.03E. Filing and notice of filing provided under subsection 002.03D shall not be considered on the record and reasonable notice for purposes of the definition of ex parte communication.

003. INTERVENTION IN A CONTESTED CASE.

003.01. INTERVENTION in a contested case shall be allowed when the following requirements are met:

003.01A. A petition for intervention must be submitted in writing to the hearing officer or designee at least five days before the hearing. Copies must be mailed by the petitioner for intervention to all parties named in the hearing officer's notice of the hearing;

003.01B. The petition must state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

003.01C. The hearing officer or designee must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

003.02. The hearing officer or designee may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

003.03. If a petitioner qualifies for intervention, the hearing officer or designee may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Those conditions may include:

003.03A. Limiting the intervenors participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

003.03B. Limiting the intervenors use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

003.03C. Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

003.04. The hearing officer or designee, at least twenty-four (24) hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order.

003.04A. The hearing officer or designee may modify the order at any time, stating the reasons for the modification.

003.04B. The hearing officer or designee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

004. COMMENCEMENT OF A CONTESTED CASE.

004.01. When a blind individual, who is an applicant for, or recipient of, NCBVI services, is dissatisfied with a written determination made by NCBVI personnel, he or she may obtain a review of the determination by filing a petition within thirty (30) calendar days from the date he or she received the written determination. NCBVI will have made every effort to provide written determination in the individual's preferred format.

004.02. The contested case begins with the filing of a petition and request for hearing with the Director at his or her official office, at the Nebraska Commission for the Blind and Visually Impaired, 4600 Valley Road, Suite 100, Lincoln, Nebraska 68510. Filing shall be accomplished in writing and will be received during regular office hours of the Commission, which are 8:00 a.m. to 5:00 p.m., Central Time, Monday through Friday, except state holidays. The petition is the initial document filed with the Director that sets forth a claim and request for action by NCBVI.

004.02A. NCBVI has established procedures consistent with the requirements of Section 102(c) of the Act for the option of formal mediation prior to review through an impartial due process hearing. Mediation is voluntary and is available whenever an impartial

hearing is requested.

004.02B. Details of the procedures for formal mediation of a vocational rehabilitation determination are provided in Appendix B.

004.03. A party to a contested case shall be the person by or against whom a contested case is brought or a person allowed to intervene in a contested case.

004.04. A party may appear on his or her own behalf in a contested case proceeding or may be represented by an attorney or other representative as permitted by law.

004.05. The pleadings in a contested case may include a petition, answer, reply, notice, motion, stipulation, objection or order or other formal written document filed in a proceeding before NCBVI. Any pleading filed in a contested case shall meet the following requirements:

004.05A. The pleading shall contain a heading specifying the name of NCBVI and the title or nature of the pleading, shall state material factual allegations and state concisely the action NCBVI is being requested to take. The pleading shall also contain the name and address of the petitioner, and shall be signed by the party filing the pleading, or when represented by an attorney, the signature of that attorney. A sample petition is contained in Appendix A.

004.05A1. Attorneys shall also include their address, telephone number and bar number.

004.05A2. The initial petition shall also contain the name and address of the respondent and shall include as an attachment a copy of the written determination with which the petitioner is dissatisfied. The petition may be filed on an optional form provided in Appendix A.

004.05B. All pleadings shall be made on white, letter-sized (8½ x 11) paper and shall be legibly typewritten, photostatically reproduced, brailled, electronically transmitted, printed or handwritten. If handwritten, a pleading must be legibly written in ink.

004.06. If the petition appears to comply with the procedural requirements of 004.05A, the Director shall appoint a hearing officer selected pursuant to Section 005 and Section 006 of this Chapter, to hear the contested case. The Director shall send a Notice of Appointment to the hearing officer with the petition attached and a copy to the petitioner and respondent.

004.07. All pleadings subsequent to the petition shall be filed with the hearing officer, with copies sent to the Director at his or her official office. Filing of pleadings and copies may be accomplished by personal delivery or mail to the hearing officer's address and to the NCBVI Director, Nebraska Commission for the Blind and Visually Impaired, 4600 Valley Road, Suite 100, Lincoln, Nebraska 68510 and will be received during regular

office hours of NCBVI.

004.08. After appointment of the hearing officer, the Director shall serve a copy of the petition and a Notice to File Responsive Pleading on each respondent listed in the petition personally or by first-class or certified mail. Certification of mailing of the legal document shall be filed with the Director. Each respondent who chooses to file a responsive pleading must do so within 20 calendar days from the date of personal service or the date of the Director's mailing of the petition.

004.09. All pleadings subsequent to the initial petition shall be served by the party filing such pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service shall be made personally or by first-class or certified mail. Written proof of such service shall be filed with the hearing officer with a copy to the Director.

004.10. A hearing date shall be set by the Director so that the hearing shall be held within sixty (60) calendar days of the filing of the petition unless the parties agree to a specific extension of time. A written notice of the time and place of hearing shall be served by the Director upon all attorneys of record or other representatives of record and upon all unrepresented parties, in the preferred format of all individuals. The notice must include a proof of such service and will be filed with the Director.

004.11. In computing time prescribed or allowed by this chapter of these rules and regulations or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or state holiday, the period shall include the next working day.

004.12. Unless the blind individual so requests or, in an appropriate case, the representative of such individual so requests, pending a decision of the hearing officer under this Chapter, NCBVI shall not institute a suspension, reduction, or termination of services being provided for the individual, including evaluation and assessment services and plan development, unless such services have been obtained through misrepresentation, fraud, collusion or criminal conduct on the part of the petitioner or his/her representative.

005. HEARING OFFICER; CRITERIA.

005.01. The Director shall appoint a hearing officer selected pursuant to 006 to conduct a prehearing conference and/or a hearing and submit a decision to the Director and the parties.

005.02. A person who has served as investigator, prosecutor, mediator or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding.

005.03. A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested

case or in its prehearing stage may not serve as hearing officer or advise a hearing officer in the same proceeding.

005.04. A person who is an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education) may not serve as a hearing officer.

005.04A. A person shall not be considered to be an employee of a public agency solely because the person is paid by NCBVI to serve as a hearing officer.

005.05. A member of the governing Board established pursuant to 29 U.S.C. 721 may not serve as a hearing officer.

005.06. A person who has been involved previously in the vocational rehabilitation of the applicant or recipient who is the subject of the hearing may not serve as a hearing officer.

005.07. A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

005.08. A person may serve as hearing officer at successive stages of the same contested case.

005.09. A hearing officer shall have knowledge of the delivery of vocational rehabilitation services for the blind and visually impaired, NCBVI State Plan for Vocational Rehabilitation Services, and the federal and state rules governing the provision of such services, and training with respect to the performance of official duties.

005.10. A hearing officer shall have no personal or financial interest that would be in conflict with the objectivity of the individual.

006. SELECTION OF HEARING OFFICER.

006.01. The hearing officer shall be selected by the Director to hear a particular case either:

006.01A. On a random basis, or

006.01B. By agreement between:

006.01B1. The Director and the blind individual who is the subject of the hearing; or

006.01B2. In an appropriate case, the Director and the authorized representative who may be a parent, a family member, a guardian, an advocate, or an authorized representative, of the individual.

006.02. The hearing officer shall be selected from among a pool of qualified persons identified jointly by:

006.02A. The Director of NCBVI,

006.02B. The members of the Board.

007. PREHEARING PROCEDURES.

007.01. PREHEARING CONFERENCES AND ORDERS. A hearing officer designated to conduct a hearing may hold a prehearing conference at the request of either party or on his or her own order. If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

007.01A. If a prehearing conference is conducted:

007.01A1. The hearing officer shall promptly notify the Director and the parties of the determination that a prehearing conference will be conducted. The Director may assign another hearing officer for the prehearing conference or the initial hearing officer may hold the prehearing conference; and

007.01A2. The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice, in preferred format, to all parties and to all persons who have filed written petitions to intervene in the matter. The Director shall give notice to other persons entitled to notice.

007.01A3. The notice referred to in subsection 007.01A2 shall include the following:

007.01A3(a). The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

007.01A3(b). The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the agency;

007.01A3(c). The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

007.01A3(d). A statement of the time, place, and nature of the prehearing conference;

007.01A3(e). A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

007.01A3(f). The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

007.01A3(g). A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act; and

007.01A3(h). Any other matters that the hearing officer considers desirable to expedite the proceedings.

007.01B. The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matters as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

007.01C. The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

007.02. DISCOVERY IN CONTESTED CASES.

007.02A. The hearing officer or a designee, at the request of any party or upon the hearing officer's own motion, may issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

007.02B. Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

007.02B1. Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;

007.02B2. State the reasons supporting the motion;

007.02B3. Be accompanied by a statement setting forth the steps or effort made by the moving party or his or her counsel to resolve by agreement the issues raised and that agreement has not been achieved; and

007.02B4. Be filed with the hearing officer with a copy to the Director. The moving party must also serve copies of all such motions to all parties to the contested case.

007.02C. Other than is provided in subsection 007.02B4 above, copies of discovery materials need not be filed with the Director.

007.03. CONTINUANCES. Except for the time limitation in subsection 004.10, the hearing officer may, in his or her discretion, grant reasonable extensions of time or continuances of hearings at the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties, in the preferred format of each party.

007.03A. GOOD CAUSE. Good cause for an extension of time or continuance may include, but is not limited to, the following:

007.03A1. Illness of the party, legal counsel, representative, or witness;

007.03A2. A change in legal representation; or

007.03A3. Settlement negotiations are underway.

007.04. AMENDMENTS.

007.04A. A petition may be amended at any time before an answer is filed or is due if notice is given to the respondent or his or her attorney. In all other cases, a petitioner must request permission to amend from the hearing officer.

007.04B. A hearing officer may also allow, in his or her discretion, the filing of supplemental pleadings alleging facts material to the case occurring after the original pleadings were filed. A hearing officer may also permit amendment of pleadings where a mistake appears or where amendment does not materially change a claim or defense.

007.05. INFORMAL DISPOSITION. Unless otherwise precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default

008. CONDUCTING A CONTESTED CASE HEARING.

008.01. ORDER. At the discretion of the hearing officer, the hearing may be conducted in the following order:

008.01A. The hearing is called to order by the hearing officer. Any preliminary motions, stipulations or agreed orders are entertained.

008.01B. Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

008.01C. Presentation of evidence.

008.01C1. Evidence will be received in the following order:

008.01C1(a). Evidence is presented by the petitioner;

008.01C1(b). Evidence is presented by the respondent;

008.01C1(c). Rebuttal evidence is presented by the petitioner;
and

008.01C1(d). Surrebuttal evidence is presented by the respondent.

008.01C2. With regard to each witness who testifies, the following examination may be conducted:

008.01C2(a). Direct examination conducted by the party who calls the witness;

008.01C2(b). Cross-examination by the opposing party;

008.01C2(c). Redirect examination by the party who called the witness; and

008.01C2(d). Recross-examination by the opposing party.

008.01D. After the evidence is presented, each party may have the opportunity to make a closing argument. Closing arguments shall be made in the same order as the presentation of evidence. The hearing officer may request that the parties submit briefs in lieu of closing argument.

008.02. EVIDENCE.

008.02A. In contested cases the hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

008.02B. Any party to a contested case from which a decision may be appealed to the courts of this state, may request that the hearing officer be bound by the rules of evidence applicable in district court by delivering to the hearing officer at least three (3) calendar days prior to

the holding of the hearing a written request therefore. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing.

008.02C. Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

008.02D. All evidence including records and documents in the possession of the hearing officer of which he or she desires to avail himself or herself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.

008.02E. A hearing officer or designee may administer oaths and issue subpoenas in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

008.02F. The hearing officer shall give effect to the rules of privilege recognized by law.

008.02G. The hearing officer may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within his or her specialized knowledge and the rules and regulations adopted and promulgated by NCBVI.

008.02G1. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

008.02G2. Parties shall be afforded an opportunity to contest facts so noticed.

008.02G3. The record shall contain a written record of everything officially noticed.

008.02H. The hearing officer may utilize his or her experience, technical competence and specialized knowledge in the evaluation of the evidence presented to.

008.03. CONDUCTING THE HEARING BY ELECTRONIC MEANS. The hearing officer may conduct all or part of the hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

008.04. HEARING OFFICER'S DECISION. Within thirty (30) calendar days of the completion of the hearing, the hearing officer shall make a decision and provide a full written report of the findings and grounds for the decision to the petitioner, his or her attorney of record and/or petitioner's

representative, and the Director by U.S. certified mail return receipt requested. Such report must be provided in preferred format for each party.

008.04A. The written report shall meet the requirement of 009.

008.04B. The hearing officer's decision shall be based on the approved NCBVI State Plan for Vocational Rehabilitation Services, the Rehabilitation Act of 1973, as amended and the regulations promulgated pursuant to it, Nebraska Revised Statute Sections 71-8601 to 71-8616 and 192 NAC 1.

008.04C. The hearing officer's decision is the final decision.

008.05. OFFICIAL RECORD.

008.05A. NCBVI shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of rehearing or appeal, in which event the transcript and record shall be furnished by NCBVI upon request and tender of the cost of preparation.

008.05B. NCBVI shall maintain an official record of each contested case under this Chapter for at least four years following the date of the final order.

008.05C. NCBVI record shall consist only of the following:

008.05C1. Notices of all proceedings;

008.05C2. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from NCBVI or hearing officer or Director pertaining to the contested case;

008.05C3. The record of the hearing before NCBVI, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the hearing officer during the proceeding, and all proffers of proof and objections and rulings thereon; and

008.05C4. The final order of the hearing officer.

008.05D. As provided in 002.03, the hearing officer who receives or who makes or knowingly causes to be made an ex parte communication as set forth in that subsection shall make the appropriate filings which shall be included in the official record of the contested case.

008.05E. Except to the extent that the Administrative Procedures Act or another statute provides otherwise, NCBVI record shall constitute the exclusive basis for NCBVI action in contested cases under the act and for

judicial review there.

008.06. COSTS. Each party shall pay his or her own costs to appeal the final decision.

009. DECISION AND ORDER IN A CONTESTED.

009.01. Every decision and order rendered by the hearing officer in a contested case shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.

009.02. The decision and order of the hearing officer should include:

009.02A. The name of the hearing officer and name of the proceeding;

009.02B. The time and place of the hearing;

009.02C. The names of all parties or their attorneys who entered an appearance at the hearing;

009.02D. The findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact;

009.02E. The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising therefrom; and

009.02F. The order consisting of the action to be taken by NCBVI as a result of the facts found and the legal conclusions arising therefrom.

009.03. Parties to the proceeding shall be notified of the decision and order in person or by mail, in the individual's preferred format. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record, in the preferred format of all individual

010. APPEALS.

010.01. Any person aggrieved by a final decision in a contested case is entitled to judicial review under the Administrative Procedure Act or to resort to such other means of review as may be provided by

010.02. Parties desiring to appeal a NCBVI decision must file a petition for review in the district court of the county where the NCBVI action is taken within thirty (30) days after the service of the final decision by NCBVI. The thirty (30) day period for appeal commences to run from the date of mailing of the notice of order and decision to the parties or their attorneys of record. Service of the petition and summons must be made in accordance with Nebraska law.

010.03. Unless otherwise provided by statute, the procedures of Nebraska Revised Statute 84-917 govern the procedure for taking an appeal.

010.04. If any person appeals the final decision of the hearing officer, the final decision involved shall be implemented pending review by the court.

APPENDIX A: SAMPLE PETITION FORM

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Appendix B

Nebraska Commission for the Blind and Visually Impaired

Mediation Procedures

Established procedures will be followed for mediation of determinations made by NCBVI personnel that affect the provision of vocational rehabilitation services to applicants or eligible individuals. An agreement has been formalized between NCBVI and the Nebraska Office of Dispute Resolution (NODR) and Regional Mediation Centers for the provision of Mediation Services. NODR, established in accordance with the Nebraska Dispute Resolution Act, is an office under the Nebraska State Supreme Court.

When the Impartial Hearing Coordinator receives a hearing request, the Impartial Hearing Coordinator will send the individual requesting the hearing a letter immediately with the following information:

- a. Mediation is voluntary on the part of the individual and NCBVI.
- b. Mediation is available whenever a Fair Hearing is requested.
- c. The use of mediation will not be used to deny or delay the rights of an individual in regards to the requested impartial hearing and in regards to any right under the Rehabilitation Act.
- d. Mediation will be conducted by a qualified, impartial mediator knowledgeable in laws and regulations relating to the provision of vocational rehabilitation services for the blind, through the Regional Mediation Centers in Nebraska. A list of the Mediation Centers will be provided, including the counties they serve.
- e. Sessions will be scheduled in a timely manner and will be held in a location that is convenient to the parties to the dispute.
- f. NCBVI will cover the costs of the mediation process.
- g. The individual has five (5) days from the date of receiving the letter to request mediation from the appropriate Mediation Center should he/she choose to do so.
- h. An agreement reached by the parties to the dispute in the mediation process will be set forth in a written mediation agreement.

i. Discussions that occur during mediation are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the mediation process.

Should both sides agree to mediation, the Mediation Center will make the appropriate arrangements. The Centers require two weeks to set up the mediation; the process is completed within 27 days. NCBVI will pay for any accommodations needed and will pay on an hourly rate for cases referred to a Center.

