

### **10A NCAC 63C .0403 PROCEDURE**

- (a) The operator/licensee shall discuss the problem with the Division staff person taking the action with which the operator is dissatisfied and request specific action in writing to resolve the grievance. This discussion shall be held within 15 working days of the occurrence of the action challenged by the operator. The operator/licensee shall receive a response within five working days following the discussion. Any decision made by agency personnel at this step shall be subject to supervisory review and approval.
- (b) If the complaint is not resolved and the operator/licensee is not satisfied with the outcome of Paragraph (a) of this Rule, he shall have 15 working days to ask for a review by the operator relations committee in writing. Within five working days after asking for a review, the operator/licensee shall be notified of the date of the hearing, which shall be held within 25 working days after the operator's/licensee's request for a hearing. The committee shall render its decision within 20 working days after the hearing.
- (c) If the decision reached in step of Paragraph (b) of this Rule is not satisfactory to the operator/licensee or the Division staff person responsible for the initial action, the matter may be referred by the operator/licensee or the Division staff person to the director of the Division. Any request for review shall be submitted within 15 working days after the operator relations committee has presented its recommendation. The party requesting the referral shall provide a written summary of the specific facts of the complaint and request for specific action to resolve the grievance, copies of which shall be provided at the same time to all other parties concerned. The director shall make the decision for the Division within 15 working days, and his decision shall be announced immediately to all parties concerned.
- (d) If the complaint is not resolved and the operator/licensee is not satisfied with steps of Paragraphs (a) through (c) of this Rule, then the operator/licensee may file a complaint with the Division requesting a full evidentiary hearing.
- (e) If a blind operator/licensee requests a full evidentiary hearing, such request shall be made within 15 working days after the director's adverse direction rendered through the procedures in this Rule.
- (f) A blind operator/licensee shall request a full evidentiary hearing in writing. This request shall be transmitted to the director of the Division personally or by certified mail, return receipt requested, transmitted through the Elected Committee of Vendors in accordance with 34 C.F.R. 395.14(b)(2). This hearing shall be held in accordance with G.S. 150B, Article 3, the extent that such article does not conflict with these Rules pertaining to grievance procedures or any federal law or regulation.
- (g) A blind operator/licensee shall be entitled to legal counsel or other representation in a full evidentiary hearing. The Division shall reimburse the operator for costs of legal counsel at a rate of 50% of the total amount not to exceed a total expenditure by the Division of one thousand five hundred dollars (\$1,500). This expenditure is based on the availability of funds.
- (h) Reader services or other communication services shall be arranged for the blind operator/licensee should he so request. Transportation costs and per diem shall be provided also to the blind operator/licensee during the pendency of the evidentiary hearing, if the location of the hearing is in a city other than the legal residence of the operator/licensee.
- (i) The hearing shall be held at a time and place convenient and accessible to the blind operator/licensee requesting a full evidentiary hearing. The blind operator/licensee shall be entitled to have the hearing held in the county of his residence unless he waives this right. A hearing held during regular Division working hours shall be deemed among the convenient times. The hearing shall be scheduled by the Division within 15 working days of its receipt of such a request, unless the Division and the blind operator/licensee mutually, in writing, agree to some other period of time. The Division shall notify the blind operator/licensee in writing of the time and place fixed for the hearing and of his right to be represented by legal or other counsel. The Division shall provide the blind operator/licensee a copy of the hearing procedures and other relevant information necessary to enable him to prepare his case for the hearing.
- (j) The presiding officer at the hearing, to be appointed by the Secretary of the Department of Health and Human Services, shall be impartial, unbiased, have knowledge in conducting hearings, and have no involvement either with the Division action which is at issue in the hearing or with the administration or operation of the Randolph-Sheppard Business Enterprises Program.
- (k) The presiding officer shall conduct a full evidentiary hearing, avoid delay, maintain order, and make sufficient record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law and may make all procedural and evidentiary rulings necessary for the conduct of the hearing.
- (l) Both the blind operator/licensee and the Division shall be entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination of witnesses as may be required for a full and true disclosure of all facts bearing on the issue.

- (m) All papers and documents introduced into evidence at the hearing shall be filed with the presiding officer and provided to the other party. All such documents and other evidence submitted shall be open to examination by the parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues.
- (n) A transcript shall be made of the oral evidence and shall be made available to the parties. The Division shall pay all transcript costs and shall provide the blind operator/licensee with at least one copy of the transcript.
- (o) The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for decision.
- (p) The decision of the presiding officer shall set forth the principal issues and relevant facts adduced at the hearing, and the applicable provisions in law, federal regulations, and state rules. It shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any remedial action necessary to resolve the issues in dispute. The decision shall be made within 15 working days after the receipt of the official transcript. The decision shall be mailed promptly to the blind operator/licensee and the division.
- (q) If the dispute(s) is not resolved to the satisfaction of a blind operator/licensee after provision of a full evidentiary hearing, an appeal may be made to the Secretary of the U. S. Department of Education for the convening of an arbitration panel.
- (r) The results of the arbitration shall be considered the final agency action and the operator/licensee shall have exhausted his administrative remedies.

*History Note:* Authority G.S. 111-27; 143B-157; 20 U.S.C. sec. 107;  
Eff. October 1, 1978;  
Amended Eff. August 1, 2002; May 1, 1996; August 1, 1990; February 1, 1984; February 1, 1983;  
December 1, 1981.