

DEPARTMENT OF TRANSPORTATION  
EQUAL EMPLOYMENT OPPORTUNITY/  
EQUAL OPPORTUNITY ALTERNATIVE  
DISPUTE RESOLUTION

AGREEMENT TO MEDIATE

This Agreement is between

\_\_\_\_\_  
(Aggrieved Person)

and

\_\_\_\_\_  
(Affected DOI Office)

prepared by

\_\_\_\_\_  
(Agency Official)

The parties agree to enter into mediation with the intent of reaching a mutually agreeable resolution of the dispute presented to the EEO Counselor or accepted for investigation on \_\_\_\_\_ . The following are the issues to be mediated by the disputants:

\_\_\_\_\_  
\_\_\_\_\_

Designation of Representative:

The aggrieved person designates his/her representative, if she/he desires a representative, for this mediation process.

\_\_\_\_\_  
(Employee Representative's Name)      \_\_\_\_\_  
(Phone Number)

is hereby designated by the aggrieved person as his/her representative for the purpose of this mediation.

Confidentiality Clause for Representatives:

We the undersigned agree not to disclose confidential information unless: (1) all parties agree in writing to disclose the information, (2) the information has already been made public, (3) the disclosure of the information is required by law, or (4) a court determines that disclosure of the information is necessary.

\_\_\_\_\_  
(Employee Representative)      \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Agency Representative)      \_\_\_\_\_  
(Date)

Provisions of the Agreement and Signatures:

1. By signing this document the parties agree that the pre-complaint process is extended by 60 calendar days. The total EEO/EO counseling period may not exceed 90 calendar days from the date EEO/EO counseling began.
2. Mediators are neutral third parties who will assist the parties to reach their own solution. Mediators will not make judgments or impose a resolution.
3. Mediators do not offer advise nor do they provide legal counsel.
4. The parties have a right to have a representative of their choice accompany and advise them anytime during the mediation process.
5. The confidentiality of the mediation process is established in the Administrative Dispute Resolution Act of 1996. A "plain English" summary of these confidentiality provisions is on the reverse side of this form.
6. While the parties intend to continue with mediation until a resolution is reached, it is understood that either or both parties may withdraw from mediation at any time. If one or both parties determine to withdraw from the mediation, the parties should be encouraged to discuss their decision in the presence of the other party and the mediator(s).
7. If the mediator(s) determine that it is not possible to resolve the dispute through mediation, the mediator can terminate the process once it has been conveyed to the parties.
8. If agreement is reached, the mediator(s) will prepare a resolution agreement that will be signed by the parties.
9. By entering into a resolution agreement the aggrieved person agrees that the allegations/issues that were resolved and which formed a basis of the dispute are withdrawn and no longer be used as the basis of a complaint against the agency or its agents.
10. If there is no resolution the aggrieved person will be referred back to the EEO Counselor to complete the pre-complaint process.

The parties have read, understand, and agree to the provisions of this agreement.

\_\_\_\_\_  
Aggrieved Person      \_\_\_\_\_  
Date      Agency Official      \_\_\_\_\_  
Date

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

The Administrative Dispute Resolution Act of 1996 (ADRA) vides for the confidentiality of the mediation process as follows:

a. Mediator. A mediator may not disclose confidential information, unless:

- (1) all parties agree in writing to disclose the information;
- (2) the information has already been made public;
- (3) the disclosure of the information is required by law, or
- (4) a court determines that disclosure of the information is necessary to:
  - (a) present manifest injustice;
  - (b) help establish violation of a law, or
  - (c) present serious harm to public health or safety.

b. Parties. A party to the mediation may not disclose confidential information, unless:

- (1) the party prepared the information;
- (2) all parties agree in writing to disclose the information;
- (3) the information has already been made public;
- (4) the disclosure of the information is required by law;
- (5) a court determines that disclosure of the information is necessary to:
  - (a) present manifest injustice;
  - (b) help establish violation of a law, or
  - (c) present serious harm to public health or safety.
- (6) the disclosure of the information is relevant to finding understanding, or enforcing a resolution agreement resulting from mediation, or
- (7) except for information communicated by the mediator, the information was provided to, or available to all parties.

c. Violations. Any confidential information disclosed in violation of ADRA and this agreement shall not be admissible in any administrative (e.g. EEOC hearing) or judicial (e.g. suit in the U.S. District Court) proceeding related to the issues raised in mediation.

d. Alternative Confidentiality Agreement. The parties may agree to use different procedures for disclosure of confidential information by the mediator. In order to use different procedures, the parties must make changes before the mediation begins. Unless the parties inform the mediator of a different set of procedures, section “a” will apply.

e. Discovery in a Judicial Proceeding. If the mediator is asked to disclose confidential information communicated during the mediation process as part of a judicial proceeding, the mediator will make reasonable efforts to notify the parties (and/or affected nonparty participant) of the request. The parties (and/or affected nonparty participant) have 15 calendar days to respond to the mediator and offer to defend the mediator’s refusal to disclose the confidential information. If the parties (and/or affected nonparty participant) do not reply to the mediator within 15 calendar days, they have waived their rights to object to disclosure of confidential information by the mediator.

f. Otherwise Discoverable Information. Information communicated in mediation is not protected from disclosure if it is otherwise discoverable.

g. Performing Resolution Agreement. Sections “a” and “b” will not apply when necessary to comply with a resolution agreement reached as a result of mediation to document compliance with such agreement.

h. Research. Information about mediation may be gathered for research or educational purposes so long as the parties and specific issues mediated are not identifiable.

i. Dispute with Mediator. Sections “a” and “b” do not prevent the use of alternative dispute resolution process to resolve a dispute with the mediator provided that release of confidential information is only released to the extent necessary to resolve the conflict with the mediator.