

The following guidance is the process that a party to a mediation should expect to follow under the Headquarters Mediation Program.

I. DECISION TO PARTICIPATE IN MEDIATION

- a. In December 2014, the Secretary of Energy issued an Alternative Dispute Resolution (ADR) Secretarial Statement encouraging employees and managers to consider using “ADR at the earliest opportunity to resolve or prevent conflict.” To that end, the HQ Mediation Program offers DOE employees and managers the opportunity to resolve workplace, collective bargaining agreement and other disputes through the use of mediation.
- b. Mediation is voluntary and confidential where participants are able to resolve their conflict with the assistance of a trained mediator. The mediator is typically an employee of DOE’s Office of Hearings and Appeals or from other federal agencies who is impartial and has no stake in the outcome of the mediation.
- c. The mediation offers a less formal, more cost-effective and timely avenue to the parties as opposed to relying on the more formal means of resolving disputes such as through litigation. Mediation may be requested at any time, including at the earliest sign of a conflict. Either party may withdraw from the mediation process at any time for any reason. Addressing workplace concerns early helps reduce friction and escalation and increases productivity.

II. CONVENING STAGE

- a. After mediation has been requested by one party to a conflict, the Headquarters (HQ) Mediation Program Manager will meet with the requesting party to discuss the mediation program and its processes and answer any questions. The requesting party will confirm his/her request by reading and signing the program’s Agreement to Mediate (OCPR-HQ-006).
- b. After the HQ Mediation Program Manager meets with the first party, she will contact the other party to determine whether that party agrees to engage in mediation. The HQ Mediation Program Manager will also offer to meet with the second party to provide information and answer any questions. If the second party agrees to engage in mediation, he/she will also read and sign the program’s Agreement to Mediate (OCPR-

HQ-006). If the second party decides not to engage in mediation at this time, the HQ Mediation Program Manager will email the first party and Office of Civil Rights, if applicable, informing them of the second party's decision.

- c. Employees have the right to legal representation but are not required to obtain legal representation in order to participate in mediation. If a party is represented by counsel, it is highly recommended that the party's counsel participate in this initial meeting. However, DOE management representative is highly encouraged to consult with the General Counsel's Office of the Assistant General Counsel for General Law to determine whether mediation is appropriate. If a party is a bargaining unit employee, the employee may consider contacting The National Treasury Employees Union (NTEU) in advance of the mediation session to seek guidance if desired.

After all necessary parties have agreed to engage in mediation, the HQ Program Manager will arrange for a mediator who will coordinate and schedule the mediation session. The mediators are trained neutrals from the DOE and other federal agencies at no cost to the mediating parties.

III. PRIOR TO MEDIATION

- a. After a mediator is assigned, the HQ Mediation Program Manager emails the parties informing them that a mediator has been assigned and that the mediator will contact them to schedule a mutually agreeable time and place for the mediation. The mediator is expected to schedule a date for the mediation no later than two weeks after the email has been sent out to the parties with the assigned mediator.
- b. Once the mediation date is set, the mediator will conduct a pre-mediation teleconference with the parties. Its purpose is to answer any questions about the process and address any preliminary matters such as clarifying the issues in dispute or considering any special accommodations or logistics that may be needed at the mediation.

IV. PREPARING FOR THE MEDIATION SESSION

- a. The value a party gets out of mediation corresponds with the effort that party puts into preparing and participating with an open mind during mediation. If a party is represented by counsel or NTEU, that party should ensure that he/she has prepared together for the mediation. For any party who may want additional assistance before,

during or after the mediation, the DOE's Employee Assistance Program (EAP) is available.

- b. To prepare for negotiations during mediation, a party should consider the questions in Exhibit A – Mediation Prep Questions. For additional support and information, either party may contact the DOE Office of Conflict Prevention & Resolution or visit its website for additional information.

V. AT THE MEDIATION SESSION

- a. The mediation session is expected to be completed in one day. The mediation begins with everyone together (joint session). During this time, the mediator will explain the process and discuss the “Mediation Confidentiality Agreement” form. The mediator will answer any questions the parties may have. Each attendee to the mediation will be asked to review and sign the “Mediation Confidentiality Agreement” form at the outset of the mediation since mediation is a confidential process.
- b. During the initial joint session, each party will have an opportunity to share an opening statement on her/his perspective regarding the nature of the dispute. An “Opening Statement” should be short, straightforward and in chronological order. Using some of the information that a party has developed as part of answering the question in Exhibit A, a party may develop his/her opening statement. But there is no requirement for a party to make an opening statement. During joint sessions, everyone has an opportunity to ask direct questions which may bring out new and useful information.
- c. Following the joint session, the mediator may meet with each side privately in a confidential session (caucus). The mediator will use these private caucuses to ensure that she/he thoroughly understands the party’s underlying interests and give each party an opportunity to speak in more frank and open manner without the other party’s involvement. The mediator may also use the caucus as an opportunity to explore options to resolve the dispute or help each party assess the strengths and weaknesses of her/his position. The mediator is prohibited from sharing any information gathered in a caucus with the other party without the approval of the disclosing party. The mediator may reconvene everyone in a joint meeting to share any areas of agreement that will further resolution.
- d. If the parties reach a common understanding on how to resolve their dispute, the terms of their understanding will be documented at the mediation using the Mediation Terms Worksheet. After the mediation ends, the mediator will provide the Mediation Terms Worksheet to DOE attorney (if present at the mediation) and the HQ Mediation Program

Manager for drafting of the settlement agreement. The DOE attorney or HQ Mediation Program Manager will draft a settlement agreement based on the Mediation Terms Worksheet and coordinate the circulation of the draft settlement agreement to the appropriate headquarters offices to be reviewed and approved to ensure compliance with applicable regulations and laws. After all reviews and edits have been completed, the parties will review and sign the settlement agreement.

- e. If the parties do not settle their dispute, the parties have the option of pursuing resolution of the matter in other forums. Mediation does not preclude a complainant from using a more formal EEO or grievance process. A complainant may return at any time to the place where processing had ceased in the formal EEO process, or to the informal EEO process where they will be issued a Notice of Right to File a Formal Complaint.

Website address: **www.oha.energy.gov** (under “Services” click on OCPR)

Additional Information: 202-287-1566 or 202-586-4002

EXHIBIT A (MEDIATION PREP QUESTIONS)

These questions are designed to help you start thinking about your interests and developing strategies on how to best serve your interests while taking into account the other party's interests and goals to the extent you know them.

1. What is the issue that you would like resolved?
2. Summarize the facts leading up to the problem in chronological sequence.
3. What are your interests, i.e., what do you really want or need? Try to focus on what you need in order to move forward.
4. What do you think the other party really wants or needs? Try to envision how you would react and what you would want if you were in their situation. You may want to prepare questions in order to obtain more information.
5. Identify and list as many creative options as you can that would resolve your concerns and meet your interests. Think about how you will convey these resolution options to the other party.
6. Consider what the other party could reasonably do to meet your interests. Think of what you could do to satisfy the interests of the other party and support the mission of the agency.
7. Of all the options, which is the best? Which is the most realistic? Prioritize your options and allow room for flexibility.
8. If you can't get everything you want, what can you accept in order to have a resolution now?
9. If you DO NOT settle this dispute in mediation, what are your other alternatives? What will those alternatives COST? Consider factors such as time, money, uncertainty and stress.