

You have been selected to mediate the resolution of a concern between the Department of Energy and an employee. The parties have voluntarily chosen to mediate their dispute. To enhance the chances of settlement, you should focus on developing the parties' trust in the process and each other. Below are several issues you should keep in mind as you serve as a HQ Mediation Program mediator.

1. Facilitative Mediation. The HQ Mediation Program uses the facilitative form of mediation. As such, you are not authorized to force the parties to settle but rather help the parties in developing a mutually satisfactory solution to resolve their dispute. Undoubtedly, parties may solicit your views of the strengths and weaknesses of their position or case. **You should resist offering your views.**
2. Pre-Mediation Teleconference. Under normal circumstances, you should hold a joint pre-mediation teleconference with the parties. Its purpose is to introduce yourself, get acquainted, answer any questions about the process, discuss your approach to mediation, and address any preliminary matters such as clarifying the issues in dispute or considering any special requests. As importantly, this pre-mediation contact is the first opportunity you will have to start to develop trust with the parties.
3. Program's Timeliness Expectations. The mediation process is expected to end within 30 days after you have been selected so it is important that you are prepared to commit the attention needed to an effective and timely mediation process. The mediation session is expected to be no longer than one day except for unusual circumstances with the mutual agreement of both parties.
4. Mediation Participants. Either party may be accompanied by any person of their choosing so long as the other party does not object. If either party objects, the objecting party may withdraw from mediation unless the parties can reach an agreement on who may attend the mediation.
5. Confidentiality. You must maintain the confidentiality of the information obtained during the mediation process. (See 5 U.S.C. § 574) If you meet privately or have a telephone conversation with one party, you must inform the other party but not convey to the other party any information that was obtained during that private conversation without the consent of the disclosing party.
6. No Binding Authority. As a mediator, you do not have the authority to bind DOE or an employee to anything. The choice to continue in the mediation process or whether or not to reach a settlement agreement resides solely within the prerogative of each party.
7. Impartiality. You should avoid any conduct that gives the appearance of partiality. In other words, you should not display any favoritism, bias or prejudice with the parties or their views or positions.
8. Conflict of Interest. You should avoid a conflict of interest or the appearance of a conflict of interest before, during and after a mediation. If you learn any fact after accepting a mediation that raises a question about a potential conflict, you must disclose it as quickly as practicable to the parties. After disclosure, if all parties agree, you may proceed with the mediation.

9. Mediation Terms Worksheet. If the parties reach a common understanding on how to resolve their dispute, the terms of their understanding should be documented in the Mediation Terms Worksheet. It is the parties' responsibility to author the terms of the Mediation Terms Worksheet. Although you may assist the parties to overcome a drafting impasse, you should not draft any of the terms.
10. Settlement Official and EEO Disputes. If you are presiding over a mediation that relates to an Equal Employment Opportunity (EEO) complaint, DOE must have a representative with the authority to negotiate in good faith for DOE. That person should also have the authority to approve or enter into a settlement agreement but if not, another person with authority to approve or enter into a settlement agreement should be accessible to the DOE's representative. **No responsible management official or agency official directly involved in the case may serve as the person with settlement authority.**
11. Document Retention. At the adjournment of the mediation process, there is no longer a need for retaining any documents that you may have acquired or developed as part of the mediation process including your written notes and therefore those documents should be destroyed.
12. Updating the HQ Mediation Program Manager. In the regular course of business, you should keep the DOE HQ Mediation Program Manager informed of the pertinent information and dates relating to the mediation such as scheduled mediation date, the location and mediation participants and provide any signed program documents for record keeping purposes.

Points YOU should emphasize with the parties at or before the mediation

- Voluntary. *Mediation is voluntary for all participants. Either party may withdraw from the mediation process at any time for any reason.*
- Filing Deadlines. *Participation in mediation does not extend, suspend or in any way alter the filing requirements of any type of complaint at DOE or any other government agency or any court.*
- Confidentiality. *The mediation process is a confidential process and therefore the parties may not discuss the substance of the mediation with anyone unless agreed to by both parties or by court order or applicable law.*
- Neutrality. *You are neutral and cannot give legal advice, act as either party's legal advisor nor take sides.*
- Timeliness. *The mediation process is expected to end within 30 days after you have been selected.*
- Settlement Official and EEO Disputes. *If you are presiding over a mediation that relates to an Equal Employment Opportunity (EEO) complaint, confirm that there is a DOE representative present or accessible with settlement authority who was not involved in the circumstances giving rise to the case.*
- Settlement Agreement. *If the parties reach a common understanding on how to resolve their dispute, such understanding will be documented using the template Mediation Terms Worksheet. The terms of the Mediation Terms Worksheet will be incorporated in a final settlement agreement that the parties will sign a few days after the adjournment of the mediation session.*