

## OEAP Employee Workplace Mediation Program Guide

<b>Guidance Number:</b> OEAPMediation2015	<b>Effective Date:</b> March 15, 2015	<b>Approval Signature(s):</b>
<b>Dated:</b> 0315/15	<b>Employee Workplace Mediation Procedure Guidance</b>	

### I. Purpose

The statewide Employee Workplace Mediation Program (or “the program”) guidance explains, in detail the Transformative Mediation program components. The program is administered by the Ohio Employee Assistance Program (OEAP). The program is a resource to address interpersonal conflict in the workplace.

### II. Mediation Approach

The Employee Workplace Mediation Program uses Transformative Mediation, which is an effective approach to addressing workplace conflict through conversation. State of Ohio employees who are trained in Transformative Mediation will serve as State of Ohio mediators. Generally two co-mediators will mediate a constructive conversation that allows each party to fully communicate his/her perspective on a particular workplace conflict. Transformative Mediation is an approach designed to support the parties’ decision-making and allow parties to have control of the process, not the mediator(s). The parties determine all outcomes including whether to resolve a conflict or dispute.

### III. Participant Eligibility

The Employee Workplace Mediation program is available to all full and/or part-time permanent state of Ohio employees, both bargaining unit and exempt.

### IV. Voluntary Participation

- A.** Participation in the program is voluntary; hence, all parties involved in the conflict must agree to participate in the program. Parties cannot be forced or pressured to participate in the program.
- B.** The parties, not the mediator, shall determine whether to settle an issue or conflict. By participating in the program, the parties are not obligated and cannot be forced or pressured by mediator(s) to settle a conflict.
- C.** Parties who participate in the program are not obligated to continue their participation. Prior to signing a settlement agreement, a party

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may withdraw from the program, at any time, by notifying one of the assigned mediators or OEAP.

**V. Types of Conflict Addressed**

- A.** The program is designed to address interpersonal conflicts between two or more state of Ohio employees. Types of conflict may involve co-workers, workgroups, subordinates and supervisors or include issues such as: communication breakdowns, confusion about work duties, personality differences and job performance.
- B.** The program cannot be used to address conflicts involving allegations of sexual contact, sexual harassment, workplace violence or workplace domestic violence.
- C.** The program cannot be used to address conflicts involving matters that are currently being investigated internally or by an external authority.
- D.** The program is not meant to replace any contractual dispute resolution process. Accordingly, the program cannot be used to address contract interpretation matters, discipline matters, or any other matters that are reserved for resolution through the grievance procedure or any other established procedure of an applicable collective bargaining agreement. For example, an open or active grievance **will not** be mediated.
- E.** This program cannot be used to address matters related to a claim(s) filed with a court and/or an administrative agency authorized to hear such claims, if doing so would impermissibly interfere with the jurisdiction of the relevant court or administrative agency. Additionally, parties who intend to file a claim in a court and/or an administrative agency should consult the filing rules for the court and/or administrative agency to determine whether participation in the program will have any impact on their claim.

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### VI. Mediation Requests and Referrals

- A. A party to a conflict can request mediation by contacting the OEAP to make a request or referral for mediation services. The request or referral can be made via email ([OEAP@das.ohio.gov](mailto:OEAP@das.ohio.gov)) or by contacting OEAP via telephone at 800-221-6327 or 614- 644-8545.
- B. Individuals who are not directly involved in a conflict but have knowledge of a particular conflict may contact OEAP for a mediation referral.

### VII. Mediation Process

- A. If all parties agree to mediation, the OEAP will assign two (2) mediators to mediate the conflict. The mediator(s) are responsible for contacting the parties to schedule the mediation as soon as possible, but absent extenuating circumstances, no later than 14 calendar days after mediation has been assigned to the mediator(s). Mediation will be held within 30 calendar days from the date of assignment notwithstanding extenuating circumstances.
- B. The mediator(s) will arrange for the proper space to conduct the mediation. The OEAP will provide the mediators with the necessary agency contact information. Absent extenuating circumstances, the mediation will be held in a private space at the work location of the parties involved. If that is not possible, the alternative shall be a nearby public place, such as a library or conference room. Mediation sessions are held during normal business hours and will take place during the parties' normal work schedule, unless the person works 2nd or 3rd shift. In this case, special considerations will need to be approved by the immediate supervisor to hold a mediation outside of the employee's normal scheduled work hours.
- C. Once the date, time and location are agreed upon, one of the mediators will send a confirmation notice via email to all parties containing the scheduled meeting date, time and location. The mediator(s) can use the telephone, inter-office mail, or other appropriate alternative methods to communicate with parties who indicate that they do not have regular access to email.

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- D. The OEAP shall notify the respective agency’s Human Resources representative (via email) that a mediation session has been scheduled for the parties involved. No other information shall be disclosed other than the party’s name, date, time and location of the scheduled mediation.
  
- E. During the mediation, the mediator(s) will work to facilitate a constructive conversation that allows each party to fully communicate their perspectives, and support the parties’ decision-making process. During the mediation, the parties determine the outcomes including whether or not the conflict was resolved.
  
- F. Using Transformative Mediation, parties have the option to resolve their conflict with a settlement agreement. Parties who agree to resolve their conflict will have the terms of their agreement recorded, in writing, as a settlement agreement that is signed by each of the parties. All parties must agree to each term that is included in the settlement agreement. The mediator(s) prepares the written settlement agreement, but the mediator does not decide or direct any of the terms of the agreement. Note by agreeing to participate in the program, parties may or may not reach a resolution.
  
- G. If the settlement agreement contains terms that require the employing agency’s authorization or signature from the appropriate agency Human Resources representative, the parties will be responsible for contacting their employing agency’s Human Resources representative to disclose the terms of the settlement agreement and will provide a copy of the settlement agreement to the employing agency’s Human Resources representative.
  
- H. Settlement agreements may not contain terms that conflict with any applicable state or federal law, agency policy or procedure, or any applicable collective bargaining agreement. If an agreement contains such terms, any conflicting terms shall be rendered null and void and the remainder of the settlement agreement will remain in effect.
  
- I. Settlement agreements are in no way precedent setting. Unless otherwise required by law, settlement agreements shall not be introduced, referred to, or utilized in any other manner in a subsequent arbitration, litigation, or administrative hearing between

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the parties except as necessary to enforce the terms of the settlement agreement.

- J.** A party may request that another individual accompany him or her to mediation for support. This support person will be identified as a non-party participant (NPP). Bargaining unit employees may select a union representative as their NPP. Unless otherwise agreed by the parties, NPPs may participate in the mediation. Unless otherwise agreed by the parties, the number of NPPs shall be limited to one (1) per party. NPPs that are state of Ohio employees must inform their supervisor of the scheduled mediation session and request work release time to attend.

Note: All NNPs are subject to the **confidentiality** and **privilege** requirements described below. Accordingly, all NPPs must sign an Agreement to Mediate.

- K.** Following a mediation session, the mediator(s) will contact the OEAP to communicate whether mediation occurred and the outcome. If settled, the mediator(s) will not discuss mediation communications or any of the terms of the settlement agreement with OEAP or the employing agency’s Human Resources representative, unless the settlement agreement contains terms that require the employing agency’s authorization or signature. In that case, a copy of the settlement agreement may be provided to and retained by the employing agency.
- L.** If additional mediation sessions are requested and agreed upon by the parties, the mediator(s) must coordinate with OEAP to schedule those subsequent sessions.

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**VIII. Mediator Conflict Coaching**

- A. As mentioned above, participation in the program is **voluntary** for all parties involved in a conflict. When one party declines to participate or withdraws, or the parties do not agree to a settlement, OEAP may offer conflict coaching to the parties through the mediator(s).
- B. Conflict coaching will be conducted by mediators trained in the Transformative Mediation process approach. During coaching sessions, the mediator will provide the participant with an opportunity to fully communicate his or her perspective and concerns regarding a workplace conflict. The mediator (s) will discuss different approaches to addressing and managing the conflict.
- C. The assigned mediator(s) is responsible for scheduling the coaching session according to the applicable procedures outlined in **Section VII** above. Conflict coaching can be conducted via phone or in person.

**IX. Request for Release Time**

- A. The participating parties (i.e., NPPs, mediators, participants) must inform their supervisor(s) of the scheduled mediation session and request work release time to attend a mediation session.
- B. Each agency is responsible for authorizing work release time for the employee to attend a mediation, which is based on the employing agency’s operational needs.

**X. Confidentiality and Privilege**

- A. Except as otherwise provided by law, mediation communications are confidential. However, the parties may agree otherwise in writing.
- B. Except as otherwise required by law, mediation communications are privileged as provided in the **Uniform Mediation Act**, ORC 2710.01– 2710.10. This privilege can be waived by the parties as provided in ORC 2710.04. Absent an exception or waiver as described above, mediators, program staff, participants, and NPPs may not testify about mediation communications.

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- C. All parties, the mediator(s), and any NPP will be required to sign an Agreement to Mediate prior to the start of the mediation.
- D. The mediator(s) may take notes during mediation. However, all notes taken during the mediation must be destroyed at the conclusion of the session.
- E. Unless the parties agree otherwise, neither the parties, mediators, NPPs or the OEAP personnel shall communicate any information about the mediation to the parties' agency other than the two limited exceptions listed below. Upon an agency's request, OEAP may release the following information:
  - a) A statement whether a mediation was held with the parties; and/or
  - b) Whether the conflict was resolved.
- F. Generally, only the parties will retain copies of their written settlement agreement. Accordingly, copies of the written settlement agreement generally will not be retained by the mediator(s), OEAP, or the employing agency. Exceptions may occur when parties agree to terms that must be authorized or otherwise disclosed with others in order to implement. In that case, the parties are responsible for determining the scope of the disclosure, notifying their employing agency's Human Resources representative and providing a copy of the written settlement agreement.
- G. Note: Written settlement agreements are not considered privileged mediation communications.

**XI. Mediators**

- A. Mediators are selected according to OEAP's established mediator selection criteria and application process.
- B. Mediators are full and/or part-time permanent state of Ohio employees who have volunteered to serve as impartial transformative mediators.

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- C.** The program uses a co-mediation approach, meaning that most mediation sessions are mediated by two (2) mediators (co-mediators).
- D.** During mediation, the mediator(s) serve as neutral third parties whose roles are to assist the parties in having a constructive conversation and supporting their decision-making process.
- E.** Mediators are not judges and are not authorized to prepare a decision regarding the conflict. The mediator(s) are not authorized to resolve a conflict, permitted to give legal advice, or act as an advocate for any party to the conflict.
- F.** Absent extenuating circumstances, the assigned mediator(s) and the parties to the conflict cannot work for the same agency.
- G.** If a mediator determines that he or she has a potential conflict of interest with anyone involved in the mediation, he or she must disclose the conflict of interest to the parties as soon as reasonably possible. Additionally, any individual involved in the mediation may raise conflict of interest concerns by notifying the assigned mediator(s) or the OEAP. The parties may opt to do the following:
  - a)** agree to proceed with the mediation as scheduled;
  - b)** proceed with the co-mediator only, provided that a co-mediator is present and does not have a conflict; or
  - c)** postpone the mediation until OEAP re-assigns another mediator.
- H.** During the mediation, the mediator(s) will use check-in techniques to determine if the mediation session is constructive. The parties will then decide whether or not to continue the session.
- I.** Mediators shall schedule a post debriefing after each mediation session with an experienced Transformative Mediator.
- J.** For the purpose of ongoing training and development as well to ensure program sustainability, mediators who demonstrate proficiency using the Transformative Mediation approach may serve as trainers, observers of new trainers and conflict coaches for the newly selected State of Ohio mediators.

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**XII. Mediator Requirements and Training**

- A.** To be a mediator, selected candidates are required to complete basic and advanced training in Transformative Mediation skill building. This training will be offered by certified Transformative Mediators and/or trainers. All Transformative Mediators must meet the minimum competencies, which include: 20 hours of basic training, 15 hours of skill building, participate in at least 6 mediations (i.e., 2 observations, 2 co-meditations, and 2 lead mediations). Training will be made available at no cost to the candidates selected.
- B.** Mediators shall schedule debriefing after every mediation session with an experienced Transformative Mediation mediator.
- C.** For program sustainability and training purposes, mediators who have demonstrated proficiency as a Transformative Mediation may train and observe novice mediators.
- D.** Mediators are required to participate in 10 hours of continuing education courses per year. Continuing education will be made available at no cost to the program’s mediators.

**XIII. Program Evaluation**

- A.** Provided the parties agree, an OEAP representative or experienced Transformative Mediator may observe mediation sessions to evaluate the effectiveness of the mediators.
- B.** At the conclusion of the mediation, the parties, mediators and any NPPs will be asked to complete program evaluation forms. Completed surveys will only be used to evaluate the effectiveness of the program.
- C.** Questions posed in the program evaluation shall focus solely on the effectiveness of the program and will not solicit any identifying information.

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**XIV. Terms and Definitions**

Below is a glossary of terms and definitions.

- A. **Confidential:** For purposes of the Employee Workplace Mediation Program, mediation communications are considered confidential if the parties agree that they cannot be discussed outside of formal proceedings. For example, the parties can agree to keep all mediation communications confidential in order to prevent anyone from discussing these mediation communications with friends, family, co-workers, etc.
  
- B. **Mediation Communications:** A statement whether oral, in a record, verbal or non-verbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.
  
- C. **Parties or Participants:** Employees who decide to use the Employee Workplace Mediation Program to address a workplace conflict and whose agreement is necessary to settle or otherwise resolve a conflict.
  
- D. **Privilege:** Privileged mediation communications are communications cannot be discussed in subsequent formal proceedings.

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**XV. History**

<b>Date</b>	<b>Description of Change</b>
01/28/2015	Original draft program guidance
03/15/2015	Review for Statewide Release

**XVI. Inquiries**

Direct inquiries about this program guidance manual to:

Ohio Department of Administrative Services (DAS)  
Human Resources Division (HRD)  
Ohio Employee Assistance Program (OEAP)  
30 East Broad Street, 27th Floor  
Columbus, Ohio 43215  
1.800.221.6327 or 614.644.8545  
[OEAP@das.ohio.gov](mailto:OEAP@das.ohio.gov)

OEAP webpage can be accessed at the link below:  
[www.ohio.gov/eap](http://www.ohio.gov/eap)

**XVII. Resources**

<b>Resource Name</b>
Agreement to Mediate [ <a href="#">Insert link/shortcut to Agreement Doc</a> ]
Settlement Agreement template [ <a href="#">Insert link/shortcut to Agreement Doc</a> ]
Program Evaluation Surveys [ <a href="#">Insert link/shortcut to Agreement Doc</a> ]
Uniform Mediation Act: ORC 2710.01 – 2710.10