

General Order

Houston Police Department



ISSUE DATE:

June 19, 2018

NO.

300-33

REFERENCE: Supersedes all prior conflicting Circulars and Directives, and General Order 300-33, dated February 26, 2013

SUBJECT: MEDIATION

POLICY

The department, through the alternative dispute resolution process, seeks to enhance communication between employees or between employees and citizens and resolve work-related issues in a timely, fair, and equitable manner at the lowest possible level.

When appropriate, the *mediation procedure* is provided to employees and citizens as an alternative to other department dispute resolution processes and is not intended to replace any existing process.

The department's *mediation procedure* is established in accordance with applicable statutory provisions and the Code of Ordinances, City of Houston, Texas, Chapter 14. The *mediation procedure* is coordinated by the department's Alternative Dispute Resolution Unit.

This General Order applies to all employees.

DEFINITIONS

Ineligible Issue. An issue is ineligible for any alternative dispute resolution process, including mediation, if it can be substantively described as a Class I policy violation or if it is so egregious that it threatens the integrity of the Houston Police Department (e.g., child abuse or neglect). An issue may be ineligible for mediation if the nature or magnitude of the issue makes it impractical for mediation. Certain management decisions, discipline, or policy issues may not be eligible for mediation.

Mediation. A forum in which an impartial person, the *mediator*, facilitates communication between parties to promote understanding, reconciliation, or settlement that may result in an agreement.

Mediation Procedure. The term used to describe all mediation-related activities collectively, including intake, education, interviews, *mediation sessions*, evaluations, and file closure.

Mediation Process. The steps constituting the structure of a *mediation session*, including introduction, opening statements, two-way exchange, issue clarification, option generation, negotiation, agreement writing, reality testing, and closure.

Mediation Session. The mediation meeting wherein the parties and the *mediator* assemble in private to discuss and negotiate the issues of concern.

Mediator. An individual selected to act as a neutral participant during a mediation session to facilitate the discussion of issues.

Participant. Any party, Alternative Dispute Resolution Unit personnel, or mediator who has a role in the mediation procedures including any interview or meeting.

Party. Any person having an interest in an issue or dispute forwarded to the Alternative Dispute Resolution Unit for resolution.

1 INITIATING MEDIATION

Employees may request mediation themselves by directly contacting the Alternative Dispute Resolution (ADR) Unit.

Division commanders may refer issues directly to ADR with a recommendation that they be mediated.

Issues received first by the Central Intake Office (CIO) shall be screened to determine if they may be eligible for mediation. If the issue is possibly eligible for mediation, CIO shall refer it to ADR's Mediation Section.

Ineligible Issues

ADR shall review issues referred to the Mediation Section to ensure that they are mediation eligible. Issues ineligible for mediation may be:

- a. Returned to CIO.
- b. Referred to another section of ADR.
- c. Closed in ADR as indicated in section 11, *Unresolved Issues*, of this General Order.

2 TIME CONSIDERATIONS

Issues eligible for resolution through mediation shall be processed and completed within 60 *calendar* days from the date the issue was received in the Mediation Section.

Reception of issues in the Mediation Section that are eligible for resolution through other department processes (e.g., grievance, Internal Affairs, Employee Representative Council) causes the applicable issue processing time requirements to be suspended up to, but no more than, 60 *calendar* days.

3 48-HOUR NOTICE REQUIREMENT

The 48-hour notice requirement is waived for all issues referred to the mediation procedure due to its nonpunitive nature. Employees may not object to any mediation meeting because a 48-hour notice was not issued.

4 COOPERATION WITH ADR PERSONNEL

Employees shall cooperate with ADR personnel in scheduling appointments for interviews, mediation meetings, and any other procedures deemed necessary by ADR personnel.

Participants shall make a diligent effort to keep appointments and attend mediation sessions. If attendance is not possible, participants shall notify ADR personnel in a timely manner and provide an explanation.

The assistant chief over ADR may mandate a participant's attendance in mediation.

Employees asked to participate in an evaluation of the mediation process shall provide the requested information to ADR personnel in a timely manner.

5 MEDIATION SESSION

Unless indicated otherwise in this section, only the parties in mediation and the mediator may participate in a mediation session. A translator may assist in the mediation if necessary.

A mediator evaluator or a mediator in training may be permitted to observe mediation.

6 REPRESENTATION

A party shall not have a representative present during a mediation interview or session. A party may consult with a representative prior to or after a mediation interview or session.

7 INTEGRITY OF MEDIATION

Mediators and ADR personnel performing duties in connection with ADR and mediation procedures are required to know and abide by the provisions of this General Order and the Mediation Section's standard operating procedures.

All participants involved in the mediation procedure, including nonemployees, are required to abide by the mediation rules, procedures, and policies communicated to them by the mediators and ADR personnel.

Mediators and ADR personnel shall not request or accept any gift or other form of personal benefit, either directly or indirectly, from any party in the mediation procedure when such benefit is for services provided in the mediation procedure.

8 MEDIATION PROCEDURE RULES

The rules listed below apply to every aspect of the department's mediation procedure.

- a. In cases with multiple parties in the mediation, each party shall speak one at a time and only for himself or herself.

- b. The mediation procedure is confidential and all applicable laws and policies governing confidentiality bind all participants. The confidentiality rules apply to all aspects of the mediation procedure including intake, interview, mediation session, caucus, and case processing by ADR personnel.
- c. All persons participating in a mediation session are prohibited from bringing a weapon of any type to the mediation session. This applies even to employees in uniform. There are no exceptions to this rule.
- d. Lock boxes shall be available in ADR to safely secure weapons. At all other facilities where mediation sessions are to be held, ADR personnel shall identify secure locations for weapon storage.
- e. Each participant in the mediation session shall contact ADR to confirm his or her attendance at least 24 hours prior to the scheduled mediation.
- f. Violations of any mediation procedure law, department policy, or mediation agreement, including confidentiality, during or after any mediation proceeding, shall be grounds for disciplinary action.
- g. If any participant fails or refuses to follow any mediation rule, procedure, or policy to the extent the mediator is unable to control the mediation, the mediation shall be stopped.

9 CONFIDENTIALITY

The mediation procedure is confidential. All interviews, mediation sessions, and documents created during the procedure are confidential according to applicable laws and department policies.

If a mediation procedure participant has a question regarding whether a particular matter about which he has knowledge should be reported, the participant may consult with ADR personnel about the effect of the confidentiality guidelines without violating the confidentiality requirement.

No photograph, video, or audio recording is permitted during the mediation procedure, including any part of the mediation process, mediation session, interview, or meeting.

Only the parties to a mediation agreement may disclose their agreement pursuant to the disclosure agreement reached during mediation.

Except as required by applicable laws and department policies, no employee shall be compelled to disclose or otherwise testify regarding any matter discovered during any mediation procedure, including an interview or mediation session.

Exceptions to the confidentiality rule include substantive allegations of child abuse or neglect and substantive allegations of abuse, exploitation, or neglect of an elderly or disabled person discovered during an interview or mediation session. These cases shall be reported in accordance with applicable laws and department policies.

See section 14, *Mediation Documents*, regarding the confidentiality and handling of documents and other materials created during a mediation procedure.

10 MEDIATORS

Mediators shall conduct each mediation session in accordance with all applicable laws, rules, and policies. Mediators shall conduct each mediation session in a manner that avoids causing undue harm to all parties participating in the mediation process.

Mediators shall withdraw from service in a mediation session if their participation in the mediation session would violate a law or policy or if they lack sufficient experience to manage the issues in dispute.

Qualifications

All mediators must acquire and maintain the necessary skills to mediate prior to conducting department sponsored mediation. Mediators may be temporarily or permanently removed from the mediator pool for good cause.

Qualifications and standards for mediators shall be determined by ADR. All mediators, regardless of their assignment, shall adhere to these qualifications and standards.

Failure to provide a valid excuse for a mediation absence may result in a mediator being removed from the mediator pool and disciplinary action.

Selection

Each party to mediation shall have an opportunity to participate in the selection of a mediator. In special circumstances (e.g., the parties cannot agree, the selected mediator is not available, an emergency situation occurs) a mediator may be appointed by an ADR supervisor.

Neutrality

Mediators and ADR personnel shall not serve in cases in which they have a personal interest in the outcome of the mediation.

Every mediator shall be neutral while conducting a mediation session and shall avoid the appearance of favoritism, prejudice, or bias. Prior to the mediation session, mediators shall disclose any circumstances likely to create an appearance of bias.

11 UNRESOLVED ISSUES

A situation in which parties in a mediation process are unable to reach an agreement is called an impasse. The rules of confidentiality also apply to cases ending in impasse.

When handling unresolved issues, ADR may do any of the following:

- a. Return them to CIO.

- b. Refer them to another section of ADR.
- c. Refer them to the assistant chief over ADR for ADR closure as indicated below.

ADR Closure of Unresolved Issues

The assistant chief over ADR may close an unresolved mediation issue if one of the following situations applies:

- a. Mediation is the only appropriate process to resolve the issue and the parties have reached an impasse or a party refuses to participate in the mediation procedure.
- b. Mediation is the appropriate first step in the department's issue resolution process and a party refuses to participate in the mediation procedure.

12 RESOLVED ISSUES

Issues resolved through the mediation procedure are closed and shall not be eligible for resolution in any other department process.

13 MEDIATION SESSION ATTIRE

Each participant in a mediation session is required to dress appropriately for the mediation. Male mediators shall wear a suit and tie or a sports coat and tie. Female mediators shall wear a business suit and blouse combination, or a conservative dress, pantsuit, or blouse and skirt combination. All other employees shall wear business or casual business attire, or their City issued uniform. Employees shall not wear jeans, shorts, beach attire, athletic shoes, or any clothing that distracts from the mediation process.

14 MEDIATION DOCUMENTS

All mediation case files are strictly confidential. Only a notice of referral and information originally received from CIO shall be returned to CIO or routed to another ADR section. At the conclusion of the mediation session, all documents, writings, forms, materials, and other records generated as part of the mediation session shall be destroyed except the mediation agreement and the original *Issue Record Form*, including attachments. These records shall be retained according to approved records retention guidelines.

Documents created and information discovered prior to or subsequent to and outside the mediation procedure may be disclosed.

15 MEDIATION AGREEMENTS

Agreements made during a mediation session shall be documented and may be reduced to writing. The agreement shall be enforceable according to applicable laws and department policies.

Mediation agreements may not violate or circumvent any law or Police Department policy.

Each party must possess the authority to agree to each provision of the agreement and possess the ability to abide by those provisions.

The parties may agree among themselves to restrict disclosure of their agreement. However, parties may not restrict the right of enforcement or disclosure in cases involving a breach of the agreement or a breach of confidentiality.

ADR personnel may release a copy of the mediation agreement only to a party to the agreement.

16 OVERTIME

Whenever possible, mediation procedures and training shall be scheduled during the normal work shift of the participants. All employees participating in mediation procedures or training, including mediators, shall be compensated for participation according to department policy.

All requests for payment of overtime or the accrual of compensatory time related to mediation procedures or training shall be submitted to ADR for verification prior to being submitted to the employee's own division.

After ADR has verified the request, the employee shall submit the overtime request form to the employee's regular assigned division for approval and entry.

17 MEDIATION REPORTS

Mediation reports generated by ADR shall not contain any specific participant information that could be used to identify any party to a mediation or that would violate confidentiality.

18 PENALTIES

The mediation procedure is not punitive and participants shall not be penalized or disciplined for participating.

However, mediation cannot shield any employee from an investigation of a violation of the law, for any issue not resolved, or for any issue not eligible to be resolved in mediation.

Any violation of the confidentiality laws or policies, breach of a mediation agreement, or act of retaliation related to mediation shall be investigated according to department policy and may be grounds for disciplinary action.

19 RELATED GENERAL ORDERS

200-08, **Conduct and Authority**

300-11, **Discrimination, Harassment, and Other Prohibited Conduct**

- 300-12, Grievance Procedure
- 300-24, Early Warning System
- 300-26, Employee Representative Council
- 300-32, Processing Complaints and Employee Issues
- 900-03, Employee Concern Resolution Program



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