

## MEDIATION RULES

1. All statements, disclosures and assertions during the course of this mediation are privileged settlement discussions, made without prejudice to any party's legal position, which are and remain non-discoverable and inadmissible for any purpose in any legal proceeding. The privileged character of information is not altered by disclosure to the mediator. Of course, information that is discoverable in litigation is not made confidential by its disclosure during this mediation.

2. The mediation is private as well as confidential. Unless otherwise agreed by the participants, only the mediator, the parties and their attorneys are allowed to attend. The mediator will not disclose any information about the proceedings to the presiding administrative law judge.

3. The mediation is informal. No record is made of the mediation. No rulings are made on the issues or merits of the case. No disclosure of discussions in the mediation can be made outside of the mediation by the mediator, parties or their representatives, without written agreement of the parties or an order of a tribunal exercising jurisdiction over the question after due consideration of the private and confidential nature of the mediation and the public policy against such disclosures.

4. Unless the parties reach a mutual agreement, the mediation will conclude without a settlement.

5. The mediator is impartial and neutral and does not render legal advice to or represent any of the parties. The mediator will, as deemed appropriate, provide evaluative comments regarding issues and merits of this dispute.

6. The mediator will not convene a mediation unless the represented parties who have appeared in the contested case are present with their counsel, and confirm that they have authority to agree upon terms and conditions of settlement without consultation with persons or entities not present. The mediator will decide how a session proceeds, when to hold joint meetings (with consent of the participants) and when to meet separately with the parties and their counsel. If the mediation appears to have come to an end without an agreement, if the parties request and agree, the mediator can submit to them (in separate meetings with each) a "mediator's proposal," a suggestion of settlement terms, based upon the information provided and the mediator's experience. But Rule 4 still applies. Unless the parties reach a mutual agreement, this mediation will conclude without a settlement.

7. The mediator will encourage disclosure of information between the parties and will assist the parties in considering the benefits, risks and alternatives available to them.

8. The mediator will not subsequently serve as an administrative law judge or in any other quasi-judicial capacity, regarding the dispute subject to this mediation.

9. During the course of this mediation, the mediator, as he deems it appropriate, will provide both facilitative and evaluative mediation. "Facilitative mediation" involves assisting the parties to reach a mutually agreeable outcome by asking questions, validating and restating parties' points of view, identifying interests underlying the positions of the parties, and finding and analyzing options

for resolution. Facilitative mediation focuses upon agreement between the parties. "Evaluative mediation" involves assisting the parties to see the weaknesses of their respective cases, offering informal suggestions of likely outcomes, costs and risks, in contested case hearing proceedings and appeals. Evaluative mediation focuses more upon legal concepts of fairness and provability of contentions, and finding and analyzing the legal positions and cost-benefit balances of the parties' positions.

10. Should the parties reach agreement during mediation, the mediator may offer a summary of the agreement to the parties, for their joint approval, and/or may assist the parties as appropriate in documenting the agreement before the mediation ends. The mediator will not author any memo of understanding, but may assist.

11. Upon signature of an agreement, or any other conclusion of the mediation, the mediator will give a brief written notice to the presiding administrative law judge and to the participating parties, stating only that mediation has concluded (with or without settlement). No further statement will be provided to the presiding administrative law judge without the mutual consent of the parties.