

**RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN RESOURCES**

**CHAPTER 1120-14
TENNESSEE EMPLOYEE MEDIATION PROGRAM**

TABLE OF CONTENTS

1120-14-.01	Statement of Policy	1120-14-.03	Process and Procedure
1120-14-.02	Coverage	1120-14-.04	Training and Certification

1120-14-.01 STATEMENT OF POLICY.

- (1) It is the policy of the State of Tennessee to encourage the use of mediation as a valuable tool for all state employees to resolve workplace issues. Mediation is a process whereby the parties themselves, with the assistance of a third party neutral, seek to develop and agree upon solutions to issues in the workplace. The primary purpose of the Tennessee Employee Mediation Program (“the program”) is to provide a responsive, informal, confidential, and effective means of resolving human resource issues as an alternative to administrative proceedings.
- (2) Mediation is designed to supplement and not to limit or replace the appeal procedures detailed in the Act. Participation in mediation will not toll the filing deadlines for appeal as described in these rules. Mediation may not be used to circumvent state or departmental policies.
- (3) The Commissioner is responsible for providing and maintaining the basic standards and guidelines for implementation and administration of this program.

Authority: T.C.A. §§ 4-3-1703, 8-30-104, and 8-30-105. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed January 18, 2023; effective April 18, 2023.

1120-14-.02 COVERAGE.

- (1) Access to Mediation. Access to mediation services under this rule is available to most employees currently in state service as a voluntary means of resolving workplace issues. Access to mediation services under this rule shall not be available to those employees excepted under the terms of T.C.A. § 8-30-102(b) or former employees who have otherwise separated from state service prior to the request for mediation.
- (2) Definition of Workplace Issues. For purposes of this rule, “workplace issues” may include, but is not limited to, the following:
 - (a) Disciplinary action taken against an employee involving suspensions, and involuntary demotions (if the request is made within fourteen (14) calendar days of the disciplinary action, or at any point during the disciplinary appeal process, if applicable);
 - (b) Workplace harassment and discrimination as defined by the Department;
 - (c) Violations of the Abusive Conduct in the Workplace Policy as defined by the Department;

(Rule 1120-14-.02, continued)

- (d) Performance and/or conduct issues, unless excepted under the terms of 1120-14-.02(3); and
 - (e) Other workplace issues involving a relational, communication, or values conflict in state government employment.
- (3) No Grounds for Complaint. Nothing contained in this rule shall be construed to create or provide any substantive or procedural right or interest in state government employment, and the denial of access to mediation services shall not constitute any grounds for complaint or appeal.
- (4) Voluntary Participation. Participation in mediation shall be voluntary and conducted only by agreement of both parties. Employees who participate in or opt out of mediation shall do so without interference, coercion, reprisal, discrimination, retaliation, or harassment.

Authority: T.C.A. §§ 8-30-104 and 8-30-105. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed January 18, 2023; effective April 18, 2023.

1120-14-.03 PROCESS AND PROCEDURE.

- (1) To commence the mediation process, an employee or the Agency shall file a request to the Department on a form prescribed by the Commissioner. Please note that the request for mediation is not confidential. Upon receipt of the request for mediation, the Department will notify the employee's Appointing Authority or his/her designee and the employee whose consent and presence will be necessary for the mediation. If consent to mediate is obtained by the individual(s) or Agency involved, and the Department otherwise considers the request appropriate for mediation under the guidelines set forth above, the Department shall refer the matter to an approved mediator. If consent is not obtained or the Department considers the matter not appropriate for mediation, the requesting employee or Agency will be so notified. This approval process shall be completed within seven (7) days of receipt of the Request for Mediation.
- (2) The Appointing Authority, or designee, shall attend the mediation to reach an agreement and implement any final mediation agreement, or be available to authorize the terms of the agreement.
- (3) Upon convening the mediation, the parties shall execute an agreement to mediate, which form shall be approved by the Commissioner and shall become part of the mediation file. Either party or the mediator may voluntarily withdraw from the mediation at any time or at any stage in the process.
- (4) Each party may have a representative present during the mediation. Any representative present at the mediation shall be required to sign the agreement to mediate and be bound by its terms. However, as mediation is not an adversarial proceeding, the role of any representative shall be limited to that of an advisor and observer, and not as an advocate on behalf of either party. The mediator shall maintain the authority to restrict the activities of any representative and shall have the discretion to terminate the mediation or limit the presence of observers. Furthermore, the presence of witnesses for either party is expressly prohibited.
- (5) Audiotape, videotape, or other automated or electronic recordings of the mediation is expressly prohibited.

(Rule 1120-14-.03, continued)

- (6) Virtual mediation is available to parties seeking to participate in mediation. A virtual mediation platform is a voluntary process by which parties can settle their workplace disputes online without the need for in-person appearances. Virtual mediation requires each party to be present on video camera. All agreements are signed electronically in virtual mediation.
- (7) To the extent permitted by law, the State will attempt to maintain the confidentiality of all documents related to the mediation, and all participants agree that any verbal communication made during or in connection with the mediation will be held in confidence and not disclosed or otherwise utilized in any other proceeding. The requirement of confidentiality does not extend when:
 - (a) A threat of bodily harm or injury is made;
 - (b) Communications express an intent to commit or conceal a crime;
 - (c) Communications reveal abuse of a child or elder abuse; or
 - (d) Disclosure is otherwise required by law.
- (8) Any mediated settlement agreement shall be approved by the parties' Appointing Authority and any other parties as required by law. Copies of the mediation settlement agreement shall be provided to the involved parties. Original copies of the settlement agreement will be kept on file with the Agency. The mediation settlement agreement shall not become part of any involved party's personnel file. Any mediated settlement agreement shall not be considered confidential pursuant to T.C.A. § 10-7-503. If the workplace issue involves an appeal filed pursuant to T.C.A. § 8-30-318, any mediated settlement agreement shall be forwarded to the Board of Appeals. Any mediated settlement agreement shall not be contrary to the laws, rules, regulations or policies of the State of Tennessee or federal law, or exceed the Appointing Authority's legal authority.
- (9) Neither a request for, nor participation in mediation shall preclude an Appointing Authority from taking independent disciplinary action as needed in dealing with an employee's job performance or conduct.
- (10) Participation in mediation shall be counted as a regular working day and therefore shall not require the use of accrued leave if the participating employee has obtained the prior approval of his/her supervisor or Appointing Authority. Any travel expenses incurred by participants shall be subject to the travel regulations established by the Department of Finance and Administration.
- (11) Neither a request for, nor participation in mediation shall affect the time periods for filing complaints or appeals pursuant to T.C.A. § 8-30-318.
- (12) By submitting a request for mediation and participating in the mediation process, participants agree not to subpoena the mediator or his/her records or notes pertaining to the mediation in any court or administrative proceedings, unless the proceeding concerns alleged misconduct by the mediator or enforcement of the mediated settlement agreement.
- (13) While serving as a mediator, the mediator is not acting in a supervisory or managerial capacity for the State of Tennessee or his/her Appointing Authority.
- (14) In order to remain neutral and unbiased, a mediator will not mediate issues involving their employing agencies. The Appointing Authority shall ensure that mediator(s) do not have a conflict of interest with employees involved in the mediation.

(Rule 1120-14-.03, continued)

- (15) Any party that participates in mediation shall do so without interference, coercion, reprisal, discrimination, retaliation, or harassment. If a party feels he or she has been retaliated against for requesting mediation, the party may file a complaint with the Appointing Authority or follow the procedures for filing a complaint with their Agency.

Authority: T.C.A. §§ 8-30-104 and 8-30-105. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed January 18, 2023; effective April 18, 2023.

1120-14-.04 TRAINING AND CERTIFICATION.

- (1) The Department shall maintain a list of state affiliated mediators approved to conduct mediations under this program.
- (2) All mediators shall be neutral third parties who have been trained and approved as mediators. An individual desiring to be listed on the panel of approved mediators shall have satisfactorily completed mediation training which has been approved by the Alternative Dispute Resolution (“ADR”) Commission of the Tennessee Supreme Court, or otherwise satisfy the requirements for listing as a mediator pursuant to the rules of the ADR Commission; and further receive the approval and recommendation for listing on the panel of mediators from the individual’s Appointing Authority. Final approval for listing or removal from the panel shall be in the Commissioner’s discretion.

Authority: T.C.A. §§ 8-30-104 and 8-30-105. **Administrative History:** Original rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed January 18, 2023; effective April 18, 2023.