



DISPUTE RESOLUTION PROGRAM
-CONFIDENTIALITY OVERVIEW-
See full discussion of confidentiality at 5 U.S.C. §§ 571-581

Confidentiality is an important aspect of mediation. Participants are more likely to talk and negotiate openly and honestly if they understand the restrictions governing disclosure of dispute resolution communications. The Administrative Dispute Resolution Act of 1996 (the Act), 5 U.S.C. §§ 571-581, which governs mediations involving Federal administrative agencies, includes confidentiality provisions. It provides that both oral and written communications made for the purposes of the mediation, by a mediator, party, or non-party participant, shall be kept confidential and cannot be used in any proceeding unless certain exceptions apply.

The Act does state that a party may disclose information from the mediation if the communication was made when all of the parties were together, in what is often called “joint session.” However, by signing the Seattle Federal Executive Board’s Agreement to Mediate, the parties agree instead that all written or oral communications made during the mediation shall be kept confidential, including communications made in joint session, subject to the exceptions below.

Confidentiality does not apply, for example, to 1) a written agreement to mediate or 2) a final written agreement reached as a result of the mediation. A final written agreement reached as a result of the mediation is not confidential, and can be enforced in a legal proceeding if a party does not do what he or she promised to do in the written agreement.

It is important to understand that the Act also provides additional exceptions to confidentiality.

The Act states that the **mediator** may disclose information from the mediation if:

- the mediator and the parties all agree to the disclosure in writing and, if a non-party participant provided the information, that participant also consents in writing;
- the information has already been made public;
- a law requires that the information be made public;
- or a court requires that the information be disclosed. (This exception is limited to rare cases where a court determines the information is needed to prevent a manifest injustice, help establish a violation of law, or prevent harm to public health or safety.)

In addition, the Act states that a **party** may disclose information from the mediation if:

- the information was prepared by the party who is seeking disclosure;
- the mediator and the parties all agree to the disclosure in writing and, if a non-party participant provided the information, that participant also consents in writing;
- the information has already been made public;
- a law requires that the information be disclosed; or
- a court requires that the information be disclosed. (*See discussion of this type of exception above.*)