



**PDHonline Course G452 (3 PDH)**

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# **Understanding ADA Mediation Program**

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**2020**

**PDH Online | PDH Center**

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An Approved Continuing Education Provider

# Understanding ADA Mediation Program

## Course Description

The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990, by President George H.W. Bush. In enacting the ADA, Congress specifically encouraged the use of alternative means of dispute resolution, including mediation, to resolve ADA disputes. Through its ADA Mediation Program, the Department of Justice refers appropriate ADA disputes to mediators at no cost to the parties. The mediators in the program are professional mediators who have been trained in the legal requirements of the ADA. In this course, we will review the process of ADA complaint filing and learn how to resolve ADA complaints through mediation quickly and effectively. In addition, we will examine some of the cases successfully settled through the ADA mediation.

This course includes a multiple choice quiz at the end, which is designed to enhance the understanding of the course materials.

## Learning Objective

At the conclusion of this course, the student will be able to

- Get familiar with the ADA Mediation Program;
- Understand the types of complaints that the ADA Mediation Program can resolve; and
- Know the resources available about the ADA and about mediation.



## Course Content

The content of this course is based on the materials published by the U.S. Department of Justice and Equal Employment Opportunity Commission. It consists of the following five parts:

1. How to File an ADA Complaint with the U.S. Department of Justice (DOJ)
2. Resolving ADA Complaints Through Mediation: An Overview
3. ADA Mediation Program: Questions and Answers
4. Questions and Answers for Parties to Mediation: Mediation and the Americans with Disabilities Act (ADA)
5. Real Life ADA Mediation Cases

## How to File an ADA Complaint with the U.S. DOJ

*Excerpts from [www.ada.gov](http://www.ada.gov)*

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You can file an Americans with Disabilities Act complaint alleging disability discrimination against a State or local government or a public accommodation (including, for example, a restaurant, doctor's office, retail store, hotel, etc.) by mail or email.

### **To file an ADA complaint by mail, you may fill out this form and mail it to:**

US Department of Justice  
Civil Rights Division Disability Rights Section – 1425 NYAV  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

### **To file an ADA complaint by fax, you may fax the form to: (202) 307-1197**

**You may also file a complaint by email at [ADA.complaint@usdoj.gov](mailto:ADA.complaint@usdoj.gov).**

Please keep a copy of your complaint and the original documents for your own records. If you require accommodations because of a disability in order to prepare a complaint, see question 2 below.

If you have questions about filing an ADA complaint, please call:  
ADA Information Line: 800-514-0301 (voice) or 800-514-0383 (TTY).

### **More Information about Filing an ADA Complaint**

1. How can I file an ADA complaint with the Department of Justice?
2. What accommodations may I request if I cannot prepare my own ADA complaint because of my disability?
3. What information should my ADA complaint include?
4. How do I file an ADA complaint by e-mail?
5. How do I file an ADA complaint by regular mail or some other delivery service?
6. What happens after my complaint is received?
7. How can I find out the status of my complaint?
8. What happens if my complaint is referred for possible mediation?
9. What happens if my complaint is opened for investigation?
10. What happens if my complaint is referred to another federal agency?
11. How will the information in my complaint be used?
12. Information in Spanish about filing an ADA complaint

## **1. How can I file an ADA complaint with the Department of Justice?**

If you believe that you or another person has been discriminated against by an entity covered by the ADA, you may file a complaint with the Disability Rights Section (DRS) in the Department of Justice. A complaint may be sent by email, the quickest way to file a complaint, or by letter. (Letters and packages sent to the DRS by U.S. Mail are delayed for security screening.) While email complaints are the quickest and receive an immediate reply confirming that they have been received, there is no guarantee of privacy when you send an e-mail. See questions 4 and 5 below for instructions on filing by email or by regular mail.



## **2. What accommodations may I request if I cannot prepare my own ADA complaint because of my disability?**

Individuals who are deaf, have hearing loss, or have speech disabilities may submit complaints using the DRS TTY line, 1-800-514-0383, or via the telephone relay system, calling 1-800-514-0301 (voice). Individuals who communicate using American Sign Language (ASL) may schedule an appointment (using either number above) to make a complaint via direct video connection to a member of our staff.

Individuals with other disabilities may have their complaints taken orally over the telephone. To schedule an appointment to dictate the text of a complaint, call the ADA Information Line at 1-800-514-0301 (voice) or 1-800-514-0383 (TTY).

## **3. What information should my ADA complaint include?**

Provide the following information:

- A. Your full name, address, the telephone numbers where we can reach you during the day and evening, and the name of the party discriminated against (if known);
- B. The name and address of the business, organization, institution, or person that you believe has committed the discrimination;
- C. A brief description of the acts of discrimination, the dates they occurred, and the names of individuals involved;
- D. Other information you believe necessary to support your complaint, including copies (not originals) of relevant documents; and
- E. Information about how to communicate with you effectively. Please let us know

if you want written communications in a specific format (e.g., large print, Braille, electronic documents) or require communications by video phone or TTY.

To guide you in providing the requested information, you may use this [ADA complaint form](#) for any ADA complaint.

#### **4. How do I file an ADA complaint by email?**

Include all of the information listed above, either in the body of the email or in an attachment. Attach relevant documents to your email. Send your complaint to [ada.complaint@usdoj.gov](mailto:ada.complaint@usdoj.gov). You will receive an automatic reply email confirming that your complaint has been received. Please keep a copy of your complaint and the reply email for your records. If you do not receive an automatic reply email, please contact DRS at the voice or TTY number above.

#### **5. How do I file an ADA complaint by regular mail or some other delivery service?**

DRS accepts complaints sent by regular mail through the U.S. Postal Service or by any other parcel delivery service. Please be aware that the receipt of complaints sent by regular mail or some other delivery services may be delayed by 4 - 6 weeks because of necessary security screening precautions. To file a complaint using regular mail or some other delivery service, send your completed complaint with copies (not originals) to the following address:

U.S. Department of Justice  
Civil Rights Division  
Disability Rights Section - NYAV  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Please keep a copy of your complaint and the original documents for your own records.

#### **6. What happens after my complaint is received?**

After the complaint is received, we will inform you of our action, which may include:

- A. Contacting you for additional information or copies of relevant documents;
- B. Referring your complaint for possible resolution through the ADA Mediation Program;
- C. Referring your complaint to the United States Attorney's Office in your area for investigation;

- D. Referring your complaint to another federal agency with responsibility for the types of issues you have raised.
- E. Investigating your complaint; or
- F. Considering your complaint for possible litigation by the Department of Justice.

Since we receive a high volume of ADA complaints and have limited resources, we cannot investigate or litigate every complaint. If we cannot investigate your complaint due to lack of resources or for some other reason, we will send you a letter explaining why your complaint will not be investigated.

### **7. How can I find out the status of my complaint?**

We review each complaint carefully. Because we receive a large volume of ADA complaints from people throughout the United States, our review can take up to three months and sometimes longer. If you have not heard from us by the end of this three-month period, you can find out the status of your complaint by calling 1-800-514-0301 (voice) or 1-800-514-0383 (TTY). A member of our staff will contact you to tell you if your complaint has been received and if it is still under consideration for possible action.

### **8. What happens if my complaint is referred for possible mediation?**

The ADA Mediation Program provides mediation services free of charge in an effort to achieve a cooperative resolution of ADA complaints against businesses and state and local governments. If we decide that your complaint may be appropriate for mediation, we will contact you and the entity that you complained about to find out if you are both willing to participate in mediation.

### **9. What happens if my complaint is opened for investigation?**

If your complaint is opened for investigation, an investigator or attorney will be assigned and will contact you to obtain additional information. The investigator or attorney will contact you at least every three months to advise you of the status of the investigation.

During the investigation, the attorney or investigator will not necessarily make a determination about whether or not an ADA violation has occurred. If he or she believes there is a pattern or practice of discrimination, or the complaint raises an issue of general public importance, DRS may attempt to negotiate a formal settlement of the matter, or may file a lawsuit in federal court on behalf of the United States. *We do not act as an attorney for, or representative of, the complainant.*

## 10. What happens if my complaint is referred to another federal agency?

If we decide your complaint is appropriate for referral to another federal agency, we will notify you of this decision and send you a copy of the letter sent to the other agency.

## 11. How will the information in my complaint be used?

The personal information will be used primarily for the Department of Justice's authorized civil rights compliance and enforcement activities. DRS will not disclose your name or other identifying information about you unless it is necessary for enforcement activities against an entity alleged to have violated federal law, or unless such information is required to be disclosed under the Freedom of Information Act, 5 U.S.C. § 552, or disclosure is allowed through the publication of a routine use in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a. To further the Department's enforcement activities, information DRS has about you may be given to: appropriate Federal, State, or local agencies; Members of Congress or staff; volunteer student workers within the Department of Justice so that they may perform their duties; the news media when release is made consistent with the Freedom of Information Act and 28 C.F.R. § 40.2; and the National Archives and Records Administration and General Services Administration to perform records management inspection functions in accordance with their legal responsibilities.

Providing DRS with the requested information is voluntary except that failure to provide such information may result in DRS being unable to process your complaint.

For other questions, call the ADA Information Line at 1-800-514-0301 (voice) or 1-800-514-0383. Information Specialists are available to answer questions on Monday, Tuesday, Wednesday, and Friday from 9:30 a.m. to 5:30 p.m. (Eastern Time). On Thursday, the information line is staffed from 12:30 p.m. to 5:30 p.m. (Eastern Time).



U.S. Department of Justice  
Civil Rights Division  
*Disability Rights Section*

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OMB No. 1190-0009

**Title II of the Americans with Disabilities Act  
Section 504 of the Rehabilitation Act of 1973  
Discrimination Complaint Form**

Instructions: Please fill out this form completely, in black ink or type. Sign and return to the address on page 11.

Complainant: \_\_\_\_\_

Address: \_\_\_\_\_

City, State and Zip Code: \_\_\_\_\_

Telephone: Home: \_\_\_\_\_

Business:

Person Discriminated Against:  
(if other than the complainant) \_\_\_\_\_

Address: \_\_\_\_\_

City, State and Zip Code: \_\_\_\_\_

Telephone: Home: \_\_\_\_\_

Business:

Government, or organization, or institution which you believe has discriminated:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

County: \_\_\_\_\_



City: \_\_\_\_\_

State and Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

When did the discrimination occur? Date: \_\_\_\_\_

Describe the acts of discrimination providing the name(s) where possible of the individuals who discriminated (use space on page 3 if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Have efforts been made to resolve this complaint through the internal grievance procedure of the government, organization, or institution?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes: what is the status of the grievance?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Has the complaint been filed with another bureau of the Department of Justice or any other Federal, State, or local civil rights agency or court?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes:

Agency or Court: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, and Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date Filed: \_\_\_\_\_

Do you intend to file with another agency or court?

Yes \_\_\_\_\_ No \_\_\_\_\_

Agency or Court: \_\_\_\_\_

Address: \_\_\_\_\_

City, State and Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Additional space for answers:

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Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Return to:

U.S. Department of Justice  
Civil Rights Division  
Disability Rights - NYAV  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Paperwork Reduction Act Statement:

A federal agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Public burden for the collection of this information is estimated to average 45 minutes per response. Comments regarding this collection of information should be directed to the Department Clearance Officer, U.S. Department of Justice, Justice Management Division, Office of the Chief Information Officer, Policy and Planning Staff, Two Constitution Square, 145 North Street, N.E., Room 2E-508, Washington, D.C. 20530.  
OMB No. 1190-0009. Expiration Date: May 31, 2015.

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Last updated May 7, 2012

## Resolving ADA Complaints through Mediation: An Overview

*Excerpts from [www.ada.gov](http://www.ada.gov)*

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### About Us

The Department of Justice's Americans with Disabilities Act (ADA) Mediation Program (the Program) informally resolves ADA complaints, allowing parties – the person who filed the complaint and the business or local government named in the complaint – to develop mutually agreed upon solutions that comply with the



ADA. Since its inception, the Program has mediated more than 4,000 complaints nationwide, with 78% of them resulting in successful resolutions.

- Using professional ADA-trained mediators throughout the United States, the Program provides a confidential, voluntary way to resolve ADA complaints fairly and quickly.
- The Program greatly expands the reach of the ADA and the speed with which alleged violations are resolved at minimum expense through a partnership between the Department of Justice and the mediation contractor, the Key Bridge Foundation.

### Mediation and the ADA

- Mediation is a process that brings parties together with a neutral mediator to resolve their differences through discussion and problem-solving.
- Complaints under both title II (State and local government services) and title III (public accommodations) can be mediated.
- Disputes where potential remedies are flexible are most appropriate for mediation and include providing effective communication, eliminating architectural barriers, or eliminating discriminatory policies.

## **Why Consider Mediation?**

### **Free**

There is no cost to either party to participate in mediation. It is not necessary for parties to have a lawyer to participate in mediation.

### **Party-Driven**

Mediation allows the parties, not a judge or the mediator, to control the outcomes of their dispute. Parties work together, and there is room to negotiate the terms of the agreement and the timeline for implementation. The matter is not closed until the parties verify that all of the terms of the agreement have been implemented. Either party can withdraw from mediation at any time.

### **Confidential**

Conversations and materials produced during the mediation sessions are confidential.

### **Quick**

Mediation is scheduled promptly as opposed to investigations or court cases which can take months or years.

### **Preserves Relationships**

The cooperative, voluntary approach can preserve relationships between parties and produce win-win results.

### **Successful**

The Program has successfully resolved thousands of ADA disputes resulting in increased access for people with disabilities and has saved businesses and State and local governments time and money.

### **More Information**

For more information about the ADA Mediation Program, visit our website at:

<http://www.ada.gov/mediate.htm>

For more information about the ADA, please visit our website or call our toll-free number.

## **ADA Website - [www.ADA.gov](http://www.ADA.gov)**

To receive e-mail notifications when new ADA information is available, visit the [ADA Website](#) and click on the link near the bottom of the right-hand column.

## **ADA Information Line**

800-514-0301 (Voice) and 800-514-0383 (TTY) Call M-W, F 9:30 a.m. – 5:30 p.m.,  
Th 12:30 p.m. – 5:30 p.m. (Eastern Time) to speak with an ADA Specialist (calls are  
confidential) or call 24 hours a day to order publications by mail.



## ADA Mediation Program - Questions and Answers

*Excerpts from [www.ada.gov](http://www.ada.gov)*

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In enacting the Americans with Disabilities Act (ADA), Congress specifically encouraged the use of alternative methods of dispute resolution, including mediation, to resolve ADA disputes. Established in 1994, the Department's ADA Mediation Program has achieved remarkable results, eliminating architectural, communication, and attitudinal barriers for thousands of people, while allowing the Department to achieve meaningful compliance with the law without having to allocate scarce resources to investigate or litigate these disputes. Over 4,000 complaints have been mediated in communities large and small throughout the country, with 78% of them resulting in successful resolutions.

### 1. What is the ADA Mediation Program?

The Department of Justice's ADA Mediation Program is an important part of ADA compliance. Using professional ADA-trained mediators throughout the United States, the Program provides a confidential, voluntary way to resolve ADA complaints fairly and quickly.

### 2. What is mediation?

Mediation is an informal process in which a neutral third party helps parties find mutually satisfactory resolutions of their dispute.

### 3. What types of complaints does the ADA Mediation Program resolve?

Both title II (State and local government services) and title III (public accommodations) complaints can be mediated. Examples of the types of complaints most appropriate for this Program include:

- Barrier removal: alleging that a store has inaccessible parking, entrances, and checkout aisles;
- Effective communication: alleging that a health care provider refuses to provide sign language interpreters to a patient who is deaf or alternate formats of written materials to a patient's spouse who is blind;
- Modification of policies, practices, and procedures: alleging that a restaurant refuses to serve a person with a disability because he or she uses a service animal; and,

- Program accessibility: alleging that a city hall's public meetings are held on the second floor of a building that does not have an elevator.

#### **4. Why should I participate in the ADA Mediation Program?**

There are many potential advantages of mediating ADA complaints in the Program, including:

- Mediation allows the parties—not a judge, jury or mediator—to develop their own solutions to ADA disputes.
- Mediation can offer a quick and satisfactory resolution of a dispute and can be far less expensive and time-consuming than a formal investigation or going to court.
- Mediation may mend relationships between parties.
- Parties do not lose any rights in attempting mediation.
- Mediation is confidential and voluntary.

#### **5. What happens during mediation?**

Mediation usually involves one or more meetings between the disputing parties and the mediator, a trained neutral person who helps the parties communicate with one another but does not make decisions for the parties. It is not uncommon for mediation to involve one or more confidential sessions with individual parties and the mediator.

#### **6. How much does mediation cost the parties?**

There is no cost to either party.

#### **7. How can I request that my ADA complaint be mediated?**

Follow the usual procedures for filing a complaint with the Department, and note on the complaint that you would be willing to mediate your dispute. The Department will make every effort to offer mediation to parties interested in participating in the Program.

Instructions on how to file a complaint are on our website:

[www.ada.gov/filing\\_complaint.htm](http://www.ada.gov/filing_complaint.htm).

#### **8. What will happen if I file a complaint and the Department decides that it is appropriate for mediation?**

If we decide that your complaint is appropriate for mediation, we send you an explanation of the mediation process, technical assistance materials, an offer to participate in the Program, and a Release for Referral to Mediation form for you to sign and return within 30 days. Our receipt of this signed form means you have accepted our



offer to participate in the Program. The person who files a complaint is referred to as the complainant.

**9. If someone files a complaint against my company or against the State or local government I represent and wants to mediate, when will I be informed?**

Once the complainant agrees to participate, we will notify you, in writing, that a complaint has been filed against you. You will be offered an opportunity to participate in mediation, and provided technical assistance materials. The letter also states that we will not pursue an investigation while mediation is pending. The entity against whom the complaint is filed is referred to as the respondent.

**10. What happens after the complainant agrees to mediate?**

Our mediation contractor, the Key Bridge Foundation (KBF), will assign a case manager to handle the matter. The case manager will contact the respondent to discuss the opportunity to resolve the complaint through mediation. Once the respondent agrees, the case manager works with both parties to arrange a mutually agreed upon time, date, and location for the mediation. KBF is a nationally recognized provider of mediation and training services.

**11. What if the respondent refuses to participate in mediation?**

If the respondent refuses to participate in mediation, KBF returns the complaint to the Department for review. After reviewing the complaint, the Department may decide to initiate an investigation.

**12. Where do the mediations take place?**

Most mediations occur locally in mutually agreed upon neutral locations. Mediations may also take place by teleconference as needed.

**13. What if I need an accommodation for the mediation?**

The Department ensures that all mediations are accessible to all participants. The Key Bridge Foundation and the mediators are skilled at handling requests for accommodations for people with disabilities, such as arranging accessible locations for mediations, providing sign language interpreters, and arranging other accommodations to ensure full and equal access to the mediation process, at no cost to the parties.

**14. Who are the mediators in the ADA Mediation Program, and where are they located?**

All mediators in the Program are professional mediators who have been trained in the legal requirements of the ADA and have a great deal of mediation experience. They are located throughout the United States.

**15. Can I bring an attorney to the mediation?**

Yes. Either party can be represented by an attorney, but it is not required. Attorneys in mediation generally advise their clients, but the parties speak on their own behalf.

**16. What happens if we start the mediation process but I am uncomfortable continuing in it?**

You may speak with your case manager at KBF to resolve any problems you experience during the mediation process. Either party can withdraw from this voluntary mediation process at any time.

**17. Can compensation be discussed as part of the mediation?**

Yes. However, any discussion of monetary or other compensation must be mutually agreed upon by the parties. Although compensation is often part of agreements, it is secondary to ensuring that the issue is appropriately resolved.

**18. Does the mediator decide the outcome?**

No. The parties themselves decide the outcome of mediation. The mediator helps move the conversation along and assures the fairness of the mediation process.

**19. What are the possible outcomes of mediation in the Program?**

A successful mediation results in a binding agreement between the parties. Resolutions may include removing barriers, implementing compliant policies, conducting training, paying money to complainants, and/or providing a simple apology. If mediation is unsuccessful and an agreement cannot be reached, parties may still pursue all legal remedies provided under the ADA, including filing private lawsuits.

**20. How does the Program ensure that implementation of the agreement will occur?**

To ensure that relief is actually obtained, no matter is deemed successfully resolved and closed until both parties verify the full implementation of the terms of the agreement.

**For more information about the ADA, please visit our website  
or call our toll-free number.**

**ADA Website: [www.ADA.gov](http://www.ADA.gov)**

To receive e-mail notifications when new ADA information is available,  
visit the ADA Website and click on the link near the bottom of the right-hand column.

ADA Information Line

800-514-0301 (Voice) and 800-514-0383 (TTY)

Call M-W, F 9:30 a.m. – 5:30 p.m., Th 12:30 p.m. – 5:30 p.m. (Eastern Time) to  
speak with an ADA Specialist (calls are confidential) or call 24 hours a day to order  
publications by mail.

For people with disabilities, this publication is available in alternate formats.

**Duplication of this document is encouraged.**

**January 2014**

## **Questions and Answers for Parties to Mediation: Mediation and the Americans with Disabilities Act (ADA)**

*Prepared jointly by the  
U.S. Equal Employment Opportunity Commission  
National Council on Disability  
U.S. Department of Justice*

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### **Introduction**

The Americans with Disabilities Act of 1990 (ADA) and the Rehabilitation Act of 1973 (Rehabilitation Act) make it unlawful to discriminate against a qualified individual with a disability.<sup>(1)</sup> This guide helps individuals with disabilities and their representatives understand their rights and responsibilities when mediating equal employment opportunity (EEO) disputes. Although this guide focuses on mediation, information about the ADA and reasonable accommodation principles will generally also apply to other types of Alternative Dispute Resolution (ADR), such as conciliation, early neutral evaluation, or settlement conferences.

### **Facts about Mediation of EEO Disputes**

If you have an EEO dispute with your employer, you may be offered mediation services by your employer, by a private organization, or by a government agency, such as the Equal Employment Opportunity Commission (EEOC). Mediation can often resolve the dispute more quickly and inexpensively than investigation or litigation. Mediation may be offered at any point in the dispute process, including after you have filed a formal charge of discrimination with an administrative agency, or after you have filed a lawsuit.

Mediation is an informal, confidential process for resolving disputes by using an impartial third-party (the mediator) who meets with the employer and employee. The mediator has no decision-making authority, but rather tries to assist the parties to resolve their dispute. Participation in mediation does not constitute an admission of any violation of the laws enforced by EEOC. Sometimes mediation is the best way to preserve or build a better working or parting relationship. To participate, parties need only be open to the possibility of resolution.

Generally neither party to a dispute is required to participate in mediation, or to agree to a resolution; an agreement to mediate is an agreement to work in good faith with the other party toward a solution. Mediation typically includes an opening session, followed by a joint meeting of the parties, fully and fairly allowing both the employer and the employee to explain their point of view and to listen to the other party's point of view. Through private and joint meetings with the mediator, the parties attempt to develop and evaluate options for reaching agreement. When an agreement is reached, usually it is memorialized in an enforceable, written document signed by both parties.

Each party may have an attorney, friend, relative, or other support person present at the mediation. If you are not able to reach resolution through mediation, then you may still pursue any legal claims or defenses you have preserved. The mediator is a neutral facilitator, not either party's advocate. The mediator will try to help both parties identify their interests and ways to achieve desired outcomes.

Here are some key questions for parties to consider in preparing to participate in mediation:

- What are the main issues of concern to you? What are the main issues of concern to the other party?
- What are your goals for the mediation? What are the goals of the other party?
- Who are the key players in the dispute?
- What obstacles might there be to having a productive session?
- What will happen if the dispute is not resolved through mediation?
- Is there anything you need to help you participate in the process?

### **Accommodation for the Mediation Process**

Sometimes individuals with disabilities will need an accommodation to allow full participation in the mediation process. Accommodations that might be needed include:

- assistance with verbal or written communications;
- specific meeting times or specific break times due to disability-related fatigue, medical treatment, medication, etc.;
- management of environmental factors such as light, noise, or chemicals;
- permission for a personal assistant to accompany a party throughout the mediation process;
- reminders about what is being discussed, the roles of others who are present, and the way the mediation process is conducted; and
- other modifications to the way the mediation is ordinarily conducted.<sup>(2)</sup>

If you are an "individual with a disability" within the meaning of the ADA, you have a legal right to reasonable accommodation in the mediation if it is not an undue hardship, meaning it does not pose a significant difficulty or expense in light of the mediation provider's resources or business operations, or fundamentally alter the mediation service. Many mediators will offer accommodation without regard to whether or not someone is a "qualified individual with a disability," in order to facilitate full and meaningful participation by all parties to the mediation and their representatives.<sup>(3)</sup>

### **1. What should I do if I believe I may require assistance or accommodation in the mediation process due to my disability?**

It is best to let the mediation provider know as soon as possible that you may need an accommodation. A mediator needs advance notice to provide many accommodations, such as sign language interpreters, alternative formats for written documents, or an accessible location. The sooner you request an accommodation, the better you can ensure it will be timely provided. You can inform the person who does intake for the mediation program, the mediator, or other appropriate individual responsible for the mediation that you have a disability that requires an accommodation. You may request a reasonable accommodation at any point during the mediation when you realize that one is needed.

**Example:** You need to check your blood sugar or take certain medication at specified times during the day, and you assumed this would coincide with the break schedule during the mediation. However, after the mediation session is well underway, you learn that breaks are not going to be taken at the times you thought. Even though the mediation already has started, you should explain to the mediator your medical need for breaks at certain times so that he can accommodate your needs by modifying the planned break schedule.

### **2. Will any accommodations be provided without a request?**

In general, physical sites and service providers have to comply with accessibility standards by having things like ramps and accessible bathrooms, and must allow the use of service animals. However, there are situations where you will need to request accommodation because the mediation provider will otherwise not be on notice that any

policy modifications or services are needed. For example, if you need a sign language interpreter, materials in alternative format, or other arrangements requiring advance planning, you should notify the mediation provider beforehand if possible.

### **3. What do I have to say or do to ask for an accommodation?**

You should inform the mediation provider what accommodation is needed and why. The request can be oral rather than written, and need not contain any magic words, such as "ADA" or "reasonable accommodation," but it must be sufficient to give notice of the need for a change or adjustment due to a medical condition.

### **4. Do I have to disclose my disability to the mediator?**

If you need an accommodation for the mediation process, you will need to explain what you need and why you need it in order to put the mediator on notice of your request for accommodation and to enable her to provide it. [\(4\)](#)

### **5. What if I have certain disability-related needs, but I am not sure whether I'll need an accommodation?**

You should ask the mediator any questions you have about the mediation site and/or the process so that you can decide whether you need an accommodation. You should advise the mediator of the nature of your concerns so that he can fully respond to them.

**Example:** You advise the mediator during the initial intake that you use a wheelchair, and ask whether there will be any problem with access to the room where the mediation is scheduled to occur. The mediator states that the mediation was scheduled to take place on the second floor of a building that has no elevator but, now that he is aware of your needs, he will reschedule the mediation to take place on the first floor or in an alternative accessible location.

### **6. Can the mediator refuse to provide an accommodation to an individual with a disability if it would be too expensive or difficult?**

The mediator must provide you with a reasonable accommodation if this can be done without significant difficulty or expense and without fundamentally altering the mediation

services. Note, however, that personal use items and personal care services are generally not considered reasonable accommodations.

**Example:** A private practice solo mediator is offering mediation services on a case in which one of the parties has requested a sign language interpreter due to a hearing impairment. The mediator contacts an interpreter service, and learns that hiring an interpreter will cost \$80/hour. The mediation is expected to last 6 hours. The total cost of \$480 to provide the interpreter is unlikely to be deemed a "significant difficulty or expense" under the ADA, because the overall financial resources of the mediation provider are considered, not just the fee for that single mediation.

**Example:** An individual with a cognitive disability tells the mediator that she is having difficulty following discussions and understanding various settlement alternatives available to her. She asks the mediator to advise her what settlement option he thinks is best and to do whatever he can to help convince the employer to agree to it. This is not a reasonable accommodation, because it would require the mediator to act as an advisor to, or advocate for, one of the parties, rather than as a neutral third party, and would thus fundamentally alter the nature of the mediation process. (Of course, the mediator may advise the individual regarding her right to bring a representative, such as an attorney or family member, to serve as an advocate during the mediation.)

**Example:** A party who uses a wheelchair requests that the mediator provide someone to assist him with transferring to and from his vehicle to his wheelchair when arriving and departing the mediation, and from his wheelchair to the toilet when using the bathroom during mediation breaks. The mediator may deny this requested accommodation because personal care services such as assistance with transferring do not have to be provided as a reasonable accommodation. However, the mediator should also discuss with the party whether there are any alternative means for the party to obtain the services needed, and should offer a reasonable alternative if one exists, for example allowing the party to arrange at his own expense for a personal assistant or other individual to be present at the mediation.



## **7. Do I have the right to receive the specific accommodation I request or can the mediator provide something else?**

If more than one accommodation solution would meet your needs, the mediator may choose which one to provide. If the mediator's proposed accommodation would not be effective for you, explain to the mediator why, so that she has an opportunity to explore an alternative accommodation with you.

**Example:** A party with a learning disability requests to tape record the mediation session, explaining to the mediator that this will accommodate her inability to take comprehensive notes. The mediator is concerned that allowing a tape recording of the mediation session will inhibit the other participants and may raise confidentiality concerns, so instead offers to provide a qualified note taker for the session. Assuming the notes are satisfactory, this may be an equally effective accommodation.

**Example:** A party who is deaf requests that the mediator provide Computer-Assisted Realtime Translation (CART) services for the mediation, whereby a qualified transcriptionist contemporaneously types a transcript of what is said at the mediation session(s), and it appears on a screen for the party to read. The mediator wishes to offer a sign language interpreter instead of CART, to reduce the expense. Absent undue hardship, the mediator must provide CART if a sign language interpreter would not be an equally effective accommodation for the individual, for example if the party does not use sign language or if no interpreter is available to communicate in the type of sign language the party uses.

## **8. Can the mediator charge me for the cost of an accommodation?**

No. However, if the accommodation you request would pose significant difficulty or expense, the mediator might offer a less costly accommodation that also meets your needs and can be provided without undue hardship.

## **9. Does the mediator have to keep my medical information confidential?**

Based on standard mediation practices, the mediator should treat medical information about you confidentially, including the fact that you requested a reasonable accommodation for the mediation.<sup>(5)</sup> If it relates to the dispute being mediated, the

mediator may ask you for permission to share certain medical or disability-related information with the other party. In that case, you should advise the mediator of what information he may share in the interest of reaching a resolution in the case. All participants to a mediation, including you and your employer, your respective representatives, and the mediator, must keep confidential all communications made during the mediation process.<sup>(6)</sup> Everyone in the mediation will typically sign a confidentiality agreement. After the mediation, all parties should destroy any notes they took during the mediation.

## OTHER CONSIDERATIONS

### **10. What should I do if I believe that the mediator does not really understand my disability, or my employer's obligations under the ADA?**

You are free to provide the mediator with resource information, such as publications or the contact information for neutral experts, to assist in explaining your disability and your view of the legal dispute. If, after having done this, you still feel the mediator is biased or not properly informed, you should express your concerns to the mediator and/or the mediation program coordinator to determine if the problem can be remedied or another mediator assigned. Remember that mediation is voluntary and can be discontinued at any time by either party.

### **11. Do I need to be represented by an attorney in mediation?**

You are not required to have an attorney for mediation. However, many people find that representation by an attorney or another person with ADA training can help both parties engage in informed participation and decision-making. Even if you do choose to have an attorney present with you at the mediation, you should nevertheless inform and educate yourself on the rights and issues in your case. If you choose not to have counsel present at the mediation, you may still have an attorney review the mediation agreement and advise you before you sign it. The mediation provider is not required to pay the cost of an attorney or other representative to participate in the mediation or to review an agreement.

## **12. How can I ensure that an agreement reached in a mediation will be enforced?**

If you reach an agreement in mediation that is reduced to a written enforceable settlement agreement, you may have the right to ask the EEOC or a court to enforce it.<sup>(7)</sup> There are steps you can take in advance to ensure that the employer will do what it has agreed to do. If an agreement you reach through mediation requires that you withdraw a pending EEO charge or lawsuit, or waive claims, in exchange for whatever relief the employer agrees to provide, you may want to make sure the agreement specifies that you will not do so until the employer has taken the steps to which it has agreed. When your agreement will involve actions on the part of the employer (e.g., paying money damages to you, reassigning you to a new position, or providing an accommodation in your current position), you may want to consider seeking the mediator's and employer's consent to include in the agreement a provision stating that the mediator will follow-up in a specified period of time to determine if the agreement was carried out. The agreement also might provide that either party can schedule another mediation if the agreement breaks down.

## **13. What should I do if no resolution is reached in mediation?**

You have the right to continue with prosecuting your legal claim, provided you meet all other requirements. For more information about how to prosecute a legal claim under the federal equal employment opportunity laws, contact the EEOC at 1-800-669-4000 (voice) or 1-800-669-6820 (TTY), or obtain information on the Internet from <http://www.eeoc.gov>.

## **14. Where can I get more information about mediation and the ADA?**

The following is a list of some resources that you can consult for information about the ADA and about mediation:

### **FEDERAL AGENCIES**

#### **U.S. Equal Employment Opportunity Commission (EEOC)**

1-800-669-4000 (voice)

1-800-669-6820 (TTY)

<http://www.eeoc.gov>

EEOC Publications Center:

1-800-669-3362 (voice)

1-800-800-3302 (TTY)

EEOC private sector mediation programs:

<http://www.eeoc.gov/mediate/index.html>

The EEOC enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, and national origin; the Age Discrimination in Employment Act, which prohibits discrimination against individuals 40 years of age or older; sections of the Civil Rights Act of 1991; the Equal Pay Act; Title I of the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in the private sector and state and local governments; and Section 501 of the Rehabilitation Act of 1973, prohibiting disability discrimination in federal government employment. In addition to investigation and litigation of claims, EEOC provides extensive technical assistance to employers and employees.

### **U.S. Department of Justice**

#### **Civil Rights Division, Disability Rights Section**

ADA Information Line

1-800-514-0301 (voice)

1-800-514-0383 (TTY)

<http://www.ada.gov>

The Department of Justice investigates and litigates claims under Titles II and III of the ADA, and also litigates cases against public employers under Title I of the ADA. The Department also provides education and technical assistance to businesses, State and local governments, and individuals with rights or responsibilities under the ADA through a variety of means to encourage voluntary compliance. Activities include providing direct technical assistance and guidance to the public through a toll-free ADA Information Line, an internet ADA Home Page, and Fax on Demand, developing and disseminating technical assistance materials to the public, undertaking outreach initiatives, and coordinating ADA technical assistance government-wide.

**National Council on Disability 202-272-2004 (voice)**

202-272-2074 (TTY)

<http://www.ncd.gov>

The National Council on Disability (NCD) is an independent federal agency making recommendations to the President and Congress on issues affecting Americans with disabilities. NCD's overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

**Access Board**

1-800-USA-ABLE (1-800-872-2253) (V/TTY)

<http://www.access-board.gov>

The Access Board is an independent federal agency devoted to accessibility for people with disabilities. Key responsibilities of the Board include: developing and maintaining accessibility requirements for the built environment, transit vehicles, telecommunications equipment, and for electronic and information technology; providing technical assistance and training on these guidelines and standards; and enforcing accessibility standards for federally-funded facilities.

**OTHER RESOURCES****Job Accommodation Network (JAN)**

1-800-526-7234 (V/TTY)

<http://www.jan.wvu.edu>

JAN is a free service of the Office of Disability Employment Policy of the U.S. Department of Labor providing information and guidance on reasonable accommodation in the workplace.

**ADA Disability and Technical Assistance Center (DBTAC)**

1-800-949-4232 (V/TTY)

<http://www.adata.org>

There are ten regional DBTAC centers throughout the United States that act as a one-stop comprehensive resource on ADA issues in employment, public services, public accommodations, and communications. Each DBTAC center works closely with local business, disability, governmental, rehabilitation, and other networks to provide ADA information and assistance. Programs vary in each region, but all of the centers provide technical assistance, education and training, materials, information and referrals, among other services.

### **American Bar Association (ABA) Commission on Mental and Physical Disability Law**

(202) 662-1570

<http://www.abanet.org/disability>

ABA's Commission on Mental and Physical Disability focuses on the law-related concerns of persons with mental and physical disabilities through a variety of activities and publications. Its mission is "to promote the ABA's commitment to justice and the rule of law for persons with mental, physical, and sensory disabilities and their full and equal participation in the legal profession." The Commission's members include lawyers and other professionals, many of whom have disabilities.

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### **References:**

1. The ADA prohibits disability discrimination by private and public employers (Title I), state and local government entities (Title II), and public accommodations (Title III). The Rehabilitation Act contains similar anti-discrimination rules that apply to executive branch federal government agencies as well as various federally funded programs and activities. For purposes of this document, the term "ADA" is used to refer to both the ADA and the Rehabilitation Act.
2. The term "reasonable accommodation" is used in this document to refer not only to "reasonable accommodation" in employer-sponsored mediation programs, but also "reasonable modifications of policies, practices, and procedures," the provision of "auxiliary aids and services," and other similar changes that provide accessibility for people with disabilities in private and government-sponsored mediation programs.

"Auxiliary aids" include such services or devices as qualified interpreters, assistive listening devices, telecommunications devices for deaf persons ("TDD" or "TTY"), readers, taped texts, Brailled materials, and large print materials.

3. For example, the ADA Mediation Guidelines (2000), available at <http://www.cojcr.org>, issued by a national work group comprised of representatives from a variety of organizations, and the Practice Standards for ADA Mediators (1999), available at [http://www.keybridge.org/med\\_info/ada/ada\\_mediator\\_standards.htm](http://www.keybridge.org/med_info/ada/ada_mediator_standards.htm), issued by the Center for Mediation, Key Bridge Foundation, Washington, D.C., provide voluntary practice standards relating to ADA mediation topics, including reasonable accommodation of participants.

4. Even if you do not need an accommodation for the mediation, if your legal claim in the case being mediated involves alleged disability discrimination or denial of reasonable accommodation, it may be useful in resolving the case for you to explain to the mediator aspects of your disability relevant to the workplace dispute.

5. In employer-provided mediation, there is additionally an ADA obligation requiring the employer and the mediator to keep the employee's medical information confidential.

6. EEOC Alternative Dispute Resolution Policy Statement (July 17, 1995) (available at <http://www.eeoc.gov/policy/docs/adrstatement.html>); Questions and Answers About Mediation (explaining EEOC's Mediation Program for charges pending before EEOC) (available at [http://www.eeoc.gov/mediate/mediation\\_qa.html](http://www.eeoc.gov/mediate/mediation_qa.html)). Threats of physical harm present an exception to the confidentiality rule, and can be disclosed.

7. EEOC Alternative Dispute Resolution Policy Statement (July 17, 1995) (available at <http://www.eeoc.gov/policy/docs/adrstatement.html>).



## Real Life ADA Mediation Cases

The U.S. Department of Justice periodically provides status reports regarding the ADA enforcement. These reports cover ADA litigation, formal settlement agreements and other settlements as well as mediation results.

Under a contract with the Department of Justice, the Key Bridge Foundation receives referrals of complaints under titles II and III for mediation by professional mediators who have been trained in the legal requirements of the ADA. An increasing number of people with disabilities and disability rights organizations are specifically requesting the Department to refer their complaints to mediation. More than 400 professional mediators are available nationwide to mediate ADA cases. Following are some examples of results reached through mediation.

- In Oklahoma, a wheelchair user alleged that a courthouse was inaccessible. The courthouse installed an accessible route from its accessible parking spaces to the entry door, provided training on procedures regarding the ADA to security officers and court staff, gave security officers wands to screen individuals who, because of disability, could not pass through the metal detector, and removed barriers in the corridor between the elevator and the courtroom door. The county commissioners also appointed an ADA Coordinator to address program access issues throughout the county.
- In Texas, a wheelchair user alleged that a restaurant failed to provide accessible restrooms. The restaurant removed a door and enlarged the area in front of the restroom to provide maneuvering space, and converted the men's restroom into an accessible unisex restroom.
- A wheelchair user alleged that a Washington, D.C., hotel failed to provide an accessible guest room, even though the hotel assured him that the room he reserved would be accessible. The hotel conducted an onsite evaluation of its designated accessible guest rooms and modified each room to ensure accessibility by widening bathroom doors and installing grab bars.
- In Tennessee, an individual who is deaf alleged that a package shipping company refused to accept his telephone relay calls. The company changed its policy to accept relay calls and agreed to have the policy tested by the complainant.
- In Texas, a wheelchair user complained that an exterior wheelchair lift used to access a courthouse was continually breaking down, once leaving him stranded



inside the lift. He further alleged that when he raised the issue with a court employee, the employee told him that he could be removed from the juror list. The courthouse repaired the wheelchair lift so that it could again be operated independently and installed a buzzer in the lift to alert staff if assistance is needed. In addition, the complainant was assured that he had not been removed from the jury pool.

- In New York, a person with no arms complained that he was refused service and ridiculed when attempting to pay for his food with his feet at a fast food drive-through window. The restaurant recommitted itself to its existing nondiscrimination policies and training program; fired the employee involved in the incident; apologized to the complainant; and paid him \$6,000.
- A person with Tourette Syndrome complained that she was told by a South Carolina hair salon that she could only receive services outside in an alley behind the salon. The owner of the salon agreed to provide services in an integrated setting for all customers, including the complainant; set up a comprehensive ADA training for its employees; apologized to the complainant; and made a donation to a Tourette Syndrome organization in the name of the complainant.
- In Florida, a wheelchair user complained that an accessible hotel guest room he reserved was not available. The hotel assigned him to a standard room, forcing him to use the portable toilet in his van. The hotel installed two fully accessible guest rooms, one with a roll-in shower. In addition, the hotel developed a reservation system in consultation with the complainant to ensure that reservations for accessible guest rooms are held, and trained staff to confirm that guests' accessibility requests are met. The owner of the hotel also apologized and refunded the night's stay to the complainant.
- In Missouri, a wheelchair user complained that he was unable to enter a cable TV services store because of heavy entrance doors. The store installed buzzers and signage at two of its stores for customers to ring for assistance in opening the doors, and agreed to provide ongoing training to front counter representatives in assisting persons with disabilities upon request. In addition, a nationwide policy was implemented to allow customers with disabilities who discontinue service to have their equipment picked up at home without a service charge.
- A person who is deaf complained that a Florida doctor's office did not provide a sign language interpreter for an appointment. The office agreed to provide qualified interpreters upon request, posted a sign in the office about the availability of interpreters, and trained all staff in complying with the ADA.

- In North Carolina, a person who is deaf complained that an architecture firm's receptionist refused to communicate with him through note writing as he requested. The office changed its policy and agreed to communicate by exchanging written notes when it is the customer's preferred method of communicating, and paid \$500 to the complainant.
- In Pennsylvania, a wheelchair user who does not have full use of her hands and arms and who uses a service animal complained that a restaurant refused to allow the animal to assist her in physically paying her bill. The restaurant sent a written apology to the complainant and agreed to allow access to all service animals, posted signage welcoming service animals, and received comprehensive training on the ADA with a detailed focus on service animals. In addition, the respondent agreed to donate \$500 to a service animal organization every year for five years.
- In Florida, a wheelchair user with a service animal complained that she was asked questions about her disability and asked to provide identification for her dog while shopping at a department store. The respondent agreed to provide disability awareness training to staff and management at the store, to post a large sign saying "Service Animals Welcome," and to provide a formal written apology and a payment of \$2,500.
- A person with a serious heart condition complained that a Pennsylvania garden store refused to provide assistance loading heavy items into his car because it was self-service only. The respondent apologized to the complainant and agreed to train all staff in assisting customers with disabilities. Additionally, the respondent agreed to install accessible parking, including a van-accessible space.
- In Texas, a wheelchair user complained that a strip mall was inaccessible. The mall installed a ramp and accessible parking spaces, including a van-accessible space, and reduced the opening force of the door to one of the businesses in the mall.
- In North Carolina, a golfer with a mobility impairment complained that a course did not allow off-path travel for carts used by golfers with disabilities. The parties agreed that the golf course did have a policy allowing off-path travel in appropriate circumstances but that the policy was not adequately communicated to golfers. The course agreed to institute ongoing training for all employees on course policies and the ADA and to issue a written apology.
- A person who is deaf complained that a Florida hospital which had previously provided interpreter services refused to provide interpreter services during the complainant's most recent visit. Although the hospital had a policy for providing

interpreters, it agreed to review its intake process and to retrain all patient care staff on how to ensure that appropriate auxiliary aids are provided immediately. Additionally, the complainant arranged two one-hour training sessions on effective communication, allowing both day and night shift staff to attend.

- In Virginia, an individual whose daughter has Asperger's Syndrome and an anxiety disorder complained that, after using a dentist for three years, the dentist informed her that he was implementing a "behavior management" fee charged to patients who required additional time. The dentist agreed to stop charging the fee and to place a sign in his office indicating that the office does not discriminate. Finally, the dentist wrote a letter of apology to the complainant's daughter, paid \$500 to the complainant, and donated \$500 to an autism center.
- In Puerto Rico, a wheelchair user alleged that, because of the hotel's rigid room assignment policy, family members requiring accessible rooms were not placed in the same building as other family members. The complainant also alleged that the hotel's shuttle was inaccessible. The hotel modified its policy to allow guests to select the accessible rooms they want, contracted for accessible shuttle services, and donated \$5,000 to a charitable organization in the complainant's name.

## Course Description

The Americans with Disabilities Act (ADA) is a comprehensive civil rights law for people with disabilities. The Department of Justice (DOJ) enforces the ADA's requirements in three areas: Title I - Employment practices by units of State and local government; Title II - Programs, services, and activities of State and local government; and Title III - Public accommodations and commercial facilities. This course provides an overview and detailed Q & A about the DOJ's ADA Mediation Program, and helps design professionals have a better understanding of the ADA requirements.

