

# Oregon Department of Human Services (ODHS) Adoption and Guardianship Mediation Program

## The Mediation Process

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# Purpose of This Manual

This Program Manual is intended to describe the specific activities associated with the Oregon Department of Human Services (ODHS) Adoption and Guardianship Mediation Program. This manual will help mediators understand how all of the components of the program work together to support mediators in providing mediation services for birth and prospective adoptive/guardian families of children in foster care and other participants as appropriate. This manual will help mediators understand the roles of individuals involved in the mediation process and how the mediator can best interact with those individuals to support the mediation process.

# Section 1: Program Overview

## Program History

The ODHS Adoption and Guardianship Mediation Program started in 1992 as a pilot program called C.A.M.P.—Cooperative Adoption Mediation Program. Through the pilot program, contracted mediators were able to assist birth parents and prospective adoptive parents to develop written plans for communication and/or contact that would continue after adoption finalization. In 1993, Oregon was the first state to allow legally enforceable open adoption agreements in public child welfare adoptions. The pilot program was expanded into a statewide, permanent program due to the demonstrated success of the program, including various benefits experienced by children in foster care as well as their birth parents and prospective adoptive parents. In 2016, ODHS secured funding to again expand the program, allowing the department to include extended birth family members and prospective guardian parents to the list of potential mediation participants. In 2021, ODHS added program emphasis on mediation between **tribes** and prospective adoptive or guardian parents to develop **Cultural Continuity Agreements (CCAs)** following the enactment of the **Oregon Indian Child Welfare Act (ORICWA)** laws.

Words that are **black and bold** are glossary terms, and their definitions can be found in the Glossary.

## Purpose of the Program

Children placed for foster care, guardianship, and adoption experience ongoing grief and loss of important people and relationships in their lives. Loss may be the physical loss of the child's parent and other family members (not seeing their loved ones), or more ambiguous in the form of not knowing what is going to happen or not remembering what has happened in their life, loss of culture, loss of relationships with friends, loss of routine, loss of place, loss of a favorite pet or toys, etc. Mediation to develop plans for openness in adoption or guardianship is an opportunity to lessen those losses for children and to help them maintain important relationships and connections.

ODHS contracts with trained, impartial mediators to assist participants in developing plans for openness (post-adoption or post-guardianship communication and contact). The mediation process is a confidential, voluntary process to help participants work collaboratively and build relationships with one another to further the best interest of the child.

This goal is based on the concept of openness. Openness helps all participants work together to be supportive of the child—now and in the future. Openness allows the child to have a psychological, emotional, cultural, and historical connection with the birth family. This connection is important because the relationships with the birth family can continue forever, even when legal relationships are severed.

The benefits of openness in adoption or guardianship affect the child, birth parents, and prospective adoptive or guardian parents. The following outlines some of the benefits of openness to each of these individuals.

## The Child

Openness helps the child:

- Understand the reasons for the adoption or guardianship
- Have knowledge of their background (including medical/genetic)
- Understand the links to their ethnic and cultural heritage/ancestry
- Find answers to the questions they have at different developmental stages
- Have a greater sense of identity
- Develop a more realistic relationship with birth family (vs. fantasy)
- Be less likely to feel that bonding with their adoptive or guardian parent is being disloyal to their birth family
- Have permission of birth parents to become a member of adoptive or guardian family
- Develop a greater ability to process grief/loss
- Stay connected to or establish connections to birth family members
- See modeling of healthy relationship building from both their birth and adoptive or guardian families

## The Birth Family

Openness helps the birth family:

- Know how the child is doing
- Be able to show their love to the child directly
- Develop relationships with adoptive or guardian parents and child as they grow
- Have greater empowerment and involvement

- Develop an increased ability to process grief/loss
- Have an ongoing exchange of important information, including life events
- Build and model healthy relationships with the child's adoptive or guardian family
- Provide lifelong connections for the child

### The Prospective Adoptive or Guardian Parent

Openness helps the prospective adoptive or guardian parent:

- Know the child's family history (including medical/genetic) and allows them the ability to ask questions as they come up
- Have an increased ability to answer the child's questions about their adoption or guardianship and background
- Have an ongoing exchange of important information, including life events
- Have an increased ability to help the child grieve the loss of the birth family
- Have permission and support of birth parents to help the child become a member of the adoptive or guardian family
- Build and model healthy relationships with the child's birth family
- Provide lifelong connections for child
- Reduce likelihood of future disagreements or disputes regarding what contact or communication was agreed to

## Roles in Mediation

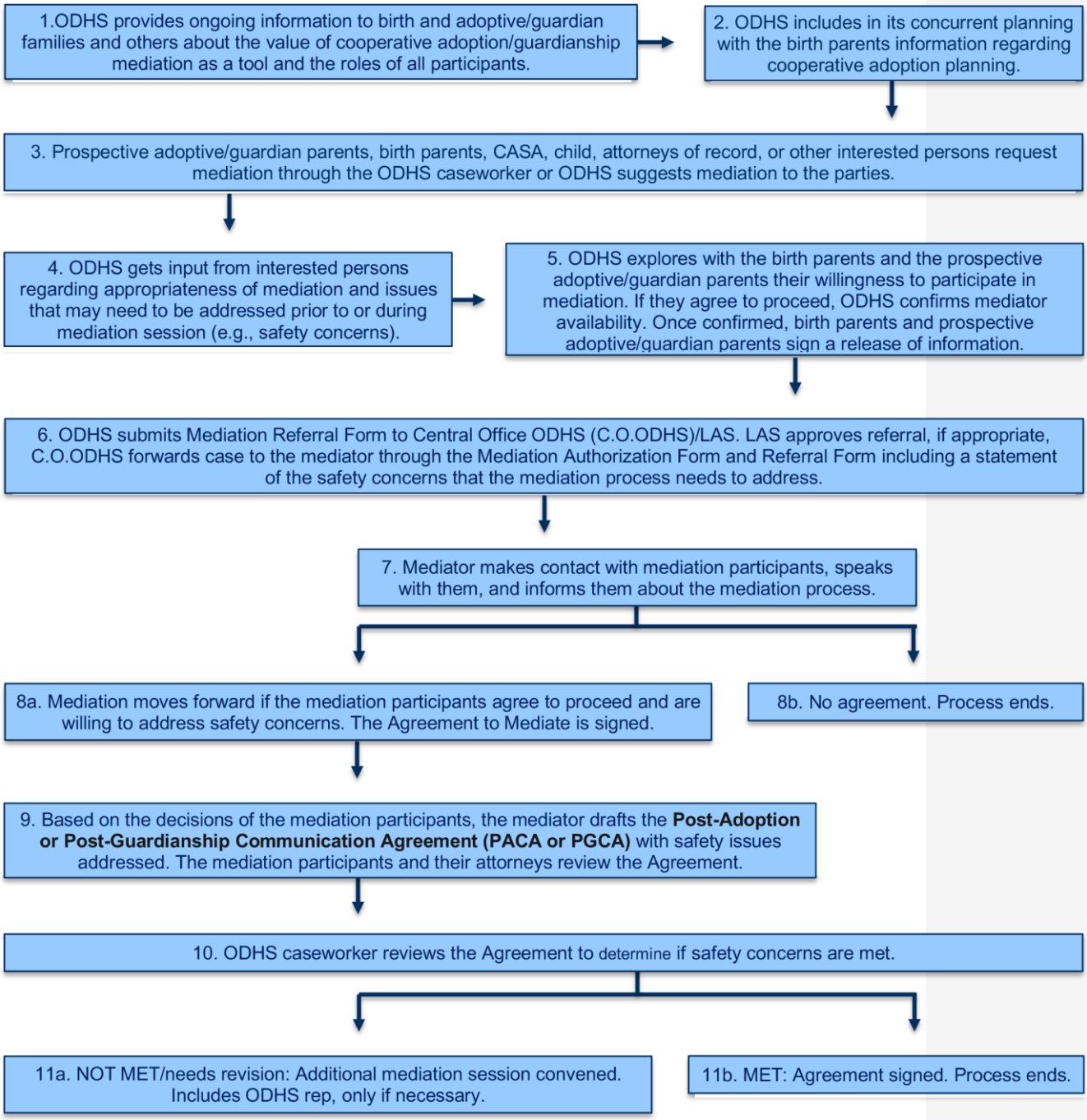
In addition to the child, prospective adoptive or guardian parent, and the birth family, there are many others that may have a role in the mediation process, including the following:

- Mediators (provide a guided process)
- ODHS staff (identify mediation participants and collateral contacts, make mediation referral, provide information to mediator, help arrange modifications/accommodations for participants including translation/interpreter services)
- Attorneys for child, birth parents, prospective adoptive or guardian parent, etc. (represent and protect interests of client)

- **Court Appointed Special Advocate (CASA)** (advocate for child's best interest, provide information and support)
- Tribal representatives (participate directly in mediation for Cultural Continuity Agreements, provide information/insight and support to the planning process when not participating directly in mediation)
- Guardian or **guardian ad litem (GAL)** for birth parent (appointed by court to protect legal party's best interests; can appear for, assist, and act on behalf of legal party)

# The Big Picture

## Openness and Post-Adoption/Post-Guardianship Communication Flow Chart



# Section 2: Launching a Mediation

## Mediation Overview

Before initiating an ODHS adoption or guardianship mediation, it is important to know the basics: the who, where, and when of the process.

- WHO might directly participate?
  - Birth parents and/or extended birth family
  - Prospective adoptive or guardian parents
  - Youth, depending on age
  - Tribe, if Cultural Continuity Agreement being developed
  - Siblings and/or sibling's family when siblings do not live together
- WHERE can mediation take place?
  - Mediator's office
  - Mutually agreed-upon space where confidentiality can be achieved
  - Electronic means (e.g., video conferencing, phone, email, text)
- WHEN can mediation happen?
  - Referral can happen after court changes plan to adoption or guardianship and prospective adoptive or guardian parent is identified.
  - Mediation must be completed prior to adoption/guardianship finalization.

## Mediation Referral

### Initiation

The ODHS caseworker will contact the mediator to ensure they are available to start a new mediation case. The ODHS caseworker should not provide the mediator with specific case information at that point as they will not yet be authorized to disclose case information to the mediator. The caseworker can provide general information about the type of mediation (e.g., adoption or guardianship) and the number and type of parties to the mediation (e.g., two birth parents and the adoptive parent). The caseworker will submit a Mediation Referral Form to the ODHS Central Office Child Permanency Program, specific to the selected mediator if the mediator confirms their ability to begin mediation.

## Case Assignment

When assigned a new case, mediators will receive the following documents from ODHS Central Office:

- Mediation Authorization Form
- Mediation Referral Form
- Each party's Authorization for Disclosure, commonly known as a Release of Information (ROI)

Refer to the Appendix for a copy of the Mediation Authorization Form, Mediation Referral Form, and the Authorization for Disclosure.

Mediators must wait for these documents to be sent by ODHS Central Office before starting any work on the mediation case.

## Document Review

Once the documents are received by mediators, they will need to review them, paying attention to the following specifics:

- Mediation Authorization Form
  - Is it for an adoption or guardianship?
  - What is the expiration date?
  - Are translation/interpreter services needed (ODHS will arrange)?
- Mediation Referral Form
  - What is the child's age?
  - Who are the mediation participants?
  - Who requested the mediation?
  - Are there any safety concerns?
- Authorization for Disclosure for each mediation participant
  - Do they show participant is releasing information from ODHS to the mediator so the caseworker can brief the mediator on the case factually?

**TIP**: Even if it says the participant is releasing information from the mediator to ODHS, explicitly or by checking the "mutual exchange" box, mediation confidentiality still limits the mediator's disclosures of mediation communications.

## Time Log

Mediators will create a time log for contemporaneously recording their time working on their cases. Information includes:

- Date
- Activity (e.g., meeting with birth father)
- Time spent (in 10-minute increments)

Mediators attach their time logs to the future invoice for the case.

# Making Initial Contact with Participants

## Initial Contact Plan

It is important for mediators to develop an initial contact plan because sequencing these contacts and choreographing the launch of a mediation can be challenging, especially when there are many participants. In addition, any planned sequence is usually altered by the randomness of who is reachable when, how long they take to return messages, etc. ODHS expects mediators to make initial contact with the caseworker and those directly participating in the mediation within 14 calendar days of receiving the referral, per the terms of their contract with ODHS.

## Preliminary Contacts

Before contacting those directly participating in the mediation (e.g., birth parents/birth family, prospective adoptive or guardian parent), it is helpful for mediators to contact the following as applicable to the case:

### *ODHS Caseworker*

Upon contacting the caseworker, mediators should:

- Confirm that the mediation process is underway
- Obtain any updates since the referral form was completed (e.g., substantive developments, updated contact information)
- Request the status of any current contact or communication between the participants and between the birth parent and the child (e.g., parenting time [visits], including when and where)
- Discuss any safety concerns including those listed on the Mediation Referral Form
- Discuss any possible needs for modification/accommodation or translation/interpreter services and the process to arrange for those services
- Ask whether anyone directly participating in the mediation process has been through the process previously
- Request the current legal status of the case
  - If adoption:
    - Have the parental rights been relinquished?

  - Have parental rights been terminated? Is there a termination of parental rights trial pending or on appeal?
- If guardianship: What is the status of guardianship finalization?
- Are there upcoming court hearings (e.g., review, pretrial, or trial for termination of parental rights; contested guardianship; or finalization of adoption or guardianship hearing)?
- The legal status of the case and court proceedings can impact the timing of the steps of the mediation process. For example, the timeline to complete **caucuses**, any joint mediation sessions, and development/signing of a Post-Guardianship Communication Agreement (PGCA) may need to be compressed if the guardianship finalization hearing will be held soon. The legal status could also impact whether the birth parent and prospective adoptive or guardian parent are willing to agree to a plan of openness and the type/extent of openness to which they'll agree. For example, the birth parent may be hesitant to agree to a plan for openness if they're hopeful that termination of their parental rights will be denied at the upcoming trial and the child will be returned to their care. Similarly, the prospective adoptive parent may interpret a birth parent appealing termination of their parental rights as a lack of cooperative planning for openness, which could impact the degree of openness to which the prospective adoptive parent will agree.

### *Adoption Worker/Certifier*

When talking with the adoption worker/certifier, mediators may want to ask the following questions:

- Has the prospective adoptive or guardian parent already expressed ideas or concerns about mediation or openness?
- What is the current status of the adoption or guardianship process?
  - Has ODHS approved ("designated" for adoption) the adoptive or guardianship placement?
  - Is an **Adoption or Guardianship Assistance** agreement in place? If not, what's the status of the application/negotiations?
  - Is there an estimated date adoption or guardianship could finalize, etc.?

**NOTE:** The status of the Adoption or Guardianship Assistance application and agreement is pertinent as possible costs of openness (e.g., securing a post office mailbox, covering travel to visits) may be covered.

### *CASAs*

Court Appointed Special Advocates (CASAs) can often provide insight about the child's needs and effective ways to communicate with the mediation participants. However, they may not be familiar with mediation

confidentiality and may be accustomed to having full access to information. Therefore, mediators may need to explain the concept to them during their conversations. The parties will decide if mediators can share their confidential ideas or circulate the draft mediated agreement with the CASA for input.

### *Attorneys for the Birth Parent, Child, Prospective Adoptive or Guardian Parent*

Mediator contact with attorneys for the birth parent, child, and prospective adoptive or guardian parent will be important because they may have experience with their client's communication styles, main concerns, and goals and will be able to share this information with mediators.

Getting the perspective of the child's attorney is particularly valuable because mediators do not typically mediate directly with the child.

*Note*

Prospective adoptive and guardian parents and birth relatives directly participating in mediation don't typically retain an attorney to represent them in matters related to the mediation. If they have retained an attorney for this purpose, contact with that attorney would follow the same process as contact with attorneys for the child and birth parents.

### *Tribe*

When the **Indian Child Welfare Act (ICWA)** or ORICWA applies, the tribe may directly participate in mediation to develop a CCA. Even when the tribe is not directly participating in mediation to develop a CCA, the mediator should still contact the tribal representative to get input.

Details the mediator might explore with the tribe include the following:

- What does the tribe want their role to be once the guardianship or adoption is finalized and how does the tribe believe the prospective guardian or adoptive parent can support that role?
- What other ways may the tribe be the point of contact and support for the child?
- Even if a CCA is not developed, what ways can the tribe help the prospective guardian or adoptive parent create connection for the child with their tribe, culture, and family members? Are there cultural or tribal activities, events, or programs in which the child, birth family members, and/or prospective guardian or adoptive parent can participate? Are there tribal benefits that can be accessed?

Refer to the ICWA/ORICWA module for more information.

**NOTE**: A tribal representative may directly participate in mediation when a CCA is being developed. Refer to the ICWA/ORICWA module for more information.

**NOTE*:*** The contact information for the tribe is included in the Mediation Referral form.

## Contact with Direct Mediation Participants

When making initial contact with those directly participating in the mediation, there is certain information that mediators need to gather and provide. During the initial contact, mediators should:

- Introduce themselves
- Briefly explain the mediation process and the role of the mediator in helping the parties explore how they can have some form of structured communication/contact after the adoption or guardianship is finalized
- Explain mediation confidentiality
- Get a sense of how they might best establish rapport with the participants and help them work together to plan for the possibility of openness
- Ascertain whether an individual involved in the mediation process has a disability that affects their participation in mediation and, if so, determine how modifications/accommodations can be made
- Ascertain whether an individual involved in the mediation process has a need for foreign language interpretation or translation services
  - The caseworker is responsible for setting up translation and/or interpreter services (ODHS contracts with translation/interpreter service providers), so they will need to be informed that the services are needed if it was not indicated on the Mediation Authorization form provided by ODHS Central Office.
  - It is a good idea to discuss the referral for translation or interpreter services with the caseworker, even when the need for those services is indicated on the Mediation Authorization form, to discuss the timing of the referral and what to expect.
- Confirm contact information for the participants and determine with them the best way to maintain contact
- Address any questions and concerns raised

Refer to the Special Considerations in Mediation Module for information on mediating with individuals with disabilities.

### *Birth parents*

If a mediation is occurring with both birth parents, treat them as two separate parties even if they are a couple. In this instance, the mediator is, in effect, conducting two parallel mediations. The mediator will have separate initial contacts and caucuses with each parent, even if some of the time is shared. Birth parents should be asked to maintain mediation confidentiality to the extent they can. It is possible that the end products of mediation could be separate plans and agreements for openness

between each birth parent and the prospective adoptive or guardian parent, with quite different terms.

While in contact with birth parents, mediators should ask each if there is anything they want the mediator to ask or share with the prospective adoptive or guardian parent.

### *Prospective Adoptive or Guardian Parent*

When mediators are communicating with prospective adoptive or guardian parents, they should try to engage each (if more than one) fully in the mediation process. Often one person in the couple takes the lead, so it is important to try to talk with both initially. If contact can only be scheduled with one prospective adoptive or guardian parent initially, a meeting with both should be scheduled as soon as possible. Mediators should be prepared to "submediate" between the couple if they are not on the same page on an issue, which is quite common.

Mediators should ask the prospective adoptive or guardian parent what degree of anonymity they want during the mediation process in terms of the mediator's communication with the birth parent. Some of the questions that mediators might ask to clarify this information may include the following:

- Do they want to go by their full names, first names only, or be referred to as "adoptive parent or guardian"?
- Do they want to disclose or answer questions about their geographical location, ethnicity, religion, family composition, (e.g., whether they are married, same-sex couple, have other children) or other personal information?

While in contact with the prospective adoptive or guardian parent, mediators should ask if there is anything they want the mediator to ask or share with the birth parent or other direct mediation participants.

### *Other Family Members (Not the Prospective Adoptive or Guardian Parent)*

The mediation referral may include other family members of the child, such as grandparents, aunts/uncles, adult siblings, or parents/caregivers of siblings, etc. When mediators are communicating with these family members, they should gain an understanding of the nature of the relationship between the family member and the birth parent as well as between the family member and the child. While in contact with the child's family member, mediators should ask each if there is anything they want the mediator to ask or share with the prospective adoptive or guardian parent.

More information on this topic can be found in **Section 3: Mediation When Guardianship Is the Plan** in this manual. Look for the topic titled, *What Are Questions to Ask the Caseworker Upon Referral?* Then refer to the bullet, "Who will be involved in the mediation?" Note: The questions are applicable regardless of whether the mediation is for a guardianship or adoption.

**TIP**

It's helpful for the mediator to know whether the birth parent, prospective adoptive or guardian parent, or any other birth relatives directly participating in mediation has a written agreement for openness regarding other children. What worked well in carrying out the agreement? Were there any barriers to carrying out the agreement that might be avoided in this agreement? Avoid discussion of confidential information from other agreements and instead gather information about the general aspects of what did or didn't work well.

### *The Child*

Involving an older child in the mediation is an option. In fact, ORS 109.305 Interpretation of Adoption Laws; Agreement for Continuing Contact, requires the consent of a child 14 years of age or older to effectuate such an agreement for openness. Additionally, ORS 109.328 provides that "If the child is 14 years of age or older, the adoption shall not be made without the consent of the child." A child who is 14 years of age or older will typically be more likely to consent to an agreement for openness, as well as to their adoption finalization, if they were part of developing the plans that will keep them connected with their birth parent and/or other family members.

Refer to the Special Considerations in Mediation Module for information on mediating with adolescents.

### *Guardian or GAL*

The mediation referral form documents whether the mediation participants include a guardian or GAL for a party (usually a birth parent). Courts appoint guardians or GALs for "incapacitated persons" (Oregon Rules of Civil Procedure 27B) with severe cognitive or communication conditions. Therefore, court appointment of a guardian or GAL might indicate that modifications/accommodations related to a disability may be needed.

Mediators contact the guardian or GAL before contacting the person to whom they were appointed. During this conversation the mediator can explore and learn about the disability. Mediators and the guardian or GAL may discuss ways to help the participant in the mediation process even though the guardian or GAL will be making decisions on the person's behalf.

Refer to the Special Considerations in Mediation Module for information on mediating with individuals with disabilities.

*Note*

If mediators experience difficulty contacting a direct mediation participant, such as a birth parent, they might be able to make arrangements to meet them at an upcoming hearing. Prior to going to a court hearing, mediators should contact the caseworker to ask their opinion about appearing at a court hearing as it relates to case dynamics. The caseworker can advise whether there are reasons that attendance would be problematic and whether there are particular approaches to the participants at the courthouse that may be helpful.

In general, however, it is recommended that the legal process of termination of parental rights or contested guardianship is kept separate from the mediation process. Doing so lessens the chances of the prospective adoptive or guardian parent feeling like they have to agree to certain plans for openness in order for the termination of parental rights or guardianship plan to be accomplished. Keeping the processes separate also lessens the chance that the birth parent will falsely believe that any voluntary agreement to termination of their parental rights or guardianship is conditional based upon the outcome of the plan for openness.

## Preparing the Agreement to Mediate Form

When preparing the Agreement to Mediate form, the mediator will need to provide the following information:

- The child's name
- The mediator's code of ethics
- The participants' names and/or roles
  - Information provided is dependent on the level of anonymity set by the prospective adoptive or guardian parent. If the prospective adoptive or guardian parent desires anonymity, they can sign using only their first name or by their role (e.g., adoptive mother/father/parent).
  - Participants' names will be provided if approved by applicable participants.

The Agreement to Mediate references the Oregon Revised Statutes (ORS) 36.220 and 36.222 regarding mediation confidentiality and the mediator's core standards. Parties may request a copy or have questions about these documents.

Refer to the Appendix for copies of the Agreement to Mediate, the Oregon Revised Statutes (ORS) 36.220 and 36.222, and the Oregon Mediation Association Core Standards of Mediation Practice.

## Using an Agreement to Protect Confidentiality Form

If a nonparty will be participating in the caucus or joint sessions, mediators will need to ask them to sign an Agreement to Protect Confidentiality form. Examples of nonparties who may participate include an interpreter, a friend or other support person for one of the parties, a therapist, or a parent trainer.

Refer to the Appendix for a copy of the Agreement to Protect Confidentiality form.

## Providing Informational Material

It can be helpful for mediators to provide the birth parent (and other family members if directly participating in mediation) and prospective adoptive or guardian parent with some informational materials covering basic topics, such as:

- Mediation: What It Is and What It Is Not
- Benefits of Openness
- ORS 109.305 Interpretation of Adoption Laws; Agreement for Continuing Contact (provide if an adoption mediation)

Refer to the Appendix for copies of Mediation: What It Is and What It Is Not, Benefits of Openness, and ORS 109.305.

Mediators may provide this information to the participants in advance of the initial meeting via mail or email or may hand them out during the initial meeting.

If the information is sent via mail or email, mediators will also provide an introductory letter to these participants. This letter may include the Agreement to Mediate form or the form can be provided to participants at the initial meeting if meeting in-person in addition to copies of Mediation: What It Is and What It Is Not and Benefits of Openness. If the mediator is also an attorney, it will be necessary to inform these participants in writing that legal advice will not be provided by the mediator to any of them.

Refer to the Appendix for a copy of the Sample Introductory Letter.

# Caucusing

## Overview

When mediators are setting up a caucus with the direct mediation participants, they need to consider which option would be best for each participant. Options include caucusing in person, over video conferencing platforms (e.g., Zoom), or by phone. Mediators should discuss the options with the participants and determine their capabilities and preferences. The method and/or location needs to be safe, private, quiet enough for conversation, and accessible. Mediators will also need to take into account the best time of the day to hold the caucus as the participants may have to plan around their jobs, childcare, treatment appointments, etc.

Refer to Section 1: Mediating with Individuals with Disabilities in the Special Considerations in Mediation modules.

## With a Prospective Adoptive or Guardian Parent

When having a caucus with a prospective adoptive or guardian parent, mediators have several options. Since the prospective adoptive or guardian parent has been assessed for safety by ODHS (including home study and criminal/child welfare background checks), mediators may feel comfortable meeting with them in the home of the prospective adoptive or guardian parent if it is convenient for them and not seen as an invasion of privacy. If not meeting in the home, other options include having the caucus at the mediator's office, the ODHS branch office (if approved by caseworker), or another mutually agreed-upon space. Confidentiality must be maintained in whatever setting is selected for the caucus. The caucus can also be held via a video conference or by phone.

## With a Birth Parent or Birth Relative

Since a birth parent or other family member has not been assessed for safety by ODHS to the extent or manner the prospective adoptive or guardian parent has (or has been assessed and concerns exist), mediators may have safety concerns about having the caucus in the home of the birth parent or other family member. If not comfortable meeting at that home, mediators should explore other options and determine what is comfortable for everyone. Options to be considered as long as confidentiality can be achieved may include the mediator's office, ODHS branch office (maybe before or after a visit and with approval of caseworker), their attorney's office, or another mutually agreed-upon place (e.g., mall, coffee shop, park, library). Meeting locations should have good public transportation access. If mediators and the birth parent or relative choose not to meet in person, the caucus can be held via the phone or video conference.

It is possible that a birth parent might be in a treatment center, psychiatric hospital, or correctional facility, and, as such, mediators will need to make arrangements to meet there. Mediators may need to obtain the birth parent's ID number and the name of their counselor at those locations from the caseworker. Usually contact needs to be arranged through the birth parent's counselor at those locations.

If mediators are also attorneys, their Oregon State Bar number can be helpful in gaining access at correctional facilities. However, it will be necessary for mediators to clarify that they are not the person's attorney but are assigned by ODHS to mediate with the person in a pending juvenile court case. Corrections officials know that incarcerated individuals have the right to conduct their civil legal business.

## Assessing Viability

After mediators have completed their initial contacts and caucuses with the participants, they must decide whether mediation is viable.

Examples of reasons a mediation may not be viable include when a direct mediation participant:

- Cannot be contacted or drops out of contact; contact caseworker to determine whether there's new contact information before ending mediation
- Chooses not to participate
- Is unwilling to maintain mediation confidentiality

In addition, mediators may conclude that a mediation cannot be conducted due to safety concerns. However, this is rare since meetings can be held via the phone or video conferencing.

If the mediation is not viable, mediators need to send a closing memo to the ODHS Central Office with an invoice to date and close the mediation.

It is important for mediators to word their closing memo to ODHS and their closing letter to the parties carefully to maintain mediation confidentiality. For example, if the prospective adoptive or guardian parent has decided not to participate in mediation because of their specific safety concerns about the birth parent, but do not want their reasoning divulged, then mediators might only be able to state that "There is not mutual desire to mediate."

If the mediation is viable, then the process is continued.

# Section 3: Mediation When Guardianship Is the Plan

ODHS mediation is a process often used to help prospective adoptive parents and birth parents or other family members talk about and create a plan for post-adoption communication. Mediation may also be used to assist families in creating a plan for post-guardianship communication. While the mediation for developing a plan for openness in guardianship is very similar to that of working with families when adoption is the plan, there are also some differences.

## What Is Guardianship?

Guardianship, like adoption, can be a permanent plan for a child in foster care when they can't be reunified with their birth parents. The court will establish a guardianship when it determines that:

- The child cannot safely return home within a reasonable time
- Adoption is not an appropriate permanency plan
- The proposed guardian is suitable to meet the child's needs and willing to accept the duties and authority of a guardian
- Guardianship is in the child's best interests, considering the child's wishes

Unlike adoption, parental rights are not severed in a guardianship. The birth parent retains some legal rights regarding the child.

## Are the Forms Different for Guardianship Mediation and Adoption Mediation?

The referral forms and invoicing of the mediation are the same for the guardianship mediation and adoption mediation. The Mediation Authorization Form will indicate whether the mediation is for the plan of adoption or guardianship. That form will also list the Mediation Referral Number prefaced with a "G" if the plan is for guardianship.

Refer to Section 2: Launching the Mediation in this manual for more information about the referral forms and process.

## What Are Questions to Ask the Caseworker Upon Referral?

Once the mediator receives the guardianship mediation referral and accompanying authorization forms from ODHS Central Office, the mediator should review the forms and explore the following with the caseworker:

- What is the timeline for the finalization of the guardianship?
  - The timeline is very important for the mediator to know since guardianships follow a different court procedure than the adoption. A referral for mediation when guardianship is the plan often comes to mediation very late in the process. By contract with ODHS, the mediator has up to four months to complete the mediation process. If the guardianship is expected to finalize in court sooner than the typical four-month timeline for mediation to be completed, the mediator will need to let the caseworker know whether they anticipate being able to meet the shorter timeline to complete the mediation. The mediator may also have to adjust their typical mediation process (including development of the initial contact plan, scheduling meetings, and coordination of signatures on the Post-Guardianship Communication Agreement/PGCA) to meet a shorter timeline for completion of mediation.
- Who will be involved in the mediation?
  - Guardianship is a fairly common permanency plan for adolescents who can't be reunified with a birth parent. While legally children 14 and older do not need to consent to the guardianship or to the communication and contact plan as they do for adoptions, they may want to be involved in mediation in some way. The mediator should ask the caseworker whether the adolescent will be involved in the mediation. If the adolescent will be involved, the mediator will explore the nature of that involvement with the caseworker, the prospective guardian, and with the adolescent.
  - Other relatives may be included on the mediation referral form. The caseworker will be able to give some background information as to why the relative will be participating in the mediation. Questions to explore include the following: Is there an existing relationship between the relative and the child and/or the prospective guardian? Does the child currently have contact with the relative, and if so, what are the details of the contact plan? Is the relative geographically close? Are there any safety concerns regarding the relative?

Refer to Section 2: Launching the Mediation in this manual for more information.

Refer to Section 3: Working with Adolescents in the Special Considerations in Mediation module for more information.

  - The child may have siblings who don't live with them. Mediation may be requested for the child's prospective guardian and the child's adult sibling or the parent/caregiver of the child's minor sibling. The caseworker can provide more information about the nature of the relationship between siblings and about any existing relationship between the child's sibling (or parent/caregiver of child's sibling) and the child's prospective guardian.

Refer to Section 2: Mediating Plans for Sibling Connections in the Special Considerations in Mediation module for more information.

- Does the ICWA/ORICWA apply to this case?
  - Guardianship is a more common permanency plan than adoption for **Indian children** who cannot be reunified with their birth parents. There will be additional considerations in mediation if ICWA and ORICWA apply.

Refer to the ICWA/ORICWA module for more information.

- Is there a familial relationship between the prospective guardian and the child and/or the child's birth parent?
  - It is fairly common for the prospective guardian to have a biological and/or legal relationship to the child, such as the prospective guardian being an aunt/uncle or grandparent to the child.
- Are there any safety concerns that could impact the degree and nature of openness?
  - It is important to know from the caseworker if there are any safety concerns that could impact the nature of the plan for openness. If so, what are those safety concerns?
  - The mediator should also gather information from the caseworker about the current contact plan. Is parenting time (visits) with the birth parent or visits with other family members supervised by ODHS? Does the caseworker have any concerns with the child having unsupervised or even overnight visits? If there are concerns, what are they?

# What Might Guardianship Mediation Look Like?

The nature of guardianships often (but not always) lend themselves to more openness than in adoption. The birth parent retains some legal rights, and the prospective guardian typically has been the longtime caregiver to the child and is often a relative that knows the child and the birth parent(s). The adults have probably experienced what works well for them and what does not. Your role as the mediator is to help the participants identify what is already working for them and where they may need help creating a plan for communication and contact.

Schedule a caucus with each of the direct mediation participants (including the adolescent, if appropriate) to find out from their perspectives what they would like to see going forward, taking into account the needs of the child. Let the participants talk about what will work for them and ask clarifying questions. If the child is working with a therapist, the mediator may want to reach out to the therapist for their input. The caseworker can coordinate signing of release of information forms so that the mediator and therapist can speak with one another.

Depending on safety issues and the nature of the relationships of all involved, a plan for openness in guardianship may include a greater degree of contact and communication.

*Note*

The birth parent may hope that the guardianship will be vacated sometime in the future and the child will be returned to their care. Vacating the guardianship is a decision that only the court can make. It is beyond the scope of the mediation to mediate terms for the child to return to the birth parent's care. The mediator should recommend that the birth parent discuss their desire for reunification with their attorney and the caseworker. If the birth parent wishes to continue discussions regarding a plan for openness in guardianship, it is appropriate for the participants to discuss whether and how communication and contact might be expanded.

## *Example of Exploring Expanded Contact*

The prospective guardian and the birth parent of a child who is 11 years old are discussing the possibility of unsupervised visits with the child in the birth parent's home. The prospective guardian is not opposed to this occurring so long as the birth parent has stable housing.

In this example, the mediator may want to help the participants explore the following:

- What does the prospective guardian need to know about the birth parent's home?
- Does the prospective guardian want to visit the residence?
- Who else will be living there or dropping by during visits?
- What will the frequency and length of the visits be?
- What are the safety guidelines?
- Does the child feel comfortable with the plan?

Refer to the Sample Language for Post-Guardianship Communication Agreement in Section 3: Working with Adolescents in Mediation of the Special Considerations in Mediation Module for more information.

**TIP**: The Oregon Judicial Department has sample parenting plans on its website. While guardianships are not coparenting or parenting plans, the sample language in the "safety-focused parenting plans" can be a useful tool in helping expand safe contact in a post-guardianship communication agreement.

# Glossary

| | |
|---|---|
| **adoption or guardianship assistance** | Assistance provided by the Oregon Department of Human Services (ODHS) to the adoptive or guardian parent on behalf of an eligible child or young adult to offset the costs associated with meeting the ongoing needs of the child or young adult. Adoption or guardianship assistance may be in the form of monthly payments, medical coverage, reimbursement of adoption or guardianship expenses, or special payments. |
| **caucuses** | Confidential, private meetings held by mediators with individual, direct mediation participants. |
| **Cultural Continuity Agreements (CCAs)** | Written agreements developed between the Indian child's tribe and prospective guardian or adoptive parent that ensures ongoing cultural connections between the Indian child and the Indian child's tribe and describes how the Indian child's cultural needs, including the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe, tribal community, and extended family, will be met on an ongoing basis. |
| **Court Appointed Special Advocate (CASA)** | A volunteer who is appointed by the court, is a party to the juvenile proceeding, and advocates for the child pursuant to ORS 419B.112. |
| **guardian ad litem (GAL)** | A type of temporary, limited guardian who is appointed by the court to protect a party's best interests in a court case. A GAL can appear for, assist, and act on behalf of a party only in that specific court case. |
| **Indian children** | Any unmarried persons who have not attained 18 years of age and: (a) Are a member or citizen of an Indian tribe; or (b) are eligible for membership or citizenship in an Indian tribe and are the biological children of a member or citizen of an Indian tribe. |
| **Indian Child Welfare Act (ICWA)** | Refers to the Indian Child Welfare Act of 1978, 25 U.S.C. §§1901-63; also referred to as "ICWA or "the Act." |
| **Oregon Indian Child Welfare Act (ORICWA)** | A 2020 Oregon law that promotes the safety of Indian children, preserves tribal families and communities, recognizes tribal sovereignty, and supports compliance with federal ICWA standards in courts and Oregon Department of Human Services (ODHS) offices throughout the state. |

| | |
|---|---|
| **Post-Adoption or Post-Guardianship Communication Agreement (PACA or PGCA)** | A written agreement for post-adoption or post-guardianship communication, signed by a child's birth parents or other birth family members and the child's prospective adoptive or guardian parent and is based on an informed decision-making process by the mediation participants. The content of the agreement is based on the best interest of the child. |
| **tribes or Indian tribes** | "Tribes" or "Indian tribes" mean any Indian tribe, band, nation or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan Native village as defined in 43 U.S.C. 1602(c). |

# Appendix

- Mediation Authorization Form
- Mediation Referral Form
- Authorization for Disclosure
- Agreement to Mediate
- Oregon Mediation Association Core Standards of Mediation Practice
- Oregon Revised Statutes (ORS) 36.220 and 36.222
- Agreement to Protect Confidentiality
- Mediation: What It Is and What It Is Not
- Benefits of Openness
- Sample Introductory Letter
- ORS 109.305 Interpretation of Adoption Laws – Agreement for Continuing Contact

Oregon Department of Human Services

**State of Oregon-Department of Human Services**
**Child Welfare Central Office Mediation Authorization Form**
**Mediation Referral Number: Mediator:**
**Mediator Contract Number:**

| | | | |
|---|---|---|---|
| **To:** | | **From:** | |
| | | **Phone:** | |
| | | **E-Mail:** | Adoptions.Mediation@dhsoha.state.or.us |
| **Number of Pages:** | **, including cover** | **Address:** | **500 Summer St NE, E-71**<br>**Salem, OR 97301-1067** |

| **Case #:** | |
|---|---|
| **Child(ren)'s Names:** | **Case # (If different)** |
| | |
| | |
| | |
| | |

| | |
|---|---|
| **Mediation Referral** ☐ | ☐ **Adoption Referral** ☐ **Guardianship Referral** |
| **Effective Date:** | |
| **Expiration Date:** | |
| | |
| ☐ **Amend Referral** | **New Expiration Date:** |
| ☐ **Add Child(ren) or Participants** | |
| ☐ **Additional Hours** | **From to** |
| ☐ **Travel Approved** | ☐ **Translation or interpreter services needed (Caseworker to arrange)** |

**Approved by:**

_____ _____
**Oregon Department of Human Services** **Date**

Confidentiality Note: The documents that comprise this facsimile transmission contains privileged information belonging to the Children Adults and Families Division of the Oregon Department of Human Services. This information is confidential and/or legally privileged and is intended solely for the use of the addressee designated above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this FAX in error, please destroy it in its entirety and notify us immediately by telephone.

Oregon Department of Human Services
CHILD WELFARE
Adoption Program

# Mediation Referral

☐ For adoption or ☐ for guardianship

## Section 1: Participant information

Date: _____ Case number: _____

Case name: _____

Signed MSC 3010 for **all participants** must be attached to this referral

| Name(s) of child(ren) referred: | DOB: |
|---|---|
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| If any child(ren) referred should participate in the mediation, note name(s): _____ _____ | |

| Mediation participants *(check all that apply)*: | |
|---|---|
| ☐ | Birth mother |
| ☐ | Birth father |
| ☐ | Adoptive mother |
| ☐ | Adoptive father |
| ☐ | Guardian mother |
| ☐ | Guardian father |
| ☐ | Other *(specify relationship)*: |
| _____ _____ _____ | |

Who requested the mediation referral? _____

## Section 2: Child placement plan

| | | | |
|---|---|---|---|
| ☐ | Adoption general applicant | Adoption selection date: | |
| ☐ | Current caretaker | Permanency staffing date: | |
| ☐ | Relative caregiver | Permanency staffing date: | |
| ☐ | Non-caregiver relative | Local office/ICPC homestudy request date: | |
| ☐ | Guardianship | Permanency committee date: | |
| ☐ | Significant relationship | Permanency committee date: | |

Are other placement resources being considered?* ☐ Yes ☐ No

***A mediation referral should be submitted if only one resource is being considered.**

**CONFIDENTIAL/PRIVILEGED INFORMATION**
**DO NOT FILE IN DHS CASE FILE**

## Section 3: Documented safety concerns

The children's safety is paramount. Please note any documented safety concerns that must be addressed in a written, mediated agreement. You may check more than one and add details, if needed.

**This list will be shared with mediation participants**

**Safety concerns:**

- ☐ Current or past substance abuse
- ☐ Violence against a child or adult
- ☐ Sexual contact with a child
- ☐ Threats or intimidation toward a child's caretaker, or threats of removal of the child from his or her caretaker(s)
- ☐ Other concern(s): _____
- ☐ Additional details: _____

## Section 4: Referral information

Name of mediator selected:* _____

***Worker must contact mediator before referral is submitted.**

Worker's name: _____ Date: _____

DHS local office: _____ Phone: _____ ext. _____

Supervisor's signature: _____ Date: _____

## Central office use only

LAS signature: _____ Date: _____

Date received in CO: _____

Assigned to: _____ Assigned date: _____

## Section 5: Contact information for mediator

1. **Child(ren)'s caseworker:** _____
   Phone: _____ ext. _____ Email: _____
   DHS office/address: _____
   City, state, ZIP: _____
2. **Certifier or adoption worker:** _____
   Phone: _____ ext. _____ Email: _____
3. **Band or tribe:** _____
   Tribal contact person: _____
   Phone: _____ ext. _____ Email: _____
4. **Biological mother's attorney:** _____
   Phone: _____ ext. _____ Email: _____

5. **Biological father's attorney:** _____
   Phone: _____ ext. _____ Email: _____
6. **Child(ren)'s attorney:** _____
   Phone: _____ ext. _____ Email: _____
7. **Adoptive parent(s) or guardian(s) attorney:** _____
   Phone: _____ ext. _____ Email: _____
8. **CASA:** _____
   Phone: _____ ext. _____ Email: _____

## Section 6: Mediation participants

1. **Biological mother:** _____
   Phone: _____ Email: _____
   Address: _____
   City, state, ZIP: _____
2. **Biological father:** _____
   Phone: _____ Email: _____
   Address: _____
   City, state, ZIP: _____
3. **Adoptive parent(s)/guardian(s):** _____
   Phone: _____ Email: _____
   Address: _____
   City, state, ZIP: _____

**Other mediation participant(s):**

1. **Name:** _____
   Phone: _____ Email: _____
   Address: _____
   City, state, ZIP: _____
   Relationship to the child: _____
2. **Name:** _____
   Phone: _____ Email: _____
   Address: _____
   City, state, ZIP: _____
   Relationship to the child: _____
3. **Name:** _____
   Phone: _____ Email: _____
   Address: _____
   City, state, ZIP: _____
   Relationship to the child: _____

4. **Name:** _____

Phone: _____ Email: _____

Address: _____

City, state, ZIP: _____

Relationship to the child: _____

| **Caseworker use only** |
| --- |
| Completed/signed CF 0437 to be sent to: Adoptions.Mediation@dhsoha.state.or.us |

Template:

Save As | Reset | Print

Show instruction pages
Hide instruction pages

# Authorization for Disclosure, Sharing and Use of Individual Information

**This form** allows the referral, coordination and oversight of provider services.

☐ Check here to add a legal representative

| **Legal last name:** | **First name:** | MI: | Date of birth: |
|---|---|---|---|
| Other names: | | | |
| Address: | City: | State: | ZIP: |
| Phone: | Email address: | | |
| Identification type: Pick one | | | |

**When I sign this form, I authorize those I name to give specific personal information about me. If I answer "yes" to "mutual exchange," I allow agencies I name to share information back and forth. This is so they can provide better services to me.**

## Release FROM:

| | |
|---|---|
| Purpose of the disclosure, sharing and use: | |
| Entity name: Pick one | |
| Date of records: Pick one | |
| Contact person: | Address: |
| City, state and ZIP: | |
| Phone number: | Email address: |
| Fax number: | Mutual exchange: ○ Yes ○ No |
| Expiration date or event*: | |

Do you request special health information to be released? ◉ Yes ○ No

**Specially protected information:** (*There may be additional laws for use and disclosure if there is the type of record or information listed in this box. I understand that* ***no information*** *will be disclosed* ***unless*** *I or my representative* ***initial next to the information types below.***)

**HIV or AIDS:** _____ **Mental health:** _____ **Genetic testing:** _____

**Alcohol or drug diagnoses, treatment, referral:** _____

Is there any specific information **not** to release? ○ Yes ○ No

## Release TO:

| | |
|---|---|
| **Purpose of the disclosure, sharing and use:** | |
| Entity name: Pick one | |
| Date of records: Pick one | |
| Contact person: | Address: |
| City, state and ZIP: | |
| Phone number: | Email address: |
| Fax number: | Mutual exchange: ○ Yes ○ No |
| Expiration date or event*: | |

Is there any specific information **not** to release? ○ Yes ○ No

**ADD** a releasing entity | **REMOVE** this releasing entity (*above*)

Template: _____

## Your acknowledgment

- I was given the chance to ask questions about this form and what it does.
- I understand what this form means and I approve of the disclosures or releases listed.
- I understand that state and federal law protect information about services I receive from any listed:
  - » Agency
  - » Business
  - » Organization
  - » Person
- This authorization is valid for one year from the date I sign it unless otherwise noted.*
- I understand my representative or I can cancel this authorization. However, information shared before I cancel cannot be undone. I can orally cancel an authorization for drug and alcohol information. All other cancellation requests must be written. I must provide any request to cancel to the agency, business, organization or person that is providing the information.
- I understand that federal or state law prohibits re-disclosure of the following, without authorization by me or my representative:
  - » Drug and alcohol diagnosis
  - » HIV and AIDS information
  - » Mental health
  - » Referral information
  - » Treatment records
  - » Vocational rehabilitation records
- I understand that information that does not have re-disclosure restrictions may be re-disclosed. Re-disclosed information may no longer be protected under federal or state law.
- I understand someone may need to contact me about this form to confirm my identity. They may also need to get more information.
- I understand that deciding not to sign this form may:
  - » Prevent agencies from deciding if I am eligible for certain programs.
  - » Prevent me from getting referrals. It may also make coordination of provider services more difficult.
  - » Affect my ability to get health services if it is necessary to share information.
  - » Keep the Oregon Health Plan (OHP) or Medicaid from paying for a service because they do not have authorization.
- **I am signing this authorization of my own free will.**

| **Signature:** | |
|---|---|
| Printed name: | Date: |

## Security statement

This form may contain your personal information. If you return the form by email there is some risk it could go to someone you don't want to have the information. If you are not sure how to send a secure email, consider using regular mail or fax.

*For questions or help to complete this form, please contact the agency you work with.*

- *Oregon Health Authority: 503-947-2340*
- *Oregon Department of Human Services: 503-945-5600*
- *Oregon Commission for the Blind: 971-673-1588*
- *Oregon Department of Employment: 800-237-3710*
- *Oregon Department of Education: 503-947-5600*
- *Oregon Housing and Community Services: 503-986-2000*
- *Oregon Department of Justice: 503-378-4400*
- *Oregon Department of Corrections: 503-945-9090*
- *Oregon Youth Authority: 503-373-7205*
- *Oregon State Police: 503-378-3720*

* *This authorization is valid for one year from the date I sign it, unless otherwise noted.*

## Instructions by section

When you submit the form, you do not need to include the instruction pages.

| Creating preset templates |
|---|
| To save time, you can preset the number and type of sections. You can also prefill your organization's information, then save template versions of this form for quick printing. Use the non-printing "Template" field in the top right corner of the form and name the template for your future reference. |

| Release TO and FROM sections | |
|---|---|
| Purpose of disclosure, sharing and use | • Give specific reasons why the information disclosure, sharing and use are needed.<br>• If the person does not want to provide a reason in this field the requesting entity may include the statement "at the request of the person" as the purpose the person initiates the authorization. |
| Entity name (*drop-down list*) | • Choose an entity from the drop-down list.<br>• If the entity is not listed, choose "Other (please type in here):" Then, type in the entity's name. An entity's name must be specific. For example, listing "medical" or "service provider" is not adequate. Please list the name of the medical or service provider. For a person or other type of organization, such as a school or employer, list the name of the person or other type of organization. |
| Specific information to be disclosed (*pops up after an entity is selected*) | • Choose a document type from the drop-down list.<br>• If an information type is not listed, choose "Other (please type in here):" and type in a description. Some examples of specific information are:<br>» Assessments » Case plans » Financial information<br>» Medicaid billing summaries » Psychological reports<br>» Results of urinalysis » Treatment plans<br>• Do not indicate "entire record" unless it is necessary to accomplish the purpose (*see "Purpose of the disclosure, sharing and use", above*).<br>• Use the buttons to add or delete additional requested information types, if you need to. |
| Date of records | • Indicate the specific date range for the requested records. |
| Expiration date or event | • This authorization is valid for one year from the date I sign. unless otherwise noted. For example, if "hospital discharge" or "end of litigation," is noted. |
| Mutual exchange | • A "Yes" allows the specific information listed on the form to go back and forth between the record holder and the people or programs listed on this authorization. Mutual exchange opens all requested records for discussion between the record requestor and specified record holders. |
| Did you request special health information to be released? | • Choosing "Yes" will display a section where special health information types can be stated.<br>• A check mark in the space next to the type of health information is not enough. The person must initial the space next to the information if they agrees to release this information.<br>• If you need this section visible in a printed copy, please make sure to choose "Yes" prior to printing. |
| Is there any specific information **not** to release? | • A "Yes" choice will display a text box where you can list specific information.<br>• If any specific information should not be included when the records are released, please list them here.<br>• If you need this section visible in a printed copy, make sure to choose "Yes" before to printing. |

| | |
|---|---|
| Re-disclosure | • Re-disclosure is the disclosure of information by the person on this form.<br>• There may be restrictions on the re-disclosure of information released under this form.<br>• Federal and state regulations prohibit re-disclosure of alcohol and drug, and HIV or AIDS information without specific authorization. |
| Adding requesting and releasing entities | • If there is a need for multiple requesting or releasing entities, use the ADD or REMOVE buttons to add or remove any additional "Releasing agency, business, organization or person" sections before you print the form. |

| Client acknowledgment section | |
|---|---|
| Signature of the person on this form or a person legally authorized to act for them. | • A person legally authorized to act for the person on this form should never be asked to sign a blank or incomplete authorization form. |

## Releasing entity: Document when records were shared.

- Entity must:
  - » Maintain a copy of the completed authorization form, either electronically or in paper file, and
  - » Following agency retention schedules.
- If completed authorization forms are stored electronically, a process shall be in place for cancellation. If a signed authorization is later (*cancelled*), that revocation must be noted electronically.
- Do not use labels on the authorization form.
- When completed correctly, the form is the only thing needed to process a disclosure.

# AGREEMENT TO MEDIATE

This is an Agreement among the persons who sign the Agreement. Each person who signs this agrees that the following terms and conditions apply to the mediation:

The process of mediation has been explained to me. The purpose of mediation is to reach a cooperative final mediation Agreement that is in the best interest of my child(ren) _____ .

I understand that the role of the Mediator is to be impartial. The Mediator is not a decision-maker and does not represent any of the persons who sign this Agreement. The Mediator cannot force any person who signs this Agreement to agree to any plan. The Mediator has told me of any conflicts of interest that they may have in this matter. I understand that the Mediator follows the Code of Ethics established by the _____

I am participating voluntarily in the mediation and understand that I may choose to end the mediation at any time.

I understand that the Mediator is not an employee of ODHS. The Mediator has a professional contract with ODHS and will be paid for services through that contract.

I understand that the Mediator cannot put into effect a final mediation Agreement unless all the persons who sign this Agreement say that they can. I understand that the Mediator will provide to all persons who sign this Agreement and their attorneys a copy of the final mediation Agreement that the participants sign. The final mediation Agreement will not be kept confidential.

The Mediator will not reveal anything that is said in mediation without the permission of all participants *except for* any information about an injury or possible injury to a child, any crime that likely will cause death or bodily injury to any person, or information that makes the Mediator concerned about the health or safety of any child.

I understand that mediation is confidential and private because it is protected by Oregon law and ODHS rules. I may request a copy of the ODHS rules from the Mediator, attorney or caseworker. "Confidential and private" means that what the participants say to the Mediator and to each other is private unless the rules let the participants share the information with other people. The participants cannot tell people who are not a part of the mediation about what is said during the mediation. The laws that make ODHS records private are not changed by ODHS rules. The rules will explain more about what information can and cannot be shared with other people. If I have questions or comments about the rules, I will not sign any Agreement and will talk with my attorney.

Oregon laws and rules control this Agreement, the mediation, and the final written Agreement.

I understand that the Mediator will help us reach a final mediation Agreement, but cannot give legal help or advice. I understand that I must arrange to speak with an attorney if I have legal questions about the Agreement or the mediation. I understand that if I do not qualify for a court appointed attorney, I will have to be responsible to pay for my attorney costs.

I agree to come to all scheduled appointments, to call ahead if late or rescheduling, and to notify the Mediator if I decide to end mediation.

By signing below, I am showing that I have read this Agreement and understand it and agree to its terms and conditions.

_____ _____

Participant Date

_____ _____

Participant Date

_____ _____

Participant Date

_____ _____

Participant Date

_____ _____

Participant Date

_____ _____

Mediator Date

# OREGON MEDIATION ASSOCIATION CORE STANDARDS OF MEDIATION PRACTICE

Revised April 23, 2005

## PREAMBLE

These Core Standards of Mediation Practice are designed as an educational tool to: (1) guide mediators in Oregon in the practice of mediation, (2) inform participants about mediation, and (3) promote public trust and confidence in mediation as an effective and productive process for resolving disputes. Each member of the Oregon Mediation Association (OMA) agrees to abide by these Core Standards when serving as a mediator. These Core Standards recognize that the role of mediator is complex, individual practice areas vary, and a full spectrum of personal, professional, and cultural diversity surrounds mediator approaches. These differences are valuable. These Core Standards should not be construed to favor or disfavor any particular approach.

These Core Standards guide mediators in demonstrating their professionalism and represent a next step in the ongoing development of mediation as a tool that truly allows participants a viable and reliable choice when determining the appropriate manner in which to resolve their differences. The Core Standards and the Comments that follow each of them are not intended to dictate conduct in a particular situation, define "competency," establish "best practices," or create a "standard of care." They are not intended to be disciplinary rules. The use of the word "should" is intended to guide, not limit the exercise of the mediator's individual judgment in the actual application of these Core Standards in a particular situation. The chosen order and format of the Core Standards and Comments are not intended to reflect any relative priority. The Comments are provided to give additional guidance and aid in the interpretation of the Standard.

When these Core Standards conflict with or are silent on subjects covered by applicable laws, regulations, professional licensing rules, professional ethical codes, or contracts by which the mediator may be bound, mediators should be aware and make participants and others in attendance aware that those requirements may take precedence over these Core Standards.

## DEFINITIONS

**Mediation** is defined in Oregon as ". . . a process in which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such time as a resolution is agreed to by the parties or the mediation process is terminated." (Oregon Revised Statutes 36.110(6))

**Party** is defined in Oregon as follows ". . . a person, state agency or other public body is a party to mediation if the person or public body participates in a mediation and has a direct interest in the controversy that is subject of the mediation." (Oregon Revised Statutes 36.234)

**Participant** is used in these Core Standards as a substitute for the term **party** as defined above, because the term is less adversarial and better reflects the important differences between the mediation and adjudication processes. As used in these Core Standards, the term **participant** does not include the mediator, representatives, or others in attendance.

**Approach** is used in these Core Standards to signify the behaviors, philosophies, processes, styles, and techniques used by mediators to conduct mediation.

## I. SELF-DETERMINATION

**Mediators respect, value, and encourage the ability of each participant to make individual decisions regarding what process to use and whether and on what terms to resolve the dispute.**

*Comments*

1. Self-determination is a fundamental principle of mediation that distinguishes it from other dispute resolution processes, including, but not limited to, litigation. Participants should be free to choose their own dispute resolution process, and mediators should encourage them to make their own decisions on all issues.
2. Mediators respect the culture, beliefs, rights, and autonomy of the participants. Mediators should defer their own views to those of the participants, recognizing that the collaborative interaction between the participants is often the key to resolution.
3. Mediators should educate participants about the continuum of mediation approaches and identify the approaches the mediator practices. Engaging the participants in a discussion to establish expectations about these approaches will help the participants give their Informed Consent to the approach best suited for their particular situation.
4. While a mediator cannot ensure that participants are making informed and voluntary decisions, mediators should help participants understand the process, issues, and options before them and encourage participants to make informed and voluntary decisions.
5. Mediators should encourage participants to consider the benefits of participation in mediation and agreement, as well as the consequences of non-participation and non-agreement.
6. Participation in mediation is usually a voluntary process. Even when mediation is "mandatory," participants who are unable or unwilling to participate effectively in the mediation process should be free to suspend or withdraw from mediation. Mediators should respect a participant's informed decision to continue or end the process.

## II. INFORMED CONSENT

**To fully support Self-Determination, mediators respect, value, and encourage participants to exercise Informed Consent throughout the mediation process. This involves making decisions about process, as well as substance, including possible options for resolution. Initially and throughout the mediation process, mediators further support Self-Determination by making appropriate disclosures about themselves and the specific mediation approaches they use.**

*Comments*

1. Informed Consent is a critical part of a participant's ability to exercise Self-Determination.
2. Mediators should disclose or offer to disclose the information reasonably necessary for each participant to make informed decisions about whether to use the mediator and whether to participate in a specific mediation process and approach. Mediators should explain their approach, along with the roles of the mediator, participants, representatives, and others in attendance.
3. Mediators should seek participant agreement on the presence or absence of persons at the mediation.
4. Mediators should disclose information regarding conflicts of

interest, fees, relevant relationships, process competency, and substantive knowledge of the subject matter in dispute. Mediator disclosures should be truthful and not misleading by omission.

5. Mediators should make ongoing, good-faith efforts to assess the freedom and ability of each participant to make choices regarding participation in the mediation and options for reaching agreement. In assessing the situation, the mediator should consider factors such as the abilities, learning style, language competency, and cultural background of each participant. Mediators should suspend, end, or withdraw from the mediation if they believe a participant is unable to give Informed Consent.
6. Mediators should make participants aware of the importance of consulting with other professionals to help them exercise Informed Consent and Self-Determination.
7. If a participant withdraws from a multi-participant mediation, the mediator may continue the mediation with the Informed Consent of the remaining participants. The mediator should explain to the participants, representatives, and others in attendance that the withdrawing participant is not bound by any subsequent agreement but continues to be bound by any confidentiality obligations in place prior to the withdrawal.

## III. IMPARTIAL REGARD

**Mediators demonstrate Impartial Regard throughout the mediation process by conducting mediations fairly, diligently, even-handedly, and with no personal stake in the outcome. Mediators avoid actual, potential, or perceived conflicts of interest that can arise from a mediator's involvement with the subject matter of the controversy or the participants, whether past or present, that reasonably raise a question about the mediator's Impartial Regard. Where a participant or the mediator questions the mediator's ability to give Impartial Regard and the issue cannot be resolved, the mediator declines to serve or withdraws if already serving.**

*Comments*

1. Mediators should make reasonable inquiry, based upon practice context, whether there are facts that a reasonable person would consider likely to create a potential or actual conflict of interest.
2. If there are any circumstances that reasonably raise a question as to the mediator's ability to demonstrate Impartial Regard, the mediator should disclose or offer to disclose information about those circumstances to the expressed satisfaction of all participants. Disclosure should include actual and potential conflicts of interest reasonably known to the mediator, as well as any present or prior relationship, personal or professional, between the mediator and any participant, representative, or other person in attendance. After disclosure or offer to disclose, a mediator may serve with the Informed Consent of all participants.
3. Mediators should guard against the potential impact on their Impartial Regard, even to the point of not serving, of a participant's personal characteristics, background, values, beliefs, or conduct during the mediation process. This also includes situations where the mediator's ability to demonstrate Impartial Regard is compromised or appears to be compromised because of the mediator's personal biases, views, or reactions to any position, argument, participant,

representative, or other person in attendance.

4. Mediators should not influence participant decisions because of the mediator's interest in higher settlement rates, increased fees, or non-participant pressures from court personnel, program administrators, provider organizations, the media, the public, or others. Mediators do not knowingly misrepresent any material fact or circumstance in the course of the mediation process.
5. Mediators should explain or offer to explain that they are not acting on behalf of or representing any participant. Whether or not participants have attorneys, mediators should advise them to seek independent legal advice and the review of any documents before signing them.
6. Mediators should avoid conflicts of interest when recommending or referring participants to other professionals for services.

## IV. CONFIDENTIALITY

**Confidentiality is a fundamental attribute of mediation. Mediators discuss confidentiality issues as soon as practical and before confidential information is provided by anyone. Mediators are aware of, comply with, and make participants, representatives, and others in attendance aware of (or determine they already are aware of) laws and regulations regarding confidentiality, non-discoverability, and inadmissibility of mediation communications, as well as any applicable exceptions.**

*Comments*

1. Mediators should understand the laws and regulations regarding open meetings and public records, as well as any exceptions applicable to the cases they mediate.
2. In advance of receiving confidential communications, mediators should educate themselves and inform all participants about their reporting obligations (e.g., mandatory Child Abuse or Elder Abuse reporting) and how those obligations influence the way the mediators conduct mediation.
3. Mediators who meet with participants in private during mediation should not convey confidential mediation communications without the prior consent of the disclosing participant.
4. The obligation for mediators to protect the confidentiality of mediation communications includes the obligation not to communicate information about how participants acted during the mediation process.
5. Mediators should not use information acquired during mediation to gain personal advantage for themselves or others.
6. The definition of mediation in ORS 36.110 (6) can include facilitation, a process different from mediation. As a result, laws and regulations regarding confidentiality, non-discoverability, and inadmissibility of mediation communications, as well as any applicable exceptions, may apply to a particular facilitation process.

## V. PROCESS AND SUBSTANTIVE COMPETENCE

**Mediators fully and accurately represent their knowledge, skills, abilities, and limitations. They mediate only when they offer the desired approach and possess the level of substantive knowledge, skills, and abilities sufficient to satisfy the participants' reasonable expectations.**

*Comments*

1. Mediators should exercise their independent judgment when their abilities or availability are unlikely to satisfy the participants' articulated expectations. When exercising their judgment, mediators should consider factors such as the participants involved, their agreed-upon mediation approach, and the complexity, subject matter, and specific issues of the dispute.
2. Mediators should have, maintain, and improve their process skills and substantive knowledge necessary to reasonably satisfy the expectations of the participants in the matters they mediate.
3. Mediators should strive to satisfy the reasonable process expectations of the participants by raising timing and pacing issues with the participants, representatives, and others in attendance.
4. Mediators should have information regarding their training, education, and experience readily available for review by the participants prior to the mediation session.
5. Mediators should be aware of and comply with the requirements of the Americans with Disabilities Act (and similar federal, state, and local laws and regulations), along with the laws regarding domestic violence, child abuse, and elder abuse. Additionally, mediators should be aware of and comply with the laws and regulations concerning their obligations, if any, in situations where the mediation is being used to further illegal conduct.

## VI. GOOD-FAITH PARTICIPATION

**Mediators explain to the participants, representatives, and others in attendance that they can improve the mediation process and probability of success when they participate with an open mind throughout the process.**

*Comments*

1. Mediators should promote honesty and candor and inform participants that the mediator is not a guarantor of the participants' Good-Faith Participation.
2. In a manner that does not violate Confidentiality, mediators should discuss with the participants any concerns regarding Good-Faith Participation and the impact of these concerns on the process and on the mediator's Impartial Regard.

## VII. FEES

**Mediators inform participants of the basis for any mediator compensation, fees, and costs, including the source of the payment, as soon as practical and prior to substantive discussions. Mediators charge reasonable fees, considering, among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community.**

*Comments*

1. Mediators should not charge fees in a manner that impairs the mediator's Impartial Regard. While a mediator may accept payments in unequal amounts from the participants, the mediator should be attentive to the real or perceived impact unequal payments may have on the mediator's Impartial Regard.
2. Mediators may pay for listings or membership in referral organizations or services and accept referrals from those organizations or services.
3. Mediators who charge fees should have written fee policies or agreements.
4. Mediators should promptly account

for and return any unearned compensation, fees, and costs.
5. Mediators should not charge fees contingent on the substantive outcome of the mediation.
6. Mediators should consider the impact on their Impartial Regard if they give or accept anything of value for a referral. The payment or acceptance of anything of value for a referral will compromise the mediator's Impartial Regard if there is a resulting expectation of biased behavior or results from the mediator.
7. Mediators may accept or give symbolic gifts, incidental items or supporting services that are provided to facilitate the mediation or respect cultural norms, as long as such practice does not impact the mediator's Impartial Regard.

## VIII. ADVERTISING AND SOLICITATION

**Mediators are truthful and not misleading by omission in advertising and solicitation activities. Mediators do not make promises or guarantees of specific results.**

*Comments*

1. Mediators should not make themselves publicly available to serve unless they can meet participants' reasonable expectations that they are qualified.
2. Mediators should claim designations such as "certified," "qualified," or "advanced" only if such status has been granted to them by an entity that provides such designations to practitioners, the granting entity has a formalized procedure for granting such designations, that procedure is readily available for public review, the mediator currently holds the stated designation, and the mediator names the granting entity. Mediators are not "certified" simply because they have received a certificate of training completion.
3. Mediators should not solicit business in a manner that could impact their Impartial Regard or otherwise undermine the integrity of mediation as a viable process to resolve disputes.
4. In their advertising or solicitation activities, mediators should not identify individuals, organizations, or entities as mediation participants without their prior permission.

## IX. DUAL ROLES AND HYBRID PROCESSES

**Mediators engage only in the role(s) to which the participants consent during mediation or any hybrid process that includes mediation, e.g., "mediation - arbitration" ("med-arb") or "arbitration - mediation" ("arb-med"). Mediators do not provide participants with legal advice, therapy, counseling, or other professional services during mediation without the prior Informed Consent of the participants. Mediators do not engage in any other services for any of the participants involving the same or significantly related issues, unless the other participants provide their Informed Consent. Before providing such services, mediators consider the impact that providing additional services for any participant may have on the other participants' views of the mediator's Impartial Regard.**

*Comments*

1. Mediating toward a voluntary agreement between the participants differs substantially from other service relationships. A dual role is created when the mediator provides additional services to the participants. Providing referrals,

information, facilitation, education, and/or training does not create a dual role.
2. Dual roles can be challenging. Mediators should discuss with participants the differences between the various services that could be provided by the mediator or others.
3. Mediators who undertake a dual role assume additional obligations and potential liabilities. For example, if they are licensed or regulated in other fields, their actions as mediators may be governed by the regulatory and ethical codes and rules of those other fields.
4. Mediators should consider the impact on their Impartial Regard when they are discussing with the participants the possible acceptance of a dual role. Mediators should recommend that participants seek independent professional advice before they give their Informed Consent to the mediator performing a dual role.

## X. MEDIATION PRACTICE

**Mediators act in a manner that enhances the integrity and quality of the mediation field.**

*Comments*

1. Mediators should participate in outreach and education efforts to assist the public in developing an improved understanding of and appreciation for mediation.
2. Mediators should improve and promote mediation by sharing their knowledge and skills through training, mentoring, and networking with others.
3. Mediators should participate in mediation research whenever practical.
4. Mediations should be open to and provide opportunities for feedback from mediation participants to enhance their mediation skills.
5. Mediators should work toward making mediation accessible to everyone in Oregon, including providing services at a reduced rate or on a pro bono basis, as appropriate.
6. Mediators should foster diversity in the field by reaching out to individuals with differing backgrounds and perspectives.
7. Mediators should demonstrate respect for differing points of view within the field, seek to learn from other mediators, and work together to improve the practice of mediation.
8. Mediators who charge a fee are encouraged to have malpractice insurance.
9. Mediators should model conflict resolution skills and use mediation in their own activities when appropriate.
10. Mediators should offer to mediate any concerns about their conduct raised by participants in their mediations in order to promote understanding between the participants and the mediator.
11. Mediators should have a file storage policy and advise the participants about that policy.
12. Mediators should be aware of and abide by rules governing the unlawful practice of law and unauthorized practice of psychology.
13. Mediators should provide these Core Standards to the mediation participants as soon as practical.
14. Organizations and programs that maintain rosters of, approve, appoint, or provide mediators should make reasonable efforts to ensure that each of their mediators is aware of and has agreed to abide by these Core Standards.

# Oregon Revised Statutes (ORS) 36.220 and 36.222

**36.220 Confidentiality of mediation communications and agreements; exceptions.** (1) Except as provided in ORS 36.220 to 36.238:

(a) Mediation communications are confidential and may not be disclosed to any other person.

(b) The parties to a mediation may agree in writing that all or part of the mediation communications are not confidential.

(2) Except as provided in ORS 36.220 to 36.238:

(a) The terms of any mediation agreement are not confidential.

(b) The parties to a mediation may agree that all or part of the terms of a mediation agreement are confidential.

(3) Statements, memoranda, work products, documents and other materials, otherwise subject to discovery, that were not prepared specifically for use in a mediation, are not confidential.

(4) Any document that, before its use in a mediation, was a public record as defined in ORS 192.311 remains subject to disclosure to the extent provided by ORS 192.311 to 192.478.

(5) Any mediation communication relating to child abuse that is made to a person who is required to report child abuse under the provisions of ORS 419B.010 is not confidential to the extent that the person is required to report the communication under the provisions of ORS 419B.010. Any mediation communication relating to elder abuse that is made to a person who is required to report elder abuse under the provisions of ORS 124.050 to 124.095 is not confidential to the extent that the person is required to report the communication under the provisions of ORS 124.050 to 124.095.

(6) A mediation communication is not confidential if the mediator or a party to the mediation reasonably believes that disclosing the communication is necessary to prevent a party from committing a crime that is likely to result in death or substantial bodily injury to a specific person.

(7) A party to a mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS 40.010 to 40.585 or other provision of law. A party may disclose confidential mediation communications to any other person for the purpose of obtaining advice concerning the subject matter of the mediation, if all parties to the mediation so agree.

(8) The confidentiality of mediation communications and agreements in a mediation in which a public body is a party, or in which a state agency is mediating a dispute as to which the state agency has regulatory authority, is subject to ORS 36.224, 36.226 and 36.230. [1997 c.670 §1]

**36.222 Admissibility and disclosure of mediation communications and agreements in subsequent adjudicatory proceedings.** (1) Except as provided in ORS 36.220 to 36.238, mediation communications and mediation agreements that are confidential under ORS 36.220 to 36.238 are not admissible as evidence in any subsequent adjudicatory proceeding, and may not be disclosed by the parties or the mediator in any subsequent adjudicatory proceeding.

(2) A party may disclose confidential mediation communications or agreements in any subsequent adjudicative proceeding if all parties to the mediation agree in writing to the disclosure.

(3) A mediator may disclose confidential mediation communications or confidential mediation agreements in a subsequent adjudicatory proceeding if all parties to the mediation, the mediator, and the mediation program, if any, agree in writing to the disclosure.

(4) In any proceeding to enforce, modify or set aside a mediation agreement, confidential mediation communications and confidential mediation agreements may be disclosed to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(5) In an action for damages or other relief between a party to a mediation and a mediator or mediation program, confidential mediation communications or confidential mediation agreements may be disclosed to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(6) A mediator may disclose confidential mediation communications directly related to child abuse or elder abuse if the mediator is a person who has a duty to report child abuse under ORS 419B.010 or elder abuse under ORS 124.050 to 124.095.

(7) The limitations on admissibility and disclosure in subsequent adjudicatory proceedings imposed by this section apply to any subsequent judicial proceeding, administrative proceeding or arbitration proceeding. The limitations on disclosure imposed by this section include disclosure during any discovery conducted as part of a subsequent adjudicatory proceeding, and no person who is prohibited from disclosing information under the provisions of this section may be compelled to reveal confidential communications or agreements in any discovery proceeding conducted as part of a subsequent adjudicatory proceeding. Any confidential mediation communication or agreement that may be disclosed in a subsequent adjudicatory proceeding under the provisions of this section may be introduced into evidence in the subsequent adjudicatory proceeding. [1997 c.670 §2]

# Agreement to Protect Confidentiality

I, _____, am participating in the mediation session at the request of _____( party). My role is _____.

I understand that the parties have agreed that all mediation discussions and all statements made during mediation are confidential and not admissible in any proceeding. I agree to protect the confidentiality of all statements made and materials shared during the mediation session.

However, I understand that there are some exceptions to confidentiality and that the mediator or other participants in the mediation may have obligations under state or federal law to report abuse, threats of physical harm or professional conduct affecting licensure.

Signature:_____

Date:_____

## What Mediation Is

- Mediation is a consensual process in which an impartial third person assists two or more parties to reach a voluntary agreement which resolves a dispute or provides options for the future.
- The mediator helps the parties identify their individual needs and interests, clarify their differences, and find common ground. A few points to keep in mind:
  - The parties are the decision makers; the mediator has no authority to render a decision.
  - The parties determine the issues that need to be addressed; the mediator guides the process and maintains a safe environment.
  - The mediator models and facilitates active listening skills.
- In addition, mediation is a conflict resolution process in which one or more impartial persons intervene in a conflict with the disputants' consent and help them negotiate a mutually acceptable agreement. The mediator does not take sides or decide how the dispute should be resolved.
- The mediator does not give advice to the parties, legal or otherwise. However, the mediator may help the parties generate options for the parties to evaluate, possibly with the advice and assistance of another professional.
- The process is usually confidential, with any exceptions disclosed and discussed prior to beginning a mediation.
- The success of mediation rests largely on the willingness of the parties to work at understanding each other and to seek solutions that meet each other's needs.

## What Mediation Is Not

- Mediation is not litigation. Litigation is the formal legal process in which parties use the court process to resolve their disputes. The judge or jury determines the outcome of this process unless a negotiated settlement is reached first.
- Mediation is not arbitration. Arbitration is a form of private adjudication, where parties present evidence and argument to an impartial third person (the arbitrator). The arbitrator then reviews the evidence and renders a decision which may be imposed on the parties. The arbitrator determines the outcome, much as a judge determines the outcome of a trial and the arbitrator's decision may or may not be binding on the parties.
- Mediation is not counseling or therapy. Although the process is often therapeutic for the parties, the primary goal of mediation is to reach an agreement, not to resolve the feelings associated with the dispute.

## What is the difference between a mediator and an attorney?

- In many instances a mediator may be an attorney, but mediators and attorneys have different roles.
- Traditionally, attorneys represent the interests of their clients; advise them of their rights, responsibilities and obligations; discuss their legal options; and advocate on behalf of their clients.

- Mediators, however, do not represent either side of a dispute, even if the mediator is also an attorney. Mediators assist people in dispute to communicate with each other in an effort to resolve their conflict.

From The Consumer Guide

# Benefits of Openness

The benefits of openness in adoption or guardianship affect the child, birth parents, and prospective adoptive or guardian parents. The following outlines some of the benefits of openness to each of these individuals.

## The Child

Openness helps the child:

- Understand the reasons for the adoption or guardianship
- Have knowledge of their background (including medical/genetic)
- Understand the links to their ethnic and cultural heritage/ancestry
- Find answers to the questions they have at different developmental stages
- Have a greater sense of identity
- Develop a more realistic relationship with birth family (vs. fantasy)
- Be less likely to feel that bonding with their adoptive or guardian parent is being disloyal to their birth family
- Have permission of birth parents to become a member of adoptive or guardian family
- Develop a greater ability to process grief/loss
- Stay connected to or establish connections to birth family members
- See modeling of healthy relationship building from both their birth and adoptive or guardian families

## The Birth Family

Openness helps the birth family:

- Know how the child is doing
- Be able to show their love to the child directly
- Develop relationships with adoptive or guardian parents and child as they grow
- Have greater empowerment and involvement
- Develop an increased ability to process grief/loss
- Have an ongoing exchange of important information, including life events
- Build and model healthy relationships with the child's adoptive or guardian family
- Provide lifelong connections for the child

## The Prospective Adoptive or Guardian Parent

Openness helps the prospective adoptive or guardian parent:

- Know the child's family history (including medical/genetic) and allows them the ability to ask questions as they come up

- Have an increased ability to answer the child’s questions about their adoption or guardianship and background
- Have an on-going exchange of important information, including life events
- Have an increased ability to help the child grieve the loss of the birth family
- Have permission and support of birth parents to help the child to become a member of the adoptive or guardian family
- Build and model healthy relationships with the child’s birth family
- Provide lifelong connections for child
- Reduce likelihood of future disagreements or disputes regarding what contact or communication was agreed to

(date)

(adoptive/guardian parent)
(address)

Dear ---,

I am the neutral mediator assigned by the Oregon Department of Human Services. I hope to help you explore with (child's first name)'s birth parent (name) how it might work to have some structured ongoing contact with you and (name) after (adoption/guardianship).

Here are several items for you to look over:

1. *Agreement to Mediate* form, which explains how mediation works and the ground rules. Signing doesn't obligate you to reach any particular agreement with (birth parent's first name); it just says that while we try mediation, these are the ground rules. Confidentiality is a very significant one.
2. A description of mediation.
3. Articles about (Open Adoption, Post Adoption Communication Agreements, other types of articles about mediation or openness in adoption/guardianship). **Note to Mediator: Types of articles will be dependent upon whether mediation is for adoption or guardianship.**
4. The Oregon statute/law that makes mediated open adoption agreements enforceable. **Note to mediator: Include ORS 109.305 only when the mediation is regarding adoption.**

Although I am a member of the Oregon State Bar, (I no longer actively practice law and) I cannot give legal advice to any of you. Do you have an attorney helping you during this process? (Child)'s attorney (name and number) might be available to share her/his perspective as well. **Note to mediator: Use this paragraph if/as applicable.**

I'm looking forward to working with you. Could you please call me? I'd like to try to answer any questions or concerns you may already have about mediation and post-(adoption/guardianship) communication and to plan for our first meeting.

Take care,

(signed)
(contact information)

**109.305 Interpretation of adoption laws; agreement for continuing contact.** (1) The rule that statutes in derogation of common law are to be strictly construed does not apply to the adoption laws of this state.

(2) An adoptive parent and a birth parent may enter into a written agreement, approved by the court, to permit continuing contact between the birth relatives and the child or adoptive parents.

(3) If the child is within the jurisdiction of the juvenile court under ORS 419B.100, an adoptive parent and a birth relative may enter into a written agreement, approved by the court, to permit continuing contact between the birth relatives and the child or adoptive parents. A birth relative that enters into an agreement under this subsection must have established emotional ties creating an ongoing personal relationship, as defined in ORS 109.119, with the child. If the child is under one year of age, the ongoing personal relationship between the birth relative and the child must have continued for at least half of the child's life.

(4) If the child is 14 years of age or older, an agreement made under this section may not be entered into without the consent of the child.

(5) As used in this section, "birth relative" includes a birth parent, grandparent, sibling and other member of the child's birth family.

(6) The court may show approval of an agreement made under this section by incorporating the agreement by reference and indicating the court's approval of the agreement in the adoption judgment.

(7) Failure to comply with the terms of an agreement made under this section is not grounds for setting aside an adoption judgment or revocation of a written consent to an adoption.

(8)(a) An agreement made under this section may be enforced by a civil action. However, before a court may enter an order requiring compliance with the agreement, the court must find that the party seeking enforcement participated, or attempted to participate, in good faith in mediating the dispute giving rise to the action prior to filing the civil action.

(b) The court may modify an agreement made under this section if the court finds that the modification is necessary to serve the best interests of the adopted child, that the party seeking modification participated, or attempted to participate, in good faith in mediation prior to seeking modification of the agreement and that:

(A) The modification is agreed to by all parties to the original agreement; or

(B) Exceptional circumstances have arisen since the parties entered into the agreement that justify modification of the agreement.

(9) The Department of Human Services is not responsible for any costs associated with an agreement described in subsection (3) of this section. [1957 c.710 §15; subsections (2), (3) and (4) of 1993 Edition enacted as 1993 c.401 §1; 2003 c.576 §142; 2007 c.720 §1]

**Note:** 109.305 (7) and (8) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.