

Chapter: Discipline, Grievances, and Mediation	Effective Date: 7/15/14
Title: Mediation	Page: 1 of 4
ACA: 4-JCF-6C-09	Replaces: PRS.35.06, 2/1/12
Statute(s): Human Resources Code §242.004	

(a) **Policy.**

The Texas Juvenile Justice Department (TJJD or Agency) implements an employee mediation program as a means of resolving work-related disputes.

TJJD offers [independent dismissal mediation](#) to former employees whose employment has been terminated through the disciplinary process by a disciplinary decision authority other than the executive director.

(b) **Definitions.**

Except as noted below, see the PRS glossary for definitions of certain terms used in this policy.

Senior Agency Official: A managerial employee designated by the executive director or by a division director to represent the agency in an independent dismissal mediation session. The senior agency official must have the authority to reverse or amend the employment termination decision. If deemed appropriate, the senior agency official may be the division director who issued the employment termination decision.

(c) **Confidentiality.**

Communications and actions in a mediation session are confidential, including the conduct and demeanor of participants, except for:

- (1) information disclosed in mediation that must be reported by law, including a report of abuse, neglect, or exploitation of a youth, or a report of fraud;
- (2) a genuine threat of physical harm (assault by threat) or other crime occurring during the mediation session;
- (3) whether or not an agreement is reached; and
- (4) the terms of any written agreement.

(d) **Procedures.**

(1) **Employee Mediation.**

(A) **Initiation of Employee Mediation.**

- (i) The director of human resources or the [employee grievance coordinator](#) may initiate [employee mediation](#) when he/she:
 - (I) determines, in consultation with management, that employee mediation is appropriate to resolve a dispute between employees or between an employee and supervisor; or
 - (II) determines that employee mediation is appropriate as an attempt to resolve an employee grievance.

Note: If an agreement is reached, the grievance is administratively closed and is not processed further. If an agreement is not reached, the grievance is processed in accordance with [PRS.35.03](#).

(ii) A [chief local administrator \(CLA\)](#) may contact the director of human resources and request employee mediation to resolve an employment-related dispute for which no employee grievance has been filed. The CLA may request that participation in mediation:

- (I) be offered to the disputing employees on a voluntary participation basis; or
- (II) be required.

(B) Process.

(i) A TJJJ employee who has been trained in mediation or an outside mediator may act as a mediator.

(ii) The mediator requires each employee involved in the dispute to sign an [Agreement to Mediate form, HR-229](#), before the session or at the beginning of the session.

(I) If an agreement is reached during employee mediation, the mediator completes a [Mediation Agreement Statement form, HR-230](#), and the disputing employees must sign the agreement.

(II) If no agreement is reached, the mediator completes a [Mediation Impasse Statement form, HR-231](#).

(2) Independent Dismissal Mediation.

(A) Notice of Availability.

When an employee is terminated through the disciplinary process by a disciplinary decision authority other than the executive director, TJJJ provides a notice of termination to the employee advising him/her of the option to request [independent dismissal mediation](#).

(B) Requesting Independent Dismissal Mediation.

To request independent dismissal mediation, the employee must provide a completed [Request for Independent Dismissal Mediation form, HR-525](#), to the local grievance contact or to the agency's [employee grievance coordinator](#) within 14 calendar days after receiving the notice of termination.

(i) If the notice of termination was mailed, the presumed receipt date is ten calendar days after the "mailed date" identified on the notice of termination.

(ii) The employee grievance coordinator, in consultation with management, may accept an HR-525 form submitted after the 14-calendar-day deadline. Unless an exception is granted, an employee who does not meet the deadline forfeits the option for independent dismissal mediation.

(iii) The local employee grievance contact forwards all HR-525 forms to the employee grievance coordinator, regardless of the date received.

(C) Selection and Role of the Mediator.

(i) The general counsel or his/her designee determines whether the mediator will be:

(I) a representative from the agency's Employee Assistance Program; or

(II) a TJJJ employee appointed by the general counsel or his/her designee.

(ii) If the mediator is a TJJJ employee appointed by the general counsel or his/her designee, the mediator must:

- (I) be outside the chain of supervision for the terminated employee and the disciplinary decision authority; and
 - (II) have completed mediation training that meets the Texas Mediation Trainers Roundtable training standards.
 - (iii) During the independent dismissal mediation session, the mediator facilitates communication between the senior agency official and the former employee to promote a mutually acceptable agreement.
- (D) **Scheduling the Session.**
- (i) The mediator provides the former employee with the option to have the mediation session conducted:
 - (I) via a telephone conference call;
 - (II) via video conference, if available; or
 - (III) in person at a location that:
 - (-a-) is determined by the mediator; and
 - (-b-) minimizes the travel expense to the agency.
 - (ii) The mediator or his/her designee notifies the former employee and senior agency official of the method, date, time, and place selected for the mediation.
 - (iii) The former employee forfeits the right to independent dismissal mediation if he/she fails to:
 - (I) be available by telephone for a scheduled conference call;
 - (II) be available at a video conference site as scheduled; or
 - (III) appear at a scheduled, in-person mediation session.
- (E) **Representation.**
- The former employee and the senior agency official may each be accompanied by a representative and/or advisor of his/her choice except the employee's representative must not be a person who claims the right to strike against the state.
- (F) **Time Reporting and Travel/Per Diem.**
- (i) The Agency does not pay compensation to or reimburse the travel expenses of:
 - (I) the former employee; or
 - (II) the representative of the former employee, even if the representative is a current state employee.
 - (ii) If a current TJJD employee acting as a representative or advisor for the former employee attends an independent dismissal mediation session held during his/her working hours, he/she must obtain prior approval to use:
 - (I) available paid leave; or
 - (II) personal unpaid leave if he/she has no available paid leave.

(G) Independent Dismissal Mediation Agreement or Other Outcome.

- (i) The senior agency official is authorized to approve all elements of an independent dismissal mediation agreement in compliance with instructions provided in the [TJJD Independent Dismissal Mediation Program Guide](#).

Note: A copy of this guide is available from the TJJD Intranet or from the local human resources office.

- (ii) The mediator provides the results of the independent dismissal mediation session to the agency's [employee grievance coordinator](#), who in turn notifies the employee's local [human resources administrator](#) (HRA) and the CLA.
 - (iii) If the agreement reverses or modifies the termination, the HRA and CLA take any necessary additional action to implement the decision.
 - (iv) The former employee may not grieve the independent dismissal mediation outcome, regardless of whether an agreement is reached.
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