

Community-Law Enforcement Mediation Program
Standard Operating Procedures

**OFFICE OF THE INDEPENDENT MONITOR
CITY & COUNTY OF DENVER**

DPD Policy: 503.01.4.b.4 provides:

- I. Mediation is a voluntary process involving numerous stakeholders, including community members, police officers, police administration and the Independent Monitor. There is no right to mediation. Even if a complaint is eligible for mediation, any stakeholder may decline to allow a complaint to be resolved through the mediation process for any reason. No stakeholder shall be required to state the reason for declining to participate in a mediation or agreeing to assign a case for mediation. Statements made during mediation cannot be used against a police officer in a criminal or civil matter. Furthermore, the decision to mediate a matter or not to mediate a matter cannot be considered during disciplinary proceedings in comparing the discipline issued in previous matters to that issued in a pending matter (*i.e.*, cannot be used for purposes of considering “consistent discipline”). A complaint will be dismissed upon the completion of a mediation session administered by the Monitor’s Office.
 - a. A complaint may be considered for mediation if it resulted from a failure to communicate or a lack of communication such that the allegation would be resolved better through mediation than through the formal disciplinary process and if it meets any other requirements set forth below. A complaint which, if proven, could constitute a violation of RR-138, Discrimination, Harassment, and Retaliation, may be eligible for mediation only in accordance with the provisions of the Department of Safety EEO Investigation Procedures.
 - b. Any allegation of misconduct that falls into one of the following conduct categories, as presented in the Discipline Handbook is ineligible for mediation:
 1. Category E: Conduct that involves the serious abuse or misuse of authority, unethical behavior, or an act that results in an actual serious and adverse impact on officer or public safety or to the professionalism of the Department.
 2. Category F: Any violation of law, rule or policy which: foreseeably results in death or serious bodily injury; or constitutes a willful and wanton disregard of Department values; or involves any act which demonstrates a serious lack of the integrity, ethics or character related to an officer’s fitness to hold the position of police officer; or involves egregious misconduct substantially contrary to the standards of conduct reasonably expected of one whose sworn duty is to uphold the law; or

involves any conduct which constitutes the failure to adhere to any contractual condition of employment or requirement of certification mandated by law.

- c. Any allegation of misconduct which, if proven, could constitute a violation of any rule that the Denver Civil Service Commission has designated as making an applicant ineligible to take a promotional examination for, or to be promoted to, the ranks of Sergeant, Lieutenant, or Captain is ineligible for mediation.
 - d. Any allegation of misconduct that falls into the following conduct category, as presented in the Discipline Handbook, is eligible for mediation only if the Manager of Safety, the Chief of Police, and the Independent Monitor all agree that mediation is appropriate.
 - 1. Category D: Conduct substantially contrary to the values of the Department or that substantially interferes with its mission, operations or professional image, or that involves a demonstrable serious risk to officer or public safety.
 - e. Any allegation of misconduct that falls into one of the following conduct categories, as presented in the Discipline Handbook, is eligible for mediation only if the Internal Affairs Bureau and the Independent Monitor agree that mediation is appropriate.
 - 1. Category A: Conduct that has a minimal negative impact on the operations or professional image of the Department.
 - 2. Category B: Conduct that has more than a minimal negative impact on the operations or professional image of the department; or that negatively impacts relationships with other officers, agencies or the public.
 - 3. Category C: Conduct that has a pronounced negative impact on the operations or professional image of the Department, or on relationships with other officers, agencies or the public.
 - f. Even if a complaint is eligible for mediation, the Manager of Safety, the Chief of Police or his/her designee, or the Monitor or his/her designee has the authority to decide for any reason that a case should not be assigned for mediation.
- II. Mediation Procedures: If the complainant expresses an interest in mediating the complaint, that fact shall be documented on the Commendation/Complaint Intake Form which will be forwarded to Internal Affairs for further review. Both the IAB Commander and the Monitor must agree that a complaint is appropriate for mediation for the complaint to be assigned to the mediation program.
- a. The complainant will be advised that the complaint is eligible for mediation, and a determination will be made whether the complainant is still interested in mediation.

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- b. If a complaint has been approved for mediation, a notice will be sent in writing by the Office of Independent Monitor to the involved officer(s), with a copy to their commanding officer, which shall include: the complaint number, the name of the complainant(s), the nature of the allegations, an explanation of the mediation program, an advisement to the officer(s) of the IAB and Monitor's conclusion that the case is appropriate for mediation, a request from the Monitor that the involved officer(s) contact the Monitor's Office within the officer(s) next five (5) working days of receipt of the notice, an explanation that participation in the mediation program is voluntary and that upon completion of the mediation, the complaint will be dismissed. A failure to respond to the request shall be construed to mean the officer has declined the opportunity to mediate the complaint.
- c. The involved officer's supervisors shall ensure that the IAB mediation notice is delivered to the involved officer(s) as soon as possible.
- d. If any of the involved officers decline to participate in mediation, the complaint shall be returned to the intake process in accordance with normal IAB policies and procedures.
- e. If a complainant fails to appear for a scheduled mediation, without good cause as determined by the Chief of Police or his designee, the involved officer(s) will be provided with the choice of either rescheduling the mediation or having the case dismissed by IAB.
- f. If any of the involved officers fail to appear for a previously scheduled mediation, without good cause, the Monitor will notify IAB so that appropriate action can be taken. The complaint may then be processed by IAB as per normal policies and procedures.
- g. Upon completion of the mediation, the complaint will be dismissed. No new complaint shall be accepted based on the conduct of an officer during mediation. The mediation session shall be confidential as per C.R.S. §13-22-307 and the Colorado Council of Mediators Revised Code of Professional Conduct, Section V and there shall be no requirement that an agreement be reached during the course of mediation.

The Independent Monitor's Intake Process

I. OIM Case Handling Process

- a. The OIM can receive a mediation referral either from a complaint filed with the Monitor's Office (via online, mail, fax, or walk-in) or from the Internal Affairs command staff;
- b. If a complaint alleges an inappropriate use-of-force, the Independent Monitor will confer with Internal Affairs on whether the case is appropriate for mediation, and if so, request permission (as per DPD policy) from the Police Chief and Manager of Safety to refer the complaint to the mediation program;
- c. The OIM will refer the complaint to its mediation vendor;

- d. OIM's mediation vendor will attempt to obtain consent to mediate from the complainant and the involved officers.

II. Complainant's consent to mediate (by mediation vendor):

- a. Explain the benefits of mediation:
 - i. Increased likelihood of satisfaction with the process;
 - ii. Opportunity to resolve the conflict directly with the officer, instead of through Departmental supervisors;
 - iii. Increased likelihood of a timely resolution of the complaint;
 - iii. Potential for increased likelihood of having a positive effect on officer's future behavior.
 - iv. The mediation session will be facilitated by a professional mediator retained by the OIM.
- b. Explain the results of agreeing to mediate:
 - i. If the officer agrees to mediate as well, the complaint is removed from the internal affairs (disciplinary) process and no further action is taken by internal affairs;
 - ii. If the officer does not agree to mediate, the case is returned to the normal internal affairs process;
 - iii. The mediation session is confidential under Colorado law (CRS 13-22-307);
 - iv. The program uses a mediation style often referred to as "facilitated conversations" in which there is not a requirement to reach an agreement, to make any promises, or to change behavior. Rather, a facilitated conversation style of mediation gives both parties the opportunity to explain their perspectives and to better understand the perspective of the other person(s).
 - v. A reasonable attempt will be made to conduct the mediation during the officer's work hours.
- c. Determine if there are other individuals who were involved in the incident that need to be at mediation.
- d. Consider possible support people and appropriate guidelines.
 - i. A support person is someone who was not present during the initial incident between the officer and community member; however, a party would like to bring this person to the mediation for emotional support.
 - ii. The support person may not speak during the mediation and must sign a confidentiality agreement.
 - iii. Having a support person is not a right; it is subject to the consent of all parties.
- e. Verify complainant meets criteria required to mediate, is willing to participate in mediation, and appears suitable for a successful mediation.

- f. With the exception of extenuating circumstances, attempts to obtain the complainant's consent to mediate should be completed within a two week period.

III. Officer's consent to mediate (by mediation vendor):

- a. Via Email (copy to officer's Commander, the Independent Monitor and Internal Affairs command staff):
 - i. Explaining the nature of the complaint that was received (including the name of the complainant, the date of the incident and the a short summary of the complainant's allegations);
 - ii. Including a copy of the mediation brochure and a reference if necessary to additional information;
 - iii. Explaining the use of professional mediators and the likelihood of increased satisfaction rates;
 - iv. Requesting that the officer contact the mediation vendor within five working days;
 - v. Explaining the complaint will be dismissed upon officers' agreement to mediate;
 - vi. Advising of need to know contact information and shift information as well as any upcoming vacation time;
 - vii. Advising if there is a request from the complainant for a support person.
- b. With the exception of extenuating circumstances, attempts to obtain the officer's consent to mediate should be completed within a one-week period.

IV. Referral to mediation vendor

- a. Via Email:
 - i. OIM staff forwards the complaint to the mediation vendor, including:
 - 1. Any significant circumstances regarding the parties, including, but not limited to, language needs, mental health issues, and individual concerns expressed regarding the mediation process or a desire for the presence of a support person, physical limitations, etc.;
 - 2. Contact information for all parties;
 - 3. Case information, including the case number, the incident date and location, a summary of complaint, contact information for all parties, and any OIM correspondence which may be potentially helpful to facilitate a successful mediation.
 - b. After a complaint is forwarded to the mediation vendor, the mediation vendor is responsible for all further communications with the parties. If contacted by either party, OIM personnel are to refer the parties back to the mediation vendor unless and until the case is closed out by the mediation vendor.
 - c. Issues and concerns expressed by an party to the mediation process will be forwarded to the Monitor for discussion with the mediation vendor, as appropriate.

Mediation Vendor Responsibilities:

- I. Case information received by mediation vendor.
- II. Mediation vendor intake:
 - a. Verify contact information and commitment to mediate with complainant(s);
 - b. Verify contact information and commitment to mediate with officer(s);
 - c. Confirm if a support person is requested by either party;
 - d. Follow up with the other party about whether or not that party agrees to the support person;
 - e. Set up location, date, time, and mediators;
 - f. Confirm with parties; and
 - g. Conduct mediation session.
- III. Mediation Issues
 - a. Mediation takes place at a neutral location and will not be held at either a police location (without the express consent of a complainant) or any individual's residence.
 - b. Support person's presence must be acceptable to the opposite party. It is the mediator's decision as to where the support person will be located during the mediation session.
 - c. OIM Observer role: Any OIM observer is present solely to monitor the quality of the work of the assigned mediators. The OIM observer is to report back to the Monitor any issues or concerns regarding the quality of the work of the assigned mediators. The Monitor will then share any concerns with the mediation vendor. No OIM observer will be permitted without the express consent of all parties to the mediation.
 - d. Surveys:
 1. Surveys must be given to all participants at conclusion of the mediation.
 2. Every attempt should be made to ensure 100% participation in filling out surveys. Participants should not leave until surveys are completed.
 3. Surveys are to be delivered to the OIM for processing and data entry and evaluation.
 4. Copies of surveys are to be provided to the mediation vendor for review.
 - e. Mediation Closeout: The mediation vendor is to send a close-out letter is to the Independent Monitor upon closure of any complaint referral.

- f. Mediation Fallout:
 1. Attempts to contact a complainant should involve at least two phone messages (unless phone is disconnected), a first class letter and/or a registered letter to last known address.
 2. Problems with contacting involved officers should be referred to the Independent Monitor to facilitate.
 3. If either party declines to participate, the case should be closed out with a letter to the OIM explaining the circumstances.
 4. If the complainant fails to appear, and no reasonable explanation is provided, the complaint may be closed out with a letter to OIM explaining the circumstances. If a reasonable explanation is provided, CMC will attempt to facilitate a second session. If the officer fails to appear and no reasonable explanation is provided, the case will be returned to OIM for a referral back to Internal Affairs.

Case Closeout (by OIM staff):

1. If a mediation session is conducted, OIM staff forwards the mediation vendor's closing letter to IAB with a request to close out the complaint in the police database as "decline-mediation." No further communication with the complainant(s) or the involved officer(s) is necessary.
2. If mediation fallout:
 - i. OIM writes declination letter to the complainant based on the information provided by the mediation vendor close-out letter.
 - ii. A copy of the OIM declination letter is sent to IAB, advising that the case should be closed in the police database as "decline – complainant withdrawal."
 - iii. All correspondence and actions will be archived and/or documented.
 - iv. If the mediation fallout is due to an action or failure to act by an involved officer, the complaint will be referred back to IAB for any appropriate personnel action.