

POLICY CONCEPT FORM

<b>Name and UO Title/Affiliation:</b>	Kassy Fisher, Associate Vice President and Chief of Staff to VPFA
<b>Policy Title/# (if applicable):</b>	Interpersonal Dispute Mediation Communications
<b>Submitted on Behalf Of:</b>	Jamie Moffitt, VPFA & CFO
<b>Responsible Executive Officer:</b>	Vice President for Finance and Administration (VPFA)

SELECT ONE:  New Policy  Revision  Repeal

HAS THE OFFICE OF GENERAL COUNSEL REVIEWED THIS CONCEPT:  Yes  No

If yes, which attorney(s): Douglas Park

**GENERAL SUBJECT MATTER**

Interpersonal Dispute Mediation Communications, former OAR 580-22-0047

**RELATED STATUTES, REGULATIONS, POLICIES, ETC.**

ORS 36.220 – 36.238 Confidentiality of mediation communications and agreements

**STATEMENT OF NEED**

*What does this concept accomplish and why is it necessary?*

This policy is largely subsumed by the “confidentiality of mediation” statutes in ORS 36.220 – 36.238. The State of Oregon mediation statutes authorize public bodies to have confidential mediation policies but does not require public bodies to have them. Accordingly, this policy-- a former Board of Higher Ed OAR inherited by the university-- is not necessary.

**AFFECTED PARTIES**

*Who is impacted by this change, and how?*

All employees at the UO, as they may be subject to workplace interpersonal disputes.

**CONSULTED STAKEHOLDERS**

Name	Office	Date
Doug Park, Jeslyn Everitt	Office of the General Counsel	Dec 2019
Missy Matella, Mark Schmelz	Office of Human Resources	Jan 2020

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**Reason for Policy**

This policy outlines the confidentiality and inadmissibility guidelines of communications occurring during workplace interpersonal dispute mediation.

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**Entities Affected by this Policy**

All employees of the university.

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**Web Site Address for this Policy**

<http://policies.uoregon.edu/interpersonal-dispute-mediation-communications>

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**Responsible Office**

For questions about this policy, please contact Human Resources at 541-346-3159.

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**Enactment & Revision History**

Technical revisions enacted by the University Secretary on September 2, 2015.

Became a University of Oregon Policy by operation of law on July 1, 2014.

Former Oregon Administrative Rule Chapter 580 Division 22, Section 0047.

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**Policy**

**Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications**

(1) This policy applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between University employees, officials or employees and officials. This policy does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this policy have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this policy affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this policy.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

- (a) All the parties to the mediation and the mediator agree in writing to the disclosure; or
- (b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this policy.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this policy, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administration, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

- (a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and
- (b) The person agreeing to the confidentiality of the mediation on behalf of the University:
  - (A) Is neither a party to the dispute nor the mediator; and
  - (B) Is designated by the University to authorize confidentiality for the mediation; and
  - (C) Is at the same or higher level in the University than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the University, unless the University head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or Governor's designee.

(7) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4) and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in

death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence 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.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence 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.

(i) To the extent a mediation communication contains information on the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the University at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The University or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures \$1,000 or

less for employee training, employee counseling or purchases of equipment that remain the property of the University, may not be made confidential.

(9) When a mediation is subject to section (6) of this policy, the University will provide to all parties to the mediation and to the mediator a copy of this section or an explanation of where a copy of the policy may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

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**Related Resources**

N/A

FOR REPEAL