

**WAC 358-30-024 Mediation.** (1) **Purpose.** The board finds that a mediation process, in which the parties, through an independent mediator, seek a settlement of their disputes in good faith, offers an opportunity early in the appeals process to settle disputes with less cost and time, and to the satisfaction of all parties. Such a process also offers the board the opportunity to concentrate its limited resources on timely resolution of those appeals which the parties have been unable to resolve.

(2) **Process.** After an appeal including all of the required documentation is received, the executive secretary or his/her designee shall:

(a) Review the file to determine whether the matter in dispute is amenable to a mediation process;

(b) Notify the parties that their appeal has been designated for mediation, if the executive secretary or designee determines that mediation would be appropriate or if the parties have jointly requested mediation;

(c) Assign the case to a hearings examiner for mediation. The executive secretary may act as a hearings examiner for this purpose. Nothing in this section prevents the parties from selecting their own mediator. However, if a mediator other than the one designated by the board is selected, the parties shall pay the cost of the mediator.

(3) **Mediation.** After selection of a mediator, the parties shall meet at least once and engage in a good faith attempt to negotiate a resolution of the appeal. Such a conference shall take place within thirty days after the parties are notified that their case has been designated for mediation. The conference may be held by telephone with the consent of the parties. The appellant and at least one designee of the employing agency or institution of higher education shall personally attend the mediation conference, unless excused by the mediator. If the designee of the agency or institution of higher education does not have authority to act on behalf of the agency or institution of higher education, a person with the requisite authority shall be available by telephone. The parties may also have representatives of their choosing at the conference.

(4) **Mediation and settlement conferences privileged.** The proceedings of any mediation or settlement conference shall not be reported or recorded in any manner, except for agreements that may be reached by the parties during the course of the conference. Statements made by or to the mediator, or by or to any party or other participant in the conference, may not later be introduced as evidence, may not be made known to the board or hearings examiner at a hearing, or may not be construed for any purpose as an admission against interest, unless they are independently admissible. No party shall be bound by anything done or said at the conference unless a settlement is reached. If a settlement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to that agreement and the appellant shall sign a request to withdraw the appeal. Any settlement reached shall not violate civil service laws or the rules promulgated thereunder or any collective bargaining agreement affecting the parties then in force.

(5) **Exemption from mediation.** A party for good cause shown, or the parties by agreement, may decline to engage in the mediation process.

(6) **Mediation available.** If an appeal is not initially selected by the executive secretary or designee as appropriate for mediation, or if at any time prior to the appeal hearing a party or parties de-

sire to engage in the mediation process, application may be made to the executive secretary for appointment of a mediator in the manner provided in subsection (2)(c) of this section.

(7) **Post-mediation process.** If the parties have been unable to resolve their dispute through mediation, the hearings examiner conducting the mediation may direct the parties to proceed to a prehearing conference either immediately or at a later date. The hearings examiner shall also ask the parties to identify acceptable dates for a hearing and shall attempt to schedule the hearing in consultation with the board.

The hearings examiner shall notify the executive secretary of the failure to reach settlement. If not already scheduled, the executive secretary or designee shall then begin the process of scheduling the appeal for hearing, including setting a prehearing conference when appropriate.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-024, filed 3/15/95, effective 4/15/95.]