



The Protection and Advocacy System for South Carolina

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FACT SHEET

DEPARTMENT OF JUSTICE ADA MEDIATION PROGRAM

The Americans with Disabilities Act (ADA) gives legal rights to people with disabilities. The ADA requires state and local governments to make their programs accessible to people with disabilities.¹ The ADA also covers places of public accommodations like stores, offices, restaurants, and hotels.²

If ADA rights have been violated, individuals can file their own lawsuit OR they can file a complaint with the US Department of Justice (DOJ) and ask it to investigate the problem. The Department can handle complaints in several ways including filing a lawsuit if it finds ADA rights have been violated. DOJ also has a special program to help individuals solve their own disputes without a lawsuit. It is called "mediation." This Fact Sheet provides information about the mediation program.

If both sides are willing, DOJ appoints a professional mediator to see if a settlement can be reached by informal discussion. The mediator does NOT decide the case, but in a neutral manner helps both sides talk and may give them suggestions. The mediator and both sides may meet in person OR by telephone. DOJ does not charge for this service. DOJ has contracted with the Key Bridge Foundation to provide mediators for ADA disputes.

Why consider mediation of your ADA complaint?

Mediation is not right for every situation. However, it does have several advantages over a formal DOJ investigation or litigation:

- ❑ In mediation you control the decision, not someone else. The mediator does not make a decision for you. If you don't agree, there is no decision.
- ❑ The result of the mediation is flexible. Formal investigations and litigation are sometimes limited in the results they can provide. Mediation is limited only by what the two parties can agree to.
- ❑ Mediation is usually quicker than either a formal DOJ investigation or litigation.
- ❑ DOJ cannot investigate all ADA complaints it receives. Your complaint may, therefore, be sent back to you without ever having been investigated. However, most individuals who file a complaint and request mediation get mediation unless the other side (called the "respondent") refuses to agree to mediation.

¹ For more information, see P&A Fact Sheet "Title II of the ADA: State and Local Governments" at <http://www.pandasc.org/resources/americans-with-disabilities-act-ada/>

² For more information, see P&A Fact Sheet "Americans with Disabilities Act--Title III, Places of Public Accommodations" at <http://www.pandasc.org/resources/americans-with-disabilities-act-ada/>

- DOJ has indicated that it will seriously consider doing a formal investigation of any complaint where a respondent has refused to agree to mediation. If mediation is not successful, individuals can still bring their own lawsuit against the other side. All information discussed during mediation is confidential and cannot be used against you if you later have to go to court.
- If mediation is successful, there will be a binding settlement agreement signed by both sides. DOJ reports that since its inception, the Program has mediated more than 5,000 complaints nationwide, with more than 75% of them resulting in successful resolutions

How do I ask for mediation?

- Prepare a complaint to DOJ. See their website at: https://www.ada.gov/filing_complaint.htm P&A's Fact Sheets about ADA Title II and ADA Title III also have information how to file a complaint. They are available at <http://www.pandasc.org/resources/americans-with-disabilities-act-ada/>.
- Write "MEDIATION REQUESTED" on the outside of the envelope and send it to DOJ. This will not guarantee that your complaint will be referred for mediation, but will let DOJ know you are interested.
- Please be aware that mediation is a program used by DOJ; it is not used by other federal agencies. If your complaint involves state and local governments, DOJ may transfer your complaint to another federal agency for its review. For example, cases involving state universities may be referred over to the US Department of Education; cases involving a state hospital may be referred to the US Department of Health and Human Services. If that happens, the DOJ mediation program will not be available.

Where do I get more information about mediation?

DOJ has said: In enacting the ADA, Congress specifically encouraged the use of alternative means of dispute resolution, including mediation, to resolve ADA disputes. Through its ADA Mediation Program, the Department of Justice refers appropriate ADA disputes to mediators at no cost to the parties. The mediators in the Department of Justice program are professional mediators who have been trained in the legal requirements of the ADA. The Department's program has resolved many ADA disputes quickly and effectively.

For more information about the DOJ ADA Mediation Program you may go to the DOJ website at: https://www.ada.gov/mediation_docs/mediation-program.htm. Also a "Q&A" (question and answer) link is available on the DOJ website: https://www.ada.gov/mediation_docs/mediation-q-a.htm.

This publication provides legal information, but is not intended to be legal advice. The information was based on the law at the time it was written. As the law may change, please contact P&A for updates.

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