# FREQUENTLY ASKED QUESTIONS

035-12 CONFIDENTIALITY IN MEDIATION\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

8VAC20-81-190.E.3 requires that discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. It further requires that any agreement which is reached contain this language.

The Code of Virginia Section 2.2-4119 goes further to define that anything in the case files of the mediator or any communications to schedule a mediation are confidential with common sense exceptions involving crime or abuse of a child.

Here are the important things to keep in mind about confidentiality. The knowledge you have before a mediation is continuing. The documents you have before mediation continue to be relevant. What is confidential is the *actual conversation*, the mediated negotiation, which occurs at the table, with the parties. This hallmark of mediation practice allows participants to speak freely and openly without being guarded as they explore the issues generate options and assess the acceptability utility of possible outcomes.

Any agreement reached has to have a limited distribution in order to implement it. This means that administrators and teachers who will be involved in its’ implementation need to know about the terms.