

PASSED BY FACULTY SENATE ON MARCH 13, 2007
University Handbook Revision
Appendix U, Policy on Mediation
Approved by Faculty Affairs on January 23, 2007

Introduction

Mediation is playing an ever-increasing role in the positive resolution of campus disputes by addressing the needs and interests of all parties and at the same time saving time and money. It is particularly effective when the disputing parties want or need to continue their relationship. It also allows the parties to look at ways to prevent conflicts in the future.

For purposes of this policy, mediation is defined as a voluntary process of facilitated negotiation in which a neutral third party, a professional mediator, sits down with the parties in conflict and helps them look for mutually acceptable solutions to work-related issues in dispute. The mediator does not make the decisions, but instead, works with the parties to identify their needs and interests and to develop creative options for resolving the conflict in a confidential manner.

Guidelines for Mediation

Mediation should be considered in any instance of serious or substantive dispute. It can be accessed at any point in the process of informal facilitation, appeal, grievance or litigation. Anyone can propose mediation; for example an ombudsperson, the next highest administrator, an affirmative action officer, or any of the parties to a dispute. The use of mediation will only occur with the concurrence of all of the disputing parties. Although any kind of dispute can be mediated, it is anticipated that common examples would include:

- disagreement over salary adjustments
- performance evaluations
- promotion and tenure issues
- workplace issues, and or
- instances of alleged harassment or discrimination that do not meet the legal standard for such but which include real or perceived problems requiring resolution

An "agreement to mediate" will be entered into by all parties. This agreement does not constitute an obligation to reach a binding conclusion.

A mediator is defined, for purposes of this policy, as a person who is certified by or is recognized as equivalently qualified by the Kansas Judiciary Branch, Office of Judicial Administration. A list of university approved mediators will be developed through a screening and selection process based upon a recommendation of a committee appointed by the provost and comprised of two central administrators, one dean, one unclassified professional staff member, and two faculty members. The list will be reviewed annually by the provost (or his or her agent) for accuracy, verifying current certifications or equivalents, and updated every three years by the committee.

Coordination of Mediation Process

Responsibility for coordinating the mediation process and making information available to the university community will be assigned by the Faculty Senate Executive Committee to a director who will operate from the Office of Faculty Senate. The University will be responsible for paying the fees for mediation unless an outside complaint or lawsuit has been filed.

Kansas State University Agreement to Mediate

This is an Agreement between _____ and _____ (hereafter referred to as the participants). The participants enter into mediation with the intention of reaching a consensual resolution of their issues. The provisions of this agreement are as follows:

Process

1. Mediation is a voluntary collaborative process ~~that is non-binding~~. The parties have a right to agree or not agree to be bound to any particular outcome.
2. The mediator is a neutral facilitator who assists the participants in reaching their own voluntary, fully informed resolution concerning the issues.
3. A mediator's duties do not include decisions concerning "right" or "wrong" and the mediator will not make a decision regarding the issues for the participants.

4. In the event that the participants are already involved in an appeal, review, or grievance process for which a hearing has not convened at the time of this agreement, that process will be suspended until the conclusion of the mediation. Any timetables associated with such a process will be placed on hold until the mediation is ended.

Disclosures

5. The mediation process can be successful only if all participants make full and complete disclosure of all information pertinent to the resolution of the issues. Each participant will make a full and complete disclosure of all relevant information and documents to the mediator and the other participant.

6. If either participant fails to make a full and complete disclosure of all relevant information and documents, then any formal, legal, binding Resolution Agreement that may be reached based on the incomplete set of materials may be set aside.

Confidentiality

~~7. All written and oral communications, negotiations and statements made in the course of mediation will be treated as privileged settlement discussions and are absolutely confidential.~~

8. Participants agree that no tape record will be made nor will any participant cause the electronic recording of any portion of the mediation session or sessions or telephone calls among the participants and/or mediator concerning the sessions.

9. The mediator will not reveal anything discussed in mediation to anyone other than the participants, unless all parties agree otherwise, in writing.

~~10~~ 9. The participants and the university will not at any time, before, during, or after mediation, call the mediator as a witness in any legal or administrative procedure concerning these issues. To the extent that the participants or the university may have a right to call the mediator as a witness, they each waive that right.

~~11~~ 10. The participants and the university agree not to subpoena or demand the production of any records, notes, work product or the like of the mediator in any legal or administrative proceeding concerning these issues. To the extent that participants or the university have a right to demand these documents, that right is hereby waived.

~~12~~ 11. If a participant or the university subpoenas the mediator, the mediator will move to quash the subpoena.

Termination/Withdrawal

~~13~~ 12. Either participant or the mediator may terminate the mediation at anytime. It will not be necessary that a participant or the mediator provide a reason for the termination of the mediation.

~~14~~ 13. In the event that the mediation is terminated, the mediator will advise the participants of the termination in writing. No explanation is required regarding the reason for termination.

Legal Representation

~~15~~ 14. Participants may choose to seek the advice of independent legal counsel at anytime during the process. Attorneys representing participants can not attend mediation sessions with the participants.

~~16~~ 15. The participants may have legal questions about either the Agreement To Mediate or the Memorandum of Understanding that may result from the mediation. Each participant may seek legal counsel regarding legal interests, rights and obligations.

~~17~~ 16. In the event that a participant seeks legal counsel, the University will bear the cost for each of the participants up to a maximum of two hours of legal costs for this purpose.

~~18~~ 17. The university will pay for the fees for mediation unless an outside complaint or lawsuit has been filed.

Memorandum of Understanding

~~19~~ 18. The mediator will prepare a Memorandum of Understanding if that is appropriate. The mediator will provide the Memorandum of Understanding to each of the participants.

~~20. The Memorandum of Understanding is not an agreement. It is not binding upon the participants. It may form a basis for a formal legal binding Resolution Agreement, subsequently prepared and executed between/among the participants.~~

In Witness Whereof, the undersigned have read, understand and agree to each of the provisions of this Agreement to Mediate.

Participant Date Participant Date

Mediator Date For the University Date