

MEDIATION AT COLUMBIA UNIVERSITY
THE OFFICE OF EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION
AND
THE COLUMBIA LAW SCHOOL MEDIATION CLINIC

WHAT IS MEDIATION?

Mediation offered through the Office of Equal Opportunity and Affirmative Action in cooperation with the Columbia Law School Mediation Clinic provides an informal and confidential forum where participants can meet face-to-face, discuss and possibly resolve their conflicts and complaints. The mediators are trained law students who, under the supervision of the Clinic Instructor, act as neutral third parties. Unlike a judge, a mediator does not decide who is right or wrong. The mediator simply helps the participants communicate and, when appropriate, reach an agreement that respects the needs and interests of all parties. Mediation is a confidential, voluntary process.

WHY MEDIATE?

Mediation allows parties in a dispute to control the outcomes of their conflicts. Mediation can work well for people who want to avoid the stress and inflexibility of more formal procedures and to improve their working relationships. Many kinds of conflicts can be resolved successfully through mediation.

HOW TO MAKE THE MOST OF MEDIATION

Mediation works best when all the parties involved are present to discuss the issues that are the source of conflict. Parties with decision-making authority should be present or available over the telephone. The neutral mediator helps create an environment where all participants have equal and full voice. Open communication helps parties listen to one another's viewpoints, identify the underlying issues and interests, and find meaningful resolutions to their disputes. Often participants leave mediation better able to communicate and resolve conflicts in the future.

HOW DOES MEDIATION FIT INTO THE UNIVERSITY'S COMPLAINT PROCEDURE?

A complainant may directly request mediation at the University's Office of Equal Opportunity and Affirmative Action; alternatively, the Office may suggest mediation. If both parties are willing to mediate, the formal grievance procedure will be suspended for up to forty-five days or the duration of the mediation whichever is shorter.

If the parties reach a mutually satisfactory resolution, mediation concludes the process. Parties can reach oral or written agreements. To obtain assistance with implementation, parties may bring their written agreement to the Office of Equal Opportunity and Affirmative Action. If the parties do not find a solution, the parties may elect to proceed through the formal complaint procedure.

COLUMBIA LAW SCHOOL MEDIATION CLINIC AGREEMENT TO PARTICIPATE IN MEDIATION

This is an agreement between the parties, _____,
_____, and the mediators. The parties voluntarily consent to participate in mediation with mediators selected by the Columbia Law School Mediation Clinic. The parties and mediators agree as follows:

THE MEDIATION PROCESS

The mediators will assist the parties to resolve their dispute by helping them to communicate their needs and interest, to identify and explore various solutions, and, when appropriate, to reach an agreement satisfactory to both of them. The mediators will not decide who is right or wrong, or impose an agreement upon the parties, or make a report or recommendation to anyone. The mediators will remain neutral throughout the mediation.

The parties will actively participate in the search for fair and workable options. While both parties agree to make a good faith attempt at reaching an agreement, they understand that they may withdraw from mediation at any time. The mediators may hold private sessions with each party in order to improve the mediators' understanding of relevant issues.

The mediators will inform the Office of Equal Opportunity and Affirmative Action about whether or not the parties attended the mediation and whether or not the parties reached an agreement.

CONFIDENTIALITY

The mediators and the parties intend that all communication made during mediation be treated as settlement discussions and that they be excluded as evidence in any disciplinary, grievance, administrative, or judicial proceeding. However, the parties agree that confidentiality does not protect credible threats of imminent violence.

The parties will not attempt to introduce communications made during mediation as evidence in any disciplinary, grievance, administrative, or judicial proceeding, will not call the mediators or anyone associated with the mediation or the mediation clinic to testify in such proceedings, and will not seek to compel the mediators to produce documents or records related to the mediation.

Information gathered in private sessions may be shared in joint sessions, unless a participant wishes to keep certain information confidential.

If the participants sign a written agreement, the contents of that Agreement are not confidential.

EFFECT ON UNIVERSITY COMPLAINT PROCEEDINGS

The formal complaint procedures shall be suspended for up to forty-five days to permit mediation to take place.

If the participants reach an agreement and decide to put the agreement in writing, then it will be signed by all parties to the dispute. This signed agreement is binding and may be enforceable in a court of law. The parties will retain copies of the agreement.

If the participants reach an oral agreement, the mediators will inform the Office of Equal Opportunity and Affirmative Action that an oral agreement exists.

The parties will decide whether the terms of the agreement will be put in writing and disclosed to the Office of Equal Opportunity and Affirmative Action. If either party would like assistance in the implementation of a written agreement, he/she should contact the Office of Equal Opportunity and Affirmative Action.

If the participants do not reach a resolution through mediation, the mediators will inform the Office of Equal Opportunity and Affirmative Action that the participants were unable to reach an agreement. The parties can utilize other grievance procedures, but everything relating to the mediation process will remain confidential.

EFFECT ON LEGAL RIGHTS

The parties understand that the agreement they reach may be different from the result obtained if an investigator or court resolved the dispute.

The mediators will not offer legal advice to or act as lawyers for either party. They will not represent either party in the future on issues related to the mediation. If the mediators are familiar with the relevant legal issues, the mediators may help the parties identify those issues. If both parties agree that legal information would be helpful to them in reaching an agreement, the mediators may provide it or suggest ways of obtaining it.

FEES

There will be no charge for mediation.

The parties agree that they have read this agreement and that they understand each of its provisions.

Party

Date

Mediator

Date

Party

Date

Mediator

Date

MEDIATION AGREEMENT

WE, THE PARTICIPANTS IN THIS MEDIATION, HAVING HAD THE OPPORTUNITY TO DISCUSS ALL ISSUES OF CONCERN TO US, HAVE VOLUNTARILY AGREED AS FOLLOWS:

[Preamble stating general purpose. E.g., Co-Worker X and Co-Worker Y would like to work together in a civil, respectful environment.]

1. Specific terms of the written agreement.
2. E.g., Co-Worker X and Co-Worker Y will address each other with respect.
3. [This paragraph would appear last in all agreements.] The parties agree that their signatures on this agreement constitute full and final resolution and withdrawal of all issues raised in the complaint filed on _____. This waiver includes all informal and formal complaints or appeals currently pending in the grievance process. In addition, the parties agree to waive their rights to pursue grievance, administrative, or judicial action in any forum concerning the matters raised in these complaints and appeals. The parties also agree that the matters raised in these complaints will not be made the subject of future litigation. The mediators and the parties intend that all communication made during mediation be treated as settlement discussions and that they be excluded as evidence in any disciplinary, grievance, administrative, or judicial proceeding.

Party

Date

Mediator

Date

Party

Date

Mediator

Date

If either party is not complying with this agreement or if you have any questions concerning this agreement, please call _____.

WAIVER AGREEMENT

WE, THE PARTICIPANTS IN THIS MEDIATION, HAVING HAD THE OPPORTUNITY TO DISCUSS ALL ISSUES OF CONCERN TO US, HAVE VOLUNTARILY AGREED AS FOLLOWS:

The parties have reached an oral agreement and agree that it constitutes full and final resolution and withdrawal of all issues raised in the complaint filed on _____. This waiver includes all informal and formal complaints or appeals currently pending in the grievance process. In addition, the parties agree to waive their rights to pursue grievance, administrative, or judicial action in any forum concerning the matters raised in these complaints and appeals. The parties also agree that the matters raised in these complaints will not be made the subject of future litigation. The mediators and the parties intend that all communication made during mediation be treated as settlement discussions and that they be excluded as evidence in any disciplinary, grievance, administrative, or judicial proceeding.

Party

Date

Mediator

Date

Party

Date

Mediator

Date

CASE INTAKE AND DISPOSITION FORM

Date Referred to Mediation: _____

Date of Mediation: _____

Complainant: _____

Department/School: _____

Office Telephone: _____

Home Telephone: _____

Complainant Status: Faculty _____ Staff _____ Student _____ Other _____

Email: _____

Respondent: _____

Department/School: _____

Office Telephone: _____

Home Telephone: _____

Complainant Status: Faculty _____ Staff _____ Student _____ Other _____

Email: _____

Complaint: _____

Mediators: _____ and _____

Time Began: _____

Time Ended: _____

Disposition

- _____ Written Agreement
- _____ Verbal Agreement with Waiver Agreement
- _____ Verbal Agreement without Waiver Agreement
- _____ No Agreement
- _____ Withdrew (C / R)
- _____ Complainant Refused Mediation
- _____ Respondent Refused Mediation
- _____ Complainant and Respondent Refused Mediation
- _____ No Show (C / R)