



Faculty

F O R U M

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Mediation

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Mediation, a form of alternative dispute resolution (ADR), has gained widespread acceptance as an approach to conflict resolution in the past thirty years. This development has been motivated by the desire to find successful alternatives to expensive, stressful, time-consuming legal and quasi-legal approaches to the resolution of conflicts. The Faculty Handbook reflects this development when it observes that "Because the grievance process has substantial costs to all involved, faculty members are strongly encouraged to attempt mediation prior to filing a grievance." It is for this reason that "The Academic Senate and the Provost make available the option of a neutral Faculty Mediation Officer to assist in settling disputes prior to the grievance being heard." Mediation can also be of use in resolving disputes in which the filing of a grievance is not contemplated and even after a grievance or a lawsuit has been filed. However, mediation often works best before any process of formal adjudication has been commenced as adjudication tends to exacerbate difficulties and entrench positions.

Mediation is a voluntary process and the mediator is a facilitator whose aim is to help the parties to a dispute find a mutually satisfactory resolution of their difficulties. Unlike adjudication mediation does not aim at the vindication of rights or at making or issuing judgments of right or wrong. The mediator is not a finder of facts and unlike the judge or the arbitrator the mediator is not a decision-maker. The terms of any possible settlement are entirely in the hands of the parties, who are themselves the decision-makers.

If the mediator is not a judge neither is the mediator an attorney offering legal advice to the parties. The mediator may, however, recommend that the parties seek outside advice. The mediator is neutral and impartial and does not represent the interests of either party. Rather, the mediator's sole interest is in reaching a resolution that is in the mutual interest of the parties. Since the process is voluntary the parties may withdraw from mediation at any time. If a satisfactory settlement is not reached, the parties are free to pursue other options.

The mediator aids the parties in conflict by raising and clarifying issues of concern, helping them focus on their interests and by generating options for settlement. Mediation is a far more informal and flexible process than adjudication and is capable of fashioning remedies that would not be available in an adjudicative proceeding. It is also a process that is useful in preserving or restoring working relationships between the parties. In order for the mediator to be effective it is important for the parties be forthcoming in their discussions with the mediator. This will assist the mediator in helping the parties understand one another's points of view and in suggesting possible resolutions to their disagreement. Mediation sessions are private and parties are asked to sign a confidentiality agreement as confidentiality within the limits of the law is often of critical importance in eliciting the information that is crucial to the kind of understanding that can lead to a resolution of the dispute. The sharply increased reliance on alternative dispute resolution methods and, in particular, on mediation in a wide variety of situations, attests to its utility in resolving many troubling problems in an efficient and effective manner.

Sources

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