

Mediation In College and University Settings



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MEDIATION IN COLLEGE AND UNIVERSITY SETTINGS

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Mediations at colleges and universities are robust and diverse. They include a variety of audiences and subjects. Participants can include students, staff, and faculty, three all diverse and with unique concerns. Colleges and universities are filled with people who have the same types of conflicts as those outside of the academy.

1. Goals

Colleges and universities use mediation for many of the same reasons that mediation is used elsewhere. These reasons include:

- (1) to seek understanding between the parties;
- (2) conciliation;
- (3) salvage relationships;
- (4) alternative to more formal procedures;
- (5) increase self-determination;
- (6) risk management;
- (7) confidentiality; and
- (8) meeting non-monetary/non-punishment interests.

One of the unique aspects of mediating at a college or university is that mediation provides an opportunity to educate students, faculty, and staff that there are alternatives beyond going to the courthouse that can be used to resolve disputes. While some students have been exposed to mediation in high school (peer mediation programs), or earlier, most have not. Students are not aware of this tool to help resolve conflicts. In many cases, these programs offer free training and free services to the participants.

In our experience, often a student will approach their campus legal services, student conduct office or the campus ombudsperson to go through a formal litigation or school disciplinary process. While those avenues can be appropriate, we also mention to the students that mediation is available. They often agree to mediate the dispute, voluntarily. The parties often reach a resolution.

At the college and university level, especially with students, the use of mediation has a significant educational component to it. College and university mediators help to educate the students about the process and use of mediation, but mediators also help students learn how to communicate with each other in professional and responsible ways.

Too often we see students communicate electronically—email, or more often, text, social media, or instant messages. We know that electronic communication has significant disadvantages, including the inability to give and receive tone. And with increasingly short areas to communicate (*i.e.*, 280 characters or less), communication often is choppy and incomplete.

2. Services Provided

Mediation offices provide multiple services to the college and university community. Traditional mediation services—individual client coaching, developing collaborative processes between groups, and clarifying policies and processes—are among them. Some colleges and universities provide services for disputes between students (*e.g.*, relationship and roommate issues), while others include mediation services between students and faculty (*e.g.*, frequently these are grade disputes), staff members (*e.g.*, conditions of employment), and faculty.

Mediation can also be used when the issue involves allegations of violations of federal law. The United States Department of Education (DoE), Office of Civil Rights (OCR), expressly authorizes the use of mediation in Title IX disputes. In its April 4, 2011, “Dear Colleague” letter, the DoE wrote:

Grievance procedures generally may include voluntary informal mechanisms (*e.g.*, mediation) for resolving some types of sexual harassment complaints. OCR has frequently advised recipients, however, that it is improper for a student who complains of harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school (*e.g.*, participation by a trained counselor, a trained mediator, or, if appropriate, a teacher or administrator). In addition, as stated in the 2001 Guidance, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints.³

³ Office for Civil Rights, Dear Colleague, U.S. Dep’t of Educ. 8 (Apr. 4, 2011), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

Thus, the DoE recognizes the use of mediation in Title IX disputes as long as the complainant is notified of the right to terminate the mediation at any time, and so long as the subject matter does not involve a sexual assault complaint.

3. Evaluation

Colleges and universities evaluate their programs and planning regularly. Mediation is simply a program, and as such should also be evaluated. Yet as far as we know, no recognized standards for evaluating mediation programs exist. Given the lack of uniform standards, we propose that colleges and universities use these criteria to evaluate the mediation program:

- What effect on student retention is the conflict having? Do the students think about leaving the institution because of the conflict? How have their attitudes changed after the mediation?
- What effect on employee retention is the conflict having? Do the employees think about leaving their office, department, unit, or even the institution because of the conflict? How have their attitudes changed after the mediation?
- What skills did the mediation participant have prior to the mediation compared to their skills after the mediation, e.g., active-listening skills?

4. Changing Demographics

Our colleges and universities are ripe with diversity. Our demographic makeup includes individuals from different parts of the state, different parts of the country, and different parts of the world. While some students rarely have a well-defined support group. The overwhelming majority are left to their own devices to manage on our campuses.

Friction from demographic makeup can be compounded by the age differences that we are beginning to see as a result of dual-enrollment courses—college course taken by current high school students, for both high school and college credit. Students entering college today are far different than students who entered a college campus 25 or even 15 years ago. We are seeing a larger portion of parents who are intensely involved in the lives of their students. These parents pick schedules, meet with advisors, and make demands on high-ranking administrators. In extreme cases, these parents attend courses and challenge instructor grading. We are seeing students who have little or no ability to communicate effectively or to advocate for their own self-interest.

Age, gender, ethnicity, level of degree, and time on the job can all play a major role in conflict development on our campuses. The data shows that faculty spans a wide range of ages and experience level.

Faculty Status	Under 35	35-54	55 or older
Full-time ⁴	7%	56%	37%
Part-time ⁵	13%	53%	35%

Gender and Race Demographics of Faculty, 2009			
	Male ⁶	Female	White ⁷
Full-time	33%	67%	81%
Part-time	33%	67%	84%

⁴ Philip C. Lootens, *Intrinsic, Extrinsic, Demographic, and Institutional Factors Related to Job Satisfaction of Full- and Part-Time Public Community College Faculty* (June 2009) (unpublished Ph.D. dissertation, Ohio University), available at https://etd.ohiolink.edu/ap/10?0::NO:10:P10_ACCESSION_NUM:ohiou1242248762

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Level of Faculty Degrees				
	Doctoral/Professional	Master's	Bachelor's	Associate or less
Full-time ⁸	19%	62%	12%	6%
Part-time ⁹	13%	51%	22%	14%

Time in Faculty Positions	5 years or less	6 to 10 years	> 10 years
Full-time ¹⁰	34%	18%	49%
Part-time ¹¹	59%	18%	23%

More surprisingly, only 3% of all faculty who were 34 years of age or younger, were tenured or tenure-line positions at four-year institutions and full-time positions at community colleges.¹² This further illustrates the generational gap that is developing and maybe part of the root cause of conflict. Women who were 45-years old or younger and who had a permanent position made up only 5% of faculty at four-year institutions and 6% of faculty at community colleges.¹³ Faculty members who were from various ethnic backgrounds, 45-years of age or younger, and had permanent positions made up 4% of faculty at four-year institutions and 6% of community-college faculty.¹⁴

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Faculty Demographics and the Future Leadership of Higher Education, 12 The Presidency 12 (2009).*

¹³ *Id.*

¹⁴ *Id.*

As the collected data demonstrates, our colleges and universities consist of individuals from a minimum of three generations. These include

- Baby Boomers, who witnessed the creation of Tupperware, the credit card, the transistor, the defibrillator, and videotape, and the Slurpee.
- Generation X, the group immediately following the post-World War II Baby Boomers. This group witnessed the development of the first child safety seat, the personal computer and microprocessor, email, the Post-it Note, and microwave popcorn.
- Millennials, or Generation Y, grew up with the Internet, the nicotine patch, the Segway, and ubiquitous cell phones.

With the development of dual enrollment credit, our colleges and universities are being introduced to an even younger crowd, dubbed Generation Z. This group ranges in age between 14 and 17. They are enrolling in college course as early as the ninth grade, and bring several issues with them to the college and university.

In short, the data suggest that there are growing gender, ethnic, and age gaps that will continue to make our colleges and universities ripe for conflict.

5. Mediation and Retention

Mediation is a valuable tool for college and university officials. Mediation can create a safe and confidential place for individuals who are in conflict to voice their concerns and seek a collaborative resolution. When conflict goes unresolved, it can create barriers to student success. This may result in low academic performance, low persistence in the classroom, and ultimately, students leaving campus and their educational opportunities behind. Mediation can be used to bridge that gap, creating a space where disputing parties can be engaged.

Mediation has many uses on our campuses:

- A mediation caucus can be used to coach individual students and create self-advocacy skills;
- Opposing parties can be brought together to discuss their issues in a safe, neutral environment where thoughtful resolutions can be created;
- Small groups (e.g., student government, campus clubs, fraternities, and sororities) can be brought together for planning and collaboration;
- Students with disabilities can come forward with ADA-accommodation disputes; and
- Roommates can collaboratively resolve their interpersonal issues.

6. Mediation to Facilitate Communication on College and University Campuses

Mediation on the college and university campus can be used to bridge communications gaps that can exist between various groups. Mediation offers a number of opportunities for more in-depth communications for students, faculty, and staff. It can be used to clarify meaning, as well as policy and procedures. Mediation can be used to facilitate organizational change, and to allow individuals to feel heard and valued. In the end, mediation can build strong and effective campus communities that value communication, collaboration, and shared understand.

7. Quantifying the Impact of the Use of Mediation

We've quantified the typical time to mediate with students in colleges and universities, based upon our experience:

Data Entry = 30min

Talking to the student = 5 hours

- Initial contact
- Follow-up
- Phone, email, face-to-face
- Status checks
- Various departments

Contacting departments to gather information = 5 hours

- By phone
- In person
- Emailing

Sending emails/letters to student = 1.5 hours

- 6 emails on the student's behalf
- 3 letters on the student's behalf

Student follow-up = 1.5 hours

- Follow-up phone calls, emails, or face-to-face visits

Staffing the student's case = 1.5 hours

Of course, one of the difficulties in quantifying mediations at colleges and universities includes the costs that were not incurred because the mediation was successful. But this is true in non-academic settings, as well. We know of cases where mediation was successful, and kept resources like the time, energy and money of university leaders—an Academic Dean, Director of Human Resources, Vice President, President, or Legal Counsel—from being used.

8. Conclusion

Mediation in the college and university setting is similar to mediation in other settings. It provides processes and outcomes that aren't available in other formal settings; it can consume fewer resources; and it is misunderstood.

But mediation in this setting can also provide a meaningful educational opportunity for the future workers, managers, and leaders. They can learn that there is another way to resolve disputes that doesn't involve immediately heading for a formal process, where self-determination is minimized and expenses can be greater. Mediation increases the likelihood that the relationship can be salvaged, and increases long term satisfaction. This all culminates with the parties feeling heard and that they shared in the decision making process, which facilitates long lasting agreements.

