

Mediation Policy

I. Policy Statement

Michigan State University recognizes the benefits of a method to resolving disputes in place of or prior to filing a grievance under the Faculty Grievance Policy (FGP). As such, the University will offer an alternative method of dispute resolution known as mediation. The purpose is to have a voluntary process aimed at solving specific issues independent of the FGP. Mediation shall not preclude parties from filing a grievance under the FGP.

II. Definitions

- a. **Mediation:** The procedure in which disputing parties enlist the assistance of a neutral third party to help them achieve a voluntary bilateral agreement that finally and definitively resolves all or portions of their dispute, without resorting to adversarial procedures such as grievance hearings or litigation. Conciliation and informal negotiation shall remain part of the normal grievance process. An agreement to mediate shall not constitute an obligation to reach a binding conclusion.
- b. **Mediation Agreement:** A written document that sets out the terms agreed to in mediation. When parties enter into a mediation agreement it becomes binding and constitutes “an established practice” for the parties directly involved. It is not precedent setting for anyone except the parties directly involved.
- c. **Mediator:** A neutral party from outside the University, supervised by the Faculty Grievance Official (FGO), whose responsibilities are to assist the parties in defining, clarifying, and communicating about the issues that appear to divide the parties and to aid the parties in generating, considering, and communicating with each other about possible bases for resolving the dispute. The Mediator may suggest ways of resolving the dispute but may not impose their own judgment on the issues for that of the parties. The Mediator does not act as an attorney or advocate for any party and any recommendations made by the Mediator do not constitute legal advice.

III. Eligibility

Participation in mediation is voluntary and shall be available to administrators, faculty and academic staff members subject to the FGP. Parties may choose mediation as an option or may be referred to mediation by university personnel. Any combination of parties covered by the FGP may enter into mediation and are not bound by the jurisdictional requirements of the FGP (e.g. disputes among faculty or within units may be mediated even if not subject to grievance).

IV. Scope

- a. Mediation can be used to resolve any workplace dispute **except** reappointment, promotion, tenure, discrimination, sexual harassment, serious misconduct or criminal activity, discharge, or any other issues covered by state and federal law.

- b. Parties to mediation cannot enter into an agreement that would exceed the scope of their own authority without approval from the required authorities.

V. Mediation Process

- a. Persons interested in mediation should first complete the Michigan State University Mediation Request Form identifying the parties involved, the nature of the circumstances surrounding the dispute and their perception of the issues.
- b. Eligible parties seeking mediation will then discuss their complaint in a conference with the FGO so that the issues involved can be better understood. The FGO will also discuss the matter with the secondary individual(s) identified in the Mediation Request Form, as well as pertinent administrators to gain a more complete understanding of the issues and to determine the willingness of parties to participate in the mediation process.
- c. After these discussions and a full review of the situation the FGO will determine if the parties are eligible for mediation based on Section IV.a of this policy. This review will be completed in writing and distributed to the appropriate parties within 14 days from the completion of the discussions. If the FGO finds the parties are not eligible for mediation then the FGO will advise the parties on other steps to resolve the issue(s).
- d. The review will be presented to the appropriate administrator by the FGO for discussion. The administrator then must approve any decision to move forward and agree to the scope and budget for completing the mediation process. It is recognized that payment for approved mediation will come from the college, department, school or unit authorizing the process.
- e. The Mediator will be selected by the FGO. Parties shall be presented with the proposed Mediator's name and credentials to determine if any conflicts of interest exist and provide an opportunity for parties to raise objections. The FGO will work with any objecting parties to find a mediator agreeable to all participants.
- f. Upon initiation of the formal mediation process all involved parties shall sign a statement agreeing to adhere to terms of this Mediation Policy.
- g. Mediation Session

The following shall apply to the mediation sessions:

- i. The Mediator shall act as a facilitator or resource for resolution and shall use their best efforts to assist the parties in reaching a mutually acceptable settlement. The Mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate the voluntary resolution of the dispute by the parties. The Mediator is authorized to conduct joint and separate meetings and/or communications with the parties and may also offer suggestions to assist the parties in achieving a settlement.

- ii. It is expected that all parties will participate in the proceedings to the fullest extent, expeditiously, and in good faith with the intention to settle, if at all possible.
- iii. The parties involved in mediation are responsible for negotiating a settlement acceptable to them. The Mediator, as a facilitator of settlement, will use every effort to facilitate the negotiations of the parties but will not impose a settlement upon the parties.
- iv. Only persons directly involved in the mediation will attend the proceedings. There will be no non-party witnesses heard at the mediation, and representatives, advisors and/or attorneys will not be permitted to attend.
- v. Disclosure
 - 1. The mediation process can be successful only if all parties make full and complete disclosure of all information pertinent to the resolution of the issues.
 - 2. If either party fails to make a full and complete disclosure of all relevant information and documents, then any agreement that may be reached based on the incomplete set of materials may be set aside by the FGO and/or the pertinent department or unit administrator.
- vi. Termination of Mediation shall occur under any of the following conditions:
 - 1. A settlement is reached between the parties resulting in a signed agreement and supplemental documents from the Faculty Grievance Office recognizing the settlement.
 - 2. At the discretion of the Mediator or parties directly involved in the form of a written statement of termination. It will not be necessary for the Mediator or participant to provide a reason for the termination of mediation and such a decision will not be held against the party or parties in any way.

In the case of the termination of mediation by the Mediator or parties involved, no record of a failed mediation process will be produced.
 - 3. At the discretion of the Faculty Grievance Official or authorizing administrator, by providing a written statement to the parties.
- h. The parties may jointly request a new mediation process with a different mediator if the parties believe that another attempt with a different mediator may result in successful mediation. If a second mediation is unsuccessful, no further mediation attempts shall be permitted.
- i. In the event that the Mediator terminates mediation and the parties are interested in continuing the process, the FGO will conduct another assessment to determine the viability of another attempt at mediation.

- j. A mediation agreement that has been enacted shall be binding on the parties to the agreement and a breach of such an agreement may result in administrative action (e.g. discipline, etc.).

VI. Confidentiality

All records and information related to mediation proceedings under the Mediation Policy (both formal and informal) shall be kept confidential to the degree permitted by law. The FGO, Mediator, parties to the mediation, and other relevant administrators shall respect the confidentiality of information and records and the privacy of all parties whose interests are affected by mediation. The final mediation agreement may be disclosed to the extent necessary to enforce the settlement reached.

VII. Other Proceedings

The Mediator shall not be called as a witness in any subsequent proceedings. Additionally, the actions or discussions that occurred during mediation shall not be referred to or used against a party in subsequent proceedings. Parties to mediation shall waive the right to subpoena mediation records from the Mediator.