

Facilitating Fair and Effective Informal Resolution Processes Under Title IX

Live Component: Facilitating Resolutions

Prepared by Kristine C. Goodwin & Peter Lake

How Mediation Works



- **Planning and the Preliminary Meetings**
 - Before mediation begins, the mediator helps the parties decide when and where to meet, for how long, and who will be there. The mediator also conducts a preliminary meeting with each party separately.
- **Mediator's Introduction**
 - With the parties gathered together in the same room, the mediator introduces the participants, outlines the mediation process, lays out the ground rules, answers questions, and emphasizes the goal for the mediation—to reach an agreement.
- **Opening Remarks by Parties**
 - Following the mediator's introduction, each side is given an opportunity to present its view of the dispute without interruption. In addition, they may also take time to vent their feelings.

<https://www.pon.harvard.edu/daily/mediation/how-does-mediation-work/>

How Mediation Works Cont'd



- **Joint Discussion**
 - After each side presents its opening remarks, the mediator and the parties are free to ask questions with the goal of arriving at a better understanding of each party's needs and concerns.
- **Caucuses**
 - If emotions run high during a joint session, the mediator might split the sides into separate rooms for private meetings.
- **Facilitated Negotiation**
 - At this point, it's time to begin formulating ideas and proposals that meet each party's core interests.
- **Closing and Follow Up**
 - If the parties reach consensus, the mediator will outline the terms and may write up a draft agreement.

<https://www.pon.harvard.edu/daily/mediation/how-does-mediation-work/>

Mediator's Introduction Checklist

- _____ Introduced self/parties
- _____ Explained the mediator's role (e.g. neutrality and facilitation)
- _____ Explained the process and procedure—what will happen (opening statements, caucuses, notes, outcomes)
- _____ Explained what mediation is (e.g. voluntary, confidential with limited exceptions, party-centered)
- _____ Set parties at ease, established trust and neutrality, answered parties' questions, and confirmed agreement to continue—with all parties

Comments/Notes:

Mediator's Self-Evaluation and Feedback Inquiry

- _____ Let all parties speak
- _____ Demonstrated equal interest
- _____ Summarized satisfactorily
- _____ Clarified and reframed
- _____ Helped parties move from positions to interests
- _____ Asked open-ended, non-judgmental questions
- _____ Responded to the priorities of the parties
- _____ Maintained neutrality/impartiality
- _____ Helped parties see their own issues
- _____ Helped parties see the other parties' issues
- _____ Reminded parties about confidentiality and confirmed what could and could not be shared with other parties
- _____ Encouraged negotiation among all parties
- _____ Encouraged the parties to generate ideas
- _____ Refrained from giving opinions/advice as much as possible
- _____ Helped the parties draft an agreement
- _____ Checked to make sure all issues were addressed
- _____ Discussed option of meeting again if parties reach impasse
- _____ Reviewed confidentiality of session

Comments/Notes:

Practice Session Instructions

The best way to become an effective mediator/facilitator is to practice.

Although the following scenarios were created for this training, the scenarios are closer to real life situations than you may realize. In fact, we encourage you to use your own experiences to further develop the characters, without deviating too much from the facts.

Time to fully participate in the role plays is important so please commence as soon as possible.

We hope everyone will get a chance to serve as a mediator/co-mediator, as a disputant, and as an advisor at least once during the practice sessions with the following scenarios.

While the disputants and advisors are role playing, they should also be preparing to give the mediators feedback during the critiquing phase. This is about helping each other be better. Consider the following criteria when deciding what to say during the critique. Is what I'm saying truthful, kind, and for the benefit of the listener? If yes, say it! Better to make mistakes and corrections here than in actual mediation sessions.

You will notice that all parties are non-gender specific. You can use your real name if you'd like or use the names given—whatever is easier for you. Please make the scenario as realistic as possible and stay in your role until the mediation is complete or time runs out. It only helps the mediators to deal with REAL personalities, emotions and conditions similar to what they will have to manage in real situations. We know many people don't like role plays, but please do your best for the sake of your fellow participants.

Thank you in advance!

Scenario 1

Complainant: Ice Hockey Player

Complainant Advisor: Ice Hockey Player's Parent (an alum of the institution)

Respondent: Basketball Player

Respondent Advisor: Basketball Player's Older Sibling

Ice Hockey Player and Basketball Player have been dating and in a sexual relationship since sophomore year. They are first semester seniors, and their relationship is serious, but tumultuous. They have several common friends on both teams who often pick sides. Coaches of both teams and the trainers have expressed concerns about the way Ice Hockey Player and Basketball Player treat each other. They are known for having explosive arguments in the training room and most recently an argument became physical resulting in an intervention by a trainer and a formal complaint being filed with the Title IX coordinator by Ice Hockey Player. Ice Hockey Player alleges that Basketball Player is jealous, controlling and vindictive. Furthermore, Ice Hockey Player says that the most recent argument was because Basketball Player suspected that Ice Hockey Player was flirting with another basketball player. Basketball Player says that Ice Hockey Player, every time they get in a fight, flirts with their friends to make Basketball Player jealous and even had sex with another basketball player just to make Basketball Player upset. Basketball Player is trying to forgive Ice Hockey Player but is triggered by Ice Hockey Player's flirting and "mind games."

Comments/Notes:

Scenario 2

Complainant: Professor P

Complainant Advisor: Faculty Union Representative

Respondent: Student S

Respondent Advisor: Professor M from the Political Science Department

Professor P teaches in the English Department and Student S is one of Professor P's students. Student S is a first-year student majoring in English. Professor P reports that Student S has continuously been leaving notes in Professor P's office and even at the podium in the lecture hall where class is held. At first the notes seemed like harmless compliments about Professor P's appearance, but have become increasingly concerning to Professor P. Most recently one of the notes suggested that Student S has been watching Professor P outside of class. Professor P approached Student S one day in the hallway. Professor P discreetly asked Student S to stop leaving notes. Student S agreed to stop, but the following week Professor P received another note from Student S. Professor P became upset and reported Student S' behavior to the Provost who suggested Professor P contact the Title IX Coordinator to make a formal complaint. Student S' notes to Professor P are unwanted and make Professor P feel very uncomfortable. Student S' persistent and pervasive behavior is interfering with Professor P's work performance. Professor P wants Student S removed from the class. Student S wants to remain in the class because the semester is more than halfway over, and the class counts toward Student S' major requirements. In addition, Student S does not understand why Professor P is upset about the notes. Student S is concerned about how this will affect not only Student S' grade in this class, but Student S' reputation with other faculty members in the English department. For these reasons Student S is alleging that Professor P's "overreaction" is causing Student S severe anxiety.

Comments/Notes:

Scenario 3

Complainant: Alpha

Complainant Advisor: Alpha's Attorney

Respondent: Theta

Respondent Advisor: Theta's Attorney

Theta and Alpha both work in the financial aid department. Theta occasionally uses the office computer to look at web sites that Alpha finds offensive. While not pornographic, the web sites contain pictures of barely dressed people in compromising positions. Alpha has expressed concern to Theta and asked that it stop, but Theta does it anyway. Theta says that Alpha is uptight and needs to loosen up, "It's not like I'm looking at porn." On one occasion Theta asked Alpha to look at the computer. Thinking it was work related, Alpha complied only to see pictures of near naked people. Fed up, Alpha filed a formal complaint with the Title IX coordinator and is considering bringing a sexual harassment claim against both Theta and the University. Theta believes Alpha is really upset about the fact that Theta is paid more than Alpha and in retaliation for Theta reporting Alpha for being late to work on several occasions. The Title IX Coordinator, in cooperation with Human Resources, offered Theta and Alpha the opportunity to try mediation after the filing of the formal complaint by Alpha, and Theta and Alpha agreed to informal resolution.

Comments/Notes:

Scenario 4

Complainant: Student A

Complainant Advisor: Student A's Mentor (a staff member from the Office of Diversity, Equity, and Inclusion)

Respondent: Student B

Respondent Advisor: Student B's Mentor (a staff member from the Office of Spiritual Life)

Two weeks into the Spring semester Student A approaches Lake, the Hall Director of Goodwin Hall, to say that Student A is "creeped out" by another resident of Goodwin Hall—Student B. When Lake asked Student A for details, Student A explained that it all started at orientation when Student B kept trying to hold Student A's hand, repeatedly sat "too close" to Student A, and leered at Student A. Student A ignored Student B's behavior hoping it would stop and managed to avoid Student B for most of the Fall semester, but things have escalated. On Saturday night, Student A and Student B were at an off-campus party and while they were dancing in a crowded area Student B "grinded" on Student A for about a minute before Student A could get away. Student B's friends were cheering, and Student A felt violated and humiliated. Since that time Student B has been hanging around on Student A's floor with some of the people who were cheering for Student B at the party.

Student A filed a formal complaint with the Title IX coordinator at Lake's suggestion. Student A wants to maintain their living situation but is now so bothered by Student B's behavior that Student A doesn't even want to step foot in Goodwin Hall. Rather than having to move, Student A wants Student B removed from Goodwin Hall. Student B denies any bad behavior and offers text messages showing friendly, "slightly flirty" conversations between Student A and Student B as proof. Student B wishes to remain in Goodwin Hall.

Comments/Notes:

Mediator Note Sheet (Optional)

Interests—Each party's hopes, wants, needs.

Party A

Party B

Options—Possible solutions

Alternatives—Each party's BATNA (best alternative to a negotiated agreement)

Party A

Party B

Objective Standards—standards of fairness (e.g. precedents, community standards, laws, expert opinions)