

FAYETTEVILLE STATE UNIVERSITY

MEDIATION POLICY FOR FACULTY AND EPA NON-FACULTY EMPLOYEES

- Authority:** Issued by the Fayetteville State University Board of Trustees. Changes or exceptions to administrative policies issued by the Board of Trustees may only be made by the Board of Trustees.
- Category:** Employment – EPA Faculty
Employment – EPA Non-Faculty
- Applies to:** ●Administrators ●Faculty ●Staff
- History:** Approved - December 11, 2003
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- Related Policies:** *The Code of the University of North Carolina
Tenure and Promotion Policies, Regulations and Procedures of
Fayetteville State University
Policy on Employees Exempt from the State Personnel Act*
- Contact for Info:** Office of Legal Affairs (910) 672-1145
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I. PURPOSE

Fayetteville State University recognizes the benefits of a method of resolving disputes other than by filing an employment related grievance. As such, the university will offer to its faculty and non-faculty EPA employees (“EPA employees”) an alternative method of dispute resolution known as mediation. Mediation will be a confidential, effective and timely means of conflict resolution within the institutional environment.

II. DEFINITIONS

- A. **Mediation** is a procedure in which disputing parties enlist the assistance of a neutral party to help them in achieving a voluntary bilateral agreement that finally and definitively resolves all or portions of their dispute, without resorting to adversarial procedures such as grievance hearings, administrative hearings or litigation. Any such mediated agreement that the parties are able to negotiate will be embodied in a written agreement.
- B. **Mediation agreement** is a written document that sets out the terms agreed to in the mediation.

- C. A **mediator** is a university employee who is a neutral party whose responsibilities are to assist the parties in defining, clarifying, communicating about, and ascertaining the substantiality and relevance of 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 his own judgment on the issues for that of the parties. A mediator for a faculty grievance may not be a member of the faculty hearing committee that hears Section 607 grievances.

University employees who serve as mediators have successfully completed formal mediation training substantially equivalent to that required for certification by the North Carolina Administrative Office of the Courts or have been formally trained in mediation specifically designed for use in a university setting.

- D. The **Staff Development Specialist** is the employee relations specialist located in the Office of Human Resources.
- E. **University day** means any day in which the university is officially opened for business.

III. ELIGIBILITY

FSU's Mediation Service is available to all full-time and part-time faculty and non-faculty EPA employees (excluding Senior Academic and Administrative Officers defined in Section 1.A. of Board of Governors' policy §300.1.1).

IV. UTILIZATION OF MEDIATION SERVICES

A. **EPA Employees**

As a prerequisite to accessing the formal grievance process outlined in Appendix A of the university's *Employment Policies for Employees Exempt from the State Personnel Act*, an EPA employee must utilize the mediation process outlined in this policy, except in cases where a decision has been made to discharge, discontinue or terminate the EPA employee's employment. In such cases where a decision has been made to discharge, discontinue or terminate the EPA employee's employment, the EPA employee may access the formal grievance process without first requesting mediation. A requirement to mediate, however, does not equate to a requirement that the parties reach a mediated agreement.

B. **Faculty**

As a prerequisite to accessing the formal grievance process outlined in Section 607 of the *Code* of the University of North Carolina, a faculty member must utilize the mediation process outlined in this policy. A requirement to mediate, however, does not require the parties to reach a mediated agreement

In all other instances, except that mentioned above, when faculty members have a right to access a formal university grievance process, the faculty member may access the formal grievance process without first initiating the mediation process.

The time limits for the filing of a formal grievance will be suspended during mediation regardless of whether mediation is required or voluntary.

Participation in the mediation process, by faculty or EPA employees, suspends the timeline for initiating a grievance until mediation is terminated by declaration of the mediator or one of more of the parties (see below). Following the termination of mediation for any reason other than a settlement, the party or parties will have twenty (20) university days to initiate the formal grievance process.

IV. MEDIATION PROCESS

A. Request for Mediation

To begin the process of mediation, the faculty member or EPA employee must complete and submit the *FSU Mediation Form* within fifteen (15) university days of the date the action to be mediated occurred. Once completed, the form should be submitted to the Staff Development Specialist.

Within ten (10) university days of the initial request, the Staff Development Specialist will contact all parties separately to explain the mediation process, to secure an agreement to mediate, and to schedule the first mediation meeting. Thereafter, the selected Mediator, in consultation with the parties, will fix the date, time, and location of each mediation session. The mediation may also be held at any convenient location agreeable to the parties and the Mediator.

The Staff Development Specialist is responsible for maintaining a list of approved trained mediators and will facilitate the administration and coordination of the mediation process.

B. Mediator Appointment

The parties shall agree upon the Mediator. The Staff Relations Specialist will provide each party with a list which will include the names of the mediators and their classification. If requested from the Staff Relations Specialist, additional information on a mediator will be provided. The Staff Relations Specialist shall ensure that the mediator who is appointed has no personal, financial, or business interest in or relationship with anyone participating in the mediation.

C. Identification of Matters in Dispute

Prior to the first scheduled mediation session, each party must provide the Mediator with a Confidential Statement of his or her position. On or before the

first session, the parties will be expected to produce all information reasonably required for the Mediator to understand the issues presented. The Mediator may require any party to supplement such information.

D. Mediation Session

The following shall apply to the mediation session:

1. The Mediator and His or Her Authority

The Mediator shall act as an advocate for resolution and shall use his or her 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 with the parties and may also offer suggestions to assist the parties in achieving a settlement.

2. Commitment to Participate in Good Faith

It is expected that all parties will participate in the proceedings in the fullest good faith with the intention to settle, if at all possible.

3. Parties Responsible for Negotiating Their Own Settlement

The parties involved in the mediation are responsible for negotiating a settlement acceptable to them. The Mediator, as an advocate for settlement, will use every effort to facilitate the negotiations of the parties but will not impose a settlement upon the parties.

4. Involvement of Witnesses and Attorneys

Only persons directly involved in the mediation will attend the proceedings. There will be no live non-party witnesses heard at the mediation, and representatives, advisors and/or attorneys will not be permitted to attend.

5. Termination of Mediation

The mediation shall be terminated under the following conditions:

- a. **Execution of a Settlement Agreement by the Parties.**
When mediation is successful and the issues have been resolved, a written agreement signed by all parties (not

including the Mediator) shall be executed. Each party shall receive a copy of the agreement, which at a minimum shall address the nature of the dispute and the agreed upon resolution. The parties, by mutual consent, will determine who else will receive copies of the agreement.

Prior to the agreement being signed by the parties, the Mediator should consult with the Staff Development Specialist to ensure that the agreement is not contrary to applicable policies or federal or state laws. If it is determined that an agreement is contrary to university, Board of Trustees' or Board of Governors' policies or applicable federal or state law then the parties must return to mediation to resolve those issues that can be resolved.

Any mediation agreement that obligates the university must be signed by the Chancellor (or his or her designee).

- b. **Declaration of the Mediator.** If the Mediator determines that the parties are not amenable to a settlement, then the Mediator may end the mediation, and the formal grievance process may begin.
- c. **Written Declaration of a Party or Parties.** Mediation will terminate if a party or parties agree that the mediation proceedings should be terminated. Such a decision will not be held against the party or parties in any way, and no blame will attach to either party if the failure to mediate does not produce a settlement. The decision to terminate the mediation must be in writing and signed by the party or parties.

In the case of the termination of mediation by the Mediator or one or more of the parties, no record of a failed mediation process will be produced by the Mediator other than an unelaborated written statement of the appropriate authority necessary to invoke the next step in the grievance process, i.e., that mediation was attempted but settlement was not reached.

E. New Mediation Process

The parties may jointly request a new mediation process with a different Mediator if the parties believe that another attempt at mediation with a different Mediator may result in a successful mediation. If a second

mediation is unsuccessful, no further mediation attempts shall be permitted.

V. CONFIDENTIALITY

Confidential information disclosed to a Mediator by the parties shall not be divulged by the Mediator. All records, reports or other documents received by a Mediator while serving in that capacity shall be confidential. Additionally, the parties shall maintain the confidentiality of the mediation.

VI. SUBSEQUENT PROCEEDINGS

The Mediator shall not be called as a witness in any subsequent proceeding. Additionally, the actions or discussions that occurred during the mediation shall not be referred to or used against a party in a subsequent proceeding.