



# Mediating a Formal Complaint

## Mediation is...

- Confidential
- Informal
- Flexible
- Safe
- Respectful
- Candid
- Helpful

## Mediation is NOT...

- An investigation
- Disciplinary action
- A means of appealing a disciplinary action
- A way of upholding a disciplinary action
- A determination of guilt or blame
- A judgement of truth or falsehood
- A forum for punishing people

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## About Mediation

Mediation is a voluntary, confidential process requested by the Complainant and Respondent in resolving an issue. The process uses a mediator – an experienced, specially trained professional who does not have a stake or an opinion in how the problem is resolved – to help the parties explore and determine solutions that are best for their situation.

Individuals cannot be required to participate, and at any time, may leave the process.

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## How mediation works

The mediator meets privately with the individuals involved and helps them resolve their issues in ways in which both parties can agree.

The mediator does not make judgements, propose solutions, determine facts, or decide the outcome; instead, they facilitate a civil discussion between participants. In this role, they provide a structured setting in which the participants can identify resolution options and find solutions best suited to their situation. No agreement is made unless and until it is acceptable to the parties.

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## The stages of the Mediation Process

Prior to the convening the mediation, the mediator will consult with each party to discuss the best format for the mediation. The options are for the parties to meet jointly with the mediator or whether the mediator might shuttle between the parties.

At the beginning of the mediation, the mediator explains to the parties that the process is voluntary, confidential and that the participants must agree to be respectful of each other. The mediator also reviews their role as an impartial person who can guide the participants through the mediation process.

The mediator does not make decisions for the parties. If the participants agree to proceed with mediation, the parties sign an Agreement to Mediate that confirms these understandings. Next, each of the parties explains their perspective of the situation. The mediator will assist the parties in clarifying the issues that have emerged during these narratives. This step is followed by the participants establishing goals that they can mutually work towards that will address the issues. The mediator will then invite participants to identify as many options as possible that may contribute to resolving the conflict. After that, participants will evaluate each of the options that they have generated to determine which options may be most likely to help resolve the conflict.

During the process, the mediator might meet with the parties individually, at either party's request or at the mediator's choice. The parties remain in control of what is happening, making all of the decisions.

Finally, if the participants reach an agreement, the mediator will assist in creating a Mediation Resolution Agreement document reflecting the specifics of their agreement.

### Who may attend Mediation

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The parties may elect to have an advisor attend to support them. The advisor is not an active participant in the mediation. A party may consult privately with their advisor during the process. A legal representative may serve as an advisor, if a party requested an advisor to attend.

Because mediation is a confidential, informal process, a mediation session is attended by the two parties and their advisors. Since there is no need for evidence or proof, witnesses are not included in mediation.

### CONFIDENTIALITY

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Since mediation is confidential, information shared during the process is not to be discussed outside of mediation. The mediator and the participants must agree that they will respect that confidentiality before the mediation sessions begins. There shall be no stenographic transcript or any audio, video, or digital recording of the mediation session. Neither the parties, their advisor will preserve any notes about the discussions which are part of the mediation process.

Nothing that comes up during mediation may be used elsewhere including disciplinary or grievance actions.

The mediator does not create any file or record related to the mediation. Also, the mediator does not discuss or share information with the Title IX staff, except to indicate that the mediations occurred and whether the parties reached an agreement or whether the mediation came to an impasse. There are a few exceptions to this confidentiality. For example, the mediator must breach confidentiality if they become aware of a likely risk of serious physical harm to one of the participants or to someone else.

## Mediation Outcomes

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If the parties are able to resolve their differences, the mediator will work with the parties to complete the Mediation Resolution Agreement document containing the outcomes determined by the parties. There will be no resolution unless both parties are comfortable with each term of the Mediation Resolution Agreement. The mediator will not pressure either party to agree.

If the parties reach an agreement, the Title IX Coordinator will review the Mediation Resolution Agreement to ensure it is consistent with University policy. If the draft agreement is not consistent with University policy, the mediator will be notified and will work with the parties to try to conform the agreement. The Title IX Coordinator is not an active participant in the mediation and will not provide input into the outcomes of the mediation.

Even if the parties cannot reach an agreement, mediation gives each person a chance to be heard and to gain a better understanding of the issues and the other person's point of view.

## Who Mediates?

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The University has retained the services of an independent mediator to facilitate the process with the Complainant and Respondent. If either the Complainant or Respondent has concerns that the mediator cannot facilitate a fair and unbiased process, they may report their concerns to the Title IX Coordinator who will assess the circumstances and determine whether another mediator should be assigned to the case.

## Mediation and The Grievance Process

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A request to mediate can be made at any time after filing a formal complaint, even during the course of the grievance process. If a party wishes to end the grievance process and pursue mediation, they should notify the Title IX Coordinator.

The mediation process ends when a Mediation Resolution Agreement has been reached or when a party, or the mediator decides to end the process. If a resolution is not reached, the Complainant has the option of moving forward with the grievance process or not proceeding with any process.

Once the Mediation Resolution Agreement is agreed to and signed by all parties, the parties are bound by the terms of the agreement and the matter cannot be addressed through the grievance process. The Title IX Coordinator will maintain the Mediation Resolution Agreement to ensure both parties are adhering to the agreement. The agreement document does not become part of any academic or employment record or file. If a Complainant or Respondent fails to adhere to the Mediation Resolution Agreement, they will be referred to the appropriate Dean's office for a possible violation of the Standards of Student Conduct and/or the Policy Prohibiting Sexual Misconduct. For employees, the matter will be referred to the Human Resource office for possible disciplinary action. Mediation agreements are final and are not subject to appeal.