

DISPUTE RESOLUTION MEDIATION AND HOW IT WORKS

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Mediation

What It Is and How It Works

WHAT IS MEDIATION?

- Mediation is a confidential process whereby a neutral third party (the mediator) assists disputants in their negotiations and collaborates with them to arrive at agreements.
- The mediator has no decision-making authority, but provides substantive guidance and encourages the parties to broaden their options and expand the range of possible resolutions.

WHAT IS MEDIATION?

- Mediators may meet together with all of the parties, or communicate separately with the participants in private meetings called caucuses.

WHY MEDIATION?

- Mediation is appropriate when:
 - Relationships are strained but must continue.
 - Miscommunication is apparent and a skilled neutral would facilitate communication.
 - The presence of a third party would change dynamics.
 - The parties may be willing to settle or reevaluate their positions.

WHY MEDIATION?

- Confidentiality is important.
- Parties are interested in retaining control of the outcome.
- Time factors are a consideration.

WIN-WIN NEGOTIATIONS

- Mediation is based on the principles of win-win negotiations:
 - Focus on issues, not personalities.
 - Focus on interests, not positions.
 - Create options to satisfy both mutual and separate interests.
 - Evaluate options according to standards, not power.

ASSUMPTIONS

- Effective communication enhances relationships.
- Both parties can win.
- Parties should help each other win.
- Open discussion expands mutual interests and options.

ASSUMPTIONS

- Standards can replace power in the negotiations outcome.
- Anger is diffused when people understand each other's motivations.

Steps

- Develop opening statements.
- Identify issues.
- Identify interests.
- Develop options.

DEFINITIONS

- Issue: Topic or subject of negotiations
- Position: What parties say they want
- Interest: One party's concern about an issue; a number of different positions could satisfy an interest

DEFINITIONS

- Options: Solutions that can satisfy an interest
- Standards: Characteristics or factors by which to compare and judge options

THE MEDIATION PROCESS

- Convening (Setting the Stage):
 - Determine who should be at the table
 - Assure appropriate delegation of authority for parties at the table
 - Introduce parties to the process of mediation
 - Set ground rules and obtain agreement

THE MEDIATION PROCESS

- Understanding the Parties and Issues:
 - Joint sessions are used to discuss and listen to each others' concerns, issues, and emotions.
 - Caucuses (separate sessions) are used to let parties further explore their concerns, options, views of "reality", etc. outside the presence of the other party.

THE MEDIATION PROCESS

- Finding Options:
 - Establish criteria for acceptable solutions
 - Generate options
 - Enlarge the pie

THE MEDIATION PROCESS

- Closure:
 - Identify areas of agreement
 - Agree on principles and then on details, if possible
 - Prepare and sign a written agreement, if reached
 - Implement decisions

MEDIATORS' ROLE

- A mediator does not make decisions for the parties.
- Mediators help to design and facilitate a process that assists parties to reach a resolution acceptable to all.

MEDIATORS' ROLE

- Mediators:
 - Explain the process being used.
 - Foster participation by all parties.
 - Help parties stay on task.
 - Offer to assist parties with technical and procedural expertise.
 - Help parties maintain control of the process and its outcome.
 - Assist parties in producing written agreements.

EXPECTATIONS OF PARTIES

- Participate in good faith (share thoughts, concerns, and relevant information with the group).
- Evaluate ideas, not people.
- Comply with ground rules established by the group.
- Maintain confidentiality of communications.

EXPECTATIONS OF PARTIES

- Complete action steps or assignments in a timely manner.

GROUND RULES

- Ground rules establish how the parties will work together; what the norms of the group will be.
- Parties establish ground rules, with help from the mediators.

GROUND RULES

- Examples:
 - Take responsibility for your own participation.
 - Listen respectfully; don't interrupt.
 - Accept that people see things differently.
 - Stay focused.
 - Observe time limits.
 - Offer solutions to the problems you identify.
 - Evaluate ideas, not people.
 - Use consensus to reach decisions.

CONFIDENTIALITY

- Confidences of parties participating in ADR processes at the Department must be protected. Therefore, Public Service Law Section 15 obligates Department employees to protect confidential information obtained in the performance of conducting Department business.

CONFIDENTIALITY

- Confidentiality also is required by 16 NYCRR Section 3.9, related to settlement discussions and other dispute resolution processes.

SO WHAT IS CONSENSUS?

- Consensus is a decision making process that stresses the cooperative development of a decision with parties working together rather than competing against each other. It means finding a solution that is as advantageous as possible to everyone involved under the circumstances.
- Consensus decision making is premised upon a respect for diversity.

Consensus is reached when:

- The parties agree upon a resolution.
- Each party can honestly say:
 - I believe you understand my point of view.
 - I believe that I understand your point of view.
 - Whether or not I prefer this decision, I am willing to support it.
 - Because it was arrived at openly and fairly.
 - And it is the best solution for us at this time.

