

Policy 602.22

1 Introduction

1.1 Appalachian State University supports employees resolving many workplace differences through relatively informal University procedures. Board of Governors policy 101.3.2 endorses the establishment of a mediation program to serve as an alternative dispute resolution process. This policy addresses the procedures to be followed by employees wishing to pursue the mediation of an employment related dispute.

2 Scope

3 Definitions

4 Policy and Procedure Statements

4.1 Eligibility

4.1.1 Any faculty member or EHRA administrative employee may request mediation services by contacting the director of the Equity Office or named designee, or by submitting a Mediation Request Form to the Equity Office. Mediation Request Forms may be obtained from the Equity Office, the Faculty Senate chair, or the chair of the Faculty Grievance Committee. Requests for mediation must be filed within the time period in which the employee would be eligible to file a grievance under applicable University policies. Faculty should direct their requests to the Faculty Senate chair or to the director of the Equity Office, and EHRA administrative personnel should direct their requests to the director of the Equity Office.

4.2 Issues to be Mediated

1. The mediation service provided under this policy is intended to be an informal dispute resolution process alternative to existing University grievance procedures. Mediation is a voluntary process. No party is obligated to attempt or participate in mediation. Participation in mediation does not preclude the possibility of future grievance proceedings. If mediation is successful, however, neither party may pursue a pending grievance nor, at a later date, file a grievance on the matters addressed in the mediation. If the mediation agreement is breached, a new grievance may be filed if the claimed breach is otherwise within the jurisdiction of the applicable grievance procedure.
2. Prior to the initiation of any grievance proceeding involving EHRA employees, the parties to the potential grievance must be offered the opportunity to have the pertinent issues mediated by a certified mediator. Before the formal commencement of a hearing, the Faculty Grievance Hearing Committee should ascertain that all parties to the grievance have been apprised of the availability of mediation and that it has either failed or been refused by one or both. This determination should be made in such a manner that neither party is shown to bear particular responsibility for the failure or refusal of mediation. In order to protect the integrity and encourage the openness of the mediation process, no mediator who has attempted to mediate the dispute in question will be permitted to appear, provide testimony, or otherwise provide facts or opinions in any formal hearing that may follow on the matter.

4.3 Process

1. The director of the Equity Office is responsible for maintaining a list of approved, trained mediators and will facilitate the administration and coordination of the mediation process. Either or both parties to a dispute may request of the director of the Equity Office that a mediation process be initiated. If both parties consent to engage in the process, the Director will attempt to identify a mutually acceptable certified mediator from among personnel of Appalachian State University, another UNC institution, another North Carolina state agency, or the private sector. The process will begin as soon as is convenient for all concerned parties.
2. Appalachian State University will bear necessary and reasonable costs incident to the mediation process. If no mutually acceptable mediator can be identified within thirty (30) calendar days, mediation may be considered as having failed.
3. Within ten (10) business days of the initial request, the mediator(s) will contact all parties separately to explain the mediation process, to secure an agreement to mediate, and to schedule the first mediation meeting, if the parties agree to mediation. All parties must jointly agree to meeting dates, extensions, and deadline changes.
4. During the mediation process each party will have an opportunity to describe the situation from his or her viewpoint. Issues of importance to each party will be identified and the potential resolution of these issues will be discussed by both parties.
5. Successful mediation resolves the dispute submitted for mediation. All specific terms of the resolution will be presented, in written form and with the signatures of both parties and the mediator, to the director of the Equity Office, who will transmit this information to the University officer(s) to whom each of the parties reports, if applicable. The terms of mediated resolutions must be consistent with the policies of the University and are subject to administrative approval. Any mediation agreement that obligates the University must be signed by a university official with the authority to bind the University concerning the particular agreement. Each signatory to the agreement shall receive a copy. The agreement, at a minimum, shall address the nature of the dispute and the agreed upon resolution. The signatories, by mutual consent, will determine who else will receive copies of the agreement.
6. At any time during the process, any party may withdraw and the mediation effort will end. If at any time during the mediation process it becomes evident to the mediator that the parties cannot reach an agreement, the mediator(s) will discontinue the 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. When a mediation process is discontinued the mediator shall notify in writing the director of the Equity Office, who will inform only those persons who have a legitimate need to know of the failed mediation. The only record of the failed mediation shall be a simple unelaborated written statement that the mediation was attempted but settlement of the dispute was not reached. A decision not to pursue mediation will not be held against any party, and no fault will attach to any party if mediation does not produce a settlement of the dispute.
7. Since mediation is a non-adversarial process, parties are not permitted to bring counsel to mediation meetings. Of course, parties remain free to seek advice of counsel.

4.4 Confidentiality

1. Confidentiality will be discussed at the beginning of each mediation. An agreement will be reached by all parties concerning how the parties will maintain the confidentiality of the process. Unless otherwise agreed by the parties in writing, documents generated during the mediation process will be retained by the parties who generated or received the documents. For the anonymous reporting of the number of mediations that

occur yearly, the mediation request form and a report of the outcome of the mediation will be filed in the Equity Office.

2. Irrespective of the outcome of the mediation, information concerning it will be subject to all statutes pertaining to the confidentiality of personnel actions and records and, if applicable, students' education records. Documents generated during the mediation process will be confidential under the law to the same extent as are grievance documents. Further, the mediation process may not be referred to or used against a party in any subsequent proceeding between the parties, and the mediator(s) may not be called as a witness.

4.5 Interaction with Other Policies

1. Requesting or pursuing mediation of a dispute by an EHRA employee may suspend the time deadlines for filing or continuing a grievance as follows:
 1. If a formal grievance petition has not been filed but mediation is requested within the requisite time period for filing the grievance petition, the time period for filing the grievance petition is suspended for the duration of the mediation process. If the mediation does not result in resolution of the dispute and the employee wishes to pursue a formal grievance, the grievance petition must be filed within ten working days of termination of the mediation process.
 2. If the parties agree to mediation after a grievance petition has been filed, the grievance procedure will be suspended for the duration of the mediation process.

4.6 Mediator Training

1. The appropriate functions of a mediator are to assist the parties in defining, clarifying, communicating about, and ascertaining the substantiality and relevance of the issues that appear to divide them and to aid the parties in generating, considering, and communicating with each other about possible bases for resolving the dispute.
2. All mediators are required to complete formal mediation training substantially equivalent to that required for certification by the Administrative Office of the Courts, or have been formally trained in mediation specifically designed for a university setting. Mediators may not be members of the Faculty Grievance Committee that hears grievances pursuant to section 607 of The Code of the Board of Governors. All mediators must sign a statement of confidentiality.

4.7 Annual Report of Mediations

4.7.1 The director of the Equity Office will submit an annual report to the chancellor reporting the number of mediations requested as well as the number of successful and unsuccessful mediations during the preceding year. Copies of the report will be provided to the provost and to the chair of the Faculty Senate.

5 Additional References

6 Authority

7 Contact Information

8 Original Effective Date

March 9, 2004

9 Revision Dates