

Alternative Dispute Resolution Procedure for Contractual Disputes and Protests

1. USE OF ALTERNATIVE DISPUTE RESOLUTION

The Virginia Administrative Dispute Resolution Act ("VADRA" or "the Act") (Va. Code §§ 2.2-4115 through -4119) recognizes that a fundamental function of government is collaborative problem solving, including the fair and efficient management of conflict and resolution of disputes. Litigation and other adversarial means of dispute resolution, while necessary at times, are costly in terms of dollars, human resources, and good will. The use of alternative, non-adversarial processes to address stakeholders' concerns can avoid these costs in many instances.

The Department of Employment Dispute Resolution provides both a grievance and a workplace mediation procedure for employment-related disputes involving classified staff. Also, faculty have a grievance procedure that should be utilized for employment-related disputes. Moreover, the students have a judiciary policies and procedures in the Student Handbook for reporting and resolving complaints. The Alternative Dispute Resolution process should not be utilized by stakeholders in lieu of these grievance, workplace mediation or judiciary policies and procedures.

New River Community College (NRCC) is committed to the use of Alternative Dispute Resolution for the informal resolution of protests of contract awards, contractual disputes and other disputes for which Alternative Dispute Resolution may be appropriate. Management of NRCC reserves the right to determine if a dispute is not appropriate for Alternative Dispute Resolution.

NRCC designates the Associate Vice President for Finance and Technology as the Dispute Resolution Coordinator (DRC). The DRC is authorized to attend training provided by the VADRA Council, and to locate and utilize needed resources, including mediators and facilitators, to invoke the Alternative Dispute Resolution process.

2. WHEN AND HOW USED

Alternative Dispute Resolution may be used in procurement disputes such as protests of contract awards, contractual disputes and other disputes and can be initiated by any stakeholder to the dispute. Once a dispute has been submitted to the DCR, the DCR may either hire or function as mediator/facilitator. The mediator/facilitator will conduct a screening interview with each stakeholder to the dispute to determine if the dispute is appropriate for mediation or facilitation.

After the screening interview, each stakeholder to the dispute will sign an Agreement for Mediation/Facilitation which outlines the rights and responsibilities of each stakeholder and the role of the mediator/facilitator. There may be several interviews or screenings with the mediator/facilitator and each stakeholder before the actual mediation or facilitation takes place. The stakeholders and the mediator will agree upon a mutually convenient time to meet. Each stakeholder is responsible for making sure that the appropriate, decision-making stakeholders are available to participate in the mediation/facilitation discussion.

3. **ROLE OF THE MEDIATOR**

Alternative Dispute Resolution, which includes mediation and facilitation, is a cooperative settlement process. The stakeholders work toward resolving their own disputes in a private setting with the help of a neutral mediator or facilitator. The mediator or facilitator guides the stakeholders in communicating effectively, defining issues, gathering and analyzing relevant information, generating alternatives, exploring consequences, and reaching agreements that are acceptable to all stakeholders. The mediator may record the stakeholders' agreement in writing, in a Memorandum of Agreement, acting as a scribe. A facilitator will usually not create a record. Using a facilitative style of mediation, the mediator will be neither directive nor coercive and will not recommend particular solutions or make decisions for the stakeholders. The stakeholders are responsible for the terms of their own agreement.

4. **FEES**

Any fees for Mediation services shall be discussed prior to any costs being incurred and shall be written, agreed upon, and signed by all stakeholders in a separate document. NRCC is committed to attempting to provide Alternative Dispute Resolution at no cost using volunteer mediators and facilitators. However, there may be instances where a volunteer mediator or facilitator will not be available and a fee may be charged.

5. **TERMINIATION**

Facilitation and mediation are voluntary processes. Each stakeholder has the right to terminate facilitation or mediation at any time for any reason. The mediator/facilitator has the right to terminate mediation/facilitation if he/she determines that it is an inappropriate process for the stakeholders; that any stakeholder is not able to participate effectively in the process; that any stakeholder is not willing to participate in the process in good faith; and for any other reason the mediator determines in his/her sole discretion.

6. **CONFIDENTIALITY**

All memoranda, work products and other materials contained in the case files of the mediator/facilitator are confidential. Any communication made in or in connection with the mediation, which relates to the dispute, whether made to a stakeholder or the mediator, or to any other person if made at the mediation session, is confidential. A signed mediated Memorandum of Agreement shall not be confidential unless the stakeholders agree otherwise in writing. "Confidential" materials and communications are not subject to disclosure in any judicial or administrative proceeding except:

- a. Where all stakeholders agree in writing to waive the confidentiality;
- b. In an action between the mediator and a stakeholder for alleged damages arising out of the mediation; or
- c. Statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation;
- d. Should any complaint against the mediator arise as a result of this mediation, confidentiality is waived with respect to that information necessary to present or defend against such a complaint.

The stakeholders agree that threats to do bodily harm to one's self or another person shall not be confidential.

7. LEGAL INFORMATION AND ADVICE

Any mediated agreement will affect the legal rights and responsibilities of the stakeholders. The mediator may provide legal information but not legal advice. Although the mediator(s) may be a licensed attorney, the stakeholders acknowledge that he/she is acting solely as a mediator and not the attorney for any stakeholder or all stakeholders throughout the mediation process. Each stakeholder is encouraged to have any mediated agreement reviewed by independent legal counsel prior to signing or should waive his or her opportunity to do so. If there is a pending court case, the stakeholders shall consult their independent legal counsel about the procedural effect on the case participating in mediation.

8. DISCLOSURE

Each stakeholder shall provide substantial full disclosure of all relevant information.