MEDIATION
Assistance in Negotiating Disputes

BYU Center for Conflict Resolution
4412 WSC
Brigham Young University
Phone: 801-422-5068
Fax: 801-422-0992
Email: ccr@byu.edu
Web site: http://ccr.byu.edu

BYU STUDENT MEDIATION SERVICES

The BYU Center for Conflict Resolution (CCR) promotes the peaceful resolution of disputes through methods other than litigation. Mediation and Arbitration are the primary methods used. This pamphlet describes how the mediation process works. (See our pamphlet Arbitration: A Private Judicial Process to know how the arbitration process works.)

The Center for Conflict Resolution can attempt to settle any dispute involving a BYU student. We do not take sides in our attempt to settle these problems. Our goal is to remain neutral and impartial throughout the dispute settlement process. We encourage people to first attempt to settle a dispute by talking things out with the other party. (See our pamphlet How to Talk Things Out to know how to talk to the other person yourself.)

If your efforts to talk things out fail, you may request mediation. We may ask you to try to talk to the other party again if we feel more effort is needed. A request for mediation or arbitration may be rejected when the petitioning party has not properly communicated with or made a good faith effort to resolve the conflict on his or her own with the responding party.

If you have done all you can to resolve the dispute, we will attempt to mediate the problem and reach a settlement through negotiation. The assigned mediator will help work out what you and the other party agrees is the best solution.

ADVANTAGES OF MEDIATION

Many disputes result from poor communication. Mediation is an opportunity to communicate better—to be fully heard, to present your story, and to search for mutually satisfactory solutions. In mediation people often communicate more effectively with one another than in arbitration or court.

Another advantage of mediation is that innovative solutions to a problem may be explored. You can create your own solutions rather than have a judge or arbitrator impose a decision on you. Thus, you maintain the power to decide rather than have someone else decide for you. As a result, the outcome of mediation generally produces more satisfaction and compliance among its participants than those who use litigation.

THE ROLE OF THE MEDIATOR

The mediator assigned to your problem will be a trained volunteer. All mediators are trained to be impartial and fair to all parties involved. Mediators hold all communications to them in confidence during the mediation process and will not be a witness for nor against either party in an arbitration hearing or in a court of law.

The mediator manages the process and tries to get the parties to talk to each other. When the parties are unwilling or unable to talk to one another directly, the mediator may shuttle between the two parties in order to assist their communications. Shuttle mediation, however, is more time-consuming.

To aid in the discussions, the mediator may ask questions to gain an understanding of the issues, help the parties understand the other person's point of view, discuss weaknesses in the arguments of the parties, or make suggestions to solve the conflict. The mediator, however, will not make the decisions.

THE MEDIATION PROCESS

You initiate the mediation process by filling out a Request for Mediation form, giving us some essential information and an explanation of the problem in writing. If you have not already agreed to mediate the dispute, you will also be asked to sign an Agreement to Mediate. (Landlords and managers of BYU-approved housing and BYU student-tenants have already made an agreement in their rental contracts to
make a good-faith effort to settle any controversy through mediation before proceeding to arbitration or court. They have a contractual obligation to mediate a dispute when one party makes the request.) A caseworker from the Center may try to contact you to understand the problem further. You may contact the other party or the caseworker will try to contact the other party and encourage him or her to agree to try to settle the problem through mediation.

The caseworker will present your views to the other party and the views of the other party to you. Some conflicts will settle simply and quickly. Others take time. The amount of time taken to settle a problem depends on the schedules, the circumstances, and the amount of cooperation of the parties. At any time during the mediation process you may consult with legal counsel or other persons. However, the persons directly involved in the dispute are expected to speak for themselves unless they have given specific authority to someone else to represent them.

We ask the participants to come together in a mediation conference—a meeting of the parties and the mediator. The caseworker will arrange a time to meet with a mediator. Most mediation conferences will be held in the Wilkinson Student Center, the J. Reuben Clark Law School, or other campus building. Where the parties live long distances or are unable to come to campus, the mediation conference can be conducted by telephone. You should allow at least two hours for the conference. Often two mediators are assigned to conduct a mediation conference. The parties agree to abide by the Mediation Rules below. At the conference the mediators may speak to both parties jointly or in private. You will have a chance to express your views to the other party. The mediators will help you discuss your disagreement with the other party and will assist you in reaching a settlement that is acceptable to both of you. It is your decision, though, to determine what an acceptable settlement is.

MEDIATION RULES

Participants in the mediation services of the BYU Center for Conflict Resolution agree to the following rules:

1. Good Faith Effort
   Parties in the mediation process agree to make a good faith effort to resolve their conflict, which means to make an honest endeavor to participate in communications or conferences with the other party with the purpose of reaching a mutually acceptable settlement.

2. Confidentiality
   Except as otherwise agreed by the parties or permitted by law, any oral or written communications prepared specifically for or expressed in the course of the mediation proceeding are privileged and confidential and shall not be disclosed through discovery or any other compulsory process and are not admissible as evidence in any judicial or arbitration proceeding. Exceptions to the rule of confidentiality in mediation communications that are permitted by law involve immediate threats of physical violence or when child abuse is suspected or reported. Any documents that are produced as a result of mediation, such as a settlement agreement or summary of decisions reached, may be used by participants in subsequent relevant proceedings.

3. Courtesy
   The parties agree to be courteous throughout the mediation process by respecting the opinions, perceptions, and feelings of the other parties and by refraining from personal attacks, intimidation, threats, and verbal or physical abuse.

4. Role of the Mediator
   The mediator may conduct joint and separate meetings with the parties and may suggest resolutions to the conflict, but does not have authority to impose a settlement.

5. Representation
   Any party to the mediation may be represented by another person provided that the representative has sufficient knowledge of the problem and full authority to make and sign a binding agreement on behalf of the represented party, and that efforts to mediate with the representative are likely to enhance the possibility of achieving a settlement.

6. Legal Counsel
   The parties may consult legal counsel any time during the mediation process. The mediator has no duty to protect the interests of the parties or to provide them with information about their legal rights.

7. Termination of Mediation
   The mediation process is terminated when (a) the parties reach a settlement agreement; (b) the mediator determines that further efforts at mediation are no longer likely to achieve a settlement; (c) both parties withdraw from the mediation proceedings; or (d) the BYU Center for Conflict Resolution declares that a party may bypass the mediation process and
proceed to arbitration.

8. *Arbitration and Court*

Should the parties fail to settle their conflict, both parties, if eligible, may apply for binding arbitration with the BYU Center for Conflict Resolution; otherwise, legal remedies may be sought through the civil courts. The parties applying for arbitration must submit a written Demand or Submission Agreement for arbitration with the BYU Center for Conflict Resolution within 90 days after termination of the mediation.

9. *Exclusion of Liability*

Neither the university nor any mediator shall be liable to any party for any act or omission in connection with any mediation service or activity sponsored by BYU’s Center for Conflict Resolution.