



University of the Virgin Islands

(Approved by Cabinet May 27, 2008)

Guidelines and Procedures for Utilizing the Services of In-house Mediators at the University of the Virgin Islands (“UVI”)

I. Introduction

- a. UVI has established a mechanism that would allow all University personnel and students the opportunity to have their complaints and disputes, which are or are not grievable, as Grievances are defined in the University’s Employee Policy Manual and Faculty Manual, addressed through a process of voluntary In-house mediation (hereinafter “the In-house Mediation Program”). The In-house Mediation Program provides an alternative **non-binding** approach to dispute resolution that is generally accepted in progressive organizations including educational institutions. It is designed as an avenue for conflict resolution that is not intended to and does not replace the established University grievance policy and procedures.
- b. UVI is committed to promoting a safe and collegial workplace in which productivity is enhanced through a strategic approach to service, accountability, and cross-functionality. The In-house Mediation Program is therefore provided with the hope that collegiality, good will, and reason will prevail in circumstances and situations to enhance the productivity of each University personnel and student, and improve overall respect, responsiveness, and commitment to each other.

II. Definitions

As defined herein, the following terms shall have the meanings set forth below:

- a) Complaints or disputes shall be defined to include:

- (1) Any material issue affecting a University Personnel, as herein defined, or Student, as herein defined, which affects their business relationships with another University Personnel, or Student; except that the following matters



SHALL be excluded from this definition for purposes of these Guidelines and Procedures:

- (i) Criminal Matters;
- (ii) Matters involving probationary employees

(2) Any grievance by a University Personnel or Student, as defined by the University's Employee Policy Manual, the University's Faculty Policy Manual, or the Student Handbook, as may be amended from time to time, and as applicable to a University Personnel or Student.

- b) Self Mediation shall be defined as the process by which University personnel first seek to resolve their own conflicts without the submission of their dispute to an impartial third party for resolution.
- c) Mediation shall be defined as a confidential process of negotiation, generally used when a complaint or dispute exists between or among two or more parties, conducted by an impartial third party identified as the mediator who works with all parties involved to facilitate identification of their true interests and to encourage and facilitate a resolution that responds effectively and fully to those interests.
- d) Mediator shall be defined as an impartial third party who serves as a facilitator or guide rather than a decision-maker in assisting the parties to determine a resolution to their dispute.
- e) University Personnel shall be defined as faculty, staff (including administrators, and any other person within the employ of the University, excluding temporary or probationary employees).
- f) Student shall be defined as one who has registered for classes, attended at least one class and has made arrangements for payments through financial aid, personal finances and or a third party or organization prior to the census date.

III. Objective of the In-house Mediation Program

The objective of the In-house Mediation program is to aid the disputing parties in reaching a mutually acceptable and voluntary agreement.

Certification of Mediators

(a) In-house mediators are required to be certified professionals in managing workplace conflict and shall have completed, at a minimum, a forty hour certification program. In-house mediators must satisfactorily complete all requirements for certification, as offered by a recognized mediation training institute, and be deemed competent to provide services in workplace mediation where appropriate. In addition to possessing or pursuing formal education credentials and the aforementioned certification, a “mediator” should:

- be, and be perceived to be impartial,
- ensure participation in the process,
- be known to be trustworthy, and a guardian of confidences,
- be professional when dealing with the disputants,
- understand the applicable law or rules, and how those laws impact upon the facts presented
- be experienced in conflict resolution,
- understand the motivations of disputants,
- be persuasive with regard to the process of the mediation, and
- listen carefully.

(b) Certified trainers of managing workplace conflict must satisfactorily complete all requirements for certification as a mediation trainer, as offered by a recognized mediation training institute, and be authorized to conduct training seminars in workplace mediation in accordance with pertinent agreements.

(c) External Mediators certified through a recognized mediation institute may also be utilized in the University’s In-house Mediation Program, where necessary, and upon the agreement of the parties to a complaint or dispute; provided however, that all costs and expenses of the engagement of such external mediators shall be borne equally by all parties to the complaint or dispute.

IV. Role and Duties of the Mediator

The role of the mediator is to facilitate negotiation between the parties.

- a. Mediators have a duty to define and describe the process of mediation at or before the first mediation conference. The subjects covered should include the following:
 - i. Mediation procedures including process, protocol, purpose, confidentiality, authority, roles and time;

- ii. The differences between mediation and other forms of conflict resolution, including therapy and counseling;
 - iii. The circumstances under which the mediator may meet alone with either of the parties, or with any other person;
 - iv. The confidentiality provisions provided for by Title 5, Section 854 of the Virgin Islands Code;
 - v. The duties and responsibilities of the mediator and the parties;
 - vi. The fact that any agreement reached must be reached by mutual consent of the parties;
 - vii. The information necessary to define the disputed issues.
- b. Mediators have a duty to disclose any fact that may be grounds for their disqualification. Mediators have a duty to be impartial and to advise all parties of any circumstances suggesting possible bias, prejudice or lack of impartiality.

V. Eligibility

- a. Subject to a University Personnel or Student satisfying the pre-requisites for participation in the In-house Mediation Program, as set forth above, and subject further to subsection II (a)(2) hereof relating to matters to be excluded from Mediation, any University Personnel or Student may request mediation services by contacting the In-house Mediation Coordinator or named designee, or by submitting an executed Mediation Request Form. Mediation Request Forms may be obtained from the In-house Mediation Coordinator, or the Department of Human Resources. Requests for mediation that would otherwise be grievable must be filed within the time period in which the University Personnel or Student would be eligible to file a grievance under applicable University policies.

VI. The In-house Mediation Process

- a. The In-house Mediation Coordinator shall be responsible for maintaining a list of all certified mediators and will facilitate the administration and coordination of the mediation process, including the scheduling of mediations hereunder.
- b. If a request for mediation is filed with the In-house Mediation Coordinator, the Mediation Coordinator or named designee will work with the parties

to select and assign a mediator; provided however, where the parties cannot agree on their choice of a mediator for the Complaint or Dispute, the In-house Mediation Coordinator shall select the mediator.

- c. Within ten (10) business days following the submission of the signed Mediation Request Form, the Mediator or the In-house Mediation Coordinator 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.
- d. During the mediation process each party will have an opportunity to describe the situation from their viewpoint. Issues of importance to each party will be identified and the potential resolution of these issues will be discussed by both parties.
- e. Successful mediation resolves the Complaint or Dispute submitted for mediation and may result in a written agreement signed by all parties (not the mediator). Any mediation agreement which obligates the University must be signed by the President, only. Each signatory to the agreement shall receive a copy. The agreement, at a minimum, shall address the nature of the Complaint or Dispute and the agreed upon resolution. The signatories, by mutual consent, will determine who else will receive copies of the agreement.
- f. 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 may declare an impasse and 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 the In-house Mediation Coordinator, in writing, of the unsuccessful mediation. The only record of the unsuccessful mediation shall be a simple written statement, signed by the mediator, that the mediation was attempted but settlement of the Complaint or 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 resolution of the Complaint or Dispute.

- g. The results of successful In-house Mediation will be documented by the Mediator in a "Mediation Output Report," which shall state the agreement reached by both parties.
- h. The Mediation Output Report shall be filed with the Central In-house Mediation Coordinator.
- i. In circumstances where a University officer or manager may not have the "right to know" the outcome of Mediation, as specified by applicable laws, the Mediator may simply communicate that the matter has been resolved or not, without disclosing any details of the mediation process.
- j. Attorneys representing any of the parties to the Complaint or Dispute may not participate in the mediation process, unless otherwise agreed by the parties.
- k. Mediation shall be completed and an agreement made within sixty (60) days from the filing of the Mediation Request Form, or by otherwise submitting a written request to discontinue mediation to the In-house Mediation Coordinator.

VII. Confidentiality

- a. Confidentiality of the In-house Mediation process shall be discussed at the beginning of each mediation session. The parties shall agree to maintain the confidentiality of the Mediation process, to the fullest extent permitted by law. 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 purposes of generating the annual report for the In-house Mediation Coordinator, the mediation request form and a report of the outcome of the mediation shall be located in the Department of Human Resources.
- b. Documents generated during the mediation process shall be confidential. Further, the mediation process may not be referred to or used against a

party in any subsequent proceeding between the parties, in any court proceedings that arise from the matter disputed, and the mediator may not be called as a witness.

VIII. Exclusions from Mediation

The following matters shall not be referred for participation in the In-house Mediation Program:

- a. Criminal matters;
- b. Pending litigation matters that are subject to a court order mandating mediation;
- c. Matters involving University temporary or probationary employees.

IX. Disclosure Privilege

Each party involved in the In-house Mediation Program has the right to refuse to disclose, and to prevent any person present at the proceeding from disclosing communications made during the mediation process; provided however, that nothing herein shall be construed to prevent the disclosure of such communications in compliance with any local or federal laws, or from disclosing such communications which are consistent with information included within any University document or record. Mediators shall maintain the confidentiality of the mediation process, to the fullest extent permitted by law.

X. Inadmissibility of Mediation Proceedings.

All communications written or oral made in the course of an In-house mediation proceeding, other than the executed settlement agreement, or in the nature of settlement discussions are intended to be inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise, and unless such communication is readily available through other means.

XI. Interaction with Other University Policies

- a. A University Personnel or Student's use of the In-house mediation procedure shall suspend the time within which a University Personnel or Student shall be eligible to file a grievance alleging unlawful discrimination, pursuant to applicable University Policies, as may be amended from time to time.

- b. Nothing in this UVI Mediation Guidelines and Procedures shall be determined to waive any right on the part of the University to fully enforce any of its policies and procedures governing the conduct of any University Personnel or Student

XII. Annual Report of Mediations

The In-house Mediation Coordinator shall submit an annual report to the Director or Human Resources and to the President reporting the number of successful and unsuccessful mediations during the preceding year. The In-house Mediation Coordinator shall maintain a list of all certified mediators and mediation trainers

Although many matters may be resolved at this level, it should be noted that some matters may exceed the scope of In-house mediation and may proceed, even after mediation, to the University's grievance process. Once a dispute has been taken from the University grievance process and turned over to the courts, it is deemed to be out of the hands of any University sanctioned process for conflict resolution, unless both parties agree to court appointed mediation.