

Policy 1404 Mediation

Date of Current Revision: June 2021
Responsible Officer: Director of Human Resources

1. PURPOSE

While James Madison University has established procedures for the resolution of grievances, the university also has alternative dispute resolution processes. [Employee Mediation Services](#) is a program offered to all employees, with the exception of student employees, to resolve conflict through facilitated conversation and employee-driven resolutions.

2. AUTHORITY

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University. See Code of Virginia § 23.1-1600; § 23.1-1301. The Board has delegated the authority to manage the university to the president.

3. DEFINITIONS

Employee

An individual employed by the university, whether full-time or part-time, contracted or temporary, and whether faculty, administrator, professional, classified staff, salaried or wage employee, student employee (*excepted from Employee Mediation Services*), or in any other employment relationship with the institution.

Mediation

A confidential and voluntary process by which participants, with the assistance of trained mediators, share perspectives, identify disputed issues, develop options, consider possible solutions, and seek to reach a mutually acceptable resolution to their dispute. Participants in mediation make informed and deliberate decisions to resolve past problems and discuss future relationships directly.

Mediation Agreement

A summary of the terms and conditions to which the parties agree and is intended to be binding. Creating a mediation agreement is optional.

Mediation Coordinator

The Human Resources (HR) consultant responsible for coordinating and administering all facets of the mediation requests made by university employees. The mediation coordinator is normally the HR consultant for the individual(s) requesting mediation.

Qualified University Mediator

A member of the JMU mediator pool who has satisfactorily completed JMU's mediation training or other training approved by the mediation coordinator. The mediator is an impartial third party who assists participants in reaching mutually acceptable solutions to their disputed issues. The mediator does not have the authority to overturn disciplinary notices, decide the outcome, nor impose a resolution.

4. APPLICABILITY

This policy is applicable to all university employees, with the exception of student employees. Student

employees and their supervisors should bring disputes to the attention of Student Employment. Students should bring disputes to the attention of the Office of Student Accountability and Restorative Practices.

5. POLICY

It is the policy of James Madison University to resolve work place disputes through non-adversarial means such as mediation whenever possible and appropriate. Participation in mediation will be voluntary. A request for mediation may be made by an employee, a supervisor, or a member of management.

6. PROCEDURES

6.1 Mediation Request

6.1.1 A request for mediation is made by contacting an HR consultant or the Office of Human Resources. Requests may be made in person, by telephone, by email, or as a referral from a supervisor, department manager, or director.

6.1.2 The HR consultant contacts the individual(s) making the request, completes an initial assessment, and determines the appropriateness of the situation for mediation.

- If the situation is not deemed appropriate for mediation, the person making the request is notified by the HR consultant.
- If the other party declines the invitation to mediate, the mediation will not occur and the requestor will be notified.

6.2 Mediation Preparation

The HR consultant, acting as mediation coordinator, selects two mediators from the pool of qualified university mediators. All mediations will have at least one mediator present, with two co-mediators present whenever possible.

6.2.1 The HR consultant provides written notification to participants of the date, time, and location of the mediation. The appropriate supervisor(s) are notified to minimize disruption to normal university operations.

6.2.2 Every effort should be made by the mediation coordinator and participants to achieve a mediation schedule that does not hinder university operations. Supervisors are required to allow employees to participate in the mediation process, unless participation would significantly hinder university operations. A supervisor with concerns that a scheduled mediation will significantly hinder university operations must notify the mediation coordinator to arrange an alternate time.

6.2.3 A pre-mediation meeting with the mediators and the mediation coordinator is scheduled to distribute information and discuss other pertinent details.

6.2.4 Participants commit to session content confidentiality as a prerequisite for participation as described below in 6.5.

6.2.5 The parties agree not to involve the mediators, the mediation coordinator, or any records pertaining to the upcoming mediation in any court or administrative proceeding.

6.3 Mediation

The mediation will be held in a private, neutral location with minimal potential for distraction.

6.3.1 Recording the mediation, in whole or part, by audio or video, is prohibited.

6.3.2 Either party may withdraw from participation any time during the process or end the mediation effort.

6.3.3 At the conclusion of mediation, each participant is given a mediation process evaluation form to complete.

6.4 The Mediation Agreement

6.4.1 The participants determine whether they wish to enter into a Mediation Agreement. If both parties do not wish to enter into a Mediation Agreement, none will be created.

6.4.2 If the parties do wish to enter into a Mediation Agreement, the mediators summarize information resulting from the mediation session and draft the participants' agreement. The agreement is signed by the participants and mediators and given to the mediation coordinator for review.

6.4.3 Each participant receives a copy of their final agreement from the mediation coordinator.

6.4.4 The supervisor(s), department manager, or director making the request for mediation receives a copy of the signed agreement.

6.4.5 The original signed agreement resides with the mediation coordinator.

6.5 Confidentiality

The goal of mediation is to empower participants to share information openly and honestly to achieve an agreed-upon resolution. Mediation participation is contingent upon both parties agreeing to confidentiality. The commitment to confidentiality includes all writings and all communications made before, during, or in connection with the mediation at all times.

The scope of the confidentiality should be discussed before the commitment is made. Disclosing the fact that mediation took place is not a breach of confidentiality.

Exceptions to confidentiality include:

- evidence of verbal or physical abuse
- evidence of suspected child abuse or neglect
- evidence of violation of university policy, including but not limited to: discrimination, harassment, or retaliation as defined by Policies [1302](#), [1324](#), [1340](#), or [1346](#)
- evidence of criminal activity
- information shared during the mediation that is known or could be learned through other means
- specific information that participants agree to share outside the mediation
- the final mediated agreement, when appropriate
- threats of bodily harm to self or to others
- both parties agree to release specific information to specific third parties

6.6 Retaliation Prohibited

Retaliation against an individual for participating or declining to participate in mediation is prohibited.

7. RESPONSIBILITIES

The director of human resources is responsible for the consistent application of this policy.

Questions related to the application of this policy should be directed to the Office of Human Resources or an HR consultant.

Directors are responsible for their department's adherence to this policy.

All departments, offices, and employees that generate, receive, or maintain public records under the terms of this policy are also responsible for compliance with Policy [1109](#) - Records Management.

8. SANCTIONS

Sanctions will be commensurate with the severity and/or frequency of the offense and may include termination of employment.

9. EXCLUSIONS

Mediation is not available to resolve incidents involving allegations of university policy violations, criminal violations, or legal violations.

This policy does not apply to student employees or students. Student employees and their supervisors should bring disputes to the attention of Student Employment. Students should bring disputes to the attention of the Office of Student Accountability and Restorative Practices.

10. INTERPRETATION

The authority to interpret this policy rests with the president and is generally delegated to the director of human resources.

Previous version: April 2015

Approved by the President: June 2008