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MEDIATION AND DISPUTE RESOLUTION SERVICES IN HIGHER EDUCATION

Neil H. Katz

Colleges and universities in the United States have long recognized the necessity of dispute resolution for the many different stakeholders who come together to live and work in the relatively confined campus community. Traditionally, student, faculty, and staff disputes were handled by offices of student affairs, human resource departments and legal affairs, or other administrative units. On the student side, administrators or student judges presided over disputes among students, infractions over code of conduct, or other policies, and resolved with either a dismissal of the issue or with imposed sanctions. On the employee side, formal investigation resulted in dismissal of the grievance or punitive actions such as formal reprimands, probation, involuntary leaves of absence, or termination. Occasionally, a decision would prompt costly legal action attempting to overturn a punitive decision. These traditional methods encourage reasonable behavior by rendering a third-party verdict on the violation. However, these systems did not always serve to uncover and help parties grapple with underlying issues, address needs and concerns fuelling the dispute, or assist in the ongoing relationship among the parties. In addition, many of these traditional procedures were costly in terms of time, effort, negative morale and resources.

Over the past few decades, creative and effective alternative dispute resolution (ADR) services have supplemented these traditional practices at many institutions. These services range from preventative measures such as training and coaching to more formal reactive procedures such as conciliation, facilitation, mediation, and arbitration. These services are more closely aligned with the vision, mission, and values of a modern university emphasizing community, inclusiveness, tolerance, collaboration, emotional intelligence, and life skills, while dealing more effectively with the substantive, procedural, and relationship issues at the core of disputes.

This chapter focuses on the use of mediation as one of the most popular alternative dispute resolution processes and illustrates its many uses for student, faculty, and staff disputes within the institutional setting. Some of the data for this chapter were collected by 27 graduate students¹ in a “Peer Mediation and Conflict Resolution in Higher Education” course taught through the Department of Conflict Resolution Studies at Nova Southeastern University. The focus is on college and university centers and programs that provide mediation services primarily to members of the campus community. Data include a summary of over 100 higher education institutions where our preliminary, mostly web-based research indicated some use

of ADR practices. The institutions in our sample include small private schools, religious academic institutions, prestigious private research universities, and large public universities. The sample programs are diverse in their focus, services offered, client base, funding, housing, and other dimensions. In addition, this chapter makes a case for why mediation and ADR services are congruent with the mission of the modern university and the need to expand their use and effectiveness, particularly in the area of employee disputes. Sections of this article include some major historical milestones of ADR development in higher education, why ADR processes are necessary to mitigate the cost of unproductive conflict, an overview of the variety of ADR options available on campuses today, and the need to expand its use throughout the campus population.

Significant developments in the history of ADR practices in higher education

Conflict is a natural occurrence on college campuses. Over the past 50 years, college administrators have experimented with a variety of procedures and methods to resolve conflict or mitigate its effects. This overview will briefly cover the past 50 years to illustrate some of the most important milestones that propelled the growth and development of mediation services as supplements to the more traditional and punitive ways to handle disputes.

Many of the significant initiatives promoted the use of mediation, a problem-solving process between the primary parties and a third-party neutral who facilitates a collaborative negotiation session that often results in a party-driven agreement while helping bridge relationships going forward. The American Arbitration Association (AAA) established the Center for Mediation in Higher Education in 1979 with the intent of encouraging institutions of higher education to adopt the use of mediation for disputes at all levels—faculty, staff, and administrative. Progress on the student side proceeded quickly. A 1981 study by Folger and Schubert found that more than half of the 741 colleges and universities surveyed had instituted mediation possibilities for student disputes (Warters, 2011, p. 1). The 1980s also included the formation of the National Association for Mediation in Education (NAME) and several publications shone a spotlight on ADR resources available on academic campuses (Warters, 2000, p. 15).

To help propel the growth of the conflict resolution field, the William and Flora Hewlett Foundation provided major funding to universities in the mid-1980s to assist in the development of practice-relevant theory in conflict analysis and resolution (Volpe & Chandler, 1999). This led to 20 prestigious universities, including Harvard, Syracuse, Northwestern, and several of the Big Ten State Universities to develop research, educational courses, and practice activities in conflict resolution, and propelled the use of mediation as a dispute system alternative.

Moving into the 1990s, the scope of mediation and other ADR approaches increased based on the nature of campus conflicts. Practices such as facilitation, conciliation, and negotiation promoted the field with the help of articles in *The Chronicle of Higher Education* such as “Negotiation, not violence, is the rule today when students clash with administrators” (Collison, 1990), which discussed a shift away from using police and force to end student protests. By March 1990, there was ample interest to usher in the first National Conference on Campus Mediation Programs, convened by Professor Neil Katz and Campus Mediation Center Director Bill Warters, at Syracuse University.

Paralleling the rapid rise of campus mediation programs was an even more dramatic acceleration of campus ombudsmen to conduct mediation and other ADR approaches. John

Zinsser (2014) of Columbia University outlined the role of campus ombudsman as being “a great listener, mediator, and conflict coach, a shuttle diplomat, an educator, a quick responder, and an individual with persuasive powers even when he/she has no formal power other than bringing greater clarity to issues and options” (personal communication). The first two campus ombuds programs were introduced in 1966–67 when East Montana State University and Michigan State University began to respond to growing student issues. The idea spread quickly and by 1975, the number of university ombuds had grown to exceed 120 (Warters, 2011). Several ombuds associations now exist to help serve the hundreds of education institutions that have one or more ombuds.

Another important development included initiatives within law schools. By the mid-1990s, more than 30 law schools had entered the area of court-annexed alternative dispute resolution by establishing mediation clinics to treat referral cases from local courts. Nationwide attention was drawn to ADR practices by the Association for Student Judicial Affairs’ (ASJA) support of mediation and the National Association of College and University Business Officers (NACUBO) recognized programs that successfully reduced costs and improved the quality of higher education.

In the 21st century, interest and programs in ADR services proliferated. The growth and understanding of ADR benefits was due in part to articles by Sara Lipka (2009) and others in the influential *Chronicle of Higher Education* on trends moving away from legalistic and disciplinary systems. The widespread growth in ADR services at other universities included the University of Georgia system, which trained 3,000 members in conflict resolution skills in its 34 state institutions and 385 designees to handle mediation at institutions other than their own (Fogg, 2008). In 2010, *The Chronicle* published “Workplace mediators seek a role on training faculty bullies” by Peter Schmidt (2010), and reported how the AAA and other conflict management agencies were providing training to help campus members work more effectively with bullying and workplace disputes. In 2013, Morgan State University made a commitment to make conflict resolution training and classroom instruction a mandatory part of students’ experiences (Schnoebelen, 2013) in response to mass campus violence. In addition, the Association for Student Conduct Administration (ASCA) “endorsed alternative forms of conflict resolution models as viable conduct administration options ... embracing best practices for training conduct professionals” (Schrage & Giacomini, 2009, p. xi).

Costs of conflict

Conflict scholars confirm the commonly negative view of conflict and the human tendency to avoid it whenever possible. Avoidance or mishandling of conflict can have serious economic and psychological costs as well as negative impact on factors such as recruitment, retention, productivity, and quality. As university administrators, particularly in the private sector, compete for the best students, they are gaining more awareness of the link between student satisfaction and how conflicts with peers, faculty, staff, and administrators are addressed. Recent studies in the area of student disputes confirm that effective conflict resolution services are important in influencing decisions on recruitment and retention (Garrido, 2015). When conflict intervention policies are not effective, there can be a negative impact on student loyalty, alumni relations, and retention.

Beyond student concerns, the costs of unresolved or poorly managed conflict extends to faculty, staff, and administrators. Disputes range from interpersonal differences over schedules and workspace to complex gender, race, or ethnically related controversies (Volpe & Chandler, 1999). Conflicts over issues of grant revenue distribution, civility discord,

personality clashes, struggles for power, and frustrations due to limited resources may result in “substantial financial, human, and credibility costs to the organization” (Buss, 2011, p. 54). The effects of employee and student attrition on cost can be broken down into three categories: 1 direct costs, 2 opportunity costs, and 3 indirect costs (Bettes & Sikorski, 2008). Direct costs, for example, can be calculated in the recruitment and retention of employees and students. Even though university enrollment has increased dramatically since the mid-1900s, the ability to keep students in school remains a challenge. Approximately 14 percent of four-year students leave their initial institution after the first year and another 13 percent the following year (Swail, 2004). Nationwide, only about 50 percent of all doctoral students complete degrees, and conflicts with faculty are cited as one of the two most important reasons why they leave before finishing (Warters, 2000, p. 30).

For university employees, “researchers studying exit interview data on voluntary departures state that chronic unresolved conflict is a decisive factor in at least 50 percent of all such departures” (Buss, 2011, p. 56). Voluntary separation costs may include, but are not limited to, unemployment insurance rates, severance pay, exit interviews, outplacement, and fees resulting from possible legal actions (Bettes & Sikorski, 2008). For faculty and staff employees, direct recruitment and placement costs to fill vacant positions range between 100 percent and 150 percent of the predecessor’s salary plus benefits (Dana, 2001, p. 22). Several research studies also calculated managers and supervisors spend between 25 percent and 40 percent of their time dealing with conflicts (Dana, 2001, p. 19). This is a considerable use of otherwise productive time for department chairs, deans, and additional supervisors. Furthermore, a study of 808 department chairs at 101 doctoral-granting universities in 1991 found that chairs identified conflict as the major category of stress (Gmelch & Burns, 1993). To ensure recruited employees stay long enough to pay the costs of recruitment, Katz and Flynn (2013) discuss a prevention approach, which includes active dispute resolution practices for maintaining team cohesion because it is directly linked to employee performance and satisfaction.

The cost of conflict also includes opportunity cost. Loss may include limited course offerings due to faculty attrition or decreased quality of teaching and inability to hire the best employees. Furthermore, loss of reputation due to poorly managed conflict can spread quickly through word of mouth and social networks, deterring potential faculty and staff from seeking positions with the institution. Spillover costs include negative effects on student enrollment, limited research and publishing, external grant opportunities, and decreased donations and contributions. Indirect costs can refer to productivity, morale, and negative employee effects. “Productivity suffers when unhealthy conflicts persist” (Buss, 2011, p. 56). Unresolved conflicts have a direct effect on sick days and what is referred to as “presenteeism” the phenomenon of employee(s) giving less than 100 percent attention and effort to task accomplishments until they are able to find another job. Research shows that 60–80 percent of all difficulties in organizations stem from strained relationships between employees, not from deficits in individual employees’ skills or motivation (Dana, 2005). The harmful belief that the institution allows self-defeating cycles to exist affects the morale and professional image of the institution.

Variety of ADR services

A review of the services offered by the sample of 100 colleges and universities listed below demonstrated the large variety of ADR services available on campuses across the United States. Services are offered to faculty, staff, and students as well as the community. Some

institutions work with governmental agencies. While the ADR services offered fall into the broad categories below, there are differences in the way they are designed and executed.

Mediation services

Mediation services are the most common ADR interventions. Mediation sessions range from student living disputes and relationship issues to mediation for family, court-annexed, community, workplace, and some unique services such as victim-offender mediation, elder, and estate mediation. Noteworthy services include re-entry mediation and social justice mediation. Howard County College offers re-entry mediation in a correctional facility to inmates who are preparing to re-enter the community. Several other types include landlord-tenant disputes, inter-group and intra-group conflicts, matters from judicial proceedings including possible criminal behavior, employment discrimination disputes, and disputes over uncivil behavior, harassment, and bullying.

Restorative justice practices

Restorative justice (RJ) is an innovative mode of conflict resolution that has been gaining popularity at many colleges. At Skidmore College “[a] central practice of RJ is a collaborative decision-making process that includes harmed parties, offenders, and others who are seeking to hold offenders accountable” (Skidmore College, n.d., para. 1). The college offers the service for students and provides training for schools, universities, and the criminal justice system. Illinois State University, another pioneer in restorative justice approaches, offers a variety of RJ services through the Dean of Students Office. RJ provides offenders important life lessons about the impact of their actions on individuals and the community. RJ gives the injured party and/or community a chance to meet the offender face to face and engage in discourse in a safe environment where impact and feelings can be expressed. RJ is an educational process that can be more meaningful and effective than punitive measures.

Community outreach

Several colleges offer services that extend beyond the campus. Southern Methodist University’s Resolution Center is geared toward community outreach. Services include mediation, facilitation, arbitration and conflict coaching offered at low cost and are provided by program alumni, faculty, and current students. Syracuse University provides training workshops and other ADR events to non-profit groups in the community in addition to the campus community. The University of North Dakota Conflict Resolution Center serves schools, non-profit organizations, children and youth, families and the elderly. Missouri State University has partnerships with County Mental Health Departments and Green County Juvenile and Youth organizations. They offer free mediation services and training to non-profit organizations and low-cost mediation services to the community. Fresno State University has a unique partnership with the Fresno, California elementary and middle schools in which university student mentors, social workers, counselors and ADR specialists, train and coach over 7,000 teacher and student school mediators.

The Dispute Resolution Center of North Central College in Illinois offers a Campus Outreach Program to assist disputes for local courts, businesses, churches and other organizations. They also have a resource center for conflict resolution information. At Nova Southeastern University, Community Resolution Services (CRS) offers various services

through its Voices Family Outreach Program. At Howard Community College, approximately 100 trained volunteers provide mediation and conflict resolution services to the Howard County, Maryland community. Both Kennesaw State University and Salisbury University work locally and globally to research conflict management practices, assess conflict management programs, and provide training in conflict management skills. Virginia Tech also offers workplace mediation services to state government agencies.

Where we are now and where we need to go

The importance of having mediation and other ADR services to supplement traditional procedures is to manage conflicts at their lowest and most effective levels, deal with underlying issues, improve a campus conflict climate, and preserve relationships. Alternative pathways encourage personal empowerment, accountability, and promote creative thinking and skill development. These services help build a safe campus community and model how to resolve conflicts, foster professional relationships and cultivate inclusiveness. Awareness of the benefits and the cost of mismanaged conflicts have led to innovative practices for handling student disputes.

On the employee side, the recognition that dispute interventions are needed for staff, faculty and administrators is growing. One study noted an alarming 250 percent rise in the average legal defense costs for private colleges and universities in just a five-year period (Campus-adr.org, 2011). There are also philosophical and practical grounds for resolving conflicts outside adversarial litigation. A desire to protect the rights of members from unfair institutional policies and practices as well as the benefit of “in-house” settlement procedures makes voluntary agreement more likely and potentially reduces occupational stress (Tallodi, 2015). Many academic offices and support units are enhancing competency in ADR approaches for handling internal disputes. For example, the author of this article recently trained the staff of residential services at Marist College in mediation and conflict management skills, delivered workshops in emotional intelligence, mediation, and conflict management skills for 120 members of the Public Safety force at Syracuse University, and trained over 50 administrative and supervisory staff in workplace mediation at the University of Belize.

Best practice examples

ADR practices offer a “model for promoting individuals’ capacities and responsibilities for decisions that affect their lives and others; for building community; for fostering mutual respect and cooperation; for developing fairness rather than power for resolving disputes—values at the core of a University” (Warters, 2000, p. 42). One of the most significant initiatives in recent years is the development of integrated conflict management systems. Examples include Eastern Mennonite University, a small Church-affiliated school in Virginia, and the large state universities of Minnesota, Georgia and Washington. At Eastern Mennonite, the University Accord Office, directed by the university ombudsperson, offers ADR services “to help individuals and groups as they strive to strengthen relationships, and process particular conflicts and concerns” (Reid, personal communication, 2014). Services include RJ dialogue circles where “parties meet in a safe space, tell their stories, identify harms and explore situations to repair harms and rebuild trust” (Reid, personal communication, 2014). Mediation is used to resolve consumer complaints and landlord-tenant issues as well as disputes among faculty and staff. Conflict communication coaching is offered to help participants consider strategies and implications.

The University of Washington has a well-rounded system of ADR integrated in different parts of the university. For example, faculty can access conciliation, coaching, mediation, and referrals through the Ombudsman Office, the University Complaint Investigation and Resolution Office, the Law School Mediation Services, or the secretary of the faculty, depending on the issue. Participants seek ADR services on issues such as unfair tenure/promotion decisions, workplace mistreatment, retaliatory actions, discriminatory practices, and conflict within teams.

At the University of Minnesota, the independent Office of Conflict Resolution (OCR) offers both informal and formal services to all employees, including civil service. Services include private consultations ombuds services to conduct data gathering and engage in possible shuttle diplomacy, facilitated difficult conversations with a third-party specialist, and more formal structured mediation. Typical issues for the OCR include conflicts among working groups and academic units, concerns about retaliation and discrimination, disputes over termination, lay-offs, nonrenewal, and disagreements about pay, promotion and performance. In 2013, the OCR celebrated its 20th anniversary and was recognized for interactions with over 3,000 faculty and staff. The OCR received credit for advancing the university's mission by "developing an approach to conflict where disagreements and conflict are seen as natural rather than aberrational and unwelcome irritants ... a place where prompt and skilled attention to conflict improves employee's ability to work effectively" (Chalmers, personal communication, 2013). The OCR was also given credit for influencing an 80 percent decline in grievance filings since its establishment.

The University of Georgia system with a population of over 400,000 students and staff across 34 different institutions has the most comprehensive integrated conflict resolution system. Until the 1980s, most of the procedures were structured, legalistic, and punitive systems but the widely publicized 1983 Jan Kemp affair that implicated the high-profile football program, the academic remedial program and eventually awarded Kemp \$2.5 million for wrongful termination from her job as coordinator of the remedial program served as a major catalyst for change. One of the responses was the appointment of a Blue Ribbon committee to look at the university's dispute resolution system. The committee developed five broad goals (Yarn, 2014, p. 89) for direction: 1 establish a system-wide conflict resolution program that will, 2 decrease the reliance on adversarial processes, and 3 resolve disputes efficiently and fairly at the lowest possible level, and in doing so, 4 foster a healthier community, and 5 lead the nation in ADR for higher education. By 2004, almost all campuses had some form of mediation program or ombuds office. From 1998–2012, over 800 mediations and 4,000 cases were handled (Yarn, 2014, p. 97). Chancellor Stephen Porch noted that the ADR work "saved the system millions of dollars per year in litigation costs" (Yarn, 2014, p. 99).

Furthermore, today some of the most comprehensive dispute settlement systems exist in state and federal government agencies thanks to the Federal Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, and the Administrative Dispute Resolution Act of 1990, which directed federal agencies to expand the use of ombuds and ADR practices to handle disputes. In 1998, President Clinton also issued an executive order requiring all federal agencies "to take steps to promote greater use of mediation, arbitration, early neutral, agency ombuds, facilitation, conciliation, and negotiated rulemaking ... and promote interest-based negotiations in their interactions with their unionized employees" (Campus-adr.org, 2011).

In the private sector, a major study by the Institute of Conflict Resolution at Cornell University's School of Labor and Industrial Relations concluded: "research strongly suggests that ADR is firmly institutionalized in a majority of United States corporations, at least for employment and commercial disputes" (Lipsky et al., 2003, p. xvii). Optimistically, the

Cornell authors cited Malcolm Gladwell's "tipping point" phenomenon to characterize the growth and bright future of ADR approaches in the workplace. They predicted, "[g]rowth will get to social and behavioural epidemic proportions where 'everyone will be doing it' and conflict management ... will become as essential to organizational life as other features of human resources" (Lipsky et al., 2003, pp. 139–140).

Unfortunately, the "tipping point" phenomenon in which ADR practices are more the norm than the exception was unfulfilled. Organizations appear to train human resources, equal employment opportunity and legal counsel personnel in a pervading legal frame to address complaints, but they discount the fact that conflict involves differences in perception about behavior and emotions. Some research suggests that less than 10 percent of complaints meet the test of legal standards, while over 90 percent consist of perceiving actions as offensive and its accompanying emotions (Herrman, 2010). Universities that overlook the essence of disputes are neglecting the research that shows procedural justice, a sense of fairness, a commitment to halting offensive behavior, and psychological satisfaction are just as important for the universities' bottom line as legal protection. Collaborative problem-solving processes are not yet the norm in higher education. The lack of integrated ADR services carries a serious cost in terms of dollars, morale, productivity, retention, a sense of justice and community. Educational leaders are needlessly escalating the cost of poorly managed conflict, and neglecting to promote civil discourse along with creative problem solving for employees and students as the norm rather than the exception. Our institutions that are dedicated to researching, educating and implementing "best practices" for the betterment of individuals and society should be leading, not trailing this trend.

Over time, our research lends evidence that some institutions have evolved from a reactive to a more proactive approach. For ADR practices to grow and become integrated in higher education, critical conceptual shifts must occur in the way conflicts are perceived and resolved. A shift away from rights- or power-based methods to interest- and collaborative-based methods is necessary. The focus is then on preventative training and procedures that address underlying needs and concerns to foster collaborative solutions, rather than focus on protecting the institution from lawsuits and grievance procedures that render dissatisfied parties. As these systems spread and evolve, they will become more integrated into the fabric of the university, address causes instead of symptoms, and treat conflict as normal, functional and expected, rather than aberrational and dysfunctional.

Educational leaders should promote ADR practices as highly congruent with the proclaimed values, mission and vision of higher education. The mission statement for Purdue University's Mediation and Conciliation Center is a model for the skills and concepts that underlie ADR educational practices: "The process of resolving conflict is educational. By establishing a forum where each party is heard, we teach listening. By creating an environment where each party can speak, we teach communication. By mediating disputes, we teach citizenship" (Warters, 2011, para. 2). It is the hope of the author and his student researchers that our documentation of creative ways of handling disputes will increase the likelihood that these services will continue to expand in utilization and effectiveness for all members of the university community.

Note

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