



Milkwood Steiner Grievance Policy

SECTION 1: GRIEVANCE PROCEDURE AND MEDIATION

Taken from Communications Policy

Rationale

This Grievance Procedure is to be followed only in situations when the above prescribed steps have been followed and one or both of the participants are still unhappy with the outcomes, on the grounds that they were:

- unfair or unreasonable; or
- that they believe that due process as described above was not followed.

The school supports, resources and advocates the benefits of Mediation. The following Grievance and Mediation procedures will be followed where problems of communication between staff members and/or between staff members and parents have been thoroughly explored using the above communication processes and where all the above processes have not been successful in resolving the problem.

The school reserves the capacity to make every effort to facilitate resolution to communication problems or grievances, with the involvement of trained staff members who have management responsibility and who are accountable to the Board, prior to mediation.

The school will not attempt to resolve disputes between parents.

Mediation

“Mediation is usually considered to be a process in which the participants, with the assistance of the dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator is usually regarded as having a facilitative role and will not provide advice on the matters in dispute. The mediator may have no particular experience or expertise in the subject area of the dispute but should be expected to be experienced and have expertise in the mediation process itself.”¹

The school supports this process as it believes that appropriate mediation:

¹ http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/What_is_ADRMediation

- Leads to *learning* by all involved; that is by the two disputing parties and by the school.
- Leads to the *empowerment* of people to take responsibility and positive actions for change.
- Allows the formal recognition of being fully heard.
- Creates *trust* that the organisation cares for the welfare of all involved.

1.1. Grievance Procedure

- a) To begin a formal Grievance Procedure a *written request complaint* must be filed with the Principal stating the belief of unfair or unreasonable treatment and the grounds for the belief that due process has not been followed. If the grievance is with the School Board the written report of the grievance must be lodged with the Chairperson of the School Board.
- b) The Principal or Chairperson will acknowledge the receipt of the letter within 2 working days.
- c) The Principal or Chairperson will assess the nature of the complaint and assign the relevant school representatives or Grievance Team to follow up the matter. The Principal will, in most instances, act as the school representative. The Grievance Team will be understood to be a combination of at least 2 members from a combination of 2 or more of the categories below:
 - (i) The Principal who is without conflict of Interest
 - (ii) A Board Member who is without conflict of Interest
 - (iii) a relevant Staff Member who is without a conflict of interest.
 - (iv) An “outside school” representative mediator as needed.
- d) An appointed member of the Grievance Team will contact the writer to discuss their written statement and to inform them of the next steps.
- e) An appointed member of the Grievance Team, in consultation with the Grievance Team, will then promptly initiate appropriate actions to resolve the grievance. Appropriate action includes but is not limited to:
 - (i) making enquiries about the circumstances of the grievance;
 - (ii) if relevant, ensure that all the previous steps of the Communication Policy have been followed;
 - (iii) reviewing *reasons* for the contentious decision or the cause of grievance;
 - (iv) reviewing the *process* of arriving at the contentious decision or the cause of grievance;
 - (v) forming a panel and/or appointing an independent consultant to carry out an investigation;
 - (vi) engaging in negotiations between the people involved; and

- (vii) engaging external mediators to work towards conciliation.
- f) The school representative will then be responsible for:
 - (i) Tabling a report to the Chair of the School Board, or if it is the Chairperson acting as the School Representative, the report shall be presented to the full Board. This report will include clear recommendations for the resolution of the matter.
 - (ii) Providing a complete and written reply to the complainant informing them of the outcome.
- g) All parties to the grievance are to sign and date a written agreement to the resolutions to the grievance.

1.2. Mediation

- a) For disputes which have been thoroughly and exhaustively through the above steps of the Communication Policy and are seen to be suitable for Mediation (see below), the school will, in most instances, assign an **external mediator or Mediation Body**.
- b) Mediators used by the school should always have undertaken mediation training.
- c) Mediation is appropriate when:
 - The nature of the dispute and the consequences of not resolving it may warrant an attempt at mediation. For example:
 - * communication issues, misinterpretation, misunderstandings, misconceptions;
 - * there is an ongoing relationship between the parties;
 - * less serious allegations/conduct;
 - * participants are interested in resolving the matter.
 - Both parties are willing to mediate.
 - There are no legal, industrial or formal investigative actions underway.
- d) Mediation is inappropriate when:
 - There is a history of broken agreements.
 - One party has been coerced into participating.
 - One party is seeking an outcome inconsistent with usual mediated outcomes (eg. revenge)
 - One or more parties are not participating in 'good faith' (eg. using mediation as a delaying tactic).
 - There is a *significant* power difference between the parties.

1.3. Mediation Procedures

- a) If mediation is deemed appropriate and agreed to by all parties the mediation process will follow the school's **Mediation Process** document. *(See Appendix 1 to this Policy)*.
- b) All parties directly involved in the mediation must abide by the agreements which arise from the Mediation Process. These agreements are binding.
- c) Should a staff member continue to make vexatious complaints or to communicate in a manner contrary to this policy, or refuse to communicate on a matter of concern, the Principal, in collaboration with the Chair of the Board, may commence disciplinary action.
- d) Should a parent continue to make vexatious complaints or to communicate in a manner contrary to this policy, or refuse to communicate on a matter of concern, the Principal, in collaboration with the Chair of the Board, may request a re-consideration of the enrolment of the child at the school.
- e) If the mediation fails any party may appeal to an appropriate external body. For example, but not limited to, the NT Anti-Discrimination Commission, the NT Department of Education & Training and the Australian Human Rights and Equal Opportunity Commissioner.

MEDIATION PROCESS

(Addendum to the Communication Policy)

To ensure impartiality and that there is no conflict of interest, **for disputes**, which have been through the appropriate steps of the Communication Policy and are seen to be suitable for Mediation, the school will in most instances, assign an **external mediator**. It would be expected that this mediator work through the process as described by the National Alternative Dispute Resolution Advisory Board process as summarised below.

The Mediator will:

- wherever possible, be fully trained in mediation by a recognised authority;
- have no advisory or determinative role regarding the content of the dispute or the outcome of its resolution (NADRAC 1997); but
- may advise on or determine the process of mediation whereby resolution is attempted (NADRAC 1997);
- work with and be appointed to any mediation by the Principal or Board Chair;
- be perceived to be impartial to the issue being mediated;
- have credibility;

- be free of conflicts of interests;
- be able to anticipate and manage strong emotion;
- have sound communication skills; and
- be an appointed independent person where an added significant level of confidentiality is required.

The ***role of the Mediator*** is to encourage the parties to identify the disputed issues and communicate these issues with each other - and develop options and consider alternatives and endeavour to reach an agreement for the resolution of the disputed issues by:

- creating and maintaining a safe non-judgmental atmosphere;
- actively listening so as to attend to feelings and needs as well as facts;
- maintaining impartiality;
- asking appropriate questions;
- ensuring the parties are treated fairly;
- summarising and reflecting the different parties' views; and
- knowing when to call a break if needed.

The Process:

1. Before Mediation consider:

- a) Who is the externally appointed mediator?
- b) Where and when the mediation should take place.
- c) Confidentiality – who needs to know?
- d) What will be the next step if mediation fails?

2. Preparation: *Never underestimate the amount of work required to prepare for mediation!* The following can be gathered from pre-session discussions, organisational knowledge, documents and witnesses.

- a) The mediator will familiarise themselves with the dispute details.
 - Who exactly is involved, including the wider community?
 - What is the nature of their relationship?
 - What is the context of the dispute?
 - Is there a history and if so what is it?
 - What are the power relationships? (*See guide for 'Sources of Power' below*)
 - Are there any already known needs or concerns?

- Is there goodwill?
- What are the expectations of the parties and/or the organisation?
- Are there fears?
- What will be the rules?
- Who will be involved, including support people?

b) Analyze the exact nature of the conflict. (*See attached 'Conflict Analysis' proforma*)

c) Mentally prepare – each party will have different perceptions, anticipate emotions (tears, anger etcetera). What support does the mediator have?

3. Revise the 'Role of the Mediator' and the following stages of mediation.

4. Stages of Mediation

a) **Opening:** A statement is made that includes:

- Welcome to all parties and introduction of the mediator if required.
- Checking the preparedness to participate voluntarily in the process.
- Explaining the role of the mediator.
- Explaining the purpose of the mediation.
- Giving an undertaking in relation to confidentiality.
- Seeking an undertaking in relation to professional confidentiality by the parties.
- Obtaining agreement on rules of behaviour – focus on courtesy principles, e.g. allowing a person to speak without being interruption, no outbursts, respect for the people and the process.

The opening statement is very important and it aims to clearly:

- Describe the process.
- Lay down all the ground rules.
- Establish neutrality.
- Make the parties feel at ease with the process.
- Engender trust in the mediator and the process.
- Acknowledge the positive step of coming to mediation.
- Focus on the hope of a positive solution.

b) Stating the Issues

- Allow the parties to decide who goes first. If this is not possible, decide for them.
- Ask each party in turn then to state their issues with minimal interruptions by the mediator and with no interruptions from the other party(ies). Try to allow equal time to each party.
- Summarise back what you understand to be the key issues for each party.
- Clarify issues in the complaint, including any issues in dispute *or* agreement.

c) Exploring the Issues

- Keep the discussion focused on the problem/issue NOT on the people.
- Encourage the parties to keep talking to each other.
- Ask open ended type questions. (*Can you tell us more about...? Can you tell me how that impacted on you? What do you mean by...? Can you help X understand what you saw as...?*)
- Identify and reflect feelings and needs.
- Identify common ground.
- Acknowledge and highlight breakthroughs.

d) Generating Options

- Get the parties to brainstorm options without evaluating their viability and without there being an expectation, at this stage, to adhere to the options raised.
- Get parties to be specific.
- Encourage both parties to contribute.
- You may offer suggestions during the brainstorming but avoid offering personal opinions.

e) Evaluating Options

- 'Reality test' the viability of each option. What would be the outcome of each option? Can the option be achieved? What resources would it require and is it possible to provide these?
- Check that each party understands the outcome of each option.

f) Negotiating an Outcome (*See note below*)

- Is there agreement, in principle, on any of the options generated?
- Is there agreement on details? (Who What When How What if?)
- Is the agreement sustainable?

g) Closing

- If an agreement is reached.
 - (i) Supply a copy of the agreement, signed by all parties to each participant.
 - (ii) Summarise, confirm and make a closing statement that:
 - Reminds of confidentiality undertakings made at the beginning of the process; and
 - Congratulates participants.
- If an agreement is **NOT** reached.
 - (i) Emphasise that this does not necessarily mean that the parties have failed or wasted time.
 - (ii) Praise the parties for courage and the attempt to resolve, even if they have not moved beyond speaking to the mediator.
 - (iii) Express positive expectations for future resolution and give information about other alternatives for resolution, including the possibility of a further mediation session.
 - (iv) Remind about confidentiality undertakings made at the beginning of the process.

h) Debrief with the Mediation Team

NOTES

Note to item 4.f) Negotiating an Outcome:

If this process begins to get seriously stuck it may be worthwhile offering **private sessions** to each party. This may be done by someone other than the mediator, to ensure impartiality is always adhered to, and to ensure that the relationship is not affected, either positively or negatively, between the mediator and one of the parties. Trust and impartiality is of the essence in mediation. If this occurs, ensure that equal time is available to both parties. In these sessions it can be useful to explore some of the following questions:

- a) What is the most important aspect in this for you?
- b) What would you need if you were them?
- c) How do you think the other person would see this problem?
- d) What do you think the other person would agree/not agree to?
- e) What can you offer?
- f) What would be the consequence for you of not resolving?
 - Best case scenario.
 - Worst case scenario.

Note to item 2.a) 'Sources of Power' guide:

It may be useful to consider the 'sources of power':

Formal authority	Expert/information Power
Association Power	Resource Power
Procedural Power	Sanction Power
Nuisance Power	Habitual Power
Moral Power	Personal Power

B Mayer "The Dynamics of Power in Mediation and Negotiation" *Mediation Quarterly* No 16 1987

CONFLICT ANALYSIS

The Conflict:

Consider the conflict as presented and any other conflict that may underpin the presenting dispute.

Context:

Consider if the presenting conflict is part of a larger or other conflict. Consider social, industrial, commercial, legal and other contexts that may impact on the resolution.

History:

Consider the relationship between the parties. Are the parties in an on-going friendship or is this a one-off interaction?

Has there been a history of conflicts or attempts at resolution?

Participants:

Consider the participants – complainant, respondent, support people, union or other advocates, family members, workmates, other audience.

Needs, concerns and interests of the participants:

Consider needs – safety, saving face, financial, workplace harmony, reputation, preserving relationships, acknowledgement of behaviours/effects/feelings, apology, resolution of conflict, not resolving their conflict...

Fears and Expectations:

Consider the advantages and disadvantages for resolving the dispute for each participant in relation to resolution or non- resolution of the conflict.