

Mediation Guide: FAQ



A Guide to Mediation at NOSM

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Mediation Guide

Introduction

NOSM encourages all Community Members (students, employees, residents, faculty, etc.) to consider Mediation as an opportunity to improve relationships and communications.

Alternate dispute resolution methods, such as informal and formal Mediations, are important tools to help promote healthy work and learning environments, achieve organizational objectives, and enhance productivity. Given the dynamic nature of NOSM, access to informal and formal Mediation is necessary to assist all levels of the organization to respond and resolve internal complaints quickly and effectively.

Mediation provides individuals with an opportunity to safely discuss their differences, engage in creative problem solving, and achieve a common solution. At NOSM, Mediation is available for all Community Members who request the assistance of a Mentor, Elder, or neutral third-party Mediator to facilitate resolution discussions.

This Guide will answer some frequently asked questions about Mediation at NOSM:

- 1) **What is Mediation?**
- 2) **What is the role of the Mediator?**
- 3) **Where does the Mediation session take place?**
- 4) **Is the Mediation process confidential?**
- 5) **How do I prepare for a Mediation session?**
- 6) **Who is involved in a Mediation session?**
- 7) **What happens if Mediation does not work?**
- 8) **What happens after Mediation?**
- 9) **When is Mediation not permissible?**

“Mediation supports NOSM’s culture of inclusiveness and core values of fairness, respect and equity”

1) What is Mediation?

Mediation is a process of discussions or meetings conducted by a third-party who acts as a facilitator to encourage co-operative dialogue to assist individuals (“Parties”) achieve resolution of their concerns or issues. Mediation gives Parties an opportunity to create solutions that best fit their circumstances.

The process of Mediation has certain key characteristics. First, Mediation is voluntary. Each Party to the Mediation must be willing to work together to participate in the Mediation process and to pursue solution oriented discussions. If both Parties do not agree to this method of resolution, an alternative mode of conflict resolution must be explored.

Second, the Mediation must be co-operative and respectful in nature. The Parties must participate in the process in good faith, speak politely and sincerely believe that a mutually satisfactory outcome is in everyone’s interests. In addition to being willing to speak and/or meet to discuss their issues, Parties must be willing to take responsibility for their part in the situation.

Lastly, the Mediation process is intended to be a creative, interest-based method for constructive and positive problem solving. There are no prescribed rules to how the Mediation will be structured. Based on the Parties’ input and information collected about the situation, the Mediator will determine the best approach to help identify each Parties’ needs and goals to achieve mutually beneficial solutions.

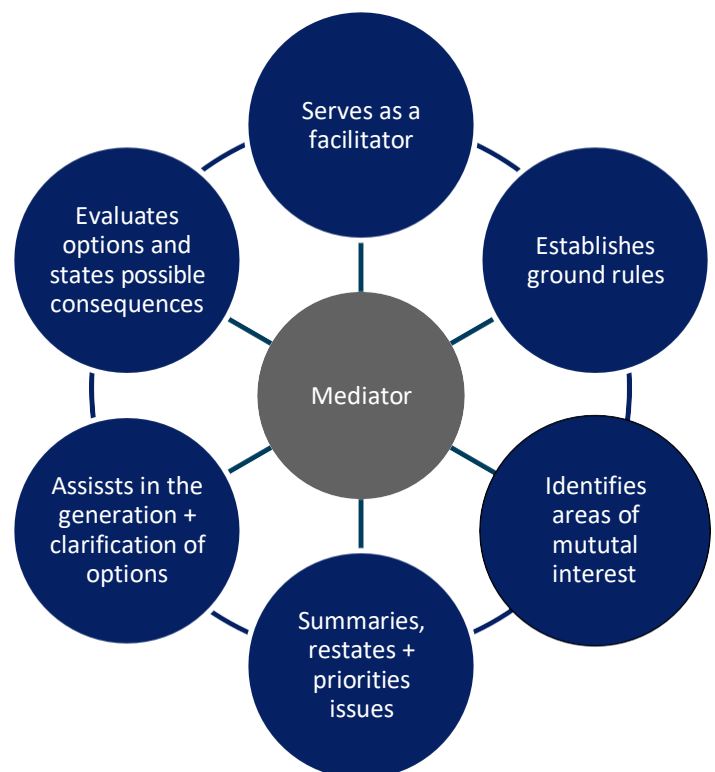


2) What is the role of the Mediator?

The role of the Mediator is to foster constructive communication to encourage the likelihood of a mutual agreement between the Parties. The Mediator could be a NOSM Community Member selected by the Parties, a NOSM Manager designated by Human Resources or an independent, neutral third-party consultant retained by NOSM to aid the Parties. NOSM will determine which type of Mediator is best suited for the Parties, the issues and the situation.

The role of the Mediator is to facilitate open, courteous discussions between the Parties. The Mediator will often have subject-matter expertise such that they are able to recommend appropriate options, help generate creative ideas to address the issues, and speak to best practices to guide the Parties to co-operative results. During the course of the Mediation, the Mediator may also provide some insight and perspective on the reasonableness of the needs of the other Party and the feasibility of proposed outcomes. The Mediator will encourage discussions to bring forth additional facts, ideas, interests, and proposals from which the Parties can create solutions to the issues in dispute.

The Mediator will establish ground rules for the discussions and the meeting, will explain how the process will proceed and will foster appropriate dialogue and exchange of ideas. The Mediator will rely on principles of fairness, conflict resolution techniques, draw the Parties' attention to expectations consistent with NOSM's rules and policies and highlight standards and/or benchmarks accepted as norms in the area involving the issues in dispute.



The Mediator's style may vary depending on the nature of the situation leading to the Mediation. Some Mediators take a casual, informal approach and let the discussions between the Parties occur naturally; alternatively, the Mediator might take an active

role in guiding the discussions. Unless the Parties have agreed to a binding Mediation (which is called a Mediation-Arbitration), usually a Mediator is not authorized to order or impose a decision on the Parties. While a Mediator may strongly encourage Parties to consider a solution or settlement, a Mediator may not coerce an outcome.

“NOSM’s faculty, staff, and learners seek to learn and listen to one another respectfully and communicate openly”

3) Where does a Mediation session take place?

The Mediation discussions and meetings may be conducted by any means or at any location selected by NOSM and the assigned Mediator. A Mediation may occur in stages or multiple sessions, over the telephone and/or in person. NOSM will endeavour to schedule the Mediation at a location that is convenient to all Parties. NOSM’s Human Resources will help arrange for the Parties to take time from their roles to participate in the Mediation.

At an in-person Mediation session, the Mediator may give the Parties the option to meet in the same room at the outset or share some time together in the same room during the discussions. Alternatively, the Mediator may decide that it is best for the Parties to hold separate meetings and describe their respective perspectives with the Mediator alone. Private discussions can often help one Party express feelings to the Mediator that they may not be able to express with the other Party.

The structure of the Mediation meeting and how discussions will unfold depends on the issue at hand, the interests of the Parties and the style of the Mediator. The Mediator will try to facilitate the session to meet the needs of the affected individuals.

4) Is Mediation process confidential?

Confidentiality is a fundamental principle of the complaints process at NOSM and, as an extension of this value, Mediation is confidential process. Prior to the commencement of the Mediation process, all participants, including the Parties, the

Mediator and any support persons, must sign a NOSM Confidentiality Agreement (Appendix A).

Any statements made, along with any information discussed or documents presented as part of process, are strictly limited to the NOSM Mediation and cannot be referenced, repeated or used as evidence in any future matters or complaints. A critical component of Mediation is the assurance that participants can speak privately and communications and offers to settle are “without prejudice”. As such, all matters disclosed during Mediation are confidential and may not be raised before another proceeding, except with the permission of the individual who provided the information, or unless the disclosure involves criminal activity or poses a significant safety risk. After the completion of a Mediation, no public record is maintained of the session. All materials are kept confidential and, as such, the Mediator’s notes and any written submissions made by the Parties will not be subject to disclosure, except as required by law.



If the Parties achieve an understanding and/or resolution, the terms of their agreement will be documented by the Mediator. This agreement document will be filed with NOSM’s Human Resources.

“Mediation helps advance a positive and collaborative environment for learners, faculty, and staff.”

5) How do I prepare for a Mediation session?

The purpose of a Mediation session is to reach a mutually agreeable decision without any need for further escalation in the complaints process. Since each Mediation session is tailored to the needs of the Parties involved, there is no set method for preparation prior to a session. In order to optimize the Mediation, Parties should turn their minds to clarifying the issues, putting themselves in the other side’s shoes, brainstorming solutions and assessing which solutions are most likely to achieve a consensus.

Helpful points that all Parties should consider prior to engaging in Mediation are:

- 1) What do I hope to accomplish by engaging with the other Party in conflict resolution discussions? Can Mediation help mitigate my concerns, or do I need to consider a more formal complaints process?
- 2) What is the best-case scenario that I hope to achieve as a result of the Mediation? What is the next best scenario that is possible and that I would be willing to accept as conciliation? Are there any aspects of my concerns that are non-negotiable?
- 3) What does the other Party hope to achieve by participating in discussions with me? What is the next best scenario that the other Party might consider? Are there any aspects of the other Party's concerns that may be non-negotiable?
- 4) What information do I need to bring to the Mediation to help the Mediator better understand my best and second-best scenarios?

After considering the above-noted four points, Parties are encouraged to write two simple paragraphs to take with them into the Mediation: i) a brief overview of your perspective and ii) your reasons for your best and second-best scenarios.

In addition to facilitating the conversation between the Parties, the role of the Mediator is to provide some guidance on whether the requests being made by the Parties are reasonable and appropriate. In order to benefit from the Mediator's "reality check", Parties need to be open to hearing from the Mediator about the benefits and risks of their position. To prepare, it may be helpful to review points #1-4 with a support person on a confidential basis.



6) Who is involved in a Mediation session?

At NOSM, a Mediation session will consist of the affected Parties and the appointed Mediator. Although the Parties involved in a Mediation are allowed to invite an approved support person (for example, a union representative) to the Mediation, the support person does not generally communicate information on behalf of the affected individual.

The presence of a support person is only for the comfort of the Parties involved and not to argue any claims on behalf of a Party. A violation of this rule may result in the support person being asked to leave the Mediation session. It is important to note that the support person is also responsible for keeping the details of the Mediation session confidential. Support persons will be asked to sign the confidentiality agreement (Appendix A) as witnesses prior to the start of the Mediation session.

“NOSM recognizes that collaboration is both a process and outcome that engages different perspectives to better understand complex problems”

7) What happens if Mediation does not work?

It is possible that the Parties may fail to reach an agreeable solution regarding the overall situation. Yet, interim measures, temporary arrangements, pilot proposals and partial agreements may still be possible. As such, NOSM encourages Parties to consider both short-term and long-term solutions during their discussions with the Mediator. While a wholesale or fulsome resolution may not be achievable at that time, other limited options may be acceptable for the Parties to try on a provisional basis. Parties can alert the Mediator that they are open to exploring probationary or contingency arrangements.

If the Mediation session is deemed unsuccessful in facilitating constructive discussion, additional steps may be initiated based on the complaint procedure that is in place for the situation. For example, NOSM’s Human Resources may require that action be taken through the commencement of a formal investigation regarding the complaint.

NOSM Human Resources will provide both Parties with further instructions on the proceeding steps.

8) What happens after Mediation?

If the Mediation results in a resolution, the terms of the agreement will be confirmed in writing, and signed by both Parties and the Mediator. This agreement will be filed with NOSM's Human Resources to ensure any follow up action required of the Parties is completed. NOSM's Human Resources may required to inform other NOSM entities about the resolution on a "needs to know basis" if the other entity's operations are affected or involved by the agreement.

At the point of writing up the terms of the agreement, Parties should ensure that they fully understand what is expected of them and that they can perform and satisfy those expectations. A failure to abide by the terms of the mediated agreement may give rise to a formal breach of settlement complaint. As such, it is vital that Parties entering into a Mediation have full authority to participate, accept and act on any conditions of an agreed resolution. At the end of the agreement, Parties should recall and remind their support persons that the Mediation and resolution are confidential. If a successful resolution is achieved, Parties are encouraged to thank the other Party, their support persons and the Mediator for everyone's time and effort in cooperating in the successful Mediation.

If the Mediation is unsuccessful, Parties should consult with NOSM's Human Resources to determine what further actions may need to be undertaken.



9) When is Mediation not permissible?

There are certain situations where Mediation is not allowed. For example, if the situation has already been determined or subject to a final ruling or decision according to NOSM's rules or the procedures of an external body, such as a labour grievance or professional regulatory complaint. Purely academic concerns, such as an academic evaluation, are generally not an appropriate topic for Mediation. Disputes that involve criminal matters, risk to safety or serious harm to the operations of NOSM would not be subject to Mediation. Further, NOSM's Human Resources has the authority to deny a request for Mediation for trivial, frivolous or vexatious matters; if the request is made in bad faith; or for matters that do not involve the interests or operations of NOSM.

Key Elements of Mediation	
1	Private and Confidential
2	Informal and Creative
3	Future Oriented
4	Voluntary
5	Non-coercive decision making
6	Binding, if agreement reached

APPENDIX A: Confidentiality Agreement

MEDIATION - IMPORTANT INFORMATION

1. All matters disclosed during Mediation are strictly confidential and may not be raised in another proceeding, except with the permission of the person who gave the information.
2. All Parties who participate in the Mediation must sign a Confidentiality Agreement (see attached) at the start of the Mediation and before Mediation discussions commence. Support Representatives are also bound by the Confidentiality agreement.
3. Please review the Confidentiality Agreement and be prepared to sign the document before the Mediation starts. A copy of this Confidentiality Agreement will be provided to you after the Mediation.
4. Only an individual who is a Party, and one support representative, can participate in the Mediation.

MEDIATION BETWEEN

-and-

1. The above-noted Parties have agreed to try to resolve some or all issues between them by participating in a Mediation facilitated by _____, on behalf of Northern Ontario School of Medicine ("NOSM").
2. The Parties and the Mediator acknowledge that participation in this Mediation is voluntary and that the Mediation will only proceed if all Parties agree to participate in good faith and act respectfully, including listening to the others' perspectives without interruptions.
3. The Parties agree that each person has the authority to make a binding agreement on their own behalf at the Mediation.
4. The Parties and the Mediator understand and agree that this is a confidential process. All documents provided and statements made in the Mediation are without prejudice (off the record) and cannot be used in any other matter or proceeding.
5. The Parties understand that, if the Mediation is unsuccessful, the Mediator will not disclose or communicate any information about the Mediation to the anyone outside the Mediation process without the Parties' consent. The Parties also understand that the Mediator is not compellable as a witness in any other proceeding and that the Mediator's notes or records are inadmissible any other proceeding.
6. The Parties understand that a copy of this Confidentiality Agreement and any terms of settlement, memorandum of resolution or agreement will be filed with NOSM's Human Resources.
7. The Parties understand and agree to comply with all of the forgoing obligations and, in particular, agree to conduct themselves in accordance with courteous behaviour.

Dated in _____, this _____ day of _____.

Party Name

Party Signature

Witness Signature

Name:

Name:

Mediator

Signature

Name:

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