

Policy Title	Version Number	Date Issued
Mediation Policy	1	October 2010 Reviewed June 2015

1. Introduction

Padua College adopts this policy as an option for resolving disputes in appropriate cases. Padua College provides for the care of students in their holistic development as they progress through the various year levels. It is possible that conflict may occur. Padua is committed to taking appropriate action when these matters arise. Mediation is just one of the options available.

The practice of mediation as a means of resolving disputes is very much in keeping with the Franciscan ethos – for example St Francis attempting to mediate between the Sultan and the Crusaders.

2. Definitions

'*Mediation*' may be defined as follows;

"...Mediation is a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on, or determine the process of mediation whereby resolution is attempted." (National Alternative Dispute Advisory Council)

From most definitions and the practice of mediation in a variety of organisations, some common elements include;

- Mediation is an open and empowering process;
- Mediation needs a climate of trust and safety;
- Mediation recognises that disputants are responsible for their own dispute and its resolution;
- Mediation emphasises and demonstrates a co-operative approach to problem solving;
- Mediation involves the use of a neutral third party to assist the disputing parties to resolve their conflict.

'*Mediator*' means a member of staff, or a person independent from the College, who has successfully undertaken studies in mediation (or is recognised as having current competence) and has been appointed as such by the Rector, Padua College.

Assumptions in mediation

From the way mediations are held, it is possible to derive a number of underlying assumptions regarding the process and those who take part in it. It is important that those participating in mediation come to accept these if the process is to succeed. These assumptions are:

- The best decision makers in a dispute are the parties themselves;
- Disputes are most effectively resolved on the basis of interests and needs rather than a strict application of the law or exercise of superior power;
- To resolve a dispute, parties need to hear and understand each other through direct and constructive communication;
- A negotiated agreement is more likely to reflect the needs and to gain commitment of the parties than a decision imposed from the outside;
- Mediators can assist by providing an environment and a process for negotiation, enabling the parties to focus on the content of their dispute.

3. Application of policy

3.1 Mediations will be offered with the approval of the Rector and/or Vice Rector Pastoral Care.

3.2 The Rector may consider it appropriate to utilise a single mediator or “*dual mediator*” process to best guide the process.

3.3 Only those parties involved in the dispute are allowed to attend the mediation. There is no scope for advocates, colleagues, family and/or support people to attend. This is because mediation in this instance is not a process which apportions blame to either of the parties to the dispute.

3.4 Attendance at mediation is voluntary on the part of all parties. Subject to 3.6, the information shared there will be considered by all the parties and the mediator, to be privileged and ‘without prejudice’. The mediation process is not to be used to obtain information to seek remedy in another forum.

3.5 Prior to conducting a mediation, the mediator would have already explained the mediation process to the parties.

3.6 An objective of mediation is to determine clear and effective ways of behaving which will govern parties’ ongoing relationships. The mediator will provide a brief summary of agreement report to the Rector and Vice Rector, Pastoral Care.

4. What disqualifies a dispute from mediation

Factors which may disqualify a dispute from mediation include, but are not limited to cases with the following characteristics:

- ✘ Where parties have ulterior motives such as using the mediation process to gain further information to take the complaint elsewhere;
- ✘ There is a fear of violence;
- ✘ There is bad faith bargaining;
- ✘ There is an unwillingness to genuinely participate;
- ✘ There is an incapacity to negotiate;
- ✘ There is duress;
- ✘ There is a need for a legal precedent or sanction;
- ✘ Where it has been a long time since the conflict;
- ✘ When the dispute is too serious to mediate;
- ✘ Where a remedy can only be provided by a court (i.e. compensation);
- ✘ There is no commitment by the disputing parties to maintain confidentiality where practicable;
- ✘ Where there is a manifest power imbalance between the parties.