



office of the
independent
adjudicator

Mediation – a guide for students

Why is the OIA suggesting I consider mediation?

The role of the OIA is to resolve disputes between students and higher education providers. In most cases we do this through an adjudication process where we review the provider's final decision to determine whether it conformed to its own regulations and was fair and reasonable in the individual circumstances of the case. However, in some cases the OIA case-handler might think that it would be in the best interest of both the student and the provider to sit down together and try to reach their own agreement to settle the complaint. Mediation can be an effective way of doing this, particularly where repairing a breakdown in the relationship between the student and provider is necessary or desirable, a creative rather than a technical solution might better resolve the complaint or we believe that the student and provider are already in agreement about many of the key matters in the complaint.

What is mediation?

Mediation is where an independent third party (the mediator) assists those involved in a dispute to reach a mutually acceptable settlement. The mediator acts to help the parties to communicate and understand each other and assists them in gaining new perspectives on the issues in dispute. In this way the mediator facilitates the parties to work together to find their own resolution. The mediator does not take sides and does not suggest solutions.

Mediation usually involves only the two parties and the mediator. For cases referred from the OIA this usually means the mediator will meet with the student and one person representing the provider. The provider will select the person it considers to be most suitable to attend the mediation, but it will inform the mediator and the student in advance of who the representative will be.

Mediation is a confidential process. In order to ensure that everyone feels able to speak openly and honestly no formal notes or minutes are taken and both parties are asked to keep all discussions confidential. Any disclosures and discussions which take place during mediation cannot be considered later by the OIA or by a Court. Where a settlement is agreed, the mediator will prepare a written settlement agreement which will record only the specific terms of the agreed resolution and will be signed by both parties.

How does mediation work?

The OIA will not refer a complaint to mediation unless both the student and provider agree to it. The OIA case-handler, usually after an initial review of the case file, will suggest to both the student and provider that mediation might be useful in their particular case and will allow some time for them to consider this option. It is entirely the choice of the student and the provider as to whether or not they agree to go to mediation. Whether or not a student or provider declined to go to mediation will not be considered in determining the outcome of the case. In recommending a remedy the OIA may take into consideration whether either party missed an opportunity to settle.

If both parties agree to go to mediation the OIA would refer the complaint to one of the mediators on our Mediation Panel. The mediators on our Mediation Panel are professional mediators and are independent from the OIA. The mediators, because they are independent professionals, charge for their services. The OIA normally asks the provider to agree to pay all of the charges for the mediator. This is because the OIA seeks to provide resolutions at no cost to the student. Once the OIA is sure that mediation is agreeable to both parties we will write to the student and provider confirming that they have agreed to mediation to resolve the complaint and we will provide the name and contact details of the mediator we have appointed. At this stage the OIA will close the complaint.

Once the complaint is sent to mediation the selected mediator will contact both the student and the provider to gain an understanding of the issues in dispute and to agree a date and time for a mediation meeting. Mediation meetings are led by the mediator and are attended by the student and a single representative of the provider. In special circumstances other individuals might be present at mediation, for example a carer or support worker, but the presence of any third party must be agreed by both the student and provider in advance of the meeting. Mediation meetings are usually held at the provider to keep cost as low as possible, but can be organised elsewhere if there is a good reason to do so.

Every mediator works in their own way in the mediation meeting. Typically they will start the meeting with both the student and the provider's representative present in the same room to share their views on the dispute. The parties might continue joint discussions, or more often they may go to separate rooms with the mediator spending time with each party to explore the issues of dispute, why they are important and what steps can be taken to resolve the matter. The mediator will not give any opinions about the dispute, but may ask difficult questions or play devil's advocate to enable a party to better understand or articulate his/her position. The mediator may also give short exercises or activities to one party whilst they are speaking to the other party in another room to help keep focus on the issues and possible resolutions.

When a resolution is reached between the student and provider the mediator will act to draft the formal settlement agreement which is then signed by both parties. A settlement agreement once signed is a binding contract and can be used as evidence in any legal proceedings.

How long does mediation take?

Once both the student and the provider agree to go to mediation it will normally take one to two weeks for the OIA to appoint a mediator. We contact both parties in writing as soon as a mediator is appointed. The mediator will contact both parties within a few days of being appointed to agree the date and time of the mediation meeting. In many cases a mediation meeting date within two to four weeks can be agreed but there are cases where it takes longer to get the parties together.

Mediation meetings vary in length, but our experience has been that many last between 4-8 hours. Therefore both sides will know whether or not an agreement has been reached by the end of the day of the meeting. Where agreement is reached it can take another few days to a few weeks for the settlement agreement to be drafted and signed by both parties.

In our experience mediation can often take less time than it would take for us to complete all of our review processes and issue our Final Decision.

What happens if mediation doesn't work?

The OIA has found that mediation is usually successful at resolving issues. However, in a few cases an agreement can't be reached. In these circumstances the student has the option of requesting that the OIA re-open their complaint. As long as the request is made reasonably quickly after the failure of the mediation, the OIA will normally agree to this request. Unless there is clear evidence to the contrary the OIA will assume that genuine efforts were made on all sides to enable the mediation to work and therefore the referral back to the OIA will not normally reflect badly upon or disadvantage either party.

When the OIA reopens a complaint it will be allocated directly to a case-handler for review, but this allocation may take a few weeks. The case-handler assigned may or may not be the same one who recommended mediation, the allocation will usually be determined by which staff member has the capacity to take an additional case into their caseload at the time. The case-handler will treat the case as they would any other complaint from that point forward. The case-handler will review the evidence in the case file and may request additional documentation or ask questions to clarify their understanding of the issues. However, because mediation is a confidential process, the case-handler will not accept any information about the discussions or disclosures which took place during mediation from either the student or the provider. Once the review is completed the OIA will issue a Complaint Outcome. We will provide the student and provider with a final opportunity to comment on the considerations and conclusions contained in the Complaint Outcome before we issue a Final Decision about the complaint and close our file.