

Resolution Agreements -- Guidelines for Mediators

When preparing a resolution agreement, ask yourself the following questions.

Does the agreement address the parties' interests/concerns raised during the mediation?

Will the parties interpret the provisions the same way?

Does the agreement provide enough information to determine whether a party has complied with its provisions?

Can the agreement be implemented legally and within agency policy guidelines?

Except for the last question, all of the information needed to draft an effective resolution agreement should be easily obtained from your mediation notes (which should be destroyed at the completion of the overall process).

Does the agreement address the parties' interests/concerns?

During mediation, you will help the parties express their interests and concerns. As the mediation progresses and the parties are discussing settlement, make sure that the settlement provisions are addressing the issues raised earlier. This is especially important when settlement negotiations are long or if there has been a long break between mediation sessions.

Help the parties avoid getting into a settlement negotiation or bargaining mode that results in provisions that do not specifically address the issues and concerns raised earlier.

Will the parties interpret the provisions the same way?

It is important that the parties have a shared understanding of certain terms. As a mediator, you have to deal with this issue on two levels. First, during the mediation, you must make sure the parties understand each other's issues. For example, if a supervisor is concerned because the employee is "always late for work," it is important that you clarify what "always" means and what being "late" means to the supervisor. Does "always" mean more than once week? Does "late" mean 5-10 minutes after scheduled time? Or does not being late mean that the employee is expected to show up at least 5-10 minutes early so he/she can receive any special information or instructions needed before their shift begins. It is important that the parties be on the same page when discussing each other's issues.

Note: If being on-time for the supervisor has a very strict meaning, i.e., reporting early or reporting exactly on-time, then try to insure that this is reasonable and that most, if not all, other employees follow this pattern. Applying an office policy differently to one person is likely to cause resentment.

In addition to clarifying terms during the mediation, it is important to clarify terms that are used in the resolution agreement. As the drafter of an agreement, you have to put yourself in the parties' shoes and read the agreement from their perspective.

Defining Terms. If the employee is to receive "training" as part of a settlement, make sure the parties define and understand the type of training that will satisfy the provision in the agreement. If a course were not available, would a detail qualify as training? If so, ask how long should the detail be? Ask the parties to include examples or guidelines that will help them determine on their own what type of training would satisfy the agreement. Also, keep time factors in mind—When should the employee expect to receive the training--within the next 6 months, 12 months?

Anticipating Problems. Also, it is important that you try to anticipate reasonable problems that could arise when attempting to implement a provision. Try to plan for some obvious obstacles that could arise. For example, if the employee wants to attend a week-long training course that involves travel and lodging, make sure it is likely the funding will be available and discuss what could be done if it is not. Another obvious obstacle could be scheduling, especially if the training is not readily available. Ask the parties what problems they can anticipate and how they intend to work them out if they arise.

Does the agreement provide enough information to determine whether the parties have complied with the agreement?

In addition to drafting and reading the agreement from the parties' perspective, you should also try to read the agreement from the perspective of an "outsider." Would someone who knew nothing about the mediation be able to read the agreement and understand what is expected of the parties and be able to determine whether the parties' actions comply with the agreement? Is the agreement clear and logical? If there is an alleged breach, you may not be the mediator or the decision-maker that will help the parties resolve the issue. If you are not, the other person may be relying primarily on the agreement to make a decision. Try to make this person's job as easy as possible.

Can the agreement be implemented legally and within agency policy guidelines?

Make sure the agreement does not violate any laws or agency policies. Make sure the parties review the draft agreement with this factor in mind and have them check any questions they may have in this area. You, as the mediator and drafter of the agreement, should feel free to discuss any question you may have with Human Resources, the Chief Counsel, the budget office, and any other administrative staff that can advise you in this area.