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The Multi-ADR Program Problem

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Problem

Institutions of higher education have numerous dispute resolution mechanisms to address specific kinds of disputes. For instance, federal mandates require public institutions of higher education to have complaint resolving mechanisms for civil rights disputes. Human Resource departments typically have employee relations conflict mechanisms, and faculty have access to academic freedom and tenure dispute resolution systems. As the value of dispute resolution procedures has proliferated in the last two decades, institutions have developed more offices to provide either specific kinds of resolution methods or to respond to different kinds of disputes that may arise within a campus community. This paper will explore the genesis of dispersed resolution functions, services and trainings at the University of New Mexico (UNM), the issues that engenders and suggest solutions on how these issues may be resolved.

GENESIS

Programs

UNM has historically offered traditional complaint mechanisms for civil rights disputes, labor relations disputes, including collective bargaining agreement dispute resolution mechanisms, and for conflicts that arise with regard to the application and interpretation of human resource policy. Traditional mechanisms have also been in place for classic faculty issues such as academic freedom and tenure. UNM also has a whistle blower’s policy, a student judiciary system and other mechanisms to resolve student disputes. Over time, it was realized that these narrow complaint mechanisms did not

provide a dispute resolution function for all conflicts and constituencies within a campus community. As alternative dispute resolution became more popular, other university programs started incorporating it into their service offerings. For instance, the employee assistance program provides some mediation.

Finally, in 1994 at the urging of staff, the institution recognized a need to provide a general dispute resolution office to resolve conflicts involving at least one staff member. Hence the Dispute Resolution Department was created. Contemporaneous with the creation of the Dispute Resolution Department, the academic Department of Communication and Journalism created a Mediation Clinic. The Mediation Clinic focuses on providing services to students and on providing a resource for academic research.

Recently, faculty have initiated a process to create a faculty dispute resolution program to address nonacademic faculty disputes that do not include either student or staff participants. The institution is currently creating a program to address the needs of faculty. Discussions include whether this should be a free standing program or operate collaboratively with existing programs and services.

Training

Along with the proliferation of dispute resolution programs and services, there has been dispersed development of dispute resolution training. For instance, the Communication and Journalism Department offers a 40 hour certificate for its mediation training. The Business School will be offering an academic certificate at the graduate level through accredited courses. Employees can also receive training in dispute resolution skills through programs offered by the Human Resources Department and taught by the staff from the Employee Assistance Program or from the Dispute Resolution Department. Finally, the Law School offers a semester long accredited course on conflict resolution and several 40 hour mediation certificate programs.

ISSUES

The proliferation of programs and services create additional conflicts between parties to the conflict AND service providers. With the proliferation of programs and services, parties engage in *forum shopping*. Rather than having a resource to address problems or concerns, individuals can go from office to office until they find the answer they are seeking. A corollary of this problem is that individuals are often sent from office to office to obtain such services. This results in increased frustration and the probability that some individuals get lost in the system, never to receive the desired services.

Multiple and uncoordinated offices result in *inefficient use of limited* financial and human *resources*. Each office must maintain its own administrative structure. Therefore, there often is a lack of coordination among offices. This lack of coordination results in individuals being “in the middle” of conflicting advice. Sometimes this results from intentional acts (as in forum shopping), sometimes this is the result of misunderstanding. In either case it does NOT benefit the individual or the institution.

The rationale for this among the service providers is the need to maintain confidentiality, or it is explained by a lack of information. Rather than directing efforts at the collaborative process and developing efforts to address both confidentiality and institutional and individual concerns, the multiple offices’ efforts could be interpreted as protecting territory. This also results in the service providers developing bad feelings either because they have unnecessarily duplicated work performed by other service providers or because they have not been approached to discuss a matter in which they are deeply involved. Ultimately, without efforts to coordinate, the potential for conflicting outcomes in any individual matter remain high.

Finally, the multiplicity of services, lack of coordination and wire-crossing creates a situation in which resolution becomes more difficult, at best, and impossible in some instances. The creation of new conflicts between parties and/or among providers as well as the on-going possibility of seeking more/different information from another source is a predicate to lack of

resolution.

Jurisdiction of the office colors the handling of disputes

Particular offices tend to use particular dispute resolution mechanisms. Thus the process that is employed in a particular matter may depend on which office the individual has contacted rather than the selection of a mechanism suited to the particular issues or concerns. For example, the collective bargaining agreement includes formal dispute resolution mechanisms such as grievances and appeals. Therefore, issues may not be addressed through less formal mechanisms like mediation or facilitation.

Appearance or reality of inequity

Individuals are often sent from office to office to obtain the service they are seeking. This results in increased frustration and the probability that some individuals get lost in the system. It also is likely that for some individuals this creates additional conflicts, thus catching them in a never-ending process of dispute rather than resolution.

With the creation of multiple offices also comes the perception of hierarchy and ranking. At UNM there already exists a strong perception that staff are second-class citizens and that the lower graded staff are not even second-class citizens. Establishing programs that only some staff can access, or are only available to faculty, further supports this perception. [It also is contrary to basic ADR principles that focus on equalizing individuals power, control and authority within the process and focus on ALL individuals being treated with genuine respect and equality.] *** I have no idea what is trying to be said here!

POSSIBLE SOLUTIONS

Central Intake Office

The intake office would take all intakes and triage individuals based on their issues so they would be “sent” to the most appropriate service provider(s). The Intake Office also would be responsible for assuring coordination as appropriate. These persons would have to ascribe to confidentiality so that the concerns of various offices could be addressed.

Standardized Intake Form

Intake forms identify all other offices contacted by individuals (ultimately all those involved in the conflict) to allow better coordination among offices. These forms could be shared as appropriate or be limited to reinforcing the providers responsibility to coordinate with other involved offices.

Coordinated Team Approach

Offices/programs offering dispute resolution mechanisms for overlapping individuals meet to coordinate handling of disputes.

Centralize Services

All services provided through one office. Perhaps this should also include centralizing training services including standards for certificates and requisite field experience. Cross-training/Rotation of different dispute resolution providers to develop increased awareness of colleagues programs.

Privatize Some/All Services

Contract out for neutrals with subject expertise.

We welcome your responses to this paper. Any suggestions or comments will be helpful in our on-going development and implementation of dispute resolution.