WORKPLACE MEDIATION PROCEDURES

These Workplace Mediation Procedures describe the operational framework of JHU’s workplace mediation program.

I. ELIGIBILITY

A. Mediation is available to JHU staff primarily, but not exclusively (excluding bargaining unit employees and staff during the original introductory period). The party requesting mediation must be an eligible JHU staff member.

B. Scope and limitations of issues that can be pursued under this program: Concerns alleging sexual harassment, sexual violence, or discrimination based upon race, color, gender, religion, age, sexual orientation, national or ethnic origin, disability, veteran status, or marital status are to be presented to the Office of Institutional Equity for consideration and may not be eligible for mediation. Contact the Office of Institutional Equity website for more information.

II. DEFINITIONS

A. **Mediation**: a voluntary process by which participants, with the assistance of mediator(s), share perspectives, identify disputed issues, develop options, consider possible solutions, and seek to reach a mutually acceptable resolution to their dispute. Participants in mediation make informed and deliberate decisions to resolve past problems and discuss future relationships directly and confidentially.

B. **Staff member**: an individual employed by JHU, in either a supervisory or non-supervisory capacity (excluding bargaining unit employees and staff during the original introductory period).

C. **Participants in mediation**: individuals who have chosen mediation as a means to resolve work-related conflict or disputes.

D. **School**: a term that includes schools, administrative units, and academic units at the university.

E. **JHU Workplace Mediator (mediator)**: an impartial third party who helps the participants reach a mutually acceptable solution to their conflict. The mediator does not decide the outcome or impose a resolution.

F. **JHU Workplace Mediation Program**: a mediation program operated by the JHU Office of Human Resources for the resolution of work-related conflict.

G. **JHU Workplace Mediation Team Leader**: an employee of JHU who manages JHU’s Mediation Program and who works to ensure that the process is coordinated with other procedures as appropriate, maintains quality assurance, monitors issues and trends and performs other duties as assigned.
H. **Unit Based Workplace Mediation Coordinator**: an employee designated by each School to serve as the primary service point of contact for mediation requests and coordinate JHU’s mediation program within that School. In areas where there is not a School-specific Unit Based Workplace Mediation Coordinator available, an ad hoc coordinator will be assigned to that area by the JHU Workplace Mediation Team Leader. Under the guidance of the Sr. Director of HR, or responsible Human Resource Manager, the Unit Based Workplace Mediation Coordinator reviews the Mediation Agreement to ensure compliance with School policy.

I. **Observer**: an individual who attends the mediation session with the permission of the JHU Workplace Mediation Team Leader. An observer attends the session in a learning capacity or to evaluate the effectiveness of the mediators or the process.

J. **Two-Party Mediation**: mediation of a dispute primarily between two parties, who may be coworkers or in a reporting relationship.

K. **Mediation Packet**: completed forms that the mediator(s) forwards to the JHU Workplace Mediation Team Leader upon the conclusion of the mediation (i.e., Consent to Mediate form, Participant Evaluations, Mediator Reports, and, when drafted, the Mediation Agreement.)

III. **PROCEDURES IN PROVIDING MEDIATION SERVICES**

A. **Requests for Mediation**

1. A request for mediation is referred to the appropriate Unit Based Workplace Mediation Coordinator.

2. The requesting party or the Unit Based Workplace Mediation Coordinator will contact the other participant or participants to the dispute to determine their interest in mediation.

3. Participation in mediation is voluntary. At any point, a participant may withdraw from the process. Participants in mediation remain subject to University, school and departmental policies, progressive counseling, performance management and disciplinary action.

B. **Intake/Assessment**

1. The Unit Based Workplace Mediation Coordinator should respond to mediation requests promptly by conducting an intake. Intake consists of interviewing the interested participants to assess the appropriateness of mediation and the willingness of the participants to resolve their conflict. The Unit Based Workplace Mediation Coordinator will submit a written "Mediation Request" (Appendix A) to the JHU Workplace Mediation Team Leader within three workdays after the mediation request.

2. The Unit Based Workplace Mediation Coordinator will review the confidentiality exclusion statement and provide each participant with a copy of "Information about the Mediation Process" (Appendix B), “Tips for Successful Mediation Participation” (Appendix C), and “Consent to Mediate” (Appendix D) to help ensure that each participant has a basic understanding of the mediation process and is a willing participant.
3. The Unit Based Workplace Mediation Coordinator will indicate on the “Mediation Request” form that the above information about the mediation process has been provided to the participants, and that the participants have been informed that they can contact the JHU Workplace Mediation Team Leader if they would like additional information.

4. The JHU Workplace Mediation Team Leader will notify the participants of the receipt of the request, and schedules the mediation session within ten workdays of receiving the "Mediation Request" form from the Unit Based Workplace Mediation Coordinator.

C. Scheduling Mediation

1. Following intake/assessment, the JHU Workplace Mediation Team Leader will assign mediators, schedule the mediation at a time mutually convenient to the parties, and reserve an appropriate location to conduct the mediation. If necessary a staff member’s regular work schedule may need to be temporarily adjusted (with supervisory approval) to accommodate the scheduling of a mediation session.

2. The JHU Workplace Mediation Team Leader will provide written notification of the date, place, and time of the mediation to the Unit Based Workplace Mediation Coordinator, JHU Workplace Mediators, and to the participants.

D. JHU Workplace Mediator Responsibility

1. Accepts mediation requests only after thoroughly reviewing upcoming commitments to confirm her/his availability and supervisor’s approval.

2. Only accepts mediation assignments in which s/he can serve impartially and without a conflict of interest, and that appear to fit skill level and competence.

3. Follows these Workplace Mediation Procedures.

4. Certifies that he has read and, consistent with state law, will abide by the Maryland Standards of Conduct for Mediators.

E. Conduct of the Mediation

1. The mediation will be held in a private, preferably neutral, location with a low potential for distraction.

2. Mediation sessions will have two co-mediators, whenever possible.

3. The JHU Workplace Mediation Team Leader reserves the right to have an observer attend the mediation. If an observer is to attend, the participants will be informed in advance of the observer’s identity. If one or more participants express discomfort with the observer assigned to attend, the JHU Workplace Mediation Team Leader will recommend another observer.

4. Mediation participants will behave in a manner that engenders mutual respect, treating each other with courtesy and civility.
5. The parties may consult with legal counsel prior to and during mediation; however, a participant’s lawyer is not permitted to attend mediation sessions. Managers and supervisors who have been requested to mediate a workplace issue with a subordinate employee may consult with the University General Counsel’s office regarding the request, and they may seek confidential legal advice from that office in preparation for, and during the course of, any mediation of such disputes.

6. Mediators will discuss the topics included in the “Mediation Introduction” (Appendix E) and review the “Consent to Mediate” form with participants and obtain their written consent prior to beginning a mediation session.

7. Mediators will honor a decision by participants to conclude the mediation prior to a resolution.

8. If the requested mediation is being held in an attempt to resolve a workplace issue that is currently on file as an active appeal, then the normal time limits for action and response to this appeal will be suspended, pending the outcome and disposition of the mediation. If a successful resolution is reached, the related appeal is also settled. If the parties reach impasse during the mediation, the appeal process restarts where it left off.

9. At the participants’ request, the mediators will document, on the “Mediation Agreement” form (Appendix F) agreements reached to resolve their conflict. The participants will review and sign this draft agreement and the mediators will give each participant a copy. This draft agreement will become the final agreement unless the review process identifies areas that need to be addressed. (See Section III. F. 1. below)

10. The mediators will, at the conclusion of the last mediation session, ask the participants to complete the “Mediator/Mediation Process Evaluation” form. (Appendix G).

11. The mediators will complete the “Mediator Report” form (Appendix H). The mediators will forward these completed forms, the signed “Consent to Mediate” and the “Mediation Agreement” to the JHU Workplace Mediation Team Leader, within three workdays of the last session. These forms comprise the “mediation packet”.

12. The JHU Workplace Mediation Team Leader will be available for consultation with mediators, if requested.

F. Completed Mediations

1. Within three workdays of receipt of the mediation packet, the JHU Workplace Mediation Team Leader and Unit Based Workplace Mediation Coordinator will review the participants’ draft written agreement. The JHU Workplace Mediation Team Leader reviews to ensure that it is consistent with University policies. The Unit Based Workplace Mediation Coordinator verifies it is consistent with School policies and assures that each participant has the authority to carry out the action called for in the agreement.
a. If the draft agreement meets the above criteria, it is no longer a draft, and becomes the final agreement. The JHU Workplace Mediation Team Leader will notify the participants and mediators that the agreement is final.

b. If the draft agreement does not meet the above criteria, the JHU Workplace Mediation Team Leader will schedule a mediation session with the participants to address any changes needed to bring the agreement into compliance.

c. A JHU manager or supervisor is not authorized to enter into an agreement that limits the authority or discretion of the University, school, department or office unit, or which commits the University to any payment. Any such Agreements are subject to review, approval and signature by an authorized University official.

d. Unless explicitly stated in the Agreement and signed by an authorized Johns Hopkins University official, the Johns Hopkins University is not a party to the Agreement, and it is not bound by its terms. Nothing in this agreement should be construed as creating an employment contract between the University and a party to the Agreement.

e. Participants may have draft agreements reviewed by a legal representative or another individual of choice prior to signing.

f. Except for faculty and certain other appointed staff, University employees are employed at-will, which means the employee or the University may terminate employment at any time without cause or notice. The written agreement does not alter the employment status of an at-will employee.

2. The JHU Workplace Mediation Team Leader will conduct a three-month evaluation following the conclusion of mediation. (See “Mediation Program Three Month Evaluation,” Appendix I)

G. Confidentiality

1. To promote frank and productive discussion, the parties agree that the mediation process shall be confidential. All oral and written communications provided during the mediation process are confidential and shall not be used for purposes outside of the mediation in accordance with the Maryland Mediation Confidentiality Act, Sections 3-1801 through 3-1806 of the Maryland code, except as required by law. The University may have need to disclose or refer to information generated during mediation where required by applicable law including but not limited to cases of child abuse, vulnerable adult abuse, threats of physical harm to self or others, sexual harassment, and sexual violence. Mediation communications are also subject to disclosure by court order to the extent that the court determines that the disclosure is necessary to prevent a manifest injustice or harm to the public interest that is sufficient magnitude in the particular case to outweigh the integrity of mediation proceedings. A written agreement resulting from this mediation is not confidential and may be disclosed by either party (unless the parties agree otherwise in writing).

2. Subject to the limitations on confidentiality noted above, the information shared during the mediation process related to the dispute must not be used or referenced in
proceedings conducted under the Appeal Process set forth in Section 8 of the Human Resources Personnel Policy Manual.

3. JHU’s Workplace Mediation Team Leader / Unit Based Workplace Mediation Coordinator’s Responsibilities

a. JHU’s Workplace Mediation Team Leader and the Unit Based Workplace Mediation Coordinator shall take appropriate measures to safeguard the confidentiality of the information shared during mediation process, including instructing mediators to devote sufficient time to promoting the participants’ understanding of confidentiality.

b. JHU’s Workplace Mediation Team Leader will maintain the mediation packet, including the original “Mediation Request” and the “Mediation Agreement”, in a separate confidential mediation file; mediation-related documents are not to be kept as part of any other JHU file.

4. Management’s Responsibilities

a. Management must assure the participants that no retaliation will result from participating in mediation. This assurance includes seeing that what is said during the process is not used in any way against the participants. This assurance is especially important to the process and enables the necessary open and honest discussion of the issues.

5. Participants’ Responsibilities

a. At the beginning of the mediation session, the participants commit to keeping the contents of the mediation session confidential. The scope of the confidentiality should be discussed before the commitment is made.

b. Disclosing the fact that mediation took place is not a breach of confidentiality.

6. Mediators’ Responsibilities

a. The mediator may not disclose or be forced to disclose mediation communications in any judicial, administrative, or other proceeding, except as required by law or court order. Upon termination of the mediation process, the mediator shall destroy any notes and written records created during mediation.

b. Mediators shall inform the participants about the role of confidentiality in mediation and how a breach of confidentiality may be addressed under these Workplace Mediation Procedures.

c. Mediators shall contact the JHU Workplace Mediation Team Leader for additional guidance on confidentiality as needed. (See Section III. H. 1. below)

H. Breach of Confidentiality and/or Breach of Mediated Agreement
1. If a participant believes that confidentiality and/or a signed mediated agreement has been breached, the participant contacts the Unit Based Workplace Mediation Coordinator to request mediation to address the concerns.

2. The JHU Workplace Mediation Team Leader will schedule a mediation session for the participants who may resolve the dispute, void the agreement, amend the agreement, and/or enter into a new agreement.

IV. REQUIREMENTS FOR SERVING AS A JHU WORKPLACE MEDIATOR

A. All potential mediators must complete the “Mediator Application” (Appendix J).

B. Upon the recommendation of the JHU Workplace Mediation Team Leader, the Leader and the Senior HR Directors, the JHU Vice President for Human Resources appoints the successful applicant as a JHU Workplace Mediator. The JHU Vice President for Human Resources may also remove a mediator if, in her/his judgment, removal is appropriate.

C. All mediators will have completed at least the 40-hour Basic Mediation Training required by the State of Maryland (or similar program) and will abide by these Workplace Mediation Procedures and the “Maryland Program for Mediator Excellence, The Maryland Standards of Conduct for Mediators” (Appendix K).

D. Mediators agree to conduct at least one JHU mediation per calendar year, upon request. Mediators should immediately alert the JHU Workplace Mediation Team Leader if they are unable to fulfill this agreement.

E. JHU encourages its mediators to pursue on-going educational opportunities to keep their skills honed and current.

F. The JHU Workplace Mediation Team Leader will review evaluations of the mediators and the mediation process and may make recommendations to mediators, the JHU Vice President for Human Resources and other University administrators, as appropriate. He/she will also convene at least two meetings per year with all mediators to discuss the progress of the program, in service concerns, etc.

G. Human Resources through the JHU Workplace Mediation Team Leader will send annual Letters of Acknowledgement to JHU’s Workplace Mediators and their supervisors for use during the employee’s annual review.
APPENDIX LIST OF SUPPORTING FORMS FOR THESE PROCEDURES:

Appendix A: Mediation Request
Appendix B: Information about the Mediation Process
Appendix C: Tips for Successful Mediation Participation
Appendix D: Consent to Mediate
Appendix E: Mediation Introduction
Appendix F: Mediation Agreement
Appendix G: Mediator/Mediation Process Evaluation
Appendix H: Mediator Report
Appendix I: Mediation Program Six Month Evaluation
Appendix J: Mediator Application
Appendix K: Maryland Program for Mediator Excellence, The Maryland Standards of Conduct for Mediators

JHU extends a note of appreciation to the Virginia Department of Employee Dispute Resolution for its permission to adapt its program materials in the development of the JHU Workplace Mediation Procedures and supporting documents.