

CHAPTER 3: APPROACHES TO DISPUTE RESOLUTION

Before You Begin

Most disputes can be resolved, and most disputes are worth resolving. By working together to resolve disputes, everyone benefits from the results. When no attempts are made to resolve differences in a fair and friendly way, the education of the student and the life of the family can be disrupted. Stress can be placed upon school employees, and resources can be strained. It is in the best interest of everyone, especially the student, to try to resolve disputes as quickly and fairly as possible.

One way of dealing with disputes is to ignore them, but this may not produce the desired results. In many cases, a dispute left unresolved could become a larger issue than it was to begin with. Once you have made a decision to resolve a dispute, it is important to explore your options and decide upon the next step.

Before taking action in any dispute resolution process, it is worth taking some time to carefully consider the situation and ask these questions.

- What exactly is the dispute about?
- Who is involved in the dispute?
- Is the issue important enough to pursue?
- Is this something that can be worked out by me and the other person or people who are involved in the dispute?
- Am I willing to work this out with the other person or people who are involved in the dispute?
- What would solve the problem for me?
- How would I like to see the dispute resolved?
- What are the benefits of this particular resolution?
- If the dispute has to do with a student, how will that student benefit?
- Do I have all the information I need about the situation, the school, the resources that are available to me, and the policies that may be in place?

If you have decided that it is worthwhile to begin a dispute resolution process, the next step is to decide on an approach.

Just as there are many ways to become involved in a dispute, there are many ways to resolve a dispute. Basic elements of problem solving can be found in every approach. The differences have to do with how much control people have over the process, how much control outside parties have over the process, and how formal the process is.

Possible Approaches

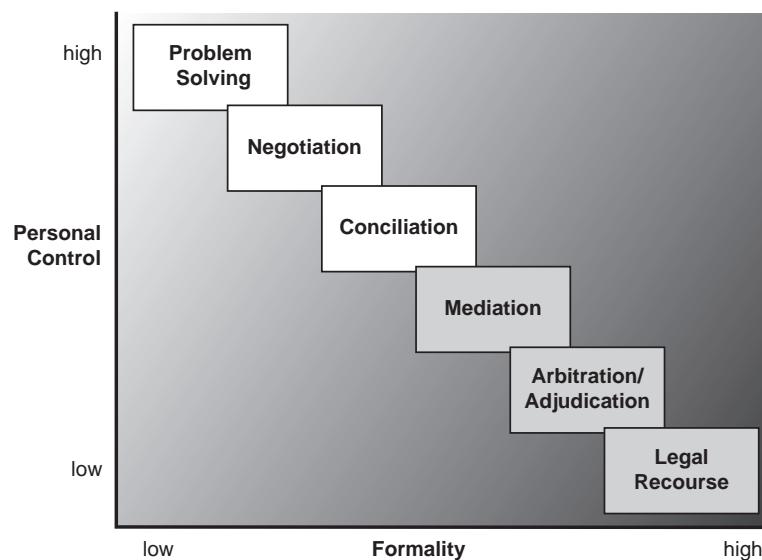
The most local and informal approaches are problem solving, negotiation, and conciliation. They are the focus of this handbook.

Informal dispute resolution involves conversations with the person or people who are most directly involved in the dispute and are most likely to help find solutions.

Issues are discussed in a direct and informal way. This can be a rewarding and positive process, and far more efficient than some of the more formal approaches.

The first three approaches to dispute resolution—problem solving, negotiation, and conciliation—are the most local and informal approaches and, therefore, the focus of this handbook.

Approaches to Dispute Resolution



The success of informal dispute resolution depends on people being able to resolve a dispute themselves. The more formal the approach, the more power an outside third party has over the process. In extreme cases, a third party makes a legally binding decision about the outcome.

Problem Solving is the most informal approach. It involves people working together in a voluntary and co-operative way to overcome their differences. In this approach, people have the greatest degree of control over the process and flexibility in the outcome. They do not come to a meeting knowing in advance how they want the problem solved. They are open to ideas and suggestions, and they are willing to find solutions that work for everyone. This approach can only be successful if people are able to agree about what the issues are and are willing to work together to resolve them. Everyone's needs and expectations must be taken into consideration. The benefit is they work it out themselves. No third parties are involved.

Negotiation is similar to problem solving. The difference is that, before they meet one another, people already have solution(s) in mind that would meet their needs. In negotiation, people explore the issues, as well as expectations, motivations, and goals, and they try to find common ground between them. This common ground may be the basis for a successful resolution. In this approach, people generally work things out themselves, but sometimes an outside facilitator may be helpful.

Conciliation is a process that involves the encouragement and support of an outside third party acting as a conciliator to help guide the process. The conciliator must not take anyone's "side." He or she meets with the people in dispute and helps them identify issues, find common ground and shared goals, and look for solutions. Usually the conciliator meets with the disputing parties one at a time before they meet face-to-face on their own. Sometimes the conciliator acts as a go-between, which is known as "shuttle diplomacy." A conciliator is like a coach on a team, providing feedback and suggestions. The people in dispute remain in control of the process.

The more formal approaches to dispute resolution are mediation, arbitration/ adjudication, and legal recourse. They are outside the scope of this handbook.

Formal approaches to dispute resolution—mediation, adjudication or arbitration, and legal recourse—become necessary when people in dispute no longer feel they can resolve the dispute or control the situation by themselves. Because these approaches require varying degrees of control by outside third parties, they remain outside the scope of this handbook. (Please see "Suggested Resources" for more information.)

Mediation, like conciliation, is a co-operative, voluntary problem-solving process involving an impartial third party. The mediator must be neutral and acceptable to everyone involved in the dispute. The mediator helps define the issues and find solutions that work for everyone. The mediator helps guide the process, but the people in dispute are responsible for resolving it themselves. Mediation is more formal than conciliation.

Arbitration / Adjudication occurs when the dispute is taken to an outside third party for resolution. In arbitration, a third party (or arbitrator) hears both sides of a dispute and then makes a decision or judgment. In adjudication, people are often represented by lawyers, who present their information to an individual, who then makes a decision or judgment. The people in dispute have limited control over the process or the outcome. The judgment may be non-binding or binding.

Legal Recourse is the most formal approach to dispute resolution. In legal recourse, people are typically represented by lawyers who present evidence regarding both sides of the dispute at a public hearing. A judge or jury makes a decision based on the merits of the case. The decision is binding.

All approaches to dispute resolution are about resolving differences and working toward solutions. Informal dispute resolution is about building and maintaining an atmosphere of trust and goodwill among schools, families, and communities.

Resolving the Dispute Informally

Once you have decided to begin an informal dispute resolution process—in other words, once you and the other(s) in dispute have agreed to try working things out on your own without the help of a third party—these are the basic steps and guidelines to follow:

Determine who is involved. It is important to identify who is most directly involved in the dispute, and most likely to be able to influence the outcome. (In some cases, for example, a person might be directly involved but have little or no influence or control over that situation.) It may be necessary to gather information about the rights, roles, and responsibilities of the people who are involved, including your own. (Please see Appendix 1: Rights, Responsibilities, Duties, and Powers for more information.)

Contact the person most directly involved. If that person is not available, leave phone numbers and times when you can best be reached. When you do have an opportunity to have a conversation, voice your concerns calmly and clearly. Often, disputes can be resolved at this stage.

Arrange a meeting. If it appears that the dispute cannot be resolved with a simple phone call, the first thing to do is to arrange a meeting. You and the other person or people involved should agree on a time and place that works for all of you.

Prepare. It is important to find out about the protocols and procedures for dispute resolution that may be in place in your local school and school division. Be aware of what options are available, and whom to contact if solutions are not agreed upon. Find out what supports and resources are available within your school, school division, or the community. Gather information. Find out the facts about the dispute. Understand the rights, roles, and responsibilities of the people who are involved. Be prepared to clearly state your concerns, motivations, and goals. Be prepared to listen and offer feedback. Be prepared to ask questions. There may be solutions that you had not even considered.

Meet. It is important to be aware of how you can help create a balanced power situation, a warm and caring climate, and a fair and open process. Make it clear that you are willing to co-operate to resolve your differences. Agree upon an approach to resolve the dispute. The best place to start is the most informal level, which is problem solving. Make sure you have explored all possibilities of problem solving before moving to another level. Set guidelines and ground rules. Listen actively. Ask open-ended questions. Check one another's understanding of what has been said. Respect each other's point of view. Look for common ground. Identify the nature of the problem, your goals, and the best way to reach a solution. If a student is involved, stay focused on the benefits for the student. Avoid emotional hooks and unrelated issues. Keep out of the realm of personal attacks.

Conclude the meeting. When the meeting is over, make sure to put the solutions you have agreed upon in writing. This should be in clear language and it should include a plan to carry out these solutions. Set a date to discuss the success of the plan. The meeting may have ended with people agreeing to disagree. If so, it is important to have a conversation about whether the matter will be closed or if further steps in the dispute resolution process will be taken.

Follow-up. Make sure there is a follow-up meeting to discuss the success of the dispute resolution plan. If the meeting does not take place face-to-face, a follow-up phone call is recommended. (Please see Appendix 2: Problem-Solving/Dispute Resolution Checklist for more information.) Even if the dispute has not been successfully resolved, a follow-up meeting or phone call to check in or “touch base” is a good idea. This is the kind of ongoing communication that builds, rebuilds, and maintains the trust that is so important in a positive school environment.

Three informal approaches were described on pages 12 and 13.

Problem Solving

The most informal approach, problem solving, involves people in dispute working together to come up with mutually acceptable solutions to their differences. Problem solving is the most informal approach to dispute resolution, and also the foundation of all approaches to dispute resolution, both formal and informal.

Problem-Solving Process:

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| <ol style="list-style-type: none">1. Decide whether the issue is worth pursuing.2. Invite the person to meet.3. Ask the person to describe how he or she sees the situation.4. Describe the situation as you see it.5. Summarize the issues that need to be resolved. | <ol style="list-style-type: none">6. Discuss one issue at a time.7. Brainstorm possible options for each issue.8. Generate solutions that work for everyone.9. Put the solutions in writing.10. Set a date to discuss how the solutions are working. |
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Negotiation

- In a face-to-face meeting, follow the same guidelines as you would in a problem-solving approach.
- Negotiation involves coming to the table with pre-set solutions in mind, so it is important that everyone is prepared to state their goals clearly.

Note: a facilitator may be involved to assist the process.

Conciliation

- In a face-to-face meeting, follow the same guidelines as you would in a problem-solving approach.
- If a third party or conciliator (or if you are that third party) has been invited into the process, it is necessary that he or she does not take sides. The conciliator must be neutral, remain neutral, and appear neutral to everyone involved.
- Conciliation is considered one of the informal approaches to dispute resolution, and the move from negotiation to conciliation often happens naturally. The person who takes on the role of conciliator will often be familiar with the dispute and the people in dispute. The conciliator must be trusted by everyone involved.

If the people in dispute cannot agree to engage a conciliator, chances are they are no longer willing or able to work together to resolve the dispute. At this point, it may be necessary to move to a more formal approach, such as mediation. It is important to keep in mind that a more formal approach means a more formal commitment of accepting help from an outside third party. A more formal approach also involves giving up a considerable amount of control over the process.

At all times, it is important to remain clear about goals. It could happen, for example, that someone in a dispute has reached a point where all he or she wants is an outside third party to make a decision about resolution. If this is the case, that person may no longer share the goals of informal dispute resolution. He or she may have goals that require a more formal process, such as arbitration.

It is hoped that people will work together in good faith at all stages of the process to resolve the dispute quickly and fairly and not prolong the process unnecessarily.

If the dispute resolution process is moving to another level, it is important that everyone at the last level is notified. It is also important to document work that has been done at every level. Documentation ensures that no vital steps are missed, and it helps keep the process moving smoothly and efficiently. (Please see Appendix 3: Dispute Resolution: Troubleshooting Checklist for more information.) It also allows people to verify the work they have done and keep the process transparent.

It is important to understand that if a child is in need of protection, informal approaches to dispute resolution cannot be used. If legal issues are involved, informal approaches to dispute resolution may not be advisable.

Line of Communication

An important part of understanding informal dispute resolution is understanding the line of communication in the education system. This means knowing whom to contact, and when to contact them. It is also important that everyone involved in informal dispute resolution follows the “rules” of the line of communication.

Starting at the most local level of a dispute means starting with the person or people who have the most direct hands-on involvement with the dispute. The most local level is also known as the point of origin. If the dispute cannot be resolved at the most local level, then the next person in the line of communication can be contacted. If the dispute still cannot be resolved, then the next person in the line of communication can be contacted, and so on.

For example, if parent(s) are concerned about a situation that has to do with a classroom, they should first contact the teacher. If the situation cannot be resolved with the teacher, the parent(s) should find out if there is anyone else who should be contacted before contacting the principal. No one should be skipped in the line of communication. The principal should be contacted before staff at the divisional level are contacted. Divisional staff should be contacted before the superintendent is contacted.

Similarly, if a teacher is concerned about a classroom situation that has to do with a student, and if that student could be helpful in resolving the problem, the student should be spoken with before parents are contacted.

It is important to keep in mind that these are guidelines and not fixed rules. Each situation is unique, and each parent, student, teacher, and administrator has feelings that need to be taken into consideration. If, for example, a teacher is not comfortable contacting a parent, or if a parent is not comfortable contacting a teacher, these concerns are serious and should be treated with respect. Creative problem-solving techniques could be useful in these situations. Perhaps the teacher in question would be more comfortable asking the principal to contact the parent. Perhaps the parent would be more comfortable bringing someone along to a meeting with a teacher, and so on.

Most schools and school divisions in Manitoba follow a line of communication similar to the one below.

School

- Student
- Teacher or parent (depending on where the dispute originates)
- Other team member as appropriate
- Principal

School Division

- Senior administrative staff (e.g., coordinators, consultants, directors)
- Superintendent

School Board

- Board of trustees
- Elected trustee*

* Please note that parents, community members, and school employees are invited to approach school trustees at any time. In a dispute situation, however, the next in the line of communication after the superintendent should be the board of trustees as a whole, not the individual trustees.

There are also people and organizations who may not be directly involved with informal dispute resolution, but they do have an important role in assisting with dispute resolution. For more information, please see “Suggested Resources.”

Please keep in mind that the Minister of Education, Citizenship and Youth has a wide range of “big picture” responsibilities having to do with education matters throughout the province. Most decisions about day-to-day school matters are made at the school level. It is recommended that schools and school divisions ensure that there are contact lists outlining whom parents or community members should call with questions or concerns about specific school matters.

Again, Manitoba Education, Citizenship and Youth is available to provide information about a wide range of topics, including information that can be helpful for people who are trying to resolve disputes.

For more information, please go to <<http://www.edu.gov.mb.ca/ks4/>> or call 1-866-626-4862.

Answers to questions often asked about dispute resolution are provided in Appendix 4: Common Questions.

Roles and Responsibilities

It may be helpful for anyone involved in a school-related dispute to have a basic understanding of the roles and responsibilities of the people in the school system, including students, parents, teachers, principals, administrators, superintendents, and school trustees. (For detailed information, please see Appendix 1: Rights, Responsibilities, Roles, and Duties.)

It is the responsibility of each **student** to engage in the learning process, and to respect the school environment. Each student should feel valued and safe, and should be able to succeed without concern for unnecessary disruption.

It is the responsibility of **parents** to work together with educators to ensure their child has a successful school experience.

Educators are responsible for providing appropriate educational programming and working with parents toward achieving that goal.

The **principal** is responsible for running the school, overseeing the learning environment, and a wide range of school matters. These include the safety and discipline of students and care and maintenance of the building and grounds.

Student service administrators have a leadership role in services for students with diverse learning needs.

The **superintendent** is the most senior administrator in the public school system. He or she provides leadership in all matters of education and reports to the board of trustees.

The **school board** consists of local trustees who are elected to represent their community. Together, trustees make up the school board. The school board determines school division policy and oversees its implementation.

Local Policy

When developing dispute resolution policy, it is essential to consider the unique needs of students, families, and communities. Information should be included concerning protocols and lines of communication, as well as rights, roles, and responsibilities of parents, educators, and members of the school and school division administration.

The process should be fair, equitable, and based on open communication. It should be structured such that people in dispute are able to clearly understand the steps and guidelines. It should be flexible enough that people are able to resolve the dispute themselves, as well as move freely among approaches. If necessary, people in dispute should be able to step back and evaluate the situation.

In the rare situation where informal approaches do not address the issues at the heart of the dispute, and if people in dispute agree they need to move into a more formal approach, there should be procedures in place that allow for movement into more formal dispute resolution processes.

