A Guidebook for

Implementing the Initiative and

Policy Direction on Conflict Resolution

UNIVERSITY SYSTEM OF GEORGIA

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THE BOARD OF REGENTS' INITIATIVE AND POLICY DIRECTION ON CONFLICT RESOLUTION
UNIVERSITY SYSTEM OF GEORGIA

Background

The University System's Vision Statement and Guiding Principles recognize the value of constructive conflict resolution. Conflict is a pervasive and normal aspect of all public and private human interaction and organization. It promotes intellectual debate and heralds change, and as such, should be viewed as an opportunity. While there are many ways to resolve conflict, the method chosen should maximize the inherent opportunities while minimizing human, institutional, and social costs. The Board of Regents therefore established a Blue-Ribbon Committee in November 1994 to study the appropriate use of less adversarial, more collaborative methods of conflict resolution in matters involving internal complaints, discipline, and grievances, and external complaints and concerns.

The Regents' initiative and the work of its Blue-Ribbon Committee comport with a broader, national trend institutionalizing methods of alternative dispute resolution ("ADR"):

- Recent federal legislation directs federal courts and agencies to incorporate ADR processes to reduce the costs and delays of litigation and to create more functional regulation.

- The federal Civil Rights Act of 1991 and the American with Disabilities Act of 1990 endorse ADR to resolve discrimination and equal access disputes.

- A majority of states have empowered trial courts to refer matters to ADR for resolution prior to trial and established state-wide offices of dispute resolution to resolve public and community conflicts and facilitate the courts' use of ADR. There are now more than 1200 ADR programs connected to the courts, and the American Bar Association has recently established a specialized Section on Dispute Resolution.

- Many of the nation's largest private corporations have pledged to use ADR instead of litigation and have revised their internal procedures to incorporate these more collaborative and less costly methods to resolve conflicts.

THE BOARD OF REGENTS' INITIATIVE AND POLICY DIRECTION ON CONFLICT RESOLUTION
UNIVERSITY SYSTEM OF GEORGIA, Cont.

Background, Cont.

The ADR trend in Georgia mirrors the national trend:

- The state Supreme Court has created a coherent plan for the use of ADR in the state's trial courts, including rules empowering trial courts to use ADR, a broadly representative permanent Commission to establish policy, and a state-wide office to assist courts in the implementation. Trial courts in more than fifty counties have ADR programs available, the administration of which is funded by filing fee surcharge legislation passed by the General Assembly.

- The state Supreme Court requires all members of the Georgia Bar, which has formed a specialized Section on ADR, to be educated in this area.

- The Workers' Compensation Board has adopted an ADR system.

More importantly, this trend is reflected in educational institutions, where conflict resolution has emerged as a respected interdisciplinary field for research and teaching. Several prestigious institutions of higher education, including Harvard University, have established ombuds offices and student mediation programs. Legal affairs personnel from the University System of Georgia have been instrumental in forming the new ADR task force of the National Association of College and University Attorneys ("NACUA"), now training mediators.

The University System's potential for ADR leadership is evidenced also by several statewide developments: faculty teaching ADR have formed an inter-institutional consortium; several institutions are rethinking their formal grievance procedures and incorporating mediation processes; and many faculty and administrative leaders have taken mediator training. None too soon: already in primary and secondary schools, in Georgia as well as nationally, students are being taught conflict resolution skills, and some schools are using students to mediate student disputes.

THE BOARD OF REGENTS' INITIATIVE AND POLICY DIRECTION ON CONFLICT RESOLUTION
UNIVERSITY SYSTEM OF GEORGIA, Cont.

Background, Cont.

In summary, all such efforts to teach and use alternative dispute resolution are congruent with the Board of Regents' vision and principles for the System. Institutions of higher education are communities that should encourage collegiality, trustworthiness, and collaboration. The resolution of campus conflicts should improve the atmosphere for learning, teaching, research and service; it should maximize benefit and minimize costs; it should stress individual and institutional responsibility, respect collaboration, and accountability; it should embody principles of fairness, equity, and accessibility; and it should serve the community-at-large by providing students with collaborative skills and instilling a sense of personal responsibility that make good citizens and effective leaders.

THE BOARD OF REGENTS' INITIATIVE AND POLICY DIRECTION ON CONFLICT RESOLUTION
UNIVERSITY SYSTEM OF GEORGIA, Cont.

Goals

Accordingly, the board of Regents' goals are:

- To establish a System-wide conflict resolution program that maximizes collaborative resources and guidance for institutional processes and practices, which are developed for a well integrated into the particular institutional culture of each campus;

- To decrease the reliance on adversarial processes, such as formal grievances and appeals and courtroom litigation, both within the System and in its dealings with other persons and agencies;

- To achieve timely, equitable, and satisfactory resolutions at the lowest possible level within the System and at its institutions in the most efficient and cost-effective manner commensurate with the interests and rights of all concerned and reduce conflict recurrence while anticipating and responding to future conflicts;

- To make the institutional environment for students, faculty and staff more protective of human dignity and trust, more respectful of the value of conflict, and more effective in fostering communication and community; and

- To make the University System of Georgia an exemplar and nationally recognized leader in the development of alternative dispute resolution for higher education.

THE BOARD OF REGENTS' INITIATIVE AND POLICY DIRECTION ON CONFLICT RESOLUTION
UNIVERSITY SYSTEM OF GEORGIA, Cont.

Implementation

Since individual institutions within the University System are diverse and have different needs, conflict resolution procedures are likely to vary among them, and no one particular model or set of procedures should be mandated. The alternative processes of dispute resolution designed under this policy direction should complement, not undermine, existing decision-making processes and make existing structures of authority more, not less, effective. While they may require an initial commitment of resources, they should result in significant institutional savings System-wide. Periodic review and improvement should be expected.

The Board of Regents therefore directs that:

9. The Chancellor's Office establish a University System Advisory Committee on Conflict Resolution with the following responsibilities:

   - Take lead in developing and extending an educational program on conflict resolution to all the institutions in the University System, including focus groups to maximize buy-in on the institutional level and encouraging the institutional development of pilot program proposals;

   - Recommend a comprehensive plan for a System-wide conflict resolution program, based in part on advice received from institutional focus groups;

   - Provide advice to the Chancellor's Office on the implementation of that plan.

10. The Chancellor's Office, in consultation with the University System Advisory Committee on Conflict Resolution, implement the following measures toward a comprehensive program of conflict resolution:

   - Develop and distribute a manual on conflict resolution systems design that includes illustrative models and possible pilot programs;

THE BOARD OF REGENTS' INITIATIVE AND POLICY DIRECTION ON CONFLICT RESOLUTION
UNIVERSITY SYSTEM OF GEORGIA, Cont.

Implementation, Cont.

- Create and distribute a directory of resources that includes relevant definitions, bibliography, contacts, associations, neutrals, and trainers;

- Consult with institutions on the implementation of policies and procedures in conformance with this initiative;

- Develop education and training materials and continuing programs, including use of distance learning technology, on conflict resolution appropriate to the needs of the institutions and the communities they serve, and establish assessment procedures for these education and training programs;

- Establish appropriate means for identifying, orienting, and contracting with neutral mediators when needed to maintain the integrity of alternative dispute resolution at institutional or System levels;

- Compile and maintain data and other information on the use of various means of conflict resolution in the conduct of institutional activity, and help institutions establish assessment procedures for their programs;

- Develop policy and practices to address the use of alternate means of dispute resolution in the Chancellor's Office itself, congruent with this policy direction, and including:

  - Designation of an individual as its dispute resolution specialist and liaison to the University System Advisory Committee; and

  - Provision of appropriate training for all involved.

- Review all Board of Regents policies and standard contract agreements and recommend to the Board any appropriate amendments congruent with this policy direction.

THE BOARD OF REGENTS' INITIATIVE AND POLICY DIRECTION ON CONFLICT RESOLUTION
UNIVERSITY SYSTEM OF GEORGIA, Cont.

Implementation, Cont.

11. Each institution in the University System develop policy and practices that address the use of alternative means of dispute resolution congruent with this initiative, including the following:

    - Designation of an individual as its institutional dispute resolution specialist and its liaison to the University System Advisory Committee and the Chancellor's Office;
    - Provision of appropriate training for all involved and;
    - A review of its standard agreements for contracts, grants, and other assistance, to determine whether to amend them to authorize and encourage the use of alternative means of dispute resolution.

INTRODUCTION AND BACKGROUND

Who Should Use This Guidebook

This Guidebook is written primarily for those persons acting as liaisons between their institutions and the Office of the Chancellor and the Chancellor's Advisory Committee ("Advisory Committee") on Conflict Resolution under the Regents' Initiative and Policy Direction on Conflict Resolution (the "Initiative"). It is designed to help liaisons understand and carry out their work — institutionalizing improved conflict resolution mechanisms. The Guidebook may be useful to members of Campus Conflict Resolution committees ("CCRC") and other persons who are helping the liaisons analyze current dispute processing on campus and design and implement improved conflict resolution systems ("CMS"). Liaisons may want to use this Guidebook to help educate key players in the implementation phase of their work.

INTRODUCTION AND BACKGROUND, Cont.

Design and Organization of this Guidebook

This Guidebook is designed to be an organic and "living" tool documenting your institution's work in conflict resolution as well as providing a basic introduction to the concepts. You will be receiving updated and supplemental materials over time from the Chancellor's Office. Please use the Appendices for your own records and materials. The Guidebook serves as a "history" to some extent, not to evaluate you or your institution, but rather to evaluate the Initiative. We would like to learn from your experience and effort, so please keep notes on what you are doing. We invite and encourage your input and improvements. We have no monopoly on knowledge or skill and would appreciate those of you who have particular insights from your disciplines.

This Guidebook is divided into six parts:

Introduction and Background	Introduces this Guidebook and the Regents' Initiative on which it focuses. It also contains key definitions and briefly describes the various dispute processing mechanisms in popular use today on campuses. An understanding and analysis of the underlying conflicts in a dispute and the myriad barriers to problem-solving are essential to mediators but also helpful in designing. The Introduction and Background section also provides some introduction to conflict analysis; however, we refer you to the accompanying texts for more detail.
Implementation of the Initiative	Suggests some guiding principles and action steps for implementation of the Initiative.
Conflict Management Systems Design	Outlines how to design an integrated conflict management system that incorporates various dispute resolution processes.
Application	Discusses the variety of conflict on campuses and presents conflict management models from a variety of educational institutions around the country.
Implementation	Discusses some of the implementation problems associated with making a new conflict management system functional.

INTRODUCTION AND BACKGROUND, Cont.

Design and Organization of this Guidebook, Cont.

Evaluation Discusses monitoring, evaluation, and modification of a conflict management system. As the Chancellor's Office and liaisons produce sample forms for dispute auditing and analysis and for program evaluation, we will distribute them for insertion in the appropriate parts of the Guidebook.

INTRODUCTION AND BACKGROUND, Cont.

Companion Materials, Texts, and Essential Reading

The Guidebook is accompanied by a Directory of Resources containing definitions, bibliography, lists of contacts, and other useful information. You may expand the Directory as you see fit, e.g., insert articles you like or materials received from liaisons at sister institutions.

This Guidebook is designed to be used in conjunction with four books, portions of which are used, summarized, or referenced throughout the Guidebook:

> R. Fisher, W. Ury & B. Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (Penguin 2d ed. 1991). The most widely read, influential, and accessible explanation of interest-based negotiation.
>
> D. Yarn, *Alternative Dispute Resolution: Practice and Procedure in Georgia* (Harrison 1991, w/ annual supp). Written primarily for lawyers, this book contains definitions, summaries of ADR theory, and detailed analyses of applicable federal and state law.
>
> W. Ury, J. Brett, & S. Goldberg, *Getting Disputes Resolved: Designing Systems to cut the Costs of Conflict* (Jossey-Bass 1988). This book is the seminal text on conflict management systems design.
>
> C. Constantino & C. Merchant, *Designing Conflict Management Systems: A Guide to Creating Productive and Healthy Organizations* (Jossey-Bass 1995). This book picks up where Ury's book left off.

If these books had not been written, we would have had to write them for the Initiative. Fortunately, we can "piggy-back" on these works and recommend them as essential reading.

INTRODUCTION AND BACKGROUND, Cont.

Terms: Players

There are numerous terms used in this Guidebook that have specialized meaning in dispute processing. In order to better communicate about these ideas, we should strive to use a common vocabulary as much as possible. Here are some terms for the various individuals and other entities involved:

Complainant A person who has a conflict which may or may not have risen to the level of a dispute. See the next section for an explanation of the difference between a conflict and a dispute.

Disputant Person who has a dispute.

Party Disputant who is engaged in a dispute processing mechanism or process. This term and disputant are largely interchangeable in this Guidebook but hopefully distinguishable in important contexts.

Grievant Disputant who initiates formal adjudicative grievance procedures.

Participants Those persons who actually participate in the interactive phases of dispute processing mechanisms.

Neutral Impartial third party who helps the disputants resolve the dispute.

Stakeholders Those persons who have an interest in, or are possibly affected by, the conflict, the dispute, the dispute processing mechanism, or the outcome of a process. Stakeholders may or may not be disputants, parties, or participants. As a general rule, neutrals are not stakeholders.

Lawyers and others representing the disputants can serve in often overlapping roles as advocates, when representing disputants in a process or forum, or as advisors or counselors when advising disputants on dispute processing. Administrating agencies or ADR providers are those organizations both inside and outside the University System that assist in providing the forum and conducting the process. These include: campus services, like a campus peer mediation center; private providers, like the American Arbitration Association; and public bodies, such as courts or governmental agencies.

INTRODUCTION AND BACKGROUND, Cont.

Terms: Conflict and Dispute

People use the terms conflict and dispute interchangeably, but they are not synonymous. Conflict is the condition or situation that gives rise to a dispute. A dispute is merely a product of conflict and disputing a method of handling conflict.[1] Thus, two student roommates have a conflict of interests over a shared resource if one wishes to use the room to have a party and the other wants to use the room to study quietly at the same time. This conflict may ripen into a dispute if, for example, the student wanting to study asks the other to hold his party elsewhere and the request is rejected. Then they may argue about who gets the room. They may negotiate a compromise or ask the resident graduate assistant to intervene. One may simply move his activity elsewhere without responding. These are methods of processing a dispute.

In this Guidebook, variations of the phrase dispute processing are generally favored over dispute resolution or dispute settlement. Any process or mechanism used to handle, manage, or respond to a dispute falls under this broad term.[2] The term conflict management is more expansive since it covers any activity, mechanism, or process directed at the reduction or control of conflict. While conflict management includes dispute processing mechanisms, dispute processing is limited to procedural concepts; therefore block solutions, which delete or control an entire class of conflicts or disputes through adjustments to policy or institutional structures are aspects of conflict management rather than dispute processing. If the roommate conflict described in the previous paragraph is common enough, the administration may react to reduce or avoid the conflict, e.g., building only single rooms, creating soundproof study carols on each floor, making common rooms available, or simply prohibiting parties in the dorms during certain hours. This would be conflict management without dispute processing.

This Guidebook focuses on dispute processing mechanisms primarily; however, other conflict management mechanisms are essential to the success of the Initiative. For this reason, we use the term conflict management system ("CMS") to refer to the totality of mechanisms (and their relationships) that you should consider in your efforts to respond constructively to conflict on your campus.

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[1] Note that this distinction differs from that used in C. Constantino & C. Merchant, *Designing Conflict Management Systems: A Guide to Creating Productive and Healthy Organizations* (Jossey-Bass 1995) at p. 5.

[2] The term dispute processing is borrowed from Felsteiner, *Influences of Social Organization on Dispute Processing*, 9 L.&Soc'y Rev. 63 (1974). As Felsteiner points out, settlement or resolution is often not the object of the exercise, nor is it always clear whether or not a dispute has been settled; the dispute itself may never be clearly defined. Several forms of dispute processing, such as avoidance, warfare, fighting, and voting, are not covered in this Guidebook.

INTRODUCTION AND BACKGROUND, Cont.

Terms: ADR as a Trend in Dispute Processing

The Regents' Initiative was inspired by the growing interest and use of dispute processing mechanisms know collectively as "ADR." "ADR," the acronym for alternative dispute resolution, is a catch-all phrase referring to private, voluntary alternatives to litigation such as negotiation, mediation, arbitration, and their variations. Definitions for the most common ADR processes are in the glossary section of the Directory of Resources.

ADR encompasses any conflict-handling procedure that has as its goal any one or more of the following:

- The cost and delay of litigation;
- Relieving court congestion;
- Providing a more effective, or constructive, resolution between disputants;
- Enhancing community involvement in the process of resolving disputes;
- Facilitating access to justice.

In order to advance these goals, the procedures that come under the heading of ADR usually are characterized as informal, fast and inexpensive. Proceedings are usually held in private and the outcome is consensual, although initial participation in the process may be coerced. Most of these procedures tend to de-emphasize the adversarial method by discouraging lawyers, judicial involvement, and the application of substantive law, and by encouraging party participation.

ADR processes have attracted considerable attention recently as institutions involved in dispute processing such as courts, community groups, religious organizations, commercial associations and governmental agencies experiment with ADR and report lower costs and greater participant satisfaction in the resolution of conflict. Private and public organizations have turned their attention to how ADR processes can reduce intra-organizational conflict and resolve disputes early before they require the intervention of an authoritative decision-maker or even ripen into litigation.

INTRODUCTION AND BACKGROUND, Cont.

Terms: ADR as a Trend in Dispute Processing, Cont.

This organizational interest in ADR seems to parallel developments in leadership, management, and organizational studies that emphasize the value of collaboration, joint problem-solving, total quality management ("TQM"), and more horizontal organizational hierarchies. The conceptual heart of ADR is the productive management of stakeholder participation in decision-making and problem-solving. The applications are broad. In addition to resolving individual private disputes, ADR experts are being asked to help design improvements to corporate efficiency, train management and leaders, facilitate public policy development, and reinvigorate participatory democracy.

INTRODUCTION AND BACKGROUND, Cont.

The Regents' Initiative and Policy Direction on Conflict Resolution

In the Summer of 1994, Elizabeth (Betsy) Neeley, Vice-Chancellor of Legal Affairs, brought together a group of people with a common interest in ADR and initiated brainstorming on the use of ADR in the University System. Like all university systems, Georgia's had seen an increase in lawsuits and in the cost of resolving disputes. The Board of Regents was spending an inordinate amount of time hearing and deciding specific grievances. This informal group advised the Board that increasing the use of ADR on campuses was one appropriate response to these problems. The Regents responded by forming a Blue Ribbon Committee to study the use of ADR in higher education and to make recommendations to the Board. In July, 1995, the Regents adopted the recommendations of this committee in the form of an Initiative and Policy Direction.

The Regents' Initiative and Policy Direction on Conflict Resolution (the "Initiative" - copy in the beginning of this Guidebook) is a direct, bold, and creative response to conflict in higher education. It is congruent with the University System's vision and principles as expressed in *Access to Academic Excellence*, relevant portions of which constitute the first page of the Initiative. The Background section of the Initiative illustrates its consistency with broader trends toward institutionalizing ADR at local, state, and federal levels and toward an increase in conflict resolution in both curricula and administration of institutions of higher education.

The Goals section of the Initiative cannot be overemphasized. The Regents' wants to:

> ***ESTABLISH A SYSTEM-WIDE CONFLICT RESOLUTION PROGRAM*** that will
>
> ***DECREASE RELIANCE ON ADVERSARIAL PROCESSES*** and
>
> ***RESOLVE DISPUTES EFFICIENTLY AND FAIRLY AT THE LOWEST LEVEL***,
>
> And in so doing ***FOSTER A HEALTHIER COMMUNITY*** and
>
> ***LEAD THE NATION IN ADR FOR HIGHER EDUCATION***.

INTRODUCTION AND BACKGROUND, Cont.

The Regents' Initiative and Policy Direction on Conflict Resolution, Cont.

Although many schools have incorporated ADR processes in their policies, none have attempted to do so on a system-wide basis.

The term ADR is used loosely in connection with the Initiative, which at times has been called the ADR Initiative. Although ADR is its primary element, the Initiative is conceptually broader since it encompasses overall conflict management design.

IMPLEMENTATION OF THE INITIATIVE

There are two related implementation issues — one, the implementation of the Initiative itself, and two, the implementation of each campus CMS. This section focuses on the implementation of the Initiative. The Implementation section of the Initiative sets out some basic principles and outlines responsibilities for action.

The Advisory Committee

The Initiative calls for the formation of a University System Advisory committee on conflict Resolution. The Advisory committee is responsible for developing an educational program and System-wide plan and for advising the Chancellor's Office on implementation of that plan.

The Chancellor appointed the Advisory Committee in the early Fall of 1995. In order to benefit from diverse ideas, experience, and opinions, the Regents' Blue Ribbon committee recommended that the Advisory committee be composed of members who are representative of the full range of stakeholders within the University System — faculty, administrators, staff, and students.[3] The Chancellor invited all the presidents to nominate potential committee members from their institutions and then selected a broadly representative group of 11 members. A list of the Advisory Committee members can be found in the Directory of Resources.

The Chancellor's Office

The Initiative entrusts the Chancellor's Office with providing this Guidebook, the resource directory, and other education and training materials. In addition, the Office will provide consultation to individual institutions, establish a roster of qualified neutrals, compile data, establish assessment procedures, and review dispute resolution procedures at the System level and in the Chancellor's Office itself.

Currently, Professor Douglas Yarn from the College of Law at Georgia State University serves as technical advisor to the Chancellor's Office and the Advisory Committee. Members of the Consortium on Negotiation and conflict Resolution, based at Georgia State University, will provide additional technical support as needed.

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[3] A committee consisting of one representative from each institution would be ungainly and less efficient than a committee of 12 or less. Since students are transient and service on the Committee demanding, the Chancellor's Office opted to represent students through the participation of the Vice-Chancellor for Student Affairs.

IMPLEMENTATION OF THE INITIATIVE, Cont.

Implementation: The Institutions

Each institution in the University System must develop policies and practices on dispute resolution consistent with the Initiative. Initial activities include designating an internal ADR specialist and liaison to the Advisory Committee and Chancellor's Office, providing appropriate education and training, and reviewing contractual provisions on dispute resolution.

In October 1995, each president appointed a Campus Liaison to be the institution's conflict resolution specialist and primary intermediary on Initiative issues with the Chancellor's Office and the Advisory Committee. Originally, some Advisory Committee members were also Liaisons; however, the Advisory Committee believed the roles should be separate to reduce confusion. A list of campus Liaisons is contained in the Directory of Resources.

Liaisons should form Campus Conflict Resolution Committees to aid in their work. The Campus Committees also serve as focus groups to provide feedback and advice to the Advisory Committee and to improve subsequent implementation.

IMPLEMENTATION OF THE INITIATIVE, Cont.

Guiding Principles for Implementing the Initiative

Walk The Talk	Implementation of the Initiative should reflect the vision and principles of the Initiative and that underlie teamwork and collaborative problem-solving. Just as mediators understand that it is counter-productive to attempt to impose a solution on the parties, we should "walk the talk" as we seek to implement this Initiative. Our implementation efforts should model the principles of facilitation and mediation as much as possible.
No Two Conflict Management Systems ("CMS") Are Alike	There are some common principles, goals, and measures of success at the University System level that apply to all the institutions; however, each institution must develop the CMS that best meets its needs, current and future. For this reason, the Chancellor's Office and the Advisor Committee will not impose a model CMS. We do want to encourage cross-pollination, however. Institutions can adapt each other's models and may find it useful to co-develop and share some CMS responsibilities and resources.
Users Should Design it	It is vital to the success of any CMS design and implementation effort that those who will use the processes have an active hand in the development of them. The design must emanate from those who will use the system — the stakeholders. Not only do they have an appreciation for the extent of current conflict and the effectiveness, or lack thereof, of current dispute resolution processes, they will be essential in legitimizing and implementing system changes.
Build And Use a Network of Experts And Proponents	A lone Liaison crying in the wilderness will soon wear out. Build support by identifying individuals on campus and in the surrounding community that have an interest in dispute resolution. Whether or not these people are on or off your committee, they will be an invaluable pool of other campuses to combine creative efforts and learn from each other's mistakes and successes. See the Directory of Resources for statewide resources such as the inter-university Consortium on Negotiation and Conflict Resolution.

IMPLEMENTATION OF THE INITIATIVE, Cont.

Guiding Principles for Implementing the Initiative, Cont.

Experiment And Be Creative	The University System is ploughing untilled soil. Your creativity and willingness to experiment has produced a variety of models. Some of the campuses have designed comprehensive conflict resolution programs, pilot projects, and mediation panels. Use your imagination. Do not feel restrained by what other institutions are doing.
Key Decision-Makers Should Be on Board	If you do not have support at the top, even the best designed CMS will function poorly, if at all. The intent of the Initiative is to complement, not undermine, existing decision-making processes and make existing structures of authority more, not less, effective. If they are not on the actual Campus Conflict Resolution Committee, Presidents, Vice-Presidents, Deans, and other important officers should be consulted often and kept up to date on the progress of your work. It is important that liaisons have standing and credibility with campus leadership.
Hear No Evil And See No Evil?	An ignored problem may become your costliest. On many campuses, it is a common practice to avoid confrontation or the recognition of problems. While avoidance is a method of dispute processing, it is rarely efficient. If your campus has few formal grievances, it may have more to do with the grievance procedure than with the actual number of complaints and disputes on campus. Effective implementation of the Initiative will require honest appraisal and a more sensitive awareness of the nature of disputing in the institutions. It is important to note that **the initial implementation of an effective CMS may cause an increase in the visible number of disputes**. The problems were already there and being expressed in other ways. A new CMS should not cause more disputing, it merely provides a healthy focus for problems that already exist.
Commit The Necessary Resources	It takes money, time, and people to do this right. The costs of one major lawsuit can easily exceed the costs of implementing a campus CMS. As a Regents' Initiative, this is a legitimate redirection under the current budgetary realignment.

IMPLEMENTATION OF THE INITIATIVE, Cont.

Guiding Principles for Implementing the Initiative, Cont.

Look Before You Leap	For proponents of ADR, it is very tempting to just jump right in and establish an ombuds office or peer mediation program. Indeed, the Initiative itself has created enthusiasm and momentum, and we want to take advantage of this excitement; however, we can damage the credibility of the exercise and undermine a potentially good CMS by moving forward willy-nilly. Before implementing any program or procedure, make sure you understand your campus culture and current dispute processing mechanisms in place. Be sure you understand the big picture — what are you trying to accomplish and what panoply of tools are available to accomplish it. Finally, have key players on board, an infrastructure for system delivery in place (or a plan to develop it), and an educational and marketing plan set to go.
Be Realistic, Be Patient	Dream without limitation and design the best CMS you can; however, focus on implementing the "do-able." Ultimately, we want every campus to have its optimal CMS in place. If lack of money, education, and support limit implementation, continue to educate, seek resources, and win support. In the near term, however, you may have to prioritize and concentrate on a less ambitious program. Developing and implementing a CMS will take time. It is not easy to change habits and institutional culture overnight. Similar attempts to institutionalize CMSs take at least three to five years to establish themselves. There will be initial resistance to change.
Review And Improve	The CMS is an essential part of each institution and deserves as much continual evaluation and improvement as any other part. A CMS must be adapted to changing environments.

IMPLEMENTATION OF THE INITIATIVE, Cont.

Steps Toward Implementing the Initiative on Campus

With the above guiding principles in mind, the Advisory Committee recommends the following steps toward implementing the Initiative on your campus. These are not detailed, additional steps may be necessary, and the activities in different steps may overlap or remain ongoing.

Step 1 - Form Campus Conflict Resolution Committees.

The liaison's initial task is to form a Campus Conflict Resolution Committee ("CCRC"). The CCRC will help identify current conflicts, anticipate future conflict, analyze current conflict handling procedures, and design an improved CMS if necessary. The CCRC should be representative of the full range of stakeholders on campus. Hopefully, these committee members will have some enthusiasm about dispute resolution or have a strong commitment to the health of the institution.

Step 2 - Education and Training.[4]

Liaisons, CCRC members, other stakeholders, and key decision-makers should learn about conflict management theory and design as soon as practicable. Initially, everyone who is going to be involved needs to have a basic understanding of the concepts and vocabulary in order to proceed efficiently. The Chancellor's Office will provide some initial education and training sessions, live and recorded, in addition to the materials in and referenced by this Guidebook. Eventually, we hope that each campus or coalition of campuses will develop the internal capacity for the ongoing education and training that will be required.

Step 3 - Conflict Management Systems Assessment.

Each institution should undertake an honest and in-depth assessment of disputing and dispute processing on its campus. Currently, disputing takes place on every campus, and every campus has a CMS. The formal component may be limited to a grievance procedure; however, many informal mechanisms may be operation as well. More detail on this activity is in the Conflict Management Systems Design section of this Guidebook.

[4] For purposes of the Guidebook, we distinguish "education" from "training." While education involves the communication and acquisition of concepts and theory, training involves the development of a specific set of conflict management skills.

IMPLEMENTATION OF THE INITIATIVE, Cont.

Steps Toward Implementing the Initiative on Campus, Cont.

Step 4 - Systems Design Recommendations

After conducting the assessment, each campus committee should determine what CMS modifications, if any, it recommends. The design should fit the needs of the organization. See the Conflict Management Systems Design of this Guidebook for more detail on CMS design and the section on Application for some models and variables.

Step 5 - Implementation of Recommendations

Perhaps the most difficult task is to formulate and carry out a detailed action plan for implementing your recommendations. This task is detailed in the Implementation section of the Guidebook.

Step 6 - Evaluation and Improvement

Every good CMS contains a feedback mechanism that alerts management to emerging needs for system modification as well as to emerging hot spots for conflict and disputing. In addition to designing this feedback mechanism, liaisons or their institutional successors must engage in on-going or periodic assessment and evaluation of the CMS. Improvements should be made as needed. More on this topic can be found in the Evaluation section of the Guidebook.

In short, there are three questions to be answered:

1. **WHERE ARE WE NOW?**

2. **WHERE DO WE WANT TO GO?**

3. **HOW DO WE GET THERE?**

Once these are answered, only action is left. Well, maybe not so easy.

CONFLICT MANAGEMENT SYSTEMS DESIGN

This part discusses the design of an integrated conflict management system that incorporates various dispute resolution processes. The two books on design, Ury, et al, and Constantino and Merchant, should be consulted along with the ACUS Systems Design Work Group materials found in the Directory of Resources. This part summarizes much of the Ury, Brett, and Goldberg text.

Design as an Inclusive Process

Your design activity will be significantly enhanced by the participation of the stakeholders. This improves the quality of information and has the added attraction of promoting buy-in at the implementation phase. The diversity of your CCRC serves as a participatory function. In addition, consider focus groups, surveys, and other mechanisms for information gathering. Use these opportunities to promote the effort as well.

Design Assumptions

Certain assumptions are behind the design philosophy presented in *Getting Disputes Resolved*. According to Ury, et al., there are three general approaches to dispute resolution — interest based, rights-based, and power-based. Negotiation and mediation usually put the focus on interests, while adjudicative processes focus on rights. Power-based approaches include power contests, defined as acts of aggression or the withholding of the benefits of a relationship.

Whether one or the other approach is best depends on the costs of using it. Costs include:

- Transaction costs (money, time, costs of diversion from other productive activity);
- Satisfaction costs (the degree to which parties achieve satisfaction with both the process as well as the resolution);
- Relationship costs (the extent of effect on relationships); and
- Recurrence costs (to what extent will the same or similar disputes arise in the future).

Some of these costs are difficult if not impossible to quantify; however, all should be considered in the assessment of a particular dispute processing approach.

The following proposition is central to Ury's design theory:

> *Reconciling interests is less costly than determining who is right. Determining who is right is less costly than determining who is more powerful. It is not necessarily better to focus on interests, it just tends to have lower costs, greater satisfaction, less strain on the relationship, and less recurrence. If you need to use rights or power approaches, then strive to lower the costs of its use.*

CONFLICT MANAGEMENT SYSTEMS DESIGN, Cont.

System Functions

Under the proposition in the previous section, most disputes in a healthy system are resolved by focusing on interests. Thus, the System emphasizes interest-based approaches and provides incentives for their use. Remember that most disputes are resolved by the disputants themselves and that one of the purposes of the Initiative is to improve the capacity of individuals to constructively and efficiently resolve their own disputes. A complete system also provides low cost rights and power approaches and mechanisms for feedback. These dispute processing mechanisms or functions can be provided internally or externally.

Typical internal functions include:

- **Expressing Respect for Feelings**
  Many complainants merely need to air their problem and are satisfied when heard by an empathetic ear.

- **Give Information on a One-on-One Basis**
  Some problems can be resolved merely by taking the time to explain or clarify the reasoning and purpose of policy.

- **Consultation to Help People Help Themselves**
  When practicable, people should be empowered to resolve their own problems by providing advice or serving as a sounding board on ways the individual complainant can constructively resolve a particular dispute.

- **Conciliation and Shuttle Diplomacy**
  Informal intervention by a third party may reduce hostility and improve communication or foster negotiation between disputants.

- **Mediation**
  Formal intervention by a third party that facilitates negotiation between the disputants may be necessary.

CONFLICT MANAGEMENT SYSTEMS DESIGN, Cont.

System Functions, Cont.

- **Fact-Finding/Investigation**
  Resolution may require the use of a third party to investigate the circumstances surrounding the dispute, make findings of fact, and to recommend solutions. Recommendations may be used by the disputants in shaping their own solution or by management in imposing a solution.

- **Decision-Making/Adjudication**
  Ultimately, the resolution may require the decision of management or of an adjudicative body. Processes to reach decisions can vary from informal consultations to formal adversarial presentations of evidence and argument.

- **Upward Feedback, Problem Prevention, Systems Change**
  While preserving the confidentiality of those who approach the system in confidence (see below), a complete system provides feedback to decision makers about recurring problem areas. This provides opportunities to act to prevent future problems and, when appropriate, to make institutional and policy adjustments.

Although some or all of the above functions can be provided externally, the typical external functions are mediation, fact-finding, and arbitration. The same functions may be available both internally and externally; for example, the system may give disputants a choice between an internal and an external mediator. When provided internally, the first five functions and the feedback function might be delivered through the use of an ombuds office which serves as a first point of contact and system entry for disputants and complainants (see the section on Application for more detail on ombuds offices). Ombuds rarely engage in fact-finding or adjudication.

CONFLICT MANAGEMENT SYSTEMS DESIGN, Cont.

Other Characteristics of Healthy Systems

The following bullet points outline additional characteristics of a healthy CMS:

- **System Is Taken Seriously**
  The point is axiomatic. Whether the system is taken seriously is dependant on the attitude of management, inclusion of stakeholders in design, appropriateness, and the bullet points that follow.

- **System Provides Significant Evidence of Change**
  If disputes go unresolved, complainants remain unaddressed, or dysfunctional policies aren't modified, then the CMS doesn't work and will be deemed illegitimate by stakeholders.

- **Policies Against Retaliation Are Respected**
  The CMS will break down if complainants are punished for using it.

- **System Provides Options and Choice**
  Disputants and complainants must be given dispute processing alternatives. Meaningful options and choice give the users ownership in the processes.

- **System Provides Loops Back and Loops Forward**
  Related to choice, parties must have the opportunity to choose to move forward or back to any function they believe best suits their needs.

- **System Available to All**
  Open access is a hallmark of a healthy CMS. This does not mean that different types of disputes may be best handled by different processes.

- **System Provides Neutrals**
  Legitimacy of third party intervention relies on the availability of impartial, trained neutrals. Since the parties' perception of neutrality is extremely important, the system should provide neutrals that are external as well as internal and give parties choice of multiple and diverse neutrals (gender, ethnicity, religion, etc.)

CONFLICT MANAGEMENT SYSTEMS DESIGN, Cont.

Other Characteristics of Healthy Systems, Cont.

- **System Guarantees Confidentiality**

If a disputant or complainant approaches the system off-the-record, then the system should guarantee confidentiality to the extent allowed by law. Any limitations should be made clear to the person before substantive interaction. This also serves as a corollary to retaliation prevention.

- **System Is Integrated, Comprehensive, and Congruent**

The best systems provide a full range of functions and operate as an essential organ in the institutional body. Its organization, characteristics, and functions are congruent with the institutional needs and culture.

CONFLICT MANAGEMENT SYSTEMS DESIGN, Cont.

Dispute Resolution System Diagnosis

The initial design step is to determine what you need and what you have in place to deal with it. Thus, you need to make an assessment or diagnosis. In conducting the assessment consider:

- ***Your administrative organization and concentrate on key positions that are focal points for complaints***, e.g., Human Resources, EEO compliance officer, grievance procedure administrator, student judiciary, residence halls director, deans, department heads, etc.

- ***Informal receptacles of complaints***. Assure interviewees that the information is to be used to facilitate management and not to undermine their authority or to reflect badly on their capabilities.

- ***Spreading this task out among your committee***. At a minimum, compile the information about disputing on campus that is collected in the regular course of business. Be very specific about the nature of your data so we aren't comparing apples to oranges when discussing design problems among ourselves.

- ***The availability of knowledge and training on campus***. Does the curriculum offer conflict resolution knowledge and skill-building? Are supervisors given opportunities for training in the resolution of conflict in the workplace? Are there skilled facilitators on campus, and do department heads know how to take advantage of these resources to conduct more effective meetings and strategic planning?

The following is a suggested, sample assessment instrument based on Ury, et al, and constitutes a minimal level of inquiry. This series of questions can be used as a model for interviews, a survey, and a CCRC meeting agenda. Please consult the two design texts and the ACUS material in the Appendix for more information. See Constantino, page 106.

CONFLICT MANAGEMENT SYSTEMS DESIGN, Cont.

SAMPLE ASSESSMENT INSTRUMENT

1. What are the past, current, and anticipated future disputes?
[This might break down into categories, e.g., student to student, among faculty, between departments, etc.]

a. Who are the disputants?

b. What type of disputes?

c. What is the frequency?

d. What are the causes?
[refer to Yarn, Chapter Three, for a classification scheme]

e. Are there any changes that are likely to affect this picture?
[externally imposed policy or law, internal restructuring, demographic changes, etc.]

2. How have and are these disputes being handled and at what cost?

a. What do disputants do with their complaints?
[sulk? protest? strike? boycott? write the newspaper? ask for mediation?]

b. What happens if negotiated?
[Does negotiation take place between supervisors and employees or administration and faculty? If so, what is the frequency of breakdown? What happens in an impasse?]

c. What adjudication is available?
[type of grievance procedure, etc.]

d. What power contests take place?

e. What are the costs?
[money, time, satisfaction, relationships, recurrence]

CONFLICT MANAGEMENT SYSTEMS DESIGN, Cont.

SAMPLE ASSESSMENT INSTRUMENT, Cont.

3. Why are certain procedures used and not others? Use the following factors:
    - Availability of procedure
    - Motivations and incentives to use procedure
    - Skills and competence to use procedure
    - Knowledge and information about the procedure
    - Effectiveness of procedure
4. How could these disputes be handled better?

CONFLICT MANAGEMENT SYSTEMS DESIGN, Cont.

Some Design Principles

In addition to the guiding principles outlined in the section on Implementation of the Initiative of this Guidebook, the following design principles should be considered:

- **Put the focus on interests**
- **Build loops back to negotiation**
- **Provide low cost rights and power backups**
- **Build in participant consultation before and after processes**
- **Arrange procedures in low to high cost sequence**
- **Provide the necessary motivation, skills, and resources**

APPLICATION

This part of the Guidebook is in draft form and briefly discusses the nature of conflict in institutions of higher education and outlines some of the dispute resolution programs at different schools. It has been very difficult accumulating materials from these different programs, and in the course of that effort, we discovered two important things. First, no institution of higher education has engaged in a systematic approach to conflict management on campus. Second, most of these programs reflect the efforts of a few dedicated and interested people; however, few programs have been established with a conscious, sustained effort at long-term institutionalization. We hope that a forthcoming book published by Jossey-Bass will provide additional enlightenment. Please note the reprint of Professor Warters Mediation Program Survey in the Appendix which hints at some of the variables involved in institutionalizing such programs. Finally, there is a model not discussed herein which should be of interest — the "community service model". Under this model, students, faculty, and staff provide dispute resolution services, usually as mediators, to the communities in which the campus is located.

APPLICATION, Cont.

Conflict on Campus: Nature of the Problem

Institutions of higher education are complex organizations and communities as well as schools. This means that disputes within higher education settings are often more varied than in any other workplace or community, for example:

- Employment disputes between faculty and administration or between students and campus work-study programs;
- Problems within relationships often develop into disputes on campuses, where two students are involved in a friendship, romantic relationship or study group;
- Campuses across the country have developed policies on race and gender because of students and/or faculty grievances regarding discrimination or harassment. In the best situations, racial tensions result in a campus community opening up lines of communication that may not have been present before, allowing for a more positive atmosphere. In the worst case scenarios, tensions are ignored and student populations lead sit-ins or instances of violence break out among students of different races;
- Faculty-student disputes that arise over grades, perceived unfair examinations, harassment, allegations of cheating, course content and instructional methods;
- College and university administrators face problems with outside vendors to their campus, sometimes leading to litigation over contractual issues;
- Faculty disputes arise over tenure, salaries, course offerings, and other difficult issues that often leave tensions high in academia.

As this paired-down list of possible conflicts demonstrates, campuses are microcosms of society. Society's problems become campuses' problems. As United States society has become more litigious, individualistic, and rights focused, colleges and universities have seen an increase in litigation. Students have become more focused on their rights and on fighting for fair treatment. Federal laws, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, the Rehabilitation Act of 1973 (Section 504) and the Family Emotional Rights and Privacy Act (The Buckley Amendment) of 1974, have supported this focus on rights. And