

Why Alternative Dispute Resolution Is Important For Facilities Teams

By Jim Patton

School districts and county offices of education are in the business of educating young people. District and county boards of education are often composed of lay people with little or no construction experience yet they are responsible for establishing policies and procedures to guide facilities projects. New construction and modernization projects are unlike anything else educators normally do. Facilities projects are more costly, more prone to delay, and more liable to end in costly litigation than any other projects they will undertake. Some districts, particularly smaller ones with fewer projects, may not have a facilities person or department to guide the process. Facilities staff members have experience in design and construction but may not have experience in conflict resolution. Consequently, educators and those who build and modernize schools for them have differing views on how the process should proceed based on their realities and needs. Now there is a new way for districts and county offices of education to take action to avoid costly delays and litigation while keeping projects to house their students in new and modernized facilities moving on time and at budget.

This new way is Alternative Dispute Resolution (ADR), specifically mediation. By using mediation as an underpinning when forming a facilities team or incorporating mediation into the facilities process wherever they are in the planning or construction process, district and county offices of education staff and Boards can immediately begin to reap the benefits. All members of the team will benefit, too. Staff members can concentrate on helping students

instead of focusing on the time consuming and debilitating activities that lead to arbitration and litigation. Students, staff and community members are better served by having their



much-needed, new and modernized facilities ready for them when they should be. Architects, contractors and construction managers can work more quickly and cost effectively. Project dollars are saved and can be used for the benefit of students rather than being spent on arbitration or litigation. This is especially important in these times of funding cuts in every aspect of education.

What is ADR?

ADR is a process by which all stakeholders in a conflict can resolve their own differences by working together to come up with an agreement that satisfies all parties involved. Conflict is normal and natural. It is not an event; it is a process. How we handle conflict is what makes the difference. If a district or a county office of education is committed to working things out by talking problems through with their facilities team, and if that facilities team

includes all the key stakeholders, including architects, contractors, construction managers, staff, and community members, the potential for arbitration and litigation can be significantly reduced or eliminated. Interest-based negotiations are used to reach agreements with classified and certified staff. Why not use a process for construction that satisfies the interests of the facilities team involved in construction and modernization of your facilities by taking time to understand the realities and needs among all the team members? By being open about their needs, facilities team members enhance their ability to keep all members of the team happy and performing at capacity. When conflict arises, they have the tools to create their own strongly written agreements that are specific, measurable, attainable, and realistic to get past conflicts and avoid costly project delays and cost overruns.

The importance of legal counsel

Mediation is not the only tool on which we need to rely. Just as Western medicine is becoming aware that the prevention of illness before it occurs is as important as treatment, we need to consider the importance of conflict prevention offered by legal counsel. This includes well-written contracts and strong contract administration by legal counsel that is committed to helping clients avoid conflicts. Many attorneys who want to help their clients avoid litigation are turning to experienced mediators to assist them and/or are incorporating mediation training and skills into their repertoire. This is different from court-ordered mediations and arbitrations where conflict has escalated to a point where it is more

