

EEO Alternative Dispute Resolution Procedures

1. **INTRODUCTION.** This Statement of Policy addresses the use of Alternative Dispute Resolution (ADR) by the U.S. Election Assistance Commission (EAC), as required by the Administrative Dispute Resolution Act (ADRA), 5 U.S.C § 571 et seq. The ADRA authorizes and encourages agencies to use mediation and other consensual methods of dispute resolution as alternatives to traditional dispute resolution processes. The ADRA requires agencies to designate a Dispute Resolution Specialist, establish a policy addressing the use of ADR, review contracts and grants for appropriate inclusion of ADR clauses and provide regular training on ADR.

If an employee would like to pursue Alternative Dispute Resolution (ADR), the employee should request it as soon as possible since participating in alternative dispute resolution does not affect the time limits for initiating statutory and administrative claims. An employee's participation in alternative dispute resolution after a final agency decision is made does not satisfy the requirements for bringing a claim under Equal Employment Opportunity (EEO), Merit Systems Protection Board (MSPB), Office of Special Counsel (OSC) or union grievance procedures.

2. **POLICY.** EAC is committed to the use of ADR, and other collaborative processes, as a management tool to prevent or minimize disputes, or to resolve disputes at the earliest stage possible in an expeditious, cost effective and mutually acceptable manner. In furtherance of this commitment to the use of ADR, and in compliance with the ADRA, EAC's ADR Program seeks to encourage and coordinate the ADR efforts of EAC, formulate agency-wide ADR policies, and disseminate information about internal ADR activities, including providing assistance, consultation and training within EAC on ADR subject matter. In state and federal court litigation, ADR procedures may be mandated by applicable statutes, court orders, rules and procedures. The EAC supports the voluntary use of ADR, including collaborative discussion and other collaborative processes, e.g., mediation, conflict coaching, partnering, facilitated dialogues and the use of an ombudsman, where appropriate.

3. KEY TERMS

- a. **Workplace Conflict:** Varying opinions, values or working styles that lead to disagreement. It is also described as a state of discord caused by the actual or perceived opposition of needs, values and interests between people working together.
- b. **Early intervention:** Employees and managers are strongly encouraged to use the ADR process to resolve complaints at the earliest possible opportunity to eliminate the need for lengthy investigations and/or costly litigation. Resolution of workplace disputes should be attempted at the lowest possible level within each organization. Employees are encouraged to attempt to resolve their concerns directly with the

individual or individuals involved before proceeding to the next level.

- c. Neutrality: The Agency ADR program will rely on a neutral third-party (one who functions specifically to aid the parties in resolving the dispute) to facilitate resolution of the dispute. ADR proceedings are most successful where a neutral or impartial third party, with no stake in the outcome of a dispute, allows the parties themselves to attempt to resolve their dispute. Neutrality helps to maintain the integrity and effectiveness of the ADR program. The facilitator's duty to the parties is to be neutral, honest, and to act in good faith.
- d. Collaborative discussion: Two or more parties who may have conflicting ideas or paths sit down, flesh out areas of difference and collaborate on a consensual path forward for the good of the relationship. This process is assisted by a neutral facilitator.
- e. Mediation: refers to a non-adjudicative, third-party intervention wherein an impartial neutral, selected by the parties, facilitates negotiations between the parties to help them reach a mutually acceptable agreement. The parties are responsible for negotiating a settlement. The neutral's role is to assist the process in ways acceptable to the disputants.
- f. Confidentiality: Confidentiality is essential to the success of all ADR proceedings. All ADR processes will ensure confidentiality consistent with the provisions in the Alternative Dispute Resolution Act. This will enable parties to ADR proceedings to be forthcoming and candid, without fear that their statements may later be used against them. Neutrals will not discuss confidential communications, comment on the merits of the case outside the ADR process' or make recommendations about the case. Neutrals will not reveal to Agency staff or management confidential communications disclosed during the mediation process.
- g. Facilitated Dialogue: Facilitate dialogue is a structured conversation between two or more parties involved in a conflict ("Disputants"). Through Facilitated Dialogue, disputants can share their thoughts, feelings, and experiences with one another in a confidential space.
- h. Conflict Coaching: Conflict coaching is defined as a set of skills and strategies used to support peoples' ability to engage in, manage, or productively resolve conflicts. In this process, the conflict coach works one-on-one with a person experiencing conflict with another person.

4. **PROCEDURES: Employees** are encouraged to discuss matters of concern informally with their supervisors. However, if a problem cannot be resolved, the ADR process is available. Usually, the entire ADR process should take no more than 90 days from initial contact to completion.

Step 1: Initial Intake

- a. An employee must contact the EEO Office to request ADR/conflict resolution services.
- b. The employee will be advised that to begin the process, he/she must complete and submit a request for ADR services (e-mails are acceptable).
- c. Upon receipt of the written request for ADR services, the EEO Official will contact the employee within five (5) calendar days.
- d. During the initial intake, a concerted effort should be focused on identifying the issues involved in a complaint, including dates of occurrence, person(s) responsible, alleged harm, and remedies requested.
- e. The EEO Official will assess the information provided, make appropriate contacts for additional information, and determine if the dispute/issue is appropriate for mediation.
 - There may be a determination that the matter is better served by using an ombudsman outside of the agency.
- f. If there are allegations of discrimination or issues that may have EEO implications, the EEO Official will refer the individual to the U.S. General Services Administration (GSA) Office of Civil Rights (OCR), a shared provider, for case processing. The EEO Official or GSA's OCR will notify the individual of his/her EEO rights and options under 29 C.F.R. Part 1614. The initial contact with the EEO Official must take place within 45 days of the occurrence or personnel action of the complaint. The EEO Official will advise the employee in writing of the specific issues that will be accepted for ADR mediation. A copy of this letter will be retained in the EEO Official's files.
- g. The EEO Official determines whether the matter is suitable for mediation.
- h. If the dispute/issue is appropriate for mediation, notification will be provided to the employee by the EEO Official. The mediation session generally will be scheduled within 21 calendar days of the request. All

parties will be notified in writing of those attending the ADR session. Mediations will be scheduled during normal work hours.

- i. Parties in mediation are entitled to have representation. The employee/management will be responsible for submitting a Designation of Representative Form (if either elects to have representation) to the EEO Official within seven (7) calendar days before the scheduled mediation session.

If the dispute is inappropriate for ADR mediation, the employee will be notified in writing of the reason. A copy of the employee notification that the case was inappropriate for ADR will be maintained in the EEO Official's file. The EEO Official will then notify the individual of the right to file a formal complaint.

Step 2: Mediation

- a. The parties will meet with an impartial, neutral third-party who will facilitate the discussion and the resolution of the dispute.
- b. The EEO Official may serve as a mediator, or mediators can be selected first from the shared neutrals roster.
- c. The mediation begins a joint session attended by the mediator, employee, appropriate responding management official, and the designated representatives.
- d. During the joint session, the parties are advised of the mediation process, confidentiality of the process, and the role of the mediator. The mediator will answer any questions either party may have.
- e. All parties to mediation must sign an "EAC Agreement to Mediate" outlining the terms under which the parties agree to participate in the mediation.

The agreement includes the following:

- The parties agree to discuss the issues and attempt to reach an amicable resolution. The parties understand that settlement during mediation is voluntary.
- The parties understand that the mediator has no power to decide the terms of the resolution or who is right or wrong. Rather, the mediator will attempt to assist the participants in reaching their own resolution by facilitating the discussion.

- The parties understand that the mediator will not act as an advocate or attorney for either party and will not provide legal advice and/or counsel.
- The parties agree to negotiate in good faith.
- The parties agree not to subpoena the mediator or any observer to testify in any forum as to the issues discussed by the parties in the mediation.
- The mediator and all observers agree not to testify voluntarily on behalf of either party and will not report anything said during this mediation unless one of the participants makes a genuine threat of physical harm or reveals information related to criminal activity, fraud, waste, abuse of government property, sexual harassment, or child or elder abuse.
- The parties understand that any document or notes prepared for or taken during mediation (such as case summaries presented to the mediator or notes taken by the mediator and the parties) are for settlement purposes only and will be given to the mediator at the conclusion of the mediation session for destruction.
- The parties understand that the mediation session will not be recorded by anyone (either video or audio), and no transcript of the session will be produced.
- The parties understand that no participant will be bound by anything said or done in mediation unless and until there is a signed written settlement agreement.
- The parties agree to discuss and define the matter to be mediated.
- Each of the parties will have an opportunity to explain his/her position on the dispute or matters of concern. The mediator encourages both parties to talk openly and candidly, voice all their concerns, and to listen to the other party's concerns to reach the best possible resolution. Additionally, the mediator might meet with each party separately to discuss the problem in a caucus to help each party find a solution.

Step 3: Mediation Outcomes

- a. The employee may opt to **withdraw the ADR matter** if it is (1) resolved before mediation or (2) because after consideration he/she elects not to proceed further. Under these circumstances, the file will be closed.
- b. If **no settlement** agreement is reached, the EEO Official will provide written

notification to the employee of his/her right to continue through the established complaint, grievance, and/or appeal systems, provided established time frames in the respective system have otherwise been met.

- c. If a settlement **agreement is reached, the** terms of the agreement will be given to the agency's Office of General Counsel for compliance and legal sufficiency review.
- The General Counsel will facilitate implementation of the settlement agreement with other functional areas within EAC.
 - The OGC may confer with the EEO Official regarding settlement of cases involving EEO matters prior to the finalization of agreements to ensure that the appropriate language is included in the agreement.
 - Written agreements reached will be signed during the mediation; however, settlement agreements under the ADR mediation may not violate any laws.
 - In the event of a **breach of the settlement agreement**, the parties may elect to (1) re-negotiate the matter, (2) apply sanctions (e.g., implementation of the original agreement by higher-level authority), or (3) a return to the status quo. For breaches of agreements involving EEO matters, the procedures set forth in the settlement agreement and in Equal Employment Opportunity Commission (EEOC) regulations will prevail.

Step 4: Evaluation

- a. An evaluation component is essential to any ADR program in order to determine whether the program has achieved its goals, and how it might be improved to be more efficient and to achieve better results. At a minimum, evaluations should capture and analyze ADR usage, amount of time saved, cost avoidance, customer satisfaction, improved relationships, and other indicators in line with the Agency's strategic goals and objectives.
- At the conclusion of each mediation session, all participants will be required to evaluate their experience with the mediation process and the mediator. This information will be used to assist the Agency in effectively evaluating the program. The Agency will monitor and maintain a record of ADR activity for annual reporting to the Equal Employment Opportunity Commission.