



National Guard Bureau

Office of Equity and Inclusion

Mediation Process

Once a complainant has elected to use the ADR process and has completed an ADR form with copies of all documentation, the State Equal Employment Manager (SEEM) in conjunction with the State Judge Advocate, will review the complaint for ADR suitability. If found suitable for ADR, the SEEM will arrange for a mediator or facilitator depending on whether it is an EEO or EO dispute.

The following are the stages in Mediation:

Stage 1: Mediator Opening Statement

The mediator will set the tone for mediation by introducing himself/herself; explain to the parties, the mediation process and the role he/she will play. He/she will also go through the mediation agreement and give details on the confidentiality aspect of the mediation and ensure that the parties are there voluntarily.

Stage 2: Parties Opening Statements

The parties will be given each an opportunity to explain their side of the dispute without interruption. During each party's opening statement, the mediator will ask questions to clarify the issues, and continually rephrase and reframe the statement to simplify the issues for the parties to hear the other's point of view. At the end of each party's opening statement, the mediator will summarize the issues.

Stage 3: Joint Discussion

The parties will discuss and list all of the issues that are important to them and as much as possible, identify any secondary that should be included. At this stage, the mediator will try to move the focus from past issues and conducts, to future solutions and behaviors.

Stage 4: Brainstorming

The parties will be encouraged to explore all possible solutions to their issues, and develop their own course of action.

Stage 5: Caucus

At times, the mediator may request to meet with the parties individually or the parties may request to meet with the mediator individually. Whatever is discussed in the caucus is confidential and will not be discussed with the other party unless permission to do so is granted by the party.



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Stage 6: Settlement Agreement

Conventionally, once the parties reach a resolution, a settlement agreement is drafted using, as much as possible, the parties' language. All of the parties must agree to the agreement. The agreement must be clear and specific with no ambiguities, and signed by all of the parties. The parties have a right to refer to an attorney before signing the agreement. For facilitation, the Parties are free to choose other non-conventional means of agreement such as verbal agreement or a memorandum of agreement.

Stage 7: Closure

Once the settlement agreement is signed, it is considered final and enforceable. The parties will receive a copy of the agreement. The mediator will acknowledge the parties' effort in settling the dispute and will ask the parties to evaluate the ADR process in a survey given to the parties.



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Mediation Process Definitions

Alternative Dispute Resolution (ADR)

ADR is any procedure that is used to resolve issues in controversy, including but not limited to facilitation, mediation, fact-finding, mini-trials, arbitration, and the use of ombudsmen, or any combination thereof (5 U.S.C. § 571(3)). In disputes, ADR proceedings utilize the services of a neutral third party to assist the parties resolve their dispute. Specific ADR procedures are defined as follows:

Arbitration

Arbitration involves the parties' mutual selection of a neutral third party, an arbitrator, to decide the issue in controversy after hearing witnesses, considering other items of evidence, and listening to the arguments of each side. The arbitrator's decision, called an award, can be binding or nonbinding, depending on the parties' agreement, but National Guard policy generally precludes binding arbitration outside of the collective bargaining context. Although commonly considered an ADR process, arbitration is not favored as an alternative process for resolving National Guard workplace disputes because of its use as the final step of negotiated grievance procedures in National Guard collective bargaining agreements.

Confidentiality

Refers to the protection from voluntary or compulsory disclosure, afforded by the Administrative Dispute Resolution Act of 1996, to certain dispute resolution communications given in confidence for the purposes of a dispute resolution proceeding. See ADRA, 5 U.S.C. § 574.

Dispute Resolution Communication

Any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant. A written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitration award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication. See 5 U.S.C. § 571(5).

Dispute Resolution Proceeding

Any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate (5 U.S.C. § 571(6)).



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Early Neutral Evaluation

A structured process in which the parties seek the assistance of a subject matter expert to review the dispute and to provide an assessment of the likely outcome of the dispute based on the facts as found or as agreed to by the parties.

Facilitation

An unstructured and flexible process in which a trained third party neutral (not necessarily a mediator) assists the parties to resolve issues in controversy by utilizing interest-based negotiation techniques.

Fact-finding

A relatively informal process in which a neutral third party examines the evidence to determine the facts giving rise to the dispute, in order to assist the parties negotiate a resolution.

In Confidence

Information provided -- (A) with the expressed intent of the source that it not be disclosed; or (B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed (5 U.S.C. § 571(7)).

Issue in Controversy

An issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement -- (A) between an agency and persons who would be substantially affected by the decision; or (B) between persons who would be substantially affected by the decision (5 U.S.C. § 571(8)).

Mediation

A structured process in which the parties seek the assistance of a qualified mediator to help them in resolving their issue in controversy. The primary attributes of mediation are a structured process, the use of interest-based negotiation techniques, and the use of joint and separate confidential (option of the parties) caucuses between each party and the mediator.

Neutral

An individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy (5 U.S.C. § 571(9)). This individual may be a Federal government employee or someone outside the Government. For purposes of determining whether communications are confidential, the term "neutral" also includes ADR intake or



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other administrative personnel designated and identified by the ADR manager as a neutral for the purpose of taking information from the party or parties to a dispute to assist them in deciding whether to use a dispute resolution proceeding to resolve the dispute.

Other ADR

Other forms of ADR not specifically identified in the ADRA include peer review panels, which are panels consisting of employees, or a combination of employees and management officials, appointed to review the facts, hear arguments, and render decisions on issues in controversy. Alternatively, an organization may employ a technique that is considered part of another agency's ADR program, such as the FLRA or EEOC. In addition, a dispute may be resolved by the use of a Federal Court's ADR program.