

JAPAN-U.S. FRIENDSHIP COMMISSION

Alternate Dispute Resolution (ADR) Policies and Procedures

Federal regulations require agencies to establish or make available an Alternative Dispute Resolution (ADR) Program for both the pre-complaint and the formal equal employment opportunity (EEO) complaint processes. (See 29 C.F.R. § 1614.102(b)(2)). ADR is a process in which a third-party neutral assist the disputants in reaching an amicable resolution using various techniques. ADR describes a variety of approaches to resolve conflict which avoid the cost, delay, and unpredictability of the traditional adjudicatory processes while at the same time improving workplace communication and morale.

In 1990, the Administrative Dispute Resolution Act (ADRA) required each federal agency to adopt a policy on ADR use. In 1996, ADRA was reenacted as the Administrative Dispute Resolution Act of 1996 (ADR Act). In 2000, the Equal Employment Opportunity Commission (EEOC) required all federal agencies to establish or make available an ADR program during the pre-complaint and formal complaint stages of the EEO process. Additionally, EEOCs regulation, 29 C.F.R. § 1614.603, requires agencies to make reasonable efforts to voluntarily settle EEO discrimination complaints as early as possible in, and throughout, the administrative process.

ADR consists of a variety of approaches to early intervention and dispute resolution. Many of these approaches include the use of a neutral individual such as a mediator who can assist disputing parties in resolving their disagreements. ADR increases the parties' opportunities to resolve disputes prior to or during the use of formal administrative procedures and litigation (which can be very costly and time-consuming).

There are many benefits to alternative dispute resolution (ADR), including:

- Complaints are processed more quickly and resolved earlier
- The process leads to more creative solutions
- Savings in time of attorneys, staff, and parties who are federal employees
- Quicker resolution than a hearing would offer and less time that the parties have spent under the cloud of pending litigation
- Creative resolutions acceptable to the parties, but which a third-party reviewer could not impose
- A durable and voluntary agreement.
- Moreover, even in the cases which do not result in resolution, other distinct advantages to the ADR process include:
 - o Laying the groundwork for a subsequent settlement
 - o Increasing clarification of the issues for third-party review.

ADR encompasses a variety of problem-solving processes designed to assist parties with resolving their disputes collaboratively and provides an informal and speedy alternative to the traditional EEO complaint process. In employee and labor relations and equal employment opportunity disputes, ADR has most commonly taken the form of mediation.

Mediation is the intervention into a dispute or negotiation of an acceptable, impartial, and neutral third party who has no decision-making authority. The objective of this intervention is to assist the parties in voluntarily reaching an acceptable resolution of issues in dispute. Mediation is useful in highly polarized

disputes where the parties have either been unable to initiate a productive dialogue, or where the parties have been talking and have reached a seemingly insurmountable impasse.

A mediator, like a facilitator, makes primarily procedural suggestions regarding how parties can reach agreement. Occasionally, a mediator may suggest some substantive options as a means of encouraging the parties to expand the range of possible resolutions under consideration. A mediator often works with the parties individually, in caucuses, to explore acceptable resolution options or to develop proposals that might move the parties closer to resolution. Mediators differ in their degree of directiveness or control while assisting disputing parties. Regardless of how directive the mediator is, the mediator performs the role of catalyst that enables the parties to initiate progress toward their own resolution of issues in dispute.

JUSFC's ADR options must further the agency's mission. They must also be fair, requiring voluntariness, neutrality, confidentiality, and enforceability. Additionally, JUSFC's ADR options should be flexible enough to respond to varied and changing priorities and environments. Hence, JUSFC's preferred method of ADR is mediation. In the event mediation is required, JUSFC will work directly with GSA's OHRM as well as the EEOC to engage third party mediators to facilitate resolution. Certified mediators have been trained to help both parties reach a voluntary agreement. Mediators cannot make decisions or force decisions on the parties to the dispute.

If a JUSFC employee wants to file a complaint, they should contact the agency's Deputy Executive Director or speak directly with GSA's OHRM. After the initial interview and some management contact, the Deputy Executive Director or GSA OHRIM (counselor) may decide that this case is one that may be appropriate for mediation. The counselor will look at several factors, including whether: (1) the situation involves continuing relationships, (2) the desire of the parties to settle the dispute confidentially and informally, (3) the parties' expressed interest in taking part in shaping an agreement, (4) the subject matter of the case, and (5) the potential for setting a precedent.

The mediation process usually begins with a joint session. During the first meeting, the lead or co-mediator explains the process and answers questions. After the parties have told their side of the story, the mediator may ask for clarification or elaboration on particular issues. Following the joint session, the lead or co-mediator may meet with each party separately to discuss the issues in greater detail, and to gain a better sense of how the parties would like to resolve the dispute.

In these meetings, the lead or co-mediator helps the parties try to find an appropriate way to solve their problems. If successful, at the end of the process, a detailed written agreement is developed and signed by both parties. In addition to the mediator, there will be a management representative and the aggrieved party. Either party can represent themselves or may have a legal representative present. However, the parties who participate in the mediation session should have the authority and ability to enter a resolution of the dispute. The Japan-U.S. Friendship Commission (JUSFC) is firmly committed to using ADR for resolving disputes in all its activities, where appropriate and feasible. Used properly in appropriate circumstances, ADR can provide quicker, less expensive, and contentious, and more productive results in eliminating workplace discrimination, as well as in JUSFC operations.