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DEPARTMENT OF DEFENSE
 Defense Security Service
 Alexandria, VA 22314-1651

Office of Diversity Management

**ALTERNATIVE DISPUTE RESOLUTION (ADR) FOR EQUAL EMPLOYMENT
 OPPORTUNITY (EEO) COMPLAINTS**

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1. REFERENCES

1.1. Department of Defense (DoD) ADR Directive, number 5145.5 of April 22, 1996

1.2. Administrative Dispute Resolution Act (ADRA) of 1996, Publication L. No. 101-552, as amended by Pub. L No. 104-320; 29 Code of Federal Regulations (CFR) Part 1614 – Federal Sector Equal Employment Opportunity effective November 9, 1999

1.3. Executive Order 12988, Civil Justice Reform, February 5, 1996; Report of the National Performance Review, Creating A Government That Works Better & Costs Less, September 7, 1993

2. PURPOSE

This regulation prescribes policies and procedures, and establishes the AD Resolution Program for EEO complaints at the Defense Security Service (DSS).

OPR: EO
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3. COVERAGE

This regulation applies to current employees of the DSS, and to persons withstanding to file EEO complaints with the DSS.

4. POLICY

The policy of the DSS is to use ADR as appropriate to resolve informal and formal EEO complaints at the earliest opportunity. The preferred conflict resolution method for the DSS EEO ADR Program is mediation.

5. DEFINITIONS

5.1. ADR. Any procedure that parties agree to use, instead of a formal adjudication, to resolve issues in controversy.

5.2. ADR Coordinating Committee. A group consisting of representatives of DoD Components assisting with the coordination of Component ADR program implementation and the exchange of information on ADR among DoD Components.

5.3. Confidential. Describes information provided with the intent that it not be disclosed, or under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed. Matters that are never to be confidential include any indication of fraud, waste, abuse, criminal behavior or harm to others.

5.4. Management Resolution Official. The person within DSS management with authority to participate in ADR with a view to resolving an issue in controversy on behalf of the Agency.

5.5. Issue in Controversy. Any material EEO issue where there is disagreement between parties.

5.6. Mediation. A process in which a neutral person facilitates settlement discussions between parties. The neutral has no authority to make a decision or impose a settlement upon the parties. The neutral attempts to focus the attention of the parties upon their needs and interests rather than rights and positions.

5.7. Neutral. An impartial person who facilitates discussions and dispute resolution to aid the parties in resolving the issue in controversy.

5.8. Party. An individual who participates in the ADR proceeding.

5.9. Settlement Official. The person within the Office of General Counsel with authority to sign a settlement agreement on behalf of the Agency.

6. OBJECTIVES

6.1. Provide an alternative to traditional EEO counseling and complaint processing in a non-adversarial process, whereby involved parties are afforded the opportunity to resolve complaints quickly and at the lowest organizational level possible.

6.2. Provide an environment that facilitates open communications.

6.3. Reduce costs of lengthy discrimination complaint administration and litigation.

7. RESPONSIBILITIES

7.1. Director, DSS.

7.1.1. Supports the DSS EEO ADR Program.

7.1.2. Provides necessary resources to support the DSS EEO ADR Program.

7.1.3. Appoints, or delegates the appointment authority of, a management resolution official to be a party to the DSS EEO ADR Program.

7.1.4. Appoints settlement officials as appropriate.

7.1.5. Provides representatives and information to the ADR Coordinating Committee and working groups as requested.

7.2. Office of Diversity Management.

7.2.1. Administers the DSS EEO ADR Program in accordance with applicable laws, regulations and policies.

7.2.2. Assures that all employees, including the management resolution official, are well-informed of the DSS EEO ADR Program and provides appropriate means for awareness.

7.2.3. Briefs senior management periodically on the DSS EEO ADR Program process and results.

7.2.4. Offers the DSS EEO ADR Program to eligible persons with EEO complaints.

7.2.5. Notifies participants of their rights and responsibilities within the DSS EEO ADR Program.

7.2.6. Approves the representatives of the parties for participation in the mediation process.

7.2.7. Recommends designation of management resolution official(s) to the Director.

7.2.8. Arranges for the assignment of a mediator and the logistics for the mediation process.

7.2.9. Coordinates and finalizes settlement agreements with the Office of General Counsel.

7.2.10. Compiles statistics of the use and results of the DSS EEO ADR Program.

7.2.11. Evaluates the effectiveness of the DSS EEO ADR Program and initiates modifications and improvements to the program as necessary.

7.2.12. Ensures appropriate monies are budgeted on a FY basis to support the DSS EEO ADR Program.

7.2.13. Ensures confidentiality of the parties involved in mediation with the exception of when instances of fraud, waste, abuse, criminal behavior and harm to other persons are surfaced during the mediation process.

7.3. Office of General Counsel.

7.3.1. Provides personnel guidance and legal advice to the Office of Diversity Management and the management resolution official.

7.3.2. Reviews and signs settlement agreements when settling is in the Agency's interest.

7.3.3. Ensures that DSS EEO ADR implementing procedures are submitted to the DoD Office of General Counsel.

7.3.4. Helps ensure confidentiality of the parties involved in mediation with the exception of instances of fraud, waste, abuse, criminal behavior and harm to other persons are surfaced during the mediation process.

7.5. Management Resolution Official.

7.5.1. Voluntarily participates in mediation, and participates in good faith.

7.5.2. Seeks advice from the settlement official on resolution of the issues in controversy.

7.5.3. Helps ensure confidentiality of the parties involved in mediation with the exception of instances of fraud, waste, abuse, criminal behavior and harm to other persons are surfaced during the mediation process.

7.6. Complainant.

7.6.1. Participates in mediation in good faith.

7.6.2. Helps ensure confidentiality of the parties involved in mediation with the exception of instances of fraud, waste, abuse, criminal behavior and harm to other persons are surfaced during the mediation process.

7.6.3. Retains the right to pursue the EEO process if mediation fails to resolve the issues in controversy.

8. ADR PROGRAM IN THE EEO PROCESS

8.1. DSS EEO ADR Program. Mediation will be used in the DSS EEO ADR Program. DSS leadership will participate in this process when appropriate and encourages the use of the DSS EEO ADR Program to the greatest extent possible. Participation by a complainant, when offered, is voluntary.

8.2. Mediation in the DSS EEO ADR Program. The process of mediation brings two parties together to attempt informal resolution of the issues in controversy. The mediator assists the parties in clarifying issues and by identifying underlying causes of the issues in controversy. Facilitation by the mediator may help the parties arrive at a remedy that satisfactorily resolves their dispute. The mediator cannot impose a resolution on the parties, and to the extent possible, the mediator will protect the confidentiality of the process. Mediation is concluded when a written settlement agreement is entered into; or when the complainant submits a written statement of withdrawal of their EEO complaint; or, when the issues are unresolved and the EEO complaint is remanded for administrative processing.

8.3. Effect on Administrative Procedures. Applicable time limits in the EEO process are suspended (tolled) during the mediation process. In the event the DSS EEO ADR Program is unsuccessful in resolving the issues in controversy, the aggrieved individual may return to the EEO process at the point the mediation began.

8.4. Representatives. The complainant may elect to have a representative participate in mediation with the complainant. The Office of Diversity Management has the authority to deny mediation when inappropriate representatives are selected by any party.

8.5. Exclusions. The Office of Diversity Management shall consider not using DSS EEO ADR Program when:

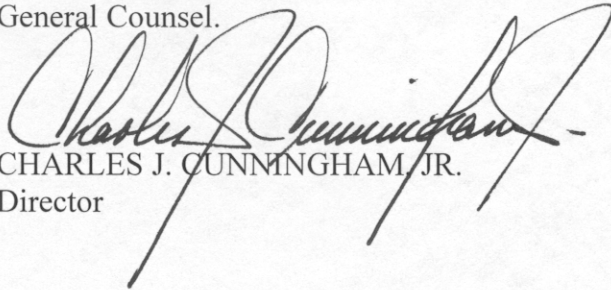
8.5.1. The issue(s) in controversy consist of allegations which have been already decided by the Equal Employment Opportunity Commission, the Merit Systems Protection Board, U.S. District Court or other adjudicating organization;

8.5.2. A definitive or authoritative adjudication of the matter is required for precedential value or for other reasons;

8.5.3. The matter significantly affects persons or organizations not a party to the proceeding;

8.5.4. A full record is of importance; or

8.5.5. Any other circumstance exists that would make use of ADR inappropriate in the judgement of the Director, Office of Diversity Management, with concurrence of the Office of General Counsel.



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