

ORDER

AC 1400.2

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
Mike Monroney Aeronautical Center
Oklahoma City, Oklahoma**

1/10/97

SUBJ.: ALTERNATIVE DISPUTE RESOLUTION

1. **PURPOSE.** This order establishes the Alternative Dispute Resolution (ADR) process at the Aeronautical Center. This process is another means for attempting resolution of informal Equal Employment Opportunity (EEO) complaints.

2. **DISTRIBUTION.** This order is to be distributed to managers and supervisors at the Mike Monroney Aeronautical Center and straightlined organizations serviced by the Aeronautical Center Civil Rights Staff, AMC-9.

3. **BACKGROUND.**

a. On November 21, 1991, the Civil Rights Act of 1991 became law. The law effected a number of statutory changes affecting the processing of administrative complaints, and the notice of rights that agencies and the Equal Employment Opportunity Commission (EEOC) are required to give aggrieved persons who believe they have been discriminated against based on race, color, religion, sex, national origin, age, or disability.

b. The National Performance Review (NPR) has called on federal agencies to improve processes and procedures established to provide workplace due process for employees by establishing alternative dispute resolution methods and options for the informal disposition of employment disputes. The NPR further recommends that all agencies expand their use of alternative dispute resolution techniques.

c. On March 3, 1992, the commissioners of the EEOC voted to adopt Title 29 CFR 1614, Federal Sector Processing Internal Discrimination Complaints, effective October 1, 1992. Section 1614.105(f) of the regulation permits agencies to implement an Alternative Dispute Resolution (ADR) procedure.

d. Discrimination complaints are often complex and lengthy, taking years from the original filing date to final disposition. The complaint process is costly, and it can affect both morale and productivity. Therefore, the Alternative Dispute Resolution process was established to focus on resolving EEO complaints at the informal stage and to preclude a costly and lengthy administrative process.

4. **OBJECTIVES.**

a. Provide an alternative process for problem solving between an aggrieved individual and management to arrive at fair and prompt resolution of issues.

b. Reduce resources dedicated to the discrimination complaint process.

c. Provide increased awareness of EEO responsibilities and desired outcomes.

5. **PROCEDURES.**

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a. When an employee believes he/she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or disability, the employee must consult an EEO counselor prior to filing a complaint. This is usually done within 45 days of the alleged discriminatory incident. The EEO counselor shall conduct a preliminary inquiry and attempt resolution within 30 calendar days. Extensions are also allowed, should an aggrieved individual desire to use the ADR process. Both parties may agree to an extension of not more than 60 days. Whether or not extensions are granted, the entire counseling process may not exceed 90 days from the date of the aggrieved individual's initial contact with a counselor.

b. If the matter is not resolved, the EEO counselor shall advise the aggrieved individual of his/her right to file a formal complaint or that they can participate in the alternative dispute resolution (ADR) process that is available as part of the Department of Transportation (DOT) counseling function.

(1) Participation in the ADR process is voluntary. If the outcome of the ADR process is unsuccessful, the aggrieved individual retains the right to file a formal complaint.

(2) In cases where the aggrieved individual agrees to participate in ADR, the counseling is extended by 60 calendar days. The aggrieved individual shall designate the ADR option by completing an Alternative Dispute Resolution Option Form. A sample of the form is provided as **Appendix 1** to this order. The ADR form is available through the Civil Rights Staff.

c. The EEO counselor shall submit the **ADR Option Form** and report of efforts made to resolve the complaint to the Civil Rights Staff

d. Upon receipt of the **ADR Option Form**, the Civil Rights Staff shall assign a mediator to the complaint. The mediator shall serve as an impartial third party to assist management and the aggrieved individual in reaching a resolution.

e. The Civil Rights Staff shall provide the mediator with all relevant data, i.e., a record of counselor efforts, statistics, etc.

f. Within five days of assignment to the complaint, the mediator shall arrange a meeting between the management representative and the aggrieved individual. The management representative shall be designated by the Program Director and shall have authority to grant relief on behalf of the organization.

g. The ADR process shall be completed within 30 calendar days from the date the complaint is assigned to the mediator.

6. **RESOLVED COMPLAINT.** If a complaint is resolved, the mediator shall prepare a settlement agreement within 3 working days from the day on which the aggrieved individual and management representative reached an agreement. The mediator shall coordinate implementation of the settlement agreement with the Civil Rights Staff. The Civil Rights Staff shall coordinate closing out the informal complaint process with the EEO counselor.

7. **UNRESOLVED COMPLAINT.**

a. Either party or the mediator may withdraw from mediation at any point. In the event the mediator withdraws from the mediation process, the mediator shall immediately notify both parties in writing that he/she is terminating the mediation process for failure to resolve the complaint and shall indicate the effective date of said termination. Similarly, either party, the aggrieved person or the Program Director or their representative may terminate the mediation process at any time by providing written notification to the other party and the mediator. Upon receipt of written notice of termination or mediator terminates the mediation process, the mediator shall (1) advise the aggrieved individual of his/her right to continue the complaint process by immediately notifying the EEO counselor with whom the initial complaint was filed and (2) within 3 working days, following the effective date of termination, provide written notification of termination to the EEO counselor. A sample of the **Unresolved Mediation Form** is provided in **Appendix 2** to this order and is available through the Civil Rights Staff.

b. The EEO counselor shall provide the aggrieved individual with the notice of final interview and advise the aggrieved individual that a formal complaint must be filed within 15 calendar days of the issuance of the notice of final interview.

c. The EEO counselor shall prepare and forward the EEO counselor's report to the Civil Rights Staff, within 10 calendar days of the issuance of the notice of final interview for further processing.

8. **FUNDING MEDIATION.** The office against which the allegation of discrimination is filed is responsible for funding the cost of mediation. In those instances where a collateral duty mediator is not available, the cost of mediation may include reimbursement of the cost for a Federal mediator through the Federal Mediation and Conciliation Service (FMCS). Additionally, some mediations may require co-mediation with a collateral duty FAA mediator and cost reimbursable mediator. The Civil Rights Staff will be responsible for payment of initial or advanced training of mediators as required.



David D. Bonnicks
Program Director, Civil Rights Staff

Appendix 1

FEDERAL AVIATION ADMINISTRATION

ALTERNATIVE DISPUTE RESOLUTION OPTION FORM

(One of the options provided aggrieved persons under the revised procedures for processing discrimination allegations/complaints is the opportunity for the use of dispute resolution for settling issues. The aggrieved person and the Civil Rights Staff must both agree to the process. This form is to be completed and signed in order to select this option.)

NAME: _____

ADDRESS: _____

WORK TELEPHONE: _____

ORGANIZATION/FACILITY: _____

COUNSELOR'S NAME _____ PHONE: _____

I AGREE TO THE USE OF THE ALTERNATIVE DISPUTE RESOLUTION PROCESS TO SETTLE MY ALLEGATION/COMPLAINT.

SIGNATURE, AGGRIEVED PERSON

DATE

SIGNATURE, THE CIVIL RIGHTS STAFF

DATE

Appendix 2

**ALTERNATIVE DISPUTE RESOLUTION (ADR)
UNRESOLVED MEDIATION
FORM**

Upon failure to reach agreement during the ADR process, either party or the mediator must complete and sign this form to terminate mediation.

PARTY TERMINATING MEDIATION

NAME: _____

ADDRESS: _____

WORK TELEPHONE: _____

ORGANIZATION: _____

MEDIATOR'S NAME: _____ PHONE: _____

MY SIGNATURE REPRESENTS THE DESIRE TO TERMINATE MEDIATION FOR FAILURE TO REACH AGREEMENT. As the aggrieved, I have been advised by the mediator to contact the EEO counselor immediately with whom I initiated the complaint. A copy of this form must be given to the EEO counselor.

SIGNATURE, AGGRIEVED PERSON

DATE

SIGNATURE, ORGANIZATION
REPRESENTATIVE

DATE

TITLE: _____

SIGNATURE, MEDIATOR

DATE