



# US Agency for Global Media

## Statement of Policy on Use of Alternative Dispute Resolution in Equal Employment Opportunity Complaint-Related Disputes

### I. General Policy

- A. Pursuant to the Administrative Dispute Resolution Act of 1966, Management Directive (MD) 110 and policies of the U.S. Equal Employment Opportunity Commission (EEOC), and consistent with good management practice, the United States Agency for Global Media (hereinafter referred to as "Agency") is committed to the use of Alternative Dispute Resolution (ADR) whenever appropriate and consistent with the mission of the Agency. ADR is part of the Agency's strong commitment to vigorously enforcing Federal laws that prohibit discrimination.
- B. Mediation and other forms of ADR help resolve disputes in more timely, less costly, and less adversarial ways than the typical time-consuming path of litigation. ADR has been shown to be a cost-effective way for organizations and their employees to enhance productivity and avoid the negative effects of unresolved tensions and conflict. ADR helps employees, managers and supervisors reach a mutually-agreed upon, expeditious and confidential resolution of a complaint without the disruption and diversions of lengthy investigations and litigation. Particularly where workplace tensions are linked to interpersonal and communication issues, ADR can help achieve closure of a positive and satisfying nature for the parties involved.
- C. This Statement of Policy reiterates the Agency's commitment to appropriate use of ADR in the area of employment-related disputes that are, or could develop into, claims of discrimination or retaliation under Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Equal Pay Act of 1963, Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, Sec. 504, and to implementing regulations and Executive Orders (including 29 C.F.R. Part 1614 and EEOC's Management Directives).

### II. Executive Responsibilities

- A. The Director of the Agency's Office of Civil Rights (OCR) has overall responsibility for administering the Agency's ADR program related to employment disputes under Paragraph I(C) above.

- B. The Director of OCR works in consultation with the Office of General Counsel (OGC) to assure compliance with civil rights laws, the Alternative Dispute Resolution Act, personnel laws and other legal requirements. When an employee is represented by an attorney, OGC may represent the Agency in ADR. OCR consults with OGC and the Office of Human Resources (HR) concerning the legal sufficiency of proposed settlements reached during the ADR process, when applicable.

### **III. Assuring Employee Knowledge Regarding Complaints Processing and ADR: Avoidance of Delay**

- A. OCR is responsible for assuring that all Agency employees are aware of their rights and opportunities to engage the discrimination complaint process by contacting an EEO Counselor within 45 days of the date of an action, which may be the basis of an EEO complaint. In addition to their responsibilities to counsel about civil rights laws, EEO Counselors also have the responsibility to inform complainants about the nature and benefits of ADR, the option to choose ADR, and the timetable and limits on use of ADR.
- B. Management Directive (MD) 110 states ADR shall be conducted within 90 calendar days of the initiation of an informal complaint of discrimination. OCR will be responsible for scheduling mediations, to include coordinating location, working with each participants' availability and obtaining a mediator. Generally, time spent in the ADR process *per se* should take only a few days. Since one of the purposes of using ADR is to reduce time spent in handling the dispute, OCR will take all reasonable measures to avoid delay and to assure that no party is allowed to misuse the ADR process. OCR will set return dates for mediators and other ADR service providers to assure that the process operates expeditiously.
- C. If a case is not settled in ADR, OCR will promptly move the case on to the next step in the EEO complaint process.

### **IV. Determining Whether ADR is Appropriate**

- A. While most disputes can benefit from ADR, the Agency always retains discretion to determine whether a particular dispute is appropriate or inappropriate for ADR. Pursuant to 5 U.S.C. 581(b), the Agency decision to use or not use ADR is discretionary and not subject to review in court.
- B. The determination to use or not to use ADR is made by the Director of OCR, who may consult with Agency management, unit management employing the aggrieved employee, and OGC.

- C. The following are some of the circumstances favoring the use of ADR. This is not an exhaustive list:
1. There will be a continuing relationship between the parties.
  2. The parties are interested in seeking resolution but there are barriers to communication due to personality difficulties, past history, etc.
  3. A thorough exchange of information or perspectives will improve the quality of the outcome.
  4. There are underlying issues which are not formally part of the complaint and may not be resolvable by relief available in litigation, but which are the catalyst for the dispute.
  5. There is a need for joint problem-solving, development of creative alternatives, or flexibility in shaping relief.
  6. Settlement possibilities may be enhanced by the neutral's ability to facilitate private meetings with the parties, to conduct frank discussions

#### V. **ADR is Voluntary - Managements Responsibilities**

- A. In all cases, participation throughout ADR is voluntary for the complaining party.
- B. If a complainant elects to participate in ADR in a case for which ADR has been determined to be appropriate, the Agency shall assure that a senior Agency official with settlement authority is either at the table during the ADR, or promptly accessible.
- C. The creative process of ADR often produces settlements, which were unanticipated as the process began. Nevertheless, it is important for the management official assigned to the mediation to use best efforts to assure that he/she has full settlement authority for the anticipated scope of the case, or immediate access to someone who does have such authority.
- D. The mediator, during ADR always has the discretion to end the mediation, when in his/her estimation, a party is not participating competently and/or in good faith.

#### VI. **Forms of ADR Used at the Agency**

The primary ADR technique used by the Agency for discrimination-related disputes is **mediation**. Mediation is a flexible, non-binding process led by a trained and experienced neutral (the mediator) which facilitates negotiations between the parties to help them reach a settlement. The mediator may extend the traditional bounds of settlement discussions and broaden resolution options, which were not

apparent to the parties before. Within the limits of law and Agency policy, the process shall remain confidential (see VII below).

The primary parties to the mediation are the complainant and a representative of Agency management, although nothing precludes parties from having representatives. Signers or other helpers may be included for persons with hearing or sight impairments or language barriers. With the assistance of the mediator (who helps the parties communicate and negotiate, but does not decide anything), the parties identify and clarify the issues around the dispute, explore options for resolution, and try to develop a resolution that satisfies both sides. If no resolution is reached, the complainant may return to the formal EEO process and neither the complainant nor the Agency loses any rights they might otherwise have.

## **VII. Confidentiality**

- A. The process of ADR is meant to be confidential so that parties are encouraged to speak frankly and participate freely in developing options. Confidentiality is controlled by provisions of the Alternative Dispute Resolution Act of 1996 (*see* 5 U.S.C. § 571(5), (6) & (7), and 574). The mediator or other ADR service provider and the parties will be asked to commit to confidentiality and to sign an agreement to mediate which includes provisions on confidentiality.
- B. When a case is not resolved in ADR, the mediator or other ADR service provider will immediately return the case to OCR, noting only that the case was not resolved. Everything related to the case with the exception of "claims to harm", remains confidential.

## **VIII. Obtaining Mediators or Other ADR Service Providers**

- A. OCR is responsible for finding well-trained and experienced mediators for discrimination complaints. OCR may draw from private sources, from other federal agencies through federal "shared neutrals" programs, and from Agency employees performing as mediators on a collateral-duty basis.
- B. To avoid concerns about neutrality and impartiality, Agency employees who perform as mediators may not be part of the Complainant's immediate organization.

## **IX. Resolving Disputes: Available Remedies**

- A. Wide range of resolution options available  
*EEOC's policies (see, e.g., Chapter 12 of EEOC's Management Directive 110) make it clear that the Agency has broad authority to settle EEO disputes by applying the*

*full range of remedies a court could order if the case went to trial. The Agency can resolve disputes without a finding of discrimination or an admission of wrongdoing.*

**B. Agency policy on settlement**

*ADR is a means for parties in dispute to find ways to resolve the dispute in a manner, which meets all of the participants needs. Thus, while factors such as litigation risk assessment and fairness may require consideration of resource-based settlements, participants in ADR are encouraged to use the creativity of the process to consider the widest possible range of possible outcomes.*

**C. Binding nature of Settlement Agreements**

*An agreement resolving a dispute shall be in writing. The agreement is a contract, containing mutually enforceable rights and obligations, and is binding on both the Agency and the employee.*

**D. Non-precedential nature of settlements**

*Settlements represent compromises of contested matters. In ADR, each settlement is uniquely crafted to fit the particular needs of the parties to a particular dispute. As such, no settlement shall be deemed precedential for any other dispute.*

**E. Approval requirements for certain resolutions**

*During ADR, disputes should be resolved at the lowest organization level possible, consistent with delegations of authority. The responsible management official for the alleged act(s) of discrimination is not the proper Agency official for participation in ADR and should not have settlement authority. A senior management official in the complainant's chain of command with the authority to resolve the complaint should be designated. He or she will have the primary responsibility for the resolution of a dispute, assuring implementation thereafter, and for undertaking any appropriate consultation with his or her manager, legal counsel, human resources managers, or others.*

*Agreements shall be crafted in such a way that OCR will consult with the appropriate Agency management official, Office of Human Resource, and the Office of General Counsel, with regard to resolutions involving monetary relief, and/or attorney's fees and other entitlements to ensure conformity with applicable federal regulations and statutes.*

**X. Education and Training**

The Director of OCR will be responsible for providing on-going education and training in support of ADR, including the following:

- A. A Conflict management and ADR training for managers and supervisors (including how to avoid workplace disputes using interest-based dispute

resolution techniques and good management practices related to workplace tensions).

- B. Awareness education about ADR and the Agency's ADR program for employees.
- C. Training in how to use ADR skills for EEO counselors and management officials.
- D. Basic and continuing skills training for Agency mediators.