

National Oceanic and Atmospheric Administration	NOAA Administrative Order NAO 202-715B	
NOAA ADMINISTRATIVE ORDER SERIES	DATE OF ISSUANCE January 26, 2022	EFFECTIVE DATE March 02, 2022
SUBJECT NOAA Alternative Dispute Resolution Program Policy		

SECTION 1. PURPOSE.

- .01 This Order establishes the National Oceanic and Atmospheric Administration (NOAA) responsibilities and procedures for complying with the Administrative Dispute Resolution Act of 1996 (Public Law 104-320). This Order also supports the NOAA's implementation of 29 CFR § 1614, Federal Sector Equal Employment Opportunity and Filing an appeal and responses to appeals (5 CFR § 1201.22, which provides for utilizing Alternative Dispute Resolution (ADR) after an agency issues an adverse action decision.
- .02 This NOAA Administrative Order (NAO) revises and supersedes NAO 202-715 (effective February 2, 2010) to clarify the responsibilities of the Office of Human Capital Services (OHCS). The revision includes updated responsibilities of the NOAA Office of Inclusion and Civil Rights (OICR), along with references and organizational nomenclature. This ADR Policy and its Guide illustrates NOAA's commitment to early intervention and dispute resolution through its ADR program.

SECTION 2. SCOPE.

- .01 The provisions of this NOAA Administrative Order (NAO) apply to all NOAA Line and Staff offices' full-time and part-time employees nationwide who utilize ADR. Where provisions of this Policy differ from negotiated collective bargaining agreements, the provisions of the collective bargaining agreement will apply. This NAO will be applicable until canceled or superseded.

SECTION 3. DEFINITIONS.

- .01 **Action Plan** – An action plan is a written document used in facilitated problem-solving. The parties involved will work with the facilitator to write an action plan agreeable to all parties involved. The action plan should include the main problem causing the workplace issue(s); identify the desired outcomes; specify the action(s) each individual will take to create a productive work environment. Anyone working for NOAA can request a facilitated problem-solving session.

- .02 **ADR** – The NOAA ADR Program uses two approaches for early intervention and dispute resolution:
- a. **Mediation** – A process in which a trained and neutral third party helps all parties in a dispute reach an informed and mutually acceptable settlement of the issues. Settlement agreements resulting from the mediation process are binding and enforceable. Mediation is the only ADR option for Equal Employment Opportunity (EEO)-related matters.
 - b. **Facilitated Problem Solving** – A process using techniques to improve the flow of information in a meeting between parties in a dispute. Employees may participate voluntarily or may be directed to participate by a manager or supervisor. Unlike mediation, there is no legally binding written settlement agreement when a dispute has been resolved through facilitation. Once all or some of the issues addressed in a facilitated problem-solving session have been resolved, the parties write an action plan that is agreed to by all parties. Facilitation is never appropriate for EEO-related matters.
- .03 **Facilitator** – The facilitator focuses on procedural assistance and remains neutral to the topics under discussion and handles the structured process referred to as facilitated problem-solving. The facilitator does not make decisions for the parties or impose a resolution to the dispute. The facilitator does not serve as an arbitrator, judge, or advocate for any side in the dispute.
- .04 **Good Faith** – An action (deed or spoken word) with an honest and sincere intention. All mediation and facilitated problem solving participants are required to agree to participate in “good faith.” That is, they must agree to:
- a. listen to all sides of a dispute;
 - b. explore their and the opposing sides’ interests;
 - c. not maintain a fixed negotiating position; and
 - d. help develop options that meet the interests of all parties.
- .05 **Initiator** – The person who requests ADR services to help resolve a dispute.
- .06 **Mediator** – The mediator serves as a trained neutral third party of the structured process referred to as mediation. The mediator helps the parties explore their interests and develop options towards a mutually satisfactory resolution. The mediator does not make decisions for the parties or impose a resolution to the dispute. The mediator does not serve as an arbitrator, judge, or advocate for any side in the dispute.
- .07 **Respondent** – The person(s) with whom the Initiator seeks to negotiate with to resolve the issues in dispute.

- .08 **Settlement Agreement** – When all or some of the issues in a dispute have been resolved to the mutual satisfaction of the parties, the agreements reached will be:
- a. formally documented as a contract between the parties;
 - b. reviewed by the Department of Commerce (DOC) Office of General Counsel (OGC) Employment and Labor Law Division (ELLD);
 - c. signed by the parties; and
 - d. reviewed and ratified by the OGC Employment and Labor Law Division, OHCS, and the NOAA OICR (if the dispute is an EEO issue).

SECTION 4. POLICY.

- .01 It is the policy of NOAA to encourage ADR and mediation in all appropriate circumstances to resolve conflicts in an efficient and constructive fashion. Solutions that are mutually agreed upon increase the satisfaction and morale of all parties.
- .02 The ADR process and rules are designed to assist parties in resolving disputes in the workplace.
- a. Mediation:
 - i. Mediation, NOAA’s primary method of ADR, offers all parties the opportunity to articulate their positions in a non-adversarial setting and resolve their disputes with a neutral third party.
 - ii. Mediation is intended as an adjunct to formal grievance processes. When a person elects mediation, deadlines in the formal process are either extended or suspended for the duration of the ADR process. When a settlement is reached that resolves all or part of the issues in dispute, all or part of the formal process is concluded. If no agreement is reached, then the formal process resumes from where it stopped to allow for the mediation.
 - iii. Proceedings before mediators are informal; therefore, rules of evidence shall not apply.
 - b. Facilitated Problem-Solving:
 - i. Facilitated problem solving is an ADR approach used to resolve the underlying issues that prevent employees or teams from being productive and attaining their goals. Facilitated problem-solving:
 - opens the lines of communication;
 - helps to clarify misunderstandings;

- provides a safe setting to discuss sensitive issues;
 - focus people on what is truly important to them; and
 - encourages creative problem solving.
- ii. Employees may participate voluntarily or may be directed to participate by a manager or supervisor.
 - iii. Managers or supervisors may opt to schedule a facilitated problem-solving session to resolve workplace disputes, improve communication, or build a cohesive team.
 - iv. Managers or supervisors may direct employees to participate in a facilitated problem-solving session to resolve conflict or dysfunction within a team.
- .03 All parties involved in the ADR mediation will maintain the confidentiality of the facilitated problem-solving process. If there is a risk or threat of violence during the facilitated problem solving process, the ADR Program Manager will end the facilitation process and report the situation to higher leadership for their awareness.
- .04 All parties must cooperate in good faith with the terms set forth at the beginning of a mediation or facilitated problem-solving session.
- .05 Employees are encouraged to request ADR services at the earliest possible time in a conflict.
- .06 It is mandatory for managers or supervisors to participate in all EEO-related mediations when appropriate.

SECTION 5. RESPONSIBILITIES.

- .01 All NOAA employees must comply with this NAO's prescribed provisions. The following describes a high-level overview of the roles and responsibilities involved with the ADR process. The details are outlined in the ADR Guide:
- a. Initiator shall:
 - i. Request mediation or facilitated problem solving at the earliest possible time in the course of a dispute;
 - ii. Report any allegations of discrimination to the NOAA's Office of Inclusion and Civil Rights Office or an EEO counselor within 45 calendar days of the alleged act(s) of discrimination; and

- iii. Raise issues under the negotiated or administrative grievance process within the timeframes established in collective bargaining agreements or the administrative grievance procedure.
- b. Respondent shall:
- i. Make an informed decision whether to participate in mediation or facilitated problem solving after consultation with the ADR Program Manager or contact the OICR (for EEO-related issues), unless the Respondent's manager or supervisor requires participation in facilitated problem solving; and
 - ii. Make decisions on behalf of management, when granted authority to serve as their representative or contact an upper-level decision maker (as necessary).
- c. Manager or Supervisor shall:
- i. Encourage the use of ADR services to resolve workplace disputes;
 - ii. Participate in ADR when requested by the Initiator;
 - iii. Consult with the NOAA OICR for EEO-related issues if there are concerns with the mandatory participation of managers;
 - iv. Authorize duty time for ADR participants;
 - v. Seek guidance from ADR Program Manager or OICR as needed;
 - vi. Authorize funds for mediators, facilitators and any necessary accommodations for participants with disabilities; and
 - vii. Provide and arrange for administrative services for mediations and facilitated problem-solving sessions, such as meeting space and access to equipment.
- d. Mediator or Facilitator shall:
- i. Serve as a neutral third party trained in dispute resolution;
 - ii. Assist parties in reaching mutually acceptable resolutions to disputes;
 - iii. Terminate the mediation or facilitated problem-solving session when it becomes apparent that continued efforts to resolve the matter through the mediation or facilitated problem-solving process will be unsuccessful;
 - iv. Advise all participants of the mediation or facilitated problem solving regarding the process, rules of confidentiality, and terms;

- v. Ensure disputing parties understand the mediator or facilitator has no authority to make decisions and will not act as an advocate for any party;
 - vi. Consult with appropriate officials, as needed, for technical assistance to clarify issues or resolve concerns; and
 - vii. Assist disputing parties in drafting the mutually acceptable settlement agreement when a settlement is reached for mediation or a mutually acceptable action plan for facilitated problem-solving.
- .02 The ADR Program Manager engages in all mediations and facilitated problem-solving sessions (except EEO-related mediations). The ADR Program Manager shall:
- a. Oversee policy and program development, direction, and evaluation, on behalf of the OHCS Director in collaboration with OGC, OHCS staff, and bargaining units that represent employees;
 - b. Explain the mediation or facilitated problem-solving process fully and what is meant by confidentiality and good faith;
 - c. Consult with parties to determine whether the dispute is appropriate for mediation or facilitated problem-solving; and
 - d. Process all requests for mediation or facilitated problem solving (except for EEO cases) with the Initiator's permission by:
 - i. Contacting the Initiator and Respondent(s);
 - ii. Notifying the Respondent(s) of the purpose of the requested mediation or facilitated problem-solving session;
 - iii. Identifying the appropriate participants for mediation or facilitated problem-solving session;
 - iv. Assuring the appropriate decision makers can participate in either the mediation or facilitated problem-solving session;
 - v. Being available for consultation and ratification of decisions;
 - vi. Obtaining voluntary agreements to mediation or facilitated problem solving;
 - vii. Arranging for mediators or facilitators from a pool of professionally trained mediators or facilitators, and ensuring they have all applicable NOAA forms and contact numbers prior to the start of mediation or facilitated problem-solving session;

- viii. Working with the Initiator's Line or Staff Office to pay mediator or facilitator professional fees, travel, and associated reimbursement, as well as conference room fees and expenses associated with accommodations for participants with disabilities;
- ix. Ensuring settlement agreements are reviewed and signed by the OHCS Director and DOC OGC (except for EEO cases);
- x. Ensuring all draft settlement agreements are reviewed and cleared through DOC OGC and that all required revisions are made before parties agree to and sign the settlement agreement (except for EEO cases); and
- xi. Providing intervention and other ADR services as requested.

.03 The NOAA OICR shall:

- a. Engage with ADR only when they have a counselee in the pre-complaint phase of the EEO process where the individual filed an allegation of discrimination in employment based on:
 - i. Race;
 - ii. Color;
 - iii. Religion;
 - iv. Sex;
 - v. National origin;
 - vi. Age;
 - vii. Disability;
 - viii. Retaliation;
 - ix. Genetic information; or
 - x. Sexual orientation.
- b. Oversee the program development and evaluation of all EEO-related meditations on behalf of the Office of the Deputy Under Secretary; and
- c. Conduct all actions outlined in section 5.02 b, c, and d above in accordance with internal OICR ADR procedures. Mediation is the only form of ADR used for EEO cases.

SECTION 6. AUTHORITIES.

- .01 [Memorandum on Agency Use of Alternate Means of Dispute Resolution and Negotiated Rulemaking, 34 Weekly Comp. Pres. Doc. 749 \(May 1, 1998\)](#)
- .02 [Administrative Dispute Resolution Act of 1996 \(Public Law 104-320, amending Public Law 101-552 and Public Law 102-354\)](#)
- .03 [5 U.S.C. 571 – 584, Alternative Means of Dispute Resolution in the Administrative Process](#)
- .04 [5 CFR § 1201.22, MSPB Filing an appeal and responses to appeals](#)
- .05 [29 CFR § 1614, Federal Sector Equal Employment Opportunity](#)

SECTION 7. REFERENCES.

- .01 [Department Administrative Order \(DAO\) 202-771, Administrative Grievance Procedure \(effective date June 8, 2011\)](#)
- .02 [DAO 215-9, Filing Discrimination Complaints \(effective date October 24, 2017\)](#)
- .03 [NAO 202-711, Labor-Management Relations Procedures \(effective date March 10, 2009\)](#)
- .04 [NAO 215-1, NOAA's EEO/Civil Rights Program \(effective date May 16, 1990\)](#)

SECTION 8. EFFECT ON OTHER ISSUANCES.

This Order supersedes NAO 202-715, NOAA Alternative Dispute Resolution Program and its associated Handbook (effective date February 2, 2010).

An electronic copy of this Order will be posted in place of the superseded Order on the NOAA Office of the Chief Administrative Officer website under the NOAA Administrative Issuances Section at: www.noaa.gov/administration/administrative-issuances.



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Offices of Primary Interest:

- Office of Human Capital Services
- Office of Inclusion and Civil Rights