National Nuclear Security Administration

MEDIATION PROGRAM
(ALTERNATIVE DISPUTE RESOLUTION)

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IF THE EMPLOYEE ELECTS MEDIATION, THE ELECTION MUST BE IN WRITING ON THE ENCLOSED FORM (END OF THIS BOOKLET). THE FORM WILL BE ATTACHED TO THE EEO COUNSELOR'S REPORT IF THE EMPLOYEE'S COMPLAINT IS NOT RESOLVED DURING MEDIATION AND THE EMPLOYEE ELECTS TO FILE A FORMAL COMPLAINT WITHIN THE APPROPRIATE TIME FRAMES. THE EMPLOYEE WILL NOTIFY GENQUEST AND MEDIATION BEGINS. THE MEDIATION PROGRAM IS NOW DESIGNED AROUND THE TIME FRAMES OF THE EEO REGULATIONS. SECTION 1614.105(F) PROVIDES THAT WHERE AN AGENCY HAS AN ESTABLISHED ADR PROCEDURE AND THE COMPLAINANT AGREES TO PARTICIPATE IN THE PROCEDURE, THE PRE-COMPLAINT PROCESSING PERIOD SHALL BE 90 CALENDAR DAYS.

ONCE THE EMPLOYEE ELECTS MEDIATION, THE EEO COUNSELOR WILL COMPLETE THE INTAKE FUNCTIONS OF COUNSELING WHICH IS OBTAINING THE INFORMATION NEEDED TO DETERMINE THE BASIS(ES), CLAIM(S), AND

TIMELINESS. IF THE DISPUTE IS RESOLVED DURING THE MEDIATION, IT WILL BE IN WRITING (SETTLEMENT AGREEMENT). ALL APPROPRIATE PARTIES WILL SIGN THE AGREEMENT. THE OEO WILL RETAIN A COPY OF THE SETTLEMENT AGREEMENT AND NOTIFY THE EEO COUNSELOR THAT AN AGREEMENT HAS BEEN REACHED.

IF THE EEO COMPLAINT IS NOT RESOLVED WITHIN THE 90 CALENDAR DAY PERIOD AUTHORIZED FOR MEDIATION, NNSA SC'S MEDIATION COORDINATOR (OEO) WILL BE NOTIFIED BY GENQUEST. THE OEO WILL NOTIFY THE EEO COUNSELOR AND THE COUNSELOR WILL ISSUE THE NOTICE OF RIGHT TO FILE A DISCRIMINATION COMPLAINT (FINAL INTERVIEW LETTER) TO THE EMPLOYEE, AND THE EEO PROCESS WILL CONTINUE.

REPRESENTATION OF THE PARTIES: AGGRIEVED INDIVIDUALS HAVE THE RIGHT TO REPRESENTATION THROUGHOUT THE COMPLAINT PROCESS, INCLUDING DURING ANY MEDIATION. WHILE THE PURPOSE OF MEDIATION IS TO ALLOW THE PARTIES TO FASHION THEIR OWN RESOLUTION TO A DISPUTE, IT IS IMPORTANT THAT THE MEDIATION PROGRAM PROVIDES ALL PARTIES THE OPPORTUNITY TO BRING A REPRESENTATIVE TO THE MEDIATION IF THEY DESIRE TO DO SO.

AN ELECTION FORM TO SELECT MEDIATION APPEARS AT THE END OF THIS BOOKLET.

FILING A GRIEVANCE

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CONCLUSION

RETURN THIS COMPLETED, SIGNED FORM TO YOUR EEO COUNSELOR IF YOUR ISSUES ARE EEO RELATED.

EEO COUNSELOR: MAIL OR FAX THE COMPLETED PAGES TO GENQUEST:

TOLL-FREE: 1-888-246-2460 • PHONE: 505-246-2829 • FAX: 505-246-0193 E-MAIL: INFO@GENQUESTINC.COM 1805 RIO GRANDE BLVD. NW • SUITE 2 • ALBUQUERQUE, NM 87104

IF YOUR ISSUES ARE NOT EEO RELATED YOU MAY SEND THE REQUEST FOR MEDIATION FORM TO THE EEO AND DIVERSITY PROGRAMS OFFICE, FAX (505) 845-4976 OR TO GENQUEST AT (505) 246-0193.

To All Employees:

The Equal Employment Opportunity Commission's revised regulations at 29 C.F.R. §1614.102 (b)(2) require agencies to establish or make available an alternative dispute resolution (ADR) program. The ADR program must be available during both the pre-complaint process and the formal complaint process. The National Nuclear Security Administration Service Center has an ADR process known as Mediation.

In May 1994, a formal Mediation Pilot Program was instituted, the first of its kind, in the Department. Because of its success the program became permanent and continues to be used to address issues that may interfere with employee morale, productivity, and work efficiency. People issues are unavoidable in the workplace, especially given the size and diversity of the NNSA work force. We believe the Mediation Program addresses employee issues in a trusting and expeditious way.

The Mediation Program puts high emphasis on ensuring objectivity and confidentiality in a communication process that would strive for "win-win" solutions to disputes. Therefore, we continue to contract out the Mediation Program.

Continued use of the Mediation Program helps us reach our strategic goals and operate within our core values.

Managing Conflict with Mediation

An employee files a sex discrimination complaint against his/her supervisor.
A disagreement arises with regard to a personnel policy or procedure.
A supervisor and employee are having a conflict regarding the work environment.

Frustration, distrust, and anger are rising. Antagonistic positions are taken and summarily rejected. Negotiations break down, or worse, do not even begin due to internal confusion or dissension. Time and energy are diverted from agency priorities and productivity is lost.

These problems are familiar to organizations. One alternative to continued conflict is mediated negotiation or mediation. In mediation the parties resolve the dispute, instead of turning it over to formal court or agency proceedings with the concomitant cost, delay, and loss of control over the result.

What Is Mediation?

In mediation, a trained, impartial third party helps two or more parties negotiate to resolve their dispute. Mediation emphasizes problem solving, rather than gearing up for protracted adversary proceedings. The mediator works to gain the trust of the disputing parties, has no stake in the outcome, is not a judge (unlike in arbitration or court proceedings), and has no power to make decisions. Mediators often use their persuasion skills to help the parties see negotiation and consensus-building processes and their knowledge of negotiating strategies will allow the parties to reach their respective objectives.

At the NNSA SC, mediation is a voluntary, informal process. **NNSA's managers must be aware that they have a duty to cooperate in an ADR process**. Rules of evidence do not apply. Testimony is not taken. Witnesses are neither sworn nor used to support or defend positions. Interrogatories, depositions, and transcripts are not required. Parties cannot be forced to reach an agreement.

How Can Mediation Help?

Organizations benefit from mediation in several ways: they save money, they make more efficient use of their resources, and they preserve the integrity of ongoing work relationships. Because individuals who reach agreement through mediation retain control of the dispute's outcome, the result is more likely to meet their needs than would be a decision imposed from the outside. Mediation gives individuals the opportunity to craft more creative solutions than might be available from an administrative law judge or other outside decision makers. Because those closest to the substance of the problem have designed their own settlement, the parties are far more likely to abide by it.

The organization utilizing mediation can take charge of the process of resolving disputes. By planning and carrying out a settlement strategy, you can avoid having a dispute swept up in costly, time-consuming adjudication. Mediation provides a flexible structure to manage, negotiate, weigh technical data, and make decisions which often prevent a conflict from festering into something worse and having to resort to more structured procedures to resolve employee concerns.

True, some people tend to do the opposite. Invoking formal processes for sticky problems may sometimes appear to be the simplest or safest course for employees in some large organizations. It is; however, seldom the most cost-effective way to reach program decisions or resolve specific conflicts.

Also, it may be tempting to pass a dispute on to someone else. It is true that agency managers cannot always effect binding settlements wholly on their own authority. However, a manager can often generate an internal consensus for workable solutions before entering negotiations (perhaps using his or her own mediation skills), keeping superiors apprised as discussions proceed. Sometimes it may be preferable for the manager to delegate the negotiating task, while retaining ratification authority. In any case, an employee can, and should, address these kinds of issues in deciding how to deal with any problem.

When to Use Mediation

Mediation is an option in any dispute where a negotiated solution is an acceptable outcome and may be especially effective in those situations where:

- ✂ Multiple issues have to be resolved.
- ✂ There is no need to establish precedent and there is no single "right" solution that is required.
- ✂ Tensions, emotions, or transaction costs are running high.
- ✂ Communication between the parties has broken down.
- ✂ Time is a major factor.
- ✂ Failure to agree does not clearly benefit one or more parties.
- ✂ Issues are complex and individual parties have an interest in maintaining confidentiality with respect to key issues.
- ✂ The parties want or need to maintain an ongoing relationship.

Mediation can obtain maximum results when it is used early in the dispute, before the positions of the parties have hardened.

Phases of the Mediation Process

The mediation process includes several different phases. Generally, there are three: an introductory phase, a problem solving phase, and closure. These may be clear and distinct, but more often they overlap.

✂ **Introductory Phase.** During this phase the mediator tries to develop an atmosphere of reasonableness and to engender the parties' trust in the mediator and in their ability to work together. Ground rules for participation and behavior suggested by the mediator must be agreed to by the parties. These rules may range from simple matters of etiquette (e.g., ensuring that only one person speaks at a time) to, in some

cases, detailed protocols about such matters as the scope, agenda, and order of the negotiation; the use and timing of private meetings; and the way in which the negotiating group will respond to media or other inquiries. This phase often begins with the parties agreeing to a general timetable for the mediation, and it includes a joint session in which the parties explain their views of the case and how they would like to see it resolved. A skilled mediator may use these sessions (and later ones) to allow parties to "let off steam" before moving on to more productive talks.

✂ **Problem Solving.** The primary goals of this phase are to continue to build trust, educate each participant about the dispute from the other party's perspective, and generate and evaluate possible solutions. During this phase, the mediator often explores hypothetical solutions separately with each side, helping the parties generate alternatives without revealing confidential information. He or she will seek to stimulate momentum to settle, build on areas of agreement, narrow differences, and to help parties explore in detail the most promising options.

✂ **Closure.** The primary objective of this phase, as its name implies, is to conclude the mediated negotiation. If all parties reach agreement, the mediator may help them draft a document spelling out its terms. The agreement might include provisions for its enforcement or settling any future related disputes. As needed, these agreements are reviewed and ratified by appropriate officials before being signed.

Even when mediation does not end in a written agreement resolving all of the issues, the process still can be useful. Mediation can help to eliminate points in a dispute, and parties generally come away with a better understanding of the issues and options for resolving them.

NNSA SERVICE CENTER MEDIATION PROGRAM PROCESS

Employee requesting mediation contacts * "GenQuest", (505) 246-2829 promptly after problem occurs (no later than **10** calendar days after the occurrence).
**Change in processing of EEO disputes.

****EEO processing:** you must contact an EEO Counselor within 45 days of the incident. Your counseling will be held up to 90 days pending the mediation outcome.

↓

Assigned mediator contacts disputing parties within **5** calendar days and schedules meetings.

↓

Meeting with disputing parties and mediation takes place. (Mediation Process Begins)

↓

Mediator informs participants at the beginning of the meeting that even though they are going through the mediation process, they may still file through the informal or formal EEO/grievance processes, as appropriate.

↓

Disputing parties read and sign agreement to mediate.

— **No → End Mediation Process**

↓

Agreement reached by disputing parties. (If not, follow-up session may be scheduled.) Draft settlement agreement is prepared.

— **No → End Mediation Process**

↓

Meeting Adjourned

↓

Mediator finalizes settlement agreement.

↓

Settlement agreement reviewed and concurred on by appropriate reviewing authorities, as appropriate.

— **No → Mediator addresses changes w/disputing parties to draw up new agreement.**

Mediator and disputing parties meet to sign settlement agreement.

— **No → End Mediation Process**
— ****If EEO related, contact your EEO Counselor within 7 calendar days and request that Counseling resume.**

↓

Mediator contacts disputing parties as specified in the settlement agreement to ensure parties are in compliance.

— **No → Meet w/parties to find out why and have NNSA SC management enforce it.**

↓

End Mediation Process.

*Upon acceptance of a "case", GenQuest shall attempt to mediate towards successful resolution within **<u>15 CALENDAR DAYS</u>** and no later than **<u>90 CALENDAR DAYS</u>** the mediation must be concluded, or the complainant provided their right to file a formal EEO Complaint**.**** EEO related disputes must be brought to the attention of an EEO Counselor no

later than **45 calendar days** after incident or action. At the initial counseling stage the employee must elect either traditional EEO Counseling or Mediation.

The Administrative Dispute Resolution Act

Public Law 101-552 [H.R. 2497] (November 15, 1990) established, and Public Law 104-320 [H.R. 4194] (October 19, 1996) re-authorized, the use of alternative means of resolving disputes involving government agencies. EEOC's revised regulations (11/9/99) at 29 C.F.R. § 1614.102(b)(2) require agencies to establish or make available an alternative dispute resolution program.

Is Mediation Confidential?

Mediation can make it safe for parties to raise sensitive issues and creative ideas, but many of its benefits can be achieved only if communications are confidential.

NNSA will ensure that the Mediation Program maintains the highest level of confidentiality. This will include holding the contractor to the highest standards of integrity. Dispute resolution communications are confidential and may not be disclosed by the parties or by a neutral third party unless:

- All parties to the dispute resolution proceeding and the neutral third party agree in writing.
- The communication has already been made public.
- The communication is required by statute to be made public, or
- A court determines that such testimony or disclosure is necessary to:
    - Prevent a manifest injustice.
    - Help establish a violation of the law.
    - Prevent harm to the public health or safety. The harm or injustice must be of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential. In addition, parties could disclose such a communication if:
        - The communication is prepared by the party seeking disclosure.
        - The communication is relevant to determining the existence or meaning of an agreement/award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award.
        - The communication is provided to or is available to all parties to the dispute resolution proceeding.

Although the Administrative Dispute Resolution (ADR) Act does not specifically exempt settlement communications from disclosure under the Freedom of Information Act (FOIA), the Department of Justice has stated its position that any document protected under the ADR Act is protected from disclosure under FOIA. The confidentiality provisions of the ADR Act do not affect the level of documentation that would ordinarily be prepared to justify a negotiated agreement.

The Mediator's Role

The Mediator is the person in the "middle," the trained facilitator who encourages both parties to sit down in a non-threatening environment, remain objective, and talk about ways to reach an agreement.

- **Mediators do not decide who is right or wrong, do not act as a judge, do not take sides, and do not place blame.**
- **Mediators do not condone violence or threats as means for solving problems.**
- **Mediators work equally with both parties.**
- **Mediators are trained in the mediation process and various communication techniques.**

Scope of NNSA SC's Mediation Program

NNSA SC and complainants have realized many advantages from utilizing Mediation. Mediation offers the parties the opportunity for an early, informal resolution of disputes in a mutually satisfactory fashion. ADR usually costs less and uses fewer resources than do traditional administrative or adjudicative processes, particularly processes that include a hearing or litigation. Early resolution of disputes through Mediation can make agency resources available for mission-related programs and activities. The agency can avoid costs such as court reporters and expert witnesses. In addition, employee morale can be enhanced when agency management is viewed as open-minded and cooperative in seeking to resolve disputes through Mediation.

Our goal is to provide an additional tool and avenue for all employees to utilize in an attempt to resolve disputes prior to initiating the grievance procedure or the EEO Discrimination Complaints process with a "win - win" situation as our ultimate goal.

How NNSA SC's Mediation Program Works

There are clearly three situations that mediation will lend itself to. They include: EEO issues, administrative grievances, and other non-grievable personnel issues. Employees are encouraged to utilize the Mediation Program as the first step in an attempt to resolve these or any other disputes or disagreements. In doing so, employees are always encouraged to discuss issues with their immediate supervisor, with the understanding that they may pursue the administrative grievance process or the EEO Discrimination Complaints Process within the prescribed (applicable) time frames addressed below.

Procedures for Utilizing the Mediation Process

If an employee has an issue that they would like to have mediated, they may contact **GenQuest** at (505) 246-2829 utilizing the following time frames:

Election between EEO Counseling and Mediation

An employee must contact the EEO Counselor within 45 calendar days from the alleged incident or action. At the initial counseling session, the complainant must elect either traditional EEO Counseling or Mediation.

If the employee elects Mediation, the election must be in writing on the enclosed form (end of this booklet). The form will be attached to the EEO Counselor's Report if the employee's complaint is not resolved during mediation and the employee elects to file a Formal Complaint within the appropriate time frames. The employee will notify GenQuest and Mediation begins. The Mediation Program is now designed around the time frames of the EEO regulations. Section 1614.105(f) provides that where an agency has an established ADR procedure and the complainant agrees to participate in the procedure, the pre-complaint processing period shall be 90 calendar days.

Once the employee elects Mediation, the EEO Counselor will complete the intake functions of counseling which is obtaining the information needed to determine the basis(es), claim(s), and timeliness. If the dispute is resolved during the Mediation, it will be in writing (Settlement Agreement). All appropriate parties will sign the agreement. The OEO will retain a copy of the Settlement Agreement and notify the EEO Counselor that an agreement has been reached.

If the EEO Complaint is not resolved within the 90 calendar day period authorized for Mediation, NNSA SC's Mediation Coordinator (OEO) will be notified by GenQuest. The OEO will notify the EEO Counselor and the Counselor will issue the Notice of Right to File a Discrimination Complaint (Final Interview Letter) to the employee, and the EEO process will continue.

Representation of the Parties: Aggrieved individuals have the right to representation throughout the complaint process, including during any Mediation. While the purpose of Mediation is to allow the parties to fashion their own resolution to a dispute, it is important that the Mediation Program provides all parties the opportunity to bring a representative to the Mediation if they desire to do so.

An election form to select Mediation appears at the end of this booklet.

Filing a Grievance

1. The employee has 15 days to initiate the administrative grievance procedure from the date the event occurred.

2. Additional information can be found by referring to the Order or by contacting a Personnel Management Specialist, Human Resources Department, at (505) 845-4850.

Other Uses for the Mediation Program

A very significant aspect of NNSA SC's Mediation Program is that an employee does not have to have an administrative grievance or a complaint that would fall under the purview of EEO. An employee may seek mediation on ANY ISSUE that he/she believes is significant and is impacting him/her, whether it is a disagreement with a peer, supervisor, an employee, or other management official, and would like immediate attention given to the issue and/or problem by a neutral third party in hopes of a successful "win - win" resolution.

Conclusion

Mediation is a tool that can help an organization expedite resolution of a dispute, narrow issues in dispute, resolve disputes at an early stage, promote "measured" advocacy, preserve relationships, and produce satisfying resolutions by expanding the range of possible solutions. By providing a structured, more positive environment in which to discuss differences, mediation helps increase mutual understanding of each other's concerns, interests, misconceptions, emotions, and unsatisfied expectations.

The ADR Act provides authority and encouragement for Federal agencies to join the private sector and the courts in using mediation to resolve disputes, improve operations, and better serve its constituents.

The NNSA SC Mediation Program responds to this need and benefits our organization.

Formal Mediation Election Form

Instructions: Please use this form to provide basic information about your complaint and mail or fax it to your EEO Counselor if your issues are EEO related. If not fax it to the EEO & Diversity Office, (505) 845-4963, **or** directly to the mediation provider, GenQuest at 505-246-0193. A copy of this document will be forwarded to the appropriate management officials to assist them in resolving your complaint.

Are you interested in mediation of your complaint? The decision to participate in mediation is voluntary, and the process is confidential. If you agree to participate, you will be contacted by GenQuest, Inc., to schedule mediation. In addition, GenQuest will provide you with information to assist you in preparing for mediation.

I, _____ hereby (check one):

( ) DO NOT AGREE to participate in mediation of my EEO complaint.

( ) I wish to participate in mediation of my issues, they **are not EEO** related.

( ) AGREE to participate in mediation of my EEO complaint.

I have not given up my right to participate in the EEO Complaint Process (right to file a formal complaint, right to investigation, or right to later request a hearing or a final agency decision) if mediation is not successful. If mediation is successful, a settlement agreement will be drawn up during the mediation, signed by the disputing parties, and concurred upon by the EEO/Diversity Program Manager at the NNSA Service Center.

I agree to notify the EEO/Diversity Program Manager, in writing, and **within 7 calendar days of the end of mediation**, if mediation was not successful in resolving the complaint. I understand that the EEO Counselor will then issue a Notice of Final Interview with information on my rights to file a formal complaint of discrimination.

My EEO Counselor is: _____
(Printed Name of Counselor)

I first contacted my Counselor on:_____
(Date of Contact)

Please provide three (3) specific dates and times during which you would be available to participate in mediation during the next month.

_____(3 hour minimum block)

_____(3 hour minimum block)

_____(3 hour minimum block)

Please Read and Complete the Following:

1. Describe the problem(s) you would like to have resolved. Please be concise; you will have an opportunity to provide additional information at a later date.

_____

_____

_____

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_____

2. Summarize the facts leading up to the problem(s), in chronological sequence.

_____

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3. What are some possible solutions that might resolve the problem(s)?

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4. Who are the parties necessary to resolve this, and what is their relationship to you? Be sure to include the names of relevant management officials who could assist in resolving this matter.

_____

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REMINDERS:

- You may want to keep a copy of this form for your records.
- **IF YOUR ISSUES ARE EEO RELATED:** You agree to notify the EEO/Diversity Program Manager, in writing, and **within 7 calendar days of the end of mediation**, of the outcome of mediation: DOE-NNSA, EEO and Diversity Program Manager, PO Box 5400, Albuquerque, NM 87185. If mediation was not successful in resolving the complaint The EEO Counselor will then issue a Notice of Final Interview with information on your rights to file a formal complaint of discrimination.

Name	Org.
Signature	Work or Home Phone #*
Title	Work or Home email*
Date	Fax #

**Best phone and email for the Mediator to contact you at.*

Return this completed, signed form to your EEO Counselor if your issues are EEO related.**

EEO Counselor: mail or fax the completed pages to GenQuest:

Toll-Free: 1-888-246-2460 • Phone: 505-246-2829 • Fax: 505-246-0193
E-Mail: info@genquestinc.com
1805 Rio Grande Blvd. NW • Suite 2 • Albuquerque, NM 87104

*****If your issues are not EEO related, you may fax the form to the EEO and Diversity Programs Office, (505) 845-4963 OR fax directly to GenQuest at (505) 246-0193.***