



# SAF/GCR Negotiation & Dispute Resolution (NDR) Program

## ADR Program Manager's Quick Start Guide



# About This Document

- The [SAF/GCR NDR Program Office](#) prepared this document for Air Force ADR Program Managers to quickly understand the most important functions of their roles.
- Hyperlinks throughout this document connect the user to important online resources. CAC is required to access certain resources. *Open this file in a browser if Adobe Acrobat blocks links to external resources.*
- Seek guidance about any content of this document that might conflict with local policies and procedures.
- Notify the SAF/GCR NDR Program Office about content that might need to be updated or corrected.



# Negotiation & Dispute Resolution Programs – an Air Force Best Practice

- **Workplace conflict** is inevitable. Failing to effectively manage workplace conflict can adversely affect mission and Airmen. The Negotiation and Dispute Resolution (NDR) Program is designed to improve Commanders' ability to effectively manage workplace conflict so as to perform the mission and take care of Airmen.
- **The NDR Program** is governed by [AFPD 51-12](#) and its associated [AFI 51-1201](#), which provides that it is a best practice for Commanders to appoint ADR Program Managers and promote the NDR Program among all organizations.
- It is also a best practice to be flexible when implementing the NDR Program so as to best resolve workplace disputes at each installation.



# ADR and Mediation



## Alternative Dispute Resolution (ADR)

- [ADR](#) consists of a variety of approaches to early intervention and dispute resolution.
- Most of these approaches include the use of a neutral individual such as a mediator or facilitator who helps participants more effectively solve problems and make better decisions.
- ADR increases opportunities to resolve disputes before or during formal administrative procedures and litigation.
- ADR is always a voluntary process in the Air Force.

## Mediation is One Type of ADR

- In [mediation](#), a skilled person with no stake in the outcome helps participants identify issues, clarify interests, explore options, and seek solutions that create value by satisfying as many interests as possible.
- Mediators provide structure and manage group process, discussion, group dynamics, conflict, communication, problem solving, and decision making.
- Unlike arbitrators, mediators do not render a decision on the merits, and many mediators refrain from even speculating about outcome.



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# 1. Case Intake: Accept, Reject, or Transfer a Dispute

## Critical Elements of Intake

- Screen and gather sufficient information
  - Provides meaningful guidance to stakeholders and neutrals, and for a proper determination of eligibility and appropriateness for ADR/mediation
- Determine whether to offer mediation
- Educate parties about the process
  - So they can make a voluntary and informed choice about agreeing to mediate their dispute
- Offer or elect to not offer ADR
- Determine appropriate participants
- Prepare written agreement to mediate



*COMMON INTAKE STEPS*



## 1. Intake

## 2. Schedule & Arrange

## 3. After the Session

### Assess for ADR Appropriateness

- The installation legal office is normally responsible for dispute screening unless that function is delegated to the installation ADR Program Manager.
- The installation labor relations office can ensure observance of collective bargaining obligations.
- Maintain confidentiality per [AFI 51-1201](#) by designating a neutral person to collect relevant information and assess whether each workplace matter is a candidate for ADR.

### Assess ADR Appropriateness

- Use checklists and [guidelines](#) approved by the legal office and NDR Program Office.
- Consider using a Request for Mediation form and the [ADR Appropriateness Evaluation Worksheet](#) to gather and assess information. Keep a copy in the ADR file.
- Consider legal guidelines & individual circumstances. Seek legal review before declining a case.





# 1. Intake

## 2. Schedule & Arrange

## 3. After the Session

### Considerations

CHARACTERISTIC*	<u>FAVORS MEDIATION IF:</u>	<u>DISFAVORS MEDIATION IF:</u>
<b>PARTIES' GOALS</b>	Really solve the problem	Just settle the dispute
<b>FOCUS OF ATTACK</b>	Confront the problem	Confront each other
<b>CONTROL</b>	Want to retain it	Give it to a 3 <sup>rd</sup> party
<b>WILLING TO LOSE</b>	No!	Willing to take the risk
<b>PRIVACY</b>	Important	Not important
<b>RELATIONSHIP</b>	Important	Not important
<b>SPEED</b>	Important	Not Important
<b>COST</b>	Desire to minimize	Don't care how much \$\$\$
<b>PRECEDENT</b>	Desire to avoid	Desire to establish
<b>VINDICATION</b>	Unnecessary	Essential
<b>COMMUNICATION</b>	Willing to engage	Unwilling to engage
<b>RESOLUTION</b>	Will to consider options	Must have all or nothing

\* Based on the work of Harvard Professor Frank E.A. Sander.





# 1. Intake

## 2. Schedule & Arrange

## 3. After the Session

### Educate Participants

- Consider using the [Air Force Negotiation Planning Worksheet](#)
- About [Mediation](#)
  - [Value proposition](#) (why mediate?)
  - [Air Force model](#) & variations
- [What to expect](#) and [how to prepare](#)
- Roles: [mediator](#), [parties](#), representatives, SMEs, ADR Program Manager
- Confidentiality per [AFI 51-1201](#) (Att. 2)
- Voluntary and good faith engagement
- Discuss 15- to 45-day scheduling window
- Discuss 'what if the case does not settle?'

### Educate Participants, continued

- Typical ground rules including notetaking
- Agreement to mediate
- Scope of potential agreements
- Joint and separate sessions
- Opening statements
- Closure, including legally enforceable settlement agreement
- Legal review for compliance
- [Evaluation survey](#)
- Applicable installation policy and process
- Special considerations in [EO matters](#)



## 1. Intake

## 2. Schedule & Arrange

## 3. After the Session

### Special Considerations

- [Equal Employment Opportunity complaints](#)
- [Administrative grievances](#)
- [Negotiated grievances and unfair labor practices](#)
- [Merit Systems Protection Board appeals](#)

### Offer Mediation?

- Ensure parties are [fully informed](#)
- First offer to management, then unconditional [offer](#) to employee
- If mediation is not offered or accepted, consider using the [Template for Declination of ADR](#) and keep a copy in the ADR file. Return to referring office.

### Appropriate Participants

- [Parties, Representatives and ADR Support Providers](#)
  - Mediator + parties who have authority to settle (participation mandatory)
  - Party representatives (participate if requested by parties)
  - Co-mediator, mentor/mentee (at mediator's election)
  - Subject matter expert (SME) (usually in the background)
- [Union Participation](#)
  - As a representative of a bargaining unit employee, or
  - In "formal discussions" (a term of art) as a representative of the bargaining unit, including formal EEO complaints where the employee does not object (contact Legal if the employee objects)



## 1. Intake

## 2. Schedule & Arrange

## 3. After the Session

### Agreement to Mediate

- **Best practice:** Parties execute a written agreement to engage in mediation or other form of ADR before engaging in the process.
- **Content of agreement normally includes:**
  - Brief description and voluntary nature of the process
  - Start time and scheduled duration
  - Location (if known)
  - Mediator's name and contact info
  - Confidentiality expectations
  - Representation
  - Signature line and date

### Sample Agreement to Mediate

- Mediation Memorandum
- Agreement to Mediate when not covered by a negotiated grievance procedure (NGP)
- Agreement to Mediate when covered by an NGP
- Ask party reps to review and modify samples before use.

### “Responsibility forms” for parties

- Filing Party/Complainant
- Respondent



## 1. Intake

## 2. Schedule & Arrange

## 3. After the Session

# Select a Mediator

### Larger Installations

- [Recruit](#), [train](#) & maintain roster of mediators
- [Appointed](#) by Installation Commander
- *Min.* 30 hours training ([certification criteria](#))
- Use [client](#) and mentor evaluations to maintain the roster
- General expectation: Roster members will be made available for cases unless actively serving in another ADR support role
- Recommendation: *Min.* one case per calendar quarter, preferably more, for at least 24 months following entrance on the roster\*

### All Installations

- Use qualified external mediators through:
  - [SAF/GCR](#)
  - Federal [Shared Neutrals Program](#)
  - DoD [Roster of Neutrals](#)
  - Another Air Force installation

\* Consider co-mediation and participatory refresher training if necessary to supplement low caseloads.



1. Intake

## 2. Schedule & Arrange

3. After the Session

### Schedule

- Check availability of mediator and all other participants, including Legal (for technical support and to review any agreement).
- Try to [schedule](#) in next 15 days, but no more than the next 45 days; at least 4 hours duration, preferably 6.
- At a neutral location with access to caucus room, phone, and computer with printer. Consider any special needs.
- Use [Case Management Worksheet](#) to coach parties on process in a neutral manner.

### Arrange

- Inform the mediator
  - Directions and parking
  - General nature of the dispute; maybe additional information
  - Gentle reminder about appropriate attire
- [Ensure availability](#) of appropriate managers, supervisors, [settlement authority](#), Civilian Personnel Office staff, union representative, any SMEs, and Legal.
- Schedule [timely legal review](#) of any settlement agreement for legal sufficiency and compliance with regulations and any applicable collective bargaining agreement (CBA).



1. Intake

## 2. Schedule & Arrange

3. After the Session

### Arrange

Follow each link to provide the mediator and parties with a generic [mediation settlement agreement cover page](#) and sample language for the following types of settlement agreements:

- [EEO complaint that does not allege age discrimination](#)
- [EEO complaint alleging age discrimination](#)
- [Dispute alleging violation of a CBA](#)
- [Dispute that does not allege EEO or CBA violation](#)

Sample language can be adjusted by the parties, provided that it passes legal review.

Review [Optional Settlement Agreement Provisions](#) and [Examples of Settlement Agreement Provisions](#) for additional practical guidance regarding settlement agreements.





1. Intake

2. Schedule & Arrange

## 3. After the Session

### Legal Review of Agreements

- Coordinate timely review for legal sufficiency and compliance with regulations and any applicable CBA; follow up any deficiencies.
- Only retain a copy of the agreement in the installation ADR records if there is no official dispute file elsewhere.

### Monitor Compliance

- Investigate allegations of noncompliance and properly correct breaches in any form.
- Coordinate with your legal advisor as appropriate.

### Parties Can Enforce the Agreement

- In non-EO cases, advise the party to contact the ADR Office or CPO.
- In EEO cases per [29 C.F.R. § 1614.504](#),
  1. Party contacts “EEO Director” within 30 days.
  2. Agency has 30 days to issue a decision.
  3. Appeal to OFO within 30 days of adverse decision or within 35 days of Step 1 if no Agency decision.
  4. EEOC issues determination.

Note: Alleged retaliation following settlement of an EEO case generally requires a new complaint alleging retaliation (rather than enforcement of the settlement agreement).





1. Intake

2. Schedule & Arrange

## 3. After the Session

### Closing a Case

- Send settlement agreement to the office that referred the case for ADR (or retain in the ADR Office if there was no referring office).
- Enter information in the NDR database (located in SharePoint as of December 2018).
- Ask parties to submit [mediator evaluations](#) when closing each case. Follow up until both parties submit.

### Quality Control

- Work with your legal advisor and installation leadership to address quality concerns. As appropriate, consider actions that improve quality. E.g.,
  - Correct elements of the mediation process.
  - Co-mediation with feedback.
  - Assign a mentor.
  - Require additional training.
  - Reduce mediator's certification level or decertify (1<sup>st</sup> consult with SAF/GCR).
- Maybe a new mediation session if conduct materially and adversely affected outcome.



# Best Practices

See detailed guidance at [AFI 51-1201 Appendix 4](#)

1. Designate an NDR Program Manager.
2. Maintain an installation ADR Plan; submit copy to SAF/GCR.
3. Track all disputes, even oral disputes, in the ADR data collection system.
4. Screen each case per established criteria.
5. Require supervisors and managers to participate in good faith.
6. Execute a written agreement to mediate in advance of the procedure; select a qualified neutral to serve as mediator.
7. Properly conduct an ADR proceeding in every eligible and appropriate matter.
8. Participate with authority to settle or access to someone who does.
9. Settlements are subject to review for legal sufficiency and regulatory compliance.
10. Can timely pursue other remedies if ADR fails to fully resolve the dispute.
11. Direct complaints about mediators to Commanders or designees.
12. Carefully maintain records in accordance with Air Force Manual 33-363 and RIMS.
13. Follow DODI 5145.05 and consult SAF/GCR in matters involving a non-Air Force party.
14. Using DD Form 2815 to submit your ADR Annual Report.

# Learn More

Links to the online [ADR Program Managers Guide](#)

• [A. INTRODUCTION](#)

• [B. WHAT IS ADR?](#)

• [C. THE LAW AND GUIDANCE](#)

• [D. MEDIATION GENERALLY](#)

• [E. SCOPE OF WORKPLACE  
MEDIATIONS](#)

• [F. STAKEHOLDERS IN MEDIATION](#)

• [G. VITAL PROCEDURES FOR AN EFFECTIVE  
MEDIATION PLAN](#)\*

• [H. ARRANGING THE MEDIATION](#)\*

• [I. PREPARING FOR THE MEDIATION  
SESSION](#)\*

• [J. ADR MANAGER'S DUTIES AFTER THE  
MEDIATION](#)\*

• [K. CONTINUOUS DUTIES FOR ADR  
MANAGERS](#)\*



# NDR Program Online Resources

## SAF/GCR

- ❑ [NDR Program Internet Site](#)
- ❑ [NDR Intranet Portal](#)
- ❑ [NDR SharePoint Resources](#)
- ❑ [NDR SkillPort Training Materials](#)
- ❑ [NDR Office email](#)
- ❑ [Forms, Checklists, and Other NDR Program Resources](#)
- ❑ [Mediation Compendium \(4<sup>th</sup> Ed.\)](#)
- ❑ [ADR Desk Book for Acquisition Professionals](#)

## Air Force, DoD, US Gov

- ❑ [AFPD 51-12](#) (June 2018)
- ❑ [AFI 51-1201](#) (October 2018)
- ❑ [ADR Desk Book for Acquisition Professionals](#)
- ❑ [Practical Guide to Negotiating in the Military](#)  
(Air Force Negotiation Center, Air University)
- ❑ [First Sgts Facilitation Course Materials](#)
- ❑ [DoD OHA CADR Program](#)
- ❑ [Federal ADR Managers Resource Manual](#)

# NDR Partners & Resources



[Ira C. Eaker Center for Professional Development at Air University](#)

• (334) 953-8944/9545, DSN 493



[Air Force Negotiation Center at Air University](#)

• (334) 953-6095, DSN 493



[Equal Opportunity ADR Program](#)

(240) 612-4357 or DSN



[SAF/GCR NDR Program Office](#)