

WHAT HAPPENS IF YOU ELECT TRADITIONAL EEO COUNSELING?

If you decide to have EEO counseling, the EEO Counselor will:

- contact you to listen to your concerns and obtain from you a proposal for resolving your precomplaint.
- contact witnesses to determine what facts are relevant to the case.
- determine what documents are needed to complete a limited inquiry into the matter.
- inform a management official of your resolution proposal.
- explore other resolution options and present them to you.
- write a report summarizing the inquiry if it is not possible to resolve the precomplaint.

If the EEO Counselor cannot resolve your precomplaint:

- you may file a formal complaint within **15 calendar days** of receiving your rights.
- you will receive the EEO Counselor's Report after you file a formal complaint.

WHAT HAPPENS IF YOU ELECT MEDIATION?

If you request mediation, a mediator will:

- meet with you to explain the mediation process.
- ask you to prepare notes to organize your thoughts to make the mediation as productive as possible.
- ask you about the interests or needs that must be met for a satisfactory settlement of your concerns.
- contact the person with whom you are having the dispute to arrange for a meeting and request the same information.
- meet with you and the other party as many times as necessary to obtain a resolution.
- draft a resolution agreement to be signed by all parties or refer you back to an EEO Office to have your rights explained.

Since everything that went on in the mediation is confidential, you will not receive a report on the mediation. However, you will receive a letter giving you the right to file a formal complaint within **15 calendar days** of your receiving the letter.

THE USE OF ALTERNATIVE DISPUTE RESOLUTION IN NIH EEO COMPLAINT PROCESSING



For more information, please contact:

NIH Office of the Ombudsman/NIH Center for Cooperative Resolution – (301) 594-7231

NIH Office of Equal Opportunity & Diversity Management (301) 496-1551

WHAT IS ALTERNATIVE DISPUTE RESOLUTION?

Alternative Dispute Resolution (ADR) involves the use of a neutral party in resolving differences. There are many ADR processes. However, mediation is the most frequently used ADR process in the Federal EEO complaint process. Mediation is offered as an option to traditional EEO counseling and as a means of resolving formal complaints. Mediation works best when used early in the complaint process before positions are set and is very effective in situations requiring creative solutions.

IS ADR RIGHT FOR YOUR COMPLAINT?

Persons filing informal complaints may choose to have an EEO counselor or a mediator. EEO counselors are trained to inform persons of their rights in the complaint process and to resolve complaints. If resolution is not possible, an EEO counselor prepares a report that will be needed if a formal complaint is filed. The sole responsibility of mediators is to facilitate the resolution of disputes. Therefore, they strive for resolution more intensely than EEO counselors.

EEO counseling is very effective in cases where there are factual disputes because counselors are authorized to obtain documents that may lead to

resolving the disputed issues. However, in disputes dealing with work relationships where strong emotions are present, mediation is a valuable tool in creating a climate in which the two parties can exchange information and recommend ways of resolving the differences between them.

The following is a more in-depth comparison of EEO counseling and mediation in the complaint process.

HOW ARE EEO COUNSELING AND MEDIATION SIMILAR?

- The primary goal of EEO counseling and mediation is to resolve disputes.
- EEO counseling and mediation both use neutral third parties to resolve disputes.
- Settlement agreements resulting from EEO counseling and mediation are negotiated based on the interests of the parties and not the merits of the complaint.
- Settlement agreements achieved in EEO counseling and mediation are enforced by the Office of Equal Opportunity (OEO).
- EEO counselors and mediators are trained to perform their jobs.

- EEO counseling and mediation are subject to standards of confidentiality.
- If EEO counseling and mediation are unsuccessful in resolving a dispute, the right to file a formal complaint is retained.

HOW ARE EEO COUNSELING AND MEDIATION DIFFERENT?

- EEO counseling results in a written report if a precomplaint is not resolved. There is no written record of mediation.
- EEO counseling involves all witnesses with relevant information in a dispute. Mediation involves only the parties in dispute.
- EEO counselors may be called as witnesses in subsequent legal proceedings. Mediators cannot be called as witnesses.
- The standard of confidentiality is stricter in mediation than in EEO counseling.
- While the regulations governing the EEO complaint process provide a time frame of up to **90 calendar days** for the completion of EEO counseling and mediation, mediation is usually completed more quickly than EEO counseling.