

DESIGN WORKBOOK

I. ADR Program Objective

- A. The overall objective of the ADR program is:

- B. The specific objectives for the ADR program are:

- C. Write down what you would like to see change as a result of your program after one year of implementation: (Remember: Keep each goal in mind as you go through the design process.)

II. Program Responsibilities

- A. Site Coordinator – (i.e. day to day administration at a single site.)

- B. Program Coordinator – (i.e. administration over multiple geographic sites, not in all locations, troubleshooting, policy interpretations and decision-making, etc.)

- C. Other

III. Selecting Mediators (Inside, Outside, Shared)

- A. Preliminary Determinations
 - 1. Where are the neutrals coming from?

 - 2. Should co-mediation be considered? If so, when?

 - 3. Are there any special needs for neutrals (e.g. fluency in American sign language, bilingual.)

B. Special Considerations For Selecting Outside Mediators

1. Criteria for selecting outside mediators

- a.) Consider how much experience the provider has in mediation. Years of experience is not as critical as how many actual mediations an individual has done.
- b.) Experience or background in human resources or EEO.
- c.) Experience mediating in the public sector.

2. Procurement Issues

a.) Payment

- Payment arrangements with providers can be structured in numerous ways. As a consumer of services, you have considerable influence in how the contract with a provider is structured and it should reflect the needs of your program.
- Providers will often give pricing discounts if a certain number of mediations per month or quarter can be guaranteed, however this type of arrangement requires careful estimation of demand. There are many ways to price mediation services: per day, per case, per session, per hour, per week (settlement week).
- How long do you think each case will take to mediate? (2 hours? 10 hours?)
- How many cases do you think can be mediated in a day?
- How many per day is the provider willing to do? (e.g. 1, 6-8 hour session. 2, 4-5 hour sessions)

- b.) Scheduling
- c.) Establish turn around time frame.
- d.) Consider varying work schedules and tours of duty.
- e.) Consider block scheduling (mediations occurs on the same days each week.)

C. Travel and per diem

1. Must be negotiated.
2. Contractor cannot get government rates on airfare or hotels.
3. If the contractor is from outside your area, cap the travel costs (e.g. \$1200).
4. Is there a reputable contractor in your geographic area?
5. Establish parameters for costs base on the characteristics of your site:(can you fly in the day before, driving vs. flying, cabs vs. rental cars)

D. Cancellation

1. Contingency plan should be included for cancelled mediations.
2. Will the provider charge an administrative fee for cancellations or will the mediation simply be rescheduled?
3. How much notice is required for cancellation with/without penalty?

E. Verification of Invoices

1. Cross-reference dates of mediations with the dates on all receipts (which should be attached).
2. Decide who will be responsible for verifying the invoices and signing off (Check in-house procurement policies and procedures).

3. Determine what information the contractor will be required to submit for verification and payment? (Check in-house payment processing policies and procedures).

F. Statement of Work

1. Must be written during the procurement process. The statement must detail what exactly the provider will be doing and during what time frame.
 - Do you plan to have the provider handle any of the scheduling duties?
 - What information will the provider give to you on the outcome of the mediation? (For example, it is important for the provider to capture the length of the mediation and whether or not it settled.)
 - Will the mediator be responsible for giving any forms (e.g. an exit survey) to all the participants?

C. Special Considerations for Selecting Inside Mediators

1. Credibility of the mediator
 - a.) The greatest area of concern in this model
 - b.) Disputants are naturally concerned about the ability of an inside mediator to keep matters discussed in mediation confidential.
 - c.) There is always an "appearance" of a power imbalance. Therefore, we recommend that you consider the following issues:
 - Training and mediating for experience (See Training section later)
 - *Who makes selection of mediators?*
 - Those employees who are nominated, and ultimately selected as mediators, must have certain identifiable skills and qualifications. (Mediators would not be selected based on their current position, but based on the knowledge, skills, and abilities they demonstrate.)

- The perception of bias should be carefully considered in choosing mediators. (For example, a labor relations advocate may not be a good choice for a mediator since as a labor relations representative he/she is trained to take a position and represent management.)

2. Selecting an Inside Mediator

a.) Who is eligible?

- Bargaining unit (REMEMBER: Pay issues, the unions, the contract, etc.)
- Non-bargaining unit
- SES

b.) How do you choose?

- Do you post it as ad hoc duties or as collateral duties?
- Do you allow the Site Coordinator to make the decision noncompetitively?
- Do you ask for suggestions from the unions?
- Do you ask management for recommendations?
- Do you interview individuals? If so, who conducts the interviews?

c.) Once your inside mediators are selected, where and how are they assigned cases?

- Will you allow them to mediate in their own facility?
- Do you want to establish an insider shared neutral program?
- Do you want to limit them to new cases or to backlogged cases?

- d.) What additional training will you need for inside mediators?
- Will three day basic mediation skills be enough?
 - Is more coursework necessary? If so, what kind?
- e.) What level of experience will be necessary before allowing an inside mediator to mediate?
- Do you need to establish a mentoring program with co-mediation?
 - If so, who will be the lead mediators—more experienced inside mediators, site coordinators or outside consultants?
 - How many co-mediations will you require before a mediator can mediate independently?
 - What type of evaluation system will be developed to determine when a person is qualified to mediate alone?
- f.) Will the inside mediators mediate as a collateral duty?
- g.) Will the inside mediators mediate full time?
- Should it be a temporary detail?
 - If full time, who would supervise the mediator?
- h.) Will inside mediators mediate on an ad hoc basis?
- i.) How will assignments be made?
- Will disputants have a choice in selecting their inside mediator?
 - What about schedule changes? How will they be handled?

D. Considerations for Selecting Shared Neutrals

1. Finding a Roster

a.) It is critical that a roster of trained mediators be obtained. Sources for information on a roster of trained mediators can be found through the following:

- Contact HHS at (202) 690-7023 who maintains a roster of neutrals in the Washington, D.C. area.
- Veterans Administration contact in Nashville, Ron Duley (615) 736-5326.
- Veterans Administration contact in Louisville, Tony Belac (502) 582-5871.
- Call your local Federal Executive Board to see if it has a roster.
- Contact EEO personnel in other federal agencies.
- Is there a local state or federal mediation program connected with the court system?
- If there is currently no roster available in your area, you will need to organize other federal agencies to form a roster and a program. (This is a challenging task which will require a roster manager, developing implementation guidelines, recruiting qualified neutrals, and maintaining the roster.)
- If you are willing to pay travel costs, a shared neutral can travel from another area.

2. Determining the qualifications of the neutrals?

- a.) How many hours of training should the neutral have?
- b.) What training is acceptable for the neutral? (Who are the providers)?
- c.) Is there a mentor program for inexperienced neutrals?
- d.) How many co-mediations should the neutral have conducted?

- e.) How many lead mediations should the neutral have conducted?
- f.) What subject matter expertise should the neutral have?

IV. Scope of Cases

A. Cases Included:

1. Do you want to include all types of cases?
2. Do you want to limit the types of cases—such as only EEO cases?
3. Are there any specific types of sensitive cases you want to exclude? (sexual harassment?)

B. Cases Excluded:

1. Can any request be denied? If so, what are the criteria?
 - a) Judicial decision is required for precedent setting cases. (i.e. drug testing)
 - b) Criminal allegations involved?
 - c) Repeat filers?
 - d) Imbalance of power?
 - e) Case likely to be settle through unassisted negotiations?
2. Who has the authority to deny the request for mediation?
 - a) How is the denial done (orally or in writing)?

C. Who can Request Mediation?

1. Bargaining unit?
2. SES?
3. Everyone?

4. Alleged Responsible Official?

D. Who should attend the mediation?

1. The official who has the authority to settle?
2. The person with whom the dispute arises?
3. Site coordinator?
4. Complainant's representative (union, attorney, friend, other)?
5. Management's representative (site coordinator, labor rep., attorney)?
6. Witnesses?
7. Technical Assistants/Advisors?
8. All of the above?

E. Approving Settlements

1. A thorough program will have a hierarchy of individuals who will approve settlement agreements. Individuals with approval authority must be available during the mediation either in person or by phone.

V. Developing Step-by Step Procedures

A. Where do mediation requests come from?

1. Phone to ADR Intake person?
2. Mail or fax requests for counseling?
3. Union calls?
4. Referrals (from EAP or elsewhere)?

B. Where do the requests go?

1. To EEO counselor?
2. To site coordinator?

3. To program coordinator?
 4. What type of system captures it (computer, log)?
- C. Who makes the decision to grant/deny requests to mediate?
1. EEO counselor?
 2. Site coordinator?
 3. Program coordinator?
 4. HR manager?
- D. How is the referral made to the mediator?
- Intake form?
 - Who fills out the intake form?
 - Where is the form sent?
 - What information is necessary in the form?
- E. How much time will it take between the request for mediation and the scheduling of the mediation?
1. What happens if this deadline is not met?
- F. Logistics
1. Who is responsible for scheduling date and time of mediation?
 2. Who is responsible for getting the room?
 3. Who is responsible for notifying participants of any changes?
- G. Wrap-up
- Who is responsible for implementing settlement agreements and studies?
- H. Developing a Tracking and Evaluation Plan (See Implementation Workbook)

- Who is responsible for developing methodology?
- Who is responsible for distributing exit surveys?
- Who is responsible for collecting data on the mediation?
- Who is responsible for tracking data collected?