



## Defense Threat Reduction Agency

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DTRA 5145.5  
DEC 1 2006  
DIR-EO

### DTRA INSTRUCTION 5145.5

SUBJECT: Defense Threat Reduction Agency (DTRA) Alternative Dispute Resolution (ADR) Program

References: (a) Public Law 104-320, "The Administrative Dispute Resolution Act of 1966"  
(b) Title 5 of the United States Code, Sections 571-584  
(c) Title 29, Code of Federal Regulations, Part 1614, Federal Sector EEO  
(d) Executive Order 12988, "Civil Justice Reform", February 5, 1996  
(e) through (g), see enclosure 1

#### 1. PURPOSE

This Instruction provides revised guidance under the Defense Threat Reduction Agency (DTRA) Alternative Dispute Resolution Program (ADR) program, assigns responsibilities, and outlines procedures for utilizing the process.

#### 2. APPLICABILITY

2.1. The provisions contained in this Instruction apply to all DTRA civilian and military personnel.

2.2. The ADR process covers most types of work place disputes between individuals, as well as disputes between agencies or between DTRA and non-federal entities.

#### 3. DEFINITIONS

3.1. Alternative Dispute Resolution. ADR is a spectrum of techniques used to informally and/or formally resolve issues in controversy in lieu of litigation in Federal court or through administrative proceedings. These techniques include, but are not limited to settlement negotiations, conciliation, facilitation, mediation, fact-finding, or any combination thereof.

3.2. Dispute. A controversy concerning a work place or employment dispute, problem, issue, or disagreement between two parties.

3.3. Employee. An employee is any person, civilian or military, supervisory or non-supervisory, assigned or detailed to DTRA.

#### 4. POLICY

ADR techniques shall be used as an alternative to litigation or formal administrative procedures to the maximum extent possible. Managers must participate in ADR/mediation in good faith but are under no obligation to settle. The ADR process increases the opportunity to resolve a dispute prior to or during administrative procedures or litigation. The core principles of the ADR program are that it is voluntary, neutral, confidential, and enforceable. This process fosters teamwork and improves work place relationships and communications.

5. RESPONSIBILITIES

5.1. The Director shall:

5.1.1. Provide sufficient resources to ensure effective implementation and administration of the ADR program;

5.1.2. Appoint an Alternative Dispute Resolution Advisor from the Equal Opportunity Office.

5.2. The General Counsel shall:

5.2.1. Furnish legal guidance and assistance with respect to this program.

5.3. The ADR Advisor shall:

5.3.1. Serve as the DTRA point of contact for all ADR matters and receive all requests for mediation, fact-finding, or other methods of ADR;

5.3.2. Monitor and evaluate program execution;

5.3.3. Advise employees and management when ADR is appropriate to resolve disputes;

5.3.4. Ensure that the parties to the dispute receive information regarding their rights and responsibilities;

5.3.5. Obtain the services of a trained mediator/facilitator and/or fact-finder;

5.3.6. Contact all parties involved in the ADR process;

5.3.7. Make all administrative and logistical arrangements for ADR;

5.3.8. Ensure training and information is made available to all employees;

5.3.9. Maintain program data and provide statistical updates, as appropriate, to the Director, EO, or designee, on the use of the ADR program; and

5.3.10. Submit an annual ADR Report to the Equal Employment Opportunity Commission (EEOC).

5.3.11. Submit the annual ADR Report through DTRA, General Counsel to the Department of Defense, Office of General Counsel.

5.4. The Business Enterprise Contracts Office (BC) shall:

5.4.1. Serve as the Agency point of contact for all contractor and procurement-related disputes.

## 6. PROCESS

### 6.1. Issues Covered

6.1.1. The ADR process can be used to resolve many matters of concern or dissatisfaction relating to employment as well as disputes between agencies or between DTRA and non-federal entities.

6.1.2. Although ADR is beneficial in most instances, there are some situations for which ADR is not appropriate. Parties will be counseled before the start of an ADR session on possible limitations. ADR will not be used to for matters which affect important policy matters such as the health, safety and/or security of employees. Other situations where ADR shall not be used include when:

6.1.2.1. A definitive or authoritative resolution of the matter is required (e.g., a court decision);

6.1.2.2. The matter involves questions of significant Government policy;

6.1.2.3. The matter significantly affects other parties not part of the same ADR proceeding;

6.1.2.4. A full public record of the proceeding is required;

6.1.2.5. There is a need for consistency in decisions *and* ADR would not likely reach consistent results; or

6.1.2.6. The Agency requires continuing jurisdiction over the matter(s) in dispute.

### 6.2. How to Initiate ADR

6.2.1. An individual should contact the ADR Advisor as soon after the act, incident or event that gave rise to the dispute or when the individual first became aware of the act, incident or event.

6.2.2. During the initial interview, the ADR Advisor will explain the purpose, scope, and applicability of the Agency's program. The ADR Advisor will: (a) ascertain the issue(s) or matter(s) in dispute, (b) scope of the problem; (c) determine if the issue is appropriate for ADR; and (d) explain the various techniques available for use during ADR. Parties who agree to



participate in the ADR program will be required to sign an Agreement to Mediate form (Encl E1).

### 6.3. ADR and the Equal Employment Opportunity (EEO) Process

6.3.1. For matters involving allegations of discrimination, an individual must contact the EO office within 45 calendar days of the act, incident, or event that gave rise to the allegation or in the case of a personnel action within 45 calendar days of the effective date. See reference (c).

6.3.2. When the Agency agrees to offer ADR in a particular case and the employee elects the ADR process in lieu of traditional EEO counseling, the ADR informal process shall not exceed 90 calendar days from the date of initial contact with the ADR Advisor or an EEO Counselor. An election to proceed either through traditional EEO counseling or ADR is final and must be made in writing to the ADR Advisor on DTRA Form 122, *Agreement to Mediate*. If ADR is unsuccessful at the informal stage, the ADR Advisor will ensure that the employee receives a Notice of Right to File a Formal Complaint and proceed through the traditional EEO complaint process.

### 6.4. ADR and the Administrative Grievance System (AGS) Process

6.4.1. For matters appropriate under the AGS, an individual may contact the ADR Advisor or the Human Resource Employee Relations Specialist (BHE) within 15 calendar days of the act, incident, or event that gave rise to the issue. See reference (f).

6.4.2. If the employee wishes to participate in ADR, s/he will be referred to the ADR Advisor who will make all administrative and logistical arrangements for an ADR session.

6.4.3. If ADR is unsuccessful and the matter is not excluded under the AGS, the employee may file a formal grievance. A formal grievance must be in writing and filed with BHE no later than 15 calendar days from the conclusion of the ADR process.

### 6.5. ADR and the Inspector General (IG) Process

If an employee contacts the ADR Advisor concerning waste, fraud, abuse, and/or whistle blowing; abuse of authority or a substantial and specific danger to the public health and safety, the ADR Advisor will refer the employee to the IG Office for assistance. Additionally, complaints of reprisal for making a complaint or disclosing information to an IG will be referred to the IG who will determine the appropriate procedures to resolve the dispute.

### 6.6. ADR and Procurement-Related Matters

If the ADR Advisor is contacted concerning a procurement-related dispute, the ADR Advisor will refer the individual to BC for assistance.

6.7. Confidentiality

6.7.1. Parties to the ADR session must not voluntarily disclose or be required to disclose through discovery or compulsory process any dispute resolution communication or any communication provided in confidence, except if:

6.7.1.1. All parties to the process, or a non-party who provided the communication, and the mediator, facilitator, or fact-finder, consent, in writing, to the disclosure; or the communication has already been made public;

6.7.1.2. The dispute resolution communication is required by statute to be made public, and no other person except the mediator, facilitator, or fact-finder is available to make the disclosure;

6.7.1.3. A court determine that disclosure is necessary to prevent an injustice, establish a violation of law, or prevent serious harm to the public health and safety;

6.7.1.4. The dispute resolution communication is relevant to determine the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award; or

6.7.1.5. Either party communicates a threat of imminent physical harm.

6.8. General

6.8.1. If a dispute is resolved during the ADR process, the resolution will be reduced to writing in a Resolution Agreement and signed by both parties. Each party to the Agreement will receive a copy once signed. The ADR Advisor will maintain the original signed Agreement. The written Agreement will state clearly the terms of the resolution and identify the Agency official(s) responsible for its implementation.

6.8.2. If the dispute is not resolved under the ADR program, the employee will be advised of further rights and avenues of redress, as appropriate.

7. EFFECTIVE DATE.

This Instruction is effectively immediately.

FOR THE DIRECTOR:

  
Michael R. Hargrove  
Colonel, USAF  
Chief of Staff

Enclosures - 3

- E1. References continued
- E2. DTRA Form 122, Agreement to Mediate
- E3 ADR Process (Flowchart)

E1. ENCLOSURE 1

REFERENCES Continued

- (e) DoD Directive 5145.5 Alternative Dispute Resolution, April 22, 1996
- (f) DTRA Instruction 1400.25 – M Subchapter 771, “Administrative Grievance System”
- (g) DTRA Instruction 5145.5, “Alternative Dispute Resolution Program (ADR),” March 8, 2004 (hereby cancelled)



E2. ENCLOSURE 2DTRA Form 122 AGREEMENT TO MEDIATE

**DEFENSE THREAT REDUCTION AGENCY  
AGREEMENT TO MEDIATE**

**PRIVACY ACT STATEMENT**

**Authority:** 5 U.S.C. 301; 29 U.S.C. 209, 211, 216, 217, 625; 44 U.S.C. 3101; 2 U.S.C. 1220 and EO 9397 (SSN)

**Purpose:** To investigate facts and circumstances surrounding reported situations involving issues associated with Equal Opportunity statutes.

**Routine Use(s):** To manage programs, produce reports, and to control various aspects of program processes. Information may also be disclosed to the EEOC, or to another Federal Agency, including the DoD, to carry out their legally authorized functions.

**Disclosure:** Voluntary, however; failure to furnish the information may delay the process.

**This mediation is confidential. The parties, their representatives, if any, and the mediator hereby agree to be bound by the contents of this agreement.**

1. This is an Agreement by the parties and their representatives, if any, to participate in good faith mediation efforts to resolve the issues in dispute.
2. By participating in this process, the parties admit to neither guilt nor wrongdoing.
3. Mediation is a process that provides for a neutral third party, a mediator, to assist the parties in reaching a resolution to the issue in dispute. The mediator is active during the process but has no decision-making authority. The mediator does not represent either party. The mediator's role is to assist the parties in understanding their rights and the terms of any settlement agreement reached.
4. The mediator has the discretion to terminate the mediation at any time he or she believes the case is inappropriate for mediation or that an impasse has been reached.
5. Only those parties concerned with resolving the issue in dispute will be present. The employee must approve all attending participants.
6. Each party has the right to consult with an attorney or with a representative of their choosing before signing any resolution agreement.
7. By electing to pursue the issue in dispute through the Alternate Dispute Resolution (ADR) process, the parties do not waive their rights to pursue the issue either through the Equal Employment Opportunity (EEO), the Administrative Grievance, or the Inspector General process, or any other administrative or legal process if mediation is unsuccessful.
8. If mediation is successful, the employee agrees not to pursue the issue in dispute through any of the processes mentioned in the above paragraph.
9. The parties agree that any and all notes, records, documents, or recordings generated during mediation are confidential and shall not be disclosed in any pending or future action related to the subject matter of the mediation.
10. The parties agree not to attempt to compel the mediator's testimony against the other party.
11. The parties agree not to testify regarding any statements made in the mediation session.



12. The mediator may not testify or serve as a witness, consultant, expert or provide any written documentation in any pending or future action related to the subject matter of the mediation, including those between persons not parties to the mediation.

13. Any concessions made by either party in an attempt to resolve the issue in dispute cannot be used against a party at a future time if resolution is unsuccessful.

14. Depending on the nature of the resolution agreement, it may be reviewed by representatives of the Equal Opportunity and Diversity Programs Office (DIR-EO), Business Enterprise, Employee Relations and Worklife Division (BE-BHE), or the Office of General Counsel (DIR-GC) before being signed.

**The parties agree and pledge to abide by the terms of this Agreement to Mediate.**

Date

\_\_\_\_\_  
Participant's Signature

\_\_\_\_\_

Date

\_\_\_\_\_  
Participant's Signature

Agreement to Mediate  
Personal Data Protected by the  
Privacy Act of 1974 (5 U.S.C. 552a)  
DTRA EO Office

E3. ENCLOSURE 3

ADR PROCESS

