

Memorandum of Agreement
Between
AFGE Local 2923 and NIEHS
Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) includes dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement. It is a collective term for the ways that parties can settle disputes, with (or without) the help of a third party. ADR includes a variety of forms such as mediation, conciliation, conflict resolution, negotiation, and fact-finding.

The Parties will use ADR principles and practices to improve working relationships between the involved parties. A commitment to this process demonstrates a positive approach and joint ownership of concerns and issues, with the intent to resolve disputes quickly and informally.

The Parties agree that although ADR cannot guarantee specific results there are benefits that are characteristic of ADR, as it generally produces or promotes:

- Mutually Satisfactory Outcomes
- Economical Decisions
- Faster Settlements
- High Rate of Compliance
- Comprehensive and Customized Agreements
- Greater Degree of Control and Predictability of Outcome
- Personal Empowerment
- Preservation of an Ongoing Relationship or Termination of a Relationship in a More Amicable Way
- Workable and Implementable Decisions
- Agreements that are Better than Simple Compromises or Win/Lose Outcomes
- Decisions that Hold Up Over Time

Section 1.0

The Agency encourages its employees to use ADR to help resolve workplace conflicts as early as feasible, to the maximum extent practicable, in an appropriate and cost-effective manner, and at the lowest organizational level. The Parties agree that whenever appropriate ADR shall be used in an effort to resolve any workplace difficulty, concern, or challenge. Such ADR interactions shall be voluntary and confidential.

Employees' relationships, their interest in retaining control over the process, the need to proceed quickly, and the need for neutral involvement are factors to be weighed in deciding whether mediation is appropriate for a particular conflict.

Section 1.1

Management and Union representatives who function as facilitators at ADR meetings shall attempt to be neutral, professional, confidential, and work towards a mutually acceptable outcome. Such outcomes may be non-precedential and/or creative with the principal understanding that the resolution should be acceptable to all and beneficial to the parties.

Section 1.2

The role of the mediator includes, but is not limited to assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement opportunities. In mediation, decision-making authority rests with the parties. The mediator is not authorized to make decisions or force a decision on any party to the dispute. The mediator will not provide counseling, therapy or legal advice to either party during the mediation process. If either party does not understand how an agreement may adversely affect legal rights or obligations, then the parties may consult their respective representative.

Section 1.3

The Parties shall use mutually agreed upon mediators with appropriate skills, experience, and training in mediation. Mediators can be used from the NIH Center for Cooperative Resolution, shared interagency mediators, the Federal Mediation and Conciliation Service (FMCS), Sharing Neutrals, or other appropriate source.

Section 1.2

Identification of interests, options, and solutions are a part of the ADR process. In addition, addressing interpersonal or organizational challenges to facilitate communication among colleagues or peers in an effort to improve workplace relationships may also be a part of ADR.

Section 1.3

ADR may be used as a preliminary or intermediary stage in any formal grievance or disciplinary action.

Section 2.0 Federal Interactive eXchange (FIX)

The FIX is an informal alternative dispute resolution (ADR) process that is completely voluntary. The primary purpose of FIX is to improve the working relationships and/or improve the workplace. Participation must be mutually agreed to by all parties prior to participation.

Section 2.1

The Union or Management may initiate the consideration of a FIX/ADR meeting. The primary participants include the employee, supervisor(s)/Manager(s), Union representative(s) and a management representative. Other appropriate participants may be from Health and Safety, Human Resources, etc. as agreed by the primary participants.

Section 2.2

The FIX/ADR does not abrogate either Party's rights, which may include taking appropriate discipline, filing a grievance, etc., however it encourages the participants to appropriately address issues in a manner that considers the Parties' collective bargaining agreement, current MOUs, and the Labor-Management Statute, and the work environment.

Section 2.3

The Parties may mutually decide to memorialize an agreement in writing, however it is not required. Agreements made as a result of FIX/ADR are non-precedential.

Section 2.4

The FIX process shall incorporate a variety of resolution methods and will include but not be limited to:

- a fair and respectful process
- early resolution of problems
- promotion of better communication
- respectful exchange to share concerns
- answer questions
- clarification of NIH policies and procedures
- non-adversarial approaches to address issues
- facilitation and just resolution of problems and disputes
- suggestions for other appropriate resources, if needed
- collaborative problem-solving

Section 2.5

The Agency agrees to provide mediation training to participating Union representatives on an annual basis, or as necessary. This training will be solicited from available cost-effective resources such as the Federal Mediation Conciliation Services. Costs, per diem, and travel shall be paid by the Agency.

Section 2.6

When the Parties engage in a FIX process it is agreed to extend the grievance timeframes by the number of days engaged in the FIX process not to exceed 60 days.

Section 3.0

Employees are free to use any other ADR or mediation service offered by the Agency.

NIH Center for Cooperative Resolution: <http://ombudsman.nih.gov/index.html>

FMCS: <http://www.fmcs.gov/internet/findMediator.asp?categoryID=72&itemID=16806>

HHS Policy on Sharing Neutrals:

<http://www.hhs.gov/dab/divisions/adr/sharingneutrals/snolicies.html>

Section 4.0

Whenever the NIH Ombudsman or other agency-sponsored mediator meets with a group of BUE's or a group of BUE's and a manager(s) the Union will be given adequate notice and opportunity to attend the meeting.

Section 4.1

The NIH Ombudsman's office agrees to communicate to BUE's that the only employee advocate at NIEHS is AFGE Local 2923.

Section 4.2

Whenever any settlements involving a BUE or BUE's occur the Union is permitted to be notified of this fact and present at any settlement discussions. In addition, the Union shall be provided a copy of any such settlements.

Section 5.0

The NIEHS-AFGE L 2923 Labor Management Forum will:

- (1) Work collaboratively to establish and maintain an ADR Program including supporting the development and utilization of shared mediators resources.
- (2) Provide ADR awareness training for employees at NIEHS.
- (3) Serve as advocates for the program encouraging the use of mediation among employees to resolve issues at the lowest level.
- (4) Collaborate with other organizational elements within NIH or HHS on efforts to effectuate a best-results approach to ADR and to avoid unnecessary expenditures of effort, time and money.

Section 5.1

The NIEHS Director will support ADR efforts by providing resources for ADR initiatives; including support for the development and training of union-management mediators.

Managers and Supervisors are responsible for maintaining an awareness of mediation as an alternative way to resolve disputes that arise within the workplace, for encouraging and supporting the use of mediation to resolve disputes at the early stages, and for cooperating to the fullest extent in any mediation effort that involve themselves and/or employees they supervise.

Employees are responsible for reviewing the mediation policy and considering mediation as a way of voluntarily resolving disputes that arise within the workplace and for cooperating to the fullest extent in any mediation in which they agree to participate.

Section 6.0

Roles, Rights and Responsibilities of Mediation Participants and Mediator

1. Mediation is a voluntary dispute resolution process that is non-adversarial in nature and seeks to find reconciliation between disputing parties. The mediation process does not declare winners or losers. The main focus is to seek a resolution that is informal, quick and minimizes the harm to either party.
2. The Mediator is not involved in the immediate occurrence and is committed to treating this matter in a fair and unbiased way. The Mediator's role is to facilitate and help the parties reach for themselves a mutually satisfactory resolution to the problem. However, the decision-making power rests with the parties, not the Mediator. If the parties cannot agree on a resolution, the Mediator will NOT impose a resolution nor will s/he offer judgment as to which party, if any, is at fault. In certain circumstances, Co-Mediators may be assigned to the matter.
3. The Mediator has no authority to make decisions or act as a judge or arbitrator. The Mediator will not act as an advocate or attorney for any party. To the extent that either of the parties wish to have legal counsel to consult with or assist them at any stage in the mediation, that party is responsible for taking steps to obtain such a person and for paying such costs of legal counsel.
4. Mediation is a confidential process. Any documents submitted to the Mediator and statements made during the mediation are for settlement purposes only. The participants agree to not subpoena or request the Mediator to serve as a witness, or request or use as evidence any materials prepared by the Mediator for the mediation, except for the settlement document signed by all parties. In no event will the Mediator voluntarily testify on behalf of any party or submit any type of report in connection with this mediation (except for statistical data). Matters that are admissible in a court of law

or other administrative process continue to be admissible although brought up in a mediation session.

5. No party will be bound by anything said or done at the mediation unless a written settlement is reached and executed by all necessary parties. If a settlement is reached, the Mediator will reduce the agreement to writing and, when signed and approved by the appropriate authorities for all the parties, the settlement document will be legally binding upon all parties to the agreement.

6. In electing to use mediation, no statutory deadlines are waived, and all statutory deadlines must be adhered to.

7. The party's RIGHTS to pursue grievance processes are not waived and will be protected during the mediation process. At the same time, the party's RESPONSIBILITIES to comply with all requirements of any administrative or court processes, e.g., time limits, point of contact, ARE NOT WAIVED and must be adhered to.

8. In the event the mediation is terminated for any reason, the parties may continue to pursue an informal or formal resolution of the matter as s/he sees fit.

9. No admission of guilt or wrongdoing by either party is implied and none should be inferred by participation in this process.

10. Participants voluntarily and actively accept to resolve this matter, agree to cooperate with the Mediator assigned to this matter, and give serious consideration to all suggestions made in regard to developing a realistic solution to the problem. Participants will conduct themselves in a courteous and non-hostile manner, use appropriate language, and to allow the Mediator to interrupt the process if the Mediator feels a caucus or break is needed to facilitate the mediation process.

11. The Mediator agrees to inform their Labor and management point-of-contacts of the status and results of the mediation process as soon as possible after the conclusion of the process, including settlements, non-settlements, or cancellation.

Nothing in this document changes or waives either party's rights.

For the Agency:

/s/ Noreen E. Gordon
Labor and Employee Relations Specialist

8 March 2012

For the Union:

/s/ Bill Jirles
President, AFGE Local 2923

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