



**DEPARTMENT OF THE NAVY**  
COMMANDER  
NAVAL EDUCATION AND TRAINING COMMAND  
250 DALLAS STREET  
PENSACOLA, FLORIDA 32508-5220

NETCINST 5800.1B  
N00E  
6 Aug 2020

NETC INSTRUCTION 5800.1B

From: Commander, Naval Education and Training Command

Subj: ALTERNATIVE DISPUTE RESOLUTION

Ref: (a) Alternative Dispute Resolution (ADR) Act of 1996  
(b) 29 C.F.R. 1614  
(c) EEOC MD-110  
(d) SECNAVINST 5800.13B

1. Purpose. To provide policy and guidance for the Naval Education and Training Command's (NETC) Alternative Dispute Resolution (ADR) Program requiring all NETC activities and commands to use ADR to the maximum extent to resolve Equal Employment Opportunity (EEO) complaints, workplace disputes, and other issues in controversy, wherever practical and consistent with the provisions of references (a) through (d).

2. Cancellation. NETCINST 5800.1A.

3. Scope and Applicability. The NETC ADR Program will apply to all managers, supervisors, and non-bargaining unit employees.

4. Background. Maintaining a productive work environment in which disputes are settled quickly and at the lowest organizational level is essential to the continued success and realization of the NETC mission and goals. Reference (a) requires all agencies to establish and make available an ADR Program during the EEO pre-complaint process. References (b) through (d) contain the EEO Commission and Department of the Navy (DON) policy and guidance for developing ADR Programs. Reference (d) further promulgates the DON's ADR Program guidance on its use; not restricting it to EEO complaints alone, but expanding its use to other kinds of workplace disputes, such as administrative and negotiated grievances, unfair labor practices and matters covered under the Merit Systems Protection Board and others. There are various ADR techniques such as mediation, group facilitation, or settlement conferences. The DON's most widely used technique is mediation. Use of the ADR process does not diminish an individual's right to pursue their claim under

reference (b) (EEO process) should the dispute not be resolved through ADR.

## 5. Definitions

a. ADR. Any procedure agreed to by all parties involved in an employment dispute that uses a third party neutral to resolve issues in controversy instead of formal adjudication or litigation proceedings. ADR is a voluntary process that is fair, efficient, and designed to empower the parties to be a part of the resolution of their dispute or conflict, (i.e., EEO complaints or other workplace dispute) by reaching a mutually acceptable agreement.

b. Issue in Controversy. An issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement.

c. Third Party Neutral. An impartial third party who serves as a mediator, fact finder, or otherwise assists the parties in resolving the issues in controversy. The Neutral has no official, personal or financial interest with respect to the parties or issue(s).

## 6. Policy

a. It is the policy of NETC that the ADR Program will be used to the maximum extent practicable. ADR is encouraged at the earliest stage of a dispute to focus on early resolution. This policy does not change entitlements of employees to file complaints or grievances or to use the chain of command to resolve issues; rather, it establishes an alternative means to resolve various types of workplace disputes. ADR may be conducted any time a dispute is identified and within almost any stage of an informal or formal administrative process. Employees may be represented in ADR proceedings and have the right to terminate the proceeding or revoke their agreement to participate at any time. If an employee terminates an ADR proceeding they retain their rights or entitlement to file complaints or grievances or to use the chain of command to resolve issues.

b. Core Principles. NETC's ADR Programs shall adhere to the following core principles:

(1) Fairness - A successful ADR program must be fair to all participants both in perception and reality. Fairness is accomplished by ensuring: voluntariness, neutrality, and confidentiality throughout the ADR process.

(2) Flexibility - A successful ADR program must be flexible in that it can adapt to changing circumstances and different disputes. No one type of dispute resolution process will work for all disputes and NETC Management Officials are encouraged to assess and determine appropriate ADR techniques with input from the affected employee when attempting to resolve matters.

(3) Training - A successful ADR program requires appropriate training and education be provided to involved persons at regular intervals.

(4) Evaluation - Evaluation of ADR efforts and processes is essential in developing and maintaining an effective and successful ADR program.

7. Matters Appropriate for ADR. Consistent with DON policy, almost all workplace conflicts or disputes are candidates for ADR. The DON policy requires use of ADR to the maximum extent practicable and the lowest level and earliest opportunity. Bargaining unit employees are subject to existing Collective Bargaining Agreements or memorandums of agreement/understanding, where applicable. Bargaining unit obligations must be fulfilled prior to implementing any ADR process. Contact a Human Resources Office Labor Relations/Employee Relations Specialist for guidance.

8. Matters Not Appropriate for ADR

a. There are statutory reasons that may make the use of ADR impracticable, such as security clearances, the matter significantly affects non-parties, or a full public record of the proceeding or resolution is important. See 5 U.S.C. 572(b). NETC will have discretion to determine whether a given dispute is appropriate for ADR.

b. In other rare instances, ADR may not be practical to use based on significant or unique characteristics of a particular case. Other reasons that may indicate ADR is not appropriate involve significant logistical problems that cannot be overcome by concerted scheduling efforts and use of alternative communication mediums, i.e., continued unavailability of participants, remote location of the parties, unreliable communications due to the location of the parties, etc.

c. ADR will not be used to resolve cases involving sexual assault or other criminal activity.

d. Agency decisions to reject the use of ADR may only be made at a supervisory level above those managers directly involved in the matter giving rise to the dispute and must be reviewed by NETC's Office of General Counsel (OGC). All rejections should be in writing, articulate the reason(s) why ADR is not appropriate for the specific case, and be signed and forwarded to the DON ADR Program Office, Assistant General Counsel (Alternative Dispute Resolution) via the Director, EEO, ADR Program Manager (PM).

9. Employee Participation in ADR is Voluntary. Fairness mandates that ADR participation by DON employees in their individual capacities is knowing and voluntary. Accordingly, ADR participation by DON employees in their individual capacities is not required or mandated and their participation must be voluntary.

10. Persons Authorized to Reject ADR on Behalf of the DON. It is the policy of the DON and NETC that ADR will be used to the maximum extent practicable. In EEO complaints of discrimination, The Secretary of the Navy is the defending party. Decisions to reject the use of ADR are made on behalf of the Secretary, not the individual management official involved in the issue or complaint. Therefore, the decision to reject ADR must be made by a management official within the activity who is at a supervisory level above the manager directly involved in the complaint. Likewise, in workplace disputes, decisions with reject ADR must also be made by a management official within the activity who is at a supervisory level above the manager directly involved in the workplace conflict.

11. Written Justification for Decisions to Reject ADR

a. NETC Management Officials considering rejecting the use of ADR in a particular matter shall consult with NETC OGC prior to rendering a decision on the use of ADR. Management officials should be prepared to discuss the matters outlined in paragraph 11c and other factors relevant to their decision process with NETC OGC.

b. Authorized officials who decide to reject the use of ADR must promptly provide appropriate justification of their decision by forwarding a memorandum to the Assistant General Counsel (Alternative Dispute Resolution) via the NETC OGC and NETC N00E/ADR PM.

c. The justification must include, at a minimum:

(1) Identification of the matter by docket number (if an EEO complaint), or other unique identifier.

(2) A statement verifying the executing official is at a supervisory level above the manager(s) directly involved in the issue or complaint.

(3) A statement explaining why ADR is impracticable to the particular case, based either on the grounds stated in 5 U.S.C. 572(b) or other appropriate grounds that justify deviation from DON policy to use ADR for issues in controversy.

(4) Provide the title, address, telephone number, and email address of the official executing the memorandum.

d. The memorandum shall be maintained by the NETC ADR PM, and a copy shall be forwarded immediately for analysis of ADR trends and barriers to:

DON ADR PROGRAM OFFICE  
OFFICE OF THE GENERAL COUNSEL  
720 KENNON STREET SE RM 214  
WASHINGTON NAVY YARD DC 20374-5012

Scanned versions may be emailed in Portable Document Format to [adr@ogc.law.navy.mil](mailto:adr@ogc.law.navy.mil).

12. Decisions to Reject the Use of ADR are not Subject to New Charges. The decision process described above for participation in ADR is part of the internal management process for DON. It is not intended to create new rights, benefits, or responsibility, substantive or procedural, enforceable at law or equity by any party against the Department of Defense, the DON, any uniformed and civilian personnel, or any other person. EEO regulations preclude the matter of not engaging in ADR for a particular case to become the subject of a new EEO complaint.

13. Obtaining a DON Certified Mediator. The DON ADR, Center of Excellence (COE), located at the Office of Civilian Human Resources-Philadelphia, is the sole source for obtaining DON Certified Mediators. All requests for ADR services shall be coordinated with the COE via the NETC ADR PM or NETC ADR Coordinator/Convener. ADR requests will follow the below procedures:

a. Workplace ADR Requests may be initiated by a manager, supervisor, or employee by contacting the NETC ADR PM for information and assistance in requesting ADR services. The nature of the dispute will be reviewed for appropriateness for use of ADR techniques.

b. ADR Requests in EEO Complaints will be initially coordinated with the NETC ADR PM through the assigned EEO Counselor. The individual will be advised of their rights under the complaint process to seek resolution using the traditional EEO process or the ADR process. The nature of the dispute will be reviewed for appropriateness for use of ADR techniques.

14. Individual with Settlement Authority. An individual with settlement authority will be made accessible during the ADR process. No individual management or agency official directly involved in the issue or complaint will serve as the individual with settlement authority and should be at least one level above a directly involved manager.

15. Responsibilities

a. The DON Assistant General Counsel (Alternative Dispute Resolution):

(1) Serves as the DON Dispute Resolution Specialist.

(2) Acts as the DON point of contact on ADR matters.

(3) Supervises the DON ADR Program Office.

b. The DON ADR Program Office:

(1) Coordinates ADR policy and initiatives within the DON at all levels to ensure consistency, effectiveness, compliance with law, and executive policy.

(2) Promotes the uses of ADR and provides training in negotiation and ADR methods.

c. The DON ADR COE:

(1) Assigns DON Certified Mediators to facilitate all ADR requests received from Command ADR PMs.

(2) Manages the DON Certified Mediators Program and ensures annual certification and recertification requirements are fulfilled for DON mediators.

d. NETC ADR PM:

(1) Serves as the NETC Dispute Resolution Specialist and promotes the use of ADR.

(2) Publicizes available ADR training for managers and supervisors.

(3) Assists employees interested in the DON Certified Mediator Program in gathering information about the program, training opportunities, and the process of applying to become a DON certified mediator. General information is available at: <http://www.secnav.navy.mil/ADR/Pages/mediacert.aspx>

(4) Liaises with and serves as the official point of contact with the DON ADR Program Office and COE.

e. NETC ADR Convener/Coordinator:

(1) Receives, processes, and coordinates all NETC ADR elections with the DON ADR COE.

(2) Advises all parties in the ADR process of their rights and requirements for participating and what to expect in the mediation session.

(3) Utilizes ADRTTracker to document pertinent participant and logistical information for ADR requests, and submits a request for assignment of a neutral to the DON ADR COE.

(4) Retains ADR case file documentation in a secured location. All ADR case material is Privacy Act protected data.

f. Commanding Officers/Activity Heads:

(1) Encourages greater use of ADR to the maximum extent practicable.

(2) Ensures collective bargaining requirements are met with respect to implementation of ADR opportunities for civilian employees.

(3) Supports the use of the DON Certified Mediator Program for employees interested in becoming a DON Certified Mediator. This support includes providing funding for mandatory and applicable training and travel for ADR training for members of the DON Certified Mediator Program.

(4) Ensures all managers and supervisors receive required ADR training per reference (b).

(5) Ensures full protection from reprisal for any employee who seeks resolution to a workplace dispute or EEO formal or informal complaint via ADR.

(6) Ensures availability of logistical support for any ADR scheduling within your command.

(7) Coordinates ADR policies, prior to implementation and routinely thereafter, with the NETC ADR PM.

16. Training. Appropriate training on ADR will be provided to employees, managers, and supervisors at regular intervals. The training requirements contained in references (b) and (c), and



any other training guidance applicable to DON will be met. At a minimum, manager and supervisor ADR training must include the following through a DON conducted program or an external source such as another Federal Agency or private contractor:

a. Reference (a) and its amendments, with emphasis on the federal government's interest in encouraging mutual resolution of disputes and the benefits associated with utilizing ADR.

b. The Equal Employment Opportunity Commission's regulations and Policy Guidance with respect to EEO ADR: 29 C.F.R. §§ 1614.102(b)(2), 1614.105(f), 1614.108(b), and 1614.603 (voluntary settlement attempts).

c. The operation of the EEO ADR method or methods that the agency employs.

d. Exposure to other EEO ADR methods, including interest-based mediation, if this method is not already in use by the agency.

e. Drafting the settlement agreement, including the notice provision pursuant to 29 C.F.R. §1614.504, where the aggrieved party believes the agency failed to comply with the terms of the settlement agreement and any other legally required notices.

#### 17. Records Management

a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned for the standard subject identification codes (SSIC) 1000, 2000, and 4000 through 13000 series per the records disposition schedules located on the Department of the Navy/Assistant for Administration (DON/AA), Directives and Records Management Division (DRMD) portal page at <https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/Records-and-Information-Management/Approved%20Record%20Schedules/Forms/AllItems.aspx>. For SSIC 3000 series dispositions, please refer to part III, chapter 3, of Secretary of the Navy Manual 5210.1 of January 2012.

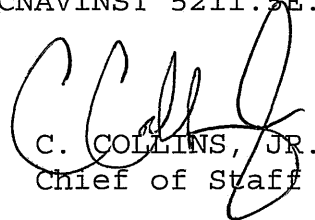
b. For questions concerning the management of records related to this instruction or the records disposition

6 AUG 2020

schedules, please contact your local records manager or the DON/AA DRMD program office.

18. Review and Effective Date. Per OPNAVINST 5215.17A, NETC will review this instruction annually around the anniversary of its issuance date to ensure applicability, currency, and consistency with Federal, Department of Defense, Secretary of the Navy, and Navy policy and statutory authority using OPNAV 5215/40 (Review of Instruction). This instruction will be in effect for 10 years, unless revised or cancelled in the interim, and will be reissued by the 10-year anniversary date if it is still required, unless it meets one of the exceptions in OPNAVINST 5215.17A, paragraph 9. Otherwise, if the instruction is no longer required, it will be processed for cancellation as soon as the need for cancellation is known following the guidance in OPNAV Manual 5215.1 of May 2016.

19. Reports. ADRTracker, the DON data collection system, will be used to document, track, and report ADR processes used within the NETC as required by the DON ADR Program office/DON Assistant General Counsel/DON Office of EEO. All information in the ADRTracker system is For Official Use Only and is protected per the Privacy Act of 1974 and SECNAVINST 5211.5E.



C. COLLINS, JR.  
Chief of Staff

Releasability and distribution:

This instruction is cleared for public release and is available electronically via the NETC public web site, <https://www.public.navy.mil/netc/directives.aspx>, or via HP Records Manager (HPRM).