

**TITLE:** 400 HUMAN RESOURCES ADMINISTRATION

**CHAPTER** 108 EMPLOYMENT PRACTICES

**PART** 3 ALTERNATIVE DISPUTE RESOLUTION

**EFFECTIVE DATE:** November 1, 2017

**PURPOSE:** To provide procedures to resolve disputes within the LOPD.

**APPLICABILITY:** All LOPD employees

**AUTHORITY:** Section 31-15-7 NMSA 1978

**CROSS REFERENCES:** 400.108.1 Discrimination, Harassment, Sexual Harassment, Retaliation; 400.108.4 Employee Complaints; 12-8A-1 through 8, Government Dispute Resolution Act, NMSA 1978; 10.12.6.13 NMAC Employee Complaints

**RELATED FORMS:** Agreement to Mediate; Mediation Agreement Form

## **DEFINITIONS**

**Alternative Dispute Resolution (ADR):** means a process other than litigation used to prevent or resolve disputes, including mediation, facilitation, fact-finding, conciliation, and dialogues between concerned parties.

**ADR Coordinator:** HR Staff member designated by the HR Director to manage the LOPD Alternative Dispute Resolutions process including Loss Prevention and Control Program requirements.

**Conciliation:** A means of ADR where a conciliator meets with parties separately and together in an attempt to resolve a conflict. The conciliator may be a supervisor or manager or an HR professional who meets with the parties separately and together in an attempt to resolve differences. The process lowers tensions, improves communications, interprets issues, encourages the seeking of solutions and assists the parties in finding mutually acceptable outcomes.

**Facilitation:** A means of ADR that assists people or a group to reach an agreement or solution through leading a discussion, identifying common objectives and developing a plan to achieving those objectives. A supervisor, manager or HR professional may facilitate a discussion by remaining “neutral” which means not taking a particular position in the discussion.

**Fact finding:** A means of ADR where a person determines facts or accuracy of information in

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an effort to settle a dispute or conflict. A supervisor, manager or HR professional may serve as a fact finder regarding a situation in dispute in the workplace.

**Mediation:** A form of alternative dispute resolution in which the parties to a dispute meet with a neutral third party in an effort to settle the disagreement. Mediation is a structured, interactive process where a neutral third party assists parties to a dispute in resolving the conflict through specialized communication techniques.

**1 Policy:** The LOPD is committed to finding appropriate and early resolution of disputes, consistent with its commitment to provide a professional and productive work environment that is conducive to the delivery of high quality customer service. The department encourages and supports the use of mediation and as appropriate, other forms of ADR as means of resolving disputes.

A. Mediation may be considered in any instance of a serious or substantive work-related dispute, including at any point in the process of complaint or informal facilitation, anticipated litigation, notice of tort claim, or appeal. Anyone can propose mediation; however, it will only occur with the concurrence of all of the disputing participants and the ADR Coordinator.

B. Participation in mediation is voluntary.

C. Issues that can be mediated typically are employee/employee and employee/supervisor disputes that arise in the workplace. Instances of alleged sexual harassment, discrimination or retaliation raised in accordance **400.108.1** of this policy may be suitable for mediation, unless apparent violations of law or policy preclude mediation.

D. Mediations are conducted during normal business hours and within the employees' regularly scheduled work time whenever possible.

E. Participants have the right to consult an attorney or to request the presence of an attorney or representative; if it is acceptable to both participants, the attorney or representative may sit in as an observer, not as a participant in the mediation process.

F. During the mediation, the participants must be willing to work toward a mutually satisfactory resolution, and each party should come prepared to settle the dispute at mediation.

G. When agreement is reached, the mediator(s) completes the Mediation Agreement form, which is signed by the participants and the mediator(s). Copies are provided to the participants and the ADR Coordinator, and relevant information may be shared with the

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participants' supervisor(s) who may monitor adherence to the agreement. The terms set forth in the Mediation Agreement are a result of mutual agreement by the participants, and the participants are expected to comply with their agreement.

H. Both the mediator(s) and the participants should consider the statements made during mediation to be private and confidential, and the mediator(s) destroy any notes kept during the mediation. However, statements that reveal conduct that is criminal or poses a significant risk to the safety of others must be reported in accordance with applicable laws and/or LOPD policy.

I. LOPD considers the matter settled when a written Mediation Agreement is signed. Any formal complaints that have been initiated by either participant regarding the dispute are concluded by the Mediation Agreement.

J. If the matter is not resolved by mediation, the participants can still use traditional methods of resolving disputes, provided that they have met the statutory or LOPD time limits that apply to their chosen form of dispute resolution.

K. The request for mediation and/or mediation process does not toll any other time period that may apply to the dispute, such as the time for filing with New Mexico Human Rights Division or other statutes of limitations. In the event that the participants are contemplating or already involved in the Employee Complaint process as set forth in **400.108.4** of this policy, that process will be suspended at the time of a request to mediate; any timetables associated with the process will be placed on hold until the mediation has ended.

L. While not all cases are appropriate for mediation, LOPD is committed to providing appropriate alternatives for resolution to workplace disputes. If it is determined that a case is not appropriate for mediation, the ADR Coordinator or management will refer the disputants, as appropriate, to other methods of resolution.

## **2 Procedure: Responsibilities for employees.**

A. While not required, if possible, it is important for employees to give their supervisors or managers the opportunity to address and resolve issues at the lowest possible level.

B. Mediation requests are initiated by employees by contacting LOPD's ADR Coordinator through the LOPD – HR email group or by contacting any HR Administrator directly.

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C. Employees must sign the Agreement to Mediate form, which sets forth the requirements for mediation, including that the employee will enter into mediation in good faith in order to resolve their differences with the other party. This agreement does not constitute an obligation to complete the mediation.

**3 Procedure: Responsibilities of Managers and Supervisors.** Managers and supervisors are required to enforce this policy by complying with the following.

A. Managers are strongly advised to include mediation or other ADR opportunities, where appropriate, in the early stages of a dispute before it results in a complaint.

B. Supervisors or managers initiate mediation requests by contacting LOPD's ADR Coordinator through the LOPD – HR email group or by contacting any HR Administrator directly.

C. Supervisors or managers may refer their employees to the ADR process by contacting LOPD's ADR Coordinator through the LOPD – HR email group or by contacting any HR Administrator.

D. Supervisors or managers who are a party to a dispute must complete and sign the Agreement to Mediate form, which sets forth the requirements for mediation, including that the participants will enter into mediation in good faith in order to resolve their differences. This agreement does not constitute an obligation to complete the mediation.

**4 Procedure: Human Resources (HR) Responsibilities.** HR evaluates requests for ADR services and manages the ADR process.

A. For each dispute, a determination is made by the ADR Coordinator or the HR Director, as to the appropriateness of mediating the matter. The ADR Coordinator may suggest other forms of ADR prior to considering mediation, if appropriate.

B. Prior to processing a request, the ADR Coordinator will have the participants complete and sign the Agreement to Mediate form, which sets forth the requirements for mediation, including that the participants will enter into mediation in good faith in order to resolve their differences. This agreement does not constitute an obligation to complete the mediation.

C. The ADR Coordinator assigns a mediator or co-mediators to the matter or contacts the NM State ADR Program at the General Service Department, Risk Management Division. If either or both participants have a reasonable objection to an assigned mediator, another mediator will be assigned as soon as possible.

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D. The ADR Coordinator provides the mediator(s) with a copy of the signed Agreement to Mediate form, and coordinates with the assigned mediator(s) on scheduling and securing a neutral location for the mediation.

E. When agreement is reached, the mediator(s) completes the Mediation Agreement form, which is signed by the participants and the mediator(s). Copies are provided to the participants and the ADR Coordinator, and relevant information may be shared with the participants' supervisor(s) who may monitor adherence to the agreement.

F. Written agreements must be consistent with the Public Defender Rules and Administrative Code, LOPD Policies and Procedures, and applicable law. If appropriate, the mediator(s) should remind the participants of the limits of his or her authority, and the possible need to discuss a proposed resolution with their supervisors or with other LOPD managers who may be affected or involved prior to completing a Mediation Agreement form.

G. The ADR Coordinator maintains a separate secured file of the completed Agreement to Mediate, and any Mediation Agreement. While mediation is a confidential process, matters that are admissible in a court of law or other administrative process, which may include disclosure required by the Inspection of Public Records Act, continue to be admissible even though brought up in a mediation session. The parties will be so advised by a statement included in the Mediation Agreement.

H. The ADR Coordinator is responsible for all ADR matters addressed in the LOPD Loss Prevention and Control Plan including submission of ADR statistics to the ADR Bureau at the General Services Division.

**Authorized Signature**

APPROVED: \_\_\_\_\_

Bennett J. Baur, Chief Public Defender  
Law Offices of the Public Defender