



FY15 ANNUAL REPORT

ALTERNATIVE DISPUTE PREVENTION
& RESOLUTION ADVISORY COUNCIL

STATE OF NEW MEXICO • GENERAL SERVICES DEPARTMENT
RISK MANAGEMENT DIVISION • ADR BUREAU

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INTRODUCTION

The New Mexico Office of Alternative Dispute Prevention and Resolution (ADR Bureau) promotes the early resolution of disputes through respectful communication and positive, constructive collaboration. The Bureau assists Risk Management Division insured entities in conflict resolution processes and policy development to maintain and advance cost-reduction efforts throughout the State of New Mexico. The core mission of the ADR Bureau is established in the Governmental Dispute Prevention and Resolution Act of 2007: to promote ADR; to organize and manage ADR programs for state agencies; to coordinate the use of neutral parties; to implement the development and use of ADR strategies; to provide staff support for the Council; to maintain information and educate government officials about training and the use of ADR and referrals; and, to report annually on the use, cost and success of ADR.

Through all of this work, the ADR Bureau remains committed to:

"Encouraging communication through mutual respect."



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December 1, 2015

Honorable Governor Martinez, Legislators, and GSD Secretary Ed Burckle:

The state's Alternative Dispute Resolution (ADR) program was established by the Governmental Dispute Prevention and Resolution Act of 2007 [NMSA § 12-8A-1 et seq.]. The statute defines ADR as a voluntary process other than litigation used to prevent or resolve disputes, and requires that state agencies provide access to ADR. In support of this mandate, the GSD/RMD/ADR Bureau provides assistance to state agencies in identifying ADR resources, coordinating services and supporting the development of improved administrative processes.

On behalf of the Alternative Dispute Prevention and Resolution Advisory Council and ADR Bureau staff, this annual report is submitted for your consideration and review.

Sincerely,

A handwritten signature in blue ink that reads "A Forte".

A.J. Forte

Chair, ADR Advisory Council
Director, Risk Management Division

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MISSION AND CORE SERVICES

The ADR Bureau supports early dispute resolution for agencies served by RMD, thus preventing expensive and complicated processes such as litigation. Core services include the coordination of no-cost mediation services for workplace issues through a “pool” of trained mediators, primarily from within state government, along with community and other volunteer service providers; the Bureau also identifies and promotes information, resources and training for agency use. In addition, state agencies conduct and report internal ADR activities, which combined with the Bureau’s service data, provide a comprehensive view of ADR use throughout state government.

The Bureau utilizes an online Electronic Content Management (ECM) system, a unique case management system developed by GSD to maintain real-time information in an efficient and secure manner. The Bureau coordinates and tracks its service requests through this system and uses it to produce useful logistical data for planning purposes (*see Appendix A*). FY15 saw an increase in agency requests for services, information and program training. In addition, the Bureau invited presentations by peer programs, e.g., the US Equal Employment Opportunity Commission (EEOC) and the New Mexico Department of Workforce Solutions Human Rights Bureau (HRB).



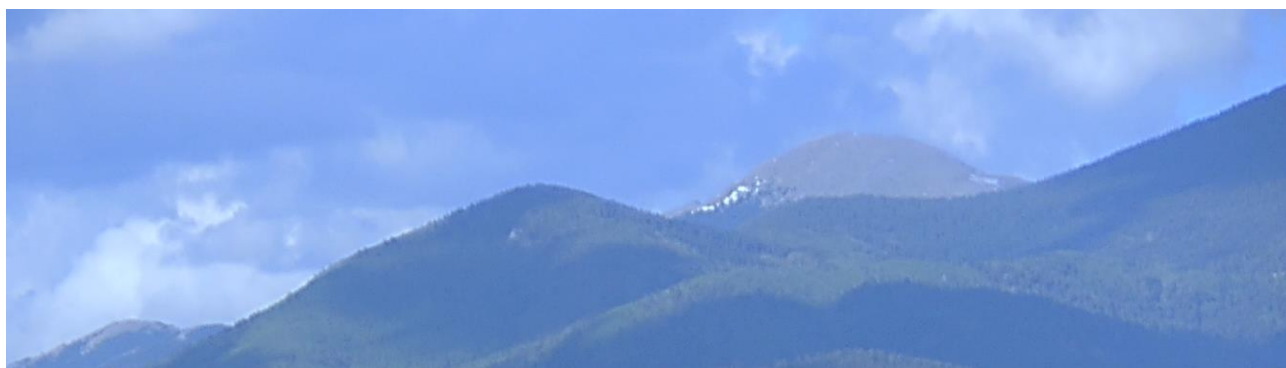
Jaime L. Phillips, Ph.D., Administrative Law Judge & Education & Outreach Coordinator for the NM Department of Workforce Solutions, Human Rights Bureau, presents an overview of the HRB, its working relationship with EEOC, and its investigative and ADR processes.

The Bureau also collects and analyzes data on agency ADR activity on a quarterly basis. Continuous refinement of the ECM system, and training on its use, have been critical to increased reporting by state agencies. In FY2015, the number of state agencies reporting ADR activity increased to 104, an upward trend, as compared to 74 agencies in FY2014, and 21 agencies in FY2013, the first use of the online system (*see Appendix B*). The number of ADR activities reported has also increased significantly, largely attributable to system improvements and continuous outreach to ADR Coordinators; the resulting data demonstrates increasing use and effectiveness of ADR within various organizations. This year, agencies completing the ADR quarterly reporting requirement were also able to leverage their efforts to demonstrate agency compliance as part of the RMD Loss Prevention and Control Bureau’s program audits.

The ADR Bureau continues to coordinate administrative functions and support to state agencies participating in the EEOC's mediation program. This year, a significant number of charges were dismissed at an early stage, and a large number of charges were not considered "eligible" for mediation for a number of reasons (primarily that EEOC did not approve the charge for ADR, or that the charging party declined ADR). State agency participation remains low with a significant number of agencies declining ADR or failing to respond, consistent with a downward trend in recent years. Comparative analysis of the most recent 5 years of EEO charges received by the ADR Office indicates that Title VII and retaliation remain the most frequently alleged violations against state employers (see *Appendix C*).

Other ADR outreach and training events included:

- On-site customer service visits and program overviews.
- ADR Coordinator orientation (half-day sessions held quarterly).
- Formal ADR training events for state employees, including 2-day conflict management courses, several mediator "refresher"/continuing education courses, and three 40-hr courses certifying 56 new state mediators to serve agencies and employees throughout the state.
- Invited presentations at state conferences (e.g., annual DA's Conference, ALTSD Aging Network Training) and regular meetings (e.g., Governor's Commission on Disability).
- Small employee group trainings on various ADR topics.
- Participation in related organizations, including the NM Supreme Court ADR Commission and the NM State Bar ADR Committee.
- Administrative support for the Alternative Dispute Prevention and Resolution Advisory Council (coordinating bi-annual meetings, requesting input into program operations, and compiling this report on its behalf).





Students in the course “Conflict, Communication & Change: Creating Opportunities for Transformation,” practice overcoming resistance.



GSD employees participate in “Communication Skills for Improved Customer Service” class.



Mediation students practice acknowledgement during Beginning Mediation class. The state Developmental Disabilities Planning Council in Albuquerque graciously hosted 24 state employees during the one-week class.

ADR has proven valuable in reducing insurable losses, particularly in employment-related civil rights claims. Analysis of claims data from FY2011–FY2015 indicates total incurred costs of over \$ 30 million, with an average of over \$ 59 thousand per claim. Resolution of workplace issues before escalation to formal administrative or legal action saves money: for FY2015, the cost avoidance value of ADR is estimated to be over \$ 5 million by resolving workplace issues that could otherwise escalate to costly claims against the state (*see Appendix D*). The increasing frequency and severity of these claims will require increased agency commitment to ADR and other loss prevention and control approaches and mitigation strategies.

FY2016 GOALS

- Maintain funding support for training and essential program operations.
- Work closely with agencies experiencing high losses in employment-related civil rights claims to develop effective ADR strategies, implement best practices, and provide training to reduce insurable losses.
- Increase outreach and training to historically underserved agencies and geographic areas, identify and support local resources, and recruit area mediators to serve in state pool.
- Continue streamlining ADR online reporting and analysis operations (ECM) and train ADR Coordinators in use.
- Facilitate and monitor agency compliance with reporting requirements, and confirm compliance to assist agencies in successfully completing audit requirements established by the RMD Loss Prevention and Control Bureau.

FIFTH ANNUAL STATE ADR SYMPOSIUM



On October 8th and 9th, 2015, the fifth annual statewide Alternative Dispute Resolution (ADR) Symposium returned to the capitol city, the sight of the first symposium five years ago. This no-cost event is organized and presented by the ADR Bureau with contributions of time and talent from many agencies, partnering organizations and colleagues, including this year's host campus, Santa Fe Community College (SFCC). Traditionally, the event is held in the month of October, which is recognized internationally as Alternative Dispute Resolution month; it is one of many events around the world promoting ADR's cost-saving benefits and value in fostering better communication and understanding between people. This year's Symposium opened with welcoming remarks from SFCC President Randy Grissom and a plenary address by NM Court of Appeals Judge J. Miles Hanisee. Two days of workshops and presentations followed, as well as numerous opportunities to network with peers and meet with ADR-related program and service exhibitors. This year's Symposium also featured a Higher Education track, designed and delivered by UNM's Ombuds Dispute Resolution Programs for Staff and Faculty.

*New Mexico Court of Appeals
Judge J. Miles Hanisee delivers the
opening plenary address to
Symposium attendees.*



Initially, the goal of this annual event was to recognize the contributions of volunteer mediators and agency ADR Coordinators to the progress of mediation and early conflict resolution within state government and in communities across New Mexico. The Bureau sought to promote competence and quality in the ADR profession by providing critical continuing education, skills practice and information on emerging trends and new programs. Today, this training event has become a unique opportunity for working and new mediators to learn from professionals in the ADR field and from each other by attending presentations, workshops and discussion forums on fundamental best practices and new and emerging approaches and programs. It has also become an eagerly anticipated annual reunion for those in the statewide ADR community to connect with each other and to establish new relationships.



Instructor Cynthia Olson leads a Symposium session entitled “Mediator Magic.”

The 2015 Symposium attracted over 220 participants from throughout New Mexico, representing 56 organizations from: state agencies/commissions/ boards; cities, counties and local public bodies; state universities/colleges/schools; all levels of state courts and district attorney offices; state benefit and employee assistance programs; federal agencies; Los Alamos National Laboratory and Sandia National Laboratory; Kirtland Air Force Base; professional mediation organizations; and many interested community members.



NM Workers’ Compensation Administration Mediation Bureau Chief Bonnie Stepleton explains the WCA mediation process.



Josh Pando, UNM Ombuds for Staff, and Teresa Burgin, NMSU ADR Coordinator, facilitate a roundtable discussion.

Evaluation responses reflect the quality of presentations and learning by participants:

- *“The majority of presenters were the Rock Stars of the New Mexico mediation community--a wonderful one-of-a-kind opportunity to hear their perspectives and learn from their experience.”*
- *“Liked the varied disciplines that presented and that were represented.”*
- *“My first time attending the symposium and I thought all the breakout sessions were significant to me.”*
- *“Excellent information and resources provided to support questions/ issues, HR staff may need guidance on from time to time.”*
- *“I like meeting other professionals in the field and sharing information and networking.”*
- *“This was one of the best symposiums I have attended. The wealth of information that was provided was beyond excellent and exceeded my expectations.”*
- *“The seminar has really rekindled an intense interest in my desire to learn more about mediation.”*
- *“These are mediators and trainers who I consider some of the best in the field. Having been a mediator for 20 some years, I really appreciate trainings that can go deeper into the process and offer new skills and perspectives that I can then incorporate into my own practice.”*



Elizabeth Jeffreys, Esq., and Dr. Nancy Garcia Tafoya share their experience in the state’s Children’s Court Mediation Program.



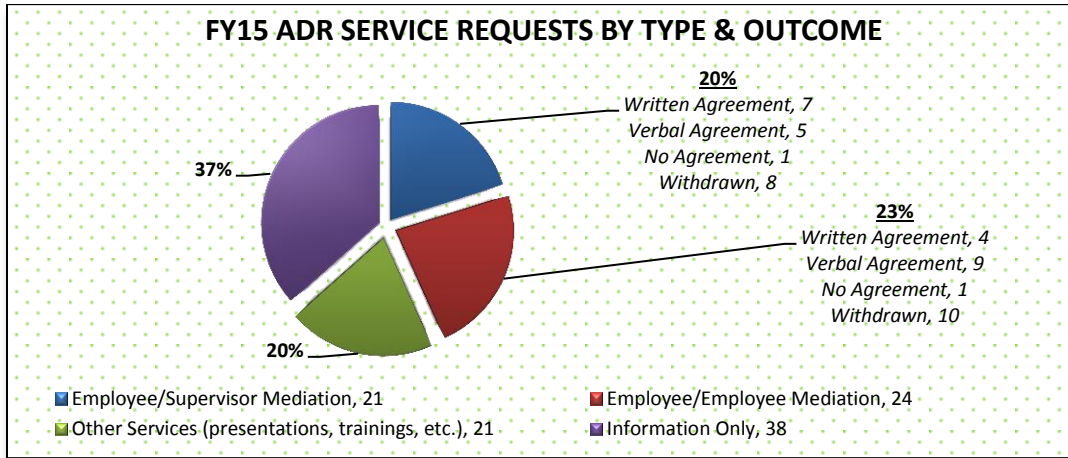
Attorney Dathan Weems leads discussion on mediation and the unauthorized practice of law.



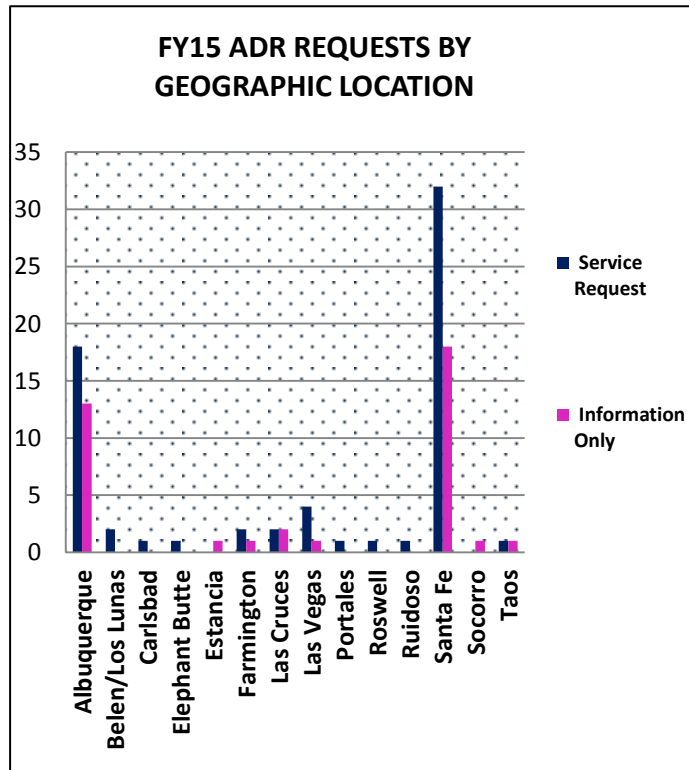
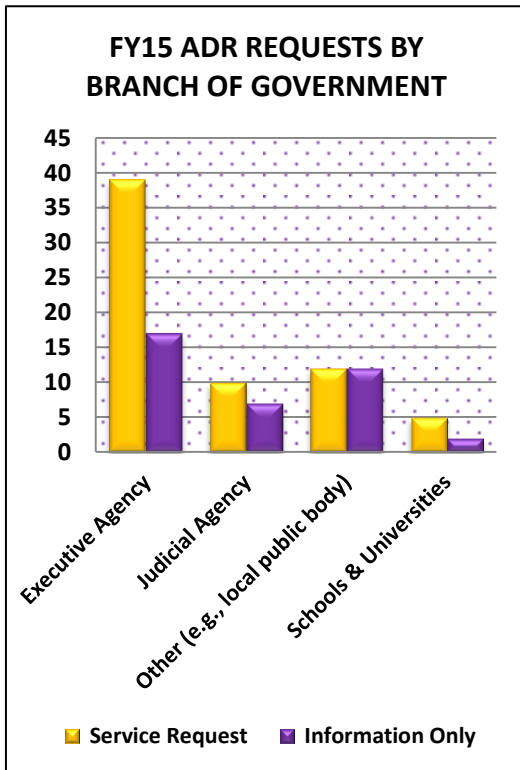
APPENDIX A: FY15 ADR BUREAU SERVICE REQUESTS

FY15 ADR REQUESTS: 104

Of the 104 total service requests, 38 requested information only, and an additional 21 requested presentations, training, etc.; some requests did not proceed to mediation because the matter was withdrawn (a party declined mediation, a party left employment, or the matter was otherwise resolved by the parties), the matter was deemed inappropriate for mediation, or a different administrative process was selected. Ultimately, 45 requests resulted in mediation as follows:



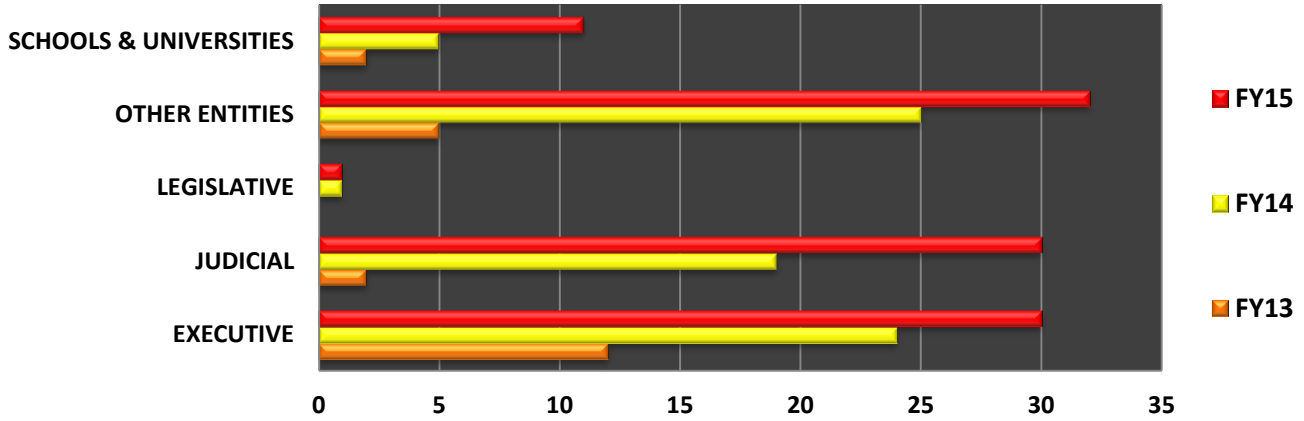
The 104 requests came from a variety of organizations and locations:



** "Service Request" refers to mediation, presentations, trainings, etc.

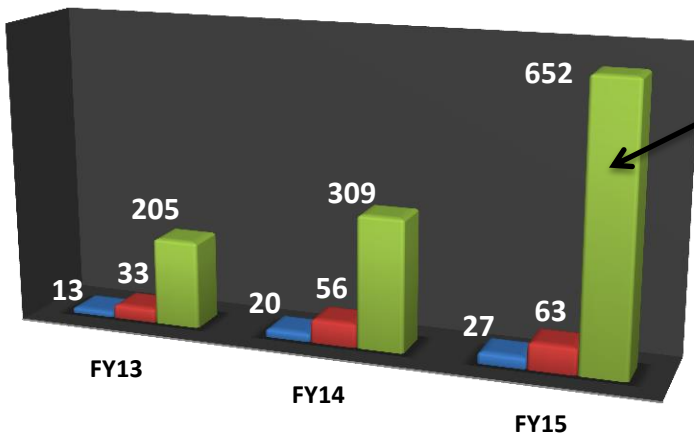
APPENDIX B: FY15 ADR ACTIVITIES SELF-REPORTED BY AGENCIES

NUMBER OF AGENCIES REPORTING ADR ACTIVITY BY TYPE / BRANCH



| AGENCY TYPE/ BRANCH | FY13 | FY14 | FY15 | INCREASE from FY14 to FY15 |
|------------------------|-----------|-----------|------------|----------------------------|
| Schools & Universities | 2 | 5 | 11 | 120% |
| Other Entities | 5 | 25 | 32 | 28% |
| Legislative | 1 | 1 | 1 | 0% |
| Judicial | 2 | 19 | 30 | 58% |
| Executive | 12 | 24 | 30 | 25% |
| TOTAL INCREASES | 21 | 74 | 104 | 41% |

INCREASE IN REPORTABLE ACTIVITY BY TYPE FROM FY13-FY15



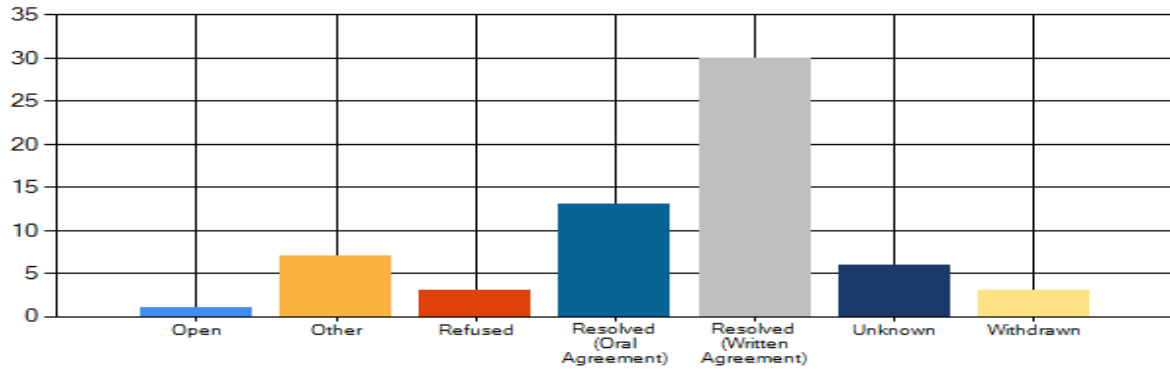
| ALL OTHER ADR ACTIVITY BY TYPE | COUNT | % |
|--|-------|--------|
| Arbitration | 12 | 1.80% |
| Citizen Participation/ Public Dispute Management | 146 | 22.40% |
| Group Facilitation | 15 | 2.30% |
| Group Mediation | 7 | 1.10% |
| Other | 227 | 34.82% |
| Training | 245 | 37.58% |

■ Employee/Employee Mediations ■ Employee/Supervisor Mediations ■ All Other

** FY15 total reported activities (742) is a 92.73% increase over FY2014 total reported activities (385).

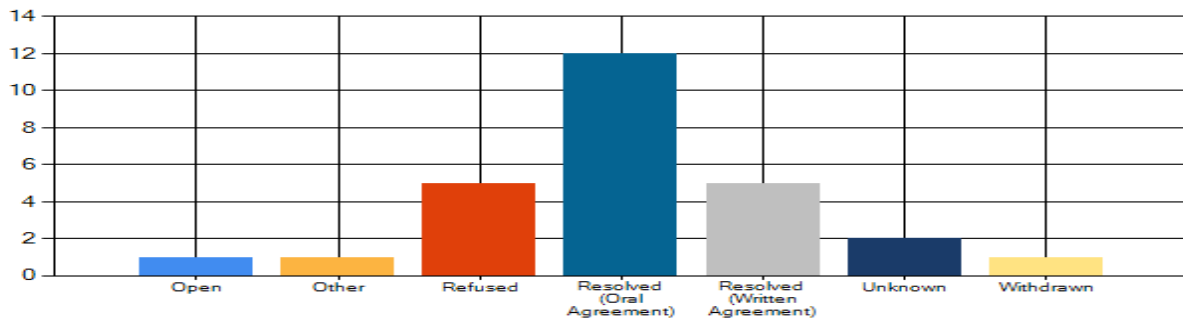
APPENDIX B: FY15 ADR ACTIVITIES SELF-REPORTED BY AGENCIES (cont'd.)

EMPLOYEE/SUPERVISOR MEDIATION REPORTED OUTCOMES



| Resolution | Count | Percent |
|------------------------------|-----------|---------|
| Open | 1 | 1.59% |
| Other | 7 | 11.11% |
| Refused | 3 | 4.76% |
| Resolved (Oral Agreement) | 13 | 20.63% |
| Resolved (Written Agreement) | 30 | 47.62% |
| Unknown | 6 | 9.52% |
| Withdrawn | 3 | 4.76% |
| | 63 | |

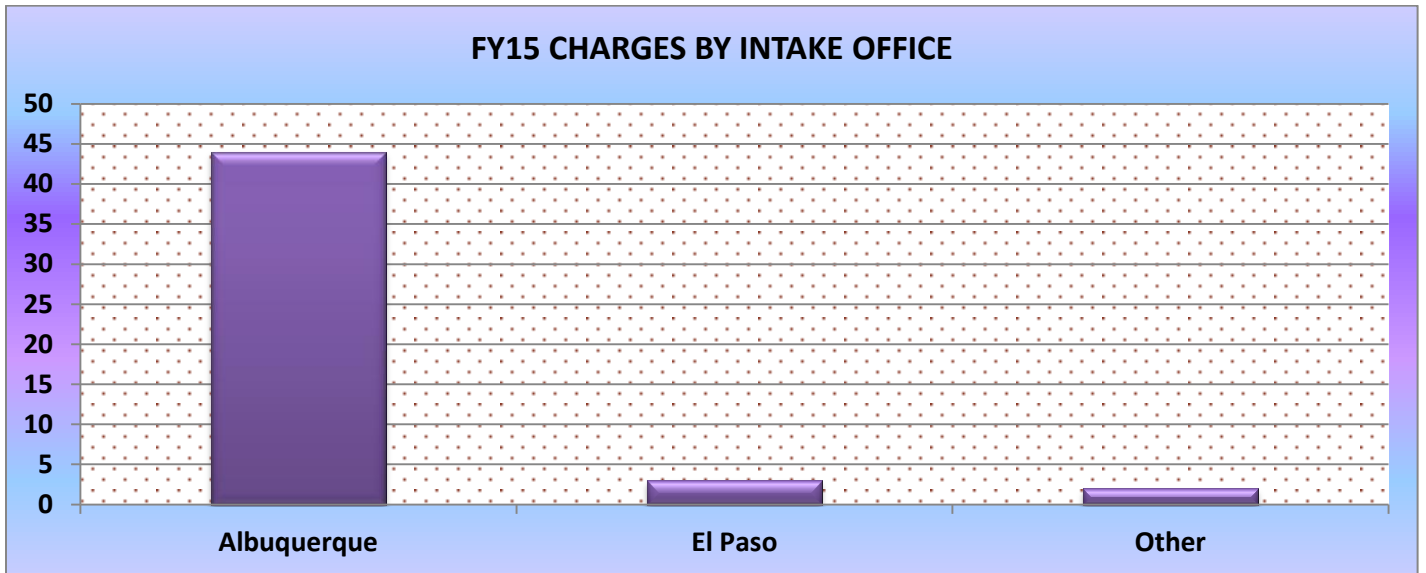
EMPLOYEE/EMPLOYEE MEDIATION REPORTED OUTCOMES



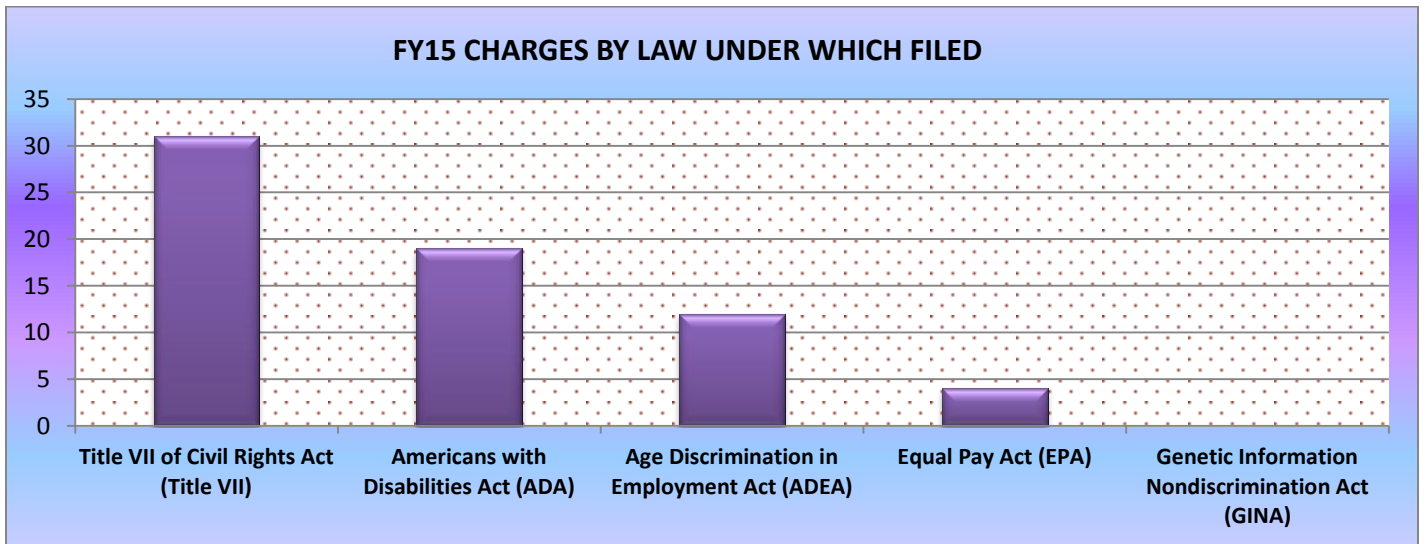
| Resolution | Count | Percent |
|------------------------------|-----------|---------|
| Open | 1 | 3.70% |
| Other | 1 | 3.70% |
| Refused | 5 | 18.52% |
| Resolved (Oral Agreement) | 12 | 44.44% |
| Resolved (Written Agreement) | 5 | 18.52% |
| Unknown | 2 | 7.41% |
| Withdrawn | 1 | 3.70% |
| | 27 | |

APPENDIX C: FY15 EEOC MEDIATION STATISTICS

PURSUANT TO REGIONAL UNIVERSAL AGREEMENT TO MEDIATE BETWEEN US EEOC & STATE OF NM: ADR Office assists agencies through EEOC mediation process, and monitors and reports on participation and outcomes. In Federal FY15 (approx. Oct. 1, 2014 – Sept. 30, 2015), the Office received **49** charges:

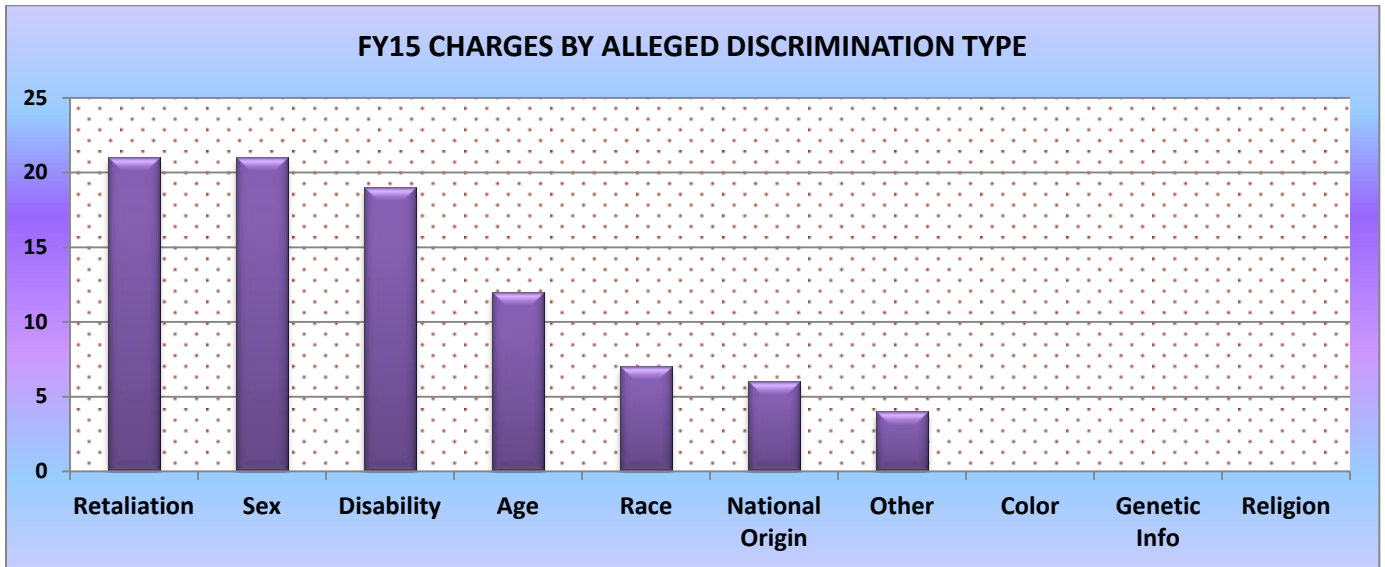


*** "Other" refers to charges administratively assigned to US EEOC St. Louis Office.*

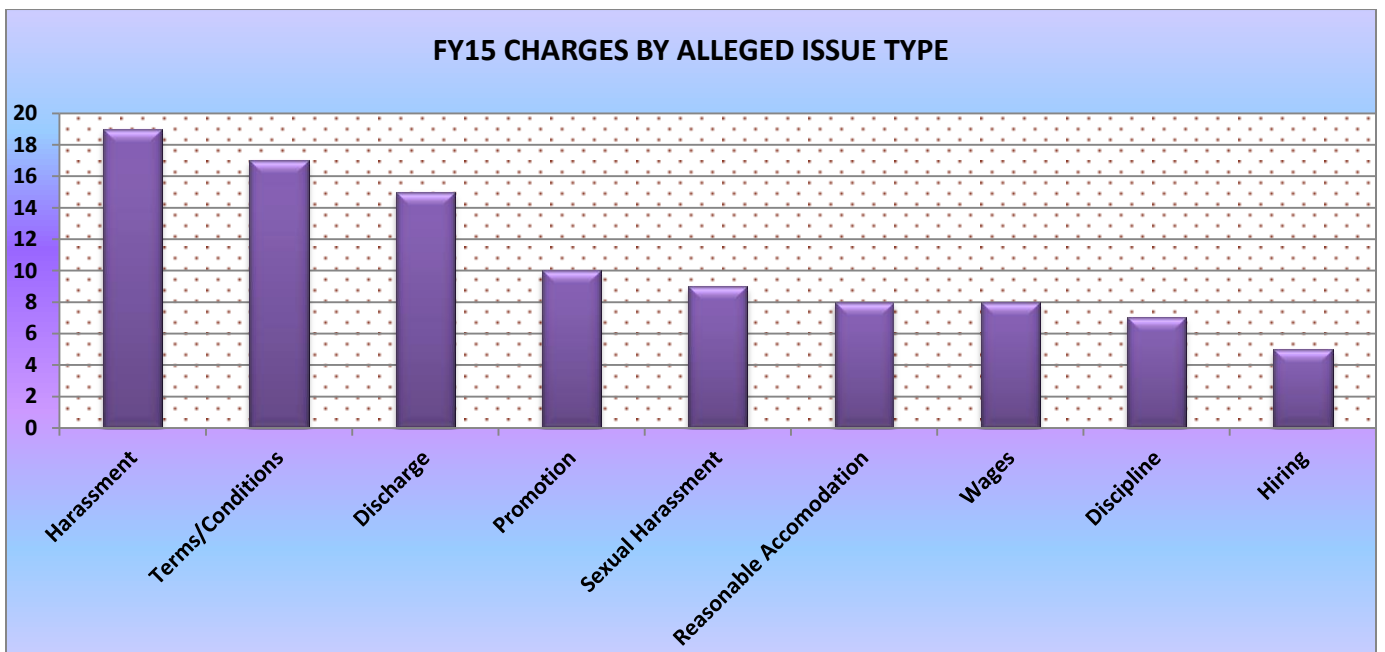


*** 14 of the 49 charges, or 28.57%, were filed under more than one law.*

APPENDIX C: FY15 EEOC MEDIATION STATISTICS (cont'd.)



*** 26 of 49 charges, or 53.06%, were filed alleging more than one type of discrimination.*

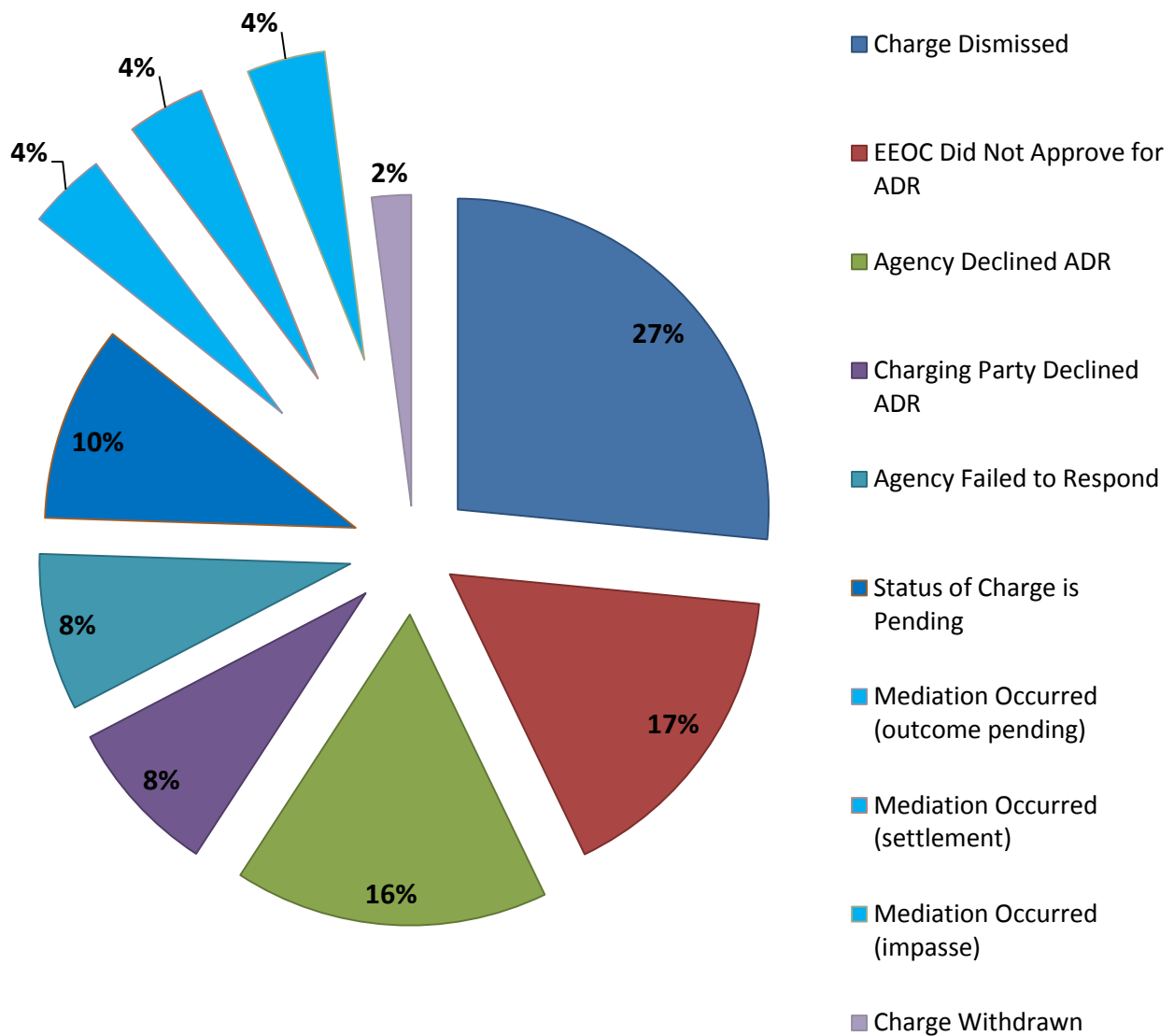


*** 35 of 49 charges, or 71.43%, were filed alleging more than one type of issue.*

APPENDIX C: FY15 EEOC MEDIATION STATISTICS (cont'd.)

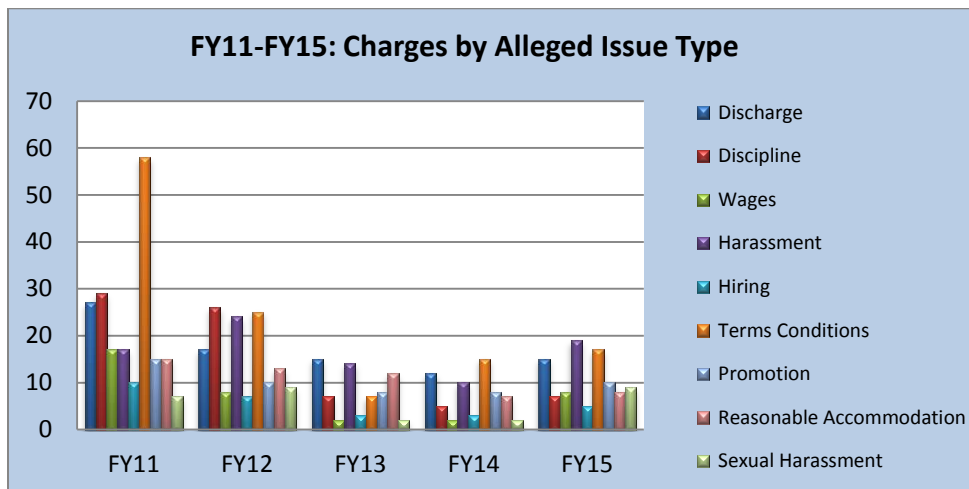
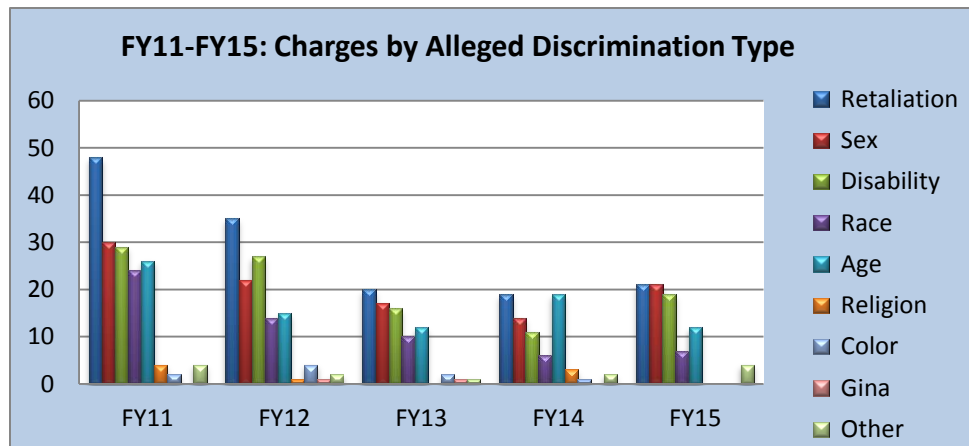
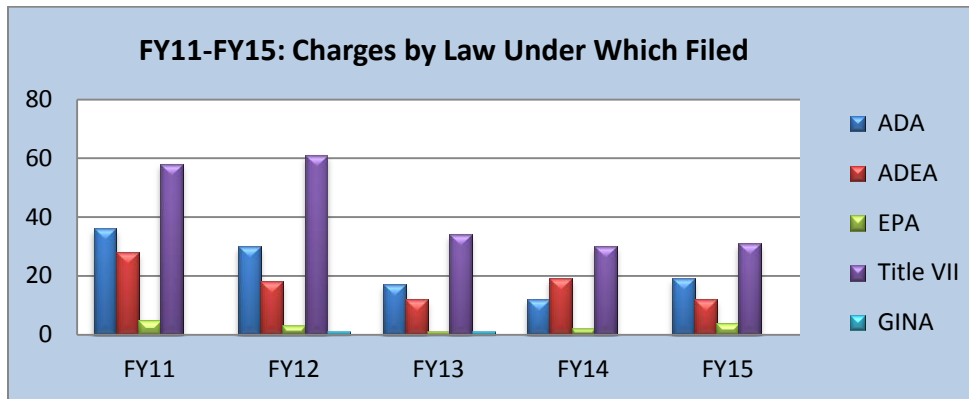
FY2015 EEOC CHARGES BY ADMINISTRATIVE OUTCOME

In 16 of the 49 total charges, or 32.65%, the responding agency agreed to mediate. In 6 of those 16 charges, or 37.5%, mediation was actually completed (*lightest blue chart sections below*). These 6 charges represent just 12.24% of the 49 total charges received in FY2015.



APPENDIX C: FY15 EEOC MEDIATION STATISTICS (cont'd.)

5-YEAR COMPARATIVE ANALYSIS



**** *In all charts, charges are frequently filed under more than one law and allege more than one type of discrimination or issue.***

APPENDIX D: FY15 EMPLOYMENT-RELATED CIVIL RIGHTS DATA ANALYSIS

Preliminary Loss Data Analysis

1. Employment-Related Civil Rights Claims against State of NM (for 5-year period from FY11 – FY15):

- **513** employment-related civil rights claims
- Aggregate “total incurred” cost of approximately **\$ 30,721,412**
- Average “cost” of approximately **\$ 59,886** per claim

2. Impact on Agency Budgets (total for all agencies, annually):

- FY13 Civil Rights Insurance Premiums: \$ 9.2 million
(of \$ 58.9 million total insurance coverage premiums)
- FY14 Civil Rights Insurance Premiums: \$ 9.2 million
(of \$ 58.9 million total insurance coverage premiums)
- FY15 Civil Rights Insurance Premiums: \$ 17.4 million
(of \$ 81.7 million total insurance coverage premiums)
- FY16 Civil Rights Insurance Premiums: \$ 19.3 million
(of \$ 82.5 million total insurance coverage premiums)
- FY17 Civil Rights Insurance Premiums: \$ 22 million
(of \$ 82.5 million total insurance coverage premiums)

ADR Cost-Benefit Factors

1. Early Dispute Resolution Options:

- In-house resources (agency policies & procedures, ADR Coordinators, etc.); *no-cost*
- ADR services through ADR Bureau / state program; *no-cost*
- Other “external” service providers (EAP, community or private service provider, etc.); *generally, a fee-for-service arrangement*
- *Other?*

2. ADR Cost-Benefit Value: In FY15, of **141** reported mediations, **87** resulted in resolution of the issues presented, with an estimated cost avoidance value of **\$ 5,210,082**.



**OFFICE OF ALTERNATIVE DISPUTE
PREVENTION AND RESOLUTION**

"Encouraging communication through mutual respect."

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