



# FY16 ANNUAL REPORT

ALTERNATIVE DISPUTE PREVENTION & RESOLUTION ADVISORY COUNCIL

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

# **FY16 ANNUAL REPORT**

**of the**

**NEW MEXICO  
ALTERNATIVE DISPUTE PREVENTION  
& RESOLUTION ADVISORY COUNCIL**

**GENERAL SERVICES DEPARTMENT  
RISK MANAGEMENT DIVISION  
ALTERNATIVE DISPUTE RESOLUTION BUREAU**



**NEW MEXICO  
OFFICE OF ALTERNATIVE DISPUTE  
PREVENTION AND RESOLUTION**

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.

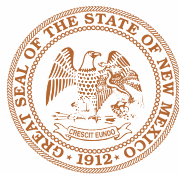
Through all of this work, the ADR Bureau remains committed to:

***"Encouraging communication through mutual respect."***

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December 1, 2016

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. This report presents some of the highlights of our work in FY16, and reflects ADR use, cost and success within state entities.

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

Sincerely,

A handwritten signature in blue ink that reads "Lara White Davis".

Lara White Davis

Chair, ADR Advisory Council  
Director, Risk Management Division

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***"THE HEART AND SOUL OF STATE GOVERNMENT"***

## MISSION AND CORE SERVICES

The mission of the Alternative Dispute Resolution (ADR) Bureau is to support early dispute resolution for agencies served by RMD to prevent expensive and complicated processes such as administrative hearings or litigation. The 2007 New Mexico Governmental Dispute Prevention and Resolution Act established the ADR program within the Risk Management Division of GSD. As defined by the Act, ADR is a voluntary option to prevent or resolve disputes, and encompasses a broad range of problem-solving processes, the most common of which are mediation, facilitation, and arbitration. The statute further requires that state agencies provide access to ADR. The ADR program encourages and supports state agency efforts by identifying resources, developing administrative procedures and forms, providing training, and coordinating no-cost mediation services – these are the Bureau’s core services. Tracking this work generates data that demonstrates the “use, cost, and success” of ADR by the state; this information is reported annually each December in this report, as statutorily required. FY17 will be the program’s tenth year of operations as a trusted and reliable service provider.

Mediation services are the cornerstone of the ADR program, and its foundation is the program’s group of volunteer mediators. The majority of mediators are trained state employees from many disciplines and organizational levels who join the program to serve as neutrals to unrelated agencies. Collectively, mediators serve the state’s overall workforce as volunteer neutrals who facilitate the mediation process. This program also greatly benefits from volunteers who are already practicing mediators in the state’s ADR community and in partnering organizations (e.g., state courts, universities, and federal agencies). These mediators join state volunteers in performing the critical services that make this program possible and available to our customers, state agencies and employees, at **no cost**. FY16 continued a steady rate of agency requests for services, information, and training (*see Appendix A*).

The program also tracks ADR activity within state agencies on a quarterly basis. This work is accomplished and reported by designated ADR Coordinators within each organization. The ADR Coordinator is essential to creating agency and employee access to the program, and serves as the program’s central contact to facilitate service and information requests, outreach, training and data gathering. FY16 continued positive growth in reported agency activity. In FY16, the number of state agencies submitting quarterly reports increased to 116, a 12% increase from 104 agencies in FY15, 74 agencies in FY14, and 21 agencies in FY13, the first use of the online system (*see Appendix B*). The number of reportable individual ADR activities has also risen to 1218, a 64% increase over FY15, reflecting greater use of various ADR processes throughout state government.

The Bureau continues to track state agency participation in the US Equal Employment Opportunity Commission’s (EEOC) mediation program pursuant to a *Regional Universal Agreement to Mediate*. Under the terms of this 2008 agreement, all eligible EEOC charges of discrimination naming any department of the State of New Mexico as the employer/respondent are to be referred to EEOC’s mediation program. Continuing a downward trend, FY16 saw fewer charges considered “eligible” for

mediation with only 39 charges received by RMD. EEOC offered mediation in only 19 of those 39, only 8 proceeded to mediation, and only 3 mediations resolved the charge. The Risk Management Division and EEOC are actively exploring how to renew and strengthen the existing agreement to increase participation and resolution rates. In FY16, 74% of the charges were filed under Title VII, and retaliation was the most frequently alleged violation against state employers (*see Appendix C*).

Training is key to ensuring the program has ready and capable service providers. The Bureau provides professional 40-hour mediation certification training for state employees who want to be able to provide skilled facilitation of problem-solving and negotiation. In return, the program requires their written commitment to serve and to gain proficiency through practice and continuing education to translate theory into practice. Furthermore, the employee's supervisor must affirm agency support for training attendance and subsequent service (subject to the demands of work schedules). In FY16, the Bureau recruited 49 employees from diverse organizations and geographic locations to improve its response to statewide requests in a timely and efficient manner. The new mediators also contribute to program sustainability by bringing in new talents and energy and by offsetting the workforce's natural attrition.



***The May 2016 mediation class with Instructor Cynthia Olson in Santa Fe.***

Like mediators, most ADR Coordinators hold other full-time jobs. Ideally, the Coordinator would function independently to maintain confidentiality, impartiality and separation from other reporting requirements; in practice, state agencies often designate the ADR Coordinator function to administrative staff because of its applicability to personnel issues and organizational impact. To prepare individuals for this role, the Bureau conducts ADR Coordinator training on basic conflict management and program-specific procedures and forms; most importantly, this training creates new and active relationships between program staff and agency counterparts. The ADR Coordinator role

has grown and designated individuals can change often; in large agencies, the role may even be shared among a number of individuals or work units. As a result, this training is conducted quarterly (and upon request) and this year, was expanded from a half-day to a full-day. In FY16, The Bureau trained 52 new ADR Coordinators from 43 state agencies.

ADR is especially effective in reducing insurable losses in employment-related civil rights claims. Analysis of RMD claims from FY12–FY16 indicates total incurred costs of almost \$24 million, with an average of over \$50 thousand per claim; generally, over half of claim expenses are legal expenses. Successful resolution of these workplace issues before litigation saves money: for FY16, the cost avoidance value of ADR is estimated to be over **\$5 million** (see Appendix D).

At its heart, the ADR program is collaborative, and the Bureau seeks opportunities to connect with state agencies and employees at all levels. In FY16, other ADR outreach and training events included:

- On-site customer service visits, program overviews, and management briefings to raise awareness about ADR and educate end-users about its cost-saving and other benefits
- Formal ADR training events and mediator “refresher” courses to maintain proficiency
- Small group trainings to support skill development and continuous improvement
- Invited presentations at state conferences, wellness fairs and staff events to promote services
- “Brown Bag Lunch” round table presentations in Las Cruces and Roswell to recruit mediators
- Partnership with The Solutions Group EAP to refer issues for direct services and training
- Active participation in related organizations, including the NM Supreme Court ADR Commission and the NM State Bar ADR Committee to network and leverage resources statewide



*Student discussion in the course “Conflict, Communication & Change: Creating Opportunities for Transformation.”*

## FY17 GOALS

- Review 2006 program proposal, progress at ten-year mark and anticipated challenges as part of comprehensive strategic planning in alignment with department’s customer service mission and division’s cost-reduction goals
- Refine claims analysis and outreach to assist state agencies with high employment-related civil rights liability losses in the development of strategies to reduce claims, lower insurance premiums, and manage conflict in more effective and satisfying ways

## SIXTH ANNUAL STATE ADR SYMPOSIUM



The GSD Risk Management Division's ADR Bureau hosted the sixth annual statewide Alternative Dispute Resolution Symposium at the Santa Fe Community College on October 12 and 13, 2016. Many agencies, partnering organizations, and colleagues supported and participated in the event which was offered at no cost. The Symposium opened with welcoming remarks from SFCC President Randy Grissom and GSD Secretary Ed Burckle, followed by a plenary address by mediator Mark Bennett. Two days of workshops and presentations followed, as well as numerous opportunities to network with peers and meet with ADR-related programs and visit service provider exhibits.

The annual Symposium is the ADR Bureau's principal outreach event. It serves as a continuing education training event for the State's mediators and ADR Coordinators, and is an opportunity for the program to express appreciation for their contribution to the progress of mediation and early conflict resolution within state government and across New Mexico. The Symposium also serves as a reunion for individuals who have trained or worked together and provides support, fellowship and connection to the state's larger ADR community. October is traditionally observed as International Alternative Dispute Resolution Month, and the ADR Symposium is one of many events around the world promoting ADR's value in fostering better communication and understanding between people, as well as its cost-saving benefits. Here in New Mexico, Governor Susana Martinez issued a proclamation declaring October 2016 "**New Mexico Alternative Dispute Resolution Month.**" (See Appendix E).



The Symposium also provides a unique networking opportunity for state government employees and others in ADR programs in the courts, federal government, and communities of practice. Providing formal mediation training for state employees is only one step in maintaining the mediator pool as a renewable resource; new mediators need practice in order to gain competency, and information on emerging trends and new programs. The Symposium offers a forum for learning with working professionals, affirms a shared vision, and promotes discussion about innovative approaches and best practices. Participants also value the opportunity to develop collaborative partnerships and strengthen existing relationships.

The 2016 Symposium's 165 participants came from throughout New Mexico, representing numerous organizations, including: State agencies/commissions/ boards; cities, counties and local public bodies; universities/colleges/schools; all levels of State courts and district attorney offices; State benefit and employee assistance programs; federal agencies; Los Alamos National Laboratory; Kirtland Air Force Base; professional mediation organizations; and other community partners.



***Stephanie Ellis, ADR Coordinator at the GSD-RMD-ADR Bureau, explains the flow of a mediation request through the state mediation program.***



***Rick Vinnay (The Solutions Group Employee Assistance Program) discusses “The Impact of High Conflict Personalities on the Workplace and How to Address Them.”***

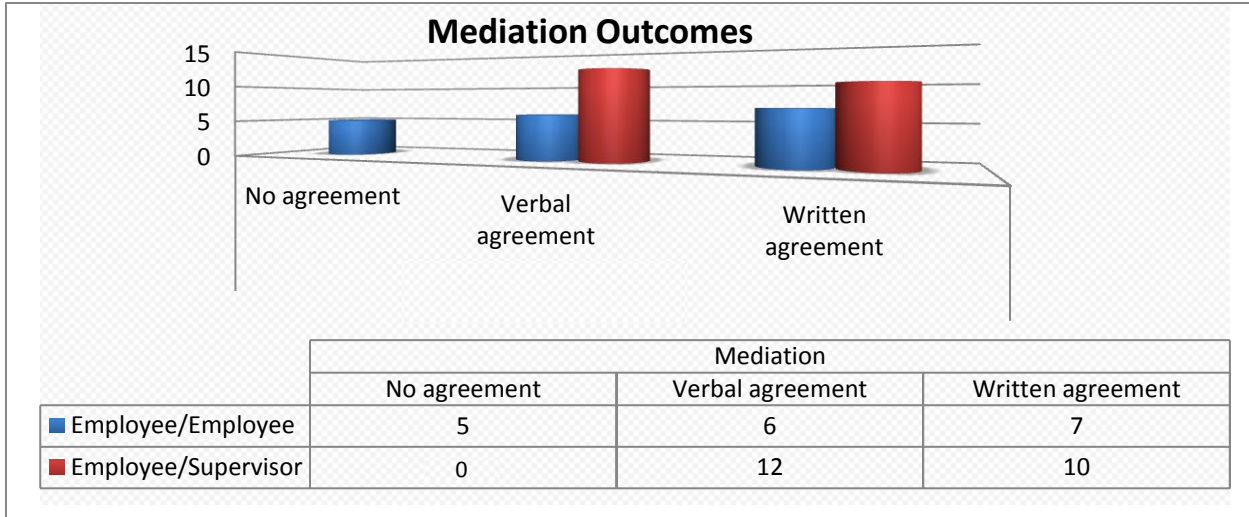
Participants shared the following feedback about their two days at the Symposium:

- “I love the diversity of the topics.”
- “Well organized, great location, substantive and useful information.”
- “Very open and interactive presentations.”
- “The subject matter selected was fantastic, topics I am able to implement at work.”
- “Liked the opportunity to get out of the office to focus on human aspects of management.”
- “I liked the variety of topics that were discussed and the applicability that they had to both mediation and HR. Great job on scheduling and presenters!!”
- “Excellent course selection and location was great.”
- “I liked having my known and newly met colleagues together for 2 days. I appreciated the life-long commitment and hard-won expertise of the presenters.”
- “I attended as many of the conflict sessions that I was able to in order that I be in a better position to advise supervisors. In this week alone I have experienced 2 meetings where the information I obtained was very helpful in these conversations. It was well worth the time spent away from the office.”
- “I liked the balance of theory and practical application e.g. "how to do it in New Mexico."

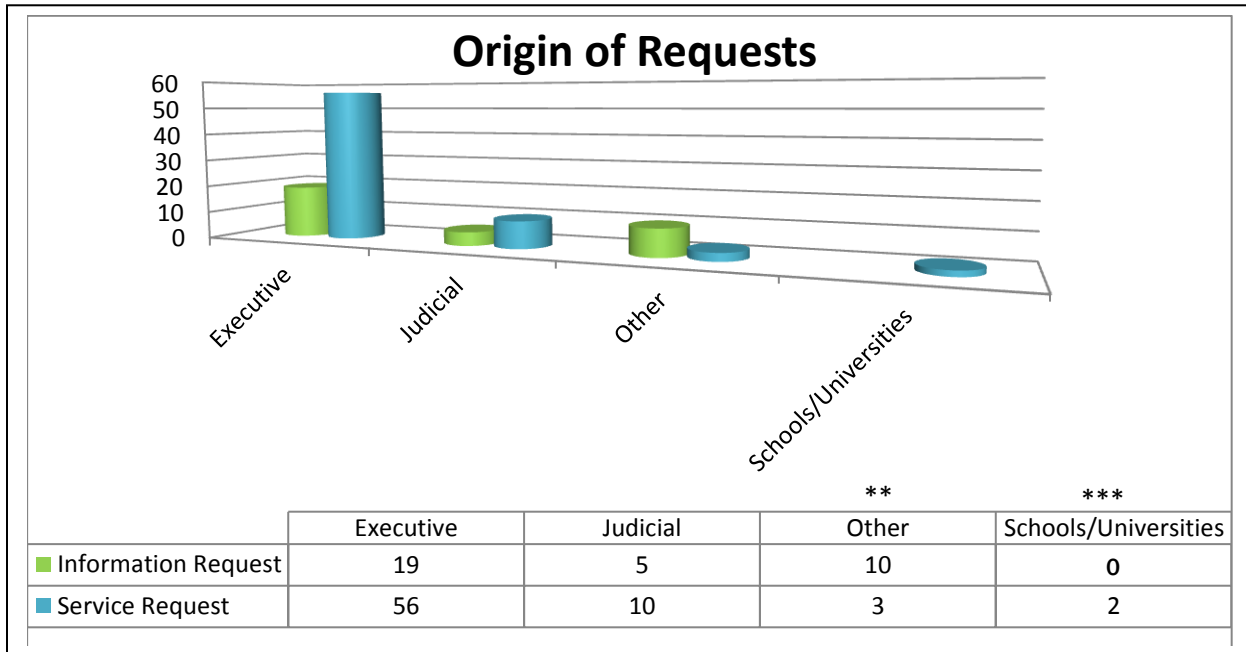
Don't underestimate the power of your vision to change the world. Whether that world is your office, your community, an industry or a global movement, you need to have a core belief that what you contribute can fundamentally change the paradigm or way of thinking about problems. — Leroy Hood

## APPENDIX A: FY16 ADR BUREAU SERVICE REQUESTS

Of the 105 total service requests, 34 requested information only, and 16 requested presentations, training, or other services. Of the remaining 55 requests, 15 were withdrawn or cancelled (a party declined mediation, a party left employment, or the matter was otherwise resolved by the parties), the matter was deemed inappropriate for mediation, a different administrative process was selected (e.g., EAP), or the request remains open (pending). Ultimately, 40 requests proceeded to mediation with the following reported outcomes:



The 105 requests came from a variety of organizations and geographic locations\*:



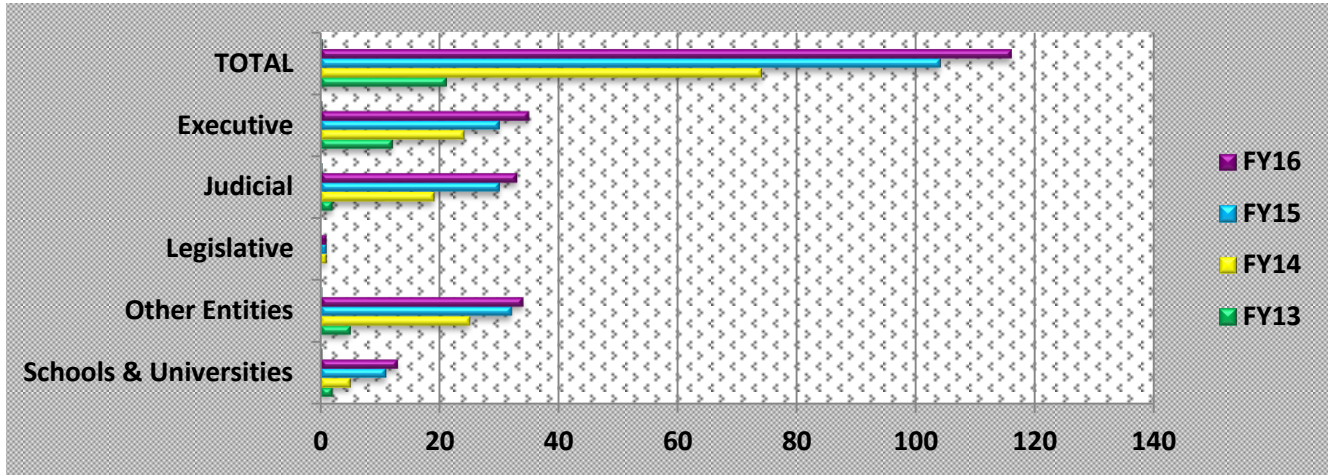
\* Approximately 75% of all requests for ADR services were from Santa Fe or Albuquerque.

\*\* "Other" includes counties, municipalities and various public bodies.

\*\*\* Some universities offer onsite ombuds or mediation services, so few requests are reflected here.

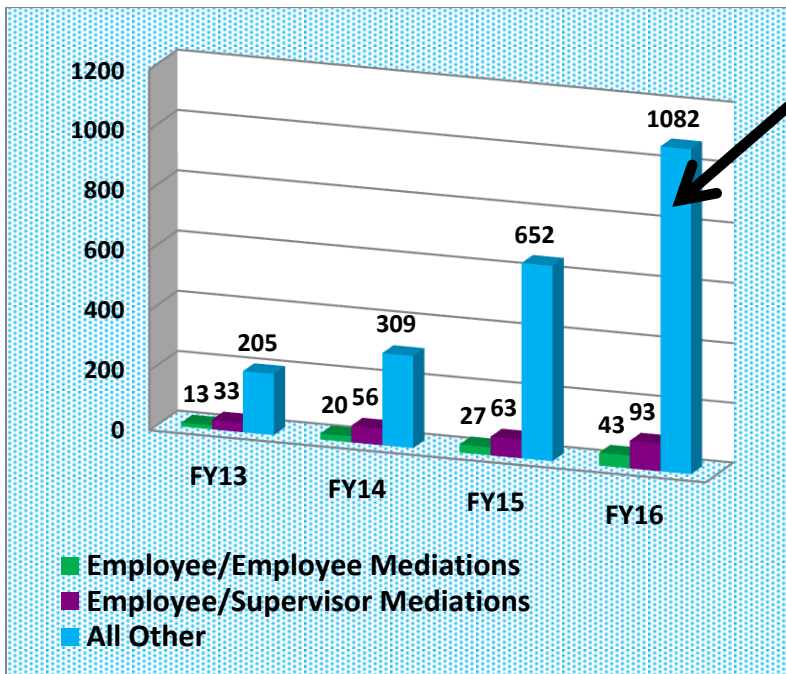
## APPENDIX B: FY16 ADR ACTIVITIES SELF-REPORTED BY AGENCIES

### NUMBER OF AGENCIES REPORTING ADR ACTIVITY BY TYPE/BRANCH



AGENCY TYPE/BRANCH	FY13	FY14	FY15	FY16	INCREASE from FY15 to FY16
Schools & Universities	2	5	11	13	18%
Other Entities	5	25	32	34	6%
Legislative	0	1	1	1	0%
Judicial	2	19	30	33	10%
Executive	12	24	30	35	17%
<b>TOTAL</b>	<b>21</b>	<b>74</b>	<b>104</b>	<b>116</b>	<b>12%</b>

### INCREASE IN REPORTABLE ACTIVITY BY TYPE FROM FY13-FY16

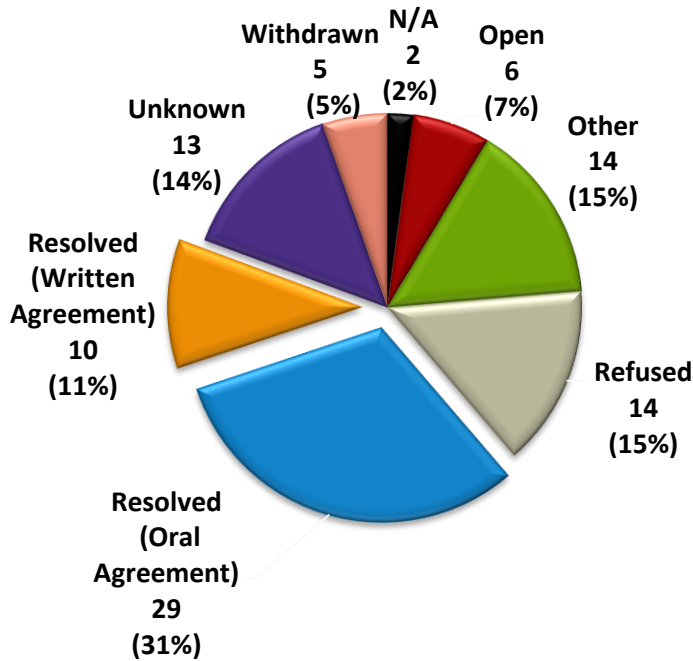


"ALL OTHER" ADR ACTIVITY (detail – FY16 only)		
	Count	Percent
Arbitration	1	0.08%
Citizen Participation/Public Dispute Management	1	0.08%
Group Facilitation	14	1.15%
Group Mediation	16	1.31%
Training	469	38.51%
Other ADR Activities (Meeting, Outreach, Consultation, posted or circulated ADR newsletter, etc.)	581	47.70%
<b>TOTAL</b>	<b>1082</b>	

**APPENDIX B: FY16 ADR ACTIVITIES SELF-REPORTED BY AGENCIES (cont'd.)**

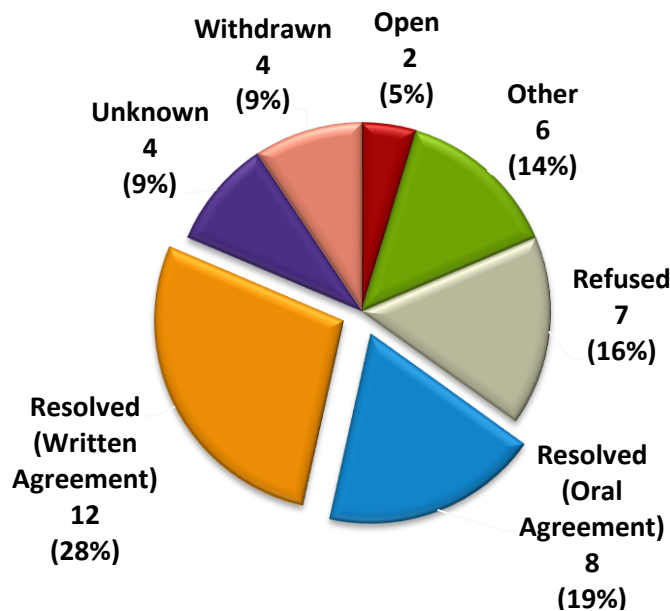
**EMPLOYEE/SUPERVISOR MEDIATION BY ADMINISTRATIVE OUTCOME**

Mediation offered on 93 occasions; when it took place, resolution occurred 39 times (42%).



**EMPLOYEE/EMPLOYEE MEDIATIONS BY ADMINISTRATIVE OUTCOME**

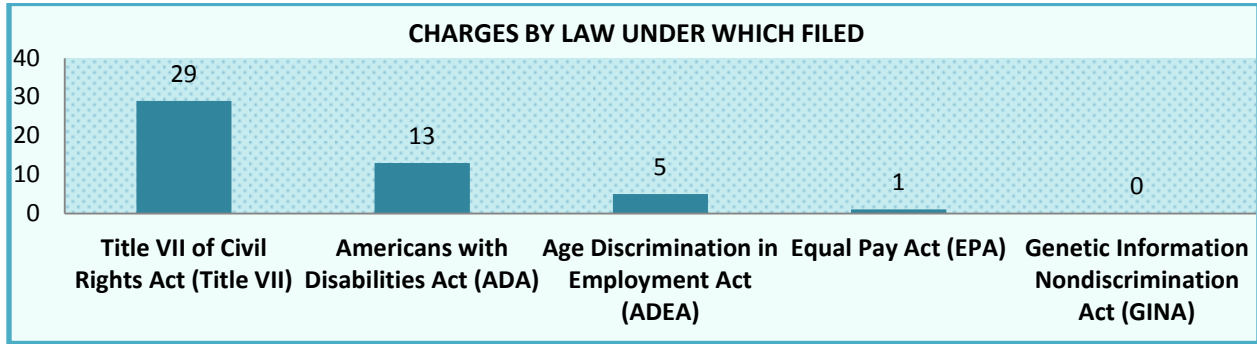
Mediation offered on 43 occasions; when it took place, resolution occurred 20 times (47%).



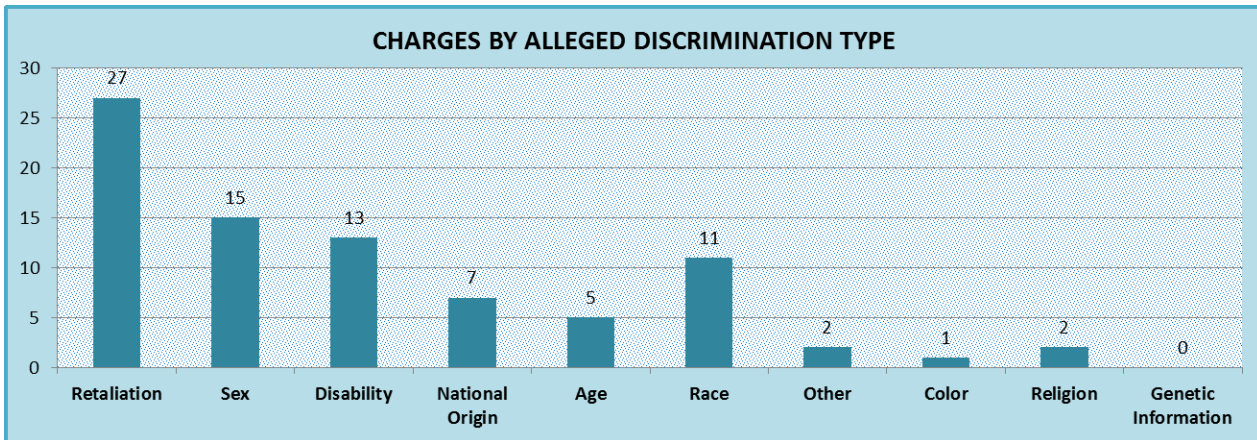
## APPENDIX C: FY16 EEOC MEDIATION STATISTICS

### PURSUANT TO REGIONAL UNIVERSAL AGREEMENT TO MEDIATE BETWEEN US EEOC & STATE OF NM:

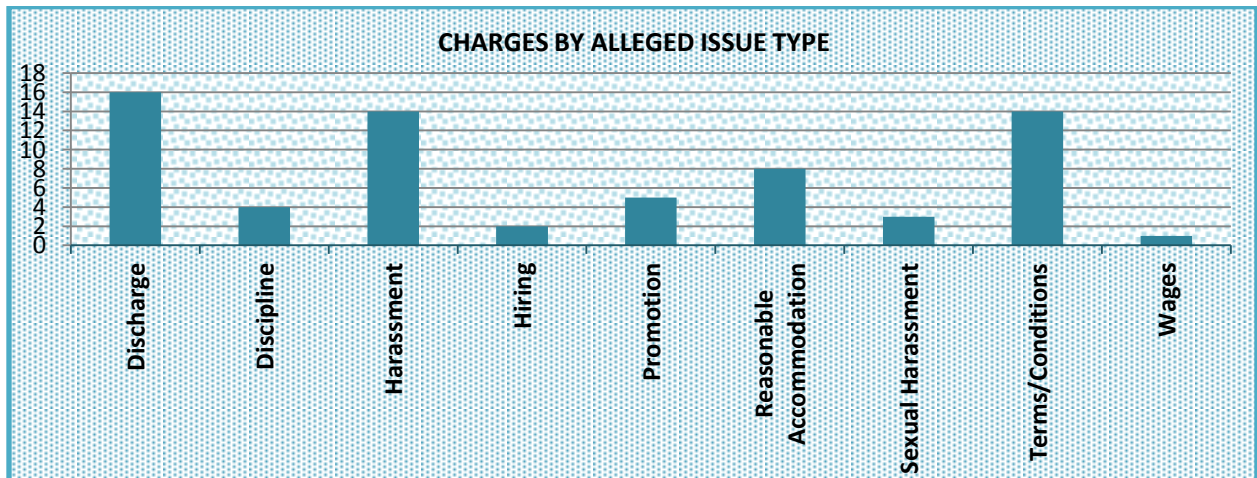
ADR Office assists agencies through the EEOC mediation process, and monitors and reports on participation and outcomes. In Federal FY16 (approx. Oct. 1, 2015 – Sept. 30, 2016), 39 charges were received, all from the Albuquerque Area Office.



*\*\*8 of the 39 charges, or 20.51%, were filed under more than one law.*



*\*\*30 of 39 charges, or 76.92%, were filed alleging more than one type of discrimination.*



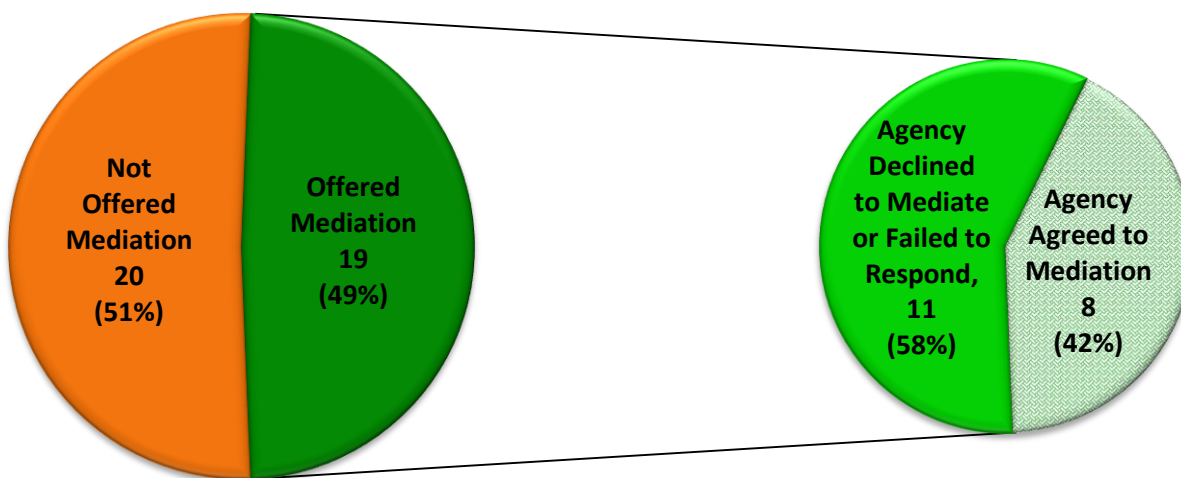
*\*\*20 of 39 charges, or 51.28%, were filed alleging more than one type of issue.*

## APPENDIX C: FY16 EEOC MEDIATION STATISTICS (cont'd.)

### FY16 EEOC CHARGES BY ADMINISTRATIVE OUTCOME

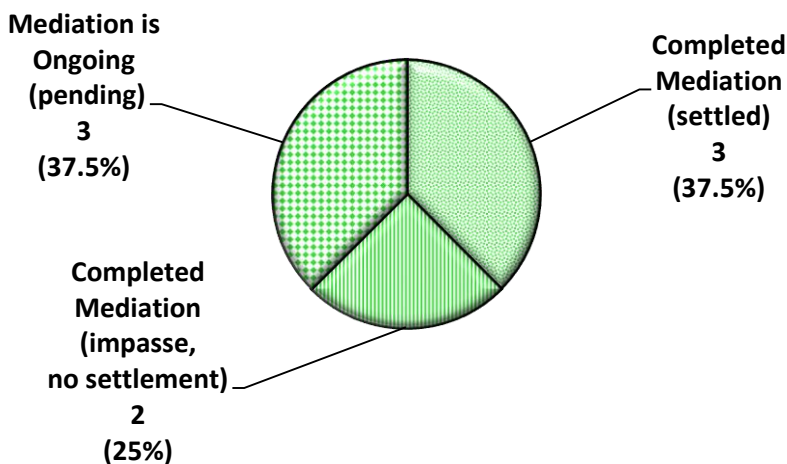
EEOC did not offer mediation in 20 of the 39 total charges, and Respondent (State Agency) declined to mediate 11 charges; together, these 31 charges had administrative outcomes, including withdrawal of charge, investigation only, dismissal/order of nondetermination, and other administrative actions.

#### When Mediation Was Offered



EEOC offered mediation in 19 of the 39 charges; the Respondent (State Agency) agreed to mediate 8 charges (42%).

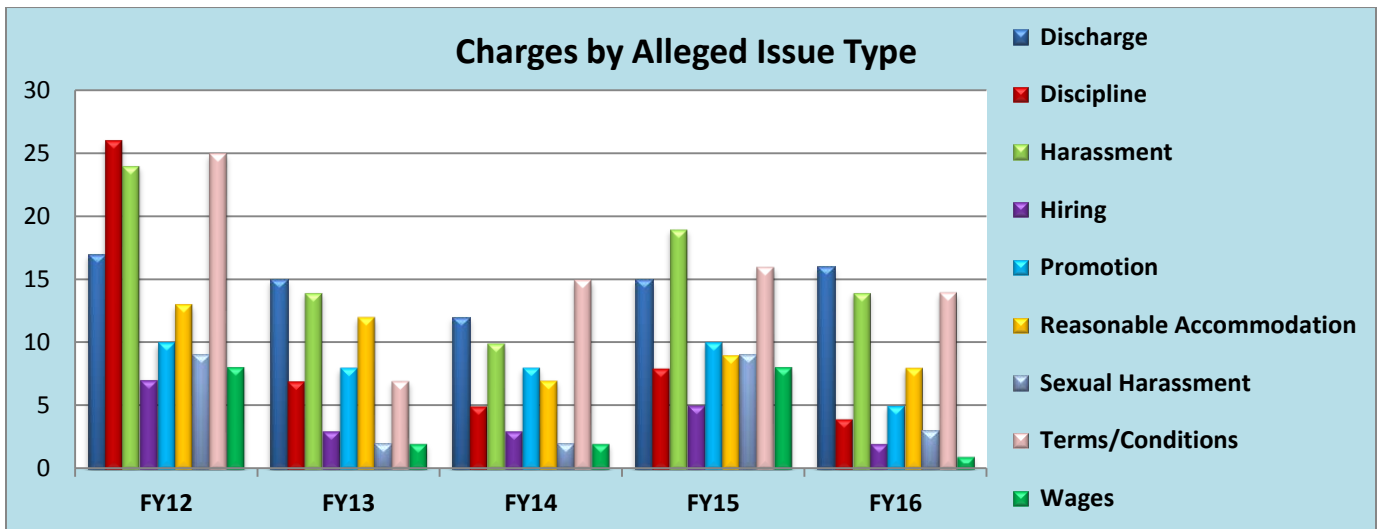
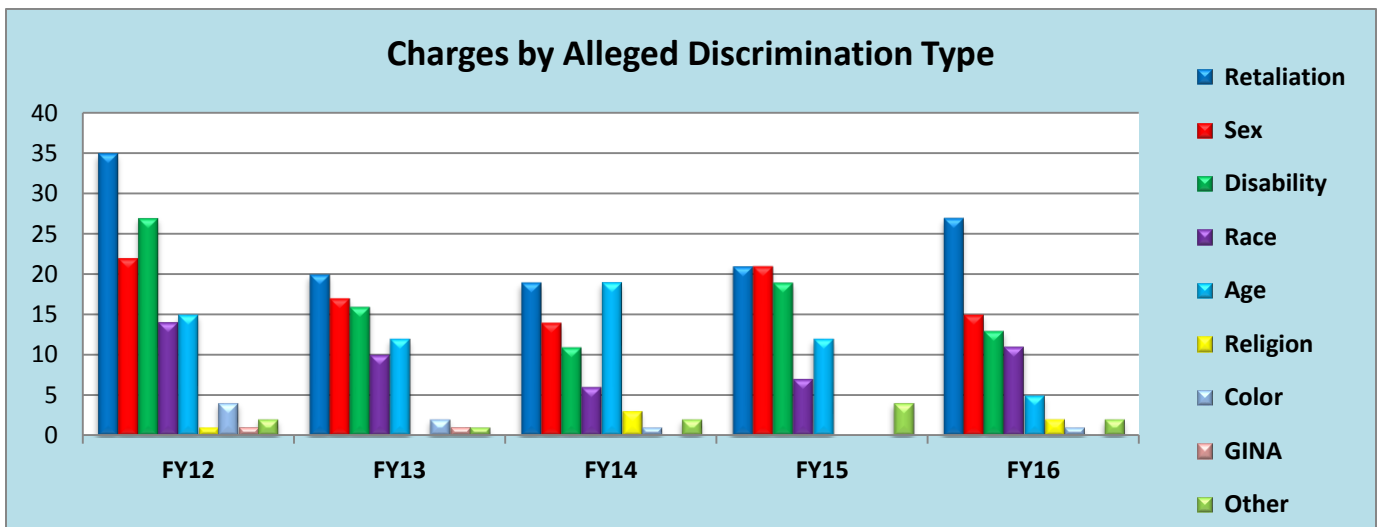
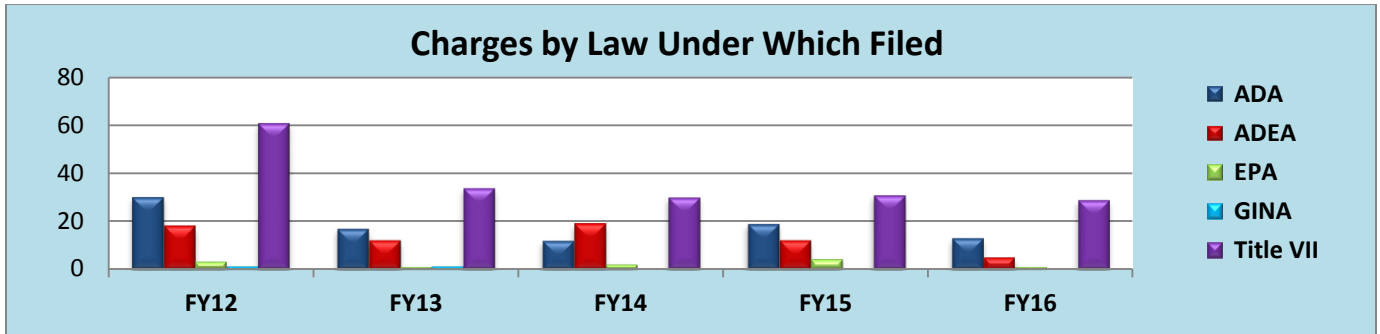
#### When an Agency Agreed to Mediation



Of the 8 mediations conducted, 3 settled/resolved the charge, 2 ended in impasse/no settlement, and 3 are pending/ongoing.

**APPENDIX C: FY16 EEOC MEDIATION STATISTICS (cont'd.)**

**5-YEAR COMPARATIVE ANALYSIS (FY12 – FY16)**



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



## APPENDIX D: FY16 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 **FY12 – FY16**):

- **461** employment-related civil rights claims
- Aggregate “total incurred” cost of approximately **\$23,810,914**
- Average “cost” of approximately **\$51,651** per claim

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

- FY14 Civil Rights Insurance Premiums: \$9.2 million  
(of \$58.9 million total insurance premiums billed to state agencies for all lines of coverage)
- FY15 Civil Rights Insurance Premiums: \$17.4 million  
(of \$81.7 million total insurance premiums billed to state agencies for all lines of coverage)
- FY16 Civil Rights Insurance Premiums: \$19.3 million  
(of \$82.5 million total insurance premiums billed to state agencies for all lines of coverage)
- FY17 Civil Rights Insurance Premiums: \$22 million  
(of \$82.5 million total insurance premiums billed to state agencies for all lines of coverage)
- FY18 Civil Rights Insurance Premiums: \$20.2 million \*  
(of \$77.8 million total insurance premiums billed to state agencies for all lines of coverage)

*\* FY18 premiums reduced by legislative action to \$17.2 million for Civil Rights Insurance Premium, and \$68 million total insurance premiums billed to state agencies for all lines of coverage.*


### 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 to RMD-insured entities*
- Other “external” service providers (EAP, community or private service provider, etc.); *generally, a fee-for-service arrangement*
- *Other? Training and staff education, outreach events, seminars, etc.*

2. ADR Cost-Benefit Value: In **FY16**, of **184** reported mediations, **97** resulted in resolution of the issues presented, with an estimated “cost avoidance” value of **\$5,010,147**.

## APPENDIX E: EXECUTIVE PROCLAMATION



STATE OF NEW MEXICO **EXECUTIVE OFFICE** SANTA FE, NEW MEXICO

# Proclamation

*WHEREAS*, ALTERNATIVE DISPUTE RESOLUTION (ADR) MEANS A PROCESS OTHER THAN LITIGATION TO RESOLVE DISPUTES AND ENCOMPASSES MEDIATION, ARBITRATION, FACILITATION, AND OTHER COLLABORATIVE DECISION-MAKING PROCESSES; AND

*WHEREAS*, THE STATE OF NEW MEXICO ENACTED THE GOVERNMENTAL DISPUTE RESOLUTION ACT IN 2007 AND ESTABLISHED THE STATE OFFICE OF ALTERNATIVE DISPUTE PREVENTION AND RESOLUTION AT THE RISK MANAGEMENT DIVISION OF THE GENERAL SERVICES DEPARTMENT TO PROMOTE ADR WITHIN STATE GOVERNMENT AS AN EFFICIENT MEANS TO PREVENT AND MITIGATE THE HIGH COST OF CONFLICT-RELATED LIABILITIES AND LOSSES FOR THE STATE; AND

*WHEREAS*, THE OFFICE IS ENTERING ITS TENTH YEAR OF SERVICE TO THE STATE AND REMAINS COMMITTED TO PROVIDING DISPUTE RESOLUTION SERVICES THAT SUPPORT FAIR, EQUITABLE, AND EARLY RESOLUTION OF MISUNDERSTANDINGS, CONFLICTS AND DISPUTES, WHILE ALSO REDUCING COSTS; AND

*WHEREAS*, ADR PROCESSES ALSO EMPOWER INDIVIDUALS, PROMOTE GREATER UNDERSTANDING AMONG PEOPLE, FAMILIES, COMMUNITIES, ORGANIZATIONS, AND BUSINESSES, STRENGTHEN RELATIONSHIPS, AND FOSTER PEACEFUL AND CREATIVE SOLUTIONS ACCEPTABLE TO THE NEEDS AND INTERESTS OF ALL PARTIES INVOLVED; AND

*WHEREAS*, THE OFFICE IS ALSO COMMITTED TO EDUCATING NEW MEXICANS ABOUT THE USE, COST, AND SUCCESS OF ADR PROGRAMS AND SERVICES THROUGH TRAINING, OUTREACH, AND EVENTS LIKE THIS ANNUAL ADR SYMPOSIUM; AND

*WHEREAS*, THIS SYMPOSIUM BRINGS TOGETHER CITIZENS AND REPRESENTATIVES FROM STATE GOVERNMENT, THE COURTS, UNIVERSITIES, SCHOOLS, COMMUNITIES, AND ORGANIZATIONS THROUGHOUT NEW MEXICO, ALL DEDICATED TO IMPROVED COMMUNICATION AND THE BENEFICIAL RESOLUTION OF DISPUTES; AND

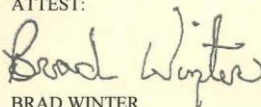
*WHEREAS*, THE MONTH OF OCTOBER IS GLOBALLY OBSERVED AS INTERNATIONAL CONFLICT RESOLUTION MONTH, AND IS ALSO AN APPROPRIATE TIME TO CELEBRATE THE GROWTH AND SUCCESS OF ALTERNATIVE DISPUTE RESOLUTION WITHIN OUR GREAT STATE OF NEW MEXICO;

**NOW, THEREFORE**, I, SUSANA MARTINEZ, GOVERNOR OF THE STATE OF NEW MEXICO, DO HEREBY PROCLAIM THE MONTH OF OCTOBER 2016 AS

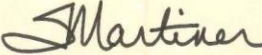
**“NEW MEXICO ALTERNATIVE DISPUTE  
RESOLUTION MONTH”**


THROUGHOUT THE STATE OF NEW MEXICO.

SIGNED AT THE EXECUTIVE OFFICE  
THIS 6<sup>TH</sup> DAY OF OCTOBER 2016.

ATTEST:  
  
BRAD WINTER  
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW MEXICO.

  
SUSANA MARTINEZ  
GOVERNOR





**OFFICE OF ALTERNATIVE DISPUTE  
PREVENTION AND RESOLUTION**

*" Encouraging communication through mutual respect."*

Visit our website at: <http://adr.gsd.state.nm.us>

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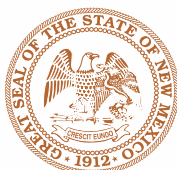
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**State of New Mexico**

General Services Department

*"THE HEART AND SOUL OF STATE GOVERNMENT"*

**GENERAL SERVICES DEPARTMENT  
RISK MANAGEMENT DIVISION**

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**EDWYNN (ED) BURCKLE, GSD Secretary  
LARA WHITE DAVIS, RMD Director**

