

NEW MEXICO  
ALTERNATIVE DISPUTE  
PREVENTION & RESOLUTION  
ADVISORY COUNCIL



FY2019 ANNUAL REPORT



### OUR MISSION

The 2007 New Mexico Governmental Dispute Prevention and Resolution Act requires that state agencies provide access to Alternative Dispute Resolution (ADR) options to prevent or resolve disputes early, thereby preventing expensive and complicated administrative processes or litigation. The Act established the state ADR Bureau within the General Services Department, Risk Management Division, to assist state-insured entities in conflict resolution processes and policy development to maintain and advance cost-reduction efforts throughout the state. The core mission and responsibilities of the ADR Bureau are established in the Act: 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 ADR Advisory 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.

In our work, the ADR Bureau is committed to:

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

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December 1, 2019

Honorable Governor Lujan Grisham, Legislators and Secretary Ortiz:

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 program coordinates services for state entities, provides assistance in identifying ADR resources and supports the development of improved administrative processes. This report presents highlights of our work in FY2019, and reflects the use, cost and success of ADR within state entities.

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, appearing to read "Mary Jo Lujan".

Mary Jo Lujan  
ADR Bureau Chief

## ABOUT THE ADR PROGRAM

The state ADR program is administered by the ADR Bureau of the Risk Management Division (RMD) of the General Services Department (GSD) and serves employees and managers of public entities statewide insured by RMD. The program's office is in Santa Fe and consists of a staff of three: a bureau chief, an outreach and training coordinator and a mediation coordinator. We offer services, resources and training to empower employees and managers to have honest conversations about how to improve our workplaces and relationships in support of the work of state government. We provide no-cost mediation by trained facilitators, who most often are also state employees. The process is voluntary, confidential and safe and is an alternative to traditional, adversarial processes. Mediation is a powerful tool that, when utilized early, can preserve and improve relationships, achieve greater understanding between people and lead to mutually satisfying solutions for moving forward; mediation may result in meaningful behavioral and organizational changes. Major organizational benefits include the return of employees to productive work, saved time and heartache and avoidance of insurance and litigation expenses for the state.

Our services focus primarily on mediation of relationship-based issues and situations arising from poor communication. Mediation is *not* a fact-finding, evidentiary or record-producing process; we do not mediate issues already in a formal process (e.g., employee grievances, charges filed at US Equal Employment Opportunity Commission, matters in litigation) or more appropriately addressed by management or other administrative process (discipline, compensation, union grievances). Mediators are not judges and do not recommend outcomes. Those requesting mediation contact us, usually through a designated ADR Coordinator. After intake and assessment, we assign mediators and schedule face-to-face sessions during worktime for an average of 3-4 hours. Sessions take place at nearby, neutral locations and additional sessions can be scheduled, if necessary. Any agreements are the parties' decision and may be oral or written.

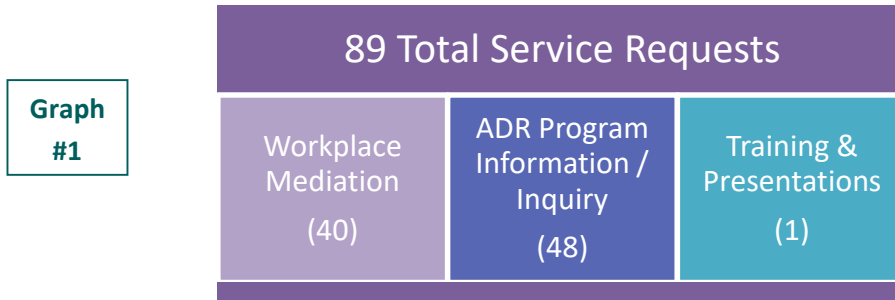
Our volunteer mediators come from diverse backgrounds and are primarily state employees certified through a professional training contract; we also work with mediators trained elsewhere (court/federal/community organizations, colleges/law schools and private practice). We utilize a co-mediation model (two mediators) which partners more experienced and proficient mediators with less experienced mediators to "mentor" them into the program. We also offer a variety of continuing education events for all program mediators, including skills-based practice sessions and an annual 2-day ADR conference. All of our training is provided at no cost to participants.

We also offer communication-based training to the workforce to build individual and collective ability to manage conflict and independently develop workable solutions at an early stage. We develop and conduct outreach initiatives to raise awareness of our program and services; outreach is critical in establishing mediation as a feasible, easily accessible and effective process for resolving workplace conflicts. Training and outreach events are scheduled throughout the year and in various locations.

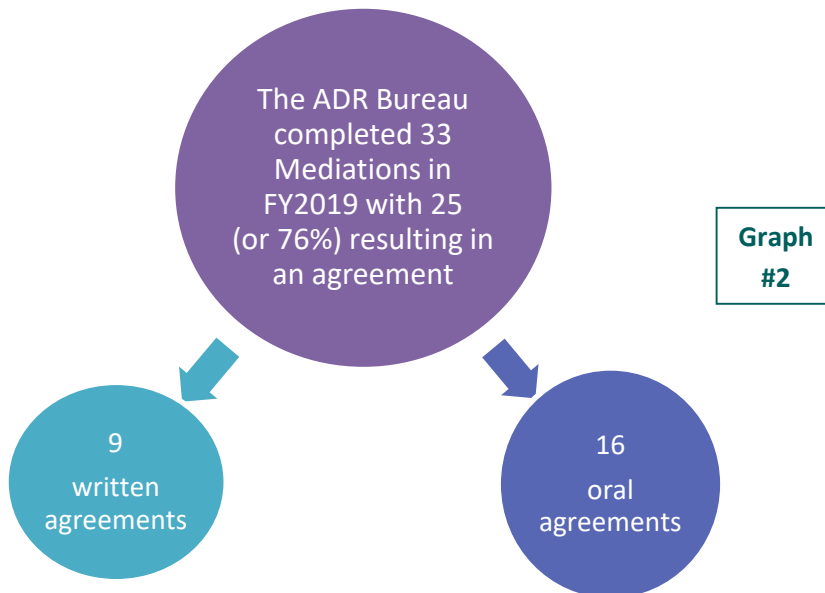
Program performance and operational effectiveness are tracked and evaluated via participants themselves. Post-mediation surveys and feedback are collected from mediators regarding the duration of sessions, appropriateness of locations and outcomes (written, oral or no agreement). We also survey mediation participants regarding fairness of process, whether workable options for resolution were developed and whether they would participate in mediation again. Results are reported only aggregately, as in this report.

## ADR SERVICES AND ACTIVITIES

**PROGRAM SERVICES:** In FY2019, the ADR Bureau received 89 service requests (a decrease of about 8% from 97 requests the previous year). The requests by type are reflected in **Graph #1**:



Completed mediation requests originated primarily from executive agencies, with the majority (70%) coming from Santa Fe and Albuquerque. This year, we were able to assist in several outlying cities such as Las Cruces, Farmington, Silver City, Roswell, Clovis, Las Vegas, Taos and Bernalillo. Of the 40 requested mediations, 7 requests did not occur because they were withdrawn or cancelled. **Graph #2** reflects the 33 requests completed, with 25 (or almost 76%) resulting in a written or oral resolution.

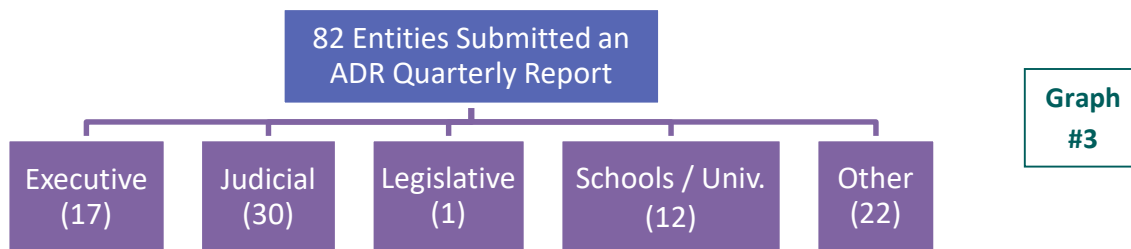


Participants’ post-mediation surveys are used to evaluate and improve the program. Of those surveys returned, 100% reported that the mediators were professional, impartial and treated them with respect; and 92% reported they were willing to participate in mediation again in the future. Survey responses also reveal areas for process improvement, e.g., reality-testing of agreements for more durable results.

Participants shared these benefits from their mediation experience:

- I think this is good that this service is available to have independent mediators outside of our agency to try to help resolve situations.
- The mediation was beneficial for me. I was able to “think out loud” in a safe and confidential environment. I was able to listen to the concerns of the other staff member and we could discuss the matter openly and professionally.
- Has been useful and brought about my awareness on how to approach some of the concerns with the individuals.
- I believe I gained a lot of insight into the issues and a better perspective of my role...
- Mediators were really supportive and guided us to speak to each other and be honest and have open communication. Mediation was good for our future success of our team.

**OTHER REPORTED ADR ACTIVITIES:** The program also collects data on ADR activity within state entities, self-reported on a quarterly basis by designated ADR Coordinators. These Coordinators are liaisons between their employees and the ADR Bureau and are responsible for promoting, coordinating, monitoring and reporting ADR. In FY2019, 82 participating entities submitted an ADR report (a decrease of almost 13% from 94 entities reporting the previous year). **Graph #3** reflects the total number of reporting entities from all branches of state government, schools/universities and local public bodies.

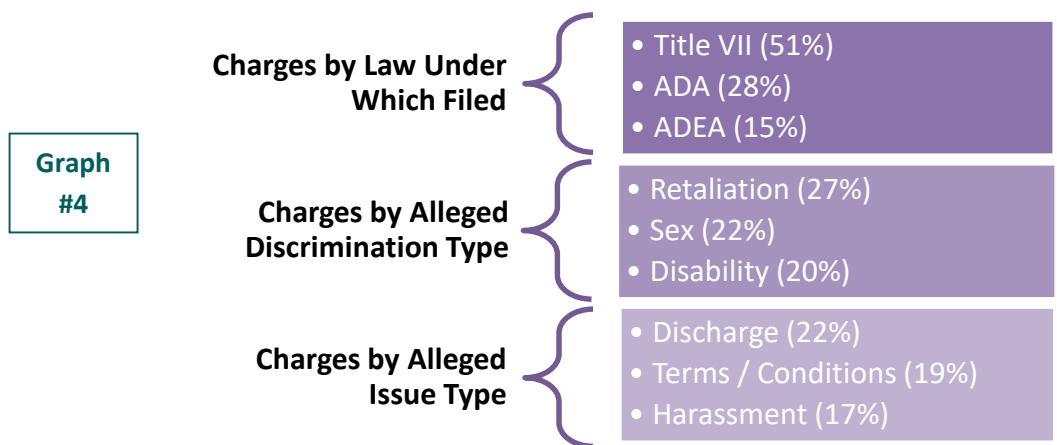


Participating entities reported a combined total of 1360 activities, an increase of almost 6% from the previous year (1286). In FY2019, participating entities reported 95 mediation requests; of those completed, 36 resulted in a written or oral resolution (33%). Continuing a six-year trend, 71% of the mediations were employee/supervisor relationships while 29% were co-worker relationships. Entities also reported other ADR processes such as arbitration, group facilitation and a significant number of other ADR activities (inquiries, outreach, meetings, etc.), 1265 in all (or 93%). Included in this 1265, entities reported a decrease in ADR or communication-based trainings (519 this year compared to 560 last year, a decrease of almost 8%).

The 2017 consolidation of all Executive Branch human resource (HR) functions to a centralized State Personnel Office continued to negatively impact the ADR Program; many ADR Coordinators (who also worked in HR) were reassigned to new positions and responsibilities that did not include ADR. Losing the connective tissue between our program and employees resulted in diminished awareness of the program’s services and benefits, fewer mediation requests and a decrease in the number of agencies reporting. Though the consolidation was reversed by Governor Lujan Grisham in 2019, the program will need to dedicate significant time and effort to identify and train new Coordinators and rebuild the program’s infrastructure.

**ADR AT US EEOC:** The ADR Bureau serves as a formal liaison between the state and the US Equal Employment Opportunity Commission’s (EEOC) mediation program. The mission of the U.S. EEOC is to stop and remedy unlawful employment discrimination in the workplace by enforcing federal laws that prohibit employment discrimination. Pursuant to a 2008 *Regional Universal Agreement to Mediate* with the state, U.S. EEOC refers all eligible charges of discrimination against RMD-insured state employers to its mediation program and provides notice to the ADR Bureau. Early notice and tracking of these charges is essential in facilitating the state’s mediation participation, preventing recurrence and mitigating loss.

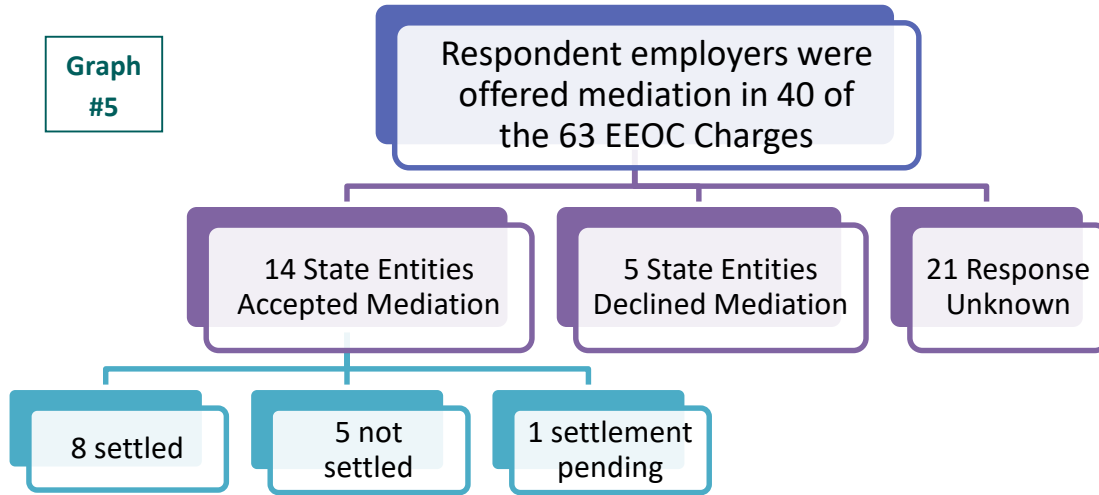
**Graph #4** reflects the characteristics of the 63 charges received in Federal FY2019 (Oct 1, 2018 – Sept 30, 2019), a decrease of 22% from 81 charges received in FY2018. This number represents only those charges received by the program, not all charges filed against state employers. A contributing factor to this decrease may have been the federal government shutdown between December 21, 2018 and January 25, 2019.



In FY2019, Disability (20%) has become the third most frequently filed *Charge by Alleged Discrimination Type* (replacing Age); Discharge (22%) has now become the most frequently filed *Charge by Alleged Issue Type*.



This year, the state saw a dramatic increase in the number of mediation opportunities offered by EEOC. Of the 63 charges received, 40 were offered mediation in FY2019, whereas merely 6 charges were offered mediation in FY2018 (due to EEOC placing a moratorium on mediation), a profound increase of 567%. **Graph #5** reflects the status of the 40 charges offered mediation in FY2019; in 14 charges, state agency employers accepted the invitation to mediate, with 8 mediations resulting in a settlement (57%). In 5 of the mediations, there was no settlement agreement and one charge has a settlement pending.



**TRAINING AND OUTREACH:** State volunteer mediators are the program’s service providers, a renewable resource made possible by professional training that produces and sustains ready and capable practitioners. New mediators contribute to program sustainability by bringing in unique talents and energy and by offsetting natural attrition. The ADR Bureau provides professional 40-hour mediation certification courses emphasizing a transformative and facilitative model; in return, graduates commit to serving the program and benefit from the ADR Bureau’s continuing education opportunities.

This year, we offered the certification course in Santa Fe and Albuquerque and recruited and trained 37 new mediators from throughout the state. Continuing education included sessions (often with guest presenters) on specific mediation strategies, skills practice and becoming a lead mediator. We also offered refresher courses, including one in the northwest Four-Corners area to sustain the development of our core group of mediators from the 2018 class, a program expansion into this historically underserved area.





Graduates of our April 2019 Mediation Certification course, conducted in Albuquerque (with instructor Cynthia Olson, front row center).

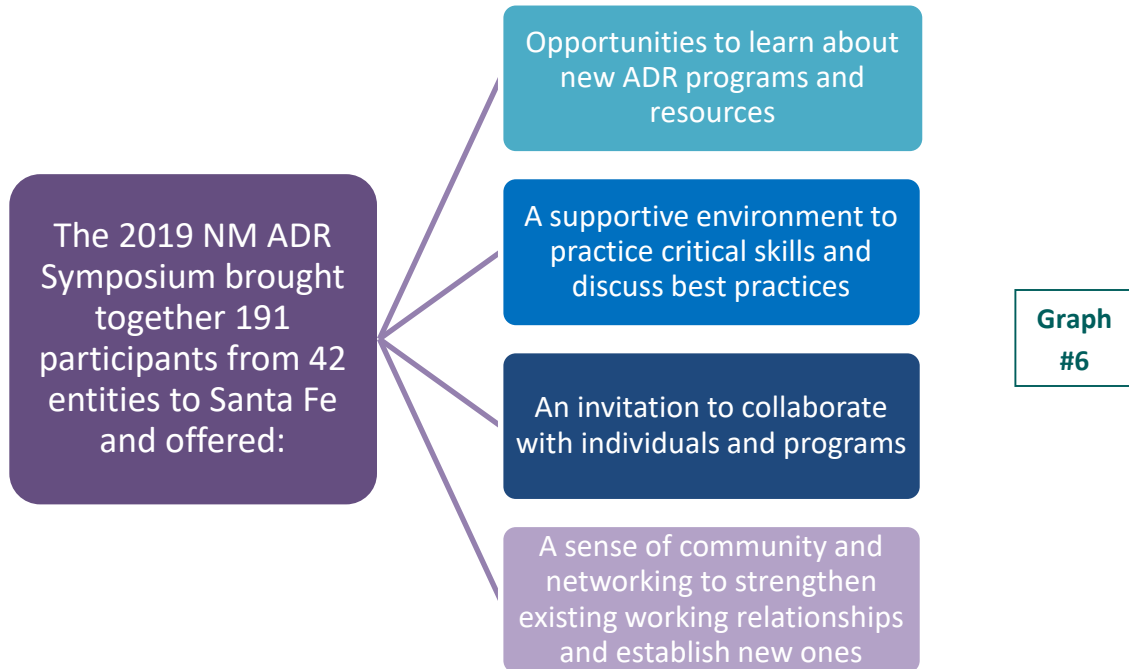
Training in communication-based practices and basic conflict management support the workforce’s capacity to effectively identify and take early opportunities to resolve issues at the lowest organizational level. Though classes are open to all state employees, the bureau focuses marketing to those entities with histories of high loss in employment-related civil rights claims for the greatest positive impact and return on investment. This year, the Bureau conducted 14 training events with 231 attendees.

The Bureau also scheduled numerous outreach events to connect directly with hundreds of state employees. This year, the Bureau participated in health fairs, presented program overviews, distributed quarterly newsletters, hosted meetings and coordinated roundtable discussions for RMD in Las Cruces and the northwest Four-Corners area. Bureau staff also actively participated in peer organizations, including the NM Supreme Court ADR Commission and the NM State Bar ADR Committee, to network and leverage resources statewide.

**NINTH ANNUAL ADR SYMPOSIUM:**

Each year, the ADR Bureau organizes and hosts the New Mexico ADR symposium, two days of workshops and presentations by colleagues and partnering organizations, offered at **no cost** to attendees. It is the only event of its kind in the state and is the ADR Bureau’s principal outreach event. This year’s event had 191 attendees and was held at the beautiful campus of the Santa Fe Community College for the fourth time.

**Graph #6** illustrates the benefits provided by this annual event.



This year’s Symposium opened with a plenary session followed by 12 workshops, including a unique track dedicated to court-connected ADR programs, “Building a Court Civil ADR Program,” coordinated by the Administrative Office of the Courts and the Supreme Court Statewide ADR Commission. Day 2 offered 12 more workshops and an ADR Resource Room featuring program representatives. The Symposium closed with a roundtable discussion on “The Stories We Learn From” and awards presented by the Supreme Court Statewide ADR Commission for service to the state of New Mexico.



2019 NM ADR Symposium presenter Mark Bennett leads discussion in “Come Together, Learn Together, Stick Together: How Mediators Can Build Healthy Organizations (and Communities).”

NM Supreme Court Statewide ADR Commissioners with award recipients Susan Barnes-Anderson and Judge Jeff Foster McElroy at closing session of the 2019 NM ADR Symposium.



## FINANCIAL AND OTHER BENEFICIAL IMPACTS

For the 5-year period FY2015-FY2019, the State of New Mexico experienced 498 employment-related civil rights claims with an estimated incurred cost of over \$20 million and an average cost of over \$40 thousand per claim. This loss history is the basis for the annual civil rights premium assessed to state entities (over \$17 million in FY2019). In FY2019, state entities and the Bureau worked together to achieve 69 mediated resolutions, with a **cost-avoidance value of almost \$2.8 million dollars**. Greater cost savings could be achieved by the state with increased awareness of the ADR Bureau's services and if state entities were more engaged in the program and EEOC's mediation process.

## FY2020 GOALS

- ✓ Conduct outreach to all four geographic quadrants of the state to increase requests for services
- ✓ Collaborate directly with our state entities to designate new ADR Coordinators; provide training and administrative support
- ✓ Develop new resources to expand service availability to all parts of the state

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*“The secret of change is to focus all of your energy  
not on fighting the old, but on building the new.”*

*~ Socrates*



**OFFICE OF ALTERNATIVE DISPUTE  
PREVENTION AND RESOLUTION**

*"Encouraging communication through mutual respect."*

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

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