



**US Army Corps  
of Engineers<sup>®</sup>**

## **Case Study #14**

ALTERNATIVE DISPUTE  
RESOLUTION SERIES



**A Case Study in Dispute Resolution  
System Design: The Corps of Engineers  
Early Resolution Program (CEERP) for  
Allegations of Discrimination**

May 1997

IWR Case Study 97-ADR-CS-14

***The Corps Commitment to Alternative Dispute Resolution (ADR):***

*This case study is one in a series of reports describing techniques for Alternative Dispute Resolution (ADR). The series is part of a Corps program to encourage its managers to develop and utilize new ways of resolving disputes. ADR techniques may be used to prevent disputes, resolve them at earlier stages, or settle them prior to formal litigation. ADR is a new field, and additional techniques are being developed all the time. This case study is a means of providing Corps managers with information on how to apply ADR to the Corps. It also suggests a framework for managerial decision-making regarding disputes. The information in this report is designed to stimulate thinking and encourage innovation by Corps managers in the use of ADR techniques.*

*These case studies are produced under the proponency of the U.S. Army Corps of Engineers, Office of Chief Counsel, Lester Edelman, Chief Counsel; and the guidance of the U.S. Army Corps of Engineers Institute for Water Resources (IWR), Alexandria, VA, Dr. Jerome Delli Priscoli, Program Manager.*

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***A Case Study in Dispute Resolution System Design:  
The Corps of Engineers Early Resolution Program  
(CEERP) for Allegations of Discrimination***

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Alternative Dispute Resolution Series  
Case Study #14

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May 1997

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**A Case Study in Dispute Resolution System Design:**

**THE CORPS OF ENGINEERS EARLY RESOLUTION PROGRAM (CEERP)  
FOR ALLEGATIONS OF DISCRIMINATION**

**INTRODUCTION**

The U.S. Army Corps of Engineers (Corps), like many federal agencies, receives several hundred informal discrimination complaints a year. Of these informal complaints, 10-13 per month would normally become formal complaints requiring administrative processing under Equal Employment Opportunity Commission (EEOC) regulations.

The procedure for processing these complaints is time consuming, labor intensive, and very costly. Average time for the full administrative process is from 1 to 3 years, and in some instances can take from 4 to 7 years. Costs for individual complaints can go as high as \$60,000 if the complaint ends up going through the full administrative and judicial process. The number of agency personnel required to administer the process and to support the agency's position and the time dedicated to these efforts strains an organization with limited resources. Finally, while litigation results in a decision, it does not fix workplace problems nor improve management-employee relationships.

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“I found the development of CEERP to be an exciting and rewarding experience because we were able to supplement the traditional adversarial discrimination complaint process with nonconfrontational ADR techniques.”

--Anita Gomez-Bennett, Chief of U.S. Army  
Corps of Engineers EEO Office

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In 1992, the Corps decided it needed to take a fresh approach for complaint procedures. A decision was made to focus on early resolution of allegations of discrimination by using Alternative Dispute Resolution (ADR) techniques. The term “alternative dispute resolution” describes its origins. ADR is an effort to find alternative means to resolve problems by means other than adversarial processes such as litigation. The goal of ADR is to reach mutually acceptable agreements. ADR uses a spectrum of techniques -- such as facilitation, mediation, and arbitration -- to achieve these agreements. Many of these techniques involve the use of a trained third party who is neutral on the issues in dispute. This third-party neutral may advise solely on how the parties work together to resolve the issue (process), or may recommend options for resolution (content).

*A Case Study in Dispute Resolution System Design:  
The Corps of Engineers Early Resolution Program (CEERP) for Allegations of Discrimination*

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The Corps has used Alternative Dispute Resolution (ADR) techniques since 1985 to resolve contractual disputes related to its world-wide construction and environmental cleanup activities. More recently the Corps has been utilizing a technique known as Partnering, which is a preventative approach to dispute resolution. These activities are part of the Corps ADR Program, sponsored by the Chief Counsel of the Corps, Lester Edelman. The ADR program has been administered by the Corps' Institute for Water Resources, with Dr. Jerome Delli Priscoli serving as Program Manager. The entire team that set up the Corps' ADR/Partnering Program was recently awarded the Hammer Award by the Secretary of Defense, as an outstanding example of reinventing government.

In July 1992 the Corps, at the request of Ms. Anita Gomez-Bennett, the Corps Chief of Equal Employment Opportunity, established an Alternative Dispute Resolution Joint Task Force on Equal Employment Opportunity. The task force's job was to identify how ADR techniques could be applied to the traditional administrative process. Over the next four years the task force used a systems design process to develop the new program -- called the Corps of Engineers Early Resolution Program (CEERP) -- and conducted two phases of pilot testing. In December 1996 the task force recommended the adoption of CEERP on a permanent basis, and submitted it for approval by the Chief of Engineers and Secretary of the Army. The program was approved by the Department of the Army on December 18, 1996.

The CEERP project has been remarkably successful in resolving problems early and at the local level. This success has generated considerable interest on the part of other agencies, both within the Department of the Army, the Department of Defense, and in other federal departments and agencies.

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"CEERP is an idea whose time has come. It works."

--Harold C. Eaton, EEO Officer

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This report describes how CEERP was designed, how CEERP works, and how it was evaluated. It is intended to provide a one-stop description of the program for other agencies, as well as inform people throughout the Corps about the CEERP story.

Section 1 describes how CEERP was designed. Section 2 provides a detailed description of how CEERP works. Section 3 presents the resolution rates during the two-year pilot test. Section 4 is a summary of two sets of interviews with field and headquarters personnel who participated in the CEERP pilot testing. Section 5 is a summary of lessons learned during the pilot testing.

## **SECTION 1: DESIGNING THE CORPS OF ENGINEERS EARLY RESOLUTION PROGRAM (CEERP)**

### **THE DECISION TO USE ADR**

The Corps' decision to try a new approach was prodded by several considerations:

- (1) There were problems with the existing discrimination complaint process -- it was time-consuming and expensive, and when the process was over it often didn't resolve underlying workplace problems or improve management-employee relationships.
- 2) The Corps was experiencing a significant rise in the number of informal discrimination allegations and formal EEO complaints.
- 3) The Corps knew ADR worked because of its successful use in other functional areas.
- 4) The EEOC made changes in its regulations which encouraged the use of ADR by providing 60 more days for informal resolution when ADR is used.

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“Personnelists need to be part of the ADR design team because so many EEO complaints concern personnel actions.”

--Dan Carpenter, HR Specialist

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### **SETTING UP THE TASK FORCE**

The first step was the establishment of a task force called the Corps of Engineers' Alternative Dispute Resolution Joint Task Force on Equal Employment Opportunity. The task force was normally referred to as “the EEO-ADR Task Force.” The EEO-ADR Task Force was made up of EEO officers and specialists, Human Resources personnel, and Labor Counselors from all levels of the Corps (Districts, Divisions, Headquarters). The Chair of the task force was Frank Carr, the Corps' Chief Trial Attorney and Dispute Resolution Specialist, who was also active in setting up the Corp's ADR Program in his role as Chief Trial Attorney for the Corps. Jean Riggs, the EEO Office's Complaints

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“The use of a systems design approach in the development of CEERP resulted in a product that maintains the integrity of the EEOC discrimination complaint process while offering employees and managers new tools to resolve and rebuild relationships.”

--James A. Huffman, EEO Complaints Manager

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Program Manager, and Linda Beckles, Chief Labor Counselor, served as task force coordinators at Corps headquarters.

## **THE SYSTEMS DESIGN APPROACH**

The System Design Approach follows a careful deliberative process for establishing an ADR program. The basic steps in this process are:<sup>1</sup>

### ***Perform a Needs Analysis***

The needs analysis focuses on an organization's real concerns. As part of this analysis the organization identifies: (1) *interests*, what the organization wants to accomplish by using ADR, (2) *principles*, standards to follow in pursuing the interests, and (3) *sources of conflict*, the substantive, procedural, and interpersonal problem sources, and the attitudinal or institutional barriers to resolution.

### ***Design a System***

Designing a system consists of (1) selecting the ADR method(s), (2) creating procedures, and (3) preparing informational materials and (4) and considering budget constraints. Program designers need to carefully describe the method and procedures. ADR terminology is sometimes used by organizations to describe very different things, so a detailed description is needed to prevent any confusion. Program designers also develop publications describing the program, and

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<sup>1</sup> This description of ADR systems design is taken from Frank Carr, *How to Design a Dispute Resolution Program*, Commentary, Vol. 12, No. 3, March 1994 and Frank Carr, *Alternative Dispute Resolution: A Deliberative Process to Establish an Organizational Program*, Federal Bar News and Journal, Volume 40, No. 7, August 1993.

awareness training materials that will be used during pilot testing. Finally, designers identify a budget for the pilot testing including training, personnel time, and cost of external third parties (such as external mediators).

### ***Conduct Pilot Testing***

The purpose of pilot testing is to observe the designed system under actual conditions before totally committing the organization to the ADR program. It also gives a chance to test methods and implementation approaches. Initial steps include:

- Set a completion date for the testing program
- Define precisely the procedures that will be used during the pilot
- Select the sites at which these procedures will be tested
- Secure local management support for ADR and the test program
- Conduct both awareness training and skills training for individuals involved in program implementation
- Provide technical assistance to people implementing the pilot program

### ***Evaluate the System***

Collect and evaluate information from the pilot test sites to determine whether the ADR method and procedures are effective. Specific steps include:

- Identify the factors that affect the organization's perception of success
- Define measurable goals
- Identify the measurable indicators that goals are being met
- Collect the information
- Analyze the information and identify any changes that are needed

### ***Implement the Program***

Assuming the pilot has shown that the ADR approach can be effective, implement the program incorporating the needed changes identified during the pilot test. Implementation requires obtaining senior management support, providing incentives for using the program, and continued support, review, and reinforcement.

## **HOW THE CORPS USED THE SYSTEM DESIGN APPROACH**

The Corps used the system design process described above to develop the CEERP. Here is a summary of the Corps' experience:

### **CONDUCTING A NEEDS ANALYSIS AND DESIGNING THE SYSTEM**

During mid-1992 the EEO-ADR Task Force worked together in a series of workshops to analyze the existing complaint program, identify the obstacles to dispute resolution, define interests and principles for a new program, and select an ADR method. Because the task force had representatives from all levels of the organization, task force members were able to provide insights about organizational needs at each level of the Corps. The task force also reviewed the use of ADR by other federal departments and agencies to resolve discrimination complaints.

The task force considered a number of possible ADR techniques including conciliation, mediation, facilitation, peer review, disputes review panels, settlement conferences, and non-binding arbitration. After considerable research and deliberation, the task force decided to use mediation as the ADR technique most suitable for resolution of EEO complaints, and developed a procedure for offering mediation as an option to the standard administrative procedure during the pre-complaint process. The task force concluded that the new mediation option should be tested at one district in each Division of the Corps.

The task force also developed informational materials describing the procedure, prepared awareness training lesson plans, and scheduled training of Corps personnel who would serve as mediators. It also developed forms to collect the information needed for program evaluation.

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**"This system of alternate dispute resolution can and has allowed both parties to return to the business at hand without the acrimony normally associated with the adversarial process."**

**--Omar M. Zen, Labor Counselor**

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## **CONDUCTING PILOT TESTING**

The Corps issued an Engineer Circular (regulations) describing the steps to follow during the pilot program. The pilot test was the first approved use of ADR procedures to resolve EEO complaints in the Department of the Army.

The Corps concluded that, as a matter of both convenience and cost, mediators would need to be Corps employees rather than external professional mediators. The task force members and EEO Officers and specialists from each district attended a 40-hour mediation skills training course that included extensive role-playing of cases similar to those participants might be expected to mediate. The mediation training was conducted by private professional mediators under the Corps ADR Program contract.

To support CEERP, the task force developed lesson plans and slides for awareness training that would be given to managers, union officials, and employees to explain CEERP. It also issued "TIP" papers on how to implement the program.

## **EVALUATING THE PILOT PROGRAM**

At the end of the first year, the results from the pilot program were positive, but the number of mediated cases was so small that it was hard to make strong statistical claims. So the decision was made to expand the program to cover the entire organization and conduct a second phase of pilot testing.

Based on the first year's experience, however, one change was made in the program. EEO Officers who served as mediators discovered that by using the skills they had learned in mediation training, they were often successful at resolving pre-complaints when a problem first surfaced. Based on this experience, the Corps decided to authorize a front-end 3-day period during which the EEO Officer has an opportunity to intervene and attempt to resolve a problem informally before an EEO Counselor is assigned. This process is called "conciliation." At the end of the three days, if the problem has not been resolved, the EEO Officer refers the person to the normal EEO pre-complaint counseling, a process that must be completed within 30 days. After counseling is completed, but during that 30 day period, the person making the allegation may be offered the opportunity for mediation. When mediation is accepted, it must be completed within 60 days. If an issue remains unresolved, and the aggrieved person wishes

