

**North Carolina Office of State Personnel  
Mediation & Grievance Programs Cost/Benefit Analysis**

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**Background: Employee Mediation and Grievance Policy Overview**  
**by Sharon Howard, Mediation Services Director**  
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**Program Overview**

In 2005 the North Carolina Office of State Personnel (OSP) implemented a statewide Employee Mediation and Grievance policy. This process allowed state agencies to adopt a grievance policy that provided mediation as the first step. With the inclusion of mediation in the grievance process, the OSP sought to promote the resolution of workplace grievances more efficiently and effectively while containing costs and providing employees a less adversarial method for resolving grievances.

**Step 1: Mediation**

When employment disputes arise in State agencies, supervisors and employees are encouraged to communicate directly with each other in the spirit of cooperation and compromise. If this communication does not resolve the conflict, mediation is the first step of the two-step internal grievance process. An employee must file a grievance within 15 calendar days of the incident triggering the grievance or the employee's unsuccessful attempt to resolve the issue. Upon a request from an agency, OSP is responsible for assigning a mediator in a timely manner to insure that mediation can be concluded within 45 calendar days of the time the grievance is filed.

The grievant and a designated agency respondent, with the authority to reach an agreement on behalf of the agency, attend the mediation. Other representatives of either the employee or the agency, including attorneys, are not permitted to attend the mediation; however, either party may request a brief recess during mediation to obtain legal or other advice.

At the end of the mediation, the mediator prepares either a written mediation agreement or a statement of impasse that is signed by both parties. The mediation agreement is legally binding and is maintained as a public record for at least three years. A mediation agreement may not include any provision that is contrary to OSP policies or rules or State or Federal law. If a mediation agreement requires a personnel transaction to be processed, the approval of the State Personnel Director is required, except where a resignation is substituted for a dismissal. If a mediation agreement involves an exception to any State Personnel Commission policy, the approval of the State Personnel Director is required.

## **Step 2: Hearing Officer/Hearing Panel**

If mediation does not result in an agreement by the employee and the agency and thus reaches an impasse, the employee is entitled to proceed to Step 2 of the internal grievance process. The agency will notify the employee within 10 calendar days of the unsuccessful mediation of the employee's option to present the grievance orally to a reviewer or reviewers outside the employee's chain of command, (e.g., Hearing Officer or Panel). Once the grievance has been presented to a Hearing Officer or Panel, a recommended decision will be provided to the Agency Head. The Agency Head will render a Final Agency Decision (FAD).

## **Step 3: Office of Administrative Hearings**

Contested case issues, which are defined in the State Personnel Act as appealable, allow the grievant to appeal the FAD to the Office of Administrative Hearings. An Administrative Law Judge [ALJ] hears the appeal taking sworn testimony and other evidence and makes findings of facts and conclusions of law.

For cases filed prior to January 1, 2012, the ALJ sends a recommended decision to the State Personnel Commission. The Commission reviews the record, findings of fact and conclusions of law. The Commission then makes a final decision which may be appealed via a petition for judicial review to the Superior Court Division of the General Court of Justice.

For cases filed after January 1, 2012, the ALJ creates a record in the same manner, but now renders a final decision which may be appealed via a petition for judicial review to the Superior Court division of the General Court of Justice.

## **Volunteer Mediation Panel**

The OSP maintains a panel of qualified mediators to mediate grievances for participating state agencies and universities. OSP periodically sponsors a 40-hour Employment Mediation training opportunity, conducted by Carolina Dispute Settlement Services, for state employees interested in becoming a mediator. Interested employees are vetted to determine their candidacy to serve as a mediator. A candidate must successfully complete a 40-hour employment mediation training course and serve as an apprentice (co-mediator) for a minimum of four mediations under the guidance of an experienced senior mediator. The use of the co-mediation model provides training opportunities for mediation apprentices to gain needed experience. The OSP mediation panel is further augmented by qualified non-state employee mediators who volunteer to serve. All mediators must adhere to OSP's adopted Mediator Code of Conduct. All mediators serve as volunteers; therefore, no compensation is provided for conducting mediations. Mediators do

receive reimbursement for their travel at the State's approved mileage rate from the agency requesting the mediation.

### **Summary of Experience**

Overall, the inclusion of mediation in the grievance process has met with success. In some cases, although the mediation resulted in impasse, tangible and intangible benefits nevertheless were realized from an open discussion of the dispute. In many of those cases, the grievant decided not to proceed to the next step of the process, thereby reducing the overall cost of the grievance process. It seems likely that the parties in such cases agreed to disagree and that the grievant decided further action would not be productive.

The State's overall experience with incorporating mediation into the grievance process and having trained numerous employees to mediate, has allowed the trained mediators to utilize their conflict resolution skills in other areas of the workplace. It is the State's goal to create a culture that fosters and encourages employees to negotiate problematic issues before they become a disruption that affects the performance of the organization or before the issues escalate into a formal grievance.

OSP sought to have an independent and neutral study conducted to substantiate the benefits of the mediation initiative in NC state government. OSP engaged NC State University to conduct a cost/benefit analysis by comparing two state agencies of similar size, the Department of Health and Human Services (DHHS) and the former Department of Correction (DOC). DHHS utilizes the Employee Appeals and Grievance policy and the Department of Correction utilizes the Employee Mediation and Grievance Process. This study evaluated the grievance processes of both agencies for calendar years 2008 through 2010 and has provided insightful recommendations based on the findings.

## **Mediation and Grievance Program Cost/Benefit Analysis**

Grievance and discipline processes fulfill an important organizational maintenance function. By assuring employees of organizational justice and serving as an internal control on aberrant administrative behavior, employee and managerial effort can be focused on more direct, productive task functions. At the time of this study (performed in 2011-2012), North Carolina State agencies could choose to adopt either the Employee Mediation and Grievance policy or the Employee Appeals and Grievance policy to resolve employment-related grievances. As described above, the Employee Mediation and Grievance policy consists of a two-step process involving an internal agency mediation process followed by a hearing panel within the agency. The Employee Appeals and Grievance policy is a three-step process involving an informal meeting between the employee and direct supervisor, a meeting with a division/facility/school director, and a hearing with a panel or officer. During the time period covered in this study, grievants could appeal the final agency decision (FAD) to the Office of Administrative Hearings (OAH) where an Administrative Law Judge would issue a recommended Decision and Order and the State Personnel Commission would issue a Final Decision and Order. As of January 1, 2012 Senate Bill 781 changed this process and removed the State Personnel Commission, such that the OAH Administrative Law Judge now issues the Final Decision and Order (NC State Personnel Manual, 2012, p. 39). In April 2011, the Office of State Personnel began a collaborative project with faculty in the Departments of Communication and Public Administration at NC State University to determine the cost effectiveness of the mediation program.

Mediation has been shown to save costs by resolving conflict at lowest and least costly levels thereby allowing employees and their supervisors to devote their time to the organization's mission (Bingham & Novac, 2001; Ury, Brett, and Goldberg, 1988). Mediation also has the ability to impact the long-term organizational climate, leading to improved employee relationships and increased levels of satisfaction and organizational commitment (Bingham, Hallberlin, Walker, & Chung, 2009; Morrow & McElroy, 2007). In calculating mediation's effectiveness, this study takes into account the cost of mediation itself as well as the savings provided through prevention of more formal and costly grievance processes including the panel

hearing or appeal to the Office of Administrative Hearings (OAH) and the State Personnel Commission.

## **Method**

### **Data Sample & Sources**

Two state agencies were chosen as the sample for the study, the former Department of Correction (DOC)<sup>1</sup>, and the Department of Health and Human Services (DHHS). These agencies were selected as they were the two largest State agencies at the time. DOC (19,704 employees in 2010) chose to adopt the Employee Mediation and Grievance Process while DHHS (16,793 employees in 2010) continued to use the Employee Appeals and Grievance Process. Several forms of data were used to compile this report, including meetings with human resource directors at each agency, analysis of mediation surveys completed by grievants and respondents in DOC, the mediation activity database of the Office of State Personnel, analysis of cases entered in BEACON 2008-2010, Employee Relations Committee reports from DOC, Annual Human Resources reports from DHHS from 2008-2010, and OAH/SPC case reports from FY2007-2008 through FY 2010-2011. Note that only cases mediated or filed during calendar years 2008-2010 were included in this report. For the purpose of cost estimates, the average hourly salary for all employees who participated in the grievance process of these two agencies in 2008 was calculated. Because there have been no salary increases in State government since 2008, we used this figure, \$24.95, in all cost estimates where employee time was calculated.

### **Types of Grievances**

During the time of this study, DOC included only three types of disciplinary grievances in the Employee Mediation and Grievance Process: dismissals, demotions, and written warnings. In order to make obvious policy comparisons, only these three types of grievances were examined in this analysis.

## **Results**

This section includes a breakdown and cost analysis of the DOC mediation data for 2008-2010 as well as results of all mediation evaluation surveys collected (2006-present). This is followed by presentation of the grievance data and cost analyses for DHHS from 2008-2010. No

parallel information on participant satisfaction with the DHHS process is available.

### **Department of Correction: Employee Mediation and Grievance Process**

According to the DOC, a fixed cost of the program is a full-time grievance intake coordinator at an annual salary of \$39,665. The coordinator receives the written grievance and coordinates with OSP Mediation Services to identify mediators to conduct the mediation. The mediation process itself, or Step One, involves the grievant, respondent, and two mediators for four hours (16 staff-hours). Some travel is also expected, and was averaged at 1 hour round-trip per participant, for an additional 4 hours. The estimated cost of mediation was calculated as 20 hours x \$24.95, or \$499 per mediation<sup>2</sup>.

Step Two of the Employee Mediation and Grievance Policy is the panel hearing. During the 2008-2010 time period DOC used a 5-member hearing panel, which resulted in 8 participants per hearing (grievant, respondent, Panel Chair, and 5 panelists). Each hearing is limited to 3 hours, multiplied by 8 participants equals *24 hours*. Following each hearing is a one-hour panel discussion for an additional *6 hours*, and the Chair's writing of the report which may take *12 hours*. Travel time is also incurred as panelists travel to Raleigh for hearings. Analysis of travel times indicated an average one-way time of 90.06 minutes and an average round-trip of 180.11, resulting in an average travel of 3 hours per person, or an additional *24 hours*. The total hours for Step Two therefore equals 66 hours x \$24.95 = \$1,646.70.

Next we determined the cost savings realized by including mediation in the two-step mediation and grievance process. To calculate this we assume that all grievances that go to Step Two have been through the 20 hours associated with Step One (mediation). Using what is referred to by academics as dynamic modeling, by practitioners as stock-and-flow models, and by the rest of us as high school algebra, we can create a break-even or equilibrium formula for this process:

$$M + pH = G$$

All cases going through mediation (M) plus the proportion that continue on to Step Two (pH) is equal to all grievances (G). Introducing our staff-hour estimates into this equation results

in  $20 + p66 = 66$  or that  $p = .70$ . As long as 70% percent or less of cases are resolved or not carried forward by the grievant, the introduction of the mediation process will save staff-hours. Based on the analysis of cases illustrated in Tables 1 and 2, 59% of cases either do not proceed past intake, are resolved in mediation, or are not carried forward beyond mediation. The actual figure for  $p$  is therefore .41. Hence, the combined mediation grievance process uses 47 staff hours compared with the 66 staff-hours used in a grievance alone process. Without harming the overall grievance process, the addition of mediation saves 19 staff-hours per case. This represents time that individuals can use on work that is more productive. Of course, time is money. Therefore, we can also monetize these savings. Based on the average hourly rate of \$24.95 for those who participated in the DOC grievance process, with each case saving 24 hours, each case resolved at Step One saves \$474.05.

<b>Table 1: DOC Mediated Cases (2008 - 2010). Dismissals, Demotions, &amp; Written Warnings only.</b>		
<b>Outcome</b>	<b>N</b>	<b>%</b>
Cancelled	25	6.2
No Show	29	7.2
Postponed	4	1.0
Impasse	228	56.6
Resolved	117	29.0
Total	403	100.0
Note: Percentages due to rounding.		
<i>Source: Office of State Personnel, Mediation Database, July 2012.</i>		

<b>Table 2: DOC Dismissals, Demotions, and Written Warnings; Steps After Mediation.</b>		
<b>Outcome</b>	<b>N</b>	<b>% of Total Cases*</b>
Dropped	238	59%
Appeal to Step 2	165	41%
Total	403	100%
<i>*Note: 10 cases were appealed to OAH; 2.5% of all cases</i>		
<i>Source: Office of State Personnel, Mediation Database, July 2012.</i>		

## Department of Correction Cases

The data in Tables 3 and 4 illustrate that dismissals are the most common of the three types of grievances included in the Employee Mediation and Grievance program, followed by written warnings and demotions. Table 4 indicates that written warnings are the types of cases most likely to be resolved in mediation at 41% as compared to 29% of demotions and 21% of dismissals. In any case, however, the existence of the mediation option has the potential to lead to resolution at the earliest possible stage of the process, which has time and monetary efficiencies as well as increasing satisfaction and long-term effectiveness of the process, as revealed by the participant mediation evaluation surveys, summarized in the next section.

<b>Mediation Type</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>TOTAL</b>
Dismissals	40	67	107	<b>214</b>
Demotions	12	11	12	<b>35</b>
Written Warnings	39	56	59	<b>154</b>
<b>TOTAL</b>	<b>91</b>	<b>134</b>	<b>178</b>	<b>403</b>

*Source: North Carolina Department of Public Safety; OSP Mediation Activity Database; Summary of State Personnel Commission Cases FY 2007-08 through FY 2009-10.*

	<b>Step 1 Mediation</b>	<b>Resolved in Mediation</b>	<b>Impasse</b>	<b>Cancelled/ no show/ postponed</b>	<b>Step 2 Hearing</b>	<b>OAH</b>	<b>Cases that did not go beyond Step 1</b>
Dismissals	214	44	141	29	105	10	109
Demotions	35	10	23	2	21	0	14
Written Warnings	154	63	64	27	39	0	115
<b>TOTAL</b>	<b>403</b>	<b>117</b>	<b>228</b>	<b>58</b>	<b>165</b>	<b>10</b>	<b>238</b>

*Source: North Carolina Department of Public Safety; OSP Mediation Activity Database; Summary of State Personnel Commission Cases FY 2007-08 through FY2009-10.*

At the Department of Correction, 403 grievances based on dismissals, demotions, or written warnings were filed between 2008 and 2010. Of the 403 grievances filed, almost one-third of the cases (29%) were resolved as a result of mediation. Slightly more than half of the cases ended at impasse (57%). Of the dismissals, demotions, or written warnings that ended at impasse (n=228), 72% of employees appealed their cases to a hearing panel (Step 2). Of all dismissals, demotions, or written warnings filed between 2008 and 2010, 165 (41%) proceeded to Step Two. Between 2008 and 2010, almost 1,300 employees were involved in hearing employment-related cases at the Department of Correction. During this time, panel hearings involved 7 to 8 employees, including the grievant and agency representative. Table 5 indicates that the average number of hours devoted to travel for grievants (3.74) was greater than the average number of hours travelled for other members of hearing panel (2.89). Conversely, the average hourly salary for panel members (\$26.13) was higher than the average hourly salary of grievants (\$16.84). While grievants spent more time to appeal their case to members of the hearing panel, the state spent more money vetting the merits of employment-related grievances

<b>Table 5: DOC Hourly Cost Analysis for Panel Hearings (2008 - 2010).</b>		
	<b>Mean</b>	<b>S.D.</b>
<b>Travel Time (Hours)</b>	<b>3.00</b>	<b>1.86</b>
Grievant	3.74	2.06
Hearing Panel	2.89	1.80
<b>Average Salary (Hour)</b>	<b>\$24.95</b>	<b>6.75</b>
Grievant	\$16.84	6.20
Hearing Panel	\$26.13	4.39
Note: Percentages due to rounding; All Employees, N=1297; Grievants, N=165; Hearing Panel, N=1132		
<i>Source: Department of Correction ERC Information for OSP, 2008 - 2010</i>		

## Participant Mediation Evaluation Surveys

Following each of the mediation sessions, the grievant and respondent are asked to evaluate the mediation process by completing a 14-item survey. These survey questions focus on (1) *the mechanics* of running a mediation, such as satisfaction with the facility itself, the timeliness of the process, and whether the process provided an opportunity to discuss the issues, (2) *the relationships* among participants, such as the perception of fairness and impartiality on the part of the mediators and the respect or civility accorded to each participant by the others, and (3) *the outcomes*, including whether the dispute was resolved, whether it provided a positive opportunity for discussion, and whether the overall process was positive. The NCSU research team received copies of all mediation surveys completed for a total of 867 surveys, 429 grievants and 438 respondents (see Appendix)<sup>3</sup>. All survey data was entered into a statistical software package (SPSS) for analysis.

### Mediation Mechanics

Oft overlooked, much goes on behind the scenes before a mediation takes place. The facility used for the session can influence participants' mood and willingness to work towards a solution. Similarly, the speed with which the mediation is dealt with can influence perceptions of the seriousness and importance attached to the issue. Because many are only vaguely familiar with mediation, the process itself requires explanation.

*Facility.* As with any other government function, space requirements are often sub-optimal. Having a facility, let alone one properly designed and sited for the task, is itself an accomplishment. However, the facility where mediation takes place can be important. Grievants especially desire a sense of confidentiality and neutral ground. A place that allows everyone to keep track of who is using it will discourage some from participating out of fear of retribution. A site that identified as one party's "home court" might be seen as not providing a "level playing field."

Grievants and respondents were asked whether "the facility used for mediation provided a satisfactory environment" (Figure 1a). The overwhelming response from both groups was a resounding yes with roughly 95 percent in each registering strongly agree or agree answers. However, respondents were slightly more likely to indicate a strongly agree.

With respect to whether “the mediation location was reasonable convenient...” (Figure 1b) responses indicate shows that respondents were more at “home.” While over 80 percent of grievants strongly agreed or agreed, 95 percent of respondents did so. Again, respondents were more likely to indicate that they strongly agreed.

Overall, location does not appear to be a significant problem. In most cases, grievants and respondents are probably sharing these locations as a work place or going to a separate facility. While the survey data does not test for this, it is possible that the difference may reflect cases where or not this is the practice.

Timeliness. “Justice delayed is justice denied.” The right to a speedy trial is ingrained in the American sense of justice. When confronted with what they perceive as an injustice, individuals want action and resolution. Grievants will find themselves psychologically in a heightened emotional and, most likely, stressful state. A grievant’s case will represent an important priority that distracts them from their work, and putting their life “on hold” is not unacceptable. On the other hand, supervisors also want to get beyond the conflict. While grievance cases may not be as all-consuming to them, they are also a distraction inhibiting their ability to concentrate on the more important tasks of their jobs.

The mediation process operates under 45-day time limit; so, it is not something that is allowed to drift along. Figure 2a shows that “the grievance request was given prompt attention” elicited strongly agree and agree responses from 90 percent of grievants and all respondents. Respondents, perhaps more familiar with the administrative complexities of recording and scheduling things were clearly more likely to register “surprising” strongly agree opinions. For grievants, fast was not fast enough.

This pattern is also seen in Figure 2b with respect to when “the mediation was held in a timely fashion.” While over 90 percent of grievants and respondents answered strongly agree and agree, grievants were still more likely to feel things were not moving as rapidly as they should. Respondents, more use to the travails of scheduling meetings, were more appreciative of the speed of the process.

Process. The mediation process itself differs from the more well-known arbitration and judicial approaches to conflict resolution. In mediation, no one imposes an external solution or

decides things for you. In mediation you do not have to accept an agreement if you do not want to. Equally important, the other participant in the mediation does not have to have a solution imposed upon them or to accept any agreement.

In Figure 3a, nearly all grievants and respondents strongly agree or agree that “the mediator(s) explained the mediation process to [their] satisfaction.” Again, respondents are noticeably more likely to have indicated that they strongly agree. This is perhaps due to respondents having more experience with the mediation process than grievants. After all, a lucky manager has never had a prior grievance and discipline case.

An important element in the success of mediation is that each participant feels that they have indeed had “their day in court.” While the dispute may have previously been characterized as competing monologues, mediation is a communications dialogue. In a mediation both sides actually listen to what each other says, if only to be able to later “set the record straight” for the mediator. While the North Carolina mediation process averages 4 hours, in Figure 3b, it appears that over 95 percent of grievants and respondents felt that they “had sufficient time to tell [their] side of the story.” Again, respondents are more likely to strongly agree with this.

### Relationships

As with other forms of negotiation and facilitation, the socio-emotional aspect of mediation is as important as the objective or content issues discussed. Participants must believe that they will receive a fair and impartial hearing and will be treated civility and with respect. This improves their satisfaction with, and potentially commitment to, the organization. There are also often long-term relationships between the grievant and their supervisor or the respondent to be considered.

Fairness. At the heart of mediation and, for that matter, arbitration and judicial decisions, is the importance of a fair and impartial hearing. Whether from a mediator, arbitrator, or judge, due process requires a neutral and objective third party presence. In mediation, where no decision can be imposed, this is even more crucial. Once a mediator is perceived as favoring one side over the other, the mediation has failed.

While disputants may not trust one another, it is important for the mediator that they trust

him or her and that they trust the mediation process itself. Mediators concentrate a great deal of their attention on creating and maintaining this trust (Moore, 1986; Slaikeu, 1996).

The North Carolina mediation process frequently uses two mediators: a senior mediator and an apprentice. Figures 4a and 4b record the perceptions that the mediator and co-mediator was fair and impartial.” Grievants and respondents both indicate strongly agree or agree in over 90 percent of the cases for both mediators and co-mediators. Respondents more often register a strongly agree. Interestingly, both grievants and respondents are slightly less supportive of the performance their co-mediators. This is perhaps just a statistical anomaly due to cases not having a co-mediator.

Respect. For a mediation to succeed, participants need to focus on tangible issues. Yet, how one perceives they are being treated cannot be ignored. Mediators help establish and enforce ground rules that assure that each participant is treated with respect and civility. While this is especially important on the part of the mediators themselves, it is also crucial in the relationship between grievant and respondent. A lack of respect here undermines the sincerity and trust that would underpin any agreement that might be reached.

In Figures 5a and 5b, we see the participants’ responses to the question of whether “the mediator [co-mediator] treated me with respect.” Around 95 percent of grievants and virtually all respondents indicated that they strongly agreed or agreed. As with previous tables, respondents were slightly more likely to strongly agree. This may reflect a better understanding of and experience with the mediation process. It may also factor in that grievants are much more emotionally committed to the issue and are perhaps more uncertain as to the mediators’ role.

The relationship between the grievant and respondent are exhibited in Figure 5c. The answers to “the agency respondent [grievant] treated me with respect” show some difference. While grievants registered over 85 percent strongly agree and agree compared to respondents nearly 95 percent, grievants are much more likely to indicate only that they agree and include around 10 percent registering a neutral opinion. Since respondents represent hierarchal authority, the respect or civility they receive is most likely ingrained in the organizational culture. Grievants, on the other hand, who are “challenging” this, may perceive themselves being accorded a less legitimate role.

## Outcomes

Satisfaction with outcomes is measured by examining distributive justice, the extent to which parties believe the final agreement is fair and satisfactory, as well as procedural justice, or the extent to which parties believe they had the opportunity to be heard and were treated fairly.

Resolved. Mediators are motivated by helping people work out solutions to their problems. Having participants say “the mediation resolved this grievance to my satisfaction” is the ultimate prize. That it represents a mutual decision with an implication for long-term conflict resolution is even better. However, that is not always easily done.

Figure 6 displays the hard results from the participants’ perspectives. Respondents strongly agree or agree that they were satisfied in around 70% of the cases. Approximately 40% of grievants indicated a strongly agree or agree. Of course, respondents may feel that an unresolved case is also satisfactory. Over 45% of grievants were far more likely to indicate that they disagreed or strongly disagreed that they had obtained a satisfactory resolution to their case. Yet, even respondents in roughly 10 percent of the instances indicated that they felt unsatisfied by the outcome.

While mediations aim to resolve issues, they do not force solutions on to participants. Hence, not obtaining a satisfactory resolution is not necessarily a ‘loss.’ Both grievants and respondents can proceed to argue their cases before a formal grievance panel. The 45% of grievants who disagreed or strongly disagreed regarding satisfaction helps explain the 34% of cases that proceed to formal grievance.

Voice. Another aspect of the mediation process is to provide an informal arena in which individuals can give voice. While agreement is not guaranteed, listening to what each side has to say virtually is. Just having had “your day in court,” minus the court costs, is seen as something a moral victory.

Figure 7 exhibits the participants’ sense of voice. When asked if “mediation provided a positive opportunity to discuss [the] grievance,” nearly 85 percent of grievants and over 95 percent of respondents strongly agreed or agreed. While resolution may not have occurred, the interests advocated by both parties were expressed.

A Positive Process. An overall assessment weighing all aspects, including the possibility that a resolution was not agreed to, serves as another indicator of mediation’s success. Since a mutually acceptable solution is not guaranteed in mediation, holding the process accountable on that factor alone may be over reaching.

In Figure 8, participants registered whether “[they] felt positive about the overall mediation process.” Over 90 percent of respondents strongly agreed or agreed to feeling positive about the mediation. Given that supervisors and managers are initially, often somewhat reluctant to participate in a “non-hierarchal” process, this is an encouraging result. Over 60 percent of grievants strongly agreed or agreed that the process was positive. However, a substantial proportion of nearly 15 percent disagreed or strongly disagreed as to feeling positive about the mediation. These grievants most likely did not obtain a satisfactory resolution.

#### Open-Ended Survey Comments

The mediation evaluation survey provided options for writing in explanations for participant satisfaction or dissatisfaction. The final step of data analysis was to examine those open-ended comments and look for central themes in the comments of grievants and respondents. In summary, 88 grievants and 93 respondents provided open-ended comments. Respondents were more likely to make positive comments, with 78 (83%), compared to 50 positive comments among the grievants (57%). Grievants were somewhat more likely to include negative comments at 38 (43%) compared to 15 negative comments from respondents (17%). Tables 6 and 7 use direct quotes from the participant’s comments to illustrate the categories of positive and negative comments in the surveys.

**Table 6: Reasons Provided for Satisfaction with Mediation.**

- “Mediators helped me feel relaxed and not like I was on a witness stand”
- “All parties were very fair & respectful”
- “I learned a valuable lesson from this experience”
- “Both parties had a better understanding of the issues at hand”

*Source: NC DOC Mediation Evaluation Surveys*

**Table 7: Reasons Provided for Dissatisfaction with Mediation.**

- “Unwillingness of the respondent to negotiate”
- “Could not discuss everything I had to discuss”
- “My concerns were not taken into consideration”
- “Mediator would not impose a solution”
- “I should have been reinstated”

*Source: NC DOC Mediation Evaluation Surveys*

### **Department of Correction Employee Mediation & Grievance Policy Summary**

The results of our analysis show that grievances are an expensive reality of organizational life. The question is how to resolve them at the lowest possible cost with maximum long-term effectiveness. If grievances are taken care of quickly, yet without perceptions of fairness and satisfaction with the process, grievants are likely to continue to be dissatisfied and recurrence of the conflict or presentation of a new grievance is more likely. While this was not reported above, the analysis of cases in BEACON suggest a low rate of conflict recurrence, with only 5% of the total cases including the same grievant more than once. These recurring cases were all written warnings. We understand that at the time of this report, second written warnings are no longer eligible for mediation.

Even if there are not visible consequences of dissatisfaction (such as new grievances), there is likely to be a toll on organizational relationships with coworkers and/or supervisors, as well as organizational commitment, which may be observed in employee absenteeism and turnover (Burgess & Burgess, 1997; Kasperzak, 1996).

Including a mediation option is one way to resolve conflicts at earlier levels of the organization and increasing satisfaction. Mediation is costly in terms of staff training, hours devoted to the process, and travel; nevertheless, it is notable that a large percentage of cases (66%) did not proceed past Step One and there were a relatively low number of cases that went to OAH (2.5%). We were unable to get access to records including the number of settlements and the costs of such settlements (such as back pay, attorney’s fees, etc.) We know from cursory examination of OAH data that the cost of these cases is exponentially greater than Step One -

mediation (\$499) or Step Two - the panel hearing (\$1,646.70.) The minimum cost for a case at OAH/SPC is \$5,000 and as high as \$100,000 or more depending on the nature of attorney's fees and settlements or payouts. This is consistent with what mediation scholars have learned about monetary costs associated with rights-based, as opposed to interest-based resolution processes (Moore, 1996).

### **Department of Health & Human Services: Employee Grievance & Appeals Policy**

The Employee Grievance and Appeals process entails three steps. In Step One, the grievant files a grievance form with their supervisor and Human Resources. Unlike DOC, there is no single person devoted to the intake process, the units within DHHS have different levels of staff and HR specialists, and intake would be one part of a person's job. Once the grievance is filed, the supervisor has five days to respond. The total staff time for Step One is estimated at 4 hours, this includes the time the grievant and respondent spend preparing for the conversation, separate conversations with HR, and their time talking together. The cost for Step One is estimated at 4 hours x the average hourly rate of \$24.95, or \$99.80 per grievance.

If the grievance is not resolved at Step One, the grievant may appeal the grievance to the Director. At this step the Director reviews the case, speaks with both parties and Human Resources, and writes a decision. The staff time devoted to Step Two is estimated at 12 hours, at a cost of \$299.40 per grievance.

If the grievance is not resolved to the grievant's satisfaction at Step Two, he/she may pursue Step Three, taking their grievance to a Hearing Officer. This Step includes the following components:

1. Grievant files with HR
2. HR creates an action letter and sends out forms; completes a checklist
3. Management completes a "response form"
4. The response form is sent to General Counsel's office
5. The grievance is assigned to a Hearing Officer
6. The Hearing Officer coordinates with grievant and respondent to set a date and get witness lists and other necessary documents
7. Information sharing or "discovery" occurs on both sides
8. Hearing Officer reviews all materials
9. Attorneys try to settle before hearing (they have two half time attorneys)

## 10. Hearing

It should be noted that there is no cap on the length of the hearing, although they do not go beyond one day. Based on the number of people involved and the process we estimate Step Three at 40 hours, or \$1,000. It should be noted that this is underestimated because many of the people involved in the Hearing process, especially attorneys, earn more than the average hourly salary of \$24.95. As occurs with the DOC mediation process, the DHHS Steps One and Two contribute to cost reductions in the overall process by eliminating the need for more costly hearing panels.

Because the Employee Grievance and Appeals policy differs greatly from the Employee Mediation and Grievance policy, a direct comparison in terms of the cost analysis is not possible or practical. For example, we limited our analysis of grievances at DHHS to dismissals, demotions, and written warnings in order to use cases comparable to DOC. However, there are slightly different processes for each of these grievance types. Dismissals are not eligible for Step One, and actually begin the process at Step Two. Written warnings are not eligible for hearings, and therefore must be completed by Step Two. Due to this inconsistency in the process, and inconsistent methods for recording cases in BEACON, we are unable to determine the precise number of cases resolved at each step of the process. Tables 8 through 10 provide the best possible estimate of dismissals, demotions, and written warnings filed during the 2008-2010 time period as reported in BEACON and compared with data from DHHS Annual Human Resources Reports.

<b>Table 8: DHHS Demotions, Dismissals, &amp; Written Warnings 2008-2010.</b>					
	<b>Cases</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>OAH</b>
2008-2010	710	457 (64% of all cases)	353 (50% of all cases)	169 (24% of all cases)	42 (6% of all cases)
<i>Source: BEACON 2008-2010</i>					

	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>TOTAL</b>
Dismissals	120	51	82	<b>253</b>
Demotions	2	0	6	<b>8</b>
Written Warnings	123	190	136	<b>449</b>
<b>TOTAL</b>	<b>245</b>	<b>241</b>	<b>224</b>	<b>710</b>

*Source: BEACON 2008-2010. Human Resources Annual Reports, FY 2007-2008 through FY 2009-2010.*

	<b># Cases</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>OAH</b>
Dismissals	253	NA	253	167	42
Demotions	8	8	2	2	0
Written Warnings	449	449	98	NA	0

*Source: BEACON 2008-2010. Human Resources Annual Reports, FY 2007-2008 through FY 2009-2010.*

### **Department of Health & Human Services Employee Grievance & Appeals Policy Summary**

There is no evaluation of the grievance process in DHHS. We cannot comment on employee satisfaction or their perceptions of the fairness and impartiality of grievance experience. Since these perceptions are factors in job satisfaction and organizational commitment, they are important to the overall effectiveness of an organization. The analysis of cases in BEACON suggest that a large proportion of cases do not go beyond Step One (discussion with supervisor), and only 50% of grievances go to Step Two. Dismissals clearly dominate the cases at Step Two, since these represent the majority of grievances and are not eligible for Step One. Approximately one-third of the grievances we examined went to Step Three, the Hearing Officer, although it is notable that written warnings are not eligible for Step Three, which means that 64% of the eligible cases did proceed to Step Three. Of the approximately 167 cases that went to Step Three, 42, or 25% were appealed to the Office of

Administrative Hearings and State Personnel Commission, with additional costs for time, travel, attorney's fees, and settlements, as described above.

In the absence of evidence from surveys or talking to participants, we do not know how comfortable employees are with the Employee Grievance and Appeals Process and whether employees perceive this process as fair. Based on academic studies of employee grievance processes, we have learned that employees are less likely to use a process when there is limited separation of management and the third party decision maker, which often results in fear of retaliation if one complains to a supervisor or goes over the supervisor's head (Blancero & Dyer, 1996; Jameson, 2001). With these two options presented at Step One and Step Two, we conclude that there are likely to be grievances that are not brought to one's supervisor, and it is even less likely that they would pursue a grievance to the next level of going to a Director. A positive aspect of this process is that there is one Hearing Officer at Step Three, and based on their experience with employees, Human Resource staff believes the Hearing Officers are perceived as fair and impartial (although it should be noted that very few recommendations are overturned). We did note a high proportion, approximately 25%, of recurring cases at DHHS during the three-year period examined. These are defined as new cases that are brought forward from the same grievant.

At first glance, the Employee Grievance & Appeals Process appears to be lower cost due to lower investment of personnel in Steps 1, 2, and 3. However, a close look at the cost of mediation reveals that it comes to \$500 when two mediators are used, compared to the cost of approximately \$400 in the DHHS Steps 1 and 2. When a single mediator is used the cost of mediation is reduced by \$100, and therefore the costs are exactly the same. The mediation process has the additional benefit of reducing the number of repeat cases, as employees who are more satisfied with the process after their first grievance are less likely to file additional grievances. Further, this study revealed that 2.5% of the cases in the DOC process went to OAH during this time period compared to 6% of the DHHS cases. The high number of cases that go to OAH account for exponentially higher costs on the back end as grievants may take their cases further through the process seeking due process and a fair and impartial third party that is not connected to management (Slaikeu & Hasson, 1998). While we do not have data to support the impact of this process on the overall organizational climate, we know from research on

alternative dispute resolution that mediation programs encourage employees to seek collaborative, interests-based solutions, while the absence of mediation leads to more adversarial, and ultimately more costly, rights- and power-based orientations to conflict management (Shapiro & Brett, 1993; Ury, Brett, & Goldberg, 1988).

### **Limitations & Recommendations**

There are several limitations to the analysis we have presented here, primarily due to inconsistent procedures for tracking cases and the existing column headings for data reported in BEACON. We have high confidence in the number of cases reported as going to Step Two due to the assistance of a DOC staff member who compiled that information. While DHHS does not use the mediation process, they do have several trained mediators who use mediation informally to prevent grievances. If those informal mediation were documented we would have more support for the effectiveness of mediation. DHHS is in the process of training people in their units to enter cases more consistently, but this process was not completed within the timeframe of our research and final report. We therefore encourage some caution in interpreting and drawing final conclusions from the specific numbers of cases reported here.

It is also not possible to make a direct comparison between agencies. DOC and DHHS are very different agencies with different types of employees and grievances. Most grievants in the analysis of DOC hearings, for example, are correctional officers—a unique occupation with potential for conflicts and challenges not found in many other agencies. The processes used by these two agencies are also complicated by the fact that different types of grievances may be eligible for slightly different procedures. While we did our best to overcome this limitation by confining the grievances we included to dismissals, demotions, and written warnings, there were some differences in processes even among these limited types of disputes. There is also no way to compare employee perceptions of satisfaction with their grievance processes, as DOC included a mediation evaluation form, but DHHS did not have a parallel process.

Perhaps the most significant limitation is the inability to accurately compute the cost of OAH cases, and the complete absence of cases that have been pursued through litigation. As suggested earlier, an OAH or legal case has exponentially higher costs than either of the “in-house” procedures due to additional administrative costs, attorney’s fees, time investment of the

grievant and respondent, and potential settlement and/or back pay costs. If we had these exact figures we would be able to document further cost savings of the Employee Mediation and Appeals Process.

We have learned over the course of this analysis that changes have already been made to the grievance procedures at each site. At DOC, now DPS, they have already moved from a 5-panel to a 3-member panel Hearing at Step Two. This reduces the costs of the Employee Mediation and Grievance program. They also no longer allow written warnings to be mediated, which also reduces some of the costs associated with mediation cases. Based on this analysis and our knowledge of the literature supporting the value of mediation, we strongly encourage the Office of State Personnel to encourage broader use of mediation within State agencies. In addition to reducing costs associated with administrative hearings and litigation, mediation has ancillary benefits in increasing employee satisfaction and organizational commitment, reducing costs associated with absenteeism and turnover, improving organizational climate through increased collaboration and interests-based conflict management, and reducing overall grievances and conflict recurrence. There may be ways to reduce the current costs associated with mediation, such as occasionally using one mediator and increasing the use of informal employment mediation. It may also be worthwhile to consider using the pool of mediators as “conflict coaches” (Jones & Brinkert, 2008). Coaches can work with one party, such as the grievant or respondent, to help them analyze their conflict and improve the way they respond. This process has many of the same benefits of mediation, while reducing costs since only one party is involved and less coordination of schedules is required.

In order to improve the ability to accurately project the costs of employee grievances, we also strongly encourage a complete overhaul of the BEACON reporting system. While some of the information requested is useful, there appear to be multiple categories for similar information and inconsistent methods of entering data, making it nearly impossible to analyze. We also found several inconsistencies among the different sources, such as BEACON, Employee Relations Committee (ERC) reports, OAH/SPC reports, and the DHHS Annual HR Reports. Having each agency report the same information using the same coding process is imperative to greater accuracy and ability to engage in any kind of cost/effectiveness analysis. Table 11 presents a sample of the current columns for reporting data that are most problematic. Note that

there it is unclear what “time from” refers to in the first column, and there is sometimes inconsistency between the step the grievance was “resolved at” and the “result.” We were also unable to learn what the “#” represented, although it was used frequently in the BEACON system as illustrated in Table 11.

Table 12 portrays a recommended change to column labels and coding categories that would significantly improve grievance data reporting and management. Note that we assume all other relevant data currently in BEACON would continue to be collected, such as initial filing date, type of grievance, employee and respondent information, etc. We also recommend referring to each step in the process as “stage,” in the BEACON columns to avoid confusion since Step 1, Step 2, and Step 3 vary by agency and grievance type.

<b>Grievance Status - Time From</b>	<b>Grievance Status - Resolved At</b>	<b>Grievance Status - Result</b>
Step 1-1	#	#
Step 1-2	Step 1-2	Resolved before FAD
Step 1-3	#	#
Step 2-1	Step 1-3	Settlement any stage
Step 2-2	#	FAD
OAH	#	OAH Final Decision
Step 3-1	FAD	Dismissed at agency

**Table 12: Recommended Revised Column Labels, Data, & Response Options for BEACON.<sup>1</sup>**

<b>Date of First Step</b>	<b>Process Post Intake (varies by agency)</b>	<b>Outcome Stage One</b>	<b>Date of Stage Two (If app.)</b>	<b>Stage Two</b>	<b>Outcome Stage Two</b>	<b>Date of Stage Three (If app.)</b>	<b>Stage Three</b>	<b>Outcome Stage Three</b>
Date	Step One - Mediation	1. Withdrawn 2. Resolved in mediation 3. Appealed	Date	Step 2- Hearing	1. Withdrawn 2. Dismissed 3. FAD 4. Appealed	Date	Hearing Officer	1. Withdrawn 2. Dismissed 3. FAD 4. Appealed
NA	Step Two - Hearing	1. Withdrawn 2. Dismissed at agency 3. FAD 4. Appealed		Step 2- Director	1. Resolved with Director 2. Appealed		OAH	1. Dismissed 2. OAH Decision 3. Settlement
	Step One - Supervisor	1. Withdrawn 2. Resolved with supervisor 3. Appealed		Step 3- Hearing	1. Withdrawn 2. Dismissed 3. FAD		Litigation	1. Withdrawn 2. Decision 3. Settlement
	Step Two - Director	1. Withdrawn 2. Resolved with Director 3. Appealed		OAH	1. Dismissed 2. OAH Decision			

<sup>1</sup>This is a subset of columns and assumes additional data would be collected consistent with current practice.

## Conclusion

Employee grievances are an inevitable part of organizational experience. Significant research has concluded that a combination of formal and informal processes that allow employees to voice their concerns in a safe environment where they feel acknowledged and treated fairly has long-term benefits for the employee and the organization. These benefits include direct cost savings in employee time, attorney's fees, settlement fees, and court costs as well as secondary cost savings in the form of decreased absences and turnover. Mediation is one interests-based process that has been shown here as an effective way to reduce the number of cases that go to hearings as well as reduce recurring cases. Other interests-based procedures, such as use of a single-mediator model, a conflict intermediary or conflict coaching model may be additional ways to reduce the cost of employee grievance programs while meeting employee and organizational needs for due process. Improved systems for recording grievances and documenting the time spent at various steps of the Employee Mediation and Appeals Process or the Employee Appeals and Grievance Process will improve the ability to accurately report and predict future program costs.

### Notes

<sup>1</sup> The Department of Correction was merged with the new Department of Public Safety on January 1, 2012. Because the data reported here are from 2008-2010, the DOC is referred to throughout this report.

<sup>2</sup>It is notable that approximately one-third of the DOC mediations completed from 2008-2010 used only a senior mediator, reducing the actual time invested to 15 staff hours or \$374.25.

<sup>3</sup>Mediation surveys included participants in all mediated cases since the inception of the program for which data were available; this is the only portion of the study that extends beyond the 2008-2010 timeframe.

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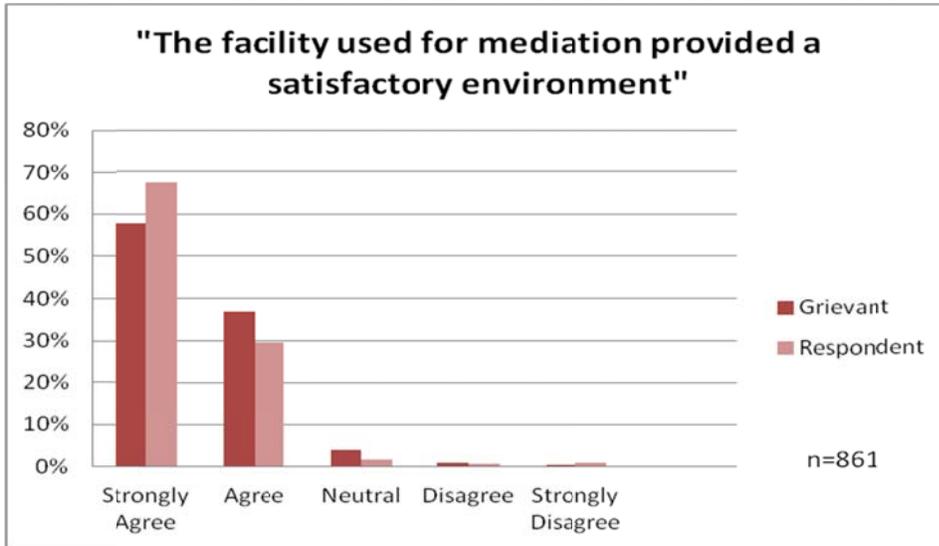
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**Appendix: Department of Correction Mediation Survey Results**

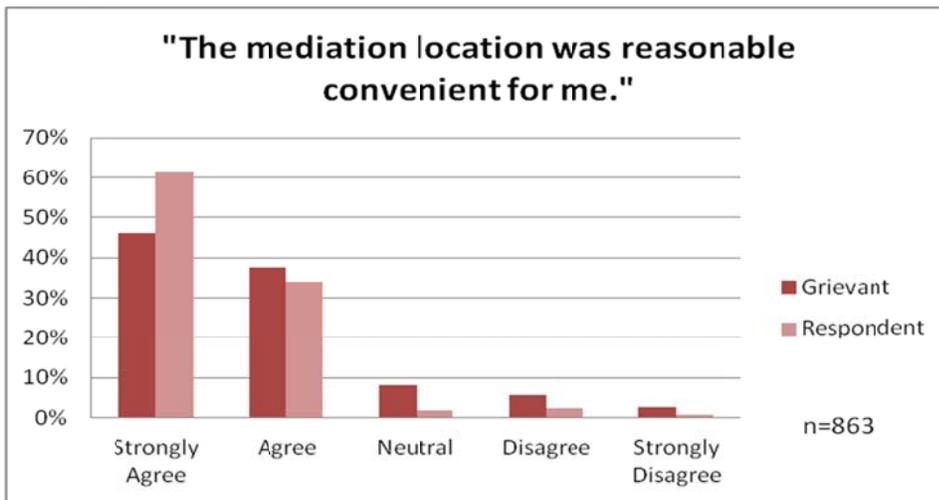
**Figure 1: Physical Setting Frequencies**

**Figure 1a:**



	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Grievant	57.7	36.9	4	0.9	0.5
Respondent	67.4	29.4	1.6	0.7	0.9

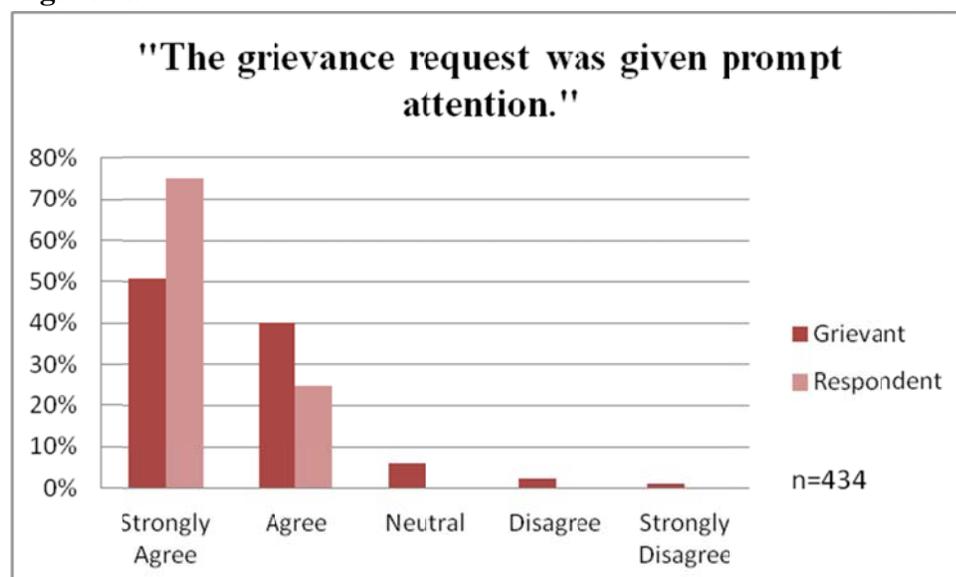
**Figure 1b:**



	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Grievant	46	37.6	8.2	5.6	2.6
Respondent	61.1	34.1	1.8	2.3	0.7

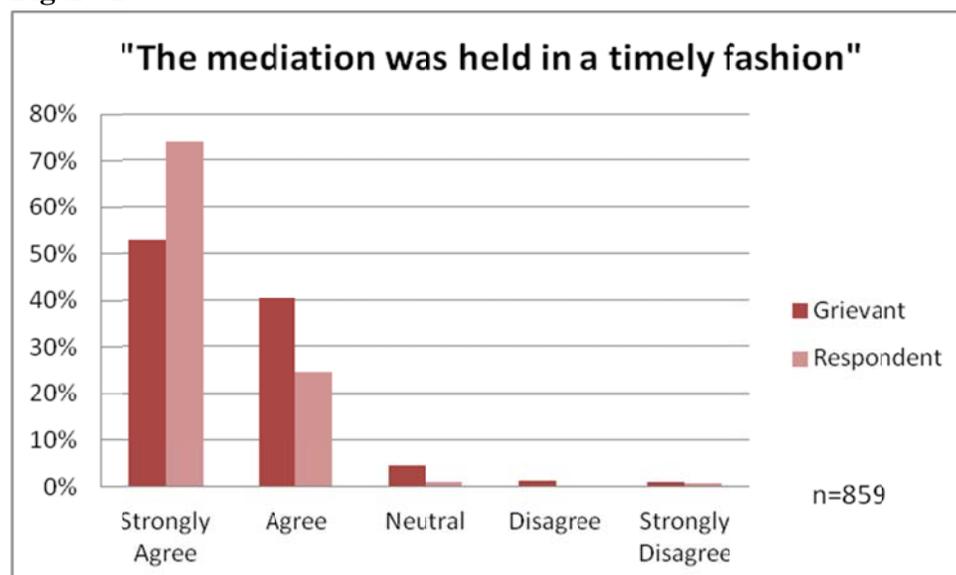
**Figure 2: Timeliness of Mediation Frequencies**

**Figure 2a:**



	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Grievant	50.7	40	5.9	2.4	0.9
Respondent	75	25	0	0	0.0

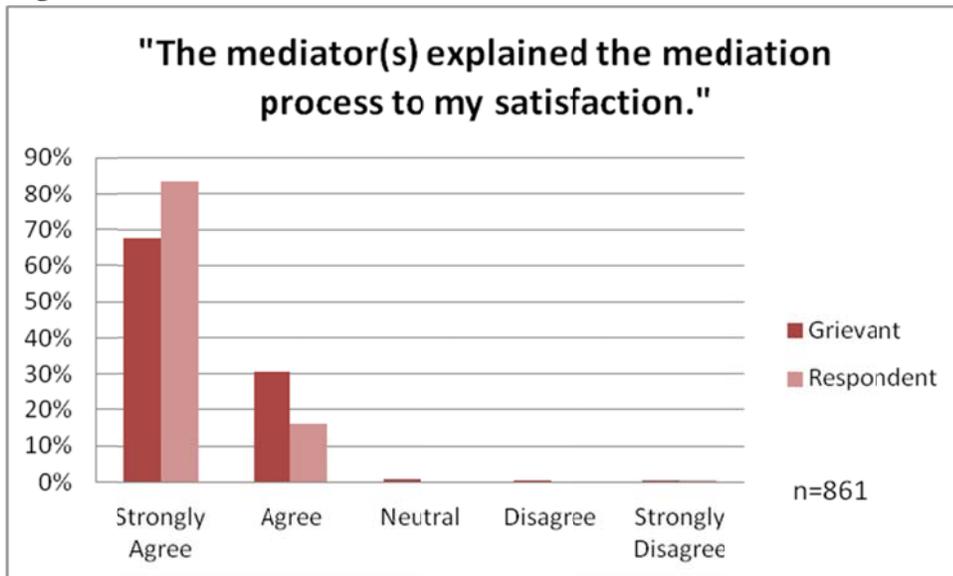
**Figure 2b:**



	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Grievant	53	40.4	4.5	1.2	0.9
Respondent	73.9	24.5	0.9	0	0.7

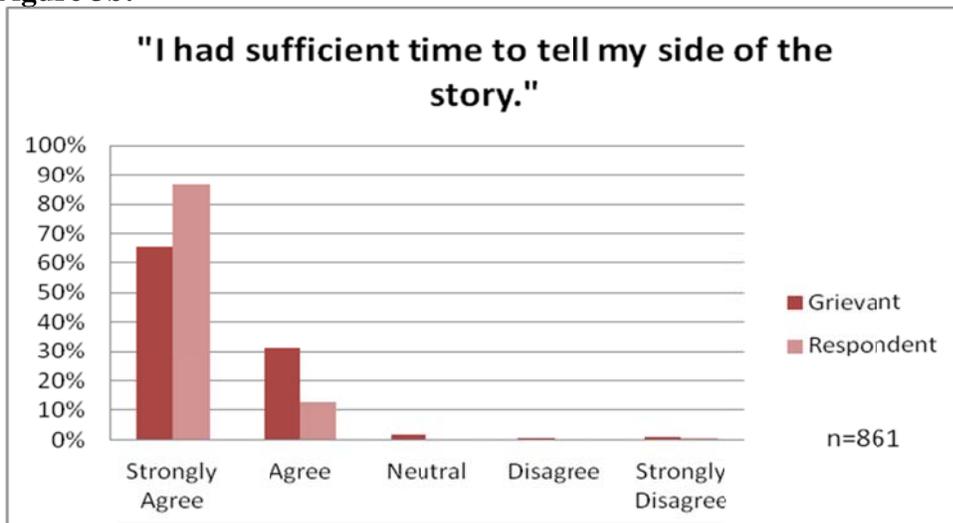
**Figure 3: Process Frequencies**

**Figure 3a:**



	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Grievant	67.7	30.7	0.9	0.2	0.5
Respondent	83.3	16.2	0	0	0.5

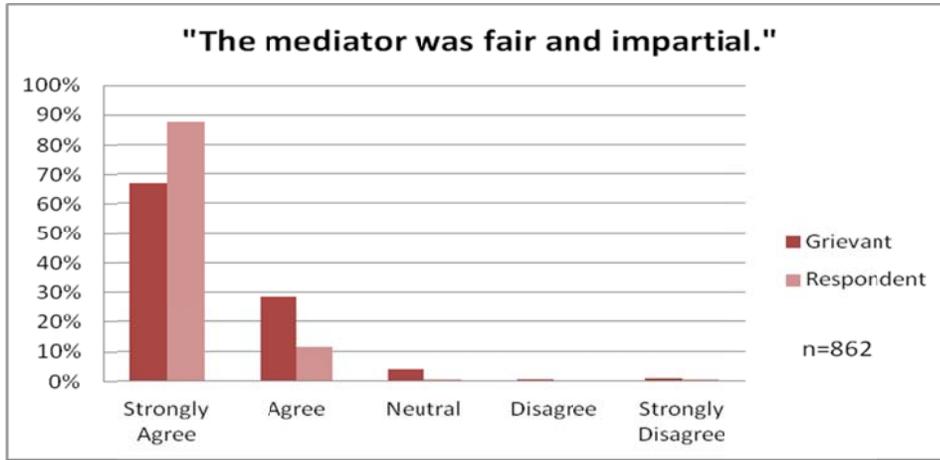
**Figure 3b:**



	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Grievant	65.6	31.3	1.6	0.5	0.9
Respondent	86.7	12.8	0	0	0.5

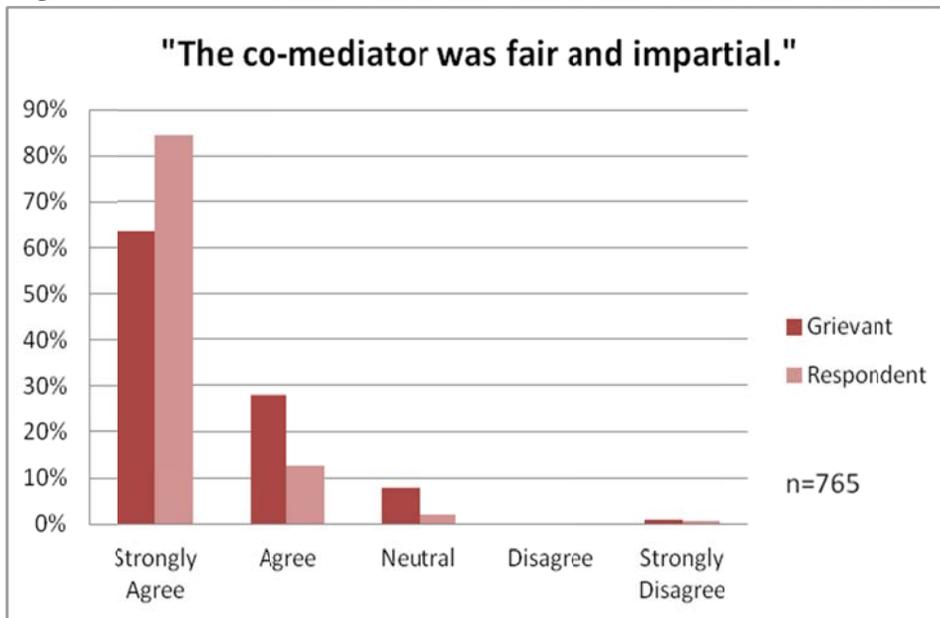
**Figure 4: Fair and Impartial Frequencies**

**Figure 4a:**



	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Grievant	66.7	28.4	3.8	0.5	0.7
Respondent	87.6	11.5	0.5	0	0.5

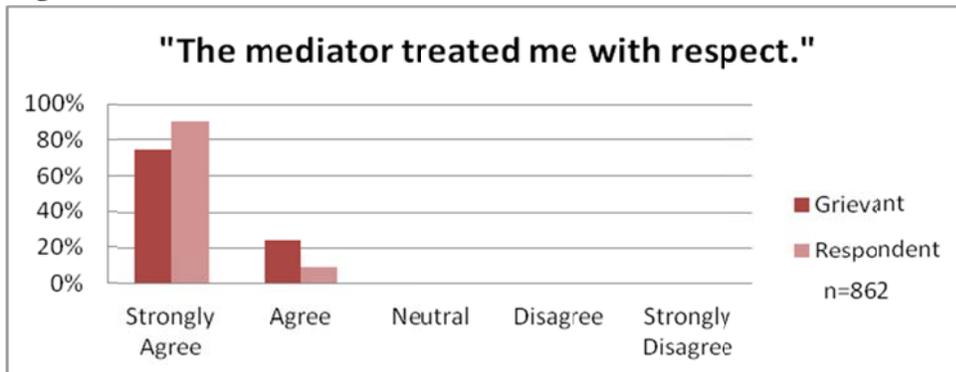
**Figure 4b:**



	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Grievant	63.5	27.9	7.8	0	0.8
Respondent	84.5	12.9	2.1	0	0.5

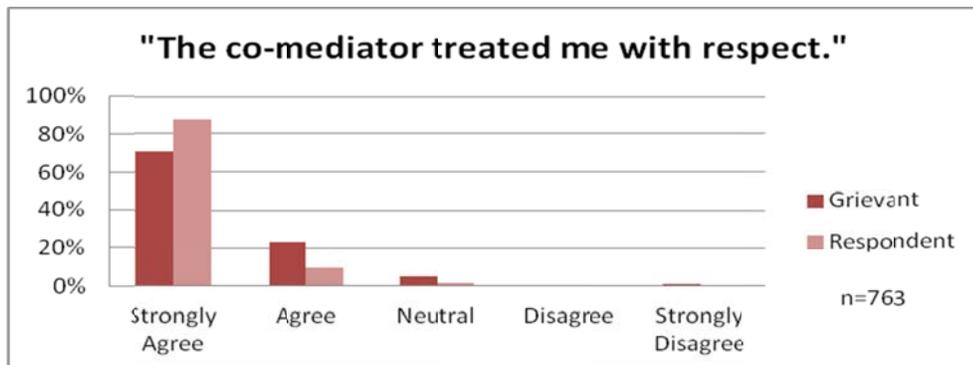
**Figure 5: Respect Frequencies**

**Figure 5a:**



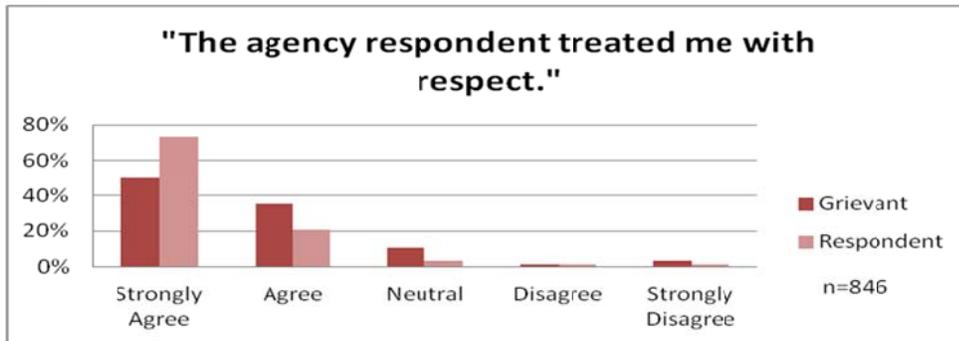
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Grievant	74.2	24.9	0.5	0	0.5
Respondent	90.4	9.2	0	0	0.5

**Figure 5b:**



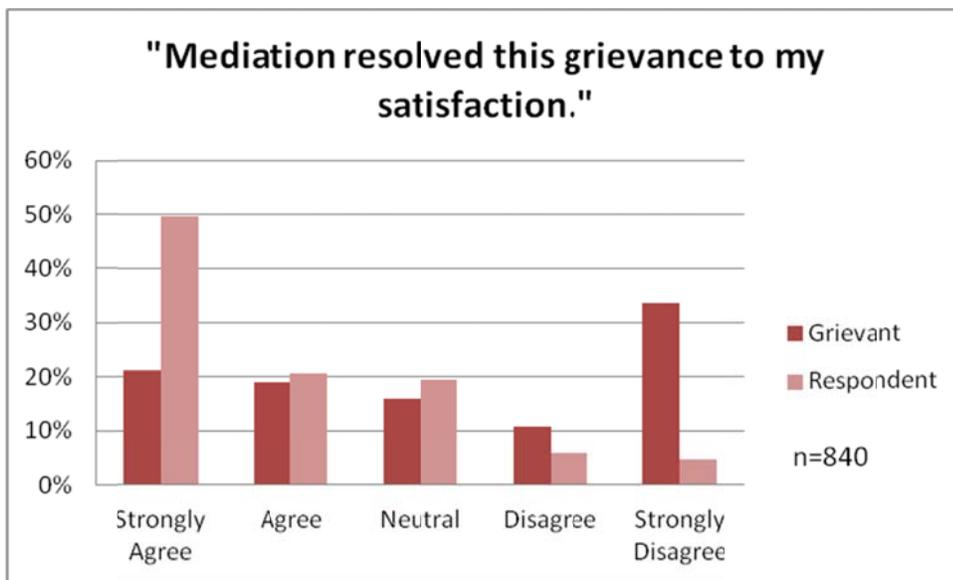
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Grievant	70.8	23.2	5.2	0	0.8
Respondent	88.2	9.7	1.6	0	0.5

**Figure 5c:**



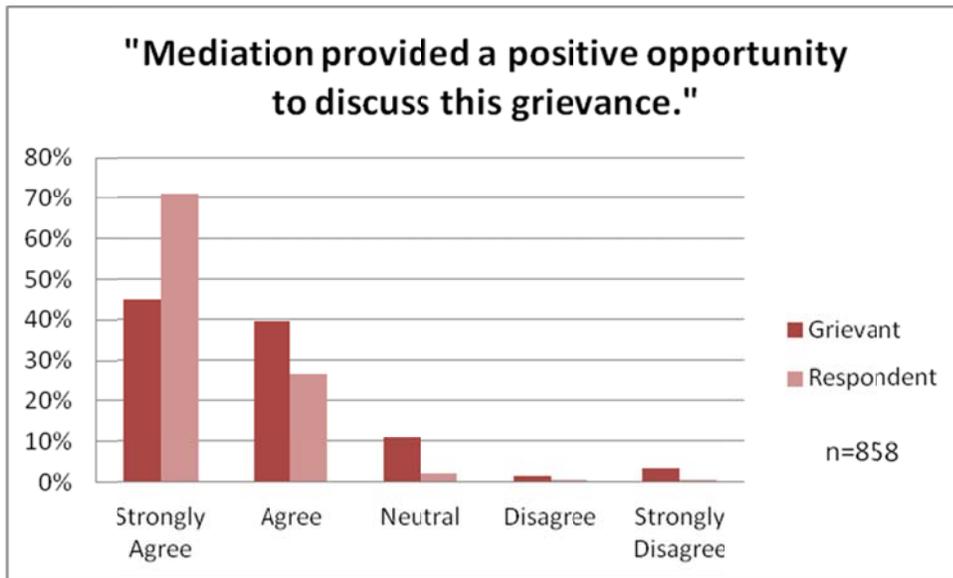
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Grievant	49.8	35.4	10.5	1.4	2.9
Respondent	73.4	20.8	2.8	1.4	1.6

**Figure 6: Resolved Case Frequencies**



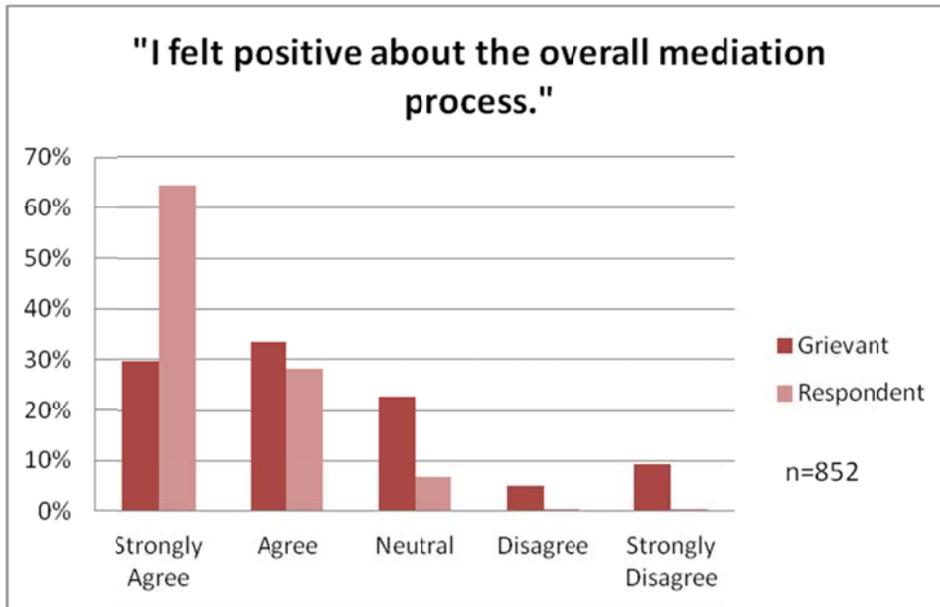
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Grievant	21	18.9	15.8	10.7	33.7
Respondent	49.6	20.7	19.5	5.7	4.5

**Figure 7: Opportunity to be Heard Frequencies**



	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Grievant	44.8	39.6	10.9	1.4	3.3
Respondent	70.9	26.4	2.1	0.2	0.5

**Figure 8: Positive Overall Process Frequencies**



	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Grievant	29.6	33.4	22.7	5	9.3
Respondent	64.2	28.2	6.7	0.5	0.5