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USING MEDIATION IN EMPLOYEE COMPLAINTS AND GRIEVANCES:

A SOURCE BOOK FOR GOVERNMENTAL ENTITIES

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I. EXECUTIVE SUMMARY

This source book is intended to assist governmental bodies in designing an employee complaint/grievance process that includes alternative dispute resolution processes (ADR), particularly mediation, as an option. Most governmental employers already have complaint and grievance systems which may work satisfactorily and may wonder what advantages are offered by including an ADR component within their existing system. However, as the private sector has discovered, these alternative processes offer many advantages over traditional hierarchical grievance and complaint systems and some companies have chosen to rely upon them completely for resolution of employee disputes. As a governmental employer with responsibility for designing and implementing a complaint/grievance system, it is important to be aware of other alternatives. This Sourcebook is intended to provide information about how ADR can be used in the governmental sector.

There are benefits and issues to be considered when selecting among these types of ADR processes (and others) for your agency. Knowledge of these processes, including an awareness of how they differ, is an essential part of making an informed selection among the ADR processes for your dispute resolution system. This knowledge can be gained in a variety of ways: training, research, and use of consultants, both formally and informally. However you chose to obtain this knowledge, it will be time well spent when it is used to form the basis of recommendations for the establishment of an employee complaint and grievance system that includes the use of ADR processes.

No matter what ADR process you wish to incorporate into your agency's complaint or grievance process, there are **six key steps** to follow:

1. **Assess** the existing conflict management program in order to obtain information on what does and does not work. Make **Decisions** about the type of program your governmental body wants to support.

2. **Develop Policy** which establishes the goals of the agency for its employee complaint and grievance system and outlines parameters of the program.

3. **Define Roles** of employees who will be involved in the complaint and grievance process.

4. **Gather Resources and Support** for the program, at both the employee and management level.

5. **Implement** the program.

6. **Evaluate** the program and use feedback to improve and strengthen the program.

These six steps are essential components of a good system design process and will help ensure that you have adequately planned your program, have established a good support system for the program, and will continue to evaluate the program's success and progress. An effective conflict management system will reflect the needs of the governmental body, including the needs of both employer and employee. It will also contain a component for regular review of the system to ensure that it continues to meet the users' needs and so that modifications can be made when necessary.

A cautionary note: Once employers decide to review their employee conflict management system and make necessary changes, there can be a tendency to become impatient in a desire to get something "up and running" quickly. As a result, they may spend time on only a selected few of these steps, particularly Steps 1 and 5. This natural tendency, however, should be anticipated and planned for in advance. To ensure a successful system, **all steps** must be given appropriate consideration or the system's long-term success is doubtful.

II. INTRODUCTION

Let's face it. No one likes employee problems, least of all the affected employee. Workplace disputes raise the level of stress and anxiety for employees, supervisors, co-workers, and others involved or affected personnel. ***Conflict is uncomfortable and most of us do whatever we can to avoid it.*** Although avoidance may feel better for the moment, it usually does not resolve the problem which may fester and develop into something even more unpleasant---a formal employee complaint or grievance. In recognition that employees need a forum through which they can air and receive final resolution for their grievances, most governmental bodies have developed and institutionalized some sort of employee complaint/grievance system. For purposes of this sourcebook, the terms "complaint" and "grievance" are used interchangeably to refer to the articulation by an employee of a criticism or objection to employer action or inaction. A typical complaint/grievance system usually looks something like this:

Step One: Employee is encouraged to discuss problem directly with person(s) involved to attempt resolution.

Step Two: Employee can complain to immediate supervisor (or other designee if immediate supervisor is one with whom employee has the problem); this can be either through an informal, oral discussion process or more formal, written process; supervisor or designee makes decision.

Step Three: Employee can appeal decision of supervisor or designee to a higher level of authority within agency.

Step Five: Employee can seek final appeal from agency adjudicator or top agency executive.

Step Six: Resolution of complaint through the above steps or the employee seeks outside assistance through available administrative agencies, such as the Equal Employment Opportunity Commission (EEOC), Texas Commission on Human Rights (TCHR), or files a lawsuit in state or federal court

At various points in the internal process, the employee can notify the Human Resources department and/or an EEO officer or Civil Rights officer of any allegations of discrimination or other unlawful activity.

While these processes are successful mechanisms for responding to employee complaints/grievances from the standpoint of reaching an ultimate point of resolution, they may fail to adequately address the situation in a way that best meets the needs of the employer and employee. On occasion, both employee and employer may need other avenues in which to explore options for resolution, particularly in situations where there is no clear solution. The following example illustrates the shortcomings of the traditional grievance procedure:

> An employee who has a good track record applies for a promotion within his Department but does not receive it. Instead, someone who the employee believes is less qualified is selected. The employee's productivity suffers through disappointment and worry that the employer does not view him as "promotable." The employer, however, considers the employee valuable in his current position and does not want to lose his expertise. Without an opportunity to obtain more information about the reason for the hiring decision, the employee concludes it is time to leave the organization for another job. He may file a complaint or grievance alleging discrimination in the promotion decision in an effort to learn the reason for non-promotion. The employer, upon receiving such a complaint, may become angry at the accusation and begin to justify the decision on other grounds. The employee may not learn the true reason and the employer may lose what once was perceived as a good employee.

Without an opportunity to exchange information with one another, one or both sides may reach erroneous conclusions about the motivations of the other. Many times, an explanation of a management decision can result in a satisfactory outcome for both parties. However, the traditional process rarely involves both an opportunity for direct exchange of information between or among the disputing parties **and** an opportunity to seek a joint solution. This source book is designed to discuss the alternative options available for conflict resolution.

A. What is the purpose of this source book?

This source book is meant to be a reference for city managers, county judges, agency heads, policy makers, and public sector legal counsels. Others, including human resource directors, managers, and employee groups may also want to use it in designing employee dispute resolution processes that include mediation as an option. The purpose of this source book is to assist Texas government personnel and entities in learning more about the application of mediation to employee complaints and grievances, and in better understanding the issues involved with developing, implementing and evaluating dispute resolution systems in the public sector.

This source book includes: (1) A generalized step-by-step guide for designing, implementing and evaluating a conflict resolution plan for employee disputes in a Texas government entity; (2) A list of important issues which need to be addressed by conflict resolution systems; (3) A review of legal issues and concerns of the working group members; (4) References to resource materials; and (5) An overview of the working groups' activities.

B. How did this source book come about?

The members of two working groups convened by the Center for Public Policy Dispute Resolution (CPPDR) at the University of Texas School of Law suggested the development of a source book to help other governmental entities who were interested in using mediation in their internal complaint system. The Working Groups represented human resource and legal counsel employees of governmental agencies brought together monthly for over a year to analyze, evaluate, and modify their organizations' internal systems of responding to employee complaints and grievances. Throughout this book, we will be referring to the issues and problems the working group participants encountered as they prepared to move to more collaborative problem-solving systems within their own government settings. Because the public entities that suggested this source book vary in size, function, and jurisdiction, and because the existing conflict resolution systems also varied in structure, their experiences will be helpful to other public entities undertaking a similar effort. Additional information about the working groups can be found in Appendix C.

As working group participants developed and refined their grievance dispute resolution systems, each organization shaped policies and procedures unique to their organizational structure and dispute resolution needs. However, over the course of the group's training and regular monthly discussions, the following four common areas of special concern emerged among the participants:

- **Acceptance of mediation as an option in employee grievance matters, especially by supervisors and managers**
- **Funding of the mediation process**
- **Evaluation of the new ADR systems to identify benefits, particularly cost savings**
- **Legal issues, especially related to the open records law**

This sourcebook addresses each of these concerns and highlights strategies developed by the working group participants to deal with them.

C. What is ADR, and why is it a good idea in the context of an employee complaint and grievance system?

Alternative dispute resolution (ADR) refers to a wide range of processes to resolve disputes other than through the use of litigation and adversarial hearings. Generally, ADR processes include the participation of a neutral party who assists disputants in reaching a resolution to their dispute

through facilitation of communication or exchange of information in a specified format. The Texas ADR Procedures Act (TADRPA) suggests that an ADR procedure is "a nonjudicial and informally conducted forum for the voluntary settlement of citizens' disputes through the intervention of an impartial third party."[1]

The TADRPA describes five non-exclusive types of ADR: mediation, mini-trial, moderated settlement conference, summary jury trial and arbitration. The Governmental Dispute Resolution Act provides authority for governmental bodies to use ADR processes such as those described in the TADRPA or a combination of the procedures.[2] Some of these procedures are especially appropriate for lawsuit evaluation or corporate disputes, such as mini-trials, moderated settlement conferences, summary jury trials and arbitrations.

The most common types of ADR processes found in the employee grievance context are mediation, arbitration, and the use of an ombudsman.

> **Mediation** is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them.
>
> **Arbitration** can be binding or non-binding. For purposes of this source book, only non-binding arbitration will be discussed. **Non-binding arbitration** is a forum in which each party and counsel for the party present the position of the party before an impartial third party, an arbitrator, who renders a specific non-binding award. Sovereign immunity doctrines make the use of binding arbitration difficult, if not impossible, as a regular governmental complaint and grievance process.
>
> An **ombudsman** is an employee within an agency who assists employees, supervisors, and management with locating resources, resolving employer-employee disputes, who may investigate complaints, and usually has authority to operate outside the traditional chain of command.

Some experts in the use of ADR in the employment context refer to ADR as "Appropriate Dispute Resolution."[3] One theorist believes that this reference includes any process that seeks to solve disputes on the basis of the interests of the disputants rather than rights and power.[4] This definition includes many other processes that can be especially helpful in employee complaints/grievances, like active listening, providing information and counseling. Another interpretation of appropriate dispute resolution is that it refers to the need for flexibility in dispute resolution: "the method of

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[1] Civil Practice and Remedies Code § 154.021.

[2] Chapter 2009, Tex. Gov't. Code. This Act was originally applicable only to state agencies but was amended by the 76th Texas Legislature in HB 826 to apply to "governmental bodies" who were subject to the Public Information Act. The Act was also originally codified as Chapter 2008 and was amended in the 76th legislative session as Chapter 2009 so as not to conflict with Chapter 2008, the Texas Negotiated Rulemaking Act.

[3] See, e.g., Costantino and Merchant, *Designing Conflict Management Systems*, San Francisco: Jossey-Bass, 1996, p. 41, and Rowe, "Dispute Resolution in the Non-Union Environment," in Gleason, *Workplace Dispute Resolution*, East Lansing: Michigan State University Press, p. 99 (1997).

[4] Rowe, "Dispute Resolution in the Non-Union Environment," in Gleason, *Workplace Dispute Resolution*, East Lansing: Michigan State University Press, p. 99, (1997). *See also* Fisher and Ury, *Getting to Yes,* Second Edition, Penguin Press, (1991) (principles of interest-based negotiation).

dispute resolution must be appropriate for the particular dispute or problem; there must be a fit between the process and the problem."[5]

This source book focuses primarily on mediation, which can be particularly useful in the employment context. As defined in the TADRPA, "Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them."[6] This forum is intended to help the parties develop an acceptable solution and develop or restore a collaborative relationship, goals which are critical for maintaining a productive workplace.

For further reading about the different forms of ADR, check out these sources:

Amy Greenspan et al., *Handbook of Alternative Dispute Resolution, 2d Ed.* Austin: State Bar of Texas, (1990).

Dispute Resolution Texas Style, 2nd Ed. Austin: State Bar of Texas, (1997).

Martindale-Hubbell Dispute Resolution Directory. New Providence: Martindale-Hubbell, published annually.

Mary Rowe, "Dispute Resolution in the Non-Union Environment," in Sandra E. Gleason, *Workplace Dispute Resolution*, pp. 89-96, East Lansing: Michigan State University Press, (1997).

[5] Costantino and Merchant, *Designing Conflict Management Systems*, p. 41, San Francisco: Jossey-Bass, 1996.
[6] Civil Practice and Remedies Code § 154.023.

Why consider mediation for employee complaints and grievance?

Why is mediation a good process to use in the employee complaint and grievance context? Simply put, (1) it can be accessed and completed faster than traditional methods of resolving employee complaints and (2) it offers a more creative forum in which the employer and employee (or employee and employee depending upon the nature of the dispute) can problem-solve.

Complaints or grievances which are not promptly and satisfactorily resolved by the agency can lead to:

- disruption of the workplace in which attention is shifted from the primary purpose of the organization to focusing and spending employee time on the complaint or grievance;

- deterioration of working relationships between co-workers as they feel called upon to take sides in the disputes;

- development of feelings of alienation between employees and supervisors;

- having to respond to charges filed at the Equal Employment Opportunity Commission (EEOC) and/or Texas Commission on Human Rights (TCHR), including participation in an administrative process to resolve the charges; and

- litigation, including time spent through discovery and trial.

Mediation provides an opportunity for time savings in the complaint/grievance process, particularly if it can be done as close to the beginning of the dispute as possible and if it is accessible at a number of other stages in the complaint process as the parties choose. If the mediation is successful and agreement is reached, then obviously the complaint process is completed at whatever stage it settles. Most complaint or grievance processes consist of several steps. Traditional grievance procedure timelines, from filing the complaint through final appeal, can take months, even with diligent efforts by agency management to respond to and resolve the complaint.

Mediation is a versatile process and can be an option at numerous stages in a complaint process. If a mediation at the beginning or anywhere along the complaint process is unsuccessful and no agreement is reached, the employee picks up with his complaint within the internal grievance process wherever he or she exited for the mediation. For example, consider Governmental Body A's complaint process which encourages employees to resolve disputes at the lowest level possible. The first stage of this process involves discussing the problem with the party(ies) who are affected. At this stage, Governmental Body A allows an employee to mediate the dispute with these parties. If the mediation is successful, then the complaint process is over and the parties are satisfied with the result. However, if the mediation is unsuccessful, then the employee returns to step 1 in the complaint process and continues through the process until resolution of the dispute is obtained.

As a result, mediation offers the opportunity to save the time of employees and managers in bringing and responding to grievances, resulting in cost savings. Successful mediations which resolve workplace problems improve the productivity of employees. Employees and managers can

spend time doing the substantive nature of the work they were hired to perform rather than expending a great deal of time in preparing and responding to a formal grievance. Also, when parties have an opportunity to collaboratively problem solve, they are more likely to be satisfied with the outcome, and compliance with the result tends to be higher. Further, when mediation occurs early in the complaint process, the potential for litigation is lessened and the corresponding litigation costs are lessened as well.

In the face of competing demands for adequate governmental funds, government leaders and employees are increasingly called upon to make the most of limited resources. As a consequence, government management must constantly evaluate whether resources are being used to their maximum advantage in all areas of the government entity's operations. In performing this evaluation, management should consider the agency's complaint and grievance process as a possible area in which alternative processes can assist them in their allocation of resources and utilization of their workforce.

D. What is Texas law/policy on governmental use of ADR?

The Texas Alternative Dispute Resolution Procedures Act (TADRPA) (1987) formally declares that it is Texas State policy to encourage the peaceable resolution of disputes through mediation and early settlement procedures.[7] The TADRA specifically authorizes the use of alternative dispute resolution in Texas.[8]

The Governmental Dispute Resolution Act (GDRA), Chapter 2009, Tex. Gov't Code, as amended in 1999, specifically encourages state agencies to resolve disputes as fairly and expeditiously as possible, and to support this policy by developing and using ADR procedures in all appropriate areas of state government.

> The TADRPA and the GDRA provide specific guidelines for different parts of the ADR process. Throughout the guidebook, legal requirements will be highlighted in boxes like this one.

- Can we use procedures not listed in the acts?

The TADRPA provides a non-exclusive list of ADR processes. A government entity may use these or other ADR procedures consistent with the TADRPA, GDRA and other relevant law. The procedures authorized by the TADRPA are not intended to replace or limit current agency dispute resolution procedures but are available as supplements to an existing process.

- How will this affect other legal rights?

[7] Civil Practice and Remedies Code § 154.002; Government Code §§ 2009.001-2009.055.
[8] Id. at §§ 154.001-154.073.

The use of mediation and other ADR procedures does not result in loss of any legal rights, like a right to an administrative or judicial hearing. The GDRA states that ADR procedures may not be applied in a manner that denies a right granted under other state or federal law.

- What is sovereign immunity, and is it affected?

Sovereign immunity is a legal defense which government entities in Texas can use to avoid liability in certain circumstances.

In general, the use of ADR procedures does not affect an agency's ability to assert sovereign immunity. The GDRA explicitly states that the activities it authorizes neither constitute a waiver of sovereign immunity nor provide agencies with new authority to assert immunity. Accordingly, an agency may use any ADR process it chooses under the GDRA, but must make its own analysis to determine (1) if and how any sovereign immunity issues are relevant and (2) that use of the process it selects conforms with its ability to assert or waive sovereign immunity.

A public entity is strongly encouraged to obtain guidance from its legal counsel on what effects if any its mediation-based employee grievance dispute resolution system will have on the availability of the entity's sovereign immunity defense.

For more in-depth information on the ADR Procedures Act and the Governmental Dispute Resolution Act, check out the following sources:

Rau, Ed et al. *Texas ADR & Arbitration: Statutes and Commentary*. West Group, 2000.

Center for Public Policy Dispute Resolution. *Commentary on the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act*. CPPDR, 1997. This publication is available through the Center or on its web site: http://www.utexas.edu/acadprogs/law/cppdr.

III. SIX STEPS FOR ESTABLISHING AN ADR GRIEVANCE PROGRAM FOR YOUR AGENCY

When considering changes or additions to an organization's employee grievance system, it is important to look not only at the proposed change, but at the big picture, as well. A successful and productive system of solving problems in the workplace can pave the way to a more efficient and effective organization, with more productive and satisfied workers. There is a helpful and growing body of literature on employee grievance systems design intended to help organizations develop comprehensive programs to solve workplace problems.

A. Step One: Assessing and Planning

Assessment is a crucial first step for a new employee grievance program. It is important to understand the existing program and its strengths and weaknesses through the eyes of the administration, management and employees of the organization.

From the administration's perspective, how well is the current system disposing of grievance claims? Is it cost efficient? Are employees satisfied? How could it be improved? For managers and employees, is the program efficient, responsive and fair? Are they able to handle their grievances in a satisfactory manner? How do grievances affect their workplace environment? What could be improved?

While the basics of the existing program can be culled from the organization's policies and grievance officers, gathering information from employees, managers and participants about how well the process works will require substantially more effort. Surveys, interviews, focus groups and meetings can all be used to gather information about perspectives on the grievance program throughout the institution.

A good understanding of the organization's existing programs and policies, and the way they are viewed internally, can go a long way towards developing an appropriate and successful grievance program.

Where does mediation fit in?

Traditional employee grievance systems have a single point of entry, with one available procedure. Employees can only access a second step on appeal, after they have exhausted the first level and are not satisfied. This "vertical" set of procedures is easy to manage, but often unsatisfying.

Current thought on designing employee grievance systems suggests a "horizontal" approach: multiple options with multiple points of entry. Disputes come in all shapes and sizes, and each person likes to handle conflict a little differently. While no organization can develop a personalized system for each employee, multiple options and flexibility to move from one option to the next can allow employees to find procedures that are well suited for them and their particular disputes. By building flexibility into the system, an organization can avoid wasting resources on dispute procedures that are not well suited for a particular case.

Instituting mediation and other ADR procedures does not mean getting rid of traditional grievance procedures. Mediation can be an excellent complement to vertical or hierarchical and rights-based procedures like administrative hearings. Mediation can be added as an option in a traditional system, making it more flexible and beneficial for employees and management.

Mediation can be used at any stage in a dispute resolution procedure. It should certainly be considered as an early option, allowing the disputants to develop a mutually acceptable resolution between themselves. It also can be used later in the process, after the disputants have gone through other procedures and realize that they could solve the problems between them with a little help.

Organizations which offer a mediation option often use a flexible approach, allowing the parties to access mediation at any stage in the grievance process, but allowing a return to the grievance process if the mediation does not resolve the dispute. This structure can help employees feel more comfortable using mediation, knowing that they can always return to the traditional approach if necessary. It also allows the parties to choose mediation at any point they feel it will be beneficial, rather than getting locked into the process they choose first.

The Colorado State Employees' Mediation program, instituted in the mid 1980's, is a good example of the flexible approach. When an employee decides to pursue a grievance, she can choose the traditional grievance procedure or mediation. If she starts in the traditional track, she is allowed to "loop out" to mediation at any stage in the process, once she has filed a formal, written complaint. When she loops out, the time limits on the grievance process are put on hold, so that if mediation is unsatisfactory, she can re-enter the traditional grievance procedure where she left off. In the first six years of the program, 272 cases were brought to mediation: 133 directly and 139 through the grievance process. Linda deLeon, "Using Mediation to Resolve Personnel Disputes in a State Bureacracy," pp. 69-86, Negotiation Journal (1994).

Who should design the program?

"If *you* build it, they may or may not use it. On the other hand, if *they* build it, they will use it, refine it, tell their friends about it, and make it their own."[9]

Design experts Costantino and Merchant believe that the most successful employee grievance programs are developed in cooperation with employees, supervisors and managers for whom the program is designed. Involving the "users" can be as elaborate as setting up a design team of employees from all levels who work with experts from start to finish to develop a comprehensive system. It can also be as simple as holding a few meetings or focus groups to get input from users, letting them know that a new program is under construction and that their ideas and needs are valuable input.

Even a simple process can provide the designer with useful information about what the users need in a grievance program, while building ownership and support among the program's users. It is important, however, not to raise false expectations. Involving users in the process, and building ownership in the idea of a new system, requires commitment and follow through. The new system doesn't need to be exactly what any user or group suggests, but once it has asked users to buy into the process, the organization should make good on its commitment to change.

While an advocate of user involvement, Mary Rowe, ombudsman at the University of Michigan, is careful to point out that thoughtful managers and executives have implemented some very successful systems in a top-down fashion by thoughtful managers and executives.[10] However, if one of the goals of a dispute resolution system is to encourage collaborative problem solving among employees, the use of collaboration in designing the system serves as a model and reinforcement to employees of this goal.

For more information about employee grievance systems design, which incorporates ADR, check out these sources:

Cathy Costantino and Christina Sickles Merchant, *Designing Conflict Management Systems*. San Francisco, CA: Jossey-Bass (1996).

Rowe, Mary, "Dispute Resolution in the Non-Union Environment," in Gleason, Sandra E., *Workplace Dispute Resolution.* East Lansing, MI: Michigan State University Press (1997).

B. Step Two: Developing Policy

Development of a written policy encouraging peaceful and early resolution of disputes is fundamental to the success of any system design. A clear understanding of the employer's goals in

[9] Costantino and Merchant, *Designing Conflict Management Systems* at p. 49.
[10] Rowe, p. 85.

implementing the alternative dispute resolution procedures will help build support for the program. Interestingly, many Working Group participants anticipated that securing a written policy statement to support the use of ADR in general or specifically in employee disputes would be among the most difficult tasks they faced.

The policy supporting dispute resolution processes should state what the organization wants to accomplish by using dispute resolution procedures and what principles will guide the implementation of such procedures. Most importantly, it should clearly express organizational commitment to collaborative problem solving and dispute resolution.

Moreover, the directive emphasizing collaboration in conflict resolution should be fully integrated into all organization documents and procedures. It is especially important to highlight collaborative problem solving in grievance procedures, employee manuals, collective bargaining agreements, organizational charts, employment contracts and standard operational procedures. If the employee is constantly reminded of the importance of collaboration and senses true organizational support for this type of dispute resolution, the employees, supervisors and managers are more likely to "buy into" and use the conflict resolution system.

Beyond the broad policy decision to utilize and support the use of mediation, the organization must adopt a number of specific administrative policies which will establish the parameters of the program. These administrative policy decisions are illustrated below.

Policy Checklist

Before beginning an ADR program, policy decisions should be made in the following areas:

- ☐ Which employees will be eligible to use the program?
- ☐ How will mediation be initiated?
- ☐ Will mediation be voluntary or mandatory?
- ☐ What kinds of disputes will be included and excluded?
- ☐ Who chooses the mediator?
- ☐ Will single or co-mediators be used?
- ☐ Confidentiality & Disclosure
- ☐ Representation
- ☐ Other _____
- ☐ Other _____

There may be other policy decisions necessary depending on the characteristics of the organization and the ADR program.

Which employees will be eligible to use the program?

Mediation can be used at all levels of the organization, from entry-level non-skilled workers to senior level administrators and professionals. Each organization should decide who will use mediation based on its particular employee grievance structure and needs.

Of the employee grievance working group members from organizations with mediation as an option to employees, most reported that mediation was made available as an option to all employees from

all levels of position classification and hierarchies within the organization. The only exceptions were employees on initial job probation and employees who had been terminated and were no longer employees.

How will mediation be initiated?

There are many different choices to be made by an organization in determining who may initiate or request mediation, and whose referral or approval of the request is necessary on behalf of the management structure of a governmental entity.

Mediation may be initiated by one party, by agreement of both parties, by the employee only if the dispute is between an employee and a manager, by a supervisor of co-workers involved in a dispute, or by anyone else the entity designates.

Beyond initiation, agencies may designate who approves a mediation request and/or refers it to mediation. Referral may be a discretionary function, given to a person who is trained to decide whether a dispute is appropriate for mediation, or it can be a simple gate-keeping function, with the designated official simply scheduling the mediation and keeping track of the outcome.

All participants in the working groups reported that either party to a dispute may initiate mediation, but the referral point varies considerably among agencies. Organizations delegate the referral responsibility to various personnel: first or second level supervisors, Human Resources personnel, Employee Assistance Program personnel, or the Ombudsman. To encourage the use of mediation in resolving disputes, however, most mediation plans provide multiple referral and entry opportunities for the mediation process.

Will mediation be voluntary or mandatory?

Unlike private sector mediation plans which often require an employee to sign an agreement to mediate disputes, all government entities participating in the working groups reported that mediation in their programs was voluntary for both parties in a dispute.

In two of the participating agencies' programs, if mediation is desired by an employee, the manager/supervisor will be strongly encouraged to participate in the mediation process. Two agencies were considering the private sector model of making mediation mandatory for all parties in a grievance situation. One Texas State agency ombudsman who had been using mediation for two years reported that only one employee had refused to participate in mediation, and that even the highest level executives of the agency had participated in mediation. Some private sector business policies state that the employer will participate in a mediation if one is requested by an employee.

What kinds of disputes may be mediated?

Decisions about the kind of disputes to be mediated will vary based on the type of grievances the agency faces and the agency's grievance policies. These decisions varied greatly among the employee grievance working group participants.

- One agency reported it would only mediate disputes about performance evaluations; another reported it would mediate any dispute *except* those related to promotion or performance appraisals.

- Although most entities reported that they would mediate up to the moment of decision in a dismissal, most reported that they would not mediate termination decisions or other disciplinary actions.

- One higher education entity reported that tenure decisions would possibly be an area that would not be mediated.

- Some entities will not mediate disputes relating to criminal matters or sexual harassment.

- Most organizations will not mediate employees' disputes unrelated to the workplace, like family and neighborhood disputes.

- One agency reported that no limitations are placed on mediation of disputes, which "run the gamut from whether someone cleaned up their mess in the kitchen to sexual and racial harassment."

Whatever the organization's decision concerning the subject matter of the dispute, such information should be clearly and explicitly included in any mediation plan adopted by the organization.

Who chooses the mediator?

Mediators can be chosen by the program administer, the participants, or randomly from an established list or roster. Some state agencies allow the disputants to mutually agree upon a mediator identified by the Human Resources office from an identified pool of trained internal mediators. One agency in the Working Group always uses mediators outside the agency, drawing volunteers from the local or regional non-profit mediation center, with that center actually selecting the mediator for a particular dispute.

Legal Note: Mediator Selection

The Governmental Dispute Resolution Act of 1997, as amended in 1999, introduced an important criterion on the question of mediator selection. The statute requires that for state entities, any mediator used must be acceptable to both parties. Since the Governmental Dispute Resolution Act is now applicable to "governmental bodies," which includes all state and local entities subject to the Public Information Act, a government's mediation system must include provisions for finding a mediator (either inside or outside the entity) who is acceptable to both parties.

Will single or co-mediators be used?

Working group members use both single mediator and co-mediators, although co-mediation is the more popular choice. Co-mediation has the following advantages:

- It has the potential for providing more diversity to the dispute resolution process.
- Less experienced mediators can work closely with mediators who have more experience and are more knowledgeable about the process, thereby improving their mediator skills and contributing to an increase in the number of experienced mediators.
- Mediators can share responsibilities which might alleviate some of the fatigue associated with lengthy mediation sessions.
- It increases the ability to creatively generate options, both in terms of managing the mediation session and for resolution of the dispute.

Government employers that may wish to use internal mediators, however, may not have a large enough staff of trained mediators to co-mediate each case. In such an instance, the governmental body could ask a local dispute resolution center or another governmental body to provide a co-mediator. Co-mediation may be more expensive if two private sectors mediators are employed. The governmental entity would certainly wish to discuss costs with the private mediators and will need to factor cost into the decision of whether to use co-mediators. The option of using a combination of internal and external co-mediators may help reduce costs and may have other benefits as well.

What about confidentiality and disclosure of information discussed in the mediation session?

Confidentiality is a cornerstone of the ADR process. Both the TADRPA and the GDRA discuss confidential communications and a governmental body must adopt policies that are consistent with those Acts. Success in mediation depends on the participants' willingness to share information and feelings that they usually guard for personal reasons or legal strategy. Strict confidentiality guidelines in mediation help participants feel comfortable sharing information, either directly in the mediation or in private with the mediator.

In order to preserve confidentiality and encourage people to participate in ADR procedures, the program should have strict confidentiality guidelines, including:

- The mediator should not disclose any information about the parties or anything that happens in the mediation process, except where specifically required to do so by the TADRPA. For instance, a mediator must report abuse or neglect of children and abuse, exploitation or neglect of the elderly and communications relating to the abuse, neglect or exploitation of children and the elderly are exempted from confidentiality.

- The parties should not disclose any communication by any other party in the mediation and should not be asked to disclose any information about the content or process of the mediation.

A governmental entity's confidentiality rules should be set out in policy, made known to everyone in the organization, and followed by everyone involved in the program. A confidentiality policy will help potential participants feel comfortable entering the process and will facilitate candid participation in the process.

Supervisors in the organization must understand and respect the confidentiality policy. Managers and other supervisors should never pressure mediators or participants to reveal the content of a mediation process, even if they want the information for legitimate "good management" reasons. Surveys used for program evaluation should not contain questions that would allow the evaluator to identify the specific case or the parties. (Developing survey forms is discussed at length in the section on evaluation.)

While all mediation programs are concerned with confidentiality, public entities face a special challenge when designing confidentiality policy: how to balance the privacy rights of individuals against the public's right to information. The organization must reconcile the need to keep personnel matters confidential with the legal requirements of the Texas Open Records Act under which public entities must operate. Ultimately, the policy must protect the agency's legal position in the event that a grievance results in litigation.

Confidentiality in ADR is governed by several Texas statutes. These statutes are briefly discussed below, but legal guidance from appropriate counsel should be obtained before designing your policies, as these laws are complicated and subject to change.

Legal Note: Confidentiality

Disclosure of Signed Agreements. Both the TADRPA and the GDRA state that a final written agreement to which a government entity is a signatory that has been reached through a dispute resolution process is subject to the Public Information Act. This means:

- When an individual signs a mediated agreement on behalf of a governmental body that is subject to the Public Information Act, that agreement is subject to disclosure under the Public Information Act. It will only be protected from disclosure if one of the exceptions of the Public Information Act applies to the agreement itself or to material contained within the agreement.

- When an individual signs a mediated agreement on his or her own behalf, that agreement is confidential under the TADRPA and is not considered a government record which would be subject to the Open Records Act unless the other signatory is a government entity.

TADRPA Confidentiality Provisions. Two sections of the ADRPA, Sections 154.053 and 154.073, cover the communications, records, conduct, and demeanor of the impartial third party and the disputants. These provisions collectively establish a number of requirements on confidentiality.

- Impartial third parties are prohibited from disclosing to other parties or to anyone else information given in confidence and communications relating to the subject matter of the dispute, unless expressly authorized by the parties.

- Communications relating to the dispute made by a participant during an ADR procedure before or after formal proceedings are confidential, not subject to disclosure and may not be used as evidence against the participant in a later proceeding.

- Any record made at an ADR procedure is confidential, and neither the participants nor the third party may be required to testify or be subject to process requiring disclosure of this information.

The TADRPA also contains some important limits on confidentiality protections:

- Any oral communication or written material that would have been discoverable or admissible independent of the ADR procedure remains admissible and discoverable. In other words, a disputant cannot 'offensively' hide material by simply introducing it during an ADR procedure.

- When the any of the statute's provisions conflict with "other legal requirements for disclosure of communications or materials," the specific matter in question may be submitted to the court of jurisdiction for a ruling.

- The parties, including the impartial third party, have a duty to report abuse, exploitation, or neglect of children or the elderly as provided in Subchapter B, Chapter 261 of the Family code, and Subchapter C, Chapter 48 of the Human Resource Code.

- As noted above, when a governmental body is a signatory to a final written agreement that is reached as a result of a dispute resolution procedure conducted under the Act, the written agreement is subject to the Public Information Act.

GDRA Confidentiality Provisions. The GDRA provisions extend the TADRPA confidentiality measures relative to the Public Information Act to state agencies. Subsection 2009.054 (b) of the GDRA provides that certain information is to remain confidential even against Public Information Act inquiries, unless all parties agree to the disclosure. The information specifically excepted from the Public Information Act includes:

- communications and records of communications between an impartial third party and the disputants, and between the disputants, that are relevant to the dispute and made during the ADR procedure; and

- the notes of the impartial third party, except to the extent that the notes consist of a record of a communication with a party.

Finally, the GDRA clarifies that the impartial third party may not be required to testify in any proceedings as a result of the dispute resolution process.

§ 441.031, Gov't Code (1997) Confidentiality Provisions. This section deals with ADR-related records and the definition of state, county and local government records. While the statute does not mention confidentiality, in practice it may provide a mechanism for ensuring that ADR records remain confidential. The statute removes all ADR records from the definition of government records. A primary consequence of this is that these records in turn may not be subject to the Records Retention Act requirements, which fact may authorize public entities to destroy the records when and if they see fit.

C. Step Three: Defining Roles

It is essential to the integrity of a dispute resolution system that the role and responsibility of each employee in the dispute resolution process be clearly defined and described. Job descriptions that precisely define every employee's responsibility as a collaborative team member and as a participant in the dispute resolution system prevents confusion, reliance on higher authority to solve all problems, or failure to acknowledge employee disputes altogether.

Identifying and Defining Functions

While it may be desirable to create new positions to manage employee dispute processes at the time that ADR is incorporated, it may not be necessary. Rather than creating new jobs, it is important to identify necessary functions, which can probably be incorporated into existing job descriptions. For example, the function of the "Dispute Resolution Program Administrator" could be added to the job descriptions of existing personnel such as a Human Resources director or an Ombudsman. Typical functions in a dispute resolution system that emphasizes collaboration and mediation include:

Dispute Resolution Program Administrator: handles the day-to-day administration, coordination and management of the dispute resolution program; acts as liaison to any dispute resolution policy committee; implements dispute resolution program.

Front-line Supervisors: act as the first and primary resource for the resolution of employee disputes; recognize and intervene to resolve employee disputes or refer employees to the most appropriate dispute resolution resource.

Managers: serve in a primary backup role to supervisors in the resolution of employee disputes and in linking employees to the appropriate dispute resolution resources; protect employees from retaliation; publicize the dispute resolution program and educate employees as to its steps and requirements.

Confidential Advisers: serve on a part-time and cross-unit basis to act as confidential and independent dispute resolution resources available to employees, supervisors and managers.

Convener: explains dispute resolution options; assists parties in selecting the most desirable process for their conflict.

Evaluator: monitors use of dispute resolution process to ensure it meets organizational goals; makes reports to appropriate administrators.

Employees: make a good faith effort to solve disputes using alternatives provided by policy; make a good faith effort to abide by agreements developed in mediation.

Not all of these roles need to be assigned to different people. For example, the conveners can also be the evaluators. In some (especially small) agencies, the program administrator might also assume the convening and evaluating functions.

The Ombudsman's Role in the Dispute Resolution Process

For purpose of workplace disputes in this country, an ombudsman is a neutral member of an organization or agency who is generally located outside of the normal managerial chain of command and reports directly to the leadership or chief executive officer of the organization.

The ombudsman's role is to help resolve work-related disputes through informal counseling, mediation or investigation and recommendations to management. Some government entities use their ombudsman to deal with extended public client complaints, not employee-related complaints. Other entities use their ombudsman for employee relations and to handle internal complaints. Ombudsmen have a dual role working with employees and also with public clients and customers of the agency. Working Group members reported that the ombudsmen within their organizations that handle internal complaints are closely involved with the integration of mediation into the agency's policies and employee grievance processes.

Ombudsmen's neutrality makes them particularly well suited for significant roles in a dispute resolution program. Entities with ombudsmen can assign a number of the roles listed above to the ombudsmen. The Ombudsman can be the program administrator, convener, and evaluator. An ombudsman can also serve as confidential advisor.

D. Step Four: Gathering Resources and Support

Like any other program in your organization, running an ADR program for employee grievances takes resources: people, facilities and, of course, money. It is critical to gather and prepare the resources during the planning stage, so when the program begins it can run smoothly and continuously. Like any program, people will be more likely to trust an ADR program that is dependable and consistent.

Recruiting Internal Mediators

No matter how the system is structured, success will depend on personnel. There are two main issues to remember when selecting in-house employees to staff an ADR program: finding the right type of people, and finding people from many different parts of the organization.

There is no prototype for a good mediator or other ADR practitioner. There are many different types of people active in the field, and they all bring different strengths. Generally, you should try to identify people who are good at diffusing tensions, communicate and listen well, and are creative problem solvers. It is also important that they are eager to encourage collaborative dispute resolution and support the conflict management system. Luckily, as long as you can identify bright, enthusiastic people with good "people skills," quality training can take them a long way towards success.

Once the type of person is determined, it is important to recruit people from all levels of the organization. One of the most critical elements in convincing employees to use these new systems is trust. Drawing mediator trainees from all ranks and divisions of the organization can help generate that trust: employees will realize that the program is not just a product of management or the personnel department, but something in which their peers are involved.[11]

Training Internal Mediators

After appropriate people are selected, the ADR "staff" will need training. According to the Texas Governmental Dispute Resolution and ADR Procedures Acts, an impartial third party in an ADR procedure must have a minimum of 40 classroom hours of "basic mediation" training. The most common providers of this training are the 16 local Dispute Resolution Centers (DRCs) around the state, but there are a number of other organizations who also provide high quality training. Additionally, there are experienced private trainers in many communities who can be contracted to train mediators, which may prove a cost-effective route for organizations that need to train a large number of mediators at once.

In addition to training mediators, the organization should provide training for "users" of the ADR program, such as program administrators, evaluators and conveners. These people will probably be most effective if they are provided with the minimum forty hours of training, but it is a good idea to provide them with enough training to understand the mediation process and be able to explain it to others.

An important tool in maintaining the quality of the program is continuing education and training. Just as for basic training, outside trainers, in-house sessions using private trainers or particularly experienced in-house neutrals can be utilized for advanced training.

For a list of DRC's and other training organizations, see Appendix A.

[11] Linda deLeon, *Using Mediation to Resolve Personnel Disputes in a State Bureaucracy*, p. 81, Negotiation Journal (1994).

Legal Note: Third Party Neutrals

Use of Impartial Third Parties. The GDRA, Chapter 2009, Tx. Gov't Code, provides that governmental bodies may appoint "a governmental officer or employee or a private individual to serve as an impartial third party in an alternative dispute resolution procedure." Government entities may also contract with the State Office of Administrative Hearings (SOAH), the Center for Public Policy Dispute Resolution, community Dispute Resolution Centers, other government entities, or may enter into a pooling agreement with several government entities to obtain impartial third parties. The section also provides that the impartial third party must be acceptable to each disputant, except under certain circumstances for cases referred by SOAH administrative law judges.

Minimum Qualifications of Impartial Third Parties. Both the GDRA and the Texas Alternative Dispute Resolution Procedures Act (TADRPA) require that an individual possess certain minimum qualifications to serve as a mediator or other impartial third party. These minimum qualifications include completion of 40 hours of ADR training and the absence of a conflict of interest. The statutes also direct that the impartial third party must abide by the standards and duties described in the TADRPA, which include a duty not to coerce or compel settlement, a duty to keep the parties' confidence, and a duty to keep the communication, conduct, and demeanor of the parties confidential from outside parties, including the appointing entity.

Using External Mediators

Some organizations choose to use mediators from outside sources. There are many very good reasons to make this choice. Here are a few of them:

- The organization is too small: it will be impossible to find in-house mediators unfamiliar with the disputes or disputants.
- The budget will allow you to pay higher costs for outside mediators over time, but not the up-front costs to train in-house mediators.
- The employees are spread out all over the state, and it would be more efficient to contract with local mediators than to send in-house mediators from place to place.
- There are not enough personnel willing to serve as mediators, or not enough are trained for the start of the program.

Options for outside mediators may vary depending upon your location. There are 16 dispute resolution centers around the state that provide mediators at a low cost (see Appendix A for a list). There are also private mediators in most communities. Private mediators located in most communities may be found in the phone book and on the Internet, and through professional organizations such as the following:

The Texas Association of Mediators P.O. Box 191208 Dallas, TX, 75219-1208 www.txmediator.org	Association of Attorney-Mediators 1-800-280-1368 www.attorney-mediators.org

Educating Employees and Building Organizational Support

While ADR and mediation are not new, few people know about them, and even fewer really understand the processes. The success of the ADR program, however, depends on the participants: they must understand the program and know how to use it. Furthermore, instituting ongoing support systems for employees can help ensure the continuing success of an ADR program.

Marketing

What is the most effective way to make sure that employees learn about the mediation program? Every organization has its own favorite and most effective methods of disseminating program information to employees, such as marketing or educational programs. Members of the employee grievance working groups suggested the following list of possibilities:

- Memos
- Policies
- Staff briefings
- Employee handbooks
- Brochures
- Seminars
- Newsletters
- New employee orientation
- Web sites

Effective education can include educational courses and seminars explaining the system and processes that your organization plans to adopt. One agency planned a "road trip" to various agency locations to make presentations division by division throughout the agency, allowing time for interaction and dialogue.

Education and Training

Education of supervisors and managers is very important for the successful implementation of ADR and mediation, especially if participation is not mandatory for supervisors. Familiarity with the vocabulary and the general tenets of mediation can help alleviate any fears of encroachment on supervisory authority. Additionally, if supervisors learn that the process can be used to resolve disputes more quickly, efficiently and effectively, they will be more inclined to participate.

For employees, education is a key to developing a successful dispute resolution system: it provides them the requisite information to support and trust the entity's conflict management system.

Training in ADR skills can help employees and supervisors alike feel more comfortable and participate more effectively in ADR procedures. Potential ADR participants do not need the extensive training required of mediators and other neutrals, but short (perhaps one or two day) training sessions can definitely improve the effectiveness of the program.

If the organization already has experienced mediators and trainers, it may be more cost effective to develop and teach training sessions "in-house," or experienced organization people can be assisted by an experienced ADR trainer as a consultant, course designer, or co-teacher. There are also outside organizations and trainers who can provide a quality training program can be contracted to conduct these short training sessions. For a list of possible providers, see Appendix A.

Some possible topics for employee training include:

- the ADR/mediation process
- active listening
- direct communication
- interest based negotiation
- preparing for mediation
- "mock" mediations or other processes

Support Systems

In order to keep the grievance program running smoothly, the organization should have ongoing support systems that your employees can access at any time. These systems can include telephone hotlines, in-person and confidential consultations and continuing education. Programs like these can help employees find answers to questions which might otherwise be stumbling blocks to use of the ADR processes.

Funding and physical resources

One of the most problematic issues in developing or modifying any governmental program is funding. While one of the goals of ADR is to save money over time, establishing an ADR program requires up front and ongoing budgetary support. An ADR program will need funds for training

managers and supervisors, running the mediation system, and publicizing the new alternative. Internal mediators will require funds for training. External mediators will have to be paid.

Legal Note: Budget Authority to Use ADR

The Governmental Dispute Resolution Act authorizes the expenses associated with implementing the statute to be paid out of any appropriate area of the governmental body's budget. Section 2009.004, Tex. Gov't Code. It also authorizes governmental bodies to contract with other public and private entities, including the several county-based community Dispute Resolution Centers and the Center for Public Policy Dispute Resolution, for training and expertise that may be necessary to meet the objectives of the Act.

While ADR-related expenditures are generally acceptable expenditures in non-agency public entities, these organizations should seek legal guidance on their authority to budget for specific ADR items.

The members of the Working Groups, concerned with tight budgetary constraints in their agencies, developed several ideas to help keep costs down:

- using volunteer mediators or mediation services provided at low cost by local or regional non-profit mediation centers
- arranging joint training sessions among entities to reduce or discount training fees
- education or training of in-house personnel to act as instructors to organization employees
- sharing mediators through an inter-agency mediator pool
- redirecting current training funds

The need for physical resources to conduct the dispute resolution processes is an often overlooked component of a successful system design. For effective dispute resolution, employees will need access to private rooms, secure telephones, and sufficient time for the mediation at a private, neutral site. If a mediation is conducted in a non-neutral site, like the manager's conference room (if the manager is a party to the dispute) or at the work site more generally, the parties may perceive an imbalance of power, to the detriment of the parties and the process. A large organization can hold ADR processes in a different facility or a completely separate section of the facility from where the disputants work. Smaller organizations should consider finding a facility off-site for ADR.

Anything that causes the dispute resolution process to be difficult or inconvenient works to undermine the system. The ADR plan should include whatever resources are needed to enhance the success of the dispute resolution.

E. Step Five: Implementing

It is a natural tendency to want to put a system into place immediately after some preliminary decisions have been made. Organizations may want to proceed immediately into Step Five after Step One. However, premature implementation of a conflict management system can have unexpected consequences, such as:

- a decrease in employee morale as they realize the system isn't what they were led to believe it would be or expected it would be,
- uncertainty and confusion about the process and the specific procedures to be used,
- resistance from management or supervisory level employees who may not understand or support the principles underlying the system, and
- lack of use by employees when they become frustrated at problems resulting from transition, among other things.

Implementation can be described as the "doing it" phase of the system design, i.e., the system that has been carefully planned and prepared before is put into effect and allowed to operate. The implementation phase, however, does not happen automatically. There must be a defined start day for the program and sufficient advance preparation and education of all employees, including management, regarding how the program will be accessed and operated so that there is no confusion or misunderstanding about the goals of the system, the procedures of the system, the support from management of the system, or the operational aspects of the system. Employees have more confidence in a conflict resolution system that is well planned and implemented, especially when they have been given sufficient training and information about that system in advance.

There can also be an inclination by a governmental body that its task is done once the system begins operation. However, a successful conflict resolution system is regularly monitored and evaluated so that appropriate modifications can be made when necessary. Evaluation of the program should provide important information about the success of the program, as well as about problem areas that need correction. Correction of problem areas is best done promptly.

Step Six: Evaluating

An important part of creating a conflict management system is establishing feedback mechanisms to collect data and then using the data for correction, modification, refinement and strengthening of the various aspects of the mediation program. Evaluation is helpful in determining:

- whether the implementation of the program is consistent with the original design and goals,

- whether it is serving the intended clientele,

- whether employees are satisfied with the program and with the outcomes of mediations, and

- whether using the mediation process in personnel disputes is cost effective.

Deciding how to evaluate begins with thinking about who will be interested in the program. For a public entity, that usually will be the officials administering the ADR program, other agency officials, especially budget officers, and the program users. Beyond the immediate agency, it is likely that other state agencies will be interested, especially if the program is successful. Because of the possible cost savings of mediation, members of the legislature may be interested, as well as research institutions which are trying to establish good cost effectiveness data. Recognition of who is interested in the evaluation will help in determining what data to collect and how to analyze the data.

Confidentiality Alert!

Confidentiality is a very important consideration in designing an evaluation process. Information about participants or their particular situations is not necessary for system evaluation. Only general program information should be gathered or used. Evaluation surveys and processes should be structured to uphold the highest standards of confidentiality. One of the most effective means of capturing feedback is the use of participant surveys. A survey instrument that is easy to use and which provides confidentiality to the respondent is more likely to be completed and returned. One of the evaluator's obligations to ensure confidentiality is to design surveys that gather general, rather than specific, case information. The evaluator should be interested in aggregate data and trends, not details of particular cases.

Gathering Data

The Working Group participants indicated that government agency mediation programs would be administered and evaluated by the human resources department or ombudsman. The members of the employee grievance working groups suggested that the following categories of data would be useful in the evaluation process:

- utilization data (cases opened/closed in a fiscal year)

- case profile data, such as:

    - ethnic and gender characteristics of mediator and disputants
    - job classifications, agency longevity, and level of education of disputants
    - types of complaints

- the length of time needed to resolve dispute
- site or business unit/origin of the case or complaint

- participant satisfaction information, including satisfaction with:

  - the identity of the neutral facilitator
  - the comfort and privacy level of the meeting room
  - the outcome of the mediation
  - the mediator's impartiality and facilitation skills

- the cost of using mediation and the durability of settlements

Sample survey forms which can be modified for use in evaluation can be found in Appendix B.

Cost/Benefit Information

Cost/benefit information is very important to agencies that operate on public funds. While somewhat difficult to measure, regular collection of data, comparison to more traditional methods of dispute resolution, and consistent and continual tracking over time can make analyzing cost information much easier. A common technique is to calculate the monetary costs for settlements and use of personnel time arising from the use of mediation and compare those costs with the historical and current costs associated with resolving legal cases and grievances through traditional complaint procedures. It is important to establish mechanisms for measuring the time elapsed from making the initial complaint to the settlement of a case, recording the number of people involved, and reporting any monetary costs resulting from the settlement.

There are also indirect cost benefits related to mediation programs which can include increased job satisfaction, better attendance on the job, lower employee turnover and lower recruitment and training costs because of higher employee retention. Indirect cost benefits are difficult to quantify even though they result in better productivity and cost savings. It is also difficult to relate these benefits to a particular program. Periodic job satisfaction surveys, focus groups, and termination interviews are all strategies that offer feedback to management about whether the conflict resolution/mediation policies are working well.

Data Analysis

The collected data should be analyzed periodically to measure customer satisfaction and program effectiveness and efficiency. A good program analysis describes and explains the data, identifies patterns and trends, and infers causal relationships between program and the measured results. A program analysis of mediation would most likely deal with questions such as these:

- Are the participants satisfied with mediation settlements?

- Would the participants elect to use mediation again in the future?

- Does the use of mediation result in greater/fewer number of settlements?

- Are disputes resolved more or less quickly using mediation, compared to traditional means of dispute resolution?

- What impact does mediation have on outcomes? Do settlement agreements reflect more "creative" solutions?

- Are certain types of cases more likely to be resolved through mediation than others?

- Does mediation result in greater/lesser levels of compliance with settlement agreements?

- Does the use of mediation have the effect of improving the work environment by reducing conflict and improving relationships?

- Does mediation result in an increase/decrease in case inventory?

- Does the use of mediation have any negative consequences?

- Is the use of mediation more or less costly than the use of traditional means of dispute resolution?

Reporting the Data

The final step in evaluation is reporting the information and analysis. Reports may be oral or written and usually contain simple tables or charts to summarize the data. The report usually begins with a statement of the goals and objectives of the evaluation and provides a description of the mediation program and its operation. The data is presented, sometimes comparing utilization and satisfactions by variables, such as gender, longevity, job classification, etc. Then the report discusses the strengths and weaknesses revealed by the utilization patterns in the survey data. The implications for program administration are considered (for example, would training improve the program? Would better marketing improve utilization?), followed by appropriate recommendations.

While the evaluation report will undoubtedly be presented to agency administrators and budget officers, it is also wise to broadcast evaluation reports as widely as possible, especially to users and potential users of the program. While reports of success will obviously encourage people to participate in the program, honest and open information will also help potential users feel comfortable using a new program in the difficult situations for which mediation is appropriate. Information may be disseminated through established employee communication channels, such as staff meeting reports, newsletters and web sites.

IV. CONCLUSION

There is no definitive data collection source for the number of employee complaints or grievances filed by state employees through an internal complaint or grievance process. However, there is statistical data from the EEOC regarding the number of charges filed with their organizations. For fiscal year 1999, the EEOC reported the receipt of 77,444 charges of violations of Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Equal Pay Act. Resolutions were achieved on 97,846 claims. Merit resolutions were achieved in 16.5 % of the cases, for a total of $210.5 million, not including monetary benefits obtained through litigation. The EEOC found no reasonable cause in 59.5 % of the cases.[12] The Texas Commission on Human Rights does not report data that would identify the number of complaints filed by government employees *per se*. While it is not possible to give an exact count of the number of government employee lawsuits related to employment filed each year, it is safe to say that there is a great amount of litigation in this area.

The private sector has begun to make increasing use of ADR processes in their employee complaints and grievances. Many companies such as Brown and Root International, JC Penney, McDonnell Douglas, Rockwell International, and ARCO have instituted employee grievance and complaint systems that include the use of ADR processes, most often mediation or arbitration. The Brown and Root program involves four steps: (1) a company-wide open door policy and employee hotline, (2) a conference with a Brown & Root representative to discuss options and an option for informal, in-house mediation, (3) formal, outside mediation, and (4) formal, outside arbitration. Brown & Root, like many other private sector companies, guarantees company participation in the mediation process if an employee selects it. Most private sector companies either pay all costs associated with a mediation or require a minimal contribution from the employee if an outside mediator is used.

In the face of competing demands for adequate governmental funds, government leaders and employees are increasingly called upon to make the most of limited resources; therefore, government management must constantly evaluate whether resources are being used to their maximum advantage in all areas of the government entity's operations. In performing this evaluation, managers should consider the agency's complaint and grievance process as a possible area in which alternative processes can assist them in more efficient allocation of resources and utilization of their workforce.

[12] EEOC Charge Statistics FY 1992 through 1999, http://www.eeoc.gov/stats/charges, as of January 12, 2000.

APPENDIX A

MEDIATION RESOURCES

Texas Associations

Texas Association of Mediators
P.O. Box 191208
Dallas, TX 75219-1208
Email: lexlar1@txmediators.org
Web Page: http://www.txmediator.org/

The Association of Attorney-Mediators
PO Box 741955
Dallas, TX 75374-1955
(800) 280-1368
Fax: (972) 669-8180
Email: aam@airmail.net
Web Page: http://www.attorney-mediators.org/

Austin Association of Mediators
1409 West 6th Street
Austin, TX 78703
(522) 476-7226
Email: gkopas@flash.net
Web Page: http://www.mediators.net/

The State Bar of Texas (local bar associations may also have ADR Sections)
Alternative Dispute Resolution Section
1414 Colorado
Austin, TX 78701
Mailing Address:
PO Box 12487
Austin, TX 78711
(512) 463-1463
1-800-204-2222, Ext. 2037
Web Page: http://www.texasadr.org/

OTHER ADR RESOURCES

Texas Organizations

Center for Public Policy Dispute Resolution
727 E. Dean Keeton
Austin, TX 78705
(512) 471-3507
Fax: (512) 232-1191
Web Page: http://www.utexas.edu/law/acadprogs/cppdr/index.html

Southwest Texas University
Legal Studies Program
601 University Drive
San Marcos, TX 78666
(512) 245-2111
Web Page: http://www.swt.edu

St. Edward's University
Master of Arts in Human Services
3001 S. Congress Ave.
Austin, TX 78704-6489
(512) 448-8400
Web Page: http://www.stedwards.edu

A. A. White Dispute Resolution Institute
University Of Houston, 325 Melcher Hall
College of Business Administration
Houston, TX 77204-6283
(713) 743-4933
Fax: (713) 743-4934
Web Page: http://www.uh.edu/aawhite/

Texas ADR Registry
Web Page: http://www.tex.law.com/bar/lsg/adr.htm

TEXAS COMMUNITY DISPUTE RESOLUTION CENTERS

Amarillo (Potter & Randall Counties)
Dispute Resolution Center
PO Box 9257
Amarillo, TX 79105-9257
(806) 372-3381
Fax: (806) 373-3268
Pam Coffey, Program Director

Austin (Travis County)
Dispute Resolution Center
5407 N. IH 35, Suite 410
Austin, TX 78723
(512) 371-0033
Fax: (512) 371-7411
Web Page: http://www.realtime.net/drc/
Kris Donley, Executive Director

Beaumont (Jefferson County)
Dispute Resolution Center of Jefferson County, Inc.
1149 Pearl 3rd Floor Old Section
Beaumont, TX 77701
(409) 835-8747
Fax: (409) 784-5811
Web Page: http://www.co.jefferson.tx.us/med_cntr/med.htm
Cindy Bloodsworth, Executive Director

Bryan/College Station (Brazos County)
Dispute Resolution Center – Central Brazos Valley, Inc.
Texas Workforce Commission Building
801 East 29th Street
Bryan, TX 77803
(409) 779-3743
Fax: (409) 823-2071 Ext. 229
Web Page: http://www.drc-cbv.org/
Barbara Emery, Director

Conroe (Montgomery County)
Dispute Resolution Center
PO Box 3609
Conroe, TX 77305
(409) 760-6914
Fax: (409) 788-8364
Kathy Bivings-Norris, Director

Corpus Christi (Nueces County)
Nueces County Dispute Resolution Services
901 Leopard, Room 401.2
Corpus Christi, TX 78401
(361) 888-0650
Fax: (361) 888-0754
Valdemar Bazaldua, Executive Director

Dallas (Dallas County)
Dispute Mediation Service, Inc.
3400 Carlisle, Suite 240, LB-9
Dallas, TX 75204-1261
(214) 754-0022
Fax: (214) 754-0378
Web Page: http://www.adrr.com/dallasadr/website.htm
Herbert V. Cooke, Executive Director

El Paso (El Paso County)
Dispute Resolution Center
1100 N. Stanton, Suite 610
El Paso, TX 79902
(915) 533-4800
Fax: (915) 532-9385
Patricia Gross, Coordinator

Fort Worth (Tarrant County)
Dispute Resolution Services of Tarrant County
One Summit Ave., Suite 210
Fort Worth, TX 76102-2609
(817) 877-4554
Fax: (817) 877-4557
Web Page: http://startext.net/homes/mediate/
Bob Good, Executive Director

Houston (Harris County)
Harris County Dispute Resolution Center
49 San Jacinto, Suite 220
Houston, TX 77002-1233
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Fax: (713) 755-8885
Nick Hall, Executive Director

Lubbock (Lubbock, Hockley, Cochran, Terry, Yoakum, Garza & Dickens Counties)
South Plains Dispute Resolution Center
PO Box 3730, Freedom Station
Lubbock, TX 79452
(806) 762-8721
Fax: (806) 765-9544
Web Page: http://www.interoz.com/spag/arbit.htm
D. Gene Valentini, Executive Director

McKinney (Collin and Rockwall Counties)
The ADR Project of Legal Services of North Texas
114 W. Louisiana
McKinney, TX 75069
(972) 562-6001
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Susan Z. Wright, Executive Director

Paris (Lamar County)
Dispute Resolution Services
Paris Junior College
2400 Clarksville
Paris, TX 75460-6298
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Shelly Hudson, Executive Director

San Antonio (Bexar County)
Bexar County Dispute Resolution Center
Bexar County Justice Center
300 Dolorosa, Suite 1102
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Fax: (210) 335-2941
Marlene Labenz-Hough, Director

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McLennan County Dispute Resolution Center
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Michael Kopp, Director

PROFESSIONAL ASSOCIATIONS

Society of Professionals in Dispute Resolution (SPIDR)
1527 New Hampshire Avenue, NW
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Washington, D.C. 20036
202-667-9700
Fax: 202-265-1968
Email: spidr@spidr.org
Web Page: http://www.spidr.org/

Academy of Family Mediators
5 Militia Drive
Lexington, MA 02421
(781) 674-2663
Fax: (781) 674-2690
E-mail: afmoffice@mediators.org
Web Page: http://www.mediators.org/

American Bar Association
Dispute Resolution Section
740 15th St. NW
Washington, DC 20005-1009
(202) 662-1680
Fax: (202) 662-1683
Email: dispute@abanet.org
Web Page: http://www.abanet.org/dispute/

The National Association for Community Mediation
1527 New Hampshire Avenue, NW
Washington, DC 20036-1206
(202) 667-9700
Fax: (202) 667-8629
Email: nafcm@nafcm.org
Web Page: http://www.igc.org/nafcm/

CPR Institute for Dispute Resolution
366 Madison Ave.
New York, NY 10017
(212) 949-6490
Fax: (212) 949-8559
Web Page: http://www.cpradr.org

American Arbitration Association
(Texas office)
1001 Fannin St., Suite 1005
Houston, TX 77002-6708
(713) 739-1302
Fax: (713) 739-1302
Web Page: http://www.adr.org

APPENDIX B

SAMPLE EVALUATION FORMS

1. Mediator Report Form
2. Evaluation Form for Mediation Participants
3. Mediation Participant Follow-up Report Form

Mediator Report Form

To the Mediator: Your feedback as mediator is critical to the success of our program. Please take a moment to complete this brief form and return it to the address at the end. Thank you for your assistance!

THIS FORM IS DESIGNED TO MAINTAIN CONFIDENTIALITY. PLEASE DO NOT WRITE YOUR NAME OR THE NAMES OF OTHERS. THE INFORMATION YOU PROVIDE WILL ONLY BE USED TO EVALUATE THE EFFECTIVENESS OF MEDIATION.

____ New Case ____ Reopened Case

Date complaint initiated _____ Date of mediation _____

Date case closed _____ Length of mediation (round to the nearest half hour): _

1. Were co-mediators used?

   ___ Yes ___ No

2. Mediator(s) gender:

   ___ Male ___ Female
   ___ Male ___ Female

3. Mediator(s) ethnic background:

   ___ African American ___ Anglo
   ___ Asian American ___ Hispanic
   ___ Other: _____

4. Describe the participants in the mediation (use job descriptions, employment relationships, etc., but not names or other specific information).

5. In general terms, indicate the issues in dispute between the parties that were raised during the mediation. For each issue, please mark the degree to which resolution was achieved.

Issue	Issue resolved	Issue narrowed	Issue not resolved
_____	( )	( )	( )
_____	( )	( )	( )
_____	( )	( )	( )

6. Check the description of the overall level of agreement on the issues referred for mediation:

___ Complete agreement
___ Complete agreement, pending collection of further information
___ Partial agreement
___ Partial agreement, pending collection of further information
___ No agreement
___ Other: _____

7. If all issues in dispute were not resolved through the mediation, please indicate why you believe settlement was not reached. Check all that apply.

___ Bargaining power imbalance
___ Parties reasonably disagreed over case
___ Factual issues need to be resolved before settlement
___ Mediator didn't effectively manage session
___ Legal issues need to be resolved before settlement
___ One or more of the parties was unreasonable
___ Critical information missing
___ Parties lacked authority to settle
___ Other: _____
_____

8. If all issues were not resolved, how do the parties intend to proceed to resolution?

___ Proceed to formal grievance
___ Schedule another mediation
___ Other: _____

9. If settlement agreement involved a monetary settlement, what was the amount? _____

10. In your opinion, did mediation in this case save time? ___ Yes ___ No

11. In your opinion, did mediation in this case save money? ___ Yes ___ No

Survey Form for Mediation Participants

To the Mediation Participant: Your feedback as a mediator participant is critical to the success of our program. Please take a moment to complete this brief form and return it to the address at the end. Thank you for your assistance!

THIS FORM IS DESIGNED TO MAINTAIN CONFIDENTIALITY. PLEASE DO NOT WRITE YOUR NAME OR THE NAMES OF OTHERS. THE INFORMATION YOU PROVIDE WILL ONLY BE USED TO EVALUATE THE EFFECTIVENESS OF MEDIATION.

____ New Case ____ Reopened Case

Date complaint initiated _____ Date of mediation _____

Date case closed _____ Length of mediation (round to the nearest half hour): .

1. Your gender: ___ Male ___ Female

2. Your age: ___ Age 25 and under ___ Age 26-50 ___ Age 51 and over

3. Number of years with the agency: ___ 0-5 years ___ 6-15 years ___ 16-20 years ___ 21+ years

4. Your job classification: ___ Professional ___ Administrative ___ Technical
   ___ Classified

5. Department: ___ Executive/Administration ___ Legal ___ Financial
   ___ Human Resources ___ Research & Planning ___ Information Systems
   ___ Public Information ___ Other: _____

6. Have you been in mediation before today? ___ Yes ___ No

7. Mediation was undertaken: ___ at my request ___ at the other party's request
   ___ at the request of _____ (provide the person's position, not name)

8. Have you previously been involved in a personnel complaint, a grievance, a legal hearing or other legal proceeding that was not mediated? ___ Yes ___ No

9. If so, which procedure do you feel was more effective? ___ Mediation was more effective
   ___ Grievance, legal hearing or other legal proceeding was more effective

10. Please circle a number to show whether you agree or disagree with the following statements about the mediation:

	Strongly disagree				Strongly agree
a. I got a chance to talk about what I wanted to talk about.	1	2	3	4	5
b. I felt that what I had to say was understood.	1	2	3	4	5
c. I understood what we were trying to do in the mediation.	1	2	3	4	5
d. I felt listened to in the mediation.	1	2	3	4	5
e. I think mediation was helpful.	1	2	3	4	5
f. Mediation helped me to understand what I need to do.	1	2	3	4	5
g. Mediation helped me to understand what my supervisor will do.	1	2	3	4	5
h. The mediator was impartial.	1	2	3	4	5
i. The mediator was knowledgeable about the process.	1	2	3	4	5
j. The mediator helped reduce tensions.	1	2	3	4	5
k. The mediator effectively managed the session.	1	2	3	4	5
l. I trusted in the confidentiality of the mediator.	1	2	3	4	5
m. The mediation process was fair.	1	2	3	4	5
n. The mediator was effective in helping resolve this case.	1	2	3	4	5

11. Was an agreement reached during the mediation? ___ Yes ___ No ___ Don't know

12. If all issues in dispute were not resolved through the mediation, please indicate why you believe settlement was not reached. Check all that apply.

___ Imbalance of power
___ Parties reasonably disagreed over case
___ Factual issues need to be resolved first
___ One or more party had no authority to settle
___ Legal issues needed to be resolved first
___ One or more of the parties was unreasonable
___ Critical information missing
___ Mediator didn't effectively manage session
___ Other: _____

13. Please rate the overall effectiveness of mediation in helping resolve this case: (choose one)

___ Not effective ___ Somewhat effective ___ Very effective

14. This case was referred to mediation ___ too early ___ too late ___ about the right time.

15. In your opinion, did mediation in this case save money? ___ Yes ___ No

16. In your opinion, did mediation in this case save time? ___ Yes ___ No

Mediation Participant Follow-up Report Form

To the Mediation Participant: Approximately six months ago, you participated in a mediation to resolve a workplace dispute. Your feedback as a participant in our mediation program is critical! Please take a moment to complete this brief form and return it to the address at the end. Thank you for your assistance!

THIS FORM IS DESIGNED TO MAINTAIN CONFIDENTIALITY. PLEASE DO NOT WRITE YOUR NAME OR THE NAMES OF OTHERS. THE INFORMATION YOU PROVIDE WILL ONLY BE USED TO EVALUATE THE EFFECTIVENESS OF MEDIATION.

___ New Case ____ Reopened Case

Date complaint initiated _____ Date of mediation _____

Date case closed _____

1. Were you satisfied with the mediation process? ___ Yes ___ No

2. If you reached settlement in the mediation process, are you satisfied with the results since then?

   ___ Yes ___ No

3. Have you previously been involved in a personnel complaint, a grievance, a legal hearing or other legal proceeding, which was not mediated?

   ___ Yes ___ No

4. If so, which procedure do you feel was more effective?

   ___ Mediation was more effective.
   ___ Grievance, legal hearing or other legal proceeding was more effective.

5. Please rate the overall effectiveness of mediation in helping resolve this case: (choose one)

   ___ Not effective ___ Somewhat effective ___ Very effective

6. In your opinion, did mediation in this case save money? ___ Yes ___ No

7. In your opinion, did mediation in this case save time? ___ Yes ___ No

8. Would you consider using mediation again? ___ Yes ___ No

APPENDIX C

BACKGROUND INFORMATION ABOUT THE EMPLOYEE GRIEVANCE/DISPUTE RESOLUTION WORKING GROUPS

In February and October of 1996, the Center for Public Policy Dispute Resolution (CPPDR) invited governmental entities to participate in Employee Grievance/Dispute Resolution Working Groups. Each of the member entities was represented by a team of two to three individuals, generally including personnel from the office of general counsel, the human resources department, and a representative of the entity's chief in command, such as a commissioner, chair or program director's office.

The primary goals of the working groups were: (1) to provide a forum in which each participating entity could review their own current internal conflict resolution system, (2) to explore appropriate ways to integrate (or further integrate) mediation or other dispute resolution processes into these systems, and (3) to develop assessment mechanisms for measuring and evaluating their results. Early on, the working groups added another goal: (4) to explore the feasibility of creating a shared mediator/third party neutral pool.

When working group members began their projects with the Center, the frequency of use of mediation as an option in their internal grievance procedures varied widely. Several members used mediation extensively, but only with outside clients. Other members had ombudsmen who provided some mediation and/or counseling services to employees, but only three of the eighteen governmental entities represented in the working groups used mediation regularly for employee disputes. Of these three, only two had adopted a formal policy establishing mediation as part of their complaint/grievance procedures.

The Center provided training to the working groups, and the groups met on a periodic basis to network, share information and learn from expert presentations. Each team participated in a "Conflict Management Systems Design" seminar. The Center offered basic mediation training courses to working group member employees and seventy-four new mediators were trained.

The Center also coordinated informational presentations for the group each month, providing experts in evaluation and assessment design, employment law, the Texas Open Records Act, and mediator qualifications, selection and evaluation. Private sector organizations with extensive experience in using mediation in their internal employee grievance systems presented statistical information demonstrating that mediation use for employee grievances had resulted in significant savings in staff and supervisory time and money.

Through this interaction, as dispute resolution plans began to take shape, members were able to identify barriers in implementing successful ADR processes and to develop creative ways to deal with unique problems.

Working Group Participants

Attorney General's Office: C. Randy McNair, III; Suzanne Marshall; Bobby Pearl
Austin Community College: Denise Anding; Joyce Guillory; Janis Koenig
City of Austin: Susan K. Lefler; Charles Williams
Comptroller of Public Accounts: Debra Kress; Javier Lopez; Robert Ruiz
Department of Health: Mary Blackmon; Ernie Klatt; Frank Ringer
Department of Human Services: Bill Buida; Ana Mireles; Terri St. Arnauld
Department of Insurance: Morris Winn; Curtis Polk; Ann Bright
Department of Mental Health/Retardation: Linda Logan; Paul Mascot; John Shaw
Department of Protective & Regulatory Services: Deborah Churchill; Jeff Hall; Karen McClusky
Fort Bend County: Diana Jetter; Julane Tolbert
General Services Commission: Perri Travillion; Larissa Albright
Lower Colorado River Authority: Karen Farabee; Cynthia Petras; Cherylann Occhipinti
Natural Resource Conservation Commission: Linda M. Smith; Cecelia Bellinger; Tina Coronado
State Office of Administrative Hearings: Bertha Davis; Amy Hodgins
Texas A & M University: Karen Chavis; Susan Irza; Scott Kelly
Travis County: Marilyn Abbett Hancock; Darwin McKee; Edith Moreida
University of North Texas: William McKee; Lewis L. Seales; Steve Miller
University of Texas at Austin: Sandra Haire; Dale Sumers; Susan Toalson

This Source Book grew out of the meetings and accomplishments of the Employee/Grievance Dispute Resolution Working Groups ("Working Groups") which were convened by the Center for Public Policy Dispute Resolution. The primary goals of the Working Groups were to review each organization's existing system for resolving public employee disputes, explore whether alternative dispute resolution (ADR) could be appropriately applied to those systems, and to help each participant to design organization-specific dispute resolution systems using mediation and other ADR processes.

In February of 1996, the Center for Public Policy Dispute Resolution invited ten governmental entities to participate in the first Employee Grievance/Dispute Resolution Working Group. The first Working Group participants included: (1) Texas Department of Insurance; (2) The University of Texas at Austin; (3) The University of North Texas; (4) Texas Natural Resources Conservation commission; (5) Office of the Comptroller of Public Accounts; (6) Texas Attorney General's Office; (7) Lower Colorado River Authority; (8) Texas Department of Protective and Regulatory Services; (9) Texas Department of Human Services; and (10) General Services Commission. Each of the member entities was represented by a team of two to three individuals, generally including personnel from the office of general counsel, the human resources department, and a representative of the entity's commissioner, chair or program director's office. Some team members had mediation training and extensive ADR familiarity prior to participation in the First Working Group, while others had little or not prior exposure to mediation.

The primary goal of the First Working Group was for each participating entity to review its own current internal conflict resolution system and explore appropriate ways to integrate mediation or other dispute resolution processes into these systems. Some entities already having ADR systems in place also participated, seeking to fine-tune their systems or to modify them in significant ways. Participating entities already using or just adopting ADR-based systems also sought to develop assessment mechanisms to measure and evaluate their results. The First Working Group members also worked to create options for training their staff as mediators and for developing a shared mediator/third party neutral pool.

In October of 1996, the Center organized a Second Employee Grievance/Dispute Resolution Working Group. The Second Working Group members included: (1) the City of Austin; (2) Travis County; (3) Texas Department of Health; (4) Fort Bend County; (5) Texas A&M University; (6) Austin Community College; (7) State Office of Administrative Hearings; and (8) Texas Department of Mental Health and Mental Retardation. At the initial meeting of the Second Working Group, members of the First Working Group discussed the status of their internal dispute resolution programs and began acting as mentors and resources for the Second Working Group participants.

The Center provided training similar to that provided to the first working group and the two groups met jointly on a periodic basis to network, share information, and receive information from ADR practitioners on topics relevant to employee grievances and ADR. A critical element of participation in the working groups was the provision of training in ADR system design. Each participating entity's team participated in a "Conflict Management Systems Design" course presented by Ralph Hasson of Chorda Conflict Management, Inc., of Austin, Texas. This course offered participants an opportunity to work together to analyze their organization's current conflict resolution system, design revisions to that system, and plan ways to implement and evaluate the modified system. Continuous plan design, redesign, and feedback among working group members were the highlights of the course. At the conclusion of the course, each team had a conflict resolution system design, or, if this was not feasible at that time, a blueprint of specific goals and action steps to enable the team to proceed with the development of a dispute resolution process within their organization. The Center also provided for three forty-hour basic mediation training courses to working group members during July and August 1996, and June 1997. As a result, seventy-four new mediators were trained in these courses.

Additionally, information presentations were coordinated by the Center for the combined groups over several months. Experts in the following areas spoke to the Working Groups: (1) evaluation and assessment design; (2) employment law; (3) the Texas Open Records Act; and (4) mediator qualifications, selection and evaluation. The working groups also heard from three organizations that had been using mediation in their internal employee grievance systems for several years: Brown & Root, the University of Texas Medical School at Galveston, and Southwest Methodist Hospital of San Antonio. Representatives of these organizations presented statistical information demonstrating that mediation use for employee disputes had saved their organizations time and money.

The First and Second Working Group members varied in size, function, and degree of current usage of dispute resolution processes. The smallest participant had several hundred employees while the largest had more than 17,000 employees. Four participants were colleges or universities. The agencies consisted of regulatory and service providers. Many of the Working Group members had offices in Austin, Texas, but also had branch offices in other locations throughout Texas or other

parts of the United States. The number of branch offices of participating entities impacted the conflict resolution system adopted for that agency significantly.

When Working Group members began their work with the Center, their use of mediation as an option in their internal grievance procedure varied widely. Only three of the organizations represented used mediation regularly for employee disputes and of those, only two had adopted a formal policy supporting the use of mediation. Other organizations had ombudsmen who provided some mediation and/or counseling services to employees. Some entities used mediation in disputes with outside parties but did not use it internally. Some participants described their status at the beginning of the project as "planning to implement mediation as an option in internal grievance procedures," while others were "simply interested in gathering information on the mediation process" or only wanted help developing accurate evaluation techniques for their existing ADR-based systems.

Working group members rated the program as successful, noting that there were significant advantages in participating in the project with other governmental entities. These included the opportunity to network with others within similar governmental bodies, the opportunity to share information about their organization with others, the ability to learn about the different types of employee dispute resolution systems, and to learn what seemed to work well and what did not work well from members who knew first-hand about their organization's system operations.

B I B L I O G R A P H Y

Statutes

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Records Management Division of Texas State Library, Definitions. Section 441.031, Tx. Gov't Code.

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