

OFFICE OF CITIZEN COMPLAINTS

MEDIATION PROGRAM REPORT TO THE SAN FRANCISCO POLICE COMMISSION

March 18, 2009

I. Introduction and Historic Background

The OCC Mediation Program was established in 1995, in response to recommendations from a 1991 Police Discipline Task Force and the subsequent negotiation of the 1992 MOU with the San Francisco Police Officers' Association. The program was intended to provide a fair, effective, and timely resolution of disputes between citizens and officers. In addition, the mediation process gives civilians the opportunity to learn about the department's procedures and policies. Similarly, it gives officers the opportunity to better understand the perspective of the civilian, and hopefully, to prevent future complaints.

From its inception through 2005, the OCC Mediation Program successfully mediated a nominal number of cases, rarely exceeding a single digit total during a year. During that period, the mediation program was managed by different staff members at various times, including an investigator, an attorney, and a member of the clerical staff. In 2005, an investigator with a background in mediation took over the program and increased the number of successful mediations from 6 to 25 in one year. In 2007, in response to an audit by the Controller's Office, the OCC hired an attorney with a background in mediation to manage the program. Since then, the numbers of successful mediations have risen steadily – 46 in 2007, and 71 in 2008. The cases mediated in 2008 represent 7% of all cases filed that year. **See Attachment A, Number of Cases Mediated -Chart.**

II. Process

A. Case Eligibility

1. Case Evaluation

Cases are reviewed during the Intake Process for potential mediation, usually by a Senior Investigator. The criteria for inclusion vary but a case will be reviewed for instances where the parties' views may have been the result of a misunderstanding, which involve 1 or 2 individuals (or more), where the issues are relatively simple, and the parties will benefit from an face-to-face encounter assisted by a mediator. The OCC Mediation Rules here provided state that cases that involve a "dispute with a member of the public rather than a disagreement with departmental policy" are eligible. Cases specifically excluded from consideration are those involving substantial injury to either party, cases involving allegations of sexual or racial slurs, use of force, or those involving

questions of law. The case is then forwarded to the Mediation Coordinator who reviews the file and ensures that it meets appropriate eligibility criteria. **See Attachment B, OCC Mediation Rules.**

2. Officer Eligibility

The subject officer must also meet eligibility requirements. Once a case is deemed eligible, the Mediation Coordinator will check the named officer's disciplinary record in the OCC database, as well as with the Commander of the Department's Management Control Division (MCD), to determine whether the officer meets eligibility requirements under the Rules. An officer does not qualify if s/he has had: (1) a Sustained case within the past year, (2) a prior mediation within the past six months, or (3) three mediations within the past two years. An officer who is not eligible due to any of these bases will again become eligible after one year of not having a sustained complaint. If the officer's record renders the case ineligible for mediation, the case will be forwarded to the Chief Investigator for re-assignment and investigation, as appropriate.

B. Mediation Procedure

1. Contact by Mediation Coordinator

Once eligibility is established, the Coordinator contacts the officer and the complainant by mail. The initial communication includes a copy of the Commission Rules and Regulations as well as a brochure explaining the process and benefits of mediation. Often, officers and complainants are unsure whether or not the process is appropriate, in which case the Mediation Coordinator may be called upon to educate the parties as to the benefits of the process.

2. Mutual Consent

All parties must consent in writing for a mediation to proceed. If any party declines, the case will be sent to the Chief Investigator for reassignment and investigation, as appropriate.

If the parties consent, the Coordinator selects at random a panel of two (2) mediators, selected from a list of *pro bono* mediators kept by the OCC. The Coordinator sends out the names of mediators to be considered, and each party may veto one mediator for any reason. The Coordinator will also facilitate the setting of a mutually convenient date and time for the mediation, usually at the office of one of the mediators. The mediations are conducted by a panel of two (2) mediators, one of whom must be an attorney, and one not, and at least one of whom must have served as mediator in the past. Once the mediators are approved/selected, they are provided with all necessary materials to conduct the mediation.

3. Outcome, Disposition, and Exit Survey

At the conclusion of the mediation, the complainant and officer(s) are given an anonymous and voluntary Exit Survey, which provides the OCC with useful information to assess and improve the efficacy of its mediations and its mediation services.

Once the mediation is concluded, the mediators will prepare and submit a mediation report to the Coordinator indicating the outcome of the mediation and any matters of note regarding the proceedings. The Coordinator will review the case and then close it, in accordance with policies and procedures established by the OCC.

A mediation is a non-confrontational opportunity for dispute resolution which may or may not result in a “successful” outcome of having the parties differences resolved. Even if the parties are not satisfied with the outcome at the end of the process, a matter has been mediated, and the parties have had the opportunity to resolve their issues.

Once the mediation is concluded the case file is sealed and a finding of “mediation” is entered into the officer’s file. The matter is considered “resolved” and no further investigation is made involving the events covered by the mediation.

III. Mediator Criteria

Volunteer mediators for the OCC must be approved by the San Francisco Bar Association and cannot be associated with the San Francisco Police Department. They cannot have represented or associated with a firm that has represented, the Department, the individual officer, or the complainant in a civil or criminal action. Furthermore, they must not have been or be a sworn member of the Department, or currently have a criminal practice. **See Attachment B, OCC Mediation Rules, Section 500.**

IV. Benefits of Mediation

The Mediation Program provides unique benefits that are unavailable under the investigative process track, including:

- **Time Savings.** Mediation allows cases to be processed more expeditiously. In 2008, mediation cases were open a median of 67 days and an average of 86 days, while investigated cases were open a median of 162 days and an average of 216 days.
- **Cost Savings.** The OCC currently has a roster of 89 volunteer mediators who conduct the mediations without charge. The mediation process saves the OCC, the City of San Francisco and ultimately the taxpayers, resources in terms of the time and financial resources that would be spent in processing an investigation, in cases that would best benefit the parties by providing them a forum to discuss the issues in a non-confrontational setting.
- **Greater Satisfaction for Complainants and Officers.** Based on Exit Surveys received in 2008, 96% of the parties who participated in mediation were Satisfied

or Very Satisfied with the mediation process; 96% felt that the mediation location provided a safe environment; 99% felt they had an opportunity to be heard; 90% felt the other party fully participated; 96% felt the mediators accurately identified and addressed the core issues; and 93% felt the complaint was totally or partially resolved. **See Attachment C, OCC Mediation Exit Survey 2008 Results – Chart.**

The OCC Mediation Program creates a win-win outcome for all parties:

- **Citizens** are provided an opportunity to tell their story, know that the officers have heard them (facilitated by experienced mediators), and better understand the difficulties encountered by the police everyday.
- **Officers** have the opportunity to understand why the complaint was filed, understand the citizen's reaction to the police action taken, and may use that information to better handle incidents in the future and avoid future complaints.
- **The SFPD** benefits in realizing the truest form of community policing, interacting with citizens in a one-on-one setting.
- **The OCC** enjoys its role in initiating and reestablishing broken lines of communication, knowing that a respectful, working relationship between citizens and officers benefits both the community and the officers.
- **The Police Commission** benefits in knowing that all of the parties are pursuing communication to the desired end of a healthy and safe community, shared in and protected by the police officers that serve the City.

V. Comparison With Other Jurisdictions

In comparison with similar oversight agencies that have mediation programs, the San Francisco OCC and the City of Denver are equal in the number of mediations based on the total number of complaints. When compared to agencies on the basis of the number of sworn officers, the OCC exceeds all other agencies for officer cooperation in voluntary mediation programs. **See Attachment D & E, Number of Cases Mediated – Chart, Comparison of Mediation Programs – Chart.**

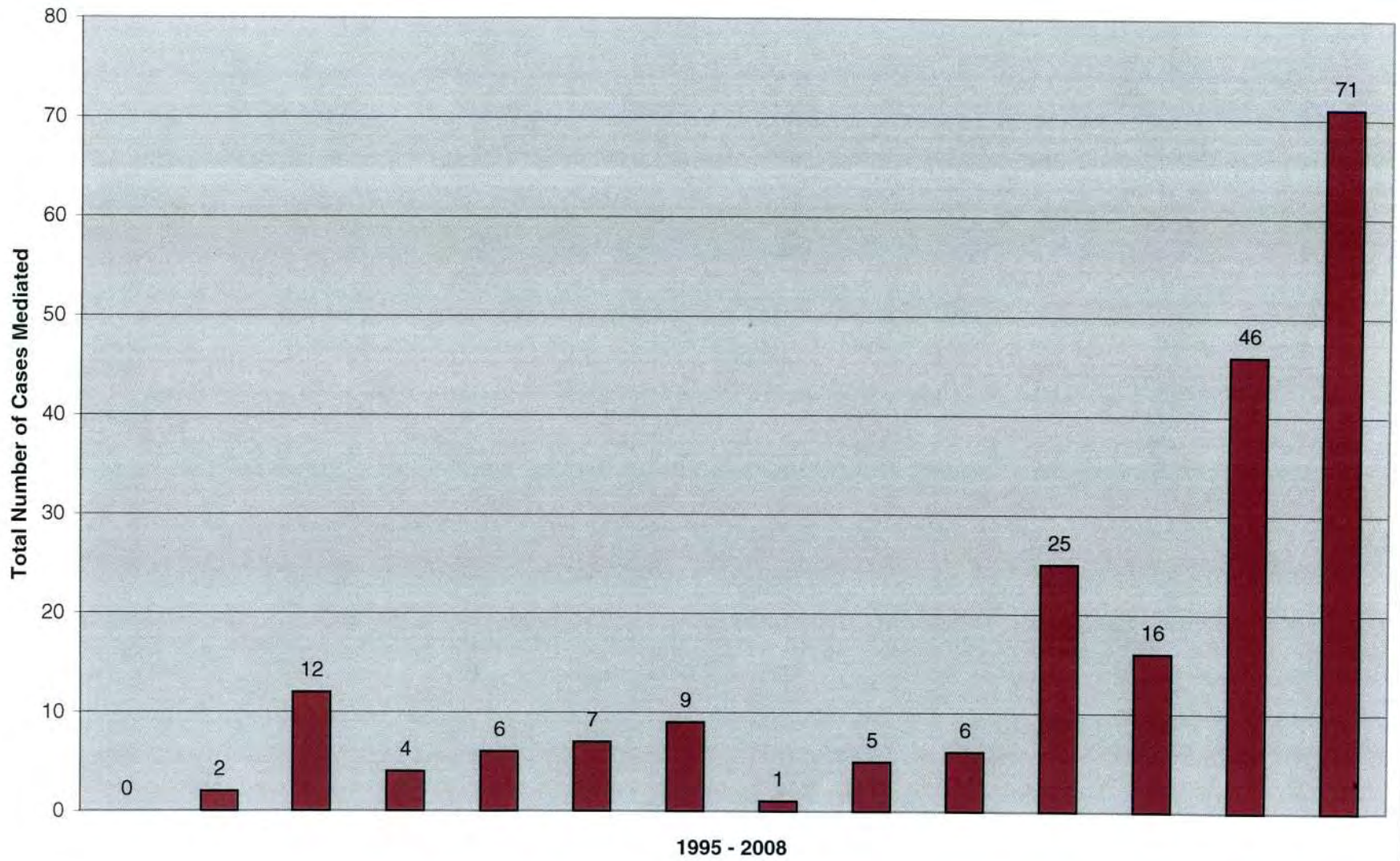
Respectfully submitted,



JOYCE M. HICKS
Executive Director

Attorneys Assigned:
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Number of Cases Mediated



**SAN FRANCISCO
OFFICE OF CITIZEN
COMPLAINTS

MEDIATION RULES**

ATTACHMENT B

100 ELIGIBILITY FOR MEDIATION

Cases will be evaluated for eligibility for mediation by intake supervisors based upon two criteria, case eligibility and officer eligibility.

101 Case Eligibility

A) All complaints will be considered eligible for mediation when the complaint involves a dispute with a member of the public rather than a disagreement with departmental policy.

B) The following cases should not be considered for mediation absent exceptional circumstances:

- 1) cases listed as A or B offenses in the disciplinary schedule;
- 2) cases involving substantial injury to either complainant or officer;
- 3) cases involving sexual or racial slurs;
- 4) cases involving use of force allegations;
- 5) cases regarding questions of law such as search or detention issues.

102 Officer Eligibility

A) Mediation will not be available to officers who have any of the following in their OCC or MCD files:

- 1) Sustained case within the past year;
- 2) A prior mediation within the past six months;
- 3) Three mediations within the past two years.

B) Officers who are ineligible for mediation based on any of the above will become eligible after a one year period of no sustained complaints.

103 Non Eligible Cases

Cases which do not meet the above criteria will be sent for standard investigation.

200 MEDIATION REQUESTS

Mediation is a voluntary procedure for the resolution of cases which will not be placed in the officer's personnel file.

201 Request Letter

A case which has been determined to be eligible for mediation will be sent to the Mediation Coordinator (Coordinator). The Coordinator will send a letter to the complainant and the officer explaining the mediation process.

201.1 Contents

The letter will explain the process, rules and expectations of mediation. The Coordinator will outline the issues to be mediated in plain language for all parties to read. It will provide a space for any comments or changes requested by any party.

201.2 Responses

Responses to the request letter will be due 15 days from the date of mailing. Failure to respond by either party will result in a waiver of mediation.

202 Agreement/Disagreement to Mediation

If both parties agree to mediation the Coordinator will select a mediator and date for the mediation pursuant to section 300 et seq of these Rules. If either or both parties object to mediation the case will be sent to the Chief Investigator for re-assignment.

300 MEDIATION PROCESS

301 Mediators

Mediators will be selected at random from a pro bono list of mediators compiled pursuant to section 500 of these rules.

Mediation will be conducted by a panel of two mediators, one of whom must be an attorney, one not; and at least one of whom has served as a mediator on three prior occasions.

301.1 Selection of Mediation Panel

The Coordinator will send each party the panel selected for the Mediation for approval. Each side will be allowed to veto one mediator for any reason, any further veto must be for cause.

- A) Any veto of a mediator must be made in writing within 5 days of notice of their selection.

302 Scheduling of Mediation

The Coordinator will schedule the mediation at a time convenient to all parties based upon the following:

- A) Mediator's schedule
- B) Complainant's schedule;
- C) Officer's work schedule;
- D) Witness availability.

302.1 Continuances

Once the date has been set, all parties will be notified and will have three days to request a different date. After three days no continuances will be granted absent a showing of extreme hardship. Such requests must be in writing and made to the Coordinator with copies to all other parties and the Mediators.

303 Place of Mediation

Mediation will take place at the office of one of the Mediators unless a request is made for other accommodations by the Mediator.

304 Mediation File

The Coordinator shall construct a mediation file which will be available to all parties and the Mediators at least 5 days prior to the mediation.

304.1 Confidentiality

The mediation file is confidential and shall not be reproduced, duplicated or made public in any way. Any violation of this rule will result in an end of the mediation and prosecution by the proper authorities.

304.2 Contents

The mediation file shall contain the complaint, any physical evidence, all police reports and any other material deemed necessary by the Coordinator. Any party may provide additional evidence at the mediation.

304. 3 Conclusion

At the conclusion of the mediation, successful or unsuccessful, all mediation files will be returned to the Coordinator. Failure to do so will be deemed a violation of the confidentiality rule cited above.

305 Conduct of Mediation

The Mediator will be in charge of the mediation and will conduct it as he or she sees fit provided they follow the basic rules of mediation as determined by the San Francisco Bar Association and as outlined below.

305.1 Rules

Pursuant to Rule 305, each side will be afforded an opportunity to present witnesses and evidence in order to express their issues and concerns to all parties. No cross examination will be allowed.

305.2 Representation

Mediation is a non-confrontational dispute resolution process. In order to maintain that atmosphere each party may be allowed to bring an uninvolved individual, but that individual will not participate in the mediation except to observe and provide support.

305. 4 Evidence

Except for section 1119 of the Evidence Code, which provides for mediation confidentiality, the Rules of Evidence do not apply to mediations. Parties may bring whatever information they feel relevant to the mediation.

305.5 Taping

The mediation is confidential and no taping shall be allowed by anyone involved.

305.6 Conclusion

The mediators will attempt to facilitate a resolution to the issue. The resolution will be an attempt to end the matter to the satisfaction of both parties. If the parties cannot resolve the case it will be handled pursuant to section 600 of these Rules.

306 Close of Mediation

Upon the closure of the mediation the Mediators will deliver to the Coordinator a confidential writing outlining the process and whether any resolution was accepted. If the resolution was not accepted by both parties, or if the mandates of the resolution are not carried out within the specified time for fulfillment, the case will be handled as outlined in section 600.

306.1 Officers File

A case which has been mediated will be sealed and a finding of "mediation" will be entered into the officers file. Both parties will receive a letter stating a mediation had been held and the issue fully resolved. No other investigation will occur involving those events covered by the mediation.

400 NOTICES, RECORDS, APPEALS

401 Notices

Notices shall be sent to all parties at the address given in the complaint, or for officers, their work assignment. Notices shall be sent by U.S. or internal S.F.P.D. mail, and time periods shall run from the date of mailing.

402 Records

The Coordinator shall cause a complete chronology for each case to be kept in the case file detailing all actions taken. This chronology is confidential and is not to be released to either party absent court order. The chronology shall not be destroyed with the rest of the mediation file in the case of an unsuccessful mediation.

403 Appeals

There shall be no appeal from the mediation process as it is a self providing process whereby failure to reach an agreement renders the mediation void. In no way shall any party be allowed to initiate further proceedings or request further relief once a resolution has been agreed upon.

500 SELECTION OF MEDIATORS

501 Qualifications

All mediators must be approved by the San Francisco Bar Association, Mediators can not be associated with the Police Department as follows:

- A) representing, or is associated with a firm representing the City Police Department, complainant or

- individual officer as plaintiff or defendant in a civil or criminal action;
- B) currently or previously been a sworn member of the Police Department;
- C) involved, or whose law firm is involved, in criminal practice.

502 Pool

The Coordinator will cause notice to be sent to all mediators currently approved by the Bar Association requesting applications for mediators who meet the qualifications outlined above. The notice will also include a description of the OCC mediation process. All applications will be kept on file at the OCC and used as the pool for selection described above.

502.1 Updating

The Coordinator will update the pool every year by contacting all current mediators and sending a letter to any mediators approved by the Bar Association since the date of the last mailing.

502.2 Dismissal

Any mediator who is dismissed by the Bar Association will not be eligible for OCC service and their name shall be removed from the pool. Furthermore, the Director may remove a mediator from the list if a showing of good cause is made by the Coordinator after an application for removal is made by any party to a mediation.

702 Officer Eligibility Statistics

503 Selection of Mediators for List

The Coordinator will select two mediators, as outlined above, at random from the available pool to be forwarded to the parties pursuant to section 301.1. In as much as is practical, no mediator will be considered for a service a second time until all potential mediators have been afforded a first time.

In order to comply with officer eligibility as outlined in section 102 of these rules the Director shall maintain a confidential record of officer mediations for each officer. These records will be destroyed pursuant to the procedure in section 102.

600 CONCLUSION OF MEDIATION

Cases which are sent to mediation will be handled exclusively through this process. No other investigation will occur, and all parties are required to abide by these rules.

A form provided by the Office of Citizen Complaints will be completed at the end of all mediations providing basic non-confidential information on the mediation for statistical purposes. Confidential comments will also be solicited from the parties on a voluntary basis.

700 MAINTAINING MEDIATION RECORDS

701 Case Statistics

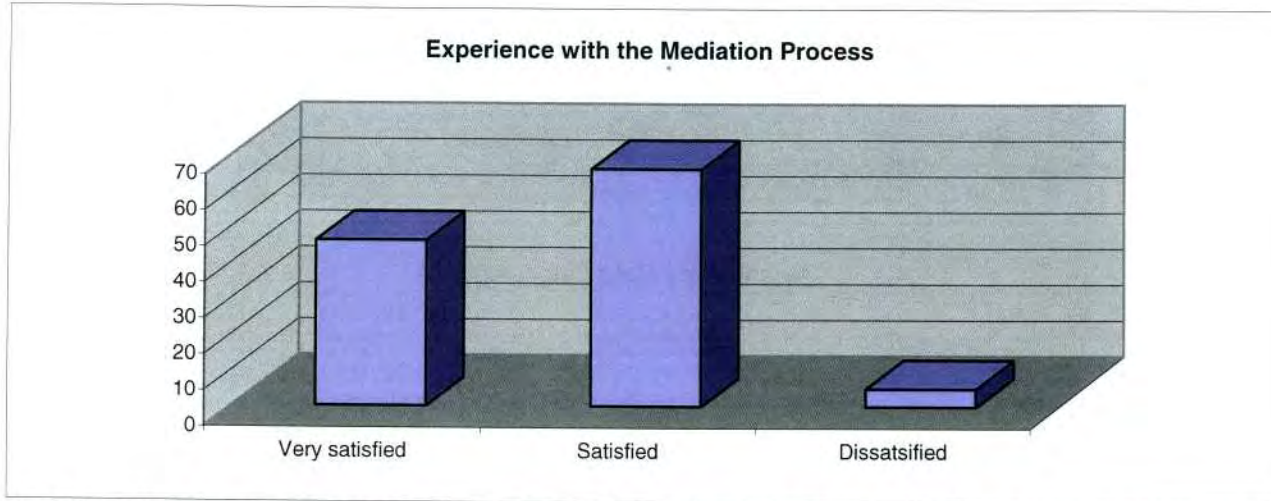
The Director shall maintain a confidential record of mediations stating the number;

- A) eligible cases
 - 1) nature
 - 2) officer
- B) requests made
 - 1) complainants
 - 2) officers
- C) cases mediated
- D) successful/unsuccessful mediations

OCC Mediation Exit Survey
January 2008 through December 2008

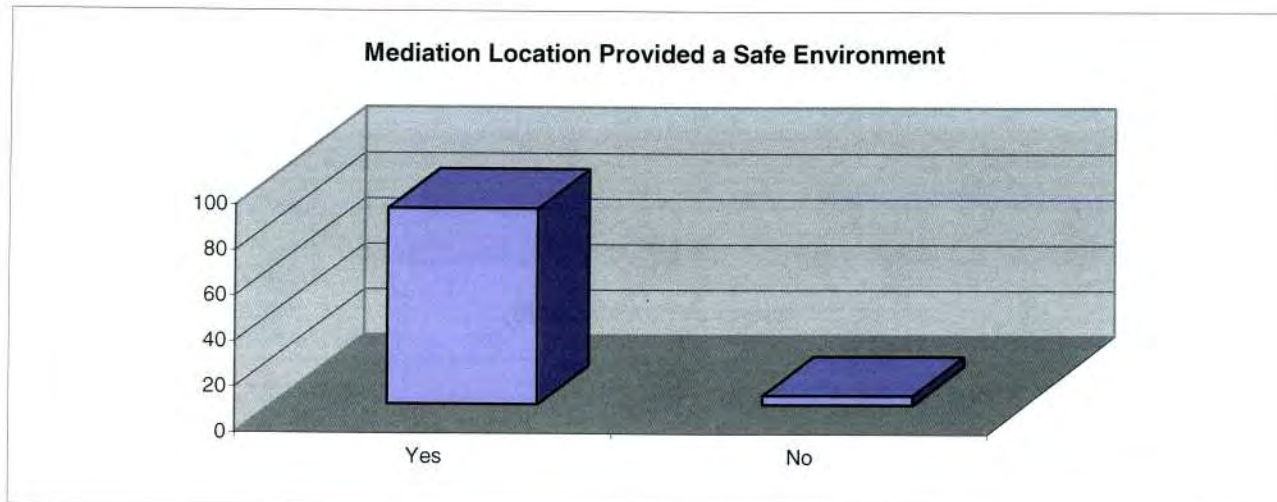
1. How would you rate your experience with the mediation process:

Very satisfied	46	39.32%
Satisfied	66	56.41%
Dissatisfied	5	4.27%



2. Did you feel the mediation location provided a safe environment for you to freely express your concerns and issues?

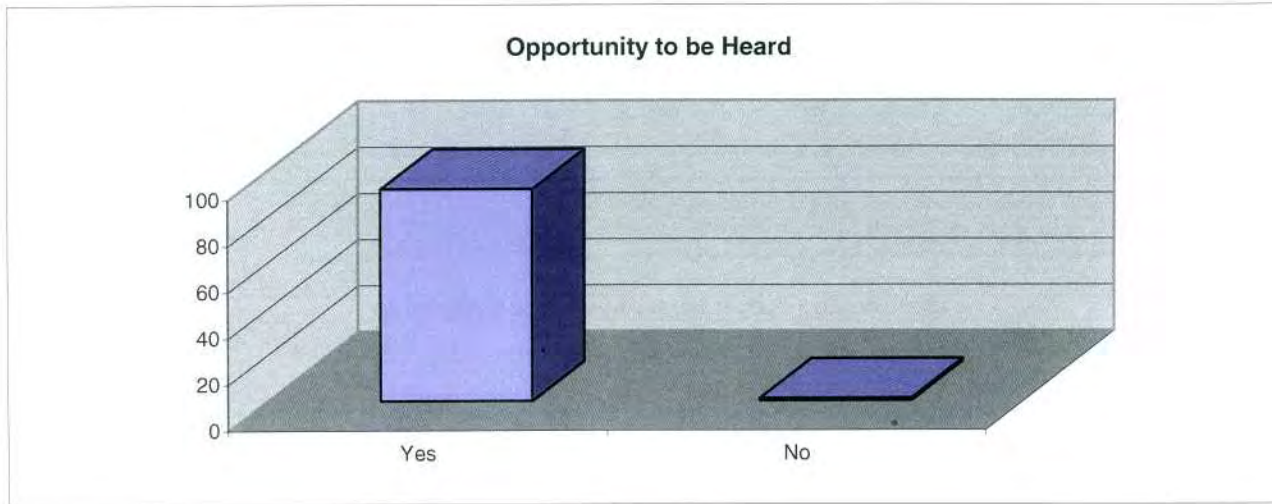
Yes	86	95.56%
No	4	4.44%



OCC Mediation Exit Survey
January 2008 through December 2008

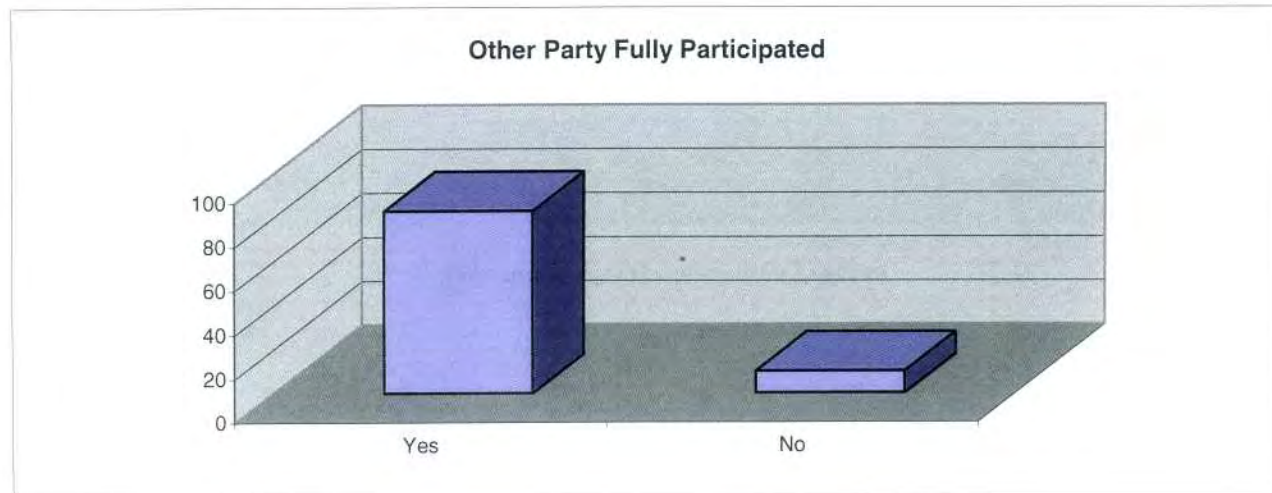
3. Did you feel you had the opportunity to be heard and to express the basis of your complaint or police action?

Yes	92	98.92%
No	1	1.08%



4. Do you feel the other party fully participated in the mediation?

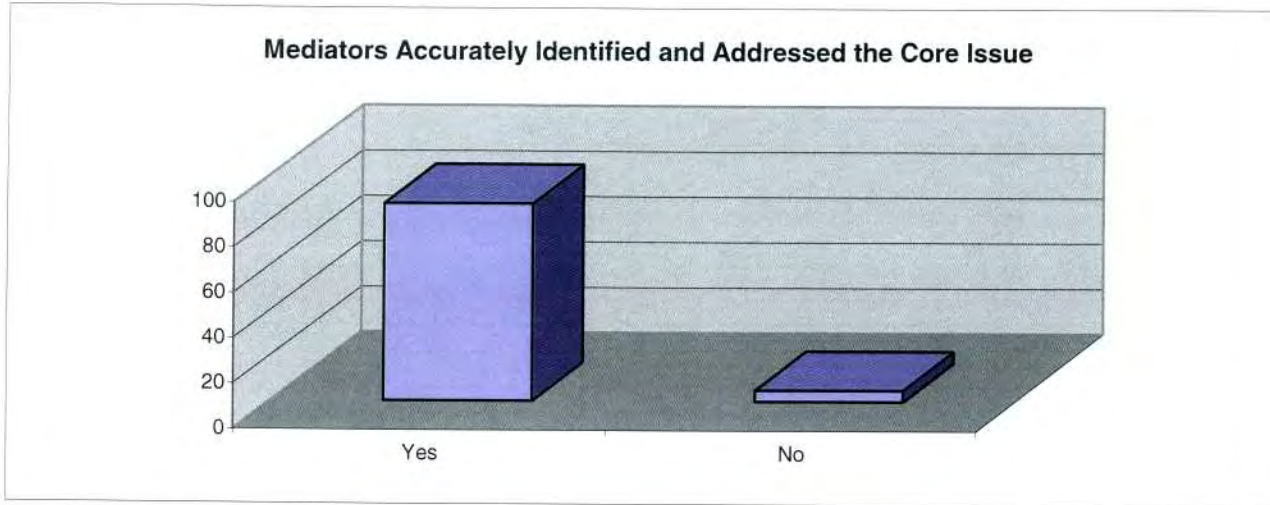
Yes	83	89.25%
No	10	10.75%



OCC Mediation Exit Survey
January 2008 through December 2008

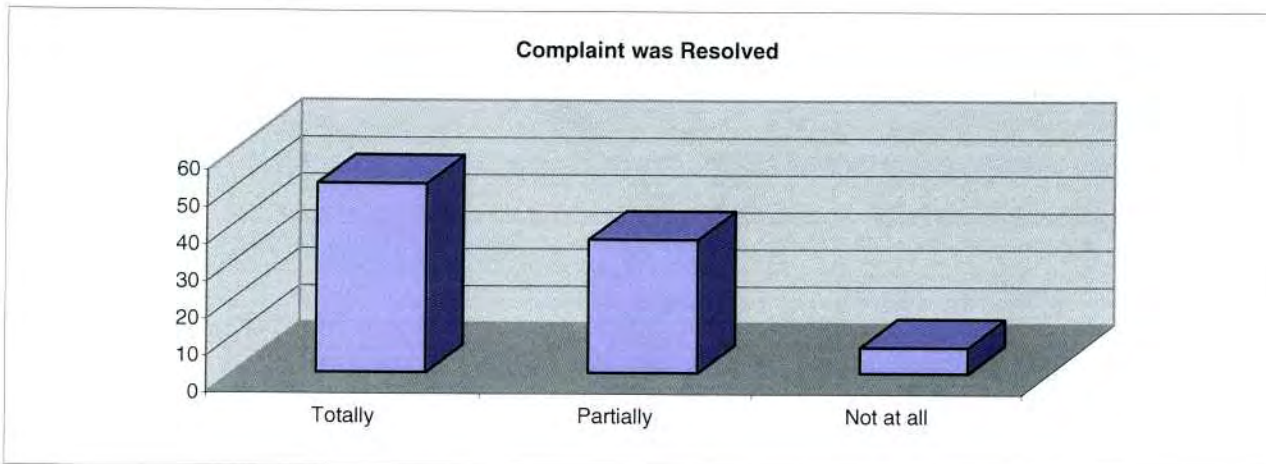
5. Did you feel the mediators accurately identified and addressed the core issue of the civilian complainant?

Yes	87	94.57%
No	5	5.43%

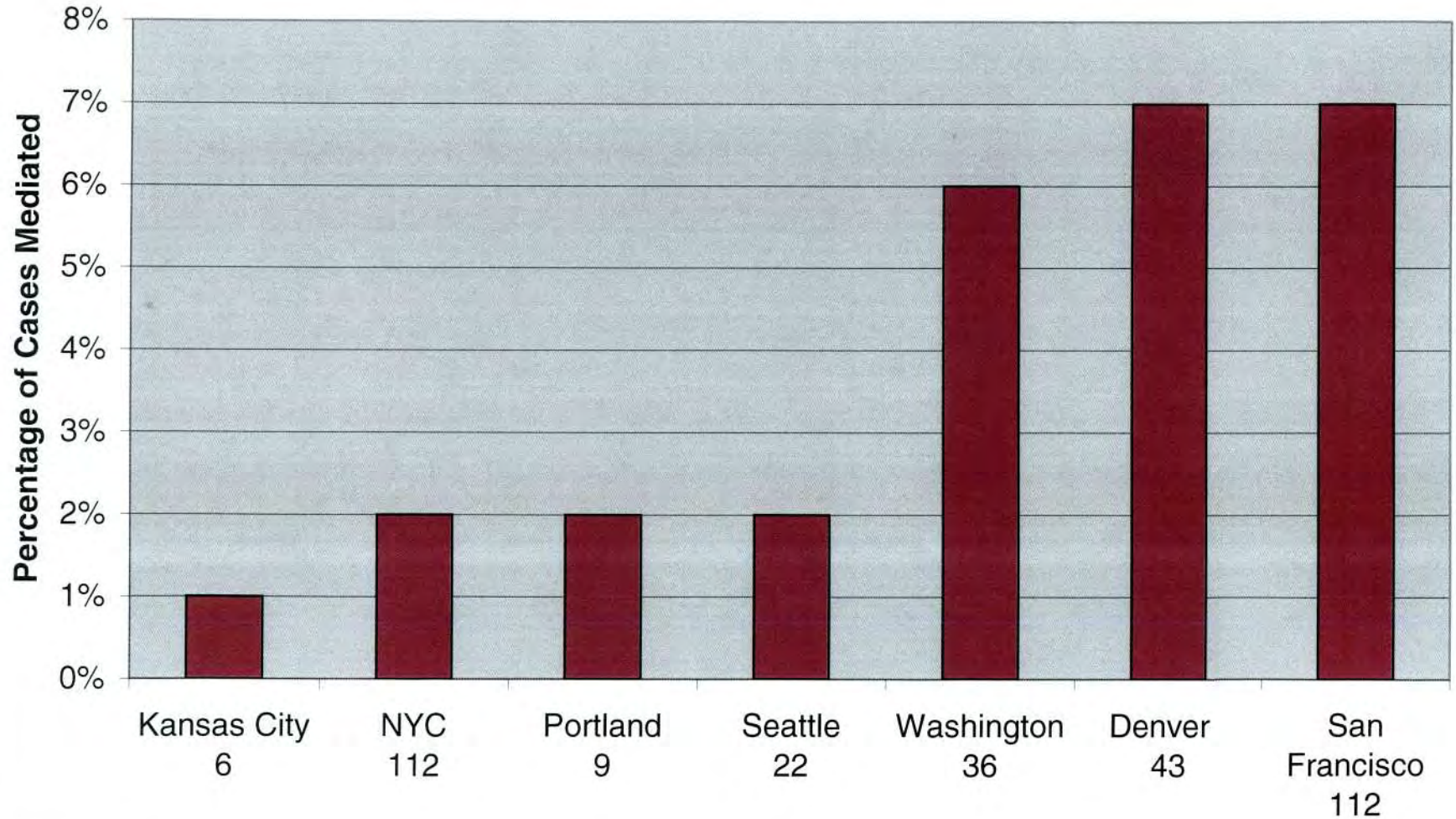


6. Do you feel the complaint was resolved?

Totally	51	54.26%
Partially	36	38.30%
Not at all	7	7.44%



Number of Cases Mediated Based on the Number of Complaints Received



Comparison of Police Department Complaint Mediation Programs

Agency	Total Cases	Mediations in 2008	Percentage of Cases Mediated	Sworn Officers	Percentage of Consenting Officers	Voluntary	Mediator Compensation	Satisfaction Survey	EIS ¹
SF Office of Citizen Complaints	1021	71	7%	2,386	92%	Yes	No	Yes	Yes
Portland Independent Review Board	453	9	2%	1,000	High	Yes	Yes	Yes	N/A ²
Seattle Office of Professional Accountability	1320	22	1.6%	1,300	No Info	Yes	Yes	Yes	No
Denver Office of the Independent Monitor	605	43	7%	1,500	90%	Yes	Yes	Yes	No
Kansas City Board of Police Commissioners	513	5-6	1%	1,300	80%	Yes	No		N/A
Washington DC Office of Police Complaints	600	36	6%	3,900	100%	No	Yes	Yes	N/A
NYC Civilian Complaint Review Board	7,421	112	1.5%	35,559	50%	Yes	Yes	No	No

¹ This column indicates whether cases mediated are counted as complaints in a department's Early Intervention System.

² N/A indicates that a department does not have an early intervention system.