



**NATIONAL RESOURCE CENTER
FOR FOSTER CARE
& PERMANENCY PLANNING**

at the Hunter College
School of Social Work

INFORMATION PACKET: Child Welfare Mediation

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Child Welfare Mediation – Summary

Child welfare mediation refers to the increasingly accepted practice of involving trained, neutral, third-party mediators in child abuse and neglect cases as a means of resolving disputes and expediting permanency for children in foster care. Sometimes referred to as child protection mediation, dependency mediation, permanency mediation or alternate dispute resolution, child welfare mediation seeks to involve birth parents in future planning for their own children by engaging them in an inclusive, confidential, and non-judgmental process in which their wishes are considered and respected. Dating back to the mid-1980's when Connecticut and California piloted their first programs (Duquette, Hardin, & Dean, 1999), child welfare mediation programs now exist in some form in counties in a number of states, including Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Iowa, Massachusetts, Michigan, New Jersey, Ohio, Oregon, Utah, Wisconsin, Texas, and Washington, D.C. (Lande, 2000, ABA, 2003).

Although the specific programs vary, generally a skilled, neutral mediator brings parents, caseworkers, attorneys and other interested parties together to discuss issues concerning the child or children in care and help them work together to come to a mutually agreeable settlement of the issues in question. When an agreement is reached, it is then presented to the court, which has the authority to accept, reject, or modify agreements. The process is meant to be collaborative, with the goal of avoiding litigation and resolving the issues in as non-adversarial a manner as possible. Many proponents of the approach cite child welfare's potential to save significant court costs associated with going to trial and costs associated with longer foster care stays, while resulting in greater cooperation and compliance on the part of birth families.

Though many of the existing programs mediate at the "permanency" or termination stage of child protection cases, many localities are also finding it to be a useful tool for resolving questions such as placement, visitation, service plans and compliance issues that may come earlier in the process. (Judicial Education Center, 2000) The U.S. Department of Human Services, *Adoption 2002 Guidelines* (1999) recommends that mediation should be available "prior to the filing of a court petition and throughout the legal process, up to and including relinquishment or termination of parental rights, adoption, and guardianship."

References

American Bar Association (2003): <http://www.abanet.org/child>

Duquette, D. N., Hardin, M., Dean, C. P., & United States Children's Bureau. (1999) *Adoption 2002: Guidelines for Public Policy and State Legislation Governing Permanence for Children*. Washington, D.C.: U.S. Dept. of Health and Human Services. <http://www.acf.hhs.gov/programs/cb>

Judicial Education Center, (2000) *Child Welfare Handbook*, October 2000, Institute of Public Law, UNM School of Law

Lande J., (2000) *Mediation and Child Protection Mediation: Reports on Trends in the State Courts, 1999-2000*, Unpublished Paper, Williamsburg, VA: National Council on State Courts

Thoennes, N. (2001) *Permanent Custody Mediation: Lucas County Court of Common Pleas, Juvenile Division*, Denver, CO: Center for Policy Research

Child Welfare Mediation - Fact Sheet

The Context – Foster Care/Adoption Statistics

From The National Adoption Information Clearinghouse:

http://www.calib.com/naic/pubs/s_foster.cfm

- Based on current estimates from the Adoption and Foster Care Analysis and Reporting System (AFCARS), released January 2000, there are approximately 520,000 children currently in foster care in the United States. Of these, 117,000 are eligible for adoption and waiting to be adopted. (US HHS, 2000)
- Historically, the number of children in foster care has increased, while the proportion of children in foster care who are free for adoption has remained constant. In 1977, as in 1997, approximately 20% of the children in foster care were available for adoption.
- Returning home is not an option for about 100,000 of the children in the foster care system, yet only 20,000 were adopted in 1995. Approximately 7,000 other children were permanently placed in legal guardianship. (US HHS, 1997)
- Approximately less than 1% of waiting children resided in continuous foster care for less than a month. 3% resided in foster care 1-5 months, 6% resided 6-11 months, 8% resided 12-17 months, 10% resided 18-23 months, 10% resided 24-29 months, 9% resided 30-35 months, 26% resided 36-59 months, and 27% resided 60 or more months. (AFCARS),
- Approximately 20 percent of waiting children have waited 12 to 17 months to be adopted after the termination of parental rights and another 20 percent waited two to five years. (AFCARS),
- Approximately 14,000 foster children per year age out of foster care without ever returning to their birth families or being placed permanently in homes of their own. (AFCARS, October 1, 1977-March 31, 1998 reporting period.)

Facts About Child Welfare Mediation

- Connecticut and California piloted the first child welfare mediation programs in the United States in the mid-1980's. (Duquette, Hardin, & Dean, 1999).
- Child welfare mediation programs now exist in counties throughout the nation, including Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Iowa, Massachusetts, Michigan, New Jersey, Ohio, Oregon, Utah, Wisconsin, Texas and Washington, D.C. (Lande, 2000, ABA, 2003). They have also gained widespread acceptance in Canada.
- A study of a child welfare mediation program in San Francisco found that sending one case to mediation every working day would present a total annual savings of \$545,225 if we combine immediate savings with the avoided costs of subsequent contested review hearings." (Thoennes, 1998)
- Evaluations of five child protection programs in California found that mediations result in full or partial agreement in at least 70 percent of cases and participants strongly believe that mediations saves time and money. (Thoennes, 1995)
- An evaluation of a Permanent Custody Mediation Project in Lucas County, Ohio found that cases that reach an agreement in mediation take, on average, 2.2 months between filing and entry of the agreement with the court, while control group cases take much longer, averaging 4.6 months between the permanent custody filing and entry of orders.
- The Lucas County study (Thoennes, 2001) also found that most cases were mediated in a single session and the average amount of time spent in mediation per case was 1.6 hours.
- Florida is the only state currently utilizing child welfare mediation that certifies dependency mediators.

Child Welfare Mediation – Bibliography

- Baron, S., and Edwards, L.P. "Alternatives to Contested Litigation in Child Abuse and Neglect Cases." *Family and Conciliation Courts Review* 33 (3): 275-285 (July 1995).
- Barsky, A. E.(1997) "Child Protection Mediation." In *Mediation and Conflict Resolution in Social Work and the Human Services*, edited by E. Kruk. Chicago: Nelson-Hall.
- Barsky, A. E., D. Este, and D. Collins. (1996) "Cultural Competence in Family Mediation." *Mediation Quarterly* 13, 167-178.
- Barsky, M. (1983): "Emotional Needs and Dysfunctional Communication as Blocks to Mediation." *Mediation Quarterly* 2 55-66.
- Barsky, A.E. (1997) "Why Parties Agree to Mediate: The Case of Child Protection." *Family and Conciliation Courts Review* 35 (2):164-183, April 1997.
- Barsky, A.E. (1991) "Proposal for the Study of Mediation in Child Protection Cases." Unpublished manuscript, Center for Child and Family Mediation, Toronto, 1991.
- Barsky, A.E. (1997) "Child Protection Mediation." In: *Mediation and Conflict Resolution in Social Work and the Human Services*. Edited by E. Kruk. Chicago, IL: Nelson-Hall.
- Barsky, A.E. (1995) "Mediation and Child Protection Cases." Ph.D. dissertation, University of Toronto, 1995.
- Barsky, A.E (1995) "Mediation and Child Protection." In: *Family Mediation: Contemporary Issues*. Edited by H.H. Irving and M. Benjamin. Thousand Oaks, CA: Sage, 1995, 377-406.
- Baron, S. (1997) "Dependency Court Mediation: The Roles of the Participants." *Family and Conciliation Courts Review* 35 (2):149-159
- Bernstein, Marvin M. "Child Protection Mediation: Its Time Has Arrived." *Canadian Family Law Quarterly*, vol. 16, no. 1 (July 1998): 73-119.
- Boesl, Sharon.(1996) "Research on Mediation of Child Abuse and Neglect Cases." Association of Family & Conciliation Courts Newsletter, 1996.
- Bowman, A. and Nasworthy C., (1998) *Evaluation of the Children's Justice Act Child Protective Services Mediation Pilot Projects* Austin, TX: Texas Department of Protective and Regulatory Services, November 1998
- Bush, R.A.B., and Fogler, J.P. (1994) *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*. San Francisco, CA: Jossey-Bass, 1994.

- Center for Policy Research. *Alternatives to Adjudication in Child Abuse and Neglect Cases, A Final Report of the State Justice Institute Project*, Denver, CO: The Center for Policy Research, 1992.
- Coats, W.P. (1992) "Settlement and Negotiation of Dependency, Neglect, and Abuse Cases." In: *Using the Law for Children: New Horizons for Attorneys and Expert Witnesses*. Edited by L.F. Michaels. Denver, CO: National Association of Council for Children, 1992, 75-81.
- Davidson, H.A. (1997) "Using Dispute Resolution in Child Protection Cases." Paper, ABA Center on Children and the Law, Washington DC.
- Duquette, D. N., Hardin, M., Dean, C. P., & United States Children's Bureau. (1999) *Adoption 2002: Guidelines for Public Policy and State Legislation Governing Permanence for Children*. Washington, D.C.: U.S. Dept. of Health and Human Services. <http://www.acf.hhs.gov/programs/cb>
- Edwards, L.P. (1997) "Dependency Court Mediation: The Role of The Judge." *Family and Conciliation Courts Review* 35 (2): 160-163, April 1997.
- Etter, J. (1997) *Mediating Permanency Outcomes: Practice Manual*. Washington, DC: Child Welfare League of America
- Family and Conciliation Courts Review*, (1997) Special Issue on Child Protection Mediation, vol. 35, no. 2, Apr. 1997.
- Firestone, G. (1997) "Dependency Mediation: Where Do We Go From Here?" *Family and Conciliation Courts Review* 35 (2): 223-238
- Firestone, Gregory.(1998) "Guidelines for Dependency/Child Protection Mediation Programs." Association of Family & Conciliation Courts Newsletter (1998): 6.
- Firestone, G. (1996) "Update on Juvenile Dependency Mediation." *The Family Law Commentator* 21 (3): 1-11.
- Fowler, B.D., Garver, P., Gelzleichter, G.D., Goodman, J., Johnston, T., Merida, L., Noel, J., Pepper, T.G., Whitmer, K. (2000) *Planning Mediation Programs: a Deskbook for Common Pleas Judges* Columbus, OH: The Ohio State University College of Law. Available online: http://www.sconet.state.oh.us/dispute_resolution/deskbook/
- Giovannucci, M.T. (1997) "Understanding the Role of the Mediator in Child Protection Proceedings." *Family and Conciliation Courts Review* 35 (2):143-148 (April 1997).
- Giovannucci, M.T. (1996) *An Alternative to Traditional Permanency Planning: A Model for Negotiated Settlements in TPR Proceedings*. Unpublished paper. Family Division, Connecticut Judicial Branch, State of Connecticut Superior Court, Wethersfield, Connecticut.
- Giovannucci, M.T. (1999) Mediation of Child Protection Proceedings:

- The Connecticut Juvenile Court's Approach, Connecticut State Judicial Branch, State of Connecticut Superior Court, Wethersfield, Connecticut
<http://www.casnet.org/library/advocacy/mediat.htm>
- Irving, H., and Benjamin, M. (1991) *The Toronto Family Mediation Service: Evaluation of Process and Outcome*. Final Report. Ottawa: Social Sciences and Humanities Research Council of Canada.
- Judicial Education Center, (2002) *Child Welfare Handbook*, Albuquerque, NM: Institute of Public Law, University of New Mexico School of Law:
- Lande J., (2000) *Mediation and Child Protection Mediation: Reports on Trends in the State Courts, 1999-2000*, Unpublished Paper, Williamsburg, VA: National Council on State Courts
- Libow, J. (1993). "The Need for Standardization and Expansion of Nonadversary Proceedings in Juvenile Dependency Court with Special Emphasis on Mediation and Role of Counsel." *Juvenile and Family Court Journal* 44 (3): 3-16
- Lowry, J.M. (1997) "Family Group Conferences as a Form of Court-Appointed Alternative Dispute Resolution in Child Abuse and Neglect Cases." *University of Michigan Journal of Law Reform* 31 (1): 57-92.
- Maresca, J.(1995) "Mediating Child Protection Cases." *Child Welfare* 74: 731-743
- Mayer, B. (1989) "Mediation in Child Protection Cases: The Impact of Third Party Intervention on Parental Compliance Attitudes." *Mediation Quarterly* 24: 89-106 (1989).
- National Council of Juvenile and Family Court Judges, Permanency Planning for Children's Department, (2001) *Technical Assistance Bulletin: The Essex County Child Welfare Mediation Program: Evaluation Results and Recommendations*
<http://www.pppncjfcj.org/html/publications.html>
- National Council of Juvenile and Family Court Judges, Permanency Planning for Children's Department (1995) *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*. Reno, NV
<http://www.pppncjfcj.org/html/publications.html>
- National Council of Juvenile and Family Court Judges (2000) *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, Fall 2000:27 and Fall 2000:28 <http://www.pppncjfcj.org/html/publications.html>
- National Council of Juvenile and Family Court Judges. (1998) *Diversion Project Matrix: A Report from Four Sites Examining the Court's Role in Diverting Families from Traditional Child Welfare Services into Community-Based Programs*. Reno, NV.
- Martin, J., and Weller S.. (2001) *Mediated Child Protection Conferencing in Criminal and Civil Child Abuse & Neglect Cases: Lessons from the Wisconsin Unified Family Court Project*, Denver: Center for Public Policy Studies, 2001.

- McNeilly, G.K. (1997) "Mediation and Child Protection: An Ontario Perspective." *Family and Conciliation Courts Review* 35 (2): 206-222.
- Orlando, M.G. (1997) "Funding Juvenile Dependency Mediation Through Legislation." *Family and Conciliation Courts Review* 35 (2):196-201.
- Pearson, J., N. Thoennes, B. Mayer, & M. Golten. (1986) "Mediation of Child Welfare Cases" *Family Law Quarterly*, vol. 20, 303-32.
- Palmer, S.E. (1989). "Mediation in Child Protection Cases: An Alternative to the Adversarial System." *Child Welfare* 68: 21-31
- Policy Consensus Initiative, "Mediating Child Protective Service Cases in Texas." *States Mediating Change: Improving Governance Through Collaboration*. Santa Fe: Policy Consensus Initiative, 2001.
- Smith, R.; Maresca, J.; Duffy, M.; Banelis, N.; Handelman, C.; and Dale, N.(1992) "Mediation in Child Protection: Limited or Limitless Possibilities." Report, Demonstration Project of the Children's Aid Society of Metropolitan Toronto, 1992.
- Shaw J., and Thoennes N. (1998), *Child Protection and Dependency Mediation Program Profiles* Madison, WI: Association of Family and Conciliation Courts.
- Simmon, B. (1999) "Voluntary Relinquishment of Parental Rights: Considerations and Practices" UC Berkeley, School of Social Work, 1999:2.
- Theonnes, N. (1994) "Child Protection Mediation in the Juvenile Court." *Judges' Journal* 33 (1): 14-19, 40-43 (Winter 1994).
- Theonnes, N. (1997) "Child Protection Mediation: Where We Started." *Family and Conciliation Courts Review* 35 (2):136-142 (April 1997).
- Thoennes, N. (2001) *Dependency Mediation in Oregon and the Nation: Report to the Oregon Judicial Department, March 2001*. Center for Policy Research, Denver, CO. http://www.centerpolicyresearch.org/child_abuse_publications.htm
- Thoennes, N. (2000) Dependency Mediation: Help for Families and Courts. *Juvenile and Family Court Journal*, Vol. 51, No. 2, Spring 2000.
- Thoennes, N. (1998) Dependency Mediation in the San Francisco *Report to the San Francisco Foundation. March 1998*. Center for Policy Research, Denver, CO
- Thoennes, N. (1997) An Evaluation of Child Protection Mediation in Five California Courts. *Family and Conciliation Court Review*, Vol. 35, No. 2, April 1997.
- Thoennes, N. (2002) *Hamilton County Juvenile Court: Permanent Custody Mediation: Report to Hamilton County Juvenile Court, October 2002*. Center for Policy Research, Denver, CO http://www.centerpolicyresearch.org/child_abuse_publications.htm
- Theonnes, N. (1991) "Mediation and the Dependency Court: The Controversy and Three Courts' Experiences." *Family and Conciliation Courts Review* 29: 246-258.

Thoennes, N. (2001) *Permanent Custody Mediation: Lucas County Court of Common Pleas, Juvenile Division: Report to Lucas County Court of Common Pleas, Juvenile Division, Ohio, November 2001*. Center for Policy Research, Denver, CO www.centerpolicyresearch.org/child_abuse_publications.htm

Theonnes, N. (1997) *A Step in the Right Direction: Child Protection Mediation in the Juvenile Court*. Denver, CO: The Center for Policy Research, 1993.

Wildgoose, J. (1987). Alternate Dispute Resolution of Child Protection Cases. *Canadian Journal of Family Law*, Vol. 6, 61-84

Wilhelmus, M. (1998) "Mediation in Kinship Care: Another Step in the Provision of Culturally Relevant Child Welfare Services." *Social Work* 43 (2): 117-126 (March 1998).

• Child Welfare Mediation – Legislative Review

Background/History

Reprinted from: Glover, L. (2001) *Michigan Court Improvement Program Annual Program Report* Michigan State Court Administrative Office

“The Court Improvement Program (CIP) grant provides federal funds to the judiciary to assist them in providing quality assurance in child protective proceedings, a role which was cast for courts by federal statute beginning in 1980. The Adoption Assistance and Child Welfare Act of 1980 (also known as P.L. 96-272) required specific court oversight for child protective cases in which children were placed in foster care. In order to qualify for federal foster care funding, states had to insure that judicial determinations were made that the child welfare agency was making reasonable efforts to reunite children with their families. Public Law 105-89, the Adoption and Safe Families Act of 1997(ASFA), revised P.L. 96-272 and expanded the role of the courts in providing oversight for the child welfare system.

The CIP was initially authorized by the Omnibus Budget Reconciliation Act of 1993 (P.L.103-66) and was renewed by ASFA in 1997. The initial terms of the grant required the highest court in each state to conduct an assessment of statutes and judicial procedures to determine barriers that impact the ability of state courts to make timely and effective case decisions in child protective proceedings. Subsequent to the assessment, a plan was to be developed for improving court processes found to be deficient. Collaboration with the designated state child welfare agency, citizen review boards, Court Appointed Special Advocates, and guardians ad litem was strongly encouraged. The Department of Health and Human Services Children's Bureau has committed significant resources to the implementation of the Court Improvement Program. The American Bar Association Center on Children and the Law has been designated as a resource agency to the Court Improvement Program and has taken the lead in establishing communication links between the state CIP initiatives. Annual conferences facilitated by the ABA, the Children's Bureau and the National Council of Juvenile and Family Court Judges bring state CIP coordinators and state level child welfare managers together in a collaborative forum. These and other efforts have effectively disseminated CIP innovations nationally.”

- **The Adoption and Safe Families Act of 1997**

The Adoption and Safe Families Act of 1997 set new guidelines for court processing of child abuse and neglect cases, stating that “timely attention to abused and neglected children requires close and concentrated collaboration among courts, social services, and the communities in which they function.”

- **Promoting Safe and Stable Families**

From the Children’s Bureau Website:

<http://www.acf.hhs.gov/programs/cb/programs/state.htm>

“The Title IV-B, subpart 2, Promoting Safe and Stable Families program provides funds to states to provide family support, family preservation, time-limited family reunification services, and services to promote and support adoptions. These services are primarily aimed at preventing the risk of abuse and promoting nurturing families, assisting families at risk of having a child removed from their home, promoting the timely return of a child to his/her home, and if returning home is not an option, placement of a child in a permanent setting with services that support the family. As part of this program, the Court Improvement Program provides grants to help State courts improve their handling of proceedings relating to foster care and adoption. After an initial assessment of court practices and policies, States use these funds for improvements and reform activities. Typical activities include development of **mediation programs**, joint agency-court training, automated docketing and case tracking, linked agency-court data systems, one judge / one family models, time-specific docketing, formalized relationships with the child welfare agency, and legislative change.”

- **Adoptions Opportunities Act**

Administered by the U.S. Department of Health and Human Services, The Adoption Opportunities program furthers the goal of promoting the timely adoption of children in foster care who are unable to return home by providing grants to public and private nonprofit agencies and organizations. These grants are used to test new models of service delivery to address and eliminate barriers to adoption and to help find permanent families for children who would benefit by adoption, particularly children with special needs.

- **The Children’s Justice Act**

A few states, including Texas and Ohio, have used money from the Children's Justice Act to create child protection mediation efforts. According to a statement by a Congressional Statement by Dr. Wade F. Horn, "States have been extremely creative in using these funds to support innovative approaches to reducing the negative impacts of child abuse and neglect. Examples of these innovations include: developing curricula and conducting cross-disciplinary training for personnel in law enforcement, child protective services, health and mental health, and the judicial system, resulting in improved communication, collaboration and resolution of cases..."

From the Children's Bureau Website:

<http://www.acf.hhs.gov/programs/cb/publications/cjafact.htm>

"The Children's Justice Act (CJA) provides grants to States to improve the investigation, prosecution and judicial handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation, in a manner that limits additional trauma to the child victim. This also includes the handling of child fatality cases in which child abuse or neglect is suspected. In FY 2002, \$17,000,000 in CJA funds were available to the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands. Funds are allocated in the amount of \$50,000 per State, plus an additional amount based on the population of children under 18 years of age in the applicant's jurisdiction. Funding comes from the Crime Victims' Fund, which collects fines and fees charged to persons convicted of Federal crimes. The Fund is administered by the U.S. Department of Justice, Office of Victims of Crime (OVC) and the grants are awarded by the Administration on Children, Youth and Families, U.S. Department of Health and Human Services, as outlined in Section 107 of the Child Abuse Prevention and Treatment Act (CAPTA), as amended, October 3, 1996."

- **Child Welfare Mediation - Best Practice Tips**

Elements of a Successful Child Welfare Mediation Program

From: Judicial Education Center, (2002) *Child Welfare Handbook*, Albuquerque, NM:

Institute of Public Law, University of New Mexico School of Law:

http://jec.unm.edu/resources/benchbooks/child_law/

- “The local judiciary must support the project. Lawyers, social workers, and others are often initially resistant to mediation. However, once they participate they are virtually unanimous in their support of the process. The support of the local children's court judge is critical to getting the program off the ground.
- Independent, competent mediators who have the trust and respect of all parties are crucial to a successful program. Mediators must understand the legal issues as well as the child welfare system and the emotional/psychological issues specific to abuse and neglect cases. Mediators need both mediation experience and training specific to abuse and neglect mediation.
- Informed and educated professional participants are also important. "Buy-in" to the process can help start and maintain a mediation program. Input from participants should be solicited at the planning and implementation stages of the program. Once the program is in place, there should be regular contact with participants to address any concerns they may have.
- Stable and consistent funding is also important. It is difficult to attract competent mediators and secure the trust and confidence of the parties and the courts in the absence of a stable funding source. Possible funding sources include private foundation grants as well as state and federal grant programs.

In summary, these four elements along with the experience of the First Judicial District suggest the following steps for starting a mediation project:

- First, have the participation of a willing and supportive judge.
- Second, form an advisory board or committee to develop a plan for the project and to oversee the plan's implementation. The board should include representatives from all of

the stakeholder groups. The project plan should include at least the following information:

- o What is the goal of the mediation program?
- o How will success be defined and measured?
- o What issues will be mediated?
- o How will confidentiality concerns be addressed?
- o Will mediation be mandatory or voluntary?
- o Who will mediate, with whom, and where?
- o What kind of training and education needs to be done and with whom?
- o How much will the pilot program cost and what are possible sources of funding?

- Third, hire a skilled and respected mediator.
- Fourth, train and educate participants.
- Finally, monitor and evaluate the program.”

• **The Mediation Process**

From: Etter, J. *Permanency Mediation Program Handbook*, Eugene, OR: Teamwork for Children

- “A mediator first contacts everyone involved (birth parents, caretakers, CWS workers, Adoption workers, attorneys, etc.).
- Agreement to Mediate forms are signed by those who will participate to work on a plan for the child.
- The mediator then meets separately with birth parents and caretakers
- The parties are then brought together, when they are ready, to work cooperatively on a plan for the child.
- The mediator meets with all parties, separately and together, until a written agreement clearly outlining the boundaries of future contact or reunification has been created.
- The end result is a stable, loving home for the child and avenues for keeping the ties to birth families in place.”

• **Key Concerns**

From: Thoennes, N. (1997). "Child Protection Mediation: Where We

Started." *Family and Conciliation Courts Review* 35(2): 138.

Questions voiced about the intervention include:

- Does the process safeguard children? Will mediated solutions offer the best, or even adequate, protection of the abused or neglected child?
- Does it protect parents' rights? How is the imbalance of power between parents and the representative of child protective services and the legal system managed?
- Is mediation a duplication of other settlement efforts? How does mediation differ from the informal efforts of caseworkers as they work with parents?
- Are there sufficient negotiable issues in child protection cases? That is, are there substantive issues to mediate, such as whether in-patient substance abuse treatment is needed or are protection cases? That is, are there substantive issues to mediate, such as whether in-patient substance abuse treatment is needed or are issues for mediation more routine, such as which services provider to use.

- **Other Recommendations**

The National Council of Juvenile and Family Court Judges' Adoption and Permanency Guidelines, published in 2000 (NCJFCJ, 2000)

<http://www.pppncifcj.org/html/publications.html> offers the following guidelines for implementing mediation programs:

- "Mediation programs should be court-based or court-supervised and have strong judicial and interdisciplinary support.
- Mediators must be highly trained, experienced and skilled professionals, have credibility with the court and related professionals, and be perceived by family members as being neutral and having the best interests of the child and family at heart.
- Mediation can be helpful in resolving dispositional, post-dispositional, and some jurisdictional issues.

- Mediation is appropriate in only a selected number of cases, but when ordered by the court, participation in mediation programs should be mandatory.
- Mediation should be confidential.
- Mediated agreements should become part of the court record.
- The availability and utilization of community resources is essential.”

- **Child Welfare Mediation – Model Programs**

California: Consortium for Children

From the Consortium for Children’s website: <http://consortforkids.org/>

“Consortium for Children was founded in 1999 with the intent to support and collaborate with public child welfare agencies and the judiciary. CFC's first project was the design and implementation of a Permanency Planning Mediation Program for the State of California. With generous grants from The Stuart Foundation, The Zellerbach Family Foundation, The Walter and Elise Haas Foundation as well as a contract with the California Department of Social Services, CFC has successfully implemented Permanency Planning Mediation in 30 California Counties.

Consortium for Children currently has a full time staff of 9 and 125 permanency planning mediators throughout California. Over the past two and one half years, CFC has received over 700 permanency planning mediation referrals, successfully reached agreement in 700 cases and helped provide early permanence for over 1,500 California children.

PPM is usually referred when it becomes clear that reunification for a child or sibling group will not be successful and before any court action to terminate parental rights begins. The purpose of the intervention is to focus significant individuals in a child's life about the child or children’s need for permanence as well as to solicit their participation in making a permanency plan. PPM is unique because the mediator is an outside individual who has no connection to the many systems that come together to provide permanence for a child. PPM allows 30 hours for the mediator to work with families, focus them on the needs of a particular child or sibling group and develop a permanent plan.”

Outcomes:

Since its inception, Consortium for Children has received over 700 referrals to the Permanency Planning Mediation. It has reached agreement in 85% of those referrals, helped provide early permanence for over 1,500 of California’s children and saved the State of California close to \$75 million.

During its first two years of implementation Consortium for Children’s Permanency Planning Mediation Program worked with its original partner counties to gather data to determine the cost per child per contested hearing as well as the length of time a contested hearing delayed permanency for children. It determined the following:

- Average Length of Time between Termination of Reunification Services and a Child is Freed for Adoption: 501 Days
- Average Length of Time Between Termination of Reunification Services and Adoption Finalization: 682 Days
- Average Number of Days for Permanency Planning Mediation: 90 Days
- Average Number of Days Permanency Planning Mediation Reduces a Child’s Stay in Foster Care: 622 Days

Financial Savings for California

Average Cost to Social Services Agency for Contested Hearing	\$24,000.00
Average Cost to the Judiciary for a Contested Hearing	\$34,000.00
Average Cost of a Permanency Planning Mediation	\$3,500.00
Cost Savings To Social Service Agencies	\$44,500,000.00
Cost Savings to The Judiciary	\$64,000,000.00
Total cost savings for California	\$108,500,000.00

**Savings based on 2,000 Permanency Planning Mediations Per Year*

• Cook County Illinois - The Child Protection Mediation Program

From the Cook County Child Protection Mediation Website:

<http://www.caadrs.org/adr/CookChildPro.htm>

“The Cook County Child Protection Mediation Program began as a six-month pilot program at the beginning of 2001 under Judge Patricia Martin Bishop, Presiding Judge of the Child Protection Division, Circuit Court of Cook County. Its success has led it to become a regular part of court services. The first mediation took place April 25, 2001. When the program started, two courtrooms were referring cases; currently all 15 courts refer cases to mediation, limiting referrals to dependency and neglect cases.

The program in Cook County is modeled after one in Santa Clara, California, and utilizes a facilitative co-mediation model. Cases are generally referred to mediation by Child Protection Division judges; however, the parties and attorneys may also request mediation. Cases are mediated the same day as the referral or request is made. The mediation process begins with an orientation session during which the parties, attorneys, and caseworkers learn about the mediation process and goals. Next, the mediators meet with the attorneys, caseworkers, and other parties not directly involved in the conflict to help them to identify and narrow the issues as they see them. The issues are generally narrowed to those related to visitation and residential status. The parties then join the session, and the mediators explore and identify what the parties themselves want to talk about. During the initial joint session, the agenda is augmented to incorporate the issues raised by the attorneys, caseworkers, and parties.

After this initial session, the attorneys have the option to leave, and the mediation with the primary parties begins. If there are points of agreement, parties begin to write these down. The attorneys are brought back in, and have an opportunity to review the working agreement. If the attorneys have an issue with any portion of the agreement, the mediators will caucus with the attorneys alone. In joint session the agreement is then finalized, signed by all present, and taken to the appropriate courtroom. Generally mediations begin at 9am. If at noon the session is still going, the parties are asked if they would like to break for lunch or return another day.

Judge Patricia Martin Bishop, with the help of the staff at The Child Protection Mediation Pilot Program, set out to create an environment different from that experienced in the

courts. The mediation sessions are held on a different floor, in an area and atmosphere totally removed from the courtrooms. The space in which the mediations take place was completely remodeled, designed as an open space along the lines of a huge living room. Their facilities also include two caucus rooms that were converted from offices, and a primary mediation room. Food is served to the children and adults waiting for the mediation. Again, the goal is to provide the parties with an environment unlike what they have previously experienced in connection with the court process.

There are two staff mediators in the program, trained in the facilitative model by the Center for Conflict Resolution in Chicago. As of April 2002, more than 60 cases had been mediated, with 75% resulting in a full or partial agreement. All mediations are free of charge to the parties. The rules governing the program are currently being reviewed by the Illinois Supreme Court. If approved, the program will serve as the model for other child protection mediation programs.”

• Child Welfare Mediation – Bibliography

Baron, S., and Edwards, L.P. "Alternatives to Contested Litigation in Child Abuse and Neglect Cases." *Family and Conciliation Courts Review* 33 (3): 275-285 (July 1995).

Barsky, A. E.(1997) "Child Protection Mediation." In *Mediation and Conflict Resolution in Social Work and the Human Services*, edited by E. Kruk. Chicago: Nelson-Hall.

Barsky, A. E., D. Este, and D. Collins. (1996) "Cultural Competence in Family Mediation." *Mediation Quarterly* 13, 167-178.

Barsky, M. (1983): "Emotional Needs and Dysfunctional Communication as Blocks to Mediation." *Mediation Quarterly* 2 55-66.

Barsky, A.E. (1997) "Why Parties Agree to Mediate: The Case of Child Protection." *Family and Conciliation Courts Review* 35 (2):164-183, April 1997.

Barsky, A.E. (1991) "Proposal for the Study of Mediation in Child Protection Cases." Unpublished manuscript, Center for Child and Family Mediation, Toronto, 1991.

Barsky, A.E. (1997) "Child Protection Mediation." In: *Mediation and Conflict Resolution in Social Work and the Human Services*. Edited by E. Kruk. Chicago, IL: Nelson-Hall.

Barsky, A.E. (1995) "Mediation and Child Protection Cases." Ph.D. dissertation, University of Toronto, 1995.

Barsky, A.E (1995) "Mediation and Child Protection." In: *Family Mediation: Contemporary Issues*. Edited by H.H. Irving and M. Benjamin. Thousand Oaks, CA: Sage, 1995, 377-406.

Baron, S. (1997) "Dependency Court Mediation: The Roles of the Participants." *Family and Conciliation Courts Review* 35 (2):149-159

Bernstein, Marvin M. "Child Protection Mediation: Its Time Has Arrived." *Canadian Family Law Quarterly*, vol. 16, no. 1 (July 1998): 73-119.

Boesl, Sharon.(1996) "Research on Mediation of Child Abuse and Neglect Cases." Association of Family & Conciliation Courts Newsletter, 1996.

Bowman, A. and Nasworthy C., (1998) *Evaluation of the Children's Justice Act Child Protective Services Mediation Pilot Projects* Austin, TX: Texas Department of Protective and Regulatory Services, November 1998

Bush, R.A.B., and Fogler, J.P. (1994) *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*. San Francisco, CA: Jossey-Bass, 1994.

Center for Policy Research. *Alternatives to Adjudication in Child Abuse and Neglect Cases, A Final Report of the State Justice Institute Project*, Denver, CO: The Center for Policy Research, 1992.

Coats, W.P. (1992) "Settlement and Negotiation of Dependency, Neglect, and Abuse Cases." In: *Using the Law for Children: New Horizons for Attorneys and Expert Witnesses*. Edited by L.F. Michaels. Denver, CO: National Association of Council for Children, 1992, 75-81.

Davidson, H.A. (1997) "Using Dispute Resolution in Child Protection Cases." Paper, ABA Center on Children and the Law, Washington DC.

Duquette, D. N., Hardin, M., Dean, C. P., & United States Children's Bureau. (1999) *Adoption 2002: Guidelines for Public Policy and State Legislation Governing Permanence for Children*. Washington, D.C.: U.S. Dept. of Health and Human Services. <http://www.acf.hhs.gov/programs/cb/publications/cjafact.htm>

Edwards, L.P. (1997) "Dependency Court Mediation: The Role of The Judge." *Family and Conciliation Courts Review* 35 (2): 160-163, April 1997.

Etter, J. (1997) *Mediating Permanency Outcomes: Practice Manual*. Washington, DC: Child Welfare League of America

Family and Conciliation Courts Review, (1997) Special Issue on Child Protection Mediation, vol. 35, no. 2, Apr. 1997.

Firestone, G. (1997) "Dependency Mediation: Where Do We Go From Here?" *Family and Conciliation Courts Review* 35 (2): 223-238

Firestone, Gregory.(1998) "Guidelines for Dependency/Child Protection Mediation Programs." Association of Family & Conciliation Courts Newsletter (1998): 6.

Firestone, G. (1996) "Update on Juvenile Dependency Mediation." *The Family Law Commentator* 21 (3): 1-11.

Fowler, B.D., Garver, P., Gelzleichter, G.D., Goodman, J., Johnston, T., Merida, L., Noel, J., Pepper, T.G., Whitmer, K. (2000) *Planning Mediation Programs: a Deskbook for Common Pleas Judges* Columbus, OH: The Ohio State University College of Law Available online: http://www.sconet.state.oh.us/dispute_resolution/deskbook/

Giovannucci, M.T. (1997) "Understanding the Role of the Mediator in Child Protection Proceedings." *Family and Conciliation Courts Review* 35 (2):143-148 (April 1997).

Giovannucci, M.T. (1996) *An Alternative to Traditional Permanency Planning: A Model for Negotiated Settlements in TPR Proceedings*. Unpublished paper. Family Division, Connecticut Judicial Branch, State of Connecticut Superior Court, Wethersfield, Connecticut.

Giovannucci, M.T. (1999) Mediation of Child Protection Proceedings: The Connecticut Juvenile Court's Approach, Connecticut State Judicial Branch, State of Connecticut Superior Court, Wethersfield, Connecticut <http://www.casanet.org/library/advocacy/mediat.htm>

Irving, H., and Benjamin, M. (1991) *The Toronto Family Mediation Service: Evaluation of Process and Outcome*. Final Report. Ottawa: Social Sciences and Humanities Research Council of Canada.

Judicial Education Center, (2002) *Child Welfare Handbook*, Albuquerque, NM: Institute of Public Law, University of New Mexico School of Law:
http://jec.unm.edu/resources/benchbooks/child_law/

Lande J., (2000) *Mediation and Child Protection Mediation: Reports on Trends in the State Courts, 1999-2000*, Unpublished Paper, Williamsburg, VA: National Council on State Courts
<http://www.ncsc.dni.us/KMO/Projects/Trends/9900/Articles/depndcymediation.htm>

Libow, J. (1993). "The Need for Standardization and Expansion of Nonadversary Proceedings in Juvenile Dependency Court with Special Emphasis on Mediation and Role of Counsel." *Juvenile and Family Court Journal* 44 (3): 3-16

Lowry, J.M. (1997) "Family Group Conferences as a Form of Court-Appointed Alternative Dispute Resolution in Child Abuse and Neglect Cases." *University of Michigan Journal of Law Reform* 31 (1): 57-92.

Maresca, J.(1995) "Mediating Child Protection Cases." *Child Welfare* 74: 731-743

Mayer, B. (1989) "Mediation in Child Protection Cases: The Impact of Third Party Intervention on Parental Compliance Attitudes." *Mediation Quarterly* 24: 89-106 (1989).

National Council of Juvenile and Family Court Judges, Permanency Planning for Children's Department, (2001) *Technical Assistance Bulletin: The Essex County Child Welfare Mediation Program: Evaluation Results and Recommendations*
<http://www.pppncifcj.org/html/publications.html>

National Council of Juvenile and Family Court Judges, Permanency Planning for Children's Department (1995) *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*. Reno, NV <http://www.pppncifcj.org/html/publications.html>

National Council of Juvenile and Family Court Judges (2000) *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, Fall 2000:27 and Fall 2000:28 <http://www.pppncifcj.org/html/publications.html>

National Council of Juvenile and Family Court Judges. (1998) *Diversion Project Matrix: A Report from Four Sites Examining the Court's Role in Diverting Families from Traditional Child Welfare Services into Community-Based Programs*. Reno, NV.

Martin, J., and Weller S.. (2001) *Mediated Child Protection Conferencing in Criminal and Civil Child Abuse & Neglect Cases: Lessons from the Wisconsin Unified Family Court Project*, Denver: Center for Public Policy Studies, 2001.

McNeilly, G.K. (1997) "Mediation and Child Protection: An Ontario Perspective." *Family and Conciliation Courts Review* 35 (2): 206-222.

- Orlando, M.G. (1997) "Funding Juvenile Dependency Mediation Through Legislation." *Family and Conciliation Courts Review* 35 (2):196-201.
- Pearson, J., N. Thoennes, B. Mayer, & M. Golten. (1986) "Mediation of Child Welfare Cases" *Family Law Quarterly*, vol. 20, 303-32.
- Palmer, S.E. (1989). "Mediation in Child Protection Cases: An Alternative to the Adversarial System." *Child Welfare* 68: 21-31
- Policy Consensus Initiative, "Mediating Child Protective Service Cases in Texas." *States Mediating Change: Improving Governance Through Collaboration*. Santa Fe: Policy Consensus Initiative, 2001.
- Smith, R.; Maresca, J.; Duffy, M.; Banelis, N.; Handelman, C.; and Dale, N.(1992) "Mediation in Child Protection: Limited or Limitless Possibilities." Report, Demonstration Project of the Children's Aid Society of Metropolitan Toronto, 1992.
- Shaw J., and Thoennes N. (1998), *Child Protection and Dependency Mediation Program Profiles* Madison, WI: Association of Family and Conciliation Courts.
- Simmon, B. (1999) "Voluntary Relinquishment of Parental Rights: Considerations and Practices" UC Berkeley, School of Social Work, 1999:2.
- Theonnes, N. (1994) "Child Protection Mediation in the Juvenile Court." *Judges' Journal* 33 (1): 14-19, 40-43 (Winter 1994).
- Theonnes, N. (1997) "Child Protection Mediation: Where We Started." *Family and Conciliation Courts Review* 35 (2):136-142 (April 1997).
- Thoennes, N. (2001) *Dependency Mediation in Oregon and the Nation: Report to the Oregon Judicial Department, March 2001*. Center for Policy Research, Denver, CO http://www.centerpolicyresearch.org/child_abuse_publications.htm
- Thoennes, N. (2000) Dependency Mediation: Help for Families and Courts. *Juvenile and Family Court Journal*, Vol. 51, No. 2, Spring 2000.
- Thoennes, N. (1998) Dependency Mediation in the San Francisco *Report to the San Francisco Foundation. March 1998*. Center for Policy Research, Denver, CO
- Thoennes, N. (1997) An Evaluation of Child Protection Mediation in Five California Courts. *Family and Conciliation Court Review*, Vol. 35, No. 2, April 1997.
- Thoennes, N. (2002) *Hamilton County Juvenile Court: Permanent Custody Mediation: Report to Hamilton County Juvenile Court, October 2002*. Center for Policy Research, Denver, CO http://www.centerpolicyresearch.org/child_abuse_publications.htm
- Theonnes, N. (1991) "Mediation and the Dependency Court: The Controversy and Three Courts' Experiences." *Family and Conciliation Courts Review* 29: 246-258.
- Thoennes, N. (2001) *Permanent Custody Mediation: Lucas County Court of Common Pleas, Juvenile Division: Report to Lucas County Court of Common Pleas, Juvenile*

Division, Ohio, November 2001. Center for Policy Research, Denver, CO
http://www.centerpolicyresearch.org/child_abuse_publications.htm

Theonnes, N. (1997) *A Step in the Right Direction: Child Protection Mediation in the Juvenile Court*. Denver, CO: The Center for Policy Research, 1993.

Wildgoose, J. (1987). Alternate Dispute Resolution of Child Protection Cases. *Canadian Journal of Family Law*, Vol. 6, 61-84

Wilhelmus, M. (1998) "Mediation in Kinship Care: Another Step in the Provision of Culturally Relevant Child Welfare Services." *Social Work* 43 (2): 117-126 (March 1998).

• **Child Welfare Mediation - Web Resources**

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Center on Children and the Law
740 15th Street, N.W.
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Phone: 202-662-1720
Fax: 202-662-1755
E-mail: ctrchildlaw@abanet.org
<http://www.abanet.org/child/>

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Association of Family and Conciliation Courts (AFCC)

329 W. Wilson Street
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608-251-4001
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<http://www.afccnet.org/>

Association of Family and Conciliation Courts Mediation Committee

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National Adoption Information Clearinghouse

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