

National Resource Center for Foster Care & Permanency Planning

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Tools for Permanency

Tool # 3: Child Welfare Mediation

The National Resource Center for Foster Care & Permanency Planning at the Hunter College School of Social Work of the City University of New York is committed to the pursuit of excellence in child welfare service delivery. As a Center dedicated to action and change, our work focuses on building the capacity of child welfare agencies to meet the needs of children at risk of removal from their families and those already placed in out-of-home care. Our "Tools for Permanency" aim to promote family-centered and collaborative approaches to achieving safety, timely permanency and the overall well-being of children and families within the child welfare system.

Child Welfare Mediation...What is it?

Mediation is a newly emerging tool that child welfare practitioners may use to engage families in decision making about their children and themselves. Mediation can enhance permanency planning by reducing the parents' sense of alienation and helplessness and empowering parents by involving them in planning their children's futures.

The term mediation is used almost interchangeably with several other terms: alternate dispute resolution (ADR), collaborative negotiations, conflict resolution, and conflict intervention strategies. In family matters, mediation is best known for its use in divorce and custody disputes, and mediation has been used in many other areas such as landlord-tenant disputes, labor disputes, and to reduce violence among teen gang members. During the last decade, techniques of mediation have also been applied to child protection and child welfare situations.

Mayer defines child welfare mediation as an approach to resolving disputes in which the various parties attempt to resolve their differences through a bargaining procedure that is not adversarial in nature. Through mediation, parties engage in a mutual effort to discover solutions that will maximize the degree to which everyone's interests are met, rather than attempting to obtain their objectives by promoting their own positions, rebutting others' arguments, and threatening to bring their power to bear on each other (Mayer, 1985).

The process of mediation involves the participation of a third-party neutral (usually called a mediator) who has no decision making power and no stake in the outcome of the negotiations. The mediator guides participants into a constructive problem-solving mode and helps them to frame their proposals, consider their options, and approach other parties in a constructive manner. The mediator oversees the process of negotiations but does not advocate a particular solution (Mayer, 1985).

How is mediation used in child welfare?

Child welfare mediation is frequently used in court-based child protection proceedings. In addition, social-service based child welfare mediation is being used in the development of permanency plans for children, including cooperative adoption (Etter, 1993). Many practitioners also advocate using mediation techniques:

- to assist the CPS worker and the parent in developing treatment/service plans
- to work out disputes over supervision, placement, parental visitation, family reunification, and other permanent plans for the child
- to resolve conflicts among parents, relatives, and other extended family members concerning intra-familial cooperation among them and child welfare authorities, and
- to resolve conflicts among foster care providers and children's court-appointed advocates concerning the needs of children while they are in placement (Davidson, 1997).

Social-Service Based Child Welfare Mediation

Perhaps the most established and successful social-service based child welfare mediation program in the U.S. is being offered in Oregon. Oregon has been using mediation in child welfare cases as a permanency tool since 1992. Their mediation program originates from the State of Oregon's Children's Services Division, and it has been developed in conjunction with a private-sector mediation program called Teamwork for Children. Oregon has primarily used child welfare mediation as an alternative to contested termination of parental rights (TPR) cases and as a means of developing cooperative adoption plans (Etter & Roberts, 1996).

Oregon's Cooperative Adoption Mediation Project (CAMP)

In 1992, Oregon's Children's Services Division (CSD) was looking for a way to involve parents in forming permanent plans for children in cases where the prognosis for reunification with biological parents was poor. CSD identified specialized child welfare mediation as a way to form cooperative relationships and avoid court terminations of parental rights. In conjunction with Teamwork for Children, Oregon began a two-year pilot project involving 36 cases, and called it the "Cooperative Adoption Mediation Project" or CAMP (Etter & Roberts, 1996).

The aims of the CAMP pilot were to:

- empower parents to make cooperative permanent plans for their children
- reduce the necessity for termination of parental rights litigation and the expenditure of state dollars, and
- reduce the time children spend in foster care awaiting permanent homes (Etter & Roberts, 1996).

CAMP mediation took place in two phases. *Phase One* was mediation between the parent and the agency. Families were interviewed by CSD and asked if they were interested in participating in the CAMP program. If they were interested, the mediator contacted the parents' lawyer and asked permission to meet with the parent. At the initial meeting, the mediator talked with the parent about the mediation process and its voluntary nature. Parents were assured they could end mediation at any time without information from the sessions being used in a trial. Parents were helped to recognize that their children needed permanent homes. Several sessions could be held to be sure that the parent understood and was comfortable with the process and was ready to proceed to *Phase Two* (Etter & Roberts, 1996).

In *Phase Two*, if the plan was not "return home," potential adoptive parents were engaged in a discussion about their willingness to work cooperatively with the birth parent(s). If all agreed, joint mediation sessions were held with prospective adoptive parents and the birth parents. The focus of the sessions was to build relationships between birth and adoptive parents in order to meet the child's need for connection with relatives, rather than a focus on negotiating a settlement between adversaries. When all participants felt ready, the mediator solidified a

simple, written post-adoption communication agreement which formed the basis for a cooperative adoption with ongoing communication between birth and adoptive parents (Etter & Roberts, 1996).

Permanency mediation was particularly effective with parents in prison, in drug treatment programs, parents with legal problems, and parents with mental disabilities. The shuttle mediation format allowed for extensive individualized work, meeting the parents on their own ground. No birth parents to date have violated the terms of their cooperative agreements. Only 2% of the children have come back into the system since the project began in 1992, over 400 cases later (Jeanne Etter, Director, Teamwork for Children, interview, February 20, 1998). Parent Empowerment Process workbooks (Etter, 1997) were used advantageously to address critical issues; these workbooks were especially effective in moving parents from resistance to positive planning for their children's futures, often resulting in cooperative adoptions.

Results of the Oregon CAMP Pilot

Of the 36 CAMP cases entering mediation, 31 cases (86%) were resolved cooperatively and avoided contested trials. Of the five cases that were unresolved: two clients withdrew from mediation, the attorney terminated mediation in two cases, and CSD terminated the mediation in one case. Of the 31 cases resolved by mediation, permanent cooperative plans for the children included:

- Cooperative adoptions - 90% (28 cases)
- Return home plans - 7% (2 cases)
- Long-term foster care - 3% (1 case)

The CAMP pilot demonstrated sizeable cost savings: the average contested TPR trial costs \$22,000. The average CAMP mediation cost \$3,500. Further, the CAMP pilot freed and placed children for adoption quickly. The average time between referral to mediation and being freed for adoption was 3.7 months. The average time from referral to adoptive placement was 5 months (Etter & Roberts, 1996).

Oregon has continued to expand its use of specialized child welfare mediation since the successful completion of the CAMP project. In addition, Idaho replicated the CAMP project two years later, found the program quite successful, and is working to continue funding for mediation prior to TPR trials. A number of other states are piloting similar projects using the social-services based mediation model to achieve cooperative permanency plans for children in foster care (Jeanne Etter, Director, Teamwork for Children, interview, February 20, 1998).

Court-Based Mediation in Child Protection Proceedings

Court-based child protection mediation was developed in response to growing demands on the juvenile court. Formal mediation in child abuse/neglect cases was first used in the Los Angeles County Dependency Court in 1983. Connecticut courts followed a year later. In 1987, Orange County, California implemented a mediation service within its juvenile court (Center for Policy Research, 1992), in 1994 the state of Florida began a court-based child protection mediation program (Firestone, 1996) and many other localities around the country are implementing or planning to implement child protection mediation projects (Firestone, 1997). Child protection mediation programs are also developing in other countries, especially Canada (Maresca, 1995).

Child protection mediation is somewhat controversial

Although mediation in child protection cases is in keeping with the historically non-adversarial nature of juvenile court, it remains a somewhat controversial practice. Those opposed to using mediation in child protection cases raise the following concerns:

- the mediation process cannot simultaneously develop compromises and protect children
- parents cannot fully participate in the negotiations
- protection of parental rights is not ensured, and
- most issues in child maltreatment are not negotiable present (Center for Policy Research, 1992).

Those in favor of using mediation in child protection cases counter that:

- Mediation can protect children – In every system, most child protection cases are resolved without resorting to a contested hearing. Mediation simply formalizes the process, moving it from hallway exchanges between a few parties to sessions with all relevant parties present.
- Parents are not at a disadvantage in mediation – The parent’s attorney will be present during the mediation. Mediators can help the less powerful party by giving this person an opportunity to speak, rephrasing points, or stopping exchanges that are angry and unproductive.
- Parents are more likely to be involved in mediation than in other negotiating forums – It offers a chance to explain to the parents, sometimes for the first time, what is transpiring and what they will need to do to have their children returned home (Center for Policy Research, 1992).

Some issues are suitable for negotiation in child protection cases...and some are not

Davidson (1997) suggests that there is consensus among those opposed to and those in favor of child protection mediation that some issues are not suitable for mediation. Whether a child actually was or was not abused or neglected is not negotiable. Whether to remove children from the home who have been severely injured or who are at risk of serious harm is rarely appropriate for negotiation. However, he also suggests that numerous other child protection decisions usually are negotiable, such as:

- the plan for where the children will be placed
- the scope of agency involvement with the family when children are not removed from their homes
- the contacts parents, children and siblings will have during placement
- the treatment interventions that will be used to address the alleged parental behaviors
- the therapeutic services children will receive
- the actions by parents that will be a precondition to a child’s return from placement
- the permanent plan that will be followed when the case is closed (Davidson, 1997).

A closer look at one court-based child protection mediation program

Although the states that are currently using court-based child protection mediation have differences, they also are similar. We thought it would be helpful to take a closer look at one state program to illustrate how, in practice, a court-based child protection mediation program works. We decided to highlight Connecticut’s Case Status Conference. (This does not mean that Connecticut’s program is any better than the other programs, this was a random selection for purposes of illustration only.)

Connecticut’s Child Protection Mediation Process: the Case Status Conference

Connecticut defines its Case Status Conference as a judicially sanctioned process which utilizes mediation techniques to provide a formalized vehicle whereby all parties involved in litigation have a neutral forum in which to discuss both the social services and legal issues that affect the case. The outcome is the formulation of a written plan which details the agreement that was reached. The agreement is then presented to the court for the judge’s final approval (Giovannucci, 1994).

Goals of Connecticut’s Case Status Conference:

- to provide an alternative to time consuming litigation
- to promote settlements with input of all parties
- to develop plans which safeguard well being of the children

- to empower parents to participate in the court process
- to develop plans which are judicially sound, and
- to protect legal rights and interests of all involved (Giovannucci, 1994)

How do the Case Status Conferences proceed?

The Case Status Conferences take about one hour, and subsequent conferences may be held. The Conference has several stages, and the mediator (in Connecticut, the mediator is called the Court Services Officer or CSO) must move participants through each stage:

- understanding the problem
- understanding the legalities
- reconfirming the legal situation
- understanding the social service needs, and
- summarizing the agreements.

The parameters of confidentiality which must be adhered to during the mediation are defined and agreed to by all participants at the start of the session (Giovannucci, 1994).

Participants in the Case Status Conference

In addition to the CSO, there are nine other possible participants:

1. Social worker from the Division of Children & Youth Services (DCYS)
2. Assistant Attorney General (AAG). The AAG represents DCYS
3. Attorney for parent(s)
4. Attorney for child
5. Parent(s) or legal guardian(s)
6. Child(ren)
7. Guardian ad litem (GAL) for child
8. GAL for parent(s)
9. Children-in-Placement/CASA monitor (Shaw & Phear, 1991)

Who calls for a Case Status Conference?

The judge can direct parties to meet in a Case Status Conference; or the conference may be held at the request of Child Protective Services, any party or counsel for any party to the case, or at the request of the CSO (Giovannucci, 1994).

Case management benefits

Case Status Conference procedures have case management benefits: a timetable is agreed upon by all parties and the court is presented with a well-thought-out agreement, or at minimum, a clearly developed case (Shaw & Phear, 1991). For those cases that do not result in mediated agreement — the process helps identify and narrow issues that will be taken up at trial. For example, issues which might have resulted in the filing of numerous pre-trial motions are often avoided by the agreed upon exchange of information. In addition, the CSO is able to schedule trials in a more timely manner with adequate time set aside to hear the case in its entirety (Giovannucci, 1994).

Summary

Several studies have shown that provided safeguards are built in (such as: correcting for possible imbalances of power), mediation in child welfare and child protection cases offers improvement over traditional child welfare practice and traditional litigation of child maltreatment cases:

- In 1994, Oregon's CAMP pilot was independently evaluated by the Oregon Council on Crime and Delinquency and they concluded that using child welfare mediators is a cost-effective means for freeing children for adoption who cannot return home. Savings were found in the areas of reduced foster care and court costs, overhead, and caseworker time, as well as reduced emotional trauma for children and families (Etter & Roberts, 1996).
- In 1995, the Denver-based Center for Policy Research did a study of five California Dependency Courts using mediation in child protection proceedings. The Center found that:
 - mediation was effective in producing settlements
 - ◆ mediated plans were more detailed and creative than litigated plans and often allowed more parental visitation than comparable adjudicated plans
 - ◆ mediation reduced the need for full trials and helped avoid repeated hearings on the same case
 - ◆ children in the mediation group spent less time in out-of-home placements, and those children who remained in placement were more likely to be placed in relative foster care
 - ◆ mediation was most useful when it maximized parental involvement
 - ◆ the majority of professionals who took part in mediation were satisfied with the process parents were very satisfied with their mediation experiences – they felt “heard” in mediation.

Further, in comparing mediated plans to non-mediated plans, the Center found that the families were more likely to receive multiple services, especially counseling, through a mediated agreement (Thoennes & Pearson, Nov.1995).

Child Welfare Mediation, along with Family Group Decision Making and Concurrent Permanency Planning, is a tool to respectfully engage families in decision making about their children and themselves.

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- Additional Suggested Reading: *Family and Conciliation Courts Review*, Vol. 35, No. 2, April 1997. Special journal issue focusing on dependency court mediation. Sage Publications, California. Tel. 805-499-0721.

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We'd like to help you get started!

Services available from the National Resource Center for Foster Care & Permanency Planning (NRCFCPP) include:

- Information Services – We can connect you with child welfare agencies around the country that are now considering or implementing innovative program models. Reading materials and bibliographies are also available.
- Training Technical Assistance – The NRCFCPP can provide consultation and/or training as you consider or plan for a new initiative. We can arrange to meet with you for a brief consultation, we can make an informational presentation at your agency or in your community, or we can work with you to develop a comprehensive in-service training program at the local or state-wide level for casework, supervisory, managerial and/or training staff, as well as attorneys and judges.

If you are interested in working with the NRCFCPP, you can start with a phone call, a brief letter or an e-mail message. Let us know what you're thinking about doing, and we'll work with you to plan the kind of help you'll need to get your project up and running. We can help you figure out how intensive your training program should be, and what costs might be involved for your agency. [Note: The NRCFCPP is funded by DHHS/ACYF/Children's Bureau. If yours is a public child welfare agency, you may be eligible for free training and/or technical assistance approved by your regional office of the Administration for Children, Youth and Families.]

Materials Available from NRCFCPP

Tools for Permanency

- Concurrent Permanency Planning – an approach to permanency planning which works toward reunification while exploring other options for the child, simultaneously rather than sequentially.
- Family Group Decision Making – outlines two models for early inclusion of a child's immediate and extended family in permanency planning decision making.
- Child Welfare Mediation – a newly emerging tool to engage families in decision making in a non-adversarial manner.
- Relative Care Options – explores the challenges involved in foster parenting by members of the child's extended family. (not yet available)

Legislative Summaries

- Adoption and Safe Families Act of 1997 (Public Law 105-89)
- Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272)
- Personal Responsibility & Work Opportunity Reconciliation Act (Public Law 104-193)
- Child Abuse Prevention and Treatment Act (Public Law 104-235)

For more information, contact us at:

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