



New York State
Office of
Children & Family Services

CHILD PERMANENCY MEDIATION PILOT PROJECT

Multi-Site Process and Outcome Evaluation Study

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Chapter 1: Introduction

The New York State (NYS) Child Permanency Mediation Pilot Project began in 2002 when representatives from the New York State Office of Children and Family Services (OCFS), the Office of Court Administration (OCA), and the Permanent Judicial Commission on Justice for Children (PJCJC) came together to support the implementation of seven child permanency mediation programs within New York State. Inspired by research documenting the potential benefits of mediation in child welfare matters, the pilot project had two main aims: 1) to support the development and use of mediation in New York State's child welfare cases, and 2) to promote the timely obtainment of safe, permanent living arrangements for children served by the State's child welfare system. To monitor the projects' progress toward achieving these goals, a multi-faceted evaluation plan, incorporating both process and outcome evaluation activities, was undertaken by the Bureau of Evaluation and Research (BER) within OCFS. This report presents the initial findings generated by the BER evaluation and offers recommendations for future program evaluation efforts.

Specifically, Chapter 2 describes child welfare mediation and reviews arguments for and against its use within child welfare cases. Studies from other locales evaluating the outcomes and impacts associated with using mediation in the child welfare arena are also reviewed. In Chapter 3, the logic model developed by the state partners to document and evaluate the use of child permanency mediation services in NYS is presented along with the original evaluation design and proposed data collection methods. Chapter 4 focuses on the implementation and development of the specific sites funded of the NYS Child Permanency Mediation Pilot Project, and provides an overview of the way in which child permanency mediation took shape within each of these sites.

Chapters 5, 6, 7, and 8 provide detailed information on the final evaluation design, methods, and outcomes. Chapter 5 describes the various components of the current evaluation design and reviews the methodologies used to gather data for each of these evaluation components. Chapter 6 presents findings from the multi-site process study and describes how and with whom mediation has been implemented. The likelihood that mediation will lead to the development of mutually acceptable agreements is also reviewed, and the relation between various case characteristics and mediation outcomes is examined. Chapter 7 explores some of the permanency-related outcomes associated with the receipt of mediation. Descriptive information on children's foster care status and service receipt one-year post mediation participation is presented. Chapter 8 presents some preliminary findings from a participant satisfaction survey distributed to both family members and professional mediation participants. Finally, Chapter 9 summarizes findings from the entire evaluation and offers some recommendations for future program and evaluation activities.

Chapter 2: Child Welfare Mediation

Endorsed by The National Council of Juvenile and Family Court Judges (NCJFCJ) as a “best practice,” alternative dispute resolution techniques, like child welfare mediation, have become an increasingly popular response to national pressures to promote permanency for foster care children (National Council of Juvenile and Family Court Judges, 2000). Unlike traditional court-based procedures which adopt an adversarial approach to the resolution of child welfare disputes, child welfare mediation seeks to engage families, social services, and legal personnel in a collaborative dispute resolution process in which parties work together to identify mutually acceptable outcomes. Parties work with a neutral third party, a mediator, who helps them to identify, clarify, and consider each other’s concerns, perceptions, and needs in an open and respectful manner. The mediator has no decision-making authority, but assumes responsibility for keeping the mediation process safe, balanced, and inclusive. Specifically trained to facilitate group communication and problem-solving efforts, mediators use their skills to model effective means of group interaction and to encourage creative, shared decision-making among participants (Giovannucci, 1997).

Arguments for Child Welfare Mediation

Advocates for alternative dispute resolution techniques believe that using mediation in child welfare cases should expedite permanency by heightening family engagement, increasing parents’ understanding of the child welfare system, and empowering families to work more effectively with the social services and legal professionals assigned to their case. When child welfare cases go to court, constraints of judicial time and requirements of the law typically dictate the issues to be discussed, and the attorney representing the parents speaks on the parents’ behalf. In contrast, mediation provides a forum in which parents are invited to be active, vocal participants. Parents contribute to the agenda for discussion, pose questions, and are given the opportunity to personally express their feelings, concerns, and ideas.

Other parties not formally represented in the courtroom (e.g., extended family members, foster parents, service providers, etc.) are also invited to the mediation table and given similar opportunities to add their voice to the discussion process. The mediator guides the information sharing process and works with participants to have each party treated with dignity and respect. An atmosphere of open, responsive communication between parties is thus established, increasing the likelihood that all parties, including parents, will feel “heard” by those around them.

This change of atmosphere is believed to lead to the identification and adoption of more viable permanency plans. Having been given the opportunity to be heard, parties can more readily put aside their own agendas and focus on listening to and working with others. The inclusion of multiple voices also increases the breadth and depth of information available to all parties, giving participants more material to work with when problem-solving. Mediation advocates maintain that these aspects of the mediation process encourage parties to look at old problems in new ways and often result in the identification of previously unconsidered solutions. Allowing the parties directly affected by the decision-making process to play an active role in plan

construction should also strengthen plan content and promote accountability. Built by the individual parties who will eventually be responsible for abiding by the terms set, mediated agreements are believed to be more likely than externally imposed requirements to contain specific information on the expected roles and responsibilities of all participants, facilitating later implementation efforts. Assuming that individuals are more likely to comply with solutions that they helped to create, mediation should also lead to stronger, more durable agreements over time (National Council of Juvenile and Family Court Judges, 1995; Thoennes, 1994).

In turn, production of creative, mutually acceptable agreements should lead to practical savings in both time and dollars. If parties are more accepting of and compliant with mediated agreements, time spent on contested court hearings should decrease. Mediated solutions may also help families and service providers work together more productively, presumably reducing the amount of time needed to identify viable options and successfully achieve permanency. Thus, mediation advocates cite both family and system level benefits to utilizing mediation in child welfare cases. These benefits include:

- Heightened family engagement and empowerment;
- Increased information gathering and sharing;
- Joint decision-making;
- Creation of comprehensive and creative agreements /service plans;
- Increased family and service provider compliance;
- Time and monetary savings for court and social services staff; and
- Decreased time to permanency.

Arguments Against Child Welfare Mediation

Others have argued that introducing mediation into child welfare cases may be more harmful than beneficial. Issues of child safety are an inherent component of all child welfare cases, raising the question as to whether child welfare represents an appropriate context for mediation. Mediation detractors worry that introducing negotiation into child welfare cases will impede efforts to safeguard children and shift focus away from the children's needs (Thoennes, 1994). Concerns that mediation may compromise parents' best interests have also been voiced.

Although mediation is intended to be a confidential, neutral process in which all parties are treated equally, a power disparity clearly exists between parents and the child welfare and legal systems overseeing their case. Parents may therefore feel compelled to engage in mediation and/or to agree to presented solutions. Some parent attorneys have also questioned whether the confidentiality agreement surrounding mediation can be enforced. If in the spirit of open communication and group problem-solving a parent shares information in mediation that would presumably compromise their legal position if later shared in court (e.g., a parent divulges a heretofore unknown substance use problem), use of mediation may jeopardize parent's efforts to keep their children.

Finally, on a more pragmatic level, use of mediation may simply be untenable in child welfare cases where multiple players with multiple schedules come into play. Unlike court proceedings, participation in mediation is voluntary. All parties must consent to mediate before discussions can begin. Refusal by a single key party may impede or even prevent meaningful mediation from

taking place. Moreover, even when parties do agree to try mediation, hectic professional schedules can make it difficult to bring the necessary parties together in a timely fashion. Maintaining the parties throughout the mediation session may also pose difficulties, as mediation sessions can last for several hours, creating serious time demands for over booked professionals. Thus, family and system level risks to utilizing mediation in child welfare cases have also been cited. These drawbacks include:

- Diminished focus on children's best interests/safety;
- Compromised parental rights;
- Implementation obstacles; and
- Increased workload for systems professionals.

Mediation: An effective tool for resolving child welfare cases?

Although the debate over using mediation in child welfare matters continues, initial research documenting the processes and outcomes associated with child welfare mediation programs suggests that mediation may facilitate permanency efforts. Nancy Thoennes of the Center for Policy Research has conducted multiple studies of child welfare mediation programs, including a frequently cited review of child protection mediation in five California counties. Her work, along with other recent evaluations of pilot mediation programs located in Essex County, New Jersey (Dobbin, Gatowski, & Litchfield, 2001), and Washington, D.C. (Letiecq, Drewery, Scrivner, & Klain, 1999; Gatowski, Dobbin, Litchfield, Oetjen, 2005) support many of the arguments made by mediation advocates and suggest that mediation may benefit both families and the greater child welfare/legal system.

Family Engagement and Empowerment

Consistent with arguments that mediation engages and empowers families, descriptive research examining participants' reactions to mediation suggests that most parents view mediation as a positive, informative, and engaging process. Over 70% of parents who participated in Thoennes' (1997) multi-county child custody mediation evaluation study felt listened to, understood, and respected by the other parties involved in their case. Other studies report similar findings. The majority of parents who participate in mediation agree that mediation actively involved them in the problem-solving process, improved their understanding of others' positions, and helped them to understand what they needed to do next (e.g., Dobbin et al., 2001; Letiecq et al., 1999; Thoennes, 1997). When asked to share their impressions of parental engagement, participating professionals offered similar reactions. Eighty percent of responding professionals in the New Jersey evaluation agreed that participation in the mediation process had increased parents' involvement in case planning activities (Dobbin et al., 2001).

Agreement Rates

Increased parental involvement in case planning should facilitate the formation of mutually acceptable agreements. In keeping with this assumption, mediation appears to be an effective tool for developing case plans in a wide range of child welfare cases. When both full and partial agreements are considered, reported settlement rates range from 70% to 90% across the larger evaluation studies (e.g., Dobbin et al., 2001; Gatowski et. al., 2005; Letiecq et al., 1999; Thoennes, 1997, 1998). Several of these studies (Dobbin et al., 2001; Thoennes, 1997, 1998) included cases referred to mediation at various points in the child welfare process (e.g., petition

through termination of parental rights), suggesting that mediation can lead to workable agreements at multiple stages in the litigation process. Similarly, the cases included in the two Washington D.C. evaluations were randomly assigned to mediation, reducing the likelihood that selection biases produced the high agreement rates observed in these studies.

Agreement Content

Preliminary evidence also suggests that the content of mediated agreements may be more comprehensive and family-friendly than litigated settlements or court orders. Thoennes (1997, 1998) used case file reviews to compare the case plans developed in mediated and litigated child welfare cases. Families who participated in mediation tended to be more likely than families who participated in traditional courtroom processes to have detailed plans that specified visitation schedules and referenced specific services to be provided to the child. Differences between agreements were also found in Washington D.C., with mediated cases receiving more referrals for both child and parent services than litigated cases (Gatowski et al., 2005). Moreover, when out of home care was required, mediated cases in both studies utilized family/relative placement options more often than comparison cases.

Compliance

There is also evidence to suggest that parties are more compliant with mediated agreements than litigated settlements or court orders. Thoennes (1997) examined mediation and non-mediation families' compliance with treatment plans approximately six months following disposition. Case file reviews indicated a 42% compliance rate among mediated families, compared to a 25% compliance rate among families receiving traditional court services. In addition, 47% of families who did not receive mediation had a contested 6-month review hearing, compared to only 12% of families in the mediation group. When these analyses were repeated with the San Francisco sample, 28% of litigated cases had a contested review hearing in the 24 months following disposition, compared to only 11% of cases with mediated agreements (Thoennes, 1998).

Permanency Outcomes

Research examining timeframes for key case events suggests that families who receive mediation reach case milestones faster than do other families. In Washington D.C., families with recent abuse/neglect petitions were randomly assigned to participate in either a child protection mediation program or traditional court-based services. The timeframe between the initial case hearing and both adjudication and disposition was significantly shorter for families in the mediation group, suggesting mediation may expedite the legal process. Quasi-experimental designs used in other locales lend additional support to this contention. In California and Ohio, use of mediation was associated with shorter timeframes for treatment plan development and for filing case agreements with the court (Thoennes, 1997; 2001).

Families who received mediation also obtain permanency faster and more often. Two years after their initial hearing, 72% of families who participated in the Washington, D.C. mediation program had a closed child welfare case, compared to 61% of families in the non-mediated group. Although the two groups did not differ significantly in the type of permanency option they achieved (e.g., return to parent, adoption, etc.), the time between initial hearing and case closure was approximately a month and half shorter for the mediation group.

Time and Monetary Costs

Mediation advocates maintain that mediation is a more cost-efficient method for resolving child welfare cases. Consistent with this perspective, reductions in court time, contested court hearings, and case length may represent significant cost savings. Unfortunately, research evaluating these potential gains in relation to mediation costs (e.g., mediator fees, professional time) is currently lacking.

Summary

Child welfare mediation is an alternative dispute resolution technique that brings families, social services, and legal personnel together to collaboratively address issues surrounding a family's child welfare case. Mediation is intended to promote open communication, group problem-solving, and shared decision-making and has received national attention as a promising new option for resolving child welfare issues. Findings from program evaluations undertaken in other locales suggest that mediation actively engages and empowers families, leads to the development of more comprehensive case plans, and reduces timeframes to permanency.

Chapter 3:

NYS Permanency Mediation Pilot Project: Conceptual Framework and Initial Evaluation Design

Inspired by the potential benefits of using mediation in child welfare matters, OCFS, OCA, and PJCJC came together to support the development of child permanency mediation programs across NYS. Each of the state partners contributed funds to the proposed initiative and seven sites were selected for inclusion within the pilot project. State representatives worked with selected sites to help develop local programs' structures and protocols (see Chapter 4), while simultaneously developing plans to study the impact of the new initiative on the state's child welfare cases. A multi-tiered evaluation was proposed, with process evaluation and participant satisfaction activities occurring first, alongside program implementation efforts. Short and long-term impact studies were also recommended, with initiation of these activities to begin once programs had reached a sufficient operating capacity.

Conceptual Framework

Based on previous evaluations of mediation programs and extensive conversations between state partners, mediation providers, and local planning groups, a conceptual framework describing the processes and outcomes presumed to be associated with child permanency mediation was developed. As indicated in Figure 1, the overall goal of the proposed initiative was to obtain safe, permanent homes for children with abuse and/or neglect histories served by family court. Specifically, it was anticipated that participation in mediation would heighten family engagement, facilitate issue resolution, and promote the development of collaborative agreements, eventually leading to better short-term (e.g., greater parental involvement, increased case plan compliance, decreased court contact/time) and long-term outcomes (e.g., decreased time in foster care, fewer foster care moves, etc.) for children.

Initial Evaluation Design

To document program implementation efforts and examine whether funded programs were successful in achieving the short-term and long-term outcomes specified in the conceptual framework, a multi-tiered evaluation plan was designed by BER and shared with state and local partners. Included in the proposed design were a multi-site process and mediation outcomes study, a participant satisfaction survey, and a short and long-term impact study.

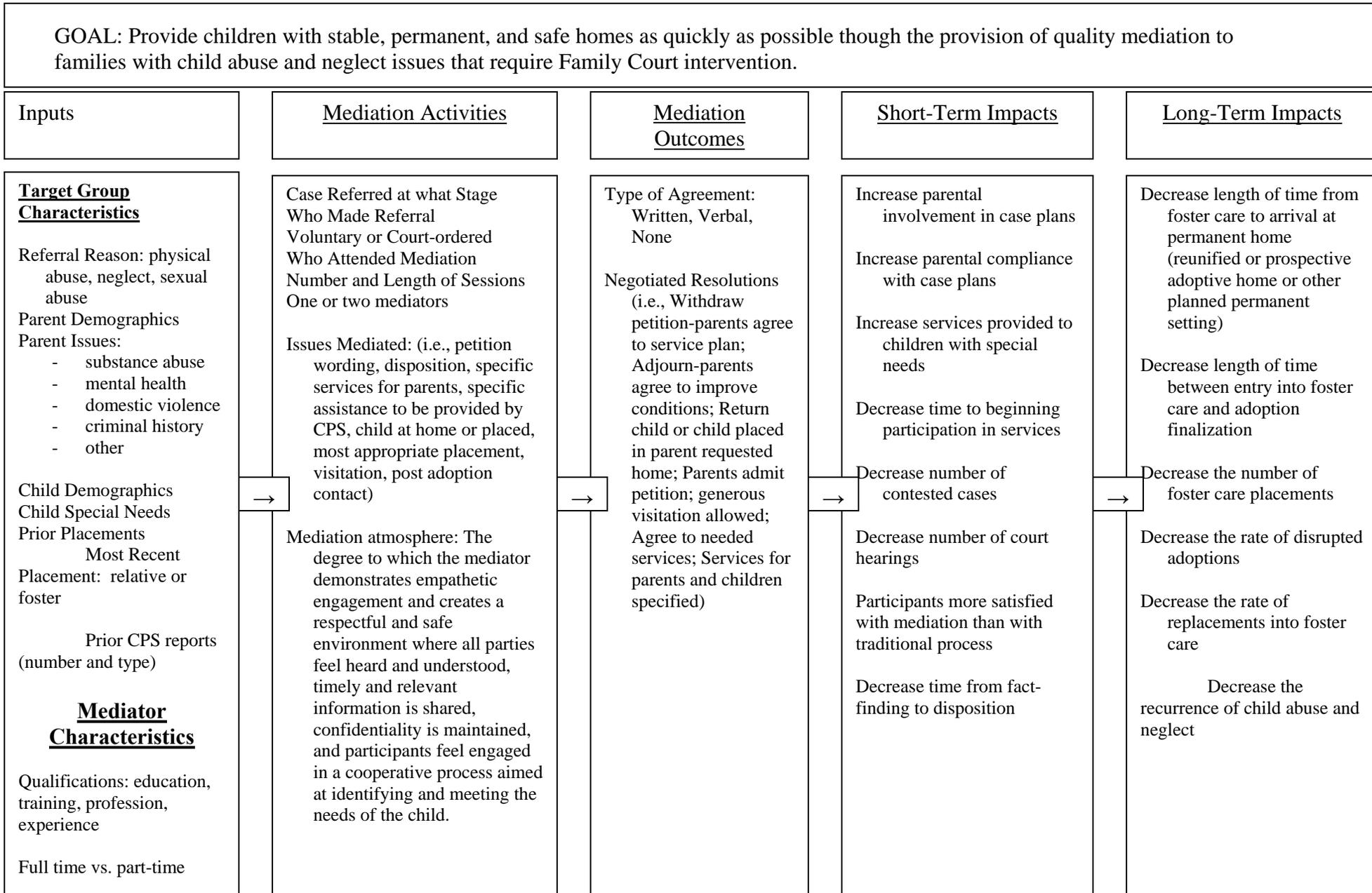
The process study was intended to document program development and implementation efforts, and focused on gathering basic information regarding program operations. As illustrated in the inputs, activities, and results columns of Figure 1, desired information included: referral/family characteristics, number and length of mediation sessions, mediation issues, resolved issues, and types of agreement generated. To assist in the data collection process, an ACCESS database system was devised to track program referrals, service delivery characteristics, and mediation outcomes. Programs were given their databases in July 2004 and instructed to enter information on all program referrals received.

To capture information regarding participants' perceptions of the mediation process, state and local partners worked together to devise a satisfaction survey that could be distributed to all

mediation participants at the conclusion of their mediation experience. Final survey forms were distributed to programs in August 2004.

Plans for a short-term and long-term impact study were also included in the proposed evaluation. In order to determine whether mediation improved outcomes for children and families, state planners were interested in comparing mediation and non-mediation families on a wide range of permanency-related constructs (see short-term and long-term outcomes columns in Figure 1). Initial conversations among the state and local partners indicated that an experimental design would not be feasible, as none of the participating sites were amenable to randomly assigning child welfare cases to either mediation or traditional family court. A quasi-experimental design was therefore recommended in which families who agreed to participate in mediation would be compared to similar families whose child welfare cases were handled through traditional Family Court processes. Potential avenues identified for selecting the non-mediation comparison group included: using “overflow cases” if more cases were referred to mediation than the programs could initially serve, and/or identifying a cohort of similar cases processed prior to the implementation of permanency mediation services within that jurisdiction. Final design characteristics and specific study location(s) were to be selected once sufficient information regarding programs’ operational characteristics and service capacities was known. It was anticipated that two jurisdictions would be selected, with a sample of 200 cases (100 mediation, 100 comparison) being drawn from each site. Information on the characteristics of mediated cases (e.g., prior child welfare services needs, pending court events, etc.) would be drawn from the process study database and used to define an appropriate comparison group. To date, these components of the initial evaluation design have not been implemented. As described in Chapters 4 and 6, low referral rates and shifting referral criteria have impeded implementation of the impact component of the evaluation design.

Figure 1
Conceptual Framework for Permanency Mediation Evaluation



Chapter 4: NYS Permanency Mediation Pilot Project: Participating Programs

With the conceptual framework for the initiative specified, state and local representatives worked together to develop the individual programs funded by the pilot project. Table 1 lists the counties originally chosen to participate in the NYS Child Permanency Mediation Pilot Project and the agencies selected to provide mediation to those locales. Information on initiative development and funding, the structure of funded programs, and program implementation efforts follows.

**Table 1
The NYS Permanency Mediation Pilot Project: Participating Sites and Agencies**

| Judicial District | Original Pilot Site | Expanded Service Area | Current Annual Funding | Mediation Provider |
|-----------------------------------|--|---------------------------------------|-------------------------------|---|
| 1 st / 2 nd | New York City (including Kings, New York counties) | Bronx, Queens Counties | \$606,470 ^a | New York City Family Court / NY Society for Prevention of Cruelty to Children |
| 3 rd | Albany County | N/A | \$30,000 ^c | Mediation Matters |
| 5 th | Oneida County | N/A | \$25,000 ^c | Peacemaker Program |
| 6 th | Chemung County | Schuyler County | \$30,000 ^c | Community Dispute Resolution Center |
| 7 th | Monroe County | Steuben County | \$75,000 ^b | The Center for Dispute Settlement |
| 8 th | Erie County | Niagara County | \$15,000 ^c | Catholic Charities of Western NY |
| 9 th | Westchester County | Rockland, Putnam, and Orange Counties | \$75,000 ^b | Dispute Resolution Center |

^a Program receives funds from OCFS (\$401,375), OCA and PJJC.

^b Program receives funds from OCFS.

^c Program receives funds from OCA.

Initiative Development

Prior to the emergence of a coordinated effort to promote child welfare mediation programs across the state, interest in developing local permanency mediation programs was evident in two NYS family court jurisdictions: Erie and Kings Counties. Both courts had been introduced to the concept of child welfare mediation through their participation in the NCJFCJ, Permanency Planning for Children Department's (PPCD) Child Victims Act Model Courts Project (VAMC) and the NYS Court Improvement Project.

The Honorable Sharon Townsend (then Supervising Judge of the Family Courts in the 8th Judicial District and currently the Administrative Judge in the same district), spearheaded Erie County's development efforts, bringing representatives from the Erie County Family Court and Catholic Charities of Western New York together. This collaborative partnership resulted in the establishment of the State's first permanency mediation program in Erie County in August 1999. OCFS helped to support the program through Temporary Assistance to Needy Family (TANF) funds.

In New York City (NYC), the Honorable Joseph Lauria, Administrative Judge for the NYC Family Court, convened a group of stakeholders representing the NYC Administration for Children's Services (ACS), the New York Society for the Prevention of Cruelty to Children (SPCC), attorneys, and other child welfare and mediation professionals. The group met regularly for two years to discuss the feasibility of creating a mediation program and to decide on a program structure and protocol. Although the group lacked an identified funding source to implement their ideas, Judge Lauria demonstrated his commitment to utilizing alternative dispute resolution techniques by appointing Catherine Friedman, a Court Attorney/Referee, as citywide ADR Coordinator.

At about the same time, interest in permanency mediation was also growing at OCFS, the state agency responsible for overseeing child welfare services. In 2001, the federal government completed the Child and Family Services Review for NYS. As a result of this review, the state was required to develop a Program Improvement Plan (PIP) to better address the needs of children and families receiving child welfare services. A primary requirement of the required plan was to identify ways to reduce time children spend in foster care and time to permanency. OCFS invited Family Court Judges, representatives from OCA, and many other stakeholders to assist in the PIP development process. Increased use of permanency mediation was included as a strategy in the state's final Program Improvement Plan.

Meetings between Judge Lauria and Larry Brown (then the Deputy Commissioner for the Division of Development and Prevention Services of OCFS and currently the Executive Deputy Commissioner of OCFS) were also influential. When Judge Lauria explained that the NYC Family Court was trying to implement a child permanency mediation program but lacked an identified funding source to support the project, Judge Lauria and Deputy Commissioner Brown decided to coordinate efforts. They identified funding for program development and implementation for the NYC program, as well as permanency mediation programs in several other locations. Five additional sites were then selected by representatives from the three state partners (OCFS, OCA, PJCJC). Albany, Chemung, Monroe, Oneida, and Westchester Counties were selected based on their perceived potential for successful cross-systems collaboration and willingness to try mediation.

Funding

In Year 1, \$400,000 was allocated by OCFS for the Permanency Mediation Pilot Project from the Quality Enhancement Fund (QEF) using Temporary Assistance to Needy Families (TANF) funding. Administered by OCFS, QEF dollars are intended to support innovative child welfare programs. The PJCJC also committed a portion of its federal Court Improvement Project (CIP) funding to the mediation pool. Remaining funds came from the Office of Alternative Dispute Resolution (OADR) within OCA. To streamline implementation, all project contracts were administered by OADR during the first year. OCFS transferred QEF to OCA, who then disbursed the funds in combination with additional funds from OCA to the six not-for-profit organizations and the NYC Family Court to provide permanency mediation in the original counties.

In Year 2, contract management and funding sources changed. In Year 2 contract responsibility and funding streams were divided between OCA and OCFS. OCFS contracted with the three not-for-profit organizations providing mediation to NYC sites (\$401,375), Monroe County (\$75,000), and Westchester/Rockland counties (\$75,000). In addition to the quality enhancement funds provided to SPCC for the NYC program, OCA provided \$250,000 to pay for three mediators who are family court employees and a supervisor for the entire NYC family courts mediation project. OCA also used \$160,000 of its own funds to support programs in Albany (\$30,000), Chemung (\$30,000), Oneida (\$25,000), and Erie/Niagara (\$75,000) Counties.

Year 3 funding streams and contract responsibilities are similar to those in Year 2 (see Table 1), with one exception. Funds for the Erie/Niagara County program were reduced to \$15,000 as the agency responsible for the permanency mediation program had reduced its permanency caseload and is currently playing a more active role in the Erie County child custody dispute resolution program.

Program Expansion

The counties served by the NYS Permanency Mediation Pilot Project expanded over time. In Year 2, five new counties were added to the project. Two of these additions stemmed from an expansion of existing program operations, with the NYC program expanding services into the Bronx, and the Westchester program expanding to Rockland County. The Oneida-based program also accepted two referrals from Lewis County on a trial basis. (The not-for-profit mediation provider in Lewis County eventually decided to handle its own child permanency mediation cases, so the Oneida program no longer receives referrals from Lewis County). In Year 2, Erie/Niagara Counties were also added to the project when the existing program serving those counties came under the fiscal umbrella of the permanency mediation project. In Year 3, the Chemung program began offering mediation to Schuyler County, the Westchester/Rockland program offered mediation to Putnam and Orange Counties, and the NYC program offered mediation to Queens. The Monroe County program also decided to accept referrals from other counties in the 7th Judicial District.

Structure and Protocols of Funded Programs

To foster mediation programs that would be well-suited to local organizational structures and responsive to local conditions, state partners placed minimal operating requirements on developing programs. Potential programs were expected to develop and use local stakeholder

groups to decide program parameters, including determination of the cases eligible for mediation and basic operation protocols. State partners recommended that these planning groups be co-chaired by a family court judge and the local department of social services commissioner, director of services, or other high level designee. Representatives from a broad spectrum of professionals in the child welfare arena (e.g., local social service district attorneys, parents' attorneys, law guardians, Court Appointed Special Advocates (CASA), foster care and social service caseworkers, etc.) were also expected to be included in the planning group. In addition, state partners set clear minimum standards for the qualifications of the mediation service providers. The individuals chosen to conduct the mediations had to be experienced mediators with additional training in permanency law and child welfare systems and issues.

State partners kept abreast of program development efforts and worked closely with local planning groups, providing both guidance and technical assistance when needed. Representatives from OCA, OCFS and PJCJC traveled to each site to communicate the overall purpose and goals of mediation in the child welfare context, share general program protocols and practice standards, and communicate state partners' expectations for local implementation and cross-system collaboration. Thus, while programs operate under the same general framework, specific program protocols and practices may also vary across funded programs. These similarities and differences are described below.

Mediation Providers

Local planning groups in Albany, Oneida, Chemung, Monroe, Erie and Westchester counties all selected pre-existing, not-for-profit, community-based mediation programs with experience in family mediation matters (e.g., divorce, custody/visitation disputes) to serve as their mediation providers. These not for profit agencies selected and hired their own program coordinators and permanency mediators. In contrast, the NYC program was a joint venture between the NYC Family Court and SPCC. Each of these two organizations hired experienced mediators to implement the jointly run program. The NYC Family Court provided an Attorney/Referee as the Coordinator for the program, and SPCC appointed their Assistant Executive Director to share the administrative and program promotion work.

Mediation Staff

Programs reported few difficulties with the hiring and training process, as most of the programs were expansions of existing community mediation programs, whose staff and/or volunteers were already experienced mediators in related issues, such as custody mediation. To help programs meet training requirements, the state partners arranged for extensive, high quality training in the specific knowledge and skills needed for child welfare-related permanency mediation to be conducted several times in different locations across the state. Programs arrange for new permanency mediators to attend permanency mediation training as needed.

Each program was responsible for hiring its own mediation staff and was free to choose the staffing patterns best suited to its needs and resources. Programs vary in their use of in-house professional staff, consultants, and community-based mediators. In NYC, half the mediators are full-time, paid staff members of the NYC Family Court and half are full-time paid staff members of the SPCC. No community-based mediators are used. Other programs' pool of available mediators includes both in-house staff and specially trained community mediators. While some

programs are able to find and retain specially trained community volunteers (e.g., Chemung, Erie/Niagara) other programs (e.g., Albany, Monroe, Oneida, Westchester) have found that the specialized knowledge and time needed to conduct successful permanency mediation sessions requires that community-based mediators be compensated for their time and expertise (see Table 2). In the Westchester/Rockland program community-based mediators are predominately attorneys and certified social workers.

**Table 2
Child Permanency Mediation Staff by Program**

| Program | Counties Served | Trained Mediators |
|-----------------------------------|---------------------------------------|--|
| NYC | Bronx, Kings, New York, Queens | 6 full-time, trained permanency mediators |
| 3 rd Judicial District | Albany | 1 Trained agency staff member, plus 6 community-based mediators paid \$25 per hour |
| 5 th Judicial District | Oneida, Lewis | 3 trained agency staff plus a pool of community-based mediators paid \$20 per hour |
| 6 th Judicial District | Chemung, Schuyler | 4 trained agency staff, plus 3 community-based volunteer mediators |
| 7 th Judicial District | Monroe, Steuben | 2 trained agency staff, plus 4 community-based, paid mediators |
| 8 th Judicial District | Erie, Niagara | 6 trained agency staff |
| 9 th Judicial District | Westchester, Rockland, Putnam, Orange | 2 trained agency staff, plus 10 community-based mediators paid \$75 per hour |

Eligibility Protocols

Most of the programs’ stakeholder groups decided to limit permanency mediation to post-disposition, Family Court Act Article 10 cases (i.e., child abuse/neglect cases in which the court had already conducted a hearing to determine whether the children were abused or neglected). Cases in which domestic violence was an issue were also automatically barred from participating in mediation in most jurisdictions. Exceptions to these general rules are listed below.

In the NYC program, only post-disposition Article 10 cases were initially considered eligible for mediation. This set of protocols has recently expanded to include cases in the predisposition stage. As stakeholders became more familiar with the benefits of the mediation process, the program received requests to mediate cases before disposition, to help tailor the order of disposition to the needs of the respondents and children. The program consulted with its various stakeholder groups and eventually agreed to consider referrals at the pre-fact finding stage of a

case. Reviewed on a case-by-case basis, all issues, except the allegations in the petition and emergency removal/return issues, may now be referred for mediation at the predisposition stage of the case.

The Oneida program also accepts pre-disposition cases, taking referrals at any stage of the legal proceeding.

Eligibility protocols vary for the Chemung-based program according to county served. Chemung County accepts only Article 10 cases that are in the late stages of proceedings (cases are typically in the 90-day or six-month review stage or in violation proceedings) and specifically excludes cases involving allegations of sexual abuse. In contrast, the planning committee in neighboring Schuyler County decided that cases in any stage of proceedings would be accepted. Schuyler County intends to refer for permanency mediation cases receiving preventive services and cases in the initial stages of contact with child protective services. The mediation program has already mediated a case that was in the initial fact-finding stage. Similarly, in Niagara County, the planning committee agreed that the mediation program would be only for families with a child currently in foster care, while the neighboring program in Erie County will accept any case with an active Article 10 petition, with no limits on the type of allegations or stages of cases to be referred.

It is worth noting Chapter 3 of the Laws of 2005 (the new Permanency Bill) authorizes courts to use mediation at any stage of an Article 10 proceeding. This new law went into effect on December 21, 2005.

Program Implementation

To help move program development efforts along and address the resource constraints of the community mediation organizations, the state provided planning grants to each of the six original pilot sites, with no expectation of caseloads, for the first six to 12 months. The Erie/Niagara County program did not receive development funds at this time, as Catholic Charities of Western New York had an active permanency mediation program in place at the start of the statewide initiative. All other sites received funding for the 2003-04 fiscal year to complete development of program protocols, hire and train mediation staff, and conduct information sessions for staff of other organizations that were likely to be involved as participants in future permanency mediations.

Start-Up Dates

As illustrated in Table 3, the seven projects varied in the amount of time it took from receipt of development funding to program implementation, as measured by the date of the first referral to permanency mediation.

Table 3
Agency Referrals from Program Inception through December 31, 2005

| Program | County | Date of 1st Referral | Open Referrals | Closed Referrals | Total Received |
|-----------------------------------|---------------|--|-----------------------|-------------------------|-----------------------|
| NYC | Bronx | 12/21/04 | 33 | 19 | 52 |
| | Kings* | 1/31/03 | 43 | 115 | 158 |
| | New York* | 10/17/03 | 9 | 31 | 40 |
| | Queens | 11/1/05 | 4 | 2 | 6 |
| | Total | | | | 256 |
| 3 rd Judicial District | Albany* | 5/19/03 | 2 | 30 | 32 |
| 5 th Judicial District | Lewis | 4/12/04 | 0 | 2 | 2 |
| | Oneida* | 8/27/03 | 1 | 98 | 99 |
| | Total | | | | 101 |
| 6 th Judicial District | Chemung* | 3/15/04 | 1 | 25 | 26 |
| | Schuyler | 7/29/05 | 0 | 3 | 3 |
| | Total | | | | 29 |
| 7 th Judicial District | Monroe* | 3/18/04 | 2 | 20 | 22 |
| | Steuben | 6/5/05 | 1 | 0 | 1 |
| | Total | | | | 23 |
| 8 th Judicial District | Erie* | 5/5/04 | 7 | 24 | 31 |
| | Niagara* | 4/6/04 | 0 | 11 | 11 |
| | Total | | | | 42 |
| 9 th Judicial District | Orange | 11/18/05 | 1 | 0 | 1 |
| | Putnam | 6/2/05 | 0 | 1 | 1 |
| | Rockland | 6/30/04 | 2 | 7 | 9 |
| | Ulster** | 12/22/05 | 1 | 0 | 1 |
| | Westchester* | 12/4/03 | 0 | 15 | 15 |
| | Total | | | | 27 |
| Total Number Received | | | 107 | 403 | 510 |

* Denotes original implementation site for program operations.

**Although Ulster County is actually part of the 3rd Judicial District, the Westchester-based program was approached by member of the Ulster County Family Court and asked to mediate a test case.

Several factors affecting the timeliness of program implementation were noted by program staff and stakeholders, including: availability of a physical location for conducting mediation sessions at the courthouse, level of judicial involvement in the planning process, and the general level of receptiveness and/or resistance to changing established organizational procedures by persons interacting with a family court. Programs like NYC, Oneida, and Albany, with access to mediation space within the Family Court tended to receive referrals before other programs without a physical presence within Family Court. In NYC, all of the program's mediators from both the Family Court and SPCC have access to mediation space within the Family Court. Similarly, the more integrated the mediation program was with the court system, the more smoothly the implementation process appeared to proceed. The success of the Kings County program in attracting numerous referrals fairly quickly is likely due in part to the appointment of a family court referee as program coordinator by the Administrative Judge. Likewise, while not formally a part of the court system, the Oneida program also has mediators sit in on family court several days a week so that the judge may ask parents and attorneys to talk with the mediator right then to see if mediation is an appropriate option.

Referrals

As shown in Tables 3 and 4, programs also varied considerably in the total number of referrals they were eventually able to solicit. Table 3 lists the total number of referrals received by programs since their initial funding date, broken into two sub-categories: open and closed. The number of open referrals was derived from programs' self-report and includes all mediation cases awaiting initial scheduling and/or receipt of mediation as of December 31, 2005. Closed referrals were derived from the agencies' process databases and include families who completed mediation services, as well as referrals that never resulted in mediation services, either due to case ineligibility or party refusal.

Despite initial enthusiasm among stakeholders on the local planning groups, most programs found that generating referrals was difficult. For the most part, the decision to refer a case to mediation is based on a family court judge or referee's opinion of permanency mediation in general, and whether mediation might help in a specific case. While some judges and referees make extensive use of mediation, others do not. Programs that lost the original "sponsoring" judge due to promotion or judge rotation also found that the project lost considerable momentum in program utilization. Programs in both Erie and Rockland Counties were temporarily slowed down by changes in judicial leadership.

Some programs also met considerable resistance on the part of local department of social services (DSS) casework staff, law guardians, and parent attorneys, even when the presiding judge was in favor of mediation. Casework staff in the Chemung, Erie, and Westchester programs have been reluctant to use mediation. Legal Aid attorneys in Erie County and Putnam County have been and continue to be resistant to mediation. As mediation is a voluntary process in which all parties must agree to participate, patent resistance from key parties may have precluded mediation referrals from ever being made.

All programs found that they needed to provide numerous presentations for attorneys, law guardians, and caseworkers, casework supervisors, and other professionals to educate potential participants about mediation and allay their concerns about the process. While program staff report that these sessions increased professional parties willingness to try mediation, Tables 3

and 4 suggest that information sessions were not sufficient to resolve the low referral problem. As shown in Table 3, in the three years that have passed since the first program referral was received in NYC, only 510 referrals to mediation have been made statewide from project that currently serves 16 counties. (Lewis and Ulster Counties are not included in the number of counties served, as formal programs have not been implemented in these locations and only test cases have been mediated). With the exception of NYC, most counties had only a handful of open referrals at year's end.

Table 4 displays the number of mediation referrals programs hoped to receive during their second year of program funding (July 1, 2004 to June 30, 2005) and the number of referrals actually received by the program during that time. As indicated in the table, most agencies fell far below their stated goals, with programs receiving between 6% and 66% of anticipated referrals. The Oneida County program was a notable exception to this overall pattern. They exceeded their anticipated referral rate by 16 referrals, or approximately 35%. Six of these referrals referenced a family previously referred to mediation; however, even when the number of referrals is adjusted, the program's 7/04-6/05 referral rate remains higher than expected. This success may be a function of the program's active recruitment strategy. As noted earlier, a representative from the mediation program sits in on family court proceedings several times a week. Her presence serves to "remind" the presiding judge of the permanency mediation option, and allows the court to immediately refer cases to the mediator for consideration. This presence allows potential participants to easily learn about mediation, and if desired, schedule a time that is agreeable to all while they are all still present in the courtroom.

Moreover, the last column of Table 4 lists the number of referrals received by programs in the first six months of the 7/05 –6/06 OCFS contract year. As shown below, only Bronx and Kings Counties have obtained a referral rate that exceeds or places them on a path to exceed their annual goal set in 7/04. The remaining programs, including Oneida County (which recently experienced a change of judicial personnel), have referral rates considerably less than anticipated, suggesting that the solicitation of program referrals remains an implementation obstacle. There is also a need for ongoing outreach and education of all professionals involved.

Table 4
Observed versus Stated Annual Referral Goals By Agency and County

| Program | County | Annual Referral Goal 7/04-6/05 | Referrals Received 7/04-6/05* | Percent of Annual Goal | Referrals Received 7/05-12/05** |
|-----------------------------------|---------------|---------------------------------------|--------------------------------------|-------------------------------|--|
| NYC | Bronx | 15 | 6 | 40% | 46 |
| | Kings | 75 | 50 | 66% | 50 |
| | New York | 40 | 14 | 35% | 14 |
| 3 rd Judicial District | Albany | 30 | 12 | 40% | 5 |
| 5 th Judicial District | Oneida | 45 | 61 | 135% | 14 |
| 6 th Judicial District | Chemung | 30 | 16 | 53% | 7 |
| 7 th Judicial District | Monroe | 75 | 12 | 16% | 6 |
| 8 th Judicial District | Erie | 72 | 21 | 29% | 9 |
| | Niagara | 35 | 2 | 6% | 1 |
| 9 th Judicial District | Rockland | 10 | 6 | 60% | 2 |
| | Westchester | 24 | 10 | 42% | 1 |

*Numbers based on closed referrals entered into program databases as of 12/31/05.

**Numbers based on closed referrals entered into program databases and program report of open cases as of 12/31/05.

Efforts to Address Implementation Barriers

Aware of the referral problem, programs have taken several steps to increase stakeholder awareness, improve attitudes, and remove barriers to the use of mediation.

- *Educational Sessions.* As noted above, all programs have engaged in extensive public relations campaigns, meeting with potential participant groups (e.g., DSS workers, law guardians, parent attorneys, court personnel) to educate them about permanency mediation and its potential benefits. Although it was not originally anticipated that these types of sessions would be necessary past the initial program development phase, most programs continue to offer information and training sessions on some basis.

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- *Geographical Expansion.* Several programs (e.g., Chemung, Monroe, Erie, Westchester) that were receiving fewer referrals than they could accommodate decided to expand their catchments areas, hoping to find receptive audiences in neighboring counties. However, expansion to additional jurisdictions can take a long time, as development work needs to occur within the new jurisdiction. A new stakeholder group must be created, requiring the involvement of a new set of judge(s), referees, social service directors, attorneys, and others. Stakeholder groups must also develop program eligibility requirements and basic operation protocols before referrals can be received.
 - *Protocol Expansion.* During the initial pilot phase, most programs limited their eligibility protocols to post-disposition Article 10 cases. NYC, Oneida, Schuylar, and Erie County-based programs currently accept predisposition cases. Other programs may soon follow suit, as passage of Chapter 3 of the Laws of 2005 authorizes judges to use mediation at any stage of an Article 10 proceeding. In addition, programs have worked to encourage potential referral sources to expand their perceptions of what constitutes an “appropriate” case for mediation.
 - *Advisory/Stakeholder Groups.* The planning/advisory groups formed during the development process have assisted many programs in overcoming implementation obstacles, particularly in the area of stakeholder reluctance. Chemung County had a problem with many DSS casework staff, law guardians, and legal professionals refusing to participate, canceling mediation with little notice, or leaving a session after 15 minutes. The program coordinator worked diligently to communicate with the respective organizations through personal communications and group presentations. High-ranking members of the stakeholder group were also asked to encourage the staff under their supervision to utilize mediation. Working together, the program coordinator and stakeholder group were able to resolve the problem by early 2005.

Erie County has also used its stakeholder group to overcome resistance on the part of some Erie County’s Department of Social Services (ECDSS) workers. Some ECDSS caseworkers believe that they are able to accomplish similar goals in their Service Plan Review meetings and are therefore reluctant to participate in mediation. Some believe that mediation may undermine the social service district’s authority in specific case situations. As a result, mediation referrals were low and when cases were referred, caseworkers would often refuse to participate in mediation or fail to show up for scheduled sessions. These issues were addressed at a Court Improvement Project Steering Committee meeting in the fall of 2005, and as a result ECDSS caseworkers were instructed that they must attend mediation if all other participants have agreed to mediate. The DSS Commissioner also appointed a committee to discuss with the mediation program potential training avenues to improve mediation utilization.

In NYC, the mediation program maintains close ties with its stakeholder groups, known in NYC as Advisory Committees. These groups continue to meet in all four locations in NYC and are used to guide all aspects of on going program operations. Groups meet to resolve any issues of concern that arise on cases referred to the program and to deliberate any proposed modifications to program operations. The Advisory Committees also give

mediation staff ongoing information about the operations of other systems, and are very helpful in disseminating information to colleagues.

- *Increased Court Presence.* NYC and Oneida County programs have a strong family court presence that appears to have facilitated program referrals. To try to encourage more program referrals in their area, staff from the Monroe County program now sit in on family court proceedings.
- *Streamline Process.* In Chemung County, caseworkers were troubled by delays between their letter requesting mediation and the next court appearance where the judge could issue the order to permit mediation. The Chemung stakeholder group worked out a method to streamline the process and reduce the time to mediation referral. Similarly, the Westchester/9th Judicial District program has also worked extensively with social services caseworkers to encourage them to recommend suitable cases to the Family Court judge for referral to mediation. The program also developed a special mediation referral form for busy caseworkers so they could easily recommend cases to the judge for permanency mediation.

Summary

The NYS Permanency Mediation Pilot Project is a collaborative venture of three state partners: OCFS, OCA, and PJCJC. Designed to promote permanency for children and families served by NYS child welfare services, the project uses state QEF, Court Improvement Plan dollars, and judicial branch funding to sponsor seven permanency mediation programs, serving 16 NYS Counties (Albany, Bronx, Chemung, Erie, Kings, Monroe, New York, Niagara, Oneida, Orange, Putnam, Queens, Rockland, Schuyler, Steuben, and Westchester). To be selected for project involvement, pilot sites had to be open to the concept of child welfare mediation and demonstrate the potential for cross-systems collaboration. Selected sites worked with state partners and locally based stakeholder groups to develop and implement a permanency mediation program specifically tailored to the resources, needs, and infrastructure of the local community. Six of the seven programs are housed in not-for profit, community-based mediation programs, while the NYC program functions as a joint venture of the NYC Family Court and SPCC. All sites use experienced mediators, specially trained in permanency law and child welfare systems, to conduct mediation sessions.

Despite multidisciplinary stakeholder groups composed of court and child welfare services-based professionals, generating program referrals has represented a significant implementation obstacle for funded programs. Efforts undertaken to address this issue include: educational sessions, geographical expansion, revised program protocols and referral processes, and use of stakeholder groups to encourage cross-systems involvement.

Chapter 5: Evaluation Design and Methods

As indicated in Chapter 3, the OCFS BER devised a multi-tiered evaluation plan to document the processes and outcomes associated with the NYS Child Permanency Mediation Pilot Project. Included in the initial evaluation design were three primary elements: 1) a multi-site process study, 2) a participant satisfaction survey, and 3) a quasi-experimental impact study incorporating both short and long-term permanency-related outcomes. Both the multi-site process study and participant satisfaction survey were implemented as anticipated; the specific research questions addressed and data collection procedures utilized for these components are reviewed below.

Contrary to expectations, however, the conditions necessary for the successful design and implementation of a quasi-experimental impact study were not achieved. As reviewed in Chapter 4, programs did not receive the number of referrals anticipated during their first two years of program implementation, making it difficult to identify a mediation sample of sufficient size. Moreover, initial process study results indicated that a diverse range of cases and issues were being sent to mediation (see Chapter 6), making the identification of an appropriate comparison group problematic. A decision was therefore made to focus on documenting some of the permanency-related outcomes available for those children whose families had participated in mediation services 12 months earlier. Although conclusions regarding the impact of mediation on time to permanency cannot be definitively drawn without an appropriate comparison group, documenting the pre and post-mediation status of participating children and families should provide some insight into how often mediation leads to permanency.

The following chapter provides a brief overview of each evaluation component, the key research questions it sought to address, and associated sampling and data collection activities.

Multi-Site Process and Mediation Outcomes Study

The process study was designed to provide a descriptive overview of child permanency mediation and the children and families served by funded programs. The study monitors program implementation and service delivery efforts, and where possible, compares documented services to recommended mediation practices and/or stated program goals. Information on immediate mediation outcomes (e.g., case agreements) is also gathered. Specific questions addressed by the process study include:

- How many referrals did programs receive? What percentage of referrals received involved cases eligible for mediation?
- What types of cases/families get referred to mediation? Who refers them? Why?
- How many referrals result in mediation? Do family/case characteristics predict who declines and who accepts mediation?
- Who participates in child permanency mediation? How long does mediation last? What types of issues are discussed?
- What percent of mediation referrals/cases complete mediation? How many achieve a formal agreement?

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- What are the characteristics of mediated agreements? How many and what types of issues are resolved?
 - Are some cases/families more likely than others to achieve agreement?

Sample Selection

To address these questions, information on all mediation referrals processed by participating mediation programs between January 1, 2003 and December 31, 2005 was collected. In order to be included in the study sample a case had to have been “closed out” (i.e., deemed inactive) by the mediation agency to which it had been referred. Cases with open referrals/mediation were not included in the data collection process, as the service provision information for these cases was by definition incomplete. A total of 403 referrals, representing 373 families, met the criteria for inclusion in the process study.

Data Collection

Once sample cases were identified, detailed information on case characteristics and mediation delivery efforts was extracted from both program and state-administered databases.

Program Databases: All agencies funded by the NYS Permanency Mediation Pilot Project are required to maintain a process evaluation database. Monitored by BER staff for accuracy and completeness, the ACCESS database system asks for detailed information on each mediation referral received by the agency since it began receiving pilot project funds. Information collected on all cases includes: family and child identifiers, referral source, recommended issues for discussion, and final service status (e.g., not mediated due to party refusal, mediation completed, etc.). If parties consent to mediation, service delivery information is also gathered. Monitored areas include: number and length of mediation sessions, party attendance, issues discussed, areas resolved, agreement status, and reason for mediation closure.

State-Administered Databases: The family and child identifiers included in program files were used to identify mediation participants in state administered databases. Information on each family’s pre-mediation experiences within the child welfare system was then extracted from the Data Warehouse to obtain a clearer picture of the types of children and families referred to mediation. Maintained by OCFS, the Data Warehouse is an interactive database system that integrates information from the Child Care Review Service (CCRS) and CONNECTIONS, the State systems responsible for recording child protective, preventive and foster care and adoption service information. Background data extracted from the Data Warehouse included: service initiation and closure dates and foster care placements, moves, and discharges.

12-Month Exploratory Outcome Evaluation

Designed to complement the process study, the outcome evaluation tracked the children who received mediation and considers the extent to which program participation was associated with permanency-related goals. Specific questions addressed by the 12-month exploratory outcome study include:

- Does the receipt of foster care services change in the 12 months following mediation intake? How many children exit foster care? How many remain?
- What percentage of children who were receiving foster care services at mediation intake leave foster care within 12 months? How do observed exit rates compare to those documented in specific geographic areas?
- Does the receipt of child welfare services change in the 12 months following mediation intake? How many children exit the child welfare services system? How many remain?

Sample Selection

Participants for the 12-month follow-up study were selected from the larger process study sample based on two simple criteria. In order to be included in the 12-month outcome study, children had to be members of a family that had participated in at least one mediation session. Children from cases in which mediation was refused were automatically excluded. Second, a minimum of 15 months had to have passed between the family's first referral to mediation and the collection of outcome data. Entry of service-related information into state databases often lags behind actual service provision efforts, thus a 15-month follow-up window was required to increase the likelihood that the 12-month service data extracted from state databases would be up to date. Slightly less than half (48%) of the children identified via process study cases met both of these eligibility requirements, resulting in a final sample of 343 children.

Data Collection

Data for the long-term outcome study was extracted from the Data Warehouse for each child. Extracted information included: case and foster care status at 12 months post-referral.

Participant Satisfaction Survey

Participant satisfaction surveys were designed to capture family and system professionals' perceptions of the mediation process and its outcomes. Survey items assessed participants' reactions to issues raised by both mediation advocates and mediation detractors, and were intended to provide feedback on the overall acceptability and utility of mediation. To make sure that survey items were appropriately worded and relevant to the person responding, separate instruments were developed for family members and professional staff. Areas addressed included:

- Participant engagement and empowerment;
- Participant's rights;
- Joint decision-making;
- Professional demands and responsibilities; and
- Overall satisfaction with the mediation process.

Sample Selection

Beginning in August 2004, agency staff members were asked to distribute surveys to all mediation participants at the time of their final mediation session. Individuals who did not participate in at least one mediation session were not included in the survey process. If a participating party was not present when surveys were distributed but had previously participated in a mediation session, program staff members were asked to mail a copy of the survey to the participant's home or work address.

Data Collection

To encourage participation, all surveys were accompanied by a pre-addressed stamped envelope.

Chapter 6: Findings: Multi-Site Process and Mediation Outcomes Study

To learn more about how child permanency mediation has taken shape in NYS, the case and service characteristics of all mediation referrals processed by participating agencies between January 1, 2003 and December 31, 2005 were examined. Analyses focused on exploring four main areas of program functioning: referrals, service initiation, service delivery, and mediation outcomes. The specific questions asked within each of these general topic areas and their corresponding findings are presented below.

A. Program Referrals

The first set of process analyses focused on describing the referral process: who gets referred to mediation, why, and by whom. The extent to which program referrals were consistent with agency protocols was also examined.

1. How many referrals did programs receive? What percentage of referrals received involved cases eligible for mediation?

During the three years included in the study period, participating agencies received and processed 403 referrals for mediation. Overall, the types of cases referred to mediation were well matched to the service protocols of participating agencies, with 95% of the referrals meeting the basic intake requirements set forth by the individual mediation programs (see Table 5). Reasons for declining a mediation referral varied across programs and included: domestic violence, serious mental health and/or intellectual impairment of a parent or guardian, new abuse allegations, and case characteristics incompatible with program participation protocols (e.g., allegations of sexual abuse).

**Table 5
Referrals Made to Permanency Mediation: January 2003- December 2005**

| Status | All Referrals | |
|---------------------------------|---------------|-------------|
| | Number | Percent |
| Eligible Referrals | 382 | 95.0% |
| Ineligible Referrals | | |
| Domestic Violence | 2 | .5% |
| Respondent's Incapacity | 3 | .7% |
| New Abuse Allegations | 3 | .7% |
| Outside Program Protocols | 13 | 3.0% |
| Total Referrals Received | 403 | 100% |

In addition, approximately 8% of all eligible referrals (n=29) referenced a child welfare case that had been previously referred to the agency's permanency mediation program. Thus, only 353 families were recommended to receive mediation, though programs received 382 eligible referrals during the study period. Table 6 depicts the overall number of permanency mediation referrals made on the behalf of each eligible family.

Table 6
Frequency of Mediation Referral by Referred Families

| Number of Referrals Made to Mediation | Family Sample | |
|---------------------------------------|---------------|-------------|
| | Number | Percent |
| 1 Referral | 330 | 93.5% |
| 2 Referrals | 19 | 5.5% |
| 3 Referrals | 2 | .5% |
| 4 Referrals | 2 | .5% |
| Total Eligible Families | 353 | 100% |

2. What types of families get referred to permanency mediation?

To examine the extent to which program referrals were drawn from long-standing child welfare cases, the service history of all eligible families referred to mediation was examined. Thirty percent of the families referred had a prior history of child welfare involvement. In addition, 26% of sample families had one or more children who had entered and exited foster care at least once before the referral to mediation was made.

Moreover, as indicated in Table 7, the vast majority of families referred had at least one child with an active child welfare case at the time mediation was recommended (95%), and 77% of eligible families had at least one child in a foster care placement at the time of referral. When informal out-of-home arrangements were taken into account (e.g., cases in which a child resided with a relative or family friend) the number of families with at least one child residing outside of the home rose to 81%. In addition, examination of the child welfare services data for families without an active services case at intake indicated that 8 of these families had an active services case that closed before or opened after their intake to mediation. Thus only 8 families, or 2% of eligible families, did not appear to involve families with an Article 10 petition.

Table 7
Characteristics of Families Referred to Permanency Mediation

| Characteristic | Family Sample (Sample Size =349*) | |
|--|-----------------------------------|---------|
| | Number | Percent |
| Service History | | |
| Previous Child welfare case | 105 | 30% |
| Previous Foster Care Placement | 91 | 26% |
| Service Status at Intake | | |
| Active Child welfare case | 333 | 95% |
| At Least One Child in Foster Care | 267 | 77% |
| At Least One Child in Out-of-Home Care | 283 | 81% |
| Number of Children Listed on Referral | | |
| 1 | 165 | 47% |
| 2 | 83 | 24% |
| 3 | 52 | 15% |
| 4+ | 49 | 14% |

*Note: Child information was missing on 4 eligible referrals.

Families also differed in size. Slightly less than half of eligible families had only one child identified by the mediation program as part of the referred case. However, 14% of referred families had four or more children listed on the referral.

2. *What types of children are referred to mediation?*

Table 8 contains additional information on the 720 children listed on eligible mediation referrals. At intake into mediation, the vast majority of children referred were between the ages of one to 13 years (78%), and approximately two-thirds (67%) were residing in foster care. Moreover, examination of the amount of time spent in foster care at mediation intake suggests that many of the children referred came from long-standing child welfare cases. Nearly a third of children referred to mediation had been in foster care for two or more years at the time of referral.

Table 8
Demographic Characteristics of Children Listed on Eligible Program Referrals

| Child Demographics | Child Sample (Sample Size =720) | |
|--|------------------------------------|---------|
| | Number | Percent |
| Sex | | |
| Male | 363 | 50% |
| Female | 357 | 50% |
| Age at Mediation Intake | | |
| Less than 1 Year | 25 | 3% |
| 1-13 Years | 563 | 78% |
| 14 ⁺ Years | 127 | 18% |
| Missing Data | 5 | 1% |
| Length of Foster Care Stay at Mediation Intake | | |
| Not in Foster Care | 234 | 33% |
| In Foster Care Less than 1 Year | 116 | 16% |
| In Foster Care 1 to 2 Years | 135 | 19% |
| In Foster Care 2 to 3 Years | 126 | 18% |
| In Foster Care 4 ⁺ Years | 109 | 15% |

3. *Why were families referred to mediation?*

Reasons for recommending mediation varied considerably in both number and content area across eligible referrals. As indicated in Table 9, referrals to mediation typically cited multiple reasons for recommending service provision. In approximately 60% of referrals two or more problem areas were identified for exploration by the referral source. However, not all referrals were accompanied by a corresponding set of problems and issues. In 8% of the referrals submitted for mediation reasons for sending the case to mediation were not provided.

Table 9
Number of Issues Specified on Mediation Referral

| Number Of Issue Areas Cited on Referral | Eligible Referrals (Sample Size =382) | |
|---|---------------------------------------|---------|
| | Number | Percent |
| 0 | 31 | 8% |
| 1 | 120 | 31% |
| 2 | 92 | 24% |
| 3 | 57 | 15% |
| 4+ | 82 | 22% |

When referral issues were listed, problems related to non-reunification planning (e.g., termination of parental rights, adoption planning, voluntary surrenders, independent living, etc.) were listed most often (40%). Issues surrounding placement (e.g., whether a child should be placed out of home and with whom), visitation plans, communication, service/visitation plan compliance and reunification were also common, appearing in 25% to 35% of all eligible referrals (see Table 10).

Table 10
Types of Issues Specified on Mediation Referral

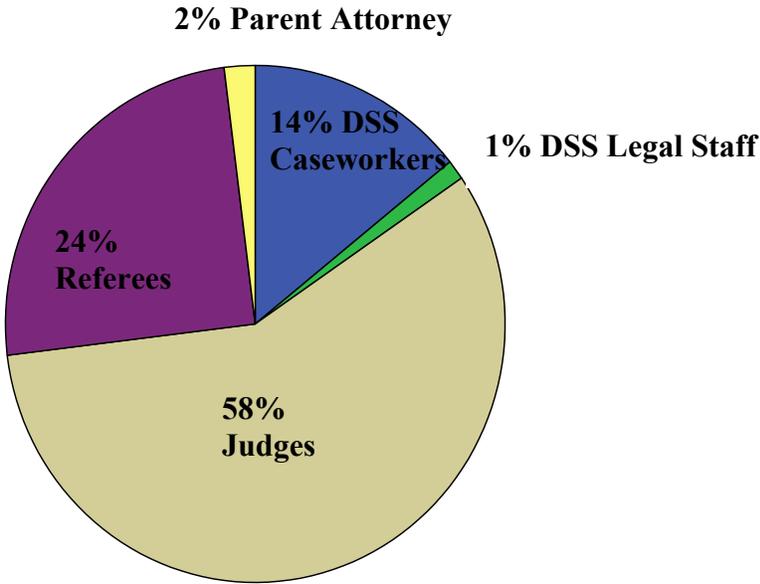
| Referral Issues | Eligible Referrals (Sample Size =382) | |
|---------------------------------------|---------------------------------------|----------|
| | Number | Percent* |
| Placement | 133 | 35% |
| Visitation Plan | 109 | 29% |
| Service Plan | 83 | 22% |
| Compliance w/ Visitation/Service Plan | 103 | 27% |
| Behavior Problems | 46 | 12% |
| Communication Problems | 110 | 29% |
| Reunification | 102 | 27% |
| Non-Reunification | 151 | 40% |

*Note: Multiple issues could be listed on a single referral, thus percent column will not total 100%.

4. Where did mediation referrals come from?

Information on the source of each mediation referral can be found in Figure 2. The vast majority of referrals received came from presiding family court judges (58%) or referees (24%). An additional 14% came directly from family caseworkers. Attorneys rarely referred; only 3% of all referrals were made by a DSS or family attorney. It is worth noting, however, that these numbers may underestimate the contribution of non-judicial referral sources. Conversations with program staff indicate that on occasion the idea to try mediation originated with a caseworker or other case participant, but since the final referral was made in the form of a court order, the ordering judge/referee was listed as the official referral source.

**Figure 2
Referral Sources**



B. Service Initiation

The second set of analyses examined how often eligible program referrals led to the receipt of mediation and explored whether certain case characteristics differentiated between cases that received and did not receive mediation.

1. How often did program referrals result in the receipt of mediation?

As indicated in Table 11, 80% of referrals accepted by participating agencies resulted in the initiation of mediation. The remaining 20% of eligible referrals dropped out during the intake process. Approximately 16% of eligible referrals were closed out when a key mediation party either directly declined to participate in mediation (9%) or failed to show (7%) for the first session. Case settlements prior to the first scheduled mediation session resulted in an additional 4% of referrals being closed without services.

**Table 11
Referral Outcomes**

| Referral Outcome | Eligible Referrals (Sample Size =382) | |
|-------------------------------------|--|---------|
| | Number | Percent |
| Mediated | 306 | 80% |
| Not mediated because... | | |
| Party declined | 33 | 9% |
| Party failed to show | 26 | 7% |
| Case settled prior to first session | 16 | 4% |

2. Do family level characteristics predict participation in mediation?

Whether family-level characteristics influenced mediation participation rates was examined by comparing the percentage of mediated cases across three family-level service-related variables: 1) prior receipt of child welfare services, 2) previous foster care placement, and 3) current out-of-home foster care placement. As depicted in Table 12, all three of these family level factors were significantly associated with the receipt of mediation. The percentage of families with a prior history of child welfare services and foster care involvement that agreed to participate in mediation was significantly higher than the percentage of families without prior histories who agreed to mediate. Likewise, families with active foster care cases mediated significantly more often than families without a child in foster care.

Table 12
Percentage of Families Mediating by Family-level Characteristics

| Family Characteristic | Total Sample | Mediated Cases | |
|----------------------------------|--------------|----------------|---------|
| | | Number | Percent |
| Previous Child welfare case** | | | |
| Yes | 105 | 99 | 94% |
| No | 244 | 188 | 77% |
| Previous Foster Care Placement** | | | |
| Yes | 91 | 82 | 90% |
| No | 258 | 205 | 80% |
| Child In Foster Care at Intake** | | | |
| Yes | 267 | 228 | 85% |
| No | 82 | 59 | 72% |

**Difference between groups significant at $p < .01$.

3. Do referral characteristics predict participation in mediation?

As described earlier, program referrals varied considerably in both the number and nature of the issues specified. To explore the potential impact of these differences on mediation participation, the number of referral issues noted was compared across mediated and non-mediated cases. Mediated cases had significantly more issues noted on their referral than non-mediated cases. Specifically, the average number of issues cited on the referral for mediated cases was 2.4, compared to the 1.7 listed on non-mediated cases.

As shown in Table 13, referral content was also significantly associated with the receipt of mediation for two of the nine issue areas examined. Referrals that specified reunification or non-reunification-related issues as a point of contention were significantly more likely to result in the receipt of mediation than were referrals in which these issues were absent. This suggests that mediation was more likely to be accepted in cases that had a permanency-related decision pending.

Table 13
Percentage of Eligible Referrals Participating in Mediation by Referral Content

| Family Characteristic | Total Sample | Mediated Referrals | |
|----------------------------------|--------------|--------------------|---------|
| | | Number | Percent |
| Reunification Issues** | | | |
| Included in Referral | 102 | 91 | 89% |
| Not Included in Referral | 280 | 215 | 77% |
| Non-Reunification Issues* | | | |
| Included in Referral | 151 | 130 | 86% |
| Not Included in Referral | 231 | 176 | 76% |

*Difference between groups significant at $p < .05$.

** Difference between groups significant at $p < .01$.

Note: “Non-Reunification” refers to issues related to adoption planning, termination of parental rights, voluntary surrenders, and independent living.

4. Does referral source predict participation in mediation?

Feedback from program staff suggested that mediation were most likely to be accepted when referrals originated with the court. To test this hypothesis, we collapsed referrals made by family court judges and referees into a single court-referred category. Referrals generated from DSS casework, DSS legal staff, and parents’ attorneys comprised the non-court based referral category. As illustrated in Table 14, referrals made by judges or referees were significantly more likely than those submitted by non-court based professionals to result in mediation. Eighty-four percent of all court-based referrals led to mediation, compared to only 66% of those derived from other sources.

Table 14
Participation in Mediation by Referral Source

| Referral Source*** | Total Sample | Mediated Referrals | |
|--------------------|--------------|--------------------|---------|
| | | Number | Percent |
| Court-Based | 315 | 263 | 84% |
| Non Court-Based | 65 | 43 | 66% |

*** Difference between groups significant at $p < .001$.

C. Service Delivery

This set of analyses focuses on describing the 306 mediations that occurred following program referral. Areas of interest included: length of time between program referral and mediation initiation, number and length of mediation sessions held, party participation, and content.

1. How long does it take to access mediation?

Advocates of mediation have argued that mediation may expedite permanency by allowing for the provision of “in time” services and avoiding lengthy court delays. We therefore examined the length of time that elapsed between mediation referral and the first mediation session for all eligible referrals that resulted in the initiation of mediation. As illustrated in Table 15, approximately 44% of mediated cases entered mediation within a month of program referral.

Over three-quarters (79%) had begun the mediation process within 60 days. However, for a notable percentage of families the wait period was more extensive. Sixteen percent of those who eventually received mediation waited for over two months for their first mediation session to take place.

Table 15
Timeliness of Service Delivery Efforts

| Number of Days From Referral to 1 st Mediation Session | Mediated Cases (Sample Size = 306) | |
|---|------------------------------------|---------|
| | Number | Percent |
| 0-14 days | 56 | 18% |
| 15-30 days | 77 | 25% |
| 31-60 days | 108 | 35% |
| 61+ days | 48 | 16% |
| Missing Data | 17 | 6% |

2. What does the provision of mediation look like? How many sessions do parties attend? How many hours?

Consistent with prevalent models of mediation, the provision of mediation was generally time limited. Over three-quarters of mediation cases involved only one (51%) or two (25%) mediation sessions. Sessions varied in length from 15 minutes to three hours and 45 minutes, with nearly 60% of mediation cases involving a total of three hours or less of mediation (see Table 16).

Table 16
Time Spent in Mediation

| Service Characteristic | Mediated Cases (Sample Size = 306) | |
|------------------------|------------------------------------|---------|
| | Number | Percent |
| Total Sessions | | |
| 1 | 156 | 51% |
| 2 | 77 | 25% |
| 3 | 29 | 10% |
| 4 | 13 | 4% |
| 5+ | 14 | 5% |
| Missing Data | 17 | 6% |
| Total Time | | |
| 1 hour or less | 34 | 11% |
| 1-2 hours | 101 | 33% |
| 2-3 hours | 44 | 14% |
| 3-5 hours | 61 | 20% |
| 5+ hours | 39 | 13% |
| Missing Data | 27 | 9% |

3. How often did participating programs utilize the recommended two-mediator model?

Given the complexity and power dynamics of child welfare cases, it has been argued that child permanency mediation programs should seek to pair mediators when intervening in child welfare cases. To examine the extent to which participating programs heeded this recommendation, we categorized each mediation session as utilizing either a single or two-mediator model. As shown in Table 17, 81% of all mediation cases had two mediators in attendance for every mediation session held. An additional 3% used what we called a mixed model, in which two mediators were used in some but not all mediation sessions. Finally, approximately 10% of the cases mediated were run using a single mediator model for all sessions held.

Table 17
Percentage of Cases Utilizing a Two versus One Mediator Model

| Mediation Model | Mediated Cases (Sample Size = 306) | |
|-----------------|---------------------------------------|---------|
| | Number | Percent |
| Two Mediator | 249 | 81% |
| Mixed | 9 | 3% |
| Single Mediator | 31 | 10% |
| Missing Data | 17 | 6% |

4. Who participates in mediation?

A primary goal of mediation is to incorporate multiple voices into the dispute resolution process, particularly those of parents and other family members. As depicted in Table 18, approximately 91% of mediated cases had a parent, child, or extended family member in attendance for at least one mediation session. Mothers were present most often (73%), followed by fathers (41%), and extended family members (25%). Child attendance occurred least often (19%), and tended to be limited to older children. The most common participants were DSS casework and/or supervisory staff (83%) and the attorney appointed to be the child's law guardian (80%). Although over 80% of the cases that went forward to mediation involved at least one child who was in out-of-home care, foster parents participated only 55% of the time.

Table 18
Participation in Mediation by Party Type

| Party Type in Attendance | Mediated Cases (Sample Size = 306) | |
|--------------------------|---------------------------------------|---------|
| | Number | Percent |
| Biological Family | | |
| Mother | 224 | 73% |
| Father | 126 | 41% |
| Child | 58 | 19% |
| Extended Family Member | 76 | 25% |
| Any Family Member | 277 | 91% |
| Parent Attorney | 218 | 71% |
| DSS Attorney | 201 | 66% |

| Party Type in Attendance | Mediated Cases (Sample Size = 306) | |
|------------------------------|---------------------------------------|---------|
| | Number | Percent |
| Foster Care Agency Attorney | 45 | 15% |
| Legal Guardian Attorney | 246 | 80% |
| DSS Caseworker or Supervisor | 255 | 83% |
| Foster Care Caseworker | 111 | 36% |
| Foster Parent | 168 | 55% |
| Service Provider | 109 | 36% |

*Note: Multiple parties could attend, thus percent column will not total 100%.

5. *What types of issues are discussed in child permanency mediation? Do discussions extend beyond referral issues?*

Mediation advocates have argued that a benefit of mediation is flexibility. While courtroom discussions may be constrained to topics deemed most relevant to judicial decision-making, mediation can be expanded to address other issues that are of significant concern to the parties involved. Consistent with this perception, Table 19 illustrates that the percentage of cases discussing a particular issue area was consistently higher than the percentage of cases referred to mediation for that reason. For example, 30% of mediated cases had visitation plan issues cited on the program referral, yet concerns surrounding visitation plans were discussed in 72% of all mediated cases. Similarly, behavioral problems were discussed in 52% of mediation cases, but were only listed as a reason for referral in 13% of mediated cases.

Consistent with the argument that mediation facilitates group discussion and constructive problem-solving, one of the most frequently discussed issues in cases that underwent child permanency mediation was communication problems. Over two-thirds (69%) of cases devoted mediation time to the discussion of communication issues between key parties (e.g., parents and foster parents, parents and caseworkers, parents and children, etc.). Concerns related to visitation and service plan development (72% and 53% respectively), as well as parties' compliance with these plans (61%) were also frequent points of discussion.

Table 19
Issues Discussed in Mediation

| Issues Area | Mediated Cases (Sample Size = 306) | |
|---------------------------------------|---------------------------------------|---------|
| | Number | Percent |
| Placement | | |
| Referred | 112 | 37% |
| Discussed | 158 | 52% |
| Visitation Plan | | |
| Referred | 92 | 30% |
| Discussed | 221 | 72% |
| Service Plan | | |
| Referred | 69 | 23% |
| Discussed | 163 | 53% |
| Compliance w/ Visitation/Service Plan | | |
| Referred | 85 | 28% |
| Discussed | 185 | 61% |
| Behavior Problems | | |
| Referred | 40 | 13% |
| Discussed | 158 | 52% |
| Communication Problems | | |
| Referred | 89 | 29% |
| Discussed | 212 | 69% |
| Reunification | | |
| Referred | 91 | 30% |
| Discussed | 147 | 48% |
| Non-Reunification | | |
| Referred | 130 | 43% |
| Discussed | 156 | 51% |

*Note: Multiple issues could be addressed in each case, thus percent column will not total 100%.

D. Mediation Outcomes

The final set of process analyses describes the outcomes associated with participation in mediation and explores whether mediation results can be predicted by case and/or service-related characteristics.

1. How often do mediated cases resolve the issues for which they had been referred to mediation?

One way to assess the potential success of mediation is to consider the number of mediation cases in which the issues for which they were referred to mediation were resolved. Of the 306 cases that participated in mediation, 290 had issues specified on the referral. In approximately 64% of these cases at least one the issues for which they had been referred were resolved, while in 35% of the cases all of the issues listed were successfully resolved. Conversely, in 36% of cases with specified referral issues none of the issues for which they had been referred were resolved.

To determine whether resolution rates varied by issue type, we also compared the number of mediated cases that were referred for each of the general issue areas to the number that eventually reached consensus on the issue area referred (see Table 20). Overall, resolution rates ranged between a low of 50% for referrals surrounding non-reunification issues to a high of 75% for referrals pertaining to parties failure to comply with visitation/service plan related issues.

**Table 20
Issue Resolution Rates by Referral Area**

| Issue Area | # Referred | #Resolved | Percent* |
|---------------------------------------|-------------------|------------------|-----------------|
| Placement | 112 | 65 | 58% |
| Visitation Plan | 92 | 64 | 70% |
| Service Plan | 69 | 47 | 68% |
| Compliance w/ Visitation/Service Plan | 85 | 64 | 75% |
| Behavior | 40 | 24 | 60% |
| Communication | 89 | 56 | 63% |
| Reunification | 91 | 52 | 57% |
| Non Reunification | 130 | 65 | 50% |

*Note: Multiple issues could be addressed in each case, thus percent column will not total 100%.

2. *What percent of mediated cases complete mediation?*

The majority of cases referred to mediation completed the mediation process. Eighty-five percent of those who began mediation, or 68% of eligible referrals, completed the mediation process (see Table 21). Reasons for terminating mediation prematurely included: withdrawal of a key party, the presence of “unamenable” issues, and case settlement.

**Table 21
Mediation Outcomes**

| Mediation Status | Mediated Cases (Sample Size = 306) | |
|---|---|----------------|
| | Number | Percent |
| Completed Mediation | 260 | 85% |
| Withdrew From Mediation due to... | | |
| Party withdrawal | 20 | 6.5% |
| Unamenable issues | 20 | 6.5% |
| Case settled between mediation sessions | 6 | 2% |

3. *How often are formal agreements obtained?*

Formal agreements, in which various parties agreed on a particular course of action for one or more areas of contention, were achieved in 51% of all eligible referrals, or 64% of those cases that initiated mediation. Formal agreements were generally shared with the court. Forty-seven percent of eligible referrals, or 59% of those cases that initiated mediation, submitted a written or verbal mediation agreement to the court for review.

Table 22
Percentage of Cases Achieving Formal Agreement

| Mediation Outcome | Number | Percent | |
|-------------------------------------|--------|---|-------------------------------------|
| | | Eligible Referrals (Sample Size=382) | Mediated Cases (Sample Size=306) |
| Formal Agreement Reached | 195 | 51% | 64% |
| Written Proposal Submitted to Court | 152 | 40% | 50% |
| Verbal Proposal Shared with Court | 27 | 7% | 9% |

4. What happens in those cases that reach formal agreement? How many and what types of issues are resolved?

To determine the nature and extent of the agreements achieved in the 195 mediation cases that reached formal agreement, we examined the number and type of issues resolved in these cases. Our analyses suggest that most mediation agreements are both multifaceted and diverse in content. In nearly 65% of all cases that reached formal agreement issues in three or more content areas were resolved. As illustrated in Table 23, issues surrounding visitation plans and communication problems were resolved most often, with over half of all cases that achieved formal agreement reporting success in these areas. In addition, compliance (48%), service plan (39%), placement (38%) and non-reunification (34%) issues were resolved in a third to nearly one-half of all formal agreement cases.

Table 23
Number and Percentage of Mediation Cases Achieving Issue Resolution

| Area Resolved | Formal Agreement Sample (Sample Size = 195) | |
|------------------------|--|----------|
| | Number | Percent* |
| Placement Issues | 74 | 38% |
| Visitation Plan | 134 | 69% |
| Service Plan | 76 | 39% |
| Compliance | 93 | 48% |
| Behavior Problems | 50 | 26% |
| Communication Problems | 111 | 57% |
| Reunification | 53 | 27% |
| Non-Reunification | 67 | 34% |

*Note: Multiple issues could be resolved in each case, thus percent column will not total 100%.

5. Are some mediated cases more likely than others to achieve formal agreement?

To determine whether some mediation cases were more likely than others to achieve a formal agreement, we examined the percentage of cases achieving a formal agreement across a series of family, referral, and service/participation-related characteristics. Cases that never began the mediation process were excluded from the analyses. Family-level variables included whether or not the family had a previous child welfare case, foster care placement, or a child in out-of-home care at intake to mediation. Referral-related variables included: referral source (court or non-court based), number of issue areas referred, and presence/absence of a given referral issue. Mediation participation-related variables included: indicators of party attendance, issues discussed and total length of time spent in mediation.

None of the family-level characteristics differentiated between mediated cases that reached a formal agreement and those that did not. Referral issues were, however, related to mediation outcome (see Table 24). Although court-based referrals were more likely than non-court based referrals to result in the initiation of mediation, once mediation began cases referred by the court were slightly less likely than cases referred by other sources to achieve formal agreement (62% versus 77%). Mediation cases referred for compliance-related issues were also significantly more likely to result in a formal agreement than were cases where compliance was not recommended as a point of discussion. Moreover, although some program staff had indicated that cases were often referred to mediation by the courts to help facilitate the termination of parental rights process, referrals for mediation that included non-reunification issues were neither more or less likely than other referrals to result in the obtainment of a formal agreement. Approximately 63% of cases referred for non-reunification issues reached agreement compared to 65% of cases that did not include this issue. Likewise, the number of issues referred for mediation did not differentiate agreement from non-agreement cases.

Table 24
Referral and Case Characteristics Associated with Mediation Outcome

| Characteristic | Total Sample | Formal Agreement Reached | |
|---------------------------------|--------------|--------------------------|---------|
| | | Number | Percent |
| Referred by Court* | | | |
| Yes | 263 | 162 | 62% |
| No | 43 | 33 | 77% |
| Referred for Compliance Issues* | | | |
| Yes | 85 | 62 | 73% |
| No | 221 | 133 | 60% |
| Child Present at Mediation* | | | |
| Yes | 58 | 43 | 74% |
| No | 248 | 152 | 61% |
| Visitation Issues Discussed* | | | |
| Yes | 221 | 150 | 68% |
| No | 85 | 45 | 53% |
| Communication Issues Discussed* | | | |
| Yes | 212 | 145 | 68% |
| No | 94 | 50 | 53% |

*Difference between groups significant at $p < .05$.

Finally, four participation-related variables were also associated with mediation outcome. Cases in which a child attended at least one mediation session were more likely than mediation cases in which children were not active participants to achieve formal agreement. Discussions surrounding visitation plans and communication issues also increased the likelihood of formal agreement, with 68% of cases addressing these issues resulting in formal agreement compared to 53% of cases without such discussions. Cases that reached formal agreement also spent more time in mediation than cases that did not reach agreement. On average, cases that reached agreement mediated for three hours and 19 minutes, while cases that did not reach agreement mediated for two hours and 44 minutes (not shown in table).

Summary

During the 24 months included within the process study, the seven permanency mediation programs participating in the NYS Permanency Mediation Pilot Project received and processed a total of 403 mediation referrals. The vast majority of these referrals were eligible to receive mediation and nearly 80% of those eligible to receive services elected to do so. Referrals made by court-based personnel (e.g., judges and referees) were more likely than referrals received from other sources to agree to participate in mediation. Agreements were reached in approximately half of the eligible cases referred (see Table 25). Agreements tended to cover multiple issues and most frequently addressed issues surrounding visitation plans, communication problems, and compliance.

Table 25
Program Participation Summary

| Participation Status | Number of Referrals | Percent of Eligible Referrals | Number of Families | % Eligible Families |
|--------------------------------------|----------------------------|--------------------------------------|---------------------------|----------------------------|
| Referred to Services | 403 | - | 373 | - |
| Met Eligibility Requirements | 382 | 100% | 353 | 100% |
| Agreed to Mediation | 306 | 80% | 288 | 82% |
| Completed Mediation | 260 | 68% | 246 | 70% |
| Reached Agreement | 195 | 51% | 190 | 54% |
| Written Agreement Shared w/ Court | 152 | 40% | 143 | 38% |
| Verbal Agreement Shared w/ Court | 27 | 7% | 28 | 8% |

Chapter 7: Findings from 12-Month Exploratory Outcomes Study

The following section provides a preliminary look at some of the permanency-related outcomes associated with the receipt of mediation. A central goal of the NYS Child Permanency Mediation Pilot Project is to promote the timely obtainment of safe, permanent living arrangements for children served by the state’s child welfare system. If mediation expedites the obtainment of safe, permanent homes, children who receive permanency mediation should have child welfare cases that close sooner and spend less time in foster care than other children with active child welfare cases. While the present study lacks the necessary comparison group to fully test this hypothesis, examining changes in children’s child welfare status pre and post-mediation provides valuable feedback on one aspect of this equation -- namely, to what extent do children who receive permanency mediation demonstrate expected movements toward permanency in the months following their participation? How many children exit foster care during the year following participation in mediation? How do the exit rates of permanency mediation participants compare to other children in care? How many children have a child welfare case that closes?

1. What are the characteristics of children in the follow-up sample?

To address these questions, we examined the foster care and case status of all children whose families participated in mediation prior to 11/16/04. As indicated in Chapter 5 this date was chosen to make sure that all selected cases met our minimum follow-up window requirements. Of the 288 families who participated in mediation, 160 families, or 55%, met these criteria, producing a follow-up sample of 343 children. As depicted in Table 26, the vast majority of children in our follow-up sample were between the ages of one to 13 at mediation intake and approximately 43% had been in foster care for an extended period of time (two or more years).

Table 26
Demographic Characteristics of Children Included in 12-Month Follow-up Sample

| Child Demographics | Child Sample (Sample Size = 343) | |
|--|-------------------------------------|---------|
| | Number | Percent |
| Sex | | |
| Male | 164 | 48% |
| Female | 179 | 52% |
| Age at Mediation Intake* | | |
| Less than 1 Year | 6 | 2% |
| 1-13 Years | 275 | 80% |
| 14+ Years | 61 | 18% |
| Length of Foster Care Stay at Mediation Intake | | |
| Not in Foster Care | 102 | 30% |
| In Foster Care less than 1 Year | 44 | 13% |
| In Foster Care 1 to 2 Years | 48 | 14% |
| In Foster Care 2 to 3 Years | 80 | 23% |

| | | |
|-------------------------|----|-----|
| In Foster Care 4+ Years | 69 | 20% |
|-------------------------|----|-----|

*Information on this variable was missing for one child.

2. What percentage of children who were receiving foster care services at mediation intake leave foster care within 12 months? How do observed exit rates compare to those documented in specific geographic areas?

As described earlier, a primary goal of the NYS Child Permanency Mediation Pilot Project is to reduce the amount of time that children spend in foster care. We were therefore interested in documenting the number of children who exit foster care services in the 12 months following their participation in mediation. Of the 343 children included in our follow-up sample, 241 (70%) were receiving foster care services at intake. Most of these children continued to receive foster care services one year later. As shown in Table 27, only 23% of those who were in foster care at mediation intake were out of foster care at the 12-month follow-up. Exit rates were slightly higher, but not appreciably different, in the permanency mediation group when we limited our sample to only those cases in which a mediated agreement was reached (data not shown). In addition, exit rates tended to decrease with length of foster care placement, with 34% of children in care for less than one year exiting foster care during the 12-month follow-up period compared to 19% of children with foster care stays of four or more years. This difference in exit rates across groups did not, however, reach statistical significance.

**Table 27
Foster Care Exit Rates by Length of Time Spent in Foster Care at Mediation Intake**

| Length of Time In Foster Care at Mediation Intake | # Children In Foster Care at Intake | # Children Not In Foster Care 12 months Post Intake | Exit Rate |
|---|-------------------------------------|---|------------|
| Less than 1 year | 44 | 15 | 34% |
| 1-2 years | 48 | 11 | 23% |
| 2-3 years | 80 | 16 | 20% |
| 4+ years | 69 | 13 | 19% |
| All Children In Care | 241 | 55 | 23% |

Moreover, contrary to expectations, receipt of permanency mediation did not appear to expedite children's exits from foster care services. Using state CFSR data as a comparison (see Table 28), we see that the overall exit rate observed in our permanency mediation sample is comparable to that observed in NYC, and less than that observed in Oneida County. These two areas were selected as comparisons, since the majority of the children included in our in care follow-up sample (65%) were drawn from these jurisdictions.

Furthermore, when we apply the age and length of foster care placement breakdowns used by the CFSR data to identify different clusters of children that may vary in their likelihood to exit foster care, the overall pattern does not change. Again, observed exit rates for permanency mediation participants tend to mirror those found in other locations among the general foster care population, with one exception. The exit rate observed for children 14 years and older was higher in the permanency mediation sample than in the other two areas reported. However, our sample size for this group is exceedingly small (n=10), potentially limiting the representativeness of this

sample. Thus, receipt of mediation does not appear to be associated with higher than expected percentages of children exiting foster care.

Table 28
Foster Care Exit Rates for Permanency Mediation Participants
and Other State Samples

| Child Group | | % Children Exiting Foster Care w/in 12 Months | | | |
|---|---|---|------------|------------------|---------------------|
| Age at Start of Current Placement Episode | Length of Stay in FC as of Mediation Intake | Permanency Mediation Follow-Up Sample | | NYC 2003 Sample* | Oneida 2003 Sample* |
| | | Number | Percent | | |
| < 1 yr | <2 yr | 13 | 15% | 19% | 59% |
| | 2-3 yrs | 17 | 16% | 37% | |
| | 4+ yrs | 19 | 18% | 39% | |
| 1 to 13 yrs | <2 yr | 73 | 27% | 26% | 43% |
| | 2-3 yrs | 59 | 20% | 25% | 25% |
| | 4+ yrs | 50 | 20% | 23% | |
| 14+ yrs | All lengths of stay | 10 | 50% | 13% | 45% |
| All Children In Care | | 241 | 23% | 24% | 40% |

*Data taken from the NYS Office of Children and Family Services, Child Care Review Service, June 30,2004.

3. What percentage of children who were outside of the foster care system remain out of care at 12-month follow-up?

While analyses examining exits from foster care provide valuable information about the outcomes associated with permanency mediation, it is also important to consider outcomes for those youth who were not in foster care at mediation intake. From a permanency perspective, maintenance of an out-of-foster care status would reflect a positive outcome, while placements into foster care would suggest a movement away from permanency. We therefore examined the 12-month foster care placement status of the 102 children who were living outside of foster care at the time of mediation intake. As illustrated in Table 29, 80% of children without foster care services at intake remained out of foster care 12 months later, while 20% entered foster care.

Table 29
Status of Non-Foster Care Children at 12-Month Follow-Up

| Foster Care Status | Number | Percent |
|------------------------------|--------|---------|
| Not In Foster Care at Intake | | |
| Stayed out of Foster Care | 82 | 80% |
| Entered Foster Care | 20 | 20% |
| Total | 102 | 100% |

These findings raise the possibility that receipt of permanency mediation may help to prevent foster care placement in some cases; however, it is also possible that many of those cases that remained out of foster care would never have warranted foster care placement, regardless of their mediation involvement. It is also possible that many of the children who remained out of foster care were residing in other out-of-home arrangements e.g., informal relative care, or Article 10 direct custody cases. State databases do not track this type of placement, making it impossible to determine the exact living arrangements of children not residing in formal foster care. Thus, without an appropriate comparison group, conclusions about the impact of permanency mediation on children not residing in foster care cannot be drawn.

4. Does the receipt of child welfare services change in the 12 months following mediation intake? How many children exit the child welfare services system? How many remain?

The vast majority (96%) of the children included in our follow-up sample had an active child welfare case on record at mediation intake. As illustrated in Table 30, 16% of these children had a child welfare case that closed between intake and the 12-month follow-up. However, for most children with an active services case at intake, case status remained unaltered. Eighty-four percent of these children had an open child welfare case at intake and an open services case at follow-up.

**Table 30
Child welfare case Status at 12-Month Follow-up**

| Case Status | Number | Percent |
|-------------------------------------|---------------|----------------|
| Open Services Case at Intake | | |
| Open Case at Follow-up | 274 | 84% |
| Case Closed At Follow-up | 54 | 16% |
| Total | 328 | 100% |

Summary

A primary goal of the NYS Child Permanency Mediation Pilot Project is to promote the timely obtainment of safe, permanent living arrangement for the children served by the State’s child welfare system. The extent to which program outcomes are consistent with this goal was examined by documenting the foster care and case status of children whose families participated in mediation 12 months after mediation intake. Findings indicate that most children who were receiving foster care and/or child welfare services at intake were still receiving these services one year later. Moreover, the percentage of children exiting foster care within one year was similar to the percentage of children exiting care observed in other foster care samples, suggesting that receiving permanency mediation did not expedite the permanency process, at least as indicated by these measures.

Chapter 8: Findings from Participant Satisfaction Survey

Beginning in August of 2004, agency staff members were asked to distribute satisfaction surveys to all individuals attending at least one mediation session. Surveys were designed to assess participants' perceptions of mediation and included a series of yes/no items specifically tailored to one of two respondent groups. *Client satisfaction surveys* were designed for use with parents, extended family members and foster parents, while *professional satisfaction surveys* contained questions relevant to the experiences of professional participants (e.g. attorneys, Department of Social Services case Staff, and law guardians).

As indicated in Tables 31 & 32, response rates for both the client and professional satisfaction surveys were relatively low across both party types and programs. According to program databases, 231 parents attended mediation sessions after August 2004. However, only 90 client satisfaction surveys, or 39% of those that should have been distributed, were received back from participating parents. This suggests that the parental responses shared below may not accurately reflect the perceptions of most parents who participated in mediation. Indeed, this is apt to be true of all groups, as rates were low for all party types, with only two groups demonstrating rates higher than 50% (relatives at 62% and DSS casework staff at 78%).

**Table 31
Client and Professional Satisfaction Survey Participation Rates by Party Type**

| Party Type | # Surveys Distributed | # Returned | Return Rate |
|----------------------------------|-----------------------|------------|-------------|
| Client Satisfaction Survey | | | |
| Parent | 231 | 90 | 39% |
| Relative | 53 | 33 | 62% |
| Foster Parent | 111 | 53 | 47% |
| Total | 395 | 176 | 45% |
| Professional Satisfaction Survey | | | |
| Parent Attorney | 240 | 97 | 40% |
| DSS Casework Staff | 216 | 169 | 78% |
| Law Guardian | 164 | 34 | 21% |
| Total | 620 | 300 | 48% |

Moreover, as depicted in Table 32, survey responses were not overly representative of participating agencies. Agency databases indicated that a total of 204 cases received mediation during the survey study period (August 2004 – December 2005). However, client satisfaction surveys were returned for only 109 (53%) cases. Professional surveys were returned more often;

overall 66% of cases had at least one professional satisfaction survey returned. Individual agency response rates ranged from a low of 18% to a high of 93%.

Table 32
Client and Professional Satisfaction Survey Participation Rates by Agency

| Agency | Counties Served | # Eligible Mediation Cases | Survey Return Rate* | |
|-------------------------------------|---------------------------------------|----------------------------|---------------------|--------------|
| | | | Client | Professional |
| Mediation Matters | Albany | 17 | 18% | 18% |
| Community Dispute Resolution Center | Chemung, Steuben | 14 | 57% | 93% |
| Center for Dispute Settlement | Monroe | 12 | 83% | 92% |
| NYSPCC | Kings, New York, Bronx, Queens | 74 | 32% | 65% |
| Peacemaker Program | Oneida, Lewis | 51 | 76% | 73% |
| Catholic Charities | Erie, Niagara | 18 | 72% | 50% |
| Dispute Resolution Center | Westchester, Rockland, Putnam, Orange | 18 | 55% | 72% |
| Total | | 204 | 53% | 66% |

- Represents number of cases with at least one survey returned.
-

Taken together, these data suggest that results presented below regarding participants' perceptions should be interpreted cautiously. The lower the response rate listed above, the greater the possibility that the results presented may be misleading.

1. Did participants perceive mediation to be empowering and/ engaging?

Participants' perceptions of the mediation process were generally favorable (see Table 33). The vast majority of parents, relatives and foster parents who returned surveys indicated that they felt respected and listened to during the mediation process. Mediation also improved parents, relatives, and foster parents understanding of the actions to be undertaken by themselves and others.

Table 33
Parents, Relatives and Foster Parents Perceptions of Engagement and Empowerment

| Statement | Percent Agree | | |
|--|---------------|----------|---------------|
| | Parent | Relative | Foster Parent |
| Engagement/Empowerment | | | |
| I got the chance to talk about the things I wanted to talk about. | 91% | 94% | 89% |
| I was treated with respect. | 90% | 94% | 91% |
| I felt others really listened to what I had to say. | 78% | 73% | 89% |
| Mediation helped me understand what I need to do. | 83% | 79% | 76% |
| Mediation helped me understand what actions others in the group will take. | 82% | 88% | 87% |

2. Did parents’ feel compelled to participate in mediation? How do parental perceptions compare to those held by other parties?

Given the power disparity that exists between parents and system professionals, questions regarding parents’ ability to “freely” mediate child welfare matters have been raised. Although mediation is intended to be a neutral process in which all parties have equal standing, critics of permanency mediation have questioned whether pressures to please system professionals may compel parents to agree to mediation. Survey responses indicate that approximately one-fifth of parents participating in mediation felt pressured to agree to mediation; this rate was considerably higher than that observed in any other responding group. A similar proportion of parents also expressed concern over their ability to end mediation without consequences; however this concern appeared to be held by a comparable number of other mediation participants. Finally, many responding parents appeared to have concerns that confidentiality of their mediation statements might not be maintained; 33% of parents stated that they were worried that things they said in mediation would be shared in court. Again, this percentage was higher for parents than for the other two groups responding to this item.

Table 34
Parties Perceptions of Mediation Rights

| Statement | % Agree | | | | | |
|---|---------|----------|---------------|-----------------|-----------|--------------|
| | Parent | Relative | Foster Parent | Parent Attorney | DSS Staff | Law Guardian |
| I felt pressured to sign the “agreement to mediate” form. | 21% | 12% | 8% | 3% | 6% | 0% |
| I could end mediation at any time without consequences. | 81% | 79% | 79% | 91% | 80% | 82% |
| I am worried that the things I said in mediation will be shared in court. | 33% | 9% | 17% | * | * | * |

*Item not included on this version of the satisfaction survey.

3. How did mediation participants perceive the problem-solving process?

Over 80% of parents, foster parents, and system professionals viewed the problem-solving process as collaborative and child-focused (see Table 35). Relatives’ perceptions were also favorable, although they endorsed statements like “the group worked together” and “everyone wanted to do what was best for the children” less often. However, approximately 20% of parents, relatives and foster parents also agreed that they had been left out of the decision-making process, suggesting that for some non-professional parties mediation was not as inclusive as desired.

Table 35
Parties Perceptions of the Problem-Solving Process

| Statement | Percent Agree | | | | | |
|--|---------------|----------|---------------|-----------------|-----------|--------------|
| | Parent | Relative | Foster Parent | Parent Attorney | DSS Staff | Law Guardian |
| The group worked together to come up with a plan. | 86% | 67% | 87% | 88% | 87% | 91% |
| Everyone wanted to do what was best for the child(ren). | 79% | 70% | 85% | 82% | 82% | 100% |
| Mediation helped me consider new ways of thinking about the problems we discussed. | 80% | 73% | 72% | 71% | 78% | 84% |
| I was left out of the decision making process. | 22% | 21% | 17% | * | * | * |

*Item not included on this version of the satisfaction survey.

4. How did participation in mediation affect systems professionals?

The vast majority of attorneys, DSS staff members, and law guardians who responded to the satisfaction survey perceived mediation as an effective and valuable tool. As depicted in Table 36, most professionals agreed that mediation had enhanced their ability to work with both their clients and their professional counterparts. Moreover, despite concerns that mediation would be overly burdensome for systems professionals, the vast majority of professionals viewed the time they spent on mediation as worthwhile. Other professional responsibilities were rarely seen as interfering with participant’s ability to actively engage in mediation.

**Table 36
Professionals’ Perceptions of Mediation**

| Statement | Percent Agree | | |
|--|-----------------|-----------|--------------|
| | Parent Attorney | DSS Staff | Law Guardian |
| Participating in mediation improved my ability to serve my client. | 87% | 79% | 88% |
| Mediation helped me communicate more effectively with the other professionals involved in this case. | 80% | 88% | 85% |
| The time I invested in preparing for and attending mediation was worthwhile. | 95% | 86% | 90% |
| Other responsibilities prevented me from fully participating in mediation. | 8% | 15% | 13% |

5. Were participants satisfied with mediation?

As illustrated in Table 37, the vast majority of mediation participants, regardless of personal or professional role, were satisfied with the mediation process.

**Table 37
Participant Satisfaction with Mediation**

| Statement | Percent Agree | | | | | |
|---|---------------|----------|---------------|-----------------|-----------|--------------|
| | Parent | Relative | Foster Parent | Parent Attorney | DSS Staff | Law Guardian |
| Overall I was satisfied with the mediation process. | 84% | 82% | 85% | 98% | 89% | 97% |

Summary

Mediation advocates maintain that use of mediation in child welfare cases engages and empowers families and fosters group decision-making. However, concern has also been raised that parents may feel compelled to participate in mediation and that participating parties, particularly systems professionals, may find mediation participation overly burdensome. To examine the validity of these presumed benefits and drawbacks, individuals participating in child permanency mediation were asked to complete confidential survey questionnaires at the conclusion of their involvement in mediation. Overall survey responses supported the use of mediation, with most participants reporting positive perceptions of the process. The vast majority of participating families found mediation to be engaging, informative, and empowering and reported being satisfied with their mediation experience. Approximately 20% of families felt compelled to participate in mediation and expressed concern over the confidentiality of their mediation statements. Systems professionals were also highly positive. Most agreed that mediation improved their ability to work with others and was a valuable expenditure of time. It is important to note, however, that survey return rates were extremely low across party types, calling the representativeness of the responses received into question.

Chapter 9: Conclusions and Recommendations

Initiated in 2002 as a collaborative venture of OCFS, OCA, and PJJC, the NYS Child Permanency Mediation Pilot Project has two main aims: 1) To support the development and use of mediation in NYS's child welfare cases, and 2) To promote the timely obtainment of safe, permanent living arrangements for children served by the state's child welfare system. To monitor the project's progress toward achieving these goals, a multi-site evaluation documenting program participation, outcomes, and participant satisfaction was undertaken by OCFS. The following chapter summarizes evaluation findings in light of these two objectives and offers recommendations for future program and evaluation-based activities.

Objective #1: To support the development and use of mediation in NYS's child welfare cases.

Consistent with initial objectives, the number of counties able to access mediation services has grown as a result of pilot project activities. Prior to Quality Enhancement funding, there was only one permanency mediation program in the entire state. The sponsored programs originally offered mediation services to eight NYS Counties and by December 2005, this number had doubled to a total of 16 counties.

Contrary to expectations, however, use of mediation in child welfare cases has not been widely adopted. During the three years covered by the present report (January 2003-December 2005) only 403 referrals were processed by the seven sponsored programs, and only one program was able to meet its annual referral goal. Conversations with mediation staff indicate that the most significant challenge to program implementation efforts has been generating professional buy-in to the mediation model. Although stakeholder groups that included high-ranking judicial and social service professionals were formed at each site, actual referrals to mediation have been significantly lower than anticipated and professionals at many sites have been described by mediation staff as "resistant". Thus, while client and professional satisfaction surveys suggest that parties who participate in mediation hold favorable views of the process, most child welfare cases never make it to the mediation table.

As noted in Chapter 4, programs have taken many steps to stimulate interest in and use of mediation, including offering information sessions, streamlining referral and intake procedures, leveraging advisory group members' influence, and establishing a courtroom presence by stationing program personnel at family court. While programs utilizing these techniques increased their referrals to some extent, the low number of referrals received across programs during the three years examined suggests that program participation is not likely to rise to desired levels without the investment of additional, external resources.

Objective #2: To promote the timely obtainment of safe, permanent living arrangements for children served by the state’s child welfare system.

Descriptive analyses indicate that the child welfare related experiences of children whose families participate in mediation are highly similar to those observed in the general foster care population. Eighty-four percent of children whose families participated in mediation had an active child welfare case one year after mediation intake. Similarly, 77% of children in foster care at mediation referral were still in foster care at the 12-month follow-up. These rates were highly similar to those found among the general foster care population served in other NYS Counties, suggesting that mediation receipt did not facilitate the more timely obtainment of permanency options for these families. Efforts to more stringently examine mediation impacts through the use of a random assignment or matched comparison group were dropped, due to low program referral rates and the diverse characteristics of the children and families served.

Findings from the present study differ from those found in other evaluations, particularly the Washington D.C. impact study, in which receipt of mediation positively impacted several permanency-related factors. As described in Chapter 2, families served by the Washington D.C. program had more detailed case plans and shorter time periods between initial hearings, disposition, and case closure than other families. It is important to note, however, that the Washington, D.C. study differed from the current evaluation in several key respects. First, cases served by the Washington D.C. permanency program were randomly assigned to mediation services prior to their initial family court hearing. In contrast, the vast majority of families in the NYS Child Permanency Mediation Pilot Project sample were involved in child welfare cases that had already completed their disposition hearing at the time of their referral to mediation. In fact, many of the cases referred to the pilot project had extensive child welfare histories and had reputations for being extremely difficult to resolve. Thus, use of permanency mediation may be most beneficial before families become deeply entrenched in the child welfare/family court systems.

Moreover, the Washington D.C. study utilized data from the court’s automated management information system to track families’ progress through the family court system. This system allowed the evaluation team to access information on the dates of key court hearings and case plan content. Similarly, many of the mediation benefits cited by Thoennes (e.g., fewer contested review hearings, shorter time frames for filing case agreements) involve family court-based markers of a family’s progress. Conversely, outcome data for the current evaluation was limited to OCFS-maintained records of child welfare and foster care services, as the family courts’ child-based tracking system was not yet operational. It is therefore possible that benefits of mediation might have emerged had court-based indicators of permanency been readily available for examination.

Recommendations

Based on the lessons learned during this and other evaluations of permanency mediation programs, the following set of programmatic and evaluation-oriented recommendations are offered.

Program Implementation:

1. Mechanisms for strengthening the connection between the family court system and mediation programs should be explored.

Programs that have been highly successful in bringing mediation to a large number of child welfare cases, like those found in California, Essex, New Jersey, and Washington, D.C., are deeply embedded in the family court system. Each of these programs was developed and directly implemented, at least in part, by individuals working for and within the family court system. In contrast, with the exception of NYC, the programs sponsored by the NYS Child Permanency Mediation Project were spearheaded by community-based, not-for-profit agencies. Although many of these agencies have worked hard to establish a presence within their local family courts, lack of “insider” status and/or guaranteed physical meeting space within the family court appears to pose a barrier to getting professionals actively involved in mediation. Basing mediation services within the family court and/or blending community and court-based mediation staff, as that done in the NYC program, might help to overcome implementation and scheduling obstacles.

2. Create an atmosphere in which judicial referrals to mediation are strongly encouraged and/or required, at least during the initial implementation phase.

Establishing an atmosphere in which judicial referrals to mediation are expected and/or required appears to be an effective mechanism for getting parents and professionals to consider using mediation. Legislation supporting mediation was passed in both California and Washington, D.C., with the D.C. Family Court Act actually “requiring the court to use alternative dispute resolution techniques to the greatest extent possible and safe” (Gatowski et al., 2005, p. 8). As a result, judges in Washington, D.C. initially randomly assigned every fifth case to mediation and later agreed to send all new referral cases to the program. With the recent passage of Chapter 3 of the Laws of 2005, judges in NYS are now authorized to use mediation at any stage of an Article 10 proceeding. Working with the lead family court judges to establish monthly referral targets, and/or processes for randomly selecting cases for mediation may help to get struggling programs off the ground.

3. Implement mandatory information sessions for targeted cases.

Getting systems professionals to accept the mediation process has been a significant challenge for many mediation programs. With its emphasis on collaboration and shared decision-making, mediation constitutes a distinct departure from traditional, adversarial family court practices. This shift can be uncomfortable for those accustomed to family court, and may generate feelings of reluctance and/or resistance from judicial, legal, and social service professionals. Yet most participant satisfaction studies, including the one reported here, find that the majority of individuals who experience mediation would use mediation again. To help mediation programs overcome initial resistance, we recommend that jurisdictions interested in supporting mediation programs consider mandating individuals to attend an informational session on mediation services. In programs like NYC, where the court mandates information sessions and sends out letters with the time and location of the meeting, participation rates are often higher than other

locations. According to program staff, individuals are generally willing to try mediation services once they are all at the mediation table.

4. Identify specific types of cases that may benefit from mediation services.

Most of the programs sponsored by the NYS Child Permanency Mediation Pilot Project set few limits on the types of cases with which they were willing to work. Educating professional parties about certain types of cases likely to benefit from mediation receipt may help professionals to think about when mediation might benefit their caseload and focus referral efforts. For example, the recent Washington, D.C. evaluation suggests that mediation may be helpful in the early stages of family court involvement.

Evaluation Activities:

1. Efforts to document the potential impacts of permanency mediation on children and families should be suspended until program implementation issues are resolved.

A strong impact study design requires that a reasonable number of participants be randomly assigned to an intervention and control group, or that matching procedures be used to create treatment and comparison groups that are comparable on key case and demographic characteristics at study intake. Low program referral rates and the varied characteristics of families referred to mediation currently present formidable obstacles to meeting these requirements. Evaluation activities should therefore be suspended until programs are operating at a sufficient level. Ideally future evaluation activities would track a sample of at least 200 cases from a common legal starting point (e.g., initial hearing, disposition, etc) for a period of 12 months.

2. Future evaluation activities should monitor court-based outcomes.

Previous work suggests that many mediation benefits are court-related, thus using court calendars and documents to track permanency objectives would provide a strong test of the utility of mediation in NYS child welfare cases. At the time of the current evaluation, the child tracking system operated by the NYS court system was not yet operational. Once this system is widely used, it may provide a valuable tool for monitoring court-related outcomes.

References

- Dobbin, S.A., Gatowski, S.I., & Litchfield, M. (2001). *The Essex County child welfare mediation program: Evaluation results and recommendations*. Reno, NV: National Council of Juvenile and Family Court Judges.
- Gatowski, S.I., Dobbin, S.A., Litchfield, M., & Oetjen, J. (2005). Mediation in child protection cases: An evaluation of the Washington, D.C. Family Court child protection mediation program. Reno, NV: National Council of Juvenile and Family Court Judges.
- Govannucci, M.T. (1997). Understanding the role of the mediator in child protection proceedings. *Family and Conciliation Courts Review*, 35 (2), 143-148.
- Letiecq, B.L., Drewery, M.P., Scrivner, K.W., & Klain, E.J. (1999). *The child protection mediation program: Evaluation of the pilot project and recommendations for improvement*. Report submitted to the District of Columbia Superior Court.
- National Council of Juvenile and Family Court Judges. (1995). *Resource guidelines: Improving court practice in child abuse and neglect cases*. Reno, NV: author.
- National Council of Juvenile and Family Court Judges. (2000). *The adoption and permanency guidelines: Improving court practice in child abuse and neglect cases*. Reno, NV: author.
- Thoennes, N. (1994). Child protection mediation in the juvenile court: A significant improvement over pretrial approaches. *The Judge's Journal*, Winter.
- Thoennes, N. (1997). An evaluation of child protection mediation in five California courts. *Family and Conciliation Courts Review*, 35(2), 184-195.
- Thoennes, N. (1998). *Dependency mediation in the San Francisco Courts*. Denver, CO: Center for Policy Research.
- Thoennes, N. (2001). *Dependency mediation in Oregon and the Nation*. Denver, CO: Center for Policy Research.



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