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CHILD DEPENDENCY MEDIATION

I. Child Dependency Mediation: Definition and Historical Context

Child dependency mediation (also known as child protection mediation) provides a non-adversarial setting in which a mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on the child's safety and the best interest and safety of all family members. The phrase "child dependency" describes cases in which a child is before the court, where a public or private agency is also involved. These cases concern children who are the subject of any of the following petitions: child abuse or neglect, child at risk for abuse or neglect, approval of an entrustment agreement or for relief of custody, foster care review, permanency planning, or termination of parental rights. Mediation can encourage acceptable solutions by all parties and more clearly define the role of the caseworker to the parents. It also encourages active participation from the parents and keeps them involved and motivated. Mediation, when compared to adjudication, is considered less injurious to the family by decreasing the trauma to the child and utilizing the parents' motivation to seek help during a family crisis situation. Mediation is a more effective way to gather information about the case when it is most needed – at vital decision-making time points.

A review of the history of child protection mediation in the juvenile court system indicates that the need for child protection mediation may have resulted from a desire to find a method that more closely matches the less adversarial nature of the juvenile court system. Early proponents of child protection mediation observed parents who did not seem to understand the standard litigation process, felt powerless, and many times were not included in the decision-making process.

The first research to empirically examine the use of child protection mediation stemmed from two demonstration projects funded primarily by the National Institute for Dispute Resolution. Private mediation organizations were given grants to provide mediation services, free of charge, to protective service agencies in Denver/Boulder, Colorado and Washington, D.C. Their involvement generally occurred at the intake stage of the child protection process, with the prevention of court filing as the primary goal. The caseworkers and the family members were the main parties involved. There were mixed results at the Colorado and Washington, D.C. pilot projects. Although mediation appeared to be successful when utilized, in both programs, the use of the service was voluntary and was mainly dependent on social worker referrals. Although the Denver pilot received more referrals, it was mainly due to the constant efforts of the program staff. In addition, it is possible that the programs were hurt by the caseworkers' lack of first-hand experience with the agencies providing the interventions. At the Washington, D.C. site, logistical problems arose including identifying a time and place where all the parties could be present and ready to mediate.

As with most new initiatives, subsequent child protection mediation programs appeared to learn from the challenges of the initial pilot projects. Since its inception in

the 1980's, child dependency mediation has experienced rapid growth. The existence of successful programs has increased an interest in developing new dependency court mediation programs. Currently, thirty states utilize alternative dispute resolution methods such as mediation, family group conferencing, or settlement conferencing to resolve child dependency cases. A good measure of the breadth of dependency mediation programs is the Permanency Planning for Children Department's (PPFD) Victims Act Model Courts Initiative, created by the National Council of Juvenile and Family Court Judges (NCJFCJ) to help courts more effectively handle child abuse and neglect cases. Model Courts serve to facilitate systems change. By definition, the Model Courts should include strong judicial leadership, collaboration and collective action across system stakeholders, a systems focus, a capacity for evaluation, and organizational learning. With all Model Courts seeking to shorten timelines for children under court supervision, alternative dispute resolution formats have been incorporated in almost all of the courts, with mediation being by far the most popular. (For information about other forms of alternative dispute resolution, please see Appendix A.)

II. The Need for Alternative Dispute Resolution in Child Dependency Matters

In the United States, child protective service agencies receive over three million reports of child abuse or neglect a year. Research has indicated that children who have been abused or neglected, or subject to foster or institutional care, have poorer scores on outcome measures such as school grades, years of education, unemployment, and involvement in crime, violence, prostitution, alcohol and drugs. Roughly one-third of these children will abuse or neglect their children, continuing this painful cycle.

Removal of an abused or neglected child from the home environment can be a stressful and frightening experience for a child. Although this may be a necessary step to ensure the child's safety, the child not only faces the uncertainty of not knowing whether he or she will ever return home, but must also adjust to temporary living conditions until permanent placement is decided. Many times, another relative is able to care for the child during court proceedings and may become the child's permanent caretaker. But many children are temporarily placed in the unfamiliar surroundings of a foster care environment – some for an extended period of time. These children may experience multiple changes in placement, with some experiencing as many as six placement changes during their time in foster care.

The child's fear and uncertainty of not knowing his future living arrangements may be amplified by the residual effects of the abuse or neglect. Children who suffer abuse have poor peer relationships, suffer from social cognition deficits, and have difficulty with cognitive tasks in school. Child abuse victims are also more likely to act out aggressively. In addition, abused children may develop insecure attachments because they view the world as a threatening place.

Abused and neglected children, like all children, are navigating important developmental stages that require a stable environment and consistent caretaking. For

example, attachment issues are paramount for infants and young children. According to attachment theorist John Bowlby, an infant's attachment to a primary adult, occurring around six to twenty-seven months of age, is vital for normal development. A disrupted attachment relationship can lead to infant despair, detachment, and in some cases, psychopathology. Children denied a consistent attachment relationship early in life are also at risk for unhealthy future relationships.

During the transition from infancy to early childhood, consistent parental involvement is important in shaping the child's social life. Parents and/or guardians assume an increasingly directive role, encouraging the child to behave appropriately and discouraging inappropriate social behavior. Children and parents develop a "partnership" in which children begin to consider and accommodate their parents' motives and feelings on their way to developing the ability to compromise.

For school-aged children, consistent and solid parent-child interactions assist the child in rehearsing and refining skills that encourage healthy peer interactions in the future. Parents become more involved in monitoring and promote emotional stability by serving as a consistent and secure resource.

Adolescence is marked by the growing development of emotional autonomy, or individuation. The adolescent is continuing to develop a sense of identity, acting independently, and accepting responsibility for choices. More time is spent with their peers, and interests in sexual and romantic relationships emerge. Although the need for independence increases, the vast majority of adolescents count on their caretakers for support, emotional intimacy and advice.

In summary, reaching these developmental milestones is difficult at best when the child is unsure of the permanency of his future home and caretaker(s). Ironically, the necessary step of removing a child from a home with abuse and/or neglect may temporarily *add* to the chaos in the child's life. Determining the child's permanent placement through courtroom litigation, even when tightly managed, can take months. This can seem like a lifetime for a young child. Therefore, it is vital that court proceedings that determine these decisions move as quickly as possible, decreasing the amount of time a child remains in temporary placement. (Please see the attached time line for child abuse, neglect and foster care cases in Virginia's Juvenile and Domestic Relations District Courts in Appendix G.)

III. Child Dependency Mediation as a Viable Alternative Dispute Resolution Method

Mediation in child protective cases is, however, still in its infancy stage. Research on the effectiveness of child protective mediation has focused on three main variables of success: the settlement rates, the amount of time saved over litigation, and parent satisfaction with the process.

The majority of child dependency mediation studies have focused on settlement rates, the number of mediated cases that reached at least partial settlement, as the primary measure of success. Rates ranged from 70 to 89 percent. Cases in which none of the issues were settled were transferred back to the courts for litigation.

The amount of time child protection mediation saves over litigation was examined in a few studies. These studies used a control group of litigated cases that were matched with the mediated cases according to case type. These studies concluded that mediated plans were produced, on average, a month to two months sooner than non-mediated plans.

Parent/guardian satisfaction with the mediation process using empirical and anecdotal evidence was examined in several studies. In one study, 75 percent of the parents indicated that they clearly understood what was going on in the session, and 88 percent said that other participants seriously considered the comments that were made during the sessions. Another study reported that over 90 percent of the parents felt they had a chance to talk about the issues important to them, and the majority thought that mediation helped them to understand what they needed to do regarding the case and the child's welfare. Although it is generally thought that parents prefer mediation to litigation in child protection cases, more research is needed in this area.

Whether or not the parents actually comply with the findings of the agreement, is another outcome variable that has been examined in a few studies. It is thought that, if parents play more of an active role in the decision-making process through mediation, they may be more likely to comply with the agreement. One study of the San Francisco courts found that within 24 months post mediation, only 11 percent of the parents had returned for a contested review hearing, compared to 28 percent of the control group of litigated cases. Another study indicated that after a six-month follow-up, 42 percent of the participants completely complied with the mediated agreement, compared to 25 percent of the control cases. It is possible that the small number of compliance studies is related to the expense and logistical difficulties of follow-up studies.

In summary, limited research has shown that mediation appears to be a desirable alternative over litigation in child protective cases because:

- it decreases the length of the process, thus finding a permanent placement for the child more quickly than litigation;
- it is a less adversarial process than litigation for parents, thus increasing the parents' satisfaction and possibly their compliance with the final decision as to where the child is placed, again decreasing the time a child spends in temporary placements; and

- mediation has been shown to generate full or partial agreements in the majority of the child protection cases in which it has been utilized.

IV. Common Components of Successful Child Dependency Mediation Models

A. Types of Cases Appropriate for Dependency Mediation

Most dependency mediation programs have some screening criteria to determine if mediation is an appropriate alternative for each dependency case. Issues to consider are the ability of all parties to effectively evaluate the best interests of the child, the presence of domestic violence that could negatively affect the mediation process, and the psychological abilities of each parent and/or guardian to effectively participate in the mediation process.

Regarding the nature of the maltreatment (physical, sexual, neglect, etc.) of the child and its effect on the mediation outcome, the limited research is inconclusive. A Wisconsin court study concluded that permanency mediation in cases involving a Child In Need of Protection or Services (CHIPS) was less effective if there was a concurrent criminal child abuse allegation arising out of the same incident. A study of child protection mediation in San Francisco courts found no statistical difference in settlement rates when controlling for variables such as the nature of the maltreatment and the stage of the legal case at the time of the mediation referral. One exception was found, however. Cases that involved a perpetrator with a diagnosed mental illness were less likely to result in a full agreement than cases without such problems. The study did note that cases involving perpetrators with histories of drug abuse or criminal histories and cases involving a criminal court filing as a result of the latest child abuse report were less likely to be referred to mediation, and, therefore, may have affected the results of the study. A study of five California courts concluded that cases involving sexual abuse were less likely to settle than cases involving neglect or physical abuse during the *jurisdictional* stage of the case. At other stages of the case, the type of abuse or neglect did not predict the mediation outcome.

B. Specific Issues To Be Mediated

Based on the type of case, issues to be mediated may include determining the placement of the child, if the placement is out of the home, when and how the parents will see the child in placement, and whether the parents must participate in specific services, such as drug testing and parenting classes. Generally not appropriate for mediation in a child protection case is a discussion of the merits of the allegation of child abuse or neglect or the identification of the perpetrator. The issue of abuse or violence is not a mediatable issue. A determination of these facts of the case is properly within the realm of the judicial process.

Another focus of the mediation process in these cases can be to facilitate the appropriate voluntary relinquishment of parental rights in lieu of protracted court litigation. Birth relatives and adoptive parents, supported by the involved child welfare agency and a mediator, collaborate before and after completion of the adoption to provide an agreeable level of contact between those relatives and the adoptive parents of the child. Such mediations can result in the development of a post-adoption contact agreement where the birth parents and pre-adoptive parents voluntarily agree to permit the exchange of information about the child's education, health and welfare and, possibly of photographs of the child. Among the benefits of this process are (i) the provision of source of birth family information that the adoptee may seek throughout various stages of life; (ii) enhancing the likelihood and stability of adoptions by decreasing the children's resistance to adoption arising out of loyalty to the birth parents or siblings before and after adoption; and (iii) decreasing birth parents' resistance to the termination of parental rights and subsequent adoption.

C. Timing of the Dependency Mediation Referral

A child dependency case can be referred for mediation at any stage during the legal process. A recent study of dependency mediation in the San Francisco courts indicated that the majority of the cases (84%) were referred during two stages. About one third of the cases entered mediation when a jurisdictional and/or dispositional hearing was pending. During this stage, decisions about whether the court needs to be involved in the case, what services the child needs and where the child should live are discussed. About half of the cases were referred to mediation later in the legal process. During this stage, placement reviews, case reviews in general, and or filings for a modification of the order can take place. (The equivalent in Virginia is the Foster Care Review stage, which should occur within six months of the dispositional hearing on the initial foster care plan.) Mediated issues at this stage generally involved the terms of the treatment plan, placement and visitation concerns, and compliance issues.

Very few cases were referred during the detention hearing which

occurs immediately following a removal of the child from the home. (The equivalent in Virginia would be the Preliminary Removal Hearing.) It is generally thought that mediation would be more productive once the investigation has been completed and enough facts have been gathered about the case to discuss possible outcomes. It is vital that the parties and social services have sufficient time to investigate the case since inadequate preparation could hinder the chance of reaching an effective agreement. Given this, it is also thought that once enough information has been gathered, it is most advantageous to begin mediation as soon as possible.

D. Arranging for All Parties to be Present at the Mediation

The effectiveness of the mediation may be greatly diminished if one or more of the parties are absent. Generally, the following parties should be present at the child dependency mediation meeting(s).

1. Mediator(s)

The mediator must be neutral to all parties and issues and ensure that the mediation process does not contribute undue stress to the family members nor endanger the child. Mediators must establish that all parties are attending the mediation session voluntarily. Frequently, mediators also serve as “teachers,” encouraging parties to share important information about the case. The mediator serves as a role model for the participants regarding appropriate behavior in the mediation meeting, conveying a high level of respect and professionalism to everyone involved. It also is the responsibility of the mediator to monitor the focus of the proceedings and keep the process moving forward.

2. Attorney(s) for the Parent(s)

The role of the attorneys in child protection mediation resembles their role in adjudication. Attorneys should prepare their client for the process, maintain representation of their client’s interests, contribute to the discussion of the issues at hand, and assist in identifying possible solutions. Although parents can waive their right to an attorney, one must strongly consider if proceeding with the mediation would still be useful.

3. Attorney for the Child

The presence of the child’s attorney (or guardian ad litem) provides additional insurance that the child’s needs are met and the best interest of the child is the main focus of the proceedings.

4. Parents

The parent(s) should be encouraged to take an active role in the proceedings. The mediator should foster a non-adversarial atmosphere that is not intimidating or punitive. Parents should be free to express their feelings and ideas about the issues at hand and to contribute to possible solutions. Firestone (1995) indicates that parental involvement may increase the quality of the agreement, the parent's sense of ownership of the resulting agreement, parental compliance with the final agreement, and reduce the likelihood of the need for further litigation. Although one recent study has shown that 82 percent of mothers and 58 percent of fathers participate in child protection mediation, it is unclear as to the *extent* of their participation.

5. Social Worker and Child Protection Agency Attorney

The social worker's attendance is needed regarding issues directly related to:

- the agency's view of the safety or best interest of the child;
- the findings or recommendations of the worker;
- a conflict that exists between the worker/agency and the child or family;
- services to be provided or coordinated by the agency; and
- when the social worker's/agency's consent is sought on agreements reached by the other participants.

The child protection agency's lawyer provides legal counsel for the social worker and helps to ensure that access to all important information is given to the mediator.

6. The Child

The potential benefits and harm to the child should be considered to determine if the child should attend the proceedings. The child's chronological age, developmental level, desire to participate, and the nature of the abuse and/or neglect must also be examined. The child's legal guardian, and his or her guardian ad litem or other court-appointed

representatives can also recommend if the child should be present. Once again, the child's best interest is the driving force behind this decision.

7. Psychologists, Teachers and Other Professionals

Professionals who have been involved in the assessment of the child or who can offer additional pertinent information regarding the child or the abuse/neglect may be invited to attend the proceedings at the mediator's discretion.

8. The Court's Role in the Mediated Settlement

Even if an agreement is reached, the court should review the agreement to ensure that it is in the best interest of the child and all parties involved fully understand its contents. Depending on each state's guidelines, the judge may have the option to enter the agreement as an order, to reject the agreement and proceed to trial, or to request that amendments to the agreement be made. In Virginia, if the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract. Upon request of all parties and consistent with law and public policy, the court shall incorporate the written agreement into the terms of its final decree disposing of a case (Virginia Code § 8.01-576.11).

E. Training of the Child Protection Mediators

The backgrounds of mediators in child protection cases, as well as training requirements, vary greatly from state to state. Many states are now requiring mediators to not only have training in mediation techniques, but also training regarding issues and areas important to child protection cases. In Connecticut, one of the pioneer states in child dependency mediation and mediator training, child protection mediators are professionals with several years of experience in the social services and related areas. Specific areas of specialized training include:

- an understanding of the child welfare system;
- educational background that includes extensive knowledge of child welfare laws, governmental policies, and state court procedures; and
- specialized training in areas such as mental health, substance abuse, the effects of sexual abuse on children, and adoption issues and laws;

In addition, even certified family mediators could use specific child protection mediation training, even though many of the topics overlap. A one-day pilot dependency mediation training was conducted for twenty-five highly experienced family mediators in Florida. Course evaluations revealed that all participants favored specific child protection mediation training for all family mediators, and they felt that observing a dependency court mediation session would be helpful. The current Florida model involves 40 hours of training in dependency court mediation, which includes the opportunity to role-play as a mediator and as a disputant.

F. Strong Judicial Leadership

In a study of juvenile court reforms conducted by the U.S. General Accounting Office (GAO), experts and state and local officials in all locations visited agreed that reforms of any type cannot occur without strong judicial leadership and that judges must set the tone for how change occurs. Judicial leadership is vital to:

- direct the mission of the court team by imparting meaning and purpose;
- instill vision and focus;
- direct efficient court operations; and
- convene other critical players such as attorneys, community leaders, and agency personnel.

G. Funding Sources

Ongoing funding for child dependency mediation programs is seen as a major factor in developing stable and successful programs for mediation of dependency cases. Many of the families involved in these cases will have limited financial resources. To sustain a successful child dependency mediation program beyond the pilot stage, it may be necessary to seek a more sustainable source of support, such as state funding, with the hope that mediation will help to decrease overall court costs. This “upfront” investment could pay future dividends by decreasing the number of litigated child protection cases, thus decreasing overall court costs.

(For examples of current successful child dependency mediation models, please see Appendix B.)

V. A Pilot Study Of Child Dependency Mediation In Virginia

A. Virginia Pilot Programs

In the interest of exploring the benefits of child dependency mediation, the Office of the Executive Secretary funded three pilot dependency mediation projects, detailed below, for the 2001-2002 fiscal year.

1. Lynchburg Project

The Lynchburg site proposed the utilization of two mediators certified by the Judicial Council of Virginia to oversee a total of nine cases -- six new removal cases and three ongoing foster care cases before the Lynchburg Juvenile and Domestic Relations District Court. Each year, the Lynchburg Department of Social Services removes approximately twenty children from their homes because of abuse or neglect.

The goals for the Lynchburg Dependency Mediation program were:

- to provide alternative dispute resolution to the target population in lieu of litigation;
- to increase and improve communication between parents and professionals;
- to increase the awareness of available community resources by the parents and other participants; and
- to produce high quality permanency plans that include treatment plans and visitation arrangements that are individualized and family-appropriate.

For this pilot program, the new removal cases received mediation services immediately preceding the mandatory five-day hearing following the child's removal from the home and additional sessions after the 30-day adjudication hearing but before the 75-day dispositional hearing.

Issues to be addressed at the mediation conference prior to the five-day hearing included the placement of the child, when and where visitation may occur, and the services to be offered to the child and family. In addition to the parents and other important family members, other parties that were encouraged to attend the mediation session include the social worker from the Department of Social Services and the attorneys representing the child, family and the Department of Social Services.

The mediation sessions after the 30-day hearing would be used to explore ongoing and broader resolution of the underlying problems, as well as to provide adequate support for the families if the children have been or will be returned to the home. If this were not possible, assistance would be given to find a permanent placement for the child.

2. Results

The Lynchburg site mediated seven child protection cases. 71 percent of these cases reached a full or partial agreement. Lynchburg had strong involvement from its judges, and received all of its referrals from the court. Initially, mediation referrals were to be generated from the Department of Social Services' Child Protection Services. A workshop was held to highlight the importance of mediation and its usefulness to all parties including the Department of Social Service workers, but this effort did not generate referrals. Conference calls between the Department of Dispute Resolution Services, the judge, the mediators and DSS were helpful in creating some movement. Mediators used continuing efforts to educate all parties about the importance and benefits of mediation in child dependency cases.

An evaluation survey of the mediators and mediation process given to the participants present at the mediation session(s) indicated that 100 percent of surveyed participants would use mediation again and 93 percent would recommend mediation to others.

3. Fairfax IMPACT Project

The IMPACT Project (Innovation Mediation Partnership – A Child Centered Team) is a collaborative effort between the Fairfax County Juvenile and Domestic Relations District Court, the Fairfax County Department of Family Services and United Methodist Family Services to provide dependency mediation within the court.

Project IMPACT's proposed goals were:

- To provide dependency mediation to at least 42 families representing at least 60 children in three Virginia jurisdictions – Fairfax, Alexandria and Loudon counties.
- Permanency will be expedited for court-involved children by facilitating communication between all the involved parties and improving the case planning process.

- Adversarial trials will be avoided and there will be an increase in the effectiveness of court hearings on those cases receiving mediation.
- Stakeholders will be trained in the need for and value of dependency mediation.
- The Fairfax County Court Services Unit will increase its in-house capacity to provide dependency mediation.
- A dependency mediation model will be developed through this collaborative effort that can be shared statewide.

Interventions such as pre-court conferencing, family group conferencing, and concurrent planning are already in place at the Fairfax County Juvenile and Domestic Relations District Court and the Department of Family Services. This court-based dependency mediation program was planned to complete the continuum of services.

Mediation conferences occurred as needed at various points in the case process, from the time that a Preliminary Removal Order (PRO) is issued through the conclusion of a Termination of Parental Rights (TPR) hearing. Issues to be mediated were to include: what services a family receives, whether a child can safely return home or be placed with a relative, whether the parents wish to make a voluntary adoption plan for their child, or whether on-going contact will occur between foster/adoptive and birth parents after an adoption.

Project IMPACT utilized a pool of certified, multi-cultural mediators to provide the racial, cultural and linguistic diversity necessary to serve their multi-ethnic communities. Any of the service providers, including the judge, attorneys, model court facilitators, DFS case managers or family members could request mediation through this project. In addition, all parties were to either be present or have their positions represented in each mediation session.

4. Results

The Fairfax site mediated 10 child protection cases. 80 percent of these cases reached a full or partial agreement. As with the Lynchburg site, Fairfax initially experienced resistance to mediation from the Department of Family Services. After preliminary training meetings did not generate referrals, a steering committee meeting occurred with key

DFS representatives and judges that proved to be a key event and helped to generate referrals during the second half of the grant.

Another of Fairfax's strengths was its multi-cultural pool of mediators. Fairfax had the most ethnically diverse mediation participants. Mediators indicated that by offering a multi-cultural mediator pool, they were able to increase the comfort level of the parents. One parent actually requested a mediator of the same race – a request Fairfax was able to grant.

An evaluation survey of the mediators and mediation process given to the participants present at the mediation session(s) indicated that 94 percent of surveyed participants would use mediation again and recommend mediation to others.

5. Alexandria Family Matters Project

The Family Matters initiative was intended to serve as an alternative for the handling of abuse and neglect and children in need of services/supervision cases within the Alexandria Juvenile and Domestic Relations District Court. Fifty cases were targeted for mediation and settlement conferences. Referrals occurred at any stage of the process and were received from the juvenile judges, guardians ad litem, and the Department of Social Services.

Family Matters' goals included:

- achieving a mediated agreement, which provides for the child's healthy emotional and educational development, nurturing and secure household, and permanency;
- achieving harmonious interactions between the people who have significant roles in the child's life;
- seeking early resolution and starting treatment, counseling and permanency sooner;
- filing a case plan reflecting the specific tenants of the mutually acceptable agreement;
- continuing the involvement of the agency in the lives of the participating families to customize service delivery; and

- educating families on alternative ways of processing issues and providing a forum where they can present their concerns.

The Family Matters program followed the mediation model which employs an initial general conference which is attended by all parties including two co-mediators, the Department of Social Services Caseworker, the City Attorney, parents, parents' attorneys, the guardian ad litem for the child, and foster parents. Mediation sessions are estimated to last approximately one-half day. The initial session serves to explain the process, introduce the parties, clarify the issues, gather information, gauge expectations, detect roadblocks, and set the tone for the collaborative effort.

Family Matters utilized two mediators with various training experiences in mediation.

6. Results

The Alexandria site mediated 11 child protection cases. Approximately 64 percent of these cases reached a full or partial agreement. As with the other sites, Alexandria experienced resistance to mediation from the Department of Social Services and also from attorneys. Alexandria also utilized preliminary continuing legal education training meetings and steering committees with the hope of generating referrals for mediation. Judges began making referrals and as the attorneys saw the value of mediation to their clients, they also became a strong referral source.

As with the other sites, Alexandria's referrals came during the second portion of the grant. Seeing the momentum they had gained, Alexandria has made the commitment to continue the project and received another contract from the Office of the Executive Secretary of the Supreme Court of Virginia to continue the program.

B. Project Goals

One of the goals of this study was to determine if mediation is a more expedient option over litigation in child protection cases. The number of days necessary to complete litigation as compared to reaching a mediated agreement was to be calculated. A control group consisting of matched, archival, litigated cases from each site was to be compared to a group of current mediated cases. Effectiveness also was to be measured by the percentage of cases that reach a successful mediation agreement as well as by party satisfaction with the adjudicatory process versus the mediation process. However, after discussions

with the judges from the three pilots, it was decided that it would be difficult to identify a control group as each case in this area is so unique. In addition, litigant sentiment towards the litigation process is understandably generally negative due to the gravity of the proceedings. Thus, a comparison of party satisfaction with the different processes would not be fair. Additional analyses were to examine if specific case and mediator variables, such as the type of child dependency case, the ethnic background of the mediators in relation to the parents or guardians, or the type of mediation format, can help to predict a successful mediation outcome.

While some of the initial objectives of this study were not met due to the inability to identify a comparable control group and due to the limited number of cases mediated, this study was able to explore the role of mediation in Virginia's child protective cases and to determine the types of child dependency cases that can best be served by mediation over traditional litigation proceedings.

1. Data Collection Instruments

Client Evaluation of Mediators and Mediation (Appendix C): The purpose of the Client Evaluation of Mediators and Mediation was to examine the clients' (parents/guardians) opinions about the mediators and to determine if these opinions can predict the outcome of the mediation. Questions on the survey were of two types: objective descriptors of the case (race, age, relation to child, etc.) and subjective ratings about the mediator and the mediation process. Clients were asked to fill out the survey after completion of the mediation process.

Dependency Mediation Summary Form (Appendix D): Mediators from each pilot site were asked to fill out the brief summary form after completing a mediation case. The survey serves two main purposes: to gather characteristics about the client and the mediation case, and to obtain information about the mediator's perception of the case.

Interviews with Judges and Mediators: Equally as important was the use of qualitative information gained from the study about the process of creating a child dependency program for Virginia's court system. Judges and mediators from each pilot site were asked to share the successes and challenges of implementing their child dependency programs to provide recommendations and suggestions for future initiatives.

2. Outcomes and Challenges

Initially, the three courts involved with the project estimated that a total of 120 cases would be mediated for this study. Unfortunately, only 28 total cases were mediated during the grant period. Even with a limited

number of cases, some encouraging trends emerged from an analysis of the data collection instruments. Approximately 77 percent of the mediated cases reached either full or partial agreement. This success rate is on the high end of what other studies have reported. Also, even including cases that did not reach a settlement, 96 percent of mediation participants indicated that they would use mediation again and would recommend mediation to others. One participant indicated that she felt that mediation “set the stage for good future relations and expectations.” In addition, over 98 percent of the participants felt that the mediators were a “neutral” party in the proceedings. This is probably the most important characteristic a mediator can have to earn the participants’ trust in the mediation process. Overall, these numbers indicate that parents as well as professionals were very satisfied with the mediation process.

Regarding the length of mediation, approximately 71 percent of mediated cases took only one session, and 65 percent took three hours or less to resolve. In the cases that were mediated, the most common reasons children were removed from their homes included neglect, physical abuse, and behavioral problems.

Mediators indicated that in 60 percent of the cases, cultural issues affected the mediation proceedings. Sites that had mediators with diverse cultural backgrounds found that this resource was helpful to more effectively address different cultural issues. Mediators also indicated that co-mediation was an effective format for the mediation process and placed less pressure on one mediator to drive the entire session. One mediator mentioned that having both a male and female mediator at the session provided good gender balance and made many parties feel more comfortable with the process. Almost all of the cases at the three sites were co-mediated. Please see the attached Data Tables for more information compiled from the Client Evaluation of Mediators and Mediation (Appendix E) and the Dependency Mediation Summary Form (Appendix F).

In addition to the information gained from the data collection instruments, the judges and mediators from each site were interviewed and provided the following important information about the successes and challenges of implementing this program.

3. Obtaining the Endorsement of all Parties Involved

Each site indicated that the main program challenge was obtaining the endorsement, or “buy-in,” from all the parties necessary to have a successful child dependency mediation program. Child dependency mediation is a collaborative effort involving representatives from a

multitude of disciplines such as judges, court personnel, attorneys for the parents/guardians, GALs, child protective service representatives and their attorneys, and the child(ren)'s parents/guardians. As one would expect with any new program, each party questioned if dependency mediation was in their best interest.

Both judges and mediators from all three sites indicated that the benefits of mediation were not always evident to representatives from the child welfare agencies. Caseworkers expressed concern that giving up control of the case through mediation could affect their ability to protect the child, and that mediation was more work without the added benefit. Some mediators and judges indicated that DSS management seemed to be excited about the mediation program, but it took time for this enthusiasm to reach the caseworkers.

Attorneys also initially voiced their concerns about the effectiveness of mediation. One judge indicated that lawyers did not initially see the benefit mediation would have for their clients. One mediator indicated that some lawyers were not sure what to expect from mediation, and thought that their "odds were better" by going through litigation. Others were initially concerned that their clients would not be adequately represented in a mediation session.

To overcome these challenges, all sites indicated that more education was needed about the positive effects of mediation in child protection cases. Although all sites had preliminary meetings with key representatives from DSS, the legal community and other vital organizations, they thought that more education was needed in the planning stage before any cases were mediated to show exactly how mediation works, and the benefits it can provide to the protection and placement of the child.

For example, the Alexandria site found that once the lawyers tried mediation and witnessed the benefits received by their clients, the lawyers not only became less resistant to mediation, but also actually began referring cases to mediation. The Lynchburg and Fairfax sites indicated that steering committees comprised of key representatives from each discipline were helpful to educate the parties, foster a sense of collaboration, demystify the process, and motivate the parties to participate in the program. Fairfax also utilized training meetings and found that DSS representatives were receptive and referred more cases once they saw the value of mediation. All the sites indicated that this training and education component needed to be more intense and occur earlier in the program. They recommended an expanded planning phase to prevent the initial delays and challenges experienced by each site.

4. Receiving Appropriate Referrals for Mediation

Each site experienced challenges in receiving referral cases for mediation. All sites initially attempted to rely upon DSS for the majority of the referrals. When this was not successful for Lynchburg and Alexandria, mediators utilized the courts directly for referrals. It was helpful that the mediators from both Lynchburg and Alexandria were lawyers and had access to the court to help facilitate this process. Fairfax mediators were not lawyers but had strong backgrounds in social services in addition to mediation. After several meetings with court and DSS representatives, they eventually received the majority of their referrals from DSS.

Judges from all the sites strongly endorsed the use of mediation in appropriate child protection cases. They indicated, however, that it would be helpful to have someone overseeing this process, possibly a court representative, to facilitate the referrals. They mentioned that it can be challenging for a judge with a busy docket to hear all the cases appropriate for mediation. Therefore, it could be useful to have a court coordinator to field referral requests from various sources such as DSS or lawyers before the case is heard to suggest to the judge that mediation would be an appropriate alternative to litigation.

A court coordinator could also assist in the administrative duties surrounding case referrals, such as review of eligible court cases as they enter the court system to determine their appropriateness for mediation, arranging for the free dispute resolution orientation session, assigning certified mediators to cases, and establishing procedures with the judges and clerks to determine the most efficient way of integrating mediation into the court without disrupting existing practices. While all sites needed to create and/or utilize a specific referral form for mediation, Fairfax mediators observed that it was difficult to know what specific information to include because they did not have the same access to the court as lawyer/mediators at the other sites. A coordinator that was employed by the court may have been helpful in this process.

5. Difficulty Encouraging Participants to Attend the Mediation Sessions

Once parties did agree to mediate, encouraging the parties to actually attend the mediation sessions and finding a convenient date and time for the meeting was a challenge for all sites. Mediation sessions involve many people such as parents, DSS, lawyers for these parties, other relatives and other representatives for the child such as mental health care

workers. Originally at the Fairfax site, the mediators were attempting to arrange the meetings, which took extensive time and effort. Having the court set a date for the mediation proved to be much more effective. Some mediators indicated that providing the court with open slots in their schedules ahead of time was helpful in facilitating the process.

Mediators also indicated that the court was vital in firmly encouraging attendance by all parties involved – especially in the beginning when “buy-in” from all the parties was not as substantial. Ordering attendance to the dispute resolution orientation session also assisted in supporting the attendance of parties who initially indicated reluctance to participate in the mediation process. One mediator noted that some parties insisted that their involvement in the mediation process was contingent upon the guarantee of receiving a favorable outcome. Mediators indicated that despite the Order of Referral to a dispute resolution orientation session, several participants did not show for the scheduled meeting. As a result, these parties never had the opportunity to learn about the mediation process and to take advantage of the opportunity to voluntarily elect to proceed with mediation.

6. Mediator Balancing Multiple Roles with the Court

One of the pilot project’s mediators had additional professional relationships with the court that made it difficult for him to be perceived as unbiased by other parties involved in a mediation session. At this site, the mediator was an attorney who served as a Guardian ad Litem on several cases in the same court. It was challenging for the mediator to be perceived as a neutral party when mediating cases that involved attorneys and social workers who had previous contact with him in court as a Guardian ad Litem. In addition, several cases could not be referred for mediation because of this perceived conflict of interest. In Virginia, several certified mediators are also Guardians ad Litem. It is not uncommon for a mediator to have several professional affiliations. When a mediator serves in multiple roles for a court, it is incumbent on the mediator to ensure the parties of the mediator’s neutrality in the mediation process. If the parties perceive a conflict of interest, the mediator has an ethical duty to recuse himself or herself from the mediation. One judge suggested having a pool of several mediators (like the Fairfax site) to help to address this situation.

7. Ongoing Program Expenses

Several judges and mediators indicated that additional financial resources are needed to support an ongoing child dependency mediation program. Specifically, several questioned who would pay the parents’

lawyers' fees for attending the mediation sessions. Frequently, parents who would be utilizing this service could not afford the fees on their own. Also, funds would be needed to support the recommendation for a mediation coordinator as mentioned above in item 4.

VI. Recommended Guidelines for Establishing Child Dependency Mediation Programs in Virginia

Based on the knowledge gained from the judges and mediators in this pilot program as well as an examination of successful child dependency mediation programs across the country, the following recommendations are suggested for establishing child dependency mediation programs in Virginia:

A. Strong Judicial Support and Leadership is Vital

Child dependency mediation cannot succeed without the full support and leadership of the judicial system. Judges must set the tone and convey to attorneys, child protection workers, parents/guardians and other participants a sense of commitment to the process and a willingness to refer appropriate cases on a regular basis. Nationally, the most successful child dependency mediation programs are court-based. Other parties, such as representatives from the Department of Social Services, lawyers, and even parents, can suggest mediation as an option over litigation, but it is the court that must consistently make the referrals when other parties have failed to do so.

B. Child Dependency Mediation Should be a Permanent Part of the Court's Infrastructure with Appropriate Financial Support

Ideally, child dependency mediation should become a permanent component of the court. A representative of the court should coordinate the child dependency mediation program and be the central contact to ensure the continuity of the program is maintained despite court personnel turnover. This coordinator should work with the judges to ensure that mediation is utilized in appropriate cases and that the system is consistent and easy to navigate. The coordinator would assist with logistical issues such as scheduling the mediation sessions and filing appropriate referral forms. In addition, a consistent funding source must be identified to support this position and subsidize expenses incurred by parents such as mediator fees. Frequently, the parties that utilize child dependency mediation are financially unable to pay for the mediation services.

C. Involved Parties Should Be Included in the Planning Process Before Implementation and Educated About Permanency Mediation

Once program representatives are in place, the court should educate its judges, attorneys, child protection workers and other representatives of agencies that deal with family cases about the process of mediation and the potential benefits to the stakeholders. This education needs to occur during a planning phase before mediation sessions can begin. The creation of a steering committee of representatives from all parties involved can be helpful to foster support, encourage collaboration, and provide a sense of ownership to the process.

D. Ongoing Efforts Should Be Made by the Program Staff and the Judiciary to Educate Potential Participants about Mediation

Research shows that the participants' ongoing support for the process is a key factor in reaching a settlement. Cases that enter mediation over the objections of one of the participants are less likely to reach agreement. Although initial education about the process and benefits is key, turnover among judges, social services staff, lawyers and other key representatives make it necessary for this mediation education process to continue past the planning phase in order to sustain the mediation program.

E. Mediators Should be Required to Receive Specific Child Dependency Mediation Certification Training

The mediators in this project had varied mediation training background. Some indicated they would have liked more specific training in the mediation of issues involving dependency. Child dependency mediation is a specialized field requiring certain skills to conduct effective mediation. Many states are now requiring mediators to not only have training in mediation techniques, but also training regarding issues and areas important to child protection cases. Certification requirements specific to child dependency cases would help to ensure consistent and comprehensive training.

APPENDIX A

I. Examples of Other Dispute Resolution Models for Child Dependency Cases

A. Family Group Conferences

Family Group Conferences were developed in New Zealand in the late 1980's to involve the extended family in key decisions in abuse and neglect cases in New Zealand. They are managed by New Zealand's child welfare agency, the New Zealand Children and Young Persons Service (NZCYPS). The following information about family group conferencing was obtained from a document from the ABA Center on Children and the Law (1996).

1. Method of Case Referral

Cases may be referred by a number of parties, including a social worker employed by NZCYPS, the police, other governmental organizations concerned with the welfare of children, the courts, and private agencies concerned with the welfare of children, such as child and family support services.

If one of the above-mentioned referral sources determines that a child has been abused or neglected, a referral is made either to the investigative unit of the NZCYPS or to a care and protection coordinator (employed by the NZCYPS) who then organizes and convenes a family group conference, inviting parents, extended family members and selected close friends. Others in attendance include the social worker who conducted the investigation, other professionals such as psychologists and teachers, and the child's attorney (if court proceedings are already underway). Referrals are made directly to the investigative unit of the NZCYPS if further investigation of the allegation of abuse or neglect is thought to be needed, or if the child is in imminent danger.

2. Family Group Conference Components

a. Information Giving Stage

Here the details of the case are explained to the family members by the care and protection coordinator, the social worker, and the other various professionals in attendance. Family members are permitted to ask questions about the case as well.

b. Private Deliberations Stage

All extended family members present at the conference meet privately to determine if the child has actually been abused or neglected and, if so, the manner in which the child should be protected. Sometimes family members will invite professionals to attend parts of the meeting.

c. Decision Stage

The extended family presents its decision to the social worker and the care and protection coordinator. After everyone agrees on the plan, the care and protection coordinator documents the decision and copies are sent to all the involved parties. Included in the plan is the requirement of another meeting of the family group conference participants to review the case.

Legally, the parents, custodians, social workers, care and protection coordinator and the child's lawyer have the right to veto the family's decision, but this rarely occurs. If this does occur, the court will resolve the disagreement.

3. Examples of Family Group Conferencing in the United States

Three models highlighted below follow the general Family Group Conferencing concept developed in New Zealand.

a. The Miami Model Court

The Miami-Dade Juvenile Court first introduced Family Decision-Making Conferences (FMDC) as part of its Miami Model Court project in 1998 to ensure that children are cared for safely and protected from future harm in ways that empower the family and utilize community supports. It is felt that the families have the most information about themselves and are in the best position to make well-informed decisions about the needs of the child. The FMDC generally involves four main phases.

1) Pre-Conference Tasks

The first task is to determine if a case is appropriate for an FDM Conference. The referral to hold an FDM Conference most often originates from the Department of Children and Families (DCF) social worker familiar with

the FDM Conference process. In the Miami Model Court, it was determined that only cases involving sexual abuse in which a parent was not supportive of the child, or egregious abuse cases would be screened out.

Once the referral is made, the family is contacted by the courts, given an informational packet about the FDMC, and asked to agree to the process. If an agreement is obtained, the case is assigned a Family Service Counselor from the court and an FDMC is scheduled within 30-45 days. A Supervisor contacts the family and tells them the name of their Counselor. The Counselor conducts pre-conference discussions with family members to determine which professionals and resource people, such as Guardians ad litem, should be present at the Conference. Additional participants may include relatives, extended family and friends. Social workers and teachers may participate in the Conference, but the parents must approve of all invited participants. The assigned Counselor and Supervisor then hold a “pre-conference staffing” to ensure that all the allegations and issues in the petition will be covered in the FDM Conference.

2) Preparation for the Conference

In this phase, family members, professionals, and other participants are prepared to ensure that the Conference members understand the purpose and goals of the Conference and to reinforce that the primary focus of the Conference is the safety of the child(ren). The goals of the FDMC should be narrowly focused, manageable and realistic. Time should be taken to ensure that goals are clearly articulated to all Conference participants prior to the Conference taking place.

3) The Family Decision-Making Conference (FDMC)

The FDMC involves a discussion among family members, family friends, and professionals about family strengths, concerns about the safety of the child, possible service options and alternatives, and the development of a safety plan. After the introductions of each Conference participant, the Conference Facilitator (the Family Court

Counselor) explains the FDMC process and the purpose(s) of the FDMC and encourages feedback from all participants. The facilitator elicits the family's strengths and weaknesses/concerns from each participant.

Allegations received by the Court must be among the concerns discussed. Then, the family and friends meet alone to review the strengths and concerns of the family. They are to develop workable solutions, addressing each concern. The facilitator, invited professionals and others rejoin the family, and the family presents its plan. If the plan is not realistic or viable, the group continues to work on a plan until a consensus is reached. The parents and facilitator are given a copy of the plan.

4) Post-Conference Tasks

After the Conference, the Family Services Counselor prepares a legal case plan based on the contents of the plan developed in the Conference. Cases are then resolved during the arraignment hearing by dismissal, adjudication, or they are set for trial. If the court accepts the plan and the case is resolved by dismissal, the case is monitored by the Miami Model Court counselor for approximately 30 days for additional support to the family if needed. The Counselor validates the family's progress and prepares a report for the department's records, indicating the family's status prior to closing the case.

b. North Carolina: Family Group Conferences

North Carolina, Family Group Conferences (FGC) are used to provide an opportunity for a family experiencing violence to meet with their relatives (and possibly friends) to make a plan to stop the abuse or other ill-treatment between family members. Referrals originate from organizations such as child protection agencies after an investigation and assessment of the family situation have been completed and a clear care, protection or safety concern has been identified. Families are accepted into the project when key members of the family have agreed to participate in the FGC. An Agreement to Participate is signed by the family members, outlining the terms for participation. A project coordinator then explains the FGC process to the family members, consults with them about who will attend the FGC, prepares family members and professionals who will be attending the FGC for their

roles in the conference, and makes necessary arrangements such as meeting place and time.

1) Holding the FGC

After acknowledgements and introductions have been made, the FGC contains three phases.

a) Phase 1: Information and Advice Giving

Verbal presentations and/or background reports are given in “user friendly” terms and include elements the family needs to address in their plan in order for it to be approved by the sponsoring agency.

b) Phase 2: Private Family Deliberations

In this phase, the family group is provided the opportunity to work out its own plan for stopping the abuse. If the coordinator believes it would be unsafe for family members to be in the room alone, the coordinator may stay.

c) Phase 3: Negotiating a Plan.

After the family has formulated a plan, they call back the coordinator to review it with them and, where necessary, to develop it into a clear plan of action.

2) After the Conference

The project coordinator presents the plan for approval by the investigating authorities at the end of the FGC. If accepted, the referring agency is responsible for monitoring and review of the agreed-upon actions in the plan.

4. Strengths

- The people that know the child best are closely involved with the process.

- Family group conferences put “peer pressure” on the parents to receive counseling and treatment if necessary.
- Utilizing many family members provides professionals with more extensive and reliable information.

5. Weaknesses

- The family could attempt to hide the truth because of embarrassment or fear.
- The family may not know the right questions to ask the professionals and/or may feel intimidated.
- The family may not be a democracy and therefore the conference is controlled by one or two dominant family members.
- The child’s voice may not be heard, despite his or her legal representation being in attendance.
- There may not be adequate follow-up after a decision has been made.

B. Settlement Conference

Settlement conferences are similar to pre-trial judicial settlement conferences. All parties involved negotiate a settlement to the child dependency hearing before the trial begins, but without the services of a mediator (National Council of Juvenile and Family Court Judges, 1995). It is recommended that a settlement conference be held no less than ten days before the scheduled hearing. If ordered by the court, attendance by all the parties involved is mandatory and is thought to encourage the parties to view each other as allies rather than adversaries. Contested hearings can foster an adversarial relationship not conducive to cooperation. In addition, after a contested hearing, parents may be less motivated to work with the child protective agency because they feel the court’s decision was forced on them.

Successful settlement conferences require cooperation and collaboration. All parties must strive to understand each other’s viewpoints and work together to devise a solution that best meets the needs of the child (National Council of Juvenile and Family Court Judges, 1995).

If substantial progress is made but a full agreement is not achieved, a follow-up settlement conference can be scheduled and the start of the trial is delayed. If no agreement is reached, the trial proceeds as scheduled, or the judge can order a judicially supervised settlement conference (National Council of Juvenile and Family Court Judges, 1995). This is useful to clarify issues under dispute, to shorten trial time, or to resolve evidentiary or other legal issues prior to trial. If the case cannot be settled, the judicially-supervised settlement conference's main purpose is to save the court time by determining up front the issues to be decided, experts to be called, and the availability of each witness.

APPENDIX B

I. Successful Child Protection Mediation Models

A. The Wisconsin Unified Family Court Project

As detailed in “Mediated Child Protection Conferencing in Criminal and Civil Child Abuse and Neglect Cases” (Center for Public Policy Studies, 2001), the Wisconsin Unified Family Court Project was created to develop and evaluate the effectiveness of mediated child protection conferencing on child protection cases in two Wisconsin counties. Steering Committees were created that were comprised of various representatives from several justice system agencies that focus on family cases.

Both counties used the filing of a Child in Need of Protection Service (CHIPS) case to trigger eligibility for the pilot project. The project also provided the option of using mediated child protection conferencing on a concurrent criminal child abuse allegation arising out of the same incident, and any other companion case that might affect the resolution of the CHIPS case.

The four major goals of the project were:

- to provide a less adversarial method of handling child abuse and neglect cases to encourage parental cooperation in the resolution of the case and improve parental compliance with any court-ordered treatment programs;
- to expand the use of extended family members in the mediation process to maximize the safety and well-being of the child;
- to decrease the time it normally takes to resolve child abuse and neglect cases; and
- to develop coordinated resolutions of the CHIPS cases and any related criminal cases to avoid conflicting or incompatible resolutions.

The mediated child protection conferences consisted of a minimum of five participants who were required to attend every conference. They included the accused parent, the attorney representing the state in the CHIPS case, the guardian ad litem, the attorney for the accused parent, and a social worker. In many cases there were two parents, two social workers and two attorneys. Therefore, the typical conference had about eight participants plus the mediator. The mediator received specific training in child protection mediation before mediating any cases.

The mediators faced, in these cases, complex issues such as alcohol, other drug abuse problems, or mental health problems. Several of the cases involved families from another culture. Various mediation techniques were used in the conferences. Often mediators met with subgroups, whole groups and individual participants in caucus. The behavior of parents ranged from passive to uncooperative.

The mediators identified some of the challenges they faced in the mediated child protection conference. These included adversarial or obstructive tactics used by prosecutors, guardians ad litem, defense attorneys or social workers that required mediator intervention; parents with cognitive limitations, and concerns about whether young children should be allowed to attend the conference.

The program resulted in the successful resolution of several complex cases and a decrease of case processing time for the criminal cases from 179 days to 53 days. Over 86 percent of all CHIPS cases and over 71 percent of all criminal cases resulted in agreement through the mediated child protection conferencing, with 84 percent of those taking only one session.

B. The Connecticut Juvenile Court

As highlighted in the document, “Mediation of Child Protection Proceedings: The Connecticut Juvenile Court’s Approach,” (Giovannucci, 1999), the Case Status Conference is the Juvenile Court’s judicially sanctioned mediation process for child protection cases. The goals of the Case Status Conference are to reach a settlement that is informed, timely, and consistent with public policy. It should be judicially acceptable, ensure the safety of the child, and aid in the development of a timely and appropriate plan for the child.

Case Status Conferences can be held at any time, but most occur after the preliminary hearing. The judge can direct the parties to meet in a Case Status Conference, or a Conference can be requested by any party involved with the case. The conferences are facilitated by a Court Service Officer (CSO), who is responsible for scheduling and managing the conference process. The CSO receives specific training in child protection mediation before mediating any cases. Other parties involved include a social worker from the Department of Children and Families (DCF), an Assistant Attorney General who legally represents the DCF, the attorney for the parent(s), the attorney for the child, the parent(s), the child (if he or she is able and wishes to attend), the guardian ad litem for the child, and the guardian ad litem for the parent (if the parent is a minor or is incapable of assessing his or her best interests).

The initial Case Status Conference lasts approximately one hour, and other conferences can be scheduled if needed. The Case Status Conference has five distinct stages. The first, Understanding the Current Situation, is attended only by the involved professionals in the case and the Court Service Officer (who attends all the stages). During this stage, an overview of the areas that are most likely to be problematic is discussed.

The second stage, Understanding the Legalities and Understanding and Resolving the Legal Issues Involved, is attended only by the attorneys. In this stage, the goal is to determine the impediments to reaching a tentative agreement about the legal parameters of the case. After this meeting, the attorneys meet with their clients to ensure that the clients accept the legal parameters agreed to in the above-mentioned meeting. The lawyers confirm that the clients have agreed to the legal parameters of the case in the third stage of the Case Status Conference, Confirming the Legal Parameters.

In the fourth stage, Understanding the Family's Social Service Needs, all parties attend to discuss how to best meet the child's and the family's needs in accordance with the agreed-upon legal parameters. Finally, in the fifth stage, Summarizing Agreements and Preparing for the Judicial Review, all parties are present to ensure there are no misunderstandings and that the agreements are workable.

Each year, at least half of all cases filed are diverted from litigation (Giovannucci, 1999). Generally, it is concluded that one of the main differences between mediated and non-mediated cases in Connecticut is that mediated cases result in the parents and children receiving appropriate services and increase the likelihood of compliance with those services. Even cases that do not result in a mediated agreement can benefit from the mediation process by it helping to narrow the issues which will be taken up at trial.

C. Florida's Child Dependency Mediation

An article by Gregory Firestone (1996) highlights Florida's child dependency mediation program. Florida utilizes a multi-party mediation process that can include the following participants: parents, relatives, Health and Rehabilitation Services (HRS) counselors and investigators, the guardian ad litem (GAL), non-relatives caring for the child, and the attorney of some or all of the above-mentioned parties. Any of the participants can request a court-referral to mediation, and this can occur at any stage in the dependency proceeding. Florida is considered to have some of the most stringent guidelines regarding child dependency mediator qualifications. To become a certified dependency mediator in Florida, an applicant must fulfill the following requirements:

- complete a Supreme Court certified dependency mediation training program of 40 hours if the applicant is not a certified family mediator who has completed at least four dependency cases (20 hours if the applicant fulfills this requirement);
- have a master's degree in social work, mental health, behavioral sciences or social sciences, or be a physician licensed to practice adult or child psychiatry or pediatrics, or be a licensed attorney;
- have four years experience in family and/or dependency issues or be a licensed mental health professional with at least four years practical experience; and
- observe four dependency mediations conducted by a certified dependency mediator and conduct two supervised dependency mediations.

Cases that typically involve mediation include child placement issues, visitation, evaluation and treatment/intervention needs for the parents and children, possible reunification of the family, and adjudication of dependency. Mediation may last two to four hours or more because of the large number of participants and issues to be discussed. In Florida, statewide statistics revealed that as high as 86 percent of mediated child permanency cases resulted in agreement.

APPENDIX C

Location _____

CLIENT EVALUATION OF MEDIATORS AND MEDIATION

Please take a moment to complete the following survey. This information will be used to inform the court system and the mediator(s) about your experience with mediation. With your help, we can ensure that quality mediation services continue to be available to the citizens of the Commonwealth. This information may be shared with the mediator(s).

I. Background Information

Today's date: ____/____/____ Sex: Male___ Female___ Age:_____
Month Day Year

Race: White, Non-Hispanic _____ Hispanic _____ Native American _____
African-American _____ Asian/Pacific Islander _____ Other (specify) _____

What is your relation to the child(ren) that was involved with this court proceeding?

Mother _____ Father _____ Other relative (specify)_____ Other (specify) _____

II. Mediator Information

Please rate your mediator(s) on the following:

5 = Very Good 4 = Good 3 = Adequate 2 = Unsatisfactory 1 = Poor 0 = Does not apply

Do you feel that the Mediator...

	Mediator A	Mediator B
1. Explained the mediation processes and procedures?	5 4 3 2 1 0	5 4 3 2 1 0
2. Provided useful information?	5 4 3 2 1 0	5 4 3 2 1 0
3. Listened to my concerns and thoughts?	5 4 3 2 1 0	5 4 3 2 1 0
4. Allowed me to talk about issues that were important to me?	5 4 3 2 1 0	5 4 3 2 1 0
5. Was respectful?	5 4 3 2 1 0	5 4 3 2 1 0
6. Helped clarify issues?	5 4 3 2 1 0	5 4 3 2 1 0
7. Encouraged us to come up with our own solutions?	5 4 3 2 1 0	5 4 3 2 1 0
8. Informed me that I could consult an attorney? _____ yes _____ no		
9. Was neutral? _____ yes _____ no		
10. Wrote our agreement clearly and accurately? _____ yes _____ no _____ does not apply		

PLEASE TURN OVER PAGE TO COMPLETE SURVEY

III. Mediation Process

For the following questions, please circle your ratings of the mediation process.

5 = Much better; 4 = Better; 3 = Same; 2 = Worse; 1 = Much worse.

<u>After mediation, your:</u>	Much Better	Same	Much Worse		
11. Custody arrangements are	5	4	3	2	1
12. Visitation arrangements are	5	4	3	2	1
13. Child support arrangements are	5	4	3	2	1
14. Relationship with your children is	5	4	3	2	1
15. Children's relationships with the other parent is	5	4	3	2	1
16. Relationship with the children's other parent is	5	4	3	2	1
17. Communication with the children's other parent is	5	4	3	2	1
18. Conversations about discipline with the children's other parent are	5	4	3	2	1
19. Children's feelings about you are	5	4	3	2	1
20. Children's feelings about themselves are	5	4	3	2	1
21. Children's behavior is	5	4	3	2	1

Please complete the following questions.

Total number of hours spent in your mediation session(s): _____ Number of sessions: _____

Your mediation ended with an agreement on (check one): _____ all of the issues _____ some _____ none

Would you use mediation again (check one)? _____ yes _____ no

Would you recommend mediation to others (check one)? _____ yes _____ no

Please use this space (and the back of this page if necessary) to share any addition comments on the mediation process and the mediator(s): _____

Please return this form to the Mediator or Program Director before you leave. Thank you.

APPENDIX D

DEPENDENCY MEDIATION SUMMARY FORM

- 1. Case Number: _____
- 2. Date of abuse/neglect or other dependency case filing: _____ / _____ / _____
- 3. Date of first mediation session: _____ / _____ / _____
- 4. Date mediation concluded: _____ / _____ / _____
- 5. # of sessions _____ and total # of hours spent in session(s) _____.
- 6. Parties attending at least part of the session (please circle all applicable):

- 1 – Mother
- 2 – Father
- 3 – Child(ren)
- 4 – Other family/friend(s)
- 5 – GAL
- 6 – Commonwealth 's Attorney
- 7 - Foster Parent
- 8 – Attorney for mother
- 9 – Attorney for father
- 10 – Counsel for Social Services
- 11 – Child Protection Worker
- 12 – Other Court staff: _____
- 13 – Other Social Services staff: _____
- 14 - Other: _____

7. Did the same attorney(s) represent the parents in a companion criminal case to this case?

	Yes	No
1. Mother	1	2
2. Father	1	2

CASE CHARACTERISTICS

Characteristics of the triggering abuse/neglect or other dependency case

8. Nature of alleged maltreatment or other dependency issue (please circle all that apply):

- 1 – Physical
- 2 – Sexual
- 3 – Neglect
- 4 – Inadequate housing
- 5 – Abandonment
- 6 – Emotional
- 7 – Caretaker inability to cope
- 8 – Alcohol abuse by a parent
- 9 – Child’s behavior problems
- 10 – Drug abuse by parent
- 11 – Relinquishment
- 12 – Incarceration of parent
- 13 – Other: _____

9. Was the child out of the home when mediation took place?

- 1 – Yes
- 2 – No
- 3 – Can’t determine

10. If you answered "yes" to question 9, how long was the child out of the home?

1 – 6 months or less 2 – 1 to 2 years 3 – 2 or more years

11. If you answered "yes" to question 9, was the placement with:

1 – Relative

2 – Foster home

3 – Group home

4 – Other (please specify) _____

5 – NA, child/children are at home

12. Relationship of alleged perpetrator(s) to child or children:

1 – mother

4 – stepmother

2 – father

5 – boyfriend of mother

3 – stepfather

6 – other: _____

13. Number of children involved in the case: _____

14. Date of birth (DOB) of each child involved in the case:

Child #1 a. Male _____ b. Female _____ DOB: ___/___/___

Child #2 a. Male _____ b. Female _____ DOB: ___/___/___

Child #3 a. Male _____ b. Female _____ DOB: ___/___/___

Child #4 a. Male _____ b. Female _____ DOB: ___/___/___

Child #5 a. Male _____ b. Female _____ DOB: ___/___/___

15. Number of children not involved in the case: _____

16. Does the family have a prior history of abuse/neglect or dependency referrals?

1 – Yes

2 – No

3 – Can't determine

17. Are any of the following issues present in the case?

	Mother	Father	Child	Other
1. Americans with Disability Act issues	1	2	3	4
2. Mental Health	1	2	3	4
3. Substance Abuse	1	2	3	4
4. Domestic Violence	1	2	3	4
5. Homelessness	1	2	3	4
3. Other? _____	1	2	3	4
4. Other? _____	1	2	3	4

Characteristics of other pending cases before the courts (if any) and whether they were addressed during this session

18. Were any of the following cases pending for the family involved in the mediation hearing, and were these other cases addressed during the mediation?

Case Pending? (check all that apply)

Case Addressed in Mediation?

Yes No

- a. Other child protection case(s)? ___
- b. Divorce case? ___
- c. Child custody case? ___
- d. Child abuse felony case? ___
- e. Domestic violence case? ___
- f. Delinquency case? ___
- g. Other felony case? ___
- h. Other non-felony case? ___
- i. Other: _____

CHARACTERISTICS OF THE MEDIATION HEARING SESSION

19. What formats were used during the session?

1- Large groups?

2- Subgroups? List composition of small group(s)

1. _____

2. _____

3. Caucus? List individuals seen in caucus

1. _____

2. _____

20. What special techniques or interventions were used during the session?

21. Were the following issues discussed in the mediation session?

Yes

No

A – Whether the child or children were abused or neglected?

B – Should the child be out of the home?

C – How visitation will occur?

D – Nature of out-of-home placement?

E – Services needed by perpetrator?

F – Services needed by child/children?

G – Services needed by other family members?

H – Consolidation of services?

I – Termination of parental rights?

J – Adoption issues?

K – Other: _____

MEDIATION HEARING OUTCOMES

22. Was an agreement produced?

1 – Full agreement

2 – Partial agreement

3 – No agreement

23. Provide a brief description of the agreement (Please use question 21 as a guide)

24. Did cultural issues affect the mediation process? (i.e. were participants from diverse cultural backgrounds)

1 – yes

2 – no

25. If you answered yes to question 24, how did it affect the mediation?

26. Additional comments:

TIME LINE AND RELATED FORMS

JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

CHILD ABUSE, NEGLECT AND FOSTER CARE CASES

PROCESSES

Hearing Type	Ex Parte Hearing for Preliminary Child Protective Order Emergency Removal	Hearing for Preliminary Child Protective Order Preliminary Removal & Adjudication	Disposition (Initial foster care plan reviewed.)	Foster Care Review	Initial Permanency Planning (PPH) (Plan goal to be achieved.)	Termination of Parental Rights (If no TPR at Initial PPH.)	Second Permanency Planning (If interim plan approved at Initial PPH.)	Review of Foster Care (If legal custody with public or private agency after permanent goal is ordered.)	Adoption Progress Report (Filed until final order of adoption; hearing on motion.)
Statute	§ 16.1-253 § 16.1-251	§ 16.1-253 § 16.1-252	§ 16.1-278.2 § 16.1-281 § 16.1-277.01 § 16.1-277.02, 278.3	§ 16.1-282	§ 16.1-282.1 § 16.1-281 B § 16.1-283	§ 16.1-283	§ 16.1-282.1	§ 16.1-282.1 A2 § 16.1-282.2	§ 16.1-277.01 E; -277.02 D; 278.3 E § 16.1-283
Timing	Upon Filing of Petition (ERO) In Any Matter (PPO)	Within 5 days after removal. Adjudicatory hearing within 30 days, if no for relief of adjudication at preliminary removal hearing (or upon issuance of PPO with abuse or neglect petition).	Within 75 days of PRO, PPO with abuse or neglect petition, or initial hearing of custody; or to dispose of child at-risk; or Within 45 days (75 for Order of Publication) of filing of petition for approval of entrustment agreement.	Within 6 months of dispositional hearing on initial foster care plan.	Within 5 months of Foster Care Review or within 30 days of finding reasonable efforts to reunite are not required. (Petition for TPR may be filed, after filing of plan documenting TPR is in child's best interest.)	Upon filing of Petition (after filing of plan documenting TPR is in child's best interest).	Within 6 months of Initial Permanency Planning Hearing.	6 months from approving APPLA; or within 12 months of ordering: permanent foster care; independent living; or permanent goal w/TPR. (Adoption Progress Report reviewed, if plan is adoption.)	Filed every 6 months from date of final order terminating parental rights.

FORMS

In Any Matter	Preliminary Child Protective Order (PPO) (DC-527)	Preliminary Child Protective Order (PPO) (DC-527)	Child Protective Order (DC-532)						
Petition (DC-511)	Emergency Removal Order (ERO) (DC-526)	Preliminary Removal Order (PRO) (DC-528)	Foster Care Plan Transmittal (all plans) (DC-552)	Petition for Foster Care Review Hearing (DC-554)	Petition for Permanency Planning Hearing (DC-556)	Petition for Termination of Residual Parental Rights (DC-511)	Petition for Permanency Planning Hearing (DC-556)	Petition for Foster Care Review (DC-554)	Adoption Progress Report (DSS Form)
Abuse/Neglect		Adjudicatory Order for Abuse or Neglect Cases (DC-561)	Dispositional Order for Underlying Petition, Foster Care Plan (DC-553)	Foster Care Review Order (DC-555)	Permanency Planning Order (DC-557)	Order for Involuntary Termination of Residual Parental Rights (DC-531)	Permanency Planning Order (DC-557)	Foster Care Review Order (DC-555)	
Risk Abuse/Neglect				Supplement to Order Transferring Custody (DC-559)	Petition for Termination of Residual Parental Rights (DC-511)	Supplement to Order Transferring Custody (DC-559)	Petition for Termination of Residual Parental Rights (DC-511)	Adoption Progress Report (DSS Form)	
Approval of Entrustment Agreement			Entrustment Agreement (DSS Form)		Order for Involuntary Termination of Residual Parental Rights (DC-531)		Order for Involuntary Termination of Residual Parental Rights (DC-531)		
Relief of Custody			Order for Voluntary Termination of Residual Parental Rights (DC-534)		Permanent Foster Care Placement Agreement (DSS)		Permanent Foster Care Placement Agreement (DSS)		
CHINS (Serv/Sup) Status/Delinquency		Order for Custody Supplement to Order Transfer to Agency Transferring Custody (DC-562) Child enters foster care dispositionally, §16.1-278.4, .5, .6, or .8.			Permanent Foster Care Placement Order (DC-558)		Permanent Foster Care Placement Order (DC-558)		
Affidavit (UCCJEA) (DC-620, 621) With dependency case filings.		Acknowledgement of Notice of Next Hearing Date (DC-508) Any hearing when setting next hearing date.			Supplement to Order Transferring Custody (DC-559)		Supplement to Order Transferring Custody (DC-559)		