

2011

PPCD RESEARCH REPORT

KING COUNTY MEDIATION PROGRAM ASSESSMENT

PHASE II



Permanency Planning for Children
Department
National Council of Juvenile and Family
Court Judges
7/6/2011



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

est. 1937

The National Council of Juvenile and Family Court Judges® (NCJFCJ) headquartered on the University of Nevada campus in Reno since 1969, provides cutting-edge training, wide-ranging technical assistance, and research to help the nation's courts, judges, and staff in their important work. Since its founding in 1937 by a group of judges dedicated to improving the effectiveness of the nation's juvenile courts, the National Council of Juvenile and Family Court Judges (NCJFCJ) has pursued a mission to improve courts and systems practice and raise awareness of the core issues that touch the lives of many of our nation's children and families.

For more information about the NCJFCJ or this report, please contact:

National Council of Juvenile and Family Court Judges
Permanency Planning for Children Department
University of Nevada
P.O. Box 8970
Reno, Nevada 89507
(775) 327-5300
www.ncjfcj.org
caninfo@ncjfcj.org

©2011, National Council of Juvenile and Family Court Judges

Mari Kay Bickett, J.D., Executive Director, National Council of Juvenile and Family Court Judges

Nancy B. Miller, Director, Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges

Report Contributors

Alicia Summers, Ph.D., Research Associate, Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges

Josh Padilla, M.A., Research Associate, Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges

Steve Wood, M.S., Research Associate, Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges

Jennifer McClellan, Administrative Assistant, Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges

Jesse Russell, Ph.D., Research Program Manager, Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges

EXECUTIVE SUMMARY

King County Mediation Program

The King County Juvenile Court implemented a Mediation Pilot Program for juvenile dependency cases in 2009 in an effort to improve efficiency of case processing. The Mediation Pilot Program offers mediation prior to adjudication to families coming in to the dependency court system in order to help resolve issues related to child abuse and neglect. The goal is to allow parties to reach agreement regarding allegations, recommended services, placement, visitation and general case planning in a non-confrontational and supportive environment. The Mediation Pilot Program began in 2009 with case referrals from one Department of Children and Family Services office to the King County Juvenile Court in Seattle, WA, and expanded near the end of 2009 to include cases referred from the Department of Children and Family Services office to Maleng Regional Justice Center in Kent, WA. In early 2010, a preliminary assessment of the pilot project was completed. The Phase I assessment included data collection on a sample of 50 cases (22 mediated and 28 non-mediated cases) that had progressed through adjudication. *Phase I found:*

Mediation improves timeliness of adjudication

Mediation reduces judicial workload because mediated cases tend to have fewer hearings

Mediated cases result in more services offered to mothers but not to fathers

Mediation does not appear to influence case compliance by the time the first review is held

Expanding to Phase II

The results of Phase I of the mediation pilot program study demonstrated that mediation is a useful tool for improving the efficiency of case processing. However, Phase I was limited in scope. The assessment only consistently included case information through completion of the adjudication hearing and only compared a small number of cases. Phase II of the study expands upon Phase I findings by adding additional cases to the sample and following cases through the permanency hearing and case closure (when applicable) in order to examine the long-term effects.

This assessment reports statistical significance where appropriate.¹ It is important to note differences in mediated cases and non-mediated cases may very well reflect important trends even if they are not significant. *Phase II found:*

Mediation increases timeliness of early case processing

Mediation reduces workload early in the case

Mediated cases are more likely to reach agreement

Children in mediated cases are more likely to be placed with a relative as opposed to placed in foster care at the review and permanency hearings

¹ Researchers typically consider findings statistically significant if the differences between the mediated and non-mediated groups were unlikely to have occurred due to chance alone. For this assessment, results are considered significant when $p \leq .10$.

Mediation Studies

Mediation is a practice of alternative dispute resolution involving a neutral third-party who facilitates discussion among parties, works with parties toward resolving contested case issues, and helps expedite case processing (Stack, 2003). The job of mediators is not to make decisions; rather, their job is to help the involved parties work together to reach an amicable case resolution (Coleman & Ruppel, 2007). When first introduced in the juvenile dependency court system, some judicial stakeholders were apprehensive (Edwards, 2009). However, publication of the *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (National Council of Juvenile and Family Court Judges [NCJFCJ], 1995) drew national attention to the use of mediation, identifying alternative dispute resolution as a “best practice” in child abuse and neglect case processing. Judges then began communicating with one another about the benefits of mediation and implementing it in their own jurisdictions (Edwards). The use of mediation has also been encouraged by the Department of Health and Human Services as an accepted alternative to adversarial court hearings (Duquette, Hardin, & Dean, 1999).

Mediation provides an effective and efficient way to address core child protection case issues (Dobbin, Gatowski, & Litchfield, 2001; Thoennes, 1997). This improved efficiency can be seen across several facets of the dependency process. First, mediation can decrease the time between key court events, such as hearings and reviews. Research findings on mediation and timeliness, however, are mixed. In some instances, mediated cases reach adjudication and disposition faster than non-mediated cases, but did not reach permanency more quickly (Gatowski, Dobbin, Litchfield, & Oetjen, 2005). Conversely, in another study, mediated cases took longer to reach disposition, but took shorter times to reach permanency than non-mediated cases (Center for Policy Research, 1999). Other studies of timeliness found that mediated cases resolve earlier as compared to non-mediated cases (Institute for Families in Society, 2003; Office of the Executive Secretary of the Supreme Court of Virginia, 2002). As the literature on child protection mediation is still developing, these differences are to be expected and may be explained by a variety of reasons: timing and reasons for mediation, differing samples, location specific practices, or differences in analytic methodology, for example.

Mediation may improve case process efficiency by reducing the number of case hearings and thereby reducing judicial workload. Mediation may serve as a means of resolving contested case issues without a lengthy hearing or trial. Statistics indicate, on average, between 60 to 80 percent of mediated cases reach full agreement and 90% or higher reach some form of agreement (Kathol, 2009; Kelly, 2004;

Office of the Executive Secretary of the Supreme Court of Virginia, 2002; Resolution Systems Institute, 2010; Thoennes, 2001; Trosch, Sanders, & Kugelmass, 2002). Some settlements occur within one or two mediation sessions, reducing the need for protracted legal proceedings (Kathol, 2009; Office of the Executive Secretary of the Supreme Court of Virginia; Thoennes, 2000). In one study, mediated cases were less likely to require a contested six-month review hearing (Thoennes, 1997).

Mediated cases may also reduce the number of hearings by reducing the number of continuances. Most cases set for trial will experience at least one case continuance (Thoennes, 2000), but, mediated cases may be able to reduce or eliminate this number by eliminating the need for contested hearings. This assertion is speculative though, as empirical research on continuances in mediated cases is limited.

Sixty-two percent (62%) of parents who participated in mediation were found to be in compliance with the case plan compared to 41% of parents who did not participate.

Mediation may also increase efficiency by better engaging parents in the process. The use of mediation as an alternative dispute resolution technique provides a means of resolving case issues in a respectful and open forum as opposed to the adversarial atmosphere often found in contested hearings. As such, mediation offers many advantages to the families involved in the court process. Mediation may increase parental engagement in the juvenile dependency process. In surveys, parents have indicated that they had more time to talk about important issues and said that they felt that others listened and understood what they said (Coleman & Ruppel, 2007; Thoennes, 2001). Parents who feel like they are more engaged in the process may be more likely to comply with services because they feel like they have a voice in treatment decisions (Airey, 1999). Therefore, mediation may also improve parent compliance with court-ordered services. In a Santa Clara County mediation study, 45% of mediated cases had findings of full parental compliance and 44% had findings of partial compliance (Thoennes, 2001). In comparison, non-mediated cases had findings of full compliance in only 16% and partial compliance in only 28% of the cases (Thoennes). In a Colorado study comparing 146 mediated cases to 48 comparable cases, 62% of parents who participated in mediation were found to be in compliance with the case plan compared to 41% of parents who did not participate (Center for Policy Research, 1999).

Finally, mediation may improve cost efficiency for the court. Given current budget constraints, some courts are seeking alternative techniques to help reduce administrative costs. Mediation is one such technique that can facilitate resolutions that are more economical. In California, estimates of the financial benefit of mediation compared to normal case processing indicated that mediation could save

the state millions of dollars (Stack, 2003). Thoennes (1998) found that sending one case to mediation every day would create an annual savings of \$545,225 for San Francisco when considering the added

Mediation can save states upwards of 39% per case.

cost of subsequent contested review hearings. Other researchers suggest that mediation can save states upwards of 39% per case (Thoennes, 1999, 2002). Stakeholders perceive increased savings due to the reduced amount of time and money being spent preparing for contested hearings (Edwards & Santa Clara Model Court Team Members, 2002; Resolution Systems Institute, 2002; Thoennes, 2001). In sum, research indicates that mediation is a valuable tool for engaging parents and can improve court efficiency.

King County Mediation Program

The King County Superior Court implemented a Mediation Pilot Program for juvenile dependency cases in 2009 in an effort to improve efficiency of case processing. The Mediation Pilot Program offers mediation to families coming in to the dependency court system prior to adjudication in order to help resolve issues related to child abuse and neglect. The goal is to allow parties to reach agreement regarding allegations, recommended services, placement, visitation and general case planning in a non-confrontational and supportive environment. The Mediation Pilot Program began in 2009 with case referrals from one Department of Children and Family Services office to the King County Juvenile Court in Seattle, WA, and expanded near the end of 2009 to include cases from the same DCFS office that were heard at the Maleng Regional Justice Center in Kent, WA.

Study Overview

In early 2010, a preliminary assessment of the mediation pilot project was completed. The Phase I assessment included data collection on a sample of 50 cases (22 mediated and 28 non-mediated cases) that had progressed through adjudication. The results of Phase I of the mediation pilot program study demonstrated that mediation is a useful tool for improving the efficiency of case processing. However, Phase I was limited in scope. The assessment only consistently included case information through completion of the adjudication hearing and only compared a small number of cases. Phase II of the study expands upon Phase I findings by adding additional cases to the sample and following cases through the permanency and case closure (when applicable) in order to examine the long-term effects. The assessment of the mediation program was designed to determine the effects of mediation on timeliness, workload, parental engagement, and case outcomes. In addition, researchers recorded race

of the child in order to determine if the effect of mediation varied by race. Specific research questions are postulated below.

Timeliness. *Does mediation positively influence timeliness?*

- Does mediation decrease time from petition to case resolution?
- Does mediation decrease time from resolution (i.e., adjudication) to permanency hearing?
- Does mediation decrease time from petition filing to case closure?

Workload. *Does mediation positively influence workload?*

- Does mediation result in fewer continuances
- Does mediation result in fewer hearings
- Does mediation result in more agreement?

Engagement. *Does mediation result in better engagement of parties?*

- Does mediation affect the number of services ordered for parents?
- Does mediation increase parents' compliance with court ordered services?
- Does mediation increase parents' participation in court hearings?

Outcomes. *Does mediation result in better outcomes for children?*

- Does mediation result in better permanency outcomes for children?
- Does mediation affect placement of the child?

Race. *Are there any race differences in the effectiveness of mediation?*

Method

For Phase II of the Mediation evaluation, researchers began with the 50 cases that were identified in Phase I and used a standardized case file review form to follow the cases to closure (when applicable). Researchers also selected an additional 25 mediated cases and 25 non-mediated cases opened in 2010. The mediated cases were identified from a list of mediated cases. Researchers selected the first 25 new (*i.e.*, that were not included in the Phase I assessment) mediated cases. For the non-mediated cases, researchers received a list of cases with a petition filed in 2010 and randomly selected 25 cases. All cases were coded for variables related to workload, timeliness, engagement, and outcomes. The Department provided information on the race of the child for all of the cases.

This assessment reports statistical significance where appropriate.² It is important to note differences in mediated cases and non-mediated cases may very well reflect important trends even if they are not significant.

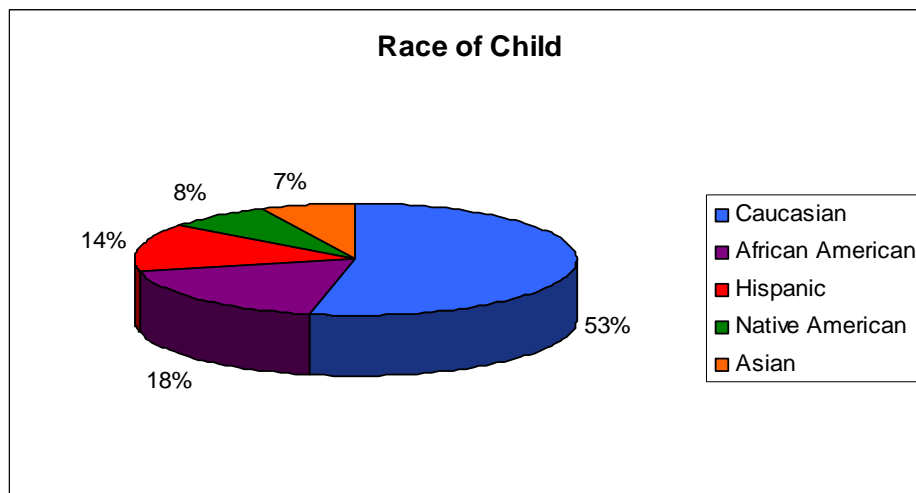
Results

Comparability of the Two Groups

The mediated and non-mediated groups in this sample did not show any notable differences in case types with similarities in allegations, initial placements, and presence of parties at the initial hearing. The similarity between the two groups indicates that outcome comparisons are more likely to be valid.

Case Demographics

The final sample for the current study compared 58 non-mediated cases (56%) to 45 mediated cases (44%). Of the mediated cases, 63% reached full agreement, 20% reached partial agreement and 17% did not reach agreement. Across all cases, the average age of the child on the case was 6, with an equal number of male and female children. The majority of cases involved Caucasian children (53%), followed by African American (18%), Hispanic (14%), Native American (8%), and Asian (7%) children. The most common presenting problem in the case was substance abuse, which occurred in 48% of cases. There was no difference in the case demographics between mediated and non-mediated cases.



² Researchers typically consider findings statistically significant if the differences between the mediated and non-mediated groups were unlikely to have occurred due to chance alone. For this assessment, results are considered significant when $p \leq .10$.

Timeliness

Mediation appears to have a positive effect on hearing timeliness. The study calculated timeliness outcomes based on the date the adjudication hearing was *held* in comparison to the date *scheduled* at the first hearing (at the 72 hour shelter care hearing, the case is scheduled for its subsequent hearings up through adjudication). On average, mediated cases reached adjudication approximately 6 days *before* the scheduled date, and non-mediated cases reached adjudication 9 days *after* the scheduled date. This finding is statistically significant.

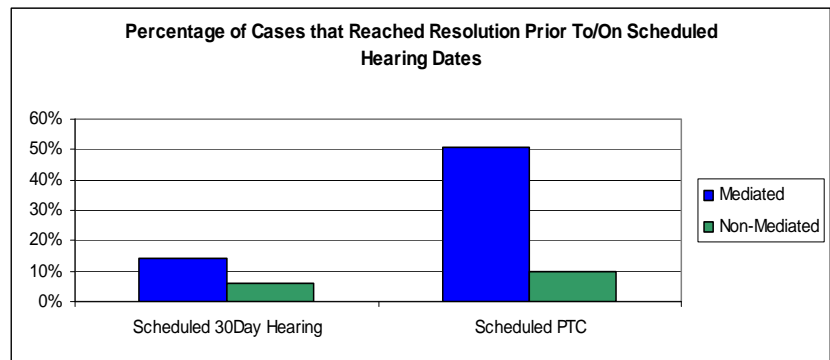
Researchers also calculated timeliness outcomes from petition filing to adjudication. Washington statute requires that cases reach adjudication within 75 days of the petition filing (Washington Rev. Code § 13.34.070). Of the study sample, 84 percent of mediated cases reached adjudication within this period, compared to only 66 percent of non-mediated cases.

In contrast, mediation had no effect on time to permanency hearing. However, the majority of both mediated (95%) and non-mediated (100%) cases held a permanency hearing within 12 months of out of home care, as statutorily required. On average, mediated cases held a permanency hearing within 240 days of adjudication, non-mediated cases held a permanency hearing within 219 days of adjudication.

Workload

Mediation also appeared to affect workload in a positive way. Mediated cases had fewer continuances, on average, across the life of the case (1.1) compared to non-mediated cases (1.8). Mediation also seemed to reduce the number of hearings. Fourteen percent of mediated cases had achieved case resolution prior to or on the same day as the scheduled 30-day hearing, which eliminated the need for some future hearings. For non-mediated cases, only 6% reached case resolution before the scheduled 30-day hearing.

Further, 51% of mediated cases reached case resolution (i.e., achieved adjudication order) prior to or on the same day as the scheduled pre-trial conference. This number was



five times greater than the 10% of non-mediated that achieved case resolution prior to the scheduled pre-trial conference.

Agreement/Stipulation

The evaluation also examined agreement/stipulation rates. Case resolution³ is achieved in one of two ways: (1) parties come to a stipulated agreement whereby the charged party agrees to the allegations (all or part depending on the agreement), or (2) the case must be heard at a contested trial by a judge after which the judge decides whether some or all of the allegations are true or whether to dismiss the case. Cases that result in an agreement do not require a fact-finding hearing where all parties must participate; instead, the judge reviews and signs the agreed orders. Phase II results indicated that mediated cases were significantly more likely to have agreed orders for adjudication. Specifically, in 93 percent of the mediated cases, parties came to an agreement on case allegations and service plan compared to 67 percent of the non-mediated cases. Stated another way, only 7% of mediated cases went to trial, whereas, 33% of non-mediated cases resulted in a contested trial.

Engagement

Number of Services Ordered. The number of services ordered for mothers tended to differ for mediated and non-mediated cases. In the mediated cases, the ordered service plan included an average of nearly four services for the mother. In the non-mediated cases, the ordered service plan included an average of just under three services for the mother. Given that case and allegation characteristics were similar for mediated and non-mediated cases, it appears that mediation alone contributed to more services being ordered for mothers.

Services for fathers, in contrast, were not noticeably different between the mediated and non-mediated groups. In the mediated cases, the ordered service plan included an average of one service for the father, and similarly for non-mediated cases the ordered service plan included an average of just over one service for the father.

Compliance Findings. Compliance was measured by examining a judicial finding of no, partial or full compliance at the first review and permanency hearings. The mediated and non-mediated groups did not show any major differences in case plan compliance at the review or permanency hearing.

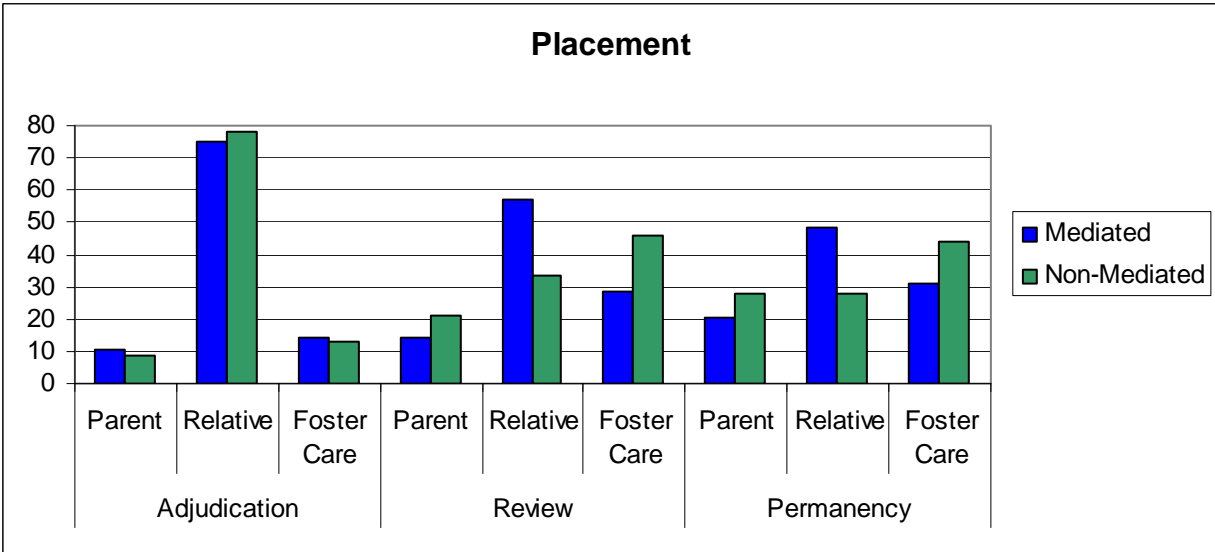
³ For this study, researchers only examined the first parent to reach case resolution and coded that parent's fact-finding for date and agreement.

Researchers used a regression model to estimate the influence of mediation, services ordered, and parents' presence on a finding of compliance with the court-ordered case plan. As to compliance findings for mothers and fathers, mediation did not have a statistically significant effect on the likelihood of a compliance finding by the judge. However, for the mothers, the number of services ordered was a strong *negative* predictor of a compliance finding. That is, findings of compliance were *less* likely for mothers who were ordered *more* services. In addition, findings of compliance were *more* common for mothers with *fewer* services. This was true for both the mediated and non-mediated groups. This finding is significant at the 0.05 level.

Participation in Hearings. Another means of assessing effectiveness of engaging parties is to examine presence of the parties at key court hearings. For this assessment, presence of the parties at the 72 hour shelter care, 30 Day shelter care, adjudication (when not agreed upon), first review, and first permanency hearing were coded. A percentage of time present variable was calculated based on the number of times the parent appeared at a hearing divided by the number of key hearings that occurred. Percentages ranged from 0 to 100%. Overall, mothers appeared at 67% of the hearings and fathers appeared at 41% of the hearings. Mothers' presence was identical for mediated and non-mediated cases. Fathers' presence was slightly higher for mediated cases (43%) as compared to non-mediated cases (38%). This difference was statistically significant.

Outcomes

Children's Placement. Mediation appears to have some effect on children's placement, particularly in terms of relative placement at the review and permanency hearing stage of the case. Children with mediated cases were more likely to be in relative placements, and less likely to be in non-relative foster care than children with non-mediated cases. These numbers approached (but did not quite achieve) statistical significance, but do demonstrate a consistent trend.

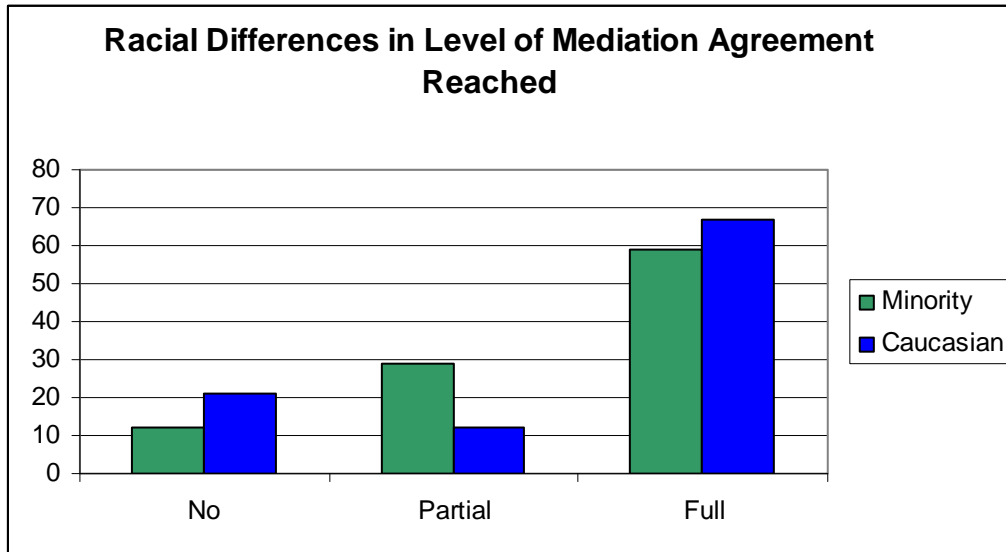


Case Outcomes. Only 27 (out of 103) cases had reached case closure at the time of the assessment. Of these closed cases, mediated cases and non-mediated cases did not differ significantly in case outcomes. The majority of both case types that had reached case closure, closed due to reunification with the parent. An assessment of safety (measured as a new petition filed following the original petition) found no difference in mediated and non-mediated cases. Because the sample size of cases that had achieved case closure was so small, it is impossible to examine any differences statistically.

Race

The racial make-up of the mediated and non-mediated cases was similar. A race variable was included in all of the analyses that compared White/Caucasian children to minority children.⁴ Results from the analyses revealed that there were no racial differences in the effectiveness of mediation. That is, both Caucasian and minority families had similar outcomes on the above analyses. One small (non-significant) difference did appear. Caucasian families were slightly more likely to not reach agreement in mediation; whereas, minority families were more likely to come to partial (instead of full) agreement in mediation.

⁴ Race could not be examined by each racial group separately because of the small number of cases.



Implications

The King County Juvenile Court Mediation Pilot Program findings suggest that mediation has a positive effect on timeliness and judicial workload. Mediated cases reached adjudication faster, and tended to result in fewer hearings because they reached stipulated adjudication prior to scheduled 30-day, pre-trial, or adjudication hearings. Ultimately, the result was that that judges held fewer hearings.

The King County Juvenile Mediation Program offers improved efficiency of case processing without any detriment to effectiveness.

Mediation also appears to positively influence placement. Mediated cases have more relative placements and fewer foster care placements at review and permanency than non-mediated cases. This may suggest that mediation results in greater discussion of potential relative placements, which increases the probability that a child can be placed in a more familiar relative placement as opposed to stranger foster care placements.

Conclusion

Results of this assessment indicate that mediation is effective in increasing timeliness of case

processing early in the case, thereby reducing the workload of judges and commissioners in King County. Mediation does not appear to have long-term effects on the hearing timeliness in the case, at least not in terms of timeliness to review or permanency hearings. It does appear that mediation affects placement at review and permanency hearings, resulting in more relative placements and fewer foster care placements. However, no differences were found in timeliness to permanency or compliance with the case plan. While this indicates no detriment to the effectiveness of mediation, it is not consistent with other mediation studies that note a marked improvement in compliance. We believe this may be a result of individual differences in perceptions of the mediation process. The next phase in this research has already begun. Phase III examines differences in perceptions of mediation. Parents are surveyed at the conclusion of the mediation process and asked questions concerning their engagement in and satisfaction of the mediation process. Other stakeholders are also surveyed to determine their perception of the mediation process. This assessment will allow researchers a more in-depth examination of parents' engagement in the mediation process and will also allow for further analyses to determine if engaged parents have different outcomes than those who are less engaged (*i.e.*, better case outcomes, increased case plan compliance, reduced re-entry into care).

References

- Airey, P.L. (1999). It's a natural fit: Expanding mediation to alleviate congestion in the troubled juvenile court system. *The American Academy of Matrimonial Lawyers*, 16, 275-292.
- Center for Policy Research (1999). *Dependency mediation in Colorado's Fourth Judicial District*. Denver, CO: Center for Policy Research.
- Coleman, R., & Ruppel, J. (2007). *Child permanency mediation pilot project: Mutli-site process and outcome evaluation study*. New York: New York State Office of Children and Family Services.
- Dobbin, S., Gatowski, S., & Litchfield, M. (2001). *The Essex County child welfare mediation program: Evaluation results and recommendations*. Reno, NV: National Council of Juvenile and Family Court Judges.
- Duquette, D. N., Hardin, M., & Dean, C. P. (1999). *Adoption 2002: The president's initiative on adoption and foster care. Guidelines for public policy and state legislation governing permanency for children*. Washington, D.C.: The National Clearinghouse on Child Abuse and Neglect.
- Edwards, L., & Santa Clara Model Court Team Members (2002). Mediation in juvenile dependency court: Multiple perspectives. *Juvenile and Family Court Journal*, 53(4), 49-65.
- Edwards, L. (2009). Child protection mediation: A 25-year perspective. *Family Court Review*, 47(1), 69-80.
- Gatowski, S., Dobbin, S., 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.
- Institute for Families in Society. (2003). *Final report to the Mecklenburg County family court mediation program*. Available from Child Welfare Information Gateway Web site, <http://www.childwelfare.gov>.
- Kathol, J. (2009). Trends in child protection mediation: Results of the think tank survey and interviews. *Family Court Review*, 47(1), 116-128.
- Kelly, J. B. (2004). Family mediation research: Is there empirical support for the field? *Conflict Resolution Quarterly*, 22(1-2), 3-35.

National Council of Juvenile and Family Court Judges. (1995). *RESOURCE GUIDELINES: Improving court practice in child abuse & neglect cases*. Reno, NV: National Council of Juvenile and Family Court Judges.

Office of the Executive Secretary of the Supreme Court of Virginia (2002). *Child dependency mediation report*. Retrieved from http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/mediation/resources/child_dependency_mediation_report.pdf

Resolution Systems Institute (2010). *Child protection mediation: An evaluation of services provided by Cook County juvenile court*. Chicago, IL: Author.

Stack, K. (2003). *Information packet: Child welfare mediation*. New York: National Resource Center for Foster Care & Permanency Planning.

Thoennes, N. (1997). An evaluation of child protection mediation in five California courts. *Family and Conciliation Courts Review*, 35, 184-195.

Thoennes, N. (1998). *Dependency mediation*. Report to the San Francisco Foundation, March 1998. Denver, CO: Center for Policy Research.

Thoennes, N. (2000). Dependency mediation: Help for families and courts. *Juvenile and Family Court Journal*, 51(2), 13-22.

Thoennes, N. (2001). *Dependency mediation in Oregon and the Nation*. Report prepared for the Oregon Judicial Department Juvenile Court Programs Division, March 2001. Denver, CO: Center for Policy Research.

Thoennes, N. (2002). *Hamilton County juvenile court permanent custody mediation*. Denver, CO: Center for Policy Research.

Trosch, L. A., Sanders, L. T., & Kugelmass, S. (2002). Child abuse, neglect, and dependency mediation pilot project. *Juvenile and Family Court Journal*, 53(4), 67-77.