

2013

RESEARCH REPORT
OUTCOME EVALUATION OF MEDIATION
IN WASHOE COUNTY, NEVADA



NATIONAL COUNCIL OF
JUVENILE AND FAMILY
COURT JUDGES

JUVENILE LAW PROGRAMS

DECEMBER 2013


est. 1937
WWW.NCJFCJ.ORG

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 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
Juvenile Law Programs
University of Nevada
P.O. Box 8970
Reno, Nevada 89507
(775) 327-5300
www.ncjfcj.org
research@ncjfcj.org

©2013, National Council of Juvenile and Family Court Judges

Mari Kay Bickett, J.D., Chief Executive Officer, NCJFCJ

Report Contributors

Alicia Summers, PhD, Program Director of Research and Evaluation, Juvenile Law Programs

Steve Wood, MS, Research Assistant, Juvenile Law Programs

Theresa Bohannon, MPH, Research Associate, Juvenile Law Programs

Carlene Gonzalez, PhD, Research Associate, Juvenile Law Programs

Lorie Sicafuse, Research Associate, Juvenile Law Programs

This research was supported by the Nevada Administrative Office of the Courts. The Nevada Administrative Office of the Courts was not involved in the study design; collection, analysis, and interpretation of data; or in the writing of the manuscript. Points of view or opinions are those of the authors and do not necessarily represent the official position or policies of the Nevada Administrative Office of the Courts or the National Council of Juvenile and Family Courts Judges.

EXECUTIVE SUMMARY

In August of 2011, the Second Judicial District of Nevada (Washoe County) implemented a mediation program for parents and stakeholders who are in the midst of the child abuse and neglect court system. The goal of mediation is to avoid further litigation through voluntary case resolution, which can enhance case processing and improve outcomes in juvenile dependency cases. Parties can come together in a neutral setting to address the issues surrounding the case, and what options are available given the status of the case, through the assistance of an impartial third party.

In 2012, Nevada Administrative Office of the Courts (AOC) contracted the NCJFCJ to assess mediation. The assessment included a process evaluation, a satisfaction evaluation, and an outcome evaluation. The initial outcome evaluation focused on only termination of parental rights (TPR) cases. When the mediation program first began in Washoe County, these cases were primarily referred to mediation. An additional outcome evaluation was recently conducted to assess differences between dependency cases that were referred to mediation to those that were not. This study expands on the first outcome evaluation by examining the effectiveness of mediation earlier in the case. This follow-up study excluded any cases that were in the TPR phase because this had already been examined during the first outcome evaluation, and included a case file review of 27 mediated cases compared to 25 cases that had not been mediated with the use of a standardized instrument.

Key Findings

Key findings included:

- Mediated cases were more likely to result in reunification when compared to non-mediated cases.
- Fathers who participated in mediation were present at more hearings compared to fathers who did not participate.
- Mothers and fathers who participated in mediation were less likely to stipulate to allegations listed on the petition compared to parents who did not participate.

This outcome evaluation demonstrated that many of the variables of interest trended in a positive direction, but did lack statistical significance. The study was limited in sample size and a larger sample size may have yielded more significant findings. A very positive finding from this outcome evaluation was that mediated cases result in more reunifications compared to non-mediated cases and that fathers were more engaged in the process. The Washoe County Mediation program has demonstrated that cases referred mediation can result in more reunified families.

TABLE OF CONTENTS

INTRODUCTION 1
STUDY OVERVIEW 3
RESULTS 4
DISCUSSION 9
CONCLUSIONS 10

Introduction

Mediation is utilized to improve case processing and outcomes in juvenile dependency cases, as it helps to avoid further litigation.¹ Mediation is a form of alternative dispute resolution that resolves issues with the assistance of a neutral third party (mediator). The main objective of mediation is to facilitate a discussion where parties voluntarily resolve the issues that brought a family into the dependency system and produce a written agreement, in lieu of a traumatic contested hearing.² Parties that may attend mediation can include parents, child protective services, attorneys, and all others that may be involved in the case. During mediation, there is a focus on the family's strengths. The topics discussed depend largely on what issues are contested and may include: petition allegations, case planning, custody, visitation, shared parental responsibility, temporary and long-term placement, foster care, relative placement, shelter care, family dynamics, parent education, available services to families, family reunification, termination of parental rights, and/or adoption.³

Benefits to mediation in child dependency cases can include: time savings, efficiency, parent engagement, and improved outcomes for children involved. Time savings may occur for courts, attorneys, and social workers through potential lightened workload by the avoidance of additional litigation and the trial preparation.⁴ Although mediation can take several hours, if resolution occurs, this can save the courts countless hours and provide time for other cases to be processed. The mediation process can also engage parents. It is not uncommon for parents to feel angry, distrustful, and confused prior to mediation and, after mediation, feel empowered and like they have a voice in the process. Mediation is conducted by an experienced professional, in a confidential and respectful place that will foster an environment where parents feel they can be honest.² Anything disclosed during mediation cannot be used against the parents later in the case. Resolution (either full or partial) can be quite common and can result in faster case progression, which ultimately may result in shorter times to permanency for children and families.

¹ Giovannucci, M., and Largent, K. (2009). A guide to effective child protection mediation: Lessons from 25 years of practice. *Family Court Review*, 47, 38-52.

² Superior Court of California, County of Alameda. *Dependency Mediation*. Retrieved from: <http://www.alameda.courts.ca.gov/Resources/Documents/Dependency%20Mediation.pdf>

³ Eighth Judicial Circuit of Florida. *Frequently Asked Questions: Juvenile Dependency*. Retrieved from: <http://circuit8.org/mediation/dependency-mediation>

⁴ Summers, A., Wood, S. and Russell, J. (2011) Assessing Efficiency and Workload Implications of the King County Mediation Pilot. *OJJDP Journal of Juvenile Justice*, 1, 48-59. Retrieved from: <http://www.ncjfcj.org/sites/default/files/King%20County%20Mediation%20Pilot%20Article.pdf>

Program Background

In August of 2011, the Nevada Court Improvement Program (CIP) funded the Second Judicial District of Nevada (Washoe County) to establish a juvenile dependency mediation program. This program was modeled after a mediation program that ran in the district in the early 2000s. Four mediators with years of experience mediating a variety of issues were recruited for the program. Mediation is administered by staff of the Second Judicial District. In Washoe County, juvenile dependency cases are automatically ordered to mediation by the court if there is a contested termination of parental rights (TPR) petition, contested permanency planning hearing, or other contested case issues. The date and time of the mediation session is set by the court, and formalized through a court order; participation by all parties to the case is mandatory. Three hours are set aside for each mediation session.

On the day of mediation, the mediator provides each parent a brief overview of the mediation process. All parties sign a confidentiality statement prior to the mediation. Mediators use a facilitative model of mediation, a style where the mediator does not present his or her own views of the case or of the agreement, and is instead focused on ensuring that all parties have an opportunity to be heard and that parties reach an agreement that meets everyone's needs.⁵ If an agreement is reached at the conclusion of mediation, a written agreement is printed and signed by those who have authority and each party receives a copy. The agreement is then entered into the electronic case management system and forwarded to the judge, who has to then sign the agreement and file a court order. All participants are then asked to complete a short survey regarding their perceptions of the mediation, the outcome and how they were treated.

A previous process and outcome evaluation was conducted by National Council of Juvenile and Family Court through a contract with the Nevada Administrative Office of the Courts. A multi-method approach was used, including structured interviews, online surveys, satisfaction surveys, and case file review. The results of the original process and outcome evaluation were positive, with high satisfaction with the program. The implementation process of the mediation program was highlighted, as well as outcome differences between mediated and non-mediated termination of parental rights cases. The full report can be found at http://www.ncjfcj.org/sites/default/files/Assessing%20Mediation%20in%20Nevada_Washoe.pdf

⁵ Imperati, S.J. (1997). Mediator practice models: The intersection of ethics and stylistic practices in mediation. *Willamette Law Review*, 33, 703.

STUDY OVERVIEW

The Nevada Administrative Office of the Courts (AOC) contracted the National Council of Juvenile and Family Court Judges (NCJFCJ) to conduct an assessment of the juvenile dependency mediation program in Washoe County. The Nevada Court Improvement Program (CIP) supports mediation as one method for improving timeliness of case process. The current outcome evaluation sought to assess what impact the mediation program might have on outcomes for maltreated children. The previous outcome evaluation only examined cases that were in the TPR phase, whereas this study excluded those cases and focused instead on cases mediated early in the process (typically pre-adjudication). Along these lines, the current study seeks to answer the following questions:

- Does mediation result in different outcomes for children and families?
- Does mediation improve engagement of parents in the process, in terms of:
 - a. Increased participation in the hearings?
 - b. Differences in the number of services offered to parents?
 - c. Compliance with case plans?
- Does mediation result in timelier outcomes for children and families?
- Does mediation result in time savings in terms of number of hearings and case continuances?

In Washoe County, enough cases had been mediated to assess the program's effect on case outcomes and timeliness of case processing. The inclusion criteria for this study were cases that were mediated from August 2011 through the end of 2012. These mediated cases were matched to non-mediated cases whose petition was initiated in August 2011 through the end of 2012. Using a standardized case file review instrument, researchers coded a sample ($n = 27$) of cases that had been mediated and a sample of cases ($n = 25$) that were not mediated for. It should be noted that 32 cases were referred to mediation within this period; however, five cases were vacated due to various reason and were placed in the non-mediated sample for comparison. Common reasons for mediation being vacated were parents not showing up to participate, an agreement was reached before mediation, or contested hearings. Because the previous outcome evaluated focused only on cases that had filed a petition to terminate parental rights, these cases were excluded from review and the focus was on cases that were referred to mediation for other reasons (i.e. contested petition).

OUTCOME EVALUATION RESULTS

For the outcome evaluation, researchers employed a systematic review of the court case files using a structured data collection instrument. Three coders collected data on 52 cases that had filed a juvenile dependency petition; 32 cases had been referred to mediation and 20 that had not been referred to mediation. Although 32 cases were referred to mediation, only 27 were mediated and 5 were vacated. To be considered a mediated case, it had to meet two criteria. First, the mediation could not be vacated. Second, one or both parents must have attended the mediation. Using these criteria, 27 mediated cases and 25 non-mediated cases were used to answer the following research questions:

- Does mediation result in different outcomes for children and families?
- Does mediation improve engagement of parents in the process?
- Does mediation result in timelier outcomes for children and families?
- Does mediation result in time savings in terms of number of hearing and case continuances?

Case Characteristics

To ensure mediated and non-mediated cases had similar characteristics when they entered the dependency system, several variables were examined. These included total average number of allegations listed on the petition, total average number of presenting problems and child's race.

The total average number of allegations against mothers listed on the petition did not vary much between mediated (1.22) and non-mediated (1.24) cases. For mothers, the average total number of presenting problems also did not vary greatly between mediated (2.2) and non-mediate cases (2.3).

The total average number of allegations against fathers listed on the petition did not vary much between mediated (0.71) and non-mediated (0.68) cases. For fathers, the average total number of presenting problems was 1.5 for mediated cases and 1.2 for non-mediated cases.

Child's race was collected during case reviews, and there did not appear to be major differences between mediated and non-mediated cases. See table 1 for full description. Based on the averages of the allegations, presenting problems and children's race, we can say the groups are statistically comparable and did not appear to be different coming in to the courts.

OUTCOME EVALUATION RESULTS

TABLE 1. CHILD'S RACE		
Race	Mediated % (n)	Non-mediated % (n)
African American	7.1% (1)	9.1% (2)
Hispanic	7.1% (1)	13.6% (3)
Caucasian	42.9% (6)	40.9% (9)
Native American	7.1% (1)	0% (0)
Undetermined	35.7% (5)	27.3% (6)
Missing Data	(13)	(3)

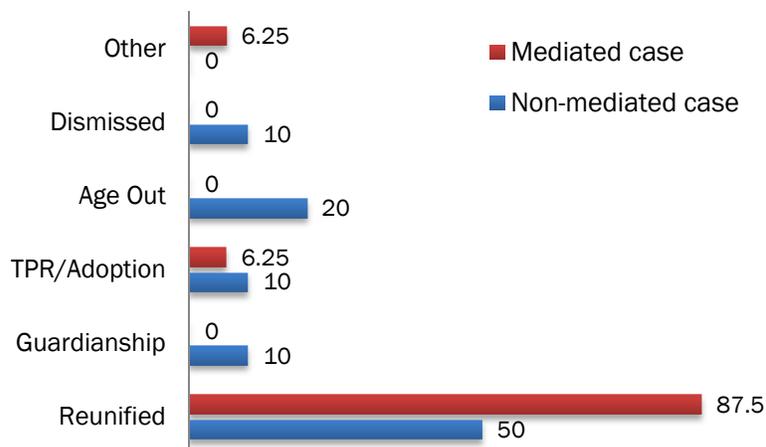
Outcomes

Does mediation result in different outcomes for children and families?

Fifty percent of all the cases had closed at the time of case file review. Of the mediated cases, 59% had closed and of the non-mediated cases, 40% had closed. Among mediated and closed cases, 87.5% of cases had reunified, 6.3% resulted in termination of parental rights (TPR)/Adoption and 6.3% were other outcomes. Among the non-mediated closed cases, only 50% had reunified, 10% guardianship, 10% TPR/adoption, 20% aged out, and 10% had been dismissed. This descriptive analysis demonstrates that more mediated cases had been closed at time of review and there were higher rates of reunification.

Chi-square tests of independence were conducted to examine the relationship between mediation and case outcomes. There was a significant difference between mediated and non-mediated cases and the likelihood of reunification compared to all other outcomes ($p=0.037$). Cases referred to mediation were more likely to result in reunification compared to cases not referred to mediation (see Figure 1).

FIG. 1 - CASE OUTCOME AS A PERCENTAGE OF CLOSED CASES



OUTCOME EVALUATION RESULTS

Children whose parents participated in mediation had slightly fewer placements compared those who did not participate. Cases that were referred to mediation resulted in an average of 2.1 placements compared to 2.7 among those who did not participate. This difference was not statistically significant ($p = .27$).

Parental Engagement

Does mediation improve engagement of parents in the process?

Engagement of parents in the process was conceptualized in two ways. First, we assessed parents participation in hearings (i.e., how often across the life of the case did a parent attend the hearings). This measure is reported as a percentage (ranging from 0 to 100). Second, we examined the number of services ordered for each party. While this may not affect parent's engagement in the process, it illustrates the amount of effort that the agency is requiring of the parent. Third, we examined case plan compliance (i.e., findings at the review or permanency hearing as to how much the parent has complied with their plan). In theory, parents that are more engaged in the case will likely have higher compliance with their plan.

Hearing Participation

Overall, mothers were present 87% of all possible hearings. Mothers who participated in mediation attended 88% of hearings possible. Mothers who did not participate in mediation attended 85% of hearings possible. Participation in mediation slightly increased mother's presence at hearing, but not significantly.

Overall, fathers were present 62% of all possible hearings. Fathers who participated in mediation attended 72% of hearings possible. Fathers who did not participate in mediation only attended 50% of hearings possible. Participation in mediation significantly increased father's presence at hearings compared to fathers who did not participate in mediation ($p=0.057$).

Services Ordered

On average mothers who participated in mediation were referred and ordered to 4.1 services in their case plan. Mothers who did not participate in mediation were referred and ordered to an average of 4.8 services in their case plan. It is important to note that other services (i.e. home visits, compliance with parole, family drug court, etc.) were captured in an "other" category and not counted within this

OUTCOME EVALUATION RESULTS

analysis. Independent t-tests did not demonstrate statistically significant differences between the two groups.

On average fathers who participated in mediation were referred and ordered to 2.6 services in their case plan. Fathers who did not participate in mediation were referred and ordered to an average of 1.6 services in their case plan. Independent t-tests did not demonstrate statistically significant differences between the two groups.

Case Plan Compliance

Case plan compliance was also examined to explore any relationship with mediation. No statistically significant associations were found between mediation and case plan compliance. See Table 2 for descriptive analysis.

TABLE 2. SERVICE COMPLIANCE AT REVIEW AND PERMANENCY HEARINGS		
Hearing	Mediated % (n)	Non-mediated % (n)
Review hearing (mother)		
None	25% (5)	27.3% (6)
Partial	37.5% (9)	45.5% (10)
Full	37.5% (9)	27.3% (6)
Permanency hearing (mother)		
None	22.7% (5)	33.3% (6)
Partial	40.9% (9)	27.8% (5)
Full	36.4% (8)	38.9% (7)
Review hearing (father)		
None	38.9% (7)	30.8% (4)
Partial	38.9% (7)	38.5% (5)
Full	22.2% (4)	30.8% (4)
Permanency hearing (father)		
None	43.8% (7)	50% (6)
Partial	37.5% (6)	33.3% (4)
Full	18.8% (3)	16.7% (2)

Stipulations

Data were also collected on whether parents stipulated to charges in the petition. A stipulation is a situation where the parents agreed to (or did not contest) the allegations found in the petition. This variable was coded to either a parent stipulating or not at any point in the case. Overall, parents were less likely to stipulate to one or more allegations if they participated in mediation compared to parents who did not participate. This association was significant for fathers ($p=0.01$) and mothers ($p=0.08$).

OUTCOME EVALUATION RESULTS

Timeliness

Removing children from their homes is traumatic for all involved parties. Moreover, federal and state legislation (e.g., ASFA) exists to ensure timeliness to final case outcomes. For these reasons, several independent samples t-tests were conducted to examine mediated and non-mediated cases with regard to differences in timeliness to case outcomes (i.e., time from initial removal to case closure, time from petition filing to adjudication, and time from petition to permanency hearing) for mediated and non-mediated cases. See Table 3 for the average number of days for each timeliness measure.

	Mediated	Non-mediated
Initial Removal to Case Closure	474	487
Petition Filing to Adjudication	65	34
Petition Filing to Permanency Hearing	356	341
Petition Filing to Mediation	190	n/a
Mediation Referral to Mediation Occurrence	30	n/a

There were no significant differences between mediated and non-mediated cases in the amount of time between initial removal to case closure, petition filing to adjudication, and petition filing to permanency hearing.

Continuances were examined at adjudication and total average number of continuances within the case. Mediated cases resulted in an average of 0.70 continuances at adjudication and non-mediated cases resulted in 0.64. Mediated cases resulted in an average of 1.48 total continuances and non-mediated cases resulted in 1.26. These differences were not statistically significant.

Limitations of Case File Review

It should be noted that the results of the case file review only demonstrated associations of mediation with case outcomes and fathers presence at hearings. The study design does inhibit causal inference. That is, we cannot draw cause and effect conclusions, or say that mediation causes changes. In particular, time may be the biggest indicator of change. An additional limitation to this study was a small sample size. While we cannot say for certain that mediation created the differences in cases, we can say there appears to be an association between mediation and some positive outcomes.

DISCUSSION

Association findings between mediated cases and outcomes, parental engagement, and timeliness indicators were limited. Mediated cases were more likely than non-mediated cases to result in reunification when compared to all other outcomes. Fathers who attended mediation were more likely to be present at hearings. Referring fathers to mediation may be a useful way to engage them in the juvenile dependency process. Fathers were also less likely to stipulate to allegations compared to fathers who were not referred to mediation. Mothers were also less likely to stipulate to allegations when they were referred to mediation. There were not statistically significant differences between services for mothers and fathers, average number of continuances, and timeliness indicators (i.e., case closure, petition to adjudication and permanency).

The previous process and outcome evaluations also demonstrated positive findings that should be emphasized. In the previous study of Washoe County's mediation program satisfaction surveys showed that both parents and stakeholders agreed that mediation generally speaking is successful. Stakeholders agreed that mediation lessened their workload in preparation and hearings and is a good alternative to court. Parents also agreed that they felt heard, respected, and treated fairly during the process. When parents felt part of the process and when the mediators clearly explained the process, this was associated with a higher level of agreement. In terms of outcomes, mediation appeared to reduce the number of default orders for mothers and fathers.

These types of findings are limited to surveys and the nuanced benefits of a mediation program may be lost in case file reviews. This case file review is a cross-sectional analysis, which cannot demonstrate long term benefits. Continued follow-up studies may be conducted to observe trends in case outcomes and re-entry into the system as a result of participating in mediation. Mediation observation could also be conducted to further understand and improve the current program.

CONCLUSION

This study demonstrated that mediated cases were more likely to result in reunification compared to cases not referred to mediation. This may indicate that mediation may be particularly useful as a tool for reunification. Mediation was also related to an increase engagement among fathers who participated in mediation. Fathers attended more hearings compared to fathers who do not attend mediation. Referring fathers to mediation may increase their overall participation in the dependency process and increase the likelihood of reunifying with their children.

The previous and current studies have shown that the mediation program in Washoe County can be an important piece to improve outcomes for children and families. Previous satisfaction surveys from parents showed that those who attend mediation are engaged, have a voice and believe it is helpful. Stakeholders also felt that the process is helpful. To demonstrate long-term results, it is important that the program monitor and track case outcomes and other key indicators.

Although the statistically significant findings in this study were limited, this may be a result a low sample size and it should not be interpreted to mean that mediation is not an important program for families involved in the dependency system. Washoe County's mediation program has been successful in meeting several of its goals since its implementation in 2011.

This outcome evaluation sought to answer if mediation impacts outcomes for children and families and the results demonstrated that families referred to mediation are more likely to reunify with their children compared to those who were not referred. Researchers look at parental engagement and found that fathers referred to mediation attended more hearings compared to fathers who were not referred. Researchers also sought to answer if mediation results in timelier outcomes and time savings for the court. Although there were no statistically significant findings with these two questions, it is important to point out that many of the cases were not closed at the time of case file review making it difficult to ascertain differences. Many of the variables collected that were analyzed trended in a positive direction for cases that were mediated. Since many of the cases were not closed at the time of case file review, additional research may help to understand the long term impacts of mediation.