

# ***Dependency Mediation***

***In the San Francisco Courts***



*Conducted by the Center for Policy Research  
1520 Emerson Street  
Denver CO 80218  
303/837-1555*

*Funded by the San Francisco Foundation  
Administered by the Study Center of San Francisco*

*March, 1998*

# *Contents*

## Executive Summary

Introduction . . . . .	1
Previous Research . . . . .	2
Research Methods . . . . .	4
Description of the Process . . . . .	7
Referral . . . . .	7
The Families . . . . .	9
Session Format . . . . .	11
The Participants . . . . .	12
The Issues . . . . .	14
Settlements . . . . .	16
Predicting Settlements: Characteristics of the Case . . .	17
Predicting Settlements: Issues Discussed . . . . .	19
Predicting Settlements: Participants . . . . .	21
Comparing Mediated and Litigated Agreements . . . . .	23
Compliance . . . . .	26
Cost Savings . . . . .	26
Participant Reactions . . . . .	27
Summary and Recommendations . . . . .	30

## Appendices

***Dependency Mediation***  
*In the San Francisco Courts*  
***Executive Summary***



*Conducted by the Center for Policy Research*  
*1720 Emerson Street*  
*Denver CO 80218*  
*303/837-1555*

*Funded by the San Francisco Foundation*  
*Administered by the Study Center of San Francisco*

*March, 1998*

# *Executive Summary*

## *The Study*

---

The research was funded by the San Francisco Foundation and conducted by the Center for Policy Research.

Quantitative data for the evaluation were generated from records maintained by mediators expressly for evaluation purposes and file data drawn from dependency court records. The last mediation included in the evaluation was held in December, 1997.

We generated a comparison sample of 186 cases set for a contested jurisdictional hearing.

We also conducted interviews with the professionals who participate in, or are affected by, the mediation program operated by the juvenile court.

## *Referrals*

---

Nearly half of the 227 mediation cases in our study were referred to mediation by a commissioner or judge.

In another quarter of the cases a parent's attorney requested mediation.

In only about 10 percent of the cases did the social worker or social worker's attorney request mediation.

In most respects cases referred to mediation look very similar to those which are not referred.

This would suggest that the decision to refer to mediation is based more on chance or subjective evaluations of the case, rather than on systematic factors.

Most of the families had been in the CPS system prior to the report bringing them into this study. Most of those prior reports appear to have been substantiated and most involved prior court action.

The overwhelming majority of the cases in this study completed mediation in a single session. Exceptional cases went on to two sessions and a handful required three or four meetings. The average number of hours spent in mediation is just over 2.5.

## ***The Participants***

---

The mediation session nearly always includes the CPS worker, legal counsel for the CPS agency, the attorney assigned to the child victim, and the attorney(s) for the parent(s). The parents almost always attend.

In about one quarter of the cases referred to mediation, the child attended. The child's age was a key variable in the decision to include the child in the mediation session. In cases with a child age 10 years or older, 57 percent of the mediations involved a child. In cases with children under 10 years, only 16 percent of the mediations involved a child.

## ***Settlements***

---

During the research period (April 1995 - December 1997), 71 percent of the cases sent to mediation reached a full settlement through the process.

Another 14 percent were unable to resolve any issues in mediation, and 15 percent produced a "partial" settlement. Partial settlements are agreements that specify resolutions for some, but not all, of the issues to be decided in the case.

Are there characteristics of the case that help to predict whether or not a settlement is reached? In large measure, the answer appears to be "no". Even after we statistically control for the

characteristics that might be expected to influence settlement, we still find that most families reach a full agreement in mediation.

There is evidence that the participants' support for mediation is a factor in producing settlements. If any party objected to mediation, the settlement rate dropped considerably. No settlement occurred in 15 percent of the cases without an objection, and 50 percent of the cases with an objection.

### ***Comparing Agreements***

---

The outcome of cases mediated and litigated at jurisdiction are very comparable.

When visitation between parents and their children in placement is worked out in mediation, the end result appears to be more specific plans than those developed in court hearings.

The mediated plans typically also provide more visits than do litigated plans.

Nearly 40 percent of the litigated settlements, but slightly more than 50 percent of the mediated settlements, relied on relatives or previously non-custodial parents to provide the out-of-home care.

### ***Compliance***

---

Cases that successfully mediate were less likely than comparison group cases to have returned to court with a contested review hearing in the 12-24 months following the dispositional hearing.<sup>1</sup> Over a quarter (28%) of the comparison group had been back for a contested review hearing, compared to only 11 percent of those who successfully mediated at the dispositional phase of the case.

---

<sup>1</sup>We were able to follow up on cases for a minimum of six and maximum of 24 months post-mediation.

When we compare pre-disposition mediation and comparison group cases we see few differences in compliance patterns.

## ***Cost Savings***

---

This study produced estimated savings of approximately \$2,505 for each case that is successfully mediated. If we assume that each review hearing that is avoided would also represent an average savings of \$2,505, the total combined savings for each 100 successfully mediated cases would be \$293,105.

Given the settlement rate during the time covered by the evaluation (71%), sending one case to mediation each working day would result in savings of \$545,225 annually.<sup>2</sup> Given the current estimated settlement rate of 84 percent, this figure would increase to \$645,054 annually.

## ***Reactions***

---

Many of the professionals we spoke to expressed the belief that the only real problem with mediation is “at the referral stage.” They say that “mediation has never really been integrated into the system,” and the result is that referrals to mediation are not made in a consistent manner.

Attorneys for parents in dependency proceedings have generally positive things to say about mediation. They report that in mediation all the professionals listen, share information, and are willing to reconsider their opinions. Parents appreciate the time and thoughtful consideration mediation affords.

Children’s attorneys like the fact that all the family’s problems can be discussed at one time. Unlike legal proceedings which consider only a narrow slice of the case, in mediation participants can bring up any and all issues.

Most social workers have only had one or two experiences with mediation, and their reactions are generally mixed.

---

<sup>2</sup> These estimates do not include the costs associated with providing mediation.

## ***Recommendations***

---

These findings lend themselves to the following recommendations for improving the program:

There should be clear guidelines about when cases are to be sent to mediation.

This would address the frustration frequently voiced by attorneys and social workers that there is no consistent referral mechanism and widespread confusion about why some cases are sent to mediation, while other equally appropriate cases are not.

The referral guideline should be inclusive. It should encourage mediation whenever the parties in the case indicate that the alternative would be a contested hearing.

A wide range of cases reach a settlement in mediation. There is no reason to exclude cases on the basis of the stage in the legal process, the issue in dispute, or the nature of the family's problems. Referring all cases requesting time for a contested court hearing to mediation will produce the greatest economic benefits and will produce settlements plans that are quite comparable, if not more comprehensive, to those generated through court hearings.

Ongoing efforts should be made by the program staff and the judiciary to educate potential participants about mediation.

The research shows that the participants' support for the process is a key factor in reaching a settlement. Cases which enter mediation over the objections of one of the participants are less likely to reach agreements. To the degree that the objections reflect individual preferences to litigate rather than mediate, objections may be reduced by educating the parties about the strengths of the mediation process.

The court should consider referring cases to mediation prior to disposition.

This would provide the court with the greatest savings, given our finding that cases resolving dispositional issues through court have more than twice as many contested hearings than those cases resolving dispositional issues through mediation.

# *Introduction*

This evaluation of dependency mediation in the San Francisco Juvenile Court was designed to address the following:

The ability of mediation to enhance parents' sense of involvement in decision making, hopefulness about the future, and sense of resolution; and the ability of mediation to encourage social workers' sense of case resolution and progress.

The overall settlement rate for cases diverted to mediation.

The extent to which the settlement rate is determined by the issues in dispute; the individual attorneys, social workers and mediators participating in the session; the legal stage at which the case is referred; or other case specific factors.

The overall financial impact of mediation on the dependency system.

The degree to which mediation reduces the need for future contested court hearings; improves the relationship between social worker and parent; and encourages parental compliance with the treatment plan.

Recommendations for referral protocols.

The research was funded by the San Francisco Foundation and conducted by the Center for Policy Research.

This report begins with a brief review of prior research. We move on to consider the research methods employed in this study. Next we provide a description of the mediation process and the cases handled through this procedure.

The quantitative analysis follows. We consider: the overall mediation settlement rate and the ability of a variety of variables to predict settlement; the terms of treatment plans developed through traditional case processing and mediation; the degree of compliance among mediated and non-mediated cases; the financial costs and savings associated with mediation; and the short-term relitigation outcomes associated with mediation and litigation.

We then provide an analysis of the qualitative data gathered during this study: that is, the reactions of key participants to the mediation process. We conclude with a discussion of how this research

compares to prior studies of dependency mediation, and a consideration of the implications of our findings for future program organization and development.

## *Previous Research*

Introducing mediation into the dependency court formally recognizes that in most cases, including most child protection cases, the decision makers are the parties and their attorneys, rather than a judge. In truth, courts have always made efforts to resolve cases without resorting to trial. However, it can be argued that many of these informal settlement procedures, such as plea bargaining or pre-trial conferences, are still “constrained by formal procedures...and communication is distorted by a legal system insensitive to interpersonal aspects of a dispute.”<sup>3</sup> Myers echoes this sentiment when he notes that “despite its reduced emphasis on contested litigation, the juvenile court remains an adversary system.”<sup>4</sup>

The formal use of ADR procedures to help reach a settlement is viewed by many within the dependency court as a logical approach to crowded dockets and one that might offer potential benefits beyond speeding case settlement. Proponents of the use of ADR techniques believe that these approaches can encourage active participation by the family and increase the amount of information available at critical decision-making time points.

Despite arguments favoring mediation there have also been questions raised about its use. Does the process safeguard children? Does it protect parents’ rights? Is it a duplication of other settlement efforts? Are there a sufficient number of negotiable issues in child protection cases?

The first effort to introduce mediation into the dependency court process occurred with a 1983 pilot project in one Los Angeles juvenile court. Court filings which were not successfully negotiated by the attorneys in the case were automatically set for mediation. A court-based program for pre-trial settlement conferences utilizing mediation techniques was launched the following year in the Family Division of the Connecticut Superior Courts. In 1987 Orange County, California responded to judicial concerns over increasing numbers of juvenile court filings by implementing a mediation service within its juvenile court.

---

<sup>3</sup>Harrington, Christine B. **Shadow Justice: The Ideology and Institutionalization of Alternatives to Court.** Westport, CT: Greenwood Press, 1985.

<sup>4</sup>Myers, John E.G. *The Legal Response to Child Abuse: In the Best Interest of Children?* **Journal of Family Law**, Vol. 24, No. 2, 1985-1986: 149-263.

The juvenile courts of Los Angeles and Orange Counties in California and in Hartford, Connecticut were the subject of an independent evaluation conducted by the Center for Policy Research. The research was funded by the State Justice Institute and completed in 1992. Highlights from the SJI study included the following:

Mediated treatment plans were produced, on average, a month sooner than non-mediated plans.

Reported settlement rates ranged from 60-80 percent of the cases seen by mediators.

In two sites, there were significant differences between the degree of compliance with mediated and adjudicated plans. In both sites, compliance was better in mediated cases.

Children were more likely to be mentioned as the recipients of services in mediated versus adjudicated plans.

Initial resistance to mediation is common. However, over time mediation becomes an accepted and valued method of resolving disputes and eliminating trials.

Participants feel mediation makes the court experience a little faster, and less foreign and more understandable to parents.

In the Spring of 1993, the five pilot counties providing mediation under California SB1420, Contra Costa, Los Angeles, Sacramento, Santa Clara, and Tulare, contracted with the Center for Policy Research for a legislatively mandated evaluation. This five-county evaluation confirmed many of the findings noted above. Specifically, we found:

Well over 70 percent of the cases mediated at each site resulted in either a full or partial settlement.

All types of maltreatment cases reach agreements in mediation.

Mediated visitation arrangements for children residing out of the home are more detailed, and often more generous, than comparable adjudicated plans.

Mediated treatment plans are more likely to specify services that will be provided to the child victim compared to adjudicated agreements.

Children in mediated cases are more likely to be placed in relative foster care compared to children in adjudicated cases.

A comparison of mediated and non-mediated cases that had court file reviews conducted at least six months after disposition reveals that mediated cases are generally less likely than non-mediated cases to have had a contested six month review hearing.

At several sites the court file data suggest that among cases reviewed at least six months post-disposition, the mediated cases show better compliance with the treatment plan than do the control group cases.

Surveys completed by parents at the close of the mediation session demonstrate that parents feel 'heard' in mediation. Over 90 percent of the parents at each site reported they had a chance to talk about the issues important to them, felt others listened to and understood what they had to say, and felt mediation clarified what they needed to do in order to have the CPS agency close their case.

The present evaluation of mediation in the San Francisco Juvenile Court provides an opportunity to see which of these patterns hold in yet another mediation setting. Duplicating findings across many programs provides strong evidence that the results are inherent to mediation and not unique to some programs with specific types of clients, or specific approaches to service delivery.

## ***Research Methods***

The research is guided by the following specific research questions:

How do case workers and their attorneys rate mediation with respect to: allowing the CPS agency position to be heard and addressed; producing appropriate treatment plans; improving parental understanding of the plan; reducing workloads and speeding case processing?

How do attorneys appointed to represent parents in the dependency court system rate the ability of the mediation service to: safeguard parental rights, allow adequate and appropriate types of participation by parents; assist parents in understanding the agreements that are produced; generate agreements that are perceived as fair to their clients; reduce workloads and speed case processing?

How do attorneys appointed to represent children in the court system rate the ability of the mediation service to: protect children; allow adequate and appropriate types of participation by children; generate agreements that are perceived as fair to their clients; reduce workloads and speed case processing?

What percentage of the cases sent to mediation are able to produce an agreement in this forum?

Is mediation more effective in producing agreements at certain points in the processing of cases than at others? For example, are there differences in the percentage of cases reaching mediated settlements at jurisdiction, disposition, post-disposition case reviews, permanency planning?

How do the major participants (e.g., legal counsel for CPS, the caseworker, the attorneys representing parents and children) and the judiciary compare on their support for, or opposition to, mediation at the jurisdictional stage, dispositional stage, post-disposition case review, permanency planning, or termination of parental rights?

To what extent is settlement in mediation predicted by the individuals — parents' and children's attorneys, caseworkers and their attorneys — participating in a given session? Do some individuals consistently settle, while others do not?

Are there other case characteristics or mediation factors that predict settlement? For example, are cases with prior child protective services reports less likely to settle?

Controlling for other relevant case characteristics, how do mediated and non-mediated treatment plans compare with respect to: placement decisions; the number and types of services to be provided to parents and children; the degree to which plans contain specific visitation agreements and the nature of these visitation plans?

How do mediated and non-mediated cases compare with respect to outcomes such as parental compliance and contested hearings?

Are there economic savings associated with mediated versus adjudicated settlements? Are savings consistent regardless of the time point at which mediation is attempted?

We conducted interviews with the professionals who participate in, or are affected by, the mediation programs operated by the juvenile court:

Judges and hearing officers

Mediators

Legal counsel for the child protective services agency

CPS administrators, supervisors, and caseworkers

Attorneys who represent parents

Attorneys who represent children

These interviews were conducted in person, and were open ended and exploratory in nature. However, an interview guide was drafted to ensure that the same general set of topics was covered during each interview.

Quantitative data for the evaluation were generated from records maintained by mediators expressly for evaluation purposes and file data drawn from dependency court records. Each of these data collection approaches is discussed below. Copies of all data collection instruments may be found in Appendix A.

The data collection forms completed by mediators and the data collection forms used to extract information from court files were designed by the Center for Policy Research. The forms collected information related to outcome variables such as settlement in mediation and the terms of the treatment plan. In addition, the forms elicited data about a variety of other items that might influence these outcome variables such as: stage in case processing at which mediation occurs; the nature, severity, and duration of the maltreatment; characteristics of the parents and children; and facts about the mediation process, such as who attended.

Mediator forms were completed immediately following each session between April 1995 and December 1997. This produced a sample of 227 mediation cases. Court records were reviewed for 153 (65%) of the 227 cases. This court data was extracted a *minimum* of six months following the mediation. This allowed some opportunity for court orders to be entered in cases not resolved through mediation, and provided us with some opportunity to measure compliance and time lags between court actions. Six months is an admittedly short follow-up period. However, given the project time line, a lengthier follow up was simply not possible for most cases. Indeed, in some cases, even a six-month follow up was not possible.

We also generated a comparison sample of 186 cases where jurisdiction was litigated. A true control group, with the requisite random assignment of cases to mediation or litigation, was not feasible. The mediation program was receiving fewer referrals than hoped for and it would have been damaging to the program if cases had to be divided between mediation and court hearings. Instead, our litigation comparison group consisted of cases that: 1) met all the criteria for mediation (e.g., no allegations of severe abuse); 2) entered the court system during the same time frame as our mediation sample; 3) were contested at the jurisdictional stage; but 4) were not referred for mediation.

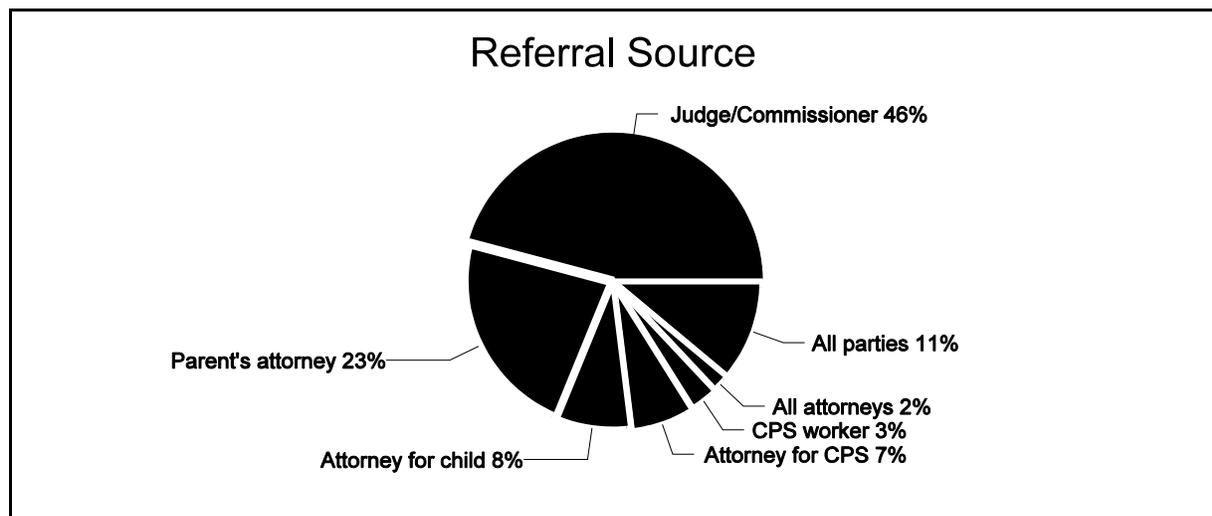
This comparison group will be used to test what, if any, informal criteria the professionals seem to be using in determining which cases to refer for mediation. Once we control for any systematic differences between the comparison and mediation groups, we will also be able to compare the two groups on the conditions of their treatment plans, compliance with these plans, and subsequent relitigation.

# *Description of the Process*

## *Referral*

The program did not automatically set all contested cases for mediation. Rather, cases could be referred for mediation by any of the participants in the case. Judges could order participation in mediation. If no one suggested using mediation, the case proceeded along the usual litigation channels.

Nearly half of the 227 mediation cases in our study were referred to mediation by a commissioner or judge. In another quarter of the cases a parent's attorney requested mediation. Approximately 13 percent were sent to mediation by the agreement of either all parties, or all attorneys. In only about 10 percent of the cases did the social worker or social worker's attorney request mediation.



There is no evidence to suggest that the various professionals request that different types of cases be sent to mediation. For example, there is no evidence that judges and attorneys select different types of cases to refer. Nor is there evidence that CPS professionals refer cases that legal professionals tend not to refer. This holds true when we consider a variety of case characteristics, including:

- the type of maltreatment;
- the nature of the problems being experienced by the alleged perpetrator (such as drug or alcohol abuse or mental illness);
- the stage of the case in the legal system.

Similarly, cases referred by commissioners, attorneys, and social workers are all equally likely to involve discussions in mediation about voluntary services, visitation and custody of children, the nature of the placement, and services.

While the various professional groups do not differ significantly in the types of cases they refer to mediation, there may still be differences between the types of cases referred to mediation and those which remain in the adjudication track. To explore this possibility, we compared the cases set for a contested jurisdictional hearing during our study period with jurisdictional cases referred to mediation.

The results suggest that in most respects cases referred to mediation look very similar to those which are not referred. This would suggest that the decision to refer to mediation is based more on chance or subjective evaluations of the case, rather than on systematic factors. In other words, whether a given commissioner refers a given case seems to have more to do with whether s/he is thinking about mediation when scheduling the case for a hearing, rather than an assessment that the issues in dispute or the characteristics of the case are ill-suited to mediation.

However, there do appear to be a few types of cases that the professionals are less likely to send to mediation. Specifically, cases where the alleged perpetrator has a drug problem or any known criminal history and cases with criminal court filings as a result of the latest child abuse report are more likely to go to a contested jurisdictional hearing and less likely to be referred to mediation. In addition, cases which enter the CPS system due solely to neglect are less likely to be referred to mediation.

**Factors Related to a Referral to Mediation**

	Does perpetrator have drug problem <sup>c</sup>		Does perpetrator have criminal record <sup>c</sup>		Has there been a criminal court filing <sup>c</sup>		Reported to CPS solely due to neglect <sup>c</sup>	
	No (134)	Yes (130)	No (182)	Yes (82)	No (188)	Yes (26)	No (164)	Yes (100)
Percent referred to mediation	38%	21%	35%	17%	27%	8%	33%	23%

<sup>c</sup> Differences between “no” and “yes” are statistically significant at .05

Cases with criminal court filings as a result of the maltreatment may be perceived to be unlikely to settle in mediation. Arguably, the parents’ attorneys in these cases may counsel their clients against an open and candid discussion about the family’s problems as long as a criminal

prosecution is pending. If this is true, mediation would not be perceived as attractive or productive for any side.

We can only speculate about why cases with drug problems noted in the files and cases with any known criminal history are less likely to be sent to mediation. Perhaps these cases are believed to be more likely to need strong judicial oversight. However, while substance abuse problems are not as common in mediation cases as in the comparison group, it is important to keep in mind that fully 40 percent of the mediation cases do involve drug or alcohol problems.

The cases reported due solely to neglect may be perceived as not really in need of mediation. Certainly when compared to physical abuse and sexual abuse cases, pure neglect cases are far more likely to settle in a case conference. Thus, although they were technically set for a contested jurisdictional hearing, only about a quarter actually made it to a contested hearing. If the parties suspected that a settlement could readily be achieved in a case conference, they probably chose not to send the case to mediation.

## ***The Families***

Although there is some evidence that decisions are being made about which cases may be too “serious” for mediation, the cases referred to mediation still involve serious allegations of maltreatment. Most of the families had been in the CPS system prior to the report bringing them into this study. Most of those prior reports appear to have been substantiated and most involved prior court action. Given the relatively recent adoption of mediation by the court, it is not surprising to discover that only a small percentage of the families had been through mediation prior to the session bringing them into this study.

---

<b>Prior Report Status of the Cases Sent to Mediation</b>	
Family had been subject of prior CPS reports	77%
If reported previously, average number of prior reports	2.8
If reported previously, average number of years since first report	5.1
If reported previously, average number of substantiated reports	2.3
If reported previously, percent involving prior court action	57%
If reported previously, percent through mediation previously	12%

---

Cases in this study were referred to mediation at a wide variety of time points. Relatively few entered at the very earliest step — the detention hearing — which occurs immediately following a removal of the child from the home. The mediation program, like most court-based programs, was not designed with the intention of serving cases at detention. The general consensus is that

mediation will be more productive once the investigation has been completed and the parties have enough factual information about the case to discuss possible outcomes.

About a third of the cases entered mediation when a jurisdictional and/or dispositional hearing was pending. This is the stage at which decisions are made about whether the court needs to be involved in the case, where the child should live, and what services should be put into place. These are all viewed as appropriate topics in mediation. However, even more cases (almost half) entered later in the legal process. These cases were referred to mediation at the time of placement reviews, case reviews in general, or as a result of a filing for a modification of the order. At this step mediation can deal with the terms of the treatment plan, placement and visitation concerns, and compliance issues.

---

**Stage in the Legal Process of the Cases Sent to Mediation**

---

Stage in Legal Process at Mediation Referral	
Detention	4%
Jurisdiction/disposition	36%
Review or modification	48%
Permanency planning	9%
Termination of parental rights	4%

---

The type of maltreatment most commonly referred to mediation was neglect. However, many of the neglect cases also involved other types of maltreatment. Physical abuse was present in nearly a quarter of the cases referred to mediation during this study and a significant number of the cases also had allegations of drug affected infants.

The most typical case referred to mediation involved a maltreatment report against a mother. This is not surprising given the profile of families reported to child protection agencies. Allegations against both parents or the father only were far less common.

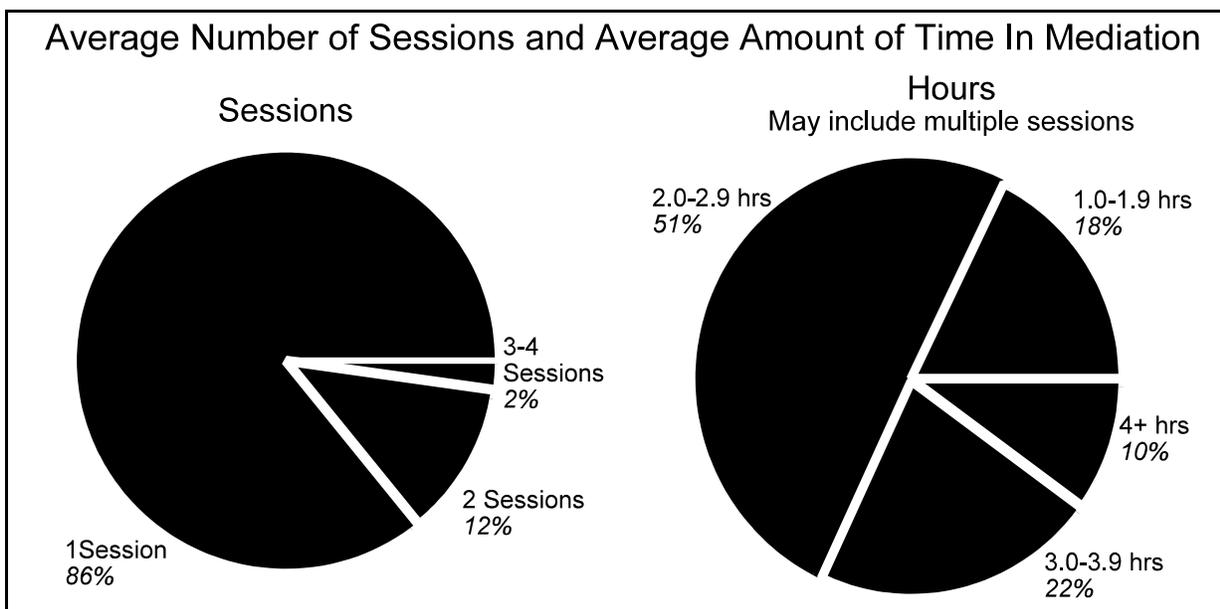
Nearly all of the CPS reports resulted in children being removed from the home. Almost without exception, children who had been removed were still in placement outside the home when mediation began. Most commonly the children were residing with foster care families. However, almost a third were with a relative.

**Profile of Cases Sent to Mediation**

Allegations of:		Alleged perpetrator		Placement	
physical abuse	24%	Mother and Father	15%	Following the CPS report, children were removed from home	86%
sexual abuse	8%	Mother	42%	If removed, still in placement at mediation or jurisdiction	91%
neglect	45%	Father	9%	Placement with:	
drug affected infant	18%	Step-father	3%	Other parent	5%
abandonment	10%	Step-mother	1%	Relative	29%
emotional abuse	8%	Mother's boyfriend	4%	Foster parent home	49%
homelessness	8%			Group home/other	17%

***The Session Format***

The overwhelming majority of the cases in this study completed mediation in a single session. Exceptional cases went on to two sessions and a handful required three or four meetings. The average number of hours spent in mediation was just over 2.5.



There is evidence that cases which enter pre-disposition require more mediation sessions than do post-disposition cases. Twenty percent of the pre-disposition cases require two or more sessions, compared to only 11 percent of the post-disposition. However, the total number of hours in mediation does not differ significantly between pre- and post-disposition cases. It may be that new cases mediate for a short period of time and then schedule a subsequent session to occur

after more information has been gathered or other actions (such as home studies of possible caretaker relatives or psychological evaluations) have occurred.

The amount of time spent in mediation does vary according to the outcome of the session. Cases which are rated by mediators as resulting in complete agreements average 2.4 hours. Those which result in no agreement average 2.6 hours. The differences between these two groups is not statistically significant. However, cases which are rated as partial agreements require significantly more time than either full or no agreement cases. Those resulting in partial settlements average 3.2 hours in mediation. Presumably partial settlement cases reflect more entrenched disagreements than do full settlement cases. However, unlike the no settlement cases, mediators see possible settlement options and continue to explore the issues rather than allowing the session to terminate.

### ***The Participants***

The mediation session nearly always includes the CPS worker, legal counsel for the CPS agency, the attorney assigned to the child victim, and the attorney(s) for the parent(s). The parents almost always attend. However, a few parents are unable to attend, typically due to incarceration.

If other professionals, such as therapists, are involved in the case they may participate in mediation. So too, do family members and friends. Foster parents attend in slightly fewer than half of all cases, presumably depending upon the issues being discussed, the amount of information they feel able to provide, and their own schedules.

In about one quarter of the cases referred to mediation, the child attended. There were several factors that distinguish cases in which children participate in mediation from those which do not include children. For example, older children were more apt to participate than younger ones. In cases with a child age 10 years or older, 57 percent of the mediations included the child. In cases with children under 10 years, only 16 percent of the mediations included the child.

---

<b>Parties Attending Mediation</b>	
Mother	75%
Father	65%
Children	25%
Court Appointed Special Advocate (CASA)	58%
Attorney for the child	97%
Attorney for the mother	90%
Attorney for the father	83%

<b>Parties Attending Mediation</b>	
CPS worker	94%
Attorney for CPS	96%
Foster parent	48%
Other professionals	76%
Other friends or family	72%

Children were also more likely to attend in pre-dispositional cases than in post-dispositional. Nearly 37 percent of the pre-disposition mediations involved a child, compared to only 17 percent of the post-disposition cases. This probably reflects the fact that many pre-disposition cases with older children involved discussions of house rules, and the child’s participation in such discussions was seen as critical. The pattern may also reflect the desire for child input in the development of a treatment plan, and reluctance to involve the child once issues of non-compliance become the focus of the session.

The nature of the abuse allegation also appears to be relevant in the decision to involve a child. Children were always involved in cases that entered the system principally due to the parent and child having conflicts. They were involved in almost half of the physical abuse cases, and a third of the sexual abuse cases. However, children were involved in the mediation in only eight percent of the neglect cases.

Surprisingly, children with developmental delays or emotional problems were not excluded from the mediation session. Children with developmental delays were no less likely than children without such delays to be included in mediation. Children with emotional problems noted in the court file, including depression and withdrawal, were actually more likely to be involved in mediation than were children without such problems. Forty percent of the children with emotional problems attended mediation, compared to 23 percent of those without such problems.

Finally, the perpetrator’s problem seemed to affect the child’s participation in mediation. Children were involved in mediation in only 15 percent of those cases in which drugs were an issue. By comparison, 32 percent of the mediation cases without drug problems included children.

We noted earlier that the child attends the mediation session in about 25 percent of all cases. How well are we able to predict which cases have children in attendance and which do not? We performed a multivariate analysis<sup>5</sup> with the following variables:

- the nature of the maltreatment
- the stage in the legal process
- the presence of a child over 10 years of age in the case
- whether the child has emotional problems
- whether the perpetrator has a drug problem

When we used these five variables, our prediction about whether the child attended was correct 81 percent of the time. We were incorrect in our prediction 19 percent of the time. This suggests that these variables will predict whether a child participates to a greater degree than chance alone. The single best predictor was whether there was a child over the age of 10 in the case, followed by the stage in the legal process.

***The Issues***

Not surprisingly, the topics discussed during the mediation session vary tremendously from case to case. It would be impossible to list all the issues covered in the mediations in this study. However, some very broad issues or areas come up over and over again. Many of these issues are relevant at all stages in the legal process, others are specific to the stage and the legal decisions pending at the time of mediation.

<b>Issues Discussed in Mediation: Jurisdiction Cases Only</b>	
Percentage of cases with mediation discussion about:	
The wording of the petition	73%
Whether to dismiss the petition with voluntary services in place	46%
Whether a child in the home should be in placement	60%

Most of the pre-disposition cases involve discussions about the wording of the petition. Many of these mediations involve at least a brief discussion about the need for court involvement in the

---

<sup>5</sup>Discriminant analysis begins with the selection of a set of variables that are expected to differentiate between two or more groups (in this analysis, cases where children attend mediation and cases where they do not). The analysis includes statistical tests for measuring how successfully the selected variables actually discriminate between the groups.

case as opposed to voluntary services and, if children are still in the home, these mediations also deal with the possible need to place these children.

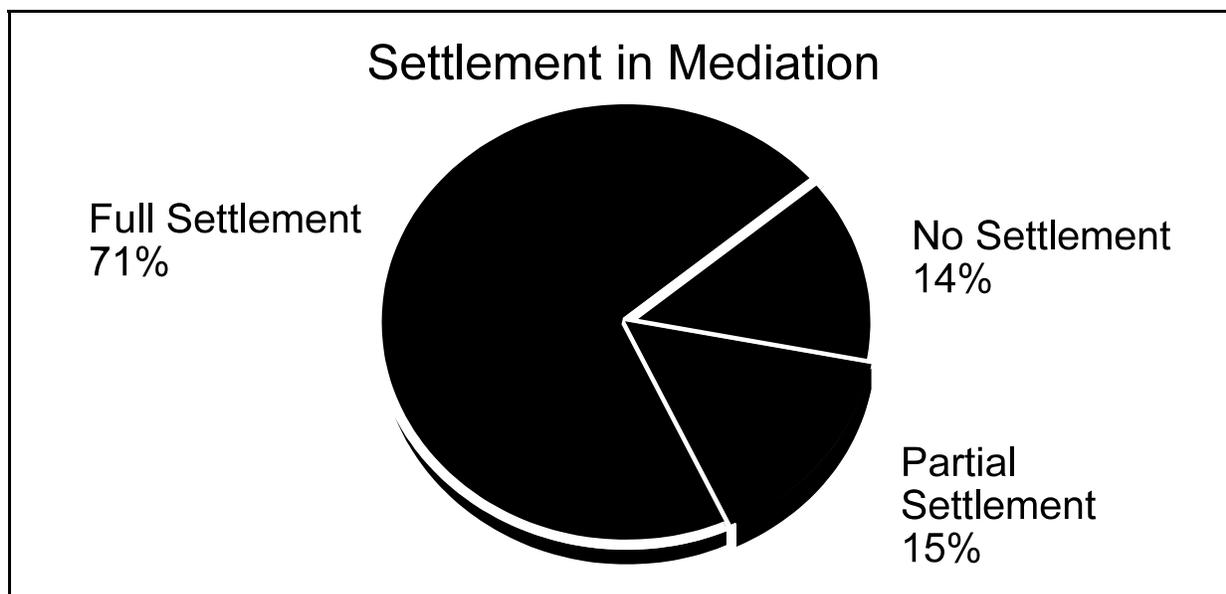
Both pre- and post-dispositional cases involve discussions about type of placement, conditions for and frequency of visitation, and a variety of issues related to treatment services. At the post-dispositional stage the mediation sessions begin to deal more and more with case goals and compliance problems. Cases seen in mediation post-disposition also typically dealt with issues of non-compliance, as well long-range case goals.

<b>Post-Disposition Issues Discussed in Mediation</b>	
	Post-disposition Cases
Non-compliance with the plan	51%
Methods of improving compliance	34%
Improving the family-worker relationship	40%
Legal guardianship as a case goal	55%
Long-term foster care as a case goal	57%
Independent living as a case goal	19%
Termination of parental rights as a case goal	58%

<b>Issues Discussed in Mediation by Stage in the Legal Process</b>		
	At jurisdiction	Post-jurisdiction
Whether a child removed from home should stay in placement	89%	76%
The type of placement to use	77%	49%
Supervision of visitation	72%	60%
Other visitation arrangements	84%	88%
Whether one or more of the adults should remain in the home	56%	19%
Counseling	82%	62%
Drug and/or alcohol treatment	79%	40%
Parenting classes	69%	33%
Psychiatric evaluations	70%	23%
Other services	52%	53%
Where services will be provided	55%	44%
Ways the parents will alter home conditions	65%	24%
House rules for adults and children to abide by	46%	38%
School related issues	50%	45%
Custody of the children	39%	45%

# Settlements

At the time our research was taking place<sup>6</sup>, 71 percent of the cases sent to mediation reached a full settlement through the process. Fourteen percent were unable to resolve any issues in mediation. Another 15 percent produced a “partial” settlement. Partial settlements are agreements that specify resolutions for some, but not all, of the issues to be decided in the case.



For example, at the start of mediation the family and CPS agency might be in disagreement about where the child will be placed, when and how the parents will see the child, and what services the parents need to successfully complete in order to have the child returned home. In cases with full settlements all of these issues would be resolved. If the case reached a partial settlement, the parties might agree about the nature of the services to be provided, but would proceed to court to determine whether the child would reside with a relative or foster parent while these services were being provided. Conversely, the parties might agree about placement, but not about services.

In cases with no settlement in mediation, the judge would be asked to decide all the issues following a contested court hearing, unless the parties were able to resolve the issues on their own prior to court. Those cases that achieve partial resolution limit the issues that have to be tried, thus shortening trial time.

---

<sup>6</sup> Our research took place between April, 1995 and December, 1997. Program staff estimate that the full settlement rate is currently 84 percent.

## ***Predicting Settlement: Characteristics of the Case***

Are there characteristics of the case — perhaps factors related to the maltreatment, the number or nature of other problems confronting the family, the family’s history with the CPS system, or other characteristics — that help to predict whether a settlement is reached?

In large measure, the answer appears to be “no.” Even after we statistically control for the characteristics that might be expected to influence settlement, we still find that most families reach a full agreement in mediation. For example, full settlement stands at approximately 70 percent after we control for the following variables:

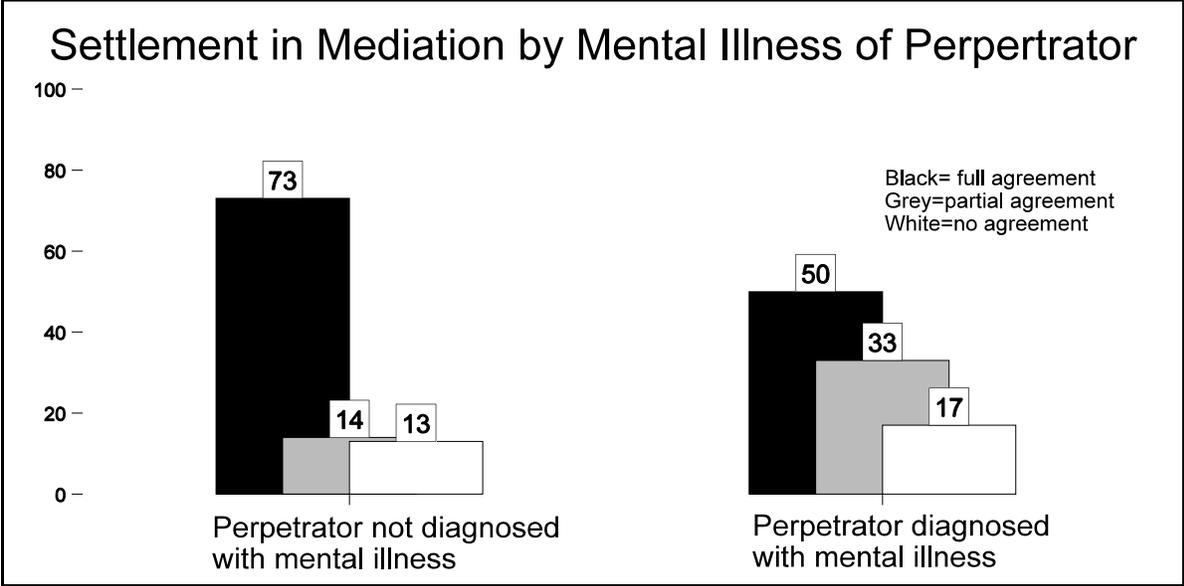
- Prior reports to the CPS agency;
- Identity of the alleged perpetrator;
- The nature of the maltreatment (physical, sexual, neglect);
- Placement of the child at the time of mediation;
- Racial/ethnic identity of the family;
- Referral source;
- Stage in the legal case at the time of the mediation referral.

We noted above that there were a few types of cases that were less likely to be referred to mediation. Specifically, a mediation referral was less likely if the case record explicitly noted allegations of drug abuse by the perpetrator, if the perpetrator had any known criminal history, or if the case involved a criminal court filing as a result of the latest child abuse report. Although these cases were less likely to be referred to mediation, some of them were nevertheless referred. When they were referred, their mediation outcomes looked very similar to outcomes in cases without such problems.

**Settlement Rate in Mediation by Nature of Selected Presenting Problems**

Agreement:	Drug Abuse by Perpetrator by Noted in Files		Perpetrator with Criminal History		Criminal Court Filing Due to Current Abuse	
	No	Yes	No	Yes	No	Yes
Full	70%	72%	72%	65%	69%	57%
Partial	16%	15%	15%	16%	16%	29%
None	14%	14%	13%	19%	15%	14%
	(130)	(88)	(175)	(43)	(121)	(7)

The similarity in settlement rates suggests that the reluctance to refer cases with drug abuse, criminal histories, and criminal court filings to mediation is based more on the professionals' assumptions about who will settle in mediation rather than empirical evidence. However, since most cases with these problems were sent on to court, we cannot be sure how well they would have fared had they been routinely sent to mediation instead.



Only one characteristic of the perpetrator, family, or maltreatment did a relatively good job of predicting settlement in mediation. Cases involving a perpetrator with a diagnosed mental illness were less likely to result in a full agreement (and more likely to result in a partial agreement), relative to cases without such problems. Relatively few cases with a record of mental illness in the court file came through the mediation program. However, of those cases involving mental illness which were seen in mediation, only half produced full settlements. The settlement rate for cases without a record of mental illness was 73 percent.

***Predicting Settlement: Issues Discussed***

There are two ways to look at the influence that the issues discussed in mediation have on settlement patterns. The first is to consider whether participants are more or less likely to reach a consensus about specific issues. For example, is there more likely to be a consensus about parenting classes than about drug treatment?

Some issues appear to be more amendable to resolution in mediation than are others. Among cases seen in mediation prior to a dispositional hearing, the issue that is least likely to result in a

consensus is whether to dismiss the case with voluntary services in place. Relatively few cases involved a discussion about dismissing the case, but when the issue was mediated the issue was resolved only about half of the time. The only other issue at the pre-disposition stage that was unlikely to be resolved was whether to have the family participate in a psychiatric evaluation.

<b>Percent of Mediation Cases Reaching Consensus on Selected Issues</b>		
If the following issues were discussed, % with consensus on the issue	Pre-disposition	Post-disposition
The wording of the petition	87%	
Whether to dismiss the petition with voluntary services in place	54%	
Whether a child in the home should be in placement	70%	
Whether a child removed from home should stay in placement	82%	78%
The type of placement to use	88%	68%
Supervision of visitation	68%	89%
Other visitation arrangements	87%	88%
Whether one or more of the adults should remain in the home	83%	33%
Counseling	87%	89%
Drug and/or alcohol treatment	96%	90%
Parenting classes	88%	94%
Psychiatric evaluations	65%	83%
Other services	86%	86%
Where services will be provided	89%	96%
Ways the parents will alter home conditions	100%	67%
House rules for adults and children to abide by	100%	87%
School related issues	92%	87%
Custody of the children	100%	69%
Non-compliance with the plan		74%
Methods of improving compliance		85%
Improving the family-worker relationship		92%
Legal guardianship as a case goal		56%
Long-term foster care as a case goal		79%
Independent living as a case goal		100%
Termination of parental rights as a case goal		57%

Post-disposition, we find that discussions of the following issues in mediation result in a consensus less than 60 percent of the time: whether one or more of the adults in the home should remain in the home; whether the appropriate case goal is legal guardianship; whether the appropriate case goal is the termination of parental rights.

The second related point is whether discussing certain issues in mediation influences the overall outcome of the session. Are mediations which consider whether the child needs to remain in placement, or cases with worker-parent conflicts, more likely to result in an impasse?

Knowing what issues were discussed in mediation does help to predict the ultimate outcome of the session. Mediation sessions involving discussions of legal guardianship or termination of parental rights, or problems in the caseworker-family relationship, are statistically less likely to settle.

<b>Mediation Outcome by Issues Discussed</b>			
	Full Settlement	Partial	No settlement
Discussed wording of the petition	77%	16%	7%
Discussed supervision of visitation	68%	21%	11%
Discussed counseling for parents	76%	14%	10%
Discussed school issues	81%	19%	0%
Discussed custody of children	79%	21%	0%
Discussed legal guardianship for children	61%	9%	30%
Discussed termination of parental rights	47%	11%	42%
Discussed worker-family relationship	64%	27%	9%

## ***Predicting Settlement: Participants***

There was little variation in who attended each of the mediation sessions in this study. We have already noted that parents, attorneys for all sides, and caseworkers attended virtually all sessions. Given that most mediations consisted of the same general group of players, it is not surprising that we see little relationship between who attended and the outcome of the session.

We do see some evidence that mediations which include professionals outside the usual circle of participants — for example, therapists — are less likely to settle. It is unlikely that the presence of these professionals disrupts the mediation process. A more likely explanation is that additional professionals are pulled in when cases are especially problematic, and this explains the lower settlement rate. Evidence for this theory can be found in the fact that almost half of the mediation sessions involving additional professionals also involved discussions about parental non-compliance with the treatment plan.

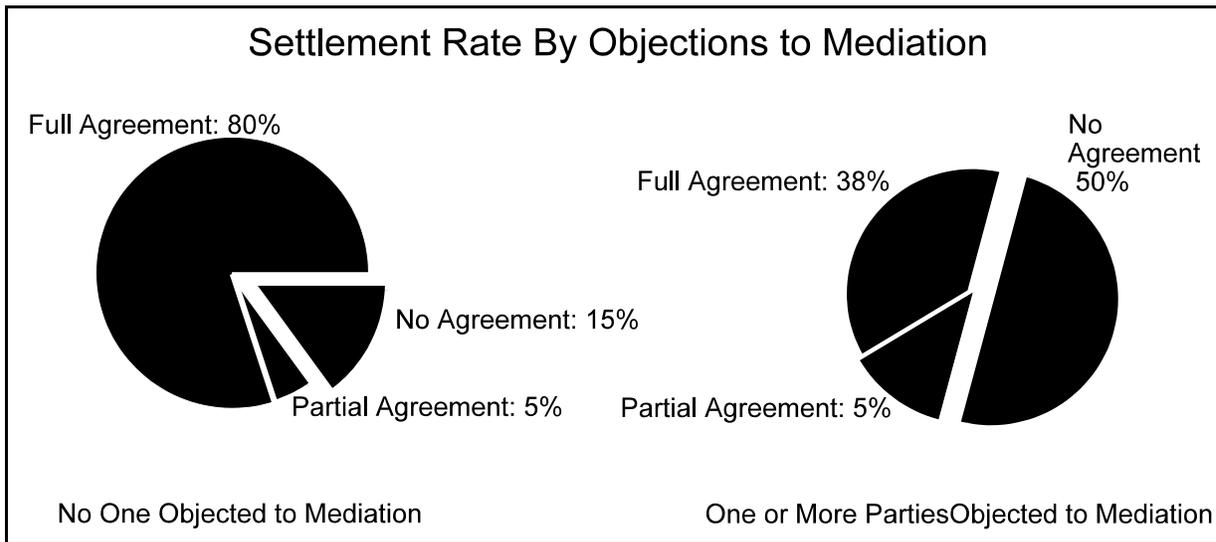
We see no evidence that the child’s participation influences mediation outcome. This is true even when we restrict the analysis to those cases with older children where the child’s participation

would presumably be most relevant. Among those cases with children over 10 years of age, about three-quarters produce full settlements in mediation, 10 percent produce partial settlements, and 15 percent reach no settlement. These figures hold when we control for whether a child attended. However, the finding that children's participation does not influence outcome should be viewed cautiously. Because the mediator and participants selectively chose to include some children but not include others, it is likely that the cases that would most benefit from the child's participation do have children present.

Finally, we explored whether settlement in mediation is largely a function of the individual personalities in mediation, quite apart from their professional identities. Our conclusions must be viewed as tentative. Most attorneys representing parents and most caseworkers had only attended a handful of mediations, making it impossible to really determine whether some people more routinely reach settlements than others. A somewhat smaller group of attorneys represent the CPS agency, and as a result five of these attorneys had attended a dozen or more mediations. The no settlement rate among these attorneys ranged from 7 to 23 percent. However, given the very small numbers, differences this large might well be due to chance alone.

While we cannot conclude that some parties routinely settle while others do not, there is evidence that the participants' support for mediation is a factor in producing settlements. On a subset of approximately 30 cases, the mediators were asked to indicate whether the case was in mediation over the objections of the parent's attorney(s), the attorney for the child, the attorney for the CPS agency, or the caseworker. In almost a third of the cases with such information we find that there was an objection. Most of the objections were by attorneys for the CPS agency, although it was not uncommon for the parents' attorneys to support the objection of the CPS attorney.

If any party objected to mediation, the settlement rate dropped considerably. No settlement occurred in 15 percent of the cases without an objection, and 50 percent of the cases with an objection. With the limited pool of cases in the present study we cannot determine whether objections reflect individual biases against mediation in general, or case specific objections. If most objections come from only a handful of professionals, it may be that outreach educational measures are needed to overcome resistance.



## ***Comparing Mediated and Litigated Agreements***

Earlier in this report we compared cases referred to mediation and cases set for litigation to provide insights into whether the professionals involved in child maltreatment cases are making selective, subjective decisions about what types of cases “belong” in mediation. Our results were mixed. On the one hand we noted:

The results suggest that in most respect cases referred to mediation look very similar to those which are not referred. This would suggest that the decision to refer to mediation is based more on chance or subjective evaluations of the case, rather than on systematic factors.

On the other hand, we also noted:

There do appear to be a few types of cases that the professionals are less likely to send to mediation. Specifically, cases where the alleged perpetrator has a drug problem or known criminal history and cases with criminal court filings are more likely to go to a contested jurisdictional hearing and less likely to be referred to mediation.

Because there do appear to be some systematic differences between the cases which were and were not sent to mediation, we must be very cautious when comparing the treatment plans developed for the two groups. If comparison group, i.e. litigated, cases involve more serious maltreatment and more troubled families relative to the mediation group, we would expect the outcomes for the two groups to be different. The following analysis attempts to reduce some potential discrepancies between the two groups.

First, we attempt to create more equivalent comparison and mediation groups by eliminating from the analysis cases that involved criminal court filings. Second, because the control group sample was drawn from the universe of cases set for a contested jurisdictional hearing, we also restrict the analysis to cases mediated prior to the dispositional hearing. This ensures that we are not comparing pre-disposition litigated plans with post-disposition mediated plans. However, by making these restrictions, we limit the number of mediation cases for analysis. The resulting small sample size is a further reason why we must view our results as suggestive, but not definitive.

The outcome of cases mediated and litigated at jurisdiction are very comparable. Approximately 18 percent of the former and 13 percent of the latter result in dismissals, with the court taking jurisdiction in the remaining cases.

Placement outcomes also appear to be quite similar. If the child was out of the home at the time of the mediation or court hearing, the treatment plans developed through both forums typically continued the out-of-home placement. Although mediated plans were slightly more likely to call for the children to return home, the differences between mediated and litigated plans were not statistically significant at the usually accepted levels.

Slight, but again not statistically significant, differences also appear in the type of placement called for in mediated versus litigated settlements. Nearly 40 percent of the litigated settlements, but slightly more than 50 percent of the mediated settlements, relied on relatives or previously non-custodial parents to provide the out-of-home care.

<b>Placement Decisions by Setting in Which Settlement Was Produced</b>		
	Settled in Mediation	Comparison/Court Group
Agreement calls for child to remain in placement	83%	93%
Placement with other parent or other relative	52%	38%
Placement in non-relative foster care	39%	60%
Placement in group home	8%	2%
	(36)	(121)

When visitation between parents and their children in placement is worked out in mediation, the end result appears to be more specific plans than those developed in court hearings. About 70 percent of the litigated plans specify only that the caseworker will determine the visitation schedule, and another 10 percent make no reference to a visitation schedule at all. By contrast, only 40 percent of the mediated visitation plans specify that the visitation schedule will be

determined by the social worker. Visitation schedules developed in mediation are generally much more specific than those plans achieved through litigation.

<b>Visitation Schedule by Where Schedule Was Developed</b>		
	Mediation	Court Hearing
No visits allowed	3%	10%
Reasonable or “up to worker”	40%	72%
1-2 times per month	7%	5%
3 or more times per month	27%	8%
Extended or overnight visits	23%	5%
	(35)	(107)

The mediated plans typically also provide more visits than do litigated plans. About a quarter of all mediated visitation plans provide for three or more visits per month, compared to only eight percent of the litigated plans. Mediated plans also appear to be more likely to provide extended, overnight, and unsupervised visits compared to litigated plans. However, the sample size in this analysis is quite small and the patterns could change substantially with the addition of a few additional cases.

Finally, the services put in place through mediation and court hearings are generally quite similar. About 70 percent of the plans developed in either forum call for some type of counseling. If drugs or alcohol were problems, 80 to 90 percent of both mediated and litigated plans called for drug treatment. Services are specified for children in 38 percent of the mediated and 29 percent of the comparison group cases.

There is some evidence that mediated plans are less likely than litigated plans to require the completion of parenting classes. Slightly more than 70 percent of the plans in the comparison group specified parenting classes, compared to just over half of the mediated plans.

# *Compliance*

All the concerns noted in our comparison of settlements for cases referred to mediation and set for court are also relevant when we compare compliance with mediated and litigated plans. In other words, to the extent that more troubled cases were screened out of mediation, we would expect the mediation and comparison groups to differ on compliance measures. Therefore, the analysis once again attempts to minimize differences between the two groups by excluding cases with criminal court filings and post-disposition cases. We also limit the analysis to cases with dispositional hearings within the last 24 months. This is important since the longer a plan has been in place, the longer the family has had to become non-compliant.

After a treatment plan is developed, a family has almost limitless opportunities to fall out of compliance with the plan: the parents can fail to visit the children in care, miss counseling sessions, have relapses in drug and alcohol use, or generally fail to create stable homes and lives. Our findings confirm what most research on families reported to child protection agencies generally shows: significant percentages of families do become non-compliant with treatment plans.

When we compare pre-disposition mediation and comparison group cases we see few differences in compliance patterns. Although not statistically significant, we do find that 29 percent of those producing settlements in mediation are rated as no longer complying at all, while this is true for 40 percent of the comparison group.

Cases that successfully mediate at the dispositional stage were less likely than comparison group cases to have returned to court with a contested review hearing in the 24 months following the disposition. Over a quarter (28%) of the comparison group had been back for a contested review hearing, compared to only 11 percent of those who successfully mediated. The sample sizes are small, but the difference between the two groups approaches statistical significance.

# *Cost Savings*

For 100 cases reaching an agreement in mediation we have estimates of the cost savings realized through mediation. In calculating the savings, we have taken into account estimated judicial time for trial, estimated attorneys' time for trial preparation and trial time, and have subtracted out the time spent by attorneys in mediation. Other routine operations costs for the court and the mediation program are assumed to be constant and are not included.

The 100 cases produced estimated savings ranging from \$180 to slightly over \$9,700. The total combined savings for these 100 cases was estimated to be \$250,520, producing an average savings of \$2,505. This figure is virtually identical for cases mediated pre- and post-disposition.

The analysis presented in the preceding section suggests that successful mediation cases also do a better job of avoiding contested review hearings. For estimation purposes, we can assume that perhaps 11 percent of the cases settled in mediation would have a contested review hearing, while about 28 percent would have had a contested review hearing without mediation. If we assume that each review hearing that is avoided would also represent an average savings of \$2,505, the total combined savings for the 100 successfully mediated cases would be:

Original hearings costs saved	+	(Expected relitigation costs - Actual relitigation costs)	
\$250,520	+	((28% of 100) X \$2,505)	- ((11% of 100) X \$2,505)
\$250,520	+	(\$70,140)	- (\$27,555)
\$250,520	+	\$42,585	
= \$293,105			

Thus, the total savings for each successfully mediated case would be \$2,931.

Given the settlement rate of approximately 71 percent during our study, sending one case to mediation each working day would result in savings of \$545,225 annually. Given the current estimated settlement rate of 84 percent, this figure would increase to \$645,054 annually.

## *Participant Reactions*

Attorneys for parents in dependency proceedings have generally positive things to say about mediation, both from their own perspective and on behalf of their clients. These attorneys typically report that mediation has a different feel compared to other settlement efforts. The chief differences they cite have to do with the willingness of all the professionals to listen and share information, the willingness of these professionals to move off of adamant stands taken earlier in the process, and the role played by the parents.

One public defender explains:

Two things pleasantly surprised me about mediation. First, the [social] worker gets off her high horse in mediation. In the hallway outside the court social workers are all in control. When the mediator questions them, they have to revisit their position and be open. That wouldn't happen during trial. And parents feel heard.

Another public defender says:

Lots of parents have been waiting to get their say. Up until mediation, the parents probably heard from the child's attorney what the caseworker said. Finally you hear things directly. You hear straight from the person, not hearsay. Parents are surprised by the time given them. I had one client express real pleasure and real surprise that the system was willing to give her some undivided attention for a couple of hours. They really appreciate that the focus is on them and how to help them.

From the PD's point of view, one of the best things about mediation is the fact that it treats parents with respect. However, one attorney notes that participants in the mediation process need to be candid, as well as encouraging and respectful. This attorney notes:

Mediators do need to be careful that the parent doesn't leave mediation with false hopes. Sometimes everyone seems reluctant to tell the parent the cold, hard truth and the parent can leave thinking that it's just a matter of days before the child is returned home. It's hard to tell people unpleasant truths.

When their role calls for them to represent children, rather than parents, most attorneys are still supportive of the process. One attorney says:

It's better than having a child testify in court. It's really hard to testify against parents. Mediation feels safer, better, more flexible.

Children's attorneys also like the fact that all the family's problems can be discussed at one time. Unlike legal proceedings which consider only a narrow slice of the case, in mediation participants can bring up any and all issues. No matter what issues are officially in dispute, one attorney says, "Once you're in mediation . . . everything comes up."

However, attorneys are more divided about whether mediation inspires cooperation or whether the nature of mediated and litigated settlements differ. One attorney speculates:

It's a great program to unclog the courts, but it won't mean the parents cooperate more. These parents are used to saying whatever people want to hear. I don't think mediation results in more cooperation or fewer contested hearings.

But other attorneys suspect that the outcomes in mediation are different from those produced in court::

There is more reality testing in mediation. The plan is more coherent. There's less defending a position just because you're asked for it at some point. People get really committed to resolving the problem, not just defending a position.

The resolutions from mediation are more practical. It's not overkill. They do one service instead of three. Every piece empowering our clients saves the court money. They'll follow through.

Most social workers have only had one or two experiences with mediation, and their reactions are generally mixed. Some workers insist that the process is helpful only if there are very clear, delimited issues to be decided. Many of these workers are frustrated that mediation typically requires hours to complete and may involve parents venting and revisiting old issues.

The parent will go backward and want to discuss the petition and the charges all over again. . . . There need to be clear-cut resolvable issues, we shouldn't be mediating the basic question "where should we be in this case."

However, several workers express the belief that the only real problem with mediation is "at the referral stage." These workers say that "mediation has never really been integrated into the system," and the result is that mediation is not used consistently and is sometimes used inappropriately. One worker says:

Mediation shouldn't be used just because nobody knows what to do with the case and nobody wants to deal with it. . .

Another contends:

What is being sent to mediation is arbitrary. I had one case sent to mediation that settled but that's because we wanted to close the case, dismiss it. . . .And we were sent to mediation with a case we wanted to dismiss!

The attorneys who represent caseworkers agree with this assessment. They express concern that cases are being sent to mediation inappropriately: either because there are no real issues in dispute or because the problems in the case are too enormous to be resolved without trial. The former are sent when commissioners try to be supportive of the process by making referrals, the latter are sent when commissioners use mediation to avoid cases.

The attorneys who represent parents and children agree that there are significant problems with the current case referral process. One attorney insists:

The problems with mediation are all with the referral process, not once you are in mediation. There are glitches getting in.

## *Summary & Recommendations*

The research yields the following conclusions:

There is some evidence that the professionals are making subjective decisions about which cases to refer to mediation and which to retain in the court hearing process. Specifically, cases where the alleged perpetrator has a drug problem, any known criminal history, and cases with criminal court filings resulting from the child abuse report are more likely to go to a contested jurisdictional hearing and less likely to be referred to mediation.

Social workers, as well as the attorneys who represent caseworkers and those attorneys who represent parents and children, express the belief that the primary problem with mediation “is at the referral stage.” These workers say that “mediation has never really been integrated into the system,” and the result is that mediation is not used consistently.

Although there is some evidence that decisions are being made about which cases may be too “serious” for mediation, the cases referred to mediation still involve serious allegations of maltreatment.

The overwhelming majority of the cases in this study completed mediation in a single session. The average number of hours spent in mediation is just over 2.5.

The mediation session nearly always includes the CPS worker, legal counsel for the CPS agency, the attorney assigned to the child victim, and the attorney(s) for the parent(s). The parents also attend, although some parents are unable to attend, typically due to incarceration.

In about one quarter of the cases referred to mediation, the child attended. The child's age was a key variable in the decision to include the child in the mediation session.

Overall, 71 percent of the cases sent to mediation reached a full settlement through the process. Fourteen percent were unable to resolve any issues in mediation. Another 15 percent produced a "partial" settlement.

Although a mediation referral was less likely if the case involved allegations of drug abuse by the perpetrator, known criminal history, or a criminal court filing, when such cases were referred, their mediation outcomes looked very similar to outcomes in cases without such problems.

There is evidence that the participants' support for mediation is a factor in producing settlements. If any party objected to mediation, the settlement rate dropped considerably. No settlement occurred in 15 percent of the cases without an objection, and 50 percent of the cases with an objection.

The outcome of cases mediated and litigated at jurisdiction are very comparable. Approximately 18 percent of the former and 13 percent of the latter result in dismissals, with the court taking jurisdiction in the remaining cases.

Slight, but not statistically significant, differences also appear in the type of placement called for in mediated versus litigated settlements. Nearly 40 percent of the litigated settlements, but slightly more than 50 percent of the mediated settlements, relied on relatives or previously non-custodial parents to provide the out-of-home care.

When visitation between parents and their children in placement is worked out in mediation, the end result appears to be more specific plans than those developed in court hearings.

When we compare pre-disposition mediation cases and comparison group cases, we see few differences in compliance patterns. The pattern is for mediated cases to show better compliance than do litigated cases. However, the differences are not statistically significant.

Cases that successfully mediate at the dispositional stage were less likely than comparison group cases to have returned to court with a contested review hearing .

Given the settlement rate during the study, sending one case to mediation every working day would present a total annual savings of \$545,225 if we combine immediate savings with the avoided costs of subsequent contested review hearings. Given the current estimated settlement rate of 84 percent, this figure would increase to \$645,054.

Attorneys for parents in dependency proceedings have generally positive things to say about mediation, both from their own perspective and on behalf of their clients. Most social workers have only had one or two experiences with mediation, and their reactions are generally mixed.

These findings lend themselves to the following recommendations for improving the program:

There should be clear guidelines about when cases are to be sent to mediation.

This would address the frustration frequently voiced by attorneys and social workers that there is no consistent referral mechanism and widespread confusion about why some cases are sent to mediation, while other equally appropriate cases are not.

The referral guideline should be inclusive. It should encourage mediation whenever the parties in the case indicate that the alternative would be a contested hearing.

A wide range of cases reach a settlement in mediation. There is no reason to exclude cases on the basis of the stage in the legal process, the issue in dispute, or the nature of the family's problems. Referring all cases requesting time for a contested court hearing to mediation will produce the greatest economic benefits and will produce settlement plans that are quite comparable to those generated through court hearings.

Ongoing efforts should be made by the program staff and the judiciary to educate potential participants about mediation.

The research shows that the participants' support for the process is a key factor in reaching a settlement. Cases which enter mediation over the objections of one of the participants are less likely to reach agreements. Without further research, and until the pool of "repeat" players

becomes larger, it is not possible to determine whether the objections are based on the dynamics of an individual case, or a more general resistance to mediation. To the degree that the objections reflect individual preferences to litigate rather than mediate, objections may be reduced by educating the parties about the strengths of the mediation process.