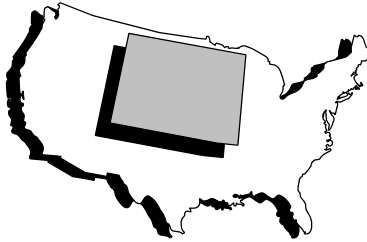


# Dependency Mediation

## IN COLORADO'S FOURTH JUDICIAL DISTRICT



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# Executive Summary

Disputes between individuals, and disputes between individuals and the government, are resolved in many ways. The vast majority of disagreements are disposed of informally through negotiation and compromise.<sup>1</sup>

This statement, true about the legal process in general, is certainly true in the child protection system. Efforts to negotiate settlements begin at the child protective services agency (CPS) and continue on through the court. One relatively recent innovation at the juvenile court is the introduction of mediation to resolve cases with disputes.

Dependency mediation has been operating in Colorado's Fourth Judicial District since the spring of 1995. In its first year of operations 12 mediations were completed. In 1999 there will be a projected 350 dependency mediations.

This evaluation of dependency mediation in Colorado's Fourth Judicial District draws on a variety of data sources:

- < Interviews with professionals who participate in dependency mediation.
- < Data on 146 cases provided by mediators following the mediation session.
- < Data drawn from the court files of 97 cases approximately 15 months following their participation in mediation.
- < Data extracted from the court records of a group of 48 comparable cases in a similar jurisdiction which were never exposed to mediation.

The results of this evaluation contribute to the growing body of evidence regarding the efficacy of dependency mediation. The study finds:

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<sup>1</sup> Myers, John E. B. **Legal Issues in Child Abuse and Neglect**. Sage Publications, Newbury Park California: 1992:2

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- < There was considerable resistance by all professional groups when dependency mediation was introduced into the system, but this resistance was short lived.

Virtually all of the programs evaluated to date have experienced resistance by social workers and attorneys during their first months of operations. Mediation is resented by some who feel it implies a lack of quality in their own settlement efforts. Others feel the introduction of mediation is an indication that the court questions the caseworker's decision making ability. Concerns about the ability of mediation to protect children and respect parental rights are voiced by many. Virtually everyone feels it will prove impossible to find the time to mediate. Fortunately the resistance in the Fourth Judicial District, as in most settings, was short lived.

Today, professionals in the Fourth Judicial District would not be willing to return to traditional ways of resolving these cases. After exposure to dependency mediation, attorneys and caseworkers agree that this process provides a more thoughtful, thorough means of resolving issues in cases, and preventing problems before they arise. Participants observe that mediation does not require new work, it simply moves case preparation from late stage (trial preparation) to front end. Even for cases that do not settle in mediation, the professionals see the sessions as time well spent. The changes recommended by the bench all involve expanding the program: allowing mediation prior to a court filing; expanding the mediation staff to allow mediation to happen even faster; and providing a method to issue emergency ex parte orders to mediate when problems arise in cases.

- < Extended family members frequently participate in mediation.

Unlike court hearings, family and friends are frequent participants in mediation sessions. In Colorado's Fourth Judicial District, 44 percent of the mediations involve such individuals. Latino families are more likely to involve family and friends in mediation sessions than are White families. There is also preliminary evidence to suggest that families in court due to physical abuse and neglect are more likely to involve family and friends than are those parents in court due to child sexual abuse.

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- < Approximately 70 percent of the cases sent to mediation are able to resolve all of the issues during the session.

The figure of 70 percent is quite comparable to the settlement rates reported in other programs around the nation. In addition, like most other programs an additional 20 percent of the cases are able to reach agreements on at least some of the issues in dispute.

- < A wide range of types of cases and disputes settle in mediation. As a result there is no evidence of a need to screen cases prior to a mediation referral.

As dependency mediation began to spread around the nation, questions arose as to the type of cases that were suited to the process. The assumption was that some type of screening might be needed to keep cases out of mediation that either could not be safely resolved or would rarely reach agreements. Research has found that there are some factors that are associated with lower settlement rates. In Colorado's Fourth Judicial District families were statistically less likely to settle in mediation if they had been the subject of prior dependency court filings. However, even cases that are statistically less likely to settle are generally good candidates for mediation. Such cases may reach a full resolution only 40 or 50 percent of the time, rather than 70 percent of the time, but these difficult cases may be those most likely to result in trial, and every case resolved in mediation rather than trial represents enormous benefits to the system.

- < In most respects mediated and non-mediated treatment plans are quite similar.

This fact should be reassuring to those professionals who initially questioned the ability of mediation to produce outcomes that would safeguard children. Placement, visitation, and services are quite comparable between cases settled in mediation in El Paso County and comparison group cases not exposed to mediation in Adams County.

- < Mediated agreements appear to enjoy slightly better compliance, compared to non-mediated agreements.

This evaluation, like previous evaluations, concludes that parents are more likely to comply with mediated agreements versus non-mediated agreements, at least in the short run. Approximately 500 days following the dispositional hearing, 62 percent of the mediated, and 41 percent of the comparison cases, were in generally complete compliance with the treatment plan. Although there were no differences between the two groups with respect

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to subsequent contested hearings, comparison cases were more likely than mediated cases to have had amended plans filed with the court.

< Mediation provides cost avoidance.

This evaluation generated cost avoidance figures associated with dependency mediation which are based on conservative estimates of avoided: trials, expert witnesses and evaluations, and trial preparation time for social services' attorneys and caseworkers. These figures indicate dependency mediation will allow the the Fourth Judicial District to reduce their costs per cases by at least 13 percent in 1999.

< Mediation helps to avoid time delays.

Preliminary evidence suggests that using mediation, especially early in the processing of cases, may help to reduce the amount of time that elapses between key events or hearings. For example, mediation appears to reduce the average number of days elapsing between the child's removal from the home and the permanency planning hearing. The control group cases took approximately twice as long to reach a permanency planning hearing as did mediation cases which successfully mediated prior to disposition.

None of the findings provided in this evaluation make mediation a magic cure for dependency courts. All aspects of the juvenile court system operate integrally. Quality social work, adequate representation for parents and children, available services for families, a committed judiciary — these remain the cornerstones of an effective dependency system. However, this evaluation adds to a growing body of evidence that dependency mediation can be an extremely valuable tool that allows each professional group in the system to operate more effectively.

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# Overview of the Study

This evaluation of dependency mediation in Colorado's Fourth Judicial District (El Paso County) was designed to address the following research questions:

- < What is the overall settlement rate for cases diverted to mediation?
- < To what extent is settlement in mediation determined by the issues in dispute; the legal stage at which the case is referred; or other case specific factors?
- < Does mediation reduce the amount of time that elapses between the dependency filing and the development of a treatment plan and a permanent plan?
- < Are mediated treatment plans different from those developed through adjudication and, if they are, what types of differences are observed?
- < Does mediation appear to promote parental compliance with the treatment plan?
- < To what degree does mediation reduce the need for future contested court hearings?
- < How satisfied with the process are the professionals who participate in mediation?
- < What is the overall financial impact of mediation on the dependency system?

The research was funded by the Colorado Judicial Department and was conducted by the Center for Policy Research.

The report begins with a brief review of the history of dependency mediation and prior research in the field. This is followed by a description of the research methods employed in this study. The analysis begins with a history of the program and the early reactions to the program. This is followed by a description of the mediation process, the participants and the cases handled through this procedure.

The quantitative outcome analysis considers settlement rates, factors associated with settlement, time elapsing between key court events for mediation and comparison cases, and relitigation and compliance patterns.

The qualitative analysis describes the current reactions of key participants to the mediation process. The cost analysis section of the report generates estimated costs associated with various settlement scenarios. The report concludes by placing the findings into the larger national context: comparing and contrasting the results of dependency mediation in Colorado's Fourth Judicial District with results from other jurisdictions around the nation.



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# Dependency Mediation

Disputes between individuals, and disputes between individuals and the government, are resolved in many ways. The vast majority of disagreements are disposed of informally through negotiation and compromise.<sup>1</sup>

This statement, true about the legal process in general, is certainly true in the child protection system. Efforts to negotiate settlements begin at the child protective services agency (CPS) and continue on through the court. However, not all cases will be successfully negotiated, and not all negotiations will be conducted with equal skill and attention. At the CPS agency the negotiation will be hindered by the family's lack of knowledge about the system and the imbalance of power between the worker and family. One study of CPS negotiations concluded:

A striking feature of caseworker-family conferences is the extreme passivity of family members vis a vis caseworkers. Family members rarely ask questions, raise their own issues or challenge position statements made by the caseworker...Given the passive nature of many parents during caseworker-family conferences, it is not surprising that caseworkers and families tend not to discuss, let alone negotiate, decisions about key issues in the child protective services case management process.<sup>2</sup>

When the negotiation occurs at court it can be argued that informal settlement procedures, such as plea bargaining or pre-trial conferences, are still typically "constrained by formal procedures...and communication is distorted by a legal system insensitive to interpersonal aspects of a dispute."<sup>3</sup> Indeed, Myers speculates that medical and mental health professionals in the child welfare system must wonder at the legal system and find themselves saying:

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<sup>1</sup> Myers, John E. B. **Legal Issues in Child Abuse and Neglect**. Sage Publications, Newbury Park California: 1992:2

<sup>2</sup> Tjaden, Patricia G. Dispute Processing in Child Maltreatment Cases. **Negotiation Journal**, October, 1994: 373-389.

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

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These lawyers are certainly a strange lot. How can they expect to find the truth when they seem to spend half their time hiding it from each other and the other half obfuscating the facts with squabbles over inconsequential details?!<sup>4</sup>

By the mid-1980's, responding to increased child maltreatment filings, and recognizing the limits of the traditional settlement efforts, a number of courts around the nation began experimenting with the use of mediation in the dependency court. The first program began in the Los Angeles Juvenile Court. One of the program's architects describes its origins this way:

It was initiated in May 1983 in an effort to achieve earlier case resolution with its many benefits, involve parents and children to a greater degree in case planning and assist the court in calendar management.<sup>5</sup>

In its earliest incarnation the Los Angeles program mediated only jurisdiction and disposition in new filings. By 1987 the program mediated at virtually all points in the court process. By 1987 the concept of dependency mediation had also begun to spread to other courts and by 1999 over a dozen states had programs operating in at least selected jurisdictions.

In most of these jurisdictions, the introduction of dependency mediation was not without opposition, as even a partial list of the concerns and reservations expressed by social workers, judges, and attorneys for parents, and *guardians ad litem* demonstrates. For example, confronted with a new dependency mediation program, child welfare professionals typically express reservations about:

- < The ability of the process to produce safe plans for children;
- < The ability of parents to participate as equal in the process;
- < The willingness of the social services agency to seriously consider new options raised in mediation;
- < The potential for parents to inadvertently offer incriminating information in mediation that would subsequently be used against them;
- < The possibility that professionals attending the session would be exceedingly guarded and unwilling to share information openly;
- < The likelihood that mediation would simply duplicate other efforts to settle the case;

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<sup>4</sup> Ibid, Myers.

<sup>5</sup> Libow, Julius. The Need for Standardization and Expansion of Nonadversary Proceedings in Juvenile Dependency Court With Special Emphasis on Mediation and the Role of Counsel. **Juvenile and Family Court Journal**, Vol.44, No. 3, 1993:3

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- < The loss of judicial “control” over cases;
  - < The potential risk to women who are placed into mediation with partners who have abused them;
  - < The potential for mediators to jeopardize cases by pressuring for settlements even if they are likely to prove unworkable;
  - < The potential for mediators who are unfamiliar with child protection cases to align with sympathetic but manipulative parents;
  - < The potential for mediators recruited from within the child protection system to align with their former coworkers; and last, but far from least,
  - < The amount of time required by the process.

The initial evaluations of dependency mediation programs suggest that these concerns are short lived and that mediation can produce sound, safe, workable results that offer distinct advantages over agreements produced through adjudication or other informal settlement efforts.<sup>6</sup> Indeed, based on the experiences of current programs, one dependency court judge has predicted that dependency mediation, as well as other means of alternative dispute resolution (ADR), such as Family Group Conferences, will change the future of the dependency court:

The trend seems clear. As it continues, the juvenile court will oversee an ever-growing system of ADR models operating in all types of cases that come before the court. The juvenile court will ensure that a comprehensive system of ADR with appropriate procedural safeguards is in place. The court will continue to monitor all agreements reached through ADR. Ideally, in such a system, only the most serious and contested cases will require the formal court process.<sup>7</sup>

This evaluation of dependency mediation in Colorado’s Fourth Judicial District will build on the growing body of research on the effectiveness of dependency mediation. It provides an opportunity to compare and contrast the results of dependency mediation in El Paso County, Colorado to the outcomes reported in prior studies in other states. As such, it provides another opportunity to assess how well mediation serves families, the dependency court, and the child protection system.

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<sup>6</sup> Thoennes, Nancy. An Evaluation of Child Protection Mediation in Five California Courts. **Family and Conciliation Courts Review**, Vol. 35, No. 2, 1997.

<sup>7</sup> Edwards, Leonard. The Future of Juvenile Court: Promising New Directions. **The Future of Children**, Vol 6 No. 3, 1996: 135

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# Methodology

The evaluation will rely on a number of data sources:

- < Interviews with professionals who participate in dependency mediation.
- < Data provided by mediators immediately following the mediation session.
- < Data extracted from the court records approximately 15 months following participation in mediation.
- < Data extracted from the court records of comparable group of cases never exposed to mediation.

Each of these data sources is described in greater detail below.

## INTERVIEWS WITH PROFESSIONALS

Interviews were conducted between April and June, 1999 with a wide range of individuals who participate in, or are affected by, the mediation program. Included in the interview process were the following types of individuals:

- < Dependency program administrators;
- < Mediators;
- < Legal counsel for the child protective services agency;
- < CPS administrators;
- < Attorneys who represent parents;
- < Attorneys who serve as *guardians ad litem*;

These interviews were open-ended, although an interview guide was used to ensure that all relevant issues were discussed. The interviews were used as an opportunity to explore the participants' reactions to mediation and the factors they liked and disliked. These qualitative interviews are not necessarily representative of the views of all mediation participants.

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## **DATA FROM MEDIATORS**

Many of the research questions outlined in this study can only be answered with data supplied directly by the mediator and immediately following mediation: Does the stage in case processing influence the likelihood of settlement? Are certain types of disputes less amenable to resolution in mediation? These questions can best be answered with information readily available from the mediator. Mediators did original record keeping as a part of this evaluation. This record keeping was done for all cases mediated between September 1, 1998 and April 30, 1999.

## **DATA FROM COURT FILES OF MEDIATED CASES**

Some research questions require the elapse of time between the end of mediation and the collection of data. For example, only after time has elapsed is it possible to determine the frequency of contested hearings, including review hearings, among mediated cases. Similarly, considering how well parents comply with mediated treatment plans requires that some time elapse from the close of mediation.

To address those research questions that require the passage of time between mediation and data collection, we rely on data from cases mediated between November 1, 1997 and May 31, 1998. For this sample, data was generated from the records maintained by the mediation program and court records.

## **COMPARISON GROUP**

Under true experimental conditions, control and experimental groups are randomly selected from the same universe of cases. In the present study this would have required cases referred for mediation to be randomly assigned to receive mediation or no mediation. In the real world true random assignment is often impractical. In the Fourth Judicial District judges and hearing officers need to be able to send all cases requesting trial to mediation. This frees the court to hear cases that truly require judicial intervention. It also encourages the legal and child welfare communities to think of mediation rather than trial. Randomly sending half of the cases that could be mediated to trial simply for research purposes was impractical.

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It was also unfeasible to go back in time prior to the start of the mediation service to generate a comparison group. The legislative environment under which the court handles dependency and neglect cases is rapidly changing. Drawing a comparison group from a period prior to the adoption of legislation on Early Permanency Planning, for example, would mean that differences in case outcomes between the comparison and experimental groups might be due to mediation versus adjudication, or might be due to the passage of legislation designed to expedite permanency planning.

As a result, a comparison group was generated in a similar judicial district which did not provide mediation.<sup>8</sup> The comparison group cases from the Seventeenth Judicial District (Adams County) were filed at the same time the experimental group cases were filed in El Paso County (November, 1997 through May, 1998). The dependency court case manager in Adams County helped to review the filings to select cases that were experiencing problems that would have been appropriate for mediation had this service been available.<sup>9</sup> The criteria for selection included variables such as: evidence that the case was set for a contested hearing; new petitions or sibling filings in open cases; or evidence of treatment plan compliance problems in post-dispositional cases.

Because a control group could not be generated using true random assignment, the analysis began with an analysis of the comparison and experimental groups to identify any major differences between these two groups. This allowed subsequent analyses to statistically control for pre-existing differences between the groups that might affect later outcome measures.

## **SUMMARY**

Table 1 briefly summarizes the data utilized in this evaluation:

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<sup>8</sup> See Appendix A for a demographic comparison of El Paso and Adams Counties.

<sup>9</sup> Data was also generated on a sample of 48 cases in Adams County which were not mediated, but did receive case management. The comparison group cases received neither case management nor mediation. The case management program was not in placement when the comparison cases were filed. For information about the case management intervention, see Appendix B.

Table 1. Data Used in the Evaluation		
Source of Data	Mediated Cases (Experimental)	Non-Mediated Cases (Comparison)
Original data maintained by the mediator	146 cases mediated September, 1998 – April, 1999.	
Retrospective review of court file data	97 cases mediated November, 1997 – May, 1998	48 cases with court action November, 1997 – May, 1998
Process interview data	Personal interviews with approximately 10 professionals	

# Program History

Dependency mediation began in the Fourth Judicial District in the spring of 1995. The Court already offered mediation in family cases, and the Coordinator of the Office of Dispute Resolution (ODR) was interested in expanding into new areas. The judge who hears dependency and neglect matters suggested that the proposed expansion should take the form of introducing mediation into abuse and neglect cases. He had read about dependency mediation, and had seen the effectiveness of mediation when he heard divorce and domestic relations cases. He had also seen a trend for more and more delay in resolving cases (“It used to be settling on the courthouse steps. Now it’s settling in the courtroom doorway”), and hoped that mediation would push the parties to prepare and settle. Finally, the judge thought that mediation would provide a settlement forum in which the parties felt they had a say in the outcome and could tailor agreements to the case. He notes that all other settlement forums impose agreements on the parties and in court the person imposing the agreement “is the one person in the room who knows the least about the case.”

The ODR Coordinator admits that her initial reaction to the idea of dependency mediation was “you can’t mediate that!” However, after exploring the matter a little further she agreed to help start the program. The presiding judge wanted all types of cases sent to mediation and said the only criteria should be that “no further harm could happen as a result.”

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Initial resistance to the program was fairly widespread. The Department of Human Services was resistant and felt coerced into mediation by the court. Parent's attorneys were skeptical. So, too, were attorneys serving as *guardians ad litem*. One GAL says she could not imagine:

...how as a GAL I could sit in the room and argue about what had actually happened, or whether what happened constituted abuse.

In addition, her initial response, "Oh great, another meeting," was typical of the widely held viewpoint that the professionals were simply too busy to squeeze in another set of meetings.

Despite the initial resistance, the program was quickly organized and implemented, and the professionals made good faith efforts to resolve cases in mediation. This is probably due in large measure to the strong judicial support the program enjoyed. No one, not social workers, their attorneys, attorneys for children or attorneys for parents, wanted to appear in the judge's courtroom without having first made a real effort to mediate a resolution. However, attorneys were obviously angry and annoyed when they appeared to schedule the mediation and the mediation staff estimate that it took the better part of a year for attorneys and social workers to accept the program.

A number of factors helped move the program from one that was reluctantly tolerated to one that is actively supported. A few "nightmare cases" that no one expected to produce settlements in mediation — cases involving incest and criminal charges — were settled. A training for the professional participants was held in early 1996 and the caseworkers who attended began to warm up to what they heard, even noting that "we can get creative in mediation." One of the leading respondent attorneys in the community decided that he liked mediation because it gave his clients a chance to be heard and he began actively requesting mediation. The program added an attorney with expertise in child protection cases to serve as mediator, thus reassuring the legal community about the legitimacy of the approach. Finally, mediation staff say, "the real turning point came when the DHS attorneys realized that this process saves them time."

The program growth has been both fast and steady. In its first year of operations 12 mediations were completed. In 1999 there will be a projected 350 dependency mediations and by the year 2000 the program expects to serve approximately 450 court referred cases.



## Number of Completed Dependency Mediations by Year

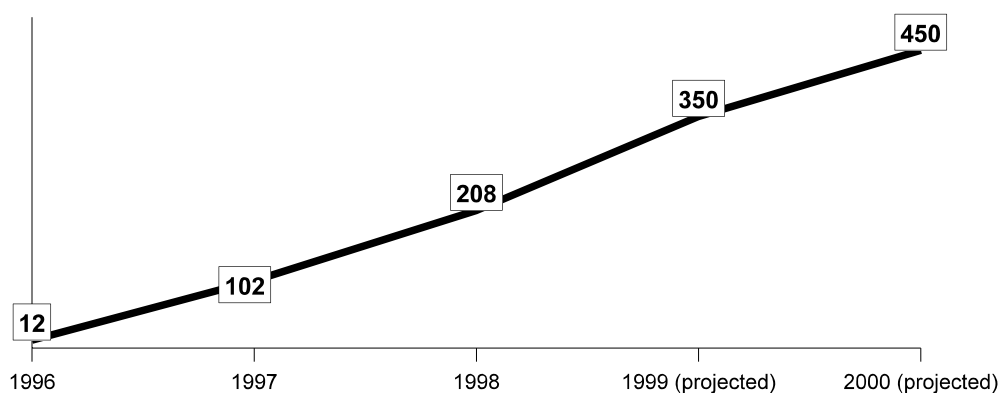


Figure 1

## Profile of Mediated Cases

Between September, 1998 and April, 1999, the dependency court mediators completed a brief form for each case mediated. A total of 146 forms were ultimately completed and analyzed. These forms provide the best means of describing the families served by the program.

With respect to race and ethnicity, just over half of the parents were White, about 15 percent were African-American, another 15 percent were Latino, and “other” (including Asian American and Native American) made up less than 5 percent of the families.

## Race/Ethnicity of Parents

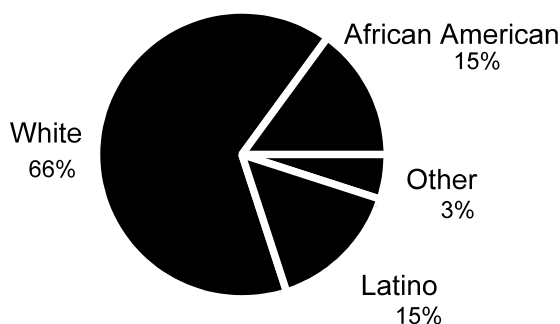
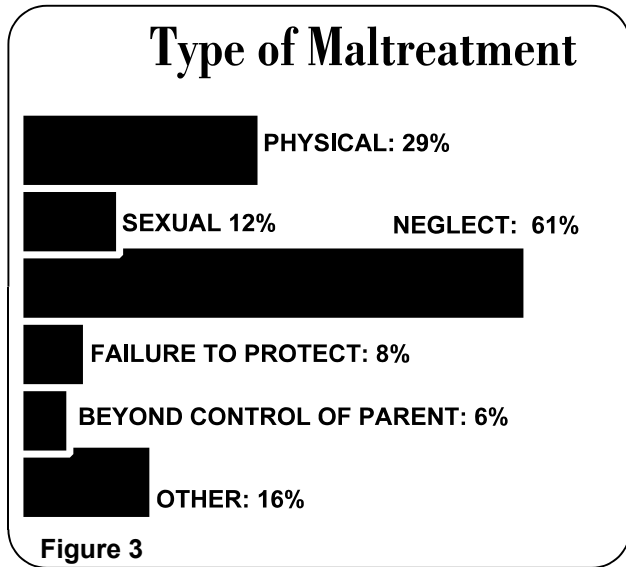


Figure 2

Most families had only one child, and approximately 13 percent had four or more children. The average age of the children was 5.6 years, with a median of 4.7 years.

The families were fairly evenly divided between those who had been the subject of previous dependency filings (52%) and those who were in the court system for the first time (48%). However, for nearly three-quarters of the parents (73%), this was their first experience with mediation.

The nature of the maltreatment bringing the family into the system was most commonly

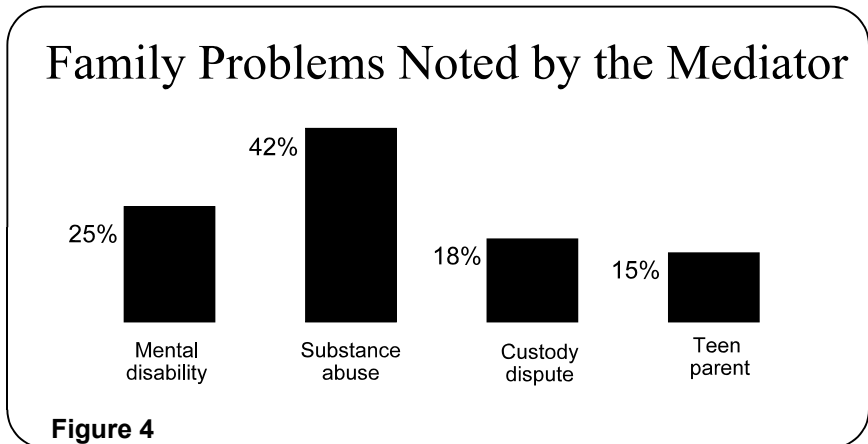


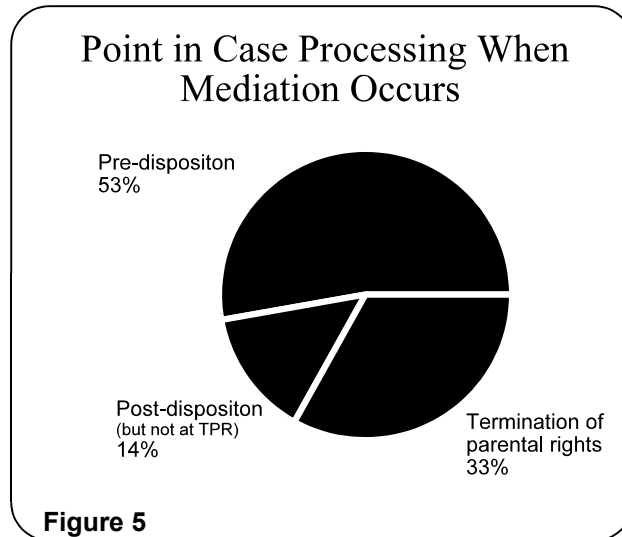
neglect, followed by physical abuse (Figure 3). Approximately a quarter of the families were reported for more than a single type of maltreatment.

Mediators also noted whether the parents had mental disabilities, substance abuse problems, were teen parents or whether the parents were fighting between themselves over custody. Most parents (70%) were experiencing at least one of these problems at the time of mediation, and 21 percent were experiencing more than one problem (see Figure 4). These types of factors complicate the ability of child

welfare professionals to generate agreements and may contribute to the family being sent to mediation. Naturally, these factors can also complicate mediation. However, families are not considered inappropriate for mediation unless a problem, such as substance abuse or mental disability, is so severe or untreated that the individual cannot participate in the session.

The mediations were fairly evenly divided between those involving new cases (pre-disposition) and older cases (post-disposition). Almost a third of the families were seen in mediation because the child protective services agency planned to file, or had filed, a motion for the termination of parental rights (See Figure 5).





## Description of the Session

### PARTICIPANTS

Mediators who come to the dependency court from the family court often note that one key difference between child custody/access mediation and dependency mediation is the sheer number of people in the session. Conferences, workshops and trainings for dependency mediators often focus on techniques for managing large groups of participants. The data in this study confirm that dependency mediations are typically composed of a great many professional and lay participants.

The average number of parties attending a mediation session was 6.5 and the median was 6.0, meaning that half of the cases involved *more than* six individuals.<sup>10</sup> The average number of professionals in attendance was 4.3 and half of the sessions included more than 5 professionals.<sup>11</sup> The average number of lay participants, including parents, children,

<sup>10</sup> This figure is actually a conservative estimate of the number of people attending. Mediators were asked to indicate whether “family/friends” attended but were not asked to indicate how many of these individuals were present. Similarly, the presence of other professionals (typically treatment providers) was noted, but no information was collected regarding the number of these “other” professionals in attendance. In the present calculation only one person was added if “family/friends” was checked, and one person was added if “other professional” was checked.

<sup>11</sup> Court Appointed Special Advocates (CASA) were included as professionals, although they are unpaid, they are trained volunteers who presumably have greater knowledge of the child welfare system than do parents and other family members.

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foster parents and other family and friends, was 2.0, although sessions ranged from those with one to four lay participants.

Cases which entered mediation post-disposition generally had more parties involved in the mediation than did pre-disposition cases. For example, only 64 percent of the pre-disposition cases had six or more parties attending, compared to 80 percent of the post-disposition cases (this difference is statistically significant at .04).

In about half of all the mediations (51%), both parents attended. This means that in half of all dependency mediations the mediator needs to be aware of possible previous intimate partner violence between the parents when deciding how to structure the mediation.

In 41 percent of the cases, only one parent attended. When only one parent attended, mothers were about twice as likely as fathers to be present. This reflects the high number of single mother households in the child welfare system. Indeed, in 12 percent of all cases, the father was not part of the case, and his location, and in some cases his identity, was unknown.

In the remaining eight percent of the mediations, neither parent attended. In half of these cases neither parent could be located. In the remaining four percent, the parent's attorney participated although the parent did not.

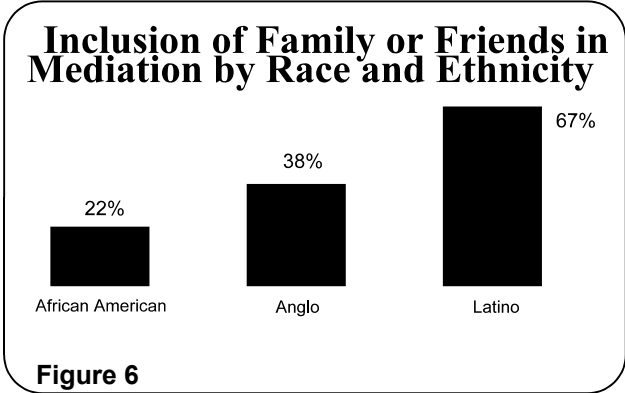
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<sup>11</sup> Percentages are based on cases where these individuals are relevant. For example, cases without a CASA are not included in the CASA percentage attending.

<b>Table 2. Individuals Present During Mediation</b>	
Mother of child	87%
Father of child	74%
Child(ren)	8%
Foster parent(s)	29%
Other family or friends	44%
<b>Average number of lay participants</b>	2.0
Attorney/GAL for child	97%
Court Appointed Special Advocate	72%
Attorney for mother	92%
Attorney for father	89%
Caseworker	99%
Attorney for county	93%
Other professionals	21%
<b>Average number of professional participants</b>	4.3
<b>Average number of participants</b>	6.5

Overall, 44 percent of the mediations included family or friends of the parents. This is a noteworthy fact because traditional approaches to settling these cases — whether through informal negotiations or trial — generally do not involve family or friends or allow them to offer input into the decisions being made.

The data indicate that some types of cases or families are more likely than others to involve family and friends. For example, there are differences by race/ethnicity in the inclusion of extended family or friends in the mediation session. Specifically, Latinos are significantly more likely to have family and/or friends present when compared to either African Americans (significant at the .05 level) or Whites (significant at the .05 level). The differences between African Americans and Whites are not statistically significant.



The type of maltreatment also appears to be related to the inclusion of family and friends in the mediation session. Specifically, neglect cases are most likely to include such support persons, while cases involving sexual abuse are least likely to have friends and family in the mediation session. Thus, 49 percent of the neglect cases had family/friends present, compared to 33 percent of the physical abuse cases, and 15 percent of the sexual abuse cases. It may be that sexual abuse is more likely to divide and polarize family members than is neglect or physical abuse, which also carry less stigma.

Although not statistically significant, there was also a tendency for family and friends to be more involved in cases with substance abuse by the parents and when the case involves teen

parents. The number of children in the family also appears to be related to participation by family/friends. Cases with 1-2 children were twice as likely to involve family and friends as were cases with three or more children (48% vs. 24%).

On the other hand, there was no variation in the participation of friends and family based on: the parents' problems with mental health; prior CPS involvement; total number of presenting problems; the age of the child(ren); or the stage at which the case entered mediation.

## PROCEDURES

Most cases are ordered into mediation by the judge, although other parties may request that mediation be provided. Every case in which trial time is requested is automatically ordered into mediation. The parties proceed directly from court to the mediation office where they set an appointment. The goal is to make sure that mediations are set at least 30 days prior to the next scheduled court hearing.

On the day of mediation, the session begins with an explanation of the process. By now most of the professionals are repeat players, and the presentation is geared more to the

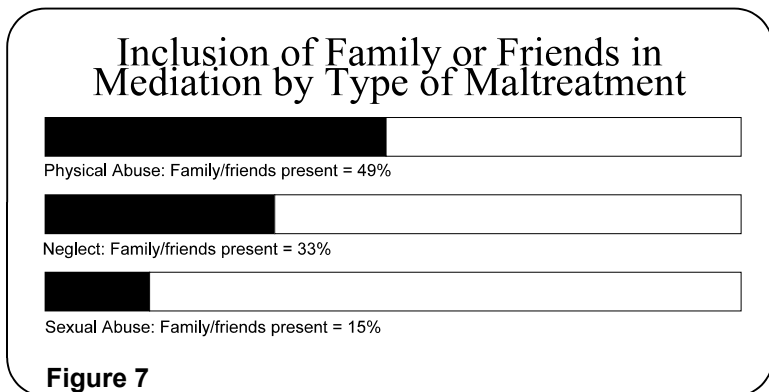


Figure 7

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lay participants, typically the parents and their extended family. The following is a typical introduction:

The first thing you should know is that I will not be making any decisions about your case. My job is to help you talk. My job is to make you as comfortable as you can be in a courthouse. I'll make sure you get lots of time to talk to your attorneys. We can also stop any time you want for a break or if you want to talk privately with someone. I want you to stop us if we start talking too fast or if we're not speaking English. I try to make sure that doesn't happen. I had a mediation the other day that was done in Spanish, and I think it really is easier to translate from Spanish to English and back than it is to translate all the "legal-ese." So if anybody starts talking legal-ese, I'll try to stop them and you remind me. After we all get comfortable, I want us to see what the issues are, and then we'll work on solving them. The most important thing is to keep talking. That's tough sometimes because the things we have to talk about aren't easy.

Participants are told there are two general rules: participants must treat one another with respect, and they must agree to abide by the rules of confidentiality. Parents are told:

It's really stressful to be in court. You're tired. You're tired of coming here. You're stressed out. That's the natural way to feel. But I ask everyone in mediation to be polite.

Participants are then told that the mediator will report nothing of what happens in mediation to the court. The participants will also not be allowed to talk about what happened in mediation when they go to court. The judge will not allow someone to say, "but in mediation you said that..."

Decisions about how to organize the mediation session after the general introductions varies depending on the mediator and the case. One mediator notes that after the introductions he likes to meet with the attorneys in the case to make sure there are "no surprises in store." This is a common approach in many mediation programs.

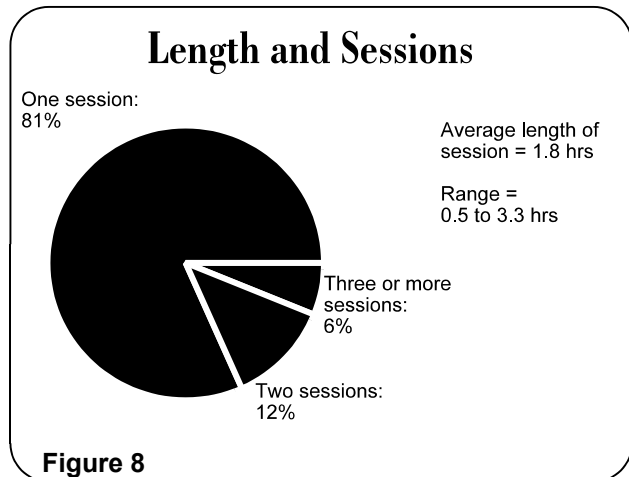
During the session the mediator may choose to meet with smaller groups of individuals and when this happens it is not uncommon for attorneys who are not part of this smaller group to request permission to make phone calls, deliver documents to court, or check on how the court is progressing with the calendar. The struggle to keep attorneys available for mediation is viewed pragmatically by the mediators as less than ideal but "something you just have to accept. It's part of being a court based program."

When the mediation results in a consensus, the mediator will summarize this agreement for the parties to be certain that everyone understands what is being agreed to. However,

a settlement does not generally result in a written agreement. There is generally a courtroom available so that the parties can go directly into court and enter the agreement. Mediators do not accompany the parties into court, and any disagreements at court about the nature of the settlement will result in the parties being sent back to mediation.

## TIME SPENT IN MEDIATION

The average mediation case in this sample lasted 1.8 hours. Most cases were resolved within a single session, although the range was 1-5 with a mean of 1.3 sessions. The amount of time spent in mediation did not differ significantly according to the number of participants, the number of presenting problems (such as substance abuse, teen parents, mental health issues, prior reports), the presence of other family/friends, the nature of the maltreatment, the stage at which the case was mediated, or the outcome of the mediation session.



## ISSUES DEALT WITH IN MEDIATION

Cases that are seen in mediation prior to the hearing(s) on adjudication and disposition typically involve discussions of how the petition will be worded, whether voluntary services would be sufficient, the need for and the nature of out-of-home placements, visitation with children placed out-of-the-home, and treatment services for parents. Less common topics of discussion at this stage include whether one of the parents should leave the home, ways that the parents can alter their living conditions to make the home safe, household rules that parents and children will agree to abide by, and school issues that the children are facing.

Many of these same issues continue to be discussed in mediations that occur after the dispositional hearing. For example, post-disposition mediations still commonly deal with placement, visitation and service issues. However, at this stage mediation also commonly deals with selecting the appropriate goal in the case and non-compliance with the treatment plan.



<b>Table 3. Percentage of Mediations Dealing With Specific Issues by Stage in Legal Process</b>		
<b>Percentage of Cases Dealing With:</b>	Jurisdiction/Disposition	Post-Disposition
Wording of the petition	80%	
Dismissing case with voluntary services in place	33%	
Placement issues	29%	40%
Visitation issues	33%	21%
Services	54%	25%
Altering home conditions	8%	9%
House rules for parents and children	4%	2%
School issues for children	5%	5%
Goal in the case		81%
Compliance issues, relationship with worker		24%
Termination and adoption issues		32%
	(72)	(63)

# Settlement

Cases do not simply “settle” or “not settle” in mediation. Rather, depending upon the issues bringing the case into the process, they may reach a consensus about all of the issues, some of the issues or none of the issues. The agreement may also cover interim steps, such as agreements to have psychological evaluations conducted or a home study of relative’s home in a potential kinship care case. However, in the present study most of the cases could be classified as full agreements. Overall, nearly 70 percent of the cases sent to mediation reached a consensus about all the issues pending in the case. Another

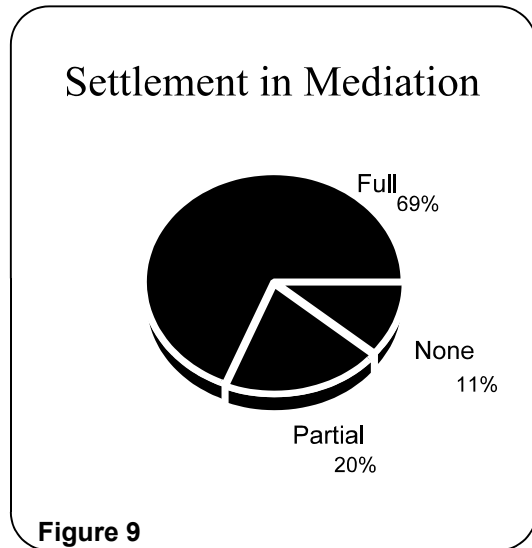
20 percent reached an agreement on some, but not all issues, or reached a temporary agreement. The remaining cases (11%) were unable to reach any agreement in mediation.

An analysis of the data indicates that there are few variables that help to predict settlement. In other words, a wide spectrum of cases are settled in mediation. For example, settlement is *not* predicted by:

- < the type of maltreatment;
- < the presence of single versus multiple forms of abuse;
- < whether criminal charges were pending;
- < the legal stage of the case when referred to mediation;
- < whether case had been through mediation previously;
- < whether the parents were adolescents;
- < whether the parents had known mental health problems;
- < whether extended family or friends attended the session;
- < the family's race or ethnicity.

Settlement also shows very little association with the specific issues discussed in mediation. For example, in jurisdiction/disposition cases settlement was equally likely regardless of whether the session dealt with the petition, placement, treatment, or visitation. Similarly in post-disposition cases, settlement was equally likely regardless of whether mediation dealt with placement, visitation, compliance, or case goals.

The only variable that helps to predict settlement is whether or not the family has been the subject of prior dependency filings. Cases with prior filings were somewhat less likely than first time filings to reach a full settlement (40% vs 22%).



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# Mediated & Non-Mediated Agreements

The treatment or case plan specifies what the parties must do in order to have the court release its jurisdiction over the child or children — such as counseling, drug testing or locating suitable housing. The plan also specifies where the child will reside while the parties, typically the parents, work on the plan and may dictate when and how the parents will see the child. In addition, the treatment plan may discuss services for parties other than the offending parents.

Cases mediated prior to disposition had treatment plans, on average, within 124 days of the initial hearing regarding the removal of the child from the home (sometimes called the detention or emergency placement hearing). In the comparison group the comparable figure was 90 days. The difference between the mediation and comparison groups is not statistically significant.

Comparing the placement decisions made in mediation cases and the placement provisions for the comparison group reveals no significant differences.<sup>12</sup> Typically the children had been removed from the home and both mediated and non-mediated plans called for them to remain in placement. Nor were there significant differences in the types of placements that were utilized. Slightly more than 40 percent of the mediation and comparison cases had children placed with relatives or the previously noncustodial parent. In the remaining cases, children were in non-relative foster care.

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<sup>12</sup> Service information was provided directly by the mediator for the prospective sample of mediation cases and was drawn from the court files for the retrospective mediation sample. The court file data is used in this analysis because only court data was available for the comparison group.

<b>Table 4. Treatment Plan Placement Provisions in Mediated and Non-Mediated Cases</b>		
	<b>Mediation Cases: Placement Decided in Mediation</b>	<b>Comparison Cases</b>
<b>Child to remain in home (in home at dispositional hearing)</b>	18%	11%
<b>Children in out-of-home placement</b>	83%	84%
<b>Children to return home</b>	0%	5%
	(40)	(44)
<b>Placed with other parent</b>	6%	10%
<b>Placed with other relative</b>	36%	34%
<b>Placed in foster parent home</b>	50%	42%
<b>Placed in group home</b>	8%	13%
	(36)	(36)

Among cases with children in out-of-home placements, treatment plans are more likely to contain specific information about visitation when the plan was developed in mediation, rather than court or out-of-court negotiations. None of the mediated treatment plans and 12 percent of the comparison case plans failed to mention visitation at all.

When visitation was mentioned, mediation and comparison group plans were equally likely to prohibit visits between parents and children (8% and 3%, respectively). When visits were allowed, mediation and comparison group plans were equally likely to note that visitation was to be determined by the caseworker or to be “reasonable.” Among those cases specifying the actual number of days of visitation, mediated and comparison group visitation plans did not differ significantly in the amount of time provided. Nor were there differences between the mediated and comparison group visitation plans with respect to the supervision of visits. The two groups were equally likely to specify unsupervised visits, to allow supervision by family and friends, and to require caseworker supervision.

<b>Table 5. Treatment Plan Provisions for Visitation in Mediation and Comparison Cases</b>		
	<b>Mediation Cases: Visitation Decided in Mediation</b>	<b>Comparison Cases</b>
<b>No reference to visitation in the court file</b>	0%	12%
<b>No visits allowed</b>	8%	3%
<b>Visitation “reasonable” or determined by caseworker</b>	40%	36%
<b>Supervision by:</b>		
<b>Caseworker</b>	69%	73%
<b>Family or friends</b>	11%	15%
<b>Unsupervised</b>	19%	12%
	(36)	(36)
<ul style="list-style-type: none"> <li>• <b>Differences between mediation and comparison groups are significant at .05</b></li> </ul>		

The services to be provided to the offending parent are very similar in the mediation and comparison groups. There were no differences between the groups respect to provisions for counseling, substance abuse treatment, parenting classes or other services.

# Case Outcomes

## COMPLIANCE

In child maltreatment cases, complying with a mediated or litigated agreement is not a simple matter.<sup>13</sup> Dependency cases are not resolved by one party paying a fine or taking some other simple one-time action. Rather, complying with the elements of a treatment plan will require months of cooperation and will give the parties many opportunities to become non-compliant. For a variety of reasons, parents may relapse into drug use, miss counseling sessions or parenting classes, or fail to visit with children who are placed out of the home. Despite these obstacles, mediation proponents hope the process will

<sup>13</sup> Measuring compliance is also complicated. Parties may be compliant at one time point and non-compliant at another, precluding a simple dichotomous classification. Measurement is further complicated by the fact that the court file provides only incomplete information about compliance. Court reports by caseworkers provide a good indication of how well the parents are living up to the conditions of the treatment plan, but the detail and accuracy of these reports undoubtedly varies from worker to worker.

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encourage compliance by tailoring the plan to the family's needs and by helping parents to feel invested in the agreement.

In assessing compliance among cases resolved in mediation and those in the comparison group, it is important to keep in mind that the comparison and experimental groups were not randomly assigned, and were, in fact, generated from different jurisdictions. It is therefore important to statistically control for any major differences between the mediation and comparison groups that might be expected to affect compliance. A preliminary analysis of the mediation and comparison groups found only two major differences. A significantly higher percentage of mediation cases involve fathers but not mothers. A total of 13 percent of the mediation, but only 2 percent of the comparison, cases involved only a father. Since compliance might be expected to vary according to who is required to meet the terms of the treatment plan, the few "father-only" cases have been eliminated from the analysis.

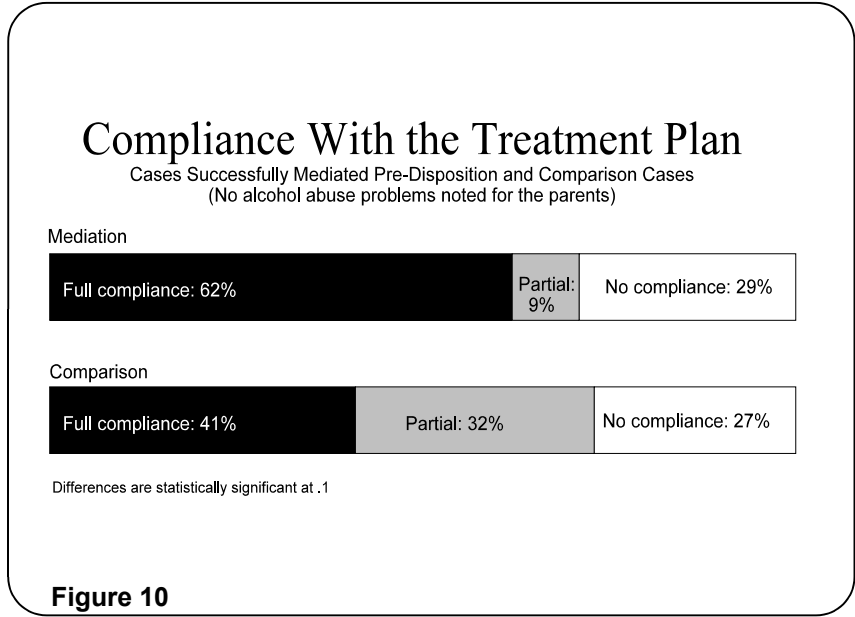
A second difference between the mediation and comparison groups is the higher percentage of mediation cases with alcohol abuse noted as a problem for the parents. The mediation cases are twice as likely as comparison cases to reference alcohol abuse (33% vs 15%). Parental alcohol abuse may have a direct influence on compliance, independent of how the case was resolved. Therefore, the compliance analysis presents patterns for all cases and subsequently restricts the analysis to cases without alcohol abuse problems.<sup>14</sup>

The mediation group is further restricted to those cases mediated pre-disposition. Cases seen in mediation post-disposition were presumably sent, at least in part, due to non-compliance and including them would not produce useable results.

As Figure 10 indicates, after introducing these controls, cases which successfully mediate show better overall compliance with the treatment plan than do comparison cases. Approximately 500 days after the dispositional hearing, 62 percent of the mediation and 41 percent of the comparison cases were in generally complete compliance with the plan.

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<sup>14</sup> There are too few comparison cases with alcohol problems to allow for a contrast of comparison and mediation cases with and without alcohol abuse issues.



A multivariate analysis, logistic regression, provides another way to view the contribution that mediation makes to parental compliance. Cases were categorized into two groups: complete compliance and less than complete compliance.<sup>15</sup> The following variables were then used to see how well they predict compliance: having been the subject of a prior dependency court filing; having criminal charges pending; the type of maltreatment; mental illness on the part of the perpetrator; developmental delays on the part of the perpetrator; drug abuse by the perpetrator; and, finally, whether mediation was used.

These variables were correctly able to predict 91 percent of the cases with less than complete compliance and 75 percent of those with complete compliance, for an overall correct classification rate of 84 percent. The variables that best predicted compliance included (in this order): prior dependency court filings, drug abuse by the perpetrator, mental illness; and the use of mediation.

**SUBSEQUENT CASE ACTIONS**

Another measure of the degree to which the treatment plan is well suited to the family is the percentage of cases with amended treatment plans filed with the court. In the present sample, 39 percent of the comparison group cases involved the filing of an amended plan, compared to 20 percent of the cases successfully mediated pre-disposition. This difference is statistically significant at the .07 level.

<sup>15</sup> As in the prior analysis, only cases involving mothers and no alcohol abuse were included in the logistic regression.

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On the other hand, there was no evidence that mediation cases experienced fewer contested review hearings relative to the comparison group. However, this finding should be viewed with caution since the court files do not explicitly note whether review hearings are contested.

Finally, at the time of data collection, what was the status of the mediated and comparison cases? In providing answers to this question, the reader is again cautioned that it was necessary to draw experimental and comparison groups from different jurisdictions. As a result, it is difficult to make definitive conclusions about how outcome varies by settlement forum. It is very possible that there are inherent differences between these two jurisdictions with respect to case processing. In addition, of course, faster case closure is only a positive outcome if it is accompanied by a successful resolution of the family's problems.

With caution, then, it can be noted that at the time of data collection (on average about 500 days post-disposition), the cases successfully mediated prior to disposition were twice as likely as comparison group cases to be closed (34% vs. 16%; statistically significant at .06).

## Participant Reactions

The reactions of the primary professional groups participating in mediation have clearly changed with exposure to the program. Initially there were reservations about finding time for mediation, losing control of cases, and, perhaps first and foremost, mediating children's safety. One magistrate, who was familiar with mediation in divorce cases, said:

I was a little bit skeptical at first, because of the number of people involved and the issues involved. In family court you're dividing parenting time or money. Here you are sending a child home or not, terminating parental rights or not.

However, the concerns voiced initially about the ability of mediation to produce safe and workable settlements are rarely heard today. Instead, attorneys for parents, children, and social services, as well as caseworkers, are supportive of mediation. The bench is also impressed with the accomplishments of mediation. The changes recommended by the bench all involve expanding the program: allowing mediation prior to a court filing; expanding the mediation staff to allow mediation to happen even faster; and providing a method to issue emergency ex parte orders to mediate when problems arise in cases.



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The professionals involved in child protection cases typically cite the following factors when asked to explain their support:

- < Mediation is the one point in time when everyone on the case is present and ready to talk.
- < Mediation provides everyone, even parents, a chance to be heard; to share information and ideas.
- < Mediation allows parents to maintain a sense of dignity.
- < Mediation allows for more creativity, both in who is involved in generating the agreement as well as the terms of the agreement.

## **ONE PLACE AND ONE TIME**

Nearly everyone interviewed in this evaluation mentioned that one major strength of mediation is the fact that it brings all the parties together at one place and at one time. Over and over again, professionals in the child protection system mention how rare it is for all the parties in a case to have time to talk through the issues. Simple cases are resolved through other forums, such as staffings, or by having one of the professionals take a lead in proposing a settlement. But all too often complex cases are set for trial, even if a trial will poorly serve the family. As one attorney who represents parents explains, “As the parent’s counsel the only real leverage you have is to threaten to take the case to trial.” Once set for trial, cases used to settle in a hurried “hallway negotiation” moments before the hearing or, in rare instances, proceeded on to trial.

One magistrate notes that having been an attorney who practiced in this area before taking the bench was ample reason to support mediation:

I *knew* that nobody does anything until they get to the courthouse. That is egregious. That’s one reason I won so many of my cases, I did prepare. So when I took the bench I knew mediation would be a way to make people prepare.

Another magistrate agrees:

The best result of mediation is that it forces busy, busy people to sit down for one or two hours to hash out the case. Juvenile court has been criticized because nobody gets together to settle before court. People wait and talk 3 minutes before court. Historically, in the juvenile system so many bad things happen because of a lack of communication.

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Attorneys for parents and children note that in cases with disputes, other attempts to bring the parties together, for example in case staffings, have often not been productive. Several attorneys for parents note that without a mediator present meetings too often descend into arguing, wander off track, and do not give everyone a chance to be heard. Without the neutral mediator, even well intentioned efforts by one of the parties to refocus or redirect the meeting will be perceived by the other participants as biased and controlling. One attorney who serves as a GAL observes:

It wouldn't be the same without a mediator. I've tried it. As a GAL a lot of what I do is negotiate and communicate with everyone, but it's not the same. You need someone who sets the agenda and keeps things moving. You need someone who can say "okay, now let's have just the following people meet". In staffings or meetings, no one will do that, nobody can take charge that way.

However, one magistrate notes that an unanticipated consequence of mediation, is that it has made staffings more productive:

Mediation has made staffings work better. People now ask me to order a staffing. They have learned how to negotiate and how to make agreements.

Having everyone in the case present at one time provides an opportunity for confusion and misunderstandings to be rectified. For example, therapists can be included in the session if the parents and caseworker disagree about, or have different impressions of, how well the parents' therapy is progressing. One GAL notes that having everyone present at the same time also:

...calls the bluff of parents who try to play one person against another. Everyone gets to compare notes and they find out that the parent is telling the caseworker one thing and the attorney is being told something else.

## **EVERYONE IS HEARD**

Nearly all the professionals agree that mediation provides a rare opportunity for parents to be heard, and for candid exchanges with parents. The attorneys who represent parents generally agree that their clients are comfortable speaking up in mediation and appreciate the chance to be heard, and to hear others. One attorney says:

Do they speak up? Definitely. Mediation here is pretty casual. In fact the parents are often pretty vociferous and the mediator can help calm them down.

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Attorneys for parents appreciate that mediators do sometimes help their clients to calm down and listen to what the parties have to say. Some attorneys mention that mediation can provide a “reality check” for parents who have very unrealistic expectations for their case and of their attorneys. Attorneys for social services also note the benefit of mediation as a “reality check.” If the caseworker is making unrealistic demands, mediation can be a forum for the worker to hear from everyone involved about why these demands are not realistic.

Mediation also provides a place for everyone to share information and answer questions. This, too, can be especially valuable for parents. One attorney who serves primarily as a *guardian ad litem* for children in dependency proceedings says:

A lot of our parents don't know what's going on. Court is really fast. Even if the GAL or the county attorney or whoever tries to explain things, parents may not believe us. Lots of times they are so confused and scared they wind up fighting about things unnecessarily. In mediation they get to know people, they get to hear that the point is to make the child's life safer.

One attorney for social services underscores that mediation provides an opportunity for the parents to get to know the professionals, and to hear, very candidly, what the professionals are hoping to see happen. She says:

Ordinarily I can't talk to parents. In mediation I can, I can say things I wouldn't dream of saying in court. I'll tell parents, “It looks to everyone like you're not even trying,” or I'll say “I want you to succeed, I have too many kids in foster care already, I don't want to keep your kids, I want them to be able to go home.” It is exceedingly time consuming and I cherish the time I'm not in court, but mediation's an investment in a case.

## **MAKING CONCESSIONS WITH DIGNITY**

Mediation allows the parties, lay and professional, to change their positions without simply saying “I was wrong.” Providing this mechanism for “saving face” can prevent the parties from defending positions simply out of pride. For example, the mediator can provide an opportunity for a change of mind by highlighting how the initial position, though entirely defensible and understandable, might have changed. Thus, while the parent's attorney accuses the caseworker of being unreasonable by refusing to consider the grandparents for kinship care, the mediator can say: “There has been a lot of very good, new information shared here today. Does any of this change where anyone stands on using the grandparents as a placement option?”

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Similarly, with a careful choice of words, the counseling program the caseworker is recommending can be presented to the parents in a non-threatening manner: as a means of learning new and more effective ways of parenting and as something that many families use and benefit from entirely independent of any child protective services intervention. Without such a presentation counseling may be something the parents feel the need to resist because it is viewed as a punishment and a sign that they are “bad” parents.

One GAL notes that mediation can provide a setting in which even the most difficult of all decisions, the decision to relinquish parental rights, can be done in a way that preserves the parents’ sense of dignity. She says:

We’ve used it [mediation] at terminations to come up with a more humane outcome. The thing about termination is, most parents know it’s coming. They haven’t got it together and they know the agency is filing.

Mediation can soften the blow for some parents by recognizing their efforts and the odds against them, as this exchange from a mediation demonstrates:

*Father’s attorney:* Our choices are going to court to fight or voluntarily relinquishing. There isn’t much of a case that can be made in court. The kids have been in foster care forever. We’ve already had an extension. The Family Nurturing Assessment recommends termination because the parents cannot meet the children’s needs...The interactional study says that the parents love the children, but that’s not enough.

*Mother’s attorney:* I just want to second what’s been said. I also want to tell my client [mother] that you did everything you could. There’s no fault here. You worked as hard as you possibly could.

In addition, one magistrate notes that even in termination cases, allowing everyone to have a say can sometimes produce surprising outcomes:

A really surprising thing is that in terminations we’ve had one or two cases that were able to reach other resolutions – family members took the kids.

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## CREATIVITY

Professional participants often describe the process of mediation, as well as the outcomes it produces, as more “creative” than court. In part, the creativity is viewed as a natural outgrowth of having individuals involved who would not be present at court. One GAL says that over time the program has learned a lot about involving third parties:

We’re more creative today about who comes to mediation. For instance, if there is a criminal case pending, the district attorney comes. Therapists come a lot. Extended family members come. We’re using it a lot in termination cases and the foster parents or adoptive parents will be there...The agreements in mediation are different from court. They are much more inventive. When you get a lot of people around a table brainstorming, you get more personalized results.

The professionals feel they have sufficient opportunity to provide input about who should be invited. They also perceive the other participants as receptive to inviting third parties who may be able to offer resources or provide insights.

Judges and magistrates who hear child protection matters feel strongly that mediated agreements are more detailed and personal than any court judgment would be. One magistrate notes:

Are mediated agreements different? Absolutely! I don’t have the time to get to know all the details, all the itty bitty problems in the case. I have to be efficient, so what I would do is deal with the big, legal issues.

# Savings: Time and Money

## COST AVOIDANCE

One judge who has been a leader nationally in the effort to introduce mediation into the dependency court expressed his concerns about a focus on cost savings this way:

My major concern about a national juvenile court mediation movement would be that this kind of program is expensive to do right. I don't know if it saves money. Probably it does since I know it can avoid a 3-4 day trial. But courts may be tempted to do it quick and dirty because that's bound to be cheaper.

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His warning is understandable, mediation cannot function properly without an adequately trained and compensated staff. Nor can it replace other elements in the system, such as adequate representation for parents and children and adequate services for families. In addition, courts and legislators should not lose sight of the non-financial benefits associated with mediation. Nevertheless, most courts are concerned with containing costs and are interested in discovering if mediation can reduce the costs associated with dependency court cases.

In any cost analysis it is necessary to introduce a number of assumptions about what happens in a “typical” case. These assumptions, held constant across mediated and non-mediated cases, are not true in all cases, but provide a typical case and therefore represent typical or average costs. In the following analysis we have made the following assumptions:

- < Mediation is conducted by a single mediator.
- < A typical mediation lasts two hours.
- < A typical trial would require two days of court time.
- < A typical dependency case includes the following parties: the caseworker; legal counsel for the caseworker; the guardian ad litem for the child; the child’s mother and father; separate legal counsel for the mother and father.
- < Attorneys for the parents and child are paid on a flat per case fee rather than an hourly basis (\$700 per case for each attorney or \$950 if the case goes to trial). Most cases serious enough to require mediation or trial will have one set of psychological evaluations conducted.
- < Attorneys for the social services agency and caseworkers will spend time preparing for mediation (estimated at 1 hour for each party), but will spend more time (estimated at a total of 5 hours for each party) preparing for trial.
- < Cases that fail to settle before being scheduled for trial typically *will* settle before a full trial. No more than two percent of these cases actually result in a full trial.
- < Although cases set for trial do settle out of court, they will typically settle only after most trial preparation has occurred.
- < Most cases that are set for trial will experience at least one continuance that will require the parties to be present at court although the case is not heard that day (estimated at 2 hours of waiting time for each expert witness, and 4 hours of waiting time for the caseworker).

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- < Cases that are set for trial are likely to have a second, more costly, set of psychological evaluations completed in anticipation of trial.
  - < A full trial will include testimony of expert witnesses and preparation time for these witnesses (estimated at 3 hours of preparation time per witness and 1-2 hours of testimony).

These assumptions and estimates have been made with input from attorneys for social services and attorneys for parents in El Paso County. The reimbursement rates are based on 1999 standards for all parties. However, the figures are only estimates. Precise data on such issues as the percentage of cases set for trial that settle out of trial are not available. Nor are there precise figures available on trial preparation time.

The cost savings estimates in this analysis are intended as a relatively conservative estimate. They do not include the more speculative cost savings such as savings from reduced time in foster care.

Given the assumptions listed above, we can begin the cost analysis by comparing the cost of a successfully mediated case with the cost that would have been incurred had mediation not been available. Thus, the following tables demonstrate the costs in a single case under three different scenarios: 1) the case is resolved in mediation; 2) the case is not exposed to mediation, rather it settles out-of-court but **following trial preparation**; or 3) the case is not exposed to mediation and **settles through a full trial**.

Table 6 indicates that each case settled in mediation costs approximately \$2,863. This includes the flat fees paid to the attorneys for the parents and children and covers the cost of one psychological evaluation. It assumes one hour of preparation time for the caseworker and the legal counsel of CPS. The court time of 15 minutes is allocated for the parties to enter the agreement with the court.

<b>Table 6. Cost Per Case Settled in Mediation</b>				
	<b>Costs</b>	<b>Preparation 1 hour</b>	<b>Mediation 2 hours</b>	<b>Total 3 hours</b>
<b>County Counsel</b>	\$25/hr	\$25	\$50	\$75
<b>Caseworker</b>	\$19/hr	\$19	\$38	\$57
<b>Attorney - Mother</b>	\$700 -\$950 flat fee			\$700
<b>Attorney- Father</b>	\$700 -\$950 flat fee			\$700
<b>GAL</b>	\$700 -\$950 flat fee			\$700
<b>Evaluations</b>	\$400 for first \$800 for subsequent	\$400		\$400
<b>Expert witnesses</b>	Hourly for: M.D. = \$150 social worker = \$25 therapist = \$25			\$0
<b>Judge and court staff</b>	\$1,000 per day • •			\$31 for 15 mins
<b>Mediator</b>				\$200
				<b>\$2,863</b>
• • Colorado Judicial Department weighted case data indicating the cost of judge and staff to be \$2.10 per minute.				

Table 7 shows the approximate cost of each case resolved by the attorneys prior to trial, but following trial preparation. This table assumes that the case was never referred to mediation. These cases cost, on average, \$4,727 to resolve. This is approximately 1.65 times the cost of a settlement through mediation. Settlement through trial preparation involves more preparation time for the caseworker and CPS legal counsel. It also assumes a second set of psychological evaluations are conducted and it builds in preparation time and waiting in court for three expert witnesses: one physician, one therapist and a social worker who formerly worked with the family. The same court time of 15 minutes is allotted to allow the agreement to be entered with the court.



<b>Table 7. Cost Per Case Settled After Trial Preparation but Prior to Trial (No Exposure to Mediation)</b>				
	<b>Costs</b>	<b>Preparation •</b>	<b>Delays and Waiting Due To Continuances</b>	<b>Total hours</b>
<b>County Counsel</b>	\$25/hr	5 hrs = \$125	4 hrs = \$100	\$225
<b>Caseworker</b>	\$19/hr	5 hrs = \$95	4 hrs = \$76	\$171
<b>Attorney - Mother</b>	\$700 - \$950 flat fee			\$700
<b>Attorney- Father</b>	\$700 - \$950 flat fee			\$700
<b>GAL</b>	\$700 - \$950 flat fee			\$700
<b>Evaluations</b>	\$400 for first \$800 for subsequent	\$1,200		\$1,200
<b>Expert witnesses</b>	Hourly for: M.D. = \$150 social worker = \$25 therapist = \$25	3.0 hrs of prep M.D. = \$450 social worker = \$75 counselor = \$75	2.0 hrs of delay/wait M.D. = \$300 social worker = \$50 counselor = \$50	\$1,000
<b>Judge and court staff</b>	\$1,000 per day • •			\$31 for 15 mins
				<b>\$4,727</b>

- Case staffing, preparation with worker, subpoenas, preparation of expert witnesses
- • Colorado Judicial Department weighted case data indicating the cost of judge and staff to be \$2.10 per minute.

Finally, the trial preparation table can be amended to show the additional costs incurred in cases that actually proceed to a two day trial. Table 8 shows the estimated cost of a two day trial equals \$8,650. This figure is 1.82 times the cost of a case settled after trial preparation but without trial. The cost of a full two-day trial is approximately 3 times the cost of a case settled at mediation. The additional costs in this table include all the trial preparation costs shown in summary in column three (excluding judge/court staff time), as well as the cost from two days of trial time for the caseworker, CPS legal counsel, and a few hours of testimony time from the expert witnesses.

**Table 8. Cost Per Case Settled  
After Trial (Without Exposure to Mediation)**

	<b>Costs</b>	<b>Trial Preparation • (Total Column from Table 7, excluding judge/court staff)</b>	<b>Additional costs for 2 day trial</b>	<b>Total hours</b>
<b>County Counsel</b>	\$25/hr	\$225	\$400 (16 hours)	\$625
<b>Caseworker</b>	\$19/hr	\$171	\$304 (16 hours)	\$475
<b>Attorney - Mother</b>	\$700 -\$950 flat fee	\$700	\$250	\$950
<b>Attorney- Father</b>	\$700 -\$950 flat fee	\$700	\$250	\$950
<b>GAL</b>	\$700 -\$950 flat fee	\$700	\$250	\$950
<b>Evaluations</b>	\$400 for first \$800 for subsequent	\$1,200		\$1,200
<b>Expert witnesses</b>	Hourly for: M.D. = \$150 social worker = \$25 counselor = \$25	\$1,000	2 hrs M.D.= \$300 4 hrs social worker= \$100 4 hrs counselor=\$100	\$1,500
<b>Judge and court staff</b>	\$1,000 per day • •		\$2,000	\$2,000
				<b>\$8,650</b>

• Case staffing, preparation with worker, subpoenas, preparation of expert witnesses  
• • Colorado Judicial Department weighted case data indicating the cost of judge and staff to be \$2.10 per minute.

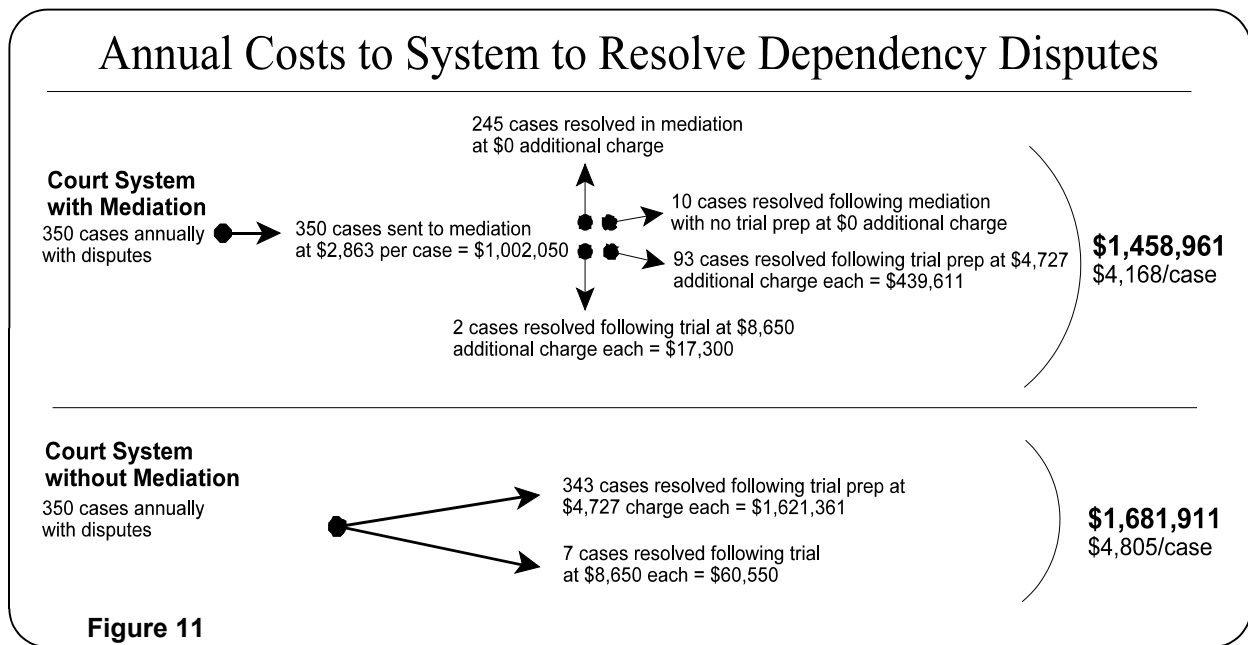
To calculate how much money mediation saves a system, a few further assumptions are needed:

- < Assume that approximately 350 cases per year (the estimated number in 1999 in the Fourth Judicial District of Colorado) will have disputes that require mediation, or in the absence of mediation, will result in requests for trial time.
- < Assume that 70 percent of all cases sent to mediation will be completely settled in mediation.<sup>16</sup>
- < Assume that 10 percent of the cases that do not settle in mediation will settle immediately following mediation without any further trial preparation.
- < Assume that 80 percent of the cases that do not settle in mediation will settle after trial preparation, but before trial.
- < Assume that 2 percent of the cases that do not settle in mediation and are set for trial will proceed to trial.

<sup>16</sup> To simplify calculations, partial settlements will be treated as no settlement.

- < In the absence of mediation assume that 98 percent of all cases will be resolved following trial preparation but prior to trial, while 2 percent proceed to trial.

Figure 11 uses these assumptions to follow 350 contested dependency cases through two court systems: one with mediation services, and one without. In systems with mediation, the 350 cases would be resolved for \$1,458,961 or \$4,168 per case. Without mediation these same 350 cases would cost \$1,681,911 or \$4,805 per case. In other words, mediation produces an average savings of \$637 per case. This means that systems with mediation spend at least 13 percent less per case. In practice the money saved through cost avoidance translates into the need for fewer new positions, lower caseloads and more time per case.



## AVOIDING DELAYS

In order to determine whether mediation speeds case processing, four time lags were considered: 1) the amount of time elapsing between the filing of the dependency petition and the date the court ordered the case disposition; 2) the amount of time between the removal of the child from the home and the court hearing determining the permanent plan;

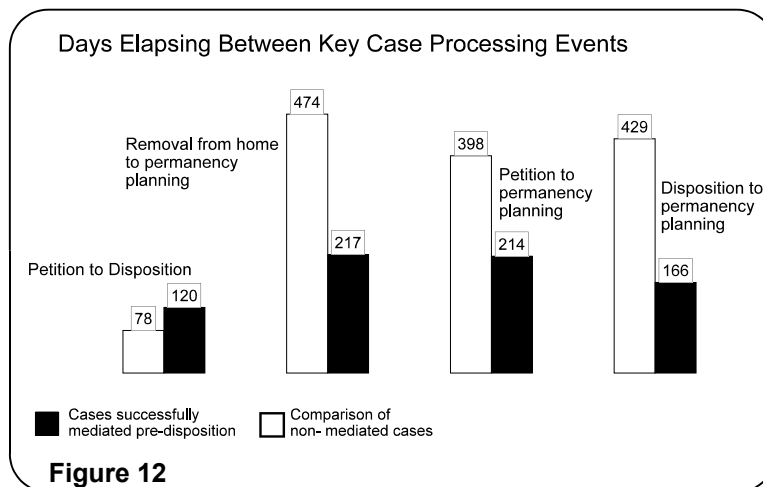
3) the time between the dependency petition and the date of the permanency planning hearing; and 4) the time between the dispositional hearing and the permanency planning hearing.

The only mediation cases included in this analysis are those which were referred prior to the dispositional hearing. These cases, referred in the early stages of case processing, offer the best opportunity to see whether savings in time might be attributed to mediation.

The results must be viewed with some caution. The sample sizes are small and case processing differences between Adams and El Paso Counties cannot be ruled out. In addition, in El Paso County, the date of the permanency planning hearing was only available if it was entered in the computer system. This results in a significant amount of missing information.

Despite these caveats, the preliminary results suggest that mediated and comparison group cases were not significantly different with respect to the amount of time elapsing from the filing of the dependency petition and the dispositional hearing date. In the Adams County comparison group the average was 78 days, in El Paso the pre-disposition cases resolved in mediation averaged 120 days.

On the other hand, the pre-disposition cases resolved in mediation did move more quickly to the permanency planning hearing. Specifically, relative to the comparison group the mediated cases had less time elapse between the removal of the child from the home and permanency planning, less time between the dependency filing and permanency planning and less time between the dispositional hearing and the permanency planning hearing.



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# Summary and Conclusions

The results of this evaluation contribute to the growing body of evidence regarding the efficacy of dependency mediation. The following highlights of the evaluation of the dependency mediation program in Colorado's Fourth Judicial District are true of many programs:

< There was considerable resistance by all professional groups when dependency mediation was introduced into the system, but this resistance was short lived.

Virtually all of the programs evaluated to date experienced resistance by social workers and attorneys during their first months of operations. Mediation is resented by some who feel it implies a lack of quality in their own settlement efforts. Others feel the introduction of mediation is an indication that the court questions the caseworker's decision making ability. Concerns about the ability of mediation to protect children and respect parental rights are voiced by many. Virtually everyone feels it will prove impossible to find the time to mediate. Fortunately the resistance in the Fourth Judicial District, as in most settings, is short lived.

< Strong judicial support helped to overcome the initial resistance of the professionals to mediation.

Given the widespread resistance that accompanies most new mediation programs, it is critical that the presiding judge be supportive of the program. In El Paso County, and in most systems, the professionals note that they made good faith efforts in mediation in large part because they knew the judge wanted the program to work. Success is unlikely if programs are not strongly supported, and almost impossible if the judge is not supportive or undermines the program by failing to accommodate the need for attorneys to be out of court and in mediation.

< Today the professionals involved in the child welfare system view mediation as the best way to resolve disputes; certainly better than hallway negotiations and more effective than settlement efforts spearheaded by one of the parties.

In the Fourth Judicial District, as in most jurisdictions that have adopted dependency mediation, the professionals would not be willing to return to traditional ways of resolving these cases. After exposure to dependency mediation, attorneys and caseworkers agree that this process provides

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a more thoughtful, thorough means of resolving issues in cases, and preventing problems before they arise. Participants observe that mediation does not require new work, it simply moves case preparation from late stage (trial preparation) to front end. Even for cases that do not settle in mediation, the professionals see the sessions as time well spent.

< Extended family members frequently participate in mediation.

Unlike court hearings, family and friends are frequent participants in mediation sessions. In Colorado's Fourth Judicial District, 44 percent of the mediations involve such individuals. Latino families are more likely to involve family and friends in mediation sessions than are White families. There is also preliminary evidence to suggest that families in court due to physical abuse and neglect are more likely to involve family and friends than are those parents in court due to child sexual abuse.

< Approximately 70 percent of the cases sent to mediation are able to resolve all of the issues during the session.

The figure of 70 percent is quite comparable to the settlement rates reported in other programs around the nation.<sup>17</sup> In addition, like most other programs, an additional 20 percent of the cases are able to reach agreement on at least some of the issues in dispute.

< A wide range of types of cases and disputes settle in mediation. As a result there is no evidence of a need to screen cases prior to a mediation referral.

As dependency mediation began to spread around the nation, questions arose as to the type of cases that were suited to the process. The assumption was that some type of screening might be needed to keep cases out of mediation that either could not be safely resolved or would rarely reach agreements. For example, some courts elected not to send sexual abuse cases to mediation based on the assumption that these cases involved parental denial and would not be amendable to mediation. Other courts speculated that mediation would prove unproductive if criminal charges were pending in the case.

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<sup>17</sup> Thoennes, Nancy. **Mediation in Five California Dependency Courts: A Cross Site Comparison**. Submitted to the California Legislature, 1995.

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Research has found that there are some factors that are associated with lower settlement rates. In Colorado's Fourth Judicial District families were statistically less likely to settle in mediation if they had been the subject of prior dependency court filings. In other courts evaluations have found lower settlement rates when criminal charges were pending, in sexual abuse cases mediated at the adjudication hearing,<sup>18</sup> or when one of the professionals in the case has formally objected to mediation.<sup>19</sup> However, even cases that are statistically less likely to settle are generally good candidates for mediation. Such cases may reach a full resolution only 40 or 50 percent of the time, rather than 70 percent of the time, but this is still a respectable settlement level and certainly does not suggest that mediation is pointless in such cases. Indeed, these difficult cases may be those that are most likely to result in trial, and every case resolved in mediation rather than trial represents enormous benefits to the system.

< In most respects mediated and non-mediated treatment plans are quite similar.

This fact should be reassuring to those professionals who initially questioned the ability of mediation to produce outcomes that would safeguard children. Placement, visitation, and services are quite comparable between cases settled in mediation in El Paso County and comparison group cases not exposed to mediation in Adams County. Previous evaluations have found that treatment plans are put in place more rapidly when mediation is used, or that children are more likely to receive services when the agreement is mediated.<sup>20</sup> In this evaluation, it was difficult to measure differences between mediated and non-mediated treatment plans because these plans were produced in different counties as well as different dispute resolution forums.

< Mediated agreements appear to enjoy slightly better compliance, compared to non-mediated agreements.

This evaluation, like previous evaluations, concludes that parents are more likely to comply with mediated agreements versus non-mediated agreements, at least in the short run. Approximately 500 days following the dispositional hearing, 62 percent of the mediated, and 41 percent of the comparison cases, were in generally complete compliance with the treatment plan. Although there were no differences between the two groups with respect to subsequent contested hearings,

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<sup>18</sup> Thoennes, Nancy. An Evaluation of Child Protection Mediation in Five California Courts. **Family and Conciliation Courts Review**, Vol. 35, No. 2, 1997.

<sup>19</sup> Thoennes, Nancy. **Dependency Mediation in the San Francisco Courts**. March, 1998

<sup>20</sup> Thoennes, Nancy. **Child Protection Mediation in the Juvenile Court**. The Judges' Journal, Winter, 1994.

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comparison cases were more likely than mediated cases to have had amended plans filed with the court.

< Mediation provides cost avoidance.

This evaluation generated cost avoidance figures associated with dependency mediation which are based on conservative estimates of avoided trials, expert witnesses and evaluations, and trial preparation time for social services' attorneys and caseworkers. These figures indicate dependency mediation will allow the Fourth Judicial District to reduce its cost per case by at least 13 percent in 1999.

< Mediation helps to avoid time delays.

Preliminary evidence suggests that using mediation, especially early in the processing of cases, may help to reduce the amount of time that elapses between key events or hearings. For example, mediation appears to reduce the average number of days elapsing between the child's removal from the home and the permanency planning hearing. The control group cases took approximately twice as long to reach a permanency planning hearing as did mediation cases which successfully mediated prior to disposition.

None of the findings provided in this evaluation make mediation a magic cure for dependency courts. All aspects of the juvenile court system operate integrally. Quality social work, adequate representation for parents and children, available services for families, a committed judiciary — these remain the cornerstones of an effective dependency system. However, this evaluation adds to a growing body of evidence that dependency mediation can be an extremely valuable tool that allows each professional group in the system to operate more effectively.



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# Appendix A

## Demographic Comparison: Adams and El Paso Counties

<b>Demographic Comparison of El Paso and Adams Counties*</b>		
	El Paso	Adams
<b>Population size</b>	465,800	303,297
<b>Race</b>		
<b>White</b>	86%	87%
<b>African American</b>	7%	3%
<b>Native American</b>	0.8%	0.9%
<b>Other</b>	7%	10%
<b>Hispanic Origin</b>		
<b>Hispanic</b>	7%	16%
<b>Education</b>		
<b>Percent high school graduates</b>	88%	79%
<b>College graduates</b>	26%	13%
<b>Age</b>		
<b>1-18 yrs</b>	29%	30%
<b>19-29</b>	21%	18%
<b>30-59</b>	39%	40%
<b>60+</b>	11%	11%
<b>Percent owner occupied housing</b>	57%	65%
<b>Percent unemployed</b>	4.7%	4.2%
<ul style="list-style-type: none"> <li>• Based on 1996 US Census Figures</li> </ul>		

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# **Appendix B**

## **Case Management**

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The Seventeenth Judicial District (Adams County) was used to generate a comparison group for the dependency mediation cases from the Fourth Judicial District (El Paso County). In addition to data on 48 comparison group cases, data was also collected in Adams County on 51 cases processed through case management.

Case management grew out of a 1996 assessment of the processing of Dependency and Neglect cases and the resulting Directive, issued by Chief Justice Vollack, designed to improve timeliness and overall quality of Dependency and Neglect case handling.

The concept of case management was introduced on a pilot basis in Adams County, prior to state-wide expansion. As implemented in the Seventeenth Judicial District, case management is designed to:

- < Develop more appropriate and comprehensive disposition alternatives;
- < Avoid termination without jeopardizing the safety or best interests of the child;
- < Protect children from chronic foster care placement moves;
- < Bring cases to closure more quickly with a conclusion that serves the needs of the child by: expediting a safe reunification; avoiding a delay of termination and permanency when this is the appropriate case goal; closing chronic cases where children are safe even if there is not complete compliance with the treatment plan.<sup>21</sup>

The case manager is to monitor difficult D&N cases and ensure that they progress through the system in a timely manner. Case management is not mediation. However, in the Seventeenth Judicial District, the case manager does use mediation techniques to conduct status conferences designed to identify problems, devise solutions, and facilitate information sharing.

This Appendix analyzes the case management, mediation and comparison groups to identify ways in which mediation and case management are similar and different, and how case management has affected case outcomes in the Seventeenth Judicial District.

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<sup>21</sup> Proposal for Dependency and Neglect Case Manager, submitted by the Seventeenth Judicial District, Adams County District Court, March, 1997.

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## Case Management Versus Comparison Group

The comparison group was selected from cases handled prior to the start of case management, but every attempt was made to identify cases that would have been appropriate for mediation or case management had those options existed. Thus, all three groups include all cases set for trial. However, case management may target other types of cases as well. Therefore, comparisons across the three groups must be viewed with caution.

The comparison group and case management samples are generally very similar. However, there are a few statistically significant differences. Most importantly for subsequent analysis on case outcomes, the case management group is less likely to include the child's mother as a perpetrator of the maltreatment, and more likely to involve drug abuse.

Given the relatively small sample sizes, it is not possible to statistically control for all the ways in which the two groups differ. In the following analysis only two controls have been introduced: cases which do not include mothers have been eliminated and the analysis has been restricted to cases with petition filings in 1998. This allows a comparison of outcome variables, such as percentage of cases closed or the nature of subsequent case action, that might be expected to differ according to the amount of time the case has been in the system.

Table A shows the major outcome variables for the case management and comparison groups. As it demonstrates, there are more open cases in the case management group than in the comparison group. This may well reflect the relative newness of the case management approach. Most cases assigned to case management appear to still be working through the problems that led them to this assignment. In time, especially as cases are diverted to case management as soon as problems arise, it may be that case management will be associated with faster closings.

Those in the case management group are also more likely than the comparison group to have amended treatment plans. One outcome of the case status conference appears to be an amended treatment plan to address the problems in the case.

<b>Table A. Outcomes for Comparison and Case Management Groups</b>		
	Comparison Group	Case Management Group

<b>Table A. Outcomes for Comparison and Case Management Groups</b>		
<b>Percent open at the time of data collection •</b>	75%	100%
<b>Placement being used in open cases:</b>		
<b>Home with parent</b>	9%	6%
<b>Relative care</b>	38%	56%
<b>Foster care</b>	48%	39%
<b>Other</b>	5%	0%
<b>Current case goal in open cases:</b>		
<b>Reunification</b>	64%	72%
<b>Termination of parental rights</b>	20%	28%
<b>Other</b>	16%	0%
<b>Percentage with amended treatment plan •</b>	31%	56%
• Differences across groups significant at .1 or less		

With respect to current case goals and current placements, there are no significant differences among the comparison and case management groups. Again, differences may be seen over time as case management begins to be used earlier in case processing.

## **Case Management Versus Mediation**

In comparing the outcomes associated with case management and mediation it is important to consider that any observed differences might actually be due to differences in case processing and practice in the Fourth and Seventeenth Judicial Districts. One way to control for this possibility is to include the unsuccessful mediation cases in the analysis. If the successful and unsuccessful mediation cases look comparable on the outcome measures, and if both look different from the case management group, the differences can be attributed to differences between the Fourth and Seventeenth Districts, rather than the dispute resolution forum.

It is also important to keep in mind that the outcomes considered are those that are readily available from court files. These may not reflect all the differences the families experience as a result of either mediation, case management, or even traditional negotiation and litigation.

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The only differences in outcomes that appear to distinguish case managed and mediated cases are the following:

- < Case management is more likely than mediation to lead to the filing of an amended treatment plan.
- < Cases that settle through mediation are less likely than those served through case management to be open court cases at the time of data collection.
- < Among open cases, those that settle in mediation are more likely than those which are case managed to have termination of parental rights listed as a goal.

The fact that case management is more likely than mediation to lead to amended treatment plans probably reflects differences in the way the two processes are used. During its startup, cases were sent for management if there were signs of problems in open cases, such as noncompliance, lengthy out-of-home stays, or multiple placements. All of these types of problems might require changes in the treatment plan. Mediation, from the outset, was frequently employed in new filings in order to prevent problems in cases that looked potentially difficult and problematic. In time, case management may become more common among new filings and the comparison of mediation versus case management may become more appropriate.

The fact that cases which settled in mediation are less likely to be open by the time of data collection cannot be attributed solely to differences between case processing in the Fourth and Seventeenth Judicial Districts. Fourth Judicial District cases that did not settle in mediation and Seventeenth Judicial District cases with case management were equally likely to be open. Case managed, successful mediation and unsuccessful mediation cases look quite comparable on background characteristics, such as the nature of the maltreatment and prior filings with the court. However, it is still possible that the unsuccessful mediation and case managed cases represent the more problematic cases that require a longer period of case monitoring.

Finally, among open court cases, those that successfully mediated were significantly more likely than those with case management to list termination of parental rights as the current case goal. Cases that were not resolved in mediation, and those with case management, were likely to list reunification as the goal. This cannot be explained by the length of time the case has been in the system. Successful mediation cases were filed at approximately the same time as those in the case management group, and are actually somewhat older

than those in the unsuccessful mediation group. It is possible that mediation provides the best forum for parents to voluntarily agree to a termination of rights.

<b>Table B. Comparison of Outcomes Between Cases with Mediation and Case Management</b>			
	Case managed	Settled in mediation	Did not settle in mediation
<b>Amended treatment plan was filed •</b>	57%	16%	19%
<b>Case was still open at the court at data collection •</b>	100%	68%	81%
<b>Case goal in open cases</b>			
<b>Reunification</b>	57%	33%	50%
<b>Termination of parental rights</b>	32%	58%	42%
<b>Other</b>	8%	11%	8%
	(47)	(72)	(15)
<ul style="list-style-type: none"> <li>• <b>Based on analysis of variance, differences between cases settling in mediation and other groups are significant at .05 or less</b></li> </ul>			

## Summary

Mediation and case management (as implemented in the Seventeenth Judicial District)<sup>22</sup> represent two approaches to ensuring that dependency cases receive the time and attention they deserve, are processed in a timely manner, and have any problems and obstacles to compliance quickly identified and addressed.

The present assessment suggests that case management does identify and address compliance problems. Comparing Seventeenth Judicial District cases that received case management with those served before case management but believed to be in need of the service shows that case management results in the development of amended treatment plans.

<sup>22</sup> Some jurisdictions use case management primarily to deal with scheduling and processing, but not to deal with disputes.



Comparing the outcome associated with mediation and case management to determine whether the two approaches produce similar results is more difficult. Many of the initial cases accepted for case management had been in the system a long time, while many of the mediation cases were new filings. As a result, very different types of outcomes would be expected for the two groups. The types of cases referred to the two processes might also explain observed differences between the groups, such as the greater number of cases still open in the case management group at the time of data collection.

This very preliminary analysis suggests that case management can be a useful tool to ensure that cases do not languish in the court system, and using mediation techniques in case status conferences convened by the case manager may produce settlements that are similar in many respects to those generated in mediation. However, further research is clearly needed to fully address the similarities and differences in what can be expected from case management and mediation.