

**INTRODUCING CHILD PERMANENCY  
MEDIATION IN NEW YORK STATE:  
PLANNING AND IMPLEMENTING A MULTI-SITE  
PILOT PROJECT**



NATIONAL COUNCIL OF  
JUVENILE AND FAMILY COURT JUDGES

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## INTRODUCING CHILD PERMANENCY MEDIATION IN NEW YORK STATE: PLANNING AND IMPLEMENTING A MULTI-SITE PILOT PROJECT

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**New York  
State  
Unified Court  
System**

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## EXECUTIVE SUMMARY

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Inspired by both national and local experiences in the use of mediation in child welfare matters, the New York State Unified Court System (UCS) and the New York State Office of Children and Family Services (OCFS) came together in 2002 to develop a process for implementing a child permanency mediation pilot project in New York State. Implementation of the Child Permanency Mediation Pilot Project was spearheaded by three state-government partners: The Permanent Judicial Commission on Justice for Children (the “Commission”) and the Office of Alternative Dispute Resolution Programs (Office of ADR), both units within the judicial branch, and OCFS, the executive branch agency which oversees the state’s child welfare system.

The Child Permanency Mediation Pilot Project includes seven pilot programs serving New York City and eight upstate counties (Albany, Chemung, Erie, Monroe, Niagara, Oneida, Rockland, and Westchester). The New York City Family Court had begun extensive planning for a program in Kings County (Brooklyn) prior to initiation of the state-sponsored pilot. Erie County’s program pre-dated the initiation of the pilot. Both have since come under the auspices of the formal pilot.

### Purpose of Report

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The primary purpose of this report is to aid future implementation efforts of child permanency mediation programs both within New York State and elsewhere. In keeping with this goal, this report has three main objectives:

1. To provide a descriptive overview of the planning and implementation process, at both the state and local level;
2. To summarize the challenges and solutions which emerged during the planning and implementation process; and
3. To provide guidelines for a collaborative program design process.

Information for the report was collected by the National Council of Juvenile and Family Court Judges’ (NCJFCJ) Permanency Planning for Children Department (PPCD) and was derived from several sources, including (1) 28 telephone interviews conducted with key stakeholders at both the state and local levels, (2) on-going conversations between NCJFCJ and UCS and OCFS staff, and (3) reviews of pilot program materials and documentation.

This report is not intended to be an evaluation of the effectiveness of the mediation projects. An evaluation is being conducted by the OCFS Bureau of Evaluation and Research. Information on this evaluation is attached as Appendix C.

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**MEDIATION** ... is a consensual dispute resolution process in which a neutral third party helps disputants to identify issues, clarify perceptions, and explore options for a mutually acceptable outcome for all participants. Mediators do not offer their own opinions regarding likely court outcomes or the merits of the case. Instead, mediators offer the opportunity to expand the settlement discussion beyond the legal issues in dispute and focus on developing creative solutions that emphasize the parties' practical concerns.

Mediation creates a new decision-making process in child welfare cases that:

- Empowers parents and family members by actively engaging them in the decision-making process;
- Allows for discussion of both legal and social service issues;
- Allows each party's perspectives and opinions to be aired; and
- Promotes a consensus-based, discussion-oriented forum for decision-making.

## **A Process of Implementation**

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Several events, most notably the federal Child and Family Service Review and resulting Program Improvement Plan, combined with a bit of serendipity, helped to set the stage and bring representatives from the court system and OCFS together to support the implementation of child permanency mediation. The report summarizes events that led up to the collaboration and discusses how state partners developed a framework to implement the child permanency mediation pilot projects and how potential pilot localities were identified and ultimately selected and supported.

### **✚ Collaboration Among State Partners**

The growing interest in child welfare mediation and inter-system collaboration among high-level court system and child welfare administrators acted as dual catalysts for representatives from the Office of ADR, the Commission, and OCFS to begin scheduling regular meetings to discuss how to best promote child permanency mediation. A series of meetings during late 2002 and throughout 2003 resulted in a framework for implementing a child permanency mediation pilot project, in which a limited number of counties would be given state support to develop and implement local permanency mediation programs.

The level of collaboration among the state partners was critical to the overall success of the Pilot Project.

- Each state partner contributed to the funding of the Child Welfare Mediation Pilot Project and strategically combined separate funding sources to maximize funding resources.
- State partners worked together to identify and compile criteria for pilot site selection.
- State partners collaboratively reached out to potential project sites to discuss the possibility of implementing child welfare mediation.
- State partners worked together to develop performance standards and training expectations for mediators.
- State partners collaborated on state and regional trainings and provided various opportunities for information-sharing and training.
- State partners provided ongoing technical assistance, support, and advice to developing programs, including a number of on-site visits and trainings.
- State partners planned for data collection and evaluation.

## **✚ Implementation of Pilot Projects at the Local Level**

Once potential pilot sites and funding sources were identified, and general program model questions were answered, project planners were ready to work with localities to implement programs.

To be considered for funding, state planners required that potential pilot sites develop a local planning group with representation from a broad spectrum of professionals in the child welfare arena. Recognizing the importance of judicial and Department of Social Service leadership, it was suggested that planning groups be co-chaired by a Family Court Judge and the Local Department of Social Services Commissioner or Director of Services or other high level designees. State planners required that localities establish and maintain an effective interdisciplinary, cross-systems collaboration.

Rather than implementing a single program model statewide, state planners agreed that each locality would be given a great deal of autonomy in developing a protocol that met local needs. Planners consciously encouraged local jurisdictions to develop program protocols and practices appropriate to local needs, resources, and culture. This decision afforded local stakeholders a large degree of flexibility but also presented its own unique set of challenges.

## **Challenges and Lessons Learned**

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Perhaps not surprisingly, both state and local stakeholders identified many of the same lessons learned – either because they recognized which factors facilitated a successful implementation process, or because they recognized that, in hindsight, they had not paid the necessary attention to certain elements or processes. Stakeholders, at both the state and local level, discussed the lessons learned and their thoughts are summarized within this report. Specifically, they noted the

### ***Importance of ...***

- **Building Collaborative Relationships**
- **Being Patient**
- **Being Flexible**
- **Being Organized**
- **Leadership**
- **Visible, Ongoing Support from Supervising Systems Professionals**
- **Recognizing that Child Welfare Mediation is Different**
- **Recognizing the Power of Modeling**
- **Program Integration**
- **Data Collection**
- **Cross-System Collaboration**
- **Providing Training Opportunities**
- **Planning for Sustainability**

## CHAPTER ONE INTRODUCTION

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*It's been over two years since Shania (age 6), Jasmine (age 10), and Terrell (age 16) were placed in foster care. Shania and Jasmine currently live in a foster boarding home; Terrell has been placed in a Residential Treatment Center. The children's mother, Lois, has a history of mental illness and is having difficulty maintaining stable housing. Lois is extremely angry at the children's service agency for taking her children away and has not actively participated in the prescribed service plan. As a result, the agency is about to change the permanency goal for all three children from "return to parent" to "adoption."*

*Despite Lois' anger and sporadic visiting habits, all three children are very attached to their mother and are fearful of losing contact with her.*

*Based on a referral from the Family Court, Lois, her attorney, the agency caseworker, the children's law guardian, the attorney for the Department of Social Services, the foster parents, Residential Treatment Center staff, and Kiera, Lois' adult daughter, agree to try mediation.*

*During mediation, Kiera, who has feared "betraying" her mother by taking over her role, comes forward as a potential resource. The issues surrounding this possibility are then explored during the mediation session. The agency agrees to study Kiera's home as a potential placement option for all three children. Lois voices her support and agrees to cooperate with the agency.*

Child welfare cases are among the most complicated and heart-rending of all Family Court cases. They can also be among the most difficult to effectively and efficiently resolve. With allegations of child abuse and neglect come questions of child safety and well-being, family preservation, and permanency. Answers to these questions are rarely clear cut. Family members and representatives of the social services and legal systems each bring their own perspectives to the issues at hand. Overloaded systems, unfamiliar jargon, and adversarial practices can lead to miscommunication, misunderstanding, and mistrust which create impasses that delay permanency for children. As illustrated by the above scenario, mediation is an innovative approach to address these challenges in a less adversarial manner.

Mediation is a consensual dispute resolution process in which a neutral third party helps disputants to identify issues, clarify perceptions, and explore options for a mutually acceptable outcome for all participants. Mediators do not offer their own opinions regarding likely court outcomes or the merits of the case. Instead, mediators offer the opportunity to expand the settlement discussion beyond the legal issues in dispute and focus on developing creative solutions that emphasize the parties' practical concerns.

Mediation creates a new decision-making process in child welfare cases that:

- Empowers parents and family members by actively engaging them in the decision-making process;
- Allows for discussion of both legal and social services issues;
- Allows each party's perspectives and opinions to be aired; and
- Promotes a consensus-based, discussion-oriented forum for decision-making.

Inspired by both national and local experiments in the use of mediation in child welfare matters, the New York State Unified Court System (UCS) and the New York State Office of Children and Family Services (OCFS) came together in 2002 to develop a process for implementing a child permanency mediation pilot project in New York State.

### **Purpose of this Report**

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The primary purpose of this report is to aid future implementation efforts of child permanency mediation programs both within New York State and elsewhere. In keeping with this goal, this report has three main objectives:

1. To provide a descriptive overview of the planning and implementation process, at both the state and local level;
2. To summarize the challenges and solutions which emerged during the planning and implementation process; and
3. To provide guidelines for a collaborative program design process.

### **Content of this Report**

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Information for the report was collected by the National Council of Juvenile and Family Court Judges' (NCJFCJ) Permanency Planning for Children Department (PPCD) and was derived from several sources, including (1) 28 telephone interviews conducted with key stakeholders at both the state and local levels, (2) on-going conversations between NCJFCJ and UCS and OCFS staff, and (3) reviews of pilot program materials and documentation. Participants for the phone interviews were identified with the assistance of UCS and OCFS staff and representative of the local pilot programs. Local stakeholders included 11 mediation provider representatives, eight family court representatives, and five local social services district representatives. Four state level stakeholders were interviewed, representing both the OCFS and UCS. Program descriptions from each of the project sites are available at [www.ncjfcj.org](http://www.ncjfcj.org).

This report is not intended to be an evaluation of the effectiveness of the mediation projects. An evaluation is being conducted by the OCFS Bureau of Evaluation and Research. Information on this evaluation is attached as Appendix C.

### **The Pilot Programs**

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The Child Permanency Mediation Pilot Project includes seven pilot programs serving New York City and eight upstate counties (Albany, Chemung, Erie, Monroe, Niagara, Oneida, Rockland, and Westchester). The New York City Family Court had begun extensive planning for a program in Kings County (Brooklyn) prior to initiation of the state-sponsored pilot. Erie County's program pre-dated the initiation of the pilot. Both have since come under the auspices of the formal pilot. A complete list of programs and the counties they serve appears in Table 1.

<b>Table 1</b>	
<b>NYS Child Permanency Mediation Pilot Project Programs</b>	
<b>Administrative Organization</b>	<b>Counties Served</b>
Catholic Charities of Buffalo	Erie, Niagara
The Center For Dispute Settlement	Monroe
Community Dispute Resolution Center	Chemung
Dispute Resolution Center	Rockland, Westchester
Mediation Matters	Albany
New York City Family Court and The New York Society for the Prevention of Cruelty to Children	New York City
Peacemaker Program	Oneida

## **THE STATE GOVERNMENT PARTNERS**

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Implementation of the Child Permanency Mediation Pilot Project was spearheaded by three state-government partners: The Permanent Judicial Commission on Justice for Children (the “Commission”) and the Office of Alternative Dispute Resolution Programs (ADR), both units within the judicial branch, and the Office of Children and Family Services (OCFS), the executive branch agency which oversees the state’s child welfare system. By 2002, all three entities had independently identified child permanency mediation as a promising approach. A brief description of each organization follows.

### **✚ The New York State Office of Children and Family Services**

The administration and delivery of social services, including child welfare, in New York State is state supervised and county administered. New York State is one of only 11 states organized in this way. New York City and each of the 57 counties outside the city has its own "local social services district." In New York City, the local social service district is called the Administration for Children's Services (ACS). The local social services districts provide child protective services, direct foster care, adoption, and child preventive services and/or contract with not-for-profit voluntary authorized agencies to deliver such services.

The OCFS was formed on January 8, 1998 through a merger of the former State Division for Youth with the family and children's programs administered by the former State Department of Social Services. OCFS supervises, monitors, and oversees the local social services districts and ACS. Each of the six OCFS regional offices has specific counties and voluntary agencies for which they are responsible. The regional offices’ responsibilities include supporting the local social services districts and implementing best practices. Other OCFS responsibilities within the child welfare arena include developing and implementing statewide standards and requirements for foster care, adoption and adoption assistance, child protective services, and preventive services for children and families.

### **✚ The Office of Alternative Dispute Resolution Programs**

The Office of Alternative Dispute Resolution Programs (Office of ADR) is a unit within the state court system's Division of Court Operations. The Office of ADR works with judges, court administrators, and members of the bar to design dispute resolution programs that are responsive to the needs of the communities and court environments in which they operate. The Office of ADR provides technical assistance to Administrative Judges in developing and implementing court-annexed dispute resolution programs, disseminates information about dispute resolution programs throughout the state, and provides educational programs for members of the judiciary, the bar, and court litigants.

The Office of ADR also administers the state's Community Dispute Resolution Centers Program (CDRCP). Begun in 1981, this program provides state judicial branch funding for a network of not-for-profit "Centers" which provide a community-based forum for the resolution of disputes that might otherwise become contested civil, minor criminal, or family court matters. The Centers, which operate in all 62 New York counties, provide mediation, arbitration, and conflict resolution training services.

### **✚ The Permanent Judicial Commission on Justice for Children**

Established in 1988 to address the problems of children whose lives are impacted by New York State's courts, the Commission is an interdisciplinary group composed of judges, lawyers, advocates, physicians, legislators, social workers, and state and local government officials. Statewide activities include developing tools to focus on the individual needs of children in foster care, identifying new resources to assist the court in decision-making, and increasing resource capacity to improve outcomes for children. Since its inception, the Commission has undertaken multiple court-related reforms including passage of New York State's Early Intervention Laws of 1992 and 1993, creation of the nation's first statewide system of court-based Children's Centers, and since 1994, implementation of the state's Court Improvement Project (CIP).

The CIP is a federally-funded project intended to assess and improve foster care, termination of parental rights, and adoption proceedings in the state courts. In New York, the CIP developed a reform agenda and selected two sites, Erie County and New York City, as pilot sites for implementing court reform.

It is important to note that both Erie County and New York City Family Courts are also designated as Model Courts as part of the Child Victim's Act Model Courts Project of the Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges. The Model Courts Project is funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office of Justice Programs, U.S. Department of Justice. The project involves 28 Model Courts across the nation, a mix of urban, rural, and tribal jurisdictions. Each of these jurisdictions engages in systems' change efforts and works collaboratively with social service agencies and other system professionals to achieve improvement goals. The Commission is currently working to replicate innovations which proved successful in the Model Court/CIP pilot sites throughout the state.

## EARLY EFFORTS TO IMPLEMENT PERMANENCY MEDIATION IN NEW YORK \_\_\_\_\_

As is often the case, local innovation preceded top down efforts to develop child permanency mediation as a formal state-supported project. The earliest efforts to use mediation in child welfare matters can be traced back to the work of visionary local leaders.

As participants in the Model Court and CIP, representatives of the New York City and Erie County Family Courts and their local department of social services counterparts had opportunities to visit other Model Court jurisdictions around the country. Many of these jurisdictions had functioning mediation programs. These “site-visits” spurred interest in mediation which led to two local implementation efforts.

In August of 1999, the Erie County Family Court, under the leadership of the Honorable Sharon Townsend (then Supervising Judge of the Family Courts in the 8<sup>th</sup> Judicial District and currently the Administrative Judge for the 8<sup>th</sup> Judicial District) collaborated with Catholic Charities of Buffalo (which had obtained funding from the John R. Oishei Foundation) to establish New York State’s first child permanency mediation program. Not long after, Catholic Charities received additional funding through an OCFS preventive services grant to support the program.

*“Child permanency mediation within New York started at the local level before it caught on in a bigger way.”*

–State Stakeholder

In 2001, efforts began in New York City to develop and implement a child permanency mediation program in Kings County (Brooklyn). The Honorable Joseph Lauria, Administrative Judge for the New York City Family Court, was committed to expanding the use of alternative dispute resolution processes. Under the auspices of the CIP, the Family Court convened a group of stakeholders representing the New York City ACS, the New York Society for the Prevention of Cruelty to Children, attorneys, and other child welfare and mediation professionals<sup>1</sup> who met regularly over a two year period to discuss the feasibility of implementing a mediation program and working towards consensus on a program protocol (attached as Appendix B). Early in this process, Judge Lauria further illustrated his commitment to this process by appointing Catherine Friedman, a Court Attorney/Referee<sup>2</sup>, as citywide ADR Coordinator. The stakeholder group lacked only an identified funding source to support the program.

To this end, Judge Lauria met with Larry Brown, Deputy Commissioner for the Division of Development and Prevention Services at OCFS. Judge Lauria explained to Deputy Commissioner Brown that the New York City Family Court was trying to develop and implement a child permanency mediation program, but was struggling with how to do so without an identified source of funding. The Deputy Commissioner and the Administrative Judge decided to coordinate their efforts to work to identify resources to support the program. Hence the mediation partnership between the Unified Court System and OCFS was born.

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<sup>1</sup> Representatives of both the Office of ADR Programs and the Commission also participated in these early meetings.

<sup>2</sup> Court Attorney/Referees are quasi-judicial officers that are granted the power to hear and decide cases upon the consent of the parties.

## **CHAPTER TWO**

### **COLLABORATION AMONG STATE GOVERNMENT PARTNERS**

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Several events, combined with a bit of serendipity, helped to set the stage and bring representatives from the court system and OCFS together to support the implementation of child permanency mediation. The following chapter summarizes some of the events that led up to the collaboration and discusses how state partners developed a framework to implement the child permanency mediation pilot projects and how potential pilot localities were identified and ultimately selected and supported.

#### **The Child and Family Service Reviews**

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During the late 1990s federal regulators established a new approach to monitor the effectiveness of state child welfare programs nationwide. Known as the Child and Family Services Review (CFSR), the process uses a set of predefined standards to evaluate the performance of state child welfare programs in keys areas related to child safety, permanency, and child and family well-being.

New York State completed the CFSR process in 2001. Among the areas identified as needing improvement were two benchmarks of particular relevance to child permanency mediation – time to reunification and time to adoption. In response, the State began developing its Program Improvement Plan (PIP). Per federal requirements, the PIP articulated specific actions the state intended to take to address those areas determined to be in need of improvement. OCFS officials recognized the importance of including court representatives in the PIP development process and enlisted Family Court Judges and other legal system representatives in the design. Several Family Court Judges and representatives of the Office of Court Administration and the Commission were involved in the PIP development process.

Thus, as one state level interview respondent noted, the CFSR/PIP development process helped to underscore the necessity of having the child welfare system and the court system work together as collaborative partners to improve practice. One of the improvement strategies incorporated into New York State’s final PIP was a commitment to support and expand child permanency mediation programs in the State.

One of the first steps towards implementing the mediation PIP strategy was a “Permanency Mediation Information Day” organized by Michelle Rafael, OCFS Policy Analyst and PIP Strategy Coordinator for permanency mediation, in September 2002. Ms. Rafael identified representatives from the Office of Court Administration, Family Courts, local DSS and OCFS regional offices that might be interested in the concept and invited them to attend. This one-day technical assistance workshop included presentations by knowledgeable presenters from legal, social service, and mediation arenas. Presenters included: Mary LeBeau and Lori Ryan of the Massachusetts “Family for Kids” Mediation Program; Marilou Giovannucci of the Connecticut Judicial Branch; Kathy Marsh and Carol Kvetkosky of Catholic Charities of Buffalo Mediation Program; and Frank Woods from the Office of ADR Programs.

Child permanency mediation was introduced to a broader audience in September of 2003 at the statewide “Sharing Success” Conference. The Conference was the product of the collaborative efforts of Honorable Judith S. Kaye, Chief Judge of the New York State Unified Court System (and Chair of the Commission); Commissioner William Bell of NYC Administration for Children’s Services (ACS); Commissioner John A. Johnson of New York State OCFS; Sheryl Dicker,

Executive Director, Permanent Judicial Commission; and the National Council of Juvenile and Family Court Judges. The Conference brought together “teams” from nearly every jurisdiction in the state, representing both the courts and the local departments of social services and was intended to be a “tribute to the evolving relationship between the courts and the social services system.” Several of the nationally recognized presenters discussed mediation as a promising approach to child welfare reform.<sup>3</sup>

*“We spoke at the Sharing Success Conference last September. Every county within the state was invited. You could not attend unless you brought a representative from your Family Court and a representative from the Department of Social Services. Lots of other stakeholders were able to attend, but those were the required participants. We worked together for two and a half days, sitting at the table, eating together, etc. Some of us had never even spoken to each other before, which is kind of outrageous. The Commissioner of OCFS and the Chief Judge delivered the welcoming speeches ... It was a strong message, that both sides of the system were sending the same message.”*

- Local Stakeholder

## The Formation of a Collaborative Partnership

The growing interest in child welfare mediation and inter-system collaboration among high-level court system and child welfare administrators acted as dual catalysts for representatives from the Office of ADR, the Commission, and OCFS to begin scheduling regular meetings to discuss how to best promote child permanency mediation. A series of meetings during late 2002 and throughout 2003<sup>4</sup> resulted in a framework for implementing a child permanency mediation pilot project, in which a limited number of counties would be given state support to develop and implement local permanency mediation programs. Those at the state level interested in promoting the use of mediation were no longer traveling on parallel paths. Instead, they were working together.

### Funding

For child permanency mediation to be introduced statewide, state planners needed to identify potential funding sources and explore means of creatively pooling available resources.

All three state groups contributed to the funding effort. The OCFS committed resources from the “Quality Enhancement Fund” (QEF), a special allocation of federal Temporary Assistance for Needy Families (TANF) funds intended to increase the availability and/or quality of children and family services programs. Activities include, but are not limited to, staff recruitment, retention and training activities, and research projects to test innovative models for the delivery of health, mental health and substance abuse services. In 2003, a portion of the QEF was allocated to support the implementation of the State’s PIP strategies including the child permanency mediation pilot project - \$300,000 for New York City and \$100,000 for counties outside New York City. The Commission committed a portion of its federal CIP funding to mediation. The Office of ADR programs was able to secure state judicial branch funding. In total, approximately \$700,000 was available to support the program during the initial year.

<sup>3</sup> The success of the first Sharing Success Conference led to regionally-based Sharing Success Conferences in 2004 and another statewide Sharing Success Conference in the winter of 2005.

<sup>4</sup> The group continues to meet regularly.

Each of these funding sources had particular constraints on how the money could be expended. For example, OCFS determined that QEF dollars could not be used to support the hiring of court-staff mediators under federal TANF regulations which prohibit the use of such funds to support judicial-branch functions. Similarly, the Office of ADR program's funds were specifically allocated for contractual services. CIP funding had no such limitations; hence by pooling resources and working collaboratively, the state-level partners were able to be responsive to the needs and program model preferences of the localities engaged in program planning and implementation.

## Selecting Potential Pilot Sites

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Representatives of the three groups worked together to compile a set of criteria for evaluating potential sites that was responsive to each agency's perceptions.

The criteria included:

- A family court receptive to child permanency mediation, progressive enough to develop and implement it, and a strong desire to do so;
- A county social services agency receptive to child permanency mediation, progressive enough to develop and implement it, and a strong desire to do so;
- An already active multi-system collaborative group, or a willingness to create one;
- A fairly significant number of children in foster care relative to the population in that county; and
- A prospective mediation service provider capable of implementing the program with integrity.

New York City was identified by all three contributing partners as a high priority site. The Model Court / CIP project laid the groundwork and the Brooklyn program represented extensive planning for inclusion in the pilot. NYC also has a large proportion of the state's foster care population. Other pilot locations were agreed upon by consensus.

*"The goal wasn't really that they would have to implement a program, but that they would engage in their own local stakeholder process to decide whether or not they wanted to have a program. If so, what would the conditions be? What would the protocol for the program be? We said, 'we have some money to potentially fund a project. What you need to do is form a joint committee that brings together people from the Family Court, the local Department of Social Services, someone from the mediation service provider in your community, and other key stakeholders that you feel are necessary to be on board to get this project off the ground. Then, you need to come up with some kind of written protocol on how the program is going to operate that everyone at the table can sign off on. Then, and only then, will we fund a project in your community.' That's what our approach was."*

- State Stakeholder

## Determining Appropriate Mediation Service Providers

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Within the mediation field there is an ongoing debate over the appropriate qualifications and skills for mediators in child welfare cases. Recognizing that child welfare is a complex area of law and practice, debates focus on whether mediators must possess content knowledge within the child welfare arena (e.g., a master's degree in social work, a law degree, or some other combination of specialized education and experience) and if so, which area(s) of expertise are required. Debates also focus on the relative importance of education versus mediation experience. Thus, a key question confronting state planners when considering the basic framework for the proposed pilot project was, "What is more important – to have a skilled and experienced mediator with little direct experience in the child welfare system, or an experienced system professional (whether a social worker or attorney) who had little, if any, training in how to mediate?"

The Office of ADR took the position that it was critical that the mediators be well-trained, experienced, and skilled as facilitators of the mediation process. The other state planners agreed to make the use of experienced mediators a requirement for pilot program funding. To enable these experienced mediators to have an appropriate level of content knowledge, state planners decided to develop a curriculum and provide mandatory child welfare and legal issues components as part of advanced child welfare mediation training. In 2002 and 2003, week-long training sessions for experienced mediators were held. The trainings introduced participants to the legal and child welfare systems and provided an opportunity for them to practice advanced mediation skills relevant to child permanency mediation.

*"We had some concerns about who would be chosen and the criteria used to choose mediators. We felt strongly that those selected should possess substantial prior mediation experience ... I remember going one week to a meeting and having a group of people tell me why only MSWs should be allowed to mediate these cases. Later that same week, people in another part of the state were telling me that only lawyers should be mediators in these cases. They could not both be right. In fact, we didn't think either of them was right. We felt the really important criterion was that they were proficient as mediators. Some other professional credentials could be helpful, but that wasn't really a prerequisite. Some of the language, some of the culture, some of the laws and some of the ways the system works could be taught to people. But, we did not want someone who understood the family court system and the child welfare system deeply but never mediated before suddenly being a mediator."*

*- State Stakeholder*

## CHAPTER THREE

### IMPLEMENTATION OF PILOT PROJECTS AT THE LOCAL LEVEL

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Once potential pilot sites and funding sources were identified, and general program model questions were answered, project planners were ready to work with localities to implement programs.

Child permanency mediation represents a new way of doing business in the child welfare arena - one that requires system professionals to adopt new roles, responsibilities, and interaction styles with respect to each other and the families they serve. For pilots to be successful, localities had to have a working understanding of the concept of child permanency mediation, and see it as both a beneficial and viable approach to child welfare cases.

To be considered for funding, state planners required that potential pilot sites develop a local planning group with representation from a broad spectrum of professionals in the child welfare arena. Recognizing the importance of judicial and Department of Social Services leadership, it was suggested that planning groups be co-chaired by a Family Court Judge and the Local Department of Social Services Commissioner or Director of Services or other high level designees.

To get local efforts off to a strong start, those potential pilot sites that had not already begun the planning process were encouraged to start with an initial information session. Representatives of the family court and the Department of Social Services convened an informational session, inviting anyone who might want to learn more about the proposed child permanency mediation pilot project and be involved in its development.

This initial information meeting consisted of a presentation by representatives of the Office of ADR, OCFS, and the Commission. Topics covered during these sessions included the overall purpose and goals of mediation in the child welfare context, general program protocols and practice standards, and state partners' expectations for local implementation and cross-system collaboration.

*“We would go and jointly make a PowerPoint presentation about what we were looking for, generally what mediation was about, the qualifications that the neutrals (mediators) would have to have, and how the program could help their jurisdiction.”*  
- State Stakeholder

Individuals targeted for participation included:

- Legal Representative for the local DSS;
- Law Guardians (Attorneys representing children);
- Parents' Attorneys;
- Mediation service provider;
- Court Appointed Special Advocates (CASA);
- Foster care agencies; and
- Other important service providers.

## Developing Local Protocols

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Once local stakeholder groups had been established and collaborative partnerships formed, local pilot sites were ready to move on to the difficult task of defining the shape and function of their permanency mediation program.

State planners required that localities establish and maintain an effective interdisciplinary, cross-systems collaboration. Although some of the pilot sites had prior experience with effective collaboration that provided a starting point for discussions, jurisdictions still needed to overcome established patterns of institutional separatism, distrust, and misunderstanding before the actual work of developing a local mediation program could begin. As a number of interview respondents noted, fear of stepping outside of traditional system roles and practical concerns about the logistics of implementing mediation posed serious barriers to the generation of local stakeholder buy-in.

Rather than implementing a single program model statewide, state planners agreed that each locality would be given a great deal of autonomy in developing a protocol that met local needs. Planners consciously encouraged local jurisdictions to develop program protocols and practices appropriate to local needs, resources, and culture. This decision afforded local stakeholders a large degree of flexibility but also presented its own unique set of challenges. Statewide representatives commented on the difficulties inherent in coordinating and supporting a multi-site implementation process, especially when project sites were in different phases of program development and implementation. Moreover, while state planners wanted local stakeholders to have the freedom to create their own program suited to community needs, they also wanted the product to be consistent with the broad goals and practice expectations articulated by the three supporting agencies. Many local stakeholders had little or no practical experience with child permanency mediation, making it difficult to simply create a program.

State planners demonstrated an on-going interest and investment in local development efforts by being physically present at local information-sharing and planning meetings and engaging in frequent face-to-face interactions with program stakeholders. Pilot sites were also asked to regularly share meeting minutes, draft protocols, and program materials with state partners. This not only served to keep state representatives informed, but it also provided opportunities for state partners to provide critical feedback and guidance. While giving pilot sites the freedom to develop local program protocols, state partners kept themselves in the planning loop by participating in local meetings, reviewing program products, and providing technical assistance. State planners also helped to enable programs to develop protocols consistent with broader project goals by providing programs with on-going technical assistance, including the provision of written resources, videos, manuals, and website links.

## Initiation of Contracts

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Final decisions regarding funding particular sites were deferred until after initial information sharing activities were complete to allow state planners to gauge local interest. As program development in local pilot sites gained momentum, however, state partners recognized that resource constraints were becoming an impediment to the ongoing involvement of the not-for-profit mediation providers. In response, the state initiated modest contracts for staff support for an initial six to 12 months of program development without any expectations of caseload.

Ongoing, regular meetings of local stakeholder groups were critical to development efforts. In addition, several respondents noted that assigning specific tasks to subcommittees helped to

expedite the program development process. Often, smaller subcommittees dealt more efficiently with problems and barriers.

Most of the pilot sites engaged in an ongoing process of refinement and “testing” of protocols in individual cases. While testing protocols, local planning and implementation groups continued to meet to debrief how the program protocols and processes were working, what changes needed to be made, and how best to continue to develop the program.

Local stakeholders faced many planning and implementation challenges. Representatives from the local court, Department of Social Services, and mediation providers needed to be brought to the collaborative table, a shared vision of child permanency mediation had to be forged, and policies and protocols for effective implementation devised. The following chapter discusses how some of these challenges were overcome and highlights some of the lessons learned.

*“We needed to clearly understand each others’ roles in the process.”*

**- Local Stakeholder**

*“There are different pressures that each agency feels like they are under. It is important to know that everybody has a different set of rules to follow and that they are trying to figure out how to meet their particular individual targets or goals. Education and information sharing about each other is a critical training piece.”*

**- Local Stakeholder**

## CHAPTER FOUR CHALLENGES AND LESSONS LEARNED

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Perhaps not surprisingly, both state and local stakeholders identified many of the same lessons learned – either because they recognized which factors facilitated a successful implementation process, or because they recognized that, in hindsight, they had not paid the necessary attention to certain elements or processes.

### The Importance of Building Collaborative Relationships

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A key component of any successful collaboration is the establishment of functional working relationships. Although previous federal, state, and local initiatives had helped to open the lines of communication, UCS and OCFS representatives had to make a commitment to learn more about each other before serious planning efforts could be undertaken.

During the initial relationship building and development phase, state level interviewees noted that they had to work through political issues about roles, responsibilities, and decision-making authority. Identified barriers to cross-system information sharing and collaboration included institutional, political, and resource differences; differences in professional perspectives, expertise, and languages; and historically insular institutional relationships. It took time to develop the state level relationships and it was important to devote time to articulating organizational constraints, roles, responsibilities, and authority, so that stakeholders could develop a better understanding of the philosophies and operations of each partner agency. Building institutional relationships required building personal relationships. Stakeholders made an effort to get to know each other as individuals, not just as members of institutions.

*“The beginning of our collaboration involved a lot of educating one another on the different bureaucratic structures and the different personalities within them.”*

- State Stakeholder

*“It is very important for people not to feel as though the program is being pushed down their throats.”*

- Local Stakeholder

*“You really have to allocate substantial time and make repeated outreach to the important stakeholders who are going to be making referrals. They absolutely have to feel that this is something worthwhile and that it is not just another program created for the sake of creating another program. You really have to take the time to make people understand it and to understand its value. They have to feel comfortable that it is something that will work.”*

- Local Stakeholder

### The Importance of Being Patient

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Whether at the state or local level, program development takes time. As noted in earlier chapters, establishing an effective child permanency mediation program requires that players from historically separate systems within the child welfare arena come together to form an effective collaborative partnership. Local stakeholders underscored the need to move slowly and to dedicate the necessary time to developing relationships and building trust. Although it is difficult to predict how much time is necessary — startup times for the programs included in the NYS Child Permanency Mediation Pilot Project varied considerably across jurisdictions, from six months to several years — attempts to short-cut the process were seen as highly detrimental to implementation efforts. Pilot sites that rushed toward implementation to accommodate perceived funding demands felt there was less local support for their program. State planners

reported a “no pressure approach,” while local planners felt pressured. This dissonance illustrates the importance of jointly developing clearly defined expectations.

### **The Importance of Being Flexible**

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Local jurisdictions should be given the opportunity to design programs that are sensitive and responsive to the needs and issues of their community. Pilot site representatives spoke very highly of the creative freedom afforded them by state planners. Respondents believed that the flexibility to develop their own child permanency mediation model and program protocols was instrumental in creating a sense of program ownership among system stakeholders.

### **The Importance of Being Organized**

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Bringing together busy professionals from multiple systems can be a difficult task. To demonstrate respect for professionals’ time and to facilitate communication and collaboration, care must be taken to ensure that meetings are well organized, well managed, and a productive use of time for everyone. Respondents offered the following tips to facilitate effective meetings:

- Consider developing a program coordinator/liaison position. Several pilot sites noted that a dedicated staff person in charge of program logistics and coordination was important for their local programs.
- Dedicate a staff person to take care of meeting logistics, create agendas (with input from meeting leaders), take minutes, etc.
- Have an agenda for the meeting with clearly articulated objectives and goals.
- At the end of each meeting, summarize what was discussed, identify items that need to be worked on before the next meeting, assign responsibility and deadlines for follow-up tasks, and set the date and time for the next meeting.
- Develop a subcommittee structure to address specific issues and report back to the larger group.

### **The Importance of Leadership**

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Local stakeholders noted that efforts by a leader, most often the Supervising Judge or the local DSS Commissioner, were instrumental in getting stakeholders from the various systems to sit down at a common table. In particular, those counties that had very active and visible judicial leadership involved in program planning efforts noted that this was critical to the success of their programs. As several respondents noted, judicial encouragement sends a powerful message to system players about the importance and value of a project.

### **The Importance of Visible, Ongoing Support from Supervising Systems Professionals**

Many of the pilot sites felt that the success of their program was largely due to the support of the judge(s). Respondents from counties with active judicial leadership noted that the judge was instrumental in encouraging attendance at meetings, facilitating input and dialogue, supporting the use of mediation services, and providing general leadership and support.

The ability for child permanency mediation programs to gain acceptance by the court has varied from county to county. Although judges were initially invited to participate in local planning efforts in all counties, in some pilot sites the judges were unable to attend meetings or sent

administrative staff to represent them. Jurisdictions without a strong judicial presence reported more difficulty enlisting system support and lower numbers of program referrals.

Similarly, the ability to gain acceptance by local child welfare commissioners, directors, supervisors, legal counsel and OCFS regional staff proved critical to getting appropriate referrals and participation.

Local representatives also noted the active participation of state planners in local planning meetings as critical to their overall successes. Having state partners actively participating in local planning meetings encouraged local systems professionals to come to meetings, provided a broader context for debates and discussion, kept discussions on track, and kept local stakeholders motivated and focused on project goals.

Some pilot site representatives reported that their programs are in a fledgling stage and that they are still having difficulty generating buy-in and getting referrals. Local level stakeholders indicated that they would like for state level stakeholders to return to their sites to either conduct trainings or to participate in meetings to discuss the current status of program implementation. Stakeholders in these sites felt that the presence of the state would motivate collaborative efforts.

### **Recognize that Child Welfare Mediation Is Different**

In mediation, child welfare discussions are often broadened to include non-traditional or non-legal topics. All parties are given the opportunity to speak and emphasis is placed on consensual decision-making. This open communication made some respondent parent's attorneys apprehensive. Concerns were raised about the potential harm that could come from an admission or incriminating statement. To accommodate these concerns care was taken to develop clear confidentiality and admissibility provisions in program protocols. In some instances, initial protocols prohibited referral of matters prior to a determination of abuse or neglect, though these restrictions were often relaxed once attorneys experienced mediation and came to trust that their clients would not be harmed by participation in the process.

While respondent parents' attorneys were concerned about the potential harm to their client's position that might be caused if new information were released, caseworkers and prosecutors were equally concerned if new allegations of abuse or neglect surfaced, but could not be acted on because of confidentiality provisions. To address this concern, program

protocols included exceptions to confidentiality for "new" allegations of abuse or neglect that might emerge in mediation. New allegations were defined as differing in type or severity from the allegations already under consideration in the pending case.

*"In many places, people have in their mind that they already have a very efficient way of handling these cases. One could argue that dedicating 10-minute chunks of time to serious child welfare cases is not an effective way. Conducting a hearing in 10 minutes is not an effective way of moving these cases forward. I think the legal professional standpoint is that is what they are used to, and so they sort of do things in 15-minute chunks. The idea that they are going to actually commit two hours or more to one case on a given day is difficult to wrap their minds around. Time management has been a big barrier."*

**- State Stakeholder**

Mediation is distinctly different from traditional family court practices, in which decisions are made by judges and the emphasis is placed on contested legal issues. This shift can be

uncomfortable for all stakeholders and is often particularly difficult for judges and referees. Several state-level stakeholders identified resistance on the part of the judiciary as an understandable but significant barrier to program implementation efforts (both the federal Adoption and Safe Families Act, known as ASFA, and state law hold the judiciary responsible for ensuring the safe placement and permanency of children). Interviewees attributed this resistance to a “fear of losing control” and the belief that mediation would undermine judicial authority and oversight.

Planners became sensitized to these judicial concerns and recognized that care needed to be taken to develop a mediation program that supported and reinforced the court’s oversight role rather than undermining it. Consequently, state planners worked with the judiciary and other partner agencies to clarify the purpose of mediation, the process of incorporating mediated agreements into court orders, and how mediation was intended to support the achievement of safe, timely permanency for children. State partners stressed that mediation was not intended to usurp or undermine judicial authority and oversight, and that the mediation process did not diffuse or dilute responsibility for the safety of the child and the actions of the parents.<sup>5</sup>

In many jurisdictions the local Community Dispute Resolution Center (CDRC) was called upon to act as the mediation service provider. These agencies have substantial experience mediating child custody and visitation matters, but in many cases had little or no experience in the child welfare system. Several respondents commented that moving from the community context to the child welfare context has presented challenges for the CDRC programs. The child welfare arena is a complex area of law and practice, administered by multiple professions with diverse perspectives, roles, responsibilities, resources, and cultures. Child welfare is also a arena in which large institutions play distinct roles, which may or may not, be in conflict with each other. For these community-based mediation service providers, child welfare was new terrain. Many were small grass roots, non-profit organizations providing multiple mediation-based services on a wide range of issues to their respective communities. In some instances, resources and institutional constraints, as well as competing priorities, made it difficult for these community-based agencies to devote the necessary time, energy, and resources to the development of mediation in the child welfare context. In some cases, it also undermined their credibility with system stakeholders and it took significant time and attention to correct and develop positive momentum.

*“This a very new territory for some of the mediation service providers and in some cases I am not sure they have managed their entry into this new arena as well as I would have liked to have seen them do. They are, in many cases, small grass roots non-profit organizations that are being pulled in a lot of different directions and they have not committed as much time and energy to this as I would have liked. Typically, we are funding a particular staff person ... and in some instances they are pulling that staff person in other directions using them for other things; part of it may be those systemic issues of how the agency is using this new staff resource and part of it might be people not knowing how to work within this highly professionalized arena where it is all lawyers, social workers, and state workers and they have their own culture and jargon and lingo and everything – the mediation professionals are coming in and I am not sure that they have been able to establish as much credibility as they need to in order to succeed and get this program off the ground.”*

- State Stakeholder

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5 Effective December 21, 2005, The New York State Family Court Act §1018 (as amended by chapter 3 of the Laws of 2005) authorizes the court, in its discretion, to use conferencing or mediation at any point in Article 10 abuse and neglect proceedings to further a plan for the child that fosters the child's health, safety, and well-being.

## The Power of Modeling

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Many local stakeholders credited the successful level of buy-in achieved within their local jurisdictions to the efforts of state partners to model inter-system collaboration. Local stakeholders noted that collaborative efforts on the state level set the tone for collaborative efforts on the local level and helped to bring and keep local players at the table.

Several local stakeholders noted the value of visiting successful mediation programs and observing mediations and meeting with their professional counterparts in these jurisdictions to discuss issues and challenges, strategies to support program implementation, and anticipated program outcomes. At the initial stage, Erie County was the only locality in New York State with direct child permanency mediation experience; hence the Erie County stakeholder group hosted several site visits and were invited to make presentations to other groups.

These visits and presentations provided stakeholders with a “real look” at programs in operation, helped create a shared vision of child permanency mediation, and generated stakeholder enthusiasm. Opportunities to talk with their professional counterparts with mediation experience and observe actual mediation processes also helped programs to develop and refine their protocols.

One local stakeholder noted that they should have organized the site visits a little differently and enabled stakeholders from different parts of the system to be included in the site visit team.

Several respondents noted that local programs facilitated the formation of collaborative partnerships by modeling mediation ideals in their meeting practices. Specific recommendations included:

- Treat participants equally. Hold meetings in a location and at a time that is as convenient as possible for all participants or rotate meeting locations so that no one group is consistently inconvenienced.
- Run stakeholders meetings like a mediation session. Having a facilitator can prevent an individual participant from dominating the discussion and decision-making. Doing so enables meeting participants to become more familiar and comfortable with the mediation process and can help the facilitator become comfortable with managing a large group process, an essential skill in permanency mediation.

## Integrate the Program

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Mediation must be seen as part of the overall court process, not as an alternative process, nor as a substitute for good casework. Mediation should not be viewed as something that is “referred out.” While there appears to be disagreement among respondents as to whether a child permanency mediation program needs to be court-annexed versus community-based, all stakeholders agreed that it has to be designed and implemented and “legitimized” as part of the court process.

## Collect Data

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Data are needed both for program operations and evaluation purposes, and if attention is paid to both while still developing the program, this will prevent duplicate, conflicting, or confusing data collection requirements. The people who will be collecting and recording case information, (i.e., the mediators and program coordinators) should be involved as much as possible in

designing and revising the evaluation and data collection plan, so that they understand how the information will be useful to them and have the commitment to ensure that data collection is accurate and complete.

While the mediation sites were still planning their programs with their local stakeholder groups, the State partners worked together on an evaluation plan, identified existing sources of data, and decided what new information needed to be collected and recorded by the mediation programs about each case. The State partners convened several meetings with the mediation programs to share this plan and solicit feedback. Their suggestions were then incorporated into the evaluation plan, database design, and client satisfaction surveys.

The established community mediation programs that already had client intake, consent, and satisfaction forms shared them with the state evaluators. This enabled the evaluators to determine what needed to be added or changed to be consistent across programs, and better reflect the unique circumstances of child permanency mediation, as compared to general community mediation programs. The local programs all agreed to use the jointly created client satisfaction forms. The State partners also reviewed the mediation programs' consent forms and suggested specific language be incorporated to address the informed consent requirements of the evaluation plan, so that an additional consent form for clients was not needed.

### Encouraging Cross-System Collaboration<sup>6</sup>

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It is more effective if child permanency mediation is developed as part of an overall, coordinated vision for systems reform. Strive to plan, prioritize, and coordinate development and implementation tasks and timeframes in accordance with a broader vision.

In keeping with state level experiences, creating a shared vision of the practice and purpose of child permanency mediation at the local level was a challenge. Local stakeholders identified a number of common political and institutional issues that undermined their ability to create local buy-in, establish collaborative relationships, and generate support for the implementation of a child permanency mediation program. Most notably:

- Inconsistencies in acceptance of the program between different judges;
- Difficulty getting support from local attorneys who represent children, parents and social service districts.
- Negative historical relationships between individual system stakeholders (e.g. attorneys and caseworkers);
- Historical conflict between the local court and DSS; and
- The need to manage multiple initiatives and innovative programs that are not necessarily appropriately coordinated or prioritized.

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<sup>6</sup> For strategies to encourage better collaboration between juvenile and family courts, child welfare agencies, and other system professionals, see Dobbin, S.A., Gatowski, S.I., and Maxwell, D. (2004). Building A Better Collaboration: Facilitating Change in the Court and Child Welfare System, *Technical Assistance Bulletin*, Vol. VIII(2), April 2004. National Council of Juvenile and Family Court Judges, Reno, NV and Townsend, Hon. S. S., and Carroll, K. (2002) System Change through Collaboration... Eight Steps for Getting from There to Here, *Juvenile and Family Court Journal*, National Council of Juvenile and Family Court Judges, Reno, NV, Fall 2002.

Local stakeholders noted that a great deal of time needed to be devoted to simply talking to stakeholders from other parts of the child welfare system. Local planners needed to learn each other's institutional roles, responsibilities and jargon. Explicitly recognizing and articulating the "bottom-line agendas" of each stakeholder group was important to increasing inter-system understanding and address misconceptions about the various systems' policies, goals, and practices.

Participating stakeholders must make a commitment to work through issues and forge a cooperative relationship with a primary focus on the best interests of children, not systems. A number of stakeholders noted that it was important to work through all the different institutional agendas, issues, and personalities, but to do so with a clear focus on what is in the best interests of children.

Program planners should assess the existence of other initiatives that currently exist or are being planned and determine if those programs may compete for attention or resources. During the assessment, consider staffing issues, funding streams, and institutional priorities. It is important that stakeholders are not spread too thin and are able to direct their focus to the development and implementation of the proposed mediation program otherwise implementation efforts may falter.

### **Provide Training Opportunities**

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Multiple training opportunities, both formal and informal, were identified by all respondents as critical to the overall program development and implementation process. Although local stakeholders differed somewhat in their training approaches (perhaps a reflection of local differences in resources and culture), all respondents agreed that, at a minimum, training agendas should address mediation as a model of dispute resolution and its overall purpose and goals; information about professional roles, responsibilities, and expectations, and how they may differ from traditional practice within the context of mediation; and programmatic information and outcomes from other jurisdictions that have successfully implemented child permanency mediation.

Providing training opportunities for a wide range of stakeholders was identified by local stakeholders as a key element of the local planning process – both in terms of substantive content and understanding of the program purpose and goals, and in terms of generating buy-in and political support. Training topics included: general presentations about mediation as a model of dispute resolution; mediation as a specific ADR tool in child welfare cases, and the associated processes and intended outcomes within this context; professional roles, responsibilities, and expectations for performance; and very role-specific trainings aimed at particular professional roles (e.g., how attorneys should represent their clients during the mediation process).

Ongoing and intensive training for mediators was identified as a critical component of the implementation process. Not only is it important to equip the mediators with the necessary level of understanding of the child welfare system and practice, but it is also important in facilitating trust of, and support for, the mediation process across multiple stakeholder groups.

## **Make Plans to Sustain and Institutionalize Programs at Both the State and Local Levels**

During development, program design committee members must keep in mind and incorporate plans that will ensure program sustainability. One key component of program sustainability is continued funding. Several stakeholders indicated that there is concern about ongoing funding. In some jurisdictions, it is unclear whether the court, agency, or mediation service provider is responsible for seeking additional funding to sustain their child permanency mediation programs. Collaborative efforts should be made to create and carry out a plan to sustain funding. Strategies to support funding efforts recommended by respondents included:

- Identify which agency, or individual, will be responsible for carrying out specific tasks (e.g., researching grant opportunities and writing proposals);
- Have an evaluation component in place. Start as early as program inception. Use data to leverage further funding and program expansion;
- Create a “signing off” process so that all agencies participating in the collaborative process can approve the funding proposal prior to its submission in a timely manner; and
- Design and honor a plan for how the funds will be used and allocated among the agencies once it has been received.

Respondents recognized that in order to ensure program sustainability, it is necessary to have a strategy in place for handling transitions in leadership. While strong leadership is key to a successful program, collaborative groups must have a plan in place for the program to be able to survive if that leadership is no longer present. Stakeholders should also be able and willing to step forward and assume leadership responsibilities if necessary. State level stakeholders and members of the local level collaborative effort (the agency, the court, the local level mediation service provider and others) need to have open lines of communication about how to handle the transition, display that child welfare mediation program efforts are unified, and must make efforts to involve and develop new leaders in program activities and responsibilities.

**APPENDIX A**  
**POLICY ISSUES AND STEPS TO CONSIDER WHEN DEVELOPING A CHILD**  
**PERMANENCY MEDIATION PROGRAM: A PILOT SITE CHECKLIST<sup>7</sup>**

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**PHASE ONE**

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***Establishing the Collaborative:***

- Who should be part of the development of child permanency mediation in your community?
  - Identify stakeholders from the court, the child welfare agency, and a local mediation service provider.
  - Think strategically when putting your committee together - include those needed to develop and implement the program - including nay-sayers and those that may create potential stumbling blocks, in order that their concerns are addressed during the beginning phases of development.
- Who should be part of the design and development committee?
  - Be sure to include stakeholders with practice and policy knowledge as well as those with administrative and technical expertise.
- Is there someone missing from your committee?
  - Are there other interested professionals, community members, or organizations that would like to be involved in a child permanency mediation program?
- Who will convene your collaborative meetings? How often will the group meet? Where will the group meet?

***Reaching Collaborative Agreement:***

- Have the roles and responsibilities for all participants been agreed upon by the group?
  - Were clear, jargon-free definitions agreed upon by the group for use in describing the different roles and responsibilities?
- Do participating members or organizations of the development committee have different preferences for the type of child permanency mediation model to be used?
  - Have these different preferences been discussed by the group as a whole?
    - What is the basis for these preferences? (i.e., Are they practice-related or philosophy-based?)
    - What criteria will be used to decide which model to adopt?
    - Were compromises made about the type of child permanency model to be implemented?
    - What decision rule will be used to handle disagreements?

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<sup>7</sup> Adapted from Elizabeth Cole and Mark Hardin, "Checklist of Issues in Establishing Family Group Conferences," *Family Group Conferences in Child Abuse and Neglect Cases: Learning from the Experience of New Zealand*. ABA Center on Children and the Law, 1996.

- Who has the final authority to make this decision if a compromise cannot be reached?

### **Scope and Purpose of the Program:**

- Has the scope and purpose of the child permanency mediation program been clearly articulated?
  - There may be multiple program goals, such as court process goals and goals related to children and families (e.g., *“To avoid litigation,” “To improve the communication and working relationships of all the parties and professionals involved in a child protection case,” “To assist family members and agency representatives in a child protection matter to resolve as many contested issues as possible in a non-adversarial manner”*). These need to be specified in detail, shared and discussed with the collaborative group.
- How will the child permanency mediation program fit into the existing court structure and process?

### **Underlying Program Values and Principles:**

- Are the values and principles that underlie the program clearly identified and articulated?
  - Articulating the values and principles helps to unify the collaborative by focusing them on a shared vision of what is to be accomplished and why (e.g., *“Many issues before the court in child protection cases can be resolved more effectively in a non-adversarial atmosphere,” “Children and families are better served and can be safely served when resolving issues in dispute in child protection cases in a non-adversarial program”*).
- How will the objectives and goals of the overall process of the child permanency mediation process fit into current court practice?

#### **THE MISSION STATEMENT**

*Once the purpose, values and principles of the child permanency mediation program have been discussed the design committee must work collaboratively to draft a mission, purpose or values statement. The mission statement should also be able to be supported by the individual roles and responsibilities of the stakeholders.*

*The statement will provide focus and clarity while the group struggles through the development and design phases of the project, trying to reach agreement on specific program elements, etc.*

*The mission statement should guide program development and should be revisited regularly.*

### **Record Keeping:**

- Are program design elements written down?
- Are drafts of program plans circulated among stakeholders for comment and review?

### **Conduct an Information Needs Assessment:**

- What information should be collected before moving into the specifics of designing the child permanency mediation program?
  - Would it be helpful to members of the design committee or child permanency mediation collaborative to observe a specific mediation model in action?
  - What questions would members of the design committee or child permanency mediation collaborative have for other child permanency mediation programs?
  - What existing information needs to be provided to stakeholders in order to translate other mediation models and tailor them to the unique features of your jurisdiction?
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## **PHASE TWO**

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### **Responsibilities:**

- Who will have responsibility for the mediation program?
- Who will be responsible for coordinating the program? (court-based, agency-public or private)?
  - Will there be a program coordinator position?
  - Who has ultimate responsibility and authority for coordinating the program?
- Who needs to be involved in the planning?
- What model of mediation will be used by mediators?
- How will you ensure that the child permanency mediation program and the mediators are culturally sensitive?

### **Mediators:**

- What are the essential educational and training qualifications that are needed to conduct child permanency mediation?
  - Will the mediators be voluntary or salaried staff members?
- How will the child permanency mediators be trained?
  - Will the training be on-going or a one-time event?
  - Will mediators be evaluated on their training activities?
- Have ethical and practice standards for mediators been developed or adopted (E.g., impartiality, conflicts of interest, promoting party self-determination)?
  - It may be beneficial to make reference in the protocol to ethical standards promulgated by professional dispute resolution organizations.

- What are the procedures for evaluating mediator performance and for handling grievances against mediators?

***Timeliness:***

- What steps will be taken to ensure timely convening and completion of the mediation?
- Will timeframes be established within which mediation must be held?
- Will there be standards and limitations on the duration of the mediation session?

***Specific Program Features:***

- What model of mediation will be implemented?
  - Will the mediation sessions be facilitated by a single mediator or co-mediated?
- Who will participate in the mediation?
- What types of cases will go to mediation?
- What kinds of cases should (and should not) be referred to mediation?
  - What are the parameters and protocols for excluding cases?
    - Will domestic violence cases be referred?
      - Will there be any special protocols in place for those cases?
    - Will sex abuse cases be referred?
      - Will there be any special protocols in place for those cases?
- How will confidentiality be addressed? Will there be exceptions to confidentiality? Will the program report any information regarding party participation to the referring court?
- How will the program provide for (in concert with legislation and local court rules) the confidentiality of the mediation program including statements made during intake and mediation sessions?
- Who will generate the agreements?
- Will the agreement be taken straight to the court or will there be a delay?

***Case Selection and Referrals:***

- How will cases be referred?
  - What will be the selection criteria?
  - Who will refer cases?
  - Can participants be court-ordered to participate in mediation?
- At what stage during the case process will cases be referred?
- What documents will the mediators receive when a case has been referred? Will the mediator review the Family Court file?
- Will the mediator contact parties prior to the scheduled session? What mechanisms will be used to inform parties about the process prior to their coming to the first session?

### ***Convening the Mediation Sessions:***

- How will contact with the parties be made?
- Who will contact the parties?
- How far in advance should parties be notified of the mediation session?
- What information should be provided to the family members and other parties in advance of the mediation?
- What steps will be taken to ensure that parties attending the mediation session will be informed on the process and have a clear understanding of what to expect?
- What are the responsibilities of: the caseworker, the mediator, the agency attorney, the parents' attorney, the child(ren)'s attorney, GAL, CASA, and others?
  - How are these responsibilities articulated?
  - Who articulates the responsibilities?
  - How are these articulated responsibilities shared with stakeholders? (e.g., how is the information shared with the group?)

### ***Conducting the Mediation Session:***

- Who formulates the mediation agreement (e.g., who writes it, distributes it, who receives copies)?
- What is the estimated length of time for the agreement to be disseminated once it has been agreed upon?
- How will the mediation agreements be monitored after the mediation has been held?
- How will the court monitor cases and review agreements (consistent with the program's confidentiality provision)?

### ***Logistical Issues:***

- Where will the mediation sessions be held?
- Is this a safe, neutral and/or convenient location for the parties and involved key stakeholders?
- Is there a room available for the mediation session?
- Is there a separate room available for mediators to caucus with individuals?
- Are there waiting areas available that are separate for perpetrators of domestic violence/sex abuse?

### ***Evaluation:***

- How will the success of your program be determined?
- Is there an evaluation component for the program?
- At what point during program inception will evaluation begin?
- Who will conduct the evaluation?
- What questions will need to be answered (e.g., participant satisfaction, the impact of agreements on permanency outcomes)?

- How will those answers be obtained (e.g., what data are you collecting)?
- How is the information being collected (e.g., surveys, MIS data)?
- How does this information address the goals and values established for the program?
- How will the quality of the mediations be monitored?
  - How will feedback on the evaluations be used (e.g., to justify the continuation of the program? To assist in adapting the program design)?
  - Who needs to receive this information?

***Map Out the Process:***

Create a master document that “maps” the goals of the program and then concretely displays the steps to be followed to produce the desired outcomes. Engaging in this activity requires the group to logically and sequentially show how each piece of the program (e.g., the stakeholders, the program itself) fits into the larger design and helps to identify any pieces that are missing from the current design. When the document is finished, it provides a visual summary of the program and its components that can be shared with other stakeholders and used to generate buy-in for the program.

- What will the child permanency mediation program look like? (Follow it through step by step)
  - Start with the goals of the program and the expected outcomes. If these goals are attained, then fill in the pieces needed by your program (e.g., which stakeholders have to be involved and what they add, which agencies have formal and informal barriers that have to be avoided to link the goals to outcomes in a logical and sequential manner).

***The Final Draft:***

The final draft should be a developed, cohesive policy document that contains the history of the program, the mission statement, a vision of what is expected to be accomplished by implementing the program, and how those accomplishments will be achieved.

**BE SURE TO HOLD ON-GOING PROGRAM DESIGN AND DEVELOPMENT MEETINGS IN ORDER TO ADDRESS ISSUES AND MODIFY PROBLEMATIC PROGRAM AREAS.**

**APPENDIX B**  
**PROTOCOL FOR KINGS COUNTY CHILD PERMANENCY MEDIATION PILOT**

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**I. INTRODUCTION AND BACKGROUND**

The New York City Permanency Mediation Pilot Program will promote collaborative planning in selected post-disposition, Article 10 matters, through mediation between Administration for Children's Services, foster care agencies, parents, their advocates and families, the law guardian for the child, and the child when appropriate.

These program protocols were developed collaboratively by a group representing the New York State Unified Court System, Office of Alternative Dispute Resolution Programs; the New York City Family Court; the New York City Administration for Children's Services; the Legal Aid Society, Juvenile Rights Division; Lawyers for Children; the Law Guardian and Assigned Counsel Panels of the First and Second Department Appellate Divisions; and the New York Society for the Prevention of Cruelty to Children.

The goal of the program is to provide a forum where family members, social service agencies, service providers, and other interested people can work together in a non-adversarial setting to create a plan that will be in the best interest of the subject child or children. In mediation, the participants can discuss and define issues, explore options, and find mutually acceptable solutions. The process provides participants an opportunity to: 1) develop a plan for ensuring safety for the child; 2) explore and plan for options to meet the child's physical and emotional needs; and 3) discuss steps that can be taken to preserve and strengthen the family whenever possible. In addition, mediation provides an avenue for individuals involved in a case to resolve conflicts among themselves (whether between family members or between the parties and the workers) so that they are able to focus on achieving the best outcome for the child(ren).

**II. DEFINITIONS**

As used herein, "mediation" shall describe a dispute resolution process in which an impartial third person helps disputing parties to negotiate. Mediators do not offer their opinions regarding the case. Instead, they help parties identify issues, clarify perceptions, and explore options for a mutually acceptable outcome tailored to the best interests of the child(ren) and the parties' practical concerns.

As used herein, "parties" shall include the petitioner, respondent(s), and the law guardian on behalf of the subject child(ren).

Foster parents, although they are not parties, will be encouraged to attend the informational session and mediation unless specifically excluded by the Order of Referral. However, their failure to appear will not prevent the case from proceeding.

**III. LOCAL POLICIES AND PROCEDURES**

**1. CONFIDENTIALITY**

Section A: Confidentiality Provision

1. Except as otherwise expressly provided in this rule, all writing relating to the subject or process of a mediation including memoranda, work products or case files of a mediator is confidential. All information disclosed during a mediation session is confidential and shall not be subject to disclosure in any judicial or administrative proceeding. All communications, whether in writing,

verbally or by other means, made during the course of mediation or in reference to the substance of a mediation by any party, mediator or any other person present are confidential and shall not be subject to disclosure in any judicial or administrative proceeding.

Section B: Exceptions to Confidentiality

1. Notwithstanding the confidentiality provisions set forth in Section A, Rule 1, information or communications may be subject to disclosure in any judicial or administrative proceeding in the following circumstances:
  - (a) All parties to the mediation and the mediator agree in writing to waive confidentiality. The waiver shall specify the individual communication(s) or information that will be disclosed, the person or entity to whom the disclosure will be made, and the purpose of the disclosure, or
  - (b) The communication or information relates to an additional allegation(s) of child abuse or neglect as defined by law which must be reported pursuant to SSL §413, or
  - (c) The communication or information constitutes a credible threat of serious and imminent harm, either to the speaker or to another person or entity, in which case the appropriate authorities and/or potential victim may also be notified.
2. A written agreement signed by all the parties to the mediated agreement may be submitted to the court for review. Only those signed mediated agreements which have become Orders of the court may be admissible in any judicial or administrative proceeding.

## 2. REFERRAL PROCESS

The New York City Permanency Mediation Pilot Project will focus mediation at the post-dispositional permanency hearing stage. Matters with issues of domestic violence will not be referred to mediation.

The Court will:

- a) Determine if any party has reason not to participate in mediation and decide if an initial introductory session explaining the mediation process is appropriate.
- b) If appropriate, direct the parties and their attorneys to participate in the initial introductory session.
- c) Inform the parties and their attorneys of the time and place of this informational session. Note: If the parties are consenting to mediate and schedules permit, the mediation may begin immediately following the introductory session.
- d) Provide the parties with a packet of information regarding the program (such packet to be provided to the Court by the program).
- e) Inform the parties and their attorneys that only those named in the Order of Referral (e.g., the Petitioner, Respondent, their respective attorneys, and the Law Guardian) will be allowed to participate in the initial mediation. Children will be permitted to participate upon the request of the Law Guardian. Others may participate only by mutual consent of the parties and mediator.

- f) Schedule a follow-up hearing.
- g) Provide the mediation program staff access to the abuse/neglect petition, the fact-finding order, the dispositional order and any reports or information the Court deems pertinent.

### **3. INTAKE AND CASE DEVELOPMENT PROCESS**

After receiving a referral from the Court, the mediation program will:

- a) Provide information designed to help parties make an informed choice as to whether or not to participate in mediation. Such information will be provided in printed materials as well as in pre-session contacts between the mediator and the parties and in the mediator's presentation at the initial session.
- b) Determine if conditions are present that might make mediation inappropriate. An example of such a condition would be a history of violence or coercion between or among participants that might inhibit any party's capacity to make decisions that are in their own best interest or in the best interest of the subject child(ren). If the mediator determines that the matter is inappropriate for mediation, such mediator will refer the matter back to the Court, indicating only that mediation was not appropriate.
- c) Ensure that the parties voluntarily consent to mediation prior to engaging in the process.

### **4. INITIAL MEDIATION SESSION**

The initial mediation session will begin with the mediator providing the parties with information designed to ensure informed participation and decision-making. The mediator will provide the parties with an overview of the process; explain its confidential nature and the limits of such confidentiality. The mediator will also explain that participation in the process is voluntary and that agreements can be reached only by mutual consent of the parties.

At the conclusion of this preliminary orientation, the parties will decide whether or not to continue. If all parties choose to participate, a consent form will be signed and the mediation process can begin. In most cases, this will be a continuation of the initial meeting.

If any of the primary parties choose not to participate, the mediator will refer the matter back to the Court, indicating only that mediation was not initiated.

### **5. THE MEDIATION PROCESS**

The mediation process typically involves the following stages:

- a) Exchanging of information;
- b) Identifying and clarifying issues;
- c) Generating options for resolution;
- d) Analyzing options and selecting among them; and
- e) Developing a written agreement (or ending the session without agreement).

These stages can be completed in one session or may span multiple sessions.

When the participants speak different languages, court-certified interpreters will be assigned to translate at the mediation session.

All parties to the matter must be in agreement for a particular issue to be resolved. Written agreements listing all issues resolved will be reviewed and approved by all parties prior to submission to the Court. Once fully executed, copies of the mediation agreement will be distributed to all participants.

At the scheduled return date, the parties will present the agreement to the Court for review and approval. Any remaining areas of disagreement requiring court action will also be identified and the court will determine the next steps to be pursued.

## **6. EXPERIENCE & TRAINING OF MEDIATORS**

The mediators who will be assigned to this project will have:

- a) Successfully completed an OCA-sponsored or OCA-recognized initial mediation training program consisting of a minimum of forty (40) hours of instruction;
- b) Completed an apprenticeship as a family mediator and have mediated a minimum of twelve (12) cases involving family issues;
- c) Successfully completed at least 15 hours of permanency mediation training after hiring;
- d) Completed any other mediation training or experience deemed appropriate by the Court;
- e) Substantial knowledge of the child welfare and Family Court systems;
- f) Have a background either in law or social work, or have equivalent experience.

## **APPENDIX C**

### **Evaluation of the Child Permanency Mediation Pilot Programs**

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The Bureau of Evaluation and Research at OCFS is conducting an evaluation of the Permanency Mediation programs in all pilot program sites. There are two components to the evaluation plan: a process evaluation with some short-term outcome measures, and an evaluability assessment to determine the feasibility of conducting a rigorous research study to ascertain if the permanency mediation program has long-term impacts on improving child permanency and related child welfare goals.

#### **Process Evaluation**

The process evaluation will focus on providing descriptive information about the families and children served, characteristics of the mediation process, the perceptions of participants about their experiences with mediation, and children's permanency status 12 months after referral to mediation.

To gather information about mediation participants' perceptions of the mediation process, biological parents, foster parents, and other family members have been asked to complete a questionnaire at the conclusion of mediation that is intended to measure seven key areas: 1) voice (i.e., the extent to which participants felt "heard" during mediation); 2) fairness/antagonism; 3) knowledge of mediation rights; 4) shared decision-making; 5) understanding of others/systems; 6) interests of the child; and 7) overall satisfaction.

#### **Feasibility Assessment**

The results of the process evaluation will be useful in determining the feasibility of conducting an impact evaluation of the mediation programs using a comparison or control group.

Factors necessary to conduct an impact study include:

- a well-articulated program model;
- consistent implementation in accordance with the model;
- a fully operational and stable program; and
- a sample size (i.e., number of mediations) that is large enough to permit effects of moderate magnitude to be detected.

Conducting an impact evaluation is also dependent upon the feasibility of establishing comparison groups and continued evaluation funding.