

# Child Welfare Permanency Mediation

New York State Unified Court System Division of Court Operations  
Child Welfare Court Improvement Project (CWCIP)

## Child Welfare Permanency-Mediation

Hi, my name is Suzanne Shafer and I'm a Child Welfare Court Improvement Liaison with the Office of Court Administration. Child welfare cases are some of the most difficult and heart wrenching of all family court cases. I'm here today to discuss Permanency-Mediation, the history of Permanency-Mediation in New York State, and the benefits of mediation in child welfare cases.

### **Child Welfare Permanency-Mediation**

- **Model Court and Court Improvement Project**
  - **Erie County Family Court - 1999**
  - **New York City - 2001**
- **The Child and Family Service Review - 2001**
  - **Time to Reunification**
  - **Time to Adoption**
  - **Program Improvement Plan**
- **“Permanency Mediation Information Day” - September 2002**
- **Sharing Success - September 2003**

NEW YORK STATE UNIFIED COURT SYSTEM • DIVISION OF COURT OPERATIONS  
CHILD WELFARE COURT IMPROVEMENT PROJECT

In the summer of 1998, the National Council of Juvenile and Family Court Judges began working with New York State on the Model Court and Court Improvement Project. The two sites that they began working with first were Erie County and New York City. As participants in the Model Court and the Court Improvement Project, representatives from both New York City and Erie County, family courts and their local Department of Social Services' counterparts had the opportunity to visit other model court jurisdictions around the country.

Many of these jurisdictions had functioning child permanency-mediation programs. These site visits spurred interest in mediation which lead to two local implementation efforts: Erie County began working with Catholic Charities in 1999 on their permanency-mediation program; in New York City began working in 2001 on theirs.

The Office of Children and Family Services conducted a Child and Family Service Review in 2001. Two areas which were identified as needing improvement were also benchmarks of particular relevance to child permanency-mediation: one was Time to Reunification and the other was Time to Adoption. With the Children and Family Services Review, a program improvement plan was developed. The State develops this Plan. During the development plan the Office of Children and Family Services recognized the importance of including Court representatives in the Program Improvement Plan development. One of the strategies incorporated into the final Program Improvement Plan was a commitment to support and expand Child Permanency-Mediation Programs.

*Permanency Mediation Information Day* was held in September of 2002. Due to the Child and

Family Services Review, their Program Improvement Plan Coordinator created the Permanency Mediation Information Day. What the Coordinator did was invited representatives from the Office of Court Administration, family courts, local Department of Social Services, and the Office of Children and Family Services' regional offices that might be interested in the concept. They did a one-day technical assistance workshop which included presentations from legal, Social Service, and mediation arenas.

In September of 2003, *Sharing Success* was held and permanency-mediation was shared with a broader audience. *Sharing Success* is an annual conference which invites teams from every county which are represented by local courts, Department of Social Services, and service providers.

### **Collaborative Partnership**

- **Office of Court Administration, Office of ADR**
- **Permanent Judicial Commission on Justice for Children**
- **Office of Children and Family Services**

Due to all of this interest generated from all of these things, a collaborative partnership was formed between the Office of Court Administration's Office of Alternative Dispute Resolution, the Permanent Judicial Commission on Justice for Children, and the Office of Children and Family Services. There was a series of meetings between these partners in late 2002 and throughout 2003 which resulted in the framework for implementing a Child Permanency-Mediation Pilot Project.

### **Criteria for Evaluating Potential Sites**

- **Family Court**
- **County Social Services**
- **Active Collaborative Group or Willingness to Form One**
- **High Ratio of Children in Foster Care to Population**
- **Capable Prospective Mediation Service Provider**

What they did is they created a criteria for evaluating potential sites. They looked at the local family courts and whether the family court was receptive, progressive, and had a strong desire for this program. They looked at the local County Social Services to decide if they also had the same things: were they receptive, progressive and did they have a strong desire. They also looked to see if there was an active collaborative group or a willingness to form one. They looked at the ratio of children in foster care to population; and they looked at the capable prospective mediation service provider in that area.

### **Pilot Sites**

- **Interdisciplinary Cross Systems Collaboration**
- **Autonomy in Developing Protocol and Practices**
- **State Planners Participated in Local Meetings**
- **State Initiated Modest Contracts for 6 to 12 Months  
without any Expectations of Caseload**

Once they came up with a criteria, they opened it up to local counties to see who was interested in having a Permanency-Mediation project. Once that was done, they determined which sites would be pilot sites and once they determined that, what they did is they set out for criteria that each of these sites would have to follow. One, was that they had to have an Interdisciplinary Cross Systems Collaboration which means they had to have a stakeholders group which included the local courts, local Department of Social Services, and local service providers. They wanted to make sure that anybody who had any interest in child welfare and worked in the child welfare system was incorporated and included in this stakeholders group.

They gave each of the pilot sites autonomy in developing their own protocol and practices. What they realized is that each county is going to do things differently so they wanted them to feel that they could create protocol and practices which worked for them and worked for their county.

*The State Planners Participate in Local Meetings.* The State Planners weren't there to oversee and make sure that these pilot sites were doing what *they* wanted. What they were there for was to encourage the local sites, to make that they understood if they needed help or needed ideas or suggestions, that the State was going to be there and they felt the best way to do this was actually to be seen. So they participated in the local meetings.

The State also initiated modest contracts from 6 to 12 months without any expectations of caseload. They didn't want the pilot sites to think, "Okay, we now have this program, we have to get it up and running and start taking cases immediately.". The State wanted to make sure each of these visits planned and developed this program so it would succeed so what they did is say, "Okay, take the time you need, create this program, set it up, and make sure it's going to work; and, don't worry about getting cases immediately.".

### **What is Mediation?**

- **Neutral**
- **Voluntary**
- **Confidential**

What exactly is mediation? Mediation is a neutral, voluntary, and confidential process. It's a consensual dispute resolution process in which a specially trained, impartial mediator helps parties to identify issues, clarify perceptions, and explore options for mutually acceptable outcome.

Mediators do not offer opinions, they do not give suggestions – instead, they facilitate construction communication that provides the opportunity to provide creative solutions which emphasize the parties practical concerns. Mediators have no stake in the case ... they are completely neutral. Doesn't affect them one way or the other what is agreed or what is not agreed upon.

Mediation is also voluntary. So although the Court might say, "Okay, I'm ordering you guys over to Mediation..." or "...referring the case over to Mediation...", once the participants show up and they hear the Opening Statement from then on it's voluntary and they've fulfilled their obligation to whoever referred the case.

It is also Confidential. There's always a couple of exceptions: One, is if there's a written agreement that, of course, isn't confidential. Everybody in the room gets a copy and a copy is sent to the referral source. The other exception is if there's any new allegations of abuse or neglect. With Permanency-Mediation, the case workers from local Department of Social Services is in the room and because they're mandated reporters any new allegations arise that, of course, is going to be reported.

### **Benefits of Mediation**

- **Informal yet structured setting**
- **Constructive communication**
- **Less intimidating than formal court processes**
- **Collectively developed plan**
- **Option of having proposals incorporated into court formal plan**
- **Time to discuss day-to-day practical issues**
- **Fully informed and included parties more invested in plan**

*The Benefits of Mediation.* Mediation is an informal yet structure setting. So although you're not in a courtroom, there's not a Judge looking down and making sure everybody's doing what they're supposed to, it's very informal. Everybody's sitting around a table, everybody's even that they're all level on the same floor, but yet it's structured.

The Mediator has control of the meeting. So although they're not giving suggestions or telling people what they need to do, they're making sure they have control and everybody is getting a chance to speak and be heard.

It's construction communication. The Mediator makes sure that everyone understands what the

other person is saying. It's less intimidating than the formal Court processes. Usually, if an agreement is reached, it's a collectively developed plan. If it's not a collectively developed plan, then it does not leave the room and it's not an agreement. Everybody in that room has to agree.

All of the participants have the option of having the proposals incorporated into court formal plans. What this means is if there's an agreement –and say it's about a Service Plan or a Visitation Plan– everybody in the room has the option of turning this into the court and saying, “We would like this to be made into an order.”

Mediation also gives the parties time to discuss day-to-day practical issues; whereas, the court is usually so overwhelmed with all of the cases they have, there usually isn't enough time to discuss whether or not ... you know, the foster parent can bring the child at this time or the parent can pick them up at this time or if this is the location they want to drop them off. These little, tiny issues which are a big deal and which really are going to affect this child may not be able to be discussed in Court ... in Mediation, they can be; and, also, usually parties who are fully informed and included are more invested in the plan and more likely to follow through. So if the parties feel like they had a say and had actually helped create this plan, it's more likely to be successful.

### **Mediation Process**

- **Referral**
- **Intake**
- **Mediation**
- **Case Closed**

*The Mediation Process.* The case is referred, an intake process is done, the Mediator will generally call of the parties and make sure they understand what mediation is, how it occurs, what it was actually referred for. Usually during the intake process other issues arise. The Mediator is aware these are other things that may come up in the mediation. The mediation is then conducted and once that is done – and if there's an agreement- of course, everyone gets a copy and a copy is sent to the referral source and then the case is closed.

### **Mediators**

- **Basic Mediation Training**
- **Family Mediation Training**
- **Child Permanency Mediation Training**

Mediators are specially trained in order to do Child Permanency Mediation. Three of the trainings they must go through is: Basic Mediation Training - which is anywhere from 32 to 48 hours; Family Mediation Training - which is anywhere from 16 to 32 hours; and, Child Permanency Mediation Training, which is anywhere from 32 to 40 hours. Once a Mediator goes through each of these different types of training, they actually do an apprenticeship program. So, once they do Basic Mediation, they do the hours that are required, they do an apprenticeship. So, they observe some mediations, they co-mediate some mediations, and then they go on their own and they usually have someone observing to make sure they're okay. They have to go through this Apprenticeship Program for each of these different types of training. So, it's not as if a Mediator is someone who –just off the street– goes, “Ya know what, I want to mediate, let me do it.”; they actually have to go through a lot of training.

### **Case Examples**

- **Service Plans**
- **Custody**
- **Visitation**
- **Relationship Issues**
- **Conditional Surrenders**

Different types of case examples for Permanency-Mediation: Service Plans can be referred, Custody or Visitation can be referred, Relationship Issues, Conditional Surrenders. The thing with Permanency-Mediation is you're not referring a case. It's not the whole case that's being referred. It's specific issues. So, for instance, if it's a Service Plan and the caseworker is saying, "I want the Responding Parent to do parenting classes." and the Responding Parent is saying "No, I don't want to do parenting classes. I want a Parent Aide." and they are just not seeing eye-to-eye on this, this is one specific issue that can be sent to Mediation to try to get it resolved.

Sometimes it's Custody or Visitation. It could be Visitation: the foster parent and the biological parent and the mother's saying, "You know what, I need to have my child's visitation on Wednesdays and Fridays at this specific time"; and the foster parent's saying, "You know what, I have visitation for my other foster child at that time and I just can bring the child at this time." and so it's issues like this that's really affecting the child that really needs to be worked on. Okay, so you put everybody in Mediation and they sit at the table and try to come up with other options. What are other things that we can do to get the visitation to where it works for everybody?

Sometimes it's Relationship Issues. It could be between the Caseworker and the Responding Parent, could be between the Foster Parent and the Responding Parent, sometimes it's even between the child and the parent.

And then the last one listed is Conditional Surrenders. Lots of times the case termination of parental rights is filed in a family court and the parent realizes either they're going to trial or they have the option of doing a Conditional Surrender. Sometimes it's easier to sit down in a room and say, "You know what, this is what's best for my child but I still want to maintain some kind of contact." So what they do is they sit down and discuss what kind of conditions will be put down in the Surrender.

As you have seen, there are many benefits to Mediation and Child Welfare cases to help children achieve Permanency faster.

Thank you for sharing your time and learning about Permanency-Mediation. If you have any questions or would like further information, please contact me.

**For further information, please contact:**

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