Child Abuse, Neglect, and Dependency Mediation Pilot Project

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ABSTRACT

The Adoption and Safe Families Act of 1997 (ASFA) established a goal of one year from removal to permanence for all children taken into protective custody. When the Family Court of Mecklenburg County (Charlotte), N.C., opened its doors in 1999, more than half of the children in the protective custody of the Department of Social Services had been in custody for 12 months or more. Innovative approaches were needed to provide children in Mecklenburg County with a safe and permanent home in a more timely manner. The Child Abuse, Neglect, and Dependency Mediation Pilot Project was one approach selected by the Mecklenburg County Family Court to help achieve ASFA’s goal of one year to permanence. This article details the court’s two-year journey to make dependency mediation a reality.

In reality, the process was anything but simple. We finally achieved our goal, but it took almost two years of intensive teamwork to get the program implemented. In January 2001, the Child Abuse, Neglect, and Dependency Mediation Pilot Project mediated its first case. Because of the countless hours of research, planning, and training undertaken by our committee, the program was specifically tailored to meet the needs of Mecklenburg County and received widespread support from all of its stakeholders. It also boasted an innovative evaluation project, which should serve as a prototype for other dependency mediation programs across the country.

This article describes in detail our two-year journey to make dependency mediation a reality in Mecklenburg County. Over those two years I learned many lessons. First and foremost, I realized that a program cannot simply be copied from another jurisdiction. Instead, it must be modified to fit the unique needs and procedures of its own jurisdiction. I also learned about the necessity of collaboration; that buy-in from stakeholders requires compromise and copious amounts of time; that being a Model Court means shifting attitudes and court practices more than anything else; that judicial leadership is critical to a program’s success; and that a tremendous resource exists in the National Council of Juvenile and Family Court Judges and other Model Courts.

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Program History

In the fall of 1998, the 26th Judicial District in Mecklenburg County, N.C., was one of three judicial districts in the state selected by the North Carolina Administrative Office of the Courts to pilot a Family Court. The mission of Family Court is to help families resolve their legal disputes through the combined efforts of family members, the courts, and community agencies “in ways that are accessible, courteous, just, safe, timely, efficient, non-adversarial and minimally intrusive.” In Mecklenburg County, Family Court was established to expedite the family dispute resolution process and reach more favorable outcomes for children and families.

When the Mecklenburg County Family Court opened its doors in June 1999, there were 1,050 children in the custody of the Mecklenburg County Department of Social Services/Youth and Family Services Division (DSS). These children had been removed from their homes due to parental abuse or neglect under Chapter 7 of the North Carolina General Statutes. Sixty-six percent (692) of these court-protected children had been in DSS custody for a period of 12 months or more; 44% (458) had been in custody for 24 months or more.¹

In 1997, the federal Adoption and Safe Families Act (ASFA) established a goal of one year from removal to permanence for all children taken into protective custody. When the Family Court began in 1999, Mecklenburg County did not meet this standard for two-thirds of the children in protective custody. DSS and court officials believed that many children remained in protective custody for significant periods of time because their parents resisted efforts to complete case plan requirements, such as participation in substance abuse treatment or mental health counseling. This resistance often resulted from miscommunication and the lack of a team approach between social workers and parents. Parents often were not involved in developing their case plans. As a result, they often had only a limited understanding of what they were expected to do in order to reunite with their children. Frequently, case plans lacked sufficient detail and did not take the individual needs of parents into account. Protracted adversarial court hearings became the general rule, as judges spent valuable court time trying to re-explain case plan requirements to recalcitrant parents and get everyone on the same page.

Everyone suffered under this approach. Parents never felt part of the team and often became hostile and frustrated. In addition, they failed to make sufficient progress to accomplish reunification. Parents’ attorneys accused social workers of failing to explain case plans or involve parents in the process. Attorneys on all sides had to prepare for adversarial proceedings, as everyone struggled to prove who was to blame for the lack of progress towards reunification. Various service providers had to repeatedly come to court as witnesses in adversarial hearings that all too frequently settled at the last minute. Judges presided over repeated review hearings, acting more as facilitators than judicial officials. By the time everyone fully understood the case plan requirements and began working cooperatively, several months had passed. All the while, children continued to suffer. Month after month they waited in limbo, never knowing if or when they were going to reunite with their parents.

Innovative approaches were needed to either bring families into compliance with their case plan requirements earlier in the case or to provide children with a safe and permanent alternative home. The Child Abuse, Neglect, and Dependency Mediation Pilot Project was one approach selected by the Mecklenburg County Family Court to help achieve ASFA’s goal of one year to permanence for children in DSS custody. Mediation offered the promise of putting everyone on the same page from the outset of the case. Mediation also offered the opportunity for everyone to offer input into a case plan tailored to the parents’ individual needs and to make DSS’s expectations clearer to all parents early in the life of the case. Mediation would allow judges to use court hearings to monitor compliance rather than to repeatedly explain case plans. Hopefully, through mediation more parents would buy into the services being offered to them and progress to reunification more quickly. If parents still failed to comply with case plans, mediation assured judges that this failure was not the result of miscommunication, failure to understand, or the lack of an individualized case plan. As a result, the court would be able to move to an alternative permanent plan for the children within a year or less.

¹ North Carolina Department of Health and Human Services, Division of Social Services, Child Placement Information and Tracking System, April-June 1999.
Judge William Jones initiated the development of a dependency mediation program in the Mecklenburg County juvenile court shortly after his appointment to chief judge of the district court in 1998. Mecklenburg County had a successful history of mediation in child custody cases dating back to 1983. Additionally, mediation in other contexts had demonstrated reduced court time, higher rates of satisfaction from participants, litigation cost savings, and high settlement rates.

Soon after he became chief judge, Judge Jones was approached by Susan Cox, a professional family mediator in Mecklenburg County, to discuss ways to expand the potential of mediation in Mecklenburg County. Simultaneously, Judge Jones was in conversation with the National Council about becoming a Model Court, many of which were using dependency mediation. Judge Jones had the opportunity to observe mediation sessions in Santa Clara County, Calif., and learned that the programs in California felt positive about the results they were achieving. When Mecklenburg County was named a Model Court in 1998, dependency mediation became one of its first Model Court goals.

Judge Jones' original expectation was that the dependency mediation program would mediate termination of parental rights (TPR) cases. While the court believed that dependency mediation would be extremely useful in TPR cases, DSS felt strongly that mediation would be most beneficial in cases that were at the pre-adjudication stage. Tyrone Wade, an attorney for DSS, explained that contested adjudications were taking an inordinate amount of time to complete causing delays in reaching the dispositional phase of the case, which in turn caused delays in the court’s ability to adopt a case plan or put appropriate orders in place for reunification. Often the parents didn’t feel they had their day in court because of limitations on admissible evidence, hearsay, and time constraints. Mediation at the pre-adjudication stage offered the opportunity for all parties to be heard and for the case to be resolved in a shorter amount of time.

In order to gain the buy-in and support of DSS, the program decided to initially limit mediation to contested pre-adjudication cases.

**Stakeholder Collaboration as Key to Development and Implementation**

The development of a stakeholder group was key to gaining buy-in for the program. The stakeholders selected were representatives of all of the agencies involved in child abuse and neglect cases in Mecklenburg County. Judge Jones selected people who he knew would be supportive of mediation, including a family court judge, DSS attorney, parents’ attorney, DSS administrators and social workers, professional mediators, and child advocates. All of the stakeholders had their own goals for mediation and were ready and willing to buy into a mediation process that incorporated their goals.

Prior to implementing the program, members of the stakeholder group carefully studied protocols from similar programs in other jurisdictions and conducted cross-site visits to Santa Clara County, Calif., Newark, N.J., and Buffalo, N.Y. Several representatives from Mecklenburg County also participated in a Dependency Mediation Colloquium in California. The stakeholder group initially thought that it could simply take a mediation model from another jurisdiction and replicate it in Mecklenburg County. The group learned quickly, however, that Mecklenburg County had its own unique needs and that it could not simply drop a program that was developed in another jurisdiction into Mecklenburg County. Instead, the group took various components from other courts and built a program designed to succeed in Mecklenburg County.

It took several meetings to construct an individually tailored program. The stakeholder group met regularly for six months simply to reach some common understandings about program goals. Many meetings were devoted to defining basic terms, setting goals, and discussing the various mediation models. This work was time-consuming and sometimes frustrating, but critical to the success of the program. These discussions formed the framework for the program and resulted in uniform and enthusiastic support of the program.

After six months of meetings, the group appeared ready to move beyond mere theoretical discussions. When Judge Jones convinced Sharon Kugelmass, a grants expert for Mecklenburg County, to join the subcommittee, the group received a much-needed kick-start. Sharon agreed to assist with efforts to obtain funding and immediately began asking the stakeholders to more
clearly define the program’s goals and objectives. Her questions would be the same questions that potential funders would later pose, forcing the stakeholder group to look at the program from an entirely new perspective. Neither theoretical arguments nor collaboration alone would be enough to convince governmental or private funding sources to support a mediation program. Rather, the group needed a detailed plan for creating a sustainable mediation program designed to achieve measurable goals for children and families.

The stakeholder group then divided into two subgroups—one sub-group was assigned the task of designing the mediation process and establishing protocols, and the other was responsible for identifying funding opportunities. In addition to completing their assigned tasks, both groups continued researching other programs and meeting together monthly to review progress. Additionally, Elaine Cigler and Susan Cox, the two mediators in the group, agreed to co-mediate two child abuse and neglect cases as “test” cases to determine whether mediation in the context of protective custody cases was practical in Mecklenburg County. The program learned tremendously about the unique nature of dependency mediation from the test cases.

While waiting for money to implement the program, the stakeholders began concentrating on training. An orientation for stakeholders and mediators was held in November 2000. Participation was mandatory for all of the agencies involved in child abuse and neglect cases in Mecklenburg County and the event was well received. In addition to the presentation of information about dependency mediation, the training offered an opportunity for attendees to ask questions, make comments, and offer suggestions, which were recorded and incorporated into the program protocols.

Finally, in the fall of 2000, the program began receiving grant funding from several sources. The Mecklenburg County Court Services Department donated start-up funding to cover the cost of the contract mediators for the initial sessions. In November 2000, the program received funding from the Sisters of Mercy of North Carolina Foundation, Inc. to assist with mediation training expenses. In December 2000, the Z. Smith Reynolds Foundation, Inc. awarded the program a grant to assist with program expenses and the Duke Endowment approved a three-year grant to cover operational costs, including the program administrator’s salary and the cost of contract mediators. The total grant funds received from all sources was almost $400,000.

Once funding was identified, the final task of the stakeholder group was to hire a program administrator. In June 2001, Linda Sanders departed her position as Mecklenburg County’s Family Court Administrator to become the dependency mediation administrator. In Linda, the stakeholders found someone who was prepared not only to implement their vision, but to take it to a new level of success. Linda continues to convene the stakeholders as a policy committee on a quarterly basis and to report the program’s progress to the Family Court’s Model Court Advisory Committee.

The successful development of the Child Abuse, Neglect, and Dependency Mediation Pilot Project is especially meaningful because it represents the first inter-governmental collaboration of its kind in Mecklenburg County. The Family Court, a state entity, collaborated with the City of Charlotte’s Dispute Settlement Program, Mecklenburg County, the Guardian Ad Litem Program (GAL), the National Council, the University of South Carolina’s Institute for Families in Society (USC), and many others to make the project a success. This is the first time in the history of local government that an inter-governmental collaboration of this magnitude has occurred.

**Program Description**

The Child Abuse, Neglect, and Dependency Mediation Pilot Project officially began accepting cases in January 2001. Its primary goal is to more quickly and efficiently provide a permanent home for children involved in abuse, neglect, and dependency proceedings and prevent them from languishing in foster care.

The objectives of the Project are:

1. To reduce the amount of time from removal of a child from his or her home to the development of a permanent plan for the child;
2. To reduce the amount of time from removal of a child from his or her home to the achievement of a permanent placement for the child;
3. To increase parental compliance with case plans;
4. To improve the quality of case plans by producing treatment plans and visitation arrangements that are individualized and family appropriate;
5. To ensure participant satisfaction with the mediation process;
6. To reduce the number of court hearings by 40%; and
7. To reach full or partial agreement in at least 60% of mediated cases without resorting to litigation.

Dependency mediation is an informal process of dispute resolution in which trained co-mediators, as neutral third parties, assist disputing parties with reaching a mutually acceptable resolution of issues related to child abuse, neglect, and dependency. The mediators are not judges, lawyers, or counselors; rather, they are skilled facilitators who assist the disputants in defining and clarifying issues, reducing obstacles to communication, exploring possible solutions and reaching a mutually satisfactory agreement. The ultimate decision-making authority rests with the parties themselves.

Dependency mediation in Mecklenburg County focuses primarily on contested pre-adjudication cases. "Contested cases" refer to those in which the parents' attorneys and DSS attorneys cannot reach stipulations on all of the allegations in the juvenile petition prior to adjudication. The mediation session focuses on seeking an agreement regarding the facts in the petition and developing a case plan that outlines the tasks that must be accomplished in order for the children to be reunified with their parents or caretakers.

Cases are generally ordered to mediation by the judge at the initial court hearing. Mediation may be ordered at the request of any party. When a case is ordered to mediation, the Family Court case manager, who is present in the courtroom during the initial court hearing, informs the parties of all available mediation dates and completes the mediation referral form. The mediation date is selected by the consensus of the parties present. The Family Court case manager forwards the completed referral form to the dependency mediation administrator.

Upon receipt of the referral form, the mediation administrator sends out a letter and dependency mediation flyer reconfirming the date and time of the mediation, announcing the location of the session, and explaining how the mediation program works. Cases are scheduled for mediation on Wednesdays and Fridays and last an average of 3.5 hours.

Cases ordered to mediation at the initial hearing are scheduled for mediation prior to the adjudication. An adjudication date is also set at the initial hearing. The court allocates only 30 minutes for adjudication unless the parties, at the time of the initial hearing, have good reason to believe that more time will be required. If an agreement is reached in mediation, the agreement is read into the record at the scheduled adjudication. If an agreement is not reached in mediation, the case is rescheduled for adjudication on a date when the court is able to hear a full trial of the issues.

Mediation requires the active participation of the parents, parents' attorneys, GAL attorney, DSS social workers, DSS attorney, and others as appropriate. Children are not routinely included in the mediation. A child may attend if he or she is old enough—chronologically, developmentally, and emotionally—and the GAL attorney and the mediators agree with his or her participation. The child must be able to express his or her needs and benefit from the process. Reasons for the child's participation can include the child's desire to participate, the relevancy to the child's placement and any benefits to the child. The child's attorney may be present during all conversations with the child throughout the mediation process. The child's safety and well-being are the primary concerns during all mediation sessions.

During mediation, the parties may stipulate to the facts alleged in the petition, but may not stipulate to the legal status of the child, i.e., whether the child was abused, neglected, and/or dependent. The court determines legal status.

Full or partial agreements may be reached as a result of mediation. The written agreement is drafted while all parties are present at the session. All parties sign the written agreement and receive a copy. The DSS attorney is responsible for taking the original agreement to the court on the set adjudication date and reading the agreement into the court record. Once adopted by the court, the agreement becomes an enforceable court order.

**Evaluation**

When the stakeholder group was convened in 1999, the members had not considered evaluation a critical component of the program. Sharon Kugelmass explained to the stakeholders that funders routinely require evaluations in order to determine whether a proposed project is effective and efficient in accomplishing its goals and should continue to be funded. It is difficult to obtain
funding to continue or expand an ongoing program without some evidence that the program is producing its desired outcomes at a reasonable cost. A comprehensive evaluation would also enable the program to continuously improve its outcomes and design by determining which components worked well and which needed to be fixed.

The stakeholder group began exploring the development of an evaluation plan. In researching other mediation programs, the group was struck by the general lack of comprehensive evaluation procedures utilized by dependency mediation programs. Over and over again, research uncovered subjective measurement tools, such as satisfaction surveys of participants and self-reports of agreement rates; however, the group was unsuccessful in identifying a program that measured its long-term usefulness. With an understanding of the increasing emphasis that funding sources place on measuring success, the group decided to utilize evaluation experts to create a comprehensive and objective measurement system for Mecklenburg County.

In the late fall of 2000, the 26th Judicial District Family Court contracted with the Institute for Families in Society at the University of South Carolina (USC) for one year to develop an evaluation plan for the Child Abuse, Neglect, and Dependency Mediation Pilot Project. The stakeholder group met with USC for two months prior to the implementation of the mediation program in January 2001 to discuss and finalize the components of the evaluation plan, including all data collection activities, the development of forms, evaluation processes and monitoring report formats, and a plan for ensuring compatibility with future evaluation efforts of the National Council.

USC evaluation staff and the stakeholder group decided that both process and outcomes evaluations were needed to assess the feasibility and cost effectiveness of mediation. A combination of data collection techniques was used, including self-analysis and participant satisfaction surveys for process evaluation, and case research and expert opinion for outcome measurement. Self-analysis involved regular feedback from mediators to resolve problems as they arose and continuously improve the process. Participants were also surveyed about their experience in mediation sessions. Case research would help the program determine the status of cases at significant intervals in the lives of the cases and assess their progress toward meeting program goals. Expert opinion would assist the program in evaluating the quality of case plans.

USC designed an evaluation plan, assisted and trained the staff in collecting program data, reviewed the data collected for accuracy and completeness, met with staff to review program activities, analyzed program data and completed quarterly monitoring reports, designed a final report, and provided recommendations regarding future evaluation. USC recommended that the program collect specific data on baseline cases, mediated cases, and comparison cases; develop an information management system for managing the data; conduct professional panel reviews to evaluate the quality of case plans developed in mediation; and utilize exit surveys to determine participant satisfaction with the mediation process.

**Data on Baseline Cases**

In January of 2001, data were collected on all child abuse, neglect, and dependency cases filed between July 1, 2000 and December 31, 2000, involving approximately 200 children. These cases constituted our baseline group of cases for comparison purposes. The data on the baseline cases were retrieved from case files at the Juvenile Clerk of Court's office and at the GAL office.

The data-tracking sheet developed by USC tracked the following categories:

- Case number and name(s)
- Dates of initial hearing, adjudication, and disposition
- Was the case partially contested, fully contested, or non-contested?
- Was the child adjudicated abused, neglected, or dependent?
- Are there other children petitioned? How many? Placement?
- Parties and professionals involved in the case
- Ethnicity of family
- Prior DSS involvement
- Is domestic violence involved?
- Alleged perpetrator of the abuse, neglect, or dependent act
• Nature of abuse/neglect
• Were criminal charges filed?
• Parents’ and children’s personal issues
• Placement of child at time of initial hearing
• Placement of child at time of dispositional hearing
• Visitation?
• Goal of case at time of the dispositional hearing

Each baseline case was reviewed six months and twelve months after the court’s dispositional hearing and additional data were collected on:

• Parents’ compliance with the dispositional case plan
• Current placement of the child(ren)
• Goal of the case at time of review
• Whether new referrals have been made to DSS
• Whether there is a permanent plan and, if so, the date of the permanent plan
• Whether there is a permanent placement and, if so, the date of placement
• Date of termination of parental rights (if applicable)

**Data on Mediated Cases**

In the summer of 2001, data were collected on child abuse, neglect, and dependency cases mediated during calendar year 2001 using a similar data-tracking sheet as was used for the baseline data. The data on the mediated cases were retrieved from case files at the Juvenile Clerk of Court’s office and through personal contact with the social workers during the mediation sessions. The data-tracking sheet for mediated cases included the categories listed above for baseline cases and the additional categories listed below:

• Date and time of mediated session
• Length of mediated session
• Type of agreement reached (full or partial agreement)

The mediated cases will be reviewed again six months and twelve months after the court’s dispositional hearing to collect the same categories of data that were collected on the baseline cases at six and twelve months.

**Data on Comparison Cases**

In January 2002, data were collected on a random sample of child abuse, neglect, and dependency cases filed between July 1, 2001 and December 31, 2001 not referred to mediation. These cases constitute our non-baseline comparison data and are helpful in gauging whether mediation is affecting the number and kinds of contested cases. The comparison data were collected using the same data-tracking sheet used for the baseline data. The data on the comparison cases were retrieved from case files at the Juvenile Clerk of Court’s office and at the GAL’s office.

The comparison cases will be reviewed again six months and twelve months after the court’s dispositional hearing to collect the same categories of data that were collected on the baseline and mediated cases at six and twelve months.

**Information Management System**

All data were entered into an automated database known as MAD-trac, an Access-based information management system. The information from each data-tracking sheet is entered into the system and labeled as mediated, baseline comparison data, or non-baseline comparison data. Once the information is entered, reports can be generated for evaluation purposes.

MAD-trac is also used to store personal information about each mediation participant and to send each participant a standard letter confirming the date, time, and location of the mediation session. The MAD-trac system saves the program significant time in reporting data and generating correspondence to mediation participants and to the court.

**Professional Panel Reviews**

From the outset of the program, it was important to Judge Jones and the stakeholder group that mediation make a difference in the quality of the case plans developed for parents in child abuse and neglect cases. All of the stakeholders agreed that if the quality of the case plans developed in mediation was better than those developed outside of mediation, the parents would more likely understand and comply with the case plan. The stakeholders also believed that mediation could help improve the quality of case plans developed outside of mediation by educating social workers on what a good, measurable case plan entails.
**Dependency Mediation Pilot Project**

The stakeholder group was initially uncertain about how it could measure quality, a subjective outcome, fairly and objectively. After much discussion, the group agreed that a “blind” review of case plans by a panel of professional experts would be the most objective way to accomplish this task. Mecklenburg County is one of the few known sites that use a panel of experts to ascertain the quality or appropriateness of case plans in child abuse and neglect cases.

Four teams of professional volunteers, including judges, parents’ attorneys, DSS attorneys, GAL attorneys, and social workers, were convened over a period of four months to judge the quality and accountability of case plans developed in mediation. Good case plans were defined by the professionals as those that are objective, measurable, realistic, time-bound, and spell out the responsibilities of all parties. Twelve case plans were reviewed. Each team received a short, anonymous summary of three case plans—one plan developed in mediation and two plans developed outside of mediation. The professionals were not told which case plan was developed in mediation. Each case plan summary included a one-page questionnaire regarding the case plan’s quality and accountability. Case plans were measured on five factors with a score of 1 meaning lacking and 4 meaning good or excellent. The five factors were:

1. The case plan addressed, at a minimum, the problems identified in the petition.
2. The case plan was realistic (meaning all parties could realistically and successfully meet the requirements).
3. The case plan addressed accountability for each of the parties involved (meaning both the parent(s) and the social worker(s) were assigned responsibilities).
4. The goals of the case plan were specific and measurable (meaning there are tangible goals by which one can readily determine compliance or non-compliance).
5. Overall the case plan was Good, Fair, or Lacking.

Some of the positive comments regarding the mediated case plans were:

- “Very all encompassing of issues surrounding the family and individually tailored.”
- “The case plan is inclusive and much more detailed than most.”
- “Excellent clear criteria and lots of detail.”

Some of the constructive comments included:

- “Nothing addresses mom’s mental understanding of the needs of the youngest child.”
- “What will the social worker do?”

The results of the panel reviews indicate that mediation is making a positive impact on the quality of case plans. The program will continue to utilize panel reviews to assess whether mediation continues to improve the quality of case plans.

**Participant Satisfaction Surveys**

USC developed participant satisfaction surveys for each class of participants involved in mediation. The surveys were adapted from existing programs in other jurisdictions and were designed to capture information regarding the different participants’ perspectives about the mediation process. Parents and family members, professionals, and GAL volunteers complete separate surveys at the end of each mediation session.

During the first year of the program, 76 parent/family member surveys and 192 professional and Guardian Ad Litem volunteer surveys were completed and returned. More than 85% of the surveys returned were overwhelmingly positive, including such comments as:

- “It is a good way to cut down on litigation time.”
- “The mediation program is a great program…”
- “The best, most effective program available for families with children in DSS Custody.”
- “Parties were all heard.”
- “I think it is a wonderful way of getting interested parties involved and resolving issues.”

**Preliminary Findings**

In February 2002, USC reported:

“A comparison of baseline contested cases to non-contested cases shows no significant difference in either the amount of time from initiation of a case to the development of a permanent plan or in the average number..."
of hearings involved. Baseline data does not support the assumption that contested cases consume more court hearings or take longer to reach a permanency plan.

"A comparison of baseline contested cases to non-contested cases across other characteristics (age of children, ethnicity) demonstrated few differences between the two groups.

"Even though it appears that contested cases are no more likely to require additional court time than non-contested cases, the pilot program may still demonstrate that mediation reduces the time required to reach a permanency plan and/or the number of hearings required. Because mediated cases have not yet reached a permanent plan, there has been insufficient time to measure these objectives. Initial measures for the pilot program will begin to be available during the second year of the project.

"A comparison of the mediated cases with the baseline groups revealed some differences in the characteristics. The ethnicity of the children in the mediation cases varied significantly from the ethnicity of children in both the contested and non-contested baseline groups. Children in mediated cases were more likely to be biracial and less likely to be African American. Parental problems were also significantly different in mediation cases as compared to the two groups of baseline cases. Parents in mediated cases were less likely to be homeless and more likely to be employed than parents in the baseline cases. The number of parents with one or more problems was not significantly different in mediated cases as compared with the baseline cases.

"Data from a random sample of non-mediated cases during 2001 is scheduled to be collected. This information will help determine if ethnicity and parental problems are different this year compared to the baseline data collected in 2000 or if the cases referred to mediation are different for other reasons. The 2001 comparison group will also prove helpful in determining whether mediated cases reach a final placement decision faster than other cases or if the change in federal legislation has enabled all cases to be resolved in a timelier manner.

"The majority of the participants feel the mediation process is helpful. Some attorneys state that the process is too time-consuming.

"The review of case plans shows promise for improving the specificity of case plans in the mediation process, and potentially, throughout the entire neglect and abuse system."2

**Evaluation Challenges**

As anticipated, gathering process information presented no major difficulties; however, outcome measurement proved more difficult. To begin with, the evaluation of mediation in child abuse, neglect, and dependency cases is fairly new and there were few established precedents. Therefore, the stakeholder group and USC could not initially agree on broad goals that were realistic and practical in Mecklenburg County. In addition, conceptual difficulties arose due to the difficulty of defining terms precisely enough to allow for accurate measurement and longitudinal comparison. Minor problems emerged around the small number of cases mediated, especially at first, and the difficulties of making valid comparisons with baseline cases. These were resolved as the number of mediated cases increased.

The problems regarding outcome measurement targets and definitions were largely resolved, thanks to the National Council, which provided consultation services and recommended that the program speak with the Model Courts in Santa Clara County, Calif., and Newark, N.J., which were grappling with the same issues. As a result of these conversations, exploratory target indicators were re-defined and adjusted resulting in outcome measures that are feasible for Mecklenburg County.

**Future Evaluation Plans**

At least quarterly, the program administrator will again review the files of baseline cases, mediated cases, and comparison cases. The results of this review will provide insight into whether the program is achieving its goals of ensuring permanent homes for children in the custody of the Department of Social Services within one year of initiating judicial action and reducing the number of court hearings by 40%.

The program will also continue to administer participant satisfaction surveys to ensure continued satisfaction with the process and to determine which areas of the process need improvement.

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2 "Final Report to the Mecklenburg County Family Court Mediation Program," submitted by the Institute for Families in Society, University of South Carolina, 2002.


**Program Accomplishments**

The first year of the program focused on hiring and training the program administrator, training contract mediators and stakeholders, developing an evaluation design for the program, and successfully implementing the program.

During its first fiscal year (July 1, 2001 through June 30, 2002), the program mediated cases involving 56 family groups and impacting 119 children. Of the cases mediated, 96% resulted in a full or partial agreement regarding the legal petition, case plan for the parents and children, post-adoption contact between the biological parents and children, or a permanent placement decision. The mediation sessions have improved communication among family members, created a better understanding among parents of the Department of Social Services’ expectations of them, and eliminated the need for a protracted court trial (thereby saving court time) in the majority of the cases mediated. The level of detail that goes into the mediated agreements has also assisted Family Court Judges in making informed permanency decisions in a more timely manner.

The ability to develop individualized, appropriate case plans has been one of the greatest accomplishments of the dependency mediation program. Parents’ attorney Mary Alice Dixon, a member of the original stakeholder group and the current policy committee, remarks, “The strongest aspect of mediation from my viewpoint as a parent attorney is the development of good case plans. I am eager to see statistics on whether mediated cases are actually resulting in more reunifications or are resulting in reaching TPR or alternative custodial arrangements more quickly. Time will tell which of these outcomes is true.” She also believes that the ability of everyone to participate in the process has been a strength of mediation. Mediation has given her clients a forum to be heard and has allowed for clarification of the complicated roles that so many people play in the case.

**Lessons Learned**

Over the last two years, the mediators have learned that it is not possible to determine either the difficulty or the suitability of a case based solely on the issues presented in the legal petition. The biggest predictor of success has been the personalities of all of the players at the table. The amount of baggage that the professionals bring into the session based on their prior experiences with one another has a greater impact on both the process and the outcome of the session than do the issues in the case. The mediators have also realized that the attitude and expectations conveyed by the judge when ordering a case to mediation affects the participants’ attitudes about, commitment to, and participation in the process.

The mediators continue to learn how to balance the need for procedure and structure during each mediation session with the need for flexibility based on the circumstances of each case. The mediators also continue to struggle with finding an effective and comfortable balance between appropriately intervening in a discussion and influencing the outcome of the discussion.

During the first year, some professionals complained that the mediation sessions were taking too long. This is particularly problematic for parents’ attorneys, who often have competing client obligations. To address these concerns, the mediators learned to be flexible regarding who should participate in different portions of the mediation sessions. The mediators now allow attorneys and social workers to leave the mediation session after the completion of the discussion of issues for which their input is critical.

In an effort to balance the power between the parents and the professionals participating in mediation, the program administrator developed a brief orientation for parents and family members that occurs immediately prior to the mediation session. The orientation gives the parents an opportunity to learn how the mediation process works and to ask questions. Ongoing training helps the program to continue to gain buy-in and input from its stakeholders and also gives the mediators an opportunity to continually explain their role in the process, which is often misunderstood by the participants.

In some mediation sessions, the participants have spent so much time disagreeing over petition language that there is not sufficient time to address the case plan, which to many stakeholders is the most critical part of the mediation session. The mediators addressed this problem by setting a two-hour limit on the discussion of each and holding participants to this time limit.
Cases with concurrent pending criminal charges have presented a problem in some mediation sessions. In these cases, parents are hesitant about admitting to the facts alleged in the petition because of the possibility that their statements will be used against them in the pending criminal matter. The mediators have handled this issue on a case-by-case basis. If it is possible to resolve some of the issues in the petition and begin addressing the case plan without impacting the outcome of the criminal matter, the mediators encourage the participants to do so.

While all mediation sessions have not resulted in a signed agreement, mediators Elaine Cigler and Susan Cox share that, “The most worthwhile mediations result in a clarification of issues, expectations, and feelings.” As a result, the program has learned not to measure its success based on agreement rates alone.

**Future Expectations**

Mecklenburg County is currently the leader in North Carolina with regard to dependency mediation. Its mediators and program administrator are often called upon by emerging programs in the state for information and assistance. The program administrator plans to focus next on increasing the number and types of cases mediated and identifying and securing a permanent funding source for the program. The program will continue to analyze data to determine to what extent mediation has been successful.

**Judicial Reflection**

Although it took much longer than the six months that I initially anticipated, I now realize that all of the planning and meeting was critical to the success of the program. In fact, through careful planning, extensive training, and focusing on generating widespread buy-in, we avoided pitfalls that have doomed other mediation programs in North Carolina.

Having spent almost four years as lead judge for the Child Abuse, Neglect, and Dependency Mediation Pilot Project, I am able to offer the following advice:

1. In order to develop a successful program, you cannot simply copy a program from another jurisdiction, no matter how successful that program has been. Each jurisdiction has unique needs. Although other programs can serve as building blocks and provide incredible insights, they must be modified to fit your court’s culture.
2. Stakeholder buy-in is essential to success. Real buy-in requires that a sense of ownership be imparted to the stakeholders. It takes time.
3. Judicial leadership does not simply involve forcing others to adopt your vision for a program. Sometimes it requires that the “leader” step back and allow the other members of the group to direct the process. Other times it requires that the court compromise and accede to the wishes of the subcommittee. The leader must remain aware of the direction of various tasks undertaken by the stakeholders and keep the process moving forward.
4. Evaluation is critical to measure success and to maintain funding. Looking at the program from the perspective of funding sources allowed us to create an objective and comprehensive evaluation system.
5. Training of all the stakeholders is critical to the success of mediation. While buy-in from stakeholders involved with the planning group was crucial to our success, we also had to offer other stakeholders and agency representatives in-depth training and an opportunity to offer input.
6. Collaboration takes time and commitment, but our experience with dependency mediation has become a model for other collaborative efforts between the court and its stakeholders. Our drug court, system of care initiative, and the creation of a training curriculum for juvenile court employees are following the same process currently.

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