New York City Child Permanency Mediation Program Evaluation

New York City Child Permanency Mediation Program Evaluation

Center for POLICY RESEARCH
Nancy Thoennes
Rasa Kaunelis

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Between the time this program evaluation began in October 2008 and its conclusion in September 2011, the Permanency Mediation Program was suspended due to budget cuts in the New York City Family Court.

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Executive Summary

The evaluation of the New York City Child Permanency Mediation Program was intended to provide information to help to answer the question, "Does mediation work?" There is, of course, no single measure of whether mediation, or any program, "works." Therefore, the evaluation considered a variety of possible outcomes to answer the questions: "Is mediation helpful to parties?" and "Is mediation helpful to the court?" Among the outcomes considered were the following:

- Does mediation help cases to reach resolution in less time than traditional court interventions?
- Is there any evidence that parents comply better with plans developed in mediation versus court?
- How do the professionals who use the process rate its accomplishments?
- What percentage of the cases sent to mediation are able to produce an agreement in this forum?
- Are there any case characteristics that are associated with especially high or low settlement rates?

Savings in Time

- **Cases exposed to mediation had fewer court hearings and fewer court appearances relative to the comparison group.**

This appears to be true for cases seen both pre-disposition and post-disposition. Cases seen predisposition averaged 10.5 hearings, compared to 16.6 in the comparison group. Those seen post-disposition averaged 11.9 hearings in the mediation group and 13.5 hearings in the comparison group. This suggests that there may be savings to the court in time and costs that are not reflected by the amount of time elapsing between key events.

- **Three times as many children are in out-of-home care for a year or less in cases that are mediated than in cases that are not.**

Other studies have also reached similar conclusions. For example, the evaluation of the mediation programs in Orleans and Jefferson parishes in Louisiana concluded that 70 percent of the cases mediated pre-disposition had a child who left care within 12 months, versus 42 percent of the comparison group.

- **Although mediated cases progress at a slightly more rapid pace through key court appearances, the differences between the mediation and comparison groups are negligible.**

Approximately 40 percent of all mediated and non-mediated cases reached a resolution on disposition within 12 months, and 72 and 65 percent of the non-mediated and mediated cases, respectively, reached the first permanency hearing within 12 months. However, it is worth noting that, since the schedule of hearings is not impacted by what has taken place in mediation, these dates do not necessarily reflect the actual pace of mediation or its potential to resolve cases more quickly.

Compliance

- **Mediated cases are more likely than comparison cases to be described as being in partial or full compliance with court-ordered service plans.**
- **Comparison group cases are about three times as likely as mediation cases to be described as not complying.**

Most evaluations that have considered compliance patterns have findings that suggest that mediated cases show better compliance overall relative to non-mediated cases.

- **The compliance patterns continue to hold when controlling for factors that might be expected to have an impact on compliance.**

For example, in cases where the respondent parent has known problems with either mental illness or substance abuse, the mediation group continues to show better compliance than the comparison group.

User Reactions

- **Professionals in the child welfare system who were interviewed as part of the evaluation were uniformly positive about the program, and felt strongly the program should be reinstated:**

> "It is very critical that this program be reinstated. If you care about permanency for children, you need to reinstate this program."
>
> "This was a great program. Even if you cannot solve the underlying issues on the cases through mediation, it is often a way to get agreements on some of the collateral issues. It is very unfortunate that we no longer have it for people who could solve some—if not all—of the collateral issues on their cases."
>
> "The results of mediation are so long lasting. These cases have fewer court appearances, spend less time in front of the judge, and have fewer motions filed after mediations. Even if there is not an agreement, the mediators are good about narrowing down the issues that need to be heard at trial … All of the judges have too many cases to see. They don't have enough time to get through all of the details on every case."

Settlements

- **Although there are some differences by site, full agreements are generally reported in 30 to 40 percent of the cases, and partial agreements in an additional 25 percent to 45 percent. No agreements range from 12 percent in New York County to approximately 35 percent at each of the other counties.**

In most programs around the nation, 60 percent to 80 percent of the cases that attempt mediation end with agreements that address all of the issues before the court. The agreement rate in the New York program is comparable to these rates when partial and complete agreements are combined.

- **Cases with known violence were less likely to reach a full settlement of the issues than were those with no known violence.**

However, this does not mean that those with violence in their backgrounds did not produce any agreement. They were more likely than those with no violence to produce partial agreements, and less likely to produce full agreements.

Nature of the Settlement

- **When considering the amount of visitation provided to the parents, the study found that the mediation group was almost twice as likely as the comparison group to have visitation awarded.**
- **The mediation group tended to show greater amounts of visitation when visits were allowed, though the difference was not statistically significant.**

Mediation is often associated with more visitation and a greater specificity in the visitation plan. These findings suggest that mediators may be more disposed to work with all the parties to spell out when the contact will occur, while the court is more likely to leave this decision to the caseworker.

New York City Child Permanency Mediation Program Evaluation

Chapter 1

Introduction to Mediation in New York City

History

The Permanency Mediation Program of New York City started as a pilot in 2002 when permanency mediation services were introduced in New York City (NYC), Albany, Chemung, Erie, Monroe, Niagara, Oneida, Rockland, and Westchester. The first New York City site was in Brooklyn (Kings County). The 2001 Child and Family Service Review (CFSR)[1] for New York indicated that greater effort was needed to ensure that permanency, including reunification and adoption, was established in a timely manner. It was hoped that mediation would help expedite permanency and would also address other areas of need that had been identified by the CFSR, such as ensuring visitation, supporting relationships between parents and children in care, creating individualized service plans, and promoting court and agency cooperation.[2]

Planning for mediation in New York City was actually initiated prior to the 2002 statewide pilot.[3] Representatives of the Court, the Administration for Children's Services (ACS), child welfare professionals from the non-profit New York Society for the Prevention of Cruelty to Children (NYSPCC)[4], mediation professionals, and other stakeholders, including attorneys for parents and children, had begun meeting several years earlier to determine whether a mediation program could and should be implemented in NYC and to work out the details regarding what such a program might look like. One impetus for mediation in NYC came from visits to courts in other states with mediation programs. These visits grew out of the New York

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[1] The CFSR is used by the Children's Bureau to monitor state child welfare services along with the Title IV-E Foster Care Eligibility Reviews, the Adoption and Foster Care Analysis and Reporting System (AFCARS), and the Statewide Automated Child Welfare information System (SACWIS) Assessment Reviews.

[2] Children's Bureau Child and Family Services Reviews Summary of Key Findings Fiscal Year 2001.

[3] The pilot program was the subject of a technical assistance brief by NCJFCJ (Introducing Child Permanency Mediation in New York State: Planning and Implementing a Multi-Site Pilot Project. Technical Assistance Brief. Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges. January 2006), and a process and outcome evaluation conducted by the New York State Office of Children and Family Services (Child Permanency Mediation Pilot Project: Multi-Site Process and Outcome Evaluation Study. R. Colman, J. Ruppel. New York State Office of Children and Family Services. March 2007). However, the outcome evaluation combined data from all of the participating sites and the findings from NYC were not disaggregated.

[4] The NYSPCC conducts advocacy for high-risk and abused children and provides parental skills classes and professional training in identifying, reporting, and serving families with child abuse and neglect.

City Unified Family Court becoming part of the Model Courts Program of the National Council of Juvenile and Family Court Judges (NCJFCJ).[5]

It was determined that mediation in NYC would be a joint endeavor of the Unified Family Court and NYSPCC. Catherine Friedman, an attorney and referee at the Court, was appointed as the ADR Coordinator and managed the mediation program.

Implementation Experiences

The decision was made from the outset to use mediators employed by the Court or its partner in the mediation process, the Society for the Prevention of Cruelty to Children, rather than roster of community mediators. There was considerable discussion about the most appropriate background to require of mediators. The decision was made that the priority would be to hire individuals skilled in family mediation, rather than experts in the substantive field of child welfare. However, either a law degree or graduate degree in social work or another social science was also a requirement, as was some professional experience in child welfare or a related field. This was, in part, to reassure the judges and stakeholders that the program would be staffed with the best people available. The selected mediators were trained by CDR Associates, one of the pioneer agencies engaged in child protection mediation.

A statewide process evaluation was completed for the statewide pilot.[6] This report noted that Kings County had more success than most sites in meeting its referral goals (with 66% of the goal being met). This was attributed chiefly to the presiding judge's decision to appoint a known and respected Kings County family court referee to act as the Program Coordinator. However, the Coordinator reports that there was initial resistance and hesitancy to use the program. Stakeholders were perceived to be most comfortable with the idea of mediation post-disposition,[7] and the program began by restricting the service to those types of cases.

The Coordinator noted that the Kings County program began in a single courtroom with one judge and one referee. She spent time sitting in on hearings in this courtroom to encourage and

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[5] NCJFCJ describes the model courts as: "national 'laboratories' for meaningful systems change in how child abuse and neglect cases are processed through the court and through the child protection system…Lead Judges and Model Court Team members develop expertise in a wide variety of areas related to improved court practice and systems change efforts. Currently, a nationwide network of 36 Model Courts represent jurisdictions from metropolitan areas such as New York, Los Angeles, and Chicago, to smaller rural communities." http://www.ncjfcj.org/content/blogcategory/117/156/.

[6] Coleman, R. & Ruppel, J. (2007). *Child permanency mediation pilot project.* Rensselaer, NY: New York State Office of Children and Family Services.

[7] Post-disposition cases have had filings with the court that resulted in the court ruling that the child is in need of care. During the dispositional stage of the case, the family is given a plan outlining what needs to happen for the court to close its involvement.

educate the judge and referee about when a referral might be helpful. As the program expanded to New York, Bronx, and Queens counties, the program staff and Coordinator conducted outreach to stakeholders in these new settings. The outreach was supplemented with a "road show," in which members of the program's Advisory Committee and representatives of the major stakeholder groups in Kings County visited their counterparts in other sites to share their experiences. At each court the startup experiences proved to be quite similar. Pre-disposition mediation continued to be resisted and concerns were expressed about how to deal with breaches of confidentiality. Over time, the Coordinator reports, worries about confidentiality eased as the stakeholders discovered that mediation did not involve discussions of past issues of abuse and neglect. There were also initial reservations expressed about the required two hours that would be blocked out for mediation, especially by attorneys and judges. However, despite the initial resistance, within two years of the first referral in Kings County, the program was also operating in the Bronx, Queens, and New York counties.

Program Operations

The judges and referees referring cases to mediation were asked to indicate on the program referral form what issues the mediator would be asked to handle. However, mediators were free to discuss issues other than those on the referral form if the parties attending the session wished to expand the scope of mediation.

If the judge or referee decided that mediation would be useful during a hearing, the first mediation session could be set by the court. Court rule allowed the first session to be mandated. This allowed mediators to explain the way mediation would operate and how the session would be structured before parties made a decision about participation. Given that most family members and many professionals were unfamiliar with the concept of mediation, this was viewed as an important step in allowing them to make an informed decision.

It was decided from the outset to use teams of mediators. The budget allowed for this, and the complexity of the cases and the large number of participants made a team approach attractive. Prior to the start of mediation, mediators were encouraged to review the court file to become familiar with the issues and status of the case. The mediators were also encouraged to contact all of the parties and their attorneys. This pre-session case development was designed to focus parties on the issues and expedite the mediation session, as well to provide an opportunity to explain the mediation process and establish positive relationships.

Mediation could end with no agreement being reached and the family being referred back to court. In such cases the program simply confirmed that the parties had attempted to mediate but provided no further information to the court. Mediation might end with an agreement on some or all of the referred issues, as well as other issues identified by the parties during the mediation session. Agreements were written up by the mediators following the final session. Parties who settled some or all issues in mediation were given the choice of presenting an

agreement to the court for orders or leaving the agreement as an understanding among the parties.

Although the program remained largely consistent over time in its general operating procedures, there were some notable changes. As the stakeholders became more familiar with the process, cases at earlier stages in the legal process began to be accepted, including some cases at the pre-fact finding stage.[8] However, permanency issues remained a staple of the program. The amount of time spent on each case also declined slightly over time. The Program Coordinator describes this as resulting from the mediators being busier and therefore "requiring the parties to be more focused."

Another change that occurred over time was the decision to allow the attorneys to leave the session when they wished to if issues were being discussed that did not require their participation. As noted above, attorneys and judges were concerned from the outset about the requirement to set aside a two-hour block for mediation. Initially, attorneys were unfamiliar with the process and the mediators and felt uncomfortable allowing mediation to continue without them being present. At the same time, the mediators believed that mediation was most useful when all of the parties were present for the entire session. However, as more cases went through mediation, everyone came to believe that certain issues could be safely and effectively discussed in mediation without the participation of the attorneys. Examples of such "non-legal" mediation issues included family relationships and dynamics, visitation, and even custody disputes.

The number of referrals per year increased over time, as did the number of judges and referees making referrals. Nevertheless, large-scale cuts to the Court budget resulted in the program being indefinitely suspended in mid-2011.

[8] In other words, prior to a finding by the court that the child had been abused or neglected.

Chapter 2

Evaluation Methodology

Purpose of the Evaluation

The evaluation was intended to provide information to help to answer the question, "Does mediation work?" There is, of course, no single measure of whether mediation, or any other program, "works." Different professionals in the child welfare system may have different ideas about what mediation should aim to accomplish, and what needs to be accomplished changes over time, as cases progress through the dependency system. As a result, this evaluation considered a variety of outcomes and research, including:

- What percentage of the cases sent to mediation produce an agreement in this forum?
- Are there any case characteristics associated with especially high or low settlement rates?
- Does mediation help cases to reach permanency in less time than traditional court interventions?
- Do mediated cases result in different types of permanency than do non-mediated cases?
- Is there any evidence that parents comply better with plans developed in mediation versus court?
- How satisfied are the stakeholders with the mediation services provided by the program?
- How do the professionals believe cases should be chosen for mediation?
- How do attorneys appointed to represent parents in the dependency system rate the ability of the mediation service to safeguard parents' rights, allow adequate and appropriate types of participation by parents, assist parents in understanding the agreements that are produced, generate agreements that are perceived as fair to their clients, offer creative solutions to families' problems, reduce workloads, and speed case processing?
- How do attorneys appointed to represent children in the family court system rate the ability of the mediation service to protect children, allow adequate and appropriate types of participation by children, generate agreements that are perceived as fair to their clients; offer creative solutions to families' problems, reduce workloads, and speed case processing?
- Do attorneys and caseworkers who participate in mediation believe the process has improved their understanding of the underlying issues in specific cases?
- Do attorneys and caseworkers who participate in mediation believe the process has improved communication and cooperation between the parents and the caseworker? Between parents and their attorneys? Among professionals in the case?

Data Sources

Data for the evaluation come from a variety of sources. The primary sources of information on cases that participated in mediation are forms completed by the mediators following the final session and reviews of the court files for these cases. Copies of both types of forms are located in Appendix A.

The forms completed by the mediators provided information regarding:

- The referral source and issues;
- The mediation scheduling process;
- The work conducted by the mediator in preparation for the first session;
- Family and child issues that the mediator knew about that could potentially complicate the mediation process;
- The identity of the parties participating in each session;
- The topics discussed in mediation;
- Resolution on the issues discussed;
- Overall resolution of the case; and
- The decision regarding whether to distill the agreement to writing and/or to submit the agreement to the court.

Most of this information is only be available directly from the mediator or another participant in the session. Without original data collection, mediation is a largely invisible process. It would not be possible to determine what was discussed or which issues were or were not settled through the process. Even information such as how the mediator prepared for the session, how the case was referred, or who attended is typically only available directly from the mediator or from records maintained by the mediator or program.

Data from the court file provided a limited amount of follow-up information about cases that used mediation. It also provided data with which to compare mediated and non-mediated cases on such issues as:

- Terms of the service plans;
- Number and types of placements;
- Time to reach permanency;
- Compliance with the plan;
- Number of appearances and hearings needed to resolve the case; and
- Final disposition of the case.

By extracting data from court files, it was also possible to compare the mediated and non-mediated cases on a number of factors that might influence the final outcome of the case, such

as the family's past history with the child protection system, the presence of factors such as homelessness or substance abuse, or custody disputes among family members.

Telephone interviews were conducted with a selection of stakeholders who reportedly had the most experience with mediation. The professional groups targeted for interviews included:

- Judges and referees;
- Attorneys representing parents;
- Attorneys representing children;
- Attorneys representing the agency;
- Caseworkers and caseworker supervisors.

Judges were asked to complete a one-page survey when a case they had referred to mediation was next seen by the court. A total of 27 surveys were completed. This was too few to serve as a valid assessment of judicial attitudes toward mediation; however, results from these surveys are combined with the telephone interviews described above.

Similarly, exit surveys were distributed to mediation participants following the final session. However, only 23 family members, 9 attorneys for children, 12 attorneys for parents, 8 agency attorneys, and 8 caseworkers completed a survey. As with judges, these surveys are used to supplement telephone interview data to assess their reactions to mediation.

Selection of Mediated and Comparison Cases

All cases that participated in mediation during the 28 months of sample generation were eligible for the evaluation. The first mediated case in the study was referred in March 2008, and the last case was referred in June 2010. Overall, 66 percent of the cases were referred in 2009, while 17 percent were referred in 2008 and 17 percent were referred in 2010. A total of 244 mediated cases are included in the evaluation.

Generating an appropriate comparison group was challenging, as it usually is in evaluating dependency mediation programs. While random assignment is the ideal, it is often impracticable in applied research. Program staff do not want to discourage referrals by withholding services, and the referring party (most commonly a judge) also resists the idea of not offering services, even temporarily. In programs that generate more referrals than mediators can handle, the overflow cases can become the comparison group. However, this was not an option in the Child Permanency Mediation Program of the New York City Family Court. In other program evaluations, comparison samples have been generated retrospectively, by sampling from a year prior to the start of mediation. In programs like the one under study here, selecting pre-program cases would have required the generation of a sample from many years ago, which introduces the possibility that the mediated and non-mediated cases will be processed under child welfare and legal systems that are not equivalent. In addition, in programs where the referring party makes a subjective decision about whether a case is

"suitable" for mediation, it can be difficult to feel certain that a comparison case would have been referred for mediation had it been available.

In the present evaluation, the decision was made to develop a comparison sample from cases that were active in the courts at the same time as the mediated cases, but were not referred for mediation. This approach has obvious problems. To the extent that cases were either referred or not referred to mediation based on case or family characteristics, the two groups could be nonequivalent in important ways. However, program staff felt that some judges simply tended to refer to mediation, while others did not. If this is true, the mediated and non-mediated families would be expected to be fairly similar.

The Principal Management Analyst of the New York City Family Court generated a listing of court hearings scheduled as of December 2008. The list was organized first by county, then by family identification number, and then by child. The selection of the comparison group began by rolling up the data so that sampling could be done by family ID within each county. This produced:

- 3,955 families in Bronx County;
- 3,692 families in Kings County;
- 3,238 families in New York County; and
- 2,966 families in Queens County.

The files were stratified into those families with a hearing scheduled at or before the dispositional hearing and those with a hearing scheduled after the dispositional hearing. Random samples were generated from these stratum to roughly match the comparison group to the mediated group in each county by stage in case processing. For the mediation sample, the stage in case processing was the stage at the time of the mediation referral. The end result is shown in Table 2-1.

Table 2-1. Number of Cases in the Study by Group, Stage in Case Processing and Site

	Mediation	Comparison
Kings County		
Pre-disposition or disposition hearing scheduled	30	24
Post-disposition hearing scheduled	53	70
Bronx County		
Pre-disposition or disposition hearing scheduled	29	19
Post-disposition hearing scheduled	20	76
Queens County		
Pre-disposition or disposition hearing scheduled	21	29
Post-disposition hearing scheduled	32	75
New York County		
Pre-disposition or disposition hearing scheduled	10	33
Post-disposition hearing scheduled	21	65
All sites, all stages	216★	391

★ Court files were reviewed for 216 of the 244 mediation cases in the study. This represents approximately 90 percent of the mediation cases. In the remaining cases, files were not available for review.

The comparison group samples from each county were generated to closely approximate the mediation group with respect to the stage in case processing. However, as noted above, it was not possible to match the comparison sample and mediation group on all of the other factors that might be expected to influence case outcomes. Table 2-2 presented below explores how comparable or different the two groups were on a few factors that might be expected to influence outcomes. The shaded lines show the factors on which the mediated and non-mediated cases show statistically significant differences. Specifically, the table shows that the two groups are comparable in many respects, including:

- How long they have been in the system;
- Filings of criminal charges;
- Having multiple fathers;
- Having teen parents;
- Having cultural or religious issues;
- Involving chronic abuse;
- Having a child diagnosed with a mental illness or physical disability;
- Having a child with behavior problems;
- Having respondent parents with mental illnesses or substance abuse issues; and
- Having parents with custody and/or visitation disputes.

On the other hand, there were some differences between the two groups:

- Relative to the comparison group, the mediated group:
  - ✓ Had slightly more prior child protection reports;
  - ✓ Was more likely to involve ongoing domestic violence;
- Relative to the mediated group, the comparison group:
  - ✓ Was more likely to have had a child removed from the home;
  - ✓ Had slightly more cases with multiple foster care agencies involved;
  - ✓ Was more likely to involve a homeless respondent parent;
  - ✓ Was more likely to have experienced a prior TPR.

Given these patterns, the two groups look reasonably comparable, although in later analysis it will be important to control for whether the child was removed from the home. Of course, other potentially significant differences between the groups cannot be readily measured through court files. Such unmeasured variables include factors such as the parents' motivation to see the case successfully closed. Program staff perceptions are only impressionistic, but they refute the idea that "nicer" or "easier" cases are referred to mediation. Rather, they see stakeholders as most likely to refer the "impossible" cases that are not progressing well.

Table 2-2. Comparison of the Groups on Selected Factors		
	Mediation	Comparison
Average year in which the petition bringing the case into the study was filed	2007	2006
✦Average number of prior child protection cases	3.1	2.7
Case involves…		
Criminal filing as a result of the abuse/neglect report	4.6%	4.2%
★Child NOT removed from the home	21.7%	1.5%
★Multiple foster care agencies	4.1%	9.0%
Multiple fathers	6.9%	6.6%
Parental custody or visitation dispute	1.8%	1.3%
Cultural or religious issues	2.8%	2.8%
Teen parents	2.3%	5.1%
Chronic abuse	0.5%	2.3%
★Ongoing domestic violence	9.2%	3.3%
Case involves child with…		
Diagnosed mental illness or disorder	21.1%	25.8%
Physical illness or disability	12.4%	17.1%
Behavioral problems	28.4%	25.3%
Case involves respondent parent with…		
★No permanent residence (homeless)	6.4%	17.6%
Mental illness	14.7%	15.3%
Substance abuse issues	39.0%	44.8%
★Prior TPR	1.4%	4.6%
	(218)	(391)

★ Chi square significant at .05.
✦ T-test significant at .05.

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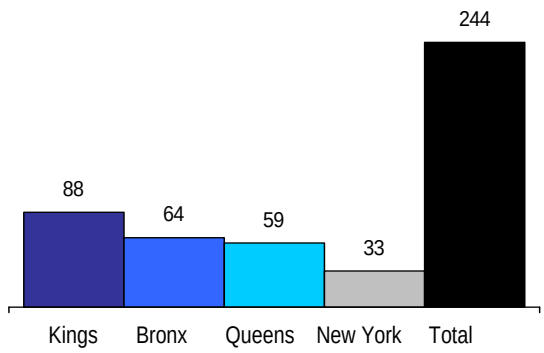
Chapter 3

Profile of Clients and Services

Profile of Mediation Clients

The 244 cases in the mediation sample were distributed across the four counties, with no county accounting for more than about a third of the cases. However, the first program to start offering mediation, Kings County, represented about 2.5 times the number of cases in the court with the fewest mediations (New York County). See Figure 3.1

Figure 3-1. Distribution of Cases Geographically



As expected, most of the cases in the study were referred to mediation after disposition. About 18 percent were referred pre-fact finding (see Table 3-1). In some locations, most notably New York County, pre-fact finding cases were almost never referred to mediation.

In all of the sites, a fairly large percentage of the cases were mediated after permanency had been established, including about 13 percent that were at the point of termination of parental rights or surrender, and another 9 percent that were post-termination of parental rights.

Table 3-1. Stage at Which Case Was Referred to Mediation★

	Brooklyn	Bronx	Queens	New York	Total
Pre-fact finding	18.6%	26.6%	13.8%	3.1%	17.5%
Disposition	16.3%	25.0%	27.6%	25.0%	22.5%
Permanency (non freed)	30.2%	25.0%	34.5%	31.3%	30.3%
Permanency (freed)	1.2%	0.0%	6.9%	15.6%	4.2%
Other post-permanency	8.1%	4.7%	1.7%	3.1%	5.0%
TPR or surrender	17.4%	14.1%	5.2%	9.4%	12.5%
Adoption	2.3%	1.6%	5.2%	3.1%	2.9%
Other post-termination	1.2%	0.0%	5.2%	3.1%	2.1%
Other	4.7%	3.1%	0.0%	6.3%	3.3%
	(86)	(64)	(58)	(32)	(240)

★Chi square significant at .01.

Given that most of the families were referred to mediation post-disposition, it is not surprising that only a third of the cases overall had been in the system for 12 months or less at referral. On average families had been in the system for between 1.6 years (Bronx) to 3.7 years (New York) at the time of the mediation referral.

Table3-2. Length of Time in the System at the Time of the Mediation Referral

	Kings	Bronx	Queens	New York	Total
12 months or less	33.0%	28.1%	28.8%	30.3%	30.3%
13-24 months	13.6%	10.9%	16.9%	3.0%	12.3%
25 to 60 months	23.9%	4.7%	23.7%	24.2%	18.9%
More than 60 months	6.8%	1.6%	3.4%	18.2%	6.2%
Average years	2.6	1.6	2.3	3.7	2.5
	(84)	(62)	(58)	(32)	(236)

Table 3-3 shows the types of allegations that originally brought the families into the child welfare system. The totals in Table 3-3 exceed 100 percent because cases often involved multiple types of maltreatment. At each of the sites, the most common reason for the filing was inadequate guardianship or supervision, followed by excessive corporal punishment, drug abuse in the home, and physical abuse. Very few cases at any of the sites were in the system due to a voluntary placement of the child outside the home or abandonment.

Table 3-3. Allegations on the Original Petition Bringing the Case Into the System

	Kings	Bronx	Queens	New York	Total
Inadequate Guardianship/Supervision	47.7%	26.6%	39.0%	33.3%	38.1%
Excessive corporal punishment	19.3%	18.8%	28.8%	21.2%	21.7%
Drug abuse in home	20.5%	21.9%	22.0%	15.2%	20.5%
Physical abuse	15.9%	18.8%	20.3%	6.1%	16.4%
Inadequate educational care	13.6%	14.1%	15.3%	6.1%	13.1%
Parent mental health issue	14.8%	4.7%	13.6%	3.0%	10.2%
Failure to provide medical care	8.0%	10.9%	8.5%	3.0%	8.2%
Domestic violence in home	10.2%	10.9%	3.4%	0.0%	7.4%
Alcohol abuse in home	10.2%	9.4%	0.0%	3.3%	6.6%
Failure to provide food/shelter/clothing	6.8%	0.0%	8.5%	0.0%	4.5%
Sexual abuse	1.1%	7.8%	6.8%	0.0%	4.1%
Failure to protect	3.4%	7.8%	0.0%	3.0%	3.7%
Failure to plan	4.5%	0.0%	5.1%	3.0%	3.3%
Voluntary placement	2.3%	1.6%	0.0%	3.0%	1.6%
Abandonment	0.0%	0.0%	3.4%	3.0%	1.2%
Other	10.2%	3.1%	1.7%	3.0%	5.3%
	(88)	(64)	(59)	(33)	(244)

★ Chi square significant at .05 or less.

Table 3-4. Number of Children Named in the Court Filing	Kings	Bronx	Queens	New York	Total
Mean	2.4	2.8	2.1	1.6	2.3
Median	2.0	3.0	2.0	1.0	2.0
One child	35.2%	23.4%	39.7%	63.6%	37.0%
Two children	27.3%	18.8%	34.5%	21.2%	25.9%
Three children	15.9%	28.1%	15.5%	9.1%	18.1%
Four children	12.5%	14.1%	3.4%	3.0%	9.5%
Five children	4.5%	12.5%	1.7%	3.0%	5.8%
Six or more children	4.5%	3.2%	5.1%	0.0%	3.7%
	(88)	(64)	(58)	(33)	(243)

The cases being mediated usually had two children. However, nearly 10 percent had five or more children (see Table 3-4). Most commonly, one of the children was between the ages of 11 and 18 years (see Table 3-5). However, there was great variation in the ages of the children, with over a third of the families including a child under age 6, and about 11 percent with a child over 18 years.

Table 3-5. Ages of Children Named in the Court Filing at the Time of the Mediation Referral	Kings	Bronx	Queens	New York	Total
Family's case involved child:					
Under age 6 years	33.0%	46.9%	27.1%	27.3%	34.4%
Ages 6-10 years	43.2%	45.3%	35.6%	30.3%	40.2%
Ages 11-18 years	60.2%	59.4%	59.3%	63.6%	60.2%
Age 19 or older	10.2%	7.8%	15.3%	9.1%	10.7%
	(88)	(64)	(59)	(33)	(244)

Mediation typically dealt with all of the children named on the petition, and in most cases at least one child was living apart from the respondent parent(s) at the time of mediation. As shown in Table 3-6, children were most often living in non-kin foster care, kinship care, or with a non-respondent parent.

Table 3-6. Child Status at Mediation	Kings	Bronx	Queens	New York	Total
Mediation dealt with all children	87.2%	90.5%	91.4%	100.0%	90.8%
At least one child not living with respondent parent at the time of mediation	87.5%	85.9%	84.7%	81.8%	85.7%
Where children lived at the time of mediation					
With respondent parent	21.6%	21.9%	27.1%	18.2%	22.5%
With non-respondent parent	36.4%	32.8%	16.9%	12.1%	27.5%
Kinship care	18.2%	23.4%	23.7%	15.2%	20.5%
Non-kinship foster care	36.4%	23.4%	33.9%	48.5%	34.0%
Group home	1.1%	6.3%	5.1%	12.1%	4.9%
Institution/hospital	1.1%	3.1%	0.0%	0.0%	1.2%
AWOL	0.0%	1.6%	0.0%	0.0%	0.4%
Other	0.0%	0.0%	6.8%	0.0%	1.6%
	(88)	(64)	(59)	(33)	(244)

Although most cases involved only a single father, about 30 percent of the mediation cases across the sites included two or more fathers (see Table 3-7). No case involved more than four fathers.

Table 3-7. Number of Fathers for Children Named in the Court Filing

	Kings	Bronx	Queens	New York	Total
Mean	1.4	1.6	1.2	1.2	1.4
Median	1.0	1.0	1.0	1.0	1.0
One	64.8%	59.4%	79.7%	84.4%	69.5%
Two	27.3%	26.6%	15.3%	15.6%	22.6%
Three or four	8.0%	14.0%	5.1%	0.0%	7.8%
	(86)	(64)	(59)	(32)	(243)

When the family was referred to mediation, most (55%) had reunification as the permanency goal. However, this means that for nearly half of the families the plan called for some other type of permanent home for the children, including adoption, guardianship, or other types of permanent living arrangement.

Table 3-8. Permanency Goal at the Time of the Mediation Referral

	Kings	Bronx	Queens	New York	Total
Reunification	56.0%	59.7%	51.7%	50.0%	55.1%
Placement with relative	8.3%	6.5%	1.7%	9.4%	6.4%
Adoption	19.0%	19.4%	22.4%	25.0%	20.8%
Legal guardianship	1.2%	0.0%	0.0%	0.0%	0.4%
APPLA	8.3%	3.2%	12.1%	12.5%	8.5%
Other	6.0%	9.7%	8.6%	3.1%	7.2%
Unknown to mediator	1.2%	1.6%	3.4%	0.0%	1.7%
	(84)	(62)	(58)	(32)	(236)

Profile of Mediation Services

All mediation referrals were made by judges and referees, although the suggestion that mediation would be useful could be made by another individual in the case. As shown in Table 3-9, in nearly 90 percent of the cases that were sent to mediation, and closer to 100 percent in Queens, the suggestion that mediation might be useful was made by a judge. Attorneys for one of the parties sometimes suggested mediation, but the request for mediation rarely came from caseworkers and ACS attorneys.

Table 3-9. Requesting/Referring Parties					
Decision to refer to mediation or request mediation by:	Kings	Bronx	Queens	New York	Total
Judge	83.9%	84.4%	98.3%	81.8%	87.2%
Attorney for child	6.9%	0.0%	0.0%	6.1%	3.3%
Attorney for mother	3.4%	1.6%	0.0%	3.0%	2.1%
Attorney for father	1.1%	7.8%	0.0%	0.0%	2.5%
ACS attorney	1.1%	1.6%	0.0%	3.0%	1.2%
Agency attorney	2.3%	3.1%	0.0%	6.1%	2.5%
Caseworker	0.0%	1.6%	0.0%	0.0%	0.4%
Other	0.0%	0.0%	1.7%	0.0%	0.4%
	(87)	(64)	(59)	(33)	(243)

Table 3-10 shows the issues that the court indicated as topics for discussion. The items that appear with the greatest frequency include custody of the child, visitation with the child, and issues related to communication.

There are some differences by site in the types of issues leading to a mediation referral. Queens is more likely than the other counties to refer cases for permanency planning and education plans and least likely to refer communication problems. Adolescent discharge plans are most likely to be a reason for referral in New York County.

Table 3-10. Referral Issues by Site					
	Kings	Bronx	Queens	New York	Total
Neglect or abuse settlement	6.8%	0.0%	3.4%	3.0%	3.7%
Interpersonal relationships	14.8%	17.2%	10.2%	27.3%	16.0%
★Communication issues	23.9%	37.5%	16.9%	45.5%	28.7%
Placement	4.5%	3.1%	6.8%	12.1%	5.7%
Out-of-state placement	0.0%	0.0%	1.7%	0.0%	0.4%
Voluntary placement	3.4%	1.6%	0.0%	3.0%	2.0%
Custody	38.6%	45.3%	30.5%	21.2%	36.1%
Service plan	14.8%	15.6%	18.6%	24.2%	17.2%
★Educational plan	8.0%	3.1%	22.0%	6.1%	9.8%
Special needs child or parent	2.3%	0.0%	3.4%	0.0%	1.6%
Visitation	31.8%	26.6%	33.9%	9.1%	27.9%
★Permanency plan	10.2%	4.7%	20.3%	21.2%	12.7%
★Adolescent discharge plan	3.4%	1.6%	11.9%	18.2%	7.0%
Surrender/termination of rights	18.2%	21.9%	11.9%	9.1%	16.4%
	(88)	(64)	(59)	(33)	(244)

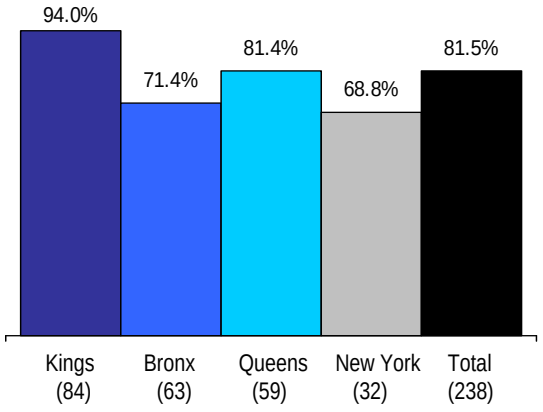
★ Chi square significant at .05 or less.

Table 3-11. Number of Referral Issues by Site	Kings	Bronx	Queens	New York	Total
One issue	40.9%	46.0%	25.9%	36.4%	38.0%
Two issues	29.5%	27.0%	37.9%	24.2%	30.2%
Three issues	18.2%	15.9%	24.1%	24.2%	19.8%
Four issues	11.4%	11.1%	12.1%	15.2%	12.0%
	(88)	(63)	(58)	(33)	(242)

Over half of the cases in each county had one or two referral issues. However, 11 to 15 percent in each county were referred for four or more issues.

In most of the mediated cases, the mediator reported reviewing the court file prior to the first mediation session (see Figure 3-2). However, there was some variation by site. In Kings County, mediators reviewed the court files prior to mediation in over 90 percent of the cases, compared to about 70 percent in the Bronx and New York, and 80 percent in Queens.

Figure 3-2. Percentage of Cases Where Mediator Reviewed File Prior to Mediation



In most cases, the mediator also spent time prior to the first session speaking with one or more parties in the case. On average, mediators in each county reported making contact with four to six people prior to mediation. In approximately 90 percent of the cases at each site, the mediator spoke with one or more of the attorneys. Family members were contacted in about 80 to 90 percent of the cases. Child protection staff were contacted in about 60 to 70 percent of the cases, and in a third of the cases the foster parents were contacted by the mediator (see Table 3-12).

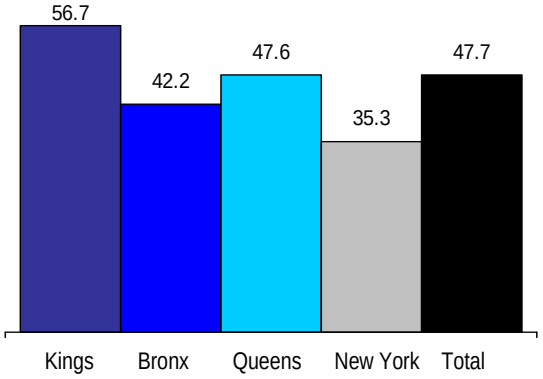
Table 3-12. Percentage of Cases in Which Mediator Spoke With Selected Parties in Preparing for Mediation	Kings	Bronx	Queens	New York	Total
Mother	56.8%	57.8%	44.1%	36.4%	51.2%
Father	42.0%	46.9%	37.3%	24.2%	39.8%
★Child	5.7%	0.0%	13.6%	18.2%	7.8%
Relatives	20.5%	14.1%	6.8%	18.2%	15.2%
Any of the above	81.8%	87.5%	81.4%	78.8%	82.8%
ACS caseworker	25.0%	26.6%	22.0%	27.3%	25.0%
Social worker for the child	22.7%	15.6%	16.9%	18.2%	18.9%
Social worker for parent	6.8%	6.3%	1.7%	0.0%	4.5%
Agency caseworker	43.2%	32.8%	32.2%	45.5%	38.1%
Any of the above	70.5%	59.4%	66.1%	72.7%	66.8%
★Attorney for mother	68.2%	73.4%	54.2%	51.5%	63.9%

Table 3-12. Percentage of Cases in Which Mediator Spoke With Selected Parties in Preparing for Mediation	Kings	Bronx	Queens	New York	Total
★Attorney for father	54.5%	50.0%	28.8%	18.2%	42.2%
Attorney for child	86.4%	85.9%	81.4%	84.8%	84.8%
Attorney for ACS	51.1%	46.9%	59.3%	54.5%	52.5%
Attorney for provider agency	14.8%	15.6%	8.5%	15.2%	13.5%
Any of the above	92.0%	96.9%	93.2%	87.9%	93.0%
Foster parent	34.1%	26.6%	37.3%	27.3%	32.0%
Other	6.8%	6.3%	6.8%	9.1%	7.0%
Average number of people the mediator spoke with in preparing for mediation	5.7	5.2	4.6	4.4	5.1
	(84)	(62)	(56)	(32)	(234)

★ Chi square significant at .05 or less.

Table 3-13. Hours Spent Preparing for Mediation	Kings	Bronx	Queens	New York	Total
1 - 2 hours	10.7%	16.1%	23.2%	21.9%	16.7%
3 - 4 hours	34.5%	27.4%	32.1%	31.3%	31.6%
5 - 6 hours	32.1%	25.8%	28.6%	28.1%	29.1%
7 - 9 hours	11.9%	17.7%	8.9%	9.4%	12.0%
10 or more hours	10.8%	12.9%	7.1%	9.4%	10.7%
	(84)	(62)	(56)	(32)	(234)

Figure 3-3. Days from Referral to Mediation to First Session



Mediators were asked to choose from a range of hours (1-2 hours, 3-4 hours, etc.) that most closely reflected the number of pre-mediation hours they spent preparing the case. The two most commonly selected categories were 3-4 hours and 5-6 hours. These two categories accounted for half to two-thirds of the cases at each site (see Table 3-13).

As shown in Figure 3-3, most cases took approximately 48 days to move from the initial referral to the first mediation session. Cases in New York County generally took the least amount of time, while those in Kings County took the longest. This may be due to the heavier caseloads of attorneys in Kings County, which would have made it more difficult to schedule a first session.

Table 3-14. Mediation Sessions, Hours, and Timing by Site	Kings	Bronx	Queens	New York	Total
Number of mediation sessions					
Average	2.3	2.0	2.0	1.9	2.1
Median	2.0	2.0	2.0	2.0	2.0
Total mediation hours					
Average	4.3	4.0	4.0	3.6	4.0
Median	3.0	3.0	3.0	3.0	3.0
Number of days from first to final session					
Average	89.7	61.0	77.7	63.8	75.9
Median	68	45	71.0	42.5	56.0
Percentage where at least one scheduled session was not held	34.1%	32.8%	27.1%	33.3%	32.0%
	(88)	(64)	(59)	(33)	(244)

Table 3-14 shows basic information about the number of sessions, length of mediation, and timing of mediation. All four counties had an average of two mediation sessions per case, for a total of approximately four hours. At each site, about a third of the cases involve at least one mediation session that has to be rescheduled, typically because of a missing party or schedule conflicts. The amount of time elapsing from the first session to the final session averages 76 days, with a high of almost 90 days in Kings County to a low of 61.0 and 63.8 days in Bronx and New York counties, respectively.

Table 3-15 shows the issues leading to the referral versus the issues discussed in mediation. In general, the number of issues actually discussed in mediation exceeded the number of issues identified in the referral. As the mediation progressed, issues clearly emerged as problems that had not been flagged as needing attention by the referring jurist. For example, about 12 percent of all cases involved a referral for parents' service plan issues, while 34 percent involved a discussion of such issues. Similarly, 22 percent of the cases involved a referral due to children's service plan issues, but 48 percent of the cases involved a discussion of these issues. About 46 percent of the cases involved a referral regarding visitation issues, while 69 percent involved a discussion of these issues. Similarly, 60 percent of the cases involved a referral related to relationship issues or communication, while 89 percent of the cases involved a discussion of these issues.

Table 3-15. Referred and Discussed Issues by Site	Kings		Bronx		Queens		New York		Total	
	Referral issue	Discussed	Referral issue	Discussed	Referral issue	Discussed	Referral issue	Discussed	Referral issue	Discussed
Placement issues	44.3%	48.9%	51.6%	59.4%	39.0%	44.1%	27.3%	36.4%	42.6%	48.8%
Visitation issues	52.3%	71.6%	48.4%	76.6%	45.8%	64.4%	27.3%	57.6%	46.3%	69.3%
Permanency (including TPR)	36.4%	42.0%	28.1%	40.6%	42.4%	44.1%	45.5%	60.6%	36.9%	44.7%
Service plan for parents	13.6%	30.7%	9.4%	37.5%	13.6%	35.6%	12.1%	36.4%	12.3%	34.4%
Service plan for child	19.3%	37.5%	9.4%	37.5%	28.8%	57.6%	39.4%	78.8%	21.7%	48.0%
Relationship issues	54.5%	88.6%	65.6%	87.5%	64.4%	91.5%	54.5%	90.9%	59.8%	89.3%
	(88)		(64)		(59)		(33)		(244)	

Table 3-16 shows the number of parties attending one or more mediation sessions and the roles these individuals play in the case. The average number of parties attending was highest in Kings County and lowest in Bronx County; however at all the sites, the average number attending was around six people.

In about 90 percent of the cases, the child's attorney was present for one or more sessions. This was followed in frequency by the child's mother, the mother's attorney, and the caseworker. There were some differences across the sites with respect to attendance. For example, fathers were almost twice as likely to attend a session in Kings County as in New York. Caseworkers were most likely to be present in New York, where over 90 percent were present for at least one session. Declining numbers of caseworkers attended in the other courts to a low of 56 percent in the Bronx.

Table 3-16. Parties Attending Mediation by Site

	Kings	Bronx	Queens	New York	Total
★ Number of parties attending					
Average	6.9	5.7	6.2	6.3	6.4
Median	6.5	6.0	6.0	6.0	6.0
Parties attending one or more sessions					
Mother	75.0%	78.1%	61.0%	60.6%	70.5%
★ Father	60.2%	54.7%	45.8%	33.3%	51.6%
★ Child	31.8%	10.9%	49.2%	66.7%	35.2%
Child caretaker	4.5%	6.3%	6.8%	0.0%	4.9%
Foster parent	37.5%	31.3%	37.3%	33.3%	35.2%
Family and friends	22.7%	20.3%	20.3%	24.2%	21.7%
★ Caseworker	69.3%	56.3%	79.7%	90.9%	71.3%
Caseworker supervisor	18.2%	10.9%	16.9%	9.1%	14.8%
ACS attorney	26.1%	28.1%	33.9%	21.2%	27.9%
Agency attorney	17.0%	17.2%	11.9%	15.2%	15.6%
★ Attorney for mother	77.3%	62.5%	55.9%	57.6%	65.6%
★ Attorney for father	58.0%	42.2%	30.5%	24.2%	42.6%
★ Attorney for child	94.3%	71.9%	89.8%	90.0%	86.9%
Child's caseworker	23.9%	15.6%	16.9%	24.2%	20.1%
Parent's caseworker	13.9%	3.1%	5.1%	9.1%	8.2%
	(88)	(64)	(59)	(33)	(244)

★ Chi square significant at .05 or less.

As shown in the previous table, children took part in at least a portion of the mediation session in:

- Approximately 10 percent of the cases mediated in the Bronx;
- About a third of the cases mediated in Kings County;
- Half of the cases in Queens County; and
- Over two-thirds in New York.

Table 3-17 also shows the reasons given for the child's participation. The most commonly cited reason was to allow the child to receive and share information. Mediators in New York County were the most likely to report that the child's behavior was an issue in the case, therefore requiring the child's participation.

Table 3-17. Children in Mediation by Site

	Kings	Bronx	Queens	New York	Total
Age of children attending a mediation session					
Average	14.2	15.1	15.3	15.6	15.0
Median	14.8	15.0	16.0	15.0	15.0
Reason child was included (may be multiple)					
★Child's behavior is an issue	39.3%	42.9%	41.4%	77.3%	50.0%
To keep the child informed	60.7%	28.6%	51.7%	77.3%	59.3%
To get or give information to the child	82.1%	100.0%	75.9%	86.4%	82.6%
Needs to be included in planning for the future	50.0%	71.4%	72.4%	72.7%	65.1%
★Ordered by judge	10.7%	57.1%	41.4%	36.4%	31.4%
All of the above	4.5%	0.0%	6.8%	6.1%	4.1%
	(28)	(7)	(29)	(22)	(86)

★ Chi square significant at .05 or less.

Chapter 4

Reaching Settlements in Mediation

Overall Outcome

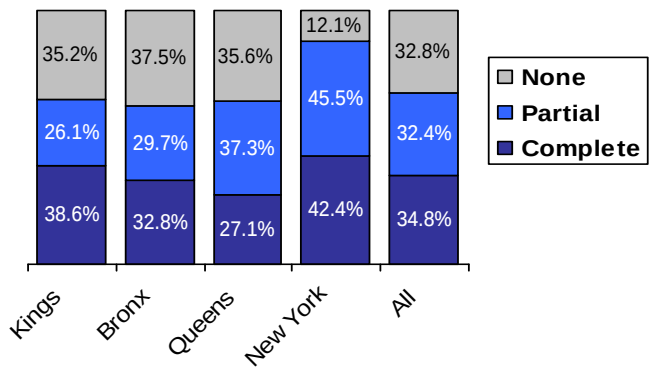
Classifying the outcome of a case in mediation is somewhat complex. Cases may be referred to mediation for one issue, but other issues may emerge during the mediation process. There may be complete agreement on all the issues discussed, regardless of whether they were part of the original referral, or there may be no agreement at all. In between are cases that reach a settlement on some issues, but not others.

Table 4-1 presents a breakdown that shows that 30 to 40 percent of the cases at each site produced agreements on all the referred issues, and sometimes on issues that were not referred but emerged in mediation as well. Another 20 percent, approximately, reached agreements on only some of the referred issues. In some of this 20 percent, non-referred issues were also resolved. A smaller percentage (6% to 18% at each site) only reached agreements on non-referred issues. About a third of the cases in Kings, Bronx, and Queens counties produced no resolutions in mediation. In New York County, the comparable figure was much smaller: 12 percent. However, the differences across the sites were not statistically significant.

Table 4-1. Issues Resolved in Mediation by Site

	Kings	Bronx	Queens	New York	Total
All referred issues were resolved (perhaps other issues too)	40.9%	34.4%	32.2%	45.5%	37.7%
Some referred issues (perhaps other issues too)	18.2%	15.6%	27.1%	24.2%	20.5%
Only issues not referred were resolved	5.7%	12.5%	5.1%	18.2%	9.0%
No resolutions	35.2%	37.5%	35.6%	12.1%	32.8%
	(88)	(64)	(59)	(33)	(244)

Figure 4-1. Settlement Outcome



At the close of the final mediation session, mediators were asked to consider all the issues referred, discussed, and resolved and classify the case as either a full, partial, or no settlement. Their responses are shown in Figure 4-1. Although there are some differences by site, full agreements are generally reported in 30 percent to 40 percent of the cases, and partial agreements in 25 percent to 45 percent. No agreements range from 12 percent in New York to 35 percent in the other courts.

Factors Associated with a Resolution in Mediation

One way to consider the types of cases that fare best, or worst, in mediation is to consider the topics that were dealt with in mediation, and the percentage of these cases that were described by the mediator as having been settled.

Table 4-2. Agreements in Mediation for Issues Discussed by Site

	Kings	Bronx	Queens	New York	Total
If living arrangement/ placement was discussed, percent reaching agreement	44.2%	42.1%	46.2%	50.0%	44.5%
	(43)	(38)	(26)	(12)	(119)
If visitation issues were discussed, percent reaching agreement	66.7%	71.4%	76.3%	94.7%	73.4%
	(63)	(49)	(38)	(19)	(169)
If permanency plan issues were discussed, percent reaching agreement	48.6%	38.5%	57.7%	60.0%	50.5%
	(37)	(26)	(26)	(20)	(109)
If parents' service plan issues were discussed, percent reaching agreement	66.7%	58.3%	66.7%	58.3%	63.1%
	(27)	(24)	(21)	(12)	(84)
If child's service plan issues were discussed, percent reaching agreement	54.5%	66.7%	64.7%	76.9%	65.0%
	(33)	(24)	(34)	(26)	(117)
If relationship issues were discussed, percent reaching agreement or improving relationship	73.1%	58.9%	64.8%	80.0%	68.3%
	(78)	(56)	(54)	(30)	(28)

As shown in Table 4-2, one of the most difficult topics to resolve is the issue of where the child will live or be placed. The agreement rate on living arrangements was 45 percent. Agreement rates were higher when the discussion in mediation focused on visitation (73%) or service plan issues. (63%) Even relationship issues were more likely to result in settlements (68%) than were discussions of the child's living arrangement.

Permanency plans were comparable to living arrangements with respect to settlement rates. Forty to 60 percent of the cases in each of the counties were able to resolve the permanent plan.

Beyond the issues under discussion, there are, of course, numerous characteristics of the case that might influence the likelihood of a settlement in mediation. The tables presented below show a few factors that showed a correlation with settlement.

Table 4-3. Agreement Status by Domestic Violence

	Intimate Partner Violence is an issue in the case★	
	Yes	No
Complete agreement	18.4%	38.4%
Partial agreement	46.9%	29.5%
No agreement	34.7%	32.1%
	(49)	(190)

★Chi square significant at .02.

Table 4-3 compares cases in which the mediator was aware of a history of intimate partner violence and those where violence was not an issue, or least not a known issue. Cases with known violence

were less likely to reach a full settlement of the issues than were those with no known violence. However, this does not mean that those with violence in their backgrounds did not produce any agreement. They were more likely than those with no violence to produce partial agreements, and less likely to produce full agreements. As is shown in Table 4-4, this tendency is most pronounced when the violence is accompanied by one (or more) fathers attending the mediation session. This table is only suggestive of possible patterns, because not all intimate partner violence is perpetrated by men and even when perpetrated by men, it may not have been the father in attendance. However, without further information on the case, it is interesting to note that only 10 percent of the cases with father in attendance and intimate partner violence in the past reached a complete agreement, according to the mediator.

Table 4-4. Agreement Status by Father's Participation Controlling for Domestic Violence

	Intimate Partner Violence is an issue in the case		Intimate Partner Violence is NOT issue in the case	
	Did father(s) attended mediation session?		Did father(s) attended mediation session?	
	No	Yes	No	Yes
Complete agreement	30.0%	10.3%	34.7%	42.1%
Partial agreement	40.0%	51.7%	34.7%	24.2%
No agreement	30.0%	37.9%	30.5%	33.7%
	(20)	(29)	(95)	(95)

Table 4-5. Agreement Status by Multiple Fathers

	The case involved more than one father★	
	Yes	No
Complete agreement	25.9%	36.8%
Partial agreement	51.9%	30.1%
No agreement	22.2%	33.0%
	(27)	(209)

★Chi square significant at .08.

Table 4-5 indicates that, apart from intimate partner violence, cases that involved multiple fathers were somewhat less likely than single-father cases to produce full agreements in mediation. Although the information available does not allow a further investigation regarding why this is the case, it may well be that the issues and options in such cases may be more complex and therefore less prone to full resolution.

Table 4-6. Agreement Status for Pre-Fact Finding Referrals

	Case was referred pre-fact finding★	
	Yes	No
Complete agreement	14.3%	39.5%
Partial agreement	50.0%	27.4%
No agreement	35.7%	33.2%
	(42)	(190)

★Chi square significant at .05.

One factor that showed an association with settlement was the stage at which the case entered mediation. Less than 15 percent of the cases that were sent pre-fact finding were able to produce settlements, compared to 40 percent of those referred post-fact finding. However, cases sent pre-fact finding were generally able to produce some type of settlement, just not one covering all the issues in the case.

Table 4-7. Agreement Status in Cases with Mental Illness		
	Case involved a parent with a diagnosed mental illness★	
	Yes	No
Complete agreement	22.9%	36.7%
Partial agreement	51.4%	29.5%
No agreement	25.7%	33.8%
	(35)	(207)

★Chi square significant at .03.

Table 4-8. Agreement Status In Cases with Teen Parent		
	Case involved a teen parent ★	
	Yes	No
Complete agreement	14.3%	35.7%
Partial agreement	57.1%	31.3%
No agreement	28.6%	33.0%
	(14)	(227)

★Chi square significant at .1.

Table 4-9. Agreement Status in Cases with Relationship Problems		
	Were Interpersonal Relationships a Reason for the Referral★	
	Yes	No
Complete agreement	23.1%	37.1%
Partial agreement	46.2%	29.8%
No agreement	30.8%	33.2%
	(39)	(205)

★Chi square significant at .1.

Table 4-10. Agreement Status in Cases with Chronic Abuse as a Referral Issue		
	Case involved chronic abuse ★	
	Yes	No
Complete agreement	0.0%	37.1%
Partial agreement	50.0%	31.7%
No agreement	50.0%	31.3%
	(14)	(224)

★Chi square significant at .02.

Two factors about the parents were correlated with case outcome. Specifically, those parents who had been diagnosed with a mental illness and/or were teen parents were less likely to produce full agreements.

However, these parents often did reach at least a partial settlement in mediation. Only about a quarter of the parents with a diagnosed mental illness, and a quarter of the teen parents, reached no agreement. This is quite comparable to the rate in cases which did not involve either teen or mentally ill parents (33% and 34%, respectively).

Several issues in the case were correlated with the case outcome. Because most of the cases sent for mediation may involve some level of interpersonal disputes, the analysis in Table 4-9 was restricted to cases in which interpersonal factors were the subject of the mediation referral. As the table indicates, those referred for interpersonal disputes were somewhat less likely than other cases to conclude with an agreement on all issues.

The study also found that, although relatively few mediated cases involved chronic child abuse (n=14), when chronic abuse was present, full settlement did not occur and no settlement was the outcome for half of these cases.

Table 4-11. Agreement Status in Cases with Child's Behavior as a Referral Issue		
	Child's behavior is an issue in the case★	
	Yes	No
Complete agreement	22.6%	42.6%
Partial agreement	43.0%	26.4%
No agreement	34.4%	31.1%
	(93)	(148)

★Chi square significant at .00.

Finally, cases in which the child or adolescent's behavior was a factor in the case were less likely than other cases to reach full settlements. However, these cases were likely to result in partial agreements.

Filing the Agreement

Agreements that are reached in mediation may be written or unwritten and may be entered with the court or left as interparty agreements. Table 4-12 shows the decision to file the agreement with the court by mediation site. The program sites are fairly comparable in this regard. Approximately half of the Bronx case agreements are entered with the court, compared to about 64 percent in the other counties. When the agreement is not filed with the court, it is typically left as an understanding among the parties without being reduced to writing. As a result, about a third of all cases that resolved all or some of the issues in mediation left the agreement as an informal interparty agreement.

Table 4-12. Entry of Agreements in the Court Record by Site					
	Kings	Bronx	Queens	New York	Total
Agreement entered in court (or will be)	63.7%	51.4%	63.9%	64.3%	60.9%
Agreement in writing, but parties choose not to enter in court	3.6%	8.1%	2.8%	0.0%	3.8%
Parties choose not to put agreement in writing	32.7%	40.5%	33.3%	35.7%	35.3%
	(55)	(37)	(36)	(28)	(156)

Table 4-13. Entry of Agreements in the Court Record by Resolution of Referral Issues			
	Resolved all referred issues	Resolved some referred issues	Resolved only issues not on referral
Agreement filed with court (or will be)	75.5%	42.5%	36.9%
Agreement written, not filed with court	1.1%	10.6%	0.0%
Agreement not written	23.3%	46.8%	63.2%
	(90)	(47)	(19)

Chi square significant at .00.

As Table 4-13 indicates, an agreement is most likely to be filed with the court when it covers issues that were noted on the referral form. Over three-quarters of the cases with agreements on referred issues are filed or are intended to be filed with the court. In contrast, almost two-thirds of the agreements that cover only non-referred issues are left as verbal agreements among the parties.

Chapter 5

Mediation and Comparison Groups: Nature of the Plans, Timeliness, and Compliance

While one outcome of interest (explored in the previous chapter) is whether a mediated cases resulted in a settlement, there are other outcomes to consider when looking at mediated and non-mediated cases. This chapter considers:

- Whether there are significant differences in the terms of mediated and non-mediated treatment plans;
- Whether the two groups differ with respect to the degree of compliance with the plan; and
- Whether there are significant differences between the two groups in the amount of time required to reach specific legal milestones (such as permanency).

In much of the following analysis, comparisons are made between all mediated and all comparison group cases, although statistical controls are sometimes used when the outcome of interest is relevant to only a subset of cases, such as those entering the study pre or post-disposition. Differences between mediated and comparison cases should be most discernable when comparing cases that reached agreements in mediation with the comparison group. However, this type of comparison is problematic for the following reasons:

- The subset of cases that settle in mediation may be different from those that do not. Although the previous chapter considered some of the factors associated with settlement, there are other case characteristics that might affect settlement that could not be measured. For example, parental motivation to resolve the legal case and the problems leading to it may be different for cases that settle and those that do not. The comparison group presumably also consists of a mixture of highly motivated and less motivated cases, but they cannot be distinguished given the data that is available. Comparing those who settle in mediation with all comparison group cases may result in an unfair bias in favor of the mediation cases.

- Many questions about the benefits that mediation offers to the court system are best addressed by considering all mediation cases relative to all comparison group cases. This type of analysis provides the most accurate and global picture of what happens in case processing when mediation is introduced.

In addition, when discussing treatment plans, the reader is cautioned that these plans are produced by the caseworker and ultimately reflect what the worker chose to write up. This means that some plans may not reflect all of the agreements reached in mediation.

Comparing the Service Plans

Treatment or service plans typically describe the case goal (along with a secondary plan), where the child will reside, when the parents and child will visit and how these visits will take place, services and tasks that will be completed by parents, and services that will be provided to the child.

Table 5-1. Final Permanent Plan by Group ★

	Mediation	Comparison
Reunification	42.7%	34.7%
Adoption	27.1%	39.5%
Custody to relative/guardianship	12.6%	2.6%
Alternate permanent living arrangement	17.6%	23.2%
	(199)	(380)

★Chi square of all mediation and comparison cases significant at .00.

For the mediation group there were several points in time at which the permanency goal was recorded. Specifically, the data collectors noted the goal in place at entry to mediation (assuming a goal had been set), immediately following mediation, and the latest goal at the time of case closure or data collection. For the comparison group, only the final goal was available. As shown in Table 5-1, there were some differences between the two groups. Mediation cases were somewhat more likely than comparison cases to have reunification as the latest goal, while comparison cases were more likely to have adoption as the goal.

Table 5-2. Most Recent Placement for Mediation and Comparison Groups★

At least one child with:	Mediation	Comparison
With non-respondent parent	3.6%	2.6%
Foster home	44.3%	49.0%
Residential placement	7.1%	5.8%
Kinship foster care	40.0%	39.0%
Custody with relative	2.1%	0.6%
Therapeutic foster home	5.0%	4.5%
Average placements per child	1.4	1.5
	(84)	(308)

★Includes only cases that had a child removed from the home; if multiple children were placed the total may exceed 100%.

In comparing placements for the children that were specified in the service plan, the analysis is restricted to cases where the child was removed from the home following the maltreatment report.

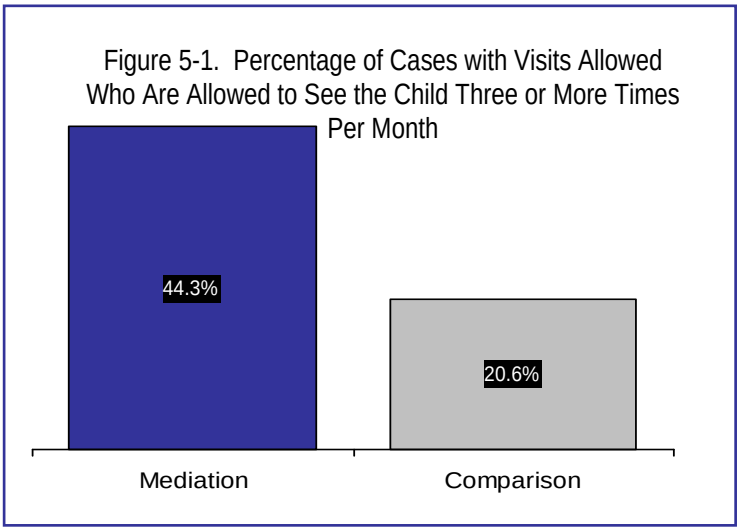
As is shown in Table 5-2, there were no statistically significant differences between the two groups in either the type of placement in effect at the close of the case or the average number of placements per child. In both groups, kinship care and non-kin foster care were the most common types of placement and children averaged around 1.5 different placements.

Table 5-3. Visitation Arrangement Mediation and Comparison Groups		
At least one child with:	Mediation	Comparison
✦ No visits	12.4%	22.7%
To be determined by caseworker	0.0%	1.3%
Once a month or less	1.8%	1.6%
Approximately twice a month	0.0%	1.0%
Three or more time per month	40.6%	16.2%
Extended at home visits	1.2%	3.4%
Reasonable visits	2.4%	5.2%
Overnight or weekend visits	7.6%	7.8%
Other agreement (*e.g.*, worked out problems with visitation, worked out sibling visits, or agreed to increase visits)	5.9%	7.3%
	(170)	(383)

✦ Chi square significant at .05.

When considering the amount of visitation provided to the parents, researchers found that the mediation group was almost twice as likely as the comparison group to have visitation provided.

There is also a trend, although not statistically significant, for the mediation group to have greater amounts of visitation when visits are allowed. As is shown in Figure 5-1, the mediation cases with visitation were twice as likely as the comparison group cases to have orders specifying that the parents would see the child three or more times per month.



As shown in Table 5-4, when visits are allowed (and when the file indicates whether the contact is to be supervised), mediated cases are more likely to have unsupervised contact relative to the comparison group.

Table 5-4. Supervision Status if Visits Are Allowed and the File Specifies Supervised or Unsupervised Status by Group★		
	Mediation	Comparison
✦ Unsupervised visits	28.7%	18.6%
Supervised by social worker or other professional	28.7%	23.0%
Supervised by family or friends	17.1%	11.8%
	(129)	(339)

★Includes only cases that had a child removed from the home

✦ Chi square significant at .05.

Table 5-5. Final Service Plan Ordered for Parent by Group★		
	Mediation	Comparison
None of the items below	26.2%	20.4%
✦Counseling	45.5%	27.1%
Drug/alcohol assessment	1.2%	3.8%
Drug/alcohol treatment/testing	9.6%	12.8%
Psych evaluations	4.8%	8.0%
Parenting classes	22.2%	17.4%
Transportation assistance	0.0%	0.0%
Financial assistance	0.0%	2.1%
Respite care	0.0%	0.0%
Homemaker services	0/0%	0.7%
Housing assistance	7.8%	11.1%
Anger management	10.2%	5.6%
✕Average number	1.2	1.3
	(167)	(288)

★Includes only cases that were mediated or entered the comparison group prior to a filing of TPR.

✦Chi square significant at .05.
✕T-test significant at .05.

The data show few differences in the services provided to parents in the mediation and comparison groups. Case files indicate services are in place for approximately 70 to 80 percent of the parents who entered the study prior to a filing to terminate their parental rights. The total number of services in place is slightly higher in the comparison group; however, the groups are quite similar. In the mediation group, there is a greater likelihood of counseling being in the service plan relative to the comparison group. On all other services, the two groups are quite similar.

Mediated cases are more likely than comparison cases to specify services for children, although child services are not typically mentioned in the service plans of either group. Only 4 percent of the mediated cases made no reference to services for children, compared to almost 9 percent of the comparison group cases. The mediated cases were more likely to specify counseling for the child, while comparison cases were more likely to mention health or school related services.

Table 5-6. Final Service Plan Ordered for Child By Group★		
	Mediation	Comparison
✦None of the items below	4.3%	8.8%
✦Counseling	49.1%	34.4%
✦Health services	13.2%	24.3%
✦School issues	19.2%	28.8%
Plans for aging out of care	7.8%	12.2%
Plans for continued contact with caring adult	3.6%	5.9%
	(167)	(288)
Average number	1.0	1.1

★Includes only cases that were mediated or entered the comparison group prior to a filing of TPR.

✦Chi square significant at .05.

Comparing Case Processing Times

Although speeding case processing is not a primary mediation goal, the fact that parties reach agreements and therefore might avoid protracted court action suggests that this might be a benefit associated with mediation. The data indicate that cases exposed to mediation had fewer court hearings and fewer court appearances relative to the comparison group. This appears to be true for cases seen predisposition (Figure 5-2) and for cases seen post-disposition (Figure 5-3).

Figure 5-2. Average Number of Hearings and Court Appearances in Cases Seen Pre-Disposition

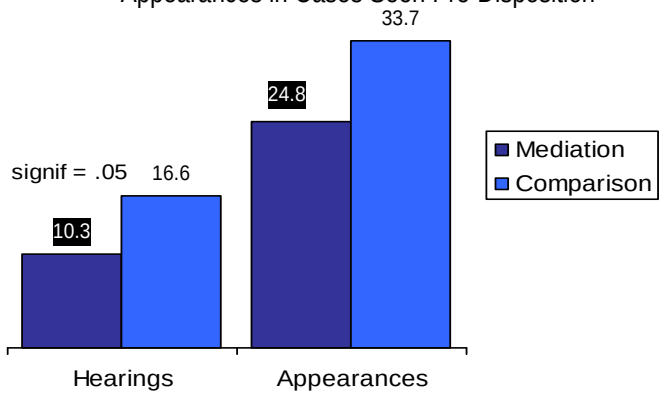
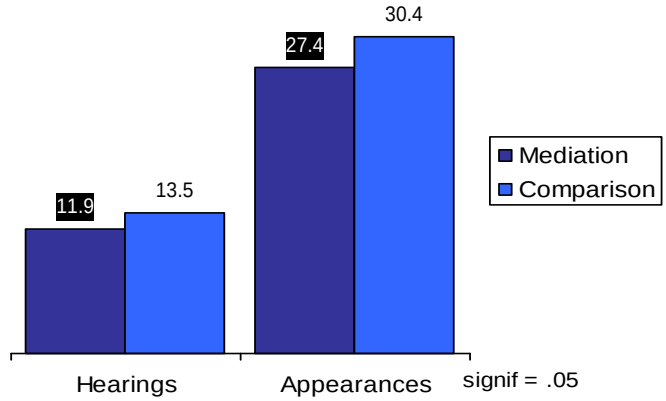


Figure 5-3. Average Number of Hearings and Court Appearances in Cases Seen Post-Disposition



Cases seen predisposition averaged 10.5 hearings, compared with 16.6 in the comparison group. Those seen post-disposition averaged 11.9 hearings in the mediation group and 13.5 hearings in the comparison group.

The next two figures (5-4 and 5-5) show the progression (in months) from the filing of the petition to the time the case reaches two major milestones, the disposition hearing and the first permanency hearing. Although mediated cases progress at a slightly more rapid pace, the differences between the mediation and comparison groups are negligible. Approximately, 40 percent of all mediated and nonmediated cases reached a resolution on disposition within 12 months, and 72 and 65 percent of the non-mediated and mediated cases, respectively, reached the first permanency hearing within 12 months.

Figure 5-4. Months From Petition to Disposition
Cases Entering Pre-Disposition

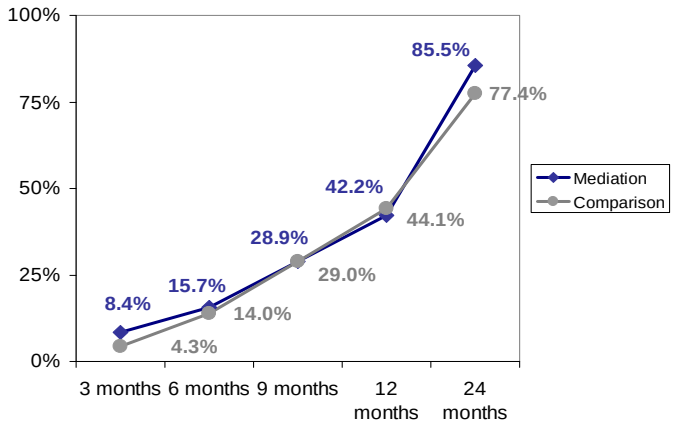


Figure 5-4. Months From Petition to First Permanency Hearing
Cases Entering Pre-Disposition

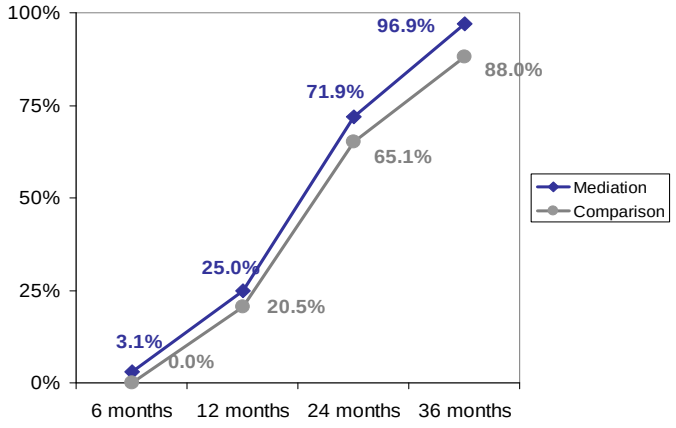


Table 5-7. Time Child Spent in Out-of-Home Care by Group ★	Mediation	Comparison
✦All cases		
365 days or less in out-of-home care	24.3%	8.1%
More than 365 days in out-of-home care	75.7%	91.9%
	(70)	(236)
✦Cases entering pre-disposition		
365 days or less in out-of-home care	40.0%	9.3%
More than 365 days in out-of-home care	60.0%	90.7%
	(30)	(54)

★ Only cases where children were placed out of the home.
✦ Chi square significant at .05.

Table 5-7 shows the percentage of cases spending less than or more than a year in out-of-home care. The analysis is restricted to only those cases with a removal of the child following the initial report. The results show that cases that mediated were three times as likely to have a child in out-of-home care for a year or less relative to cases that were not mediated.

Table 5-8. Case Status at Data Collection by Group	Mediation	Comparison
✦Cases entering pre-disposition		
Open	34.8%	49.0%
Closed	65.2%	51.0%
	(30)	(54)

✦ Chi square significant at .05.

Cases in the mediation and comparison groups entered the system at approximately the same time. Among those cases entering the mediation and comparison group samples prior to a dispositional hearing, mediation cases were more likely to be closed at the time of data collection.

Comparing Case Compliance

Mediation proponents argue that parties are more likely to comply with plans or remedies that they have had a hand in shaping. Not only are such agreements presumably better suited to the needs and abilities of the individual, there is also a presumed cognitive dissonance that occurs when one agrees to perform certain acts and then fails to do so. In some types of mediation, it is a simple matter to measure compliance. In small claims court mediation, one individual may agree to make a payment to the other disputant, and the court may record whether the payment occurred. Measuring compliance with orders and agreements in child welfare cases is not as simple. Among the complications in measuring compliance are the following:

- Agreements in mediation may cover some, but not all, conditions in the treatment plan. However, trying to measure compliance with only those issues resolved in mediation is exceedingly difficult and may be impossible if the resolutions were limited to factors such as ways to improve communication among family members or between the family and caseworker.

- Generally, the only way to assess compliance is to read the caseworker's court reports and peruse other documents in the file. There is no truly objective or standardized court form that provides a neat check-off box for "compliance" or "non-compliance."
- Compliance is not a single event. Unlike the small claims court example above, the child welfare case will make multiple requirements of the parties and will cover many months. As a result, a parent may start by complying and then stop performing. Or the parent may comply with some, but not all, terms of the plan or may move in and out of compliance.
- It is generally impossible for the data collector to conduct a blind review in which the reviewer is unaware of whether the case mediated or did not mediate. Files typically include some indication that there was an order to mediate. As a result, there may be unintentional bias in favor of, or against, mediated cases if the data collector has particularly strong feeling for or against the process.

Given these difficulties, data collectors were instructed to read caseworkers' court reports and other relevant documents and then classify the case using the following guidelines:

- Generally non-compliant: The parent either never engages in the ordered services and visitation plan, or stops performing soon after the plan is instituted. Some of these parents simply disappear; others return to court regularly but fail to make substantial progress on the treatment plan.
- Partial compliance: The parent complies fully with selected parts of the treatment plan, but not with others. The parent complies fairly well, but only sporadically, or the parent performs well for a substantial period of time, but then falls out of compliance.
- Generally compliant: The parent engages in the ordered services and visitation plan, although there may be an occasional lapse.

Table 5-9. Case Compliance By Group

	Mediation	Comparison
✦ Overall compliance based on information in file		
Basically no compliance	12.7%	38.3%
Complied off and on, or with selected parts of plan	51.9%	34.6%
Generally complied	35.4%	27.1%
	(212)	(376)

✦ Chi square significant at .05.

Table 5-9 shows the compliance ratings given to the two groups. The pattern is for mediated cases to be more likely than comparison cases to be described as "in general" or "in partial" compliance. Comparison group cases are about three times as likely as mediation cases to be described as basically not complying.

Table 5-10. Case Compliance By Group	Mediation	Comparison
Compliance in cases where…		
✕The child was removed from the home		
Basically no compliance	13.9%	37.8%
Complied off and on, or with selected parts of plan	60.0%	35.1%
Generally complied	26.1%	27.2%
	(165)	(368)
✦Mental illness noted for respondent parent		
Basically no compliance	28.1%	42.4%
Complied off and on, or with selected parts of plan	37.5%	42.4%
Generally complied	34.4%	15.5%
	(32)	(59)
✕Substance abuse noted for respondent parent		
Basically no compliance	16.0%	35.5%
Complied off and on, or with selected parts of plan	60.5%	37.2%
Generally complied	23.5%	27.3%
	(81)	(172)

✦ Chi square significant at .1.
✕ Chi square significant at .05.

The compliance patterns continue to hold when controlling for factors that might be expected to have an impact on compliance. For example, having a child removed from the home might be viewed as a spur to compliance (to achieve reunification) or as a hindrance (if the parent is excessively angry at the system). When looking only at those cases with a child in out-of-home placement, the better compliance among the mediation group continues to hold, although the difference is largely in the greater percentage of mediated versus comparison cases that show partial compliance.

Under conditions where the respondent parent has known problems with either mental illness or substance abuse, the mediation group continues to show better compliance than the comparison group. Among those with mental illness, the differences are largely in the degree to which the mediated and comparison groups show generally complete compliance. Among those with substance abuse, the difference appears to be that the mediated group shows some compliance, while the comparison group is more likely to be non-compliant.

Table 5-11. Subsequent Abuse Reports By Group	Mediation	Comparison
✦ Subsequent report of abuse or neglect		
No	90.4%	85.8%
Yes	9.6%	14.2%
	(212)	(376)

✦ Chi square significant at .06.

Contempt hearings and sanctions were not noted in any cases, in either the mediation or comparison group. As a result, the only other indicator of compliance that is readily available is whether the family was the subject of a subsequent abuse or neglect report following the filing that brought them into this study. Although relatively few families in either group were re-reported, there were slightly more reports in the comparison group. As noted in the methodology chapter, removal of the children from the home was one variable on which mediated and comparison group cases differed. As a result, the analysis was repeated using only those cases with children removed

from the home at the time of the mediation referral. Although the patterns persist, the differences are no longer statistically significant. The researchers cannot be certain if this is due to a greater likelihood parents whose children were removed from the home (rather than being provided in-home services) will be through the system more than once, or if it due, in full or in part, to the small sample sizes.

Chapter 6
User Reactions

At the close of the project, telephone interviews were conducted with a selection of stakeholders who were believed to have had the most experience with mediation. This included judges, referees, attorneys representing parents, attorneys representing children, attorneys representing the agency, caseworkers, and caseworker supervisors.

The goal of the interviews was to gather feedback on a variety of issues including:

- The referral process, such as the types of cases most often referred and why some judges and referees did or did not make referrals;
- The quality of the mediators;
- Satisfaction with the format of the mediation, including number and length of sessions, the amount of time it took to get cases into the first mediation session, and whether all of the people who needed to be there were at the mediation sessions;
- Satisfaction with agreements produced and mediation and factors determining whether or not they were entered with the court;
- Overall thoughts on mediation and how the court is different without it.

Referrals

Several of the judges and referees stated that the cases that they referred to mediation were often those that had issues that needed to be discussed and worked out, and the judges and referees simply did not have time to work through those issues in the courtroom. One judge also added that she used to make referrals when the outcome of litigation and following the law may not result in the best case outcome in her mind.

Some examples of case types often sent include:

- Cases that have issues around permanency that need to be resolved;
- Cases involving children aging out of care;
- Custody cases;
- TPR cases where there might be the hope of voluntary surrender with visitation;
- Cases where there is tension between a parent and a caseworker; and
- Cases with visitation issues, including disagreements between parents and foster parents.

One judge described the cases he referred as those dealing with "the side issues related to child and abuse cases, such as cases with a non-respondent parent, custody and visitation issues. My

philosophy was to litigate the child abuse and neglect case, and have the mediators work through the side issues."

The caseworkers had different opinions on which cases are appropriate for mediation. One believed that the cases that were served best by mediation were kinship and custody cases, while other cases might be best served by a case advocate who can provide ongoing support to all parties in the case (*e.g.*, cases where parties disagree about visitation).

While some judges and referees made regular referrals to mediation, others made no referrals. The interviewees felt that some of their colleagues did not make referrals because:

- They never got in the habit of making referrals. Most felt that, once a judge or referee began sending cases to mediation and got in the habit of doing so, they would continue making referrals on a regular basis.
- Interviewees felt that the judge's personality may play a role in whether he or she sends cases to mediation.
- Other judges and referees may be set in their ways and not make referrals. Some interviewees felt this was especially true of judges who have been working these cases for years without the mediation program.
- Some interviewees suggested that there was not enough publicity about the program.

One of the judges admitted not referring cases right away and said that it took a while to learn enough about the mediation program before feeling comfortable and knowledgeable enough about sending cases to mediation.

Mediators

Most of the interviewees felt that the right people were chosen as mediators. According to one interviewee "the mediators are very well trained and very professional." They also saw the mediators as partners in helping children and families in the child welfare system. A few interviewees felt that some of the mediators were better than others at remaining neutral and keeping the mediation room calm and on track. But, overall, they still felt that the right people were conducting the mediation sessions.

Interviewees praised the mediators' ability to work with families:

> The mediators can flesh out the issues that are really bothering the family and work through these issues. They are trained to look for different issues than the attorneys or judges. It's a different dynamic between mediators and families.
>
> The mediators do a great job of establishing the trust of the family which can be very difficult.

The interviewees felt that the mediators were good at handling cases where there has been a history of animosity. Mediators were seen as ensuring that everyone felt safe and heard in the meditation room, which sometimes required taking people aside for a one-on-one discussion if someone in the room appeared to be intimidated. One interviewee told a story of a mediation in which everyone in the room was male except for the respondent mother. In this case, the mediator was credited with noticing that the mother was not speaking up and looked slightly uncomfortable in the room with all of the men. As a result, he brought in a female mediator. The female mediator also followed up with the mother after the mediation sessions to make she felt she was being heard in the process.

According to the interviewees, the pre-mediation contact made by the mediators was helpful to everyone involved in a case. Oftentimes, the judges or referees could call the mediators in to the courtroom after they referred a family to mediation so that the mediator could meet all of the parties in the case face-to-face. According to one referee:

> The pre-mediation contact is very important. Many of our litigants have both cognitive and mental health issues and engaging them in the process can be very difficult. Further, many do not have good contact information. Getting the mediators in the court room was very helpful for everyone, especially the litigants.

One judge felt that having the mediators come into the courtroom after she referred a case to mediation was not just helpful to the litigants, but also to her. "For me to find 10 minutes to write up a summary of every case referred to mediation is very difficult. Having [the mediator] come in to the court room to hear about why a case was being referred to mediation meant that [the mediator] could help out with some of the paperwork." Another judge echoed this sentiment and the overall satisfaction with the face-to-face, pre-mediation contact: "I don't have time to do all of the paperwork. When the mediators meet with the litigants right after court, this allows them to explain the mediation process and being to establish a relationship with the litigants and build up some of the trust needed for mediation."

Format of the Mediation

Overall, those stakeholders who participated in interviews praised the mediation format. All of the interviewees believed that it was necessary for the mediators to have a list of items for which the cases were being referred. The judges and referees all noted that, while these lists were important to "set the stage for mediation," it was also important to allow the parties to come together and discuss issues that were not on the initial list. According to one referee, "I always left the issues to be meditated open ended and conveyed that any other issues could be mediated, too." The interviewed attorneys agreed. According to one attorney, "It's good to have a list of issues, this list can always be narrowed or broadened based on the needs of the party."

It was reportedly about one month from the when a case was referred into mediation until the first mediation session occurred. Most interviewees agreed that this was longer than they would have liked; however, all of the interviewees felt that the mediators got cases in for mediation as soon as they could given the fact that they were trying to bring so many different people (*e.g.*, attorneys, caseworkers, parents, etc.) to the table all at once. According to one interviewee, "if it took too long for the first mediation to get scheduled, it was because of the attorneys or caseworkers' schedules. It is a lot of people to get together in one room."

The interviewees were split in terms of whether the number and length of the mediation sessions were generally accurate. The interviewed attorneys and caseworkers were more likely to think that the meditation sessions should be shorter, or, at the very least, have an initial short meeting so that the attorneys could decide if they needed to attend all of the mediation sessions. The judges and referees generally felt that the number and length of the session was just right and that the mediators were good at tailoring the mediation sessions on a case by case basis.

Those who were familiar with the mediation sessions agreed that the mediators kept the discussion on track. "The mediators do a good job at keeping the conversation on track. They do an amazing job of controlling the room without being pushy." These interviewees also praised the mediators for their ability to ensure that all of the people who needed to be at the sessions were there or to accommodate people who could not physically attend the mediation session by speaking to them over the phone prior to the mediation session.

All of the interviewees, especially the attorneys, appreciated the fact that the decision was made to allow the attorneys to leave during some portions of the mediation. After the program had been operational for a while, the decision was made that attorneys, with the client's permission, could leave the session when some types of non-legal issues (often visitation and supervision arrangements) were under discussion. According to one attorney:

> I felt very comfortable leaving my clients alone in a mediation session. It took me a while to get to that point; I had to become more familiar with the mediators and the format of the sessions. But, after I got to that point, my clients knew that they could stop a conversation during the mediation session at any time if they felt there was a problem, and the mediators were always very respectful of the clients.

Another attorney said something similar: "My clients knew that they could hold off on any discussion until I got back." All of the interviewees felt that the mediators understood the issues and would know when to stop a conversation that seemed inappropriate if a client's attorney was not present.

Agreements

Interviewees unanimously agreed that the agreements that come out of mediation were not the most important outcome. They felt that getting everyone to the table and airing their differences was equally as important. As one judge explained, "sometimes you don't get an

agreement, but you can resolve some of the contentious side issues on a child abuse and neglect case. This lowers the temperature of the entire case, which may lead to a better resolution for the case as a whole." Indeed, many of the interviewees felt that the cases referred to mediation are some of the most contentious and that using agreement rates as a measure of the effectiveness of mediation does not make sense on these difficult cases.

Stakeholders who took part in interviews were split on the program's decision to not write up agreements immediately following the session, and sometimes not at all. Some interviewees felt that it was important for the mediation participants to walk away from the session with something in writing, even if it was just an interim agreement. Those who agreed with this point of view said that "it is very easy for people to say one thing during mediation then do something else when they get back into the real world." Another said that:

> There were times when everyone left mediation thinking there was an agreement, but it wasn't in writing. People would change their minds once they left the mediation room. Not putting the agreement in writing at the mediation gives people too much wiggle room.

Other interviewees felt that it was a good decision to not put the agreements in writing. According to one judge: "what was agreed upon in mediation generally stuck with the participants, whether it was put in writing or not." Another interviewee said that:

> It is not a problem to not put the agreement in writing right after the mediation, or at all for that matter. Most people, especially the attorneys, leave right after the mediation and will not stick around to wait. If a participant wants to change their mind about the agreement after the mediation, they will change their mind whether it is in writing or not. And, for mediation, you don't want to force people into anything. That being said, I do think it is important for judges and referees to receive something in writing, even it if is just an outline of the session or a status report.

While everyone agreed that something in writing should be produced following the mediation sessions, the interviewees were not in agreement over whether the agreements had to be put in writing immediately following the mediation or at all.

Future

Before these interviews took place, the Permanency Mediation Program had been suspended due to budget cuts in the New York Family court. All of the judges, referees, attorneys, caseworkers, and supervisors interviewed for this evaluation said that losing the mediation program is a huge loss for the family court. According to the interviewees:

> This is a definite loss for us. Families are going to have a lot of issues that just will not get dealt with now. The agency will have to pick up the slack or the

attorneys will have to deal with these side issues in the waiting room. I would change nothing about this program if it came back. I'll admit that I started out slow with referrals. After I got used to it, I would send over one or two cases every week.

It is very critical that this program be reinstated. If you care about permanency for children, you need to reinstate this program.

This was a great program. Even if you cannot solve the underlying issues on the cases through mediation, it is often a way to get agreements on some of the collateral issues. It is very unfortunate that we no longer have it for people who could solve some—if not all—of the collateral issues on their cases.

What's happening to the cases that used to go to mediation? They are wasting my time and limping along.

Please bring mediation back. It was an effective tool. I see cases that I know would benefit from mediation, and I wish so much that the program was back.

Everything about mediation really made a difference in cases, even the atmosphere. It was so much more cordial compared to other parts of the court house. It was a controlled and pleasant environment.

The results of mediation are so long lasting. These cases have fewer court appearances, spend less time in front of the judge, and have fewer motions filed after mediations. Even if there is not an agreement, the mediators are good about narrowing down the issues that need to be heard at trial … All of the judges have too many cases to see. They don't have enough time to get through all of the details on every case.

Chapter 7
Summary and Conclusions

The final goal of the evaluation is to put the results of the New York City Permanency Mediation Program into context. Presented below are key findings from the evaluation and a discussion of how these findings substantiate or refine the results of past research on dependency mediation.

As is the case with all evaluations, there are some limitations that should be noted for this study. Specifically, generating an appropriate comparison group was challenging, as it usually is in evaluating dependency mediation programs. While random assignment is the ideal, it is often impracticable in applied research. Program staff do not want to discourage referrals by withholding services, and the referring party (most commonly a judge) also resists the idea of not offering services, even temporarily. In the present evaluation, the decision was made to develop a comparison sample consisting of cases that were active in the courts at the same time as the mediated cases, but were not referred for mediation. This approach has obvious problems. To the extent that cases were either referred or not referred to mediation based on case or family characteristics, the two groups could be nonequivalent in important ways. However, program staff felt that some judges simply tended to refer to mediation, while others did not. If this is true, the mediated and non-mediated families would be expected to be fairly similar, unless there were other differences between judges who refer and those who do not with respect to their handling of cases. The final samples consisted of 244 mediated cases and 391 comparison cases.

Referrals

- **Most of the cases in the study were referred to mediation after disposition.**

About 18 percent were referred pre-fact finding. In all of the sites, a fairly large percentage of the cases were mediated after permanency had been established, including about 13 percent that were at the point of termination of parental rights or surrender, and another 9 percent that were post-termination of parental rights. In this respect, the New York City program differed somewhat from dependency mediation programs through the nation. From the beginning, there has been controversy surrounding the idea of mediating before the court has determined that the child is in need of services. However, over time, most programs have realized that there are decided cost savings to be realized by mediating cases from the beginning to end. On the other hand, historically there has also been resistance to mediating at the time of adoption or the termination of parental rights. New York City's Permanency Mediation Program seems to have overcome this obstacle from the outset.

- **The referring jurist indicated that specific issues were to be dealt with in mediation, along with other issues that emerged during the session.** The items that were most commonly

referred include custody of the child, visitation with the child, and issues related to communication.

The issues dealt with in the New York City Program are many of the same topics that have been dealt with in dependency mediation programs nationally. Research has documented that visitation is often more effectively dealt with in mediation, rather than in court or out-of-court settlements. The mediation process seems to encourage a discussion of ways to maximize contact and increase specificity in orders related to visitation.

Mediation Preparation

- **Mediators were asked to choose from a range of hours that most closely reflected the number of pre-mediation hours they spent preparing the case. The two most commonly selected categories were 3-4 hours and 5-6 hours.**

Around the country, programs vary tremendously in the degree to which they encourage or prohibit mediators from gaining background information about the case. Some programs prefer to have mediators initiate the session with no prior knowledge of the case; other encourage mediators to become familiar with the court file and issues that may be relevant for the mediation session. Preparation time and settlement rates show no correlation, although programs without preparation would probably maintain that the mediator is allowed greater neutrality without advance information, while those encouraging preparation might argue that the parties are better prepared for mediation, the quality of the session is higher, and the session is expedited when the mediator understands the case. The New York City program encourages mediators to review the file and to contact the potential participants prior to the first session.

The Mediation Sessions

- **All four counties have an average of two mediation sessions per case, for a total of approximately four hours.**

Dependency mediation programs vary significantly in the number of hours the average case spends in the process. For example, in Jefferson and Orleans parishes in Louisiana, the average amount of time in mediation averaged approximately 4.1 or 4.2 per case. In contrast contact, the average amount of time in mediation in the El Paso County, Colorado program was 1.8 hours. Despite the variations in the average amount of time, most programs are quite similar in their overall agreement rates.

- **In general, mediation covered more issues than originally anticipated in the referral.**

As the mediation progressed, issues clearly emerged as problems that had not been flagged as needing attention by the referring party. Issues commonly discussed in mediation include placement of the child, visitation of the parents and child, and services for the parent. However, many programs do not require that the referral indicate the issues in contention; as a

result, most programs probably result in issues being discussed during mediation that are not identified as problems leading to the mediation session.

- **The average number of parties attending was highest in Kings County and lowest in Bronx County; however, at all the sites, the average number attending was around six people.**

Programs vary considerably in the number of parties attending. For example, in Jefferson Parish, Louisiana, the average was 11.0 parties; in El Paso County, Colorado, the average was 6.5 parties. What is apparent at nearly all sites is that, compared to parenting-time mediation, with divorcing or never-married parents, the number of participants in dependency mediation is quite high.

- **In about 90 percent of the cases, the child's attorney was present for one or more sessions. This was followed in frequency by the child's mother, the mother's attorney, and the caseworker.**

There were some differences across the sites with respect to attendance. For example, fathers were almost twice as likely to attend a session in Kings County as in New York. Caseworkers were most likely to be present in New York, where over 90 percent were present for at least one session. Declining numbers of caseworkers attended in the other courts to a low of 56 percent in the Bronx. The parties attending the mediation session in New York City are quite similar to attendees at other programs. Caseworkers and attorneys are nearly always present, as are parents.

- **Children took part in at least a portion of the mediation session in about 10 percent of the cases mediated in the Bronx, about a third of the cases mediated in Kings County, half of the cases in Queens County, and over two-thirds in New York.**

Programs vary considerably in the degree to which they involve children in the mediation session. In nearly all programs, the variation is partly dictated by the age of the children and the degree to which they are perceived to be instrumental in reaching an agreement. As a result, most of the children who attend the mediation session are in fact young adults whose engagement is critical if the proposed agreement is to succeed. It is also worth noting that cases in which the child or adolescent's behavior was a factor in the case were less likely than other cases to reach full settlements. However, these cases were likely to result in partial agreements. The greater percentage of children attending mediation in New York may be due to the fact that New York had a higher percentage of cases in which the child's behavior was cited as an issue in the case (77% versus approximately 40% at the other sites), a higher percentage of cases dealing with an adolescent discharge plans in mediation, and a specific program policy to include children.

Settlements

- **At the close of the final mediation session, mediators were asked to take all the complexities into consideration and then to classify the case as either a full, partial, or no settlement. Although there are some differences by site, full agreements are generally reported in 30 to**

40 percent of the cases, and partial agreements in 25 percent to 45 percent. No agreements range from 12 percent in New York County to 35 percent at the other counties.

In most programs around the nation, complete agreement rates range from 60 percent to 80 percent of the cases that attempt mediation. The agreement rate in the New York program is comparable if partial and complete agreements are combined.

- **Cases with known violence were less likely to reach a full settlement of the issues than were those with no known violence.**

However, this does not mean that those with violence in their backgrounds did not produce any agreement. They were more likely than those with no violence to produce partial agreements, and less likely to produce full agreements.

- **Cases that involved multiple fathers were somewhat less likely than single-father cases to produce full agreements in mediation.**

Although the information available does not allow a further investigation regarding why this is the case, it may well be that the issues and options in such cases may be more complex and therefore less prone to full resolution.

- **Less than 15 percent of the cases that were sent pre-fact finding were able to produce settlements, compared to 40 percent of those referred post-fact finding.** However, cases sent pre-fact finding were generally able to produce some type of settlement, just not one covering all the issues in the case.

- **Parents who had been diagnosed with a mental illness and/or were teen parents were less likely than other parents to produce full agreements.** However, these parents often did reach at least a partial settlement in mediation. Only about a quarter of the parents with a diagnosed mental illness, and a quarter of the teen parents, reached no agreement.

Nature of the Settlement

This evaluation, like many previous evaluations, found mediated and non-mediated agreements to be quite similar. This is only logical given that cases should not necessarily vary in their service needs depending upon whether they receive a referral to mediation.

- **Mediated cases were somewhat more likely than comparison cases to have reunification as the latest goal, while comparison cases were more likely to have adoption as the goal.**

Researchers cannot be certain whether this is the result of cases that are perceived by the court to have a chance to reunifying being more likely to receive a mediation referral, or whether mediation actually increases the likelihood of the professionals seeing a path to reunification.

- **There were no statistically significant differences between the two groups in either the type of placement in effect at the close of the case or the average number of placements per child.**

In both groups, kinship care and non-kin foster care were the most common types of placement and children averaged around 1.5 different placements. Some other studies of dependency mediation have concluded that mediated cases are more likely than non-mediated cases to result in relative care (Gatowski, et al., 2005). However, a number of other studies have found no differences between mediated and non-mediated cases with respect to the type of placement used (Center for Policy Research, 2005a; Thoennes, 1999).

- **When considering the amount of visitation provided to the parents, the study found that the comparison group was almost twice as likely as the mediation group to have no visitation provided.**

There is also a trend, although not statistically significant, for the mediation group to have greater amounts of visitation when visits are allowed. Mediated cases are more likely to have unsupervised contact relative to the comparison group. Mediation is often associated with more visitation and a greater specificity in the visitation plan (Gatowski, et al., 2005; Center for Policy Research 1998; Thoennes, 1999). These finding suggest that mediators may be more disposed to spell out when the contact will occur, while the court is more likely to leave this decision to the caseworker and the parties in the case.

- **The data show few differences in the services provided to parents or children in the mediation and comparison groups.**

Mediated cases are more likely than comparison cases to specify services for children, although child services are not typically mentioned in the service plans of either group. Only 4 percent of the mediated cases made no reference to services for children, compared to almost 9 percent of the comparison group cases. A number of studies have found that mediation is more likely to result in services being specified for children, perhaps as a result of having all the parties at the table to discuss the child's best interests (Gatowski, et al., 2005).

Savings in Time

- **Although mediated cases progress at a slightly more rapid pace, the differences between the mediation and comparison groups are negligible.**

Approximately 40 percent of all mediated and non-mediated cases reached a resolution on disposition within 12 months, and 72 and 65 percent of the non-mediated and mediated cases, respectively, reached the first permanency hearing within 12 months. Past studies have sometimes found a higher percentage of cases reaching disposition within 30 days of the petition filing (Gatowski, et al., 2005).

- **Cases exposed to mediation had fewer court hearings and fewer court appearances relative to the comparison group.**

This appears to be true for cases seen predisposition and post-disposition. Cases seen predisposition averaged 10.5 hearings, compared to 16.6 in the comparison group. Those seen post-disposition averaged 11.9 hearings in the mediation group and 13.5 hearings in the

comparison group. This suggests that there may be savings to the court in time and costs that are not reflected by the amount of time elapsing between key events.

- **Cases that mediate are three times as likely to have a child in out-of-home care for a year or less relative to cases that do not mediate.**

This finding is similar to the evaluation of the mediation programs in Orleans and Jefferson parishes in Louisiana. This evaluation concluded that 70 percent of the cases mediated pre-disposition had a child who left care within 12 months, versus 42 percent of the comparison group (Center for Policy Research, 2005b).

Compliance

- **The pattern is for mediated cases to be more likely than comparison cases to be described as "in general" or "in partial" compliance.**

Comparison group cases are about three times as likely as mediation cases to be described as basically not complying. Most evaluations that have considered compliance patterns have findings that suggest that mediated cases show better compliance overall relative to non-mediated cases.

- **The compliance patterns continue to hold when controlling for factors that might be expected to have an impact on compliance.**

For example, having a child removed from the home might be viewed as a spur to compliance (to achieve reunification) or as a hindrance (if the parent is excessively angry at the system). When looking only at those cases with a child in out-of-home placement, the better compliance among the mediation group continues to hold, although the difference is largely in the greater percentage of mediated versus comparison cases that show partial compliance. Under conditions where the respondent parent has known problems with either mental illness or substance abuse, the mediation group continues to show better compliance than the comparison group. Among those with mental illness, the differences are largely in the degree to which the mediated and comparison groups show generally complete compliance. Among those with substance abuse problems, the difference appears to be that the mediated group shows some compliance, while the comparison group has a higher rate of no compliance.

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New York City

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