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DIRECTIVE #15-17

[Supersedes Directive #11-09]

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TO: Assignment Judges
Family Presiding Judges
Trial Court Administrators

FROM: Glenn A. Grant, J.A.D. 

SUBJECT: Family – Children in Court – Child Welfare Mediation Program Procedures Manual -- Statewide Implementation

DATE: June 23, 2017

This Directive mandates the statewide implementation of mediation in child welfare cases in the Family Part, as approved by the Judicial Council. The affected case types are child placement review (FC docket), abuse and neglect (FN docket), termination of parental rights (FG docket) and kinship legal guardianship (FL docket). Attached are a procedures manual and forms, the main elements of which are outlined below.

Background

In May 2005, then Administrative Director Philip S. Carchman authorized a statewide pilot program to mediate child welfare matters. All vicinages were offered the opportunity to participate in this program. Ten vicinages did so.

In November 2006, participating vicinages began collecting data necessary to evaluate the pilot program. A comprehensive evaluation report was completed in September 2008. The evaluation showed that mediation produces high settlement rates, saves the court time, helps parents understand their situation more clearly, permits parties to develop creative solutions, and produces a higher rate of parental compliance with visitation and with accepting and participating in services. Almost all stakeholders expressed positive responses to the mediation program; all judges surveyed were satisfied with mediation and would refer future cases to mediation.

Mediation Protocol

The attached procedures manual establishes policies and procedures for referring cases to mediation and conducting mediation. The manual mandates the following key elements:

1. Mediation must occur post fact-finding;
2. Mediation has the same priority as other court events:
 - a. Judges cannot call attorneys out of mediation sessions to appear in court, and attorneys will not be permitted to leave the mediation session to attend other court appearances;
 - b. All participants ordered to mediation must attend the session and be authorized to make decisions in the case;
3. A judge must be available for the participants to enter a Mediated Consent Order on the record immediately following a mediation;
4. Mediation will not be ordered if an active domestic violence restraining order exists between the parties; and
5. Mediation will not be ordered if a party is found to be incompetent (e.g., person is intoxicated or has severe psychological/mental impairment).

Procedures Manual and Forms

The procedures manual details the case processing steps of the mediation program to assist judges and staff implementing the program.

Standard forms are to be used. New Family Automated Case Tracking System (FACTS) codes have been created to record proceedings and documents. These codes are noted in some of the forms where necessary to guide staff in properly entering the information in FACTS. The following documents are appended to the procedures manual:

- The Referral Form (CN 10746), to be completed by court staff, is an internal document that contains participant information: addresses and telephone numbers, whether participants were noticed in court, the need for an interpreter, the need to obtain a writ for incarcerated parties, brief domestic violence history, if any, issues for mediation and the next court date.
- The Referral Order (CN 10748) is the court order for mediation. This order is used for out-of-court requests for mediation, which may originate from the parties, the attorneys, child placement review board or the Court Appointed Special Advocate (CASA).

- The Mediation Checklist (CN 10747) lists tasks to complete to assist court staff when the court orders child welfare mediation.
- The brochure (CN 10742) is a one page tri-fold pamphlet provided to parents and caregivers explaining child welfare mediation.
- The Child Welfare Mediation Notice (CN 10745) is mailed to the mediation participants advising them of the mediation date or any scheduling changes. The notice also advises that:
 - Participants must arrive on time
 - Failure to appear at the mediation will be reported to the judge
 - Participants should expect the mediation session to last up to three hours
 - Participants may not bring children to the mediation session unless specifically ordered by the court
 - A DCP&P representative with knowledge concerning the case and authorized to make any case-related decisions for DCP&P must be present at the mediation.
- The Confidentiality Agreement (CN 10743) sets forth the terms of the mediation. All participants must sign it before starting the session.
- The Mediated Consent Order (CN 10744) contains the terms of any agreement regarding the substantive issues addressed during the mediation. This document is signed by the parties and is given to the attorneys and parties. It must be reviewed by the court immediately after the session and placed on the record.
- The Mediation Case Status Report (CN 10749) is completed by the mediator indicating the outcome of the mediation.

Substantive Mediation Training and Sustainability

All child welfare mediators must have completed the Basic and Family Mediation training programs coordinated by the AOC, lasting 18 and 22 hours respectively. Ongoing training of mediators is necessary because of normal turnover of personnel. A statewide child welfare mediation training program has been implemented to ensure that the mediation programs are sustainable. This training program will include observation, mentoring and review of training materials. It also includes individualized training of the mediators on court procedures by AOC Family Practice Division staff. All child welfare mediators will be required to meet twice yearly to discuss mediation challenges and solutions. The semi-annual meetings will be arranged by the AOC Family Practice Division and will include training. In addition, the AOC Family Practice Division and experienced child welfare mediators may provide refresher training at local CIC Advisory Committee meetings as needed.

EDITOR'S NOTE

*2017 Update - The reference to the Division of Youth and Family Services was changed to reflect the reorganization of the Department of Children and Families effective July 2, 2012. The Division of Youth and Family Services is now the Division of Child Protection and Permanency.

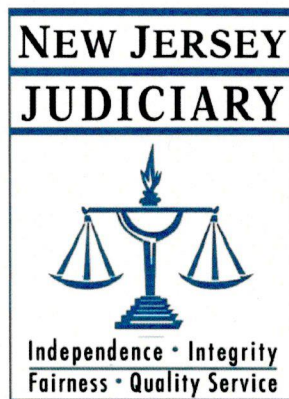
Directive #11-09 requested implementation plans from all vicinages and listed future training dates. Because the policy outlined in this Directive was implemented in 2009, references to implementation plans and training have been removed.

11/6/2009 - Directive #11-09 -- Originally issued by Glenn A. Grant, J.A.D., Acting Administrative Director.

Attachment: Child Welfare Mediation Procedures Manual

cc: Chief Justice Stuart Rabner
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Ann Marie Fleury, Special Assistant
Melaney S. Payne, Special Assistant
David Tang, Chief
Family Division Managers

**Reissued by Directive #15-17
(Supersedes Directive #11-09)
New Jersey Judiciary
Family Division**



**CHILD WELFARE MEDIATION PROGRAM
PROCEDURES MANUAL**

As Approved by the Judicial Council, 2009

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SCOPE

Child Welfare Mediation is an alternative approach to the court process used to resolve identified issues in child welfare cases. After making its fact-finding determinations, the court decides whether this non-adversarial approach will more effectively dispose of the case or will remove obstacles to the achievement of statutory goals and requirements. Attendance is court-ordered and mandatory, but agreements entered into by the participants are voluntary.

A trained, neutral mediator structures and guides the discussion. The mediator helps the participants clarify issues and generate possible solutions. Mediation provides an opportunity for participants to be heard and to understand the roles of the other participants in the child welfare process. Participants must make a good faith effort to discuss and resolve issues in mediation.

1. CASE SELECTION

a. Case Screening

Any interested party involved in an FN (Abuse and Neglect), FG (Guardianship), FC (Child Placement Review) or FL (Kinship Legal Guardianship) case may request mediation. The following cases **will not be considered appropriate for mediation and will be screened out:**

- Cases with an active domestic violence (DV) court order (See c. below for policy on dismissed/not active DV cases.)
- Cases in which a party is incompetent (e.g., person is intoxicated or has severe psychological/mental impairment)

The mediator may subsequently decide that a case is not appropriate for mediation if:

- 1) domestic violence issues become known; or
- 2) a party is suspected of being under the influence of

alcohol or drugs at the time of the session; or 3) some other concern becomes known. For procedures on the mediator's role under these circumstances, see *Problems Arising During the Mediation* below.

b. Screening For Domestic Violence Cases

If a case is being considered for mediation, court staff will screen parties to the case on FACTS for any active domestic violence orders. If one party has an active temporary restraining order (TRO) or an active final restraining order (FRO) as to another party, **the case is not appropriate for mediation.**

c. Policy on Domestic Violence Cases

If there is no active restraining order, but the parties have a DV history, court staff should advise the judge. Based on the history, the judge may decide that the case is inappropriate for mediation. If the case is being recommended for mediation during a Child Placement Review Board (CPRB) hearing, the Child Placement Review (CPR) Coordinator should bring the DV history to the Board's attention. The Board may then decide not to make the recommendation.

If there is a prior DV history (but no active restraining order) and the case is referred to mediation, the mediator should review the DV history on FACTS, as well as the DV file (if available), prior to the initial mediation session. If there has been a previous DV filing between the parties, and the court file is unavailable, the mediator shall caucus with the appropriate participants and their attorneys prior to the start of the mediation session to determine whether it is suitable to proceed with mediation.

The mediator may conference any questionable cases with the judge. The judge should decide whether mediation is appropriate. If the judge decides to cancel mediation prior to the scheduled mediation date, court staff or the mediator (depending on county) will notify the participants, complete a Child Welfare Mediation Notice regarding the cancellation, and mail it to all participants.

2. PARTICIPANTS

a. Court-ordered Participants

Parties: Parents, parents' attorneys, Law Guardian, Division of Child Protection and Permanency (DCPP) caseworker and/or supervisor and Deputy Attorney General (DAG). Participants must have thorough knowledge of the case and the authority to consent to mediation agreement. *No court-ordered participant will be excused from attending mediation.*

Others if ordered by the court: For example Court Appointed Special Advocate (CASA) volunteer, resource family, therapist, teacher, clergy, or support person (e.g., friend or family member). Children may participate if ordered by the judge or at the mediator's discretion unless otherwise prohibited by the court. Resource family members' attendance is mandatory if ordered by the court to attend the mediation session. The mediator has discretion to conduct part of the session in the absence of the resource family to address issues not relevant to the resource family. *No court-ordered participant will be excused from attending mediation.*

b. Discretionary Participants

Any other person who wishes to participate in mediation may do so with the unanimous agreement of all court-ordered participants.

3. REFERRALS/SCHEDULING

Cases may only be referred to mediation **post fact-finding** and can be referred as follows: at a court hearing, by the Child Placement Review Board, or by an out-of-court request (writing to the judge who is hearing the case or contacting the Children in Court (CIC) Team). The fact-finding or stipulation must be completed before mediation can be scheduled. Attorneys must be appointed to represent the

parties. The court decides whether a case is appropriate for mediation and determines who must attend the mediation session.

a. Cases Ordered to Mediation at a Court Hearing

If the judge orders mediation while the participants are in court, court staff will look on the mediator's calendar and will choose the date and time of the mediation in consultation with the participants. Court staff shall notify the mediator of the selected date immediately to avoid conflicts in scheduling. The FN/FG/FC/FL Order shall specify the date, time and location of the mediation session and the individuals ordered to attend.

Once mediation has been ordered, court staff or the mediator (depending on county) shall:

- 1) Complete the Child Welfare Mediation Referral Form while all participants are in the courtroom. Court staff must obtain name, address and telephone number information of all court-ordered participants. This information is essential for proper notice to participants.
- 2) Distribute a copy of the Child Welfare Mediation Brochure to parents.
- 3) Distribute a copy of the Child Welfare Mediation Brochure to resource families (if ordered to participate in the session).
- 4) Prepare a Writ/Notice to Produce (if applicable), Request for Security letter (if applicable) and Interpreter Request form (if applicable). If a party is incarcerated, appropriate staff should work with the County Sheriff's Department to arrange for transportation and onsite security.
- 5) Prepare and send a copy of the Child Welfare Mediation Notice to all individuals ordered to mediation. *****Do Not Use Resource Families' names on the Notice*****. Include a copy of the Child Welfare Mediation Brochure to parents and resource families.

- 6) Prepare the mediation packet using the Child Welfare Mediation Checklist. Copies of the following documents shall be provided to the mediator at least one week prior to the scheduled session: Child Welfare Mediation Checklist, FN/FG/FC/FL Order referring matter to mediation, last substantive order (if different from order referring to mediation), Child Welfare Mediation Referral Form, Child Welfare Mediation Notice, FN Complaint (and FG Complaint or FL Petition), Writ/Notice to Produce (if applicable), Request for Security letter (if applicable), and Interpreter Request form (if applicable).

b. Cases Referred to Mediation by Out-of-Court Request

If a request for mediation is made out of court (including CPRB recommendations), court staff or the mediator (depending on county) shall:

- 1) Contact the judge for approval to mediate the case.
- 2) If the judge approves, schedule the mediation session. The person responsible for scheduling the mediation shall contact the attorneys to select a date. If scheduled by court staff, court staff shall notify the mediator of the selected date immediately to avoid scheduling conflicts. Since Mediated Consent Orders are to be reviewed by the court at the conclusion of the mediation session, court staff or the mediator should ensure that a CIC judge is available on the day of mediation.
- 3) Complete the Child Welfare Mediation Referral Order for the judge's signature.
- 4) Complete the Child Welfare Mediation Referral Form. The Child Welfare Mediation Referral Form must include name, address and telephone number information of all court-ordered participants. This information is essential for proper notice to participants.
- 5) Prepare and send a copy of the Child Welfare Mediation Notice and the Child

Welfare Mediation Referral Order to all individuals ordered to mediation. *****Do Not Use Resource Families' names on the Notice*****. Include a copy of the Child Welfare Mediation Brochure to parents and resource families.

- 6) Prepare a Writ/Notice to Produce (if applicable), Request for Security letter (if applicable) and Interpreter Request form (if applicable). If a party is incarcerated, appropriate staff should work with the County Sheriff's Department to arrange for transportation and onsite security.
- 7) Prepare the mediation packet using the Child Welfare Mediation Checklist. Copies of the following documents shall be provided to the mediator at least one week prior to the scheduled session: Child Welfare Mediation Checklist, Child Welfare Mediation Referral Order, last substantive order, Child Welfare Mediation Referral Form, Child Welfare Mediation Notice, FN Complaint (and FG Complaint or FL Petition), Writ/Notice to Produce (if applicable), Request for Security letter (if applicable), and Interpreter Request form (if applicable).

c. Failure of a Party to be Notified

If a Child Welfare Mediation Notice is returned to the court, court staff or the mediator (depending on county) shall contact the parents' attorneys or the DCPD case worker and/or supervisor to obtain a current address and resend the notice immediately. If any notice problems exist, the mediator should be notified immediately.

d. Mediator's Calendar

The mediator will prepare a monthly calendar, which will indicate the dates and times available for mediation. Upon identifying a potential date for a mediation session, court staff shall inform the mediator as soon as possible so that the calendar may be updated to reflect the newly scheduled mediation.

Ongoing communication between the mediator and staff is important so that the mediator's calendar is kept updated and accurate.

e. Interpreter Needed for Mediation

If the mediation will require an interpreter, the appropriate staff will be responsible for completing the interpreter request procedures immediately. A copy of the Interpreter Request Form should be placed in the file and a copy should be provided to the mediator in the mediation packet.

4. ADJOURNMENTS

Court staff or the mediator (depending on county) shall handle requests for adjournments. The judge or his/her designee shall make the final decision regarding adjournment requests.

5. THE MEDIATION SESSION

a. Priority

Mediation sessions must be given the same priority as other court-ordered appearances. Judges cannot call attorneys out of mediation sessions to appear in court and attorneys will not be permitted to leave the session to attend other court appearances.

All participants ordered to mediation must attend the session and be authorized to make decisions in the case. The DCPD representative who attends the session must have the authority to make decisions on behalf of the agency, enter into an agreement, and sign a Mediated Consent Order.

b. Location

Security for the mediation participants should be provided as warranted. A telephone with speaker

should be in the mediation room.

c. Length of Mediation

Sessions may last up to three hours. All participants should be available for no less than three hours.

d. Participants

1. Participants who fail to appear

If a participant fails to appear, the mediator will discuss possible options with the individuals present to decide how to proceed. The length of time to wait for participants to appear will depend on county policy.

2. Other individuals who wish to participate in mediation

Any other person who wishes to participate in mediation may do so with the unanimous agreement of all court-ordered participants.

3. Participation of Attorneys and DCPD

The attorneys and DCPD representatives are expected to arrive for the mediation session on time and be prepared to participate in the process. There **must** be a DCPD representative present who has the authority to make decisions on behalf of the agency and the authority to enter into and sign any agreement. If a caseworker does not have this authority, the supervisor (or someone with authority) **must** accompany the caseworker to the mediation.

4. Children

Children participate if ordered by the judge or at the mediator's discretion, unless otherwise prohibited by the court.

e. Initial Discussion

The mediator describes the session, its ground rules, and explains the purpose of mediation and

possible results.

f. Confidentiality Agreement

Child welfare mediation is considered a private and confidential process. To ensure the confidentiality of the mediation process, each participant will be required to sign a confidentiality agreement. At the beginning of the session, the mediator will read and explain the confidentiality agreement to the participants, and ask each participant to sign it. All participants must sign the agreement before the mediation process can begin. The confidentiality agreement signed by the participants will be retained in the court's file.

If a participant refuses to sign the agreement after discussion with the mediator and/or the participant's attorney, the mediator may terminate the mediation session or proceed with the mediation without the individual.

A copy of the confidentiality agreement may be provided upon request.

g. Caucusing

A caucus is defined as a smaller meeting made up of selected participants in the mediation. A caucus is called when the mediator decides that it would be beneficial to meet alone with one or more of the participants. The mediator may call a caucus at any time during the mediation session or any party in the mediation may request a caucus. If a party requests a caucus, the mediator reserves the right to decide whether it is an appropriate time to break off into a caucus. Anything said in a caucus will be kept confidential unless otherwise requested by the participants in the caucus.

h. The Session and Problems Arising During the Mediation

The mediator asks the participants to identify the issues to be addressed and the procedural status of the case (e.g., trial date, permanency hearing date). The issues are set forth, clarified and discussed.

As previously indicated, cases with an active domestic violence restraining order and cases in

which a party is incompetent (e.g., person is intoxicated or has severe psychological/mental impairment) are not appropriate for mediation. In addition, it is possible that issues may arise during the mediation session that would make it inappropriate or dangerous to continue with the mediation.

The mediator should assess these circumstances on a case-by-case basis. The mediator may:

1. Caucus to determine the nature and extent of the problem; and/or
2. Terminate the mediation session; or
3. Excuse inappropriate participant(s) and proceed with the mediation without them.

Some examples of problems include: domestic violence; psychological problems/inability to comprehend; a new allegation of abuse or neglect; alcohol/drug use (participant is suspected of being under the influence during the mediation).

Note: Evidence of domestic violence includes a participant's inability to participate effectively in the mediation as a result of another participant's power and control. The mediator may call a caucus to discuss these issues and assess the situation.

i. Outcome of the Session

Agreement: Mediated Consent Order is signed.

If the participants agree on all or some of the issues, a Mediated Consent Order is drafted and the participants review and sign the Mediated Consent Order. The Mediated Consent Order memorializes the agreement made by the participants during the mediation session. The mediator will prepare the agreement. All participants must sign the agreement at the conclusion of the session, thereby consenting to the form of order. Immediately following the mediation session, the participants must appear before the court to enter the agreement on the record. When the judge reviews the agreement, he/she may either approve or reject it. If the agreement is approved, all participants shall be provided with a copy of the Mediated Consent Order before they leave the courthouse. When the court approves and signs the agreement, it is a binding Order of the court and is subject to court enforcement.

Surrender of Parental Rights: If a parent decides to surrender his/her parental rights, a Mediated Consent Order is not prepared. Instead, immediately following the mediation session, the participants must appear before the court. The mediator will indicate the surrender on the Child Welfare Mediation Case Status Report for the file and forward a copy to the judge.

No Agreement: If no agreement is reached, the mediator will complete the Child Welfare Mediation Case Status Report, retain a copy for his/her records, forward a copy to the judge, and forward the original to the file. An appearance before the court is not required.

j. Scheduling Subsequent Mediations

The court may order a subsequent mediation session or the parties may agree to attend another session. If the parties agree to another session, it shall be written into the Mediated Consent Order and scheduled by court staff or the mediator (depending on county). The mediator shall advise participants that the court process will move forward to ensure adherence to ASFA time lines.

LIST OF CHILD WELFARE MEDIATION DOCUMENTS

Children in Court Orders and Forms are located on the Judiciary's website at:

<http://www.njcourts.gov/selfhelp/catalog.html?customer=Agencies&category=CIC>

1. *Child Welfare Mediation Referral Form (CN: 10746)*
2. *Child Welfare Mediation Referral Order (CN: 10748)*
3. *a. Child Welfare Mediation Notice - English (CN: 10745)*
b. Child Welfare Mediation Notice - Spanish (CN: 10745)
4. *Child Welfare Mediation Checklist (CN: 10747)*
5. *a. Confidentiality Agreement - English (CN: 10743)*
b. Confidentiality Agreement - Spanish (CN: 10743)
6. *Mediated Consent Order (CN: 10744)*
7. *Child Welfare Mediation Case Status Report (CN: 10749)*
8. *a. Child Welfare Mediation Brochure - English (CN: 10742)*
b. Child Welfare Mediation Brochure - Spanish (CN: 10742)