

Essential Aspects of Child Protection Mediation

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Statement of the Research Problem

The primary function of the child protection system is to safeguard children from abuse and neglect. Ideally, this goal is accomplished in a manner that is least intrusive to families and children (Solnit, Nordhaus & Lord, 1992). Essentially, the least intrusive way for a state agency to ensure the safety of children is by working on a voluntary and consensual basis with the family. Two of the concerns expressed about the child protection system are:

1. Some parents involved in the child protection system are alienated and disempowered by the system, and, as a result
2. Many of these parents feel resentful and/or angry towards their child protection workers ("CPWs").

Given these conditions, it can be extremely difficult, if not impossible for parents and CPWs to work together on a truly voluntary and consensual basis.

Recently, mediation has been offered as an option within the child protection system in order to remedy to some of the problems related to alienation, disempowerment, anger and resentment. Empirical research into child protection mediation to date has been limited (Barsky, 1995, 1997; Campbell & Rodenburgh, 1993; Golten, 1986; Oran, Creamer & Libow 1984; Mayer, 1987; Morden, 1989; Savoury, Beals, & Parks, 1995; Thoennes, 1994). While this research has looked at issues such as participant, satisfaction, compliance, efficiency and rates of settlement, there has been little focus on what mediation means in the context of child protection cases.

Research Questions

This research is an emergent study designed to describe, explain and compare the critical experiences of people who participate in child protection mediation with the experiences of people involved in cases without mediation. One of the primary questions of this study is: Can mediation make a unique contribution, or is it merely a duplication of other conflict management efforts that already exist in the system? Along these lines of inquiry, this study addresses the following questions:

What are the critical experiences of people who participate in child protection mediation?

What are the critical experiences of people in non-mediation child protection cases?

What aspects of mediation might be able to explain the critical differences between the experiences of those involved in mediation and those involved in non-mediation cases?

Methodology

In order to develop a better understanding of the dynamics of child protection mediation, this study used naturalistic inquiry methods (Denzin & Lincoln, 1994). From March 1992 to May 1994, the researcher conducted exploratory "long interviews" (McCracken, 1988) with 17 adult family members, CPWs and mediators who had been directly involved in five cases from a child protection mediation project. Using criteria developed with CPWs, a comparison group of three child protection cases without mediation was selected, so that family members and CPWs from such cases could participate in similar interviews.

All of the Center's cases were considered for participation in this study; however, the final sample of cases was based substantially on availability. The pool of cases to draw from was relatively small, since the Center mediated approximately 30 cases over the research period. Further, some parties did not wish to participate in mediation because of outstanding issues in the case, or because they did not want to have to tell their stories over again to another "outsider." In comparing the demographics, issues and dynamics of the research cases with the Center's overall pool of cases, the cases involved in the research appear to be relatively typical (Lincoln & Guba, 1985).

Drawing a relevant comparison group of non-mediation cases required more purposive sampling. One of the most important factors to consider was the type of interventions used in the non-mediation cases. Some types of interventions in the child protection process engender philosophies related to those which underpin mediation: e.g., solution-focused therapy; case conferencing and plan of care meetings (Tjaden, 1994; Bernstein, Campbell & Sookraj, 1993). Accordingly, in order to explore whether mediation is qualitatively different from other child protection processes, the investigator tried to select comparison cases in which mediation-like interventions were employed.

All interviews were audio-taped¹ and transcribed. Each interview was read, re-read and analyzed as it was completed, rather than waiting to analyze all of the interviews together. Key themes and patterns from the interviewees' perspectives were identified from the transcripts

¹ One family member asked not to be taped due to concerns about the possibility of the child protection case being opened up again. In order to respect the wishes of this person and to encourage open discussion, written notes were taken during the interview in lieu of taping it. In comparing this interview to those that were taped, taping was less disruptive than taking notes. Participants were able to forget the interview was being recorded and were able to engage in a more natural form of conversation.

(Lincoln & Guba, 1985). The interview guides were altered for subsequent interviews in order to further explore important topics and perspectives raised by interviewees that were not originally identified by the researcher. McCracken's five-stage model for data analysis was employed (McCracken, 1991). The transcribed texts were processed for analysis with the Ethnograph (Seidel & Clark, 1984) computer software package. Lincoln & Guba's (1985) method for establishing trustworthiness was used throughout the study.

Results

The analysis was able to generate ten themes that the parties identified as essential elements of the child protection mediation process: alliance between mediators and mediation participants; bringing the parties together; facilitating communication; keeping peace; developing options; enhancing understanding; focusing the parties; contracting; neutrality; and fairness. Although these elements were not necessarily unique to mediation, certain aspects of the mediation process were found to alter the dynamics and change the nature of the discourse between child protection workers and family members.

Both the current research and existing child protection literature suggest there is considerable overlap between the essential aspects of mediation and aspects of other child protection processes. For example, contracting, bringing parties together and facilitating communication are social work functions generally (Shulman, 1991) and specifically in the context of child protection work (Maidman, 1984). Solution-focused intervention and case conferencing provided two examples of CPW practices that allowed CPWs to replicate many of the dynamics identified as essential to the mediation process. Although many techniques identified in this study were used both in mediated and non-mediated cases, mediated cases nevertheless stood out in two important ways: (1) the systematic and structured use of process in mediation cases, and (2) the position of neutrality assigned to the mediator (Mayer, 1989).

When a mediator is interposed between a CPW and family members, the mediator assumes responsibility for managing the process of communication and negotiation. The CPW can then focus on how to ensure that the welfare needs of the child are met. This division of responsibilities can have a profound impact on the nature of the discourse between the family and CPW. First, mediation focuses the parties on the best interests of the child, but also helps the CPWs and family members work towards other mutual interests (e.g., to work on a collaborative basis, to avoid having to go to court, and to work towards terminating the CPW's involvement in the family as soon as possible). During mediation, some participants found CPWs still possessed more power than family members, but the CPWs were less apt to use that power in the mediation process. Instead, the parties focused more on the strengths of the family. Mediation is a unifying process that builds on resources within the family rather than replacing them (Eddy, 1992). A CPW is mandated to intervene when a child is in need of protection. This can put the CPW in direct conflict with the family when they disagree about what is in the child's best interests. Because a mediator has no decision-making authority, the

mediator can remain neutral with respect to this issue. Accordingly, the mediator is freed up to help the parties manage their conflict in manners that may be unavailable to CPWs.

The second key distinction between the mediated and non-mediated cases is that CPWs cannot be neutral in terms of decisions that may put a child at risk of maltreatment (Barsky, 1997). Even when a CPW attempts to be fair and open-minded in working through a conflict with the family, the family may perceive the CPW as biased against them. The family's past experience with protective services can also color their view of the current CPW, making it difficult for family members to trust anyone from the agency. The mediator, on the other hand is in a unique position to maintain a neutral stance. The mediator is not only perceived as being neutral, but is also in a better position to provide support to each party. Mediators were able to build rapport with family members even in situations where the family previously had a negative working relationship with the CPW. The mediators were also able to help both CPWs and family members gain better understandings of one another's situations. For CPWs, the mediators were able to help them take a step back from their positions and hear the experiences of the family members on a new level. For parents, the mediators were able to encourage the CPWs to explain their positions and limitations in terms that family members could understand more easily.

The differences between mediation and other child protection processes do not suggest that mediation is an inherently better process in all situations. For instance, mediators were able to build trust in some cases because family members saw them as independent of the child protection system. However, in some of the non-mediation cases, family members did not necessarily want to work with an independent professional. The CPW may have built up a positive working relationship through strategies unavailable to mediators (e.g., advocacy for the family with other systems; familiarity through intensive work over a longer period of time; provision of concrete services; and building trust by following through on successive agreements). Further, some family members wanted an intervenor who would make decisions. They wanted clear-cut solutions more than participation in the decision-making process. In some cases that had gone to court over an extended period, family members were frustrated by the lack of finality. Mediation does not necessarily conclude with an agreement. If the parties did not want or believe that they could come to an agreement, then mediation may not be their optimal choice.

One of the difficulties facing CPWs is how to reconcile their role as "child protection agents" for the state with their role as "helping professionals" for parents and families. On the other hand, parents involved in the child protection system can feel disempowered: not only do the majority come from backgrounds of poverty and other social disadvantages, but they are confronted with an alien system that may be threatening intrusion into the family, court action or even removal of their child(ren) from the home. Accordingly, a mediator needs to be aware of the dynamics of child protection cases in order to be able to assist CPWs with role conflict, and to be able to empower parents in their dealings with CPWs.

Utility for Social Work Practice

While some of the processes identified in this study appear to be intrinsically linked to mediation, others relate to techniques that are directly transposable to child welfare practice. These techniques could be used to improve upon the social work practices of CPWs without the need for an independent mediator. If some of the useful attributes of mediation are replicable by CPWs, then one option would be to train CPWs to incorporate those attributes into their modes of practice. The choice becomes, should mediation be used in order to redress some of the deficiencies of other child protection processes, or should those other processes be reformed in order to build in some of the positive aspects of mediation. As the non-mediation cases illustrated, some of these aspects are already being practiced by CPWs.

Tjaden (1994) and Eddy (1992) acknowledged the benefits of mediation, but noted that there may not be sufficient political support or financing to provide for mediation services. Accordingly, they suggested that many of the elements of mediation can be incorporated into other child protection practices. Eddy (1992) offered a model called a "Negotiation Conference." Lawyers, CPWs and other professionals involved in child protection would be trained in how to be more sensitive to each other's point of view and how to collaborate in problem solving. The parties would follow a standardized protocol for the Negotiation Conference. Under this type of model many of the elements identified as essential to mediation would be incorporated: getting the parties together; focusing the discussion; contracting; developing options; and so on. One of the lawyers would be assigned so-called neutral tasks: for instance, summarizing the case and stating the purpose of the conference as an introduction.

Although this model has many of the attributes of mediation, there are still critical differences. All of the people involved in the conference have prior association and interests in the result of the conference. There is no neutral third party, even if one of the parties is assigned some of the "neutral tasks." This party may not be perceived or trusted to be neutral. Further, the Negotiation Conference model does not envision giving anyone the responsibility for ensuring that the process is fair. Without a mediator, there would be no one to strategically balance power between the parties. Finally, since Eddy's model provides for direct involvement of lawyers, the degree of direct communication between the CPWs and family members would likely be diminished. His negotiation model may be more akin to a pre-trial settlement conference than the model of mediation used by the Toronto Center.

The Negotiation Conference may have certain advantages over mediation. First, this model would eliminate the need to bring another professional into the process. The parties would not have to tell their whole story over again to a new person. The cost of a mediator would be saved. Finally, this model would promote constructive negotiation by specifically training a range of professionals in the child protection process. CPWs and lawyers would be able to use these skills and strategies in all of their work with families. In contrast, when a mediation model is used, training is directed primarily at the mediators. Other participants might learn constructive negotiation skills on a more incidental basis.

Tjaden (1994) suggests that CPWs receive training to improve upon the way in which

they conduct family conferences. Although this approach simulates some mediation approaches, the CPW is not a neutral facilitator. As noted earlier, case conferencing can be a very effective intervention. However, when there is a high level of conflict with the agency or perceptions of agency bias, then it would be extremely difficult for a CPW to act as a mediator.

Proponents for the use of mediation in child protection cases lay strong claims about its desirability in terms of a broad range of outcomes: empowerment, timely settlement, individualized and durable solutions, high levels of participant satisfaction, and so on. Critics question whether child protection mediation puts children at greater risk of maltreatment, imposes social control in an insidious manner, or duplicates the role of a child protection worker. Resolution of such questions, however, depend significantly upon how the process of mediation is defined and implemented. The essential aspects of mediation offered in the present analysis demonstrate some of the positive ways in which mediators can intervene in child protection cases.

In areas where child protection mediation has been implemented, there have been positive levels of satisfaction among parents, CPWs, administrators, lawyers and judges. Although ongoing funding and statutory recognition for child protection mediation are among its greatest challenges, there is certainly a growing interest across North America about how mediation can be applied in child protection cases. Given the proliferation of mediation into more and more areas of social conflict, the development of child protection mediation reflects a larger societal trend towards the use of consensual and collaborative dispute resolution systems.

References

- Barsky, A. E. (1997). Child protection mediation. In E. Kruk (Ed.). Mediation and conflict resolution in social work and the human services. Chicago: Nelson-Hall.
- Barsky, A. E. (1995). Essential aspects of mediation in child protection cases (Doctoral dissertation). University of Toronto Faculty of Social Work, Toronto.
- Bernstein, M., Campbell, J., & Sookraj, N. (1993). Transforming Child Welfare Services in the 90's (Unpublished Paper). Catholic Children's Aid Society of Metropolitan Toronto.
- Campbell, J., & Rodenburgh, M. (1993). Mediation pilot project evaluation (Program Evaluation). Victoria, BC: Ministry of Social Services.
- Denzin, N. K., & Lincoln, Y. S. (Eds.) (1994). Handbook of qualitative research. Thousand Oaks, CA: Sage.
- Eddy, W. A (1992). Mediation in San Diego's Dependency Court: A balancing solution for a system under fire? (Unpublished paper). Univ. of San Diego School of Law.
- Golten, M. M (1986). Child Protection Mediation Project. Denver: CDR Associates.
- Lincoln, Y. S., & Guba, E. G. (1985). Naturalistic inquiry. Newbury Park, CA: Sage.
- Maidman, F. (1984). Child welfare: A source book of knowledge and practice. New York: Child Welfare League of America.
- Mayer, B. (1987). Mediation and compliance in child protection. (Doctoral dissertation, University of Denver). Ann Arbor, MI: U.M.I. Dissertation Services, No.8802810.
- Mayer, B. (1989). Mediation in child protection cases - The impact of third-party intervention on compliance attitudes. Mediation Quarterly, 24, 89-106.
- McCracken, G. (1991). The long interview. Qualitative Research Methods, Series 13. Newbury Park, CA: Sage.
- Morden, P. (1989). Child Protection Mediation Demonstration Project: Proposal to the Children's Aid Society Foundation of Metropolitan Toronto.
- Oran, H., Creamer, J., & Libow, J. (1984). Dependency Mediation Court Project: The first seven months (Evaluation report). Los Angeles: Supreme Court.
- Savoury, G. R., Beals, H. L., & Parks, J. M. (1995). Mediation in child protection: Facilitating the resolution of disputes. Child Welfare, 74, 743-762.
- Seidel, J. V., & Clark, J. A. (1984). The Ethnograph: A computer program for the analysis of qualitative data. Qualitative Sociology, 7, 110-125.

Solnit, A., Nordhaus, B. F., & Lord, R. (1992). When home is no haven. New Haven, CT: Yale University Press.

Thoennes, N. (1994). Child protection mediation in the juvenile court. The Judge's Journal, 33 (1), 14-19, 40-43.

Tjaden P.G.(1994). Dispute resolution in child protection cases. Negotiation Journal, 10 (4), 373-390.