



**Greacen Associates, LLC**

**North Dakota Supreme Court  
Family Mediation Pilot Project  
Evaluation**

**Final Report**

**July 30, 2013**

# Executive Summary

During its initial four and a half years, the North Dakota Family Law Mediation Pilot Project has met its objectives and has not encountered any unintended negative consequences.

With the assistance of the program administrator and the mediators, Greacen Associates has been gathering empirical and impressionistic data on the program over the four and a half year pilot period and has issued three interim reports as well as this final evaluation report. The data show that the program has been successful over its first four and a half years on every measure defined for the program.

## Resolution of disputes by agreement of the parties rather than through litigation

- The parties fully resolved 51% of parenting time disputes during mediation. They reached a partial resolution in an additional 24% of the cases, for a total resolution rate of 75% of the cases.
- The total resolution rate was higher than ten of thirteen other parenting time mediation programs that have been evaluated (twelve in the United States and one in Canada), including many that are voluntary rather than mandatory.
- If one took into account the cases that were fully settled soon after the completion of mediation, the full agreement rate would rise from 51% to 71%.
- The parties agreed to mediate additional issues in 75% of the cases, reaching full agreement on those other issues in 42% of the cases and partial agreement in an additional 27%, for a total resolution rate of 69% of non-parenting time issues.
- The parties rescinded their agreements in only 10% of the cases. The rate of rescission fell during the pilot period and was 9% for the last two reporting periods.

### Getting parents to internalize the “best interests of the child” standard for making decisions

- Eighty-one percent of mediation participants reported that they felt that both parties had been able to put the needs of their children first.

### Improving the ability of divorced parents with children to communicate with each other

- 92% of mediation participants reported that they did a good job representing their point of view
- 31% reported that they learned something new during mediation about their former spouses
- 45% reported that they learned to negotiate with their former spouse more successfully
- 77% reported that the mediation included new ideas for resolving their disagreements

### Reducing post-final decree litigation in the courts

- The average number of post-decree filings per case fell by 86% in the South Central District in cases mediated during the first year of the pilot project compared to cases filed the year before.
- In two other pilot districts, the North East Central and Northwest, the average post-decree filings per case fell by 57% and 49% respectively over cases filed the previous year.
- The average number of post-decree filings for cases in the first year of the pilot program in the Northeast Central and South Central Districts were 50% lower than the comparable numbers for filings for cases during the same year in the East Central and Northwest Districts that were not participating in the pilot program at the time.

### Having litigants leave mediation sessions satisfied with the process

- At the close of the mediation, 87% of mediation participants reported they were overall satisfied with the mediation process
- 93% stated the process was fair to me

- 96% stated the parties were treated equally
- 97% stated the mediator cared about their case
- 99% stated the mediator treated her or him with respect
- There are no statistically significant differences in satisfaction scores for mediation participants based on gender, race, income or education.

Having judges, lawyers and court staff believe that the program was a worthwhile investment of judicial branch resources

- All judges and court staff interviewed in five North Dakota communities in August 2012 strongly supported the parenting time mediation program
- Of the members of the North Dakota family bar who responded to an online survey in 2012, 76% report a favorable experience with the mandatory mediation program.
- Ninety-seven percent of them disagree that litigation is the best way to resolve parenting time disputes. The same percentage report that they encourage their clients to participate in the mediation program.
- Seventy-nine percent believe that mediation provides the participants with improved dispute resolution skills.
- Eighty-five percent of responders believe that parties are more likely to abide by the terms of a mediated agreement than a court order. This percent is up from roughly fifty percent at the commencement of the program.
- Eighty-three percent believe that parties are less likely to come back to court to modify a custody arrangement if it was reached through mediation. This percentage is up from 64% early in the program.
- Seventy-one percent of the respondents are comfortable with the professional quality of the mediators used in the North Dakota mandatory parenting time mediation program.

- Eighty-eight percent of responding attorneys believe that the program reduces the costs to parties by reducing the amount of attorney time required.

Avoiding unintended negative consequences, such as delay in the time required to resolve family law cases as a result of insertion of mandatory mediation into the process

- Mediated cases decided in the first year of the pilot program in the Northeast Central, Northwest and South Central Districts were resolved in 25%, 34%, and 29% less time than cases with contested parenting time issues filed the previous year in the same districts
- Cases mediated during the first year of the pilot program in the Northeast Central and South Central Districts were resolved in 33% less time than cases with contested parenting time issues filed during the same year in the East Central and Northwest Districts in which the pilot program was not in place.
- There is no indication of other unintended negative consequences of the pilot program over its first four and a half years of operation.

Providing access to mediation for persons who could not otherwise afford the services of private mediators, persons who live in remote areas, and to underprivileged and minority persons

- The costs of the mediators for the mandatory mediation pilot program were paid by the North Dakota judicial branch so that all North Dakotans could access this service.
- 53% of mediation participants reported monthly household income of \$3,000 or less.
- Mediated cases arose from 50 of North Dakota's 53 counties, demonstrating that the program reached rural as well as urban residents of the state.
- 60% of mediation participants reported that they did not have a college degree.
- The North Dakota population is roughly 10% minorities. Minorities made up 8.3% of mediation participants.

## Increasing awareness of and promoting the use of mediation of parenting time disputes within North Dakota

- Narrative comments of mediation participants demonstrate their appreciation of having a neutral third party help the parties resolve their disagreements, the mediator's ability to create an environment in which the parties were comfortable expressing their views and feelings, the helpfulness of the mediator's restatement of the parties' views in ways that allowed the other party to understand and appreciate them, the mediator's ability to interject new options and ideas into the negotiations, and the parties' appreciation of having the autonomy to reach their own decisions.
- Mediators report that as understanding of the new process has spread, parties come to mediation with the intention of working out their disagreements rather than fighting.

## Developing ethical guidelines for mediators

- In December 2008, the North Dakota Supreme Court/State Bar Association's Joint ADR Committee developed a draft code of ethics for mediators participating in the pilot project and a draft enforcement process. The code of ethics and enforcement process have been adopted by the North Dakota Supreme Court.

## Identifying and publicizing best practices for parenting time mediation with respect to issues of domestic violence and self-represented litigants

- The pilot program has worked effectively with the domestic violence services community, by involving their members in developing a protocol for screening for domestic violence during the mediation orientation process and by involving them in the training of mediators.
- Mediators have reported the extent to which they perceived an imbalance of power in the mediation (6% of mediated cases) and the steps they have taken to address the situation. Those comments are contained in this report and show a sophisticated response to such issues.
- Those comments show an understanding of safety planning, including keeping the parties in separate rooms.

- 97% of mediation participants reported feeling safe during the mediation.
- The Burleigh County court has developed forms for self-represented litigants and a process for having the court prepare decrees in small claims matters. The Burleigh forms have been made available statewide. Attorneys in a number of districts are providing assistance to self-represented litigants in the preparation of final decrees embodying mediation agreements on a limited scope representation basis at minimal cost.

This final report presents all the information gathered in the course of the four and a half years of this evaluation, analyzes that information, and makes a few final recommendations. The recommendations deal with:

- resolution of a number of legal and operational issues discussed with judges, mediators, and family lawyers during interviews in the summer of 2012;
- our view that there is no reason to continue evaluating this program; and
- our opinion that this evaluation contributes to our national and international understanding of the impact of mandatory mediation programs in family law, urging North Dakota to publicize these results.

Greacen Associates, LLC expresses its thanks to program administrator Cathy Ferderer, Chief Justice Gerald VandeWalle, State Court Administrator Sally Holewa, and to the many judges, court staff, North Dakota state bar leadership, and mediators who contributed their time and insight to this evaluation. Working with North Dakota on this endeavor has been a professional joy.

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# Pilot Project Background

After several years of discussion with the North Dakota bench and bar, in 2007 the North Dakota Supreme Court made plans for and obtained a legislative appropriation to support a Family Mediation Pilot Project.

The court believes that the traditional adversarial process does not necessarily produce the best long term outcomes for contested child parenting time<sup>1</sup> disputes. The parties to these disputes must maintain ongoing relationships for many years as they continue to co-parent their children. Mediation – a process in which a non-judicial neutral mediator facilitates communication between the parties to assist them in reaching voluntary decisions related to their dispute – may produce better short and long term outcomes in contested child parenting time disputes. In the short term, voluntary agreements are more likely to be implemented by the parties than agreements forced upon them by a judge; in the long term, the parents may learn from the mediation process skills that will enable them to resolve future disputes amicably.

Mediation has long been an available alternative for North Dakotans with child parenting time disputes – if they can afford and choose to use the services of private mediators. North Dakota courts incorporate agreements arising from private mediation sessions in court orders. But the courts have not previously had the means to provide mediation services to litigants in lieu of the traditional litigation process.

The mission, purpose and structure of the pilot project are set forth in North Dakota Supreme Court Administrative Order 17, amended effective March 1, 2008 – the start date for the pilot project.

The pilot project’s mission is “to explore a procedure to provide a high quality, impartial, and efficient forum for resolving disputed custody and visitation matters through mediation.” The pilot project’s goal is “to improve the lives of families and children who appear before the court by trying to resolve custody and visitation disputes through mediation in order to minimize family conflict, encourage shared decision-making, and support healthy relationships and communication among family members.”

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<sup>1</sup> Since the first interim report, the North Dakota legislature has adopted the terminology “parenting time” in lieu of the previously used terms “custody and visitation.”

With funds appropriated by the legislature, the North Dakota Supreme Court funds the cost of mediations in family law cases with contested parenting time issues.

Any divorce, separation, paternity, or guardianship case filed in one of the pilot districts in which legal custody, physical custody, or visitation of a child is an issue must be referred by the clerk of court to the pilot project administrator at the Supreme Court within ten days of filing. A judge may refer a post-judgment motion for parenting time modification to the administrator if the judge finds that a prima facie case for relief has been established under N.D.C.C. 14-09-06.6 and determines that mediation may be useful to the parties and the children in the case.

The mediation process is mandatory for cases falling within its scope. Lawyers for represented parties may participate in the mediation process. The pendency of a mediation does not bar a party from obtaining temporary parenting time orders from the court. The parties are expected to continue with the traditional court process if mediation does not succeed.

The following cases are not referred for mediation: cases in which the parties started mediation on their own prior to the commencement of the pilot project, cases in which the parties stipulate to all parenting time matters, and cases in which there is a current domestic violence protection order or other order for protection between the parties. Under limited circumstances, a victim of domestic violence may request that her or his case be included in the mandatory mediation process. The project administrator also excludes cases in which one or more of the parties live outside of North Dakota on the theory that it would be a hardship to require a party to travel from out-of-state to attend a mediation session.

Under Administrative Order 17, the project administrator is to administer the protocol developed for the pilot project, select mediators, assign them to particular cases, obtain information from the mediators on case outcomes, and arrange for an evaluation of the pilot project.

Administrative Order 17 sets forth the following process: The clerk of court notifies the administrator of a case falling within the program parameters. The administrator appoints a mediator, prepares an order for the judge's signature requiring the parties to participate in the mediation process, and sends the signed order when she gets it back from the judge to the parties and mediators. The order requires the parties to contact the mediator and participate in an orientation within 20 days. The mediation is to take place within 90 days, unless the mediator obtains an extension of time from the

court. The pilot project pays for six hours of mediation; the parties may pay the mediator for further services if they desire to spend more time trying to reach an agreement. A fee waiver or sliding scale reimbursement for such additional mediation fees may be available from the Supreme Court upon application by the parties and a showing of financial hardship.

The parties must mediate their parenting time issues. They may mediate other outstanding issues – such as property division – if they wish to do so.

The project administrator has stressed with the mediators that the North Dakota Supreme Court does not consider reaching agreement to be the highest purpose of the pilot project. The Supreme Court instructs the mediators not to pressure the parties into agreements; the Court prefers no agreement to one that will not persist because it was not fully voluntary on the part of the participants.

If the parties reach an agreement during mediation, the mediator puts it in writing – using the parties' own words. Within five business days following the reaching of agreement as a result of mediation, either party may notify the mediator in writing of her or his request to reconsider the decisions made in mediation. Unless the mediator receives such a request, s/he sends a copy of the written summary and conclusion of mediation form to the parties and their attorneys.

The project has been implemented in three stages.

The first phase began on March 1, 2008 with two initial pilot districts – the South Central and Northeast Central Judicial Districts of North Dakota. These two districts include Bismarck and Grand Forks respectively.

The evaluator requested that mediations not begin until baseline attitudinal data had been collected from lawyers and mediators. The project administrator therefore held all mediation orders until that data was collected. The result was that no mediations actually took place until May 2008.

The first interim evaluation report analyzed the experience with the program in the first two pilot districts during the first ten months of the project's life. During that time, the project appointed mediators in 98 cases; 49 of those cases were completed at the time of the first interim evaluation report.

The second phase of the project began on August 1, 2009, when three additional pilot districts were added – the Northeast, Northwest, and Southwest Judicial Districts.

The third phase of the project began on September 1, 2010, when the project was extended statewide to include all Judicial Districts. The Supreme Court concluded that the funding provided for the project would be sufficient to support statewide implementation. In expanding the project to a statewide scope, the Court nonetheless decided that it would maintain its status as a “pilot project” for at least the first two years of statewide program activities. The “pilot project” designation ensured continuing evaluation of the mandatory mediation project.

The second interim report analyzed the experience of the first and second phase courts – the courts of the South Central, Northeast Central, Northeast, Northwest, and Southwest Judicial Districts between January 1, 2009 and February 28, 2010. It also presented the cumulative results for the period March 1, 2008 through February 28, 2010.

The third interim evaluation report covered cases mediated during the period from March 1, 2010 through August 31, 2011 – including the first full year of results from the statewide project scope. It presented the cumulative results for the period March 1, 2008 through August 31, 2011.

This final evaluation report covers the period from September 1, 2011 through August 31, 2012. As with the second and third interim reports, the final report also provides the cumulative project results, in this case covering the four and a half years of project activities from March 1, 2008 through August 31, 2012.

## **Evaluation Design**

As noted above, this is the final project report. It analyzes data for cases in which mediations were completed for the period September 1, 2011 through August 31, 2012 and aggregates that data with the data presented in the first, second and third interim reports. This final project report is intended to serve three purposes:

- To make an overall assessment of the project’s effectiveness;
- To identify any areas in which the operation of the program can be strengthened and make recommendations for improvement; and

- To recommend whether, and if so how, North Dakota should continue to evaluate its mandatory parenting time mediation program.

The evaluation does not include any review of project costs; it focuses exclusively on project effectiveness.

The project administrator and the evaluator agreed upon the following set of pilot project objectives for purposes of the evaluation:

### **Objectives for child parenting time mediation services**

1. To promote resolution of parenting time disputes by agreement between the parties rather than through litigation
2. To improve parental decision making as it affects their children, i.e., getting the parents to internalize the “best interests of the child” standard for making such decisions
3. To improve the ability of divorced parents with children to communicate with each other
4. To reduce post-final decree litigation in the courts
5. To have litigants leave mediation sessions satisfied with the process
6. To have judges, lawyers and court staff believe that the mediation program has been a worthwhile investment of judicial branch resources
7. To avoid unintended negative consequences of the mandatory mediation program, such as
  - a. delay in issuing temporary or permanent custody and visitation orders, leaving families “in limbo” longer
  - b. creating an incentive for lawyers’ strategic games, such as “mediator shopping” to obtain a mediator perceived to be more sympathetic to persons like the lawyer’s client
  - c. the imposition of unnecessary “boilerplate” parenting time order provisions as a result of standard language included in mediation agreements or mediator recommendations to the judge
  - d. reducing the use of private mediation because of the availability of publicly funded mediation by court contract mediators
8. To provide access to mediation for persons who cannot otherwise afford the services of private mediators, persons who live in remote areas, and to underprivileged and minority persons

## **Objectives for the pilot project as a culture change intervention**

9. To increase awareness of, and promote the use of, mediation to resolve parenting time disputes - for instance, by informing family law litigants, lawyers and the community that mediation:
  - a. allows litigants to maintain control over the outcome of the dispute, and
  - b. gives them maximum flexibility to develop a resolution appropriate to their personal needs and circumstances
10. To develop ethical guidelines for mediators
11. To identify, record and publicize best practices for child custody and visitation mediation, including
  - a. how to work effectively with the domestic violence services community,
  - b. how to ensure that the mediation process is not distorted by the presence of domestic violence in the relationship between the parents,
  - c. how to ensure the personal safety of litigants during the mediation process when there has been a history of domestic violence in the relationship (for instance, by conducting the mediation by "shuttle diplomacy" so that the litigants do not come into visual or physical contact with each other), and
  - d. how to ensure that the policies and approaches of the mediators are aligned with the policies and approaches of the judges and with those of court personnel who provide services to self-represented litigants.

The evaluation design uses both before and after and control group comparisons to assess the effectiveness of the pilot project in achieving these objectives. The North Dakota Supreme Court has obtained data from pre-pilot project cases in the first two pilot districts and one of the three second phase pilot districts and data from two non-pilot districts from the same time period as the first two pilot projects for comparison purposes.

## **Project data**

This final project report is based on the following data:

- Attitudinal and demographic data from litigants completing mediations in 1088 of the initial 1123 cases accepted into the pilot project. Of these cases, 49 were from the first interim report, 173 from the second interim report, 471 from the third reporting period, and 422

from the final twelve month period. We have received information for 441 new cases for the fourth reporting period – more than the number of mediations completed during that time. It is clear that mediators provided information during this period on cases completed previously.

Ideally, each case should include a “mediator’s report” containing information on the characteristics of the litigants and on the outcomes of the cases and a two page survey completed by each of the two mediating parties. In reality, 67 cases lack all three of these documents; information from these cases comes exclusively from the project administrator’s log.

The numbers of cases and surveys for the whole evaluation are shown in the table below:

**Data Used in This Report**

<b>Data Type</b>	<b>First Reporting Period March 1, 2008 to December 31, 2008</b>	<b>Second Reporting Period January 1, 2009 to February 28, 2010</b>	<b>Third Reporting Period March 1, 2010 to August 31, 2011</b>	<b>Fourth Reporting Period September 1, 2011 to August 31, 2012</b>	<b>Total Project Period March 1, 2008 to August 31, 2012</b>
<b>Cases Accepted into Project</b>	<b>98</b>	<b>213</b>	<b>546</b>	<b>456</b>	<b>1313</b>
<b>Mediations Completed</b>	<b>49</b>	<b>182</b>	<b>471</b>	<b>422</b>	<b>1123</b>
<b>Mediations with 0 surveys</b>	<b>0</b>	<b>37</b>	<b>82*</b>	<b>32</b>	<b>151</b>
<b>Mediations with 1 survey</b>	<b>10</b>	<b>23</b>	<b>76</b>	<b>51</b>	<b>160</b>
<b>Mediations with 2 surveys</b>	<b>39</b>	<b>113</b>	<b>268</b>	<b>358</b>	<b>778</b>
<b>Total number of cases included in evaluation</b>	<b>49</b>	<b>173</b>	<b>425*</b>	<b>441</b>	<b>1088</b>
<b>Total number of surveys included in evaluation</b>	<b>88</b>	<b>251</b>	<b>612</b>	<b>766</b>	<b>1717</b>

\* Data from the third reporting period has been adjusted.

We have no explanation for the discrepancy in the total number of surveys in the combined database compared with the numbers reported for the four separate reporting periods.

- A log of case information maintained by the project administrator showing the district, county, mediator name, mediation outcome, dates on which mediation information reports were provided by the courts and on which the mediations were completed, and number of elapsed days from filing to closing of the underlying family law case, and the number of times a project case has been reopened as a result of a petition to modify some term of the original court judgment. This data has proved invaluable as the source of information on cases for which the mediators provided no information and is the source of the information used in assessing the timeliness of mediation completion and the frequency of reopening of mediated cases.

This report also analyzes data collected for both “before” and “after” and “experimental” and “control” comparisons of average time to disposition and likelihood of reopening a case. The Northwest District serves both as a “control” for the first two pilot project implementations and as a “before” and “after” site when it was added as one of the three second tier pilot project districts.

The “after” data consists of data for all cases referred to mandatory mediation for three of the pilot districts during the first year of the project’s operation (March 1, 2008 to February 28, 2009 for the Northeast Central and South Central Districts and August 1, 2009 to July 31, 2010 for the Northwest District). The “before” data consists of all family cases involving contested parenting time issues filed during a full year prior to the beginning of the pilot project in those same three districts (between March 1, 2007 and February 29, 2008 in the first two districts and between March 1, 2008 and February 28, 2009 in the Northwest District).

The “experimental” data is the same data for the first year of operation of the Northeast Central and South Central pilot programs. The “control” data consists of all family cases involving a contested parenting time issue filed in the East Central and Northwest Districts during the first year of operation of the pilot project (March 1, 2008 to February 28, 2009) – a time period in which neither district participated in the mandatory mediation process. It appears that family law attorneys in Fargo (the major city in the East Central District) typically do not file their divorce cases until all matters have been resolved by the parties. This practice is not the norm in the rest of the state. The existence of this practice means that average time from filing to disposition of family cases in Fargo should be much shorter than in the original pilot districts. The analysis of the “experimental” and “control” district comparison shows that – despite the existence of this different



attorney practice – the average time to disposition for the pilot project cases is substantially shorter than in the East Central District during the same time period.

It has proved necessary to add data entry fields and codes to the North Dakota UCIS case management information system to support this data collection effort. It has also proved necessary for the project administrator to retroactively enter data for pilot project cases from March 1, 2008 to the date the new fields and codes were added to UCIS and to enter that data for all pre-pilot cases in the pilot districts. All three of these tasks have been completed and the data provided for this report.

This final project report also includes interview data from judges, lawyers, court staff, and mediators. Survey data from all four sources was collected before the pilot project began in early 2008 and again after the pilot project had been in place for ten months. A follow up survey of members of the family law bar was conducted by email in September 2012. The results of that survey are compared with the previous two family bar surveys. Greacen Associates has been able to meet with judges, court staff, mediators, and lawyers five times in the course of this evaluation – twice in 2008, once in 2009, 2010, and 2012. The results of the last set of interviews are included in this report. The earlier interviews are summarized in interim evaluation reports.

The evaluation design included telephone interviews with mediation participants six months after their mediation sessions. Parties to divorces are a highly mobile population; it has proved difficult to locate and obtain telephone numbers for mediation participants six months after the completion of the mediation. North Dakota court staff abandoned the effort to obtain this telephone follow up information.

## **A statistical note**

We have computed measures of statistical significance for some of the differences identified in this report. This is a standard research practice to report the likelihood that an observed difference is a true difference in the population and not the result of random chance based on the sample of cases from which the data were drawn (i.e., a statistical aberration). Tests of statistical significance take into account such factors as the size of the difference observed, the number of cases on which it is based, and the extent of variation within the data. The standard convention is to give credence to observed differences and report them as statistically significant

only if there is less than a 5% likelihood that the difference is the result of a statistical aberration (expressed as a p-value which will be considered statistically significant when less than .05). That is the standard we use throughout the report. The results are reported in footnotes throughout the text.

## **Project Accomplishments**

After four and a half years of operation, the Family Mediation Pilot Project has accomplished a number of tasks.

### **Development of protocol and program materials**

The North Dakota Supreme Court Office of State Court Administrator hired a full-time project administrator who finalized a project protocol and procedures for administering the project.

### **Recruitment of mediators**

The project administrator, through a process involving applications and interviews, selected over two dozen mediators to provide mandatory mediation services for the five pilot districts and then recruited additional mediators to provide statewide mediation services. Several of the mediators have agreed to deliver mediation services outside of the districts where they reside or maintain their offices – at the courthouse or at some other location convenient to the parties. This flexibility on the part of the mediators has proven extremely valuable in ensuring the delivery of services in all cases accepted into the project.

### **Recruitment of evaluator and development of evaluation methodology**

The Office of State Court Administrator chose Greacen Associates, LLC to perform the evaluation. The project administrator worked with the evaluator to develop survey instruments and data collection protocols for collection of survey information from lawyers, mediation providers, judges, court staff, and participants in mediation.

The project administrator and evaluator met with Office of State Court Administrator's information technology staff and clerical staff from the pilot districts and worked out changes to the UCIS system needed to enter data needed to support the evaluation design.

The evaluation contract has been amended to incorporate the additional evaluation period produced by the decision of the North Dakota Supreme Court to maintain the project’s “pilot” status through the end of August, 2012 – including the first four and a half years of statewide implementation.

## **Training of mediators**

The project has provided a day long training session for all project mediators which included extensive training in domestic violence identification, techniques for dealing with likely victims who chose not to reveal the violence explicitly, and safety planning for these situations. All mediators were provided with a screening tool for use during orientation with potential mediation participants to identify domestic violence victims. The training session also covered the history of the project, project objectives and procedures, the project evaluation design, and data gathering required of the mediators.

The project administrator has provided this same training for mediators added for the expansion of the project to three additional districts in August 2009 and to the rest of the state in November 2010.

## **Identification of cases and preparation of referral orders**

The project administrator received 2139 case referrals from the pilot districts during the first four and a half years of the pilot project. The table below shows that 39% the cases referred were rejected because they contained disqualifying characteristics; this proportion has not varied significantly during the course of the pilot project. As of the end of August 2012, mediations were completed in 1123<sup>2</sup> of the 1313 (86%) cases accepted into the project.

### **Pilot Project Cases – March 1, 2008 through August 31, 2012**

Total cases referred from pilot districts		2139
Cases rejected		826
Custody issues settled prior to mediation	343	
Existence of domestic violence restraining order in case record or domestic violence issues identified	220	

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<sup>2</sup> Second mediations were conducted in a number of cases. Frequently the parties will return for a second or further session with the mediator; this is not considered a separate mediation. But when a further mediation addresses a new dispute in the same case, it is considered a separate mediation.

One party resides outside of North Dakota	142	
Default divorce	69	
One party incarcerated	17	
Mediation attempted prior to filing divorce action	14	
Miscellaneous	21	
Cases accepted into pilot project		1313
Evaluations completed as of August 31, 2011		1123 <sup>3</sup>
Cases dropped from mediation		98
One or both parties did not comply with order	69	
Parties reconciled	29	
Cases open as of September 1, 2012		92

## **Modification of UCIS case management information system to record needed data**

The North Dakota Office of State Court Administrator completed the data base modifications needed to support the required additional fields and data entry codes by the summer of 2008. The project administrator circulated a memorandum informing court staff of the changes and the procedures to be used to enter data about future cases.

## **Entry of data from cases from project start date to effective date of UCIS modifications**

It was necessary for the project administrator to travel to the courthouses in all fourteen counties in the two pilot districts to retroactively enter the data needed for the pre-pilot comparison for this second interim evaluation and to the courthouses in the two comparison districts for the same purpose.

## **Modification of new case management information system to accommodate the needs of the mandatory mediation project**

The North Dakota judiciary has procured the Odyssey case management information system supplied by Tyler Technology. The court system has required the vendor to make modifications to its basic product to support the

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<sup>3</sup> The only information we have on 67 of these cases is that contained in the project administrator's spreadsheet of all project cases. Because of a lack of information, we have not included those cases in our analyses, except for the analysis of time required to complete mediations.

pilot project. One significant enhancement has been the development of a daily report that the project administrator can run to identify all newly filed divorce and other cases involving parenting time disputes. Production of this report gives her the information needed to initiate the mediation process without requiring the submission of information reports from the individual courts.

The Odyssey system has now been installed throughout the state.

## **Conduct of mediations**

The mediators completed 1123 mediations in the first four and a half years of the project's life. Sixteen of them have been second mediations in the same case.

## **Development of a code of ethics and enforcement process**

The North Dakota Supreme Court/State Bar Association's Joint ADR Committee developed a draft code of ethics for mediators participating in the pilot project and a draft enforcement process. In December 2008, the Committee determined the codes ready for submission to the SBAND Board of Governors for review and comment, and then final submission to the Supreme Court.

The ethics code and enforcement process have been approved by the North Dakota Supreme Court.

## **Data Concerning Completed Mediations**

Mediations have been completed in all seven judicial districts and in 50 of North Dakota's 53 counties. The table below shows the distribution of cases for which we have information in the form of a mediator's report or one of more surveys. For the first three evaluation reports, we accepted the information provided by mediators concerning the district and county of the mediation. For the fourth reporting period and for the cumulative project totals, we have recoded the data to reflect the county and district in which the case was filed. The result is that the data for the four reporting periods do not sum to the cumulative project totals. But the cumulative project totals accurately reflect where each of the cases for which we have detailed information originated, not necessarily where the mediation itself actually took place.

**Distribution of Completed Mediations by District and by County**

District/County	Initial Reporting Period	Second Reporting Period <sup>4</sup>	Third Reporting Period	Fourth Reporting Period	Cumulative Pilot Project to Date <sup>5</sup>
<b>South Central</b>	<b>24</b>	<b>75</b>	<b>83</b>	<b>71</b>	<b>254</b>
Burleigh	20	55	82	54	195
Emmons				1	1
Grant		1			3
Kidder				1	1
Logan				1	1
McIntosh		1			2
McLean		1			5
Mercer				3	3
Morton	3	14	1	11	39
Oliver		2			2
Sheridan		1			1
Sioux	1				1
<b>Northeast Central</b>	<b>25</b>	<b>81</b>	<b>122</b>	<b>83</b>	<b>299</b>
Grand Forks	23	81	122	82	296
Nelson	2			1	3
<b>Northeast</b>		<b>12</b>	<b>31</b>	<b>38</b>	<b>115</b>
Benson		1	1	2	9
Bottineau		2	2	2	9
Cavalier				1	8
McHenry			1	4	6
Pembina		5	3	3	18
Pierce			1		2
Ramsey		1	10	15	30
Ransom				4	7
Renville			1		1
Rolette		1	1		2
Towner		1		1	4
Walsh		1	11	10	27
<b>Northwest</b>		<b>3</b>	<b>63</b>	<b>61</b>	<b>111</b>
Burke					2
Divide			1		1
McKenzie			2	3	6
Montrail				3	5
Ward		3	51	39	78
Williams			5	16	19
<b>Southwest</b>		<b>2</b>	<b>26</b>	<b>31</b>	<b>62</b>
Adams					2
Bowman				2	5

<sup>4</sup> The project administrator's records show ten more cases completed during this time period than were included in this data from our second interim report.

<sup>5</sup> This column shows only the cases for which we have information from a mediator's report. It is lacking 67 cases for which we do not have a report.

District/County	Initial Reporting Period	Second Reporting Period <sup>4</sup>	Third Reporting Period	Fourth Reporting Period	Cumulative Pilot Project to Date <sup>5</sup>
Dunn				1	1
Golden Valley				1	1
Stark		2	25	27	53
East Central			65	101	151
Cass			65	99	147
Steele				1	2
Traill				1	2
Southeast			33	56	96
Barnes				4	6
Dickey			1	2	3
Eddy				2	2
Foster			5	2	4
Griggs			1	2	3
Lamoure				3	3
Ransom				4	7
Richland				7	11
Sargent				2	4
Stutsman			24	25	48
Wells				3	4

Over the first three and a half years of the project, 63.5% of the completed mediations took place in the Northeast Central and South Central districts – the first two pilot districts. During the third reporting period, only 48.5% of the mediations were conducted in these two districts. During the fourth reporting period, 50.8% of the mediations came from those two districts. So half of the mediated cases for the last two reporting periods arose from the other five districts – showing that the project has successfully transitioned to a statewide effort.

At the time of the first interim report, there were 12 active mediators. Our current records contain entries for 30 mediators. Twenty-three of them completed cases during the fourth data collection period.

The completed cases were not equally distributed among the mediators during the fourth reporting period nor for the pilot project as a whole. During the fourth reporting period, the most active mediator completed 36 cases. Another completed 34 cases, a third completed 33 and a fourth completed 30. Six completed between 20 and 29. Eleven completed between 10 and 19. Two had fewer than 10.

For the full four and a half year period, three mediators had over 80 completed mediations (89, 85, and 84 respectively). Eight had between 40

and 59. These top eleven mediators were responsible for 62% of the completed mediations. Twelve completed between 20 and 39 mediations. Seven had fewer than 20 completed mediations.

At the time of the first interim report, the mediator’s report did not ask mediators to divide the time they spent on a case between the time required for orientation and the time required for mediation. The median total time was close to 4 hours and the average time was 4.3 hours.

During the remaining three reporting periods, mediators reported both the time required for orientation and the time required for mediation. The next table shows the data for the second, third and fourth reporting periods and for the pilot project as a whole (less the first reporting period). The data is remarkably consistent across the life of the project, with orientations taking about 45 minutes for each party and an hour and a half for each case and the mediations themselves taking an average of three and a quarter hours. The entire process was completed in an average of four and three-quarters hours compared to the program maximum allotted time of six hours. The experience of the project shows that the six hour time allocation is adequate to complete the vast majority of cases.

**Orientation and Mediation Times Over the Life of the Pilot Project<sup>6</sup>**

	<b>Second Reporting Period March 1, 2008 to February 28, 2010</b>	<b>Third Reporting Period March 1, 2010 to August 31, 2011</b>	<b>Fourth Reporting Period September 1, 2011 to August 31, 2011</b>	<b>Pilot Project Total</b>
<b>Orientation</b>				
Average time required	1 hr 32 mins	1 hr 31 mins	1 hr 27 mins	1 hr 29 mins
Half completed within	1 hr 30 mins	1 hr 30 mins	1 hr 24 mins	1 hr 30 mins
Shortest	30 mins	30 mins	0 mins	0 mins
Longest	3 hrs	3 hrs 48 mins	3 hrs 30 mins	3 hrs 48 mins
<b>Mediation</b>				
Average time required	3 hrs 12 mins	3 hrs 16 mins	3 hrs 17 mins	3 hrs 16 mins
Half completed within	2 hrs 45 mins	3 hrs	3 hrs	3 hrs
Shortest	0 min	15 mins	18 mins	0 min
Longest	12 hrs	12 hrs	9 hrs 12 mins	12 hrs
<b>Combined average times</b>	4 hrs 44 mins	4 hrs 48 mins	4 hrs 44 mins	4 hrs 45 mins

<sup>6</sup> This data was not collected for the first 49 cases in the evaluation. We are missing data on orientation time in an additional 106 cases and on mediation time in an additional 77 cases.



Case type was reported for 815 of the 840 cases included in our analysis. The data for the second, third, and fourth reporting periods, and for the pilot project as a whole, are shown in the next table.

**Distribution of Mediations by Type of Case from Which They Arose**

Case Type	Second Reporting Period March 1, 2008 to February 28, 2010	Third Reporting Period March 1, 2010 to August 31, 2011	Fourth Reporting Period September 1, 2011 to August 31, 2012	Pilot Project Total
Initial divorce proceeding	39%	56%	49%	52%
Custody not arising out of pending proceeding	9%	20%	23%	19%
Post judgment modification request	34%	16%	19%	19%
Paternity	18%	8%	10%	10%
Guardianship	0%	0.2%	0%	0.1%

Only slightly more than half of the project’s mediations arise from initial divorce proceedings. Post-judgment proceedings initially produced a third of the mediations; they now account for only a fifth. Custody matters not arising out of a pending proceeding have been rising steadily as a source of mediations. We believe that this reflects the consistent reports from judges, mediators and family law practitioners that the number of “never married” cases has been rising dramatically during the past few years. Because the parties were never married, they do not file for divorce; if there is not dispute concerning paternity, they are not filing paternity actions.

## **Data Concerning Mediation Participants**

In our third interim evaluation report we expressed concern about the falling rate of survey completion. During that period, there were an average of 1.31 surveys per completed mediation, compared to 1.45 during the second reporting period and 1.80 during the first reporting period. The project focused attention on this issue, with dramatic effect; during the fourth reporting period there were an average of 1.74 surveys per completed mediation. For the total four and a half year period, we have an average of 1.58 surveys per completed mediation. This corresponds to a 79% response rate for surveys over the course of the project (1717 out of a possible 2176 from 1088 mediations) – a quite high rate of response which allows us to express a high level of confidence in the validity of the data reported from those surveys.

Each survey asked for demographic data on the participant. Most participants provided the requested information. We present the demographic data for all 766 completed litigant surveys from the fourth data gathering period, compare it with the data from the first three data gathering periods, and show the total information for the pilot project as a whole.

Half of the respondents from the fourth reporting period were female (50.6%); half were male (49.4%). For the full four and a half year data set, out of 1700 responses, 17 more were completed by women than by men. It is clear that the survey data represents a balance between the views of men and women.

The age of persons responding to the surveys is shown in the following table, for the four separate time periods and for the full four and a half year period of the pilot project.

**Age of Mediation Participants<sup>7</sup>**

<b>Age Category</b>	<b>First Reporting Period (10 months)</b>	<b>Second Reporting Period (14 months)</b>	<b>Third Reporting Period (18 months)</b>	<b>Fourth Reporting Period (12 months)</b>	<b>Pilot Project Total (54 months)</b>
<b>18-24</b>	<b>15%</b>	<b>12%</b>	<b>13%</b>	<b>14%</b>	<b>14%</b>
<b>25-34</b>	<b>37%</b>	<b>41%</b>	<b>43%</b>	<b>46%</b>	<b>44%</b>
<b>35-44</b>	<b>34%</b>	<b>36%</b>	<b>31%</b>	<b>30%</b>	<b>32%</b>
<b>45-54</b>	<b>13%</b>	<b>9%</b>	<b>11%</b>	<b>8%</b>	<b>10%</b>
<b>55 and over</b>	<b>1%</b>	<b>1%</b>	<b>1%</b>	<b>1%</b>	<b>1%</b>

Over the life of the project, the percentage of mediation participants in the 25-34 age group has grown, while the percentages of participants in the 35-44 and 45-54 age groups have fallen. Three-fourths of mediation participants are between the ages of 25 and 44.

Almost half of the mediated cases have involved an only child. The data is shown below. Eight cases reported no children; they are likely to be grandparent visitation or guardianship cases. Because the data was coded differently by our staff during different reporting periods we are unable to provide a final column displaying pilot project total data.

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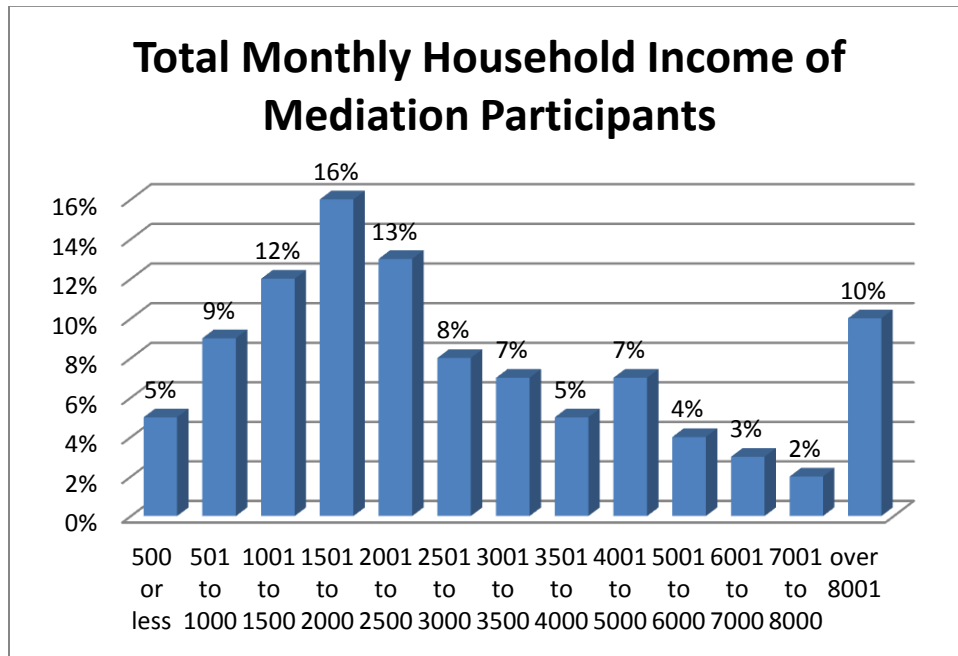
<sup>7</sup> Two questionnaires were completed by persons under the age of 18 and one by a person older than 65.

**Number of Children in Mediated Cases**

Number of Children	First Reporting Period (10 months)	Second Reporting Period (14 months)	Third Reporting Period (18 months)	Fourth Reporting Period (12 months)
1	55%	45%	46%	49%
2	32%	36%	34%	32%
3	6%	11%	14%	14%
4	4%	7%	4%	3%
5 or more	2%	-	1%	2%

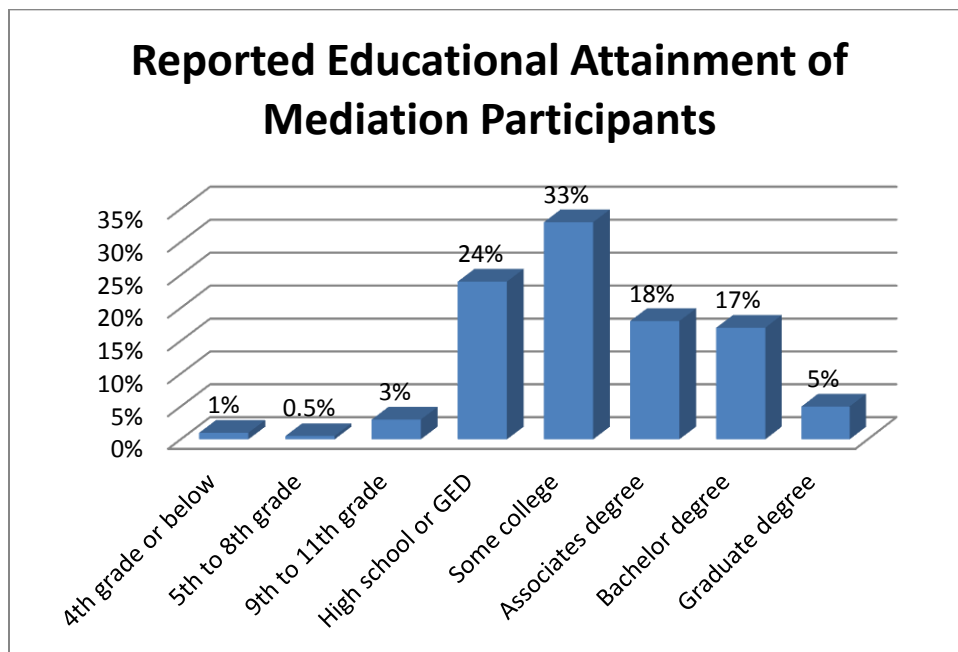
One of the project goals is to make mediation more widely available to rural North Dakota residents. It is clear from the county-by-county distribution of completed mediations reported previously that mediation is reaching rural county residents. The pilot project now includes cases from 50 of North Dakota’s 53 counties.

Mediation participants report a wide range of total monthly household income. The survey instrument defined this term to include all income sources, including child support, before taxes. The data reported by participants completing surveys during the full pilot project period is displayed on the chart below. The income distribution for the full four and a half year period is very close to the distribution for the fourth reporting period.



The data shows that the pilot project is making mediation available to many North Dakotans of low or limited means. Sixty-four percent of mediation participants during the pilot project period reported making \$3,000 per month or less. However, it is not surprising that there are significant numbers of participants who could afford to pay for these services. However, in our view, it is entirely appropriate for the court to provide these services on an equal basis to all North Dakotans, regardless of income.

Educational levels of participants are shown in the next table. This data tends towards the middle values, not the extremes. Seventy-five percent of mediation participants have high school, some college, or an associate’s degree. Four percent have less than a high school diploma or GED. Twenty-two percent have a bachelor’s or graduate degree. There has been very little change in this data over the four and a half years of the pilot project.



During the fourth reporting period, 91% of the participants reported their race as White, 3.3% as American Indian, 1.8% as African American, 3.2% as Hispanic, and 3.8% as “other.” Half of the “other” category identified themselves as Asian, the other half as “some other” (which often signifies a mixed racial background).

The table below shows the relative percentages of members of different racial and ethnic groups among mediation participants over the total pilot project period compared with the North Dakota population in general.

**Percentages of Race and Ethnicity Reported by Mediation Participants  
Over the Total Pilot Project Period<sup>8</sup>**

	White	American Indian	Black	Hispanic	Other
<b>North Dakota 2010 census</b>	<b>90.0%</b>	<b>5.4%</b>	<b>1.2%</b>	<b>2.0%</b>	<b>2.8%</b>
<b>First 10 months</b>	89.4%	8.2%	0%	2.3%	2.3%
<b>Next 14 months</b>	92.0%	4.4%	2.0%	2.0%	1.6%
<b>Next 18 months</b>	93.6%	3.8%	0.7%	2.6%	2.3%
<b>Most recent 12 months</b>	91.0%	3.3%	1.8%	3.2%	3.8%
<b>Total pilot project</b>	<b>92.7%</b>	<b>3.9%</b>	<b>1.3%</b>	<b>2.8%</b>	<b>2.0%</b>

The 2010 census data shows that North Dakota has 10% minority population. The percentage of mediation participants varied among the four reporting periods from 6.4% to 10.6%. For the pilot project as a whole, 8.3% of mediation participants are from minority groups. It is clear that the pilot project is reaching significant numbers of minority North Dakotans, even though the numbers are not quite proportional to the 2010 census report. The table shows three trends over the past four and a half years of the project. Mediation is serving proportionately fewer American Indians and proportionally more Hispanics and persons of “other” races.

Only six participants over the four and a half year pilot project period reported a primary language other than English; only one of them reported that language was Spanish. This statistic calls into question the responses to the survey question concerning the difficulty of proceeding without an interpreter. Twenty-four respondents (over four and a half years) answered that they had difficulty participating because an interpreter was not present. Yet only six persons reported a primary language other than English.

We ask the mediators to report whether the person filling out a survey form is the plaintiff/petitioner or the defendant/respondent in the court action giving rise to the mediation. Over the full period of the pilot project, 50.8% completing surveys were plaintiff/petitioners and 49.2% defendant/respondents. Women are more likely to be petitioners (58% versus 42%) and men more likely to be respondents (57% versus 43%).<sup>9</sup>

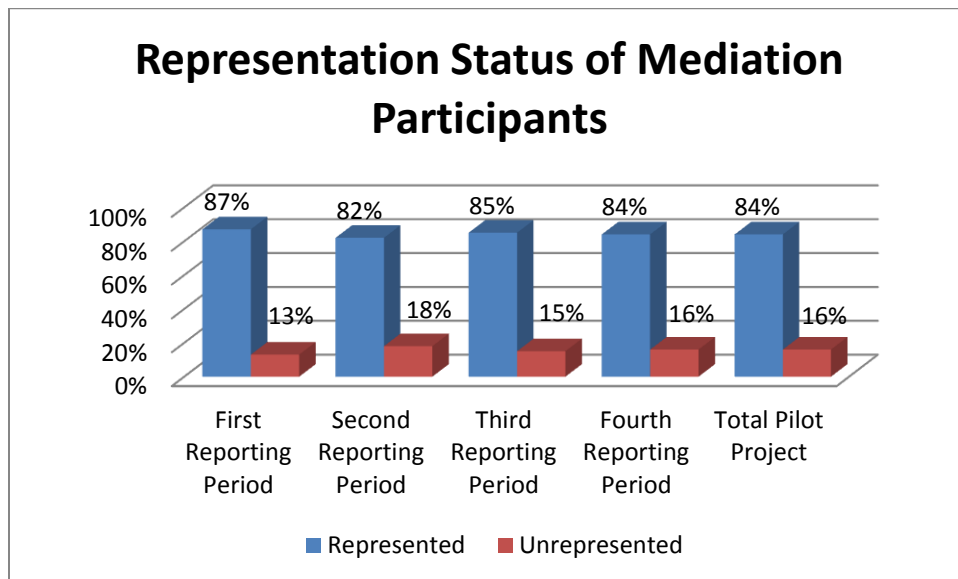
We also ask the mediators to indicate whether a mediation participant is represented by counsel at the time of the mediation. During the fourth

<sup>8</sup> These numbers sum to more than 100%. Our questionnaire used the method used by the US Census Bureau, which treats Hispanic as an ethnicity, not a race, e.g., there can be White Hispanics and Black Hispanics. So the racial categories add up to 100%, to which the percentage of persons identifying themselves as Hispanic is added.

<sup>9</sup> This difference is statistically significant;  $p < .0005$ .

reporting period, mediators provided that information for 79% (602 of 766) surveys. For the surveys for which mediators provided the information, 83.9% of the mediation participants were represented by counsel. Over the whole period of the pilot project, 84.1% of the participants for which we have data (1360 of 1717 surveys) reported that they had a lawyer.

In many other states more than half of persons responding to this question in family law cases would be unrepresented, with the percentage of unrepresented persons increasing over time. The data for contested custody cases in North Dakota does not follow this national trend. Self-representation is used in only 16% of North Dakota cases involving custody disputes and the percentage has not changed to any significant extent over the course of the pilot project. Judges and court staff report that self-representation is on the rise in North Dakota; that may be the case for divorce cases without children.



## Data Concerning Success in Reaching Agreement through Mediation

Under the terms of Administrative Order 17, parties must mediate their parenting time issues. They may also agree to mediate other issues in the case. The data for the first four and a half years of the program show that the parties are agreeing to mediation of other issues in 75% (815 of 1088 cases). The rate during the first two reporting periods was 59% (131 of 222). It increased dramatically to 81% (345 of 427 cases) during the third

reporting period and dropped slightly to 77% (339 of 441 cases) during the fourth reporting period.

The project administrator has stressed with the mediators that reaching agreement is not the highest objective of the pilot project. This is a critically important principle for the North Dakota mandatory mediation program. In programs elsewhere in the country where agreement rates have been stressed as the program’s paramount objective, mediators have been reported to use what many observers would consider to be coercive tactics to obtain agreement.

Despite North Dakota’s de-emphasis on agreement, initial outcomes compare favorably with those in other jurisdictions that have evaluated family court mediation programs.

The table below shows agreement rates for the first, second, third and fourth data gathering periods and for the full pilot project period. Overall, roughly half of all cases reach full agreement, one quarter reach partial agreement, and the other quarter reach no agreement. There are no significant trends in the data over the four reporting periods. Even though the proportion of cases in which the parties agreed to mediate other issues increased over the life of the pilot project, the agreement rates stayed relatively consistent. It remains the case – and a very positive sign for the program – that the full agreement rates for the mandatory aspect of the program are higher than those for the voluntary component. One would suspect the opposite – that the parties would be more likely to reach agreement on the issues they volunteer to mediate than on those they are forced to mediate.

**North Dakota Mediation Agreement Rates<sup>10</sup>**

	<b>First Reporting Period March 1, 2008 to December 31, 2008</b>	<b>Second Reporting Period January 1, 2009 to February 28, 2010</b>	<b>Third Reporting Period March 1, 2010 to August 31, 2011</b>	<b>Fourth Reporting Period September 1, 2011 to August 31, 2012</b>	<b>Total Project Period March 1, 2008 to August 31, 2012</b>
<b>Full agreement on parenting time</b>	54%	56%	50%	51%	51%
<b>Partial agreement on parenting time</b>	25%	14%	26%	24%	24%
<b>No agreement on parenting time</b>	21%	30%	24%	25%	25%

<sup>10</sup> Mediation outcome was not reported on 25 of the 1088 completed cases.

	First Reporting Period March 1, 2008 to December 31, 2008	Second Reporting Period January 1, 2009 to February 28, 2010	Third Reporting Period March 1, 2010 to August 31, 2011	Fourth Reporting Period September 1, 2011 to August 31, 2012	Total Project Period March 1, 2008 to August 31, 2012
Full agreement on other issues	42%	43%	44%	39%	42%
Partial agreement on other issues	22%	22%	26%	29%	27%
No agreement on other issues	36%	35%	30%	32%	31%

There are instances in which the parties do not reach agreement at the time of the mediation but, based on the progress made during the mediation in resolving all but one or two issues, reach agreement soon thereafter. The project administrator has kept track of the number of such cases – 30 during the first two years of the project, 73 during the third reporting period, and 109 in the final reporting period. These “settled” cases constitute 20% of the total number of mediated cases. If these cases were treated as full agreement cases, the full agreement rate for the full four and a half years of the pilot project would be 71%.

Under the terms of Administrative Order 17, either party may rescind a mediated agreement within five days by notifying the mediator. This provision gives the parties an opportunity to obtain the advice of counsel on a mediated agreement and nullify it based on that advice or time to reconsider the agreement themselves. Beginning with the second data reporting period, we asked mediators to report the number of agreements rescinded. There is some ambiguity in the data reported. Mediators were asked to answer “yes” or “no” to the statement “Agreement rescinded by one or more of the parties.” No answer was provided in 311 of the 1088 cases in the evaluation (29%). If lack of response to this item were interpreted as “no rescission,” the rescission rate for the project would be lower (7% versus 10%). However, sound research methods do not attribute meaning to missing information. We have consistently used the higher rescission rate in our reports.<sup>11</sup>

The reported rescission rate was 15% for the second reporting period, 9% for the third and fourth reporting periods and 10% over the full four and a half years of the pilot project.

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<sup>11</sup> The principal impact of this decision occurs with mediator-specific data, where failure to report information results in much higher rescission rates for some mediators.



We have gathered data from other mediation program evaluations. It is presented in the next table, together with North Dakota’s data. Despite North Dakota’s de-emphasis on agreement as the ultimate objective of the mediation program, its agreement rates are extremely high when compared to those in other states and programs.

**Comparative Agreement Rates Following Family Case Mediation<sup>12</sup>**

Jurisdiction	Date of Study	Mandatory/ Voluntary	Full Agreement	Partial Agreement	Combined Full and Partial
Ventura, CA <sup>13</sup>	August 2007	Mandatory	55%	40%	95%
District of Columbia	1992	Voluntary	80%		80%
Charlottesville, VA	1989	Mandatory	77%		77%
North Dakota Pilot Project	2011	Mandatory	51%	24%	75%
North Carolina	2000	Not Known	74%		74%
James City County, VA	2001	Voluntary	72.4%		72.4%
Winnipeg, Canada	1988	Voluntary	65%		65%
Orange County, CA	February 2007	Mandatory			62%
Montreal, Canada	1988	Voluntary	58%		58%
California	2003	Mandatory	44%	8%	52%
San Bernardino, CA	September 2008	Mandatory	33%	15%	48%
Solano County, CA	2009-2010	Mandatory	43%		43%
York County, VA	2001	Voluntary	39.5%		39.5%
Georgia	2002	Voluntary	34%		34%

As explained in footnote 10, some of these comparisons may be questionable. The evaluator is, however, very familiar with California’s mediation program. Other than the fact that mediations are done by court-employed full-time mediators in larger California courts, the California and North Dakota programs are roughly comparable in approach. Two researchers in 1995 summarized outcomes research from dozens of studies done by that date as finding that full agreement varies from 40% to 60%

<sup>12</sup> Comparison of cross-jurisdictional outcomes should be treated with considerable skepticism. This data was gathered from multiple sources. The full context of each program and its evaluation was not available. It is therefore not clear whether the other programs listed were comparable to North Dakota’s program, how full and partial agreements were defined and measured (assessment was left completely to the mediator in North Dakota), or the extent to which participation was mandatory or voluntary (one might expect higher agreement rates in voluntary programs). Note, however, that Benjamin and Irving in their 1995 summary of research on this topic (Benjamin, M. and Irving, H. H., “Research in Family Mediation, Review and Implications,” *Mediation Quarterly*, 1995) conclude that outcomes do not vary significantly on these variables.

<sup>13</sup> Mediator coercion was reported in this jurisdiction.

and that partial agreement varies from 10% to 20%. By both of those benchmarks, North Dakota’s pilot mediation project is markedly successful in obtaining agreements.

Do the details of the data on agreement outcomes provide any insight into the mediation process in North Dakota?

The next chart shows agreement rates for parenting time by case type.

Full agreement rates and combined full and partial agreement rates are highest for paternity and initial divorce proceedings and lowest for parenting time not arising out of a pending case and post judgment modification. The full agreement rate was below 50% only for parenting time cases not arising out of a pending case. Agreement rates for initial divorce proceedings trended slightly upward during the pilot project period, stayed high for paternity cases during the entire period, and varied from period to period for the other two case types. We have agreement data for only one guardianship case, so the pilot project data is not a reliable indication of the potential for mediation to be helpful in guardianship cases.

Parenting Time Agreement Rates by Case Type<sup>14</sup>

Case Type	First and Second Reporting Periods March 1, 2008 to February 28, 2010			Third Reporting Period March 1, 2010 to August 31, 2011			Fourth Reporting Period September 1, 2011 to August 31, 2012			Total Project Period March 1, 2008 to August 31, 2012		
	Full agreement	Partial agreement	Total	Full agreement	Partial agreement	Total	Full agreement	Partial agreement	Total	Full agreement	Partial agreement	Total
Initial divorce proceeding	58%	15%	74%	51%	25%	76%	55%	24%	79%	54%	23%	77%
Post judgment modification	49%	20%	68%	58%	24%	82%	46%	20%	66%	51%	21%	72%
Paternity	67%	15%	82%	53%	25%	78%	52%	29%	81%	56%	24%	80%
Parenting time not arising out of pending case	41%	35%	77%	35%	32%	67%	46%	27%	73%	42%	30%	72%
Guardianship				0%	0%	0%				0%	0%	0%

The same data for non-parenting time issues is in the next chart. Agreement rates show very little difference by case type for the full pilot project period, with post judgment modifications and parenting time issues not arising out of a pending case having a slightly lower full agreement rate. For the latter case type, a higher than average partial agreement rate

<sup>14</sup> Full and partial percentages do not always equal total percentages because of rounding. Sixty-four cases for the pilot project lack information on case type.

balanced the total agreement rate score. Agreement rates for post judgment modifications varied widely among the reporting period, while agreement rates for the other case types were quite stable. The caveat about guardianship cases stated above applies equally to this chart.

**Non Parenting Time Issues Agreement Rates by Case Type**

Case Type	First and Second Reporting Periods March 1, 2008 to February 28, 2010			Third Reporting Period March 1, 2010 to August 31, 2011			Fourth Reporting Period September 1, 2011 to August 31, 2012			Total Project Period March 1, 2008 to August 31, 2012		
	Full agree ment	Partial agree ment	Total	Full agree ment	Partial agree ment	Total	Full agree ment	Partial agree ment	Total	Full agree ment	Partial agree ment	Total
Initial divorce proceeding	51%	18%	70%	45%	25%	70%	39%	31%	70%	44%	27%	70%
Post judgment modification	24%	29%	54%	57%	27%	84%	31%	26%	57%	39%	27%	65%
Paternity	47%	27%	73%	50%	20%	70%	42%	26%	68%	46%	24%	70%
Parenting time not arising out of pending case	43%	29%	71%	35%	32%	67%	45%	26%	71%	40%	29%	69%
Guardianship				0%	0%	0%				0%	0%	0%

The rate of rescission is highest for parenting time issues not arising out of a pending proceeding (16%) and lowest for paternity cases (3%). The other case types were at or very near the pilot project average of 10%.

The first interim evaluation noted that mediation outcomes were higher in Grand Forks County than in Burleigh County on every dimension. It noted the long tradition of mediation in Grand Forks County, created largely as a result of the work of the Conflict Resolution Center at the University of North Dakota which had been in existence for 22 years at the time of that report. It predicted that the agreement levels in Burleigh County would rise towards those in Grand Forks County over time as the Bismarck bar became more familiar with, and confident of, mediation.

The next table contrasts agreement rates for Burleigh, Cass, Grand Forks and all other counties combined. The agreement rates for Burleigh have increased by 2% over each of the reporting periods, but still remain well below the agreement rates for Grand Forks County (which have also risen slightly) and for the rest of the state. Cass County, which includes Fargo, had more mediated cases than either Burleigh or Grand Forks Counties during the fourth reporting period, has agreement rates much closer to those in Grand Forks. The rest of the state falls between Cass and Grand Forks, on the one hand, and Burleigh, on the other. The overall message is

that Burleigh County remains something of an outlier in the low percentage of cases reaching full or partial agreement with respect to contested parenting time issues.

Parenting Time Agreement Rates by County<sup>15</sup>

County	First and Second Reporting Periods March 1, 2008 to February 28, 2010			Third Reporting Period March 1, 2010 to August 31, 2011			Fourth Reporting Period September 1, 2011 to August 31, 2012			Total Project Period March 1, 2008 to August 31, 2012		
	Full agreement	Partial agreement	Total	Full agreement	Partial agreement	Total	Full agreement	Partial agreement	Total	Full agreement	Partial agreement	Total
Burleigh County	50%	13%	63%	41%	24%	65%	50%	17%	67%	48%	16%	65%
Grand Forks County	60%	24%	83%	61%	19%	79%	56%	31%	86%	61%	23%	84%
Cass County				60%	28%	88%	50%	26%	74%	52%	27%	79%
All other counties	53%	7%	60%	48%*	32%*	80%*	52%	23%	75%	46%	26%	72%

\*Cass County was included in the “all other counties” calculation for the third reporting period. It was computed separately for this final report. If Cass County data were excluded from the “all other counties” data, the full and total agreement rates would be lower and the partial agreement rate would be higher.

Burleigh County’s agreement rates for non-parenting time issues have increased dramatically over the period of the pilot project. However, its agreement rates for non-parenting time issues still remain below those for the rest of the state. The full agreement rate in Cass County is almost as high as for Grand Forks County, but its partial agreement rate is quite a bit lower. The full agreement rate for the rest of the state is close to Burleigh County’s rate, but its partial agreement rate almost matches that of Grand Forks County.

Non Parenting Time Issues Agreement Rates by County<sup>16</sup>

County	First and Second Reporting Periods March 1, 2008 to February 28, 2010			Third Reporting Period March 1, 2010 to August 31, 2011			Fourth Reporting Period September 1, 2011 to August 31, 2012			Total Project Period March 1, 2008 to August 31, 2012		
	Full agreement	Partial agreement	Total	Full agreement	Partial agreement	Total	Full agreement	Partial agreement	Total	Full agreement	Partial agreement	Total
Burleigh County	42%	7%	49%	30%	26%	56%	37%	29%	66%	37%	20%	57%
Grand Forks County	42%	38%	80%	60%	21%	81%	45%	41%	86%	53%	31%	83%
Cass County				62%	16%	79%	42%	19%	61%	50%	19%	69%
All other counties	45%	14%	59%	42%*	32%*	72%*	37%	49%	68%	35%	30%	65%

<sup>15</sup> Full and partial percentages do not always equal total percentages because of rounding.

<sup>16</sup> Full and partial percentages do not always equal total percentages because of rounding.

\*Cass County was included in the “all other counties” calculation for the third reporting period. It was computed separately for this final report. If Cass County data were excluded from the “all other counties” data, the full and total agreement rates would be lower and the partial agreement rate would be higher.

When analyzed in this same fashion, the rescission rates for the full pilot project period are highest in Burleigh County (14%), lowest in Cass County (5%) and the same in Grand Forks and the rest of the state (10%).

Do some mediators have higher success rates than others? Yes. We did not provide a definition of “full” and “partial” agreement; therefore the reporting varies from mediator to mediator based on their personal interpretations of those terms. Nonetheless, as shown in the table below, their combined full and partial agreement rates for parenting issues range from 43% to 100%, for non-parenting issues from 35% to 100%, and for rescission rate from 0% to 100%. Twelve mediators had full agreement rates for parenting time issues of 60% or higher; four had rates below 30%.

The list of mediators below is not in alphabetical order, in order to preserve the anonymity of the mediators. Greacen Associates is providing the project administrator with a report on each mediator, which can be shared with that mediator.

**Mediation Agreement Rate by Mediator<sup>17</sup>**  
**Full Pilot Project Period**  
**March 1, 2008 to August 31, 2012**

Mediator (# mediations)	Agreement on Parenting Issues					Agreement on Non-Parenting Issues					Rescissions	
	Full Agreements	Full Agreement %	Partial Agreements	Partial Agreement %	Total Agreement %	Full Agreements	Full Agreement %	Partial Agreements	Partial Agreement %	Total Agreement %	Number	%
Mediator 1 (34)	27	79%	3	9%	88%	21	75%	2	7%	82%	1	7%
Mediator 2 (85)	50	60%	20	24%	83%	26	68%	8	21%	90%	5	8%
Mediator 3 (84)	34	43%	6	8%	51%	18	33%	1	2%	35%	3	30% <sup>18</sup>
Mediator 4 (11)	5	46%	3	27%	73%	4	40%	3	30%	70%	1	100%
Mediator 5 (59)	37	64%	10	17%	81%	11	32%	5	15%	47%	5	10%
Mediator 6 (17)	7	44%	2	13%	56%	4	33%	2	17%	50%	2	25%

<sup>17</sup> Full and partial agreement rates may not sum to total agreement rates due to rounding errors. Includes only cases for which we have reported outcomes and mediator information.

<sup>18</sup> Although this mediator had 84 cases, the mediator reports included an answer concerning rescission for only ten of those cases – three of which were rescissions.

Mediator (# mediations)	Agreement on Parenting Issues					Agreement on Non-Parenting Issues					Rescissions	
Mediator 7 (57)	17	31%	17	31%	62%	7	17%	20	49%	66%	3	7%
Mediator 8 (49)	28	57%	5	10%	67%	12	44%	3	11%	56%	2	10%
Mediator 9 (57)	37	69%	10	19%	87%	22	65%	7	21%	85%	7	21%
Mediator 10 (34)	10	30%	15	46%	76%	6	23%	9	35%	58%	9	38%
Mediator 11 (3)	2	67%	1	33%	100%	1	100%	-	-	100%	-	-
Mediator 12 (89)	55	63%	11	13%	75%	41	55%	10	13%	68%	0	0%
Mediator 13 (35)	12	35%	12	35%	71%	8	29%	13	46%	75%	2	7%
Mediator 14 (24)	13	54%	5	21%	75%	6	26%	8	35%	61%	5	23%
Mediator 15 (7)	5	72%	2	29%	100%	3	60%	2	40%	100%	0	0%
Mediator 16 (7)	1	17%	4	67%	83%	1	17%	4	67%	83%	1	20%
Mediator 17 (28)	16	57%	11	39%	96%	19	70%	6	22%	93%	0	0%
Mediator 18 (57)	25	46%	7	13%	58%	18	37%	9	18%	55%	3	7%
Mediator 19 (47)	28	60%	10	21%	81%	16	41%	19	49%	90%	3	7%
Mediator 20 (20)	12	60%	8	40%	100%	9	47%	10	53%	100%	3	17%
Mediator 21 (36)	14	41%	1	3%	44%	14	41%	2	6%	47%	0	0%
Mediator 22 (24)	11	48%	12	52%	100%	5	25%	15	75%	100%	2	9%
Mediator 23 (42)	15	37%	16	39%	76%	12	38%	6	19%	56%	4	10%
Mediator 24 (34)	13	38%	13	38%	77%	9	27%	17	50%	77%	0	0%
Mediator 25 (36)	21	60%	12	34%	94%	15	52%	9	31%	83%	4	13%
Mediator 26 (46)	12	26%	27	59%	85%	12	32%	17	46%	78%	2	5%
Mediator 27 (7)	2	29%	1	14%	43%	1	20%	4	80%	100%	1	25%
Mediator 28 (20)	12	60%	2	10%	70%	9	53%	2	12%	65%	2	15%
Mediator 29 (23)	13	57%	5	22%	78%	8	40%	6	30%	70%	6	29%
Mediator 30 (14)	12	86%	1	7%	93%	5	50%	3	30%	80%	2	18%

Although it is clear that some mediators are more successful than others, the narrative comments written on the participant satisfaction surveys do not express consistently negative views toward any particular mediator. In fact, the most negative comments relate not to the conduct of the mediation but to delay in scheduling and holding it. Most participants ascribe blame for the lack of success of mediation to their former spouse, not to the mediator.

We reviewed the agreement rate data across the time span of the pilot project for each mediator. Some mediators had more success as their experience increased; roughly the same number had less success over time. The pilot project data provides no support for applying the standard wisdom that performance improves with experience to North Dakota parenting time mediators.

The data shows no difference in the likelihood that men and women will reach agreement during mediation.

**Mediation Rates by Gender**

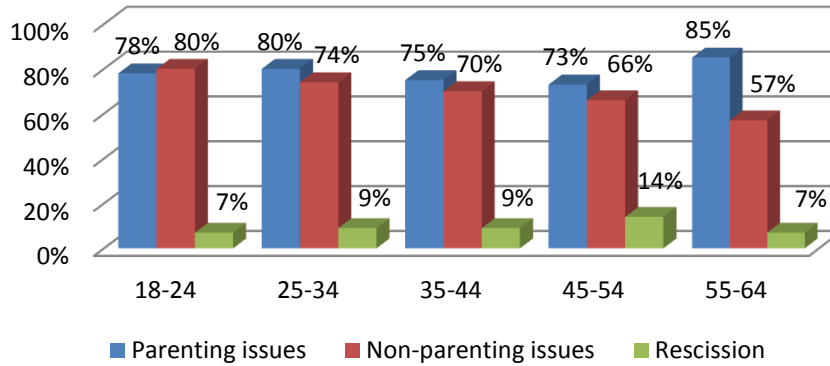
Gender	Rate of Agreement on Parenting Issues			Rate of Agreement on Parenting Issues			Rescission rate
	Full Agreement %	Partial Agreement %	Total Agreement %	Full Agreement %	Partial Agreement %	Total Agreement %	
<b>Male</b>	55%	23%	78%	47%	27%	73%	9%
<b>Female</b>	53%	24%	77%	44%	28%	72%	9%

Younger and older persons are somewhat more likely to reach agreement during mediation.<sup>19</sup> The exception is that persons over 55 are less likely to reach agreement on non-parenting issues. We have insufficient data for cases with participants under the age of 18 or over the age of 65 to include in the chart.

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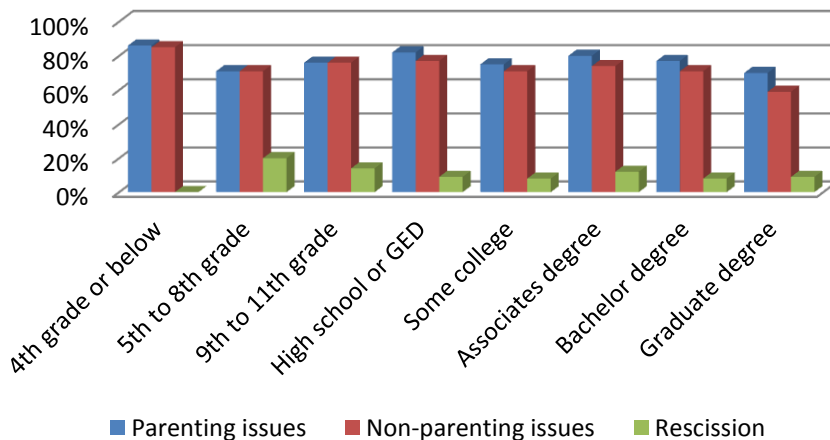
<sup>19</sup> These differences are not statistically significant.

## Differences in Combined Full and Partial Mediation Agreement Rates by Age



Persons with a grade school education and persons with graduate degrees are somewhat less likely to reach agreement during mediation, except for persons with a fourth grade education or lower, who are most likely to reach agreement (and to not rescind an agreement reached).<sup>20</sup>

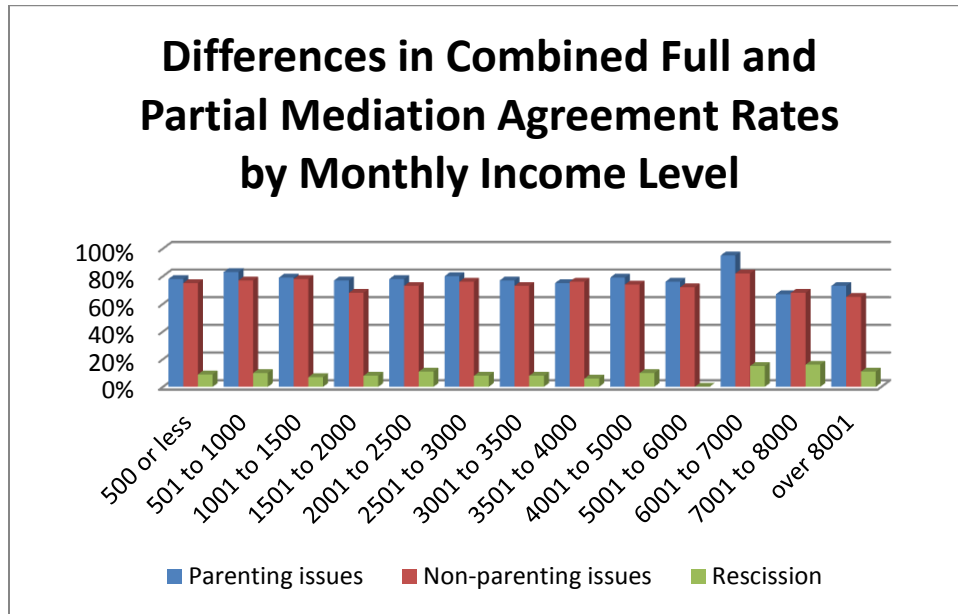
## Differences in Combined Full and Partial Mediation Agreement Rates by Educational Attainment



<sup>20</sup> The only statistically significant difference is for agreement rates for non-parenting issues between persons with high school or GED and persons with graduate degrees.



The data shows very few differences in agreement rates by income. Persons at the highest income level are slightly less likely to reach agreement and more likely to rescind an agreement made, with the exception of persons making from \$6000 to \$7000 a month, who are most likely to reach agreement on parenting issues.<sup>21</sup>



## Perceived Imbalance of Power Between the Mediation Participants

Concerns about power imbalances – particularly those arising from domestic violence – have played a significant role in the design and implementation of the North Dakota mandatory custody mediation program. Cases with active domestic violence restraining orders are screened out of the program at the inception of a case. Cases with domestic violence will be mediated if the victim requests mediation. Mediator training has focused on identifying domestic violence during both the orientation and mediation phases and safety planning should any reason for concern arise.

The mediator’s report for the third and fourth reporting periods contained two new questions to obtain information from mediators on the possibility of an imbalance of power between the mediation participants – in general or as a result of domestic violence. The questions are:

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<sup>21</sup> There are no statistically significant differences among the various income groups on agreement rates.

Did you have any concern during this mediation that the outcome was unfair because of an imbalance in the power of the participants during the process?  Yes  No If "yes," please provide a few observations about the process.

Domestic violence issues. Please describe indicia of domestic violence identified during the orientation or mediation and steps you took to address that issue.

Mediators responded to the first question for 725 of the 1088 cases included in our analysis. They reported a perception of imbalance in 6% of the cases (40 of 725 cases). There is no statistically significant relationship of likelihood of a perception of imbalance associated with the age, education level or income level of the persons participating in the mediation. There were statistically significant differences among counties – most of the cases in which there was a perceived imbalance arose from the state's three largest counties.<sup>22</sup> There was also a significant difference<sup>23</sup> among mediators. One mediator who had 36 cases perceived a power imbalance in 8 of them (24%), while another with 34 cases perceived a power imbalance in 6 of them (18%). Contrast this with a mediator with 89 cases who perceived a power imbalance in none of them (0%), a mediator with 85 cases who perceived a power imbalance in one case (1%), and a mediator with 84 cases who perceived a power imbalance in four of them (5%). Fourteen of the thirty-two mediators reported no cases with a perceived power imbalance.

The mediators' narrative responses to the two questions are set forth verbatim below; we also note the location at which the mediation took place.

The comments below show that quite a few of the mediated cases involve past or current domestic violence situations. They also demonstrate to us a high level of sophistication among the mediators – both in identifying domestic violence or other bases for imbalance of power between the participants that could lead to unfairness and in responding in ways that minimize the likelihood that any such power imbalances will produce unfairness in the results of the mediation process. These narrative comments could serve as the basis for an article for mediators in North Dakota or elsewhere to familiarize them with the sorts of situations they may encounter and the steps they can take to deal with them appropriately.

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<sup>22</sup> p=.012

<sup>23</sup> p=<.0005

However, the dramatic differences in the perceptions of imbalance among the mediators leave a lingering question concerning the possibility that some mediators are not perceiving power imbalances that may be present. This perspective is supported by reports by 54 mediation participants (3% of the total of 1717 participants for whom we have completed surveys) report that they agree (36) or strongly agree (18) with the statement "I did not feel safe here today." Although this is a small percentage of the total mediation participants, the goal of the program should be to have no participant feel unsafe during the process.

Location	Imbalance of power comments	Domestic violence comments
Grand Forks	Mother has a very strong personality. Father has a learning disability.	
Bismarck		There was discussion of anger issues and one altercation early in the marriage.
Bismarck		Plaintiff and I discussed the issue of DV. She requested that she be allowed to try mediation. Physical fear was not present. I explained the power balance needed for mediation. She felt she could speak freely and openly. She came early to the mediation. We set up a safety plan and she was allowed to leave first following the mediation session.
Grand Forks		No domestic violence reported or observed. Female requested someone to attend to support her ability to hear and talk in the first two sessions. She was alone and speaking freely in the third session.
Dickinson		One party spoke of 1 incident of DV approximately 1 year prior. Attorney for the parties attended mediation. Discussed and utilized a safety plan with client. Client very adamant about mediating even if prior DV.
Grand Forks		Mother expressed concerns about Father's mental health and temper. The session took place at the GF courthouse and law enforcement was nearby. Much of the mediation took place with the parties individually.
Minot	I felt the defendant would not stand behind her position and became emotional several times. She wrote me an email explaining her position but did not stand behind it when we met.	
Bismarck	Other party some concerns	
Grand Forks	Male had all the financial power and had used threats to manipulate. Observed and reflected and allowed the parties to negotiate how to handle the situation present and future.	None reported or observed -- except for verbal reported above.

<b>Location</b>	<b>Imbalance of power comments</b>	<b>Domestic violence comments</b>
Grand Forks		None reported or observed. High levels of anger interfered with communication and shifted in the mediation.
Bismarck	Both parties had their attorney present.	
Grafton		Each party described pushing and shoving as mutual. Neither had concerns for their safety or ability to mediate. I did seat them across the table from each other and tried to keep heated arguments at bay. I saw them out at the end of the case.
Bismarck		Domestic violence identified by client. Client insisted on trying mediation. Mediator explained the process of mediation and the balance of power. Mediator agreed to "caucus" this mediation. Other party agreed to this process.
Grand Forks	The parties went into mediation with a positive attitude and all issues were discussed and put into a document (Stipulation) by the Plaintiff, proceeding pro se. I reviewed the document with the parties in order to assure them of the appropriate format, etc. The Plaintiff dominated the process. Had to run interference for the Defendant. No attorneys involved.	
Grafton		There was one incident of breaking property. The perpetrator acknowledged it. The victim felt it was due to alcohol use and had no concerns for her safety in mediation as long as he was not drinking.
Fargo	One party was frustrated with the passivity of the other and ended up giving in more than she should have. It was discussed appropriately.	
Fargo	The parties remained in the marital home and the husband was very resistant to looking into options to refinance the home in order for the wife to move. Both parties were extremely defensive and had a difficult time looking at issues objectively.	There was an incident that was not reported of a physical altercation. The wife said she was slapped across the face. Safety issues were explored and she was encouraged to seek out counseling.
Grand Forks		History of domestic violence but no current concerns other than emotional/mental abuse between both parties.
Grand Forks	There were power and control issues, manipulation that eventually focused on the need to end the mediation process.	None reported or observed - with the exception of power and control.

Location	Imbalance of power comments	Domestic violence comments
Jamestown		This was a post-divorce proceeding. The parties have been living apart for the last 2 years. One party indicated that there was DV during the marriage but not since except for one major incident with the Jamestown police. Oddly, the criminal judgment contains a no contact provision regarding the ex-spouses even though the ex-spouse was not a victim or witness. The judge ordered mediation. The parties wanted to mediate. Both parties attended the mediation session. The parties were on different floors of the courthouse and never spoke directly to each other. I went back and forth between the two meeting rooms. One party left the mediation session early and with her attorney. Both parties indicated that they felt safe communicating during the mediation session and both believed that they would not be subject to DV as a result of the mediation.
Fargo	Answered "No" to question 8. But I will qualify that with the following comments -- the parties were discussing various options and when the mother said she had concerns about their ability to share custody because of some very real issues -- different school districts, etc. -- the father became very passive aggressive and would not talk it out.	There was an order for protection in effect when this case was initially referred. I found out about it during the separate orientation session. The order was finished in mid-April. I talked with the mother several times prior to the sessions starting. There was one single incident involving the authorities and she said she felt safe and would be able to assert herself.
Grand Forks	Due to the history of domestic violence there were screening precautions taken before this case was taken to the table.	During the plaintiff's orientation she described past instances of domestic violence including: physical such as choking, hitting, dragging; mental/emotional such as controlling and manipulating; verbal such as calling her names and putting her down. The domestic violence screening tool was used for both parties. During mediation, the mediator paid close attention to the dynamics at the table.
Minot		Both parties addressed concerns in this area. I felt they were evenly matched. I asked both parties if they felt comfortable engaging/continuing mediation.
Jamestown		One party described DV. I asked if that party wanted to mediate and if so would it be a safe place and was there fear of retaliation after mediation ("No"). Both parties' attorneys participated in the mediation. One party left mediation before the other. That party was told to tell the mediator if any safety issues arose during mediation and she did not raise any.
Fargo		Were some past DV issues. Mom was very concerned about the child being hurt. We mediated with the other party via phone. Dad lives in Colorado.

Location	Imbalance of power comments	Domestic violence comments
Grafton	Always power concerns with abuse. No flags went up during the session.	Past abuse was reported by one of the parties in orientation. Extra time to help her process her decision on proceeding. She decided to mediate in separate rooms with a support person. Both parties had a support person.
Devil's Lake		The Plaintiff's attorney wanted mediation in separate rooms because of possible domestic violence. The first mediation I mediated separately because of her request. The second mediation took place in the same room as the parties had been communicating directly, and neither expressed any need for separate rooms. I did not feel at either time there were domestic violence issues -- just more of an imbalance of ability to express one's desires.
Jamestown		The parties had a previous but expired protection order. I spoke extensively with the protected party about safety during and after the mediation. Both parties' attorneys were present. Both parties expressed a <u>strong</u> desire to mediate and settle issues amicably. The perpetrator was a sober alcoholic during/before mediation. Violence had occurred only when the perpetrator had been drinking.
Dickinson	I didn't but one of the attorneys did.	
Grafton		Wife described pushing and grabbing by husband. She had applied for a restraining order and dropped it. She felt it was [undecipherable]. She felt comfortable talking to him and they rode to the appointment together. I asked her to tell me if she had concerns and she agreed but did not have any. I did not leave them alone.
Fargo		No, but one party requested to be separated and of course that request was granted.
Grafton		There was one incident of domestic violence. It was acknowledged by both as an isolated incident. I did not leave parties alone.
Carrington		Protection order in place for a number of years. I separated the parties and went back and forth between them.
Fargo		Were some DV issues. Party requested separate rooms. We did conduct mediation in separate rooms.
Williston	The defendant was very loud, vocal and controlling of the situation. I stopped the mediation at one point and divided the parties to cool off. Plaintiff insisted on continuing and things went very well after the break.	When we took a break I questioned Plaintiff about past violence, which was confirmed. But she insisted on proceeding. DCRO was recently dismissed, which probably contributed to animosity.

Location	Imbalance of power comments	Domestic violence comments
Fargo	Initially, one party brought their attorney and it was uncomfortable for the party who decided not to bring an attorney due to the attorney being very verbal/active. This was only during the first session. The attorney did not attend after this and the parties were very interactive and it seemed to be extremely helpful to them.	
Jamestown		Several years ago there was a protection order in place. Neither party felt threatened or fearful currently. The parties have lived apart for five years. The parties' attorneys were present during mediation. The parties did the mediation in two different rooms and left at separate times.
Stanley	I questioned the imbalance of power because one party was unrepresented and one had an attorney present. But that did not appear to be a factor in the outcome.	
Fargo		Emotional issues/abuse in relationship history.
Ellendale		Emotional abuse possible. No physical abuse. Party brought attorney to mediation to ensure his/her voice was heard and outcome was fair.
Grafton		Verbal abuse identified. Mediation conducted with attorneys present and in separate rooms.
Grand Forks	Mother has had full residential responsibility without visitation. A parenting plan was not followed in the past. Father not interested (or aware) of legal rights. Referred parties to get legal advice and gave them ND (SBND) sample	
Minot		None. There were concerns of stalking voiced by Plaintiff but she opted to proceed with mediation. Discussed safety planning and options if she became uncomfortable.
Bismarck		Domestic violence was a concern in this case. All allegations were denied, but there was enough concern to keep the parties separate and require counsel at joint sessions.
Jamestown	Lack of representation, resources. Power swings both ways.	
Jamestown	No agreements were reached but had there been, they were heading into unfair territory. One party was giving in to the other's demands and I was not comfortable with it.	

Location	Imbalance of power comments	Domestic violence comments
Dickinson		Yes. Pushing, slapping, blocking doorways. Both parties indicated that they would not feel threatened during mediation. Safety plan made. Attorneys required at mediation. Discussions regarding any possible feelings of power imbalance. None reported.
Bismarck		In pre-mediation, Defendant revealed he had received a domestic protection order against Plaintiff to protect himself and his daughter.
Grafton	One party had counsel. This made the other quite vulnerable and some legal strategy had placed her at a disadvantage. I'm thinking she got some power back in mediation and maybe the outcome was not unfair.	
Fargo		There were some issues in the past, so I separated the parties after deciding they could not continue in the same room.
Wahpeton	The plaintiff alleged that the defendant is an alcoholic and has been very difficult and controlling.	
Dickinson		Protection order vacated by court. Parties agreed there was no threat of physical violence from either parent.
Jamestown		One said s/he was emotionally abused, other said s/he was threatened (not physically) and intimidated. Used separate rooms, both parties' attorneys present. Both parties desired mediation. Parties left at separate times.
Minot	Plaintiff brought attorney which was okayed by the defendant. Defendant was unrepresented.	There were issues of domestic violence alleged by Plaintiff. Plaintiff and his attorney wanted to go forward with mediation and we did, with the parties in separate rooms.
Minot	One party has a significant history of suicide threats/attempts, which made negotiation very difficult for the other party. We also agreed to mediate via phone because one party was in Minot and one in Fargo-I am not sure that was beneficial for the parties-though the attorney involved thought it was best based upon the disposition of the clients.	
Grand Forks		Attorney for Plaintiff indicated some domestic violence issues. Throughout orientation and mediation jointly it was never identified other than an incident in 2009 in which there was an altercation.
Grand Forks		Parties kept in separate rooms-no contact



Location	Imbalance of power comments	Domestic violence comments
Grand Forks		History of violence was indicated during orientation, however parties did not have concerns about history impacting mediation.
Grand Forks	This mediation was a little more difficult as the Defendant does have some issues (apparently bi-polar, according to Plaintiff). Very angry. Plaintiff tried to dominate and dictate. I was pleased we were able to get as much resolved as we did.	
Carrington		There had been a restraining order in place so I had the parties in separate rooms.
Bismarck		There was a previous DVPO for X's benefit that had expired. She was later removed from the home due to her disorderly conduct. After orientation she applied for DVPO but was denied. Discussions were had with X on protective measures during mediation and she felt none were needed. Observations during mediation did not suggest violence was any type of issue although "signals" we agreed upon were in place with X.
Bismarck	Defendant was in treatment (residential) for drug/alcohol problems - at one point we had an agreement in principle on the parenting plan issues and were preparing for a final meeting. She was released-causing Plaintiff to conclude he did not want to enter into agreement with her, feeling he could not trust her to follow through.	
Bismarck		Significant suggestions of verbal abuse and threats of violence although not aware of any restraining orders. Mother just out of penitentiary and father recently completed drug related felony probation. Separate rooms for mediation with mom (accompanied by lawyer) arriving and leaving early.
Fargo		Wife had obtained a DVPO from 1997 episode-placed parties in separate rooms as far apart as possible.
Fargo	One of the parties was disabled and had experienced a closed head injury. She was not represented by counsel, initially. She was encouraged to get representation and did so. Counsel reviewed the agreement.	
Fargo		Kept in separate rooms

Location	Imbalance of power comments	Domestic violence comments
Fargo	One of the clients was not well advised by his/her attorney as to how a court would rule because her requests were completely in left field. Not having realistic attorney advice for this client (a lack the mediator cannot fill) does not make it a very successful mediation.	
Grafton	The father claimed that the summary was not accurate. It is my belief that he is mentally ill or chemically dependent.	The father was very verbally abusive and belligerent. The mother was able to get some things she needed but was not powerful. She did not have counsel either. He did and had already gained some advantage though the legal process.
Minot		DVPO in place, but parties wanted to mediate. Both represented themselves well and DV did not appear to be an issue.
Jamestown		One party related receiving harassing phone calls, outbursts, belittling language-same party wanted to continue mediation and felt safe...discussed safety plan and option to discontinue if felt nervous or scared. Attorney present.
Jamestown		DV by one party (physical). I asked client if mediation was appropriate and safe. The answer was a strong yes. Attorneys present, staggered arrival and departure times. Spoke with client and attorney that mediation could be terminated if safety issues arouse.
Grafton		The plaintiff identified some anger issues. She did not feel this would be an issue at my office. She declined protective measures offered.
Devils Lake	Mrs. X was very difficult to communicate with. She was stand-offish from the time she arrived until she left. She feels everyone is against her and by her actions and statements (her own statements) her mental health was questionable.	There were concerns expressed by Mrs. X as to being in the same room with Mr. X. There had been an application for restraining order but it had been dismissed, according to the parties. I continued to mediate in separate rooms, and tried to do what I could for the parties.
Jamestown		Some DV when one party consumed alcohol excessively. Both attorneys present for mediation, parties in separate rooms, parties left at different times. Inquired as to whether the parties felt safe during mediation-they were confident the mediation was appropriate and felt safe at all times.
Grand Forks	I felt the parties would complete the agreement. There is an issue between the representative attorneys. Also, a concern about mental health and visitation for the father, and exposure to a new girlfriend.	

Location	Imbalance of power comments	Domestic violence comments
Grand Forks	Defendant wanted to delay mediation while he was searching for employment and obtaining funds to possibly obtain an attorney. Also, Plaintiff's ability to review summary letters with her attorney was inhibited due to her attorney's absence from her office for an extended period of time after mediation.	Plaintiff has a restraining order against the Defendant. We conducted the first session in the same room, but we conducted the second session in separate rooms at the request of the plaintiff.
Fargo	The Plaintiff was a stay at home mom and there was a significant asset issue to sort out. The Defendant was restricting funds, and neither of the parties trusted each other. A great deal of elusiveness.	
Fargo	Both parties spoke up but the Plaintiff definitely had some traditional set role beliefs and seemed to want to dictate how the Defendant conducted herself.	There were some mild/moderate dynamics that could indicate some domestic violence issues, but it was more surrounding male privilege and sex roles. I encouraged them to discuss other different viewpoints and what they saw as healthy boundaries.
Fargo	No DV, but parties separated because they had lots of control issues.	
Fargo	The Plaintiff seemed to vacillate between being cooperative and accommodating to very confrontational/obstructionist. There was a minor incident reported by the parties of the Plaintiff getting aggressive. I wonder about mental health issues.	
Fargo	Some concerns-the Defendant has a severe alcohol dependency issue but is in recovery and doing well. There were a lot of trust concerns voiced by the parties and the Plaintiff seemed to have significant resentment and did use some guilt trips.	
Bismarck		This case was worrisome to me because there had been discussion of anger issues previous to this court order. The parties were able to work through the mediation very well despite those concerns.
Bismarck	One party was not cooperative in the process and did not provide the other party with requested information.	One party was verbally abusive-aggressive in the process.
Bismarck	Power imbalance due to one party having an attorney (not present) and the other party not having legal advice.	
Bismarck	He was very mean to her in his comments to her and cut off communication with his demeanor	He was very volatile and left abruptly. I was concerned about the anger.

Location	Imbalance of power comments	Domestic violence comments
Bismarck		At time case referred to mediation there was a DV protection order in place. Concluding case was delayed because we waited for protection order to expire. Joint session was held in daytime hours-each parent present with their counsel.
Fargo		Father has a criminal conviction for DV. Parties were kept in separate rooms, parties left at different times-no contact.
Grand Forks	The Respondent has mental health and physical health issues. Petitioner is domineering and uncooperative. Had telephone visitation agreed upon and he did not follow through with their agreement.	
Grand Forks	The parties HATE each other. Criminal conviction of her boyfriend for assaulting the four year old little girl. Social Services is involved. Dad has temporary custody through juvenile court. She wants her daughter back. He has custody.	The DV issue is not between the parties.
Carrington		The parties have been separated for 5 years. One party talked about strangling/hitting 5 years ago leading to felony charges. Other party said no DV. The alleged victim said no fear of DV or intimidation when mediating. Alleged victim wanted to mediate. Made a safety plan. Alleged victim came and left first. 3rd person in another part of office building signal for mediator if alleged victim felt uncomfortable.
Fargo		Mother stated Father had been abusive before they married (10 years ago). She stated that she was not afraid of him and that she was comfortable going forward with mediation.
Fargo		Restraining order in place-both parties were very cordial and agreed to meet. Began in separate rooms.
Valley City		Some physical DV between parties. Both attorneys present. For mediation, parties in separate rooms, parties left at different times, inquired as to whether the parties felt safe during mediation- they were confident that mediation was appropriate and felt safe at all times.
Grand Forks		Male party alleged child abuse against female party. Child protection services was involved according to him.

Location	Imbalance of power comments	Domestic violence comments
Wahpeton		Parties have been divorced for over 15 years. Defendant disclosed during orientation that there was DV in their relationship. He was put on trial for sexually assaulting her shortly after they separated but was acquitted because she could not bring herself to testify at the trial. She said that everyone, including her attorney, has told her that that should have no bearing on this situation and that she should be over that by now. When I validated that, of course, past abuse still affects her and her communication with her ex-husband, she cried and thanked me for not making her feel like she was crazy. She felt strongly about moving forward with the mediation process so I made sure she arrived before him and kept them in separate rooms, then had her leave before him so she would not have to see him at all. Ultimately she chose not to come back for a second session as she was too intimidated but expressed that she was glad that she at least tried the process.
Grand Forks	There were some capacity concerns, but the party who we had concern for was adequately supported with an advocate.	
Grand Forks	Plaintiff has a strong personality-somewhat unpredictable. I saw and found [unreadable] on behalf of the Plaintiff	
Dickinson	One party had an attorney present who did not believe in the process and insisted on speaking for her client.	
Fargo	The Defendant (mother) was upset that they were not trying to work it out and stay together. She used the fact that she had another child and other "guilt" tactics on the Plaintiff (father). Usually not an issue, but the Plaintiff did have a traumatic brain injury (brain tumor removed) and was easily overwhelmed.	
Grand Forks	She simply had "her" parenting schedule all typed out with little room for negotiating on her part. Has been very restrictive of the father's time with their little girl. I suggested Parents Forever and Love & Logic classes for both of them.	Defendant felt she was emotionally abused by the Plaintiff. Couple are very young, immature. Both tried controlling each other as well as the process. There was quite some time put into each airing his/her anger and frustration with the other party. Neither was realistic in his/her expectations.
Devils Lake		There were concerns about DV re: threats of suicide, mental/verbal abuse, few incidents of pushing/shoving. I conducted mediation in separate rooms. I left the decision to continue up to Mrs. X and she adamantly wanted to continue in separate rooms, so I did.

Location	Imbalance of power comments	Domestic violence comments
Devils Lake		Male said he was slapped, but had no fear or discomfort or concerns. He strongly desired mediation.
Wahpeton		Neither party disclosed or displayed any indications of DV during orientation or mediation. There appeared to be a balance in power during the first session, coming close to an agreement. Then when the plaintiff cancelled the final session, she said that she was considering a restraining order. The plaintiff's attorney's lack of cooperation in scheduling, resulting in a delay for the entire process, contributed to the heightened sense of conflict between the parties. Had the second session happened sooner, they may have been able to come to an agreement, or at least been able to talk about the issues in a mediation setting, maybe avoiding the impending downward spiral.
Minot	Mental health issues on both sides may have prevented this from progressing. One party has significant medical problems that seemed to contribute to this ineffective mediation.	There were allegations of abuse; discussed power and balance and safety measures. Conducted mediation at courthouse.

## Participant Satisfaction Ratings

We present the participant satisfaction data from a database of 766 completed participant questionnaires for the fourth data reporting period and from a database of 1717 completed questionnaires for the full pilot project period. We present participant satisfaction data for the first, second, third and fourth reporting periods and for the entire pilot project. We then look for differences in participant satisfaction level by various case and participant characteristics.

Participants reported their satisfaction by responding to various statements with Strongly Agree, Agree, Neutral, Disagree, or Strongly Disagree. For purposes of assessing this data, we have created two alternative scores. The first is the "percentage satisfied" which compares the sum of those responding Strongly Agree and Agree with those responding Disagree and Strongly Disagree. This measure disregards "Neutral" scores. The second assigns the values 5, 4, 3, 2, and 1 to the five ratings. Although this scoring process involves assigning a strict numerical ranking to a series of qualitative statements that may not be related to each other in this strict proportion, it is nonetheless a standard research practice. This scoring practice takes into account the "Neutral" ratings. The maximum score would be 5.0; the minimum would be 1.0; and all "Neutrals" would be 3.0.

The statements were set forth in the survey instrument in both positive and negative formulations to discourage respondents from answering all questions the same way. For reporting purposes, we set forth the statements as they appeared on the survey form but have transformed the average scores as if all statements had been stated in their positive formulation. For example, "The mediator did not care about our case" is reported as 96% satisfied and a 4.32 average even though the actual scores are the converse – 4% and 1.68 respectively.

The scores are set forth in the table below.

**Participant Satisfaction Scores**

Statement	First Reporting Period March 1, 2008 to December 31, 2008		Second Reporting Period January 1, 2009 to February 28, 2010		Third Reporting Period March 1, 2010 to August 31, 2011		Fourth Reporting Period September 1, 2011 to August 31, 2012		Total Project Period March 1, 2008 to August 31, 2012	
	% Satisfied	Average	% Satisfied	Average	% Satisfied	Average	% Satisfied	Average	% Satisfied	Average
The mediation was at a time relatively convenient for me	97%	4.26	94%	4.19	97%	4.31	99%	4.39	97%	4.33
The mediator treated me with respect	98%	4.61	98%	4.65	99%	4.70	99%	4.72	99%	4.70
I did not understand the process that we were to follow	84%	3.89	88%	4.00	88%	4.05	90%	4.08	89%	4.05
I was able to say what I needed to say during the mediation	94%	4.17	92%	4.04	95%	4.24	95%	4.28	94%	4.22
I learned something new today about my former spouse	33%	2.69	27%	2.51	29%	2.56	34%	2.68	31%	2.61

	<b>First Reporting Period March 1, 2008 to December 31, 2008</b>		<b>Second Reporting Period January 1, 2009 to February 28, 2010</b>		<b>Third Reporting Period March 1, 2010 to August 31, 2011</b>		<b>Fourth Reporting Period September 1, 2011 to August 31, 2012</b>		<b>Total Project Period March 1, 2008 to August 31, 2012</b>	
<b>Statement</b>	<b>% Satisfied</b>	<b>Average</b>	<b>% Satisfied</b>	<b>Average</b>	<b>% Satisfied</b>	<b>Average</b>	<b>% Satisfied</b>	<b>Average</b>	<b>% Satisfied</b>	<b>Average</b>
I was not well prepared for the mediation today	94%	3.95	89%	3.88	91%	3.96	92%	4.01	91%	3.97
I was able to do a good job representing my point of view	89%	3.90	91%	3.86	92%	3.97	92%	4.01	92%	3.97
The mediator treated both of us equally	94%	4.31	96%	4.33	96%	4.41	97%	4.42	96%	4.40
The mediator did not care about our case	97%	4.36	95%	4.30	97%	4.44	97%	4.42	97%	4.41
We were able to put the needs of the children first	83%	3.87	73%	3.59	82%	3.86	83%	3.88	81%	3.83
I learned today how to negotiate more successfully with my former spouse	40%	2.78	38%	2.72	44%	2.86	49%	2.97	45%	2.89
The mediation process was not fair to me	93%	4.08	90%	3.94	93%	4.10	94%	4.13	93%	4.09
I did not feel safe here today	95%	4.36	98%	4.35	96%	4.44	97%	4.47	97%	4.43



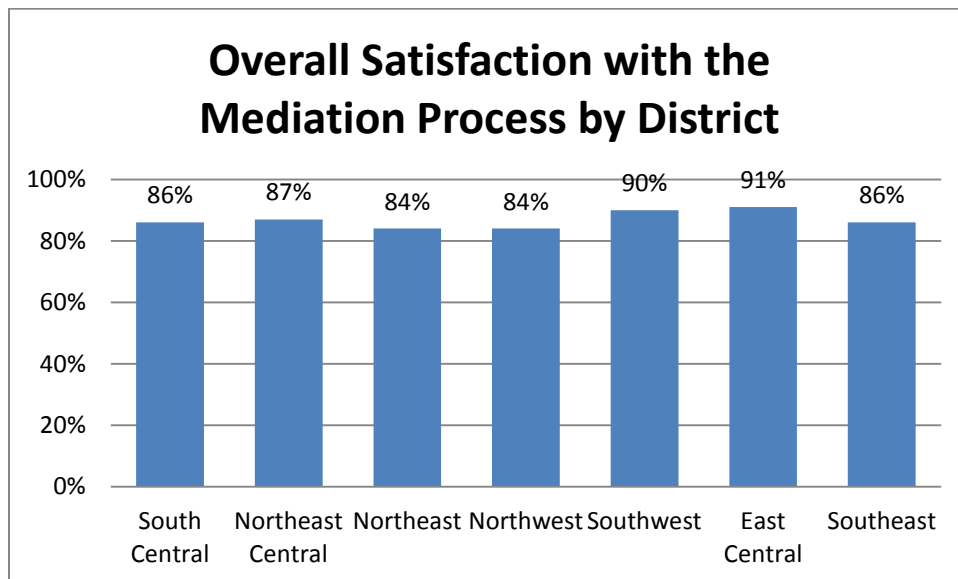
	First Reporting Period March 1, 2008 to December 31, 2008		Second Reporting Period January 1, 2009 to February 28, 2010		Third Reporting Period March 1, 2010 to August 31, 2011		Fourth Reporting Period September 1, 2011 to August 31, 2012		Total Project Period March 1, 2008 to August 31, 2012	
Statement	% Satisfied	Average	% Satisfied	Average	% Satisfied	Average	% Satisfied	Average	% Satisfied	Average
Overall, I am satisfied with the mediation process	91%	3.91	80%	3.65	86%	3.88	87%	3.87	87%	3.84
Mediation is better than going to court	94%	4.08	86%	3.95	91%	4.07	91%	4.09	91%	4.06
The outcome today was worse for me than it would have been in court	89%	3.69	91%	3.67	89%	3.74	90%	3.76	86%	3.74
The mediation included new ideas for resolving our disagreement	70%	3.31	66%	3.28	76%	3.50	82%	3.61	77%	3.51
I had difficulty participating because an interpreter was not present	99%	4.45	100%	4.48	98%	4.50	98%	4.56	98%	4.52
I had difficulty participating because of physical barriers	97%	4.44	96%	4.40	97%	4.43	97%	4.51	97%	4.47

Both scoring processes provide very positive support for the pilot project. Most gratifying for those providing mediation services, participant satisfaction scores have improved consistently over the four and a half years of the project. Every average score was equal to or better than its

counterpart score from the third interim report. Average overall satisfaction with the mediation process rose from 3.82 to 3.84. Average scores increased the most for the most ambitious of the project’s measures – with increases of .05 or more on “I learned something new today about my former spouse,” “We were able to put the needs of the children first,” “I learned today how to negotiate more successfully with my former spouse,” and “The mediation included new ideas for resolving our disagreement.”

Improvements in percentage satisfied were just as strong. “Overall satisfaction with the mediation process” improved from 86% to 87%. Eight other scores improved while only one went down -- “The outcome today was worse for me than it would have been in court.” The largest improvements were in “I learned something new today about my former spouse,” “I learned today how to negotiate more successfully with my former spouse,” and “The mediation included new ideas for resolving our disagreement.”

Satisfaction scores differ from district to district. The overall satisfaction ratings over the four and a half years of the pilot project are shown in the next table. Two of the last districts to implement the mediation process have the highest overall satisfaction scores.



There is considerable variation in average overall satisfaction score by county – with the satisfaction averages ranging from 0% to 100%. But those differences are based on very few surveys for most counties, so the data is not reliable enough to be worth reporting.

During the first three and a half years of the pilot project, overall satisfaction scores were 8% higher for participants who were not represented by counsel than for those who were represented.<sup>24</sup> That difference fell to 1.7% for the four and a half year period. Unrepresented litigants had an 88.3% overall satisfaction rating compared to an 86.6% rating for represented litigants. Fifteen of the nineteen scores for unrepresented litigants fell from the third to the final report while fourteen of the nineteen scores for represented litigants increased. The breakdown of satisfaction scores for represented and unrepresented litigants on all of the satisfaction questions is shown below.

Unrepresented litigants gave the project significantly higher scores on “learning something new about my former spouse,” “ability to put the children first,” “learning how to negotiate more successfully with my former spouse,” and “including new ideas for resolving our disagreement.” Represented litigants had significantly higher scores for “understanding the process we were to follow,” “being able to say what needed to say,” “being well prepared,” “doing a good job representing myself,” and “feeling safe.”

Possible interpretations of the areas with the largest differences are that litigants with attorneys would have more thoroughly explored alternative approaches to resolving their disputes before coming to mediation. One would expect that there would be fewer new ideas or perceived learnings about the former spouse and how to deal with her or him when the parties had previously negotiated with their attorneys serving as brokers. In addition, it is reasonable to expect that litigants with attorneys would come to the mediation better prepared and better able to present their point of view than litigants without attorneys.

**Satisfaction Ratings for Represented and Unrepresented Participants**

Statement	Percentage Satisfied	
	Represented	Unrepresented
The mediation was at a time relatively convenient for me	98%	97%
The mediator treated me with respect	99%	96%
I did not understand the process that we were to follow	91%	83%
I was able to say what I needed to say during the mediation	94%	93%
I learned something new today about my former spouse	28%	33%
I was not well prepared for the mediation today	93%	90%
I was able to do a good job representing my point of view	93%	89%
The mediator treated both of us equally	96%	95%
The mediator did not care about our case	97%	97%

<sup>24</sup> There are 1140 surveys for represented litigants and 216 for unrepresented litigants. We are missing representation status for 360 surveys.

We were able to put the needs of the children first	81%	81%
I learned today how to negotiate more successfully with my former spouse	41%	50%
The mediation process was not fair to me	93%	93%
I did not feel safe here today	97%	94%
Overall, I am satisfied with the mediation process	87%	88%
Mediation is better than going to court	90%	91%
The outcome today was worse for me than it would have been in court	89%	91%
The mediation included new ideas for resolving our disagreement	75%	81%
I had difficulty participating because an interpreter was not present	98%	99%
I had difficulty participating because of physical barriers	97%	98%

Participant satisfaction scores for individual mediators were generally high for the pilot project. Because the pilot project had 30 mediators, we have divided the table into two parts. The first table contains data for the first fifteen mediators; the second table contains data for the remaining fifteen mediators. There are relatively few surveys for some of the mediators. Shaded columns in the table below indicate that a mediator’s scores are based on fewer than 10 completed participant surveys.

The only scores that seem troublesome are shaded in pink. Two mediators had “treated me with respect” scores lower than 90%. One mediator could do a better job of ensuring that participants understand the process. One had low scores both on participant feeling they had said what they needed to say and was able to do a good job representing their point of view; one other mediator had a low score on the latter. Two mediators had very low scores on “learned something new about my former spouse;” one of them also had a very low score on “learned how to negotiate more successfully with my former spouse.” One mediator had a score of 75% on treating both parties equally – which is troubling. Two had low scores on litigants’ feeling they were able to put the needs of their children first. Two mediators had low scores on mediation being better than going to court; one other had a score of 50% on the outcome being worse than it would have been in court. Four mediators had scores below 75% on overall satisfaction with the mediation process.

Mediator sixteen had five low scores (and one very high score). Mediators four and ten had three low scores. We will bring these scores to their attention in our reports for individual mediators.

On the other side of the coin, we note that every mediator scored 90% or above on three key questions – the mediator cared about my case, the process was fair to me, and I felt safe here today. There are several instances where mediators appear to be performing considerably above

average on the most difficult aspects of the custody mediation process. These scores are highlighted in light green on the table. Two mediators scored 100% on litigants understanding the process they were to follow. Seven received 40% or above from participants on “learning something new about my former spouse today.” Four mediators received scores of 60% or higher on participants’ “learning how to negotiate more successfully with my former spouse” – a key objective of the North Dakota mediation project; nine more received scores between 50% and 59% on that question. Participants for two of the mediators give themselves scores of more than 90% for being “able to put the needs of the children first” during the mediation; those mediators are undoubtedly doing something to achieve that result. Two mediators scored above 90% on introducing new ideas into the mediation process. Finally, five of the mediators scored above 90% on overall satisfaction with the mediation process.

We urge the program administrator to ask these mediators to explain to their colleagues on one of the periodic mediator conference calls (or at some other training opportunity) the techniques they use to which they would attribute these exemplary results.

We will provide individual reports for each mediator, showing their average scores for the whole pilot project period along with the average project-wide satisfaction percentages.

**Average Participant Satisfaction Scores by Mediator  
First Sixteen Mediators**

Statement	Mediator Number														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
The mediation was at a time relatively convenient for me	98	100	95	94	95	97	96	100	99	91	100	97	95	100	100
The mediator treated me with respect	100	99	99	89	98	97	100	100	99	100	100	100	97	97	100
I did not understand the process that we were to follow	82	92	86	80	92	75	85	93	92	88	100	91	90	81	100
I was able to say what I needed to say during the mediation	96	97	95	94	95	90	88	99	94	84	100	97	88	97	100

Statement	Mediator Number														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
I learned something new today about my former spouse	28	33	22	29	30	41	24	29	27	33	100	25	39	41	33
I was not well prepared for the mediation today	90	95	91	87	89	86	90	94	94	95	100	88	87	87	100
I was able to do a good job representing my point of view	100	94	86	79	96	88	89	97	96	78	100	93	87	93	100
The mediator treated both of us equally	98	96	99	75	95	100	97	99	93	94	100	97	98	191	100
The mediator did not care about our case	94	97	100	100	95	93	98	98	96	95	100	97	93	100	100
We were able to put the needs of the children first	81	76	88	81	86	59	70	83	89	75	100	85	71	89	100
I learned today how to negotiate more successfully with my former spouse	42	34	56	27	47	57	31	45	51	38	100	39	46	61	100
The mediation process was not fair to me	98	94	96	86	88	85	93	96	93	87	100	92	89	90	100
I did not feel safe here today	98	97	100	88	96	93	98	98	90	98	100	97	87	97	100
Overall, I am satisfied with the mediation process	90	90	94	79	87	77	73	95	89	73	100	93	80	82	100
Mediation is better than going to court	88	92	100	100	93	85	76	96	87	84	100	97	88	90	100
The outcome today was worse for me than it would have been in court	95	94	96	100	88	94	82	84	89	83	-	89	86	87	100
The mediation included new ideas for resolving our disagreement	69	67	86	73	81	74	67	83	74	65	100	81	74	85	100

Statement	Mediator Number														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
I had difficulty participating because an interpreter was not present	98	100	100	100	99	97	97	98	99	98	100	99	97	100	100
I had difficulty participating because of physical barriers	100	99	98	100	94	93	94	99	96	96	100	98	97	97	100

**Average Participant Satisfaction Scores by Mediator  
Final Fifteen Mediators**

Statement	Mediator Number														
	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
The mediation was at a time relatively convenient for me	100	97	99	98	97	98	97	99	100	96	96	100	100	100	92
The mediator treated me with respect	100	100	100	100	97	100	100	100	100	100	100	100	97	100	89
I did not understand the process that we were to follow	100	95	84	87	93	84	97	93	88	83	87	91	88	92	100
I was able to say what I needed to say during the mediation	100	98	88	100	91	96	97	97	89	93	99	100	100	100	92
I learned something new today about my former spouse	0	25	21	41	32	24	37	41	28	42	40	13	42	25	32
I was not well prepared for the mediation today	100	95	90	93	94	88	97	93	90	86	88	88	97	100	100
I was able to do a good job representing my point of view	86	97	86	91	92	92	97	95	85	93	94	100	91	97	88
The mediator treated both of us equally	90	100	100	97	89	98	100	96	96	90	96	100	97	97	93
The mediator did not care about our case	90	100	98	95	94	96	97	99	96	95	99	100	97	100	100
We were able to put the needs of the children first	57	87	71	82	94	82	97	85	73	85	83	75	90	88	88

Statement	Mediator Number														
	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
I learned today how to negotiate more successfully with my former spouse	13	45	36	44	59	47	63	58	36	58	52	100	52	56	61
The mediation process was not fair to me	100	97	97	90	97	96	97	95	92	86	95	100	97	100	92
I did not feel safe here today	100	95	100	97	97	100	97	100	95	87	99	100	100	100	100
Overall, I am satisfied with the mediation process	71	91	82	85	84	94	94	91	74	84	89	67	87	96	89
Mediation is better than going to court	100	90	93	91	87	91	97	100	78	95	84	86	97	93	95
The outcome today was worse for me than it would have been in court	100	97	82	86	100	93	93	89	83	92	92	50	95	92	94
The mediation included new ideas for resolving our disagreement	38	85	61	73	79	82	85	94	60	68	88	50	92	81	78
I had difficulty participating because an interpreter was not present	100	100	99	98	100	96	94	100	97	100	100	100	100	97	92
I had difficulty participating because of physical barriers	90	95	98	98	100	93	94	199	95	100	100	100	100	94	100

The data shows no significant difference in satisfaction among whites and non-whites.<sup>25</sup> The average overall satisfaction scores for persons of different reported races are shown in the next table. Hispanics had the highest average overall satisfaction score and American Indians had the lowest. The maximum deviation from the study-wide mean was 6%.

<sup>25</sup> Because of the way the data for race is entered into our database, we are unable to compute measures of statistical significance for the differences shown in the following discussion. The conclusion that the differences shown are not “significant” is based on our professional experience and on the relative lack of statistical significance of other differences identified elsewhere in the report.



**Average Overall Satisfaction Scores by Self-Reported Race of Participant**

Race	Study as a Whole	White	American Indian	Hispanic	Other Race	African American	Asian
Number of surveys	1717	1585	67	48	35	23	17
Average Satisfaction Score	87%	87%	81%	92%	85%	84%	83%

The least degree of difference in the satisfaction scores by race was for scheduling the mediation at a convenient time, being treated with respect, being treated equally, being treated fairly, and the mediator caring about the case. The latter four matters are, of course, the most important indicators of perceived fairness and the lack of difference in the scores by race provides strong support for the overall fairness of the pilot project. One American Indian reported having difficulty because an interpreter was not present. No other minority group member reported the need for an interpreter. Twenty-one whites reported the need for an interpreter – an anomalous outcome suggesting that they simply misread the survey question.

We paid particular attention to the average scores for four questions that focused generally on the participants’ sense that they understood and were able to function effectively in the mediation process. The average scores by self-reported racial groups on those four questions are also reassuring. While American Indians scored a bit lower on doing a good job representing myself, they scored above average in being able to say what I needed to say. Persons reporting “other race” (which often represents persons with a multi-racial background) reported the reverse – lower on being able to say what I needed to say, but above average on doing a good job representing themselves.

Overall, we conclude from these scores that mediators do not need to take any additional steps to ensure that North Dakotans of all races are able to participate on an equal footing in the mandatory custody mediation program.

**Average Overall Scores by Self-Reported Race of Participant  
On Questions Bearing on Understanding of and Effective Participation in  
the Mediation Process**

Race	Study as a Whole	White	American Indian	Hispanic	Other Race	African American	Asian
Number of surveys	1717	1585	67	48	35	23	17
Understood the process we were to follow	89%	89%	87%	93%	85%	95%	87%
Able to say what I needed to say	94%	95%	95%	93%	86%	100%	94%
Was well prepared	91%	92%	94%	98%	89%	90%	93%
Did a good job representing my point of view	92%	92%	88%	97%	93%	100%	93%

Women and men had virtually the same overall satisfaction with the mediation process (women 86% and men 88%). This difference is not statistically significant.<sup>26</sup> There were no differences in perceptions of fairness of the process between women and men – being treated with respect, being treated fairly, being treated equally, the mediator caring about the case, and feeling safe.

Areas in which there were differences in the perceptions of women and men are shown below. Women are more likely to feel that they understand the process, that they are well prepared, and that the mediation outcome was better than it would have been in court. Men are more likely to feel that they have learned something new about their former spouse, that the parties were able to put the needs of the children first, that they were able to do a good job representing their point of view, mediation is better than going to court, and that the mediation included new ideas. These differences are of no particular significance for the mandatory mediation process.

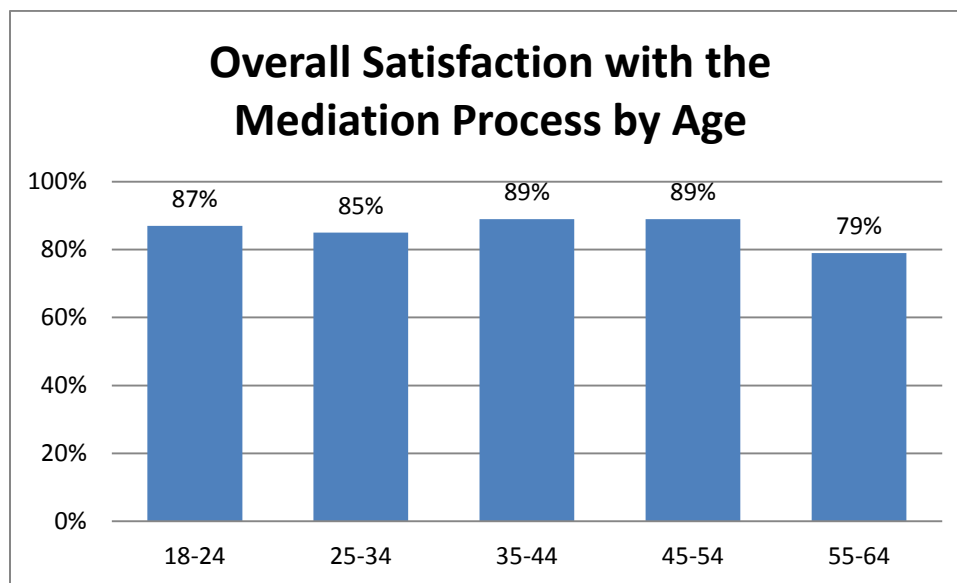
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<sup>26</sup>  $p = .139$ .

### Differences in Satisfaction Scores between Women and Men<sup>27</sup>

Statement	Women	Men
I did not understand the process that we were to follow*	91%	86%
I learned something new today about my former spouse	24%	35%
I was not well prepared for the mediation today*	94%	89%
We were able to put the needs of the children first	78%	82%
I was able to do a good job representing my point of view	90%	93%
We were able to put the needs of the children first	80%	83%
Mediation is better than going to court	89%	93%
The outcome today was worse for me than it would have been in court*	91%	88%
The mediation included new ideas for resolving our disagreement	75%	78%

The next chart shows relatively consistent overall satisfaction levels for persons in each age group, except for the 55-64 year old group.<sup>28</sup> This difference is not statistically significant.<sup>29</sup>



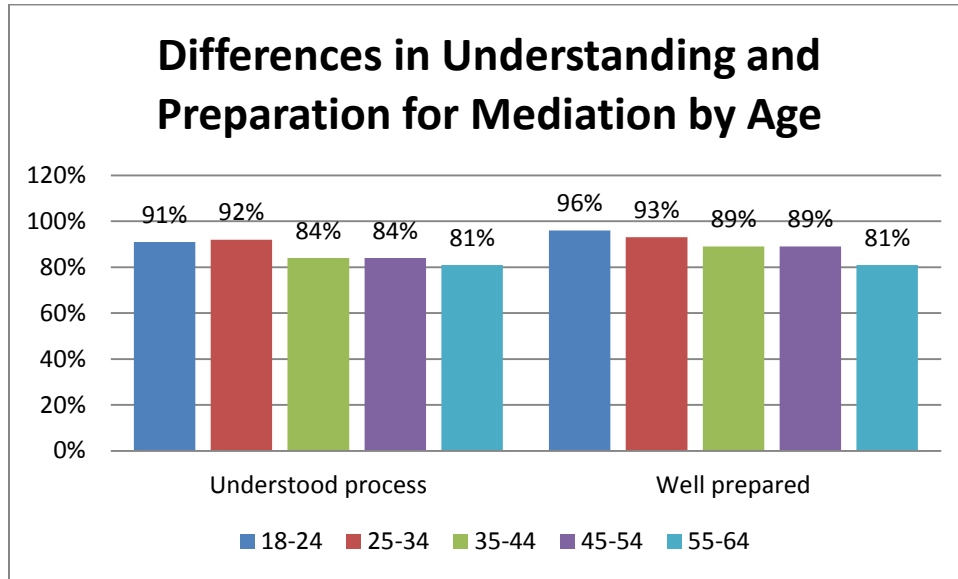
We looked closely at four questions bearing on the participants' ability to understand and participate effectively in the mediation process. There was very little difference in the average scores by age for "ability to say what I needed to say" and "did a good job representing my point of view." But there were generally declining scores by age for understanding the process

<sup>27</sup> The scores for statements presented in the negative (which are indicated with an asterisk) have been inverted so that all scores can be compared easily.

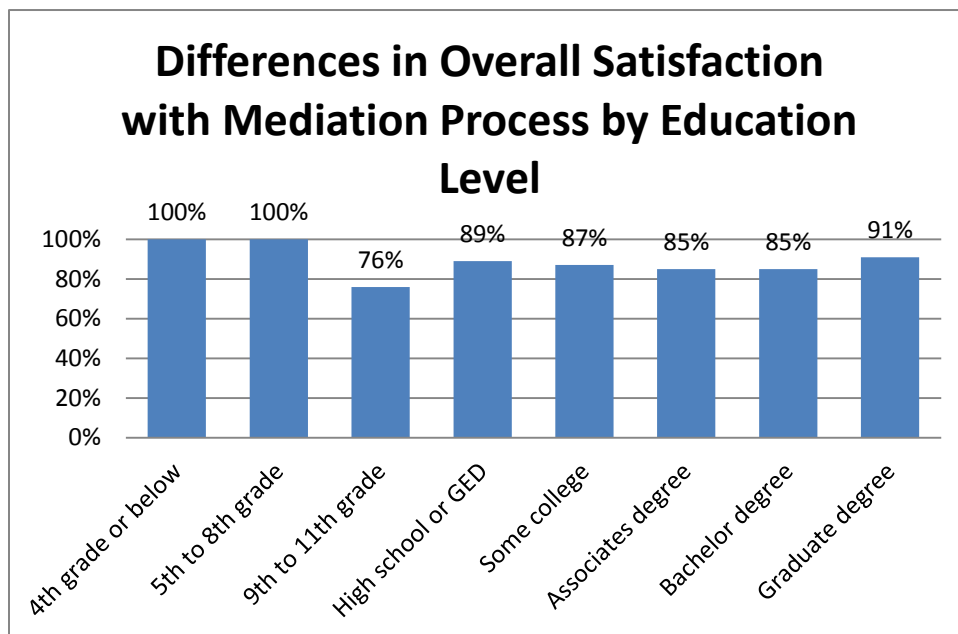
<sup>28</sup> There were only two surveys for mediation participants under the age of eighteen and only one for a participant over the age of 65. We have not included their scores in this chart.

<sup>29</sup>  $p = .909$

and being well prepared. The differences in both of these scores are statistically significant.<sup>30</sup> It might be useful for mediators to ask participants' ages during orientation and extend the time given to orientations for persons in the 55-64 year age category.



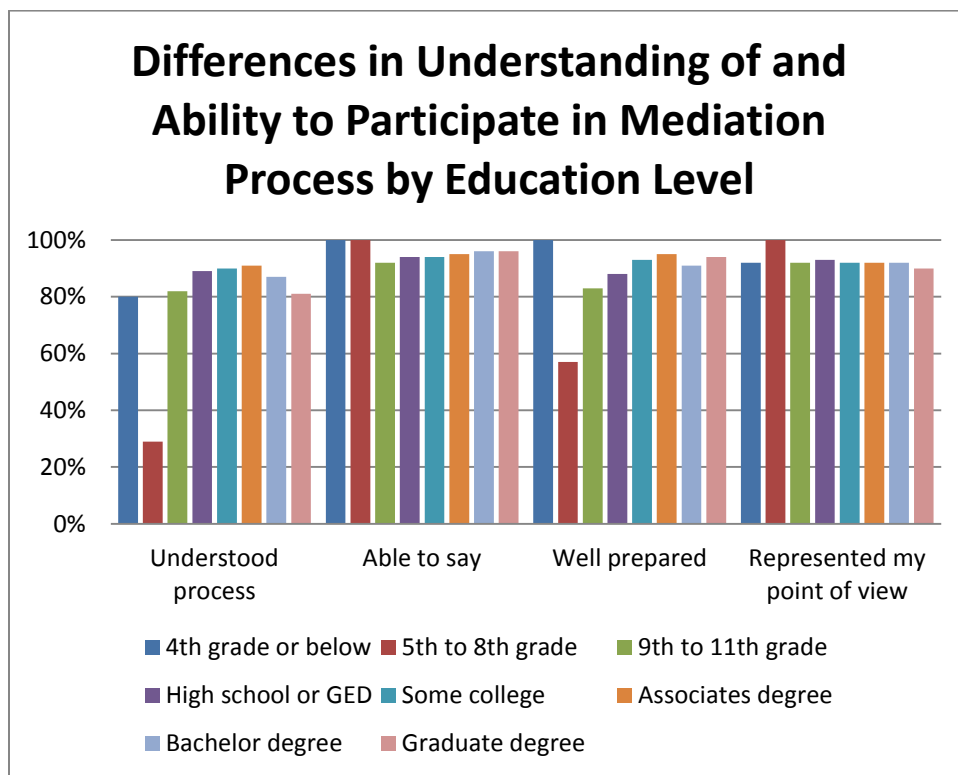
The average overall satisfaction data show some differences based on education level, but the differences are not statistically significant.<sup>31</sup>



<sup>30</sup> For understanding,  $p = .002$ ; for preparation,  $p < .0005$

<sup>31</sup>  $p = .446$

We again looked closely at the four questions bearing on the participants' ability to understand and participate effectively in the mediation process. The chart on the next page presents that information for each education level for all four questions. Despite the fact shown above that the participants with the least and most education reported the highest average overall satisfaction rating, they also reported the lowest average scores for understanding the process they were to follow. The only difference shown in the table below that is statistically significant is the difference in understanding score for persons with a 5<sup>th</sup> through 8<sup>th</sup> grade education.<sup>32</sup> However, the reported lack of understanding (and lack of preparation for persons with a 5<sup>th</sup> through 8<sup>th</sup> grade education) does not appear to lead to an inability to participate effectively in the mediation process.

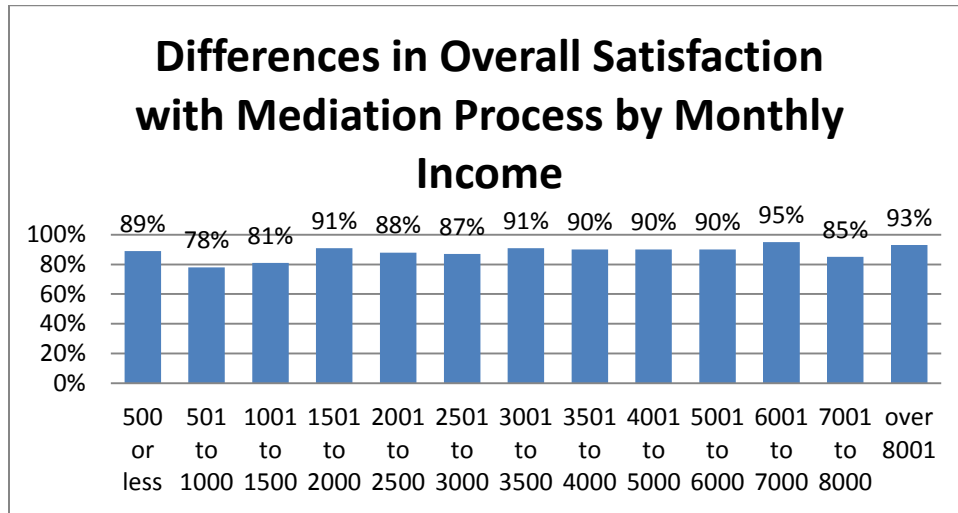


None of the differences in scores of overall satisfaction based on income level are statistically significant. Scores for persons with higher income levels are somewhat higher for overall satisfaction with the mediation process than for persons with lower income levels, although there are notable exceptions. The results are influenced by a relatively low number of

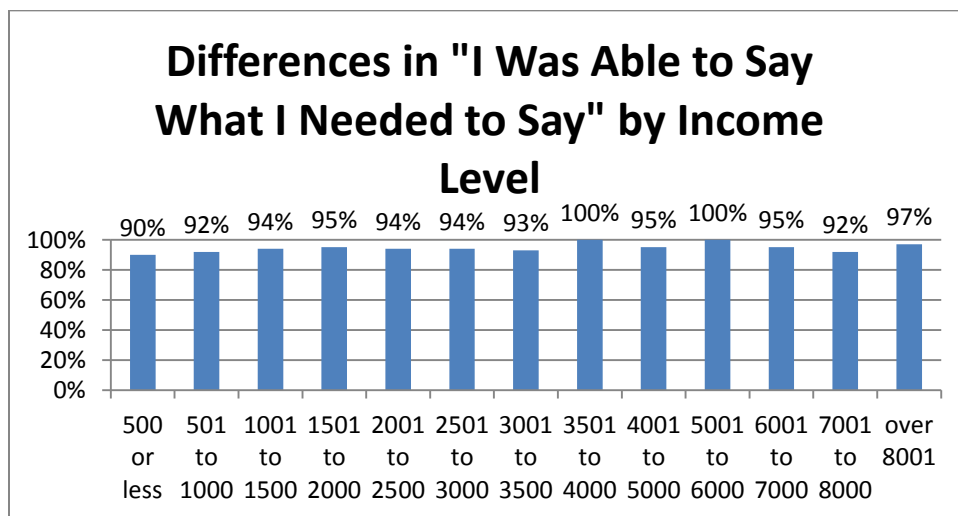
<sup>32</sup>  $p < .0005$

surveys in the \$6001-\$7000 (23) and \$7001-\$8000 (16) income ranges. There is no consistent pattern for scores on the other satisfaction questions.

We note in passing that the \$7,000 to \$8,000 income range is the least likely to reach agreement during mediation and is also one of the lowest in overall satisfaction with the mediation process.



Analysis of the four questions bearing on the participants' ability to understand and participate effectively in the mediation process by level of income produced only one statistically significant finding.<sup>33</sup> The variations on this question do not show any consistent pattern, with persons in income levels at the very bottom, middle, and higher income ranges having low scores in their perception of their ability to present their case.



<sup>33</sup>  $p < .0005$

## Participant Comments

The survey forms gave mediation participants an opportunity to record the aspects of mediation that were most and least helpful. Here is a full list of those comments made on questionnaires submitted during the final data collection period. The “most helpful” and “least helpful” comments of each participant are reported side by side, along with the county in which the mediation took place.

Our three interim reports included similar set of comments. We have chosen not to repeat them here. Readers wishing to have all of the comments from the first three and a half years of the project’s surveys should refer to the earlier reports.

These comments provide sobering material for understanding the context within which parenting time mediation takes place. The parties are often bitter and highly conflicted. The issues separating them are of long-standing. The comments demonstrate the problems faced by North Dakota’s mediators and highlight the significance of the pilot project’s success rate in achieving agreements.

The most consistent positive comments are the value of discussing the issues on which they disagree with a neutral third party, the mediator’s ability to create an environment in which the parties were comfortable expressing their views and feelings, the helpfulness of the mediator’s restatement of the parties’ views in ways that allowed the other party to understand and appreciate them, the mediator’s ability to interject new options and ideas into the negotiations, and the parties’ appreciation of having the autonomy to reach their own decisions.

The only comment that disturbed us as the evaluator was the report by one woman who said that a mediator changed the terms of the agreement without consulting her. The information presented is not sufficient to know what really happened in the situation. But if it occurred as reported, it would not be in keeping with the mediator’s role.

## Participant Narrative Comments – Fourth Data Collection Period

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Bismarck	Communicating	None		
Bismarck	Mediator has done this many times with great experience. Helps keep parties above the line and moving forward. We're not done yet, but hopefully he can help keep my spouse's head together and moving forward in the best interest of my daughter.		This is lawyers helping themselves to other people's money. This has opened my eyes to how bad the attorneys have twisted the law so that people like me and my soon to be ex spouse open our bank accounts to these crooked bastards and God forbid you have a penis and testicles- the laws are all about protecting women.	What God joined we all die. (I think God has a very warm place for attorneys)
Bismarck	He was very easy to talk to, explained things very well. Easy to understand. Gave us a lot of new ideas to help resolve child support issues. All around a very good mediator.	Nothing. I only have good things to say. This went very well for us.	Having someone answer the questions we had.	Nothing
Mountrail			Some things were worked out	Having separate mediation
Cavalier	Having someone help along the thinking process	Not being able to work out parenting schedule	Being able to talk through things without a heated discussion	
Devils Lake			Mediator helped reconcile our differences	I believe every part was helpful
Burke	How she made it easy for both			



Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Devils Lake	Getting ideas on how to solve issues that were not so cut and dry	Not agreeing or coming to a conclusion because the other person left during session		
Grafton	Being able to resolve decisions without fighting		Ability to settle differences quickly	Driving 90 minutes
Cavalier	Mediator redirected when other party was ranting, not related to a question	Nothing, it was great	Being able to talk freely	Nothing was really resolved. Things are pretty much staying the way they are
Fargo			Calm, collective conversation-problem solving	Because of how the system works, it was hard to divide things fairly the way I think they should be
Wahpeton	The mediator	My soon to be ex-spouse	Mediator put a lot of effort into getting us together for the mediation. Although my soon to be ex-wife was not very willing to complete the process	My wife
Fargo	Settling and moving forward		Came to a mutual agreement	
Wahpeton	Being able to come to an agreement with my former spouse	The mediator was great and I can't think of any complaints		
Wahpeton	Going through the parenting plan	My spouse	Opportunity to talk with spouse	Not being able to resolve more due to time limit
Bismarck	We whittle items down every issue	It was very helpful		
Dickinson	We were able to talk civil		Having the 3rd party there	

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Dickinson	Took the third party out of it and allowed for direct communication		Getting a neutral person's points of view and ideas	nothing
Dickinson	To have someone in the middle who was neutral to bring up topics for discussion and keep us on track		We finally are getting somewhere with making some decisions and having some form of communication	Overall it was good
Dickinson	Mediator was very open to both our issues and helped me see when I was wrong and vice versa. She was great.	It was all great	Not having to be in the courtroom	
Jamestown			The ability to discuss options with my attorney	The amount of time as the parties were split and not in the same room
Jamestown	The mediator was knowledgeable	My spouse's stubbornness	Feeling safe to speak my mind and knowing the other was at least half listening	Only one mediator. Feel there was a little sexism involved-not a lot, but a little.
Jamestown	My ex was a jerk, but the mediator did his best to bring it back to reality. I'm divorced...soon.	I'm sad for my child. I had to negotiate which ended up not being the best for her.	Just have someone else there.	The fact that my wife was there.
Valley City	Coming up with fair solutions			
Fargo	The mediator explained it in layman terms		Being informed of different issues and their impact on the issue.	

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Cavalier	The mediator was calm and organized. The process went smoothly from start to finish. A high level of professionalism was apparent.	We didn't solve many of our issues but we did at least start a dialogue.	Understanding what my spouse was looking for. It helped clear up some things that were in question.	It was obvious that we could discuss and workout physical things, objects. Custody was our largest issue. I do not feel this was addressed in a meaningful way. As it was apparent that it became an issue we stopped working on it and went to household items.
Minot	Working everything out without a judge.		Being able to resolve disagreements in a safe environment.	
Benson			Talking to each other and how to work things out.	Nothing
Minot	No yelling	No progress	Separate rooms	No complaints
Minot			No real resolutions came from the mediation.	No real resolution came from the mediation.
Minot	Mediator was very professional...she was courteous and very attentive.	My spouse raising voice, cussing and talking over the mediator and me...typical for him		
Minot	We were able to come to an agreement and everyone was very civil. There was not much tension and barely any arguing.	Not knowing if the agreements made are going to be final.	The mediator's helpful guidance towards resolution.	Can't think of anything specific, it all helped.
Minot	I got to sit down and make decisions with the other party		Communication	
Minot		No legal help at all		

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Minot	Not having to let a 3rd party decide the fate of my children	Compromising, but it had to be done	To be able to discuss options in a neutral environment	
Benson			The options available and the third party that was not biased	
Grand Forks	That (mediator) was here to mediate	My x husband		
Grand Forks	Helped us know what we had to figure out and helped us think of ways to go about things.	Nothing	We were able to agree on everything.	Nothing
Grand Forks			Informing what decision the court may make.	Informing what decision the court may make.
Grand Forks	Talking with mediator about recourse of ex being so unreasonable. Nice lady to talk to.	My ex being unwilling to put the children first. Give me any of the things in their room.	Nothing was resolved.	
Grand Forks			Neutral party	
Grand Forks	She was kind and caring and tried to understand both of our spots.	He wouldn't agree to anything.	To know what to expect in court, set up visiting time.	I was only able to get supervised visiting time.
Grand Forks	Doing this in separate rooms		Figured out parenting time	In separate rooms made it hard to come to terms
Grand Forks	Was given good ideas to try and work through the marriage		Time seemed to move quickly	Joint meeting due to spouses disagreement about divorce
Grand Forks	The ability to express the court's viewpoint/interest		Mediator seeing both roles	Everything was helpful
Grand Forks			Their knowledge of mediating	Nothing

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Grand Forks	Having a neutral third party present to discuss instead of argue.	Nothing-both walking away happy	Talking about what is best for the children	Child support, when it will start and how much per month
Grand Forks	We were able to sit down and discuss what was and is best for our child		They helped us word it the way we needed to. It was very helpful.	Nothing was. I thought it all was helpful.
Grand Forks	The respect the mediator showed was very helpful being in the same room with the other party.	The least helpful was not being able to come to an agreement.	Be able to talk to the partner or other parent.	Not able to get an agreement.
Grand Forks	Finally made us sit down and figure everything out rather than procrastinating or wasting money at the lawyer's office.		The checklist-clear and concise guides for conversation to follow. Staying on topic in a progressive way.	Nothing really. It was fine, plenty of time, comfortable.
Grand Forks	Good discussion was able to happen outside the courtroom.	Not enough time to discuss all issues thoroughly.		
Grand Forks	Someone there to help us agree on what was best for us and our children.		The mediator	
Grand Forks	Being able to talk to my other without yelling at one another.	Not being able to answer financial questions.	Allotted time to communicate.	Parenting plan or other document needs to flow better, custody first then smaller issues.
Grand Forks			Having someone sit down and talk with us about how this could work out and end.	My future ex-wife and I not agreeing on child care.

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Barnes	Opening the lines of communication with my ex	My ex refusing to show up for the last meeting and dragging out our issues for more months to come. Mediator was the attorney for my ex-husband's girlfriend-conflict of interest?	How the child is put forth before the needs of the parent.	Some things I already knew what the outcome was going to be.
Grand Forks	Open communication	The other party	Getting to see my daughter	
Grand Forks	Even though we didn't come to an agreement, the mediator was very helpful and provided great insight			The other person refusing to be in the same room
Grand Forks	Being able to talk without somebody being judgmental or taking sides		Talking in a controlled manner	
Grand Forks	Having an impartial 3rd party to buffer		Nice calm voice, impartial	
Grand Forks	That we had someone there to make sure that the time was split for the best interest of our child not our own selves	Nothing	Getting things resolved with someone else there	Not being able to fully get my point across
Grand Forks	Being able to talk and try to express myself in a controlled and supervised manner	Still lead to arguments and couldn't solve all issues	Talking	Time restraints
Carrington	After all having separate rooms	Unsure if anything was least helpful. It was good to talk things over.	A chance to work out parenting plan between both parents.	We didn't come to a decision.

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Minot	Talking with a neutral party	Spouse trying to win the mediator over	Neutral party involved	Lack of advice
Minot	Being able to talk to other party openly without things getting nasty - he said, she said. It was only between both of us and our wants and needs.		Everything	Nothing
Williston	I didn't feel completely afraid of confronting my spouse	Nothing	The ability to talk peacefully	Nothing
Carrington	Nothing	Was a feeling of the mediator's being on the other person's side	Mediator did a great job. Thank you very much.	Separate rooms. I couldn't call fronts or lies when she spoke. That's an easy out because I couldn't call her on it.
Minot	Just being able to find common ground which was fair for both of us	Nothing	The fact that we could ask questions and get an answer. The fact that we did not need a judge to control our decisions and intimidate.	I felt nothing was unhelpful about mediation.
Minot	There was someone there to go between and "translate" between us in a less threatening way.	Nothing was accomplished except confirming that my former spouse is not willing to negotiate without paying a lawyer to do it.		
Bismarck			Having a third party to keep the negotiations going	All was helpful at this point
Bismarck	Keeping on track of what we were discussing	Nothing	Having someone else there	My wife is still pigheaded.

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Bismarck	Talking about the best interest for our child and that two people that aren't together can resolve a lot by us talking and having help by our mediator to stay on the right track	My spouse spoke to me. Me and my spouse coming to agreements.	We could sit and talk about stuff, there was no running from stuff or avoiding questions.	My ex
Bismarck	Working out schedule		Third party	
Bismarck	Our mediator was able to say things in a different way so we could understand them better. He was able to stop us when we got off track.	My spouse is not willing to negotiate.	Being able to talk about things that were upsetting me and made me angry. We were able to clear the air.	The fact that we're both stubborn and then feel I have no say.
Adams	To have us both (parents) discuss our children's well-being instead of fighting	The land and property	To be able to talk with spouse	
Bismarck	Having my attorney present to explain things and answer questions	I felt some of it was one sided and almost pressured and uncomfortable	Talk to	
Bismarck	Resolving our issues with a 3rd party around		The mediator	
Bismarck	Mediator remained neutral	It was all helpful	Discussion good for agreement possibilities.	Spouse wasted time with irrelevant information.
Bismarck	Talking with the mediator present, she neutralized when progression was no longer happening.	Understand from the defendant.	The presence of a mediator to calm the situation and start with new ideas.	Nothing is definite. Opinions aren't given.



Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Fargo	The mediator went out of his way to make sure I felt safe and assisted very effectively.		Chance to speak out	It take long time
Fargo			New ideas	It was as good as it could be.
Fargo	Great mediator		Coming to a conclusion	I can't think of anything.
Fargo	The mediator explained things until I understood.	I thought everything went well. This is my first time doing mediation.	It was easier to talk in the setting we were in.	
Fargo				No resolution
Fargo	Many ideas	Amount of Time	Neutral person gave us the other's written proposals and explained them.	
Fargo	Having only lawyer here	The other party not willing to work with us.	Nothing-the case did not present an opportunity to do mediation because the two parties interests are so different.	
Fargo			Being able to express my opinion	
Fargo	Being able to discuss with him but not argue because of the mediator.	He was unwilling to compromise.	Being able to speak my mind.	
Fargo	Being in separate rooms using a mediator		The mediator explained other options that other people had chosen that allowed me to come to an agreement over our daughter.	

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Fargo	It helped my spouse see what I asking for in financed support as being fair and somewhat equal.		It let me know more of the rules.	
Fargo			The calm environment and not being in a courtroom. Being able to work out the kinks and essentially come to an agreement.	
Fargo	Helping with negotiations	I didn't find it unhelpful.	Talk through issues	unknown
Fargo	Being able to have someone talk on my behalf without emotions	Couldn't present all evidence		
Fargo	She was kind	Attorneys should not be allowed in mediation. It did not allow ideas to be discussed openly.		
Fargo	Independent 3rd opinion made a cloudy situation more clear. Reassurance that I will be ok.	We weren't able to accomplish much in the big picture. Baby steps.	That we agreed to put on hold any further mediation until later this year.	We only did 30 minutes of mediation at this time.
Fargo				Need to schedule pre-appointment
Fargo	My mediator was great	Nothing	I was thankful for the non-confrontational atmosphere.	Having to go through the process of mediation.
Fargo	The mediator made me feel comfortable,, like I could say anything	The other party being stubborn	It's not court and its free.	

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Fargo	Having someone listen to both sides and tell us facts about the law and custody	Nothing		
Fargo	Deciding what's best for the interest of the child with custody schedule	My spouse's attitude		
Fargo	Just having a third party but even then you can't change the other person's thoughts	Nothing that I can think of	The civil talking helped.	Meeting in same room
Fargo			Getting along	
Grafton	The mediator made it easier to see each situation from both points of view.	I think mediation made it easier to explain situations instead of letting a judge make decisions for our children.	Wife being down to earth.	Time between sessions
Cavalier	My ex and I were able to speak to each other in a kind manner and resolve disputes and ask questions with our mediator there. We didn't have to go to court.	Everything was helpful with going to mediation.	Just a chance to talk with someone who saw it both ways and guided us to make the right decisions.	Nothing
Cavalier	Mediators helping to make me understand more		Having someone there who explained what was going on	
Grafton	That there was a mediator to see my issues I have with my spouse when it comes to our child.	My former spouse	We were able to start working out visits for our child so that there is a set time.	

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Cavalier	Mediator was able to explain things better when asked or explain things in out. I was acting far from spouse.		Caring about the children and being equal to both sides.	About caring about our children
Bismarck	Discussing time with our children	Not much	Being able to discuss everything	Nothing
Minot	Chance to talk without fear of emotional reprisal	Felt a little unprepared at times due to lack of written material	The mediator was able to keep us both on task and not off topic.	No complaints
Minot	New ideas the mediator presented			
Minot	Suggestions made by mediator		His friendliness and willing to explain things	Nothing
Minot	Divorced sooner. Mediator helped solve problems we hadn't considered.	Nothing	We came to an understanding instead of going to court. The mediator helped us understand each other.	None
Fargo			He listened very good	She got mad and left
Minot	When the discussion got intense or at a standstill there was someone there to help.		Atmosphere	
Minot	Having my lawyer present		The mediator was good about focusing and assisting on reaching a compromise solution	Small conference room

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Minot	That we could both get our points across in order to make the best decisions for our child	I think today went extremely well and I believe everything was helpful	Letting me say what I felt needed to be said	Seeing her cry, That's never fun.
Williston	We both got to put in our ideas and talk about the issues.		Simplifying our case	
Minot	The mediator helped me by giving us ideas we had not thought of before.			
Tioga	Coming to an agreement on custody/visitation	Spouse not willing to cooperate when it came to discussion on the house.		
Minot		I dislike my spouse more after coming here than I did before I came. It just pitted us against each other because we both took offense to what the other was saying.		
Williston	Being able to voice my concerns and thoughts	Unsure	Being in a nonaggressive environment	
Williston	You are able to talk			
Fargo	The mediator was willing to help with questions		My lawyer was there	I didn't get to say what really wanted to say.
Dickinson		We weren't able to agree on an official parenting responsibility	Being able to talk	
Dickinson	Mediation is about the kids and what is right for them.		Coming to an agreement on kids' needs	
Dickinson	A mediator			

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Dickinson	Getting to talk with a third party present	Nothing unhelpful	To learn about my spouse's feelings	Nothing
Dickinson	There was a fair and educated person available to moderate and oversee things.	That the party who ordered the mediation did not come to town - so mediation was via Skype. It would be better to be in person.	The third party (mediator) being a witness helped to convince my daughter's mother to agree to Skype sessions on a weekly basis.	The unfairness and bias of the mediator. Mediator provided one-on-one consultations to the other party but ignored my requests for re-scheduling of mediation and provided the other party with information that I requested that she not. The mediation basically delayed the visitation determination process long enough for me to miss another summer from my daughter.
Dickinson	Having someone present so I could speak without being attacked by spouse.	Raised some more issues we never had.	Having a neutral party present	
Dickinson	Showed ways of communicating			
Dickinson	Having a third party to see the big picture		I have set times now, everything is more clear.	Nothing
Dickinson			Laid a foundation for a schedule and parenting plan. Thank you.	The other party doesn't follow through with the plans made in mediation or after.
Dickinson	I got to see how it has affected him and realized he might still care.		Figuring out what she wants.	Getting a settlement agreement done.

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Dickinson			No outside interference from related 3rd parties	The mediator seemed to lead the other party into arguing against me.
Grand Forks	The kindness of the mediator	My husband is an asshole	I don't know	My wife is a liar
Jamestown	Attorney present	Having to listen to my spouse put me down during mediation.		
Jamestown	I learned how to communicate with him.	It's still a mess.	The equality	
Jamestown	Try to get everything settled fairly	Didn't come to a decision.	The ideas that were presented to me, and options	Nothing
Fargo	That I could express how I felt about things better without him in the room.	Not being able to come to decisions on a couple of things.	Negotiating	Stubbornness from other party
Jamestown			We received examples of other cases.	Not enough time to reasonably accomplish goals
Jamestown	Resolution of issues	Nothing	Just having a third party to keep everything calm.	
Jamestown	The added options provided	Jumped around sometimes, could be hard to follow.	Talk things out	
Jamestown			Figured everything out	
Jamestown	The control of the situation the mediator provided during the meeting kept it moving forward in a positive manner.			

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Jamestown	They were great at helping us come to an agreement.	Nothing - it went great	Parents sitting and talking about the child comes first, the best things for the child throughout the child's parenting plan.	
Jamestown	Learning different ways to communicate		An "open" person to talk to	
Jamestown	I was able to speak to my ex without the fear of an argument due to having a third party present.	Not having my lawyer present	Being able to talk about our concerns regarding our time with our children and what goals we have for them and their future.	
Jamestown	Having a neutral party here		To sit down and talk calmly and go over things.	
Jamestown			It got me and my former spouse to think and talk.	Nothing
Grafton	That I got to say how I felt somewhat and talk about some days she's with me.	Not speaking up because I was worried that I wasn't being fair or that my former spouse would get mad at my point of view.	Giving us a starting point for each topic; direction	Distance I guess; nothing particularly not helpful
Fargo	Seeing that he wants to have more time with kids on his terms and not how anyone else feels.	Not solving the parenting at night	Being able to talk. Being able to try to make my concerns clear to my spouse.	
Bismarck	Just having someone guide us on how to achieve a parenting plan- Thanks	Nothing-all good-very helpful	An unbiased opinion and a 3rd party view on our situation	My wife still won't stay married to me or accept that I want to change for the better.



<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Jamestown			She helped explain stuff	Nothing
Bismarck	We decided what the outcome was going to be between us-not a judge deciding.		Explanation of terms and understanding of how and why things are.	Nothing
Towner	Getting a set outline of what he is happy with. Seeing during a week to week setting.	Father made his side seem all peachy.	To talk about disagreements	Nothing
Bismarck	Having different ways and ideas presented.	My former spouse's talking	Another point of view and legal knowledge.	
Bismarck	The mediator was good at expressing both points of view to where we could see them both reasonably.		Having a neutral person	Time restraints
Bismarck	Having the mediator present		Having someone relate to both parties	
Bismarck	The mediator did a very good job of bringing up points and situations for us to talk about. He was very fair.	My daughter's father decided not to agree to anything in the end.	The ability to speak with each other in person.	Fighting without control.
Bismarck			Getting process of divorce in motion	Saving money not going to court
Bismarck	Hearing another's point of view		To have someone (un)biased to listen and give ideas	
Williston			Her willingness and cares towards both of us resolving it	
Cavalier	Having neutral party offering suggestions	Facing and communicating with my ex	Neutral party	Getting off the subject and fighting/anger issues

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Grand Forks	Neutral party facilitated process	Just wish we could have come to a compromise.	The two of us talking and getting rid of the arguing	
Grafton	Getting everything in writing	A lot of stuff was left up in the air-uncertain.	It helped me decide what was best for our son.	Nothing
Grand Forks			Getting a schedule for vacations that was more fair.	It seemed to be difficult to be heard from the other party.
Devils Lake	Seeing where we are with our thoughts on things	I felt it was a little one sided.	The mediator was very good at listening and explaining all aspects of the mediation process. Very professional.	The way my wife wanted everything and the greed that she expressed when all bills and children were made by the two of us. We were supposed to be friends and be able to make things good for our children.
Devils Lake	Trying to get points across and what was BEST for my child and financial issues. And other issues we have to work on.		Just talking and saying what I wanted to say in a neutral setting.	
Devils Lake	More ideas-keeps things on an even bar		My former spouse and I talked without getting into an argument.	Getting the custody final
Grafton	I was prepared and know what to expect.	Spouse wasn't prepared.		
Fargo	Having my lawyer with me and not seeing the other party involved	Mediator seemed biased which made it feel like he wasn't a neutral party. If I have to go to mediation again I would ask for a new mediator.		

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Wahpeton	Being able to voice more probably than if going through the courtroom	Feeling intimidated and feeling like I had to agree with what I felt I didn't want to agree with	Having someone neutral helping go through the process	
Aberdeen	We both came to agreements and we got everything down in writing. We now have a sound decision.	Everything was great.	Being able to talk with another person instead of face to face with other party and to get another opinion.	Nothing
Jamestown	Back and forth between parties with no tension	Unwillingness to mediate	Being able to talk about things in a neutral setting	
Carrington	Everything, the setting, the mediator, it all helped a lot		Everything	Nothing
Bismarck	Having the mediator we had			
Jamestown	To get some things done		Nothing really	Did resolve what I wanted.
Dickinson	It helped me come to an agreement.			
Grand Forks	Nothing	Nothing		
Grand Forks			Communication between both parties	Having a resolved decision over custody of our children
Grand Forks	There was someone to point out what needed to be discussed.	It was very helpful	An attorney was the mediator.	
Grand Forks	Our mediator is an awesome mediator. She is clearly an impartial person and wants to help people		That our daughter's needs were first and primary.	The deep issues of why irreconcilable issues my spouse is fussing about cannot be enlightened at this time.

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Grand Forks	Being able to resolve issues civilly with the opposite party	Found mediation very helpful-no complaints	Being able to talk things out	Nothing
Grand Forks	He helped us with obstacles on how we would transition our parenting time.	Everything was helpful.	The person helping us	Nothing
Grand Forks	Nothing really helped because my husband chose not to participate for the full time allotted.	The fact that my soon to be ex-husband decided he didn't want to discuss because he thinks the marriage should still be together, which he has made impossible.		
Grand Forks	My spouse and I were able to come to mediation together and for the most part remain agreeable.	It's not court binding.		
Grand Forks	Having someone there to "referee" our conversations, so we could both be heard.	We just weren't able to agree on the custody and visitation schedule.	I was able to speak and be heard without her talking over me.	She went back on everything she agreed to.
Grand Forks	Agreeing to a schedule that both of us were happy with.		The time schedule	Nothing, everything was good
Grand Forks	We were able to come to some sort of an agreement	I did not really find anything that was not helpful.	She and I were not yelling at each other. We both got a chance to say what was on our minds.	None
Grand Forks	Having someone explain everything in detail to us	Nothing	Having someone there to discuss our situation with	Nothing

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Grand Forks	The mediator helping discuss issues			
Grand Forks	Being able to come to an agreement on our child's behalf	Everything was helpful	Reaching an agreement before court	I feel that I legally could not win 50/50 custody based solely on the fact that I am a male.
Grand Forks			Mediators were impartial.	One mediator was present via webcam.
Grand Forks	Very nice casual place where both parties could be heard and agreements could be reached.	Nothing I can think of	We were able to talk face to face without lawyers. It was nice.	It went fairly well.
Grand Forks	Not going to court		Easy to come to an agreement	Nothing
Grand Forks	We got to discuss our issues			
Grand Forks			Being able to have an impartial person convey our concerns to the other.	Not being able to be in the same room or have direct conversation with my wife.
Grand Forks	That I had a chance to talk.	We didn't solve a plan for our son.		Personal issues
Grand Forks			Trying to come to an agreement prior to going to court. Finding out how evil someone can get that once had feelings for you.	Listening to my "failures" over the years.
Grand Forks	Talking to someone who is not emotionally involved with my case, i.e. relatives.	Nothing. I would recommend this to everyone.		

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Fargo	Right now I cannot talk to my husband alone comfortably. I felt secure in my surroundings.		Resolved conflicts in a non-threatening environment	Satisfied with mediation meeting
Fargo	Being able to say what I wanted to say and how I felt about things	Having to go back so many times		
Fargo	She gave opinions which helped.	The emotional stress	She is easy to work with and agreements are being made.	
Fargo	It was free, allowed us to talk on neutral ground.	Lawyer didn't have a lot of times that worked for us; cancelled scheduled times.		
Fargo	I thought it was helpful to have the opportunity to "clear the air" our first session.	The fact that in the room things were verbally agreed upon and afterwards the other party called and spoke with the mediator regarding changing their mind/not comfortable with the original agreement. So, the mediator wrote the parenting plan up in that manner and I feel that was misleading and misrepresented and should've been discussed with all parties involved.		

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Fargo	Being able to talk out issues I was not able to understand. Being face to face with my husband made him human and not some monster I am divorcing and made me willing to cooperate more		Settling our differences with an impartial mediator	Nothing
Fargo			The help with other options and the help to control the disagreements at the right times before things get heated.	Not knowing enough about fathers' rights and more info on how the whole custody stuff is figured rule wise. And why we weren't informed of this right away by the lawyers. It would save a lot of money people in this type of situation could put toward kids.
Fargo	We were allowed to state our case without interruptions.	Nothing. She did awesome!		
Fargo			More information to think about	Nothing
Fargo	Having the mediator there to help me realize the parenting plan isn't just for right now.	Nothing	The fact of explanation about everything we were going through	Nothing
Fargo	We got things accomplished for our daughter.			
Fargo			Got us thinking about parenting after the divorce.	Giving up money with no credit given.

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Fargo	Separate talks before being in the same room		Conclusion	2 more months
Fargo	Not having the huge time delay that sending letters from our attorneys created as well as not having the outside influences affecting our decisions...Just us making decisions for our children the way you would as a family vs. talking to the outside world about the letter you just got from the others attorney and receiving negative feedback.	I don't believe anything was least helpful. This kind of communication or the effort to communicate and come to a mutual agreement has been most beneficial for all children involved.		
Fargo	Saved money	Still have questions with other party's ability to hold up responsibilities	Having somebody neutral-3rd party point of view	All was helpful in a way
Fargo			Calm collected ideas and thoughts from the mediator	My former spouse's inability to negotiate
Fargo	To have someone without opinions-neutral party to look at issues		A neutral party to offer a reasonable look at how the issues would likely be seen by a judge in court	Being in separate rooms-unable to have direct discussions
Fargo	Being able to try to work this out without having to talk directly to my ex			
Fargo			To understand one another	



<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Fargo	The calm, rational atmosphere and the mediator being respectful of both our opinions		We were able to come to an agreement without going to court and compromised our disagreements.	I found the mediation experience great and have no real negative comments.
Fargo	Talking through it	Trying to get close to 50/50	Having more ideas brought to our attention	
Fargo	Mediator showed he cared-did not show emotion when I was giving answers.	Husband left and did not come back.		
Fargo	The mediator is very personable and upbeat. She seems to be able to diffuse the situation if needed.	Nothing	To start to communicate with my spouse	
Fargo	Setting time to meet	Took too long talking about enumerable things		
Fargo	Neutral	Neutral		
Fargo			Face to face interaction	It was very helpful, we accomplished more in 2 hours than in the last 3 months.
Fargo			Being able to agree on things	

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Fargo	That the mediator explained everything thoroughly and that we had up to 6 hours to go through everything.	It was pretty intense for the almost 4 hours we were there. Felt like we should get it done by the time the office closed so we didn't take too many breaks. Felt a little rushed at the end although we could go back for the remaining couple hours if need be.	Very good at keeping control of the situation	
Fargo	Nothing	Mediator going back and forth between rooms and discussing things that were not pertinent. Not going over/through the parenting plan right away.	We had a chance to resolve some issues.	
Fargo	Being able to have my belongings returned.	Former spouse backed out of everything agreed upon during mediation so it felt like a waste of time.	Having someone there to help me confront my former spouse.	The hatefulness and unreasonableness of my former spouse.
Fargo	Separate rooms	Didn't get resolved at one meeting	Having someone do the talking to my ex that wasn't me.	The waiting...I'm not the most patient person out there.
Fargo	I don't know- undecided -our case is still ongoing.	Undecided-our case has not been agreed on yet.		
Fargo	Neutral	Neutral	Having someone neutral	Took too long
Fargo	A neutral viewpoint from a third party		Hospitable environment to talk	
Fargo	The mediator was very nice and helpful		Less stressful	

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Wahpeton	Having a mediator and a neutral lawyer present	Spouse would not negotiate anything unless I agreed to 50/50 custody, which I did not.	The ability to say my piece. Attempt to settle out of court is good if mediator is good.	Mediator was not trained in law and was not able to move process forward. Mediator was COMPLETELY ineffective and could not figure out how to overcome barriers by defendant. Mediator was not adequately trained.
Fargo			Getting things resolved ourselves	
Fargo			More cost effective than each person having a lawyer	
Fargo	He remained neutral and allowed us to express our point of view.	We did not settle.		
Fargo	To have a non partial person		Come to an agreement	Nothing
Fargo	Able to discuss issues with both parties present and objective 3rd party involved		Mediator kept us focused and kept emotions from taking over discussions.	
Fargo			Keeping us in separate rooms while still able to interact by the mediator	
Fargo	Mediator helped to clarify things for ex-spouse	Being in the same room for long periods of time. Being pressured to set up meetings before I was ready.	It made us sit down and start negotiations.	I was pleased with everything.

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Fargo	Coordinating an over-the-phone mediation as I work out of town.	The outcome...I felt pressured. I was able to think about my daughter's future. I still feel child support should be paid in order for father to have time with my child.	That I can at least get to see my daughter and know what she needs.	At least both parties can agree on the things to help the kid for she or he's need.
Fargo	The mediator was very professional and assisted in facilitating the mediation in a calm environment. When topics became intense he stopped the mediation and allowed us to regroup. If he was not there it would not have been as civil.		The mediator was great.	It would have been helpful to have been told what documents to bring so that issues could have been discussed more thoroughly.
Fargo	Having someone else to keep things on task and to not let emotions overrun	We were not able to reach agreement but I feel that is more because things are just complicated.	To change topic or diffuse escalating tension	Not quite resolving all issues. Meeting again for the remaining time set aside to hopefully resolve further differences.
Fargo	Having a view from an outside party's perspective		All of it	None
Fargo	Being able to sit with a neutral party and talking about the issues			
Fargo	Seeing things in the big picture		Opening communication without lawyers	

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Fargo			That wife could do mediation, was always against it till she was forced to.	Got process moving a little bit.
Valley City	Respect and answered any questions	Getting what the other party and I agreed on	Not being able to include my wife in the mediation. She should have been able to be there as she is the other parent caring for the child.	
Grafton	That we could decide on things per each other's requests and not have a judge decide for us		Mediator there to calm plaintiff	Plaintiff yelling all of the time
Dickinson	We put our child's needs and came to agreements for him.	Talking and working it out.	Being able to talk and get feelings and concerns out	Agreeing on some things
Bismarck	Giving us some point of view	None	He helped by making it so both parties could speak on how they felt without letting the situation get heated.	Needed more time
Bismarck	We could talk things out amongst ourselves		Our mediator was able to help us accomplish what we could not on our own	
Bismarck			The time to get together and talk and try to negotiate	Attitude of other party
Fargo	The mediator redirected us to stay on track toward our goal.	The plaintiff's attorney was new to the case and not prepared.		

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Bismarck	Having someone willing to tact the time to offer explanation about the legal system, the choices we have, what options we have	Having a spouse who is unwilling to cooperate	Didn't have time to talk about much	Not knowing what to do
Bismarck			She listened	It should not have gotten to that point.
Bismarck	That me and him could actually hold a conversation		We got to sit down and work out the issues with a third party that was helpful.	Nothing
Bismarck			Being able to share ideas	The lack of cooperation from the other party. I do also wish the mediator would have been more proactive during the mediation sessions. A laid back nature is fine, but when something needs to be done or said, I wish the mediator would have been more willing to step in.
Bismarck	I was able to talk directly with my spouse to try to come to a resolution.			
Bismarck	The mediator did not take sides and was able to bring different viewpoints and ideas that I hadn't thought of.	I thought this was very helpful and found nothing wrong with it.	Saved time and money associated with going to court.	Nothing

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Bismarck	That we were able to talk about certain issues with a third party	Having to communicate with other party	Face to face with a neutral party to stop any big arguments	Custody time
Bismarck	Having the mediator with us made me feel safe enough to express my opinions	The process itself was helpful. Our agreement fell apart outside of this process when my husband decided against the financial agreement we had established.	Having a third party with no vested interest help guide us through the process.	Nothing comes to mind. I feel it served us well.
Bismarck	Communication	It was very helpful	Concrete suggestion on how to proceed	
Bismarck	Having paperwork sent to me and pre-mediation meeting		Being able to reach a final decision peacefully	
Bismarck	Ideas on communication			
Bismarck	Having someone there who didn't let us lose focus of kids. Had us fill out paperwork assets and child plan. Kept us civil and on track. Not out for one side	We didn't have money paperwork or child plan with us. It was at home but we did remember what we had written.	Mediation provided new ideas on how to communicate (Google calendar) kids' activities. Gave opportunity for myself and wife to talk about issues in front of neutral party to reach conclusions.	
Bismarck	I was able to talk to my child's father face to face.	Just my child's father didn't want to compromise.	I understood that sometimes reasoning doesn't work.	Just doing it wasn't really helpful. The issues were never resolved. Sometimes court is the only option.

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Bismarck	I got to hear his point of view.	He did all the demanding and I tried to compromise but did not get to let him know my point of view on what is best for our child.		
Bismarck	Having a non-biased third party present	Not having anything set in stone because it is not a legal document	The mediator was able to see her for who she is too. Always late and a liar and only cares about herself.	The trying to find a medium with my ex. Not even the presence of some body to help each other understand the other's faults and needs didn't even make her realize.
Bismarck	Saving court costs	The correspondence from mediator on decisions reached in mediation was incorrect in times, dates, etc...		Looking at her
Bismarck	Mediator was able to present new ways of trying to come up with decisions and ways to go about finding a middle ground.	Defendant was not willing to stay and come up with any type of compromise.		
Bismarck	Helped me understand my children's needs on their level and how they see things. Understanding my feelings and how my spouse feels.		Clearly stated assignments to have prepared for the next session	Couldn't get my spouse to fully understand my points of view.
Bismarck	Communication	Seeing the other spouse	The helping us work through the things we overlooked	



<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Bismarck	A neutral party pointing out the issues		Being able to finally talk to my spouse	
Bismarck			Got shit off our chest	Was prepared
Bismarck			Having help wording the agreement	My wife
Bismarck	It was nice to have somebody with experience and a wide variety of suggestions help us through this difficult time. It was beneficial to hear what possibilities exist and give us the option of deciding what would work for us.	We experienced some difficulty with not having all the information we needed present with us a couple of times	Having someone bring up new ideas that we could brainstorm about.	Not able to schedule more dates in because my wife took a long time to get through all the items.
Bismarck	The mediator listened to both sides before offering suggestions.		Gave me a different outlook on the "relationship" that my former spouse and I need to have	I didn't see anything that was not useful.
Bismarck	Just having a neutral person and being able to get us (both parents) together to discuss our child's needs. Very thankful	None	Brought me and my former spouse's communication closer and stronger. We were more civil.	Nothing
Bismarck	Not having to go to court to see a judge. Being able to talk about issues and air differences.	It was all helpful.	Having my attorney present	Somewhat apprehensive situation
Bismarck	Nothing at this time		Our circumstance was not a good candidate for mediation. #12, 15, 18, 21 questions were worded difficultly.	It was hard to say some of the things that were said because I knew they were hurtful to my spouse.

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Bismarck	Made us quickly decide on a resolution	Felt like I settled and just gave in-was not fair for me	Location was appropriate. Mediator was very knowledgeable, and brought up points to discuss we hadn't thought about.	Time restraints. 6 hours is extremely helpful, but I felt that the individual 1 hour orientation could have been shortened to give more time with the other party.
Bismarck	The mediator was very knowledgeable and able to explain things I didn't understand.		Meeting with spouse and being able to talk things over	
Bismarck	Nothing, it felt like it didn't change much.	It didn't seem helpful due to the fact that we didn't change much.	Working out a time to pick up the kids	Trying to get more time with the kids
Bismarck	Moving forward	Communication between us	He pointed out things that I never considered.	All good
Fargo	The mediator was very kind and respectful.	The other party in my case is incorrigible.	That I had a chance to hear her views without shouting or feeling a fight was brewing	That an outcome was not reached
Grand Forks	We were able to compromise.	Nothing		
Bismarck	Being able to talk with someone here to referee and put things into perspective.	Nothing		
Bismarck	Finding out what it is that the other party would like to happen in the end of all of this.	The whole process was very helpful.	It gave me the chance to talk without her interrupting me.	She was still very rude to me.
Fargo	Having someone there to calm my fears	No complaints		

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Dickinson	Working on what was best for our child		To be honest, nothing	Trying to talk things out 'cause I couldn't. I would try and answer my former spouse's questions and couldn't. She wouldn't stop talking so I could answer.
Dickinson	That is over	The mediator was very one sided, outspoken, very rude, was out of line in some of her comments. I was not happy at all with this process.	Both of us were able to discuss our concerns.	Not enough time
Fargo	It was helpful to throw around ideas to one another and not be able to leave.	My former spouse was presented with proposals and quickly turned them down without resolving any issues. He also did not suggest any alternatives to our issues.		
Minot			Seeing my ex's true intentions	Communication barriers, no compromise, not willing to be open to other possibilities
Minot	That we were able to talk about what's going on and also she was able to get my point across to my ex-husband	Nothing	The friendly atmosphere and mediator was excellent	Can't think of any
Minot	To see he is still a compulsive	Arguing		

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Minot	Not much, my ex-husband began the session by saying it was a waste of time-so it was. He began to verbally and emotionally abuse me repeatedly during the session so I had to leave.	The mediator was late. It put the tense meeting off to a more tense start. She did a fine job, but punctuality is important-especially when people are tense to begin with.		
Bismarck	Neutral party allowed for not losing temper	Long times at the table were exhausting-but helped to get us to resolve the difficulties.	Being able to discuss topics without it dissolving into a fight	
Bismarck		Mediator did not return phone calls. I felt she favored other party. I felt I was manipulated into decisions. Stressful and unpleasant situation.	My visitation was continued.	It doesn't make a difference how I feel about anything to my former spouse.
Fargo	The mediator made it easier to discuss the items that had been difficult in the past.		A neutral party to listen	
Grand Forks	He was not "the boss" just saying "no". Mediator explained to him what's fair and how things work-very good!	Nothing	Different room so I didn't have to see ex	
Grand Forks			Nothing	Nothing
Grand Forks	Just having someone else there with us	Nothing	Working with the mediator	

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Grand Forks			Nothing. Though I'm sure this process works well for some people, the mediators were not helpful to us.	The mediators did not do anything. They sat there and listened while every time I was trying to speak, my child's mother was interrupting me every 2 seconds. Because of these constant interruptions I was not able to get my point across, communicate or come to any sort of agreement. The mediators did nothing to stop or curb the interruptions.
Grand Forks	We finally agreed on something.	That I don't get to spend as much time with my little girl	The mediator was very respectful and equal.	
Grand Forks	That I was able to appear by phone	There wasn't much effort put out to help us come to an agreement about sharing transportation costs.	The fact that the mediator is easier to talk to	Nothing
Grand Forks			The mediator understood my problems and concerns.	My ex
Grand Forks	I have been able to briefly begin a new relationship with our children.	My ex is still unable to follow ANY type of agreement/ order.	Being able to discuss and at least reach some kind of decision	My ex-wife yelling at me
Grand Forks	We each got to speak our concerns- the mediator stopped it if it was heated.		Setting	

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Dickinson	Having a referee			
Dickinson	Wanting to help resolve our issues	The communication between myself and father	By the end of the mediation it became very obvious that the other party was willfully denying parenting time and that my children's best interest was not a factor in decisions made by the other party.	The fact that the other party willfully denied me parenting time which has a negative effect on my children and the mediator couldn't do anything to change it.
Jamestown	She listened and was able to put in different ideas that have worked for others and may or may not work for us. She explained everything very well.	I can't think of anything.	Honest mediator	
Minot		I just think that if he and I could agree then mediation wouldn't have been an option.	Having the chance to share my thoughts on our children and how I felt as though it was both our jobs to raise them	My ex tended to shut down and not want to compromise on anything.
Grafton	Being able to sit down and come to an agreement without arguments	Everything was helpful	That they help with decision making and drawing up plans	
Dickinson	Hearing both sides with the mediator throwing out ideas to debate		It got both of us talking in front of each other. We got to hear each other out.	The travel distance /time
Minot			Getting us to an agreement	Too much potential for arguments

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
New Rockford	Hopefully my former spouse will take action and pay his medical bills, and he will stop talking ill of me to our son.	My husband would not be in the same room. The mediator had to go between 2 rooms		
Carrington	Neutral party. New options		Level head	Nothing
Bismarck	Having a neutral party		Interruptions, and agreed on shit. We talked things out without....	
Fargo	That we had a neutral party to keep us on task and moving in the right direction			
Fargo			I believe that we are a rare situation that no matter what, it would've never worked out in mediation.	My ex said she didn't expect it to work at the very beginning of the process and I couldn't divulge info due to the safety of our children.
Grand Forks	Nothing	Everything	Nothing	Nothing
Jamestown	To have someone eliminate the bad tone of conversation and to point out different views		After 4 1/2 years of begging my ex-spouse to allow me and my kids more time together, finally happened.	Nothing, I needed it.
Carrington			It aired out our problems and hopefully got them resolved.	Length

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Carrington	I can't think of anything, but not because of mediator, but because of ex. He thinks he has to control everything.	Same as above		
Minot	The mediator helped clarify what we were trying to have the other understand. Very much needed.	Everything was helpful.	Not having attorneys present- this allowed for both parties to freely speak their minds.	
Carrington	My former spouse communicated and I saw his side more. I do not agree with him still, but it was not arguing for once.	Nothing-we're just not able to agree.	It was helpful just to be able to talk with my ex-wife and have someone there who helped both of us understand the other's side.	Nothing. I thought overall it was a good experience.
Fargo	Being able to have a neutral person to listen to both sides		Mediator was good to work with and my lawyer was present.	The other party
Fargo	The mediator was very helpful at explaining how the process worked.	My ex just walked out after 5 minutes.		
Fargo	Not being in a courtroom or paying hourly attorney rates-being open to saying what you thought/felt without retaliation	Having my ex not willing to budge on one factor	Issues were resolved	
Fargo	Came to a resolution	None	How easy it was to talk and come to resolutions	Knowing if I was making the right decisions
Grafton			Nothing	
New Rockford	Talking out issues that needed to be discussed	Didn't really accomplish anything.		



<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Grand Forks	Having former spouse in a different room, I wasn't scared to speak my mind.		Avoiding court fees	Not immediate fix, still have to go through our lawyers.
Grand Forks	We got to agree on holidays.	We didn't resolve much.	Getting some issues taken care of without court	Just not being able to come to custody agreement
Grand Forks			No loud shouting involved since other people present	
Bismarck	The mediator was good at redirecting arguments	My ex-spouse	That the mediator was completely neutral.	My ex was too emotional.
Dickinson	Not having judges present		Discussing the matter at hand	Didn't always understand everything that was going on.
Grand Forks	We were both in agreement to what's best for our kids, and my former spouse has been good to me as far as ensuring I am able to get on my feet again.			
Fargo	The mediator	Not ending it	Got an opportunity to vet some ideas	We were only slightly successful.
Grand Forks			Nothing	
Grand Forks	Coming to agreement		The different ideas and options given by the mediator. It gave us the opportunity to come to what we would agree was the best resolution for all involved.	Nothing
Missing county	Different ideas on how other parents share time and make decisions		Communication and new thoughts were developed	None

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Bismarck	Being able to resolve our summer parenting issue		We came to an agreement.	None
Devils Lake	Mediator was able to suggest items that we did not know of/think of. She was very fair and helped us to reach a decision at this time. I'm extremely happy with the outcome of today's session.	Nothing	Helping with communication	
Minot	We tried to work things out.	We were not able to agree due to our strong beliefs.		
Minot	Getting it all worked for the interest of our son		To get things resolved and move forward with our lives	Arguing with or between the lawyers
Fargo			Communication. The mediator was very professional and understanding with both of us.	Nothing
Grand Forks	Able to talk to my ex	Unable to compromise	Talking things out without raising the voices	Not coming to terms about our son
Valley City	Was able to get points across and agree to things			
Minot	Having my former spouse and I work things out for ourselves	Nothing	Working things out outside of a courtroom	
Fargo	Not having my ex interrupt me			
Fargo		Expensive to be required to pay for an additional 6 hours of attorney time 210x6 hours = \$1260		

<b>Location</b>	<b>Female-Most Helpful</b>	<b>Female-Least Helpful</b>	<b>Male-Most Helpful</b>	<b>Male-Least Helpful</b>
Grand Forks	Helped me get stuff off my chest that I need to	Nothing	Helped me a lot	Nothing
Grand Forks	Talking and planning to talk more and use kinder words	Dead set on not letting us move	A somewhat calm environment	
Dickinson	Sitting down together and talking things out	Nothing. It was great	Being able to talk things over in a good manner	Nothing
Minot	Trying to reach an agreement before court	My former spouse and I could not agree to anything.	The mediator	The other party
Minot			Talking about some issues	Sitting across the table from my ex
Wahpeton			Undecided	Undecided
Grand Forks	The mediator was very considerate.	It was all helpful I think.	Someone there to guide any and all decisions made and how it was we got to those decisions	
Grand Forks	Someone neutral communicating for both of us	Nothing	Being able to talk without threats and name calling	Other than an unresolved issue to be determined in court, there was nothing to be disappointed about.
Minot			I was able to at least explain my point of view to my son. Although not in person, it was the first time I actually talked to him in six months.	I waited for the mediation 2 months with anticipation. I thought I would be able to talk to my son and at least sit down and talk to him. But, my former spouse didn't want to participate.
Grand Forks	It gives an open forum to discuss things even though nothing was worked out	We didn't accomplish anything.	We were able to have a controlled argument.	Our case was such that "no wiggle room."

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Grand Forks			I could afford it	I was the only one that had anything to lose.
Bismarck			Having a 3rd party ask questions to try to get to the root of the issue	Despite no outcome, I thought it was very helpful and didn't find anything not helpful.
Bismarck	Advice given by the mediator was very good and we were able to reach an agreement about visitation.	Mediation cannot fix hard feelings between the father and I which many times is the reason why we have the problems we do and cannot come to an agreement.	Being able to talk and express what my concerns are. Hearing the other side with an open mind.	
Dickinson	Had a person to let each person speak	Did resolve it		
Minot	Having a professional help us come to terms and bring up subject matters that were relevant	Nothing	Having an impartial point of view	The fact that I had to travel two hours for it
Fargo	The creative way to come up with a unique schedule		The professional way the mediation was handled and the mediator's willingness to explain whatever I didn't understand	Nothing
Grand Forks			The way she explained what would happen either if I agree or not agree	Driving on a work night. I'm tired.
Williston	Having a civil conversation with my former spouse		Being able to talk with someone to keep boundaries	

Location	Female-Most Helpful	Female-Least Helpful	Male-Most Helpful	Male-Least Helpful
Grand Forks	Nothing was helpful and the mediator needs more schooling before doing more cases. She does not know what she is doing, like telling one side what the other side said.	I was allowed to be questioned like I was in a courtroom by their attorney, was swore at by my ex, and no one stopped his behavior. Mediation actually made my situation worse	In this case, I do not believe that mediation was a benefit due to the nature of the case and the stubbornness of the other party.	No answer
Minot	Being able to discuss my point of view	I felt I could not bring up income states. Even though we were in a small room with the mediator I still felt intimidated by my spouse.		
Williston	Learning to try to work as a team for our daughter	The mediator forced her own views more than tried to help us negotiate on what we expected. She also has a very negative opinion of those working with violence intervention center which did not help	Not much really	First session felt like a man-bashing meeting

## Time Required to Complete Mediations

A possible drawback for a mandatory mediation program is that it may delay the resolution of family law cases. Administrative Order 17 was structured to ensure speedy completion of the mediation process. The trial court is to notify the project administrator of a qualifying case within 10 days of filing. There is no time frame for the project administrator's drafting of the mediation order, its return to the trial judge for signature, its return to the project administrator for distribution, and its dissemination by the project

administrator to the parties, attorneys and mediator. The mediator has 90 days from the date of the order to complete the orientations and mediation.

With the deployment of the Odyssey case management system, this process has been changed. The program administrator now gets an automated printout of presumptively qualifying cases and initiates the mediation order electronically, which is now signed electronically by the judge assigned to the case. Local court staff still play an important role in the project by identifying cases that “slip through the cracks” of the automated process.

In our interim evaluation reports we have assumed that the time from referral by the trial court to signing of the order will take up to 10 days, with the result that mediations should be completed within 100 days from referral of a case to the project. We see no reason to change that standard for this final evaluation report.

The next table shows how the pilot program’s performance on this measure has improved over the course of the program. It shows percentage of cases completed within 100 days, average time for completion, and longest and shortest cases for the different reporting periods.

**Time Required to Complete Mediations**

	<b>Percentage of cases completed within 100 days</b>	<b>Average time for completion</b>	<b>Longest case</b>	<b>Shortest case</b>
<b>Total cases</b>				
<b>First and Second Reporting Periods</b>	<b>58%</b>	<b>108 days</b>	<b>520 days</b>	<b>21 days</b>
<b>Third Reporting Period</b>	<b>46%</b>	<b>110 days</b>	<b>404 days</b>	<b>5 days</b>
<b>Fourth Reporting Period</b>	<b>68%</b>	<b>94 days</b>	<b>367 days</b>	<b>17 days</b>
<b>Cases with extensions</b>				
<b>Third Reporting Period</b>	<b>0%</b>	<b>199 days</b>	<b>375 days</b>	<b>108 days</b>
<b>Fourth Reporting Period</b>	<b>0%</b>	<b>195 days</b>	<b>367 days</b>	<b>114 days</b>
<b>Cases without extensions</b>				
<b>Third Reporting Period</b>	<b>60%</b>	<b>101 days</b>	<b>404 days</b>	<b>5 days</b>
<b>Fourth Reporting Period</b>	<b>72%</b>	<b>88 days</b>	<b>256 days</b>	<b>17 days</b>

The first three interim evaluation reports focused considerable attention on the issue of time required to complete mediations. It was the principle area in which the pilot project was falling short of its goals. We made a number of suggestions for increased monitoring of the timeliness of mediators' completion of their cases. The data for the fourth reporting period show that the program coordinator's efforts to obtain increased compliance with the timeliness requirements of Administrative Order 17 have been successful. During the first two reporting periods, only 58% of cases were completed within 100 days. This percentage dropped to 46% during the third reporting period, but improved to 68% during the final reporting period. The average time for mediation completion in all cases was 108 days for the first two periods, rose to 110 days during the third period, and fell to 94 days – below the target completion time – during the fourth reporting period.

Administrative Order 17 authorizes trial judges to grant extensions of time to complete mediations for good cause. During the fourth reporting period, extensions were granted in 25 cases.<sup>34</sup> When these cases are excluded from the calculations, the percentage of mediations completed within 100 days rises to 72% and the average time to completion drops to 88 days – below the 90 day standard of Administrative Order 17 with no allowance for the time required to issue an order to mediate.

None of the cases in which extensions are granted are completed within 100 days; the average time to completion for these cases is 195 days.

The next table shows the timeliness performance of the mediators in the seven districts. All of the districts had average completion times within the project requirement, when cases with extensions are excluded from the calculation. All of the extensions were in four of the seven districts – Southeast, South Central, East Central, and Northwest. The Southeast District had the highest percentage of cases with extensions.

The Northeast Central District had the best performance – with 83% of cases completed within 100 days or less and an average completion time of 74 days. The South Central District had the second highest percentage of cases without extensions decided within 100 days – 82%. The Southwest District had the poorest timeliness performance – 63% of cases completed within 100 days and an average time of 97 days. Even though it had the highest percentage of cases with extensions, the Southeast District had the second

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<sup>34</sup> We included within this total seven cases in which extensions were not sought, but in which the parties refused to proceed with mediation for some reason, such as going to counseling, attempting reconciliation, extended scheduling conflicts, or the desire for a parenting investigator report before mediating.

poorest performance for cases without extensions – 63% of cases completed within 100 days and an average time of 91 days.

With the exception of the East Central District, the most predominantly urban districts had higher percentages of mediations completed within the time requirement than the more rural districts.

**Timeliness of Mediation Completion by District**

District	First and Second Reporting Periods		Third Reporting Period – cases without extensions		Fourth Reporting Period – cases without extensions		
	% of cases completed timely	average time to complete mediations	% of cases completed timely	average time to complete mediations	% Cases with Extensions	% of cases completed timely	average time to complete mediations
<b>East Central</b>			70%	91 days	6%	68%	92
<b>Northeast</b>	58%	83 days	56%	111 days	0%	70%	87
<b>Northeast Central</b>	64%	99 days	67%	90 days	0%	83%	74
<b>Northwest</b>	100%	101 days	53%	107 days	7%	71%	91
<b>South Central</b>	52%	122 days	48%	113 days	12%	82%	85
<b>Southeast</b>			66%	90 days	15%	63%	91
<b>Southwest</b>	33%	73 days	57%	106 days	0%	63%	97
<b>Totals</b>	58%	108 days	60%	101 days	6%	72%	88

The timeliness of mediation completion varied significantly from mediator to mediator – from 26% to 100% completion of mediations within the required time period (based only on cases without a time extension). Times of each mediator for the previous and current reporting periods are shown in the next table.

The likelihood that an extension will be granted also varies by mediator. Eight of the 25 cases with extensions belonged to Mediator 5; half of that mediator’s cases had extensions. Mediators 3 and 25 each had 4 cases with extensions. These three mediators accounted for 64% of the fourth reporting period cases with extensions. Twenty-eight percent of the cases of these three mediators had extensions, compared to 3% of the cases for the remaining 21 mediators who had cases during the fourth reporting period.

A mediator’s timeliness performance was not the result of a heavy mediation workload – the two busiest mediators had the lowest average completion times (56 and 73 days [92% and 83% cases completed within 100 days]). Nor was it related to length of experience with the program. Two of the



newer mediators had the lowest timely completion percentages – 26% and 30%. But the next lowest score of 50% was for one of the program’s most experienced mediators.

For the twenty mediators that completed cases during both the third and fourth reporting periods, only four had lower timeliness percentages during the fourth reporting period.

### Timeliness of Mediation Completion by Mediator

Mediator Number	First and Second Reporting Periods			Third Reporting Period – Cases without Extensions			Fourth Reporting Period – Cases without Extensions		
	Total Cases	% of Cases Completed Timely	Average Time to Complete Mediations	Total Cases	% of Cases Completed Timely	Average Time to Complete Mediations	Total Cases	% of Cases Completed Timely	Average Time to Complete Mediations
1	22	41%	123 days	16	50%	112 days			
2	26	77%	84 days	28	64%	79 days	37	92%	56 days
3	23	39%	133 days	38	24%	137 days	14	50%	111 days
4	11	64%	112 days						
5	18	6%	210 days	15	27%	161 days	8	100%	75 days
6	16	94%	70 days	2	50%	90 days			
7	17	71%	76 days	28	71%	86 days	8	75%	86 days
8	16	50%	109 days	18	81%	98 days	16	81%	87 days
9	17	47%	124 days	23	70%	95 days	18	94%	77 days
10	19	68%	98 days	13	69%	89 days			
11	3	33%	144 days						
12	16	100%	67 days	42	79%	76 days	36	83%	73 days
13				21	71%	84 days	12	75%	80 days
14	1	100%	70 days	12	64%	91 days	11	64%	116 days
15	1	100%	75 days	7	71%	75 days	1	100%	100 days
16	5	40%	97 days						
17	5	60%	102 days	17	47%	102 days	3	67%	84 days
18	2	100%	65 days	24	63%	106 days	28	64%	97 days
19	1	100%	56 days	31	52%	118 days	13	54%	121 days
20	1	100%	21 days	11	55%	104 days	11	82%	76 days
21				19	37%	123 days	13	85%	74 days
22				8	100%	70 days	14	71%	83 days
23				11	91%	90 days	26	88%	79 days
24				18	78%	86 days	17	71%	80 days
25				8	0%	152 days	20	30%	125 days
26				24	67%	91 days	19	26%	119 days
27							7	86%	80 days
28							20	55%	104 days
29							20	75%	92 days
30							15	60%	79 days
<b>Totals</b>	<b>221</b>	<b>58%</b>	<b>108 days</b>	<b>431</b>	<b>60%</b>	<b>101 days</b>	<b>391</b>	<b>72%</b>	<b>88 days</b>

# **Effect of Mandatory Mediation on Time to Disposition in Family Law Cases**

The North Dakota Supreme Court – and a number of members of the North Dakota family law bar – have been concerned that the introduction of mandatory mediation may extend the time that it takes to complete divorce and other family law cases involving parenting time disputes. As noted in the discussion of the data collected for this report, the project administrator and the information technology staff of the Administrative Office of the Court have gone to great lengths to collect data bearing on this issue. Preliminary analyses of this data were provided in the second and third interim reports.

This evaluation presents a final report on the average time to disposition for cases in the pilot project compared with the average time to disposition for cases in the pilot districts before the pilot project began and with cases in two comparison districts (the East Central and Northwest Districts) during the same time period as the pilot project. Because the Northwest District was added as an additional pilot during the second phase of the pilot project, it is also possible to compare its pre- and post-implementation data.

Only 3 of 204 cases involved in this analysis (and of the analysis of the percentage of reopens per case which follows) remain open at the time the data was gathered for this report – one pre-pilot case in the South Central District, one each in the first year cases for the Northeast Central and Northwest Districts. The data is sufficiently complete to provide reliable results – results that show definitively that the North Dakota mandatory mediation program has speeded the disposition of family law cases with disputed custody matters.

The data is shown in the next table, which shows the number of completed cases in each data sample, together with the number of cases that remain open. Cases that were dismissed have been deleted from the analysis.

**Average Time to Disposition<sup>35</sup> for Family Cases with a Parenting Time Dispute**

District	Number of Completed Cases	Number of Open Cases	Average Time to Disposition
South Central pre-pilot cases	28	1	409 days
Northeast Central pre-pilot cases	10	0	324 days
South Central pilot cases	54	0	291 days
Northeast Central pilot cases	56	1	243 days
Northwest comparison/pre-pilot cases	14	0	449 days
Northwest pilot cases	23	1	296 days
East Central comparison cases	16	0	350 days

The first chart compares the “before” and “after” data for the Northeast Central, Northwest, and South Central Districts. The “before” data consists of all cases with a contested custody matter filed in the Northeast Central and South Central Districts the year before they became part of the pilot program and, for the Northwest District, all such cases filed between March 1, 2008 and February 28, 2009 – seventeen months before that district became part of the pilot program. The “after” data consists of the cases referred to the mandatory mediation program during the first year of the pilot program – from March 1, 2008 through February 28, 2009 in the Northeast Central and South Central Districts and from August 1, 2009 through July 31, 2010 in the Northwest District.

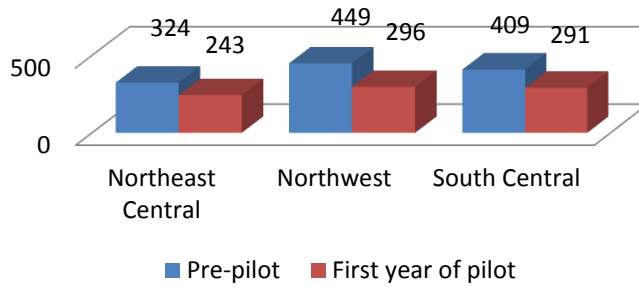
The chart shows that time to disposition in family cases with parenting time disputes has been significantly shorter in the pilot districts following implementation of the mandatory mediation project. Time to disposition decreased by 81 days (a 25% improvement) in the Northeast Central District, by 118 days (a 29% improvement) in the South Central District, and by 153 days (a 34% improvement) in the Northwest District.

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<sup>35</sup> We have used the computation of time from filing to disposition provided by the program administrator for both the pilot cases and the pre-pilot and control cases.

## Average Days from Filing to Disposition for Cases with a Parenting Time Dispute

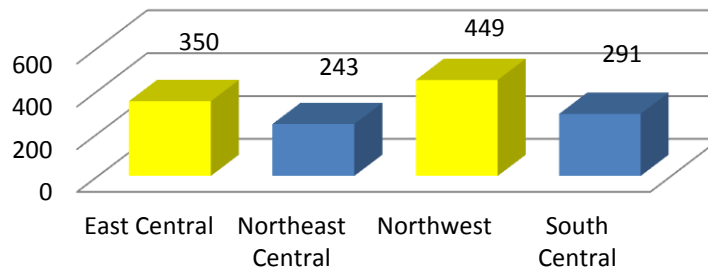
### Pre- pilot v. Pilot Performance



The second chart compares the average time to disposition for the first two pilot districts with "control group" cases filed during the same time period in the East Central and Northwest Districts. The control districts are colored yellow. This comparison confirms that the mandatory mediation program reduced the average time to disposition in North Dakota. The average of the two average times for the two pilot districts is 267 days. The average of the average times for the two control districts is 400 days. The mandatory mediation program appears to have reduced the time to disposition by 33%.

## Average Days From Filing to Disposition for Cases with a Parenting Time Dispute

### Pilot v. Control Districts Performance



The difference between the average disposition time for the pilot program cases and the pre-pilot and control district cases are statistically significant.<sup>36</sup> The two comparisons – “before” and “after” and “experimental” and “control” – show roughly the same effect for the introduction of mandatory mediation of parenting time disputes – a reduction of the time from filing to disposition of between 25% and 33%. The fact that the two comparisons reach very similar results strengthens our confidence in those results.

## **Data on the Effects of Mediation Agreements on Subsequent Court Filings to Modify Parenting Time Arrangements**

The North Dakota judiciary is also very interested in the frequency with which parties return to court to obtain further court rulings on parenting time and other issues relating to their children. One of the goals of the mediation pilot project is to reduce the number of returns to court by crafting agreements satisfactory to both parties and by providing the parties with enhanced skills to negotiate their own consensual modifications of those agreements.

The project administrator has been recording the number of times cases in the pilot project have been reopened. We are able to compare that data with data for comparison cases filed during the year before the pilot project began in the South Central and Northeast Central Districts, and for a year before it began in the Northwest District (offset by five months), with cases referred to mediation during the first year of all three pilot districts. We are also able to compare the number of reopenings in cases referred to the South Central and Northeast Central for mediation during the first year of those pilots with cases filed in the two “control group” districts. We have data for that year in the East Central and Northwest Districts, which did not have mandatory mediation at that time. All of the control group cases for the Northwest District were filed during the first half of the year.

As time goes on, more cases will be reopened. Because they have been closed for a longer period of time, it is to be expected that the pre-pilot cases in the original pilot districts will have a higher reopen rate than those during the pilot period. However, all of the first year pilot program cases

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<sup>36</sup>  $p < .0005$

had been open for three and a half years when this data was collected, so they have had sufficient time for, in some cases, two reopens per case. We should not expect any such difference between the cases filed during the same time periods in the first two pilot districts and the two “control” districts.

The table on the next page shows the data collected to date – the number of cases mediated, the number of reopens for those cases, and the percentage of reopens per completed case.

We use “percentage of reopens per completed case” rather than “percentage of cases that were reopened.” If a case is reopened twice or three times, we count each reopening. If we were counting only the percentage of cases reopened, rather than the number of reopenings, compared to the total number of disposed cases, we would underestimate the burden on the courts from requests to modify parenting time or other child-related issues.

The data shows that the mandatory mediation program has been highly effective in reducing the rate at which parties involved in parenting plan disputes return to court after obtaining a judgment.

**Percentage of Reopenings for Family Cases with a Parenting Time Dispute**

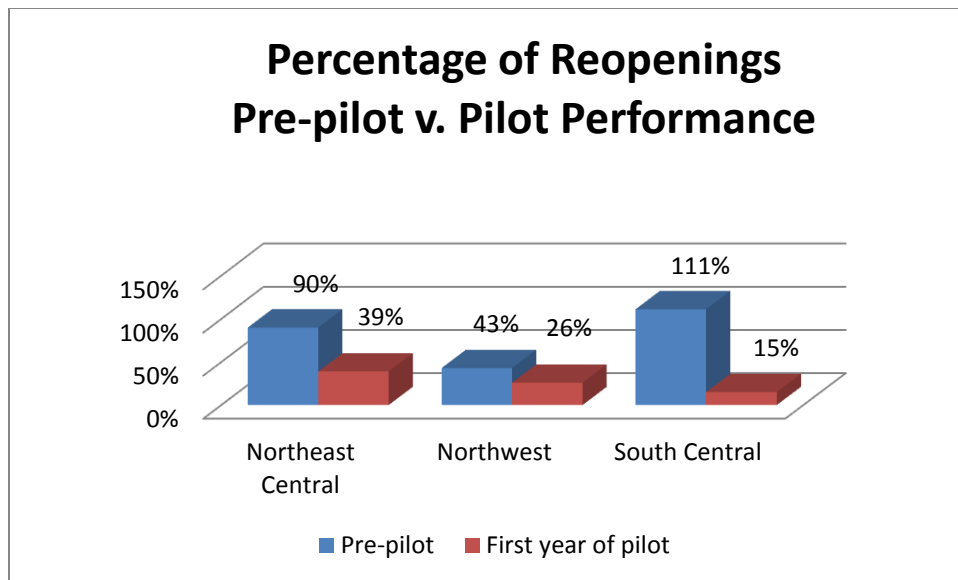
District	Number of Completed Cases	Number of Reopened Cases	Percentage of Reopenings
South Central pre-pilot cases	28	31	111%
Northeast Central pre-pilot cases	10	9	90%
South Central pilot cases	53	8	15%
Northeast Central pilot cases	56	22	39%
Northwest comparison/pre-pilot cases	14	6	43%
Northwest pilot cases	23	6	26%
East Central comparison cases	16	12	75%

The first chart compares the “before” and “after” data for the original two pilot districts and for the Northwest district. The “before” data consists of all cases with a contested custody matter filed in the Northeast Central and South Central Districts between March 1, 2007 and February 28, 2008 – the year before the Northeast Central and South Central Districts began mandatory mediation of these cases and in the Northwest District between March 1, 2008 and February 28, 2009. The Northwest District joined the pilot project on August 1, 2009 – five months after the end of the “before” data gathering period. We have no reason to believe that the five month gap between the “before” and “after” periods for the Northwest District had

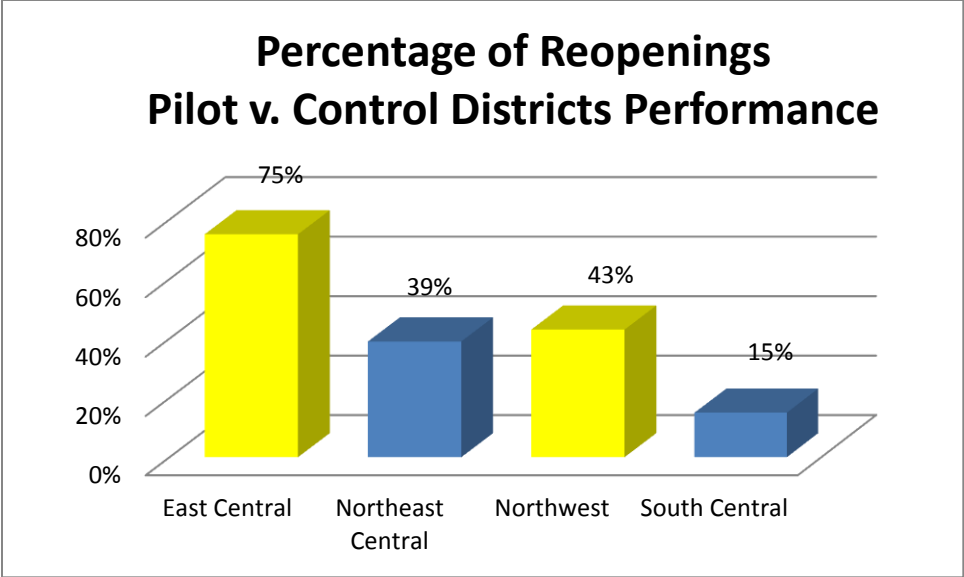
any effect on the study comparisons. The “after” data consists of the cases referred to the mandatory mediation program during the first year of the pilot program – from March 1, 2008 through February 28, 2009 in the Northeast Central and South Central Districts and from August 1, 2009 through July 31, 2010 in the Northwest District.

One would expect that there will be fewer reopenings in the Northwest District during the pilot program phase, since its cases are younger in age than for the other sets of cases. That is true for the Northeast Central District (39% reopens compared to 26% for the Northwest District) but not for the South Central District (which has only a 15% reopen rate).

The data for the South Central District is striking – showing 86% fewer reopenings for cases filed during the pilot project cases than for cases filed the year before. The effect for the other two districts is closer to a 50% reduction (57% for the Northeast Central District and 40% for the Northwest District).



The second chart compares the reopening percentages for the first two pilot courts and the two control districts – contested custody cases filed in the East Central and Northwest Districts between March 1, 2008 and February 28, 2009. Again, the control districts are shown in yellow.



There is no reason to believe that the percentages of reopenings in the pilot districts will increase more in the future than the percentages in the control districts, since the cases were filed during the same time period.

When we add together the reopenings per case percentages for the “control” and “experimental” courts, reopenings in the “experimental” courts are reduced by 50% – which corresponds to the “before and after” effect for two of the three pilot courts for which this analysis was conducted. The difference between the average number of reopenings per case for the pilot program cases and the pre-pilot and comparison group cases are statistically significant.<sup>37</sup>

Once again, the results from the “before” and “after” and the “experimental” and “control” groups are comparable. We are confident in the conclusion that North Dakota’s mandatory mediation program is reducing the number of instances in which the parties to cases with contested parenting time issues are returning to court after they receive an initial judgment.

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<sup>37</sup>  $p < .0005$



## **Results of Interviews of Judges, Court Staff, Mediators, and Family Bar Members**

The project administrator and the evaluator met with judges, court staff, mediators and members of the family law bar in August 2012 in Bismarck, Fargo, Grand Forks, Jamestown, and Minot.

The general tone of the comments was highly supportive of the program. The judges support the program because it works to resolve parenting time and property division issues in their cases.<sup>38</sup> One judge reported that s/he had not had a contested custody trial in over a year. Judges also reported a decrease in the need for parenting investigations. This, plus reduced attorney fees when trials are avoided, produce substantial savings for the litigants. One judge reported success with directing parties to return to mediation after a pretrial conference and before trial.

Both attorney and non-attorney mediators are very supportive of the program. They report that as word has gotten out about the program, parties are coming to mediation ready to work to reach agreement rather than ready to fight. Attorneys appear to be less likely to attend mediation sessions as the program matures and they develop confidence in the mediators. It is highly unlikely that an attorney will return for a second mediation session in a case. They report that their own stress is reduced when mediation supplants litigation as the principle mode of case resolution. Discussion in several interviews focused on the use of telephone and Skype to involve a party who faces a significant travel challenge to attend in person. These techniques have often, but not always, proved to be successful.

Both judges and mediators reported several trends of importance to the way the mediation program operates. They report that roughly half of the cases in mediation involve persons who were never married; the parties are attempting to work out a cooperative relationship for raising their child, but without having any substantial prior experience in working with the other parent. A number of cases involve military families and families of oilfield workers in which one of the parties wants to leave North Dakota – usually to return to a previous home; this situation creates increased tension concerning parenting time arrangements. The recent economic recession has resulted in a number of cases in which the parties have separated but

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<sup>38</sup> One judge asserted that reduced judicial workload should not be an objective of the program. Judges are public servants and they are obliged to hold whatever trials and hearings the parties in cases need.

cannot afford to live apart; they continue to share the same home or apartment. This living arrangement creates additional issues that require dispute resolution. The oil boom in Western North Dakota has created problems with application of the child support guidelines; rents have trebled over a couple of years, increasing living costs for both custodial and non-custodial parents.

Court administrators report that the program is working smoothly from an administrative standpoint. Administrators and judges in Bismarck reported programs with the e-signature function of Odyssey – judges have to check separate queues on their computers for each of the twelve counties in the South Central District in order to find all pending mediation orders awaiting signature. They report that e-signature actually contributes to delay in issuing mediation orders.

A number of operational and practical issues surfaced in the course of the interviews. Several warrant attention from the program. They are:

- Whether the mediation agreement is binding until it is incorporated into a court decree. Does the agreement constitute a contract between the parties once the five day rescission period has passed? Are the parties expected to begin living with the agreement, or can they ignore the agreement until it is incorporated into a court order?
- The role children can and should play in the process of working out a parenting plan. Several mediators reported that they will talk with older children if the parties consent. Others do not, fearing that the children will get caught up in the parental fighting if they become formally involved in the process.
- Obtaining assistance for self-represented litigants in preparing a divorce decree embodying the mediation agreement. Mediators believe that the preparation of decrees incorporating mediated agreements constitutes the practice of law. Attorney mediators believe that they cannot represent both parties in preparing such a document. Consequently, persons in cases in which neither side has an attorney need to find an attorney who will draft the necessary document(s) or prepare the documents themselves (which often results in a drawn out process frustrating both the parties and the court as they labor to craft legally sufficient decrees for court approval. Participants in some of the interviews reported that attorneys in their districts are offering their services on an unbundled basis to prepare divorce decrees and that the process is

working well. Other districts report that their local bars are not providing such services.

- Whether mediators can compute child support amounts as part of the mediation process. There is a difference of opinion on this issue. Some mediators do. Some don't. Some refer parties to the online calculator. Some don't, fearing that the parties will enter incorrect values and obtain incorrect results.
- What conflict checking an attorney mediator needs to conduct and when that should be conducted. In one district, it appears that parties are raising conflict of interest issues to disqualify mediators as part of a process of "shopping" for a desired mediator. On the other hand, if a mediator is an attorney, conflict of interest principles do come into play. One mediator is trying to get this issue resolved during the orientation process by trying to get the parties to identify any potential conflict that may exist.
- Whether the process for obtaining approval for additional state-provided mediation time can be streamlined. One mediator asked if the form can be simplified, if the mediator can fill it out on behalf of the parties, and if qualification for public assistance should suffice to entitle one or both parties for additional state-funded mediation time.
- Whether mediator travel time should be compensated for travel to Williston. There are no certified mediators in Williston. So mediators have to drive there. They are reimbursed for their mileage, but not for the time required for the drive. The number of cases in that part of the state is making this a hardship for the mediators involved.
- Whether the requirement for filing a post-decree motion to modify parenting time should continue to be necessary for acceptance of a post-decree parenting time dispute into the mandatory mediation program. A divorce decree will often include a term requiring the parties to mediate a dispute that arises concerning the terms of the decree. Parties often assume that they can access the state mediation program simply because of the existence of such a provision in their decree. However, under the program's current terms, they must file a motion reopening their case before a parenting time dispute can be referred to the mediation program.

# Family Bar Member Survey Results

The evaluation surveyed members of the North Dakota Family Bar three times – one in May 2008 before the first two pilot programs commenced, one in November of that same year (roughly six months into the first two pilot programs, and one in September 2013 at the close of the evaluation period. The first two surveys used paper questionnaires mailed to all members of the family bar. The third used an online survey, with emails to family bar members encouraging participation and containing a link to the survey. The response rates for the three bar surveys are shown in the table below.

**Family Bar Member Survey Responses**

	May 2008 survey	November 2008 survey	September 2012 survey
Surveys sent	77	77	Assume 80
Surveys returned	54	39	33
Response rate	70%	51%	41%

Respondents were given a series of statements and asked to choose Strongly Agree, Agree, Neutral, Disagree, or Strongly Disagree for each statement. All three surveys used the same format, although the September 2013 instrument deleted five statements contained in the first two surveys and added two new statements. The wording of the second and second to last statements changed in the September 2012 survey (as shown in the table of responses). We scored the answers by assigning the values 5, 4, 3, 2, or 1 to those answers. The most favorable score would be 5; the least favorable 1; 3 would represent the midpoint. The statements alternated from positive to negative. The actual statements are shown in the table below; the responses are all transformed as if the question were stated in a positive formulation.

## Family Bar Member Survey Responses

Question	Average Scores		
	May 2008 survey	November 2008 survey	September 2012 survey
Litigation is the best way to resolve child custody and visitation disputes	3.93	4.00	4.42
I would encourage my clients to participate in mediation of [child custody and visitation matters if the services were free] [parenting time and visitation disputes]	4.30	4.33	4.58
I generally discourage my clients from participating in mediation	4.11	4.26	
I have used private mediators to resolve family law matters in the past	3.70	3.95	
My previous experience with mediation has been favorable	3.48	3.95	
My experience with the North Dakota mandatory parenting time mediation program has been favorable			3.70
I have served as a mediator myself	2.52	2.89	
I believe that mediation provides litigants with improved dispute resolution skills	3.46	3.69	3.76
Parties are more likely to abide by the terms of a mediated agreement than a court order	3.33	3.46	3.85
Parties are less likely to come back to court to modify custody and visitation if their agreement was reached through mediation than through trial	3.51	3.82	3.85
The power relationships between the parties are the same in mediation as in the courtroom	2.53	2.24	2.20
I think mediation should be required in custody and mediation matters	2.91	3.26	
I am comfortable with the professional quality of [private mediators in my community] [the mediators used in North Dakota's mandatory parenting time mediation program]	3.04	3.54	3.30
The mandatory parenting time mediation program reduces the costs to the parties by reducing the amount of attorney time required in many cases			3.75

Because the numbers of attorneys responding to the three surveys differs from survey to survey and the numbers of responders decreases over time, one should use caution in interpreting the results. Nonetheless it is noteworthy that the average scores on all but two of the statements improved over the course of the pilot program. The two statements for which scores went down concerned power relationships in mediation and the professional quality of mediators. The wording of the second statement was altogether different for the third survey.

The data for the most recent survey shows the following:<sup>39</sup>

- Support for mediation within the North Dakota bar has grown over the life of the pilot program. Most attorneys support mediation. 76% of respondents in the most recent survey report a favorable experience with the mandatory mediation program.
- Ninety-seven percent of attorneys disagree that litigation is the best way to resolve parenting time disputes. The same percentage report that they encourage their clients to participate in the mediation program.
- Seventy-nine percent believe that mediation provides the participants with improved dispute resolution skills.
- Eighty-five percent of responders believe that parties are more likely to abide by the terms of a mediated agreement than a court order. This percent is up from roughly fifty percent at the commencement of the program.
- Eighty-three percent believe that parties are less likely to come back to court to modify a custody arrangement if it was reached through mediation. This percentage is up from 64% early in the program.
- On the other hand, 95% of respondents disagree that power relationships are the same in mediation as in the courtroom. Only 5% agree.
- Seventy-one percent of the respondents are comfortable with the professional quality of the mediators used in the North Dakota mandatory parenting time mediation program.
- Eighty-eight percent of responding attorneys believe that the program reduces the costs to parties by reducing the amount of attorney time required.

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<sup>39</sup> The percentages reported below use the percentage favorable approach favored throughout this report – comparing favorable and unfavorable and disregarding “neutral” scores.

## Attorney Narrative Comments

The bar member survey provided an opportunity for attorneys to set forth their perceptions of the advantages and disadvantages of mediation for parenting time disputes. The comments from the September 2012 survey are set forth below. The narrative comments from the previous two surveys were presented in the first interim evaluation report and can be obtained from that report.

The comments of each attorney who chose to respond are shown side-by-side.

### Attorney Narrative Comments from September 2012 Surveys

Advantages	Disadvantages
Cost effective, quick resolution	None
The parties talk through the issues face to face and solve their own problems with the help of a neutral mediator. An attorney drafts the closing documents. This takes the attorney out of the emotional drama which often takes place in contested cases.	There are not as many contested cases. Hence fees are reduced.
Some control over the process, a more creative and flexible approach to resolving their dispute, more prompt results, an opportunity to reduce costs of litigation by working out some items or even agreeing on how to place values, prepare lists of property, etc.	None
A way to discuss their situation in a neutral environment, decrease costs, and provides neutral input which might make the parties try harder to work together, and sometimes helps keep the situation from getting out of control.	Some parties are just not willing to mediate then it just makes another hoop to jump through and takes more time to get through the court system.
An avenue to save the expense of litigation while empowering individuals to negotiate their own agreement.	Some litigants feel like they are bended by the mediator or that the mediator is favoring the other side. This is a perception issue of the litigant. Having non-attorney mediators is not preferred.
An opportunity to discuss the issues face to face with a neutral 3rd party and an opportunity to take control of the outcome themselves.	Mediators in cases I have been involved in are giving legal opinions to parties and discourage attorney involvement in the mediation process contrary to ethical standards of mediators. They don't seem to have very good skills to help litigants truly work out a mutual solution rather the mediator is more likely to "sell" their view of what would be the "best" solution.

Advantages	Disadvantages
	<p>These questions are awful in that they assume every case is the same. Not true. Making mediation mandatory, for every case, has drawbacks for those in high conflict, more complex cases. It requires those people to attend mediation sessions made useless for lack of readiness. Many cases need to be developed before they are ripe for fruitful negotiation. Our program does not recognize this fact. Many of the mediators the program has selected have no, or little, actual experience representing family law clients and their lack of real world experience impairs their credibility and competence. A necessary quality for a family law mediator is the ability to provide “reality checks” to litigants’ sometime unrealistic expectations. A mediator without real world experience cannot provide real world feedback about parties’ expectations and positions. As an aside, this survey feels “forced.” Does anyone actually answer affirmatively that litigation is the best way to resolve family disputes?! The results of this survey will likely be used to tout the proposition that mediated agreements are more durable than litigated outcomes. However, there is no way that this survey can establish that point. Only actually comparative data could do so .... And when each case has but one outcome, that data is and ever will be unavailable.</p>
The ability to invest in the final outcome of their disputes.	None.
Reduction in attorney fees, the opportunity to express themselves in front of a neutral third party and, often, to communicate for the first time, a chance to hear the other person’s perspective, reduce the case load imposed on our judges.	
In low conflict, simple cases, the pilot program helps people resolve their cases faster, more cheaply, and with less hostility.	
More speedy and cost effective resolution.	None.



<b>Advantages</b>	<b>Disadvantages</b>
A less expensive and less acrimonious way to resolve their cases.	I find that some mediators do not require documentation showing the values of assets and they take people at their word. This is not necessarily fair as many people are willing to lie or simply not disclose assets.
None.	Many of the mediators have done a poor job of getting parties into mediation in a timely manner and have not been effective in reaching fair and equitable agreements between the parties. The mediator puts the parties in separate rooms and the parties do not learn to communicate with one another to resolve their disputes. Further, the mediator doesn't always communicate the proposals to the parties accurately. My clients have not been happy with the results.
A way for parties to get some issues off of their chests and then focus on the real issues. For people who really want to move on, divorce and resolve custody, it's a great tool!	If there is an imbalance, the one party still needs his or her counsel to get anywhere. If the parties are terribly dysfunctional, I feel like mediation is just a hoop to jump through that wastes everyone's time who is involved. The very idea of mediation is voluntary, so to have it court ordered sometimes does not make any sense.
None. Because the mediator that you have in Wahpeton, North Dakota representing the Southeast District is horrible. She's offensive, uninformed, unqualified and clearly has absolutely no idea how to solve most issues regarding the parties. The Administrator should NEVER have hired this person. She is costing the parties more money than if she didn't even exist. It is a total waste of time and by the time they get done with her the parties have more animosity against each other than ever before.	It wouldn't. But the Administrator has hired individuals who are simply not qualified to mediate. I'm not talking about the "qualifications" necessary to be a mediator. Anyone can meet those qualifications. I'm talking about having knowledge concerning child support, marital assets, non-marital assets, spousal support, issues relating to short and long term marriages. Mediation can be a helpful tool with the right mediator. To hire someone who is not an attorney or an attorney without family law experience is not helpful to the parties in any capacity. For the Administrator to defend her actions without having the knowledge and experience to support such a position, is, in my opinion, completely unprofessional. If a person were to make such poor decisions in private practice they would be immediately terminated.
An opportunity to be heard and have a hand in the resolution of their dispute.	As long as the mediator takes steps to prevent one of the parties from dominating the other party, I can think of no drawbacks.

<b>Advantages</b>	<b>Disadvantages</b>
<p>The program does not help to curb litigation in some cases. It allows them to make their own decisions and plans moving forward as opposed to a bench. Unfortunately, I have more issues with the program than good things to say at this time.</p>	<p>The process happens way too early. The vast majority of my experiences with the program (and I practice family law exclusively so I have had several sessions) revolves around interim issues and not final resolution. There is simply a disadvantage to the early referrals because people are either too entrenched in their positions before discovery and investigations occur or because they are not past the emotional blow that divorce causes. The program would be more efficient and a better use of everyone's time if it were required to occur AFTER the pretrial conference and before trial. That would give ample time for the parties to know their strengths and weaknesses and to be more in tune with a settlement negotiation. Further the mediators need to know that the attorneys are not thief enemy, but their ally. The program should encourage attorneys to attend mediation and to be there for clients. Rather, it seems we are treated as a hindrance by most of the mediators who are new to mediation. I am not sure if it is the "transformative" method or not, but that sort of mediation rarely ends with a deal. The more experienced mediators who caucus have better results in my view. Lastly, more clients want to reach a global settlement in mediation and will gladly use part of the free time to discuss financial issues, the program does not anticipate that and it should. If the goal is to solve domestic cases involving children, who gets the house and what support is going to be is an important component in their ability to reach an agreement. Mediators should look at all aspects, not judge the small window they are to now. These are simple fixes to be made. My hope is they are addressed.</p>
<p>Mediation allows them to air their frustrations in a healthy, productive manner so that they can get past the pain and get on with their lives. This also has the benefit of being in the best interests of the children involved, which is crucial.</p>	<p>I really can't think of any drawbacks. Even if the parties do not reach agreement, at least they understand that there are ways to solve these issues other than litigation.</p>
<p>Involvement in process. Cost savings. Closure.</p>	<p>May hamper resolution of emergency situation or situations where it is clear no resolution can be reached through mediations.</p>

<b>Advantages</b>	<b>Disadvantages</b>
The opportunity to reach an agreement regarding their children rather than having a stranger decide, reduced costs, avoidance of damaged relationship caused by litigation.	Parties sometimes reach agreement that are not in the best interests of the children or would be unenforceable under North Dakota law. Some parties are too angry to mediate at the beginning of a case and could benefit from mediation more later in the case; parties often renege on agreement after consulting with their attorney.
Earlier settlement of disputes than would be possible otherwise.	
It is usually in their children's best interests (if not always in the litigants' best interests). Parenting issues are usually more important, especially if they can be isolated from other issues; mediation allows this, often preventing parenting issues from becoming bargaining chips or preventing the resolution of parenting issues from becoming contingent on the resolution of other issues. Kids and (in terms of at least mental health) litigants often "win" with mediation.	This varies tremendously from case to case. Some litigants enter mediation, treating it like an attorney treats arbitration. When it is too late in these litigants' cases, mediation results in processes that fail to be collaborative and highly adversarial "agreements" that won't make their way into signed stipulated judgments (or partial judgments). Other litigants enter mediation too early before they have processed the full practical and strategic implications of the contested issues in their case. These litigants suffer drawbacks that vary among themselves, including: assuming a more adversarial or less adversarial position in mediation than is in their best interests, agreeing in mediation to terms not in their/children's best interests, and jeopardizing their litigation strategies for often-fleeting promises of concessions. Furthermore, there are yet another group of litigants who are ordered to participate in mediation too early such that the timing forces an unhealthy rush to preserve finalization of in-progress stipulated agreements. Mediation in this area is too valuable not to press forward, developing solutions to these and other drawbacks.
Faster and more cost effective resolutions, even if only temporary agreements pending final outcome. An opportunity to observe and model effective communication and how to identify misinterpretation. A vast reduction in stress when settlement is reached as opposed to the litigation looming for months.	Some mediators are not as skilled as others. I have had mediations with veteran family law attorneys and those mediations have been very successful. We need to continually improve the court appointed mediator list making sure that we have the best available candidates doing this very important work.

Advantages	Disadvantages
	I think cases are referred to mediation too soon. In some cases there's no time to do formal discovery before the mediation is scheduled. Also, in some cases the referral to mediation goes out before the Agreement has been filed. I think if the Clerk would wait maybe 20 or 30 days or so then make the referral it may help in these situations.
	Some of the mediators are great ...others I will not allow my clients to go to alone. Some issue agreements that purport to be binding if not objected to in five days, but the parties have not signed off on those agreements. I have raised this with at least one mediator, but it hasn't changed that mediator's methods at all. And, since I attended that mediation with my client, I know that the agreement contained language that was not discussed with my client about that binding in five days language. The timelines for the mediation to be completed are too rushed in some cases. There are some situations that do require some discovery or those decisions are not being made knowingly. I also am not confident that abuse cases are adequately screened in the absence of no contact or protective orders.

As with the responses to the survey statements, the majority of the attorney comments are positive. They emphasize the same factors as the litigants do in their comments – the importance of a neutral third party, an opportunity to hear the positions of the other party, a focus on the best interests of the child. In addition, the attorneys frequently emphasize the speediness of the process and the importance of speed in avoiding the build up of anxiety and animosity. They also emphasize cost savings.

The negative comments are stated strongly so they seem to predominate even though they are a minority of the comments received. The complaints about the process fall into five categories:

Philosophical objections Some attorneys continue to believe that mediation should not be mandatory, that it is impossible to screen effectively for domestic violence, and that the mediation process often constitutes a time consuming “additional hoop to jump through.” It is interesting that one of the strongest comments posits that mediation

causes parties to compromise their litigation strategies – that the focus of family law dispute resolution must be on court litigation and that any process that could interfere with a party’s pursuit of all tactical litigation advantages is misguided. Most of the family law bar has concluded over the course of the pilot program that the mandatory mediation program is successful and that these complaints should be classified as theoretical quibbles rather than serious objections.

Objections to the use of non-attorney mediators Despite the high ratings that non-attorney mediators receive from the litigants themselves, some attorneys continue to believe that only experienced family law attorneys can be successful mediators. One of the “transformational” mediators has recognized that it is necessary in family law matters to inform the parties of the legal parameters within which judicial decisions are made if these matters go to court.

Objections to specific mediators Some attorneys have negative views of the competence of some mediators.

Objections to the timing of mediation in highly contested cases Several of the comments complain that mediation comes too early in the case – before necessary discovery or expert reports have been prepared. The program provides attorneys the opportunity to seek an extension of time in these circumstances. Consequently, the complaint discloses attorneys’ ignorance of the program’s features rather than a flaw in the program. The data on the use of extensions of time suggests that they reflect the practices of particular mediators rather than the needs of particular cases. This in turn suggests that family law attorneys are not advocating for the interests of their clients by seeking extensions of time on their behalf when they feel that the cases requires postponement of mediation until more information is available.

An objection that parenting time mediation ignores property division issues necessary to a full resolution of the divorce One attorney notes that resolution of property division issues is often essential to resolution of parenting time issues. The program accommodates this concern – mediators inform the parties that the mediation can cover non-parenting time issues and the parties agree to include those issues in 75% of the mediations. This complaint, again, reflects ignorance of the characteristics of the program by an attorney rather than a legitimate criticism of North Dakota’s program.

The Supreme Court and the North Dakota Bar Association may wish to consider including a discussion of the two misunderstood facets of the mandatory mediation program in an upcoming family law continuing legal education program. On the other hand, it may be that these complaints represent “willful ignorance” on the part of a few members of the family law bar who merely wish to register complaints about a program that they oppose on philosophical terms. In that case, education concerning the program will not change their opinions, although it might improve their ability to represent the best interests of their clients.

## **Recommendations Concerning Further Evaluation of the North Dakota Mandatory Parenting Time Mediation Program**

We have been asked to advise the North Dakota Supreme Court on the need for and value of continuing evaluation of the mandatory parenting time mediation program.

This program has been the subject of an extended, thorough evaluation over a four and a half year period. The results of the evaluation show beyond doubt that the program is achieving its objectives and providing significant, valuable services to family law litigants in North Dakota. There is no need for the state to continue incurring costs for gathering and analyzing data on the value of the program. It has been established.

There are three ongoing issues of significance for the program – the timeliness of completion of mediations, the performance of individual mediators, and the ability of mediators to identify and deal appropriately with cases involving domestic violence that the parties do their best to conceal.

This final report shows that the efforts of the program administrator to get mediators to focus on the importance of timely completion of mediations is bearing fruit. An ongoing external evaluation is not needed for this purpose.

This report shows that some mediators are better than others – in specific functions and overall. However, all of the program’s current mediators are clearly performing at a more than satisfactory level. The program might consider as a prophylactic measure the establishment of a formal complaint mechanism, requiring mediators to hand out at the close of each session a short description of the program and simple form that either party could use

to complain to the program administrator about the performance of a mediator. Such a mechanism would reduce the possibility that there might be a problem mediator in the future. The program administrator is experienced with the program and could quickly sort out the frivolous from the possibly meritorious complaints and talk with the mediator about the latter. Instituting a complaint program would require that the program administrator have the resources available to respond in writing to every complaint filed. We do not suggest that a formal complaint program is necessary. It may well be that the program administrator is sufficiently confident that she will receive complaints from attorneys and parties if the program should encounter an inadequate mediator. Again, it does not appear to us that maintenance of an evaluation program is necessary to ensure the competence of the parenting time mediators.

Finally, the program faces the ongoing challenge of avoiding situations in which an abused spouse who conceals that abuse could be put into a situation in which her abuser will be able to intimidate her into an unfair mediated agreement. The North Dakota Mandatory Parenting Time Mediation Program has been very aware of this risk and has taken significant steps to minimize it. It has hired a former domestic violence advocate as the program administrator. It emphasizes the issue of concealed domestic violence in its training for mediators. This evaluation has shown that mediators seem on the whole to be sophisticated in identifying such situations and taking appropriate steps to avoid any negative consequences. On the other hand, the data shows that some mediators are far less attuned to this issue than others. Unfortunately, there is little that further evaluation of the program could add to the information on this topic gathered to date. Everyone recognizes that power imbalances exist, that they are exacerbated by domestic violence, and that they can be more detrimental in a mediation setting than in a courtroom. It is our conclusion as evaluator that the program deals with this issue in a sophisticated and competent fashion. That is all that can be expected of the program.

## **Recommendations of the Final Evaluation Report**

The findings from this final report are summarized in the Executive Summary at the beginning of this report.

Based on those findings, Greacen Associates makes the following recommendations.

That the program address the issues raised during the last interviews with judges, court staff, mediators and attorneys listed on pages 129 and 130. The issues range widely in substance and how they might be addressed.

That the program not pursue further evaluation of the mandatory parenting time mediation program. This report is as definitive as any that Greacen Associates has authored concerning a program's success in accomplishing its objectives. Issues that continue for the program can be resolved by the program administrator or would not benefit from further evaluation.

Finally, the results reported in this report on reduced time from filing to disposition for family cases with parenting time disputes and reduced reopenings have national significance. We urge the North Dakota judicial branch to publicize these findings widely. North Dakota has shown national leadership in its dedication of the resources required to gather the data for an extended evaluation of this important innovation and to contract for its analysis. Publication of the results will add to public knowledge and understanding of mandatory mediation of parenting plan disputes and possibly encourage other states to engage in similar rigorous evaluation efforts. We will be glad to assist in preparation of an article summarizing the study for such an effort.