

## Mediation Skills for Child Welfare

**W**hy are practitioners in the child welfare system inundated with messages from research emphasizing the value of "client empowerment," a "family strengths perspective," and "co-construction of relationships with involuntary clients"? Because it is these concepts that enable parents and caseworkers to arrive at a mutual understanding of what is required in a case plan for a child's basic needs for safety and well-being.

Without this perspective, parents experience the child protection system as alienating and coercive, resulting in a sense that they are helpless in shaping the outcome. The results can be costly. If parents are not engaged in assessment and case planning, then what often follows are unacceptable delays in the resolution of cases, lack of compliance in court-imposed orders, and prolonged litigation.

The child protection system is a minefield of disputes. These are inevitable when the state intervenes in the intimate life of a family. Arriving at a solution for the best interest of a child, reportedly maltreated, plunges the family and the child protection worker into a complex set of exchanges. Contending interests are pulled into play. We are thus drawn to mediation, a method which is centered in conflict resolution.

According to Dr. Mark Umbreit, (Director of the Center for Restorative Justice and Peacemaking, and a contributor to this edition of **Practice Notes**), engaging the parent in an alliance with the child protection worker, rather than as an adversarial party, is the key to good social work practice, and mediation skills provide guidance.

To the extent that an honest and trusting relationship can be built under the stressful conditions of child protection procedures, approaching the family with skills developed by mediation enables us to see family problems with a sense of clarity and a perspective that place us in a better position to appreciate the child's needs.

Three concepts provide the framework for incorporating elements from formal mediation models that may be useful for the child welfare system: *Diminishing Power Imbalance*; *Creating a Solution-Focused Relationship*; and *Exploring Family Networks*.

This edition of **Practice Notes** borrows elements from formal mediation models and intends to demonstrate how mediation skills might be incorporated in everyday practice. **E.W.**

**"Mediation has been defined as the voluntary process of negotiation between parties . . . which has as its aim a mutually acceptable resolution of the dispute between the parties" \***

### Common Sources of Dispute

- ✧ Differing assessments of "imminent harm"
- ✧ The conditions under which children are returned to parents
- ✧ Elements in the case plan
- ✧ Regulating visitation (frequency, supervision, access)

### A Method for Resolution

Mediation skills outline a method that assures that families will have an opportunity to provide their narrative, define their concerns, and articulate their options for the safety of their children.

\* Maresca, J. (1995). Mediating child protection cases. *Child Welfare*, 74 (3), 731-742

According to Dr. Mark Umbreit the following Key Principles have a role in resolving interpersonal conflicts.

### Key Principles

1. The more directly and timely the conflict is confronted, the better-usually.
2. Be direct and tough in resolving the problem, but gentle and respectful to the person.
3. If you err, err in the direction of empathy, warmth, and being connected with the parties (being genuine), even if you “mess up” on some of the formal techniques of negotiation or mediation.
4. The essence of good communication skills in resolving conflict is to be found in the presence of integrity . . . a consistency between that which we are thinking, are saying verbally, our bodies are communicating . . . how we feel, and the deeper values within our heart.
5. Understanding and responding to conflict must be viewed through appropriate and relevant cultural lenses. The process should be adapted to the cultural context of the involved parties.

Far too often conflict . . . is dealt with in a very indirect passive aggressive manner . . . As hard as it may be to believe, there can be many positive outcomes of approaching conflict in a healthy manner. . . leading to stronger and clearer relationships, as well as renewed energy, vision, and creativity.

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For more information:

Umbreit, M.S. (1997). Humanistic mediation: A transformative journey of peace-making. *Mediation Quarterly*, 14(3), 201-213.

Umbreit, M.S. (1995). Moving to a Higher Plane: A Humanistic Model of Mediation. In M. Umbreit, *Mediating Interpersonal Conflicts: A Pathway to Peace* (pp. 198-216). West Concord, MN: CPI Publishing.

Umbreit, M.S. (1997). Beyond settlement driven mediation: A humanistic model of peace-making. *Interaction*, Spring, 16-17. (The Canadian Mediation Network Journal).

## Diminishing Power Imbalance: Creating a Context of Fairness

Narrowing the power imbalance inherent in the child protection system poses conceptual challenges. Here we have parents, confronted with a maltreatment charge of their child, enmeshed in a complicated child welfare system, unsure of their rights, responsibilities, and the mandates of the law, facing a child protection worker who holds the cards of professional authority, the law, and resources.

Here are some ways in which the interactions may provide some empowerment for families, yielding a context of fairness to the development of a case plan.

- Keep the language non-technical: limit jargon.
- Listen, briefly, to the narrative of the past, which may reflect a large portion of unresolved grievances. At a relevant point, steer the discussion to the need to develop a plan for NOW and the FUTURE.
- Reframe: remove focus from the person and place it on the problem. Enlist the parent in a mutual effort to solve the problem.
- Consider the merits of encouraging, generating, and considering several options for the best interest of the child. Encourage observations on how each option might work out. \*
- Be straightforward about what is negotiable (such as visitation when the child is placed; details for a relative search), and what is non-negotiable (the safety and well-being of the child).
- Consider parental concerns that are relevant to the goal of child safety.
- Engender hope by eliciting the times and circumstances when parents could provide safety and well-being of their child.
- If parents take issue with the recommendations of others (mental health providers, substance abuse counselors), remind them of their legal right to counsel. If it is realistic, consider advocating on their behalf.
- Children may be involved in case planning, case consultations, family group conferences: encourage parents to share concerns about their role and participation.

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#### Sources:

Barsky (1996). Mediation and empowerment in child protection cases. *Mediation Quarterly*, 14(2), 111-134.

Barsky and Trocme (1998). The essential aspects of mediation in child protection cases. *Children and Youth Services Review*, 20(7), 629-656.

Heath, D.T. (1998). Qualitative analysis of private mediation: Benefits for families in public child welfare agencies. *Children and Youth Services Review*, 20(7), 605-627.

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#### \* We have some options to consider:

1. We can work together to develop a plan.
2. You can choose to have a family-based conference that will try to uncover a support system for you and care for your child. Who among your family networks can provide out-of-home care, respite, on-going support?  
Whom would you choose to be part of your caring circle?
3. You can choose to work with a lawyer (public defender) to develop your own plan.

(Suggestions from Family Group Conferencing Facilitators.)

# Mediation Skills in a Solution-Focused Relationship

**Goal:** To create a genuine dialogue to solve problems as a joint process.

**Strategy:** To redirect patterns of communication from anger, resentment, blame and shame to problem-solving.

## Concepts

- Assume the parent has some competencies which may be revealed in the dialogue.
- Acknowledge parent's feeling of being overwhelmed (e.g., fear of non-compliance with a case plan; the ticking clocks of MFIP; the time lines on permanency procedures).
- Acknowledge and respect the reality and rights of parents to make choices about what to do in their circumstances.
- Treat the parents as being knowledgeable about their own lives and experiences\*
- Include, if appropriate, the father of the children, if he is not a member of the household.
- Explore the parent's goal of wanting to get the system out of their life.
- Shift the focus on disputing the findings of risk assessment to the safety needs of the child. Then engage the parent in a mutual effort to solve the problem.
- Invite the parent to consider the compliance features in the case plan - "What do you think about these expectations?"
- Build an alliance by providing access to concrete services and acting when appropriate as an advocate for the parent in other systems (mental health, substance abuse).

For further reading see:

DeJong, P. & Kim Berg, Insoo (2001). Co-constructing cooperation with mandated clients. *Social Work*, 46(4), 361-374.

Bibus, A.A. & Rooney, R.H. (1995). Training child welfare practitioners in work with involuntary clients. *Journal of Continuing Social Work Education*, 6(4), 13-22.

## \*Case Illustrations:

### Reframing the Exchange from "Shame and Blame" to the Best Interest of the Child

"When do you feel closest to your child?"

"When have you felt proud of your child?"

"What would you say is the happiest time for your child?"

# Exploring Family Networks

- Encourage the parent to voice the capacity of family members to relate to the children.
- Encourage the parent to articulate informal and cultural resources that are part of the family's experience and history.
- Solicit concerns about family members that are relevant to the goal of child safety.

## Case Illustrations

"Tell me about the people in your life. . . .  
Who is there for you? . . .  
Provide some resources. . . .  
Respite care? . . .  
So do you have a good relationship with ...?"

"How have you managed to get through  
the crises in your life? ...  
Who has been available to  
you when you needed help?..."

"With whom, in your family, have you  
felt safe, happy, able to help you,  
when life fell apart?..."

(Suggestions from Family Group Conferencing  
Facilitators.)

*Q: When will  
you know that  
your mediation  
skills have  
worked?*

*A: When  
parents indicate  
that you are  
fair, not biased  
against them,  
but genuinely  
focusing on the  
best outcomes  
for their child.*

# Final Comments

by Dr. Mark Umbreit

In this edition of Practice Notes we have tried to highlight the benefits for child protection workers in using communication and negotiation skills that are grounded in the field of mediation. Formal mediation always involves a neutral third party who assists the disputants in working out a mutually agreeable plan for resolving the issues. We have emphasized the importance of adapting formal mediation skills for use by individual child protection workers, without the assistance of a formal mediator.

In the context of child protection or any other context, there are a number of important factors that have been found to enhance communication with clients and strengthen the likelihood of effective conflict resolution. These include being able: to anticipate a likely dispute; to temporarily suspend the power of one's professional role; to relate to clients in a non-judgmental manner; to listen deeply to their concerns as expressed through their stories; and be flexible enough to adapt to specific individuals and cultural needs of the parties.

In many respects, good mediation and conflict resolution skills simply reflect good clinical practices.

## Limitations in the Use of Mediation Skills

- Some parents are so deeply entrenched in their anger, resentment, and a malevolent view of community standards that they are not open to a relationship based on a common interest for the well-being of a child. Parents in serious substance abuse involvement and parents who are seriously mentally ill are usually not available for mediation skills interventions.
- For a child protection worker to effectively use mediation skills with clients, it requires that they temporarily suspend the court sanctioned power of their position in order to communicate in a non-judgmental manner. This enables a focus on the development of a mutually acceptable plan that addresses the joint interests of the family and the agency. Some child protection workers may find this role suspension difficult.

### A Reality Check for the Child Protection Worker

- Do you have hope for the parents?
- Do you believe they have the capacity and the willingness to create options and be on the alert for safeguarding the safety and well-being of their children?

## For Further Reading on Mediation in Child Protection Services

Barsky, A. (1999). Community involvement through child protection mediation. Child Welfare 78(4), 481-501.

Kaminsky, H. & Cosmano R. (1990). Mediating child welfare disputes: How to focus on the best interest of the child. Mediation Quarterly, 7(3), 229-235.

Savoury, G.R., Beals, H.L., & Parks, J.M. (1995). Mediation in child protection: Facilitating the resolution of disputes. Child Welfare 74(3), 743-762.

Wilhelmus, M. (1998). Mediation in kinship care: Another step in the provision of culturally relevant child welfare services. Social Work, 43(2), 117-127.

### Special Thanks

*The insights provided to us by facilitators of Family Group Decision-Making programs were particularly valuable. It is in their work that we see how the dynamics between child protection workers and the family under investigation for maltreatment can be channeled to focus on the best interests of the child.*

### A note of appreciation to the following:

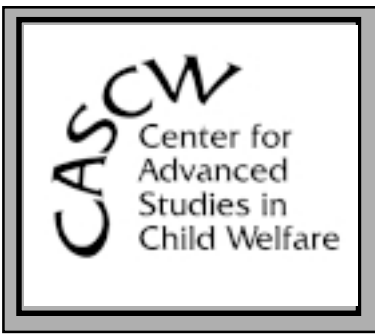
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