



N.C. ADMINISTRATIVE OFFICE OF THE COURTS PERMANENCY MEDIATION PROGRAM POLICIES

August 2023

Statutory Authority

N.C. G.S. 7B-202 authorizes the North Carolina Administrative Office of the Courts (NCAOC) to (1) establish a Permanency Mediation Program to provide statewide and uniform services to resolve issues in juvenile abuse/neglect/dependency cases, (2) establish a statewide program in phases, in local court districts, and (3) promulgate policies and regulations necessary and appropriate for the administration of the program.

Comment: Legislation in G.S. 7B-202 establishing Permanency Mediation in North Carolina requires that the NCAOC “establish a Permanency Mediation program” in phases statewide and to “promulgate policies and regulations necessary and appropriate for the administration of the program.”

Purpose of Permanency Mediation

The purpose of the Permanency Mediation Program is to provide a collaborative, problem-solving process facilitated by a trained mediator in an effort to resolve cases in which a juvenile has been adjudicated to be abused, neglected, or dependent, or in which a petition or motion to terminate a parent’s parental rights has been filed. Participants in the mediation shall include the parties and their attorneys, including the guardian ad litem and attorney advocate for the child. Others may participate by agreement of the parties, their attorneys, and the mediator, or by order of the court.

Definitions

Mediator – A party who is employed by the North Carolina Administrative Office of the Courts (NCAOC) to perform permanency mediation services.

Permanency Mediation Agreement – Any agreement reached by the parties as a result of the mediation, whether referred to as a “placement agreement,” “case plan,” or some similar name, which is reduced to writing, signed by each party, and submitted to the court as soon as practicable.

Goals

The goals of permanency mediation are to:

1. Provide a non-adversarial, structured, confidential setting conducive to the productive exchange of information between the parties.



2. Facilitate the co-operative resolution of the referred issues.
3. Expedite the permanent placement of children within the Adoption and Safe Families Act (ASFA) guidelines.
4. Improve the participants' understanding of the nature and purpose of the juvenile proceeding and their available options.
5. Improve the quality of case plans by making them more realistic, understandable, and measurable, and by having the parents as well as the social workers assume responsibility for formulating the plans.
6. Achieve increased specificity of case plans which will allow for earlier assessment as to whether goals are reached or need to be changed.
7. Increase participant satisfaction with the process.
8. Reduce the number and length of court hearings.
9. Reduce the re-litigation of issues and the likelihood of delays caused by appeals.

Administration

The Permanency Mediation Program shall be administered by NCAOC Court Programs Manager of the Child Custody and Visitation/Permanency Mediation Program.

Stages of Development

The NCAOC shall establish a process which defines stages of development for implementing permanency mediation programs in districts, and criteria that are applied during the stages of development. The NCAOC shall provide this information as well as limits to the numbers of cases the program is able to serve to judicial districts.

Local Administration

It is the responsibility of the referring judge to complete AOC-J-135 or provide an order informing the mediator of the issues for mediation as well as the names and contact information of all the parties ordered to attend. If the local custody mediation office does not have the administrative support required to assist with appointment setting and the attending paperwork, the referring judge will assign a staff member or party to the action to assist and coordinate these duties with the NCAOC Permanency Mediation office.

Mediator Qualifications

Permanency mediations will be led by either:

- NCAOC Custody Mediators who possess the qualifications per § 7A-494 and who have who have successfully completed the additional training requirements outlined in the next section or
- mediators the NCAOC has contracted with to provide permanency mediation.

In order to be eligible for contractual work as a permanency mediator with the NCAOC, a person must meet the following minimum requirements:

1. Not be convicted, within ten years of the contract of a violent felony (Class A-E), a Class A1 misdemeanor, or a crime involving moral turpitude.
2. Possess one of the following: (a) a master's or doctoral degree in psychology, social work, counseling, marriage and family therapy, or another behavioral science related to family relationships, family development, or child development from an accredited college or university, or (b) a Juris Doctorate from an accredited college or university.



3. Have at least three (3) years work experience as an attorney, judicial officer, a mediator, or a therapist. Experience in a setting related to juvenile dependence or family relations is preferred.
4. Complete a 40-hour family mediation training approved by the NCAOC.
5. Complete the NCAOC Carolina permanency mediation training period prior to or within four months of beginning practice as a permanency mediator.
6. Attend in-service training and continuing education in permanency mediation as specified by the NCAOC.

Mediator Training Period

The mediator shall satisfy the following requirements for training and mentoring before mediating solo or assuming the lead mediator role during a mediation session.

- A. 12 hours of permanency mediation training in a program approved by the NCAOC
- B. 15 hours of co-mediation as “second chair”
- C. Participation in post-mediation debriefings with mentor
- D. Official assessment and approval of knowledge, skills, and performance of permanency mediation conducted by NCAOC staff

The Mediation Process

Upon motion of any party or upon the Court’s own motion, the Court may order parties in a case to participate in permanency planning mediation as outlined below.

Issues for Mediation

At this phase of program implementation, cases may be ordered to mediation from the permanency planning stage forward.

Visitation

According to N. C. G.S. 7B-905.1(d) *For resolution of issues related to **visitation** the court may order the parents, guardian, or custodian to participate in custody mediation where there is a program established pursuant to G.S. 7A-494.*

Visitation issues may be referred to mediation prior to the entry of a permanent order or upon a motion for review where the court has retained jurisdiction. The referring judge will complete form **AOC-J-135** in order to outline the parameters of an allowable agreement. The local custody mediation office will then contact the NCAOC Permanency Mediation Office for assignment of trained mediators.

Other Permanency Issues

Other issues such as case planning, modifications of case plans, communication, permanent placement, voluntary relinquishment, and any other issues that may facilitate permanence for a child may be ordered to Permanency Mediation.

Participants

All parties and their attorneys shall attend Court ordered permanency mediation. Other individuals whose input may be helpful may be invited to attend by the parties or attorneys but are not required to



attend. These individuals may participate in the session only at the discretion of the mediators and if agreed upon by the parties, their attorneys, or by order of the Court.

Parties and attorneys who are ordered to attend a mediation session, but who fail to appear, may face Court sanctions, including but not limited to, contempt of court.

Only if deemed appropriate by the judge or by the child's attorney advocate, will a child be allowed to participate in some or all of the mediation. Issues to be considered in determining whether a child may participate in mediation include the viewpoint of the parents, the child's age, developmental stage, emotional status, mental health, adjustment level and basic understanding of the mediation process, and post-mediation support. The child's involvement in mediation shall be conducted in a manner designed by the mediator and in consultation with the child's advocate to protect the child's interest and emotional well-being. The child's safety and well-being shall be the primary concern during all mediation sessions.

Assignment of Mediators

Upon receipt of AOC-J-135 or a court order for permanency mediation, the local custody mediation office will contact the NCAOC Permanency Mediation program for assignment of qualified mediators. All other orders for permanency mediation will be forwarded by the Court or Court designee to the Permanency Mediation Office for assignment of qualified mediators.

Authority of the Mediator

The mediator, with input from the parties or their attorneys, shall determine if the mediation can proceed when a person who has been ordered or invited to attend mediation does not appear. However, a represented parent or caretaker may not participate in mediation without the presence of their attorney or substitute attorney nor can a parent or caretaker participate without the presence of their guardian ad litem if one has been appointed.

During the session, the mediator may release any parties or attorneys, with their consent, if the mediator determines that the session can continue without their presence.

The mediator shall be in control at all times of the mediation process and the procedures to be followed in the mediation. The mediator may excuse a non-party participant when the mediator determines their participation is counter-productive to the mediation. The mediator may suspend the session if it becomes unsafe or counterproductive for any of the participants.

At the time of scheduling, any participant shall notify the mediator or the NCAOC Permanency Mediation Office of any known history of family violence or mental health issues. The mediator will assess the appropriateness of mediation. If a party's capacity to meaningfully participate in mediation is severely limited due to mental illness, substance abuse, or the overwhelming imbalance of power resulting from family violence, the mediator will ask the presiding judge to waive the case from mediation.

The mediator shall include all parties to any communication with the judge.



The Mediation Session

Permanency mediations will be conducted primarily via online video conference. For ease of caucusing, lawyers will aim to appear for the meeting in the same physical room and on the same screen with their clients.

A co-mediation model shall be used in all permanency cases unless the NCAOC approves a single mediator session in advance. Mediation shall include the following steps:

- Intake and assessment process
- Orientation of the parties to the process
- Discussion and agreement on agenda and/or issues to be discussed
- Caucus sessions as appropriate
- Written agreement and/or termination of the process

If the mediation process requires more than one session, to which the parties agree to attend, then no party or counsel may approach the Court between sessions on any matter referred to in mediation unless an emergency arises regarding the child(ren). Participation in mediation is not to be used to delay the court process.

If paternity is not established prior to the mediation session and if a father named in the petition does not intend to acknowledge paternity prior to the scheduled mediation, then that father and his attorney may not enter into a mediated agreement regarding the petition or case plan, unless approved by the Court.

Although parties may be ordered to attend mediation, there shall not be any punitive measures taken by the Court or service providers if a mediated agreement is not reached.

If an agreement is reached, the mediators will, as often as possible, draft a written agreement while all parties and attorneys are present at the mediation. The parties can agree to use electronic signatures to facilitate execution of the mediated settlement agreement. The parties shall receive a copy of the signed agreement. The attorney for DSS, or another individual identified by the parties, will submit the agreement to the Court for consideration. The Court shall determine whether the mediated agreement will become a Court Order.

Confidentiality

All participants shall receive a copy of the confidentiality clause prior to mediation. The mediator will review the terms of confidentiality with the parties during the intake or orientation process and field any questions. All participants, including mediators, shall honor the confidentiality provisions regardless of the outcome of the mediation. All verbal or written communications from participants in the mediation to the mediator or between or among the participants in the presence of the mediator are absolutely privileged and inadmissible in court. EXCEPTION: There is no confidentiality or privilege as to communications made in furtherance of a crime or fraud. Nothing herein shall permit an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of the North Carolina General Statutes, Section 7B-301 or 108A-102.

Capacity

While the aim of the NCAOC Permanency Mediation Program is to provide mediation for all referred cases that are appropriate for mediation, the program will develop in manageable stages that align with



available resources. The program manager will refer cases back to court when unable to provide mediation in a timely manner due to limited resources.

Complaint Procedures

If a party has a complaint against either the mediator or the mediation process, the complaint must be submitted in writing, signed by the complainant, and mailed or delivered to the Chief District Court Judge of the judicial district. The Chief District Court Judge will review the complaint and respond in writing to the complainant within sixty (60) days of receiving the complaint.

Advisory Committee. The Custody Mediation Advisory Committee, established by the Director of the NCAOC, shall advise the NCAOC on matters of the Permanency Mediation Program.

