



**Greacen Associates, LLC**

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

**Draft Final Report**

**December 31, 2012**

# Executive Summary

During its initial three and a half years, the North Dakota Family Law Mediation Pilot Project has been very successful in meeting its objectives.

Data for the first two years of the project showed that it was succeeding in almost every measure. The addition of data for the eighteen months of the third reporting period, which now includes information on completed mediations for every district in the state, shows even better results for:

- The percentage of mediations that result in agreements on both parenting time (up from 70% to 76% from the second to the third reporting period) and non-parenting issues (up from 65% to 70%) and the percentage of mediation participants who agree to mediate the non-parenting issues in their cases (up from 59% to 81%)
- The percentage of those agreements that are rescinded by the parties (down to 9% for the third reporting period)
- The average satisfaction ratings from mediation participants, with overall satisfaction with the mediation process now reported by 87% of participants completing post-mediation surveys
- The average time required to complete mediations

The pilot project continues to reach persons from rural areas of the state, persons of limited means who could not afford private mediation, and members of minority groups.

This report contains the first assessment of the extent to which mediators perceive a power imbalance between the mediation participants and information on the steps that they take to deal with such imbalances when they arise. A power imbalance was perceived in only 7% of the mediations for which this question was addressed. The detailed comments of mediators – set forth verbatim in this report – demonstrate that the mediators consistently take steps to ensure that no miscarriage of justice arises from these situations.

The most dramatic findings from this third interim report, however, are that the mandatory mediation program is reducing the average time required for the courts to resolve contested parenting time cases (by roughly 35%) and

is reducing dramatically the percentage of these cases that are returning to court (by roughly 60%).

There are two ongoing issues that the project has not resolved. Mediators are still not consistently conducting mediations in a timely manner – within the 90 day time requirement established by the North Dakota Supreme Court. And the response rate for participant surveys has fallen to 65% (down from 90% during the first ten months of the pilot project and from 73% during the first two years). The falling response rate calls into question the validity of the participant satisfaction information collected for the evaluation. Both of these problems result from lack of discipline on the part of the mediators. Both the time required for completion of mediations and the response rate for participant surveys vary significantly from mediator to mediator. The performance of individual mediators demonstrates that it is possible to complete all mediations within the Supreme Court's time requirement and to obtain completed surveys from all mediation participants. Our recommendations urge the Office of State Court Administrator to take firm action to remedy these two deficiencies so that they do not remain as issues for the final evaluation report due at the close of 2012.

The factual findings of the study are summarized in the following statements:

- Of the 1375 cases referred to the Project Administrator, 38% were rejected due to the existence of a current domestic violence restraining order or other disqualifying characteristic. Mediations have been completed in 698 of the 857 mediations accepted into the program. At the close of the third data collection period, the pilot project had completed mediations in 81% of the cases accepted for mediation.
- Mediations have been completed in all seven judicial districts and in 30 of the state's 53 counties. During the third reporting period, fewer than 50% of the mediations came from the first two pilot districts, demonstrating that the pilot project has successfully completed the transition to a statewide project.
- For the third reporting period, the average time for orientation of the participants was roughly 1 ½ hours. The average time required for the mediation itself was 3 ¼ hours; the shortest was 15 minutes and the longest was 12 hours.

- Over half of the mediations arise from initial divorce proceedings.
- Participants completing post-mediation surveys are half women, half men. Three quarters of them are between the ages of 25 and 44. Almost half of the cases involve a single child; only 6% involve more than 3 children. Sixty-two percent of the mediation participants report monthly before tax incomes of \$3,000 or below. Seventy-five percent of participants report educational attainment of high school, some college, or an associate's degree. Only four percent have less education; 26% have a bachelor's or graduate degree.
- Mediation participants reflect the racial and ethnic composition of the state of North Dakota. Except for Hispanics, minority group representation among mediation participants is slightly below their representation in the 2010 North Dakota census (1.1% fewer American Indians; less than 1% fewer for any other group).
- Only three of over six hundred mediation participants reported a primary language other than English.
- Over the first three and half years of the pilot project, 84% of mediation participants are represented by counsel. That proportion has not changed perceptibly during the life of the project.
- During the third reporting period, 81% of mediation participants voluntarily agreed to mediate their non-parenting time issues. This represented a substantial increase from the rate of 59% during the first and second reporting periods.
- Despite the North Dakota Supreme Court's de-emphasis of the importance of reaching agreement during mediation, mediators report that they have obtained full agreement on parenting time issues in 50% of the cases completed during the third reporting period (down from 54% and 56% during the first and second reporting periods) and partial agreement in an additional 26% of the cases (up from 25% and 14% for the first and second reporting periods). The total agreement rate rose from 70% during the second reporting period to 76% during the third reporting period. For the three and a half years of the pilot project, the total full and partial agreement rate for parenting time issues is 75%.
- If the project were to be given credit for cases that do not reach full agreement during the mediation, but settle very soon thereafter, the

full agreement rate would be 68% for the first three and a half years of the pilot project.

- Although North Dakota de-emphasizes agreement as the objective of its mediation project, the project's agreement rate compares very favorably with that from similar efforts in other states.
- The full agreement rate for non-parenting time issues rose from 43% during the second reporting period to 44% during the third reporting period. The partial agreement rate rose from 22% to 26%. The total full and partial agreement rate for non-parenting time issues rose from 65% to 70% for the third reporting period and now stands at 69% for the first three and a half years of the pilot project.
- The rate of rescission of agreements reached during mediation dropped from 15% during the first two reporting periods to 9% for the third reporting period. It stands at 10% for the first three and a half years of the pilot project.
- Agreement rates for parenting time issues are highest for paternity cases, followed by post judgment modifications, initial divorce proceedings, and parenting time disputes not arising out of a pending case. Agreement rates for non-parenting time issues do not vary substantially by case type.
- Mediation continues to be less successful in Burleigh County than in Grand Forks County or the other counties combined. Rescission rates are higher in both Burleigh and Grand Forks counties than in the rest of the state.
- Agreement rates vary substantially from mediator to mediator. Six mediators have full parenting time agreement rates of 67% or above; five have full agreement rates of 35% or lower. Total full and partial agreement rates for parenting time mediation range from 44% to 100%. Total full and partial agreement rates for non-parenting issues range from 21% to 100% for particular mediators.
- Younger participants are more likely to reach agreement and less likely to rescind an agreement than participants in other age groups; older participants are the opposite. Agreement is less likely for persons with graduate degrees than for persons with lesser educational attainment. Agreement rates do not vary substantially by income, except for persons with reported incomes from \$7,000 to \$8,000 per month.

Ironically, this group is the most likely to agree to mediate non-parenting time issues even though it is the least likely to reach agreement when the issues are mediated.

- Mediators tend to report fewer instances of power imbalances in cases at the extremes of age, education and income. The most frequently reported groups were participants between the ages of 25 and 34, persons with a high school education, and persons with reported monthly incomes between \$501 and \$2000.
- Participants reported an increase in overall satisfaction with the mediation process from the second data collection period to the third – with average scores rising from 80% to 86%. The three and a half year average score for overall satisfaction with the mediation process is now at 87%.
- Satisfaction scores are reported in two formats – “average score” and “percentage satisfied.” The latter disregards “neutral” responses. The average scores for every question were higher for the third reporting period than they had been for the second reporting period. The percentage satisfied scores rose for sixteen of the nineteen survey questions from the second to the third reporting periods. Satisfaction ratings for the life of the project as a whole rose for fifteen of the nineteen questions. For participants over the three and a half years of the pilot project:
  - 99% agreed that the mediator treated them with respect
  - 97% agreed that the mediator cared about their case
  - 96% agreed that they felt safe and that the mediator treated both parties equally
  - 94% agreed that they were able to say what they needed to say during the mediation
  - 92% agreed that the process was fair to them
  - 91% agreed that they were well prepared and that they did a good job representing their point of view
  - 90% agreed that mediation is better than going to court; only 11% felt they would have gotten a better outcome in court, and
  - 88% agreed that they understood the process they were to follow

- On the more ambitious objectives of the pilot program, for participants over the three and a half years of the pilot project:
  - 80% agreed that they were able to put the needs of the children first in their negotiations
  - 73% agreed that mediation introduced new ideas into their discussions
  - 42% agreed that they had learned how to negotiate more successfully with their former spouse, and
  - 29% reported that they learned something new about their former spouse.
  
- Unrepresented litigants are more satisfied with the mandatory mediation process than represented litigants (94% compared to 86%).
  
- The highest overall satisfaction rates are in the Southwest (96%) and East Central (94%) and lowest in the Northeast District (78%).
  
- Although the overall satisfaction rates are very high, they vary for the different mediators. A chart in the report notes a few scores that should be of concern to individual mediators and may warrant corrective action. On the other hand, a few mediators do exceptionally well on some of the most ambitious objectives of the project – such as focusing on the needs of the children, introducing new ideas into the negotiations, and equipping the parties with improved negotiation skills.
  
- There are no significant differences in satisfaction with the mediation process based on sex or race. Satisfaction was highest for persons at either end of the age spectrum and for persons in the second and third highest income groups. It was lowest for persons with the lowest educational attainment. Reported understanding of the process is consistently high except for persons with education from grades 5 through 11 where there are significant drops in reported understanding. Perception of ability to represent one's point of view declines with educational attainment. And perceived ability to represent one's point of view is very high for those groups who report poor understanding of the process.
  
- The most consistent positive comments provided by mediation participants 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.

- Mediations are completed within the time frame set by the North Dakota Supreme Court's Administrative Order 17 in 60% of cases without extensions of time (up from 58% of all cases as of the second interim report). The average time to completion (again for cases without extensions of time) was 101 days (down from 108 days for all cases as of the last report) compared with the standard we have adopted of completion within 100 days, to include time for communication of her or his appointment to the mediator. When cases in which extensions of time have been granted by the court in which the underlying case is pending, the percentage of cases completed timely dropped during the third reporting period to 46% and the average time required to complete mediations rose to 110 days. The longest case took 404 days and the shortest took 5 days.
- Timeliness of mediations varies by district. The East Central District is most timely – completing 70% of cases without extensions within 100 days and achieving an average time to completion of 91 days in those cases. The South Central District is the least timely – completing only 48% of cases without extensions within 100 days and averaging 113 days for mediation completion. With the exception of the South Central District, the three most rural districts – Northeast, Northwest and Southeast – have the lowest percentages of cases without extensions completed within 100 days.
- Timeliness of mediations appears to depend primarily on the mediator. Mediator performance in completing all mediations without extensions of time varies from 0% to 100%. Of the sixteen mediators with cases in both the second and third reporting periods, four improved their percentage of mediations completed timely and six reduced their average time for completion.
- Despite the above finding, data shows conclusively that the average time from filing to court disposition of family cases with parenting time disputes is shorter by 25% to 35% since implementation of the mandatory mediation pilot project. This finding is based on both "before" and "after" data from three of the early pilot districts and from "experimental" and "control" data comparing the performance of

the first two pilot districts with that of two districts in which mandatory mediation had not been implemented. The “before” and “after” comparisons show that time to disposition decreased in the Northeast Central District by 80 days (a 25% improvement), in the South Central District by 120 days (a 30% improvement), and in the Northwest District by 150 days (a 34% improvement). The “experimental” and “control” comparison shows a reduction of 35% in time from filing to disposition.

- The mandatory mediation pilot project has reduced the percentage of reopenings by roughly 60% since the mediation project has been implemented. Comparison of the percentage of reopenings of the first two pilot courts with the “control” courts shows a reduction of 67%. There is no reason to expect that number to change since the data are for cases filed during the same year. Comparison of reopenings in cases in three early pilot districts “before” and “after” implementation of mandatory mediation shows a reduction of 91% for the South Central District, 71% for the Northeast Central District, and 14% for the Northwest District. This data is subject to change because the cases filed during the “before” period have had one year more than the “after” cases during which they can have been reopened.

The report that follows provides detailed support for these conclusions and makes several recommendations for strengthening the project for the remaining eight months of its pilot period.

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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 that 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.

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 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 two 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.

This final project report is based on the following data:

- Attitudinal and demographic data from litigants completing mediations in 693 of the initial 857 cases accepted into the pilot project. Of these cases, 49 were analyzed in the first interim report, 173 from the second interim report, and 471 from the most recent reporting period. 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, 47 cases analyzed for this report lack all three of these documents; information from these cases comes exclusively from the project administrator’s log. For the second interim report there were 35 such cases. The total number of cases

for the pilot project to date for which we have no data is 92.<sup>2</sup> We have 80 for the current reporting period for which we have only the mediator's report, without any surveys. For the remaining 137 cases, we have a mediator's report and one or two completed party surveys. 268 cases have two surveys; 76 have only one. We have a total of 612 surveys for this third interim reporting period.

The numbers of cases and surveys for the first and second interim reporting periods and the combined totals are shown in the table below:

**Data Used in This Report**

Data Type	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 August 31, 2011 to August 31, 2012	Total Project Period March 1, 2008 to August 31, 2012
Cases Accepted into Project	98	213	546	456	1313
Mediations Completed	49	182 <sup>3</sup>	471	422	1123
Mediations with 0 surveys	0	37	127		164
Mediations with 1 survey	10	23	76		109
Mediations with 2 surveys	39	113	268		420
Total number of cases included in evaluation	49	173	426 <sup>4</sup>		648
Total number of surveys included in evaluation	88	251	612		950 <sup>5</sup>

<sup>2</sup> It also appears from the project administrator's records that there were ten cases for which mediations were completed during the second reporting period which were not on her spreadsheet at the time of the second interim report. We have not made any attempt to incorporate those cases into our analysis.

<sup>3</sup> Adjusted from second interim report.

<sup>4</sup> Three cases represent second mediations in the same case. One case from the third reporting period was counted twice – once for the surveys and once for the mediator's report, so the number of cases appearing in the reports is 427. For our analysis of time required to complete mediations, we have been able to use the project administrator's spreadsheet, including 471 cases for the third reporting period.

<sup>5</sup> The total project period data includes one additional survey for a case analyzed during the first reporting period. The information from that survey appears only in the cumulative data reports.

- 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 report does not include any survey data from judges, lawyers, court staff, or mediators concerning attitudes toward mediation. Data from surveys completed prior to project start up was included in the first interim report. This report also does not include reports from the mediators concerning the impact of the state-supported mandatory mediation project on their private mediation practices.

In addition, this report does not include data from telephone interviews with mediation participants six months after their mediation sessions. The evaluation design included such telephone interviews. 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 have abandoned the effort to obtain this telephone follow up information.

## **Project Accomplishments**

After three 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 1375 case referrals from the pilot districts during the first three and a half years of the pilot project. The table below shows that 38% the cases referred were rejected because they contained disqualifying characteristics. As of the end of August 2011, 701 mediations were completed in 698<sup>6</sup> of the 857 (81%) cases accepted into the project. At the time of the second interim evaluation, the project had completed mediations in 71% of the accepted cases.

### 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	
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>7</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, 2011		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 needed additional fields and data

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<sup>6</sup> Second mediations were conducted in three 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.

<sup>7</sup> The only information we have on 53 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.

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 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 701 mediations in the first three and a half years of the project's life. Three 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 completed during the third reporting period – March 1, 2010 through August 31, 2012 – have been added to the chart below showing the location of completed mediations. Mediations have been completed in all seven judicial districts and in 30 of North Dakota’s 53 counties.

Distribution of Completed Mediations by District and by County

District/County	Initial Reporting Period	Second Reporting Period <sup>8</sup>	Third Reporting Period <sup>9</sup>	Cumulative Pilot Project to Date <sup>10</sup>
South Central	24	75	83	182
Burleigh	20	55	82	157
Grant		1		1
McIntosh		1		1
McLean		1		1
Morton	3	14	1	18
Oliver		2		2
Sheridan		1		1
Sioux	1			1
Northeast Central	25	81	122	227
Grand Forks	23	81	122	225
Nelson	2			2
Northeast		12	31	43
Benson		1	1	2
Bottineau		2	2	4
McHenry			1	1
Pembina		5	3	8
Pierce			1	1
Ramsey		1	10	11
Renville			1	1
Rolette		1	1	2
Towner		1		1
Walsh		1	11	12

<sup>8</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>9</sup> We are missing district information for four cases and county information for eleven cases, so the counts for the counties within a district do not necessarily sum to the district total.

<sup>10</sup> This column shows only the cases for which we have information from a mediator’s report. It is lacking 55 cases for which we do not have a report.

Northwest		3	63	66
Divide			1	1
McKenzie			2	2
Ward		3	51	54
Williams			5	5
Southwest		2	26	28
Stark		2	25	27
East Central			65	65
Cass			65	65
Southeast			33	33
Dickey			1	1
Foster			5	5
Griggs			1	1
Stutsman			24	24

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. More than half were conducted in 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 27 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 third reporting period. The most active mediator completed 43 cases. Another completed 42 cases and a third completed 33. Nine completed between 20 and 29. Seven completed between 10 and 19. Four had fewer than 10.

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>11</sup>

	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, 2011	Pilot Project Total
<b>Orientation</b>				
Average time required	1 hr 32 mins	1 hr 32 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	25 mins	25 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 18 mins	3 hrs 19 mins
Half completed within	2 hrs 45 mins	3 hrs	3 hrs 3 mins	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 45 mins	4 hrs 48 mins

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%	47%	52%
Custody not arising out of pending proceeding	9%	20%	24%	20%
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

<sup>11</sup> We are missing data on orientation time in 168 cases and on mediation time in 102 cases.

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

During the third reporting period, the mediators obtained completed surveys from both parties in 268 cases and from one party in an additional 76 cases, for a total of 612 completed surveys.<sup>12</sup> There were no completed surveys in 127 of the completed mediations. The participant scores on four surveys were incomprehensible because the mediator misprinted the survey forms. There were an average of 1.31 surveys per completed mediation. During the second reporting period the average was 1.45 surveys per completed mediation. During the first reporting period, the rate of survey completion was better – an average of 1.80 surveys per completed mediation during the first reporting period.

As the project has matured, the mediators have become less conscientious in obtaining feedback surveys from the mediation participants. Every mediator who participated in both the second and third reporting periods performed more poorly in obtaining and returning surveys during the third reporting period. We are reporting to the project administrator the performance of each mediator in obtaining and sending in the evaluation surveys. We did the same in conjunction with the second interim report; those individual mediator reports do not appear to have had any effect on mediator behavior in this regard.

The rate of return of completed participant surveys was 90% during the first reporting period, 73% during the second reporting period, and 65% for the third reporting period. Lower rates of survey return bring into question the validity of the participant satisfaction data gathered for the evaluation. There is no way to know whether the participants who did not complete post-mediation surveys were systematically less satisfied with the mediation process than those who did.

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<sup>12</sup> As noted earlier, we discovered that three cases, representing five surveys, were cases that we had included in the analysis for the second interim report. We conclude that these cases involved second mediations in the same case, and have included them in the data base of completed surveys.

While we doubt that this is the case given our personal acquaintance with a number of the mediators, the data is subject to a more sinister interpretation – that some mediators obtain surveys only for those cases in which they perceive the participants to be satisfied with the process. Whenever the rate of return is low, the data is subject to the interpretation that mediators may have manipulated it to their advantage.

It is clear that the rate of return of completed surveys varies dramatically from mediator to mediator. Mediator 15 provided a total of 2 surveys for 7 cases – a rate of return of 14%. For 43 mediations, mediator 3 provided two surveys in 11 cases, one survey in 6 cases, and no surveys in 26 cases – a rate of return of 32%. On the other hand, several mediators provided a very high proportion of the required surveys – demonstrating that there is no structural impediment to obtaining a high survey response rate. Mediator 13 provided 95% of the required surveys for 21 completed mediations. Mediator 7 provided 92% of the required surveys for 26 completed mediations.

Returning to a high rate of return of participant surveys should be a major objective of the pilot project during its final eight months.

Each survey asked for demographic data on the participant. Most participants provided the requested information. We present the demographic data for all 758 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 (50.5%); half were male (49.5%). 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>13</sup>

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

Over the life of the project, the percentage of mediation participants in the 25-34 age group has grown, while the percentage 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. Three cases reported no children; they are likely to be grandparent visitation or guardianship cases.

### Number of Children in Mediated Cases<sup>14</sup>

Number of Children	First Reporting Period (10 months)	Second Reporting Period (14 months)	Third Reporting Period (18 months)	Fourth Reporting Period <sup>15</sup> (12 months)	Pilot Project as a Whole (54 months)
1	55%	45%	46%	49%	
2	32%	36%	34%	32%	
3	6%	11%	14%	15%	
4	4%	7%	4%	3%	
5 or more	2%	-	1%	2%	

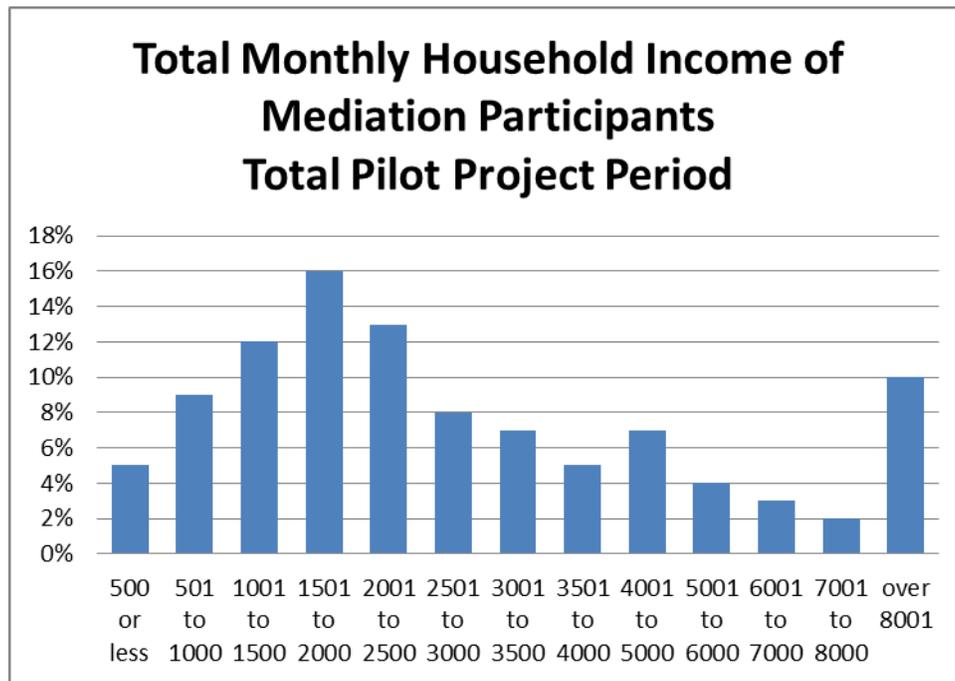
One of the project goals is to make mediation more widely available to rural North Dakota residents. It is clear from the county-by-county distribution of completed mediations reported previously that mediation is reaching rural county residents. The pilot project now includes cases from 30 of North Dakota's 53 counties.

<sup>13</sup> Two questionnaires were completed by persons under the age of 18 and one by a person older than 65.

<sup>14</sup> For this data, we used the cases data set, involving only one survey from each case. This data set had the number of children for 340 of 427 cases for the third reporting period.

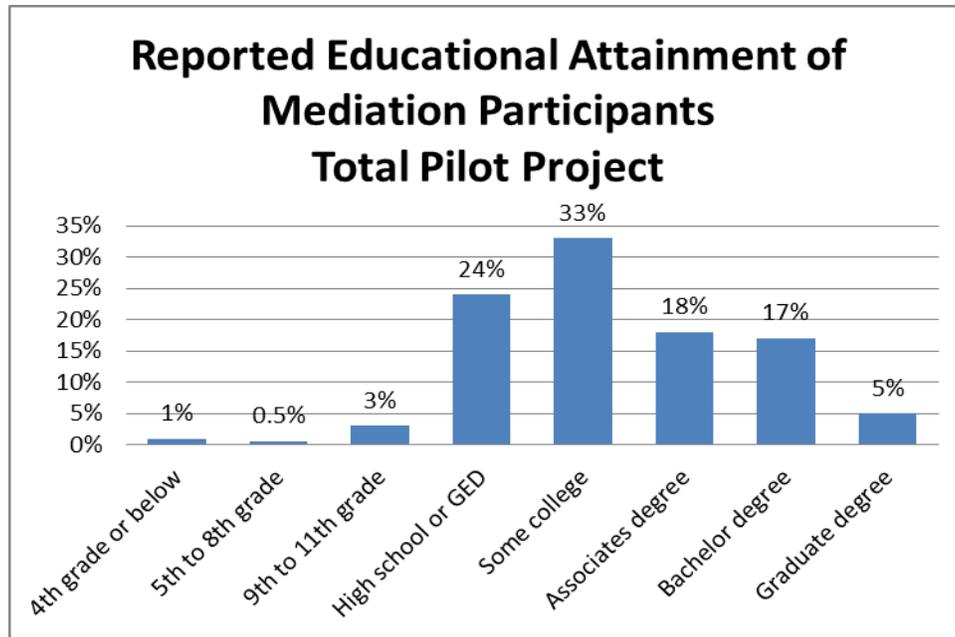
<sup>15</sup> Twelve survey forms from the fourth reporting period stated the party had no children.

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 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. 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 significant 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, 3.3% as Hispanic, and 3.8% as “other.” Half of the “other” category identified themselves as Asian, the others and “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>16</sup>**

	White	American Indian	Black	Hispanic	Other
North Dakota 2010 census	90.0%	5.4%	1.2%	2.0%	2.8%
First 10 months	89.4%	8.2%	0%	2.3%	2.3%
Next 14 months	92.0%	4.4%	2.0%	2.0%	1.6%
Next 18 months	93.6%	3.8%	0.7%	2.6%	2.3%
Most recent 12 months	91.0%	3.3%	1.8%	3.3%	3.8%
<b>Total pilot project</b>	<b>91.7%</b>	<b>3.9%</b>	<b>1.3%</b>	<b>2.9%</b>	<b>2.0%</b>

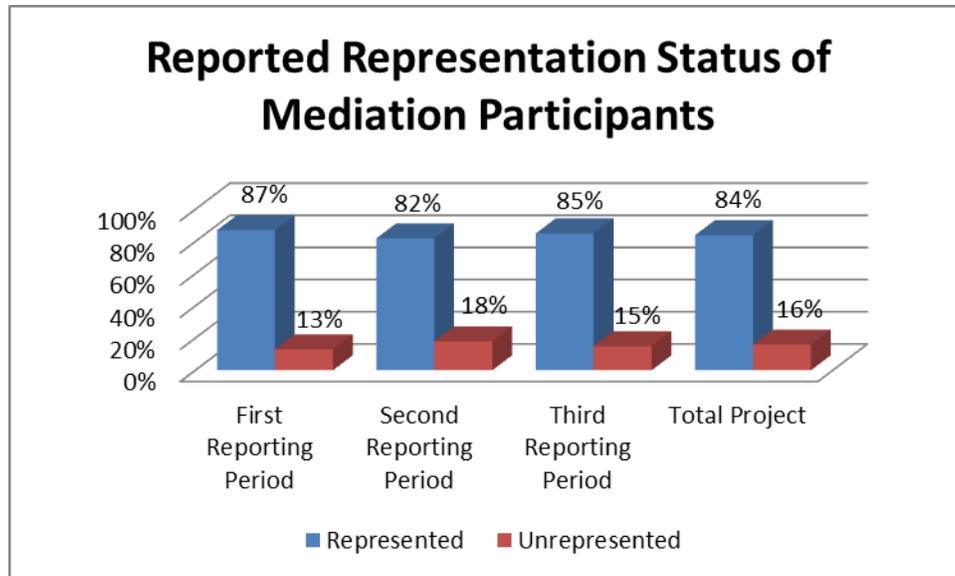
<sup>16</sup> These numbers sum to more than 100%. Our questionnaire used the method used by the US Census Bureau, which treats Hispanic as an ethnicity, not a race, e.g., there can be White Hispanics and Black Hispanics. So the racial categories add up to 100%, to which the percentage of persons identifying themselves as Hispanic is added.

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 more Hispanics and persons of "other" races.

Only six participants over the pilot project period reported a primary language other than English; only one of them was Spanish. This statistic calls into question the responses to the survey question concerning the difficulty of proceeding without an interpreter. Thirteen respondents 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 indicate whether a mediation participant is represented by counsel at the time of the mediation. During the fourth reporting period, mediators provided that information for 78% of the surveys (136 of 612 surveys lacked that information). For the surveys for which mediators provided the information, 85% 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 1768 surveys) reported that they had a lawyer. Mediators did not provide this information for the other 408 questionnaires.

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 trend. Self-representation may be more prevalent, however, for North Dakota 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 three and a half years of the program show that the parties are agreeing to mediation of other issues in 64% (412 of 648 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.

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, and third data gathering periods. It shows a decrease in full agreement rates from the

second to the third reporting period, which was more than compensated by an increase in the rate of partial agreements. The combined full and partial agreement rate increased from 70% to 76% and is at 75% for the first three and a half years of the pilot project. Even though the proportion of cases in which the parties agreed to mediate other issues increased significantly (from 59% to 81%) the full agreement rate rose by 1% and the combined full and partial agreement rates for other mediated issues rose from 65% to 70%. 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>17</sup>

	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 parenting time	54%	56%	50%	53%	
Partial agreement on parenting time	25%	14%	26%	23%	
No agreement on parenting time	21%	30%	24%	24%	
Full agreement on other issues	42%	43%	44%	41%	
Partial agreement on other issues	22%	22%	26%	29%	
No agreement on other issues	36%	35%	30%	30%	

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 and an additional 73 during the third reporting period. If those cases were treated as full agreement cases, the full agreement rate for the third reporting period would be 67% and for the first three and a half years of the pilot project would be 68%.

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

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<sup>17</sup> Mediation outcome was not reported on 17 of the 648 completed cases.

a mediated agreement and nullify it based on that advice or time to reconsider the agreement themselves. During the second data reporting period, we asked mediators to report the number of agreements rescinded. The data was reported for 325 of the 427 cases included in the third reporting period analysis. It showed rescissions occurred in 9% of cases in which an agreement was reached, down from 15% during the first two reporting periods. For the first three and a half years of the pilot project the rescission rate has been 10%.

We repeat below the data presented in the first two interim reports concerning comparative agreement rates which show that North Dakota's agreement rates – despite its de-emphasis on agreement as the ultimate objective of the mediation program – are extremely high.

Comparative Agreement Rates Following Family Case Mediation<sup>18</sup>

Jurisdiction	Date of Study	Mandatory/ Voluntary	Full Agreement	Partial Agreement	Combined Full and Partial
Ventura, CA <sup>19</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	52%	23%	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%

<sup>18</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>19</sup> Mediator coercion was reported in this jurisdiction.

Jurisdiction	Date of Study	Mandatory/ Voluntary	Full Agreement	Partial Agreement	Combined Full and Partial
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 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% 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 for the first two years of the pilot project provide any insight into the mediation process in North Dakota?

During the first ten months of the project, agreement rates were relatively consistent among the four main case types – divorces, paternity, post-judgment modification, and custody not related to another pending proceeding. During the second data reporting period, there was more variation by case type, with full and partial agreement highest in paternity cases, followed by initial divorces, post judgment modifications and custody matters not arising from a pending proceeding.

During the third reporting period, full and partial agreement rates were highest in post judgment modification, followed by paternity, initial divorce proceeding and parenting time not arising out of a pending case.

For the first three and a half years of the pilot project, full and partial agreement rates are highest for paternity, followed by post judgment modification, initial divorce proceeding and parenting time not arising out of a pending case. We have agreement data for only one guardianship case, so that data should be taken with a grain of salt.

Parenting Time Agreement Rates by Case Type<sup>20</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%						
Post judgment modification	49%	20%	68%	58%	24%	82%						
Paternity	67%	15%	82%	53%	25%	78%						
Parenting time not arising out of pending case	41%	35%	77%	35%	32%	67%						
Guardianship				0%	0%	0%						

Full and partial agreement rates for non-parenting time issues rose dramatically for post judgment modification cases – from 54% to 84%. Agreement rates for non-parenting issues in initial divorce proceedings stayed the same – at 70%. Agreement rates for non-parenting issues in paternity and parenting time not arising out of a pending case both dropped by a few percentage points.

For the first three and a half years of the pilot program, full and partial agreement rates for non-parenting time matters were virtually the same for initial divorce, post judgment modification, and paternity, and only a few percentage points lower for parenting time issues not arising out of a pending case.

<sup>20</sup> Full and partial percentages do not always equal total percentages because of rounding. Ten cases during the third reporting period and fifty-two for the pilot project to date lack information on case type.

**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 agreement	Partial agreement	Total	Full agreement	Partial agreement	Total	Full agreement	Partial agreement	Total	Full agreement	Partial agreement	Total
Initial divorce proceeding	51%	18%	70%	45%	25%	70%						
Post judgment modification	24%	29%	54%	57%	27%	84%						
Paternity	47%	27%	73%	50%	20%	70%						
Parenting time not arising out of pending case	43%	29%	71%	35%	32%	67%						
Guardianship				0%	0%	0%						

The first interim evaluation noted that mediation outcomes were more successful 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.

During the third data reporting period, the Grand Forks County's agreement rates in parenting time mediations dropped slightly because of a reduced rate of partial agreements. But Burleigh County's full agreement rate for parenting time mediations dropped from 50% to 41%, compensated somewhat by an 11% increase in its rate of partial agreements. For the first three and a half years of the pilot project, the gap between the two counties on full and partial agreement rates is now at 17% -- one percent higher than during the first ten months of the pilot project. It now appears unlikely that Burleigh County will begin to approach the level of acceptance given mediation in Grand Forks County during the four and a half years of the pilot project.

The experience of the other counties (some of which are in the South Central and Northeast Central Districts) is more similar to that of Grand Forks County than Burleigh County in terms of the combined percentage of full and partial agreements, but is higher than either in the percentage of partial agreements reached. By this time in the pilot project there are 255 cases from other counties, suggesting that this data is reliable and significant. 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>21</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%						
Grand Forks County	60%	24%	83%	61%	19%	79%						
All other counties	53%	7%	60%	48%	32%	80%						

The gap between the two counties' full and partial agreement rates for non-parenting time issues has widened substantially during the course of the pilot project. Grand Forks County now has a 19% advantage in full agreement rate, a 9% advantage on partial agreement rate, and a 28% advantage in combined agreement rate for non-parenting time issues. The experience in other counties is, again, closer to that in Grand Forks County than to that in Burleigh County. For the three and a half years of the pilot project, the other counties have a partial agreement rate for non-parenting time issues nearly the same as that of Grand Forks County, but a total agreement rate 12% points below Grand Forks County's rate. The combined agreement rate is closer to that in Grand Forks, once again suggesting that Burleigh County lags behind the rest of the state.

Non Parenting Time Issues Agreement Rates by County<sup>22</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%						
Grand Forks County	42%	38%	80%	60%	21%	81%						
All other	45%	14%	59%	42%	32%	72%						

<sup>21</sup> Full and partial percentages do not always equal total percentages because of rounding.

<sup>22</sup> Full and partial percentages do not always equal total percentages because of rounding.

counties												
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The rescission rates for the third reporting period and for the first three and a half years of the pilot project reflect the same dynamic, with Burleigh’s rescission rate at 16% and Grand Forks’ rate at 12% for the third reporting period and their respective rates at 16% and 14% for the full pilot project period. The rescission rate in other counties (6% for the third reporting period and 7% for the full pilot project period) is less than half that in either Grand Forks or Burleigh County.

Do some mediators have higher success rates than others? Yes. As shown in the table below, their combined full and partial agreement rates for the third reporting period range from 44% to 100%. 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>23</sup>**

Mediator	First and Second Reporting Periods March 1, 2008 to February 28, 2010					Third Reporting Period March 1, 2010 to August 31, 2011						
	Agreement on Parenting Issues			Non parent Ing issues %	Rescis sions	Agreement on Parenting Issues					Non parent Ing issues %	Rescis sions
	Full Agree ments	Partial Agree ments	Total Agree ment %			Full Agree ments	Full Agree ment %	Partial Agree ments	Partial Agree ment %	% Total Agree ment %		
Mediator 1	19	1	91%	81%	0	8	67%	2	17%	83%	83%	1
Mediator 2	15	8	92%	100%	1	18	72%	2	8%	80%	88%	3
Mediator 3	12	0	50%	56%	1	12	34%	4	11%	46%	21%	1
Mediator 4	5	2	70%	67%	0	0	0%	1	100%	100%	100%	1
Mediator 5	9	2	65%	46%	1	17	71%	4	17%	88%	50%	3
Mediator 6	7	2	56%	50%	2							
Mediator 7	7	3	56%	36%	1	6	25%	9	38%	63%	71%	2
Mediator 8	8	1	60%	44%	0	10	59%	2	12%	71%	64%	1
Mediator 9	9	2	73%	75%	1	15	75%	3	15%	90%	79%	3
Mediator 10	6	9	75%	62%	5	4	31%	6	46%	77%	54%	4
Mediator 11	2	1	100%	100%	0							
Mediator 12	12	4	100%	75%	0	23	62%	6	16%	78%	75%	0
Mediator 13						5	24%	11	52%	76%	73%	2
Mediator 14	1	-	100%	100%	0	6	60%	1	10%	70%	44%	2
Mediator 15	1	-	100%	-	0	4	67%	0	0%	67%	60%	0
Mediator 16	2	4	100%	80%	1	0	0%	0	0%	0%	100%	0
Mediator 17	3	1	80%	75%	0	11	55%	9	45%	100%	95%	0
Mediator 18	1	-	50%	50%	0	10	46%	5	23%	68%	57%	1

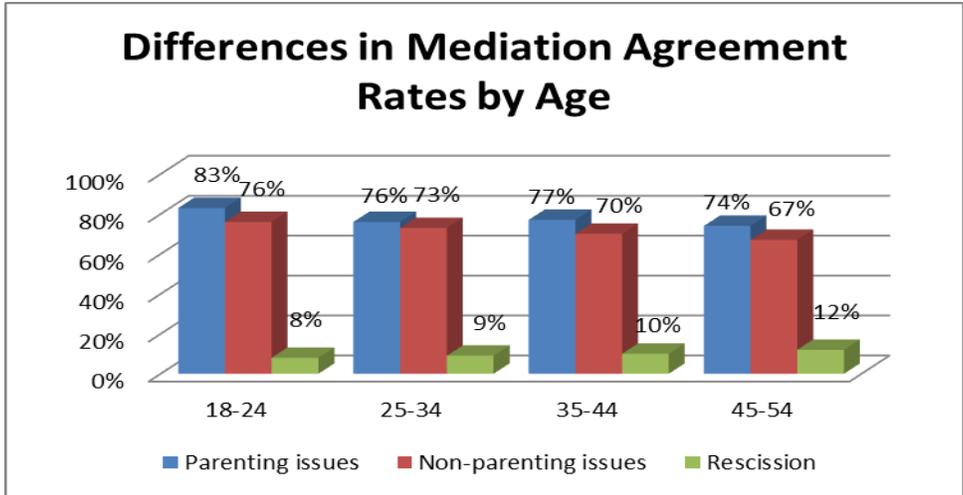
<sup>23</sup> Full and partial agreement rates for third reporting period may not sum to total agreement rates due to rounding errors. Includes only cases for which we have reported outcomes information.

Mediator	First and Second Reporting Periods March 1, 2008 to February 28, 2010					Third Reporting Period March 1, 2010 to August 31, 2011						
	Agreement on Parenting Issues			Non parent Ing issues %	Rescis ions	Agreement on Parenting Issues					Non parent Ing issues %	Rescis ions
	Full Agree ments	Partial Agree ments	Total Agree ment %			Full Agree ments	Full Agree ment %	Partial Agree ments	Partial Agree ment	% Total Agree ment %		
Mediator 19	1	-	100%	-	0	18	60%	5	17%	77%	88%	2
Mediator 20	1	-	100%	100%	1	4	50%	4	50%	100%	100%	0
Mediator 21						7	39%	1	6%	44%	50%	0
Mediator 24						3	43%	4	57%	100%	100%	0
Mediator 25						8	67%	3	25%	92%	75%	2
Mediator 26						7	39%	6	33%	72%	83%	0
Mediator 27						5	62%	3	38%	100%	86%	1
Mediator 28						4	17%	18	75%	92%	81%	1

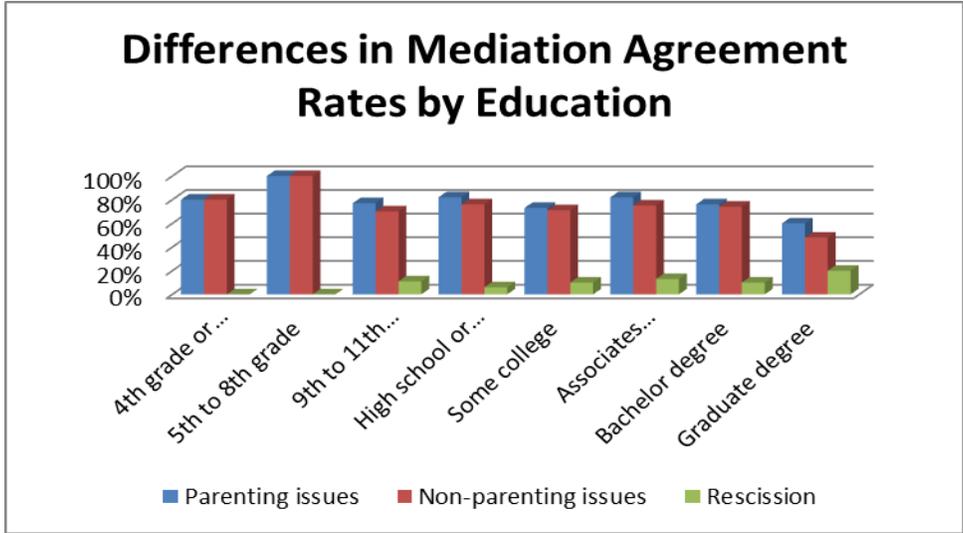
Six mediators have full agreement rates of 67% or higher. Five have full agreement rates below 35%. However, this information needs to be viewed with an understanding that differentiating between full and partial agreement is a judgment call and some mediators may use a more rigorous standard in assessing whether the parties have reached full agreement.

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.

As in previous reports, data for the full three and a half year period of the pilot project shows some variation in the likelihood of reaching agreement by age – showing that participants between the ages of 18 and 24 are somewhat more likely to reach agreement and less likely to rescind an agreement reached. Mediation participants above the age of 45 tend towards the opposite end of the spectrum. We have insufficient data for cases with participants under the age of 18 or over the age of 55 to include in the chart.



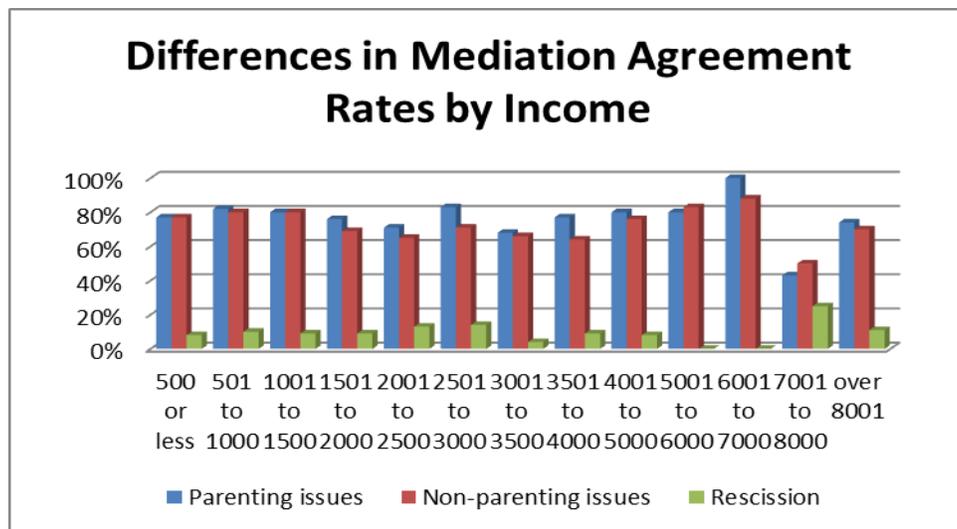
As data has accumulated for the pilot project, the only significant difference in the likelihood of agreement for persons with different educational attainment is for persons with graduate degrees, who have combined full and partial agreement rates of only 60% for parenting issues and 48% for non-parenting issues, with a 20% rescission rate for agreements reached. The data for the two lowest educational attainment levels is very limited – four cases and two cases respectively -- and the results are therefore of limited usefulness.



The full project period data for differences in agreement rates by income show a significant variation only for two income categories – persons making from \$6,000 to \$7,000 per month (who are most likely to reach agreement during mediation and least likely to rescind an agreement reached) and persons making from \$7,000 to \$8,000 per month (who are least likely to

reach agreement during mediation and most likely to rescind an agreement reached). Persons in the highest income category are close to the study average in all three categories. There are relatively few persons within the \$7,000 to \$8,000 per month category, but a sufficient number (7 cases) to include the data in the chart.

There is no consistent pattern in the relationship of level of income to willingness to mediate non-parenting time (property) issues. The percentage of persons willing to mediate property matters ranges from 67% (for the \$6,000 to \$7,000 per month group most likely to reach agreement when these issues are mediated) to 88% (for the \$7,000 to \$8,000 group least likely to reach agreement).



## Perceived Imbalance of Power Between the Mediation Participants

The mediator’s report for the third reporting period 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:

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 325 of the 427 cases included in our analysis. They reported a perception of imbalance in 7% of the cases (22 of 325 cases). Although we are missing information on age, education, and income for a third of these cases, mediators tend to identify power imbalances more in cases in the following categories: ages between 25-34, education at the high school level, and incomes between \$501 and \$2000 per month (there were no instances of perceived imbalance for persons with income levels above \$5,000 per month).

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 demonstrate 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.

The sophistication of the comments leads the evaluator to conclude that there is no significant likelihood in North Dakota that mandatory custody mediation will lead to a miscarriage of justice as a result of domestic violence or any other source of an imbalance of power between the mediation participants.

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.

Location	Imbalance of power comments	Domestic violence comments
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.
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

Location	Imbalance of power comments	Domestic violence comments
		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 was 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.
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 because 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

Location	Imbalance of power comments	Domestic violence comments
		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.
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.

Location	Imbalance of power comments	Domestic violence comments
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.
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

Location	Imbalance of power comments	Domestic violence comments
		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.	
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.

## Participant Satisfaction Ratings

We present the participant satisfaction data from a database of 612 completed participant questionnaires for the third data reporting period and from a database of 950 completed questionnaires for the first three and a half years of the project. Six of the surveys for the third reporting period (all from the same mediator) were misprinted and the scores were not discernible; we were unable to include those surveys in this data. We present participant satisfaction data for the first, second, and third reporting periods and for the first three and a half years of the project. We then look for differences in participant satisfaction level by various case and participant characteristics. As noted earlier, we are concerned that the rate of return for participant satisfaction surveys dropped to 65% during the third reporting period. As a result, we have less confidence in the results reported for the third reporting period than for previous reporting periods.

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		Total Project Period March 1, 2008 to August 31, 2011	
	% 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	96%	4.28
The mediator treated me with respect	98%	4.61	98%	4.65	99%	4.70	99%	4.68
I did not understand the process that we were to follow	84%	3.89	88%	4.00	88%	4.05	88%	4.03
I was able to say what I needed to say during the mediation	94%	4.17	92%	4.04	95%	4.24	94%	4.18
I learned something new today about my former spouse	33%	2.69	27%	2.51	29%	2.56	29%	2.56
I was not well prepared for the mediation today	94%	3.95	89%	3.88	91%	3.96	91%	3.94
I was able to do a good job representing my	89%	3.90	91%	3.86	92%	3.97	91%	3.94

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		Total Project Period March 1, 2008 to August 31, 2011	
	% Satisfied	Average	% Satisfied	Average	% Satisfied	Average	% Satisfied	Average
point of view								
The mediator treated both of us equally	94%	4.31	96%	4.33	96%	4.41	96%	4.38
The mediator did not care about our case	97%	4.36	95%	4.30	97%	4.44	97%	4.39
We were able to put the needs of the children first	83%	3.87	73%	3.59	82%	3.86	80%	3.79
I learned today how to negotiate more successfully with my former spouse	40%	2.78	38%	2.72	44%	2.86	42%	2.82
The mediation process was not fair to me	93%	4.08	90%	3.94	93%	4.10	92%	4.06
I did not feel safe here today	95%	4.36	98%	4.35	96%	4.44	96%	4.40
Overall, I am satisfied with the mediation process	91%	3.91	80%	3.65	86%	3.88	87%	3.82
Mediation is better than going to court	94%	4.08	86%	3.95	91%	4.07	90%	4.04
The outcome today was worse for me than it would have been in court	89%	3.69	91%	3.67	89%	3.74	89%	3.72
The mediation included new ideas for resolving our disagreement	70%	3.31	66%	3.28	76%	3.50	73%	3.42
I had difficulty participating because an interpreter was not present	99%	4.45	100%	4.48	98%	4.50	98%	4.49
I had difficulty participating because of physical barriers	97%	4.44	96%	4.40	97%	4.43	97%	4.43

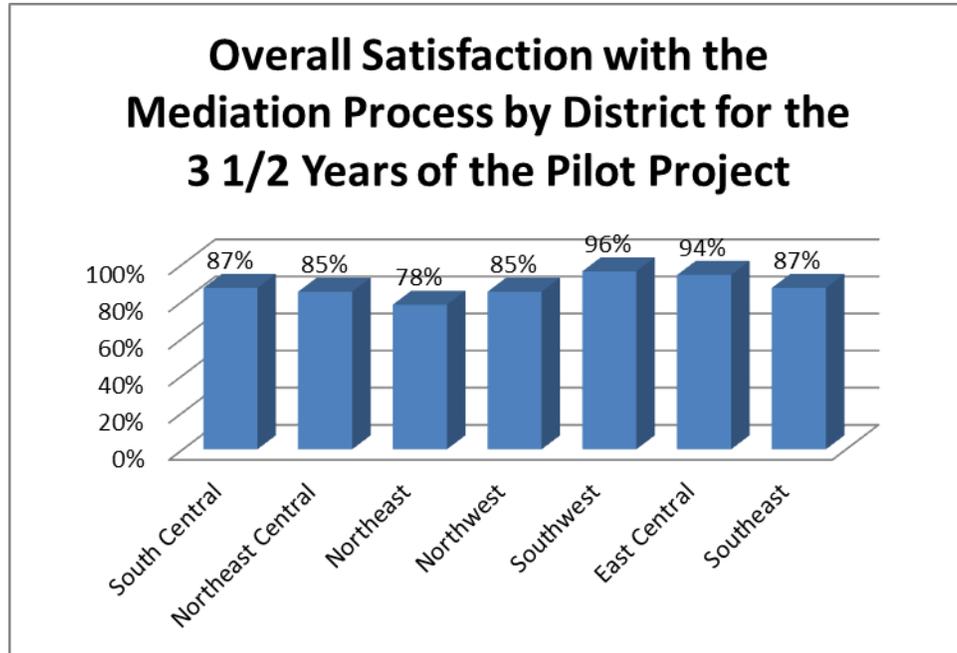
Both scoring processes provide very positive support for the pilot project over its first three and a half years of operation. Most gratifying for those providing mediation services, participant satisfaction scores improved significantly from the second data gathering period. Every average score was better than its counterpart score from the second interim report. Average scores on four items improved by .2 points or more – “overall satisfaction with the mediation process,” “able to say what I needed to say,” “able to put the needs of the children first,” and “inclusion of new ideas.”

Improvements in percentage satisfied were not quite as dramatic. Scores for the third reporting period were equal to or better than the scores for all but three items compared to the scores for the second reporting period – “I felt safe,” “mediation outcome better than court would have been,” and need for an interpreter. “Overall satisfaction with the mediation process” improved by 6% (from 80% to 86%). “Learned how to negotiate more successfully with my former spouse” also improved by 6% (from 38% to 44%). “Able to put the needs of the children first” improved by 9% (from 73% to 82%). And “inclusion of new ideas” increased by 10% (from 66% to 76%).

Some of these scores remain lower than the scores for the first reporting period. Five of the average scores from the first reporting period (“overall satisfaction with the mediation process”, “learned something new about my former spouse,” “able to put the needs of children first,” “mediation better than court,” and physical barriers) and seven of the satisfaction percentages from the first reporting period (“overall satisfaction with the mediation process,” “learned something new about my former spouse,” “well prepared for the mediation,” “able to put the needs of the children first,” “mediation better than court,” “inclusion of new ideas,” and need for interpreter) were higher than their counterpart scores for the third reporting period.

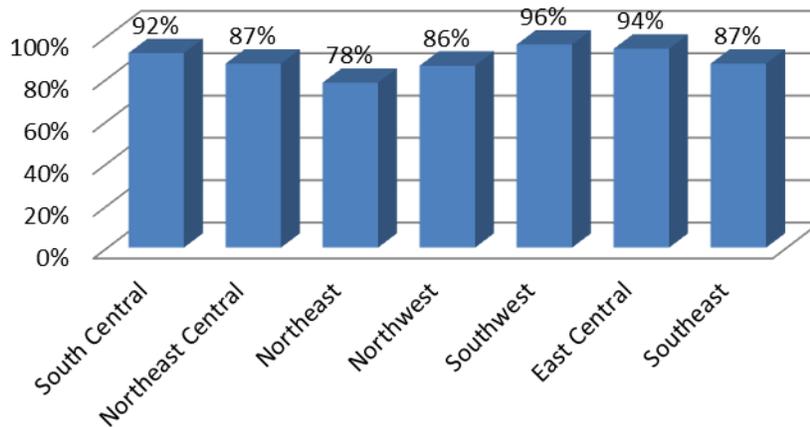
The satisfaction scores for the complete life of the program improved with this evaluation. Every average score increased, with “overall satisfaction with the mediation process,” “able to say what I needed to say,” “able to put the needs of the children first,” and “inclusion of new ideas” improving by .1 point or more. Fifteen of the nineteen percentage satisfied scores improved. “Inclusion of new ideas” improved by 5%. “Overall satisfaction with the mediation process” and “able to put the needs of the children first” improved by 4%. “Learned how to negotiate more successfully with my former spouse” improved by 3%. One score remained the same and three dropped by 1% -- “I felt safe,” “the mediation outcome was worse than the outcome I would have gotten in court,” and need for an interpreter.

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



When the data is restricted to the most recent reporting period, the scores for the districts with the longest history with the pilot project improve.

### Overall Satisfaction with the Mediation Process by District for the Third Reporting Period



Over the first three and a half years of the pilot project, overall satisfaction scores were higher for the 119 participants who were not represented by counsel (94% positive) than for the 639 who were (86% positive).<sup>24</sup> 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,” “including new ideas for resolving our disagreement,” and preference for mediation over going to court. Represented litigants had significantly higher scores for “understanding the process we were to follow.”

One possible interpretation of the areas with the largest differences – other than overall satisfaction with the mediation process – is 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.

<sup>24</sup> Representation status was not recorded on 192 of the surveys.

The differences in the comparative satisfaction scores are sufficiently small that it appears that attorneys are not systematically biasing their clients against the mediation process.

**Satisfaction Ratings for Represented and Unrepresented Participants**

Statement	Percentage Satisfied	
	Represented	Unrepresented
The mediation was at a time relatively convenient for me	98%	96%
The mediator treated me with respect	99%	99%
I did not understand the process that we were to follow	90%	81%
I was able to say what I needed to say during the mediation	93%	94%
I learned something new today about my former spouse	25%	38%
I was not well prepared for the mediation today	92%	91%
I was able to do a good job representing my point of view	92%	92%
The mediator treated both of us equally	95%	96%
The mediator did not care about our case	97%	95%
We were able to put the needs of the children first	79%	82%
I learned today how to negotiate more successfully with my former spouse	36%	57%
The mediation process was not fair to me	92%	93%
I did not feel safe here today	96%	95%
Overall, I am satisfied with the mediation process	86%	94%
Mediation is better than going to court	89%	93%
The outcome today was worse for me than it would have been in court	89%	95%
The mediation included new ideas for resolving our disagreement	70%	84%
I had difficulty participating because an interpreter was not present	98%	99%
I had difficulty participating because of physical barriers	96%	99%

Participant satisfaction scores for individual mediators were consistently high for the third data gathering period. 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 could do a better job of ensuring that participants understand the process. Two might query their fellow mediators to find out what they do to make sure that every participant feels that s/he has said what s/he needed to say. Two mediators have lower than average scores on perceived fairness – one arose from the question about treating both participants equally and the other from a low overall “fairness” rating. One mediator had a low score on participants’ feeling of safety. Three mediators had low scores on overall satisfaction with the mediation process.

On the other side of the coin, we note 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. One mediator scores very high from participants on “learning something new about my former spouse today.” Participants for three of the mediators give themselves very high scores 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 get very high scores for participants’ “learning how to negotiate more successfully with my former spouse” – a key objective of the North Dakota mediation project. Finally, six mediators score very highly on introducing new ideas into 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 third data gathering period scores along with the average project-wide satisfaction percentages. For mediators who participated in the project at the time of the second interim report, the individual reports also show their previous average scores.

**Average Participant Satisfaction Scores by Mediator**

Statement	Mediator Number																						
	1	2	3	5	7	8	9	10	12	13	14	15	16	17	18	19	20	21	24	25	26	27	28
The mediation was at a time relatively convenient for me	100	100	100	93	98	100	100	88	98	91	100	100	100	100	96	97	100	96	100	100	100	100	92
The mediator treated me with respect	100	100	95	97	100	100	100	100	100	95	100	100	100	100	100	100	100	100	100	100	100	100	100
I did not understand the process that we were to follow	90	93	85	93	85	90	92	90	89	86	91	100	100	93	80	83	92	86	90	95	86	100	86
I was able to say what I needed to say during the mediation	92	100	96	96	97	100	96	76	97	84	100	100	100	100	79	100	100	93	91	95	93	100	97
I learned something new today about my former spouse	33	38	17	30	31	29	30	40	15	38	17	50	-	18	16	38	22	20	25	63	30	14	29
I was not well prepared for the mediation today	91	96	95	89	97	100	96	87	92	84	89	100	100	93	87	87	100	85	89	80	88	86	89
I was able to do a good job representing my point of view	100	92	78	96	97	93	100	72	95	82	91	100	100	100	88	87	100	88	88	100	86	100	97

Statement	Mediator Number																											
	1	2	3	5	7	8	9	10	12	13	14	15	16	17	18	19	20	21	24	25	26	27	28					
The mediator treated both of us equally	100	96	96	90	100	100	96	89	97	97	100	100	100	100	100	94	80	96	100	100	97	86	95					
The mediator did not care about our case	92	96	100	97	100	100	97	100	98	88	100	100	100	100	96	94	100	96	91	100	96	86	100					
We were able to put the needs of the children first	80	81	86	92	71	83	96	75	88	69	90	100	50	88	63	84	100	71	100	85	71	71	87					
I learned today how to negotiate more successfully with my former spouse	57	42	80	53	42	30	44	36	45	50	57	100	50	20	28	46	70	38	50	69	27	40	38					
The mediation process was not fair to me	100	90	96	86	97	100	96	76	91	82	100	100	100	96	95	86	100	96	91	100	96	83	92					
I did not feel safe here today	100	96	100	100	100	94	90	94	97	81	100	100	100	93	100	94	100	100	100	100	97	100	98					
Overall, I am satisfied with the mediation process	100	95	95	92	78	100	100	67	95	81	90	100	100	96	72	81	85	92	80	100	71	86	86					
Mediation is better than going to court	100	96	100	96	81	93	92	85	96	88	100	100	100	100	94	88	92	88	100	100	77	100	79					
The outcome today was worse for me than it would have been in court	100	95	94	95	77	72	90	70	94	77	100	100	100	96	71	82	100	90	78	87	90	100	92					
The mediation included new ideas for resolving our disagreement	90	76	82	89	72	71	74	69	87	76	88	100	50	86	50	69	63	77	40	71	43	75	87					
I had difficulty participating because an interpreter was not present	100	100	100	100	93	97	100	94	100	95	100	100	100	100	100	97	100	96	91	100	100	100	100					
I had difficulty participating because of physical barriers	100	100	100	100	89	97	96	94	100	94	100	100	100	96	100	97	100	92	100	100	93	100	100					

The data shows no significant difference in satisfaction among whites and non-whites. Whites had an overall satisfaction score of 87%; the overall satisfaction scores for American Indians, Other races, African Americans, and Asians were 83%, 79%, 86% and 100% respectively. There were no scores reporting unfairness or unequal treatment among minority group responses. No minority group member reported the need for an interpreter.

There were five scores for minority groups that were somewhat lower than the average satisfaction scores for all mediation participants. American Indians reported lower scores for “mediation is better than going to court” (80% agreement versus 90% agreement for the study average) and “outcome today worse than it would have been in court” (76% disagreement versus 89% disagreement for the study average). Persons reporting “Other Race” reported lower scores for understanding the process to be followed (75% versus 88% for the study average), “able to say what I needed to say during the mediation” (81% versus 94% for the study average), and “mediator cared about our case” (84% versus 97% for the study average). Even though these scores are lower than the average, they are still quite high in an absolute sense. They do warrant further attention in the final evaluation report due later this calendar year.

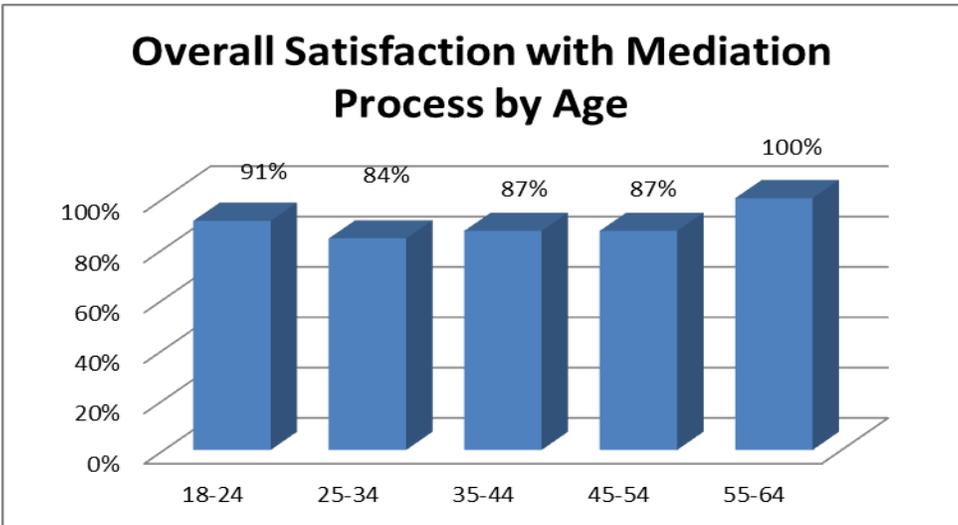
Women and men had virtually the same overall satisfaction with the mediation process (women 86% and men 87%). Areas in which there were significant differences in the perceptions of women and men are shown below. Women are more likely to feel that they understand the process, that they are well prepared, 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 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.

Differences in Satisfaction Scores between Women and Men<sup>25</sup>

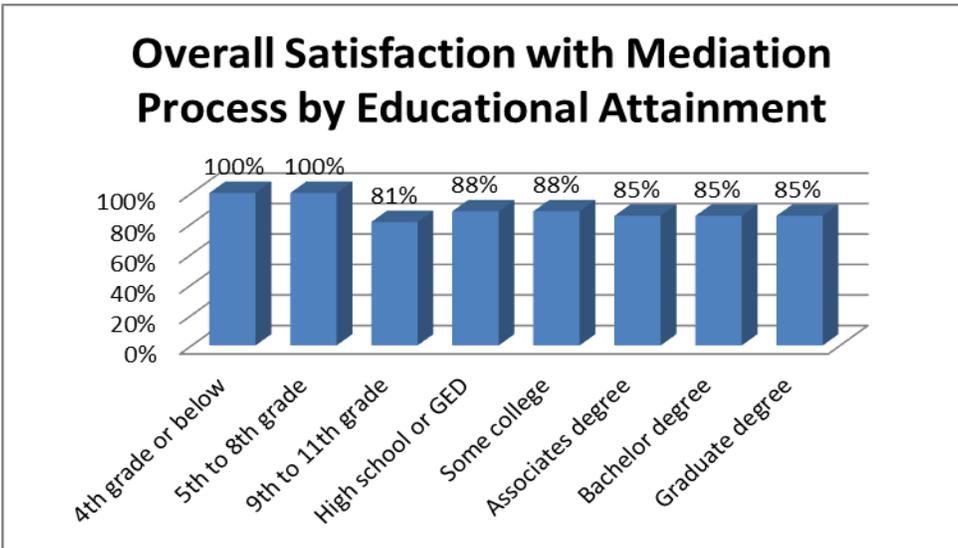
Statement	Women	Men
I did not understand the process that we were to follow*	90%	85%
I learned something new today about my former spouse	23%	35%
I was not well prepared for the mediation today*	94%	87%
We were able to put the needs of the children first	78%	82%
Mediation is better than going to court	89%	92%
The outcome today was worse for me than it would have been in court*	92%	86%
The mediation included new ideas for resolving our disagreement	71%	75%

At the time of the second interim report, persons between the ages of 45 and 54 were the least satisfied with the mandatory mediation process. The chart below shows a slightly higher satisfaction level for persons at both ends of the age spectrum. There were only ten surveys for persons in the oldest age group.

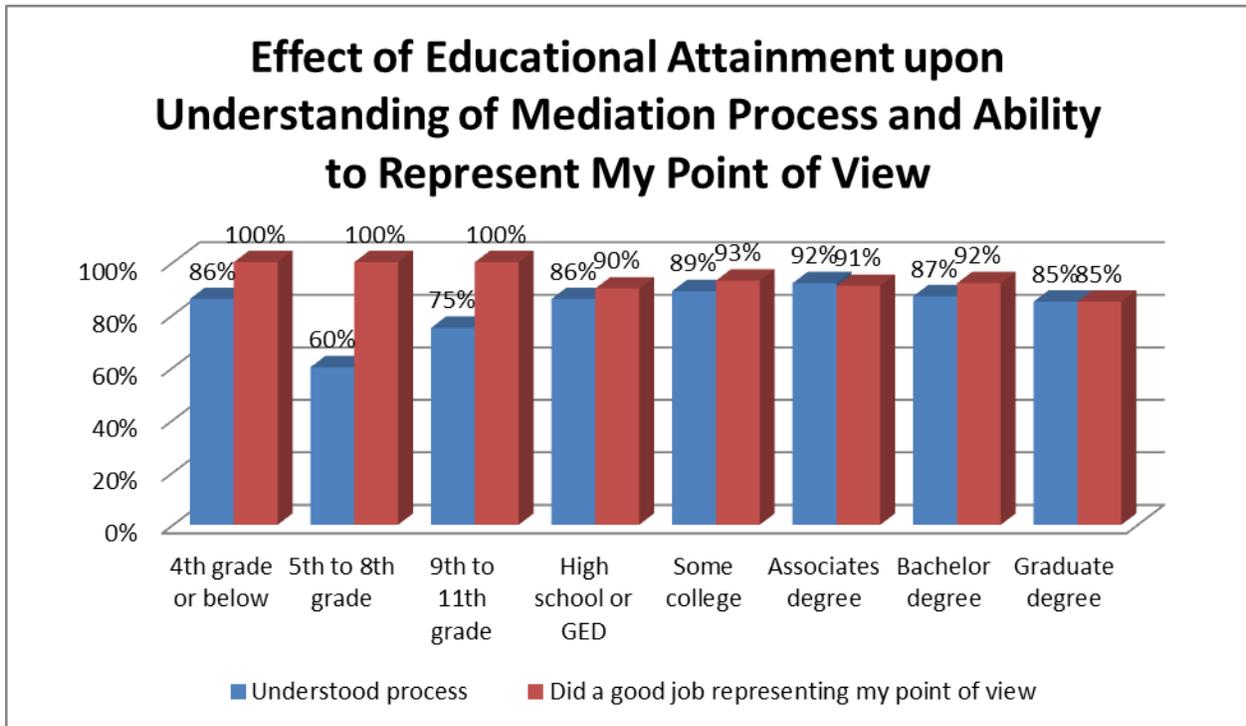
<sup>25</sup> The scores for statements presented in the negative (which are indicated with an asterisk) have been inverted so that all scores can be compared easily.



At the time of the second interim report, the data showed that more highly educated persons were somewhat less satisfied overall with the mediation process than persons with lower levels of education. The data for the first three and a half years of the program show relatively little difference in overall satisfaction by level of education, except for persons with the least education. There are only 8 surveys from persons with a 4<sup>th</sup> grade education or lower and only 5 surveys for persons with education from 5<sup>th</sup> to 8<sup>th</sup> grade, so while the very high satisfaction level for persons with the least amount of education is a real finding, it is based on relatively few surveys. Persons with education of 9<sup>th</sup> through 11<sup>th</sup> grades now show the lowest levels of overall satisfaction with the mediation process.

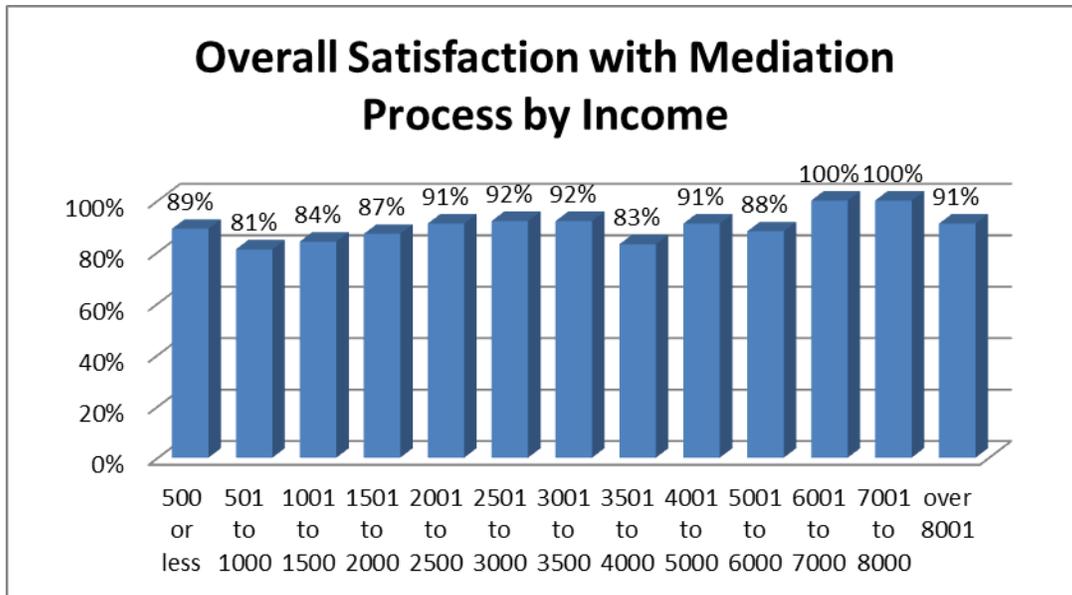


We separately analyzed the data pertaining to reported understanding of the mediation process and “did a good job representing my point of view.” Reported understanding of the process is consistently high except for persons with education from grades 5 through 11 where there are significant drops in reported understanding. Ironically, perception of ability to represent one’s point of view declines with educational attainment. And perceived ability to represent one’s point of view is very high for those groups who report poor understanding of the process.



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 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, but is nonetheless one of the two highest in their overall satisfaction with the mediation process.



## 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 with the “most helpful” and “least helpful” comments of each participant reported side by side, along with the county in which the mediation took place.

Our first and second 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.

**Participant Comments from Third Data Collection Period**

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
Fargo	the one on one, she wrote everything down	didn't even discuss child support -- guess the judge will have to do that	not much happened, just went over stuff we are going to court for	the mediator was not too interested in our case when we called her more times than one she said "your guys paper work was on the bottom and I forgot about you." Really a waste of time, nothing accomplished.
Grand Forks	the fact that S--- and I could talk with each other and not be interrupted or have to worry about anyone else putting their two cents in		being able to talk in a closed setting	
Fargo	having a person we didn't know and knowing the law	nothing really	putting things into words	the attorneys
Bismarck	I got to finally hear from J---- what he wants	he refused to come to an agreement and wants to go to court	that I now know where my former partner and I stand	nothing was wrong with the mediation I think it went as well as it could have
Grand Forks	not having to pay lawyers for the back and forth -- (Mediator) is a very nice person			
Bismarck		my ex-spouse being unreasonable		
Bismarck	we came to an agreement and hopefully won't have to go to court and let a judge decide	It was very helpful	all of it	none of it
Bismarck	we had to sit down and talk	nothing got better because of it	nice to be able to sit down and talk because under normal circumstances that would not happen	that it is still up to the parties to make a decision and we failed at making one

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
Bismarck	(mediator) kept discussion moving in the right way		trying to get point across	the other party was not open to ideas
Minot		all the yelling		
Grand Forks	less time in court	seems she did all the talking -- would cut us off -- also seemed geared to getting only father rights	talking it all out	
Fargo	it got us in the same room to discuss issues face to face and make decisions instead of the constant back and forth between our lawyers	our mediator was a little impatient at our second and final session -- I assumed he was having a bad day, but we still both felt a bit put off		
Grafton	we made a schedule and agreed on it	everything worked okay	being able to sit down and talk	
Fargo	the fact that the mediator was unbiased	that past happenings were not taken into consideration	free time	
Fargo	having the mediator's perspective	the mediator believed everything my ex said -- my ex even seemed to manipulate the mediator into thinking it is best for my son to spend all of Christmas break with him and not see me (the mom) during Christmas	having a resolution when all was said and done	at the end of it, no new level of communication was reached between the two of us -- it still took a third party to reach an agreement
Bismarck	nothing was resolved	other lawyer got mad and left		
Grand Forks	understanding the process	no agreement		
Devil's Lake	being able to talk	nothing in paper like a judge, no ruling		
Devil's Lake	good	good mediation	was able to talk to spouse in a calm manner	
Minot	someone present to sit down and not have to be alone with	not enough time -- felt a little rushed to make major	the mediator kept great control of the proceedings	the plaintiff's uncertainty -- not able to make a

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
	spouse - to help redirect	decisions		sound decision
Grand Forks	(Mediator) helped us keep on track "things from the past are not going to help resolve things today"	my spouse would not be reasonable at all -- wouldn't work things out -- very bitter	resolved some of our issues	my wife is unwilling to put the kids first -- the parenting time is not sufficient for my children
Garrison			the mediator's patience was amazing	
Fargo	agreed on parenting plan	my ex was never prepared		
Bismarck	resolving some of the custody issues	having former spouse disagree on most of my suggestions	it kept communication open and flowing, prevented fighting and a communication breakdown that always happened before mediation -- also saved time and court costs	nothing -- I would recommend this
Grand Forks		nothing resolved		
Grand Forks	I got to get out some feelings I had about him that I couldn't say for fear he would use it against me	I did not find it helpful because I knew he wouldn't side with what I thought was right for our daughter	I got a chance to try to explain why I should see my daughter more	
Fargo	breaking down schedules and certain scenarios that may come up	getting my former spouse to agree on what's best for the kids	none	
Grand Forks			nothing - if we could resolve this we would not be in court	
Fargo	the mediator was excellent, tried with my ex and would have had good outcome if ex would have participated	my ex choosing to act the way he did, switch rooms and refuse to be predictable	separate rooms -- a chance to work things out in an inexpensive way	
Bismarck	this process has potential if lawyers don't abuse and sabotage the concept	Felt like two hours of mediation time was wasted with orientation. Provide		

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
	-- the goal needs to be to actually resolve issues rather than to increase adversity -- Both my former spouse to be and I were "played" by our counsel, not the mediator.	hard copy orientation materials or use prerecorded modules via distance learning format. Lawyers were unprepared on both sides and it increased tension, anxiety and reduced potential resolution-- also heightened defensiveness.		
Dickinson	to have the parenting plan as another outline for the needs of the child	no comment		
Jamestown	having a third party to give ideas	all of it was helpful	new ideas on how to resolve issues	it was all helpful
Grand Forks	mediation beneficial but hard when my ex does not put kids first -- only wants to make things difficult	The session itself was good. The discussions that took place were ones where I was hopeful would change some things but that has not happened.	talking so my ex-spouse would understand my view on things, not just her emotions	trying to say something about a situation and being interrupted by my ex or her new husband -- although we did get through it I was frustrated at times
Fargo	safe environment to start process -- neutral party trying to help settle difficult decisions	not enough time -- was not able to settle on child needs and custody --- did not get through important things	got a summer schedule for kids	too many people involved -- no or little progress
Carrington	being able to talk about things openly	I feel as though nothing was accomplished	keeping us talking and making it very comfortable for both of us	my ex wife
Fargo	just having a neutral party present		very helpful	
Minot	(mediator) was nice and helpful due to the circumstances	(ex's) attitude and swearing	nothing	nothing
Grand Forks	that we could agree on some things	that we couldn't agree on the rest of the things		
Grand Forks	said what I needed to say without getting			

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
	too upset and was actually heard and acknowledged			
Grand Forks			nothing	
Carrington	being able to communicate with former spouse with (mediator) to hear things discussed unbiased to either situation		talk between me and my spouse	
Fargo	she took her time	nothing	figuring it out ourselves	
Jamestown	not having to talk with my ex-husband and coming to some agreements on certain things		being able to resolve issues with a no contact order	
Carrington			the open table forum it was in	some "lawyer" words used I did not quite understand
Devil's Lake	we were able to discuss a few things but they were things we had already discussed and decided upon	mediator did not direct us effectively - - she could have directed our conversation better - - she allowed us to argue about nonproductive stuff -- had my lawyer not prepared what she did for me we would have sat there and stared at each other	less stressful than a courtroom	I thought it was good
Grand Forks	having another person tell my ex-husband that he needs to be open and fair			
Not reported	being able to put all the issues up front and seeing where my spouse was with them	my spouse could not make it to the mediation so it was done over the phone with me present and him teleconferenced		
Fargo	(mediator) was very kind and	the fact that we could not solve our		

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
	knowledgeable -- helped us see things in a different light and we were able to solve some issues -- would recommend her and the process	biggest issue -- parenting time and custody issues -- my children's father has a skewed view of how things should go and we are now moving on to a personal investigator		
Fargo	was able to say what I needed to him with no fear	I was unsure of making decisions in mediation - if they were best interest instead of just compromise	normal	doesn't care
Grand Forks	the suggestions the mediator provided		the most helpful things was the fact that someone in the legal system is there to point scheduling in the right direction with the kids between the two parents and that the state provides it (mediation)	nothing that I can think of because it all worked out the way I originally intended and suggested
Grand Forks	getting the plan worked out in some way	not realizing my situation and fears for my kids	nothing	it was nothing but fighting and name calling -- all I received from the whole thing was verbal abuse from another party
Grand Forks	having the mediator break the ice or change the view of conversation	trying to figure out anything when my ex was inevitably inconceivable		
Minot			the communication aspect within a safe environment	Too many off topic moments
Jamestown	the mediator	being in the room with my ex		
Bismarck			feeling safe when talking about children and keeping on track	
Bismarck	nothing was resolved	that M--- was not		

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
		willing to agree to anything		
Not reported			being able to discuss agreement for kids	
Cavalier	mediator helped get points across	time -- didn't feel it addressed everything		
Jamestown	the ideas and examples she gave us		(mediator) seemed to individually take points of view and help convey them	
Jamestown	sit down and talk things out			
Jamestown	have a neutral party hear and reflect/restate our comments -- clarify/validate	my spouse	both sides presented	none
Bismarck	being able to discuss things without feeling the pressure of attorneys and a judge -- it was more relaxed		we got to talk -- both of us	I wish they were more involved as far as what each other's rights are
Devil's Lake	knowing I could say what I needed to say	We didn't get everything resolved - still waiting to find out about child support		
Fargo	It brought us together and we had to talk about issues -- something he wouldn't do before	It doesn't resolve the conflict or the reason why we're here -- it's not necessarily about the father's time with his son -- it's more about money and control		
Grand Forks			talking about issues	I think it was all beneficial
Fargo			child support	custody
Carrington	when he shut down, mediator opened the discussion back up and my question was answered -- she also pointed out our communication styles			

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
Grand Forks	he helped us work out a solution that was best for both of us and our daughter	nothing	we were able to work out issues	nothing
Grand Forks	that we came to an agreement in a calm, collective way	nothing	the ability to talk in an unstressful environment	nothing
Grand Forks	in this particular situation I knew mediation would not help with the other party		finding out T--- hasn't changed	nothing resolved
Fargo	Neutral environment without unneeded stress	not having enough time I felt I needed in the meeting	How he was there to listen to both parties and help us make a decision	
Grand Forks			it's over	the pain
Grand Forks	did not help	he was not truthful	it gave me an opportunity to speak with her, without the facilitation that would not have happened	
Fargo			talking openly	
Bismarck	place of exchange	impasse	the ability to know what is being requested and what is being expected from the other party	it ended with no complete resolution
Mandan	getting together and putting ideas on the table	sometimes I felt I wasn't prepared enough to make some decisions	being able to sit down with spouse and talk about things without fear of being judged	
Grand Forks			fast, easy, understandable	
Fargo			having a third party to discuss the problems	nothing went very smooth
Grand Forks			the atmosphere allowed for discussion; the mediators kept us focused	agreeing on something only to have my wife change her mind later
Bismarck	We got nowhere - mediation didn't help at all	I feel like nothing could have helped in our situation without the help of my	to understand about how my daughter is acting	nothing

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
		child's father		
Mandan	able to express my view	nobody could say anything other than V---- or me.		
Not reported	nothing	I did not clearly understand the process. I felt misunderstood and was not getting a fair agreement. I'm sorry, but I didn't feel the process was explained to me and I didn't feel treated fairly		
Bismarck	We can work together to come up with schedules	All was helpful	It let us share both our points of view without being in a courtroom	Everything was helpful
Bismarck	I saw it made the other party understand what he could not in normal circumstances		was at a convenient, central location	
Bismarck	(Mediator) helped us through many situations	everything we did was helpful	worked out for my schedule, was able to span multiple weeks/meetings	
Dickinson	having someone there to put us in our place and work things out -- having someone laid back and who went out for breaks with us	not having it in same town as residence		
Grand Forks			shortened process	felt pressured to settle
Bismarck				Our papers were "lost" for one month after we filed. Scheduling was a joke; it took over 3 months. I want an explanation why it took over 5 weeks to receive our final copy from our last

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
				meeting.
Bismarck	(Mediator) listened carefully and was neutral -- focus was on the best interests of the children. Without this process we would have argued in court. I believe I would have benefited financially, however my children would have suffered. We are better parents together now than we have ever been. I credit the mediation process with this. M is a great mediator!	The inherent conflict in divorce; but mediation had no bearing on that.	being able to work out differences over and between multiple meeting times	by having the discussion primarily between us, former patterns of disagreement resurface leading to deadlock.
Dickinson	being able to talk about things without fear of fight	in the end, nothing was accomplished only because parties could not agree - mediator did her job	the mediator's explanation of what the judge will look for in our case	my ex wife
Fargo	having someone relaxed and calm be impartial and give clarity of options	pressure	the neutral environment of mediation and options available	
Dickinson	talking things through			
Fargo	greatly helpful, thank you		moved along quickly	
Grand Forks	they were willing to try to make conversation continue even after J-- was done talking	J--- was unwilling to compromise	nothing, to be honest, guess I had my set beliefs	little uncomfortable
Minot	that it could help me avoid going to court and come to an agreement outside of court like it should have		the mediators holding the children as top priority	ex-spouse being unwilling to put children's well-being over her possession of custody -- her custody was more important than the kids' happiness
Bismarck	someone being able to speak with my spouse and help him understand what I	my spouse	having a third party available kept tensions down and help us see things a	I felt my spouse did not take the process seriously and that mediation does not

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
	need out of the disagreement with the children		little clearer	allow for evidence of such to be brought forth
Bismarck	We decided everything ourselves instead of having an outsider involved in decisions			
Grafton	having a neutral party there to explain different ideas or ways of coming to an agreement on certain subjects	still have to deal with him when I get home		
Fargo	I felt safe to say what I needed for the best interest of my child	The opposite party -- my former partner	very helpful	partner is still accusing
Minot	we didn't get anything solved at that time	that we didn't get anything solved	understanding K--- is not easy to work with	partner not working with me
Grand Forks	neutral ground			
Minot			being in a neutral place to discuss the separation and the splitting of parental time and property	
Grand Forks	it was informal		to get through this	
Grand Forks			getting rid of the wishing well because it was hard on us	
Grand Forks	one on one			
Grand Forks	have someone who could talk in a calm voice when I couldn't	everything was great -- glad for this process	having someone keep control and keep things flowing in order	
Minot	coming to an agreement without court		was able to sit down one on one without my ex's mother here	there wasn't anything in particular that didn't help
Devil's Lake	getting extra options and opinions to help come to common grounds with one another with no hard feelings		free discussion; unbiased questions	
Minot	he had an open mind and was helpful in		professional and neutral approach	

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	getting us to come to an agreement		taken by our mediator	
Bismarck	negotiating things out even if we didn't agree entirely	didn't solve everything	that we were able to speak our minds and state what we wanted	that some decisions come to a standstill; however mediation would then end that topic
Bismarck	having a neutral party to help us with our decisions -- he knew what he was talking about and helped us with this difficult process		having a mediator who knew the system and all the guidelines of the court -- he understands where we are both coming from -- he was very neutral	mostly everything was helpful
Grand Forks	children's issues	the defendant was allowed to bully me		
Grand Forks	being able to express our reasons for what I wanted without the lawyers			
Minot	mediator was able to explain things to help me understand what we were discussing	nothing	being able to talk to a neutral party	figuring out who gets what
Minot			it was not in a nervous court setting and I was comfortable talking to the mediator	wife was there!
Minot			talking things out about the kids with my ex	
Minot	being in the same room with ex-spouse to actually talk but felt he was unreasonable and not willing to compromise	feels like mediator should have had more input -- I felt at times she was a body in the room to keep us on track. Legal advice, more options would have been helpful. I understand she cannot do that, but it would have helped immensely.		

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Minot	nothing was helpful about mediation - it is the same as it has ever been, trying to agree with L--		I figured out more ways to negotiate with my ex about picking up and dropping off our son	As soon as I brought up using my wife as my third party my ex refused it and decided to leave and would not work with me
Not reported	being able to talk with people present so he couldn't control me and threaten me. He had to listen to what I had to say without butting in and putting me down. The mediators had many ideas to help us figure things out.	He lied about his assets, his 401K, etc., so I agreed upon stuff without full knowledge. But afterwards we met with our lawyers together and came to a better agreement, but kept many things that we agreed about from mediation.	nice people, no lawyers	
Bismarck	my favorite line by the mediator was "that's not what I'm hearing"	not going to court	you could talk in private if need to	
Grand Forks	they let me get my anger and frustration out	there really wasn't anything	able to get my point across to my ex wife	That the attorney did not take all the agreed information to court
Grand Forks			talking	getting plaintiff to see my side of things
Not reported			it was a big waste of time and tax payer money	mediator was more concerned with getting his allotted hours in for the state to get paid -- had no interest in our case
Grand Forks	learned what we did agree on	I do not believe mediation is necessary when both parties know they are not going to agree on things	they helped us communicate better	T--- not listening
Dickinson	she made me feel safe and she was equally fair			
Minot	he guided us	it was the only way this would have	it broke the ice between us and got	

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		gotten done	things moving	
Grand Forks			I had someone to help clarify things	not having the other party present and phone disruptions
Bismarck	I didn't think this was a necessary avenue in my case	This agreement is very similar to my original divorce papers. In our case this mediation process was a waste of time and money	discussing and establishing a visitation plan between my kids and myself	nothing comes to mind
Bismarck	the fact that both me and my partner could sit and talk peacefully with an unbiased person	really don't have any complaints		
Grand Forks	having a neutral party present to keep things on track		we came to no conclusion so I cannot answer this	same
Bismarck	being able to discuss things with a neutral party to help me understand and to suggest options	limited amount of time to reach final agreement	Mediator does a good job of getting parties talking	Difficult to make real progress without separation of the parties
Minot	less expensive; less lawyer's fees; impartiality	time arrangements; mediator was very good	it was free	none
Bismarck	everything made things a lot clearer and made it very easy for me and my spouse to come to terms -- it was great		reassurance that Dad doesn't always get shorted	
Grand Forks	it was nice to have a neutral party so we could express ourselves without interruptions	highly recommend (our mediator) -- very positive and helpful	(Mediator's) skills and attitude, saving money, less time with lawyers	nothing
Bismarck	Able to talk with or through someone to come to some agreements	not being able to agree on 1 thing	finally find out what she really wanted	couldn't totally agree on some subjects
Minot	mediator did try to present different options but the unwillingness to come to a compromise	Pressure to be the one to make the compromises due to the other party's unwillingness	being able to come to a formal agreement on at least some items was good	dealing with former spouse being stubborn on issues

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	made issues unagreeable			
Bismarck	the mediator helped me get things settled amongst ourselves that we wouldn't have otherwise	everything was helpful	the mediator	
Grand Forks	meeting with my lawyer first and being prepared		examples of prior types of mediation and settlement -- the mediation experience	overall it was very helpful
Minot	telling my concerns about the children	that the children would still be affected by spouse behavior even after expression of my concerns -- spouse backed out of the deal		
Bismarck	being able to talk it out with someone else present so there was no arguing	It was all helpful		
Bismarck	Mediator had all the decisions we had agreed to and made them less complicated and easy to remember	We still didn't agree that I would get primary custody of V---	being able to talk and set a schedule that would work for V---	
Minot	(Mediator) was very professional		Having an independent third party that is knowledgeable and experienced provide guidance and insight	I can't think of anything -- Perhaps if it were somehow more "binding"
Bismarck	(mediator) was great at bringing us back to the issues at hand and moving forward		understanding the other side's position	sides too far apart to take advantage of mediation process
Grand Forks	being able to sit down and balance things out to ensure that the needs of our son are addressed and all involved need not worry	nothing -- I believe the entire process has helped all of us involved		nothing

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Dickinson	someone there to "referee"			
Grand Forks			complete divorce proceeding without representation	I couldn't spend more money (Joke)
Grand Forks	we got to talk it through with a neutral person		having an impartial person explain things	
Grand Forks	to have other opinions about our case -- to have my ex-spouse listen to what is best for the boys -- (mediator) was great - - pushed when he was going the other way	I'm not sure anything was least helpful -- better than court! No one was in court	not preparing for court process, saving money	having to give when in court I may have not had to give anything
Grand Forks			I was optimistic that it would be. However, it was not. The most helpful thing was I could negotiate what little the system would allow without hitting more systemic barriers.	First, I had Judge --- who thought my case was someone else's and made decisions based on what she thought was causing a financial burden on me to move forward in court. When my lawyer advised her she was quoting misinformation in my affidavit, she realized her error and even stated she mixed the cases up, but still put the burden on me even though I had a doctor and educator support affidavits for my motion. Therefore, I had to rely heavily on mediation. In the mediation I learned that my ex-spouse and one of the mediators had

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
				<p>conversations outside of mediation regarding schools and which system was better, which was a topic during my mediation and a sticking point. She informed my ex-spouse that ND schools were better with the programs we needed. I was fighting for school in MN. My ex-spouse even stated that the mediator was also a special education mediator and she knew better. Through these conversations and apparent one sided notes favoring my spouse and her friend who attended mediation, I had to withdraw my motion. I felt that I was mistreated by the system for attempting to make a better life for my family and had to potentially lose thousands of dollars to do so. My ex-spouse is not mentally stable, suffers from depression, and is attempting to seek help as she herself admitted in the mediation and that was never captured. My ex-spouse was</p>

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				argumentative and focused on the past, not the future of the kids. None of this appeared to be captured by the mediators. I feel that this process was gender biased and unfortunately my children may have to suffer for it.
Grand Forks	Able to talk		talking about everything	
Bismarck	The mediation process is a very good idea. I just felt that my spouse was not able to comprehend or understand my concern with finances, etc. I think the judge will understand and my spouse can interpret his rulings...	It's very hard when the mediator is to remain silent when he may be able to get my spouse to understand and listen to what I needed to have him assist me with.	the kindness and professionalism of our mediator -- he tried to get the divorce resolved -- I feel he did a great job - we both agree on that	the many disagreements between me and my wife
Grand Forks	having the mediator make suggestions	the lack of my spouse to bend on issues	everything but parental custody	
Grand Forks	the mediators asking questions			
Bismarck	gave us some options	none	talking things out	nothing
Grand Forks	being able to voice opinions about my child's emotional states during the reintroduction of the other parent	having to look at my ex	the whole process	the custody issue
Grand Forks	In our case, we realized after one meeting that we were not going to resolve our issues with mediation. We needed to set a court date.			

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Grand Forks	I can still see that he is a lying sack of sh---		We were able to take care of the items that we agree on with no problem or cost of attorneys	
Grand Forks	(Mediator) did a great job of changing direction when needed			
Bismarck			The mediator was the most helpful aspect. She talked us through situations that would never otherwise have been resolved without a judge's order -- very sensible	very helpful, no quarrels
Dickinson	this is something I wish we could have done sooner. Instead of wasting money on attorneys our mediator helped us make mature decisions for the best of our child. I would strongly recommend this.	I wish this could have occurred before we had to go to an interim period. Everything was great. Better outcome with communication that I could have expected from this process. Thank you for caring about us and our son.	Felt like we were finally both looking for the best interest of the child and not the personal failings	
Grand Forks	That there was a nonbiased person that listened to and took into account both sides of the story.	I was very pleased with every aspect of the mediation.	that I found out what my former wife wanted	nothing
Grand Forks	being able to talk with mediator present			
Bismarck	It kept our conversations at a civil and intellectual level	Sometimes issues were repeated	getting things done faster	
Grand Forks	When we talked she listened and suggested different ways to get to an answer		We were able to come to terms easily	

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Grand Forks	redirection	my desire to be argumentative	being able to talk things out with my spouse	
Fargo	(Mediator) was able to calm down my ex when he got very irritated	my ex-husband getting angry	getting things done out of court	giving in
Bismarck	somebody else redirecting and having new ideas		saying what was needed to say and also hearing each other and listen	not sure
Bismarck	very good at rephrasing and understanding our situation		resolution to what could have been a very painful, long, expensive process	
Cavalier			having a neutral party to tell my spouse to relax	Don't really know -- it just helped to settle our differences
Grand Forks	talking to another party who understood me (the mediator) She was very wonderful to talk to and work with		she made me realize that I should not give up	
Grafton	I was able to say something that bothered me	The mediator gave legal advice to my spouse about how he should go after alimony. The mediator was also incorrect about an agreement, I contacted the mediator to try to correct the error, but she never responded.	explaining our true feelings	disagreeing
Grand Forks	(Mediator) really listened to us and paraphrased back "what he thought" we were saying to ensure we were on the same page. He had good suggestions as to what he thought might work when we were in	At times I felt a little pressured to be able to make decisions so that the case could be resolved today	getting process explained so I understood what was going on	I thought it went well -- didn't find too much if anything that I didn't like.

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	disagreement			
Grand Forks	having someone else present			
Minot	having the opportunity to solve issues outside of court	no real way of helping either side see reason due to the need to be impartial		
Minot	we could attempt talking it out and resolving issues	We did not know who will have custody so therefore we could not make an agreement about many issues	just getting a chance to talk about the situation at hand	what happens in mediation should be recorded for future reference
Bismarck	discussing holidays and clinical visits	bills, taxes and how we couldn't agree on visitation	The mediator explained things well and was friendly throughout this tough process	nothing was accomplished
Bismarck			limited people present	
Bismarck			she helped us agree on a lot	we couldn't agree on a lot of things
Bismarck	I thought that the best thing about mediation was that the mediator helped keep my ex and I on the same page so we didn't digress too much into our relationship issues	my ex was unable to focus on what is in the best interest of our child	seemed like it would be a good process/program but unfortunately the other party was not willing to negotiate	it was a good process and I have no complaints
Grand Forks	being able to discuss needs openly and objectively with spouse and reach agreement	child support issues	very helpful with the guidance or direction that we could go to resolve our case	
No location	humorous at times, serious when appropriate -- she said "but J--- what I hear her saying is...". She kept a clear focus and pointed out irrational thought		able to talk with help to direct course	arranging schedule of mediation
Grand Forks	coming to agreement			
Grand Forks			well, it got me one	That I wasn't here in

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			step closer to marriage closure and a half way decent custody deal for now	person so that the mediator could see my nonverbals. It wasn't her fault because I am deployed and over the phone was all we had.
Minot	She listened and really tried to come to a conclusion	my ex was changing his mind and was not thinking of the best interests of the children	was patient with other spouse	most of this was worked out before, but she would not sign divorce papers
Minot	I got to think of ideas and then got to go home and think about it. I was not rushed	That it did take a while to finally come up with a decision.	being able to talk everything through in an even manner and express my thoughts, opinions and beliefs	uncertainty of being able to back out or change everything no matter
Fargo	it was a neutral place and the mediator was someone neither of us knew so he was a great middle person to help us reach our decision	it was uncomfortable seeing my daughter's father at first since I haven't seen him in over 18 weeks and he hasn't seen our daughter in 18 weeks as well	just sitting in the same room with someone who could spell it out from A to Z	
Grand Forks	we didn't resolve much but mediator was great and very helpful	it didn't solve our issues		
Grand Forks	having an impartial third party to help come up with ideas and not take sides	having a stubborn ex	being able to sit down and talk without a biased third party	trying to change the other person's mind on certain subjects
Fargo	(mediator) was very good at helping us decide what was reasonable. Her relaxed and caring manner made both of us feel at ease	the two attorneys that we retained prior to coming -- mediator was clear and helpful	we were able to reason our way through and discuss each point	the wasted legal fees I spent prior to mediation -- I would suggest a worksheet for the two parties to fill out prior to mediation
Jamestown	being able to discuss my point of view		not much -- my ex-wife is very hard to deal with	child support
Jamestown	other suggestions from third party,	being in the same room	help in reaching an agreement	nothing

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
	outsider			
Jamestown	being able to talk about each issue	nothing	being able to come to an agreement	nothing
Dickinson	learning new ways to communicate and decide things together -- always doing what is best for the child at all costs	nothing	being able to talk without a lawyer present	nothing, everything went smoothly
Jamestown			it gave the opportunity to discuss options for solving our problems that I hope will have positive impact on our children	I would have preferred to speak more directly with my Ex
Minot	the calmness of the mediator	the other side of the table	having the help to get through this	did not help with communication between us
Fargo	hearing both sides and how my spouse is feeling	not solving this	the understanding of what is going to be happening with the divorce	the fact that it is going to a judge in the end
Hendrickson	being able to have separate rooms and to have a speaker phone in the room	I don't think there was anything least helpful	it showed me how much T--- cares	a delay to go to court
no location	(Mediator) was down to earth, respectful and reminded us constantly to put our "wants" aside and to put our daughter's needs first. Having my attorney present was helpful.	trying to communicate with ex -- our attitudes got in the way of the process	Mediator was most helpful -- he did a very good job, but I could not get to what I even thought was a little fair when it came to Y--- it really is a great tool to have mediation and I feel it will help many people, possibly even us as yet	Y--- is only worrying about herself rather than our daughter. I feel she would not compromise to a reasonable extent at all
Fargo	setting things up		being able to talk and hear her side and her hear mine	
Bismarck	I learned what the other parent wants and is willing to give in the case	the fact that we weren't going to move further	talking openly about our daughter and our goals	the making of proposals as to what was best for our daughter
Jamestown	having the mediator		being able to	

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	there to help make decisions		express my feelings and concerns	
Jamestown	being able to speak my concerns			
Bismarck			getting both parties involved	getting my point across to my spouse
Fargo	Ex's point of no compromise	did not come to an agreement	Mediator trying to get us to think of different ways to work out our differences	We were not able to come to any sort of agreement and basically left in the same situation we came in
Williston				that nothing has to be adhered to that is addressed in mediation
Cooperstown			the mediator was super -- she treated both of us with respect and dignity	
Fargo	she was able to help us stay focused as to why we were here -- she did an excellent job of getting us to be able to communicate	can't think of anything negative about the mediation	she was informative and very well informed about issues and was very helpful -- made the situation very comfortable	not being able to settle all the differences because of the other party
Fargo	communicating with the mediator about our situation		she provided great ideas and alternatives to make it work	
Grand Forks	we worked at solutions for our child		being able to talk openly without argument	
Bismarck	negotiation skills		chance to speak without interruption	
Dickinson	the mediator's ideas about helping us calm down and think clearly		how neutral and understanding our mediator was	
Jamestown	having someone in a neutral position who can give you insight on different topics			
Minot	talking	talking	just trying to talk to S---	
Jamestown	she helped the other	I didn't feel I could	that the mediator	that there was no

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	party understand better what I was trying to say	get my point across to the other party	was neutral	agreeing on anything
Watford City	to know where he stands at this point because there is no communication			my ex wife
Minot	(Mediator) brought up different aspects that hadn't been looked at -- different situations with ways to resolve them	couldn't get an opinion on anything regarding this case		got nowhere
Grand Forks	taking in both points of view and letting us know the norm for custody/support cases		someone I could talk with, not against	
Grand Forks	setting up holidays and visitation during the weekend	not giving me exactly the options I wanted -- ex got the options he wanted and I'm okay with the decisions we made	the cooperation of both parties and the mediator	
Grafton	(mediator) put things into perspective -- helped make guidelines		put things into perspective for us -- if we didn't understand something she explained it for us	
Fargo	the mediator was very understanding and helped a lot - I was very pleased with the outcome		mediator knowledge on different concerns	not having communication with my attorney
Fargo	discussions and variables about what would benefit the kids	not coming to a total agreement on custody		
Fargo			Learning divorce is going to be costly	
Fargo	mediator very honest and tells it like it is - I felt safe and good about my choices	it was great		
Fargo	I was able to tell mediator the issues I			

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	wanted to resolve that I was not able to bring up with ex without him freaking out - she was able to talk with him about that for me			
Fargo	having someone else there to help	nothing was accomplished	knowing what was the main issue	
Fargo	it was helpful to be able to voice my own opinion and speak openly -- mediator was very helpful and conscientious	I was always scared I was missing something	my lawyer was present -- (mediator) was very good, solved a few problems	it was all good
Grafton	it was nice to be able to sit in the same room with my ex and not feel that we would have a break out fighting -- there was tension, but it was manageable	there are still issues it would have been nice to have my lawyer present for -- I will be meeting with him soon to hopefully resolve these	finding new ways to solve disagreements	I'm happy with the results
Grafton	just knowing what I need to have in the papers	having to look at my spouse	mediator's explanations	defendant's actions
Williston	everything	nothing	that (mediator) took the time to go over and explain everything in detail in our parenting plan	
Carrington	I was able to agree or disagree on things -- was able to come to a mutual agreement on what was best for our child -- also was able to work with my schedule	mediation very helpful -- glad I did it	my former partner had to listen to someone else's point of view other than her parents' pressure to follow her wishes	we were unable to meet face to face because of restraining order and allowing attorneys present caused undue cost but I felt I needed to have one present because she intended to have hers present
Fargo			very easy to talk to	nothing
Dickinson	mediator didn't get caught up in the emotional state		the mediator was able to keep things moving	I was not provided an appraisal sheet
Bismarck	being able to speak freely		being able to speak freely	it was helpful

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Williston	the outcome was what I anticipated which was pointless -- no fault of the mediator			
Williston	we were able to work things out without the judge	he tried to control the entire process	face to face communication, finally -- neutral mediator was helpful, had good ideas	maybe could be in a more open environment (loud debating)
Minot			ability to discuss options	
Dickinson			the mediator there to keep discussion on track	could use a bit more time -- other party had a tendency to get off track
Grand Forks	the entire mediation process - what an extremely beneficial program to help assist families come to an agreement that is best for all involved - thank you	I can't think of anything	simply being able to sit down and argue without pressure from the other side to leave	
Grand Forks	the mediator provided a productive atmosphere and productive discussion		we defined some of the terms of the judgment that we both could live with	we were unable to agree on all issues
Fargo	getting issues resolved with a neutral party, gave good ideas, helped understanding the process		being neutral, new ideas, ways to communicate	
Grand Forks	having spouse see what is the law -- how courts will look at it	Financials were not in order prior to meeting -- should be a requirement to have accurate and complete financial statement		
Bismarck	having a neutral party to suggest ideas and stop disagreement from turning into fights		the ability to have a third party present to help understand everything	I would say that there wasn't anything that was not helpful

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Bismarck	getting my husband to actually make a decision	nothing -- it was all positive on my end	simple, convenient	
Fargo	available		it saved all the mud slinging that you would have in court - - interest wasn't me or her but always looking at my son's interest	
Minot	having her talk about certain situations of previous people's experiences that helped put our decisions in better perspective and make better choices		understanding what the guidelines would be	
Grand Forks	gave ideas, listened	helpful	got to air differences without fighting	nothing really
Grand Forks	I was able to express my frustrations and hopes and was able to hear the other side as well		the chance to talk without going to court and learn more ways to resolve this situation with the other party	
Jamestown	suggesting counselor	seeing my husband		
Dickinson	circumstances the mediator brought up from her experiences that we would never have thought of		the mediator was clear and concise	nothing
no location			In some cases I can see this being beneficial to people to work at certain things that apply to the after effects of court, for instance -- I have a difficult situation with an order, so I simply complied with the mediation time without mediating a change	situations have to be a certain way for children's stability, so I don't see where, after an order from the court, where mediation is much help, simply mandatory
Jamestown	being able to put child first			

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Jamestown	our mediator was excellent and it helped that our close proximity allowed us to make decisions quickly		covering conflicts, resolving issues	
Fargo	setting (not courtroom)		avoiding court	
Bismarck and phone	face to face discussion, input given by mediator	length, took several sessions, but also understand that it was exhausting		
Minot			new ideas and unbiased perspective	time constraints
Bismarck	amicable -- we decided what is best for us and our children	lawyers not present, wanted to be but ex wouldn't meet if they were -- frustrating		
Carrington	able to talk with someone else about issues that we struggle on		nothing	it was a waste of time
Ellendale	an independent/unbiased mediator		third party involvement and having my lawyer present	
Grand Forks	someone was able to witness the immaturity of my former spouse			
Grand Forks			Personal mediator helped a lot -- divorce is hard, was easier with a mediator who worked and told stories	nothing
Grand Forks	(mediator) was great - - very supportive and neutral, a great mediator	my ex and I just don't get along at all	I was able to express how I felt about our child and our situation	my son's mother not understanding how I felt or how her son is feeling
Bismarck	my ex-husband saw my point of view	he gathered information from mediation to use against me in court	(mediator) was great	the fact that this case was selected -- we had already made offers to S--- and she is unwilling

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				to compromise. I really question the selection process for mediation.
Fargo	helped us resolve any issues that we had	could have used more explanation of what mediation was before the orientation class	determining child support issues and equity payment	nothing
Fargo	the mediator came to the table with new and different ideas -- the mediator also helped us to make informed decisions in a confidential and constructive way	time consuming, but still helpful	everything but parental custody	
Minot			great process overall	
Jamestown			it was helpful to have the mediator to talk to rather than talking straight to my ex	if the ex would have come to more meetings I think it would have worked better
Grafton	got the ball rolling for my ex to complete a drug evaluation	Basically a waste of time and money since attorneys had to be present, we had to travel a long distance and we knew from the beginning that we wouldn't get anywhere with it -- did it to comply with the process		
Grand Forks	being able to talk without a judge present to come to a solutions about our problems	making a plan that is good for the situation without knowing more facts about each other	talking	none
Minot	got to figure out a good custody agreement for the children		all the ideas the mediator gave us -- she was very professional and hopeful	nothing
Minot	we are not able to usually discuss issues			

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
	when we present them to each other when we are alone -- having a third party present forced us to try and communicate on a somewhat civil level			
Fargo	we got to talk about our hopes for our daughters's futures	nothing	neutral party doing the mediation	had to drive from out of town
Grand Forks	being able to speak openly without worrying it would totally bread down into an all out fight	though our mediator was very good at her job, it would have been helpful to have someone there who could give legal answers	learning what my wife felt	unable to solve the issues due to her stance
Fargo			learned what she had to say about me and how I live	have to decide which way to go with the case
Dickinson			ideas on communicating with spouse and ideas on children handling	
Fargo	mediator		mediator	wife
Dickinson	I learned how to negotiate more successfully		just being able to sit down and discuss our problems	could use maybe more time
Grand Forks	that we had someone there		gave out what courts would agree upon	
Fargo	having a neutral party and opinion	everything was helpful	having an independent third party there	
Fargo			looking at different opinions	
Jamestown	I felt more able to say what was needed without fear of his reaction	They were unable to help us compromise on some issues, knowing that this is also the fault of us as the parties	communication between the two of us	inconvenient time
Fargo	we were able to discuss and work out issues that we could not do on our own	emotions that came out during the process and slowed things down	kept down the yelling and got it resolved without more heartache and courts	it being in Fargo when I live in Minot

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
Minot	I got to speak my mind about the situation without being out of line		getting to an understanding without the courts	nothing
	that it is better than a trial and cheaper -- it is cost effective	unwilling spouse		
Bismarck	seeing things from someone else's perspective	had to go through lawyer/court process to get there		
Bismarck	when we had trouble coming to an agreement the mediator suggested getting more information on the topic	none	being able to hear what the kids thought about their living with me	
Bismarck	keeping it calm, calling it quits when no agreement -- agree to disagree	trying to work out schedule	not much -- my ex-wife is very hard to deal with	
Minot			mediator's presence facilitated communication -- keep spouse's hostility to a lesser degree -- great to resolve issues, move forward and, hopefully, concentrate on our children	nothing comes to mind
Devil's Lake	he helped the communication when C---- would not take into consideration what I thought	not coming to all agreements	being in front of a third party who allowed both sides to express opinions and views separately	the defendant
Jamestown	being able to express myself and feelings and actually be able to say what I needed to without so much of an argument	she did a great job -- our communication with each other is not good. It's our fault that nothing was helpful because we are both stubborn	allowing time for rebuttals	
Jamestown			nothing -- maybe	I felt that I was the

Location	Female most helpful	Female least helpful	Male most helpful	Male least helpful
			that I found out more about the lack of rights a father has	one expected to "give" -- this caused even more ill will between the two of us when I would compromise and she would not
Minot	getting options, ideas	My ex-boyfriend was being difficult and glad we can work it out	seeing different options	
Fargo	(mediator's) tact with C-----			
Grand Forks	not a lengthy drug out court case	I don't really want to give up my parental time	not a drug out court case	nothing
Bismarck	insight into how to word my feelings and concerns -- the focus on the kids	our personal dynamics presented complications -- we just need to be better together to resolve things	being able to work together	
Bismarck			all good	
Bismarck	cost	my outcome	having a level headed mediator	trying to communicate with my wife
Dickinson	just being able to discuss things	having a hard time saying what I really wanted to say	trying to understand what is best for us and the kids	not progressing fast enough on the issues

## 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. Assuming that the time from referral by the trial court to signing of the order

takes up to 10 additional days, mediations should be completed within 100 days from referral of a case to the project.

During the first two years of the pilot project 58% of the cases (129 of 221<sup>26</sup>) were completed within this time period. Ninety-two cases took longer than 100 days to complete. During the third reporting period, we computed three average completion times – one for all cases, one for cases that involved an extension of time, and one for cases that did not involve an extension. Forty cases involved an extension of time. The data for both reporting periods is set forth in the next table.

Time Required to Complete Mediations

Measure	First and Second Reporting Periods	Third Reporting Period - Total Cases	Third Reporting Period - Cases with Extensions	Third Reporting Period - Cases without Extensions
Percentage of cases completed within 100 days	58%	46%	0%	60%
Average time for completion	108 days	110 days	199 days	101 days
Longest case	520 days	404 days	375 days	404 days
Shortest case	21 days	5 days	108 days	5 days

Considering only the cases without extensions of time, the pilot project’s average time to complete a mediation was virtually within the time limit set by the Supreme Court in Administrative Order 17 for the third reporting period. However, only 60% of the mediations without extensions of time were completed within 100 days.

Using only the cases without an extension of time, the timeliness data shows a marginal improvement in both the percentage of cases completed within the time requirement (from 58% to 60%) and the average time to completion (from 108 days to 101 days).

The next table shows the timeliness performance of the mediators in the seven districts. Three of the districts had average completion times within the project requirement.

One of the most recently added districts – the East Central – had the best performance, with 70% of cases within the time requirement and an average of 91 days. Although it improved its average time to completion, the South

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<sup>26</sup> Dates were missing for one case.

Central District now has the worst performance – completing only 48% of its mediations within the time requirement.

With the exception of the South Central District, the most urban districts had higher percentages of mediations completed within the time requirement than the three most rural districts – the Northeast, Northwest, and Southwest Districts.

**Timeliness of Mediation Completion by District**

District	First and Second Reporting Periods			Third Reporting Period – Cases Without Extensions		
	Total Cases Completed	Percentage of Cases Completed Timely	Average Time to Complete Mediations	Total Cases Completed	Percentage of Cases Completed Timely	Average Time to Complete Mediations
East Central				43	70%	91 days
Northeast	12	58%	83 days	55	56%	111 days
Northeast Central	106	64%	99 days	128	67%	90 days
Northwest	2	100%	101 days	60	53%	107 days
South Central	98	52%	122 days	83	48%	113 days
Southeast				31	66%	90 days
Southwest	3	33%	73 days	30	57%	106 days
Totals	221	58%	108 days	431	60%	101 days

The timeliness of mediation completion varied significantly from mediator to mediator – from 0% 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 performance of Mediators 24 and 25 – two of the newest mediators – show that the project’s goal can be attained. The performance of Mediator 5 was the worst at the time of the second interim evaluation. It improved in terms both of average time to completion and percentage of cases completed within the time requirement, but remains the worst for the pilot project. Ironically, Mediator 5 also had the highest number of extensions of time – eight.

For the sixteen mediators that completed cases during both reporting periods, four increased the percentage of mediations completed within the time requirement and six reduced the average time to complete all their mediations.

### Timeliness of Mediation Completion by Mediator

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

## 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 interim report.

This evaluation presents a near-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.

Very few cases 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 South Central Districts, one each in the East Central and Northwest comparison cases, and two in the first year cases for the Northwest District. While we will follow these cases and provide even more complete data for the final evaluation report, the data is now 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.

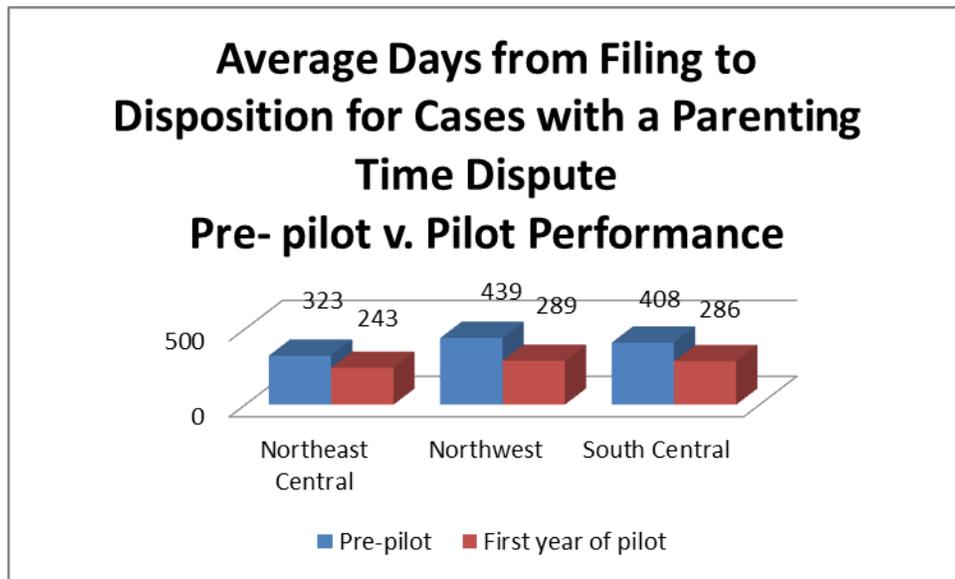
**Average Time to Disposition for Family Cases with a Parenting Time Dispute**

District	Number of Completed Cases	Number of Open Cases	Average Time to Disposition
South Central pre-pilot cases	29	1	408 days
Northeast Central pre-pilot cases	10	0	323 days
South Central pilot cases	53	1	286 days
Northeast Central pilot cases	56	1	243 days
Northwest comparison/pre-pilot cases	15	1	439 days
Northwest pilot cases	22	2	289 days
East Central comparison cases	17	1	377 days

The first chart compares the “before” and “after” data for the Northeast Central, Northwest, and South Central Districts. The “before” data consists

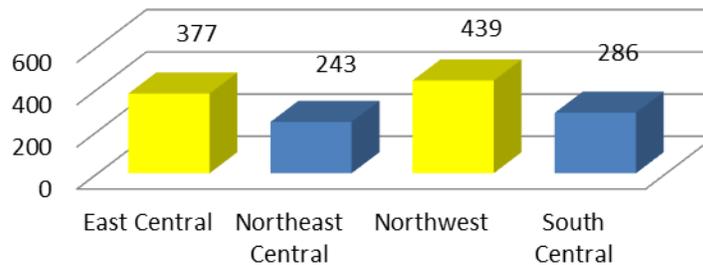
of all cases with a contested custody matter filed in the Northeast Central and South Central Districts the year before they became part of the pilot program and, for the Northwest District, all such cases filed between March 1, 2008 and February 28, 2009 – seventeen months before that district became 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 80 days (a 25% improvement) in the Northeast Central District, by 120 days (a 30% improvement) in the South Central District, and by 150 days (a 34% improvement) in the Northwest District.



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 265 days. The average of the average times for the two control districts is 408 days. The mandatory mediation program appears to have reduced the time to disposition by 35%.

## Average Days From Filing to Disposition for Cases with a Parenting Time Dispute Pilot v. Control Districts Performance



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 35%. 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. 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. By the time the fourth evaluation report has been completed, we expect to be able to report with confidence whether the pilot project has reduced the number of reopenings for the “before” and “after” comparisons as well as the “experimental” and “control group” cases.

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 extraordinarily effective in reducing the rate at which parties involved in parenting plan disputes return to court after obtaining a judgment.

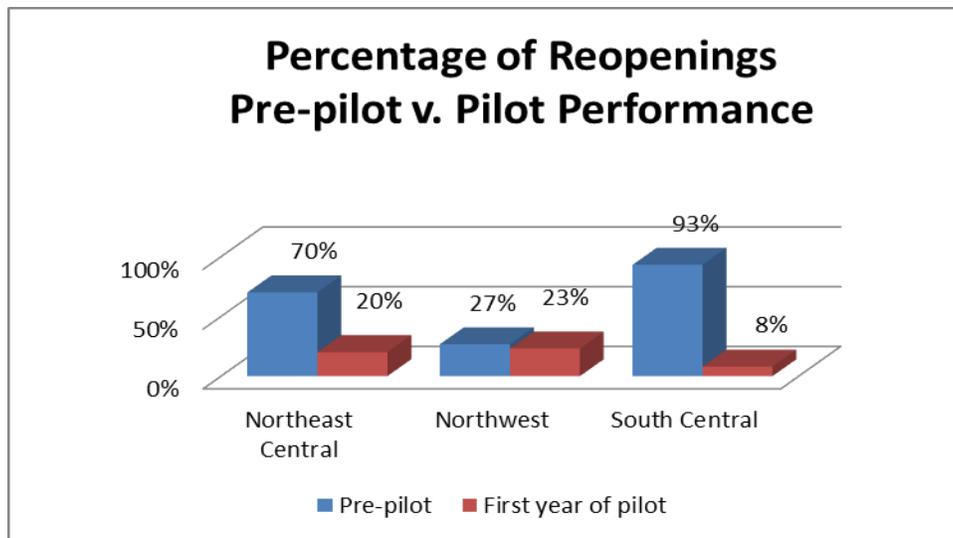
Percentage of Reopenings for Family Cases with a Parenting Time Dispute

District	Number of Completed Cases	Number of Reopened Cases	Percentage of Reopenings
South Central pre-pilot cases	29	27	93%
Northeast Central pre-pilot cases	10	7	70%
South Central pilot cases	53	4	8%
Northeast Central pilot cases	56	11	20%
Northwest comparison/pre-pilot cases	15	4	27%
Northwest pilot cases	22	5	23%
East Central comparison cases	17	10	59%

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.

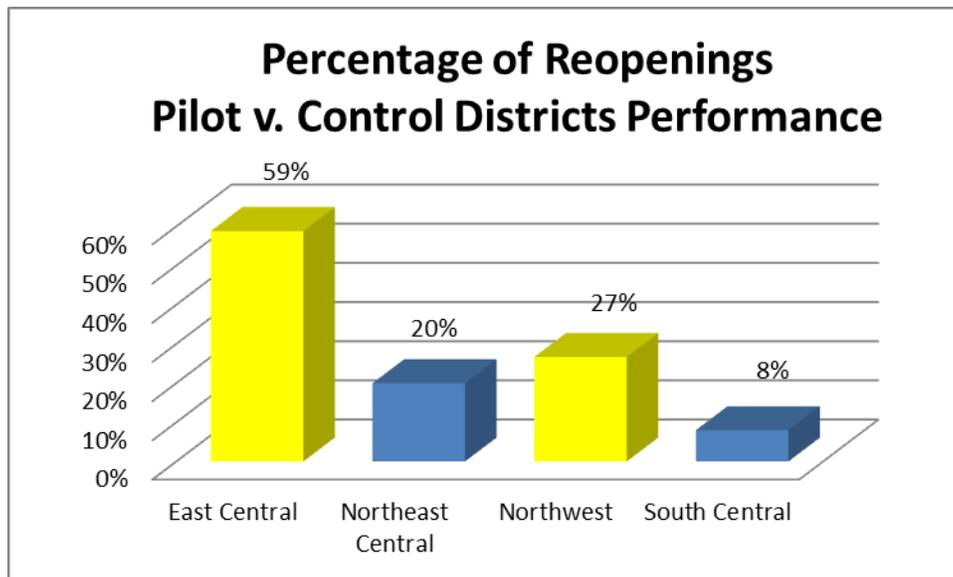
One would expect that there will be fewer reopenings in the Northwest District during the pilot program phase, since its cases are younger in age than for the other sets of cases. That is not the case – the Northwest District has the highest percentage of reopenings.

The data for the first two pilot districts is striking – showing dramatically fewer reopenings for cases filed during the pilot project cases than for cases filed the year before. The effect for the Northwest District is positive, but less significant in size.



The reductions in the percentage of reopenings for the three districts are 91% for the South Central District, 71% for the Northeast Central District, and 14% for the Northwest District. The average percentage reduction for the three districts is 59%.

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 67%.

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.

## Comments of Mediation Providers

Before the project began and again after the project had been operating for nine months, the project director sent surveys to attorneys in the pilot districts, mediation providers, judges and court staff. The reports of those surveys were contained in the first interim report. They showed widespread support for the use of mediation to resolve parenting time disputes and other family law matters, with opposition from a minority of the bar.

For the second interim evaluation the evaluator and project administrator met in person with groups of judges, court staff, and mediators in Bismarck, Devil's Lake, Dickinson, Fargo, Grand Forks, and Minot during the first week of August 2010. The attendees at those meetings gave strong support for the project, had minimal problems to report, and reported generally that the project had widespread and growing support within the bar.

We have conducted no further attitudinal surveys for this third interim report. We reproduce below the comments provided by mediators on their reports for the third reporting period, together with the location of the mediation.

Several of the comments describe successful mediation outcomes arising in cases for which the mediator had little expectation of success following the orientation sessions with the parties. Others note progress during mediation, but ultimate inability of the parties to overcome the conflicts that had led to their separation.

An often repeated theme of the comments is obstruction by one or both attorneys – either in making it very difficult for the mediator to conduct the mediation or in vetoing an agreement reached during mediation. It might be useful to schedule an educational session at an upcoming North Dakota Bar conference at which mediators and family law attorneys can discuss the mediation process and identify and address specific problems that have arisen.

Location	Other comments
Grand Forks	The plaintiff's attorney's negative comments regarding the mediation process may have interfered with the parties' self-determination and participation in further mediation sessions.
Bismarck	Parties were enrolled members of Standing Rock Tribe. I feel there may have been cultural issues related to family roles that affected the parties' inability to work together toward agreement. It would be beneficial to have a Native American mediator as a resource in a case like this.
Bismarck	This mediation involved parents who are high school age. They reached an agreement in October. One party rescinded parts of the agreement. A new agreement was reached in December.
Bismarck	At the second meeting, the parties would not be in the same room.

Bismarck	Extensive joint time due to significant property issues and also parenting plan issues related to husband's concerns about losing his relationships with 3 children.
Minot	The parties did well on the peripheral issues regarding their children. However, the primary parental responsibility piece was difficult.
Fargo	Mother alleged Father had been verbally abusive. She stated she was agreeable to mediate if I was in the room with her. I made sure she was never alone with Father.
Minot	We came very close to reaching some final agreements but ultimately their time was nearing an end and both backed off instead of being pressed for a decision for the wrong reasons.
Minot	The parties reached an agreement on everything except travel associated with visitation! A report of child abuse/neglect arose between the orientations and the joint session, making the mediation interesting and difficult at first.
Bismarck	The parties really embraced mediation and made it work for them.
Bismarck	There was communication from one attorney that a portion of the agreement pertaining to finances was not acceptable but no confirmation of whether the parties used the full agreement.
Minot	The parties agreed to all issues in mediation but declined to give final okay to Summary of Decisions.
Bismarck	Essentially came together on agreement re: parenting -- but property dispute got them alienated about agreeing on anything. They will, I think, settle before trial.
Bismarck	The mother stopped me after the mediation and thanked me for helping them to re-open the lines of communication.
Bismarck	Problem of one party living in Colorado. Survey mailed to him for return directly to the administrator. (It was returned and included in the evaluation.)
Bismarck	Completion delayed by delays in obtaining real estate values and consensus about property division vis-a-vis the house.
Grand Forks	The parties have agreed to consult with Dr. ____ regarding parenting time as the child is but nine months old and will work out a schedule with Dr____y's input, especially for overnights.
Minot	An agreement was reached on all issues except child support. The parties wanted to leave that up to their attorneys' calculations.
Minot	Mother indicated she was suffering from PTSD (she is in the military). I believe this greatly impacted this mediation.
Grand Forks	Money was an issue as well as lack of personal responsibility with both parties. It was nice that the State of North Dakota could pick up the tab (in part) for extra session so they could figure out what they needed to do.
Grand Forks	Telephonic -- father was deployed overseas throughout the mediation.
Grand Forks	It was a pleasure working with the parties.
Bismarck	This was a grandparent visitation issue. Really based on one topic/issue.
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.
Bismarck	The parties had arrived at some agreements in mediation; however, I was informed that the agreements were rescinded.
Bismarck	There were power and control issues regarding withholding children.
Dickinson	Parties intended on returning but then changed their minds.
Fargo	This couple had significant financial issues and during the mediation it was agreed that an expert in bankruptcy or finances be consulted. They did not follow through and said they just wanted to be done.
Bismarck	Slightly over 90 days set by protocols. Some delay associated with scheduling due to the

	schedules of the attorneys (who were involved in all the joint sessions).
Fargo	The husband was very angry and had difficulty discussing different options/problem solving. The parties agreed to divorce back in October of 2010 and the home environment has been extremely tense since neither of them are feeling safe to leave due to their belief it will change the custody outcome.
Fargo	One party fired their attorney the day before mediation and had very skewed and grandiose ideas of what "they could get," i.e., debt relief and custody. Made mediating very hard. He refused to get legal counsel stating a "lawyer couldn't tell him anything!"
Bismarck	Parties had attorneys with them for mediation.
Fargo	It was <u>very</u> difficult with the attorneys allowing their clients to agree to anything during mediation as well as the drafting language.
Grand Forks	One of the parties used the process to try to manipulate the other.
Fargo	Was late getting this finished due to attorneys requesting additional changes to parenting plan and wanted to do this for the clients.
Devil's Lake	Too much attorney involvement hinders the mediation process. This mediation was going very well until one party pulled out a proposed Stipulation prepared by an attorney. The other party shut down, but I was able to get that party to open up again, but with great difficulty.
Fargo	I am not sure how the restraining order got through without the program administrator getting notified (and notifying the mediator).
Fargo	One attorney in this case was very challenging. We would have agreement between the parties and the attorney would call and demand changes.
Grand Forks	Perfect case for mediation. Enough time has lapsed. They wanted to move on.
Grand Forks	The plaintiff's decreased capacity issues became apparent in the second session which impeded her ability to fully participate.
Minot	The parties indicated they wanted to come back for a second joint session -- but later called and said they changed their minds.
Minot	Mother became very hostile and angry at the conclusion of the joint session and yelled at me that I need to be more in control/aggressive during the mediation.
Bismarck	The parties had close to a full agreement and at the last mediation one of the parties rescinded everything they had agreed to.
Devil's Lake	This mediation could have been settled completely, if not for the lack of cooperation of one party's attorney, the CSEU's inability to make timely findings, and the pro se party's lack of knowledge of the law.
Fargo	Mother wants only supervised visitation in North Dakota until proof Father is sober and drug free, has a license, and develops a relationship with the child. Father refused to agree to any of those terms. All other issues except visitation times/days were resolved. Father fired attorney and is representing himself.
Fargo	Father seemed to be withholding a lot of important financial information. He owned several restaurants and was wholly motivated with protecting assets and not having the wife walk away with much. They are currently conducting discovery on businesses and finances. They want to mediate again after that has been completed.
Fargo	One of the attorneys had absolutely no interest in mediating and it was very difficult to discuss any <u>reasonable</u> agreement. The client was also not being assisted by their attorney whatsoever.
50-?	Ultimately the party reporting abuse in the past decided that her rights could best be protected by the court.
Bismarck	May try mediation again before trial. Want to see what judge will order at interim order hearing coming up.
Bismarck	Attorneys were present in this mediation and it is this mediator's opinion that counsel hindered the communication necessary for open discussions.

Devil's Lake	The Plaintiff's attorney had my hands tied from the beginning. She had told the Plaintiff to submit a settlement proposal to the Defendant at the initial mediation session. This limited my ability to see the real issues at hand and to try to resolve any underlying issues that were a problem.
Cooperstown	There was significant time spent on communicating with the parties before orientation/mediation could take place because of concerns with the original location and bias to one of the parties. I worked with the parties to find a mutually agreeable location, and therefore it took place in Cooperstown, ND.
Jamestown	As to the property, the parties agreed to use an appraiser and then will split property equally.
Fargo	An initial agreement was reached at the first session which was subsequently rescinded by both parties.
Watford City	The parties reached a full agreement but ultimately rescinded due to a family emergency they both needed to deal with. It is anticipated that the outcome of the emergency will dictate a partial outcome in this matter.
Grand Forks	Parties agreed; attorneys didn't.
Fargo	There were serious allegations of child abuse that CPS determined were not there. One party continued to insist and went to three other doctors, all of whom stated there wasn't cause for concern. Party would not agree to final parenting time until after another doctor evaluates parents and children. The accused party feels the other parent is doing this to prevent children from seeing them. I got parties to agree to use an experienced doctor in child abuse cases and put weight to her recommendations. Everything but final parenting time was agreed to, including holidays, vacation option, and joint decision-making.
Bismarck	The parties spent time talking after completing orientations and came to the joint session with a full agreement that was being drafted by counsel.
Williston	There was a huge history between the parties and they couldn't let go of that to move forward.
Fargo	The parties were initially tentative about the process but when they agreed to their goals and what old communication patterns they wanted to avoid they utilized the time very well.
Grand Forks	Shortly after the second mediation session, the parties were able to resolve in their entirety the remaining asset/debt issues, with their agreement being generally consistent as to what was discussed in mediation.
Dickinson	Parties did not follow through with second joint session and did not complete surveys.
Jamestown	This mediation took little time due to the fact that the parties hired an objective professional to interview the child. The parties agreed to a temporary change of primary residential responsibility order. If the order is not questioned within a year, it becomes permanent.
Grand Forks	These parents found the SBAND parenting plan helpful and used it to craft their own agreement.
Fargo	Started out <u>very</u> tough and contentious but worked the process and ended just great. Parties began communicating very well towards the end. Remarkd (they did) how great the mediation was, how shocked they were that it worked and that they wished they knew about this sooner!
Bismarck	This mediation took a while longer due to the fact that an accountant had to be used for expert advice. Also, one of the attorneys was not available for a number of weeks.
Minot	Parties did not want an agreement/memorandum drafted and sent to their attorneys. Rather they just wanted my mediation notes to take and discuss.
Grand Forks	Mom wanted to relinquish her parental rights. Not a possibility. Doesn't want visitation. Her attorney is drafting an agreement. Both will sign it.
Fargo	Resolved all issues and once attorney received notice the attorney disputed the label of settling on joint custody although the attorney agreed upon 50/50 parenting time.
Grafton	Parties intended to apply for more time but them changed their minds. Surveys were not completed as it was expected they parties would return. (One was returned.)
Grand Forks	While the parties have made tremendous progress, they don't appear ready at this time to spell out a final parenting agreement.

Fargo	Very nasty mediation at first. <u>Tons</u> of power struggles. Both parties delayed the process many times. One party changed attorneys <u>3</u> times. Each time causing another long delay to schedule. The other party now lives in Montana, so traveling and scheduling was difficult. Once proceeding with mediation, it went well. They want to do more.
Minot	The parties had some good discussion but are so far apart with custody outcomes that there was no way to find any middle ground.
Fargo	The parties reached an agreement on all issues however they requested that the agreement be tentative pending approval by counsel -- which did <u>not</u> occur.
Fargo	One party lived in the Twin Cities. Scheduling was difficult. Mediations got cancelled twice because of weather.
Jamestown	Parties are not ready to complete a parenting agreement. Their current living situations -- school, work, distance, add challenges to their decision-making.
Fargo	Parties reached agreement in mediation on <u>all</u> children issues and we went forward and they continued to reach agreement on all <u>divorce</u> issues. However, after the weekend, Plaintiff called and believed she could get more child support if she would go to court so wanted to take the whole thing to trial.
Minot	This is a case whereby the memorandum/agreement was sent out for the parties' signatures but was only signed and sent back by one party. Therefore according to our recent conference call I have not sent the mediation closing form to the court.
Dickinson	Orientation done by phone by first mediator. Parties traveled in bad weather from Dickinson on Dec 23, 2010 and Jan 4, 2011 to Bismarck where both attorneys practice. Very acrimonious divorce proceeding which has gone on for over a year. Some movement, and case might still settle before trial, but mediation sessions did not result in settlement.
Grand Forks	After the orientations with each of the parties, I had very little expectation that the child-related issues would be resolved through the mediation process. At mediation, however, the parties were able to focus on what was in the best interests of their children and reached an excellent result. However, after the summary letter was sent to the parties, one of them contacted me and indicated an unwillingness to finalize the matter. I do not know specifically what terms the party was no longer in agreement with, so the Closing Form indicates that no agreements were reached.
Minot	The parties did not reschedule to finalize agreement.

## Recommendations of the Third Interim Evaluation Report

The findings from the third reporting period are summarized in the Executive Summary at the beginning of this report.

Having reviewed all of the information provided in this report, Greacen Associates makes the following recommendations. They address the two persistent weaknesses in the pilot project – the failure of mediators to abide by the North Dakota Supreme Court’s timeliness requirement for completion of mediations and the low rate of return of participant satisfaction surveys, which threatens the validity of the project’s satisfaction data.

We are providing the project administrator with individual reports for each mediator, showing their personal agreement rates, satisfaction scores, timeliness performance, and survey completion performance.

We urge the State Court Administrator to prepare a cover letter for these individual mediator reports (or request the Chief Justice to prepare such a cover letter) requiring each mediator to prepare a personal action plan for improvement in the areas of:

- Timeliness of completion of mediations
- Response rate for post-mediation surveys
- Any participant satisfaction rating for that mediator which is 10% or more below the average for the project as a whole

The letter should require submission of the personal action plan to the project administrator within ten days of receipt of the letter and individual mediator report as a condition of continuing participation as a project mediator in the pilot project.

We further urge the project administrator to monitor timeliness of mediation completion – notifying mediators in writing of each instance in which their performance falls short of the Supreme Court’s timeliness requirement. We also urge her to withhold payment for a mediation until she has received the required participant evaluations and mediator report (or a written statement explaining to her satisfaction why the required participant evaluations cannot be obtained).

We recommend that the project administrator compile the mediator comments on dealing with power imbalances between the participants into a publication for use by the North Dakota mandatory mediation program and by other mediators interested in becoming more sophisticated in their mediation practice.

We recommend that the project administrator ask the mediators with exceptional participant ratings (as noted in this report) to make presentations to their colleagues during mediator conference calls or at other mediator training opportunities to encourage the adoption of the most effective techniques for accomplishing the pilot project’s goals of putting the needs of the children first, introducing new ideas into the negotiation process, and providing mediation participants with improved skills in negotiating with their former spouses.

We urge the State Court Administrator and the Executive Director of the North Dakota State Bar to develop an educational program at an appropriate bar training event to help North Dakota family attorneys understand how best to interact with the mandatory mediation program.

We suggest that the project administrator take to heart the request from one of the mediators to recruit an American Indian mediator who would be available to conduct or assist with mediations involving American Indian participants. American Indians are the largest minority group in North Dakota and reported a lower than average overall level of satisfaction with the mediation process (83% compared to the study average of 87%).

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. While it may be prudent to wait for the final evaluation report due by the end of this calendar year, we urge the North Dakota judicial branch to plan 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.

Please let us know if there are ways in which Greacen Associates can help to implement any of these recommendations.