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Probate & Family Court Onsite Mediation Program

Fiscal Year 2020 Implementation & Evaluation Report

**Massachusetts Office of Public Collaboration
John W. McCormack Graduate School of Policy & Global Studies
University of Massachusetts Boston**

July 2020

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Introduction

The FY20 Onsite Mediation Program (Program) is a continuation of the pilot that was established in FY19. The goal of the Program is to expedite the disposition of cases in the Probate & Family Court (P&F Court) by helping parties resolve parenting and child welfare issues in addition to child support on MA Department of Revenue (DOR) block days and eliminate the need to file separate actions and minimize the number of necessary court appearances. The Program objectives are twofold: a) provide free onsite mediation services on DOR block days in the Essex (Salem) and Middlesex (Cambridge) divisions and with expansion to the Suffolk (Boston) division with services delivered through court-approved Community Mediation Centers (CMCs) under the oversight of the MA Office of Public Collaboration (MOPC), specifically Community Dispute Settlement Center (CDSC), North Shore Community Mediation Center (NSCMC), and MetroWest Mediation Services (MWMS); and b) assess the potential for onsite services to enhance referrals to the existing DOR Child Support Enforcement Division (CSE)-sponsored Parent Mediation Program (PMP) also administered by MOPC in partnership with CMCs.

In FY19, after collaborative program design, delivery of free onsite mediation services for DOR block days took place between March 2019 and June 2019 in the Essex (Salem) division and Middlesex (Cambridge) division. Following this pilot period, MOPC evaluated the Program and provided findings and recommendations which informed implementation of the Program in FY20. Due to the success of the initial pilot, it was decided that the program would continue at both sites and be expanded to a third court division in Suffolk (Boston).

Part I: Program Implementation

A. Roles

Program roles and services in FY20 continued as originally designed in FY19. As Program sponsor, the P&F Court's role was to fund the pilot, make arrangements with the court divisions on mediation space and support pilot activities, and designate court staff to coordinate referrals and communication among pilot partners. The DOR's role, as informal sponsor, was to arrange for DOR attorneys to identify and refer appropriate cases to mediation on DOR block days at the three court divisions and work in coordination with the pilot partners. The MOPC's role as the Program administrator was to design the pilot expansion in collaboration with pilot partners, oversee and coordinate the pilot implementation, and provide monitoring, evaluation, and reporting to the P&F Court and DOR. The CMCs role was to provide qualified mediators to deliver onsite mediation and collaborate with MOPC on design, orientation, data collection, and evaluation of the pilot. Key components of the program included having specially assigned Court and DOR staff identifying cases for mediation and coordinating mediation referrals with CMC onsite coordinators; and also having dedicated CMC coordinators and mediators conducting intake and screening to determine informed consent and voluntariness to participate in mediation and coordinating the return of the case to the Court or DOR for disposition or further action.

B. Funding

Program funding covered MOPC program design, administration and evaluation services through Intergovernmental Service Agreements (ISAs) with the Trial Court and onsite mediation services

from the three community mediation centers through MOPC subcontracts. Funding for the Program pilot in Year 1 had been provided by the P&F Court through its own FY19 budget in the amount of \$75,000. For Year 2 of the Program, the P&F Court funding was supplemented by funding specifically appropriated for court-connected ADR by the Legislature in the FY20 state budget for a total amount of \$220,840. P&F Court administrators reported that the scaling up of the funding for the Program in Year 2 (FY20) was largely due to the documented success of the pilot in Year 1 (FY19). The FY20 Program funding was allocated as follows: \$48,040 (22%) to MOPC, \$49,920 (23%) for Salem site services, \$55,680 (25%) for Cambridge site services and \$67,200 (30%) for Boston site services. Due to the suspension of the Program after court closures due to COVID-19, only \$184,760 of the FY20 Program funding was expended.

C. Services

To maximize the benefit of having onsite mediators present in the courthouses, referrals to mediation were generated in the Program, not only from attorneys in DOR block day sessions, but also from judges in pre-trial sessions where dispute intervention by probation officers was not a factor. In these instances, Assistant Judicial Case Managers (AJCMs) identified cases appropriate for mediation, filled out the referral form, and communicated with the onsite coordinator (a mediator from the CMC responsible for managing cases). For block day sessions hearing child support-related matters initiated by DOR, the DOR attorneys identified appropriate cases for mediation, and during case conferencing, spoke with parties about mediation, filled out the referral form, and sent the case to the onsite CMC mediators. Once a case was referred to mediation, the onsite coordinator conducted intake and screening with the parties to explain the mediation process, determine if parties were willing and able to participate, assess the appropriateness of the case/issue for mediation, and determine whether there were current or past domestic violence issues that would make the case inappropriate for mediation. Following screening, parties willing to go forward with mediation signed an agreement to participate prior to commencing the mediation session in order to ensure confidentiality and informed consent to the process. If the onsite mediation resulted in a mediated agreement, the mediators wrote up the agreement and coordinated the reporting of it through court staff to the judge for incorporation into a court order. If the parties did not consent to mediation or participated in mediation with no agreement, the mediators returned the case to DOR or the referring judge for further action. At the conclusion of mediation sessions, they administered participant evaluation forms to parties to collect feedback and demographic information. Parties were also informed that the CMCs were available to conduct mediations outside the Program on a free or sliding scale basis.

Salem site: In Salem, the Program continued in FY20 with few changes at the outset. Onsite mediation on DOR block days occurred biweekly on Thursdays. The Judicial Case Manager was assigned to work on the program as the designated local court representative and helped to coordinate mediation referrals from judges and the dispositions of cases. The CMC serving Salem, NSCMC, through one of their office and onsite coordinators respectively, regularly checked in with the Judicial Case Manager prior to each scheduled block day to find out if there would be pre-trial cases for mediation and then scheduled mediators to cover those cases plus any cases referred from DOR. The DOR Essex Regional Counsel in charge of block days provided a consistent presence and support for the Program, both promoting onsite mediation herself and encouraging her colleagues to refer cases to mediation. When the DOR supervising attorney could not oversee referrals to mediation, she enlisted one of her assistants to serve this function. The

P&F Court Administrative Office also sent a staff person to assist with the coordination of mediation referrals in Salem. These assistants focused on finding case referrals for mediation, keeping track of referrals, and working with court staff to convert mediated agreements into court orders. Introducing mediation as a voluntary option to resolve non-child support, parenting and child related issues occurred both at DOR block day check-in (a brochure was made available to parties) and during DOR attorney case conferencing. The NSCMC mediators were given access to two dedicated conference rooms at the Salem courthouse located near the courtrooms used for the DOR block day sessions.

Cambridge site: In Cambridge, the Program began with slight changes in FY20. After the first two months, the Program funding shifted to support only bi-weekly onsite services on DOR block days rather than weekly. However, the CMC serving Cambridge, CDSC, decided to continue providing services on a weekly basis in order to continue building the Program and encourage more referrals to mediation. For July and August, CDSC and MWMS shared service delivery for eight DOR block days with each CMC responsible for every other week (four days each). From September onwards, CDSC alone provided service delivery in Cambridge on a weekly basis and MWMS transitioned to delivery of mediation services for the Program expansion to Boston. In Cambridge, the DOR Middlesex Regional Counsel and lead attorney for DOR block days flagged cases appropriate for mediation for the block day check-in staff, who then provided parties with a brochure about mediation as they checked in. The onsite coordinator regularly checked in with DOR attorneys to encourage mediation referrals. As the Program continued, the decision was made to include brochures in the mailings to parties of notices regarding their child support hearing in order to introduce the option for mediation to the parties before their scheduled hearing on DOR block days. Additionally, the Assistant Judicial Case Manager assigned to the Program continued to help refer cases to mediation when she was available, primarily helping to generate DOR referrals and less often referrals from judges. Structural barriers, space arrangements and limited space in Cambridge, which has two courthouses, affected the Program. Mediators went from having two rooms available for mediation to using just one. The scheduling of trial sessions rather than pretrial sessions in other courtrooms on DOR block days limited the feasibility of same day judicial referrals to the Program.

Boston site: The decision to expand the Program to the Suffolk division in Boston was based on the determination of the P&F Court Deputy Administrator and the DOR Chief Legal Counsel, who had formerly run the Suffolk block days and had participated in a prior mediation pilot there, that there would be particularly good buy-in to mediation and sufficient court and DOR staff to work with onsite mediators as well as a large block day and pre-trial caseload for referrals.

In September 2019, MOPC, with CMC and P&F Court representatives, conducted an orientation for DOR attorneys and staff in charge of block days in Boston. This meeting helped to clarify the process for mediation referrals and to provide guidelines on introducing mediation to parties and assessing the suitability of cases for mediation. There was feedback from DOR attorneys regarding the mediation *referral form* to make it more suitable for a busy court with a large volume of cases. Subsequently, the referral form was adjusted to be easier and quicker to fill out. Following the orientation, a walkthrough of the procedures and logistics was held on the first scheduled DOR block day on September 19, 2019.

DOR block days in Boston occurred weekly on Thursdays, with MWMS overseeing the program. MWMS and CDSC mediators shared coverage of the block days, with each providing mediators

every other week to deliver services under the oversight of the MWMS onsite coordinator. The mediators were provided access to two dedicated conference rooms just outside a courtroom for mediations. The MWMS onsite coordinator worked closely with the Suffolk Regional Counsel and lead DOR attorney for block days and the Court AJCM assigned to the Program to coordinate case referrals, reporting of mediated agreements for incorporation into court orders, and return of cases to the DOR or Court for further action (if no mediated agreement). Additionally, the Suffolk Chief Justice assigned his sessions clerk to assist in finding cases appropriate for mediation. Initially, DOR attorneys referred all block day cases, even those not yet ripe for mediation (where only one party appeared); however, once suitability of cases for mediation was clarified, DOR attorneys adjusted accordingly. Due to these efforts of the site team, the Suffolk site soon began generating many referrals and mediating a high volume of cases which continued throughout the year. It became apparent early on that there was a need for Spanish language interpreters to be assigned specifically for this Program. The Court was able to secure a dedicated interpreter, which helped tremendously given the large number of Spanish speaking litigants in Suffolk.

D. Monitoring and Planning

Data Collection: Case forms consisting of mediation referral forms, agreements to mediate, mediated agreements, and participant evaluation forms were submitted biweekly to MOPC from the three CMCs. MOPC reviewed these forms and prepared a summary spreadsheet providing statistics on referrals and outcomes to monitor Program case activity for each site throughout the year. The CMCs also entered data collected from the referrals forms and participant evaluation forms into a uniform case management database and reporting system overseen by MOPC, known as MADtrac, and generated quarterly Program MADtrac caseload and demographic reports to MOPC. In July and August, CDSC and MWMS each provided their own caseload reports for Cambridge. To simplify data collection with the Boston expansion, MWMS took responsibility for submitting all case-related forms and reporting all caseload data, including those for block days where CDSC provided mediators.

Monitoring/Oversight: MOPC scheduled and facilitated periodic check-in calls with all program partners which included P&F Court department and division staff, DOR senior administrators and attorneys, and CMC directors and onsite mediation coordinators. The purpose of these calls was to monitor the Program, problem-solve issues and respond to unexpected developments as they arose. Check-in calls with all program partners occurred in December, March, and June. Additional check-in calls with program partners for the different sites were held in September (Cambridge and Salem) and November (Suffolk). During these calls, issues were raised by program partners and addressed collectively, including: 1) clarification of protocols for mediating domestic violence cases; 2) enhancing informed consent; 3) the need for Spanish language interpreters; 4) managing planned changes in Cambridge site; 5) exploring potential expansion to other divisions; and 6) pivoting to remote mediation due to COVID-19 court closures.

Domestic Violence: Members of the Family Law Task Force who had learned of the Program raised concerns about mediating cases where there is a 209A restraining order between the parties. Previously, program partners had discussed this during the pilot in FY19 and it was confirmed that the P&F Court does not prohibit mediation for such cases; however, that caution must be exercised. Mediators were already screening for domestic violence and carefully vetting the parties to ensure there was no perceived pressure to mediate by the vulnerable party. Because of the concerns, the P&F Court and DOR decided that no cases with current 209A restraining orders would be referred

to onsite mediation. For cases with past restraining orders, mediators would continue to exercise due care to screen parties, verify that parties—especially the vulnerable party—were making an informed decision and voluntarily entering into the process, and structure the process to safeguard parties throughout the mediation.

Informed Consent: Similar to the concerns for mediating cases with domestic violence, members of the bar were concerned whether parties were entering mediation with informed consent. While all CMCs were using their own agreement to mediate forms, they and MOPC decided to develop a uniform Agreement to Mediate to address issues of informed consent and voluntariness. All sites switched to using this standardized form before mediations.

Spanish Interpreters: In Cambridge and Salem, when the need for an interpreter arose, DOR loaned their interpreters, and on occasion, the court interpreter was used for mediations needing Spanish interpreters. However, due to the large volume of cases in Boston, it became clear early on that this approach was unsustainable at that site. Two cases in which the parties were willing could not be mediated in Suffolk due to lack of access to an interpreter. Mediators attempted using a dial-in interpreter service, but the solution was untenable, as it was extremely time consuming, especially when reviewing the agreement to mediate. The Court agreed to provide a dedicated Spanish interpreter for the mediation program which was arranged immediately thereafter. Additionally, MOPC and the CMCs arranged to have the uniform Agreement to Mediation form translated into Spanish as well as to make the demographic forms, the participant evaluation forms, and a Spanish language Program brochure available in Spanish.

Cambridge Changes: In the early spring, Program partners were informed of the planned closure of the Cambridge division and the opening of Middlesex divisions in Lowell and Woburn. DOR block days would be moved as well, with the transition to Lowell beginning in May 2020: block days on the first, third, and fifth week of the month would be held in Lowell while block days on the second and fourth week remained in Cambridge. This schedule would remain in place until October 2020, when Woburn would begin hosting block days on the second and fourth weeks. DOR stated that it would wait until the next fiscal year to determine whether it would be able to have the Program continue on block days in Lowell, Woburn, or both. CDSC, the CMC serving the Cambridge site, tentatively agreed to continue services in Cambridge through October next year and then at the new divisions as feasible. During the final check-in call among program partners in June, Lowell was identified by the P&F Court Department representatives as the most promising Middlesex site for hosting onsite mediation services in FY21.

Expansion Planning: Exploration of potential expansion of the Program to other court divisions began midway through the year. Plymouth P&F Court division was identified as a potential site because the site served as the pilot for the Pathways approach to case management and the aim of providing ADR services through the 2nd pathway aligned with the purposes of this Program. To assess the capacity of an expansion to Plymouth or other P&F Court divisions as well as the opening of Middlesex divisions in Lowell and Woburn, MOPC reached out to the 12 CMCs in the community mediation grant program to gauge their interest and readiness to provide services for onsite mediation program. Further program planning was put on hold due to the COVID-19 closures in March and the suspension of the Program in May.

Pivot to Remote Mediation: As a result of the COVID-19 pandemic, courts closed mid-March except for emergency cases. MOPC convened a call with all Program partners to develop an interim plan for the Program involving referral of cases to CMCs offsite for *remote services*, as available and appropriate. MOPC convened calls with the CMCs to plan for video conferencing or telephone mediation. Each CMC confirmed that they had procured the tools necessary to provide remote mediation and developed a protocol for referral and intake. NSCMC developed a fillable electronic referral form for DOR and court staff to use. This information was subsequently shared with all collaborators and encouraged JCMs/AJCMs and DOR attorneys to make referrals for parenting plans, custody, visitation, and other child-related matters that would not fit the exigent circumstances to qualify for judicial intervention. MOPC also offered that cases could also be referred to the DOR-sponsored/MOPC-administered Parent Mediation Program. To pivot to remote mediation, CMCs addressed key issues of confidentiality, informed consent, electronic signatures, and adjustments to technology. Forms were made electronically fillable and language added to ensure confidentiality in the Agreement to Mediate. NSCMC set up intake calls with parties to address technical issues in advance. All CMCs used a signature service so that individuals could electronically sign forms and mediation agreements. The Program was ultimately suspended in May due to the continued court closures. Prior to the suspension, in April the DOR counsel in Salem referred three cases to NSCMC, one of which went forward to remote mediation and resulted in an agreement. Communication early on, collaboration on the referral process, converting forms and other paperwork to electronic format, developing the intake process, and determining how to have mediated agreements take effect all contributed to the Salem site's successful pivot to remote mediation services.

E. Caseload and Case Types

<u>FY20 Caseload – Salem*</u>			
# of onsite dates	16		
Total # of referrals	67		
# of DOR Referrals	43		
# of Judge referrals	24		
# of cases screened	46	<i>Screening Rate:</i>	69%
# of cases mediated	40	<i>Mediation Rate:</i>	87%
# of agreements	31	<i>Settlement Rate:</i>	78%

*July 1, 2019 – April 30, 2020; includes referrals to remote mediation in April

<u>FY20 Caseload – Cambridge*</u>			
# of onsite dates	36		
Total # of referrals	57		
# of DOR Referrals	41		
# of Judge referrals	16		
# of cases screened	43	<i>Screening Rate:</i>	75%
# of cases mediated	41	<i>Mediation Rate:</i>	95%
# of agreements	37	<i>Settlement Rate:</i>	90%

*July 1, 2019 – March 31, 2020

FY20 Caseload – Boston*			
# of onsite dates	26		
Total # of referrals	219		
# of DOR Referrals	193		
# of Judge referrals	26		
# of cases screened	75	<i>Screening Rate:</i>	34%
# of cases mediated	75	<i>Mediation Rate:</i>	100%
# of agreements	56	<i>Settlement Rate:</i>	75%

*Sept 19, 2019 – March 31, 2020

FY20 Caseload Totals – Boston*, Cambridge**, Salem***			
# of onsite dates	78		
Total # of referrals	343		
# of DOR referrals	277		
# of Judge referrals	66		
# of cases screened	164	<i>Screening Rate:</i>	48%
# of cases mediated	156	<i>Mediation Rate:</i>	95%
# of agreements	124	<i>Settlement Rate:</i>	79%

*Sept 19, 2019 – March 31, 2020

**July 1, 2019 – March 31, 2020

***July 1, 2019 – April 30, 2020; includes referrals to remote mediation in April

The number of onsite dates relates to the number of DOR block days in which mediators were available for onsite mediation. Referrals were counted as cases where both parties were present and were offered the opportunity to use free mediation to address any parenting or other child-related issues. Number of cases screened were cases where parties agreed to speak with the mediators about mediation. Boston screening rates differed from Cambridge and Salem due to high volume of cases as well as the proactiveness of the DOR attorneys in offering mediation to parties during case conferencing. Many parties who declined mediation stated that they already had a parenting plan or agreement in place. *Screening rate* is computed by dividing the number of completed screenings by the number of referrals. *Mediation rate* is computed by dividing the number of cases that progressed to the mediation stage by the number of completed screenings. *Settlement rate* is computed by dividing the number of cases with mediated agreements by the number of mediations held.

Case Types: *Cases types* referred to onsite mediation spanned all case types listed on the referral form. Some forms omitted this information, whereas others listed multiple case types.

Paternity Establishment	68
Custody-Support-Parenting Plan (209C) establishment	30
Child Support Establishment	108
Child support modification	70
Child related modification	7
Child Support Enforcement/Contempt	4
Other (divorce, guardianship, contempt, etc)	30

Issues referred to onsite mediation ranged the issues listed in the referral form. Some forms omitted this information, whereas others listed multiple case types.

Parenting plan development	122
Child-access & child-related issues within existing parenting plan	16
Other child-related issues (custody, medical, school)	11
Separation/divorce related issues	17
Other	15

Part II: Program Evaluation

For FY20 (Year 2), MOPC developed a comprehensive evaluation plan for the Onsite Mediation Program (Program) in order to establish a framework for assessing successful implementation across fiscal years and demonstrating the impact of the mediation services for collaborative partners, sponsors, and disputing parties. The plan aligns this Program with the DOR CSE Parent Mediation Program administered by MOPC and also with the P&F Court’s Pathways triage case management initiative by presenting an opportunity to collect data that can inform the use of onsite mediation as a means of processing family cases. Data for program evaluation was collected through the case-related mediation forms, participant evaluation forms and MADtrac data reports submitted by the three CMCs, and from the periodic check-in calls with Program partners and the online survey administered by MOPC in June to collect program partner feedback.

The following section outlines the key inputs, outputs and outcomes from the Program and sets forth the summary findings from the detailed program evaluation conducted by MOPC’s Research Unit submitted as a separate attachment.

A. Program Inputs, Outputs and Outcomes

The following critical *inputs* contributed to the success of this multi-sponsor, multi-partner, multi-site court-connected ADR program:

- Senior P&F Court and DOR staff with necessary approvals consulting on the Program
- MOPC program managers and research staff experienced in program design, administration and evaluation
- Three CMCs with dedicated onsite mediation coordinators and qualified mediators delivering services
- DOR attorneys/staff and court judicial case managers/staff at all three court divisions facilitating mediation referrals
- Funding from the P&F Court to enable contracted program management, evaluation and mediation services from MOPC and the CMCs
- Space set aside for mediation at courthouses
- Time invested in collaborative problem solving as issues arose as well as obtaining buy-in and orienting key participants for the site expansion
- Program design, policies, procedures and forms

The below *outputs* were produced by the Program during FY20 until suspended in May 2020. These are results of the collaboration and contributions of all key players at the state, regional, and local levels. Overall caseload targets (projected to be approximately 370 mediation referrals

generated by 96 block days) would have been met but for COVID-19 court closures. Mediation and settlement rates are all at levels expected for successful court-connected ADR programming.

- New program site at Suffolk, Boston division
- Adjusted Program forms and translations to Spanish
- Dedicated Spanish interpreter assigned to the Boston division for mediation
- Orientation and walk-through at the Boston division for DOR attorneys and court staff
- New dedicated Program Manager from MOPC
- Three site visits by MOPC Program Manager
- Five calls/meetings with all Program partners for monitoring implementation
- Two calls with Program sponsors for COVID-19 response
- Two calls with CMCs for COVID-19 response and pivot to remote mediation
- Interim plan for remote mediation (developed)
- 340 cases referred to onsite mediation (274 from the DOR and 66 from the court)
- Three cases referred to remote mediation from the DOR
- 164 cases screened
- 156 cases mediated
- 124 mediated agreements
- 1.6 hours average duration of mediation sessions, including screening
- 203 completed participant evaluation forms
- 221 completed demographic forms
- 23 completed online evaluation surveys
- Parties in 343 cases pending in P&F Court informed of free mediation services
- 64 cases screened eligible for services under DOR-sponsored Parent Mediation Program
- Quarterly MADtrac data reports from three CMCs
- Program evaluation plan
- Completed program evaluation
- Year-2 Program Report

Despite the suspension of the Program due to COVID-19, the collaborative effort across all sponsors and partners enabled the Program to make progress towards desired *outcomes*. Moreover, the pandemic provided an opportunity for all collaborators to develop a complementary process for the future as courts reopen with limited capacity.

- Families with cases pending in the P&F Court became aware of and expressed interest in mediated solution to parenting plan or other child-related issues on DOR block days
- Parenting plans and other child-related disputes were addressed and resolved through onsite, court-based mediation services in a non-adversarial process
- Pending cases in the P&F Court were moved off the court docket in an expedited fashion through onsite, court-based mediation services
- Information collected on potential for onsite mediation on DOR block days to increase number of case referrals to the existing DOR-sponsored Parent Mediation Program
- System of credible assessment to measure the success of the onsite mediation services
- System for identifying the number of cases referred by DOR attorneys and by judges
- Program design for future expansion of onsite mediation to other P&F Court divisions
- Development of remote mediation capacity by CMCs

B. Summary of Program Evaluation Findings

1. **The Program was a successful collaboration** between individuals from organization partners, i.e., CMCs, the P&F Court, DOR, and MOPC. The surveys indicated many of the hallmarks of a successful collaboration including positive relationships between Program colleagues and organization partners; shared values among Program colleagues; common interest on the part of organization partners in addressing party needs; commitment to the success of the program; influence exercised by all the organization partners over Program issues; informed decision-making and action. Program partners viewed the decisions, responses and actions taken on various program issues as mostly positive, suggesting that their collective action tended to produce solutions.
2. **Program operations managed a healthy rate of referrals, screenings and mediations** on par with numbers in other comparable programs. The Program demonstrated capacity for high agreement rates in particular. For example, Program mediation services led to 123 agreements from the 155 mediated cases, producing an agreement rate of 79%, which was near the top of the national range of 50% to 80% for divorce mediation rates.
3. **The Program expansion to the Suffolk court division in Boston proved productive** in that it led to an upsurge in referrals and attendant program activities, including screenings and mediations, during the first 36-37 weeks of FY20. During the FY20 period, 340 cases were referred for Program services, in contrast to the FY19 period, when 75 referrals were received. The gains made in Program operations during the FY20 period compared to the FY19 period were attributable in part to the heavy demand for Program services from the Suffolk court division. Compared to the FY19 period, the *average* number of referrals from the Middlesex and Essex court divisions decreased moderately during the FY20 period.
4. **The Program met party needs** like benefits to children, improved communication between disputing parties, less conflict between parties, and resolution of parenting and child welfare issues. 70-74% of partner organizations indicated that the program satisfied these party needs, which was shared by all the organization partners surveyed. Overall, 98% of parties, which comprised 65% of all parties mediating through the Program, were satisfied with mediation.
5. **The Program offered a reproducible model** for on-site court mediation and the public profile of mediation was enhanced by the program. Survey respondents from CMCs, DOR, P&F Court, and MOPC also generally agreed that the program contributed to some increased efficiencies for organization partners, namely, savings for the court from time spent on cases; lower need for separate actions; and fewer court appearances.
6. **The Program served many races/ethnic groups.** Demographic data about survey respondents indicated that no single racial/ethnic group predominated among OMP parties as a whole. The largest share of parties self-identified as Hispanic/Latino (36%), followed by Whites (31%), and Black/African Americans (23%) while the share of Asians was slight (5%).

7. **The Program served lower-income parties gain access to justice.** 73% of parties served were lower income (under \$50,000 annual income). Across the nation, access to justice tends to be limited for most low (earning under \$50,000) and middle-income individuals (earning under \$154,756). Nearly all surveyed parties, who were middle- or lower-income earners (99%), were able to access justice to get their child-related legal issues addressed through mediation services from the Program.
8. **The Program had broad impact on mediating parties.** For 40% or more of surveyed parties, mediation was successful in resolving a variety of child-related issues such as parenting time, parenting plans, assignment of parent responsibility, custody, and finances. Approximately 10% of examined mediated agreements contained divorce/separation provisions unrelated to children, including debt liabilities, spousal support, and asset division. Communication between parties was improved for 56% of the parties while, for 42% of the parties, conflict between them diminished thanks to the OMP.

Part III: Recommendations

The Year 2 program evaluation process generated the following recommendations for both continuing and improving the Onsite Mediation Program (Program), and for cultivating it as a replicable model of effective practices for court-connected ADR, and a leveraged resource for the Pathway's triage case management initiative. These recommendations are offered as a guide to the P&F Court and DOR in making programmatic, funding and operational decisions in the coming year and beyond as they seek to promote free mediation services accessible to parties in various regions of the state.

1. **State investment in the Program should continue.** Given the documented effectiveness of the Program in advancing the interests and missions of the court system, the state child support enforcement agency, the state dispute resolution agency, state-sponsored community mediation centers, and families and children in the Commonwealth of Massachusetts, state investment in the Program should continue, and should be used to leverage additional public and private investment.
2. **The Program should be elevated as an evidence-based model and aligned with other policy initiatives.** In FY19, MOPC was commissioned by the Trial Court to conduct a research study on methods for strengthening court-connected alternative dispute resolution (ADR). Almost all of the best practices for increasing awareness, access and utilization of ADR in the courts documented in MOPC's research report have been successfully incorporated in this Program. As such, this Program model should be shared and used to develop other court-connected programs in the Trial Court. In particular, this Program should be deployed as a critical resource for implementing the Family Justice Initiative Pathways approach currently being piloted in preparation for a statewide rollout. The P&F Court is adopting the Pathways initiative to promote more effective case management and delivery of justice. Of the three triage tracks in Pathways, the Tailored Services Pathway track involves deploying ADR for cases that present an opportunity for problem solving between parties and that would benefit from receiving ADR information and access to ADR services to help parties reach agreement.

- 3. Replication should adhere to the Program's collaborative and holistic framework.** Data analysis confirms the effectiveness of the Program's multi-partner collaboration and comprehensive framework for program administration, service delivery, monitoring and evaluation. Any efforts to expand the Program at other P&F Court sites or replicate the model in other Departments of the Trial Court should retain these program design components as well as the following operational success criteria: support of leadership; funding for services; qualified program administrators and mediators; buy-in at the local level; court and DOR staff assigned specifically to the Program; private space for mediation sessions; and interpreters available for mediations. Efforts to explore new Program sites in Plymouth, Bristol and Worcester should continue, with a priority given to Plymouth since the divisions in that county are the current sites for the P&F Court Pathways pilot.
- 4. Remote mediation services should be added into the Program with onsite services.** The capacity developed by the CMCs to deliver remote mediation via video conferencing and telephone during the COVID-19 closures should be built upon and expanded. Remote mediation should be deployed as an alternative to onsite mediation in the coming year in order to enable the Program to operate during court closure periods. It should also be offered on ongoing option to complement onsite services once they recommence in order to make mediation more accessible to parties in the community and enable them to access free/affordable mediation services before and after court hearings and in lieu of filing court actions. Active use of remote mediation for the resolution of cases would both broaden access to justice for litigants and help achieve additional cost-savings and efficiencies for the court and DOR. Online mediation is recommended in the principles of the Tailored Services Pathway.
- 5. Additional program resources already available for similar case types should be leveraged for court and DOR referrals.** The Parent Mediation Program (PMP), sponsored by DOR CSE and administered as a partnership between MOPC and several CMCs, offers four hours of free mediation for eligible parties with child access and visitation issues. Almost half the cases screened in the Program were determined to be eligible for the PMP. Mediators shared information about the PMP during screenings for parties to consider for off-site mediation or if their case could not be reached for onsite mediation at the time of the block day referral. PMP was also used as a source of funding for eligible cases referred to remote mediation during court closures. These practices should continue, as well as the tracking of PMP eligibility through the mediation referral form. Additionally, the PMP should be considered for temporary bridge funding to keep the Program running when awaiting availability of other funding.
- 6. The Essex and Suffolk sites should be continued under the same arrangements in Salem and Boston.** The bi-weekly onsite mediation services at the Essex site in Salem has continued to work well in Year 2 with a continuing stream of referrals from both DOR and judges due to the dedication of the site team from DOR, the court and the CMC. The additional staff assistance on Salem block days provided by DOR and the P&F Court department should be continued as that has been confirmed to be a critical component for effective operations. The weekly onsite mediation services in Boston, newly launched in Year 2, have produced a high

volume of cases being referred to onsite mediation, particularly from DOR, due to the commitment and effective coordination of the DOR lead and staff, the AJCM and other court staff, and the CMC site coordinator and mediators.

- 7. The Middlesex site should be transitioned to Lowell and/or Woburn.** Although the Cambridge site did generate referrals to onsite mediation, the structural and physical limitations and conditions did not improve in Year 2, and the level of overall referrals remained low. Given the P&F Court's planned closure of the Cambridge division and the opening of two new Middlesex divisions in Lowell and Woburn, there is an opportunity to shift the Program to a more suitable site. Lowell has been flagged by the P&F Court Department as likely the best option for the coming year. The CMC serving Cambridge has indicated an interest in continuing to deliver onsite services for either or both of these Middlesex sites. Before transitioning the Program to Lowell, careful vetting of the Lowell site should be done to ensure that the Program criteria can be met, including confirmation of support from the Lowell Chief Justice and judicial case managers, as well as DOR leadership, regional counsel and staff. Even with a transition of the Program to Lowell, the potential for also covering DOR block days in Woburn should be considered for the future.
- 8. Provide dedicated interpreters for onsite mediation services at all sites.** The critical need for interpreters to be available for mediations was flagged in the Year 1 program evaluation and it has emerged again as a key issue in the Year 2 evaluation. Given the substantial number of Spanish speaking litigants with cases in the Suffolk division, the P&F Court was able to arrange for a dedicated interpreter for the Program in Boston on DOR block days. In Salem and Cambridge, the Program was not able to mediate all cases due to the lack of interpreters. Those site teams made do with the court interpreters and DOR interpreters for mediations when they were not tied up in court hearings and trials, but these resources proved insufficient. Thus, the P&F Court should continue the Spanish interpreter assigned to mediations for Suffolk and should also arrange for dedicated interpreters for the Essex and Middlesex sites.
- 9. Standardize the protocol for handling mediation cases with domestic violence issues:** During Year 2, the Program policy about mediating cases with domestic violence was further clarified to prohibit mediation of cases with current restraining orders but to allow mediation of cases with prior restraining orders after appropriate additional safety screening by the CMCs. The CMCs used their own domestic violence screening protocols and procedures to accomplish this when these types of cases were referred. For purposes of quality control, accountability and consistency, it is recommended that the Program create a standardized or uniform set of protocols and procedures for domestic violence screening to be used at all sites.

Attachment A
Probate & Family Court – DOR Onsite Mediation Program
FY20 Program Partners & Participants

Partners & Participants Working Onsite:

Suffolk Division in Boston:

Tanya Fuller, Regional Counsel, Department of Revenue
John Joe (JJ) Hallissey, Assistant Judicial Case Manager, Suffolk Probate & Family Court
Brian Powell, Sessions Clerk, Suffolk Probate & Family Court
Jennifer Hawthorne, MetroWest Mediation Services, Onsite Mediation Coordinator & Mediator

Middlesex Division in Cambridge:

Stephen McNamara, Regional Counsel, Department of Revenue
Lucia Miller, Lead Attorney, Department of Revenue
Renee Kahn, Assistant Judicial Case Manager, Middlesex Probate & Family Court
Barbara Beardslee, Community Dispute Settlement Center, Onsite Mediation Coordinator & Mediator
Pam Barcroft, Department of Revenue, Middlesex Litigation Supervisor

Essex Division in Salem:

Janet Fennell, Regional Counsel, Department of Revenue
Michelle Yee, Judicial Case Manager, Essex Probate & Family Court
Scott Marks, North Shore Community Mediation Center, Onsite Mediation Coordinator & Mediator
Rachel Lasada, Department of Revenue staff assisting onsite
Danielle Rado, Probate & Family Court staff assisting onsite

Other Key Partners & Participants:

Probate & Family Court (P&F Court)

Chief Justice John Casey
Linda Medonis, Deputy Court Administrator
Diane Beswick, Managing Attorney
Christine Yurgelun, Manager of Administrative Services/ADR Coordinator
Matthew Abraham, ADR Coordinator

Department of Revenue (DOR): Child Support Enforcement Division

Maureen Ford, Associate Deputy Commissioner
Joshua Fishbein, Chief Legal Counsel
Karen Melkonian, Counsel

Massachusetts Office of Public Collaboration (MOPC)

Susan Jeghelian, Executive Director
Madhawa Palihapitiya, Associate Director
Jarling Ho, Program Manager
Mette Kreutzmann, Program Manager
Kaila Eisenkraft, Research Fellow
Jennifer Waldron, Graduate Assistant

North Shore Community Mediation Center (NSCMC)

Cynthia McClorey, Director
Deepika Madan, Manager of Mediation Services

MetroWest Mediation Services (MWMS)

Seth Izen, Director
Melinda Milberg, MWMS Suffolk/Boston Onsite Mediator

Community Dispute Settlement Center (CDSC)

Gail Packer, Director
Kim Whelan, CDSC Suffolk/Boston Onsite Mediation Mediator
John Berke, CDSC Suffolk/Boston Onsite Mediation Mediator

Attachment B

On-site Mediation Referral and Processing Form

Did all parties consent to the mediation referral? ☐ Yes ☐ No

- *If yes, fully complete this page and give this form to the parties to bring to the on-site mediator*
- *If no, fill out only *Division; *Date; *Docket #; *Referral Source; and *Case Type and give this form to the on-site mediator or court JCM/AJCM liaison for record-keeping*

Part I: Case & Referral Information [to be filled out by DOR /Court]

*Division: <input type="checkbox"/> Essex <input type="checkbox"/> Middlesex <input type="checkbox"/> Suffolk	*Referral Date: _____
*Docket #: _____	Judge: _____
*Referral Source: <input type="checkbox"/> DOR Block Day Session <input type="checkbox"/> P&F Court Judge/Pre-Trial Session	
Referred by: _____	
Case Name: _____	
Party Attorney Names: _____	

***Case Type:**

- ☐ Paternity Establishment
- ☐ Custody-Support-Parenting Plan (209C) Establishment
- ☐ Child Support Establishment
- ☐ Child Support Modification
- ☐ Child-related Modification
- ☐ Child Support Enforcement/Contempt
- ☐ Other (please specify): _____

Case Status:

DOR Referral:

- ☐ Agreement on child support and need to return to DOR attorney for court approval
- ☐ Did not reach agreement and need to return to DOR attorney for court hearing

Judge/Court Pre-Trial Referral:

- ☐ Conference already held
- ☐ Parties need to be conferenced after mediation

Reason for Referral to Mediation (check all that apply):

- ☐ Parenting plan development
- ☐ Child access & (child-related) issues within an existing parenting plan
- ☐ Other child-related issues (e.g., custody, medical, school)
- ☐ Separation/Divorce-related issues
- ☐ Other (specify): _____

Comments: _____

Part II: Report Back from Onsite Mediation [to be filled out by Mediators]

Names of Mediators/Center Staff: _____

Status of Referral: (check all that apply):

- ☐ Intake/screening held, and case determined appropriate for mediation
- ☐ Parties elected to mediate and signed agreement to participate (see below)
- ☐ Parties declined to participate in mediation and were referred back to Court JCM
- ☐ Case was not mediated on referral date due to limited time/space
- ☐ Parties elected to mediate with mediators outside the court house
- ☐ Parties did not contact the mediator after referral
- ☐ Other (please specify): _____

Mediation Services:

- ☐ Length of mediation session _____ (including screening time)
- ☐ Outcome of mediation process: ☐ settled ☐ partially settled ☐ not settled ☐ on-going
- ☐ Parties elected to continue mediation with the mediators outside the court house
- ☐ Mediators helped parties to write up their mediated agreement
- ☐ Parties were referred to Court JCM/AJCM liaison/Sessions Clerk to present mediated agreement for entry as court order or resume DOR block day hearing or pre-trial conference

Potential Eligibility for Parent Mediation Program (PMP):

- ☐ Case would **not** have been PMP eligible
- ☐ Case would have met the following PMP eligibility criteria:
 - Biological or adoptive parents with at least one minor child
 - If parents still reside together, they must have desire to move apart
 - One parent considered custodial/primary caretaker and the other non-custodial/non-primary
 - Issue(s) must be around custody, access, parenting time and/or visitation issues, and co-parenting issues that have a direct impact on access/visitation
 - At least one parent must live in Massachusetts.

Mediator Comments (e.g., referral process, cases status, next steps, mediation space, etc.):

Mediators submit copies of this Referral Form to the following:

- ☐ DOR Attorney/Staff or court JCM/AJCM liaison making the referral to mediation
- ☐ CMC Director or Staff Coordinator
- ☐ MOPC Program Manager: Jarling Ho - email: jarling.ho@umb.edu

Attachment C

Docket #: _____

On-site Mediation Program

AGREEMENT TO PARTICIPATE IN MEDIATION

We have been referred for mediation services and understand and agree to the following terms:

1. **Mediation is voluntary.** We, or the mediator(s), may choose to end the process at any time for any reason.
2. **Mediator(s) are impartial.** Mediator(s) facilitate communication and assist participants explore options. Mediator(s) do not take sides or impose decisions.
3. **Mediation is confidential.** The mediator(s) will keep the details of our case and all related documents confidential within the mediation program; case related data used in program reports will not identify us by name or otherwise allow anyone to identify us. EXCEPTION: The mediator(s) reserve the right to disclose suspected abuse or neglect and/or plan to commit a crime to the proper authorities. Additionally, mediated agreements are shared with the court with our consent.
4. **Mediator(s) do not provide expert advice.** Mediation services are not the same as legal or financial advice, therapy or any professional service other than mediation. We may seek expert advice at any time during the mediation and have the right to have independent counsel review any agreement before signing it.
5. **Mediation involves full financial disclosure:** If we discuss finances, we will disclose all of our financial worth, assets and liabilities during the mediation process.
6. ☐ The mediator(s) have disclosed a conflict of interest and we agree to waive it.
☐ The mediator(s) have indicated no conflicts of interest.

Signed by the parties:

Print Name

Signature

Date

Print Name

Signature

Date

Print Name

Signature

Date

Print Name

Signature

Date

Signed by the mediator(s):

Print Name

Signature

Date

Print Name

Signature

Date

Appendix

FY 2020 Evaluation of the Onsite Mediation Program¹

A. Introduction:

The Family Justice Initiative (FJI), in a 2019 report² that formed the basis for the Massachusetts Probate & Family Court's plans for improving the way the court handles domestic relations cases, described the value of mediation as a “tailored-services resolution” that “is more likely to meet the family’s needs if the parties are invested and have agreed to the outcome.”³ The FJI also recommends that courts not only provide mediation and problem-solving services but that they should also gather and analyze evaluation data, particularly from the parties they serve in order to be able to meet their needs.⁴

Additionally, the FJI recommends evaluation based on certain performance measures. The goal of this recommended evaluation framework is to ensure fidelity to the processes by collecting and analyzing data on; time and cost savings, time to disposition/age of active pending caseload; case complexity; procedural fairness and perspectives from judges and court staff who handle these domestic relations cases.⁵

MOPC evaluation of the effectiveness of the Probate & Family Court’s on-site mediation program applied these principles by collecting mediation participant data that can inform the use of on-site mediation as a means of processing domestic relationship cases. Program effectiveness was assessed through measures that took into account referral, screening and mediation rates; satisfaction rate; time and cost efficiencies to parties and the court, including reduction in court involvement; impact on parties like children’s benefits, improved communication between disputing parties, less conflict between parties, and resolution of parenting and child welfare issues; gender, race/ethnic diversity of parties; documented procedural fairness (like fee waivers); and meeting the interests of the program’s stakeholders – the court, the DOR, MOPC, and, ultimately, the needs of the individuals to be served – to the extent feasible. The participation of these stakeholders in program implementation and evaluation illustrate the extent

¹ Conducted and reported by the Massachusetts Office of Public Collaboration Research Unit.

² The FJI project was launched by the National Center for State Courts in 2017 with support from the SJI to evaluate and improve the way state courts handle domestic relations cases. Subsequent to this, Bristol and Plymouth Divisions of the Massachusetts Probate and Family Court commenced operationalizing the FJI Pathways model prior to statewide adoption. This evaluation report considers these initiatives as a blueprint for evaluating the ADR collaborative that is known as the Probate & Family Court Onsite Mediation Program (OMP).

³ Davis, A. (2019). *Family Justice Initiative: Family Justice Initiative Pathways*. National Center for State Courts, p.9.

⁴ *Ibid.* pp. 20-23.

⁵ Davis, A. (2019). *Family Justice Initiative: Considerations for FJI Performance Measures*. National Center for State Courts.

to which a collaborative approach can promote resolution of domestic relationship cases, thereby increasing community partnerships in ways that leverage additional resources.

Specifically, the goal of this evaluation was to assist the Probate & Family Court Onsite Mediation Program for DOR Block Days in: a) establishing an evidence-base for successful implementation across fiscal years; and b) demonstrating the impact of the mediation services for collaborative partners/sponsors and disputing parties.

B. Background

The Probate & Family Court Onsite Mediation Program (OMP) was designed to assist parents, referred by Massachusetts Department of Revenue (DOR) attorneys, with the resolution of parenting disputes by providing subsidized mediation services, free of charge to parties, at Probate & Family Court sites. The Massachusetts Office of Public Collaboration (MOPC) was responsible for program management. Direct financial support for the OMP was provided by the Probate & Family Court. Upon implementation of the program in March 2019 and continuing for 16 weeks until the end of the 2019 fiscal year (FY), case referrals were received from judges or from court staff at pre-trial sessions as well as from DOR attorneys. Mediation services – primarily consisting of screenings and mediations and ancillary activities – were provided by three community mediation centers – Community Dispute Settlement Center (CDSC), MetroWest Mediation Services (MWMS), and North Shore Community Mediation Center (NSCMC) – at two court divisions: Middlesex (in Cambridge) and Essex (in Salem). In September 2019, the OMP was expanded to the Suffolk Court division in Boston. The program continued to function at the three court divisions until March 16, 2020 when non-emergency access to the courts was restricted in response to the pandemic outbreak, effectively bringing OMP operations at the court sites to a halt.

C. Directing the implementation of the OMP as a collaborative enterprise:

The implementation of a multi-organization, multi-site program like the OMP to deliver mediation services to divorcing or separating parties involved the coordination and performance of tasks by the court, the DOR, community mediation centers, and MOPC (hereafter collectively referred to as organization partners). Twenty-six individuals from these organizations (hereafter program colleagues) had key roles in guiding and carrying out program operations. The general import of survey responses from 23 of these program colleagues (comprising ten respondents from centers, five from the court, five from DOR, and three from MOPC) indicated that their collective efforts on behalf of the OMP bore many of the hallmarks of a collaborative enterprise.⁶

⁶ See the Wilder Collaboration Factors Inventory from the Wilder Foundation; also see Frame, T. M., Gunton, T., & Day, J. C. (2004). The role of collaboration in environmental management: An evaluation of land and resource planning in British Columbia. *Journal of Environmental Planning and Management*. 47:1, 59-82.

1. Past and present positive relationships among program colleagues and the organization partners:

Collaborations are more likely to be productive when relationships among collaborators are mostly positive. Majorities of the surveyed OMP program colleagues agreed, either strongly or simply, about the affirmative nature of their association. The organization partners had a history of working together (as per 73% of 22 respondents). Apart from a neutral response from a single court respondent, the remaining 22 respondents agreed strongly (57%) or simply agreed (39%) that trust and respect formed the basis of their relationship or that of the organization partners. Nearly all (96% of 23 or 22) respondents implicitly acknowledged the value that the organization partners added to the OMP by recognizing that no single organization could easily accomplish OMP goals. Moreover, the partners were characterized as “right” for the program (as per 91% of 23 or 21 respondents, with one center respondent maintaining neutrality and a DOR respondent disagreeing).

2. Interests of organization partners in the OMP:

An effective collaboration is more likely to ensure that a project or program addresses relevant interests and values of stakeholders when the collaborators adequately represent those values and interests.

a. Values and interests of program colleagues and organization partners in the OMP:

Program colleagues remarked on their sense of shared values – 100% of 23 respondents noted the convergence in their views about the program’s purpose (strong agreement from 39% and simple agreement from 61%). In addition, the goals of the program were considered reasonable by all but one respondent (who was neutral about the matter).

As for organizational interests, addressing party needs was the common thread in the assortment of interests, enumerated by respondents, that underlay the involvement of the organization partners in the OMP. Each organization’s other interests served as context for their particular perspective on addressing party needs. Accordingly, centers’ interest in meeting parties’ needs was accompanied by their focus on promoting the awareness and use of mediation as well as strengthening working relationships with the court and DOR. The court was concerned about serving pro se parties with parenting issues and increasing court efficiency through settlements, process simplification, and greater awareness and innovative use of alternative dispute resolution, particularly with the DOR. The DOR aimed to better serve parties and reinforce compliance with child support obligations by encouraging party involvement in the child’s life and assisting with issues outside the DOR’s purview. Besides advocating for compensation of mediation services, MOPC sought to meet parties’ dispute needs by increasing their access to justice and to an evidence-based program that modeled multi-organizational on-site mediation.

b. Addressing the values and interests of the organization partners through the OMP:

Apart from two respondents who felt unable to assess the OMP's effect on organizational interests, a small majority of 52% of the remaining 21 respondents considered that the interests of their organizations were fully addressed by the program. However, upon the addition of modestly positive responses from ten other respondents – eight who found their organization's interests were moderately addressed and two who indicated that the interests were somewhat addressed – plus the absence of any negative responses, that small majority grew into a consensus that organizational interests were dealt with by the OMP, at least to some extent.

3. *Commitment to the OMP:*

A shared commitment to a program's success can motivate cooperation among collaborators, thereby increasing the effectiveness of collaboration. The dedication of program colleagues to making the OMP work was unanimously confirmed by respondents (strong agreement from 61% and simple agreement from 39% of 23 respondents). Commitment to the program's success was also attributed to leadership and to organization partners by nearly all respondents (22 or 95% of 23, leaving a single neutral respondent). Affirmation of participants' time commitment, though, was less enthusiastic – although a majority of 74% of 23 respondents agreed strongly or simply about the adequacy of participants' time investment, 22% were neutral and one court respondent dissented.

4. *Power dynamics among the collaborators:*

An enduring imbalance in the power dynamics among the group of collaborators may imperil an effective solution of the problems under consideration. Similarly, undue influence exerted on behalf of certain interests may undermine optimal problem-solving by collaborators. To get some insight into the power dynamics among organization partners and their effect on the OMP, program colleagues were asked to identify which organization partners wielded influence over the responses to certain program issues and to assess the impact of the response. The program issues in question, which emerged over the life of the OMP, included expanding the program to other court divisions, notifying parties in DOR cases about the opportunity to mediate, promoting mediation services to parties in court-referred cases, establishing a policy about mediating in domestic violence situations, arranging for interpreter services at mediations, and modifying forms, namely, the mediation referral form and the agreement to mediate form.

Influence was exercised by all the organization partners over every program issue according to at least some respondents, whether they were thinking about the power of their own organization or that of the other organization partners. The breadth of respondents' recognition of an organization partner's clout, though, varied with the program issue. Thus, all the organization partners were identified by respondent majorities as holding sway over referral form modification. As for the other program issues, fewer organization partners were recognized by majorities of respondents for their influence. And so, respondent majorities viewed the court, the DOR and MOPC as key to OMP expansion. In addition, according to most respondents, the

centers and the court exercised their influence to promote mediation services to parties in court cases – as did the DOR and the court in notifying parties in DOR cases about mediation; the court and DOR in arranging for interpreter services; the centers and the court in making policy related to domestic violence; and the centers and MOPC in modifying the agreement to mediate form. Most respondents also acknowledged the influence of their own organization on program issues. MOPC respondents were the exception, failing to credit MOPC’s influence on both notification about mediation services in DOR cases or providing access to interpreter services.

However influence was exerted, the impact on the OMP from the decisions and actions taken by program colleagues in response to the above program issues was viewed as mostly positive, suggesting that their collective action tended to produce solutions. Respondents were entirely in accord about the positive impact on the OMP from the promotion of mediation in DOR cases. Robust respondent majorities of 70% or more (23 respondents) pointed out the value to the OMP from promoting mediation in court cases, modifying the mediation referral form, and formulating mediation policy in domestic violence situations. Smaller but still sizeable majorities of 65% discerned positive effects on the OMP from OMP expansion and adjusting the agreement to mediate form. A scant majority of 52% found that arranging for interpreter services in mediation benefited the OMP. Overall, majority findings of a positive impact from considered issues fell short of unanimity due to a minority of responses indicating neutrality, a lack of information, or untimeliness, except for the issue regarding access to interpreters. Unlike the other program issues, the impact from the interpreter issue was also described as negative by five respondents from three organization partners – the centers, the court, and DOR.

5. Informed decision-making and action:

Successful collaborations are associated with effective communication that provides the ingredients for well-informed decision-making and action.

a. Communication of information:

Most respondents agreed that necessary information related to the OMP was conveyed. The communication of relevant information from program colleagues and from leadership received widespread approval from respondents: out of 23 respondents, strong or simple agreement about effective communication from leaders was expressed by 91% of respondents, and the presence of both formal and informal avenues for communication among program colleagues was confirmed by 96%. Moreover, a large portion of colleagues (83%) further agreed that they were informed about the program frequently enough.

b. Knowledge about program goals and roles in program:

The effectiveness of the communication of information about the OMP may be indicated in part by the robust majorities of respondents who considered themselves knowledgeable about the program. A clear understanding of the purpose of the OMP was unanimously claimed by the 23 respondents. By the same token, familiarity with and comprehension of program goals were ascribed to OMP participants in general by all 22 responding program colleagues. An

understanding of their roles and responsibilities in the program was attributed to OMP participants by a large majority of 82% (19 of 23) of respondents that fell short of unanimity due to four neutral responses.

6. Evaluation and reporting on OMP operation and impact:

Evaluation and reporting of the outcomes of decisions and activities as well as a cost-benefit analysis of the collaboration approach provide information necessary for well-informed decision-making and action by collaborators. Surveyed program colleagues largely concurred about the existence of measures to assess program activities and services (as per 91% or 21 of 23). It should be noted that the survey in which program colleagues recorded these responses was one of these measures. Yet, a smaller – but still substantial – proportion of responding colleagues of 78% acknowledged their own examination and reporting activities regarding program outcomes. All the same, as many as 87% of 23 respondents agreed strongly or just agreed that the information gained about program activities, services, and outcomes was used to improve their joint work.

The recognition of existing OMP evaluation measures by the majority of respondents was bolstered by the early assignment of evaluation and reporting responsibilities onto OMP administration. As program manager, MOPC was made accountable for reporting on the OMP's activities and services and for evaluating the program's effectiveness and impact during the first three quarters of FY 2020. The report and evaluation results were prepared for dissemination at the end of the fiscal year. Throughout the first three-fourths of the 2020 fiscal year, OMP performance data were recorded, and program colleagues were regularly advised about program developments including the frequency of such activities as referrals, screenings, and mediations.

D. OMP operations – referrals, screenings, and mediations:

The expansion of OMP to the Suffolk court division led to an upsurge in referrals and attendant program activities during the first 36-37 weeks of FY 2020. This data set includes the brief burst of OMP activities – three case referrals from the DOR, three case screenings, one mediation, and a single mediated agreement – conducted through remote means during April 2020, which were brought about through the determined efforts of DOR and center staff connected to the Essex court. In any event, during the relevant time periods under consideration, referrals, screenings, and mediations increased markedly from the FY 2019 period of March 2019-June 2020 (hereafter referred to as the FY 2019 period) to the FY 2020 period of July 2019-March 2020⁷ (hereafter referred to as the FY 2020 period). During the FY 2020 period, 343 cases were referred for OMP services, 164 cases were screened, and 156 cases were mediated, in contrast to FY 2019 period, when 75 referrals were received, 51 cases were screened, and 41 cases were mediated. The gains made in OMP operations during the FY 2020 period were attributable not only to the increased amount of time in which the program operated

⁷ This period should be understood to include two separate days in April on which OMP activities occurred.

but also to the additional demand for OMP services from the Suffolk court division. The OMP at the Suffolk court accounted for 64% of the 343 referrals (219 referrals), 46% of the 164 cases screened (75 screened cases), and 48% of the 156 cases mediated (75 mediated cases).

The outsize contribution of the Suffolk court division program to the growth of the OMP as a whole relative to the other court divisions may be partially explained by the diminution in institutional participation – as indicated by case referrals – at the Middlesex and Essex court divisions, which became apparent upon a close examination of referral data for the last two fiscal year periods (see Table 1). Contrary to expectations, greater familiarity and experience with the OMP did not appear to translate into more referrals from the court and the DOR at the Middlesex and Essex courts. Compared to the 16-week referral numbers from the two court divisions in FY 2019, the average FY 2020 referral numbers from these divisions over a roughly comparable, though somewhat longer, interval (i.e., a period of approximately 18 consecutive weeks) declined by 17% (from 75 referred cases in the FY 2019 period to an average of 62 referred cases in the FY 2020 18-week period).

The decline in referrals was probably not attributable to the activities of the two general referral sources. The proportion of referrals from the DOR and from the court (i.e., judges or court staff) to the program at the Middlesex and Essex court divisions remained relatively constant – hovering around two-thirds of DOR referrals and one-third court referrals – from one fiscal year to the next (see Table 1). Specifically, out of 75 referrals in the FY 2019 period, 63% were DOR-referred and 37% were court-referred while out of 124 Middlesex and Essex referrals in the FY 2020 period, 68% were DOR-referred and 32% were court-referred. As a result of the entry of the Suffolk court division into the OMP in the FY 2020 period, the proportion of DOR referrals in the OMP increased to 81% even as the proportion of court referrals decreased to 19%.

Table 1. OMP referral sources by FY 2019 and FY 2020 periods.

	FY 2019 period			FY 2020 period		
Court divisions & OMP	Court referrals	DOR referrals	Total referrals	Court referrals	DOR referrals	Total referrals
Suffolk	n/a	n/a	n/a	26	193	219
Middlesex	6	26	32	16	41	57
Essex	22	21	43	24	43	67
OMP total	28	47	75	66	277	343

Due in part to the smaller number of candidates for screening resulting from the lower average FY 2020 period referral numbers, the average number of cases screened at the Essex and Middlesex courts during the relevant period in FY 2020 (an average 44.5 cases screened) was 13% lower than the number of cases screened in the FY 2019 period (51 cases screened). In contrast, mediation numbers at the two sites did not exhibit the same downward trend as did the

referral and screening numbers (see Table 2). Compared to the 41 cases mediated during the last 16 weeks of FY 2019, the average number of cases that were mediated during the roughly comparable period in FY 2020 was about the same: 40.5 mediated cases. The inclusion of the OMP's mediation activities at the Suffolk court raised the FY 2020 period mediation average to 78 mediated cases. All in all, 156 cases were mediated during the FY 2020 period, which amounted to under one-half or 45% of the referred cases. Mediation led to 124 agreements from the 156 mediated cases, producing an agreement rate of 79%, which was near the top of the national range of 50% to 80% for divorce mediation rates.⁸

Table 2. OMP mediated cases by FY 2019 and FY 2020 periods.

Court divisions	FY 2019 mediated cases	FY 2020 mediated cases
Suffolk	n/a	75
Middlesex	15	41
Essex	26	40
Total	41	156

D. Program colleagues' feedback about the impact of OMP mediation during the FY 2020 period:

In general, the accomplishments achieved with the help of OMP services reported by surveyed program colleagues roughly tracked the interests that organization partners had in the OMP. The concern over satisfying party needs, shared by all the organization partners, was met through OMP services with respect to children's benefits, improved communication between disputing parties, less conflict between parties, and resolution of parenting and child welfare issues according to majorities of 70%-74% of respondents. Indeed, the symbiotic relationship between the court and the OMP with respect to addressing party needs was noted by a court respondent:

It [the OMP] was a great resource to have. The more avenues the Court is provided to manage the cases, the more effective the Court will be in helping families. It was a good resource for cases that needed more time than Probation can provide on a busy day.

A second court respondent was moved to praise the work of centers:

The mediation centers in particular have been stellar.

Similarly, three DOR respondents noted how the value of the program for the DOR resided in the OMP's service to parties:

⁸ See Wilkinson, J. (2001, August). *A study of Virginia and ten states: Final report and recommendations*. Virginia Association for Community Conflict Resolution (VACCR), Institute for Environmental Negotiation, University of Virginia.

It was a very helpful program to low income parties who would otherwise not seek out mediation services.

The program made mediation services available to our customers seeking assistance with parenting time and custody issues.

DOR's child support program has specific programmatic requirements that do not permit our staff to enter into agreements outside the scope of the child support program. Our ability to partner with entities who are skilled in handling this type of mediation with parties subject to a child support order help address customer issues outside the scope of DOR's mandate.

Reduced public welfare dependence was the least recognized outcome achieved, chosen by a single center respondent. Minorities of respondents reported that child support issues and divorce/separation issues were successfully addressed through the OMP: just under half (48%) indicated that the OMP helped resolve divorce/separation issues while just over one-third (35%) considered that child support was expedited by the OMP.

Institutional or system-level accomplishments accrued to the organizations participating in the OMP and to the field of alternative dispute resolution: 74% of 23 respondents reported that relations with the organization partners were strengthened and that the profile of mediation was enhanced, and 65% considered that the OMP offered a reproducible model for on-site court mediation. Respondents also generally agreed that the program contributed to the increased efficiency of organization partners. The extent to which this contribution was recognized varied with the type of efficiency-oriented action. The program's contribution to producing agreement among disputants and to savings in the court's time on cases was recognized by majorities of respondents: 59% of 22 respondents and 65% of 23 respondents, respectively. Half of 22 respondents also agreed that pre-trial activities and trials were also reduced as a result of program services. In particular, out of 23 respondents, 57% saw a lower need for separate actions and 65% reported fewer court appearances. However, efficiencies comprising reductions in parties' time at court; in financial costs to parties, to the court, and/or to the DOR; and in the time the DOR spent on cases were attributed to OMP services only by minorities of 30% to 45% of respondents.

The merit of OMP's claim to continued financial support was not refuted by any of the 23 respondents. Apart from two respondents who claimed insufficient information for an opinion, the remaining 21 respondents (91% of 23 respondents) felt that the program should continue, eight of whom (38% of 21 approving respondents) maintained that the program should persist unchanged whereas a majority of 13 (62% of 21 approving respondents) conditioned their backing for OMP's continuation on making changes. The apparent intent behind the recommended changes was to improve the OMP.

The more comprehensive changes that were put forward involved challenges posed by funding, finding OMP court sites, the pandemic, and organizational involvement in the OMP.

Funding and OMP siting were just mentioned for their potential for change. The need for program adjustments in response to the pandemic was noted by a respondent from each of the organization partners. In particular, respondents from the centers, the DOR, and MOPC urged the development of OMP capacity for remote mediation. Doubts about the suitability of DOR's involvement in the OMP were raised by a DOR respondent. The perceived impact of the OMP on delaying DOR procedures and the irrelevance of child support issues to mediation apparently outweighed the admitted usefulness of the OMP and formed the basis for the respondent's implied suggestion that OMP services be limited to motion sessions and excluded from DOR sessions:

The program is useful but is not best-placed in the DOR session. It slows down our session and has little impact on child support because the issues operate independently and support issues are addressed prior to a case going to mediation. The program would be best served in a regular motions session.

The greatest number of recommended changes may be described as practical in nature. Suggestions for enhancing participation from the organization partners and their personnel included strengthening the DOR's commitment to the OMP (source: center respondent), improved commitment from court staff at certain (unnamed) sites (source: court respondent), examining the variations in DOR referrals to seek improvements (source: DOR respondent), and increasing dedicated DOR and court staff (source: center respondent). Mediator-related changes involved increasing mediator stipends (source: center respondent) and increasing mediator availability at the Suffolk court (source: center respondent). Staffing changes that received attention concerned interpreter services. The need for more interpreters and for dedicated interpreters was cited by four respondents:

We benefited greatly from having available dedicated staff from the Court (name) and DOR (name). We also need available interpreters (source: center respondent).

Availability of dedicated staff from DOR and Court on-site for the program on DOR Block Days Availability of interpreters (source: center respondent).

We need to resolve the issue of interpreters. DOR has verified that Worcester would be an appropriate division for expansion (source: DOR respondent).

If the program continues in Middlesex, the program must supply their own interpreters. DOR has only one interpreter per session and each mediation sidetracks that interpreter for possibly an hour, making the DOR funded interpreter unavailable for DOR cases and resulting in frustration from the court. (source: DOR respondent).

Procedural changes, favored by DOR respondents, included fee waivers for e-filings and for regular filings, simplification of parties' financial statements, and uniform procedures for incorporating mediated agreements into judgments.

E. Party feedback about the impact of OMP mediation on participating parties during the FY 2020 period:

In order to assess the impact of OMP mediation on disputing parties, parties were invited to voluntarily complete a post-session survey that asked for their feedback about their reasons for mediating, the outcomes achieved through mediation, and the assistance received from mediators and staff. Two hundred twenty-one parties,⁹ representing 135 cases¹⁰ (or 86% of the 156 cases mediated under OMP auspices) reported on 108 mediation sessions. Forty-three percent of the 221 surveyed parties received OMP services at the Suffolk court, 30% at the Salem court, and 27% at the Cambridge court. Parties also provided demographic information on a separate survey. Information about mediation agreements was obtained from official records. Program and party impact evaluation was based on aggregated data, which were analyzed in terms of percentages, usually calculated to the nearest integer.

1. Mediating parties' circumstances during the FY 2020 period:

a. Gender of surveyed parties:

Among the OMP parties who identified their gender, virtually equal numbers of men (101) and women (102) participated in the post-session survey.

b. Racial/ethnic affiliation of mediating parties:

Asian, Black/African American, Hispanic/Latino, and White racial/ethnic categories collectively encompass almost the entire population of Massachusetts as well as the separate populations of Suffolk, Middlesex, and Essex Counties (see Table 3). Likewise, the overwhelming majority of OMP parties (95% of 197 responding parties) identified their racial/ethnic affiliation with one of these four groups: Asian (5%), Black/African American (23%), Hispanic/Latino (36%), and White (31%). Unlike the state and county populations where Whites constituted the majority racial/ethnic group, no racial/ethnic group predominated among OMP parties as a whole. In fact, a plurality of OMP parties self-identified as Hispanic/Latino, with Whites and Black/African Americans comprising increasingly smaller percentages of the OMP population while the share of Asians was slight.¹¹

⁹ In at least two mediations, other individuals besides the named parties participated in the mediation session.

¹⁰ In several instances, mediating parties represented more than one docketed case in a single mediation. Seventeen mediations each involved two cases; two mediations separately involved three cases; and another two mediations involved four cases each.

¹¹ Spanish translations of mediation forms as well as Spanish translators were made available to accommodate the communication needs of Spanish-speaking parties at mediation sessions.

Table 3: Proportion of ethnic/racial groups in Massachusetts and specified cities and in the surveyed OMP mediating population as a whole and at courts in the FY 2020 period.

	Asian	Black/African American	Latino/Hispanic	White
Massachusetts ¹² (n: 6,892,503)	7.1%	8.9%	12.3%	80.8%*
Suffolk County ¹³ (n: 803,907)	9.3%	24.7%	23.4%	61.5%*
Middlesex County ¹⁴ (n: 1,611,699)	12.9%	5.9%	8.3%	78.5%*
Essex County ¹⁵ (789,034)	3.9%	7.1%	21.9%	85.2%*
OMP mediating parties overall (n: 197)	5%	23%	36%	31%
Mediating parties at Suffolk court OMP (n: 74)	1%	32%	54%	14%
Mediating parties at Middlesex court OMP (n: 51)	2%	20%	33%	47%
Mediating parties at Essex court OMP (n: 53)	0%	23%	26%	51%

*Includes individuals who also identified themselves as Hispanic/Latino.

More than half the surveyed Hispanic/Latino and Black/African American parties in the OMP – 56% and 52%, respectively – came from the Suffolk OMP as did the smallest percentage (16%) of White OMP parties (see Table 4). Meanwhile, the Essex OMP accounted for a plurality of 44% of White OMP parties.

¹² Available at [https://www.census.gov/quickfacts/fact/table/MA/INC110218\)#qf-headnote-b](https://www.census.gov/quickfacts/fact/table/MA/INC110218)#qf-headnote-b)

¹³ Available <https://www.census.gov/quickfacts/suffolkcountymassachusetts>.

¹⁴ Available at <https://www.census.gov/quickfacts/middlesexcountymassachusetts>.

¹⁵ Available at <https://www.census.gov/quickfacts/essexcountymassachusetts>.

Table 4: Percent of parties from each court site in OMP racial/ethnic group during the FY 2020 period.

Surveyed racial/ethnic group	Percentage of parties from Suffolk OMP in racial/ethnic group	Percentage of parties from Middlesex OMP in racial/ethnic group	Percentage of parties from Essex OMP in racial/ethnic group
OMP racial/ethnic population (n: 178)	42%	29%	30%
Black/African American (n: 46)	52%	22%	26%
Latino/Hispanic (n: 71)	56%	24%	38%
White (n: 61)	16%	39%	44%

c. Annual income of mediating parties:

According to the survey responses of 142 respondents, parties from a wide range of income levels – from \$0 to \$160,000 – received mediation services from the OMP (see Table 5). On average, mediating parties earned an annual income of \$37,728. At least 14% could qualify as indigent, with incomes under \$19,000.¹⁶ About one-fifth (or 21%) of the parties would be considered low-income, earning less than \$25,000 (specifically, \$25,365);¹⁷ 73% were lower income, making under about \$50,000 (specifically, \$51,585); and 26% were middle income with incomes between approximately \$50,000 and \$155,000 (specifically, between \$51,843 and \$154,756).¹⁸

Access to justice for the resolution of legal issues tends to be out of reach for most low- and middle-income individuals due to the costs associated with the justice system: “An estimated four-fifths of the individual legal needs of the poor, and a majority of the needs of middle-

¹⁶ Indigency standard used by the Massachusetts courts is 125% of the current Federal Poverty Line. The 2020 Federal Poverty Level for a family of two is \$17,240, and 125% of this amount is \$21,550. See <https://www.mass.gov/service-details/eligibility-requirements-for-indigency-waiver-of-fees>

¹⁷ “The term “low-income individual” means an individual whose family's taxable income for the preceding year did not exceed 150 percent of the poverty level amount,” which for a family of two amounted to \$25,365 as of January 11, 2019. (Federal Trio Programs: Current-Year Low-Income Levels. Retrieved February 4, 2020, from <https://www2.ed.gov/about/offices/list/ope/trio/incomelevels.html>).

¹⁸ According to the Pew Research Center’s definition of middle income as 67% to 200% of overall median household income. (Pew Research Center. (2015, December 9). The American middle class is losing ground. Retrieved February 3, 2020, from <https://www.pewsocialtrends.org/2015/12/09/the-american-middle-class-is-losing-ground/>). The median household income for Massachusetts in 2019 was \$77,378. (US Census Bureau. QuickFacts Massachusetts. Retrieved February 3, 2020, from <https://www.census.gov/quickfacts/fact/table/MA/INC110218>)

income Americans, remain unmet.”¹⁹ Because of the services provided by the OMP, 99% or 141 surveyed parties with incomes under \$155,000 were able to access justice through mediation to get their divorce-related legal issues addressed.

Table 5. Number of surveyed mediation parties at each income level during the FY 2020 period.

Income levels	# of mediation parties at income level (n=142)
\$0-9,999	20 (14%)
\$10,000-19,999	10 (7%)
\$20,000-29,999	31 (22%)
\$30,000-39,999	24 (17%)
\$40,000-49,999	19 (13%)
\$50,000-59,999	13 (9%)
\$60,000-69,999	5 (4%)
\$70,000-79,999	3 (2%)
\$80,000-89,999	11 (8%)
\$90,000-99,999	4 (3%)
\$100,000	1 (.07%)
\$160,000	1 (.07%)

d. *Parties’ reasons for choosing mediation:*

Parties were introduced to the OMP through referrals from either the court or the DOR. Out of 107 mediations, most of the cases (58%) were referred by the DOR while a large minority of 42% were court-referred. However, these referrals did not motivate a corresponding portion of parties to mediate. A scant third or 34% of 217 surveyed parties cited recommendations from the court as a reason for their decision to mediate, whereas a scant fifth or 19% were moved to mediate by DOR recommendations. The largest share of surveyed parties – 43% – turned to mediation in preference to court proceedings. The accessibility of mediation and the absence of fees separately incentivized nearly one-third (34%) of parties. Over one-fourth (29%) of parties were attracted by the confidentiality of mediation proceedings while just under one-fourth (24%) were drawn to mediation by positive word of mouth. By and large, no one reason prompted a majority of surveyed parties to choose mediation. Nearly all mediating parties – 96% of 191 respondents – indicated that the information they were given about mediation was clear, which suggests that their decision to mediate involved informed consent.

2. Mediation outcomes during the FY 2020 period:

a. *Progress made in resolving issues through mediation:*

¹⁹ Rhode, D.L. (2009). Whatever happened to access to justice. *Loyola of Los Angeles Law Review*, 42, 869-911, 869. Retrieved March 3, 2016, from <http://digitalcommons.lmu.edu/llr/vol42/iss4/2>

Parenting plans loomed large in both the institutional and party views of mediation-ready issues. For parties, though, parenting time issues outnumbered parenting plan concerns.

Any child-related issue may be addressed either within the context of a parenting plan or separately and apart from such a plan. As far as the court and the DOR were concerned, most cases were referred to mediation to tackle parenting plan issues: parenting plan development was identified as an issue in 68% of 93 referred cases while child access and (child-related) issues within an existing parenting plan were involved in 12% of the referred cases. Other child-related issues – for example, those concerning custody, medical matters, and school – were identified by the DOR and the court as issues warranting mediation attention in nine percent of referred cases.

As for parties, the largest number of surveyed parties – 88% of 175 respondents – regarded issues over parenting time relevant to mediation whereas the second largest number of parties – 83% of 144 – considered the development or modification of parenting plans as appropriate issues to mediate. Other child-related issues were pertinent to mediation for smaller, but still sizable, majorities of surveyed parties: assignment of parent responsibilities was an applicable issue for mediation for 72% of 147 parties, finances for 71% of 156 parties, and custody for 67% of 156 parties.

Mediation was successful in resolving the variety of child-related issues listed on the survey – that is, parenting time, parenting plans, parent responsibility assignment, custody, and finances – for substantial minorities of 40% or more of surveyed parties. Indeed, parties’ assessment of progress achieved in child-related issues during mediation mirrored their assessment of the applicability of such issues for mediation: complete progress was made in settling matters relating to parenting time issues for 49% of 175 parties, to parenting plans for 48% of 144 parties, to the assignment of parent responsibilities for 46% of 147 parties, to custody for 42% of 156 parties, and to financial matters for 40% of 156 parties.

b. Agreements reached:

Agreements were reached at mediation sessions in greater numbers than might have been expected from the reports of full progress in addressing issues at these sessions. Across 107 mediations, sessions lasted an average of one hour and forty minutes, and ranged from twenty minutes to five hours and fifteen minutes in duration. Because of surveyed parties’ participation in OMP mediation, controverted issues were settled at 76% of 104 mediation sessions, and partially settled at another 11% of these sessions, producing a 76% agreement rate for completed agreements and an 87% rate for all agreements, both fully and partially completed. Agreement eluded parties at 13% of the mediation sessions, and the settlement status of 0.09% of sessions (that is, a single session) was left undecided since the discussion was considered on-going.

Out of the 81 to 90 agreements²⁰ that issued from OMP mediation, the contents of 57 (including two temporary orders) were available for scrutiny, thereby providing insight into the kinds of issues that were considered and settled through the mediation process. Among the 57 agreements examined, only 18% (ten agreements) expressly referred to a parenting plan.

²⁰ At least two of the eleven partial agreements were written down. It is unclear whether or how the remaining nine partial agreements were recorded.

Notably, in one of these agreements, provision was made for the use of mediation in settling future parenting plan disputes. Otherwise, the vast majority or 91% of the 57 agreements concerned parenting time schedules – either setting up or confirming the continuation of such a schedule. As part of the scheduling arrangements, six of the agreements specified transportation plans for the child, five agreements allowed other family members – such as a new spouse, grandparents, or other children of the parent – to be present during parenting time, and eight agreements provided for contact between parent and child during the other parent’s parenting time.

Other child-related issues were dealt with in a minority of the agreements. Just under half the agreements – 49% or 28 agreements – assigned or confirmed custody of the child. The parameters limiting between-parent communication were detailed in 16 agreements (28%). And in one-fourth the agreements (25% or 14), social, religious, and other non-financial arrangements were established: e.g., out-of-state travel, acquiring passports, engaging in therapy, posting photos on social media, providing a car seat or swimming lessons. Around one-fifth of the agreements (19% or 11) concerned child support payments, including establishing, continuing, modifying, or waiving child support or dealing with arrears. Other financial arrangements were made for the child in 12 agreements (21%), e.g. covering the cost of college, clothing, medical and dental services, or determining tax dependency status. Fewer than ten percent of agreements involved an acknowledgement of parenthood (three agreements or five percent) or provided for access to the child’s education or medical records or for notice about medical appointments or school conferences (four agreements or seven percent).

Ten percent or fewer agreements contained provisions unrelated to children. According to the DOR and the court, 15% of the referred cases concerned separation- or divorce-related issues. However, only two agreements of those available for examination were designated petitions for divorce or annulment. Responsibility for debt or other liabilities and the provision or waiver of spousal support or alimony were concerns in five agreements, and other financial arrangements were sorted out in three agreements. Meanwhile, asset division, the dismissal of restraint orders or other legal actions, and limitations on communications between spouses about non-child related matters, were each the subject of two agreements.

c. Party benefits other than agreements or issue resolution:

Mediation participation may confer benefits upon parties above and beyond the resolution of disputes, including better interactions between parties.²¹ As a result of OMP mediation, communication between parties was improved for a narrow majority of mediating parties – 56% of 207 – while conflict between the parties diminished for a robust minority of 42%. Thus, parties remarked that:

²¹ “Among mediation’s numerous advantages is its ability to constructively address conflicts, respect each party’s perspective, empower individuals to take personal responsibility for conflicted relations, establish mutually beneficial dialogue, and reduce violence. Written settlements are often a by-product of these dynamics,” Hedeon, T. & Coy, P.G. (2000). Community mediation and the court system: The ties that bind. *Mediation Quarterly*, 17:4, 351-367.

[Mediators] really helped us communicate and be kind to one another.

[It] helped a lot to come to a decision without arguing

A smaller – though still noteworthy – minority of 40% found that they had a better understanding of the issues due to mediation. As one party observed, they were

Pleased w/mediator...helped both of us w/ agreement/better understanding of each other's issues

And 38% of parties reported a reduction in court involvement – a percentage that was roughly commensurate with the 43% of parties who preferred mediation over court proceedings. For example, the impact of mediation on their court involvement was appreciated by two parties:

It [mediation] was easy, fast and helped save a trip into court!

Well done, thanks, I hope we will not have to come deal with court anymore.

A small number of parties (20% of the 207 responding parties) indicated that their conflict resolution skills had improved by engaging in OMP mediation.

d. *Process satisfaction:*

In general, mediation is a highly regarded dispute resolution process.²² Mediation services, delivered under OMP auspices, were no exception. Ninety-eight percent of 209 respondents (i.e., 204 respondents) expressed their satisfaction with OMP mediation. Assuming two parties per case for 156 mediated cases (which includes mediations of multiple cases with identical parties), the 204 surveyed parties who approved of the mediation process amounted to a 65% majority of all parties mediating under the OMP. Satisfaction with the mediation process did not, however, depend on the outcome. Despite reaching a mediated agreement, one party complained:

I feel that the 1.5 hours spent was going in circles instead of getting to the point. Not sure what they were actually wanting me to answer for a final decision.

In contrast, another party was pleased with mediation even though agreement remained out of reach:

I was very pleased with [mediator's] assistance on a difficult matter in spite of the fact that no agreement was reached.

Moreover, the 98% satisfaction rate exceeded the agreement rate of 87% rate for all agreements by 11 percentage points, further evidence that process satisfaction was not necessarily determined by the agreement outcomes of mediation.

²² Ballard, R.H., Holtzworth-Munroe, A., Applegate, A.G., & D'Onofrio, B. (2011, January). Factors affecting the outcome of divorce and paternity mediations. *Family Court Review*, 49:1, 16-33; Pearson, J. & Thoennes, N. Divorce mediation research results. (1988). In J. Folberg and A. Milne. (Eds.). *Divorce mediation*. New York: Guilford Press.

As for party assessment of mediators, robust majorities of the 208 surveyed parties acknowledged the assistance provided by mediators: more than three-fourths (78%) thought the mediator(s) listened well to their needs and concerns; approximately two-thirds found the mediator(s) fair and unbiased (67%), helpful in identifying issues (67%) and in writing up the agreement (64%). Over half the parties recognized mediator contributions to generating and considering options (59%) and encouraging parties to make their own decisions (53%).

F. Evaluation conclusion:

Implementation of the OMP, a multi-organization and multi-site program that delivered mediation services to divorcing/divorced or separating/separated parties, was accomplished through the collaborative work of program colleagues from the court, the DOR, community mediation centers, and MOPC. According to most surveyed program colleagues, a number of parties had a variety of their needs met with the assistance of OMP services. Likewise, the OMP contributed to assorted institutional or system-level achievements that accrued to the organizations involved with the program, including gains in efficiency. Program colleagues were generally in favor of continued financial support for the OMP, and many proposed changes for improving the program.

During the period July 2019 through March 2020, the value that the OMP contributed to disputing parties as well as to the court and the DOR resided, to an important extent, in the resolution of disputes in referred cases by means of a process that won the approval of a majority of participating disputants. Forty-five percent of the 343 cases referred to the OMP in the FY 2020 period proceeded to mediation, which, in turn, led to settlements in 79% of mediated cases. The resolution process – mediation – proved satisfactory to a majority of at least 65% of the parties in all the mediated cases.

The agreements reached during mediation displayed the breadth of issues that were amenable to resolution through mediation. The panoply of issues in mediated agreements encompassed both child-related matters, including child support and paternity claims – subjects of particular concern to the DOR – as well as divorce and separation issues unrelated to children. The robust representation of Black/African American, Hispanic/Latino, and White racial/ethnic groups in the population served by the OMP raises the possibility that recognition of the usefulness of OMP mediation exists across racial/ethnic affiliation for some Massachusetts population groups.

In order to expand access to the benefits conferred by OMP mediation, ways to minimize barriers to program participation by parties and by organization partners should be considered.