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## PARENT MEDIATION PROGRAM EVALUATION REPORT: FISCAL YEAR 2020

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**Massachusetts Office of Public Collaboration**

**PARENT MEDIATION PROGRAM EVALUATION REPORT:  
FISCAL YEAR 2020**

**Executive Summary**

During FY (Fiscal Year) 2020, the Parent Mediation Program (PMP) operated in its usual fashion, providing services to eligible parties referred by Probate & Family Court Divisions and non-court (or community) sources until March 16, 2020 when non-emergency access to the court was curtailed, and constraints on inter-personal contact were urged due to the coronavirus pandemic. In response to this crisis, the PMP persevered with its functions for the remainder of the fiscal year by converting as many of its operations as possible into electronic form. All five centers participating in the PMP offered parties the opportunity to mediate remotely – either through telephonic or online platforms. Preparing for remote mediation was effortful and time consuming, but all five centers conducted remote mediations despite the pandemic crisis. Perhaps as many as 24 cases were mediated remotely. The disadvantages of remote mediation involved diminished communication and documentation shortfalls. Remote mediation’s advantages resided in greater convenience, enhanced physical security, and, most importantly, the opportunity to mediate when in-person mediation became infeasible.

Data for PMP activities during FY 2020 indicated that the annual referral and mediation targets set up for the year had been surpassed but to a lesser extent than the previous year. A decline in PMP activities during the final third of the year was probably attributable to the general pandemic shutdown. The bulk of referrals to mediation were issued by the courts, and during the last FY 2020 quarter, referrals came from an increased number of courts.

Based on parties’ survey responses, the PMP-served population roughly reflected the diversity of the state’s population and was, for the most part, lower income. Indeed, 31% of surveyed parties could qualify as indigent. Parties usually learned about the PMP through the court, yet parties’ preference for mediation over court proceedings influenced most parties to use mediation to deal with their parenting disputes.

PMP mediation impacted parties, including remotely mediating parties, in ways that affected the persistence of their disputes, the development of parenting plans, their access to justice, their interactions with each other, and their handling of child-related issues. An agreement rate of 89% and a parenting-plan development rate of 79% were produced by PMP mediation in FY 2020, at or more than the upper end of the range of agreement rates typically generated by divorce mediation. The PMP also increased access to justice by providing indigent parties and parties denied access to the courts because of pandemic concerns with dispute resolution assistance that met these parties’ legal need for solutions to their parenting disputes.

Mediation helped most parties improve their interactions with one another, such as bettering communication, reducing conflict, and increasing civility. For minorities of interviewed parents, their interactions were better after a four-ten week interval following mediation.

Notwithstanding the centrality of child-related issues to PMP mediation, only minorities of parties acknowledged progress at their mediation sessions with respect to child-related issues that concerned access, visitation, parent's time with the child, the other parent's involvement with the child, and parent participation in the child's education or extra-curricular activities. The disaggregation of parties' responses about child-related issues by custodial status revealed that the proportion of non-custodial parties reporting progress on child-related issues was consistently greater than the proportion of custodial parties indicating progress on those same issues. Following a four-ten week interval after mediation, minorities of interviewed parties indicated that increases in their time with the child and their involvement with the child's education and extra-curricular activities were continuing.

As for progress towards increasing the child's financial support, a minority of parties found that at least some progress was made through their mediation in increasing their financial support for the child. Nearly half of the respondents attributed a positive impact on their support from factors related to housing and time with/access to the child. Greater proportions of custodial than non-custodial parties regarded the impact of these factors to be positive.

PMP services won the approval of over 90% of participating parties. Four-ten weeks after mediating, most parties thought their participation in mediation was positive for their child, and half the interviewed parties also thought the other parent's mediation participation positively affected the child. Mediators employed multiple techniques to facilitate productive discussion among parties. The abilities of mediators to listen carefully, maintain neutrality, generate solutions, etc. impressed large majorities of parties, including parties who had mediated remotely.

In fact, post-mediation survey responses from parties who engaged in remote mediation exhibited the same trends regarding mediation satisfaction and outcomes as those of the entire group of surveyed PMP parties. Like the larger PMP group, willingness to use and recommend the program was widespread; agreement and parenting plan development rates were high; and party majorities reported progress on party interactions due to remote mediation while party minorities did so for child-related issues.

The continued operation of the PMP throughout FY 2020 and the accomplishments achieved despite pandemic-related constraints justify continued support for the PMP even if remote mediation were to be the program's future. In view of the likely growth in the use of remote mediation to assist parties with parenting disputes, recommended actions on behalf of the PMP involved improving remote mediation, increasing compensation for remote mediation services, widening outreach activities, disseminating advice about improving remote mediation communication, and carefully choosing between remote and in-person modes of mediation when the choice between these two formats becomes available.

## **I. Introduction:**

Financial matters and the welfare of the children tend to be the most fraught issues confronting parents whose personal relationship with each other has broken down.<sup>1</sup> Under these circumstances, parents can seek assistance with resolving conflict over the well-being of their child from the Parent Mediation Program (PMP). The PMP – sponsored by the Massachusetts Department of Revenue’s Child Support Enforcement Division (DOR) through a federal Access and Visitation Grant and administered by the Massachusetts Office of Public Collaboration (MOPC) at the University of Massachusetts Boston – provides up to four hours of subsidized mediation services free to divorcing/separating/never-married parents disputing over child-related issues, particularly those involving the parent’s time with the child, parenting plans, and parental rights. By engaging in the mediation process, disputing parents get to discuss their views, delve into alternative solutions, and seek to arrive at a mutually acceptable agreement to settle their dispute, all under the guidance of a neutral third-party – the mediator.<sup>2</sup> Evidence of the efficacy of mediation in resolving parenting disputes arising from divorce or separation is provided by agreement rates of 50% to 80% typically generated by the mediation of divorce-related issues.<sup>3</sup> The impact of mediation on issues concerning parent time and parent involvement with the child also tends to be positive: a longitudinal study that compared the effects of mediated divorces to litigated divorces found a greater likelihood of increased involvement and contact between the non-custodial parent and the child when the divorce was mediated than when it was litigated.<sup>4</sup>

## **II. The Parent Mediation Program (PMP) in operation during FY 2020**

Program operations during Fiscal Year (FY) 2020 were supported by a grant of \$133,265.45 from the DOR. The program was managed by a Program Manager under the direction of the MOPC Executive Director, and program services were delivered in partnership with five community mediation centers (centers) from various areas of the state: Martha’s Vineyard Mediation Program (MVMP) located in Martha’s Vineyard, Community Dispute Settlement Center (CDSC) in Middlesex County, MetroWest Mediation Services (MWMS) in Middlesex County, North Shore Community Mediation Center (NSCMC) in Essex County, and

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<sup>1</sup> “During the divorce, the two most contentious issues are usually finances and children – in that order,” says Dan Couvrette, publisher of *Divorce Magazine*.’ (idfa). (2015). Leading causes of divorce: Survey: Certified divorce financial analyst (CDFA) professionals reveal the leading causes of divorce. Retrieved July 24, 2015, from <https://www.institutedfa.com/Leading-Causes-Divorce/>.

<sup>2</sup> 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.

<sup>3</sup> *Ibid.*

<sup>4</sup> Emery, R. E., Sbarra, D., & Grover, T. (2005). Divorce mediation: Research and reflections. *Family Court Review*, 43:1, 22-37. Retrieved August 15, 2012, from <http://onlinelibrary.wiley.com/doi/10.1111/j.17441617.2005.00005.x/full>; Pearson, J. & Thoennes, N. Divorce mediation research results. (1988). In J. Folberg and A. Milne. (Eds.). *Divorce mediation*. New York: Guilford Press.

The Mediation & Training Collaborative (TMTC) in Franklin County. During FY 2020, the PMP operated in its usual fashion, providing services to eligible parties referred by Probate & Family Court Divisions and non-court (or community) sources until March 16, 2020 when non-emergency access to the court was curtailed, and constraints on inter-personal contact were urged by public health and government officials due to the coronavirus pandemic. In response to this crisis, the PMP persevered in functioning for the remainder of the fiscal year by converting as many of its operations as possible into electronic form.

**A. Continuing PMP operations:**

Highlights of the PMP's operations during the first nine months of the 2020 fiscal year featured an increase in the number of centers participating in the program (from four to five) and in the regions covered by PMP services, a rise in the maximum amount of subsidized mediation hours available to parties, and the addition of parental rights protection as a PMP priority. These accomplishments were produced by the timely execution of administrative tasks; completion of DOR, university, and MOPC requirements; and fulfillment of reporting responsibilities through the joint efforts of centers and MOPC. Thus, consultation with and training from the Program Manager supported the decision of a fifth center, MVMP, to join the PMP again after a four-year hiatus. Raising the ceiling (on a case-to-case basis) for free, PMP-subsidized mediation time from four hours per case to six hours in January 2020 and then to eight in February entailed an analysis by the Program Manager of the budgetary implications of the quantity of mediation activities performed by centers. Consideration of factors that could have potential impact on PMP's main concerns over parenting time (including access or visitation) and parenting or visitation plans led to the inclusion of parental rights protection among PMP's priorities.

In the meantime, activities required for PMP functioning proceeded as usual throughout the first two thirds of FY 2020. Quarterly telephone conferences with the Program Manager and centers were held to share information about developments relevant to the PMP, bring up pending deadlines, and discuss matters of interest to centers. Invoices for centers' services were processed and payments disbursed. Referrals for mediation were received in an amount that exceeded quarterly targets. A quarterly average of 27-28 referrals was anticipated, and an average of 33 quarterly referrals was obtained. Intakes and screenings of interested parties were conducted by center staff to gain information about eligibility and consent and to inform parties about mediation. Mediations were scheduled and conducted, surpassing quarterly mediation targets. While 22-23 quarterly mediations were expected, an actual quarterly average of nearly 25 cases were mediated. Besides conducting mediations, mediators collected and furnished required details about the matters mediated, the mediation outcomes, changes in parenting time as well as completing a mediator survey after each session and distributing post-session surveys to parties following the last mediation session.

The above activities continued in some fashion for the remaining portion of FY 2020 even though, on March 16, courts were closed to non-emergency matters; MOPC's university shut down, and MOPC offices were shuttered; and the implementation of safety precautions for the Massachusetts public discouraged in-person encounters, including mediation, and impeded access to office computers, records, and documents at MOPC and various centers. MOPC and

centers worked individually and together to continue serving parties under the PMP. During a conference call, centers shared their experience in meeting the challenges of successfully performing electronic transfers, e.g., providing privacy protections for documents conveyed on various electronic platforms, obtaining signatures from parties on relevant documents, etc. The inequities regarding access to mediation arising from the use of online platforms that require internet and computer access were discussed and suggestions offered about the potential usefulness of ubiquitous smart phones to mitigate the inequity problem. Information about ways to acquire documentation and written consent from both online and telephonic mediations was shared.

MOPC and centers went into action.

### **B. PMP operations during the corona virus pandemic:**

To learn about centers' experience with remote mediation, the MOPC Research Unit added relevant questions to the electronic version of the fourth quarter center survey that was used to obtain feedback about the PMP from participating centers. The Program Manager – effectively barred from MOPC premises due to campus closure – continued her PMP work by heavily relying on remote access to MOPC's electronic files. She also made the extra effort to enter the university campus in accordance with university-established protocols and obtain physical documents required for her work. Centers, for their part, proceeded to set up their individual procedures for continuing their PMP work and complying with PMP requirements.

The most important change instituted by centers in response to the pandemic crisis was to convert the medium for their mediation services from in-person to remote forms of interaction.<sup>5</sup> All five centers offered parties the opportunity to mediate remotely either through telephonic or online platforms. Preparing for remote mediation was effortful and time consuming. According to one center,

*having to conduct mediations on-line during this quarter raised numerous challenges: We needed to quickly familiarize ourselves with the Zoom platform. We had to create organizational guidelines and protocols for on-line mediations, and provide support for all our mediators to make sure they were competent in the use of Zoom. We had to utilize a program for collecting on-line signatures to get Agreements To Mediate before sessions, we developed alternate processes for collecting, recording and submitting TMTC data, including PMP data. Given all these challenges, it mostly worked pretty smoothly!*

In general, mediators were required to become familiar with navigating the technology involved in the type of remote mediation used so that the integrity of the mediation process, confidentiality, and cyber-safety were preserved. Centers also helped parties be comfortable with the technology and be aware of the rules of engagement in order to protect mediation confidentiality. Two centers provided extra mediator training, consulted with other

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<sup>5</sup> Much of the information about centers' experience with remote mediation was provided in response to questions added to the quarterly PMP center survey.

organizations, worked with other community mediation centers, adjusted documentation procedures, modified information about their services for parties, and learned from experience (so-called trial and error). A third center employed all these strategies with the exception of trial and error. Another two centers focused on mediator training, and one of these centers also “researched and worked with MOPC.”

As a result of their efforts, all five centers conducted remote mediations despite the pandemic crisis. Perhaps as many as 24 cases were mediated remotely. The use of remote mediation was confirmed for half these cases and assumed for the remainder based on the post-March 15 dates of the mediation sessions.<sup>6</sup> According to centers, the drawbacks of mediating remotely included the effort required to prepare for the mediation, problems with getting completed and signed documents, including surveys, from parties, and the limitations on communication caused by difficulties with eye contact and reading body language. The disadvantages cited included:

*Getting paperwork completed and signed by parties, particularly parties who may have very limited electronic access, i.e. only using a phone, no printer, etc.*

*Getting the process finalized, time that it takes to do intakes, then zoom prep sessions before scheduling the zoom mediation.*

*Getting evaluations back.*

*Training mediators who have limited technological skills.*

*Not being able to maintain eye contact or read body language as one can do in person; technological limitations.*

*Of course, the transition to working remotely and conducting all mediations during this quarter on-line, added particular challenges. For example, because mediators could not collect participant evaluations at the end of an in-person mediation, our return rate on completed participant evaluations went down.*

Nevertheless, centers celebrated their triumph over pandemic obstacles through their use of remote mediation – noting their ability to help parties in a timely fashion despite pandemic constraints and the flexibility in scheduling afforded by remote mediation when the impediments of time and distance dropped out:

*Keeping mediators active and engaged, helping parties to work out issues instead of having to wait, and keeping our services available for the community and courts.*

*Ability to continue our services even in the midst of a pandemic.*

*In some ways makes the scheduling easier. Although we don't have the advantage of a pre-arranged day and time (on-site mediations at the court) but on-line access means*

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<sup>6</sup> Responses to requests for information about the remote mediation status of these 12 cases were not received before the report deadline.

*people don't have to leave their home, find transportation & parking, and only have to reserve the actual mediation time, not also the travel time.*

*We live on an island, enables off islanders to be able to mediate without having to travel.*

*No need to travel into Cambridge (both mediators and participants); flexibility in timing.*

One of the centers further noted that remote mediation provided parties with the opportunity to interact with one another without having to share the same physical space:

*Also, for some people, not being in the same room as the other party may make them more comfortable with using mediation.*

Mediating via video and audio conferencing, then, provided a structure that apparently filled the gap between mediation that involved the physical presence of all parties and the mediation strategy of caucusing, when the mediator and a single party meet during the mediation process.

Remedies were offered by centers for some of the problems presented by the demands made by remote mediation on center resources and by the increased difficulty of obtaining surveys from parties. In order to compensate centers for the claims on time and resources added by remote mediation, one center proposed that payments for their services from the PMP be increased. The case coordination specialist at another center, TMTC, created a model for a Google version of the party survey as a way to elevate the low response rate for PMP party surveys. MOPC has embraced the concept of an online version of the party survey, and is examining ways to use Google or some other online platform that will accommodate the need to keep track of who responds and still preserve respondents' anonymity.

### **C. PMP referrals, mediations, and other activities during FY 2020:**

Data for PMP activities during FY 2020 indicated that the annual referral and mediation targets set up for the year were met despite the downward forces from the pandemic (see Table 1). One hundred twenty-four new case referrals – 14 more than targeted – were received, and 105 of the newly referred cases proceeded to mediation. With respect to the mediation target, which refers to the number of cases mediated during a specified time period irrespective of the date of referral, 99 first-session mediations were conducted during FY 2020, nine more than the mediation target.<sup>7</sup> Notwithstanding this accomplishment, PMP activities during FY 2020 were lower than those of the previous year. Referrals and mediations each dropped by 12%. The reduction in centers' PMP activities resulted in a lower expenditure of PMP funds. By year's end, 16% of the DOR grant was unspent.

Fewer fourth quarter activities largely accounted for this decline in PMP activities. Referrals, screenings, and cases progressing to mediation during the fourth quarter of FY 2020 were lower than the previous three quarters, possibly due to pandemic-related constraints imposed during the entirety of the last quarter. Despite this last quarter's downturn in activities, the impact of the pandemic failed to diminish PMP performance over the entire second half of

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<sup>7</sup> First-session mediation numbers for FY 2020 and FY 2019 are based on numbers cited in the April-June 2019 and April-June 2020 reports of the *Quarterly Program Report to DOR Child Support Enforcement Division*.

FY 2020. Referrals during these last six months comprised more than half of the entire year’s worth of referrals, amounting to 52% or 65 out of a total of 124 referrals. Case numbers for completed screenings and progress to mediation over FY 2020 displayed the same pattern: 52% of 119 screenings and 51% of 105 cases progressing to mediation took place during the combined third and fourth quarters of the fiscal year.

Table 1: Referrals, screenings, and mediations for FY 2020 & FY 2019.

<b>Performance data</b>	<b>FY 2020 target</b>	<b>July-Sept 2019</b>	<b>Oct-Dec 2019</b>	<b>Jan-Mar 2020</b>	<b>April-June 2020</b>	<b>FY 2020 totals</b>	<b>FY 2019 totals</b>
<b>New case referrals</b>	110 for year	29	30	41	24	124	141
<b>Community-referred new cases</b>	n/a	15	13	13	13	54	50
<b>Court-referred new cases</b>	n/a	14	17	28	11	70	91
<b>Screenings completed</b>	n/a	27	30	41	21	119	127
<b>Cases progressing to mediation</b>	n/a	22	29	37	17	105	116
<b>Mediations</b>	90 for year					99 first-session mediations	113 first-session mediations

Out of the 124 new case referrals that were received by participating centers over the 2020 fiscal year, non-court (community) sources generated a minority of 44% of the referrals (see Table 2). The bulk of referrals to mediation were issued by the courts: a majority of 56% of the referral total originated in the courts. The western divisions of the Probate & Family Court in Franklin, Hampden, and Hampshire continued their tradition as referral sources for the PMP. In particular, the Franklin and Hampden courts were responsible for the largest proportion of court-referrals in FY 2020 – 41% of court referrals from Franklin and 49% from Hampden. Although a regular referral source for the PMP, the Hampshire court issued markedly fewer referrals in FY 2020 than the previous year, with its referrals decreasing from 28 in FY 2019 to four in FY 2020. (56% decrease). A notable development in the fourth quarter of FY 2020, however, involved the expansion of court participation in the PMP. The Essex and Middlesex courts joined the western court stalwarts in referring cases to the PMP. The timing of their participation invites speculation that restrictions on court access brought about by the pandemic might have been a factor motivating court referrals for off-site dispute resolution.

Table 2. Court referrals of new cases in FY 2020.

<b>Probate &amp; Family Court Divisions</b>	<b>July-Dec 2019 referrals</b>	<b>Jan-Mar 2020 referrals</b>	<b>Apr-June 2020 referrals</b>	<b>Jan-June 2020 referrals</b>	<b>FY 20 total referrals</b>
<b>Dukes</b>	0	0	0	0	0
<b>Essex</b>	0	0	1	1	1
<b>Franklin</b>	14	12	3	15	29
<b>Hampden</b>	16	15	3	18	34
<b>Hampshire</b>	1	1	2	3	4
<b>Middlesex</b>	0	0	2	2	2
<b>Suffolk/BMC</b>	0	0	0	0	0
<b>Total</b>	31	28	11	39	70

**D. PMP reporting and accountability responsibilities:**

MOPC’s responsibilities to report on and be accountable for the functioning of the PMP were fulfilled upon submission to the program sponsor, the DOR, of four quarterly reports from the Program Manager about the program’s situation and two semi-annual evaluation reports issued by the MOPC Research Unit, which assessed PMP operations and their impact. The evaluation reports were based on information obtained from internal records and documents, the Manager’s quarterly reports, as well as party and mediator responses to surveys. The evaluation would have been incomplete if not for the special effort made by the Project Manager to scan and electronically transmit to the Research Unit the large quantity of documents needed to fulfill reporting and accountability obligations.

**III. Impact of PMP mediation services on parties:**

**A. Determining mediation’s impact on parties:**

When 99 cases were mediated in FY 2020, over 200 parties and their children gained access to the potential benefits associated with mediation participation. Mediation is a non-adversarial, discourse-based process that respects party autonomy by giving parties voice and empowering them to work out their issues and make decisions about solutions. Besides resolving issues through agreements, benefits that are ancillary products of the mediation process may also accrue to parties.<sup>8</sup> The collaborative approach towards problem-solving embraced by mediation

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<sup>8</sup> “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, but they are not in themselves a sufficient goal of community mediation.” Hedeem, T. & Coy, P.G. (2000). Community mediation and the court system: The ties that bind. *Mediation Quarterly*, 17:4, 351-367.

may prevent further exacerbation of parties' relationship with one another as well as contribute to mutually acceptable solutions to issues concerning the child.<sup>9</sup> Accordingly, written surveys were provided to parties after their last mediation session to elicit information about their background and their assessment of their mediation experience and its impact on different aspects of their relationship (e.g., communication and conflict management) and on various child-related issues (e.g., parental contact and involvement with the child). To test the durability of changes wrought by mediation, guided interviews were conducted with parties four to ten weeks after mediation. Feedback about the accomplishments produced at mediation sessions was collected from mediators who responded to written surveys after each session. In FY 2020, party reaction to their mediation experience was obtained from surveys completed by 110 parties from 58 cases. Fifty-seven parties from 42 cases were interviewed. And 162 sessions representing 111 cases were reported on by mediators. Data from these surveys were analyzed in terms of frequencies, usually expressed as percentages to the nearest integer. Survey results apply solely to the particular group of parties who responded to each survey.

## **B. Demographic and other background information about surveyed parties:**

Demographic and background information about parties was based on responses to the party survey concerning their last mediation session.

### **1. Relationship between party and child**

Virtually equal numbers of mothers (50) and fathers (51) filled out the post-session survey. Eight other parties who were surveyed included a grandmother, an uncle, a guardian, a child, and an attorney, among others.

As for the custodial relationship between party and child: out of the 90 parties who self-identified their custodial status on the post-mediation survey, close to two-thirds (64% or 58) of the 90 respondents declared themselves to be the primary caretaker or to have physical custody of the child. A bit over one-third (36% or 32) of the parties denied having the role of primary caretaker or possessing physical custody. Parties who were interviewed about changes in their situation following mediation were also asked to report on their custodial status. With respect to the custodial status assigned by the PMP during the intake process,<sup>10</sup> 56% of 57 (or 32) interviewed parties were designated as custodial parents by the PMP and 44% (or 25) were PMP-designated non-custodial parents. These PMP-generated labels were assigned during an early PMP procedure and persisted without change throughout parties' involvement with the PMP. However, the custodial relationship between parent and child may in fact change as a result of developments in mediation or other circumstances. Thirty-two interviewed parties self-identified their custodial status following a four-ten week interval after mediation. According to their self-

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<sup>9</sup> Wilkinson, *op. cit.*; Shaw, L.A. (2010). Divorce mediation outcome research: A meta-analysis. *Conflict Resolution Quarterly*, 27:4, 447-467.

<sup>10</sup> Eligibility for PMP services required that one of the parties in a case be considered a custodial parent and the other be considered non-custodial. In cases where there was no official designation of custodial status, parties would be deemed custodial or non-custodial by center staff based in part on the parties' role in caring for the child.

reports, 17 were custodial parents, six were non-custodial parents, and nine shared custody. Notably, the PMP-assigned custodial status of 11 of these interviewed parties differed from their self-identified custodial status. Nine of the parties – three of whom were PMP-custodial parents and six were PMP-non-custodial parents – claimed shared custody. Two other parties, who were PMP-designated non-custodial parents, identified themselves as custodial parents at the time of their interview. Presumably, as far as the interviewed parents were concerned, their custodial relationship with their child since mediating was not necessarily in accord with the PMP status assigned before mediation.

## **2. Racial/ethnic origins of parties:**

All but five of 110 surveyed parties identified their racial/ethnic origins. Although the Massachusetts population is composed of individuals from at least six races/ethnicities,<sup>11</sup> the FY 2020 group of PMP respondents consisted entirely of individuals from four races/ethnicities. The comparative sizes of the racial/ethnic groups among PMP respondents corresponded to those in the state population with Whites predominating, followed by Hispanics, then by Blacks, and finally Asians, in descending size order. In Massachusetts, Whites formed the largest group at 80.6%, followed by Hispanics at 12.4%, Blacks at 9.0%, and Asians at 7%. In the FY 2020 PMP population, though, over two-thirds or 69% of 105 respondents self-identified as White; over one-fourth or 29% considered themselves Hispanic/Latino/Spanish; a small percentage of 8% were Black/African American; and the smallest proportion, 4%, were Asian. The most striking difference between the racial/ethnic make-up of FY 2020 PMP respondents and that of the state concerned the percentages of White and Hispanic parties. The proportion of Whites in the PMP population was much lower than that in the state population while the proportion of Hispanics was much higher.

## **3. Parties' financial circumstance:**

Based on the responses of 102 parties who disclosed their current personal income, the PMP served the dispute resolution needs of individuals whose earnings ranged from less than \$10,000 to more than \$65,000. For the most part, though, the population assisted by the PMP was lower-income, with two-thirds or 66% of parties earning less than \$51,585.<sup>12</sup> Nearly half this lower-income group or 31% of the total number of responding parties reported incomes under \$21,550, which could qualify them as indigent.<sup>13</sup> As such, this 31% proportion of indigent

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<sup>11</sup> See US Census Bureau. QuickFacts Massachusetts. Retrieved July 14, 2020, from <https://www.census.gov/quickfacts/MA>

<sup>12</sup> 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>)

<sup>13</sup> The 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. Since each PMP respondent has at least one child, it is reasonable to apply this indigency standard to respondents' situations. The

parties served by the PMP was greater than the proportion of 10% of Massachusetts' population living in poverty.<sup>14</sup> Just over one-fifth of parties (22%) earned at least \$65,000, at the upper range of income levels tracked for PMP purposes. It is noteworthy that remotely mediating parties were more heavily represented among the higher income earners than would be expected from their share of the PMP population of respondents. While remote mediation parties constituted 12% of the 102 respondents, they made up 23% of parties who claimed incomes of \$65,000 or more. On the other hand, half the parties in remote mediations earned less than \$30,000.

#### **4. Learning about the program:**

Parties usually learned about the PMP through the court. For a small number of respondents – 15% of 108 respondents – family or friends were sources of program information. Otherwise, the vast majority of respondents – 79% – heard about the program at court. A plurality of 47% were informed by judges – by way of judges' recommendations for 16% and judges' orders for 31% – while a 27% minority received program information from court personnel.

#### **5. Choosing to mediate:**

Not only was the court an important source of information about mediation, it also influenced most parties to use mediation to deal with their disputes. The reason given by 6% of 110 respondents for choosing mediation was to comply with court orders. In addition, a 56% majority expressed a preference for mediation over court proceedings, and presumably chose to mediate to avoid going to court. Fully a third or 33% of respondents were motivated to use mediation to resolve their issues by mediation's positive reputation. Ready access to mediation and gratis services each attracted 26% of parties to mediation.

#### **6. Parties' history of problems:**

The challenge of addressing the parenting issues that brought parties to mediation tended to be complicated by the parties' background of problems. Mediators identified the persistence of parties' difficulties at 136 or 84% of 162 sessions. The most common problems concerned parties' relationship with each other. Most of the 136 sessions involved parties who found it difficult to tolerate their differences (65%), to cooperate on child-related issues (59%), and distrusted (58%) or disrespected (54%) one another. Close to half found it hard to validate the other party's importance (47%) or to separate parties' needs from the child's needs (48%).

### **C. The impact of PMP mediation on parties:**

#### **1. Settling disputes by reaching agreements:**

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actual household income is not available for the respondents. See <https://www.mass.gov/service-details/eligibility-requirements-for-indigency-waiver-of-fees>

<sup>14</sup> See US Census Bureau, *op. cit.*

The express goal of mediation is settling disputes through mutually satisfactory agreements devised by parties.<sup>15</sup>

***a. The implications of parties' conflict:***

High levels of conflict militate against the resolution of disputes.<sup>16</sup> Parties and mediators were generally in alignment about the level of parties' conflict that formed the context for mediation in FY 2020. More than one-fifth or 23% of 107 responding parties experienced high levels of conflict during mediation. Just under one-third or 32% indicated that conflict was moderate or low. No conflict was apparent at 15% percent of sessions. According to mediator reports on 160 mediation sessions, just over one-fifth or 21% of sessions were attended by high levels of conflict. Moderate and low conflicts each characterized around one-third of sessions: conflict between parties was moderate at 37% of sessions and low at 35%. Consistent with research-based expectations, disputes were resolved in FY 2020 through mediated agreements for approximately 90% of parties and at approximately 80% of mediation sessions.

***b. Agreements achieved by means of mediation:***

As a result of mediating, disputes were settled in FY 2020 through some form of agreement by 89% of 79 responding parties. A small majority of 53% of these parties reached full agreements. Partial agreements were produced by a one-fifth minority (20%) while a smaller minority of 15% formed temporary agreements.

A more comprehensive outlook on agreements achieved through FY 2020 mediation was provided by mediators' reports on the agreement outcomes of 111 mediated cases. According to mediators, 20% of 161 sessions led to full agreements, 39% to partial agreements, and 27% to temporary agreements. The agreement rate of 87% resulting from mediators' data concerning full, partial, and temporary agreements was comparable to the 89% rate derived from party responses. These FY 2020 agreement rates surpassed the upper end of the range of agreement rates typically generated by divorce mediation.

***c. Parenting plans resulting from mediation:***

Arrangements regarding each parent's rights and responsibilities for the care of their child are often set out in parenting plans. Such plans may provide for the child's housing, the scheduling of parents' time with their child and associated conditions; allocation of responsibility for the child's social life, education, health, religious observance, etc.; financial arrangements; protocols for parental communications and decision-making about the child; and

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<sup>15</sup> Wilkinson, *op. cit.*

<sup>16</sup> 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.

so on.<sup>17</sup> Few parties – 6% of 109 respondents – considered parenting plans irrelevant to their mediation. Through mediation, nearly half (49%) of the respondents were able to agree upon a completed parenting plan. Some 30% arrived at a partial plan. Progress on developing or revising a parenting plan, though, eluded 15% of respondents.<sup>18</sup> In sum, mediating about parenting plans succeeded to some extent for 79% of parties. Thus, for one party, “[i]t feels much more relaxed to discuss parenting plans with a mediator than through lawyers.”

In considering how the parenting plan issue was addressed at 162 sessions, mediators agreed with parties about the extent to which such plans were irrelevant, stalled, or developed. Plans were inapplicable at 6% of sessions and failed to progress at 15% of sessions. However, progress on parenting plans was complete at 24% of sessions and partial at 56% of sessions. Overall, some degree of progress with parenting plans occurred at 80% of sessions.

Although parenting plans are considered useful for reducing disagreements between parents about the care of their child,<sup>19</sup> it should be acknowledged that such plans guarantee neither party satisfaction nor compliance. Describing the benefits of his/her parenting plan following a four-ten week period after mediation, one party reported being “... able to work through an agreement that seems to be really working for the family. I now have more time with kid on a schedule that fits to my work shifts. It has been a win-win.” In contrast, another party’s experience with the mediated parenting plan proved negative: according to that party, the custodial parent “went back on the agreement with [the] NCP [non-custodial parent], travel dates in [the] agreement weren’t correct. ...going to court to solidif[y] the agreement caused financial hit to NCP.”

## **2. Implications of PMP mediation for parties’ access to justice:**

Mediation has been characterized as a way to increase access to justice<sup>20</sup> – defined in due process terms of the resolution of disputes – to low-income and other vulnerable populations for whom access to justice through the judicial system is typically out of reach. Accordingly, access to justice was provided by the PMP to indigent parties.<sup>21</sup> Close to one-third of the surveyed PMP population (at least 31% of 102 responding parties), who qualified as indigent because they

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<sup>17</sup> Goldenhersh, S.E. & Sabino, J.A. (2018), Chapter 9: Child custody. In Bowman, J.J., Levesh, P.A., et al., *Family law advocacy for low and moderate income litigants*. Boston, MA: MCLE Press. Retrieved July 17, 2020, from <https://www.masslegalservices.org/system/files/library/Chapter%209.pdf>

<sup>18</sup> Parenting plans did not apply to the situation of 6% of parties.

<sup>19</sup> Oregon Department of Justice. (2018). Parenting plan help. Retrieved July 18, 2020, from [https://www.doj.state.or.us/wp-content/uploads/2018/01/Parenting\\_Plan\\_Help\\_Q\\_A.pdf](https://www.doj.state.or.us/wp-content/uploads/2018/01/Parenting_Plan_Help_Q_A.pdf)

<sup>20</sup> Eisenkraft, K.O. (2016, May). Access to justice in the United States with Massachusetts examples: An introduction, Boston, MA: Massachusetts Office of Public Collaboration, University of Massachusetts Boston. Retrieved July 18, 2010, from [https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1016&context=mopc\\_pubs](https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1016&context=mopc_pubs)

<sup>21</sup> “Both national and state bar studies consistently find that over four-fifths of the individual legal needs of low-income individuals remain unmet” and “Courts and legal aid programs have also had difficulty meeting the needs of particularly vulnerable groups.” Rhode, D.L. (2009). Whatever happened to access to justice. *Loyola of Los Angeles Law Review*, 42, 869-911, 879-880. Retrieved March 3, 2016, from <http://digitalcommons.lmu.edu/lr/vol42/iss4/2>

earned less than \$21,550 per year, were able to get their legal needs related to parenting disputes met through PMP mediation services. The PMP also afforded access to justice to parties with parenting disputes who were denied access to the courts due to pandemic concerns. Perhaps as many as 48 parties (44% of 110 parties) in 24 cases (41% of 58 cases) were able to mediate their parenting disputes remotely under PMP auspices. As a consequence of the access to justice provided to disputing parties by way of PMP services, party involvement with the court system was reduced at least somewhat for 70% of 105 surveyed parties or for parties at nearly half (49%) of 161 sessions. The FY 2020 agreement rate and parenting plan rate generated through PMP mediation suggest that the access to justice supplied by the PMP was successful in meeting parties' legal needs.

### **3. Progress on problems in parties' history:**

Amelioration of the difficult conditions that formed the context of parties' mediation was brought about through mediation at most sessions. Mediators saw progress made in dealing with the problems in parties' circumstances at about two-thirds or 67% of 151 mediation sessions. Descriptions of the improvements in parties' difficulties were provided by a number of mediators – e.g.,

*At the onset of mediation there was a lot of back and forth regarding the other parent's home environment, by the time mediation concluded they were confirming the positive qualities of the other parent.*

*Parents' trust for each other has greatly increased and their ability to calmly communicate with one another has improved. Parents are welcoming to the other parent being with their child vs not wanting to co-parent. Parents have a much clearer sense of boundaries.*

*History of access denial and pattern of alienating the child from the other parent: Both parties agreed that alienating the child from Dad was doing more harm and wasn't in the best interest of their child.*

*It was the concern of father that if he (or mother) had to get a job off-island cause both became unemployed cause of pandemic. He wanted to make sure he would not lose access to child. They were successful in validating the importance of each parent.*

In one case, parties' difficulty with cooperating was addressed to the point that agreement could be reached. As the mediator noted,

*Cooperation between both parties was addressed, and a preliminary agreement has been drafted.*

### **4. Ancillary benefits of mediation:**

The ostensible issues presented for mediation under the PMP largely concerned child-related matters involving parent contact with the child, parenting plans, and the like. Yet parties'

interactions with one another loomed large among the issues actually addressed at their mediations.

***a. The impact of mediation on parties interactions with each other:***

Few parties – under 20% – considered that improving their interactions with one another was an inappropriate topic for the mediation in which they participated. According to respondents, expressing parenting expectations to the other party did not apply to the mediation for less than one-fifth of responding parties (18% of 106). The tenor of party interactions – parties’ civility towards each other – and their conflict resolution skills were considered inapt for the mediation experienced by 13% of 106 and 12% of 104 respondents, respectively. Improving communication and reducing conflict were each deemed inapplicable to the mediation engaged in by 8% of 106 respondents.

Even as small minorities of parties regarded issues concerning their interaction as inapplicable to their mediation, clear majorities of parties reported progress towards better interactions due to mediating. Mediation reportedly helped around two-thirds of parties make at least some progress in improving communication (64% of 106), expressing parenting expectations (65% of 106), and increasing civility (64% of 106) as well as reducing conflict (67% of 106) and developing conflict resolution skills (65% of 104).

The contribution that their mediation experience made to parties’ communication and conflict issues was expressly acknowledged by several parties. One respondent noted that the mediation provided “good tools for communication/conflict resolution.” Another party found mediation “helped shed light on the reality of the situation (or at least a neutral perspective) and offer methods to help keep tensions from escalating. Facilitated better communication.” Three other respondents remarked on the positive impact of mediation on their communication: mediation “helps with communication skills;” mediation “helped me communicate my needs to my son's father;” and “mediation was really helpful in establishing a context where we could just talk about our styles as parents, and the plan we have in place for visitation without spiraling out of control. It has improved our co-parenting relationship a lot.”

To test the durability of the impact of mediation on in parents’ interactions with each other, parties were interviewed about changes in communication, conflict, civility, and conflict resolution skills that were in effect four to ten weeks after mediation. For minorities of one-third or more of 57 interviewed parents, their interactions were better: communication had improved for 47%, conflict was lessened for 40%, their ability to resolve conflict was greater for 44%, and 35% were more civil to one another.

***b. The impact of mediation on child-related issues:***

***i. Relevance of child-related issues to the mediation in which parties participated:***

Notwithstanding the centrality of child-related issues to mediation under the PMP, parties commonly considered that the quest for progress in achieving solutions to a variety of child-related issues was not applicable to the mediation that they experienced.

Table 3. Progress in mediation achievements in child-related issues according to mediator reports on sessions, parties, custodial parents, and non-custodial parents.

<b>Child-related issues</b>		Mediator:% (# sessions)	Parties: % (# parties)	CP: % (# parties)	NCP: % (# parties)
Access to child	Progress*	58% (160)	40% (107)	34% (56)	45% (31)
	N/A*	29%	44%	53%	35%
Visitation	Progress	52% (161)	34% (108)	30% (57)	39% (31)
	N/A	34%	46%	54%	35%
Time with child**	Progress	58% (162)	27% (107)	23% (56)	29% (31)
	N/A	27%	52%	61%	39%
Prevent less parent-child time	Progress	n/a	32% (104)	28% (53)	36% (31)
	N/A	n/a	51%	58%	42%
Involved in education	Progress	26% (160)	29% (106)	27% (55)	22% (31)
	N/A	60%	55%	62%	48%
Involved in extra-curricular	Progress	26% (160)	29% (106)	28% (55)	22% (31)
	N/A	63%	57%	64%	48%
Other parent involvement	Progress	54% (161)	35% (103)	40% (53)	29% (31)
	N/A	32%	46%	45%	45%
More financial support for child	Progress	73% (162)	37% (102)	37% (52)	32% (31)
	N/A	20%	42%	40%	48%
<p>**Progress* indicates at least some progress; "N/A" indicates not applicable.  **"Time with child" means, in the case of parties, to establish or increase parent's time with child and, in the case of mediator reports on sessions, to change/adjust time with child.</p>					

Accordingly, between 51% and 57% majorities of parties characterized attempts to make progress in child-related matters concerning the parent's time with the child and parent participation in the child's education or extra-curricular activities as outside the purview of their mediation (see Table 3). Along the same lines, substantial minorities of 40%-49% of parties rejected the relevance to their mediation of seeking to progress on issues involving visitation, access to the child, and the other parent's involvement with the child.

**ii. Progress made towards achievements on child-related issues through mediation:**

The inapplicability of child-related issues to parties' mediation experience was a minority view held by sizable respondent minorities. Correspondingly, across all the aforementioned child-related issues, minorities of parties acknowledged progress at their mediation sessions. Thus, between 27% and 40% of parties indicated that at least some progress was made on child-related issues that concerned access, visitation, parent's time with the child, the other parent's involvement with the child, and parent participation in the child's education or extra-curricular activities (see Table 3). And so, where one parent found mediation successful in resolving some child-related issues – mediation “resolved issues relative to legal custody and support,” another parent reported failure – in mediation “[n]othing was really resolved. No visitation. No communication with my daughter.”

**iii. The durability of changes in child-related issues:**

A majority of 54% of 57 interviewed parties indicated that their personal connection with their child had increased over the four-ten week interval since their mediation. Substantial minorities exceeding 25% also found that increases in their time with the child (37%) and their involvement with the child's education (30%) and extra-curricular activities (26%) lasted during the weeks following mediation. From the perspective of 55 interviewed parties, though, a smaller minority of 18% reported that the other parent's involvement with the child had grown. Otherwise, after a four-ten week post-mediation period, most interviewed parties found no change in the time they spent with their child (56%), their involvement with education (65%) or extra-curricular activities (63%), and in the other parent's involvement with the child (60%).

**c. Mediator assessment of progress regarding party interactions and child-related issues at mediation sessions:**

Mediators reported progress at most sessions both with parties' interactions and with child-related issues with the exception of party involvement in education and extra-curricular activities. Consistent with party reports about the impact of mediation on their interactions, mediators found progress at most sessions: civility increased at 58% of 161 sessions, party communication progressed at 80% of 161 sessions, expression of parenting expectations was better at 71% of 162 sessions, conflict lessened at 72% of 160 sessions, and conflict resolution skills improved at 66% of 161 sessions. Unlike most party reports, though, mediators also found progress was made at a majority of sessions with child-related issues that involved access (58% of 160), visitation (52% of 161), parent's time with child (58% of 162), and the other parent's involvement with the child (54% of 161) (see Table 3).

***d. Custodial and non-custodial parties' assessment of the impact of mediation on child-related issues:***

The discrepancy between the reported frequency of progress on child-related issues between mediators and parties might be due not only to differences in the number of mediated cases considered by mediators and those connected to parties, but also, in part, to the disparities between custodial and non-custodial parties in their assessment of progress made on child-related issues through mediation. In situations where the child lives with one parent and not the other, the latter non-resident or non-custodial parent tends to be more concerned about maintaining contact with the child. Consequently, responses about developments that affect parent-child contact may differ according to custodial status. Thus, in the FY 2020 group of surveyed parties, the proportions of the non-custodial parties reporting progress on access, visitation, gaining more time with the child, preventing a loss of time with the child, and increasing involvement with the child's education and extra-curricular activities were consistently greater than the proportions of custodial parties indicating progress on those same issues (see Table 3). As for contact between the child and the other parent, progress was acknowledged by a lower percentage of non-custodial parents than custodial parents. Despite these differences in party responses associated with custodial status, the aggregated party assessment of progress on child-related issues tended to reflect the stance of custodial parents since survey responses from non-custodial parents were outnumbered by those from custodial parents two to one.

***e. Parties' financial support for the child:***

Parent's financial support for the child is a child-related issue that is uniquely positioned with respect to eligibility for mediation under PMP auspices. Child support payments per se are generally outside the purview of PMP mediation except under certain circumstances, e.g., when the issue impacts parent's time with the child. In order for financial arrangements for the child, other than child support payments, to become a mediation topic, they too may require a nexus to PMP priorities such as parenting plans, parent's time with the child, and parental right protection.

***i. The issue of financial support for the child: mediation relevance and progress:***

The distinction between child support and other child-related issues proved confusing for some parties. One mediator reported on parties' difficulty with "understanding that parenting time and support are two separate and distinct issues and should not be commingled or dependent on one another." The party in another case associated child support with visitation, observing that "I pay child support (\$175 a week) and I've gotten no visitation. Never does she give her rides to me. And still wants to increase the amount." Given this complicated context, it may be foreseeable that the parties' financial support for the child would be regarded by most parties as irrelevant for their mediation. In fact, out of 106 responding parties, a considerable minority of 42% viewed the question of increasing the financial support received by the child to be inapplicable to their mediation.

As for progress in increased the child financial support, a smaller minority of 37% found that at least some progress was made in increasing their child's financial support through their

mediation. This pattern of responses about relevance and progress on the issue of the child's financial situation persisted when responses were disaggregated by custodial status. However, the pattern was somewhat more pronounced for non-custodial than for custodial parties. A higher percentage of non-custodial parties (48% of 31) than custodial parties (40% of 52) considered the issue of financial support irrelevant to their mediation while the percentage of non-custodial parties who reported some success in increasing such support (32% of 31) was lower than that of custodial parents (37% of 52).

**ii. Factors influencing party's financial support for the child:**

In considering factors that might affect the party's financial support for the child – viz., jobs, housing, relationship with the other parent, time with or access to the child (child time/access), transportation, or something else – the greatest number of respondents – that is, nearly half (49%) of 68 responding parties – associated a positive impact with the separate factors of housing and child time/access. Smaller, but still considerable, percentages of parents indicated that their job situation (46%) and their relationship with the other parent (41%) positively influenced their support. Few parties regarded any of the above factors as a negative influence on their financial support: the largest number of negative responses (12%) concerned the effect of the parents' relationship. Upon further examination however, responses about the impact of these factors on financially supporting their child differed by custodial status. Greater proportions of custodial than non-custodial parties indicated that the impact of the above factors was positive. As for the most frequently chosen positive factors: whereas a majority of 53% of 36 custodial respondents regarded housing, jobs, and child time/access as positive influences, only smaller proportions of non-custodial parents did so. Thus, out of 18 non-custodial respondents, the effect of child time/access was positive for 50% of respondents while jobs and housing each had a beneficial effect for 44%.

**iii. The durability of changes in parties' financial situation and their support for the child following mediation:**

Whatever factors affected their finances by the time four-ten weeks had elapsed since mediation, improvement in their financial situation was reported by a slim minority of 16% of 57 interviewed parties. With respect to the welfare/public assistance factor, the financial circumstances of the vast majority of the interviewed parties were unrelated to such assistance. Over two-thirds (68%) regarded welfare/public assistance irrelevant to their situation. Another 7% or four interviewees were less dependent on welfare/public assistance while 4% or 2 were more dependent, and for 21% or 12, that dependency was unchanged. Otherwise, similarly slim minorities of 16% of interviewed parties separately indicated that their ability and the ability of the other party to provide financial support for the child had increased.

**f. Impact of PMP mediation on party satisfaction:**

**i. Satisfaction rate:**

The PMP won the resounding approval of participating parties. Ninety-four percent of 102 parties were willing to engage in PMP mediation again, and 96% of 105 would recommend

the PMP to others. As one party said, “I think it's a great program and [I'm] very impressed by [the] success rate.” Another party appreciated the assistance afforded through the PMP, noting that we “couldn't have done it ourselves alone.” A third party provided constructive suggestions to improve the PMP through better session scheduling, noting the “long time between sessions – one time each week would be better ... [as would] the ability to schedule sessions in advance.”

**ii. Party views about the impact of their participation in mediation on the child:**

Four-ten weeks after mediating, most parties (54% of 57 interviewed parties) thought their participation in mediation was positive for their child, and half the interviewed parties (50% of 56) also thought the other parent's mediation participation positively affected the child. One party commented that “we've [parties] worked out a relatively complex set of moves for each of us during our divorce but through mediation managed to not have those big life changes really upset our children's day-to-day. We had a space in mediation for our challenging conversations and high emotions to be expressed so we didn't have to come home and subject the kids to that.” Another party found that his or her February mediation was particularly helpful in meeting the challenge of parenting when school was closed by the pandemic: “We [parent and child] get to spend more time together, especially with the virus and having to stay home and do school from here. It's good for both of us. Mediation helped us to get to this point, it would have been harder if we hadn't done that first.”

**iii. Party assessment of mediators' skills:**

By virtue of their training and experience, mediators' skills were critical to parties' positive experience in mediation.

*Use of mediation techniques:* Mediation tended to be positive for parties in large part because mediators employed multiple techniques to facilitate productive discussion among parties, including but not limited to validating, active listening, reframing, reality testing, asking questions, caucusing (private sessions), promoting between-parties communication, exploring options, and focusing on alternative goals, among others. Across the 160 sessions reported on by mediators in FY 2020, the most frequently used technique (at 58% of sessions) was active listening. Active listening involved a variety of tactics – such as paraphrasing, summarizing, clarifying issues, reflecting back, articulating parties' needs, and rephrasing – that let parties know that they were heard. At one session, mediators relied on active listening to ensure that “both parties felt heard and ... ensuring both parties were participating actively.” At another session the active-listening tactic of restating was valuable in engaging parties in mediation and focused on their goal: “restating proved to be most helpful in keeping the parties productively engaged during the mediation session, because it allowed for the parties to remain focus in achieving their goal of establishing a parenting schedule.” The second-most popular mediation technique, reframing, was employed at 42% of sessions. Reframing consisted of re-describing the disputed issue in order to stimulate a fresh perspective among parties and thereby promote resolution of the dispute. Thus, one mediator used reframing “to ensure understanding of the parties [and so] the parties would hear what was said in a new light and remain engaged.” The mediator at a different session explained that reframing proved valuable to the development of a

parenting plan: “I reframed the feelings they [the parents] were each having about time spent with the children while providing legal information re custody so that they [the parents] were able to develop a parenting plan that felt good to each of them.”

Approximately one-fifth or more of sessions involved asking questions (29%), caucusing (23%), or helping parties with their focus (21%). Accordingly, mediators used questions directed at parties during one session to raise “different circumstances and issues they [the parties] had not considered which helped them clarify the details of agreement.” By way of caucuses, mediators discovered that “during our first session, we found using confidential conferences to be the most effective tactic as during the beginning of the mediation they were both agreeing with whatever the other parent said. It wasn’t until the confidential conferences that we were made aware of the real conflicts.” Mediators enabled greater party cooperation by “focusing on the impact of how their [parents’] disagreements and inability to co-parent negatively effects the child.”

Mediators turned to additional strategies to enable parents to mediate more effectively. For example, role-playing was employed to encourage ‘mutuality’ – that is, getting parties “walking in the other person’s shoes, with respect to how the other parent will feel in connection with the other parent’s actions around child.” At other times, mediators were more directive in order to address a participation imbalance among parties. Mediators used directive actions “when one party was dominating the conversation; ensuring both parties were participating actively” and to quell party interruptions at another session since “in this situation, with these clients, it is important to be more directive to keep control over who is speaking to prevent interruption.”

***Adjusting mediation techniques for effective remote mediation:*** Mediators adjusted their mediation techniques to meet the challenges posed by remote mediation. And so, extra efforts to personalize active listening were made. Mediators found that “because it [the session] was a Zoom mediation, referring to the parties by name to ensure they both felt heard and provid[ing] feedback kept them [the parties] both engaged.” Active listening by a mediator at another remote mediation session involved amplifying body language: “Because this was a Zoom / online session, it was important to actively express body language while the parties were talking that [implied] I was hearing them and then follow up with paraphrasing what was said.”

Suggestive evidence for mediators’ skill in conducting mediations remotely and for the effectiveness of remote mediation under the PMP may be found by comparing parties’ assessment of the accomplishments of remote mediation with those of mediation in general. Post-mediation survey responses from parties who engaged in remote mediation exhibited the same trends regarding mediation satisfaction and outcomes as the total surveyed group of parties. Twelve post-remote mediation surveys were received, five of which concerned confirmed remote mediations while seven of these surveys were assumed to involve remote mediation because they occurred after the day courts closed and officials discouraged physically proximate interactions. Like the larger group of surveyed PMP parties, willingness to use and recommend the program was widespread – comprising 100% of remotely mediating respondents. Mediation outcomes of this remotely mediating group also paralleled those of the overall PMP respondent population. The agreement and the parenting-plan development rates produced by remote mediation was

high. Full, temporary, or partial agreements were achieved by 91% of 11 remotely mediating respondents, and only one party reported failure with reaching agreement. Parenting plans were fully or partially developed by 92% of 12 remotely mediating respondents and not at all by a single responding party. Thus, at one session, mediators helped parents meet the challenge of arranging parent contact with the child under pandemic distancing protocols:

*The parents were having difficulty figuring out how to create a temporary COVID 19 Social Distancing shared parenting plan. They addressed this issue by talking about the long-term parenting plan and working together to figure out how to develop a COVID 19 version that kept their parenting time similar.*

Likewise, reports of progress on party interactions due to remote mediation exceeded those about progress on remotely-mediated child-related issues. Between 58% and 50% of remotely mediating parties achieved progress in communication, conflict and civility whereas reports of progress in issues involving some form of parental contact with the child or involvement with the child's education and extra-curricular activities ranged from 42% to 8%.

***Party assessment of mediators' skills:*** Mediators' ability to listen impressed 84% of 105 parties. The fairness and lack of bias exhibited by mediators were noted by 81% of respondents. As one party remarked, "[Mediator A] was great, [Mediator B] as well. I appreciate the time and their understanding on my concerns, as well as for [other person]. For my first time, I found no favoritism, everything seemed fair on both sides." Parties largely appreciated mediator's help with identifying issues (79%), generating options (71%), and allowing parties to make their own decisions (71%). Consequently, another party was inspired to observe how "everyone was extremely helpful. They [mediators] made the easy stuff even easier and I could not tell you how helpful it was for the difficult stuff. I would recommend them to anyone in our situation. Or any other situation." A third party was so impressed with the mediators that his or her interest in getting involved with the program was awakened: "I am grateful that mediation was available to us and was handled so well. [Mediator A] and [Mediator B] were great to work with. I wonder how I can become involved. Thank you!" However, a fourth party's commendation of the mediators' work came with a caveat about the perceived power imbalance between the mediators: "I was very grateful for [Mediator A] and [Mediator B] and their calm and well-informed and deep experience with mediation. The only constructive feedback I would give is that [Mediator B] is sometimes overshadowed/interrupted by [Mediator A], and she has wisdom to offer." Almost two-thirds or 63% of respondents found the mediators' assistance in writing up the agreement welcome.

#### **IV. Conclusion:**

During FY 2020, the PMP operated in its usual fashion, providing services to eligible parties referred by Probate & Family Court Divisions and non-court (or community) sources until March 16, 2020 when non-emergency access to the court was curtailed, and constraints on inter-personal contact were urged due to the coronavirus pandemic. In response to this crisis, the PMP persevered in functioning for the remainder of the fiscal year by converting as many of its operations as possible into electronic form. Nevertheless, referrals and mediations declined

during the last quarter of FY 2020 even though remote mediation became available. All five centers conducted remote mediations either telephonically or online. The FY 2020 group of PMP parties, including parties who participated in remote mediations, experienced the same benefits as PMP parties in previous years, namely, high agreement and satisfaction rates, majority party progress in parties' interactions with each other, and minority progress with child-related issues.<sup>22</sup> Data from the small sample of parties who engaged in remote mediation provided suggestive evidence that remote mediation through the PMP was as effective as PMP mediation in general in producing agreements and making progress with parties' interactions and child-related issues.

## **V. Recommendations:**

- (1) The continued operation of the PMP throughout FY 2020 and the accomplishments achieved despite pandemic-related constraints demonstrate the value that the program provides to the Massachusetts community and justify continued support for the PMP even if remote mediation were to be the program's future.
- (2) For the time being while the pandemic is rife, remote mediation is the order of the day for resolving parenting disputes. Measures should be taken to improve remote mediation services:
  - a. The disparities in access to remote mediation should be addressed. In the event that telephonic mediation is employed as a way to broaden access to remote mediation, then consent forms and other required documents will need to be adjusted in order to accommodate the limitations of this medium. If an audio-visual version of remote mediation is desired, perhaps parties could be given iPads or tablets on a temporary basis.
  - b. Outreach activities that will help make the public, including potential parties and referral sources, aware of the availability and effectiveness of remote mediation should be increased. The fourth quarter downturn in the quantity of mediations – which were conducted remotely – compared to the previous quarters when mediations were in-person – may be attributable to a lack of public familiarity with or confidence in the efficacy of remote mediation. Greater awareness of remote mediation will be critical for expanding its use. Perhaps expert advice on how to effectively leverage social media would help in this regard. At the same time, innovative outreach activities concerning remote mediation should be devised since the normal avenues for outreach – in-person conferences, workshops, presentations, etc. – are presently unavailable. Social apps like TikTok or Instagram might be useful.

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<sup>22</sup> See, e.g., Massachusetts Office of Public Collaboration. (2019). *Parent Mediation Program Evaluation Report: January-June 2019 & Fiscal Year 2019*, Boston, MA: Massachusetts Office of Public Collaboration, University of Massachusetts Boston. Retrieved July 27, 2020, from [https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1024&context=mopc\\_pubs](https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1024&context=mopc_pubs)

- c. Techniques to upgrade the quality of communication that occurs during audio or video conferencing should be developed and shared with mediators and interested parties. Mediation is a discourse-based process in which communication is crucial. However, communication during remote mediation (whether audio or audio-visual) is impoverished compared to in-person communication. Mediators are gaining experience with improving the communication that occurs during remote mediation – consider the examples of mediator accounts of the frequent use of parties’ names or more emphatic body language to compensate for the deficiencies in communication that were intrinsic to the medium through which remote mediation was conducted. A means of collecting and disseminating mediators’ observations and advice about useful maneuvers for improving communication in remote mediation should be developed. Creating a library of such mediator tips and posting it on social media or some other internet-based application that facilitates the sharing of ideas might be a useful move.
- (3) For the future, remote mediation should be considered a viable dispute resolution method alongside in-person mediation based on the limited evidence emerging from remotely mediating PMP parties. Considering the advantages of in-person mediation and the disadvantages attached to remote mediation relative to communication, in-person mediation should not be replaced by remote mediation. Rather, when a choice between using remote mediation or in-person mediation becomes practical, the benefits and detriments of each form of mediation should be carefully weighed for use on a case-by-case basis.
- (4) In view of the extra preparation required for both center staff and mediators to set up and conduct remote mediations and familiarize parties with the relevant technology, an increase in PMP payments to centers for remote mediations should be seriously considered.