



Nebraska's Court-Connected ADR System

by Kelly Riley

In 1991, Senator Dave Landis introduced Legislative Bill (LB) 90, known as the Dispute Resolution Act (DRA). The DRA, signed by Governor Ben Nelson on June 5, 1991, created the Office of Dispute Resolution (ODR) within the Judicial Branch, an advisory council, and a statewide network of approved centers for mediation services. This legislation stemmed from the 1988 Farm Mediation Act¹ and was the culmination of a collaborative effort between Legal Aid Society, Interchurch Ministries, and the Nebraska State Bar Association.

Implementing a public-private partnership with non-profit organizations to provide statewide mediation services is not unique to Nebraska. Other states include California,² Massachusetts,³ Michigan,⁴ New York,⁵ Oklahoma,⁶ Oregon,⁷ and Washington.⁸ This type of arrangement allows for efficient and effective delivery of service to all Nebraskans across 93 counties and four tribal nations with oversight provided at

the state level by the ODR and the Supreme Court's Dispute Resolution Advisory Council.

There have been various amendments to the DRA. While all are important, two amendments are significant. One being LB595⁹ in 2019. This legislation explicitly incorporates restorative justice (RJ) into the DRA and allows for RJ to be provided through the approved centers¹⁰ and expands confidentiality and privilege to RJ services.¹¹ LB595 also updated the juvenile code to harmonize RJ language with the DRA.

The other significant amendment occurred in 2003 when LB760¹² implemented a \$0.75 dispute resolution filing fee to support the six approved centers through the Dispute Resolution Cash Fund, increasing the annual grant¹³ to \$45,000 per center, an increase of \$15,000 to each. Unfortunately, since Fiscal Year (FY) 2014, the annual grant to the centers, still at the same amount, has outpaced the Dispute Resolution Cash Fund's income. To continue funding the centers, ODR once again received an appropriation in the FY2022 budget as the cash fund is unable to sustain funding to the centers at the current level.

Separate from the DRA, the revised Parenting Act of 2007 created the Parenting Act Fund. To fund the account, a \$50 filing fee is collected for marriage dissolutions¹⁴ and paternity determinations, parental support proceedings, and modifications.¹⁵ These monies fund an annual grant to the six approved centers and Douglas County Conciliation Court to subsidize access to court-connected mediation for indigent and low-income individuals involved in parenting disputes.¹⁶ This fund is stable with income slightly outpacing expenses.

Funding to the centers is critical because the DRA explicitly outlines that the approved centers cannot deny a person

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services solely because of an inability to pay the fee.¹⁷ Data from the case management system used by the ODR and the centers shows that from July 1, 2013, through June 30, 2022, the centers have served 4,042 individuals with an annual income of less than \$10,000. That number more than doubles to 8,813 people served when querying on those who reported annual earnings of less than \$20,000.

Overview of the Office of Dispute Resolution (ODR)

The ODR is an administrative office within the Administrative Office of the Courts and Probation. As an administrative office, the ODR staff cannot actively mediate through the office or personally in Nebraska. The only exception is that qualified ODR staff can mediate internal staffing issues with the Judicial Branch.

The duties of the ODR director are outlined in statute.¹⁸ The statutory duties can be grouped into five categories: center system support, data, funding, training, and public awareness. The ODR is also responsible for policy development, applicable only to the centers, to ensure best practices are adhered to and to maintain fidelity to mediation and restorative justice processes.

The ODR also has duties under the Parenting Act related to parenting education providers and Parenting Act mediators. For parent education providers, the ODR accepts annual provider applications and makes a recommendation to the State Court Administrator regarding approval for each applicant. The ODR also audits educational programs to ensure compliance with statutory curriculum components.¹⁹

For Parenting Act mediators, the ODR processes applications for approval based on compliance with statute²⁰ and policy.²¹ Background checks are completed before approving an applicant. Once approved, mediators are required to have eight Continuing Mediation Education (CME) hours every biennial period in three categories: general hours; ethics; and domestic intimate partner abuse, unresolved parental conflict, or child abuse. General hours include education in general mediation skills, family mediation issues, family law relating to parenting plans, child development, family systems theory, psychological and other issues in parenting, or other areas relevant to parenting plan mediation.

The Supreme Court's Dispute Resolution Advisory Council, as set out in the DRA,²² advises the ODR director. Council members have opportunities to work on collaborative projects with the ODR. Past projects include developing standards of practice for restorative justice facilitators and new screening tools to use during the initial individual private session in parenting plan mediations.

Overview of Court-Connected Mediation Services

The ODR contracts with the six approved centers for a variety of services that encompass both child welfare and juvenile justice. In 2014, funds were transferred from the Department of Health and Human Services (DHHS) to ODR's budget to cover these court-connected,²³ pre-adjudicated, contracted services. Using a center's neutral facilitator, who does not have decision-making authority, for these services allows the professionals involved in a case to focus on their professional roles. Having a neutral facilitator manage the dialogue is also helpful in engaging all the participants, including the family and/or youth, in the process. Finally, and most importantly, the centers and facilitators can help determine what court-connected mediation service will best result in better outcomes for the individuals involved.

Child Welfare Services

A *Pre-hearing Conference (PHC)* is conducted at the initial protective custody hearing and is a brief (30 to 45 minutes) facilitated conference involving parents, DHHS, county attorney, parents' attorneys, guardian ad litem, and sometimes the Court Appointed Special Advocate (CASA). This process allows for a facilitated discussion that focuses on safety and permanency issues and to identify early on the needs of the parents and children.

A *Pre-hearing Permanency Review Conference (PHPR)* is optimally held 60 days prior to a 12-month permanency review hearing. A PHPR allows those involved in the conference to discuss what permanency plans will be proposed to the court, and what needs to happen to accomplish the plan and ensure the court has sufficiently detailed information to make a decision.

A *Pre-hearing Termination of Parental Rights Conference (PHTPR)* is held once a motion has been filed and allows participants to explore non-trial alternatives. The conference may result in an agreement regarding a permanency plan that can be presented to the court. The PHTPR protocol²⁴ includes specific questions if termination of parental rights and adoption are recommended, if permanent guardianship or permanent custody is recommended, or if another plan is being recommended.

A *Family Group Conference (FGC)* is a research-based, family-centered approach that may be used at any stage of the child welfare process. The goal of an FGC is to actively engage the child's extended family and provide them with an opportunity to create a family-driven plan that addresses the critical issues identified. During an FGC, participants explore strengths and concerns for the child and family, then the family has private time to craft an initial plan. The family's plan is then shared with the professionals and collaboratively the group reviews the plan to ensure it is attainable and meets the child's needs for safety, permanency, and well-being.

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Child welfare mediation/facilitation can be used to solve issues between family members and professionals or to unravel conflicts that are a barrier to a family's progress. Mediation or facilitation is appropriate when issues do not rise to the level of needing an FGC.

Juvenile Restorative Justice Services

A *Victim Youth Conference (VYC)* is an evidence-based process between a youth who committed an offense and the person they harmed. The first step is an assessment to determine if the youth is appropriate to participate. There is a separate initial conversation with the victim, including what participation may look like or if they want to participate. If they do not want to be part of the process, a surrogate can be used. A surrogate will speak from their perspective and does not speak for the actual victim. Together, the youth and the victim or surrogate discuss what happened, the impacts of the youth's actions, and how to repair the harm. Together, a reparation plan is developed.

A *Truancy Conference* brings together the student, their family, and school personnel to have a deeper conversation that gets to the root of why the student is missing school. With that information, the group collaboratively develops a plan that helps the student succeed in school.

Juvenile Justice Mediation/Facilitation is similar to the process on the child welfare side and is a catch-all when a

juvenile is running into barriers that are impacting their success. A neutral mediator/facilitator can bring together those that are involved in the youth's case and provide a process that promotes engagement by the youth and the other participants.

Federal Grant

The ODR was awarded a \$1 million, 3-year grant to implement the Juvenile Restorative Justice and Family Intervention Initiative, a statewide "upstream" program geared at diverting youth under the age of 18 from the court system. This initiative builds on the juvenile restorative justice work already being done by expanding services to include families. Including families is important for two reasons: 1) families can provide support to youth as they work to repair the harm they caused through completion of reparation plans, and 2) many families are dealing with issues that make it harder for the youth to succeed if the family issues are not addressed.

Under this grant, the juvenile RJ services have expanded and the services available through the centers are paid with grant funds. The additional services are:

- *Juvenile Justice Family Group Conference.* Similar to a VYC though the process incorporates private family time. During this private time, the youth and their family develop a youth-specific reparation plan that sets the



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youth up for success with the support of their family. The plan is reviewed by the victim and their support system and together the plan can be updated to ensure the needs of the victim are met.

• *Juvenile Justice Family Conference*. This is a facilitated conference specifically for a youth and their family to address issues within the home. A youth's success can hinge on the success of their home life. In addition to facilitating a safe and productive process, the facilitators are also resource expanders and may be able to direct a family to needed resources. A result of this process is a family interaction plan.

These grant services, including VYC and Excessive Absenteeism (truancy) conferencing, can be referred directly from a school (elementary through high school), county attorney/pre-court, legal representation, a human service organization, or through a Diversion program.

Conclusion

In the 30 years since the passage of the DRA, the approved centers have handled over 75,600 cases. The impact on children, young people, families, communities, and the courts has

been tremendous. However, there is still more work to be done. It is often said that the Nebraska mediation system is one of the best kept secrets. While promoting the services offered through the centers, it is common to hear from professionals that they were not aware of what is available. So, the work continues with an emphasis on public awareness. If you or someone you work with has questions about whether mediation is appropriate, please contact the approved center for the area or the Office of Dispute Resolution. 

Endnotes

- ¹ Neb. Rev. Stat. § 2-4801-2-4815 (2009), <https://nebraskalegislature.gov/laws/statutes.php?statute=2-4801>.
- ² *Legislation*. (n.d.) State of California Department of Consumer Affairs. Retrieved December 1, 2022, from https://www.dca.ca.gov/publications/drpa_statutes.shtml.
- ³ *Legislation*. (n.d.) The 192nd General Court of the Commonwealth of Massachusetts. Retrieved December 1, 2022, from <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter75/Section47>.
- ⁴ *Legislation*. (n.d.) Michigan Legislature. Retrieved December 1, 2022, from <http://legislature.mi.gov/doc.aspx?mcl-act-260-of-1988>.
- ⁵ *Legislation*. (n.d.) The New York State Senate. Retrieved December 1, 2022, from <https://www.nysenate.gov/legislation/laws/JUD/A21-A>.
- ⁶ *Legislation*. (n.d.) Casetext. Retrieved December 1, 2022, from <https://casetext.com/statute/oklahoma-statutes/title-12-civil-procedure/chapter-37-dispute-resolution-act>.
- ⁷ *Legislation* (n.d.) Oregon State Legislature. Retrieved December 1, 2022, from https://www.oregonlegislature.gov/bills_laws/ors/ors036.html.
- ⁸ *Legislation*. (n.d.) Washington State Legislature. Retrieved December 1, 2022, from <https://apps.leg.wa.gov/rcw/default.aspx?cite=7.75&full=true>.
- ⁹ *Legislation*. (n.d.) Nebraska Legislature. Retrieved December 1, 2022, from <https://nebraskalegislature.gov/FloorDocs/106/PDF/Slip/LB595.pdf>.
- ¹⁰ Neb. Rev. Stat. § 25-2911(2).
- ¹¹ Neb. Rev. Stat. § 25-2914.01.
- ¹² *Legislation*. (n.d.) Nebraska Legislature. Retrieved December 1, 2022, from <http://www.nebraskalegislature.gov/FloorDocs/98/PDF/Slip/LB760.pdf>.
- ¹³ Neb. Rev. Stat. § 25-2909(1).
- ¹⁴ Neb. Rev. Stat. § 33-106.03.
- ¹⁵ Neb. Rev. Stat. § 33-107.02.
- ¹⁶ *Parenting Act Fund Policy*. (2017, March 10). Nebraska Judicial Branch. <https://supremecourt.nebraska.gov/rules/administrative-policies-schedules/parenting-act-fund-policy>.
- ¹⁷ Neb. Rev. Stat. § 25-2910.
- ¹⁸ Neb. Rev. Stat. § 25-2908.
- ¹⁹ Neb. Rev. Stat. § 43-2928(4) and (5).
- ²⁰ Neb. Rev. Stat. § 43-2938.
- ²¹ *Policy for approval of Parenting Act mediators*. (2020, December 14). Nebraska Judicial Branch. https://supremecourt.nebraska.gov/sites/default/files/Programs/mediation/Reports/policy_for_approval_of_parenting_act_mediators.pdf.
- ²² Neb. Rev. Stat. §§ 25-2905 to 25-2907.
- ²³ Neb. Rev. Stat. § 43-247.04.
- ²⁴ *Pre-hearing Termination of Parental Rights Conference Protocol*. (2011, July). Nebraska Judicial Branch. https://supremecourt.nebraska.gov/sites/default/files/files/2921/PHTPR_Protocol_2011_07_0.pdf.

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