

**ADR Handbook:
Mediation and
Restorative Justice
Practices**

For Judges and Court Staff

**Nebraska Administrative
Office of the Courts & Probation
Court Services Division
Office of Dispute Resolution**

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Preface

August 2020

The Nebraska Judicial Branch has long stood for fairness, equity, and justice, where voices are heard and issues are resolved. It is in light of these time-honored principles that Nebraska determined that in addition to the traditional justice processes, other appropriate processes may be offered to citizens to resolve disputes and highlight self-determination. In recognition of the commitment and dedication of those serving as judges, clerk magistrates, district court clerks, and court personnel, the Office of Dispute Resolution (ODR) offers this revised alternative dispute resolution (ADR) handbook on mediation and restorative justice practices.

Beginning in 1992 and annually since, the ODR Advisory Council reviews the policies, practices, and financials of the centers that are requesting approval, and provides a recommendation to the State Court Administrator regarding approval of each as an “ODR-approved” center. The ODR-approved centers, herein referred to as centers, provide a significant resource to Nebraska’s courts and citizens. Since the passage of the Dispute Resolution Act, 69,000+ mediation and restorative justice cases have been processed through the centers, and they continue to serve every Nebraska county.

As the director for the Office of Dispute Resolution, Administrative Office of the Courts and Probation, Court Services Division, it is my hope that the material and resources within this handbook will be useful when considering court-connected restorative justice practices and court-referred mediation. This office welcomes inquiries and ideas, and I look forward to working with Nebraska’s judges and court personnel to offer services that provide Nebraskans with another avenue to access justice.

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Introduction

This handbook is designed to provide judges and court staff information regarding the Office of Dispute Resolution (ODR) and the ODR-approved centers and the services they provide that can assist litigants.

Most cultures and people through history have used some form of informal mediation to resolve disputes. For example, mediation has been used by indigenous peoples of the Americas, New Zealand, Australia, and also used by religious orders such as the Quakers and Mennonites. In more recent times, formal systems of rights-based dispute resolution, using primarily an adversarial process, have evolved in Western civilization and have been largely and exclusively used in the United States and many other nations. For the past six decades and more, the informal, more interest-based dispute resolution strategies have begun to be incorporated into the mainstream of the justice system.

There are three primary styles of mediation – facilitative, evaluative, and transformative – though many mediators change or blend styles based on the type of case or as the mediation progresses, recognizing that a different approach may help move the parties past impasse. Regardless of the style, mediation is grounded in party self-determination.

A facilitative mediator provides a structured process to assist parties in identifying issues and interests (underlying needs) that help move parties off their initial positions. This is accomplished through questions, active listening, reframing, summarizing, and other facilitative skills that can move the parties toward collaboration and creative problem-solving. In a facilitative mediation, parties are generally in joint session and caucus or separate meetings are used as a tool, as needed. Facilitative mediators are generally not content experts; therefore, they do not offer advice or opinions, nor do they make proposals. An exception is with mediating parenting plans where the mediator is knowledgeable on the Parenting Act and the contents of a parenting plan.

Evaluative mediators provide feedback and guidance to the parties based upon the mediator's industry knowledge, jury verdict and settlement data, and previous experience with similar disputes. In other words, an evaluative mediator provides risk assessments to the parties based upon the mediator's professional knowledge and experience, and engages in a dialogue with the parties as to each party's best and worst case scenarios under both a litigated and mediated process. Some, but not all, evaluative mediators make predictions as to the likely outcome of a litigated dispute. Finally, evaluative mediators may propose terms of an agreement, i.e., a "mediator's proposal," as a means of avoiding impasse at mediation.

Transformative mediation is grounded in empowerment and recognition by each party of the other's needs, interests, values, and points of view. Empowerment is about increasing the skills of both sides to make better decisions for themselves; recognition helps expand parties' ability and willingness to relate to others in a more understanding and considerate way. The goal with transformative mediation is long-term change in the parties and in their interpersonal relationships. The United States Postal Service is one of the most well-known users of transformative mediation through their REDRESS mediation program.

The ODR and the ODR-approved centers primarily use facilitative style of mediation, and the program standards and procedures used by each center are very similar. All of the ODR-approved centers provide mediation services on a sliding fee scale or at no cost, depending on the service. Each center has developed programs unique to their geographical area and designed to assist the public and courts to access justice for disputes, as well as facilitated dialogues focusing on goal setting and planning. Judges and court personnel are welcome and

encouraged to work with the directors of their respective center to develop programs that will be of assistance to their court.

In Nebraska, statewide community-based dispute resolution efforts began in the 1980s when the agriculture financial crisis gave rise to the farm crisis hotline in 1984, which led to the Nebraska Farm Mediation Act in 1988. The Farm Mediation Program demonstrated that many problems could successfully be solved consensually, often as an alternative or supplement to the courts. It also showed that statewide programs working in cooperation with institutions, agencies, and local individuals could extend limited resources and provide greater access. As a result, efforts were made to extend the mediation process to other kinds of disputes, and in 1991 the Nebraska Dispute Resolution Act was passed, broadening the use of mediation to all types of civil conflicts. Since then, the state has also passed legislation authorizing restorative justice practices in child welfare, juvenile justice, and adult cases.

In 2007, the Nebraska Legislature revised the Parenting Act allowing for mandatorily-referred mediation or specialized alternative dispute resolution when parties have not submitted a parenting plan to the court within a specified time frame. Prior to being ordered to mediation, parents can develop a parenting plan through any means that is suitable to them (e.g., on their own, through attorneys, voluntary mediation). Douglas County's Rule 4-3 served as a guide for this legislation, and per Neb. Rev. Stat. § 43-2937 (2) "on or after July 1, 2010, all trial courts shall have a mediation and specialized alternative dispute resolution rule in accordance with the act."

This *ADR Handbook: Mediation and Restorative Justice Practices for Judges and Court Staff* was originally funded in part by the National Institute for Dispute Resolution and later revisions supported by the Administrative Office of the Courts and Probation, Court Services Division, Office of Dispute Resolution. The opinions expressed herein do not necessarily reflect the position of the Institute. It is hoped that this handbook will encourage a continuing dialogue between the courts, ODR and the centers in order to create and sustain a quality partnership.

Benefits of Alternative Dispute Resolution

“Dispute resolution is a term that refers to a number of processes that can be used to resolve a conflict, dispute or claim. Dispute resolution may also be referred to as alternative dispute resolution, appropriate dispute resolution, or ADR for short.

Dispute resolution processes are alternatives to having a court (state or federal judge or jury) decide the dispute in a trial or other institutions decide the resolution of the case or contract. Dispute resolution processes can be used to resolve any type of dispute including family, neighborhood, employment, business, housing, personal injury, consumer, and environmental disputes.”¹

Through the ODR and its centers, ADR means dispute mediation and restorative justice processes. While ADR will not solve all the problems of society, nor all the problems of the courts, ADR does provide an avenue for individuals to achieve results in a wide variety of cases. ADR, when appropriate and where used effectively, can have many benefits.

ADR is inherently non-coercive. When an agreement is reached through ADR, it is based on the parties' own values and needs, rather than imposed by someone else.

Agreements reached through ADR are self-enforcing. Several studies have shown that parties who reach their own agreement are generally more likely to follow through and comply with its terms than those whose agreement is imposed by a third party decision-maker.

Parties are satisfied with the ADR process. When parties reach an agreement through dispute mediation or a restorative justice practice, they are more likely to be satisfied than those who proceed through a court process. Even in cases when an agreement is not reached, the parties who have attempted ADR tend to perceive others involved as acting in good faith more often than litigants who go to trial without having attempted ADR.

The process is flexible and comprehensive. ADR processes have the added advantage of being able to develop agreements that cover both legal and extra-legal issues, such as visits with extended family members for important family traditions.

ADR is future focused. ADR allows parties to come to a resolution within the context of their relationship. This is particularly important when the relationship is going to continue, for example relationships between parents, parents and youth, and youth and their communities. ADR not only addresses the issues at hand but can set up a framework to more effectively manage future conflicts.

ADR is private and confidential. Both dispute mediation and restorative justice processes are done in private rather than in an open courtroom. The matters discussed in dispute mediation and through restorative justice processes are confidential² and privileged.³

¹ “Dispute Resolution Processes,” American Bar Association, accessed June 30, 2020, https://www.americanbar.org/groups/dispute_resolution/resources/DisputeResolutionProcesses/

² Neb. Rev. Stat. §§ 25-2914, 25-2914.01, 43-247.03

³ Neb. Rev. Stat. §§ 25-2933, 43-247.03, 43-2941

Facilitative, Interest-Based Dispute Mediation: An Overview

Generally speaking, facilitative, interest-based dispute mediation should be considered in situations where a relationship is involved, such as conflicts between parents, family members, employer/employee, landlord/tenant, debtor/creditor, parent/child/school, neighbor/neighbor, business associates, and many others. However, to successfully mediate, parties must be able to:

- Have the ability to exercise self-determination during the mediation process.
- Be willing to attempt resolution of issues in good faith.
- Be able to communicate on some level.
- Be mentally competent and in control of their actions and behavior, not violent, or under the influence of alcohol or drugs.
- Be able to follow some degree of structure (both in the mediation process and any conditions provided in the agreement).

Some conditions make settlement more easily achievable:

- A previous history of cooperation.
- No long history of dispute, distrust, or litigation.
- Reasonable number of issues in dispute.
- Hostility towards each other is moderate or low.
- External pressure to settle (e.g., one party faces a time constraint).
- Limited psychological attachment toward each other.
- Adequate resources available to negotiate with during the mediation.

It does not mean that a mediation will be unsuccessful without these conditions; it does mean cases with one or more of these conditions are more likely on a more frequent basis to reach full settlement.

Mediation may not be as effective when the following factors would preclude a referral of a case to mediation:

- When there is a need for public sanctioning of conduct.
- When repetitive violations of statutes or regulations need to be dealt with collectively and uniformly.
- When it is important to set legal precedent or settle important legal or factual issues for the general public.

Parenting Plans and the Nebraska Parenting Act

In 2007, the Nebraska Legislature amended the Parenting Act. As part of the revised Act, the ODR was charged with approving and maintaining a list of ODR-approved Parenting Act mediators who are governed by the Act and related statutes, as well as guided by the Nebraska Standards and Ethics for Family Mediators. To meet this requirement, the ODR developed the Policy for Approval of Parenting Act Mediators that describes the approval process, mediator training and educational requirements, and mediator status and grievance process. The ODR maintains and publicizes a roster of approved mediators through a public-facing searchable list on the Judicial Branch website. In addition to the ODR-approved Parenting Act mediators, a licensed Nebraska attorney may serve as a parenting plan mediator if the parties agree to use such attorney as a mediator.

Mediation recognizes that parents are the experts of their family. Mediators assist parents to channel that expertise by providing a process that is conducted in a safe environment, allowing parents to work together and focus on the best interest of their child(ren). One way that mediators accomplish this is by figuratively having the child(ren) at the table to identify their needs and how those needs can be met. On rare occasions, and with both parents' approval and extensive preparation, an age-appropriate child may participate in mediation.

Initial Individual Private Session (IPS)

ODR-approved Parenting Act mediators and attorney parenting plan mediators are required by statute⁴ to meet with each parent individually to determine the appropriate process – mediation or specialized ADR – or if neither is appropriate. This is accomplished by assessing the presence of:

- Child abuse or neglect
- Unresolved parental conflict
- Domestic intimate partner abuse
- Other forms of intimidation or coercion
- An inability to negotiate freely and make informed decisions

Specialized Alternative Dispute Resolution (SADR)

Specialized Alternative Dispute Resolution (SADR) is defined as “a method of nonjudicial intervention in high conflict or domestic intimate partner abuse cases in which an approved specialized mediator facilitates voluntary mutual development of and agreement to a structured parenting plan, provisions for safety, a transition plan, or other related resolution between parties.”⁵ If it is determined that SADR is the appropriate process, the case shall be referred to an approved SADR mediator that has completed 24-hours advanced training, a requirement of ODR-approved SADR mediators. A licensed Nebraska attorney may serve as a SADR parenting plan mediator if the parties agree to use such attorney as a mediator.

Financial Assistance

The ODR grants Parenting Act funds to centers and Douglas County Conciliation and Mediation (DCCM) to subsidize mediation fees for low income parents. The centers and DCCM cannot deny service to a parent solely based on the inability to pay; a sliding fee scale is available and placement of each parent is based on income verification.

⁴ Neb. Rev. Stat. §§ 43-2927 (3), 43-2939 (1)

⁵ Neb. Rev. Stat. §43-2922 (23)

Parent Education

The ODR oversees the application process for third party service providers offering parent education courses to ensure that required components are included as part of the course curriculum.

The basic-level parenting education course is designed to educate parents about the impact of the pending court action on the child and appropriate application of parenting functions.

Approved curriculum shall include, but is not limited to, information about:

- Developmental stages of children
- Adjustment of a child to parental separation
- Litigation and court process
- Alternative dispute resolution
- Conflict management
- Stress reduction
- Guidelines for parenting time, visitation, or other access
- Provisions for safety and transition plans
- Effects of child abuse and neglect, domestic intimate partner abuse, and unresolved parental conflict on parents and children

Parents may be ordered to a second-level parenting education course as a subsequent course, and shall include, but is not limited to, information about:

- Development of provision for safety and transition plans
- Potentially harmful impact of domestic intimate partner abuse and unresolved parental conflict on the child
- Use of effective communication techniques and protocols
- Resources and referral information for victim and perpetrator services
- Batterer intervention programs
- Referrals for mental health services, substance abuse services, and other community resources

Child Welfare and Juvenile Restorative Justice Practices

With the passage of LB464 in 2014, the funding and management of child welfare and juvenile justice conferences, mediations, and facilitations, including restorative justice (RJ), was transferred to the State Court Administrator. In 2019, LB595 further expanded RJ practices stating that RJ services are to be provided by approved centers, and that the Office of Dispute Resolution shall be responsible for funding.⁶ Additionally, the ODR governs the training and eligibility requirements for the approved centers' RJ facilitators. These requirements also serve as best-practice guidelines for private RJ providers.

A [bench card](#) is available for Child Welfare/Juvenile Justice Conferencing that outlines the procedure, sample court language, terminology, and the Transmittal Form.

Child Welfare Services

For child welfare services, the Court can determine on its own or on the motion of a party that a child welfare conference is warranted and is to be referred to an approved center. The approved center will conduct an assessment to decide the appropriate process (Table 1).

At the conclusion of the service, the center will provide the court with a completed Transmittal Form that indicates the service that was provided and if a conference/mediation/facilitation was held. If yes, the conference summary or mediated agreement will be submitted with the Transmittal Form.

Table 1: Child Welfare Services

	Definition	Goal
Family Group Conference	Research-based, family-centered process with three phases: information sharing, private family time, and plan presentation for approval	Address the essential issues of safety, permanency, and well-being of the child
Pre-hearing Conference	A facilitated meeting with a defined agenda, set by <u>protocol</u> , held prior to appearing in court	Clarify placement, parenting time, ICWA determination, and services
Pre-hearing Permanency Review (PHPR)	A facilitated meeting focusing on critical questions, outlined in <u>protocol</u> , to be answered at the upcoming permanency hearing	Develop a permanency plan to propose to the court
Pre-hearing Termination of Parental Rights (PHTPR)	A facilitated meeting focusing on critical questions, outlined in <u>protocol</u> , to be answered at the upcoming termination hearing	Determine if case is ready for trial and explore non-trial alternatives
Child Welfare Mediation	A one-on-one mediation that can be between parent and provider, parent and foster parent, or family members	To solve problems that are hindering the child's and family's progress
Child Welfare Facilitation	A multi-party facilitation to unravel and set a better course direction for the child, parents, and caregivers	To solve problems that are hindering the child's and family's progress

⁶ Neb. Rev. Stat. § 43-247.03 (1)

Juvenile Restorative Justice (RJ) Practices

Juvenile RJ includes a variety of services. While the different services may have different goals, they have a common theme among them, which are the three pillars of restorative justice: addressing harms/needs, acknowledging obligations, and engaging stakeholders. In Nebraska, RJ is an extension of the dispute mediation services provided by centers with RJ facilitators building on their mediation skills with specific RJ facilitation skills training.

Both RJ and dispute mediation processes are grounded in self-determination, and engage parties to determine how the needs of all involved can be addressed, commonly referred to as a “win-win.” While there are similarities, it is important to also highlight differences between the two.

	Dispute Mediation	Restorative Justice (Dialogue) Practices
Responsibility	Generally both parties have some responsibility related to the outcome.	The youth takes responsibility.
Focus	The focus is on the interests of the parties and how those needs can be met through an agreement.	The focus is on impact, safety, and stakeholder engagement.

Similar to child welfare services, the Court can determine on its own or on the motion of a party that a Juvenile Justice conference is warranted and is to be referred to an approved center. The approved center will conduct an assessment to decide the appropriate process (Table 2).

At the conclusion of the service, the center will provide the court with a completed Transmittal Form that indicates the service that was provided and if a conference/mediation/facilitation was held. If yes, the conference summary or mediated agreement will be submitted with the Transmittal Form.

Table 2: Juvenile Justice RJ Practices

	Definition	Goal
Expedited Family Group Conference	A research-based, family-centered process with three phases: information sharing, private family time, and plan presentation for approval	Address immediate placement issues for a juvenile
Victim Youth Conference (a.k.a. Victim Offender Mediation)	An evidence-based dialogue between an offender and victim or victim surrogate, with victim safety a priority	Collaboratively address the harms and develop a reparation agreement
Youth Truancy Mediation/Conference	A facilitated process for youth who are at risk for court involvement and involves the parents/guardians and school staff	Develop a plan to ameliorate the factors that led to truant behavior
Juvenile Justice Mediation	A one-on-one mediation that can be between a youth and parent, parent and provider, or family members	Solve problems that are barriers to the youth's progress and can address status offenses
Juvenile Justice Facilitation	A multi-party facilitation to unravel and set a better course direction for the youth	Solve problems that are hindering the youth's progress
Circles	A storytelling process in which participants are equals and have honest exchanges about difficult issues and painful experiences	Benefit from the collective wisdom to generate new understandings and possibilities for solutions

Frequently Asked Questions

What does mediation cost?

ODR-approved centers and private mediators alike set their own rates, and these reflect a range of rates. Nebraska's centers set rates based on per person or per group costs, and fees are disclosed prior to commencing mediation. The Dispute Resolution Act provides that no one is to be denied access to mediation based upon inability to pay; thus, centers offer a sliding scale for fees based on the [Federal Poverty Guidelines](#).

How many times and how long of a session is typical for a dispute mediation process?

The type of case, the needs of the parties, any court-imposed expectations, and timelines influence the length and number of mediation sessions. Some cases, such as community disputes, may require multiple, briefer (2 hour) sessions while some parenting plan mediations can reach agreement after one session (2 to 3 hours). Other types of situations, such as pre-litigation civil disputes and cases that involve multiple parties from multi-state venues may be scheduled for a one-time, all-day session.

How long is a restorative justice process?

The timing depends on the process. A prehearing conference can last 15 to 60 minutes, while other RJ processes tend to be in the range of two to four hours, and a family group conference generally is scheduled for six hours.

How long does it take to get to the table to complete a mediation or restorative justice process through an approved center?

A range of 10 to 25 days is the average amount of time between initial contact and getting to the table. Multiple factors affect the timeline, including assessment of the parties and scheduling to find a mutually suitable date for the parties, as well as the mediator(s)/facilitator(s).

Who are the mediators and facilitators?

Mediators come from a variety of backgrounds, including law, counseling, business, education, community, and others. In Nebraska, mediators affiliated with an ODR-approved center are required to complete 30 hours of basic mediation training; facilitators receive additional training in the processes they will be facilitating (e.g., prehearing conferences, victim youth conferences, family group conferences, etc.).

At present (2020), there are no statutory training or educational requirements for private mediators, with the exception of ODR-approved Parenting Act mediators, who must complete 30 hours of basic mediation training, 30 hours of family mediation training, conduct at least three supervised parenting plan mediations, and complete 8 hours of continuing mediator education on a biennial basis. Additionally, licensed Nebraska attorneys are qualified to mediate parenting plans.

Advanced training for center-affiliated and private mediators in such areas as restorative justice, employment, and special educational mediation is offered through [Nebraska Mediation Association](#), ODR, ODR-approved centers, and other regional and national organizations. Each center has an internal mediator credentialing and evaluation process for their affiliated mediators, as well as a grievance process.

Where do referrals to centers come from?

Anyone can refer a case to mediation. The Dispute Resolution Act provides that referrals may be made by a court, an attorney, a law enforcement officer, a social service agency, a school, or any other interested person or agency. For the 2019 calendar year, ODR statistics reflect that referrals from courts represent 51% of all referrals, followed by attorneys (22%), self/family/friend (16%), government agency/organization (7%), and schools (3%).

If a court wants to refer a case for dispute mediation, how should that be done?

Judges and court staff who wish to access dispute mediation are encouraged to contact an ODR-approved center and/or private mediators to become more familiar with the types of cases mediated and other services.

When judges or court staff make a referral to mediation, it is helpful to describe to the parties and lawyers as to why mediation is being encouraged. For some individuals, this may be the first they have heard of mediation. Mediation brochures from the centers and ODR are available for display and distribution by the courts. Informally, parties and/or attorneys may be given the contact information of the ODR-approved center and be encouraged to reach out for more information.

Formally, a judge may also refer a case to mediation by use of a court order, with a copy of the order faxed or sent to the approved center. The order should state whether the parties or the center are to make initial contact, and how the outcome of the mediation is to be reported back to the court. Courts should establish presumptive deadlines for the mediation process which may be extended by a showing of the parties that a continuation would assist resolution.

Courts may consider and encourage potential litigants to consider mediation as an option prior to filing, as well as during the pendency of the case and after final judgment or order.

If a court refers/orders ADR, what information will be submitted to the court?

When a court refers a case, the ODR-approved center, the parties, or parties' attorneys generally provide nominal information to the court as to whether parties participated in the mediation and whether an agreement was reached. Typically, if mediation is successful in reaching an agreement, the mediated agreement is usually incorporated into a settlement agreement by parties' attorneys and submitted to the court. If the mediation does not result in an agreement, the parties may return to court. The mediator's privilege precludes subsequent reporting to the court as to the communications occurring during the mediation.

With court-referred Parenting Act mediations, some ODR-approved centers may provide the court with a progress report noting when the individual private session (IPS) is scheduled as well as the mediation.

After a court-ordered RJ process, the ODR-approved center will submit to the court a completed transmittal report that indicates the RJ process that was determined as appropriate, if it was held, and if so a copy of the conference summary or mediated agreement will be submitted along with the transmittal report.

Are dispute mediation agreements enforceable?

Generally speaking, mediated agreements are considered as enforceable along the lines of basic contract principles.

Mediated agreements tend to be highly self-enforced. Individuals are nearly twice as likely to voluntarily comply with a mediated agreement as with a court-imposed judgment.

Are mediations and restorative justice processes confidential?

Mediations conducted by the ODR-approved centers are confidential as provided for under the Nebraska Dispute Resolution Act. Additionally, the Nebraska Uniform Mediation Act addresses privilege as does the Nebraska Parenting Act.

What is the role of lawyers in ADR?

Lawyers have clear and important roles in terms of representing clients who are participating in an ADR process. Similar in principle to preparing clients for trial, attorneys will want to prepare their clients and understand the nuances and opportunities afforded through an ADR process. With dispute mediation, attorneys may decide to attend mediation sessions (or not), advise indirectly outside of sessions, review draft mediation agreements, and complete the legal process following the session. With RJ, attorneys are actively engaged throughout the process.

What types of mediation and restorative justice programs are being offered by Nebraska's ODR-approved centers?

In addition to the processes that have been outlined (mediation of parenting plans and restorative justice processes), there are a number of mediation and problem solving programs provided by some or all of the ODR-approved centers. Many of these are done in connection with courts and the legal system, including:

- Small claims mediation
- Full divorce (attorney-mediator assigned)
- Probate and estate conferencing
- Neighborhood and community issues
- Employment related (employer-employee, employee-employee)
- Youth guardianship
- Adult guardianship/conservatorship

If a court wants to propose or explore creating a pilot ADR or mediation project, or to increase the use of court-referred mediation or court-connected restorative justice practices, how should that be done?

The court may contact the director of the ODR-approved center serving its area, or the director of the Office of Dispute Resolution.

Glossary

Alternative or Appropriate Dispute Resolution (ADR): A variety of practices and programs designed to settle disputes outside of the traditional adversarial process. May include conciliation, mediation, arbitration, and hybrid programs like problem solving courts.

Arbitration: A process by which a neutral third party with authority to render a binding or non-binding decision, assists two or more people to resolve a dispute or controversy.

Basic Level Parenting Education Course: A mandatory course for parents involved in cases involving parenting time, custody, visitation, or other access to their children.

Child Welfare Facilitation (CWF): A multi-party facilitation to unravel and set a better course direction for the child, parents, and caregivers, with the goal of solving problems that are hindering the child's and family's progress.

Child Welfare Mediation (CWM): A one-on-one mediation that can be between parent and provider, parent and foster parent, or family members with the goal of solving problems that are hindering the child's and family's progress.

Circles: A storytelling process in which participants are equals and have honest exchanges about difficult issues and painful experiences. The goal is for participants to benefit from the collective wisdom of everyone to generate new understandings of the problem and new possibilities for solutions.

Community Mediation Center ("Centers"): Private, non-profit centers which provide neutral third parties to help resolve issues and negotiate settlements.

Conciliation: A process whereby a third party works with parties separately to improve communication, facilitate direct discussion, and ultimately, reach a voluntary settlement between the parties.

Court-Connected/Court-Annexed Mediation: Mediation programs managed by court personnel, funded by, or under the control of the courts.

Court-referred mediation: Mediation ordered or referred by county, district, juvenile, or tribal courts with costs and fees paid by the parties or through grants and contracts.

Evaluative Mediation: A style of mediation in which the mediator provides feedback and guidance to the parties based upon the mediator's industry knowledge, jury verdict and settlement data, and previous experience with similar disputes. In other words, an evaluative mediator provides risk assessments to the parties based upon the mediator's professional knowledge and experience, and engages in a dialogue with the parties as to each party's best and worst case scenarios under both a litigated and mediated process. Some, but not all, evaluative mediators make predictions as to the likely outcome of a litigated dispute. Finally, evaluative mediators may propose terms of an agreement, i.e., a "mediator's proposal," as a means of avoiding impasse at mediation.

Expedited Family Group Conferencing (EFGC): A research-based, family-centered process with three phases: information sharing, private family time, and plan presentation for approval, with the goal of addressing immediate placement issues for a juvenile.

Facilitation: A process whereby a neutral third party assists a groups of individuals/parties with goal setting, information gathering, and decision-making around potentially controversial issues.

Facilitative Mediation: A structured process to assist parties in identifying issues and interests (underlying needs) that help move parties off their initial positions. This is accomplished through questions, active listening, reframing, summarizing, and other facilitative skills that can move the parties toward collaboration and creative problem-solving. In a facilitative mediation, parties are generally in joint session and caucus or separate meetings are used as a tool, as needed. Facilitative mediators are generally not content experts; therefore, they do not offer advice or opinions, nor do they make proposals. An exception is with mediating parenting plans where the mediator is knowledgeable on the Parenting Act and the contents of a parenting plan.

Family Group Conferencing (FGC): A research-based family-centered process with three phases: information sharing, private family time, and plan presentation for approval. The goal is to address the essential issues of safety, permanency, and well-being of the child.

Individual Private Session (IPS): An initial private session of a parenting plan mediation held with each parent individually to assess the presence of child abuse or neglect, unresolved parental conflict, domestic intimate partner abuse, other forms of intimidation or coercion, or a party's inability to negotiate freely and make informed decisions.

Juvenile Justice Facilitation (JJF): A flexible multi-party facilitation to unravel conflicts and set a better course direction for the youth, with the goal of solving problems that are hindering the youth's progress.

Juvenile Justice Mediation (JJM): A one-on-one mediation that can be between a youth and parent, parent and provider, or family members, with the goal of solving problems that are barriers to the youth's progress and can address status offenses.

Mediation: A process by which a neutral third party assists two or more people to resolve conflict and reach a mutually agreed upon solution.

Negotiated Rule Making: A process to involve all stakeholders in the implementation of legislation through active participation in the development of agency regulations.

ODR-Approved Center: A nonprofit organization or court-established program which makes dispute resolution procedures and restorative justice services available, and has applied for and received approval from the director under § 25-2929.

Office of Dispute Resolution (ODR): Part of the State Court Administrator's Office and under the authority and supervision of the Nebraska Supreme Court. Approves and sets ethical, training, and related standards for the ODR-approved mediators and regional mediation centers in the state.

Parenting Mediation: A process for parents to develop a mutually agreed plan addressing parenting functions provided for under the Parenting Act, Neb. Rev. Stat. §43-2929.

Parenting Plan: Plan which takes into account the parenting functions of a child, parenting time, custody and provisions for safety to meet the best interests of the child/ren. May be required in cases where child custody is to be ordered. May be developed by parents or with assistance of mediation.

Pre-Hearing Conference (PHC): A facilitated meeting with a defined agenda, set by protocol, held prior to appearing in court to clarify placement, parenting time, ICWA determination, and services.

Pre-Hearing Permanency Review (PHPR) Conference: A facilitated meeting focusing on critical questions, outlined in protocol, to be answered at the upcoming permanency hearing, with the goal of developing a permanency plan to propose to the court.

Pre-Hearing Termination of Parental Rights (PHTPR) Conference: A facilitated meeting focusing on critical questions, outlined in protocol, to be answered at the upcoming termination hearing, with the goal of determining if the case is ready for trial and explore non-trial alternatives.

Restorative Justice (RJ): A set of principles including (1) victim sensitivity and restoration; (2) offender accountability; and (3) community and public safety. May include victim/offender mediation, sentencing circles, victim impact panels, group conferencing, and problem solving courts.

Second-Level Parenting Education Course: Educates parents about the development of provisions for safety and transition plans, the potentially harmful impact of domestic intimate partner abuse and unresolved parental conflict on the child, use of effective communication techniques and protocols, resources and referral information for victim and perpetrator services, batterer intervention programs, and referrals for mental health services, substance abuse services, and other community resources.

Specialized Alternative Dispute Resolution (SADR): A process to ensure the developed parenting plan addresses safety measures, transition planning, communication restrictions regarding the amount and type of contact between parents, or other provisions for ensuring the safety and well-being of their children.

Special Education: Process in which mediators work to resolve disagreements between parents and school administrators.

Study Circles: Democratic, small-group conversations that offer the chance to get to know other participants, consider different points of view, explore disagreements, and find common ground.

Transformative Mediation: Grounded in empowerment and recognition by each party of the other's needs, interests, values, and points of view. Empowerment is about increasing the skills of both sides to make better decisions for themselves; recognition helps expand parties' ability and willingness to relate to others in a more understanding and considerate way. The goal with transformative mediation is long-term change in the parties and in their interpersonal relationships. The United States Postal Service is one of the most well-known users of transformative mediation through their REDRESS mediation program.

Victim Offender Conference: See Victim Youth Conference

Victim Offender Mediation: See Victim Youth Conference

Victim Youth Conference (VYC): An evidence-based dialogue between an offender and victim or victim surrogate, with victim safety a priority. The goal is to collaboratively address the harms and develop a reparation agreement.

Youth Truancy Mediation: A facilitated process between youth who are at risk for court involvement and involves the parents/guardians and school staff, with the goal of developing a plan to ameliorate the factors that led to truant behavior.

Online Linked Resources

Dispute Resolution Advisory Council

ODR-approved Centers (contact information and state map with geographical service areas)

Child Welfare/Juvenile Justice Conferencing Bench Card

Legislation, Rules, Standards, and Opinions

Nebraska Dispute Resolution Act

Nebraska Parenting Act

Uniform Mediation Act

List of Nebraska Mediation Statutes

Mediator Role in Developing a Parenting Plan; Advisory Opinion 01-2015

Rules Relating to the Nebraska Dispute Resolution Act 1992

Policies and Protocols

ODR Manual of Standards and Ethics

ODR Policy Manual

Nebraska Standards and Ethics for Family Mediators

Policy for Approval of Parenting Act Mediators

Nebraska Restorative Justice Standards of Practice

Protocols for Facilitation of Prehearing Conferences (PHC)

Protocols for Facilitation of Prehearing Permanency Review (PHPR) Conferences

Protocols for Facilitation of Prehearing Termination of Parental Rights (PHTPR) Conferences



STATE OF
NEBRASKA
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Office of Dispute
Resolution

For more information about our office, visit:

<https://supremecourt.nebraska.gov/programs-services/mediation-restorative-justice>