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The COVID-19 Pandemic and Nevada's Juvenile Dependency Mediation Program: Examining Effects on Practice

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Examining Effects on Practice

Executive Summary

Purpose

The goal of this study was to provide the Nevada Court Improvement Program (NVCIP) with information about how the global COVID-19 pandemic might have affected Nevada's Juvenile Dependency Mediation Program's (JDMP) case process and outcomes. This information can be used to indicate areas of practice challenge and to design improvements to target those challenges.

Method

The study conducted a secondary analysis of Nevada's JDMP's completed data collection forms for post COVID-19 process and outcomes (e.g., mediation agreements and parent surveys). These data were then compared in a pre/post research design to data previously collected on Nevada's JDMP's process and outcomes (pre-COVID) and analyzed for differences.

Key Findings

Case demographics: Key differences emerged in which sites were holding mediations and the focus of the mediation. The 2nd judicial district held a higher percentage of mediations post COVID-19 and the 8th judicial district held fewer. In addition, post COVID-19, there were significantly *fewer* mediations that focused on TPR and significantly *more* mediations that focused on petition language.

Case process: Parents were unlikely to complete the post-mediation survey. Only a handful of parents completed the survey, in comparison to prior years when a significant portion of survey responses were parents or caregivers. Parents were more likely to feel ignored, unheard, and not part of decision-making post COVID-19 (interpret with caution due to small sample).

Case outcomes: Post COVID-19, mediations were significantly more likely to result in "No Agreement" (29% compared to 25%) and were significantly less likely to have failures to show (based on the data sheets analyzed).

Conclusions/Recommendations:

Nevada's JDMP has pivoted to a virtual mediation format, getting quickly up to speed with the available technologies, but not without some impacts on program practice and outcomes. This study found, for example, that post COVID-19 there were less mediations in the 8th JD and more in the 2nd, fewer TPR mediations but more mediations of the petition, and more mediations resulting in "no agreements" but fewer "no shows" for mediation. Feedback received from parents and "other" stakeholders (e.g., attorneys, caseworkers, foster parents, and other family members) also indicate some decline post COVID-19 from the very positive assessments of mediation experiences obtained from exit surveys pre COVID-19. Participants noted struggles with technology (i.e., hearing everyone, dropped calls, waiting room delays), for example, and felt communication was more difficult and not as open in the remote mediation format. In light of these findings, the following are offered as considerations or recommendations for ways the JDMP may enhance the delivery of virtual mediations (these are briefly noted here and discussed in more detail in the body of the report):

- Consider whether additional training in conducting virtual mediations is needed for mediators/program staff to increase their confidence with the technology and their ability to actively facilitate the mediation process while managing the virtual mediation platform.
- Consider whether there is a benefit, moving forward post COVID-19, to continue to offer a hybrid mediation model, with some individuals appearing in-person and some appearing online. This study found that significantly fewer parties were "no shows" to mediations post COVID-19. This may be the result of the virtual format offering greater scheduling flexibility and fewer transportation issues for parties, which facilitated their attendance.
- Consider if the greater flexibility offered by virtual mediation means that mediation can be used at earlier stages of the case than it has been previously, which may result in resolving issues sooner.
- Consider ways to enhance communication during the virtual mediation session. While there are aspects of in-person mediation that cannot easily be replicated in an online format, (e.g., being able to observe participants' non-verbal communication if they are not sharing video), the JDMP should discuss what can be done to enhance interactions to resemble the in-person experience more closely and facilitate open dialogue.
- Consider ways to enhance virtual mediation evaluation efforts by encouraging parents' completion of exit surveys (e.g., enhanced survey recruitment scripts at the beginning and end of the mediation session and/or following up on non-returned surveys). Very few mediation surveys were returned from parents and the findings with respect to parents' feedback presented in this study need to be interpreted with caution as a result.

The COVID-19 Pandemic and Nevada’s Juvenile Dependency Mediation Program: Examining Effects on Practice

Introduction

Juvenile dependency mediation is implemented in all judicial districts (JDs) in Nevada. It is a non-adversarial process facilitated by two neutral co-mediators who facilitate communication among those involved in a case while also working to ensure that all have a say in the outcome. Those in attendance are generally the natural parents; the foster parents (if applicable); other family members closely involved in the child’s life; the attorney for the child, the attorneys for the parents, the district attorney, and the caseworker assigned to the case. Each is given the opportunity to share his or her view on the case, as well as express any concerns about issues going forward. Cases can be referred to mediation pre- or post-adjudication, or at the TPR stage of the case. Specifically, mediation in Nevada may focus on whether or not court jurisdiction is appropriate, petition language, services for children and parents, visitation, placement options, educational issues, reunification plans, permanency plans, dismissal orders, termination of parental rights, post-adoption contact, and any issues that are barriers to permanency.

Juvenile dependency mediation in Nevada has demonstrated considerable success at achieving its case processing and outcome goals. Previous research examining mediation in Nevada (e.g., Summers, Wood, Bohannon, Gonzalez, & Sicafuse, 2013; Summers, Wood, & Bohannon, 2013; Summers & Gatowski, 2019), for example, has shown that mediation can enhance case processing (i.e., improve timeliness of court events), increase key participant (i.e., parents, children, relatives, and foster parents) and system stakeholder (i.e., prosecutors, parents’ and children’s attorneys and advocates, social workers, and others) satisfaction with and engagement in the case process, and improve juvenile dependency case outcomes in a non-adversarial manner (i.e., improved reunification rates and timeliness of permanency outcomes).

In 2020, Nevada courts had to pivot away from “business as usual” practice to ensure safe operations during the global COVID-19 pandemic. This meant postponing certain types of hearings and implementing remote or virtual access to other hearings. Nevada’s JDMP also had to pivot to be able to provide mediation services during the pandemic. Mediations began being held remotely, using available virtual technologies such as teleconferencing, Zoom, and Bluejeans. Post-mediation surveys began being disseminated via an online survey link (Survey Monkey) to participants.

As demonstrated by past evaluations of Nevada’s statewide JDMP, mediation has had positive impacts on case processing and permanency timelines. It provides an effective forum for timely agreement and resolution of issues, as well as an important opportunity for participants to have a voice in the case process and become more fully engaged in their case. The current study sought to

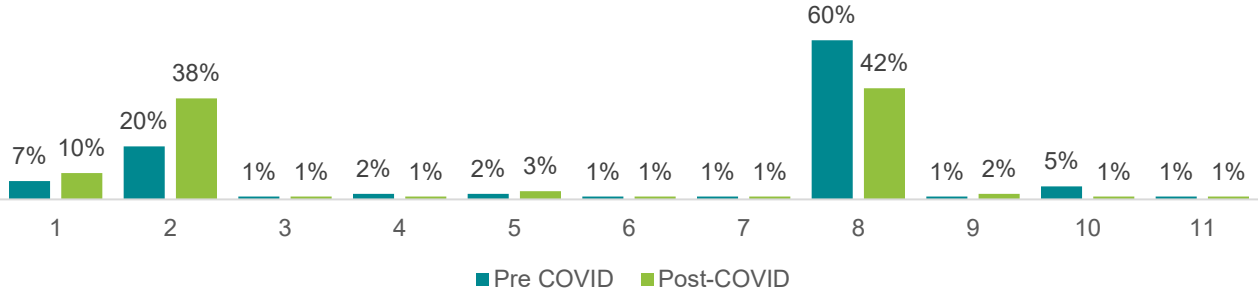
determine if the challenges posed by the COVID-19 global pandemic, and any changes in practice enacted to provide mediation during this time, have had an effect on the JDMP’s case process and outcomes.

Methods

This study examined completed data collection forms for Nevada’s JDMP post COVID-19 (mediation data sheets and parent and stakeholder surveys). These data were then compared in a pre/post research design to data previously collected on Nevada’s JDMP’s process and outcomes (pre-COVID) and analyzed for differences.

Instruments and Data Collection: Mediators collect data from each case that is mediated, entering data about the mediation into a Case Data Sheet. The data sheet includes information on the mediation start and stop time, focus of the mediation, outcome, as well as information on the family. Mediators also distribute surveys after every mediation to the participants (e.g., mother, fathers, caregivers) as well as the professionals (e.g., attorneys, caseworkers), who attend the mediation. Participants are given a different survey than professionals. Surveys are collected at the conclusion of the mediation, and in remote/virtual mediations, exit surveys were distributed to participants via an online link. For this study, researchers took the pdfs of the original paper documents for both the Case Data Sheets and the participant surveys and entered those into a database so that all of the information could be analyzed. This produced a dataset for all mediations with all documentation from May to December of 2020. These data could then be compared to an existing JDMP dataset of Case Data Sheets and surveys from a previous study conducted by the researchers pre COVID-19 (i.e., mediations from July 2016 to May of 2019).

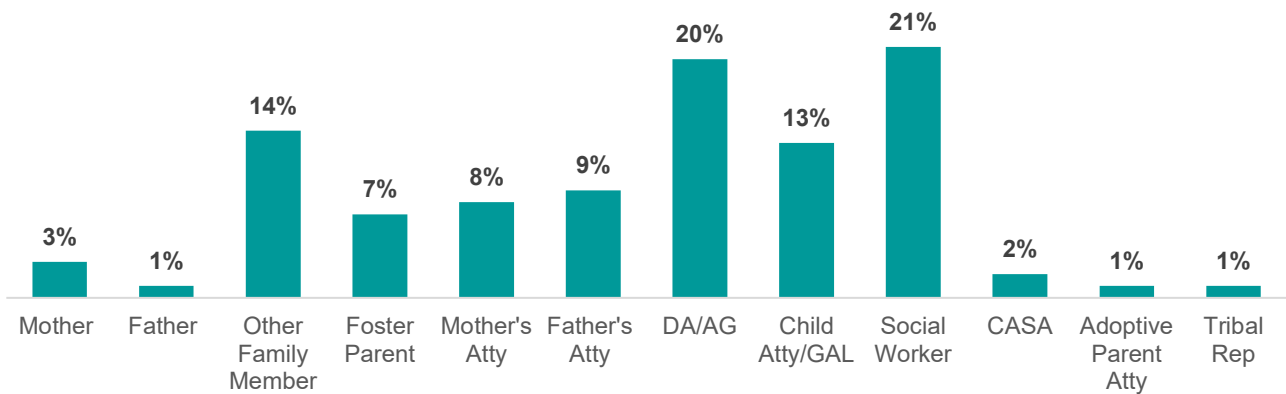
Figure 1. Percentage of Overall Mediations by JD



Post-COVID 19 Mediations (From Survey Data)

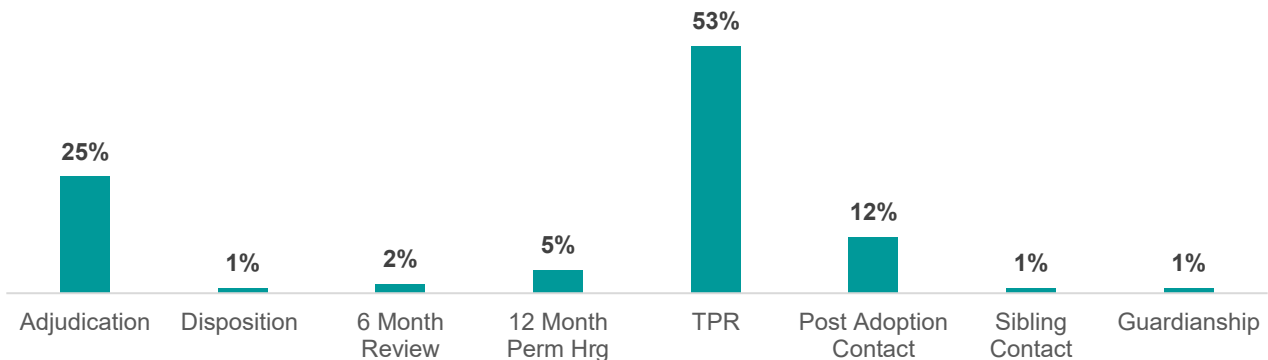
Mediation exit surveys were received from 122 mediations that were held remotely (virtually) from 4/10/2020 to 12/17/2020 (the completed surveys did not clearly note the jurisdiction the mediation was held in). A total of 431 individuals who participated in the 122 mediations returned a completed survey. Most of the 431 completed surveys were returned by professional stakeholders (e.g., attorneys, caseworkers), with few surveys received from mothers (3%; n=12 of 431) or from fathers (1%; n=6 of 431). See Figure 2 for the number of mediation surveys received by participant's role in the mediation.

Figure 2: Percentage of Completed Mediation Surveys Returned by Respondent Role in Mediation (N=431)



Half of the mediations (53%; n=65 of 122) were held prior to termination of parental rights, with 25% (n=30 of 122) of the mediations held prior to an adjudication. See Figure 3 for the legal action pending when the post COVID-19 remote mediations were held.

Figure 3: Legal Action Pending When Mediation Held (N=122)



Final Sample: The final samples for the study consisted of 427 mediations prior to COVID-19 and data sheets from 240 mediation post COVID-19. Surveys included 1,427 surveys from prior mediation assessments (pre COVID-19) and 431 surveys from mediations post COVID-19.

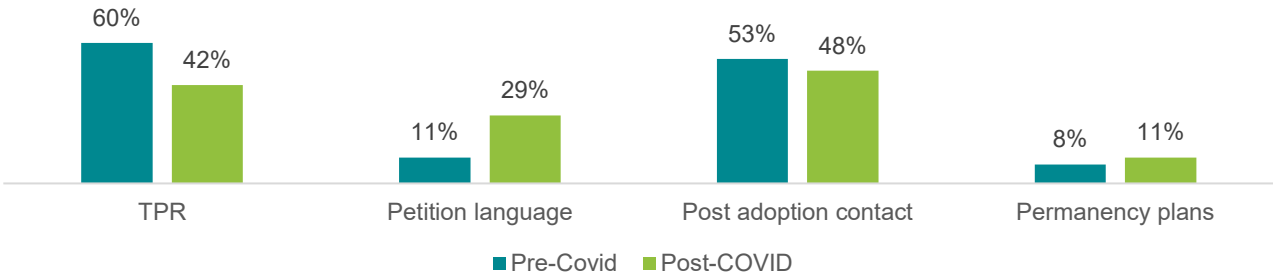
Data Analysis

Descriptive analyses were conducted to describe the mediation data to the reader (e.g., report of averages, medians, and frequencies). Additional statistical analyses were performed to determine if any differences in case process and outcomes between pre COVID-19 and post COVID-19 mediated cases were statistically significant (i.e., whether there is a low likelihood that any differences found are the result of chance alone).

Findings

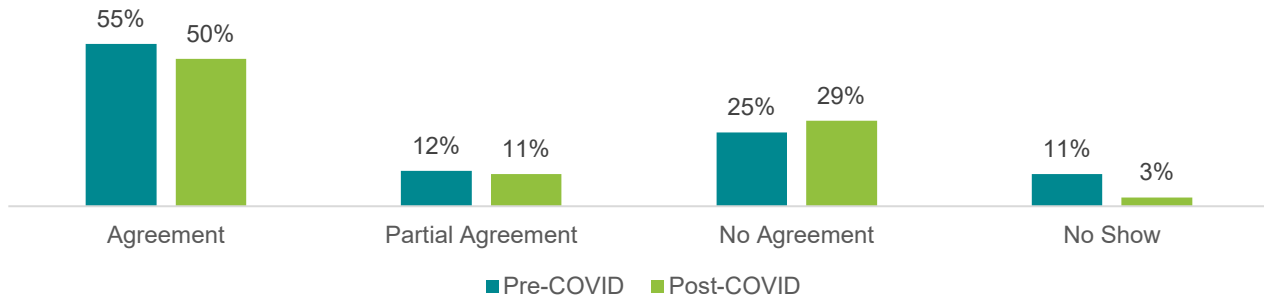
Mediations: Number and Focus. From the Case Data Sheets, which were collected by mediators in every jurisdiction, 427 mediations occurred between July of 2016 and May of 2019 when the data were collected in the pre sample, compared to 240 data sheets for mediations that occurred between May and December of 2020. Figure 4 illustrates the focus of those mediations, based on the data provided on the Case Data Sheets. It is important to note that percentages in the figure will not add up to 100% as a mediation can have multiple focus areas. Most common mediation focus areas from the Case Data Sheets pre and post COVID-19 are presented in Figure 4. Both TPR and petition language were significantly different between pre and post COVID-19. There were significantly more TPR focused mediations pre COVID-19 (60%) compared to post COVID-19 (42%), and significantly more mediations focused on petition language post COVID-19 (29%) compared to pre COVID-19 (11%).

Figure 4. Focus of Mediations (Most Common)



Mediation Data Forms: Agreement Rate. Mediation outcomes were compared between the pre COVID-19 sample (2016-2019) and post COVID-19 (2020) sample. There was no difference in rates of agreement or partial agreement. There was a statistically significant difference in no agreement (higher post COVID-19) and no shows (lower pre COVID-19). Figure 5 provides the percentages of outcomes for each sample.

Figure 5. Mediation Outcomes



Mediation Survey Data: Agreements

Data from the mediation surveys show different responses to mediation rates than those obtained from the Case Data Sheets. From the survey data, 43% of the mediations resulted in an agreement on all of the issues (43%; n=53 of 122), while 40% (n=49 of 122) resulted in a partial agreement (i.e., agreement on some of the issues). The remaining 16% (n=20 of 122) of mediations failed to reach an agreement. Table 1 presents mediation agreements achieved by the specific stage of the case or pending legal action when the mediation was held.

<i>Pending Legal Action When Mediation Held</i>	Did your mediation result in an agreement?			
	No	Yes, All Issues	Yes, Some Issues	Total
Adjudication	10% (3)	71% (22)	19% (6)	31
Disposition	-	-	100% (1)	1
6 Mo Review	-	100% (2)	-	2
12 Mo Perm Review	17% (1)	50% (3)	33% (2)	6
TPR	21% (14)	26% (17)	52% (34)	65
Post Adoption Contact	13% (2)	53% (8)	33% (5)	15
Sibling Contact	-	100% (1)	-	1
Guardianship	-	-	100% (1)	1
TOTAL	20	53	49	122

When asked why they felt an agreement could not be reached in the mediation, some survey respondents provided an explanation. Examples of explanations as to why “no agreement” was reached for mediations at the Adjudication, 12 Month Permanency Review, and TPR stages are presented below:

Adjudication

- *Unable to agree about changes in petition language*
- *More time needed to work on a safety plan*

12 Month Permanency Review

- *Mother was too angry and left*
- *Mother’s inability to be candid*
- *Mother not ready to reach agreement*

Termination of Parental Rights

- *All parties were not on the same page*
- *Parties too entrenched in their positions*
- *Parties want their day in court*
- *Extensive and difficult family dynamics making agreement not possible*
- *Parents were not ready to make decision/Parents need more time*
- *Parents were no-shows/parents not able to attend*
- *Father wanted to meet foster parent in person which could not be done over zoom*

Participant Voice in Mediations

Voice can be defined in many ways. For this study, the perception of voice was defined using a procedural justice framework. Procedural justice refers to the fairness and transparency of the processes by which decisions are made when there is a dispute (e.g., Lind and Tyler, 1988). Research has demonstrated that certain features of dispute resolution procedures increase participants’ perceptions of procedural justice, including feeling that one has a voice in the process, feeling part of the decision-making, feeling like others listened, being treated with respect, and being treated fairly (e.g., Lind and Tyler, 1988; Tyler, 2005). Sense of voice in the process was measured using the post-mediation surveys. The surveys asked for mediation participants to indicate their level of agreement on several items, which are identified in the Table below. Responses are compared for pre vs. post COVID-19 (remote) mediations.

Table 2. Mediation: Participants' Agreement to Mediation Survey Questions

	Pre COVID-19			Post COVID-19 (Remote)		
	Mothers (150)	Fathers (96)	Others (242)	Mothers (12)	Fathers (6)	Others (413)
Yes, had chance to voice opinions	96%	94%	98%	Not asked		
Yes, other people really listened to what you had to say	87%	86%	93%	67%	67%	76%
Yes, felt ignored or unimportant during mediation	17%	17%	11%	25%	33%	3%
Yes, treated with respect	95%	95%	99%	92%	100%	76%
Yes, able to be part of finding answers to problems discussed	91%	95%	94%	67%	67%	19%
Yes, mediator treat everyone fairly	100%	98%	99%	92%	100%	76%

Due to the small number of completed surveys received from mothers and fathers in the post COVID-19 sample of mediations, any differences in pre/post COVID-19 responses for mothers and fathers in Table 2 above should be interpreted with caution.

As displayed in Table 2, the post COVID-19 mediations saw the biggest reductions in the percentage of mothers, fathers and “other” participants reporting that people had really listened to what they had to say and that they were part of finding answers to the problems discussed. When compared to the pre COVID-19 mediations, fewer “other” participants in the post COVID-19 mediations (e.g., professional stakeholders, other family members and foster parents) reported that they were treated with respect (76%) and that everyone was treated fairly (76%). The frequency with which mothers and fathers reported being treated with respect, and that everyone was treated fairly, was similar in the pre and post COVID-19 mediations. Fewer “other” participants reported feeling ignored or unimportant in the post COVID-19 mediations (3%), but more mothers (25%) and more fathers (33%) reported feeling ignored or unimportant in the post COVID-19 mediations.

Participants were asked what was **most helpful** about the mediation session. The open-ended responses were analyzed, and the following common (most frequent) themes emerged:

Professional stakeholders

- Opportunities for private discussion via breakout rooms on zoom
- Explaining factual basis for the termination action
- Explaining TPR and Adoption vs. Guardianship to the parents
- Presenting evidence that would be offered at trial

- Opportunity for everyone to have their opinions heard
- Opportunity for parents to express their challenges and wishes
- Having the foster parent present and giving input
- Having other family members present and giving input
- Having the adoptive resource present and giving input
- Having mediators contact all of the parties in advance of the mediation
- Excellent mediators (e.g., able to encourage discussion, redirect when needed, de-escalate tension)

Parents, family members and foster parents

- Structured, guided approach to the discussions
- The phone calls the day before to help get prepared for the experience
- The information that was provided to make sure process and next steps were understood
- Ability to meet privately in breakout rooms on zoom
- All participants allowed to talk/everyone is heard from
- Being able to hear from adoptive parent/able to meet the adoptive parent
- Everything was explained in understandable and clear language
- Opportunity to share my opinion/express my concerns
- Excellent mediators (e.g., calming, kept things moving along, knowledgeable, compassionate, respectful, makes sure everyone is heard from)

Mediation participants were asked what was the least helpful about the mediation session. The open-ended responses were analyzed, and the following common (most frequent) themes emerged:

Professional stakeholders

- In-person mediation results in better communication between all parties than the virtual format
- Long time spent in the waiting room while others discuss the case
- Some participants appear via telephone only which results in inability to see their reactions, body language
- Harder to talk in the zoom call format without waving hand or take mic off mute to get attention
- Conducting the mediation through BlueJeans with an interpreter slowed the conversation and made it difficult to have a natural dialogue
- Technical issues that dropped parties off calls
- Hard to hear everyone on zoom call
- Spending time mediating both parents with separate agreements in the same mediation rather than bifurcating

Parents, family members and foster parents

The most common theme in the responses provided by parents, family members and foster parents was that “there was nothing that was least helpful/everything was helpful.” When something “least helpful” was noted, the most common responses included:

- Allowing people to talk over each other
- People didn’t show up that should have been there
- Difficult to speak up on zoom
- Communication not as open on the zoom format
- Interactions are not as genuine
- Some people participating without video so can’t see their reactions
- Hard to understand everyone due to bad connection
- Technology problems that dropped people off calls

Conclusion

Over the past year, Nevada’s JDMP took mediation online in order to continue to safely offer dispute resolution services in dependency cases during the global COVID-19 pandemic. When compared to pre COVID-19 practice, this study found the 2nd JD had held a higher percentage of mediations post COVID-19 and the 8th JD held fewer. In addition, post COVID-19, there were significantly fewer mediations that focused on TPR and significantly more mediations that focused on petition language. With respect to mediation outcomes, post COVID-19 mediations were significantly more likely to result in “No Agreement,” but were also significantly less likely to have failures to show for the mediation.

Nevada’s JDMP has been quick to pivot to the new virtual mediation format, getting quickly up to speed with the available technologies. Survey respondents reported that mediators were able to help guide parties through the process and also identified the pre-mediation prep calls as particularly valuable to improving their understanding of what to expect from the mediation.

Very few surveys were returned by parents who attended virtual mediations. As a result, caution should be exercised in drawing conclusions about parents’ post COVID-19 mediation experience. Having said that, feedback from parents and “other” stakeholders (e.g., attorneys, caseworkers, foster parents, other family members) indicate some decline in the pre COVID-19 positive assessments of the mediation experience. Fewer parents and “other” participants, for example, felt listened to or felt part of finding answers to the problems discussed in post COVID-19 mediations. In addition, fewer “other” participants in the post COVID-19 mediations felt they were treated fairly and with respect, and parents were more likely to report feeling ignored or unimportant.

Responses given to questions about what was least helpful in the post COVID-19 mediations provide insight into why participant feedback about the mediation experience was less positive than pre COVID-19 assessments. Participants noted struggles with technology (i.e., hearing everyone, dropped calls, waiting room delays, challenges when interpreting services required), for example, and felt communication was more difficult and not as open in the remote mediation format. This latter finding about negative impacts on the quality of communication may also be contributing to the finding of significantly more “no agreements” in the post COVID-19 mediations.

In light of this study’s results, the following are offered as considerations or recommendations for ways the JDMP may enhance the delivery of virtual mediations:

- Consider whether additional training in conducting virtual mediations is needed for mediators/program staff to increase their confidence with the technology and their ability to actively facilitate the mediation process while managing the virtual mediation platform. Existing platforms have introduced enhancements since the early days of the first lockdown – including increased security features; greater provision of ‘breakout’ rooms (which survey respondents reported appreciating); participant ‘hand-raising’; and the ability to rearrange participants in gallery view so all parties can be seen and usefully grouped. Whatever technology is used, the mediator must be in control of, and confident and comfortable with, the chosen platform if the mediation is to be truly effective.
- Consider whether there is a benefit, moving forward post COVID-19, to continue to offer a hybrid mediation model, with some individuals appearing in-person and some appearing online. This study found that significantly fewer parties were “no shows” to mediations post COVID-19. This may be the result of the virtual format offering greater scheduling flexibility and fewer transportation issues for parties. Greater flexibility offered via the remote format may also mean that dependency mediations can be arranged, and so disputes can be resolved, at earlier stages of the case than previously. Of course, questions can arise as to how to achieve a level playing field when some parties appear in-person and some do not, and these need to be considered and navigated with care. There are benefits of in-person mediation which cannot easily be replicated in an online format, including being able to observe participants’ non-verbal communication – something the survey respondents noted was missing from their mediation experience. This can be addressed, somewhat, by asking participants to always keep their cameras on, although some parties may only be able to attend via phone. If virtual mediations continue to be offered, or a hybrid model becomes the norm, ways to enhance communication during the virtual mediation session should be discussed. If the virtual format facilitates the use of mediation earlier, and more often in a case, the possible impacts on available resources for mediation would need to be carefully thought through (i.e., to ensure the program had the capacity for any expansion/increased volume).

- Consider ways to enhance virtual mediation evaluation efforts by encouraging parents' completion of exit surveys. Very few mediation surveys were returned from parents. This is not surprising, as parents had to access the survey via a link (rather than being handed a survey at the conclusion of an in-person mediation). To encourage responding, the JDMP may need to employ additional strategies such as: making an announcement at the beginning and the end of the mediation about the survey, its goals and purpose, and how to access it for completion; emphasizing the importance of completing surveys to the program's quality assurance (e.g., responses are used to ensure the mediation program is meeting the needs of all participants) when telling participants about the survey link; letting participants know that the survey is short and won't take up too much of their time; sending 1-2 follow-up texts or reminder emails (1-2 days after the mediation), to those who have not completed a survey; exploring possible access challenges to the survey in advance (inability to access link), and considering other options for providing feedback such as participating in a telephone interview that uses the same questions as the survey, or sending the survey via email or text.

Past evaluations of Nevada's JDMP have demonstrated the program's considerable success at achieving its case processing and outcome goals – providing an effective forum for timely agreement and resolution of issues, as well as an important opportunity for participants to have a voice in the case process and become more fully engaged in their case. The current study provides Nevada's JDMP stakeholders with data that can be used to reflect on mediation practice post COVID-19, to ensure that the program is able to successfully handle the challenges posed by the shift to a virtual mediation format.