



**MEANINGFUL PARTICIPATION OF
CHILDREN AND YOUTH
IN CHILD PROTECTION MEDIATION**

**PRACTICE GUIDELINES
For Child Protection Mediators
and
Child Welfare Practitioners**

**Ministry of Children and Family Development
and
Ministry of Justice**

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- the Federation of BC Youth in Care Network (FBCYICN).

NOT ABOUT US WITHOUT US

This statement was foundational to the project committee and working group's approach to identifying the needs of young people as it relates to highlighting ways in which they could experience meaningful participation within the Child Protection Mediation process.

Young people were invaluable in providing direction and context to these guidelines through their participation and sharing of their thoughts and experiences.

In particular, we would like to acknowledge the efforts of Trevor Coburn, an active member of the working group, who serves as a youth representative.

Introduction and Background

These guidelines were created to support and enhance the meaningful participation of children and youth in Child Protection Mediation (CPM). The Ministry of Justice (MOJ) and the Ministry of Children and Family Development (MCFD) worked together to develop this document in response to the identified need to advance practice, provide clarification around the roles of the mediator and the child protection worker in the CPM process, and share emerging knowledge. These guidelines further serve to reaffirm MOJ and MCFD's commitment to practice CPM in a developmentally appropriate way by recognizing the participation rights of children and youth.

The guidelines are drawn from a variety of sources, including earlier research and extensive consultation within B.C. and in other jurisdictions. The guidelines are meant to be a flexible, living document that continuously evolves to reflect changes within the child welfare context.

PLEASE NOTE...

These guidelines are to be interpreted and applied in accordance with the applicable legislation and the *Child, Family and Community Service Act (CFCSA)*, so that the safety and well-being of children remain paramount considerations during CPM.

See Appendix 1 "The Legal Context, Policy and Standards" for more information.

Purpose

These guidelines provide a framework to assist practitioners with ensuring the meaningful participation of children and youth in CPM. The guidelines are primarily intended for child protection mediators and child protection workers, however, it is likely to be of interest to others. Child and youth participation is not new to the CPM Program and these guidelines build on and further the knowledge and skills already in place.

While these guidelines were designed to address participation specifically for child protection mediation, they may be used to inform future work to strengthen children and youth's participation in a variety of other child welfare collaborative planning and decision making processes, such as family group conferencing and traditional decision making.

Goals

These guidelines are a support to the practice of meaningful participation for children and youth in CPM and are set out to:

- Create a shared understanding of meaningful child and youth participation specific to the child protection mediation context;
- Increase child and youth participation throughout the mediation process;
- Assist and support children and youth in upholding their right to participate as fully as they wish, to have their voices heard and their views considered in matters affecting them;
- Promote consistent, high quality child and youth participation practice;
- Create a pathway to support ongoing training opportunities for all program stakeholders to learn skills necessary to ensure meaningful child and youth participation; and
- Understand the roles and responsibilities of practitioners to promote and support child and youth rights under the *UNCRC*, *CFCSA* Section 70, and other relevant provincial legislation and policy (see Appendix 1 for the legal context).

Objectives

As well as providing context, these guidelines provide tools that facilitate the practice of inclusion and meaningful participation for children and youth and set out to:

- Establish a framework that provides practitioners with a flexible continuum of child and youth participation options;
- Create an inclusive culture where there is a presumption that all children and youth will meaningfully participate, and alternative methods are considered only when barriers to participation cannot safely be addressed;
- Define and clarify the roles and responsibilities of mediators, child protection workers and other participants and the key considerations that need to be addressed when incorporating meaningful child and youth participation into CPM;
- Provide support and practical information to practitioners about how to balance social, emotional, behavioural and cultural considerations while ensuring participation by children and youth; and
- Define advocacy and create an understanding of the importance of advocacy in supporting the participation of children and youth in professional practice.

Guiding Principles

The meaningful participation of children and youth in CPM is guided by the following principles, as outlined in the General Comment, Article 12 *United Nations Convention on the Rights of the Child (UNCRC)*. In order for the process to be considered meaningful it should be:

- | | | |
|-------------------------------|-------------------------|---------------|
| • Transparent and informative | • Voluntary | • Respectful |
| • Child friendly and enabling | • Relevant | • Inclusive |
| • Safe and sensitive to risk | • Supported by training | • Accountable |

Please refer to the References page for a link to the *UNCRC* General Comment Article 12 for further descriptions of each of these principles.

How to use these guidelines

There are five sections in these guidelines. Each section lays the foundation for the next, building on essential knowledge of which to be mindful when engaging children and youth to participate in CPM.

By section five, the foundational knowledge required to best understand the opportunities for meaningful participation have been identified and the practical applications explained. A complete review of these guidelines is intended to refresh and/or expand the practitioner's knowledge base on how to include children and youth in CPM.

Section 1 – Context

This section provides a brief overview of child rights, defines meaningful participation, outlines the benefits of and challenges to establishing meaningful participation, provides a summary of consultations with youth in B.C. about participation, explores collaborative planning and decision making in B.C. and defines child protection mediation

Section 2 – What is advocacy and what is its role in Child Protection Mediation?

This section reviews what advocacy is and how advocates can be a valuable resource in CPM, identifies who can be an advocate, and identifies the role of the Representative for Children and Youth (RCY).

Section 3 - Roles in facilitating child and youth participation in Child Protection Mediation

This section defines the roles and responsibilities of some key participants normally included in the CPM process.

Section 4 - Balancing Considerations

This section highlights the most common considerations of which to be mindful when trying to determine the most meaningful way for children and youth to be involved in CPM.

There is a non-exhaustive list of considerations for practitioners to keep in mind on a case-by-case basis.

Section 5 – Facilitating Meaningful Participation

This section provides an outline of the mediation process and identifies a flexible continuum of child and youth participation options which are responsive to the unique needs and circumstances of mediations.

This continuum includes a range of methods from direct to indirect participation, and encourages consideration of using the most direct method of participation.

Section 1 - Context

The meaningful participation of children and youth is about **respect** and **upholding children's rights**.

The *United Nations Convention on the Rights of the Child (UNCRC)*, to which Canada and the provinces signed their agreement, sets out (in 54 Articles) the inter-related rights of children and youth, including participatory and informational rights.

Article 12 of the *UNCRC* is the right for children and youth to:

- **express their views;**
- **be heard; and**
- **have their views given due weight in accordance with their age and maturity.**

Article 12, together with Articles 5 and 13 to 17, introduces a philosophy of respect for children as active participants in their own lives and acknowledges both their evolving capacity and the common sense approach that a child's path from total dependence to adulthood is gradual.

A child or youth's family and the adults in their life are responsible to guide them in all aspects of their development, and to uphold their rights. It means taking into account their wishes and feelings, including their perspective in all matters affecting them, and cultivating an environment that welcomes and nurtures a child or youth's evolving capacity. Participation is a process and children and youth will only be able to meaningfully participate in an environment that actively encourages their ongoing involvement in both the big and small decisions; where they feel empowered and supported.

The *Child, Family and Community Service Act* speaks to the guiding principle that "the child's views should be taken into account when decisions relating to a child are made" (s.2(c)) and the child's views must be considered in determining what is in their best interests (s.4 (f)). **CFCSA Section 70 Rights of children in care** specify the right "to be consulted and to express their views, according to their abilities, about significant decisions affecting them" (s.70(c)). In addition, children in care have the right "to be informed about and to be assisted in contacting the representative under the *Representative for Children and Youth Act*, or the Ombudsperson" (s.70 (n)) and "to be informed of their rights, and the procedures available for enforcing their rights" (s.70 (o)) under the *CFCSA*.

In recent years, there has been growing acceptance and understanding of the importance of involving children and youth in child welfare decision-making, and some major shifts have been occurring, particularly in policy and practice. Child welfare experts recognize the benefits of child and youth participation and the importance of the rights of children and youth. Therefore involving children and youth in processes where decision-making occurs is viewed as a priority in British Columbia, across Canada and in other jurisdictions internationally (see Section 1.3 for the benefits and challenges involved in child and youth participation).

THE RIGHT TO BE HEARD

The rights that fall into the "be heard" category ensure that a child or youth can express their feelings, thoughts and opinions, especially when important decisions are being made about them. These rights include the right to an advocate or interpreters, and to a lawyer in certain circumstances. It also includes the right to be given important information, such as the rules of the process and how decisions will be made; and to be told about their rights or how to make a complaint if their rights are not being upheld.

1.1 What is meaningful child and youth participation?

Every child and youth is an expert in their own lived experiences: they have unique and valuable contributions to make in discussions affecting their current and future well-being. Meaningful child and youth participation involves recognizing and nurturing the strengths, interests and abilities of children and youth through the provision of real opportunities to become involved in decisions that affect them.

Real opportunities mean that the views of children and youth are sought out and taken seriously, and there is more than a token effort to involve them. We have a responsibility to proactively engage with children and youth while creating opportunities for them to express their views and be heard. Meaningful child and youth participation in decision making processes that profoundly affect them involves actively creating space in a system traditionally designed for adults. It also entails communicating in a way that children/youth can understand, with opportunities for sharing information and asking questions.

REMEMBER...

For the best interests of the child to be determined, it is important that his/her voice be heard. With increased age and maturity, the child should be able to influence and decide more. This obvious point is often forgotten. Adults tend to discuss what is best for children without seeking their opinions or even listening to them.

As practitioners and decision-makers, we need to consider the child or youth's views as a significant piece of information when working with others (including the child or youth) to make decisions that are in their best interests. Research and reports, from child welfare and the area of family justice, suggest that children typically want greater opportunities to provide input, and that they understand the difference between providing input and making the final decision.

Child and youth participation is very complex and requires careful consideration as to how to create the conditions that allow for the participation to be genuine, meaningful, and safe. Attention must be given to the physical, behavioural, emotional, cultural, and other relevant factors that affect child and youth participation and the child/youth must have input into choosing how they may participate.

1.2 What do young people In B.C. say about meaningful participation?

Frequently, adults make decisions on behalf of children and youth without gaining their insight or input. In our efforts to encourage child and youth participation, a group of youth from the Federation of BC Youth in Care Network (FBCYICN) were engaged in discussions about what constitutes meaningful participation.



In Their Words

Below is a collection of ideas on how to create an environment where meaningful child and youth participation can occur:

- Someone makes sure we are prepared for a meeting
- We have an advocate there to speak for us if we choose, and are involved in who is invited to the meeting
- We are in an environment that feels safe to open up and share (build trust)
- We can say what we want in a way that works for us
- Adults communicate so we understand what they mean
- We feel genuinely listened to and acknowledged
- We are given choices and are a part of making the decision
- We need an explanation about how a decision was made if we don't agree
- We need adults to follow up with us after a meeting, and follow through on what they say they will do

*Statements taken verbatim from young people



1.3 Benefits of and challenges to child and youth participation

Benefits of Meaningful Participation

- Children and youth have an opportunity to express their views, which are pursued in a developmentally appropriate manner that promotes safety and well being
- Information is more accurate and relevant, which improves decisions making
- Adults become aware of the views of children and youth and work towards solutions that acknowledge these views
- Children and youth are more likely to adhere to decisions made with their input and more willing to engage with practitioners and services
- Respecting the child or youth's views promotes better planning and increases their capacity and competency to interact with the world around them in a positive manner
- Children and youth demonstrate greater self-esteem, improved coping skills and a sense of empowerment
- Children and youth are exposed to constructive, non-violent problem-solving and observe non-adversarial decision making
- Participation can improve relationships, build trust and promote emotional healing between all parties
- The involvement of children and youth helps maintain the focus on their best interests and can act to improve the behavior of the parties

Challenges to Meaningful Participation

- There is an assumption that children and youth do not want to participate, rather than a presumption that they wish to be heard, consulted and to participate
- Participants have varying levels of experience and comfort working with children and youth
- Age, capacity, language and/or culture of the child or youth may be, or perceived to be, a barrier
- Children and youth may have difficulties expressing their views (for a variety of reasons)
- The process is considered too complex with the various parties already involved
- A participant holds the belief that children and youth lack the skills, abilities and insights to be able to participate
- Some adults hold the belief that children and youth do not have the right to participate in the process
- Not valuing the views of children and youth; not believing that their views have a place in decision making
- There is a perceived lack of time and resources
- While some CPM practices ensure the child or youth's views are sought and considered in mediation sessions, many others focus the parties on the child or youth themselves, rather than on their views and personal interests

1.4 Collaborative Planning and Decision Making in British Columbia

In British Columbia, a range of complementary “Collaborative Planning and Decision Making” (CPDM)¹ processes are available to families, children and youth involved with the child welfare system, that include mediation, family group conferencing, and traditional decision making as options. As a CPDM third-party facilitated and shared decision making process, MOJ’s Child Protection Mediation Program is well established and supported. In fact, statutory provisions in the *Child, Family and Community Service Act (CFCSA)*² were designed to encourage early resolution of child protection matters outside of court.

MCFD policy³ goes further to support a presumption in favour of using CPDM processes for resolving child welfare disagreements as the preferred alternative to court. These processes can provide an environment that can facilitate and enhance opportunities for children and youth to have a voice and be involved in decisions concerning their lives; therefore this is an essential aspect of CPDM.

In child protection mediation there are numerous ways to provide children and youth with the opportunity to meaningfully participate in this process, through an inclusive combination of direct and indirect methods. Of course, there is a delicate balance between the potential advantages and challenges, thus requiring careful consideration, case by case, to ensure maximum benefit.

1.5 What is Child Protection Mediation?

Parents/guardians and child protection workers can choose to use [child protection mediation](#) as a collaborative way to reach agreement about the care of a child/youth and their safety and well-being, with the help of a specially trained, impartial mediator. Mediation is a voluntary and confidential option that may be tried any time when MCFD or a Delegated Aboriginal Child and Family Service Agency is involved with a family under the CFCSA. Mediators do not take sides, nor do they make decisions or recommendations. Instead, they encourage people to focus on common interests and work towards a mutually acceptable solution that is focused on the child or youth’s needs.

The CFCSA sets out a provision for mediation in Section 22 of the legislation. The ministries of Justice (formerly the Ministry of Attorney General) and Children and Family Development established the Child Protection Mediation (CPM) program in 1997 and the two ministries collaborate to jointly promote and administer the program.

The Child Protection Mediator Roster is a list of trained, qualified mediators who are available throughout the province. The neutrality of these mediators is seen to be critical to the integrity and viability of the child protection mediation program and is safeguarded by having MOJ manage the roster by contracting for mediator services with private sector mediators.

¹ Information on Collaborative Planning and Decision Making is available online at:

http://www.mcf.gov.bc.ca/child_protection/mediation.htm

² CFCSA available online at: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96046_01

³ MCFD: *Child and Youth Safety and Family Support Policies*, 2012.

Section 2 - What is Advocacy and What is its Role in Child Protection Mediation?

Advocacy for children and youth plays an important role in the child welfare system and it is recognised and supported as a legitimate activity within mediation and other collaborative decision making processes.

Children in care or accessing child welfare services provided by government are often, by definition, in need of advocates, because they are usually without their natural advocates who would automatically assume this role (parents, extended family and others). Making things more complex, the number of adults involved, their relationship to the child, and the number and type of decisions being made are quite different for children in care than for other children.

What is advocacy?

- Advocacy means helping children to use their own voices or speaking out on their behalf to make sure their rights, interests and views are respected.
- Effective advocacy is an assertive and collaborative approach to problem-solving, rather than an aggressive and adversarial one.
- It is solution focussed and seeks solutions, not retribution, and takes place in a climate of mutual respect.

Who can be an advocate?

All adults, including key professionals, involved in the lives of children and youth can and should play an effective advocacy role for them by facilitating their participation in mediation and helping them become more effective advocates for themselves.

Children and youth have the right to involve someone of their choice to advocate for them:

- Friends, family members, relatives or a caregiver;
- Service providers such as child protection workers, foster parents, teachers, youth workers; or
- A more formal advocate like an Advocate from the office of the Representative for Children and Youth (RCY)⁴ or the Federation of BC Youth in Care Network (FBCYICN).

Representative for Children and Youth

The Representative for Children and Youth provides information, support and advice to children and youth who are receiving or attempting to access government services and government-funded services designated under the *RCY Act*. Advocates from the RCY may act on behalf of children and youth to ensure their voices are heard, their rights are upheld, their interests are central to decision-making, and services are being provided. It is the child protection worker's responsibility to inform young people about the RCY and the availability of advocates. Mediators may want to explore with the child protection worker how to obtain an advocate.

⁴ An Advocacy Protocol was signed by MCFD and the RCY on April 4, 2011. The protocol ensures that there are no barriers to the RCY exercising its advocacy function by clarifying the roles of each organization.

http://www.mcf.gov.bc.ca/child_protection/pdf/rcy_advocacy_protocol.pdf

Section 3 - Roles in Facilitating Child and Youth Participation in Child Protection Mediation

Child Protection Mediation is one forum where decisions are made about children and youth involved in the child welfare system. Mediators, child protection workers, and others who advocate for a child or youth's best interests have a duty to support and encourage their meaningful participation.

3.1 What is the role of the child protection mediator?

The role of the mediator is that of a process facilitator and neutral third party. Due to the complex nature of child protection mediation, the role of managing and facilitating the process and creating a safe environment is a significant responsibility. In managing the process, the mediator remains cognizant of the boundaries of their own role in order to safeguard the reality of and perceptions about their neutrality and impartiality.

The neutrality of the mediator is seen to be critical to the integrity and viability of the CPM program and a cornerstone to its success. Therefore the program maintains that mediators do not take on the specific roles of child interviewer, advocate, or representative of the views of children and youth. Instead, the mediator works with the participants to determine how the children or youth who are the subjects of the mediation will participate and how their voice will be heard. The mediator may facilitate a pre-mediation orientation to prepare the child or youth, hear their views, and determine how these views will be advanced in the mediation. The mediator does not advance a particular set of interests, as this would challenge perceptions of their impartiality

PRACTICE TIP...

Introduce child and youth participation right at the start of the mediation process; encourage parties to be thinking about how children and youth can participate throughout the process.

The child or youth's participation will vary on a case by case basis and the mediator plays a key role in working with children, youth and others to ensure they are well prepared and appropriately supported for participation. During the mediation, the mediator facilitates the expression and consideration of the views and interests of all parties, including those of the subject children and youth.

The mediator balances the various perspectives of the many participants, including children, youth and their advocates. Their role is to:

- Share information with participants about the benefits of child and youth participation;
- Speak with all potential participants (participants include the child or youth) in order to design a process where children and youth can safely and meaningfully participate;
- Explore with participants the ground rules that need to be in place to create an environment where they feel safe and able to participate;

- Discuss with all potential participants and decide (ideally with consensus) how the child or youth's views are going to be represented in the decision-making and ensure the mediation process is adapted to fit with the child or youth's method of communication;
- Speak with the child protection worker to ensure that the child or youth has been informed about confidentiality and information sharing, and confirm the necessary consents have been obtained;
- Ensure that the unique cultural values and backgrounds of each child or youth and their family have been considered and are reflected in the process;
- Prepare advocates or support persons by furthering their understanding of the mediation process and their role;
- Facilitate the mediation process (from pre-mediation orientation through completion of an agreement) with a child/youth-focused approach; whether a child/youth is physically present or not;
- Facilitate the mediation session so that safety is managed when a child or youth is in attendance at the mediation, and that his/her views are being heard and considered;
- Facilitate a discussion about how to include an explanation of how the child or youth's views were considered in decision making when drafting the agreement;
- Ask questions of participants about how the agreement/plan will be shared with the child or youth if the young person is not present during the agreement phase; and
- Explain how the child or youth's views were represented at the mediation and any barriers to child and youth participation when reporting back to the CPM Program via the case management form.

3.2 What is the role of the child protection worker?

Child protection workers play a valuable role in exercising their responsibility to support child and youth participation, especially in decision making processes such as mediation. The requirement to seek a child or youth's views is infused throughout MCFD's policy and practice standards, which apply to child protection workers within the child welfare system. It is the child protection worker's role to:

- Consider legal mandates and obligations (legislation, policy and practice standards);
- Be open-minded, curious, and creative about how to include the child or youth's views while attending to safety and well-being;
- Weigh the benefits and barriers against the range of available options on the best way for the child or youth to participate and provide the mediator with this information;
- Work with the mediator to prepare the child or youth and facilitate the most direct participation option available;
- Work with the child or youth and/or participants to identify an appropriate support person/advocate and prepare them for attendance;
- Inform the child or youth about confidentiality of information (CFCSCA Section 24), consents required, with whom their information will be shared, and what information will be documented and filed;
- Be active in considering the child or youth's views throughout the decision-making process and encourage other participants to do the same; and
- Plan for appropriate follow-up with the young person, particularly communication about the outcomes of the decision making process and about next steps.

3.3 What is the role of the parent or legal guardian (other than the child protection worker)?

This is determined on a case by case basis depending on how the child or youth is participating and may include:

- Participating in a discussion regarding the needs and interests of the child or youth;
- Exploring with the child or youth about their interest in participating, and how they will be involved in the process;
- Preparing to be a support in the preparation process for the child or youth;
- Attending the mediation process to share and promote the child or youth's needs and interests;
- Attending the mediation process to create a safe environment for the child or youth to attend and express their views;
- Listening respectfully to the perspectives of their child or youth, and genuinely considering their needs and interests when planning and making decisions; and
- Being asked to follow-up with their child or youth to share the outcome of the mediation process.

3.4 What is the role of children and youth in the mediation process?

Children and youth are the central reason for the child protection mediation process. Their role in the development of plans that have a direct impact on their lives is essential, and their involvement assists to ensure that the plans are informed, transparent, workable, and child/youth focussed.

There may be cultural views regarding the participation of a child or youth in the mediation process that the mediator would need to explore (see Section 4.6). Having participants understand the right of children and youth to participate, and upholding that right in the mediation process, is the responsibility of all the participants.

Thorough preparation of children and youth for participation in all aspects of the mediation is required in order for a child or youth to carry out their role, which is to:

- Obtain information on child protection mediation from and discuss with their child protection worker, an advocate/support worker and/or the mediator their interest in participating, how they will be involved in the process, and how their views/voice will be heard;
- Obtain information about information-sharing and what it means to give consent;
- Identify what worries or fears they have about participating and how those might be managed;
- Determine what level of participation they feel most comfortable with and who could assist them in their participation (support person or advocate); and
- If they do not attend the mediation, discuss how they want the outcome of the mediation shared with them and who they determine would be the best person to do this.

3.5 What are the roles of other participants?

Examples of other participants may include extended family (including siblings), support person, advocate, legal counsel for the child or youth, legal guardians, and caregiver. Their role is determined on a case by case basis and depends on how the child or youth is participating. The role of other participants can include any of those outlined for the parent/s and legal guardian listed above.

For example: a youth may identify an extended family member (who may or may not otherwise attend the mediation) as their support person to accompany them to the pre-mediation orientation with the mediator, transport them to the mediation and sit beside them while they participate.

3.6 What is the role of an advocate?

An advocate or support person can be effective in assisting a child or youth through the mediation process and providing essential information to the mediator and other participants to help them understand what is important to this young person.

Advocates work collaboratively with the other members of the mediation process to make informed decisions that are in the best interests of the child or youth. Sometimes, child protection workers feel that the best interests of the child or youth must always override their wishes or feelings, which can then get unreasonably ignored. However, a child or youth's views are an important piece of evidence that the decision-makers need to weigh in order to determine what the child or youth's best interests are. An advocate can help to ensure that this happens as part of the mediation process. An advocate:

- Ensures that the process involves the affected parties in a meaningful way by asking for informed input before decision-making, as opposed to seeking a full consensus decision where everyone has to agree before a decision is made;
- Does not judge what is in the best interests of the child or youth and understands that this is the role of the decision-maker;
- Understands rights and entitlements as a foundational piece, as the framework within which process is developed and decisions are made;
- Supports self-advocacy wherever possible; provides help when a child or youth has difficulty speaking for themselves;
- Remains up to date about the subject matter and obtains and understands relevant information from all parties involved;
- Helps the child or youth identify their underlying interests and brings those forward (understands interest-based problem-solving);
- Ensures the child or youth's views are heard and considered and does not make a judgment about whether or not they agree with the child or youth's proposed solution;
- Provides the child or youth with important information about potential challenges with their position; and
- Finds and names common ground.

Section 4 - Balancing Considerations

There are many factors to consider in determining the most appropriate way for the views of a child or youth to be heard through participation in the mediation process. It is not possible to outline or provide depth to every consideration, therefore these guidelines aim to highlight the most common ones that arise and provide some questions for mediators and child protection workers to ask themselves and the participants when assessing how a child and youth may participate.

These considerations have been organised into six categories:

1. Assessment of the mediation context
2. Advocacy for children and youth
3. Assessment of a young person's capacity to participate
4. Determination of the capacity and readiness of adults
5. Exploration of the child/youth's relationship with other participants
6. Incorporation of cultural identity

As these factors can be as complex as the mediation itself, many of them intersect and impact each other.

4.1 Consideration One: Assessment of the mediation context

In preparing for mediation and speaking to potential participants, the overall context of the process must be assessed in order to create a safe environment, develop ground rules and strategies to address potential challenges, maximize direct participation, and promote a constructive and productive process.

a) Impacts on process and/or outcome

When children and youth see all the adults working together and giving the child or youth the same message, it may resolve feelings of being caught in the middle of ongoing conflict. When anticipating what impact participation may have on the process and/or outcome, consider:

- What are we hoping to achieve by the meaningful participation of children and youth?
- What type of information are we hoping the child or youth's views will contribute?
- What will the process gain from children and youth meaningfully participating?
- How might their participation impact the outcome?
- Will the child or youth's participation impact other participants' ability to openly communicate?
- If I believe communication has been affected, how can I facilitate the process in a way to get around this? What opportunities can I provide to participants so they feel safe to share their views?

b) The nature of child protection issues

Each mediation case deals with different child protection issues. The nature of these child protection issues may influence decisions about how to engage children and youth in a meaningful way. It is important to have clarity about the issues, and what particular vulnerability the child or youth may have in relation to these concerns to make an informed decision about their participation. For

example, in situations related to serious abuse, it may not be realistic to even consider having a child or youth in the same room as the perpetrator of that abuse.

- What impact does the nature of the protection issues have on the child or youth's views being heard and how they might participate?
- What can be done to mitigate any challenges to child or youth participation due to the nature of the child protection issues?
- What is the attitude of participants about the protection issues in relation to the views of the child or youth (i.e. are other participants going to invalidate the young person's experience)?
- Does the status of the child protection file in the legal process have any impact on the process of the child or youth's views being heard and how they might participate (e.g. is this a mediation for a current child protection issue or is it related to a child or youth who has been in care for some time and the plan is for permanency)?

c) Safety (physical, mental, emotional, spiritual) before, during and after mediation

While safety is paramount and there may be safety issues that require careful consideration in assessing participation, we must challenge many of the assumptions that adults make about potential harm which result in the exclusion of children and youth. Instead, we should carefully explore ways to mitigate these safety concerns and support young people to participate as fully as possible in a safe way. A conflict between safety and participation does not release us from our obligation to ensure that the child's views are heard and given due weight.

- Based on the considerations related to the child or youth and the adults, what are the likely physical, emotional, cultural and spiritual safety issues that might impact how the child or youth participates?
- What can be done to mitigate these issues to facilitate meaningful participation?
- Who will plan for and attend to these matters?

d) Impacts of trauma/personal history

Many children and youth involved in the child welfare system have experienced traumatic events. In addition, their personal history involving family, culture/community and care experiences may provide challenges in ensuring their ability to participate in mediation safely and in a meaningful way. Here are some considerations:

- Are there traumatic events or family/personal history that may affect how the child or youth can participate safely (e.g. a child or youth who has been physically/sexually abused being in the same room as the alleged perpetrator)?
- What preparation, people and supports can be provided to enhance safety around participation?
- Children and youth who have had difficult life experiences may be less likely to trust the adults or the process. Time, respect and sensitivity will be crucial in engaging their participation.

- If the concerns or issues pertain to domestic/family violence, refer to “Best Practice Approaches: Child Protection and Violence Against Women”⁵.

PRACTICE TIP...

Depending on the level of trauma, more attention may need to be taken in ensuring information is gathered to make a safe plan for participation.

e) Issues and dynamics in mediation

Given that the dynamics in child protection mediation are complex, there are many potential issues that may arise and impact decisions on how a child or youth may meaningfully participate throughout the mediation process. Considerations include:

- What are the relationships like between the participants? What is the level of conflict? How polarized are the parties?
- What are the communication styles and conflict resolution skills of participants?
- What are the issues likely to arise in the mediation?
- The behaviour of participants may be unpredictable, so what can be done to attend to safety (prevention and response to events in mediation)?
- What impact will the participation or non-participation of the children or youth have on the resolution and longevity of agreement on these issues? (For example: How will an agreement centered on a youth’s behavior, house rules, or significant life decisions be impacted if the youth is not involved and they “vote with their feet”? Will a child or youth’s presence inhibit other participants’ willingness or ability to discuss and resolve issues?)
- Will conflict be created by the way in which participants may use the child or youth’s views?
- Are there issues, outside of the child protection concerns, likely to arise at mediation (such as separation, divorce, custody or access matters)? What may be the impacts of these issues on the environment of the mediation?

4.2 Consideration Three: Assessment of a young person’s capacity to participate

The combination of characteristics and needs of each child or youth who is the subject of child protection mediation will be unique, and assessment of participation should be made on a case-by-case basis accessing specialized resources as necessary to facilitate communication. This section outlines some of the major considerations related to children and youth, with the intent of highlighting what information is needed to decide how each child or youth can participate in a meaningful way.

⁵ Best Practice Approaches: Child Protection and Violence Against Women, MCFD, November 2010, updated May 2014, available at http://www.mcf.gov.bc.ca/child_protection/pdf/best_practice_approaches_2014.pdf

a) Capacity

Capacity is the ability of an individual to understand, process and respond to information. Capacity is impacted by many different things over a person's lifetime; some factors may be long-term and others situational. There is an abundance of research about children and youth's "evolving capacity". Based on a child or youth's environment and life experience, they will acquire and expand various cognitive, emotional, social, moral and physical competencies over time. Some may be predictable based on general principles of child development, while others are more diverse.

Considerations impacting capacity can include: psychiatric diagnosis, mental health issues; physical, emotional, cognitive or special needs; alcohol and drug issues and Fetal Alcohol Spectrum Disorder (FASD). When assessing a child or youth's capacity to participate, considerations include:

- What is the child or youth's ability to understand, process and express their needs?
- To what degree does the child or youth understand the nature of the mediation process?
- To what degree does the child or youth understand their role in the mediation?
- How might the child or youth be vulnerable in this process?
- Do I understand their mode of communication? How can I adapt my communication to meet their needs?
- Are there identified special needs?
- What is their cognitive capacity, e.g. the ability to understand various questions?
- What is the child or youth's emotional state when discussing his/her needs and situation?
- Does the child or youth have a particular psychiatric diagnosis that would be difficult to manage in the mediation setting?
- How does the child or youth react to situations with high emotion? Conflict?
- Will the child or youth be physically comfortable in the mediation session?
- Are there other issues of capacity that may facilitate or restrict their participation?
- What supports could be put in place to accommodate needs, and encourage safe and full participation?
- How flexible/adaptable is the child or youth to new situations, transitions or unfamiliar people and places?
- How may capacity impact the ability to participate in making decisions and agreements (including legal consents)? How can this be supported?
- Is a child or youth's capacity higher with respect to some parts of the issues than others (e.g. can plan for what they like to do when they are with parents, but not how many times a week they visit and who transports)?
- Does the child or youth have a relationship with the professional who is meeting with him/her?
- Where are they meeting and how is the meeting structured? Is it comfortable for the child or youth? What time of day is it being held?

PRACTICE TIP...

When assessing capacity, it is important to learn about the child or youth's abilities, and think ahead to find ways to accommodate rather than assuming exclusion from the process. Capacity should be assessed in relation to a particular situation, rather than labelling children and youth as competent or non-competent.

b) Chronological age and development

Chronological age is a source of a great deal of debate. There is no agreed upon threshold, or age, whereby children and youth are deemed competent and entitled to participate in making decisions that affect their lives. While legislation identifies the age of 12 for inclusion in proceedings, there are many children younger than that who are very capable of expressing their desires, and those older than 12, who may be much more limited. This is why it is important to make decisions about child and youth participation on a case by case basis.

PRACTICE TIP...

Where a young person has been formally assessed and determined to have physical, cognitive and/or emotional special needs, there is often supporting information available to provide guidance around the best ways to work with and communicate with the young person to compensate for their disability or special needs.

The Child Protection Mediation Program supports a model whereby child and youth participation is determined based on a variety of factors. Therefore, when assessing the impact of chronological age and development on a particular child or youth, one could ask the following questions:

- How may the age and development of the child or youth facilitate or inhibit their participation?
- How does the child or youth communicate? How might she/he express their point of view (verbal, written, drawings, crying, facial expressions)?
- How long can they stay focussed?
- What is her/his capacity to be in a structured meeting?
- Will her/his physical presence impact the process (e.g. moving around the room, needing to be attended to)? How will the situation be adapted to meet the child or youth's development needs?
- What is her/his ability to understand problem solving, conflict resolution and the mediation process?

PRACTICE TIP...

Use a hypothetical example of what might happen in mediation and the language likely to be used, and then gauge his/her reaction and ask questions to ensure they understand. If not, ensure that language is adapted or reframed in the orientation (and mediation if they are attending) to increase the young person's ability to participate.

c) The child or youth's prior decision-making experience, views and interest in participation

It is important to explore with the child or youth their experiences in prior decision making when planning for mediation. Understanding their views and how they choose to participate (or not) will assist in creating a successful mediation experience for all participants.

- To what degree has the child or youth previously participated in decision making? What was that like for her/him?
- Does the child or youth want to be involved and/or feel comfortable being involved? How does the child or youth want to participate, and have her/his views brought into the decision-making process?
- Who is the most appropriate person to speak with the child or youth about participating?
- If a child or youth fears that participation will cause more harm (i.e. people will be mad at me), how will you explore what would make her/him feel safer?
- What is her/his level of understanding about their current situation (e.g. protection concerns, role of the child protection worker, why they are in care, why access visits are set up the way they are) and the issues being discussed?
- Is there a specific location where the child or youth would like to hold the meeting?
- What does the child or youth want to tell the family at the family meeting?
- What does the child or youth want to get out of the meeting?
- What kind of plan would the child or youth like to see?

PRACTICE TIP:

If a child or youth does not want to participate in the process (directly or indirectly) explore their reasons to get to the underlying issue. Be creative with ideas of how the child or youth can participate as fully as possible and build emotional safety.

d) Capacity and decision-making

As discussed in a previous section, children and youth's capacity to understand issues and participate in activities evolve with cognitive and emotional development and experience. Children and youth and their parents or legal guardians may feel that undue responsibility is being placed on young people to make decisions beyond their understanding, and adults may feel that their role in making decisions to protect children or youth is being undermined. It is important for everyone to understand that the children and youth are being asked to provide their views on issues important to their lives, but that does not mean they are the decision-makers.

- To what degree does the child or youth understand the issues being discussed in mediation?
- Many children or youth may not want full decision-making responsibility, but they do wish to be a part of the process and have their views heard and considered in the process;
- Children and youth need to understand that they are not the ultimate decision-maker and will not always get exactly what they are requesting. This way their expectations may be managed. The final decision needs to be explained to children or youth in a way they can understand, and how their input was considered in the process and influenced the decision made;
- The views of the child or youth can and should carry more weight as they get older, as their level of maturity changes with age and development. Their level of input should be in line with their evolving capacity to consider options and make decisions.

PRACTICE TIP...

Explain to the young person before the mediation that it is a process for working towards meeting everyone's interests, however, not all interests can be met all of the time. Someone close to the child or youth should be assisting them with understanding that her/his opinions are important, and that although the decisions made may not be exactly what was wanted, their perspective was considered and they are given reasons why.

4.3 Consideration Two: Advocacy for children and youth in Child Protection Mediation

There is a shared responsibility amongst the adults involved in the mediation process to ensure that effective advocacy is available to the child or youth. The following are some considerations:

- Adults should acknowledge and exercise their own role as an advocate for the child or youth and be aware when this becomes a conflict;
- When discussing the role an advocate can play in mediation, discuss the plan with the child or youth's child protection worker first to explore options;
- Notify children and youth of their right to have and choose an advocate to help express their views;
- Help the young person to understand what the role of an advocate is and what they should look for in a good advocate;
- Be knowledgeable about the MCFD/RCY Advocacy Protocol and the child protection worker's responsibility to inform young people about the RCY and advocacy services;
- Share (with the consent of the child or youth) with the advocate/s any information to be considered as part of the decision;
- Clarify that the role of the advocate is not to take sides, but to share the child or youth's views about the situation and issues at hand; and
- Work collaboratively with the advocate and hear the voice of children and youth as presented through them.

PRACTICE TIP...

Actively engaging the child or youth's advocate or support person from the very beginning can strengthen the collaboration, promote understanding and highlight what information the advocate might need prior to the mediation to best serve their role.

Given the dynamics of child welfare, and of child protection mediation, there are some considerations about the role of advocacy within this process. For example:

- Who will advocate for the child? There may be role confusion, e.g. the child protection worker as legal guardian will represent the "best interests" of the child; however, the child's views may be very

different and someone without this conflict must advocate for the child. There may be sensitivity with respect to professional boundaries: not wanting to “step on the toes” of the other professionals by preventing their representation as advocate.

- Parents may believe they are speaking for their child, but like the child protection worker, may have interests that differ substantially with the child’s views. Opportunities to support children and youth’s participation may be lost if it is unclear who is expected to introduce their views into the mediation.
- Is there someone in the child or youth’s life who you think could help support their participation? Who does the child or youth feel could/should support them? Would she/he prefer an outside advocate? What would be the benefit to having an outside advocate for the child or youth? What would their role be in the mediation process?
- What advocacy resources are available? Who will help the child or youth find an advocate? What other resources could assist the child or youth’s advocate to provide support most effectively?
- Who will prepare (orient) the advocate/support person that the child or youth has chosen? Who will communicate with the advocate about what considerations have been given to how the child or youth may participate?
- How will other participants in the process perceive the chosen advocate or support person? Are there considerations about how this person’s participation may inhibit the child or youth’s views from being heard, or impact other participants?
- Some contracted service providers or others acting as advocates may feel like they are in, or are perceived to be in, a conflict of interest to challenge MCFD planning on behalf of the child or youth. How can this be mitigated?
- Advocates may not have information (e.g. from the child or youth’s/family’s MCFD file or personal history) that could assist with how the child or youth’s views are presented/supported. Can the child protection worker or another service professional provide information that will assist the advocate in supporting the child or youth as effectively as possible?

4.4 Consideration Four: Determination of the capacity and readiness of adults for child and youth participation

Just as capacity issues with respect to young people were discussed in the previous sections, there are similar factors related to the adults involved which may also impact the participation of children and youth in the mediation process. Adult participants may facilitate the participation of children and youth, or may pose challenges to the process of participation. This must be considered in determining effective participation of children and youth in mediation.

a) Readiness of adults for child and youth participation

Different participants may be able to attend to the needs and interests of children and youth in child protection mediation in different ways. Their level of readiness may impact decisions about how to best bring forward the young person’s views into the process. Some questions that may provide information about readiness include:

- Are they willing to hear the views of children and youth and value their participation in decision making?

- Even if they have been unaccustomed to having children or youth be participants in decision making before, are they open to the process, and able to be present in a manner that will not negatively impact the safety and wellbeing of everyone involved?
- Frequently, well-intentioned adults are afraid that children and youth will be emotionally harmed by being present when discussing child welfare issues, or witnessing adult conflict. How can they be reassured?

PRACTICE TIP...

- Despite adult concerns, most children and youth are very aware of the issues, having lived with the adults who were responsible for the child welfare concerns and the conflict. When discussing this concern with adults, reinforce that children and youth being present in a safely structured mediation is very helpful, as children and youth see the adults coming together to work through problems.

- Are there going to be discussions during the mediation for which the child or youth should not be present? Sometimes issues are personal (e.g. parents with divorce/custody issues, relatives who have long-standing conflicts), but need to be addressed in order to move forward to come to consensus in decision making.

PRACTICE TIP...

Structure the mediation to address these concerns, while providing a separate venue for the children or youth to go to in the interim. They can then re-join the mediation when these matters have been addressed.

- What are the interests of the participants in the mediation, and how does that affect the child or youth's participation?
- What are the views of each adult about the participation of each child or youth? Is there resistance to their participation? What might be the basis of the resistance (e.g. shame, fear of harm to the child or youth, fear of disclosure of family secrets, privacy, issues being mediated)?
- What is the emotional readiness of the participants to have the child or youth meaningfully participate? Are they willing and able to listen? Are they able to be genuine and empathetic?
- How do the participants think that the child or youth should participate?
- If they know that the child or youth's views are different from their own, will that impact their behaviour in the mediation?

PRACTICE TIP...

When preparing adults for mediation explore their views and values that may influence the process by supporting or hindering participation.

b) Capacity issues of other participants

Most of the capacity issues and considerations for adult participants are the same as those for children and youth. Please refer to the section on children and youth for this information.

- What is the capacity of other participants to appreciate the views of the child or youth and value their participation in the decision making process?
- Do other participants have the capacity to restrain inappropriate thoughts and actions so they do not impact the safety and wellbeing of the child or youth?
- How do they manage their behaviour in highly emotional contexts?
- What capacity issues may facilitate or inhibit child and youth participation? What would the impacts be if the individual participates?
- What supports could be put in place to mitigate capacity challenges of other participants?

PRACTICE TIP...

If there is concern about how a particular participant will respond to the views of the child or youth, work on reframing the benefits of child and youth participation to the overall process and planning.

4.5 Consideration Five: Exploration of the child or youth's relationship to other participants in the mediation

It is important to consider who will be present and their relationship to the child or youth when planning for mediation. The mediation generally is occurring due to disagreement between the parties, and consequently there is the potential for conflict that may be upsetting or frightening for the child/ren or youth in attendance.

Meetings with participants prior to the mediation will provide insights into how to plan the session to mitigate potential conflict and provide for the child or youth to be present in an environment where adults work through disagreements in a collaborative manner.

Considerations may include:

- Who are the other participants?
- What is the child or youth's relationship with the participants (loyalties, expressed fears, anxiety, historical trauma)?
- Are there participants that the child or youth does not know? How will they be introduced to the child/youth?
- When was the last time the child or youth saw/spoke to the other participants? What was their experience of this?
- How might contact with other participants affect the child or youth?
- What is the child or youth's perception of relationships between other participants? What impact does this have on them?

- How does the child or youth feel about speaking openly in front of their parents or other participants?
- What would the child or youth need from family members and others to feel comfortable and safe to participate? What supports could be put in place to encourage safe participation?
- What does it mean to the child or youth to have family members come together to make a plan?
- What does it mean to the child or youth if people she/he does not feel comfortable with are at the meeting?

PRACTICE TIP...

If a child or youth wishes to attend, but may be nervous since they haven't had contact with a particular participant in some time, speak to the young person about what would support them to feel comfortable. This might mean speaking to the child protection worker about finding a way for a safe visit prior to the mediation.

4.6 Consideration Six: Incorporation of cultural identity

PRACTICE TIP...

Explore with participants their cultural tradition of decision making. Early collaboration will enhance cooperative, culturally reflective participation. Engage the parties in the design of the process to reflect their traditions and customs.

The practices and approaches used in engaging children and youth in meaningful participation are most effective when they reflect and reinforce distinct aspects of the identity and culture/s of the participants. Respect is demonstrated by understanding the unique cultural values and diverse backgrounds of each child or youth and their family. Inclusion is demonstrated when processes, services and programs are culturally sensitive to children and youth from all communities.

Culture plays an important role in family dynamics and it is essential to understand its impact when preparing for mediation. Cultural considerations are equally important regardless of the age of the participant. The inclusion of children and youth in the process raises a number of considerations including:

- Are there known cultural norms, or norms of this particular family related to power structure, family and community relationships, gender, roles and decision-making that may impact the child or youth's participation?
- What other cultural considerations may facilitate or inhibit their participation (e.g. there may be more than one cultural background in the family with different ways of dealing with issues)?
- Are there particular dates or other considerations (such as location) that may be important to recognise in scheduling the mediation process?
- Are there spiritual/traditional processes that would/could support the child or youth's participation?
- Are there language considerations? Is there a need for an external interpreter? Who interprets within the family?
- Are there culture conflicts between generations in the family?

- Are there other issues related to cultural safety⁶ that might impact how the child or youth participates?
- What can be done to mitigate these issues to facilitate meaningful participation?
- Who will plan for and attend to these matters?

PRACTICE TIP...

Is there someone who is familiar with the child or youth's family dynamics and culture that could provide insight into how culture may impact the child or youth's participation and support the design of the process? Does the family want someone from their community (e.g. an elder, a spiritual advisor) to attend the mediation in order to help address some of these issues in a culturally appropriate way? Should they be invited to attend the pre-orientation sessions as well?

Aboriginal children, families and communities

In recent years, the Ministry of Children and Family Development – working in partnership with Aboriginal communities — has taken many important steps to enhance, improve and deliver programs and services in a more culturally appropriate manner. The Ministry has legislated responsibilities under the *CFCSA* specific to Aboriginal children and youth. These responsibilities, which relate to connectedness with and involvement of Aboriginal communities in decision making related to Aboriginal children and youth, also apply to child protection mediation.

The use of Aboriginal community-based traditional decision making (TDM) processes is encouraged in all child welfare practices, including CPM. Collaborative processes with Aboriginal children and youth are conducted in traditional ways wherever possible, and some are informed through cultural protocols. These processes may involve people in traditional roles as problem-solvers, and are effective in reaching agreement on issues involving a child or youth.

There may be resources within the child or youth's Aboriginal community and/or a local Aboriginal organisation to assist in assessing how culture should be considered with respect to the participation of each child or youth.

PRACTICE TIP...

Every young person can have a different relationship with their culture and traditions; therefore it is important to check in with the young person to confirm what they are comfortable with and how they would like to proceed.

⁶ Ball, Jessica, *Cultural safety in practice with children, families and communities*. University of Victoria, School of Child and Youth Care (undated) <http://www.ecdip.org/docs/pdf/rp/culturalsafety.pdf>

Section 5 - Facilitating Meaningful Participation

The CPM program acknowledges that there is a range of processes available to encourage *meaningful participation*. Additionally, each situation requires the balancing of unique considerations to determine what will be most appropriate way to proceed. In the complex context of child welfare situations, direct attendance of the child or youth at the mediation may not always be the most appropriate or effective option. However, a ***presumption in favour of direct in-person participation is encouraged where appropriate.***

5.1 Participation Framework

There is clear recognition that there should not be a prescriptive model or approach to child and youth participation in child protection mediation, as there are many complex factors. Therefore, through consultation with participants, the mediator will weigh all considerations and work with the person/s with legal responsibility for the child to determine the most appropriate method of participation for each child and youth in each mediation session. It is important to include a plan to ensure that when children and youth are involved in the process, care is taken to ensure that their needs are met before, during and after the mediation.

There is a wide array of options for how a child or youth can participate in the child protection mediation process. Through considerable research and consultation, the following chart was created to attempt to organize the possible participation tools from the most direct to the least direct forms of children and youth participation. However, this is not meant to suggest that the options are mutually exclusive; in fact, several may be used in a given mediation.

Range of Options for Participation:

1. Direct In-Person Participation
2. Direct Virtual Participation
3. Use of Advocate
4. Pre-Mediation Orientation
5. Recorded Verbal Statement
6. Recorded, Non-Verbal “statement”
7. Passive Attendance
8. Provision of Information
9. General Conversation
10. Symbolic Representation

Option	Benefits	Challenges
Direct in-person participation Attendance at some or all of the mediation sessions, with or without a support person/advocate	<ul style="list-style-type: none"> • Meaningful participation • Child/youth's needs are at the forefront • Reduced risk of views being misinterpreted • Powerful symbolism of presence can settle hostility 	<ul style="list-style-type: none"> • Requires greater resources and preparation • Requires specialized mediator • May expose child/youth to difficult dynamics • May inhibit discussion
Direct "virtual" participation – video, phone, text messages Interactive but not physical attendance at mediation, with or without support person/advocate for some or all of the time	<ul style="list-style-type: none"> • Meaningful participation • Reduces risk of views being misinterpreted • Takes child/youth's comfort into consideration • Improves durability of agreement • Can settle hostility 	<ul style="list-style-type: none"> • Requires greater resources and preparation • Availability and security of technology • Requires specialized mediator • Loss of visual communication (body language) • May inhibit discussion
Advocate only The advocate attends the mediation session representing the child/youth's views and interests	<ul style="list-style-type: none"> • Avoids placing the child protection worker in a dual role • Participation beyond simple expression of child/youth's views • Uncovers child/youth's interests, views, feelings • Balances power • Can act as independent check 	<ul style="list-style-type: none"> • May involve considerable resources • Risk of polarization and formalization of mediation • Needs clarification of the advocate's role • Consent provisions apply
Pre-mediation child/youth interview The child/youth's views expressed in the interview are fed into the joint mediation sessions as a separate set of interests	<ul style="list-style-type: none"> • Promotes meaningful participation • No safety concerns • Unlikely to inhibit discussion • Child/youth's views are expressed in their own words • Their views are factored into the agreement 	<ul style="list-style-type: none"> • Requires more resources, more planning • Potential to undermine mediator's neutrality (perceived or real) • Consent and confidentiality provisions apply • Who assesses capacity and how?

Recorded verbal statement - letter, email, text message, audio, video	<ul style="list-style-type: none"> Promotes meaningful participation No immediate safety concerns Relatively easy Unlikely to inhibit discussion A powerful message 	<ul style="list-style-type: none"> May be inflammatory No opportunity for feedback, reframing May involve increased costs Consent and confidentiality provisions apply
Recorded, non-verbal "statement" – e.g. artwork depicting a child/youth's views on the topic of the mediation	<ul style="list-style-type: none"> Promotes meaningful participation A creative medium Assists children who struggle with verbal communication No safety issues Unlikely to inhibit discussion 	<ul style="list-style-type: none"> May be misinterpreted Confidentiality and consent provisions apply
Passive attendance at mediation Child/youth is permitted in the room, but does not participate (typically younger children)	<ul style="list-style-type: none"> Helps focus the parties on the best interests of the child May alleviate a child/youth's anxiety May foster acceptance of the agreement 	<ul style="list-style-type: none"> Does not give the child/youth an opportunity for meaningful participation May expose the child/youth to difficult dynamics May increase feelings of frustration, powerlessness
Provision of information to the child/youth	<ul style="list-style-type: none"> Part of a holistic approach (i.e. meaningful participation is not possible without information) 	<ul style="list-style-type: none"> Does not give the child/youth an opportunity for meaningful participation Needs resources and creativity Challenge of communicating complex ideas to young children
General conversation about the child A discussion of the child/youth's needs, hopes and dreams	<ul style="list-style-type: none"> No safety issues No or little extra cost; easy Appropriate for any age May soften the parties Won't inhibit conversation 	<ul style="list-style-type: none"> Does not give the child an opportunity for meaningful participation Room for misinterpretation of the child's views
Symbolic representation of the child – Art work, photograph, empty chair	<ul style="list-style-type: none"> Ever present reminder No safety issues No resources required; easy Useful for any age Won't inhibit discussion 	<ul style="list-style-type: none"> Does not give the child an opportunity for meaningful participation Often purely symbolic, tokenism

5.2 Use of child and youth centred language

Age and capacity notwithstanding, it is central to *meaningful participation* that children and youth understand the oral and written communication used in their mediation process, in order to exercise their rights to be heard, consulted and to participate. Without an age/capacity-appropriate understanding of the communication, other activities in the process lose their meaning and there is no genuine opportunity for the child or youth to exercise their rights.

The use of child and youth centred language is part of a holistic approach in recognizing the rights of young persons. There is little or no cost and it is relatively easy. However, it does require a conscious effort on the part of all adult participants to adapt their speech and behaviour to accommodate the needs of the children and youth who are subjects of the discussions.

Some accommodations are more obvious than others. For example, communication includes the right to speak your own language and to have communication challenges accommodated. Interpreters or specialized tools/resources can be provided if language or disability is a communication barrier. To accommodate a range of literacy levels in written materials, the readability function on a computer can be used to keep the level at Grade 6 or lower.

To focus the mediation on the best interests of the child or youth, their level of understanding and confidence must be explored in the pre-mediation/orientation stage. A young person may not feel confident enough to participate because they:

- Do not know what to say or how to present the issues;
- Do not understand the jargon or language used;
- Experience barriers such as language, or cultural, developmental, emotional and learning differences.

During orientation, examples of what might happen in mediation and the language likely to be used can be explored with the child or youth to gauge his/her reaction, and questions asked to ensure understanding. To meet their level of understanding, ensure the language is adapted or reframed in the orientation (and mediation if they are attending) to increase the young person's ability to participate.

During the mediation process, everyone is reminded to use plain language and check frequently for understanding. As necessary, content is reframed into child or youth-friendly language and regular stops made to ensure the child or youth understands the process. When the child or youth expresses their views, they are repeated to ensure that what the adults heard was in fact what the child or youth meant to say.

In the written agreement/s, the language used should also be child/youth centred, so there is clarity and transparency for the child or youth about the decisions and the plan. The child or youth should be able to understand the language in the agreement, particularly regarding the commitments made and the next steps to be taken.

5.3 Pre-mediation preparation

Thorough preparation is the key to a successful mediation. The time spent speaking with potential participants, building relationships and trust, exploring views and possible dynamics between parties, will provide invaluable information in creating an environment in which everyone can feel safe. By exploring the potential conflicts and issues, the mediator can give thought to ground rules that can be used to address any challenges that may arise. The result will be a process that will flow more smoothly, and participants will feel heard and supported throughout the mediation process.

The mediator has a unique opportunity to speak to all participants prior to the mediation session about the various important considerations and the benefits of participation in the decision-making process. The participation framework can be shared to encourage consensus about the most appropriate approach.

These conversations should begin at the point of referral. As participants are identified, the mediator should be asking the sorts of questions outlined in the considerations sections to gather information and begin to build consensus on how the child or youth will participate in a meaningful way.

Regardless of how a young person ends up participating in the mediation process, these tools help to facilitate decision making and help to create an environment which promotes the child or youth's views being heard and considered right from the beginning of the pre-mediation process.

Pre-mediation tools	Examples	Practice Notes
Pre-mediation meeting with the child/youth	In determining how a child/youth will participate, a meeting may be held with the child/youth and an adult who can explore the considerations (see previous sections) and participation options with them. This meeting may or may not include the mediator Additionally, if a child/youth is attending the mediation, the mediator will always schedule a pre-mediation orientation just as they would with any other participant	While this is an important piece in determining how a child/youth can participate to the fullest, and it promotes meaningful participation, care must be taken to ensure that this meeting is designed appropriately and that the approach taken is also meaningful, leading to participation and the child/youth's voice being brought into the mediation
Provision of information to the child/youth	While the child/youth's views might not be brought up or represented in the mediation, they are provided with information about the meeting and the outcomes	This is part of a holistic approach to children/youth's participation; however, in and of itself, this option does not provide a willing and capable child/youth an opportunity to participate in a meaningful way

Use of child/youth centred language in pre-mediation orientations	Attempts should be made to ensure that conversations in pre-mediation orientations with all participants bring focus to the child/youth's needs	This helps participants focus on the child/youth without mitigating safety and other concerns
General conversation about the child or youth during pre-mediation orientations	Discussion of the child/youth's needs, hopes and dreams	This is a very positive approach to bringing participants together to focus on the child/youth However, in and of itself, this option does not provide a willing and capable child/youth an opportunity to participate in a meaningful way

a) Designing the pre-mediation meeting/s with a young person

Sufficient time and resources should be made available to ensure that children and youth are adequately prepared, and have the confidence and opportunity to contribute their views. Children and youth will need different levels of support and forms of involvement according to their age and evolving capacities. Without considerable effort, mediation will continue to be an adult-dominated meeting.

Prior to the pre-mediation meeting with the children or youth considerations may be:

- Who is introducing to the child or youth the idea of meeting with the mediator? Who should do this? What should they say?
- Does the child or youth know why the mediation is being held?
- What is the impact of the physical and emotional environment in which a young person is being prepared? Can we make the space more child and youth-friendly?
- What will the reactions of other participants be to taking the time necessary to prepare a child or youth?
- What is my experience working with vulnerable children and youth? What do I need to keep in mind when I am meeting with a young person?
- In order to establish trust, should the mediator be present for the first meeting with the child or youth? Who else should be there? When/is it appropriate for the mediator to meet privately with the child or youth? How many times will the mediator need to meet with the young person before he/she is prepared to participate?
- If there is more than one child or youth, should young people meet together or separately to discuss the mediation?
 - What is the dynamic between the children/youth?
 - Would meeting with them together or separately facilitate or limit their voices being heard?
 - Would it be helpful if one child or youth saw the mediator first to reassure the other siblings that the mediator is not threatening?
 - If children or youth are participating in different ways, what will the impact of this be? How will this be communicated to the other children/youth?

b) Pre-Mediation Meeting: Assessing and designing participation with the young person

During the pre-mediation meeting with the children or youth considerations may be:

- Explain that it is the mediator's role to create a safe environment for everyone to express their views;
- Let them know about the time involved for a mediation and who will attend;
- Provide time for the child or youth to ask all the questions they want;
- Check all assumptions; be curious and ask probing questions;
- How can the “agreement to participate in mediation” be explained in an age-appropriate way? Make sure the young person understands the meaning of and limits to confidentiality;
- Anticipate questions and provide answers – if you don't have the answer, let the child or youth know you will find the answer and follow-up with him/her;
- Offer opportunities to rehearse, role play, practice;
- How will you address a child or youth who is feeling frightened and/or threatened? What can you do to make the mediation process feel safe for them?
- What does safe and comfortable look like for that child or youth?
- Provide the young person different options, alternatives for attending, including a “Plan B” if they should change their mind about attending (see tools and options above);
- Determine who their support person is, if not already identified (see Advocacy for children and youth above);
- If the young person is planning on attending the mediation, try to plan with them how to make it as comfortable as possible by asking questions such as:
 - Where do you want to sit?
 - Who do you want to sit next to you?
 - Do you want to have a cue to let your support person know if you feel uncomfortable?
 - What do you want to do if you feel uncomfortable?
 - Do you want to write down what you think is important for the group to hear (or draw pictures)?
- If they are not attending, but the child or youth is expressing views in a letter or picture, ask who should read what the young person has written down or show the pictures they have drawn.

5.4 Design of the Process: Matching considerations and options to support a young person's participation

There is no roadmap to determine the most appropriate or meaningful tool for participation. Each situation is different and will, therefore, require a different pathway. However, guided by the information received through preparation, the mediator (along with the other participants) will make a determination about how each young person will participate in the process.

Looking at all the considerations and the range of options practitioners should be asking:

- ***How can young people be involved in the most optimal way?***
- ***How can the most direct participation be facilitated in order to maximize benefits and minimize challenges?***

Mediators, in their leadership role, look to those involved in the mediation to provide information to support decision making about who will be participating, and how. Although there are various complex considerations, as outlined in previous sections, the decision about child and youth participation is no different. If a young person is to participate in some or all of a mediation session, there are a number of things to keep in mind in planning the session:

a) Building in and maintaining safety

There are a number of things that can be done to enhance safety or mitigate identified safety concerns so that young people can participate as fully as possible in a safe way. Some of the questions related to safety have been posed in earlier sections. Some additional questions for session design include:

- Arrange arrival and departure plans for the children and youth to accommodate safety (who will deliver and pick up the children or youth?).
- What ground rules have the participants chosen?
- Where will the child or youth sit? Will sitting next to, or across from certain people inhibit or help the child or youth's participation? Does historical trauma or alleged trauma factor in?
- Will an advocate be there to support the child or youth?
- Should the guidelines include structure for safety and when a child or youth might leave the room or when the mediation might be terminated?
 - Is there an agreed upon way for the young person to let the mediator know they need to leave the room?

SAFETY IS PARAMOUNT

Due to the issues addressed in child protection mediations, a mediator may encounter a situation where they feel that a child or youth has been, or may be at risk of harm. When this occurs, the mediator has a **duty to report** the concern, pursuant to Sections 13 and 14 of the *Child, Family and Community Service Act*. The limits to confidentiality should be shared with participants up front to avoid misunderstandings. Please refer to the References section for the hyperlink to the *CFCSA* to read about what a child protection concern may be and your duty to report to the appropriate authorities

b) Number of participants

The number of people attending mediation can vary greatly, depending upon the issues being mediated, the number of professionals and cultural/spiritual community members involved, and the size of the family. The complexities of facilitating a mediation usually increase substantially as the number of participants increases.

- How will the number of participants impact the mediator being able to address safety?
- What opportunities could be provided to mitigate this (e.g. support people)?
- Are all potential participants required to be at the table?
- What ground rules may be helpful in managing the size of the group?
- How will the mediator ensure that everyone at the table has the opportunity to be heard?
- Should the mediation be held over more than one session in order to reduce the challenges of managing a large number of people and achieving consensus in one day?

c) Time and resources

Organizing and facilitating mediation from pre-orientations to follow up can be very time consuming. Frequently, professionals feel under pressure to hold a mediation as quickly as possible, and the time needed to adequately prepare and include children and youth in the process may appear unrealistic to proceeding in a timely fashion.

Mediators and child protection workers need to resist the temptation to choose a tool that is “easier” and less time consuming (e.g. not engaging the child or youth, but rather just using child/youth-focussed language in the mediation), rather than one designed to discover and include the views of children and youth in the process and have them meaningfully represented in decision making.

Time and/or resource considerations that may facilitate or inhibit participation include:

- Additional preparation time may impact the length of time from referral to mediation session, as well as the cost of mediator fees and expenses;
- Professionals may provide pressure to hold a mediation too quickly to adequately prepare young people to participate;
- The constraints of timeliness in court or legislation (the court may have delayed a hearing by a certain number of weeks in order to hold the mediation; legislation requires a matter be decided within a specific time frame);
- Including children and youth in the process may affect the length of a mediation session or the number of sessions;
- There may be cost implications of transportation, child care, moving to a more child/youth-friendly venue, and so forth.

d) Other session planning considerations

These arrangements are made in the preparation stage of the process to ensure the safety and comfort of the participants:

- Where will the mediation be held? Are there any child/youth-friendly venues available?
- Can the mediation be organised around appropriate timing for the child or youth (time of day, length of mediation)?
- Are there others that the mediator thinks should be suggested to ensure meaningful child and youth participation?
- Are regular breaks scheduled (washroom breaks, food, debriefing with support person)?
- What kind of food does the child or youth like? If there are times during the mediation when the child or youth will be elsewhere, is there age appropriate activities to keep them engaged (colouring, toys, books, movies), supervised if necessary and supported?

e) Considerations for facilitating participation in the mediation session/s

During the mediation session care must be taken to ensure that all participants have the opportunity to be safe and be heard. Things to keep in mind during the session:

- Review the need for everyone to use child/youth-friendly language. Where necessary reframe in child/youth-friendly language and stop regularly to ensure the child or youth understands the process. When the child or youth has expressed views, check back with them to ensure what the adults heard was what the child or youth meant to say;
- Ensure the young person has support during the session – make sure the child or youth has their chosen support people sitting next to them;
- It is normal for children and youth to express emotions of pain, confusion, frustration or hurt. Adults need to know this may occur. With support, this is part of the process of providing a safe space to feel;
- Review ground rules and consider posting them in the space where everyone can see and refer to them;
- Take regular breaks and check in with the young person to ensure they are feeling safe, comfortable with the process and understanding what is being said;
- Be prepared to take unscheduled breaks should you be concerned for the young person's emotional safety.

PRACTICE TIP:

In order to ensure that the child or youth understands as much as possible, check in regularly with them throughout the process to make sure that they feel safe, comfortable and they understand the language and level of communication. At the beginning of the mediation, reinforce to the group the need to use child/youth friendly language and remind everyone throughout the process.

5.5 Mediation Follow-up

Feedback from young people regarding participation is that frequently, when they are included and asked for their views, there is no follow up to inform them about the outcome of the decision making process. Meaningful participation is about more than just attendance: it is having views heard and weighed when making the decision, and including the young person afterward so they understand how the decision was made and what will happen next.

Follow-up is important because it shows young people that their views, and participation in the process, have been taken seriously. It lets them know what action is being taken and by whom. Some important considerations are:

- If the child or youth attends, do a brief check in with them when they are leaving. Get their thoughts, opinions, feelings on the process. Thank them and commend them on their participation in such an unfamiliar situation, with an emphasis on the value of their voice in the process;
- If the young person is not present, who is going to follow-up with the young person to explain the decisions made? What is going to be said?
- Who will explain the decision to the child or youth, the rationale for the decision, how his/her views were incorporated into the decision making process and who is responsible for following through on the agreement made?
- How will the young person participate in follow-up or review of the decisions? Should this be written into the mediation agreement to ensure follow through by adult participants?
- When the mediator is collecting feedback from participants about the process, how is the child or youth's views being recorded?
- What will be the process if a child or youth is unhappy with the decisions and wants follow-up? Children and youth should have the opportunity to express disagreement and challenge decisions.

Conclusion

Children and youth have identified that they want to participate in processes such as CPM where the decisions made profoundly affect their lives. All practitioners involved in child welfare matters share the responsibility to create the opportunities for the meaningful participation of children and youth. This includes engaging them, seeking out their views, listening, encouraging, preparing and supporting children and youth to exercise their rights to be heard, to have their views considered and given due weight, and to actively participate in the process in accordance with their age and maturity. The extent to which practitioners are successful in this endeavour will be reflected in the quality of the decisions and plans made, the relationships that are mended or built and sustained, and in the positive progress and development of the children and youth.

Glossary

Aboriginal child: defined in the *Child, Family and Community Service Act (CFCSA)* as a child:

- (a) who is registered under the *Indian Act (Canada)*,
- (b) who has a biological parent who is registered under the *Indian Act (Canada)*,
- (b.1) who is a Nisga'a child,
- (b.2) who is a treaty first nation child,
- (c) who is under 12 years of age and has a biological parent who
 - (i) is of aboriginal ancestry, and
 - (ii) considers himself or herself to be aboriginal, or
- (d) who is 12 years of age or over, of aboriginal ancestry and considers himself or herself to be aboriginal

Aboriginal community: for the purposes of policy and practice standards, “Aboriginal community” is defined more broadly than the definition under the *CFCSA*. An Aboriginal community includes an Indian Band as per the *Indian Act (Canada)* and includes a Band Council, Nisga'a Nation and treaty First Nations. A child’s Aboriginal community is one to which the child has a connection through culture, heritage or descent and includes the community or communities with which the child identifies. The Aboriginal Practice and Operational Standards further refer to community as both the geographical area/reserve in which families live as well as the First Nation, which may cover more than one geographical area or reserve

assessment: the process of collecting information on children and families in order to make informed decisions. Different approaches, supports, programs and services may be chosen depending on the outcome of the assessment

capacity: a child is capable of understanding issues that affect him or her and is able to give or refuse informed consent. An assessment of a child’s capacity is based on the child’s:

- age,
- developmental level and maturity, and
- ability to understand the nature, complexity and effect of the decision or course of action.

child: means a person under 19 years of age and includes a youth

child in care: means a child who is in the custody, care or guardianship of a director or a director of adoption

cultural safety: the outcome of interactions where individuals experience their cultural identity and way of being as having been respected or, at least, not challenged or harmed

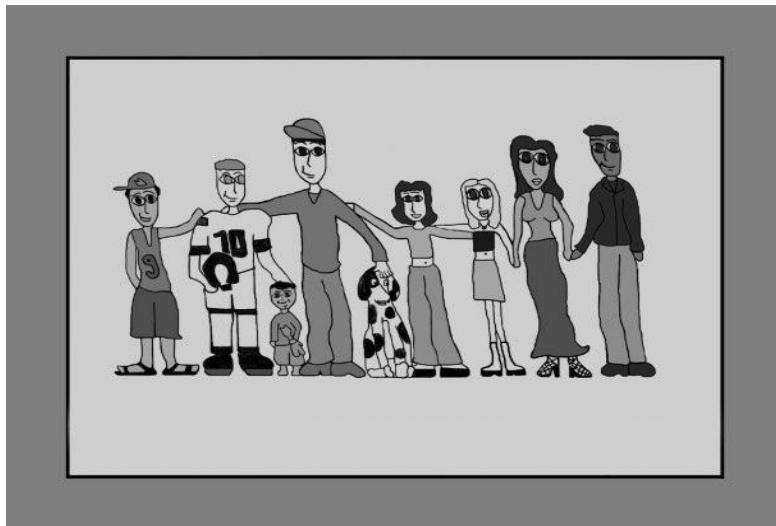
mediator: a trained, neutral person who facilitates the mediation process while encouraging the people involved to focus on common interests and work towards a mutually acceptable solution that is focused on the child or youth’s needs

practitioner: a service professional practicing in child welfare matters

record: Schedule 1 of the Freedom of Information and Protection of Privacy Act defines *record* as "books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records"

special needs: a child with special needs has documented significant impairment associated with an ongoing physical, cognitive, communicative and/or emotional/behavioural condition that requires specialized care and support

youth: means a person who is 16 years of age or over but is under 19 years of age



Everybody Matters

Appendix 1: The Legal Context, Policy and Standards

The Legal Context

The United Nations Convention on the Rights of the Child (UNCRC)

The *UNCRC* sets out inter-related rights of children, including participatory and informational rights. For example, the right to express a view on “all matters affecting the child” and to have those views be given “due weight” is found in Article 12. For more information, please refer to the References section.

Child, Family and Community Service Act (CFCSA)

Collaborative Planning and Decision Making

B.C.’s child protection law, the *CFCSA*, includes specific provisions in sections 20 - 24, designed to encourage early resolution of child protection disputes outside of court, including mediation, family group conferencing, and traditional decision making.

Rights of Children in Care

Section 70 of the *CFCSA* outlines specific rights for children if their welfare is the responsibility of MCFD or a Delegated Aboriginal Agency. Included in these are: the right for children to be consulted and to express their views on matters affecting them; complaints services, and the resources necessary (such as an interpreter) to ensure participation. The legislation also requires that a child be informed of all advocacy options, including the office of the Representative for Children and Youth.

Policy and Standards

MCFD Policy and Practice Standards

Policy and practice standards for child protection workers support the use of various collaborative approaches and uphold children’s rights, including the right to participate, as a guiding principle. Collaborative practices in working with families in child protection matters include Collaborative Planning and Decision Making (CPDM) processes (e.g. child protection mediation, family group conferencing, and traditional decision making [TDM]). Policy also supports a presumption in favour of using CPDM processes as the first choice to resolving significant disagreements and disputes with families around planning for a child, as an alternative to court.

Aboriginal operational and practice standards have an approach that strongly favours and incorporates the use of Aboriginal community-based TDM (i.e. Circles) across all child protection and child welfare practices.

MOJ Policy and Practice Standards

One of the priorities of the B.C. Ministry of Justice is to promote non-adversarial dispute resolution options within the justice system and government in general. The CPM Program is a touchstone of this work, promoting non-adversarial, collaborative practices within the field of child protection.

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[UNCRC Article 12](#)