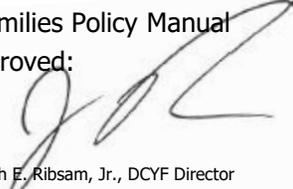


| 1800 VOLUNTARILY MEDIATED AGREEMENTS IN ADOPTIONS  |  |
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| Chapter: <b>Adoptions &amp; Post-Adoption Supports</b>   | Section: <b>Adoption</b>   |
|   | <p>New Hampshire Division for Children, Youth and Families Policy Manual</p> <p>Policy Directive: <b>19-29</b></p> <p>Effective Date: <b>July 2019</b></p> <p>Scheduled Review Date:</p>   |
| <p>Related Statute(s): <a href="#">RSA 169-C</a> and <a href="#">RSA 170-B</a></p> <p>Related Admin Rule(s):</p> <p>Related Federal Regulation(s):</p> | <p>Approved: </p> <p style="text-align: right;">Joseph E. Ribsam, Jr., DCYF Director</p> <p>Related Form(s): <b>FORM 1800, nhjb2302-fp, nhjb-2542-f, and nhjb-2543-f</b></p> <p>Bridges' Screen(s) and Attachment(s):</p> |

All children and youth need and deserve permanency. The Division for Children, Youth and Families (DCYF) is responsible for partnering with families and communities to promote a safe, stable, and permanent family for every child/youth in DCYF's custody in the timeliest way possible. Adoption provides a new parent who is charged with the care, custody, safety, and well-being of the child/youth when a court decides it is in the child/youth's best interests to terminate the legal child-parent bond with parents, or when the parents make a plan to surrender parental rights. When it is in the best interests of the child/youth, the exploration and use of Voluntarily Mediated Agreements supports a process to engage the parties to achieve permanency while also exploring ongoing connections in support of a child/youth's well-being.

### Purpose

To outline DCYF's practices and procedures around Voluntary Mediated Agreements (VMAs).

### Definitions

**"Adoption"** means the establishment of the status of parent and child between individuals who are not biological parent and child.

**"CASA"** or **"Court Appointed Special Advocate"** means a volunteer who serves as an advocate for an abused and/or neglected child/youth in the New Hampshire court system.

**"CPSW"** or **"Child Protective Service Worker"** means an employee of DCYF who is authorized by the Division to perform functions of the job classification Child Protective Service Worker.

**"DCYF"** or the **"Division"** means the Department of Health and Human Services' Division for Children, Youth and Families.

**"Family Assessment and Inclusive Reunification (FAIR) Meeting"** or **"Case Review"** means a review of the status of the case including the case plan, the child/youth's safety, well-being, and plans for permanency.

**"Guardian"** means either natural parent or a person appointed by a NH Circuit Court, or a court of similar jurisdiction in another state, to have responsibility for the care, custody, and educational needs of the child/youth.

**"Guardian Ad Litem"** or **"GAL"** means a court-appointed representative designated to represent the best interests of children legally considered incapable of managing their own affairs.

**"Legal Custody"** means a status created by court order embodying the rights and responsibilities as described in RSA 169-C:3 Definitions XVII unless otherwise modified by court order.

**"Parent"** means, for the purpose of this policy, any birth parent, legal parent, or legal guardian of the child/youth for whom a mediated adoption agreement is being considered.

**"Permanency"** means the process to ensure a child/youth has a safe, stable environment with a life-long relationship with a nurturing caregiver to establish the foundation for a child/youth's healthy development.

**"Permanency Planning Team"** or **"PPT"** means a group of DCYF staff that meets, at least monthly to develop permanency action plans for children and youth in out-of-home care and to provide consultation and planning to CPSWs/JPPOs concerning permanency issues.

**"Permanency Worker"** for this policy, is a CPSW who has expertise in permanency options for children in out-of-home care and who consults with Family Services CPSWs or other Division staff to facilitate planning for permanency early in the case.

**"Prospective Adoptive Parent"** or **"Pre-Adoptive Parent"** means the person who will be named on an adoption petition filed in Circuit Court.

**"VMA"** or **"Voluntarily Mediated Agreement"** means an agreement made through a court-approved mediation program between the Department, parent(s), and prospective adoptive parent(s) in contemplation of post-adoption sharing of information and/or contact regarding the adoption of a child/youth who is under either the legal custody or guardianship of the Division.

## Policy

- I. A Voluntarily Mediated Agreement (VMA) can only be legally binding or enforceable under law when DCYF had legal custody or guardianship of a child/youth who was under the age of 18 at the time of the agreement.
- II. Voluntarily Mediated Agreements must be completed prior to the surrender/termination of parental rights when the Court determines reunification is no longer a permanency option.
- III. Voluntarily Mediated Agreements must support the child/youth's best interest.
- IV. Pre-adoptive parents and parents may voluntarily participate in a court-approved mediation program, and both parties must be open to the mediated agreement for it to move forward.
  - A. When birth/legal parents are not in a relationship together, each parent shall have their own mediation session.
  - B. If one (1) parent chooses to mediate and the other does not, the first parent is still able to mediate.
  - C. Both adoptive parents must participate in mediation, unless it is a single parent adoption.
  - D. DCYF, the parent(s), and the pre-adoptive parent(s) must physically be present during the mediation sessions unless excused due to medical necessity or incarceration, in which case accommodations may be made for electronic participation.

- V. All cases being considered for a VMA must be reviewed with the Permanency Planning Team (PPT) prior to any discussion of an agreement with the parent(s) and/or pre-adoptive parent(s).
- VI. The appropriateness and feasibility of a VMA shall be discussed at both the six (6) month PPT meeting and the 10-month FAIR meeting. The discussions shall include exploration of:
  - A. The relationship between the child/youth and their parent(s);
  - B. The relationship between the parent(s) and the pre-adoptive parent(s);
  - C. The specific needs of the child/youth;
  - D. Any potential safety concerns associated with mediation;
  - E. The CASA/GAL's position on mediation; and
  - F. The overall best interests of the child/youth.
- VII. The PPT shall continue to explore the appropriateness of a VMA at all subsequent PPTs. Factors to be considered, in addition to those listed directly above, should include:
  - A. Any changes that could impact permanency since the previous PPT;
  - B. Any conversations had with the respective parties around mediation, including if they want a VMA and if they fully understand the mediation process (when the PPT has previously determined that a VMA is supported); and
  - C. The anticipated investment/ability of the pre-adoptive family in carrying out tasks within the VMA process and ultimately following through with all the terms of the VMA.
    - 1. It is imperative that the PPT thoroughly explores the commitment and preparedness of the pre-adoptive family.
- VIII. As developmentally appropriate, all children/youth will be consulted regarding their preferences with respect to the terms of the mediation and they shall have the right to sign their VMA.
  - A. Youth age 14 and older must assent to the adoption unless the Court determines it is not in their best interest to have to assent.
  - B. A youth's assent must be in writing and must be signed before the Court.
- IX. When the PPT determines that exploration of a VMA is appropriate, the assigned CPSW and/or Permanency Worker shall meet with both the parent(s) and the pre-adoptive parent(s) separately to discuss the VMA process and to inform, educate, and counsel the parties prior to the entry of any adoption decree about a Voluntarily Mediated Agreement. Specifically, the CPSW(s) shall discuss with the parent(s) and pre-adoptive parent(s):
  - A. The mediation process;
  - B. That participation is strictly voluntary and cannot be ordered by the Court otherwise;

- C. That violation of the agreement does not affect the surrender of parental rights or the final decree of adoption;
- D. The importance of maintaining some form of ongoing connection between the parties to support the best interests of the child/youth;
- E. The importance of recognizing the bond the child/youth has with both the birth/legal and pre-adoptive parent(s) and the role each plays in the child/youth's overall well-being;
- F. Any DCYF safety or best interest concerns for the child/youth that should be addressed in the agreement; and
- G. The parent(s) and pre-adoptive parent(s) understanding of the process and what could occur, as well as the long-term implications for various scenarios that could result from the mediation.
  - 1. It is critical that the CPSW(s) work with both the parent(s) and pre-adoptive parent(s) to ensure they are making an informed decision around mediation and that they have realistic expectations around any agreements in the long term.
- X. When all parties are in agreement with entering into a VMA, either the CPSW/Permanency Worker or the parent(s) through their attorney shall submit a request for mediation to the Court (Form nhjb 2542-f for DCYF or Form nhjb 2543-f for parents).
- XI. Upon receiving a copy of the Notice of Mediation Session, the CPSW/Permanency Worker shall submit a completed Mediation Case Summary (Form 1800) to the mediator no later than five (5) calendar days prior to any scheduled mediation, with copies to the other parties to the mediation, including the CASA/GAL.
- XII. The CPSW/Permanency Worker shall work with others involved in the case to prepare the youth, if they are age 14 or older, to understand the agreement according to the youth's maturity and ability.
- XIII. In the event that DCYF does not believe mediation is in the best interest of the child/youth, the CPSW/Permanency Worker shall work with the Staff Attorney to provide a written explanation of DCYF's position to the Court, parent(s), and pre-adoptive parent(s).
- XIV. Other people may be invited to participate in the mediation (e.g. Attorneys, CASA/GAL, extended family, etc.) by mutual consent of DCYF, the parent(s), pre-adoptive parent(s), and the youth as appropriate. However, these invitees shall not be parties to any agreement reached during that mediation.
- XV. A Voluntarily Mediated Agreement (Form nhjb2302-fb) shall be signed by the parties and acknowledged before a Notary Public as the free act and deed of the parties. If the youth is 14 or older, the VMA shall contain the written agreement of the youth unless the Court determines it is not necessary.
- XVI. To be enforceable, a Voluntarily Mediated Agreement shall be:
  - A. In writing;
  - B. Approved by the Court prior to the date for entry of any adoption decree;

- C. Incorporated, but not merged into, any adoption decree, and shall survive as an independent agreement; and
  - D. For a child/youth under age 18 (VMAs cease to be enforceable on the date the youth turns 18 years of age).
- XVII. The VMA may only be modified, enforced, or discontinued by the Court that approved the agreement.
- A. Modifications, enforcement, or discontinuance of the VMA can be made when a party to the agreement commences an equity action in the Court that approved the underlying agreement if the party certifies that they have participated or attempted to participate in good faith in mediating the dispute giving rise to the action prior to filing the equity action.
  - B. The Court may modify the terms of the VMA if the Court finds by a preponderance of the evidence that there has been a material and substantial change in the circumstances and that the modification is in the best interests of the child/youth.
  - C. A court imposed modification of a previously approved VMA may limit, restrict, condition, decrease, or discontinue the sharing of information and/or contact between the parent(s) and the child/youth, but in no event shall a court imposed modification serve to expand, enlarge, or increase the amount of contact between the parent(s) and the child/youth, or place new obligations on the parties to the agreement.
- XVIII. If the CPSW/Permanency Worker is contacted by either the parent(s) or adoptive parent(s) relative to an issue with the VMA once it has been finalized by the Court, the CPSW/Permanency Worker shall refer the parties to the Circuit Court in which the agreement was ordered.

### Practice Guidance

#### **What should the Permanency Planning Team (PPT) be looking at in determining the appropriateness of a VMA?**

- The PPT should be reviewing safety factors, what is in each child/youth's best interest, and if all parties want to mediate and understand the mediation process.
  - Safety factors that may be present post-adoption relative to all possible types of contact, and what, if any, supports could be in place to mitigate concerns.
    - Consideration must be given to emotional safety as well as physical safety.
    - Examples of on-going safety factors may include: substance use, mental health issues, exposure to domestic violence and/or physical, sexual, and/or emotional abuse and its impact on the child/youth.
  - Possible types of contact/connection other than visitation may include receiving/exchanging yearly letters and/or pictures, phone calls, and/or contact through social media.
- Do the parents demonstrate respect for the pre-adoptive parents' authority and role in the child/youth's life?
- Does the pre-adoptive family demonstrate an appreciation of the value of some form of ongoing connection as it relates to the best interest of the child/youth? Are they realistic in terms of their ability to follow through with a VMA until the child/youth is 18?

#### **What factors should the PPT evaluate to ensure the pre-adoptive family is motivated and realistic about their participation in a VMA?**

- Do they have an appropriate understanding of the VMA process and of the legality of what they may agree to?

- Have they thoroughly considered the long-term implications of the VMA and how that may impact their family in the future?

**When is it appropriate to have multiple Voluntarily Mediated Agreements in a case?**

- Each parent shall have their own VMA, regardless of if the agreement pertains to an individual child/youth or siblings.
- Best practice is that there should be an individual VMA relative to each child/youth. However, if siblings have the same parent(s) and are being adopted by the same pre-adoptive parent(s), there may be a single VMA that has terms within it that speak to the individual needs of each child/youth.

**At what point do you include the District Office Supervisor, Field Administrator and/or the Permanency Program Specialist in making the decision to move forward with a VMA?**

- When the court orders a VMA and the parties do not agree with it, and/or DCYF has concern with moving forward with a VMA;
- When there is a disagreement between the PPT and the CPSW/Supervisor around moving forward with a VMA; or
- When support or guidance is needed by the team in making a decision about the mediation.

**What should the CPSW do if they do not agree with moving forward with a VMA or does not agree with components of the VMA?**

- Consult with their Supervisor and attorney about how mediation works in their particular court.
- If appropriate, write something into the agreement or possibly file a motion with the court detailing the Division's position in regards to participation or a specific term within the VMA.

**Should CASA/GAL be consulted about moving forward with a VMA?**

- Yes. Although, CASA/GALs are not considered a party to the VMA, the Division values their viewpoint and recommendations that speak to what they believe to be in the child/youth's best interest. This should be a question that is asked of the CASA/GAL prior to the six (6) month PPT meeting where a VMA will be discussed and at the time of any subsequent PPTs.
- The CPSW should work collaboratively with the CASA/GAL to support and educate the child/youth involved and assess their wishes in a VMA.

**How should youth participate in a Voluntarily Mediated Agreement?**

- Youth age 14 and older will be consulted regarding their preferences with respect to the terms of the mediation. The youth shall have the right to sign their VMA.
- Youth may or may not attend the actual mediation session. The Court Improvement Project is developing guidance with respect to the level of participation of youth who attend the actual mediation session and what participation will look like.
- Depending on youth preparedness or developmental ability, it may not be comfortable or appropriate for them to make decisions in the presence of their parents and pre-adoptive parents. They can creatively be involved by consultation, letter, participation in part of or all of the session, speaking with their CASA/GAL, etc.

**What if a VMA is established and the child/youth is matched or moved with a new family and then that family no longer wants to move forward with the VMA?**

- The VMA is not transferable from one adoptive family to another adoptive family. However, if it is determined that maintaining the terms of the VMA is in the best interest of the child/youth the Division should work with the new pre-adoptive family to explore mediation.

**What should I do if a party to a VMA contacts me that they are having difficulty with the other party?**

- If a VMA is not working for one (1) of the parties, encourage them to seek mediation either with the support of DCYF or on their own, and if that is unsuccessful, direct them to the Court for support around filing a petition for modification if it is their desire.