

**SCREENING FOR DOMESTIC VIOLENCE
IN COLLABORATIVE FAMILY LAW CASES**

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Dallas

CHAPTER 3

EDUCATION

Southern Methodist University School of Law, J.D. 1999
University of California, Santa Barbara, B.A., 1995

LICENSURE

State Bar of Texas, 1999
United States District Court, Northern District of Texas, 2000

PROFESSIONAL AWARDS AND RECOGNITION

Selected for inclusion in *Texas Super Lawyers, Rising Stars Edition*, 2011, 2012, 2013

COLLABORATIVE LAW AND MEDIATION TRAINING

Collaborative Law Institute of Texas Advanced Interdisciplinary Training, May 2011
Collaborative Law Institute of Texas Spring Conference, February 2008; March 2009; March 2010; March 2011
International Academy of Collaborative Professionals Forum, New Orleans, October 2008
Family Mediation Training, Dispute Mediation Services, April 2008
Basic Mediation Training, Sid Stahl and John Estes, November 2007
Basic Collaborative Law Training, Janet Brumley, November 2005
Basic Collaborative Law Training, Chip Rose, January 2004

PROFESSIONAL ACTIVITIES

Member, State Bar of Texas (Family Law, Collaborative Law, and ADR sections)
Member, Collin County Bar Association
 Vice President 2012-2013, Secretary 2011-2012, Board of Directors 2010-2011
 Chair, Family Law Section 2008-2009, 2009-2010
 Chair, ADR Section 2010-2011, Treasurer 2008-2009, 2009-2010
Member, College of the State Bar of Texas
Member, Dallas Bar Association (Family Law and Collaborative Law sections)
Member, Collaborative Law Institute of Texas
 Chair, Domestic Violence Subcommittee

Member, Collaborative Law Alliance of Collin County (Chair 2011, Vice Chair 2010)

Member, The Curt B. Henderson Inn of Court (2011-present)

Member, The Annette Stewart American Inn of Court (2006-2010)

Fellow, Texas College of Collaborative Law (2009-present)

LAW-RELATED PRESENTATIONS AND PUBLICATIONS

- 2012 Author and Speaker, "Screening for Domestic Violence is Collaborative Family Law Cases," International Academy of Collaborative Professionals 13th Annual Networking and Educational Forum (Chicago, Illinois)
- 2012 Author and Speaker, "Getting a Divorce Case Off on the Right Foot," Handling Divorce Cases from Start to Finish, National Business Institute (Dallas, Texas)
- 2012 Author and Speaker, "Ethical Perils in Divorce Practice," Handling Divorce Cases from Start to Finish, National Business Institute (Dallas, Texas)
- 2011 Author and Speaker, "Common and Not-So-Common Family Law Issues and Answers," Family Law From A to Z, National Business Institute (Fort Worth, Texas)
- 2010 Speaker, "Collaborative Law and the District Courts: What Judges and Lawyers Need to Know," Collin County Bench Bar Conference (Rockwall, Texas)
- 2009 Author, "The Collaborative Law Process and Mediation: What is the Difference?" Alternative Resolutions (State Bar of Texas ADR publication) Spring 2009, Volume 18, No. 2
- 2008 Author and Speaker, "Dancing with the Stars: Getting the Most out of the Practice Group," International Academy of Collaborative Professionals 9th Annual Networking and Educational Forum (New Orleans, Louisiana)
- 2008 Speaker, "Getting the Most out of the Practice Group," 4th Annual Civil Collaborative Law Training (Dallas, Texas)
- 2008 Speaker, "Collaborative Law and the District Courts: What You Need to Know," District Clerk Annual Conference (Kerrville, Texas)

- 2007 Speaker, “Collaborative Practice: A Blueprint for Conflict Resolution,”
Dallas Bar Association, International Law Section and Collaborative Law
Section (Dallas, Texas)
- 2007 Author and Speaker, “Collaborative Practice: A Bridge Over Troubled
Waters,” Hill Country Bar Association (Kerrville, Texas)

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Education

Master of Arts in Counseling, February 2003
Amberton University

Bachelor of Arts in Psychology, August 1998
University of Texas at Dallas

Professional Affiliations

International Academy of Collaborative Professionals
The Collaborative Law Institute of Texas

Work Experience

Jennifer Leister, M.A., LPC-S - Private Practice, January 2005-Present

Dr. Ray Levy - Associate to Dr. Levy within his private practice, June 2005-Present

Avenues Counseling Center - Counselor, June 2003-June 2005

Collin County Children's Advocacy Center - Counselor Intern, August 2002-April 2003

Therapeutic Family Life-Intake Counselor, April 2000-July 2002

Texas Department of Protective and Regulatory Services-Child Protective Services, December 1998-April 2000

Healing Heart of Dallas - Volunteer, 2000-2001

Training Experience

2005 Basic Collaborative Law with Chip Rose

2005 Interdisciplinary Team Training by CLI-TX

2005 Basic Collaborative Interdisciplinary Training by Collaborative Training

Team

2005 IACP Core Skills Institute

2006 DMS Basic Mediation Training

2006 Parenting Coordination Training by Gay Cox and Lynelle Yingling

2006 Dealing with Challenging Clients by Cox, Johnson, Matlock and Savage

2006, 2009, 2011, 2012 Spring Retreat by CLI-TX

2011 Advanced Interdisciplinary Collaborative Law

Presentations

2010 Author and Speaker, "Working With Substance Abusers and Families in The Collaborative Process," Spring Retreat by CLI-TX

2012 Team Thursday, Co-presented with Jennifer Hargrave, JD and Carie Mack, JD "Family Violence"

2012 Author and Speaker, "Screening for Domestic Violence in Collaborative Law Cases," International Academy of Collaborative Professionals 13th Annual Networking and Educational Forum (Chicago, Illinois)

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SCREENING FOR DOMESTIC VIOLENCE IN COLLABORATIVE FAMILY LAW CASES

I. TEXAS FAMILY CODE

The Collaborative Family Act enacted in 2011 requires collaborative family lawyers to screen potential collaborative law clients to determine whether the client has a history of family violence with the other potential collaborative law party. The definition of “family violence” under Texas Family Code Chapter 15 is the same as the definition under Chapter 71. *See* 15.112 (a) (2). Specifically, “family violence” means: (1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; (2) abuse as that term is defined by Section 261.001(1) (C), (E), and (G), by a member of a family or household toward a child of the family or household; or (3) dating violence, as that term is defined by Section 71.0021. *See* 71.004.

Texas Family Code section 15.112(b) imposes an affirmative obligation upon a collaborative lawyer to make a reasonable inquiry whether his or her client in a prospective collaborative family law case has a history of family violence with the other prospective party. Specifically, section 15.112(b) provides, “Before a prospective party signs a collaborative family law participation agreement in a collaborative family law matter in which another prospective party is a member of the prospective party’s family or household or with whom the prospective party has or has had a dating relationship, a prospective collaborative lawyer must make reasonable inquiry regarding whether the prospective party has a history of family violence with the other prospective party.”

Section 15.112(c) imposes a duty on the collaborative law attorney to suspend the collaborative law process upon a reasonable belief that there has been a history of family violence between the parties. The collaborative lawyer may not permit the case to proceed in the collaborative law process unless the party requests to remain in the process. In addition, the collaborative attorney must determine with the party if any reasonable steps can be taken to address concerns regarding family violence. Section 15.112 (c) states, “If a collaborative lawyer reasonably believes that the party the lawyer represents, or the prospective party with whom the collaborative lawyer consults, as applicable, has a history of family violence with another party or prospective party, the lawyer may not

begin or continue a collaborative family law process unless:

- (1) The party or prospective party requests beginning or continuing a process; and
- (2) the collaborative lawyer or prospective collaborative lawyer determine with the party or prospective party what, if any, reasonable steps could be taken to address the concerns regarding family violence.

II. CLI-TX TOOLS

To help collaborative lawyers satisfy the “reasonable inquiry” requirement of section 15.112(b), the Collaborative Law Institute of Texas has published a “Conflict Questionnaire” screening tool for lawyers to use with prospective collaborative family law clients. A copy of this questionnaire is available on the CLI-Tx website and is attached to this article as Appendix A.

In the event domestic violence is disclosed, a more thorough questionnaire is available on the CLI-Tx website to further explore the extent of violence between the parties to a collaborative law case. Based on the responses to this “Confidential Collaborative Law Family Safety Questionnaire,” attorneys can better evaluate whether a particular case is suitable for the collaborative law process. A copy of this form is attached to this article as Appendix B.

CLI-Tx has also published a list of “reasonable steps” for collaborative lawyers to use in the event family violence has been disclosed in a collaborative family law case. A copy of the reasonable steps tool is also available on the CLI-Tx website and is attached to this article as Appendix C. These reasonable steps are not an exhaustive list, but rather suggestions to be considered, if the parties chose to remain in the collaborative law process despite an incident or history of family violence. Reasonable steps include:

1. Include MHP on the team with training or expertise in domestic violence.
2. Ask the client about specific behaviors that he or she finds threatening.
3. Instead of joint meetings with clients in the same room, use a “caucus” style, with clients in separate rooms.
4. If the clients agree to be in the same room together, consider seating arrangements, such as whether clients should sit next to each other, across the table from each other, a neutral in between clients, or another arrangement.
5. Each attorney and/or MHP meets with each client individually prior to collaborative meetings to help the clients prepare for the

- meeting and understand how to effectively communicate with the other spouse.
6. Schedule frequent breaks during the meeting to help break any tension and/or allow clients to meet with their attorneys and/or MHP to address any concerns.
 7. Agree on a signal or gesture a client can use to indicate to his/her attorney or the MHP the need for a break.
 8. Prior to the meeting, discuss staggering the arrival and departure times for the clients. This will avoid the potential for the clients running into each other in the parking lot or sharing an awkward or stressful elevator ride.
 9. Attorneys and/or MHP debrief with clients after each meeting (a quick debrief before the client leaves the building to triage immediately any issues that arose during the meeting with additional debrief as appropriate). Attorneys and/or MHP check in with clients frequently regarding domestic violence issues.
 10. Include additional mental health specialist, i.e. therapist, child specialist, or a two-coach model.

Depending on the severity of the family violence committed by a party (or parties) in a collaborative law case, some cases may be appropriate to remain within the collaborative law process. Other cases, however, may require termination of the process to protect one or more of the parties or children.

III. HOW TO SCREEN FOR FAMILY VIOLENCE

In most cases, the lawyers will have the initial contact with the parties to a collaborative family law case rather than any of the neutrals. And notably, the statutory obligation to screen the parties for family violence rests solely on the attorneys.

The Conflict Questionnaire was drafted so that it may be used by attorneys while interviewing a prospective client or may be given to a client to answer privately. Either way, it is essential for collaborative law attorneys to use the conflict questionnaire or something similar in order to ensure compliance with the Collaborative Family Law Act.

APPENDIX A

INITIAL CLIENT INTERVIEW CONFLICT QUESTIONNAIRE

1. How do you and your spouse argue?

- | | | | |
|-----------------------------------------|-------|-----------|------------|
| A. Name calling? | Never | Sometimes | Frequently |
| B. Threats? | Never | Sometimes | Frequently |
| C. Throw and/or hit things? | Never | Sometimes | Frequently |
| D. Physical contact (hitting, shoving)? | Never | Sometimes | Frequently |
| E. Silent Treatment? | Never | Sometimes | Frequently |

Comments: _____

2. Do you feel safe around your spouse?

- | | | | |
|-------|-----------|------------|--------|
| Never | Sometimes | Frequently | Always |
|-------|-----------|------------|--------|

Comments: _____

3. Have you ever felt threatened or intimidated by your spouse?

- | | | | |
|-------|-----------|------------|--------|
| Never | Sometimes | Frequently | Always |
|-------|-----------|------------|--------|

Comments: _____

4. Have you ever felt isolated from friends or family members?

- | | | | |
|-------|-----------|------------|--------|
| Never | Sometimes | Frequently | Always |
|-------|-----------|------------|--------|

Comments: _____

5. Has your spouse ever threatened to hurt you or actually hurt you?

- | | | |
|-------|-----------|------------|
| Never | Sometimes | Frequently |
|-------|-----------|------------|

Comments: _____

6. Has your spouse ever threatened to hurt a family member or pet or actually hurt a family member or pet?

- | | | |
|-------|-----------|------------|
| Never | Sometimes | Frequently |
|-------|-----------|------------|

Comments: _____

7. Has your spouse ever forced you to do anything you didn't want to do?

Never Sometimes Frequently

Comments: _____

8. Has your spouse ever threatened to damage any property or actually damaged property while angry?

Never Sometimes Frequently

9. Has your spouse ever threatened to hurt you or your children with a weapon? Y N

If yes, what kind of weapon? _____

10. Has your spouse ever taken the children away from you or threatened to take them away?

Never Sometimes Frequently

Comments: _____

11. Has your spouse ever threatened suicide or attempted suicide?

Never Sometimes Frequently

Comments: _____

12. Does your spouse control your access to money or how you spend money?

Never Sometimes Frequently

Comments: _____

13. Does your spouse abuse alcohol?

Never Sometimes Frequently

Comments: _____

14. Does your spouse abuse prescription drugs or use illegal drugs such as marijuana, cocaine, etc.?

Never Sometimes Frequently

Comments: _____

15. Have the Police ever been called to your home?

Never Sometimes Frequently

Comments: _____

APPENDIX B

**CONFIDENTIAL COLLABORATIVE LAW
FAMILY SAFETY QUESTIONNAIRE¹**

NAME: _____

SPOUSE'S NAME: _____

DATE: _____

The purpose of this Confidential Collaborative Law Family Safety Questionnaire is to help your attorney better understand the degree of conflict between you and your spouse so that these difficulties can be resolved in the most effective manner. The information you provide must be true and accurate and not intended to mislead. Your spouse may have the chance to respond to the information that you provide. You do not have to answer this questionnaire if you believe that you may endanger yourself or your children by doing so. (If you are not married, substitute partner for spouse.)

It is very important that you answer this questionnaire truthfully so that your attorney is able to represent you as effectively as possible. Your attorney and other collaborative team members are required by law to report certain instances of abuse to Child Protective Services and/or the police. It is important that you understand that your attorney may be required by law to report instances of child abuse committed by you or your spouse.

Please answer the following questionnaire to the best of your ability regarding your behavior and your spouse's behavior **during the entire course of your marriage**. The answers that you provide will help your attorney assess the degree of conflict in your

¹ Adapted with permission from Gretchen Ferris and Iris Newman from the form developed by Family Court Services, Santa Clara County, California, 1998.

marriage and will help identify potential issues that will arise during the collaborative law process.

For any item below that you check "NEVER", check the last column if you believe your spouse may claim that you engaged in the behavior.*

YOUR BEHAVIOR TOWARD YOUR SPOUSE					*
			MORE THAN	DATE OF	
<u>NEVER</u>	<u>1-5 TIMES</u>	<u>6-10 TIMES</u>	<u>10 TIMES</u>	<u>LAST INCIDENT</u>	<u>BEHAVIOR</u>
					Yelling, threatening, swearing
					Humiliating, embarrassing, put downs
					Blaming all or most problems on your spouse
					Interrupting your spouse's eating or sleeping
					Keeping your spouse away from family, friends, employment
					Not permitting personal contact, phone, mail, or email
					Not permitting your spouse to go places by him/herself or without you
					Prohibiting your spouse's employment
					Punishing spouse for contact with others
					Demanding constant knowledge of spouse's whereabouts
					Making automobile not work, withholding car keys
					Making telephone not work
					Wrecking friendships or relationships with the rest of the family
					Threatening family and friends
					Not permitting spouse to have or get credit cards or checks
					Refusing to let spouse leave a room or place
					Falsely accusing spouse of being sexually unfaithful
					Using the children against spouse or keeping spouse from seeing them
					Making an unreasonable number of phone calls to spouse
					Refusing to leave spouse's home or workplace
					Monitoring/supervising spouse's phone calls
					Monitoring/supervising spouse's email or text messages
					Following spouse
					Stalking spouse
					Forcing spouse to use drugs or alcohol
					Forcing spouse to engage in prostitution or

					pornography	
					Pushing, carrying, shoving, grabbing, or restraining spouse	
					Attempted or actual slapping spouse with an open hand	
					Pulling spouse's hair	
					Physically dragging or throwing spouse	
					Biting or kicking spouse	
					Hitting spouse in the head, face, breast, or genital area	
					Hitting spouse in another area of the body	
					Attempted or actual choking, strangulation, or smothering spouse	
					Attempted or actual using of a knife, firearm, or other weapon against spouse	
					Trying to hit spouse with, or throw spouse out of, a vehicle	
					Burning spouse	
					Driving recklessly to scare spouse	
					Throwing objects at spouse	
					Raping spouse	
					Other forms of forced sex (please describe): _____	
					Abusing or threatening to abuse pets	
					Destroying property	
					Inflicting pain on spouse in a cruel or sadistic manner	
					Kidnapping spouse	
					Kidnapping a child	
					Breaking and entering into your spouse's residence or workplace	
					Withholding access to financial information and records	
					Refusing to allow spouse to show emotion	
					Prohibiting spouse from attending church or religious services	
					Forcing spouse to attend church or religious services	
					Other (please describe): _____	

Use this space, to explain any of the above items, if you desire.

For any item below that you check something other than "NEVER", check the last column if you believe your spouse may claim that the behavior NEVER occurred.*

YOUR SPOUSE'S BEHAVIOR TOWARDS YOU					*
NEVER	1-5 TIMES	6-10 TIMES	MORE THAN 10 TIMES	DATE OF LAST INCIDENT	BEHAVIOR
					Yelling, threatening, swearing
					Humiliating, embarrassing, put downs
					Blaming all or most problems on you
					Interrupting your eating or sleeping
					Keeping you away from family, friends, employment
					Not permitting personal contact, phone, mail, or email
					Not permitting you to go places by yourself or without your spouse
					Prohibiting your employment
					Punishing you for contact with others
					Demanding constant knowledge of your whereabouts
					Making automobile not work, withholding car keys
					Making telephone not work
					Wrecking friendships or relationships with the rest of the family
					Threatening family and friends
					Not permitting you to have or get credit cards or checks
					Refusing to let you leave a room or place where you are
					Falsely accusing you of being sexually unfaithful
					Using the children against you or keeping you from seeing them
					Making an unreasonable number of phone calls to you
					Refusing to leave your home or workplace
					Monitoring/supervising your phone calls
					Monitoring/supervising your email or text messages
					Following you
					Stalking you
					Forcing you to use drugs or alcohol
					Forcing you to engage in prostitution or pornography
					Pushing, carrying, shoving, grabbing, or restraining you
					Attempted or actual slapping you with an open hand
					Pulling your hair
					Physically dragging or throwing you

					Biting or kicking you	
					Hitting you in the head, face, breast, or genital area	
					Hitting you in another area of the body	
					Attempted or actual choking, strangulation, or smothering you	
					Attempted or actual using of a knife, firearm, or other weapon against you	
					Trying to hit you with, or throw you out of, a vehicle	
					Burning you	
					Driving recklessly to scare you	
					Throwing objects at you	
					Raping you	
					Other forms of forced sex (please describe): _____	
					Abusing or threatening to abuse pets	
					Destroying property	
					Inflicting pain on you in a cruel or sadistic manner	
					Kidnapping you	
					Kidnapping a child	
					Breaking and entering into your residence or workplace	
					Withholding access to financial information and records	
					Refusing to allow you to show emotion	
					Prohibiting you from attending church or religious services	
					Forcing you to attend church or religious services	
					Other (please describe): _____	

Use this space, to explain any of the above items, if you desire.

For any item below that you check "NEVER", check the last column if you believe your spouse may claim that you engaged in the behavior.*

YOUR BEHAVIOR TOWARDS CHILD(REN)					
			MORE THAN	DATE OF	
NEVER	1-5 TIMES	6-10 TIMES	10 TIMES	LAST INCIDENT	
BEHAVIOR					
					Yelling, threatening, swearing directed toward child
					Humiliating, embarrassing, put downs directed towards child
					Blaming all or most problems on child
					Interrupting child's eating or sleeping
					Keeping children away from family and/or friends
					Punishing child for contact with others
					Wrecking child's friendships or relationships with the rest of the family
					Threatening family and friends of child
					Refusing to let child leave a room or place where you are
					Pushing, carrying, shoving, grabbing, or restraining child
					Attempted or actual slapping child with an open hand
					Pulling child's hair
					Physically dragging or throwing child
					Biting or kicking child
					Hitting child in the head, face, breast, or genital area
					Hitting child in another area of the body beyond what would be considered reasonable physical discipline
					Attempted or actual choking, strangulation, or smothering of child
					Attempted or actual using of a knife, firearm, or other weapon against child
					Trying to hit child with, or throw child out of, a vehicle
					Burning child
					Throwing objects at child
					Abusing or threatening to abuse pets
					Destroying child's property
					Inflicting pain on child in a cruel or sadistic manner
					Kidnapping child
					Refusing to allow child to show emotion
					Sexual abusing child
					Forcing child to participate in child pornography
					Forcing child to look at child pornography
					Other (please describe): _____

YOUR SPOUSE'S BEHAVIOR TOWARDS CHILD(REN)					
			MORE THAN	DATE OF	
<u>NEVER</u>	<u>1-5 TIMES</u>	<u>6-10 TIMES</u>	<u>10 TIMES</u>	<u>LAST INCIDENT</u>	<u>BEHAVIOR</u>
					Yelling, threatening, swearing directed toward child
					Humiliating, embarrassing, put downs directed towards child
					Blaming all or most problems on child
					Interrupting child's eating or sleeping
					Keeping children away from family and/or friends
					Punishing child for contact with others
					Wrecking child's friendships or relationships with the rest of the family
					Threatening family and friends of child
					Refusing to let child leave a room or place where you are
					Pushing, carrying, shoving, grabbing, or restraining child
					Attempted or actual slapping of child with an open hand
					Pulling child's hair
					Physically dragging or throwing child
					Biting or kicking child
					Hitting child in the head, face, breast, or genital area
					Hitting child in another area of the body beyond what would be considered reasonable physical discipline
					Attempted or actual choking, strangulation, or smothering of child
					Attempted or actual using of a knife, firearm, or other weapon against child
					Trying to hit child with, or throw child out of, a vehicle
					Burning child
					Throwing objects at child
					Abusing or threatening pets
					Destroying child's property
					Inflicting pain on child in a cruel or sadistic manner
					Kidnapping child
					Refusing to allow child to show emotion
					Sexual abusing child
					Forcing child to participate in child pornography
					Forcing child to look at child pornography
					Other (please describe):

APPENDIX C

“REASONABLE STEPS”

Texas Family Code section 15.112 (c) says, “If a collaborative lawyer reasonably believes that the party the lawyer represents, or the prospective party with whom the collaborative lawyer consults, as applicable, has a history of family violence with another party or prospective party, the lawyer may not begin or continue a collaborative family law process unless: (1) the party or prospective party requests beginning or continuing a process; and (2) the collaborative lawyer or prospective collaborative lawyer determines with the party or prospective party what, if any, reasonable steps could be taken to address the concerns regarding family violence” (*emphasis added*).

This list of reasonable steps is a guide for attorneys, although it is certainly not exhaustive.

1. Include MHP on the team with training or expertise in domestic violence.
2. Ask the client about specific behaviors that he or she finds threatening.
3. Instead of joint meetings with clients in the same room, use a “caucus” style, with clients in separate rooms.
4. If the clients agree to be in the same room together, consider seating arrangements, such as whether clients should sit next to each other, across the table from each other, a neutral in between clients, or another arrangement.
5. Each attorney and/or MHP meets with each client individually prior to collaborative meetings to help the clients prepare for the meeting and understand how to effectively communicate with the other spouse.
6. Schedule frequent breaks during the meeting to help break any tension and/or allow clients to meet with their attorneys and/or MHP to address any concerns.
7. Agree on a signal or gesture a client can use to indicate to his/her attorney or the MHP the need for a break.
8. Prior to the meeting, discuss staggering the arrival and departure times for the clients. This will avoid the potential for the clients running into each other in the parking lot or sharing an awkward or stressful elevator ride.
9. Attorneys and/or MHP debrief with clients after each meeting (a quick debrief before the client leaves the building to triage immediately any issues that arose in the meeting with additional debrief as appropriate). Attorneys and/or MHP check in with clients frequently regarding domestic violence issues.
10. Include additional mental health specialist, i.e. therapist, child specialist, or a two-coach model.