

## Mock Mediation Guide

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## Stages of Mediation

The following outlines the main mediation elements which should be demonstrated by students to meet the adjudication criteria and earn maximum points. There are many mediation models and your school is encouraged to find out more about them. Most of the mediation models have the following features in common:

- Room arrangement;
- Opening statement by the mediators;
- Statement by each party outlining their perception of the dispute;
- Mediators' summaries of parties' opening statements & identification of issues to form an agenda;
- Initial joint session;
- Generation and recording of options;
- Initial private sessions and exploration of options;
- Subsequent joint sessions;
- Negotiating final agreement;
- Conclude mediation.

### Room Arrangement

The mediators arrange the room in advance with tables and chairs so that the 2 mediators are centrally located. It is important that the tables are arranged so that the mediators can clearly see the parties. The positioning of chairs will signify that each party has equal status in the mediation.

The recording space (Laptop & Screen, White Board or Flip Chart and markers) is set up behind the mediators. Ensure the recording board is set up where all parties have a good view.

Marker pens, pads, pens, water jug and glasses are provided on the table.

Mediators must have a clock or watch to assist with time management.

### Mediators Opening Statements

Mediation is a structured problem-solving process. The mediators are independent and impartial facilitators that assist the parties to identify issues in dispute, develop options, and consider alternatives in an endeavour to reach an agreement that will meet the needs of each person.

The mediator who makes the opening statement should not read out the common facts. It is essential that this section is handled in a friendly and business-like manner. The

mediators will be doing most of the talking at the start (see example in Mediator's Script). They set the tone of the mediation by being friendly, polite and optimistic.

## **Statement by each party outlining their perception of the dispute**

This stage is an opportunity for both parties A and B to give their 'Opening Statements' (each team member tells their version of the story and shows their individual interests.) The importance of this stage is that it allows each party to hear the other party's points of view. This is an important part of resolving differences.

It is an opportunity for the mediators to become familiar with the dispute. Also, party A and party B will take it in turns to speak and be given the opportunity to speak without interruption.

While the parties are giving opening statements, Mediators take separate roles.

- Mediator 1: will be taking notes of what is being said. Direct quotes are jotted down to use in the next stage of the mediation.
- Mediator 2: will be summarising the main points. These main points will take the form of single words, simple concepts or questions to assist with the agenda setting.

The mediators ensure that each party can speak uninterrupted. The role players may have to be reminded that they will have an opportunity to speak and to be listened to.

Parties' Role:

- Listen to mediators' opening statements;
- Ask for clarification if they need it;
- Role play in character;
- Respond appropriately to mediator interventions;
- Party A explain what has brought them here, how they have been affected by it and what they would like for the future;
- Party B explain what has brought them here, how they have been affected by it and what they would like to the future.

## **Mediators' Summaries of Parties' Statements & Identification of Issues to form an agenda**

This next stage has two distinct phases: mediators' summary and agenda setting. The aim of this stage is for the mediators to confirm what each party has said and to assist the parties to develop an agenda of issues to be discussed. Each party must be satisfied that the mediators have listened to them and have been able to show that they have a good recall of each party's point of view.

A high level of skill in the “recalling” process will establish that mediator’s credibility as an impartial listener. Through the use of direct quotations, the mediator will gain the confidence of the party being quoted. In this stage the two mediators do most of the speaking.

## Mediator 1: (Summary)

- The mediator that took the notes thanks the parties for their cooperation.
- Explains that the purpose of stage is to:
  - confirm that the mediators have understood the parties’ perspective of the dispute;
  - agree the issues in dispute that will need to be discussed further.
- The mediator who took notes reports back what they heard each party say using reported speech (second person) “you said... you went on to say...I heard you say” (Report back to each party individually and gain approval before moving to the next party).
- Ask each party to confirm that the mediator accurately reflected back what was said and give them an opportunity to add points, clarify or correct statements.
- Each party confirms, adjusts or adds to their statement when the mediator reads it back.

## Mediator 2: (Agenda Setting)

- The key points are written on the whiteboard or butcher’s paper. They have an important task in that those key points will form the basis of the dialogue to follow.
- The key points must identify the problems common to both parties, in an impartial way to help steer the mediation toward mutual agreement.
- Explain the purpose of the agenda.
- The other mediator reads back the key points for confirmation, or clarification.
- Note on the whiteboard all common key points to be raised for discussion and seek assistance from the parties.
- Only key points, which all parties agree to, are added to the list on the board.
- The aim is to have one list of issues which both parties are willing to discuss.

## Parties’ Role:

Think about the agenda and provide input as appropriate to ensure it is a mutual agenda.

## Initial Joint Session

The aim of this stage is for the mediators to encourage the parties to talk directly to each other. The parties do most of the talking. It is where the parties can express emotions and behaviours that may be associated with their character based on the circumstance of the scenario and the confidential facts.

The mediators use their skills to keep the parties focused on one issue at a time to enable clarification of each party's perspective.

### Mediators' Role:

- Explain the purpose of stage.
- Remain seated other than when writing on the white board.
- Parties are encouraged by the mediators to clarify and to discuss their issues.
- Mediators ask open-ended questions that encourage the parties to engage in conversation.
- Encourage parties to communicate with each other.
- Reaffirm guidelines if the discussion becomes heated or to manage behaviour.
- Ask a different party to select the next item for discussion
- This process repeats until all items have been discussed
- Keep summarizing and reporting progress to acknowledge agreed outlooks
- To move on stuck arguments, the mediators will need to use their skills to draw attention to parties' common ground or mutual interests rather than their differences. This help parties to understand each other's' point of view. Do not give any indication that you agree or disagree – remain impartial.

### Parties' Role:

- Discuss their issues with each other.
- Raise some of the confidential facts including some more of their interests and concerns.
- Clarify and explore each key point.
- Release information that helps others to understand their interests.

## Generation and Recording of Options

After clarifying and exploring each of the key points on the agenda the dialogue shifts to being entirely future focused. Options are generated for each key point and noted on the board to be discussed later. It is important to get as many options as possible on the white board/butcher's paper. All parties should be encouraged to make suggestions. It is a brainstorming session. All suggestions will have equal validity and should be written up without allowing discussion.

### Mediators Role:

- One mediator explains the brainstorming process outlining that in this exercise the parties are encouraged to list as many options as possible, without evaluating

them, thus allowing for creative solutions to be suggested.

- One mediator remains seated and facilitates the brainstorming process.
- The other mediator writes the suggestions on the white board. It is very important that the options are generated by the parties, not the mediators.

#### Parties' Role:

- Contribute options which meet their interests based on both the common facts and on the confidential facts.

### **Initial Private Sessions and Exploration of Options**

The aim of this stage is to further explore the options and to negotiate. By this stage it is likely that there will be considerable co-operative discussion directly between the parties it is important that all parties participate in the decision-making.

The mediators should pay particular attention to maintain a future focus so as to encourage resolution.

#### Mediators' Role:

- Explain purpose of stage.
- Encourage the parties to make proposals that will meet their needs and the needs of the other party.
- If no one wants to start the discussion the mediators may begin by giving an overview of the progress to date.
- Maintain future focus

#### Parties' Role:

- Put forward suggestions that they think will work.
- Ensure the needs of your character are being met.
- Propose solutions that meet the other party's needs.

### **Private meetings**

Sometimes the mediators or the parties may need to take time out away from the mediation in order to consider any new information, discuss options raised, calm down or think about whether the agreement would work (ie reality testing). Private meetings for these purposes are permissible but not compulsory.

## Subsequent Joint Sessions & Negotiate Final Agreement

Reality testing is a process of checking that the negotiated agreement will actually work. It is an essential part of the negotiations to ensure that the proposals are workable. The proposals must meet the needs of each party and all issues from the original agenda must be addressed.

The mediators must ensure that it is clear who will do what and when. The mediators need to time manage the process to ensure the mediation is closed on time. Do not try to rush a resolution. It is better to agree on issues that have not been resolved and to determine the next steps, such as a subsequent mediation or perhaps to do further research and to agree who will do this and how the outstanding matters will be resolved.

### Mediators Role:

- Explain the purpose of the stage. The mediators may begin by giving an overview of progress to date.
- If an agreement is reached the mediators will need to provide the opportunity for the parties to discuss the next stage which may include:
  - Writing an agreement that each party signs
  - Shaking hands on the deal
  - Reporting to the person who recommended the mediation

### Parties' Role:

- Cooperate appropriately – provide information about their proposal and accept other proposals (or part of a proposal) as appropriate to the character's role.
- Hesitate appropriately when proposals do not meet character's needs.
- Demonstrate commitment to agreement.

## Conclude Mediation

- Conclude the mediation.
  - Agreement: The mediators thank the parties for their attendance and congratulate them on reaching an agreement.
  - No Agreement: Acknowledge the effort of the parties for participating and summarize what has been achieved. Encourage the parties to decide what they might do next to resolve the remaining matters. If they have decided on another mediation session clarify date, time and venue.

## Thank the Adjudicator

## After the mediation

It is important when the mediation is completed that the students are given an opportunity to talk among themselves, guided by their teacher/coach, to identify what they did well during the mediation and what they could have done differently. If the students have become heated during the mediation, it is also important that they be given an opportunity to unwind. One way to do this is for the teacher to introduce the parties to each other by their real names and ask them to say something their character says that is different from how they think.

## Role of Team Members

The team comprises six students with varied functions.

## Mediators

The role of the mediators is a neutral one. They must not take sides or give their opinion. They facilitate the mediation process by acknowledging emotions, creating clear communication channels, using careful questioning to get all the hidden facts on the table, helping the parties to generate options, work towards agreements and then check that any agreement is workable. The mediators should co-operate with each other, so one mediator might be asking questions of the parties while the other mediator might be noting the issues raised or the options generated. Care should be taken to ensure both mediators contribute in all sections of the mediation so they can achieve maximum scores. At the same time, one of the core concepts of mediation which needs to be observed is that the parties communicate with each other rather than discuss issues through the mediators. At all times throughout the mediation process the mediators need to encourage the parties to have the courage to take responsibility for the form of the resolution reached.

The mediators will:

- Show balanced teamwork;
- Each mediator introduces themselves;
- One mediator asks both members of each party to introduce themselves;
- Welcome the parties and commend them for coming to mediation;
- Explain the Mediation Process;

*Explain each stage of the process to inform the parties what to expect, including Private Sessions. Private Sessions are a strategy of intervention and are used when the mediators or the parties need to take time out away from the mediation to consider new information, discuss options raised, calm down emotions or think about whether the agreement would work and to think about their alternatives. Sessions are used at the discretion of the mediators or as requested by the parties and are not essential.*

- Explain the Mediation Principles;  
*Mediation is a voluntary process and either party can withdraw or the mediators can terminate if they believe they cannot continue. Mediation is confidential and mediators will be impartial. They will facilitate the process, assist the parties to identify the issues and possible solutions and work toward an agreement. A similar amount of time will be offered to each party at each stage.*
- Explain Mediation Guidelines  
*Each person is to be allowed to finish speaking and parties will speak politely and respectfully to each other. Confirm agreement on the mediation guidelines from all parties and ask parties if they have any questions.*

## **The Parties** (4 students – A1 & A2 and B1 & B2)

Each team member makes an opening statement. The two students in Party A form a cohesive unit, as do the two students in Party B. However, individual team members will have different interests that need to be identified during the dialogue stage and included in the Negotiations and Resolution stages.

The parties should restrict themselves to the fact situation prepared. They will score points for their characterisation and authenticity. Too much rehearsal will make it difficult for the parties to incorporate their confidential facts. They should display any emotions called for by the role-play such as confusion, anger, grief, bitterness, disbelief or reluctance to speak. The mediators should be given the opportunity to display skills and intervene to acknowledge the emotion and encourage the party to participate positively

The parties need to display their communication, option-generating, problem-solving, negotiation and assertiveness skills. These skills may be shown to evolve with the encouragement and facilitation of the mediators. It is often difficult to find the fine line between being too compliant, offering no resistance and being too stubborn which prevents the other students from engaging in productive discussion. Students who can remain authentic to their character by participating in the various stages of the mediation process and clearly showing changes they experience as the mediation progresses.

Parties should stay in character, and should do so in a way which is true to the common facts and to the confidential facts. They need to provide challenges to mediators, particularly in the early stages. Then they should respond in character and appropriately to the mediators' intervention strategies.

As the session progresses it should become evident that the parties are becoming more cooperative as they develop an understanding and empathy for the other points of view. Maximum scores are obtained when all 4 students contribute equally to the mediation. It may be within the role for a party to remain silent and subdued.

Adjudicators will be aware of the common and confidential facts and a party will not be penalised for playing an appropriate role. Generally, parties will demonstrate a shift from a passive or an aggressive outlook to an assertive outlook as the mediation progresses to the option generation stage. It is important that the role-players give an authentic performance and display a range of emotions and reactions to conflict appropriate to the dispute. When the parties play their roles authentically, requiring the mediators to demonstrate their knowledge of each of the stages and of the appropriate skills, the team will score well.

## Scenarios

The Mock Mediation Coordinator provides a new scenario for each round. The scenarios are fictitious community disputes relevant to the students' age. The scenario consists of Common Facts and Confidential Facts.

## Common Facts

The common facts of the mediation are available to schools at the start of each round to be used for coaching purposes. They are available from the web site and will also be emailed to the contact teacher.

These common facts will allow the mediators and parties to become familiar with the background of the dispute. They consist of background, incident and aftermath which will provide the basis of the mediation.

## Confidential Facts

At the commencement of each mediation the adjudicator will provide each team with separate confidential facts (for Parties A1 & A2, Parties B1 & B2). There is 10 minutes' reading time. Once these facts have been distributed, Parties A and Parties B must be kept separate and the student mediators can only speak with parties after the mediation commences.

The confidential facts are designed to give the parties an opportunity to play their role in a realistic way and give the mediators an opportunity to display their mediation skills. While both parties can disclose all their confidential facts immediately should they choose to, this reduces the total number of points that can be scored by the team because it risks reducing the level of conflict that usually arises in the mediation. The parties can improve their total score by disclosing the confidential facts in a way and a time that would be consistent with their character and in response to the mediators' interventions.

The confidential facts allow interests to be identified, leading to options being generated that were not evident from the common facts. For this reason the preparation should focus on the skills and processes of the team, rather than the substance of the dispute.

## Suggested script for Mediators

The Mediators Script has been prepared to assist students undertaking the roles of mediators to understand the responsibilities of their respective roles and the process of the mediation.

### Opening Statement by Mediators

Purpose: To put parties at ease and outline role of mediators and what will happen during the mediation stage by stage. In Mock Mediation two mediators work as a team. They have equal standing and it is important that the disputing parties should see them as equals. However, it is perfectly in order for one or the other mediator to take a more or less active role at a particular time. The only time when the roles are purposely divided is during the introductory part of the mediation process. Sharing the introductory tasks not only eases the workload but emphasises each mediator's equal involvement and responsibility. The mediators plan the division of tasks in advance. The mediation begins with a statement by the mediators.

### Mediator One – Opening Statement

Introductions

“Thanks for coming today. I am (1st Mediator's name) and my name is (2nd Mediator). We will be your co-mediators to help talk about the problem that brings you to mediation today... What are your names?

Party A: and then Party B”.

Outline role of mediators:

Describe mediation process as voluntary and confidential;

Ensure that all parties who have an interest in the dispute are present to ensure effective agreement.

**Mediator One** – will describe what's going to happen.

“In a minute we will be asking each of you to tell us your side of the story. This is just to make the matter clear for us as the Mediators today. It is preferable that neither of you interrupt the other. Instead you can make notes and these can be discussed later when it's your turn to have the opportunity to state your views. “After all of your statements have been given, we will go back and check to see if we have your stories straight. In keeping with confidentiality all notes will be destroyed after today's mediation”. Mediator Two (say name), will be noting issues and concerns that appear to come out of your statements. These will be worked through until we all come to some sort of an agreement. If either party needs to talk to us in private or we feel that a separate meeting with each of you and us would be helpful we will have private

meetings. Everything said during the private meetings are also totally confidential. Having private meetings may help you to speak to us more freely which could then help us to get the discussion back on the right track. We are pleased that you agreed to come to this mediation and we hope that the problem that brings you here today will be resolved. There are no rules except; one person speaks at a time and we ask that you treat each other with respect. Is this clear to everyone? “Thanks, now we’ll try to help you solve this problem, without fighting or anything like that, in a friendly way. We can’t take sides, or make decisions for you. We’re just helping you reach an agreement. Anything said today will remain confidential. This is on a-need-to-know basis and we can’t say anything to anyone else, so feel free to talk. You are all here because you want to sort out your problem. Is there anyone else that should be here?”

## **Mediator Two – Opening Statement.**

- Mediator Two will outline the stages
- parties’ opening statements
- mediator summaries of parties opening statement
- list issues on whiteboard
- discussion on each issue to achieve a solution – agreement
- Obtain parties’ commitment.

The importance of the mediator’s opening statement and its impact on the mediation should not be underestimated. Anxious parties need to be put at ease and also to know what is going to happen. The mediators’ neutral, non-decision-making role is emphasised. The statement needs to be clear, but brief. People can only take in a certain amount of new information and there can be an anxiety to get on with the mediation. What follows is an invitation to the parties to make their opening statements.

## **Opening Statement by Parties’ and Mediator Summaries of Parties’ Statements**

Purpose: To outline the parties’ understanding of the dispute and to build up a picture of what the dispute is all about.

Note: parties are not meant to respond to each other’s statements during this stage. Each party should be given about 2-3 minutes to tell their side of the story.

It doesn’t make a difference who starts first as everyone will have a chance to speak.

Party A can start if that’s OK with Party B

Party A Party A1’s statement

Party A2’s statement

Party B Party B1’s statement

Party B2’s statement

## Mediator One

Will take brief notes of each party's statement and check back with each party to see if notes are correct.

## Mediator Two

While Mediator One is checking with the parties, Mediator Two will be making a note of the main issues and concerns raised in the parties' statements by identifying those questions which need to be answered for an agreement to be reached. After all parties have made their statements always ask each party "Do you have anything you'd like to add to that?" The invitation to the parties to make an opening statement is a clear indication to them that the role they are expected to play is one of active participation rather than one of depending on others. It is a listening exercise for the other participants and sets the scene for doubt creation in their current perspectives by ensuring they listen to each other without interruption, perhaps for the first time. The parties' statements also enable the mediator to get the wider picture but not necessarily the intricate details at this time. In the second part of this phase the mediator summarises what each party has said.

## Mediator One

"I'll just make sure that I've got what you meant'. Reads his/her notes and summarises party's statement and at the end asks "Did I miss anything?" As well as assuring the parties that the mediator has heard, noted and summarised their individual issues and concerns, the summaries you have just heard also reinforce the mediators' neutrality and impartiality. The mediator can use such terms as "You said"; "I heard You say"; "In your view". By using "You" language the mediator emphasises that it was their individual concerns that were being summarised, not the mediator's version of events. The mediator's summary also provides each party the opportunity to hear, through the mediator, the other side's version for a second time. The next stage is directed towards identifying the issues and concerns emerging from the parties' statements and listing these on the whiteboard. Mediator One – "OK, well now I'm going to summarise what you have all said and note this on the whiteboard"..The Mediator then brings down the butchers paper on the whiteboard with a list of issues already written up.

## Agenda Setting

These issues will then be written up on a whiteboard/butchers' paper in neutral terms for the parties to recognise. Agenda topics are isolated from the parties opening statements. Thus, the list is not the "mediator's agenda" of what they thought should be discussed but came directly from what the parties have actually said. Note that the mediator should write the issues in neutral, non-judgmental language, so as to avoid

upsetting or disadvantaging one side. Converting individual grievances into mutual problems as far as possible encourages a co-operative problem solving approach.

There are many reasons for using the whiteboard, one of which is to focus the parties on the problem, not on the people. The next phase (Clarification and Exploration of Issues) is one of, if not, the most important and challenging part of a mediation. Up to this point the parties have been encouraged to communicate with the mediators rather than each other so this stage heralds a change of focus. People in dispute often cannot move on to consider settlement possibilities until they have had an opportunity to ventilate, clarify or clear the air with each other. In fact the parties may want or need to argue. This is why it can be counter-productive to rush to solutions or into a private session with the parties too early.

## Discussion

Purpose: Party A & B are encouraged to discuss each issue/question with the co-mediators. While parties explore each issue, the co-mediators assist the parties by directing communication between them particularly where parties get stuck on one issue. Mediator Two “Let’s choose an issue to discuss!” Select an issue from the whiteboard and work through these with the parties.

## Exploring options that are available for each issue

Party A & B comes up with possible solutions under each issue. Mediator One “These are certainly options and we will make a note of them” (Mediator One writes these on the whiteboard). Identification and generating of settlement options plays a vital role in moving parties towards agreements. The mediators did not suggest how the parties might settle the matter but encouraged them to come up with their own ideas. It should be noted that the mediator writes these up as options rather than as solutions. Describing ideas as options prevents one side or the other immediately rejecting an idea from which a solution may grow, simply because it came from the other side. The idea in mediation is to get out as many options as possible no matter how bizarre and unworkable they may at first appear. The rule is no evaluation or rejection at any early stage. Questions play an important role in mediation. Mediators should avoid asking questions that simply require a Yes or No answer. These options can emerge from co-mediators asking open-ended questions. “What do you think or how do you think” requires a more creative response than simply a “Yes” or “No”. The question assumes that there is something everybody can do.

**Mediator Two** could ask “Any more ideas or . . . “Have you thought of who would assume responsibility for a particular task” Students can continue to develop this idea if they wish until they agree on solutions or outcomes of their choice. The Mediators will then encourage the students to commit this part of the agreement on this issue to the whiteboard.

## Agreement

Party A & B negotiates the terms and conditions of an agreement.

Mediators One & Two Assist by asking questions to see if the agreement can work under various circumstances.

**Mediator One** - writes up the agreement, if reached. The final negotiations begin with the mediators summarising what has been achieved so far. The mediators encourage the parties to develop the options, helping them to focus on the future and not the past. The mediator's use of the whiteboard helps to provide focus and emphasise the party's achievement. If necessary the mediators can use this phase to generate further settlement options or to allow further tabling or clarification of ideas. To assist the parties finalise their negotiations, it is important that the mediators test and fine-tune the agreement. At this point their role is to make quite certain that each person understands exactly what is going to happen and to minimise the scope for further friction or misunderstanding. Co-mediators (together): say "Thanks for your time, well done on reaching a solution in a reasonable way". Ensure that all parties sign the agreement and Students shake hands.

## OPTIONAL STAGE AFTER STAGE V - PRIVATE SESSION

A private meeting is a confidential discussion between the co-mediators and Party A followed by another confidential discussion between the co-mediators and Party B (or in the reverse order. Sometimes the mediators or the parties may need to take time out away from the mediation in order to consider new information, discuss options raised, calm down or think about whether the agreement would work. Private meetings may be used for this purpose.

This is a suggested guide designed to assist mediators develop their own style of mediating conflicts between disputing parties.