



## LONDON SEN MEDIATION SERVICE

### Guidance for legal representatives at mediations

*This guidance should be read in conjunction with the London SEN Mediation Service leaflet and any specific guidance issued when confirming arrangements for a mediation session.*

#### The mediation process

- **What is mediation?** - Mediation is an informal method of dispute resolution in which the parties, assisted by independent and impartial mediators, seek to discuss and resolve their differences. It usually involves a face to face meeting, although separate meetings and “shuttle” mediation, may also be used. It is a confidential and voluntary process, and “without prejudice” to any ongoing legal proceedings.
- **When does mediation work best?** - Mediation works best when the parties genuinely want to resolve the dispute and actively participate in the mediation with a view to finding solutions.
- **Confidentiality agreements-** The content of the discussions during the mediation are confidential except where there is a disclosure of child protection issues. All participants, including legal representatives are required to sign confidentiality agreements confirming that they will keep the discussion confidential.
- **Legal and personal issues** – Disputes about a child’s education may involve not only legal rights, but also strong emotions. Personal feelings about what has happened can sometimes get in the way of the parties’ ability to resolve a dispute through legal channels, because the legal process is not designed to deal with how people feel about a dispute. Mediation can offer the opportunity for parties to express some of this, which often makes it easier for them also to resolve the legal issues in a case.

#### Preparing for the mediation

- **Joint case summary-** Legal representatives and/or their clients are requested to prepare a joint case summary of key issues setting out, **briefly**, the background, and issues in dispute. This will help the mediator to scope the mediation and it will also highlight the extent of authority to settle required. It is important that legal representatives co-operate with each other to encourage, early on, a constructive approach to the process and the negotiation.
- **Authority to settle-** Everyone who attends the mediation should have a clear role. It is vital to ensure that a person with sufficient authority to settle attends the mediation. Legal representatives can assist by ensuring that the key decision maker attends. There may, in exceptional circumstances, be situations where authority can only be obtained by referral back to a Panel. This must be brought to

the attention of the London SEN Mediation Service well in advance of the mediation.

- **Preparing the clients** – The London SEN Mediation Service will speak directly to the parties involved in the dispute to answer any questions they may have, find out the issues which concern them most, and prepare them for what to expect at the mediation. The content of these discussions is confidential, and will not be passed on to the other party without consent. These preparatory conversations are an important part of the mediation process. We will also speak with the legal representatives about the issues and the procedure that will be followed on the day.
- **Parties taking control**- At the mediation session your client will have an opportunity to talk about the disagreement and what they want to see happen to resolve it. Mediation is about people feeling empowered to reach agreements for themselves rather than having a Tribunal impose a judgement that the parties have to live with.

### **During Mediation**

- **Your role – one of support** - Legal representatives should adopt a supporting role and wherever possible try to give your client the confidence to speak for themselves– it is important their personal views are expressed and heard. You have an important role in providing an honest view (in private) as to how the process is going and how best to keep the discussions focussed. You also have an important role in helping to moderate and manage your client's expectations.
- **Opening statements** - At the start of the mediation, the mediator will invite the parties to state the key issues that they wish to discuss. This should be a short summary lasting no more than 5-10 minutes. Ideally the parties should make the opening presentations themselves. Where parties prefer their legal representatives to do this, it would be desirable for there to be some client participation, if at all possible.
- **Flexible approach**- As the mediation process unfolds; new information may come to light which requires reappraisal of any initial assessment of the case. As legal representative you have a vital role to play in helping your client with any reappraisal that may be necessary.
- **Managing the meeting** – The mediator's role is to manage the process – This requires skilful judgement, particularly if emotions are running high. If you cannot immediately see the value or relevance of the discussions we ask you to trust the mediator's judgement – often it is necessary to allow a powerful emotional exchange to take place before movement towards agreement becomes possible. If at any time you wish to speak with the mediator about your role, or any concerns you may have about how the meeting is going, please ask for a break and indicate that you would like to speak with the mediator privately. She/he will be happy to answer any questions you may have.
- **Reaching agreement** – The aim of the mediation is to reach resolution. It may not always be possible to agree on all the issues in dispute. Mediation can also assist parties narrow the issues in dispute between them and provide parties with a better understanding of each other's perspectives. If the parties move towards agreement

you have an important role play in advising your client of the legal implications of the terms of any proposed agreement. You also have a vital role in helping your client reality test any proposed agreement. Parties are asked to sign any agreements that are made at the end of the session. Copies are distributed to all before leaving the meeting.

### **After the mediation**

- **Evaluation forms-** At the end of the mediation you will be given an evaluation form so that we can get your feedback on the service we have provided and your view of the mediation process. Your feedback is greatly appreciated and helps us to maintain a high quality of service for all clients. Please kindly ensure that you complete the form.