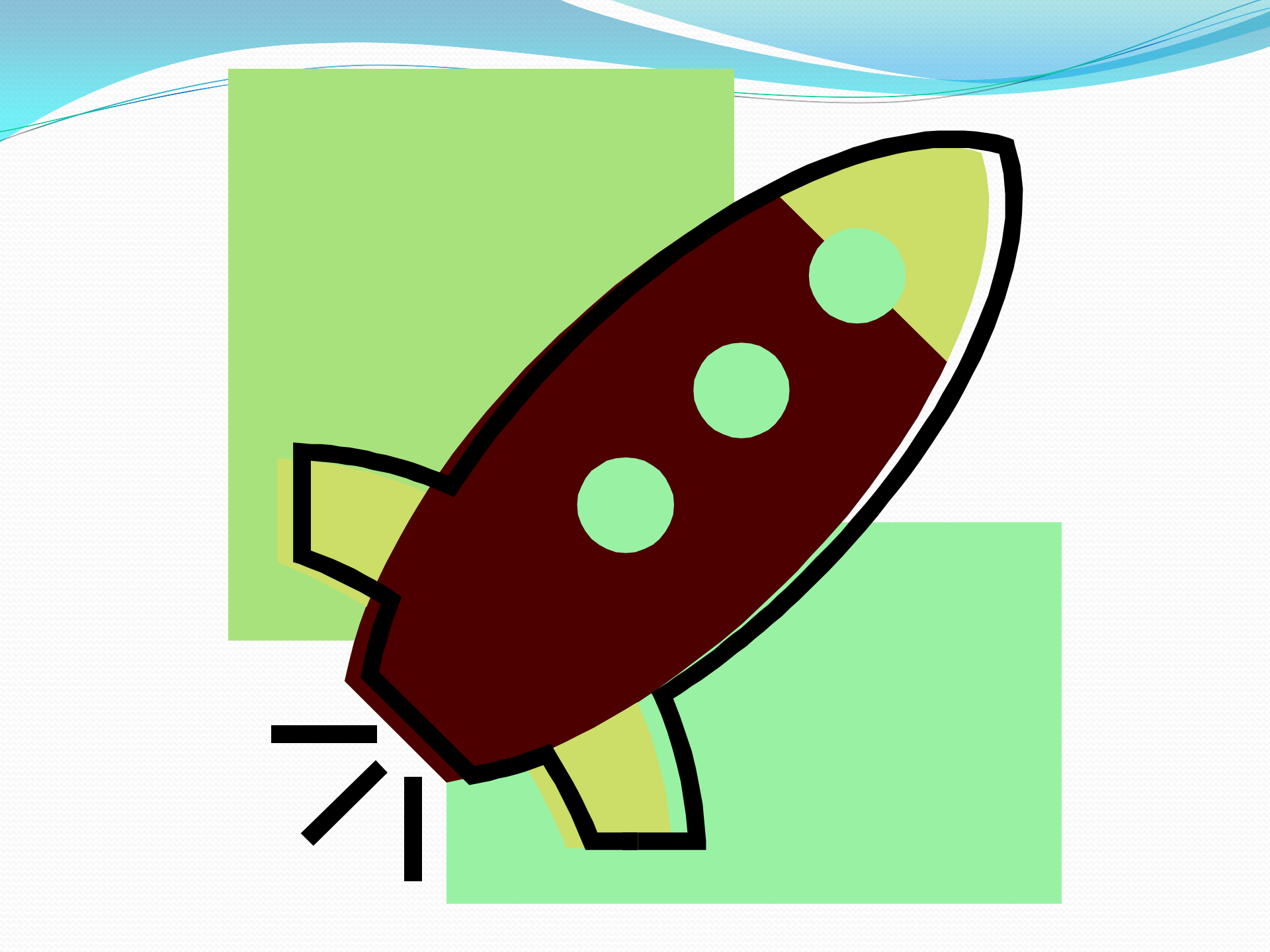


# POWERING UP FOR EFFECTIVE MEDIATION PROGRAMS

## Mediation Tool Kit

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COBA November 4, 2010  
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# OUTLINE

## Examining Performance Driven Mediation

- Dr. Edward de Bono's Six Thinking Hats - **interactive**
- Examples of Performance Measures and Practices used by selected ADR programs in the United States
- Outcome of the 2010 CEDR (Centre for Effective Dispute Resolution) Mediation Audit – Great Britain
- Practical tips and strategies to enhance mediation results in a performance driven environment
- Q & A

# Dr. Edward de Bono's Six Thinking Hats



# BLUE HAT

- **Agenda, process, overview 5 hats – 30 minutes**

## **PROPOSITION:**

How do you develop a performance or results based mediation program that gets cases “closed” (settled or resolved), with durable and implementable solutions that are in or respect the public interest mandate of tribunals?

# WHITE HAT

- **Facts**
- **Neutral objective information**

# RED HAT

- Emotions
- Hunches
- Intuition
- Gut feelings

# BLACK HAT

- Dangers
- Risks
- Critical
- Analyst
- Logical negatives



# YELLOW HAT

- Optimism
- Logical positives
- Opportunities
- Benefits
- Rewards

# GREEN HAT

- **Creativity**
- **Possibilities**
- **New ideas**
- **Linking or building on others thoughts**

# BACK TO BLUE HAT

- **Summary**
- **Actions**
- **Decisions**
- **Wrap up this exercise**

# THE CONSORTIUM FOR APPROPRIATE DISPUTE RESOLUTION IN SPECIAL EDUCATION (CADRE)

FROM: <http://sites.maxwell.syr.edu/measuringadr/pdf/adr.pdf>

## Performance Measures Utilized

CADRE commissioned experts in the fields of dispute resolution and special education to write papers suggesting ways that the performance of ADR processes and programs in special education may be evaluated. Here are the most frequent suggestions:

- Costs to participants
- Time from referral of a case to mediation to resolution of the dispute
- Outcomes of mediation, such as a change in the education plan for a student
- Participant satisfaction with the mediated outcomes
- Durability of mediated outcomes
- Impact on the relationships between parties

# CADRE - continued

- Program neutrality
- Appropriateness/usefulness of the mediation process
- Preparation process and materials used in the mediation process
- Fairness of mediation process including opportunity to tell story, feeling understood, respectful treatment, control over outcomes (as judged by participants)
- Skills of mediator (as judged by participants)
- Knowledge of mediator (as judged by participants)
- Impartiality of mediator (as judged by participants)

# CADRE - continued

- **Unique Approaches to Performance Measurement**
- Holistic approach to evaluation - CADRE experts suggest a “360 degree” approach to evaluating the performance of ADR processes and programs in special education. This means collecting feedback not only from participants to mediation processes, but from other parents, school personnel, and mediators themselves. CADRE also suggests that questionnaires be distributed in person, by mail, and online.
- (Source: The Consortium for Appropriate Dispute Resolution in Special Education (CADRE) -
- <http://www.directionservice.org/cadre/index.cfm>.)

# U.S. INSTITUTE FOR ENVIRONMENTAL CONFLICT RESOLUTION (USIECR)

## Performance Measures Utilized

(As judged by participants and assessors)

- Full or partial agreement reached
- Signed agreement
- Implemented agreement
- Costs to participants
- Outcomes of mediation, such as a change in the education plan for a student
- Participant satisfaction with the mediated outcomes
- Durability of mediated outcomes
- Impact on the relationships between parties
- Program neutrality

# USIECR - continued

- Appropriateness/usefulness of the mediation process
- Fairness of mediation
- Skills of mediator
- Knowledge of mediator
- Impartiality of mediator

## **Unique Approaches to Performance Measurement**

Multiagency evaluation forms: In an effort to create uniform instruments for the evaluation of ADR processes and programs, the USIECR convened ADR experts from six government agencies using environmental conflict resolution (ECR) processes, as well as academics and consultants. Several well-developed assessment tools are available for download at

**[www.ecr.gov/multiagency/program\\_eval.htm](http://www.ecr.gov/multiagency/program_eval.htm)**

(Source: U.S. Institute for Environmental Conflict Resolution – [www.ecr.gov](http://www.ecr.gov).)



# CEDR's Fourth Mediation Audit

## – The Business Case for Mediation

<http://www.cedr.com/news/?347>

### 4th Mediation Audit: Market continues to grow and benefit economy

- CEDR's fourth Mediation Audit since 2003, has shown that the market in the UK has continued to grow with approximately **6,000 mainstream commercial and civil cases** mediated in the last year (this figure does not include workplace mediations or the Ministry of Justice Small Claims Mediations).
- Furthermore value of the cases mediated is £5.1 billion a year (this figure has increase by £1 billion in the last three years) and taken over the last 20 year this figure is almost £40 billion.
- By achieving earlier resolution of cases that would otherwise have proceeded through litigation, the commercial mediation profession this year will save the British Economy around **£1.4 billion a year** in wasted management time, damaged relationships, lost productivity and legal fees. Again taken over the last 20 years this figure comes to contribute savings of £8.8 billion. By way of comparison the audit results suggest that the mediation profession total fee income is around £13.5 million.

# PRACTICAL TIPS AND STRATEGIES

- Demystify the mediation process
- Educate the parties about the process
- Empower the parties to make their own decisions
- Understand that you do not own the dispute – the parties do and do not let them forget that - it is their dispute and it is their responsibility to take and keep ownership of it
- Develop and practice the skill to “run on 12 tracks” at once
- Know about
  - LIAR
- Understand the differences between –
  - CINS
  - PIES
- Develop and use techniques to overcome impasse

# “LIAR” IS NOT WHAT YOU THINK

- LIAR is a communication facilitator
- **L** – means to listen – fully to the story/complaint/hurt
- **I** – means to identify what the issue or emotion being expressed is
- **A** – means to acknowledge the emotion, to validate the feeling
- **R** – means to respond appropriately to the initial story/complaint/hurt

- An example:

A colleague bustles right past you and through the door which slams shut in your face. Your reaction – Anger? Hurt? A sense of being “dissed” or disrespected?

# WHAT ARE CINS AND PIES?

- PIES – What people want
  - Positions – articulated results or outcome
  - Information – the story behind the position
  - Expectations – what the person expects, based on his/her reality [this may be the easiest variable to change/reset]
- CINS – Why they want it
  - Concerns – fears, objectives
  - Interests – the (often hidden and unstated and at times even unknown driving factor or motivator)
  - Needs – think Maslow's hierarchy – basic, emotional, ego needs

# OVERCOMING IMPASSE

- Is there an impasse?
- Is there buy-in to the process?
- Are the parties engaged in the process?
- Will a short break help regain perspective?
- Are people fatigued, hungry, thirsty?
- Is the location, room, temperature, a problem?
- It is a case of bad timing?
- Call it for what it is
- Recap and reinforce the positives, the progress
- Restate the objectives of the mediation – get confirmation that these have not changed
- Know when to call it, and how to do so intelligently

# WRAP UP AND Q & A

- We tackled the issue of measuring performance
- Identified what some other programs have done/are doing
- Addressed the benefits of successful ADR programs
- Identified practical tips to enhance mediator performance, and
- Have a few minutes for questions

# THANK YOU!

- For the opportunity to hear your thoughts on performance measures and management as it affects tribunal mediation programs, and
- For the opportunity to share some of my thoughts with you.

Kathleen

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**THE END/FINI**

**SHIFTS  
HAPPEN**