



HITTING BACK MEDIATION

Teaching Note

This simulation is one of three created for a mediation training program for the Ontario Teacher's College. It is intended to focus mediators on "core emotional concerns" that might have been triggered in the parties – a parent and their child's teacher. It references the "core concerns model" outlined in Fisher and Shapiro's *Beyond Reason: Using Emotions as You Negotiate* (Penguin 2006), adapted to a mediation context. The teaching point is that when practicing "active listening," a mediator is wise to target paraphrastic restatements to the core concerns they hear in the parties' situation or statement.

To keep this teaching note brief, I'm including Chapter 4 from my book, *Client Science: Advice for Lawyers on Advising Clients Through Bad News and Other Legal Realities*, (Oxford 2012). That chapter explains how lawyers can use "targeted active listening," attuned to the Fisher and Shapiro's core concerns. My advice to mediators is the same.

As you'll see, both parties' roles contain instructions to exhibit certain attitudes and behaviors. This is intended to give mediators practice at intervening to de-escalate. And to build trust with the mediator, and insight for all, the mediators and the process should be well served by active listening and particularly by "targeted active listening" – targeted to the core emotional concerns.

Not surprisingly, the other key to understanding and resolution lies in disclosing information and explaining divergent perspectives. The three primary examples are Chris Cooper's health condition, which may have resulted in dizziness and holding on to/hitting Emily in ways Chris wasn't aware of. Dizziness aside, Chris Cooper didn't know Emily was running from the other children's bullying and assaults on the playground. Finally (in the aftermath) Pat Parker wasn't aware that the school administrator had instructed Chris Cooper not to discuss the situation, particularly with Parker. She heard Chris's refusal to talk on the phone as just that, a refusal, and felt Chris wasn't honoring their earlier relationship. Of course, Chris also believes the earlier relationship was strong and significant and should have enabled them to discuss this. Chris remembers saying "I'm not supposed to talk to you" to Pat but hadn't explained these were the school administrator's instructions. As so often happens, because of the incident, Pat has now re-interpreted Chris' earlier attentiveness to Emily in a negative light. The mediator can and should attempt to have the parties share this information and elicit their perspectives and perceptions. If the parties are open, this could repair the relationship. There's no preset resolution to this dispute, but some joint discussion with Emily and an apology by Chris Cooper would make sense.

The plotline summary follows, drawn from shortened versions of the parties' perspectives, core concerns, and instructions for behaviors to exhibit in mediation.



The Plot Line

From the perspective of teacher Chris Cooper:

Chris Cooper had welcomed a new student Emily (from another district). Suspecting Emily was having trouble adjusting, Chris had worked with her individually. Chris had learned from the gym teacher that other students made fun of Emily's weight, calling her Pudgy Parker. Chris met with her parent, Pat, because Emily was falling behind and daydreaming in class. Pat's response was positive, and Emily's performance seemed to improve.

A couple of weeks ago, after school, Chris saw Emily Parker push another child on the playground. When Chris left the classroom to check on the situation, Emily and two other children ran toward Chris in the hallway. The other two said that Emily had pushed and hit them. Emily burst into tears, wailed, "They are liars," and began flailing her arms around. Chris grabbed Emily to keep her from hitting the others and told them to go to the administrator's office. Chris claims to have been patting Emily on the back to calm her.

The episode ended when the school administrator, Mr. Snyder, came and led Emily away and promised to "take it from here." Chris was relieved because they felt lightheaded. A bit later, Chris's spouse realized Chris was having a low insulin reaction related to their diabetes and insulin regimen. After receiving treatment at the hospital, Chris went home and slept until morning. (The school is unaware of Chris's medical condition.)

At school the next day, Mr. Snyder explained that Pat claimed Chris had hit Emily, leaving red marks on her arms and back; Pat threatened to file a formal complaint. Chris explained they were trying to calm Emily, never hit her, but held her arms down to keep her from hitting the other children (or Chris); she was out of control.

Chris was stunned but then disclosed their diabetic condition, explained it was caused by low insulin, and their spouse had taken them to the hospital for emergency treatment that day. Chris told Mr. Snyder that perhaps, in their dazed state, their "patting" may have been more forceful than intended. Chris vaguely remembered feeling the need to grab onto Emily for balance. Mr. Snyder advised Chris to say nothing to anyone else, particularly to Pat Parker, until further notice. Chris later received a call from Parker, who tried to assure Parker that they hadn't done anything to Emily, but also explained they weren't supposed to talk about it with Parker.

Chris has been teaching for over fifteen years and has never been the subject of a complaint or disciplinary action. Chris is upset that Parker filed a formal complaint. Chris thought they had a good relationship and could have worked through this on their own.

From the perspective of Pat Parker, Emily's parent:

Parker is the 40-something single parent of 9-year-old Emily. Emily had always done well in school until this year's move into the new district. At one point, her teacher, Chris Cooper



reported that Emily was having problems keeping up and paying attention. Pat met with Chris, and they worked on a plan for Emily. Though too soon to tell, Emily seemed to be improving. However, a couple of weeks ago, Pat saw that Emily had obviously been crying before coming home from school.

Emily said her teacher had grabbed her and kept hitting her. She explained that she and two other children were playing outside the school building, waiting for the bus. At first, they were playing tag, and everything was fine. But at some point, the children started making fun of her: teasing her about her weight and refusing to leave her alone. Desperate to get away, Emily pushed one child and ran into the school. The children also ran inside, reached Chris Cooper first, and said Emily had hit them. Emily burst into tears and said the children were lying. At that point, Chris grabbed her and began hitting her. Emily had red marks on her arms and back. There were no bruises.

Pat immediately called the school administrator, who promised to talk to the teacher and get back to them. After a week, Pat again called the school administrator who said the matter was under investigation. Because of their previous good relationship, Pat decided to call Chris directly. On the phone, Chris immediately denied doing anything wrong and refused to talk about it. Pat decided to file a formal complaint.

Pat heard nothing before receiving a letter indicating the matter had been referred to mediation. Pat is not sure what a mediator can do but is willing to participate. Pat can't imagine what a teacher could say to justify hitting a child.

The Core Concerns and Behaviors – Supplied in the Parties' Role Information

Parent Pat Parker's role information describes their Core Concerns and instructs them to exhibit related behaviors in mediation, as follows:

Appreciation: Pat doesn't feel anyone at the school understands that Emily was assaulted; they are acting as if nothing is wrong and have denied any wrongdoing. Pat also fails to understand how a teacher could possibly justify such behavior.

Behaviors Pat is instructed to exhibit in mediation:

- Interrupt Chris's story, saying, "That's not true, Emily wouldn't lie."
- Listen at first, but at some point, physically turn away as Chris is speaking.
- When you are telling your story, say you think Chris has been picking on Emily all along (i.e., calling you in to talk about her).
- State that you think Chris is biased against single parents.
- Dismiss Chris's explanation as "ridiculous."
- Repeat that no one has listened to them.

Autonomy: Pat intends to make sure they are not given the runaround by Chris, the school system, or the mediator. This is Pat's daughter; they will get to the bottom of this and see



that justice is done. Pat is tired of being put off and intends people to recognize Pat is a force to be reckoned with—or else they will hear from Pat’s attorney!

Behaviors Pat is instructed to exhibit in mediation:

- State that Pat intends to have their say in this.
- “If this process does not work, you’ll hear from my attorney.”
- Question the school district’s complaint process, i.e., “In Emily’s former school system, the teacher would want to have me involved in this immediately, not put me off for a week!”
- TALK A LOT.
- Tell the teacher how they should have handled the situation.
- Insist that the teacher give Emily a written apology for hitting her.

Chris Cooper’s role information describes their Core Concerns and instructs them to exhibit related behaviors in mediation, as follows:

Appreciation: So far, Chris has not been given the opportunity to explain anything to Emily’s parent. Chris explained their perspective to school administrator, Snyder, who said he didn’t know what to make of Chris’s story and encouraged Chris to “make it right” with Pat in mediation. Although Chris’s doctor said it is common for persons in the early stages of a low insulin reaction not to know exactly what they are doing or to feel dizzy, Chris is unsure if others will appreciate that. In addition, no one seems to care that Chris saw Emily hit another child and that Emily was literally having a fit in the hallway that day! Pat should be thanking you for keeping Emily safe from harm and from harming the other children!

Behaviors Chris is instructed to exhibit in mediation:

- Deny they did anything wrong.
- Ask Pat why Emily was hitting the other children.
- Suggest that if Pat would do something about Emily’s weight problem, perhaps other children wouldn’t pick on Emily.
- Keep repeating that Emily’s behavior was not acceptable.
- Suggest Emily should have been treated by a psychologist from the beginning.
- State that Chris has never had a complaint before, and it is ludicrous to believe that Chris would strike a child.

Affiliation: Chris feels Pat Parker has already judged them “guilty.” That upsets Chris, given their work to help Emily adjust. Chris thought Pat appreciated the extra time you spent with them. Chris is upset that Pat filed a complaint without talking first. Although Mr. Snyder explained that Chris can say what they wish in mediation, Chris is not sure about sharing personal medical issues; Chris doesn’t know if Pat and the mediator can be trusted.

Behaviors Chris is instructed to exhibit in mediation:

- Be reluctant to talk much about the situation, say they are not sure this should be discussed or settled.



- State they can't imagine this is the first time Emily's behavior has been out of control; children of single parents often have behavior problems.
- State that Pat Parker is a backstabber for filing a complaint after all Chris has done for Emily.
- Imply that you think Emily has a tendency to lash out from her parent.
- Be very reluctant to share their medical history as an explanation for the incident; maintain only that they didn't intend to harm Emily.