

Making Mediation Sessions Accessible To People With Disabilities

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Mediators have recently become aware of the need to make these mediation sessions accessible to people with disabilities. This development is largely due to disputes that have arisen as a result of the Americans with Disabilities Act (ADA). However, all mediation sessions involving people with disabilities need to be accessible, not only ADA mediation sessions. (Although this article addresses mediation, in fact, most of the same points apply to other dispute resolution forms such as arbitration, fact-finding, and ombuds functions.)

People with disabilities are just like everyone else, except for their disability. They are just as likely as anyone to find themselves caught up in a commercial, labor, family or other dispute. All mediators - regardless of their area of specialization - need to know how to set up and run an accessible mediation session.

Under Title III of the ADA, mediators are required to make their facilities and services (as those of a "public accommodation") accessible to clients. In actuality, that responsibility may be a shared one. For example, an employer who uses mediation for an employment disputes has an obligation to ensure that the session is accessible to the employee with a disability. But that does not remove the obligation from the mediator's shoulders.

Mediators set the tone for their sessions. The mediator's ability to use appropriate disability etiquette and language and to handle access arrangements has an impact on the parties' future interactions, as well as on the interpersonal dynamic of the session.

Pre-session arrangements

When the mediator learns that one of the parties in an upcoming mediation has a disability, she should arrange to discuss access needs directly with that person. The mediator should not assume that she knows what will be most effective for the person who has a disability, nor should she take someone else's word for what his needs are. The person with a disability needs to know exactly what will happen in the session, in order to describe how to make the session accessible.

A person who is hard of hearing may request an assistive listening device to amplify people's voices as they speak. However, amplification is not effective for all hard of hearing people, and real-time captioning may be most effective (like court reporting, with speakers' words typed out on a screen).

In the planning discussion, each aspect of the session that may impact on the person's ability to participate should be raised: length of session (people with certain physical disabilities may fatigue easily; people with certain cognitive or psychiatric disabilities may not be able to concentrate for great lengths of time), need for breaks, best time of day (medication, among other factors, may influence this), limitations in processing verbal or written information, physical access, ability to deal with stress, need for water, etc.

Persons who have learning disabilities that make it difficult to concentrate may not think to request that the room be very simple, without loudly patterned curtains or pictures, which could be distracting.

If a person is blind or visually impaired, offer to have the parties exchange documents in advance of the session date. Ask the person about his or her preferred format for the documents: large print (what point size), audio tape or braille.

The parties must agree ahead of time about who will make and pay for the access arrangements, and on any relevant criterion pertaining to the selection of the accommodation.

The ADA requires that a "qualified" interpreter be used when necessary to provide effective communication for persons who are deaf. "Qualified" is defined as "can interpret effectively, accurately and impartially both receptively and expressively, using specialized vocabulary." The parties must agree on whether the interpreter needs to be certified, who will determine whether the interpreter is qualified, etc.

Learn about the disability and relevant access arrangements

While it is true that each person experiences his disability differently and that access issues need to be addressed on a case-by-case basis, having background knowledge lessens the amount of planning time. If the person has a disability that the mediator knows nothing about, she can learn information to make her more effective in mediating a session with this person.

Persons with bipolar disorder may, in a manic phase, speak very quickly and jump from topic to topic. Being prepared for this allows the mediator to strategize about ways to handle it without making a judgement about the person's god faith effort to participate. For example, the mediator may decide to summarize frequently in order to ensure that she has not missed something. By summarizing, the mediator sends a signal that she places considerable importance on hearing everything the person has to say.

The person's disability may cause him to act in ways that are disruptive to the smooth running of the session. The mediator should not accept disruptions just because the person has a disability. But with effective planning, one can minimize the negative impact of "disruptive" behavior.

Have a time-out room available for a person with a stress-related disorder. A time-out room may also be helpful for a person with Tourette syndrome, who may need to release the build-up of impulses to make sounds.

If appropriate, the mediator should ask the person's permission to share information about the disability with other participants in the session, possibly obtaining an explicit "waiver" of confidentiality. It may be helpful put the disability information to be shared in writing to be sure it is acceptable.

A person with traumatic brain injury may have poor impulse control and poor social skills. The person may say something offensive to another party in the session that is based more on the person's lack of self-control than with any negative impulses. With

advance preparation, the parties can avoid hard feelings.

Confidentiality is a significant issue to persons with hidden disabilities. The person may not wish to self-identify to the other party.

A person with AIDS may wish to schedule sessions for times when his medication is not affecting him. A person with lupus may tire easily and request that sessions be no longer than two hours. The other party normally does not need to know about this request, and the mediator is obligated to maintain confidentiality.

Attitude of the Mediator

The way that the mediator interacts with the disabled person sets an example. The mediator should pay attention to her own attitudes, and monitor her responses.

If the person has a speech disability, the mediator should give him unhurried attention, avoid interrupting or completing the person's sentences, and preventing other participants from doing so as well.

A person with cerebral palsy may have slurred speech and involuntary body movements. The mediator's impulse may be to discount what he says, and she may have to remind herself not to make assumptions about the person's emotional or intellectual capacity based on his appearance.

Persons with hidden disabilities are often disbelieved when they request reasonable accommodations. If the mediator does not take the person's request seriously, she is not likely to gain the person's trust. A person who does not self-identify as having a disability, may make a request that is disability-related.

A person may indicate to you that she has trouble handling stress and she is not sure she will "make it" through the session. Don't dismiss this because you know that a mediation session can be stressful for anyone. Ask how you can help, and work with her to design ways to deal with it.

If you ignore the person's reasonable accommodation request, you may jeopardize more than the person's faith in the process; you could endanger the person's health.

A person with multiple chemical sensitivity, asthma or other respiratory disability may request that the room have good ventilation and that other participants not wear fragrances. Although it might sound strange to you, if you don't meet the person's needs, he may become seriously ill.

Setting Up the Room

Work with the person to set up the room most effectively. Certain seating arrangements will impact on the person's ability to participate in the session.

People who are hard of hearing rely on seeing the lips of people who are speaking to help them follow what is being said. Set up the table so that the person can see everyone's face, and so that others' backs are not to the source of light. Consider using a round table.

Introducing the Subject of Access at the Session

Some access plans depend on the cooperation of other participants at the session. The person with a disability will appreciate the mediator's explaining everyone's role, as long as it is done in a neutral, appropriate manner.

The mediator should let participants know that they should speak to each other and not to the sign language interpreter, and that they must speak one at a time so that the interpreter can do her job effectively. Phrased in this way, the deaf person is not singled out.

It is not always necessary to be direct. Many process modifications can be introduced as ground rules, or incorporated into your opening without calling any attention to disability access.

The mediator can ask each participant to say something when they are all seated, so that a person is blind will be oriented as to where each is sitting by their voice. (In a big session, the mediator can call on people by name before they speak.)

Disability-related issues not pertaining to access or to the case itself should not be raised. The person is entitled to privacy.

Comments about a person's guide dog unnecessarily single out the person.

Running the Session

Throughout the session, observe disability etiquette and other measures so that the person with a disability has equal access at the session.

Persons with mental retardation learn slowly, and have trouble using what they learn. Prepare to give directions slowly and clearly. Speak in simple and clear sentences, but don't use baby talk. Use concrete examples, rather than abstract concepts. Break down complex ideas into separate components.

Do not touch a person's wheelchair, cane, crutch or other mobility device; they are part of his personal space.

Possible Disability-Related Behavior

Sometimes, the mediator finds herself dealing with a party who has difficulty participating in the session. This issue is hardest to deal with in the case of cognitive disabilities and psychiatric disabilities -- hidden disabilities that may interfere with the person's ability to communicate effectively. A person with auditory processing disorder (a learning disability) may have difficulty following what people are saying and/or putting his own thoughts into logical sequence.

The mediator can use the caucus to find out what she can do to facilitate more effective communication. If the person has not self-identified as disabled, the mediator should simply address what's going on in the session, and not frame it as a disability issue.

The Inaccessible Session

If the mediator discovers that the session is not accessible, and access cannot be arranged on the spot, she must reschedule it.

For a person with a severe psychiatric disability, the mediator can arrange to co-mediate with someone who has expertise. Alternatively, the mediator can help the party arrange for a support person of his choice to attend a rescheduled session.

If the sign language interpreter is not acceptable, or if there is no interpreter, the session cannot proceed using writing. Sign language is not a translation of English; many deaf people have low-level English skills. Conducting the session in written English denies the deaf person equal access.

These are some of the many disability access issues that mediators may encounter. People with disabilities have the civil right to participate and have equal access in the mediation session. Through training, preparation and experience, mediators can ensure that they fulfill their obligation to provide equal access in their mediation sessions.

Common Situations

If the person is deaf, the telephone conversation will most likely be by TTY. The TTY (teletypewriter) is an appliance with a keyboard and screen that deaf, hard of hearing and speech-impaired people use to communicate by telephone. If you do not have a TTY, the conversation will be via relay service. In the conversation, the parties need to use short, clear sentences.

For a wheelchair user, be sure that the table is high enough to accommodate a wheelchair and an accessible path of travel must exist to the meeting room, rest room, and all other areas the person will be using. It is not enough to ask the facility if these areas are accessible; ask about specific measurements: 32" doorways, 36" aisles, 5' turning room in the rest room stall, etc. If the way through the building is complicated, find out the most accessible path of travel and inform the disabled person of the most accessible routes.

The sign language interpreter must sit where the deaf person can see the persons speaking and watch the interpreter. Normally this would be next to the mediator, opposite the deaf person's side of the table.



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