



San Francisco Bay Area Federal Executive Board

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Shared Neutrals Program Overview

What is Mediation?

Mediation is a process whereby a trained neutral party assists in resolving a dispute, or at least narrowing and clarifying issues, in a manner that is acceptable to both sides. Mediation is different from traditional litigation in that it is informal, the rules of evidence do not apply, testimony is not taken, and the mediator does not decide the dispute. It is also different from traditional negotiation in that the neutral party facilitates the discussions, sometimes with both disputants together and sometimes with each side privately.

The mediator, in effect, creates a new forum where the disputants can candidly discuss their concerns. The mediator will not reveal anything from private discussions that one side does not want revealed to the other. Therefore, the mediator often will have more information, and a more complete picture of the problem, than either party alone. By virtue of this unique position, the mediator can often help identify options for agreement that were not evident before. Also, the mediator can help assess the strengths and weakness of each party's case and help create realistic expectations.

Why Request Mediation?

While conflict is a normal part of our daily lives, it is often uncomfortable and counterproductive in the workplace. When you find yourself in a dispute, mediation can help you resolve issues in a private, confidential, and timely manner. Mediators are trained in communication and problem-solving skills, and a session with a mediator can facilitate a constructive exchange of views and develop previously unseen options for resolution.

Mediation allows you to control your dispute and resolve the problem yourself, rather than having a judge or some other official decide it for you. Mediation is also fast and economical. Even if you do not resolve the dispute, mediation frequently clarifies and narrows the issues so that litigation proceeds in a speedy and focused manner.



People sometimes avoid mediation because they confuse it with compromise. Requesting mediation does not mean you wish to compromise. It means you are interested in talking in a confidential setting to determine whether the problem can be resolved without litigation. You retain control. You need not agree to anything that you do not believe is in your best interest. Also the parties may withdraw from the mediation at any time.

Who is the Mediator?

A mediator is a trained professional in conflict resolution specifically, the mediation process. The mediator serves as an impartial third party and does not take sides or render a decision on the merits of the dispute. Occasionally, a mediator may suggest some substantive options as a means of encouraging the parties to expand the range of possible resolutions under consideration. The mediator performs the role of catalyst that enables the parties to initiate progress toward their own resolution of issues in a dispute. Mediation offers both the complainant and the responsible management official:

- ❖ An opportunity to be heard
- ❖ An opportunity to develop new ways of dealing with a dispute
- ❖ The opportunity to create their own solution(s)

Who are the Co-Mediators?

A Co-Mediator has completed a 40 hour mediation course and is completing their final requirements to become full Mediators. They observe mediations with an experienced mediator. Next they mediate with an experienced Mediator. Upon successful mediation, the experienced mediator recommends to the Shared Neutrals Council to elevate the Co-Mediator to a full Mediator status.

Is the Mediation Confidential?

All conversation and materials produced during a mediation session are strictly confidential. The mediator does not disclose or discuss with anyone outside of the mediation session anything that occurred between the parties. The parties agree in writing not to disclose any information regarding what happens in the mediation session without the consent of the mediator AND the other party. **Confidentially will not be afforded to threats of imminent physical harm or criminal activity.**

Mediation is not Litigation

The mediator does not determine who is right or wrong. Both points of view are valid and the parties work together to create their own solution. Mediators do not provide legal advice. However either party may have a representative or legal counsel present during the mediation session. The parties agree not to subpoena the mediator to produce any documents prepared or submitted to the mediator in any future proceeding. The mediator will not testify on behalf of any party.



Mediation is not an EEO Investigation

The mediation process acknowledges the emotional issues in a conflict and focuses on finding a workable solution to the dispute rather than focusing on the causes or who is at fault. Participation in a mediation session assists the parties in resolving problems in a constructive manner. Mediation saves both parties the time, expense and emotional distress of living with unsolved conflict in the workplace. Mediation promotes a renewed, positive relationship between the parties and enable the mission of the agency to be accomplished without prolonged disruption.

What happens during the Mediation Process?

❖ Opening statement by the mediators:

The mediators introduce themselves and outline the format of the mediation. You will be asked to confirm that you are willing to negotiate in good faith and that you intend to conduct the session with common courtesy.

❖ Opening statement by participants:

Each participant makes an opening statement. This opening statement will be an uninterrupted time to speak for each person. After each participant finishes, the mediators will reflect back the statement and ask clarifying questions. Your statement should include as clear a picture as possible about the circumstances that led up to the mediation, both the facts as you see them, and how you feel about the situation.

❖ Agenda building:

Together, all participants list the issues that need to be resolved in order to reach settlement. These issues can be of the concern to one or both parties. As much as possible, the interest behind each of the issues should be listed as well.

❖ Negotiations:

In this step you will be exploring interests and developing options that satisfy all or part of the interests of all the parties to the dispute. You will be thinking of ways to craft a workable, mutually satisfactory solution or relationship for the future.

❖ Caucus:

From time to time during the negotiation phase of the mediation, the mediators or the participants may decide it would be beneficial for the parties to meet with the mediators separately. Discussions held in caucus are doubly confidential, that is, the mediators will not share those discussions with the other side unless the participants want to.



Resolution -Settlement Agreement

Mediation does not favor the complainant or management, but rather, facilitates resolution of a dispute in a manner that is satisfactory to both the complaining party and the Agency. When the parties agree on a mutually acceptable solution to the dispute, the agreement is recorded in writing by the mediator and all parties sign the agreement. No party shall be bound by anything said or done in the mediation unless the agreement is signed. This document reflects that the informal EEO complaint is resolved. However, when there is no resolution, this too is documented and the complainant has the right to continue with the formal complaint process. An agreement reached in mediation has the same effect as any other settlement agreement through the EEO complaint process, i.e., the agreement is binding on the parties and enforceable.

The written settlement should reflect the agreement of the parties as to how they will relate to one another in the future. It should describe in detail the responsibilities each party has agreed to assume in order to resolve their dispute. It is, therefore, important that the agreement be understandable, comprehensive and specific. Upon reading the agreement, it should be clear who will do what, when, how much, and for how long.

