

This is a collection of listserv posts (May 2 – July 28, 2021) that were part of a weekly refresher series on the [ADA Mediation Guidelines](#) posted by Judy Cohen, ADA Mediation Guidelines Work Group Coordinator. The posts have been lightly edited since their original posting on the [CUNY DRC \(Dispute Resolution Center\) listserv](#).

ADA (Americans with Disabilities Act) Mediation Guidelines refresher coming up!

[ADA MEDIATION GUIDELINES](#) #1– Background

Greetings, Friends!

I think it might be time for a refresher on ADA Mediation, * a topic I have written and trained on frequently – but not for a while now.

First, a little history. Some years ago, while I was an education director at the ILGWU (International Ladies Garment Workers Union), I worked with our Deaf union members. We collaborated on integrating them into the mainstream of union life and we put on city-wide all-union conferences (“Building Bridges: Deaf Workers in the Labor Movement”) to educate Deaf members about trade unionism, and for Deaf and hearing members to get to know each other. This was my introduction to the field of disability. (Please note, though, that many Deaf people don’t consider themselves disabled.)

In this period, I myself developed a disability, [multiple chemical sensitivity](#) (MCS). It was debilitating, especially at first, though I learned to manage it over time. More about that below.

I left the union in 1992. The ADA had recently been passed, and I began to train unions and employers in their new obligations. Soon after, I began providing disability awareness training. (In fact, for a number of years, I provided this training to CUNY Peace Officers here at John Jay!)

In 1993, I participated in my first mediator training. As I got involved in the field, I became aware that mediation providers were unprepared to make the process accessible to people with disabilities. A colleague suggested that I gather some experienced practitioners and develop standards. Next week, I will talk about how I did this.

This time, I’ll tell you a little about my experience as a mediator with a disability. To manage my MCS, I had simple needs: fresh air and avoidance of triggers (toxins in the air). I requested in advance that mediation participants not wear fragrance; and that the mediation room not be cleaned with fumey products and that it have good ventilation. My requests were sometimes met with understanding; other times with disbelief. (People with “hidden” or “invisible” disabilities are often disbelieved.) I think that times have changed; today, more places are accustomed to collaborating with people with disabilities on issues of accessibility.

One more story from these early days: at a panel about disability issues where I spoke, another speaker was an attorney who used a motorized wheelchair. His chair was actually too big to fit

through the door of the meeting room! It never occurred to him to mention it to the planners, but an aware mediator just might have included that on her list of questions before the session.

Next week I will talk about the process of developing the [ADA Mediation Guidelines](#). After that, each Wednesday, I will post, step by step, small sections from the Guidelines, including practical examples. I certainly will welcome questions, discussion and other people's experiences along the way.

**Our international friends will find much of this guidance useful, though it is based on the Americans with Disabilities Act, a US law.*



Judy (top right) with Deaf ILGWU members, 1989.

[ADA MEDIATION GUIDELINES](#) #2 – Background

Greetings to all, and welcome to the 2nd post in this series...

The passage of the ADA in 1990 brought new awareness of mediators' obligations to ensure the full participation of people with disabilities. Mediators were already obliged – under our code of ethics, [The Model Standards of Conduct](#) – to make the process accessible to everyone; the ADA highlighted one aspect of that responsibility.

It was obvious that mediators would need to collaborate with those with disabilities in order to make the process fully accessible. To that end, the recommendation of the ADA Mediation Guidelines Work Group was that mediators inform themselves about the range of disabilities. More about that later...

When mediators talked about their work on ADA cases,* their bias and lack of awareness were dismaying to those of us with expertise in the disability field, some of whom had disabilities ourselves. Finally, one of my colleagues said to me, “Judy, why don't you get a group together and write some standards?”

So I contacted everyone I knew in the field and asked them to reach out to people they knew. In the end, we formed a group of 12 practitioners and program managers, all of whom had

experience and/or expertise in mediating cases with people with disabilities – not only substantive legal allegations of ADA violations, but also cases in any context that simply involved making the process accessible.

We wrote and sent out an early draft and later a final draft of our recommendations for feedback. We received 200 comments and integrated just about everything into our final drafts, which we submitted to the primary ADR organizations at the time: SPIDR (The Society for Professionals in Dispute Resolution), the American Bar Association Section on Dispute Resolution, NAFCM (National Association for Community Mediation), and AAA (American Arbitration Association). They, in turn, sent comments, which we discussed with them and incorporated.

The Guidelines were widely accepted. With funding from a variety of organizations, the Workgroup oversaw several printings of the Guidelines in pamphlet form, distributed by NAFCM. They were also produced in alternative formats (audiotape, braille) and distributed by CUNY DRC.

Next week, I will begin to take us through the Guidelines, step by step, with practical examples.

**When used as a generic term in this series, “ADA Mediation” includes both 1) cases of any type where a participant has a disability and may need an accommodation to make the process accessible and 2) cases involving alleged violations of disability rights laws.*

[ADA MEDIATION GUIDELINES](#) #3 – PROGRAM DEVELOPMENT

Today, we begin our sequential discussion of the guidelines. Each post will have a standard format: I will cite the relevant portion of the original guidelines; and then I will comment and clarify.

I. Program and Case Administration

This section of the Guidelines refers to the administration of mediation programs and to the administration of cases by mediation providers, both mediation provider organizations (any entity that manages or administers mediation services) and private mediators.

A. Program Development

1. Providers, staff and volunteers involved in ADA mediation in any capacity should be trained in disability-related issues and ADA compliance requirements, according to their particular program’s needs and structure.
2. Mediation providers should be responsive to their constituents. The input of people with disabilities and other stakeholders should be considered in program development and evaluation.

In other words, in mediating disability-related claims – such as employers’ failure to accommodate or lack of access in a public setting – every employee and volunteer of the mediation provider should have training relevant to their role. *A receptionist, for example, should be trained in disability etiquette and so, if s/he were standing high up behind a counter and a person arrived in a wheelchair, the receptionist would come around and sit in a chair at the person’s eye level, being careful not to touch the person’s wheelchair, which would be considered part of that individual’s personal space.* (Please note: though not addressed in the Guidelines, it is my personal belief that every mediation provider organization should offer disability awareness training, including disability etiquette, to all its employees and volunteers. More about that later...)

In developing a program, the provider should collaborate directly with people with disabilities. An efficient way to do this is through the local [independent living center](#). [Regional DBTACs](#) (Disability and Business Technical Assistance Centers) may also be a good source of local contacts and guidance. For workplace programs, contact the [Job Accommodation Network \(JAN\)](#).

ADA MEDIATION GUIDELINES #4 – ACCESSIBLE PROCESS, Part 1

I. Program and Case Administration

B. Disability Access to Mediation

Mediation providers have obligations to make their services accessible to persons with disabilities. These obligations are articulated in the ADA Title III (Public Accommodations) under which mediation providers would be considered as “Service Establishments,” in Title II (Public Service) if they are state or local government entities such as publicly funded court or community mediation programs, and in Title I (Employment) for internal employment dispute resolution programs. Mediation provider organizations and private mediators may not charge the individual with the disability for any expenses relating to making the session accessible.

MODEL STANDARDS OF CONDUCT FOR MEDIATORS

STANDARD VI. Quality of the process A mediator shall conduct a mediation in accordance with these Standards and in a manner that promotes... party participation...

Before the passage of the ADA, mediators already had an ethical obligation to make the process accessible to ensure maximum party participation. Mediators could always ask parties what would make the process more comfortable for them. In certain types of mediation, specific questions may even be standard. For example, in domestic relations mediations, the parties may be specifically offered the option to appear online, in separate rooms and/or at separate times.

Here’s what the ADA brings into the equation:

1. A legal obligation to make the process accessible (with some exceptions, such as significant difficulty or expense).
2. An obligation to make the process not just accessible to the parties in the dispute but to **all participants**: such as advocates, attorneys, union representatives, support persons – and the mediator.
3. In general, even private, independent mediators are responsible for making their process accessible. Many, if not most, accommodations in mediation are process accommodations, which are cheap or free: *for example, taking frequent breaks for a person with multiple sclerosis, who may get exhausted easily.* But some accommodations cost money. *Sign language interpreters, for example, may charge \$50 an hour, depending on location and, for a mediation, you generally need to hire two, so that they can spell each other during lengthy proceedings.*

ADA MEDIATION GUIDELINES #5 – ACCESSIBLE PROCESS, Part 2

I. Program and Case Administration

B. Disability Access to Mediation

1. ADA mediation providers should make all aspects of mediation— from training to mediation sessions—accessible to persons with disabilities, including parties and other mediation participants, staff, volunteers, and mediators. For these purposes, the broadest definition of disability should be applied, including chronic conditions, episodic symptoms and temporary disabilities. This is in keeping with generally accepted mediation principles that the parties be able to participate fully in the process.
1. **Accessibility applies to all aspects of mediation:** that includes the intake process, forms in accessible formats, telephone calls, sitting comfortably at the table, being able to use the restroom during breaks, etc.
The access obligation applies not just to the parties with disabilities, but to everyone participating in the process, including the person conducting intake, the mediator, advocates, etc. (This is why you see me sometimes refer to “participants,” and not just “parties” in my posts.)
 2. **The disability doesn’t have to rise to the level of a “substantial limitation.”** According to these Guidelines, we accommodate even a mild or temporary impairment, just as we would accommodate any participant who has any need – if we can.
 3. Still, the burden on the program and mediator to attend to the needs arising from a person’s disability is stronger than the obligation to meet the needs of, say, a party who happens to have a headache that day, or a party who, as a convenience rather than a need, would like the mediator to use a flip chart, or a party who is just having a bad day. **Disability access is a legal right.** Routinely facing obstacles to participation due to a

disability is different from the temporary discomforts and inconveniences that everyone faces now and then. Mediators must be particularly attentive to the access needs of people with disabilities, who have been historically excluded from the mainstream due to systemic and cultural bias.

4. For this reason, providers must do everything in their power to **create a space where people with disabilities will feel safe** disclosing their disability, discussing their needs, and collaborating to explore accommodation options.

ADA MEDIATION GUIDELINES #6 – ACCESSIBLE PROCESS, Part 3

I. Program and Case Administration

B. Disability Access to Mediation

1. ADA mediation providers should make all aspects of mediation — ranging from training to mediation sessions — accessible to persons with disabilities, including parties and other mediation participants, staff, volunteers, and mediators...

Clearly, the provider collaborates directly with the individual to design the accommodation; the **individual's input is primary.**

However, if they are to collaborate effectively in designing accommodations with participants who have disabilities, mediation providers – both organizational providers and individual mediators – must be comfortable discussing disability issues and should have basic substantive background knowledge about disability.

Often, participants do not know what to expect in the mediation. It is only in the conversation about the process and about possible accommodations that the individual begins to grasp what might be useful. **The provider should at least have enough general knowledge to know 1) what questions to ask and 2) some options to put forward, if the participant is uncertain.**

In addition, **basic awareness of disability etiquette** – the norms within each disability cultural group regarding how to communicate and interact, including appropriate terminology – is essential. It lets the person know that they are respected and that the provider has a certain level of sensitivity. Basic awareness would include, *for instance, knowing that it's not appropriate to touch a person who is blind as a way to get their attention, and not appropriate to touch a person's wheelchair or other accessibility device, which is considered part of their personal space.*

The mediator will always benefit from further research to expand their knowledge and understanding of disability culture.

Finally, I am sharing an article I wrote many years ago, "[Making Mediation Sessions Accessible to People with Disabilities](#)" (SPIDR News, Spring 1997 – yes, that old!). The article includes many useful examples and, surprisingly, is still pretty accurate. Some of the terminology and technology references are out of date (for instance, "mental retardation" is now referred to as "intellectual disability"), but I think that, by and large, readers will find the guidance and information useful.

[ADA MEDIATION GUIDELINES #7 – ACCESSIBLE PROCESS, Part 4](#)

I. Program and Case Administration

B. Disability Access to Mediation

1. ... Persons conducting intake or case development should notify the mediator of a case of any disability accommodation required to enable a party's participation in the mediation.

In next week's post, I'll walk through steps and considerations for collaborating on accommodation design with a mediation participant who has a disability. Today, we simply consider what a disability accommodation is – and is not.

– For our purposes, a disability accommodation is a **modification or adjustment to the mediation process** that will enable a participant with a disability to participate as fully as possible.

– A disability accommodation is **not help or special assistance** for a particular participant. It is a change in the way things will be done.

Though the accommodation clearly makes the process accessible to the person with a disability, it also facilitates a meaningful, participatory process for *everyone*. For example, in sessions where Deaf individuals are present, sign language interpreters participate as a disability accommodation. However, as I say in my introduction to such sessions, "There are sign language interpreters here to facilitate communication between Deaf and hearing mediation participants." The contributions of the interpreters benefit everyone at the session.

Tip: There's a dropdown menu on the [JAN \(Job Accommodation Network\)](#) website that – while geared for workplace accommodations – can be useful to explore accommodation options for mediation. The mediation provider – perhaps in conversation with the participant – can look at lists of options, selecting according to disability, limitation, topic, function or accommodation.

[ADA MEDIATION GUIDELINES #8 – ACCESSIBLE PROCESS, Part 5](#)

I. B. Disability Access to Mediation

Persons conducting intake or case development should notify the mediator of a case of any disability accommodation required to enable a party's participation in the mediation.

1. **It is essential to follow up immediately on requests for accommodation.** By their nature, certain accommodations may take time to arrange.
2. **The mediator needs to be notified if a participant requires an accommodation** – even if the organizational provider is arranging the accommodation – **because the mediator will almost certainly have a role in implementing the accommodation** during the session. *For example, if a person with a visual impairment has requested that documents be in large print, the mediator needs to know, so as to be able to comply – and ensure compliance – with that request before, during and after the session. That will involve tasks such as ascertaining the appropriate font size; ensuring that the proper type of paper is used; confirming the location of a photocopier in case a document needs to be enlarged during the session; informing the other participants so that they comply; and ensuring proper lighting in the room(s).*
3. In addition, **the conversation with the mediator may reveal a need that intake did not pick up on.** Here's an example that is often overlooked: *if a participant uses a service animal, the mediator should collaborate with the person to set up the room with space for the animal. Other participants should be advised that a service animal will be there with a participant, in case there are issues such as allergies or fear of animals. (In that case, the provider will need to collaborate with relevant participants to ensure that the session is accessible and comfortable for all.)*
4. The provider – which may be intake or the mediator – should **allow at least half an hour** for the initial conversation. Most likely, the person will be unaware of what is entailed in mediation, and so the provider will describe the process and what to expect.
5. Before the conversation, **the provider may do some research** about the disability and potential accommodations, so as to become familiar with options. But remember:
 - **Every person's experience of their disability is different.** The provider is not expected to be an expert, but even if s/he were, each individual's needs and preferences will be unique.
 - **What the provider does will also depend upon the situation and upon the personality of the individual.** If the individual is unsure about accommodations, I generally put forth an option to spark thinking, even if it may not be the right option. This may be particularly useful if the disability is new or changing. Other mediators may prefer to ask questions; however, the individual may experience that as invasive. You will find your own style for initiating the collaborative process if the individual is unsure. This is a nuanced process and there is not one right way to conduct it.
6. If the individual doesn't feel an accommodation would be useful, **the provider should make clear that they may change their mind** later and may ask to explore

accommodations at any point in the process, with the understanding that some accommodations take time to arrange.

Note: In proposing to discuss accommodations, the provider has two goals: 1) to **initiate the design** of any accommodation that may be needed; 2) to communicate to the individual – who may not initially be open to discussing the topic – that s/he **may safely and openly talk about accommodations**.

ADA MEDIATION GUIDELINES #9 – ACCESSIBLE PROCESS, Part 6

Today I will give you a tool – a series of steps – for accommodation design. Note that collaborating on accommodations in mediation is different from the standard design process for workplace accommodations.

– For one thing, in the classic workplace design process, the employee will be *expecting* to discuss the disability and accommodation, whether in a meeting or in an ADA mediation. In mediation, by contrast, the topic of the mediation may have nothing to do with the person’s disability; and, even if it does, the person may be focused on the reasonable accommodations for the job and may be unprepared to discuss access to the process.

– The employee with a disability in a workplace ADA mediation generally comes with knowledge about the functions of the job. Mediation participants are generally not aware of what to expect in the mediation process.

– In reasonable accommodation design for the workplace, there are generally clearly defined job functions that need to be addressed. In mediation, by contrast, the list of process “functions” is more fluid and will be tailored to the person and the way their disability affects them.

– Finally, the mediation design conversation is far less formal, less involved and less technical than the classic workplace design process.

The tool I describe below is based on a problem-solving model, and so mediators should find its use comfortable. It doesn’t need to be followed rigidly, but it can give you insights and spark other ideas about how to approach the accommodation design process for mediation access.

Please note: Like other aspects of mediation, there is no single right way to do this. It is a nuanced process and requires sensitivity, creativity and flexibility.

If others on the listserv have other tools they use or other ways of doing this, please do share. There are many ways to approach the process of designing disability accommodations to make

the mediation process accessible.

I. B. Disability Access to Mediation

Mediation providers have obligations to make their services accessible to persons with disabilities...

The steps I recommend for the accommodation design process are as follows:

1. **Write a list of the aspects of the mediation process that may need to be accommodated.** This puts the emphasis on the process rather than on the disability. You'll be using this list in collaborative brainstorming and discussion with the individual. In that way, the starting point and foundation of the discussion is the process, rather than the person's limitations. This framing helps the person visualize the process and their role in it, rather than forcing them to list their limitations as a starting point. It puts the person – rather than the mediator – in the driver's seat.

It is likely you'll be having this conversation on the phone or on a video call, so prepare accordingly. For example, you may use a Google document that both can see and work on at the same time.

In contrast to workplace accommodation design – where a list of job functions is complete, predetermined, and the same for everyone in the same job position – the list of items in mediation accommodation design is tailored to *the individual* and how the disability impacts their functioning. The list for a person with a visual impairment will be different from the list for a person who is hard of hearing. Items on the list for a person who is blind, for example, *might* include: being oriented to the room and to relevant places in the facility (e.g., a restroom); recognizing speakers' voices; accessing written documents before, during and after the mediation; and being informed about gestures and movements that other participants make during the session.

You may very well end up expanding or fine-tuning your initial list while in conversation with the individual.

2. **Go over each aspect**, one by one, following these steps:
 - a) note potential obstacles or issues
 - b) generate a list of potential accommodations that could be useful (or, if an accommodation is not needed, remove the item from the list)
 - c) discuss the potential accommodations
 - d) select accommodations

e) reach agreement on how the accommodation will be specifically selected, arranged, etc. (Then put this in writing.)

Note: If you are doing pre-session conferencing, you may even fold the accommodation design informally into that conversation. *For example, when you are describing the joint session, an individual with a visual impairment may mention that s/he has a hard time breaking into conversations because of the lack of visual cues. The two of you may then discuss ways to overcome this obstacle, in terms of mediator attentiveness, process changes, ground rules, or whatever works best for the person to ensure their full participation.*

3. If relevant, **reach agreement on whether other participants will be informed** about the accommodation(s) (e.g., frequent breaks for a person whose condition makes them fatigue easily). This agreement may change during the course of the mediation: sometimes the individual is reluctant or not ready initially, but feels differently later in the process. Maintaining confidentiality on accommodations should be second nature to the mediator, since it is akin to sharing – or not sharing – information from caucus.

Whether other participants are made aware of an accommodation will depend on the situation. For example, in general, it need not be stated that a flip chart is being used as an accommodation.

But if an accommodation in the mediation relates to access at the workplace or public accommodation, it could be useful to share that information. *For example, if a supervisor is made aware that the mediator is repeating and reframing to ensure understanding, the session could provide useful modelling for that supervisor. A library patron who is hard of hearing may point out the effectiveness of mediation participants not covering their mouths or turning away when they speak.*

The individual may even stop during the mediation session and call attention to the accommodation, as a demonstration to the employer or other covered entity of its effectiveness.

As we know from first-person testimony, those who feel they must keep secret who they are – whether gay and trans people or individuals with stigmatized disabilities – find the experience marginalizing and damaging. That is why my personal emphasis is on creating a climate – not only in the mediation, but also in preparing for future communications within the setting at question (workplace, family, covered entity, etc.) – where the person will feel comfortable disclosing their disability and discussing related issues. Mediators always respect the person's right to privacy, while we work at facilitating a safe process and laying the foundation for the acceptance of disabilities in the environment to which the parties must return after mediation.

4. Make sure the person understands that the **accommodations may be adjusted at any time** during the process. (Such adjustments would probably be arranged during a caucus.) If appropriate, you may even plan to have a caucus early on so as to check in about the effectiveness of accommodation.

Just to be clear, this procedure is a tool that you may or may not follow exactly. It is one tool of many for your mediator tool kit. You will likely adapt it for the particular participant, for the situation, and for your own style.

ADA MEDIATION GUIDELINES #10 – ACCESSIBLE PROCESS, Part 7

I. Program and Case Administration

B. Disability Access to Mediation

2. Mediation provider organizations should have in place policies and procedures concerning accessibility for persons with disabilities. Essential components include procedures for requesting a disability accommodation, for grieving the denial of accommodations, and a non-discrimination policy that includes disability. The policies and procedures should be communicated to the parties, to mediation participants, to mediators, and to staff and volunteers.

A. DISABILITY ACCOMMODATION REQUEST PROCEDURE

1. Every **mediation intake form should have a space for parties to request a disability accommodation**. [See sample here](#).
2. Consider including a space for a person to request an accommodation without specifying that it is disability-related.
 - a) Account in your intake process for participants besides the person listed on the intake form who may need an accommodation to participate: a support person, representative, etc. Provisions for their accommodation should kick in as soon as such participants are identified. The process must be accessible for everyone who is going to be in that room.
 - b) Apart from the intake process, do not forget to consider whether the mediator may need an accommodation.

3. Completed forms need to be reviewed and acted on as soon as they are submitted, in part because **some accommodations may take time to arrange**. *For example, a person who is blind may request that any written material be provided in audible form. The provider may also arrange for a reader in the session to read aloud written documents. Reading documents is not the mediator's role; this function needs to be accommodated. It may also be performed by a support person. (Supporters will be discussed more in later posts.)*
4. The other reason for a timely response is to **assure the person with a disability that their needs are taken seriously**. People with disabilities are often disregarded, their needs not acknowledged. (*"Does he really need that wheelchair?" "I think she's just pretending not to hear. She seems to know exactly what is going on." "He has a psychiatric disability. Why does he need a service dog in the session?" "I know someone with X problem who doesn't need an accommodation."*) Once the request is reviewed by intake or the mediator, the provider needs to demonstrate responsiveness in order to build trust.
5. **Confidentiality of the form and all information about the disability** must be maintained at all stages.
6. Once agreed upon, arrangements must be stated in a form that is clear to all parties, including the person with a disability. *I once showed up at a mediation where, because of miscommunication, the person who was Deaf brought two sign language interpreters and the employer had also arranged for two interpreters.* Programs must **keep clear records about the accommodation request** and document every step of the process, including reasons for denial of the request, if relevant.
7. After agreement on a specific accommodation has been reached by a collaborative process, it is essential to **keep the person with a disability informed about all subsequent developments**, with consultations as appropriate. Note that the accommodation does not need to be exactly what the person requests and may not be absolutely the best option, but **it must be effective**. In any case, it is advisable to get as close as possible to what the person requests.

B. GRIEVANCE PROCEDURE

If an accommodation is denied, the individual must be able to appeal by means of a procedure that is already in place.

C. NON-DISCRIMINATION POLICY

For example, the text might read as follows: The Peacemaker Mediation Program does not discriminate on the basis of race, color, religion, gender, gender expression or identity, age, national origin, disability, marital status, sexual orientation, or military status in any of its activities or operations.

ADA MEDIATION GUIDELINES #11 – Mediator Recruitment and Selection, Part 1

I. Program and Case Administration

C. Mediator Recruitment and Selection

1. ADA mediation presents complex issues, and mediation provider organizations that provide ADA mediator training should select mediators who have mediation experience in addition to training.

Mediation provider organizations that do not provide ADA mediator training should select as mediators only persons who have completed advanced ADA Mediation Training as set out in Section III of these Guidelines, or who have equivalent knowledge.

In addition, the 2005 The Model Standards of Conduct for Mediators address the topic as follows:

STANDARD IV. COMPETENCE

A. A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.

1. Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's competence and qualifications. Training, experience in mediation, skills, cultural understandings and other qualities are often necessary for mediator competence. A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively.

1. According to the Model Standards, **mediators should not accept cases that they are not competent to manage**. For cases involving the legal rights of people with disabilities, mediators need to have a basic understanding of the law – for example, Title I of the ADA, if the case involves the rights of an employee with a disability.
2. **For cases involving disability rights, it is useful for mediators to be aware of case law**. Though mediators do not give legal advice or information, this background is often helpful – for example, in reality-testing and in facilitating money settlement negotiations. My experience in

mediating cases for enforcement agencies (e.g., EEOC, DOJ, NY State Division of Human Rights) was that the agency itself or a contracting organization provided guidance for mediators during the session. Non-attorney mediators may want to avoid accepting this sort of case outside the purview of an enforcement agency, unless they are familiar with the law.

3. In mediating ADA cases, practitioners do not need expertise in disability. But **they should have a foundation of ADA basics**. ADA mediators who are just starting out might consider co-mediating until they reach the required comfort and skill level.

4. However, **all mediators need to know basic disability etiquette** – the “cultural understanding” referred to in the Model Standards. Even if the case doesn’t involve disability issues, people with disabilities participate in our mediations all the time. You are not going to have the opportunity to run out and do the research at that moment. It is better to be aware, going in, for example, *not to move – or even touch – a person’s mobility device (such as a cane or wheelchair), which the individual may consider part of their personal space or even an extension of their body*. For more tips, see this booklet *Disability Etiquette*, which I wrote a number of years ago. (Over 1 million copies in print!) You can [order a copy here](#). (Disclaimer: It has been updated by the publisher since I wrote it.)

5. The mediator must not have stereotypical views or be biased against people with disabilities. ADA mediators are frequently in a position to assist participants with disabilities make their experience of bias understood to the other party – a role we frequently play with respect to many parties’ experiences. There is no place in an ADA mediation for a mediator who has no insight into cultural biases about disability.
At a training that I attended – as a roster member – for an organizational provider’s ADA mediation program, one of the roster mediators said to the group something like, “How can you sit there and talk with a drooling wheelchair person?” This mediator not only held an extreme bias against people with disabilities, but also had no qualms in stating it out loud; it seemed perfectly acceptable to him. We all have more to learn and can all raise our own awareness about cultures and groups other than our own, but a mediator with such a deeply seated bias should not be handling ADA cases.

6. The mediator must be comfortable talking about the disability and a general awareness of community resources.
*I once had a mediation involving a married couple who had a young child. The husband was dying of AIDS and his wife was dependent upon him because of her disability. He requested mediation because he was concerned that she was in denial about his condition and about the prospect of his death. Specifically, he didn’t know how she would cope and care for their child without him. As the mediator, I had to feel comfortable talking about his illness, about his condition, about death, and about his wife’s disability.
It became clear that the husband’s concerns would be alleviated if the wife were to learn independent living skills. In such cases, it falls within the mediator’s role to assist parties in identifying resources. Indeed, this was key to meeting the husband’s goal for the mediation. So during the session, we investigated those resources; and part of the resolution was that she*

would get those services.

7. The mediator also needs self-awareness. In particular, if, because of a history with a person who has the same disability as a mediation party, the mediator believes s/he might be biased, it is an ethical requirement to decline the case. *For example, a mediator who grew up with an alcoholic parent might decline to mediate a case involving a person with alcoholism, because of the possibility of a bias either for or against the person.*

But, in general, having expertise or experience with a disability is helpful. As in any mediation context, if you are a skilled practitioner, background in the subject matter should only enhance your ability to do a good job.

8. In the Model Standards (above), note the last phrase: “who have equivalent knowledge.” I’d like to share an excerpt with you from “[Mediation Ethics: Cases and Commentaries](#)” (Ellen Waldman, Jossey-Bass, 2011). [This case study discussion](#) by Carol Liebman shows an inquiring, analytical, mindful approach to a mediation involving a young man with an intellectual disability (what used to be called “mental retardation”). Note the finesse with which she talks through the considerations for planning this mediation! The ability to find a balance between treating a person with a disability just like anyone else and considering their unique needs – always guided by our core mediator ethics – is an essential mediator skill.

And here’s a final point, related to discourse on the listserv: I wasn’t bothered by the few comments in the case study analysis that I didn’t agree with; rather, they made me want to sit down and talk with the authors, to exchange ideas and understand each others’ points of view. So I hope that, in reading this extremely insightful analysis, you will not only benefit from the substantive content, but also find a model of *how* we can think about the complexities of these cases.

[ADA MEDIATION GUIDELINES](#) #12 – Mediator recruitment, Part 2

I. Program and Case Administration

C. Mediator Recruitment and Selection

2. Provider organizations should have a diverse pool of mediators. Diversity recruiting efforts should include seeking out qualified mediators who have disabilities.

Efforts to ensure mediator diversity must take a bottom-up approach, beginning with basic mediator training. Programs that train mediators may recruit trainees who have disabilities from [Independent Living Centers](#) and through personal contacts in the mediation world. But

outreach should be broadened to other groups, so that future mediators truly represent the diversity of people in our society – in terms of race, religion, sexual orientation, gender and gender identity, age, etc.

Mediators who do not have disabilities, but who come from other marginalized groups, may be more sensitive to the range of experience in our society and would be valuable additions to rosters of mediators whose cases involve participants with disabilities.

Disclaimer: I am not an attorney and the information I am providing does not constitute legal advice.

Note, this weekly post series continues, starting September 8, 2021, with in-depth guidance, examples and links to resources about the capacity section of the Guidelines. Subscribe to the [CUNY DRC \(Dispute Resolution Center\) listserv](#) to see the posts as they are published.

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