



11.255
Negotiation and
Dispute Resolution in the
Public Sector

Spring 2021

Class #15

+ Question

- Nolon talks about the mediative functions that a party (as opposed to a neutral) can play. Under what circumstances does it make more sense to ask a party to mediate rather than a professional neutral?

+ Mediation: definition and key elements

- Dispute intervention by a trained neutral, who assists willing parties in reaching a mutually acceptable agreement
- Mediators:
 - Are neutral on the views held by the parties
 - Are impartial to the substance of the outcome
 - Have no authoritative decision making power
 - Seek to help all parties discover, express, and advocate for their interests in order to invent options and decide on mutually agreeable outcomes
 - Often help with communication among parties



What is the difference between mediation and facilitation? How are they similar and how are they different?

+ Tasks of the Mediator (PRE-NEGOTIATION)

- Getting started
 - Meeting with potential stakeholders to assess their interests and describe the consensus-building process
 - Handling logistics and convening initial meetings
 - Assisting groups in initial calculation of BATNAs
- Representation
 - Caucusing with stakeholders to help choose spokespeople or team leaders
 - Working with initial stakeholders to identify missing groups or strategies for representing diffuse interests
- Drafting protocols and agenda-setting
 - Preparing draft protocols based on past experience and the parties' concerns
 - Managing the process of agenda-setting
- Joint fact finding
 - Helping to draft fact-finding protocols
 - Identifying technical consultants or advisors to the group
 - Raising and administering the funds in a resource pool
 - Serving as a repository for confidential or proprietary information

+ Tasks of the Mediator (NEGOTIATION)

- Inventing options
 - Managing the brainstorming process
 - Suggesting potential options for the group to consider
 - Coordinating subcommittees to draft options
- Packaging
 - Caucusing with each group to identify and test possible trades
 - Suggesting possible packages for the group to consider
- Written agreement
 - Working with a subcommittee to produce a draft agreement
 - Preparing a preliminary draft of a single text
- Binding the parties
 - Serving as the holder of the bond
 - Helping to invent new ways to bind the parties to their commitments
- Ratification
 - Helping the participants “sell” the agreement to their constituents
 - Ensuring that all representatives have been in touch with their constituents

+ Tasks of the Mediator (POST-NEGOTIATION)

- Linking informal agreements and formal decision-making
 - Working with the parties to invent linkages
 - Approaching elected or appointed officials on behalf of the group
 - Identifying the legal constraints on implementation
- Monitoring
 - Serving as the monitor of implementation
 - Convening a monitoring group
- Renegotiation
 - Reassembling the participants if subsequent disagreements emerge
 - Reminding the group of its earlier intentions



What do you think about the idea of “planners as mediators”?



What problems do you see with an interested party serving as a mediator?



How do you see mediation skills helping you professionally?

What mediation skills do you see as being applicable in your workplace?

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