

The Greater Boston Federal Executive Board
Shared Neutrals Program

OUR PROGRAM'S PURPOSE AND GOALS

The program's goal is two-fold. First, we strive to provide no / low cost, high quality mediation services to Federal agencies by utilizing mediators from among the Federal ranks. The GBFEB maintains a pool of trained and experienced mediators who serve on a collateral basis and at the discretion of their supervisors / agency heads. These mediators not only gain a valuable working knowledge of Federal agencies outside of their own but also gain experience in a variety of types of cases.

Second, the trained mediators mentor those less experienced co-mediators from a variety of Federal agencies to help them accomplish the minimum qualifications. This approach will provide an additional avenue for increasing experience and adding new mediators to the pool by allowing mediators with some training, but little or no experience, to co-mediate with an experienced mediator. It will also allow experienced mediators to gain additional experience in different settings and with different case-types. This program provides all participants with a unique and ongoing developmental opportunity.

THE MEDIATION PROCESS

Mediation is a process whereby a trained neutral third party assists disputants in resolving a dispute, or at least narrowing and clarifying issues, in a manner that is acceptable to both sides.

Mediation is different from arbitration and traditional litigation in that it is voluntary, the rules of evidence do not apply, testimony is not taken, a formal record is not made and the mediator does not decide the dispute. It is also different from traditional settlement discussions in that the Mediator facilitates the discussions, sometimes with both disputants together and sometimes with each side privately, in what is called a caucus.

The Mediator, in effect, creates a forum where the disputants can candidly discuss their concerns and interests. The Mediator will not reveal anything from private discussions which one side does not want revealed to the other. Thus, 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 assist the parties in identifying possible solutions that were not evident before. Also, the Mediator can assess the strengths and weaknesses of each party's case and help create realistic expectations.

VALUE OF MEDIATION

Mediation allows the disputants to manage their dispute and resolve the problem themselves, rather than having a judge or some other official decide it for them. Mediation is also fast and economical when contrasted to adversarial process costs. Even if the disputants do not resolve the dispute, mediation frequently will simplify the issues and enhance communications so that litigation proceeds more rapidly and is more focused, therefore less costly as a result of having attempted mediation.

The GBFEB Program uses one or two mediators who sit down with all disputants and assist them in arriving at their own resolution to the dispute. The goal of the Mediator(s) is to provide a safe environment for the parties to discuss their issues and underlying interests, to build their agenda of items to resolve, and to negotiate resolutions that satisfy their interests. The Mediator(s) is a completely neutral third party who has no stake in the outcome other than to assure that the resolution is acceptable to the parties involved in the dispute and may not serve as a witness in any litigation if settlement is not reached.

DETERMINING SUITABILITY FOR MEDIATION

The mediation model that the Greater Boston Federal Executive Board (GBFEB) uses is an interest-based model.

This model may be used for a broad range of disputes including:

- ◆ EEO at the counseling or formal complaint stage
- ◆ Personnel issues to improve relationships
- ◆ Agency Grievances and Collective Bargaining Agreements filed under negotiation grievance procedures (with union consent)
- ◆ External customer/client/contract disputes
- ◆ Workplace "informal" disputes
- ◆ Interagency disputes
- ◆ Enforcement disputes

Although other types of cases may have been deemed suitable for mediation, not all cases are suitable for the GBFEB Shared Neutrals Program. Lengthy cases

involving multiple parties and issues may not be appropriate because GBFEB mediators serve on a collateral basis. Case suitability is at the discretion of the GBFEB Working Group.

There are many factors to consider when determining if a case is suitable for mediation. These include:

- The parties are interested in seeking settlement of the dispute but personality conflicts or poor communication between the parties or opposing counsels adversely affect resolution.
- There are underlying issues that are not formally part of the complaint/grievance and which cannot be resolved by the relief legally available, but which are the catalyst for the complaint/grievance.
- A continuing relationship between the parties is important or desirable
- The complainant/grievant's demands, or the agency's view of the case, are unrealistic, and a discussion of the situation with a mediator may dislodge the recalcitrant party(ies).
- The parties expect to settle eventually, most likely on the steps of the "hearing room" or courthouse.
- There is a need to avoid adverse precedent but traditional settlement negotiations have reached an impasse.

Not every case is suitable for mediation. Unfavorable factors include:

- Questions of law or applicability of fiduciary regulations;
- Precedent-setting cases that involve significant legal, policy or constitutional issues and one of the parties desires a precedent (consult the process owner or attorney);
- Cases that involve significant questions of government policy,
- When disputes involve individuals or organizations that cannot be part of the mediation;
- Cases of serious employee misconduct or criminal activity; An indication that fraud, waste for abuse was committed by either party.

LOCAL FEDERAL AGENCIES SHARING RESOURCES

Alternate Dispute Resolution (ADR) is being promoted in many contexts as a cost-effective means of resolving disagreements and avoiding litigation. The Administrative Dispute Resolution Act (PL 101 -552) encourages Federal agencies to use mediation and other alternative dispute techniques to avoid or resolve disputes. We have seen that the emphasis on the use of mediation in employee, contract, and grant disputes and in agency regulatory activities has increased

markedly in the last several years.

The designated mediators are expected to conduct the actual mediation process in a manner that is both most efficient and cost effective for the government and consistent with the Rules of Conduct established for mediators.

COST

The Shared Neutrals Program provides local Federal agencies with a no/ low cost option when they have no “in house” mediators. For example, even though an agency may have staff who are trained as mediators, a party to a dispute may question the neutrality of that mediator. We tap the existing resources of other Federal agencies for that purpose. Many Federal employees have received training and experience in a number of highly regarded community and court mediation programs throughout the United States. There is no charge to the requesting agency unless travel is required.

An agency is not prohibited from requesting a mediator from the pool simply because it has no qualified mediators. A “non participating” agency may be asked, however, to provide, some other valuable service to the project.

WORKING GROUP

The Greater Boston Federal Executive Board developed a Working Group (WG) of qualified Federal employees to provide oversight and guidance to the Program. The WG is responsible for gathering, screening, and compiling the pool of mediators and is comprised of employees from various Federal agencies and occupations. Each has a strong working knowledge of mediation and its uses. Members serve on the WG as a collateral duty and at the discretion of the their supervisor / agency head and the GBFEB chair. (complete list of WG attached.)

REQUESTS FOR MEDIATION FROM THE SHARED NEUTRALS PROGRAM

Local Federal agencies may make a request for mediation by contacting the GBFEB and providing preliminary background information about the case. A mediator is assigned by the GBFEB based on availability. Each mediator in the GBFEB cadre has been screened carefully and has been deemed equally qualified by the Working Group. Although agencies may make special requests, the final assignment is made by the GBFEB.

NOTE: Agencies must contact the GBFEB for each and every request. Federal agencies should not contact GBFEB mediators directly or make additional requests of them independent of this program. Agencies should keep in mind that each

mediator serves the GBFEB on a collateral basis and at the discretion of his / her supervisor / agency head and of the WG.

After being assigned a case, the Lead Mediator will contact the agency point of contact directly to obtain more complete background information and schedule the case. Biographies will be provided upon request.

REQUESTING AGENCY RESPONSIBILITIES

It is the requesting agency's responsibility to ensure that all parties voluntarily agree to mediation in advance of making a request and that internal agency paperwork, if any, is complete. The Agency Point of Contact ensures that coordination is accomplished with the parties and their representatives (i.e., union official, Labor Relations Officer, EEO Officer, Human Resources Director, employee and personal attorney, as appropriate) and the mediator. The agency POC will contact the disputants and the mediator(s) to schedule the time and place for the mediation and arrange for an appropriate site. It is important that the site selected be considered neutral and acceptable to the participants. Participation in mediation excludes observers, other than the participants' representatives, unless agreed upon by all parties to the mediation.

The GBFEB Program does not require that parties complete paperwork in advance. Instead, it is the requesting agency's responsibility to ensure that both parties are entering into the mediation process voluntarily and that internal agency paperwork is complete in advance. The assigned mediator may decide to contact parties in advance to gather background information and confirm that the mediation is voluntary.

MEDIATOR RESPONSIBILITIES

The assigned mediator will contact the agency POC in advance to gather background information and schedule the time and place for the mediation. Biographies will be provided upon request. Following the mediation, the mediator ensures that all notes made during the mediation sessions are collected and destroyed and strict confidentiality is stressed to the participants. Mediators may also request feedback from participants in an effort to improve the program.

SETTLEMENT AUTHORITY

Mediators are encouraged to request that settlements be memorialized in writing. However, only agency officials with delegated settlement authority may enter into an official settlement agreement. Settlement agreements should be enforced as rigorously as possible by the requesting agency. Agencies may decide to have settlement agreements reviewed by counsel, Human Resources Directors, and

Labor Relations Officers to ensure compliance with statute, personnel rule and regulation, and collective bargaining requirements. Such reviews and or approvals shall occur promptly and without undue delay.

MEDIATOR MINIMUM QUALIFICATIONS

The GBFEB's mediation process is a powerful, sophisticated tool for dispute resolution. Although the process is structured, it operates as an informal process for the participants. It requires that the mediator(s) have a level of skill that can be developed only through a serious training program that includes the opportunity to practice skills and to observe other skilled mediators.

Consistent with industry standard and Commonwealth of Massachusetts recommendations, GBFEB mediators must have received a minimum of forty (40) hours of basic mediation training from a credible source approved by the GBFEB Working Group AND have served as lead mediator or equal co-mediator in at least three (3) mediations. Mediators must also submit to the GBFEB a course evaluation or recommendation from a mediator who has observed his / her work. Each mediator is evaluated by the GBFEB Working Group on an individual basis.

Some individuals may have completed the training requirements but not yet gained practical experience in the mediation setting. Those individuals may be identified as "co-mediators" and work alongside and observe the seasoned mediators until an appropriate level of achievement is complete.

Mediators serve the GBFEB on a collateral basis (while performing their regular agency work) and at the discretion of his / her agency and the Working Group.

The GBFEB Working Group will collect feedback on a voluntary basis from participating agencies. Under no circumstances will evaluation data on individual mediators be provided to any person or group outside the GBFEB Working Group.

APPLYING TO SERVE AS A MEDIATOR / CO-MEDIATOR IN THE GBFEB SHARED NEUTRALS PROGRAM

Federal employees who are interested in serving as a mediator in the Shared Neutrals cadre should complete a "mediator profile" (attached) and present evidence of qualifications. Employees must get the approval of their supervisor / agency before applying. A Working Group member will contact each applicant personally for an interview. All mediators serve at the discretion of their supervisor / agency and of the Working Group.

RECOMMENDED TRAINING SOURCES

Metropolitan Mediation Services, Brookline, MA www.metromediation.com

The Justice Center, Atlanta, GA

USDA Graduate School www.grad.usda.gov

UNDERSTANDING MEDIATOR ROLES

In most cases, a mediator will serve in multiple roles involving different skills attainable through training and experience. Not everyone is capable of developing these skills to the level required of a competent mediator. These interrelated functions include:

Moderator: To assist the parties in defining the issues of the case and serve as the catalyst for constructive communication between the parties, including asking questions of an un-biased nature, and to move the process along, as well as identify when the process is no longer effective. On occasion he/she may be presented with heated or angry confrontations between the parties.

Case Analyst and Mediation Trainer: To identify and guide discussions to the most pertinent issues in an attempt to allow disputants the opportunity to re-evaluate the strengths or weaknesses of their points of contention.

Reality Checker: When holding private discussions with either of the disputants, the mediator should attempt to phrase questions which might be answered contrary to the party's opinion allowing the disputant an opportunity to see possible weaknesses in their position.

Confidant: Should maintain confidentiality when requested by either party during caucus (private session a party.)

Messenger: To communicate all offers brought to the table by either party, in an attempt to settle the dispute.

MAINTAINING NEUTRALITY

A person should not attempt to conduct mediation when disclosed data would cause the mediator to no longer have an unbiased perspective. A mediator should not have an acquaintance or knowledge of any of the parties involved in the dispute. A mediator should disqualify/recuse him/herself whenever the mediator feels that he or she could not remain neutral.

Mediators should not provide professional of legal advice to parties under any circumstances.

SAMPLE
MEDIATOR'S OPENING STATEMENT CHECKLIST

INFORM parties your opening will take a few minutes and ask them to relax until you are done.

INTRODUCE yourself and parties. First names o.k?

INTRODUCE observers and explain their role.

COMMEND participants for use of mediation.

REMIND parties mediation is a VOLUNTARY process.

- Are parties present voluntarily? Are there court orders?
- How were they referred?
- Are all parties required to reach agreement present?

Mediation is also a CONFIDENTIAL process.

- Previously unreported abuse (child, elder, handicapped, etc.) is an exception and must be reported.
- Mediators cannot be required to testify.
- All mediator notes will be destroyed.

DESCRIBE role of Mediator.

- To be an impartial facilitator, not an advocate or judge.
- To assist parties in arriving at their own solutions.

DESCRIBE role of Parties.

- To mediate in good faith, be willing to listen, to share all pertinent information, to keep an open mind, be willing to negotiate without holding to a fixed position.
- To abide by rules of common courtesy, no interrupting or using inflammatory language.

EXPLAIN the process and timeline

- Client opening statements and response period; emphasis on uninterrupted time.
- Developing an agenda/list of items to discuss.
- Negotiating issues and interests or concerns.
- Caucus (optional). Explain confidentiality and use.

- Settlement agreement. Forms. Their agreement. Legally binding. Would hold up in a court of law.

Please return to Greater Boston Federal Executive Board
10 Causeway Street, Suite 178, Boston, MA 02222
Fax: 617-565-8178

**USER'S FEEDBACK
(VOLUNTARY)**

The purpose of this survey is to determine how the mediation process is working and what areas need improvement. Your comments are important and confidential.

DISPUTE TYPE

Interpersonal

EEO - Age / National Origin/ Race / Sex / Religion / Disability / Sexual Harassment

Personnel Action –

Identify Issue: _____

Please evaluate the mediation process using the following scale, describing your satisfaction level:

1 2 3 4 5

Very Dissatisfied/ Dissatisfied /Somewhat Satisfied/ Satisfied/ Very Satisfied

1. How well did the mediators explain the process to all the parties? _____
2. Were you able to fully present your case? _____
3. How well did the mediators listen? _____
4. Did the mediators help facilitate realistic options for Settling the dispute? _____
5. Did the mediators treat all parties equally? _____
6. Did the mediators understand the issues involved? _____
7. How well did the mediators clarify key issues and interests of each party? _____
8. How satisfied were you with the mediators? _____
9. How satisfied were you with the process of mediation? _____
10. Did you reach settlement with your mediation? YES _____ NO _____
11. How satisfied were you with the outcome of the mediation? _____
- 12? How beneficial was the use of a neutral party from another Federal agency to the early resolution of this matter? _____

13. Any other comments or elaboration on any of the questions above:

ETHICAL GUIDELINES FOR MEDIATORS

(Source: <http://www.attorney-mediators.org/ethics.html>)

These Ethical Guidelines are intended to promote public confidence in the mediation process and to be a general guide for mediator conduct. They are not intended to be disciplinary rules or a code of conduct. Mediators should be responsible to the parties, the courts and the public, and should conduct themselves accordingly.

Mediator Conduct

A mediator should protect the integrity and confidentiality of the mediation process. The duty to protect the integrity and confidentiality of the mediation process commences with the first communication to the mediator, is continuous in nature, and does not terminate upon the conclusion of the mediation.

A mediator should not use information obtained during the mediation for personal gain or advantage.

The interests of the parties should always be placed above the personal interests of the mediator.

A mediator should not accept mediations that cannot be completed in a timely manner.

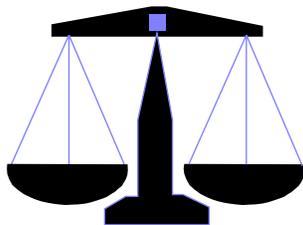
A mediator should not mediate a dispute when the mediator has knowledge that another mediator has been appointed or selected without first consulting with the other mediator or the parties unless the previous mediation has been concluded.

A mediator should conscientiously avoid any mediation between or among parties with whom there is or may be any relationship that may reflect adversely on the mediator's neutrality or impartiality.

A mediator shall promptly fully disclose any and all relationships that may exist between him/her and any of the parties or participants to the mediation.

Greater Boston Federal Executive Board

Shared Neutrals Pilot Program



The GBFEB is looking for trained mediators to serve in its cadre of “shared neutrals”. Serving as a mediator/neutral for the GBFEB Shared Neutrals Program offer individuals vast growth and development by providing the opportunity to mediate a variety of cases and gain experience in different settings. Participating agencies will have the opportunity to utilize this source of neutrals for agency disputes that cannot be resolved by other means. Annual time commitment is minimal. Please note that participation in the GBFEB Shared Neutrals Program is on a collateral basis and approval from your agency leadership is required. Acceptance into the cadre is at the discretion of the Shared Neutrals Working Group.

Mediator Profile

Mediator Name: _____
Agency: _____
Address _____
Phone: _____ Fax: _____
Email: _____

Please attach an additional sheet outlining your experience as a mediator and training certification. If possible, include number and types of cases mediated, and other related experience. Additionally, each mediator must submit performance evaluations from training courses and/or letters of recommendation from mediators who have observed your work.. Profiles will be evaluated by the GBFEB Shared Neutrals Steering Committee on an individual basis. Once reviewed, participants will be contacted by a member of the committee with more complete policy information.

Supervisor Approval:

Please complete the above information and return to Kim Ainsworth, Executive Director, Greater Boston Federal Executive Board, by fax 617/565-8178 or email kim.ainsworth@gsa.gov.
Contact the GBFEB at 617/565-6769 with questions.

Greater Boston Federal Executive Board
Shared Neutrals Program Working Group

Kimberly E. Ainsworth, Executive Director
Greater Boston Federal Executive Board
10 Causeway Street, Suite 178
Boston, MA 02222
617/565-6769 Phone
617/565-8178 Fax
kim.ainsworth@gsa.gov

John W. Iberg, EEO Officer
Federal Aviation Administration

Lorraine Iovanni, Labor Relations Officer
Federal Aviation Administration

Joshua Secunda, Esq.
EPA - New England

Elissa Tonkin, Esq. ADR Specialist
EPA - New England