

Transportation Outreach Planner

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Public Outreach Strategies

Negotiation and Mediation

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Recommended Target Groups

Education

College Education
High School Diploma
No High School Diploma

Language

Creole
Other
Spanish

Disability

Hearing Impaired
Other
Physically Challenged
Sight Impaired

Income

Low Income
Middle to Affluent

Vehicle Ownership

Non-vehicle Owner
Vehicle Owner

Race and Ethnicity

Race and Ethnicity

Age
Seniors
Working Age Adults
Youth

Strategy Class

- General

Strategy Types

- Civic Engagement

Description

Negotiation and mediation are processes used to resolve a conflict between parties who are unable to reach agreement. These processes are part of alternative dispute resolution (ADR) procedures, which are utilized to avoid issues from going to court. Agencies use these techniques to help bring about consensus or to mitigate community conflict. Although ADR procedures can result in binding agreements, the negotiation and mediation techniques used in public involvement efforts are generally non-binding. The following describes the difference between the two techniques: ¹

- **Negotiation:** This process calls for bargaining and compromise between two (or more) parties in order to come to a mutual understanding regarding an issue or dispute. Negotiation can be conducted between the interested parties without a neutral mediator.
- **Mediation:** In mediation a neutral facilitator works to help parties reach consensus on issues of disagreement. Mediation is often used when negotiation efforts have failed.

Special Uses

Non-binding mediation and negotiation techniques can be used to:

- Resolve conflicts between groups, communities, agencies, and contractors
- Avoid costly litigation and legal proceedings
- Reach consensus on controversial issues without polarizing a community

When to Use

Agencies can use negotiation and mediation skills to enhance public involvement efforts. Such techniques can be used for consensus-building, or to resolve conflicts that may arise related to a plan, project, or policy. Negotiation skills are best used in informal situations, before disagreements reach the point of polarization. Mediation is a more formal process utilized when there is "an impasse or major breakdown." Both techniques are useful for establishing cooperation and working agreements between parties that have conflicting interests. ²

Cost

* * Moderate (\$1000 to \$9999)

The costs of undertaking a negotiation or mediation process can be moderate, particularly if outside consultants are hired to serve as neutral facilitators and if it is necessary to rent a facility to hold the discussions. Depending on how long the proceedings last, staff time to coordinate the meetings and oversee the process should also be taken into account. However, it is possible to reduce expenses if an in-house person is used to facilitate the negotiation or mediation, or if the agency is able to obtain a volunteer to provide the services pro-bono. Faculty from local colleges and universities who specialize in these areas may be able to offer their services free of charge.

Low (up to \$999)	*
Moderate (\$1,000 to \$9,999)	**
High (\$10,000 to \$50,000)	***
Very High (Above \$50,000)	****

Disclaimer: The cost estimates provided are intended to be a guide. Project costs will vary depending on the size and nature of the project.

Time

* 1 to 3 months

Most negotiation and mediation proceedings can be completed within three months, particularly if the issue is not complex and the parties are willing to come to an agreement. However, complex issues that involve multiple stakeholders may take many months, or years to resolve, particularly if the effort follows previous failed attempts. Generally, meetings are held on a periodic basis until an agreement is reached. In between sessions, staff generates documents and analysis to help inform the process and facilitate agreement.

1 to 3 months

*

6 months to a year

**

Multiyear

Disclaimer: The time estimates are approximations. The duration of a project may vary depending on various factors, including size and budget.

Implementation Guidelines and Suggestions

The following serve as recommended guidelines and suggestions for conducting negotiation or mediation: ³

- **Identify the main areas of disagreement and conduct a conflict assessment.** Prior to engaging in any negotiation or mediation, an agency needs to have a clear understanding of what the issues of contention are. It is also important to determine who the stakeholders are, whether the conflict is resolvable, and possible approaches for resolution. A thorough assessment of the issues also needs to be completed in order to get a full understanding of the facts and the competing viewpoints.
- **Determine whether negotiation or mediation will be utilized.** Negotiation is effective when the parties are willing to work together and are willing to compromise. Mediation should be used when there is a stalemate and litigation is likely to be the next step.
- **Invite all key stakeholders to participate in the process.** Agencies need to identify the stakeholders that have a direct or indirect interest in the issue. The stakeholders can be individuals, community leaders, representatives from organizations or groups, agency representatives, as well as experts or professionals from a specific field. Community members can often help agencies to identify the key persons that should be invited to participate. To ensure effective participation all participants should agree to the following conditions:
 - Commitment to attend all meetings
 - Willingness to express concerns and listen to other participants
 - Acceptance to follow the process and basic guidelines
- **Identify a neutral facilitator to oversee the proceedings.** The person that is selected to oversee the process should be impartial, have training in dispute resolution, and have no stake in the issue. Agencies can appoint a staff person to facilitate the process if the agency is not one of the opposing sides in the dispute. Although it is possible to hold negotiations without a facilitator, a neutral facilitator can help the process be more effective. The role of the facilitator is to:
 - Guide participants toward finding mutual interests
 - Ask questions that help participants to identify alternative solutions
 - Work toward developing consensus
- **Hold the session in a neutral setting and ensure that the format is conducive to open discussion.** The following is a basic checklist for coordinating negotiation or mediation proceedings:
 - Identify key stakeholders and ensure their participation
 - Hold the event at a neutral location
 - Consider all participants as equals, regardless of titles or positions
 - Schedule the meetings at convenient times for the participants
 - Encourage participation by giving sufficient time for all participants to express their thoughts
- **If conducting a negotiation the following process should be followed:**
 - Identify underlying issues and interests (do not focus on positions)
 - Develop alternative scenarios to address the underlying interests
 - Refine alternatives, making sure the interests of the disputing parties are addressed
 - Select a mutually acceptable alternative through consensus
- **If coordinating a mediation the following steps should be followed:**

- Obtain an agreement from all participants regarding who will be part of the discussion
- Agree on the scope of the mediation, the agenda to be followed, and the role of the participants
- Review the process and the ground rules
- Give all participants an opportunity to express their viewpoints, interest in the issues, and reasons for the dispute
- Review all the issues and points of agreement
- Develop alternative scenarios that address disputing interests
- Develop a draft document that reflects possible areas of agreement
- Work with all parties to compromise and reach consensus on a mutually acceptable solution to the dispute
- Have all participants sign a written agreement outlining the compromise solution

It should be noted that the above process can take several working sessions to complete.

- **Maintain written documents for all meeting proceedings, including any agreements and supporting documentation.** This should include minutes, reports, and other decisions agreed upon by the various interest groups. Although the agreements are not binding, a written record of the proposed solutions helps to maintain focus and commitment. The supporting documentation, such as the minutes are useful when there are issues regarding the interpretation or intent of the agreement.
- **Agencies should encourage participants to evaluate the status of the agreement at least once a year.** This will serve to monitor implementation efforts and address any issues or unintended consequences that may arise. It also helps to maintain commitment to the agreement.

RECOMMENDED TARGET DEMOGRAPHICS

Negotiation and mediation can be used among all demographic groups; however, groups need to be willing to participate. Prior to engaging in negotiation or mediation, agencies need to have a clear understanding of all the stakeholders so that they may be included in the process. Depending on the issue, "stakeholders may include neighborhood residents, local business people, abutters, regional interest groups, public officials, and agencies." 5 Failing to include key stakeholders can undermine the legitimacy of the process.

Lessons Learned/Challenges

Below are key points to keep in mind when undertaking a negotiation or mediation: 4

- **All participants must be considered equal for the process to work.** Since not everyone will have the same knowledge of the issue, agencies need to provide all stakeholders with information and briefing material so that they can effectively participate in the process.
- **People must be willing to compromise for negotiation or mediation efforts to be effective.** If people are not willing to compromise, the effort will not be successful.
- **Facilitators need to ensure that any resolution that is proposed does not conflict with people's values.** It is possible to develop solutions around people's interests, but most people are not willing to compromise on values or principles.
- **Seek to accomplish "win-win" solutions.** A "win-lose" approach should be avoided. If participants feel that they are better off not cooperating or "appealing to the political process," the process is likely to get stalled.

Case Studies

The Orlando MPO used mediation to achieve a consensus agreement regarding the Orlando Urban South-Central Corridor. The project called for a limited access roadway to be constructed that would link Greater Orlando Airport with the City of Orlando. This "Central Connector Project" created great tension between those that supported the plan and those who believed the project would have a negative impact on the community. The mediation enabled extremely polarized parties to develop mutually acceptable solutions for proceeding with the project, and the agreement was included in the MPO's 2020 Long-Range Transportation Plan (http://www.policyconsensus.org/casestudies/docs/Transportation_Case_Studies.pdf).⁵

The State of Main used mediation to address the controversial environmental issues related to the Allagash River. At a time when litigation seemed inevitable, a facilitated retreat was held with 23 stakeholders and key advisors. The goal was to develop consensus on access to the river and other management issues. After 36 hours the participants

presented the "The River Drivers Agreement," which was signed all 23 participants. The Agreement was recognized for providing a mechanism for preserving the wilderness of the waterway and providing recreational access (<http://www.mediate.com/articles/reitmanJ.cfm>).⁶

For Further Information

The following provide additional information on negotiation and mediation techniques:

- **Mediate.com:** This is a professional website on for mediators, and provides useful articles and information on mediation (<http://www.mediate.com/index.cfm>).⁷
- **National Association for Community Mediation:** Provides information and guides on community mediation (<http://www.nafcm.org/Home>).⁸
- **Program on Negotiation at Harvard University:** This site includes a blog on negotiation, and provides articles, videos and tips on effective negation techniques (<http://www.pon.harvard.edu/?floater=99>).⁹

Sources

1 U.S. Department of Transportation, Federal Highway Administration (FHWA), "USDOT FHWA/FTA Public Involvement Techniques for Transportation Decision-Making: Negotiation and Mediation," August 2002, 29, FHWA, 25 January 2012 (<http://www.fhwa.dot.gov/reports/pittd/contents.htm>).

2 FHWA, "USDOT FHWA/FTA Public Involvement Techniques for Transportation Decision-Making: Negotiation and Mediation."

3 FHWA, "USDOT FHWA/FTA Public Involvement Techniques for Transportation Decision-Making: Negotiation and Mediation."

4 FHWA, "USDOT FHWA/FTA Public Involvement Techniques for Transportation Decision-Making: Negotiation and Mediation."

5 "Case Studies: Transportation Collaboration," October 2003, National Policy Consensus Center, 25 January 2012, (http://www.policyconsensus.org/casestudies/docs/Transportation_Case_Studies.pdf).

6 Reitman, Jonathon W., "The Allagash: A Case Study of a Successful Environmental Mediation," June 2003, Mediate.com, 25 January 2012, (<http://www.mediate.com/articles/reitmanJ.cfm>).

7 Reitman, Jonathon W., "The Allagash: A Case Study of a Successful Environmental Mediation."

8 National Association for Community Mediation, 25 January 2012, (<http://www.nafcm.org/Home>).

9 Program on Negotiation at Harvard University, 29 January 2012, (<http://www.pon.harvard.edu/?floater=99>).