

**The Kentucky Bar Association
Alternative Dispute Resolution Section
presents:**

**Neurodiversity: Benefits and Implications
for Dispute Resolution**



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Neurodiversity: Benefits and Implications for Dispute Resolution

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PRESENTER BIOGRAPHY

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With more than 60,000 hours as a management consultant, Luella Wong's expertise spans several economic sectors including finance, health care, hospitality, education, information technology, and the public sector, delivering solutions primarily as the founder and principal of Lunar, Inc. Luella applies her consulting experience of listening carefully, thinking creatively, and helping to solve complex problems to her practice as a mediator, an arbitrator, and as an attorney. She presented at the national conference for the Dispute Resolution section of the American Bar Association in 2023 (Facilitating Client Collaboration in Dispute Resolution with Tools from Other Disciplines) and 2024 (Neurodiversity - Benefits and Implications for Dispute Resolution). Luella earned degrees in mechanical engineering from MIT and Case Western Reserve University, an MBA from the University of Louisville, and a J.D. from New England Law | Boston with certificates in compliance & risk management and intellectual property law. She is a member of the Bar in Massachusetts and Kentucky, a fellow of the Kentucky Bar Foundation, and serves on the Board of Directors of the New England Law | Boston Alumni Association.

SMALL CHANGES TO MAKE MEDIATION MORE NEUROINCLUSIVE

Luella Wong

Neurodiversity is the broad umbrella term for the differences in how we think. Small changes in what we say and what we do can improve communication and neuro-inclusivity in mediation, in the workplace, and in our society as a whole. A great starting place is providing summaries – give people the short-read option as often as possible as illustrated by Figure 1 which provides a summary of this 1,500-word article. Know that many people will skim that summary and stop so help them get as much information as possible.

Figure 1: Summary of this article

(Note, a larger font version of this content is provided at the end of the article)

Minimize Biases	Augment EF	Reduce Anxiety	Audience-First
<ul style="list-style-type: none"> • Challenge thinking, language, and practices that promote a “different is less” mindset • Ask about individual needs, strengths, and preferences, during the intake process • Add an ND policy note to marketing materials, contracts and agreements • ND disclosure is optional, personal and confidential • Shaking hands, eye contact, and fidget toys – ensure a judgement-free zone for all • Take frequent breaks with the option to stretch & move 	<ul style="list-style-type: none"> • Take notes and share them with all attendees • Summarize key points • Use heading styles or outline format to organize notes or emails • Use bold fonts and colors for emphasis, especially for task owners • Send out materials before the meeting to allow for pre-read • Use online collaboration tool(s) to develop and manage a to-do list for all with clear, concise steps with examples whenever possible 	<ul style="list-style-type: none"> • Set an agenda and stick to it • Give notice if plans are changing and provide a clear reason for the change • Conduct “no camera” video conference meetings to reduce verbal signals (sent and received) • Allow for asynchronous communication. Not being present (at the same time) may improve the conversation • Review the process often and emphasize alternatives. Less pressure may be better • Ask about triggers to avoid 	<ul style="list-style-type: none"> • Use clear, concise language • Answer who, what, when, then why, then how & where • Be literal and direct; avoid euphemisms and subtle signals including facial-only messages • Pause often and for more than just a few seconds. Give people time to process • Watch for early signs of withdrawal from the process. Early intervention or mitigation can keep all engaged • Try dark mode for email and presentations.

Small changes that can improve the mediation experience for everyone can be sorted into four categories:

- 1) Minimize biases
- 2) Help fill gaps in executive function (EF)
- 3) Help reduce anxiety
- 4) Consider the needs of the audience

1) Minimize Biases

Addressing discrimination against neurodivergent people starts with recognizing our own biases, and the most fundamental is to recognize that differences are simply differences, not an indication of less or more. Consider these common occurrences:

- Shake hands at the beginning and ending of a first meeting
- Make eye contact with the speaker
- Sit still and hold your hands still

Now what if one, two, or all three of those activities were difficult or even impossible for one or more of the participants? How does that change the dynamic of the mediation session? Are people who don't shake hands or make eye contact less trustworthy? Does movement call into question maturity or whether someone is paying attention if they are holding a fidget toy? All these activities likely have very little impact on the substance of the session, but we often overemphasize and over-interpret nonverbal social behaviors.

As moderators, we want all parties to be able to participate and benefit from the mediation process. Achieving that goal may mean that we need to dispel some long-held assumptions and reset how we interpret nonverbal messages and how we make space for differences. Often, those changes will benefit everyone. For example, sitting rigidly still for hours every day takes a toll on our health so adding frequent pauses to move and stretch is good for all of us.¹

Thinking broader, the goal is not just to recognize and address our biased thinking, but to take a strengths-based approach. Every neurotype has associated strengths and skills² and focusing on those positive elements can raise our expectations and elevate outcomes for all of us. Conversely, we want to challenge thinking, language, and practices that promote a "different is less" mindset.

A good starting point is the intake process. Use that time to ask about individual needs and preferences as well as strengths and skills. For example, someone might inform you about a preference for no bright light, a cooler room, an adjustable height table for sitting or standing, or something else that will make them feel more comfortable and more welcome. Remember, disclosure of neurodiversity is optional and it's a personal choice. Also, if someone does share their neurodivergent profile, that information is confidential unless they give explicit permission to share it with other participants. Adding an ND policy note to your marketing materials, agreements, and other contracts can reassure everyone that you will respect their privacy in this matter and serve as a reminder that it is not to be shared outside of the mediation session.

One additional note here: it is possible that modeling the desired behavior of a strengths-based approach will not be received well by the other party. A bias toward neurodiversity may be at the root of the dispute or it may be something that complicates the matter. For example, what if one party needs to hold a fidget toy to focus and the other party calls it out as annoying and distracting. It's worthwhile to practice what you will say – the perception of neutrality is important, but when faced with discriminatory words or actions, we cannot stay neutral. Just as you would not tolerate belittling based on gender, race, or sexual orientation, it is important to know where the line is with neurodiversity and make sure the mediation stays on the right side of that line.

2) Help Fill Gaps in Executive Function

Executive Function (EF) enables us to identify individual steps in a process, prioritize those steps based on goals, and perform each of them in order. The three main executive functions are working

¹ Harvard Medical School. (2024, April 17). *Staying Healthy, The Importance of Stretching*, Harvard Health Publishing. Available at <https://www.health.harvard.edu/staying-healthy/the-importance-of-stretching>.

² Genius Within. (n.d.). *What is Neurodiversity?* Available at <https://geniuswithin.org/what-is-neurodiversity/>.

memory, inhibition control, and cognitive flexibility such as planning, reasoning, solving problems, and multi-tasking.³

EF is variable, and again, small changes to fill in the gaps can make everything better for all of us. For example, taking notes and providing a summary of key points can not only help make sure the session is well-documented, but can also help participants focus on the meeting instead of taking notes when doing both might be difficult. Note usability is improved by using an outline format or heading styles that break the content into sections, and bold fonts or colors can add emphasis or effectively call attention to the follow-up tasks owned by each person.

Tasks should be pulled out of the notes and organized into a to-do list to help everyone stay on track and get things done. Online tools such as Kan Ban boards can be used to help create that list collaboratively during the session with columns like “to do”, “in progress”, “verified”, and “done” to always know the status of each task as they are updated asynchronously by the owner. This methodology promotes both transparency and accountability. Be sure to break down tasks into clear, concise steps. Provide examples whenever possible to further improve communication.

3) Reduce Anxiety

In mediation, anxiety can be the enemy of progress. How we experience anxiety is personal and varies from mild emotional discomfort to feeling tense, restless, irritable, weak, or exhausted. For some, anxiety can have physical manifestations including sweating, trembling, feeling light-headed or nauseous, tightening in the chest, GI problems, headaches, and/or panic attacks.⁴

Reducing anxiety can help someone be more open to compromise and to moving forward with a solution. Tactics like setting an agenda and sticking to it can help participants with a different lived experience for cognitive flexibility feel less anxious. If things change, give as much notice as you can and provide a clear reason for the change. For others who find face-to-face meetings to be confrontational, changing the format of the meeting can impact feelings of anxiety. Reconsider whether cameras actually have to be on during a video conference. Reducing the nonverbal signals (both sent and received) can improve communication for some participants, not diminish it. Likewise, communicating asynchronously such as email responses or posting to a collaboration board anytime during a given window of time can improve the meeting for some participants. That is, not being physically present can be beneficial.

It is important to consider all points of view as you make decisions about the logistics of the meeting. When things are set, for some it can be helpful to review the process often including the option to not reach a resolution. It may sound counterintuitive, but less pressure can move things forward for some people. In general, asking is often the best starting point. Let participants tell you if they have known triggers for anxiety and if there are small changes that make a big difference.

³ Cleveland Clinic. (2024, March 15). *What is Executive Function?* Available at <https://my.clevelandclinic.org/health/articles/executive-function>.

⁴ Mayo Clinic. (2018, May 4). *Anxiety Disorders, Symptoms and Causes*. Available at <https://www.mayoclinic.org/diseases-conditions/anxiety/symptoms-causes/syc-20350961>.

4) Consider the Needs of the Audience

A best practice for communication in general is to empathize with your audience. What do they need to hear and how should that message be delivered? For a neurodivergent audience, optimal communication often means using clear, concise language.⁵ The five Ws still apply, but order matters. Answer who, what and when first, then provide the why, and finally the where (and the how). Ambiguity can lead to misunderstandings, a common factor in disputes. To make sure everyone receives the same message, be literal and be direct. Avoid euphemisms and subtle signals. If one participant states a goal of the session is to “clear the air”, follow-up to determine what that means to all parties, don’t just leave it open to interpretation. Remember, face-only signals such as a raised eyebrow or a smirk can be missed entirely by some neurodivergent people. Use words, both written and spoken, to make sure the message is received. Also, check in frequently to further confirm comprehension. Watch for signs of resignation or withdrawal from the process. Early intervention or mitigation can keep everyone engaged and often all it takes is one sentence.

If you need to speak for a long duration, pause often. Not just for a few seconds, but for a minute or more. You may need to specifically state that the moment of silence is intentional because for some, silence is uncomfortable and they’ll be inclined to fill it, which is counterproductive when you want to give people time to absorb and process what has been said. If you are presenting written materials onscreen or via email, consider dark mode. A dark background with white font is often preferred by neurodivergent people.

Fifteen hundred words later, if you read this end-to-end, go back to Figure 1. Consider preparing a summary for any important “assigned reading” because we all benefit, neurodivergent and neurotypical alike.

Content from Figure 1:

Minimize Biases:

- Challenge thinking, language, and practices that promote a “different is less” mindset.
- Ask about individual needs, strengths, and preferences during the intake process.
- Add an ND policy note to marketing materials, contracts, and agreements.
- ND disclosure is optional, personal, and confidential.
- Shaking hands, eye contact, and fidget toys – ensure a judgement-free zone for all.
- Take frequent breaks with the option to stretch & move.

Augment Executive Function (EF)

- Take notes and share them with all attendees.
- Summarize key points.
- Use heading styles or outline format to organize notes or emails.
- Use bold fonts and colors for emphasis, especially for task owners.

⁵ May, Tara. 2024, March 5). *Five Ways to Embrace Neurodiversity and Drive Innovation*. Forbes. Available at <https://www.forbes.com/sites/forbesbusinesscouncil/2024/03/05/five-ways-to-embrace-neurodiversity-and-drive-innovation/>.

- Send out materials before the meeting to allow for pre-read.
- Use online collaboration tool(s) to develop and manage a to-do list for all with clear, concise steps with examples whenever possible.

Reduce Anxiety

- Set an agenda and stick to it.
- Give notice if plans are changing and provide a clear reason for the change.
- Conduct “no camera” video conference meetings to reduce verbal signals (sent and received).
- Allow for asynchronous communication. Not being present (at the same time) may improve the conversation.
- Review the process often and emphasize alternatives. Less pressure may be better.
- Ask about triggers to avoid.

Audience-First

- Use clear, concise language.
- Answer who, what, when, then why, then how & where.
- Be literal and direct; avoid euphemisms and subtle signals including facial-only messages.
- Pause often and for more than just a few seconds. Give people time to process.
- Watch for early signs of withdrawal from the process. Early intervention or mitigation can keep all engaged.
- Try dark mode for email and presentations.

CHECKING MY OWN BIASES RELATED TO NEURODIVERSITY

Luella Wong

Would you prefer to work with someone who identifies as an autistic person, or would you prefer to work with someone who does not have ASD (autism spectrum disorder)? How about dyslexia? Or ADHD (attention-deficit/hyperactivity disorder) or another neurodivergent profile? First, if you work with more than five people, the odds are that you already do work with someone who is neurodivergent because 15 to 20 percent of the population thinks differently from the way neurotypical people think.⁶ Second, if you have a preference about neurodiversity (ND) in your colleagues, by definition, you have a bias. I'll come back to that.

In my family, our neurodivergent profile representation is much higher than 20 percent. Uncles, cousins, nephews, and siblings with dyslexia; siblings, cousins, and nieces with ADHD; cousins with OCD; uncles and siblings with PTSD; a sibling with acquired neurodiversity due to brain injury; nephews with DCD (developmental coordination disorder); and the list goes on. It was not until recently that I realized my own personal bias. I thought of their ND conditions as a challenge to be overcome with medication, specialized training, or counseling, or as something to be ignored out of politeness. In every instance, I thought of their ND conditions as negative with no benefits.

Recently I had the privilege of leading the effort for more neuro-inclusivity at a large financial services company. As I worked on a reading list for myself to be better educated on the topic, it became clear that despite a large body of research on neurodiverse ways of thinking, there was not enough research into ways in which neurodiverse people can feel welcomed in their workplace. Interestingly, in the hundreds of articles, videos, and websites analyzed, three sources in particular stood out for being referenced repeatedly.

The first was Dr. Nancy Doyle's image of overlapping circles calling out common strengths and skills of each ND profile and of overlapping profiles.⁷ For example, she notes that strengths common for people with dyslexia are visual thinking, creativity, and 3D mechanical skills. That can help explain why my uncle who never learned to read was a millwright (the person that fixes any machine that breaks at the mill), and my brother who has severe dyslexia is an exceptional artist and photographer. Viewing individuals from a strengths-based point of view can dramatically change expectations, interactions, and outcomes. Dr. Doyle credits Judy Singer as an important source for her visualization of neurodiversity.

The second source that came up often is an article published by Harvard Health in 2021 by Nicole Baumer and Julia Frueh, "What is Neurodiversity?":

⁶ DECG Staff. (2022, April 25). *Neurodiversity*. National Cancer Institute, Division of Cancer Epidemiology & Genetics. Available at <https://dceg.cancer.gov/about/diversity-inclusion/inclusivity-minute/2022/neurodiversity>.

⁷ Genius Within. (n.d.). *What is Neurodiversity?* Available at <https://geniuswithin.org/what-is-neurodiversity/>.

*Neurodiversity describes the idea that people experience and interact with the world around them in many different ways; there is no one "right" way of thinking, learning, and behaving, and [differences are not viewed as deficits](#).*⁸

Differences are not viewed as deficits. Based on published studies and anecdotes, as well as my interactions with a talented and motivated neurodiversity working team, I thought I had the basic concept down. Different is not less. Then I took a closer look at a slide about neurodiversity that I had created based on content from a government website. Every sentence started with “difficulty with” or “challenges with.” It took me two days to recognize the bias in my own language. I replaced those phrases with “atypical,” and it stayed that way for another day. Atypical speech and language. Atypical social communication and interaction. My bias was deep. The page bothered me, but it took me days to pinpoint why. Different is not less. I edited the slide again and removed the still negative language. The answer was to simply note the differences and take judgement out of it.

The third commonly cited source was a comic that was created almost 100 years ago by Hans Traxler. Here’s the alt text I wrote in my presentation to describe the comic: Cartoon of animals lined up facing a man sitting at a desk. The animals are a bird, a chimpanzee, a penguin, an elephant, a fish in a fishbowl, a seal, and a dog. There is a large tree in the background. The caption reads "For a fair selection, everybody has to take the same exam. Please climb that tree."⁹

As someone who has benefitted immensely from standardized tests and the doors that high scores can open, that caption spoke to me. Taking the same exam does not mean that we are ensuring fairness. Differences are not viewed as deficits, but differences alone are enough to change how you perform on a standardized test. Because I was comfortable sitting in the same position for hours and could ignore everything around me that might be a distraction, I had an advantage that had nothing to do with what the test was meant to measure. Changing the test or the conditions under which the test is administered can still measure aptitude but mitigate the inherent bias.

One additional learning that helped me check my bias is a simple but appalling statistic: 85 percent of autistic people with a college education are unemployed. I’ll say it a different way to help it sink in: six out of every seven people with ASD who study for four years and graduate with a degree are unable to get a job. Going back to the opening paragraph, if I have a preference about neurodiversity (ND) in my colleagues, by definition, I have a bias. Has that bias influenced my decisions about who I work with? I’m sure it has and that’s something I actively work to address. I think back to a young man a couple of years ahead of me in college. He was a triple major – three degrees in four years – at MIT. In his final semester he openly shared his frustration with the job interview process by posting his rejection letters in the hallway next to his room. They filled the wall stretching to the next doorway. I’m not the only one with ND bias.

⁸ Harvard Medical School. (2021, November 23). *Mind and Mood, What is Neurodiversity?* Available at <https://www.health.harvard.edu/blog/what-is-neurodiversity-202111232645>.

⁹ Herzog, Walter. (n.d.). *Chancengleichheit (in English: Equal Opportunity)*. Prof. Herzog’s personal website. Available at <https://www.walterherzog.ch/cartoons/chancengleichheit/>.