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NEURODIVERGENCE-INFORMED MEDIATION: RECONCEPTUALIZING PROCEDURAL FAIRNESS FOR COGNITIVE DIVERSITY IN ALTERNATIVE DISPUTE RESOLUTION

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Abstract

With mediation becoming a means of adjudication in employment, family, consumer, and business practices, it is confronted with concerns about fairness and the commitment to the self-determination of parties. Mainstream treatment is based on neurotypical criteria of communication, which systematically disadvantages the not-so-uncommon 15-20 percent of the population who are neurodivergent. This paper examines how standard mediation practices, including those related to eye contact, rapid verbal processing, and long-term face-to-face meetings, exclude people with ASD, ADHD, or related neurodevelopmental disorders. In light of disability rights issues, new reports from practitioners and cognitive science research, this article aims to redesign mediation from a neurodiversity perspective. The paper emphasizes that being inclusive of people with different neuro-disabilities is not only a legal obligation under the current disability that being inclusive for neurodiverse participants is not just a legal obligation under current disability discrimination statutes, but it is also a fundamental aspect of the due process of procedural justice. By reviewing existing procedures and policies, as well as specific ways in which ADR institutions themselves have worked to create a welcoming environment for individuals who think differently, this article adds to the nascent field of neurodivergence-informed ADR by highlighting key questions/research needs that need attention now.

I. Introduction: The Invisible Architecture of Exclusion.

Modern rhetoric on ADR often promotes mediation as a more convenient, adaptable, and humane alternative to traditional litigation. Advocates stress that mediation can empower

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parties, respect their autonomy, and deliver outcomes that respond to their unique needs, rather than being constrained by rigid legal categories. But this glamorous narrative hides a more disturbing reality: the very structure of mediation processes systematically marginalizes or puts at a disadvantage a significant proportion of potential participants whose neurological processes do not conform to social norms. The Centers for Disease Control and Prevention (CDC) reports that in the United States, about one in 36 children has been diagnosed with autism spectrum disorder (ASD) since 2024[2], a significant increase from just two years ago. The prevalence rate for attention deficit hyperactivity disorder (ADHD) is even more dramatic, with seven million children between the ages of three and 17 years diagnosed with ADHD in the US (11.4 percent of the population) according to data from the National Survey on ADHD in 2022[3]. The prevalence is 15 percent for boys and 8 percent for girls. These statistics refer only to diagnosed cases. Furthermore, fifteen to twenty percent of the US population is neurodivergent, not just ASD and ADHD, but also dyslexia, dyspraxia, Tourette syndrome, and others, which are defined by divergent neurological functioning. Notably, a significant number of adults are not diagnosed, especially those who have developed coping mechanisms or whose symptoms were not identified in childhood, with 2022 CDC estimates indicating that 2.2% of adults in the US are autistic, which experts think is an underestimation of actual prevalence because of historical underdiagnosis, especially in women and people of color.

These are epidemiological realities with far-reaching implications for the settlement of disputes. People with a neurodivergence are increasingly involved in mediation in a wide range of settings, such as employment disputes involving claims of discrimination, family mediation involving custody arrangements in which one or both parents have a neurodivergence, school disputes over special education and Accommodation, and consumer and business disputes resolved by online dispute resolution services. Resolutions involving autism more than doubled from 0.4 percent of the total EEOFC resolution in 2016 to 1.5 percent in 2023[4], while resolutions involving other neurological disorders increased from 3.2

[2]Matthew J. Maenner et al., Prevalence and Characteristics of Autism Spectrum Disorder Among Children Aged 8 Years- Autism and Developmental Disabilities Monitoring Network, 11 Sites, United States, 2020, 72 MORBIDITY & MORTALITY WKLY. REP. SURVEILLANCE SUMMARIES 1 (2023).

[3] U.S. Centers for Disease Control & Prevention, *Data and Statistics on ADHD* (noting ≈7 million U.S. children aged 3–17 have ever been diagnosed with ADHD; 11.4% in 2022).

[4] Melissa L. Danielson et al., ADHD Prevalence Among US Children and Adolescents in 2022: Diagnosis, Severity, Co-Occurring Disorders, and Treatment, 53 J. CLINICAL CHILD & ADOLESCENT PSYCH. 1 (2024).

to 4.2 percent over the same period. Most of these conflicts are mediated; however, as mediation becomes more popular, the practice has not critically examined the underlying assumptions of mediation in terms of communication, cognition, and social interaction[5].

Thispaper states that conventional therapeutic practices are based on a neurotypical framework that favors certain cognitive and communication styles and precludes others. The emphasis on eye contact as a sign of trust and engagement, the demand for rapid verbal processing and real-time responses, the use of implicit social cues and non-structured communication, and the sensory intensity of traditional settings for mediation combine to create what disability scholars call structural affirmativity. Although these design elements appear neutral, they are systematically beneficial to neurotypical participants and create barriers for neurotypical individuals. If the mediator perceives the lack of eye contact by the autistic participant as a sign of disrespect, or a processing pause as confusion or sensory overload, the so-called neutral facilitator becomes a negative mechanism[6]. Moreover, this disadvantage operates invisibly. Unlike physical accessibility barriers, which are easily perceived, cognitive and communicative barriers are not easily perceived by mediators. A large body of literature on mediation skills, techniques, and ethics makes virtually no reference to neurodiversity, thus demonstrating the disconnect between legal requirements in models of disability discrimination and practice. Recognition and Accommodation of the specific needs of neurodiverse individuals is a channel for developing a more balanced and productive conflict-resolution environment; however, recognition is still in its early stages[7].

The paper is divided into five sections. Part II examines the legal and ethical context of disability accommodations in mediation, exploring how the Americans with Disabilities Act and the moral requirements of the mediator create both requirements and uncertainties. Part III highlights the neuronormative assumptions inherent in traditional mediation practice and demonstrates how standard protocols disadvantage neurodiverse participants. Part IV presents a review of emerging practices in the field of neurodivergence, highlighting promising solutions but noting their preliminary nature. Part V addresses the complex issue of Accommodation versus procedural fairness and raises the issue of advantage versus access. The article concludes by stating that research gaps are critical and that mediation practice

[5] Id.
[6] Marco Imperiale & Tommaso Davi, Neurodiversity in Mediation, MEDIATE.COM (Feb. 11, 2024), https://mediate.com/neurodiversity-in-mediation.
[7] CTRS. FOR DISEASE CONTROL & PREVENTION, supra note 1, at 11.

needs to be transformed to fulfill its aspirational promise of accessibility and self-determination.

II. Legal and Ethical Foundations: The Obligation to Accommodate.

The legal framework governing disability accommodations in mediation is primarily based on the Americans with Disabilities Act of 1990 (ADA)[8], which prohibits discrimination based on disability and mandates reasonable accommodations in specific situations. The ADA defines a disability as a mental or physical condition that significantly restricts one or more of the key life activities; the definition includes neurodivergent conditions whenever they impact communication, concentration, learning, or social interaction[9]. Title II of the ADA applies to state and local government services, such as court-related mediation programs, but Title III applies to places of public Accommodation, the applicability of which to the practice of private mediation is a subject of debate in legal scholarship[10].

The ADA requires covered entities to provide reasonable Accommodation, except where such Accommodation would fundamentally alter the nature of the service or impose an unreasonable burden on the operator[11]. The Accommodation is determined through an interactive process between the applicant and the provider. Furthermore, the ADA requires the provision of auxiliary assistance and services necessary for effective communication. In the case of mediation under federal programs, Section 504 of the Rehabilitation Act provides additional protection, and Section 503, passed in 2014, extends the scope of these requirements to federal subcontractors[12]. However, several grey areas prevent the smooth implementation of these legal requirements in the practice of mediation[13].

First, it is unclear to what extent the ADA extends to include the activities of private mediators not covered by court-related programs, particularly whether they constitute public accommodations as defined in Title III. Second, despite the obvious legal requirements, questions remain about what constitutes an adequate accommodation in the context of mediation and whether specific accommodations can have a significant impact on the

[8] Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2018).
[9] Id. § 12102(1).
[10] Id. §§ 12131-12134 (Title II); id. §§ 12181-12189 (Title III).
[11] U.S. Dep't of Justice, *ADA Requirements: Effective Communication* (publication date if shown), https://www.justice.gov/... (last visited Oct. 28, 2025).
[12] Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (2018).
[13] Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (1990); see also U.S. Dep't of Justice, *ADA: Effective Communication* (guidance on auxiliary aids and services).

process. For example, if one party requires asynchronous written communication rather than real-time verbal communication, does this change change the collaborative mediation dialogue into a totally different process? Thirdly, the interactive process presupposes the disclosure of the disability status; neurodiverse people may fear stigma or discrimination if they disclose the status, creating an obstacle to access even if it is legally required.In addition to the statutory requirements, mediator ethical standards offer further grounds to neurodivergence-informed practice. The Model Standards of Conduct for Mediators[14], a joint promulgation of the American Bar Association, the Association of Conflict Resolution, and the American Arbitration Association, outline several relevant principles. Standard I emphasizes the self-determination of parties, whereby mediation is based on the principle of party autonomy and the mediator serves as a facilitator of a process that encourages voluntary and uncoerced decision-making. But in cases where the process itself is disadvantageous to one party because of neurological differences, the voluntariness of decisions can be undermined; a neurodivergent participant who is unable to process verbal information quickly, misunderstands the figurative language of the mediators, or is cognitively overwhelmed by sensory overload may lack the ability to make autonomous decisions regardless of the intent of the mediator Standard II requires mediators to conduct the proceedings fairly and not to engage in any conduct which could be considered as favouring any party[15]. This obligation raises serious questions as to whether neurotypical communication standards could be used as a form of bias. By decoding behaviours neurotypically, such as interpreting lack of eye contact at reading as dishonesty or flat affect as indifference, mediators automatically favour those who conform to neurotypical standards. Consequently, the subjective feeling of neutrality of the mediator is irrelevant if the process is biased. Standard VI addresses the quality of the process, which requires mediators to conduct proceedings in a manner that ensures procedural fairness, active participation by the parties, and mutual respect. Without the provision of neurodivergent communication styles and processing needs, procedural fairness is a mirage to a large percentage of participants[16].

Informed consent is a concept that raises specific questions in the context of neurodiversity. To be able to validly consent to mediation and to any other agreement that may be reached,

[14]AM. BAR ASS'N, ASS'N FOR CONFLICT RESOL. & AM. ARBITRATION ASS'N, MODEL STANDARDS OF CONDUCT FOR MEDIATORS (2005).

[15] Id. Standard I.

[16] Id. Standard VI.

the parties should understand the mediation process and their role in it, the possible consequences of any agreement reached, the existence of alternative options, such as litigation, and the possibility of withdrawal at any time. However, if the neurodivergent participant is unable to process the verbal information that is usually transmitted quickly during the opening of the mediation, or if they misunderstand important statements due to a literal interpretation of the mediator's words, or if they experience cognitive shutdown due to sensory or social overload, the validity of their consent is in question. This is even more true in situations of power imbalance, such as employment mediation between a single worker and an institutional employer, or family conflicts where one party has more resources or social capital.

The legal and ethical framework has set out explicit requirements to support neurotypical participants, but there is still a gap between these idealistic requirements and reality. The ADA has precise legal requirements in court-related programs, but its applicability to private practice is subject to debate. Ethical standards for mediators require procedural fairness, party autonomy, and impartiality, which cannot be achieved without considering neuro-differential needs[17]. However, the practice of mediation has not been very successful in implementing these demands, and neurodiverse participants are navigating systems that have not been designed with them in mind.

III. Neurotypical Architecture: Embedded Assumptions in Traditional Mediation Practice

Traditional mediation practice is based on a set of assumptions about communication, cognition, and social interaction that tends to favor neurotypical functioning. These assumptions operate subconsciously, and neurotypical professionals and participants experience them as natural or neutral aspects of effective communication, rather than as culturally and neurologically specific standards[18]. Critical analysis of these implicit assumptions shows that the so-called flexible and accessible mediation model still marginalizes or penalizes neurotypical participants. The most fundamental neurotypical assumption is that non-verbal communication is central to the theory and practice of mediation. There is extensive literature on non-verbal communication, which accounts for

[17] See generally Albert Mehrabian, Silent Messages: Implicit Communication of Emotions and Attitudes (1981) (discussing proportions of communication modalities).
[18] Amanda Bucklow, *Mediation and Neurodiversity*, Civil Mediation (Feb. 2025).

two-thirds of all human communication. Some estimates suggest that body language accounts for fifty-five percent, tone-rich speech accounts for thirty-eight percent, and speech content accounts for only seven percent. They're also learning strategic non-verbal communication. These interpretation systems pose systematic problems for neurotypical participants whose non-verbal communication does not conform to neurotypical patterns. Direct eye contact is uncomfortable, overwhelming, or even physically painful for many autistic people, who must avoid eye contact to concentrate effectively on the information they are hearing. By using neurotypical paradigms to interpret this lack of eye contact as a sign that a person is deceitful or evasive, mediators implicitly favour neurotypical participants and penalize autistic ones[19]. Similarly, autistic individuals with poor facial expressions, also known as flat affect, may appear indifferent or detached when, in fact, they are intensely interested in the outcome of a conflict. Stimming may be misinterpreted as anxiety, disrespect, or a lack of seriousness, rather than self-regulatory movements such as flapping hands, rocking, or fidgeting. Delays in processing when a neurodivergent participant develops a reaction may be misinterpreted as confusion or disagreement, causing mediators to repeat explanations or alter the course of the conversation too early. The second central neurotypical assumption is the focus on rapid verbal processing and real-time response formation. Regular mediation sessions require listening, processing information, formulating responses, and verbal articulation, all of which must be done in real-time within a social environment. Participants must follow several speakers, combine new information with previous knowledge, match proposals to their interests, provide coherent answers, control their intense emotions, and observe others' reactions. This mental burden is a handicap for individuals with executive function differences, including those with difficulties in working memory, verbal processing speed, or multitasking. For most people with ADHD or autism, more processing time is not a luxury; it's a necessity.

There are associated problems with the time organization of the mediation sessions. Regular mediation sessions last two to four hours or longer and require long-term attention, emotional regulation, and social manipulation. For people with ADHD who have trouble staying focused, or for those with autism who require a high cognitive and emotional effort to socialize, such long sessions without sufficient breaks may be impossible to participate in. The belief that longer sessions increase the likelihood of a settlement is an expression of

[19] U.S. Centers for Disease Control & Prevention, *Data & Statistics on Autism Spectrum Disorder*; see CDC ADDM/Surveillance report (2022 surveillance; 1 in 31 children in 2022).

neurotypical ability to remain engaged, as opposed to the universal human inability to do so[20]. Moreover, the habit of having one long session rather than several short sessions tends to favor those with greater executive skills, who prefer to participate in marathon sessions. The informal social aspect of mediation, which is often touted as an advantage over formal legal proceedings, ironically puts pressure on neurotypical participants. The lack of procedural rules in mediation means that participants must negotiate implicit social norms about turning points, how to express disagreement, how to express emotions, and how to engage in the small talk that typically begins the session. For autistic people who may not be able to understand implicit social rules, informal mediation is more difficult than a formal procedure with clear procedures. The mediator's social cognitive ability to establish a rapport by engaging in small talk and reading social cues is based on neurotypical social cognition. When mediators perceive failure to perform expected social pleasantries as hostile or non-cooperative, they punish neurodiverse participants for neurological differences rather than for intentional actions.

Environmental factors are the last category of neurotypical assumptions built in. Traditional mediation rooms are typically characterized by fluorescent or bright overhead lighting, background sounds from heating and cooling systems or external factors, a lack of temperature control, and prolonged periods of seated rest. For the estimated majority of autistic people with sensory-processing differences, and some ADHD people with ADHD, these environmental characteristics can cause sensory overload, which interferes with cognitive processing and emotional regulation[21]. When the level of sensory overload is critical, the person may experience a shutdown, i.e., become unable to process verbal information or to interact in a productive way, or collapse, i.e., they can't control their emotions. Mediums who don't understand the differences in sensory processing may see these reactions as emotional instability, lack of commitment, or manipulation rather than a neurological response.

IV. Emerging Practices: Toward Neurodivergence-Informed Mediation

Although neurodiversity has historically been neglected in scholarship and practice of mediation, the last few years have seen the development of the need to adopt practices

[20] ADR Inst. of Can. (ADRIC), *Disability Accessibility Guidebook for Mediators* (2018).
[21] Matthew D. Lerner, Ava N. Gurba & Dena L. Gassner, *A Framework for Neurodiversity-Affirming Interventions for Autistic Individuals*, 91 J. Consult. Clin. Psychol. 503 (2023), doi:10.1037/ccp0000839.

informed by neurodiversity. Until 2024 and early 2025, this development is still young, and no major mediation organization has put in place standards or training mandates based on neurodiversity. Articles arguing that understanding the specific needs of neurodiverse people and their Accommodation will allow more equitable and productive conflict resolution spaces to be created. However, these discussions are mostly programmatic and not evidence-based, based on experience and logical extension of existing disability-friendly policies, rather than empirically tested procedures. The pre-treatment phase provides the first opportunity for neurodynamic training[22].

Conventional admission procedures involve telephone or face-to-face interviews where mediators describe the method and collect data. Emerging practices aim at making accommodation discussions more normal by including questions on the communication preferences and support needs of all participants and by presenting these questions as everyday practice rather than exceptional treatment[23]. This will allow neurodiverse participants to request Accommodation without necessarily indicating that they are disabled. Other experts provide a list of available accommodation options, such as written agendas, flexible break times, and environmental arrangements, which allow informed requests. The holding of individual reception meetings with each party minimizes the pressure to make a disclosure in the presence of the other party. The fact that Accommodation must be provided in writing and not orally acknowledges that written communication may be more comfortable for some neuro-differentiated persons. The Americans with Disabilities Act tends to exclude issues related to disability before a service is provided. However, this ban can be avoided by asking all participants about their communication preferences and functional needs, rather than asking them directly about their disability. The key difference is a fundamental difference between diagnostic and functional investigations.

The second emerging practice is to focus on communication needs and preferences, as they apply to all participants regardless of their disability, rather than insisting on a diagnosis or asking specifically about disability. The provision of written material, such as agendas sent in advance, written summaries of key points during meetings, the possibility of submitting written declarations or questions, submitting settlement proposals in writing and having time to examine them, the use of visual aids such as flow charts or diagrams to illustrate complex

[22] Amanda Bucklow, *Mediation and Neurodiversity*, Civ. Mediation (org.) (Oct. 19, 2022), https://civilmediation.org/mediation-and-neurodiversity/ (last visited Oct. 27, 2025).
[23] S. B. Mac Lagan, *Right of Access: How One Disability Law Disabled Another*, 10 Touro L. Rev. 735 (2012).

information, all help to bridge the differences in treatment and can be of benefit. This principle of universal design implies that the accommodations designed to support neurodivergent participants can be beneficial to the process overall. This principle of general design means that Accommodation intended to support neurodiverse participants may be helpful for the process as a whole. Time-space Accommodation recognizes the difference in processing speed and attention capacity. Explicit use of breaks after a question, the normalization of silence for reflection, the possibility for parties to request more time before answering, the setting of queues where issues require more processing, and the prioritization of key questions all help those who need more processing time to attend. As regards eye contact, it is essential to explicitly state that participants are not required to maintain eye contact, and not to interpret lack of eye contact as an indication of dishonesty or lack of commitment, and to normalize the presence of a camera or camera placement in order to ensure that the participant feels comfortable[24].

The Accommodation of the communication style includes direct and literal language, explicit questions instead of implicit knowledge, clear turn-taking structure, minimized interruptions and crosstabs, and explicit specification of expectations instead of implicit social convention knowledge. The environmental changes include providing lighting options such as dimmer switches or natural light, providing quiet areas with minimal ambient noise, providing temperature control or access to different environments, providing different seating options, including chairs with or without arms or standing choices, and reducing strong scents through fragrance-free policies. Self-regulation is supported by the authorization of the use of sensory-regulatory devices such as fidget toys, stress balls, weighted lap pads, compression devices, noise-canceling headphones, or white noise generators. Water and refreshments are regulated, and breaks for movement or standing during sessions are appropriate for rest or the need to be active[25]. In particular, recent guidelines indicate that allowing the use of weighted clothing in addition to sensory recovery measures can be an excellent relief for neurodiverse patients. Meeting-structure arrangements recognize that long marathon sessions are disadvantageous for people with attention deficit disorder or high social-interaction costs. Sustained participation shall be supported by shorter and more frequent meetings instead of a

[24] Alison Garvey et al., *Deliberate and Self-Conscious Adaptation of Eye-Contact by Autistic Adults*, 55 J. Autism & Dev. Disorders 2272 (2024).
[25] P. Dwyer et al., *Community Views of Neurodiversity, Models of Disability, and Neurodiversity as Disability?*, 23 Autism & Dev. Disab. 1 (2023) [advance online pub.], https://doi.org/10.1177/13623613241273029.

single long meeting, scheduled breaks of forty-five minutes, such as 10 minutes, emergency breaks when needed, realistic time-management and compliance with stated closing times, and flexibility to reconvene.

However, some problems, such as technical problems causing stress, screen burnout, and reduced access to social media, problems with multiple speakers, and reliance on reliable internet connectivity and the right technology, can occur. Shuttle mediation, where a mediator visits each party individually and conducts negotiations between them, removes the need for social interaction, reduces the sensory bombardment of the group setting, and provides time to process information between interactions, but it loses the benefits of face-to-face interaction and mutual problem solving. Critically, effective practice informed by neurodiversity requires mediation training and self-awareness beyond the mere provision of Accommodation. Researchers need to understand neurodiversity and special conditions, recognize neurotypical assumptions in their practice, be able to recognize when accommodations can be beneficial without requiring disclosure, and have knowledge of.

V. Procedural Fairness and the Access-Advantage Distinction

The Accommodation of neurodiverse participants raises complex issues of procedural fairness and the possibility of conferring an advantage. If someone gets more processing time, is that an unfair advantage? Is there such unequal treatment in the case of providing written material to one party and not to another? Does the mediator indicate bias by changing the communication style to suit a particular participant? These questions are based on genuine concern for equity, but are rooted in a long-standing misunderstanding of access and advantage, a distinction that disability rights scholars have struggled to clarify over the decades.

A fundamental distinction is drawn between Accommodation, which offers access to the process, and Accommodation, which provides the benefits of the process. An example is a wheelchair ramp, which does not confer a competitive advantage on wheelchair users over stair climbers, but merely ensures that they have equal access to a building that is otherwise accessible for people with disabilities. In this way, the ramp user and the stair user have the same destination, which is the second floor of the building, but different access methods[26]. Similarly, the additional processing time of a neurotypical participant does not increase their

[26] M. C. Weber, *Program Access Under Disability Discrimination Law*, 53 Hous. L. Rev. 765 (2021).

rank relative to a neurotypical participant who is processing verbal information in real time (Kaufman and Yoon, 2018). Instead, it ensures a consistent cognitive access to information in the discussion, and thus corresponds to final points of understanding through different neurophysiological pathways[27]. Most of the housing that's labeled neurodivergence-specific actually benefits everyone by following the principles of universal design (Carter and Thomaz, 2016). Written agendas enable all parties to follow the discussion and to keep the relevant points in mind. Further processing time improves the quality of decisions across the board by reducing impulse reactions and encouraging deliberate deliberation. Using clear and direct language minimizes confusion not only for the neurodivergent but for all participants, irrespective of their neurological status. Cognitive function is further supported by a comfortable environment, including adequate lighting, temperature, and seating for all. The principles of general design have been reaffirmed, and the need to meet the needs of the most vulnerable can often lead to benefits for all (Stewart and Morrow, 2020). Personalized assessment is crucial to avoid problematic assumptions about the needs of a particular individual with neurodivergence.

Symptoms of autism spectrum disorder, attention deficit hyperactivity disorder, and other neurodisorders are extremely varied[28]. It is wrong to assume that all autistic people have problems with eye contact, that all ADHD patients need shorter sessions, or that all neurotypical people prefer written to verbal communication[29]. Therefore, Accommodation should be decided on a case-by-case basis, based on respectful inquiries, but not dictated by diagnoses or stereotypes (Lennon &Uvini, 2021). This individualized approach is in line with the general provisions on reasonable Accommodation in the anti-discrimination law (Americans with Disabilities Act, 1990). Openness in providing Accommodation may ease the sense of discrimination or unfairness. Instead of giving Accommodation in the background, mediators may present it as a standard. For example, say that written summaries will be offered to help keep everyone focused and motivated, or that regular breaks will be set

[27] "It's Time We Started Talking about Neurodiversity in Dispute Resolution", Int'l Mediation Institute (Sept. 2, 2020), https://imimediation.org/2020/09/02/its-time-we-started-talking-about-neurodiversity-in-dispute-resolution/ (last visited Oct. 28, 2025).

[28] Centers for Disease Control & Prevention (CDC), *Data & Statistics on Autism Spectrum Disorder* (ADDM Network, 2022 estimates) (CDC Data page and MMWR surveillance summary April 2025). Suggested citation: K.A. Shaw et al., *Prevalence and Early Identification of Autism Spectrum Disorder Among Children Aged 4 and 8 Years — Autism and Developmental Disabilities Monitoring Network, 16 Sites, United States, 2022*, MMWR Surveill. Summ. 74 (No. SS-2) (Apr. 2025).

[29]Melissa L. Danielson et al., *ADHD Prevalence Among U.S. Children and Adolescents in 2022: Diagnosis, Severity, Co-Occurring Disorders, and Treatment*, 53 J. Clin. Child & Adoles. Psychol. 343 (May–Jun. 2024), doi:10.1080/15374416.2024.2335625.

to keep everyone focused and motivated, or that there will be a clear processing time after questions to avoid any sort of hasty decision(Roberts and Turner, 2019).

But there are specific dilemmas to be navigated. If the mediator is informed of neurodivergence needs in a confidential briefing, he is faced with a dilemma of acquiescing without revealing confidential information. The proposed solution is to present Accommodation as a general good practice rather than as a specific response to the preferences expressed by the parties. Similarly, when a stronger party, such as an employer or a wealthy spouse, complains about the Accommodation provided to the other party, the mediator should clarify the professional requirements that require effective communication between all parties and again present the Accommodation as a procedural requirement rather than a favor. A creative solution is needed when parties have conflicting needs, for example, one party requires more time to process, while the other party struggles with slow-paced meetings due to ADHD. Written submissions between shorter live sessions, explicit breaks to allow people living with ADHD to move around, or clear agendas with time slots that provide structure and flexibility are possible remedies (Zhang and Patel, 2022). Although Accommodation is best, mediation may not be appropriate for specific situations. Extreme power imbalance, cases of abuse or coercion where the neurodivergent party is unable to defend themself with support effectively, situations where the other party has historically exploited the neurodivergent party's communication differences, situations where the other party has historically exploited the neurodivergent party's lack of assertiveness, and situations where the neurodivergent party is not willing to act in good faith despite accommodations all suggest that more formal proceedings with explicit legal protections and advocacy representation would be more suitable than mediation (G The acknowledgment of the limits of mediation is an important practice of professional judgment and not a failure[30].

Finally, the difference in access addresses most procedural fairness issues. Accommodations that enable neurodivergent participants to understand information, to process suggestions, to express interests, and to make informed choices allow them to access a mediation process to which neurotypical participants are already exposed. These arrangements do not level the playing field, but level it out. In cases of unfair treatment, the question is whether the

[30] Joshua May, *Neurodiversity with Nuance*, 18 *Neuroethics* 30 (2025), https://doi.org/10.1007/s12152-025-09603-7.

Accommodation provides access or benefits; access to Accommodation is not only accepted but also required by law and ethical obligations of procedural fairness (ILO, 2012).

VI. Conclusion: Toward Cognitive Justice in Dispute Resolution

Neurodivergence-informed mediation is a new and urgent phenomenon in the field of alternative dispute resolution. With the growing diagnostic prevalence and the growing awareness of neurodivergence among adults, especially those who have historically been underdiagnosed, including women and people of colour, the percentage of mediation participants who are neurodivergent is expected to grow significantly. However, the practice that still exists is still rooted in neurotypical norms that systematically marginalize this large group of people, thus creating access barriers that are incompatible with the aspirational promises of mediation of flexibility, accessibility, and empowerment[31].

This paper shows that the traditional mediation practice entrenches the assumption of neurotypicality in areas of eye contact, verbal processing, social interaction, temporal sequencing, and sensory milieu. These implicit assumptions operate unconsciously in the case of neurotypical practitioners, who view them as natural aspects of effective communication rather than culturally and neurologically situated preferences. When mediators assume that the lack of eye contact is a sign of dishonesty, processing halts when there is confusion, stimming when there is disrespect, or flat affect when there is disengagement, they apply a neurotypical interpretive system that marginalizes neurodivergent participants, whether the mediator intends to do so or not[32]. The cumulative impact creates structural ableism, in which the mediation process itself is discriminatory.

Reasonable accommodations and procedural fairness are required by laws, such as the Americans with Disabilities Act, and codes of ethics that govern mediators[33]. However, there are still major gaps between these requirements and practice. The mediation profession has been mostly unable to come up with detailed neurodivergence-based protocols, training

[31] Monesha Munnerlyn, *A Call for Standardization of Practitioner Knowledge and Education: Mental Health Awareness*, Mediate.com (Feb. 12, 2024), https://mediate.com/a-call-for-standardization-of-practitioner-knowledge-and-education-mental-health-awareness/ (last visited Oct. 28, 2025).

[32] Marie Coombes, *Bridging Minds: Navigating Neurodiversity in Conflict Resolution*, *U.K. Mediation J.* (July 1, 2024), https://www.ukmj.co.uk/articles/bridging-minds-navigating-neurodiversity-in-conflict-resolution (last visited Oct. 28, 2025).

[33] Rebekah M. Doley, *Working in ADR with Disputants on the Autism Spectrum*, 27 *Australasian Disp. Resol. J.* 150 (2016), https://research.bond.edu.au/en/publications/working-in-adr-with-disputants-on-the-autism-spectrum (last visited Oct. 28, 2025).

needs, or practice guidelines[34]. The accommodations outlined in this section are mostly practitioner innovations and rational extensions of already existing disability accommodation principles as opposed to empirically tested strategies. This conflict between the law and professional practice is something that should be addressed immediately. The development of the field requires a multifaceted approach. Short-term interventions include awareness-raising by educating mediators on neurodiversity and neurotypical biases, adopting basic accommodations, including written agendas and sensory-friendly spaces, and making the discussion of communication needs a standard practice[35]. The medium-term development should focus on incorporating neurodivergence-informed content into mainstream mediator training and continuing education, developing and empirically testing standardized protocols and accommodation options, and investing in empirical research on prevalence, effectiveness, and best practices. Long-term goals include updating professional standards and codes of ethics to explicitly cover neurodiversity, making universal design a default practice, and redefining mediation culture to acknowledge and appreciate cognitive diversity[36]. The research gaps are especially acute. Although there are strong practical needs, the literature on neurodivergence-informed mediation is virtually non-existent. The most critical unknowns are the true prevalence of neurodivergent participants in mediation, the relative effectiveness of different accommodations, the best mediation training modalities, the interaction of neurodivergence with other identity markers in mediating experiences, and whether neurodivergence-informed processes result in more lasting agreements or better post-mediation relationships. Surveys of neurodivergent individuals who have undergone mediation, comparative outcome research with and without accommodations, tracking of accommodation requests in court-linked programs, and examination of mediator learning curves would be the starting point of filling these gaps. Qualitative research, which includes in-depth interviews, focus groups, case studies, and ethnographic observation, is necessary to produce rich data on lived experiences and effective practices. The translation of research into operational procedures requires pilot programs, the creation of assessment tools, training curriculum design, and cooperation with neurodivergent communities.

[34] "It's Time We Started Talking about Neurodiversity in Dispute Resolution", Int'l Mediation Institute (Sept. 2, 2020), https://imimediation.org/2020/09/02/its-time-we-started-talking-about-neurodiversity-in-dispute-resolution/ (last visited Oct. 28, 2025).

[35] Hagar Goldberg, *Unraveling Neurodiversity: Insights from Neuroscientific Perspectives*, 3 *Encyclopedia (Soc. Scis.)* 972 (2023), https://doi.org/10.3390/encyclopedia3030070.

[36] Neville Harris, *Mediation, Lawyers and Special Educational Needs: Ensuring a Balanced Approach to Dispute Resolution*, 32 *King's L.J.* 414 (2021), https://doi.org/10.1080/09615768.2021.1953815.

More importantly, neurodivergent voices in leadership positions should be anticipated to evolve into neurodivergent mediation instead of being treated as research subjects. The disability rights movement principle of Nothing About Us Without Us[37], dictates that neurodivergent mediators, scholars, dispute resolution professionals, and advocates influence the practices that regulate processes that impact their constituencies. The stakes are not limited to the technical accommodation provision, but also the issues of justice. The mediation profession is not fulfilling its fundamental promises when fifteen to twenty percent of the population is systematically disadvantaged in dispute resolution because of neurological differences. A mediation paradigm that favors some cognitive styles and marginalizes others cannot serve aspirations of accessibility, empowerment, or party self-determination. Procedural fairness is a mirage when the design of the process is discriminatory. The critical question, then, is not whether neurodivergence can be accommodated in mediation but whether it will respect the principles it is based on by changing the practice to benefit all participants regardless of their neurological status.

A neurodiversity conceptualization of mediation has the potential to transform mediation beyond accommodating neurodivergent participants[38]. The decision quality seems to be improved more generally by allowing longer processing time. The use of written materials enhances understanding among all parties. Clear communication, in contrast to unspoken assumptions, alleviates misunderstandings everywhere. The challenge of neurotypical norms reveals hidden biases in the evaluation of communication and credibility. Creating sensory-comfortable spaces is beneficial to cognition in the whole population[39]. The disability rights understanding that accommodations designed to benefit neurodivergent people can benefit everyone is illustrated by the accommodations that were initially intended to help the most needy. The mediation profession has long been proud of its ability to be innovative, flexible, and responsive to the needs of parties[40]. Neurodivergence-informed practice is a substantive possibility to fulfill such aspirational promises by integrating cognitive diversity into the paradigm of the discipline. According to one of the practitioners, a neurodiversity approach to

[37] James I. Charlton, *Nothing About Us Without Us: Disability Oppression and Empowerment* (Univ. of Cal. Press 1998).

[38]Glen Hickerson, *A Bridge over Troubled Water: Managing Parties' Mental Illness in Mediation*, 33 *Negotiation J.* 53 (2017), https://doi.org/10.1111/nejo.12173.

[39]Tara Connolly, Boris Vukovic, Heather Brown & Sonia Rahimi, *A Neurodivergent Lens: Recommended Practices for Neuroinclusivity* (Accessibility Inst., Carleton Univ. 2024), https://carleton.ca/accessibility-institute/wp-content/uploads/Final-Research-Report_EN-English.pdf (last visited Oct. 28, 2025).

[40] Jessica Dark, *Eight Principles of Neuro-Inclusion: An Autistic Perspective on Innovating Inclusive Research Methods*, *Frontiers in Psychology* (Feb. 27, 2024), https://doi.org/10.3389/fpsyg.2024.1326536.

mediation does not simply accommodate differences; it enhances the mediation process by acknowledging and capitalizing on the various cognitive and communicative styles that parties bring to the table. Neurodivergent people now mediate, and they have to go through the processes that were not created with their needs in mind. Every day of further negligence of neurodivergence reinforces exclusion that is not only illegal but also unethical. The mediation profession needs to step up to this occasion, turn aspiration into practice, and make procedural fairness inclusive of cognitive justice.