

PROCEDURAL SAFEGUARDS UNDER CHAPTER 16

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1. MEDIATION

a. CHAPTER 16 -- § 16.64. Mediation

b. MEDIATION THROUGH THE OFFICE FOR
DISPUTE RESOLUTION

Mediation is an effective way for parents and public educational agencies to resolve disputes with regard to a child's identification, evaluation, educational placement and provision of gifted education. Disputes may arise for children who are thought to be gifted as well as children who are receiving gifted education. Mediation works because it:

1. Builds relationships between the public agency and the parents when they jointly seek a positive outcome for the child.
2. May be inexpensive to all participants.
3. Is structured to afford mutual problem-solving.
4. Is less time consuming than due process hearings.
5. May be significantly less stressful than adversarial proceedings.
6. Promotes trust building to assist resolving future disputes.

Mediation can be requested by calling the Office for Dispute Resolution (ODR), toll free: 1-800-992-4334. Mediation can be scheduled prior to or concurrent with a due process hearing request or complaint. If a parent calls ODR and asks for mediation, the ODR staff will contact the public agency to determine their willingness to attempt to resolve the disagreement through mediation. Once each party agrees to mediation, ODR will schedule a mediation at a mutually agreeable time and place and assign a mediator. Each party would be responsible for any fees of participants they invite to the mediation.

Parents or public agencies can bring other people as guests to mediation. The parent(s) may invite two guests, one of whom may be an advocate. The public agency may designate a total of three school officials to participate in the mediation session, one of whom must have the authority to commit public agency resources. Neither party can be represented by an attorney during the mediation.

At the beginning of the mediation, the mediator will greet and, when necessary, introduce all parties and invited guests. The mediation process and rules are explained. The importance of open and honest discussion, maintaining confidentiality, and the importance of each party's commitment to a binding agreement are stressed by the mediator.

Each party is given an opportunity to present their views in a joint session. The mediators and all participants listen without interruption. The mediator may ask

questions or summarize what is said. The parties then may meet privately with the mediator in what is called a "caucus". The purpose of a caucus is to clarify views and feelings and provide additional information about the issues and possible solutions. The mediator will not share information from the caucus with the other party without consent, and several sessions may be held with each party. A joint meeting is reconvened to identify areas of agreement and issues that need further discussion and resolution.

If the parties reach an agreement, the mediator assists them in writing an agreement. The parties determine the terms of the agreement and compose the wording. The mediator puts the agreement in writing for the parties. All participants in the mediation session, including the mediator, sign the agreement. Copies of the agreement are distributed to the parties as documentation of the meeting.

At the close of the mediation session, all participants and guests are asked to complete an evaluation. Sealed and completed evaluations are returned to the mediator and forwarded to ODR. The evaluations are used to evaluate the effectiveness of the mediator and the mediation system and help identify ways to improve the process.

If you would like more information on special education mediation or would like to request a mediation, please contact ODR at 1-800-992-4334.

2. IMPARTIAL DUE PROCESS HEARING

a. CHAPTER 16 -- § 16.63. Impartial due process hearing

b. DUE PROCESS HEARINGS THROUGH THE OFFICE FOR DISPUTE RESOLUTION

A special education due process hearing is a hearing that can be used to determine the appropriateness of the identification, evaluation, educational placement, or provision of a gifted education for a student who is or who may be gifted. A public agency or a parent or guardian of a child who is or who may be gifted (hereinafter, “parent”) can request a due process hearing.

Due process hearings are conducted by impartial due process hearing officers by or on behalf of the public agency responsible for providing an education to those children in its jurisdiction who are gifted. The Office for Dispute Resolution coordinates and manages Pennsylvania’s gifted education due process system. In addition, ODR selects and trains hearing officers and provides technical assistance concerning procedural safeguards to Hearing Officers, public agencies, parents, and advocates as well as general information to other constituents.

If a party is not satisfied with the decision of the Hearing Officer, a party can appeal the decision to a Panel of three Appellate Hearing Officers. In order to appeal a Hearing Officer's decision, a party must file exceptions (objections) to the Hearing Officer's decision with the Office for Dispute Resolution. A final order of the Panel either affirming, modifying, or reversing the Hearing Officer's decision shall be rendered within 30 calendar days after Office for Dispute Resolution’s receipt of the exceptions.

If you have any questions or would like more information regarding the special education due process hearings system, please call 1-800-222-3353.

3. GIFTED EDUCATION ASSISTANCE REQUESTS

1. All calls and correspondence for assistance should be forwarded to the Bureau of Curriculum and Academic Services' office, Telephone: (717) 787-8913.
2. The Bureau secretary will complete the Assistance Request Form, log the information on the bureau's data bank, initiate an Assistance Request Tracking Folder and forward it to the Bureau Director for internal routing instructions. The Assistance Request Tracking Folder is to be used to maintain all request-related data, correspondence and information.
3. The Bureau secretary will prepare an initial Assistance Request Response letter for the Bureau Director's signature.
4. The Bureau Director will evaluate the Assistance Request Form and attached correspondence, assign it to the appropriate Division Chief for action and sign the initial Assistance Request Response letter.
5. The Bureau secretary will copy, forward the initial Assistance Request Response letter to the requester, place a copy in the Assistance Request Tracking Folder and forward the folder to the appropriate division.
6. The designated Division Chief will assign an Action Officer.

7. The Action Officer will contact the Requester and conduct a preliminary investigation into the assistance request. A detailed summary (with date and time) of all telephone conversation will be maintained.
8. The Action Officer will contact, as necessary, all related agencies both internal (e.g., Office of Chief Counsel) and external (e.g., School District Superintendent) in the conduct of the assistance investigation.
9. The Action Officer will summarize his/her findings and recommendation and submit them to the Division Chief for concurrence. The Action Officer will attach copies of related correspondence and telephone conversation summaries. A draft summation response to the requester will be included for the Division Chief and Bureau Office approval.
10. The Division Chief will forward the folder to the Bureau Office for a final determination.
11. If the Assistance Request requires further action (e.g., mediation, monitoring) the Bureau Office will notify the appropriate agency and provide the necessary correspondence and data. Once approved or forwarded to an appropriate agency the Bureau Director will sign the summation response letter.
12. Once a final action has been determined, the Bureau secretary will appropriately annotate the Assistance Form and data bank entry, forward the summation response letter and file the Assistance Request Tracking Folder. The completed Assistance Request Tracking Folder with all request-related

information, data and correspondence will be filed and maintained by the Bureau Office in a central location.

4. ConsultLine

Another service provided by the Office for Dispute Resolution is ConsultLine: a hotline designed to assist parents and advocates of children who are gifted or thought to be gifted. The Specialists at ConsultLine are prepared to:

1. Explain state laws relating to gifted education;
2. Describe the options that are available to parents;
3. Inform parents of procedural safeguards;
4. Identify other agencies and support services;
5. Describe available remedies and how parents can proceed.

ConsultLine responds annually to more than 6000 telephone inquiries. If all Specialists are talking with parents and advocates when a call is placed to ConsultLine, a parent or advocate can leave a message. The Specialists return all calls swiftly; in most cases, calls are returned within 24 hours.

If you have additional questions regarding the services of ConsultLine or would like to contact ConsultLine, call toll free: 1-800-879-2301.