

GIFTED Due Process Procedures - Fact sheet

This Fact Sheet pertains to due process procedures involving gifted only issues. If a student is determined to be both gifted and eligible for special education, please refer to the "Special Education Due Process Procedures – Fact Sheet."

Parents may request in writing an impartial due process hearing concerning the identification, evaluation or educational placement of, or the provision of a gifted education to a student who is gifted or who is thought to be gifted if the parents disagree with the school district's identification, evaluation or placement of, or the provision of a gifted education to the student.

A school district may request a hearing to proceed with an initial evaluation or a reevaluation when a parent fails to respond to the district's proposed evaluation or reevaluation. When a parent rejects the district's proposed educational placement, other than the initial placement, the school district may request an impartial due process hearing. However, if the parent fails to respond or refuses to consent to the initial provision of gifted services, neither due process nor mediation may be used to obtain agreement or a ruling that the services may be provided.

Administrative Matters at Preliminary Meetings, Mediation and Due Process. When carrying out administrative matters such as scheduling, exchange of witness lists, and status conferences, the parent and school district may agree to use alternative means of meeting participation, such as videoconferences and conference calls. The format for any of these activities involving the hearing officer will, to the extent such falls within his or her discretion, be decided by the hearing officer.

Timeline for Completion of Due Process Hearing. A hearing will be held within thirty (30) calendar days after a parent's or school district's initial request for a hearing. The hearing officer's decision will be issued within forty-five (45) calendar days after the parent's or school district's request for a hearing.

Disclosure of Evaluations and Recommendations. Not less than five (5) calendar days prior to a due process hearing, each party must disclose to all other parties all evaluations completed by that date, all recommendations based on those evaluations, as well as all other documents and witnesses, that the offering party intends to introduce or call at the due process hearing. Failure to disclose this information may result in a Hearing Officer prohibiting the party from introducing the information at the hearing unless the other party consents to its introduction.

Due Process Hearing Rights. Generally, due process hearings for students who are gifted, or thought to be gifted, must be conducted by and held in the local school district at a place reasonably convenient to the parents. Parents may request that the hearing be held in the evening. The hearing must be an oral, personal hearing and must be open to the public unless the parents request a closed hearing five (5) days in advance of the hearing. If the hearing is open, the decision issued in the case, and only the decision, shall be available to the public. If the hearing is closed, the decision shall be treated as a record of the student and may not be available to the public. The decision of the Hearing Officer must include findings of fact, discussion and conclusions of law. Although technical rules of evidence will not be followed, the decision must be based solely upon the substantial evidence presented during the course of the hearing. A written, or at the option of the parent, electronic verbatim record of the hearing will be provided to the parents at no cost. Parents may be represented by legal counsel, and/or accompanied to and advised at the hearing by individuals with special knowledge or training with respect to students who are gifted. Parents or parent representatives must be given access to educational records, including any tests or reports upon which the proposed action is based. A party has the right to present evidence, witnesses, and to confront and cross-examine opposing witnesses, which includes the presentation of expert medical, psychological or educational testimony.

Hearing Procedures. The hearing officer assigned will inform the parties about procedural matters related to the hearing, and matters relating to hearing management that are within his or her discretion.

Civil Action. Either the parent or school district who disagrees with the findings and decision of the Hearing Officer has the right to file an appeal in state or federal court. Sometimes the issues in a due process case deal not only with special education issues, but also regarding a child's status and/or claim as a gifted child. In that instance, the final order of the Hearing Officer -- to the extent it deals with issues of giftedness -- can only be appealed to Commonwealth Court. For all other appeals, the party filing an appeal is encouraged to seek legal counsel to determine the appropriate court with which to file an appeal. A party has ninety (90) days from the date of the Hearing Officer's decision to file an appeal in federal court. While this time period for so appealing to Pennsylvania Commonwealth Court is likely the same, since it is unclear whether state rules seeking to establish a uniform thirty (30) day period for filing appeals to that Court apply, a party appealing to it may wish to do so in this shorter time frame.

Childs Status during Administrative Proceedings. Unless the school district and the parent of the student agree otherwise, the student involved in the hearing will remain in the student's current educational placement pending the outcome of the hearing.