

Act 32 Mediation Guidelines

Act 32 requires the Department of Community and Economic Development (DCED) to create guidelines to dictate how mediation will be conducted for any disputes among affected parties involving a deviation from taxes received. The following guidelines set forth the practice and procedures for the Act 32 mediation program (Guidelines):

1. One or more affected political subdivisions (PSD)(s) shall give written notice (Notice) to the tax collection committee (TCC) and the DCED of the desire to submit the disputed matter to mediation by DCED. Thereafter, the PSD(s), TCC, and tax officer shall submit to mediation in accordance with these Guidelines.
 - a. Only a PSD (school districts or municipalities) can initiate mediation requests (Initiating PSD(s)).
 - b. The Notice shall be submitted by regular mail.
 - c. Included in the Notice shall be a statement from the Initiating PSD(s), as to whether or not the mediation meets the 10% or greater deviation threshold for mandatory mediation¹.
 - d. There is a \$500.00 filing fee payable to DCED. The fee is not refundable and not appealable. The \$500.00 fee (payable by check) must be submitted together with the Notice to DCED by the Initiating PSD(s).
2. Promptly upon receipt of the Notice, DCED shall provide a copy of the Notice to the tax officer. Within 20 days of the submission of the Notice, the Initiating PSD(s), TCC(s) and Tax officer(s) must each submit a written statement of no more than 5 pages to DCED and each other party, stating the position of each party as to the disputed and undisputed facts and issues in the case and whether prior settlement negotiations have occurred (Statement).
 - a. It is within the discretion of DCED to consider any information contained in a Statement filed after the 20 day deadline.
3. Within 30 days of DCED's receipt of the Notice, DCED shall determine whether the dispute meets the threshold conditions for mandatory mediation (Determination).
 - a. If the issue being mediated is the same for more than one PSD, the PSDs must combine their Notices into one Notice, not to exceed 5 pages. In this

¹ Any dispute among the affected parties involving a 10% or greater deviation from taxes received in the previous tax year shall be subject to mandatory mediation under these Guidelines. A dispute involving less than the 10% threshold may be the subject of voluntary mediation in accordance with these Guidelines.

instance, there is only one \$500.00 fee and it may be shared by the Initiating PSDs at their discretion.

- b. The Determination is final and not appealable.
 - c. Notice of the Determination shall be issued by DCED in writing (including email if available) to all affected parties
4. If the Determination is that the dispute requires mandatory mediation, DCED will turn the matter over to the Pennsylvania Office of General Counsel Dispute Resolution Coordinator (Coordinator) within 5 days of the date of the Determination. The Coordinator will appoint an OGC mediator to mediate the matter (Mediator). The selection of the Mediator is final and not appealable. The Mediator will attempt to complete the mediation within 20 days of their appointment, but no later than 30 days following the date of the Determination. Except as otherwise provided herein, the mediation will be conducted pursuant to the rules contained in the OGC Mediation Handbook. Any costs incurred or other mediation fees imposed by the Mediator will be equitably assessed against the parties at the discretion of the Mediator. The cost assessment is final and not appealable.
- a. All parties must participate in the mediation in good faith. Any party that fails to participate in good faith may be required to pay all the costs of the mediation. This decision shall be at the Mediator's discretion.
 - b. The Mediator may request any DCED personnel to be present for all or any portion of the mediation. This decision is final and not appealable.
5. If the Determination is that the dispute is the subject of voluntary mediation, all parties involved in the mediation including the DCED, must agree to mediate the issue through the Coordinator within 5 days of DCED's determination. The Coordinator will appoint a Mediator to mediate the matter. The selection of the Mediator is final and not appealable. The Mediator will attempt to complete the mediation within 20 days of their appointment. Except as otherwise provided herein, the mediation will be conducted pursuant to the rules contained in the OGC Mediation Handbook. Any costs incurred or other mediation fees imposed by the Mediator will be equitably assessed against the parties at the discretion of the Mediator. The cost assessment is final and not appealable.
- a. All parties must participate in the mediation in good faith. Any party that fails to participate in good faith may be required to pay all the costs of the mediation. This decision shall be at the Mediator's discretion.
 - b. The Mediator may request any DCED personnel to be present for all or any portion of the mediation. This decision is final and not appealable.

6. Any mediation sessions shall be closed to the public and shall not be subject to the requirements of 65 Pa.C.S. Ch. 7.
7. No offers or settlements made in a mediation session, excluding the final written settlement agreement, if any, shall be admissible as evidence in any subsequent judicial or administrative proceedings in accordance with the provisions of 42 Pa.C.S. § 5949 (relating to confidential mediation communications and documents.)
8. If a settlement is reached during the mediation, DCED shall prepare a written settlement agreement and obtain all necessary signatures within 30 days of the agreement of the parties to settle the issue. The settlement agreement shall be binding upon the parties to the agreement. Such settlement agreement shall be subject to the provisions of the Right-to-Know Law. Such agreements shall be admissible as evidence in any subsequent judicial or administrative proceedings in accordance with the provisions of the Pennsylvania Rules of Court, the Pennsylvania Rules of Evidence and 42 Pa.C.S. § 5949.
9. If the mediation has not resulted in a written agreement signed by the parties as provided in paragraph 8, the mediation shall be deemed to have been unsuccessful unless all parties and DCED agree in writing to extend the mediation. The Mediator shall have the right to determine that the mediation has been unsuccessful and to terminate the mediation if the parties have not executed a settlement agreement by the ending date of the extension, or any further extension agreeable to the affected parties and the Mediator.