

## § 16.17

substantial interest in the outcome of the dispute, that participation would sharpen issues or otherwise be helpful in resolution of the dispute, and that participation would not result in substantial delay.

### § 16.17 Ex parte communications (communications outside the record).

(a) A party shall not communicate with a Board or staff member about matters involved in an appeal without notice to the other party. If such communication occurs, the Board will disclose it to the other party and make it part of the record after the other party has an opportunity to comment. Board members and staff shall not consider any information outside the record (see §16.21 for what the record consists of) about matters involved in an appeal.

(b) The above does not apply to the following: Communications among Board members and staff; communications concerning the Board's administrative functions or procedures; requests from the Board to a party for a document (although the material submitted in response also must be given to the other party); and material which the Board includes in the record after notice and an opportunity to comment.

### § 16.18 Mediation.

(a) *In cases pending before the Board.* If the Board decides that mediation would be useful to resolve a dispute, the Board, in consultation with the parties, may suggest use of mediation techniques and will provide or assist in selecting a mediator. The mediator may take any steps agreed upon by the parties to resolve the dispute or clarify issues. The results of mediation are not binding on the parties unless the parties so agree in writing. The Board will internally insulate the mediator from any Board or staff members assigned to handle the appeal.

(b) *In other cases.* In any other grants dispute, the Board may, within the limitations of its resources, offer persons trained in mediation skills to aid in resolving the dispute. Mediation services will only be offered at the request, or with the concurrence, of a responsible federal program official in the program under which the dispute arises. The Board will insulate the me-

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diator if any appeal subsequently arises from the dispute.

### § 16.19 How to calculate deadlines.

In counting days, include Saturdays, Sundays, and holidays; but if a due date would fall on a Saturday, Sunday or Federal holiday, then the due date is the next Federal working day.

### § 16.20 How to submit material to the Board.

(a) Submissions should be addressed to the Board's current mailing address: Department of Health and Human Services, Departmental Appeals Board, Appellate Division—MS 6127, 330 Independence Ave. SW., Cohen Building—Rm. G-644, Washington, DC 20201; however, submissions to the Board in certain types of cases may be made by electronic filing using DAB E-File at <https://dab.efile.hhs.gov>. Changes to the mailing address will be made available on the Board's Web site at [www.hhs.gov/dab/divisions/appellate](http://www.hhs.gov/dab/divisions/appellate).

(b) All submissions after the notice of appeal should identify the Board's docket number (the Board's acknowledgement under §16.7 will specify the docket number).

(c) Unless the Board otherwise specifies, parties shall submit to the Board an original and two copies of all materials. Each submission other than the notice of appeal, must include a statement that one copy of the materials has been sent to the other party, identifying when and to whom the copy was sent.

(d) Unless hand delivered, all materials should be sent to the Board and the other party by certified or registered mail, return receipt requested.

(e) The Board considers material to be submitted on the date when it is postmarked or hand delivered to the Board.

[46 FR 43817, Aug. 31, 1981, as amended at 81 FR 3012, Jan. 20, 2016]

### § 16.21 Record and decisions.

(a) Each decision is issued by three Board members (see §16.5(b)), who base their decision on a record consisting of the appeal file; other submissions of the parties; transcripts or other records of any meetings, conferences or