

SETTLEMENT AGREEMENTS, CDE COMPLAINTS AND DUE PROCESS HEARINGS

*Presentation by Stacy L. Inman
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I.

What happens when a due process hearing has been filed against a school district, a written settlement agreement is entered into by the district and the parents, and then the school district fails to implement the settlement agreement?

Unfortunately, many things can happen. The school district may have a due process complaint filed against it again, it may have a California compliance complaint filed against it, and/or it may have a state or federal lawsuit filed against it. What is critical to realize is that just because a matter has been resolved through a settlement agreement, that does not mean that everything has been accomplished! This presentation will provide information on the steps to take in these situations.

Settlement Agreements:

Current Practice.

The IDEIA (the Individuals with Disabilities Education Improvement Act) contemplates various means of resolving disputes between a local education agency (LEA) and a student in regard to the identification, evaluation or educational placement of a child. There are three main ways to resolve these issues: (1) Mediation only (without due process hearing attached), (2) a “due process” hearing (which includes the new requirements for a resolution process), and (3) the state complaint resolution system.

- A. **Mediation Only.** Mediation only involves the parents/guardians of a student and school officials voluntarily meeting with an impartial third-party mediator to discuss and resolve any differences, including matters arising prior to the filing of a due process complaint. A written signed mediation agreement is legally binding and enforceable in any state court of competent jurisdiction or in a district court of the United States. (20 U.S.C. section 1415(e)(2)(F); 34 CFR 300.506(b)(7).)
- B. **Due Process Hearing and Resolution Process.** The 2004 Amendments to the IDEIA added a resolution process whenever the parents/guardians of a student request a due process hearing. (There is NO resolution process if the LEA files the due process hearing.) This process provides the parties with an opportunity for a pre-hearing meeting to resolve the dispute and, like mediation, allows for a written signed agreement that is legally binding and enforceable in any state court of competent

jurisdiction or in a district court of the United States. (20 U.S.C. section (f)(1)(B); 34 CFR 300.510.)

- C. **State Compliance Investigation.** As part of its general supervisory responsibility, the California Department of Education (CDE) must adopt and implement complaint resolution procedures consistent with the requirements of 34 CFR 300.151-300.153. The state complaint process must be available for resolving any complaint that contains an allegation that a public agency has violated Part B and meets the other requirements of 34 CFR 300.153.

Past Practice:

When the State of California contracted with the McGeorge School of Law to provide due process hearings, many times the state hearing officers reviewed and approved settlement agreements. When a hearing officer was directly involved, the hearing officer would automatically dismiss the due process hearing, with prejudice, in any hearing in which a settlement was reported.

The 2004 IDEIA:

Under 34 CFR 300.507, although the parties have a right to initiate hearings on any matter described in 34 CFR 300.503(a)(1) and (2), relating to the identification, evaluation or educational placement of a child with a disability or the provision of a free appropriate public education (FAPE) to the child, neither the IDEIA nor the final regulations specifically address the authority of hearing officers to review or approve settlement agreements. The IDEIA does NOT specifically address enforcement by hearing officers of settlement agreements reached by the parties. A state may have uniform rules relating to a hearing officer's authority or lack of authority to review and/or enforce settlement agreements reached outside of the mediation or resolution processes contained in the IDEIA. However, such rules must have general application and may not be limited to proceedings involving children with disabilities and their parents/guardians.

Settlement agreements reached through the mediation or due process resolution system are legally binding and can be enforced in any state court of competent jurisdiction or in a district court of the United States. (20 U.S.C. 1415(e)(2)(F); 34 CFR 300.506(b)(7).)

II.

Can a state refuse to consider a complaint by a parent/guardian which alleges a violation based on the LEA's failure to implement a settlement agreement?

In order for the California Department of Education to investigate a complaint, it must contain a statement alleging that the LEA violated a requirement of Part B of the IDEIA. Therefore, a failure to implement an IEP that is based on a settlement agreement would be the basis for a complaint alleging that an LEA is in violation of Part B. Settlement agreements may include an agreement by the parties on the special education and related

services and/or the student's educational placement which would provide FAPE to the child. Settlement agreements also may include an agreement on the specific procedures required to reach a decision on the necessary special education and related services and/or placement that would provide FAPE to the child. Therefore, to the extent that a state complaint alleges that the failure to provide the services or placement called for in a settlement agreement constitutes a denial of FAPE, the (Federal) Office of Special Education Programs and the California Department of Education believe that the Part B regulations at 34 CFR 300.151-300.153 do require the states to investigate and resolve such complaints.

Current Positions of CDE:

Currently, the California Department of Education will enforce settlement agreements between the parents/guardians of a child and an LEA, if the LEA does not fulfill the conditions that it committed to in the settlement agreement. If an LEA enters into a settlement agreement to resolve a due process hearing, and the settlement agreement specifically defines the special education and related services that will be provided to a child, the CDE will require the LEA to perform the obligation delineated in the settlement agreement. This is true even if the LEA did not incorporate the settlement agreement terms into a student's IEP.

Therefore, it is critical for the LEA to maintain their focus to complete the required items that are delineated in the settlement agreement. Many times, LEA administrators are happy to have the matter "settled," then relax and fail to perform some or all of the required elements of the settlement agreement. Every term which the LEA agrees to perform must be performed, or else the CDE will mandate performance and/or even issue sanctions against the school district.

Additionally, it is critical for the LEA to incorporate the terms of the settlement agreement into an IEP. In that way, the District has documented what they have agreed to perform in an IEP, which is more typically reviewed by special education personnel in order that the student is receiving all of their special education and related services.

Finally, if an LEA has a CDE complaint filed against it for failure to perform a settlement agreement, the best move for the LEA to make is to "call your lawyer!"

Different strategies are better for different districts. Maybe your district should just respond to the CDE complaint; perhaps your district should file a due process complaint itself and request that the CDE hold its investigation in abeyance because the due process hearing addresses the same issue; or finally, it may be in the school district's best interest to go directly into state or federal court in order to protect itself from parents' lawyers.

BE PROACTIVE!! CALL SCHOOLS LEGAL SERVICE!!

EXAMPLE OF

CALIFORNIA DEPARTMENT OF
EDUCATION

SPECIAL EDUCATION DIVISION

INTENT TO IMPOSE SANCTION
NOTICE