



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

February 12, 2010

James Irby, Esq.
The Law Firm of James Irby, P.C.
120 East Tennessee Street
Florence, Alabama 35630

Dear Mr. Irby:

This letter is in response to your June 19, 2009 letter to Patricia Guard, former Acting Director of the Office of Special Education Programs. You requested guidance regarding parent participation in resolution meetings conducted under Part B of the Individuals with Disabilities Education Act (IDEA) consistent with 34 CFR §300.510.

You ask whether it is consistent with 34 CFR §300.510(a)(1) for the parent's attorney to instruct the parent to attend the resolution meeting, but "not to agree to anything or to sign anything." In such scenarios, you ask whether the local educational agency (LEA) has a right to resolve the matter without protracted and expensive litigation and is "denied their right to resolve" the dispute by the attorney's instructions. You ask whether a hearing officer, may dismiss, with prejudice, a due process hearing complaint based on the parent's refusal to agree to the resolution that the LEA has proposed at the meeting and whether the public agency has a right to seek dismissal under this situation. We interpret your questions as seeking guidance in situations where the parent participates in the resolution meeting, but the attorney insists on proceeding to a due process hearing to resolve the matter.

We believe that the purpose of the resolution meeting is for the parent to discuss the due process complaint and the facts that form the basis of the complaint so that the LEA has an opportunity to better understand, and possibly resolve, the dispute without either side expending additional time and resources in a due process hearing. While 34 CFR §300.510 requires that the parent participate in the resolution meeting, nothing in the IDEA or its implementing regulations requires that the parent agree to a specific resolution proposed by the LEA or agree to a resolution during the resolution meeting. The regulations also contemplate that the parties may wish to use mediation instead of, or after, the resolution meeting. 34 CFR §300.510(c).

The IDEA and its implementing regulations do contain provisions that may reduce or shift attorney's fees where the parent or attorney unreasonably delays resolution of the dispute. First, the IDEA prohibits an award of attorney's fees for work done subsequent to a written offer of settlement made consistent with Rule 68 of the Federal Rules of Civil Procedure or, for an administrative proceeding, at any time more than 10 days before the proceedings begin, where the offer is not accepted and the court or hearing officer finds the relief finally obtained by the parent is not more favorable than the offer of settlement. 34 CFR §300.517(c). Also, a

prevailing LEA may be awarded attorney's fees "against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation." 34 CFR §300.517(a)(ii). In addition, a prevailing LEA may be awarded attorney's fees "against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation." Finally, where the court finds that "the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy" and the court finds that the State or LEA did not unreasonably protract the final resolution of the action or proceeding or violate section 615 of the IDEA, then the court reduces, accordingly, the amount of attorney's fees awarded to a prevailing parent. 34 CFR §300.517(c)(4) and (5).

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have questions, please do not hesitate to contact Laura Duos at 202-245-6474 or by email at Laura.Duos@ed.gov, or Deborah Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

A handwritten signature in black ink that reads "Alexa Posny". The signature is written in a cursive, flowing style.

Alexa Posny, Ph.D.
Acting Director
Office of Special Education Programs