



"How I Advise My Clients" is a Special Ed ConnectionSM feature that provides expert opinions from attorneys and education consultants for overcoming common problems and core challenges in the field. Each installment will include insights from multiple stakeholders, offering you a variety of perspectives to strengthen your efforts to serve students with disabilities.

'HOW I ADVISE MY CLIENTS': Should district offer settlement agreement in middle of due process?

Parties involved in a special education dispute may reach a settlement agreement through different methods. Most settlement agreements are developed and executed during the alternative dispute resolution processes outlined in the IDEA. *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Educ. Act (Part B)*, [61 IDELR 232](#) (OSEP 2013).

But what if a due process hearing has already begun? Can you still settle?

It's important for districts to understand the potential benefits and drawbacks of offering a settlement agreement in the middle of a due process hearing. Why would it be a good idea to make an offer? When would it not make sense to make an offer?

Special Ed ConnectionSM asked these and other questions to experts in the field. Consider their responses, edited for length and clarity:

□ **Julia V. Wilde, school attorney, Shipman & Goodwin LLP, Hartford, Conn.:**

A settlement agreement can be offered and negotiated at any point, even when the hearing is already underway. Consider these issues before making an offer:

- **Why it may make sense to offer a settlement agreement.**

Offering a settlement during due process can be a good idea for a variety of reasons. Chief among those are goals of rebuilding or repairing relationships with families and conserving district resources.

Ongoing litigation can be very stressful for families and district staff alike. It may be that offering a settlement can provide an opportunity to move forward without continuing to engage in protracted litigation. It can provide an opportunity to really focus on a continued relationship with a shared goal and focus on a child's educational needs.

It may, at a certain point, also make better financial sense for a district to consider settlement, particularly in cases when hearings are complex and drawn out over longer periods of time.

Settlement agreements can also provide an opportunity for the parties to be more creative when it comes to resolution; whereas, the remedies available to a hearing officer may be much more limited.

- **What to think about before making an offer.**

Districts should work with their counsel to consider the individual circumstances of each case and each student. Factors to consider generally could include educational impact on the student, fiscal and human resource impacts on the district, the risks and uncertainties inherent in litigation, and whether an adverse decision could be precedential and/or have negative implications.

- **When it may not make sense to offer a settlement agreement.**

In some circumstances, it simply may not make sense to offer a settlement during due process. It may be that settlement efforts have been exhausted through alternative dispute resolution processes already. Or the district simply cannot make any proposal that the family would accept. If settlement discussions would be futile, or in less-complex cases where the risk of uncertainty or an adverse outcome is low, it may be best to stay the course. In some circumstances it really is helpful to have a matter fully adjudicated by an impartial hearing officer for purposes of clarity going forward.

□ **Patrick Andriano, school attorney, Sands Anderson PC, Richmond, Va.:**

Districts can, and often should, offer settlement agreements in the middle of due process. As observed by the 3d U.S. Circuit Court of Appeals, "settlement agreements are encouraged as a matter of public policy because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by courts." *D.R. v. East Brunswick Bd. of Educ.*, [25 IDELR 734](#), 109 F.3d 896, (3d Cir. 1997). Follow the suggestions below:

1. Consider good reasons to settle. There are numerous benefits for parents and districts to settling after a due process hearing has started. These include:

- Due process proceedings can be incredibly expensive, time consuming, and stressful for school staff and parents. The cost-benefit analysis as to settlement may shift as the due process hearing progresses.
- Pro se parents may not fully realize the extent of a due process proceeding at the outset and may be more willing to settle after experiencing a portion of the process.
- Sometimes hearing officers unintentionally signal an inclination to support one position or another. Reading the tea leaves may lead to a decision to offer a settlement agreement.
- A voluntary resolution offers less risk than placing the decision in the hands of a hearing officer.
- A district may preserve its relationship with a family. Districts are in a unique position. Regardless of the outcome of the due process hearing, the relationship with the family continues until the student either graduates with a regular diploma or reaches the age of 21.
- The facts of the case may not be favorable to the school district, or there may be concerns that the district failed to comply with the IDEA or its implementing regulations.
- The district counsel may later learn that the parent is seeking something more reasonable than the district previously thought, so it might make sense to offer it through an agreement.

2. Think before making offer. Districts should think about these issues before offering a settlement agreement:

- The diversion of staff and resources away from their educational purpose, as well as other impacts on school staff, including stress.
- The possibility that the parents may attempt to introduce evidence of the settlement offer in the hearing.
- The likelihood of a favorable decision should the hearing proceed.

- The reasonableness of the demands made by the parents to resolve the issues.
- Whether a resolution would be appropriate for the student and provide him with FAPE.

3. Recognize when not to settle. If the district has concerns about setting a particular precedent, it may choose not to settle. Review these other reasons not to settle:

- If the district believes that the parents' request(s) would not provide the student with FAPE.
- When the likelihood of prevailing is relatively high.
- If the district is doubtful about its ability to properly implement the terms.

Editor's note: This feature is not intended as instructional material or to replace legal advice.

See also:

- [Fumbled IEP implementation? Here's how to recover](#)
- [Resolution Sessions and Mediation Under the IDEA: Settling Disputes Without Due Process Hearings](#), by Jason H. Ballum, Esq.
- [IEP and 504 Plan Implementation Strategies for Compliance and Student Success](#), by Joseph L. Pfrommer, Esq.

[Cara Nissman](#) covers autism, school psychology, and IEP team issues for LRP Publications.

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