

DOE CASE RECEIVES PARTIAL SETTLEMENT TODAY

Ohio's long standing lawsuit regarding the free, appropriate, public education (FAPE) of children with disabilities ages three through twenty-one has received a partial settlement agreement today, October 20, 2009.

This suit is in the Federal District Court, Judge Holschuh presiding. It is known as John Doe v. State of Ohio. The lawsuit has two parts. The first part is a challenge to the way Ohio funds special education and related services.

The second part is a challenge to the Ohio Department of Education's (ODE) procedures for implementing the Individuals with Disabilities Education Act (IDEA).

This lawsuit was brought by parents of students with disabilities in Ohio who want their children to receive FAPE. The second part of the suit is the subject of the partial settlement, the challenges to Ohio's procedures for implementing IDEA.

The challenges raise four matters:

1. The way ODE monitors local school districts and other agencies compliance with the IDEA.
2. The way ODE handles school districts' requests for waivers of state standards controlling the delivery of special education services.
3. The way ODE operates its system for handling complaints about special education matters.
4. The way ODE corrects school districts' failure to comply with the IDEA.

For over a year, the parties have been negotiating an agreement for a partial settlement which resolves the claims about the way ODE implements the federal law, IDEA. The parties have written the agreement in a document called a "Consent Order". The judge, in a hearing held on October 20, 2009, declared the "Consent Order" final, with regard to the issues above.

The Consent Order requires ODE to identify and correct violations of federal and state special education law. Since this case was a class action, it applies to all children in Ohio who are receiving or who should be receiving special education and related services. The final order requires:

1. ODE to provide public involvement and access to information regarding its IDEA monitoring systems. Local school districts must post for public review local districts' performance and hold open meetings to hear concerns.
2. ODE must provide protections and additional oversight when a waiver to the state requirements for class size are requested by schools. Parents in the district whose children would be affected by allowing the rules on class size, case load and other

factors, must now be given notice of requests for such waivers before ODE can decide to give the waiver. Waivers cannot deny FAPE to affected students.

3. ODE must provide additional notice to parents/guardians of the complaint process and advocacy resources when a parent files a state level complaint. ODE is required to conduct a more thorough investigation of complaints which challenge the delivery of FAPE, or a school's failure to implement due process hearings or state level review decisions, and the inappropriate use of restraints or seclusion. ODE must correct violations of the law in a timely manner.
4. ODE must enforce complaint timelines and mediation cannot delay these timelines.
5. ODE must enforce state and federal standards and require a district to correct failures within one year. Penalties may be applied for failure to correct.

This decision is final and the Consent Order is in effect and lasts for 2 years.

Please visit www.olrs.ohio.gov/ to read the Order.