

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

██████████, *et al.*,

Plaintiff

v.

SUSAN TAVE ZELMAN, *et al.*,

Defendants

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) Civil Action 2:06-cv-00389
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) JUDGE JAMES L. GRAHAM
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) Magistrate Mark R. Abel
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AGREED ORDER OF SETTLEMENT

1. Defendant Zelman and Defendant State of Ohio, Board of Education (“the State Defendants”) desire to resolve Plaintiffs’ claims against the State Defendants without acrimonious litigation and make the following agreements without conceding wrongdoing or liability.
2. The State Defendants shall train all Independent Hearing Officers (“IHO”) and State Level Review Officers (“SLRO”) employed by the Ohio Department of Education (“ODE”) that:
 - a. 20 U.S.C. §1415(b)(7)(A)(ii) does not require a due process complaint to reach the level of specificity and detail of a complaint in a court of law;
 - b. That the purpose of the sufficiency requirement is to ensure that the other party will have an awareness and understanding of the issues forming the basis for the complaint; and
 - c. That due process complaints should be construed in light of *Schaeffer v. Weast*, 126 St. Ct. 528, 532 (2005), and *Escambia County Board of Education v. Benton*, 406 F. Supp. 2d 1248, 1259-1260 (S. D. Ala 2005).
 - d. IHOs shall be instructed that the standard in *Schaeffer* and *Escambia* for reviewing the sufficiency of a due process request is a minimal pleading standard and is lower than the standard for reviewing complaints in court.
3. The State Defendants shall ensure that ODE posts redacted copies of all decisions resolving sufficiency challenges on its website. Redacted copies of decisions for the period July 1,

2005 through the date of signing of this Order shall be included on the website. All such decisions shall be posted not later than 45 days after the date of signing of this Order.

4. Dissemination and training

- a. The State Defendants shall provide a copy of this order to every IHO not later than seven days from the date of entry of this order and include a copy of this order on the ODE website in a manner which is easily accessible by parents.
 - b. The State Defendants shall ensure that the IHO training set forth in ¶2 shall be completed not later than six months from the date of entry of this order.
 - c. The State Defendants shall ensure that every training session for IHOs in the future shall include instruction consistent with this order.
5. The State Defendants shall ensure immediately that all parties to any due process proceeding are provided the same notices at the same time for all phases of due process.
6. The State Defendants shall ensure immediately that all parties to a due process hearing receive a clear explanation of the procedure for appointment of the Sufficiency Hearing Officer and IHO and the functions and responsibilities of each.
7. Upon receipt of a sufficiency challenge, ODE shall immediately appoint a Sufficiency Hearing Officer to review the sufficiency challenge in accordance with the following.
- a. The Sufficiency Hearing Officer shall make a determination on the face of the due process complaint in not less than five days after receipt of the notification of the sufficiency challenge.
 - b. The Sufficiency Hearing Officer shall convey written notice of the determination on all parties on the same date the determination is made.
 - c. If the complaint for due process is determined to be insufficient, the notice shall include
 - i. reasons for the determination of insufficiency.
 - ii. a statement in clear language that the case has not been dismissed.
 - iii. the case cannot go to hearing until a due process notice is filed which meets the requirements of 1415(b)(7)(A)
 - iv. notice of resources to assist parents without counsel in completing due process complaints and in correcting deficiencies included in the finding of insufficiency by the Sufficiency Hearing Officer, including, but not limited to the identity and contact information of the person named in paragraph 14.

- d. The determination of insufficiency shall not result in dismissal of the case by the Sufficiency Hearing Officer. The determination shall be forwarded to the hearing officer assigned to the case pursuant to O.A.C. § 3301-51-08.
 - e. Nothing herein shall preclude ODE from amending its regulations to change its hearing officer selection procedures so that a single hearing officer hears both the sufficiency challenge and the case itself. In the event of such a change, all other provisions of this paragraph shall remain in effect.
8. The State Defendants shall ensure that the hearing officer assigned to a case in accordance with the requirements of O.A.C. § 3301-51-08 or in accordance with an amended IHO selection regulation as set forth in paragraph 7 above, will hear all phases of the case including, but not limited to whether a determination of insufficiency should result in amendment or in dismissal of the due process complaint. This is to ensure that the process for reviewing sufficiency challenges is integrated into the process of clarifying issues prior to a due process hearing.
 9. The State Defendants shall instruct IHO's and SLRO's immediately that when the IHO or SLRO permits amendment of a due process complaint the amendment relates back to the date of initial filing of the original due process complaint.
 10. The State Defendants shall instruct the Sufficiency Hearing Officers immediately that when a complainant has filed an otherwise sufficient due process complaint in a non-disciplinary case, the complaint will not be dismissed because the complainant has requested an expedited hearing. Sufficiency Hearing Officers shall only make determinations on sufficiency issues.
 11. The State Defendants shall ensure immediately that when a pro se complainant files a complaint for due process, ODE provides specific notice of availability of mediation, procedures for requesting mediation, and availability of mediation whether or not a complaint is dismissed for insufficiency.
 12. The State Defendants shall ensure that the written materials that ODE provides to parents explaining due process procedures and requirements for sufficient due process complaints are reviewed so that they are clear and comprehensible to pro se parents and the general public. Such notice shall be prepared in consultation with a communication professional.
 13. The State Defendants shall ensure that ODE revises its due process form to enlarge the space on the form for explaining the problem of the child with a disability and/or his parent and for the proposed resolution, encouraging and facilitating a more complete presentation of the problem and the relief sought.
 14. The State Defendants shall ensure that when a parent calls ODE with questions about what must be in a due process complaint the parent's questions are answered by an employee qualified to address the issues.

15. When ODE propose new regulations governing due process procedures and appointment and authority of hearing officers, ODE shall take all steps reasonably necessary and available to adopt regulations which incorporate the provisions of this Agreed Order and shall not be in conflict with any of the provisions of this Agreed Order.
16. The State Defendants shall provide Plaintiffs with a list of all persons whose complaint was dismissed on sufficiency grounds from July 1, 2005 through the date of signing of this Order. Plaintiffs' counsel shall serve the following on all such persons with language which has been approved by the parties:
 - a. A copy of this order
 - b. Notice of their right to file a complaint for due process
 - c. Notice that the complaint shall be subject to requirements of this Order
 - d. Notice that if their new complaint is found sufficient that the IHO will have authority to apply equitable tolling of the limitation period set forth in 20 U.S.C. 1415(e).
17. *Whose IDEA Is This* Shall be revised to incorporate the provisions of this Order. There shall be a summary of the changes made as a result of this order which accompanies the revised version of *Whose IDEA Is This* for a period of not less than six months from the date of signing of this Order. A copy of the order and an explanation of the changes shall be published on the ODE Web Site.
18. Further proceedings:
 - a. In subsequent stages of this litigation, the State Defendants shall not oppose or take a position contrary to the Plaintiffs' position that the due process complaint filed by named Plaintiffs on February 28, 2006, meets the requirements of 20 U.S.C. § 1415(a)(7)(A)(ii).
 - b. The State Defendants shall not take any position contrary to the requirements of this Order in any further proceedings before this Court or in any proceedings related to remand of this action.
 - c. Upon any remand by the District Court, the case on the merits shall be returned to Robert St. Clair as the IHO originally assigned and proceed from the state of the record as it existed on the date that Plaintiffs filed their due process complaint in that case.
19. The parties acknowledge that the requirements of this Order have been developed subject to law and precedent in effect at the time of signing of this Order. In the event that any applicable statute or controlling authority appears to alter the terms of this Order, the parties shall meet to review the requirements in light of such change.

20. This Court shall retain jurisdiction over this case until the State Defendants have promulgated regulations which conform to the requirements of this order and applicable Federal and Ohio law.
21. The parties agree that upon entry by the Court, this settlement finally resolves all of Plaintiffs' claims against the State Defendants that were or could have been raised in this case, with the following exceptions: claims as stated in Paragraph 22 below; claims for enforcement of this agreement; and personal injury claims unrelated to education and unknown to Plaintiffs as of the date of the Court's entry of this Agreement. Plaintiffs presently know of no personal injury claims.
22. The State Defendants agree that Plaintiffs are prevailing parties with respect to systemic issues related to sufficiency challenges in the above captioned litigation. The Parties reserve all rights with respect to the issue of attorney's fees which shall be presented to the Court for decision.

Dated

James Graham, U.S. District Court

Approved and Agreed to:

Ss/ Franklin Hickman
Counsel for Plaintiffs

Ss/ Todd R. Marti
Counsel for Superintendent Zelman
and the State of Ohio, Board of Education