



IDEA Complaints and Due Process

California Association of School
Social Workers (CASSW)

CSU Fresno
April 13, 2016

Presented by
Amanda E. Ruiz

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What's Ahead

CDE Complaints

OCR Complaints

Mediation Only

Due Process Hearings



Overview of the Law

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FAPE

To provide a FAPE districts must:

- Identify, locate, and assess students with suspected areas of disability (a.k.a. "child find");
- Develop an appropriate IEP for each eligible child; and
- Implement the IEP in a timely and consistent manner.

FAPE

Some examples of **substantive** FAPE violations:

- Not addressing all of student's needs;
- Not offering sufficient services; and
- Failure to implement some part of a student's IEP.

Some examples of **procedural** FAPE violations:

- Missed timelines;
- Missing IEP team members; and
- Failure to provide prior written notice.

CDE Complaints

CDE Complaints

- California Department of Education receives and investigates complaints alleging noncompliance with special education laws.



CDE Complaints: *Jurisdiction*

- When LEA fails to comply with:
 - applicable law or regulation governing special education
 - due process procedures
- When Complaint indicates:
 - child may be in immediate physical harm; or
 - health/safety/welfare of a child is threatened
- When Student does not receive the services in his/her IEP

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Process

- (1) Complaint
- (2) Notification of Investigation
- (3) Request for Information
- (4) Response
- (5) Investigation Report



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Timelines

Decision: 60 Days

Appeal/ Reconsideration: 30 Days

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OCR Complaints

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OCR Complaints: Jurisdiction

- The Office of Civil Rights receives and investigates complaints alleging violations of:
 - Section 504 of the Rehabilitation Act of 1973
 - Age Discrimination Act of 1975
 - Title II of the Americans with Disabilities Act of 1990
 - Title VI of the Civil Rights Act of 1964 *race*
 - Title IX of the Education Amendments of 1972 *gender, pregnant/parenting*
 - Boy Scouts of America Equal Access Act

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Process

1. Complaint Notification
2. Investigation
 - A. Data requests
 - B. Interviews
3. Letter of Findings



OCR Complaint Process

Trends:

- Bullying
- Service animals
- Sex discrimination
- Discipline
- Instructional minutes
SPED + reg.



transgender + restroom facilities

OCR Interviews



- Preparation
- Objectives
- Telephonic/ In-person
- Counsel
- Minors

Resolution Process

Prior to Letter of Findings

- Early Complaint Resolution
- Voluntary Resolution Agreement
- Monitoring of Implementation

After Letter of Findings

- No Voluntary Resolution
- Letter of Impending Enforcement Action
- Administrative Enforcement Action

Responding to the Complaint

- Response
- Declarations
- Exhibits



CDE/OCR Complaints: Role of Administrator

Once a complaint is received:

- Gather facts
- Consider contacting attorneys
- Conduct internal investigation
- Prepare response



CDE/OCR Complaints: Role of Administrator

If Corrective Action/ Resolution Agreement

- Calendar deadlines
- Inform staff of any items they are responsible for
- Evidence of compliance



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CDE/OCR Complaints: Potential Remedies

- Develop procedures to address issue
- Prepare memorandum to staff to remind them of legal requirements
- Order District to Convene IEP meeting
- Compensatory Education



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Potential Remedies

9th Circuit:

Attorneys' fees available for successful CDE complaint.



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Mediation-Only




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Mediation Only & Due Process

The Office of Administrative Hearings presides over Mediations and Due Process Hearings


OAH has jurisdiction to hear claims arising under the Individuals with Disabilities Education Act (IDEA).



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OAH Statistics: 2014-2015 Fiscal Year

Requests	
Mediation-Only Request	224
Hearing Request	3714
Outcomes	
Settlement at Resolution Session	166
Settlement at Mediation	1375
Settled Elsewhere	1408
Hearing Decisions	79



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What Is Mediation-Only?

A request to resolve a dispute through the mediation process, prior to filing for a due process request.

- Enables resolution of disputes prior to hearing
- Non-adversarial in nature
- No attorneys



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Mediation-Only

Confidentiality:

anything in due process hearing

- May not be used as evidence in a due process hearing
- Includes oral communications and documents prepared for/during mediation
- No mediator may testify at a hearing

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Mediation-Only

What to Expect:

- Mediator introduces herself and her role
- Mediator lays ground rules
- Each party provides a brief summary of its position
- Negotiations begin—private meetings are called "caucuses"
- All reasonable options are explored

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Mediation-Only

- Scheduled within 15 days after state receives the request
- Completed within 30 days after receipt of request
- State bears the costs



Mediation-Only

Mediation can also be held:

- After a due process hearing complaint is filed, OR
- After the hearing has begun – *not usually mediation at this point*



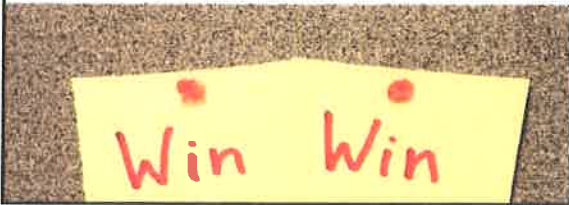
Mediation-Only: Role of Administrator

- Ensure you have authority to settle on day of mediation
- Know student's case history
- Determine appropriate parameters of settlement, if applicable
- Consider all options



What Happens If Mediation Resolves the Conflict?

- Parties must execute a legally binding agreement that:
 - Sets forth the **resolution**
 - **Signed** by both parties
 - **Enforceable** by any state or federal district court



Mediation-Only: No Agreement

What happens if mediation fails?

- Parties may file for due process
- Mediator may assist in identifying issues
- Parents must be notified of their rights

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Due Process Hearing

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Due Process Procedures (Overview)

- Complaint
- Response
- Resolution of Session
- Mediation
- Hearing
- Hearing Decision
- Appeal



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Parent Filed Complaint

- Parent/guardian may file a complaint for any alleged violation of the IDEA
- Two-year statute of limitations
 - The violation occurred not more than two years before filing party knew or should have known about the action

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District-Filed Complaint

- District may file a complaint if: *continuing*
- Parent refuses to consent to an IEP or assessment plan
 - Parent requests an IEE at public expense
 - Two-year statute of limitations



district has obligation to file

The Complaint

Complaint must include

- Name and address of the child
- Name of the school
- Description of the problem
- Facts and a proposed resolution



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Notice of Insufficiency

What if the complaint isn't adequate?

Notice of Insufficiency

- 15 days to file
- Grounds: complaint does not meet the formal requirements or give adequate notice of the issues
- Hearing officer decides in 5 days

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Notice of Insufficiency

What happens if the complaint is found to be insufficient?

- The complaining party may file an amended complaint
- The amended complaint restarts all timelines



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Response

- 10 days to respond
- Must include:
 - Explanation of District actions
 - Description of other options considered
 - Description of evaluation procedures, assessment, record, or report used as basis of action
 - Other relevant factors

Resolution Session



Resolution Session: Role of Administrator

- Arrange meeting with Parents
- Know student's case history
- Consider all options
- Draft agreement if resolution is reached

Resolution Session

- Need not be held if
 - Parties agree to waive the meeting
 - Parties use mediation process instead



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Resolution Agreement



- If settlement, parties must execute a legally binding agreement
- Cooling off period

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Pre-Hearing Mediation



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Voluntary

10-Day Settlement Offers

- Attorneys' fees will not be awarded for legal services provided after an offer of settlement if:
 - Offer is timely made (more than 10 days before proceeding)
 - Offer is not timely accepted (within 10 days)
 - Relief granted is not more favorable than the offer

Prehearing Conference Statement

- Clarify issues and raise pre-trial motions



Burden of Proof

- Burden of proof is on the party seeking relief in an administrative hearing under the IDEA.



The Judge

- Hearings are conducted by administrative law judges (ALJ)
- Will never have the same ALJ in hearing and mediation
- One pre-emptory challenge



Parental Rights

- Open or closed hearing
- Presence of the child at issue
- Interpreter



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Due Process Hearings

- Each party to a hearing has the right to:
 - Present evidence
 - Confront, cross-examine, and compel witness attendance
 - Prohibit introduction of evidence not disclosed at least 5 days before the hearing

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Hearing: Role of Administrator



- Exhibits
- Witnesses
- District's representative at hearing
- Testimony

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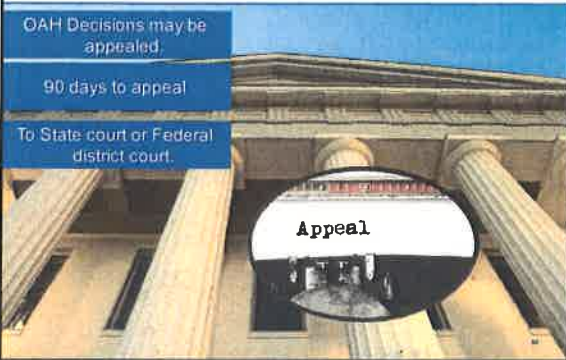
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Appeals

OAH Decisions may be appealed.

90 days to appeal

To State court or Federal district court.



Appeal

appeal to state or federal court

Potential Remedies

- Compensatory Education - *hours*
- Change of Placement
- Assessment
- IEE
- IEP
- Reimbursement
- Attorneys' fees



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recall

Attorneys' Fees

- A court may award reasonable attorney's fees as part of costs.
- Awarded to:
 - Parent
 - LEA



Potential Remedies


- 685 hours of compensatory education
Student v. Clovis Unified School District (2008)
OAH Case No. 2008080686.
- 600 hours of compensatory education
Student v. Ravenswood City School District (2010)
OAH Case No. 2010020941.



Potential Remedies

What about prospective private placement?

Takeaway



- Take an active role in responding to Complaints.
- Consider Early Resolution Strategies.
- Prepare!

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Office of admin Hearing (OAH)
state civil agency - out of Secto,
LA, Monterey,

Questions



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Education

J.D., University of San Diego School of Law

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Charter Schools

Bar Admission

California, 2012

Overview

Amanda E. Ruiz is an Associate in Lozano Smith's Fresno office. Ms. Ruiz represents school district clients, focusing on the Labor & Employment, Students, Special Education and Charter Schools practice areas. Ms. Ruiz has experience as a full-time staff attorney at a County Counsel's Office, where she counseled and represented the County in civil and criminal cases, including civil commitment proceedings, bench trials, and examination of witnesses. Her experience extends to the California Welfare and Institutions Code, California Evidence, Criminal, Probate, Family Law, and Civil Procedure. She has represented county departments of behavioral health, social services and agriculture, and assisted with research and drafting of documents related to a high-profile personnel matter and Public Employment Relations Board appeal.

During law school, Ms. Ruiz was a legal intern for the California Attorney General's Office, Criminal Division and the San Diego Public Defender. She also served as a judicial extern for the Honorable Charles S. Poochigian, California Court of Appeal. These experiences have given her deep experience in analytical and legal research and writing.

Education

Ms. Ruiz earned her Juris Doctor degree from the University of San Diego School of Law. She earned her Bachelor of Arts degree in Political Science from the University of California, Los Angeles.

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- Community Colleges
- Facilities and Business
- Labor and Employment
- Litigation
- Local Government / Municipal Law
- Public Finance
- Special Education
- Students
- Technology and Innovation

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