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MEDIATED SETTLEMENT AGREEMENTS UNDER THE IDEA ^{a1}

The Individuals with Disabilities Education Act (IDEA)¹ provides for adjudication at the administrative level prior to that at the judicial level.² In the 2004 Amendments of the IDEA, Congress fine-tuned the adjudicative provisions in an effort to reduce or reverse the continuing upward trajectory of litigation at both the administrative and judicial levels.³ One of the various revisions⁴ was to reinforce the mechanism for mediation by (a) allowing for the opportunity for mediation prior to filing for an impartial hearing⁵ and (b) adding the following provision for mediated settlement agreements (MSAs):

In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that—(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; (ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and (iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.⁶

*² In light of the paucity in the literature,⁷ the purpose of this brief article is to provide an overview of the case law specific to MSAs.⁸ The issues of this case law range widely from validity to confidentiality of MSAs.

Validity

Among the various statutory specifications for MSAs,⁹ the one that requires signing by persons with appropriate authority was the focus of a case in New Jersey. Specifically, the court ruled that MSAs are not enforceable where evidence is lacking that the signatories had the authority of the respective parties.¹⁰ In this case, the court concluded that the MSA was not valid because neither of the two signatories, who were both attorneys, evidenced express or implied authority to bind their respective clients, who were the parents and the district.¹¹

Confidentiality

The aforementioned¹² confidentiality provision refers specifically to the discussions in mediation, not the contents of the MSA. In awarding attorneys' fees to the prevailing parents in an IDEA case, the Fourth Circuit Court of Appeals

refused to consider the school district's 10-day offer argument¹³ because the offer referred to conditions within the mediation discussions and, thus, confidential.¹⁴

Exhaustion

Extensive case law authority has established that the IDEA, with limited exceptions, requires exhaustion of its administrative adjudication process—i.e., the impartial hearing and, in the relatively few states with a second tier,¹⁵ the review officer level—prior to judicial decision-making.¹⁶ A pair of cases in *3 California required exhaustion of the IDEA's administrative adjudication process prior to bringing suit in court to enforce the MSA.¹⁷ In a subsequent California case, the court ruled that the school district's claim of money damages for parent's breach of the second of two successive MSAs fit in an exception for exhaustion requirement.¹⁸ More specifically, the court concluded that the relief the plaintiff-parents sought—noneducational damages—was not available under the IDEA and, thus, did not require exhaustion of the hearing officer process.¹⁹

As a side, state issue, a Texas appellate court ruled that the exhaustion doctrine required the plaintiff-parents to obtain a school board's decision regarding the administration's action to transfer a student prior to judicial consideration of the MSA that allegedly prohibited the transfer.²⁰ The basis of the decision was the school board's exclusive transfer authority, thus triggering the exclusive rather than primary jurisdiction doctrine under state law.²¹

Enforcement

A statutorily settled avenue for enforcement of an MSA is via a breach of contract action in court.²² For example, in the aforementioned²³ California case, the federal court eventually, after exhaustion, ruled in favor of the school district in response to not only the parent's breach of contract and IDEA claims for the first of the two MSAs but also the district's counterclaim under the indemnity clause of the same MSA.²⁴

A less settled issue is whether the IDEA impartial hearing is an available avenue for enforcement of an MSA. Straddling the fence, a federal court in Ohio adopted an ad hoc approach, concluding that whether a hearing officer has authority to enforce MSAs depends on various factors.²⁵ In this particular case, the court tentatively answered the question in the affirmative in the form of a temporary restraining order based on (1) the overlap between the breach of contract and the core jurisdiction of the hearing officer for the issue in this MSA—free appropriate public education; (2) the possible applicability of *Younger* abstention doctrine; and (3) the unique nature of a settlement agreement that is mediated.²⁶

*4 A final possible avenue of judicial enforcement is the state complaint resolution process under the IDEA.²⁷ Although not subject to case law specifically on point, the decisions supporting this alternative for enforcing hearing officer decisions arguably extends to enforcement of MSAs.²⁸

Attorney's Fees

The final subject of the case law to date is the intersection of attorney's fees and MSAs. In general, the courts have agreed the prevailing parents are entitled to attorney's fees under the IDEA as a result of judicial imprimatur,²⁹ which extends to a settlement agreement that a hearing officer approved in the form of a consent decree or incorporated order.³⁰ For MSAs specifically, the case law is limited to other variations. In the twice-mentioned³¹ California case, the court awarded partial attorney's fees to the district under the terms of the indemnity clause of the first of the parties' two

MSAs.³² More recently, a federal court in Texas denied awarding attorney's fees to parents under the IDEA, refusing to allow the MSA as additional evidence after they inexcusably hid it during previous proceedings.³³

Conclusion

In sum, the limited but increasing case law concerning the specialized topic of MSAs under the IDEA suggests the following pointers for practitioners:

- Make sure that the MSA is not only in writing but also signed by either parties and/or agents that have their binding authority.
- Because mediation discussions are confidential, the part(s) of the MSA that memorialize those discussions are likely to be confidential as well.
- The forums for enforcement of an MSA start but do not necessarily end with federal and state courts, with state courts probably the best choice *5 due to their dual jurisdiction for the IDEA and breach of contract; however, do not neglect to fulfill the exhaustion doctrine.
- Obtaining the imprimatur of the hearing officer or higher adjudicative authority may well qualify the parents for attorney's fees, although resolving the matter within the MSA may well be a more efficient alternative.

Footnotes

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¹ 20 U.S.C. §§ 1401 *et seq.* (2013). The IDEA regulations are at 34 C.F.R. §§ 300.1 *et seq.* (2013).

² States have a choice of limiting the administrative adjudication to an impartial due process hearing or adding a second tier in the form of a review officer. *Id.* § 1415(g)(1) (2013). An increasing majority of states have opted for a one-tier system. *See, e.g.*, Perry A. Zirkel & Gina Scala, *Due Process Hearing Systems under the IDEA: A State-by-State Survey*, 21 J. DISABILITY POL'Y STUD. 3 (2010). At the next stage, the IDEA provides concurrent jurisdiction to state and federal courts. 20 U.S.C. § 1415(i)(2)(A).

³ *See, e.g.*, Perry A. Zirkel, *Longitudinal Trends in Impartial Hearings under the IDEA*, 303 Ed. Law Rep. 1 (2014); Perry A. Zirkel & Brent L. Johnson, *The "Explosion" in Education Litigation: An Updated Analysis*, 265 Ed. Law Rep. 1 (2011).

⁴ Other provisions included, for example, resolution meetings and reverse attorneys' fees. 20 U.S.C. §§ 1415(f)(1)(B) and 1415(i)(3)(B)(i)(II)–(III).

⁵ *Id.* § 1415(e)(1) (2013). Mediation is discretionary 34 C.F.R. § 300.152(a)(3) (2013).

⁶ *Id.* § 1415(e)(2)(F) (2013). The next subsection provides: "Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding." *Id.* § 1415(e)(2)(G).

⁷ A search yielded only one article, which was limited to the confidentiality of MSAs. Ellen E. Deason, *Enforcing Mediated Agreements: Contract Law Conflicts with Confidentiality*, 35 U.C. DAVIS L. REV. 33 (2001) (arguing that confidentiality should not be absolute or uniform, giving way, for example, to fraudulent or coerced agreements).

8 Due to the mediation focus, the coverage does not extend to settlement agreements more generally under the IDEA. See, e.g., [20 U.S.C. § 1415\(f\)\(1\)\(B\)\(iii\)](#) (providing for a legally enforceable written settlement agreement in cases resolved at the resolution-session stage of the prehearing process); [S. Kingstown Sch. Comm. v. Joanna S.](#), 772 F.3d 344, 312 Ed. Law Rep. 507 (1st Cir. 2015) (enforcing settlement agreement in relation to private evaluations); [I.K. v. Haverford Sch. Dist.](#), 567 Fed. Appx. 135, 307 Ed. Law Rep. 738 (3d Cir. 2014) (enforcing release in IDEA settlement agreement).

9 See *supra* text accompanying note 6.

10 *Lenape Reg'l High Sch. Dist. Bd. of Educ. v. G.P.*, 55 IDELR ¶ 49 (D.N.J. 2010).

11 *Id.*

12 See *supra* note 6.

13 The IDEA precludes awarding attorney's fees to the plaintiff-parents for the attorney's services the subsequent to a districts' timely offer of settlement—specifically prior to ten days before the hearing commences—where the parents unjustifiably did not accept the offer within ten days and their ultimate relief was not more favorable than the offer. [20 U.S.C. § 1415\(i\)\(3\)\(D\)\(i\)–\(E\)](#) (2013).

14 *J.D. v. Kanawha Cnty. Bd. of Educ.*, 571 F.3d 381, 246 Ed. Law Rep. 663 (4th Cir. 2009).

15 See *supra* note 2.

16 See, e.g., Louis Wasserman, *Delineating Administrative Exhaustion Requirements and Establishing Federal Courts' Jurisdiction under the Individuals with Disabilities Education Act*, 29 J. NAT'L ADMIN. L. JUDICIARY 349 (2009).

17 *Hayden v. W. Placer Unified Sch. Dist.*, 52 IDELR ¶ 189 (N.D. Cal. 2009); *R.K. v. Hayward Unified Sch. Dist.*, 48 IDELR ¶ 253 (N.D. Cal. 2007).

18 *Pedraza v. Alameda Unified Sch. Dist.*, 111 LRP 65121 (N.D. Cal. 2009).

19 *Id.* (citing *Hoeft v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 76 Ed. Law Rep. 47 (9th Cir. 1992), a seminal case that illustrated the inadequacy exception).

20 *In re Mabank Indep. Sch. Dist.*, 165 S.W.3d 808, 199 Ed. Law Rep. 996 (Tex. Ct. App. 2005).

21 *Id.* at 813.

22 The IDEA provides concurrent jurisdiction of state and federal courts not only generally ([20 U.S.C. § 1415\(i\)\(2\)\(A\)](#)) but also for this specific purpose. See *supra* text accompanying note 6.

23 See *supra* notes 18–19 and accompanying text.

24 *Pedraza v. Alameda Unified Sch. Dist.*, 57 IDELR ¶ 227 (N.D. Cal. 2011).

25 *Springfield Local Sch. Dist. Bd. of Educ. v. Jeffrey B.*, 55 IDELR ¶ 158 (N.D. Ohio 2010).

26 *Id.*

27 See, e.g., Perry A. Zirkel, *Legal Boundaries for the Complaint Resolution Process under the IDEA: An Update*, 313 Ed. Law Rep. 1 (2015).

28 See, e.g., *Wyner v. Manhattan Beach Unified Sch. Dist.*, 323 F.3d 1026, 146 Ed. Law Rep. 1000 (9th Cir. 2000); *Gum v. Nevada Dep't of Educ.*, 113 P.3d 853, 198 Ed. Law Rep. 971 (Nev. 2005).

29 See, e.g., *Bingham v. New Berlin Sch. Dist.*, 550 F.3d 601, 239 Ed. Law Rep. 901 (7th Cir. 2008); *P.N. v. Seattle Sch. Dist. No. 1*, 474 F.3d 1165, 215 Ed. Law Rep. 637 (9th Cir. 2007); *Mr. L. v. Sloan*, 449 F.3d 405, 210 Ed. Law Rep. 41 (2d Cir. 2006).

30 *See, e.g., V.G. v. Auburn Enlarged Cent. Sch. Dist.*, 349 Fed.Appx. 582, 253 Ed.Law Rep. 156 (2d Cir. 2009); *Y.Z. v. Clark Cnty. Sch. Dist.*, 54 F.Supp.3d 1171, 315 Ed.Law Rep. 871 (D. Nev. 2014); *Walker v. Dist. of Columbia*, 798 F.Supp.2d 48, 274 Ed.Law Rep. 92 (D.D.C. 2011). However, more limited case law suggests that this entitlement does not extend to parents' successful enforcement of a settlement agreement. *Robert K. v. Cobb Cnty. Sch. Dist.*, 279 Fed.Appx. 798, 235 Ed.Law Rep. 832 (11th Cir. 2008). Similarly, a federal court's jurisdiction to enforce a settlement agreement, which includes attorney's fees, is subject to question when not the result of mediation or a resolution session. *Smith v. Imagine Hope Cmty. Pub. Charter Sch.*, 934 F.Supp.2d 132, 296 Ed.Law Rep. 975 (D.D.C. 2013).

31 See *supra* text accompanying notes 18–19 and 24.

32 *Pedraza v. Alameda Unified Sch. Dist.*, 58 IDELR ¶ 226 (N.D. Cal. 2012).

33 *M.M. v. Plano Indep. Sch. Dist.*, 63 IDELR ¶ 49 (E.D. Tex. 2014).

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