



## DoDEA REGULATION 5530.01

### DoDEA SETTLEMENT AGREEMENTS

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<b>Originating Division:</b>	Office of General Counsel
<b>Effective:</b>	August 2, 2018
<b>Releasability:</b>	Cleared for public release. Available on the DoDEA Policy Webpage.
<b>Incorporates:</b>	DoDEA Policy Memorandum 06-GC-001, "Settlement Agreements and Administrative Decisions and Orders," May 22, 2006, expired on January 9, 2018
<b>Approved by:</b>	Thomas M. Brady, Director

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**Purpose:** This Issuance establishes policy and assigns responsibilities for Department of Defense Education Activity (DoDEA) for the negotiation and signature authority for the settlement of all disputes and complaints. Such disputes and complaints include, but are not limited to, Equal Employment Opportunity (EEO) informal and formal complaints, Merit Systems Protection Board (MSPB) appeals, Unfair Labor Practice (ULP) charges and complaints, Office of Special Counsel (OSC) complaints, union grievances and arbitrations, Due Process complaints under Chapter 33 of Title 20, United States Code, also known and referred to in this Issuance as the "Individuals with Disabilities Education Act (IDEA) as amended," and Section 504 Accommodation complaints.

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## SECTION 1: GENERAL ISSUANCE INFORMATION

**1.1. APPLICABILITY.** This Issuance applies to the Office of the Director, DoDEA; the Principal Deputy Director and Associate Director for Academics, DoDEA; the Associate Director for Financial and Business Operations, DoDEA; the Chief of Staff, DoDEA; the Director for Student Excellence, DoDEA Americas/Associate Director for Performance and Accountability [formerly the Director, Domestic Dependent Elementary and Secondary Schools, and Department of Defense Dependents Schools, Cuba (DDESS/DoDDS-Cuba)]; the Director for Student Excellence, DoDEA Europe [formerly the Director, Department of Defense Dependents Schools, Europe (DoDDS-E)]; the Director for Student Excellence, DoDEA Pacific [formerly the Director, Department of Defense Dependents Schools, Pacific, and Domestic Dependent Elementary and Secondary Schools, Guam (DoDDS-P/DDESS-Guam)]; (referred to collectively in this issuance as "DoDEA Region Directors for Student Excellence"); and all DoDEA headquarters, region, district, community, and school leaders and support staff.

### 1.2. POLICY.

a. It is DoDEA policy that DoDEA administrators, managers, and supervisors attempt to resolve complaints and disputes as early as possible, and at the lowest appropriate Agency level.

b. All settlements through which the Agency resolves a dispute or complaint must be reduced to writing and signed by the party or party's legal representative and have the legal authority to bind the party to the agreement.

c. The level of approval and signature authority for the settlement of a complaint or dispute is dependent upon the type and seriousness of the complaint; the commitments of the parties; and, the stage of the complaint or dispute.

d. The funding of any commitment made in a settlement will be the responsibility of the organizational unit who exercises the settlement authority to resolve the complaint or dispute. No central fund will be maintained at DoDEA Headquarters for the purpose of funding a settlement commitment unless the DoDEA Director, or designee, provides otherwise.

**1.3. INFORMATION COLLECTION.** This Issuance may result in the collection of information due to its policy and procedures. Any collection of information must follow all applicable Federal, DoD, and DoDEA regulations, policies, and guidance.

## SECTION 2: RESPONSIBILITIES

### 2.1. DODEA DIRECTOR. The DoDEA Director:

- a. Establishes settlement policy and designates settlement authority for DoDEA settlement agreements, as appropriate.
- b. Exercises oversight of all settlement agreements to ensure consistency with DoDEA and DoD policy, and compliance with Federal mandates, such as those prohibiting discrimination and prohibited personnel practices, and requiring the delivery of free appropriate public education (FAPE).
- c. Coordinates with the DoDEA Office of General Counsel (OGC) for the appointment of one or more DoD Legal Services Agency attorneys to serve as the Agency Representative for purposes of defending DoD and/or DoDEA in any litigation, including the negotiation of settlement agreements, pursuant to this Issuance.
- d. Coordinates all resolutions that involve the payment of money or benefits to an employee, such as back pay, restoration of leave, or compensatory damages, with the servicing Resource Management Office, the DoDEA OGC, and the Human Resources Office (for personnel actions), prior to reaching a final agreement.
- e. Coordinates all settlement agreements which involve the payment of attorney fees with the DoDEA OGC, prior to reaching a final agreement.
- f. Enters into settlement agreements, as appropriate, and serves as Agency approval authority on settlements over \$150,000.00.

### 2.2. DODEA PRINCIPAL DEPUTY DIRECTOR AND ASSOCIATE DIRECTOR FOR ACADEMICS; DODEA ASSOCIATE DIRECTOR FOR FINANCIAL AND BUSINESS OPERATIONS; DODEA CHIEF OF STAFF; AND DODEA REGIONAL DIRECTORS FOR STUDENT EXCELLENCE. The DoDEA Principal Deputy Director and Associate Director for Academics; DoDEA Associate Director for Financial and Business Operations; DoDEA Chief of Staff; and DoDEA Regional Directors for Student Excellence:

- a. Exercise settlement authority and enter into settlement negotiations of complaints and disputes for which the manager or supervisor possesses full legal authority to grant the relief agreed to by the parties, as appropriate.
- b. Coordinate with the DoDEA OGC for the appointment of one or more DoD Legal Services Agency attorneys to serve as the Agency Representative for purposes of defending DoD and/or DoDEA in any litigation, including the negotiation of settlement agreements, under this Issuance.
- c. Coordinate with the DoDEA Director all settlement agreements, the terms of which will have monetary consequences totaling over \$150,000, including but not limited to: training,

permanent change of station (PCS)/reassignment, change of performance rating (resulting in a case award), back pay, attorney fees, and/or compensatory damages.

d. Coordinate all resolutions that involve the payment of money or benefits to an employee, such as back pay, restoration of leave, or compensatory damages, with the servicing Resource Management Office, the DoDEA OGC, and the Human Resources Office (for personnel actions), prior to reaching a final agreement.

e. Coordinate all settlement agreements which involve the payment of attorney fees with the DoDEA OGC, prior to reaching a final agreement.

f. Enter into settlement agreements, as appropriate.

**2.3. DODEA DISTRICT SUPERINTENDENTS, DODEA COMMUNITY SUPERINTENDENTS, AND DODEA HEADQUARTERS DIVISION CHIEFS.** The DoDEA District Superintendents, DoDEA Community Superintendents, and DoDEA Headquarters Division Chiefs:

a. Exercise settlement authority and enter into settlement negotiations of complaints and disputes for which the manager or supervisor possesses full legal authority to grant the relief agreed to by the parties, as appropriate.

b. Coordinate with the DoDEA OGC for the appointment of one or more DoD Legal Services Agency attorneys to serve as the Agency Representative for purposes of defending DoD and/or DoDEA in any litigation, including the negotiation of settlement agreements, under this Issuance.

c. Coordinate with the settlement authority's supervisor all settlement agreements, the terms of which will have monetary consequences totaling over \$10,000, including but not limited to: training, PCS/reassignment, change of performance rating (resulting in a case award), back pay, attorney fees, and/or compensatory damages.

d. Coordinate all resolutions that involve the payment of money or benefits to an employee, such as back pay, restoration of leave, or compensatory damages, with the servicing Resource Management Office, the DoDEA OGC, and the Human Resources Office (for personnel actions), prior to reaching a final agreement.

e. Coordinate all settlement agreements which involve the payment of attorney fees with the DoDEA OGC, prior to reaching a final agreement.

f. Enter into settlement agreements, as appropriate.

**2.4. DODEA GENERAL COUNSEL.** The DoDEA General Counsel:

a. Advises the DoDEA Director and subordinate DoDEA settlement authorities concerning the implementation of this Issuance.

b. Upon a request by a DoDEA settlement authority, or upon his/her own initiative, appoints one or more DoD Legal Services Agency attorneys to serve as Agency Representatives for the purpose of defending DoD and/or DoDEA in any litigation, including negotiating settlement agreements under this Issuance.

c. Advises and assists the DoDEA Director and subordinate DoDEA settlement authorities and/or DoDEA Agency Representatives in assessing settlement options and strategies, and in reviewing a settlement agreement for legal sufficiency and compliance with governing laws, regulations, and policies.

## **SECTION 3: SETTLEMENT PROCEDURES**

### **3.1. SETTLEMENT PHILOSOPHY.**

a. DoDEA management officials who serve as settlement authorities are encouraged to negotiate and settle complaints and disputes at all phases of litigation, with a view towards the settlement of valid complaints at the lowest appropriate level.

b. Public policy favors the use of settlement agreements that serve to avoid and bring a quicker end to unnecessary and often times unpredictable litigation. Besides saving the parties the time and costs of litigation, the settlement of disputes leaves the parties in control of the outcome of the litigation, rather than having the outcome of the litigation decided for them by a third party.

### **3.2. COMPLAINTS AND DISPUTES IN LITIGATION.**

a. A complaint or dispute in litigation includes, but is not limited to, an EEO informal or formal complaint, a MSPB appeal, an ULP charge and/or complaint, an OSC complaint, a union grievance, an arbitration, a due process complaint under the Individuals with Disabilities Education Act (IDEA), as amended, and a Section 504 Accommodation complaint.

b. A settlement agreement is a binding and enforceable contract, written to bring closure to a complaint or dispute in litigation between two or more parties. Entering into a settlement agreement means that the parties have reached a “meeting of the minds,” that they have formed an agreement, the terms of which represents a clear and unambiguous resolution to the dispute between the parties.

c. Given that settlement agreements are contracts, and that the interpretation of a settlement agreement constitutes a question of law which can lead to separate litigation, settlement authorities shall consult with the DoDEA OGC, or agency designee, when notified of a complaint or dispute in litigation.

### **3.3. APPOINTMENT OF AGENCY REPRESENTATIVE.**

a. Upon notification of a complaint or dispute in litigation, the DoDEA General Counsel, or OGC designee, will appoint one or more DoDEA OGC attorneys (or seek the appointment of one or more DoD Legal Services Agency attorneys, if appropriate), to represent and defend the interests of DoDEA in the litigation.

b. Once appointed to complaint or dispute in litigation, an Agency Representative serves as the settlement authority’s legal representative for purposes of participating in settlement discussions and negotiations, and the drafting of any settlement agreement should the parties agree to resolution.

c. Agency Representatives have the authority to negotiate settlement agreements on behalf of DoDEA. This authority is limited, however, to reaching an agreement in principle. Agency Representatives do not have authority to bind the agency in settlement and will not sign settlement agreements on behalf of DoDEA without first obtaining the written approval of the appropriate settlement authority.

### **3.4. COORDINATION REQUIREMENTS.**

a. The Settlement Authority and Agency Representative must ensure that the Settlement Authority either possesses or has been delegated full legal authority to grant the relief being negotiated by the parties. For example, a DoDEA District Superintendent has legal authority to reassign an employee from one position within their district to another position within their district, but not to another position outside their district. In order to negotiate a commitment to move such an employee, the DoDEA District Superintendent would have to either bump the Settlement Authority to a person who oversees both districts or obtain written authorization from such a person to negotiate the commitment.

b. The Settlement Authority and Agency Representative shall not finalize the language of or execute (i.e., sign) a settlement agreement without first coordinating the settlement agreement with DoDEA organizations that may be affected by the terms of the agreement. For example, all settlement agreements that commit the agency to take action that will require agency funding or administrative action, such as payment of back pay or compensatory damages, or restoration of leave, must be coordinated with the appropriate DoDEA Headquarters or DoDEA Regional Resource Management and Human Resources offices. Other DoDEA organizations that may also be appropriate for coordination include OGC (on any legal matter or the payment of attorney fees), or the DoDEA Diversity Management and Equal Opportunity Office (for matters related to EEO complaints or issues of diversity management), and the supervisor/district or area supervisor of any individual affected by the settlement.

c. For any settlement agreement, the terms of which will have monetary consequences totaling over \$10,000, including but not limited to: training, PCS/reassignment, change of performance rating (resulting in a cash award), back pay, attorney fee, and/or compensatory damages, DoDEA District Superintendents, DoDEA Community Superintendents, and DoDEA Headquarters Division Chiefs must coordinate the settlement agreement with the immediate supervisor.

d. For any settlement agreement, the terms of which will have monetary consequences totaling over \$150,000, including but not limited to: training, PCS/reassignment, change of performance rating (resulting in a cash award), back pay, attorney fee, and/or compensatory damages, DoDEA Principal Deputy Director and Associate Director for Academics; DoDEA Associate Director for Financial and Business Operations, DoDEA Chief of Staff, and DoDEA Regional Directors for Student Excellence must coordinate the settlement agreement with the DoDEA Director.

e. Agreements that involve the payment of attorney fees must be reviewed by OGC prior to reaching final agreement to pay attorney fees.



### **3.5. CONTENTS OF SETTLEMENT AGREEMENT.**

a. The Settlement Authority and Agency Representative are encouraged to be flexible and creative when devising a resolution of a complaint or dispute. In addition, settlement agreements may vary in their format, their degree of formality, and their detail.

b. A settlement agreement must be reduced to writing and signed by each party or the party's representative, and have the legal authority to bind the party to the agreement. Given that all parties to the settlement agreement must ultimately reach agreement to the specific terms and language to be contained in a settlement agreement, settlement authorities and Agency Representatives have great latitude to work with the opposing party or parties in order to craft the mutually agreeable language that ultimately constitutes the final settlement agreement. At a minimum, however, all settlement agreements shall:

(1) Describe the issue or issues being resolved and the specific actions/commitments to be made or taken by each party, including the timeframe for completion, if any.

(2) Reflect that all parties to the agreement have knowingly and voluntarily entered into the settlement agreement.

(3) Reflect that the settlement agreement is binding upon the parties.

(4) Legally release the Agency from any future litigation and liability regarding the complaint(s) and/or dispute(s).

c. Where it may be necessary to modify practices to serve complainants with disabilities or limited English proficiency, settlement and other vital documents should be made available in an alternative format, as appropriate (e.g., Braille, an electronic text file, or in Spanish). Steps also should be taken to ensure such complainant understands the legal implications of signing any such document and, for those people with disabilities who may be unable to hand sign forms, be provided an alternative lawful means to secure record of their acceptance, as may be necessary to accommodate such disability or language barrier.

**3.6. AUTHORITY TO SIGN SETTLEMENT AGREEMENT.** Signing a settlement agreement binds the agency to the terms of the agreement. Therefore, only the Settlement Authority, or a designated Agency Representative who receives written authorization to sign on behalf of the Settlement Authority, may sign a settlement agreement.

## GLOSSARY

### G1. ACRONYMS.

EEO	Equal Employment Opportunity
FAPE	free appropriate public education
IDEA	Individuals with Disabilities Education Act
MSPB	Merits Systems Protection Board
OGC	Office of General Counsel
OSC	Office of Special Counsel
PCS	permanent change of station
ULP	Unfair Labor Practice

**G.2. DEFINITIONS.** Unless otherwise noted, these terms and their definitions are for the purpose of this Issuance.

**arbitration.** A process of dispute resolution in which a neutral third party (arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard.

**Equal Employment Opportunity Commission.** An independent federal agency created under Title VII of *Public Law 88-352*, for the purpose of enforcing civil rights laws against workplace discrimination based on race, color, age, sex, religion, national origin, and mental or physical disability.

**grievance.** Any complaint by any employee concerning any matter relating to the employment of the employee; by any labor organization concerning any matter relating to the employment of any employee; or by any employee, labor organization, or agency concerning the effect or interpretation, or a claim of breach of a collective bargaining agreement; or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

**Individuals with Disabilities Education Act (IDEA).** A four-part piece of legislation that ensures students with a disability are provided with free appropriate public education (FAPE) that is tailored to their individual needs.

**Merit Systems Protection Board.** An independent quasi-judicial agency established in 1979 to protect federal merit systems against partisan political and other prohibited personnel practices and to ensure adequate protection for federal employees against abuses by agency management.

**Office of Special Counsel.** An independent federal investigative and prosecutorial agency whose primary mission is the safeguarding of the merit system in federal employment by protecting employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing.

**settlement agreement.** A contractual agreement between two or more parties to actual or potential litigation by which each party agrees to a resolution of the underlying dispute.

**Section 504.** An anti-discrimination, civil rights statute (i.e., Section 701 et seq. of Title 29, United States Code (also known as the “Rehabilitation Act of 1973”)) that prohibits discrimination based upon disability by requiring the needs of students with disabilities to be met as adequately as the needs of the non-disabled.

**unfair labor practice.** Conduct by an agency or union that violates the rights of a party protected by Section 7116 of Chapter 71 of Title 5, United States Code.

## **REFERENCES**

*Public Law 88-352*, Title VII, “The Civil Rights Act of 1964,” as amended

United States Code, Title 5, Chapter 71, Section 7116

United States Code, Title 20, Chapter 33 (also known as the “Individuals with Disabilities Education Act (IDEA), as amended”)

United States Code, Title 29, Section 701 et seq. (also known as the “Rehabilitation Act of 1973”)