

ND Department of Public Instruction – Special Education

Annual Report for Dispute Resolution  
September 1, 2005 – August 31, 2006

**DPI – Special Education  
Complaint Management Request History**

	<b>MEDIATIONS</b>	<b>COMPLAINT INVESTIGATIONS</b>	<b>DUE PROCESS HEARINGS</b>
<b>SEPTEMBER 2005 – AUGUST 2006</b>	<b>4*</b>	<b>7</b>	<b>2</b>
<b>SEPTEMBER 2004 – AUGUST 2005</b>	<b>4</b>	<b>3</b>	<b>1</b>
<b>SEPTEMBER 2003 – AUGUST 2004</b>	<b>1</b>	<b>11</b>	<b>0</b>
<b>SEPTEMBER 2002 – AUGUST 2003</b>	<b>0</b>	<b>33</b>	<b>0</b>
<b>SEPTEMBER 2001 – AUGUST 2002</b>	<b>3</b>	<b>13</b>	<b>1</b>
<b>SEPTEMBER 2000– AUGUST 2001</b>	<b>2</b>	<b>9</b>	<b>0</b>

\* 1 mediation pending

**Requests for Mediation  
September 2005 - August 2006**

<b>DATE REQUEST RECEIVED</b>		<b>DISPUTE ISSUE(S)</b>	<b>FILED BY</b>	<b>OUTCOME</b>
1	8-30-06	Preschool services	Special Ed Unit and Head Start	Pending
2	7-06-06	Placement Services Progress Reports	Parent	Parent withdrew – (2 districts involved in dispute agreed to participate)
3	2-14-06	Transportation	Parent	Special Ed Unit declined to participate
4	1-30-06	Transportation	Parents	Agreement reached
5	11-16-05	Placement	Parent	Agreement reached
6	9-16-05	Residency Determination	2 Special Ed units and DHS	Agreement reached

**Requests for Due Process Hearings  
September 2005 – August 2006**

<b>DATE REQUEST RECEIVED</b>		<b>DISPUTE ISSUE</b>	<b>FILED BY</b>	<b>OUTCOME</b>
1	2-17-06	1. Parent notice 2. Provision of FAPE 3. 504 vs. IEP	Parent	Hearing held; parent failed to appear; Decision: School no fault on all issues.
2	10-24-05	1. Placement 2. Compensatory Education	Student/ Parent	Decision: School no fault on all issues

## NDDPI Annual Performance Report (APR)

### Cluster Area I: General Supervision

#### Dispute Resolution – Complaints, Mediations, and Due Process Hearings Baseline/Trend Data

Ia: Formal Complaints								
(1) July 1, 2005 - June 30, 2006 (or specify other reporting period: 09/01/05 to 08/31/06)	(2) Number of Complaints	(3) Number of Complaints with Findings	(4) Number of Complaints with No Findings	(5) Number of Complaints not Investigated – Withdrawn or No Jurisdiction	(6) Number of Complaints Set Aside Because Same Issues being Addressed in a Due Process Hearing	(7) Number of Complaints with Decisions Issued within 60 Calendar Days	(8) Number of Complaints Resolved beyond 60 Calendar Days, with a Documented Extension	(9) Number of Complaints Pending as of: 08/31/06 <i>(enter closing date for dispositions)</i>
<b>TOTALS</b>	7	5	2	0	0	6	1	0

Ib: Mediations					
(1) July 1, 2005 - June 30, 2006 (or specify alternate period: 09/01/05 to 08/31/06)	Number of Mediations		Number of Mediation Agreements		(6) Number of Mediations Pending as of: 08/31/06 <i>(enter closing date for dispositions)</i>
	(2) Not Related to Hearing Requests	(3) Related to Hearing Requests	(4) Not Related to Hearing Requests	(5) Related to Hearing Requests	
<b>TOTALS</b>	3	0	3	0	1

Ic: Due Process Hearings					
(1) July 1, 2005 - June 30, 2006 (or specify alternate period: 09/01/05 to 08/31/06)	(2) Number of Hearing Requests	(3) Number of Hearings Held <i>(fully adjudicated)</i>	(4) Number of Decisions Issued within Timeline under 34 CFR §300.511	(5) Number of Decisions within Timeline Extended under 34 CFR §300.511(c)	(6) Number of Hearings Pending as of: 08/31/04 <i>(enter closing date for dispositions)</i>
<b>TOTALS</b>	2	2	1	1	0

**DPI – SPECIAL EDUCATION**  
**COMPLAINT SYNOPSES**  
**SEPTEMBER 2005 – AUGUST 2006**

**Note:** These summaries are intended to provide information in a greatly condensed format. All complaints are decided on their unique facts. Readers are encouraged to consult the Department or other advisors before applying the conclusions indicated below to another fact situation.

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**Complaint 1**

**Issue:** Did the school fail to evaluate Student for eligibility?

**Conclusion:** No violation of IDEA. The complainant was a noncustodial parent who alleged the school had not evaluated Student. Documentation from the school showed the school had conducted a thorough evaluation of Student, culminating in an integrated written assessment report. The complainant alleged that IDEA requires the school to obtain consent from all custodial parents before evaluation may occur. The Department determined that the school had made reasonable efforts to contact the complainant about the proposed evaluation, without success. If, as the complainant alleged, the other parent interfered with the complainant's receipt of communications from the school, complainant's remedy lies with the court. On these facts, the Department followed its longstanding interpretation that consent executed by one parent with authority to act is enough to satisfy the IDEA requirement of informed parent consent.

**Complaint 2**

**Issue 1:** Did the school fail to obtain written consent before evaluation Student?

**Conclusion:** No violation. The sequence of events was this: The parent signed consent for evaluation; the parent verbally revoked consent; the parent gave the school a doctor's note approving testing; the school started testing; the parent sent the school a written consent to test. The Department concluded school staff reasonably believed parent had given permission to test when she gave the school the doctor's note approving testing.

**Issue 2a:** Did the school fail to inform parents of their right to obtain an independent educational evaluation?

**Conclusion:** No violation. After the parent filed a complaint with the SEA, the unit director wrote to the parent (13 days after his first letter acknowledging parent's request) stating that the request had been approved and enclosing a list of local independent educational evaluators.

**Issue 2b.** Did the school fail to consider the results of an evaluation obtained at parent expense?

**Conclusion:** No violation. IDEA does not mandate that an evaluation team embrace any findings or recommendations from an independent evaluation, as long as the school can show meaningful consideration of the evaluation's content. The IDEA requirement to "consider" the independent evaluation is met where the school can document that the team was informed of and reflected upon or thought about the evaluation with some degree of care. The team must consider the evaluation; it is not required to defer to the content of the evaluation.

**Issue 3:** Did the school meet IDEA requirements for prior written notice?

**Conclusion:** No violation. The school issued a prior written notice for a “meeting to discuss evaluation results and/or determine if the student is eligible for special education services” and “development of an individual education plan (IEP) for your child.” At the meeting, the team, over parent disagreement, determined Student was no longer eligible, and the school exited Student from services four days later. The parent perceived the prior written notice as misleading and the school’s subsequent action unnecessarily abrupt. The prior written notice meets minimum IDEA requirements. Practice pointer: prior written notice content that is clear to school staff through long usage may not be equally clear to parents.

**Issue 4:** Did the school meet minimum IDEA requirements for parent participation?

**Conclusion:** No violation. The record contained ample documentation and anecdotal evidence that the parents actively and vigorously participated in the evaluation process. The primary case manager’s parent contact log was particularly helpful in documenting conversations and other actions by parents and school personnel.

**Issue 5:** Did the school fail to assess Student in all areas of suspected disability?

**Conclusion:** No violation. Student did not show requisite adverse educational impact from her disability. Practice pointer: The school lost an opportunity to address the parent’s concerns about Student’s future school performance when the school declined mediation and by omitting reference to possible eligibility for a Section 504 plan on the integrated written assessment report.

**Issue 6:** Did the school fail to comply with IDEA requirements for school staff attendance at an IEP meeting?

**Conclusion:** Noncompliance. A teacher left an IEP meeting without written parental consent to the absence, contrary to new attendance requirements under IDEA 04. Corrective action: The unit was required to submit 1) documentation that educators and administrators had been notified of IDEA requirements for attendance at and excusal from IEP and evaluation meetings; 2) unit policy and procedure, including forms, for implementation of the IDEA requirement.

### **Complaint 3**

**Issue:** Did the school comply with IDEA requirements to have a regular education teacher participate in the IEP team meeting?

**Conclusion:** Noncompliance. The school acknowledged it did not obtain the parent’s written consent to hold the meeting without a regular education teacher. Corrective action: The unit was required to submit 1) documentation that educators and administrators had been notified of IDEA requirements for attendance at and excusal from IEP and evaluation meetings; 2) unit policy and procedure, including forms, for implementation of the IDEA requirement.

### **Complaint 4**

**Issue 1:** Did the school fail to comply with requirements of then-applicable IDEA 97 for conducting a functional behavior assessment and developing a behavior intervention plan for Student’s re-entry to the school after a period of expulsion?

**Conclusion:** Noncompliance. Student was expelled in 7<sup>th</sup> grade and returned to the school in fall for 8<sup>th</sup> grade. The school failed to conduct a functional behavior assessment and develop a positive behavior intervention plan. Corrective action: The school was directed to 1) train administration and special education staff on IDEA requirements for functional behavior assessment procedures, including behavior plan development and

implementation; 2) convene the IEP team to implement functional behavior assessment planning procedures and complete a functional behavior assessment.

**Issue 2:** Did the school fail to comply with IDEA requirements for obtaining and considering medical evidence from an evaluation paid by the parent?

**Conclusion:** No violation. In response to a parent request to send the school medical information, the medical facility sent a one page letter from the doctor. There were extensive additional medical records at the facility that were not sent, and the school did not request further information. There was a failure of communication despite parent's effort to have information conveyed; however, these facts, though regretted do not constitute a violation of IDEA.

**Issue 3:** Did the school fail to consider the results of an evaluation obtained at parent expense during a manifestation determination?

**Conclusion:** No violation. IDEA does not mandate that a team embrace any findings or recommendations from an independent evaluation, as long as the school can show meaningful consideration of the evaluation's content. Here, the unit director read the entire report as offered by the parent to the manifestation determination team. After the reading, there was some discussion of Student's behavior and medication history. This activity meets or exceeds the minimum IDEA requirement.

### **Complaint 5**

**Issue:** Did the school fail to comply with IDEA requirements to respond to a parent request for an independent educational evaluation?

**Conclusion:** Noncompliance. In an unusual fact scenario involving multiple writings back forth between the parent and the school, the school agreed it had not responded to the parent's request. Mitigating factors in favor of the school led the Department to direct corrective action consisting of an immediate response to the parent, and an IEP team meeting with a neutral facilitator to consider the status of an evaluation obtained by the parent and additional evaluation proposed by the parent.

### **Complaint 6**

**Issue 1:** Did School fail to implement the student's IEP by failing to provide a sighted guide during a class trip?

**Conclusion:** No violation. Student did not file her complaint until May 12, 2006, more than a year after the alleged failure to provide a sighted guide on March 15, 2005. The complaint was untimely and did not fall within the scope of the one year time limitation.

**Issue 2:** Did School fail to implement student's IEP by failing to provide a sighted guide during a music competition trip?

**Conclusion:** No violation. Student did not file her complaint until May 12, 2006, more than a year after the alleged failure to provide a sighted guide on April 9, 2005. The complaint was untimely and did not fall within the scope of the one year time limitation.

**Issue 3:** Did School fail to implement student's IEP by failing to provide a sighted guide during a band and choir trip?

**Conclusion:** No violation. The IEP provided that, in unfamiliar settings such as field trips, student would travel safely using a sighted guide with 90% accuracy. The IEP team understood that the designated sighted guide would not be with student every minute during the field trip. Other chaperones served as sighted guides within the meaning of the IEP. The student was accidentally injured while she was with other sighted chaperones, not including the designated sighted guide. The record showed that the school did not fail to provide a sighted guide for the band and choir trip.

## **Complaint 7**

**Issue 1:** Did the school fail to implement the adaptations called for in the IEP?

**Conclusion:** There were instances of noncompliance that the school had remedied by the time the complaint investigation took place. Corrective action included a directive to reconvene the IEP team with a neutral facilitator and revise the IEP including the adaptations section. Here, a lengthy and fluctuating list of adaptations had not resulted in greater academic success for Student. The team had not sufficiently considered the relationship between behavior and learning nor developed a positive behavior intervention plan, although the IEP recited behaviors that interfered with Student's learning and the learning of others.

**Issue 2:** Did the school fail to implement learning disability services as recited in the IEP?

**Conclusion:** No violation. Local unit practice was to place consultative services in the adaptations section of the IEP. Student had subsequently been determined no longer eligible for LD services.

**Issue 3:** Did the school include improper negative content in the present levels of educational performance section of the IEP?

**Conclusion:** No violation. IDEA does not prohibit the inclusion of statements such as those presented here (e.g. "daydreaming", "not paying attention") which are factual. The IEP team was directed to revisit the present levels section as part of overall IEP revision to ensure that the present levels are current and reflect the input of all team members, including Student. The team was directed to focus on transition considerations as a way to engage Student's attention and interest in his own education and pave the way for a more effective educational program.

**Issue 4:** Did the school revise Student's IEP to address lack of progress in the general curriculum as required by IDEA?

**Conclusion:** No violation. There were seven meetings of the IEP team in various configurations after lack of progress had been identified in the fall. The IEP was revised from time to time in an effort to enhance Student success.