

*ND Department of Public  
Instruction- Office of  
Special Education*

*Annual Report for Dispute  
Resolution  
July 1, 2006 – June 30, 2007*

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

	<b>IEP Facilitations</b>	<b>MEDIATIONS</b>	<b>COMPLAINT INVESTIGATIONS</b>	<b>DUE PROCESS HEARINGS</b>
<b>JULY 1, 2006 – JUNE 30, 2007</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>0</b>
<b>JULY 1, 2005 – JUNE 30, 2006</b>	<b>4</b>	<b>4</b>	<b>8</b>	<b>2</b>
<b>SEPTEMBER 2004 – AUGUST 2005</b>	<b>N/A</b>	<b>4</b>	<b>3</b>	<b>1</b>
<b>SEPTEMBER 2003 – AUGUST 2004</b>	<b>N/A</b>	<b>1</b>	<b>11</b>	<b>0</b>
<b>SEPTEMBER 2002 – AUGUST 2003</b>	<b>N/A</b>	<b>0</b>	<b>33</b>	<b>0</b>

**Requests for Complaint Investigation  
July 1, 2006 – June 30, 2007**

<b>FILED BY</b>	<b>DATE OF RECEIPT OF COMPLAINT</b>	<b>ISSUES</b>	<b>FINDINGS ISSUED Y/N</b>	<b>DATE OF REPORT TO COMPLAINANT</b>
<b>Parent (#3)</b>	1-22-07	1. Request for IEP meeting not met	1. Yes	Due: March 23, 2007 <i>Sent: March 15, 2007</i>
<b>Parent (#2)</b>	1/4/07	1. Student information to Law Enforcement 2. Failure to make measurable goal in IEP 3. Failure to provide education and services	1. Yes 2. No 3. No	Due: March 5, 2007 <i>Sent: March 5, 2007</i>
<b>Parent (#1)</b>	11/9/06	1. Failure to implement IEP 2. Failure to inform teachers of their responsibility	1. No 2. Yes	Due January 8, 2007 <i>Sent: January 5, 2007</i>

**Requests for Mediation  
July 1, 2006 – June 30, 2007**

<b>DATE REQUEST RECEIVED</b>		<b>DISPUTE ISSUE(S)</b>	<b>FILED BY</b>	<b>OUTCOME</b>
1	3-27-07	<ul style="list-style-type: none"> <li>• Action plan developed at IEP Facilitation</li> <li>• Communication</li> <li>• Student use of time</li> <li>• Resource Room</li> </ul>	Parent	Agreement on few issues; agreed to review accommodations in IEP in Fall 2007.
2	8-30-06	<ul style="list-style-type: none"> <li>• Preschool services</li> </ul>	Special Ed Unit and Head Start	No agreement
3	7-06-06	<ul style="list-style-type: none"> <li>• Placement</li> <li>• Services</li> <li>• Progress Reports</li> </ul>	Parent	Parent withdrew – (2 districts involved in dispute agreed to participate)

**Requests for IEP Facilitation  
July 1, 2006 - June 30, 2007**

<b>REQUEST BY</b>	<b>DATE OF REQUEST</b>	<b>ISSUE</b>	<b>DATES/ RESULTS</b>	<b>COMMENTS</b>
DPI Corrective Action	1-05-07	Implementing IEP/student accountability	Scheduled 1-18-07.	Successfully completed; facilitator reported problems persist in communication between school and parent.
Parent	1-02-07	Implementing IEP	Successfully completed 1-11-07	Successfully completed
DPI Corrective Action	7-01-06	Behavior plan	3 meetings. Final meeting sched. for 9/27/06	Successfully completed

**Requests for Due Process Hearing: July 1, 2006 - June 30, 2007**

**\*\*\* There were no due process hearings filed or resolution meetings held during the 2006-2007 school year. \*\*\***

**Table 7: 2006-2007  
Dispute Resolution – Complaints, Mediations, and Due Process Hearings Data**

<b>SECTION A: Written, signed complaints</b>	
(1) Written, signed complaints total	<b>3</b>
(1.1) Complaints with reports issued	<b>3</b>
(a) Reports with findings	<b>3</b>
(b) Reports within timeline	<b>3</b>
(c) Reports within extended timelines	<b>0</b>
(1.2) Complaints withdrawn or dismissed	<b>0</b>
(1.3) Complaints pending	<b>0</b>
(a) Complaint pending a due process hearing	<b>0</b>
<b>SECTION B: Mediation requests</b>	
(2) Mediation requests total	<b>3</b>
(2.1) Mediations	
(a) Mediations related to due process	<b>0</b>
(i) Mediation agreements	<b>1</b>
(b) Mediations not related to due process	<b>2</b>
(i) Mediation agreements	<b>1</b>
(2.2) Mediations not held (including pending)	<b>1</b>
<b>SECTION C: Hearing requests</b>	
(3) Hearing requests total	<b>0</b>
(3.1) Resolution sessions	<b>0</b>
(a) Settlement agreements	<b>0</b>
(3.2) Hearings (fully adjudicated)	<b>0</b>
(a) Decisions within timeline	<b>0</b>
(b) Decisions within extended timeline	<b>0</b>
(3.3) Resolved without a hearing	<b>0</b>
<b>SECTION D: Expedited hearing requests (related to disciplinary decision)</b>	
(4) Expedited hearing requests total	<b>0</b>
(4.1) Resolution sessions	<b>0</b>
(a) Settlement agreements	<b>0</b>
(4.2) Expedited hearings (fully adjudicated)	<b>0</b>
(a) Change of placement ordered	<b>0</b>

**DPI – SPECIAL EDUCATION**  
**COMPLAINT SYNOPSES**  
**July 1, 2006 – June 30, 2007**

**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 1:** *Did the school fail to implement Student’s IEP in violation of IDEA, specifically regarding these adaptations: multiple choice tests with reduced multiple choices, as needed; tests and other reading materials read in an alternative setting; and alternative spelling and grammar program.*

**Conclusion:** *The school was in substantial compliance with the requirements of IDEA for implementation of the IEP.*

The school did not implement the reading of tests to Student or modifying of tests on all occasions. IDEA envisions that when school staff recognize or otherwise have an instance of non-compliance called to their attention, they will remedy the noncompliance promptly and restore full implementation of the IEP. The alternative spelling program was been implemented at all times at issue, by the use of substitute materials until Student’s own materials arrived. IDEA permits this type of minor adjustment in the delivery of services. School staff took steps to remedy non-implementation of the alternative grammar program in September. The art teacher remedied non-implementation by modifying the second test (after she had been informed of the IEP contents) and by arranging to have the test read to Student.

**Issue 2:** *Did the school fail to inform the art teacher and other service providers of their specific responsibilities related to implementing Student’s IEP and specific content of the IEP in violation of IDEA?*

**Conclusion:** *The school was out of compliance on Issue 2.*

The school agreed that the art teacher was not informed of her responsibilities under the IEP, contrary to unwritten school policy. The noncompliance was remedied for this student for the 06-07 school year. In order to ensure continued compliance in the future for all students, the school was directed in the corrective actions to adopt a written policy and procedures to supplement the unit’s policy, under which it is a matter of local school district practice how a school will accomplish the requirements of notifying teachers and service providers of their duties to implement the IEP. The school was also directed to conduct an in-service training to review school policy and procedure on informing teachers and other service providers of their responsibilities for implementing the IEP under IDEA 04. Because the investigation revealed problems of communication among team members, the school was also directed to reconvene the IEP team to revise the IEP with specific attention to these aspects:

- Strategies for improved communication.
- Clarification of roles and responsibilities, including Student choices for accommodations and modifications.
- Planning for enhanced Student self-advocacy, including consideration of data collected on a goal addressing student independence. The student in this case was a high school student whose parent conducted most of the communication with school personnel.

## Complaint 2

***Issue 1. Did the school violate IDEA by failing to carry out required procedures for transmitting Student's special education and disciplinary records for consideration by law enforcement or judicial authorities?***

***Conclusion: There was a violation on Issue 1. School personnel did not follow school policy.***

The school initiated a referral of Student to law enforcement authorities in September. The parent believed IDEA protections for a student not eligible for special education and related services but deemed to be a student with a disability, applied to Student when the referral to juvenile authorities was made because she had made a written request for special education services in mid-September. The parent wanted juvenile authorities to have Student's special education and disciplinary records, and she filled out a form authorizing the sending of records to juvenile authorities in satisfaction of FERPA requirements for consent to release records. As of December, juvenile proceedings were still pending, and the parent reminded the principal of the duty to send records to juvenile authorities. At the time of the reminder in December, Student had been found to be a student with a disability. A previous complaint by the parent had resulted in the district adopting a policy affirming the duty to provide special education and discipline records to judicial authorities to the extent permissible by FERPA. The school submitted some authorized records to juvenile authorities in January. The parent claimed the submission was not timely and therefore Student lost the benefit of having juvenile authorities be informed of his disciplinary and special education history.

Student was not a "student with a disability" at the time of the September referral to juvenile authorities, but is deemed to be a student with a disability under the language of the statute and rules, "Protections for children not yet eligible for special education and related services." 34 CFR sec. 300.534. These protections were triggered by the parent's September letter to the assistant principal requesting special education services.

No disciplinary records were sent. School district policy gives parents to indicate which of the commonly requested special education and disciplinary records will be transmitted, and the opportunity to add records to the list of what will be sent. The associated form also indicates that those additional records "will be submitted." The school transmitted one of eleven documents for which the parent gave written consent to release of information. The other records requested by the parent were not submitted. Where the school invites the parent to add to the list, and then does not send the parent's additional documents, the school is out of compliance with its own policy.

Special education and discipline records give law enforcement or judicial authorities relevant information for their use in considering the appropriate disposition of allegations and charges against students. To be meaningful, authorities must have the information within a reasonable time of the referral. The Department applied the standard "within a reasonable time" in a 2005 complaint involving this issue, and applied it again here. A lapse of approximately three and one-half months between the date of the juvenile referral and the transmittal to juvenile authorities is not reasonable.

Corrective action consisted of a directive that the unit director review IDEA requirements at 34 CFR sec. 300.535 and school district policy regarding the referral of students with a disability and students deemed to be students with a disability to law enforcement or judicial authorities with all building principals in the school district. The Department also suggested that a cross-reference or other language cueing referral to other applicable school policies be added to the administrator's handbook, to make full compliance easier to achieve for busy administrators.

## **Complaint 2 (continued)**

***Issue 2. Did the school violate IDEA by failing to state a measurable goal in Student's individualized education program (IEP) document developed on or about January 31, 2006?***

***Issue 3. Did the school violate IDEA by failing to provide special education and related services clearly designed to increase Student's skills in his identified areas of need due to his disability?***

***Conclusions: No violation on Issue 2. No violation on Issue 3.***

The parent believed the goal regarding behavior was inadequate in its content regarding positive behavioral supports. The Department concluded that the goal stated in the January 2006 IEP met minimum IDEA requirements for an "annual, measurable goal," when the criteria are considered as part of goal content. The goal at issue here was consistent with the goals illustrating compliance with IDEA minimum requirements as stated in state guidelines, although the goal statement could have been clearer on what constitutes "an opportunity" for purposes of the criteria for achievement. There was observable behavior stated in the behavior support plan that further defines the concept of "opportunity": "When [Student ] becomes agitated..." "When [Student ] is anxious or too upset..." "By discussing a situation in a calm, logical manner and taking control/venting his frustrations in an appropriate manner..." Some element of subjectivity may be inescapable in the drafting of a goal that addresses behaviors of "frustration" or "anxiety," and that element does not offend IDEA.

The special education services called for in the January 2006 IEP consist of the following: "Emotionally disturbed, starting date [], end date [], 10 minutes per day, direct, service provider [ED teacher]." Student refused additional services. It is unknown what additional services might have been developed by the team had Student not refused, apparently with parental support, services to directly address his needs. Student was involved in and made progress in the general education curriculum. Student was also educated with and participated with other children with disabilities and non-disabled children. The Department noted in the report that the positive effect of appropriate behavior supports remains an important part of special education services for students whose behavior interferes with their learning.

## **Complaint 3**

***Issue 1: Did the school comply with minimum requirements of the Individuals with Disabilities Education Act (IDEA) regarding the convening of an IEP team meeting when the parent of a student with a disability requests a team meeting?***

***Conclusion: The school was deemed procedurally out of compliance with IDEA minimum requirements for responding to a parent request for a meeting and following proper procedures for revising the IEP.***

The events at issue here arose in part from a failure of communication between the parent and the principal and in part from the principal's lack of response to one aspect of the parent's expressed concerns. The parent asked the principal for a meeting to discuss Student's math program and the incident in math class. The principal did not understand that the parent was asking for an IEP team meeting. The principal responded to the parent's concern about Student's math progress by discussing it with the special education teacher (who functions as the primary case manager) and other school staff. The special education teacher, in turn, discussed a change to Student's math program with the parent. Student's placement for math class was changed from general education to resource room without parent consent or an IEP team meeting. No IEP team meeting was held to revise the IEP to address lack of progress. The parent received no follow-up by school staff on her request for a meeting to discuss the math teacher's handling of the math class incident.

IDEA does not require the school to convene an IEP team meeting every time a meeting is requested by a team member. The school administrator as the education professional has a responsibility to recognize that the parent may be attempting to exercise her rights under IDEA. IDEA does not require school personnel to be mind-readers; it does expect school personnel to clarify parent requests that may potentially trigger IDEA procedural requirements, so that parents may exercise their procedural rights under IDEA in a meaningful way. If the principal had probed what the parent was asking for, her request could have been identified as a request for an IEP team meeting or some other type of meeting. Once her request was accurately identified, the parent could then make a timely exercise of her rights under IDEA or to proceed by alternate channels. The parent's rights under IDEA consist of the right to request an IEP team meeting and the right to a response from the school: either an IEP team meeting, or prior written notice stating the school's refusal to convene the meeting, which in turn triggers a parent's option to request a due process hearing to contest the school's refusal.

The change in environment from the general education environment to the resource room is a change of placement even if there was no change in minutes of services. Such a change may be made only in an IEP team meeting, or by the parent and school, as long as a written document amending or modifying the current IEP is developed. 34 CFR § 300.324(a)(4). Here, no written document was developed. IEP content of the sections on LRE and special education and related services was not internally consistent. The minutes of services listed could not be reconciled with the services described in the IEP and with Student's class schedule. Corrective action consisted of a directive that the special education unit director provide training for school administrators and the special education teacher/primary case manager on IDEA requirements regarding amending the IEP, convening the IEP team, and appropriate and accurate development of the LRE and special education and related services sections of the IEP.

