

ND DEPARTMENT OF PUBLIC INSTRUCTION - SPECIAL EDUCATION

ANNUAL REPORT FOR DISPUTE RESOLUTION

September 2004 – August 2005

**Requests for Mediation
September 2004 - August 2005**

DATE REQUEST RECEIVED		DISPUTE ISSUE(S)	FILED BY	OUTCOME
1	9/22/04	Placement	Parent	Due process complaint filed 8/25/04. [2003-04 reporting period]. Agreement not reached.
2	9/29/04	Implementation of IEP Good faith effort	Parent	Agreement reached
3	2/18/05	Placement	School	Agreement reached
4	4/4/05	ESY	School/Parent	Agreement reached
5	7/26/05	Placement	School	Parents declined mediation.

**Requests for Due Process Hearings
September 2004 – August 2005**

DATE REQUEST RECEIVED		DISPUTE ISSUE	FILED BY	OUTCOME
1	2/17/05	1. Placement 2. Manifestation determination 3. Compliance with mediation agreement	Parent	8/31/05: all issues dismissed (45-day hearing requirement waived by parent and school district) Hearing: 3/31/05 Hearing continuation: 5/23/05

**DPI – Special Education
Complaint Management History**

	AGREEMENTS/MEDIATIONS	COMPLAINT INVESTIGATIONS	DUE PROCESS HEARINGS
SEPTEMBER 2004- AUGUST 2005	3 / 4	3	1
SEPTEMBER 2003 – AUGUST 2004	1 / 1	11	2
SEPTEMBER 2002 – AUGUST 2003	0 / 0	33	4
SEPTEMBER 2001 – AUGUST 2002	2 / 3	15	3
SEPTEMBER 2000 – AUGUST 2001	0 / 2	14	5
SEPTEMBER 1999 – AUGUST 2000	5 / 6	16	4
SEPTEMBER 1998 – AUGUST 1999	1 / 4	4	6

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, 2003 - June 30, 2004 (or specify other reporting period: 09/01/04 to 08/31/05)	(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of Complaints with Findings	(4) Number of Complaints with No Findings	(5) Number of Complaints not Investigated – Withdrawn or No Jurisdiction	(6) Number of Complaints Set Aside Because Same Issues being Addressed in a Due Process Hearing	(7) Number of Complaints with Decisions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: 08/31/04 <i>(enter closing date for dispositions)</i>
TOTALS	3	1	2	0	0	3	0	0

Ib: Mediations					
(1) July 1, 2003 - June 30, 2004 (or specify alternate period: 09/01/04 to 08/31/05)	Number of Mediations		Number of Mediation Agreements		(6) Number of Mediations Pending as of: 08/31/04 <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	
TOTALS	3	1	3	0	0

Ic: Due Process Hearings					
(1) July 1, 2003 - June 30, 2004 (or specify alternate period: 09/01/04 to 08/31/05)	(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>
TOTALS	1	1	0	1	0

DPI – SPECIAL EDUCATION
COMPLAINT SYNOPSES
SEPTEMBER 2004 – AUGUST 2005

Note: These summaries are intended to provide information in a greatly reduced 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.

Complaint 1

Issues:

1. Did the school fail to develop and implement an IEP that meets minimum requirements of IDEA when Student started school at the beginning of the school year?
2. Did the school's actions in referring Student to juvenile court and in failing to develop the IEP constitute a violation of IDEA requirements to provide special education and to make a good faith effort to help Student achieve his goals?

Conclusion on Issue 1: There was no violation of the IDEA requirement to develop and implement an IEP, where the IEP team met several times during the summer vacation and concluded in late August that it was necessary to conduct a functional behavior assessment in order to develop an appropriate positive behavior intervention plan. The fact that the school staff did not work on the IEP over the summer did not materially delay completion of the functional behavior assessment. The school could not have completed the functional behavior assessment during the summer because a key component of the functional behavior assessment is observation in the school environment. Diagnostic teaching, observation of the student's activities, and personal interviews with school personnel could be conducted only when school is in session. The school acted within its discretion to incorporate these elements into the functional behavior assessment.

Conclusion on Issue 2: No violation. The parent's claim of failure to act in good faith was not directed at specific individuals, but rather at the apparent "disconnect" between school recognition of Student's disability in the IEP process, and school actions to hold Student accountable for behavior in the juvenile court. The truancy referral was a good faith effort to promote Student's educational success. In North Dakota, state compulsory attendance laws place an affirmative duty on school personnel to refer school absences to law enforcement authorities. N.D.C.C. sec.15.1-20-01. The referral for willful disturbance comes within the IDEA provision for reporting a crime to law enforcement authorities.

Complaint 2

Issues:

1. Did the school fail to implement Student's individualized education program ("IEP") by failing to provide two adaptations of educational services, specifically, use of notes on tests and highlighted textbooks?
2. Did the school deny Student a free appropriate public education ("FAPE") by school staff engaging in disability harassment?
3. Did school staff make a disclosure of personally identifying information about Student without parent consent, in violation of the Individuals with Disabilities Education Act ("IDEA") and the Family Educational Rights and Privacy Act of 1974 ("FERPA")?

Conclusion on Issue 1: No violation. The timing of Student's receipt of her notes was disputed, but it was undisputed that she did receive her notes for use on the test. Student's IEP states "She may use her notes on tests when requested by [Student]" (emphasis added). The complainant emphasized that Student had always used her notes on tests. School personnel explained that the language "when requested by [Student]" is used deliberately as a strategy designed to foster self-advocacy by Student, who is a junior in high school with plans to attend college. Student had use of a highlighted text in timely manner after she requested it, as called for in the IEP.

Conclusion on Issue 2: No violation. A claim of belittling comments may constitute disability harassment, which is a violation of IDEA if the harassment rises to a degree that the student is denied a free appropriate public education. In the absence of applicable judicial authority interpreting IDEA, the Department looks to disability harassment cases under other statutes such as Section 504. In cases where disability harassment has been established under Section 504, the harassing conduct has been severe, persistent, or pervasive. Severity and pervasiveness standards require a degree and duration of alleged conduct not presented on the facts here, even if the facts are viewed in the light most favorable to the parent and Student.

Conclusion on Issue 3: No violation. The parent alleged the regular education teacher made a disclosure of personally identifying information about Student without the parent's consent, in violation of IDEA, when the regular education teacher questioned Student about a test in the presence of others. There was no evidence that the regular education teacher mentioned Student's disability during the conversation at issue. The fact that the regular education teacher questioned Student about taking the test outside the regular education classroom does not, by itself, constitute a disclosure of disability status. Some verbal exchange between a teacher and a student is reasonably incidental any time a student included in the general education classroom receives accommodations and modifications outside the general education classroom.

Complaint 3

Issues:

1. Did the school fail to meet requirements of the Individuals with Disabilities Education Act, 20 U.S.C. sec. 1400 et seq. ("IDEA") to provide information about Student's special education records to appropriate authorities in connection with referrals to juvenile court?
2. Did the school fail to follow a safety plan that was incorporated into Student's individualized education program ("IEP"), thus failing to implement the IEP?
3. Did the school fail to comply with IDEA stay-put requirements during the due process proceedings when it issued two out-of-school suspensions?

Conclusion on Issue 1: There was a limited violation of IDEA requirements for the transmittal of special education records to appropriate authorities after the school reported a crime to law enforcement authorities. The parent favored special education records being furnished to juvenile court authorities. The school had transmitted a portion of the IEP to the school resource officer, who is a police officer housed in the school building. IDEA regulations require the school to transmit special education records to "appropriate authorities," but only to the extent that transmission is permitted by the Family Educational Rights and Privacy Act (FERPA). A general release of information existing between the school and the student's custodian may permit the school to share information with the school resource officer for purposes of the officer's educational activities within the school. It does not satisfy the requirement of written consent to disclose special education

records when a crime is reported by school officials to the school resource officer and the school resource officer, in turn, refers the student to juvenile authorities. Here, there was no harm to the student, and the school's disclosure was timely. The result sought by the parent was, in part, achieved. Corrective action consists of adopting a policy to guide future action.

Conclusion on Issue 2: No failure to implement provisions of Student's IEP addressing behavior and options for Student to leave the environment to calm down. The parent alleged a teacher offered Student the option to leave the classroom and go to the office, contrary to Student's behavior plan, which called for several options but not going to the office. Student chose to go to the office and was subsequently referred to juvenile authorities for behavior that occurred in the office. It was Student's choice to go to the office. No one required Student to go to the office.

Conclusion on Issue 3: No violation of stay put requirements. Student's parent filed a due process complaint. Student was subsequently placed in the custody of a social service agency. The custody placement was unrelated to the due process hearing. A representative of Student's custodial agency participated in a discussion with school administrative staff and the primary case manager after a behavior incident. The group, including the custodial representative, agreed that Student would be placed on a three-day out of school suspension. The removal constituted a change of placement under 34 CFR sec. 300.519. The custodian, who held full educational decision-making authority pursuant to a court order, agreed to the change of placement. The due process stay put regulation permits a change of placement while due process proceedings are pending, if the school and parent agree. 34 CFR sec. 300.514.