

***ND Dept of Public Instruction
Office of Special Education***

***Annual Report for
Dispute Resolution
July 1, 2007 – June 30, 2008***

Dispute Resolution Management History

	IEP FACILITATION REQUESTS (ACTUAL)	MEDIATION REQUESTS (ACTUAL)	COMPLAINT INVESTIGATION REQUESTS (ACTUAL)	DUE PROCESS HEARING REQUESTS (ACTUAL)
7/1/07- 6/30/08	8 (7)	1 (0)	3 (3)	0 (0)
7/01/06- 6/30/07	3 (3)	3 (3)	3 (3)	0 (0)
7/1/05- 6/30/06	4 (4)	3 (5)	8 (8)	2 (2)
9/1/04- 8/30/05	N/A	4 (4)	3 (3)	1 (1)
9/1/03- 8/30/04	N/A	1 (1)	11 (11)	0 (0)

Requests for Complaint Investigation: July 1, 2007 – June 30, 2008

FILED BY	DATE OF RECEIPT OF COMPLAINT	ISSUES	VIOLATION Y/N	DATE OF REPORT TO COMPLAINANT
Parent (#1)	11/07/07	1. Failure to consider AT devices & services for IEP.	1. No	Due: January 7, 2008 Sent: Dec. 31, 2007
Parent (#2)	02/06/08	1. Failure to state measurable annual goal as related to student's disability	1. No	Due: April 7, 2008 Sent: April 7, 2008
Parent (#3)	05/12/08	Did the District: 1. Fail to include the student in the regular classroom? 2. Fail to modify curriculum for social studies and science? 3. Maintain a hostile relationship with the parents? 4. Fail to observe notice and procedural protections? 5. Are parents entitled reimbursement for transp.	1. No 2. No 3. No 4. No 5. No	Due: July 11, 2008 <i>(Extension Requested by Complainant and granted for two weeks)</i> Sent: July 25, 2008
SpEd Unit Director (#4)	6/06/08	Did the District fail to provide FAPE?	NA	Withdrawn

Requests for Due Process Hearing: July 1, 2007 - June 30, 2008

There were no due process hearing requests or resolution meetings held during the 2007-2008 school year.

Requests for Mediation: July 1, 2007 – June 30, 2008

DATE REQUEST RECEIVED	DISPUTE ISSUE(S)	FILED BY	OUTCOME
1 6-19-08	1. Issues outlined in the complaint <ul style="list-style-type: none"> ▪ Child find ▪ Failure to implement IEP ▪ Highly qualified teacher ▪ Violation of FERPA 	Special Ed Unit Director	<ul style="list-style-type: none"> ▪ Mediation request was tied to a complaint investigation request. ▪ Request for both mediation and complaint were withdrawn on 6-23-08 ▪ School board submitted their request for mediation on 6-27-08 then withdrew by phone a month later. ▪ The parties agreed to give new district Superintendent a chance to resolve at the beginning of the 2008-09 school year.

Requests for IEP Facilitation: July 1, 2007 - June 30, 2008

DATE OF REQUEST	ISSUE(S)	MEETING DATE(S)	RESULTS
4/22/2008	1. Progress Reporting 2. Discipline/Behavior 3. Implementation of IEP	5/22/2008	Student will attend [PRIVATE FACILITY] and transportation will be provided.
4/18/2008	1. Placement & Services 2. Identification 3. Services 4. Goals 5. Adaptations 6.AT 7. Progress Reports 8. Implementation of IEP	5/15/2008	Successful completion of IEP
2/6/2008	1. IEP Goals	1st mtg: 02/18/08; 2nd mtg: 03/19/08	Student determined not eligible under IDEA; 504 Plan being developed
12/13/2007	1. Placement & Services	4/16/2008	Family disagrees with placement decision of the team; considering DPH
12/6/2007	1. Adapt./accommodations	12/20/07	Successful completion of IEP
11/6/2007	1. Implementing IEP Services 2. Behavior Plan 3. Adapt./accommodations 4. Placement	1st mtg: 11/23/07 2nd mtg: 1/08/08	Successful completion of IEP; behavior plan and placement decision
10/2/2007	1. Implementing transition & IEP goals	1st mtg: 10/23/07 2nd mtg: 11/06/07	Successful completion of IEP
9/11/2007	1. Services 2. IEP Implementation	XXXXXX	Parent declined

Table 7: 2007 – 2008
Dispute Resolution – Complaints, Mediations, and Due Process Hearings Data

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

DPI – SPECIAL EDUCATION
COMPLAINT SYNOPSES
July 1, 2007 – June 30, 2008

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.

COMPLAINT 1

Issue 1: Did the school fail to consider the need for assistive technology devices and services for the student's individualized education program (IEP) effective 1/24/07 to 1/24/08, as required by 34 CFR section 300.324, resulting in a violation of IDEA?

Conclusion: No violation. The school did not fail to consider the student's needs for assistive technology when it developed the IEP.

Regulations implementing the IDEA provide that in developing each child's IEP, the IEP Team must consider whether the child needs assistive technology devices and services. An assistive technology device (or service) can be special education, a related service, or a supplementary aid or service. The choice of a particular assistive technology device is left to the school district, provided the device it selects provides an appropriate level of educational benefit or support. The IEP team did consider assistive technology and determined that the student did not need it to access the general curriculum. The team noted that the student was performing successfully without AT and that the student's hand writing and organization difficulties could be addressed with appropriate low tech accommodations, access to computers at school and assistance in the resource room. The parent advocated the use of a "Tablet PC" and maintained that the team should have considered a 2005 AT assessment that recommended AT. Regulations implementing IDEA provide that in developing each child's IEP, the IEP team must consider the results of the initial or most recent evaluation of the child. Nothing in the IDEA defines "consideration." Accordingly, what is sufficient consideration is an open question. Here however, some members of the IEP team had reviewed the 2005 assessment, the IEP team considered the hand writing and organization difficulties noted in the assessment and the team considered the need for AT. Given the student's recent academic progress without assistive technology, assistive technology was not required for the student to derive benefit from his education. Further, there was evidence that the school had offered appropriate accommodations and devices, but the student had refused them. That the student wouldn't use the software or computers at school, use the resource room to complete homework, or make efforts to complete work as required was not the school's responsibility. The school does not have to offer the AT device of the student's choosing and in fact, providing unneeded AT may be counterproductive. The record showed that the student did not require AT to derive benefit from his education. The student's academic difficulties were not related to a lack of assistive technology - they were related to poor attendance and behavior unrelated to his disability.

COMPLAINT 2

Issue 1: Did the school fail to include a statement of measurable annual goals designed to meet the student's needs that result from his disability, in the student's individualized education program (IEP) effective 1/24/07 to 1/24/08, as required by 34 CFR section 300.320, resulting in a violation of IDEA?

Conclusion: No violation. The school did not fail to include annual goals to meet the student's needs resulting from his disability.

The parent and student alleged that the student's IEP was defective because it contained only one goal related to improving the student's attendance, yet the school maintained that the student's truancy was not related to his disability. The parent asked that the goal on attendance be included in the IEP and the IEP team agreed to write the goal to improve attendance because the team believed that if the student could get to school, the student would do well. But no member of the team believed that the student's attendance problems were related to student's disabilities. First, the parent considered the attendance goal and the IEP to be appropriate at the time it was developed. Case law holds that parents' claims that IEP goals are trivial and inappropriate will not be accepted if they had previously approved of those goals. Second, that the student's attendance problems were not related to his disabilities had already been determined in a prior due process decision involving the same parties. The IDEA provides that if an issue raised in a complaint has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue. Accordingly, the finding that the student's attendance problems were not related to his disability is binding on the SEA and shows that the school was not required to write a goal related to attendance. That the school agreed to write a goal for attendance, when it was not required to do so, does not, by itself, invalidate the IEP. It may however create an obligation to provide that programming throughout the period covered by the IEP, regardless of whether that service or programming is necessary for FAPE.

COMPLAINT 3

Issue 1: Did the school district fail to include the student in the regular classroom in accordance with the IEP, resulting in a violation of IDEA?

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

Documents from the school and interviews with school personnel showed that the student was included in the classroom in accordance with the IEP. The amount of time the student was in the regular education classroom for any given subject fluctuated according to the student's needs, but the total amount of time the student spent in the classroom and resource room was within the percentages specified in the IEP and in accordance with the environmental setting set forth in the IEP. These environmental setting options "are not intended to hinder the team's creativity but to serve as a summary statement about where the child with a disability spends most of his or her day." *Guidelines: Individualized Education Program Planning Process*, North Dakota Department of Public Instruction, p. 54 (2007).

Issue 2: Did the school district fail to modify curriculum for social studies and science in accordance with the IEP, resulting in a violation of IDEA?

Conclusion: No violation. The school did not fail to modify curriculum for social studies and science in accordance with the IEP.

The parents claimed that the curriculum was not properly modified to allow the student to be successfully included in the regular education classroom. Upon investigation, it was determined that all of the student's work was appropriately modified and the parents were mistaken as to the nature and extent of the modifications made to the student's curriculum. Modifications were not readily apparent and despite explanations from school personnel, the parents remained unconvinced that appropriate modifications were being made. They believed that the modifications could have been done better and they pointed to curriculum modifications made at another school as superior to those provided to the student. The record showed however that the student did receive an appropriately modified curriculum in social studies and science. And while modifications could have been done better or differently, that is a question of education methodology, which is within the discretion of the school district, provided the method chosen offers FAPE.

Issue 3: Did the school district maintain a hostile relationship with the parents of the student in violation of the IDEA?

Conclusion: No violation. The school did not maintain a hostile relationship and claims of hostility cannot defeat an appropriate IEP.

The parents claimed that when they attempted to work with the school to have the IEP implemented, they were met with rudeness, obstruction, and resistance. The school agreed that there was a personality conflict between the special education teacher and the mother. Despite the admitted poor relationship between the parties, the parents were provided requested meetings, their concerns were addressed and their suggestions were considered. The IDEA requires that parents be given an opportunity for meaningful input and there is no evidence that the parents were denied an opportunity for meaningful input. The evidence did not support the parents' claim that the school district created a hostile environment such that the student should not be educated at the school. While the school ultimately agreed to pay for the student's transfer to another school because of the acrimonious relationship between the parties, the IDEA encourages parties to work together and it would undermine the collaborative approach envisioned in the IDEA to allow claims of hostility to invalidate an otherwise appropriate program.

Issue 4: Did the school fail to take minutes at meetings and fail to consider certain meetings as IEP meetings with all of the associated notice and procedural protections, resulting in a violation of the IDEA?

Conclusion: No violation. The school did not fail to convene a required IEP meeting or fail to take minutes of proceedings of IEP meetings.

The parents complain that they requested several meetings with school staff to discuss their concerns about the implementation of the IEP and that these meetings should have been deemed IEP meetings, with all of the associated notice and procedural protections. The parents agreed that they did not specifically request any IEP meetings, and the school did not determine that it was necessary to conduct any IEP meetings, but when the parents requested meetings, they were held. Parents and staff discussed the implementation of the IEP, including curriculum modifications and inclusion. Meetings were also held to discuss the student's transfer to another school. No modifications to the IEP resulted and the student's IEP was implemented without change in the new school. The IDEA would not have required the school to convene an IEP meeting for every meeting requested and held to address the parents' concerns about the student's program. Nor is a school district required to convene an IEP meeting prior to a change in

location. A transfer of a student from one school to another school, which has a comparable educational program, is generally considered a change in location only. The record did not show that any of the meetings held should have been IEP meetings, although best practice would be to schedule an IEP meeting when parents believe that the student is not progressing satisfactorily or that there is a problem with the current IEP.

With regard to whether minutes should have been kept, a school district is not required to produce minutes or other documentation of the proceedings of IEP meetings over and above the IEP document itself. Likewise, recommendations discussed by participants in meetings not considered IEP meetings would not have required documentation. Nevertheless, the school did take staffing notes and the parents were told that they could supplement the staffing notes to the extent they felt appropriate.

Issue 5: Are the parents entitled to be reimbursed for transportation costs?

Conclusion: No. The school did not fail to offer an appropriate placement.

The parents unilaterally placed the student in another school district because they believed that the first school had created a hostile environment and they did not believe that the student's IEP was implemented as written. They believed they should be reimbursed for having to drive their child to another school. The resident school district agreed to pay for the student's tuition to attend another school because of the strained relationship between the parties, but the school did not agree to pay for transportation. Under IDEA, a family is entitled to reimbursement for tuition and transportation costs where the school district failed to offer appropriate placement. The evidence did not show that the school created a hostile environment such that the student should not be educated in the district, nor did the evidence show that the school failed to provide FAPE such to require it to pay tuition. Accordingly, the parent's placement of their child in another district did not entitle them to reimbursement for transportation for the 2007-2008 school year.

The parents also asked for reimbursement for future transportation costs. However, the student has been transferred for the 2008-2009 school year pursuant to an application for open enrollment. North Dakota law does not require the district of residence to provide transportation. Case law provides that a school district does not discriminate or deny FAPE when it adheres to a facially-neutral transportation policy for its transfer program. Requiring the school to spend any money to provide transportation to the student would fundamentally alter open enrollment as it is set out in North Dakota law.

Complaint #4: Withdrawn