

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

***Annual Report for  
Dispute Resolution  
July 1, 2008 – June 30, 2009***

## Dispute Resolution Management History

	IEP FACILITATION REQUESTS (COMPLETED)	MEDIATION REQUESTS (COMPLETED)	COMPLAINT INVESTIGATION REQUESTS (COMPLETED)	DUE PROCESS HEARING REQUESTS (COMPLETED)
7/1/08 – 6/30/09	7 (6)	1 (1)	1 (1)	0 (0)
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)

### Complaint Investigation: July 1, 2008 – June 30, 2009

FILED BY	DATE OF RECEIPT OF COMPLAINT	ISSUES	VIOLATION Y/N	DATE OF REPORT TO COMPLAINANT
<b>Outside Party</b>	10/14/08	<ol style="list-style-type: none"> <li>1. Failure to provide parent prior written notice</li> <li>2. Failure to receive parent consent for evaluation</li> <li>3. Failure to provide access to educational records</li> <li>4. Failure to develop appropriate transition plan</li> <li>5. Failure to document parent participation in IEP</li> <li>6. Failure to reconsider disability category</li> </ol>	<ol style="list-style-type: none"> <li>1. No</li> <li>2. No</li> <li>3. Yes</li> <li>4. Yes</li> <li>5. No</li> <li>6. No</li> </ol>	Due: 12-18-08 Sent: 12-18-08

### \*\*\* Due Process Hearing: July 1, 2008 - June 30, 2009\*\*\*

There were no due process hearing, expedited due process hearing requests, or resolution meetings held during the 2008-2009 school year.

### Requests for Mediation: July 1, 2008 – June 30, 2009

DATE REQUEST RECEIVED	DISPUTE ISSUE(S)	FILED BY	OUTCOME
1 4-06-09	1. Accommodations, adaptations, grades	Parent	Agreement was not reached

## Requests for IEP Facilitation: July 1, 2008 - June 30, 2009

DATE OF REQUEST	ISSUE(S)	MEETING DATE(S)	RESULTS
5/21/09	1. Placement 2. Services 3. Goals 4. Adaptations/Accommodations 5. Assistive Technology 6. Implementation of IEP	Tabled to Fall 2009 – Scheduled October 2, 2009	Pending
3/9/09	1. Identification/Evaluation	4/2/09; 4/9/09	IWAR contentious; IEP successfully developed
3/9/09	1. Identification/evaluation	4/2/09	Successful completion of IEP
2/25/09	1. Behavior Plan	4/15/09	Behavior plan was revised to accommodate behaviors across environments
1/2/09	1. Identification/Placement 2. Services 3. Adaptations /Accommodations 4. Related Serv. 5. Implementation of IEP	1/22/09	Successful completion of IEP
12/9/08	1. Extended school year	Scheduled for 12/22/08, then rescheduled to February 2009.	Incorporated ESY into IEP to meet the individual needs of the student.
9/23/08	1. Transition Services	11/5/08	Appropriate job placement determined as part of Transition plan

**Table 7: 2008 – 2009**  
**Dispute Resolution – Complaints, Mediations, and Due Process Hearings Data**

<b>SECTION A: Written, signed complaints</b>	
(1) Written, signed complaints total	<b>1</b>
(1.1) Complaints with reports issued	<b>1</b>
(a) Reports with findings	<b>1</b>
(b) Reports within timeline	<b>1</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>1</b>
(2.1) Mediations	
(a) Mediations related to due process	<b>0</b>
(i) Mediation agreements	<b>0</b>
(b) Mediations not related to due process	<b>1</b>
(i) Mediation agreements	<b>0</b>
(2.2) Mediations not held (including pending)	<b>0</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>

# NDDPI – SPECIAL EDUCATION COMPLAINT SYNOPSIS

July 1, 2008 – June 30, 2009

**Note:** This summary is 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

This complaint was filed by a third party (someone other than the parent or the school) and it involved more than one local education agencies (LEAs). During the 2006-2007 school year, *District #1* was the LEA of residence and location. When the student transferred to *District #2* in April 2007, *District #2* (as the new public agency) was required to provide FAPE to the student under the existing IEP, until it either adopted the IEP or developed a new one. *District #2* developed a new IEP in October 2007. In November 2007, the student was placed in a residential facility and attended a private school associated with the residential facility. The student did not transfer to a new public agency and *District #2* was still responsible for providing FAPE. However, financial responsibility for FAPE fell to DPI on September 15, 2007, because [Student's] biological parent was living out of state and there was no LEA of residence. In December 2007, [Biological Parent] moved back to *District #1* and continued to maintain residence in *District #1*. In June 2008, the student moved to another residential facility and attended the private school associated with the residential facility. Effective September 15, 2008, *District #1* was identified as the district of residence and, as the new public agency, was responsible for providing FAPE to [Student].

The following issues were investigated:

**Issue 1:** *Did the school fail to provide the biological parent with prior written notice of IEP meetings in violation of IDEA? No violation*

Full care, custody and control of [Student] was awarded to [Social Services] and the judicial order did not allocate any rights to [Biological Parent], the noncustodial parent. Since the biological parent did not retain authority to make educational decisions for the child, the biological parent was not presumed to be a “parent” for purposes of 34 CFR 300.30 and was not entitled to prior written notice of IEP meetings as the “parent.” [Biological Parent] was not deprived of the procedural protections of prior written notice of IEP meetings because she was not considered a “parent” under IDEA entitled to prior written notice. However, the biological parent without authority to make educational decisions may still be invited to participate in IEP meetings. In this case, the record showed that the biological mother was invited to IEP meetings and did participate.

**Issue 2:** *Did the school fail to obtain the biological parent's consent for an evaluation in violation of IDEA? No violation.*

The complaint alleges that *District #2* failed to obtain parental consent for the student's evaluation upon [Student's] transfer to *District #2* in April 2007. A complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. 34 CFR 300.153. *District #2* completed [Student's] cognitive and academic testing in September 2007. That is more than one year before the complaint was received

on October 17, 2008. The allegation of a violation that occurred more than a year before the complaint was received is not timely. No other evaluations requiring consent were conducted during the year preceding the receipt of the complaint.

**Issue 3: Did the school fail to provide the biological parent with access to educational records, including copies of IEPs and progress notes in violation of IDEA? Violation of FERPA**

With regard to educational decision making, [Biological Parent] had no authority. But [Biological Parent's] rights under IDEA are different than her right to access educational records under FERPA. A judicial order dated gave [Social Services] authority to access school records, but the order did not state that the biological parent does not have the authority to inspect and review records relating to her child. A school must provide access to non-custodial parents unless there is a court order that specifically removes the biological parent's FERPA rights. Here, the court order did not specifically revoke [Biological Parent's] FERPA rights. Therefore, both [Social Services] and [Biological Parent] have rights under FERPA. The school was not required to automatically send copies of IEPs or progress notes to [Biological Parent]. The school's failure to grant access to [Student's] education records did not result in a denial of FAPE in violation of the IDEA. On the other hand, [Biological Parent] had a right to access her son's educational records under FERPA and those rights were violated. State educational agencies have the authority to resolve complaints alleging violations of Part B of the IDEA Confidentiality of Information regulations, including 34 CFR 300.613, access rights even if the parent could also seek relief under FERPA. *Letter to Anderson, 50 IDELR 167 (OSEP 2008)*.

Corrective Action: *District #2* was required to review all FERPA regulations, the Rights of Non-Custodial Parents in the Family Educational Rights and Privacy Act of 1974 brochure, and review and develop policies and procedures for handling noncustodial parent requests for records. The review was to be conducted with all appropriate staff within 60 days of receipt of the Complaint Investigation report. Evidence of completion was to have been submitted to the NDDPI within the 60 day timeline.

**Issue 4: Did the school fail to develop an appropriate transition plan in violation of IDEA? Violation of IDEA.**

The 2007 and 2008 IEPs recognize [Student's] wish to graduate from high school and go on to vocational education. They also showed that [Student] was taking applied courses. However, while the applied courses may have been appropriate for [Student], the postsecondary goal was not stated with any clarity and it could not be determined whether the applied courses [Student] were appropriate to facilitate [Student's] movement to postsecondary training or education. Because the postsecondary goals were not appropriately stated, it could not be determined whether the appropriate transition services had been identified. So, while all of the elements required to be considered for transition services were considered by the team, the discussion and decision making in the IEP must be based on the postsecondary goals of the student. Because the postsecondary goals were not appropriately stated, it could not be determined whether the appropriate transition services had been identified, resulting in a denial of FAPE.

Corrective Action: *District #1* and *District #2* were required to review, with appropriate staff, the Secondary Transition IEP Process and Forms in *Appendix B of the NDDPI Guidelines: Individualized Education Program Planning Process* within 60 days of

receipt of the Complaint Investigation report. The *District #1* Special Education Unit personnel were also required to coordinate with the residential facility and school where the student was placed to conduct an IEP meeting to provide appropriate measurable postsecondary goals and supporting transition services. The IEP team was to consider whether the Course of Study was appropriate given the newly stated postsecondary goals and evidence of completion was to be submitted to the NDDPI within the 60 day timeline.

**Issue 5:** *Did the school fail to document the biological parent's participation in the 2008 IEP, resulting in a violation of IDEA?* **No violation.**

The complaint alleges that the January, 2008 IEP did not document the biological parent's participation in the IEP process, even though the IEP states that she attended the IEP meeting. An IEP that does not include all the necessary elements is not necessarily invalid. Procedural deficiencies do not justify setting aside an IEP when the deficiencies don't compromise the student's right to an appropriate education or hamper the parent's ability to participate. Here, the biological parent participated. Any failure to fully document that participation by quoting every comment or recommendation made by that parent cannot be deemed to compromise the student's right to an appropriate education or hamper the parent's ability to participate, especially when the biological parent does not retain educational decision making authority.

**Issue 6:** *Did the school fail to reconsider the student's category of disability specified under the IDEA after an evaluation identified the student as having mental retardation, resulting in a violation of IDEA?* **No violation.**

The complaint alleges that [Student] was diagnosed as MR and that the school should have revisited his category of eligibility. [Biological Parent] did not believe that MR was an appropriate eligibility category. [Biological Parent] believed that [Student's] current eligibility categories of ED and SI were appropriate and that the educational program was appropriate. The label affixed to a child's disability is not as important as the education and services the child receives under the IDEA. A school offers FAPE if it provides education and services that meet a student's unique needs, regardless of the student's specific category of eligibility. It was determined that the team did not misdiagnose [Student's] disability or fail to develop an IEP that addressed [Student's] unique needs, regardless of his specific category of eligibility.