

Based on an evaluation completed when Gabriel was in preschool, the IEP team determined he qualified for services as a child with a behavior disability. Early childhood special education (ECSE) services were initiated on his third birthday. He attended the Discovery Time Preschool two afternoons per week with ECSE services monitored by AEA personnel. The IEP identified one goal concerning "compliance in large and small group activities." Later that year, Gabriel attended a special education preschool program, which continued during the 1992-94 school year. The IEP goals focused on successful group participation.

Gabriel began kindergarten at Madison Elementary School in September 1994 with integration into regular education activities 2 ½ hours per day. Shortly after the beginning of the school year, the integration stopped due to behavior concerns and on 11/7/94 a staffing team determined that Gabriel should be placed in the self-contained classroom at Madison. The parents rejected the recommendation and Gabriel did not attend school from that date until 1/24/95. A mediation conference resulted in a placement decision that Gabriel would attend Hoover Elementary School with only regular classroom accommodations. A subsequent conference held 3/23/95 resulted in an agreement that Gabriel would be provided home tutoring until an evaluation had been completed. Communication between the parents and MCCSD indicated that the evaluation was not completed.

To develop an IEP for Gabriel's 1st grade year, a staffing was scheduled for 8/16/95. Although the parents did not attend, an IEP was developed with the self-contained program at Madison as the recommended placement. No goals were included on the IEP. The parents filed for a due process hearing, and an ALJ decision stated that Gabriel should continue the general education placement at Hoover according to the plan developed 1/24/95. A subsequent mediation identified additional goals, accommodations and paraeducator assistance.

The record indicates that Gabriel continued his program at Hoover Elementary throughout his 2nd and 3rd grade years, making good academic progress with minor behavioral concerns. However, several behavioral concerns were noted during the end of his 3rd grade year. Gabriel was in time-out 36 school days for "compliance" problems between 11/3/97 and 6/5/98. During his 4th grade year, Gabriel was in time out a total of 104 times between September 1998 and June 1999. Concerns about more severe behaviors and their consequences were discussed in a series of conferences between MCCSD personnel and Gabriel's parents that year. A clinical evaluation was recommended.

A conference was held 9/21/99 to develop an IEP for Gabriel's 5th grade year. One goal, "Gabe will problem-solve to make decisions within school rules and teacher expectations" was identified and a behavior intervention plan (BIP) was attached. A detailed chronology prepared by Gabriel's paraeducator indicated that Gabriel's behavior continued to deteriorate through the first semester. The IEP team met 2/28/00 and all members except the parents decided that a change in placement to a small group setting with social skill and anger management training was the most appropriate placement option for Gabriel. The parents apparently left the meeting, rejected this recommendation and filed for a due process hearing that same day. Since Gabriel was not attending school, another IEP meeting was held on 3/24/00 to discuss an interim alternative educational setting for Gabriel throughout the pendency of the hearing. Although the parents

were not in attendance, the remainder of the IEP team recommended the interim placement be the Madison Elementary self-contained program. The Administrative Law Judge determined that "rushing to a very restrictive placement" without modifying the IEP or BIP was inappropriate. The team was ordered to revise Gabriel's IEP and BIP based on an independent evaluation conducted at NTAEA2's expense (SE - 222, May, 2000).

On June 6, 2000, a staffing was scheduled to discuss an independent evaluation and revise Gabriel's IEP and BIP. Although the parents did not remain at the meeting, subsequent arrangements for an independent evaluation were made. An IEP meeting was scheduled for August 29, 2000 to discuss the results of that evaluation conducted by Dr. Michael Hopkins from Two Rivers Psychological Services in Des Moines and to develop a transition plan for Gabriel's 6th grade year. The results of the evaluation were reported in the Present Level of Educational Performance (PLEP) section of the 8/29/00 IEP. In addition to strengths of general knowledge, categorical thinking and general word knowledge, several weaknesses were also noted. Tasks requiring visual information to be reproduced motorically, motor integration tasks (such as note taking), and transitions between activities were difficult for Gabriel. The BIP included accommodations in the form of computers and supports during transitions. A positive behavioral plan and positive reinforcement chart were developed to address Gabriel's ADHD and ODD. The behavioral plan allowed Gabriel to "take a break" from stressful or frustrating situations, utilize computers for class assignments, and learn prosocial skills. The prosocial skills of anger management and self-control were addressed in the special education program for one hour per day. The Boystown Motivational System was the behavior management program used in the special education setting. In this system, Gabriel earned points which could be used to purchase activity and tangible reinforcers. The BIP was to be implemented by all school staff, and additional inservice activities for teachers were also planned. The school had shared videos and books on ADHD and ODD with the staff, and Principal Boone met with the sixth grade teaching staff on at least three occasions to discuss Gabriel's behavior plan. Gabriel was also to participate in a Talent Development course to utilize his intellectual strengths. A conference was scheduled for 1/16/01 to review Gabriel's progress. Recommended adjustments included homework completion goal, due to "Gabriel's decreased performance in work completion." It was recommended that incomplete work be e-mailed to Gabriel's parents. An adjustment was also made to the social skills support to permit Gabriel more input during the training sessions.

A meeting was held 8/27/01 to plan for Gabriel's 7th grade year. Dr. Hopkins was asked to review Gabriel's IEP prior to the meeting to assist in program planning. Dr. Hopkins' report indicated that he was "pleased to see the work the administration and teaching staff had done to minimize disruptions as well as to prepared the staff for ADHD/ODD students." Dr. Hopkins opined that the behavior plan, reinforcement chart and behavioral interventions resulted in good progress, and suggested that Gabriel's seventh grade teachers use a constructive discipline plan "not unlike the one that was used last year." Dr. Hopkins indicated that a "point system based upon the Boys Town Model is excellent as are the Boy's Town Administrator Interventions." Some additional modifications to the behavior plan suggested by the IEP team involved an arrangement by which Gabriel's class participation and assignment completion would be submitted to Ms. Bartleson, the special education teacher, who would monitor progress and keep the parents informed. The BIP was also revised to focus on four target objectives: controlling

anger, cooperating with others, accepting decisions of authority and controlling emotions. Gabriel was to continue to receive social skill and self-control instruction from the special education teacher and NTAEA2 social worker to total 2 periods per day. The remainder of the day Gabriel attended regular education classes with accommodations listed on the BIP.

Gabriel experienced difficulties in the first quarter of the 7th grade year. He was failing many classes, and had a cumulative grade point average of .67. In November, he was suspended from participation in all extra- and co-curricular activities for 28 days for "profanity and vulgar remarks" to MCCSD staff. A meeting was scheduled 12/07/01 at the parents' request to address academic and behavioral concerns. It was agreed that Gabriel would complete class assignments and that he be given independent time to get caught up with assignments. Another conference held at the parents' request on 2/6/02 identified several options to deal with Gabriel's poor academic progress, including a shorter school day, more time in the special education setting, and parental discussions with Gabriel. Apparently, a shortened school day was initiated, with more time in the special education setting. Gabriel attended only six periods, four of which were in the special education setting. The parents agreed to this changed in an e-mail sent February 14, 2002. It was also agreed that when dismissed at 1:30, Gabriel would have little or no homework. On May 8, 2001, a "revision" staffing was held. It was recommended that Gabriel attend full days with 100% of the time in the self-contained program for students with behavioral disorders. Work completion and "problem-solving skills with peers and adults" were included as goals. In justifying the restrictive setting, the IEP includes the following statement:

"Gabe is capable of being in the general education setting if he manages his personal space, behavior and complies with the school rules. This has been more difficult for Gabe in some class settings than others. He has benefitted from small group special education instruction and setting, to learn, and implement prosocial skills and behavior management of his anger and aggression. The special education setting has also additional flexibility and monitoring of his work completion. Providing special education services in the general ed. setting would negatively impact the learning of other students at this time."

The BIP attached to the IEP identifies the following strategies: 1) opportunities to earn movies, participation in Christmas party/dance, 2) contract to assist Gabriel to complete wrestling, 3) alternative social skill instruction, 4) specific behavior contract including "walk outs" when needed, 5) free time for assignment completion during 8th hour, and 6) an assignment folder. The Boystown system was implemented throughout Gabriel's school day.

On September 12, 2002 an IEP meeting was held to discuss annual progress, transition and 3-year evaluation of Gabriel. The 8th grade IEP continued the behavioral goal of "problem-solving when dealing with peers and adults." The Behavior Support Plan lists several strategies including 1) lunch with same-age peers, 2) participation in extracurricular activities, 3) social skill instruction, 4) community volunteering to improve self-esteem, and 5) daily contact with the school psychologist. Gabriel was to continue involvement with the Boys Town system, earning points for appropriate behavior. The points could be used to purchase reinforcers. Consequences for inappropriate behavior involved a warning, time-out carrel, time-out room and crisis intervention with a crisis teacher. Gabriel was to have access to all school activities by meeting the criteria of the "Progress Level" of the Boys Town Model. Accommodations included materials at the desk instead of a locker, color-coded notebooks for class materials, assignments listed on the board to

assist in transitions, textbooks available at home, and paraprofessional assistance.

A detailed description of this behavior plan is warranted, since issues of this appeal address the nature and adequacy of this plan. One major feature of the BIP involves the Boystown Motivational Model, a token economy level system designed to improve targeted social behaviors and reduce inappropriate responses. Students earn points that move them to increasingly higher levels with corresponding increases in reinforcement opportunities, independence and integration. The protocol for addressing behavior is called a "teaching interaction" which involves a multi-step dialogue with the student. Depending on the effect of the teaching interaction, points may be awarded or lost. Principal Boone, special education teacher Misty Bartleson, and crisis interventionist Tom Novotney all testified that both the reinforcement and consequence components of the Boystown portion of the BIP had been individualized for Gabriel. The reinforcement component involved Gabriel earning points for the targeted behaviors. The points may be used to purchase activities from the "buy box." The overall structure of the Boystown system was modified to a "0 - 30 - 60" point accumulation for Gabriel. During the second quarter of the school year, Gabriel earned/purchased several "reinforcement opportunities" including a Harry Potter movie, Lord of the Rings movie, and free reading, computer or social time eighth hour (see Exhibit 3). A specific contract was established to assist Gabriel to participate in wrestling and special school activities such as parties and dances. Access to these activities required Gabriel to reach the "Progress" level - the middle level - of the Boys Town Model. The consequence component of the Boystown model was also individualized for Gabriel. Instead of one warning or redirection, the teacher provided four of five redirections. If those initial redirections were unsuccessful in returning Gabriel to task, he was given a choice to go to the time-out carrel within the class to sit quietly and then return to his class work. Following three to four interventions in that location, Gabriel would be sent to the time-out room, supervised by a paraprofessional. If uncooperative in this location, Gabriel would be sent to Mr. Novotney for crisis intervention. There was no point loss if Gabriel responded to any of the four or five initial warnings; there was a point reduction for carrel time, which could be earned back. There was also a point reduction for the time-out room, but Gabriel was able to earn up to 50 points back if he returned to work and/or complied with the teacher directive. Mr. Novotney testified that the goal of crisis intervention was to discuss the problem behavior with the student, develop a plan for appropriate behavior, and return the student to class. He described several strategies to de-escalate students who are sent to crisis intervention, including students voicing concerns, asking for time away, and going for a walk. Recognizing that Gabriel's swearing and profanity may be part of his ADHD and ODD, there were no consequences for inappropriate language unless directed at a teacher or MCCSD staff member. NTAEA2 consultant Louise Cameron testified that she helped develop the BIP, which was revised several times and updated on a quarterly basis. Progress monitoring of goals was on-going, and reported quarterly. Michael Finn, school social worker, testified that he helped develop Gabriel's BIP and provided support services including social skill training, relationship building and counseling (specifically concerning Gabriel's resistance and noncompliance). Mr. Finn described the IEP team's on-going efforts to modify the BIP in response to Gabriel's needs.

Despite the collaborative effort to design an effective BIP, Gabriel experienced numerous difficulties throughout this eighth-grade year. Although Principal Boone testified to some "good

days," Gabriel required extensive crisis intervention (see Exhibit 1). Of the 60 days Gabriel has attended school since September 19, 2002, he has required crisis intervention on 27 days. Although the "crisis time" varied, there were several days that Gabriel spent the entire school day with the crisis interventionist. Gabriel was issued a 2-day suspension on September 12 for noncompliance and profanity toward the crisis interventionist. Gabriel was also taken or sent home on other occasions. For example, on November 19, 2002 Gabriel pushed another student down outside the cafeteria. He was issued an in-school-suspension for the day, but refused to go to the room. Gabriel's father picked him up from school, stating he would prefer he be at home rather than the in-school-suspension. On November 21, 2002, Gabriel's parents received notification that his grade point average for the first quarter was 1.00. On November 22, 2002, Ms. Bartleson, Mr. Novotney, Mr. Boone met with Gabriel and his parents to explain that Gabriel must complete an appropriate teaching interaction in order to return to class. Ms. Bartleson testified that Gabriel's parents became upset and verbally harassing. Around this time, Gabriel's parents requested a due process hearing. As of 12/3/02 Gabriel's grades were four F's. It was apparently decided that a "change of roster teacher and sp. ed. classroom setting" was necessary to facilitate his attendance and academic motivation. He was assigned to special education teacher Angie Ewalt's classroom. At the time of this change, Gabriel had missed six days of school. An IEP dated December 6, 2002 included several modifications to Gabriel's BIP: 1) moved to Mrs. Ewalt's classroom, 2) extra points awarded for ignoring others' behaviors and making good choices in academics and behavior, 3) allowed to telephone parents in times of crisis, 4) no points lost for not attending to work if quiet, 5) use of any of the time-out areas as needed, 6) choice of seating in class. Principal Boone testified that the change did not result in improvement in Gabriel's behavior. A December 16, 2002 meeting was scheduled to discuss modifications to Gabriel's IEP. Gabriel's parents cancelled the meeting, preferring to "cover the issues with the ALJ in due process."

Conclusions of Law

The Behavior Intervention Plan

The issues of this appeal center on the Behavior Intervention Plan (BIP) developed and implemented for Gabriel. The appellants allege that the BIP was "punitive," that it was not followed consistently, and that they were not allowed to be part of the intervention process.

The IDEA ensures that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independence [20 U.S.C. § 1400(d)(1)(A)]. The FAPE to be provided is defined as special education and related services that--

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program (IEP)[20 U.S.C. §

1401(8).

The IEP must include 1) a statement of the child's present level of educational performance, 2) a statement of measurable annual goals, including benchmarks or short-term objectives, 3) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child, 4) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class, 5) a statement of any individual modifications in the administration of State or districtwide assessments of student achievement, 6) the projected date for beginning of services and modifications, 7) a statement of needed transition services, and 8) a statement of how the child's progress toward annual goals will be measured and how the child's parents will be regularly informed [20 U.S.C. § 1414(d)(1)(A)(i-viii)].

During the development of the IEP, the IEP team is to consider several factors including: in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior [20 U.S.C. § 1414(3)(B)(i)].

This "behavioral intervention plan" (BIP) is referenced in the discipline provisions of the IDEA. Prior to disciplinary action the local educational agency (LEA) is to review the BIP if one exists or develop a BIP if the LEA "did not conduct a functional behavioral assessment and implement a behavioral intervention plan" [20 U.S.C. § 1415(k)(B)(i)].

The specific components of the BIP are not identified in either the federal statute or regulations. State rules similarly require consideration of behavioral strategies in the development of the IEP [Iowa Administrative Rules of Special Education (IARSE 281-41.67(5)(b)(1) Iowa Administrative Code (IAC)] but do not outline the specific contents of a BIP.

In an earlier ruling, this Administrative Law Judge identified several criteria useful in examining the appropriateness of a BIP. These criteria were 1) the BIP must be based on assessment data, 2) the BIP must be individualized to meet the child's unique needs, 3) the BIP must include positive behavior change strategies, and 4) the BIP must be consistently implemented as planned and its effects monitored (36 IDELR 50, SEA IA 2001).

Gabriel's BIP is based on assessment data, specifically the independent educational evaluation conducted by Dr. Michael Hopkins. Mr. Hopkins reviewed Gabriel's BIP and concluded that a "point system based upon the Boys Town Model is excellent as are the Boy's Town Administrator Interventions." The BIP meets the first criterion.

Gabriel's BIP is individualized. Modifications in the Boystown Model as well as accommodations designed to address his ADHD and ODD (assignments listed on board to assist in transitioning, color coded notebooks and folders to aid organizational skills) provide evidence of a plan designed to meet Gabriel's unique needs. The BIP meets the second criterion.

The BIP includes positive behavior change strategies. In addition to the accommodations referenced above, the Boys Town model provided opportunity for Gabriel to earn points for

appropriate behavior. These points could be exchanged for reinforcing activities and materials. Although the appellants describe the consequence component of the Boystown Model as “punitive,” the sequence of teacher redirection, time-out carrel, time-out room, and crisis intervention is to encourage the student to reflect on their behavior, examine behavioral choices, and plan future behavior (testimony of Principal Boone). The “teaching interactions” that move a student through the sequence were described by Dr. Hopkins as “excellent” for Gabriel. The BIP meets the third criterion.

From the evidence and testimony presented, Gabriel’s BIP has been consistently implemented as planned and its effects monitored. Ms. Bartleson testified that progress is monitored through both the Boystown point records and IEP goal updates. She also testified that progress data were shared with Gabriel’s parents through daily correspondence. The IEP team revised the BIP in accordance with on-going progress monitoring data. For example, the last revision of Gabriel’s BIP provided for “extra points,” a modification of the Boystown model. The BIP meets the fourth criterion.

The appellant’s claim that the BIP is punitive and that the IEP has not been followed has not been substantiated.

Parental Involvement in the Development of the IEP/BIP. The regulations for IDEA specify that each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate by 1) notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and 2) scheduling the meeting at a mutually agreed time and place [34 C.F.R. § 300.345(a)]. The notice to the parents must a) indicate the purpose, time and location of the meeting and who will be in attendance and b) must inform the parents of provisions concerning the addition of other IEP team members with knowledge and special expertise regarding the child [34 C.F.R. § 300.345(b)].

An IEP meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. The public agency must keep a record of attempts to arrange a mutually agreed on time and place, such as 1) detailed records of telephone calls made or attempted and the results of those calls; 2) copies of correspondence sent to the parents and any responses received; and 3) detailed records of visits made to the parent’s home or place of employment and the results of those visits [34 C.F.R. § 300.345(d)]. The issue of conducting an IEP meeting without parents in attendance was addressed in the Analysis of Comments and Changes [64 *Federal Register*, No.48, 12587 (March 12, 1999)]: Section 300.345(d) is a longstanding provision that is intended to enable a public agency to proceed to conduct an IEP meeting if neither parent elects to attend, after repeated attempts by the public agency to ensure their participation.

There was no evidence or testimony presented that indicated the appellants were not provided opportunity to fully participate in the development of Gabriel’s IEP and BIP. Although the appellants have left IEP meetings early (March 24, 2000 and June 6, 2000), rescheduled meetings

(April 26 IEP meeting was originally scheduled April 17) or cancelled IEP meetings (December 19, 2002), MCCSD met the procedural and substantive requirements of parental participation. In fact, the IEP team met several times upon the parents' request (12/07/01; 2/6/02) to discuss Gabriel's program.

The appellant's claim that they were not allowed to be part of the intervention process is not substantiated.

Suspensions and Denial of FAPE

The appellants assert that a "pattern of suspensions and in-school suspensions" has resulted in a denial of FAPE for Gabriel.

School personnel have the authority to place a child in an appropriate interim alternative educational setting, another setting or suspension for not more than 10 school days (to the extent such alternative would be applied to children without disabilities)[20 U.S.C. § 1415(k)(1)(A)(i)]. Federal regulations additionally provide for "additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement)[34 C.F.R. § 300.520(a)(1)(i)]. A change in placement would occur if the removals constituted a pattern because they cumulated to more than 10 school days in a school year and because of factors such as length of each removal, the total amount of time the child was removed and the proximity of the removals to one another [34 C.F.R. § 300.519(b)]. The school district is therefore permitted to use the disciplinary sanction of suspension as long as the suspensions do not constitute a change in placement for students with disabilities: "As was the case in the past, school personnel have the ability to remove a child for short periods of time as long as the removal does not constitute a change of placement" [64 *Federal Register*, No. 48, 12412 (March 12, 1999)].

Courts have consistently interpreted the IDEA to prohibit expulsion or suspension for more than 10 school days for misconduct without compliance to procedural safeguards [*Honig v. Doe*, EHLR 559:231 (1988)]. OSEP has consistently taken the same position. In the Memorandum *Initial Disciplinary Guidance Related to Removal of Children with Disabilities from Their Current Educational Placement for Ten School Days or Less* [OSEP Memorandum 97-7, 26 IDELR 981 (OSEP 1997)] OSEP clarified that removals for less than 10 days do not require additional action by the school district. However, school districts are strongly encouraged to review as soon as possible the circumstances that lead to the child's removal and consider whether the child was being provided services in accordance with the IEP and whether the behavior could be addressed through minor classroom or program adjustments, or whether the IEP team should be reconvened to address possible changes to the IEP [see also *Letter to Osterhout*, 35 IDELR 9 (OSEP, 2000); *Letter to Shows*, 33 IDELR 223 (OSERS 2000) noting additional ten-day suspensions can occur in the same school year for separate incidents of misconduct, as long as there is not a pattern of removals and the educational services are not ceased].

Whether or not in-school-suspensions (ISS) are included in the 10-day limit was addressed in the Analysis of Comments and Changes [64 *Federal Register*, No.48, 12619 (March 12, 1999)]. The guidance indicated that in-school suspensions would not be considered a part of the days of

suspension as long as the child is afforded the opportunity to continue and appropriately progress in the general curriculum, continue to receive the services specified on his or her IEP and continue to participate with nondisabled children to the extent they would have in their current placement. Further, portions of a school days (i.e., half-days) that a child had been suspended would be included in determining whether the child had been removed for more than 10 cumulative school days or subjected to a change in placement.

Cumulative short-term suspensions totaling more than 10 school days in a school year may constitute a change of placement under the IDEA when the removals create a pattern of exclusion. Factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another must be considered in determining whether or not a pattern of exclusion exists [34 C.F.R. § 300.519(b)]. Other factors to consider in determining whether or not a pattern may exist might include the nature of the misconduct or characteristics of the disability. Since Damian's misconduct could be consistently described as insubordination, a pattern might easily be established. Children repeatedly suspended for minor school code violations must not be "cut off from educational services" and their problem behaviors must be addressed [64 *Federal Register*, No.48, 12618 (March 12, 1999)].

Gabriel's record of in and out-of-school suspensions indicates he had a 2-day out-of-school suspension and no in-school suspensions (Exhibit 1). Although Gabriel has required extensive crisis intervention, time in this setting cannot be described as suspension. Arguably, time with the crisis interventionist to discuss resistance and noncompliance, appropriate behavior responses and future behavior plans may be "time well-spent" and a critical component of Gabriel's educational program.

The appellants' claim that a pattern of suspensions and in-school-suspensions has resulted in denial of FAPE is not substantiated.

Retaliatory Actions

No evidence or testimony was presented by the appellants which defined or described intentional retaliatory action impacting the provision of FAPE to Gabriel. However, both the school record and testimony attest to the continuing deterioration of the relationship between the appellants and appellees. Testimony from school district personnel characterized the parents as hostile, threatening and harassing. Gabriel and his parents characterized school district personnel as insensitive and untrustworthy. School social worker Michael Finn testified that while the parents view their actions as advocacy, their intercession may be protecting Gabriel from consequences necessary for behavioral improvement.

While an administrative hearing remains a right and an option for the appellants with complaints relating to the educational placement or the provision of a free appropriate education for Gabriel [20 U.S.C. § 1415 (b)(6)], they may want to explore alternative dispute resolution activities which may assist in reestablishing a conciliatory relationship with MCCSD and NTAEA2. Resolution facilitation or mediation may offer mutually-acceptable solutions to disagreements and may help to restore collaborative program planning.

All motions and objections not previously ruled upon, if any, are hereby overruled.

Decision

The appellees (MCCSD and NTAEA2) prevail on all issues. The appellants' contention that Gabriel has been denied a free and appropriate public education by "a punitive behavioral plan," "a pattern of suspensions and in school suspensions," "not following the I.E.P. and not allowing us as parents to be part of the intervention process" and "retaliatory actions against both us and our children" is without merit. Any party who is aggrieved by the findings and decision can bring civil action [20 U.S.C. § 1415(i)(2)(A)]. A party initiating civil action in federal court shall provide an informational copy of the petition or complaint to the department within 14 days of filing the action. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy [§ 281-41.124(2) I.A.C.].

Susan Etscheidt
Susan Etscheidt, Ph.D.
Administrative Law Judge

January 15, 2003
Date