

**Report of Inquiry  
Bureau Resolution Determination  
Conducted by the Bureau of Exceptional Education and Student Services  
Involving the Charlotte County School District**

**BACKGROUND**

The Bureau of Exceptional Education and Student Services (Bureau) received correspondence via electronic mail (e-mail) on November 23, 2008, and an additional state complaint from the complainants on November 24, 2008, alleging that the Charlotte County School District had violated federal and state laws relating to the education of students with disabilities. The issues identified in both documents were incorporated into one state complaint. Specifically, the complainants' allegations involved the following issues:

**ISSUE 1: Whether the Charlotte County School District followed the required procedures regarding excusing individual educational plan (IEP) team members from the IEP team meetings held on October 1, 13, and November 5, 2008**

**ISSUE 2: Whether the Charlotte County School District followed the appropriate procedures and revised the student's May 2, 2008, IEP for the 2008-09 school year to include all accommodations agreed upon by the IEP team**

**ISSUE 3: Whether the Charlotte County School District followed the appropriate procedures in the development of the student's IEP on October 1, 13, and November 5, 2008, specifically when the complainants disagreed with the IEP teams decision to not provide the following accommodations:**

- Daily use of a calculator
- Not grading the student on spelling tests

**ISSUE 4: Whether the Charlotte County School District followed the appropriate procedures when revising the student's IEP for the 2008-09 school year to reflect "small group instruction"**

The 60-day timeline for completion of the inquiry began on November 24, 2008, with an anticipated completion date of January 23, 2009. The district and the complainants were asked to submit relevant documents and information to the Bureau. The district's documentation was submitted by Ms. Linda Apple, Director of Exceptional Student Education (ESE), Charlotte County School District. The complainants also provided documentation. In addition, both parties provided information via telephone interviews.

As part of the inquiry process, relevant portions of the student's educational records were reviewed. The educational records indicated that the student (date of birth: ■) was in the ■ grade and determined eligible for special programs for students identified with specific learning

disabilities (SLD), and received occupational therapy (OT) as a related service. In addition, the student was mainstreamed for all academics.

**ISSUE 1: Whether the Charlotte County School District followed the required procedures regarding excusing individual educational plan (IEP) team members from the IEP team meetings held on October 1, 13, and November 5, 2008**

**LEGAL AUTHORITY FOR THE BUREAU’S FINAL DECISION**

Section 300.321(a) of Title 34 of the Code of Federal Regulations (Title 34) states, “*General.* The public agency must ensure that the IEP Team for each child with a disability includes-(1) The parents of the child; (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; (4) A representative of the public agency who-(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) Is knowledgeable about the general education curriculum; and (iii) Is knowledgeable about the availability of resources of the public agency. (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section; (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) Whenever appropriate, the child with a disability...”

Section 300.321(e) of Title 34 states, “*IEP Team attendance.* (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member’s area of the curriculum or related services is not being modified or discussed in the meeting. (2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member’s area of the curriculum or related services, if-(i) The parent, in writing, and the public agency consent to the excusal; and (ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting...”

The Analysis of Comments and Changes section of Volume 71 of the Federal Register, page 46676 (71 Fed. Reg. 46676), related to section 300.321(e) of Title 34, states:...”Likewise, if a parent learns at the IEP team meeting that a required participant will not be at the meeting, the parent can agree to continue with the meeting and request an additional meeting if more information is needed, or request that the meeting be rescheduled...”

The Analysis of Comments and Changes section of Volume 71 of the Federal Register, page 46674 (71 Fed. Reg. 46674), related to section 300.321(e) of Title 34, states:...”With regard to the recommendation that the notice state that the parent has a legal right to require an IEP team member to participate in an IEP team meeting, it is important to emphasize that it is the public

agency that determines the specific personnel to fill the roles for the public agency's required participants at the IEP team meeting. A parent does not have a legal right to require other members of the IEP team to attend an IEP team meeting..."

The corresponding state requirement is contained in State Board of Education Rule 6A-6.03028, of the Florida Administrative Code (F.A.C.).

## CONCLUSIONS

1. The requirements regarding written consent for excusal from attending an IEP team meeting apply only to the required team members (i.e., not less than one general education teacher of the child; not less than one special education teacher of the child; a representative of the district; and someone who can interpret the instructional implications of evaluation results), and the district determines the specific personnel to fill those roles.
2. For the meeting held on October 1, 2008, the student's ESE teacher attended all but the final three minutes of the meeting, and no significant changes were made to the IEP subsequent to her leaving; this reflects attendance at the meeting by at least one special education teacher or provider of the student.
3. For the meeting held on October 13, 2008:
  - The OT was not invited to the meeting and therefore her attendance was not expected.
  - The student's ESE teacher fulfilled the required role of not less than one ESE teacher or provider of the student; when that individual left, the decision was made to adjourn the meeting and another meeting was scheduled.
  - The regular education teacher attended until the decision was made to adjourn the meeting.
4. For the meeting held on November 5, 2008, the team was notified at the start of the meeting that the teachers would not be available after 2:45 pm; the IEP development was completed by that time and district staff remained with the complainants to edit the meeting notes.
5. The district followed required procedures for participation of not less than one ESE teacher or provider of the student at meetings held on October 1, 13, and November 5, 2008.

## CORRECTIVE ACTION

None

## RECOMMENDATION

In the event a required IEP team member must leave the meeting prior to the completion of an IEP, then the district should either obtain written consent for the dismissal of that required participant or adjourn the meeting at that time.

**ISSUE 2: Whether the Charlotte County School District followed the appropriate procedures and revised the student's May 2, 2008, IEP for the 2008-09 school year to include all accommodations agreed upon by the IEP team**

## **LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION**

Section 300.320 of Title 34 states, “(a) *General*. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with sections 300.320 through 300.324, and that must include-(1) A statement of the child’s present levels of academic achievement and functional performance, including-...(i) How the child’s disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or (ii) For preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities; (2) (i) A statement of measurable annual goals, including academic and functional goals designed to-(A) Meet the child's needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and (B) Meet each of the child ‘s other educational needs that result from the child’s disability; (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives; (3) A description of-- (i) How the child’s progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided; (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, 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 to enable the child-- (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section; (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section; (6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why-(A) The child cannot participate in the regular assessment; and (B) The particular alternate assessment selected is appropriate for the child; and (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications...”

## **CONCLUSION**

The Charlotte County School District followed the appropriate procedures and revised the student’s May 2, 2008, IEP for the 2008-09 school year to include all accommodations determined necessary by the IEP team.

## **CORRECTIVE ACTION**

None

**ISSUE 3: Whether the Charlotte County School District followed the appropriate procedures in the development of the student’s IEP on October 1, 13, and November 5, 2008, specifically when the complainants disagreed with the IEP team’s decision to not provide the following accommodations:**

- **Daily use of a calculator**
- **Not grading the student on spelling tests**

The complainants stated that the IEP team did not acknowledge the recommendations made by the UF consultant regarding specific accommodations to be included in the student’s IEP. The complainants stated that they requested mediation regarding these specific accommodations, but had not received any information from the district regarding their request to mediate.

## **LEGAL AUTHORITY FOR THE BUREAU’S FINAL DECISION**

Section 300.320 of Title 34 states, “(a)... IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting...and that must include...(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, 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 to enable the child - (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the regular education curriculum...and to participate in extracurricular and other nonacademic activities... (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications...”

Section 300.503 of Title 34 states, “(a) *Notice*. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability ... (2) An explanation of why the agency proposes or refuses to take the action...(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency’s proposal or refusal. (c) *Notice in understandable language*...”

## **CONCLUSION**

The Charlotte County School District followed the appropriate procedures in the development of the student’s IEP on October 1, 13, and November 5, 2008, specifically when the complainants’ disagreed with the IEP teams determination to not provide the accommodations, “daily use of a calculator” and “not grading the student on spelling tests.”

## **CORRECTIVE ACTION**

None

## **RECOMMENDATION**

The district should ensure that the amount of time to be committed to each of the various services to be provided be clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP. When frequency is to be dependent on teacher or student discretion, the basis of this decision should be described.

### **ISSUE 4: Whether the Charlotte County School District followed the appropriate procedures when revising the student's IEP for the 2008-09 school year to reflect "small group instruction"**

The complainants stated that the student's IEP team did not agree to provide intensive reading to the student one-on-one. The complainants stated that they did not agree to small group instruction during the October 1, 2008, IEP meeting. Due to the IEP team not being able to reach an agreement, the complainants stated that they requested mediation regarding this issue, but had not received information regarding their request to mediate.

## **LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION**

See Issue Three

Section 300.506 of Title 34 states, "(a) *General*. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process..."

The corresponding state requirements are contained in State Board of Education Rules 6A-6.03028 and 6A-6.03311, F.A.C.

## **CONCLUSION**

The Charlotte County School District followed the appropriate procedures when revising the student's IEP for the 2008-09 school year to reflect "small group instruction."

## **CORRECTIVE ACTION**

None