

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

BACKGROUND

On December 2, 2008, the Bureau of Exceptional Education and Student Services (Bureau) received a state complaint letter from complainants alleging that the Manatee County School District had violated federal and state laws relating to the education of students with disabilities. Specifically, the complainants' allegation involved the following issue:

ISSUE: Whether the Manatee County School District developed the individual educational plan (IEP) to address the student's academic needs that result from the student's disability for the 2007-08 school year, specifically regarding the following:

- **One-on-one delivery of instruction**
- **Slowing the student's rate of instruction**
- **Considering a full range of supplementary aids and services**
- **Remediation and support to enable the student to achieve the annual goals**
- **Statements of how the student's disabilities impacted the student's progress in curriculum**
- **Baseline information for annual goals and a description of the objective measurements used for monitoring the progress**
- **Sending class work home to be completed and depending on the tutor to teach the student**
- **Not providing the student extra supports in writing and requiring essays**
- **Requiring the student to take notes while watching movies or learning concepts**

The 60-day timeline for completion of the inquiry began on December 2, 2008, with an anticipated completion date of January 31, 2009. The district and the complainants were asked to submit relevant documents and information to the Bureau. The district's documentation was submitted by Mr. Ron Russell, Director of Exceptional Student Education (ESE), Manatee 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 other health impairments (OHI), language impairment (LI), and receiving occupational therapy (OT) as a related service. The student was dismissed from OT on January 30, 2008. In addition, the student was diagnosed with post-traumatic stress disorder (PTSD), attention deficit hyperactivity disorder (ADHD), anemia, and hypoglycemia, and took medication for anxiety.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.324 of Title 34 of the Code of Federal Regulations (Title 34) states, “(a) *Development of IEP.* (1) General. In developing each child’s IEP, the IEP Team must consider-- (i) The strengths of the child; (ii) The concerns of the parents for enhancing the education of their child; (iii) The results of the initial or most recent evaluation of the child; and (iv) The academic, developmental, and functional needs of the child.” (2) Consideration of special factors. The IEP Team must-- (i) In the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior; (ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child’s IEP; (iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child’s reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child’s future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; (iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child’s language and communication needs, opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode; and (v) Consider whether the child needs assistive technology devices and services. (3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of -- (i) Appropriate positive behavioral interventions and supports and other strategies for the child; and (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with 300.320(a)(4)...(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

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 a reasonable time before the public agency-- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (b) Content of notice. The notice required under paragraph (a) of this section must include-- (1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (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. (1) The notice required under paragraph (a) of this section must be-- (i) Written in language understandable to the general public; and (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure-- (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; (ii) That the parent understands the content of the notice; and (iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

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

CONCLUSIONS

1. The student's IEP was not revised after the student was assigned to ■ Academy as an interim alternative educational setting. While enrolled there the student did not receive the ESE support in the general education classroom and ESE instruction in a Learning Strategies course as required by the IEP in effect at that time. The IEP was not revised to reflect the services to be provided at ■ Academy, and prior written notice of the change in the provision of FAPE was not provided to the parent.
2. The IEP team considered the student's need for one-on-one of instruction, but prior written notice of the district's refusal to provide this service was not provided when this service was specifically requested by the complainants.
3. The special education and related services and accommodations included in the student's IEP provided for slowing the rate of instruction while still allowing the student to receive instruction in grade level SSS as required for students pursuing a standard diploma.
4. The IEP team considered the student's need for supplementary aids and services, and determined that none were needed. In addition, assistive technology evaluation requested by the complainants in January 2008 was completed in October 2008.
5. The IEP team considered the remediation and support needed to enable the student to achieve the annual goals, as well as the parents' concerns regarding the student's placement in specific courses or classes, when developing the IEP.
6. The student's IEP contained statements of how the student's disabilities impacted the student's progress in the curriculum. Those statements reflected information included in evaluations, conference notes, and correspondence provided to the district by the complainant. The special education and related services and accommodations included on the IEP addressed the impact of the disability.
7. Regarding the inclusion of baseline information for annual goals and a description of the objective measurements used for monitoring progress, the annual goals and methods for determining the student's progress towards the goals are sufficiently clear as to be observable and measurable. However, the complainants were not provided with reports of the student's progress toward the annual goals at least as often as parents of nondisabled students are informed of their students' progress or as indicated on the IEP.
8. In order to maintain the student's progress in the general curriculum the student was assigned unfinished class work to complete at home; no other homework was assigned. The student's

teachers provided instruction in the course content and annual goals; there is no evidence that they relied on the student's private tutor to teach required skills.

9. The student was provided with supports in writing and for required essays in the form of instruction and accommodations.
10. On one occasion the student was required to take notes while watching a video. This was resolved by school staff; the student is not required to take notes simultaneously with watching a video for content.

CORRECTIVE ACTIONS

1. No later than March 15, 2009, the Manatee County School District shall provide comprehensive professional development for the appropriate faculty and staff at ■ Middle School and ■ Academy regarding the provision of written notice to parents prior to a proposal or refusal to make a significant change in the provision of free appropriate public education (FAPE) to a student. Documentation regarding this training, including the content and list of participants, shall be provided to the Bureau no later than April 15, 2009.
2. Regarding the student's November 2, 2007, IEP not being revised after the student was assigned to ■ Academy from December 5, 2007, through March 25, 2008; the district shall be required to review the procedures and requirements regarding its responsibility for revising the student's IEP to reflect the correct ESE services being provided to the student based on the IEP team decisions, no later than March 15, 2009. Documentation of the contents of the review, with written signatures and titles, shall be provided to the Bureau no later than April 15, 2009.
3. The district shall ensure that parents are provided reports of the student's progress toward the annual goals at least as often as parents of nondisabled student are informed of their student's progress or as indicated on the student's IEP. No later than March 15, 2009, the district shall review its policies and procedures for reporting to parents their student's progress toward annual goals and provide professional development for the appropriate faculty and staff at ■ Middle School and ■ Academy. Documentation of this training, including the content and list of participants, shall be provided to the Bureau no later than April 15, 2009.
4. In addition, copies of all required progress reports for the remainder of the 2008-09 school year concerning the student referenced in the complaint shall be provided to the Bureau on February 15, 2009, April 15, 2009, and June 16, 2009.