

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

**BACKGROUND**

The Bureau of Exceptional Education and Student Services received a state complaint from [REDACTED], parents of a student with a disability on February 8, 2010, alleging that the Orange County School District violated federal and state laws relating to the education of students with disabilities. Specifically, the allegations involved the following issues:

**ISSUE 1: Whether the Orange County School District followed the required procedures when determining the student's change in placement during the 2009-10 school year**

**ISSUE 2: Whether the Orange County School District followed the required procedures regarding excusal of individual educational plan (IEP) team members from the IEP team meetings held during the 2009-10 school year**

**ISSUE 3: Whether the Orange County School District followed the required procedures when developing and implementing the student's behavior intervention plan (BIP) during the 2009-10 school year**

The 60-day timeline for the completion of the complaint inquiry began on February 9, 2010, with an anticipated completion date of April 9, 2010. As part of the inquiry process, the complainants and the district were asked to submit relevant documents and information to the Bureau. Harriet Brown, Esquire, Director of Exceptional Student Education (ESE) Policy and Procedures, Orange County School District, submitted documentation on behalf of Anna Diaz, Associate Superintendent, ESE and Multilingual Services. The complainants also submitted documentation.

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: [REDACTED]) was in grade [REDACTED] and determined eligible for exceptional student education (ESE) as a student with autism spectrum disorder (ASD) and a language impairment (LI), and receiving occupational therapy (OT) as a related service.

On February 10, 2010, the IEP team convened to address the complainants' concerns as presented in the complaint. One of the complainants informed the Bureau on February 11, 2010, that the IEP team had made progress in resolving the issues, and the IEP team was planning to reconvene to address the unresolved issues. The parties were continuing to work locally to address the issues and were informed to contact the Bureau in the event that the issues were resolved prior to the completion of the inquiry. Additionally, the complaint included a request for an independent educational evaluation (IEE), including a functional behavioral assessment (FBA), to be conducted by a certified behavior analyst.

**ISSUE 1: Whether the Orange County School District followed the required procedures when determining the student's change in placement during the 2009-2010 school year**

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

Section 300.116, Title 34, Code of Federal Regulations (34 CFR §300.116) states “(a) The placement decision - (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options... (b) The child's placement - (1) Is determined at least annually; (2) Is based on the child's IEP; and (3) Is as close as possible to the child's home; (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled; (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.”

34 CFR §300.503 requires, “(a)... 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... (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...”

The corresponding state requirements are found in Rules 6A-6.03028 and 6A-6.03311, of the Florida Administrative Code (F.A.C.).

**CONCLUSIONS**

1. The IEP developed on October 5, 2009, indicated that the student would be served at the resource level of service and would be in the general education classroom for 150 minutes per day.
2. The principal of the student's school informed the complainants in writing on January 21, 2010, that, in order to provide a safe learning environment for students and staff, effective that day the student was no longer permitted to participate in the general education setting.
3. The district provided the complainants with notices for IEP team meetings on February 4 and February 10, 2010. Both notices indicated that the purpose of the meeting was to review/revise the IEP. Neither notice indicated that a change in placement would be addressed, although this topic was addressed during both meetings.

4. At the IEP team meeting on February 4, 2010, the IEP team informed the complainants that the student would be returned to the original placement on February 8, 2010. However, on February 5, 2010, the principal of the student's school rescinded that decision.
5. At the IEP team meeting on February 10, 2010, the IEP team reviewed and revised the student's IEP to reflect the increase in severity of the student's behaviors and to reflect separate class placement. Prior written notice of the change was provided to the complainants.
6. During the period from January 21, 2010, through February 10, 2010, the Orange County School District implemented a change in placement for the student based on a unilateral administrative decision and without convening the IEP team or communicating with the parent to amend the student's IEP outside of a meeting.
7. The Orange County School District did not follow the required procedures when determining the student's change in placement during the 2009-10 school year.

### **CORRECTIVE ACTION**

No later than May 10, 2010, the district shall reconvene the student's IEP team with the appropriate participants and sufficient advance notice to provide an opportunity for the parents to attend the IEP team meeting. The district shall provide appropriate notice of the meeting including the purpose(s) of the IEP team meeting as required. The IEP team must consider the impact of the change in the student's placement, and determine whether the student's current placement is appropriate and reflects the least restrictive environment for the student. Documentation of the IEP team's determination, including a narrative description of the reasons for the decision, shall be provided to the Bureau within ten days following the meeting.

### **ISSUE 2: Whether the Orange County School District followed the required procedures regarding excusal of individual educational plan (IEP) team members from the IEP team meetings held during the 2009-10 school year**

The complainants alleged that they were misled to believe that the student's general education teacher would be present at the IEP team meeting scheduled on February 4, 2010.

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

34 CFR §300.321 states, "(a) *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...“(e) *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 46674 (71 Fed. Reg. 46674), related to 34 CFR §300.321(e) 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 Analysis of Comments and Changes section found at 71 Fed. Reg. 46676, related to 34 CFR §300.321, 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...”

34 CFR §300.322 states, “Parent Participation. (a) *Public agency responsibility—general*. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including— (1) Notifying 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 on time and place. (b) Information provided to parents. (1) The notice required under paragraph (a)(1) of this section must—(i) indicate the purpose, time, and location of the meeting and who will be in attendance; and (ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child)...”

The corresponding state requirement is found in Rule 6A-6.03028, F.A.C.

Section 1003.32(4), F.S., states “A teacher may remove from class a student whose behavior the teacher determines interferes with the teacher’s ability to communicate effectively with the students in the class or with the ability of the student’s classmates to learn. Each district school board, each district school superintendent, and each school principal shall support the authority of teachers to remove disobedient, violent, abusive, uncontrollable, or disruptive students from the classroom.”

## CONCLUSIONS

1. Regarding the parent's request to be provided the name and title of each person invited to attend the February 10, 2010, meeting, the district is required to notify parents, by role or by name, of who will attend an IEP team meeting. In addition, it is the school district that determines which personnel will fulfill the designated roles on the IEP team.
2. Regarding the March 16, 2010, meeting, although the meeting notice indicated that a general education teacher would attend and one was not in attendance, it was determined that the meeting was held as an informal parent conference and not a formal IEP team meeting.
3. The student's IEP included services in a general education classroom setting for part of the school day. It is unclear who was designated as the student's general education teacher during when the student's assigned classroom teacher invoked section 1003.32(4), F.S. At that time the principal assigned the student to the ESE classroom full time.
4. The student's IEP in effect at the time of the February 4, 2010, IEP team meeting included time with nondisabled peers in a general education classroom. The IEP team discussed change in placement during that meeting. There was not a general education student in attendance at that meeting and the district did not obtain parent consent to excuse that teacher.
5. The Orange County School District did not follow the required procedures regarding excusal of IEP team members from the IEP team meetings convened on February 4, 2010.

## CORRECTIVE ACTION

Prior to the start of the 2010-11 school year, the district is to provide training regarding the excusal of IEP team members from IEP team meetings with district staff responsible for the development and/or implementation of IEPs. Verification of this training is to be provided to the Bureau no later than September 1, 2010.

**ISSUE 3: Whether the Orange County School District followed the required procedures when developing and implementing the student's behavior intervention plan (BIP) during the 2009-10 school year**

## LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.324(a)(2) of Title 34 states that the student's 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;...”

34 CFR §300.17 states, “Free appropriate public education or FAPE means special education and related services that-(a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.”

The corresponding state requirement is found in State Board of Education Rule 6A-6.03028, F.A.C.

## **CONCLUSIONS**

1. The function of the student's target behavior was identified as escape.
2. The BIP developed on October 5, 2009, included consequences for the target behavior. However, the extent to which proactive interventions to prevent the target behavior or strategies to teach replacement behaviors were implemented, and the plan for the provision of reinforcement to the student for appropriate behavior, was not clear.
3. The strategies in the BIP dated October 5, 2009, included consequences to the escape behavior that seemed to result in additional escape or avoidance of the required task. It is unclear how the interventions would result in a decrease in the target behavior.
4. There is evidence that some portions of the BIP were implemented. Data regarding the number of behavior incidents was provided, but there was not sufficient evidence with regard to the application of the interventions or consequences outlined in the BIP.
5. The Orange County School District did not follow the required procedures when developing and implementing the student's BIP during the 2009-10 school year.

## **CORRECTIVE ACTION**

No later than May 1, 2010, the district shall reconvene the student's IEP team with the appropriate participants and sufficient advance notice to provide an opportunity for the parents to attend the IEP team meeting. The IEP team shall review and revise the student's BIP as appropriate to meet the student's needs and/or the student's current behavior functioning. The IEP team shall also consider any results and/or data collected as part of the student's recent FBA, during the IEP team's consideration. If the IEP team determines that there is no need for any revisions to the student's BIP, or the development of a new BIP, a narrative description of the reasons for the decision must be provided. If the IEP team determines the need for BIP revisions, and/or the development of a new BIP, verification of these revisions or the new BIP shall be provided to the Bureau 10 days following the IEP team meeting. Verification of BIP implementation shall be provided to the Bureau on the following dates: June 15, 2010, and October 29, 2010.