

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

BACKGROUND

The Bureau of Exceptional Education and Student Services (Bureau) received a state complaint, from ■■■ on April 15, 2011, alleging that the Palm Beach County School District violated federal and state laws relating to the education of students with disabilities. Specifically, the allegation involved the following issue:

ISSUE: Whether the Palm Beach County School District violated the requirements related to considering the use of positive behavioral interventions and supports and other strategies to address the student’s behavior in the development and implementation of the student’s individual educational plan (IEP) during the 2010-11 school year

The 60-day timeline for the completion of the inquiry process began with receipt of the complaint, with an anticipated completion date of June 14, 2011. As part of the inquiry process, the complainant and the district were asked to submit relevant documents and information to the Bureau. Ms. Laura Pincus, Director of Exceptional Education and Student Services, Palm Beach County School District, submitted documentation on behalf of the district.

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 ■■■ and determined eligible for exceptional student education (ESE) services ■■■.

ISSUE: Whether the Palm Beach County School District violated the requirements related to considering the use of positive behavioral interventions and supports and other strategies to address the student’s behavior in the development and implementation of the student’s IEP during the 2010-11 school year

The complainant indicated that during an IEP team meeting convened on April 13, 2011, plans for addressing the student’s behavior in the classroom were discussed, including the development of a behavioral intervention plan. On the following day (April 14, 2011), the complainant alleged that the school had not sufficiently responded to the student’s aggressive behavior before contacting the police for support.

LEGAL AUTHORITY FOR THE BUREAU’S FINAL DECISION

Section 300.324(a)(2) of Title 34, Code of Federal Regulations (34 CFR §300.324) 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...”

The corresponding state requirements are found in State Board of Education Rules 6A-6.03028 and 6A-6.05271, Florida Administrative Code.

Section 1003.573, F.S., states “Use of seclusion and restraint on students with disabilities.—(1) Documentation and Reporting—(a) A school shall prepare an incident report within 24 hours after a student is released from restraint or seclusion. If the student’s release occurs on a day before the school closes for the weekend, a holiday, or another reason, the incident report must be completed by the end of the school day on the day the school reopens. (b) The following must be included in the incident report: 1. The name of the student restrained or secluded. 2. The date and time of the event and the duration of the restraint or seclusion. 3. The location at which the restraint or seclusion occurred. 4. The type of restraint used. 5. The name of the person using or assisting in the restraint or seclusion of the student. 6. The name of any nonstudent who was present to witness the restraint or seclusion. 7. A description of the incident, including: a. The context in which the restraint or seclusion occurred. b. The student’s behavior leading up to and precipitating the decision to use manual physical restraint or seclusion, including an indication as to why there was an imminent risk of serious injury or death to the student or others. c. The specific positive behavioral strategies used to prevent and de-escalate the behavior. d. What occurred with the student immediately after the termination of the restraint or seclusion. e. Any injuries, visible marks, or possible medical emergencies that may have occurred during the restraint or seclusion, documented according to district policies. f. Evidence of steps taken to notify the student’s parent or guardian. (c) A school shall notify the parent or guardian of a student each time manual physical restraint or seclusion is used. Such notification must be in writing and provided before the end of the school day on which the restraint or seclusion occurs. Reasonable efforts must also be taken to notify the parent or guardian by telephone or computer e-mail, or both, and these efforts must be documented. The school shall obtain, and keep in its records, the parent’s or guardian’s signed acknowledgment that he or she was notified of his or her child’s restraint or seclusion. (d) A school shall also provide the parent or guardian with the completed incident report in writing by mail within 3 school days after a student was manually physically restrained or secluded. The school shall obtain, and keep in its records, the parent’s or guardian’s signed acknowledgment that he or she received a copy of the incident report. (2) Monitoring.— (a) Monitoring of the use of manual physical restraint or seclusion on students shall occur at the classroom, building, district, and state levels. (b) Beginning July 1, 2010, documentation prepared as required in subsection (1) shall be provided to the school principal, the district director of Exceptional Student Education, and the bureau chief of the Bureau of Exceptional Education and Student Services electronically each month that the school is in session. (c) The department shall maintain aggregate data of incidents of manual physical restraint and seclusion and disaggregate the data for analysis by county, school, student exceptionality, and other variables. This information shall be updated monthly. (3) School District Policies and Procedures.— (a) Each school district shall develop policies and procedures that are consistent with this section and that govern the following: 1. Incident-reporting procedures. 2. Data collection. 3. Monitoring and reporting of data collected. (b) Any revisions to such policies and procedures, which must be prepared as part of the school district’s special policies and procedures, must be filed with the Bureau Chief of the Bureau of Exceptional Education and Student Services no later than January 31, 2011. (4) Prohibited Restraint.— School personnel may not use a mechanical restraint or a manual physical restraint that restricts a student’s breathing...”

DISCUSSION AND CONCLUSIONS

1. A classroom behavioral plan served as the student's primary behavior intervention plan until the end of April. The classroom behavior plans for both of the student's classrooms included the use of positive behavioral interventions and supports. In addition, the student's April 13, 2011, IEP indicated the need for immediate reinforcement regarding following directions and completing work. According to documentation provided by the district, instructional staff who worked with the student attempted to use verbal praise, verbal prompts, planned ignoring strategies, and reward incentives to encourage positive behavior. After spring break, the student was observed by professionals who made recommendations for decreasing the behavior.
2. During the November 11, 2010, IEP team meeting, the IEP team decided to begin data collection for the purpose of developing an FBA pertaining to the student's wandering behaviors. Substantial data were collected. Although substantial data had been collected, during the April 13, 2011, IEP team meeting, the team decided to begin conducting a new FBA, and discussed behavior interventions and modifications. However, the BIP provided by the district was dated April 28, 2011. The day after the meeting, personnel were moved so that the student could be accompanied by an adult at all times.
3. Based on documentation provided, it appeared that the district addressed target behaviors involving "wandering" in the original FBA. Data indicated that the student exhibited many behaviors involving aggression. It is unclear as to why the district did not target aggressive behavior as the primary area needing support/intervention. In addition, the district used physical restraint on multiple occasions to intervene with aggressive behaviors that placed the student in imminent risk of harm to self and others.
4. Before using physical restraint, school personnel are required to apply proactive, de-escalation strategies to the situation. It appears that, in the case of this student, the district implemented reactive measures while the student and others were in crisis, and there is no clear indication of direct, preventative measures being taken to avoid escalation. In addition, after each episode of aggression, there was no evidence that the IEP team reviewed a behavior plan for the student, or made substantive changes to the student's IEP to address the student's changing behavioral needs.
5. Notes and information from additional data indicated aggressive behavior starting in September and continuing throughout the school year. Teacher notes indicated that the student's reinforcement schedule was increased or changed at various times throughout the year, to encourage appropriate behavior and appropriate peer interaction. A social story was included within the student's BIP, but to date, the district has not provided information regarding the use of the social story with the student. The aggressive behaviors seem to have increased in intensity after spring break.
6. Section 1003.573, F.S., "Use of seclusion and restraint on students with disabilities," requires the school to report the incidents of physical restraint to the Bureau, provide the parent with a written notice of each incident on the day it occurs, provide a detailed incident report to the parent within three days of each incident, and obtain from the parent signed acknowledgement that the required documentation was received. Two incidents, described above (October 19, 2010, and April 1, 2011), involving physical restraint, were not reported. The district did not provide evidence that the complainants were notified in writing as

required for each incident involving restraint. In addition, no evidence was provided indicating that written acknowledgement was obtained from the parents, or that a good faith was made by the district to obtain their signature.

7. Based on the documentation provided, the Palm Beach County School District violated the requirements relating to considering the use of positive behavioral interventions and supports and other strategies to address the student's behavior in the development and implementation of the student's IEP during the 2010-11 school year. In addition, the district violated the requirements related to notification and reporting procedures required when using physical restraint.

CORRECTIVE ACTIONS

1. No later than three days from receipt of this report of inquiry, the incidents involving the student and the use of restraint that occurred on October 19, 2010, and April 1, 2011, shall be reported to the Bureau as required. Technical assistance shall be provided at the school in question to staff responsible for documentation and reporting of incidents involving restraint. Verification of technical assistance provided at the school in question shall be submitted to the Bureau **no later than September 1, 2011**. In addition, the district shall ensure that the complainants are notified as required of any future incidents involving the use of restraint, and ensure that a good faith effort is made to obtain written acknowledgement from the complainants and maintain this information in the district's records.
2. **No later than August 31, 2011**, 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. At that time, the IEP team must address the student's current behavioral functioning and needs, and consider the use of positive behavioral interventions and supports. The IEP team shall review the FBA and BIP to determine whether additional information regarding the function of the student's behavior is needed and whether the IEP, FBA, or BIP need to be revised. Verification of the IEP team meeting, including a description of the team's decisions regarding revisions to the student's IEP, FBA, and BIP, **shall be submitted to the Bureau within ten days of the meeting**.
3. **Verification of the implementation of the student's IEP and BIP shall be provided to the Bureau on October 31, 2011, and January 31, 2012.** Documentation verifying IEP and BIP implementation may include, but is not limited, to the following: anecdotal records; student-specific permanent products documenting classroom activity related to annual goal mastery; documentation of annual goal progress; classroom observations; lesson plans related to student-specific annual goals; narratives describing lesson plan implementation; examples of social skill lessons taught or narratives describing social skill interaction; therapy logs; behavior logs; verification of the provision of reinforcement; and verification of instruction in replacement behavior.

*Note: In accordance with the reporting requirements of the Annual Performance Report for the State Performance Plan, this item will be counted as a finding of noncompliance related to **SPP indicator #4, Suspension and Expulsion**. Documentation verifying completion of all components of the corrective action must be received in accordance with the timelines established above, but in no case longer than one year from the date of this report (**June 14**,*

2011) in order for the district to comply with the requirements of SPP 15, Timely Correction of Noncompliance.