

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

BACKGROUND

On May 8, 2007, the Bureau of Exceptional Education and Student Services received a signed complaint letter and information release from Ms. Ann Siegel on behalf of [REDACTED] [REDACTED] [REDACTED] [REDACTED] is the parent of a student who has been receiving exceptional student education (ESE) services. The complainant and legal representative alleged that the Broward County School District had violated federal and state laws relating to the education of students with disabilities. By letters dated May 10, 2007, the complainant, legal representative, and the district were informed of the Bureau's receipt of the formal complaint. Specifically, the allegations involved the following issues:

- ISSUE 1: Whether the Broward County School District reevaluated the student in a timely manner during the 2006-07 school year.**
- ISSUE 2: Whether the Broward County School District followed the required procedures regarding discipline for the student during the 2006-07 school year, specifically related to the student's suspensions.**
- ISSUE 3: Whether the Broward County School District considered the student's behavioral needs and the use of positive behavioral interventions and supports, and other strategies, to address those needs in the development of the student's individual educational plan(s) (IEPs) for the 2006-07 school year.**
- ISSUE 4: Whether the student's IEP team reviewed and revised the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum during the 2006-07 school year.**
- ISSUE 5: Whether the Broward County School District followed the required procedures regarding discipline for the student during the 2006-07 school year, specifically related to the manifestation determination and expulsion to an alternative education center.**
- ISSUE 6: Whether the Broward County School District has appropriately determined the student's eligibility for all applicable exceptional student education (ESE) categories.**

ISSUE 7: Whether the Broward County School District followed required procedures regarding the provision of prior written notice and the procedural safeguards notice, specifically related to the student's 180-day expulsion.

The 60-day timeline for the completion of the complaint inquiry began on May 8, 2007, with an anticipated completion date of July 7, 2007. As part of the inquiry process, the district, complainant, and legal representative were asked to submit relevant documents and information to the Bureau. Due to the complexity of the numerous issues and the extensive documentation that was required, the timeline for completion of the inquiry process was extended for two weeks, to July 21, 2007, to allow adequate time for the necessary analysis of relevant information.

The district's documentation was submitted by Ms. Denise Rusnak, ESE Director, Broward County School District. The educational records that were provided indicated that at the time of the filing of the state complaint, the student (D.O.B. [REDACTED]) was eligible for the special programs for students with speech and language impairments.

ISSUE 1: Whether the Broward County School District reevaluated the student in a timely manner during the 2006-07 school year.

The following legal provisions apply to this issue:

Section 300.303 of Title 34 of the Code of Federal Regulations (Title 34) states: "(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted... (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or (2) If the child's parent or teacher requests a reevaluation. (b) Limitation. A reevaluation conducted under paragraph (a) of this section (1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary."

The corresponding state requirement is found in Rule 6A-6.0331 of the Florida Administrative Code (F.A.C.).

CONCLUSION

The student was not reevaluated in a timely manner during the 2006-07 school year.

CORRECTIVE ACTION

No later than September 30, 2007, the district shall complete the reevaluation as specified on the January 19, 2007, Consent for Reevaluation/Reevaluation Plan. Documentation of

the student's reevaluation including the consideration of the reevaluation results by the student's IEP team must be provided to the Bureau by October 7, 2007.

ISSUE 2: Whether the Broward County School District followed the required procedures regarding discipline for the student during the 2006-07 school year, specifically related to the student's suspensions.

The following legal provisions apply to this issue:

Section 300.530 of Title 34 states, "(a) *Case-by-case determination.* School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct. (b) General.(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 300.536).(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section..."

Section 300.536 of Title 34 states, "(a) For purposes of removals of a child with a disability from the child's current educational placement under 300.530 through 300.535, a change of placement occurs if (1) The removal is for more than 10 consecutive school days; or (2) The child has been subjected to a series of removals that constitute a pattern (i) Because the series of removals total more than 10 school days in a school year; (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. (b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. (2) This determination is subject to review through due process and judicial proceedings."

The corresponding state requirement is found in Rule 6A-6.03312, F.A.C.

CONCLUSION

The Broward County School District did not follow the required procedures regarding discipline for the student during the 2006-07 school year, specifically related to the student's suspensions.

CORRECTIVE ACTION

No later than September 4, 2007, the district shall convene the student's IEP team, with the appropriate participants and sufficient advance notice to provide an opportunity for the parent to attend that IEP team meeting, to determine the amount and type of compensatory services needed for the time period from November 9, 2006, until February 19, 2007, when FAPE was not provided. Documentation of the IEP team's determination regarding compensatory services must be provided to the parent and student, and any resulting plan/timeline, shall be provided to the Bureau within one week following the IEP meeting. Verification of the provision of the compensatory services shall be provided to the Bureau on the following dates as applicable: October 31, 2007 and January 31, 2008. Although it is not expected that there be a 1:1 correlation between what was missed and what is provided as compensatory services, reasonableness should prevail.

RECOMMENDATION

The student's IEP team should consider additional services for the student, such as counseling services, social worker services, and drop-out prevention intervention.

ISSUE 3: Whether the Broward County School District considered the student's behavioral needs and the use of positive behavioral interventions and supports, and other strategies, to address those needs in the development of the student's individual educational plan(s) (IEPs) for the 2006-07 school year.

The following legal provisions apply to this issue:

Section 300.324 of Title 34 states: "...(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..."

The corresponding state requirements are found in Rules 6A-6.03028 and 6A-6.03312 F.A.C.

CONCLUSIONS

1. The Broward County School District considered the student's behavioral needs and the use of positive behavioral interventions and supports, and other strategies, to address those needs in the development of the student's individual educational plan(s) (IEPs) for the 2006-07 school year.
2. However, the student's discipline reports indicated that the interventions and supports, and other strategies, to address the student's behavioral needs were not effective.

3. The student's IEP team did not reconvene to review and revise the IEP to address the lack of progress toward the annual goals and in the general education curriculum. (See Issue 4.)
4. There is no record of a FBA being completed.

CORRECTIVE ACTION

At the IEP meeting held for the Issue Two corrective action, the student's IEP team shall revise the IEP to consider the student's behavioral needs and the use of positive behavioral interventions and supports, and other strategies, to address those needs. A copy of the revised IEP and any meeting notes shall be provided to the Bureau within one week following the meeting.

Additional documentation may be requested by the Bureau.

ISSUE 4: Whether the student's IEP team reviewed and revised the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum during the 2006-07 school year.

The following legal provisions apply to this issue:

Section 300.324 of Title 34 states: "... (b) Review and revision of IEPs. (1) General. Each public agency must ensure that... the IEP Team (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and (ii) Revises the IEP, as appropriate, to address (A) Any lack of expected progress toward the annual goals...and in the general education curriculum, if appropriate; (B) The results of any reevaluation ...; (C) Information about the child provided to, or by, the parents...(D) The child's anticipated needs; or (E) Other matters..."

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

CONCLUSION

The Broward County School District did not review and revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum during the 2006-07 school year.

CORRECTIVE ACTIONS

1. At the IEP meeting held for the Issue Two and Issue Three corrective actions, the student's IEP team shall revise the IEP to address the lack of progress in the general education curriculum. A copy of the revised IEP and any meeting notes shall be provided to the Bureau within one week following the meeting.

2. In addition, the student's IEP team shall reconvene as necessary to review and revise the IEP to address the lack of progress toward the annual goals and in the general education curriculum.
3. During the first semester of the 2007-08 school year, the district shall provide the Bureau with the following documentation:
 - Progress reports for the student
 - Report cards for the student
 - Discipline reports for the student
 - Any FBAs and/or Behavior Intervention Plans (BIPs) developed and/or revised for the student
 - IEP(s) and any meeting notes for IEP team meetings held

ISSUE 5: Whether the Broward County School District followed the required procedures regarding discipline for the student during the 2006-07 school year, specifically related to the manifestation determination and expulsion to an alternative education center.

The following legal provisions apply to this issue:

Section 300.530 of Title 34 states: "(e) Manifestation determination. (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP. (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met. (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies. (f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must (1) Either (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan. (g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child (1)

Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA...”

The corresponding state requirements are found in Rules 6A-6.0527 and 6A-6.03312, F.A.C.

CONCLUSION

The Broward County School District did not follow the required procedures regarding discipline for the student during the 2006-07 school year, specifically related to the manifestation determination and expulsion to an alternative education center.

CORRECTIVE ACTIONS

1. The Broward County School District shall ensure that the required procedures regarding discipline specifically related to manifestation determination and expulsion to an alternative education center are followed.
2. The district shall provide the Bureau with the names of students who were suspended for ten days or more during the second semester of the 2006-07 school year. From this list, the Bureau will request records of manifestation determinations and expulsions to an alternative education center for randomly-selected students.
3. During the first semester of the 2007-08 school year, the district shall self-monitor regarding out-of-school suspensions, manifestation determinations, and expulsions of students and provide the following information to the Bureau no later than January 31, 2008:
 - List of students with out-of-school suspensions totaling ten or more days (including name, grade, and school)
 - For each student, the number of days of out-of-school suspension
 - For each student, date and outcome of manifestation determination meeting(s)
 - For each student, date of FBA(s)
 - For each student, date of BIP(s)

ISSUE 6: Whether the Broward County School District has appropriately determined the student’s eligibility for all applicable exceptional student education (ESE) categories.

The following legal provisions apply to this issue:

Section 300.306 of Title 34 states: “(a) General. Upon completion of the administration of assessments and other evaluation measures (1) A group of qualified professionals and

the parent of the child determines whether the child is a child with a disability, as defined in 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and (2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent...”

The corresponding state requirement is found in Rule 6A-6.0331, F.A.C.

CONCLUSION

The Broward County School District has not appropriately determined the student’s eligibility for all applicable exceptional student education (ESE) categories, since the district did not make efforts to complete a medical evaluation following the complainant’s failure to provide the medical information.

CORRECTIVE ACTION

At the IEP meeting held for the Issues Two, Three, and Four corrective actions, the student’s IEP team shall address the possible need for a medical evaluation due to the student’s history of head injury. If the IEP team determines that a medical evaluation is needed, the district shall ensure that such evaluation is provided at no cost to the parent. Documentation regarding the IEP meeting shall be provided to the Bureau within one week of the meeting. Additional information may be requested by the Bureau.

ISSUE 7: Whether the Broward County School District followed required procedures regarding the provision of prior written notice and the procedural safeguards notice, specifically related to the student’s 180-day expulsion.

The following legal provisions apply to this issue:

Section 300.503 of Title 34 of the Code of Federal Regulations (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...”

Section 300.504 of Title 34 states, “(a) *General*. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents (1) Upon initial referral or parent request for evaluation; (2) Upon receipt of the first State complaint under 300.151 through 300.153 and upon receipt of the first due process complaint under 300.507 in a school year; (3) In accordance with the discipline procedures in 300.530(h); and (4) Upon request by a parent. (b) *Internet Web site*. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists. (c) *Contents*. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under 300.148, 300.151 through 300.153, 300.300, 300.502 through 300.503, 300.505 through 300.518, 300.520, 300.530 through 300.536 and 300.610 through 300.625 relating to (1) Independent educational evaluations; (2) Prior written notice; (3) Parental consent...”

The corresponding state requirement is found in Rule 6A-6.03311 of the Florida Administrative Code (F.A.C.).

CONCLUSION

The Broward County School District followed the required procedures regarding the provision of prior written notice and the procedural safeguards notice, specifically related to the student’s 180-day expulsion.

CORRECTIVE ACTION

None.