

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

BACKGROUND

On October 10, 2007, the Bureau of Exceptional Education and Student Services received a formal complaint from [REDACTED], the parent of a student with disabilities referenced in the complaint, and Ms. April Katine, the complainant's advocate from the Advocacy Center for Persons with Disabilities, Inc. The complaint included information from [REDACTED] and Ms. Katine, who both alleged that the Leon County School District had violated state and federal requirements regarding the education of students with disabilities. Specifically, the complainants' allegations involved the following issues:

- ISSUE 1: Whether the Leon County School District provided the student with comparable services to those described in the student's individual educational plan (IEP) as a transfer student from another state during the 2007-08 school year.**
- ISSUE 2: Whether the behavior management/intervention specified on the student's IEP is based on peer-reviewed research to the extent practicable.**
- ISSUE 3: Whether the Leon County School District reviewed and revised the student's IEP during the 2007-08 school year to consider the concerns of the parent regarding the use of seclusion time-out.**
- ISSUE 4: In the case of the referenced student whose behavior impedes the student's learning or that of others, whether the Leon County School District considered positive behavioral interventions and supports, and other strategies, to address the student's needs during the 2007-08 school year.**
- ISSUE 5: Whether the Leon County School District's Notice of Refusal dated September 27, 2007, met the requirements regarding the explanation as to why the district refused to take action during the 2007-08 school year.**
- ISSUE 6: Whether the Leon County School District follows required procedures related to the use of seclusion time-out for students (including the student specified in the complaint).**
- ISSUE 7: Whether behavior plans within the Leon County School District are not being individualized for students where seclusion time-out is utilized.**

Letters dated October 15, 2007, notified the complainants and district staff of the Bureau's receipt of the complaint letter. On October 19, 2007, the district and the complainants were notified by the Bureau regarding the opportunity for documentation to be submitted.

Mr. Ward Spisso, Director, Exceptional Student Education (ESE), Leon County School District, submitted the district documentation. The complainants also submitted documentation. In addition, both parties provided information via telephone interviews. The investigation process included on-site visits to the student's school and three additional schools, which use seclusion time-out.

As part of the review process, relevant portions of the educational records of 165 students who had used the seclusion time-out room were reviewed, including the records of the student referenced in the complaint [date of birth: [REDACTED] - a [REDACTED]-grade student who was determined to be eligible for special programs for students with emotional/behavioral disabilities (E/BD)].

The student's psychoeducational report completed August 2006 in Arizona identified that the student was diagnosed with attention deficit hyperactivity disorder (ADHD) and a possible bipolar and mood disorder. In addition, the report identified that the student had issues with boundaries, showing respect for others, following rules, coping during transitions, and anxiety.

The following issues were investigated:

ISSUE 1: Whether the Leon County School District provided the student with comparable services to those described in the student's individual educational plan (IEP) as a transfer student from another state during the 2007-08 school year.

The parent stated that the student's school behavior plan in [REDACTED] did not involve closed door time-out and was working well for the student. The parent indicated that [REDACTED] did not want the student to be put in seclusion/closed door time-out. Leon County School District staff told the parent that the closed door time-out was part of the district's classroom-wide behavioral plan and would be used if necessary.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.323 of Title 34 of the Code of Federal Regulations (Title 34) states, "(f) *IEPs for children who transfer from another State.* If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency – (1) Conducts an evaluation...(if determined to be necessary by the new public agency); and (2) Develops, adopts, and implements a new IEP, if appropriate..."

The corresponding state requirements are found in State Board of Education Rules 6A-6.03028 and 6A-6.0334 of the Florida Administrative Code (F.A.C.).

CONCLUSIONS

1. The student's placement (special class) was the same in Leon County School District as in [REDACTED].

2. The feelings corner was used in the ■■■ school behavior plan when the student became frustrated and needed to calm down; where as, the chair time-out (CTO), open door time-out (ODTO), and closed door time-out (CDTO) were used in the Leon County School District classroom-wide behavioral plan.
3. Both behavioral plans allowed the student opportunities to learn replacement behaviors.
4. The Leon County School District provided the student with comparable services to those described in the student's individual educational plan (IEP) as a transfer student from another state during the 2007-08 school year.

CORRECTIVE ACTION

None.

ISSUE 2: Whether the behavior management/intervention specified on the student's IEP is based on peer-reviewed research to the extent practicable.

The primary concern referenced in the complaint was the use of seclusion time-out.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.320(a) of Title 34 states that a student's IEP 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...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 curriculum..."

The corresponding state requirements are found in State Board of Education Rules 6A-6.03028 and 6A-6.03312, F.A.C.

CONCLUSION

The behavior management/intervention specified on the student's IEP is based on peer-reviewed research to the extent practicable.

CORRECTIVE ACTION

None.

ISSUE 3: Whether the Leon County School District reviewed and revised the student's IEP during the 2007-08 school year to consider the concerns of the parent regarding the use of seclusion time-out.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.324 of Title 34 states, “(b)(1)(ii) Revises the IEP, as appropriate, to address (A) Any lack of expected progress toward the annual goals described in 300.320(a)(2), and in the general education curriculum, if appropriate...(D) The child’s anticipated needs..”

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

CONCLUSION

The Leon County School District reviewed and revised the student’s IEP during the 2007-08 school year to consider the concerns of the parent regarding the use of seclusion time-out.

CORRECTIVE ACTION

None.

ISSUE 4: In the case of the referenced student whose behavior impedes the student’s learning or that of others, whether the Leon County School District considered positive behavioral interventions and supports, and other strategies, to address the student’s needs during the 2007-08 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 the behavior.”

The corresponding state requirements are found in State Board of Education Rules 6A-6.03028 and 6A-6.03312, F.A.C.

CONCLUSION

The Leon County School District considered positive behavioral interventions and supports, and other strategies, to address the student’s needs during the 2007-08 school year; however, the student did not stay long enough at the school for sufficient analysis of effectiveness and possible revision.

CORRECTIVE ACTION

None.

ISSUE 5: Whether the Leon County School District’s Notice of Refusal dated September 27, 2007, met the requirements regarding the explanation as to why the district refused to take action during the 2007-08 school year.

The parent stated that the district did not provide ■■■ with a Notice of Refusal that met the requirements of 300.503, stating that the district:

- did not provide an explanation of their refusal to take action
- provided information that the parent disagreed with regarding the student's current IEP to be used as a basis for their refused action
- did not describe other factors that were relevant to their refusal

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.503(a) of Title 34 states, "...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 -...(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...(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."

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

CONCLUSION

The Leon County School District's Notice of Refusal dated, September 27, 2007, met the requirements regarding the explanation as to why the district refused to take action during the 2007-08 school year.

CORRECTIVE ACTION

None.

ISSUE 6: Whether the Leon County School District follows required procedures related to the use of seclusion time-out for students (including the student specified in the complaint).

The parent stated that ■■■ requested a copy of the classroom-wide behavioral plan sometime in September 2007 and had not been provided the plan as of October 8, 2007. The parent noted that the student had been put directly in the CDTO room for property destruction and for AWOL, which ■■■ indicated was not following the classroom-wide behavioral plan. Specifically, the parent reported witnessing the student being put into the CDTO due to the student attempting to follow ■■■ as she left the classroom on September 17, 2007. The parent stated that the student struggled with staff but did not hit staff and that the classroom aide picked up the student and carried ■■■ directly to the seclusion time-out room. The parent thought the seclusion time-out

room was harming the student psychologically, causing ■■■ to have phobias (not able to shut doors at home); and seemed like punishment for the student's noncompliance.

The Bureau conducted a systemic investigation into the use of the secured seclusion time-out rooms, based upon observations and allegations from the Advocacy Center staff (advocate for the parent). The state complaint alleged that the Leon County School District was not following their own administrative procedure D-13, entitled *Time-Out: Practices and Special Requirements* for implementation of the Leon County School Policy 7.08, in that seclusion time-out was being used prior to the implementation of less restrictive behavioral interventions. In addition, the complaint referenced that parental consent is not being sought prior to the use of seclusion time-out.

The advocate for the parent noted a blind spot inside the seclusion time-out room in the left front corner, meaning that the staff observer may not be able to see a small student in that part of the room from the observation window.

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 the behavior."

The corresponding state requirements are found in State Board of Education Rules 6A-6.03028 and 6A-6.03312, F.A.C.

The Florida Fire Prevention Code Rule regarding seclusion time-out rooms is found in 69A-58.0084, F.A.C.

CONCLUSION

The Leon County School District follows required procedures related to the use of seclusion time-out for students (including the student specified in the complaint).

CORRECTIVE ACTION

None.

ISSUE 7: Whether behavior plans within the Leon County School District are not being individualized for students where seclusion time-out is utilized.

Because the classroom-wide behavioral plan is consistent across the district, the complaint alleged that behavior plans are not being individualized for students where seclusion time-out is utilized.

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 the behavior."

The corresponding state requirements are found in State Board of Education Rules 6A-6.03028 and 6A-6.03312, F.A.C.

CONCLUSION

The Leon County School District is individualizing behavior plans for students where seclusion time-out is utilized.

CORRECTIVE ACTION

None.

RECOMMENDATIONS

Although not a state or federal requirement, the district may consider offering the parents a printed copy of the classroom-wide behavioral plan at the students' IEP meetings.

In addition, the district may consider the following: The frequent use of seclusion time-out for a particular student may indicate a need for another type of management program or for a different school setting to better meet the student's learning and behavioral needs.