

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

BACKGROUND

The Bureau of Exceptional Education and Student Services (Bureau) received correspondence via electronic mail (e-mail) on November 23, 2008, and an additional state complaint from the complainants on November 24, 2008, alleging that the Charlotte County School District had violated federal and state laws relating to the education of students with disabilities. The issues identified in both documents were incorporated into one state complaint. Specifically, the complainants' allegations involved the following issues:

ISSUE 1: Whether the Charlotte County School District followed the required procedures regarding excusing individual educational plan (IEP) team members from the IEP team meetings held on October 1, 13, and November 5, 2008

ISSUE 2: Whether the Charlotte County School District followed the appropriate procedures and revised the student's May 2, 2008, IEP for the 2008-09 school year to include all accommodations agreed upon by the IEP team

ISSUE 3: Whether the Charlotte County School District followed the appropriate procedures in the development of the student's IEP on October 1, 13, and November 5, 2008, specifically when the complainants disagreed with the IEP teams decision to not provide the following accommodations:

- Daily use of a calculator
- Not grading the student on spelling tests

ISSUE 4: Whether the Charlotte County School District followed the appropriate procedures when revising the student's IEP for the 2008-09 school year to reflect "small group instruction"

The 60-day timeline for completion of the inquiry began on November 24, 2008, with an anticipated completion date of January 23, 2009. The district and the complainants were asked to submit relevant documents and information to the Bureau. The district's documentation was submitted by Ms. Linda Apple, Director of Exceptional Student Education (ESE), Charlotte 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 specific learning

disabilities (SLD), and received occupational therapy (OT) as a related service. In addition, the student was mainstreamed for all academics.

ISSUE 1: Whether the Charlotte County School District followed the required procedures regarding excusing individual educational plan (IEP) team members from the IEP team meetings held on October 1, 13, and November 5, 2008

FINDINGS OF FACT

1. Meeting notices and signature pages for the IEP team meetings held on October 1, 13, and November 5, 2008, were provided by the district. Conference notes and audio tapes of the meetings provided additional information regarding IEP team participation. A summary of participation is provided in the table below:

Meeting Date	Meeting Notice Invited Participants	Signature Page Meeting Attendance	Additional Information
10/1/2008	<ul style="list-style-type: none"> • Parents/Guardians • ESE Teacher • Liaison • Occupational Therapist (OT) • Regular Education Teacher • ESE Administrator/LEA • Principal/Designee 	<ul style="list-style-type: none"> • Parents/Guardians • ESE Teacher • Liaison • OT • Regular Education Teacher • LEA • Reading Specialist • Consultant (via phone) 	<ul style="list-style-type: none"> • ESE teacher participated in the meeting for approximately two hours and 44 minutes, then returned to classroom • Occupational therapist (OT) provided input regarding her area and then left the meeting; complainants and district indicated agreement orally • Meeting adjourned after two hours and 47 minutes
10/13/2008	<ul style="list-style-type: none"> • Parents/Guardians • ESE Teacher • Liaison • Reading Specialist • Regular Education Teacher • ESE Administrator/LEA • Principal/Designee 	<ul style="list-style-type: none"> • Parents/Guardians • ESE Teacher • Liaison • Reading Specialist • Regular Education Teacher • LEA 	<ul style="list-style-type: none"> • ESE teacher participated in the meeting for approximately one hour and 27 minutes, then left to attend to child care issues • When the ESE teacher left the meeting, it was decided that the IEP team meeting would need to be rescheduled • Regular education teacher participated in the IEP team meeting, including identification of needed accommodations; the regular education teacher attended until the decision was made to adjourn the meeting • Complainants expressed concern regarding OT not attending the meeting to discuss an accommodation for handwriting and neatness; staff indicated the student's grades would not be lowered due to handwriting and

			neatness <ul style="list-style-type: none"> • Regular education teacher for reading was unable to attend due to an accident; district reading specialist provided input in this area • Meeting adjourned after one hour and 37 minutes; subsequent meeting was scheduled
11/5/2008	<ul style="list-style-type: none"> • Parents/Guardians • Regular Education Teacher • ESE Director • Liaison • Reading Specialist • ESE Teacher • ESE Administrator (LEA) • Principal/Designee • Student 	<ul style="list-style-type: none"> • Parents/Guardians • Regular Education Teacher #1 • Regular Education Teacher #2 • ESE Director • Liaison • Reading Specialist • ESE Teacher • LEA 	<ul style="list-style-type: none"> • ESE director stated at the start of the meeting that all teachers would be leaving in one hour, at 2:45 (end of contractual day) • IEP contents were completed while the teachers were in attendance • Complainants and district staff remained after the teachers left to discuss the content of the meeting notes; complainant expressed concern that the teachers should remain to discuss changes being requested to the meeting notes • Meeting adjourned after one hour and 28 minutes

2. The district reported that the student’s IEP was expiring the next day and the district needed a completed IEP in place for the student. The student’s IEP team had met for three meetings totaling five hours and fifty-two minutes to develop the student’s IEP.

LEGAL AUTHORITY FOR THE BUREAU’S FINAL DECISION

Section 300.321(a) of Title 34 of the Code of Federal Regulations (Title 34) states, “*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...”

Section 300.321(e) of Title 34 states, “*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 46676 (71 Fed. Reg. 46676), related to section 300.321(e) of Title 34, 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...”

The Analysis of Comments and Changes section of Volume 71 of the Federal Register, page 46674 (71 Fed. Reg. 46674), related to section 300.321(e) of Title 34, 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 corresponding state requirement is contained in State Board of Education Rule 6A-6.03028, of the Florida Administrative Code (F.A.C.).

CONCLUSIONS

1. The requirements regarding written consent for excusal from attending an IEP team meeting apply only to the required team members (i.e., not less than one general education teacher of the child; not less than one special education teacher of the child; a representative of the district; and someone who can interpret the instructional implications of evaluation results), and the district determines the specific personnel to fill those roles.
2. For the meeting held on October 1, 2008, the student's ESE teacher attended all but the final three minutes of the meeting, and no significant changes were made to the IEP subsequent to her leaving; this reflects attendance at the meeting by at least one special education teacher or provider of the student.
3. For the meeting held on October 13, 2008:
 - The OT was not invited to the meeting and therefore her attendance was not expected.
 - The student's ESE teacher fulfilled the required role of not less than one ESE teacher or provider of the student; when that individual left, the decision was made to adjourn the meeting and another meeting was scheduled.
 - The regular education teacher attended until the decision was made to adjourn the meeting.
4. For the meeting held on November 5, 2008, the team was notified at the start of the meeting that the teachers would not be available after 2:45 pm; the IEP development was completed by that time and district staff remained with the complainants to edit the meeting notes.

- The district followed required procedures for participation of not less than one ESE teacher or provider of the student at meetings held on October 1, 13, and November 5, 2008.

CORRECTIVE ACTION

None

RECOMMENDATION

In the event a required IEP team member must leave the meeting prior to the completion of an IEP, then the district should either obtain written consent for the dismissal of that required participant or adjourn the meeting at that time.

ISSUE 2: Whether the Charlotte County School District followed the appropriate procedures and revised the student’s May 2, 2008, IEP for the 2008-09 school year to include all accommodations agreed upon by the IEP team

The IEP team met on October 1, 13, and November 5, 2008, to revise the student’s May 2, 2008, IEP. The complainants stated that some of the accommodations that were agreed upon by the student’s IEP team were not included on the November 5, 2008, IEP.

FINDINGS OF FACT

- The table below is a summary of the accommodations the complainants reported that were not included on the November 5, 2008, IEP and the IEP team response:

Accommodations reported by the complainants to be agreed upon by the IEP team	IEP team discussion regarding the accommodation (provided via audio recordings and/or IEP team meeting conference notes)	Accommodation identified on the final 11/05/08 IEP
No copying from boards, overheads, etc	The UF consultant stated that the student needed to practice copying off the board to improve this skill. The IEP team members discussed and agreed; however, an accommodation providing copies of notes was provided.	Provide copies of lecture notes and overheads
All materials in all subject areas read aloud	The IEP team members discussed flexible presentation and determined that materials should not be read aloud to the student if given a reading test.	Flexible presentation - Math and content area read aloud when needed
Daily use of spell checker/Franklin Speller	The IEP team members discussed spelling, and determined this accommodation should be included on the IEP along with other specialized equipment.	Use of specialized equipment and/or technology/computer program usage in the classroom (word processing device, the student will use books on audio to

		access materials of a higher reading level/ and technology software)
Accommodations reported by the complainants to be agreed upon by the IEP team	IEP team discussion regarding the accommodation (provided via audio recordings and/or IEP team meeting conference notes)	Accommodation identified on the final 11/05/08 IEP
Special seating arrangements, close proximity to teacher	This accommodation had been included on the student's ■ and ■ grade IEPs. The IEP team discussed proximity seating and determined that the student no longer needed this accommodation.	Not included on IEP per the IEP team determination
No bubble sheets	The IEP team discussed bubble sheets and the use of a scribe, noting that the student would not be expected to complete a bubble sheet as staff transfer the student's responses on a bubble sheet.	Flexible responding – scribe longer responses/adult to transfer booklet responses to answer document
Make learning process concrete, visual, and multi-sensory	This accommodation had been included on the student's ■ and ■ grade IEPs. The IEP team discussed this issue and determined it was not needed on the current IEP as teachers use these techniques on a daily basis in the normal course of instruction.	Not included on IEP per the IEP team determination
Praising specific behaviors (verbal, providing extra privileges, reinforcements, etc.); Positive reinforcement	The IEP team discussed the positive reinforcement and determined that the accommodation would be added but reworded to emphasis praise for self-monitoring.	Praise the student for self-monitoring of progress for increasing independence/self-advocacy
The student will self-monitor progress on increasing independence	See previous	See previous

- The IEP team meeting conference notes and/or audio recordings of the IEP team meetings held on October 1, 13, and November 5, 2008, indicated that each of the accommodations requested by the complainants were considered and discussed. In addition, the complainants were provided with copies of the draft IEPs after each IEP meeting.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.320 of Title 34 states, "(a) *General*. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with sections 300.320 through 300.324, and that must include-(1) A statement of the child's present levels of academic achievement and functional performance, including-...(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum

as for nondisabled children); or (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; (2) (i) A statement of measurable annual goals, including academic and functional goals designed to--(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (B) Meet each of the child 's other educational needs that result from the child's disability; (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives; (3) A description of-- (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided; (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, and a statement of the program modifications or supports for school personnel 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 education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section; (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section; (6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--(A) The child cannot participate in the regular assessment; and (B) The particular alternate assessment selected is appropriate for the child; and (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications..."

CONCLUSION

The Charlotte County School District followed the appropriate procedures and revised the student's May 2, 2008, IEP for the 2008-09 school year to include all accommodations determined necessary by the IEP team.

CORRECTIVE ACTION

None

ISSUE 3: Whether the Charlotte County School District followed the appropriate procedures in the development of the student's IEP on October 1, 13, and November 5, 2008, specifically when the complainants disagreed with the IEP team's decision to not provide the following accommodations:

- **Daily use of a calculator**

- **Not grading the student on spelling tests**

The complainants stated that the IEP team did not acknowledge the recommendations made by the UF consultant regarding specific accommodations to be included in the student's IEP. The complainants stated that they requested mediation regarding these specific accommodations, but had not received any information from the district regarding their request to mediate.

FINDINGS OF FACT

The information below was taken from audio recordings provided by the complainants and IEP conference meeting notes provided by the district for the October 1, 13, and November 5, 2008, IEP team meetings.

1. Regarding the accommodation "daily use of a calculator":
 - On October 1, 2008, the use of the calculator was discussed with the IEP team. The teacher stated that the student liked to play with the calculator and expressed concerns the student had the calculator available all the time. The UF consultant stated that the student should be allowed to use a calculator if laboring on a math problem. A final determination was not made.
 - On October 13, 2008, the complainants stated that the accommodation should be worded "daily use of a calculator." Later during the meeting the complainants requested use of calculator "at the student's discretion." The school and district staff members of the IEP team recommended the use of the calculator at the teacher's discretion. The teacher recommended "weekly" use; therefore, use of the calculator would average weekly, not on a daily basis.
 - On November 5, 2008, the IEP team discussed the student's excellent problem solving strategies which they did not want to be stifled, and determined that it will be allowable for the student to use the calculator for extended calculation as assignments/teacher/student deemed it necessary. The November 5, 2008, IEP identified "Use of a calculator for extended computation/problem solving, weekly, in the regular education classroom." The complainants disagreed with "weekly" and requested a written notice of refusal. The notice was provided on November 11, 2008.
 - The discussion section related to frequency described on an IEP, (71 Fed. Reg. 46667), states that the amount of time to be provided to each of the various services must be appropriate, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP.
2. Regarding the accommodation "not grading the student on spelling test":
 - On October 13, 2008, the complainants stated that the student should not be tested on vocabulary.
 - The student has an accommodation that states "emphasize content rather than spelling in written communication when spelling is not being tested."
 - On October 13, 2008, the IEP team discussed spelling and determined that the student would not be graded on spelling unless it was a spelling test.
 - On November 5, 2008, the complainants requested that the student not be graded on spelling at anytime. The other members of the team disagreed, and the complainants requested a notice of refusal. The notice was provided on November 11, 2008.

- On December 5, 2008, the complainants received written notification from the Bureau that the district had declined participation in mediation due to the IEP team's determination.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.320 of Title 34 states, "(a)... IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting...and that 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, and a statement of the program modifications or supports for school personnel 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 regular education curriculum...and to participate in extracurricular and other nonacademic activities... (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications..."

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 ... (2) An explanation of why the agency proposes or refuses to take the action...(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*..."

CONCLUSION

The Charlotte County School District followed the appropriate procedures in the development of the student's IEP on October 1, 13, and November 5, 2008, specifically when the complainants' disagreed with the IEP teams determination to not provide the accommodations, "daily use of a calculator" and "not grading the student on spelling tests."

CORRECTIVE ACTION

None

RECOMMENDATION

The district should ensure that the amount of time to be committed to each of the various services to be provided be clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP. When frequency is to be dependent on teacher or student discretion, the basis of this decision should be described.

ISSUE 4: Whether the Charlotte County School District followed the appropriate procedures when revising the student’s IEP for the 2008-09 school year to reflect “small group instruction”

The complainants stated that the student’s IEP team did not agree to provide intensive reading to the student one-on-one. The complainants stated that they did not agree to small group instruction during the October 1, 2008, IEP meeting. Due to the IEP team not being able to reach an agreement, the complainants stated that they requested mediation regarding this issue, but had not received information regarding their request to mediate.

FINDINGS OF FACT

The information below was taken from audio recordings provided by the complainants and IEP conference meeting notes provided by the district for the October 1, 13, and November 5, 2008, IEP team meetings.

1. On October 1, 2008, the complainants requested that the UF consultant participate in part of the IEP team meeting via telephone. The IEP team members discussed the student receiving intensive reading one-on-one or by small group instruction with the consultant. The student’s prior IEP dated May 2, 2008, did not specify either; however, the IEP team stated that the student was currently being provided intensive reading one-on-one, but could receive the instruction with another student from time to time if needed. The UF consultant indicated the following regarding small group instruction for the student’s intensive reading program:
 - If the students receiving the instruction were working on the same concepts then small group instruction would work.
 - Teaching Barton reading with more than one student in a group had been shown to be effective due to the fact that students taught in a small group tend to model each other.
 - The teacher could creatively integrate material together and still allow each student to work on their own concept.
2. The complainants were provided a copy of the draft IEP at the end of the October 1, 2008, meeting.
3. The October 13, 2008, draft IEP identified the following as ESE services:
 - Academic Instruction, Additional Reading Instruction
 - Intensive Instruction
 - Small Group Instruction
 - 240 minutes, 4 times per week, in the ESE classroom.
4. The complainants were provided another copy of the draft IEP at the beginning of the October 13, 2008, IEP team meeting. The complainants stated they had not yet read the draft IEP.
5. During the November 5, 2008, IEP team meeting the complainants questioned why small group discussion was on the draft IEP and stated that they did not agree. The IEP team discussed the issue and the IEP team determined that small group instruction should remain on the draft IEP.
6. The complainants requested a written notice of refusal and mediation regarding the issue.

7. On November 11, 2008, the district provided the complainants with a written notice of refusal which stated that one-on-one instruction was refused as the complainants' UF consultant had agreed that small group instruction was appropriate.
8. On December 5, 2008, the complainants received written notification from the Bureau that the district had declined mediation due to the IEP team's determination.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

See Issue Three

Section 300.506 of Title 34 states, "(a) *General*. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process..."

The corresponding state requirements are contained in State Board of Education Rules 6A-6.03028 and 6A-6.03311, F.A.C.

CONCLUSION

The Charlotte County School District followed the appropriate procedures when revising the student's IEP for the 2008-09 school year to reflect "small group instruction."

CORRECTIVE ACTION

None