

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

BACKGROUND

On October 31, 2008, the Bureau of Exceptional Education and Student Services (Bureau) received a state complaint letter from a complainant alleging that the Manatee County School District had violated federal and state laws relating to the education of students with disabilities. Specifically, the complainants' allegations involved the following issues:

ISSUE 1: Whether the Manatee County School District followed the required procedures regarding the complainants' request for an evaluation/reevaluation during the 2007-08 and 2008-09 school years

ISSUE 2: Whether the Manatee County School District followed the required procedures when developing and implementing the functional behavioral assessment (FBA) during the 2007-08 and 2008-09 school years

ISSUE 3: Whether the Manatee County School District considered the student's complex post-traumatic stress disorder (PTSD) diagnosis when developing the individual educational plan (IEP), FBA, and behavioral intervention plan (BIP)

The 60-day timeline for completion of the inquiry began on October 31, 2008, with an anticipated completion date of December 30, 2008. The district and the complainants were asked to submit relevant documents and information to the Bureau. The district's documentation was submitted by Mr. Ron Russell, Director of Exceptional Student Education (ESE), Manatee County School District. The complainants also provided documentation. In addition, both parties provided information via telephone. Due to the need to request additional documentation, on December 30, 2008, the timeline was extended for the completion of the inquiry. The new extended completion date, January 20, 2009, was set to allow adequate time for the necessary analysis of relevant information.

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 as other health impaired (OHI), language impaired (LI), homebound or hospitalized (H/H), and receiving occupational therapy (OT) as a related service.

ISSUE 1: Whether the Manatee County School District followed the required procedures regarding the complainant's request for an evaluation/reevaluation during the 2007-08 and 2008-09 school years

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.303 of Title 34 of the Code of Federal Regulations (Title 34) states: “(a)...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.”

Section 300.301 of Title 34 states: “...(c) “Procedures for initial evaluation. The initial evaluation – (1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or (ii) if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe...”

Section 300.502 of Title 34 states: “(a) *General*. (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section. (2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section. (3) For the purposes of this subpart— (i) *Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and (ii) *Public expense* means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.103. (b) *Parent right to evaluation at public expense*. (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section. (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either— (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency’s evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. (4) If a parent requests an independent educational evaluation, the public agency may ask for the parent’s reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation. (5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. (c) *Parent-initiated evaluations*. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation—(1) Must be considered by

the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.... (e) *Agency criteria.* (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. (2) Except for the criteria described in paragraph (e) (1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.”

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

CONCLUSIONS

1. The requirement that an evaluation be completed within 60 school days during which the student is in attendance after receipt of parental consent applies to initial evaluations only; it does not apply to reevaluations.
2. The Manatee County School District followed the required procedures regarding the complainant's request for an evaluation/reevaluation during the 2007-08 and 2008-09 school years.

CORRECTIVE ACTION

None

ISSUE 2: Whether the Manatee County School District followed the required procedures when developing and implementing the functional behavioral assessment (FBA) during the 2007-08 and 2008-09 school years

The complainant stated that the student's previous FBA from Sarasota County School district was not used by Manatee County.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.324 of Title 34 states, “(a) Development of IEP...(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;...(3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of- (i) Appropriate positive behavioral interventions and supports and other strategies for the child; and (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with 300.320(a)(4)...”

The corresponding state requirements are contained in State Board of Education Rule 6A-6.03028 and Rule 6A.6.03312 of the F.A.C.

CONCLUSION

The extent to which the Manatee County School District followed the required procedures when developing and implementing the functional behavioral assessment (FBA) during the 2007-08 and 2008-09 school years can not be determined.

CORRECTIVE ACTION

No later than February 15, 2009, the Manatee County School District shall reconvene the student's IEP team, with appropriate participants and sufficient advance notice to provide the opportunity for the complainants to attend that IEP team meeting. The team shall review the student's BIP to ensure that the requirements of the plan are clear to all involved. Documentation of the IEP team meeting shall be provided to the Bureau within one week following the meeting. Evidence of implementation of the BIP shall be provided to the Bureau on the following dates: April 15, 2009, June 16, 2009, and October 31, 2009.

ISSUE 3: Whether the Manatee County School District considered the student's complex post-traumatic stress disorder (PTSD) diagnosis when developing the individual educational plan (IEP), FBA, and behavioral intervention plan (BIP)

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.320(a) of Title 34 states, "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 section 300.320 through section 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);...(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... (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;..."

Section 300.324(a)(2) of Title 34 states, "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 requirement is found in State Board of Education Rule 6A-6.03028, (F.A.C.).

CONCLUSIONS

1. The Manatee County School District considered the student's complex PTSD diagnosis when developing the student's FBA/BIP.
2. It is not evident that the Manatee County School District considered the student's complex PTSD diagnosis when developing the student's IEP, including consideration of the student's need for counseling as a related service.

CORRECTIVE ACTION

No later than February 15, 2009, the Manatee County School District shall reconvene the student's IEP team, with appropriate participants and sufficient advance notice to provide the opportunity for the complainants to attend that IEP team meeting. The team shall respond to the parent's request for psychological services and shall consider the student's need for counseling as a related service. Documentation of the IEP team meeting, including any change in services or other revisions to the IEP, shall be provided to the Bureau within one week following the meeting.