

**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**

FINDINGS OF FACT

1. On October 12, 2007, the IEP team met at the complainant's request. A request was made by the complainant for a receptive-expressive evaluation and a functional behavioral assessment. According to the district, the consent form was signed by the complainant; however, the informed notice and consent for evaluation/reevaluation was not provided. The receptive and expressive evaluation was completed on October 24, 2007, and the functional behavioral assessment was completed on November 15, 2007.
2. On May 27, 2008, the complainant requested an evaluation concerning auditory processing and processing difficulties. According to the district, the consent was signed by the complainant; however, the district did not provide the informed notice and consent for evaluation/reevaluation. The independent educational evaluation (IEE) was completed on July 23, 2008.
3. On October 2, 2008, the complainant sent electronic mail message (e-mail) to district staff to request an IEE for the purpose of developing an appropriate FBA at the district expense.
4. On October 27, 2008, the complainant again requested an IEE for the purpose of developing an appropriate FBA at the district expense. The FBA was completed in January 2008.
5. On November 24, 2008, the complainant corresponded via electronic mail to district staff with the request for a neurological IEE. On December 5, 2008, the complainant signed the consent form for the neurological evaluation.
6. The district stated that there have been no refusal notices sent to the complainant.

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.

FINDINGS OF FACT

1. Conference notes dated April 5, 2007, indicated that Manatee County School District would implement the student's IEP from Sarasota County School District, with some revisions, and the IEP team would convene at a later date to develop an IEP for the following school year. That IEP had a duration date of November 9, 2007. A FBA had been conducted, and a BIP implemented in Sarasota County School District. Conference notes from April 5, 2007, did not reference this document specifically, although a summary statement provided by the district in response to this complaint indicated that the Sarasota FBA/BIP was implemented by Manatee County School District during this time period.
2. Numerous conferences and IEP team meetings were held during October and November 2007. The November 2, 2007, IEP included the statement "...Behavior Specialist is in the process of gathering information for a Functional Behavioral Assessment. She will begin observations in about a week or two."
3. At the IEP team meeting on January 30, 2008, a FBA/BIP was reviewed. The contents of the document include references to the student's PTSD, as well as a cautionary note regarding "...the ineffectiveness of a FBA/BIP to address behaviors possibly affected by private events." Due to the FBA/BIP format used by the district, the exact nature of the interventions to be implemented was unclear to the Bureau investigators, as it includes a series of recommendations, and not a formal plan. Recommendations included, but were not limited to, the following:
 - Staff awareness of diagnoses and potential emotional responses of PTSD, including appropriate ways to respond to the student's emotional responses
 - Predictable and consistent environment
 - Avoiding power struggles
 - Using humor to diffuse tension and strengthen student/teacher rapportConference notes from that meeting provided by the complainant indicated that the BIP would be implemented but that the complainant did not agree to the contents of the plan.
4. Correspondence dated May 30, 2008, from Yvonne Gonzalez, Licensed Mental Health Counselor, to Karen Mills, Certified Behavior Analyst, Manatee County School District, included a response to a FBA/IEP team meeting in which she had participated. The letter included a description of the effect of PTSD, and recommendations for staff training and interventions.
5. An addendum to the FBA/BIP, dated June 2008, was provided by the district. The addendum included changes to the recommendations related to the following:

- Staff awareness of diagnoses and potential emotional responses of PTSD (revised use of self-calming strategies for the student)
 - Consequences of behavioral infractions (advised communication between the complainant and school-based administrators regarding school district policies)
 - Avoiding power struggles (deleted the reference to the Student Code of Conduct)
 - Staff awareness of the recommendations made by Yvonne Gonzales (see Finding of Fact 7, above)
6. A revision to the FBA/BIP, dated October 2008, was submitted by the district. The revision included changes to several recommendations as well as to the section entitled to *Setting Events*.
 7. As noted in Finding of Fact 3 above, in all versions of the FBA/BIP, it was unclear to the Bureau investigators whether the recommendations included were to be implemented in full, or were simply recommendations. As a result, it is difficult to evaluate implementation.
 8. Documentation submitted by the district indicated that during the time period in question modifications to the district's and school's standard disciplinary procedures were implemented for the student. This did not prevent referrals or other disciplinary action, but did reflect consideration of the student's disability and the FBA/BIP(s) in effect at the time.

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)

The complainant provided a privately obtained 2006 neuropsychological evaluation and addendum to that evaluation that stated “because of [the student’s] well-documented PTSD, [the student] is in a perpetual state of ‘fight or flight’ ... It might be helpful for staff to connect ■ behaviors with past traumatic events – recognizing that particular context can perhaps allow for greater patience and latitude.” There were recommendations to minimize threat and increase comfort, acceptance, and support.

FINDINGS OF FACT

1. On September 7, 2007, the complainant requested a parent teacher conference so that school staff would understand the nature of the student’s disabilities.
2. On September 28, 2007, the complainant wrote the district and requested, via an attorney, to schedule a meeting with a certified associate behavioral analyst to develop interventions, supports, and strategies to help the student as well as train the staff on PTSD.
3. Conferences were held on October 12 and 30, 2007, to discuss the student’s educational needs. An IEP for the 2007-08 school year was developed on November 2, 2007, and updated or revised on multiple dates, including November 14, 2007, January 30, 2008, and September 3, 2008.
4. The November 2, 2007, IEP:
 - Included the statement “...Behavior Specialist is in the process of gathering information for a Functional Behavioral Assessment. She will begin observations in about a week or two.”
 - Included as an effect of the student’s disability the following statement: “Because of [the student’s] PTSD, [the student] has feelings of anxiety and stress throughout the day. [The student] has difficulty focusing in the regular classroom and often needs to take tests in a quiet place.”
 - Indicated the student’s priority educational need to take responsibility for ■ actions and follow through with ■ assignments
 - Included the following annual goals addressing social/emotional behavior:
 - Given a one-to-one situation with ■ counselor, one time weekly, [the student] will identify 3 positive things that ■ has done.
 - [The student] will practice self-control (raising ■ hand, not yelling out) when frustrated and accept redirection from ■ teachers 4 out of 5 times.
 - On a daily basis, [the student] will recognize situations that bring on feelings of anxiety, and will quietly excuse [him/herself] to go to a designated site.
 - Included the following services:
 - Assistance for some learning activities
 - Specialized instructional approaches
 - Language therapy

- Was revised on March 25, 2008, and September 3, 2008, to include hospital/homebound services
5. On November 9, 2007, the complainant wrote the district regarding the student's referral for inappropriate journal entries. She expressed concern for the student's mood and how the stress and anxiety had caused depression that resulted in self-mutilation, and indicted that school staff had previously discussed the student's need for therapy. In the letter the complainant stated "...The last time [he/she] cut, we were in the clinic with Pam and her assistant, and I asked [the student] what [he/she] what thinking before [he/she] cut. [The student] cried out, 'I hate school! I hate school!' This is school related. I'm formally requesting school psychological services..."
 6. On November 28, 2007, the student was found to be in possession of alcohol. School staff discovered alcohol in the student's backpack and the student disclosed that there were knives in the locker. Staff investigated and confirmed that there were three knives.
 7. On December 3, 2007, the student's licensed clinical social worker wrote a letter to the school in reference to the student's alternative placement and recommended a residential setting with mental health treatment. The student's diagnosis of reactive attachment disorder and post traumatic stress disorder, in addition to the increase in risk taking behaviors, were stated as evidence of the need for a safe, more intensive treatment. The recommendation was to focus on psychiatric problems, rather than behavioral or conduct issues. The complainant alleged this letter was brought to the IEP team meeting, but that the team refused to acknowledge it.
 8. On December 4, 2007, the IEP team met to discuss the student's recent incident involving knives and alcohol on campus. School staff recommended a change of placement to an alternative school for bringing a weapon on campus along with the possession of alcohol. The complainant stated that the student's therapist and physician recommended residential treatment. Staff discussed Homebound or Hospitalized services. An IEP team meeting was scheduled for December 12, 2007.
 9. On December 12, 2007, a manifestation determination meeting was held and the complainant's attorney expressed concern that social emotional issues have not been addressed or dealt with in the best manner by the IEP team. The team determined that the recent misconduct was a manifestation of the student's disability. The behavior specialist reported that the Horizon Academy, an alternative school, had been visited and information continued to be collected to complete the FBA and the BIP. The IEP team planned to reconvene with Horizon's staff.
 10. At the IEP team meeting on January 30, 2008, a FBA/BIP was reviewed. The contents of the document include references to the student's PTSD, as well as a cautionary note regarding "...the ineffectiveness of a FBA/BIP to address behaviors possibly affected by private events."
 11. On March 25, 2008, the IEP team met to discuss services through the program for students who are homebound or hospitalized. The decision was made to provide homebound services to the student.
 12. The IEP in effect for the 2008-09 school year was developed on October 7, 2008. The October 7, 2008, IEP:
 - Included as an effect of the student's disability the following statement: "Because of [the student's] PTSD, [the student] has feelings of anxiety and stress throughout the day. [The student] has difficulty focusing in the regular classroom and often needs to take tests

in another room for extended time purposes. [The student] has a red pass [the student] uses to take a break when [the student] is feeling anxious or overwhelmed. [The student] is using it regularly.”

- Indicated the student’s priority educational needs to:
 - Recognize the need to take a break
 - Utilize the strategies outlined in the BIP for decreasing target behaviors
 - Utilize strategies (introduced by outside counseling) to reduce anxiety within the classroom setting
 - Take responsibility for the student’s own actions
 - Follow up with assignment completion when returning to class
- Included the following annual goals addressing social/emotional behavior:
 - [The student] will practice self-control (raising [the student’s] hand, not yelling out) and accept redirection from teachers as evidenced by compliance with directives and returning to classroom activity within one minute on four out of five trials
 - On a daily basis, [the student] will recognize situations that bring on feelings of anxiety, and will quietly excuse [him/herself] to go to a designated site.
- Included the following services:
 - Assistance for some learning activities
 - Learning therapy
 - Individual instruction at home or hospital
 - Highly structured behavior management plan infused throughout the school day

13. The IEPs or FBA/BIPs in effect for the student during the period in question did not include counseling as a related service, nor was evidence provided that the IEP team considered the student’s need for counseling or the complainant’s written request for psychological services.

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.