

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

BACKGROUND

The Bureau of Exceptional Education and Student Services received a state complaint on November 25, 2008, in which the complainants alleged that the Hillsborough 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 Hillsborough County School District conducted the student's reevaluation and functional behavioral assessment (FBA) in a timely manner following the receipt of the March 31, 2008, signed parental consent

ISSUE 2: Whether the Hillsborough County School District provided the complainants prior written notice of its refusal to conduct a reevaluation and FBA following receipt of parent consent, if required

During the investigation of the complaint, the following additional issue was discovered by the Bureau:

ISSUE 3: Whether the Hillsborough County School District failed to provide the student with a current individual educational plan (IEP) during the 2008-09 school year

The 60-day timeline for the complaint inquiry began on November 25, 2008, with an anticipated completion date of January 24, 2009. The district and the complainants were asked to submit relevant documents and information to the Bureau. The district's documentation was submitted by Dr. Cristina Benito, Supervisor, Exceptional Student Education (ESE) Compliance, Hillsborough County School District.

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 ■ grade and determined eligible for special programs for students identified with autism spectrum disorder (ASD), speech impairment (SI) and language impairment (LI) and receiving occupational therapy (OT) as a related service.

ISSUE 1: Whether the Hillsborough County School District conducted the student's reevaluation and functional behavioral assessment (FBA) in a timely manner following the receipt of the March 31, 2008, signed parental consent

FINDINGS OF FACT

1. The district provided documentation verifying that the parent requested and signed consent on April 10, 2007, for reevaluation for the student, including a behavioral evaluation. A functional behavioral assessment (FBA) was completed for the student on May 17, 2007. The student's family moved out of state during the summer of 2007. The family moved back to Florida and the student re-enrolled in the Hillsborough County School District on February 21, 2008.
2. The district provided documentation verifying that the FBA dated May 17, 2007, was reviewed and discussed at an IEP team meeting for the student on March 31, 2008. The targeted behaviors identified on the FBA had been observed in the classroom twice since the student's re-enrollment. According to IEP team meeting conference notes dated March 31, 2008, the parent verbally requested a new FBA.
3. The district provided documentation verifying that the parent signed consent for a three year reevaluation for the student on March 31, 2008. The documentation specified that consent was only authorized for the reevaluation in the areas initialed by the parent. The parent circled and initialed the following assessments to be administered to the student:
 - academic achievement
 - anecdotal records
 - assistive technology evaluation
 - behavioral evaluation
 - clinical interviews
 - intellectual ability
 - language screening or evaluation
 - learning abilities
 - occupational therapy (OT) evaluation
 - physical therapy (PT) evaluation
 - social/development historyAn FBA was not specifically referenced on this request for reevaluation.
4. Neither party provided documentation that the March 31, 2008, written consent for reevaluation included an FBA.
5. As part of the reevaluation, the following assessments, which included all areas initialed by the parent, have been completed:
 - PT, completed April 25, 2008
 - OT, completed May 21, 2008
 - psychological, including intellectual, academic achievement, and behavioral, completed July 22, 2008
 - speech/language, completed August 21, and 22, 2008
 - social/developmental history, completed August 26, 2008
 - alternative communication and assistive technology (ACAT), completed September 18, 2008
6. The district provided documentation verifying that the student was present at school 56 days and absent 12 days between February 21, 2008, and June 5, 2008. During extended school year (ESY) between June 23, 2008, and July 28, 2008, the student was present at

school 16 days and absent eight days. During the 2007-08 school year the student arrived at school at 11:00 a.m. on Thursdays due to private OT and PT sessions.

7. The student's IEP was effective from March 31, 2008, until August 29, 2008. IEP team meetings scheduled for August 29 and September 25, 2008, were cancelled by the parent pending the receipt of re-evaluations. Upon receipt of the results and prior to the IEP team meeting to discuss the results the parent requested an independent educational evaluation (IEE) for all assessments completed. The district made referrals for IEEs for the following areas on the following dates:
 - PT, September 25, 2008
 - OT, October 15, 2008
 - speech/language, October 15, 2008
 - psychological, October 15, 2008
 - ACAT, November 24, 2008
8. The district provided documentation that verified that an IEP team meeting was held on October 30, 2008. At that meeting the results of the PT, ACAT, social/history and psychological evaluations completed by the district were reviewed and discussed. The parent requested corrections on the social/developmental history and psychological evaluations; the district made the changes.
9. The district provided documentation verifying that a continuation of the October 30, 2008, IEP team meeting was held on November 3, 2008. The psychological evaluation report completed on July 22, 2008, was again discussed, including information on the report regarding the student's behaviors. School staff reported that the student is generally cooperative in school and the behaviors that the parent observes at home are not occurring in school. The school psychologist has been working with school staff to complete *The Assessment of Basic Language and Learning Skills (ABLLS)* and gather information for a FBA/behavior intervention plan (BIP). Although the district states that the student has not been demonstrating behaviors that interfere with the student's ability to learn and function in the classroom, the IEP team agreed that an FBA would be completed in an effort to work cooperatively with the parent.
10. The district provided documentation verifying that during the 2008-09 school year, the student was present 35 days and absent 40 days as of December 9, 2008. The district provided conference notes from the October 30, 2008, IEP team meeting which stated that the parent has kept the student home from school since October 20, 2008, due to the parent's concerns regarding the student's allergies and safety at school. The parent has requested homebound/hospital services be considered for the student but has not submitted the required documentation from a licensed physician.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

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.”

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 of the Florida Administrative Code (F.A.C.).

CONCLUSIONS

1. An FBA was completed for the student on May 17, 2007, but was not reviewed and discussed at an IEP team meeting until March 31, 2008, because the student had moved out of state during the summer of 2007, and re-enrolled in the district on February 21, 2008.
2. During the March 31, 2008, IEP team meeting the parent verbally requested a new FBA for the student. The parent signed consent for reevaluations for the student in specific areas only. A FBA was not included on the consent form. Neither party provided documentation indicating that the parent provided written consent for an FBA.
3. The school staff and the psychologist have not observed behaviors that would make an FBA/BIP necessary for the student, but the IEP team has agreed to complete an FBA in an effort to work cooperatively with the parent.
4. The Hillsborough County School District conducted the student’s reevaluation in a timely manner following the receipt of the March 31, 2008, signed parental consent; however, an FBA was not included in the March 31, 2008, request.

CORRECTIVE ACTION

None

ISSUE 2: Whether the Hillsborough County School District provided the complainants prior written notice of its refusal to conduct a reevaluation and FBA following receipt of parent consent, if required

FINDINGS OF FACT

See Issue One.

LEGAL AUTHORITY FOR THE BUREAU’S FINAL DECISION

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 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..."

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

CONCLUSION

The Hillsborough County School District did not refuse to conduct a reevaluation and FBA following receipt of parent consent; therefore no prior written notice of refusal was required.

CORRECTIVE ACTION

None

ISSUE 3: Whether the Hillsborough County School District failed to provide the student with a current individual educational plan (IEP) during the 2008-09 school year

FINDINGS OF FACT

1. The district provided documentation that verified that during the March 31, 2008, IEP team meeting the parent requested that the duration of the IEP be from March 31, 2008, until August 29, 2008. The IEP states that "this IEP will expire on [August 29, 2008] to include the three-year evaluation. An annual IEP will be developed at that time to address supports and services for the upcoming year."
2. See Issue 1 FOF # 6, 7, and 8.
3. The district provided documentation that in addition to the IEP team meetings held for the student during the 2008-09 school year on October 30, 2008, and November 3, 2008, an IEP team meeting was held for the student on December 8, 2008. The IEP has not yet been finalized, and the district has scheduled IEP team meetings for January 9, 2009, and January 22, 2009, to continue the IEP annual review process.
4. The district acknowledged in an addendum dated December 19, 2008 that the IEP had a duration date of August 29, 2008, and the IEP is beyond the duration date.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.323 of Title 34 states, "(a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP..."

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

CONCLUSION

The Hillsborough County School District failed to provide the student with a current individual educational plan (IEP) during the 2008-09 school year.

CORRECTIVE ACTION

No later than February 13, 2009, 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 finalize the IEP and determine if compensatory services are needed for the time period from August 30, 2008, until the date of the new IEP, when a current IEP was not in place for the student. A copy of the completed IEP and documentation of the IEP team's determination regarding compensatory services must be provided to the Bureau, and any resulting plan/timeline for the provision of compensatory services shall be provided to the Bureau within one week following the IEP meeting. Verification of the provision of the compensatory services, if applicable, shall be provided to the Bureau on the following dates: April 15, 2009 and June 16, 2009.