

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

BACKGROUND

The Bureau of Exceptional Education and Student Services received a signed state complaint letter on December 10, 2008, in which the complainants alleged that the St. Johns County School District has 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 St. Johns County School District followed the required procedures for determining the student's need for extended school year (ESY) services**
- ISSUE 2: Whether the St. Johns County School District developed the individual educational plan (IEP) to address all areas of need, especially related to**
- math
 - secondary transition
- ISSUE 3: Whether the St. Johns County School District followed appropriate procedures related to IEP team member participation, especially related to**
- consideration of all required information
 - presentation of a draft IEP
- ISSUE 4: Whether the St. Johns County School District followed the required procedures to ensure the IEP is accessible to all staff responsible for its implementation**
- ISSUE 5: Whether the St. Johns County School District followed appropriate procedures for excusing IEP team members prior to the conclusion of IEP team meetings held during the 2007-08 and 2008-09 school years**
- ISSUE 6: Whether the St. Johns County School district followed appropriate procedures related to the provision of written notice prior to its proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student**

Letters dated December 10, 2008, notified the complainants and district staff of the Bureau's receipt of the state complaint. The 60-day timeline for the complaint inquiry began on December 10, 2008, with an anticipated completion date of February 8, 2009. Due to the complexity of the six complaint issues and the extensive documentation that has been required, it was necessary to extend the timeline for the completion of the inquiry process to allow adequate time for the necessary analysis of relevant information. The extended completion date was changed to February 21, 2009. On February 19, 2009, the timeline was extended to March 2, 2009, in order to obtain and review additional documentation.

As part of the inquiry process, the district and the complainants were asked to submit relevant documents and information to the Bureau. The district's documentation was submitted by Ms. Lisa Bell, Director of Exceptional Student Education (ESE), St. Johns County School District. The complainants also submitted documentation.

The educational records that were provided indicated that at the time of the filing of the state complaint, the student (D.O.B. ■) was eligible for the special programs for students who are intellectually disabled (IND) and language impaired (LI).

ISSUE 1: Whether the St. Johns County School District followed the required procedures for determining the student's need for extended school year (ESY) services

The complainants stated that since 2007 requests for the student to receive ESY services along with remediation in functional math have been denied. "ESY services were approved on the IEP but the local educational agency (LEA) will only consider a set amount of days and hours which coincide with summer school and not throughout the year as allowed under Individuals with Disabilities Education Act (IDEA) guidelines." The complainants allege that during the summer of 2008 the student participated in summer school but did not receive ESY services.

FINDINGS OF FACT

1. The IEP dated May 29, 2007, included the following regarding ESY services:
 - The IEP team determined that there was a need for ESY services.
 - The *Extended School Year Recommendation* form signed and dated by the complainants stated that the student would attend summer school and ride the bus.

The district indicated that the student received ESY services with transportation services four days per week during the summer of 2007 for two hours per day from June 4, 2007, through July 31, 2007.
2. The IEP dated October 23, 2007, included the following regarding ESY services:
 - The IEP team determined that there was a need for ESY services.
 - The *Extended School Year Services Determination of Need* form noted that "the data indicate the likelihood that the student is at a crucial stage in the development of a critical life skill, and that a lapse in services would substantially jeopardize the student's chances of learning ..." It was stated that, based on a review of reading data, the nature or severity of the student's disability indicated the student would be unlikely to benefit without ESY.
 - The *Extended School Year IEP Addendum* document dated October 23, 2007, stated that the IEP team believed that the student would benefit from ESY services. However, the section of the document designated for special education and related services to be provided during ESY stated "none."
3. The district, in a letter to the complainants dated October 24, 2007, provided written notice of refusal in response to the complainants' request for ESY services to be conducted in their home during Thanksgiving break, winter break, and spring break. According to this letter the student received take home instructional assignments for the continued provision of ESY services. These assignments were provided for the student to complete independently using Kurzweil and Achieve3000™. This letter included all required components for a written notice of refusal.

4. The district and complainants agreed to mediation and developed a Mediation Agreement on November 7, 2007. Specified within this written agreement were district responsibilities including conducting assessment(s) of the student in reading, providing the complainants with copies and results of assessments, and additional meetings to review the student’s achievement levels in reading. The complainants’ responsibilities were specified as, “Complainants will return ESY binder to [Vice Principal] by Wednesday, November 14, 2007.”
5. The IEP dated January 28, 2008, included the following regarding ESE services:
 - The complainants requested ESY services for reading instruction on Saturdays, after school, and during summer vacations.
 - The IEP team determined there was not a need for ESY services.
6. The IEP dated May 21, 2008, included the following regarding ESY services:
 - The *Extended School Year Services Determination of Need* form noted that “[t]he data indicate the likelihood that the student is at a crucial stage in the development of a critical life skill, and that a lapse in services would substantially jeopardize the student’s chances of learning that skill...” It identified Achieve3000™ scores as the IEP data collection.
 - The *Extended School Year IEP Addendum* document stated that “The student did not experience severe regression but the IEP committee determined that ESY services ARE necessary.” This determination was based on data that indicated the student was at a crucial stage in the development of a critical life skill (reading and math). Also, the nature and severity of the student’s disability was such that the student would be unlikely to benefit from education without the provision of ESY services. The complainant’s signature was included on the document.
 - The *Extended School Year Recommendation* form signed and dated May 21, 2008, by both complainants indicated that the student would attend summer school with a bus ride for morning and afternoon.
7. The district reported that the student received ESY services from June 24 through July 3, 2008, and from July 14 through July 31, 2008, three days per week, four hours per day, and that the student received one-on-one ESY services from a certified ESE teacher during the summer of 2008. The time that the student received ESY services was concurrent with the district’s summer school schedule.
8. The student’s semester grades for the 2007-08 school year were the following:

Course	First Semester Grades	Second Semester Grades
Drawing & Painting	B	A
Learning Strategies	A	A
Reading 9-12	A	A
English 9-12	A	A
Social Studies	B	B
Math	B	B
Intermediate Volleyball	A	N/A
Team Sports 1	A	A

9. The student scored at Level One for reading and math on the Florida Comprehensive Assessment Test (FCAT) during the spring of 2008.
10. The student’s IEPs provided by both parties indicated that the student is on the course of study pursuing a special diploma, option one.

11. The IEP dated October 21, 2008, included the following regarding ESY services:
 - The IEP team determined that there was a need for ESY services
 - The district provided the complainants with written notice of its refusal to provide "...individual remediation on Saturdays, after school, and vacations, in reading."
 - The ESE Conference Notes dated October 21, 2008, indicated that the previous mediation agreement included the option of providing an additional intensive reading class in place of an internship and elective. This option was rejected by the participants based on the student's need to take a class that focused on independent functioning skills.
12. The November 16, 2008, conference notes stated that discussion was initiated by the complainants regarding ESY as a means to help the student achieve the reading goal. It was noted that a notice of refusal had been provided at a previous meeting regarding providing the student ESY services for reading comprehension during the school year. The complainants alleged that the district needed to provide more time when looking at ESY along with taking into consideration the student's regression and impairment. District staff stated that previously additional lesson activities had been provided for the student to complete at home.
13. On December 4, 2008, the district again provided the complainants with written notice of refusal to provide ESY services in the form of reading instruction on Saturdays, after school, and during vacations. For this refusal, the following documentation was provided to the complainants:
 - A letter from the ESE Director to the complainants
 - The district form used to document informed notice of refusal
14. The requirements related to ESY services are addressed in section 300.106 of Title 34 of the Code of Federal Regulations. The discussion section of that document states: "Typically, ESY services are provided during the summer months. However, there is nothing in section 300.106 that would limit a public agency from providing ESY services to a child with a disability during times other than the summer, such as before and after regular school hours or during summer vacations, if the IEP Team determines that the child requires ESY services during those periods in order to receive FAPE..."

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.106 of Title 34 of the Code of Federal Regulations (Title 34) states, "(a) *General.*(1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a) (2) of this section. (2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. (3) In implementing the requirements of this section, a public agency may not--(i) Limit extended school year services to particular categories of disability; or (ii) Unilaterally limit the type, amount, or duration of those services. (b) *Definition.* As used in this section, the term extended school year services means special education and related services that-- (1) Are provided to a child with a disability--(i) Beyond the normal school year of the public agency; (ii) In accordance with the child's IEP; and (iii) At no cost to the parents of the child; and (2) Meet the standards of the SEA."

The corresponding state requirement is found in State Board of Education Rule 6A-6.03028, of the Florida Administrative Code (F.A.C.).

CONCLUSIONS

1. The need for ESY services was addressed by the IEP team during meetings held during the 2006-07, 2007-08, and 2008-09 school years.
2. The district provided ESY services during the summer of 2007 that included intensive reading instruction with transportation services for four days per week, two hours per day, from June 4, 2007, through July 31, 2007.
3. The district provided ESY services during the summer of 2008 that included intensive reading instruction with transportation services for three days per week, four hours per day, from June 24, 2008, through July 3, 2008, and July 14, 2008, through July 31, 2008.
4. The district followed the required procedures for determining the student's need for ESY services. Determinations regarding ESY services were made by the student's IEP team; the complainants participated in all IEP meetings except for the IEP team meeting held on January 28, 2008.

CORRECTIVE ACTION

None

ISSUE 2: Whether the St. Johns County School District developed the individual educational plan (IEP) to address all areas of need, especially related to

- **math**
- **secondary transition**

The complainants reported that “transition goals are not developed appropriately in order to allow the student to progress in skills for employment, independent living, or further education”. For the purposes of this investigation, the IEPs in effect for the 2007-08 and 2008-09 school years were reviewed. Additionally, for clarity, during a telephone call with Bureau staff on February 3, 2009, the complainant informed staff that this complaint issue should relate to reading comprehension instead of math.

FINDINGS OF FACT

1. The IEP dated May 29, 2007, included the following:
 - Present Level of Educational Performance: “Based on previous IEPs, teacher statements, reevaluation, progress reports, curriculum based assessments, FCAT, and [Diagnostic Assessments of Reading], [the student] is able to successfully complete assignments with teacher direction and support. [The student] is having success in [student's] general elective classes with modifications to the curriculum and direct adult assistance. The IEP team would like for [the student] to work on functional reading goals to prepare [the student] for the workforce. These needs will best be met in a full-time ESE setting.”
 - Priority Educational Need: “To increase functional comprehension and vocabulary skills, as they relate to real-life experiences.”
 - Reading Comprehension Goal(s):
 - There was a typographical error resulting in two reading goals that varied somewhat in their phrasing being presented instead of one as intended; this resulted in confusion regarding the goal for reading.
 - Six objectives supported the student's needs in the area of reading.

- Secondary Transition Goal(s):
 - “[The student] will complete 4 out of 4 employment objectives with 80% accuracy.”
2. The IEP dated October 23, 2007, included the following:
- Present Level of Educational Performance: “Based on previous IEPs, teacher statements, reevaluation, progress reports, curriculum based assessments, FCAT, and [Diagnostic Assessments of Reading], Fluency Probe, Teenbiz3000™, [the student] is able to successfully complete assignments with teacher direction and support. [The student] is having success in [student’s] general elective classes with modifications to the curriculum and direct adult assistance. The IEP team would like for [the student] to work on functional reading goals to prepare ■ for the workforce. These needs will best be met in a full-time ESE setting.”
 - Priority Educational Need: “To increase functional comprehension and vocabulary skills, as they relate to real-life experiences.”
 - Reading Comprehension Goal(s):
 - There was a typographical error resulting in two reading goals being presented instead of one as intended; the reference to a sixth grade reading level in the first goal and a fifth grade reading level in the second resulted in confusion regarding the actual goal for reading.
 - Seven objectives supported the student’s needs in the area of reading.
 - Secondary Transition Areas:
 - Instruction: “See goal pages”
 - Community Experience: “[The student’s] parents would like to see [the student] get a driver’s license to enhance independence.”
 - Employment: “[The student] took a Career Preparation class and will continue to need assistance to improve [the student’s] functional employable skills. [The student] has worked with Goodwill in the past. Vocational Rehabilitation (VR) contact information provided during meeting.”
 - Post-school Adult Living: “[The student] should continue services from outside agencies, such as VR, to obtain information related to household management and independent living.”
 - Living Skills: “age-appropriate”
 - Functional Vocational Evaluation: “age-appropriate.”
3. A draft IEP dated January 28, 2008, included the following -
- Present Level of Educational Performance: “Based on previous IEPs, teacher statements, reevaluation, progress reports, curriculum based assessments, FCAT, DAR, MAZE, Fluency Probe, Teenbiz 3000™, [the student] has increased the [student’s] reading level by 3 grade levels in less than 1 school year. [The student] is able to successfully complete assignments with teacher direction and support. [The student] is experiencing success in [student’s] general elective classes with modifications to the curriculum and adult assistance. The IEP team would like for [the student] to work on functional reading goals to prepare [student] for the workforce. These needs will best be met in a full-time ESE setting.”
 - Priority Educational Need: “To increase functional comprehension and vocabulary skills, as they relate to real-life experiences.”
 - Reading Comprehension Goal(s):
 - There was a typographical error resulting in two identical reading goals being presented instead of one as intended; this resulted in confusion regarding the goal for reading.
 - Six objectives supported the student’s needs in the area of reading.

- Secondary Transition Areas:
 - Instruction: “See goal pages.”
 - Community Experience: “[The student’s] parents would like to see [the student] get a driver’s license to enhance independence”
 - Employment: “[The student] took a Career Preparation class and will continue to need assistance to improve [the student’s] functional employable skills. [The student] has worked with Goodwill in the past. VR contact information provided during meeting.”
 - Post-school Adult Living: “[The student] should continue services from outside agencies, such as VR, to obtain information related to household management and independent living”.
 - Daily Living Skills: “age-appropriate.”
 - Functional Vocational Evaluation: “age-appropriate”.
4. The IEP dated October 21, 2008, included the following:
 - Present Level of Educational Performance: “Based on previous IEPs, teacher statements, re-eval, progress reports, curriculum based assessments, FCAT, MAZE, Fluency Probe, [Scholastic Reading Inventory], [the student] has increased the reading level to a 4th grade level. [The student] is able to successfully complete assignments with teacher direction and support. [The student] is experiencing success in [student’s] general elective classes with modifications to the curriculum and adult assistance. [The student] works well with both adults and peers. The IEP team would like for [the student] to work on functional reading goals to prepare [student] for the workforce. These needs will best be met in a full-time ESE setting.”
 - Priority Educational Need: “To increase functional comprehension, vocabulary skills, and fluency as they relate to real-life experiences.
 - Reading Comprehension Goal(s):
 - There was a typographical error resulting in two identical reading goals being presented instead of one as intended; this resulted in confusion regarding the goal for reading.
 - Six objectives supported the student’s needs in the area of reading.
 - Secondary Transition Goal(s):
 - “[The student] will complete the necessary coursework to earn a special diploma so that [the student] can attend the University of North Florida On-Campus Transition Program by June 10, 2009.”
 5. IEP conference notes dated October 21, 2008, included discussion of reevaluation for academic levels, results of most recent testing, and reading goals. The complainants stated the need for intensive remediation to meet the goal of No Child Left Behind (NCLB). The complainants requested the IEP meeting be adjourned.
 6. Correspondence dated November 16, 2008, indicated that test scores were reviewed, and that the complainants would like to see the student’s reading increase from grade four to grade nine by graduation.

LEGAL AUTHORITY FOR THE BUREAU’S FINAL DECISION

Section 300.324 of Title 34 states, “(a) *Development of IEP*. (1) General. In developing each child’s IEP, the IEP Team must consider- (i) The strengths of the child; (ii) The concerns of the parents for enhancing the education of their child; (iii) The results of the initial or most recent evaluation of the child; and (iv) The academic, developmental, and functional needs of the child... (6) Amendments.

Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated...”

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

CONCLUSION

The St. Johns County School District developed the IEPs for the 2007-08 and 2008-09 school years to address all of the student’s areas of need, related to secondary transition. However, the reading goals were not appropriately developed to address the student’s reading needs.

CORRECTIVE ACTION

No later than March 20, 2009, the district shall convene the student’s IEP team, with the appropriate participants and sufficient advance notice to provide an opportunity for the complainants to attend that IEP team meeting, to develop appropriate reading goals for the student. The IEP team should determine if compensatory services are needed. A copy of the completed IEP, documentation of the IEP team’s determination regarding compensatory services, and any resulting plan or timeline for the provision of compensatory services, if required, 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.

ISSUE 3: Whether the St. Johns County School District followed appropriate procedures related to IEP team member participation, especially related to

- **consideration of all required information**
- **presentation of a draft IEP**

For the purpose of this investigation, the student’s IEPs in effect during the 2007-08 and 2008-09 school years were reviewed.

FINDINGS OF FACT

1. Documentation provided by the parties indicated the following:
 - The complainants were presented with a draft IEP at the start of the IEP meeting.
 - The complainants were provided with the opportunity for input during each of the meetings.
 - Each IEP team consisted of the required participants, and the content of each IEP included consideration of all required information.
2. Bureau staff spoke with the complainants via telephone on February 23, 2009. During this conversation the complainant stated that she was informed at the start of each IEP meeting that the IEP was presented as draft, and an opportunity was provided for ■ input.

LEGAL AUTHORITY FOR THE BUREAU’S FINAL DECISION

Section 300.322 of Title 34 states, “(a) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. (b) Information provided to parents.(1) The notice required under paragraph (a)(1) of this section must--(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (ii) Inform the parents of the provisions in 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child)...”

The Analysis of Comments and Changes section of Volume 71 of the Federal Register, page 46678 (71 Fed. Reg. 46678), related to section 300.322 of Title 34, states: “ ... with respect to a draft IEP, we encourage public agency staff to come to an IEP Team meeting prepared to discuss evaluation findings and preliminary recommendations. Likewise, parents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of the full discussion of the child’s needs and the services to be provided to meet those needs. We do not encourage public agencies to prepare a draft IEP prior to the IEP Team meeting, particularly if doing so would inhibit a full discussion of the child’s needs. However, if a public agency develops a draft IEP prior to the IEP Team meeting, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents. The public agency also should provide the parents with a copy of its draft proposals, if the agency has developed them, prior to the IEP Team meeting so as to give the parents an opportunity to review the recommendations of the public agency prior to the IEP Team meeting, and be better able to engage in a full discussion of the proposals for the IEP. It is not permissible for an agency to have the final IEP completed before an IEP Team meeting begins...”

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

CONCLUSION

The district followed appropriate procedures related to IEP team member participation, especially related to consideration of all required information and presentation of a draft IEP.

CORRECTIVE ACTION

None

ISSUE 4: Whether the St. Johns County School District followed the required procedures to ensure the IEP is accessible to all staff responsible for its implementation

Bureau staff spoke with the complainants on February 23, 2009, at which time the complainants acknowledged that all teachers working with the student had access to the IEP. However, it was clarified that the allegation involved whether the student’s teachers were aware of their responsibilities for implementing the IEPs. Specifically, the complainants state that the student’s

teachers could not describe the student's IEP goals, objectives, accommodations, and/or modifications when asked.

FINDINGS OF FACT

1. The IEP dated May 29, 2007, included signatures of the following team participants:
 - Complainants
 - LEA
 - ESE teacher
 - Basic class teacher
 - Student
2. The IEP dated October 23, 2007, included signatures of the following team participants:
 - Complainants
 - LEA
 - ESE teacher
 - Basic class teacher
 - Support specialist
3. The draft IEP dated January 28, 2008, did not include any signatures, since the team agreed to continue discussion regarding the development of an appropriate IEP for the student.
4. The IEP dated October 21, 2008, included signatures of the following team participants:
 - Complainants
 - LEA
 - Three ESE teachers
 - Guidance counselor
 - Basic class teacher
 - Speech-language pathologist.
5. The district described its policy related to accessibility of student IEPs as follows: "Teacher maintains the original IEP in their working file and a copy is filed in student's cumulative file so it is accessible to all teachers working with the student for review. Individual teachers make copies for their own files if they wish to do so. In addition, the ESE Teacher provides all regular education teachers working with the student a copy of the accommodations that must be provided for the student."
6. As participants in the development of the IEP, the student's teachers were aware of their responsibilities; there is not a requirement that the teachers be able to restate the contents of the IEP.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.614 of Title 34 states, "Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records."

Section 300.323 of Title 34 states, "(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that-(1) The child's IEP is accessible to each regular education teacher, special

education teacher, related services provider, and any other service provider who is responsible for its implementation; and (2) Each teacher and provider... is informed of (i) His or her specific responsibilities related to implementing the child's IEP; and (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” The corresponding state requirements are contained in State Board of Education Rule 6A-6.03028 and 6A.1.0955, F.A.C.

CONCLUSIONS

1. For each of the student's IEP meetings specified in this issue, the required participants were present and assisted in the development of the IEPs.
2. The district followed the required procedures to ensure that the IEP was accessible to all staff responsible for its implementation, and that all of the student's teachers were aware of their responsibilities.

CORRECTIVE ACTION

None

ISSUE 5: Whether the St. Johns County School District followed appropriate procedures for excusing IEP team members prior to the conclusion of IEP team meetings held during the 2007-08 and 2008-09 school years

The complainants alleged that some team participants left IEP meetings early, and the guidance counselor, LEA and the primary ESE teacher remained to develop the IEP.

FINDINGS OF FACT

1. The requirements related to excusing IEP team members prior to the conclusion of IEP team meetings are addressed in section 300.321(a) of Title 34. The discussion section (34 CFR 300.321; 71 Federal Register (Fed. Reg.) 46675 and 46676) of that document includes the following information with regard to IEP meeting excusals: “The excusals from IEP Team meetings apply to... the regular education teacher of the child (if the child is, or may be participating in the regular education environment); not less than one special education teacher of the child (or where appropriate, not less than one special education provider of the child); a representative of the public agency who meets the requirements in [Section] 300.321(a)(4); and an individual who can interpret the instructional implications of evaluation results. We do not believe it is necessary to require consent or a written agreement between the complainants and the public agency to excuse individuals who are invited to attend IEP Team meetings at the discretion of the complainants or the public agency because such individuals are not required members of an IEP Team.”
2. This discussion section (34 CFR 300.321(e); 71 Fed. Reg. 46675 further states, “With regard to situations in which there is more than one regular education teacher, the IEP Team need not include more than one regular education teacher. The regular education teacher who serves as a member of a child's IEP Team should be a teacher who is, or may be, responsible for implementing a portion of the IEP so that the teacher can participate in discussions about how best to instruct the child. If the child has more than one regular education teacher responsible for

carrying out a portion of the IEP, the LEA may designate which teacher or teachers will serve as the IEP member(s), taking into account the best interest of the child.”

3. Additionally, this discussion section specifies, “An LEA could also agree that each teacher attend only the part of the meeting that involves modification to, or discussion of, the teacher’s area of the curriculum.”
4. The table below is a summary of the meeting notices and signature pages for the student’s IEP team meetings held during the 2007-08 and the 2008-09 school years.

Meeting Date	Meeting Notice Invited Participants (Identified by Name on Notice; Identified by Title Below)	Signature Page Meeting Attendance	Additional Information
10/23/2007	<ul style="list-style-type: none"> • Complainants(s) • LEA • Principal/designee • Basic class teacher(s) • Special ed. teacher(s) 	<ul style="list-style-type: none"> • Complainants • LEA • ESE teacher • Basic class teacher • Support specialist 	As documented by signatures on the IEP, the IEP team included all required members. In a telephone conversation with Bureau staff on February 27, 2009, the ESE Director reported that the basic class teachers assigned for art and physical education presented information regarding the student’s participation in their class, and then were excused from the meeting. Regarding this meeting, for the area of concern (reading), the student received instruction from the ESE teacher.
1/28/2008	<ul style="list-style-type: none"> • Complainants • LEA • Principal/designee • Basic class teacher(s) • Special class teacher(s) • Student 	No signatures provided – only a draft	Per discussion with the ESE Director, this IEP was drafted and reviewed by the IEP team, but team consensus was that it did not meet with team approval and therefore was not signed and/or implemented. In a telephone conversation with Bureau staff on February 27, 2009, the ESE Director reported that the basic class teachers assigned for art and physical education presented information regarding the student’s participation in their class, and then were excused from the meeting. Regarding this meeting, for the area of concern (reading), the student received instruction from the ESE teacher.
5/21/2008	<ul style="list-style-type: none"> • Complainants • LEA • Basic class teacher • Special ed. teacher 	<ul style="list-style-type: none"> • Complainants • Student • LEA • ESE teacher(s) • Basic class teacher - literacy coach • Long term substitute 	As documented by signatures on the IEP, and in a telephone conversation with Bureau staff on February 27, 2009, the ESE Director reported that the IEP team included all required members. Regarding this meeting, for the area of concern (reading), the student received instruction from the ESE teacher, who participated in

Meeting Date	Meeting Notice Invited Participants (Identified by Name on Notice; Identified by Title Below)	Signature Page Meeting Attendance	Additional Information
			the entire meeting. The basic class teacher also participated in the entire meeting.
10/21/2008	<ul style="list-style-type: none"> • Complainants • LEA • School psychologist • Basic class teacher(s) • Special class teacher(s) • Student 	<ul style="list-style-type: none"> • Complainants • LEA • Student • ESE teacher(s) • Assistant principal • Guidance counselor • Basic class teacher - literacy coach • Long term substitute • Speech language pathologist 	As documented by signatures on the IEP, and in a telephone conversation with Bureau staff on February, 27, 2009, the ESE Director reported that the IEP team included all required members. Regarding this meeting, for the area of concern (reading), the student received instruction from the ESE teacher, who participated in the entire meeting. The basic class teacher also participated in the entire meeting.
11/16/2008	Conference notes are dated 11/18/2008	<ul style="list-style-type: none"> • Complainants • Student • ESE teacher • School psychologist • Guidance counselor • Assistant principal 	As documented by signatures on the conference notes, the IEP team included all required members. Regarding this meeting, for the area of concern (reading), the student received instruction from the ESE teacher, who participated in the entire meeting. The basic class teacher also participated in the entire meeting.

5. It was confirmed to Bureau staff by the ESE Director on February 23, 2009, that staff signatures on an IEP documents attendance by these participants at the IEP team meeting.
6. On February 27, 2009, the ESE Director informed Bureau staff that the excusal of some teachers during the IEP meetings specified above did occur. These excusals happened after teachers had provided input regarding their specific subject area, and these teachers were excused from the meeting to return to teach their class.

LEGAL AUTHORITY FOR THE BUREAU’S FINAL DECISION

Section 300.321(a) of 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 parents 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 parents 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 parents, in writing, and the public agency consent to the excusal; and (ii) The member submits, in writing to the parents 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 parents learns at the IEP team meeting that a required participant will not be at the meeting, the parents 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, F.A.C.

CONCLUSION

The IEP teams included the required participants; however, for some meetings, required participants were excused for part of the meeting without written consent or agreement.

CORRECTIVE ACTION

For any subsequent IEP meetings held for the student during the 2008-09 school year, the district must ensure that required participants are not excused for part of any IEP meeting without written consent or agreement by the parent and the LEA. Documentation of the IEP team meetings held for the student shall be provided to the Bureau within one week following the meeting.

ISSUE 6: Whether the St. Johns County School district followed appropriate procedures related to the provision of written notice prior to its proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student

During a telephone call with Bureau staff on February 19, 2009, the complainants informed staff that this complaint issue was regarding the district providing prior written notice of refusals for ESY and math remediation.

FINDINGS OF FACT

1. The complainants stated that they felt that the refusal of ESY services was predetermined before each IEP meeting, based upon the district’s completed refusal of services form being brought to the IEP meetings. District staff stated that the student’s needs were addressed at each IEP meeting.
2. The table below is a summary of written notices of refusal provided to the complainants for ESY services. All the notices included the required components.

Date of notice	Proposal/Refusal
10/24/2007 (letter)	Refusal to provide math remediation
10/21/2008 (form)	Refusal to provide, at complainant’s request, ESY services in the form of individual remediation in reading on Saturdays, after school and during vacations.
12/04/2008 (letter and form)	Refusal to provide, at complainant’s request, ESY services in the form of supplemental reading instruction after school, on weekends, and during school holidays.

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...”

Section 300.504 of Title 34 states, “(a) *General*. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents (1) Upon initial referral or parents request for evaluation; (2) Upon receipt of the first State complaint under 300.151 through 300.153 and upon receipt of the first due process complaint under 300.507 in a school year; (3) In accordance with the discipline procedures in 300.530(h); and (4) Upon request by a parent. (b) *Internet Web site*. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists. (c) *Contents*. The procedural safeguards notice must include a full explanation of all of the

procedural safeguards available under 300.148, 300.151 through 300.153, 300.300, 300.502 through 300.503, 300.505 through 300.518, 300.520, 300.530 through 300.536 and 300.610 through 300.625 relating to (1) Independent educational evaluations; (2) Prior written notice; (3) Parental consent...”

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

CONCLUSION

The St. Johns County School District followed appropriate procedures related to the provision of written notice prior to its proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student.

CORRECTIVE ACTION

None