

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

BACKGROUND

The Bureau of Exceptional Education and Student Services received a state complaint on November 25, 2008, in which an attorney, on behalf of five students, alleged that the Broward County School District had violated federal and state laws relating to the education of students with disabilities. The Bureau received signed release of information statements from the parents on December 3, 2008, and December 17, 2008, allowing the Bureau to communicate with the attorney regarding the complaint. Upon receipt of the December 17, 2008, release of information statements, the 60 day timeline for this state complaint was initiated with an anticipated completion date of February 15, 2009. The district and the complainant were asked to submit relevant documents and information to the Bureau. Ms. Denise Rusnak, Exceptional Student Education (ESE) Director, Broward County School District, submitted documentation on behalf of the district. The complainant also submitted documentation. Due to the number of students involved and the nature of the issues, the results of the investigation are reported at the individual student level.

STUDENT ONE

Specifically, the complaint allegations involved the following issues for Student One (■):

ISSUE 1: Whether the Broward County School District followed the appropriate procedures to reevaluate the student during the 2007-08 and 2008-09 school years

ISSUE 2: Whether the Broward County School District reevaluated the student in all areas related to the suspected disability during the 2007-08 and 2008-09 school years

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) and language impaired (LI).

ISSUE 1: Whether the Broward County School District followed the appropriate procedures to reevaluate the student 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."

The corresponding state requirement is found in Rule 6A-6.0331 of the Florida Administrative Code (FAC).

CONCLUSION

1. The earliest documentation of a formal request for reevaluation submitted by either party is the letter dated July 25, 2008.
2. Written consent for reevaluation was provided on August 21, 2008. The reevaluation plan was amended to add speech and language on October 3, 2008.
3. The assessments required by the August 21, 2008, reevaluation plan were completed by November 21, 2008. The assessments required by the October 3, 2008, reevaluation plan were completed by January 9, 2009. In addition, an OT screening was completed on January 13, 2009, based on a recommendation in the neurological report.
4. The Broward County School District followed the appropriate procedures to reevaluate the student during the 2007-08 and 2008-09 school years.

CORRECTIVE ACTION

None

ISSUE 2: Whether the Broward County School District reevaluated the student in all areas related to the suspected disability during the 2007-08 and 2008-09 school years

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.304(c) of Title 34 requires the public agency to ensure that - "...(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities...(6)...The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified..."

The corresponding state requirement is found in Rule 6A-6.0331, FAC.

CONCLUSIONS

1. Neither the district nor the complainant provided verification that the student was suspected of having additional areas of disabilities during the 2007-08 school year.

2. The district provided the following evaluations during the 2008-09 school year:
 - audiological
 - psychosocial
 - speech and language
 - neurological
 - psychological
 - OT screening
3. The district made several attempts to schedule an IEP team meeting to discuss the results of the reevaluations and determine if additional evaluation was necessary. The parent could not attend any of the scheduled meetings.
4. The Broward County School District reevaluated the student in all areas related to the suspected disability during the 2007-08 and 2008-09 school years.

CORRECTIVE ACTION

None

STUDENT TWO

Specifically, the complaint allegations involved the following issues for Student Two (█):

ISSUE 1: Whether the Broward County School District reevaluated the student in all areas related to the suspected disability during the 2007-08 and 2008-09 school years

ISSUE 2: Whether the Broward County School District provided the parent with prior notice/notices of refusal when required during the 2007-08 and 2008-09 school year

As part of the inquiry process, relevant portions of the student's educational records were reviewed. The educational records indicated that the student (date of birth: █) was in the █ grade and determined eligible for special programs for students identified with autism spectrum disorder (ASD) and who are language impaired (LI).

ISSUE 1: Whether the Broward County School District reevaluated the student in all areas related to the suspected disability during the 2007-08 and 2008-09 school years

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.304(c) of Title 34 requires the public agency to ensure that - "...(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities...(6)...The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified..."

The corresponding state requirement is found in Rule 6A-6.0331, FAC.

CONCLUSION

1. Neither the district nor the complainant provided evidence that the student was suspected of having additional areas of disabilities during the 2007-08 school year.
2. The IEP team determined that reevaluation in the areas of academic achievement, in particular math, and psychological process functioning were required.
3. The district's *Policies and Procedures for the Provision of Specially Designed Instruction and Related Services for Exceptional Students* states that vision and hearing screenings are conducted prior to evaluations when determining the student's eligibility as a student with a disability.
4. The student passed the hearing screening; when the student failed the vision screening the district provided the parent with a vision examination and a voucher for eye glasses for the student. The student came to school with eyeglasses but the district was unable to reach the parent to confirm that a vision examination had been completed.
5. The Broward County School District reevaluated the student in all areas related to the suspected disability during the 2007-08 and 2008-09 school years.

CORRECTIVE ACTION

None

ISSUE 2: Whether the Broward County School District provided the parent with prior notice/notices of refusal when required during the 2007-08 and 2008-09 school year

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, FAC.

CONCLUSION

The Broward County School District provided the parent with prior notice/notices of refusal when required during the 2007-08 and 2008-09 school year.

CORRECTIVE ACTION

None

STUDENT THREE

Specifically, the complaint allegations involved the following issues for Student Three (■):

ISSUE 1: Whether the Broward County School District followed the appropriate procedures to reevaluate the student during the 2007-08 and 2008-09 school years

ISSUE 2: Whether the Broward County School District reevaluated the student in all areas related to the suspected disability during the 2007-08 and 2008-09 school years

During the investigation of the state complaint it was discovered that the student had not been determined eligible for ESE; therefore, the complaint issues are amended to state the following:

ISSUE 1: Whether the Broward County School District followed the appropriate procedures to evaluate the student during the 2007-08 and 2008-09 school years

ISSUE 2: Whether the Broward County School District evaluated the student in all areas related to the suspected disability during the 2007-08 and 2008-09 school years

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 on August 20, 2008, for special programs for students identified as other health impaired (OHI), and determined eligible for special programs for students identified as language impaired on September 29, 2008 .

ISSUE 1: Whether the Broward County School District followed the appropriate procedures to evaluate the student during the 2007-08 and 2008-09 school years

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.301 of Title 34 states: “(a) *General*. Each public agency must conduct a full and individual initial evaluation, in accordance with Sections 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part. (b) *Request for initial evaluation*. Consistent with the consent requirements in Section 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. (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; and (2) Must consist of procedures-- (i) To determine if the child is a child with a disability under Section 300.8; and (ii) To determine the educational needs of the child. (d) *Exception*. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if - (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or (2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child’s previous public agency as to whether the child is a child with a disability under Section 300.8. (e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.”

Section 300.302 of Title 34 states, “The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.”

The corresponding state requirement is found in State Board of Education Rule 6A-6.0331, FAC.

CONCLUSIONS

1. The Broward County School District received a written request for a comprehensive evaluation to determine if the student was eligible for special education services. The request included a signed consent form, although not the district form designed for that purpose.
2. On February 11, 2008, the district indicated that a district consent form was required in order to conduct the initial evaluation. It is not clear when the district provided the parent with the required district form, although it appears that it was first provided on March 5, 2008, at which time the parent signed it.
3. Psychological, academic, and behavioral evaluations were conducted on May 20, 27, and 28, 2008 and June 3, 2008.
4. On August 20, 2008, the eligibility team met, determined that the student was eligible as a student who is other health impaired (OHI), and developed an IEP for the student.
5. A language evaluation was completed for the student on September 25, 2008.
6. On September 29, 2009, the IEP team met, determined that the student was eligible for the program for students with language impairments, and revised the IEP.
7. There is no evidence that Broward County School District provided the parent with written notice of its proposal to conduct an initial evaluation and requested signed parental consent

between the date of parent request (January 31, 2008) and the date of the problem solving team meeting (March 5, 2008).

8. Based on information obtained through screenings, the initial evaluation should have included the language evaluation that was conducted subsequent to the first eligibility meeting.
9. Broward County School District did not follow appropriate procedures to evaluate the student during the 2007-08 and 2008-09 school years, including conducting an evaluation upon parent request and adherence to the 60-day timeline for conducting an initial evaluation.

CORRECTIVE ACTIONS

1. The Broward County School District shall ensure that required procedures are followed regarding evaluation of students upon parent request. No later than March 15, 2009, the IEP team, with appropriate participants and sufficient advance notice to provide an opportunity for the parent and the attorney to attend, shall consider whether compensatory services are required for the student due to the delay in the evaluation process following the parent's request for an initial ESE evaluation. Verification of the IEP team meeting and the determination regarding compensatory services shall be provided to the Bureau within ten days following the meeting.
2. If compensatory services are determined to be necessary for the student, the Broward County School District shall ensure that these services are provided and provide verification to the Bureau on the following dates as applicable: April 15, 2009; June 16, 2009; and October 31, 2009.
3. No later than April 30, 2009, the district is required to provide staff development training for all the Broward County School District employees at ■ Elementary School responsible for implementing the ESE evaluation process, including adherence to required timelines. This training shall include the required procedures regarding parental requests for evaluation. Documentation of the contents of training, date(s) of training, and list(s) of participants with written signature and title, shall be provided to the Bureau no later than no later than May 15, 2009.

ISSUE 2: Whether the Broward County School District evaluated the student in all areas related to the suspected disability during the 2007-08 and 2008-09 school years

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.304(c) of Title 34 requires the public agency to ensure that - "...(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities...(6)...The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified..."

The corresponding state requirement is found in Rule 6A-6.0331, FAC.

CONCLUSIONS

1. The parent requested a complete evaluation of the student, including a language evaluation, on January 25, 2008.
2. The student was administered a language screening on February 13, 2008, and referred for further evaluation.
3. A language evaluation was completed for the student on September 25, 2008. This was one month after the initial eligibility determination meeting was held on August 20, 2008, and appears to have been conducted under the original consent for initial evaluation.
4. The Broward County School District did not evaluate the student in all areas related to the suspected disability as part of the initial evaluation during the 2007-08 and 2008-09 school years.

CORRECTIVE ACTIONS

1. During the IEP meeting held for the student for Issue 1, the IEP team shall consider whether compensatory services are required for the student due to the delay in the evaluation process for evaluating the student in the area of language. Verification of the IEP team meeting and the determination regarding compensatory services shall be provided to the Bureau within ten days following the meeting.
2. If compensatory services are determined to be necessary for the student, the Broward County School District shall ensure that these services are provided and submit documentation of this to the Bureau on the following dates, as applicable: April 15, 2009; June 16, 2009; and October 31, 2009.

STUDENT FOUR

Specifically, the complaint allegations involved the following issue for Student Four (■):

ISSUE: Whether the Broward County School District followed the appropriate procedures to reevaluate the student during the 2007-08 and 2008-09 school years

During the investigation of the state complaint it was discovered that the student had not previously been determined eligible for ESE; therefore, the complaint issue was amended to state the following:

ISSUE: Whether the Broward County School District followed the appropriate procedures to evaluate the student during the 2007-08 and 2008-09 school years

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 on October 15, 2008, for special programs for students identified as language impaired (LI).

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.301 of Title 34 states: “(a) *General*. Each public agency must conduct a full and individual initial evaluation, in accordance with Sections 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part. (b) *Request for initial evaluation*. Consistent with the consent requirements in Section 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. (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; and (2) Must consist of procedures-- (i) To determine if the child is a child with a disability under Section 300.8; and (ii) To determine the educational needs of the child. (d) *Exception*. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if - (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or (2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child’s previous public agency as to whether the child is a child with a disability under Section 300.8. (e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.”

Section 300.302 of Title 34 states, “The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.”

The corresponding state requirement is found in State Board of Education Rule 6A-6.0331, FAC.

CONCLUSIONS

1. The district received a request for initial evaluation dated October 24, 2007, from the student’s attorney and a court order dated October 16, 2007, for a psycho-educational evaluation.
2. The district obtained signed consent for evaluation on February 28, 2008.
3. The district completed the evaluation on September 17, 2008.
4. The date of the last evaluation was beyond the 60-day timeline for completion.
5. The district met on October 15, 2008, to determine eligibility of the student for ESE services.
6. The Broward County School District did not follow the appropriate procedures to evaluate the student during the 2007-08 and 2008-09 school years; including conducting an evaluation upon parental request and adherence to the 60-day timeline.

CORRECTIVE ACTIONS

1. The Broward County School District shall ensure that required procedures are followed regarding evaluation of students upon parent request. No later than March 15, 2009, the IEP

team, with appropriate participants and sufficient advance notice to provide an opportunity for the parent and the attorney to attend, shall consider whether compensatory services are required for the student due to the delay in the evaluation process following the request and court orders for evaluation. Verification of the IEP team meeting and the determination regarding compensatory services shall be provided to the Bureau within ten days following the meeting.

2. If the IEP team determines that compensatory services are necessary for the student, the Broward County School District shall ensure that these services are provided and provide verification to the Bureau on the following dates as applicable: April 15, 2009; June 16, 2009; and October 31, 2009.
3. No later than April 30, 2009, the district is required to provide staff development training for all the Broward County School District employees at ■ High School and ■ High School responsible for implementing the ESE evaluation process, including adherence to required timelines. This training shall include the required procedures regarding parental requests for evaluation. Documentation of the contents of training, date(s) of training, and list(s) of participants with written signature, title, and school shall be provided to the Bureau no later than no later than May 15, 2009.

STUDENT FIVE

Specifically, the complaint allegations involved the following issue for Student Five (■)

ISSUE: Whether the Broward County School District followed the appropriate procedures to reevaluate the student during the 2007-08 and 2008-09 school years

During the investigation of the state complaint it was discovered that the student had not previously been determined eligible for ESE; therefore, the complaint issue was amended to state the following:

ISSUE: Whether the Broward County School District followed the appropriate procedures to evaluate the student during the 2007-08 and 2008-09 school years

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 on November 18, 2008, for special programs for students identified as other health impaired (OHI) and language impaired (LI).

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.301 of Title 34 states: "(a) *General*. Each public agency must conduct a full and individual initial evaluation, in accordance with Sections 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part. (b) *Request for initial evaluation*. Consistent with the consent requirements in Section 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. (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; and (2) Must consist of procedures-- (i) To determine if the child is a child with a disability under Section 300.8; and (ii) To determine the educational needs of the child. (d) *Exception*. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if - (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or (2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under Section 300.8. (e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed."

Section 300.302 of Title 34 states, "The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services."

The corresponding state requirement is found in State Board of Education Rule 6A-6.0331, FAC.

CONCLUSIONS

1. Written request for evaluation was provided by the parent's attorney on October 24, 2007.
2. The parent signed consent for evaluation of the student on November 26, 2007.
3. The evaluation process for the student was completed November 10, 2008.
4. The date of the last evaluation was beyond the 60-day timeline for completion.
5. An eligibility determination meeting was held for the student on November 18, 2008, and the student was determined to be eligible for special programs for students who are other health impaired and language impaired.
6. The Broward County School District did not follow the appropriate procedures to evaluate the student during the 2007-08 and 2008-09 school years, including conducting an evaluation upon parent request and adherence to the 60-day timeline.

CORRECTIVE ACTIONS

1. The Broward County School District shall ensure that required procedures are followed regarding evaluation of students upon parent request. No later than March 15, 2009, the IEP team, with appropriate participants and sufficient advance notice to provide an opportunity for the parent and the attorney to attend, shall consider whether compensatory services are required for the student due to the delay in the evaluation process following the parent's request for evaluation. Verification of the IEP team meeting and the determination regarding compensatory services shall be provided to the Bureau within ten days following the meeting.
2. If the IEP team determines that compensatory services are necessary for the student, the Broward County School District shall ensure that these services are provided and provide verification to the Bureau on the following dates as applicable: April 15, 2009; June 16, 2009; and October 31, 2009.

3. No later than April 30, 2009, the district is required to provide staff development training for all the Broward County School District employees at ■ High School and ■ Center responsible for implementing the ESE evaluation process, including adherence to required timelines. This training shall include the required procedures regarding parental requests for evaluation. Documentation of the contents of training, date(s) of training, and list(s) of participants with written signature, title, and school shall be provided to the Bureau no later than no later than May 15, 2009.