

**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 (Bureau) received a state complaint on January 23, 2009, from a complainant alleging that the Hillsborough County School District has violated federal and state laws relating to the education of students with disabilities. Specifically, the complainant allegations involved the following issues:

- ISSUE 1: Whether the Hillsborough County School District followed required procedures regarding development of a functional behavioral assessment (FBA) and behavioral intervention plan (BIP) for the student during the 2008-09 school year**
- ISSUE 2: Whether the Hillsborough County School District followed the required procedures regarding discipline for the student during the 2008-09 school year, specifically related to the student's multiple out-of-school suspensions**
- ISSUE 3: Whether the Hillsborough County School District followed required procedures regarding the reporting of student progress specifically related to behavior during the 2008-09 school year**
- ISSUE 4: Whether the Hillsborough County School District's policies and procedures regarding field trip participation are in violation of federal and state exceptional student education (ESE) regulations**

The 60-day timeline for the completion of the inquiry began on January 23, 2009, with an anticipated completion date of March 24, 2009. As part of the inquiry process, the district and the complainant 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, in Hillsborough County School District.

The educational records that were provided indicated that at the time of the filing of the state complaint, the student (D.O.B. ■) was grade ■ and had been determined eligible for the special programs for students who have been identified as trainable mentally handicapped (TMH) and receiving speech/language therapy and occupational therapy as related services.

- ISSUE 1: Whether the Hillsborough County School District followed required procedures regarding development of a functional behavioral assessment (FBA) and behavioral intervention plan (BIP) for the student during the 2008-09 school year**

The complainant alleged within the complaint that the FBA was not revised and a BIP was not developed.

FINDINGS OF FACT

1. The complainant asked for a meeting to discuss the student's behavior. The meeting, originally scheduled for April 18, 2008, was rescheduled for May 23, 2008, at the request of the complainant. The complainant was not in attendance at the May 23, 2008, meeting. The district's copy of the meeting notice indicated that the complainant gave permission via telephone to hold the meeting without her.
2. The individual educational plan (IEP) dated May 23, 2008, included the following regarding social/emotional needs, the FBA, and the BIP:
 - The social/emotional portion of the present level of academic achievement and functional performance narrative stated that the student had improved with regard to keeping ■ hands/feet to ■, but becomes aggressive and noncompliant in certain situations. The techniques for effective anger management (TEAM) staff had been required to remove the student from the class on five occasions.
 - The social/emotional goal stated that, "Given daily social skills instruction and positive behavioral supports, [the student] will interact with adults and peers using socially acceptable words and gestures, 9 out of 10 consecutive school days over 2 consecutive 9 week periods."
 - The objectives for the goal above were as follows:
 - "Display socially acceptable communication skills when talking to adults and peers."
 - "Demonstrate ability to keep hands and feet to self while walking around school."
 - "Seek adult attention appropriately by raising ■ hand or asking for help."
 - "Appropriately greet peers and adults that enter the classroom."
 - "Follow rules and procedures in a variety of settings to include the bus."
 - "Raise hand, wait for teacher instruction/direction and verbalize bathroom requests."
 - Accommodations for instructional delivery included proximity control, reminders of rules, and cueing and prompting in the ESE class, daily
 - Under the behavioral supports section of the IEP it was noted that a FBA/BIP was "...in existence and revision needed. Most recent FBA/BIP is dated 09/28/2005."
 - Special education services included daily instruction in self-advocacy strategies, communication skills, and social skills in the ESE class.
 - Related services and supplementary aids and services included specialized ESE transportation with an aide and harness required due to behavioral and safety concerns.
3. Documentation from an IEP team meeting held on May 23, 2008, included the following:
 - A statement in the conference notes that the FBA/BIP dated September 28, 2005, would be "...reviewed, revised, and implemented."
 - A revised FBA that addressed physical aggression toward students and adults, throwing of classroom materials, off task behavior, the use of profanity, and spitting on the bus.
 - A BIP that included preventative strategies to address the problem behaviors, instructional strategies to address replacement behaviors, reinforcement procedures, and correction procedures; a document summarizing the baseline data was attached.
4. The parent requested an IEP meeting to be held on July 15, 2008. Conference notes indicated that the complainant was in attendance at the meeting, which began on July 15, 2008, and

was continued on July 28, 2008, and that the FBA/BIP would be revised to reflect the student's placement at █ Middle School.

5. A written notice of change of placement, dated July 28, 2008, reflected the change of placement from a center-based setting to a neighborhood school (█ Middle School).
6. The IEP completed on July 28, 2008, included the following regarding social/emotional needs, the FBA, and the BIP:
 - The student continued to demonstrate the need for social skills training and behavioral supports.
 - Aggressive and noncompliant behaviors had decreased in severity.
 - The social/emotional goal stated that, "Given daily social skills instruction and positive behavioral supports, [the student] will interact with adults and peers using socially acceptable words and gestures, 9 out of 10 consecutive school days over 2 consecutive 9 week periods."
 - The objectives for the goal above were as follows:
 - "Display socially acceptable communication skills when talking to adults and peers"
 - "Demonstrate ability to keep hands and feet to self while walking around school."
 - "Seek adult attention appropriately by raising █ hand or asking for help"
 - "Appropriately greet peers and adults that enter the classroom"
 - "Follow rules and procedures in a variety of settings to include the bus"
 - "Raise hand, wait for teacher instruction/direction and verbalize bathroom requests"
 - The bus would be made available for instructional use to address bus behaviors so that the student could be transitioned back to a bus with other students.
 - The revised IEP stated that the FBA would be updated as soon as possible, and that the BIP would be developed and implemented based on that data.
7. A conference was held on November 4, 2008, with the complainant in attendance, to review and/or revise the FBA/BIP.
 - The revisions to the FBA included the following:
 - "Student has been responsive to modeling"
 - "Additional adult supervision for all activities"
 - "Sharing, taking turns"
 - "[Instruction to take place] prior to transitions of non-preferred activities"
 - "Limit the number of adults redirecting student during agitation"
 - An addendum to the BIP included preventative strategies, replacement behaviors, reinforcement procedures, correction procedures, and crisis procedures to address the targeted behavior of physical aggression.
8. A psychological evaluation was completed on December 18, 2008, which included the following regarding the student's behavior:
 - "[Student] has one-on-one assistance throughout the school day"
 - "An intense level of proximity control is needed to manage disruptive behavior"
 - "[Student] works on assigned tasks only with assistance and constant prompting"
 - "At times, [the student] refuses to work and engages in disruptive behaviors"
 - "The [student's] FBA was most recently revised in November 2008, with collaboration between [student's] mother, Dr. Worcester (Certified Behavior Analyst [CBA] with █), █ Middle School staff, Area 5 ESE staff, and Kim Gonzales (CBA)"
 - "The current FBA/BIP primarily targets physical aggression"

- “The student displays disruptive behaviors, according to observations and data collection”
 - “Defiant behaviors include ignoring instruction, refusing to work, laying on the floor, refusing to get up, and pulling the fire alarm”
 - “Aggressive behaviors include spitting, screaming, throwing chairs and other items, kicking the person next to ■”
 - “Aggressive behaviors on the bus include shoe throwing, hitting students, and banging the seat buckle on the window”
 - “During violent episodes, more than one adult is required to restrain and deescalate the student”
8. The required IEP team members participated in each of the IEP team meetings addressed in this issue.

LEGAL AUTHORITY FOR THE BUREAU’S FINAL DECISION

Section 300.324 of Title 34 of the Code of Federal Regulations (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 Florida Administrative Code (F.A.C.).

CONCLUSION

The Hillsborough County School District followed required procedures regarding development of a functional behavioral assessment (FBA) and behavioral intervention plan (BIP) for the student during the 2008-09 school year.

CORRECTIVE ACTION

None

ISSUE 2: Whether the Hillsborough County School District followed the required procedures regarding discipline for the student during the 2008-09 school year, specifically related to the student’s multiple out-of-school suspensions

The complainant alleged that the student was suspended for more than 10 days during the 2008-09 school year.

FINDINGS OF FACT

1. The table below summarizes the student's discipline reports for the 2008-09 school year, with a total of 12 days of out-of-school suspension (OSS).

Date	Inappropriate Behavior	Action Taken
October 8, 2008	Disruptive	3 days OSS
December 11, 2008	Other	2 days OSS
January 15, 2009	Battery	7 days OSS

2. The original action taken for the January 15, 2009, incident was ten days of OSS.
3. An undated summary provided by the principal indicated that the original ten day suspension was reduced to seven days, and that the parent was notified via electronic mail on January 27, 2009, that the student could return to school.
3. During a telephone interview with Bureau staff, the principal stated that all of the suspensions were in response to acts of aggression that involved hitting peers or adults in some fashion, and included throwing furniture.
4. The FBA/BIPs dated May 23, 2008, and November 4, 2008, included aggression against adults and peers and throwing of furniture as target behaviors.
5. During a telephone interview with Bureau staff, Ms. Benito, Supervisor, Exceptional Student Education (ESE) Compliance, in Hillsborough County School District, stated that the series of infractions in question did not represent a pattern of behavior.
6. The student returned to school on January 28, 2009.
7. An educational planning meeting was held on January 28, 2009, with the complainant in attendance. Conference notes included the following eight recommendations:
 - "Change schedule to reflect an increase in educational individualized/intensive instruction"
 - "Certified Applied Behavior Analyst (CABA) and ESE support staff from Area V will model and collect data during direct and individualized instruction"
 - "All staff will be shown, modeled and reminded to properly escort [student]"
 - "Team will be instructed to work in fifteen minute intervals followed by reinforcers"
 - "A list of possible reinforcers will be developed and shared with personnel working with [student]"
 - "[Student's] behavior will be reported to parent daily in the agenda and daily report"
 - "School personnel will report all acts of physical aggression, including bus incidents"
 - "IEP team will reconvene to evaluate [student's] progress in three to four weeks and parent will provide coordinator with a date agreeable to her and her supports in which to have the meeting"
7. Neither party provided evidence that the IEP team considered whether the student's behavior on January 15, 2009, represented a manifestation of the student's disability.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.530 of Title 34 states, "(a) *Case-by-case determination.* School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct. (b) *General.* (1) School personnel under

this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536”

Section 300.536 of Title 34 states, “(a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if (1) The removal is for more than 10 consecutive school days; or (2) The child has been subjected to a series of removals that constitute a pattern (i) Because the series of removals total more than 10 school days in a school year; (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. (b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. (2) This determination is subject to review through due process and judicial proceedings.”

The corresponding state requirement is contained in Rule 6A.6.03312, F.A.C.

CONCLUSIONS

1. The student was suspended for a cumulative total of twelve days during the 2008-09 school year for a series of similar infractions that reflected the behaviors addressed on the student’s then-current FBA/BIP.
2. The district did not consider whether the student’s behavior on January 15, 2009, represented a manifestation of the student’s disability.
3. The district did review and revise the BIP during its educational planning meeting.

CORRECTIVE ACTIONS

1. No later than June 4, 2009, the district will report to the Bureau regarding the effectiveness of the recommendations included on the student’s current FBA/BIP.
2. For any subsequent removals during the 2008-09 and 2009-2010 school years resulting from behaviors addressed in the student’s FBA/BIP, the district will follow the required procedures regarding discipline for the student, including determining whether the behavior in question is a manifestation of the student’s disability.
3. Verification of the implementation of these policies shall be provided to the Bureau on the following dates: April 15, 2009, October 31, 2009, and April 15, 2010.

ISSUE 3: Whether the Hillsborough County School District followed required procedures regarding the reporting of student progress specifically related to behavior during the 2008-09 school year

The complainant alleged that no documentation had been received indicating progress and behavior for December 2008 and January 2009.

FINDINGS OF FACT

1. The IEPs developed on May 23, 2008, and July 28, 2008, included the following regarding reporting of progress:
 - Progress towards the achievement of the social/emotional goal would be evaluated on a quarterly basis by using the following:
 - Teacher/therapist data collection
 - Anecdotal records
 - Point sheets
 - Parents will be notified of their child's progress toward the annual goal at least every 9-week grading period and at least as often as progress is reported for nondisabled students.
 - The progress report will describe the extent to which the student's progress is sufficient to enable the student to achieve the goal by the end of the year.
4. The district provided copies of the first and second quarter IEP progress reports, which reported on progress for the social/emotional/goal.
5. Periodic informal notes were provided, which included a copy of a calendar for December 2008 with daily behavioral notations.
6. Subsequent to the period of this complaint, on January 28, 2009, the complainant attended an IEP team meeting. Conference notes reflected the need for a revised FBA/BIP and indicated discussion of the student's progress. Conference note #8 stated that, "Communication between school and parent will continue on a daily basis to ensure a smooth transition and address any behavioral or academic concerns in a timely manner." The district provided copies of daily notes sent home to the complainant after the January 28, 2009, planning meeting.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.324 of Title 34 states, "...*(b) Review and revision of IEPs* —(1) *General*. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and (ii) Revises the IEP, as appropriate, to address (A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate; (B) The results of any reevaluation conducted under §300.303; (C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2); (D) The child's anticipated needs; or (E) Other matters..."

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

CONCLUSIONS

The Hillsborough County School District followed required procedures regarding the reporting of student progress specifically related to behavior during the 2008-09 school year.

CORRECTIVE ACTION

None

ISSUE 4: Whether the Hillsborough County School District's policies and procedures regarding field trip participation are in violation of federal and state exceptional student education (ESE) regulations

The complainant alleged that the student was not allowed to participate in a field trip that other students in his class were allowed to attend. The complainant stated that the student's 20-year-old brother was able to chaperone the field trip and that no permission slip had been sent home.

FINDINGS OF FACT

1. In response to this issue, the district submitted copies of the *Hillsborough School Board Policy Manual*, the district's *Field Trip Handbook*, and a narrative summary by the principal.
2. The *Hillsborough School Board Policy Manual*, states, in part, "Fourteen working days prior to the trip, teachers should complete the following: have each pupil take home Application for Participation in Instructional Field Trips (SB60531) or Application for Participation in School-Sponsored Activities (SB60532) to be signed by parents and returned prior to the trip..."
3. The *Field Trip Handbook* states that chaperones are subject to screening and application procedures. It also stated that an appropriate chaperone must "...be a responsible adult, 21 years of age or older. Exception: A parent or legal guardian under 21 years of age may also chaperone."
4. The narrative summary from the principal describing the two field trips in question included the following:
 - The student was suspended for the first field trip, held on December 15, 2008.
 - The second field trip occurred on December 18, 2008.
 - The principal telephoned the complainant on December 15, 2008 to discuss the impending field trip with the complainant. The complainant returned the call on December 17, 2008.
 - The complainant stated that no permission slip had been sent home.
 - The student's teacher was absent that day, so the principal was unable to find or send a permission slip home.
 - The complainant stated that her 20-year-old son could accompany the student on the field trip as a chaperone.
 - The teacher called the complainant on the morning of the field trip and told the complainant that her 20-year-old son could drive the student on the field trip.
 - At that time, the complainant told the teacher "...to just keep ■ at school because she did not think we wanted ■ to go anyway."

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.320(a) of Title 34 states, "(a) *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 §§300.320 through 300.324, and that must include...”(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, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities...”

Section 300.107(a) of Title 34 states, “The State must ensure the following: (a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities...”

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

CONCLUSION

The Hillsborough County School District's policies and procedures regarding field trip participation are not in violation of federal and state exceptional student education (ESE) regulations. However, the documentation provided indicated that the district did not adhere to its field trip policies and procedures for the student in question for the December 18, 2008, field trip.

CORRECTIVE ACTION

The Hillsborough County School District shall ensure that its policies and procedures regarding field trips are followed for any trips conducted during the 2008-09 and 2009-10 school years which involve the student's then-current classroom. Verification of the implementation of these policies shall be provided to the Bureau on the following dates: April 15, 2009, October 31, 2009, and April 15, 2010.