

**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.

### **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.

### **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.

## **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 ■■■ 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.

## 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.