

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

BACKGROUND

On January 21, 2009, the Bureau of Exceptional Education and Student Services (Bureau) received a state complaint letter from ■ alleging that the Polk County School District had violated federal and state laws relating to the education of students with disabilities. Specifically, the complainant's allegations involved the following issues:

ISSUE 1: Whether the Polk County School District followed the required procedures related to the complainant's request for a change of placement from a self-contained classroom in January 2008

ISSUE 2: Whether the Polk County School District followed required procedures related to the complainant's request for an individual educational plan (IEP) team meeting in the fall of 2008

ISSUE 3: Whether the Polk County School District provided the complainant the opportunity to participate in an IEP team meeting(s) held during the 2008-09 school year, as required

ISSUE 4: Whether the Polk County School District followed the required procedures when determining the student's least restrictive environment (LRE) during the 2008-09 school year

The 60-day timeline for completion of the inquiry began on January 21, 2009, with an anticipated completion date of March 22, 2009. The district and the complainant were asked to submit relevant documents and information to the Bureau. The district's documentation was submitted by Ms. Norma Hayes, Director of Exceptional Student Education (ESE), Polk County School District. In addition, both parties provided information via telephone interviews.

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 other health impairments (OHI) and a speech impairment (SI). On January 14, 2009, the student met the criteria for discontinuing services as a student with a speech impairment.

ISSUE 1: Whether the Polk County School District followed the required procedures related to the complainant's request for a change of placement from a self-contained classroom in January 2008

The complainant stated in the complaint letter that ■ had asked that the student not be moved to the self-contained classroom as ■ did not agree with the decision. In addition, the

complainant stated that ■ thought the student was to be in a self-contained classroom no longer than 30 days.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.503, Title 34, Code of Federal Regulations (34 CFR 300.503) states, “(a)...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... (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.”

34 CFR 300.327 relating to educational placements states, “Consistent with 300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.”

The corresponding state requirements are found in Rule 6A-6.03311 of the Florida Administrative Code (F.A.C.).

CONCLUSION

The complainant was provided an opportunity to participate in the decision regarding the student’s educational placement. The district provided the complainant with prior written notice of its proposal or refusal to make a change in educational placement or the provision of a free appropriate public education (FAPE) to the student. The Polk County School District followed the required procedures related to the complainant’s request for a change of placement in January 2008.

CORRECTIVE ACTION

None

ISSUE 2: Whether the Polk County School District followed required procedures related to the complainant’s request for an individual educational plan (IEP) team meeting in the fall of 2008

The complainant stated in the complaint letter that ■■■ had visited the student's school in October and November 2008 and requested information regarding the student, but was unable to obtain any. The complainant stated that ■■■ had also met with the district's ESE director, who was going to try to schedule an IEP meeting regarding her concerns.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

CFR 300.324 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."

34 CFR 300.503 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 Rule 6A-6.03028, F.A.C.

CONCLUSIONS

1. Because the reported communication was oral, there is no written evidence that the complainant requested an IEP meeting in the fall of 2008.
2. The evidence presented is conflicting as to whether the complainant requested an IEP team meeting in the fall of 2008. Based on the information provided, the Polk County School district followed required procedures.

CORRECTIVE ACTION

None

ISSUE 3: Whether the Polk County School District provided the complainant the opportunity to participate in an IEP team meeting(s) held during the 2008-09 school year, as required

The complainant stated in the complaint letter that ■■■ has been denied the opportunity to participate in the decision making process regarding the provision of a free appropriate public education (FAPE) for the student.

LEGAL AUTHORITY FOR THE BUREAU’S FINAL DECISION

34 CFR 300.322 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), and 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).”

34 CFR 300.501 states, “(b) Parent participation in meetings. (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--(i) The identification, evaluation, and educational placement of the child; and (ii) The provision of FAPE to the child. (2) Each public agency must provide notice consistent with 300.322(a)(1) and (b)(1) to ensure that complainants of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section. (3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.”

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

CONCLUSIONS

1. The student’s custodial parent did not list the complainant on the student’s registration or emergency contact information upon enrollment.
2. The complainant was not invited to the January 14, 2009, IEP team meeting as the district did not have ■■■ contact information; however, the custodial parent attended the meeting.
3. The district and school staffs have confirmed that the complainant will be invited to participate in all future IEP meetings regarding the student.

CORRECTIVE ACTION

None

ISSUE 4: Whether the Polk County School District followed the required procedures when determining the student's least restrictive environment (LRE) during the 2008-09 school year

The complainant requested in the complaint letter that the student's behavior plan be implemented in the least restrictive way, through enrollment in classes with the student's nondisabled peers.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR 300.114(a) states "(2) Each public agency must ensure that – (i) To the maximum extent appropriate, children with disabilities...are educated with children who are nondisabled; and (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

34 CFR 300.115 states, "(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. (b) The continuum required in paragraph (a) of this section must—(1) Include the alternative placements listed in the definition of special education under 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement."

34 CFR 300.116 states, "In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that – (a) The placement decision- (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (2) Is made in conformity with the LRE provisions...(b) The child's placement – (1) Is determined at least annually; (2) Is based on the child's IEP; and (3) Is as close as possible to the child's home; (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled; (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum."

34 CFR 300.327 relating to educational placements states, "Consistent with 300.501(c) each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child."

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

CONCLUSIONS

1. The student's May 17, 2007, IEP maintained placement in a resource setting, with a change in placement to a separate class setting to begin on August 20, 2007. The prior written notice form provided to the complainant at that time stated that the IEP team recommended the student's placement change from resource to separate classroom due to the student's "low academics skills" and the student's need for small group instruction. The information provided in the IEP and the prior written notice form supported that determination.
2. On August 21, 2007, the student's IEP team met and determined that the LRE for the student would be the general education classroom, rather than a separate class, as had been determined in May. The prior written notice form does not include a specific student-based rationale for the change from the earlier proposal for separate class placement. Instead, it simply states the proposed outcome (participation in an inclusion program) as the rationale for making the change. This is in conflict with decision made on May 15, 2007, and there is no evidence that the IEP team reviewed additional information regarding the student that would warrant this change in outcome. It appears that the Polk County School District did not follow the required procedures when determining the student's placement on August 17, 2007.
3. On January 16, 2008, the student's IEP team met and determined that the LRE for the student was separate class. The information provided in the IEP and the prior written notice form supported that determination. The Polk County School District followed the required procedures when determining the student's placement on January 16, 2008.

CORRECTIVE ACTION

The Polk County School District shall ensure that the required procedures are followed when determining a student's LRE. No later than May 1, 2009, the district is required to provide staff development training for all the appropriate Polk County School District employees assigned to the school in question regarding student's placement decisions relating to LRE, and the extent to which supports are available to a student in the general education setting. 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 May 8, 2009.