

**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 she had asked that the student not be moved to the self-contained classroom as she did not agree with the decision. In addition, the

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

FINDINGS OF FACT

1. The complainant participated in the development of the student's IEP dated May 15, 2007. That IEP maintained the student's placement as resource room (more than 40%, but less than or equal to 79% with non-ESE)) until the end of the 2006-07 school year, and then provided for a change in placement to separate class (daily in the ESE classroom) beginning on August 20, 2007. Conference notes from the meeting indicated that the complainant was in agreement with the educational placement. The prior written notice form provided to the complainant at that time indicated that the placement change was proposed because of the student's "low academics skills" and need for small group instruction.
2. The complainant participated in the development of the student's IEP dated August 17, 2007. The IEP team met to revise the IEP that had been developed in May, and changed the student's placement to regular class (i.e., removed from the general education setting less than 21% of the school day). The prior written notice form provided to the complainant at that time indicated that the placement change was proposed because the student was going to be participating in the inclusion program, and that the student would receive ESE support through co-taught classes and the support, monitoring and assistance of an ESE support teacher.
3. The complainant participated in the development of the student's IEP dated January 16, 2008. The IEP developed on that date included a change in placement from regular class to separate class. At the meeting, the complainant expressed disagreement with the placement decision. The prior written notice form provided to the complainant at that time included a description of the information considered when making the decision and the other options considered, and indicated that the placement change was proposed because the student would be better served in a smaller environment with constant redirection, and more one-on-one assistance.

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 she 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 she had also met with the district's ESE director, who was going to try to schedule an IEP meeting regarding her concerns.

FINDINGS OF FACT

1. The complainant told Bureau staff via a telephone interview in January 2009 that she had orally requested an IEP meeting in fall of 2008 when she visited the student's school.
2. District documentation stated that the complainant went to the student's school in the fall of 2008 and requested to see the student but did not request an IEP meeting.
3. The ESE director stated that the complainant came to the district office in the fall of 2008 claiming that the student's school was denying her access to the student, but the complainant did not request an IEP meeting.

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 she 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.

FINDINGS OF FACT

1. The complainant lived out-of-state during the 2008-09 school year and the student resided in Florida with the custodial parent.
2. The electronic IEP system used by the district automatically generated a meeting notice with the complainant's name as the parent invited to the January 14, 2009, IEP team meeting. The district acknowledged this was a mistake, and reported that a meeting notice was not mailed to the complainant; however, the custodial parent was provided a copy of the meeting notice and attended the January 14, 2009, meeting.
3. The district reported that they did not have the complainant's contact information as the student's custodial parent had not included it on the student's registration and emergency contact records.
4. The complainant faxed a copy of the *Order Regarding Motion for Civil Contempt/ Enforcement and Motion For Child Pick-Up* to the school on January 14, 2009. The court order indicated that on December 18, 2008, the court granted a temporary change of custody to the other parent. In addition, the complainant was authorized to visit the student at school while visiting in Florida and the custodial parent was to verify with the school that the complainant had been listed as a contact person for emergency purposes.
5. The school received the faxed copy of the court order on January 14, 2009, after the IEP team meeting had taken place.
6. The district reported that the custodial parent added the complainant's name to the student's emergency information card but could not provide an exact date as to when.
7. District and school staff reported that the complainant will be invited to participate in all future IEP meetings regarding the student.
8. The Individuals with Disabilities Education Act (IDEA) does not address custodial matters regarding students with disabilities.

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 her 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.

FINDINGS OF FACT

1. District documentation identified the following regarding the student’s enrollment:
 - The student was enrolled in the district for █ during the 1997-98 school year through █ grade, and then moved out-of-state.
 - The student returned and enrolled in the district for █ grade during the 2005-06 school year, and then moved out-of-state for the beginning of █ grade.
 - The student returned and enrolled in the district on April 19, 2007, to complete the █ grade during the 2006-07 school year.
2. The May 17, 2007, IEP developed by the district maintained the student’s placement as resource room for the 2006-07 school year and included the following:
 - The student’s attention-deficit/hyperactivity disorder (ADHD) interfered with █ progress in the regular classroom.
 - The complainant agreed that the student would be best served in a self-contained classroom for the 2007-08 school year.

- The student did not have a need for positive behavior intervention or strategies.
- The student's IEP included one communication goal, four curriculum and learning goals (in these three subjects: math, writing and reading), one independent functioning goal, and one health care goal.
- Present level of educational performance:
 - Teacher observation: “[The student] is easily distracted from the task at hand and remains off task until ■ is verbally requested to get back to the task at hand. [The student] does not bring materials to class, write in ■ agenda, and complete/turn in assignments.”
 - 2003 Woodcock-Johnson III Achievement (WJ III ACH) Tests Scores – math grade level – 1.6, math reasoning – 2.1 grade level, basic reading skills – 1.4 grade level, reading comprehension K-8 grade level.
 - Teacher Input: The student has difficulty staying on task, needs constant prompting, is easily distracted, impulsive and will blurt out hurtful comments to other students without provocation, has a difficult time transitioning in the hallways between classes, and is significantly below grade level in reading, writing, and spelling. In addition, the student requires a lot of one-on-one attention from the teacher.
 - The student needed remediation to pass the statewide assessment, according to the 2006 Florida Comprehensive Assessment Test (FCAT) results.
 - The student was not on medication for ADHD.
 - The student's ADHD affected ■ academic progress.
- Effects of the student's disability: The student's inattentiveness interfered with the ability to follow multiple step directions, retain facts, apply information, organize and complete assignments, remain on tasks, and keep track of materials between home and school in the general education classroom.
- Priority educational needs:
 - To stay focused and on task
 - To come to class prepared and write assignments in agenda
 - To complete/turn in homework and classroom assignments in a timely manner
- The IEP identified the following special education services to be provided to the student beginning May 17, 2007:
 - Speech therapy in the therapy/ESE classroom
 - Special instruction language arts and math in the ESE classroom
 - Consultation regarding academics in the ESE and general education classrooms
 - Consultation for independent functioning in the ESE and general education classrooms
 - Consultation for communication in the ESE and general education classrooms
- The IEP identified the following special education services would be provided to the student beginning August 20, 2007:
 - Special instruction for all academics in the ESE classroom
- The IEP identified consultation with family regarding health issues as a related service.
- The IEP included ten accommodations.
- The explanation of non-participation with nondisabled peers section of the IEP stated: “[The student] requires specially designed instruction in math and language arts to meet IEP goals and objectives for the remainder of the 2006-07 school year. [The student] will

receive specially designed instruction for all academics in a self-contained classroom for the 2007-08 school year.”

3. On May 15, 2007, a prior written notice form was provided to the complainant, which stated that the IEP team recommended the student’s placement change from resource to separate class due to the student’s “low academics skills” and the student’s need for small group instruction for the remainder of the 2006-07 school year.
4. On August 17, 2007, the student’s IEP team met for annual review and developed an IEP that included the following:
 - The student was identified as OHI and SI.
 - Present levels of academic and functional performance:
 - The student’s WJ-III ACH dated September 25, 2006, indicated that the student was “...functioning within the Average range with regard to [the student’s] nonverbal reasoning and performance abilities. [The student’s] verbal skills have been estimated to fall in the Borderline range of measured intelligence. The 25 - point difference between [the student’s] verbal IQ and performance IQ is statistically significant and indicates that [the student’s] strengths definitely lie in [the student’s] nonverbal reasoning and performance abilities.”
 - The student was not administered the 2007 FCAT as ■ had not enrolled in the district until April 2007. Regarding the 2006 FCAT, the student scored a level one in math and in reading, and needed remediation in both.
 - Teacher’s Input: The student has a great deal of difficulty staying on task, needs constant prompting to start and complete work, is easily distracted, and needs to refocus often.
 - The student was below grade leveling reading, writing, and spelling.
 - Effects of the student’s disability: The student’s inattentiveness interfered with the ability to follow multiply step directions, retain facts, apply information, organize and complete assignments, remain on tasks, and keep track of materials between home and school in the general education classroom.
 - Priority educational needs:
 - To correctly produce all phonemes for effective communication in the classroom
 - To be able to solve a single digit word problem and solve division involving single and double digit divisors
 - To increase skills to the end of third grade to mid-fourth grade reading level
 - To continue to work on reading comprehension and decoding skills to increase reading level
 - To work on staying focused and on task
 - To come to class prepared, write assignments in his agenda, and complete and turn in homework and classroom assignments in a timely manner
 - The student’s IEP included one communication goal, three curriculum and learning goals (in these two subjects: math and reading), two independent functioning goals, and one health care goal.
 - The IEP identified the following as services to be provided to the student in the general education classroom:
 - Speech therapy (provided in therapy room/classroom)
 - Consultation regarding academics
 - Consultation for independent functioning

- Consultation for communication
 - Co-taught math
 - Co-taught English
 - Support facilitation
- The IEP identified consultation with family regarding health issues as a related service.
 - The IEP included 23 accommodations.
 - The student's placement was in the regular education classroom.
5. On August 17, 2007, a prior written notice form was provided to the complainant, stating that the student's IEP team recommended the student's placement change from resource to regular classroom because the student was participating in the inclusion program and would receive ESE support through co-taught classes and the support, monitoring and assistance of an ESE support teacher.
 6. District documentation identified that from September 27, 2007, through January 14, 2008, the student had twelve discipline incident reports that resulted in nine days of out-of-school suspensions and eight days of in-school suspensions.
 7. District documentation identified that the student's second quarter grades for the 2007-08 school year were five C's and two F's.
 8. The student's attendance record from August 20, 2007, through January 2008, identified twenty-two unexcused absences.
 9. The district reported that, during the second semester, the student was more often tardy to class or school, grades were falling, and inappropriate behaviors were increasing.
 10. The following behavior supports were provided to the student in the general education classroom:
 - The student was in co-taught math and English classes (i.e., taught by both a general education teacher and an ESE teacher). When the student's behavior became disruptive the ESE teacher would take the student to her office and work with the student one-on-one.
 - If the student became disruptive in classes that were not co-taught, the classroom teacher would request that the ESE support facilitator come to the classroom and help re-focus the student or take the student to her office and provide counseling.
 - The ESE support facilitator met with the complainant, teachers, mental health counselors, school deans, and the student numerous times to review expectations and provide the support needed for the student to be successful.
 11. On January 16, 2008, the student's IEP team met and developed an IEP that included the following:
 - The student's placement was changed from regular class to separate class.
 - Present level of academic and functional performance:
 - The student's WJ-III ACH dated September 25, 2006, which stated that the student was "functioning within the Average range with regard to [the student's] nonverbal reasoning and performance abilities. [The student's] verbal skills have been estimated to fall in the Borderline range of measured intelligence. The 25 - point difference between [the student's] verbal IQ and performance IQ is statistically significant and indicates that [the student's] strengths definitely lie in [the student's] nonverbal reasoning and performance abilities."
 - The teacher reported that the student had great difficulty staying on task, and needed constant prompting to start and continue working. The student would refuse to do

- class work at times even if assistance was offered, was easily distracted, did not bring agenda or materials to class, and would instigate arguments with other classmates which distracted the other students in the classroom from learning. The student had been removed from the classroom by the school administration for behavior issues which affected the learning environment of the other seventeen plus students.
- The student was experiencing minor delays with regards to math skills and more substantial delays had been identified in the areas of reading and written language.
 - The student did not take the 2007 FCAT; the student scored a level one in reading. The student was receiving remediation in reading and currently reading on a second grade level and had made some progress on reading goals in the past year.
 - The student was receiving remediation in math and the math goals on the previous IEP had not been met.
 - The student would often destroy school property, was often openly defiant and would loudly refuse to comply with the teacher's guidance, thus creating a scene in the classroom interrupting the other students.
 - The student did not meet the articulation goal from the previous IEP. The student's articulation errors continued to adversely affect the student in the classroom.
 - The student's book bag and agenda had been found at various locations on campus, the student was often late to class and at times had been found hiding in the bathroom during class.
 - The student's ADHD interfered with the student's progress in the general education classroom.
- Effects of the student's exceptionality:
 - The student's behavior and emotional difficulties interfered with the student's ability to complete and turn in assignments, understand classroom instruction, and listen and follow directions in the general education classroom.
 - The student's inattentiveness interfered with the ability to follow multiple step directions, retain facts, apply information, organize, and complete assignments, remain on tasks, and keep track of materials between home and school in the general education classroom.
 - Priority educational needs:
 - To work on computation skills involving fractions and decimals
 - To increase skills to the end of third grade to mid-fourth grade reading level
 - To continue to work on reading and comprehension and decoding skills to increase reading level
 - To come to class prepared and write assignments in agenda
 - To work on writing skills
 - To correctly produce all phonemes for effective communication
 - To demonstrate positive behaviors that would allow ■ to successfully interact in the learning environment
 - The student's IEP identified four curriculum and learning goals (in these three subjects: math, reading, and writing), an independent functioning goal, a communication goal, a health care goal, and a social emotional behavior goal.
 - Special education services in the ESE classroom:
 - Speech therapy (provided in the therapy room or classroom)
 - Consultation for communication

- Behavior contracting/behavior intervention plan (BIP)
 - Social skills training
 - Special instruction for all academics
 - Supervision for most activities (ESE classroom/school)
 - Extended school year (ESY)
 - Related services in the ESE classroom/school:
 - Mental health services
 - Consultation with family regarding health issues
 - 23 classroom accommodations
 - The student would participate in state and district-wide assessments with accommodations.
12. A prior written notice form dated January 16, 2008, provided to the complainant stated that the IEP team recommended a change of placement from regular to separate classroom in order to better serve the student in a smaller environment with constant redirection, and one-on-one assistance. The change of placement was initiated due to the student's failing grades and numerous discipline referrals.
13. The district reported to the Bureau that the IEP team decided not to place the student in a resource class as the team felt that, even with all the accommodations in place, the student was not being successful, and the self-contained class would provide the student with the necessary supports.
14. The district reported no discipline referrals from January 16, 2008, through June 2008. In addition, the student made passing grades.
15. The student's functional behavioral assessment (FBA)/BIP dated November 21, 2008, stated the following:
- The first behavior of concern was the student's work production:
 - The student needs to be on task and completing assignments.
 - The behavior tends to occur two times a period and lasts five – fifteen minutes.
 - The behavior causes the student to lose time with the instructor and the student does not produce samples that show ability.
 - Before the targeted behavior occurs, the class assignment is explained to the student and time is provided to complete the work.
 - The behavior tends to occur in the morning (period one) and after lunch (periods four and five).
 - The behavior is absent when there is peer coaching or a cooperative activity.
 - The second behavior of concern was the student's attendance:
 - The behavior occurs one to two times a week.
 - The student tends to be absent on Monday and/or Friday.
 - The behavior impacts the student's time with the instructor; more class work is missed than can be made up.
 - The primary function of both behaviors appears to be avoidance, and the behaviors are more likely to occur when the student has conflict with ■ parents. Incentives and assertive discipline have been attempted as strategies and interventions to address the behaviors. The broad goal of the FBA/BIP is to increase the student's work production and time-on-task.

- The district provided samples of the weekly behavior point sheets that track the student remaining on task, completing assignments, and not interfering with the learning of others around him.
16. On January 14, 2009, the student's IEP team met, with the father in attendance, and developed an IEP that included the following:
- The father's concerns for the student are that the student needs to stay awake in class and complete class assignments. In addition, the father requested that the student make up any missing assignments so that the student could transition into regular classes in the ■ school setting.
 - Special factors identified that the student had a need for positive behavior intervention and strategies.
 - Present level of academic and functional performance:
 - The student's standardized test results: Spring 2008 FCAT – level one math, level one in reading. August 2008 Kaplan score was 36% for math and 26% for reading.
 - The student received remediation for math and reading.
 - The student was still having difficulty staying on tasks and needed constant prompting to start and continue working.
 - The student lacked organization skills.
 - The student instigated arguments with other students in math class instead of working.
 - The student chose to be silly, played around by being distracting to others, and seemed to thrive off the attention from the teacher and stopping the learning process.
 - The student was openly defiant and when asked to do something would loudly refuse and disrupt others.
 - The student would request to leave the room rather than complete homework.
 - Effects of the student's exceptionality: The student's behavior and emotional difficulties interfered with the student's ability to complete assignments, turn in assignments, listen and understand classroom instruction, and listen and follow directions in the general education classroom.
 - Priority educational needs:
 - To increase math skills to become more independent in the classroom and to increase FCAT scores
 - To increase skills to the end of third grade to mid-fourth grade reading level
 - To continue to work on reading comprehension and decoding skills to increase reading level
 - To come to class prepared and write assignments in agenda
 - To work on writing skills
 - To correctly produce all phonemes for effective communication
 - To demonstrate positive behaviors that will allow ■ to successful interact in the learning environment
 - The student met dismissal criteria from the consultative speech impaired program.
 - The student's attendance records and grades were reviewed which identified that the student was passing all classes and had received no days of suspension for the 2008-09 school year.
 - The student was in ■ grade, and the IEP team members encouraged the student to self-advocate for ■ needs. The IEP identified that the student was pursuing general education

courses of study leading to a standard diploma, and the student's post-school desired outcomes were discussed.

17. The January 14, 2009, IEP identified the following services to be provided to the student in the ESE classroom:
- Special education services:
 - Behavior contracting/behavior intervention plan (BIP)
 - Social skills training
 - Special instruction for all academics
 - Supervision for most activities (ESE classroom/school)
 - Mental health services as a related service
 - 19 classroom accommodations
 - The student would participate in state and district-wide assessment programs with accommodations.
 - The student's placement remained as separate class (less than or equal to 40% with non-ESE).
 - Non-participation with non-disabled students: "Disruptive/inappropriate behavior which interferes with instruction of self/or others. [The student] will be placed in a VE/self-contained classroom with low student count and two teachers to help ■ be successful here at [middle school]."
18. The student's IEP was developed to include four curriculum and learning goals (in math, reading, and writing), and a social emotional behavior goal.
19. The IEP team determined the student's LRE was appropriate at this time based on ■ needs and success.

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.