

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

BACKGROUND

On January 16, 2009, the Bureau of Exceptional Education and Student Services (Bureau) received a state complaint letter from ■, attorney, on behalf ■, alleging that the Orange County School District had violated federal and state laws relating to the education of students with disabilities. Written authorization and consent for release of information for the attorney to communicate with Bureau staff was received from the student's parent on January 21, 2009, via telephone and facsimile respectively. Specifically, the complainants' allegations involved the following issues:

ISSUE 1: Whether the Orange County School District implemented the student's individual educational plan (IEP), specifically relating to the provision of wheelchair accessible transportation in a climate controlled atmosphere with an aide or monitor, during the 2008-09 school year

ISSUE 2: Whether the Orange County School District's policies and procedures regarding the provision of transportation with an aide or bus monitor violate federal and state regulations related to exceptional student education (ESE)

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 was asked to submit relevant documents and information to the Bureau. The district's documentation was submitted by Ms. Harriet Brown, Esquire, Director of Exceptional Student Education (ESE) Policy and Procedures, on behalf of Ms. Anna Diaz, Associate Superintendent, ESE and Multilingual Services, Orange 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 grade ■ and determined eligible for special programs for students with orthopedic impairments (OI) and language impairments (LI), and receiving occupational therapy (OT) and physical therapy (PT) as related services.

ISSUE 1: Whether the Orange County School District implemented the student's individual educational plan (IEP), specifically relating to the provision of wheelchair accessible transportation in a climate controlled atmosphere with an aide or monitor, during the 2008-09 school year

FINDINGS OF FACT

1. The IEP in effect during the 2008-2009 school year was developed on June 4, 2008, with revisions on September 3, 2008; September 17, 2008; and November 19, 2008. It included

the following regarding wheelchair accessible transportation in a climate controlled atmosphere with an aide or monitor:

- A statement that the student has a need for special transportation services
 - Statements that, due to the student's disability and to ensure the student's safety:
 - Medical equipment is required
 - The student has a medical condition, per physician's prescription
 - An aide or monitor is required due to the student's disability and the specific needs of student
2. IEP team notes dated September 17, 2008, indicated that:
- The meeting was being held at parent's request to discuss the student's hour-long bus ride in a wheelchair.
 - At this meeting, an offer was made to reimburse the parents for transporting the student, but the offer was declined.
3. The complainant alleged that there were at least two occasions during the 2008-09 school year that the student was denied special transportation. Documentation submitted by the district described the following related to transportation not being provided:
- Due to mechanical problems on the bus, the student was not provided special transportation on the morning of October 30, 2008.
 - Due to the lack of an aide or monitor on the bus, the student was not provided special transportation on January 7, 2009.
 - The district reported that the parent was offered reimbursement for transporting the student or the option of having another bus sent out with a monitor, once the original bus run was completed. Each of these options would result in the student missing a portion of the school day.
 - The student's parent provided transportation on the dates in question.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.320, Title 34, Code of Federal Regulations (34 CFR 300.320), requires that an IEP must include, "(a)(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; and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section..."

Section 300.323 of Title 34 states, "(c)(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP..."

The corresponding state requirement is found in State Board of Education Rule 6A-6.03028, Florida Administrative Code (F.A.C.)

CONCLUSIONS

1. The district was not able to provide wheelchair accessible transportation in a climate controlled atmosphere with an aide or monitor on October 30, 2008, and January 7, 2009, during the time of the regular school bus run.
2. The parents elected to transport the student to school on those days.
3. The issue in question did not result in a significant lapse of services for the student, although concerns are noted in the district's established policies and procedures related to special transportation with an aide or monitor (see Issue 2).

CORRECTIVE ACTION

None.

ISSUE 2: Whether the Orange County School District's policies and procedures regarding the provision of transportation with an aide or bus monitor violate federal and state regulations related to exceptional student education (ESE)

FINDINGS OF FACT

1. The Orange County School District provided excerpts from a document provided to school principals regarding the district's policies and procedures related to transportation. The *Transportation for Special Needs Students* section describes the following procedures:
 - If the IEP indicates "bus attendant requested," this means that the team requests a bus attendant but understands another bus attendant may not always be available to cover the bus attendant's absence.
 - If the IEP indicates "aide or bus attendant required due to disability and specific need of student," this means that the student has severe medical or behavioral concerns that would jeopardize the safety of the student or others on the bus.
 - When indicating that a bus attendant is required, the district's transportation services will not pick up the student without a bus attendant or substitute bus attendant present on the bus, due to the student's needs.
2. The complainant provided a copy of an electronic mail (email) message dated January 7, 2009, from school staff stating, "In the event that the monitor is absent, the bus driver will notify you. You may elect to have the bus transport [the student] without the attendant. Unfortunately, in most circumstances, a substitute monitor is not available."
3. In a response to this complaint dated February 11, 2009, the district stated that the transportation department had "...discussed the possibility of picking the child up after the first run to the school when a monitor could be available. The district is in the process of revising its policies concerning transportation for students requiring bus monitors. We have inquired from similar districts in the state information about their policies and are reviewing the provision of substitutes through internal processes. This change, of course, can not occur until there is school board action."
4. On March 4, 2009, the district's Director of ESE Policy and Procedures informed Bureau staff in a telephone call that the Orange County School District does not maintain a list of substitute bus aides or monitors. However, they do utilize other transportation staff as

substitutes. If no substitute is available, the district will return with an aide or monitor to pick up the student after completing the bus run. This results in the student arriving tardy to school.

5. In an email message dated March 16, 2009, staff of the Orange County School District transportation office stated that “Our daily operational policy is that the ESE parent will be immediately contacted and advised that a monitor/attendant is currently not available, however, every effort will be made to obtain a monitor/attendant as soon as possible and the bus will return as quickly as possible to transport the student. The parents are also advised that if they so choose, they may transport their own student at the expense of the district as mileage reimbursement will be available.”

LEGAL AUTHORITY FOR THE BUREAU’S FINAL DECISION

Section 300.201 of Title 34 requires that, “The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.101 through 300.163, and §§ 300.165 through 300.174.”

The corresponding state requirement is found in Section 1003.57, Florida Statutes (F.S.)

CONCLUSIONS

1. The Orange County School District’s written policies and procedures regarding the provision of transportation with an aide or bus monitor reference the use of substitute bus attendants, although they also state that the district’s transportation services will not pick up the student without a bus attendant or substitute bus attendant present on the bus.
2. Additional procedures and practices described by district staff include alternative transportation options (i.e., second bus run later in the day; reimbursement to parents for transporting the student) to be employed in the event a substitute bus aide or monitor is not available.
3. As written, the district’s policies and procedures regarding the provision of transportation with an aide or bus monitor violate federal and state regulations related to exceptional student education with regard to implementing students’ IEPs when special transportation is required, to the extent that they allow for a lack of substitute attendants and, therefore, transportation not being provided.
4. As implemented, however, with the additional options of a second bus run or reimbursement to parents for transporting their students, the district’s practices are not in violation of federal and state regulations with regard to implementing students’ IEPs.
5. The limited availability of staff to serve as substitute bus aides or monitors may result in the use of the alternative transportation options, causing the student to miss a portion of the school day.

CORRECTIVE ACTION

The Orange County School District shall ensure that its policies and procedures regarding special transportation are designed to ensure full implementation of the IEPs of students with disabilities

who require the services of an aide or monitor on the bus. The results of its review of policies and procedures related to special transportation, including any revisions and a description of how they ensure full implementation of IEPs, shall be provided to the Bureau by June 30, 2009.