

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

**BACKGROUND**

On February 5, 2009, the Bureau of Exceptional Education and Student Services (Bureau) received a state complaint letter from ■ alleging that the Orange County School District had violated federal and state laws relating to the education of students with disabilities. On February 17, 2009, the district provided documentation that identified ■ as the legal guardian of the student named in the complaint. Specifically, the complainant's allegations involved the following issues:

**ISSUE 1: Whether the Orange County School District followed the required procedures regarding the January 15, 2009, individual educational plan (IEP) team meeting by providing the complainant with a meeting notice**

**ISSUE 2: Whether the Orange County School District implemented the student's IEP specifically regarding the provision of rewards for the student during the 2008-09 school year**

The 60-day timeline for completion of the inquiry began on February 6, 2009, with an anticipated completion date of April 6, 2009. The district was asked to submit relevant documents and information to the Bureau. The district's documentation was submitted by 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 identified with other health impairments (OHI).

**ISSUE 1: Whether the Orange County School District followed the required procedures regarding the January 15, 2009, individual educational plan (IEP) team meeting by providing the complainant with a meeting notice**

The complainant stated in the complaint letter that she was unaware that she needed to attend a child study team meeting regarding the student's absences. The complainant told Bureau staff that she requested the January 15, 2009, IEP meeting to discuss the student's educational concerns, and that she felt uncomfortable with the school counselor's presence at the meeting. The complainant stated that she asked the school counselor to leave and when she refused, the complainant left the meeting.

## **FINDINGS OF FACT**

1. The district reported that on November 14, 2008, the complainant requested an IEP team meeting to discuss the student's behavior and school work. The IEP team meeting initially was scheduled for December 5, 2008. The complainant requested that the meeting be rescheduled for December 11, 2008, and requested again for the meeting to be rescheduled for January 15, 2009.
2. The December 8, 2008, meeting notice included the following information:
  - An IEP meeting was scheduled for January 15, 2009, from 8:10 am to 9:10 am, to be held at Sunrise Elementary School.
  - The purpose of the meeting was to hold a parent conference and an IEP meeting.
  - The following persons were to be invited to attend the meeting:
    - Complainant
    - Regular Education Teacher(s)
    - ESE Teacher/Therapist(s)
    - Local Education Agency (LEA) Representative
  - The complainant agreed to the January 15, 2009, date and time by telephone, and a meeting notice was mailed to the complainant.
3. The district's January 15, 2009, meeting notes identified the following persons in attendance at the IEP meeting:
  - Regular Education Teacher
  - ESE Teacher
  - LEA Representative
  - Evaluation Interpreter
4. The district acknowledged that the school counselor attended the IEP meeting; however, the school counselor's name is not listed as a person who attended the meeting and the January 15, 2009, meeting notice was not revised to include the school counselor's name as one of these individuals to be invited.
5. The January 15, 2009, IEP meeting notes indicated that the complainant also attended the meeting but left early; and therefore, did not sign the IEP. The meeting notes identified discussion regarding the complainant's concerns with the student's educational needs and did not identify any discussion regarding the school counselor or attendance issues.
6. The district reported the following additional information regarding the January 15, 2009, IEP meeting:
  - The complainant was scheduled to attend two meetings on January 15, 2009 – one an IEP team meeting, and the other a child study team meeting regarding the student's unexcused absences, which was originally scheduled to be held after the IEP team meeting.
  - The school principal stated that the complainant was notified of both meetings.
  - On January 14, 2009, the complainant contacted the school principal, and stated that she would not be attending the child study team meeting regarding the student's attendance issues.
  - The principal reported that she told the complainant that the student's attendance issues could possibly be discussed during the January 15, 2009, IEP team meeting, and that the school counselor would attend the meeting to do so.
7. The complainant reported the following additional information regarding the January 15, 2009, IEP team meeting:

- The complainant was not notified that the school counselor would be attending the meeting to discuss the student’s attendance.
- The complainant told the principal that she did not want the school counselor to attend the meeting due to a previous incident involving both parties that left the complainant feeling uncomfortable in the presence of the school counselor.
- The complainant provided copies of doctor excuses to the school counselor at the IEP meeting for the dates the student was absent.
- The school counselor left the IEP meeting and returned with a list of additional dates that the student had been absent, which the complainant stated were incorrect.
- The complainant left the IEP team meeting because the school counselor refused to leave and the complainant felt this was interrupting the IEP meeting; as a result, the complainant was not able to complete her discussions with the IEP team members regarding the student’s needs.

## **LEGAL AUTHORITY FOR THE BUREAU’S FINAL DECISION**

Section 300.322, Title 34, Code of Federal Regulations (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)...”

The corresponding state requirements are found in Rule 6A-6.03028, Florida Administrative Code (F.A.C.).

Section 1003.26, Florida Statutes, states: “The Legislature finds that poor academic performance is associated with nonattendance and that school districts must take an active role in promoting and enforcing attendance as a means of improving student performance. It is the policy of the state that each district school superintendent be responsible for enforcing school attendance of all students subject to the compulsory school age in the school district and supporting enforcement of school attendance by local law enforcement agencies. The responsibility includes recommending policies and procedures to the district school board that require public schools to respond in a timely manner to every unexcused absence, and every absence for which the reason is unknown, of students enrolled in the schools. District school board policies shall require the parent of a student to justify each absence of the student, and that justification will be evaluated based on adopted district school board policies that define excused and unexcused absences. The policies must provide that public schools track excused and unexcused absences and contact the home in the case of an unexcused absence from school, or an absence from school for which the reason is unknown, to prevent the development of patterns of nonattendance. The Legislature finds that early intervention in school attendance is the most effective way of producing good attendance habits that will lead to improved student learning and achievement. Each public

school shall implement the following steps to promote and enforce regular school attendance: (1) CONTACT, REFER, and ENFORCE. - (a) Upon each unexcused absence, or absence for which the reason is unknown, the school principal or his or her designee shall contact the student's parent to determine the reason for the absence. If the absence is an excused absence, as defined by district school board policy, the school shall provide opportunities for the student to make up assigned work and not receive an academic penalty unless the work is not made up within a reasonable time. (b) If a student has had at least five unexcused absences, or absences for which the reasons are unknown, within a calendar month or 10 unexcused absences, or absences for which the reasons are unknown, within a 90-calendar-day period, the student's primary teacher shall report to the school principal or his or her designee that the student may be exhibiting a pattern of nonattendance. The principal shall, unless there is clear evidence that the absences are not a pattern of nonattendance, refer the case to the school's child study team to determine if early patterns of truancy are developing. If the child study team finds that a pattern of nonattendance is developing, whether the absences are excused or not, a meeting with the parent must be scheduled to identify potential remedies, and the principal shall notify the district school superintendent and the school district contact for home education programs that the referred student is exhibiting a pattern of nonattendance.”

## **CONCLUSIONS**

1. Section 1003.26, F.S., affirms the importance of regular school attendance, and requires that, at a minimum, child study teams convene to address student nonattendance in certain circumstances. For students with disabilities, IEP teams often serve as the group that addresses issues of nonattendance.
2. The December 8, 2008, notice for the January 15, 2009, meeting included “parent conference” as a purpose, which might be expected to include discussions related to attendance as well as behavior, school performance, or any other factors impacting the student’s education.
3. The December 8, 2008, notice for the January 15, 2009, meeting did not include the school counselor, either by title or name, as an invited participant.
4. The Orange County School District did not follow the required procedures regarding the contents of the written notice for the January 15, 2009, IEP team meeting.

## **CORRECTIVE ACTION**

The Orange County School District shall ensure that required procedures are followed for IEP team meetings regarding the provision of meeting notices. No later than April 30, 2009, the district shall convene the student’s IEP team, with the appropriate participants and sufficient advance notice to provide an opportunity for the complainant to attend that IEP team meeting, to allow the complainant to discuss her concerns regarding the student. A copy of the meeting notice(s), meeting notes, and the student’s IEP shall be provided to the Bureau within one week following the IEP team meeting.

**ISSUE 2: Whether the Orange County School District implemented the student’s IEP specifically regarding the provision of rewards for the student during the 2008-09 school year**

The complainant stated in the complaint letter that she had requested that school staff not give the student rewards such as sweets or toys due to his attention-deficit/hyperactivity disorder (ADHD), and recommendations she had received from the student's doctors. The complainant stated that she had shared this information with school staff and school staff had "continuously undermined" her requests. The complainant stated that she had suggested verbal rewards and stickers instead of sweets and toys. The complainant reported to Bureau staff that the student's teacher had given the student sweets as early as two weeks before the complaint was filed, based on what the student had told her. The complainant stated that she had notified the teacher by writing in the student's planner that the student was not to have sweets of any kind due to having ADHD.

## **FINDINGS OF FACT**

1. The student's IEP in place for the 2008-09 school year was dated April 8, 2008. This IEP did not address the provision of rewards such as sweets or toys for the student.
2. District documentation indicated that there was an incident earlier this school year involving sweets being given to the student by another student. However, the teacher immediately remedied the situation and informed the complainant.
3. District documentation indicated that the complainant requested an IEP team meeting which was held on October 2, 2008, and the following items were addressed:
  - The complainant requested that the student not be given sweets for rewards and all toys that the student received as rewards were to be kept at the school's Accelerated Reader (AR) point store.
  - The complainant requested that she be notified if the student brought money to school.
  - The complainant requested that she be notified if the student acted moody.While these topics were discussed, the IEP was not revised to include any information regarding rewards for the student.
4. The district reported that, according to the school principal and the staffing specialist, the school had complied with all of the complainant's requests from the October 2, 2008, IEP team meeting.
5. The January 15, 2009, IEP meeting notes do not reflect any discussion regarding the provision of rewards such as sweets or toys for the student, and the IEP was not revised at this meeting to include any information regarding rewards.

## **LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION**

CFR 300.320 requires that an IEP 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;
- and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section..."

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

## **CONCLUSIONS**

1. The student's April 8, 2008, IEP for the 2008-09 school year does not address the provision of rewards for the student, neither requiring nor prohibiting specific rewards.
2. The issue of the types of rewards to be provided to the student was discussed at the IEP team meeting held on October 2, 2008, but this was not incorporated into the IEP.
3. There is conflicting information regarding the provision of sweets to the student.
4. As the student's IEP in effect during the 2008-09 school year was silent on the provision of rewards, the Orange County School District did not fail to implement the IEP in the event rewards may have been provided.

## **CORRECTIVE ACTION**

None

## **RECOMMENDATION**

When the IEP team reconvenes for issue one, it should consider revising the student's IEP to include specific information regarding the timing and type of rewards, if any, appropriate for the student.