

Report of Inquiry – Amended
Bureau Resolution Determination
Conducted by the Bureau of Exceptional Education and Student Services
Involving the Flagler County School District

BACKGROUND

On February 6, 2009, the Bureau of Exceptional Education and Student Services (Bureau) received a state complaint letter from Mr. and Mrs. ■ alleging that the Flagler County School District had violated federal and state laws relating to the education of students with disabilities. Specifically, the complainants' allegations involved the following issues:

- ISSUE 1: Whether the Flagler County School District appropriately developed and implemented a behavior intervention plan (BIP) which included the use of physical restraint for the student during the 2008-09 school year**
- ISSUE 2: Whether the Flagler County School District followed the required procedures when completing the December 18, 2008, individual educational plan (IEP) team meeting notice**
- ISSUE 3: Whether the student's IEP was revised, as appropriate, on January 29, 2009, to address the student's lack of expected progress toward the annual goals**
- ISSUE 4: Whether the Flagler County School District implemented the student's IEP from August 18, 2008, through February 4, 2009, specifically regarding the provision of:**
- **counseling**
 - **behavior tracking sheets**
 - **accommodations**

The 60-day timeline for completion of the inquiry began on February 7, 2009, with an anticipated completion date of April 7, 2009. The district was asked to submit relevant documents and information to the Bureau. The district's documentation was submitted by Dr. Myra Middleton-Valentine, Director of Exceptional Student Education (ESE), Flagler County School District. The complainants provided documentation, and 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 as physically impaired with other health impairments (OHI), and with specific learning disabilities (SLD).

- ISSUE 1: Whether the Flagler County School District appropriately developed and implemented a behavior intervention plan (BIP) which included the use of physical restraint for the student during the 2008-09 school year**

The complainants stated in the complaint letter that at the December 18, 2008, IEP meeting they were first made aware that the school had implemented a BIP for the student without informing them or providing them a copy. The complainants stated that they presented their disagreements with the proposed BIP at the IEP team meeting, primarily the use of physical restraint as well as some additions to the functional behavioral assessment (FBA) and the BIP. The complainants stated that the IEP team members agreed that the complainants' educational consultant would e-mail this information to the district to be discussed when the IEP team reconvened after the winter break.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.324, Title 34, Code of Federal Regulations (34 CFR 300.324) 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..."

CFR 300.530 states, "(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--(1) Either--(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior..."

The corresponding state requirements are found in Rules 6A-6.03028 and 6A-6.03312 of the Florida Administrative Code (F.A.C.).

CONCLUSIONS

1. Without the student's IEP team reconvening, the behavioral strategies being used for the student were consolidated into a single document which resulted in the October 1, 2008, BIP. This BIP was implemented by the student's teachers; however, no physical restraints were used.
2. On January 28, 2009, the BIP was revised by the behavior specialist to include the complainants and the educational consultant's requested revisions to remove the need for physical restraints as agreed upon at the December 18, 2008, IEP team meeting.
3. The Flagler County School District did not appropriately develop and implement the October 1, 2008, BIP which included the use of physical restraint for the student during the 2008-09 school year.

CORRECTIVE ACTION

No later than May 1, 2009, the district is required to provide a copy of the district's policy regarding developing a BIP, and to ensure that any future changes to student's BIP will be appropriately developed. Documentation of any revisions to the student's BIP, along with IEP team meeting notices, IEP team meeting notes and copies of the student's IEP must be provided to the Bureau on June 16, 2009, and October 30, 2009, or a narrative stating that no revisions were requested.

ISSUE 2: Whether the Flagler County School District followed the required procedures when completing the December 18, 2008, individual educational plan (IEP) team meeting notice

The complainants stated in the complaint letter that they first became aware of the school's desire to remove the student from his current placement at the December 18, 2008, IEP meeting. The complainants stated that the E/BD program supervisor had been invited to the meeting without their knowledge. The complainants stated that they requested that the meeting be "tabled" since neither they nor the educational consultant had been informed that the intent of the meeting was to discuss a change of placement. The complainants stated that they had been informed that the meeting was called to update the IEP and to implement a BIP.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

CFR 300.322(a) 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 requirement is found in Rule 6A-6.03028, F.A.C.

CONCLUSION

The Flagler County School District followed the required procedures when completing the December 18, 2008, individual educational plan (IEP) team meeting notice.

CORRECTIVE ACTION

None

ISSUE 3: Whether the student's IEP was revised, as appropriate, on January 29, 2009, to address the student's lack of expected progress toward the annual goals

The complainants stated in the complaint letter that on January 29, 2009, the IEP team reconvened to discuss the student's BIP and to complete the IEP annual review. The complainants stated that prior to the IEP team meeting they were informed that the student's existing goals would continue as they had not been met. The complainants stated that they requested documentation on the student's lack of progress as well as work samples and the evaluation artifacts that were to be collected as part of the IEP. In addition, the complainants stated that prior to updating the student's present level of performance and identifying the student's needs on the January 29, 2009, IEP, school staff presented their proposal for the student to be moved to a self-contained E/BD classroom at a different school.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

CFR 300.324(b) requires that 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...and in the general education curriculum, if appropriate; (B) The results of any reevaluation...(C) Information about the child provided to, or by, the parents...(D) The child's anticipated needs; or (E) Other matters."

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

CONCLUSIONS

1. The student's progress reports for the 2008-09 school year identified limited progress toward the annual goals.
2. On January 29, 2009, the student's IEP team met revised the student's IEP to address the student's lack of expected progress toward the annual goals.

CORRECTIVE ACTION

None

ISSUE 4: Whether the Flagler County School District implemented the student's IEP from August 18, 2008, through February 4, 2009, specifically regarding the provision of:

- **counseling**
- **behavior tracking sheets**
- **accommodations**

One of the complainants stated in the complaint letter that when the educational consultant was attempting to gain clarification of the student's progress (in January 2009) [REDACTED] discovered that the student's current IEP had not been followed and that over a period of months the student had not been receiving counseling services. In addition, the school had not been using the behavior tracking sheet correctly by instituting a method of tracking which only indicated the student's negative behaviors. The complaint letter stated that the student began attending counseling on January 31, 2009, and the daily tracking sheet was reinstated on February 2, 2009. The complaint

letter stated that the complainants believe that the school failed to provide the student's accommodations, which further increased the student's distress and troubling behavior at school.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

CFR 300.320 states, "(a)... IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting...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 regular education curriculum...and to participate in extracurricular and other nonacademic activities..."

The corresponding state requirements are found in Rules 6A-6.03013 and 6A-6.03028, F.A.C.

CONCLUSIONS

1. The district did not implement the student's IEPs from August 18, 2008, through February 4, 2009, specifically regarding the provision of counseling.
2. During the period in question, the student's behavior was tracked and communicated to the complainants from August 18, 2008, to February 4, 2009, using anecdotal notes provided via e-mail at least two to three times a week, a weekly planner including teacher notes, target behavior data sheets due to the student's increased non-compliance with adult directives beginning in October 2008, tracking inappropriate behavior using a behavior tracking form in December 2008, recorded interventions provided by the student's teachers (not dated), and intervention logs regarding the supports provided by the teachers dated August 28, 2008, to January 29, 2009.
3. The district did not implement the student's IEPs from August 18, 2008, to February 4, 2009, specifically regarding the use of a daily behavior checklist identified as an accommodation.
4. The district implemented the student's IEP from August 18, 2008, through February 4, 2009, specifically regarding the provision the accommodations with the exception of the daily behavior checklist.

CORRECTIVE ACTIONS

1. No later than April 27, 2009, the district is required to reconvene the student's IEP team to determine if compensatory services are needed due to the district not providing the counseling services for the student from August 18, 2008, through February 4, 2009, as the IEP identified. Documentation of the IEP team's determination shall be provided to the Bureau within ten days of the meeting. If the IEP team determines the need for compensatory services, verification of the provision of compensatory services shall be provided to the Bureau no later than June 16, 2009.
2. In addition, the IEP team must describe the manner in which behavioral data will be collected for the student so that it is understood by all involved.