

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.

FINDINGS OF FACT

1. At the March 31, 2008, IEP team meeting, the IEP team suggested that an FBA and BIP be developed with input from the district's behavioral specialist due to the student's behavioral concerns.
2. On May 19, 2008, the district's behavior specialist completed a behavioral observation/functional behavior assessment which included the following:
 - The behavior checklist identified that the student was having difficulty completing tasks, having difficulty waiting ■ turn, being out of ■ seat, interrupting/blurting out, and requiring the teacher's constant attention.
 - The student's three teachers indicated the following areas of concern: completing tasks/assignments, expecting "something" for completing a task, often sitting with a blank face and refusing to answer verbal questions, and telling teachers ■ would not do what they were requesting.
 - The complainants identified that the student "needed a structured routine, had been diagnosed with a bipolar disorder, loved verbal praise, had ■ privileges removed when disciplined." It was also indicated that the student had trouble managing ■ emotions.
 - The recommendations were to use non-violent crisis prevention verbal de-escalation techniques, provide organizational strategies, maintain a consistent schedule, utilize visual checklist, provide easy access to the nurse or counselor, try to schedule challenging tasks during times when the student performed optimally, and consider providing a "sensory diet of soothing input."
3. On May 23, 2008, the IEP team met to review the student's FBA. The IEP team decided to defer the development of the BIP until the following school year, if warranted, and the teachers would continue to use the strategies developed by the complainants' educational consultant.
4. The district submitted each of the teachers' data collection regarding the student's behavior from August 28, 2008, and through January 29, 2009, while providing support services for the student in the math, reading, and language arts class.
5. On September 4, 2008, the IEP team met per the complainants' request to review and revise the IEP. The IEP team meeting notes stated the following specifically regarding the student's behavior issues:
 - The FBA developed by the district's behavioral specialist was reviewed.
 - The student appeared to be off to a good start for the beginning of the school year.
 - The teachers would determine if the student needed a BIP along with the 28 accommodations on the IEP to support the student's educational needs.

- The student’s new medication might cause disorganized thoughts, increased irritability, “pressured” speech, and a change in mood.
 - The student may be requesting to go to the school nurse to get out of class work and it was suggested to keep records on how often the student asked for “safe/escape pass” in order to collect baseline data.
 - The student appeared to be trying and may be experiencing some anxiety with the classroom expectations.
 - There were as many as three teachers in language arts to offer support to the student.
 - The teachers had some concerns with the student’s organizational strategies.
 - The student’s homework would be online for the parents to access.
 - The student should be offered routines which lead to feelings of safety.
 - The behavior specialist offered to tailor an intervention for the student if needed for “escape” behaviors after the beginning of the school year.
 - The IEP team agreed that there was a strong classroom management system in place and it would meet the student’s behavioral needs as it established solid expectations and routines.
 - The student’s teachers, behavioral specialist, and the nurse would all share information with the complainants and the educational consultant regarding the student’s behavior and how it impeded learning.
6. In an electronic mail (e-mail) message dated September 15, 2008, the regular education teacher stated to one of the complainants that the student was having problems focusing on school work due to worrying about a classroom project, and that positive strategies were offered for the student to use.
 7. In an e-mail dated September 18, 2008, the ESE teacher consulted with the complainants’ educational consultant regarding positive strategies for the student’s fear of the writing process.
 8. An e-mail dated September 29, 2008, from one of the complainants to the regular education teacher, stated that the complainants understood that completing homework and class work assignments were becoming a problem for the student, as ■ was refusing to do the work, and that the student was struggling just to maintain “daily functions.”
 9. The behavior specialist reported that the teachers needed a simple tool to refer to when strategies were needed for the student’s behavior. The teachers had been presented with a large binder of ideas, strategies, suggestions, etc. by the complainants at the beginning of the school year and had to refer to numerous e-mailed behavioral strategies from the educational consultant as well as the IEP strategies/accommodations and other documents. The information was consolidated into a single document resulting in the October 1, 2008, BIP by the district behavior specialist, the school guidance counselor, the school psychologist, and the student’s ESE teacher.
 10. The October 1, 2008, BIP identified the following:
 - Target behavior was to increase the student’s compliance with adult directives
 - Activities were addressed that were associated with the student’s behaviors such as anxiety/perfectionism
 - Classroom activities that set off the problem behaviors were identified as: tasks, teacher/directive, teacher demand, teacher request, teacher re-direction, and transition

- Problem behaviors were identified as: talks out, non-compliant, does not complete work, inappropriate vocalization, abusive/inappropriate language, defiant to adults, out of seat/area, and being disruptive
 - What the student would gain from these behaviors by escaping or avoiding tasks
 - Interventions for the target behavior to increase compliance with adult directives and task completion rates were identified as: proactive, educative, and functional
 - A daily communication form was to be completed by the classroom teacher and quarterly behavior progress reports were to be generated for the behavior specialist
 - The BIP indicated that crisis management procedures may be needed to insure the student's safety and de-escalation of the student's behavior. (The document identified that the district utilized non-violent crisis prevention strategies as a method of behavioral de-escalation for all students by trained/certified personnel.)
 - The classroom teacher would monitor the student's progress daily.
11. The district did not reconvene the student's IEP team to review the October 1, 2008, BIP nor were the complainants notified that the strategies being used were consolidated into a BIP.
 12. After the BIP was implemented on October 1, 2008, each of the student's teachers began documenting the interventions that were being implemented for the student.
 13. In an e-mail dated October 3, 2008, the complainants' educational consultant stated to the student's teachers that the student had destabilized, and the complainants were looking to reduce the student's homework load (work not completed in the classroom).
 14. In an email dated October 6, 2008, one of the complainants asked the regular education teacher if the behavior specialist had observed the student in the classroom. In addition, it was explained that a family member was very ill which was affecting the student's anxiety level.
 15. A target behavior data sheet was completed by the student's teachers beginning in October 2008 when the student was exhibiting increased noncompliance with teacher directives in reading/language arts class. The data sheet identified that the student engaged in the targeted behavior eleven times during the week of October 6, twelve times during the week of October 13, and seven times during the week of October 20, 2008.
 16. In an e-mail dated November 3, 2008, the educational consultant provided support to the teachers regarding the positive supports being providing for the student due to continued episodes of frustration, anxiety, lashing out at other students, refusing to do class work, and the student's need for one-on-one attention from his teachers.
 17. On November 5, 2008, the student received one day of out-of-school suspension for throwing soapy water in another student's eyes, going into the teacher's office, slamming his hands on the desk, and ripping a test in half.
 18. On December 2, 2008, an e-mail from the student's teacher to the complainants and the educational consultant addressed the teacher's tracking of the student's interfering behavior.
 19. On December 2, 2008, the student's educational consultant requested in an e-mail that copies of the student's behavior tracking forms be sent to her and the complainants to help them know the student's frequency and duration of the work avoidance, and if this behavior was occurring when the student had to complete reading and writing activities or was it across the board. The district did not provide copies of the behavior tracking forms, as they were not being utilized at that time, but did provide the complainants and the educational consultant information in other agreed upon formats regarding the student's behavior.

20. An e-mail dated December 15, 2008, from one of the complainants to the student's regular education teacher stated that the complainants had decided to keep the student home the week before the winter break began due to the pressures of school and undue anxiety that was causing the student to have outbursts and inappropriate behaviors. In addition, the complainant stated that they were unaware that the student had been evaluated by the district's behavior specialist and that a BIP had been put into effect beginning October 1, 2008, without their knowledge.
21. The December 18, 2008, IEP team meeting notice identified that the student's IEP would be reviewed for possible change in placement. The IEP meeting notes stated the following:
- The IEP team decided to discuss the current BIP and the student's progress since the complainants stated that they had not received a copy of the meeting notice.
 - The behavioral specialist was contacted by the student's ESE teacher regarding the student's deteriorating behavior and the BIP. The district behavior specialist explained that the BIP was not "new" but information consolidated into a single document for ease of use that had been provided by the complainants and the educational consultant regarding strategies/accommodations.
 - The educational consultant reported that the BIP was not shared with either the complainants or herself until December 17, 2008.
 - The educational consultant stated that the complainants were working closely with the student's psychiatrist who was modifying the student's medications.
 - The behavior specialist reviewed the positive strategies that were being implemented in the student's classroom and determined that strategies included in the BIP were exclusively designed to meet the student's individual needs to be successful in the classroom. However, after matching the intensity of the intervention and the intensity of the behavior, it was noted that the student was still exhibiting inappropriate behaviors.
 - Based on the student's destabilization, recent medication changes, and a recent family member's death, the IEP team agreed to take into consideration that the student was not stable at this time. The educational consultant also stated that the student was not capable of performing adequately due to anxiety and a bipolar disorder.
 - ***The IEP team members discussed the student being provided a paraprofessional. The IEP team indicated that a paraprofessional would not be appropriate for the student. The ESE director stated that a one-on-one was more restrictive than an environment that is outside the general education setting.***
 - The complainants stated that after the winter break the teachers should see a difference in the student as ■ was going on new medication. The IEP team decided that after the winter break the team would reconvene to review the student's behavior.
 - A shortened day was suggested by the IEP team until January 29, 2009, when the IEP team would meet to conduct an annual IEP review, BIP review, and a possible change in placement. The complainants and the teachers would determine when the student needed a shortened day.
 - The behavior specialist shared the student's crisis intervention plan with the complainants who disagreed with the district's implementation of using restraints on the student as the student's behavior intervention plan identified. The district behavior specialist reported that it was explained to the complainants and the educational consultant that non-violent crisis prevention intervention strategies are methods of behavioral de-escalation (largely verbal in nature) utilized for all students and that any type of physical intervention is

always a last resort should imminent danger be present. The complainants stated that they did not want any physical restraints or controls for their ■ that was not used with any general education student. It was reported that no physical restraint had been used on the student.

22. The district reported that the complainants and the educational consultant presented their disagreements with the October 1, 2008, BIP at the December 18, 2008, IEP meeting, primarily the use of physical restraint as well as some additions to the FBA and the BIP. 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.
23. After receiving the educational consultant's e-mail information, the student's BIP was revised on January 28, 2009, to include their requests, including that no crisis management (physical restraint) would be needed.
24. On January 29, 2009, the IEP team met and discussed the following regarding the student's behavior needs:
 - The student was currently performing below grade level in ■ core academic classes, did not appear to be learning, and often sat staring and "glaring" and not producing work.
 - The teacher shared that the student was not writing when asked.
 - The teacher shared that when the student was being provided with math support, the student decided to "Christmas tree" a test and wouldn't go back and make an effort to correct the answers.
 - The teacher shared that often times during an open book test the student would complete the test before the teacher finished reading the directions.
 - The teacher shared that the student would not participate in group activities, only one-on-one activities.
 - The teacher stated that the student liked to chat with them one-on-one daily and it was becoming excessive and getting in the student's way of learning.
 - The educational consultant stated that the student may need some additional supports in language arts such as redirection and constant feedback.
 - The IEP team indicated that the teachers had provided the student with many supports and the educational consultant stated that the student needed even more supports.
 - The emotional/behavioral disability (E/BD) program was discussed which offered general education curriculum and all the intense therapeutic supports to learn consequences, with many built in accommodations.
 - The IEP team reported that the student's behaviors were causing the student to miss out on ■ education, curriculum, and school based experiences. The entire IEP team agreed that the student needed more support, which an E/BD program could offer for the student's academic, behavioral and emotional needs.
 - The teachers indicated that the student was not learning. The ESE teacher stated that the student was receiving additional support above and beyond the IEP.
 - The school psychologist stated that the student appeared to be "frozen in time" academically from two years ago. The IEP team members agreed that the services at the E/BD program would be beneficial to the student's needs.
 - The FBA and BIP were not revised again.

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.

FINDINGS OF FACT

1. The district reported that on November 24, 2008, the complainants' educational consultant who attends the student's IEP via telephone requested that the November 25, 2008, IEP meeting be rescheduled.
2. The meeting notice identified that on November 25, 2008, an e-mail was sent to the educational consultant and a written notice mailed to the complainants on December 1, 2008, stating that the meeting had been rescheduled to December 18, 2008.
3. The December 18, 2008, meeting notice stated that the purpose of the meeting was to "Review IEP Possible Change in Placement."
4. The following persons were to be invited to the December 18, 2008, IEP meeting:
 - LEA Representative
 - Evaluation Interpreter
 - Parent
 - ESE Director
 - Behavior Specialist
 - Principal
 - ESE Teacher
 - School Counselor
 - General Education Teacher
 - General Education Teacher
 - █ Advocacy Center (educational consultant)
 - █ Elementary School Guidance Counselor
 - █ Elementary School Program Supervisor
 - School Psychologist
5. The following persons were in attendance at the December 18, 2008, IEP meeting:
 - LEA Representative
 - Parents
 - █ Elementary School ESE Representative
 - School Counselor
 - Assistant Principal
 - General Education Teacher
 - Principal
 - Behavior Specialist

- School Psychologist
 - General Education Teacher
 - ESE Teacher
 - ■ Advocacy Center (educational consultant)
6. The December 18, 2008, IEP meeting notes stated that the complainants told the IEP team members that they had not received a meeting notice; therefore, the IEP team decided to discuss the student's current positive behavior intervention plan and current progress instead of a possible change of placement, to which the complainants agreed.
 7. The complainants acknowledged in an e-mail to school staff that they had found the meeting notice in a stack of unopened mail at their home.
 8. School staff reported that one of the complainants was asked to sign the meeting notice at the December 18, 2008, IEP meeting.
 9. School staff reported that beginning December 19, 2008; meeting notices were sent by certified mail to the complainants, to ensure arrival.

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.

FINDINGS OF FACT

1. The student’s progress reports for the annual goals during the 2008-09 school year identified the following:

Goals	10/21/2008	12/05/2008	1/15/2009
Curriculum and Learning (Math) – By the annual review of the IEP in the general education classroom, the student will solve a variety of grade level math computation problems with 80% accuracy 4/5 trials.	Limited progress with continued assistance	Limited progress with continued assistance	Progress being made
Curriculum and Learning (Writing) – By the annual review of the IEP in the general education classroom, the student will determine explicit ideas and information in grade level text, including but not limited to main idea, relevant supporting details, implied message, inferences, chronological order of main events, summarizing and paraphrasing with a score of 4.0 on the writing rubric in 2/3 trials.	Limited progress with continued assistance	Limited progress with continued assistance	Limited progress with continued assistance
Social Emotional Behavior – By the annual review of the IEP, the student will turn in 80% of the class assignments given in the regular classroom.	Limited progress with continued assistance	Limited progress due to incomplete assignments	Progress being made
Social Emotional Behavior – By the annual review of the IEP in the general education classroom, the student will identify and manage feelings of anger, anxiety, stress, frustration or disappointment on a daily basis with 90% accuracy in 3 out of 4 trials.	Limited progress due to behavior concerns	Limited progress due to behavior concerns	Limited progress due to behavior concerns
Social Emotional Behavior – By the annual review of the IEP, the student will maintain appropriate school behaviors in all settings with 85% accuracy by meeting the objectives 3 out 4 trials.	Limited progress with continued assistance	Limited progress due to behavior concerns	Limited progress with continued assistance
Social Emotional Behavior – The student will identify and express feelings/strengths about self and others with 80% accuracy in 3 out of 4 trials.	Limited progress with continued assistance	Limited progress with continued assistance	Limited progress with continued assistance

2. On January 29, 2009, the IEP team reconvened to conduct the annual IEP team meeting. The IEP meeting notes stated the following:
 - The student’s current evaluation results, grades, and class progress were reviewed.
 - The educational consultant asked if the student’s current levels included a modified curriculum or an accommodated curriculum. The IEP team stated that the student was

provided with a highly accommodated curriculum, not modified; however, the student's performance evaluation was modified.

- The regular education teacher stated that the student did not appear to be learning. She shared that the student often sat staring and glaring and not producing work.
 - The teacher shared that when the student was being provided with math support ■ decided to "Christmas tree" a test and wouldn't go back and make an effort to correct the answers.
 - The teacher stated that often times during an open book test the student would complete the test before the teacher finished reading the directions.
 - The teacher stated that the student would not participate in group activities, only one-on-one activities.
 - The educational consultant stated that the student may need a modified curriculum/resource setting for language arts in order to progress, and some additional supports such as redirection and constant feedback, small classes so that the student would be able to benefit from the general education curriculum.
 - The IEP team reviewed the student's social emotional behavior goal regarding completing assignments and the progress being made. The ESE teacher shared that if the student did not complete the assignment in class, the assignment was sent home, the student was getting less questions, more time to complete assignments, and other accommodations to aide and offer support. However, the student was still not turning in the work. The student was meeting this social emotional behavior goal in all classes except language arts.
 - The IEP team indicated that the teachers in the general education classroom had provided the student with many supports and the educational consultant stated that the student needed even more supports.
 - The E/BD program was discussed which offers general education curriculum and all the intense therapeutic supports to learn consequences, with many built in accommodations. The educational consultant stated that a one-on-one aide would be a more appropriate change for the student.
 - The IEP team reported that the student's behaviors were causing the student to miss out on his education, curriculum, and school based experiences.
 - The entire IEP team agreed that the student needed more support, which an E/BD program could offer for the student's academic, behavioral and emotional needs. The teachers indicated that the student was not learning. The ESE teacher stated that the student was receiving additional support above and beyond the IEP.
 - The school psychologist stated that the student appeared to be frozen in time academically (two years ago.) The IEP team members agreed that the services at the E/BD program would be beneficial to the student's needs.
3. The January 29, 2009, IEP identified the following: (note: addition/revision)
- Present level of academic and functional performance:
 - The student is currently performing below grade level in ■ core academic classes.
 - The student had been absent nineteen days during the first half of the 2008-09 school year.
 - The student's grades as of the second quarter of the 2008-09 school year were as follows: Language Arts – F, Reading – D, Math – C, Science – C, Social Studies – B

- 2008 Florida Comprehensive Assessment Test (FCAT) results were as follows: Math – level three; Reading – level one
- January 22, 2009, Woodcock-McGrew-Werder Mini-Battery of Achievement (MBA): Basic Skills (83), Reading (104), Writing (63), Math (88), and Factual knowledge (100)
- December 2008, Kaplan Baseline 2 – overall 46%
- December 2008, Kaplan Baseline Achievement – overall 52%
- January 2009, Scholastic Reading Inventory (SRI) – Lexile 230
- In order for the student to maintain success in academic courses, the student needed to complete all assignments, be self-reliant, and ask for assistance when needed so ■ can work to ■ potential. The student completed 10/14 reading assignments of which seven earned a passing grade and no written assignments were turned in.
- Effects of the exceptionality remained the same as on the previous IEP dated September 4, 2008, except for the two additions:
 - The student had difficulty independently solving division and multiplication problems involving more than one step, had difficulty reading word problems, and deciding which operation ■ needed to perform.
 - The student had difficulty organizing ■ thoughts and ideas independently.
 - The student's missed and/or incomplete assignments were negatively affecting ■ current classroom grades. The student had difficulty completing assignments independently in the general education classroom even when the amount of the assignment was reduced, the student was provided with extra time, and the curriculum was modified and/or the student was graded on problems completed instead of problems attempted.
 - When given an assignment, the student had difficulty getting focused and staying on task to begin the assignment. After the clarification of the directions, redirection, and individual assistance from the general education and/or ESE teacher, the student would shut down and often refused to complete work. The student then had to take the class work home and complete it as homework for credit. (*addition*)
 - The student had difficulty communicating and working with ■ peers in the classroom, lunch, or recess. The student often got frustrated or angry when a classmate or peer did not respond the way ■ expected or wanted them to respond. (*addition*)
- Priority educational needs remained the same except for one addition:
 - To improve ■ writing in the areas of focus, organization and support. Remediation for FCAT writing
 - To turn assignments presented to ■ by the classroom teacher within a specified time
 - To recognize when ■ was getting frustrated with ■ classroom assignments, and use strategies to cope with this frustration so ■ could successfully attempt and complete work in school.
 - To be successful in maintaining school appropriate behavior
 - To implement strategies needed to redirect or resolve the situation independently or with the assistance of an adult when the student was feeling frustrated or angry in an academic or social situation with ■ peers. (*addition*)
- The student's annual goals were not revised.
- Special education services:

- Specialized support and instruction related to standard course curriculum, (five periods daily in the ESE classroom (*revision from minimum of three periods per week in the general education classroom*))
- Instruction in self-regulatory skills, daily in the ESE classroom (*addition*)
- Related services:
 - Counseling, 30 minutes/week, guidance office/1:1 and small group
 - Group counseling, 30 minutes/daily, in the ESE classroom (*addition*)
 - Specialized transportation, daily, home/community (*addition*)
- 28 accommodation, daily/or as needed in the ESE classroom (*revision from the general education classroom*)
- Separate class (less than or equal to 40% with non-ESE) (*revision from regular class*)
- Participation in regular/vocational education: Specials area(s) Lunch/Recess for 525 minutes per week (*addition*)
- Non-participation with non-disabled students: “Student requires designed instructional approaches and curriculum to meet IEP goals and objectives. Student requires counseling and instruction in self-control strategies to meet IEP goals and objectives.” (*addition*)

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) she 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.

FINDINGS OF FACT

1. The student's IEPs in effect from the period of August 18, 2008, through February 4, 2009, were dated May 31, 2008, and September 4, 2008.
2. Regarding the provision of counseling, the district's documentation indicated that counseling had not been offered for 30 minutes a week, in the guidance office or one-on-one and small group, as stated on the IEP.
3. Regarding the provision of the behavior tracking sheets:
 - The May 31, 2008, and September 4, 2008, IEPs identified:
 - Special factor: Need for positive behavior intervention or strategies
 - Charts and/or anecdotal logs would be used in the evaluation process for three social emotional behavior goals regarding the student's behavior.
 - Accommodations: Use positive behavioral interventions and daily behavior checklist, daily, in all classrooms
 - The September 4, 2008, IEP meeting notes stated that:
 - The educational consultant requested that the teachers record how often the student asks for a "safe/escape pass" in order to collect baseline data. The teachers begin charting and collecting data on the student's "escape" behaviors.
 - The complainants requested that teachers communicate with them and the educational consultant regarding the student's behavior via e-mail and a spiral notebook.
 - The educational consultant reported that the teachers had a strong classroom management system in place and that this would work for the student as it established solid expectations and routines.
 - Beginning in October 2008 the regular education teacher began collecting data on the student's increased non-compliant behavior with teacher directives in reading and language arts class as well as the frequency and the days of the week the behavior occurred. The data was reviewed with the ESE teacher to make sure the days and times she was providing support met the student's academic and behavior needs.
 - On December 2, 2008, an e-mail from the student's teacher to the complainants and the educational consultant stated that she had started using a behavior tracking form.
 - On December 2, 2008, the educational consultant e-mailed the teacher that the student was on a daily behavior tracking sheet last year and this may be something that needed to be reintroduced for the student.
 - At the January 29, 2009, IEP meeting the educational consultant stated that a daily checklist was supposed to be in place to provide the student feedback on ■ behavior. The

ESE teacher stated that at the beginning of the year it had decided not to implement the behavior tracking sheet; however, the IEP team now felt the daily checklist was necessary.

- The behavior tracking was started again on February 2, 2009.

4. Regarding the provision of the student’s accommodations, the district provided the following summary of accommodation implementation as reported by the student’s teachers:

Accommodations	Teacher reported documentation
Assignments: Break long assignments into parts	Assignments are broken into smaller parts, spread out over a period with breaks in between each section, may be spread out over a period of days to allow the student to complete it
Assignments: Extra time (Time plus 100% additional time) to complete assignments	Allowed up to 100% additional time to complete class assignments, allowed to take work home to finish it, or is provided with additional time when ■ returns to school the next day
Student planner signed by parent and teacher daily	Copies the daily assignment into ■ planner from the board, teacher reviews the planner for accuracy before sending it home for the day, teacher signs the planner, stamps the planner or communicates via e-mail
Tests/Assignments: Allow student to demonstrate understanding of directions	After teacher gives directions for an assignment, student is asked to reread or explain the directions in ■ own words so ■ can demonstrate ■ understanding of the expectations.
Tests/Assignments: Provide verbal/nonverbal encouragement and praise	Before, during, and after a test or assignment, student receives verbal and non-verbal encouragement and praise. Non-verbal examples include a special sticker or stamp on a completed paper, student work displayed in classroom, and golden tickets or reward coupons for completing work or staying on tasks.
Tests/Assignments: Repeat, clarify, summarize directions	Directions for test and assignments are repeated, clarified and summarized for the student when ■ is unable to demonstrate understanding of the directions.
Test /Assignments: Seat in area away from busy parts of classroom	Student is seated in a cluster of two other students in math class, student also has another desk in the room that ■ can move to away from the other students, if needed, to redirect or refocus, student was allowed to choose a “special” seat away from the other students at the beginning of the year. In reading class, student assigned seat is at a table with only one other student, student may also work in the teacher’s office when ■ has trouble staying focused or needs a time out.
Tests: Additional time (Time plus 100% additional time) for test situation	Student is provided with 100% additional time, if needed, to complete ■ tests.
Test: Administer test during several brief sessions	Student’s tests are broken down into smaller sections and are administered over an extended period of days or are administered in 2-3 small periods with breaks in between.
Tests: Enter answers directly into test booklet	Student is permitted to answer questions on the FCAT or other test that are administered in a booklet directly in the test booklet if needed.
Test: Test individually or in a small group setting	Student is tested individually in the classroom office with the supervision of a teacher or in a small group setting with the ESE teacher in a separate classroom if needed.

Tests/Assignments: Use of word processor to respond	A word processor is available in the classroom for the student to complete written assignments if needed, student is reminded of this option, but often declines.
Tests: Use person to transcribe response to format required on test	After the student has completed a written response in ■ own words, the teacher transcribes the response into the required test format if needed.
Require fewer questions but select ones that measure all required content	The number of problems on assignments and test are reduced for the student if needed.
Behavior: Use positive behavior strategies	ESE teacher collected data recording the date, activity/lesson being presented in the student's math, reading and language arts class as well as comments or concerns she may have had while providing support services for the student. In addition, a log that identified 43 positive behavior interventions that were implemented by the student's teachers was provided. A BIP was created on October 1, 2008, which was a compilation of the strategies previously requested or being utilized by the teachers and revised on January 28, 2009.
Test/Assignments: Allow student to demonstrate understanding of directions	A behavior intervention log provided identified that the student was provided with follow-up to ensure understanding on a task assigned.
Tests: Verbal responses recorded by a proctor	Student provided oral responses to written short answers, writing assessments and math worksheets, teacher records ■ responses for ■, parents also record ■ homework for ■.
Tests/Assignments: Use of word processor to respond	A word processor is available in the classroom for the student to complete written assignments if needed, student is reminded of this option, but often declines
Assignments: Use of checklist or student planner	Student copies the daily assignments from the board into ■ planner
Use of positive behavioral interventions and daily behavior checklist	It was decided at the beginning of the school year that the behavior checklist would not be used and instead the teachers began providing feedback to the complainants and the educational consultant using the following: 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, interventions provided by the student's teachers were recorded (not dated), and intervention logs regarding the supports provided by the student's teachers dated August 28, 2008, through January 29, 2009.
Provide access to frequent bathroom and water breaks	Student is permitted to use the bathroom or get a drink of water when needed
Increase white space on tests and quizzes	Student is provided with additional paper with more white space and larger line spacing for answering questions or writing responses if needed
Provide a "safe place" to go for time outs or when experiencing strong emotions	Student has a desk separate from the other students in the classroom where ■ is allowed to go if ■ needs to cool down or refocus, student is also allowed to meet with the guidance counselor, sit with the ESE teacher or go to the nurse if needed

Second set of books at home	Student was provided with a second set of books at the beginning of the school year, books are also available online.
Study guides and concept maps for review of core content material	Student is provided with a study guide or graphic organizers to use as a review of content material before a test
Grade on homework completed versus homework assigned	Student is graded on ■ homework completed versus homework assigned as needed
Use of math grids/graph paper	Student is provided with graph paper to organize ■ math problems if needed
Flexible scheduling and attendance as needed due to medical condition	Student was absent nineteen days as of the second quarter of the 2008-09 school year, shortened day was suggested by the IEP team until January 29, 2009, when the IEP team would meet to conduct an annual IEP review, BIP review and a possible change in placement, complainants and the teachers would determine when the student needed a shortened day.

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.