

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

BACKGROUND

The Bureau of Exceptional Education and Student Services (Bureau) received an unsigned state complaint from ■ forwarded from the Department's Inspector General Office on December 3, 2008, alleging that the Marion County School District had violated state laws relating to the education of students who are gifted. A signed complaint letter with all the required components was received via electronic mail (e-mail) on January 27, 2009, which initiated the 90-day timeline for completion of the inquiry process. Specifically, the complainant's allegations involved the following issues:

ISSUE 1: Whether the Marion County School District followed required procedures related to parent input and participation in meetings during the 2008-09 school year

ISSUE 2: Whether the Marion County School District followed the required procedures regarding the provision of counseling as a related service during the 2008-09 school year

The 90-day timeline for the complaint inquiry began on January 28, 2009, with an anticipated completion date of April 28, 2009. The district and the complainant were asked to submit relevant documents and information to the Bureau. The district's documentation was submitted by Ms. Beverly A. Morris, Marion County School Board Attorney. 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 who are gifted.

ISSUE 1: Whether the Marion County School District followed required procedures related to parent input and participation in meetings during the 2008-09 school year

FINDINGS OF FACT

1. The district provided a copy of a letter dated September 25, 2007, from the Marion County School District superintendent to the parent. The letter states, "...At the present time you may not attend events on any school campus or meet with individual teachers without going through the principal...When we believe that the disruptive effect of a parent's presence outweighs the privilege of parental access to the schools, then we must restrict that access to the extent necessary without entirely eliminating the parent's opportunity to communicate

with his or her child's school in the event of an emergency or in the discussion of a new problem.”

2. The district provided an educational plan (EP) that was in effect from October 10, 2007, until October 9, 2010. The parent attended the EP team meeting on October 10, 2007, and participated in the development of the EP.
3. The district provided documentation that the parent filed a due process hearing request on January 2, 2008, to request that the student be evaluated and determined eligible for exceptional student education (ESE) services for students with other health impairments (OHI).
4. The district provided documentation that an eligibility determination meeting with the parent in attendance was held on March 6, 2008, to discuss evaluation results for the student and determine if the student met the eligibility criteria as a student with a specific learning disability (SLD) or OHI. The team determined that the student did not meet eligibility requirements for any ESE programs other than gifted.
5. The administrative law judge (ALJ) reviewed the evaluation determination and, in a final order dated August 8, 2008, did not require the district to amend their previous eligibility determination.
6. The district provided documentation that the student received private occupational therapy (OT) for seven sessions and was discharged on August 13, 2008. The discharge summary stated “No further occupational therapy intervention is indicated at this time...”
7. The district provided *Conference Reports* which indicated that the parent participated in parent conferences with the student's teachers to discuss medical concerns and the student's class performance on the following dates:
 - August 15, 2008
 - October 6, 2008
 - November 26, 2008
 - January 29, 2009

Conference notes do not indicate that the parent had concerns at the meetings about either an EP meeting or OT services for the student.

8. The parent provided documentation that she sent e-mail to the school principal requesting an individual educational plan (IEP) team meeting to provide OT for the student on the following dates:
 - September 2, 2008
 - September 30, 2008
 - October 13, 2008
 - October 14, 2008
 - January 3, 2009

The principal responded in an email message on September 2, 2008, that “I read the OT documentation from [private therapist] as a dismissal from services. This does not allow me to request OT treatment for [the student]. I will submit this request to ESE for review.”

9. In an e-mail dated September 15, 2008, the principal of the student's school stated “...You will be allowed to attend scheduled Student Advisory Council (SAC) meetings as a committee member. You have not been given permission to attend Parent Teacher Organization (PTO) meetings and I will not grant this permission.”
10. The district provided documentation that the parent went to the district ESE office on September 29, 2008. The parent told a staffing specialist that an IEP team meeting needed to

be scheduled for the student to discuss providing the student with OT. The staffing specialist told the parent that the message would be relayed to the ESE Director.

11. The district reported that the ESE Director spoke to the parent by telephone on October 2, 2008. At that time, the ESE Director told the parent that, because the student is gifted, the student was entitled to an EP team meeting and not an IEP team meeting, and suggested making a written request for an EP team meeting if the parent chose to pursue that option.
12. The district provided a log dated from October 28, 2008, to February 5, 2009, of telephone calls the parent made to the deputy superintendent of schools. None of the telephone calls on the log were in regard to a request for an EP team meeting or OT services for the student.
13. Neither the district nor the parent provided documentation that the parent made a written request for an EP meeting for the student from the beginning of the 2008-09 school year through the time of the filing of this state complaint.
14. The district provided a copy of the 2008-09, School Advisory Committee (SAC) meeting attendance sheets. The parent attended monthly SAC meetings in September, October, November, and January. The parent did not attend the SAC meeting in December. In an e-mail to the parent dated March 26, 2009, the deputy superintendent of Marion County School District stated that the parent was not allowed to attend the December 2008 SAC meeting because the parent wanted to have a conversation at the meeting about the student. The e-mail also stated that the parent can no longer attend SAC meetings during the 2008-09 school year because the parent had been told before the January meeting that she needed participants' permission to record the meeting with an audio recorder. The parent recorded the January meeting without the knowledge or permission of the participants.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

State Board of Education Rule 6A-6.030191 of the Florida Administrative Code (F.A.C.) states: "Educational Plans (EPs) are developed for students identified solely as gifted. Parents are partners with schools and school district personnel in developing, reviewing, and revising the educational plan (EP) for their child. Procedures for the development of the EPs for exceptional students who are gifted, including procedures for parental involvement, shall be set forth in each district's Policies and Procedures for the Provision of Specially Designed Instruction and Related Services to Exceptional Students document and shall be consistent with the following requirements. (1) Role of parents. The role of parents in developing EPS includes: (a) Providing critical information regarding the strengths of their child; (b) Expressing their concerns for enhancing the education of their child so that they receive a free appropriate public education; (c) Participating in discussions about the child's need for specially designed instruction; (d) Participating in deciding how the child will be involved and progress in the general curriculum; and (e) Participating in the determination of what services the school district will provide to the school and in what setting. (2) Parent participation. Each school board shall establish procedures which shall provide for parents to participate in decisions concerning the EP. Such procedures shall include the following: (a) Each district shall take the following steps to ensure that one (1) or both of the parents of a student who is gifted is present or is afforded the opportunity to participate in each EP meeting: 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) A written notice to the parents must indicate the purpose, time, location of the meeting, and who, by title and or position, will be attending. The notice must also include a

statement informing the parents that they have the right to invite an individual with special knowledge or expertise about their child.”

CONCLUSIONS

1. During the 2008-09 school year the district determined that the parent will no longer attend PTO meetings and SAC meetings. The Bureau does not have jurisdiction over such determinations.
2. The Marion County School District followed required procedures related to parent input and participation in EP team meetings and parent conferences with the student’s teachers during the 2008-09 school year.

CORRECTIVE ACTION

None

ISSUE 2: Whether the Marion County School District followed the required procedures regarding the provision of counseling as a related service during the 2008-09 school year

FINDINGS OF FACT

1. The student has an EP and receives services through the gifted program. Counseling is not listed as a related service on the student’s EP.
2. The district provided documentation that the parent filed a due process hearing request on January 2, 2008, to request that the student be evaluated and determined eligible for exceptional student education (ESE) services for students with other health impairments (OHI).
3. The district provided documentation that an eligibility determination meeting with the parent in attendance was held on March 6, 2008, to discuss evaluation results for the student and determine if the student met eligibility criteria for programs in SLD or OHI. The psychological report dated February 5, 2008, did not indicate that the student was in need of counseling services.
4. Conference notes from the evaluation meeting dated March 6, 2008, indicate that a behavior analyst stated that she had been requested to meet with the student to discuss mentoring, bullying, and self-esteem. The behavior analyst reported that the student “...reports no bullying, feels great about himself, and enjoys school and the extracurricular activities.” There is no evidence that the behavior analyst, the parent, or school staff requested counseling services for the student during the meeting.
5. The complainant provided a copy of an email dated September 30, 2008, from the complainant to the school’s principal stating that the student needs an IEP because the student needs testing and counseling. The principal responded in an email dated September 30, 2008, that the parent had made the same request to the ESE office the day before.
6. The district reported that the ESE Director spoke to the parent by telephone on October 2, 2008. At that time, the ESE Director told the parent that, because the student is gifted, the

student was entitled to an EP team meeting and not an IEP team meeting, and suggested making a written request for an EP team meeting if the parent chose to pursue that option.

7. The complainant provided a copy of an email dated October 12, 2008, from the complainant to the student's school, indicating that the issue of counseling had been addressed in her request for due process and that the ALJ did not rule in her favor.
8. The district provided a log dated from October 28, 2008, to February 5, 2009, of telephone calls the parent made to the deputy superintendent of schools. None of the telephone calls on the log were in regard to a request for an EP team meeting or counseling services for the student.
9. Neither the district nor the complainant submitted documentation indicating that the parent had provided to the district evidence that the student needed counseling.
10. Neither the district nor the parent provided documentation that the parent made a written request for an EP meeting for the student from the beginning of the 2008-09 school year through the time of the filing of this state complaint.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

State Board of Education Rule 6A – 6.030191 (4), F.A.C. states, “Contents of Educational Plans (EPs). EPs for students who are gifted must include: (a) A statement of the student's present levels of performance which may include, but is not limited to, the student's strengths and interests, the student's needs beyond the general curriculum, results of the student's performance on state and district assessments, and evaluation results; (b) A statement of goals, including benchmarks or short term objectives; (c) A statement of the specially designed instruction to be provided to the student; (d) A statement of how the student's progress towards the goals will be measured and reported to parents, and (e) The projected date for the beginning of services, and the anticipated frequency, location, and duration of those services;”

Section 1003.01 (3)(a), Florida Statutes (F.S.) states, “Exceptional student means any student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students who are gifted and students with disabilities...”

CONCLUSIONS

1. The student has been determined to be a student eligible for gifted education and has an EP. The EP does not include counseling as a related service for the student.
2. There is no evidence that counseling was identified as an area of need for the student during meetings held during the time in question.
3. The Marion County School District followed the required procedures regarding the issue of whether to provide counseling as a related service during the 2008-09 school year.

CORRECTIVE ACTION

None