

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

**BACKGROUND**

The Bureau of Exceptional Education and Student Services (Bureau) received a state complaint on March 10, 2009, from ■ alleging that the Citrus County School District has violated federal and state laws relating to the education of students with disabilities. Specifically, the complaint allegations involved the following issues:

- ISSUE 1: Whether the Citrus County School District followed the required procedures regarding discipline for the student during the 2008-09 school year, specifically related to the use of seclusion time-out**
- ISSUE 2: Whether the Citrus County School District provided special education and related services to the student by appropriately trained personnel during the 2008-09 school year**
- ISSUE 3: Whether the Citrus County School District implemented the student's behavior intervention plan (BIP) during the 2008-09 school year**
- ISSUE 4: Whether the Citrus County School District developed the student's individual educational plan (IEP) to include specialized instruction that addressed the student's unique needs that result from the student's disability during the 2008-09 school year**

The district and the complainant were asked to submit relevant documents and information to the Bureau. Ms. Jean Reed, Exceptional Student Education (ESE) Director, Citrus County School District, submitted documentation on behalf of the district. The complainant also submitted documentation.

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 autism spectrum disorder (ASD), with language impairments (LI), and receiving the related services of occupational therapy (OT) and physical therapy (PT).

- ISSUE 1: Whether the Citrus County School District followed the required procedures regarding discipline for the student during the 2008-09 school year, specifically related to the use of seclusion time-out**

## FINDINGS OF FACT

1. The district did not have districtwide policies and procedures related to the use of seclusion time-out when this state complaint was filed. Procedures were established at the individual school-level and described on a parent permission form.
2. The district acknowledged the following noncompliance regarding the use of seclusion time-out for the student that occurred on January 23, 2009:
  - A parent permission form granting permission to use seclusion time-out for the student was altered after the parents specifically made known that they did not grant permission for seclusion time-out.
  - The student's IEP did not specify that seclusion time-out would be used as an intervention or as a consequence for specific behaviors.
3. In response to the noncompliance noted above, the district implemented the following:
  - The seclusion time-out rooms used for significantly cognitively impaired students at the student's school were closed pending district review of the school's policies related to time-out.
  - The district formed a committee to draft district policy related to seclusion time-out; copies were provided to the Bureau.
  - Upon review and/or approval of policies related to the use of seclusion time-out, the district will determine if seclusion time-out rooms at the student's school will be re-opened.
  - A new teacher has been hired to work in the student's classroom.
4. The student had two behavior intervention plans (BIPs) in effect during the 2008-2009 school year.
  - The *Crest Individual Behavioral Plan* developed by the teacher was dated March 4, 2008, and indicated that the following sequence of interventions would occur for inappropriate behavior:
    - Points would be taken from weekly pay sheet (token economy system)
    - If behavior persists, time-out would be given in the classroom
    - If behavior escalates, time-out would be given outside the classroom in the time-out roomThe complainants reported that they were aware of the existence of this plan.
  - The second BIP was developed by the school psychologist on March 10, 2008, and revised on February 19, 2009, and March 17, 2009. This BIP did not include seclusion time-out as an intervention. The parents indicated at the February 19, 2009, IEP team meeting that they had not been aware of the March 10, 2008, BIP until February 19, 2009.
5. The district provided a log for the behavior treatment room (BTR) indicating that the student was placed in seclusion time-out on November 4, 2008, and January 23, 2009. The term BTR is interchangeable with seclusion time-out outside the classroom. No misconduct form was completed and filed on November 4, 2008, and there is no record of the parents being notified. A misconduct form was completed and filed on January 23, 2009, and the parents were notified.
6. A misconduct form was completed and filed on December 11, 2008, describing an outburst by the student and indicating that after the student had calmed down the student was placed

in seclusion time-out for a period of ten minutes. This was not recorded in the BTR log and there is no record of the parents being notified of this incident.

7. The district provided an investigation summary report dated February 11, 2009, in which the student's teacher confirmed that she placed the student in seclusion time-out on December 3 and 4, 2008. The teacher did not record the seclusion time-outs on the BTR log, nor did she complete and file misconduct forms. The teacher wrote in daily notes to the parents on December 3 and 4, 2008, that the student had been sent to time-out. The investigation summary indicated that the teacher reported using the term "time-out" to mean seclusion time-out.
8. The district provided a video recording dated January 23, 2009, of the student's classroom, the hallway outside of the classroom and the BTR, and inside the BTR. The ESE director and the parents viewed the videotape and confirmed that the student in the videotape was the student referenced in this complaint. The video recording showed the following sequence of events:
  - The student brought █ backpack from the back of the room to █ desk.
  - A paraprofessional tried to take the backpack from the student's hands, dragging the student on █ knees until █ released █ grip on the backpack.
  - The student was sitting on the floor of the classroom and appeared to touch the hands of another student.
  - The teacher entered the room and pulled the student from the room on █ knees by pulling on █ arms.
  - The teacher and the paraprofessional pulled the student by █ arms down the hall while █ was still on █ knees and put █ in the BTR.
  - The BTR was dark, with no lights on.
  - A student in a wheelchair from another classroom was brought into the darkened BTR and left with the student.
  - The teacher and the paraprofessional were facing each other and talking in the hallway; they did not continuously watch the student through the window of the BTR door.
  - On two occasions the teacher entered the BTR and forcefully pulled the student from one side of the room to the other.
  - Paraprofessionals brought the student's classmates to stand outside the BTR for approximately three minutes while the student was in the BTR.
  - Nine minutes after the student entered the BTR, the lights were turned on in the room and it was discovered that the student was bleeding.
  - The school nurse was called to the BTR and the student was transported by ambulance to the hospital.
9. As part of the investigation summary report dated February 11, 2009, the school's guidance counselor provided a written statement that the student's teacher had been informed six or more times not to touch students in any way. The guidance counselor stated that a "Code 2" team is called to work with students when severe behaviors occur. After viewing the videotape of the incident on January 23, 2009, the guidance counselor stated that he saw no behavior that would warrant a Code 2 team response.
10. When the complaint was filed, neither the district nor the complainant provided documentation to verify that the student's BIP was reviewed after each incident of seclusion time-out.

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

Section 300.324(a)(2) of Title 34 of the Code of Federal Regulations (Title 34) states that the student's 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;..."

Section 300.17 of Title 34 states, "*Free appropriate public education or FAPE* means special education and related services that-(a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of sections 300.320 through 300.324."

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

## **CONCLUSIONS**

1. The district did not have district policies and procedures related to the use of seclusion time-out.
2. School procedures were not followed when the student was placed in seclusion time-out on five occasions during the 2008-09 school year. The BTR log and misconduct forms were not completed on three of the five occasions, and the parents were not notified on four of the five occasions.
3. The Citrus County School District did not follow the required procedures regarding discipline for the student during the 2008-09 school year, specifically related to the use of seclusion time-out.

## **CORRECTIVE ACTIONS**

1. No later than May 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 parents to attend that IEP team meeting, to determine if compensatory services are required to address the time period between August 18, 2008, and January 23, 2009, when the student was subject to seclusion time-out without parental permission or notification. Verification of the meeting and the team's determination regarding the need for compensatory services shall be provided to the Bureau within ten days following the meeting. If the team determines that compensatory services are needed, verification of the provision of those services shall be provided to the Bureau on the following dates: October 30, 2009; January 29, 2010; and April 15, 2010.
2. No later than June 30, 2009, the district shall develop district policies and procedures related to the use of seclusion time-out and shall provide copies of the policies and procedures and any related forms to the Bureau.
3. The district shall provide training to all district staff who have direct contact with students, including administrative staff, instructional staff, and paraprofessionals, regarding discipline

specifically related to BIPs, manual restraint, and seclusion time-out. Documentation of the contents of training, dates of training, and lists of participants with written signature, title, and school shall be provided to the Bureau no later than August 31, 2009.

4. The district shall notify the Bureau of its decision regarding the use of seclusion time-out rooms at the student’s school by June 30, 2009. If seclusion time-out rooms are used at the school, for a period of one year the district shall provide the Bureau with documentation of such use, including BTR logs, misconduct forms, parent permission forms, parent notification forms, and verification of review of student BIPs for each incident.

**ISSUE 2: Whether the Citrus County School District provided special education and related services to the student by appropriately trained personnel during the 2008-09 school year**

**FINDINGS OF FACT**

1. The following table provides information regarding the qualifications of the assigned teachers of the student specified in the complaint:

<b>Teacher Name</b>	<b>Grade Level and Subject Certification</b>	<b>Certification Type</b>	<b>Expiration Date</b>	<b>Courses Taught</b>
Heather Ivanyi	Varying Exceptionalities Grades K - 12	Regular/Professional	June 30, 2014	ESE
Patricia Scarcliff	Mentally Handicapped Grades K – 12	Regular/Professional	June 30, 2009	ESE
Stephen Santafe	Health Grades K – 12 Physical Education Grades 6 – 12 Adaptive Physical Education/endorsement	Regular/Professional	June 30, 2012	Adaptive Physical Education
Jeanette Muehlhof Brew	Art Grades K – 12	Regular/Professional	June 30, 2014	Art
Jack John Vino	Educational Media Specialist Prekindergarten – Grade 12 Elementary Education Grades 1 – 6 Music Grades K – 12	Regular/Professional	June 30, 2014	Media
Betty T. Wright	Speech Language Impaired Grades K – 12 Exceptional Student Education Grades K –	Temporary Educator’s Certificate	June 30, 2009	Speech Language Therapist

<b>Teacher Name</b>	<b>Grade Level and Subject Certification</b>	<b>Certification Type</b>	<b>Expiration Date</b>	<b>Courses Taught</b>
	12			
Theresa Lynn Equils	Speech-Language Impaired Associate Grades K – 12	Temporary Educator’s Certificate	June 30, 2011	Speech Language Therapist
Gail J. Purdy	Elementary Education Grades K – 6 School Psychologist prekindergarten – Grade 12 Exceptional Student Education Grades K – 12	Regular/Professional	June 30, 2010	School Psychologist
Paul Matthew Heinze	Elementary Education Grades 1 – 6 Emotionally Handicapped Grades K – 12 Guidance and Counseling Prekindergarten – Grade 12 Mentally Handicapped Grades K - 12	Regular/Professional	June 30, 2010	Guidance Counselor/Staffing Specialist
Martha Hinkle	Occupational Therapy	License	February 28, 2011	OT
Amy Choto	Physical Therapy	License	November 30, 2009	PT

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

Section 300.18(b) of Title 34 states, “*Requirements for special education teachers in general.* (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires that – (i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher...”

The corresponding state requirements are found in Section 1012.56 of the Florida Statutes (F.S.) and State Board of Education Rule 6A-1.0503 of the Florida Administrative Code (F.A.C.).

## CONCLUSIONS

1. The district provided documentation to verify that all personnel providing special education and related services to the student have been appropriately certified by the state educational agency.
2. The Citrus County School District provided special education and related services to the student by appropriately trained personnel during the 2008-09 school year.

## CORRECTIVE ACTION

None

### **ISSUE 3: Whether the Citrus County School District implemented the student's behavior intervention plan (BIP) during the 2008-09 school year**

## FINDINGS OF FACT

1. The district provided a copy of the student's *Crest Individual Behavioral Plan* developed by the teacher dated March 4, 2008, which indicated that the student's behavior would be documented on both a weekly pay sheet divided into class periods and a behavior chart which would be documented daily. There is no indication that anyone other than the teacher participated in the development of the BIP for the student. The *Crest Individual Behavioral Plan* indicated that the following would occur for inappropriate behavior:
  - Points would be taken from weekly pay sheet (token economy system)
  - If behavior persists, time-out would be given in the classroom
  - If behavior escalates, time-out would be given outside the classroom in the time-out roomThe district provided copies of weekly pay sheets for the student dated from August 18, 2008, until January 24, 2009; the district did not provide copies of a daily behavior chart for the student.
2. The district also provided a copy of the student's BIP, dated March 10, 2008, written by the school psychologist. This document was developed independently by the school psychologist and presented at the IEP team meeting on March 4, 2008. Changes were made by the IEP team at the meeting, and the document dated March 10, 2008, included the changes that were suggested at the IEP team meeting. On February 19, 2009, and March 17, 2009, the BIP was revised. The BIP indicated that targeted behaviors would be tracked by recording time, place and duration of behavior, and by recording frequency and duration of the behavior during observation periods. No documentation was provided to verify that behavior was tracked as indicated on the BIP.
3. The BIP requires the following interventions be followed in the event the student strikes out at another person:
  - Call school staff members for back-up
  - Use the most effective and least intrusive crisis prevention intervention (CPI)
  - Prompt student to "calm down" or "cool off"
  - If student is a danger to self or others, move student to a safe area
  - If student is striking out, block student
  - Use planned ignoring

The BIP does not indicate that the student would be placed in seclusion time-out for any type of behavior.

4. The district provided a video recording of the student's classroom dated January 23, 2009. The ESE director and the parents viewed the videotape and confirmed that the student in the videotape was the student referenced in this complaint. The video documents an incident during which staff used physical intervention to place the student in seclusion time-out. None of the interventions or consequences in either The *Crest Individual Behavioral Plan* or the student's BIP appeared to be followed during this incident.

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

Section 300.324(a)(2) of Title 34 states that the student's 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;..."

Section 300.17 of Title 34 states, "Free appropriate public education or FAPE means special education and related services that-(a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of sections 300.320 through 300.324."

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

## **CONCLUSIONS**

1. Both of the student's behavior plans provide for specific interventions for targeted behaviors. The district provided a video recording of the student's classroom dated January 23, 2009, which indicated that specific interventions were not followed in response to the student's behavior.
2. The Citrus County School District did not implement the student's BIP during the 2008-09 school year.

## **CORRECTIVE ACTIONS**

1. No later than May 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 parents to attend that IEP team meeting, to review the student's BIP and revise as necessary. The team will also develop data collection instruments to track the student's behavior and interventions utilized to address the behavior. Documentation of the IEP team meeting and development of data collection instruments must be provided to the parent and the Bureau within one week following the IEP meeting.
2. Documentation to verify the implementation of the student's BIP specifically related to the student's behavior and interventions utilized to track the behavior shall be provided to the Bureau on the following dates: June 16, 2009, October 30, 2009, and January 29, 2010.

3. Any revisions made to the student's BIP during the 2009-2010 school year shall be provided to the Bureau on the following dates: October 30, 2009, and January 29, 2010.

**ISSUE 4: Whether the Citrus County School District developed the student's individual educational plan (IEP) to include specialized instruction that addressed the student's unique needs that result from the student's disability during the 2008-09 school year**

**FINDINGS OF FACT**

1. The district provided copies of the student's IEPs in effect during the 2008 -09 school year with the following dates:

- March 4, 2008
- February 3, 2009
- February 19, 2009
- March 17, 2009

For all of the IEPs in effect for the 2008-09 school year the student was assigned to adaptive physical education (PE).

2. The IEP dated March 4, 2008, included the following:

- Measurable annual goals:
  - When provided with the appropriate tools or objects [the student] will complete a given task (preferred or non - preferred) in the school environment on three of five trials with minimal physical/verbal/redirecting and modeling done by staff throughout the duration of the IEP
  - [The student] will follow staff directions staying in the classroom/designated area in all school activities, settings and in the community with minimal aggressiveness towards staff with three out of five trials throughout the IEP period
  - [The student] will remove harness, head sets and supplies from backpack and place in appropriate places in the classroom with assistance as needed in three of five trials throughout the IEP period with minimal aggressiveness towards staff members
  - [The student] will eat a meal at school or out in the community while on community based instruction (CBI) trips by piercing/scooping a small portion/amount of food with utensils, setting utensils down, and wiping mouth between bites independently four out of five measured opportunities with visual cues by March 2009
  - Provided assistance as needed, [the student] will take care of washing hands each time after using the restroom and after meals without resistance or aggressiveness towards staff in three out of five times for the duration of the IEP
  - Provided daily language instruction/intervention within the classroom and assistance as needed, [the student] will repeat essential functional responses through the use of a variety of communication modalities (signs, pictures, imitation of verbalization and/or device activation) eight of ten opportunities by March 2009

- Specially designed instruction:

<b>Specially Designed Instruction</b>	<b>Frequency</b>	<b>Location</b>
Developmental Academics	4 out of 7 periods	all school settings
Replacement behavioral strategies	7 out of 7 periods	all school settings

<b>Specially Designed Instruction</b>	<b>Frequency</b>	<b>Location</b>
Gross Motor Skills	7 out of 7 periods	all school settings
Daily living skills	7 out of 7 periods	all school settings
Language skills	7 out of 7 periods	all school settings
Language skills	30-minute sessions/3x week	all school settings

- Related services:

<b>Related Service</b>	<b>Frequency</b>	<b>Location</b>
Occupational Therapy	30-minute sessions/2x week	all school settings
Physical Therapy	30-minute session/1x week	all school settings
Special transportation arrangements	daily	to and from school

- Supplemental aids and services:

<b>Supplemental Aids/Services</b>	<b>Frequency</b>	<b>Location</b>
Instructional Aide	instructional times during the day, 4 periods	all school settings

3. On February 3, 2009, the IEP team changed the student's placement from separate day school to hospitalized/homebound. The IEP developed on February 3, 2009, retained the annual goals from the March 4, 2008, IEP and included the following services:

- Specially designed instruction:

<b>Specially Designed Instruction</b>	<b>Frequency</b>	<b>Location</b>
Developmental Academics	270 minutes weekly	home
Replacement behavioral strategies	30 minutes weekly	home
Language skills	60 minutes weekly	home

- Related services:

<b>Related Service</b>	<b>Frequency</b>	<b>Location</b>
Occupational Therapy	30-minute session/1x month	home
Physical Therapy	30-minute session/1x week	home

4. On February 19, 2009, the IEP team changed the student's placement from hospitalized/homebound to separate day school. The IEP developed on February 19, 2009, included the following:

- Measurable annual goals:

- [The student] will demonstrate assisting with daily living skills by assisting with washing hands, eating, and brushing teeth in the school setting on three of five opportunities for the IEP
- Given verbal cues and demonstration as needed [the student] will participate during recess and PE in a variety of exercises for arms and legs and demonstrate improved awareness of lower extremity positioning when walking and floor sitting on eight of ten opportunities over a grading period by March 2010

- [The student] will demonstrate accepting redirection from staff in all school settings with staff prompts by following the directions after having been given a waiting period on three of five opportunities
  - Provided weekly language instruction/intervention within the classroom and assistance as needed, [the student] will repeat essential functional responses through the use of a variety of communication modalities (signs, pictures, imitation of verbalization and/or device activation) eight of ten opportunities throughout the IEP
  - [The student] will demonstrate remaining on tasks for 15 minutes in a structured activity in the classroom setting with staff support for up to 15 minutes on three of five trials for the IEP/TP period
  - Specially designed instruction was the same as on the March 4, 2008, IEP.
  - Related services were the same as on the March 4, 2008, IEP, with the addition of school health services/nursing one time per month.
  - Supplementary aids and services were the same as on the March 4, 2008, IEP, but the use of an instructional aide was increased from four to seven periods daily (100% of the day).
5. An IEP team meeting was held on March 17, 2009, with the parents' attorney present. The IEP developed on March 17, 2009, included the following:
- Measurable annual goals:
    - [The student] will match, sort or count familiar two-dimensional figures based on a given feature, such as size, shape or color to complete tasks with 80% accuracy four of five times during the IEP period
    - [The student] will respond, request and/or initiate, using a variety of communication modalities (i.e. verbalization, device activation, pictures) during functional/academic activities five times over a 30 minute period on eight of ten occasions
    - [The student] will demonstrate accepting redirection from staff in all school settings with a system of least to most prompting by following directions after being given a waiting period of three to five minutes on eight of ten opportunities by May 29, 2009
    - Following a system of least to most prompting as needed, [the student] will transition to the computer station on request and work for 15 minutes on a fun or preferred activity on four of five opportunities during a week
    - Following a system of least to most prompting as needed, [the student] will participate during recess and PE in a variety of exercises for arms and legs and demonstrate improved awareness of lower extremity positioning when walking and floor sitting, and increase safety awareness within the school environment on four of five opportunities within a week over a grading period by March 2010
  - The types of specially designed instruction remained the same as on the March 4, 2008, IEP, with language skills instruction increasing from three to four 30-minute sessions per week.
  - The types of related services remained the same as on the February 19, 2009, IEP, with occupational therapy increasing from 60 to 90 minutes per week.
  - The supplemental aids and services remained the same as on the February 19, 2009, IEP.

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

Section 300.320 Title 34 states, “(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with sections 300.320 through 300.324, and that must include... (2)(i) A statement of measurable annual goals, including academic and functional goals designed to—(A) Meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and (B) Meet each of the child’s other educational needs that result from the child’s disability;... (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... (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 contained in State Board of Education Rule 6A-6.03028 of the Florida Administrative Code (F.A.C.).

## **CONCLUSIONS**

1. Each of the IEPs in effect for the 2008-09 school year included specially designed instruction in developmental academics. However, three of the four IEPs did not include academic goals to identify the skills to be addressed.
2. The Citrus County School District did not develop the student’s IEP to address the student’s unique needs that result from the student’s disability during the 2008-09 school year.

## **CORRECTIVE ACTIONS**

1. No later than May 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 parents to attend that IEP team meeting, to determine if compensatory services are required to address the time period between August 18, 2008, and March 16, 2009, when academic goals were not included on the student’s IEP. Verification of the meeting and the team’s determination regarding the need for compensatory services shall be provided to the Bureau within ten days following the meeting. If the team determines that compensatory services are needed for the student, verification of the provision of those services shall be provided to the Bureau on the following dates: October 30, 2009; January 29, 2010; and April 15, 2010.
2. Copies of any IEPs developed or revised for the student for a period of one year from this report, including any IEP team meeting notes, shall be provided to the Bureau on the following dates: October 30, 2009; January 29, 2010; and May 1, 2010.