

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

BACKGROUND

The Bureau of Exceptional Education and Student Services received a systemic state complaint on October 1, 2008, in which the Florida Advocacy Center for Persons with Disabilities, Inc., and the School-to-Work Project of the Southern Poverty Law Center alleged that the Hillsborough County School District had violated federal and state laws relating to the education of students with disabilities. The complaint was filed on behalf of six named students and a class of all similarly situated students. On October 20, 2008, the Bureau was informed that both parties agreed to attempt local resolution to address the issues presented in the systemic state complaint. At that time the complaint was placed in abeyance pending the outcome of the local resolution meetings. The Bureau received information from an attorney representing the complainants on January 12, 2009, that the local resolution meeting scheduled for January 15, 2009, had been cancelled and no other local resolution meetings were scheduled. The complaint was taken out of abeyance on January 12, 2009.

Once notified that the parties were not able to resolve the issues, the Bureau requested that the complainants submit signed release of information forms for each of the identified students prior to the initiation of the investigation. Upon review of the submitted documents, the Department's Office of General Counsel requested supporting documentation regarding the authority of some of the individuals who signed the forms to provide consent. In error, the investigation remained on-hold during this time period. The error was brought to our attention on March 11, 2009, through documentation provided by the complainants. The investigation was begun at that time, and the 60-day timeline for completion of the inquiry was established as May 10, 2009.

The complaint included references to actions taken by the school district from the period of 1997 to the present. State complaints must allege a violation that occurred not more than one year prior to the date that the complaint is received. Therefore, the issues reflect only the 2007-08 and 2008-09 school years.

The district and the complainants were asked to submit relevant documents and information to the Bureau. Dr. Cristina Benito, Supervisor, Exceptional Student Education (ESE) Compliance, Hillsborough County School District submitted documentation on behalf of the district. The complainants also submitted documentation. Documentation submitted verified that one of the students referenced in the complaint withdrew from the Hillsborough County school district before the beginning of the 2008-09 school year; therefore, documentation was reviewed for only five students for the 2008-09 school year.

Due to the number of individual educational plans (IEPs) being reviewed and the extent and complexity of the issues being investigated, a summary of relevant information from the students' IEPs, by student, is provided in an attachment. This document is referenced as needed in the findings of fact included in this report. Student 6 withdrew from the district on April 17,

2008, and Student 3 withdrew on October 14, 2008. The remaining four students were enrolled at the time of this investigation. The following issues are referenced for all six students during their period of enrollment:

- ISSUE 1: Whether the students' individual educational plan (IEP) teams considered the need for related services such as counseling, social work, and psychological services in the development of the students' IEPs for the 2007-08 and 2008-09 school years**
- ISSUE 2: Whether the Hillsborough County School District followed the required procedures when determining the students' least restrictive environment (LRE) during the 2007-08 and 2008-09 school years**
- ISSUE 3: Whether the students' IEPs were revised, as appropriate, to address any lack of expected progress toward the annual goals specific to the students' behavior during the 2007-08 and 2008-09 school years**
- ISSUE 4: Whether the students' IEP teams considered the use of positive behavioral interventions and supports and other strategies to address the students' behaviors during the 2007-08 and 2008-09 school years**
- ISSUE 5: Whether the students' functional behavior assessments (FBAs) and behavior intervention plans (BIPs) were reviewed and revised, as appropriate, to address the students' behaviors during the 2007-08 and 2008-09 school years**
- ISSUE 6: Whether the Hillsborough County School District followed the required procedures regarding discipline for the students during the 2007-08 and the 2008-09 school years, specifically related to the students' suspensions from school, placement in time-out rooms, suspensions from the school bus, and manifestation determinations, as appropriate**
- ISSUE 7: Whether the students' IEP teams developed the IEPs to include coordinated measurable, annual IEP goals and transition services that would reasonably enable the students to meet post-secondary goals**

The following issue is referenced for only the student identified as Student One

- ISSUE 8: Whether the Hillsborough County School District followed required procedures regarding reevaluation during the 2007-08 and 2008-09 school years**

As part of the inquiry process, relevant portions of the educational records for the six students identified in the complaint were reviewed. The complainants provided educational records for the students dating from 1997 as background material, and court records adjudicating dependency and termination of parental rights for four of the students.

ISSUE 1: Whether the students' individual educational plan (IEP) teams considered the need for related services such as counseling, social work, and psychological services in the development of the students' IEPs for the 2007-08 and 2008-09 school years

The complainants alleged that the Hillsborough County School District is failing to provide the appropriate levels of related services such as counseling, social work and psychological services necessary to address the students' behavioral challenges and issues.

FINDINGS OF FACT

1. Federal and state regulations require that, to the extent appropriate, the public agency must provide related services required in order for a student with a disability to benefit from special education. There is not a requirement that every type of related service be considered; however, those related services necessary for the student to receive a free appropriate public education (FAPE) must be provided.
2. There is no requirement that IEP teams maintain conference notes reflecting the issues discussed during meetings or, if conference notes are maintained, that they reflect all discussion that takes place at the meeting.
3. During the time in question, the IEPs for Students 2, 3, 4, 5, and 6 referenced noteworthy behavioral and social/emotional concerns such as significant aggressive and/or self-injurious behavior that resulted in placement in more restrictive settings such as separate class, separate day school, home based instruction, or modified schedule (see Attachment).
4. In accordance with 34 CFR §300.34(2), counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
5. Regarding counseling as a related service during 2007-08:
 - Students 1, 3, 5, and 6 had IEPs that included counseling as a related service, indicating that the IEP teams considered the need for counseling.
 - The IEP for Student 6 also stated that the student was being provided therapy through an in-house mental health care counselor and an outside therapist from ■ caregiving agency. Conference notes dated March 14, 2007, stated that psychiatric and therapeutic services currently in place would continue.
 - Conference notes for Students 2 and 4 do not reference consideration of the need for counseling as a related service.
 - The October 2, 2007, BIP for Student 2 included verbal praise and tokens for appropriate behaviors; replacement behaviors were not addressed.
6. Regarding counseling as a related service during 2008-09:
 - Students 1, 3, and 5 had IEPs that included counseling as a related service, indicating that the IEP teams considered the need for counseling.
 - Conference notes for Students 2 and 4 do not reference consideration of the need for counseling as a related service.
7. In accordance with 34 CFR §300.34(14), social work services in schools includes preparing a social or developmental history on a child with a disability; group and individual counseling with the child and family; working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment

in school; mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and assisting in developing positive behavioral intervention strategies.

8. Regarding social work services during 2007-08:
 - None of the students' IEPs included social work services as a related service.
 - None of the conference notes provided referenced consideration of the need for social work services as a related service; it can not be determined whether the IEP teams considered the need for social work service.
9. Regarding social work services for 2008-09:
 - None of the students' IEPs included social work services as a related service.
 - None of the conference notes provided referenced consideration of the need for social work services as a related service; it can not be determined whether the IEP teams considered the need for social work service.
10. In accordance with 34 CFR §300.34(10), psychological services means administering psychological and educational tests, and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations; planning and managing a program of psychological services, including psychological counseling for children and parents; and assisting in developing positive behavioral intervention strategies.
11. Regarding psychological services during 2007-08:
 - None of the students' IEPs included psychological services as a related service.
 - None of the conference notes provided referenced consideration of the need for psychological services as a related service; it can not be determined whether the IEP teams considered the need for psychological service.
12. Regarding psychological services for 2008-09:
 - None of the students' IEPs included psychological services as a related service.
 - None of the conference notes provided referenced consideration of the need for psychological services as a related service; it can not be determined whether the IEP teams considered the need for psychological service.
13. The BIP for Student 2 was revised during the 2008-09 school year to include instruction in replacement behaviors that addressed behavioral and social/emotional needs; the BIP in place prior to that did not include this. As revised, the October 10, 2008, BIP targeted the following behaviors: not wanting to do assigned work; using profanity; yelling; and being physically aggressive with staff and students. It included a variety of rewards for appropriate behaviors and instruction, modeling, and guided practice by the ESE teacher and paraprofessional in the following replacement behaviors: anger management skills such as pausing and counting; communication skills such as talking about feelings and explaining what is bothering the student.
14. The BIP for Student 4 in effect during the 2008-09 school year targeted the following behaviors: hitting; pushing; grabbing; kicking others. It included instruction by the classroom teacher, school social worker, and school psychologist in the following replacement behaviors: learned phrases; designated safe place.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.34 of Title 34 of the Code of Federal Regulations states, “(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes...counseling services, including rehabilitation counselingand parent counseling and training...(c)(2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel...(10) Psychological Services includes- (i) Administering psychological and educational tests, and other assessment procedures; (ii) Interpreting assessment results; (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations; (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and (vi) Assisting in developing positive behavioral intervention strategies...(14) Social work services in schools includes- (i) Preparing a social or developmental history on a child with a disability; (ii) Group and individual counseling with the child and family; (iii) working in partnership with parents and others on those problems in a child’s living situation (home, school, and community) that affect the child’s adjustment in school; (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and (v) Assisting in developing positive behavioral intervention strategies.”

Section 300.320 of Title 34 states, “(a)... 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...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 general education curriculum...”

The corresponding state requirement is contained in Rule 6A-6.03028 of the Florida Administrative Code (F.A.C.).

CONCLUSIONS

1. There is some overlap in the definitions of the related services of counseling, social work services, and psychological services. For the purposes of this complaint, the focus is on the common purpose among them of addressing the behavioral or social/emotional needs of the student to enable the student to benefit from special education services.
2. During the time in question, the IEPs for Students 2, 3, 4, 5, and 6 referenced noteworthy behavioral and social/emotional concerns such as significant aggressive and/or self-injurious behavior that resulted in placement in more restrictive settings (e.g. separate class, separate day school, home based instruction, or modified schedule).

3. The IEPs for Students 3, 5, and 6 included counseling as a related service, indicating that the IEP teams considered the students' needs for related services to address behavioral and social/emotional concerns.
4. In addition to the other behavioral supports and services provided for Students 2 and 4, instruction in replacement behaviors included their BIPs in effect during the 2008-09 school year reflects skill development relevant to this issue.
5. It is not clearly evident that the IEP teams appropriately considered the students' needs for related services to address behavioral and social/emotional concerns for Students 2 and 4 during the 2007-08 school year.

CORRECTIVE ACTION

No later than June 30, 2009, the district shall convene IEP teams for Students 2 and 4 with the appropriate participants and sufficient advance notice to provide an opportunity for the parents to attend that IEP team meetings, to consider the need for related services to address the students' behavioral and social/emotional concerns, and, if so, to determine whether compensatory services are required to address the time during the 2007-08 school year when the students' IEPs did not include counseling, social work, and psychological services as related services. Verification of the meetings and the teams' determinations regarding the need for related and compensatory services shall be provided to the Bureau within ten days following the meetings. If the teams determine that compensatory services are needed, verification of the provision of those services shall be provided to the Bureau on October 30, 2009; January 29, 2010; and April 15, 2010.

ISSUE 2: Whether the Hillsborough County School District followed the required procedures when determining the students' least restrictive environment (LRE) during the 2007-08 and 2008-09 school years

The complainants alleged that the Hillsborough County School District placed the students in restrictive settings without providing support services which might allow them to access the general education curriculum.

FINDINGS OF FACT

1. In accordance with 34 CFR §§300.314 and 300.316, the district must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled. The placement decision must be made annually by a group of persons, including the parents, and other persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. In selecting the LRE, consideration must be given to any potential harmful effect on the child or on the quality of services that he or she needs, and a student with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

2. Student 1

- The IEPs developed on April 26, 2007, and December 12, 2007, reflected the student's eligibility as educable mentally handicapped (EMH) and placement in a separate day school. Factors considered when determining this placement were:
 - Frustration and stress
 - Distractibility
 - Inadequate learning without individualized instruction
 - Insufficient time to master educational objectives
 - Decreased self-esteem and worth
 - Inadequate learning in large group settings
 - Lack of (or insufficient) progress
 - Need for environment with fewer distractions
 - Communication needs
 - Need for lower pupil-to-teacher ratio
- A psychological report dated June 25, 2007, recommended that the student's eligibility be changed from EMH to specific learning disabled (SLD).
- A *Prior Parent Participation* form for a meeting to be held on December 12, 2007, indicated that the purpose of the meeting was to discuss the reevaluation results. Conference notes from that meeting indicated that school personnel would wait to review the reevaluation results.
- The IEP developed on November 11, 2008, reflected the student's change in eligibility from EMH to SLD and a change in placement/FAPE from separate day school to resource (special education services provided outside the regular class 21% to 60% of the time, on a regular high school campus). The listed factors considered when determining this placement were the same as for the previous IEPs.
- Services and supports related to behavior and social/emotional needs were revised with each IEP (see attachment), with significant progress indicated on the November 11, 2008, IEP. However, improvement in this area is not identified as a factor in the decision regarding a change in placement.

3. Student 2

- The IEPs developed on April 24, 2007, and September 12, 2007, reflected separate class placement. Factors considered when determining this placement were:
 - Frustration and stress
 - Distractibility
 - Inadequate learning without individualized instruction
 - Insufficient time to master educational objectives
 - Decreased self-esteem and worth
 - Need for increased supervision
 - Inadequate learning in large group settings
 - Social isolation by peer group
 - Lack of (or insufficient) progress
 - Need for environment with fewer distractions
 - Communication needs
 - Need for lower pupil-to-teacher ratio
- The IEP developed on November 16, 2007, reflected a change in placement to home based instruction. In addition to the factors considered as indicated in the previous IEPs,

in response to a manifestation determination meeting (see Attachment) the team considered the safety of the student and others.

- Prior written notice of the proposed change of placement/FAPE was provided.
- The IEP developed on April 28, 2008, reflected placement in a separate day school.

Factors considered when determining this placement were:

- Frustration and stress
 - Disruption of students
 - Distractibility
 - Inadequate learning without individualized instruction
 - Insufficient time to master educational objectives
 - Decreased self-esteem and worth
 - Need for increased supervision
 - Inadequate learning in large group settings
 - Causing harm to self or others
 - Lack of (or insufficient) progress
 - Need for environment with fewer distractions
 - Need for lower pupil-to-teacher ratio
- Prior written notice of the proposed change of placement/FAPE was not provided on the district's designated form. However, the substance of the content requirements for prior notice was included in the written conference notes and the IEP itself.

4. Student 3

- The IEPs developed on August 30, 2006, and September 6, 2007, reflected separate class placement. Factors considered when determining this placement were:
 - Inadequate learning without individualized instruction
 - Insufficient time to master educational objectives
 - Need for increased supervision
 - Inadequate learning in large group settings
 - Lack of (or insufficient) progress
 - Need for lower pupil-to-teacher ratio
- The IEP developed on October 4, 2007, reflected a change in placement/FAPE to a separate day school. Factors considered when determining this placement were:
 - Frustration and stress
 - Disruption of students
 - Distractibility
 - Inadequate learning without individualized instruction
 - Insufficient time to master educational objectives
 - Decreased self-esteem and worth
 - Need for increased supervision
 - Inadequate learning in large group settings
 - Social isolation by peer group
 - Causing harm to self or others
 - Lack of (or insufficient) progress
 - Communication needs
 - Age of child
 - Need for lower pupil-to-teacher ratio
- Prior written notice of the proposed change of placement/FAPE was not provided.

- At the time of the meeting, the student was refusing to be transported to the separate day school.
- The IEP developed on December 21, 2007, reflected separate class placement in an ESE residential charter school. Factors considered when determining this placement were:
 - Frustration and stress
 - Disruption of students
 - Distractibility
 - Inadequate learning without individualized instruction
 - Insufficient time to master educational objectives
 - Decreased self-esteem and worth
 - Need for increased supervision
 - Inadequate learning in large group settings
 - Social isolation by peer group
 - Causing harm to self or others
 - Lack of (or insufficient) progress
 - Communication needs
 - Need for lower pupil-to-teacher ratio
- Prior written notice of the change of placement/FAPE was not required, as the residential portion of the placement was not at the direction of the IEP team.

5. Student 4

- The IEPs developed on April 25, 2007, and February 28, 2008, reflected home based instruction provided in the student's group home. Factors considered when determining this placement were:
 - Frustration and stress
 - Disruption of students
 - Distractibility
 - Inadequate learning without individualized instruction
 - Insufficient time to master educational objectives
 - Need for increased supervision
 - Inadequate learning in large group settings
 - Social isolation by peer group
 - Causing harm to self or others
 - Lack of (or insufficient) progress
 - Communication needs
 - Need for lower pupil-to-teacher ratio
- Home based instruction was initially implemented on September 28, 2006, due to battery on a teacher and a history of violent behaviors, with a designated date to review placement in December 2006. Conference notes dated April 25, 2007, indicated that the student withdrew prior to receiving home based instruction and enrolled in another school district, reenrolling in Hillsborough County School District on January 21, 2007.
- The IEP team met on the following dates for educational planning and to review the student's IEP:
 - On August 17, 2007, conference notes indicated that the parents wanted the student to exit home based instruction and attend school full time. Prior written notice of the addition of speech consultation services was provided and home based instruction was continued.

- On October 15, 2007, conference notes indicated that the student would begin meeting with school personnel at a separate day school, a functional behavior assessment (FBA) would be initiated so that a BIP would be in place when the student begins a modified day schedule, and the group home personnel would provide their behavior intervention plan (BIP) for the student to ensure consistency. The parent requested that the student's home based instructor be in attendance at the next meeting.
- On November 15, 2007, conference notes indicated that the student would attend school from 10:00 a.m. to 1:15 p.m. three days per week, and the district would begin the process of obtaining a unique needs aide.
- On January 29, 2008, conferences notes indicated that the student's home based instruction was going well, and that there had been three "major issues" while at the separate day school on the modified day schedule.
- The IEP developed on March 24, 2008, reflected transition from home based instruction to a modified day in a special day school, beginning April 14, 2008. Factors considered when determining this placement were:
 - Frustration and stress
 - Disruption of students
 - Distractibility
 - Inadequate learning without individualized instruction
 - Insufficient time to master educational objectives
 - Need for increased supervision
 - Inadequate learning in large group settings
 - Social isolation by peer group
 - Causing harm to self or others
 - Lack of (or insufficient) progress
 - Communication needs
 - Need for lower pupil-to-teacher ratio
- Prior written notice of the proposed change of placement/FAPE was provided.
- The IEP developed on April 28, 2008, reflected placement in a special day school for a modified day schedule. Factors considered when determining this placement were the same as those indicated on the April 25, 2007, and February 28, 2008, IEPs. Conference notes indicate that the IEP team met to discuss the delay in implementing the transition to a separate day school. Concerns regarding transportation were discussed, and the following was determined:
 - Student would wear harness and wrist restraints on bus for safety reasons until student has been successful on bus for ten consecutive days
 - Group home personnel would ride the bus for the first days of the transition
 - School would use current personnel to give student a unique needs aide
 - Training for bus driver and attendant would be investigated to address crisis intervention.
- The IEP developed on January 5, 2009, reflected placement in a special day school on a modified day schedule, with an increase in the amount of time. Factors considered when determining this placement were the same as those indicated on the previous IEPs.
- Prior written notice of the proposed change of placement/FAPE (increase modified day to extend through the end of the school day; revise transportation) was provided.

6. Student 5

- The IEPs developed on April 17, 2007, April 3, 2008, and March 25, 2009, reflected placement in a special day school. Factors considered when determining this placement were:
 - Frustration and stress
 - Disruption of students
 - Distractibility
 - Inadequate learning without individualized instruction
 - Insufficient time to master educational objectives
 - Decreased self-esteem and worth
 - Need for increased supervision
 - Inadequate learning in large group settings
 - Social isolation by peer group
 - Physical mobility problems
 - Causing harm to self or others
 - Lack of (or insufficient) progress
 - Communication needs
 - Need for environment with fewer distractions
 - Health and safety concerns due to physical condition
 - Need for lower pupil-to-teacher ratio

7. Student 6

- The IEPs developed on January 18, 2007, and January 17, 2008, reflected placement in a special day school. Factors considered when determining this placement were:
 - Frustration and stress
 - Disruption of students
 - Distractibility
 - Inadequate learning without individualized instruction
 - Insufficient time to master educational objectives
 - Decreased self-esteem and worth
 - Need for increased supervision
 - Inadequate learning in large group settings
 - Social isolation by peer group
 - Causing harm to self or others
 - Lack of (or insufficient) progress
 - Communication needs
 - Need for environment with fewer distractions
 - Need for lower pupil-to-teacher ratio

8. As indicated in the Attachment, the IEPs of Students 1, 2, 3, 4, 5, and 6 included annual goals to address the students' behavioral and social/emotional needs and included special education, related services, supplemental aides and services, and program modifications or supports for school personnel to address those goals.

9. The IEPs in effect for the all of the students during 2007-08 and 2008-09 indicated that the required IEP team participants were invited and attended the IEP team meetings and that the placement decision was reviewed at least annually.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.114 states “(2) Each public agency must ensure that - (i) To the maximum extent appropriate, children with disabilities...are educated with children who are nondisabled; and (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”

34 CFR §300.116 states “(a) The placement decision - (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options...(b) The child’s placement - (1) Is determined at least annually; (2) Is based on the child’s IEP; and (3) Is as close as possible to the child’s home; (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled; (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.”

34 CFR §300.503 requires, “(a)...Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency - (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child...(b) Content of notice. The notice required under paragraph (a) of this section must include - (1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part, and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP Team considered and the reasons why those options were rejected;

The corresponding state requirements are found in Rules 6A-6.03028 and 6A-6.03311, F.A.C.

CONCLUSIONS

1. Of the six students IEPs reviewed for the 2007-08 and 2008-09 school years, the Hillsborough County School District followed the proper procedures when determining the students’ LRE for Students 2, 5, and 6.
2. The IEP team for Student 1 did not consider the results of the most recent evaluation of the student when developing the IEP on December 12, 2007. On November 21, 2008, the team met and considered this information. The student’s eligibility was changed from EMH to SLD and the student’s placement was changed from separate day school to resource level in a traditional high school. The factors listed in the IEP as contributing to the decision

regarding the student's placement were the same for both placements. It appears the student's placement decisions were based in large part on the particular disability category.

3. The district did not provide a prior written notice of its proposal of a change in placement/FAPE for Student 2 on April 28, 2008, and Student 3 on October 4, 2007.

CORRECTIVE ACTIONS

1. No later than June 30, 2009, the district shall convene Student 1'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 beginning August 20, 2007, until November 21, 2008, when the student's reevaluation results were reviewed and the student's disability identification and educational placement were changed. 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 meetings. 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. The district shall review its policies and procedures for the provision of prior written notice and evaluate its practices to ensure that IEP team members are knowledgeable of the requirements. No later than the first day of the 2009-10 school year, the district will provide technical assistance to the staff of the schools in which Students 2 and 3 were enrolled to ensure that prior written notice is provided as required. Documentation of that technical assistance must be submitted to the Bureau by September 1, 2009.

ISSUE 3: Whether the students' IEPs were revised, as appropriate, to address any lack of expected progress toward the annual goals specific to the students' behavior during the 2007-08 and 2008-09 school years

The complainants alleged that the Hillsborough County School District failed to provide the students with the specialized instruction necessary to address the students' behavioral challenges and issues.

FINDINGS OF FACT

1. In accordance with 34 CFR§300.324(b), the IEP team must review the student's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and revise the IEP, as appropriate, to address: lack of expected progress toward the annual goals and in the general curriculum; the results of reevaluation; information about the student provided by the parent; the student's anticipated needs; or other matters.
2. Student 1
 - Progress reports and report cards during 2008-09 indicate that the student was making sufficient progress towards goals and receiving passing grades.
 - The IEP team met on April 26, 2007, December 12, 2007, and November 21, 2008. During each of these meetings the IEP was revised in some way to address identified needs (e.g., change in services, revision/addition/deletion of goals) (see Attachment).

3. Student 2
 - Progress reports and report cards during 2008-09 indicate that the student was making sufficient progress towards most goals but not on pace to meet the performance standard on grade level Sunshine State Standard Access Points. Comments on the progress reports indicated reasons for lack of progress on specific objectives and actions taken in response.
 - The IEP team met on April 4, September 12, and November 16, 2007, and April 21, 2008. During each of these meetings the IEP was revised in some way to address identified needs (e.g., change in services, revision/addition/deletion of goals) (see Attachment).
4. Student 3
 - Progress reports and report cards during 2007-08 indicate that the student was making failing grades in all subjects during the first semester while enrolled in a separate day school, and that grades improved to Ds during second semester and during extended school year services while enrolled in an ESE residential charter school. Grades are not available for 2008-09 as the student withdrew from the district on October 14, 2008.
 - The IEP team met on September 6, 2007, October 4, 2007, and December 21, 2007. During each of these meetings the IEP was revised in some way to address identified needs (e.g., change in services, revision/addition/deletion of goals) (see Attachment).
5. Student 4
 - Progress reports and report cards during 2008-09 indicate that the student was making insufficient progress towards one or more goals each grading period.
 - The IEP team met on August 17, 2007, February 28, March 24, and April 28, 2008, and January 5, 2009. During each of these meetings the IEP was revised in some way to address identified needs (e.g., change in services, revision/addition/deletion of goals) (see Attachment).
6. Student 5
 - Report cards indicate that the student was earning Bs, Cs, Ds, and Fs during 2007-08 and As, Bs, and Cs, with one D, during 2008-09. Progress reports indicate that the student was making insufficient progress towards most goals during 2007-08, with more time was needed to allow for progress, and that increasing progress was made toward most goals during 2008-09.
 - The IEP team met on April 17, 2007, April 3, 2008, and March 25, 2009. During each of these meetings the IEP was revised in some way to address identified needs (e.g., change in services, revision/addition/deletion of goals) (see Attachment).
7. Student 6
 - Progress reports during 2007-08 indicate that the student was making sufficient progress towards two of five goals, with more time needed to allow for progress on the other three goals. Report cards during 2007-08 indicate that the student's instructional level was below grade level, that the student was making As and Bs, with one C, and that the student needed improvement and additional time in many areas of behavior. Grades were not available for 2008-09 as the student withdrew from the district on April 17, 2008.
 - The IEP team met on January 18, 2007, and January 17, 2008. During each of these meetings the IEP was revised in some way to address identified needs (e.g., change in services, revision/addition/deletion of goals) (see Attachment).

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.324 states: "...Each public agency must ensure that...the IEP Team...(ii) Revises the IEP, as appropriate, to address - (A) Any lack of expected progress towards 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.

CONCLUSION

The IEP for Students 1, 2, 3, 4, 5, and 6 were revised, as appropriate, to address lack of expected progress toward the annual goals during the 2007-08 and 2008-09 school years.

CORRECTIVE ACTION

None

ISSUE 4: Whether the students' IEP teams considered the use of positive behavioral interventions and supports and other strategies to address the students' behaviors during the 2007-08 and 2008-09 school years

The complainants alleged that the Hillsborough County School District failed to provide the students with a free appropriate public education by failing to address the students' behavioral challenges.

FINDINGS OF FACT

1. There is evidence in each of the IEPs for Students 1, 2, 3, 4, 5, and 6 (see *Relevant Goals* and *Relevant Supports/Services* sections of the Attachment) that the IEP teams considered the use of positive behavioral interventions and supports and other strategies to address the students' behaviors during 2007-08 and 2008-09.
2. Positive behavioral interventions and supports and other strategies incorporated into the IEPs included: annual goals to address identified areas of need related to behavior and social/emotional skills; instruction in social skills and self-advocacy; counseling as a related service; accommodations such as proximity control and reminders, cues, and prompts; FBAs/BIPs; and classroom and individual behavior management systems.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.324 states that the IEP team must: "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."

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

CONCLUSION

The students' IEP teams considered the use of positive behavioral interventions and supports and other strategies to address the students' behaviors during the 2007-08 and 2008-09 school years.

CORRECTIVE ACTION

None

ISSUE 5: Whether the students' functional behavior assessments (FBAs) and behavior intervention plans (BIPs) were reviewed and revised, as appropriate, to address the students' behaviors during the 2007-08 and 2008-09 school years

The complainants alleged that the Hillsborough County School District failed to provide the students' with free, appropriate, public education by failing to address the students' behavioral challenges.

FINDINGS OF FACT

1. In accordance with 34 CFR§300.530, a student with a disability who has been removed from the current placement for more than ten school days in a school year as a result of disciplinary action must receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. Under circumstances that require the team to conduct a manifestation determination, if the behavior is found to be a manifestation of the student's disability, the team must conduct an FBA if one has not already been conducted and develop and/or review the student's BIP.
2. Student 1
 - During 2007-08 the student received seven days of out-of-school suspension (OSS). No days of OSS are reported for 2008-09.
 - The April 26, 2007, IEP includes the statement that an FBA/BIP is required and will be initiated. The December 12, 2007, IEP includes the statements that there is an FBA/BIP, but that revision is needed, and that the most recent FBA/BIP is dated December 12, 2007. A copy of an undated FBA was provided with the BIP section left blank. IEP conference notes dated November 21, 2008, indicate that the student's behavior has improved and an FBA/BIP is no longer necessary.
3. Student 2
 - During 2007-08 the student received ten days of OSS. An additional day was rescinded (not served). During 2008-09 the student received four days of OSS.
 - An FBA was completed on September 12, 2007, and a BIP was developed on October 2, 2007, while the student was attending a traditional high school. On November 16, 2007, the IEP team met to conduct a manifestation determination for a violation of the student code of conduct; the violation was found to be a manifestation of the student's disability. The IEP team determined that a change in placement to home-based instruction was

appropriate due to concerns for the safety of the student and others. On April 21, 2008, the IEP team determined that a change in placement to a separate day school was appropriate due to the student's progress. Another FBA was completed and a BIP was developed on October 10, 2008, while the student was enrolled in the separate day school.

4. Student 3

- During 2007-08 the student received 13 days of OSS. Additional two-day, three-day, and seven-day suspensions were imposed but then rescinded before being served. The student received no days of OSS during 2008-09 prior to withdrawal on October 14, 2008.
- The district acknowledges that an FBA/BIP was required for this student. A parent notification form for a meeting scheduled for September 6, 2007, indicates "initiate FBA/BIP" as a purpose of the meeting, but the district was unable to present a copy or determine if one had been completed.

5. Student 4

- During 2007-08 there are no reported days of OSS for this student. During 2008-09 the student received one day of OSS.
- A school-based FBA/BIP was developed for the student on May 3, 2008.
- An FBA/BIP dated July 17, 2007, was in place in the student's group home setting.

6. Student 5

- During 2007-08 the student received four days of out-of-school suspension (OSS) and an additional seven days of bus suspension. The student attended school on five of those days. No days of OSS are reported for 2008-09.
- The student has an FBA dated April 3, 2006. A BIP was not included with it.
- The IEP dated April 3, 2008, included as a behavior support the statement "Functional behavioral assessment/positive behavior intervention plan (FBA/BIP) in existence and appropriate. Most recent FBA/PBIP dated 4/3/2006."
- IEP team conference notes dated October 21, 2008, indicated that the student's FBA/BIP was discussed and that a copy would be provided to the group home.

7. Student 6

- During 2007-08 the student received six days of OSS and one additional day of bus suspension. The student attended school on that day. Four additional days of OSS were rescinded by the principal and not served.
- The student's FBA/BIP dated January 31, 2007, was reviewed by the team on January 17, 2008, and determined to be appropriate.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.324 states that the IEP team must: "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."

34 CFR §300.530 states that "(d) Services. (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must— (i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and (ii) Receive, as appropriate, a functional

behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.... (e) Manifestation determination. (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine— (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP. (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met. (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies. (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-6.03012, F.A.C.

CONCLUSIONS

1. There is evidence in the records that Students 1, 2, 3, 4, 5, and 6 each required positive behavioral interventions and supports during 2007-08 and 2008-09. In addition, Students 2 and 3 committed violations of the student code of conduct that resulted in removal for more than ten days in the school year and manifestation determinations to be conducted.
2. The IEPs for Student 1 included statements that an FBA/BIP was required and completed. However, documentation submitted by the district was incomplete and included only part of an FBA and no BIP.
3. The IEP team for Student 2 determined that the behavior was a manifestation of the student's disability. Due to the nature and extent of the student's challenging behaviors, the IEP team determined that a change in placement to a more restrictive setting (home-based instruction) was required for the student to receive FAPE. The student's placement was subsequently changed again; the student is currently enrolled in a separate day school and an FBA/BIP has been completed.
4. There is no evidence that a manifestation determination was conducted for Student 3 or that an FBA/BIP was completed. This student withdrew from the school district on October 14, 2008.
5. For Student 5, an FBA was provided by the district but it did not include a BIP. The IEPs for this student referenced "an FBA/BIP," but it is not clear that one was developed.
6. Students 4 and 6 had FBAs and BIPs that were developed, reviewed, and/or revised, as appropriate.

7. Students 1, 2, 3, and 5 required FBAs and BIPs either because the IEP team determined that they were required or in accordance with the discipline requirements of 34 CFR §300.530.

CORRECTIVE ACTIONS

1. No later than June 30, 2009, the district shall convene IEP teams for Students 1, 2, and 5, with the appropriate participants and sufficient advance notice to provide an opportunity for the parents to attend the IEP team meeting, to develop, review, or revise the students' FBA/BIPs and determine if compensatory services are required to address the time periods during 2007-08 and/or 2008-09, as appropriate, when the students FBA/BIPs had not been developed, reviewed, and/or revised. Should Student 3 reenroll in the district during the 2008-09 or 2009-10 school years, the IEP team shall convene within fifteen days of enrollment to determine if compensatory services are required to address the time periods during 2007-08 and/or 2008-09 until the time of withdrawal when no evidence was provided that an FBA/BIP was in existence and reviewed or revised as appropriate. Verification of the meetings and the teams' determinations regarding the need for compensatory services shall be provided to the Bureau within ten days following the meetings. If the teams determine that compensatory services are needed, verification of the provision of those services shall be provided to the Bureau on October 30, 2009; January 29, 2010; and April 15, 2010.
2. Copies of the students' FBAs/BIPs, including any required revisions, shall be provided to the Bureau within ten days following the meetings. Any revisions to the FBAs/BIPs during the 2009-2010 school year shall be provided to the Bureau on the following dates: October 30, 2009; January 29, 2010; and April 15, 2010.

ISSUE 6: Whether the Hillsborough County School District followed the required procedures regarding discipline for the students during the 2007-08 and the 2008-09 school years, specifically related to the students' suspensions from school, placement in time-out rooms, suspensions from the school bus, and manifestation determinations, as appropriate

The complainants alleged that the Hillsborough County School District failed to provide the students with a free appropriate public education by violating the discipline provisions of the Individuals with Disabilities Education Act (IDEA 2004).

FINDINGS OF FACT

1. In accordance with 34 CFR §300.530, school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local education agency (LEA), the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's

disability; or if the conduct in question was the direct result of the LEA's failure to implement the IEP.

2. Student 1
 - During 2007-08 the student received seven days of OSS.
 - No days of OSS are reported for 2008-09.
3. Student 2
 - During 2007-08 the student received ten days of OSS. An additional day was imposed but then rescinded. A manifestation determination was held on November 16, 2007, and the behavior was found to be a manifestation of the student's disability.
 - During 2008-09 the student received four days of OSS and two days of seclusion time-out. An undated signed parent consent form and a time-out log were provided.
4. Student 3
 - During 2007-08 the student received 13 days of OSS. Additional two-day, three-day, and seven-day suspensions were imposed but then rescinded before being served.
 - The student received no days of OSS during 2008-09 prior to withdrawal on October 14, 2008.
 - The district acknowledges that an FBA/BIP was required for this student. A parent notification form for a meeting scheduled for September 6, 2007, indicates "initiate FBA/BIP" as a purpose of the meeting, but the district was unable to present a copy or determine if one had been completed.
5. Student 4
 - During 2007-08 there are no reported days of OSS for this student.
 - During 2008-09 the student received one day of OSS.
6. Student 5
 - During 2007-08 the student received four days of out-of-school suspension (OSS) and an additional seven days of bus suspension. The student attended school on five of those seven days.
 - During 2007-08 the student had two incidences of seclusion time-out. District policy states that parent consent for seclusion time-out must be obtained; the district acknowledged that parent consent was not obtained prior to the filing of the state complaint. District policy also states that time-out must be brief. Notes indicate that on April 2, 2008, the student was in seclusion time-out from 3:00 to 4:10, and on April 3, 2008, the student was in time-out from 10:40 to 3:36. No log for seclusion time-out was provided.
 - No days of OSS or seclusion time-out are reported for 2008-09.
7. Student 6
 - During 2007-08 the student received six days of OSS and one additional day of bus suspension. The student attended school on that day. Four additional days of OSS were imposed but then rescinded by the principal.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.530 states, "(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability

who violates a code of student conduct. (b) General. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536). (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section...

34 CFR §300.530 states: “(e) Manifestation determination. (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child’s IEP Team (as determined by the parent and the LEA) must review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine - (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or (ii) If the conduct in question was the direct result of the LEA’s failure to implement the IEP. (2) The conduct must be determined to be a manifestation of the child’s disability if the LEA, the parent, and relevant members of the child’s IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met. (3) If the LEA, the parent, and relevant members of the child’s IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies. (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; and (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan. (g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child’s disability, if the child - (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA...”

The corresponding state requirement is found in Rule 6A-6.03312, F.A.C.

CONCLUSIONS

1. The district acknowledged that a manifestation determination was not held for Student 3 and parent consent for seclusion time-out was not obtained for Student 5.
2. District policy states that time-out must be brief. On one occasion Student 5 was in timeout for over an hour; on another occasion Student 5 was in time-out for over four hours.

CORRECTIVE ACTIONS

1. If Student 3 should re-enroll in the Hillsborough County School District during the 2008-09 or 2009-10 school years, 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 when the student was subject to suspension without having had a manifestation determination as required. 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 convene Student 5'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 beginning August 20, 2007, when the student was subject to seclusion time-out without parental consent, and subject to time-out for long periods of time during the school day. Verification of the meeting and the team's determinations 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 October 30, 2009; January 29, 2010; and April 15, 2010.

ISSUE 7: Whether the students' IEP teams developed the IEPs to include coordinated measurable, annual IEP goals and transition services that would reasonably enable the students to meet post-secondary goals

The complainants allege that the Hillsborough County School District has failed to provide necessary and appropriate transition services.

FINDINGS OF FACT

1. One or more IEPs in effect for Student 1 for 2007-08 and 2008-09 did not include measurable post-secondary goals related to employment that were based on age appropriate transition assessment; and annual goals and short-term objectives or benchmarks and transition services that would reasonably enable the student to meet post-secondary goals (see Attachment).
2. One or more IEPs in effect for Student 2 for 2007-08 and 2008-09 did not include measurable post-secondary goals related to education and employment that were based on

age appropriate transition assessment; annual goals and short-term objectives or benchmarks and transition services that would reasonably enable the student to meet post-secondary goals; and transition planning indicated as a purpose of the meeting (see Attachment).

3. One or more IEPs in effect for Student 3 for 2007-08 and 2008-09 did not include consideration of the need for self-determination; measurable post-secondary goals related to education and employment that were based on age appropriate transition assessment; annual goals and short-term objectives or benchmarks and transition services that would reasonably enable the student to meet post-secondary goals; and transition planning indicated as a purpose of the meeting (see Attachment).
4. One or more IEPs in effect for Student 4 for 2007-08 and 2008-09 did not include consideration of the need for self-determination; measurable post-secondary goals related to education and employment that were based on age appropriate transition assessment; and annual goals and short-term objectives or benchmarks and transition services that would reasonably enable the student to meet post-secondary goals (see Attachment).
5. One or more IEPs in effect for Student 5 for 2007-08 and 2008-09 did not include consideration of the need for self-determination; measurable post-secondary goals related to education and employment that were based on age appropriate transition assessment; annual goals and short-term objectives or benchmarks and transition services that would reasonably enable the student to meet post-secondary goals; and transition planning indicated as a purpose of the meeting (see Attachment).

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.43 states, "Transition services.(a) Transition services means a coordinated set of activities for a child with a disability that--(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes--(i) Instruction;(ii) Related services; (iii) Community experiences; (iv) The development of employment and other post-school adult living objectives; and (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. (b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education

34 CFR §300.320 states, "(b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include— (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

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

CONCLUSION

The students' IEP teams did not develop the IEPs to include coordinated measurable, annual IEP goals and transition services that would reasonably enable the students to meet post-secondary goals

CORRECTIVE ACTIONS

Note: Through the 2007-08 compliance self-assessment process, the district recently completed a corrective action plan targeting systemic noncompliance related to secondary transition. Preliminary results of 2008-09 monitoring activities indicate that the systemic nature of the noncompliance has been addressed for a random sample of all disability categories. The corrective action required here will target a purposeful sample of students identified as emotional /behavioral disability (E/BD) and intellectual disability (InD) who are served in separate class or separate day school placements.

1. No later than June 30, 2009, the IEP teams for Students 1, 2, 4, and 5 shall convene with the appropriate participants and sufficient advance notice to provide an opportunity for the parents to attend that IEP team meeting, to appropriately address the transition requirements of the IEPs for the students and consider the need for compensatory services. Verification of the meeting and the teams' determinations regarding the need for compensatory services shall be provided to the Bureau within ten days following the meetings. If the teams determine that compensatory services are needed, verification of the provision of those services shall be provided to the Bureau on October 30, 2009; January 29 and April 15, 2010.
2. No later than June 30, 2009, the Hillsborough County School District shall conduct a self-assessment of a purposeful random sample of student records to be determined by the Bureau. Upon validation of the self-assessment by the Bureau, all identified noncompliance must be corrected within 60 days of notification, including consideration of the need for compensatory services. In the event the results of the self-assessment reveal noncompliance on given requirements in 25% or more of the records sampled, the district will be required to develop and implement a corrective action plan targeting similarly situated students. Procedures for completing the self-assessment, including identification of the sample will be provided under separate cover. Copies of each IEP, including documentation of the IEP teams' determinations regarding compensatory services and any resulting plans and timelines for the provision of these services shall be provided to the Bureau no later than October 30, 2009. Verification of the provision of compensatory services shall be provided to the Bureau on the following dates as applicable: January 31, 2010, and April 15, 2010.

ISSUE 8: Whether the Hillsborough County School District followed required procedures regarding reevaluation during the 2007-08 and 2008-09 school years

The complainants alleged that the Hillsborough County School District failed to provide Student One with a free, appropriate, public education by failing to reevaluate the student during a ten year period.

FINDINGS OF FACT

1. The district and the complainants provided documentation that the student had an initial psychological evaluation on December 17, 1997. From this evaluation the student was determined eligible for ESE programs for students who are EMH.
2. A discipline conference summary dated January 25, 2007, indicated that the purpose of the meeting was to review the student's IEP, consider a change of placement and manifestation determination, and discuss the need for a reevaluation of the student. The legal guardian attended the meeting and signed consent for reevaluation of the student on January 25, 2007. The *Informed Parental Consent for Reevaluation* form indicated that this was not a triennial reevaluation, but instead represented a more frequent reevaluation. Conference summary notes from the IEP team meeting on December 12, 2007, indicated that a reevaluation had been completed on May 6, 2005, but the most recent psychological evaluation was in 1997.
3. The student's psychological evaluation report was dated June 25, 2007. The report referenced the evaluation results from 1997 and did not indicate that additional formal assessments had been administered in the intervening years. The psychologist recommended in the report that the student's earlier identification of EMH be changed to specific learning disabled (SLD). The report stated that "...some of [the student's] deficits can be attributable to skill deficits and [the student's] involvement in the EMH program."
4. The student's IEP team met on December 12, 2007, with the student's guardian in attendance. The meeting notice indicated that the purpose of the meeting included discussion of reevaluation needs/results and consideration of a less restrictive environment, in addition to conducting an annual review of the IEP. The conference summary stated that school personnel would wait to review the student's reevaluation, and the student's placement remained as separate day school.
5. An eligibility staffing was held for the student on November 21, 2008. The student's guardian was not able to attend, but had given permission for the meeting to proceed. The student's eligibility was changed from EMH to SLD.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

CFR 34§300.303 states: "(a)...A public agency must ensure that a reevaluation of each child with a disability is conducted... (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or (2) If the child's parent or teacher requests a reevaluation. (b) Limitation. A reevaluation conducted under paragraph (a) of this section (1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary."

The corresponding state requirement is found in Rule 6A-6.0331, F.A.C.

CONCLUSIONS

1. The student was initially evaluated and found eligible as EMH in 1997. There is no evidence that a reevaluation that included a psychological assessment was completed until 2007,

although there is evidence that the IEP team considered the student's need for reevaluation on at least one occasion in the intervening years (May 5, 2005).

2. The psychological report recommending a change in eligibility from EMH to SLD was dated June 25, 2007.
3. An IEP team meeting was held on December 12, 2007, five months after the psychological report was completed, to, among other things, review the results of the reevaluation and consider a change to a less restrictive environment. Conference notes from that meeting indicated that school personnel would wait to review the reevaluation results.
4. An eligibility determination meeting was held on November 21, 2008. The student's was found no longer to be an eligible student under EMH, but to be eligible as SLD. The student's placement was changed from separate day school to resource level placement on a regular high school campus.
5. The Hillsborough County School District did not follow required procedures regarding reevaluation of this student during the 2007-08 and 2008-09 school years.

CORRECTIVE ACTIONS

1. No later than June 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 beginning August 20, 2007, until November 21, 2008, when the student's reevaluation results were reviewed and the student's disability identification and educational placement were changed. 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.