

**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.

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.

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.

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.

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.

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).

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.

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.

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.