

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

**BACKGROUND**

On March 17, 2009, the Bureau of Exceptional Education and Student Services (Bureau) received a state complaint letter from Mr. and Mrs. ■ alleging that the Pinellas County School District had violated federal and state laws relating to the education of students with disabilities. Specifically, the complainants' allegation involved the following issue:

**ISSUE: Whether the Pinellas County School District followed the correct procedures when determining that the student no longer met eligibility for exceptional student education (ESE) in May 2008**

The 60-day timeline for completion of the inquiry began on March 18, 2009, with an anticipated completion date of May 16, 2009. The district was asked to submit relevant documents and information to the Bureau. The district's documentation was submitted by Ms. Evelyn Mowatt, Supervisor, ESE Compliance, Pinellas County School District on behalf of Ms. Cindy Bania, Assistant Superintendent, ESE, Pinellas County School District. The complainants also provided documentation.

As part of the inquiry process, relevant portions of the student's educational records were reviewed. The educational records indicated that the student (date of birth: ■) was in grade ■ and identified as a student no longer eligible to receive ESE services.

The complainants stated that due to the student's life-threatening allergies the student needed a trained assistant with ■ at all times. An assistant was included on the student's individual educational plan (IEP) until May 16, 2008. It was determined that the student no longer met eligibility for ESE services. The student was found eligible for a plan under Section 504 of the Vocational Rehabilitation Act of 1973 (Section 504) in May 2008; however, an assistant for the student was not included. The complainants stated that an assistant was needed as the student may not communicate with a teacher if ■ was having an allergic reaction, and the student needed an assistant to watch for symptoms of an allergic reaction and act quickly in the event of an emergency.

**FINDINGS OF FACT**

1. The district provided documentation that the student transferred from out-of-state in November 2005 to Pinellas County School District as a kindergarten student with an IEP. On November 18, 2005, the student's IEP team met with the parents in attendance and developed an IEP that included the following:
  - The student was temporarily placed in ESE programs as other health impaired (OHI), and speech impaired (SI) with the following comparable services:

- Specially designed instruction – speech therapy for 30 minutes a week
  - Related services:
    - Occupational therapy (OT) for 30 minutes a week
    - Special transportation – assistant on bus
  - Accommodations – three in flexible presentation
  - Supports for school personnel – assistant to the general education teacher daily
  - Special consideration – health care services (due to severe allergies)
  - Placement – general education class
  - Annual goals: communication and independent functioning (related to OT)
  - A health plan was created by the school nurse that specified:
    - Where the student would be seated in the classroom environments/lunch
    - Parent was to provide cleansing wipes
    - Instructions for areas to be wiped down by the assistant
    - Student’s food/drink was to be provided by the parents
    - Procedures for use of the EpiPen
    - Instructions for location of the student’s activities
    - Instructions for the computer lab
    - Procedures for classmates’ hand washing
    - Instruction for field trips
  - The student’s parents attended this IEP team meeting, and it was determined that a reevaluation was needed.
2. The following is a summary of documentation provided by the district regarding the student’s reevaluation results:
    - March 21, 2006 - Admissions Diagnostic and Placement Team (ADAPT) report indicated:
      - Woodcock-McGrew-Werder Mini-Battery of Achievement - Student’s basic academic skills in reading, writing, math, and factual knowledge ranged from average to high average
      - Goldman-Fristoe Test of Articulation 2 - Student did not exhibit an articulation disorder which might negatively impact academic and social functioning in the educational setting; dismissal from the SI program was recommended
    - OT Functional Evaluation dated March 22, 2006 – No functional concerns regarding physical tasks interfering with the student’s ability to perform in the educational environment were identified; the student was performing in all areas of physical/cognitive tasks independently.
  3. The district provided documentation that the student’s IEP team met on August 4, 2006, for an annual review to discuss the results of the reevaluation and develop an IEP if needed.
  4. Based on the results of the reevaluation, the student was dismissed from SI and OT; the team determined continued eligibility for OHI based on evidence that the student had a health impairment which resulted in reduced efficiency in school work because of temporary or chronic lack of strength, vitality, or alertness
  5. The student’s August 4, 2006, IEP included the following:
    - Present levels of academic achievement and functional performance – The student had threatening allergies and wore a medical bracelet. All surfaces that the student came in contact with were cleaned. Hand washing was required before entering the classroom and wipes and EpiPen were provided by the parent. If the EpiPen was administered, the

student should be taken to the emergency room within 15 minutes. The student could not touch any food items that ■ was allergic to and could only eat foods provided by the parents. The student ate in the classroom and could attend field trips and other events with peers. Food allergies included: peanuts, wheat, eggs, barley, rye, soy, oats, potatoes, tree nuts, sesame, dust mites, shellfish, maple syrup, milk, coca cola, coconut, honey, and cats. The student was most susceptible to anaphylactic reaction from touching peanuts.

- Effect of disability on the student's involvement and progress in general curriculum – The student's severe allergies may interfere with ■ ability to progress in the general curriculum.
  - Priority educational need – To increase safety needs to promote student achievement
  - Special consideration – Health care plan in place due to severe allergies
  - Related service – Teacher assistant on the bus
  - Supports for school personnel – Teacher assistant in the general education classroom; ESE consultation with the general education teacher, one time a grading period
  - Provided with curriculum with grade level appropriate Sunshine State Standards, without accommodations
  - Annual goal for independent functioning: The student was to follow classroom procedures to ensure individual safety.
6. The complainants were provided a written notice dated August 4, 2006, regarding the change from temporary placement and the student's change in eligibility.
  7. The district provided ESE consultation logs for the 2006-07 school year that stated the student completed all assignments in a timely manner. The student's grades for the year were as follows: seven E's (excellent performance in classroom work); one V (very good performance in classroom work).
  8. District documentation identified the following progress reports for the student's independent functioning goal:
    - October 2006 – In process of learning, anticipation of meeting goal by IEP end date
    - February 2007 – In process of learning, anticipation of meeting goal by IEP end date
    - May 2007 – In process of learning, anticipation of meeting goal by IEP end date
  9. The district provided documentation that the student's IEP team met on May 11, 2007, for annual review. There were no changes made to student's IEP.
  10. The complainants provided documentation from the student's physician dated June 7, 2007, stating that the student was allergic to peanuts, including eating them or inhaling any residue.
  11. The district provided documentation of the student's health care plan dated August 22, 2007, which included a list of the student's severe food allergies, specific responsibilities for the complainants, and specific responsibilities for designated school personnel. The plan was signed by the complainants, the school principal, and the school nurse.
  12. District documentation identified the student's progress reports for the independent functioning goal:
    - November 2007 – In process of learning, anticipation of meeting goal by IEP end date
    - March 2008 – In process of learning, anticipation of meeting goal by IEP end date
  13. The district provided documentation that the student was referred for an evaluation for the gifted education program on January 11, 2008, to which the parents agreed.
  14. The district provided ESE consultation logs for the 2007-08 school year indicating that the student continued to complete assignments and worked well independently in the classroom.

15. District documentation indicated that the student's grades for the 2007-08 school year were as follows: two A's (math and social studies), three B's (writing, reading, and science), and three E's for excellent performance in classroom work (art, music, and physical education).
16. The district provided documentation that the IEP team met with the complainants on May 16, 2008, and the following was discussed:
  - The classroom teacher stated that the student was meeting all classroom expectations, functioning independently in the classroom, and was referred for an evaluation for the gifted program.
  - One of the complainants agreed that there were no negative instructional implications associated with the student's medical condition; however, both complainants indicated that the student needed a one-on-one assistant due to severe allergies.
  - The IEP team reviewed the eligibility criteria for OHI and determined that the student no longer met the criteria, as there was no evidence of a health impairment that was adversely affecting the student's educational performance, and the student's IEP did not include specially designed instruction or accommodations.
  - The IEP team determined there was no need for additional formal assessment data to be collected and recommended dismissal from OHI based on the current classroom data.
  - The IEP team discussed that the school's full-time nurse had provided training to the appropriate school personnel regarding the student's allergic reactions. The complainants were reminded that the school had guidelines in place for managing students with food allergies.
  - The complainants stated they were adamantly opposed to the determination that the student would no longer be identified as OHI, which they felt the student needed in order to be provided the assistant.
  - The district assured the complainants that they would continue to put processes in place to ensure the student's safety.
  - The IEP team discussed that the school team could consider the student's eligibility for a Section 504 Plan.
17. A written notice dated May 16, 2008, was provided to the complainants stating a change in the student's eligibility as the student no longer met the eligibility criteria for OHI, and was dismissed from ESE services.
18. The district provided documentation indicating that on May 21, 2008, one of the complainants requested a meeting with district staff. The following were discussed:
  - The complainant expressed concern regarding the student's life-threatening allergies and the need for an assistant.
  - The district explained the function of the IEP and specially designed instruction.
  - One of the complainants agreed that the student did not require specially designed instruction.
  - The complainants agreed to schedule a Section 504 eligibility meeting.
19. The district provided documentation that the student was found eligible for a Section 504 Plan, on June 2, 2008, due to ■ medical condition, and it was determined that the student's impairment may substantially limit the student's "breathing" in the case of an allergic reaction. A Section 504 Plan was developed with one of the complainants in attendance at the meeting. It included accommodations to be provided by trained school staff in order to provide supervision of the student while participating in the following: classroom activities, physical education, music, art, guidance, lunch room, field trips, transportation, and school

assemblies. The school had a full-time nurse on-site. In addition, the Section 504 Plan stated that school staff would monitor the student and encourage the student to verbalize any signs or symptoms of an allergic reaction. The complainant agreed with the accommodations on the Section 504 Plan, but they did not agree that the accommodations could be provided without an assistant assigned to the student.

20. The district and the complainants agreed that the student did not need ESE services for academic achievement.

21. The district reported that a life-threatening incident regarding the student's allergic reaction has not occurred at school since the student enrolled in the district in November 2005.

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

Section 300.39(a)(1), Title 34, Code of Federal Regulations (34 CFR §300.39) states, "(a) General. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability..."

34 CFR §300.39(b)(3) states, "Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction – (i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children."

34 CFR §300.305 states, "(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must-- (1) Review existing evaluation data on the child, including-- (i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers; and (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--(i)(A) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child; (ii) The present levels of academic achievement and related developmental needs of the child; (iii)(A) Whether the child needs special education and related services; or (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. (b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting. (c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section. (d) Requirements if additional data are not needed. (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of-- (i) That determination and the reasons for the determination; and (ii) The right of the parents to request an assessment to determine whether the child continues to be a

child with a disability, and to determine the child's educational needs. (2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents. (e) Evaluations before change in eligibility. (1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with Section 300.304 through Section 300.311 before determining that the child is no longer a child with a disability."

34 CFR §300.503 states, "(a) Notice. 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; or (2) Refuses 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; and (7) A description of other factors that are relevant to the agency's proposal or refusal. (c) Notice in understandable language..."

The corresponding state requirements are found in Rules 6A-6.0331 and 6A-6.03411, Florida Administrative Code (F.A.C.).

## **CONCLUSION**

The Pinellas County School District followed the correct procedures when determining that the student no longer met eligibility for ESE in May 2008.

## **CORRECTIVE ACTION**

None