

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

**BACKGROUND**

The Bureau of Exceptional Education and Student Services (Bureau) received an unsigned state complaint letter from ■ on March 11, 2009, alleging that the Hardee County School District had violated federal and state laws relating to the education of students with disabilities. A signed complaint was received at the Bureau on March 23, 2009, which initiated the 60-day timeline for completion of the inquiry process. Specifically, the complaint allegations involved the following issues:

**ISSUE 1: Whether the Hardee County School District developed the student's individual educational plan (IEP) to address the student's needs that result from the student's disability for the 2008-09 school year, specifically regarding the following:**

- reading
- behavior
- extended school year (ESY) services

**ISSUE 2: Whether the Hardee County School District revised the student's IEP during the 2008-09 school year to address any lack of progress**

**ISSUE 3: Whether the Hardee County School District followed the required procedures when determining the student's least restrictive environment (LRE) during the 2008-09 school year**

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

As part of the inquiry process, relevant portions of the student's educational records were reviewed. The educational records indicated that the student (date of birth: ■) was in grade ■ and determined eligible for special programs for students with language impairments (LI) and receiving occupational therapy (OT) as a related service.

**ISSUE 1: Whether the Hardee County School District developed the student's individual educational plan (IEP) to address the student's needs that result from the student's disability for the 2008-09 school year, specifically regarding the following:**

- reading
- behavior
- extended school year (ESY) services

## **FINDINGS OF FACT**

1. The district provided copies of the individual education plans (IEPs) in effect for the student during the 2008-09 school year which were developed on May 9, 2008, and October 14, 2008.
2. The IEP dated May 9, 2008, was developed by Polk County School District while the student was in attendance in that district. The IEP included the following:
  - Present level of performance:
    - Dynamic Indicators of Basic Early Literacy Skills (DIBELS) scores from May 2008, were in the intensive instructional range and the student scored below grade level in all areas
    - Student struggles in all academic areas
    - Student has to be constantly reminded to stay on task
    - Student responds well to rewards and praise
    - Student does not know many first grade basic sight words
    - Student can recognize numbers from one to ten, but confuses seven and eight
    - Student can count to 20 correctly
    - Student does not know basic addition facts
  - Priority educational needs for curriculum and learning:
    - Read and comprehend a story on grade level
    - Improve recognition of numbers and their value
    - Do basic computation skills without manipulatives
    - Be more successful in math
    - Compose and legibly write short simple sentences
  - Curriculum and learning goals:
    - “The student will use word attack skills to decode words at the first grade level with 75% mastery as measured by work samples, curriculum based assessments, Stanford 10 Achievement Test (SAT10), DIBELS, and portfolio.”
    - “Given instruction and the opportunity to practice, the student will demonstrate basic math skills at the first grade level with 75% mastery as measured by work samples and curriculum based assessments.”
    - “Given a writing assignment, the student will use written communication skills/language mechanics at the first grade level to complete the assignment with 75% mastery as measured by work samples, teacher made tests, and curriculum based assessments.”
  - Priority educational need for communication:
    - Improve overall receptive and language abilities
    - Improve classroom language skills and ability to express thoughts
  - Communication goal:
    - After language therapy, in the school setting, [the student] will demonstrate expressive language skills in four of five trials as measured by tally
  - Priority educational need for the independent functioning:
    - Improve inattentive behavior so the student can become more focused academically at school

- Independent functioning goal:
  - “[The student] will follow a two step (verbal, visual, gestured/written) direction (independently with minimal assistance) on seven out of ten occasions on the school campus as measured by performance demonstration and checklist.”
- Special education services
  - Special instruction for academics and independent functioning skills provided daily in the ESE classroom with 60 minute weekly language therapy session provided in the therapy room and a weekly 30 minute occupational therapy (OT) session provided
- 3. The *Special Factors* section of this IEP includes the following: “Special factors have been considered for the student. Check all identified needs addressed on this IEP.” The item “communication needs” is checked; the item “need for extended school year” is not checked.
- 4. The IEP dated October 14, 2008, was developed by the Hardee County School District. A recording of the meeting was submitted with a copy of the IEP. The IEP included the following:
  - Present level of performance:
    - DIBELS scores from September 2008 were in the intensive instructional range
    - SAT 10 reading score at the 17th percentile
    - After hearing a story the student can answer factual questions
    - Student recognizes 30 out of 50 basic sight words
    - Student is able to write 24 of 26 capital letters and 21 of 26 lower case letters with verbal prompts
    - Student is able to copy all letters and a five word sentence
  - Priority educational needs for curriculum and learning
    - Improve phonemic awareness skills
    - Improve recognition of numbers their values to allow the student to do basic computation skills
  - Curriculum/learning goals:
    - “When given 50 Consonant-Vowel-Consonant (CVC) words, the student will decode the word using phonemic awareness skills with 80% accuracy.”
    - “When presented with a number 1 – 20, the student will be able to recall the number name and value of the number with 80% accuracy in four out of five trials without visual representation.”
    - “The student will write 26 of 26 lowercase letters with one verbal prompt for attention, without a model, two out of three trials.”
  - Present level of education performance for communication
    - The student correctly follows simple two-step oral directions with no more than one prompt with 90% accuracy.
    - The student correctly formulates simple sentences using seven or more words, and writes a simple sentence of four to six words when given a model.
  - Priority educational need for the communication
    - Improve overall receptive and language abilities in order to independently complete language based activities and communicate more effectively in all academic settings
  - Communication goal:
    - “When provided with a picture stimulus, [the student] will formulate a grammatically correct sentence to describe the picture, using target vocabulary and sentence structure with 80% accuracy.”
  - Present level of education performance for independent functioning

- The student follows oral directions or verbal commands after two teacher prompts
  - The student follows one-step directions
  - Priority educational needs for the independent functioning
    - Improve inattentive behavior so the student can follow directions, thus improving attentiveness and time on task
    - Improve visual motor skills for written communication
  - Independent functioning goals:
    - “[The student] will follow verbal directions with no more than two verbal prompts from staff four out of five trials”
    - “[The student] will write two five-to-seven word sentences with proper alignment and spacing with no verbal prompts for attention in two of three trials”
  - Special education services:
    - All specialized academic instruction provided in daily in the ESE classroom with 60 minute weekly language therapy session provided in the therapy room and a weekly 30 minute OT session provided
19. The *Special Factors* section of this IEP includes the following: “Special factors have been considered as appropriate for this student. Check all identified needs addressed in this IEP.” The item “communication needs” is checked; “need for extended school year services” is not checked. The recording of the IEP team meeting includes a reference by district staff at the start of the meeting acknowledging that the parent had a concern related to the need for ESY services. However, there was no subsequent discussion evident on the recording of the parent’s concerns regarding the student’s need for ESY services.

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

Section 300.320 of Title 34 of the Code of Federal Regulations states, “(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include... (2)(i) A statement of measurable annual goals, including academic and functional goals designed to—(A) Meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and (B) Meet each of the child’s other educational needs that result from the child’s disability;... (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child... (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section...”

34 CFR § 300.106 states, “(a) General. (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a) (2) of this section. (2) Extended school year services must be provided only if a child’s IEP Team determines, on an individual basis, in accordance with §§ 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. (3) In implementing the requirements of this section, a public agency may not—(i) Limit extended school year services to

particular categories of disability; or (ii) Unilaterally limit the type, amount, or duration of those services. (b) *Definition*. As used in this section, the term extended school year services means special education and related services that-- (1) Are provided to a child with a disability--(i) Beyond the normal school year of the public agency; (ii) In accordance with the child's IEP; and (iii) At no cost to the parents of the child; and (2) Meet the standards of the SEA.”

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

## CONCLUSION

The Hardee County School District developed the student's individual educational plan (IEP) to address the student's needs that result from the student's disability for the 2008-09 school year, specifically regarding reading and behavior. However, the recording of the IEP team meeting held on October 14, 2008, indicates that the team did not discuss the student's need for ESY services.

## CORRECTIVE ACTION

No later than June 1, 2009, the district shall convene the student's IEP team with the appropriate participants and sufficient advance notice to provide an opportunity for the parent to attend the meeting, to consider the need for ESY services. Verification of the meeting and the team's determination regarding the need for ESY services shall be provided to the Bureau within ten days following the meeting.

## ISSUE 2: Whether the Hardee County School District revised the student's IEP during the 2008-09 school year to address any lack of progress

## FINDINGS OF FACT

1. The district provided copies of the IEPs in effect for the student during the 2008-09 school year that were developed on May 9, 2008, by the Polk County School District and on October 14, 2008, by the Hardee County School District.
2. The report card indicated that the student is working below grade level in all subjects. A, B, and C represent letter grades. S reflects satisfactory progress and E represents excellent progress. In the table below are the student's report card grades for the 2008-09 school year.

Course title	1 <sup>st</sup> grading period	2 <sup>nd</sup> grading period	3 <sup>rd</sup> grading period
Language Arts	C	B	B
Reading	C	A	B
Spelling	B	A	A
Writing	S	S	S
Math	C	B	B
Science	C	B	B
Social Studies	C	B	B
Academic Skills	S	S	E

The district provided copies of progress reports dated September 17, 2008, and February 20, 2009. The following table represents the progress report for September 17, 2008:

<b>Course Title</b>	<b>Average</b>	<b>Grade</b>
Language Arts	75.0	C
Math	73.3	C
Reading	76.6	C
Science	70.0	C
Social Studies	70.0	C
Spelling	90.0	A
Writing	70.0	S

The following table represents the progress report for February 20, 2009:

<b>Course Title</b>	<b>Average</b>	<b>Grade</b>
Academic Skills	90.0	E
Language Arts	83.0	B
Math	81.6	B
Reading	83.3	B
Science	80.8	B
Social Studies	80.8	B
Spelling	93.3	A
Writing	80.8	S

3. Progress reports for annual goals 1, 4, and 5 for the May 30, 2008, IEP indicated that the student was progressing or making progress with mastery expected during the duration of the IEP.
4. The district provided a copy of an undated progress report for the student's annual communication goal which indicated that, for each of the first three grading periods of 2008-09, the student was making progress towards the annual goal and was expected to achieve the annual goal.
5. The district provided an undated progress report for the student's annual curriculum and learning and independent functioning goals. The report indicated that, for each of the first three grading periods of 2008-09, the student was making progress towards each of the annual goals and was expected to achieve each annual goal.

### **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 district revised the student's IEP on October 14, 2008; thereafter, the student's report cards and progress reports indicated that the student was making progress on all annual goals.

## CORRECTIVE ACTION

None

### **ISSUE 3: Whether the Hardee County School District followed the required procedures when determining the student's least restrictive environment (LRE) during the 2008-09 school year**

## FINDINGS OF FACT

1. The district provided copies of the IEPs in effect for the student during the 2008-09 school year that were developed on May 9, 2008, by the Polk County School District and on October 14, 2008, by the Hardee County School District. Both IEPs indicated that the student's placement was a separate class (less than or equal to 40% with students without disabilities). The parent and required members of the IEP team attended both IEP team meetings.
2. The student's IEP dated May 9, 2008, stated that the reason for the student's placement was that the student requires specially designed instruction in all academics, communication, and independent functioning to meet IEP goals and objectives. Other placements were rejected in consideration of providing an education in the least restrictive environment at the appropriate level of instruction and in consideration of the need for related service.
3. The student's IEP dated October 14, 2008, stated that the reason for the student's placement was that the student needs a specialized class due to low level skills; the student needs weekly language therapy to improve receptive and expressive language skills and independently complete language based activities; and the student needs occupational therapy to improve visual motor skills for written communication.
4. The student's present level of academic needs and functional performance during the 2008-09 school year indicated very low assessments results identified as being within the "intensive range" for need for intervention.

## 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 "In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that - each public agency must ensure that (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..."

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

### **CONCLUSION**

The Hardee County School District followed the required procedures when determining the student's least restrictive environment (LRE) during the 2008-09 school year.

### **CORRECTIVE ACTION**

None