

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

BACKGROUND

On March 30, 2009, the Bureau of Exceptional Education and Student Services (Bureau) received a state complaint letter from Mr. and Mrs. [REDACTED] alleging that the Indian River County School District had violated federal and state laws relating to the education of students with disabilities. Specifically, the complainants' allegations involved the following issues:

ISSUE 1: Whether the Indian River County School District followed required procedures regarding the complainant's request for an independent educational evaluation (IEE) reimbursement during the 2008-09 school year

ISSUE 2: Whether the Indian River 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:

- positive behavioral intervention plan (PBIP)
- extended school year (ESY) services
- supports for school personnel

ISSUE 3: Whether the Indian River County School District followed appropriate procedures related to IEP team member participation for district staff during the 2008-09 school year

The 60-day timeline for completion of the inquiry began on March 30, 2009, with an anticipated completion date of May 29, 2009. The district was asked to submit relevant documents and information to the Bureau. The district's documentation was submitted by Mr. Larry Harrah, Executive Director of Exceptional Student Education (ESE) and Student Services, Indian River County School District. In addition, the complainants and the district provided information via telephone interviews.

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: [REDACTED]) was in grade [REDACTED] and determined eligible for special programs for students who are homebound or hospitalized (H/H). Prior to being served in the H/H program, the student received services as a student with an other health impairment (OHI).

ISSUE 1: Whether the Indian River County School District followed required procedures regarding the complainants' request for an independent educational evaluation (IEE) reimbursement during the 2008-09 school year

FINDINGS OF FACT

1. The student had been a student at a charter school in the district since August 18, 2008. The school is chartered under the sponsorship of the Indian River County School District and as such is subject to the same oversight and monitoring requirements of any other public school operating in the district.
2. Documentation submitted by the complainants indicated that they requested services for the student through the H/H program on August 21, 2008, due to recent violent outbursts, the likelihood that the student posed a danger to other children, and the fact that the student was in the process of having his/her medication stabilized.
3. In correspondence dated August 29, 2008, the district's Home/Hospital Coordinator stated that "Home/hospital services are denied due to the current diagnosis."
4. On September 26, 2008, the IEP team met, with the complainants in attendance, and found the student eligible for services through the H/H program with a medical diagnosis of bipolar disorder.
5. On November 17, 2008, the IEP team met, with the complainants in attendance, for the purpose of reviewing the student's educational challenges. The meeting Summary/ Recommendation notes indicate that the student had been receiving tutoring at school, but that it had become problematic. A decision was made to have the father bring the student to the tutoring sessions and, if restraint was required, the father would enter the classroom and restrain the student. The notes stated that "the ESE Teacher will secure needed form for parents to sign to allow psychoeducational evaluation in all 8 domains: cognitive, academic, fine and gross motor, speech and language, social emotional, vision and hearing, and communication. By Friday, 11/21/08, mom to sign evaluation form."
6. On November 25, 2008, the complainants notified Mr. Harrah by letter that they were requesting an evaluation for the student, and that they had not yet received the consent for reevaluation form referenced above. The letter indicated that, in an attempt to help the student's school develop appropriate supports and services for the student, the family had hired an educational consultant.
7. On December 4, 2008, the district provided the complainants an informed notice of refusal for a change of placement stating that the student was on H/H placement. This notice indicated that the student would remain on H/H until a medical doctor notified the school district that the student was able to return to school.
8. On December 15, 2008, the complainants notified Mr. Harrah and the principal of the student's charter school by letter that they would be obtaining an independent educational evaluation (IEE), and indicated that the written notice of refusal provided by the district on December 4, 2008, did not respond to their request for evaluation; rather, it responded to a request for a change in placement, which the complainants were not seeking.
9. This IEE was conducted on February 18, 2009, and was paid for by the complainants.
10. The complainants submitted a copy of an email message dated March 12, 2009, from Mr. Harrah to the complainants and the principal of the charter school regarding the student's dismissal from the H/H program and reenrollment in the charter school. The email stated that "The School District of Indian River County will not be involved with the future planning of your son's education. ■■■ is a student at [the charter school], therefore ■■■ future education plans need to be developed with the staff at [the charter school]."

11. Bureau staff was informed by district staff on May 13, 2009, that the complainants would be reimbursed for the cost of the IEE, that the charter school had reimbursed \$900.00 of the cost, and that the remaining \$900.00 would be reimbursed by the school district.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.502 of Title 34 of the Code of Federal Regulations states, "...Independent educational evaluation. (a) General. (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section. (2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.(3) For the purposes of this subpart— (i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and (ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103. (b) Parent right to evaluation at public expense. (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section. (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either— (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria..."

34 CFR § 300.303 states: "(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311— (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."

34 CFR § 300.209 states: "(a) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this part. (b) Charter schools that are public schools of the LEA. (1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must— (i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and (ii) Provide funds under Part B of the Act to those charter schools— (A) On the same basis as the LEA provides funds to

the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and (B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law. (2) If the public charter school is a school of an LEA that receives funding under § 300.705 and includes other public schools— (i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and (ii) The LEA must meet the requirements of paragraph (b)(1) of this section.”

The corresponding state requirements are contained in Section 1002.33 of the Florida Statutes (F.S.) and State Board of Education Rule 6A-6.0331, Florida Administrative Code (F.A.C.).

CONCLUSIONS

1. At the time in question, the student was enrolled in a charter school sponsored by the Indian River County School District.
2. Parents are entitled to an IEE at public expense if they disagree with an evaluation conducted by the school district.
3. The district did not follow the required procedures in response to the parents' request for an evaluation of the student.
4. The parents obtained an IEE at private expense.
5. The charter school and the Indian River County School District have agreed to reimburse the complainants for the cost of the February 18, 2009, IEE.
6. Charters schools are public schools which must afford learning opportunities for all students.

CORRECTIVE ACTIONS

1. No later than June 15, 2009, the Indian River County School District shall submit to the Bureau documentation of reimbursement to the complainants for the cost of the IEE.
2. No later than August 18, 2009, the Indian River County School District shall review and revise as needed, its policies and procedures related to the services provided to charter school students with disabilities.
3. Comprehensive professional development shall be provided to appropriate district and charter school staff regarding their roles and responsibilities as they relate to ESE programs in charter schools. Documentation of the district's policies and procedures related to charter school students with disabilities and of the provision of related professional development, including content and a list of participants, shall be provided to the Bureau no later than August 31, 2009.

ISSUE 2: Whether the Indian River 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:

- **positive behavioral intervention plan (PBIP)**
- **extended school year (ESY) services**
- **supports for school personnel**

FINDINGS OF FACT

1. The student's IEP in effect during the 2008-09 school year was developed on September 26, 2008, and included the following information pertinent to this issue:
 - Present Level of Performance: Based on physician statement and previous IEP, the student is unable to attend school due to illness; the student is able to complete 1-2 independent tasks without redirection; the student responds well to verbal redirection; and is able to read fluently on grade level; the student's math is on grade level.
 - Priority Education Need: "To return to school when released by a physician."
 - Annual Goals:
 - "Given daily work assignments the student will organize materials on [redacted] work space in order to complete assignments in a timely manner on 4 out of 5 samples."
 - "Given a role play setting, the student will make an appropriate choice 50% of the time in 4 out of 5 trials."
 - "The student will maintain grade level in reading and math."
 - "The student will write 5 sentences with correct capitalization, grammar, spelling, and punctuation with 80% accuracy."
 - Exceptional Student Education Services included:
 - Instruction in social skills
 - Behavior Support
 - Monitoring organizational skills
 - Instruction in expressive communication
 - Modified curriculum
 - Related services, supplementary aids and services, support for school personnel, and assistive technology were not required.
 - Special Factors:
 - Need for positive behavior intervention or strategies was marked as needed
 - Need for assistive technology and devices and services was marked as needed
 - Need for extended school year was not marked as needed
2. On September 18, 2008, an electronic mail was sent to Mr. Larry Harrah in which the parent requested that Mr. Harrah revisit the issue of H/H services for the student because the physician and therapist felt that the student was a danger to other children and requested the H/H placement in an attempt to stabilize the student on medication. In the e-mail the parent listed the following reasons for this decision:
 - The student was removed from [camp] for aggressive behavior when the student hit the counselor and needed to be restrained
 - The student had to be removed from karate camp when the student was restrained by the owner until the parent arrived
 - The first day of school the student kicked a student, threw a rock in class, hit and kicked the teacher, and was restrained
3. Information provided by Dr. Marshall Teitelbaum on September 19, 2008, indicated that the student has a lengthy history of severe rage behaviors that can be dangerous. Dr. Teitelbaum stated that he was adjusting the medication in an effort to help the student maintain control so that the student may successfully return to school in the future.
4. The complaint letter referenced a request on November 4, 2008, for an IEP team meeting to discuss the student's tutoring sessions, due to the fact that often the student was restrained

during the sessions. Conference notes from a November 17, 2008, IEP team meeting indicated that the tutoring sessions were problematic and it was decided that the parent would bring the student to the sessions, and that the parent would go into the classroom to restrain the student when restraint was required.

5. There was no documentation that the IEP team considered the need for supports for school personnel which related to the parents' concern of providing training about autism spectrum disorder (ASD) and bipolar diagnosis to school staff.
6. The IEP did not include a PBIP.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

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

34 CFR § 300.320(a)(4) states that the IEP must include, "...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..."

34 CFR § 300.324 "(a) Development of IEP...(2) Consideration of special factors. The IEP Team must-(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;...(3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of- (i) Appropriate positive behavioral interventions and supports and other strategies for the child; and (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with § 300.320(a)(4)..."

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

CONCLUSIONS

1. The present level of academic achievement and functional performance did not adequately describe the student's current functioning related to the behavioral issues identified by the charter school, parent, and doctors.
2. The IEP included a goal related to making appropriate choices. It is unclear what specific behaviors or choices were targeted. The goal was supported by instruction in social skills and behavior support.
3. There is evidence on the IEP that the IEP team considered the student's need for ESY and determined it was not needed.

4. The IEP does not include support for school personnel in the form of information and training related to ASD and bipolar disorder. As it reflects only H/H services, such services would apply only to the H/H teacher. This would more appropriately be considered when developing the IEP for reentry into a regular school campus.

CORRECTIVE ACTIONS

1. No later than June 5, 2009, the district shall reconvene the student's IEP team, with the appropriate participants and sufficient advance notice to provide an opportunity for the parents to attend, to review the student's need for positive behavioral interventions, supports, and other strategies to address the student's behavior, and to consider the need to conduct a functional behavioral assessment (FBA) and develop a positive behavior intervention plan (PBIP). At this IEP team meeting the team must consider the parents' concern regarding supports for school personnel. A copy of the IEP developed for the 2009-10 school year must be provided within one week of development.
2. Documentation verifying implementation of the student's IEP specifically related to the student's behavior, including data or other information reflecting the effectiveness of the interventions, shall be provided to the Bureau on the following dates: October 30, 2009, January 29, 2009, and April 15, 2010.
3. Any revisions made to the student's IEP during the 2009-2010 school year shall be provided to the Bureau within one week of such revisions.
4. In the corrective action stated above for Issue One, the Indian River County School District shall include in the comprehensive professional development information on the use of restraint and seclusion in accordance with district policies.

ISSUE 3: Whether the Indian River County School District followed appropriate procedures related to IEP team member participation for district staff during the 2008-09 school year

The complainants requested an IEP team meeting on November 4, 2008. The complainants' specific concern was that the individuals at the meeting were not adequately prepared to address their concerns.

FINDINGS OF FACTS

1. The complainants provided a copy of written correspondence from the complainants to the ESE Coordinator for the charter school in which a request was made for an IEP team meeting for the purposes of:
 - Discussing the student's present level of performance
 - Making a provision to mainstream the student
 - Addressing a functional behavioral assessment
 - Addressing assistive technology for writing
 - Addressing occupational therapy for sensory integrationIn the correspondence, the complainants indicated that the student's therapist could attend on either November 12 or 17, 2008.

2. A meeting was held on November 17, 2008. The complainants stated that they attended the meeting expecting it to be an IEP team meeting, "...only to have it become clear that the required people needed to be in attendance were not available..." They stated that the ESE coordinator was unfamiliar with the requirements for an IEP team meeting, and that they were told that the principal and the ESE coordinator "...would be contacting the district for assistance in developing the assessment plan and securing form needed for us to provide consent for evaluation..."
3. The Meeting Summary Sheet for the November 17, 2008, meeting included the following information:
 - Meeting reason: IEP
 - Meeting participants:
 - Parent
 - LEA representative/designee
 - ESE teacher
 - Principal/designee
 - Teacher
 - Summary/Recommendations:
 - The team met to review the student's educational challenges
 - Discussion included the need to restrain the student during tutoring sessions, and the decision was made to have the parent bring the student to tutoring and implement restraint procedures if they were needed
 - The ESE teacher would secure needed form for parents to sign to allow psychoeducational testing in all eight domain areas; the parent would sign the consent form by November 21, 2008.
4. During a telephone call and in a follow-up electronic mail message on May 22, 2009, a district representative:
 - Acknowledged that on November 4, 2008, the complainant requested an IEP team meeting and that staff from the charter school requested assistance in conducting the meeting
 - Stated that, upon review of the student's file by a district ESE Program Specialist, it was determined that an IEP team meeting would not be necessary until the student returned to school (i.e., was released by the physician from H/HB services)
 - Stated that on November 10, 2008, staff from the charter school reported that the complainant was in the process of obtaining the required information from the student's physician, and that the charter school principal had requested that a meeting be held to discuss the student's status and plan for transition to the charter school's new site
 - Stated that the meeting held on November 17, 2008, was not intended to be an IEP team meeting; rather, it was intended to be an informal parent conference to address the student's transition back to school.
5. Written notice of the meeting was not provided by the district or the complainant.
6. The complainant was not provided the consent form by November 21, 2008, as stated in the notes (see Issue 1).
7. In conference notes from an IEP team meeting held on April 14, 2009, the district acknowledged that the parents had requested "...a full assessment of [the student] in all areas..." but that the decision regarding further evaluation would be made after speech, language, and occupational therapy screening was conducted.

LEGAL AUTHORITY FOR THE BUREAU’S FINAL DECISION

34 CFR § 300.322 states, “(a) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. (b) Information provided to parents.(1) The notice required under paragraph (a)(1) of this section must--(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (ii) Inform the parents of the provisions in § 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child)...”

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

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 Sec. 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.

The corresponding state requirement is contained in State Board of Education Rule 6A-6.0331, F.A.C.

CONCLUSIONS

1. The complainants requested in writing that an IEP team meeting be scheduled for either November 12 or 17, 2008.
2. The meeting held on November 17, 2008, was attended by individuals fulfilling the required roles for an IEP team (i.e., LEA representative, at least one ESE teacher of the student, at least one general education teacher of the student, and the parent)
3. In accordance with 34 § CFR 300.305, the group determining the need for specific assessments as part of a reevaluation comprises the IEP team and other qualified personnel.

4. The team that met on November 17, 2008, functioned as an IEP team in so far as a decision regarding reevaluation was made; however, they were unable to obtain parental consent on that day due to not having the required documents.
5. The complainant indicated that they believed the meeting on November 17, 2009, was intended to be an IEP team meeting.
6. District staff indicated that the meeting on November 17, 2008, was not intended to be an IEP team meeting; rather, it was to be an informal conference to discuss the student's transition back to school.
7. Written notice of the meeting clearly identifying it as an IEP team meeting was not provided by either party.

CORRECTIVE ACTION

None.

RECOMMENDATION

In the corrective action stated above for Issue One, the Indian River County School District should include in the comprehensive professional development information on timely response to parental requests for IEP team meetings as well as the roles and responsibilities of IEP teams and of each IEP team member.