

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

BACKGROUND

On March 30, 2009, the Bureau of Exceptional Education and Student Services (Bureau) received a state complaint letter from ■■■■ alleging that the Miami-Dade County School District had violated federal and state laws relating to the education of students with disabilities. The 60-day timeline for completion of the inquiry began on March 31, 2009, with an anticipated completion date of May 29, 2009. The state complaint included allegations referencing three individual students and systemic issues. The complainant provided release of information statements for the three individual students named in the state complaint.

The district and the complainant were asked to submit relevant documents and information to the Bureau. The district documentation was submitted by Ms. Edna Waxman, Supervisor of Compliance for Exceptional Student Education (ESE), Miami-Dade County School District on behalf of Ms. Catherine Orlando, Executive Director, Division of Special Education, Miami-Dade County School District.

The following issues presented in the complaint were investigated for Student 1:

ISSUE 1: Whether the Miami-Dade County School District implemented the student's individual educational plan (IEP) from March 30, 2008, to March 30, 2009, specifically related to providing:

- **Language therapy sessions for the student**
- **Autism support services for the student**
- **Training/support for the parents of the student**

ISSUE 2: Whether the Miami-Dade County School District followed the required procedures regarding the February 24, 2009, notice of refusal relating to language services

The following issues presented in the complaint were investigated for Student 2:

ISSUE 3: Whether the Miami-Dade County School District followed the required procedures for IEP team meeting participation, specifically regarding the autism support teacher, for the student's IEP team meeting held on March 3, 2009

ISSUE 4: Whether the Miami-Dade County School District implemented the student's IEP from March 30, 2008, to March 30, 2009, specifically related to providing language therapy sessions

The following issues presented in the complaint were investigated for Student 3:

ISSUE 5: Whether the Miami-Dade County School District followed the required procedures for IEP team meeting participation, specifically regarding the autism support teacher, for the student's IEP team meeting held on September 5, 2008

ISSUE 6: Whether the Miami-Dade County School District implemented the student's IEP during the 2008-09 school year specifically related to providing autism support services

The following issues presented in the complaint were investigated systemically:

ISSUE 7: Whether the Miami-Dade County School District followed the required procedures for students' IEP team meeting participation specifically regarding the autism support teacher during the 2008-09 school year

ISSUE 8: Whether the Miami-Dade County School District implemented the students' IEPs during the 2008-09 school year specifically related to providing autism support services

ISSUE 9: Whether the Miami-Dade County School District implemented the students' IEPs during the 2008-09 school year specifically regarding speech and/or language therapy services

As part of the inquiry process, relevant portions of the educational records for Student 1, Student 2, and Student 3 were reviewed. The educational records indicated that Student 1 (date of birth: [REDACTED]) was in grade [REDACTED] and determined eligible for special programs for students identified with autism spectrum disorder (ASD), and a language impairment (LI). Student 2 (date of birth: [REDACTED]) was in grade [REDACTED] and determined eligible for special programs for students identified with ASD, and LI. Student 3 (date of birth: [REDACTED]) was in grade [REDACTED] and determined eligible for special programs for students identified with ASD, and a speech impairment (SI).

A common concern addressed in Issues 1, 2, 4, and 9 is the extent to which missed speech and/or language therapy services due to staff not being available constitutes a district's failure to implement an IEP or the denial of a free appropriate public education (FAPE) to a student. The Individuals with Disabilities Education Act (IDEA) and its implementing regulations are silent on this issue with regard to an amount of service that can be missed, although it is clear that school districts have an obligation to ensure that all students with disabilities have available to them FAPE, consistent with the student's IEP. Guidance from the United States Department of Education (USDOE), both the Office of Special Education Programs (OSEP) and the Office for Civil Rights (OCR), was drawn upon to establish criteria to apply in determining compliance with the requirements of IDEA.

Based on that guidance, a decision rule was established. For students who meet the criterion stated below, the IEP team must determine whether this interruption in services represents a

denial of FAPE, and if so, identify appropriate compensatory services. In the alternative, the district may choose to develop a plan that provides an established amount of compensatory services for all students similarly situated, which parents may accept in lieu of convening an IEP team meeting. The need for compensatory services must be considered when the following occurs:

- For staff-related reasons (e.g., speech/language pathologist (S/LP) absent; S/LP in attendance at an IEP team meeting for a student other than the student in question), the student misses six or more therapy sessions **and** the missed services represent more than ten percent of the services required within a given time period.

This criterion was applied in this investigation to determine whether the school district implemented the student's IEP.

ISSUE 1: Whether the Miami-Dade County School District implemented the student's individual educational plan (IEP) from March 30, 2008, to March 30, 2009, specifically related to providing:

- **Language therapy sessions for the student**
- **Autism support services for the student**
- **Training/support for the parents of the student**

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.320, Title 34, Code of Federal Regulations (34 CFR §300.320) states, "(a)... 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...and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section ... (6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments..."

The corresponding state requirement is found in Rule 6A-6.03028, Florida Administrative Code (F.A.C.).

In Coronado Unified School District, 16 IDELR 249A (OCR1989), OCR determined that "...a ten day delay in commencing direct services does not, per se, deprive students of related services for a sufficient period to deny them a free appropriate public education."

Guidance from OSEP issued in a letter to Catherine Clarke dated March 8, 2007, addressed the need to use substitutes and to schedule make-up sessions when speech-language pathology sessions are missed due to a child's absence from school, cancellation for a class or school activity, or absence of the speech language pathologist. The letter stated that "IDEA and the regulations do not address these issues. States and local educational agencies (LEAs) are

required to ensure that all children with disabilities have available to them FAPE, consistent with the child's individualized education program (IEP) (see 34 CFR §300.101). We encourage public agencies to consider the impact of a provider's absence or a child's absence on the child's progress and performance and determine how to ensure the continued provision of FAPE in order for the child to continue to progress and meet the annual goals in his or her IEP. Whether an interruption in services constitutes a denial of FAPE is an individual determination that must be made on a case-by-case basis."

Guidance from OSEP issued in a letter to Kathy Balkman dated April 10, 1995, and reiterated in a letter to John Copenhaver dated March 11, 2008, stated that, if IEP services are not made available at the regularly scheduled time, "...the school district would be required to make other arrangements to provide the services at that time or reschedule the services in order to meet its responsibility of providing FAPE to that student in accordance with his or her IEP."

CONCLUSIONS

1. Student 1 was not provided 31 of the 113 required language therapy sessions (27%) during the period from March 30, 2008, through March 30, 2009, due to the S/LP being unavailable. The district did not implement Student 1's IEP from March 30, 2008, to March 30, 2009, specifically regarding the provision of language therapy.
2. The district implemented Student 1's IEP specifically regarding provision of autism support services.
3. The district implemented Student 1's February 26, 2008, IEP specifically regarding provision of the training/support for the parents of the student for the 2008-09 school year. At the time of the filing of the state complaint, the district had not yet scheduled training/support for the parents of the student for the 2009-10 school year that was included on the February 24, 2009, IEP.

CORRECTIVE ACTION

No later than June 12, 2009, the district is required to reconvene Student 1's IEP team to determine if compensatory services are needed due to the language therapy services not being provided for the student from March 2008 through March 2009. Although it is not expected that there be a 1:1 correlation between what was missed and what is provided as compensatory services, the IEP team members must be reasonable in their determination. Documentation of the IEP team's determination, including the anticipated initiation date for those services shall be provided to the Bureau within ten days of the meeting. If the IEP team determines the need for compensatory services, verification that compensatory services have been provided must be submitted to the Bureau on the following dates: October 30, 2009, and January 29, 2010. Additional documentation may be requested by the Bureau.

ISSUE 2: Whether the Miami-Dade County School District followed the required procedures regarding the February 24, 2009, notice of refusal relating to language services

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

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...”

The corresponding state requirement is found in Rule 6A-6.03311, F.A.C.

Guidance from OSEP issued in a letter to Catherine Clarke dated March 8, 2007, addressed the need to use substitutes and to schedule make-up sessions when speech-language pathology sessions are missed due to a child’s absence from school, cancellation for a class or school activity, or absence of the speech language pathologist. The letter stated that “IDEA and the regulations do not address these issues. States and local educational agencies (LEAs) are required to ensure that all children with disabilities have available to them FAPE, consistent with the child’s individualized education program (IEP) (see 34 CFR §300.101). We encourage public agencies to consider the impact of a provider’s absence or a child’s absence on the child’s progress and performance and determine how to ensure the continued provision of FAPE in order for the child to continue to progress and meet the annual goals in his or her IEP. Whether an interruption in services constitutes a denial of FAPE is an individual determination that must be made on a case-by-case basis.”

Guidance from OSEP issued in a letter to Kathy Balkman dated April 10, 1995, and reiterated in a letter to John Copenhaver dated March 11, 2008, stated that, if IEP services are not made available at the regularly scheduled time, “...the school district would be required to make other arrangements to provide the services at that time or reschedule the services in order to meet its responsibility of providing FAPE to that student in accordance with his or her IEP.”

CONCLUSIONS

1. The allowance to provide written notice of refusal in response to a parent request does not negate the district’s obligation to provide a FAPE consistent with the student’s IEP.
2. While the Miami-Dade County School District did provide written notice of its refusal to provide compensatory language services, it did not follow the required procedures regarding

the February 24, 2009, notice of refusal, as the reason the request was refused was not appropriate in light of the large number of sessions the student missed.

CORRECTIVE ACTION

The district is required to review and revise its policies regarding missed therapy services to ensure that students are provided FAPE consistent with their IEPs. In doing so, the district should consider the impact of a provider's absence on the student's progress and performance and determine how to ensure the continued provision of FAPE in order for the child to continue to progress and meet the annual goals in his or her IEP. Revised policies must be in place no later than the start of the 2009-10 school year. The district shall provide a copy of the revised policies to the Bureau by August 1, 2009.

ISSUE 3: Whether the Miami-Dade County School District followed the required procedures for IEP team meeting participation, specifically regarding the autism support teacher, for the student's IEP team meeting held on March 3, 2009

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.321(a) states, "General. The public agency must ensure that the IEP Team for each child with a disability includes-(1) The parents of the child; (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; (4) A representative of the public agency who-(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) Is knowledgeable about the general education curriculum; and (iii) Is knowledgeable about the availability of resources of the public agency. (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section; (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) Whenever appropriate, the child with a disability... (e) IEP Team attendance. (1) A member of the IEP Team described in paragraphs (a) (2) through (a) (5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. (2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if - (i) The parent, in writing, and the public agency consent to the excusal; and (ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting."

The Analysis of Comments and Changes section of Volume 71 of the Federal Register, page 46674 (71 Fed. Reg. 46674), related to Section 300.321(e), Title 34, Code of Federal Regulations (34 CFR §300.321) states, "With regard to the recommendation that the notice state that the

parent has a legal right to require an IEP team member to participate in an IEP team meeting, it is important to emphasize that it is the public agency that determines the specific personnel to fill the roles for the public agency's required participants at the IEP team meeting. A parent does not have a legal right to require other members of the IEP team to attend an IEP team meeting..."

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

CONCLUSION

The Miami-Dade County School District followed the required procedures for IEP team meeting participation, specifically regarding the autism support teacher, for the student's IEP team meeting held on March 3, 2009.

CORRECTIVE ACTION

None

ISSUE 4: Whether the Miami-Dade County School District implemented the student's IEP from March 30, 2008, to March 30, 2009, specifically related to providing language therapy sessions

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.320 states, "(a)... 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...and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section ...(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments..."

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

CONCLUSIONS

1. Documentation provided by the district indicated the student missed eight hours of language therapy (20% of required therapy) from March 2008 through March 2009 due to the S/LP being absent or not available due to other school activities.
2. The student's IEP team determined in October 2008 that the student would be provided the equivalent of eight hours of language therapy as compensatory services for language goals. Documentation provided indicated that the student was provided 13 30-minute sessions (six and one half hours) of compensatory language therapy from November 5, 2008, to March 25, 2009. An additional three sessions (90 minutes) were missed due to the student being absent

or engaged in other school activities and one session (30 minutes) was missed due to the S/LP being absent.

3. Due to the IEP team's provision of six and one half hours of compensatory language therapy services, the Miami-Dade County School District substantially implemented the student's IEP from March 30, 2008, to March 30, 2009, specifically related to providing language therapy sessions.

CORRECTIVE ACTION

None

ISSUE 5: Whether the Miami-Dade County School District followed the required procedures for IEP team meeting participation, specifically regarding the autism support teacher, for the student's IEP team meeting held on September 5, 2008

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.321(a) states, "General. The public agency must ensure that the IEP Team for each child with a disability includes-(1) The parents of the child; (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; (4) A representative of the public agency who-(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) Is knowledgeable about the general education curriculum; and (iii) Is knowledgeable about the availability of resources of the public agency. (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section; (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) Whenever appropriate, the child with a disability..."

The Analysis of Comments and Changes section of Volume 71 of the Federal Register, page 46674 (71 Fed. Reg. 46674), related to Section 300.321(e) of Title 34, Code of Federal Regulations (34 CFR §300.321) states, "With regard to the recommendation that the notice state that the parent has a legal right to require an IEP team member to participate in an IEP team meeting, it is important to emphasize that it is the public agency that determines the specific personnel to fill the roles for the public agency's required participants at the IEP team meeting. A parent does not have a legal right to require other members of the IEP team to attend an IEP team meeting..."

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

CONCLUSION

The Miami-Dade County School District followed the required procedures for IEP team meeting participation, specifically regarding the autism support teacher, for the student's IEP team meeting held on September 5, 2008.

CORRECTIVE ACTION

None

ISSUE 6: Whether the Miami-Dade County School District implemented the student's IEP during the 2008-09 school year specifically related to providing autism support services

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.320 states, "(a)... 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...and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section ...(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments..."

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

CONCLUSION

The Miami-Dade County School District implemented the student's IEP during the 2008-09 school year specifically related to providing autism support services.

CORRECTIVE ACTION

None

ISSUE 7: Whether the Miami-Dade County School District followed the required procedures for students' IEP team meeting participation specifically regarding the autism support teacher during the 2008-09 school year

As part of the inquiry process, relevant portions of 36 randomly selected students' educational records were reviewed. The educational records indicated that the students, enrolled in elementary, middle school and high school, were determined eligible for special programs for

students identified with ASD, and their IEPs included supports and services from an autism support teacher.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.321(a) states, “General. The public agency must ensure that the IEP Team for each child with a disability includes-(1) The parents of the child; (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; (4) A representative of the public agency who-(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) Is knowledgeable about the general education curriculum; and (iii) Is knowledgeable about the availability of resources of the public agency. (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section; (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) Whenever appropriate, the child with a disability...”

34 CFR §300.321(e) states, “IEP Team attendance. (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member’s area of the curriculum or related services is not being modified or discussed in the meeting. (2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member’s area of the curriculum or related services, if-(i) The parent, in writing, and the public agency consent to the excusal; and (ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting...”

The Analysis of Comments and Changes section of Volume 71 of the Federal Register, page 46676 (71 Fed. Reg. 46676), related to Section 300.321(e) of Title 34, Code of Federal Regulations (34 CFR §300.321) states, “Likewise, if a parent learns at the IEP team meeting that a required participant will not be at the meeting, the parent can agree to continue with the meeting and request an additional meeting if more information is needed, or request that the meeting be rescheduled...”

The Analysis of Comments and Changes section of Volume 71 of the Federal Register, page 46674 (71 Fed. Reg. 46674), related to 34 CFR §300.321, states, “With regard to the recommendation that the notice state that the parent has a legal right to require an IEP team member to participate in an IEP team meeting, it is important to emphasize that it is the public agency that determines the specific personnel to fill the roles for the public agency’s required participants at the IEP team meeting. A parent does not have a legal right to require other members of the IEP team to attend an IEP team meeting...”

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

CONCLUSIONS

1. The Miami-Dade County School District followed the required procedures for students' IEP team meeting participation specifically regarding the autism support teacher during the 2008-09 school year.
2. For two of the IEP team meetings, autism support teachers attended the meetings but were not included on the written notice of the meeting.

RECOMMENDATION

It is recommended that the IEP team document at the time of the meeting that the parent agrees to having additional staff members not identified in the written notice participate in the IEP team meeting.

ISSUE 8: Whether the Miami-Dade County School District implemented the students' IEPs during the 2008-09 school year specifically related to providing autism support services

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.320 states, "(a)... 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...and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section ...(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments..."

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

CONCLUSION

With the exception of the four students noted above, the Miami-Dade County School District implemented the students' IEPs during the 2008-09 school year specifically related to providing autism support services. For these four students, the services missed did not result in a denial of FAPE to the students.

CORRECTIVE ACTION

None

ISSUE 9: Whether the Miami-Dade County School District implemented the students' IEPs during the 2008-09 school year specifically regarding speech and/or language therapy services

As part of the inquiry process, the educational records were reviewed for 152 randomly selected students enrolled in elementary, middle, and high school who were determined eligible for special programs for students with SI and/or LI.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.320 states, "(a)... 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...and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section ...(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments..."

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

In Coronado Unified School District, 16 IDELR 249A (OCR1989), OCR determined that "...a ten day delay in commencing direct services does not, per se, deprive students of related services for a sufficient period to deny them a free appropriate public education."

Guidance from OSEP issued in a letter to Catherine Clarke dated March 8, 2007, addressed the need to use substitutes and to schedule make-up sessions when speech-language pathology sessions are missed due to a child's absence from school, cancellation for a class or school activity, or absence of the speech language pathologist. The letter stated that "IDEA and the regulations do not address these issues. States and local educational agencies (LEAs) are required to ensure that all children with disabilities have available to them FAPE, consistent with the child's individualized education program (IEP) (see 34 CFR §300.101). We encourage public agencies to consider the impact of a provider's absence or a child's absence on the child's progress and performance and determine how to ensure the continued provision of FAPE in order for the child to continue to progress and meet the annual goals in his or her IEP. Whether an interruption in services constitutes a denial of FAPE is an individual determination that must be made on a case-by-case basis."

Guidance from OSEP issued in a letter to Kathy Balkman dated April 10, 1995, and reiterated in a letter to John Copenhaver dated March 11, 2008, stated that, if IEP services are not made available at the regularly scheduled time, "...the school district would be required to make other arrangements to provide the services at that time or reschedule the services in order to meet its responsibility of providing FAPE to that student in accordance with his or her IEP."

CONCLUSION

The Miami-Dade County School District did not implement students' IEPs during the 2008-09 school year specifically regarding speech and/or language therapy services.

CORRECTIVE ACTIONS

The district is required to consider the need for compensatory services for all students in the district whose IEPs include speech or language therapy and who, for staff-related reasons have missed six or more therapy sessions during the school year **and** the missed services represent more than ten percent of the services required within the school year. Staff-related reasons include things such as the S/LP being absent or in attendance at an IEP team meeting for a student other than the student in question.

In implementing this, the district must:

1. Review the therapy logs of all students receiving speech or language therapy to identify those students who missed more than ten percent of the sessions required by their IEPs during the 2008-09 school year.
2. Of those students, identify those who missed six or more sessions.
3. Convene the IEP teams for those students for the purpose of determining:
 - Whether compensatory services are required
 - If so, what the compensatory services will be (i.e., amount and type of services; timeline)
4. The district may choose to develop a plan to provide compensatory services and offer services in accordance with that plan to all eligible students. If the parents accept the plan, this would take the place of the requirement to convene the IEP team. If the parent does not accept the plan, the IEP team must reconvene.

No later than June 15, 2009, the district shall submit a plan to the Bureau describing the actions to be taken. A timeline for submission of documentation regarding implementation of the corrective actions will be established upon review and approval of the plan.