

**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 Ms. [REDACTED] 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: ■■■) was in grade ■■■ and determined eligible for special programs for students identified with autism spectrum disorder (ASD), and a language impairment (LI). Student 2 (date of birth: ■■■) was in grade ■■■ and determined eligible for special programs for students identified with ASD, and LI. Student 3 (date of birth: ■■■) was in grade ■■■ 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**

**FINDINGS OF FACT**

1. The district provided two IEPs dated February 26, 2008, and February 24, 2009, that were in effect for Student 1 from March 30, 2008, to March 30, 2009. The following information included on the IEPs is relevant to this issue:
  - February 26, 2008, IEP
    - Specialized instruction included: receptive/expressive language skills in the therapist's office for 90 minutes per week (mpw)
    - Support for school personnel included:
      - Autism support strategies for all teachers, paraprofessional, S/LP, and occupational therapist (OT), provided monthly, by the district, region, or school staff
      - Cultural sensitivity training for all teachers, paraprofessional, S/LP, parent, and autism support, provided one time, by district staff
    - Conference notes stated that the autism support teacher would provide support two times a month for March, April, and May of the 2007-08 school year, including classroom observation, and monthly thereafter starting in August of the 2008-09 school year. In addition, the autism support teacher would be consulted as needed.
  - February 24, 2009, IEP
    - Specialized instruction included receptive/expressive language skills in the therapist's office for 90 mpw
    - Support for school personnel included:
      - Autism support strategies for all teachers, paraprofessional, S/LP, and OT, provided monthly, by the district, region, or school staff
      - Cultural sensitivity training for all teachers, paraprofessional, S/LP, parent, and autism support, provided one time, by district staff

2. Documentation provided by the district indicated the following regarding language therapy for Student 1 during the period from March 2008 through March 2009:
  - 113 30-minute sessions were required
  - 70 of the 113 sessions (62%) were provided (68 regularly-scheduled; 2 make-up)
  - 9 of the 113 sessions (8%) were not provided due to the student being absent or not available due to other school activities
  - 31 of the 113 sessions (27%) were not provided due to the S/LP being absent or not available due other school activities
    - 24 of the 31 sessions were missed due to the S/LP’s attendance at IEP team meetings; none of the meeting were of Student 1’s IEP team
    - 3 of the 31 were missed due to delay in services at the start of the school year as schedules are developed
    - 2 of the 31 were missed due to the S/LP’s participation in work shops
3. District staff provided the following description of informal policies regarding make-up sessions for missed therapy:
  - S/LPs are required to attend student staffings and IEP team meetings, provide evaluations and screenings to students, attend monthly region meetings, and attend professional development activities three to four times per year; it is not required that these sessions be made up
  - Sessions missed due to student absences, Florida Comprehensive Assessment Test (FCAT) testing, field trips, or other special activities at the school are not required to be made up
  - S/LPs are asked to make-up missed sessions when they are the result of excessive absences by the therapist; five or more absences within a year generally is considered to be excessive
  - A student cannot be pulled out of reading, math, or physical education classes for make-up therapy sessions
4. The district reported that the federal policy established in Coronado Unified School District, 16 IDELR 249A (OCR1989), the Office for Civil Rights (OCR), was applied when determining whether a delay in services at the start of the school year as schedules are established was allowable. The finding in that case was 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.” The district reported that therapists typically begin therapy services one week to ten days after the first day of the school year, depending on the difficulty of scheduling students.
5. District staff described the position of autism support teacher as an in-house position solely maintained by the district’s ESE instructional supervisor and intended to provide the following:
  - Arrange district/region/school site training and provide technical assistance for administrators, teachers, and support staff of students with ASD that are assigned to autism programs, general education and inclusive settings
  - Respond to requests for information/referrals by parents, teachers, and community as assigned by the supervisor
  - Respond to requests for assistance by making observations of classrooms and/or individual students where concerns are raised regarding classroom set-up, scheduling and meeting educational needs, as assigned by the supervisor

- Provide technical assistance to administrators and teachers on structuring classrooms, assessment, effective instructional and behavioral strategies, and tracking progress through data collection
  - Work collaboratively with district/region psychologists to provide technical assistance for students who are referred due to programming concerns
  - Work with S/LPs assigned to programs for student with ASD to enhance communication in the classroom through augmentative and/or alternative communication approaches
  - Participate in school, region, or district IEP team meetings as assigned by the supervisor
  - Attend professional development dealing with Autism Spectrum Disorders, curriculum development, inclusion, Florida Department of Education trainings and Center for Autism and Related Disabilities (CARD) meetings, as appropriate
  - Other duties as assigned by the supervisor
6. Monthly support/services were provided for Student 1 by three autism support teachers for either one full day or one half day at a time, as follows:

<b>Date Provided</b>	<b>Half Day</b>	<b>Full Day</b>
3/20/08	X	
3/27/08	X	
4/10/08		X
4/30/08	X	
5/6/08		X
5/27/08	X	
8/27/08	X	
9/2/08	X	
9/23/08		X
10/16/08	X	
11/13/08	X	
11/18/08	X	
1/15/09	X	
1/21/09		X
3/24/09	X	
4/2/09		X
4/16/09	X	

7. The student was provided autism support services in excess of the amount designated on the February 26, 2008, and the February 24, 2009, IEPs in place during the time in question.
8. The district described IEP Implementation Training as:
- A meeting separate from the IEP team meeting
  - Usually conducted with the parent, but it doesn't have to be
  - For the purpose of providing extra support to the service providers, integrate teamwork, and ensure that everyone knows their role in implementing the IEP
  - Information and format varies from student to student
9. Regarding the provision of the training/support for the parents of Student 1:
- The parent attended IEP implementation training for the 2008-09 school year on May 27, 2008
  - At the time of the filing of the state complaint, IEP implementation training for the 2009-10 school year had not been scheduled yet

## **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**

### **FINDINGS OF FACT**

1. The complainant reported that the parent wrote a letter to the district dated February 23, 2009, stating that the student had not been provided the language therapy services required by the February 26, 2008, IEP, and requested that 600 minutes of compensatory language therapy services be provided to the student.
2. Based on the February 26, 2008, IEP during the period from March 2008 through March 2009, 113 30-minute sessions of language therapy were required:
  - 70 of 113 sessions were provided
  - 31 of 113 sessions were not provided due to the S/LP being absent or not available due other school activities
3. The February 24, 2009, IEP conference notes stated that the parent was concerned with the language services that had been missed and requested compensatory language therapy sessions for the student.
4. The district provided progress reports for the student's three language goals included on the February 26, 2008, IEP which identified "some" progress to "adequate" progress being made towards the goal from March 2008 to February 2009. The student's progress reports for the two language goals included on the February 24, 2009, IEP, identified "some" progress being made towards the goal.
5. The district provided documentation of a written notice of refusal to the parent of the student dated February 24, 2009, which stated that the compensatory language therapy would not be

provided. The explanation in the notice of why the action was refused was: “Language services that have not been provided have not been uncustomary due to school obligations.”

6. The district reported that additional services are provided to students when it is determined that a student’s therapy schedule is impacted. The district also stated that this issue has become increasingly significant with the critical shortage of S/LPs and the increasing demands for the S/LPs’ participation in IEP team meetings that may extend over multiple days.

## **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**

## **FINDINGS OF FACT**

1. The student’s IEP team met on five dates (October 14, 28; November 14; December 1, 2008; March 3, 2009) to develop and finalize the March 3, 2009, IEP.
2. The autism support teacher who had been working with the student’s teachers was invited to and attended the student’s IEP team meetings held on October 14 and 28, November 14, and December 1, 2008.
3. The autism support teacher was invited to the March 3, 2009, IEP team meeting, but was unable to attend. The district stated that another autism support teacher was sent by the district to attend the March 3, 2009, IEP team meeting; however, the parent declined to have that autism support teacher attend.
4. The required participants for an IEP team meeting are:
  - A parent of the student
  - At least one general education teacher of the student
  - At least one ESE teacher of the student
  - A representative of the local educational agency
  - An individual who can interpret the instructional implications of evaluation results
5. Staff members fulfilling each of the required roles were present at the IEP team meetings.

6. The excusal requirement under 34 CFR §300.321 applies only to the required IEP team members, and not to other individuals.
7. The autism support teacher was not a required member of the student's IEP team; therefore, the district was not required to implement the excusal procedures when this individual was unable to attend a meeting.

## **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**

## **FINDINGS OF FACT**

1. The district provided the two IEPs, dated February 4, 2008, and March 3, 2009, that were in effect for Student 2 from March 30, 2008, to March 30, 2009. They included the following:
  - February 2008 IEP
    - Specialized instruction included language skills in the therapist's office for 60 mpw
  - March 2009 IEP
    - Specialized instruction included language skills and receptive/expressive comprehension skills in the therapist's office and English class for 60 mpw
2. Documentation provided by the district indicated the following regarding language therapy for Student 2 during the period from March 2008 through March 2009:
  - 39 60-minute sessions were required
  - 26 of the 40 sessions (67%) were provided
  - 5 of the 40 sessions (13%) were not provided due to the student being absent or not available due to other school activities
  - 8 of the 40 sessions (20%) were not provided due to the S/LP being absent or not available due other school activities
3. On October 28, 2008, the student's IEP team met and determined the student would be provided the equivalent of eight hours of language therapy as compensatory services. Documentation provided indicated that the student was scheduled to receive 17 30-minute therapy sessions (eight and one half hours) from November 5, 2008, to March 25, 2009, as compensatory services. Thirteen of the 17 sessions occurred as scheduled. The student missed two sessions due to absence from school and one session due to an exam, and the S/LP was absent for one session.
4. District staff provided the following description of informal policies regarding make-up sessions for missed therapy:
  - S/LPs are required to attend student staffings and IEP team meetings, provide evaluations and screenings to students, attend monthly region meetings, and attend professional development activities three to four times per year; it is not required that these sessions be made up
  - Sessions missed due to student absences, FCAT testing, field trips, or other special activities at the school are not required to be made up
  - S/LPs are asked to make-up missed sessions when they are the result of excessive absences by the therapist; five or more absences within a year generally is considered to be excessive
  - A student cannot be pulled out of reading, math, or physical education classes for make-up therapy sessions

5. The district reported that the federal policy established in Coronado Unified School District, 16 IDELR 249A (OCR1989), the OCR, was applied when determining whether a delay in services at the start of the school year as schedules are established was allowable. The finding in that case was 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.” The district reported that therapists typically begin therapy services to a student one week to ten days after the first day of the school year, depending on the difficulty of scheduling students.
6. The district reported that additional services are provided to students when it is determined that a student’s therapy schedule is impacted. The district also stated that this issue has become increasingly significant with the critical shortage of S/LPs and the increasing demands for the S/LPs’ participation in IEP team meetings that may extend over multiple days.

## **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**

## **FINDINGS OF FACT**

1. An IEP was developed on September 5, 2008, for Student 3. The autism support teacher was invited to the September 5, 2008 IEP team meeting, but did not attend.
2. The autism support teacher did attend the November 3, 2008, and the March 3, 2009, interim IEP team meetings for Student 3.
3. The required participants for an IEP team meeting are:
  - A parent of the student
  - At least one general education teacher of the student
  - At least one ESE teacher of the student
  - A representative of the local educational agency
  - An individual who can interpret the instructional implications of evaluation results
4. Staff members fulfilling each of the required roles were present at the IEP team meeting.
5. The excusal requirement under 34 CFR §300.321 applies only to the required IEP team members, and not to other individuals.
6. The autism support teacher was not a required member of the student's IEP team; therefore, the district was not required to implement the excusal procedures when this individual was unable to attend the meeting.

## **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**

## **FINDINGS OF FACT**

1. The district provided four IEPs dated May 27, 2008, September 5, 2008, November 3, 2008, and March 9, 2009, that were in effect for Student 3 during the 2008-09 school year. The following information included on the IEPs is relevant to this issue:
  - May 27, 2008, IEP
    - Support for school personnel included:
      - Autism support strategies for all teachers provided monthly, by the district
  - September 5, 2008, IEP
    - Support for school personnel included:
      - Autism support strategies for all teachers provided monthly, by the district
    - Related services provided included social skills training in the general education class for 30 mpw
    - Conference notes stated that, per the July 25, 2008, resolution agreement between the parents and the district, social skills training for the student was to be provided weekly by the S/LP, counselor, and autism support personnel as a related service. In addition, the three social skills goals and benchmarks were to be implemented with the collaboration of the autism support personnel, S/LP, and counselor.
  - November 3, 2008, and March 9, 2009, IEPs
    - Support for school personnel included:
      - Autism support strategies for all teachers/paraprofessionals provided monthly, by the district

- Related services provided included social skills training in the general education class for 30 mpw
2. The district provided documentation that further clarified the role of the autism support teacher regarding social skills:
    - The S/LP and the counselor provided the social skills training directly to the student.
    - The autism support teacher provided support and training to the S/LP and the counselor regarding the social skills training for the student.
    - The student’s IEP does not identify the autism support teacher as a person responsible for the implementation of the IEP, but rather as a support needed for the implementation of the IEP.
    - The autism support teacher provided initial training to the counselor and S/LP regarding social skills and was available for continued support as needed.
  3. Monthly support/services that were provided for Student 3 by the autism support teacher:

<b>Date Provided</b>	<b>Half Day</b>	<b>Full Day</b>
8/25/08	X	
9/10/08	X	
9/18/08	X	
9/24/08	X	
9/29/08		X
10/27/08	X	
11/13/08	X	
1/22/09	X	
2/19/09		X
2/26/09	X	
3/9/09	X	
3/23/09	X	
4/2/09	X	
4/3/09		X
4/16/09		X

**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.

## FINDINGS OF FACT

1. Documentation provided by the district regarding the autism support teacher's participation in the 36 ASD students' IEP meetings during the 2008-09 school year is identified in attachment one. The following is a summary of the documentation:
  - IEP team meetings were not required during the time in question (August 2008 through March 2009) for four of the 36 students
  - 45 IEP team meetings were held for the remaining 32 students
    - Autism support teachers received invitations to participate in 17 of the IEP team meetings
    - Autism support teachers did not attend four of the 17 IEP team meetings
    - Two meetings were scheduled for the same date
    - The autism support teacher offered different dates to meet and to be available by telephone for two of the meetings.
  - Autism support teachers were not invited to 26 of the IEP team meetings; however, they attended two of these meetings. Parents attended both of the IEP team meetings, and there is no indication that the parents disagreed with the autism support teacher attending the meeting.
2. The required participants for an IEP team meeting are:
  - A parent of the student
  - At least one general education teacher of the student
  - At least one ESE teacher of the student
  - A representative of the local educational agency
  - An individual who can interpret the instructional implications of evaluation results
3. Staff members fulfilling each of the required roles were present at the IEP team meetings.
4. The excusal requirement under 34 CFR §300.321 applies only to the required IEP team members, and not to other individuals.

5. The autism support teachers were not required members of the students' IEP teams; therefore, the district was not required to implement the excusal procedures when these individuals were unable to attend one or more meetings.

## **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**

## **FINDINGS OF FACT**

1. The district provided the following documentation regarding the support services that the autism support teacher provided for the 36 students with ASD:
  - Arranged district/region/school site training and provided technical assistance for administrators, teachers, and support staff of students with ASD that are assigned to autism programs, general education and inclusive settings
  - Responded to requests for information/referrals by parents, teachers, and community as assigned by the supervisor
  - Responded to requests for assistance by making observations of classrooms and/or individual students where concerns are raised regarding classroom set-up, scheduling and meeting educational needs, as assigned by the supervisor
  - Provided technical assistance to administrators and teachers on structuring classrooms, assessment, effective instructional and behavioral strategies, and tracking progress through data collection
  - Worked collaboratively with district/region psychologists to provide technical assistance for students who are referred due to programming concerns
  - Worked with S/LPs assigned to programs for student with ASD to enhance communication in the classroom through augmentative and/or alternative communication approaches
  - Participated in school, region, or district IEP team meetings as assigned by the supervisor
  - Attended professional development dealing with Autism Spectrum Disorders, curriculum development, inclusion, Florida Department of Education trainings and CARD meetings, as appropriate
  - Other duties as assigned by the supervisor

2. The district provided documentation for the 36 students with ASD regarding the provision of the autism support services during the 2008-09 school year which is identified in attachment two. The following is a summary of the information:
  - All of the IEPs for the students with ASD were implemented regarding the autism support services except for the following:
    - Student 31 – (frequency: monthly) – During August and November 2008, support services were not provided; however, support services were provided twice in September and October 2008
    - Student 250 – (frequency: monthly) – During November 2008, support services were not provided
    - Student 270 – (frequency: monthly) – During November and December 2008, support services were not provided
    - Student 330 – (frequency: monthly) – October 2008 and February 2009, services were not provided
3. Students 110 and 151 were provided support services by the autism support teacher prior to the service being included on the student’s IEP.
4. The majority of the 36 students with ASD were provided autism support services beyond that specified in their IEPs (e.g., more frequent).

## **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.

**FINDINGS OF FACT**

1. The district provided documentation for the 152 students regarding the provision of speech and language therapy during the period from March 2008 through March 2009. The following is a summary of the information regarding missed therapy sessions:
  - Nine of the 152 students (6%) missed no therapy sessions due to the therapist not being available
  - 52 of the 152 students (34%) missed fewer than six therapy sessions or less than ten percent of the required sessions
  - 91 of the 152 students (60%) missed six or more therapy sessions, representing more than ten percent of the required sessions
2. District staff provided the following description of informal policies regarding make-up sessions for missed therapy:
  - S/LPs are required to attend student staffings and IEP team meetings, provide evaluations and screenings to students, attend monthly region meetings, and attend professional development activities three to four times per year; it is not required that these sessions be made up
  - Sessions missed due to student absences, FCAT testing, field trips, or other special activities at the school are not required to be made up
  - S/LPs are asked to make-up missed sessions when they are the result of excessive absences by the therapist; five or more absences within a year generally is considered to be excessive
  - A student cannot be pulled out of reading, math, or physical education classes for make-up therapy sessions
3. The district reported that the federal policy established in Coronado Unified School District, 16 IDELR 249A (OCR1989), the OCR, was applied when determining whether a delay in services at the start of the school year as schedules are established was allowable. The finding in that case was 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.” The district reported that therapists typically begin therapy services one week to ten days after the first day of the school year, depending on the difficulty of scheduling students.
4. The district reported that a massive reorganization of the Speech and Language department began in July 2008 with many therapists laid off. S/LPs were hired and placed as quickly as possible; however, they were still being placed in September 2008, resulting in students missing some therapy sessions.

5. The district acknowledged that required participation in IEP team meetings, staffings, and student screenings and evaluations puts a significant strain on the caseload of the S/LPs and that this impacts service delivery.
6. The district reported that it is reviewing its therapy logging system to allow for more effective tracking by therapists and supervisory staff to ensure that services are provided as required.

## **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.