

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

BACKGROUND

The Bureau of Exceptional Education and Student Services (bureau) received a state complaint from [REDACTED], on April 3, 2014, alleging that the Hillsborough County School District violated federal and state laws relating to the education of students with disabilities. Specifically, the allegations involved the following issues:

ISSUE 1: Whether the Hillsborough County School District violated the requirements during the 2013-2014 school year, related to the implementation of the student's individual educational plans (IEPs) specifically regarding the following:

- **Provision of accommodations**
- **Provision of speech and language therapy**
- **Assistive technology (AT)**
- **Reporting of how progress toward the annual reading goal was measured**

ISSUE 2: Whether the Hillsborough County School District violated the requirements during the 2013-2014 school year, related to the consideration of the student's independent educational evaluation (IEE)

ISSUE 3: Whether the Hillsborough County School District violated the requirements related to the development of the student's IEP on March 4, 2014, specifically regarding the consideration of the student's preferences and interests in the IEP meeting

ISSUE 4: Whether the Hillsborough County School District violated the requirements during the 2013-2014 school year, specifically related to conducting a functional behavioral assessment (FBA) and behavioral intervention plan (BIP)

The 60-day timeline for the completion of the complaint inquiry began with receipt of the required complaint components with an anticipated completion date of June 23, 2014. However, both parties agreed to reconvene an IEP team on May 5, 2014 as a facilitated IEP team meeting; and to mediation on May 12, 2014, to discuss the complainant's concerns. Subsequently, the parties had agreed to an extension of the timeline to June 23, 2014, for the completion of this process while they continue to collaborate toward a meaningful resolution. As part of the inquiry process, the complainant and the district were asked to submit relevant documents and information to the bureau. Ms. Cristina Benito, Compliance Supervisor, Hillsborough County School District, submitted documentation on behalf of the district.

As part of the inquiry process, relevant portions of the student's educational records were reviewed. The records indicated that the student (date of birth: [REDACTED]) was in grade [REDACTED] and determined eligible for exceptional student education (ESE) services as a student with [REDACTED] and a [REDACTED].

ISSUE 1: Whether the Hillsborough County School District violated the requirements during the 2013-2014 school year, related to the implementation of the student's IEPs specifically regarding the following:

- **Provision of accommodations**
- **Provision of speech and language therapy**
- **Assistive technology**
- **Reporting of how progress toward the annual reading goal was measured**

The complainant alleged that the student was forced to drop two classes due to a lack of accommodations, and the student was not being provided speech and language therapy. The complainant also alleged the district did not know the student's reading level, and the student never received adequate training for the assistive technology device provided by the district.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.6, Title 34, Code of Federal Regulations (34 CFR §300.6) states, "Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes – (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities; (c) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child."

34 CFR §300.105 states, "(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's – (1) special education under §300.36; (2) Related services under §300.34; or (3) Supplementary aids and services under §§300.38 and 300.114 (a)(2)(ii). (b) On a case by case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's needs access to those devices in order to receive FAPE.

34 CFR §300.320 states, "(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include... (3) A description of – (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured... (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 in accordance with

paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section...(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 consistent with section 612(a)(16) of the Act...(7)The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications...”

34 CFR §300.323 (c)(2) states, “As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP...”

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

DISCUSSION AND CONCLUSION

1. Regarding provision of accommodations, an accommodation log for the first quarter progress reporting period and email correspondence through March 2014, indicated that the student received accommodations as stated on the student’s IEP on a consistent basis.
 - However, notes from the November 4, 2013, parent conference, indicated that the student dropped a class in order to enroll in the Research class because the student had not received sufficient accommodations during the first nine weeks.
 - In an email responding to the bureau’s request for more documentation of the student’s accommodations, district staff indicated that FCAT accommodation logs were not maintained, but the student’s accommodations were administered. Although documentation of classroom accommodations was discontinued after the first quarter, there is some documentation in email correspondence between the parent and teachers that suggests that some accommodations were provided. However, there was no systematic method of documenting provision of the student’s accommodations throughout the year.

2. Regarding provision of speech and language therapy:
 - Based on the student’s IEP in effect at the time of the filing of the complaint, the student was scheduled to receive speech therapy two times a week for 2 hours.
 - The SLP service logs indicated that the student received services in speech and language therapy on a regular basis from September 12, 2013 to October 10, 2014.
 - Emails provided indicated that the complainant requested the speech and language services to be suspended until they could be scheduled during a different time.
 - Subsequent to the parent’s request to “put SLT services on hold,” the SLP service logs indicated that the student did not report for services during the time period from October 31, 2013, through April 29, 2014. Although the student did not report for speech and language services, the SLP continued to take attendance and recorded the student as a “no show.”
 - According to the conference notes dated November 4, 2013, there was no indication the parties addressed the student’s repeated absences for speech and language therapy, although the parties did discuss and made adjustments to the student’s class schedule. There were attempts to convene an IEP team meeting, beginning on November 15, 2013. Email documentation indicated that the team planned to discuss speech and

language services when the meeting convened. However, while IEP teams determine the appropriate services for a student, IEP team meetings are not necessary in order to change a student's schedule.

3. Regarding AT:

- Communication and equipment logs indicated that the student received an AT device that was provided by the ACAT team.
- The ACAT communication logs documented that school district staff who would be working with the student were trained in the logistics of the student's computer usage and in software the student would be using.
- Federal regulations require local education agencies (LEAs) to provide AT devices when the IEP team considers such devices are necessary in order to provide FAPE. The district's mid-year and end-of-year status logs reported that the student did not use the AT device provided. ACAT communication logs also indicated that the student chose not to use the AT device.

4. Regarding reporting of how progress toward the annual reading goal was measured:

- According to the student's annual reading goal, the student would increase "comprehension and decoding skills across all content areas to demonstrate at least one year's growth as measured by state and district assessments."
 - The student participated in the FAIR assessment on December 3, 2012, September 8, 2013, and December 3, 2013. The scores reflect the student's progress on the goal.
 - Progress was reported for each quarter.

FINDINGS OF NONCOMPLIANCE

1. Based on documentation provided, there is no evidence that the Hillsborough County School District violated the requirements during the 2013-2014 school year, related to the implementation of the student's IEPs specifically regarding the provision of the following:
 - AT
 - Reporting of how progress toward the annual goal was measured
2. Based on documentation provided, there is evidence that the Hillsborough County School District violated the requirements during the 2013-2014 school year, related to the implementation of the student's IEPs specifically regarding the provision of accommodations and speech and language therapy.

CORRECTIVE ACTION

1. The Hillsborough County School District is required to provide professional development to the appropriate district staff at the student's school regarding procedures related to documentation of accommodations. No later than August 1, 2014, the district will provide training materials to the bureau for review prior to the training. No later than September 1, 2014, the district will provide to the bureau evidence of staff participation in the training, including names, signatures, titles, and date of training.
2. The Hillsborough County School District is required to offer compensatory services for the aforementioned speech and language therapy services. No later than close of the 2014-2015 school year, the district must offer the student 720 minutes of compensatory service in

speech and language therapy. No later than June 22, 2015, the district must provide the bureau with evidence of the compensatory services offered to the student.

ISSUE 2: Whether the Hillsborough County School District violated the requirements during the 2013-2014 school year, related to the consideration of the student's IEE

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.324 states, "(a) (1) In developing each child's IEP, the IEP Team must consider – ... (iii) The results of the initial or most recent evaluation of the child;"

34 CFR §300.502 states, "(a) General. (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section. (2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section. (3) For the purposes of this subpart – (i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and (ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with Sec. 300.103. (b) Parent right to evaluation at public expense. (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section. (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either – (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria... (5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees ..."

The corresponding state requirement is found in State Board of Education Rule 6A-6.03028, and 6A-6.03311, F.A.C.

DISCUSSION AND CONCLUSIONS

1. The district funded an independent evaluation that was completed during the 2012-13 school year. A psychological evaluation was conducted on November 12, 2012, and January 7, 2013, and provided to the district on March 1, 2013.
2. The district attempted to schedule IEP team meetings on four different occasions prior to the filing of this complaint. All meetings were scheduled for the purpose of conducting an IEP annual review and to discuss diploma options. However, the prior notification forms did not indicate that the IEP team would discuss the IEE.
3. During the March 4, 2014, IEP team meeting, discussion was limited to present levels. The team agreed to continue the meeting on another date. Conference notes for the meeting did not indicate that the IEE completed during the 2012-13 school year was discussed.
4. The prior notice form provided to the student and parent for the IEP team meeting held on May 30, 2014, indicated that the purpose for the IEP team meeting was to discuss

reevaluation results, age and grade related requirements, post-secondary goals and transitions services.

5. There was no documentation of any discussion regarding the student's 2012-13 IEE during the May 30, 2014, IEP team meeting. The section of the IEP that addressed evaluation results did not include any references to the psychological evaluation conducted by an independent evaluator on November 12, 2012, and January 7, 2013.

FINDING OF NONCOMPLIANCE

Based on the documentation provided, there is evidence that the Hillsborough County School District violated the requirements during the 2013-2014 school year, related to the consideration of the student's IEE as part of the consideration of the most recent evaluation results for the student.

CORRECTIVE ACTION

During the next scheduled IEP team meeting, the IEP team must review the student's IEE that was conducted on November 12, 2012, and January 7, 2013. Within 10 school days of the next scheduled IEP team meeting, the district must provide documentation to the bureau that the results were reviewed.

ISSUE 3: Whether the Hillsborough County School District violated the requirements related to the development of the student's IEP on March 4, 2014, specifically regarding the consideration of the student's preferences and interests in the IEP meeting

The complainant reported that the district did not take into consideration the student's preferences and interests during the student's transition IEP team meeting. The complainant reported that the student was not allowed to facilitate the student's IEP team meeting or allowed to have an annual goal written for band.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.324 states, "(a) Development of IEP – (1) General. In developing each child's IEP, the IEP Team must consider – i) the strengths of the child; (ii) the concerns of the parents for enhancing the education of their child; (iii) the results of the initial or most recent evaluation of the child; and (iv) the academic, developmental, and functional needs of the child

34 CFR §300.321(b)(1) states, "in accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b). (2) if the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interest are considered

34 CFR §300.322 states, "Parent participation. (a) Public agency responsibility – general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including – (1) Notifying parents of the meeting early enough to ensure that they will have an

opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place ... (d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as – (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits...”

The corresponding state requirements are found in Rules 6A-6.03028, F.A.C.

DISCUSSION AND CONCLUSIONS

1. Documentation provided by the district indicated that a prior notice of meeting form that included the purpose of the scheduled IEP team meeting was provided to the parent by way of mail and email. The student and the parent attended the scheduled March 4, 2014, IEP team meeting.
2. The draft present level of performance indicated that the district, the parent and the student provided input. The present level statement included the parent's and student's interest as it related to the student's instructional and curriculum preferences, extracurricular activities and post-secondary interest to pursue a career in information technology or a math-related career.
3. Although the district and the complainant were not able to reach consensus during the IEP meeting, the student's draft present level of performance indicates that substantial consideration was given to the student's preferences and interests. Additionally, the conference notes indicated that the district, the student and the parent “had much discussion” about the student's band goal and the parent's desire for the student to march in the percussion band.
4. Based on the documentation provided, the Hillsborough County School District did not violate the requirements related to the development of the student's IEP on March 4, 2014, specifically regarding the consideration of the student's preferences and interests in the IEP meeting.

CORRECTIVE ACTION

None

ISSUE 4: Whether the Hillsborough County School District violated the requirements during the 2013-2014 school year, specifically related to conducting an FBA and BIP

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

34 CFR §300.530 states, “...(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must – (1) Either – (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to

address the behavior; and (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan...”

The corresponding state requirements are found in State Board of Education Rules 6A-6.03016, and 6A-6.03312, F.A.C.

Florida State Board of Education Rule, 6A-6.03016, F.A.C., an FBA is required in order to identify a student as a student with an emotional and behavioral disability. The rule states, (a)...The FBA must identify the specific behavior(s) of concern, conditions under which the behavior is most and least likely to occur, and function or purpose of the behavior. A review, and if necessary, a revision of an FBA completed as part of general education interventions may meet this requirement if it meets the conditions described in this section. If an FBA was not completed to assist in the development of general education interventions, one must be completed and a well-delivered scientific, research-based behavioral intervention plan of reasonable intensity and duration must be implemented with fidelity prior to determining eligibility. Implementation of the behavioral intervention plan is not required in extraordinary circumstances described in paragraph (4)(e) of this rule; (b) The evaluation must include documentation of the student’s response to general education interventions implemented to target the function of the behavior as identified in the FBA;

DISCUSSION AND CONCLUSIONS

1. The student’s discipline records indicated that the student did not have any incidents of misconduct, out-of-school suspensions or in-school suspensions at the time the state complaint was filed.
2. Districts are required to conduct an FBA prior to identifying a student as a student with an emotional and behavioral disability and when members of an IEP team make the determination that the conduct of a suspended student with a disability was a manifestation of the student’s disability.
3. Considering that the student had no incidents of misconduct, any suspensions, change in placement due to a violation of the district’s code of conduct, and was not being evaluated as a student with an emotional or behavioral disability, the district was not required under Federal Regulations and Florida State Board of Education Rules to conduct an FBA. Additionally, the student did not have a behavioral intervention plan documented on the student’s IEP.
4. As of the filing of this complaint, there had not been an FBA completed for the student; therefore the student did not have a BIP. No documentation submitted by the district indicated that the student’s behavior affected the student’s access to the student’s education. However, if an IEP team had determined that the student needed a FBA or BIP, then provisions of such services should be documented on the student’s IEP.
5. Based on the documentation provided, Hillsborough County School District did not violate the requirements during the 2013-2014 school year, specifically related to conducting an FBA and BIP.

CORRECTIVE ACTION

None