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March 10, 2006

Ms. Wendy R. Bellar
6050 Waterwood Path
Bartow, Florida 33830

Dr. Gail McKinzie, Superintendent
Polk County School District
P.O. Box 391
Bartow, Florida 33831-0391

RE: Bureau Resolution Determination: Case No. BEESS-2006-010-RES

Dear Ms. Bellar and Superintendent McKinzie:

On December 9, 2005, the Bureau of Exceptional Education and Student Services received a letter of formal complaint from Wendy Bellar on behalf of her son and other students with disabilities. The complainant alleged that the Polk County School District had violated federal and state laws relating to the education of students with disabilities.

On December 13, 2005, the complaint was set aside pending the outcome of a meeting to develop an individual educational plan (IEP). The complainant contacted the Bureau on January 11, 2006, and reactivated the complaint inquiry. Specifically, the complainant's allegations involved the following issues:

- Whether the Polk County School District made changes to the student's individual educational plan (IEP) without following proper procedures, specifically related to the provision of speech/language services.
- Whether the district provided speech/language services as specified on the student's IEP during the 2005-06 school year.

BAMBI J. LOCKMAN
Chief

Bureau of Exceptional Education and Student Services

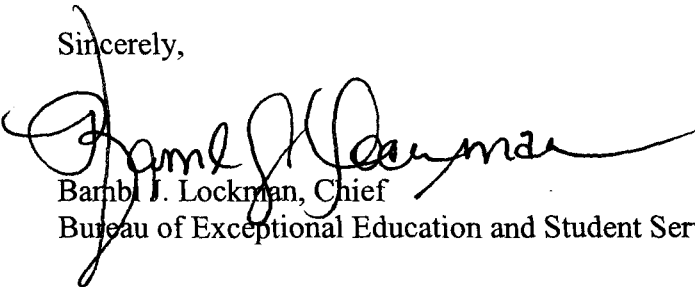
Ms. Bellar and Superintendent McKinzie
March 10, 2006
Page 2

- **Whether the district provided speech/language services to students with disabilities as specified on their IEPs during the 2005-06 school year.**

The requirements for resolving formal complaints are found in the regulations that implement the Individuals with Disabilities Education Act (IDEA 2004), as amended, Sections 300.660-300.662 of Title 34 of the Code of Federal Regulations. The staff has completed the inquiry. The enclosed Report specifies the Findings of Fact, Conclusions, and Corrective Actions and/or Recommendations, as appropriate.

Should you have any questions regarding the contents of this Bureau Resolution Determination, please contact Eileen Amy or me at (850) 245-0476.

Sincerely,



Barbi J. Lockman, Chief
Bureau of Exceptional Education and Student Services

BJL/ts

Enclosure

cc: Sherwin Holmes, Polk County School District
Eileen L. Amy, Florida Department of Education
Howard George, Florida Department of Education

Report of Inquiry
Bureau Resolution Determination
Conducted by the Bureau of Exceptional Education and Student Services
Involving the School Board of Polk County

BACKGROUND

On December 9, 2005, the Bureau of Exceptional Education and Student Services received a letter of formal complaint from Wendy Bellar on behalf of her son, hereafter referred to as R.B., and other students with disabilities. The complainant alleged that the Polk County School District had violated federal and state laws relating to the education of students with disabilities. On December 13, 2005, the complaint was set aside pending the outcome of a meeting to develop an individual educational plan (IEP).

The complainant contacted the Bureau on January 11, 2006, and stated that some of the issues in her original complaint had been addressed in the IEP meeting on December 16, 2005. She said that she was "hopeful" that the IEP would be followed, but wanted to reopen the complaint, with the following issues:

- ISSUE 1: Whether the Polk County School District made changes to R.B.'s individual educational plan (IEP) without following proper procedures, specifically related to the provision of speech/language services.**

- ISSUE 2: Whether the district provided speech/language services as specified on R.B.'s IEP during the 2005-06 school year.**

- ISSUE 3: Whether the district provided speech/language services to students with disabilities as specified on their IEPs during the 2005-06 school year.**

By letters dated January 23, 2006, the complainant and the district's staff were notified of the Bureau's initiation of the inquiry into the formal complaint. The timeline for the completion of all activities related to this complaint was established as March 12, 2006.

Both parties were offered an opportunity to provide information as a part of the inquiry process. Relevant portions of R.B.'s educational records were reviewed. Mr. Sherwin Holmes, Director, Exceptional Student Education, Polk County School District, provided records and documentation from the district.

The educational records that were provided indicated that R.B. (D.O.B.: March 18, 2001) was eligible for special programs for students with developmental delay and language impairment.

ISSUE 1: Whether the Polk County School District made changes to R.B.'s individual educational plan (IEP) without following proper procedures, specifically related to the provision of speech/language services.

In the letter of formal complaint, the complainant stated, "...Speech/Language Therapy as was indicated on [R.B.]'s original IEP but removed for illegal reasons given by Polk County that this was not available and therefore could not be on [R.B.]'s IEP."

FINDINGS OF FACT

The following facts were based on the district's explanatory responses, interviews with district staff, and the submitted documentation regarding the issue:

1. R.B.'s IEP from another district had specified language therapy to be provided in the therapy room.
2. The Polk County School District acknowledged that there had been an oversight regarding R.B.'s language therapy.
3. Compensatory language therapy services have been, and continue to be, provided to R.B.
4. R.B.'s October 3, 2005, IEP specified that language therapy would be provided weekly in the ESE classroom.
5. R.B.'s January 9, 2006, IEP specified that language therapy would be provided 120 minutes per week in the therapy/ESE classroom.

The following legal provisions apply to this issue:

Section 300.346 of Title 34 of the Code of Federal Regulations (Title 34) states, "(a) Development of IEP. (1) General. In developing each child's IEP, the IEP team, shall consider – (i) The strengths of the child and the concerns of the parents for enhancing the education of their child; (ii) The results of the initial or most recent evaluation of the child; and (iii) As appropriate, the results of the child's performance on any general State or district-wide assessment programs. (2) Consideration of special factors. The IEP team also shall – ... (iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and (v) Consider whether the child requires assistive technology devices and services. (b) Review and Revision of IEP. In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP team shall consider the factors described in paragraph (a) of this section. (c) Statement in IEP. If, in considering the special factors described in paragraphs (a)(1) and (2) of this section, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP..."

The corresponding state requirements are contained in Section 1003.57 of the Florida Statutes (F.S.) and Rule 6A-6.03028 of the Florida Administrative Code (F.A.C.).

CONCLUSION

The Polk County School District acknowledged the oversight regarding R.B.'s language therapy and compensatory services are being provided.

CORRECTIVE ACTION

None.

ISSUE 2: Whether the district provided speech/language services as specified on R.B.'s IEP during the 2005-06 school year.

FINDINGS OF FACT

1. See Issue 1 regarding R.B.'s speech/language services prior to October 3, 2005.
2. Weekly language therapy sessions were held for R.B. during the 2005-06 school year.
3. R.B.'s October 3, 2005, IEP specified that language therapy would be provided weekly in the ESE classroom.
4. R.B.'s January 9, 2006, IEP specified that language therapy would be provided 120 minutes per week in the therapy/ESE classroom.
5. Documentation reviewed by the Bureau indicated that R.B. had received speech/language services as specified on his IEPs for the 2005-06 school year, and that compensatory services were being provided for speech/language services missed (See Issue 1.)

The following legal provisions apply to this issue:

Section 300.350(a)(1) of Title 34 of requires each public agency to “[p]rovide special education and related services to a child with a disability in accordance with the child’s IEP.”

The corresponding state requirements are contained in Section 1003.57 (F.S.) and Rule 6A-6.03028 (F.A.C.).

CONCLUSION

The Polk County School District provided speech/language services as specified on R.B.'s IEPs during the 2005-06 school year.

CORRECTIVE ACTION

None.

ISSUE 3: Whether the district provided speech/language services to students with disabilities as specified on their IEPs during the 2005-06 school year.

Bureau staff reviewed IEPs and supporting documentation for 30 IEPs from the district, representing all grade levels, various exceptionalities, and schools throughout the district.

FINDINGS OF FACT

1. In 12 of the 30 sets of student records that were reviewed, the district clearly followed legal requirements regarding the provision of speech/language services.
2. In 11 of the 30 sets of student records that were reviewed, the district was out of compliance in regard to providing the level of speech/language services that were listed on the students' IEPs.
3. The remaining seven sets of student records either did not have enough information to determine compliance with the IEPs or contained information indicating the students had been dismissed from speech/language programs.
4. In accordance with established Bureau monitoring procedures, a finding of a systemic violation is made if evidence of such a violation is found in 25% or more of the pertinent data. There was a systemic finding of noncompliance regarding the provision of speech/language services for the 2005-06 school year.
5. District staff stated that the district currently is developing a reporting system that will enable ESE staff to review provision of speech/language services on a monthly basis.

The following legal provisions apply to this issue:

Section 300.350(a)(1) of Title 34 - See Issue 2.

The corresponding state requirements are contained in Section 1003.57 (F.S.) and Rule 6A-6.03028 (F.A.C.).

CONCLUSION

The Polk County School District did not adequately provide speech/language services to students with disabilities as specified on their IEPs during the 2005-06 school year.

CORRECTIVE ACTION

The Polk County School District shall ensure that speech/language services are provided to eligible students as specified on their IEPs. The district shall review the verification of

speech/language services provided to all students who are currently eligible for such services, comparing services required by the IEP and services that have been provided during the 2005-06 school year. Documentation of the district's review of services provided shall be provided to the Bureau no later than April 10, 2006.

For each student who has not been provided speech/language services (excluding student absences, school holidays, and special events) during the 2005-06 school year, the student's IEP team shall convene with the appropriate participants and after sufficient notice has been provided to afford the parent with an opportunity to attend that meeting. The IEP team shall address the possible need for compensatory speech/language services due to any failure to fully implement the student's IEP. Although it is not expected that there be a 1:1 correlation between what was missed and what is provided as compensatory services, reasonableness should prevail. Verification of the IEP teams' determinations regarding compensatory services and any related documentation shall be provided to the Bureau no later than June 1, 2006. If the IEP team determines that compensatory speech/language services are needed, verification of the provision of these services shall be provided to the Bureau no later than September 30, 2006. Additional documentation may be requested by the Bureau.