



Disability Rights FLORIDA

VIA FACSIMILE AND FED EX

June 19, 2014

Monica Verra-Tirado Ed.D., Chief
Florida Department of Education
Bureau of Exceptional Education and Student Services
325 West Gaines Street, Suite 614
Tallahassee, Florida 32399-0400

Dear Dr. Verra-Tirado:

Disability Rights Florida, in its official capacity as Florida's federally-funded Protection and Advocacy (P&A) Agency for individuals with disabilities, is formally filing this State Complaint on behalf of students with disabilities or suspected of having disabilities, in Broward County Public Schools (BCPS). Disability Rights Florida is alleging that during the 2013-2014 school year, BCPS violated federal requirements of the Individuals with Disabilities Education Act (IDEA), as well as relevant sections of the Florida Administrative Code. The IDEA requires states receiving federal funds to identify, locate, and evaluate all children with disabilities who are in need of special education services 20 U.S.C. § 1412(a)(3), 34 C.F.R. § 300.111 (Child Find). The Child Find regulations under the IDEA require that schools must promptly seek parental consent to evaluate a child for special education, under regular timeframes . . . whenever the child is referred for an evaluation 34 C.F.R. § 300.309(c). See also 34 C.F.R. §300.300(a) (Parental consent for initial evaluation).

Disability Rights Florida is designated as Florida's P&A by the Governor of the State of Florida pursuant to federal laws 42 U.S.C. § 150001 et seq., and the State of Florida, Governor's Executive Orders 08-240 and 87-151. As Florida's federally mandated P&A, Disability Rights Florida is granted broad authority to protect and advocate for the rights of persons with disabilities.

Disability Rights Florida received an anonymous complaint from an individual with knowledge of BCPS, who informed us that individuals employed with BCPS are failing to meet their Child Find obligations in violation of the IDEA. Our complainant has alleged that BCPS employees are often resistant to the Response to Intervention (RtI) process used to initially screen students for Exceptional Student Education eligibility and have discouraged staff from referring students for RtI. Staff have been informed that the RtI process is burdensome and have been given little to no explanation of how to complete the necessary data collection or implement research based strategies in classrooms. Our complainant alleges that when the RtI process is initiated, BCPS often leaves students in this observation and intervention stage for inappropriately long periods of time, even after it is clear that additional evaluations, a move to a higher tier of intervention,

and parental consent for those evaluations will be necessary. By discouraging and/or delaying the RtI process, BCPS is failing to fulfill its Child Find obligations in a timely manner in clear violation of the IDEA.

The United States Department of Education (USDOE) has acknowledged that “[i]t is critical that [the identification of students in need of special education and related services] take place in a timely manner and that no procedures or practices result in delaying or denying this identification.” Memorandum to: State Directors of Special Education, 56 IDELR 50 (OSEP Jan. 21, 2011). The USDOE further states that “the use of [RtI] strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 C.F.R. §§300.304-300.311, to a child suspected of having a disability under 34 C.F.R. §300.8.” Id. By discouraging the RtI process and/or allowing students to remain in the observation and intervention stage of the RtI process for excessive amounts of time, BCPS is failing to fulfill its Child Find obligations.

Further, our complainant alleges that when the RtI process is eventually completed and the decision is made to refer students for comprehensive evaluations based on academic or behavioral concerns, individuals responsible for evaluations and eligibility determinations consistently delay the provision of a parental consent form in order to postpone the start of the 60 school day window for evaluation under Fla. Admin. Code R. 6A-6.0331(3)(f)(2014). By postponing the provision of parental consent, BCPS is failing to fulfill its Child Find obligations in a timely manner in clear violation of the IDEA. A district fails its Child Find duty “when it ignored clear signs that a student had a disability and when [it] had reason to suspect that a student might need special education because of his disability.” Meridian Sch. Dist. 223, 56 IDELR 30 (SEA IL 2010)(citing A.P. v. Woodstock Bd. Of Educ., 572 F. Supp. 2d, (Conn 2008); El Paso Ind. Sch. Dist. V. Richard R., 567 F. Supp. 2d 918 (W.D. Tex. 2008)).

In addition, the USDOE has expressed that, although there is no specific timeline for obtaining parental consent under the IDEA, “it has been the Department’s longstanding policy that the LEA [local education agency] must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed.” Memorandum to: State Directors of Special Education, 56 IDELR 50 (OSEP Jan. 21, 2011). The Office of Special Education and Rehabilitative Services has also stated that “it generally would not be acceptable for an LEA to wait several months to conduct an evaluation or to seek parental consent for an initial evaluation if the public agency suspects the child to be a child with a disability. Questions and Answers on Response to Intervention (RTI) and Early Intervening Services (EIS), 47 IDELR 196 (OSERS Jan. 1, 2007).

With a recent change to Fla. Admin. Code R. 6A-6.0331(3)(b)(2014), schools must provide parental consent forms to parents within 20 days of a school-based team’s determination that circumstances indicate that a student may be a student with a disability. Though our complainant provided information concerning a time period, the 2013-2014 school year, both before and after the change to rule 6A-6.0331(3)(b) in March of 2014, we believe that should BCPS continue its current practice of delaying provision of parental consent, it may be that they are in violation of not only of the rule’s prior requirement of “prompt” provision of parental consent, but in violation of the updated Florida Administrative Code 20-day rule as well.

As a proposed resolution, Disability Rights Florida suggests that professional development regarding the RtI process, including training in research-based instruction and progress monitoring, be made available to BCPS staff. In order to promote district-wide implementation, BCPS should ensure that there is an infrastructure for school-based support for staff, as well as a clearly identified campus RTI coordinator or RTI team that will work to facilitate regular collaboration and problem solving with classroom teachers, students, and parents. Further, BCPS should ensure that RtI teams are aware of any current or future changes to the Florida Administrative Code that may have an effect on the timelines or requirements for the intervention and referral processes.

Additionally, BCPS should work to provide information to students and parents regarding their procedural safeguards during the RtI and evaluation process, including a parent's right to request an evaluation at any time, even if a school has not completed the RtI observation and intervention process. Finally, the Florida Department of Education should require BCPS to expeditiously identify and evaluate any and all children BCPS failed to properly identify or evaluate who were potentially harmed by BCPS's failure to fulfill its Child Find obligations.

Thank you.

Cordially,

A handwritten signature in black ink, appearing to read 'Stephanie Moore', with a long horizontal flourish extending to the right.

Stephanie Moore, Esq.
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