

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

BACKGROUND

The Bureau of Exceptional Education and Student Services (Bureau) received an unsigned state complaint from [REDACTED] and [REDACTED] on December 2, 2011, alleging that the Indian River County School District violated federal and state laws relating to the education of students with disabilities. The Bureau received a signed state complaint on December 27, 2011. Specifically, the complainants' allegation involved the following issue:

- ISSUE: Whether the Indian River County School District violated the requirements related to conducting an evaluation of the student during the time period from December 28, 2010, through December 27, 2011, specifically regarding:**
- Responding to the parents' request for an evaluation of the student
 - Conducting an evaluation within the required 60-day timeline
 - Reviewing existing data, including evaluation, screening, assessment, and response to intervention (RtI) data and any other relevant information

The 60-day timeline for completion of the inquiry process began with receipt of the signed complaint, with an anticipated completion date of February 25, 2012. The district and the complainants were asked to submit relevant documents and information to the Bureau. Mr. Larry Harrah, Executive Director, Exceptional Student Education (ESE) and Student Services, submitted documentation on the behalf of the district. The complainants also submitted documentation.

As part of the inquiry process, relevant portions of the student's educational records were reviewed. The educational records indicated that the student (date of birth: October 6, 2001) was in grade three and had a Section 504 plan.

- ISSUE: Whether the Indian River County School District violated the requirements related to conducting an evaluation of the student during the time period from December 28, 2010, through December 27, 2011, specifically regarding:**
- Responding to the parents' request for an evaluation of the student
 - Conducting an evaluation within the required 60-day timeline
 - Reviewing existing data, including evaluation, screening, assessment, and RtI data and any other relevant information

The complainants alleged that the district used the RtI process to unreasonably delay the completion of an initial evaluation of the student, following the parents' requests for an evaluation. The complainants reported that numerous requests were made for the district to evaluate the student, and the district was unresponsive.

FINDINGS OF FACT

1. A review of documentation submitted by the complainants and the district included information regarding events relevant to this issue that occurred prior to the timeframe of this complaint. A summary of the relevant information is as follows:
 - The student was determined eligible for ESE services as a student with a speech impairment on January 26, 2007, and was determined to no longer meet eligibility criteria for ESE services on October 8, 2009.
 - The complainants provided a copy of a letter dated October 12, 2010, written by the student's pediatric neurologist, which was given to the student's school. It stated that due to the student's diagnosis of Tourette syndrome, the student was in need of accommodations to help the student be successful in the educational setting.
 - The complainants provided a letter to the district dated October 19, 2010, in which the complainants requested that RtI be initiated, and an educational and functional behavioral analysis be completed concurrently with the RtI process for the student.
 - The district provided a copy of a *Meeting Summary Sheet* dated October 21, 2010, regarding a meeting held with the complainants to discuss the complainants' concerns and student's medical status. The complainants requested the meeting to determine if an individual educational plan (IEP) and accommodations could be implemented for the student. The district agreed to provide the student with some of the accommodations that the complainants suggested. The district also agreed to have a follow-up meeting in November.
 - The complainants provided a copy a *Vision and Hearing Screening Report* dated November 2, 2010, which stated that the student passed hearing and vision screenings.
 - The student's RtI team convened to discuss the student's performance, accommodations, and behavioral data on October 29, 2010, November 4, 2010, and November 5, 2010. During the November 5, 2010, meeting, the student's RtI team concluded that more data collection was needed regarding the student. Based on the student's nine week report card, the student was performing well. At the conclusion of this meeting, the complainants requested a "Section 504 plan to allow [the student] accommodations." The complainants also requested "additional testing" to be completed for the student.
 - Both parties provided a copy of an email between district staff members dated November 5, 2010, indicating that the RtI meeting with the complainants on November 5, 2010, "did not turn out well" as the complainants stated they were going to file a complaint with the Office for Civil Rights (OCR).
 - Both parties provided an email from the district to the complainants dated November 5, 2010, that included an attachment of a brochure titled, *Florida Problem Solving and Response to Instruction/Intervention, Information for Parents-2009*. In the email, the district informed the complainants that the brochure was developed by the Florida Department of Education and listed interventions that the district had been implementing for the student.
 - On November 10, 2010, the complainants and district met to discuss concerns presented by the complainants.
 - On November 10, 2010, the complainants filed a complaint with OCR which alleged that the district denied the student a free appropriate public education (FAPE) by failing to evaluate the student in a timely manner.
 - In a letter to the district dated November 17, 2010, the complainants stated, "On October 19th we requested that [the student] be given an educational assessment and functional behavioral assessment in order to evaluate [the student's] eligibility for

- exceptional education services." The complainants requested that the evaluations be completed "concurrently with the intervention process."
- On November 18, 2010, the student's RtI team and the complainants convened to discuss the use of a "Ball Chair" for the student.
 - On November 23, 2010, the student's RtI team convened to discuss current data collection regarding the student's interventions.
 - On December 14, 2010, the RtI team and the complainants convened to discuss the student's performance, medication, accommodations, and behavioral data.
2. The complainants provided a letter dated February 2, 2011, from the University of South Florida, Department of Pediatrics, Rothman Center for Neuropsychiatry, which indicated that the student was under the care of a physician for Tourette syndrome, Attention Deficit Hyperactivity Disorder (ADHD), depressive disorder, dysgraphia, and dyslexia.
 3. The district submitted a copy of a *Section 504/ADA Eligibility* form dated February 8, 2011, which discussed the eligibility of the student under Section 504, and need for a Section 504 plan. The form included the following relevant information:
 - The student had a diagnosis of Tourette syndrome and sleep apnea.
 - The student's disability had a "negative impact" on the student's academic performance: "completing tests and assignments, remaining in the class, and projects. Behaviorally it physically and mentally" exhausted [the student].
 - The student's behavior "physically and mentally exhausts" the student.
 - The complainants provided a *Section 504/ADA Notification of Rights* form dated February 8, 2011, listing the rights afforded by Section 504/ADA. In addition, the complainants provided a *Section 504/ADA Staff Notification* form that listed interventions "that will assist him/her to access the regular classroom curriculum, to the same extent as students without disabling conditions," which included the following:
 - Additional time on assignments and test
 - Computer for writing assignments
 - Breaks
 - Prompts
 - Permit legitimate movement
 - Headphones
 4. The complainants submitted a copy of a *Section 504/ADA Plan* dated February 8, 2011, which stated that academic and behavior were areas of difficulty for the student. It listed the student's medications, the student's physician, and physician's contact information.
 5. The complainants submitted a copy of an email to the district dated February 24, 2011, that included the following concerns from the complainants:
 - The complainants recognized that the student had improved since the Section 504 plan meeting. The student performed well on the reading benchmark testing.
 - The complainants wanted to add more accommodations to the student's Section 504 plan to address areas that caused stress for the student.
 - The complainants inquired regarding the status of the complainants' request for the student to be evaluated for ESE services.
 6. The complainants submitted a copy of an email response from the district to the complainants dated February 24, 2011, that included the following relevant information:
 - If the student's Section 504 plan needed additional accommodations, then a team would identify the problem area and analyze causes or major contributing factors.
 - Once sufficient data existed to determine why the problem has occurred, then the team would design an evidenced-based intervention that would be implemented for a period of time.

- If the intervention worked, then the team would meet and add the accommodation to the Section 504 plan.
 - The team would continue to gather academic and behavioral data to help determine whether ESE services were needed
7. Both parties submitted a copy of a *Parent Notification of Screening for Gifted Services* form dated February 24, 2011, which indicated the following:
 - The district acknowledged that the student demonstrated advanced abilities in the classroom and recommended the student for further screenings to determine if the student met eligibility criteria as a student needing instructional programs or services for gifted education.
 8. The complainants submitted a copy of an email to the district dated February 28, 2011, in which the complainants inquired regarding the status of the request for the student to be evaluated to receive ESE services.
 9. In response to the complainants email, the district responded in an email dated February 28, 2011, which stated, "Unlike in past years, eligibility for ESE is now a process of RtI."
 10. The district submitted a copy of a letter from the complainants dated March 4, 2011, which included the following relevant information:
 - The complainants mentioned that the initial evaluation request for the student for ESE services was based on the student's diagnosis of Tourette syndrome, obsessive compulsive disorder, ADHD, dyslexia, dysgraphia, and possible dyscalculia.
 - The complainants stated that because of the "lack of action on the part of the school district within the frame required by IDEA, we felt we had no alternative but to file a complaint with the Department of Education's Bureau of Student Assistance."
 11. Both parties provided a copy of an email to the district from the complainants, dated March 7, 2011, listing accommodations that were thought to be helpful by those who worked with the student.
 12. Both parties provided an email from the district to the complainants dated March 8, 2011, stating that the district was aware of the need of Tourette syndrome awareness training for teachers and staff. The district discussed a plan and possible dates with the complainants to conduct the trainings for teachers and staff.
 13. Both parties submitted a copy of an email and a letter from the district to the complainants, dated March 8, 2011, which stated that there would be no further communication between the district and the complainants until OCR provided a determination regarding the pending complaint. The district also mentioned that the Section 504 plan for the student would remain in effect throughout the process.
 14. Both parties submitted a copy of meeting notes from an RtI meeting dated March 31, 2011. The following relevant information was discussed:
 - The complainants used an online tutor to help the student with math skills.
 - The complainants mentioned that the student did not believe there was a need to use accommodations all of the time.
 - The complainants reported that the student was "intelligent" and would benefit from a gifted program.
 - The complainants inquired regarding occupational therapy (OT) and physical therapy (PT) to assist the student with writing. The district indicated that those related services were not available to the student, but only for students who qualify for ESE services.
 15. The complainants inquired regarding the status of the complainants' request for the student to be evaluated for ESE services. The district mentioned the student's data was being reviewed through the RtI process.
 16. The district provided a copy of a *Parent Permission for Evaluation* form dated April 4, 2011, signed by the complainants, for a proposed evaluation for gifted services. The form included

- a preprinted list of possible evaluation areas that included the following: "developmental, psychoeducational, educational, vision, audiological or impedance, PT and OT, medical, vision, speech and language, and social assessment."
17. The complainants provided a *Psychoeducational Evaluation Report* with evaluation dates of April 14, 2011, and May 28, 2011, that was completed by a private psychologist. The report addressed behavioral observations, information regarding intellectual functioning, achievement, general cognitive functioning, attention and executive functions, behavior or adaptive functioning, and included the following relevant information:
 - The student showed advanced verbal comprehension and expression.
 - The student was determined to be performing on grade level in reading, but the student's math and written skills were below grade level.
 - The student presented behaviors of hyperactivity, distractibility, and impulsivity.
 - The student had difficulty focusing for a long period of time.
 - The student's visual motor processing speed presented moderately severe learning disabilities in fine motor coordination and written language expression.
 - The student's learning disability did not interfere with the student's ability to learn through verbal interaction; but affected the student's attention span, motivation, and ability to complete written paper and pencil responses in a timely manner.
 - The evaluator recommended that the student be allowed to perform and check math calculations with a calculator, rather than paper and pencil.
 18. The district provided a copy of a *Participation Attendance Roster* dated April 15, 2011, for a district in-service at the student's school. The purpose of the training was to inform teachers about Tourette syndrome.
 19. The district provided a copy of a *Meeting Summary Sheet* dated June 9, 2011, which indicated that the RtI team committee met to review and discuss RtI data. The following relevant information was discussed:
 - The student's accommodation usage over the past nine weeks indicated that the student's use of accommodations was "sporadic."
 - The complainants were pleased with the student's most recent grades, benchmark testing, and Florida Comprehensive Assessment Test results.
 - The team determined that the student would be moved out of the "Tier 3 math intervention," and be monitored in math through "Tier 2 intervention in the general education setting."
 - The team recommended for the student's accommodations to be reviewed on a quarterly basis and for the student's "case" to be closed through "Individual Problem Solving." The complainants indicated agreement with the team's recommendations.
 - The complainants were provided with information about the John McKay Scholarship Program.
 20. The district provided a copy of an *Eligibility and Assignment Staffing Form* dated June 9, 2011, which indicated that the student did not meet eligibility criteria for ESE services. The form included the following relevant information:
 - The student was evaluated using the *Kaufman Assessment Battery for Children II* and it was determined that the student's performance was within the average range and the student did not meet eligibility criteria for the gifted program.
 21. The district submitted a copy of a letter dated August 1, 2011, written by the complainants' attorney. The letter included the following relevant information:
 - The complainants planned to remove the student from the district and place the student in a private school.

- The complainants stated that, "If the student makes progress in the private placement, the undersigned will be seeking relief from the school district to compensate [the student's] parents for the tuition and related expenses for the cost of tuition."
 - The complainants believed the student had been denied FAPE from the school district under the Individual Disabilities Education Act (IDEA).
 - The complainants recognized that the district determined the student met eligibility criteria for a Section 504 plan. However, the complainants believed that the district neglected to evaluate the student concurrently with the RtI process and failed to provide OT services, which the complainants felt that the student needed.
 - The complainants reserved the right to seek reimbursement for the private school placement and transportation and other costs that were not covered under the John McKay Scholarship Program.
22. The complainants submitted a copy of a letter dated August 17, 2011, from the district in response to the letter written by the complainants' attorney, which included the following relevant information:
- The district stated that there were no pending evaluations being conducted for the student by the district nor have any evaluations been requested.
 - The district mentioned that the student was approved and determined eligible for the John McKay Scholarship.
 - The district stated that only students with ESE eligibility were eligible for related services for OT, and an occupational therapist was involved in the Section 504 plan determination for the student and served as a consultant during the RtI activities for the student.
23. Documentation from the complainants indicated that the student began attending a private school on August 22, 2011, as a fourth grader, using the McKay Scholarship.
24. The district provided a *Meeting Summary Sheet* dated December 19, 2011, which discussed the meeting held with the complainants and the district to discuss the "OCR Voluntary Complaint Resolutions." The following relevant information was discussed:
- The complainants discussed their request for an "evaluation."
 - The complainants reported that the student had difficulty with behavior, writing, and math.
 - The complainants believed that the student's behavior worsened by the end of the school year.
 - The complainants shared the student's evaluation report completed by a private psychologist with the district.
 - The complainants reported to the district that the school year had ended for summer break before the evaluators gave a copy of the evaluation report to the complainants.
 - The complainants requested the following compensatory services from the district:
 - Reimbursement for the private evaluation in the amount of \$2,900
 - Reimbursement for out-of-pocket expenses covering the gap between what the McKay Scholarship provided and the total cost of tuition at a cost of \$380 per month
 - Twenty hours of OT services for the student
 - A computer program for dyslexia addressing the use of graphic organizers and word prediction to be used at home
 - An in-home reading coach providing tutoring for the student
 - The district requested that the complainants provide the district with an itemized bill for the evaluation and a written request including the remainder of the complainants' requests.
 - The district disagreed with the complainants' request for a reading program for the student due to the student's performance on grade level at the end of the school year,

- and that the student achieved a level 4 on the FCAT reading section, during the 2010-11 school year.
- The complainants did not want to sign the meeting notes until the complainants' attorney could review the notes with the complainants.
25. The district provided a copy of a letter dated January 5, 2012, in response to the complainants' compensatory requests. The letter included the following relevant information:
- The complainants' request for reimbursement for the private evaluation was denied. The district stated that the complainants had the right to obtain an independent educational evaluation (IEE), if the complainants disagreed with the district's evaluation. Since an evaluation by the district had not been conducted, the request for compensation was denied.
 - The complainants' request for reimbursement for out-of-pocket expenses covering the gap between what the McKay Scholarship provided and the total cost of tuition at a cost of \$380 per month from August 2011 through December 2011, for the student's education, was denied. The district stated "there is no [legislative] mandate or reference that a county school district is responsible to pay any gap coverage between what the scholarship will pay for tuition and fees and what the private school is requiring for that student's tuition and fees."
 - The complainants' request for twenty hours of OT services was denied, as the district stated the student must be a student receiving ESE services to receive OT services.
26. The complainants' request for a computer program for dyslexia addressing the use of graphic organizers and word prediction to be used at home in lieu of a reading coach tutoring the student at home was denied. The district stated that the "assignment of specialized materials and strategies would remain an Individual Education Plan issue."
27. The district's legal counsel sent an email with an attached letter to the Bureau dated January 30, 2012, on behalf of the district. The letter included the following relevant information:
- The district conceded that the student was not evaluated as the complainants requested.
 - The district offered to reimburse the complainants for the student's IEE.
 - The district mentioned their intention to convene a meeting with the complainants to "examine and determine eligibility for ESE services," for the student. The IEE would be "part of the eligibility determination."
28. On February 2, 2012, the Bureau received an email from the district that included a response from the complainants' attorney responding to the district's legal counsel's email. The complainants' attorney's email included the following relevant information:
- The complainants' attorney stated that, "a meeting to discuss compensatory services/education is not sufficient to prevent a filing for due process or dismiss a state complaint."
 - The complainants' attorney stated that the complainants are requesting the *Orton-Gillingham* multi-sensory phonics program for one year for the student.
 - The complainants' attorney stated that the complainants are requesting a one-on-one math tutor for the student.
 - The complainants' attorney stated that the complainants are requesting in-home behavior services for twenty hours per month for no less than twice a week, by a Board Certified Behavioral Analyst who would help develop a behavior intervention plan.
 - The complainants' attorney stated that the complainants are requesting reimbursement for the difference between the amount that the McKay Scholarship covered and the complainants' out-of-pocket expenses.

LEGAL AUTHORITY FOR THE BUREAU'S FINAL DECISION

Section 300.111, Title 34, Code of Federal Regulations (34 CFR §300.111) states, "(a) General. (1) The State must have in effect policies and procedures to ensure that – (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services..."

34 CFR §300.301 states, "(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part. (b) Request for initial evaluation. Consistent with the consent requirements in §300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. (c) Procedures for initial evaluation. The initial evaluation – (1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or (ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and (2) Must consist of procedures – (i) To determine if the child is a child with a disability under §300.8; and (ii) To determine the educational needs of the child. (d) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if – (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or (2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8. (e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed."

34 CFR §300.304 states, "Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct. (b) Conduct of evaluation. In conducting the evaluation, the public agency must – (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining – (i) Whether the child is a child with a disability under §300.8; and (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities); (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (c) Other evaluation procedures. Each public agency must ensure that – (1) Assessments and other evaluation materials used to assess a child under this part – (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer; (iii) Are used for the purposes for which the assessments or measures are valid and reliable; (iv) Are administered by trained and knowledgeable personnel; and (v) Are administered in accordance with any instructions provided by the producer of the

assessments. (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure). (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities; (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e), to ensure prompt completion of full evaluations. (6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided."

34 CFR §300.34 states, "(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training."

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 §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..."

34 CFR §300.8 states, "(a) General. (1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. (2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part."

The corresponding state requirements are found in State Board of Education Rules 6A-6.03018, 6A-6.0331, and 6A-6.03311, Florida Administrative Code.

DISCUSSION AND CONCLUSIONS

1. Documentation submitted by both parties indicated that the district had knowledge that the complainants requested an initial evaluation of the student in October of 2010.
2. The student had a Section 504 plan in effect as of February 8, 2011. In an email to the complainants from the district dated February 28, 2011, the district communicated that eligibility for ESE services involved the RtI process.
3. During an RtI meeting convened on March 31, 2011, the district communicated to the complainants that related services (i.e., OT and PT) could only be provided to students meeting eligibility criteria for ESE services. However, this statement does not accurately reflect the provisions of Section 504 of the Rehabilitation Act of 1973 (Section 504). Students receiving accommodations through the provision of a Section 504 plan may also receive related services in circumstances when a team determines this to be appropriate based on the student's needs.
4. The district obtained parental consent for an evaluation of the student for suspected gifted eligibility on April 4, 2011. On June 9, 2011, it was determined that the student did not meet eligibility criteria as a student needing gifted services or programming.
5. During the beginning of the 2011-12 school year, the complainants communicated to the district that they failed to conduct an initial evaluation of the student concurrently with the implementation of the RtI process.
6. On August 22, 2011, the student began attending a private school using the McKay Scholarship.
7. Within correspondence dated January 30, 2012, the district's legal counsel acknowledged that the student was not evaluated per the complainants' requests. The district offered to reimburse the complainants for the IEE, and planned to schedule a meeting to determine the student's eligibility for ESE services, that would include the consideration of the IEE.
8. Information communicated by the district to the complainants regarding the ESE eligibility process involving the RtI process was somewhat accurate. While general education interventions may be involved in determining a student's eligibility for ESE services, the RtI process may not be used to delay the completion of an initial evaluation for a student. Upon receipt of a parental request for an initial evaluation, the district must either obtain parental consent to conduct an initial evaluation, or provide an appropriate notice of refusal including the required components.
9. While the district has acknowledged that an initial evaluation was not conducted as required, they have also communicated that an eligibility determination will be made based on existing

data and the IEE. It is unclear as to whether sufficient data exists to determine the student's ESE eligibility at this time.

10. Based on the documentation provided, there is evidence that the Indian River County School District violated the requirements related to conducting an evaluation of the student during the time period from December 28, 2010, through December 27, 2011, specifically regarding:
 - Responding to the parents' request for an evaluation of the student
 - Conducting an evaluation within the required 60-day timeline
 - Reviewing existing data, including evaluation, screening, assessment, and RTI data and any other relevant information
 - Specifically, the district evaluated the student for gifted services and determined that the student was ineligible for gifted services and programming, and did not complete an initial evaluation regarding the suspected areas of concern or eligibility presented by the complainants. In addition, it does not appear that the IEE was formally considered in making educational decisions regarding the student.

CORRECTIVE ACTIONS

1. No later than **March 9, 2012**, the Indian River County School District shall convene a meeting with the parent in attendance to review existing data on the student and, based on the review, identify what additional data are needed to determine if the student is a student with a disability and the nature and extent if any, of the student's special education needs. If no additional data are needed, the eligibility team is required to make a determination regarding the student's eligibility during the time of the meeting convened **no later than March 9, 2012**. **No later than ten days following the meeting**, the district shall provide the Bureau with verification of the team's determination and a narrative summary regarding the meeting to the Bureau. If the eligibility team determines that additional data are needed, the district shall ensure that the data is obtained and the evaluation is completed **no later than March 30, 2012**. If the team determines that additional data are needed, verification of the team's determination and a narrative summary of the second meeting, as well as any documentation regarding additional meetings pertaining to the student and the evaluation process shall be provided to the Bureau **no later than April 13, 2012**.
2. a. Upon determining the student's eligibility for ESE services, if the student is determined to be eligible, the district must, through the IEP team meeting process, determine the extent to which compensatory services are required to address the lapse in services resulting from the delay in the completion of the student's initial evaluation. **No later than April 13, 2012**, the district shall provide evidence that a determination has been made regarding the extent that compensatory services will be provided, if applicable. If compensatory services are required, verification of the provision of compensatory services must be provided on **May 18, 2012, June 15, 2012, October 31, 2012, December 13, 2012, and January 18, 2013, unless the provision of amount of agreed upon compensatory services is completed earlier than the dates prescribed above**.
b. If the student is determined to be ineligible for ESE services, the district shall provide evidence of the meeting held to determine eligibility as described above in item 1. **no later than ten days following the meeting**.
3. The Indian River County School District shall provide staff development training to all district staff and the staff at the student's school who are responsible for conducting evaluations and determining eligibility for ESE services. Verification of the training shall be provided to the Bureau by **April 13, 2012**, and must include the following:

- a. Copies of training materials that address evaluation procedures within a problem-solving or RtI framework
- b. Documentation of participation, including printed names, signatures, and titles of participants

Note: In accordance with the reporting requirements of the Annual Performance Report for the State Performance Plan, this item will be counted as a finding of noncompliance related to responding to the parents' request for an evaluation. Documentation verifying completion of all components of the corrective action must be received in accordance with the timelines established above, but in no case longer than one year from the date of this report (February 22, 2013) in order for the district to comply with the requirements of SPP 15, Timely Correction of Noncompliance.