

**East Central Regional Human Rights Authority
Flanagan Cornell School District
Report of Findings
Case #19-060-9004**

The East Central Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission voted to pursue an investigation of Flanagan Cornell School District after receiving the following complaints of possible rights violations:

Complaints:

- 1. Inadequate provision of least restrictive environment when student is moved to a different classroom based on lack of teachers.**
- 2. Inadequate placement when determination was not based on student's Individualized Education Plan (IEP).**
- 3. Inadequate treatment and discipline of a student when the student's assistive device was taken away so the student could not communicate.**
- 4. Inadequate notification of parent/guardian of incident where the student was disciplined.**

If the allegations are substantiated, they would violate protections under Illinois Administrative Code (Ill. Admin. Code tit. 23, § 226.240 and 226.730) and the Code of Federal Regulations (34 C.F.R. § 300.116 and 34 C.F.R. § 300.105).

Complaint Summary: A Flanagan-Cornell High School student diagnosed with Autism (non-verbal) was allegedly moved from a classroom setting to a "resource room" due to a lack of teachers. The allegations state the student does not like the new environment and is constantly asking to go home. Additional allegations state that in Nov 2018 an aide became frustrated with the student and took away his assistive device used for communication in order to not listen to the complaints from the student. The parents found out about the incident through community members but were never notified by the school of the disciplinary action.

Investigation

The HRA proceeded with the investigation after receiving written authorization from the student's guardian. To pursue the matter, the HRA visited the school and the program representatives were interviewed. Relevant practices, policies and sections of the student's record were reviewed.

Interviews:

On May 3, 2019 at 9:00am, the HRA met with Flanagan Cornell School District staff members, including: The High School Principal, Special Education Teacher, and the Special Education Program Supervisor. The meeting occurred at 202 E Falcon Highway Flanagan, IL 61740. The meeting began with introductions, a review of HRA procedures, and a review of the allegations being addressed in this investigation.

The staff provided some general information about Flanagan Cornell High School. There are 151 students in Flanagan Cornell High School (grades 9 through 12), and 22% of those students have IEPs (Individual Education Plans) but only 2 students are in a special education classroom 100% of the time. Most students receive special education services within the traditional classroom setting. The school has two special education classrooms overseen by two full-time special education teachers and five aides. Each of the aides is required to have a state teaching certification and all the current staff have a minimum of a bachelor's degree. All special education students have an IEP that is reviewed yearly with the student's teachers and aides to assure compliance. If a student or parent has a concern about the education or education plan, the procedure is to discuss the concern with the teacher, then the principal, then the superintendent, and lastly, if no resolution can be found, the concern can be taken to the Illinois State Board of Education for investigation. The staff reported that no complaints have been made regarding these allegations.

The student is a 22-year-old male (21 at the time of the complaint) who is diagnosed with Autism that limits his ability to verbally communicate. The school stated that, while the student can communicate using hand gestures and expresses happiness and displeasure through facial expression and arm motion, the school acquired an iPad and computer application, called Dynovox, that allowed him to communicate better throughout the school day. The school also gave the student permission to take it with him each day and use it at home. The student was placed in the Special Education program prior to arriving at Flanagan Cornell High School as a freshman and was scheduled to discontinue his education at the high school on his 22nd birthday. The student had an IEP that was reviewed each spring. The IEP did not include a behavior plan because the student's history and temperament did not warrant one.

The school reports that in the 2017-2018 school year there were 2 students receiving special education services in the full-time special education room. In the fall of 2018, the school had a teaching vacancy that was not filled, and the special education room was tasked to one teacher instead of two teachers. The change in classroom organization did not affect the student's primary room for education and did not change the small group setting or one-on-one instruction that is required by the student's IEP. The teacher noted that there were times when the student's instruction was provided in the primary classroom and times when the student used the additional resource room for things such as taking breaks and cooking lunches. Staff added that the use of both of these rooms was no different from previous years. Staff did not notice any change in the student's behavior due to the staffing change. The school had been working with the parent to enroll the student in a community program for adults because he was scheduled to turn 22 before the end of the school year.

The special education teacher reported that on Friday, November 16, 2018, she walked the student to his car at the end of the school day to hand off some leftover soup that the student had that day for lunch. The parent picking up the student reported no problems or concerns. The following Monday and Tuesday the student did not attend school. The staff contacted the parent regarding the absence and was told that the student would not be returning to the school. The school reports they made efforts to understand the reason for the departure from the program because the student was scheduled to be enrolled at the high school until February (when he

would turn 22 and be transitioned to a community program). The parent reported to the school that she had run into another student in the community and that student had told the parent that her son's communication device had been taken away as punishment. The special education teacher reported that the only time that the student was without the device was when the device needed the battery charged. Since the student used the device to watch videos at home and school, the device was frequently in need of having the battery charged. The week prior to the student not returning, the student did go to the library without his device because the battery was dead. The staff did not believe that this caused the student any additional stress and do not recall that he was even upset (again, this was a regular occurrence since the device needed to be charged frequently). Staff reiterated that the student was able to communicate wants and needs through minimal amounts of signing as well as facial and body expressions when his device was unavailable. Staff also added that the student was well behaved and never required any disciplinary action.

The parent attended an exit staffing on 11/27/18 and expressed concerns about the device being taken away as discipline but the school reassured the parent that the device was not removed for disciplinary purposes and there was no further discussion. The meeting focused on the parent's desire for the student to have an aide at the adult programming center where he was applying to attend and the school providing the information that the community program needed for enrollment.

Records Reviews:

Flanagan Cornell School District provided the HRA with the following records:

An IEP Summary report dated 11/27/18 stated that the student, parent, Special Education Coordinator, School Psychiatrist, and Principal were all present at an IEP meeting to discuss the student's exit from the program 4 months early. The IEP outlines the student's current abilities and needs and provides the parent with a list of adult services in the area. The meeting summary states that the "meeting was held to discuss (the student's) exit from Flanagan-Cornell High School. Parent waived right to 10 days notice. (Student) is eligible for services until 2/21/2019. Parents have decided to discontinue these services at Flanagan- Cornell High School at this time. Summary of performance form was reviewed." The exit IEP does not mention why the parents are removing the student from the school early or provide any documentation about what efforts/discussions were completed to keep the student enrolled until his 22nd birthday as planned.

An annual IEP dated 5/22/18 states the student will be placed in Flanagan-Cornell District 74 at Flanagan- Cornell High School as a full-time special education student. The student will receive 1800 minutes of special education instructional time, 60 minutes of speech/language therapy, and 150 minutes of lunch. The IEP states that the "[student's] limited communication and auditory discrimination abilities and cognitive delays require intensive small group or one on one instruction and multiple adaptations to the curriculum making the general education classroom insufficient for him to make progress."

The 5/22/18 IEP states that the student uses a Tobii Dynovax Communication Device and he can “navigate through the communication device extremely well especially for preferred items”. This device is frequently referenced throughout the IEP in individual outcomes/goals. There are tasks for the student stating he will “increase his use of functional words that he can read and demonstrate comprehension/meaning associated with the words” and reports that on 10/12/18 he was making progress. It also stated that he will “initiate varied appropriate topics using his communication device with others”. This task was also evaluated on 10/12/18 and reports that the student “does an excellent job initiating communication.” It should be noted that there is no documentation in the IEP specifying who is responsible for keeping the communication device (iPad) charged or what should be done if the device is unavailable.

There is a notation in 5/22/18 IEP stating that the student’s mother asked who the student’s teacher was scheduled to be and that this was a primary concern for the parents. The school stated that the school was in the process of hiring another teacher.

A written statement provided to the HRA by the Speech-Language Pathologist dated 5/2/19 states, “General observations throughout the school year showed teacher and aid checking battery level on iPad for current charge and charging the iPad as needed. Modifications to therapy plans were made if the device was on the charger.”

It should be noted that there is no mention of any behavioral concerns in any of the IEP documentation. The student has no record of a Manifestation Determination for behavior concerns and there is no Behavior Modification Plan. Additionally, the HRA saw no documented evidence that an iPad was removed from the student by the aide as a measure to silence the student.

Policy Reviews:

The Livingston County Special Services Unit that governs the school’s special education department has a manual titled “Special Education Procedures Assuring the Implementation of Comprehensive Programming for Children with Disabilities.” This manual requires that if a child is found to be eligible for special education services an IEP must be developed and specifies that the IEP shall include the placement the IEP team has determined to be appropriate for the child. The policy also defines the Least Restrictive Environment as “If a student is found eligible for special education services, the previously tried FSD (flexible service delivery) interventions may not negatively impact placement in the least restrictive environment, with the use of supplementary aids and services. The FSD process shall not be used as justification for a more restrictive placement for a student to receive special education services. The first consideration for providing special education services must still be the general education classroom.”

The Livingston County Special Services Unit policy titled “Notice of Procedural Safeguards for Parents/Guardians of Students with Disabilities” outlines discipline of students with disabilities by stating “If your child’s behavior impedes his/her learning or the learning of others, strategies including positive behavioral interventions and supports, must be considered in the development of your child’s IEP.” This section covers Short Term Removals, Long Term Removals, and Manifestation Determination Reviews. The safeguards also have a section outlining Complaint

Resolution that states that a parent may direct any concern regarding the student's education to the local school district and then goes on to outline that parents may file a signed, written complaint with the Illinois State Board of Education, alleging that the rights of your child or several children have been violated and provides directions to do so.

Conclusions

Complaint 1. Inadequate provision of least restrictive environment when student is moved to a different classroom based on lack of teachers.

The Illinois Administrative Code (Ill. Admin. Code tit. 23, § 226.730) states "Except as provided in subsection (b)(5), each class in which any student receives special education services for more than 60 percent of the school day shall have at least one qualified teacher for each eight students in attendance during that class. However, the district may increase the class size by a maximum of five students when a paraprofessional educator is provided for the entire class." The Code of Federal Regulations (34 C.F.R. § 300.116) states, "(b) The child's placement— (1) Is determined at least annually; 2) Is based on the child's IEP; and (3) Is as close as possible to the child's home; (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled; (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum."

The Flanagan-Cornell High School 2018-2019 full-time special education classroom had two students with their aides and one full time teacher. The student frequently used additional access to a resource room for breaks and activities. The primary classroom location and use of resource room were not a change from any of the student's prior years at the high school. The student remained at the same school, in the same classroom setting, and the teacher to special education student ratio remained less than 1:8 per Ill. Admin. Code tit. 23, § 226.730.

Based on the findings above the East Central Human Rights Authority concludes that the consumer's rights were not violated and, therefore, the complaint is **unsubstantiated**. No recommendations or suggestions are being made in relation to these complaints.

Complaint 2. Inadequate placement when determination was not based on student's IEP.

The Illinois Administrative Code (Ill. Admin. Code tit. 23, § 226.240) states "The determination of placement shall conform to the requirements of 34 CFR 300.114 through 300.116, 300.327, and 300.501(c), and the IEP Team shall take into consideration the student's eligibility for other educational programs and services such as bilingual education, career and technical education, gifted education, and federal Title I programs. The placement determination shall be reviewed at least annually or any time the IEP is revised." Section 226.730 and 34 C.F.R. § 300.116 were reviewed as cited above.

The student's annual IEP review dated 5/22/18 states that the student will be placed in Flanagan-Cornell High School as a full-time special education student (leaving the special education setting for lunch and therapy). This placement was again reviewed at an IEP meeting that was held on 11/27/18 to discuss that, even though the student was eligible for services until February 2019, the parents had decided to discontinue these services at Flanagan-Cornell High School. Documentation supports that the school discussed the student's current IEP tasks and provided the parent with additional information about community programs for the student.

Based on the findings above the East Central Human Rights Authority concludes that the consumer's rights were not violated and, therefore, the complaint is **unsubstantiated**.

Through the investigation, the HRA discovered that the reason that the parent removed the student from the placement at the high school is because the parent believed that the student was being mistreated. Unfortunately, the school has no documentation that explains the parents' reasoning for removing their student or documentation or what efforts were done in order assist the student in remaining at the high school until he turned 22 as planned. The IEP form itself includes a section for documenting parental concerns which, in this case, was not reflective of the parental concern as acknowledged by the school. The HRA would suggest that the school work on improving their documentation of parent complaints, concerns and reasoning as well as efforts made towards a resolution. The HRA also found no documentation of any review, inquiry or investigation of the parent's concern about an aide removing the device from the student as punishment. The HRA also strongly suggests that when a parent removes a student from school for such an allegation, that a documented review of the incident be completed.

Complaint 3. Inadequate treatment and discipline of a student when the student's assistive device was taken away so the student could not communicate. And 4. Inadequate notification of parent/guardian of incident where student was disciplined.

The Code of Federal Regulations (34 C.F.R. § 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 § 300.39; (2) Related services under § 300.34; or (3) Supplementary aids and services under §§ 300.42 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 IEP Team determines that the child needs access to those devices in order to receive FAPE."

According to school policy "If your child's behavior impedes his/her learning or the learning of others, strategies including positive behavioral interventions and supports, must be considered in the development of your child's IEP." The school reports that the student did not have any behavior concerns and discipline was not required for the student. The IEP does not have any behavior concerns noted and there is no behavior modification plan in place. The school district provided the student with the technology needed for communication and education. The school did report that the student was sometimes without his assistive device during the school day because the device needed to be charged, however, it was never taken away as discipline or in frustration. The school cannot recall an incident when the iPad was taken from the student in a

manner that could have been interpreted in that way and no situations like what was described in the complaint were documented, therefore, the HRA does not believe that there was anything to notify the parent of.

Based on the findings above the East Central Human Rights Authority concludes that the consumer's rights were not violated and, therefore, the complaint is **unsubstantiated**.

Throughout the investigation the staff at Flanagan Cornell discussed that the iPad was needed for communication and was often in need of charging. There is no documentation, other than a statement by the Speech Pathologist written in May 2019 that states that this was an ongoing issue. The HRA suggests that, when a student requires an assistive device that needs charging, a statement or task should be added to the student's IEP to clarify who is responsible for assuring that the device is operable when needed as well as the frequency for charging the device.

The HRA would like to thank the Flanagan School District staff for their cooperation with this investigation.