



FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY - PEORIA REGION
REPORT OF FINDINGS

Case # 22-090-9003
Dunlap School District

INTRODUCTION

The Human Rights Authority (HRA) opened an investigation after receiving complaints of possible rights violations at Dunlap School District. The complaints alleged the following:

- The school district does not utilize Response to Intervention (RTI) to identify students with learning disabilities.
- Students are remaining in Response to Intervention (RTI) programs for a significant length of time without evaluation.
- Behavioral Intervention Plans (BIP) are inappropriate.
- The school district has an inadequate complaint procedure.

If found substantiated, the allegations would violate the Illinois Administrative Code and the Code of Federal Regulations (23 ILAC 226.100, 23 ILAC 226.130, and 23 ILAC 226.230; include federal reg citations)

COMPLAINT STATEMENT

There are students in the school district that have reportedly been in Response to Intervention for a significant amount of time with no improvement and no evaluation for special education services. Students are being denied special education services and told that they need to “fail in Tier 3 RtI first” as per the complaint. According to the complaint, the behavior plans for students with disabilities are not implemented properly. Student behaviors are reportedly managed with discipline only and, if discipline does not correct the behavior, then the students are placed in alternate district schools for behavior planning. Lastly, it was reported that when complaints are taken to the administration, they have been denied any grievance process and nothing is done to correct problems.

FINDINGS

The Dunlap School District has 4,641 students through pre-K. The district consists of 8 buildings, 5 elementary, 2 middle school and 1 high school. There are 655 students with IEPs in the district.

Staff Interviews (3.2.2022)

Staff explained they use a computer program as an assessment platform. All students start in the Tier 1 level platform. If a student is in Tier 2 or Tier 3, it is due to a specific deficit. The assistance for Tier 2 and Tier 3 is unique and individualized. Staff said they have RTI cycle meeting every quarter, so every 8 to 10 weeks. They do have team meetings for RTI. Parents are invited to the quarterly meetings. They track all the students' goals and processes. There are Tier teams. If the student is unsuccessful in Tier 2, then they move to Tier 3.

The Tier 2 grouping is meeting two times a week, and they meet in small groups. The Tier 2 has about 8 to 10 students. Tier 3 level students are grouped into two or three students with similar deficits. The District's RTI plan was approved by the board. The Director of Curriculum then took the RTI plan they had before and made it more understandable and condensed. Tier 2 meets a minimum of 2 times a week and Tier 3 meets 3 to 5 times a week. They use "Push In" or "Pull Out" support to meet the minutes. The method depends on the grade level; at middle school or high school they can build the support into the day. At the middle school level, they have a specific name to an intervention time, like a home room. In the study halls they have learning labs and they will provide the additional supports during that time. All principal and instructional leadership teams are making the decisions on "Push In" or "Pull Out." The parents do not have input on the instructional delivery.

Staff send a communication home with a student when that student must enter Tier 2. They provide hard copies of the communication and will also send an email. They explain the interventions and they will organize a formal meeting if needed or requested. Parents request to initiate special education proceedings. When the school receives a request for a special education assessment, they follow the Federal and State guidelines. They have 10 days to respond based on data and then they use the Federal forms to state whether they are moving forward with special education evaluation or not proceeding. They do not know if they have data on the evaluations. A child receiving a psychiatric evaluation depends on the child and data found through the school, all of which is individualized. Tier 3 has school social workers and psychiatrists that work with the teams. They discuss if the students are getting what is needed or if the RTI team will do a full evaluation on the services. If the student is in Tier 3 for a long amount of time, they do not want that child to be in that position forever. They are looking for movement with each Tier. Generally, the longest a student would stay in one Tier is two cycles before moving a student up or down. They are looking for movement with each Tier. As stated, the quarters would be a cycle and that is 8 to 10 weeks. Students may go through two cycles if they stay consistent, but they may stay in the Tier 2 level longer but not the Tier 3. 12 to 18 months would be the maximum length.

They cannot think of a situation where special education was denied based off the RTI process. They move forward on evaluations even if they have an inkling that a student needs further services. The evaluation is based off the student's data. They explain to the parents where they receive the data for the evaluation. Staff makes sure that the data shows that the need for special education services was proven or denied. If a person is in the RTI process, they will review the RTI data, they will also review scores, speak with teachers, etc. Staff said that RTI should not play into the factor of accepting or denying a request.

They have a behavioral coordinator at the facility full-time, through their co-op special education program. Staff said they will put a draft in place of a BIP even if it is not yet the official BIP. The BIP and functional behavior assessment are completed before they would change a student's placement. The BIP is after the functional behavior assessment. When they open an evaluation, they have a social worker and a behavior counselor that work as a team. They interview teachers, parents, look at ratings scales, and make lots of observations. They are looking at graphs, point sheets, and they have notes. They want to know the data and let the parents know. Once that all the information is gathered, they will conduct a meeting and write the plan if they find it appropriate. The BIP reviews the target behavior and whether it is a skill deficit or a performance deficit. They discuss the student's strengths and create a hypothesis of the behavior's function. They also review previous interventions and what has been done. They also look at what they are going to do to teach a change in behavior. They also review the environment of the student. The BIP uses positive supports, and they use motivators and rewards. They try to stay away from the costly rewards but they reward students by doing things like asking them to read to therapy dogs. There is a crisis plan and there would be a suspension of the student if truly needed. They consult with the parents on what works at the home and are in communication with parents all the time; parents want to know what works at the school. They have team meetings and with some parents they meet every two weeks.

Staff said that they send home behavioral point sheets. They will scan and email the sheets if the parents do not receive them. They are focused on providing more professional development. The district is leaving the Co-op after July 1st and they are creating their own behavioral classroom. It is a general plan and reassurance. The school is big on positive reinforcement and each plan has positive supports. If they send someone home, it must be a volatile situation. They use removal from school as the last resort. They want the students to be in the school. The staff has a Manifestation Determination if the suspension reaches 10 days out of school to see if the incident was because of a behavior. They take the diagnosis into consideration and can have a manifestation meeting at any time. The school has a have restorative justice program in some buildings and are returning kids to school. The school has students placed in different districts in an emotional disability classroom and they have students placed in day treatment programs. They also have students on homebound until they can have instruction in the schools. They plan on creating 4 behavioral classrooms at different levels. A few of the students are already back on their way to general education. They have restraint training if a student is a danger to self or others. They have a behavior

intervention support team for all students. In the behavior plans, there are consequences, like a student will be moved to a different setting. Most often if a student is having behaviors, they attempt to distract the student with a walk or getting out of class.

They have a special education advisory committee that includes parents, and the staffs' door is always open to hear about complaints. They have a committee with 8 to 10 parents, and they also have staff involvement. Next year they are starting Parent University. Some parents are not ok with sending the complaints to staff. They receive their parental rights and can file with the ISBE, have mediation, or file due process. They ask to know issues and give names and contact information, and the parents could go to the superintendent as well. People will take complaints to the principal or the board, but they would like to have the parents go directly to the special education staff. There is a complaint manager. The special education staff do not receive many grievances, but they have had 3 ISBE complaints. They respond to the ISBE complaints. They believe parents are concerned about the co-op withdrawal. According to school board policy title 9 there is a complaint manager, who a parent can contact with a complaint. There is no form, but they can call and email. The complaint manager does deal more with staff complaints, and they have not had any students come with issues.

Record review:

In the Dunlap "Response to Intervention Plan", dated May 2017, RtI is a general education program and not a special education program. It notes that schools must "demonstrate evidence that early intervention has been attempted through a three-tier model before consideration of special education services". Page 7 of the plan describes the parent's role in the RtI process, stating that communication is important, and parents are formally a part of the RtI Team at the Tier III level. Page 8 reads "Through the RtI process student progress monitoring data will be collected at each tier in order to document a student's response to scientific, research-based and/or evidence-based interventions. Special education eligibility will be considered when students do not successfully response to Tier III interventions. These decisions will be made by the RtI Team."

The "RtI Process Overview-Dunlap CUSD #323" provides a description of the RtI Tiers noting General Education Teacher's Responsibility, Intervention Period Specifics, Required Data and Documentation, and criteria for Moving Down a Tier. Both Tier 1 and 2 state that they are provided for 8-10 weeks in small group instruction 2+ times a week. Tier 2 students receive 20 30-minute sessions and Tier 3 students receive 30-60 minute sessions. To move down from Tier 2, a student must show continuous improvement, the RtI team must agree to new "placement" and the interventions then fade out. To move down from Tier 3, the student must have progress monitoring data that shows goals have been met with no fewer than 6 data points and have team agreement. Tier 3 states that "Special education entitlement considered once all options are exhausted".

The "Social-Emotional-Learning Response to Intervention" chart provides a description of the SEL RtI Tiers. At the bottom of this chart, it states "To move towards entitlement,

Students must receive minimum of 8-10 weeks of individual interventions and Tier-3 interventions in any area where entitlement support would be considered. Data, decided at RtI meeting, shows a consistent decreasing trend line or flat line.”

Elementary-Level Student Support Programming and Middle School Student Support Programming demonstrate a list of research-based interventions for each tier for both Academic and Social Emotional Learning. These charts show the variety of tools offered for the student receiving RtI.

A chart titled “Numbers RtI” breaks down the number of students in Tier 2 and 3 at each school and reports how many of the RtI students “qualify for services”. In 2021-2022, 610 students received Tier 2 interventions, 85 students received Tier 3 interventions, and 26 of those RtI students (Tier 2 and 3) qualified for special education services (less than 4%).

An Excel spreadsheet titled “RtI Goals” was provided. The spreadsheet had student id, goal id and form id, goal number, goal set date, skill deficit, skill deficit specifics, current placement level, goal review, and goal status for students going back to 2016. For the purposes of this report, the data was only reviewed from 8/1/2019 to 4/26/2022 to narrow it down to 153 students. Out of those 153 students, there appears to be 38 students that have been in RtI for more than 18 months.

The HRA requested a behavioral intervention plan policy but none was provided.

Three redacted Behavior Intervention Plans were provided for review. The plans were all for 1st grade students, with conference dates for 2021-2022, and were on ISBE’s 34-54K(8/15) form. Target behaviors included physical aggression, noncompliance, elopement, work avoidance, verbal outbursts, and meltdowns. All 3 plans used the “Questions About Behavioral Function Survey” to complete the hypothesis of behavioral function section with the target behaviors in mind. Hypotheses included access to tangibles, attention, escape, and work avoidance. None of the hypotheses go any further to answer why the student is using this behavioral function (ie why does the student want attention, what is the student trying to escape, or why they are avoiding the work). Behavioral Intervention Strategies and Supports are outlined and individualized to the student. All plans included a statement under restrictive disciplinary measures that says the student “is subject to disciplinary actions as listed in the school/district handbook to accommodate his safety and the safety of others. A manifestation meeting is required if the child’s behavior results in more than 10 cumulative school days of suspension to determine if the behavior is related to the disability.” All 3 plans included crisis plan statements that stated that nonviolent crisis intervention de-escalation and preventative techniques will be used to diffuse the situation and indicates that staff are trained in such de-escalation. Physical intervention such as restraint are considered a last result when the student is a danger to himself or others and will be done “in accordance with 23 ILCS 1.285”. All plans indicated that staff will collect data on the target behavior and that staff

will communicate with the parents through charts, emails, phone calls and quarterly progress reports.

The Dunlap Board of Education Policy 2:260 Uniform Grievance Procedure states “A student, parent/guardian, employee, or community member should notify and District Complaint Manager if he or she believes that the Board of Education, its employees, or its agents have violated his or her rights guaranteed by the state or federal Constitution, State of federal stature, or Board policy, or have a complaint regarding any of the following...”. The policy goes on to state that the complaint manager will attempt to resolve the complaint without the grievance procedure but if a formal complaint is filed it will be addressed promptly and equitably. The policy describes how to file a complaint, the investigation process, and decision and appeal. The complaint managers are listed are the Superintendent and Director of Student Services.

Mandates:

23 IAC 226.100

“Each school district shall be responsible for actively seeking out and identifying all children from birth through age 21 within the district (and those parentally-placed private school children for whom the district is responsible under 34 CFR 300.131) who may be eligible for special education and related services.”

34 CFR 300.131

“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.”

23 IAC 226.130

“a) In addition to the requirements set forth in Sections 226.110 and 226.120 of this Part, the district shall adhere to the procedures set forth at 34 CFR 300.307, 300.308, 300.309, 300.310, and 300.311 when evaluating a student who is suspected of, or who has previously been identified as having, a specific learning disability as described in 34 CFR 300.8.

b) Provided that the requirements of this subsection (b) are met, each district shall implement the use of a process that determines how the child responds to scientific, research-based interventions or multi-tiered systems of support as part of the evaluation procedure described in 34 CFR 300.304. When a district implements the use of a process of this type, the district shall not use any child's participation in the process as the basis for denying a parent's request for an evaluation.

1) The State Superintendent of Education shall disseminate a plan outlining the nature and scope of the professional development that is necessary to permit implementation of a process of this type and describing any additional activities or resources that the Superintendent finds to be essential. Any amendments to the plan will be made in consultation with the statewide teacher organizations, statewide school management organizations, and State Advisory Council on Education of Students with Disabilities.

2) The plan shall quantify the estimated cost of the professional development and other necessary resources and shall identify sources of funding that are or may become available to the State Superintendent for these purposes.

3) The plan shall include:

A) a method of identifying school districts that are less able than others to implement a process of the required type without technical or financial assistance from the State;

B) a timeframe for the provision of training, other technical assistance and materials, or financial resources for related purposes that demonstrates the State Superintendent's best efforts to secure and provide relevant support to districts; and

C) a method of allocating resources that affords first consideration to districts that may otherwise be unable to implement a process of the required type without diverting necessary support from other aspects of the educational program.

c) Each district shall have a plan for the use of a process that determines how the child responds to scientific, research-based interventions as part of the evaluation procedure described in 34 CFR 300.304. Each district's plan shall identify the resources the district will devote to this purpose and include an outline of the types of State-level assistance the district expects to need, with particular reference to the professional development necessary for its affected staff members to implement this process. The plan developed pursuant to this subsection (c) may be incorporated into a district's district improvement plan (see 23 Ill. Adm. Code 1.85(b)) if one exists.

d) In addition to using an identification process of the type required by subsection (b), a district may use a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability”

23 IAC 226.230

“The IEP of a student who requires a behavioral intervention plan shall: 1) Summarize the findings of the functional behavioral assessment; 2) Summarize prior interventions implemented; 3) Describe any behavioral interventions to be used, including those aimed at developing or strengthening alternative or more appropriate behaviors; 4) Identify the measurable behavioral changes expected and methods of evaluation; 5) Identify a schedule for a review of the interventions' effectiveness; and 6) Identify provisions for communicating with the parents about their child's behavior and coordinating school-based and home-based interventions.”

Office of Special Education Programs (OSEP) Memo 11-07 Response to Intervention (RTI) (January 21, 2011) taken from ed.gov website (<https://sites.ed.gov/idea/idea-files/osep-memo-11-07-response-to-intervention-rti-memo/>)

OSEP stated in a 2011 letter that “it has come to the attention of the Office of Special Education Programs (OSEP) that, in some instances, local educational agencies (LEAs) may be using Response to Intervention strategies to delay or deny a timely initial evaluation for children suspected of having a disability”. The memo states that while the Education Department supports RtI initiatives and programs, “... the use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, ... to a child suspected of having a disability”. The memo also reiterates, as discussed above, that IDEA and its regulations currently “allow” the use of RtI data as part of the criteria for determining if a child has a specific LD, as opposed to mandating such an evaluation procedure. The memo therefore concludes that “it would be inconsistent with the evaluation provisions [of the IDEA regulations] for an LEA to reject a referral and delay provision of an initial evaluation on the basis that the child has not participated in an RTI framework” (see also City of Chicago Sch. Dist. 299, 2009, in which the Hearing Officer holds that “because RTI is a general education tool, districts cannot use it to delay disability identification in the face of parents' requests for immediate formal testing for eligibility”). The position of ED is that while schools have the discretion to reject parental requests for referral, the fact that a student has not participated in an RtI program cannot be the basis for the denial, as such participation is not required by law as a prerequisite to an evaluation request.

CONCLUSION:

Complaint #1 – The school district does not utilize Response to Intervention (RTI) to identify students with learning disabilities.

Dunlap school district reported that they could not think of a situation where special education was denied based off the RTI process. They stated that they move forward on evaluations even if they have an inkling that a student needs further services and that RTI should not play into the factor of accepting or denying a request for evaluation for special education. Unfortunately, the district’s Response to Intervention Plan states that schools must “demonstrate evidence that early intervention has been attempted through a three-tier model before consideration of special education services”. This directly violates Child Find (23 ILCS 226.100 and 34 CFR 300.131) which requires the district to actively seek out and identify all children within the district that may be eligible for special education services. This issue is further clarified in an OSEP Memo dated 11-07 that states “the use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, ... to a child suspected of having a disability....”.

The Human Rights Authority concludes that the consumer’s rights were violated and, therefore, the complaint is **substantiated**. The Human Rights Authority makes the following recommendations:

1. Dunlap will remove the stipulation from its Response to Intervention Plan that schools must utilize RtI before consideration of special education to align with 23 ILCS 226.100 and 34 CFR 300.131 and add a statement clarifying that the use of RtI strategies cannot be used to delay or deny the provision of a full and individual evaluation if they believe that the student is a child suspected of having a disability, regardless of RtI tier, per OSEP guidance. Please provide the HRA with evidence that this occurred.
2. All Dunlap staff will receive training on Child Find. Please provide the HRA with evidence that this occurred.

Complaint #2 – Students are remaining in Response to Intervention (RTI) programs for a significant length of time without evaluation.

Dunlap school district reported that 12 to 18 months would be the maximum length of time a student would receive RtI services. The ‘RtI Process Overview-Dunlap CUSD #323’ and ‘Social-Emotional-Learning Response to Intervention’ chart state that a student will spend a minimum of 8-10 weeks in these interventions. Considering the student’s possible movement between RtI Tiers, the HRA feels 12-18 months maximum of RtI is reasonable. Dunlap’s RtI data from 8/1/2019 to 4/26/2022 states that 38 of the reported 153 students receiving RtI services have had the same RtI goal for more than 18 months. There was no documentation provided that indicates how many of these 38 students have been evaluated for special education services.

Human Rights Authority concludes that the consumer’s rights were not violated and, therefore, the complaint is **unsubstantiated**.

The Human Rights Authority suggests that Dunlap create a tracking system in order to monitor the length of time that a student has been receiving RtI services. When a student has been in RtI for longer than the 12-18 months, the district should actively seek out and evaluate those children for eligibility for special education services

Complaint #3 –Behavioral Intervention Plans are inappropriate.

Dunlap school district reported their behavior intervention process in the interview and provided 3 redacted Behavior Intervention Plans for review. No specific Behavior Intervention Policy was provided. The BIPs were consistent with each other and with the Illinois State Board of Education format for such plans including a summary the findings of the functional behavioral assessment, a summary of prior interventions implemented, a description of any behavioral interventions to be used, identify the measurable behavioral changes expected and methods of evaluation, identification of a schedule for a review of the interventions' effectiveness, and identification of provisions for communicating with the parents about their child's behavior and coordinating school-based and home-based interventions per 23 IAC 226.230.

The Human Rights Authority concludes that Dunlap School District's Behavior Intervention Plans align with 23 IAC 226.230 and, therefore, the complaint is **unsubstantiated**.

Complaint #4 – The school district has inadequate complaint procedures.

Dunlap provided the “Dunlap Board of Education Policy 2:260 Uniform Grievance Procedure” that describes the complaint process that parents may utilize in the event that they have a grievance against the district. Additionally, the district noted that parents of students with disabilities can file with the ISBE, have mediation, or file due process.

The Human Rights Authority concludes that Dunlap has an adequate complaint procedure in place as well as additional complaint mechanisms for students with disabilities and, therefore, the complaint is **unsubstantiated**.

RESPONSE

Notice: The following page(s) contain the provider response. Due to technical requirements, provider responses appear verbatim in retyped format.

REGIONAL HUMAN RIGHTS AUTHORITY

HRA CASE NO. 22-090-9003

SERVICE PROVIDER: – Dunlap School District

Pursuant to Section 23 of the Guardianship and Advocacy Act (20 ILCS 3955/1 *et seq.*), we have received the Human Rights Authority report of findings.

IMPORTANT NOTE

Human Rights Authority reports may be made a part of the public record. Reports voted public, along with any response you have provided and indicated you wish to be included in a public document will be posted on the Illinois Guardianship and Advocacy Commission Web Site. (Due to technical requirements, your response may be in a verbatim retyped format.) Reports are also provided to complainants and may be forwarded to regulatory agencies for their review.

We ask that the following action be taken:

please only include correspondence from 7/24/23
We request that our response to any recommendation/s, plus any comments and/or objections be included as part of the public record.

We do not wish to include our response in the public record.

No response is included.

Mandy Ellis
NAME

Director of Student Services
TITLE

8/3/2023
DATE



Dr. Scott Dearman
Superintendent

Mr. Matthew Andrews
Assistant Superintendent
of Curriculum, Instruction,
& Human Resources

Dr. Scott Adreon
Assistant Superintendent
of Business Services

Mrs. Mandy Ellis
Director of Student Services

Dr. Jennifer Hastings
Director of Special Education

Mr. Michael McKenzie
Chief Financial Officer

July 24, 2023

IGAC
401 Main Street
Suite 620
Peoria, Illinois

RE: Case #22-090-9003

I assumed the Director of Student Services position in Dunlap Community Unit School District #323 on July 1, 2023. As part of my job responsibilities, I will oversee the Multi-Tiered Systems of Support (MTSS) implementation alongside my colleague; Assistant Director of Student Services, Amelia Miller.

The [handbook](#) is in final draft form and is attached to this email for your review. Staff training with the handbook will occur in multiple phases. This includes training with administrators, certified staff, and intervention staff. Included in the attachments are draft forms of our Professional Learning Community and Professional Development Planning Schedule with solidified dates for meetings and training with staff, a quick reference guide for staff with links to documents and needed forms, the MTSS Handbook presentation that is used to review MTSS with staff, a MTSS schedule for review of plans, and the MTSS draft plan.

As I am new to this role, I can only speak to the direction of our MTSS programming and system of support. Therefore, I do not have documentation in the form log in sheets for the past year for meetings that were held regarding MTSS. That being said, I am confident in the direction of our programming, systems of procedures, and plan for the 2023-2024 school year as it relates to supporting all students.

Please let me know if I can be of further assistance.

Respectfully,

Mrs. Mandy Ellis
Director of Student Services