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**Report of Findings
East Central Regional Human Rights Authority
Champaign Community Unit School District #4
Case #08-060-9025**

The East Central Regional Human Rights Authority (HRA), a division of the Illinois Guardianship and Advocacy Commission, accepted for investigation the following allegations concerning the Champaign Community Unit School District #4:

1. The student's Individualized Education Plan (IEP) was inadequate.
2. The district failed to provide adequate evaluations of the student.
3. The district did not follow evaluation recommendations.
4. The district failed to adequately monitor a student's progress.
5. The district inappropriately applied restraints.
6. The district did not adequately involve a student's parent.
7. The district did not fully implement the student's IEP.
8. The district inappropriately removed a student from general education classes.
9. The district inappropriately used discipline.

If found substantiated, the allegations represent violations of state and federal special education mandates (23 Ill. Admin. Code 226 and 34 C.F.R. 300).

The Champaign Community Unit School District provides a range of special education services to approximately 1300 students in the Champaign area.

To investigate the allegations, the Authority met with and interviewed various school officials, reviewed the record of a student receiving special education services, with parental consent, and examined pertinent school district policies and special education mandates.

COMPLAINT STATEMENT

According to the complaint, a student's March 2007 IEP did not address a student's sensory needs and the plan offered limited accommodations. There was reportedly no behavior plan and when a behavior plan was eventually developed it did not include the use of restraints or classroom removals, practices that were used for the student. The complaint also states that there was an inappropriate use of behavioral modification techniques.

The complaint states that, in December 2007, the student's support level was increased but there was no increase in related services. In 2008, IEP revisions were reportedly made with regard to accommodations and behavioral programming without being reviewed at an IEP meeting. Furthermore, benchmark goals were allegedly never revised. The complaint reports that there were no special education or regular education teachers at the re-entry conference after the student's suspension.

With regard to evaluations, the complaint states that there was no initial functional behavioral analysis and that the analysis that was eventually completed referenced a behavioral incident at a prior school and did not include enough of a time frame to adequately assess the student's behaviors. In another evaluation, a psychiatrist reportedly recommended a full-time aide which was not provided for the student. And, recommended modifications were allegedly not fully implemented.

The complaint contends that the student's IEP did not include measurable goals and thus did not allow for the measuring of student progress, including progress on the IEP, behavior plan or homework. When the student was not making progress, the complaint states that there were not always IEP revisions.

According to the complaint, the school did not follow therapeutic crisis intervention principles. Instead, restraints were reportedly used and the restraint episodes were not properly documented. And, staff who applied restraints were allegedly not trained or not involved in the student's IEP. The complaint states that the district has inconsistent policies regarding restraint use across schools. Finally, the complaint reports that the parent was notified after restraint applications or not at all.

In regard to parental involvement, the complaint indicates that an IEP provided to the student's parent was different from the IEP in the student's record. Also, the district reportedly attempted to hospitalize a student without parental involvement. And, there was allegedly no 10-day waiver from the parent regarding an IEP meeting to discuss revisions. Finally, the complaint states that changes were made to the student's homebound instruction without parental input.

The complaint indicates that the student's IEP was not fully implemented when the parent had to prompt the use of a behavioral scale as referenced in the student's IEP, when there was a delay in the initiation of homebound instruction, and when the district did not follow the IEP with regard to hours, services and integration.

In terms of removal from the general education classes, the complaint reports that the student was contained in a resource room without access to related services (e.g. speech, social work) or non-academics (e.g. physical education, music, art).

Finally, the complaint states that there was no manifestation determination as part of the student's discipline and the student was reportedly subjected to spankings.

FINDINGS

Interview of District Officials

In a meeting with district special education administrators and staff, the HRA obtained information regarding the district's special education program as well as specific information regarding the allegations in the case. Of the district's 9300 total students, approximately 1300 students receive district special education services at several different locales: the early childhood program, 11 elementary education buildings, 3 middle schools, 2 high schools and an alternative academy. The district also contracts with two therapeutic day programs for approximately 78 students with behavioral needs. Classroom arrangements include anything from contained classes to cross-categorical arrangements with many students being included in the general education environment. The district employs approximately 300 special education staff.

With regard to IEP development, the district reported that new teachers receive a training manual and a week's training; the manual includes a section on IEP development. The district utilizes a computerized IEP format as well as Illinois State Board of Education IEP forms. The district provides staff with additional training through district improvement days, and various topics are also addressed at monthly staff meetings. The district reports that newly employed general education teachers receive some special education orientation as well. Oversight of IEPs occurs through the auditing of IEPs using an audit checklist. Audit results are then utilized in trainings. Approximately 10% of IEPs are audited.

The HRA inquired about the special education program's behavioral intervention strategies and resources. The district reported that it uses trained intervention teams that review referrals of students having behavioral difficulties; and, the district reported that it may try some informal interventions or community resources before referring a student for a case study evaluation for special education behavioral services. The district uses certified therapeutic crisis intervention (TCI) trainers to teach special education staff de-escalation and restraint techniques. The district holds at least three training sessions per year on therapeutic crisis intervention although staff are not required to take the training due to bargaining union contract issues. Restraint use is considered the last resort in behavioral intervention. If a student's IEP includes restraint use, it must list TCI trained staff. Before restraints are applied, staff first attempt to remove the student from a classroom. Other behavioral approaches used by the district include social stories, sensory diets and behavioral contracts.

The district then provided information regarding the situation under HRA review. The student was identified for early childhood education services while in pre-school with a diagnosis of autism. The student seemed to benefit from a smaller classroom and this was noted as part of kindergarten preparation. The student's aide support has varied from up to 25% support to continual support. In the student's March 2007 IEP, the student had up to 25% support as part of the student's reevaluation. Aide support gradually increased to a full-time aide. In August 2007, the IEP was reviewed due to increased behaviors related to the student leaving the resource room; a meeting was held to discuss classroom supports and the behavioral plan was developed to include out-of-school suspension and restraints as well as other interventions, including the use of behavior scales although the aide support was not initially increased. Additional supports included a work station situated outside of the classroom that the student could access and the development of social stories. The district maintains an autism team that

consists of 2 teachers, an occupational therapist, and a physical therapist; the team's role is to set up and monitor services. On 08-24-07, another IEP meeting was held after more behaviors occurred; services were increased, including aide services for up to 50% of the classroom time. Sensory breaks were established. A 09-24-07 IEP increased the aide services to full-time after a 09-18-07 behavioral incident and a general increase in behaviors. Another IEP meeting was held on 10-16-07. The school district reported that it has also questioned medication and other external changes that may have contributed to the student's behaviors. In November 2007, the student's parent approached the district with an allegation of abuse related to alleged spankings; the school investigated and the Illinois Department of Children and Family Services was notified. It was determined that the allegations were "not founded." Due to the family discomfort with the school, the student was to transfer to a new school in January 2008 and a transition process was identified and information was sent to the parent. The student began school in January 2008 participating in the resource room classroom because she was reluctant to enter the regular education classroom. The student's aggression, mostly to the teacher, continued; on January 9, 2008, a teacher attempted to block the student's exit from the room and the student reportedly attacked the teacher, causing injuries. The district contacted a mental health pre-screener to assess for possible hospitalization to conduct a mental health evaluation which the parent refused. The student was subsequently suspended. A 01-16-08 scheduled IEP meeting had to be rescheduled; in a 02-15-08 IEP meeting, the parent reported the physician's recommendation for home-based services. The district requested a prescription for home-based services which the parent produced on 02-29-08. The home-based services included tutoring totaling 64 make-up hours and then five hours per week running from February through July 2008 with a goal that the student return to school. To date, the student has not returned to school although the district contends that it wants the student to return; the district states that the parent wants the tutoring to continue. As of the time of the HRA's meeting with the district, the student had not returned to school.

With regard to the district's communication with the student's parent, the district reported that notes are sent to the parent regarding behavioral incidents. The parent has been part of the IEP meetings as well as any transition plans and the parent had requested to be notified of restraint use. The district also reported that it offered the parent crisis intervention training.

Record Review

The HRA examined a student's record with parental consent. A 03-01-07 IEP identifies the student's primary special education eligibility category as Autism Spectrum Disorder. The student's parent attended the meeting. The student's strengths are listed as follows: academic skills; motor functioning; able to label feelings and participate in behavior plan and sensory needs; initiates play with peers; and, her use of vocabulary. Her needs are listed as follows: sensory processing; speech/language deficits, and limited social interactions. The parent expressed concerns about the student's dressing skills, sleeping habits and transitioning into 3rd grade. The IEP indicates that the student will be provided with assistive technology services, speech and behavioral supports. Accommodations were to include reviewing assignment directions, if needed, checking vocabulary comprehension, encouraging the student to ask for assistance, daily check-ins with school staff, ignoring inappropriate behaviors if possible, allowing breaks, developing a home communication system and utilizing a behavior

management system. The IEP listed speech goals, behavioral goals, and social interaction goals. The student was assigned to a cross categorical class with an aide as part of Resource Level I services at 24% or less of the school day, or 16 to 420 minutes per week. There is reference to some limited exposure to general education class time although the specifics are not listed in the IEP. The IEP concludes with notes about specific accommodations (e.g. 1-5 scale, social stories, timers, daily schedule, writing feelings, controlled choices, allowing scheduled and requested breaks, etc.). The plan references a behavioral review on 01-28-07 and a behavioral assessment parental interview on 02-21-07. This IEP also indicates that 30 minutes per quarter of Occupational Therapy (OT) consultation is to be provided to monitor the student's OT needs. The assessment section of the IEP references the student's private psychiatrist, but there is no documentation of psychiatric recommendations pertaining to the student's needs.

An 08-14-07 IEP adds a functional behavioral analysis and behavioral management plan. The behavioral analysis indicates that the student has aggressive behaviors on a weekly basis when presented with an activity she does not like or upon becoming frustrated; the behaviors are used to escape or control situations. The second behavior was listed as work refusals when given a directive or task. For the aggressive behaviors the district was to use the positive behavioral interventions of a scale to assess the student's emotions, a modified discipline code, teaching the desired behaviors or communication strategies, deep sensory techniques, breaks, and honoring student requests to take breaks; restrictive interventions included time in chair, calling home, manual restraints and time in office, resource room or work station placement until behavior calms. Interventions for work refusals included asking the student about her feelings, going to case manager's office to write, sensory techniques, wait time and time at work station. The parent was to be kept informed by phone although the frequency is not designated.

An 08-24-07 IEP includes similar information as the 03-01-07 IEP and continues with the behavioral plan. The student's support level was increased to Resource 2 meaning she was to receive support 25 to 49% of the day or 421 to 840 minutes per week of support.

An 10-16-07 IEP continues with the Resource 2 level of support as well as the behavioral plan; a functional analysis is also attached. Added to the IEP was the use of a visual schedule, behavioral support (1-5 scale) for all general education, and aide support in Art, Math and Reading.

A 12-12-07 IEP is similar to the 10-16-07 with continued Resource 2 level of support and behavioral programming. The district added an IEP Progress Report to the IEP that allows the district to document specific progress related to each goal and objective. The IEP indicates that the student had not been in school since 11-01-07.

An IEP dated 02-15-08 lists the student's service level as "homebound upon receipt of Dr.'s prescription." The student's goals were comparable to prior IEPs and a behavior plan was also attached. Homebound instruction was listed instead of a resource category and supplementary aides for general education participation were removed. The homebound instruction was not specified. The IEP listed an occupational therapy monitor at 30 minutes per quarter, speech services at 40 minutes per week (mpw) and social work services at 30 mpw. The parental concerns section of the IEP stated that the parent "...expressed concerns regarding

...[the student's] education support. She shared information from ...[physician]. Homebound is a recommendation from this physician. Homebound forms were presented to the parent. [The parent]...also expressed concern about the transition from homebound to school services. The team agreed that a transition IEP meeting to determine a plan for reintegration would be held once the Dr. indicates school participation is medically acceptable."

According to a May 9, 2008 IEP, the student's services were listed as homebound. The parental concerns section states that the parent was concerned about service provision in terms of the amount of service time provided for occupational therapy, speech therapy and social work services as well as the transition process back to school. She offered to assist with the transition back to school. Speech, social work and social interaction goals were listed. The student's classroom was listed as cross-categorical in one section, but homebound in another. Occupational therapy, speech therapy and social work services were listed at the same level as the 2-15-08 IEP. However, it appears from an addendum to the IEP that the district offered the provision of related services (speech, OT and social work) on-campus only. Otherwise, speech, OT and social work consultation was being provided to the homebound instructor. A homebound plan was attached detailing the weekly provision of homebound tutoring beginning the week of May 12 through July 25th; a total of 65 hours was to be provided during this time frame. The IEP indicated that the prior IEP goals apply: speech, social interaction, social work and behavioral. The addendum also indicated that the parent was not satisfied with the IEP.

The purpose of a 09-11-08 IEP team meeting was to develop a plan that would guide the student's return to school. This plan indicated that the student was to receive homebound instruction until October 1, 2008 at which time she would be transitioned back into the school environment. Issues discussed during the meeting included sensory needs, staff training on sensory input and behavioral interventions, calming strategies and a continuation of the behavior plan using the 5 point scale. The plan indicated that the student was owed homebound hours and those hours would be made up. The IEP listed general education participation at 200 mpw in Music, Art and Physical Education along with 20 mpw of OT consult, 200 mpw of aide or teacher support, 15 mpw of consultant services, 40 mpw of speech and 30 mpw of social work services. The IEP referenced cross categorical classroom if student is unable to participate in general education coursework. The parent submitted a document entitled, "Minority Report." The report describes the student's strengths, parental concerns, accommodations and modifications, goals, and homebound instruction. The parent's statements included the following: "Champaign Unit #4 Schools abuse and neglect inflicted upon [the student] through the lack of accommodations and services which resulted in excessive restraints, isolation and segregation and removal from the education setting as a coercive means to manipulate and control her neurological disability has significantly impeded her academic and social functioning in a general education, school-related environment." The parent requested that the following accommodations be added: calculator, student read text, pre-read questions, visuals, reading checks, extra set of textbooks, and picture schedule. The parent asked that the behavior contract be removed. The parent requested that "friendship skills" be removed and that the district develop goals related to social interactions in the class as well as communication skills when stressed through the use of role playing, social stories, sensory breaks, etc. It appeared that the district followed the parent's request with regard to the goal changes; however, the HRA did not

find documentation that the district carried out parental requests with regard to all of the specific accommodations. A 09-19-08 IEP appears to mirror the 09-11-08 IEP.

A 10-15-08 IEP added goals related to personal space and self-calming techniques. General education class work included reading, language arts and writer's workshop. OT, speech and consultation services remained at the same level. However, social work services increased (45 mpw) as did aide minutes (375 mpw). The total number of minutes the student would spend outside of the general education was listed as 115 mpw. Notes from this meeting indicated that the student is not following the transition plan, schedule, or the use of the feelings chart. The team discussed various avenues to address the issues, including an aide accompanying her at all times, a visual schedule, related social stories, a revised approach to the feelings chart, an altered means of providing speech services and a revised start schedule.

Of the IEPs reviewed the HRA found that regular and special education teachers were in attendance at all meetings except the December 2007 meeting at which there was no regular education teacher present. The parent was in attendance at all IEP meetings. The HRA also found that IEP goals and objectives were measurable in that they were listed in terms of an anticipated number or percentage for the student to achieve. Parental IEP meeting notices reviewed by the HRA indicated that the 10-day notice requirement was not met for 2 meetings and the HRA did not receive evidence of a parental waiver of the 10-day notice.

The HRA examined two medical orders from the student's physician; one order is dated 02-25-08 and the other is dated 08-28-08. Both orders recommended home instruction and referenced the student's diagnosis of autism, delayed development, and severe aggression.

The HRA team reviewed discipline referrals dating back to 2006. A referral dated 09-15-06 states that a call was made to the student's home after the student struck a teacher three times after taking a prize without permission; this resulted in a one-day in-school suspension. On 11-13-06, the student was given 1 ½ days of in-school suspension for refusing to work and then throwing a pencil at a teacher and hitting her in the eye; the student was also given time out. Discipline that included a ½ day of in-school suspension and 1 ½ days of out of school suspension was given to the student on 09-18-07 for aggression toward another student that included knocking the student off of the monkey bars twice, hitting the student and pulling the student's hair. A discipline referral dated 01-11-08 stated that the student hit a teacher in the chest and arm and then kicked her leg. The student was suspended for 3 days and then referred to a mental health agency. The form states that the parent was notified by phone. In a letter to the parent, the district stated that the student could return to school on 01-17-08 after a conference. The letter indicated that the student did not want to transition to school activities and the teacher had to restrain the student after the student struck and kicked the teacher. All discipline referrals document that the parent was notified.

A review of restraint episodes was also conducted. One incident was documented in a detailed narrative report while the rest were documented on a restraint checklist that allowed for some general comments regarding the restraint use. In an incident dated 10-31-07, the student wanted to play some games that were set up for someone else; the teacher unsuccessfully attempted to counsel the student who became increasingly agitated to the point that she kicked

and hit the teacher at which point she was restrained to protect herself and others. Restraint documentation states that deep pressure was applied to the student to calm her and the teacher asked her about her levels until she was at a point of being calm. After the restraint episode, the student reportedly grabbed the teacher's arm and tried to motion the teacher's arm toward the student's own backside while stating, "you are going to spank me," and " you are going to jail for spanking me." The teacher redirected the student as per documentation. A restraint episode on 01-07-08 that began at 10:50 a.m. and ended at 11:00 a.m. was initiated when the student attempted to leave the building and staff blocked the door; the student then started hitting the teacher and throwing items from desks. There were 2 staff involved and neither were listed as being TCI trained although documentation states that the principle was present and she is TCI trained; other alternatives documented as being attempted included cues for transition and modified activities, and the parent was notified. An incident occurred on 01-08-08 from 1:37 p.m. to 1:50 p.m. after the student threw a computer mouse and tried to push a chair into a teacher. Documentation indicates that staff attempted to redirect the student and use a point system. The individuals involved in the restraint incident were not TCI trained, and the parent was notified. Three restraint incidents were documented on 01-09-08. The first began at 8:20 a.m. and ended at 8:35 a.m. when the student tried to leave the room and did not respond to redirection; the report states that the student pushed the teacher, turned off the lights and hit the window of the door. The staff involved were not TCI trained. The parent was notified as per documentation. The second restraint incident on 01-09-08 began at 10:15 a.m. and ended at 10:30 a.m. and the third began at 10:33 a.m. and ended at 10:50 a.m. The student was redirected to a task she was to complete and she pushed over chairs and threw materials; staff involved were not TCI trained and the parent was notified. After this incident a referral was made to a community mental health center that recommended the student be placed in an inpatient program for observation and assessment with the parents expressing concerns about such a placement; however, medication was discussed. A 01-10-08 restraint incident began at 10:40 a.m. and ended at 10:50 a.m. when the student threw her work and tried to exit the classroom; one of the staff involved was TCI trained. The parent was notified. Documentation notes that redirection, the point system and massage/deep pressure were attempted as alternatives. And, on 01-11-08 a restraint was applied from 8:13 a.m. to 8:24 a.m. when the student struck and kicked a teacher who was attempting to block the student from leaving the classroom. Redirection and the point system were listed as alternative approaches. The parent was notified and one of the staff involved was TCI trained.

The HRA examined documents related to the feelings scale. A score of "1" suggests that the student is feeling fine and is happy; staff are to praise her. A "2" score indicates that the student does not want to work and is bored or sad. This is to serve as a warning for staff to begin providing support. A score of "3" means that that the student is anxious or nervous and the work is hard; staff are to offer some choices. At a score of "4" the student is frustrated and wanting to leave at which time the student should receive a sensory break. A score of "5" indicates that the student is explosive, frustrated and/or angry; staff are to remove her from the room, apply a manual restraint if violent and call home. The HRA examined the feelings chart for the month of October 2008. The chart was utilized. There was mixed feedback. Staff noted times of student success as well as times during which she would refuse activities and have behaviors. It appeared that the student was allowed to take breaks on her own accord and sometimes she exhibited behaviors before a break. There was also documentation on a couple of occasions that

she wanted to do something that staff would not allow (e.g. swing in swing, play computer games).

In December 2007, subsequent to the student's allegations stating that certain staff had spanked her, the district conducted an investigation that included interviewing the reported perpetrators, interviewing individuals who work in the vicinity of the areas where the spankings were to have occurred, and interviewing the student. The investigation report stated that the Illinois Department of Children and Family Services was contacted about the allegations but that they declined to investigate as the evidence did not rise to the level of an investigation. The investigation concluded that the student does not wish to attend school due to some type of aversion, but there was no evidence to support the allegation that she was spanked at school. The report recommended that the parent work with special education administration to determine a means to address the student's aversion to school. The HRA saw evidence of a modified questionnaire about the allegations created for the student who was able to document her responses via computer entries versus direct interviews with district staff. The district stated that it did not receive any correspondence from the DCFS documenting its position on the allegation.

The HRA examined documentation of autism support team hours during the 2007-2008 school year which indicated 6 ½ hours of support in August, 1 hour and 20 minutes in September and at least 3 ½ hours in October. A review of homebound instruction hours was conducted and the HRA found that 64 hours had been delivered from May 13, 2008 through July 25, 2008.

The HRA examined pages of e-mail communication between the district and the parent with regard to meeting schedules, IEP contents, record access, etc.

Policy Review

The HRA examined pertinent district policies. A policy on behavioral interventions for students receiving special education services requires the district to pursue "positive, nonaversive interventions designed to develop and strengthen desirable student behaviors....the use of more restrictive behavior interventions should be used sparingly and approached with caution." The policy states that a behavior plan is to be written for a student receiving special education when the student does not comply with the district's discipline code, displays behaviors that are disruptive, is suspended for more than 10 days in a school year, is considered for expulsion or is referred for an alternative placement. The behavior plan is to include a functional analysis, prior interventions, recommended interventions, expected behavior changes, a review schedule and a means of communicating behavior incidents to the parents. Included in the policy is reference to the use of restrictive behavioral interventions such as restraint. The policy dictates that such interventions should only be used when less restrictive measures are not effective, for only the amount of time needed to control behaviors, in concert with positive interventions that strengthen desirable behaviors and when less restrictive interventions are subsequently used as soon as possible.

The district's discipline policy for students with disabilities states that when a student with disabilities is guilty of misconduct, the district is to notify the parents within 24 hours of the

discipline being considered as well as the time the IEP team will meet; written information is to follow. Until the IEP team meets the district may restrict the student to a study carrel, place a student in an alternative classroom, restrict the student from extracurricular activities, and suspend the student for not more than 10 days pursuant to suspension procedures and regardless of the student's disability. After 10 days of suspension or for expulsion, the IEP team conducts a manifestation determination meeting. If the student's behavior that resulted in the additional discipline is determined by the IEP team not to be related to his/her disability, the district can proceed with discipline, including expulsion, suspension, classroom removal, denial of privileges and detention. If the team determines that the misconduct is related to the student's disability, the IEP team is to review the IEP and consider revisions or a placement change after a multidisciplinary conference. If the parent objects to a placement change and the student's behavior is a risk to the safety of the student or others, the district will seek a court order for changing the placement or suspending the student.

MANDATES

State regulations pertaining to evaluations (23 Ill. Admin. Code 226.110) state that the parent, school, or another agency can request an evaluation of a student. Within 60 school days after securing parental consent for an evaluation, the district is to determine special education eligibility. Federal regulations (34 C.F.R. 300.103) state that if a parent initiates a private evaluation/services, the evaluation results must at least be reviewed and considered by the district.

Section 226.510 of state regulations requires the district to provide parents with notification of their rights. Federal regulations (34 C.F.R. 300) require in section 300.322 that the district is to take steps to have parental involvement at IEP meetings. Section 300.501 provides parents with the right to examine student records and allows for parental involvement in placement decisions.

With regard to disciplinary procedures, Section 300.530 of federal regulations state that the district can remove a student with a disability for a conduct violation for not more than 10 consecutive school days. After 10 days, the district must provide services and must conduct a functional behavioral assessment and behavioral services. An interim alternative setting can be considered. If a placement change is being considered, the IEP team is to meet and determine whether or not the student's behavior was a manifestation of his/her disability. If a behavior is considered a manifestation of the student's disability, the district is to conduct a functional behavioral assessment and develop or revise a behavior plan. The district can remove a student to an alternative setting for not more than 45 school days regardless of manifestation determination if the student carries a weapon onto school property, possesses, uses or sales drugs, or has inflicted serious injury upon another person at school.

Section 300.323 of federal regulations describe the IEP process and requires the district to have an IEP in effect for each student with a disability. The IEP is to be accessible to any district person involved in implementing the student's IEP. Section 300.321 requires the IEP team to include the parents, at least one regular education teacher if the student participates in the general education environment, at least one special education teacher, and a district

representative who is knowledgeable about the district's general education and available resources. Section 300.324 addresses IEP development and requires the IEP team to consider student strengths, parental concerns, evaluation results and student needs. For a student with behavioral needs, the team is to consider positive behavioral interventions, the student's communication needs, and assistive technology. The regular education teacher is to participate in the determination of positive behavioral interventions as well as the student's need for aides, modifications, and support. The district is to review the IEP at least annually and revise the IEP, if needed, to address a lack of progress, reevaluation results, new information from the parents, the student's anticipated needs, etc. State regulations (23 Ill. Admin. Code 226) require in section 226.200 that special education services are to be provided according to student IEPs. Section 226.530 requires that parents receive meeting notices no later than 10 days prior to a meeting; Section 226.520 requires 10-day written notice when changing the IEP unless the parent waives the 10-day notice.

Section 300.320 describes the content of the IEP. The IEP is to include information about the student's current level of performance, measurable goals related to the student's needs, a description of how the student's progress will be measured, a statement regarding supplementary aids and services, the extent to which the student will be educated in the general education environment, the projected date for beginning services/modifications, anticipated frequency, location and duration of those services and modifications.

CONCLUSIONS

Complaint #1: The student's Individualized Education Plan (IEP) was inadequate. The March 2007 IEP reportedly did not address sensory needs, did not provide accommodations, did not include a behavior plan, did not include restraint use or classroom removals, did not result in an increase in related services, did not include revised benchmark goals over time, and did not involve teachers in a re-entry conference. Also, revisions were reportedly made with regard to accommodations and behavioral programming without an IEP meeting in 2008.

In its review of the student's record, the HRA found that the March 2007 IEP did acknowledge the student's sensory processing needs and included a provision that allowed the student to take breaks from the school environment. The student received 30 minutes per quarter of OT consultation but not ongoing OT. Accommodations were listed; however, those accommodations did not include specifics as to start time, duration, frequency and location. And, not all of the accommodations requested in writing by the parent in September 2008 were listed in the September 2008 IEP. The IEP references a behavior plan, but the HRA did not find a formal plan attached to the IEP. Instead, there were behavioral goals and approaches and the student's needs do not seem to indicate significant behavioral issues in March 2007; discipline records indicate a suspension for behaviors in 2006 and then not again until September 2007. The IEP indicated needs in the area of communication and social interaction. Subsequently, the IEP listed goals related to communication, friendship skills and increasing positive classroom behaviors. The parent participated in the IEP meeting and there were no parental comments documented related to sensory goals, OT services or behavioral programming.

The HRA did find that, over time, goals remained essentially the same until the parent and/or advocate suggested changes in September and October 2008. IEPs did not document parental or teacher dissatisfaction with these goals until the parent requested a change in September 2008. Aide support was increased over time and the student's placement changed.

The HRA also found that there were at least 5 IEP meetings held in 2008 and it did not appear that IEP changes were made without an IEP meeting. The HRA did note that while the student was receiving homebound services as per a 02-15-08 IEP meeting, homebound instruction was not specified in the 02-15-08 IEP. A May 2008 IEP listed the student as receiving homebound instruction in one section and cross-categorical classroom instruction in another.

Teachers were involved in all IEP meetings although the HRA noted that there was not a regular education teacher present at the December 2007 IEP meeting even though the IEP indicates that the student would be participating in the general curriculum.

Special education mandates require that services be provided consistent with a student's IEP and based on student needs. An IEP is to be revised based on student needs, assessments and lack of progress. Needed accommodations are to be included in the IEP and list the frequency, amount, duration, start date and location. A regular education teacher is to participate in the IEP meeting if the student participates in the general education program.

Due to the lack of a regular education teacher at the December 2007 IEP meeting, the lack of specifics regarding homebound instruction in the 02-15-08 IEP, and the lack of specifics related to accommodations, **the HRA substantiates this portion of the complaint and recommends the following:**

- 1. Follow special education mandates and ensure regular education teacher participation in IEP meetings that involve a student who is included in the regular education environment.**
- 2. When a placement and services change, ensure the IEP is revised accordingly, as per requirements.**
- 3. Ensure that special education mandates are met with regard to the IEP section on accommodations by including the following specifics with regard to the provision of those accommodations: start date, frequency, duration, and location.**

Complaint #2: The district failed to provide adequate evaluations of the student. The complaint contends that the student did not have an initial functional behavioral analysis, that the eventual analysis referenced an incident at a prior school, and the analysis did not allow enough time frame to adequately assess the student's behaviors.

The HRA did not observe a functional behavioral analysis until the student's 08-14-07 IEP although a review of the student's behavior was completed as part of the March 2007 IEP. It is unclear if the student's behavioral incidents warranted a functional behavioral analysis prior to

08-14-07 although there was one documented suspension for behaviors in 2006. The 08-14-07 functional behavioral analysis mostly discussed general behaviors; there was not specific reference about behaviors at another school. The time frame for the analysis was not listed. A behavior plan accompanied the 08-14-07 functional behavioral analysis. Subsequent IEPs included behavioral analyses and behavior plans after more discipline was issued in September of 2007.

Special education regulations allow for the parent, school or an agency to request an evaluation; the evaluation is to be completed within 60 school days of obtaining parental consent. IEPs are to be based on evaluation results.

In conclusion, while the HRA found that the student's March IEP included behavioral goals but lacked a functional behavioral analysis, it is unclear if the student's behaviors warranted a formal behavior plan or a functional behavioral analysis prior to the August 2007 IEP. The March IEP does not specify significant behavioral needs. However, a functional behavioral analysis was developed for the August 2007 IEP citing increased behaviors; a formal behavior plan was developed. And, a functional behavioral analysis and plan was developed for each subsequent IEP. Based on the record documentation, the HRA does not substantiate the allegations. The HRA does offer the following suggestion:

Consider including within the functional behavioral analysis, greater detail about the process used for analyzing the student's behaviors, including the time frame for the analysis.

Complaint #3: The district did not follow evaluation recommendations. According to the complaint, a psychiatrist recommended a full-time aide which was not provided and recommended modifications were not fully implemented. Although there is reference to the student receiving services from a private psychiatrist beginning with the March 2007 IEP, there was no psychiatric recommendation documented in any of the IEPs. Aide services were gradually increased over time to the point of a full-time aide while in general education. Accommodations were included in every IEP and there was no documented parental objection or concern regarding the status of the accommodations until the 09-11-08 when the parent presented a report that requested additional, specific accommodations some of which were subsequently built into the IEP. Special education mandates require IEP teams to review and consider, but not necessarily follow, evaluation results in the development of IEPs. Based on the available evidence, the HRA does not substantiate the allegation that the district did not follow evaluation recommendations. The HRA does offer the following suggestions:

1. If a private service provider is involved in the care of a student receiving special education services, solicit and review provider feedback, with parental consent, and attach or reference provider recommendations in the student's IEP.
2. The HRA noted that the parental input section remained exactly the same from one IEP to the next for several IEPs. Ensure that the district solicits and documents parental input into IEP documents.

Complaint #4: The district failed to adequately monitor a student's progress. The complaint states that the student's IEP did not include measurable goals and thus, did not allow

for the measuring of student progress. When the student was not making progress, the complaint indicates that there were not always IEP revisions.

The HRA found that the IEPs for the student included goals that allowed for measuring progress via numbers or percentages (e.g. increased/decreased behavioral incidents, increased %). The HRA also found that the district had attached a form for documenting goal progress on the more recent student IEPs. However, neither the form nor the progress section of the IEP goals contained documentation of the student's progress. Over the course of multiple IEP meetings, there were no goal revisions until the parent requested revisions in September 2008; those revisions, which addressed social interactions and verbal communication, were implemented by the district. Instead of revising goals, the district revised the IEPs in terms of increased support (e.g. aide support).

Special education mandates require that goals be measurable and the progress be reviewed on a regular basis. **Due to the lack of documentation in the IEPs or attached progress forms, the HRA substantiates the allegation that the district failed to adequately monitor a student's progress. The HRA acknowledges that the district used measurable IEP goals and repeatedly revised the IEP for a student who was experiencing difficulties. The HRA makes the following recommendation:**

- 1. Follow special education requirements regarding progress reviews by completing the goal progress section of student IEPs.**

The HRA also offers the following suggestion:

Consider the need for goal revisions in addition to increased supports when a student is experiencing difficulty in the school environment. Document the IEP team's review of current goals.

Complaint #5: The district inappropriately applied restraints. The complaint states that the district did not follow therapeutic crisis intervention principles when restraints were used. The complaint further states that restraint episodes were not properly documented and staff who applied restraints were not trained. In addition, the complaint stated that restraint policies are inconsistent across schools and the parent was not properly notified of restraint use.

The district reported to the HRA that staff who apply restraints must be TCI trained and restraint use is the last resort in managing student behaviors. The HRA did note the district's report that not all staff have to take the TCI training as per a bargaining unit agreement. The district's policy on behavioral intervention focuses on positive approaches before restrictive interventions are used. The policy requires the use of a formal, written behavior plan for student in special education with significant behaviors.

The HRA found that the student's behavior plan referenced the use of restraint if more positive approaches failed. The plan stated that only TCI staff are to be involved in implementing the behavior plan, including restraint use. The behavior plan indicates that the parent is to be notified of behavioral incidents by phone, but it is unclear if the contact is to be

made prior to restraint application. The HRA examined October 2008 behavioral plan implementation through the use of the feelings scale. It appears that the school staff used the approaches contained in the behavior plan in its most recent contacts with the student. Restraint records document that staff involved in several of the restraint incidents were not TCI trained even though the student's behavior program dictates that only TCI trained staff will implement the program and the district reported that only TCI trained staff apply restraints. Restraint documentation indicates that the staff typically used redirection prior to restraint use; in one episode the staff used deep pressure massage just after restraint application as a means to calm the student. The restraint records do document parental notification; it appears that the notification occurred after the restraint application. The documentation on restraint use is a check list that allows for some narrative reporting but most narrative documentation, with the exception of one report, provided a general description.

The district's behavioral intervention policy for students in special education addresses restraint use as a restrictive measure to be used only after less restrictive measures have been attempted and only for the time frame needed to calm the child, then, positive interventions are to be considered. Special education regulations require the IEP to consider positive behavioral intervention approaches, communication needs and assistive technology when considering student behavioral needs.

Based on the evidence reviewed by the HRA, the student's behavior plan has been based on positive approaches and the student's IEP addresses communication needs. Restraint use is to be a last resource for behavioral intervention and it appears that staff attempted to redirect the student before utilizing restraints. The restraint reports indicate that restraints were applied by staff who were not TCI trained; in addition, restraint reports generally used a checklist format with limited space for narratives detailing the chain of events that led to the restraint applications or what occurred subsequent to the restraint use. The concern that parental notification occur prior to restraint application seems unreasonable given the potential safety risk. However, it is reasonable for parents to expect notification after a restraint episode and this requirement is documented in the student's plan. **The HRA substantiates the complaint that the district inappropriately applied restraints only with regard to the restraint applications by staff who were not TCI trained as dictated by the student's behavioral program. The HRA recommends the following:**

- 1. Follow student behavioral programs with regard to restraint use and ensure that restraints are only applied by staff who are TCI trained.**

The HRA also offers the following suggestions:

1. Continue to ensure that parental notifications are appropriately documented.
2. Consider approaching the bargaining unit about TCI training as a means to increase protections for students, staff and the school environment.
3. Consider the need to more thoroughly document the chain of events that led to restraint applications as well as what occurred after the restraint application to ensure that staff returned to the use of positive interventions as soon as possible consistent with district

- policy. Consider holding debriefings after restraint episodes to evaluate the use of the restraint, the behaviors, and any alternative approaches that could have been used.
4. Consider the use of other quality assurance measures to review restrictive behavioral approaches. Examples might include administrative review, a review by a quality assurance team, parental follow-up, etc.
 5. When restraints are listed in a student's behavioral plan, ensure that there is clear information as to who is allowed to apply them to the student.

Complaint #6: The district did not adequately involve a student's parent. The complaint states that the parent did not receive the same IEP as in the student's record, that the district attempted to hospitalize a student without parental involvement, that there was no 10-day waiver notice for the IEP meeting, and there were changes to the homebound instruction without parental input.

The HRA found that the parent was invited and attended every IEP meeting held for the student. When the parent submitted specific written requests, the district seemed to carry out most requests. The HRA could not determine if there were different IEPs created for the same meeting. The HRA received and examined some of the IEP meeting notifications sent to parents; two did not allow for 10 days notice and the HRA did not see evidence of any waivers. At the same time, the HRA examined multiple pages of e-mail correspondence between the district and the parent regarding IEP contents, IEP meeting notices, etc. With regard to the hospitalization after a behavioral incident, the incident form does reference a referral to a screening agency, but the form also indicates that a call was made to the student's home although the communication that occurred was not specifically documented. Restraint documents and discipline referral forms all documented parent notification. The details of the homebound instruction were never specified in any IEP so the HRA could not evaluate if changes were made without parental feedback; however, the parent did participate in meetings to discuss the homebound placement and there was evidence of e-mail communication regarding homebound services.

Special education mandates require districts to take steps to involve parents.

Based on documented communications with the parent, parental attendance at IEP meetings, and district compliance with parental written requests, the HRA does not substantiate the allegation that the district did not adequately involve a student's parent. The HRA does suggest that the district ensure that parental waivers of 10-day meeting notices are provided and documented.

Complaint #7: The district did not fully implement the student's IEP. This complaint states that the district did not use the behavior scale without parental prompting, delayed the initiation of homebound instruction, and did not follow the IEP with regard to hours, services and integration.

The behavior scale was listed as part of the student's behavioral program when it was initially developed and continued to be a part of the program in subsequent IEPs. It is unclear how the feelings scale was initially implemented although it appears that it may not have been

used unless the student presented signs of anxiety or nervousness. The most recent documentation, from October 2008, indicates that the scale was utilized throughout the student's school day. With regard to the homebound instruction, the first physician's order is dated 02-25-08 while the tutoring hours appear to begin in May 2008 with hours being made up during the course of the summer. The HRA did see evidence of consultation time from the autism team. The IEP did reference student time being spent in the regular education environment with aide services; however, the district reported, and documentation from the October 2008 feeling scale indicates, that the student would sometimes leave the regular education environment after becoming anxious. At other times, she would handle regular education situations very well; it does appear from the most recent notes of October 2008 that the student was afforded the opportunity to be in the designated general education environment as per her IEP. There was also documentation, as per the October 2008 schedule/feelings notes, that the student was receiving social work, sensory input and speech services.

Special education requirements state that services are to be provided consistent with a student's IEP.

Based on the available evidence, the HRA finds that services were not consistent with the IEP only with regard to the delay in homebound tutoring although the HRA acknowledges that the district made up the missed tutoring time. The HRA recommends that the district:

1. Ensure compliance with special education mandates and provide services consistent with a student's IEP.

Complaint #8: The district inappropriately removed a student from general education classes. The complaint states that the student was contained in a resource room and did not have access to related services or non-academics, such as physical education, music or art.

The most recent documentation, from October 2008, indicates that the student did participate in non-academics, unless she decided to leave those classes and that she regularly received related services. As part of her behavior program, the student was allowed to take sensory breaks from scenarios that caused her anxiety. Her placement in the resource room was reviewed by the IEP team during IEP meetings at which the parent attended.

According to special education mandates, the student's IEP team determines placement. And, the district is required to follow the IEP, including behavioral programs.

Decisions regarding the appropriate placement of a student with disabilities are beyond the HRA's scope and best addressed by the student's IEP team. The student's behavior program allowed for the student to leave the general education class for a break, which she sometimes did. The October 2008 documentation does not indicate that the district removed her from the classroom. The HRA does not substantiate this allegation.

Complaint #9: The district inappropriately used discipline. The complaint indicates that there was no manifestation determination as part of the student's discipline and the student was subjected to spankings.

The district acknowledged the parental concern regarding spankings and an investigation was completed by the district; the Illinois Department of Children and Family Services reportedly refused to investigate. The HRA also found documentation of continued parental concern about how her daughter was treated. The district stated that it offered a different school placement as a means to address parental concerns.

The HRA also found evidence of a 3-day suspension after the student struck a teacher; there was no manifestation determination. However, it was the parent, rather than the district, who pursued the alternative homebound placement with a physician's prescription. Other documented discipline of suspension appeared to fall within district discipline policies and special education requirements.

Special education regulations require a review of behavioral interventions and a manifestation determination when a placement change is being considered by the IEP team subsequent to a conduct violation by a student receiving special education services. Both the district's discipline policy and the special education regulations allow for the suspension of students receiving special education for not more than 10 consecutive days.

The HRA could not confirm or deny that the student was spanked although it acknowledges that the district investigated the allegation and a report states that the DCFS was notified although DCFS documentation was not available. The HRA finds that the most recent placement change to homebound instruction was not an IEP team decision but a decision made by the parent in conjunction with the student's physician. And, the discipline of suspension was issued consistent with policy and regulatory requirements. The HRA does not substantiate the allegation. The HRA does suggest that the district acknowledge parental concerns related to a student's discomfort with a school situation and work with the parent to identify means to increase the comfort level of the student and the parent to facilitate the student's return to school.

RESPONSE

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

[REDACTED]

May 8, 2009

VIA ELECTRONIC & U.S. MAIL

[REDACTED]
Director
Human Rights Authority
Guardianship & Advocacy Commission
5407 North University, Suite 7
Peoria, Illinois 61614-4776

Re: Champaign Community Unit School District #4/Student A.J.

This correspondence shall serve as Champaign Community Unit School District #4 (“the District”) response to the report and findings issued by the Human Rights Authority (“the HRA”) on March 23, 2009. As an initial matter, the District respectfully questions the HRA’s authority and competency to investigate and render findings in the above captioned matter. Section 15 of the Guardianship and Advocacy Act (“the Act”) provides that a regional authority that receives a complaint alleging that the rights of an eligible person have been violated, shall conduct an investigation “unless it determines that the complaint is frivolous or beyond the scope of its authority or competence.” 20 ILCS 3955/15. Section 15 further provides that the Authority “may advise a complainant as to other remedies which may be available.”

First, the District is not subject to the investigatory authority of the HRA. To explain, the Act establishes a scheme for monitoring, investigating and rendering recommendations concerning complaints related to the rights of disabled persons. 20 ILCS 3955/2. Although the Act does not conclusively limit investigations to certain entities, the Act consistently applies this authority only in the context of investigations involving “service providers” and “State agencies.” See 20 ILCS 3955/17 (in an investigation, a regional authority may enter and inspect the premises of a *service provider* or *State agency* and question privately any person); see also 20 ILCS 3955/18 (in the course of an investigation, a regional authority’s ability to inspect or copy materials of the *service provider* or *State agency* is limited); 20 ILCS 3955/21 (regional authority may conduct closed meetings and hearings to protect the rights of any eligible person or *provider of services* or other person); 20 ILCS 3955/22 (during an investigation, the regional authority shall periodically inform the complainant, or *provider* and any eligible person involved of the status of the investigation) (emphasis added).

Irrefutably, the District is not a State agency. Furthermore, the District does not qualify as a “service provider” as it does not render the types of services to disabled persons that are specified by the Act. Indeed, Section 2 of the Act defines “Services” to include “examination,

diagnosis, evaluation, treatment, care, training, psychotherapy, pharmaceuticals, after-care, habilitation, and rehabilitation provided for an eligible person.” 20 ILCS 3955/2. The District is not in the business of examining, diagnosing, medically evaluating or caring for disabled persons. To the contrary, the District’s primary purpose is to educate students, including general education students, special education students, and students with disabilities. The Act’s inclusion of the term and definition of “services” and its consistent reference to “service providers” in the context of a regional authority’s investigation operates to limit the Authority’s power to investigate complaints only with respect to these entities. For these reasons, the District does not qualify as a service provider and should not be subject to the HRA’s findings in this case.

The HRA’s own regulations further support the conclusion that investigations of alleged IDEA and School Code violations were not contemplated under the Act. Indeed, HRA regulation 310.10 specifically contemplates that investigations will include violations of the Mental Health and Developmental Disabilities Code, the Mental Health and Developmental Disabilities Confidentiality Act, and the Nursing Home Care Act. 59 Ill. Admin. Code 310.10. These laws most specifically govern service providers like hospitals and mental health centers that provide the types of medically related “services” identified in the Act. Yet the regulations are silent with respect to the School Code and the IDEA.

Finally, this conclusion is particularly supported by the fact that the overwhelming majority of decisions rendered by the HRA govern actions of medical hospital and mental health centers. Indeed, the HRA’s 2008 investigation reports almost exclusively involve Illinois hospitals and mental health centers. *See*: <http://gac.state.il.us/hra/reports.htm>. Accordingly, the HRA is without authority to render its findings with respect to the District.

Alternatively, if the HRA determines that it does have authority to render its findings with respect to the District, it should decline to issue findings in this case under Section 15 of the Act, as the issues before it are outside the scope of its expertise and competence. Indeed, the HRA’s draft substantiated findings rely entirely on complex legal issues that arise under the Individuals with Disabilities Education Act (“IDEA”), the Illinois School Code, and regulations and guidance from the U.S. Department of Education and the Illinois State Board of Education. Specifically, the HRA’s draft substantiated findings involve determinations concerning the adequacy of an Individual Education Plan (“IEP”); the adequacy of the District’s monitoring of a special education student’s academic and developmental progress towards goals listed in her IEP; whether physical restraints were properly applied; and whether the District properly implemented an IEP.

Furthermore, these issues draw upon an intricate area of law and expansive area of federal case law, all to which the HRA lacks expertise. Indeed, as described below, the HRA’s conclusion on these matters lacks legal support, and further ignores the authority established by federal case law on these issues.

Critically, these are issues that the U.S. Department of Education and the Illinois State Board of Education are particularly versed. These agencies have established an exclusive

remedy for parents, through their child's school districts, to address such issues. These matters should be considered by trained and experienced hearing officers with an expertise in special education that is necessary for evaluating such matters. For these reasons, the District respectfully requests the HRA to decline to render findings in this matter.

Notwithstanding the above objections, the District provides the following responses to the HRA's draft substantiated findings.

1. The HRA substantiates Complaint #1, that the student's IEP was inadequate.

Specifically, the HRA basis its determination on an alleged lack of a regular education teacher at the December 2007 IEP meeting, an alleged lack of specifics regarding homebound instruction in the 02-15-08 IEP, and an alleged lack of specifics related to accommodations. Accordingly, the HRA recommends the following actions in bold. The District responds to these findings and recommendations, in turn.

A. Follow special education mandates and ensure regular education teacher participation in IEP meetings that involve a student who is included in the regular education environment.

Response: As an initial matter, the HRA fails to identify which specific "special education mandates" the District allegedly violated with respect to the Student. While the HRA's "Mandates" Section of its report identifies that Section 300.321¹ requires the IEP team to include at least one regular education teacher if the student participates in the general education environment, the HRA's substantiated finding and recommendation misapplies this requirement.

To explain, HRA's only finding on this point is that "there was not a regular education teacher present at the December 2007 IEP meeting" and that "[a] regular education teacher is to participate in the IEP meeting if the student participates in the general education program." (HRA, p. 12.) HRA's analysis and application is wholly in error. Indeed, this regulation requires a regular education teacher *to be incorporated into the IEP team*, not that the regular education teacher attend every IEP meeting. To the contrary, the IDEA specifically identifies reasons why an IEP team member, such as the regular education teacher, can be excused from an IEP team meeting. Specifically, this includes times when the team member's curriculum or related services are not being modified or discussed at the IEP meeting. See 34 C.F.R. 300.321(e).

The HRA substantiated finding fails to make any determination or inquiry as to whether the December 2007 IEP meeting addressed any modifications or discussions of the general education curriculum that would require the general education teacher to be present under 34 C.F.R. 300.321(e). Nonetheless, the record clearly establishes that at the time of the December 2007 IEP meeting, the Student had not been in attendance at school since November 1, 2007.

¹ The District presumes this is in reference to 34 C.F.R. 300.321(a)(2).

Furthermore, the parent was specifically seeking homebound services at that time. (HRA, p. 6). Homebound services are, by definition, outside of the general education environment. Accordingly, there was no reason for the regular education teacher to be present at the December 2007 IEP meeting, and there was no violation of the “special education mandates” to which the HRA vaguely refers.

Additionally, the District objects to the HRA’s recommendation that it “ensure regular education teacher participation in IEP meetings that involve a student who is included in the regular education environment,” as this recommendation fails to consider the exceptions provided under the IDEA regulations and is therefore inconsistent with Federal requirements. The District further objects to this recommendation to the extent that it intimates a systemic problem concerning general education teacher attendance at student IEP meetings. Despite these objections, the District responds that it strictly adheres to requirements and regulations related to servicing special education students and developing students’ IEPs under the IDEA and the Illinois School Code.

B. When a placement and services change, ensure the IEP is revised accordingly, as per requirements.

Response: As an initial matter, the HRA fails to explain what it means when it cites “per requirements” and further fails to identify which student rights the District allegedly violated. While the HRA’s “Mandates” Section of its report identifies requirements under §300.324² that the District “revise the IEP, if needed, to address a lack of progress, reevaluation results, new information from the parents, the student’s anticipated needs, etc.,” the HRA only cites to a “lack of specifics” in the Student’s IEP regarding homebound instruction to support its substantiated finding. The District objects to this finding as vague, as it does not explain what rights the District allegedly violated.

Furthermore, §300.324 requires the IEP team to revise the IEP, “as appropriate.” The HRA does not identify any “appropriate” revisions were left out of the IEP and fails to provide any legal authority supporting its conclusion that the District left out appropriate information. Instead, the HRA seemingly relies on its own opinion and interpretation to form the basis of this conclusion. Accordingly, the District objects to the HRA’s substantiated finding on the basis that it lacks factual and legal support.

The District further objects to the HRA’s recommendation to the extent that it intimates a systemic problem concerning the District’s revision of student IEPs. Despite these objections, the District responds that it strictly adheres to requirements and regulations related to servicing special education students under the IDEA and the Illinois School Code.

² The District presumes this is in reference to 34 C.F.R. 300.324(b).

C. Ensure that special education mandates are met with regard to the IEP section on accommodations by including the following specifics with regard to the provision of those accommodations: start dates, frequency, duration, and location.

Response: The HRA finds that “accommodations were listed [in the Student’s IEP]; however those accommodations did not include specifics as to start time, duration, frequency and location. And, not all of the accommodations requested in writing by the parent in September 2008 were listed in the September 2008 IEP.”

First, the HRA fails to identify a single “special education mandate” that the District allegedly failed to meet with respect to reporting the Student’s accommodations in her IEP. Indeed, the HRA’s “Mandates” Section of its report fails to mention any reporting requirement on this point at all, let alone any legal requirements that the District notate the start dates, frequency, duration and location of any such accommodations. Accordingly, the District objects to this finding because it has no legal support that the District violated any of the Student’s rights under Federal or State law.

Moreover, the information that the HRA recommends be listed in the Student’s IEP is evident from the IEP itself. Indeed, the IEP is dated and under the IDEA, services are generally to commence within 10 days of the date of the IEP. 23 Ill. Admin. Code § 226.220. And the frequency and duration of accommodations are necessarily implied by the student’s accommodation. For instance, if a student is afforded a testing accommodation, the accommodation is provided whenever the student takes an exam or test. Likewise, if a student in a wheelchair is provided an elevator key as an accommodation to access a non-ground level floor, it is implied that the student would use that key any time he or she needs to access a non-ground level floor. Finally, the location is also implied by the IEP itself, as it specifically identifies where the student’s placement. The HRA’s recommendation provides little to no value to the student’s development and progress towards goals. Accordingly, the District objects to this recommendation.

In addition, the District objects to the HRA’s substantiated finding to the extent it relies on the conclusion that “not all of the accommodations requested in writing by the parent in September 2008 were listed in the September 2008 IEP.” Foremost, the parent is an individual IEP team member. Under the IDEA, no team member – including the parent – may make unilateral decisions with respect to accommodations provided to a student. To the contrary, the IDEA specifies that these decisions must be made by the team collectively. If a parent disagrees with a decision of the IEP team regarding the accommodations for the student, the IDEA provides the parent an exclusive remedy to initiate a due process complaint. The HRA’s substantiated finding on this point is based on an erroneous premise that a requested accommodation must necessarily be granted and therefore incorporated in an IEP. This is not only counter the cooperative spirit of the IDEA, it is legally inaccurate. For this reason, the District objects to this recommendation.

The District objects to the HRA's recommendation to the extent that it intimates a systemic problem concerning documenting students' accommodations. Nevertheless, the District responds that it commonly provides accommodations to students with disabilities. The District documents the details related to these accommodations, including how the accommodation will be provided, and for how long in a student's IEP. The District further responds that it strictly adheres to requirements and regulations related to servicing students with disabilities under the IDEA, the Americans with Disabilities Act, and the Illinois School Code.

2. The HRA substantiates Complaint #4, that the District failed to adequately monitor the student's progress.

Specifically, the HRA basis its determination on an alleged lack of documentation in the IEP or progress forms, and concludes that "special education mandates" require goals be measurable and the progress be reviewed on a regular basis. Accordingly, the HRA makes the following recommendation:

A. Follow special education requirements regarding progress reviews by completing the goal progress section of the student IEPs.

Response: The HRA's report concludes that the Student's IEP contained measurable goals and a means for measuring the Student's progress towards those goals. The HRA concludes, however, that the District failed to document the Student's progress towards those goals. Based on these conclusions, the HRA substantiates the allegation that the District failed to adequately monitor the Student's progress in violation of "special education requirements."

This case is unique in that the Parent withheld the Student from school for much of the past two school years. In light of these circumstances, the District did not provide the Student with the type of progress reports typically provided to parents of special education students. However, the District objects to the HRA's recommendation to the extent that it intimates a systemic problem concerning documenting students' progress towards IEP goals. Despite this objection, the District responds that it strictly adheres to requirements and regulations related to monitoring special education students' progress under the IDEA and the Illinois School Code.

3. The HRA substantiates Complaint #5, that the District inappropriately applied restraints.

The HRA limits its determination to restraints applied to students by staff who were not TCI trained as directed by the student's behavioral program. Accordingly, the HRA makes the following recommendation:

A. Follow student behavioral programs with regard to restraint use and ensure that restraints are only applied by staff who are TCI trained.

Response: As an initial matter, the HRS's findings fail to consider whether the District's actions were used in an emergency situation as permitted by Section 5/10-20.33 the School Code. This Section effectively provides that a non-trained staff member may implement "momentary periods of physical restriction by direct person-to-person contact, without the aid of material or mechanical devices, accomplished with limited force and that are designed (i) to prevent a student from completing an act that would result in potential physical harm to himself, herself, or another or damage to property or (ii) to remove a disruptive student who is unwilling to voluntarily leave the area." The District objects to the HRA's finding because it fails to consider whether the District's actions were consistent with this provision of the School Code.

Furthermore, the HRA's recommendation that the District "ensure that restraints are only applied by staff who are TCI approved" limits the District's authority under the School Code. And if followed, this recommendation would prohibit non-TCI staff members from intervening in escalated physically aggressive situations that without temporary restraint could result in injury to a physically aggressive student, other students or staff. For this reason, the District object to the HRA's recommendation.

Despite these objections, the District acknowledges that upon investigation prompted by this Complaint, it learned that the Student's classroom teacher was not TCI trained at the beginning of the school year. The District took immediate steps to train that teacher in TCI. The District further responds that it strictly adheres to requirements and regulations related to restraining students under the IDEA and the Illinois School Code. The District further responds that it has provided all relevant special education staff members TCI training.

4. The HRA substantiates Complaint #7, that the District did not fully implement the student's IEP.

The HRA's determination is limited only with regard to the delay in homebound tutoring, although the HRA acknowledges that the District made up the missed tutoring time. Accordingly, the HRA makes the following recommendation:

A. Ensure compliance with special education mandates and provide services consistent with a student's IEP.

Response: As an initial matter, the District objects to the HRA's substantiated finding because it is moot. Indeed, the HRA recognized that any missed homebound services were subsequently provided to the Student as tutoring time.

Furthermore, the District objects to the HRA's recommendation as vague because it fails to identify or explain which "special education mandates" to which it is referring. Despite these

[REDACTED]

[REDACTED]

May 8, 2009

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objections, the District responds that it strictly adheres to requirements and regulations related to servicing special education students under the IDEA and the Illinois School Code.

I trust this information satisfies your request. Please contact me if you have any questions or need any further information.

Very truly yours,

[REDACTED]

[REDACTED]



July 24, 2009

Arthur Culver, Superintendent
Champaign Unit 4 School District
703 S. New Street
Champaign, IL. 61820

Re: Human Rights Authority Case #08-060-9025

Dear Superintendent Culver:

The East Central Regional Human Rights Authority (HRA) is in receipt of the district's May 8, 2009 response to its report of findings on the above-named case. The response was prepared by [REDACTED] attorney for the district. The HRA offers the following comments with regard to the district's May 8th correspondence.

First, the district's response questions the HRA's jurisdiction in investigating special education complaints. As part of the Illinois Guardianship and Advocacy Commission, the HRA's jurisdiction in special education can be traced back to the Commission's enabling Act, the Guardianship and Advocacy Act (20 ILCS 3955). Section 15 of the Act, in its entirety, requires the following of a regional Human Rights Authority:

3955/15 Investigations of Complaints

A regional authority which receives a complaint alleging that the rights of an eligible person have been violated in the region in which the authority sits, shall conduct an investigation unless it determines that the complaint is frivolous or beyond the scope of its authority or competence, or unless the Commission finds that a conflict of interest exists and directs another regional authority to conduct the investigation. The authority shall inform the complainant whether it will conduct an investigation, and if not, the reason therefore. The authority may advise a complainant as to other remedies which may be available.

Furthermore, the HRA has investigated special education complaints since the Commission's inception in 1979 and the HRA's jurisdiction in special education matters was litigated and resolved by an appellate court in Illinois (Human Rights Authority v. George Miller, Superintendent (of) Galesburg School District 205, 124 Ill. App.3d 701, 464 N.E. 2d 822, 79 Ill. Dec. 929 (3d Dist. App. Ct. 1981)).



With regard to the HRA's findings and recommendations, the HRA investigated nine complaints. Of those complaints, four were substantiated, including the following: a) The student's Individualized Education Plan (IEP) was inadequate; b) The district failed to adequately monitor a student's progress; c) The district inappropriately applied restraints; and d) The district did not fully implement the student's IEP. Recommendations were issued for each substantiated finding to which the district responded. The HRA will comment to the district's response to each complaint as follows.

- a) **The student's IEP was inadequate.** The HRA found that a regular education teacher did not participate in a student's IEP meeting, that there was no revised IEP when the student's placement changed to homebound instruction, that when the IEP was eventually revised it listed two different types of placement in the same IEP, and that the district's provision of accommodations was not specified as required by special education regulations.

The district responded by stating that a regular education teacher is to be part of an IEP team but is not necessarily required to attend every IEP meeting, that the involvement of the regular education teacher at an IEP is only required if there are plans to discuss general education curriculum or modifications, and that the regular education teacher was not required to attend because the student was receiving homebound instruction.

The HRA disagrees with the district's response to the issue of regular education teacher participation in IEP meetings. Special education regulations require in Section 300.321 (a) (2) the participation of "...not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment)...." To waive the attendance by any member of the team requires, as per Section 300.321 (e), that "...the parent of a child with a disability and the public agency [to] agree, in writing that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting." Although the student in this case was receiving homebound instruction, the intent of the meeting in question was to facilitate her return to school, including some participation in the regular education environment. The HRA found no documentation that the parent agreed to waive the participation of a regular education teacher. **The HRA stands behind its recommendation: Follow special education mandates and ensure regular education teacher participation in IEP meetings that involve a student who is included in the regular education environment.**

The HRA also found that when the student's placement changed to homebound services, the subsequent IEP developed in February 2009 included the same goals, objectives and behavior plan as if the student was still attending school. The IEP eventually revised in May 2009 contained contradictory statements referencing placement as homebound in one section and cross categorical in another (pp. 5-6). Special education regulations specify in Section 300.324 (b) (ii) the reasons for considering IEP revisions; accordingly, the IEP team is to revise an IEP to address "...Any lack of expected progress toward the annual goals...The results of any reevaluation...Information about the child provided to,

or by, the parents...The child's anticipated needs; or other matters." In addition, Section 300.323 (c) (2) requires that special education services are to be "...made available to the child in accordance with the child's IEP." The HRA contends that when a student's placement changes, the IEP should be updated accordingly to accurately reflect the student's current status. In addition, a revision of goals may be warranted when the placement changes to a homebound arrangement. **The HRA stands behind its recommendation: When a placement and services change, ensure the IEP is revised accordingly as per requirements.**

With regard to the provision of accommodations for the student, the HRA found that the student's IEP lacked detailed information as the projected start date of the accommodation, the frequency of its use, the location of the accommodation and the duration; these details are required as per Section 300.320 (a) (7) of special education regulations. The district's response states that the frequency and duration of accommodations is "implied" by the IEP. The HRA does note the district's comment that the parent does not make unilateral decisions regarding the IEP, including decisions related to the use of accommodations. However, this issue was not the basis of the HRA's substantiation; the lack of specifics regarding the accommodations was the basis for the substantiation. Regardless, the HRA contends that parental input should be documented and addressed within the IEP or in attached IEP meeting notes. **The HRA stands behind its recommendation on this issue. Ensure that special education mandates are met with regard to the IEP section on accommodations by including the following specifics with regard to the provision of those accommodations: start date, frequency, duration, and location.**

- b) **The district failed to adequately monitor a student's progress.** The HRA acknowledges that the district may have had difficulty monitoring the student's progress given the student's limited attendance at school as well as her limited participation in the homebound program. The HRA accepts the district's response to this findings and recommendation on this complaint.
- c) **The district inappropriately applied restraints.** The HRA found that the student's IEP required that only staff trained on therapeutic crisis intervention (TCI) techniques should apply restraints to the student; however, district staff who had not been specifically training on TCI were applying restraints on the student. Section 300.323 (c) (2) states that "...special education and related services are [to be] made available to the child in accordance with the child's IEP." Furthermore, the School Code (105 ILCS 5/10-20.33) stipulates that "The use of physical restrains is prohibited except when (i) the student poses a physical risk to himself, herself or others, (ii) there is no medical contraindication to its use, and (iii) the staff applying the restraint have been trained in its safe application." The HRA acknowledges that the district has since trained the teacher and accepts the district's response to the recommendation.
- d) **The district did not fully implement the student's IEP.** The HRA found that the district did not provide the number of hours per week of homebound tutoring as stipulated in the student's IEP. Section 300.323 requires services to be provided in

accordance with the student's IEP. The HRA acknowledges that the district made up the missed time and accepts the district's response regarding this issue.

In conclusion, the HRA considers the tone of district's response inconsistent with the intended purpose of its investigation. The Authority is a negotiation body and its goal is to work collaboratively with providers of disability services to reach conclusion that will benefit our mutual clients. The HRA requests that the district reconsider its response with regard to the following recommendations: **1) Follow special education mandates and ensure regular education teacher participation in IEP meetings that involve a student who is included in the regular education environment. 2) When a placement and services change, ensure the IEP is revised accordingly as per requirements. 3) Ensure that special education mandates are met with regard to the IEP section on accommodations by including the following specifics with regard to the provision of those accommodations: start date, frequency, duration, and location.**

Thank you for your review. If you have questions, please do not hesitate to contact HRA Director, Teresa Parks at [REDACTED]

Sincerely,

Diana Krandel, Chair
Regional Human Rights Authority

Pc: Teresa Parks, Director, Human Rights Authority

[REDACTED]
Attorneys and Counselors

August 4, 2009

Diana Krandel, Chair
Regional Human Rights Authority
Guardianship & Advocacy Commission
[REDACTED]

Re: Human Rights Authority Case No.: 08-060-9025

Dear Ms. Krandel:

The undersigned represents Champaign Community Unit School District No. 4 ("School District"). Your July 24, 2009 letter to Arthur Culver, the School District's Superintendent has been referred to me for a response.

In that letter you request that the School District reconsider its response to three recommendations made by your agency.

Those three recommendations and the School District's response is as follows:

1. Follow special education mandates and ensure regular education participation in IEP meetings that involve a student who is included in the regular education environment.

Response: The School District follows all "special education mandates" and will continue to so do.

2. When a placement and services change, ensure the IEP is revised accordingly as per requirements.

Response: See Response to No. 1.

3. Ensure that special education mandates are met with regard to the IEP section on accommodations by including the following specifics with regard to the provision of those accommodations: start date, frequency, duration and location.

Response: See Response to No. 1.

Very truly yours,
[REDACTED]

cc: Arthur Culver
[REDACTED]

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IGAC East Central

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ADVOCACY COMMISSION
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