



FOR IMMEDIATE RELEASE

**Peoria Regional Human Rights Authority
Report of Findings
Pekin Community High School
Case #08-090-9013**

The Peoria Regional Human Rights Authority (HRA), a division of the Illinois Guardianship and Advocacy Commission, accepted for investigation the following allegations regarding special education services at Pekin Community High School (PCHS):

1. The school inappropriately disciplined a student receiving special education services.
2. The school did not follow the student's individualized education program.
3. The school did not follow requirements related to a manifestation determination meeting.

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

Approximately 2300 students attend Pekin Community High School; of those students, more than 400 receive special education services through individualized education programs (IEPs) and some receive services through 504 (Rehabilitation) Plans.

To investigate the allegations, an HRA team met with and interviewed the complainant, the school superintendent, the high school principal, the special education director and the school psychologist. The team also reviewed the student's record with the guardian's and student's consent as well as pertinent school policies and procedures.

COMPLAINT STATEMENT

According to the complaint, a high school student, with a history of primary school special education services, began high school without any special education services. Special education services for the student ended in junior high school when it was determined she no longer needed such services. In 10th grade, the student's grades began to drop and she was referred for a 504 Plan to identify needed accommodations. The student's private psychologist made recommendations specific to the needed accommodations. The complaint states that at the beginning of her junior year (2007-2008 school year), the student began having behavioral incidents. In one situation, the student reportedly participated in a protest which resulted in a one-day suspension, reduced from a three-day suspension after it was determined that certain behaviors attributed to her were actually the actions of another student. The student allegedly received a one-day suspension at a later date for carrying a stuffed animal on pajama day as part of the school's spirit week; the student reportedly argued with school officials after she refused to

give up the stuffed animal. And, the student is reported to have received a suspension in December for arguing with a school secretary. During this same time, the complaint indicates that the student began experiencing medical problems, including gastrointestinal issues, hypothyroidism, colitis and medication changes. She was eventually placed on a celiac diet. The student was subsequently referred for special education services, and an IEP meeting was held in January 2008; the IEP included a behavior plan that allowed her to have a Pass to leave class when she began feeling stressed. According to the complaint, she was not allowed to use the Pass and the IEP was generally not followed. In January 2008, she had additional incidents and the police became involved resulting in an arrest, conviction, juvenile detention and probation. Upon release from the juvenile detention center, the school was reportedly to provide a tutor as per a manifestation determination meeting; however, the complaint states that no tutor was initially provided. Also, the manifestation determination indicated a relationship between the student's behavior and her disability, but the student was reportedly not allowed to return to school because the teachers allegedly do not want her back. The complaint indicates that the school does not return student or family phone calls. A judge involved in the court case ordered the student to a residential treatment program although no beds were immediately available; instead, the student secured a community job.

FINDINGS

Interviews with School Staff

The Authority began its investigation by meeting with school administration to learn more about the school's special education services, general policies related to discipline involving students with disabilities and the situation that serves as the basis for this case. The school reported that, although it uses some services of a special education cooperative, most services are provided directly by the school. The school's special education program is its largest department employing teachers, aides, personal assistants, a full-time special education director, psychologist and social worker. The school offers a full range of comprehensive special education services, including a classroom for students with behavioral needs, a life skills program and a program that pairs regular education students with students receiving special education services. The school reported that it integrates students into regular division classes as much as possible. The school has a small number of students who are sent out of district with a few attending behavioral health schools and a couple attending programs specially designed for persons with hearing impairments.

School officials reported that most referrals for high school special education services come as referrals from feeder schools where the student previously received special education services. The referring schools will hold the IEPs that will transition the students into high school special education services. On a few occasions, the high school will conduct initial evaluations for students who have never received special education. With regard to behavioral issues, the special education program tends to target freshman students as behaviors tend to decrease as students become older. Staff reported that behaviors usually occur outside the classrooms and at unstructured times (e.g. hallways, at lunch, etc.).

The school then described discipline practices. A discipline handbook is distributed to each student who must sign a receipt; certain portions of the handbook are read to students.

Teachers may give front-line discipline, but most discipline is given by one of the school's three deans. Each dean manages the discipline of an assigned caseload of students (700 to 800 students) and reports to the assistant principal and principal. A resource police officer, secured via a city grant, is stationed on campus, who primarily preventive purposes. A police officer may become involved if an issue rises to the level of warranting police intervention; examples of issues that would require police involvement include drug possession or noncompliance.

With regard to the situation under HRA review, the school reported that the student is prone to volatile behavior resulting in explosive incidents which cause others to fear her. The behavioral approach to be used with the student is speaking to her in a calm manner, sending her to the dean's office and calling her family. The situation that led to police involvement began when the student argued with a teacher over suggested changes in her writing. The school reported that the student backed the teacher into a corner. The family was called, and a family member and several staff all gathered in the dean's office to discuss the student's behavior with her, to discuss a better way in which to handle herself and to issue a suspension. Staff reported that the student's behavior escalated in the office with the student slamming a desk and the dean stepping back in fear. The police officer was at the meeting, but stayed in the corner of the room until he was needed. The student's agitation increased and she became confrontational. Staff contend that the police officer was patient with the student but asked her to leave the building, giving her many opportunities to leave on her own. Staff stated that she began screaming obscenities and the police officer got her out of the office with the principal following. The student then swung her purse at the officer, knocking off his glasses. She was arrested and back-up police had to be called. Staff reported that the student began fighting and kicking at the police officers allegedly cracking the windshield of the police car during the behavioral episode.

According to the school, the student's behaviors primarily began this school year. At some prior point, a 504 Plan was developed identifying accommodations related to a diagnosis of Post Traumatic Stress Disorder. The school stated that beginning this school year, the behavioral issues became more prominent; in one incident, the student came to school during spirit week with a huge stuffed animal that was disruptive to the school environment. When asked to give up the stuffed animal, the student became argumentative and barged into the principal's office demanding to discuss the matter with the principal and staying in the office for an hour. Due to the increased behaviors, the school decided to pursue an IEP with a behavior plan that included a Pass that allowed the student to leave a classroom and go to either her counselor's office or to the school psychologist. Staff stated that the student was not denied the use of the Pass; instead, she would choose not to use it.

After the incident, the student was initially placed in a juvenile detention center after which she was to receive homebound tutoring until placement in a residential program could be secured. The school reported that it had a tutor in place although identifying a meeting date with the family to institute tutoring services was difficult. The school directed the student's family to residential options and the family toured, but refused at least one residential option. When a bed became available at an inpatient mental health facility in the Chicago area, the court versus the school directed placement to the inpatient facility as part of the student's probation although the school is paying for the inpatient expense. And, although the school is covering the

cost for inpatient services, it has not been privy to information about the student's treatment there.

The HRA inquired about interactions with the student's private therapist. The school reported that when a student is seeing a private professional, the school will attempt to obtain a consent to secure information about the professional's involvement. And, frequently the private professional will take the lead with regard to an issues related to their professional expertise. The student's private psychologist has had ongoing input into the student's special education arrangements, including needed student accommodations.

With regard to a grievance process, the school reported that a complaint usually begins with the special education teacher. If dissatisfied, a complaint can be reported to the special education case manager who oversees not only the student's special education services but the student's regular division experience as well. If needed, the special education director or school psychologist can be enlisted for assistance in resolving complaints.

School administrators reported that the student passed most second semester classes with the exception of Algebra in which the student received an "incomplete." The focus of the student's tutoring was on completing the Algebra coursework.

Second Interviews with School District

At a subsequent meeting, the HRA team met with and interviewed the school's special education director and psychologist who provided additional information regarding special education services at the high school and about the student who is the basis of the Authority's review. These school administrators confirmed that the student was not identified as a student in need of special education services upon entering high school. According to the administrators, the student was found no longer to be eligible for special education before completing elementary school. However, on 04-19-08, a 504 plan was developed to address the student's test anxiety related to a diagnosis of Attention Deficit Hyperactivity Disorder. The administrators reported that the 504 Plans are handled by the assistant principal's office and the special education department is not typically involved. On 04-25-07, after a behavioral incident, a manifestation determination meeting was held at which it was decided the student's behavior was not related to a disability; the student was placed on homebound services at that time and until the remainder of the school year. On 08-17-07 an updated 504 Plan was developed as the student began the 2007-2008 school year; the student's diagnosis was listed as Post Traumatic Stress Disorder. In September 2007, the school contacted the student's family to obtain consent for a case study evaluation in order to pursue special education services, but the family did not consent to the evaluation. However, consent was obtained after some behavioral incidents in the Fall of 2007 and the psychologist started testing the student in October 2007; an IEP with a behavioral plan was eventually developed based on the psychologist's evaluation. The psychologist sent a memorandum to all school staff about the student's ability to use a Pass to leave a classroom should she begin feeling agitated.

With regard to the incident, these school administrators stated that they were not directly involved. However, they understood that the incident began on 01-24-08 during an English class when the student disagreed with the teacher's comments regarding her writing; as the student

became more agitated, the teacher reportedly tried to get the student to use her Pass. However, the student reportedly refused to use the Pass and all the students in the classroom had to leave at which time the student then pulled out her Pass. In response to the HRA's inquiry about special education staff participation in the meeting that led to the arrest, the special education staff reported that they were not involved in the scheduled meeting on 01-25-08 regarding the 01-24-08 incident and the meeting arrangements were handled by the dean. The dean reportedly sent for the student using the school's security guard; the security guard allegedly enlisted the assistance of the school police officer to accompany the security guard. The student was taken to a small meeting room that included several school officials, the police officer and the student's family. Besides the arrest, the student was to serve a suspension. At a manifestation determination meeting held on 01-30-08, the IEP team determined that the student's behavior was related to her disability and she was placed on homebound services awaiting residential placement. A revised IEP was not developed.

Special education administrators were not completely sure about the chain of events that subsequently followed, however, a homebound instructor was assigned on 02-21-08. Eventually, two tutors were identified; the second tutor was identified after it was determined that the student would benefit from a tutor to work specifically with the student on Math. At the same time that the student was obtaining homebound tutoring, residential placements were being pursued. The student and her family visited a residential site which was refused by the student/family; a telephone conference call was held with the other site which had no available beds, but the student was placed on a waiting list. As part of extended school year services, the student worked on two courses during the summer which were interrupted when the student was placed at the inpatient site. The school did not know when the student was released from the inpatient program and the student is in the process of completing these two courses. The school reported that it attempted to set up an IEP meeting on 06-17-08.

Upon learning that the student had been released from the inpatient program, the school attempted to make arrangements with a local junior college to complete coursework for graduation; the family rejected this option. Therefore, a new IEP was developed after some scheduling conflicts. The student is taking six classes at the high school plus a night class at the junior college with a goal to graduate in December 2008. The student will have accommodations to take the ACT in October, and this accommodation is listed in the student's IEP. In the new IEP a modified behavior plan is included that allows the student to leave the classroom with the Pass and the student is not to be verbally confronted when leaving with the Pass.

The HRA also inquired about the discipline process for students receiving special education services. Special education staff reported that when students who have IEPs display behaviors in the regular education classes or at unstructured times, the dean's office handles the discipline and the special education division may not be specifically notified. The special education department has asked that it be notified when suspensions start totaling 5 to 6 days due to the 10-day rule that requires additional activities related to special education services.

The HRA expressed concern that the discipline meeting held to address the student's behaviors involving a room full of authority figures may have actually been a trigger for her severe response given the approaches and rationale cited in her behavior plan. The HRA asked if

discipline is typically handled in this manner; staff reported that this would not be the usual approach used when doling out discipline for other students. The HRA questioned the need to further revise the student's IEP regarding the use of this approach. The special education staff also indicated that they might be in contact with the student's family regarding upcoming Spirit week activities which seemed to be an impetus for last year's behaviors.

The special education staff concluded that there are approximately 400 students with IEPs at the high school; there are 24 students receiving specialized behavioral services in 3 behavioral classrooms. Staff indicated that the number of students receiving special education services has been fairly stable in the recent past.

Record Review

The student's record verifies that the student had been receiving special education services while in primary school and had participated in a program for at-risk children prior to elementary school. She was referred for special education services due to behaviors. Her prior IEPs included behavioral plans as well as placement in a classroom for students with behavioral needs. The record indicates that special education services were discontinued in 2000 while the student was still in elementary school.

The student began high school in 2005. On April 19, 2006, it was determined that the student would benefit from a 504 plan based on issues related to Attention Deficit Hyperactivity Disorder, problems with written expression, and anxiety during test-taking. An accommodation was given for the student to have extra time to finish tests, exams, finals and quizzes. The plan was signed by the student, family, the 504 Coordinator/Assistant Principal, and a counselor.

A manifestation determination meeting was held on 04-25-07 after a behavioral incident that began with a teacher but also involved her counselor and an officer. Meeting participants that included the family, school social worker, counselor, dean, school psychologist, assistant principal and two teachers concluded that the student's behavior was not a manifestation of her disability and she was referred for homebound tutoring.

The 504 Plan was reviewed on 08-17-07 just prior to the beginning of the 2007-2008 school year; the diagnosis of Post Traumatic Stress Disorder, was added. The accommodations in this plan included extra time for tests and quizzes, extra time for lengthy written work, use of a computer for assignments, preferential seating (by teacher's desk), an allowance to leave out steps in written math work if student can demonstrate knowledge, and an allowance to leave stressful situations in class and go to counselor's office. The student's private psychologist provided input into the 504 plan and the student's needed accommodations.

On 09-07-07, the student was given a one-day suspension for defiance and insubordination related to a protest. The HRA notes that the discipline referral initially indicated a 3-day suspension that was crossed out and replaced with a one-day suspension. On 10-01-07, the student was given a 2-day suspension for leaving the dean's office without permission and for not stopping for the security officer. The discipline form includes a note to consider meeting with the special education director. On 10-01-07 the student was issued another 3-day suspension for gross misconduct after refusing to take off a night mask, for refusing to put her

teddy bear into a locker, and for being defiant to deans and the office secretary. On 10-09-07, the student was given a one-day suspension for gross misconduct. According to the 10-09-07 referral form, the student "...asked to go to the nurse and I told her no she could go sit out w/a zero for the day since class had begun. Her reason for the nurse was she didn't feel good, which is not o.k. once class starts, she then said she was going to throw-up. I told her she could leave without permission. She simply did not want to ride on the bikes, and continued to argue. I told her to go to the dean's office and she refused and went to the counselor. She came back again w/o pass then left again. (She should be called up in the morning or later today for leaving class w/out permission)."

On 10-11-07, the student was referred for a case study evaluation. The domain meeting included the school psychologist, a family member, the school social worker, a special education teacher, a regular education teacher, the student, a counselor, the private psychologist and the special education director. The authorized family member signed the consent form. A psychological evaluation was completed on 10-19-07. The evaluation concluded that the student's working memory is in the low average range, she functions low in visual alertness to details; her processing speed is in the low average range and she "...tends to work a little slower than average." Her teacher rated her as having frequent defiance particularly with adult requests and she "very often" loses her temper. On 12-13-07, the student received a one-day suspension for insubordination. A social developmental study was completed on 01-14-08.

On 01-16-08, the student was found to be eligible for special education services and an IEP was developed which included goals to attain academic credit, explore career possibilities, and develop appropriate responses to various situations. Accommodations included extended time for tests and quizzes, extended time for written work, preferential seating, and the allowance of leaving out steps in written math assignments. She was to spend more than 99% of her time in general education classes. She was to receive special education monitoring and monthly contact with school social work services. And, a functional behavioral assessment was completed. The behavioral assessment listed behavioral antecedents as being when the student "...perceives any challenge to her sense of justice or to her need to be in control. When [the student] may anticipate negative regard from others. When [the student] perceives confrontative verbal or nonverbal communication from others." Consequences for the behaviors include removal from the situation, opportunity to vent, attention for inappropriate behaviors, and attempt to control the situation. Under the hypotheses of behavioral function, the assessments states that the student "reacts impulsively and feels others are causing a problem for her. She would like more control of her environment and an affirmation of her sense of justice." The behavior plan listed the target behaviors as being "Impulse control--inappropriate outbursts and disruptions, defiance of authority, not following school/class rules." The summary of prior interventions attempted included counseling the student, suspension, arrest and homebound tutoring. Replacement behaviors are listed as "Refraining from outbursts, following school/class rules, following instructions from adult." Behavioral strategies and supports include being allowed to leave a stressful environment and go to the special education or guidance office by showing a laminated pass to the teacher. In addition, the student was allowed to waive physical education, and the student was to receive positive supports from the guidance counselor and social worker. Restrictive measures were listed as out-of-school suspensions. Under "motivators and rewards," there is a statement that says "Will add to this section later." The

crisis plan is to "Talk calmly to [the student] in a soft voice and avoid physical guidance. If [the student] becomes dangerous to herself, others or property, physical guidance may be used. Avoid abrupt movements, speaking in a quiet voice or not at all. [Family Member] should be called immediately." The family member signed a consent to initiate the IEP effective 01-16-08.

On 01-17-08, the school psychologist sent a memo as well as the student's behavior plan to the principal, deans, counselors, teachers, security officer and police liaison. The memo stressed that the behavior plan must be followed, and that the student be allowed to discreetly leave a classroom upon showing her Pass and without question.

On 01-24-08, the student was issued 3 days of suspension for defiance and insubordination and 7 days of suspension for gross misconduct. According to a teacher's written account, the student became argumentative during 6th hour English class after receiving her grade on a theme. The student wanted to discuss the grade during class and in front of the other students. The teacher attempted to redirect her to a more appropriate time, but the student became angry. The teacher eventually sent the rest of the students to the computer lab while the teacher attempted to calm the student. The account states that the student's anger became more pronounced as she questioned the teacher and her abilities. The student then pulled out her Pass and indicated that she was leaving the class to go to her counselor to demand being placed in a new class. The teacher noted that she felt that the Pass was used inappropriately in that it was not used immediately upon becoming stressed but after her behavior had escalated and as a means to complain about the teacher.

The HRA found several notes regarding the incident that occurred on 01-25-08. The dean reported that the student was called to her office to discuss the discipline referral made by the English teacher the previous day. The dean had contacted the family member and arranged for a meeting with the family member along with a school counselor, the social worker and the police officer. The student came into the meeting and the dean informed her of the 3-day suspension for the interactions with the English teacher the previous day. The student became agitated and argumentative which quickly escalated to screaming. She was asked to leave with the family member. The principal entered the room due to the screaming. The student continued "screaming" and the police officer gave a warning to calm down and leave the building. She then yelled out an obscenity and the police officer told her she was under arrest. The student then ran out of the area with the police officer chasing after her. The dean concluded her statement by documenting that "I also need to mention that all of us present, excluding [the student] spoke in calm voices as stated in her IEP. One of the reasons for so many being involved was to prove that all of us acted professionally." The security officer documented that he and the police officer escorted the student to the dean's office. He then went to his office which is next door to the dean's office. He exited his office 15 minutes later when he heard screaming and witnessed the police officer tell the student to get up and leave with the family member or she should be arrested. The student stated she would leave if the police officer left the area. The police officer did not leave and repeated his request. When the police officer stated that the student was under arrest, the student ran. While trying to detain the student, the student hit the officer in the face with her purse knocking his glasses off. He eventually placed her in handcuffs and called for a transport car. When placing her in the police car, the student kicked the other police officer. Additional reports documenting similar accounts were submitted

by a secretary, the principal, 2 additional deans, the school counselor and the school social worker. No special education staff were involved in the meeting. The report submitted by the police officer documents the officer's actions after the student left the meeting room. According to the report, the police officer requested several times that the student leave the building with the family member. The report states that the student continued arguing, shouting profanities and refused to leave, walking toward the dean's office instead. The officer stated that he attempted to place his hands on her wrists to handcuff her and the student resisted, ran away and knocked the officer's glasses off of his face with her purse. The officer then escorted her outside, sat her on the ground, held her arms behind her, handcuffed her and called for backup while the student reportedly continued to fight. When back-up arrived, the student was reported to have kicked the back-up officer and then the 2 police officers and security officer placed the student into the caged police car. While in the police car, the student kicked the rear passenger's side window to the point that it cracked. At the police station, the student was charged with aggravated battery towards a police officer, resisting, obstructing and disarming officers, aggravated assault on school personnel and disorderly conduct. The police officer also gathered witness statements. Besides the arrest, the student was issued 10 days of suspension.

A manifestation determination meeting was held on 01-29-08 which concluded that the student's behavior was a manifestation of her disability. Meeting documentation further states that "Due to the severity of this incidence, [the student] should not return to PCHS. When she concludes her out-of-school suspension we will place her on Homebound Tutoring for up to 8 hours a week. [the special education director] will investigate a placement for her that will meet her ability level. Another conference will be held to determine the next placement." The student's family, special education staff, a regular division teacher, the counselor, social worker and dean all attended the meeting.

On 01-28-08, a judge signed an order for temporary detention of the student. In a separate document prepared by the family and given to the judge, the family shared information about the student's ongoing contacts with a private psychologist and recent medical issues, including a January 2008 diagnosis of Celiac Disease and Colitis. The family's account of the incident states that school staff and the police officer spoke to the student in a loud and strong manner and that there were "...7 authority figures standing over her." The account of the student losing control then mirrors other accounts, but described the incident as a "power struggle" between the student and the school officials. In an adjudication order dated 02-08-08, two charges were dismissed but the aggravated battery charge remained; the student was released from a juvenile detention center and placed on home detention with family. The home detention agreement required the student to cooperate with homebound tutoring.

Correspondence from the school principal dated 02-21-08, indicated that a homebound instructor was assigned to the student to ensure progress toward receiving a diploma. The letter concludes with statements regarding the student's calls to the office and making demands, the school's attempt to change instructors, and a statement that a former instructor felt threatened by the student. On March 12th, the principal sent a form letter to students, including the student in this situation, describing upcoming testing. A March 13th letter from a private psychiatric residential program verifies receipt of a referral on the student and indicates that there is a waiting list. A March 14th sentencing order places the minor on one year's probation and the

probation order states that the "Minor to successfully complete residential treatment program and cooperate w/PCHS on placement and cooperate [with probation officer] in transporting minor to placement." The probation order also states that the student is to either enroll in a GED program or attend school when in session, pay monthly probation fees, be screened for substance abuse, and follow a curfew. A March 19th letter to the family from the principal stated that the student is exempt from testing due to her status on homebound tutoring and she can take the ACT at another location than PCHS. However, a form letter dated April 2nd from the principal was sent to the student regarding testing and the testing dates at the high school. A letter from the ACT testing site dated April 3rd, lists the student's accommodations for the ACT. Then, on April 22nd, the principal sent a letter to the student's family rescinding the student's invitation to the testing at the high school "...based on her behavior and her various e-mails to staff here at the high school. She will be able to take these exams at another location and time. She is not to be on District 303 property at any time for any reason. Should she choose to ignore this, she will be arrested for trespassing....[The student] has been ordered by the court to cooperate with PCHS in finding an alternate placement and attending there in order to secure her degree. She will not be returning to PCHS as a student for the remainder of her high school career." An April 30th letter from a residential program states that the student would not be effectively served by their program.

Documentation of tutoring hours was reviewed. There were 2 primary tutors serving the student. One tutor began on February 29th and the other began on March 15th and tutoring services were provided through mid-June. Weekly tutoring hours ranged from 1.75 per week to 10 hours per week. There were 5 weeks in which the full 8 hours per week of tutoring, as referenced in the manifestation meeting, were provided: the weeks of March 17 (8 hours), March 31 (8 hours); April 14 (8.25 hours), May 19 (9 hours) and June 10 (10 hours).

Finally, the HRA examined a discharge summary completed by the inpatient residential placement on 07-09-08. The summary indicates that the student was admitted on 06-16-08. She had treatment goals related to anger management and her diagnosis of post traumatic stress disorder. Her condition at discharge was described as follows: the student "...has exhibited safe behavior since her admission....She has not had any incidents of verbal or physical aggression since her admission, and there have been no elopement attempts or attempts at self-injury." Discharge was recommended with follow-up for individual, outpatient therapy.

The HRA examined the Pass issued for an entire semester which states that the student has permission to leave class. The Pass was signed by the special education director.

Policies

The HRA examined the school's special education policies related to evaluations, IEPs, behavioral programming, discipline, placement and manifestation determination. The policy on evaluations states that the school has 60 school days to conduct an evaluation from the date that it received written consent. The school is then to hold an IEP meeting to review evaluation results. When developing an IEP, the policy requires that the IEP team is to consider the student's strengths, parental concerns, evaluation results and student needs. If a student needs a behavioral intervention plan, the policies state that the school is to summarize results of a behavioral assessment, consider prior interventions attempted, describe the interventions to be

used, list expected behavioral changes as well as a means for measuring changes, consider a review schedule and document a means of communicating with parents. Policies indicate that the IEP is to address the student's ability to participate in both state and district assessments and include any needed accommodations.

With regard to placement issues, the policies describe at length the options available as well as the process for pursuing various placements. First of all, the school is to ensure that it offers a continuum of placement options to meet students' needs. In determining the most appropriate placement, individuals who have knowledge of the student's needs are to be involved and they are to consider least restriction in the decision process. "In the event the School District must remove a special education child from his/her current program because of behavior that causes serious bodily injury or due to weapons or drug violation, the IEP Team shall identify an interim alternative education setting (IAES). This setting will enable the child to continue to progress in the general curriculum and to receive those services and modifications as described in the child's current IEP....Homebound instruction may be recommended by the IEP Team...." If the IEP team decides that a state or private placement better meets the student's needs, the school is to hold an IEP meeting inviting representatives of the state or private schools to assist with the decision. If such a placement is determined, the school continues to hold the responsibility for developing and holding IEP meetings.

The policies describe, in detail, provisions related to behavioral programming. According to the policies, "Behavioral interventions shall be used with children with disabilities to promote and strengthen desirable behaviors and reduce identified inappropriate behaviors...A behavioral intervention plan shall be based on a functional behavior assessment and shall include positive behavioral intervention strategies and supports to address the inappropriate behavior."

Finally, special education policies also address discipline for students with disabilities. The policies require that no student is to be expelled for gross disobedience or misconduct related to the student's disability; however, if the behavior is not related to the student's behavior, expulsion can occur but the district must continue to provide educational services.

A special education student may be suspended for periods of no more than 10 consecutive days each in response to separate incidents of gross disobedience or misconduct, regardless of whether the student's gross disobedience or misconduct is a manifestation of his/her disability, as long as the repeated removals do not constitute a pattern that amounts to a change in placement...and provided that such child receives educational services to the extent required by IDEA [Individual with Disabilities Education Act] during such removals.

The policy further states that a student receiving special education services may be excluded from school by a court order or upon an order of a hearing officer and if a student carries a weapon to school, uses or sells illegal drugs or inflicts serious bodily injury while at school. If this exclusion occurs, the student can only be placed in an interim placement for no more than 45 days. When such an act occurs and the student is subject to either expulsion or more than 10 cumulative days of suspension in one school year, the IEP team is to convene and either review or develop a behavior plan within 10 days.

For all removals that exceed 10 cumulative days during one school year, the School District must provide services to the student. School personnel, in consultation with at least one of the child's teachers, shall determine the services to be provided. Such services must be designed to enable the child to progress in the general curriculum and advance toward his/her IEP goals.

If discipline results in a change of placement for more than 10 consecutive school days or the student has a pattern of removals from the school, the school is to inform the parents of potential expulsion and conduct a manifestation determination meeting within 10 days after the discipline decision is made. At the manifestation determination meeting, the IEP team is to review the IEP, teacher observations, and parental information to determine if the behavior was caused by the student's disability or if the school failed to implement the IEP.

If, at the manifestation determination review conference, it is determined that the behavior of the child was a manifestation of his/her disability, the authorized administrator shall not continue with his/her recommendation for expulsion. The authorized administrator may request a review of the appropriateness of the educational placement of the child in accordance with the federal and State law. During the period necessary to propose a new placement, the child will remain in his/her then-current placement unless: The child has not served a full 10 school day suspension...The parent(s) and the School District agree on an interim placement; or...The School District obtains an order from a court...changing the then-current placement....

If the IEP team determines that the behavior was not a manifestation of a disability, the school may consider expulsion upon evidence related to the manifestation determination. The school must then hold an IEP and determine services to be provided during the expulsion period. In situations where it is determined that continued placement is likely to result in injury to the student or others, the school can obtain a court order or hearing officer decision to change the placement; an IEP meeting is to be held to address the specific placement.

As part of its review, the HRA also examined the school's general discipline procedures. The procedures list various acts that result in discipline, including disobedience, defiance, use of profanity and aggressive behaviors. These behaviors on school grounds or during school related activities result in school-determined discipline and possible arrest. An out-of-school suspension can be given by the dean, principal, assistant principal or other designee. Expulsion is a school board action considered upon recommendation by the principal or superintendent for gross disobedience and/or misconduct. The procedures also address discipline for a student receiving special education services and states that the school's discipline procedures will apply unless the student's behavior is the result of his/her disability. The manifestation determination process is described, special education protections are referenced and the continuation of education services is stated.

The HRA did not find evidence of a grievance policy in either special education or school policies.

MANDATES

State special education regulations (23 Ill. Admin. Code 226) require that "Each school district shall provide special education and related services to eligible children in accordance with their IEPs." Section 226.230 addresses the content of the IEP and states that goals are to be measurable and there should be a statement regarding the student's ability to participation in state and district assessments. Behavioral plan requirements are stated exactly the same of the special education policies regarding an assessment, prior interventions attempted, approaches, expected change and the means of evaluating, a review schedule, and the means for communicating with parents. Section 226.400 addresses discipline and states that if a student is subject to expulsion or suspension of more than 10 cumulative days, the student's IEP team is to meet and review the student's behavior plan or develop a behavior plan. Section 226.750 includes further guidelines with regard to behavioral interventions and requires the district to utilize positive behavioral approaches "...in consideration of the child's physical freedom, social interaction, and the right to placement in the least restrictive environment and...administered in a manner that respects human dignity and personal privacy." And, state regulations related to evaluations (23 Ill. Admin. Code 226.110) state that evaluations are to be completed within 60 days of written consent and if the district cannot complete the evaluation, the stated reasons shall be documented.

Federal regulations (34 C.F.R. 300) mirror or expand state requirements and state in Section 300.323, each eligible student shall have an IEP in place at the beginning of each school year, and services are to be provided consistent with the IEP. The IEP is to be accessible to those responsible for its implementation. Section 300.530 addresses discipline and states that the school can consider on an individual basis a change in placement for a student with a disability who violates the school's conduct code.

School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative education setting, another setting, or suspension, for not more than 10 consecutive school days...and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of conduct....After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required....For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability...school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities....

A student removed from his/her current placement is to continue to receive educational services and receive a behavioral functional analysis and behavioral services. The federal regulations describe the manifestation determination process consistent with the process already delineated in state regulations. Special circumstances are also described including sending a student to an alternative setting for carrying a weapon, selling or using drugs and for inflicting serious bodily injury. Serious bodily injury is described in regulations regarding crime (18 U.S.C. 1365) as an injury that presents a high risk of death, extreme physical pain, disfigurement, or loss or impairment of a bodily function.

CONCLUSIONS

Complaint #1: The school inappropriately disciplined a student receiving special education services.

According to the complaint, a student receiving special education services received discipline for protesting, for bringing a stuffed animal to school and for arguing with school staff. The student reportedly had behavioral needs related to her diagnoses of ADHD and PTSD, and she was experiencing medical issues during the time frame in question.

Staff reported and discipline records document that the student was issued discipline as per the complaint; however, in each incident the student's behavior, in the form of verbal interactions, escalated to the point of being called insubordinate, defiant and gross misconduct. As a result of the behaviors, the student was issued suspensions consistent with the school's discipline procedures. Just before the 2007-2008 school year, the student's 504 Plan was reviewed adding accommodations including the allowance that the student can leave the classroom when she gets stressed. After several suspensions in the Fall of 2007, the special education program determined the need for further evaluations to consider the development of an IEP and a formal behavior plan for the student. Evaluations began in October 2007. An IEP was finalized in January 2008. Shortly after the IEP was implemented, the student had behaviors that warranted discipline as per the school's discipline procedures. The school involved the police officer in the incident that led to the student's arrest. The arrest occurred after the student's behavior escalated and the student refused to leave the building.

School district and special education policies and federal regulations (34 C.F.R. 300.350) allow the school to issue discipline, including suspension, for students receiving special education services when the student violates the school's code of conduct as long the discipline does not remove the student from school for 10 consecutive days in the same school year at which time additional special education requirements must be considered.

Based on its findings, the complaint that the school inappropriately disciplined a student receiving special education services is not substantiated.

COMMENT:

The HRA does question the handling of 504 Plans by administrative staff rather than the special education staff when special education staff have specific expertise on disability and behavioral issues. In addition, the HRA is concerned that special education staff are not always notified when discipline is issued to students receiving special education services even if the student has a behavioral plan. And, the HRA notes the complaint's mention of the student's underlying medical issues as described in the IEP but not included in behavioral considerations; one past suspension in October 2007 was related to defiant behaviors associated with a request to go to the nurse. The HRA contends that a student's medical well-being can be a contributor to behaviors. As a result of these concerns, the HRA offers the following suggestions:

1. Improve collaboration between high school administrative staff and the special education program to better ensure that the needs of students with disabilities are met. Involve

special education staff in the development and oversight of 504 Plans. Inform the special education program each time a student with an IEP is issued discipline.

2. Include medical considerations when completing behavioral assessments, behavioral programming and behavioral approaches.

Complaint #2: The school did not follow the student's individualized education program.

According to the complaint, the school did not follow the student's behavior plan that allowed her to use a Pass when she began feeling stressed. And, there was a gap in the provision of tutoring services when the student was on a homebound placement.

The student's record indicates that the use of the Pass was implemented in a behavior plan developed January 16, 2008. Copies were appropriately disseminated to pertinent school staff. Staff interviewed by the HRA reported that the student chose not to use the Pass. The HRA did not find documentation regarding the use of the Pass until the January 24th incident involving an English teacher. The teacher documented that the student only used the Pass after an argument ensued and other students left the classroom not when she initially began feeling stressed as indicated in her behavioral plan. Based on the available documentation, it does not appear that the student was denied the use the Pass as intended in the IEP/behavior plan. For the incident in question, it seems that the situation had escalated beyond the point of using the Pass

However, the HRA does take issue with the approach used to issue discipline on January 25th. The student's behavioral assessment clearly states that antecedents to the student's behaviors are when the student perceives a challenge to her sense of justice and her need for control and when she anticipates negative or confrontational communication from others. The behavior plan allows her to escape stressful situations and directs staff to talk calmly and quietly with the student before considering any physical direction. One dean documented that staff did talk calmly with the student as per her IEP. On the other hand, a family member reported in documentation given to a judge that individuals in the meeting were authority figures who spoke to the student in a loud and strong manner. The approach used in issuing discipline for this student included having the student brought to the dean's office by a security officer and a police officer and then issuing the discipline in an enclosed area in the presence of several administrative staff that included the dean and a police officer. This approach appears consistent with the triggers listed as behavioral antecedents in the student's behavioral assessment. And, the behavioral plan allows the student to use Pass in order to leave stressful situations while the approach used for the discipline meeting actually put her in a stressful situation. Finally, the HRA is again concerned about the lack of involvement of special education staff in the January 25th discipline meeting; there were no special education staff present and it does not appear that they were invited or even consulted. While the Authority recognizes that the impetus for handling the discipline in this way was out of concern that the student would exhibit behaviors in response to the discipline, the school's need to recognize the student's behavioral triggers by reviewing IEP recommended behavioral approaches in addition to consulting with special education staff should have been considerations in preparing for the meeting.

Besides the approach used in issuing the discipline, the HRA is also concerned about the lack of a revised IEP subsequent to the January 25th discipline and arrest. There is

documentation of a manifestation determination that recommends homebound tutoring and the amount of hours to be provided, but no revised IEP that guides the homebound placement or the tutoring services. The last completed IEP was the January 16th IEP that included the behavior plan, class/test accommodations, and social work services which would not be as applicable in a homebound placement.

Finally, with regard to the tutoring services, the manifestation determination meeting documentation indicated that the student was to receive "up to 8 hours" of tutoring per week until residential placement was secured. Correspondence from the school principal, dated 02-21-08, stated that a tutor had been secured. While one tutor began providing services within a week, the other tutor did not begin until 3 weeks later. And, 8 hours per week of tutoring was provided in only 5 weeks over the 16-week time period in question acknowledging that in 2 of those weeks, more than 8 hours of tutoring was provided.

School special education policies and state and federal regulation require that student IEPs be followed, that behavioral assessments guide behavioral approaches and plans, and that IEPs be revised when a student's placement changes.

While the HRA does not find that the school failed to follow the student's IEP with regard to the use of the Pass, the HRA does find that the school did not follow the student's IEP with regard to the approach used in the discipline meeting and the school did not follow IEP requirements related to the need for a revised IEP when the student's placement changed. The HRA found that school did provide weekly tutoring "up to 8 hours" as listed in the manifestation document although at times, the tutoring provided was much less than the maximum 8 hours. Based on its findings, the HRA issues the following recommendations:

- 1. Ensure that special education regulations pertaining to behavioral interventions are followed by considering IEP approaches when issuing discipline to a student with behavioral needs.**
- 2. When a student's special education placement changes, revise the IEP accordingly as required by special education regulations.**

The HRA also offers the following suggestions:

1. When issuing discipline to a student in special education, involve or consult with the school's special education professionals.
2. When assigning tutoring hours in a homebound placement, consider the identification of a specific number of hours to ensure that the student and family members have a clear understanding of expectations.
3. The HRA noted that one section of the behavior plan entitled, "motivators and rewards," offered no mention of positive reinforcement. Instead, documentation states that this section would be completed later. The behavior plan for the student included an

approach that allowed the student to remove herself from stressful situations and an approach for staff to use in when there was a behavioral crisis, but no positive reinforcers were specifically identified. To ensure compliance with positive behavior intervention requirements as stated in special education regulations, the HRA suggests that this section be completed as part of behavioral planning and referenced when implementing the plan.

4. Finally, the HRA suggests that when a behavioral approach includes the use of some type of prompt such as a Pass, that the school document the use of the prompt in order to assess the frequency of its use as well as the circumstances that surround its use. This will provide better data in evaluating a student's behavioral situations and needs. The documentation provision should also be part of the behavioral plan.

Complaint #3: The school did not follow requirements related to a manifestation determination meeting.

In reviewing the student's record, the HRA identified two times in which a manifestation determination was made. The first time was when the student was receiving accommodations as per a 504 Plan and she had a behavioral incident. The school recommended expulsion in the Spring of 2007, but prior to the expulsion, a manifestation determination meeting was held as required in special education regulations. At the manifestation determination meeting, it was determined that the student's behavior was not a manifestation of her disability and the student was expelled for the remainder of the school year. The student subsequently received homebound tutoring.

In the second instance, the school had just developed an IEP and formal behavior plan for the student. After the incidents occurring on January 24th and 25th, the school recommended suspension of up to ten consecutive days requiring a manifestation determination meeting which was held on January 29th, within the required time frame. The IEP determined that the student's behaviors were a manifestation of her disability and that she not return to the high school. The team recommended that she receive tutoring services through homebound placement until another placement could be identified. The student visited one site but the family refused the placement and the placement indicated that she could not be served there. A second placement, at an inpatient facility, did not initially have available beds. Then, a judge ordered the student to the inpatient facility when a bed became available. By the time the bed had become available, the student was in a stable situation; she was working at a community job and had completed several weeks' worth of tutoring. Regardless, the student complied with the court order and received inpatient services; she was discharged with a recommendation for outpatient counseling which she had in place prior to the inpatient admission. Since returning from the inpatient placement, the student has enrolled back at the high school for the remainder of 2008 with a goal of graduating in December 2008; her IEP and behavior plan are back in place.

Based on the documented evidence, the HRA does not substantiate the complaint that the school failed to follow requirements related to a manifestation determination meeting. Requirements, including time frames, appear to be met.

The HRA acknowledges the full cooperation of the high school and its staff during the course of its investigation.