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HUMAN RIGHTS AUTHORITY - NORTHWEST REGION

REPORT 09-080-9011

ROCKFORD SCHOOL DISTRICT #205 - GUILFORD HIGH SCHOOL

Case Summary: there were no substantiated violations and a response was not required.

INTRODUCTION

The Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission accepted for investigation the following complaints of potential special education rights violations against a student at Guilford High School in Rockford:

1. The district has not provided the student with staff/faculty who are adequately trained to meet his needs.
2. A behavioral incident that led to the student's three-day suspension did not receive an adequate district review.
3. The district does not provide the student with a full day of education and isolates him in a hot room during his time in school.
4. Parents cannot voice concerns or grievances to the district without fear of retaliation.

Substantiated findings would violate protections under federal and state special education mandates (34 C.F.R. 300 and 23 Ill. Admin. Code 226).

Guilford High School educates about 2,100 students in its current enrollment; nearly 300 of them receive some level of special education services. An HRA team visited Guilford where the issues were discussed with district and school representatives and where observations were made of teaching and aide staff interacting with the student in the classroom and lunchroom settings. District policies were reviewed as were relevant sections of the student's record, with consent.

COMPLAINT SUMMARY

This review centers on the special education provided to a fifteen-year-old student who qualifies for services because of Autism. He converses primarily by typing words and sentences on a communication board and needs ample time to respond to questions and directives. The complaint states that the staff responsible for teaching him are untrained and unwilling to learn how to work with him appropriately through Facilitated Communication, and, as a result, have frustrated him to the point of causing his aggressions. He has reportedly been suspended for behaviors tied to his disability, is down to a three-hour school day and is kept in a hot room for

the duration. In addition, the school is said to have retaliated against the parents' expressed concerns over these problems by calling the Illinois Department of Children and Family Services (DCFS) on them without true cause.

Facilitated Communication, or FC, is a technique that helps a person with impairments communicate by pointing to letters, words or pictures. A facilitator holds the person's hand, wrist or forearm as he points out what he wants to say.

## FINDINGS

### Complaint #1: The district has not provided the student with staff/faculty who are adequately trained to meet the student's needs.

District representatives explained that the student is a freshman and has attended Guilford since August 2008. He is very bright but challenging, and the staff who work with him are well qualified and trained appropriately to meet his needs. The district said that the teaching and aide staff communicate effectively with the student, just not the way his parent specifically wants. He prefers to type statements and responses on a paper keyboard, and while they approve of and provide this kind of supported communication, they do it without the hand-over-hand assistance called for in the FC model. The district said there seems to be no problems with the style they use given the student's sound academic performance.

The student's special education teacher told us that she feels adequately equipped to teach him. The district provides training in Autism and has an Autism Advisory Team that has spent considerable time in her classroom, about two months, for support during his transition into high school and in subsequent Individualized Education Program (IEP) development. In addition, team members filled in when an aide was injured and had to be replaced, and they are always available to her for collaboration as needed. The team was formed about six years ago and consists of two speech pathologists, a social worker and a special education teacher who was the student's primary teacher the previous year. The teacher said that the student is intelligent; she enjoys working with him and intends to stay with him next year as well. In her view, the issue with communication is that he types quickly. Sometimes he forgoes the keyboard and verbalizes directly, usually stating that he needs a break or whatever it is he feels. She said she has watched FC instruction videos provided by the parent. She uses some components of the technique, but not the hand contact because you have to pull back the student's arm after each word and you are never sure exactly which person is the true author. Although she has never asked him which he prefers, he seems to be doing well with their communication style and his grades show success. She along with the other representatives maintained that the student's challenges come instead from the over-stimulations of large classrooms and loud or chaotic hallway settings.

The HRA observed the teacher and the student's aide in his classroom and in the lunchroom. He is taught in a small room along with one other student. Desks lined both sides of the walls; the teacher's desk was on one side of the room and at the end of the opposite side there was a large bean bag chair provided for the student to use for relaxing or calming. He and his teacher were working on a test. He answered questions by typing on his keyboard, which was contained in a three-ring binder with a set of numbers and letters on one side and a piece of paper that posed the question of whether or not he wanted help on the other side. He appeared to initiate most of the communication independently. The teacher worked quite efficiently with him, prompting him to stay on task and allowing him time to respond. Part way through the test the student typed and stated that he needed a break and went to the bean bag chair where he

stayed for about three minutes. Shortly after this the teacher was able to get him back to his desk, and he finished taking the test. When that was over the teacher had an aide work with the student on another assignment until it was time for lunch. Interaction between the aide and the student was also effective but slightly slower. The aide accompanied the student to the school's lunchroom. The aide was not overbearing and gave him space to eat at a table where he sat with other students. There were no communication barriers observed in either room.

According to the record, the student's IEP has been visited on several occasions during the school year, either by district or parent initiation and mainly to review and/or adjust allotted times, settings and behavior management. Participants consistently included his parents, his special education teacher, a math teacher, a speech/language professional and at least one, sometimes two Autism Advisory Team members. Using an assistive device is listed as the student's mode of communication; FC is not, although there are references to the parent's requests for it to be used. The most recent IEP cites progress in the student's independent communication via multiple strategies: assistive technology, typing, gesturing, and raising his hand. It calls for continued support in his communication efforts with specific attention given to timely and appropriate responses, prompting during social interactions, and expressing wants and needs to avoid physical aggression. The speech and language professional's observation report concluded that the student benefits from these supports and that they should be continued. Likewise, the Autism Advisory Team's report recommended continuation and support through the use of a keyboard and choice boards. The IEP states that the student had achieved 4 out of 4 credits and a 3.75 grade point average at the end of the fall semester.

We also reviewed the credentials of the special education teacher and Autism Advisory Team members who have been involved in the student's curriculum. To summarize the abundant information provided by the district, the special education teacher is currently certified for special teaching and approved as a Learning Behavior Specialist for preschool through age 21. She is highly qualified in English and Speech under the Illinois State Board of Education's Educator Certification System and has ongoing trainings in crisis intervention and Autism-related topics, including communication strategies. Regarding the four Autism Team members, two are certified and licensed speech and language pathologists, two are certified to teach special education, and one is a certified school administrator and social worker, all of whom have documented, ongoing trainings in multiple crisis intervention and Autism-related areas.

## CONCLUSION

District policies/procedures for IEP development state that parents, the special education teacher, a general education teacher, a social worker, a speech/language pathologist and other specialists or professionals needed must be invited to participate in the IEP process and to recommend appropriate interventions and services (#3.5).

According federal rules, a free appropriate public education must be available to all children between the ages of 3 and 21, with an IEP in effect (34 C.F.R. 300.101). The IEP team must consist of parents, one regular education teacher, if the student participates in that setting, one special education teacher and, at the district's or parents' discretion, others who have certain expertise regarding the child (34 C.F.R. 300.321). In developing the IEP, the team is to consider the student's strengths and academic, developmental and functional needs, a parent's concerns for enhancing the education of their child, and evaluation results (34 C.F.R. 300.324).

In Illinois, school districts must provide special education and related services to eligible

children in accordance with their IEPs (23 Ill. Admin. Code 226.200). Districts shall employ the types of personnel based on students' needs, who, in a professional instructional capacity, shall hold either a valid special certificate or another valid teaching certificate and approval issued by the State Board of Education specific to the area of responsibility (23 Ill. Admin. Code 226.800), which includes learning disabilities (23 Ill. Admin. Code 300.810 and 25.43).

Guilford High School is providing the student in this case with special education pursuant to an IEP that cites communication supports based on his needs. The IEP team that developed the plan includes personnel who are qualified as required and who seek continuing education specific to his disability according to the documentation provided. We cannot say that his right to a free appropriate public education is being violated or that the district provides him with unqualified and untrained staff. The complaint is not substantiated.

We are concerned however, about the parents' role as integral IEP team members and we encourage the district to ensure that it will always provide a true team approach. When a member of the team makes repeated requests that are denied, be sure that the IEP notes the reasons. The student's teacher said that she has never asked him whether he prefers to use FC, and we encourage her to do that as well.

Complaint #2: A behavioral incident that led to the student's three-day suspension did not receive an adequate district review.

District representatives described an incident that occurred in February when the student "assaulted" three other students as they waited for the school bus at home. Administration investigated the matter by interviewing those involved and determined that a three-day out of school suspension was appropriate and in accordance with the district's discipline code. Prior to that, he was given a one-day out of school suspension for physical aggression, and there are no other suspensions for the year. His parents appealed the latter disciplinary action to the school's principal who upheld the suspension. They subsequently appealed for a school board hearing but reached an agreement with the district to reduce the suspension to one day. As a result, there are two separate one-day out of school suspensions on the student's record for the 2008-2009 school year.

We reviewed documentation from the student's record covering the administration's investigation. The initial incident report stated that while waiting for the bus, a group of three students were "attacked" by him and that they were hit and kicked. A discipline referral sheet from the investigator added that he also slapped the students and cited physical abuse as the infraction. Statements were taken from the students, all of which correlated to the hitting and kicking without apparent reason, but none of them said anything about being slapped.

## CONCLUSION

The district's discipline code recognizes students with disabilities and states that discipline not involving a change in placement for a period of no longer than ten days may be imposed without regard to whether the behavior requiring discipline is a manifestation of the handicapping condition. The Principal may impose appropriate discipline not to exceed a ten-day suspension (pg. 5). Disciplinary suspensions can be applied for conduct which endangers the safety of others and includes physical abuse (pp. 7 and 16). Guidelines for suspending are outlined specifically in the district's procedures (#7.4 - 7.6).

Federal and state requirements iterate the same by allowing school personnel to suspend a child with a disability who violates codes of conduct for not more than ten consecutive school days without convening the IEP team for review of behavior plans, the need for behavior plans, or whether within a change of placement the conduct was a manifestation of the child's disability (34 C.F.R. 300.530 and 23 Ill. Admin. Code 226.400).

Based on the student's school record documentation, he was suspended for three days for physical abuse against other students. Ultimately, the three days were reduced to one, which is below the number allowed in regulations before an adequate review of the conduct and the program is required. The student's rights were not violated, and the complaint is not substantiated.

We do have concerns about accuracy regarding the February incident. District representatives used the word "assault" in describing the incident to us and the word "attacked" in their documentations. These words seem much too strong and conjure something more flagrant than what actually occurred. The school administrator who investigated the incident not only wrote that the student attacked the others but that he slapped three of them, none of whom meanwhile made any reference at all to being attacked or slapped in their statements. Hitting and kicking is a precise reflection of the incident as reported and anything more subjective should be left out. This kind of information will likely follow the student beyond his school days, and we urge the district to ensure that the record is accurate.

Complaint #3: The district does not provide the student with a full day of education and isolates him in a hot room during his time in school.

According to the district, the student began his school year with a full day program that included instructions in general education classrooms. He also had access to a self-contained room whenever he needed a break or when he was observed to become agitated. His teacher said that the general setting was too much for him; it was too demanding for him in a class with more students, and he often told her that he needed a break. He would say, "I want 149", which is the self-contained room number. It was explained that he was tolerating about ten minutes before he asked for a break and that his aggressions toward others, including toward his teacher and his aide, were on the increase. Changing classes at the end of periods proved difficult for him as well. Behaviors they typically saw were hitting, kicking, biting, pulling hair, falling on the floor and screaming at a high pitch. Following an incident in October when the student harmed his teacher, the IEP team convened and determined that a partial day program would be necessary for the student's progress and for safety, although correspondence from after the meeting showed that the parents objected to the limited schedule. The determination was based on recommendations previously provided by a consultant whom the parent brought in from an outside district. His suggestions to keep the student in short periods and then gradually extend were key in program developments over the past few years. The idea we were told is to control his environment and the stressors that cause his outbursts, and there has been ebb and flow in implementing that. His teacher said that since the transition to a smaller, controlled setting she has seen significant improvements in his behavior and work output. The student is currently taught in the self-contained room along with another student, the teacher and an aide; he has lunch in the lunchroom shared by all students. The parents are provided with English lesson materials for his time at home. Their intention is to see progress interacting with more students first and then to increase his time in school. They said there is no balance between the academic

and the functional at the moment, and their plan is to get that back. He is expected to attend another classroom with six students in the next school year and the length of his school day will be reconsidered.

We reviewed IEP and related documentation about the shift from a full to a partial school day. According to notes regarding a 10/07/08 IEP meeting, the team discussed concerns over recent aggressions toward staff. They looked at data from when the student was most successful in order to replicate the service, which was when he had a shortened day. The team agreed to shorten his day in school to decrease his anxiety levels, and when he demonstrated success, he would gradually have more classes added. The student would attend Vocational Education, Algebra, Physical Science, lunch, and then head home. The behavioral section of his program was adapted to promote a comfortable environment, increase verbal encouragement and support, to provide advanced written notices of any schedule changes, and earning approval signatures for computer time and a pizza reward. The revisions are reflected on the updated IEPs. Notes stated that the parent agreed but that she was concerned about the staff not receiving proper training and support. The team would meet again to review and update on 11/05/08. Notes from that meeting stated that the student's aggressions had decreased and that English curriculum from Virtual High School was provided to the parent; his teacher was to handle the grading. An annual review was held in December, at which time only minor changes were made that did not affect the student's schedule.

Behavioral graphs and incident reports for the year were also reviewed. There were approximately thirty-eight incidents including kicking, charging, hitting, pulling hair or falling to the floor during September and the first week of October when the student's schedule was changed. There were six incidents for the remaining three weeks in October, ten in November, four in December, seven in January, six in February, and three through the middle of March.

Regarding the room being hot, district representatives said that the student's classroom is indeed hot but that there were only two days of school left. They also said that if the teacher thought the heat caused problems she would alert administration. The HRA noted during observations in the student's classroom that it was quite warm and that the student might have been sweating. The lunchroom was extremely warm too, but so were the entire first floor grounds where all students spend their day. We were told that the school is not air conditioned except for the office where employees work during the summer when school is out of session.

## CONCLUSION

The district has procedures in place for prescribing the IEP process from eligibility determination through program development and review (#3.1 - 3.19), and the district requires implementation of behavior plans whenever a student in special education shows a pattern of behaviors that interfere significantly with student learning (#9.14), both of which are developed upon analyzed needs.

Federal and state regulations require the consideration of the student's strengths and academic, developmental and functional needs, and evaluation results in developing the IEP and any needed behavior interventions. Reviews and revisions are to be made periodically and as appropriate (34 C.F.R. 300.324). School districts must also provide special education and related services to eligible children in accordance with their IEPs (23 Ill. Admin. Code 226.200).

According to the student's school record, Guilford started his school year with a full day and within the general setting. At the onset he showed struggles with his new surroundings,

appeared disinterested in staying in larger settings and had numerous physical outbursts, which was supported by well-documented behavioral analyses. The IEP was revised to adjust to these problems, and the school is providing education accordingly. His room *is* very hot, at least in May when we visited, although the entire school was hot at the same time. Based on the contents of the student's record and his IEP, we cannot say that his rights are being violated. The complaint is not substantiated.

Since the district has noted progress with the student following the October change, we urge the district to move forward with plans to increase his class size and ultimately his time in school so that the parents are no longer forced to educate their son at home in the afternoons. Consider tutoring services as he moves toward that goal. It is also suggested that the student's teacher consult the parents on whether they feel there is a need to alleviate the heat in their son's classroom during warm months.

#### Complaint #4: Parents cannot voice concerns or grievances to the district without fear of retaliation.

This complaint arises from an instance when the DCFS was sent to the student's home following a complaint of abuse/neglect. We followed up with the student's parent for background information about the incident. The parent said that they had a foreign exchange student living with them who was at the bus stop with the other children when the student hit and kicked them. The foreign exchange student went to school crying, and she told them later that the school interviewed her about the incident. The DCFS arrived within days, and they were never clear about a specific complaint, only that it had to do with neglect of child care. There were many questions about whether the student was left alone with his siblings. There were no findings in the complaint.

The district's attorney responded to this allegation by stating that the district never took any retaliatory action against the student or his parents for voicing their concerns or grievances. She also stated that because reporting to the DCFS is confidential and to the extent the district may have contributed information to child protection investigators, they are not at liberty to release related information. She went on to explain that district staff are mandated reporters under the Abused and Neglected Child Reporting Act and that any staff member who believes that a student may be neglected or abused has an obligation to report that information to the DCFS.

#### Conclusion

Guilford's student handbook includes notification on the district's steps for filing grievances. There are instructions on how to file a complaint; there is a description of the investigative process; and there are instructions on appealing any finding. Complaint managers are appointed to handle grievances and investigations, and their names and contact numbers are also provided.

The district's policy on reporting states that any employee who suspects or receives knowledge that a student may be an abused or neglected child shall immediately report such a case to the [DCFS] (#5.90).

Per the Abused and Neglected Child Reporting Act, school employees are listed as mandated reporters (325 ILCS 5/4). All records concerning reports and referrals of abuse or

neglect shall be confidential and undisclosed (325 ILCS 5/11).

The district has a system in place for students and families to lodge their complaints. We have no evidence to suggest that the district retaliated against the student or his family by calling the DCFS. The complaint is not substantiated.