



FOR IMMEDIATE RELEASE

**East Central Regional Human Rights Authority
Report of Findings
Bourbonnais School District
Case #09-060-9011**

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 Bourbonnais School District:

1. The district's special education program did not adequately address a student's needs in his individualized education program (IEP).
2. The district disregarded the student's medical condition.
3. The district harassed the student over absences related to the student's medical condition.

If found substantiated, the allegations represent violations of the Illinois School Code (105 ILCS 5) and federal and state special education mandates (34 C.F.R. 300 and 23 Ill. Admin. Code 226).

According to the Illinois State Board of Education (ISBE) website, the Bourbonnais School District had a total student population of 2,639 during the 2006-2007 school year and students with IEPs represented 13.9% (368 students) of the student population. In the 2007-2008 school year, there were 2,664 total students served by the district and 13.4% or 358 were students with IEPs.

To investigate the allegations, an HRA team met with district representatives as well as representatives from the regional truancy program, reviewed pertinent policies and, with consent, examined the record of a student.

Complaint Statement:

According to the complaint, a student with a learning disability and medical issues had multiple absences from school, but his situation was not adequately addressed through the IEP process. Instead, a referral was made to a truancy program in which a truancy officer harassed the student over medical absences and made inappropriate comments and accusations that the student was faking his illness and the student would be removed from the home.

FINDINGS

Interviews:

According to district representatives, the district follows state guidelines with regard to the provision of special education services. When a student is referred for special education, he/she

is evaluated and a team is assembled to develop an IEP. Information about special education services and district policies are available on the district website. The district stated that it recognized the student was struggling and referred him to a summer "bridge" program which assists students who might otherwise be detained with moving to the next grade. The student participated in the bridge program at the end of the 6th grade. The student did not have a special education IEP, there was no parental request for an IEP or for Response to Intervention (RTI) and the student may have slipped past school representatives who might have initiated special education evaluation. With regard to absences, the district stated that it allows for 10% unexcused absences before taking further action. However, if students are out of school for three days, the district will follow-up with daily phone calls. The district also works to have students make up missed work so that they do not fall behind. The district did discuss the potential need to include flags for students with chronic health issues for which absences would trigger additional reviews. When absences are excessive the district refers students to the regional attendance program.

Representatives of the regional truancy program reported that the program's goals are for intervention and prevention. A school district makes a formal referral to the program typically when 10% of absences are unexcused. Each school is assigned a caseworker/truancy officer who makes home visits. For the student in this case, there was a reported medical condition but no physician recommendation for homebound services. The assigned caseworker assesses family and other needs that might facilitate attendance. Truancy officers, including the officer referenced in the HRA complaint, receive background checks and have a minimum education level of a bachelor's degree in either education or criminal justice. When interviewed by the HRA team, the truancy officer reported that she had past experience in working with children in need, that she would not make home visits for an absence that had been excused by a physician's note, that she did not have a student sign a document without the parent's involvement, and that she never made the statements as alleged in the complaint. She did report that the student's parent attempted to assault her over the situation.

Record Review:

With consent, the HRA examined the student's records. His grade records for the 2006-2007 school year when the student was in 6th grade indicated that the student received all passing grades in the 1st semester; 2 passing and 5 failing grades in the 2nd semester; 1 passing, 2 incompletes and 5 failing grades for the 3rd semester; and, 6 passing grades and one failing grade for the 4th semester. A total of 116 absences and 9 tardies are documented and his placement for the following year was identified as 7th grade after participating in the Summer Bridge Program. During the 2007-2008 school year, the student received 1 passing grade (in physical education) in the first quarter and no passing grades in the second quarter; the student left the district on 12-04-07. For the 1st Quarter of the 2007-2008 school year, the student was present 13 days, absent 33 days and tardy one day. In the second quarter, he was absent all 33 days and did not attend school.

The HRA examined more detailed accumulative attendance records for the student. The first set of attendance records are dated 08-30-06 to 06-01-07 for the 2006-2007 school year. Of the 116 total absences, 89 are excused and 27 are listed as unexcused. Most of the reasons for excused absences are medically related. The HRA reviewed medical statements related to absences. On

01-26-06, the student was seen at a hospital for a urinary procedure. Lab work for "gross hematuria" was completed at a hospital on 03-28-06. Another hospital visit and more lab work was done on 04-05-06 due to "evidence of serious kidney disease." On 04-26-06, the student received hospital lab work due to a diagnosis of "intermit. Gross hematuria." The student was hospitalized from 10-31-06 to 11-01-06 for a left kidney biopsy. Doctor excuses were provided due to office visits on September 6, 12, 21, October 13, 19, November 8 and December 6 of 2006. A doctor's excuse due to illness was written for September 13, 14, 15, 18, 19, 20, 21, and 27 of 2006. A hospital statement indicated that the student had been under medical care and absent 10-2-06 through 11-07-06 but that he could return to school on November 8, 2006. A physician's note, dated 01-11-07, stated that the student could return to school on 01-08-07 "following his procedure." An emergency room discharge statement on 01-10-07 stated that the student was seen for muscle strain and an upper respiratory infection and should not be at school for 3 days. Another note documented that the student was seen by a physician on January 22, February 2, and February 16 of 2007. A hospital note indicated that the student had a procedure on 02-12-07 and could return to school on 02-16-11; a diagnosis of Hematuria (blood in urine) was listed. A hospital note dated 02-22-07 documented that the student was seen for outpatient services and was excused from school from 02-20-07 through 02-23-07. The student was excused from school on 02-26-07 and 02-27-07 for pain as per a hospital note listing a diagnosis of Hematuria. On March 1 and 2, 2007, the student was absent for diagnostic testing according to a hospital statement. The student received outpatient services on 03-08-07 and was provided a physician's excuse for 03-07-07, 03-08-07 and 03-09-07. Other hospital statements indicated that the student was absent from school on 03-12-07 due to pain, on 03-22-07 due to outpatient services, and on 04-19-07 for specialty services. Physician excuses were also provided for 09-07-11 through 09-18-07 and for 11-07-07.

When comparing excused/unexcused absences, there are discrepancies on the following dates in which the student's absence was listed as unexcused, but there appears to be a medical note: 09-21-06, 02-02-07, 03-01-07, 03-02-07, 03-07-07, 03-09-07, 03-12-07, 03-22-07, and 11-07-07.

A physician's letter to the truant officer, dated 03-22-07, stated that he was aware of the student's loss of school days over the past year. The letter listed the student's diagnoses as follows: "Left, Torsed Appendix Testicle with Acute Epididymitis [infection related to testicles], Testicular Microcalcifications [calcium deposits in testicles], Chronic Hematuria with back pain, Rule out IgA nephropathy [inflammation of kidneys], Bilateral ureterovesical junction obstruction [urinary tract obstruction] status post bilateral ureteral stent placements." The letter concludes by stating that the physician would be happy to discuss the student's diagnosis and regular school attendance rather than a home tutor.

A student retention form signed by the parent and school representatives stated that the student would be retained in the 6th grade for the 2007-2008 school year with a note stating "If [the student] makes progress and attends at least 30 out of 35 days of Summer Bridge School he will be placed into 7th grade. If he does not attend at least 30 days, he will be retained in 6th grade. If surgery is needed, a doctor's note will excuse [the student] from the 30 days requirement." In correspondence sent to the parent on 05-3-07, the Summer Bridge program is described as a program for students "who would be retained in the same grade if the program did not exist...." and primarily covers the subjects of reading and math. The letter quotes school mandates

indicating that districts can adopt policies and programs to provide remedial assistance, including a summer bridge program, to help students achieve grade promotion. The student's report regarding his participation in the bridge program stated that he had 5 absences, made excellent progress in all subject areas and did a "super job." Documentation from a tutoring service indicated that the parent had the student tested and sought out math tutoring in June 2007.

The HRA reviewed an Individualized Optional Education Plan (IOEP) compiled and signed by the truancy officer on 03-14-07. The plan stated that the student will improve attendance by 90% and receive the following attendance services: wake-up calls, alarm clock, 3 face-to-face meetings with truant caseworker each week, truant officer contact with the student's parent when absent and access to health care if ill. The student is to also complete 100% of academic assignments on time and receive academic services that include enrollment in an after-school program, supplemental education, alternative education, school supplies, academic counseling, and tutoring. Person goals for the student include appropriate behavior, reducing discipline to no more than 1 per semester, participation in at least one extra curricular activity, 100% attendance at physical and mental health appointments, and the preparation of a career plan. Finally, the plan stated that the student would be referred for health services, counseling, social services, parenting classes/support, day care, mentoring, court related services, community service/volunteer opportunities and life skills training. Other than a couple of unsigned notes, there is virtually no follow-up documentation by the truancy officer provided to the HRA that indicated that the plan was followed with regard to academic services to be received, goal implementation and progress or referrals for support services during the 2006-2007 school year or for the first part of the 2007-2008 school year. The unsigned notes along with some collateral notes by parents seem to indicate that the truancy officer visited the student at school and at home although frequency of the visits is unclear.

Policies:

The HRA examined the district's attendance/truancy policy in place during the student's enrollment which had last been revised on 10-01-07. According to the policy, compulsory attendance is required with some exception including an exception for "any child who is physically or mentally unable to attend school..." The policy references School Code requirements and indicates that the superintendent or designee will have an absenteeism and truancy program that includes protocol for excusing a student, a process for contacting parents of students absent without parent notification, a process for tracking students, a means for examining underlying causes of absenteeism, support services and resources for truant students, etc. The policy explains the school's responsibility which includes a direct call to parents if no notice of absence has been received. If the parent confirms the absence and a reason, no excuse is needed. If the parent cannot be reached and no written excuse is received from the parents upon the student's return, the student receives an unexcused absence; the school follows up with the parent. Students absent for 5 days in a 9-week grading period may be asked for a physician's statement for any further absence depending on circumstances. Also, "A letter is mailed from the nurse's office stating the District's concern and advising of the availability of support services." Parents of students with chronic absences will be notified in writing by the principal of the student's absence history and request that the parent contact a school administrator. When the absence rate reaches 10%, the school will make a referral to the regional truancy program. The policy further states that when absences total 5 days in a 9-week grading period, the

principal will send a letter to the parent with a copy going to the nurse who will make follow-up contact with the parent. The policy concludes by listing resources and supports available to students with chronic absences which include the following: conferences with school personnel, counseling, "testing by school psychologists and special education personnel," schedule/program changes, "special education assessment and placement," and a referral to community agencies for appropriate services.

The most current policy available on the district website, which was last revised in January 2011, lists only School Code requirements and does not indicate the district's responsibilities or a prescribed process for addressing absences as listed in the policy reviewed by the HRA. A separate policy regarding students at risk for failing includes resources to which a student can be referred, including testing and counseling services. And, another policy includes a description of home services for students with medical conditions who are unable to attend school.

The district's student/parent handbook includes a section on available special education services, including a description of RTI; however, there is no description of how students or parents may access the services.

The referral procedure for the Regional Attendance Assistance Program was also reviewed. The referral begins with a school notifying the program of a student's attendance issues. The student is assigned a caseworker and an "Individualized Optional Education Plan" is developed. The caseworker meets with school officials, the student and the student's parents. When a student who has been referred is absent, the caseworker makes a home visit to verify the absence. When a student's attendance has improved by 90%, program participation is discontinued. However, if attendance does not improve, the program makes a referral to the Truancy Review Board and a contract is developed involving the student, parent/guardian, caseworker, and school principal. If the contract is not followed, further court action follows. Sample forms related to the referral process were reviewed. The referral form documents a variety of information including attendance data, participation in special education, the presence of physical or emotional problems, homelessness concerns, etc. A truancy intervention checklist allows the caseworker to document interventions attempted before referring to the truancy board such as counseling with student and parents, providing an alarm clock, weekly visits to the student, referrals to medical services, providing school supplies, referrals for tutoring, etc. A sample contract identifies requirements to be fulfilled by the student and parents such as attending classes, being on time for school, providing written verification of illness, etc. The contract requires signatures by the student, parent, school administrator, truancy board chairperson and caseworker. The Program also publishes a Directory of Family Services for families residing in Kankakee and Iroquois Counties.

Mandates:

The Illinois School Code (105 ILCS 5 et seq.) provides guidance on truancy issues. According to the Code (105 ILCS 5/3-13), "Each county superintendent of schools shall appoint a county truant officer."

The Code (105 ILCS 5/26-1) addresses attendance issues as follows:

Whoever has custody or control of any child between the ages of 7 and 17 years (unless the child has already graduated from high school) shall cause such child to attend some public school in the district wherein the child resides the entire time it is in session during the regular school term, except as provided in Section 10 19.1, and during a required summer school program established under Section 10 22.33B; provided, that the following children shall not be required to attend the public schools:

1. Any child attending a private or a parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education is in the English language;

2. Any child who is physically or mentally unable to attend school, such disability being certified to the county or district truant officer by a competent physician licensed in Illinois to practice medicine and surgery in all its branches, a chiropractic physician licensed under the Medical Practice Act of 1987, an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, a physician assistant who has been delegated the authority to perform health examinations by his or her supervising physician, or a Christian Science practitioner residing in this State and listed in the Christian Science Journal; or who is excused for temporary absence for cause by the principal or teacher of the school which the child attends; the exemptions in this paragraph (2) do not apply to any female who is pregnant or the mother of one or more children, except where a female is unable to attend school due to a complication arising from her pregnancy and the existence of such complication is certified to the county or district truant officer by a competent physician;....

Furthermore, the School Code (105 ILCS 5/26-5) outlines the role of truant officers as follows:

The truant officer of the school district, whenever notified by the Superintendent, teacher, or other person of violations of this Article, or the county truant officer, when notified by the County Superintendent, shall investigate all cases of truancy or non-attendance at school in their respective jurisdictions, and if the children complained of are not exempt under the provisions of this Article, the truant officer shall proceed as is provided in this Article. The county truant officer, within the county and the district truant officers, within their respective districts, shall in the exercise of their duties be conservators of the peace and shall keep the same, suppress riots, routs, affray, fighting, breaches of the peace, and prevent crime; and may arrest offenders on view and cause them to be brought before proper officials for trial or examination.

Finally, the School Code (105 ILCS 5/26-13) states that "School districts shall adopt policies, consistent with rules adopted by the State Board of Education, which identify the appropriate supportive services and available resources which are provided for truants and chronic truants."

Federal special education regulations (34 CFR 300.101) require that "A free appropriate public education" be available to children with disabilities. A child with a disability is defined as a child " having mental retardation, a hearing impairment (including deafness), a speech or

language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as 'emotional disturbance'), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services." (34 CFR 300.8). "Other health impairment is further defined as "having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette Syndrome; and (ii) Adversely affects a child's educational performance." (34 CFR 300.8)

State special education requirements (23 Ill. Admin. Code 226) require districts to seek out students who might be eligible for special education services as follows:

Each school district shall be responsible for actively seeking out and identifying all children from birth through age 21 within the district...who may be eligible for special education and related services. Procedures developed to fulfill the child find responsibility shall include: 1) An annual screening of children under the age of five for the purpose of identifying those who may need early intervention or special education and related services. 2) Ongoing review of each child's performance and progress by teachers and other professional personnel, in order to refer those children who exhibit problems which interfere with their educational progress and/or their adjustment to the educational setting, suggesting that they may be eligible for special education and related services. 3) Ongoing coordination with early intervention programs to identify children from birth through two years of age who have or are suspected of having disabilities, in order to ensure provision of services in accordance with applicable timelines....b) When the responsible school district staff members conclude that an individual evaluation of a particular child is warranted based on factors such as a child's educational progress, interaction with others, or other functioning in the school environment, the requirements for evaluation set forth in this Subpart B shall apply. (23 Ill. Admin. Code 226.100)

According to the evaluation procedures (23 Ill. Admin. Code 226.110) districts are to make available information on the process for requesting evaluations and parental rights associated with evaluation requests. Parents or school representatives can request evaluations and requests made by parents are to receive a district written response.

CONCLUSIONS

Complaint #1: The district's special education program did not adequately address a student's needs in his individualized education program (IEP).

Complaint #2: The district disregarded the student's medical condition.

With regard to the first complaint, the student did not have an IEP for special education services. Instead, the student had an attendance plan [IOEP] through the attendance program. **Therefore, the HRA cannot substantiate the complaint that the special education program did not**

adequately address a student's needs in his IEP. However, the HRA finds that the acronym used for the attendance program (IOEP) is very similar to the acronym for the plan used in special education (IEP) which could be confusing for parents.

This attendance plan or IOEP includes goals and identifies activities to be provided by the truancy program such as the provision of a clock, transportation arrangements, access to medical care, school counseling and face-to-face visits with the truancy officer. It is unclear the extent to which the activities were carried out as it appears there were no truancy notes for the school year covered in this report with the possible exception of some notes that were unsigned and undated. However, it appears that between documentation and reports provided by the program and the parent, the truant officer did visit the student.

With regard to the second complaint, the HRA found documentation that the student had multiple absences, many of which were related to medical issues and appointments. In addition, the student had failing grades that continued to decline as the student became older and absences continued. The district did refer the student to a summer program that allowed him to proceed to another grade level and it appeared that he did very well with the program. The HRA did not find documentation that the student had been referred to any support services as indicated for failing students in the both past and current school policies and there was no documentation of the involvement of the school nurse as per the attendance policy in effect during the student's enrollment. There was no documentation that the student had been referred for RTI or special education evaluation.

The district's student/parent handbook provides a clear description of special education services and RTI but does not explain how parents might access such resources.

Special education regulations require school districts to seek out and identify students in need of special education services and provide evaluations. Furthermore, special education regulations indicate that students with health impairments can be eligible for special education services if the health impairment impacts educational performance.

The School Code requires districts to have policies in place with supports and resources for truant students.

Because the student's absences were often health-related, his grades were failing, no referrals for support services (except for summer bridge program) were made as per district policies for students at risk and a referral was not made for special education evaluation or RTI consistent with special education requirements, **the HRA substantiates the complaint that the district disregarded the student's medical condition is substantiated.** The HRA does acknowledge and commend the district for referring the student to the summer bridge program so that he could proceed to the 7th grade.

Recommendations:

- 1. When students are at risk of failing, including failing due to repeated absences, follow district policies and offer supportive services.**

2. **Follow special education requirements to seek out and identify students who may need special education services, including students with repeated absences for medical reasons who are experiencing problems with educational performance. Utilize RTI and special education evaluations to confirm or deny special education eligibility as per regulations.**
3. **Ensure that the student/parent handbook includes information about the referral process for special education evaluation and RTI.**

The HRA also takes this opportunity to offer the following suggestions:

1. Request the provision of clear, dated and signed documentation of the attendance program's activities on behalf of district students.
2. Ensure that parents and students understand that a referral to the attendance program and the subsequent IOEP is not related to special education services. Consider requesting that the attendance program change the acronym of its documented plan so that it does not resemble special education terminology.
3. The HRA commends the district for its past policy of involving the school nurse when a student has repeated absences for medical reasons and suggests that the district revisit this practice/policy to facilitate school/parent communication and student attendance.

Complaint #3: The district harassed the student over absences related to his medical condition.

According to the complaint, the truant officer harassed the student over medically related absences, made inappropriate remarks and had the student sign a document without involving the parent.

Although the truant officer is not a direct employee of the district, the officer's visits are triggered by the district.

The School Code mandates compulsory student attendance with some exceptions noted, including for physical disabilities if certified by a medical professional. The Code also mandates that the officer investigate truancy and non-attendance. The district's attendance/truancy policy at the time of the student's enrollment clearly explained how absences would be addressed, the number of absences allowed before referring to the attendance program and requirements related to physician notes. Neither the newly revised policy nor the current student/parent handbook includes this information.

The student had significant absences for the time period reviewed by the HRA many of which were health related and excused. On at least 9 occasions, the HRA found discrepancies between the district's record indicating an unexcused absence and an available physician's excuse. Regardless, the School Code provides for investigations of non-attendance by the truancy officer. The HRA could not confirm or deny that the truant officer made inappropriate comments as this

would be one person's word against the other's. **Based on the available evidence, the HRA does not substantiate the complaint that the district harassed the student over absences related to his medical condition.**

The HRA does take this opportunity to suggest the following:

1. Ensure that documentation regarding excused and unexcused absences is accurate.
2. If a parent voices concerns regarding a truant officer's behavior, notify the program and pursue a review.
3. Consider revisiting past policy that clearly described how absences would be addressed, the number of absences allowed before referring to the attendance program and requirements related to physician notes.

RESPONSE

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



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December 21, 2011

VIA FACSIMILE AND U.S. MAIL

Thomas Larison Phillips, Chairperson
Regional Human Rights Authority
2125 South First Street
Champaign, IL 61820

Re: Response to Findings, Human Rights Authority Case 09-060-9011

Dear Mr. Phillips:

This response is filed on behalf of Bourbonnais Elementary School District 53. Enclosed is the form indicating that the District would like its response to be incorporated into the public record.

Out of the three complaints addressed, only one was substantiated. Specifically, the HRA found that the District disregarded the student's medical condition. To the contrary, the District was well aware of the student's medical difficulties, and accepted parent's explanations regarding the student's absences. Significantly, parent did not ever communicate a request for home tutoring, or provide an indication that the underlying reason for the absences was chronic and required special accommodation.

That being said, in the future, the District will complete an independent investigation when a student is absent for more than 10 days in a school year as to the reasons for the absences, as well as refer such students for intervention to the District ESSIST team (Establish Successful Supports and Interventions for Students and Teachers) so that it can determine whether evaluation and/or accommodation under the Individuals with Disabilities Act or Section 504 of the Rehabilitation Act of 1973 is required. In addition, the District will seek greater collaboration with the Regional Office of Education to make sure that its truant officers are aware of the District's commitment to identify and serve students with chronic conditions that interfere with school attendance.

Thank you for sharing your response with the District. Should you have any questions, please contact me.

Sincerely,

Dana Fattore Crumley

DFC/bwr
Enclosure

cc: Ms. Bernadette Henriott, Director of Student Support Services

REGIONAL HUMAN RIGHTS AUTHORITY

HRA CASE NO. 09-060-9011

SERVICE PROVIDER: Bourbonnais School District

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

IMPORTANT NOTE

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

We ask that the following action be taken:

We request that our response to any recommendation/s, plus any comments and/or objections be included as part of the public record.

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

No response is included.

Dana Fattore Crumley
NAME

Attorney for Bourbonnais Elementary
TITLE School District 53

Dec. 21, 2011
DATE