

FOR IMMEDIATE RELEASE

Peoria Regional Human Rights Authority Report of Findings Case #10-090-9010 Midland School District

The Peoria Regional Human Rights Authority (HRA), a division of the Illinois Guardianship and Advocacy Commission, accepted for investigation the following allegations concerning a high school student receiving special education services from the Midland School District:

- 1. The school unjustifiably removed a student's accommodation that was to be provided as per the student's Individualized Education Program (IEP) and no IEP revisions were made.
- 2. Later, the accommodation was reinstated; however, it has not been adequately used to accommodate the student's educational needs. Neither the student nor her teachers have been oriented or trained on its use. The student's IEP does not adequately address its use and updates are not routinely done.
- 3. The student receives inadequate transition planning.
- 4. The district publicized confidential information involving the student.

If found substantiated, the allegations represent violations of state and federal special education regulations (34 C.F.R. 300 and 23 Ill. Admin. Code 226). There are approximately 33 high school students in the district who have IEPs.

To investigate the allegations, an HRA team met with the student, examined the student's laptop, reviewed the school website, met with a school administrator, examined pertinent school policies and, with consent, examined a student's record.

Prior to the site visit, the school district submitted to the HRA, a September 25, 2009 letter from the Illinois State Board of Education indicating that the State Board had already investigated a complaint related to allegation #1 that the school unjustifiably removed a student's accommodation that was to be provided as per the student's IEP, and no IEP revisions were made. According to the September 25, 2009 letter, the State Board received and reviewed a complaint that the student had not been allowed the use of the laptop as per the IEP, and the IEP was not revised. The State Board stated in the letter that during the student's IEP meeting which was convened on September 2, 2009 and concluded on September 18, 2009, "The district was directed to ensure that the IEP team consider the student's use of the laptop computer and

accurately document the provision of that device within the student's IEP....The district submitted a copy of the formal paperwork specific to these IEP meetings. Upon review, this paperwork included specific documentation regarding the student's use of the laptop computer at both school and home. Based upon this information, the district will not be required to complete any further corrective actions. The complaint is considered closed." Because the Illinois State Board of Education, as the enforcement entity for school districts, has already reviewed this matter and corrective action has been completed, the Authority will not duplicate the complaint investigation, findings or recommendation. However, the Authority proceeded with the remaining three complaints.

COMPLAINT STATEMENT

According to the complaint, after a laptop was reinstated as an accommodation for a high school student who receives special education, training and care for the laptop was not provided. No training was allegedly offered to the student or teachers; no updates or cleanings were done, and the laptop is reportedly not used on a routine basis. The complaint states that a "Read and Write" program is supposed to be used. The complaint also states that there is inadequate transition planning with regard to relating IEP goals to future goals. Also, the complaint indicates that the family's name was shared during a public presentation regarding the need for a tax levy. Later, the HRA received information that potentially identifying information was revealed in a written report by the principal posted on the school's internet site; the school revised the principal's report after the HRA brought it to the district's attention. Later, additional complaints were made regarding accommodations which indicated that the flash drive has been lost and had to be replaced and that the student uses a scanner at school; however, she does not have a scanner at home as per her IEP.

FINDINGS

<u>Student Interview</u>

In an interview with a student who receives special education services, the HRA inquired about her use of the laptop as well as transition planning activities. The student also allowed the HRA to examine the laptop. The student explained that she primarily uses the laptop to type up her homework; she also reported scanning homework assignments into the laptop. A flash drive with the Read and Write program is also provided; however, she did not bring the flash drive to the interview. The student reported that she uses the laptop for history writing assignments approximately one timer per week and for science homework about two times per week. She stated that she uses the Read and Write program around three times per week. According to the student, the school rarely examines the lap top or uploads/downloads items; she reported that the school usually examines the laptop just prior to a school meeting with her parents but she stated that she does not know what the school examines and she is not present when they examine it. The student indicated that she received very little training on the laptop and she does not believe that the school has completed any updates. The student reported that school staff have very little to do with the laptop and she was not aware of any laptop training that staff may have received. The student also reported using a tape recorder in class as an additional modification. Tests are also modified but homework assignments are not as per the student. The HRA asked the student to demonstrate the laptop's use. The student was able to work the various laptop functions and

open documents. The HRA examined several documents that appeared to be narratives completed for English and History classes from both 2009 and 2010. The HRA noted that the laptop was very dirty with crumbs and smudges.

With regard to transition planning, the student stated that she discusses future goals with staff but the discussion usually occurs outside the IEP meetings. She indicated an interest in nursing, and the school has encouraged her to do research on the topic of nursing. She stated that she was not aware of any transition related IEP goals.

Finally, the HRA inquired about any privacy concerns. The student stated that sometimes teachers ask her about her tape recorder and laptop in front of other students.

School District Interview

The HRA interviewed a school district administrator. The administrator stated that the laptop is the student's primary accommodation; he described that Read and Write Program which is a "text to speech" program made available to the student on flash drive. Scanning is also used and the school downloads information on an iPod that the student uses. A digital recorder was provided beginning in October 2009. The administrator reported that staff received training on the Read and Write Program in the Fall of 2008. A demonstration on the digital recorder and a handheld scanner was provided to staff and the parent in the Fall of 2009; however, the student had difficulty using the handheld scanner and uses a flat bed scanner available in the resource room instead. The school reported that an Intel reader, which puts books into speech, was recently purchased and may be an option for the student as well. A school district case manager oversees the use of accommodations and the administration makes additional checks. The administrator indicated that the student's use of the internet is limited and not much of what the student uses on the laptop requires updates. The student can reportedly complete iTunes updates on her own. Any Windows updates would be completed by the district's technology employee who originally set up the laptop but the administrator was unsure how frequently the employee would conduct any updates or reviews. The administrator stated that even if no updates were completed, this would not impact the intent of the laptop. The administrator reported that the student generally knows how to use the laptop but had to be trained on the Read and Write program, PDF documents, the digital recorder and the IPod; the training was completed last year and again this year. This year, an MP3 format was secured for the student's IPod. The administrator acknowledged that the laptop was in "cruddy shape" and stated that the student had indicated that she would clean it; however, the administrator stated that the school would clean it if needed.

With regard to transition plans, the administrator stated that the school is working at improving transition plans for all students. A specialist participated in the development of a transition plan for the student in this case. Although the parent does not allow the student to attend the IEP meeting, student input regarding transition goals is obtained via career testing as is done for all students. The district will also be engaging the Department of Rehabilitation Services. The student is expected to stay at the school for another school year and then graduate; while the school does not have a specialized program for students in the 18-21 year old age group, another school does. If the student in this case chooses not to graduate, she could continue and participate in the program offered at the other school or have an individualized

program at Midland. The district stated that it does have one student in the 18 - 21 year range who participates in a cooperative program. Contact was also made with a Step Program that facilitates employment for high school students in special education; however, the program has no new funding. The transition plan, based on the student's interest in nursing, is to have the student job shadow at a nursing home for approximately 2 hours per week.

Confidentiality was also discussed. The administrator stated that the student's family name was shared in open session and listed on a website as part of a Truth in Taxation Hearing. The information was modified in 2 to 3 weeks as per the administrator. With regard to the principal's posted report, the administrator stated that the family name was not mentioned and it was felt that the notes were ambiguous. The administrator stated that the parent is very public in sharing student information. The district reported using various means to protect student confidentiality including consents to release information, the implementation of a confidentiality policy and a student delegation form which would allow continued parental involvement after a student in special education reaches age 18.

Record Review

With consent, the HRA examined pertinent information in the record of a student receiving special education services. An IEP was developed on September 2 and 18 of 2009. The parents were present at the meetings, but the student was not. Delays were noted in the areas of mathematics, reading, intellectual, adaptive, academic, speech, visual-motor, memory and language processing skills. Under parental concerns, the IEP stated that the Read and Write program should be used for text to speech purposes more often, that they would like more prevocational activities in the high school curriculum, that they would like the student to learn to distinguish credible internet information better, and they would like to see reading improvements. A vocational evaluator attended the September 18th meeting and provided the results of a vocational assessment. The assessment results were referenced in the IEP's transition plan for the student. The transition plan identified a transition goal for each of the following post-secondary areas: education/training; employment; and, independent living. With each transition goal, an IEP goal was referenced along with related post secondary anticipated services and a responsible person or agency. The transition education/training goal was listed as follows: "Closer examination and identification of academic and vocational training programs in allied health in the local area." The corresponding IEP goal was goal #1 and related anticipated services included counseling and guidance; vocational training; transportation; assistive technology and post-secondary education/training supports. The transition employment goal indicated that the student will explore and shadow different jobs, increase knowledge of employment world and consider volunteer work. The corresponding IEP goal was goal #2 and anticipated related services included counseling, vocational training, transportation, and job related services. The transition goal for independent living stated that a goal is not needed and the student will work on math, reading, community orientation, transportation, social judgment and decision making skills. The corresponding IEP goal was #3 and anticipated needed services were listed as counseling, transportation, assistive technology and other. High school staff were listed as responsible parties to the transition goals along with external agencies. The transition plan listed the following high school courses and services as being needed to assist with post secondary goals: math, biology, history, reading, English, vocational, social work, DHS referral, speech, investigation of community resources, and career exploration.

After listing the transition plan the IEP then listed IEP goals. Included in the goals were the following: 1) Investigate allied health career that align skill levels with objectives to analyze different health related jobs and interview 3 health care workers; 2) Acquire job seeking skills with objectives to develop a resume, complete various applications and participate in mock interviews; 3) Advance math, reading and community orientation skills with objectives to manage a checking and savings account, make purchases, and measure liquids. Additional goals were included in the areas of writing, math, reading, speech, stress management, decisionmaking and independence. The independence goal stated that the student will function with optimal independence given appropriate adaptations with an objective to complete modified assignments with adaptation as listed in the modification/adaptation section of the IEP. The modification/adaptation section of the IEP listed the following modifications for testing: increased time, alternative test site, oral directions/test, modify test assignment, and calculator. For instruction, modifications included home/school communication system, checking with student for understanding, repetition of materials, directions given incrementally, oral and/or written assignments and the provision of lectures in digital format. Finally, for assignments, shortened assignments, accommodations included increased verbal response time. calculator/math table/dictionary, etc.; use of computer, additional set of books, training in the use of a scanner and IPOD. An added statement indicated that "staff will teach [the student] to determine when she should use assistive technology in the classroom." Finally, the accommodation section indicated that the student would use an assignment notebook, be given modified grades and have access to a paraprofessional. Also, "...classroom teachers will be given instruction on [the student's] assistive technology." In an addendum, it is noted that, at the 09-02-09 meeting, the parent asked for examples of the use of the Read and Write program and the use of assistive technology in the general curriculum; in response, the school offered to meet with the parent to share examples. The addendum notes a presentation by the vocational specialist who recommended hands on transitional related activities. An addendum completed for the 09-18-09 IEP notes further discussion regarding assistive technology, that the school will pursue another Read and Write Gold program to send home as well as a laptop, IPOD, and audio versions of science and history texts. Discussion also occurred regarding the use of a mobile scanner, arrangements to get the laptop back and forth between home and school, digital copies of lectures, a bag for the laptop, and staff working with the student so that she can make decisions on when to use accommodations. Meeting notes dated 02-22-10 indicated parental questions regarding technology use for transition and career activities; the school responded that the current transition plan does not address technology but it could be addressed in the next IEP with new technology coming to the school. The parent asked to meet with the teacher about technology use at school.

The vocational evaluation completed by a specialist on 08-20-09 indicated that multiple assessments were completed to evaluate interests, skills, preferences, aptitudes and achievement with regard to educational placement and transition. The evaluation concluded by listing the student's vocational assets as auditory comprehension, recall and retention, accurate hand-eye coordination and manual dexterity, accurate matching with certain types of data, identification of errors, responsiveness to oral directions and accuracy in telling time and time schedules. Vocational limitations were listed as reading, math skills, spatial perception and visual/motor problem solving, work pace and no work experience. The assessment recommended structured and short-cycle work tasks, hands-on learning, exploration/job-shadowing, contact with a preferred junior college, pre-vocational activities at the high school, community work experience, accommodations/supervision in competitive jobs, detailed transition plan goals, and a referral to the Office of Rehabilitation services. The evaluation noted that it was being given in response to a court order related to a special education hearing.

The HRA examined progress reports on IEP goals from the date that the IEP was initiated in September 2009 through March 2010. Progress notes indicated that the student was making steady progress on all IEP goals. Progress was documented using specific measurements.

The HRA reviewed a copy of information displayed at a public tax levy hearing. Contained in the information is the following statement, "Tort Levy was increased by \$100,000 to defend district from [student's last name] Special Education Litigation last year and this year." A related newspaper article indicated that the name reference was removed upon consultation with a representative from the U.S. Department of Education. Also reviewed was a principal's report posted on the school district internet site that referenced the HRA's complaint investigation and suggested the identity of the complainant without specifically listing a name; a modification was made using a more general descriptor at the request of the HRA.

Policy Review

The school reported that it has no policies specific to transition planning or modifications/accommodations. The HRA examined several policies related to confidentiality. A school board policy on school board meetings indicates that its meetings are subject to the Open Meetings Act and a portion of the meetings can be closed for certain reasons. One such reason is the placement of students in special education programs and other matters regarding individual students. The district's Code of Conduct for Board Members requires Board Members to take no private action that might compromise confidentiality or privileged information. A policy on student and family privacy rights discusses privacy related to survey instruments, the right of parents to review instructional materials, the prohibition of non-emergency, invasive physical exams, prohibitions related to selling student records requires that records be kept confidential and information not be released except as provided by law. A school record is defined in the policy as "Any record that contains personally identifiable information or other information that would link the document to an individual student...."

MANDATES

Federal special education regulations (34 C.F.R. 300.320) require that IEPs include a statement of related services and supplementary aids and services as well as modifications or supports that will help the student advance toward annual goals, that allow the student to make progress in general education and that allow for the student to be educated with nondisabled peers. Modifications are to include "The projected date for the beginning of the services and modifications...and the anticipated frequency, location and duration of those services and modifications." This section also requires that the IEP include "Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training,

education, employment, and, where appropriate, independent living skills; and...The transition services (including courses of study) needed to assist the child in reaching those goals." Section 300.622 requires that parental consent be secured before disclosing personally identifiable information.

Regulations require school districts and cooperatives to "...develop and implement a comprehensive personnel development program for all personnel involved with the education of children with disabilities."

The Illinois School Records Act (105 ILCS 10/6) prohibits the release, transfer, disclosure or dissemination of school student records or information. Section 10/2 defines a school student record as "...any writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored."

CONCLUSIONS

<u>Complaint #1: The school unjustifiably removed a student's accommodation that was to be</u> provided as per the student's Individualized Education Program (IEP) and no IEP revisions were made.

As discussed earlier in this report, this issue was previously addressed in a complaint to the Illinois State Board of Education. The HRA's scope does not supersede the authority of the district's enforcement entity.

<u>Complaint #2:</u> Later, the accommodation was reinstated; however, it has not been adequately used to accommodate the student's educational needs. Neither the student nor her teachers have been oriented or trained on its use. The student's IEP does not adequately address its use and updates are not routinely done.

The student identified and demonstrated her use of a laptop although the HRA noted that the condition of the laptop was such that it needed cleaning which the school indicated it could do. The student stated that the only time that school staff access the laptop is prior to an IEP meeting. The HRA was able to examine documents related to specific classes; it appeared that the laptop was being used primarily for word processing by the student. The student also mentioned the Read and Write program on a flash drive but she did not have it with her during the interview. The school administrator indicated that any updates would be completed by the school technology staff and that the updates are not all that necessary for the laptop's intent. The administrator stated that training was provided to the student and staff and approximate dates were given.

The student's IEP provides a detailed list of the various forms of student accommodations and supplementary aids, including the laptop. Training for the student in the use of the aids and accommodations is referenced as is training for teaching staff. The HRA could not find specific documented dates as to when any of the training may have occurred or when it was scheduled. The HRA did note repeated IEP addendum documentation of parental questions as to how technology was used for the student, and there was reference to the future scheduling of a meeting. Consistent with special education requirements there were statements, in fact an IEP page listing the student's accommodations in general areas such as for tests, class work and assignments; however, there was no specific IEP documentation related to the "the projected date for the beginning of the services and modifications...and the anticipated frequency, location and duration of those services and modifications" as specified in regulations. Regulations require that staff be adequately trained to serve students receiving special education services.

In conclusion, the HRA commends the district on the availability of various types of accommodations and supplementary aids made available to the student. The IEP includes clear statements about the aids and the areas in which they are to be used. However, the IEP does not address start dates, frequency of use and durations as required. Therefore, the HRA substantiates the complaint only with regard to the IEP identification of start dates, duration, frequency and location of accommodations and recommends the following:

Ensure that the IEP contents addresses "the projected date for the beginning of the services and modifications...and the anticipated frequency, location and duration of those services and modifications"

The HRA also offers the following suggestions.

- 1. The HRA noted that the IEP contained documentation regarding training for the student and staff on technology. The principal identified training dates and the student seemed to have a basic understanding of the laptop's operation. Based on the available information the HRA could not clearly substantiate a rights violation. However, the HRA does suggest that when an IEP identifies the need for training in a particular area, that the provision of that training be clearly documented within the IEP or within school records.
- 2. Both the HRA and the school administrator identified that the laptop was in need of cleaning. The administrator could not definitely state that updates had been done. To ensure that the laptop is in its best working condition, the HRA suggests that the school assist the student with keeping the laptop clean and updated; also, consider adding provisions for cleaning and updating the laptop to the student's IEP.
- 3. In an interview with the student, the student indicated that the school periodically examines her laptop; however, she is not present when the examination occurs. The HRA suggests that the school offer to examine the laptop in the presence of the student or her parents.
- 4. The student also mentioned that teachers sometimes ask her about the laptop and tape recorder in front of other students which, to the student, was a stated privacy concern. The HRA suggests that staff who work with the student be mindful of her privacy by pursuing questions about her accommodations in a discreet manner.

Complaint #3: The student receives inadequate transition planning.

The student's current IEP lists a student's transition plan consistent with recommendations made by a vocational specialist who evaluated the student in response to the results of a special

education hearing. The plan includes specific and measureable goals and objectives related to training, education and independent living. The transition goals were then connected to IEP goals and academic classes. Special education regulations require the provision of measureable goals based on a transition assessment and related to training, education, independent living skills, and services and courses of study to meet the transition goals. The prior transition plan had previously been addressed as part of special education hearing results which led to the involvement of a vocational specialist. The district administration indicated the district's interest in improving transition plans for all students receiving special education. Based on its findings, the HRA does not substantiate the allegation and highly commends the district on the student's current transition plan which is very thorough and based on evaluation results as well as student interest. The HRA also commends the district on its interest in enhancing transition planning for all students receiving special education results as well as student interest. The HRA also commends the district on its interest in enhancing transition planning for all students receiving special education results as well as student interest.

Comment: The school indicated and the record revealed that the student does not attend her IEP meetings. Given the fact that the student has reached the age of majority and, as a result, has a right to participate in her own IEP meetings, the HRA encourages the district to invite and include the student in IEP meetings.

Complaint #4: The district publicized confidential information involving the student.

The HRA observed, and the district acknowledged, that it posted the student's last name and special education status at a public hearing but has since removed the name. A principal's report posted on the internet did not specify the student's name but did reference some information that may or may not have been identifiable; the information was revised at the HRA's request. The School Records Act prohibits the disclosure of student information. **Based on the disclosure of the student's family name and special education status at a public hearing, the HRA substantiate the allegation and recommends the following:**

Ensure that the district follows the provisions of the School Records Act with regard to public meetings and posted information.

The HRA acknowledges the full cooperation of the school district during the course of its investigation.

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

Hodges Loizzi Eisenhammer Rodick & Kohn LLP

Jay R. Kraning jkraning@hlerk.com

October 8, 2010

Via Facsimile and U.S. Mail

Mr. Gene Seaman Human Rights Coordinator Guardianship & Advocacy Commission 5407 North University, Suite 7 Peoria, Illinois 61614

Re: Response to Complaint #10-090-9010

Dear Mr. Seaman:

OCT 1 4 2010

GUARDIANSHIP & ADVOCACY COMMISSION PEORIA REGIONAL OFFICE

My firm represents Midland Community Unit School District No. 7, the school district that was subject to the investigation conducted pursuant to this complaint. Your agency issued a written report with findings and recommendations in response to allegations of Midland Community Unit School District No. 7. Please consider this letter the District's response to your agency's Report of Findings.

The Commission's report investigated four specific complaints. In our recent phone conversation, you clarified to me that the investigation was only able to substantiate complaint #2 and 4. You asked for a response to the findings and recommendations made with respect to those two allegations. Let me begin by addressing the allegation raised in complaint #2 having to do with the student's use of a laptop computer pursuant to provisions in TEP in place at the time of your investigation.

A review of the Report of Findings indicates that the Commission's investigator reviewed the student's IEP paperwork from September, 2009, which addressed in services for the 2009-2010 school year. The Report of Findings was included with a letter to increase the service of the participate in the student's annual review and to develop in IEP for the 2010-2011 school year. We are unaware if the Commission has been apprised of that fact, as this event has occurred outside the timeframe of your investigation. At this time, it is assumed that the Commission would want their recommendations applied to the student's current IEP and program, rather than the previous IEP that is no longer in effect.

The student's current IEP was developed on August 6, 2010. It consists of approximately 27 pages. The laptop and assistive technology issues would be covered under the section of the IEP entitled "Modifications in the Regular Education Setting," found on page 24 of the IEP. On the next page of the IEP, within this same section, but under subsection C "Materials/Assignments," it states that "Assistive technology to be determined by early fall."

ARLINGTON HEIGHTS

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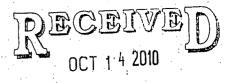
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GUARDIANSHIP & ADVOCACY COMMISSION PEORIA REGIONAL OFFICE

In response to the Commission's recommendations, the District will prepare an amendment to the IEP in which they will list the specific forms of assistive technology being provided this academic year, as well as the start dates, duration, frequency, and locations, as requested by the Commission in the conclusion section of their report. In the next subsection D of the IEP, entitled "Self Management," the District will amend the IEP to include a provision stating that the student will be trained regarding how to keep the assistive technology devices, especially laptop, in clean, working order. In subsection G, "Supports for School Personnel," it currently states, "Commission teachers will be given instruction on the assistive technology." Assuming those technology needs have been identified, the IEP will be amended to reflect what specific instruction will be provided to which school personnel, and when it will take place to address the Commission's further recommendations in this area.

One final comment needs to be made with respect to this specific area of concern. The Commission is aware, as evidenced in their report, that there was a brief period of time that the student was without the use of aptop, despite the fact that the fact that the fact that the student was a student was without the use of the student was a student was without the use of the student was a student was without the use of the student was a student was without the use of the student was a student was without the use of the student was a student was without the use of the student was a student was without the use of the student was a student was without the use of the student was a student modification to urriculum. There was evidence supplied to both the Commission, as well as the Illinois State Board of Education, establishing the fact that the laptop had been used for unauthorized purposes and had not been properly cared for while in the possession of the student family. Since that time, the student has been provided with another new laptop, which and has reportedly been damaged again, as reported by parents have requested that the District provide them with a third new laptop, but have not provided the District with the broken laptop, despite numerous requests from the District. I have included copies of correspondence as evidence of attempts made, by the District to obtain and examine the current laptop. A third new laptop has been purchased, and is ready for use by the parents comply with the District's requests to return the broken laptop and student once and sign a "Computer Proper Use Form," a form commonly used with all students who require the use of expensive assistive technology devices off school property, even those students without a history of misuse of such devices like the student in this matter.

The other matter the Commission has requested the District to respond to is allegation #4 regarding the discussion of confidential information involving the student by the District. The Commission should be aware of the fact that appendice have currently pending before the United States District Court, Central District of Illinois, a lawsuit against the District appealing the adverse findings entered against them by the administrative hearing officer in their previous due process case against the District. This is federal action, and all pleadings filed by either party in that action are public records.

meetings, has on several occasions asked District representatives to comment on the various charges levied against them the several occasions. I have discussed this situation with the District and

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have been assured that in the future, they will follow all provisions of the Illinois School Student Records Act with regard to any future public meetings and posted information having anything to do with this student.

I believe these assurances are responsive to your request for a response from the District to the findings of your Commission's report. If you have any further questions or concerns, please contact me.

Sincerely,

HODGES, LOIZZI, EISENHAMMER, RODICK & KOHN LLP

Jay R. Kraning

JRK/gw

Encl.

cc:

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