



FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY - PEORIA REGION
REPORT OF FINDINGS

Case # 10-090-9023
Farmington School District

INTRODUCTION

The Human Rights Authority (HRA) opened an investigation after receiving a complaint of possible rights violations at Farmington School District, a K-12 school. Complaints alleged the following:

- 1. The school district would not consider a student's service dog as an accommodation.**
- 2. The school district would not allow a service dog to attend school with the student.**
- 3. The student's placement was changed due to the service dog.**

If found substantiated, the allegations would violate the Illinois School Code (105 ILCS 5), Federal Special Education Regulations (34 CFR 300), the Illinois Administrative Code (23 Il. Admin. Code 226), and ADA Regulations (28 CFR 36).

Farmington School is a K-12 school that has approximately 320 students in their Junior High and 18 certified staff. They service the Knox, Fulton, and Peoria county area. They are in a contract with a special education co-op that provides the school with special education services. They have 3 special education teachers, employed by the co-op, in their Junior High. They also have a Life Skills program at the school.

The student in this case has a diagnosis of avascular necrosis of the right hip that causes him severe pain and limits his mobility. The student also has bilateral hearing loss and that hearing loss is progressing. The service dog is meant to assist the student with his mobility, by helping the student to balance and brace the student as well as assisting with his hearing loss by alerting the student of things such as traffic and fire alarms. The student attended junior high at Farmington and is currently attending a different school that is closer to his home school district.

To investigate the allegations, HRA team members met and interviewed Farmington School District staff, the student's home school principal, and the co-op that is used by the student's school district; the HRA also examined pertinent documents regarding the case. All documents were reviewed with the guardian's written consent.

COMPLAINT STATEMENT

According to the complaint, a student had obtained a service dog to assist with his disability needs during the school day and the principal would not allow the dog at the school. The complaint alleges that the school felt that if the parent wanted the service dog with the student, then the student would have to be placed in a different school that would accommodate the dog. The complaint states that the school coordinated the transfer of the student without the parent requesting the transfer. The parent alleges that she was never given a written or oral reason for the transfer of the student and that she signed to approve the transfer so that her son would not have to go through the stress of the situation any longer. The parent states that she did not want to sign the transfer but felt as though she didn't have a choice. The complaint alleges that the State Board was notified of the situation but the school expedited the placement before the Board could act. The complaint explains that the State Board cannot investigate the complaint now because the school is calling the transfer voluntary due to the parent signing for the placement. The complaint states that placement was hurried and cites that a registered letter was sent to school staff members on a Tuesday stating a date that the dog would start coming to school with the student and by Friday the parent was told that the student was going to be transferred. This situation has caused the student to move from the family's preferred school and to leave peers with whom he was familiar.

FINDINGS

Interviews with School Staff

The HRA began the investigation by interviewing school staff. The staff members consisted of the school superintendent, the director of student services, and two other school district principals. The Farmington staff explained that the student has a different home school but was placed in Farmington by the co-op with which the district contracts because of the Life Skills classes and due to the student's mobility needs. The Farmington school building is flat with very few steps that would encumber the student's mobility. The home school has many stairs and would be harder on the student due to the mobility needs. The staff explained that they received notice that the student was coming, received the student's paperwork (including the student's IEP), and they felt concern that the student was coming to their school but they were unsure about being able to accommodate the student's health needs. The staff went on to reference the large amount of prescription medication that the student was required to take and also mentioned the fact that they had just employed a full-time nurse the year before. The staff stated that once the student arrived at the school, they did not see any mobility problems from the student and they also did not see any evidence of the student's other health problems. They stated that the student was not using a wheelchair and he even wanted to play basketball and run in gym class but had a note from the doctor that he could not, so he was not allowed. The staff explained that the fire alarm was a strobe, so if children can not hear it, they can see it. They

also stated that the child had hearing aides the entire time he was at the school and he could hear pretty well.

They mentioned that the student missed a lot of school time due to illness and they felt that this was the only reason for his academic problems. They said that he had missed so much school that he was behind and they felt that there was a possibility that he did not need the Life Skills classes because he was functioning at such a high level. The staff said that if the student was continuing at the school, they would have had him reevaluated to see if he actually needed the Life Skills classes. The staff explained that the child functioned well and they did not see any signs of the balance issues that the IEP referenced.

The staff explained that students receiving special education from that home school area generally go to a different school within that district rather than coming to Farmington and they questioned the traveling aspect of the placement because Farmington was so much further away than the other school. The staff stated that the student only received PT (physical therapy) and OT (occupational therapy) at the school and they were not aware if there was any outside help regarding the student's therapies.

The staff recounted that they first heard about the service dog from the student. They said the student declared in class one day that he was getting a dog that would come to school with him. The staff explained that they heard nothing more about the service dog until an IEP meeting. During the IEP meeting, the staff had just removed an Occupational Therapy and Physical Therapy accommodation in the IEP when the mother stated that she was bringing a service dog to the school. She stated that she was bringing the dog to school with the student because of fire alarms and mobility issues. When the IEP team questioned further regarding the service dog, she said that she did not need permission to bring the dog to school. The staff stated that they could not let the dog into the school without having a meeting with the IEP team to discuss what to do involving the dog entering the school, how to deal with the dog being at the school, and then entering this information into the IEP.

The school staff set up a meeting at the home school with the mother, grandmother, and the home school superintendent. The staff said that they wanted to communicate to the student's mother that they would have to have an IEP meeting with the team to determine why the dog was needed and the details of having the dog at the school. The staff stated that they did not have enough information on why the dog was needed and, due to seeing the student at school and seeing that the student was mobile, they wanted to make sure that the dog was needed. The staff wanted to see documentation from a physician regarding why the dog was needed and they had not received that documentation. The staff stated that, because they did not have the information to start the IEP process, the service dog was not put on the IEP or allowed into the school with the student. The staff stated that they had a release sent to the child's doctor because they wanted to be a part of the process regarding the dog and they wanted information regarding the student's need for the dog. They also stated that they wanted to provide the physician with feedback.

The staff stated that on March 23rd, they received certified letters that the dog would be coming to school with the student on April 12th and that an individual from the dog training

service would be there to train the staff on the dog. The letters also had two notices from physicians recommending that the child have a service dog. The staff stated, on April 1st, they received notice to attend an IEP meeting at a school within the student's home school district. This school within the home school district was the school that students with disabilities would usually attend from that district. The staff stated that the placement took place at that meeting. They also stated that this was the first time that they had heard why the student needed the dog.

The staff explained that they never said they did not want the dog at the school, but there was a process that needed to be followed to get the dog into the school. They stated that they never add an accommodation to an IEP without reason. The staff stated that they were not involved in the transfer of the student and they did not know who initiated the student's IEP meeting; they stated that they went to the IEP meeting at the new school and the placement was done. They also expressed that they thought the mother was happy with the placement and they mentioned that the mother did not file any sort of formal grievance regarding the dog. They also mentioned that they did not know that the State Board was notified of the situation.

The staff said that at one point, the mother brought the dog to the school to meet the teacher, and they did not allow the dog into the school because they were not prepared for the dog to come into the school. They explained that the Junior High Principal told the mother that they could wait and he could get the teacher and bring her outside to see the dog.

The school stated that they have no policy regarding service animals and that those decisions all come from the co-op. They stated as long as it is an IEP decision, they would comply. During the interview, the school superintendent also mentioned that if the classroom needs modified too much, then why not put students into another class, even though the state feels differently. When asked if the student could transfer back, they stated that they were not sure why the family would make a request to come back to the school. They also stated that students could not request to go to a specific school just because they wanted to and there were rules behind where the student would go. The staff also stated that they want their students to learn in the least restrictive environment and, if the student came back, they would reevaluate him to put him in the least restrictive environment. They went on to say that they did not give the mother transfer papers to sign and played no role in initiating the transfer. They also stated that they did not know who initiated the transfer. When asked about the school grievance process, the staff explained that their grievance process was constructed in accordance with the due process requirements of the state.

Interview with home school superintendent

The HRA conducted a phone interview with the superintendent of the student's home school district. The superintendent explained that most students with disabilities attend the school that the student is currently attending. Students with disabilities attend this school because of Life Skills courses and other accommodations that make the school a good choice for students with disabilities. The superintendent explained that he was contacted by the district co-op in regards to the student. The co-op program asked for a school referral for the student. The superintendent said that the student's health issues were explained to him over the phone and two of the health issues, which were the student's mobility issues and the fact that the student needed

air conditioning, made the superintendent refer the student to Farmington. Farmington is a school with air conditioning and no stairs, while the other schools had limited air conditioning and stairs. The superintendent said that in January, the superintendent from Farmington called to set up a meeting between himself, the Farmington superintendent, and the student's mother. The meeting was to gather information regarding the student's health issues to see if a service dog was really needed by the student. The superintendent stated that at the meeting, a medical release was asked for by Farmington to see if a service dog was needed by the student. The superintendent stated that Farmington was not receiving the releases and the mother was still saying that the dog was coming to the school. The superintendent explained that the student's health issues did not match their observations of the student. For example, he said the student would run the track at Farmington, but then it is said that a service dog was needed. The superintendent also stated that the mother was very firm in the fact that the dog was coming to the school. The superintendent stated that he had a phone call with the student's mother after the meeting and she asked why the information was even needed. The superintendent said that Farmington then received a letter stating that the dog was going to be at the school in two weeks and he decided to initiate an IEP meeting to discuss the student's placement. He said that had he known the details of the student's health issues before the initial referral, that he would have had the student placed at the current school rather than Farmington. The superintendent stated that the other reasons why he initiated the placement transfer was because of the financial aspect of the student being transported by himself to Farmington rather than taking a bus that transported other children, because he wanted the child to socialize with students that would be attending the same high school as he was so he could begin relationships that would last throughout his school career, and also because he was starting to see tension between Farmington and the student's family. The superintendent wanted to steer away from any potential problems that might arise from that relationship. He said that the IEP team met and decided to place that child in the school that he is currently attending. He explained that the child could have attended two other schools or stay at Farmington but the IEP team decided to transfer the student to the new school. The superintendent also stated that the student's mother was a little upset at first during the meeting but overall he felt that she was on board with the transfer and he said that they left the meeting with a positive feeling. He stated that at first, she asked about the purpose for the IEP meeting and placement change. The superintendent was not sure if it was communicated to the mother that this was a placement meeting or not. He also stated that he could have explained his rationale for initiating the meeting to the mother a little better. He explained that he initiated the meeting by contacting the co-op and then the co-op sent out the meeting letters and set up the transfer paperwork. The superintendent stated that the placement was an IEP team decision and there was not one specific person who made the decision. The superintendent stated that if they reconvened the IEP team, and there was a reason for the student to return to Farmington, or attend another school, then he could go back. The superintendent stated that he felt as though the meeting was positive and that everyone was happy with the outcome. He also stated that the mother waived the 10-day waiting period on the placement.

Interview with co-op

The HRA met with members of the special education co-op that is used within the student's school district. The HRA met with the director of the co-op and two case workers who dealt with the student's case. The co-op members explained that they did not know exactly who

initiated the IEP meeting but it involved Farmington and the student's mother. When asked whether the home school principal initiated the placement meeting, the co-op director said that it is possible that he did. The co-op staff explained that the purpose of the IEP meeting was because the student was doing well at Farmington and they wanted to put the student in the least restrictive environment. The IEP meeting was to determine which school would be the least restrictive environment. The co-op staff explained that the student no longer needed Farmington's level of services and the IEP team looks at the student's current level of need. The student's issues that the co-op was initially made aware of were no longer affecting the student so they wanted to bring him closer to his home school district. The co-op stated that the reasons for moving the student were to surround him with his peers and they also stated that transportation was another reason why the student was transferred. When going to Farmington, the student was taking a 45-minute bus ride and was on the bus alone.

The co-op staff explained that during the meeting, the mother initially wanted to know why the transfer was happening but they did not sense any dissatisfaction with the decision. The co-op members who attended the meeting said they did not remember exactly what the mother was told when she asked why the transfer was taking place but it seemed like she was happy with the decision. They also stated that there were no complaints or grievances ahead of time.

The co-op staff also stated that the health issues that they were initially made aware of with the student were not applicable to the student once he started at Farmington. They said he was not having problems with hearing, mobility, or respiratory issues. They stated that the student was using a nebulizer but it was a device that he could work on his own. They did not know the student when he transferred from the other school district, and when they saw the issues, they decided to utilize Farmington because of the student's mobility issues and need for air conditioning. They stated that there was another school that would have been a good placement match and was closer but the classroom was full.

The co-op staff stated that there was nothing in the IEP about the service dog because it is not a school issue but rather an ADA issue, and the school has no say in ADA issues. They said that the student was certified to have a service dog and they had to let the student have the dog at school. One of the co-op members stated that at times, the student does not use the service dog and he is told that he must use it while at school. For example, the student tied the dog up during recess while he played with other children. The co-op called the mother regarding this issue and she was in full support and said that the student must use the dog while at school.

The co-op said that the process for setting up the meeting was that Farmington, the home school and the mother had conversations regarding placement. After those conversations, the co-op was contacted to set up the IEP meeting. The co-op staff then contacted everyone to set up the meeting. The co-op member who set-up the meeting said that she explained to the mother why the placement was being made and she did not recall the service dog being brought up. She also stated that the mother did not appear mad. The co-op also stated that they initially coordinated the placement of the student with Farmington.

The co-op staff stated that the mother could initiate a placement meeting if she wanted to. They said that in the meeting, they would discuss services and where to place the student. The

co-op staff stated that they look to the home school first and, if that school is not available, they start looking to other schools. They only look outside of the home school if there are no other spots. They stated that the student's actual home school does not have a Life Skills service, air conditioning, and there may be mobility issues due to the stairs in the school. They also said that because the mother initiated the meeting, it does not mean that the placement will automatically occur.

The co-op reported that the student seems happy and that he has the same program in his current school as he did in Farmington. They said that he is having no problem with stairs or mobility, no problem with heat and no other problems at the school. They also stated that the Life Skills class, where he spends most of his time, has air conditioning.

The co-op indicated that there is no specific paperwork regarding the placement but rather it is added to the IEP. They explained that there is a placement section in the IEP where the placement is added.

Record Review

With consent, the HRA reviewed pertinent documents associated with the complaints stated in this case. The HRA began its record review with the most recent Individual Education Program (IEP) document (dated 4/1/2010). On page two of the IEP, under a section titled "Placement (To Be Completed After Determination the current school's initials are handwritten in and typed "Life Skills Program." Also, in the "Parental Educational Concerns/Input" it states "Mom attended meeting and participated." In the "Supports For School Personel" section, it states "Yearly training on service dog to inform staff and students of do's and don'ts of working with the dog, to include bus staff in training." As stated in the co-op interview, this IEP is considered the placement document. Within the document, there is no communication of why the transfer to the new school occurred.

The student's three most recent IEPs determine that the student is eligible for special education because of the student's "Specific learning disability," and "other health impairments." In reviewing the student's IEP from 1/11/2010, when he was attending Farmington School District, the document states that the student receives occupational and physical therapy along with adapted physical education classes, the student is visited by a hearing consultant 3 times per year, and also receives speech consultation once per semester. In the most recent IEP (4/1/2010) the student maintains the same levels of academic achievement and functional performance, receives occupational and physical therapy along with adapted physical education, and meets with a hearing consultant 3-4 times per year to monitor hearing/accommodation. The educational services are the same: 30 minutes per week of Adapted Physical Education, 30 minutes per week of Occupational Therapy, and 90 minutes per week of Social Work Services; also, the Life Skills Program is very similar at 1477 minutes per week at Farmington and 1520 minutes per week at his current school. Many of the goals between the two IEPs are the same, both reading: "[Student's Name] will correctly read 95 words in one minute with 5 or fewer errors on the 5th grade DIBELS assessment by the end of the 3rd quarter"; "Given a grade appropriate writing prompt, [Student's Name] will write 20 words in 3 minutes"; and "By the end of the 3rd quarter, [Student's Name] will increase his KeyMath score to 90. This equivalent to a

2.9 grade level." The physical goals also match; for instance "Will participate to the best of his ability in a given activity" and "With adaptation in equipment or rules [Student's Name] will be successful in class." Also, in the "Student's Present Level of Academic Achievement" from his 1/11/2010 IEP, it states "On the 5th grade DIBELS winter benchmark testing given 12/15/2009, [Student's Name] correctly read 75 words correctly with 2 errors. His re-tell fluency score, which assesses comprehension, was 19. On the 2nd grade level writing prompts, [Student's Name] wrote 16 words in 3 minutes. [Student's Name] scored an 85 on the KeyMath assessment given 12/10/2009, which is a 2.8 grade equivalent." On the student's previous IEP, dated 9/3/2009, it states "[Student's Name] read 98 words correctly in one minute on the grade DIBELS fluency assessment. Given a writing prompt, [Student's Name] wrote 14 words in a three-minute time frame. On the Keymath assessment, [Student's Name] scored a raw score of 95 with a grade equivalent of 3.1." Also, in all three reviewed IEPs, it is stated as a goal statement that the student will "increase hand strength for functional hand use/visual motor and fine motor acquisition for greater success with written communication in the classroom environment." In all three IEPs the student is in adapted physical education.

In a previous IEP from Farmington, dated 9/3/2010, the student's goals were stated at increasing correct words read per minute to 110 with 10 or fewer errors and will increase his Keymath score to 115. On the next IEP dated 1/11/2010, the correct words read per minute was lowered to 95 and the KeyMath score was lowered to 105. Within the three IEPs, two from Farmington, and one from his newest school, the student's goals were decreased and then maintained.

The HRA also reviewed documents concerning the student's health. In a diagnostic services summary report evaluation for the 2007-2008 school year, it states "[Student's Name] has a new diagnosis of mixed hearing loss ... Other diagnoses include asthma, steroidal neuropathy, osteoporosis, atrial fibrillation and mood disorder. He also has ADHD." In the interim history of a speech/language evaluation from a hospital, it states "[Student's Name] has been hospitalized periodically for asthma exacerbation and pneumonia. He continues to demonstrate difficulties related to his chronic asthma, although he has been weaned off steroids. He also demonstrates periodic psychological difficulties related to frequent steroid use. [Student's Name] is on approximately 20 medications for his asthma, ADHA, a vascular necrosis of the right hip and left ankle, GERD, psychological issues, and osteoporosis. The school psychologist has diagnosed [Student's Name] as mildly mentally impaired with a learning disability." A letter from a doctor of audiology, dated 2/23/2010 states "[Student's Name] has a bilateral hearing loss that has already shown in our documentation to be decreasing. We feel it is very important, especially for the safety of [Student's Name], that he is able to have his service dog with him at all times. With the extent of [Student's Name] hearing loss, it is going to be increasing difficult [sic] for him to hear emergency signals, such as a fire alarm, as well as everyday environment sounds, such as the sound of oncoming traffic." Another medical doctor writes in a letter dated on March 25th, 2010, "In December of 2009 [Student's Name] started to work with a service dog. His dog is trained as a brace dog to assist [Student's Name] with balance and decrease the weight placed on his hip. [Student's Name] reports decreased pain when he is using the brace dog. By using a brace dog [Student's Name] will not need to use a more restrictive device like a walker or a wheelchair. A service dog will allow [Student's Name]

to maintain his present level of activities ...[Student's Name] needs to bring his service dog to school as soon as possible. The dog is currently trained to start attending school."

The HRA reviewed a letter, dated 5/22/2010, from a member of a service dog organization which gives information about the goals of the organization, gives information about the service dog that the student will be using, and asks if the co-op would like to speak with the service dog organization to address any concerns surrounding the dog. A line in the letter states "Before our dogs can become certified service dogs, the dogs, as well as their handlers must pass numerous tests and both [Student's Name] and his mother are certified to handle [Dog's Name]." The letter also states that "We are planning on sending [Dog's Name] to school on April 13th for a few hours and will gradually transition him to being at school full time."

Finally, the HRA reviewed Farmington School District's procedural safeguards policy which is given to parents of students with disabilities and the "Special Needs" section of the school handbook. The "Special Needs" section of the handbook explains that special education services are available to the students and what services are available. The student handbook also explains the schools grievance policy. The school's due process policy is also explained in the procedural safeguards as well as policies on parent participation in meetings, parental consent, and private school placements among other topics. In a phone call with the Director of Student Services, it was explained that Farmington does not have a written IEP process procedure but they are in the process of creating one. A policy regarding service dogs does not appear in the handbook or the procedural safeguard policy.

MANDATES

The HRA researched mandates and requirements in accordance with this case. The Illinois School Code states "Service animals such as guide dogs, signal dogs or any other animal individually trained to perform tasks for the benefit of a student with a disability shall be permitted to accompany that student at all school functions, whether in or outside the classroom" (105 ILCS 5/14-6.02). The Federal regulations state "Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability" (28 CFR 36.302). The Federal regulations define a service animal as "Service animal means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items" (28 CFR 36.104 5).

In a document titled "Legal Briefings" which is created by Equip for Equality and was developed for use by the national network of ADA and IT Technical Assistance Centers, it is written when asked the question "Can an entity require an individual to provide certification that their animal is a service animal and not a pet?" the document states "No. The ADA does not mandate that service animals be specifically identified with certification papers, a harness, special collar, or any other form of identification. The ADA regulations merely establish minimum requirements for service animals, namely, that an animal (1) is individually trained and

(2) works for the benefit of the individual with a disability. Policies and practices that require proof of certification or similar documentation violate the ADA." The document goes on to provide the case law of *Green v. Housing Authority of Clackamas County*, 994 F. Supp. 1253 (D. Or. 1998), where "An Oregon district court found that the county housing authority violated Title 2 of the ADA, the Fair Housing Amendments Act and the Rehabilitation Act of 1973 after the housing authority threatened to evict a tenant who was deaf for having a dog despite the tenant's explanation that the dog was a service animal ... Despite the tenant's claim that the dog was trained professionally as well as individually in the tenant's residence, the housing authority claimed the dog was not a service animal because the tenant could not produce any verification or certification that the dog was trained as a hearing assistance animal by a certified trainer or other "highly skilled individual." The Court held that the housing authority had no independent authority to determine whether the dog was a service animal as long as the dog was individually trained for the benefit of a person with a disability." The document also goes on to state that *Stamm v. New York City Transit Authority*, 2006 WL 1027142 (E.D.N.Y. Feb. 7, 2006) that "The plaintiff, a woman with post-traumatic stress disorder and a hearing impairment, brought action against the New York Transit Authority under Title 2 of the ADA. She alleged 43 different instances when she was either denied access to transit vehicles because of her service animal or was improperly asked to provide certification that her dog was a service animal." The document also states that "The Transit Authority moved to dismiss the case claiming that the Department of Transportation regulations plaintiff relied upon did not state a private cause of action. The court held plaintiff's complaint did state a valid private cause of action based on regulations that were established to carry out the intent of the ADA." The Legal Briefings document also has a section titled "If Entities Cannot Require Certification, What Questions Can They Ask to Determine Whether an Animal is a Service Animal," which states that entities can ask whether an animal is a service animal and may ask what tasks the animal has been trained to perform.

The Federal Code regarding special education placement states "In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that-- (a) The placement decision-- (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118; (b) The child's placement-- (1) Is determined at least annually; (2) Is based on the child's IEP; and (3) Is as close as possible to the child's home; (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum" (34 CFR 300.116).

The Federal Code section 300.114 states that "(2) Each public agency must ensure that-- (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved

satisfactorily" (34 CFR 300.114). Also, the Federal Code, section 300.118 states "Except as provided in § 300.149(d) (regarding agency responsibility for general supervision of some individuals in adult prisons), an SEA must ensure that § 300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures)" (34 CFR 300.118).

The ADA, Title 2, states that "Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity" (42 U.S.C.A. § 12132).

CONCLUSION

Complaint #1 and #2 - The school district would not consider a student's service dog as an accommodation. The school district would not allow a service dog to attend school with the student.

The complaint states that the school district would not consider a student's service dog as an accommodation and would not allow a service dog to attend school with the student. The complaint also alleges that if the parent wanted the dog, they would have to be placed in a different school that would accommodate the dog. The school maintains that they wanted documentation that the student actually needed the dog before they allowed the dog in the school and they could not let the dog on the premises until the IEP team met. The school also stated that they wanted documentation that the student needed the dog. In accordance with the School Code "Service animals such as guide dogs, signal dogs or any other animal individually trained to perform tasks for the benefit of a student with a disability shall be permitted to accompany that student at all school functions, whether in or outside the classroom" (105 ILCS 5/14-6.02). The Federal regulations state "Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability" (28 CFR 36.302). Also, in accordance with court cases and ADA standards cited in the Mandates section above, there is no requirement for a student to provide certification or documentation regarding the service dog in accordance with ADA standards. The School Code and Federal regulations do not state that documentation proving that the student needs a service dog is needed, and, in accordance with the ADA, the individual with the service animal does not need to produce evidence that the dog is needed. The student was placed in a different school before the dog was to attend school with him so there is no evidence either way on whether the school would allow the dog or not. With this in mind, the complaint that the school would not consider a student's service dog as an accommodation and that the school would not allow a service dog to attend school is **unsubstantiated** but the HRA finds that the school is in **violation** of the ADA Code in regards to requesting information regarding the service dog and for communicating to the mother that an IEP meeting was needed before they could have the dog in the school. The HRA makes the following **recommendations** regarding the violation:

- Ensure that the school's ADA Policies are consistent with the ADA and School Code regarding service dogs.

- When service animals are indicated for students with disabilities, refrain from requiring certification or documentation. The school can inquire about the dog's training and what tasks the dog can complete.
- When dealing with IEP process policies, treat ADA accessibility tools (eg. Wheelchairs, walkers, service dogs) in accordance with the ADA Code.

Complaint #3 - The student's placement was changed due to the service dog.

The complaint states that the student's school placement was changed due to the service dog. The complaint alleges that the mother signed placement paperwork under duress and did not want to move her child. The mother also states that she was never explained the reason for the transfer in verbal or written form. Farmington School District stated that they were not sure who initiated the student's transfer, the home school superintendent stated that he was the one who initiated the transfer, and the co-op stated that the process of setting up the placement IEP came from Farmington, the mother, and possibly the home school but also stated that they are not sure who initiated the placement. The issues that the co-op was initially told about were no longer affecting the student and he was doing well so they wanted to bring him closer to his home school district. The co-op stated that the reasons for moving the student were to surround him with his peers so that he could get acquainted with students with whom he would be going to high school. They also stated that transportation was another reason why the student was transferred. When going to Farmington, the student was taking a 45 minute bus ride and was on the bus alone. The home school superintendent stated that he initiated the placement because, in retrospect, he would have put the child in the school anyway, but also because of the financial aspect of the child being transported by himself to Farmington rather than taking a bus that transported other children, because he wanted the child to socialize with students that would be attending the same high school as he was so he could begin relationships that would last throughout his school career, and also because he was starting to see tension between Farmington and the student's family and he wanted to steer away from any potential problems that may arise from that relationship. In reviewing the student's IEP, the HRA discovered that while the student was at Farmington, his goals were actually lowered in the IEP which does not indicate progress but rather regression. Also, items in the IEP dealing with the student's physical impairments still remained in the IEP through two drafts at Farmington and the last IEP when the student's placement was changed, which indicates that the student's physical situation had not changed or improved since he was placed in Farmington. All three people interviewed did indicate that they felt that the student's physical problems were no longer prevalent but this was not indicated on the student's IEP. Part of the co-op's reasoning for changing the placement dealt with the student getting better but the IEP indicates that the student declined in some areas while at Farmington. Also, there were no statements on the IEP stating the reason why the student was transferred and there was no evidence found to support that information had been communicated to the mother regarding the transfer.

Also, the home school superintendent stated that the mounting tension between Farmington and the mother was part of the reasoning for initiating the meeting which led to the transfer of the student from Farmington to the new school. Although part of the superintendent's reasoning for initiating the placement meeting was because of the service dog, the decision for placement was ultimately made by the IEP team, and because of this, and lack of evidence

showing that the placement was changed solely because of the service dog, the HRA finds this complaint **unsubstantiated**, but offers the following **suggestions**:

- In the future, when it is decided to change the placement of a student, ensure that the reasoning for the change is documented and communicated to all parties involved and also documented on the student's IEP in a manner that is clearly understood by all parties involved.
- Document progress by students clearly and concisely on the student's IEP in a manner that is clearly understood by all parties involved.
- In the specific case, due to the fact that there is no documentation presented that shows the student's improvement both academically and physically, and due to the fact that the student initially needed a school with no stairs due to mobility issues, the HRA suggests another IEP meeting regarding the student's placement to see if the student is in the environment that best suits his physical situation. If there are changes to the student's physical situation that allow him to better deal with mobility on stairs, these changes should be added to the student's IEP.

The HRA is also concerned with the reasoning for placement being that the student is doing well, yet the IEP indicates a decline and the fact that the schools and the co-op indicated that the student's physical condition has improved; however there have been no changes to indicate such on the student's IEP. The HRA offers the following **suggestions** regarding the student's IEP:

- Document any changes to the student's physical or education status on the student's IEP to ensure that any future situations where the IEP is referenced are as accurate to the student's current situation as possible.
- The HRA noted that there was limited information in the parent section of the IEP and suggests that specific parental input at an IEP meeting be clearly documented.

The HRA would also like to mention that the statements during the Farmington interview regarding keeping students with disabilities in different classrooms than other students if the class needs modified too much is in direct violation of Federal Code 34 CFR 300.116 and Federal Code 34 CFR 300.114 as stated in the Mandates section above. The HRA did not find evidence of this occurring in this case so there are no substantiated findings but would still like to make it known that the ideals of the school regarding special education placement contradict federal mandates.

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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October 27, 2010

Via electronic and first class mail

Gene Seaman
Peoria Regional Human Rights Authority
of the Illinois Guardianship & Advocacy Commission
5407 North University, Suite 7
Peoria, Illinois 61614

Re: Human Rights Authority Case #10-090-9023

Dear Mr. Seaman:

This office represents the Board of Education of Farmington Central Community Unit School District #265 ("Board" or "District"). Please accept this letter as the Board's response to the Report of Findings issued by the Peoria Regional Human Rights Authority of the Illinois Guardianship & Advocacy Commission ("Commission") in reference to the above captioned case. In the event that the Commission's findings are made public, the Board requests that this response be included with the released documents. In that regard, please find enclosed the completed form authorizing release of this response to the public.

The student at issue resides in the Peoria metropolitan area within the geographic boundaries of the [REDACTED] (" [REDACTED] "). [REDACTED] is the student's home school district and, as such, is the public school district with the responsibility of educating the student and providing a free appropriate education in the least restrictive environment as required by the Individuals with Disabilities Education Act (the "Act").

The Farmington school facility is located on the western edge of Peoria County approximately 25 miles outside the Peoria metropolitan area where the student resides. Both school districts are members of the [REDACTED] (" [REDACTED] ") which is a cooperative partnership of school districts formed for the purpose of providing some special education services to the students who attend the member

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districts. Farmington School District houses a "life skills" class and accepts students from other [REDACTED] member districts when space limitations allow. A life skills program usually encompasses a relatively small class of special education students who spend little if any time in the traditional classroom.

The student was a new transfer student to [REDACTED] at the beginning of the 2009-2010 school year. Prior to the start of the school year, the Superintendent of the [REDACTED] district reviewed the student's prior IEP and noted the document indicated a prior life skills program and very significant physical limitations. [REDACTED] does not house a life skills program and usually places their students requiring life skills in [REDACTED]. However, after a review of the prior IEP and under the mistaken belief that [REDACTED] did not offer an air conditioned classroom and because he was not certain of the student's ability to negotiate stairs, the Superintendent at [REDACTED] recommended a placement at Farmington. Based upon that recommendation, the student was placed in the Farmington School District initially under the prior IEP. The process of utilizing the prior IEP is customary for transfer students until a new IEP can be prepared. A new IEP was created at an IEP meeting held on September 3, 2009. It is important to underscore that under the Act, the home school district retains the responsibility to educate the child including holding IEP meetings, making placement decisions, and determining which services and accommodations are provided under an IEP. If the student is placed in another school district, the home school, through its IEP team, still retains all educational responsibility as well as the power to make any accommodations that are requested by school staff or parents. In this case, despite the fact that Farmington provided educational services, [REDACTED] was still the resident district and the district ultimately responsible for the education and related services delivered to the student.

When the student began attending school in Farmington, the staff immediately noticed that the student's physical disabilities were not as limiting as the prior IEP implied. In fact, the student participated in gym class including voluntarily playing basketball and running, which was later prohibited because of a written directive of the student's physician. In addition, the school noted that the student's hearing impairment was minimized as a result of hearing aides. The staff generally believes that the extent of the student's past and current academic deficiencies could at least be partially attributable to his excessive absences from school. During one hundred thirty attendance days at the district during the period of his enrollment at Farmington, the student was absent forty-eight days. These observations eventually lead some staff members to question the need for a life skills program rather than a less restrictive environment. The matter would have been further considered by Farmington staff had the student's placement been continued in Farmington.

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During the second semester of the school year, the student announced that he was getting "a puppy" that was going to come to school with him. This was the first time that school representatives heard anything about a dog. A short while later, the school held an IEP meeting for the purpose of making any necessary adjustments to the student's IEP including the removal of occupational therapy and physical therapy services. At the end of this meeting, after many of the school staff had left, the student's mother announced that she was bringing a service dog to school. Based upon their observations, the remaining members of the IEP team did not understand the need for a service dog at school so they specifically asked the student's mother why the dog was necessary. The mother stated that the dog was needed because of fire alarms, balance issues, and answering the phone. The staff noted that the student did not appear to have any challenges with these issues that were not otherwise being accommodated. The student's mother then indicated that she did not need permission to bring the dog to school and again stated matter-of-factly that she was bringing the dog to school. The staff responded that this would not be possible without convening an IEP meeting to further discuss the need for the dog and to discuss how the dog would be handled at school. In addition, the staff had to take into consideration other students in the class who, in fact, had allergies or a disabling fear of dogs. The school staff also inquired whether the student's physician might be able to provide any further explanation as to why the dog was necessary because the reasons given by the mother were not compelling given the staff's own observation at school. This request was designed to determine whether the dog would assist the student with medical or other needs which district representative might have been uninformed about. Also, the staff wanted to insure that the physician was informed about the present levels of performance at school so that any recommendations about accommodations were based upon complete information. In particular, the student never demonstrated any balance issues at school and never used a walker or wheelchair the entire time while attending the Farmington facility.

The District Did Not Violate the Americans with Disabilities Act

The Report of Findings from the Commission purports that the Farmington School District violated the "ADA Code" due to the school requesting information concerning the need for the dog. The Report states in part:

[I]n accordance with court cases and ADA standards..., there is no requirement for a student to provide certification or documentation regarding the service dog in accordance with ADA standards (sic). The School Code and Federal regulations do not state that documentation proving that the student needs a service animal is

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needed, and, in accordance with the ADA, the individual with the service animal does not need to produce evidence that the dog is needed.

However, under ADA regulations, a service animal is defined as:

any guide dog, signal dog, or other animal individually trained to do work or perform tasks *for the benefit* of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

The school's inquiry into the need for the dog was directly related to understanding whether the dog would provide any benefit to the student. The suggestion that public schools cannot make a reasonable inquiry into whether a dog provides a student any benefit before allowing the dog into the school is absurd. Granted, most cases will require no additional inquiry because the need will be obvious. Examples include visually impaired students or wheelchair bound students that need assistance picking things up. However, in cases like the one at issue, where the need for a dog is not apparent, a reasonable inquiry is not only permissible, but prudent.

The authority relied upon in the Report of Findings to suggest that an inquiry into the need for the dog is impermissible is not persuasive. The Report of Findings relies heavily upon a document authored by Equip for Equality, an advocacy organization that represents disabled individuals. The information contained in this organizations literature should not be used as legal authority in deciding cases of this type. Instead, decisions should be based upon applicable law found in statutes, regulations and applicable cases. Setting aside the biased origin of the authority utilized in the Report of Findings, a review of the text of the information cited is not compelling in any event. The "Legal Briefings" document created by Equip for Equality includes the following question and answer section relied upon by the Commission:

- Q: Can an entity require an individual to provide certification that their animal is a service animal and not a pet?
- A: No. The ADA does not mandate that service animals be specifically identified with certification papers, a harness, special collar, or any form of identification.

The Commission goes on to cite the "Legal Briefings" document in reference to a case of an Oregon woman who successfully argued to a trial level court that a public housing

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authority should not be allowed to undertake an independent inquiry about whether a dog was a service animal.

There is a great disconnect of these two points from the actions of the district in this case. These points relate to whether the dog was in fact a "service animal". The district merely asked for information demonstrating a need for the dog. Neither this question and answer nor the cited case prohibits such an inquiry¹.

The Report of Findings also indicates that the Farmington School District violated the "ADA Code" for communicating that an IEP meeting was needed before they could have a dog in school. However, it is important to recognize that the school never indicated that a service dog could not be utilized. Instead, the school merely asked for additional information in order to properly evaluate the request. Given the complexity of the question regarding need as well as other necessary issues to discuss including, among others; interactions with other children, allergies, sanitary issues, and other logistical concerns, the school thought it best to discuss the matter in a meeting. In addition, under IDEA and its implementing regulations, the IEP team is given the directive to determine the particular accommodations that will be provided and the manner in which they are provided. While there may or may not be a right to have a particular accommodation, the fact is that the IEP process is utilized under IDEA to memorialize the accommodation for the benefit of all parties, particularly the child.

The Farmington District Did Not Deny the Service Dog Accommodation

The Report of Findings correctly notes that the Farmington District did not prohibit the use of service dog at the school because the student was placed elsewhere before the decision on the dog was made. However, this point implies that the issue was one of timing rather than ultimate responsibility. Since the student at issue is a resident of the [REDACTED] the IEP team from [REDACTED] determined placement and issues related to special education and related services. Farmington School District had NO power to deny any accommodation deemed necessary by the [REDACTED] IEP team.

¹ As an aside, the support for the negative answer to the foregoing question is also not at all compelling. While it is true that the ADA does not MANDATE that service animals be specifically identified, that is not the operative question when addressing the qualifications of the dog. The operative question is whether the ADA prohibits an inquiry into whether the dog has been specifically trained. Of course, the ADA has no such prohibition but the regulations do specifically indicate that service animals must be properly trained. It is not a leap to suggest that a school would not be violating the ADA by simply asking whether the dog has had this type of training.

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The Report of Findings Mischaracterizes District Comments Regarding Placement of Students in Different Classes

The Report of Findings alleges that the School Superintendent suggested placing students in different classes if the classroom or curriculum needs to be modified too much to accommodate their needs. Based upon this allegation, the Report of Findings indicates that such a statement, if carried out, would be a violation of 34 CFR 300.116 and 34 CFR 300.114. However, the statements of the Superintendent have been mischaracterized and the legal conclusions are inappropriate given the facts here.

The Superintendent made comments about potentially having to divide the classroom if a dog was necessary and other students had allergies or potentially disabling fear of dogs. The Superintendent never suggested that the student would have been placed in a more restrictive environment due to the presence of the dog. The fact is that the dog may have presented issues for other students. Those other students, like the student at issue, have the right to a free appropriate education in the least restrictive environment. Dividing a class or moving students to different classrooms may have been necessary to accommodate all of the students and would not have been inappropriate, because the student was receiving a FAPE in the LRE.

Commission Recommendations

In addition to the foregoing, the District offers the following responses to the recommendations made by the Commission in its Report of Findings:

- The District has undertaken a review of the ADA and School Code to insure that its practices are consistent with these laws.
- When a change of placement occurs, the reasoning for the change of placement has been and will continue to be specifically communicated to the parent. This is done both orally at IEP meetings and on the IEP document itself where the reasons that other potential placements are rejected are set forth. Care will be taken to insure that the reasoning is clear. It is worth noting here, again, that the IEP at issue here was prepared by the [REDACTED] IEP team.
- Without admission of any wrongdoing and with the understanding that the student here was a student of [REDACTED], the Farmington District will insure that progress toward IEP goals, changes to the student's physical and education status, and contrary parent input will be documented clearly in future IEPs.

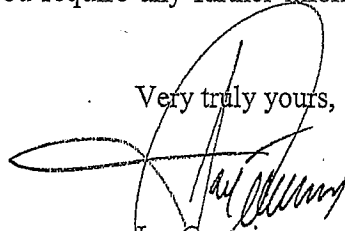
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- The District will pass along the Commission's recommendation regarding a new IEP meeting for placement consideration to the [REDACTED]

The Farmington District appreciates this opportunity to respond to the Report of Findings of the Commission. Should you require any further information, please let us know.

Very truly yours,



Jay Greening
For Miller, Hall & Triggs, L.L.C

JEG: rsj

Enc.