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**FOR IMMEDIATE RELEASE**

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HUMAN RIGHTS AUTHORITY - PEORIA REGION  
REPORT OF FINDINGS

Case # 11-090-9003  
Midland School District

INTRODUCTION

The Human Rights Authority (HRA) opened an investigation after receiving a complaint of possible rights violations at Midland School District. Complaints alleged the following:

1. Midland is using a staff person who is inadequately trained in special education instruction, which does not follow a student's Individualized Education Plans (IEPs) for instruction needs.
2. Midland is not willing to accommodate a parent's request to switch instructors.
3. The school made changes to a student's IEP without an IEP team meeting.

If found substantiated, the allegations would violate Special Education Regulations (23 IL. Admin. Code 226 and 34 C.F.R. 300) concerning the school's adherence to students' IEPs and standards for certification of special education teachers.

To investigate the allegations, HRA team members met and interviewed school staff and reviewed documentation pertinent to the case.

COMPLAINT STATEMENT

The complaint states that an individual teaching the student may only be a teacher's aide and cannot be found on the Illinois State Board website; the student's IEP states that the staff teaching the student must be qualified. There is also a possibility that the teacher has a criminal record. The complaint also states that the family does not feel comfortable having a male teacher instructing their female daughter alone during the summer in a school that is unoccupied. When the family asked if they could get another teacher, they were told that this could not be accommodated. The complaint also states that the student was supposed to be in a work based learning program at a local nursing home through a community college which is written into the student's IEP. Two days before school was to start, the family found out the student should have applied to the program in the spring of 2010 and she could not get in this year. The school never shared this information and they claimed that the student was ineligible. The school then said

that they would get her a co-op job at another nursing home which also fell through so the school is now going to have a Certified Nursing Assistant class in the spring semester in which the student has been placed. These changes were all carried out without a meeting to change the IEP.

## FINDINGS

### Interviews with School Staff

The HRA met with Midland School District staff to discuss the allegations in the complaint. The Midland School staff stated that the individual, who was to teach the student Extended School Year (ESY) subjects, is fully certified in special education. The staff stated that the individual is currently working as a librarian and has a provisional certificate for the librarian position. The Midland staff explained that unless an individual is employed as a teacher, they do not show up on the Illinois State Board of Education (IBSE) website. The staff stated that they gave the parents a copy of the individual's certification but the parents still complained about the individual, and did not give the school a reason why seeing the certification was not satisfactory. The Midland School District staff did explain that they had performed a background check on the individual and the individual had no convictions.

The Midland School District staff stated that the family was more worried about the individual teaching their daughter alone than anything else. The Midland School staff said that the school would not have been unoccupied. The class was from 9AM until 1PM and would occur in the cafeteria with full video surveillance. Also, there is a full custodial crew in the school and the cafeteria has glass windows surrounding the cafeteria area. The staff also stated that in this case, they could not find another teacher to teach the class. The staff explained that Midland School District does not usually allow requests for parents to pick the teachers, but if the parent could demonstrate an educational need for having a certain teacher, then the school would think about the accommodation. The school staff stated that, because they had no other teacher to teach the class, they could not have accommodated the request anyway. The staff also stated that at no time were the parents told they would have the request accommodated. The staff stated that it is rare that parents request a teacher. The staff also said that the parents never requested a specific teacher when discussing the class, and they never made a male or female teacher request. The staff stated that if they would have requested a specific teacher, they would have tried. Also, the parents signed off on the summer IEP which included the ESY. The Midland School District staff stated that part of the reason why requests for certain teachers are not accommodated is because the school is on a schedule. Parents do help students fill out the schedule. The Midland School District staff did state that there is no documentation that they have the final say on teachers or that parents cannot request a certain teacher. The staff said that for special education students, they develop the schedule through the IEP that the parents sign. The school stated that they have no IEP policy but they do have a special education policy. They also stated that they have no policy on one-on-one instruction but they tell the teachers to never

be alone with a student. The staff stated that no grievance was filed about the ESY teacher and the student did not end up taking the ESY classes. The staff stated the student never showed up to the classes. They said the classes were not made-up but they would be happy to make them up.

The school staff explained that yearly, they go into classrooms and ask if students are interested in the work based learning programs and hand out applications. This occurs around January or February each year. The work based learning program is where the students spend a half day on the job and a half day at the school. The school explained that they do not have many students involved because the location of the school makes commuting to the programs difficult. Out of all the work based learning programs, the CNA program is the most utilized. The staff stated that they ask the students to have their applications returned by March 1<sup>st</sup>, but it is not uncommon to have students ask about the program at the beginning of the school year. The staff stated that they can usually get students into the program that late. In this case, the student was interested in the class in August, so they called late to see if the student could enroll in the class and added the information to the student's IEP. This year, the program had new items that had to be completed in order for the student to participate in the program which included a background check and a reading test. The student did not pass the reading test and the community college running the program would not interview a student unless the reading test was passed. The student could test again, but that would be in July. The school staff stated that they called the community college and found out that the student could not attend the class. The Midland staff said that they told the parents about the class and that there was an email sent to the family regarding the class on 8/12, which was the same day that the school heard the student would not be able to participate. Midland stated that they were not sure when the parents talked to the community college concerning the classes.

The Midland School staff then decided to create a CNA program in a nearby city and contacted the same teacher who was teaching the class at the community college. The CNA instructor agreed to teach the class. The class had no stipulation that the student would have to pass a reading test and 6 other students got involved with the class, making the class a 6 to 1 student to teacher ratio.

The Midland School staff stated that there was an IEP meeting dated 8/6 that stated the student was to be enrolled in the work based learning class and there was no IEP before March stating that the student wanted the CNA class. Work based learning was specifically added to the IEP on that date because the school thought that they could get the student into the class, and it was after the program was added to the IEP that the school found out that the student did not pass the reading test. The staff stated that between the dates of 8/6 and 8/12 is when they found out that the student was not eligible for the class. The staff stated that, because they found a way to have the CNA class, the only IEP change was that the class was switched to another semester. The staff also stated that the parents were consulted in the change that a class was being set up for the student.

In a follow-up phone conversation with Midland staff, it was explained that they have a co-op program at the school. The students secure their own employment to get into the class, but, if the school definitely knows of areas of employment, they will sometimes help the

students. In this student's case, the school called a local nursing home and got the student a job shadowing position in a non-paid capacity. The staff explained that the student's family wanted the student to be paid out of district funds for the non-paid position. The staff explained that when discussing the co-op it was agreed to enroll her in the co-op class but she still had to find her own employment. In this instance the school did help her find the job shadowing position. The co-op class consists of the student spending part of the day in class and the other part of the day on the job site. The student is enrolled in the co-op through the job shadowing.

The staff also verified that, when the student was not accepted into the work based learning program through a local community college that all conversations regarding the program were done through phone calls and emails. They stated that no notification letter was sent. They explained that they called the parent and explained to them that they were going to create a program and the parents seemed satisfied. Later, the school had an additional IEP meeting in November when the IEP was amended. The staff explained that the CNA class was moved to the spring because of the local community college not accepting the student. Because of the CNA class, the co-op was moved to the first semester. The staff explained that the CNA class that was set up actually goes beyond the requirement asked for in the IEP because it is the same information taught, but in a smaller class setting and the class was being taught closer to the school area.

#### Record Review and Policy Review

The HRA reviewed policies and records applicable to the complaints within this case. In regard to the complaint that the Midland School District is using a staff person who is inadequately trained in special education instruction, which does not follow the student's IEP for instruction needs, the HRA first review the instructor's State Teacher Certification.

The certificate reads that the individual has certificate endorsements as a "Learning Behavior Specialist 1." The HRA spoke with the Illinois Board of Education who verified that an individual with a Learning Behavior Specialist 1 endorsement on a teaching certification can teach any child with a disability. Also, a review of the teacher's background check reveals that the instructor has no convictions on his record.

In Midland's Board Policy Manual, it states that the School Code (105 ILCS 5/10-21/9) "lists criminal offenses that disqualify an individual from district employment if the individual was convicted of one. It requires any person hired by the District to submit to a fingerprint-based criminal history records check." The policy proceeds to explain that when the employee submits the form for the background check, the Superintendent (or Designee) sends a request to the State Police for the background check. After fingerprinting and the check have been completed, the State Police and the Federal Bureau of Investigation provide the School Board President with information on any convictions of the individual who applied. The Superintendent (or Designee) also must check two criminal sex offenders' databases before an individual is employed. This procedure is required by every employee or contractor that will come in contact with students at the school.

The Board Policy also states that teachers have specific qualifications to teach at Midland School District. The teachers must have "... a valid Illinois certificate that legally qualifies the teacher for the duties for which the teacher is employed." The teacher must provide the district office with the proof of certification by the end of the first week of school in each school year and "Provide the District Office with a complete transcript of credits earned in institutions of higher education and, annually by July 1, provide the District Office with a transcript of any credits earned since the date the last transcript was filed." As stated above, the instructor's certification was available through the school, which shows that they did have a copy.

In reviewing the student's IEPs from the 2009-2010 school year, the HRA did not find any evidence that there were specific requirements regarding the qualifications of the student's instructors.

As stated in the staff interview, there is no policy/procedure that states parents cannot request a different instructor for their student, nor is there policy/procedure regarding students being instructed one-on-one by a teacher, therefore no school policy or procedure was reviewed regarding these aspects of the complaint by the HRA.

In regard to the complaint the school made changes to the student's IEP without an IEP team meeting, the HRA reviewed the student's IEP for the 2010-2011 school year (which was dated 8/6/10). In the IEP, it is written that "Health Occupation" would be in the second semester and that "co-op" would be in the first semester. During the interview with the staff, it was stated that the "Health Occupation" is the work based learning program and it was now moved to the first semester and the coop is in the second semester. This was not updated on the IEP.

In the Midland School District's curriculum guide there is a description of the Work-Based Learning Courses. The guides states "[Work-Based Learning Courses] all involve leaving the traditional high school classroom for part of the day and traveling somewhere for a specialized program ... The application deadline for these programs is March 1<sup>st</sup> of the current school year for the following schooling year ... To be eligible for any of these programs, a student must have a cumulative GPA of 2.875 or higher out of 5.0, have no major disciplinary referrals in the dean's office, and have reliable transportation to the class."

In the Midland School District's curriculum guide there is also a description of Interrelated Cooperative Education courses. The course description states that the class is "...a capstone course designed to assist students in the development of effective workplace skills and attitudes through practical, advanced instruction in the school and on the job through cooperative education. Approximately half of the school day is spent in the classroom and the other half is spent on-the-job-training." The description of the class does not state that the student has to secure their own employment nor does it state that the student will be getting paid for the internship. The HRA also reviewed the student's course list (dated 12/17/10) which confirms that the student is enrolled in the co-op program. Also, the HRA reviewed a Training Agreement for the class which states where the student will be volunteering and this form is signed by the student's parents on 9/7/10.

The HRA also reviewed an email from the case manager to the student's mother, dated 8/12, which reads "Have you talked to [community college]? [Staff member] called me and said that they called her and said that [student] doesn't meet the requirements to get in the work-based learning program. She needed to get a minimum of 62 on the reading placement test and she didn't."

The HRA reviewed a notification for the student's parents to attend a conference for the student on 11/1/10 and also reviewed a document titled "Additional Information for IEP" which stated that "This meeting is being held to make some documentation and clarification changes to [the student's] IEP." The additional information notes read "Discussion on [the student's] current Coop activity - there were no job openings available. So, [the student] is in the classroom portion, and [the student] does job shadowing to meet her transition goals. Parents expressed concern regarding than [sic] even though the plan was made for [the student] to have a job through work based learning it did not happen. The school had contacted [community college] last spring for the late applicant for CNA classes and were told they would take a student, then in the fall they would not take [the student]. Her schedule was corrected. Teacher, Guidance and mother will meet to determine her actual timed schedule."

## MANDATES

The Illinois Administrative Code also states "The Learning Behavior 1 is a teacher of children and youth with one or more of the following documented disabilities as specified in the individuals with Disabilities Education Act [20 USC 1400 et seq.] .... Beginning July 31, 2002, a teacher preparation program or course of study leading to the issuance of the Learning Behavior Specialist 1 (LBS 1) endorsement (either on the special preschool-age 21 certificate or on both an elementary and a secondary certificate) shall be approved only if it includes content that will enable candidates to meet the standards set forth in this section" (23 Il Admin Code 28.200). The Code proceeds to list the standards.

The School Code reads "(a) Certified and noncertified applicants for employment with a school district, except school bus driver applicants, are required as a condition of employment to authorize a fingerprint-based criminal history records check to determine if such applicants have been convicted of any of the enumerated criminal or drug offenses in subsection (c) of this Section or have been convicted, within 7 years of the application for employment with the school district, of any other felony under the laws of this State or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as a felony under the laws of this State" (105 ILCS 5/10-21.9).

In regard to the complaint that Midland made changes to the student's IEP without an IEP team meeting, the State Special Education regulations state "Each school district shall provide special education and related services to eligible children in accordance with their IEPs" (23 Il Admin Code 226.220). The State regulations also state "a) When an IEP has been developed or revised, a notice in accordance with 34 CFR 300.503(b) and (c) shall be provided immediately to the parents, and implementation of the IEP shall occur no later than ten days after the provision of this notice." (23 Il Admin Code 226.200).

Federal Special education regulation 34 CFR 300.503 states "(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (b) Content of notice. The notice required under paragraph (a) of this section must include--(1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency's proposal or refusal."

The Code of Federal Regulations also states " Free appropriate public education or FAPE means special education and related services that . . . (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324" (34 CFR 300.17).

The federal special education regulations state "(i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. (ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes" (34 CFR 300.324).

## CONCLUSION

### **Complaint #1: Midland is using staff that is inadequately trained in special education instruction, which does not follow student's IEPs for instruction needs.**

The complaint states that an individual teaching special education may only be a teacher's aide, cannot be found on the Illinois State Board website and staff that are instructing the student must be qualified. The complaint also states that there is a possibility that the instructor may have a criminal record. The HRA reviewed a copy of the instructor's State of Illinois Certificate which shows the individual has certificate endorsements in English Language Arts, Language Arts, and Learning Behavior Specialist 1, which, in accordance with the Illinois State Board, means that individual can teach any special education students. The HRA also reviewed a copy of the individual's background check which specified that the individual was not convicted of any crimes. Due to the fact that the HRA found sufficient evidence that the individual who was instructing the student is qualified to teach special education students and does not have a criminal background, the HRA finds this complaint to be **unsubstantiated**.

**Complaint #2: Midland is not willing to accommodate a parent's request to switch instructors.**

The complaint states that a family did not feel comfortable having a male teacher instructing their female daughter alone during the summer in a school that was unoccupied, and when the family asked if they could get another teacher, they were told that this could not be accommodated. The Midland school staff stated that the child would not be alone with the teacher because there was a full custodial staff in the school and the instruction would take place in an area of the school that is surrounded by windows. The staff also stated that the area had full video surveillance. The staff explained that the school does not allow parents to pick the teachers for their students, but if there were an academic reason that the parents wanted a specific instructor, they would consider the request. The staff explained that in this case, there was not even another available instructor for the student. There is no documentation in a policy or procedure from the school stating that the parents cannot request a change in instructors and there is also no documented policy regarding a male instructor teaching a female student one-on-one. There are no regulations or mandates regarding parents requesting specific teachers or any evidence of regulations regarding male instructors teaching female students one-on-one with no other staff present. The HRA recognizes that the school did not accommodate the parental request, but due to the fact that there are no regulations or mandates regarding this action, the HRA finds the complaint **unsubstantiated** as a rights violation, but offers the following suggestions:

- Create policy and procedure for dealing with situations where a male instructor will be working one-on-one with a female student to assure the safety of both the student and the instructor. Also make this policy and procedure available to parents and family of students that attend Midland School District.
- Create written documentation of Midland's policy/procedure regarding parents or family members requesting a specific teacher for their children and make this policy/procedure available to the parents and family members of the Midland students.

**Complaint #3: The school made changes to the student's IEP without an IEP team meeting.**

The complaint states that a student was, in accordance with the student's IEP, supposed to be in a work based learning program through a local community college. The complaint states that a family discovered that a student should have applied to a program in the spring of 2010 and could not get into the program that year. The school reportedly never shared this information with the family and claimed the student was ineligible for the program. The complaint also states that the school was to enroll the student into a co-op job at a nursing home which fell through so the school is now going to have a CNA class in the spring semester. This was all done without a meeting to change the student's IEP. The deadline for participating in the program was May 1<sup>st</sup>, but there was no request to participate in the program until August. The school staff stated that they still thought that they could enroll the student in the program, so they added the program to the student's IEP. The school discovered that there was required testing for the class that was not a requirement in previous years and the student did not pass the testing. The school then created a CNA program for the student, as well as other students at Midland, for



the spring of that year, and moved the student's co-op class to the first semester of the school year, essentially switching the semesters for the programs. The course description for the work-based learning program states that the deadline for application for the course is May 1<sup>st</sup> and does not state that there is a testing component involved in participation with the course. On 8/12, there is an email from the school to the parents stating that the student did not get accepted into the work-based community college program. Federal special education regulation states "... Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child" (34 CFR 300.503). Midland School District added the work-based program into the student's IEP, and then discovered that the student could not get into the program because of not meeting the testing requirements; the school did not know that the student's had to test and meet requirements prior to adding the program to the student's IEP. There was also no written notification given to the parents per federal special education regulations nor was there any agreement between the school and the student's family regarding changing the IEP without a meeting per 34 CFT 300.32. In November, the school did schedule an IEP meeting with the parents to make changes to the student's IEP regarding the program changes, with that being said, the school did correct the situation by creating a CNA class that the student could participate in that used the same instructor who would have taught the original class that was on the IEP. Because changes were made without updating the IEP, the HRA finds this complaint **substantiated** and makes the following **recommendations**:

- Update the school's IEP procedure in accordance with Federal regulations (34 CFR 300.503 & 34 CFR 300.324) regarding written notification if changes are made to the student's IEP outside of the IEP team meeting.
- Update the student's current IEP to reflect decisions made by the parents and the school regarding the student's current schedule.

The HRA also offers the following **suggestions**:

- In the future, do not add programs or curriculum to the IEP without knowing that the student can be enrolled into the program prior to the addition.
- The current curriculum guidebook does not include testing or a background check as part of the eligibility to be involved in the work-based learning program. Update the school's curriculum guidebook to include all aspects of eligibility for the program.
- The 8/6/10 IEP that was reviewed by the HRA only reads "Health Occ" and "co-op," and the semesters of which the programs will be occurring, without any additional information regarding the programs and goals of the programs. When adding programs to the IEP, include additional, detailed descriptions of the programs and what is meant to be accomplished by the programs so that the student's IEP can be properly evaluated.
- During the staff interview, the HRA felt that the student's case manager misunderstood IEPs and the IEP process (examples are that the case manager did not understand that the IEP was a legal document that would follow the student throughout their academic career and that the document should be as detailed as

possible). The HRA recommends that the special education staff receive in-service training regarding IEPs.

**The HRA also would like to suggest that the Midland School District document more policy rather than depending on verbalizing the policy. Within this complaint alone, there were instances regarding requesting a teacher and co-op classes where there are unwritten practices in place. For better understanding by parents and family, as well as Midland School District staff, the HRA suggests documenting all policy.**

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## **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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Hodges Loizzi  
Eisenhammer Rodick & Kohn LLP

Jay R. Kraning  
jkraning@hlerk.com

May 2, 2011

Via U.S. Mail

Mr. Steven Watts, Chairperson  
Regional Human Rights Authority  
Guardianship & Advocacy Commission  
5407 North University, Suite 7  
Peoria, Illinois 61614-4776

**Re: Response to Human Rights Authority Case #11-090-9003**

Dear Mr. Watts:

My firm has been retained to represent the interests of Midland School District No. 7 in this matter. On January 25, 2011, the Authority issued their Report of Findings regarding this complaint. They have since requested that the District provide a response to those findings. Please consider this letter as the District's formal response to be made a part of the public record in this matter.

The complainant in this matter has a history of filing multiple complaints against this District with not only this agency, but also other agencies such as the Illinois State Board of Education and the Office of Civil Rights, the majority of which have made findings favorable to the District. This is, in fact, the complainants' third complaint filed with the Guardianship & Advocacy Commission. The majority of their allegations have turned out to be false, misleading, frivolous and unreasonable. They have been filed to harass and intimidate the District in response to other matters unrelated to their [REDACTED] disability. This should be considered when investigating any allegations filed by these complainants now or in the future. This most recent complaint raised three new allegations against the District.

The Human Rights Authority (HRA), after interviewing school staff and reviewing documentation pertinent to this case, determined that two of the three new allegations raised against the District were unsubstantiated. Those allegations pertained to the staff person whom the District had assigned to provide Extended School Year (ESY) services to the complainants' [REDACTED]. After the complainants failed in their attempts against the District to change the staff person assigned to provide ESY services to a person more to their liking, and they were unsuccessful in their attempts to tarnish that person's reputation through allegations they raised in the local newspaper, they resorted to filing this complaint with the HRA, alleging the District's teacher was not properly certified and had a criminal background. HRA was able to see that those claims were without any legal or factual foundation.

The HRA also correctly determined that the District had no legal obligation, under either federal or state regulation(s) to accommodate the complainants' demand for a change of staff. Although the

Hodges Loizzi  
Eisenhammer Rodick & Kohn LLP

Mr. Steven Watts, Chairperson

May 2, 2011

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HRA ruled that this allegation was unsubstantiated, they did suggest that the District consider creating a policy to apply when a parent demands their choice of personnel assigned to their child, as well as a policy to cover situations whenever a male instructor could possibly be assigned to work one-on-one with a female student. The District is declining the HRA's suggestion to create such a policy.

First of all, there is no need for such a policy. It is an established rule of law that, as long as personnel are qualified for the position they have been assigned to, the "determination as to which personnel will provide services to a child eligible under the IDEA are left to state and local educational authorities." Letter to Williams, 21 IDELR 73 (OSEP, 1994). The suggestion that a policy is needed to cover personnel appointments whenever a male service provider could be assigned to a female student presumes that any such situation automatically results in a safety issue, even though the personnel under consideration has presumably passed numerous criminal background checks required by law. The District is not yet willing to accept such a dour premise.

The complainants' remaining allegation claimed that the District made changes to the student's IEP without notice or any meeting of the IEP team. The HRA incorrectly found this allegation to be substantiated by the facts. The District does not dispute the facts found in the HRA report, but believes the applicable law was incorrectly interpreted and applied to those facts. The student's IEP indicated that [REDACTED] needed a work-based learning program. The way that was going to be provided was going to be through a program located at the local community college. While that fact was documented in the IEP, it was not necessary to do so under any applicable regulation.

It was subsequently determined that the student was unable to obtain a sufficient score on a reading test which was a prerequisite to placement in the community college program. When that fact came to the attention of the District, they took steps to create the same type of work-based learning program, specifically for this student, which was just going to be provided at a different location (within the Coop) and during a different semester, but still within the same school year covered by the IEP. There was no change of service, merely a change of location where that service would be provided. This was a scheduling issue, an issue which is typically dealt with outside of the confines of a formal IEP meeting. HRA, in fact, determined that the District was "essentially switching the semesters for the programs." The instructor was going to be the *same instructor* that was providing the program at the community college, teaching the same CNA program.

The law has always distinguished between a "change of placement," which requires notice and an IEP meeting, and a change of location, which requires neither. In its' findings, the HRA cites 34 C.F.R. 300.503, which requires a district to provide parents with notice whenever they "(1) propose to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." There was no change in the program or provision of a FAPE in this matter, as the student was still getting the CNA program with the same instructor. However, instead of the program being offered at the local community college, which she was unable to attend due to her low test score (an event the District could not have predicted), [REDACTED] was going to get the

Hodges Loizzi  
Eisenhammer Rodick & Kohn LLP

Mr. Steven Watts, Chairperson

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same program, provided by the same instructor, but in a different location (at the Coop) *specifically created for her*. Rather than providing any expression of gratitude to the District for their efforts to resolve this issue, the parents chose their usual course of action of filing yet another complaint.

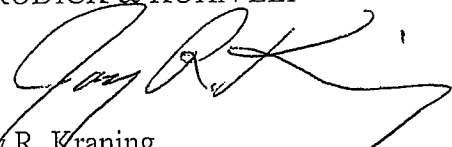
OSEP has held, and the courts have affirmed, that "if it is determined that the change of placement involves only a change in location - for example, the school or facility, and not a corresponding change in program, the formal notice requirements of 34 C.F.R. 300.505 do not apply." 21 IDELR 992 (OSEP, 1994) (See also *Wilson v. Fairfax Cty Sch Bd*, 38 IDELR 39 (E.D. Va. 2002), *Weil v. Bd. of Ed.*, 17 EHLR 902 (U.S.Ct. of App, 5<sup>th</sup> Cir., 1991), *Seattle (WA) Sch. Dist. No. 1*, 28 IDELR 763 (OCR 1997), *Morris v. Metro. Govt. of Nashville*, 26 IDELR 159 (M.D. Tenn. 1997), *Bayonne Bd. of Ed.* 37 IDELR 118 (SEA NJ 2002). In this matter, the CNA program the student was ultimately placed in was the same level of service on the continuum of program options as was discussed at the previous IEP meeting. The program was already developed and determined at an IEP meeting which had proper notice.

The HRA's suggestion that the District meet to update the student's IEP to reflect ~~the~~ *current schedule* (their exact words), not program, is now moot given the fact that events have already occurred making the change unnecessary and due to the fact that an IEP does not need to specify the actual schedule a student follows within the program set forth in their IEP. Schedules, like methodologies utilized and personnel assignments, are all matters not required by federal or state regulation for inclusion in a student's IEP.

The District would like to inform the HRA that, as suggested in their findings, a half-day staff in-service was provided to all special education staff and many District administrators on February 18, 2011. It was provided by our law firm and covered many aspects of the legal requirements under the IDEA, as well as helpful suggestions for writing legally sufficient IEP's, IEP meeting etiquette, and updates in various areas of the law. Our firm will continue to assist the District in keeping them up to date with the various changes that occur in the area of special education law, as well as assist them with defending themselves from baseless allegations filed by ~~the~~

Sincerely,

HODGES, LOIZZI, EISENHAMMER,  
RODICK & KOHN LLP



Jay R. Kraning  
One of the District's Attorneys

cc: Mr. Rolf Sivertsen, Superintendent

STATE OF ILLINOIS  
Pat Quinn  
Governor

# GUARDIANSHIP & ADVOCACY COMMISSION

Dr. Mary L. Milano, Director

HUMAN RIGHTS AUTHORITY  
LEGAL ADVOCACY SERVICE  
OFFICE OF STATE GUARDIAN



June 20th, 2011

Rolf Sivertsen, Superintendent  
Midland Schools  
1830 State Route 17  
Varna, Illinois 61375

Re: Human Rights Authority Case #11-090-9003

Dear Rolf Siversten:

The Regional Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission, at its June 15th, 2011 meeting, discussed the above mentioned case and the response that was sent by Midland School District.

The HRA feels that, because the CNA program is a transition related activity outside of the school that differs from the regular classroom activity, the scheduling of that program should be included in the student's IEP and, when that schedule changes, the [REDACTED] should be made aware of the change due to the logistics that may be needed to accommodate the change (ex. Change in travel situation for the student).

The HRA asks that, per the recommendations of the report, the following actions are taken:

- Update the school's IEP procedure in accordance with Federal regulations (34 CFR 300.503 & 34 CFR 300.324) regarding written notification if changes are made to the student's IEP outside of the IEP team meeting.
- Update the student's current IEP to reflect decisions made by the [REDACTED] and the school regarding the student's current schedule. If this has been done, please provide evidence.

Please send response regarding action taken and evidence of the actions attention Gene Seaman, at the **Guardianship and Advocacy Commission, 401 Main Street, Suite 620, Peoria, IL 61602, by July 11<sup>th</sup>, 2011.** Thank you and if you have any questions, please contact Gene Seaman at 309-671-3030.

Yours truly,  
*Meri Tucker (gs)*  
Meri Tucker, Chairperson  
Regional Human Rights Authority

MT;gs

PEORIA REGIONAL OFFICE

- ◆ 401 Main Street, Suite 620 ◆ Peoria, IL 61602
- ◆ Telephone (309) 671-3030 ◆ Fax (309) 671-3060
- ◆ Statewide Toll Free Intake (866) 274-8023 ◆ Statewide TTY (866) 333-3362



Hodges Loizzi  
Eisenhammer Rodick & Kohn LLP

Michelle A. Todd  
mtodd@blerk.com

July 14, 2011

Via First Class Mail

Mr. Gene Seaman  
Regional Human Rights Authority  
Guardianship & Advocacy Commission  
401 Main Street, Suite 620  
Peoria, Illinois 61602

**Re: Response to June 20, 2011, Correspondence  
Human Rights Authority/Case No. 11-090-9003**

Dear Mr. Seaman:

~~As you are aware, our firm represents Midland School District No. 7 in this matter. On January 25, 2011, the HRA issued its Report of Findings regarding this complaint and on May 2, my office forwarded you the District's formal response to the HRA's findings. On June 20, the District received the attached June 20, 2011, correspondence requesting that the District take the following corrective actions: (1) update the school's IEP procedures in accordance with Federal regulations regarding written notification if changes are made to the student's IEP outside of the IEP team meeting; and (2) update the student's current IEP to reflect decisions made by the [REDACTED] and the school regarding the student's current schedule.~~

First, the District's special education procedures and practices have been and continue to be fully in compliance with Sections 34 C.F.R. 300.503 and 34 C.F.R. 300.324 of IDEA. The District requires written notification of any change to a student's educational programming by way of a written IEP amendment provided to the student's parent/guardian. In their original complaint with the HRA, the complainants claimed that the District made changes to the student's IEP without notice or any meeting of the IEP team simply because the *location* of the student's vocational program had changed. As stated in the District's May 2 response to the Commission's findings, the HRA incorrectly interpreted the applicable law to the facts. There was no change in the educational program or provision of a FAPE in this matter, as the student was still getting the same CNA program with the same instructor. Furthermore, the Northern District of Illinois, in the recent case of *Brad K. and Jennifer K. ex rel. Jessica K. v. Board of Educ. of City of Chicago*, 56 IDELR 197 (N.D.II. 2011), confirmed that this is the correct understanding of IDEA's requirements. In that case, the Court specifically ruled that placement and location are not the same, and that while the placement is to be determined by the IEP team, the specific location where the services are provided may be determined by the school district. Accordingly, at all times relevant to the complainants' allegations, the District has complied with state and federal law.



Hodges Loizzi \_\_\_\_\_  
Eisenhammer Rodick & Kohn LLP

Mr. Gene Seaman  
July 14, 2011  
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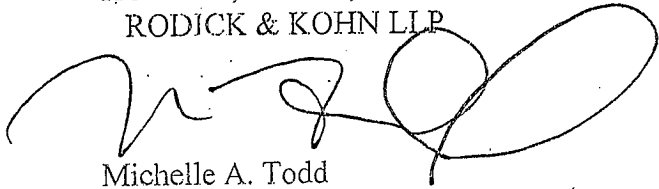
Second, the HRA's recommendation that the District meet to update the student's IEP to reflect [REDACTED] current schedule, not program, is now moot given the fact that the student's IEP team has developed a new IEP for the student at the most recent annual review meeting with new vocational programming. However, the District stresses again that an IEP does not need to specify the actual schedule a student follows within the program set forth in their IEP. Schedules, like instructional methodologies, curriculum tools and personnel assignments, are all matters not required by federal or state regulation for inclusion in a student's IEP.

We trust that this correspondence will bring this complaint to closure. We will continue to assist the District in responding to the complainants' now fourth complaint filed with the HRA. We continue to ask the HRA to take the complainants' continued harassing tactics into consideration as the District is forced to expend public funds to respond to their baseless and unreasonable allegations.

Please direct all future correspondence to my attention.

Sincerely,

HODGES, LOIZZI, EISENHAMMER,  
RODICK & KOHN LLP



Michelle A. Todd

cc: Mr. Rolf Sivertsen, Superintendent  
Mr. Jay R. Kraning

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