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**FOR IMMEDIATE RELEASE**

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**HUMAN RIGHTS AUTHORITY - PEORIA REGION**  
**REPORT OF FINDINGS**

**Case # 11-090-9040**  
**Midland School District**

**INTRODUCTION**

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

1. IEP meeting accommodations not followed for student and parent with disabilities. Internet is supposed to be available for student and parent but internet was not functional at beginning of meeting and meeting was almost cancelled. 30 minutes later, the internet was working again. Also, parent and student were not given a digital copy of the IEP nor was a digital copy prepared.
2. School told parent when meeting was occurring but would not work with them on a meeting time to accommodate both parties. School gave parents 3 dates to choose from. Also, meeting was postponed due to staff conflicts but they would not change meeting for parents.
3. Meeting was recorded by the school without parents' and student's permission nor did the parents know they were being taped.
4. Confidentiality violations, school board members knew about aspects of students IEP but they were not members of the IEP team.
5. Requests for an independent evaluation of a student for occupational therapy services were inappropriately denied by the school district

If found substantiated, the allegations would violate the Illinois State Regulations for special education programs (23 IL ADC 226), Federal special education regulations (34 CFR s 300), the Criminal Code (720 ILCS 5/14), the Illinois School Student Records Act (105 ILCS 10/6), the Illinois School Code (105 ILCS 5/10), and Federal Americans with Disabilities Act (ADA) regulations (28 CFR 35).

The Midland School District services Sparland, Varna, Lacon, and other rural areas in and around Marshall County. The district has 813 students, 265 of which are in the high school. Approximately 12% of the students receive special education services. The District has 100 employees, 25 of which are special education staff. The school uses a special education co-op service for occupational therapy, social workers, and a school psychiatrist.

## **COMPLAINT STATEMENT**

The complaint states that a parent with disabilities was not allowed accommodations at an IEP meeting. At the meetings, the internet is supposed to be available for the student and the parent. The internet was not functional at the beginning of the meeting and the parent did not want to continue with the meeting. 30 minutes later the internet was turned on. Also digital copies of the IEP were not prepared for the parent or the student and the IEP states the IEP is to be in digital format.

The second complaint states the school did not work with the parents on picking a date for the IEP meeting. The parents were told when the IEP meeting was occurring and the school would not change the time so they could attend. The meeting was changed by the school due to staff conflicts but the school would not adjust for the parents. The parents thought it would be useless to have an IEP until a requested OT evaluation was done. The complaint alleges the school gave the parents 3 dates from which to choose.

The third complaint states that the school taped an IEP meeting without the parents' or student's permission.

The fourth complaint states that school board members discussed aspects of the student's IEP with the parents which they should not have known about. The school board discussed the condition of the laptop.

The final complaint states that the parents' request for an independent evaluation for a student was inappropriately denied by the school. The parents discussed an independent evaluation at a prior IEP. On May 9<sup>th</sup>, the school shared resources for an evaluation but the parents wanted an independent evaluator. The school said they would talk about it at the next meeting but the parents thought it was more urgent. The school said the principal would meet with the parents to discuss, and when the parent went to discuss the situation with him, he was busy. Then the parent called the principal and there was no response. The student's parent sent an email stating that the 14 days to respond to an evaluation request had passed without a response. The parent sent another email on May 18<sup>th</sup> and the school told the parent they needed the evaluation requested in writing even though the emails requested it. The evaluation has been requested several times since then in multiple emails.

To investigate the allegations, an HRA team conducted an interview with the Midland School District staff and reviewed documents pertinent to the complaint.

## **FINDINGS**

### **Interview with staff (8/16/2011)**

The HRA began the investigation by interviewing Midland School District staff members about the complaints in the case. The staff explained that one of the student's parents requested to use the internet at an IEP meeting. The school has wireless internet so the parent could use a laptop and be connected to the internet. The school was never clear as to what the parent's

disability was. They said the parent never mentioned the disability or requested to use the internet until a year ago and the accommodations were not required prior to then. The staff said that there is no documentation regarding the parent's accommodation. They said that the parent claims that a hearing officer stated that the parent must receive this accommodation but the school never received any evidence of this statement.

The staff explained that the meeting mentioned in the complaint was the May 16<sup>th</sup>, 2011 IEP meeting. At that meeting, the school's server had gone down when the meeting started. The staff said that the server was restored by the school's IT personnel and the parent was able to use the internet.

The staff explained that they were providing the parent internet access. The parent asked the school to disable filtering software which the school explained was against the law. The law states that the school must have software in place to protect students from pedophiles. The staff stated that disabilities would be accommodated at the IEP meetings. The staff explained that they do provide the parent and student with digital copies of the IEP but they provide the document in PDF form so that the IEP cannot be changed. The staff explained that they sent the PDF files via email. The staff said that the parent is not willing to accept a PDF digital file. The staff said that parents will also not accept certified mail and the staff was never provided a reason for the parents not accepting certified mail. They stated that the parents also will not accept documents via the internet. The school said that they even offered to send the IEP on a USB drive but the parents did not want receive the IEP in that manner. The school staff also said that the parent sent out a blanket email to the school staff stating that they would no longer have contact or correspondence with the school district superintendent any longer. The superintendent did not receive a copy of the email.

The staff said that on November 1<sup>st</sup>, there was an IEP meeting where the parents were told by the superintendent that he could not have internet access without the filtering software. The staff explained that they did not see how the parent had a disability and why the school needed to disable the filtering. The staff explained the filtering software protects the students by blocking certain sites. The software also blocks websites that do not pertain to student's education such as Facebook. The parent never explained to the staff why the filtering software needed disabling as a part of his accommodation. They stated that he parent was still able to use the internet via the school's wireless system at that meeting.

The staff explained that they tape record the meeting for their records. They said that they have a pattern and practice of recording the meetings and that the parents have also recorded meetings in the past. The parents did not record the meeting discussed in this complaint. The staff said that in the past, they have announced that the meeting is being recorded and they have even added a notation to the IEP that the meeting was recorded. The staff explained that they could not remember if they announced that the meeting was being recorded at the beginning of this specific IEP meeting. They did remember that the recorder was placed on the meeting table in sight of everyone at the meeting and all the attendees knew that it was there.

The staff explained that the student has completed high school requirements and participated in graduation but has not received a diploma. At the time of the interview, the school year was starting the next day and the IEP team conducted two meetings and completed the student's IEP for the upcoming school year. According to the IEP, the student was scheduled for extended school services but the staff did not know if the student was going to start the school year. The staff said that they did send a digital copy of the current IEP to the parents.

The staff said that the entire IEP team met for the annual review in May but did not finish the review and agreed to reschedule the meeting. The dates requested for the continuation were in June. The staff requested additional dates for the meeting from the parents but never received a response. The staff explained that they did not demand that the meeting was June 13<sup>th</sup> and that no other dates were available. They said they spoke with the parents about meeting times. The staff claimed that historically the family would cancel and delay the meeting, so when the school could not set a date set for the meeting, they decided to proceed with completing the IEP without the parents so the student would have an IEP ready for the school year.

In regard to the occupational therapy (OT) issue, the staff explained that the request occurred at the May IEP meeting and that nothing preceded the OT request. The parent stated that he spoke with an OT provider because he said the student could not use a screwdriver. The school explained that there was someone on staff who could provide the OT evaluation but the parent wanted the provider with whom he had spoken to perform the evaluation. The IEP team decided to discuss the evaluation at the next meeting and the parents were agreeable with the decision at the time. The staff stated that on June 6<sup>th</sup> one of the parents sent an email stating that they did not want to conduct an IEP meeting until the provider he requested completed an OT evaluation. This request was never sent to the superintendent. The school explained that usually a request for an independent evaluation is because parents disagree with the OT evaluation conducted by the school. The school also explained that they never had any goals for the student to work with tools so they were caught off guard with the request. The staff said that the parents are notified in advance on how to request an independent evaluation. The parents receive copies of the handbook as required by law. When a child has a disability, and first becomes eligible for special education, they receive a handbook and then they receive a copy annually. The procedural safeguards were also sent electronically on June 16<sup>th</sup> with the IEP. Parents with children who receive special education services receive the procedural safeguards once every calendar year. The document is either given to the parents in person at the IEP meeting or mailed to them. The handbook also references the procedural safeguards document. The staff stated that the parents will not respond to emails or letters to discuss the situation.

The staff also explained that the school board is part of governing body of the school district. The staff said that parents attend the board meetings and discuss personal issues in public and have even spoken with the board members. The board does discuss this specific IEP because the school is being sued by the family. The staff has talked to the board and legal counsel concerning the IEP. The school staff stated that they do not believe that board members talked to the parents regarding aspects of the IEP and they deny that the complaint occurred. The board is governed by laws and regulations concerning student confidentiality. The school and the parents have been in litigation about issues for years. The school legal counsel generates a board member handbook relating to their powers and duties regarding confidentiality. The staff

also stated that the parents have spoken to local newspapers about the special education program. The staff said that they train the board members on confidentiality and they also send them a board member handbook that addresses confidentiality.

### **Record Review**

The HRA began the investigation by reviewing records that are pertinent to the case. To address complaints #1, #2 and #5, the following timeline of records has been constructed:

The HRA was provided an email from the student's parents dated 10/28/2010 which reads "I have requested all IEP's be done in electronic format for not only [student] but for myself also. I wish to remind the IEP team of that request." The email was sent to special education staff and the staff's response reads "The IEP will be done in electronic format. I have forwarded your complete request to Midland School."

- On 10/30/2010, an email provided to the HRA by the student's parents, sent by the student's parent to a member of the special education co-op reads "I have requested all IEP's be done in electronic format for not only [student] but myself also. I wish to remind the IEP team of that request. Next I also need to have access to a 110 volt power supply for power to my laptop, I can bring my own extension cord if you can tell me the length needed. I also need internet access, the last time this was not available to me. I must also ask the following that the connection not be going through any of the district filtering or monitoring connections, such as a proxy server, in the fact I use secured connections to my main system. Such software can jeopardize my security. I make this statement as in the past I will in no way use the connection knowingly for any illegal activity. If this is not available to me the I will require a translator for the IEP."
- On 12/30/2010, the HRA reviewed an email provided by the student's parents that reads "This is to inform you that at this time we simply cannot be making any further contact with the team members or the district pertaining to [student's] IEP unless it's via email or other forms of electronic communications. There are several reasons for this decision and you all are well aware of at least two. One [student] has a disability requiring it as with a long established IEP record of the need. Next, her father has a disability and requires it which is upheld by several federal laws. The district has been aware of this fact for some time." This email was sent to the special education staff. In reviewing the May and June 2011 IEPs, there is no indication that an IEP must be sent to the student and the parent in digital format, but there is an accommodation requiring classroom notes be transcribed into digital format, indicating a possible need that documentation be digitized for the student.
- On 5/9/2011 a document titled "Additional Information for IEP" that is attached to the student's IEP reads "This meeting is being held to discuss [student's] current progress and determine future plan with Midland High School. Anything written will be transcribed into digital format. [Parent's name] did not want to start without internet access. The tech coordinator will be here in a half an hour and the meeting will precede then. At 10:55 the internet connect was made for [Parent's name] and the team was brought back to resume." In that same IEP, on the attached "Additional Information" document, it

reads "[Parent] expressed concern with her [student's] ability to pick up small tools and remove screws. He reported that he has concerns on whether more should have been done. He has talked to [occupational therapy agency] and they reported that they could come out and so an evaluation [sic] ... Parents would like to request an evaluation with [occupational therapy agency] which the team will return to after goals are addressed." Later in the notes it reads "Parents want another IEP to talk about the OT evaluation. The parents want the evaluation done by [occupational therapy agency] and the school does have an OTR/L available." The notes close by stating "This will be transcribed into electronic form and sent to parents." In the conference recommendations section of the IEP it reads "another meeting will follow to discuss future planning."

- On 5/10/11 the HRA reviewed an email from the special education staff to the student's parents. The notes from the meeting were attached to the email.
- On 5/18/2011, the HRA reviewed another email provided to the HRA from the parent, which is between the parent and the special education staff stating that "The IEP still has not been provided in digital format in full. Under the IDEA there are timelines, one being 10 days for us to make statements or to take action pertaining to the IEP meeting. In the fact I still have not received the entire IEP in digital format; the 10 day time will not begin until I have the full digital copy of the IEP." The HRA was also provided another email by the student's parents, from a staff member to the parent on 5/20/2011 which reads "I have submitted your request for a digital copy of the IEP to [superintendent's name], Midland Superintendent."
- On 5/19/2011, the school provided the HRA with an email from a special education staff member to one of the student's parents which reads "Would you guys be able to make it if we held the IEP meeting Tuesday May 24<sup>th</sup> at 12:30?"
- On 5/20/2011 another email from the same staff member reads "I am going to send out a Notice of Conference for a meeting on Tuesday May 31<sup>st</sup> at 9:00 here at the high school. That way we have the 10 day notice in place. If you would prefer to have it on Tuesday May 24<sup>th</sup> instead, let me know by 4:00 today so I can get back to [IEP team member] and invite a regular ed teacher."
- On 5/24/2011 the same staff member wrote an email to the parent stating "From what you told me at [student's] graduation party Saturday, I understand that neither of those days work for you. I am working on rescheduling it."
- On 5/26/11 there is a certified letter that is signed for by one of the student's parents, from the district superintendent to the student's parents, that reads "It is has been [sic] brought to my attention that a previously scheduled staffing for your child, [student], was scheduled at an inconvenient time. It is my understanding that the suggested previous times were on May 24<sup>th</sup> or May 31<sup>st</sup>. Accordingly, I have directed our staff to reschedule the aforementioned meeting. Please find enclosed a notice of conference for the rescheduled meeting. I hope this is convenient and acceptable for you to attend." This letter was signed but there was no date of delivery.

- On May 31<sup>st</sup>, there is a letter stating "Due to a conflict among staff members we have found it necessary to revise the notice sent to you on May 24<sup>th</sup>. Accordingly, I have attached the revised notice of conference." There is also a signed certified mail document on June 2<sup>nd</sup>, 2011 that was signed by someone (their name cannot be read). The documentation provided to the HRA indicates that the certified mail is for the letter on May 31<sup>st</sup> but there is no specific evidence linking the two. There are two notifications of conference (which are sent to the parent prior to all IEP meetings) in the same document packet that was provided to the HRA that indicates the date of the meeting is June 13<sup>th</sup>.
- On 6/6/2011, a special education staff member emailed the following message to the parents, and CC'd the Superintendent and the school's legal counsel, "In response to your e-mail dated 6/6/11 regarding an independent Education Evaluation for Occupational Therapy, I am providing this reply. At the May 9, 2011 IEP meeting, you requested an OT evaluation for [student] and the District offered our licensed OTR/L to complete an evaluation. You refused this offer, requesting the [occupation therapy agency] conduct the OT evaluation for [student]. At the end of the meeting, the IEP Team decided to discuss [student's] overall need for the OT evaluation at the next IEP meeting (which is scheduled for Monday, June 13, 2011 at 10:00 AM), in an effort to complete her education programming for the 2011-2012 school year. As a result, the IEP team plans to discuss if [student's] current needs require an OT evaluation at this time on June 13. If you wish to pursue an IEE at public expense, you must submit that request in writing to the district superintendent. However, we look forward to discussing the OT evaluation and completing [student's] IEP on June 13 with the IEP team."
- On 6/8/2011, a parent of the student wrote to a special education staff member "On May 9<sup>th</sup> we made a request of the district for an IEE, We have no need to make a second request for the independent evaluation of [student] for OT services at district expense. Based on your reply we have taken it that we should make the arrangements and have started to do so. We cannot make the meeting on May or June [sic] the 13<sup>th</sup> which was a rescheduled date by the district. We already have plans and cannot attend the meeting on that day. More over it simply is not appropriate to have such a meeting until after the evaluation is completed." This email did not have the district Superintendent CC'd.
- On 6/9/2011, an email to the student's parents reads "The law requires you to request an independent educational evaluation ('IEE') at public expense, in writing, directly to the Superintendent. 34 CFR 300.502(b). Your oral statement at the May 9 IEP meeting does not comply with the requirements in the law. If you desire an IEE at public expense, you are required to comply with this provision of IDEA. Moreover, the IEP team has not had the opportunity to consider [student's] needs for an occupational therapy assessment at this time. As you are aware, the team intended on discussing your request at the June 13 meeting, with your input." The email proceeds to read "At our last IEP meeting on May 9, you agreed to continue the meeting at another date in order to complete [student's] IEP for the upcoming school year. We have previously offered you May 24, May 31 and finally June 13 as additional dates to convene the IEP team to complete the IEP. It is now our understanding from your email that you do not intend to meet with [student's]

IEP team until the District funds a private occupational therapy evaluation at District expense and the evaluation is complete. For the reasons stated above, the District will not fund an independent OT evaluation at this time. We need to move forward and complete [student's] IEP for the 2011-2012 school year. As a result, the IEP team will convene on Monday to complete the IEP as documented in the IEP meeting notice we forwarded to you. We hope that you will reconsider your position and attend the meeting on June 13<sup>th</sup>, or provide me with additional dates during the week of the 13<sup>th</sup> to convene District staff before the end of the school year." The school superintendent was CC'd on this email.

- On 6/10/11 at 1:35pm, correspondence was sent from one of the parents to the IEP team that states "We have no idea at this time how to proceed with the IEP process. What I know is that I will no longer tolerate individuals that are a part of the team and members of the Midland School District staff and others to continue to try and humiliate, discriminate, retaliate and violate my civil rights along with [student's]. As to [special education staff member's] request for me to place a written request for the IEE to the superintendent. This is simply not going to happen. I made a request for the IEE. It was presented to the Team with a school administrator present. That request was fully and totally acknowledged by the team and the districts LEA. More over it was then forwarded to not only the superintendent, but the district's legal counsel by [special education staff member] . . . Requesting that I place the request in writing to the superintendent is nothing more than a cheap shot at humiliation, and retaliation for my disability. [Special education staff] is more than aware that I CAN NOT WRITE . . . As follows, I am disabled and afforded certain accommodations. The law seems very clear on that fact. Prior to and on May the 9<sup>th</sup> multiple accommodations were requested. None were provided at first. Though internet access was provided it was not considered to be a secure non monitored connection, thus my use was limited, no portion of the IEP was prepared or ever provided in digital format during the meeting or afterwards other than some poorly taken notes . . . The district did state that they would talk about the evaluation at the next meeting. I did not agree and insisted the IEE take place prior to the meeting. I agreed to have [principal] the district building principal get together to discuss the arrangements for the IEE. I never received any calls in regard to such a meeting time. I tried to speak to him after the meeting as well and he was not available as he needed to eat lunch and then according to his statement during the meeting had another IEP meeting . . . The district has had repeated notices, I CANNOT WRITE ANYTHING, [parent's spouse] has to proof everything I send you and no, she is not the one handling this as she has enough to do trying to keep [student] and the other girls on top of their many events along with a full time job. . . I provided the request in the best format available to me, under the circumstances. The long and the short of the IEE was made in a proper fashion, and we intend on making no additional requests to the district . . . As to the meeting dates, the district never discussed nor did we ever agree to any dates. There were no mutually agreeable dates set for an IEP meeting. The district simply sent notice of a meeting date and then requested our attendances. More over once again [special education staff] is in error. The meeting on the 13<sup>th</sup> was scheduled by the district as a result of a staffing issue. I have prior commitments for the 13<sup>th</sup> . . . The Midland School and its legal team can continue to find ways to spend federal and state and local tax



money on ways to manipulate the laws or it can provide services correctly to [student] and stop its ongoing disagreement with our family. These issues must be addressed by the district prior to any additional IEP meetings." The HRA saw no evidence of alternative meeting dates being provided by the family. The HRA also saw no evidence that the principal indicated that he would discuss the situation with the parents and then ignored requests to discuss the situation.

- On 6/10/11 at 3:33pm there was also an email from the special education staff to the parents that had a copy of the May IEP attached.
- On 6/16/11 there is an email from district superintendent to the student's parents that has two files titled IEP attached in a PDF format.
- On 6/16/11 there is a letter from the school's superintendent to the student's parents which reads "I am writing this correspondence to inform you that your daughter's Special Education Team completed a required annual Individual Educational Plan (IEP) staffing on June 13<sup>th</sup> 2011. Accordingly, I have attached the Individualized Educational Plan (IEP) that the team completed ... Please contact me at your convenience at least one week prior to July 18<sup>th</sup> to arrange a time and location that is beneficial to both your family and the district employee providing the aforementioned services." There is no indication that this was sent electronically or that the parents received this via traditional mail.
- On 7/7/11, a parent sent the special education staff an email which states "This is to inform the district and the IEP team members that I will not accept any form of non digital communications. You have [parent's name] and my email addresses. Sending information in non text form such as Adobe that is not able to be copied and pasted into a text format will not be accepted. I have a medically diagnosed disability which the district is aware of. I have written instructions from a medical doctor to have the accommodations. I am to have a laptop computer with me as much as possible. In 2009 an appointed hearing officer acknowledged this disability and allowed for the accommodations. It is clear the district is aware of the facts and that some have chosen to simply use it as a tool to retaliate against me. Again no information will be accepted in any format other than digital, this includes things such as registered or Certified mail. ALL will be returned to the sender, a portion of this letter has been seen by the postmaster ... Any attachments that are in a format that is not easily converted to text will be returned to the sender with a request for a different format. It is the district's responsibility to give notice of its agents of this situation. I simply cannot take the time to receive the mail then try and convert to text, especially when the district has the ability to send in a digital format ... I have a disability and deserve the accommodations requested per my civil rights as covered under law."
- On 12/12/11 the HRA sent an email to a member of the Midland School District staff asking "... is there any correspondence indicating that the family was provided an IEP or IEP notes prior to the May meeting that were to be used in the May meeting?" The HRA did not receive any correspondence proving that the family was provided these documents.

The HRA reviewed the Notice of Procedural Safeguards documentation that was said to have been provided with the IEP. Within those documents, there is a section titled "Evaluation Procedures" which has a subsection titled "Independent Educational Evaluation." The HRA reviewed that section and, within that section, there is no statement that the parents must make the request for an independent evaluation in writing to the superintendent. The Independent Educational Evaluation states "You have the right to obtain an independent educational evaluation at public expense if you disagree with an evaluation obtained by the local district." The HRA saw no evidence in the documentation, other than emails, stating how a parent obtains an independent evaluation.

The HRA also read a district policy regarding Access to Electronic Networks which reads "Each District computer with Internet access shall have a filtering device that blocks entry to visual depictions that are: (1) obscene (2) pornographic, or (3) harmful or inappropriate for students, as defined by federal law and as determined by the Superintendent or designee. The Superintendent or designee shall enforce the use of such filtering devices. An administrator, supervisor, or other designee shall enforce the use of such filtering devices. An administrator, supervisor, or other authorized person may disable the filtering device for bona fide research or other lawful purpose, provided the person receives prior permission from the Superintendent or system administrator." The policy also states that the Superintendent or designee shall include measures in the policy to address four other issues. The other issues are limiting student access to inappropriate matter and restricting access to harmful materials, student safety and security when using electronic communications, limiting unauthorized accessed including hacking and other unlawful activities, and limiting unauthorized disclosure, use and dissemination of personal identification information. The policy also proceeds to state that any student or parent must sign a document titled "Authorization for Electronic Network Access" before being granted unsupervised use and failure to follow the terms of the document will result in a loss of privileges, disciplinary action, or appropriate legal action.

In regard to complaint #1, the Midland handbook has a section titled "Accommodating Individuals with Disabilities" which reads "Individuals with disabilities will be provided an opportunity to participate in all school-sponsored services, programs, or activities. Individuals with disabilities should notify the superintendent or building principal if they have a disability that will require special assistance or services and, if so, what services are required. This notification should occur as far in advance as possible of the school-sponsored function, program, or meeting."

In regard to complaint #2, the Safeguards have documentation regarding participation in meetings. The first sentence of the section reads "You must be afforded the opportunity to participate in meetings regarding the identification, evaluation, eligibility, reevaluation, and educational placement of your child." The section also states "As a parent, you are an important member of your child's IEP team and are encouraged to be involved in meetings where decisions are made regarding the educational placement of your child. However, if you cannot attend the meeting, the school district must use other methods to ensure your participation, including individual or conference telephone calls. Decisions about your child's services and placement can be made by the IEP team even if you do not attend the meeting, but the district must

maintain a record of its attempts to arrange a mutually agreed upon time and place for the meeting that includes things such as detailed telephone calls made or attempted and results of those calls, copies of correspondence sent to you and any responses received, or detailed records of visits made to your home or workplace and the results of those visits."

Regarding complaint #3, the HRA reviewed "additional information" notes for an IEP dated 11/1/2010 which states "This meeting is being held to make some documentation and clarification changes to [student's] IEP. Both parent and school taped recorded [sic] the meeting and parent took notes on a laptop." In the additional information section for the May 2011 IEP, which is the IEP meeting in question, did not state that the meeting was being taped by either parties.

Complaint #4 states that there were confidentiality violations because school board members knew about aspects of the students IEP but were not members of the IEP team. The school district's "Access to Student Records" policy reads "Neither the District nor any of its employees shall release, disclose, or grant access to information found in any student record except under the conditions set forth in the Illinois School Student Records Act." Some examples of conditions from the Illinois School Student Records Act that are cited in the policy are releasing records to the parent or guardian of a student under the age of 18, to release records pursuant to a court order, or if the individual requesting the information has a signed consent from the student or parents/guardians for the records.

The District's School Board Policy Manual, in the Board of Education section, reads "The District is governed by a school board consisting of 7 members. The Board's powers and duties include the authority to adopt, enforce, and monitor all policies for the management and governance of the District's schools."

In reference to complaint #5, the HRA reviewed 6 emails written by the parent who stated that he has a disability. The HRA cannot confirm or deny the extent of the parent's disability, the use of a medication or the assistance of another individual to review or respond to the e-mails. The superintendent of the school is not addressed on any of the emails regarding a request for an independent evaluation. According to the May 2011 IEP, the superintendent was also not present at the IEP meeting.

### **Mandates**

The HRA reviewed mandates pertaining to the complaints in this report. Regarding complaint #1, the Federal Special Education requirements state "(e) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English" (34 CFR 300.322). The Illinois Administrative Code reads "In addition, the district shall take whatever action is necessary to facilitate the parent's understanding of and participation in the proceedings at a meeting, including arranging for and covering the expense of an interpreter for parents whose native language is other than English or for an interpreter licensed pursuant to the

Interpreter for the Deaf Licensure Act of 2007 [225 ILCS 443] for parents who are deaf" (23 II Admin Code 226.530).

The Children's Internet Protection Act reads "Except as provided in clause (ii), an elementary or secondary school having computers with Internet access may not receive services at discount rates under paragraph (1)(B) unless the school, school board, local educational agency, or other authority with responsibility for administration of the school-- **(I)** submits to the Commission the certifications described in subparagraphs (B) and (C); **(II)** submits to the Commission a certification that an Internet safety policy has been adopted and implemented for the school under subsection (1) of this section; and **(III)** ensures the use of such computers in accordance with the certifications ... A certification under this subparagraph is a certification that the school, school board, local educational agency, or other authority with responsibility for administration of the school-- **(i)** is enforcing a policy of Internet safety for minors that includes monitoring the online activities of minors and the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are-- **(I)** obscene; **(II)** child pornography; or **(III)** harmful to minors; **(ii)** is enforcing the operation of such technology protection measure during any use of such computers by minors; and **(iii)** as part of its Internet safety policy is educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response ... C) Certification with respect to adults. A certification under this paragraph is a certification that the school, school board, local educational agency, or other authority with responsibility for administration of the school-- **(i)** is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are-- **(I)** obscene; or **(II)** child pornography; and **(ii)** is enforcing the operation of such technology protection measure during any use of such computers. (D) Disabling during adult use. An administrator, supervisor, or other person authorized by the certifying authority under subparagraph (A)(i) may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose" (47 U.S.C.A 254).

The second complaint deals with parent participation at IEP meetings. The Federal Special Education requirements state "(c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with § 300.328 (related to alternative means of meeting participation)" and "(d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as-- (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits" (34 CFR 300.322). The Illinois Administrative Code reads "With respect to parents' participation in meetings, school districts shall conform to the requirements of 34 CFR 300.322 and 300.501. For purposes of 34 CFR 300.322(a)(1), 'notifying parents of the meeting early enough to ensure that they will have an opportunity to attend' means the district shall provide

written notification no later than ten days prior to the proposed date of the meeting" (23 Il Admin Code 226.530). The Federal regulations also state that "(a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in sec. 300.320" (34 CFR 300.323).

The third complaint alleges that a meeting was taped by the school with consent and without all parties knowing that they were being recorded. The Criminal Code reads "(a) A person commits eavesdropping when he:(1) Knowingly and intentionally uses an eavesdropping device for the purpose of hearing or recording all or any part of any conversation or intercepts, retains, or transcribes electronic communication unless he does so (A) with the consent of all of the parties to such conversation or electronic communication or (B) in accordance with Article 108A or Article 108B of the 'Code of Criminal Procedure of 1963', approved August 14, 1963, as amended" (720 ILCS 5/14-2). According to the Code, an eavesdropping device is defined as "any device capable of being used to hear or record oral conversation or intercept, retain, or transcribe electronic communications whether such conversation or electronic communication is conducted in person, by telephone, or by any other means; Provided, however, that this definition shall not include devices used for the restoration of the deaf or hard-of-hearing to normal or partial hearing" (720 ILCS 5/14-1).

Complaint #4 states that the student's confidentiality was breached when there was discussion of the student's IEP with school board members. The Illinois School Records Act prohibits the release, transfer, disclosure or dissemination of school student records or information, with some exceptions, one of which is "(2) To an employee or official of the school or school district or State Board with current demonstrable educational or administrative interest in the student" (105 ILCS 10/6). The School Code reads "(a) School districts having a population of fewer than 1000 inhabitants and not governed by any special act shall be governed by a board of school directors to consist of 3 members who shall be elected in the manner provided in Article 9 of this Act. In consolidated districts and in districts in which the membership of the board of school directors is increased as provided in subsection (b), 7 members shall be so elected" (105 ILCS 5/10-1)

The final complaint states that requests for an independent evaluation was inappropriately denied by the school district. The Illinois Administrative Code states that "Parents have the right to obtain an independent educational evaluation of their child at public expense in accordance with 34 CFR 300.502 and Section 14-8.02(b) of the School Code. The following rights and requirements shall also apply. a) If the parents disagree with the district's evaluation and wish to obtain an independent educational evaluation at public expense, their request to that effect shall be submitted in writing to the local school district superintendent" (23 Il Admin Code 226.180). Federal statutes also state that a parent has the right to request an independent evaluation at public expense but the statutes do not say that the parent must send this as a written request to the school superintendent (34 CFR 300.502).

Federal ADA regulations state that "(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the

modifications would fundamentally alter the nature of the service, program, or activity" (28 CFR 35.130 b 7).

## **Findings**

**Complaint #1 - IEP meeting accommodations not followed for student and parent with disabilities. Internet is supposed to be available for student and parent but internet was not functional at beginning of meeting and meeting was almost cancelled. 30 minutes later, the internet was working again. Also, parent and student were not given a digital copy of the IEP nor was a digital copy prepared.**

The HRA reviewed the complaint which states that IEP meeting accommodations were not followed for a student and parent with disabilities. The complaint states that the internet was to be available for the student and parent but was not functional at the beginning of the meeting. Through reviewing documentation, the HRA did discover that, as the complaint stated, the internet was not available at the beginning of the meeting but, according to the staff and the IEP notes, a connection was made for the parent, but it was not an unfiltered connection that was desired by the parent. The Child Internet Protection Act reads "An administrator, supervisor, or other person authorized by the certifying authority under subparagraph (A)(i) may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose" (47 U.S.C.A 254). According to Midland school policy, for a parent to gain any internet access, they must sign the "Authorization to Electronic Access" form according to the school policy and the HRA did not see a copy of that form completed by the parent, nor was there any indication that the school worked with the parent to fulfill this policy. The law states that the protection can be disabled for bona fide research or other lawful purpose by the individual in authority over the program. Because this situation deals with the safety of all students and clearly puts the authority of disabling the software in the authority of the school district, the HRA feels that it is out of their jurisdiction to make a decision regarding removing the filter on the software.

The HRA reviewed an email dated 10/28/10 in which the parent requested IEPs to be provided in electronic format for the student and the parent and then another email on 12/30/2010 requesting all contact to be via email because of the parent's disability. On May 18<sup>th</sup>, 2011 the parents sent a request for the May IEP and it was not until 6/10/11 that the parents received a copy of the May IEP. The HRA did not see any evidence that documentation (e.g. meeting notice, proposed IEP goals, etc) related to the scheduled May 2011 was sent via e-mail or prepared in any other electronic format as requested by the parent in October 2010. HRA also saw no documented discussion between the school and the parent regarding what was to be prepared prior to the IEP meeting.

According to the 5/9/2011 notes, the IEP team decided to schedule another IEP meeting to discuss OT evaluations and another meeting was to follow. The school did not consider the May IEP to be a completed IEP and had another meeting to finish the IEP. The parents did receive a copy of a completed IEP on 6/16/2011 from the 6/13/2011 IEP meeting.

The parent stated that the PDF was not a digital file but rather a picture file that could not be used. This statement was made in a 7/7/2011 email. The HRA did not see any indication that the parent received another copy of the IEP. The parent had requested a digital file and never specified what type of digital file was needed. When the files were sent, the parent finally stated that a PDF would not be acceptable. This was the first mention of an exact type of file needed and this mention was made 28 days after receiving the first PDF and 22 days after receiving the second PDF. Even after that request, there was still no mention of an exact type of file requested.

Because it appears as though no electronic or digital IEP meeting information was prepared to facilitate the May 2011 IEP meeting as requested by the parents in October 2010 and because the information was not provided in a digital/electronic format subsequent to the May 2011 meeting until the parents made another request, the HRA finds this complaint **substantiated**. However, the HRA does not find the school district to be completely at fault in this situation. Although in an Oct. 2010 email, it appears that the parent requests IEPs be done for the student and the parent in a particular format, there is never a statement by the parent indicating that they would like an IEP prior to every meeting. The HRA saw no documented discussion fully reviewing the parent's request or accommodation need. The notes for the May IEP meeting do not indicate the parents were upset with not being provided an IEP prior to the meeting. Also, the parent requested a digital file, which was provided, and then it was stated that it was not the type of digital file requested even though the request for an exact type of digital file was never made nor has a request for an exact file type been currently made.

The HRA offers the following **recommendations**:

- Pursuant to 34 CFR 300.322 and 23 Il Admin Code 226.530 provide parents with accommodations needed to assist in the understanding of and participation in IEP meeting proceedings including requests to review the IEP in digital format.
- When parents request documents to be provided in a text format that is not PDF, provide this document to the parents pursuant to 34 CFR 300.322 and 23 Il Admin Code 226.530, so that the parents can use it to understand the process of the IEP team/meeting. If the school is concerned that the document will be changed, ensure there is a time stamped original. If a school cannot meet an accommodation request, clearly document the reasons.

The HRA offers the following **suggestions**:

- The HRA suggest that when a parent requests internet access, they are made to follow the school policy and sign an "Authorization to Electronic Access" form per school policy.
- Develop policy that addresses parental participation in IEP meetings, including the provision of accommodations.
- Document parental accommodation needs in the student's IEP.

**Complaint #2 - School told parent when meeting was occurring but would not work with them on a meeting time to accommodate both parties. School gave parents 3 dates to**

**choose from. Also, meeting was postponed due to staff conflicts but they would not change meeting for parents.**

The HRA reviewed the complaint which states that the school would not work with the parents on accommodating a meeting time. The HRA reviewed documentation and saw that the school had attempted to work with the family in finding an appropriate date for them to meet to discuss the IEP. As stated in the report, parents of the student stated in an email (dated 6/9/2011) that "it simply is not appropriate to have such a meeting until after the evaluation is completed." The school offered the dates May 24<sup>th</sup>, May 31<sup>st</sup> and June 13<sup>th</sup> for IEP meetings and finally had the meeting on June 13<sup>th</sup> without the parents so that the student would have an IEP for the start of the school year. The Federal regulations states that "A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend" and that detailed records attempts to contact (telephone calls, correspondence, or one-on-one visits) were kept (34 CFR 300.322). The school is also bound by the regulation of each student with a disability starting the school year with an IEP (34 CFR 300.323). The school also requested that the parents provide additional dates where they could attend the meeting during the week of June 13<sup>th</sup> and the HRA saw no additional dates provided by the parents. Due to the fact that the school followed what is needed within the regulations in regard to parent participation, the HRA finds this complaint **unsubstantiated** but offers the following **suggestions**:

- Although the HRA feels that in this case the school district took enough action needed to comply with Federal requirements for parent participation, the HRA still does not feel as though all actions were completely exhausted. For example, the HRA saw no documentation of the school trying to contact the parents over the phone or attempting any one-on-one visits per regulation examples. The HRA recognizes that the parents insinuated that they did not want to have a meeting until the independent evaluation was complete and did not offer any alternative days for an IEP meeting. The school contacted the parents via email to cover Federal requirements, but the HRA would like to have seen all forms of contact exhausted due to the importance of the parents participating in the IEP team. The HRA suggests that the school develop a policy and/or procedure for the future in which telephone and in-person contacts with parents are attempted (both of which are logged) before proceeding with an IEP meeting especially when the start of the school year is still 2 months away.

**Complaint #3 - Meeting was recorded by the school without parent and students permission nor did the parents know they were being taped.**

The complaint states that parents and the student were recorded at an IEP meeting without knowledge or permission. The HRA did see evidence that both the school and the parents have taped meetings in the past, so there was a past practice of recording this student's IEP meetings. The school said that they did not remember if they made the statement that the meeting was being taped but, even if this did occur, they did place the recorder where everyone could see that the meeting was being recorded. The HRA saw no reference to the tape recorder at the meeting and no documentation of parental objection to taping the meeting. The state eavesdropping laws state that eavesdropping occurs when a person knowingly and intentionally records a conversation without the consent of the parties being taped (720 ILCS 5/14-2). Because of



contradictory statements that the meeting was recorded without parental/student knowledge per the complaint to the HRA while the school staff contend that the recorder was placed in full view of the parents and student with no objection and because there is no documented IEP information regarding the use of a recorder, the HRA cannot confirm or deny the allegation; thus, the complaint is **unsubstantiated**. The HRA does offer the following suggestion:

- In the future, be sure to receive consent from all parties involved in the meeting prior to recording the meeting and document accordingly in the meeting notes.

**Complaint #4 - Confidentiality violations, school board members knew about aspects of students IEP but they were not members of the IEP team.**

The complaint states that the district violated confidentiality when it was discovered that School Board members knew about aspects of a student's IEP and discussed the student's IEP with the parents. In its review, the HRA did not discover any evidence of the Board discussing the student's IEP with the parents nor did they discover evidence that the Board discussed the student's IEP in any manner that was not confidential or outside of the realm in which the information could be disseminated to the Board. The School Code determines that the board of school directors governs a school district (105 ILCS 5/10-1) and the School Records Act determines that students records or information may be distributed to "an employee or official of the school or school district or State Board with current demonstrable educational or administrative interest to the student." (105 ILCS 10/6). The HRA feels that due to the history of complaints and court actions between the family and the school district, the student and the student's IEP may have been a topic of discussion but it would fall into the category of school official with administrative interest in the student. Due to the fact that regulations determine that the school board is privy to student information in certain cases, the HRA finds this complaint **unsubstantiated** but offers the following **suggestion**:

- The HRA did find this complaint unsubstantiated but also views this as a perfect opportunity for the district to review confidentiality with the Board to remind the Board of their confidentiality obligations and re-educate the staff of the circumstances in which it is appropriate to discuss student records. The HRA also believes that this may be an opportunity to educate parents on the jurisdiction and powers of the school board and suggests that the same actions are taken in some manner with families.

**Complaint #5 - Requests for an independent evaluation of a student for occupational therapy services were inappropriately denied by the school district.**

The complaint states that a request for an independent evaluation was inappropriately denied by the school district. In reviewing the documentation, the school requested that the family send a written request to the school superintendent asking for the independent evaluation per state mandates (23 Il Admin Code 226.180). The HRA feels as though there has been a miscommunication regarding the written request in that the parent may have thought that the request had to be "hand written" whereas the mandates only indicate that the requests had to be "written" to the superintendent and an email request to the school superintendent would have been adequate for requesting an independent evaluation. No e-mail or other written request for

an independent evaluation was specifically sent to the superintendent until some time later, thus, the complaint is **unsubstantiated**. The HRA offers the following **suggestion**:

- Because staff were aware of the parent's interest in securing an independent evaluation as referenced in IEP meeting notes and in e-mail exchanges with the parents, information should have been provided about how to make a formal request, including the use of an e-mail request especially if e-mail had been an identified or requested parental accommodation. The HRA suggests that in the future, the school explain to parents that written requests can be made via email.
- The Federal ADA regulations require public entities to make modifications to their practices as to not discriminate against individuals with disabilities (28 CFR 35.130).

**Overall, the HRA would like to express its concern regarding this situation. There is a lack of cooperation between both the school district and the student's parents regarding the student's education. This report exemplifies both sides of the process being at fault in this lack of cooperation, for example the school could have clarified that the evaluation request could be sent via email to the superintendent and the parent could have sent an alternative date for the IEP meeting when it was requested by the school district. The HRA fears that the individual being most affected by the lack of cooperation in this case is the student. The HRA's role in the community is to advocate for rights of individuals with disabilities and the HRA feels that the student's right to a free appropriate public education is possibly being compromised by the actions of both parties involved. Considering both parties main goal should be the student's education, the HRA strongly suggests that, for the sake of the student, the school district and the family somehow learn to cooperate and constructively work together regarding matters involving the student's education.**

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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

Michelle A. Todd  
mtodd@hlerk.com

June 7, 2012

## Via Facsimile and First Class Mail

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

**Re: Response to May 23, 2012, Correspondence  
Human Rights Authority/Case No. 11-090-9040**

Dear Mr. Seaman:

As you are aware, our firm represents Midland School District No. 7. Please consider this correspondence a response to the HRA's May 23 letter requesting an updated version of Board of Education Policy 8:70, *Accommodating Individuals with Disabilities*. As I informed you in our telephone conference, it is the District's position that Board Policy 8:70 fully ensures that all individuals with disabilities are provided with an opportunity to participate in all school-sponsored services and further provides that the District will provide auxiliary aides and services when necessary to afford individuals with disabilities equal access to all school programs. This includes providing parents with accommodations at IEP meetings. It is the District's position that the policy fully conforms to both state and Federal law and does not require any revisions.

Additionally, it is our position that the HRA does not have jurisdiction over this complaint. This same [REDACTED] filed the same complaint with the Office for Civil Rights, OCR Complaint #05111341. OCR completed an investigation regarding the District's accommodations to parents with disabilities and entered into a compliance agreement with the District on this very issue. The District will continue to follow the compliance agreement initiated by the OCR. As a result, we now consider this matter to be closed.

Sincerely,

HODGES, LOIZZI, EISENHAMMER,  
RODICK & KOHN LLP



Michelle A. Todd

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

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