



FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 12-030-9005
Libby Elementary School

Case Summary: The HRA could not substantiate the complaint that the school falsified a signature stating that a parent refused special education services, but it did substantiate that the school then made the decision to refuse the child these services without the input of the parent.

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at Libby Elementary School (Libby). It was alleged that when a parent requested an evaluation of her child for special education services the school said the parent had signed a paper stating that she did not want special education services, which the parent said was not true, and the school then made the decision to refuse the child these services without the input of the parent. If substantiated, this would be a violation of state and federal regulations pertaining to special education (23 Ill Admin. Code 226; 34 C.F.R. 300).

Libby Elementary, a Chicago Public School District 299 school, serves grades pre-kindergarten through eighth grades. The district has 689 schools, grades pre-kindergarten through twelve, serving 425,128 students. Libby has 600 students of which 92 have IEPs.

To review these complaints, the HRA conducted a site visit and interviewed the school's Principal, Assistant Principal, a Counselor/Case Manager, and a Specialized Service Administrator. With consent, the team reviewed the record of a student as well as pertinent school policies.

COMPLAINT SUMMARY

The complaint centers on a parent's request for an evaluation of her daughter for special education services. The complaint indicates that the parent transferred her daughter into Libby school in January of 2011, at which time she took a letter from her physician indicating that the child had a diagnosis of Attention Deficit Hyperactivity Disorder. One day, when the parent went to the school to pick her daughter up for a doctor's appointment, she approached the

counselor/case manager and asked if/when her child would be evaluated for special education services. The case manager stated that the mother had signed a paper on 1/03/11 stating that she did not want special education services, and she produced this paper. The complaint alleges that the parent did not sign this paper. Additionally, the complaint indicates that the mother picked her child up from school one day and was told by the child's teacher that the child had been very "hyper" that day and was struggling to focus. The mother told her that the child was on medication to treat this and the teacher asked, "Does the school know about this?" Because the teacher was unaware of the child's diagnosis, the mother was adamant to have a meeting with the teacher and counselor, however they would not meet with her. The complaint states that the mother was picking her daughter up after school and was told by the staff that her daughter had been refused special education services, and that she never received a written response to her request or any further information.

FINDINGS

Libby provided the student record for the investigation. In it is a letter, written 1/03/11, which states, "[Parent] mother of [student], 2nd grade Homeroom 611, brought a letter from a Physician indicating [student] has a diagnosis of Attention Deficit Hyperactivity Disorder, Combined Type is currently being treated with medication. [Parent] expressed to [counselor/case manager] the Case Manager at Libby, that she does not want [the student] to be evaluated for special education services and that she has been responding well to the medication she has been taking." The letter is signed by the parent and the counselor/case manager.

The record contains a written request made by the mother which states, "To whom this letter seriously concern, I would like my daughter... to be evaluated for special education services. This is very deep concern for me because of my daughter's disability." This is signed by the parent and dated 9/20/11. The record shows that this correspondence was sent by certified mail on 9/21/11 to Libby.

The record contains the Parent/Guardian Notification of Decision Regarding a Request for an Evaluation. It is dated 9/20/11 and is addressed to the parent: "A request for a special education evaluation was made for your child on 9/13/11 by you for the following reasons: [Student's] mother requested an evaluation for [student] on 9/13/11. [Parent] stated that the concerns were regarding her diagnosis with ADHD and how it affects her academic performance. A review of the request has determined that an initial evaluation is not appropriate at this time. The reasons and relevant factors for the above indicated decision include: [Student's] grades and test scores were reviewed by staff after the [parent] requested an evaluation. [The student] appears to be performing appropriately according to her grades and test scores. Specifically, [the student] received a 'C' on her 5 week progress report in Reading, as well as a final grade of 'C' at the end of the school year. Her reading teacher commented that [the student] is inconsistent in her efforts, but is fully capable of doing this work. [The student] increased her Reading Scantron score on 8/22/11 by 254 points from 5/12/11 and 414 points from 1/21/11. [The student's] teachers addressed no concerns regarding her academic performance. Based on this information, staff feels that an evaluation for [the student] is not warranted at this time. You and your child have rights and protections under the procedural safeguards and may wish to review your attached copy of the Explanation of Procedural

Safeguards regarding the district's decision. To discuss any concerns or, if you have any questions regarding this decision, please contact [the counselor/case manager]...." This letter is signed by the counselor/case manager. This letter was also sent by certified mail to the parent. The receipt indicates that the correspondence was "unclaimed." The address is one numeral off of the actual address of the parent.

The student's performance test scores were included in the record. For the Reading test, the student tested at the 17th percentile, and the Rating is indicated as "Below." For the Science test, the student tested at the 14th percentile with a Rating of "Below Average." For the Mathematics test, the student tested at the 11th percentile with a Rating of "Warning." The Progress Report for the student was included in the record and indicates that the student received a "C" in Reading, a "D" in Writing, a "D" in Mathematics, a "C" in Science, and an "F" in Social Science. The Comments section includes: "Is inconsistent in his efforts" in Reading, "understands course concepts" in Writing, and "More effort needed" in Mathematics and Social Science.

STAFF RESPONSE

School staff were interviewed regarding the complaint. They stated that the parent brought a letter from the student's doctor in January, 2011 stating that the child had a diagnosis of ADHD. Staff reported that the parent then signed the letter which indicated she did not want special education services, and this signature was witnessed by two staff. Staff indicated that in September of 2011 the parent verbally requested that the student be evaluated for special education services when she informally met with the counselor/case manager. After this request the parent was asked to put the request in writing, which she did. Before receiving the written request, the counselor/case manager met with the principal, school social worker, the student's teachers (3), the school psychologist, school speech pathologist, and school nurse, to discuss the student's progress and educational needs. At this time teachers noted that the student was easily directed to do her work with prompting and was capable of completing her work within the school setting. Teachers and other staff determined that the student was not getting adequate educational support from her parent because she was not doing the required work outside the classroom. The refusal of services letter and other documents were then sent to the mother and then returned to the school unclaimed. On 11/10/11 the Assistant Principal saw the parent on the playlot after school and told her that the packet had been returned and was in the office where the parent could pick it up. Staff believe the parent then picked up the packet three days later. Staff were asked if there is documentation of an arranged meeting between the parent and the school staff regarding the parent's concerns about her student's academic performance. They reported that the parent is angry, belligerent, and they do not feel comfortable meeting with her. There is one staff member, the Assistant Principal, who is able to converse with the parent, and they usually meet informally when the parent arrives at the school to pick up her child. There is no documentation of the school's educational interventions or plan for the student going forward.

School staff were interviewed about the programming that is available to determine the eligibility for special education. They stated that students may progress through early literacy programming, Supplemental Education Services (SES), Response to Intervention (RTI), and then be evaluated for an IEP. Staff indicated that a diagnosis of ADHD alone does not suggest a need

for special education services, but that the disability must impact the student's academic success. They indicated that the student in this case was offered help through her teacher, who contacted the mother to discuss remediation in the classroom, however the parent was not responsive. Also, staff stated that they invited the mother to attend SES after school with her daughter, but the parent refused. Additionally, the school has a tiered system to address the specific needs of students, and the student in this case was progressing through this system. Additionally, because of the inadequacy of the work outside of the classroom, the student did not qualify for RTI. Staff were certain that the student is being offered every intervention that is appropriate for her educational needs, but that she lacks the appropriate support outside the classroom.

Staff noted that the student was just below average on her scores and that staff usually look for a "dip" in test performance rather than a flat line in determining need for special services. Staff stated, "There is no IEP for slow learners." Staff indicated that the student's teachers felt the student was very able to do the work, particularly when someone was able to keep her focused, and that generally she performed well in the classroom. The staff were very adamant that the student in this case was capable of completing her work, but lacked parental support.

STATUTORY RIGHTS

The Illinois Administrative Code states, "To determine whether the child requires an evaluation, the district may utilize screening data and conduct preliminary procedures such as observation of the child, assessment for instructional purposes, consultation with the teacher or other individual making the request, and a conference with the child. Within 14 school days after receiving a request for an evaluation, the district shall determine whether an evaluation is warranted. If the district determines not to conduct an evaluation, it shall provide written notice to the parents in accordance with 34 C.F.R. 300.503(b)." The Code states, "Each school district shall develop and make known to all concerned persons procedures by which an evaluation may be requested" (23 Ill. Admin. Code 226.110).

The Illinois Administrative Code also states, "Provided that the requirements of this subsection are met, each district shall, no later than the beginning of the 2010-11 school year, implement the use of a process that determines how the child responds to scientific, research-based interventions as part of the evaluation procedure described in 34 C.F.R. 300.304. When a district implements the use of a process of this type, the district shall not use any child's participation in the process as the basis for denying a parent's request for an evaluation" (23 Ill. Admin. Code 226.130 (b)).

The Federal Code states, "Request for initial evaluation. Consistent with the consent requirements in 300.300, either a parent of a child or a public agency may initiate a request for an evaluation to determine if the child is a child with a disability" (34 C.F.R. 300.301). The Federal Code also states, "Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of the child with a disability a reasonable time before the public agency...(1) Proposes to initiate or change the identification, evaluation, or educational placement of a child, or the provision of FAPE [Full and Appropriate Public Education] 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 action" (34 C.F.R. 300.503).

SCHOOL POLICY

Chicago Public Schools Special Education Policy states, "To determine if a student requires a Full and Individualized Evaluation (FIE), the case manager along with any other individuals designated by the principal, e.g., Instructional Leadership Team, review the referral information and screening data, conduct preliminary procedures (such as observation of the child, assessment for instructional purposes, consultation with the teacher or other individual making the referral, and/or a conference with the student) to determine if the referral should be approved. As part of this process, the review must ensure that the student's need for an FIE has been documented and considered fully."

Chicago Public Schools Special Education Policy states, "All referrals for evaluations must be provided in writing. If the referral does not include the basis for concern, the CPS case manager will ask for the omitted information, document the response and attach it to the parent's referral request. If the request is made orally, the case manager should instruct the referrer to put his/her concerns in writing, date it and give it to the principal. The case manager should document this conversation in the *Event Log*. If the parent is unable to write out his/her concerns, the case manager should assist in transcribing the parent's concerns. The principal/designee may ask the parents to provide any relevant information about the child, including any reports, prior evaluations, health records, school records from other schools, etc., to avoid duplication of information and to assist in making appropriate decisions about the FIE. Within 14 school days after receiving a request for an FIE, the case manager must notify the parent in writing whether or not an evaluation has been determined to be warranted."

Chicago Public Schools Special Education Policy states, "If the principal/designee determines that the evaluation is not warranted, (s)he must ensure that the parent and any other referral source are provided a written notice of this decision within 14 school days of the date the school received the Full Individual Evaluation referral. The form must include the following:

Notice to the parent/referral source of the referral date, reasons for the referral, and why the principal/designee determined that the evaluation was not appropriate.

The mailing date of the notice.

Any plan to address the student's needs, such as general classroom interventions designed by the Instructional Learning Team and a time frame for implementation and review;

The contact person, which is usually the case manager.

For initial referrals, the provision of the Explanations of Procedural Safeguards document, which notifies the parents of their right to mediation or a due process hearing to contest this decision. The case manager discusses this decision with the parent to answer any questions and address any concerns. In addition, the case manager places a copy of the form in the student's temporary record. Within 14 school days after receiving a request for an FIE, the case manager must notify the parent in writing whether or not an evaluation has been determined to be warranted."

Libby Elementary provided the flowchart which demonstrates the decision chain for evaluation for special education services. It shows that once a request is received, the case manager, along with the IEP Team, "determines if current available information (including RTI data) indicates student-based educational concern in any of the following areas: Academic performance, communication or social or emotional learning." If the team decides there is no concern: "The team determined that through general education and based on the student's documented progress, the student can make educational progress in an age appropriate curriculum with the use of high quality classroom practices and interventions using differentiated instruction." The team may deny the request for an evaluation based upon the decision that "the concerns expressed in the request for evaluation can be addressed with the use of high quality classroom practices using differentiated instruction and interventions. Notice of decision must be sent within 14 school days."

CONCLUSION

The HRA has reviewed the letter written 1/3/11 stating that the parent did not want her student evaluated for special education, and although it doesn't appear to be the parent's signature, there is no way to substantiate this. Moreover, we feel that it is unnecessary since the parent's verbal request was made the following school year, in September of 2011. From that point the district policy states, *"At this time the case manager should instruct the referrer to put his/her concerns in writing, date it and give it to the principal. The case manager should document this conversation in the Event Log. If the parent is unable to write out his/her concerns, the case manager should assist in transcribing the parent's concerns. The principal/designee may ask the parents to provide any relevant information about the child, including any reports, prior evaluations, health records, school records from other schools, etc., to avoid duplication of information and to assist in making appropriate decisions about the FIE. Within 14 school days after receiving a request for an FIE, the case manager must notify the parent in writing whether or not an evaluation has been determined to be warranted."* Also, the district policy indicates that in order to ensure that the student's need for an IFE *"has been documented and considered fully,"* they must conduct preliminary procedures such as *"consultation with the individual making the referral."* In this case, there is no documentation to show that a meeting took place between the parent/referral source and the school regarding the

request for special education or the refusal of such. Additionally, there is no documentation to show what happened after the referral packet was returned to the school because of an error in the address. The parent states that she did not receive the packet, did not meet with staff about the issue, and was told on the playlot that her child was refused services. The school policy clearly indicates that it was the responsibility of the school to provide their written response along with the appeal process to the parent, and the HRA believes the packet could have easily been delivered to the parent, who picks up her child from school daily. Also, per district policy, the refusal for services should include "*Any plan to address the student's needs, such as general classroom interventions designed by the Instructional Learning Team and a time frame for implementation and review*" which was not included in the packet or in a meeting with the parent. The HRA cannot substantiate the complaint that the school falsified a signature stating that a parent refused special education services, but it does substantiate that the school then made the decision to refuse the child these services without the input of the parent.

RECOMMENDATION

1. Review with staff the Chicago Public Schools policy and procedure for the Full and Individualized Evaluation (FIE), ensuring that within 14 days after receiving a request for an FIE the case manager notifies the parent in writing whether or not an evaluation is warranted and that the refusal includes the Explanation of Procedural Safeguards document as well as a plan to address the student's educational needs going forward. Document any irregularities in the Event Log.