



FOR IMMEDIATE RELEASE

**East Central Regional Human Rights Authority
Report of Findings
Champaign Community Unit School District #4
Case #12-060-9012**

The East Central Regional Human Rights Authority (HRA), a division of the Illinois Guardianship and Advocacy Commission accepted for investigation the following allegations concerning the Champaign Community Unit School District #4:

1. A child's access to special education services are reduced or not provided because the child attends a parentally-placed private school.

If found substantiated, the allegations may represent violations of state and federal special education mandates (23 Ill. Admin. Code 226 et seq., 105 ILCS 5/1 et seq., and 34 C.F.R. 300 et seq.)

Per it's website "The mission of the Champaign Unit #4 School District, in partnership with the community, is to guide all students in gaining knowledge, skills, and attitudes necessary to direct their lives, improve a diverse society, and excel in a changing world by providing dynamic, resource-rich learning environments and experiences in which people and lifelong learning are valued."

COMPLAINT STATEMENT

Per the complaint a child in a parentally placed school was not offered testing for his disability and the school did not want to provide special education services. When the IEP was completed in order for the child to receive services he had to attend the public school one hour per day to earn a reduced amount of special education services.

To investigate the allegations, the Authority met with and interviewed various school officials, reviewed the record of a student receiving special education services, with parental consent, and examined pertinent school district policies and special education mandates.

Interview

The HRA met with the Director of Special Education and staff. The HRA asked how many children are enrolled in the district's schools. The response was 9400 students. School district staff explained that there are approximately 1400 students that have individual education plans (IEP) and receive special education services. This includes students ranging in age from prekindergarten through 21 years of age.

When asked to describe the process of finding children needing special education services, per the Educational Code, the school's staff stated they have an annual screening of children under the age of 5 for the purpose of identifying those who may need early intervention or special education and related services. There were 24 children referred for speech evaluation and 44 children in the 2011/2012 school year who had been referred for a special education evaluation. There were 284 children between the ages of 3-5 that have been screened this year. Of the 3-5 year olds needing special education services, 99% of them are now attending Champaign School district. In this case, on 9/6/2011, the parent requested a special education evaluation due to concerns about her child's articulation. At the time of the request, the Director of Special Education informed the parent that the district did not evaluate students who attended for-profit schools because those students were not eligible for proportionate share services. Following the parent conversation, the Director consulted the school's attorney who works with the special education department. The attorney informed the Director that an evaluation should be completed, but confirmed that students who attend for-profit schools were not eligible for proportionate share. The Director called the mother back, informed her that the district would conduct the evaluation, and contacted a speech language pathologist who was assigned to the evaluation. On 9/14/2011 the school sent a notification of the decision regarding a request for an evaluation and included consent for the evaluation identification of needed assessments which was completed and returned by the parent.

The HRA asked about the District's policy of dual enrollment. The school representatives explained that in this case the child's private school is not an elementary or secondary school by federal law because it is a for-profit school, citing the Code of Federal Regulations, Title 34, Section 300.13. The Code defines under section 300.13 that "Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law." In order for the district to provide a Free Appropriate Public Education (FAPE), the child must be enrolled in the school district at least part time to receive special education services. At this time the child is dually enrolled in Champaign Elementary school, one hour per day, and the for-profit school. The school district cannot use federal funds for a for-profit agency.

When the HRA asked about the child's needs in determining the IEP, the response was it was hard to provide services with the child attending a for-profit school and not being able to use the proportionate share of funding. The HRA questioned if it was recommended on the IEP that the student should receive 30 minutes of special education per week, then why does his IEP state that he will only receive 10 minutes per week. School staff explained that since the child would not be eligible for the proportionate share, he would receive the percentage of special education services based on the percentage of his attendance at the elementary school. Example if the child attends school at Champaign school district 50 % of the day he would receive 50 % of the special education services that would be recommended on the IEP. Applying this formula to the dual enrollment of this child attending the public school for one hour per day, he is eligible for approximately 10 minutes per week. The school shared with the HRA that the child now only attends the elementary school one hour per week because of a physician's statement which limits how much time the child may be in a public setting because of a head injury and to prevent

infection. The physician's statement has since expired. The hour he attends is the hour he receives his 10 minutes of special education.

The HRA discussed that after reviewing the record of this child, it appears that this child has been functioning quite well at his parentally placed school. We asked had anyone considered that this child's current education would be disrupted approximately 10 hours per week or 2 hours per day if you include the time it takes to travel back between schools. The school representatives explained that the parent chose the time of the speech therapy. The parents provide transportation. A representative from this child's private school did attend the first IEP meeting, but did not attend the second IEP meeting. The representative was invited to both IEP meetings.

Policy

The HRA reviewed the *Champaign Community Unit School District #4 Administrative Procedure for the Education of Children with Disabilities (no date.)* Under section 1, regarding the provision of a FAPE, A. Comprehensive Program it states: "The School District provides and maintains appropriate and effective educational programs in order to afford every eligible child with a disability who is between the ages of 3 and 21 (inclusive), is enrolled in the School District, and requires special education and related services to address the adverse effect of the disability on his/her education, a free appropriate public education (FAPE). As part of this effort, the School District shall make available to all eligible children who are residents of the School District a comprehensive program of special education...."

In section 9, for Serving Students Who Attend Nonpublic Schools B. Children With Disabilities Enrolled by Their Parents In Private Schools Where FAPE Is At Issue 1., it states: "The School District is not responsible for educational costs, including special education and related services, of children placed in nonpublic special education programs or facilities by their Parents if the School District made FAPE available to the child and the Parent(s) elected to place the child in a nonpublic special education program or facility. "

The HRA reviewed the school board policy #656 Dual/Shared Time Enrollment which states: "The Board of Education believes that dual/shared time enrollment is educationally beneficial to the District and its constituents. A program of dual/shared time shall apply to all non-public educational institutions and students participating in registered home instruction on a purely voluntary basis upon application by the parent(s) or legal guardians of those children seeking enrollment...." "The District shall honor requests on a "space-available" basis. Students accepted into the dual/shared time program shall be subject to the District's reasonable rules and regulations." The policy is based on the Illinois School Code (105 ILCS 5/10-20.24) which states: "To accept in part-time attendance in the regular education program of the district pupils enrolled in nonpublic schools if there is sufficient space in the public school desired to be attended. Request for attendance in the following school year must be submitted by the nonpublic school principal to the public school before May 1. Request may be made only to those public schools located in the district where the child attending the nonpublic school resides...."

Regarding the powers and duties of school boards, the School Code (105 ILCS 5/14-6.01) states: "School boards of one or more school districts establishing and maintaining any of the educational facilities described in this Article shall, in connection therewith, exercise similar powers and duties as are prescribed by law for the establishment, maintenance and management of other recognized educational facilities. Such school boards shall include only eligible children in the program and shall comply with all the requirements of this Article and all rules and regulations established by the State Board of Education. Such school boards shall accept in part-time attendance children with disabilities of the types described in Sections 14-1.02 through 14-1.07 who are enrolled in nonpublic schools. A request for part-time attendance must be submitted by a parent or guardian of the disabled child and may be made only to those public schools located in the district where the child attending the nonpublic school resides; however, nothing in this Section shall be construed as prohibiting an agreement between the district where the child resides and another public school district to provide special educational services if such an arrangement is deemed more convenient and economical. Special educational services shall be provided to such students as soon as possible after the identification, evaluation and placement procedures provided in Section 14-8.02, but no later than the beginning of the next school semester following the completion of such procedures. Transportation for students in part time attendance shall be provided only if required in the child's individualized educational program on the basis of the child's disabling condition or as the special education program location may require."

Included was Section 300.130 of the Code of Federal Regulations which states that the definition of parentally-placed private school children with disabilities are "children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13"

Record Review

A timeline and additional records were provided by the school district to the HRA investigation team.

9/6/2011 – The parent requested a special education evaluation due to concerns about her son's articulation. At the time of the request, the Director of Special Education informed the parent that the district did not evaluate students who attended for-profit schools because those students were not eligible for proportionate share services. Following the parent conversation, the Director consulted the attorney who works with the special education department. The attorney informed the Director that an evaluation should be completed, but confirmed that students who attend for-profit schools were not eligible for proportionate share. The Director called the parent back, informed her that the district would conduct the evaluation, and contacted a speech language pathologist who was assigned to the evaluation.

9/14/2011 – A notification of the decision regarding a request for an evaluation was completed and mailed. An evaluation was deemed necessary. The consent for the evaluation identification of needed assessments was completed at the meeting; the parent signed the consent for evaluation

9/20/2011 - The *Timely and Meaningful Consultation letter* was sent to all of the private/parochial (not for profit) schools in the school district. It stated that "In accordance with the requirements of section 612 (a) (10) of the Federal Individuals with Disabilities Education improvement Act of 2004 (IDEA 2004), this letter is to invite you to a meeting to discuss our plans for working with students with disabilities who currently attend your school during the 2011-2012 school year." The letter further asked for identifying up to three parents (preferably of students with disabling conditions) who may wish to attend this meeting to offer their input. The agenda included topics regarding: Child Find, Proportionate Share, Meaningful Participation, Allocation of Services, and Proposals of the Private School Representatives. The meeting date and time was published in the local newspaper under public notices. In the publication it stated: "That if you were a parent of a home schooled student who has been or may be identified with a disability and you reside within the boundaries of the district you are urged to attend." On the attendance sheet for that meeting it was documented that 7 private schools had representatives that attended and two other names that were masked of parents that attended.

10/12/2011 – An eligibility determination conference was convened. The student was found eligible for special education services as a student with speech/language impairment. There was discussion about the child's ineligibility for the proportionate share services because of attendance at a for-profit school. The meeting was terminated before the (IEP) could be discussed.

11/1/2011 –The student was offered a Free Appropriate Public Education (FAPE) at a Unit #4 school. No proportionate share services were offered because of the for-profit status of student's private school. It was documented that FAPE was declined by continued enrollment in a for-profit school. The possibility of dual-enrollment was discussed and the school board policy on dual enrollment was provided. The parent stated that she would pursue the matter legally. Following the IEP meeting, the parent went to the Family Information Center (FIC) and picked up registration forms, stating her intention was to enroll her child for speech services.

The HRA reviewed the IEP from this date. It documented that based on the team's analysis; a disability in speech had been identified. There was a speech language report suggesting the student was delayed in his articulation. His prognosis for improvement was very good. It also documented that he needed 30 minutes per week of speech therapy special education. The IEP meeting was held with the parent, the speech pathologist, the special education administrator and the associate director of the private school the student attends regularly.

11/10/2011 – The parent returned to the FIC with the registration forms.

11/22/2011 – The student was assigned to an elementary school and would begin following winter break.

1/18/2012 – The IEP meeting for the student was held at the elementary school. The parent identified the time of day during which she wanted to dually enroll her child; this time encompassed parts of math and science/social studies time. Based on the educational impact during that time, the IEP was written for 10 minutes per week of speech service. The parent accepted the IEP and the student would start attending on 1/30/2012. On 2/3/2012, the student's

doctor wrote a note excusing him from school on all but Fridays: “Due to ____ head wound he should limit exposure to multiple children.” The note excused the student from 1/31/2012 to 3/13/2012. Since the date of the doctor’s note, the child continues to attend school only on Fridays (through 4/26/2012); the one day he receives his 10 minutes of speech therapy.

The HRA reviewed the IEP. It was signed by one of the parents, the speech therapist, the Director of Special Education and another party. It was determined that the student is enrolled in a school that is not eligible for proportionate share. The student would be eligible for services on the proposed IEP if enrolled in the school district's elementary school part time. He would receive 10 minutes per week of special education speech therapy. The student would attend special education classes, separate schooling or removal from the regular classroom environment because the quiet environment of the therapy room was necessary to achieve goals for speech therapy. He would participate in nonacademic activities with nondisabled peers and have the same opportunity to participate in extracurricular activities as nondisabled peers. He would attend the school he or she would attend if nondisabled. Under the student's strengths it stated that he was a very personable student. Language skills, voice and fluency were all strengths for him. Parental concerns were about the student's articulation and how it affected the student socially. Regarding academic achievement there were not any areas of concern, the student was strong academically. The student followed rules and routines and completed work in a timely manner. In describing the effects of this individual's disability in the general education curriculum and the functional implications of the student's skills it stated that speech misarticulations impact communication in the classroom socially in oral discussions. Under goals it stated that the student would use /r/ in conversation with 90% accuracy. It documented that the parents refused services by saying no to a free appropriate public education (FAPE.) As of 1/19/12 the student would be dually enrolled at the elementary school. He would attend the elementary school from 12:00 - 1:00 daily.

The HRA was provided a graph that showed the initial evaluations for children attending (not for profit) private schools from 2008 through 2011. It showed how many children were evaluated, how many were eligible for services out of those evaluated and the total number that were served and the proportionate share. In 2010-2011 there were approximately 150 children receiving education in parentally placed private schools that receive special education services from the Champaign School District. This same school year 31 new children were evaluated for special education services that attend parentally placed private schools and 28 were determined to be eligible. The proportionate share for these children was \$184,464.00.

BEST PRACTICES

The HRA contacted the Illinois State Board of Education (ISBE), Family Resource Center on Disabilities (FRCD) and Family Matters Parent Training and Information Center (FMPTC). Both FRCD and FMPTC are funded by the U.S. Department of Education and specialize in providing training and resources to serve children with disabilities. FRCD serves families and children in the Chicago area and FMPTC serves the 94 counties outside of the Chicago area. The HRA inquired of each agency to see what would be the best practices in this case scenario.

Per telephone conversation with the ISBE representative, she stated that the school seemed to be on the right track. She did not see any issues with the dual enrollment and felt it was fair. That dual enrollment is not common, but is a way to offer special education services to children who attend for-profit schools.

The HRA contacted FMPTC, an agency which is a project of ARC Community Support Systems that was funded as a Family Support Program, in 1989, by the Illinois Department of Human Services in order to assist families to keep their children with disabilities living at home by providing, locating, or creating the needed supports. The representative contacted did not have any similar case scenarios to provide any basis of comparison to determine best practices. She did say it is very rare to have for-profit elementary schools in downstate Illinois.

The HRA contacted FRCD an agency which provides bilingual information/referral and individual assistance on IDEA (individuals with Disabilities Education Act), the Rehabilitation Act and state laws. The representative from this agency stated that in providing services to a student enrolled in a for-profit school that student must be dually enrolled to provide services and to receive Title I funding. The public school is only allotted so much funding. The student would not receive the same services as if he was in the public school full time.

CONCLUSIONS

Regarding the issue of Child Find the school district made a mistake when they did not offer testing when the parent first requested services. However it was researched by school district staff and quickly remedied within a week. The child was provided testing for special education services. The school district has documented evidence that they do contact all not-for-profit schools in the district to conduct the process of Child Find pursuant to the Code of Federal Regulations for education under Title 34, Section 300.131 which states that "Each local education association (LEA) must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA...." The school district also publishes when these meetings will take place and invites parents who home school to participate and to seek services.

Regarding the allegation that a child's access to special education services are reduced or not provided because the child attends a parentally-placed private school, the Code of Federal Regulation in Section 300.13 defines "Elementary school as a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law." The definition of parentally-placed private school children with disabilities pursuant to the Code under 300.130 "means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 300.13" The Code further states in 300.137 "No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school." The Code in section 300.148 (a) regarding the placement of children by parents when FAPE is at issue states "This part does not require an LEA to pay for the cost of education,

including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with 300.131 through 300.144...." Section 300.17 (a) (b)(c) defines FAPE as "special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the state education association (SEA), including the requirements of this part; and include an appropriate preschool, elementary school, or secondary school education in the State involved...." Based on the definition in the Code that a for-profit school is not recognized as an appropriate elementary school and the school district, per the Code, is not required to pay for the cost of special education while the child attends the for-profit school, the complaint: A child's access to special education services are reduced or not provided because the child attends a parentally-placed private school although true, **is not substantiated as a rights violation.**

The HRA takes this opportunity to make the following suggestions:

1. Invite the for-profit school representatives when the school district is conducting the Child Find Process. Parents of children attending these schools are entitled to the free assessment for special education services and may want to take advantage of the special education services by attending the school district or take advantage of the school district's dual enrollment policy so that their child may receive services pursuant to the Code 300.131 which states "That each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA...."
2. Ensure that a representative from the child's private school participates in the IEP process, even if that representative could not be there in person, maybe they could participate by electronic means or via telephone pursuant to the Code in the same section which states "If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls."
3. Ensure that parents of students identified as needing special education services are fully informed of the various options for receiving services and any associated limitations.

The HRA appreciates the full cooperation of the Champaign Community Unit School District #4 during the investigation.