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Egyptian Regional Human Rights Authority  
Report of Findings  
13-110-9034  
Massac County School District

The Egyptian Regional Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission has completed its investigation concerning an alleged rights violation involving the Massac County School District located in Metropolis. There are approximately 300 students at the Jr. High and at least 620 at the high school. Of this population, approximately 280 have some kind of disability but only 6 use wheelchairs. The specific allegations are as follows:

1. Accommodations were not made at the High School to address accessibility issues for a student with a disability.
2. Family members were not allowed to participate in the IEP process at the Jr. High resulting in the student's aide being inappropriately reassigned after 9 years of working with him.
3. A student with a disability was denied participation in school functions.

If substantiated, the allegations would be violations of the Individuals with Disabilities Education Act (IDEA) (20 USCA 1400); the Code of Federal Regulations (34 CFR 300); the Americans with Disabilities Act (28 CFR 35); the Illinois Administrative Code (23 IL ADC 226) and the Illinois Accessibility Code (71 IL ADC 400).

According to the complaint, a student with a disability was not provided school transportation that would allow him to participate in his 8<sup>th</sup> grade graduation practice and an awards ceremony. It was also alleged that his aide since Kindergarten was reassigned and would not be allowed to continue at the high school with him, making the transition even harder on the student. The complaint was concerned that this was a repercussion due to the aide overstepping boundaries when trying to advocate for the student and that the school reassigned her as punishment so she could no longer be involved with him. The final allegation was that the high school was not addressing accessibility issues that the student would have when attending there. Specifically, installing a wheelchair ramp that would make it possible for him to access the football field bleachers to participate in band; putting in a sidewalk to the asphalt at the band room door to allow quicker access to the football field; providing accommodations that would cover a ditch that leads to the football field; and finally, providing someone to push the student's wheelchair during field shows, parades, practices and band camp.

**Definitions**

The Code of Federal Regulations (CFR) in Section 300.39 defines *special education* as "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability including instruction conducted in the classroom, in the home..." *Specially designed instruction* means "adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--(i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children." Travel training means "providing instruction, as appropriate, to... children with disabilities who require this instruction, to enable them to...learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community)." *Free Appropriate Public Education (FAPE)* is outlined in section 300.101 as "a free appropriate public education [that] must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d)." Individualized Education Program (IEP) is defined in section 300.320 as "a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include--(1) A statement of the child's present levels of academic achievement and functional performance...(2) A statement of measurable annual goals, including academic and functional goals designed to-- (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (B) Meet each of the child's other educational needs that result from the child's disability...(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities."

The IDEA (20 USCA 1414) defines individualized education program (IEP) as "a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section..." The term individualized education program team (IEP Team) is defined as "a group of individuals composed of (i) the parents of a child with a disability; (ii) not less than 1 regular education teacher of such child...(iii) not less than 1 special education teacher...(iv) a representative of the local educational agency who (I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (II) is knowledgeable about the general education curriculum; and (III) is knowledgeable about the availability of resources of the local educational agency; (v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi); (vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (vii) whenever appropriate, the child with a disability"

### **Investigation Information**

To investigate the allegation, the HRA Investigation Team (Team), consisting of one member and the HRA Coordinator conducted 3 site visits at the schools involved. During the

visit the Team spoke with the School Superintendent (Superintendent), the Special Education Director (Director), the principals of the Jr. High and High School, the student's mother and the school aide the student had for 9 years. The student's Individualized Education Program (IEP) was reviewed after the Authority received written authorization from the student's guardian.

## **I. Interviews:**

A. Superintendent: The Superintendent informed the Team that there are approximately 300 students at the Jr. High and 620 or more at the high school. There are others with disabilities but he didn't have the exact figures, the Special Education Director did. They have 40 teachers' aides on staff. The Team questioned him regarding the allegations involving transportation to graduation practice and the awards ceremony. The Superintendent informed the Team that the student's aide had asked for a bus to pick him up to transport, but the school did not have a release from the student's treating doctor saying it was ok for him to be transported by bus, only that it was ok for him to attend graduation. The student had recently undergone back surgery and was on homebound status at that time. The school was concerned that transporting him by bus would be too risky so soon after his surgery and also had concerns about liability. The Superintendent stated that the awards ceremony was held before the release was valid; therefore, he would have needed a new release in order to participate. The special education director tried to get a note, but by then the student's mother said she didn't want the school to pick him up because she had gotten her car fixed. He could not remember if the student attended the awards ceremony but said he was at graduation and was reclined the whole time. All of this happened within 1 day of the events which made it difficult to make the accommodations.

The Team asked about the accessibility issues at the high school. The Superintendent informed the HRA that the school had already begun pouring the sidewalk from the band room to the football field as that issue was brought up in the student's IEP meeting. He was unaware that there was a problem crossing the ditch but said that he would have that addressed as well. When asked if he was approached by the aide about writing a grant for accommodations to be made, he said if he was he couldn't remember it. He said she did approach him on her own to advocate for the student's accommodations at the high school including the accessibility of the bleachers on the football field and having another student push his wheelchair for field shows and parades. The school was afraid of the liability of that because a student is not properly trained and if that student would accidentally "dump him out of his chair" the school would be held liable. He did mention that the school wanted to get a motorized wheelchair so that the student could get around the school without having an aide push him, but his mom said no because she wanted him to have the exercise of pushing the wheelchair at other times. The school did provide a sports wheelchair that was made for the gym floor to allow him to participate in PE, but the student would not use it.

Finally, the Team questioned him about the teacher's aide being reassigned. He explained that the teacher's aides are employees of the school district and not personal assistants of individual students. The school district reassigns teacher's aides based on their abilities and where they are most needed. In this case, the teacher's aide had some recent medical issues of her own and she was less able to provide the same kind of assistance for this student. His IEP did not provide for a 1:1 assistant and it wasn't needed. He said this student's needs could be met

by a classroom aide. There are no specific requirements for student's aides to be of the same sex, but at the high school age group it is preferred, especially in this case as the student needs some restroom assistance. The Superintendent was unaware of any problems between the Special Education Director and the teacher's aide for this student.

B. Special Education Director: The Director informed the Team that this student's parents declined transportation that was offered by the school because they wanted to bring him so he wouldn't stand out. Therefore, transportation was not included in his IEP. The day of graduation practice, the mother called her cell phone asking for transportation for the student because her car had broken down. The Director explained that in order for this to occur, he would have to be released him from homebound status, his IEP would need to be changed to provide transportation and the transportation has to be coordinated with the bus company. It is not typically something that can be accomplished in one day. The Director spoke with the student's nurse to see if he could be released from homebound status and to ride a bus. She received one fax dated May 10<sup>th</sup> that was not specific enough and requested another. The first was not specific enough because it only stated that the student could participate in two graduation practices and one awards ceremony and that he needed to be picked up and dropped off by the school bus for the rest of the school year. However, the school needed to know a date that the student was taken off homebound status or if he was off homebound status with restrictions. This is due to the fact that the school cannot provide transportation to students who are on homebound status. Per the bus company's insurance policy, they cannot transport students due to a risk of liability. The student has to be released with no restrictions on transport before they can provide the transportation. After the second fax was received, the Director amended the student's IEP to include transportation by adapted buses. The second fax dated May 13<sup>th</sup> was more specific and listed specific dates that the student began homebound status and what date it ended, which is what the school required in order to take action. The Director contacted the bus company to provide transportation after the second release was received and then contacted the mother to see if she wanted the bus to pick up her son. The mother refused transportation at that time.

Regarding the aide reassignment, the Director informed the team that the administration which includes the principals of all schools, the superintendent and the special education director meets, usually after the school year ends, and makes the determination of where the aides will be assigned based on the students' needs and which building each student with special needs will be attending school. The parents and other IEP members are not involved in this decision because aides are not assigned to specific children as personal aides per se. The aides are employees of the school district and the administration assigns them where they are most needed. A child's IEP only lists which accommodations they need such as an aide for transportation, school work assistance, bathroom assistance, etc... The IEP does not list a specific aide, only that an aide will be provided to meet the student's needs. After meeting and determining which aide is assigned to a student, the school district sends a letter to the parent and the aide informing them of their assignment. For the most part, aides are assigned to certain schools/buildings. She said they are not required to put male students with male aides, however students tend to do better with aides of the same sex, it is better socially for the students. The aide this student had since Kindergarten was reassigned because they wanted to give this student a male aide who would be physically stronger to better meet his growing size and provide the assistance he needed. His

former aide had undergone recent surgeries and had restrictions on how much she could lift as a result of that surgery and had also mentioned to the Director that she could not provide the assistance, specifically the lifting that this student required due to her health problems. This student's aide is required to lift and transfer him and provide bathroom assistance, although at the high school there is a full time nurse who will provide bathroom assistance to him due to catheterization.

The school district informed his former aide of the reassignment in a letter and she never contacted the school with concerns about her new assignment. The Director said this student never voiced concerns about his aide being reassigned, but his mother did. The Director further explained that the special education process is slightly different at the High School than at the Elementary and Jr. High schools. At the Jr. High, the student is in a regular education classroom and at the end of the day he or she goes to the "resource room" for extra help with the special education teacher. However, at the high school, a special education teacher "takes on a child" and follows him or her all through high school. That special education teacher is their "case manager." This approach allows for one person to become fully involved with the student and ensures that all his or her needs are being met because he/she are more familiar with the student.

As for accommodations, she said they built a pad at the primary school 2 years ago to allow better accessibility for wheelchairs. The student's mother asked about accommodations at the high school so the school invited its attorney to the meeting to address the legal issues regarding accommodations. She also mentioned that the school district offered adaptive PE (physical education) but this student's former aide had told his mother that the school could not offer that. The Director said sometimes the aide would "run the meetings" and the mom would just go along with whatever the aide said and she felt that as a result of that, this student was denied some beneficial services. The mother was informed of other accommodations during the most recent IEP that the school offered that she was unaware of such as Dragon software (the student speaks into the software and it types what is being said rather than the student having to type it) and they are currently looking into some of these additional accommodations for this student. She said the Jr. High just had a nurse on an as needed basis but the high school has a full time nurse who has a master's degree that will help with this student's catheter. The new aide helps this student, mostly with mobility issues and also helps others in the classroom. This student's IEP does not require him to have an individual aide, just a mobility aide and catheterization twice a day. He is not developmentally disabled and his IEP does not provide for a 1:1 aide. She explained that by going directly to the superintendent with the concerns/accessibility issues at the high school, this aide did overstep boundaries and the chain of command which, for a teacher's aide, would normally be the building principal first, then the special education director and finally the superintendent. The chain of command is reviewed with the teacher's aide by the principal when he goes over the contract with them upon hiring. The Director explained that there could be legal issues if a person's employment was terminated due to issues resulting from not following the chain of command; therefore it is noted in their personnel file. She also said that if/when the chain of command is not followed, the normal protocol would be the aide receiving verbal counseling and then noting it in the aide's personnel file for future evaluations, which was the case with this aide. The Director further explained that all of the issues brought to the superintendent involved funding which she and the special

education supervisor handle when it involves students receiving special education services. The supervisor handles the funding approvals and the director writes the grants.

C. Mother: The mother informed the HRA that her son has Spina Bifida, Hydrocephalus, club feet and has short term memory. He also suffers from stress related anxiety. He has had close to 15 surgeries with his most recent back surgery being in March, 2013. He has had the same teacher's aide / personal aide since Kindergarten; she has been through 3-4 surgeries with him, provides bathroom assistance due to his having a catheter, and helps him get around school and with his studies by scribing for him and reading certain assignments. She said this aide came to their home and kept him up on his studies after his surgery so he could graduate. When this aide was on vacation or away from work, the mother had to go to the school several times each day to assist her son in the bathroom because the other aides refused to provide bathroom assistance. She finally became certified herself and just stayed with him all day when this aide was away from work. She received a call from the Director after school was out for the year notifying her that this aide had been assigned elsewhere and that her son would have a new aide that she would meet at the IEP meeting.

According to the student's mother, her son's aide approached the school Superintendent at her request, around May 10th to discuss issues that had been brought up at his IEP meeting that had not yet been addressed which she felt should have been prior to the start of his freshman year. She was busy caring for her son after his surgery and could not take care of it herself. The issues to be addressed were: to have a ramp installed which would make the football field bleachers accessible; to have a sidewalk poured from the band room to the asphalt leading to the football field; placing a wooden plank over a slight ditch leading to the football field; and to create a stipend to encourage one student to assist her son during field shows, parades, practices and band camp. The aide was also going to discuss transportation for her son for graduation and an awards ceremony as her van had broken down. She said that the aide was told that these issues were not her concern and she should have gone through the proper channels and brought up these issues with the Special Education Director (Director). After returning to her job, she received several emails from the Director, to the mother's knowledge these emails were "curt and had a negative tone."

Around this same timeframe (May 10<sup>th</sup>), the mother was working with her son's physician to obtain a release for him to ride a bus to and from an awards ceremony scheduled for May 14<sup>th</sup> and two graduation practices that week. (Graduation was held on May 16<sup>th</sup>). The Jr. High principal said it was fine for him to attend the events, but was concerned the bus ride would be too difficult for him. She said the nurse at the doctor's office sent the paperwork releasing her son to ride the bus the same day it was requested (May 10<sup>th</sup>). It was sent to Massac Unit 1 office with a coversheet addressed to the Jr. High. On the morning of the awards ceremony she called to confirm the exact time of pick up and was informed that the school had not received any paperwork from the nurse. The nurse confirmed to the mother that she had sent it when it was requested and agreed to resend it. However, by the time it was received, it was too late for the Jr. High to schedule a bus pick up for her son and he missed his awards ceremony. She then contacted the Director who informed her that since her son was homebound, he did not get bus privileges so there would be no transportation for him on the days requested, but transportation would be provided for him to attend graduation. The mother was upset and told her no thank

you. Her husband was able to repair their van enough for them to transport their son to the graduation practices and the graduation ceremony. She then scheduled a meeting with the Superintendent who referred her to the Director. When the mother said she was uncomfortable speaking with the Director without a mediator, he agreed to have them all meet in his office. The mother discussed that she was upset about them not providing transportation; she contends that the Director knew a week before that transportation would not be provided but she did not communicate that with the principal or the mother so that other arrangements could be made. The mother requested copies of her son's IEP and the letters received from the doctor's office. She only received the second doctor's note which stated he was on homebound until May 16<sup>th</sup>. She also said the IEP she had was different than the one the Director provided her in that, there were handwritten notes on the Director's copy that had different dates than her original copy. She said that they now have bus accommodations in place, but the bus runs another route too and may need advance notice if her son needs a ride. **She said her son has anxiety about riding the bus alone and they just try to take him if they can.**

They also discussed the school reassigning his teacher's aide of 9 years. She was told by the Director that a male aide was already in place at the high school and they try to match up male students with male aides. The mother felt like the Director was upset with the aide for coming to the IEP meetings even with the mother's permission/request and that she deliberately made some decisions that have directly affected her son negatively. She said there is a nurse at the high school that will take care of her son's catheter during the school day, but said she cannot do it alone and has "spilled on him" a couple of times. She said his previous aide did the restroom breaks alone and now her son has the nurse and a helper with him in the restroom. At the time of our interview, her son was still on half days due to ongoing health issues so the catheter had not yet been a big issue because she just takes care of it at home. She said her son is doing well with his new aide but now he has a teacher's aide instead of a personal aide. She was unsure what the difference was. Since her son's aide is not there to help him with band, she has been staying at school during practices and band time to make sure he has his instrument and to help him get to the football field. She is also planning on assisting him in the parades.

She felt like she was unable to fully participate in her son's educational planning due to the handwritten notes and changes that were made to his IEP and his aide being changed without her input.

D. Aide: The aide informed the HRA that this student had back surgery in March, 2012. He was in school full time until 4 days prior to that surgery. He was out of school from March through the end of the school year. At first he was confined to his bed on his back and then was able to be in a reclining position in his wheelchair. She scribed for him while he was on homebound status. She wrote out his answers to Math, Social Studies, Science and reading assignments. She went to his home daily or at the very least, every other day. The teachers were aware that she was doing this and so was the principal. She said she spent about 2 hours each night with him. She said his special education teacher kept folders of all of his assignments. She said the Special Education Director knew he had surgery and that he would need **homebound status**, however, that **was not approved by the school until May 7<sup>th</sup>**, graduation was May 16<sup>th</sup>. At that time, the principal told her to stop helping him because she did not have a special education degree and that he had to go on homebound status. She stated that if she had not

helped him up to that point, he would not have graduated because he would have been too far behind. She said the school had never had issues with her before that she knew of. She had always helped him with his past surgeries (5<sup>th</sup> and 6<sup>th</sup> grade). She said at first she was hired as a personal aide and then was reclassified as a teacher's aide at some point but was never told she had to do anything differently.

The Tuesday before graduation was the awards ceremony (May 14<sup>th</sup>). She said she met with the Superintendent on Friday, May 10<sup>th</sup> to discuss the student's needs such as a ramp to the football field bleachers, his need for assistance around the field so he could participate in band activities. She stated she could not assist him because of back issues. She also informed him that the parents had no transportation at the moment and asked if the school would provide a bus for the awards ceremony and graduation. She indicated that she went to the Superintendent because it all involved financial things. According to the aide, the Superintendent got angry because she did not involve the Special Education Director and said that the district would be liable to have the student at school in the gym for anything while he was on homebound status. She emailed the Special Education Director and the Jr. High principal to tell them about seeing the Superintendent. The principal also told her that he could not ride the bus while he was on homebound status. She said the Director responded with an email telling her that she was overstepping her bounds and had no right to contact him directly. According to the aide, she had always talked to principals and counselors about the needs of this student without first asking the mother or the Special Education Director.

She also contacted the high school principal and offered to write a grant through Wal-Mart to get a ramp for the football field bleachers. She was told that would not be necessary and said that he offered to build it.

After school was out for the year, she received a letter in the mail advising her that she had been reassigned to the elementary school and not to contact the student's family as that was not her job. The position she currently had was a harder situation on her than what she had with this student as she was now with a whole classroom of students who needed more physical help than just the one student required. She conceded that she had hurt her neck (bulging discs) lifting this student and had been under a doctor's care for her back but said she still worked with him just did not help with physical therapy. She said the other aides refused to learn how to catheterize and that the student's mother had trained her on how to do this and the student never said that he did not want her to help him or that he was uncomfortable with her helping. She said this student participated in PE until the 6<sup>th</sup> grade; then, he had a special education class instead but she was never told that the adapted wheelchair was for him personally, that it was there for anyone who needed it.

The HRA reviewed the letter of reassignment sent to the aide. It told her where her new assignment would be and what her job duties would require of her which included toileting, feeding, and safety/supervision needs. It continued to say "the Massac School District has made this decision to change your assignment based on the needs of the students of the District. Any communication with parents is the responsibility of the District, and you are not to assume that responsibility. Please speak to the Director [name] should you have any questions in regards to your reassignment."



The HRA received and examined e-mail correspondence between school staff regarding the student's situation. The e-mails are dated on or around May 9<sup>th</sup> and express concern about school accessibility for the student at the high school next year, the family's need for transportation assistance in the current school year particularly surrounding graduation activities, the chain of command for the aide, and the special education director's contention that unless the school feels that relevant information should be shared, often times aides are not invited to IEP team meetings.

E. High School Principal: The HRA met with the principal on the accessibility issues at the high school. He said they have approximately 615 students at their school and several with disabilities. They have had no complaints in the past regarding accessibility issues. The school had brought up the option of a motorized wheelchair for him but his mother declined. Currently he has a teacher's aide assisting him. The school would like to gradually transition him to doing more pushing on his own to facilitate an easier transition from high school to college and beyond. He said this student is quiet and doesn't complain. He seems happy with his new aide. At the time of our interview, he was on half days due to some ongoing medical issues. Because of this, the school rearranged his schedule to ensure that he gets more core classes in. He is taking regular education classes with the assistance of the special education teacher. The principal said he speaks to the student's mother on a regular basis and she has participated in 2-3 IEPs so far this school year. He also said the student's parents prefer to pick him up and drop him off at school, but they do have transportation included in his IEP. If it is ever needed, he does have access to a bus.

The principal gave the HRA a tour of the facility as well as outside around the football field where accommodations had been made at the beginning of the school year. In the past, the "pit" where the band plays has been on the bleachers. He did check into building a ramp to the bleachers but was told by the contractor that it was not feasible due to the age of the bleachers and new code standards and if they alter them, then they would have to replace the whole set which would be very costly. The school instead, moved a set of bleachers to the end zone which is where the band will now sit and this student can pull his wheelchair right next to his peers. He said this works out better all around because it gets the noise of the band away from the fans in the stands and the band can be heard better by all fans.

The HRA also viewed a new concrete pad that was built from the back band door to the asphalt. This area previously was all gravel which was difficult to navigate in a wheelchair. There was an asphalt ramp leading up to a door nearby that could be accessed from the band room, but there was concern that the incline was too steep for this student to push himself up. The new concrete pad that was poured allows access directly from the band room door that all band members use to the asphalt parking lot leading to the football field. There was also a concrete slab poured over the slight ditch from the track to the grass field to allow access to the end zone where the bleachers for the band now are. There is also a rubber track that runs in front of where the bleachers were placed allowing easier mobility for a wheelchair.

The other complaint issue was having someone assigned to assist this student for field shows and parades. The principal informed the HRA that having a wheelchair on the football

field for shows may not be possible. For example, if the weather is bad and the ground is wet and muddy, it would be very difficult to navigate a wheelchair and he was afraid that might put the student in danger of being "dumped" out of his chair if it gets stuck on the field. He said field shows are very hard to do and there are several students who do not participate simply because they cannot get the routine down and they just play from the pit during field shows. He did say there are approximately 3 parades scheduled for this school year and they are looking into possibly assigning a student in uniform to assist this student in parades. He is hoping to have this all worked out by next year.

F. Jr. High Principal: The principal told the HRA that he worked well with the former teacher's aide for this student. He said she was a strong advocate for him but also tried to help him become more independent his 8<sup>th</sup> grade year in preparation for high school. She would ask to work in the library when the student was working independently. He was unaware of any issues between the special education director and this teacher's aide and said if there were any problems he "wasn't in on it." His recollection of the transportation issue was that the day of (hours before) the awards ceremony they were rushing around trying to work out the details for transportation to be provided for the student. They did finally get a doctor's release via fax, but not in enough time to get the bus arranged. The Director was not comfortable with the rushed situation and also did not feel that it was safe for the student to ride a bus since he was still in a reclined position and "erred on the side of caution and safety." The principal said he defers to the Director in these situations and it is her discretion to make decisions such as this. He said the student did participate in the graduation rehearsals and ceremony but the bus company did not transport him there. He could not go on stage due to the ramp not being adequate for his wheelchair, but that was not discovered until the day of so there was no time to make changes. The student "walked across the floor" instead of the stage and the board came down to give him his diploma and his mother pushed his wheelchair across the floor and he was still in a reclined position at that time.

The principal stated that he was aware that the aide was bringing the student's homework to him after his surgery in March and also turning it in to his teachers at school. He said that is an unusual situation but it was ok with him as long as the parents were ok with it. He said since she had been the student's aide as long as he had been in school; she and the parents had developed a relationship so he did not think it was a problem. Normally, when a student is out for extended periods of time, until he or she is officially on "homebound status", a parent comes to the school to get assignments and can bring the student in for help from teachers if he or she does not understand assignments. The principal was not sure if the Director was aware that the aide was doing this but said she should have been told, but may not have been early on. When a student is officially on homebound status, a special education teacher is to provide home instruction and assistance periodically throughout the week.

The principal was aware of the disagreement between the Director and the aide due to her not following the chain of command by going to the Superintendent over the accessibility issues but not until after it had happened. After the fact, the Director came to him and made him aware of the situation and told him that she talked to the aide about the chain of command and verbally reprimanded her. Normally, if there is an issue with staff that he is directly involved in, he sits

down with a union representative and the employee to work it out, so the Director made him aware of this situation, but it never got to that level.

G. Special Education Supervisor: The supervisor was not available on the day of the HRA's site visit to the school. The Director explained his job duties and also provided the Team with the supervisor's phone number. The supervisor is contracted by the school and his job duties include handling the funding approvals and conducting IEP meetings. The current arrangement is that the supervisor conducts all meetings held on Tuesday through Thursday and the Director conducts the Monday and Friday meetings. The Director explained that the supervisor ran all the meetings at the elementary schools in the past and should be familiar with this student. The IEP meetings usually include a regular education teacher, a special education teacher, the special education director and a parent. The supervisor facilitates and participates in the meetings and reviews the IEP plan. The teacher writes the IEP including the goals and the supervisor looks at the funding codes.

## II. Chart Review:

A fax from the physician dated 5/10/13 and electronically signed by the doctor stated "This note is intended to confirm illness and change in abilities of the above named patient to participate in activities as noted below: [name] needs to attend **two graduation practices and one award ceremony**. [name] also needs to be picked up and dropped off by the school bus for the rest of this school year." There was a handwritten note on this letter that said "we will transport to graduation ceremony."

The second fax from the physician dated 5/13/13 and electronically signed by the doctor stated "this note is intended to confirm illness and change in abilities of the above named patient to participate in activities as noted below: [name] started homebound on 3/11/13 and it will be ending 5/15/13 return to school on 5/16/13." [**The awards ceremony was May 14<sup>th</sup> and graduation was May 16<sup>th</sup>**].

IEP Amendment dated 4/9/12 stated that the parents and the [special ed teacher] had spoken on the phone and agreed to the following changes "[name] has had surgery and is currently recovering at home from his procedure. Limited work, upon parent request, has been sent home for [name] to complete. We are awaiting doctor's orders for homebound services to be sent to the school."

IEP dated 10/10/12 for the 13-14 school year to be initiated on 08-15-13 showed 86% regular education and 47% special education and listed the following under related services: Social Work provider, School Health Services provider, Aide-Individual Student provider and an Occupational Therapy provider. **Under transportation needs, none are required: the student "...is in a wheelchair. His parents provide him transportation to and from school."** Accommodations needed are listed as: Extended testing times, Flexible schedules, Administration of the test in a separate location, Large print, Paraphrasing/simplifying directions (must be an individual administration to avoid distractions to others), Reader script for English, Mathematics and Science tests only, Student dictates answers to extended-response questions...dictated answers must be destroyed after verbatim transcription is completed. Transition plan goals were also included. At the time of this IEP the student was making average

grades and had good attendance on a full day schedule. The parental concerns are listed as "wants to be sure that his accommodations are carried over in high school." It also states that the student does a good job getting from class to class on his own in his wheelchair. It also stated that the student "has a personal aide in all of his academic classes who is great about providing additional examples and repeated instruction. He is assisted the most with note taking and writing lengthy assignments." His personal aide takes his books and materials to all of his classes for him and often has to get his assignments/homework out for him because he does not know where it is. It was also noted that his limitations from his disability decrease his mobility in and around school and adversely affects his educational performance. It stated that his personal aide provides health related services and educational help as well as facilitating accommodations for extended time, repeated instruction, written visual information, and assistance with writing lengthy assignments which help him be successful in the general education curriculum. It was noted on the IEP that even though he was on homebound status, there was no regression of critical skills noted. Signatures on the IEP included the student, his mother, LEA representative, Special Education Teacher, Social Worker, Aide, Another Special Education Teacher, Physical Therapist, Occupational Therapist, Special Education Director and the General Education Science Teacher.

Educational Services and Placement dated 5/1/13 was reviewed which had a handwritten note that said transportation was initiated 5/7/13 and continued through 5/7/14. The "yes" box was checked next to "special transportation is required to and from schools and/or between schools" and the "no" box was marked out. The "yes" box was also checked next to "specialized equipment" with "adapted buses" being underlined as what is required. The "no" box was marked out. Under the explanation it was stated that "[name's] parents provide transportation to and from school, however the school will provide as needed." Under placement considerations the homebound instructional program is marked "yes." It stated he would receive "individualized instruction through home bound services, but student will be removed from the general education environment and peers."

The IEP amendment dated 5/7/13 stated the parents and [special ed teacher] had spoken on the phone and agreed to make the following changes to the student's IEP. Under explanation of changes it stated "[Name] received surgery in March and has since been recovering at home. **He has just been released to participate in home bound services by his doctor's written consent. He will receive 5 hours of instruction a week. [Name] will finish the remainder of his 8<sup>th</sup> grade year at home.**" The changes will begin on 5/8/13.

The IEP dated 8/13/13 states it is for the school year 13/14 which would be this student's high school IEP. Under the transportation needs section has the "yes" boxes checked next to "special transportation is required to and from schools and/or between schools; Special transportation is required in and around school buildings and Specialized equipment (such as special or adapted buses, lifts, and ramps) is required." It additionally states that "student is in a wheelchair and will need a specific wheelchair lift bus." Under the "supplementary aids, accommodations and modifications" the student's accommodations to help him throughout the school day are listed such as allowing frequent breaks, allowing to leave class early to get to the next class etc... Nothing is mentioned in this section about the high school accommodations needed that the mother said were discussed at his IEP meeting such as having a ramp installed (which would

make the football field bleachers accessible); to have a sidewalk poured from the band room to the asphalt leading to the football field; placing a wooden plank over a slight ditch leading to the football field or mobility accommodations for the student during field shows, parades, practices and band camp.

### **III. Policies**

The Superintendent provided the HRA with the online policies on the Illinois Association of School Boards (IASB) website that Massac schools abide by. The following related policies were reviewed:

**A. Education of Children with Disabilities:** "The school district shall provide a free appropriate public education in the least restrictive environment and necessary related services to all children with disabilities enrolled in the district as required by the Individuals with Disabilities Education Act (IDEA) and implementing provisions of the School Code, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act."

**B. Chain of Command:** "The Superintendent shall develop an organizational chart indicating the channels of authority and reporting relationships for school personnel. These channels should be followed, and no level should be bypassed except in unusual situations. All personnel should refer matters requiring administrative action to the responsible administrator, and may appeal a decision to a higher administrative officer. Whenever possible, each employee should be responsible to only one immediate supervisor. When this is not possible, the division of responsibility must be clear."

**C. General Personnel:** "Professional and ethical behavior is expected of all District staff members. The standards listed below serve as a notice of expected conduct..." The expected employee conduct listed includes "Exemplify honesty and integrity. Violations of this standard include, but are not limited to falsifying, misrepresenting, omitting or erroneously reporting the professional qualifications of oneself or another individual or information submitted in connection with job duties or during the course of an official inquiry/investigation...Maintain integrity with students, colleagues, parents/guardians, community members and businesses concerning business dealings and when accepting gifts and favors...Demonstrate conduct that follows generally recognized professional standards and attend all in-service trainings on educator ethics, teacher-student conduct and school employee-student conduct for all personnel. Unethical conduct is any conduct that impairs the employee's ability to function professionally in his or her employment position or a pattern of behavior or conduct that is detrimental to the health, welfare, discipline or morals of students. "

**D. Administrative Procedure:** "Email, including attachments, that are sent or received by the District or District employees may be, depending on their content, subject to disclosure under the Freedom of Information Act and/or discover in litigation as evidence in support of a claim. Employees must use the same standards of judgment, propriety, and ethics with email as they do with other forms of school business-related communications."

E. Educational Support Personnel - duties and Qualifications: "Paraprofessionals and teacher aides are noncertificated personnel with supervised instructional duties; the terms are synonymous...noncertificated personnel working with students and performing non-instructional duties may be used for supervising study halls, long distance teaching reception areas used incident to instructional programs transmitted by electronic media (eg computers, video and audio) detention and discipline areas and school-sponsored extracurricular activities; as supervisors, chaperones or sponsors for non-academic school activities and for non-teaching duties not requiring instructional judgment or student evaluation. Nothing in this policy prevents a noncertificated person from serving as a guest lecturer or resource person under a certified teacher's direction and with the administraion's approval."

F. Home and Hospital Instruction: "A student who is absent from school, or whose physician anticipates that the student will be absent from school, because of a medical condition may be eligible for instruction in the student's home or hospital...Appropriate educational services from qualified staff will begin no later than 5 school days after receiving a physician's written statement. Instructional or related services for a student receiving special education services will be determined by the student's individualized education program....periodic conferences will be held between appropriate school personnel, parents/guardians and hospital staff to coordinate course work and facilitate a student's return to school."

The HRA also reviewed Massac Unit 1 job descriptions of job titles directly related to this case. The following is the summary:

A. Duties Associated with Special Needs Classroom Aide

Reports to: Program Supervisor

Program Description: Assists students with mental health, behavioral, communication, medical, social and/or physical needs. They support students in the performance of daily living activities (ADL), use of equipment, and assist with mobility and physical positioning...these duties can be both non-instructional and instructional activities that allow the student to participate to his/her maximum extent possible in the least restrictive environment. These paraprofessionals are responsible for meeting the needs written in the IEP, laws, board policy and/or collective bargaining agreement.

Assists Student with ADL: states the aide "**assists and/or attends to the student's bathroom needs**, including diapering, toilet training, menstrual cycles. Etc..."

Assists Student to ambulate, perform gross motor skills, transfers & positioning: states the aide "assists the student with any activity related to walking, crawling, sitting, standing etc. as directed by the Physical Therapist and/or Teacher; Works with the student to develop gross and fine motor skills as directed by the teacher, Physical Therapist and/or Occupational Therapist and transfers the student to and from his/her wheelchair/chair, positions the student as directed, lifts the student for toileting, exercise, positioning, etc."

Completes required forms and paperwork: includes "per teacher directive, observes, documents, records and charts student performance on IEP goals and objectives and provides input for IEP development/revision"

Participates in required in-service programs, trainings, workshops: includes "participates in student specific trainings related to implementation of the IEP."

Position Specifications: lists the following as "representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions of the job. Paraprofessional Certificate, CPR only if applicable to class/student needs, Diabetes care only if applicable to class/student needs, language abilities, mathematical abilities, reasoning abilities, temperament (professional interactions, composure under stress...), Physical Demands which includes the ability to frequently push/pull over 90 pounds such as a wheelchair; frequently lift from waist to shoulder 76 plus pounds from floor to waist lift 76 plus pounds."

#### B. Job Description of Director of Special Education

Qualifications: Master's Degree in Special Education or Education Administration, An Illinois Administrative Certificate endorsed for special education director, a minimum of 4 years of successful teaching and/or administrative experience in special education

Reports to: Assistant Superintendent of Schools

Supervises: School psychologists, speech therapists, school social workers, special education supervisors and all contracted personnel in support of the special education program

Performance Responsibilities: include the following "Assists in the adaptation of school policies and procedures to include all students with special education needs; Recommends policies and programs essential to the needs of children with disabilities; Develops procedures for referral, securing medical reports, evaluations, special education placements and maintenance of special education temporary records; Supervises and coordinates home and hospital instruction; Assists in recruitment, selection and recommendation for employment and/or dismissal from employment of all special education personnel."

Special Ed Director Goals: includes establishing "a viable and productive means of communication between the school, the parents and the community"

#### C. Special Education Supervisor:

Qualifications: minimum of a Master's Degree in Special Education and/or School Administration, an Illinois Type 75 Certificate endorsed for school administration and an Illinois LBS I Certificate endorsed for one or more disability areas

Reports to: Director of Special Education

Performance Responsibilities: include "Chairs all IEP meetings and annual review conferences for students with disabilities who are residents of Massac County School Unit District No. 1; Assists the Director of Special Education in the development of a master schedule for all students placed in the district's special education program; Meets and confers with parents as necessary and assumes all other responsibilities that may be assigned by the Director of Special Education."

The HRA reviewed the agreement/contract between the school district and education association. In the employee rights section it states "an employee shall be given written notice of his/her assignments for the forthcoming year within thirty (30) days after the closing date of school. In the event changes in such assignment are proposed, the employee affected shall be notified promptly and consulted..."

## Statutes

The Code of Federal Regulations (CFR) in Section 300.107 Nonacademic services provides that "The State must ensure the following: (a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available."

Section 300.110 requires that "the State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, *including* art, music, industrial arts, consumer and homemaking education, and vocational education."

Section 300.112 provides that "the State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§ 300.320 through 300.324..."

Section 300.305 states, "Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education , and vocational education."

Section 300.324 states this about the content to be included in the IEP "A statement of the special education and related services and supplementary aides and services...to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child ...to be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section and to participate in extracurricular and other nonacademic activities and to be educated and participate with other children with disabilities and nondisabled children in the activities described in this section."

Section 300.321 lists members of the IEP Team as "(1) The parents of the child (2) Not less than one regular education teacher of the child...(3) Not less than one special education teacher of the child...(4) A representative of the public agency who--(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) Is knowledgeable about the general education curriculum; and (iii) Is knowledgeable about the availability of resources of the public agency. (5) An individual who can interpret the instructional implications of evaluation results...(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the



child, including related services personnel as appropriate; and (7) Whenever appropriate, the child with a disability... (2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered... Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.."

Section 300.322 Parent Participation requires that " Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place...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). (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."

Section 300.324 outlines the development of the IEP and requires the following to be considered "the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child and the academic, developmental and functional needs of the child...In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene and IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP team is informed of those changes...Changes to the IEP may be made either by the entire IEP team at an IEP tem meeting, or as provided in paragraph (a)(4) of this section by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated."

The Code of Federal Regulations (28 CFR 35.150) states "a public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities... A public entity may comply with the requirements of this section through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other

methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities."

The Illinois Accessibility Code (71 IL ADC 400) under "Purpose" states "This Code is intended to ensure that the built environment, including all spaces and elements of all applicable buildings and facilities in the State of Illinois, is so designed, constructed, and/or altered to assure the safety and welfare of all members of society and to be readily accessible to, and usable by, environmentally limited persons."

The Illinois Administrative Code (23 IL ADC 226.300) requires that each local school district ensure that a continuum of placement is available to meet the needs of children with disabilities for special education and related services and states the following with respect to home instruction "the child receives services at home...because he or she is unable to attend school elsewhere due to a medical condition; when an eligible student has a medical condition that will cause an absence for two or more consecutive weeks of school...the IEP team for that child shall consider the need for home or hospital services. Such consideration shall be based upon a written statement from a physician licensed to practice medicine in all its branches which specifies...if an IEP team determines that home or hospital services are medically necessary, the team shall develop or revise the child's IEP accordingly. The amount of instructional or related service time provided through the home or hospital program shall be determined in relation the child's educational needs and physical and mental health needs. The amount of instructional time shall not be less than five hours per week unless the physician has certified in writing that the child should not receive as many as five hours of instruction in a school week...services required by the IEP shall be implemented as soon as possible after the district receives the physician's statement."

### Conclusion

The complaint alleged that the school district had not addressed accessibility issues that a student would face when he transitioned to high school. Specifically, installing a wheelchair ramp that would make it possible for him to access the football field bleachers to participate in band; putting in a sidewalk to the asphalt at the band room door to allow quicker access to the football field, providing a wooden plank to cover a ditch that leads to the football field and finally, providing someone to assist the student during field shows, parades, practices and band camp. The HRA found that these issues had not been addressed at the time of the complaint and therefore **substantiates** the allegation. However, **the issues were addressed at the beginning of the school year and the HRA was satisfied with the accommodations that were made and offers the following recommendations:**

- 1. The mother indicated that accessibility issues at the high school were discussed during the IEP meetings, however the HRA found that the IEP documents for 8<sup>th</sup> and 9<sup>th</sup> grade years did not document this. Therefore, the IEP prepared for the high school did not adequately address the student's accommodation needs or the gaps in accommodation needs identified at the IEP meeting and were not resolved prior to the beginning of the school year. In the future, any issues that**

arise in IEP meetings should be noted in the IEP document and addressed immediately.

2. Section 300.321 of the Code of Federal Regulations lists members of the treatment team as "...at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate." Because aides often have direct knowledge of a student's educational needs, the HRA recommends that the school considers any aide to be a part of the IEP team or at least consult the aide prior to IEP meetings as long as the parent agrees.

The next allegation was that the student was denied participation in school functions due to school transportation not being provided. The HRA determined that this complaint issue was due to a lack of communication between the school district and the student's mother. The school had offered to provide transportation to the student in the original IEP but the mother had declined to have it included. The mother also told the HRA that her son has anxiety over riding the bus alone, so they just take him to school. However, when it came time for the awards ceremony and graduation practices, the parents had trouble with their vehicle and requested a bus transport their son, however since transportation was not included in the IEP and the student was still on "homebound status" this could not be accomplished in the short amount of time or without a doctor's release from "homebound status". In addition, the physician's faxes dated 5/10/13 and 5/13/13 both stated that the student could attend the graduation and awards ceremonies at the school and further stated that transportation would need to be provided by the school. The awards ceremony was May 14<sup>th</sup> and the graduation was May 16<sup>th</sup> however, the school was trying to facilitate transportation the day of the awards ceremony. The HRA questions why the 5/10/13 fax was not adequate for arrangements to be made in plenty of time for the student to attend the school functions. The HRA understands that the school may have had concerns with the physician's recommendations, however if there were concerns they should have been brought before the IEP team to make the final decision as to whether or not transportation could be provided for the student since there was a physician's release received. Due to time constraints, this could have been accomplished via telephone conference and an IEP amendment if needed. The HRA could not find any school policy or regulation that prohibits a student who is on "homebound status" from riding a school bus or participating in school functions. Therefore, the allegation is **substantiated**. The HRA makes the following **recommendations**:

1. The school should have ensured that transportation was included in the IEP so that it would be available if needed as required by the Code of Federal Regulations (34 CFR 300.107) and communicated more clearly with the mother that if it was not included in his IEP, transportation could not be provided.
2. The HRA was concerned about the length of time it took for the student to be officially placed on homebound status. His surgery was in March and he was not placed on homebound status until May 7<sup>th</sup>. According to the online school policy regarding homebound instruction, "appropriate educational services from qualified staff will begin no later than 5 school days after receiving a physician's

written statement." This policy also requires "periodic conferences to be held between appropriate school personnel, parents/guardians and hospital staff to coordinate course work and facilitate a student's return to school." The school should review the circumstances in this case and determine why it took so long for this student to be placed on homebound status when the policy requires it to occur within 5 days of receiving a physician's written statement. The school should take necessary steps to ensure that delays do not occur in the future and that appropriate steps are taken to coordinate course work as soon as possible to prevent a student from falling too far behind when he is not able to attend school to ensure compliance with the Administrative code and the Code of Federal Regulations (23 IL ADC 226 and 34 CFR 300.39 and 300.115).

3. The HRA recommends that in the future, the school review the physician's orders and statements with the IEP team and consider the need for IEP revisions taking into account the need to respond in a timely manner to meet the student's needs.

The final allegation was that the family members were not allowed to participate in the IEP process at the Jr. High resulting in the student's aide of 9 years being inappropriately reassigned, making the transition to high school more difficult. The HRA found that teacher's aides are not considered personal aides to specific students, they are employees of the school district and it is the administration's discretion to assign aides where they are most needed based on review of the circumstances including what the students' needs are and which school building the students with special needs will be attending. This student's IEP does not list a specific person to act as his aide, only that an aide will be provided. The school district kept this aide and student together for several years but new circumstances including the aide's medical concerns as well as the student's different needs based on available services in high school were all taken into consideration when making the decision to change the student's aide. Therefore this allegation is **unsubstantiated**. The HRA makes the following **suggestions** for best practice:

1. The Director said this student did not have provisions for a 1:1 aide in his IEP however, the IEP reviewed by the HRA had "personal aide" listed as a provision for him. The terminology in the IEP should be reviewed and clarified so as to eliminate confusion as to whether the student has a "personal aide" or a classroom aide that is shared with others.
2. Employee job descriptions should be more clear and specific to avoid confusion as to what is actually expected of an aide to avoid him or her "overstepping boundaries" and also to ensure that all duties that are expected of them are performed. This mother informed the HRA that she had to either attend school with her son or make frequent trips daily when his regular aide was unavailable because the other aides refused to assist him with his restroom needs as required in the classroom aide job description on the policy website.
3. Another issue of concern the HRA had is that the student's current aide does not assist him with band responsibilities outside of regular school hours. The HRA **strongly suggests** that the school make provisions for this student in his IEP

requiring his new aide to help him during band practices and activities since they are school related functions as required by the Code of Federal Regulations (34 CFR 300.107). The school should also consider natural supports to assist the student, including other students interested and willing to provide assistance, students who may already volunteer for a key club or Best Buddies program, students interested in pursuing special education in college or just friends in band who want to support the student.

4. If it is necessary for handwritten changes to be made to the original IEP, everyone normally involved in planning, including family members, should sign or initial beside these changes showing agreement to ensure there is no confusion surrounding the changes.
5. The school should ensure that the process for pursuing concerns is clear for both parents and staff.

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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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# MASSAC COUNTY UNIT SCHOOL DISTRICT NO. 1

401 Metropolis St., P.O. Box 530, Metropolis, IL 62960  
Phone 618-524-9376 Fax 618-524-4432

William Hatfield, Superintendent

[www.massac.org](http://www.massac.org)

April 16, 2014

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Egyptian Regional Human Rights Authority  
# 7 Cottage Drive  
Anna, IL 62906

Dear

On August 1, 2013, Massac Unit 1 was notified that the Egyptian Human Rights Authority (HRA) had decided to investigate an allegation it had received in regard to Massac Junior High School. The District was dismayed when it received the HRA's report. As it turned out, very little of what was recommended contained in the report had anything to do with Massac Junior High School. Rather, the report focused on Massac High School, a school that the student did not attend when the claim was made to the HRA. Moreover, the investigation addressed issues not identified or stated to the District; thus, not providing the District an opportunity to fully respond to the claims made. This is particularly evident from a review of the allegations provided to the District. The allegations made were:

1. A student with a disability was denied access to school functions at the Jr. High.
2. Accommodations were not made to allow accessibility around school (Massac Jr. High).
3. Family members were not allowed to participate in the IEP process.

When the Report of Findings was received by the District, it contained the following 3 revised allegations:

1. Accommodations were not made at the High School to address accessibility issues for a student with a disability.
2. Family members were not allowed to participate in the IEP process at the Jr. High resulting in the student's aide being inappropriately reassigned after 9 years of working with him.
3. A student with a disability was denied participation in school functions.

We find it very unusual that that the focus of the investigation changed at some point in time without any notification to the District. Only 1 of the original allegations remained in its original form. Needless to say, many of the original interviews were conducted through the lens of the original allegations not the revised ones. Then to add additional confusion, the revised allegations were listed in a certain order and then addressed in a different order in the findings. Because we are permitted to respond to the Report of Findings, we

have addressed the findings in the order identified at the beginning of the Report of Findings.

**1. Accommodations were not made at the High School to address accessibility issues for a student with a disability. (*Unsubstantiated allegation, but with recommendations*)**

While the allegation that the District did not make the school accessible to a student was determined to be unsubstantiated, the District has, nonetheless, decided to respond to this allegation.

First and foremost, the District held an Individualized Education Program (IEP) for the student that is the subject of the complaint. At this meeting, a team of school personnel and the parent discussed the accommodations needed for the student. These accommodations are then identified in the IEP and are to be provided by school staff. The chief complaint focused on by the HRA centered on accessibility for a student in an extracurricular activity.

The District considered various options to allow accessibility for the student while participating in the extracurricular activity. In the end, the District decided upon, and did implement, a program that provided the greatest accessibility for the student. Accordingly, the District was very sensitive to the student's needs. And accessibility was provided. Moreover, the District is audited to determine whether its facilities are accessible to disabled students. At no time has the District ever been notified by architects that its facilities were not accessible, or otherwise do not meet all building code requirements, including handicapped accessibility requirements.

Under this same heading of "accommodations", the HRA then diverts its focus to discussing the participation of an aide in the IEP meetings. From the Report of Findings, it appears that one of the complaints submitted to the HRA was that an aide was not at the IEP meeting and that led to a reduced amount of services to the student. While the District does not routinely invite support personnel (non-teaching staff) to IEP meetings, it had no reason to do so for this student. Moreover, the parent could have, but did not request, the aide's participation in this meeting. Finally, concerns apparently were raised with the HRA regarding the amount of aide support provided to the student. When considering needs for students, the District is always mindful about a student's independence. Supports are provided when needed; however, it is always the District's goal, as mandated by federal and state statutes, to assist all students to be independent. If the parent disagreed with this determination by the IEP team members, the parent could have challenged the services provided. No challenge was made by the parent.

**2. Family members were not allowed to participate in the IEP process at the junior high resulting in the student's aide of 9 years being inappropriately reassigned, making the transition to high school more difficult. (*Unsubstantiated allegation with recommendations*).**



The District always permits parent participation at IEP meetings. As stated above, the District did not inappropriately reassign a support person. Rather, the District carefully considered the student's needs and provided the services needed to allow the student to be successful in the high school environment.

The HRA seems to suggest that the concern about aide support could be better clarified in the IEP. In other words, a change in terminology be considered. Specifically, the HRA suggests that the District consider modifying the IEP form – one that is recommended by the Illinois State Board of Education (ISBE) for use with students requiring IEPs. To make the requested changes by the HRA could pose concerns regarding the District's ability to meet federal and state requirements. Moreover, the amount of time a student receives certain special education services is to be provided to the state for purposes of reimbursing the District for certain costs. Accordingly, a change could affect the District's ability to receive certain funding to provide the services to the student. Moreover, it is the District's position that the IEP provided sufficient clarity. In this case, the IEP specified the amount of minutes, per week, that the student would receive certain services. This provides the clarity needed. Finally, and most importantly, the services to be provided to the student were fully discussed at the student's IEP meeting. The parent participated in this discussion. In reviewing the description of the issue, as well as the meeting with representatives from the HRA, the objection only occurred after the aide found out that she was not needed to assist this particular student on a full-time basis.

Next, the HRA also suggests that the mother "had" to attend school with her son when the aide was absent. The District was not previously advised of this concern until it received the Report of Findings. Accordingly, no investigation was conducted into this allegation and no response is being provided at this time. The District does state that if a student requires certain services at school, supports are provided.

### **3. A student with a disability was denied access to school functions. (Substantiated with recommendations)**

The District is mostly troubled and concerned over this particular finding in the Report of Findings. When this matter was presented to the District, it was the District's understanding that concerns were raised about student transportation during the end of the student's 8<sup>th</sup> grade year. Specifically, the parent called and requested special transportation for the student. The District immediately contacted its bus company to provide this for the student. It is our understanding that the bus company was prepared to deliver the service and that the parent refused service. We urged the HRA to contact the manager for our bus service to talk with her regarding her discussions with the parent about transportation. The bus manager has advised the District that the HRA made no attempt to discuss this matter with her. Had the HRA contacted the bus company about this matter, it would have discovered that the service was offered by the District, and that arrangements had been made. Accordingly, the District disagrees with the HRA's findings.

Next, the HRA recommended that the District state, on the IEP, that special transportation is required on an "if needed" basis. While the HRA believes that the concern would be corrected with this language, the District sees it otherwise. Scheduling of student transportation is difficult. It is more difficult when specialized equipment is needed to transport a student. The District cannot, on a moment's notice, send a bus with specialized equipment to a student's home without potentially impacting several other fragile students. Accordingly, if special transportation were needed, a bus with the required equipment would need to be dispatched to the student's home on a regular basis. Deviation from a regular route would be a major inconvenience for other regular riders who would see their route and pick-up/drop-off times change unpredictably if one student was using the service on an "as needed" basis. In this instance, the student was placed on homebound services by the student's physician and was not released to return to school when the transportation was requested. The original Doctor's note approved participation in activities and bus pick-up before ever releasing the student from "homebound" status. Because of this, the District required that the parent secure a release from homebound status from the physician. To do otherwise could possibly jeopardize the safety of the student, and place the District at risk, too. Unfortunately, the original release date from homebound status provided by the Doctor was after the date scheduled for the awards ceremony. This led to additional delays but the service was offered before the ceremony and subsequently refused by the parent. So, in this case the "if needed" language would not have impacted the issue even if it had been included in the student's IEP.

Next, the HRA suggests that, in this matter, homebound services should have been commenced at an earlier time. To institute homebound services, Illinois statutes require that a physician certify that a student is medically able to have services available. Also, the physician is to provide the amount of instructional time a student can handle while on homebound services. In this instance, the physician apparently authorized homebound services on May 7, 2013. The IEP case manager saw the release for part-time homebound instruction from the physician on May 7<sup>th</sup>. A copy of this was not provided to the District. Despite this, the District commenced homebound services on the very next day, May 8<sup>th</sup>. To this day, the District is still not in possession of the physician's statement authorizing homebound instruction for the student.

The final recommendation from the HRA was for the District to review the physician's orders with the IEP team. Again, the HRA fails to appreciate concerns related to compliance with federal laws. Specifically, federal laws require that the District provide the parent/guardian with 10 days notice prior to conducting an IEP meeting. The laws do, however, allow the parent and the District to amend the IEP if there is agreement to do so by an administrator and the parent. In this case, an administrator approved the change and services were started immediately. To hold an IEP meeting would unnecessarily delay the implementation of services to the student.

The Massac District prides itself on the provision of special education and related services for its students. In this case, the District provided the required supports needed for the student to be successful at both Massac Jr. High and Massac High School. The District expects that this correspondence be appended to the Report of Findings if posted on the HRA's website.

Sincerely,



June 5, 2014

Superintendent  
Massac County School District  
401 Metropolis St.  
Metropolis, IL 62960

RE: HRA Cases # 13-110-9034

Dear

The Egyptian Regional Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission voted at its May 27, 2014 meeting to **table case closure** for clarification of your response. The board was concerned that there may have been some miscommunication or misunderstanding of how the HRA investigative process works. Although the complaint involved a particular student, the HRA's goal in any investigation is to look at systemic problems through specific cases. Therefore, although this case involved a specific student, the HRA was also looking at policies and practices that may affect other students as well. I am enclosing a document entitled "Human Rights Authority Investigations Fact Sheet" that will hopefully clear up any misunderstanding or miscommunication that may have occurred as to how a complaint comes to the HRA, what a provider can expect from an HRA investigation etc... This document is usually sent to a provider when the HRA notifies them that a case has been opened. I apologize if this document was not sent to you initially.

The first concern in your response was that the report was focused more on the high school rather than the junior high, where the student attended at the time of the complaint and that the investigation addressed issues not identified to the district. The HRA would like to reiterate that the original complaint was against the **Massac School District** which includes both the high school and junior high. Any communication specific to one school or the other, either in the form of our report or correspondence, was strictly for clarification since the complaint was against the district itself and involved both schools. However, this was communicated to both Ms. [redacted] and yourself. From the beginning of the investigation, the accessibility issue primarily pertained to the high school and if you recall, you even sent pictures via email to the HRA Coordinator, [redacted] on 8/27/13 attaching pictures of the accessibility issues at the high school being addressed. At any rate, this issue of concern also involved the junior high because the accessibility issues at the high school were brought up in IEP meetings held at the junior high and also in email communications in May, 2013. However, it wasn't until the IEP dated 8/13/13 (after the HRA became involved) that the accessibility issues were addressed at the high school and noted in the IEP document. Although the HRA substantiated this finding, we



did recognize in our report that the accommodations were made for this student and simply **recommended** that “in the future, any issues that arise in IEP meetings should be noted in the IEP document and addressed immediately.” The school district’s response should advise the HRA as to how that will be addressed in the future to ensure that issues are addressed in a timely fashion. The board also noted that in response 1 paragraph 3 the district noted that *“the District decided upon, and did implement, a program that provided the greatest accessibility for the student...and accessibility was provided.”* The board would like clarification on what this program was and would like to point out that full band participation represented an accessibility gap.

The other HRA **recommendation** in response to this substantiated allegation was that the school district “considers any aide to be a part of the IEP team or at least consult the aide prior to IEP meetings as long as the parent agrees” consistent with the Code of Federal Regulations, Section 300.321, which states that members of the IEP team includes “...(6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.” The HRA contends that because aides often have direct knowledge of students’ educational needs and spend the most time working directly with the students, they should be included as regular IEP team members. Therefore, the HRA board would like the school district to provide a response to our recommendation of including aides in IEP meetings for all students in the future (not just this specific student). Since this is mandated by federal regulations, a request from a parent to have an aide present would not have to occur if the school district included aides as regular IEP team members. Some parents may not even be aware of the fact that they can invite whoever they want to be present to their child’s IEP meeting.

The second allegation was that the student was denied participation in school functions due to school transportation not being provided. This allegation was **substantiated** and therefore a response is required to address the **recommendation** of how the school district will communicate more clearly with the parents/guardians that if transportation being provided by the school district is not included in IEPs then it cannot be provided at all, even if an emergency comes up with a student’s normal transportation, as was the case here. The board understands the district’s concern that a specialized bus cannot be sent on a moment’s notice without impacting several other students already receiving transportation and therefore, the board recognizes your concern that the option suggested of including in IEPs that transportation could be provided “if needed” may not be feasible. However, this reiterates the HRA’s recommendation that the district should communicate more clearly with parents/guardians about the transportation needs and services during IEP meetings. The board would like the district to provide further response to the recommendation specifying how the district will communicate

the transportation services more clearly with the parents/guardian and respectfully requests that the school district provide a response as to how that issue will be addressed in the future.

The next HRA **recommendation** in response to this allegation was that the school should take necessary steps to ensure that delays in obtaining “homebound status” do not occur in the future. The school’s policy states that instruction will begin 5 days after receiving a physician’s written statement and also that periodic conferences will be held between appropriate school personnel, parents/guardians and hospital staff to coordinate course work and facilitate a student’s return to school. The HRA questioned why the school did not take a more proactive approach in reaching out to the physician when so much time passed after surgery without this student having been placed on official “homebound status.” The board would like the district to explain how this will be addressed in the future to ensure that delays do not occur in getting the child needed services.

The final HRA **recommendation** in response to this allegation was that in the future the school review the physician’s orders and statements with the IEP team and consider the need for IEP revisions taking into account the need to respond in a timely manner to meet the student’s needs. The district’s response addressed the fact that the district is required to provide the parent/guardian with 10 days’ notice prior to conducting an IEP meeting but failed to recognize that a parent can waive the 10 day notice and IEP revisions can be made without a meeting if all are in agreement. Also, the Code of Federal Regulations also provides in section 300.328 that “the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.” This would allow for other IEP team members to participate in decision making for a student when special circumstances arise while still complying with federal regulations. In addition, Section 300.324 of the federal regulations allows for IEP amendments without a meeting if both the parent and district are in agreement which allows for timely IEP changes when needed.

The third allegation was that family members were not allowed to participate in the IEP process resulting in the student’s aide being inappropriately reassigned. This allegation was **unsubstantiated** and the HRA offered **suggestions** for best practice, which do not require a response. One of the suggestions offered by the HRA involved the current aide not assisting this student with band responsibilities outside of regular school hours. The HRA suggested that the school make provisions for this student in his IEP requiring his new aide to help him during band practices and activities since they are school related functions. The district addressed this issue in another section of its response relating to accessibility and stated that the *“chief complaint focused on by the HRA centered on accessibility for a student in an extracurricular activity.”* As pointed out in our report, according to the Code of Federal Regulations in section 300.107 “each public agency must take steps, including the provision of supplementary aids and services

determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities..." The HRA listed this last suggestion under the final allegation regarding the IEP process because the HRA determined that accessibility for band activities should have been included in this child's IEP. A **suggestion** is simply that, a suggestion for best practices in the future and requires no further response from the district, only consideration of the need to address this issue for this student in particular in future IEPs. An HRA **recommendation** requires a response before closing the investigation. Recommendations that the board determined were still unaddressed by the district's response have been detailed in this correspondence and underlined for easier recognition.

One final issue that the board asked me to address with you is the district's statement on page 3, paragraph 2 of the response which states "*The district has been further informed that the complaint was generated from .*

It is the policy of the HRA that the identity of complainants is not revealed and will not be in this case either. Complainants can come from a number of sources such as concerned citizens, family members and employees. The HRA can also initiate investigations. Therefore, since you requested that your response be made public along with the HRAs report, it is my duty to inform you that this statement quoted above will be masked in the district's response before it is made public consistent with our mandates that protect the confidentiality of both the service recipient and complainant.

Please contact the HRA Coordinator,  
again for your cooperation.

if you have questions. Thank you

Yours truly,

Chairperson  
Egyptian Regional Human rights Authority

# MASSAC COUNTY UNIT SCHOOL DISTRICT NO. 1

401 Metropolis St., P.O. Box 530, Metropolis, IL 62960  
Phone 618-524-9376 Fax 618-524-4432

**William Hatfield, Superintendent**

[www.massac.org](http://www.massac.org)

June 23, 2014

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Egyptian Regional Human Rights Authority  
# 7 Cottage Drive  
Anna, IL 62906

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Massac Unit 1 has complied with all federal and state regulations regarding its IEPs to students and, on the advice of counsel, will not engage in further discussion about this matter with the HRA.

Sincerely,

RECEIVED

JUN 25 2014

ADVOCATE  
EGYPTIAN

REGIONAL  
OFFICE