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**FOR IMMEDIATE RELEASE**

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HUMAN RIGHTS AUTHORITY – NORTHWEST REGION  
REPORT 14-080-9014  
THE ARC OF WINNEBAGO, BOONE & OGLE COUNTIES

INTRODUCTION

The Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving complaints of potential rights violations regarding confidentiality at The Arc of Winnebago, Boone & Ogle Counties. The complaint alleges that files of clients were reviewed by a non-employee spouse of a supervisor.

Substantiated findings would violate rights protected under the Mental Health and Developmental Disabilities Confidentiality Act (MHDD Confidentiality Act) (740 ILCS 110).

The Arc of Winnebago, Boone & Ogle Counties serves over 200 adults and children with intellectual and developmental disabilities and their families each month through a wide variety of programs, services and activities including: resource and referral, guardianship assistance, home based support, service facilitation, money management/representative payee, counseling, skills training, social activities, advocacy, outreach and education. The Arc has approximately 112 volunteers that participate in various activities, project art, mailings, building maintenance and special events.

To investigate the complaint an HRA team met at the facility where it interviewed the executive director and a human services supervisor. Relevant policies were reviewed as were sections from the volunteer's file.

Complaint Summary

It was said that an individual who is not an employee, but is the spouse of a supervisor, rearranged personal and confidential files of a caseload of 37 clients that were being serviced by the facility. The complaint concludes by saying that when the supervisor was questioned regarding this procedure, he became contentious and verbally offensive.

**FINDINGS**

Interviews

The executive director stated that due to budget restraints, the facility laid off a portion of their regular staff and had to use non-staff persons who are considered volunteers, for various assignments. Quite recently, considerable attention had been paid to the client files and their disorder. The volunteer was asked to assist in sorting and organizing the client files. The executive director went on to give a comprehensive account of how the volunteer worked on the files under the direction of a supervisor. The length of the assignment was 4 days. No files were removed and taken outside of the facility by the volunteer.

The human resources supervisor added that although training for volunteers is dependent upon the type of assignment that is accepted by the volunteer; all volunteers receive the same confidentiality and mandated reporter training as employees. During the on-the-job training, this particular volunteer was instructed in the procedure for organizing the client files. Prior to this, the volunteer was given a binder that included a confidentiality policy, a Code of Ethics 2.21 form and an Office of Inspector General Rule 50 Abuse and Neglect form. The forms were read aloud and there was a rather lengthy discussion about the forms between the supervisor and the volunteer. After it was assured that the volunteer understood the forms, they were signed and dated by the volunteer. This procedure takes place annually. The supervisor went on to say that at no time did the supervisor display unprofessional behavior when questioned regarding the assignment of the volunteer to sort through the client files.

## RECORDS

The Code of Ethics 2.21 form signed by the volunteer on 12/26/13 contains the following affirmations: “I will respect the privacy of those The Arc serves. I will observe confidentiality when dealing with records of those The Arc serves. Upon termination of my employment with The Arc, I will maintain necessary confidentiality regarding information obtained about The Arc or those it serves. I will commit to providing the highest quality of service to those The Arc serves. I understand that violation of any part of this code may be grounds for disciplinary action, up to and including termination”.

The volunteer signed the Office of Inspector General Rule 50 Abuse and Neglect form on 12/26/13 and it describes the “mandated reporter training for volunteers, contractors and other mandated reporters with the potential to have direct contact with persons served”.

## CONCLUSION

According to The Arc Client Confidentiality Policy 2.22, “The Arc expects its staff members to act at all times in the best interest of those it serves. In the course of their jobs, staff members at The Arc gain information of a confidential

nature about the people the organization serves. Staff members are directed not to discuss such information outside the organization. Violation of this policy may result in termination and possible legal action”.

According to the MHDD Confidentiality Act (740 ILCS 110/4) regarding persons entitled to inspect and copy recipient’s record:

*§ 4.(a) The following persons shall be entitled, upon request, to inspect and copy a recipient’s record or any part thereof:*

- (1) the parent or guardian of a recipient who is under 12 years of age;*
- (2) the recipient if he is 12 years of age or older;*
- (3) the parent or guardian of a recipient who is at least 12 but under 18 years, if the recipient is informed and does not object or if the therapist does not find that there are compelling reasons for denying the access. The parent or guardian who is denied access by either the recipient or the therapist may petition a court for access to the record. Nothing in this paragraph is intended to prohibit the parent or guardian of a recipient who is at least 12 but under 18 years from requesting and receiving the following information: current physical and mental condition, diagnosis, treatment needs, services provided, and services needed, including medication, if any;*
- (4) the guardian of a recipient who is 18 years or older;*
- (5) an attorney or guardian ad litem who represents a minor 12 years of age or older in any judicial or administrative proceeding, provided that the court or administrative hearing officer has entered an order granting the attorney this right;*
- (6) an agent appointed under a recipient’s power of attorney for health care or for property, when the power of attorney authorizes the access;*
- (7) an attorney-in-fact appointed under the Mental Health Treatment Preference Declaration Act; or*
- (8) any person in whose care and custody the recipient has been placed pursuant to Section 3-811 of the Mental Health and Developmental Disabilities Code.*

And section 110/5 regarding disclosure; consent:

*...record and communications may be disclosed to someone other than those persons listed in Section 4 of this Act only with the written consent of those persons who are entitled to inspect and copy a recipient’s record pursuant to Section 4 of this Act.*

Under Section 110/2 definitions:

*“Confidential communication” or “communication” means any communication made by a recipient or other person to a therapist or to or in the presence of other persons during or in connection with providing mental health or developmental disability services to a recipient. Communication includes information which indicates that a person is a recipient.*

*“Record” means any record kept by a therapist or by an agency in the course of providing mental health or developmental disabilities service to a recipient concerning the recipient and the services provided.*

Complaint: Personal and confidential client files were reviewed by a person who is not an employee, but is the spouse of a supervisor.

In Section 110/5 of the Mental Health and Developmental Disabilities Confidentiality Act, it states that records and communications may only be disclosed to someone other than those under Section 110/4 with written consent. Section 110/4 of the Act also allows record access by “...any person in whose care and custody the recipient has been placed....” The spouse, a volunteer agent of the ARC, indeed had access to client files but was appropriately trained in confidentiality matters beforehand and signed a Code of Ethics form according to the documentation. In this situation, the agency’s use of an authorized and trained volunteer to assist with file organization does not appear to violate the Act. The HRA review provided no evidence that the volunteer disclosed unauthorized information from the client files that she was handling. The complaint is not substantiated.

Suggestion:

Revise the agency confidentiality policy to include volunteers.