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**Egyptian Regional Human Rights Authority
Report of Findings
15-110-9010
Crab Orchard 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 Crab Orchard School District located in Marion. There are approximately 517 students in the Pre-K-12th Grade school district. Approximately 48 are enrolled in special education. The special education program is run by Williamson County Special Education Services (WCSE), a cooperative that serves approximately 1800 students ages 3-21 County wide. The specific allegations are as follows:

1. Accommodations were not made for a student with a disability.
2. Failure to communicate with parent/guardian about an IEP (Individualized Educational Plan) meeting.
3. Breach of confidentiality.
4. Discrimination based on a student's disability.

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 et al.); the Americans with Disabilities Act (28 CFR 35.130); and the Illinois Administrative Code (23 IL ADC 226).

According to the complaint, a student with a disability was not provided a Physical Therapy (PT) evaluation to assist with obtaining a wheelchair or Behavior Analyst services. It was also alleged that the WCSE failed to notify a parent of an IEP meeting and breached confidentiality by discussing specifics of the student's case with a community autism center without a release of information signed by the parent. The final allegation was that the student was denied access to Music and Art classes due to her disability. The HRA determined that allegations #1 through #3 were addressed in the HRA Report of Findings for Case #15-110-9009, Williamson County Special Education Services. Thus this report will focus on allegation #4 which directly involved the Crab Orchard School District.

Investigation Information

To investigate the allegation, the HRA Investigation Team, consisting of two members and the HRA Coordinator conducted 5 site visits. During the visit the Team spoke with the Special Education Director (Director), the student's mother, the Superintendent and teachers. The

student's Individualized Education Programs (IEPs) were reviewed after the Authority received written authorization from the student's guardian.

I. Interviews:

A. Special Education Director (Director): The HRA met with the Director and a teacher coordinator who was also a former Assistant Director. The Director explained that the WCSE provides all the special education services for the schools county wide and also have two self-contained buildings for alternative placement. They also serve 15 school districts outside of Williamson County. The cooperative also has a board that consists of 5 Regional Superintendents that meet monthly. This student's home school district is in a rural community and there are approximately 25 students per class. She explained that this student has attended the public school and has also been home schooled. The school district struggled to provide services. Having a 1:1 aide worked well in primary school in the regular education classroom, however, as she got older, it was more difficult when her behavioral problems increased. As she got older, the gap between her and her peers was larger so she would be in the regular education classroom doing ABC cards when others did 7th grade work. She explained that 4 years ago they had to pull Music from their curriculum as a separate class due to budget cuts, but the teachers were supposed to provide some form of this in the classrooms. Currently, the school just has an Art Appreciation class. The WCSE provided a 1:1 aide for the student which could have assisted with some art and music activities, but her IEP goals were to work on letter identification, numbers, and communication therefore, she may have not been recommended for those classes due to her limitations. However, regardless she should have been offered Art and Music in another form. The school offered an alternative "specialized, functional school" that provided services such as life skills, community outreach and the WCSE even offered to transport her to and from the school. They felt this would be a good option for the student to work on daily living skills and community integration, but the parents refused. The Director stated that last Christmas, the student's mother once again started homeschooling her and had a homebound prescription from her physician. The Director explained that it was difficult to find a homebound instructor because the home is in a very rural area. Typically, the WCSE hires special education teachers to provide these services and providing homebound instruction required a teacher to work outside of his/her normal hours and a stipend is paid. Retired teachers, who are certified in special education, usually provide this service for 2 hours per day 5 days per week. However, 1 hour a day 5 days a week is all that is required and that is all that the mother wanted and she refused the extra 5 hours each week.

B. Superintendent and Teachers: The HRA met with the Superintendent of the local public school. He has been the Superintendent for 11 years and was the Principal for 3 years prior to that. The Superintendent is employed by WCSE but is assigned to the specific district. When the student attended the school, she was more with the special education classroom than in a regular education classroom. While attending their school, the student had made significant progress; she had a 1:1 aide and was more verbal. He explained that her mother "pulled her out of school" on two different occasions. She was homeschooled sometime around her 5th grade year in 2009/2010 and she was gone for 1-2 years, returning her 7th grade year. When the student returned, she had regressed significantly. He explained that he was not sure why the mother had pulled the student out of school for homeschooling but the parent just has to say that they are

homeschooling their child; no one regulates homeschooling. He stated that he has nothing against homeschooling and has had students in the past play sports and test high with homeschooling, but when this student returned she had regressed significantly. Upon her return, the Superintendent spoke to the Director of special education who recommended a program in a neighboring school district that was for students who are “more profound” to teach them life skills. He explained that they do some educational teaching but stated that “they’re not going to read and write.” He stated that the mother had refused to send the student to that school; he did not know what her reasoning was other than she had concerns about the bus route. The Superintendent stated that the student may have had problems initially with the bus route, but she is fine once she gets used to someone and he was of the opinion that she would have adjusted. He stated that they would have sent an aide with the student who had worked with her for approximately 4 years.

During the student’s 9th grade year in the spring, she left again for homebound instruction. The Superintendent stated that he had not had any complaints from the family regarding the student or the services provided by the school, but he was informed by the Director, who had recently retired, that the mother wanted homebound services and wanted a teacher to come to the home every day for instruction. He explained the requirements for homebound instruction and stated that for regular education, in order to be approved for homebound instruction, must be due to a medical or psychological reason. For special education, they just have to have a “legitimate” reason for homebound. If not, they have to be at the regular school or an alternative placement. He explained that this student had left for mental health/anxiety reasons. He explained that she was never a “bad kid” just “stubborn at times”. He stated that the teachers did not complain that she was disrupting others with her behavior.

The Superintendent explained that they had to drop Music from their curriculum 3 years ago due to lack of funding. However, he said prior to that, a student being denied any particular class was not at the teacher’s discretion; an IEP meeting would have had to have been held to make that decision for this student. The Superintendent gave us the names of several teachers who had worked with this student and the HRA met with three of them as well which is detailed below.

1. Elementary (K-5) Special Education Teacher: The teacher explained that when she worked with this student she was essentially nonverbal but would say “good morning” and used minimal sentences and used sign language. She also had a communication board that she worked on name and letter recognition, but she could not write. Around 3rd or 4th grade she was switched to a “more functional than educational” curriculum. She took the lunch count and mail, watered plants and worked on communication skills. She explained that she was a very stubborn girl but had a 1:1 aide which helped with redirection. She did always attend PE, Music and Art classes in elementary school. She did not like to do physical things or participate in organized games, so she would walk in the gym for exercise instead. Around 5th grade, she explained that the student’s mother wanted to homeschool her so she could spend more time with her and also had concerns about her menses. She was homeschooled during her 6th and 7th grade years and then in 7th or 8th grade her mother started working outside of the home and therefore wanted the student back at school. She requested that the student have the same 1:1 aide, but she had left

employment by then. The teacher explained that in grade school, the “gap” wasn’t as big between this student and her peers but when she returned in Jr. High the “gap” was larger. She explained that the student brought stuffed animals to school and was in the resource room more with a 1:1 aide. She explained that in the regular education classroom, she distracted other students with her growls. She stated that the Jr. High special education teacher complained about the growling and the student sitting down on the floor in the classroom. She stated that she was distracting other students in the resource room. She also explained that a “more appropriate setting” that focused more on functional skills was offered to the mother but she refused to send her daughter to that school. When asked about the Music classes she explained that in elementary school, Music class was more about singing and at the Jr. High level all that was offered was band where you had to read music and play specific pieces of Music. Also, in Jr. High, the Art class was more “hands on” and following step by step instructions which was difficult for this student but she explained that alternative Art was offered to her in her classroom.

2. Jr. High Art and Music Teacher: This teacher also explained to the HRA that Jr. High Music was more of a concert choir and band type class that focused on performing for concerts. Due to this student being non-verbal, it would have been difficult for her to participate in this level of music class. She explained that her mother wanted elementary-type music instruments to be offered which they did not do at the Jr. High level. She stated that the student would have been welcome to sit in the classroom, but she was of the opinion that this student would have been more interested in observing than participating. She also taught Art and explained that at Jr. High level, the Art class is more “hands on” and would have been difficult for this student to participate in. Their first assignment was a leaf project and due to this student’s writing/fine motor skills deficits, it would be very difficult for her to complete the project herself and it would be the 1:1 aide doing the work and not the student.

3. Jr. High Special Education Teacher: This teacher worked with the student 6th through 8th grade when she attended the public school. The HRA questioned her about the Art and Music classes. She stated that they began that year by walking her to the art room to do projects, but it was difficult to walk in the hallways with her because any time she saw the doors, she attempted to elope and then would just sit in the floor and refuse to move. She explained that they attempted to do artwork in the resource room with the student such as using glue, markers and paper crafts but a lot of the time the student refused to participate. The teacher stated that she does not have fine motor skills therefore she would watch and assist sometimes but the aide did most of the project. She also stated that after 1½ years of working with the special education teacher, the student was still uneasy around her.

The teacher recalled two times when they had to call the student’s older sister for assistance with the bathroom because she would not let the teacher or aide assist her. When they called her sister, she would not let her help either and they would have to call her mother. She explained that before the student went on homebound status, they were calling her mother approximately every other day because the student would refuse to participate in school and would “throw herself” down on the floor. She would lie on the floor for 30-45 minutes at a time and one person was not strong enough to lift her off the floor or to keep her from going to the floor. Therefore, a staff person would have to stay with her until she decided to get up on her

own. The teacher explained that her special education classroom was not geared towards teaching “life functions” only. She explained that her class consisted of students with learning disabilities and moderate autism, but they all did school work, this student was not able to do the same work that the others in her classroom could do. She stated that she told her mother about the specialized school in a neighboring community but the mother refused to send her there. At first the mother was adamant against it, but later said she would try it but she never did. Instead, the mother took the student out of school because someone was coming to her house to work with her.

C. Mother: The student’s mother explained that her daughter had been placed on homebound status through her school system per her doctor’s order due to extreme anxiety. Her daughter was isolating into her room and would not come outside of the home either to go into their yard or to travel anywhere. She had attended public school most of her life with the exception of a few years when she homeschooled her.

The mother voiced concern that while attending public school, her daughter had been denied classes with her peers; specifically, Art and Music. She stated that her daughter was denied these classes due to her inability to talk and that she wouldn’t be able to participate because she was disabled. She stated this occurred in 2011/2012 and 2012/2013 school years. She stated that when she was in 7th or 8th grade, she was not allowed to attend Music class with her peers due to not being able to talk. She was also denied access to Art class with her peers. The teacher had said they couldn’t “dumb it down to her level” so instead they provided Art in her special education classroom. Therefore, instead of working on ceramics, painting and drawing, she would do “texture therapy.” The mother also explained that her daughter was not allowed to participate in PE (physical education) class with the rest of her class. Instead of participating in the activities the other students were doing, they would make her daughter walk laps around the gym, then after PE every day she would have a “meltdown.” She also stated that her daughter has hip problems and she was concerned that all the walking aggravated that and could potentially have caused her “meltdowns” after PE.

The mother also stated that the school wanted to send her daughter to a “specialized school” that was more secluded and only teaches life skills in a neighboring community that a lot of “behavioral” students attended. She stated they offered to provide the transportation, but she was concerned that she wouldn’t be able to tolerate the long bus ride (approximately 30 minutes one way) which she would have to ride alone as no 1:1 aide would be provided. The mother did not want her daughter to attend a school with unfamiliar people instead of attending the public school in her community that she had always attended before and where she was comfortable. She also stated that other people had told her “horror stories” about the treatment received by other students there and how they mostly “just babysat” the students. Therefore, she refused their offer. The mother also explained that she homeschooled her daughter after Spring Break because the school requested it stating that “it’s not working.” Prior to Spring Break, the school would frequently call the mother to come and pick her up because she was trying to elope from school. The mother stated that it was discussed at her IEP meetings that when her daughter would start becoming agitated, they would move her to a conference room with a 1:1 aide, but that never happened. The mother stated that they pulled her older daughter out of class instead to “deal with her.” She stated that the special education teacher would meet her in the hallway to

tell her what the student had “done wrong” that day; the aide would then tell her it wasn’t that bad.

II. Chart Review:

A. Individualized Education Plans (IEPs): The 2009/2010 5th Grade IEP lists the student’s primary eligibility as “cognitive disability” and indicates time inside the regular classroom as “less than 40% of the day.” The student’s strength’s section states the student “*is a sweet natured and polite young lady. She works hard to learn new skills in the classroom. She has increased her verbal skills and is learning new ways to communicate. She has started performing many jobs around the classroom and the school. She has many friends.*” The parental concerns section states “*mother is concerned with [name’s] life skills. Mother is planning on home schooling [name] next school year. She thinks that life skills would best be learned at home with family. Mother would also like [name] to be tested to get current info of academics skills.*” The current level of academic achievement stated that the student was learning to recognize new words and symbols and was “*learning many new skills and jobs at school. She helps by delivering mail and taking the school lunch count to the kitchen personnel.*” The present level of functional performance section stated that the student carried her tray at lunch and opened her milk independently and was learning to put her coat and backpack on and off with little help. It was also documented that she had very good computer skills. The speech/communication performance section documented that the student “*utilized single words and/or single signs to imitate or utilize functional vocabulary. It also stated that she would participate in activities with prompting but does not frequently initiate interactions with peers or adults or demonstrate motivation to maintain interactions initiated by others.*” The section was summarized with the statement “*The severity of [name’s] deficits cognitively negatively impacts her involvement and progress in the gen. ed. Curriculum and, a specialized instructional program is indicated.*” The student’s fine motor and cognitive skills were rated to be “*around the 3-3 ½ year level.*” The IEP stated that she would be with the general education class during PE with no supplementary aids and during Art and Music classes with supplementary aids. All other classes were to be held in the special education classroom (English, Reading, Math, Science, Social Studies.) The student had the related services of Occupational Therapy (OT), Speech/Language Services, Aide-Individual Student, Transportation, School Health Services for the duration of the school year.

The 2014/2015 10th Grade IEP dated 9/11/14 lists the eligibility as “*Multiple Disabilities*” and indicates 100% of time in special education and none in regular education. This IEP was also held to update the home based education program. The student’s functional performance report stated “*refuses to leave the house and displays non-compliant behaviors, including aggression, fear, hallucinations, growling, losing control of bowels and bladder, displaying severe agitation when any demands are placed on her. When demands are placed on her to leave the house she refuses and physically must be removed from the house.*” The IEP documented that the student had been receiving home bound instruction since March 5, 2014. Her last school evaluation dated May, 2013 reported that she “*is a sweet girl. She can hang up her coat and backpack on her own, [name] can carry her own lunch tray and she wipes her table after lunch. She likes to use her Alphabet cards and watch aide or teacher sign the cards. She will watch her aide or teacher for the majority of the time and she will occasionally turn the*

cards.” The parental educational concerns section stated that the mother “*indicates that [student] is in a crisis situation. Her anxiety levels are extremely high, escalating to ‘fight or flight’ when surroundings change beyond her home, specifically, her bedroom. She wants [student] to engage in community activities and progress in life skill development. [Mom] has established contacts with local agencies and providers to assist [student].*” It was noted that in August, 2014 the student’s doctor had requested home/hospitalization instruction for the student due to her diagnosis of “Down’s Syndrome, Autism and Severe Anxiety” for the duration of the school year through June, 2015. The student’s present level of academic achievement according to documentation provided in January, 2014 stated “*likes her Alphabet cards [student] will listen to aide when discussing calendar, days of week and months. [Student] is not responding to matching, numbers, her name, seasons or colors. She refuses to pick up a crayon or pencil the majority of the time. She has held a paintbrush and a marker but only for a few seconds...[student] will pick up a crayon or pencil when she doesn’t want to do something and throws it into the box. Aid and Teacher try to do hand over hand with tracing a line with pencil or crayon. [Student] shows little to no participation at all when she doesn’t want to do something...has been growling every morning when mom brings her into school...she will begin growling when she doesn’t want to do something...was withdrawn from school in March, 2014 and entered home schooling by parents. [Mom] requested to continue her education and IEP through home/hospitalization program for 2014-2015 school year.*”

Another IEP was held on 1/21/15 which documented that the student was making progress with accepting a new individual that she had not had an extensive history with. She enjoyed going to fast food restaurants and shares her snacks with others. She responds to her name and “*explores a variety of toys in the environment.*” The team members reported that she enjoys painting and displays strength in toileting, dressing and eating, which she completes independently. The student’s present level of academic achievement section stated that the teacher “*reports that no academic work has been attempted with [student] due to the extensive time necessary for the aforementioned protocol [developed by the behavior analyst working with the student]. The instructor has participated in daily logs and progress collected to build an educational and function plan for [student]. Some team members are concerned for the accuracy of the reporting from the teacher. Her reports of behaviors are often optimistic according to [mom], although the teacher reports positive interactions; they are of the type that are not witnessed by others. The team will introduce additional team members with more extensive training in behavior data collection and crisis prevention following today’s meeting. Parent indicates that [student] has regressed academically over the past several years. Many of the skills obtained in elementary school are no longer present.*” The next section “Present Levels of Functional Performance” provided a summary from 2010, 2013, 2014 and 2015. In 2010 she was able to recognize pictures of common objects, make requests using sign, follow simple single step directions, school routines, greet others in passing, participate in group activities and complete work jobs with and without assistance. In 2013 an evaluation was completed “*to see where [student’s] current levels of functioning are to better program for her at school following an extended time of home schooling by parent.*” This evaluation indicated that her adaptive skills fell in the low range noting she had difficulty with communication, cannot point to 3 body parts or common objects, sometimes smiles and uses first names of siblings. It was noted that she could ask to toilet and put on clothes that open in the front and feed herself with a fork and spoon. It was noted that she prefers to be alone, is overly nervous,

avoids social interaction and lacks energy and interest and “has delays in adaptive skills that impact her participation in the classroom.” In 2014 target behaviors to be addressed were physical aggression (PA) and non-compliance. PA occurred 1 time every 2 weeks and non-compliance occurred daily in the classroom and had also occurred in the bathroom and hallway 2 times. In 2015, following one semester of the home based program, the parent reported that the student did not attempt to communicate in any form. She would take known reinforcers when offered; she indicated preferred items by pointing to, pulling to or standing by the item. She was able to physically be near others without engaging in disruptive behavior for at least 30 minutes, occasionally approached others to initiate social interaction and could dress herself, feed herself and pour solids from a container. She could toilet herself appropriately at home with assistance.

The final IEP reviewed was dated 5/14/15 and her present level of academic achievement was summarized as “from January to May the trained teacher reports little to no educational progress. The team indicated that the teacher has established rapport with [student], however, she is not able to participate in any educational opportunities during the home based program despite the use of the developed plan...the IEP team recommends that a plan to re-integrate [student] into an educational setting is necessary and should be considered as part of short term and long term planning.” The student’s present level of functional performance listed an IQ Composite of 40 and cognitive functioning range was listed as “lower extreme.” The May, 2015 summary stated that the student “has shown no academic progress. She has demonstrated some decline in independent functioning skills such as toileting...currently showing little eye contact with teacher during table time, she remains at the table only when presented an edible. Teacher reports [student] has displayed hallucinatory behavior on one occasion. A variety of modes, including visual, auditory and kinetic activities have been presented. On one occasion, [student] appeared to be listening to the teacher read a story for less than 3 minutes. [Student] left the area, entering her preferred and isolated location of her bedroom, the teacher continued reading, noting an increase in growling. [Student] often growls during non-preferred activities or in the presence of unknown individuals, as well as, randomly without known antecedent.” The Adverse Effects section again stated that “the severity of [student’s] adaptive, communication, cognitive and academic impairments impact [student’s] access to the standard academic curriculum. Access to the regular school setting is not precluded by disability. A physician request for home based programming was provided for the duration of the 2014-2015 school year indicating ‘down syndrome and severe anxiety’ as the medical diagnosis, request extended on 5/14/15 for extended school year and diagnosis of ‘bipolar disorder, autistic, moderate mental retardation and down syndrome.” The Additional notes/information section included a statement that “...The IEP team recommends a plan for re-integrating [student] into an educational setting. This plan should begin in June, 2015 during extended school year. A program focusing on independent and functional skills is available for [student] to attend on a part time basis, as a start of re-integration. The small group setting is ideal for [student] to begin to slowly attend a program with necessary supports and therapy. The home health provider will begin ‘drive bys’ at [special needs school] to assist in a transition of moving towards an educational program. The home based health care provider will gradually introduce [student] to the school setting. The special education home based teacher will meet [student] at the school, as tolerated, for interaction with peers. This will be a gradual process as careful attention will be placed on [student’s] ability to generalize across settings. Parent brought physician prescription for OT, PT and Speech Services. She would like for related services to be

provided in a gradual manner as part of the home base education program. As part of an educational therapy services, an evaluation for OT and PT is necessary. Due to the time limits, parent would like to begin with speech therapy, introducing other therapy providers in a staggering manner. This will help [student] acclimate to new people at a slower pace. Speech services will be included as part of 2015 ESY program at home. An occupational therapy evaluation will be conducted at the beginning of 2015-2016 school year and included in next year's program services."

Attendance Records: The following attendance records were provided by WCSE.

- August 2004-June 2010 (Kindergarten through 5th grade) - all years completed in general education with special education classes and related services at local public elementary school. On average she was absent 25-40 days each school year.
- August 2010 – June 2013 (6th, 7th and 8th grade) - parent choice to home school child. It was discouraged by the school system. There was a brief period of re-enrollment November 27, 2012 during her 8th grade year.
- August 2013 – enrolled in 9th grade withdrawn by parent March 5, 2014 of same year to home school. [Parent indicated that the student was withdrawn at the request of her physician]
- August 2014 – enrolled in 10th grade with a homebound prescription from physician. Services were still being provided at the time of the HRA investigation.

B. Report from a Down Syndrome Clinic dated 7/18/13 was also reviewed. The physician's recommendations included speech therapy to be continued, occupational therapy to be initiated, an assessment by a behavioral analyst to conduct a functional behavioral assessment (FBA). The physician stated that *"being that she is a student with special needs, she has the right to an FBA at school if there are behaviors that are interfering with her education. It is the law..."* The physician also recommended that her receptive communication be on the iPad since she is a visual learner and specifically an application called MyRoutine. The physician suggested creating an expressive communication system for the student to make requests such as starting with some preferred food and drink items for her to use to request items and gradually move her towards a picture system. The physician also noted that regression is not uncommon for children with Down Syndrome and Autism.

Statutes & 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..." *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)." Section 300.5 outlines *Assistive technology device* as "any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities

of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.” Section 300.34 defines

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 and that includes... (IV) 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 for the child” 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"

The IDEA (20 USCA 1400) states that “*Congress finds the following: (1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.*”

The purposes of the IDEA are listed as “*to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; to ensure that the rights of children with disabilities and parents of such children are protected; and to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities...to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and to assess, and ensure the effectiveness of, efforts to educate children with disabilities.*”

The Code of Federal Regulations (34 CFR 300) in Section 300.105 requires “*Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's (1) Special education under § 300.36; (2) Related services under § 300.34; or (3) Supplementary aids and services under §§ 300.38 and 300.114(a)(2)(ii). (b) On a case-by-case basis, the use of school-purchased assistive technology*

devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.”

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 300.305 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."*

The Code of Federal Regulations (28 CFR 35.130) prohibits discrimination on the basis of disability by stating *"No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:*

- (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;*
- (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;*
- (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;*
- (iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;*
- (v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;*
- (vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;*
- (vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service. A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.”*

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 allegation was that the school discriminated against the student based on her disability by not allowing her to participate in Art and Music classes with her peers. When the HRA questioned school staff, it was explained that Music class offered previously in elementary school had been pulled from their curriculum 4 years ago due to budget constraints and the only offering at the Jr. High level was Band/Chorus which required reading music and playing specific pieces of music. The only Art class offered at the time of the interviews was Art Appreciation which was described as a "hands on approach" requiring the students to follow step by step instructions. However, it was explained that alternative Art was offered to this student in her classroom. The student's IEP stated that "*The severity of [name's] deficits cognitively negatively impacts her involvement and progress in the gen. ed. Curriculum and, a specialized instructional program is indicated.*" The student's fine motor and cognitive skills were rated to be "*around the 3-3 ½ year level.*" The HRA noted that the student was being offered "alternative Art" in her classroom. It was also noted that when the school teachers attempted to do artwork in the resource room with the student such as using glue, markers and paper crafts, a lot of the time the student would refuse to participate. The teacher stated that limitations in her fine motor skills prohibited her from doing this type of Art as well. Therefore the student would watch and assist sometimes but the aide did most of the projects. Because the prior Art and Music opportunities were no longer available due to budget constraints and because of documentation indicating that the student was not actively participating in art activities, the discrimination allegation is **unsubstantiated**. The following **suggestions** are offered:

1. Consistent with state and federal special education mandates, the school should consider accommodations that would enable students to participate in regular education opportunities, including band and chorus, and if accommodations are not successful consider a music alternative as music might provide therapeutic benefits as well.
2. It was noted that the teacher "did most of the art projects" for this student, the HRA would suggest that when this occurs perhaps accommodations are warranted or OT services may be needed. In addition, perhaps some students do not enjoy certain types of art projects and other art or fine motor activities could be offered. Finally, it

was noted in the record that the student in this case enjoyed working on the computer and the physician recommended an IPAD. When such strengths, interests or recommendations are noted, the school should consider pursuing as such technology can facilitate art-related or fine motor activities as well as academic, vocational and independent skills.