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Egyptian Regional Human Rights Authority
Report of Findings
15-110-9019
School for the Hearing Impaired

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 School for the Hearing Impaired (School) located in Marion. There are approximately 50 students with special needs aged Pre-Kindergarten (Pre-K) through 5th grade who are served by this school. Originally built in 1976 for students who are deaf or are hard of hearing and who are now primarily placed in regular education classrooms, the school now has three communication disorder classes as well as early childhood and Pre-K classes. There are sensory/motor classrooms. Physical Therapy (PT) and Occupational Therapy (OT), a Speech Pathologist, Audiologist and Nurse are housed at the school. The specific allegations are as follows:

1. The school is not providing necessary accommodations for a student, specifically a 1:1 aide, assessments and educational accommodations.
2. There is inadequate behavioral/educational/transition planning for a student.

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 Illinois Administrative Code (23 IL ADC 226.330) and the Illinois School Code (105 ILCS 5 et al).

According to the complaint, a student with autism was not provided with a 1:1 aide, behavioral analysis assessments, speech therapy and educational accommodations in the classroom. The second allegation is that an appropriate behavioral intervention plan was not in place and the only transition planning for high school is to go to a specialized school for special needs rather than integrating in a regular classroom setting or residential placement school.

Investigation Information

To investigate the allegation, the HRA Investigation Team, consisting of two members and the HRA Coordinator conducted 6 site visits. During the visits the Team spoke with the Special Education Director (Director), the Principal, the student's mother and grandmother, the student's teacher, a home support services worker, a services and support advocate, a representative from the Department of Children and Family Services and the Director of home

based services. The student's Individualized Education Program (IEP) and medical records were reviewed after the Authority received written authorization from the student's guardian.

I. Interviews:

A. Mother and Grandmother: The student's mother explained that her 13 year old son's classroom at the school where he had attended for 3 years was being discontinued and the children were all being transferred elsewhere for the following school year. She was not sure why the classroom was closing but assumed it was due to funding issues. Her son is a 13 year old, nonverbal child with autism. At the IEP meeting they were discussing where her son would transition to and stated that the only option the school gave for her son was to be transferred to a life skills only high school. The mother explained that this school had both academic classrooms and life skills classrooms. She stated that the Principal said that her son was not teachable and would not learn anything in the academics classroom because he is not able to read and comprehend and insisted that her son be placed in the life skills only classroom. She stated that she and the teacher both agreed that he would benefit from both academic curriculum and life skills. The mother had also researched a residential placement school that was about 3-4 hours away for her son to attend where he could both live and go to school. However, the school refused to consider that option stating that they could provide all of his educational needs locally. Instead, the home support services agency was to provide home services for the mother and grandmother with the school's help. The mother explained that the case coordination service, the medical doctor, and home support services worker all believed that residential placement was the most appropriate for her son. She explained that her son had become more combative towards her and her mother and was getting "harder to handle" the older he gets. At the time of the interview, the child was 13 years old and weighed 125 pounds and was approximately 5 foot 5 inches tall. The mother and grandmother both explained that he would scratch, bite and throw things when prompted to do something he did not want to do. The grandmother is the paid respite worker but the mother explained that it takes both of them to get him under control when he has maladaptive behaviors.

The mother also explained that the school refused to have a behavioral assessment conducted by a certified behavioral analyst, stating he did not need one, even though the mother had a prescription from his doctor dated 8/20/14 to have one done. She also stated the school had not provided speech therapy the past year because, per the school, "he wouldn't do anything" when the school tried to work with him. Another concern of the mother was that her son did not have a behavioral intervention plan (BIP) as part of his IEP. His only BIP was to utilize the "quiet room" and to contact the mom when he had behavioral issues. However, she stated the school had never called her regarding her son's behavior; the teacher instead would send a note home saying he was put in the quiet room that day. She never received copies of incident reports detailing why and for how long he was placed in the quiet room, just handwritten notes from the teacher on notebook paper. The grandmother stated she believed he was spending about half of the day in the quiet room for hitting and biting himself or scratching classroom aides and students. The mother stated she had also been advocating for her son to have a 1:1 aide at school due to his maladaptive behaviors and felt it would be beneficial for him to have someone close to help prevent injury to her son or others and to help him with school work. At first, the school would not allow him to have a 1:1 aide because they wanted him to be independent, then the

school refused a 1:1 aide because they said he was too dangerous to have an aide because he would hurt the aide. The HRA inquired as to if a psychological examination had been done recently and the mother stated that he had not had one since he had been at the school for the hearing impaired. She had asked for one but was told that he cannot communicate so it would not do any good. She stated that he recently had an acute psychiatric admission on a psychiatric unit at a community hospital and stated they might have done an assessment but she was not sure. She explained that the doctor there added Risperdal but it caused him to eat all the time and he had severe digestive issues which she believed sometimes caused maladaptive behavior due to him being in pain. She stated that she discussed this with his primary care physician who recommended discontinuing it but no other psychotropic medication was added.

There was also an issue with bus transportation. The school required her son to be in a harness when being transported by the bus, but the Principal refused to put the harness into the IEP due to having a “good rapport” with the bus company and stated that it was not necessary because the bus company is contracted out. The mother explained that he was supposed to ride a special education only bus due to her son’s sensory issues, but instead he was on a regular bus full of children. Her son suffered an injury on the bus allegedly due to his back being “zipped” in his harness. The mother stated that she kept getting different stories as to how the injury occurred and had concerns about the length of the bus ride and eventually she refused to let him ride the bus and just took him to school herself. The mother was trying to get a harness for her vehicle to help with transporting her son because he would hit and scratch her while she was driving. The Director of home based services was trying to assist her in getting the harness but at the time of the interview that had not been accomplished. In order to avoid her child being placed at the specialized school in his current district, the mother moved before the start of the next school year and her child is now in another school district.

B. Special Education Director (Director) and Principal: The HRA met with the Director and the Principal and toured the school which was attached to a public school building. The HRA was informed that lunch, physical education, music and recess times are integrated with the public school children and classroom learning occurs in the school for the hearing impaired building. The students’ IEPs determine placement at the school for the hearing impaired and those students typically have the most severe/profound needs as well as medical needs. It is a regional school but they have tuition based students too. The child in this case has autism, profound type, and was previously enrolled at a tri-county special education school in another school district prior to moving to his current home. His current classroom was being closed because they now had enough space at the public schools to accommodate the students and only had a few students left in his classroom so they integrated those students into regular, public schools. This child was to transition to a specialized high school in a nearby town which was a continuation of the same program in which he was currently enrolled. The new school/classroom focuses on community based instruction, teaches job skills, prepares the students for CILA [community integrated living arrangement] home placement and focuses on basic life skills such as getting around town, leisure activities, etc. The plan was for the receiving teachers at this new school to finalize his transitional IEP plan after they got to know him and his needs. The only other option for high school placement they have when transitioning students from the school for the hearing impaired, is a high school in the same town. The students transitioning there are typically those with higher cognitive skills in areas

such as Math, meeting graduation requirements, budgeting money, getting a job, etc. The residential school was brought up by the mother at an IEP meeting in April which was called to coordinate services. The Principal stated that this discussion ended with the school stating they were doing all they can and the mother was going to do more at-home interventions with the home services support team. At that meeting there were 2 board certified behavior analysts (BCBA) who were working on in-home services with the family. The mother was having problems with the child attacking her so the school was trying to help the mother manage his behavior by providing in home support services. The mother had asked about her son attending a residential school which was approximately 3-4 hours away. The Director stated that no one had ever been referred to the residential school previously. The Director was not familiar with what the admission requirements are, but the school felt it was not necessary for this student because all of his needs could be met locally.

When inquiring about the 1:1 aide, the Director explained that the higher functioning class at the school for the hearing impaired has 1 assistant teacher but only 8 students, the other classrooms have 1-2 assistants in each room. Since the teacher-student ratio is so low, they do not typically add a 1:1 aide for a student. In the classrooms, they mostly do center work and teachers and assistants are working with 1-2 students at a time. As for the speech therapy, functional behavioral assessment (FBA) and the BIP, the Director informed the HRA that a 3-year re-evaluation was completed on 11/7/13 and speech was listed as a relevant domain but no additional data was needed and speech language services continued. Social emotional was not listed as a concern at that time and therefore no FBA/BIP was done. On 8/28/14 the IEP did meet to discuss the need for a FBA/BIP and the parent signed the consent. The consent stated that "request was made by the IEP Team" indicating that, the IEP Team, which included the family as well as school representatives and other community providers, was the requester for these assessments. On 11/6/14 another meeting was held to discuss the results of the FBA and create a BIP for this child. Both were included on that IEP and were implemented from that point forward. Speech/language was listed as consult/indirect 5 MPW [minutes per week] which the Director explained is for the speech and language teacher to assist with the communication device and she noted that 200 MPW for language development is on the IEP throughout.

This child's behaviors consisted of screaming and scratching others when he was doing a non-preferred activity. However, it was noted that most of the time he was fine in his classroom and he was only removed to the quiet room when he "lashed out" and then he would typically be in the quiet room for 5 minutes or so and then he was back in his classroom. The specific times and reasons for his quiet room time were not documented as a part of his permanent record, however it was explained that it might be documented by his teacher in her own records. His mother had expressed concern about him going to the quiet room and the teacher had agreed to discuss it more with the parent when they spoke. The Principal stated that the mother typically spoke with the teacher in person every day for 5-15 minutes when she dropped off or picked her son up from school. When asked if the school noticed an increase in behavior due to possible stomach issues, per the mother's report, it was explained that he was a very picky eater and his mother would supply his food, and the school fed him what the mother brought. She mostly provided taquitos and chicken nuggets. Although they had concerns over the type of food the mother brought, they never saw an increase in behavior after he ate. This was not uncommon to have a mother

provide the food due to several children at the school having special diets or texture preferences and those students brought lunches from home as well.

C. Teacher: This teacher had been the child's teacher for approximately 3 years. She had worked at the school for 8 years in the communications disorder classroom for children who are on the low end of the autism spectrum. Most of her students are non-verbal and their average functioning level is below Pre-K age (3 years). There were 7 children total in her classroom and she had two classroom aides and some afternoons they also had a high school worker. She stated that they did use the gym/cafeteria at the public school but they did not get to eat over there very often due to this child's behaviors. He would steal food from others' trays, throw food trays, display self-injurious behavior (SIB) and one time he "exposed himself" when other 2nd and 3rd graders were in the cafeteria. In the classroom, she stated that she worked on toilet training with him and desensitizing him to the bathroom (hand dryers, other children being in the restrooms). They also worked on name recognition, writing names, sorting items by color and shape, watering plants and they worked on number identification. This student was only able to identify numbers 1-5. They also worked on identifying community signs, picture communication and a "functional curriculum" reading program. She stated that this student would refuse to work a lot of the time but he could identify 5 signs. The classroom she taught in was closed because she had requested a transfer to another school and the classroom numbers were down too low to justify keeping it open for 2 children. The school transitioned the children earlier so not to cause too many changes at once. She explained the others were all good transitions. The students had more room in the nearby high school and 2 children who were 6th graders went to the junior high and others who were 8th graders went to the high school because the school did not want the children to have 2 transitions in the same year. She explained it was a "last minute" change that was not anticipated earlier in the school year. She described some activities of the nearby school that was recommended for this student and the areas of focus. She stated there are 2 classes and the functional classroom goes to the mall and Goodwill, washes windows and earns money but they were taught responsibility. This student was going to the more profound room which was more training for life skills needed. She was of the opinion that it was the most appropriate setting for him. The HRA questioned if the Principal had made any comments in the meeting stating that the child was not teachable and would not learn anything in the academics classroom because he is not able to read and comprehend. Her response was that she heard the Principal comment that the student would probably never get to the level of being able to read, comprehend and take tests because he had never seen a typically developed child with autism be able to accomplish that. He believed that this child needed a classroom that would teach him something that would be practical and meaningful to his life. The teacher explained that the grandmother was highly offended by that statement and left the meeting at that time.

The teacher stated that it was very important for him to have the same routine daily. The teacher stated that the mother dropped off the child at a different time each day. The teacher tried to encourage the mother to put him on the bus so that his day would be more consistent. The mother's response was that she could not due to him not sleeping at night. The buses arrived around 8:30 and this student typically arrived around 9:00. The child did ride the bus home daily for 1-2 months. She stated that it was a special education bus that he rode which transported approximately 12 children. He had to wear a harness that zipped like a seatbelt to keep him from standing or walking around on the bus. She also stated that he had previously "went after kids"

and hit the window on the bus, so the harness was implemented for safety issues. There was 1 aide that rode the bus daily. The teacher stated that she spoke to mom for about 20 minutes each day when she dropped him off at school and she also put handwritten notes in his back pack daily that told his mother how his day went, what he ate, etc. She stated that she did this at least 3 days per week.

The teacher stated that she did not notice any stomach issues at school and stated he did not display common signs of stomach discomfort such as curling into a ball or holding his stomach. He would “break down” at 11:30 daily because he was tired of eating the same food every day. She tried using a picture book for communication at meal time to see if it would curb this “daily break down.” The book had pictures of his food that his mother frequently provided and he was to point to what item he wanted. She said he initially utilized the book but then got tired of it and tried jumping over the therapist to get to his food. His daily food consisted of 15-20 chicken nuggets, applesauce, baby food and pretzels. He was not allowed to have milk or popcorn and did not have much fruit. This was due to his mother stating he was constipated and those things caused it. The mother left Maalox for the school to use for constipation. The teacher stated when they did give him Maalox at school it did not change his behavior and she questioned whether he had the stomach issues that the mother believed he had. There was a functional behavioral assessment done by the social worker at the school and the teacher informed us that a local autism center had a team of 3 who came and observed this student and wrote the BIP together. They are the ones who began the use of the “break button” and quiet room. She believed that was implemented around October, 2014. The HRA questioned if the teacher felt like he needed a 1:1 aide. Her response was he did not need one because he had become too dependent on them in the past. When he did not have a 1:1 aide, he gained personal hygiene skills and worked more independently in all areas. When he has an aide, he depends on the aide to do more for him. She stated that the mother had asked for a 1:1 aide and it was discussed at his IEP meeting, but all were in agreement he did not need one. The teacher stated that this student was not overly aggressive and lack of consistency is the biggest antecedent to his maladaptive behavior.

She did utilize the quiet room at times when asked for an estimate of how frequently he was placed in the room, she stated before January he was in the quiet room maybe once per week possibly less than that. After mid-January he was not in the quiet room at all. She felt like this was due to her working 1:1 with him instead of the classroom aide as the aide was not as consistent with him as she was. She also stated that she utilized his “break button.” She described the break button as a button he could push when he wanted a break from school work. She said typically after 2-3 tasks he would press the button to get a break. At that time she would give him a 1-2 minute break. She also tried using an iPad but he showed no interest at all in that and would push it aside whenever she tried utilizing it. She said he enjoyed playing with scarves, balls and a music box at first but by the end he was no longer interested in those things either. She explained that his behaviors became more severe after puberty and the only way she could get him to stop hitting himself was if she placed her hand over his on his desk and gently rubbed his hands, then he would calm down but he would still scratch other children. She could not restrain him due to his size. According to his BIP, if he “went after” another student he would go to the quiet room. If his aggression was towards a teacher, it was at their discretion whether or not the quiet room was utilized. She stated that most times she did not utilize it

because she could calm him down in the classroom. He had set guidelines as to when he could get out of the quiet room one of which was to do a task that had been mastered previously without aggression. She stated that he was only in the room for a few minutes, less than 15, before he would meet criteria to come out. When in the quiet room, either the teacher or a classroom aide would go with him and stay with him the whole time.

There was an IEP meeting held that addressed the residential placement issue brought up by the mother. Some professionals in attendance were a speech therapist, the case coordination worker, an advocate from the Springfield area, 2 representatives from the home support services team and the Director of home based services. The overall consensus was that the student did not need residential placement due to his behaviors at school improving. The case coordination worker was going to work with the mother at home and the Director of home support services was going to help the mother obtain a harness for her vehicle to transport her son safely. The IEP team recommended routine and consistency, set guidelines and a structured daily environment both at home and at school. The support services team was going to work with the mother and grandmother to train them to implement the same routines and consistency that the student had at school, at home. The mother said they could not carry out the recommendations because he is too aggressive towards them at home. The treatment team felt that if the mother was more consistent at home and had a set routine, she would see a decrease in maladaptive behaviors just as the school had seen, but the mother never followed through with the recommendations.

D. Director of Home Based Services: The Director saw the child approximately 6 times per year. Her job was to provide additional oversight and case management services. One of her job duties was to make sure his grandma, the paid personal support worker, was tracking and documenting his behaviors. She stated that the grandmother is paid through a home based waiver program and she helps with homework and activities of daily living (ADLs) but does not keep data sheets. The Director had been working with the child approximately 9 months at the time of our interview. She stated that she had witnessed him attack his mother unprompted. She stated that she has not found anything specific that triggers his aggression. The mother contributes it to stomach problems but the mother has had several medical tests done which found nothing, she believes the mother self-diagnoses it as constipation. The Director expressed concern that the mother was giving him a Maalox type medication regularly without a physician's order and no tests confirming that he had any problems with constipation. He was given Xanax by a physician, but stated the mother took him off of it because it "made him too normal." He had made progress at school and was toilet trained, but has had several absences from school. The Director had attended IEP meetings and stated that the mother did ask for a 1:1 aide but the school said he did not meet the criteria for one and her opinion was that he did not need 1:1 in that classroom structure. There was already a teacher and a classroom aide for 8 children and she felt that ratio was appropriate. The mother had also requested a behavioral assessment be done and the Director stated there was one at the next IEP but it was done by a teacher or school worker. The Director stated the child's behavior is unpredictable; sometimes he is fine other times he is not. The Director has not seen his behavior at school to compare it to his home behavior but has heard the reports at the IEP meetings. She was aware that he had problems with bus transportation and that he allegedly "got out of" his harness and scratched other kids. At school to manage his behaviors, he was transferred to the quiet room until he was

calm and stated the times varied depending on behavior and calming time but most of the time it was reported that he spent 5-10 minutes in the quiet room. She stated that the school was utilizing the quiet room as well as the “break button” to help manage behaviors at school. She also stated that when he is not on a schedule his behaviors seem to increase and the inconsistency at home with mom was discussed in IEP meetings. The mother had quit using the picture system with him at home and then he would not use it at school. The only activities she saw him do at home was to play with a scarf and she did not see much stimuli at home. The home support services team would recommend things to do at home but the mother would refuse and say he will not do it and she is not going to try it. The HRA questioned whether or not the Director was of the opinion that residential placement would be appropriate for this child. Her response was that yes, she believed it would be beneficial to him because she would like to see how the change of environment and having consistency would change his behaviors. The Director informed the HRA that the case coordination service had “bent over backwards trying to find a placement” and found one residential school placement that was willing to accept him and his new school district offered to pay for the school portion but not the residential portion. When this was mentioned to the mother, she stated that she wanted him to have a private school instead that would offer music therapy as well. A local social service agency offered to provide transportation for mom to go tour this school, but she has not yet. The Director was of the opinion that the mother would not let him stay anywhere for very long and questioned whether or not she would allow him to go into residential placement at all because it seemed like every time she made a request and it was met by the coordinating service agencies, then she would change the request.

E. Home Support Services (HSS) Worker: The HSS Worker, who is also an Assistant Behavior Therapist, started working with this family in May. She was to provide 1 hour per week of training for the family on Applied Behavior Analysis (ABA) interventions to use with this child. She was referred by the Director of home based services. The HSS Worker attended the April IEP and said that the issue of residential placement was brought up and discussed at that meeting, but the school did not agree to provide it. The child was not in attendance. She stated that they also discussed reading for pleasure for this child at that meeting, but the Principal stated he needed to start with functional reading first then move on to pleasure reading. The Speech teacher discussed an evaluation and her daily plan. She also remembered that there was a lot of discussion about transportation at the meeting. The mother and grandmother met with teachers daily but she did not recall any discussion about a previous Behavior Analyst being involved or evaluating this child. She did state that a graduate assistant from a local university had conducted a functional behavioral assessment and determined that his behaviors were for escaping demands and the “big red button” was initiated for him to use when he needed a break. She stated that the specialized school was also discussed at the meeting and it was explained that the school is housed in a different building from the public school but it would be a similar setting to what he had at the School for the Hearing Impaired, just a different teacher. The mother did not want him to go to that school but the HSS worker did not know why.

She met with the family to see what services could be provided, but the family was not interested in training at home, only residential placement. However, she continued coming weekly and did try to train the family, but they had to cancel at times due to hospitalizations etc... She explained that her agency typically tries to help implement successful services in the home and does not

typically assess for out of home services as she did in this case. Her agency's goal is to equip families to manage their loved ones behavior at home so he/she does not have to go into residential placement. The HRA questioned if she was of the opinion that residential placement would be an appropriate setting for this child and she agreed that it would be an appropriate setting. She also agreed with some of the other professionals that the HRA interviewed that his biggest barrier to growth and improvement was the inconsistency at home. She stated that the school which the mother was pushing for with the School for the Hearing Impaired is not currently accepting anyone, but another residential placement "up North" has asked him to come for a visit but the mother is not interested. She was not sure why but stated she believed it was because there was not a school on site, however she said there are very few residential placements that do have a school on site. His current (new) school had agreed to award [pay for] the school portion of any residential placement but the mother wanted them to pay the full portion, which the school cannot do.

At the time of our interview the HSS worker had assessed him at his new school. At the new school, he has 2 aides, a Behavior Analyst and a Psychologist who all assessed him and the school was working on functional communication, using a "break card" instead of scratching others when he needs a break and utilizing a card for when he needs to use the restroom. She stated at his new school he does scratch the aides due to demands being placed upon him but the teachers remain consistent and keep "pushing" him to complete the task and eventually he does. At home, when he scratches, the mother leaves him alone so then he is able to avoid the demands she is trying to place on him. The HSS worker is of the opinion that his target behaviors are rarely for attention that they are more for avoidance and to obtain tangibles. The HSS worker stated that when she spoke with his current teacher, she was informed that she also taught him at the county school he attended prior to the School for the Hearing Impaired, and she was surprised at how much he had declined in the 3 years since she last taught him. His current teacher also stated that at first he did aggress against her, but now he does not and instead uses his break card. The HRA also questioned her about the 2 aides that this child now has at the new school and asked if she was of the opinion that he could have benefited from a 1:1 aide at the School for the Hearing Impaired. She responded by stating that his teacher there had him on a good schedule and she also had a smaller class. She was of the opinion that in that setting, he may have become dependent on an aide and not worked independently.

F. Individual Service and Support Advocacy (ISSA) Worker: The HRA interviewed a representative from community case coordination service who was also involved in the treatment planning for this child. She was of the opinion that both the School for the Hearing Impaired and his new school were doing the best they could for this child. She stated that the family wants residential placement, but the residential school which is their first choice was not taking any new students at that time. The first her agency had heard about residential placement was in the summer of 2015 and stated that her agency did send a referral packet for this child to that school to see if it would be an option. The school informed them that they had a bed available but they could not accept new students because they were "under review" at the time. The ISSA worker gave the HRA a list of 19 different residential placements to which she had sent referral packets. Most were sent after the April, 2015 meeting at the mother's request, not the school's. He was on the waiting list for a while but they have since refused him due to the mother saying he has several health and stomach problems, so now most will not take him. She explained that this

child displays typical mannerisms/behavior for a child with autism such as rocking, moaning, SIB [self-injurious behavior], however his mother interprets that as him being in pain and insists that he has stomach issues and constipation. The worker explained that there was one school approximately 5 hours away from where he currently lives that has accepted him and asked the family to come for a visit. The ISSA worker stated that his current school had offered to pay for the tuition for the school but not the residential portion. The worker had informed the mother about an individual care grant that she could try to apply for which might cover the residential portion. The mother reported that she was told her son did not qualify for it because it was for people with mental illness only. A community social service agency had offered to transport the mother to this residential placement so she could tour it and speak with the administrators at the school, but she refused to go because they did not offer music therapy. The worker stated that music therapy was not included in this child's IEP but stated that a private school would have music therapy if his IEP could be revised to include it as a required service and then he would still be able to live at the residential placement that had accepted him. She felt like the mother's refusal was a contradiction because the mother states that he is combative to her and that she cannot "handle his behavior" at home but then when the ISSA agency and school worked together to make a residential placement happen, she refused to even go look at the residential school and was currently asking for placement out of state, which is not feasible.

The ISSA worker is of the opinion that the current school is doing well with this child. He is socializing but at times he does become overstimulated and combative. He has 1-2 behaviors each day of grabbing or scratching others but he is redirected and even when he comes into school angry, he adapts well. This worker stated that he is doing better and is progressing with his current teacher and stated that it is good that she knew him from previously teaching him in early childhood. She stated that his current school is "on board" with treatment recommendations, including paying tuition for a residential school if one is found to which the mother agrees. The worker was also of the opinion that this child's biggest barrier is that the mother and grandmother do not follow through on recommendations at home. He has behaviors at school, but is making progress. However, when he goes home he does not always have that same consistency and his family does not implement recommendations at home so he progresses at school but then it stops at home therefore he stagnates. When asked if she was of the opinion that a residential placement was appropriate for this child, she responded that yes she would recommend residential placement for him so that he could have the interaction and progression because he is not getting that at home.

G. Department of Children and Family Services (DCFS) representative: Finally, the HRA interviewed a representative from the DCFS after several different professionals informed the HRA that multiple calls had been made to the Department for various reasons. The representative informed the HRA that she had been to the home 3-4 times and observed interaction between mother and child but found no problems. When asked if she would recommend residential placement for this child she responded that she would recommend it due to his age and aggression. She also stated that his mother would need to have access to him and explained that the mother had told her she would move next to him if a residential placement could be found. The representative was unaware of specifics relating to the school paying or refusing to pay for residential placement but stated that the mother had told her that the school did not want to fund a residential school.

II. Chart Review:

A Individualized Education Plan (IEP) from the School for the Hearing Impaired: The 4/8/15 IEP from the School for the Hearing Impaired was reviewed. It was reported that the mother requested the meeting to address her son's attacking behavior. The school teacher indicated that his behaviors are reducing and that he was using a switch when he needed a break from a task. The mother and grandmother were not aware that he was using that switch and requested more communication about specific activities that occur at school and stated that they would like to duplicate the activities at home for reinforcement. The bus transportation was discussed and the family expressed concern that he may injure another student on the bus. The school administrator was to contact the bus company to discuss his and other students' safety. The family also requested increased communication about what occurs when he is in the timeout room at school, the length of time in the room and antecedents to the attacking behavior. It was noted that in the fall, the child was showing many aggressive behaviors but has since reduced the aggressive behaviors to occasionally scratching staff, it was also noted that he was no longer aggressive towards other students and that his main behavior was self-aggression (biting and hitting his face and head). He was learning shapes and colors and becoming more consistent in identifying colors, numbers and shapes at around 55-58% of the time. He was beginning to recognize his name in a group of other names but was unable to order the letters of his name and becomes overwhelmed when they are placed in front of him. He was able to pick a preferred item and was participating in the PCI Functional Reading Program. He was identifying signs for stop, bike lane, playground and airport with 60% accuracy and was able to hold a pencil with 93% accuracy. He could follow one-step directions and it was noted that he responds most positively to music. He requires hand over hand for completing an activity. He was to be "placed on indirect consult for speech/language services." He was also working in the STAR program for children with autism which works on pre-academic skills, expressive and receptive language and social interaction concepts. At the time of the IEP he was working at level I and II of this program. It was noted that he was functioning below a kindergarten level in math and reading. He was not toilet trained and would help change his diaper on occasion, but preferred staff to complete the task. He was also working on other life skills such as personal hygiene, using deodorant, brushing teeth and warming up his own lunch. Specific instructions for implementing the break button were also included in the IEP and it was noted that he had shown that he understands the break button and it was being generalized across settings. His behavior had "greatly improved" and he was no longer showing aggression towards students and rarely towards staff, however, he was still engaging in SIB.

Under the consideration of special factors section, it was noted that this child's behavior impedes his learning. The IEP noted that if marked yes, "the team must consider strategies, including positive behavioral interventions and supports to address behavior. This may include a Functional Behavior Assessment and/or a Behavioral Intervention Plan [BIP]." A BIP was attached to the IEP. The child's strengths were listed as enjoying coming to school and watching others around him, interacting with staff directed games and activities painting with his hands and participating in art projects as well as playing with balls, scarves, music boxes and looking at himself in the mirror. His maladaptive behaviors are listed as a skill deficit and the hypothesis of behavioral function is attempting to escape undesired activities, seeking emotional outlets from

extreme emotions [overstimulation] and attention seeking. The replacement behavior is listed as teaching through pictures and the single button switch to communicate needs and wants instead of acting out in frustration or physical aggression. Crisis Prevention Intervention “(CPI) procedures may be utilized if student becomes a danger to himself or others. [Child] will be placed in the time out room for as long as it takes for him to calm down. [Child’s] mother will be called.” Related services needed for this child are listed as Aide-class; School Health Services, Speech/Language – Consult (Indirect), Assistive Device – personal iPad, Behavioral Intervention Plan. Under the transportation section it was noted that special transportation is required to and from schools and/or between school, however under the detailed transportation plan all that was listed was the special education cooperative’s name. Under the section of Educational Environment Considerations it was noted that this child would not attend the school he would if nondisabled. The explanation is listed as “requires a functional curriculum that emphasizes the development of communication skills, daily living skills and academic skills. The most appropriate, least restrictive environment is located in another setting.” The Functional Behavioral Assessment (FBA) was also included in the IEP but does not indicate who completed the FBA. The FBA reiterated the maladaptive behaviors that this child displayed, the time of the day they most likely occurred, the antecedents to behaviors such as task avoidance and consequences to behaviors such as redirection, CPI and escorting to the time out room and it lists his behavior as a skill deficit meaning he does not know how to perform the desired behavior. The HRA also reviewed an IEP dated 11/6/14 which had this same FBA included which stated verbatim what the FBA on 4/8/15 IEP stated.

B. IEP from previous school: The HRA reviewed an IEP dated 3/2/12 that was for the tri-county school this child attended before the School for the Hearing Impaired. The child’s strengths were listed as participating in group activities with less prompting, showing more independent skills, checking his schedule and becoming more independent with hygiene and toileting. The effect of his disability on progress in general education curriculum section stated that this child would require a functional curriculum that focuses on basic skills training. His present level of achievement listed inconsistently identifying his name but when he is focused identifying his name 5 out of 5 trials, identifying colors and shapes with 60 % accuracy. It listed him as “generally happy when he is at school.” Noting that, at times, he gets upset and will scream or cry and had recently began trying to hit and scratch when he becomes upset. The screaming was noted to occur during work time and group when he is frustrated. Scratching and hitting seemed to occur when he had a couple of absences in a row. When he scratched and hit, he was “given time to himself at his desk to work through his frustration, he will then generally continue working without problems.” A behavior plan was not recommended at that time because he was able to be verbally redirected. It noted that the iPad was being used and that he attended to the task better when presented through that modality. He signed “more” but otherwise did not communicate his wants and needs in a functional manner. The child was independently brushing his teeth and zipping his coat but was not toilet trained. His health update section stated that he was on a gluten free-casein free diet for autism colitis and acid reflux. His GI Specialist ruled out colitis but the mother disagreed with him and felt that the child did suffer from colitis and another physician had diagnosed him with colitis. The mother requested that he stay off of wheat because she believes it increases his hyperactivity and pain. He took a daily stool softener at home at that time as well.

C. IEP for new school: The IEP dated 11/2/15 from the new school was also reviewed. It listed his functioning level as below 1st grade in reading and math and that he has functional communication deficits that prevent him from functioning in the general education setting. He was performing at the pre-academic level for skills and is currently working on skills in the areas of modeled play, turn taking, non-vocal choice making, one step motor imitations and two-step actions. He was also working on identifying his name, functional signs, colors, shapes and numbers. It was noted that he was wearing underwear at school instead of diapers but has had a few accidents at school. He requires verbal prompting and some hand-over-hand for washing and hygiene tasks (deodorant, brushing teeth and brushing hair). He becomes upset during meal times and often throws his lunch tray even when given preferred foods that mom provides, however he has tried a few food items from his tray. He had recently began interacting with peers by waving or giving them high fives. He enjoys watching peers during group activities. He does scream and display SIB and aggressive behaviors toward staff and on occasion to peers. Behaviors occur when he is presented with non-preferred task or activities. This school had implemented him wearing gloves throughout the school day to protect himself, peers and staff. He was receiving "indirect consult" from a speech language pathologist. He is presented with pictures of basic wants and needs which he inconsistently selects his wants and needs. He has started using a yes/no board mostly with foods and the speech pathologist would continue to provide classroom staff with materials and suggestions to facilitate communication. This IEP listed the support of an aide to transition in and around the school as well as the support of a BIP as school supports. The use of picture exchange communication, visual cues, picture schedule and consistent routine forewarning of changes in routine when possible along with simple one step directions and regularly scheduled sensory breaks, calming activities such as scarves and squishy toys along with gloves to protect self and others are all accommodations and considerations for this child.

On 9/2/15 the mother requested a meeting to address concerns about what the child was doing in the classroom. The team reviewed the FBA that was conducted by their district school Psychologist/BCBA [board certified behavior analyst]. The team acknowledged that the child was making progress at school and the main concern of the family is that they need help at home. The mother continued to express the want of a residential placement due to her inability to manage his behaviors at home. Grandmother reported she is able to manage his behaviors, but she cannot be there all the time. The community social services supervisor reported they are also involving additional staff to help address the family's concerns. The mother acknowledged understanding that the school schedule is working and he needs that for home.

On 11/2/15 the annual review was held. The special education teacher reviewed his present level of achievement and functional performance. The gloves were discussed and it was noted that the child requests the gloves and can take them off and put them back on. The incidents of SIB have decreased greatly since his enrollment at their school. And everyone reviewed the Discrete Trial Data sheets. The teacher had implemented picture choice cards. The mother reviewed her concerns beginning with the fact that staff would not help them get the child into the building when they are having behavioral issues and that she is upset by the rudeness of the aides. The mother was redirected to move forward from that so that they could begin putting a plan into place to support her son. The mother requested that she would like him to attend a school out of state, a day school that they could drive him back and forth to, however the IEP team confirmed

that his current placement is the appropriate placement for her son at this time. He is making progress and is becoming more integrated with peers. The mother expressed concern about the gloves and stated that she feels compassion from the aides towards her would be nice. The team reiterated the need to put into place a drop off and pick up routine for the child and that he uses this behavior to get what he wants and that consistency of the routine is important for him and then behaviors would decrease. A plan was agreed upon. A team member also offered to create a picture schedule for the family to use at home. It was reiterated to the mother that consistency of the routine at home is important as well. The mother was agreeable to the plan

A FBA was also included as a part of this IEP; it was very detailed and included data that was collected over four days to target SIB of him slapping his face strong enough to leave redness at the site of contact and biting himself when presented with challenging work that is not removed, despite him hitting himself. He also grabs, scratches, pinches, hits and kicks staff and other students. This intensity varies depending on the task demand and activity. He also throws food during meals at school and will masturbate unless stopped. The FBA determined that the antecedent to his behavior was presentation of academic work and lunch but not breakfast. The consequences include verbal redirection and verbal statements of what the expected behavior is and hand-over-hand when necessary. Staff do not remove tasks and require him to complete his work. If he is given a break and aggressive behaviors continue, then his work is resumed. It was noted that the child now receives applied behavior analysis (ABA) services through the community social services agency although the provision was noted to be inconsistent possibly due to family schedule. His current goal was to complete 15 minutes of work without SIB and aggression toward others 3 out of 5 times over four consecutive days. His strengths are currently listed as making eye contact and responding to his name, understanding prompts to keep his hands still, washing hands with minimal help, some toileting skills, putting on his own shoes, smiling and laughing at times, following one step directions, signing more appropriately and starting to understand “first (work) then (reinforcement).”

The new BIP focused on replacement behaviors to use instead of maladaptive behaviors. The new school continued to use the break switch, and making choices between two activities but added a goal of working up to 15 minutes of work without SIB/aggression. The plan was to implement breaks at first only after he presses the break switch or says “break” and then gradually fading out breaks to appropriate stopping points in work completion. Staff will keep data on ABC [antecedent behavior consequence] data sheets that are daily recordings of behaviors every 16 minutes. This data will be reported to the behavior intervention team. Motivators and/or rewards will also be used. Praise paired with tangibles such as scarves iPad, balls etc... Reinforcement is to always occur at some level and be greater for more independent responding.

D. Summary of 10/22/15 meeting: This meeting was held to coordinate care of all the entities involved in this child’s treatment and to reach a consensus on whether or not residential placement was appropriate. The ISSA worker had informed the HRA that packets had previously been sent for residential placement in the summer and possibly sooner in April, 2015 but the mother had changed her mind stating that she did not want residential placement after she requested it, then she would change her mind back to wanting residential placement. The providers present were the home support services worker/behavior therapist, the ISSA worker,

the Director of home based services and the community social services provider to which DCFS had referred this case. The mother and grandmother were also present. The agenda included what is a mandated reporter, what the family wants prior to this meeting were, what progress had been made toward these wants/needs, what the current wants/needs were, his residential/educational needs, systemic barriers, the plan for future residential setting (in state residential, out of state residential stipulations, state mental health care grant), the role of guardian approval for residential placement, and, finally, questions and a summary. The outcome of this meeting was “for sure residential placement” for this child.

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...." 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)." Section 300.34 defines Related Services as “Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.”

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 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... 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"

Section 1414 further states the following:

“A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this subchapter.

(B) Request for initial evaluation

Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability...Such initial evaluation shall consist of procedures

- (I) to determine whether a child is a child with a disability (as defined in section 1401 of this title) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and
- (II) to determine the educational needs of such child...

Reevaluations...A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)...

(b) Evaluation procedures

In conducting the evaluation, the local educational agency shall--

- (A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining--

- (i) whether the child is a child with a disability; and
- (ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Additional requirements

Each local educational agency shall ensure that--

(A) assessments and other evaluation materials used to assess a child under this section--

(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;

(iii) are used for purposes for which the assessments or measures are valid and reliable;

(iv) are administered by trained and knowledgeable personnel; and

(v) are administered in accordance with any instructions provided by the producer of such assessments;

(B) the child is assessed in all areas of suspected disability;

(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and

(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall:

(A) review existing evaluation data on the child, including--

(i) evaluations and information provided by the parents of the child;

(ii) current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) observations by teachers and related services providers; and

(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--

- (i) whether the child is a child with a disability as defined in section 1401(3) of this title, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;
- (ii) the present levels of academic achievement and related developmental needs of the child;
- (iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
- (iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum...The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B)...(B)Consideration of special factors The IEP Team shall in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior”

The Code of Federal Regulations (34 CFR 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, "Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

- (1) Review existing evaluation data on the child, including—
 - (i) Evaluations and information provided by the parents of the child;
 - (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
 - (iii) Observations by teachers and related services providers; and
- (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—
 - (A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or
 - (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
 - (ii) The present levels of academic achievement and related developmental needs of the child;
 - (A) Whether the child needs special education and related services; or
 - (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
 - (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set

out in the IEP of the child and to participate, as appropriate, in the general education curriculum...

(c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section...

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—

- (i) That determination and the reasons for the determination; and
- (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs... The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.”

The Illinois Administrative Code (23 IL ADC 226.230) requires that the IEP of a student who requires a behavioral intervention plan shall “1) Summarize the findings of the functional behavioral assessment; 2) Summarize prior interventions implemented; 3) Describe any behavioral interventions to be used, including those aimed at developing or strengthening alternative or more appropriate behaviors; 4) Identify the measurable behavioral changes expected and methods of evaluation; 5) Identify a schedule for a review of the interventions' effectiveness; and 6) Identify provisions for communicating with the parents about their child's behavior and coordinating school-based and home-based interventions.

With regard to transition, the Code states that: “...c) Beginning not later than the first IEP to be in effect when the child turns 14 ½, and updated annually thereafter, the IEP shall include:

1) appropriate, measurable, postsecondary goals based upon age-appropriate assessments related to employment, education or training, and independent living; 2) the transition services that are needed to assist the child in reaching those goals, including courses of study and any other needed services to be provided by entities other than the school district; and 3) any additional requirements set forth in Section 14-8.03 of the School Code [105 ILCS 5/14-8.03].”

Section 226.330 provides for placement by a school district in state-operated or nonpublic special education facilities. “When an IEP Team determines that no less restrictive setting on the continuum of alternative placements will meet a child's needs, the child may be placed in a State-operated or nonpublic special education facility. In such a case, use of a State-operated program should be given first consideration. However, the district shall refer the child to the agency or facility which is most appropriate to the individual situation. This determination shall be based upon recent diagnostic assessments and other pertinent evidence and made in light of such other factors as proximity to the child's home. Evidence of a condition that presents a danger to the physical well-being of the student or to other students may be taken into consideration in identifying the appropriate placement for a particular child.

a) When it appears that a child will require a placement pursuant to this Section, the IEP Team shall invite representatives of potential service providers to assist in identifying or verifying the

appropriate placement for that child. If one or more needed representatives cannot attend, the district shall use other methods to ensure their participation...

c) No school district shall place any child in a nonpublic special education program, nor shall any such program accept placement of any child with a disability under Section 14-7.02 of the School Code [105 ILCS 5/14-7.02], unless all the following conditions have been met.

1) The program has been approved by the State Board of Education pursuant to the criteria set forth in 23 Ill. Adm. Code 401 (Special Education Facilities Under Section 14-7.02 of the School Code) for the school year for which placement is sought.

2) The allowable costs for the program have been established pursuant to Section 14-7.02 of the School Code.

3) The district has made the certification of inability to meet the student's needs to the State Superintendent of Education, if required pursuant to Section 14-7.02 of the School Code, and the State Superintendent has found the district in substantial compliance with Section 14-4.01 of the School Code [105 ILCS 5/14-4.01].

4) The program has been approved by the State Board of Education for all of the disability categories applicable to the student and requiring services pursuant to the IEP.

5) The program has been approved by the State Board of Education for the age range that includes the age of the student.

6) The district has determined that all educational programming and related services specified on the child's IEP will be provided to the student. The use of a facility or program pursuant to 23 Ill. Adm. Code 401 does not relieve the local school district of the responsibility for ensuring that the student will receive all programming and related services required by the IEP, whether from one source or from multiple sources.

7) The school district and the facility have entered into the contractual agreement required by subsection (d) of this Section.

8) The child will receive an education that meets the standards applicable to education provided by the school district.

d) If a nonpublic school placement is chosen, the district and the facility shall enter into an agreement utilizing a format provided by the State Board of Education. The agreement shall provide for, but need not be limited to:

1) The child's IEP, as developed by the local school district;

2) The amount of tuition that will be charged;

3) Assurance that the special education staff of the placing school district may inspect the private facility and confer with the staff at reasonable times; and

4) Assurances that the placement will result in no cost to parents.

e) When a nonpublic facility is used, the school district shall be responsible for the payment of tuition and the provision of transportation as provided by Section 14-7.02 of the School Code. (See also Section 226.750(b) of this Part.)

f) Each local school district shall be responsible for monitoring the performance of each State-operated or nonpublic facility where it has placed one or more eligible students, to ensure that the implementation of each IEP conforms to the applicable requirements of this Part.”

Section 226.360. Placement by School Districts in Remote Educational Programs states “A school district that places a student into a remote educational program authorized under Section 10-29 of the School Code [105 ILCS 5/10-29] shall ensure that the educational programming and related services as specified in the child's IEP are provided to the student. The placement of the student in a remote educational program does not relieve the school district of the responsibility for ensuring that the student will receive all programming and related services required by the IEP, whether from one source or from multiple sources. Each local school district shall be responsible for monitoring the performance of the remote educational program to ensure that the implementation of each IEP conforms to the applicable requirements of this Part.

The School Code (105 ILCS 5/14-7.02) requires that “If because of his or her disability the special education program of a district is unable to meet the needs of a child and the child attends a non-public school or special education facility, a public out-of-state school or a special education facility owned and operated by a county government unit that provides special educational services required by the child and is in compliance with the appropriate rules and regulations of the State Superintendent of Education, the school district in which the child is a resident shall pay the actual cost of tuition for special education and related services provided during the regular school term and during the summer school term if the child's educational needs so require, excluding room, board and transportation costs charged the child by that non-public school or special education facility, public out-of-state school or county special education facility, or \$4,500 per year, whichever is less, and shall provide him any necessary transportation. “Nonpublic special education facility” shall include a residential facility, within or without the State of Illinois, which provides special education and related services to meet the needs of the child by utilizing private schools or public schools, whether located on the site or off the site of the residential facility. The State Board of Education shall promulgate rules and regulations for determining when placement in a private special education facility is appropriate. Such rules and regulations shall take into account the various types of services needed by a child and the availability of such services to the particular child in the public school. In developing these rules and regulations the State Board of Education shall consult with the Advisory Council on Education of Children with Disabilities and hold public hearings to secure recommendations from parents, school personnel, and others concerned about this matter.”

Section 5/14-8.02 of the School Code requires that “In the development of the individualized education program for a student who has a disability on the autism spectrum (which includes autistic disorder, Asperger's disorder, pervasive developmental disorder not otherwise specified, childhood disintegrative disorder, and Rett Syndrome, as defined in the Diagnostic and Statistical

Manual of Mental Disorders, fourth edition (DSM-IV, 2000)), the IEP team shall consider all of the following factors:

- (1) The verbal and nonverbal communication needs of the child.
 - (2) The need to develop social interaction skills and proficiencies.
 - (3) The needs resulting from the child's unusual responses to sensory experiences.
 - (4) The needs resulting from resistance to environmental change or change in daily routines.
 - (5) The needs resulting from engagement in repetitive activities and stereotyped movements.
 - (6) The need for any positive behavioral interventions, strategies, and supports to address any behavioral difficulties resulting from autism spectrum disorder.
- (7) Other needs resulting from the child's disability that impact progress in the general curriculum, including social and emotional development.”

Section 5/14-8.05 regarding behavioral interventions states “(1) That when behavioral interventions are used, they be used in consideration of the pupil's physical freedom and social interaction, and be administered in a manner that respects human dignity and personal privacy and that ensures a pupil's right to placement in the least restrictive educational environment.

(2) That behavioral management plans be developed and used, to the extent possible, in a consistent manner when a local educational agency has placed the pupil in a day or residential setting for education purposes.

(3) That a statewide study be conducted of the use of behavioral interventions with students with disabilities receiving special education and related services.

(4) That training programs be developed and implemented in institutions of higher education that train teachers, and that in-service training programs be made available as necessary in school districts, in educational service centers, and by regional superintendents of schools to assure that adequately trained staff are available to work effectively with the behavioral intervention needs of students with disabilities. Each school board must establish and maintain a committee to develop policies and procedures on the use of behavioral interventions for students with disabilities who require behavioral intervention...and shall: (i) be developed with the advice of parents with students with disabilities and other parents, teachers, administrators, advocates for persons with disabilities, and individuals with knowledge or expertise in the development and implementation of behavioral interventions for persons with disabilities; (ii) emphasize positive interventions that are designed to develop and strengthen desirable behaviors; (iii) incorporate procedures and methods consistent with generally accepted practice in the field of behavioral intervention; (iv) include criteria for determining when a student with disabilities may require a behavioral intervention plan...(vi) include procedures for monitoring the use of restrictive behavioral interventions.”

Conclusion

The complaint alleged that the school was not providing necessary accommodations for a student, specifically a 1:1 aide, psychological and behavioral assessments and educational accommodations. The mother and grandmother explained to the HRA that this child was not

allowed to have a 1:1 aide; he had not had a functional behavioral assessment or a psychological examination and had not received the services of a speech therapist in over a year. The classroom teacher and other school representatives did not view a 1:1 aide as a necessity for this child due to low teacher/student ratio in the classroom and the opinion that he may become too dependent on the aide. They also explained that the classroom work mostly focused on doing “centers work” and teachers and assistants are working with 1-2 students at a time. Other professionals interviewed also agreed that, in that setting, a 1:1 aide was not needed.

The Director of home based services stated that a behavior intervention plan (BIP) was included as part of his treatment plan but it was completed by a school social worker or the teacher. The home support services worker stated that a graduate assistant from a local university had conducted a functional behavioral assessment (FBA) as a result of an IEP meeting and the Special Education Director corroborated this. The Director also elaborated that prior to 8/28/14 the IEP team determined that a FBA and BIP were not warranted since social emotional issues were not a concern prior to then. The HRA reviewed the 11/6/14 IEP which did include a BIP and a FBA. The college graduate assistant intern did sign this IEP as a participant. The 4/8/15 IEP also included a BIP and a FBA. There was no signature on the BIP and FBA specifically, so it could not be determined who exactly completed those forms, but the IEP signature page did include the signature of two BCBA [board certified behavior analysts].

The child’s IEP provided for a speech therapist as “Consult (Indirect).” The HRA was informed that this means that the speech therapist was providing 5 minutes per week of indirect consultation to assist with the child’s iPad. The IEP also included 200 minutes per week (MPW) for language development which consisted of language development activities that were completed in the classroom setting with the classroom teacher. The teacher explained that they would also work on identifying functional words by using pictures and his iPad, increase yes or no responses, working on language to help him communicate when he was frustrated. The break button was used to help his language develop in the sense that he had a way to communicate with staff his feelings. The speech therapist came into the classroom and worked with the students, along with the teacher and teacher assistants.

The HRA concluded that since the professionals outside of the school district that were involved in this child’s education planning also agreed that a 1:1 aide was not necessary in that student-to-teacher ratio setting, that Board Certified Behavior Analysts were a part of his IEP meeting and signed the BIP plan and because the speech pathologist was involved in this child’s speech development along with the classroom teacher, that this allegation is **unsubstantiated**. The following **suggestions** are offered:

1. The specific length of time in the quiet room and reasons for going there were not documented as a part of this child’s permanent record and the teacher did not have any formal documentation of time spent in the quiet room. The HRA suggests that the school develop a specific form to be used which would document the reason for each seclusion type behavioral intervention and the length of time spent in the “quiet room” to be utilized in the future and include a section to mark when the parent has been notified that the quiet room was used.

2. The HSS Worker, who is also an Assistant Behavioral Therapist, who was working with this family on ABA techniques to use with this child, was referred by the Director of home based services. The HRA suggests that in the future when the IEP team is in agreement that some assistance to the family should be provided for a child to have the best possible treatment and consistency at home, the school should consider community resources such as these to bring in as part of the child's provided services and it should be included in the IEP. The school should also ensure that the IEP is being developed with the advice of parents with students with disabilities and other parents, teachers, administrators, advocates for persons with disabilities, and individuals with knowledge or expertise in the development and implementation of behavioral interventions for persons with disabilities as required in the School Code (Section 5/14-8.05).
3. One IEP documented a parent's concern that she was not kept informed of incident. The HRA strongly suggests that the parent be kept informed of incidents, and if the IEP designates a parent be informed subsequent to an incident such as when time out is used, ensure parent notification and document that notification.
4. One IEP documented the parent's concern about how she was treated, including, certain staff being rude to her after which the IEP states she was redirected from these complaints. The HRA strongly suggests that parent concerns be addressed. In addition, it appeared that staff were very frustrated with the parent and may have been negative. The HRA encourages the school to recognize the challenges that parents face and provide positive supports as much as possible, including refraining from negative and generalized comments about a student's particular disability, such as autism, and its impact on the child's abilities.
5. When parents have repeated concern, refer that parent to the school's grievance process.
6. Ensure that the provision of speech minutes is tracked and documented.

The second allegation is that there was inadequate behavioral/educational/transition planning for a student because the only behavioral plan was to use a time out room and the only transitional planning was for the student to attend the specialized school that focused on functional living rather than educational development. The quiet room was implemented after review by the graduate assistant along with using the "break button." The teacher and other professionals involved in the child's IEP team stated that the quiet room was used approximately once per week and after January he had not required the use of the quiet room at all due to the teacher working more one on one with him and utilizing the break button. Upon review of his educational plan with his teacher, the HRA contends that educational services were being provided at this child's level by working on color and number identification, writing his name and following a "functional curriculum" reading program along with a picture system for communication. The HSS worker stated that the specialized school in which the child was going to transfer to before he moved out of district was brought up at his IEP meeting and it was

discussed that it was a continuation of the same program he was currently using in his current classroom.

The teacher had stated that at the IEP meeting the mother did request residential placement but the professionals were all in agreement that he did not need residential placement due to a decrease in maladaptive behaviors at school. The consensus was that instead, he needed consistency and routine at home. The home support services worker was to start coming to the child's home to train his family on ABA [applied behavior analysis] techniques that could be used and the case worker was going to work with the mother to implement the same routines he had at school. However, when the HRA interviewed the professionals individually, the overwhelming consensus was that this child did need residential placement due to the lack of consistency and routine at home and the mother's refusal to enforce that at home. Although the professionals **currently** are in agreement that the child needs residential placement, this investigation focused on the time he was attending the School for the Hearing Impaired. At that time, the professionals were all in agreement that he was making improvements at school and all agreed that if he had the same consistency at home, the family would also have seen a decrease in maladaptive behaviors. It is of note that this child's current school placement in another district **has** agreed to provide residential treatment for this child as the professionals are all in agreement that it is the least restrictive and most appropriate setting for him at this time.

The HRA finds that since the graduate assistant and other professionals involved in creating the BIP recommended the break button and quiet room, and the break button seemed to be helping to decrease maladaptive behaviors and the time out room was used infrequently and for brief periods of time to allow the child a break from overstimulation, the HRA contends that it was consistent with assessment results and special education requirements. The HRA also finds that the educational plan for this child coincided with his functioning level and included both daily living skills as well as educational skills as per assessments and special education requirements. Finally, the HRA acknowledges that this child was 13 years old at the time of these allegations and The Illinois Administrative Code (23 IL ADC 226.230) requires a transition plan to be developed at age 14 ½ and therefore was not required to be completed by the School for the Hearing Impaired. However, the HRA also considered the specialized school placement and if it was the most appropriate placement for this child since his classroom was being discontinued. The HSS worker stated that the specialized school was discussed at the IEP meeting and that it was a continuation of the same program he was currently in. Therefore the HRA finds that the second allegation is **unsubstantiated**. The following suggestion is offered:

1. Section 5/14-8.02 of the School Code outlines what factors are required of the school to consider when developing the individualized education program for a student who has a disability on the autism spectrum. The HRA suggests that the school should ensure that positive behavioral interventions, strategies, and supports are also included in the BIP to address any behavioral difficulties resulting from autism spectrum disorder.
2. The school should review and ensure that training programs for staff includes in-service training programs to assure that adequately trained staff are available to work effectively with the behavioral

intervention needs of students with disabilities, including the special needs of children on the autism spectrum.