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HUMAN RIGHTS AUTHORITY - PEORIA REGION
REPORT OF FINDINGS

Case #16-090-9010
Farmington School District

INTRODUCTION

The Human Rights Authority (HRA) opened an investigation after receiving complaints of possible rights violations involving a child with disabilities who received services at Farmington School District. The allegations were as follows:

1. School did not have an IEP for student for 30 days into the school year.
2. School did not follow student's IEP.
3. Inadequate parental involvement with IEP team.
4. Inappropriate discipline of a student in a special education program.
5. IEP changed based on student schedule rather than IEP development based on student's needs.

If found substantiated, the allegations would violate the State special education regulations (23 Il Admin Code 226), the Federal regulations (34 CFR 300), and the Illinois School Code (105 ILCS 5).

Farmington School District services 1400 children and of those, there are 125 students receiving special education services. They have 14 staff for the special education program and they also use the Special Education Association of Peoria County (SEAPCO) for hiring life skills staff, occupational therapy, physical therapy, adapted physical education and a behavior consultant. The facility has their own emotional disabilities program and the student involved in this complaint was part of that program.

Complaint Statement

The first complaint states a parent of a student contacted Farmington School District over the summer and asked about the programs available for her son with special education needs. She was told that her son would be a good fit for their services. This student was currently being home schooled but had an IEP from a different school district. The student started in August without an IEP and the student's mother was told that staff needed to get to know the student for 30 days prior to constructing an IEP. The student was supposed to have a sensory diet and other accommodations but the school said that they would cover that in the IEP and the provided

physician's assessment reportedly did not matter because they still needed to get to know the student for 30 days. In the meantime, the student was arrested at school and suspended.

The second complaint states that the student's IEP was not followed. The student was supposed to have a safe place but it was allegedly locked. Additionally, they told the student's mother that an aide would take the student from class to PE but there was no aide. Also, it was stated that, in his IEP, the student had to earn his way into classes and had to earn his way into a cross category class. The student also was not allowed to wear a hat. The student was reportedly listed as an 8th grader on the IEP when the student was actually a 7th grader. Additionally, the student was to have picture cards but they were not sufficient and the student was to be allowed to leave class because of flatulence but was not allowed as per the complaint.

The complaint that there is inadequate student involvement deals with two incidents that occurred; and the student's parent asked that the school not touch the student or he would react, but there was still touching. The complaint states there was not a crisis plan in place in the IEP. Additionally, the student's mother wanted to observe the student but the school reportedly went back and forth with their decision, first telling the parent that she could be in the classroom and then telling her she could not. Also the parent was told that the student needed to be in attendance two consecutive weeks before they would allow her to observe. The parent also did not see the student's work throughout the school year. According to the complaint, students receiving special education services have a point system but the parents do not learn about the student's points until the next day. The student's mother was also supposed to have a meeting and requested an agenda and attendance list. She received a copy of the IEP but the school staff said that there were a few pages missing, but, at the meeting, it was discovered that there were 18 pages missing and wording changes. Additionally, the student's mother asked that the school not talk about reproduction with the student but then found out that it was discussed. The student was supposed to have a visual planner that was not in the IEP although the student's mother requested it. The school was also provided a behavior improvement plan by the mother that the school reportedly refused. The student was expelled for 10 days for an incident. Allegedly, staff pulling the power chord from the computer that the student was told to sit at led to an incident. The student was offered homebound tutoring but would not go to the student's house; they had to go to the public library. The school also allegedly pursued the arrest of two more students in the classroom.

Regarding complaint number five, the student was switched from a 7th grade gym class where he had no issues to a 6th grade gym class where the student did not feel safe, which caused problems for the student. This switch was made because of the student's schedule and not based on the student's needs.

Interview with staff (3/7/2016)

Staff started the interview by stating that the student had a 10-day suspension and was not expelled for any amount of time. They said that the first conversation that they had with the student's mother was in April 2015 and the student was being homeschooled. She had contacted the school because she had heard about the emotional disability (ED) program and she wanted more information. The administrator and the student's mother spoke and it seemed like he would benefit from the program. The student did not have a current IEP because it was 3 years old and out of date. Staff explained that when a student enrolls with an IEP that is out of compliance, they have 30 days to observe. The student had no IEP so legally he was not a

special education student as per staff. Staff said that the previous IEP was very vague and there were no doctor's orders. There was some information from Easter Seals and from an evaluation. Staff stated that the information would be taken into account but they needed evaluations. The student's mother wanted occupational therapy and physical therapy from the beginning but the IEP was needed first, and this was explained to the student's mother. When a new student attends the school, but has an IEP that is out of compliance, they have a few options. One is to place the student into a general education classroom and observe him there and the other option would be to place the student in a cross category classroom. In this case, the student's mother wanted the ED classroom so that is where he was placed at first.

Staff discussed the situation with the SEAPCO and they said to place him in a setting that was as close to the noncompliant IEP as possible. The staff explained the process to the student's mother in the spring and at the beginning of the school year. The first IEP was on October 7th and that was the first listing of a placement. The student's mother signed consent for evaluations on the 7th and between October 7th and November 30th, the evaluations took place. Staff said that legally, from the day of signing the consent, the school has 60 days to complete the evaluations. The sensory diet is the occupational therapist's responsibility. The diet was more along the lines of chewing gum rather than an actual diet. Staff gave the student frequent breaks and he could go into the administrator's office if a more formal break was needed.

The student's mother was adamant about including the physician reports in the IEP and they were referenced and included in both IEPs. Staff explained that they cannot just give the student occupational therapy and physical therapy. Staff said that he qualified for occupational therapy but not speech therapy. They said he qualified for behavior supports and there was a behavior consultant from the first day. The behavior consultant was assessing but it was mostly the teachers taking informal data to see if the classroom was right for him. The student was also receiving social work services. Staff said that during the 30 days, the student's mother changed her mind often. She wanted to look at a life skills program so staff agreed to observe the student in a life skills class. The student was absent for 18 ½ out of 27 of those days so they could not get a good analysis. When suspended, the student's mother wanted the student to receive homebound tutoring services and the school agreed. They did have some concerns about the staff being at the student's home so they offered the services in a library and the student's mother agreed. Staff said that from day one, the student's mother wanted the student to attend an alternative school. They explained to the student's mother that there were qualifications to attend the school. At the last IEP meeting they told the student's mother that they would have him added to the waiting list but they thought that he should try SEAPCO Academy first (which offers programs such as Public Day Programs, for students who need more supports than a public school special education system can provide, and Interim Educational Setting Programs, for students who have been expelled, are on 45 day placement or are awaiting placement in other facilities). They agreed to placement but the student was never sent to the academy and eventually the student's mother began homeschooling. They attempted to contact the student's mother but she would not respond. They sent her a letter about the student not attending and they received a letter stating she was going to homeschool the student.

Staff said that they tried to accommodate the student and they did their best. They said that they received lots of emails and communication from the student's mother. Staff said that they agreed on just about everything that she wanted but some requests were out of their control legally. Staff said that they had a safe place for the student and the student had choices and one area even has a couch with stuffed animals. The administrator's office had music and a sensory

toolkit. Staff were unaware of a time when the student tried to get into the room but could not. It was the administrator's office and the other area was in the student services room, which were always open. Staff also has keys to the administrator's office. The student also had an aide with him for the entire day, which is a requirement for the ED program. They said that in the IEP, it was stated that the student could have his hat on because he pulled his hair out. He could also wear a hood. The student was never told to take off his hat but when he realized other students could not wear hats in the hallway, he would take it off sometimes because he knew other students would not like it. They had sensory breaks in the student's schedule and he could leave whenever he wanted. Also, the entire ED class has a visual schedule.

Staff explained that the student was not arrested at school during the 30-day time frame. He was arrested on November 5th over an incident when a staff person was assaulted. The staff member was hit by the student resulting in injuries. The student did not want to go to a physical education class and there was a behavioral consultant that was supposed to observe him all day; but, the student was talking back, refusing redirection and started throwing items and swearing. The consultant attempted to use CPI (Crisis Prevention Institute) training and the student started hitting staff. The staff person was forced to touch the student to control the situation. They removed other students from the area (which was the computer lab) and called the police because the student was uncontrollable. The behavioral consultant went to the hospital because of the incident. The student was suspended once during that time and there was a manifestation determination meeting held.

After the incident, the next meeting was scheduled for November 17th and at that meeting, the student's mother brought an attorney, which the school determined that it must also have an attorney present. The meeting was rescheduled to November 30th. The student was suspended from November 6th until the 20th. From October to November the student missed 16 days which made it hard to complete evaluations. The student's mother stated that she was not going to bring the student back until there were services. The student's mother also changed the student's medications without a physician's notice on the day that he was arrested, and emailed the staff about the change. Staff said that it was evident when the student did not have his medicine. On the 30th, the student's placement was changed to SEAPCO Academy, but he never attended the school. Staff said that the plugs were pulled from the computers.

Staff explained that he was given a choice to sit in a chair away from the computers and they were shut off so he could not play games. A staff member was brought into the situation said that he walked into the room and tried to small talk to the student about Halloween and was told to shut up by the student. He told the student to sit in a chair away from the computer or go to the gym. He also tried a countdown and then the student swore after the countdown and he started to throw objects. Staff moved objects so he would not throw them. The staff member shut the computer off and this did not work, so staff unplugged the machine as well as the rest of the computers. This staff member was called in at the end after other staff tried to diffuse the situation. Staff stated that due to confidentiality, they could not provide any other information regarding other students' discipline, but it is very rare that students are arrested at the school. The HRA asked the staff about contacting the student's mother during the incident and was told that the student's mother was contacted when the student started to become aggressive and one staff member contacted the student's mother as soon as she arrived at the computer lab. The student started to become aggressive and violent and staff informed the parent of the situation. The student started to throw chairs, hit staff and destroy school property; staff were on high alert and needed to protect themselves and at that point. Staff said that the student's mother did not

need to be called when he refused to go to the gym because he was yet to be a danger to himself or others at that time.

The student's mother made a request to observe the student but staff thought that, because the student had separation anxiety, it would impair the observation. They wanted to get evaluations completed and get him into a consistent routine. The student's mother wanted to observe because she had heard about other students. Staff said that parents do observe students and they have an open door policy. They did not deny the request. They do not receive an observation request too frequently and usually set guidelines for when the parents observe. Staff said they encourage parents, via the school's website, to observe and visit. They said they would like to have seen the student there for 10 consecutive days. Staff said that the student's mother was going to sit in class with them to make sure that the other students were okay around her son and the staff said they were worried about the confidentiality and privacy of the other students. She said there were triggers in the class and that they were hiding things. On Oct. 22nd, they sent the email about when she could come. She wanted to observe all day for an entire week.

Regarding the IEP, staff said that the student's mother mentioned that she wanted a copy of the IEP in advance but it is a working document so there are going to be pages missing. She wanted evaluation results by a specific date but one report was incomplete. Staff said that the 18 pages not being included are normal. The student's mother received the evaluation before the meeting and the signature pages were not included, but those cannot be done prior to the meeting. She received all of the evaluation results; she just received one a day later than the others. They also did not complete the manifestation page because that is a team decision, and it was completed at the meeting. The goals were completed and she had copies of those. Staff said that the note pages were also completed later. Staff said that they did not know what wording changes were being discussed because the evaluations were all complete and set. Accommodations were changed at the meeting at her request, so that would be different. They stated that the student's mother also received an agenda and reviewed the IEP during the meeting and signed the document. They said that the crisis plan is a part of the behavior plan. Staff said that the gym class did change because she wanted the student to try the life skills classroom. She wanted an aide to go with him, so they needed to arrange the aide's time. The gym class was not part of the IEP. There was no discussion about the comfort level of the gym class and staff said that the student was not there enough to know if it was working or not.

Staff stated that the student did not want to go to gym class. Part of the class attends gym class and part attends the computer lab. He was starting to escalate. The instructor said he had to be in the lab to do work, not just free time. He went to the computer lab with the class and plugged in his own computer games. He just wanted to do what he wanted and never gave a reason to not attend gym class. The student had a good relationship with the gym teacher. Staff explained that there was not an IEP meeting about the classroom switch because it was not needed. At the October 7th meeting the switch was discussed and they included a new copy so they could see the schedule. The student's mother wanted certain classes in the morning and they reworked the student's schedule to accommodate her requests. This was before the incident and the student's mother did not sign off on the IEP. None of the changes had anything to do with the gym class.

The student did not have any gym goals included on his IEP. The students in the ED classroom have a 4-year age span and they range from 6th grade to 9th grade. Staff said that the student had two suspensions; one incident was when the student destroyed the office because he

did not want to take his medicine and the behavior plan was based off that incident. They had an IEP shortly after the first incident and the behaviors were covered.

The student had an aide and would attempt to elope but he never did; the student was never without an adult. In the ED classroom, the number one focus is behavior and they are on a point level system to target behaviors. The teacher checks in every 30 or 40 minutes. In each class, students earn points in certain categories if they did well. The point levels are 4, 3, 2, 1, red level and then restrictions. They receive rewards for high numbers and consequences for low numbers. General rewards are integrating into general education classes, bringing snacks, independently walking to classes and free time. The students are asked what they prefer and the rewards are based on what the students would like to work towards. The overall goal of the ED classroom is to mainstream the students into a general education classroom. They stated that plans were individualized per student and they are able to pick a general education class after gaining the points. If the behaviors are so poor and they are having outbursts, then the general education class is not for them. The point system is used in the ED classroom and all the SEAPCO ED classrooms.

Regarding the complaint that the student was taught reproduction against the parent's wishes, staff said that reproduction is part of the curriculum. Staff explained that there are certain topics that the student's mother did not want him to learn. Staff did not think the student was there long enough to learn about that area. Also the curriculum is a state mandate. They stated if they did not teach it to him, the student still had the classroom book. They said that when they taught reproduction in class, the student could step out and the teacher would not have cared. Staff said that the student's grade was changed on the IEP. By his age, he would be in 8th grade but the student was in 7th, and the grade was changed on the IEP. Staff said that the change would not have affected the decisions anyway. Staff also stated that the student's mother wanted to make sure there were visuals and a visual schedule. He had a schedule in the class and a personal schedule. Sometimes that visual schedule worked and sometimes he threw them away. At the IEP meeting, they put suggestions in place for different types they could try. The visual schedules are in place for the entire class. The student's mother brought up the schedule and one time even accused them of not having a schedule. Staff said there was an accommodation in place about the student being flatulent and he was allowed to leave when he wanted to. Staff did not know if there was a physical issue that caused the flatulence.

Staff said that they had a behavior plan in place based on state criteria. The student's mother wanted the plan switched to one that she had, and there was communication with the special education teacher about this topic. The student's mother was at the school every day to pick up the student and she communicated with staff often. Staff explained that homework was sent home and the point system was available to be sent home. The student's mother would often email and say she did not know the status of the student's level and they would provide the level. The student would tell his mother his level. They thought that the point system was sent home weekly and they think that now it is sent home daily. The student's mother would say that she did not like that there was no communication but she contacted the school often and corresponded via email. She would email during class at times and then get upset at not receiving the response, so they talked to her about the issue.

FINDINGS

With proper consent, the HRA reviewed resident records and facility policy that pertain to the allegations in this case.

Complaint #1 - School did not have an IEP for student for 30 days into the school year.

The HRA reviewed the two IEPs for the student from the previous school district and they were dated 3/21/2013 and then 9/17/2013. The school staff clarified that the student's first day was 8/14/2015 and the student's attendance report spans from 8/13/2015 until 11/16/2015 but the HRA was not provided documentation indicating the student's exact start date. The date of the first IEP is 10/7/2015 and the parental notification does not have a date other than 10/7/2015. In the additional notes of the student's first IEP, it reads "In the spring of 2015, [Student's mother] called [Staff] to share information about [Student]. [Student's mother] had questions about the type of special ed programming we had available for students at Farmington. She shared her experiences with [Student] at [Previous school district] and was not pleased with the way the school handled his behaviors. She shared she was hoping to add him on the waiting list at [Alternative school] but may be moving to Farmington in the future. In August 2015, [Student's mother] called [Staff] to share that they moved to Farmington. She brought in evaluation results from [Agency] in Chicago. [Staff] shared with [Student's mother] the different types of special ed programs available. The placement that most likely reflects his last academic school setting on the IEP was our Cross Categorical (CC) program. [Student's mother] was worried that [Student] would not be able to attend in the gen ed setting due to his behavioral outbursts. [Staff] shared that in this situation he would typically need to be in general education setting, then have an IEP meeting to determine placement. Taking into account [Student's] severe academic and behavioral needs, [Staff] shared that we would observe him for 30 days, get to know [Student], and then hold an IEP meeting to create a new IEP. His reevaluation is due March 2016, so the team will do reevaluation later in the year." An email exchange between Farmington staff and SEAPCO staff, dated 8/10/2015 and 8/11/2015, explains that there is a new student who was in a cross categorical program during the 2013-2014 school year, then was homeschooled and now has a noncompliant IEP. The email asks "Would we need to do a reevaluation since his last IEP is from 2013 or do we just have a regular IEP meeting? I would like to review placement." The response reads "You can take him into your ED program and write an IEP after that. It is cleaner to do the eval and then make the placement especially if you decide to move him later. The legal answer is: he starts in gen ed and you have an IEP meeting and make placement from there. The other legal answer is: take him into your CC program, observe him for 30 days, and within that time write a new IEP and/or do a re-eval to make sure you are meeting his needs. I think I would go with option 3 – it most closely reflects his last placement." In the additional notes section of the student's first IEP it reads that the purpose of the meeting was "1) to create new IEP team did not adopt [Previous schools] IEP 2) domain meeting to identify additional evaluations needed for reevaluation ... Domain: [Staff] reviewed the domain grid & explained the evaluation process. Team went through each domain. Mom would like to see OT added. Team add FBA[Functional Behavioral Analysis]/BIP [Behavioral Intervention Plan] so plan can be updated. Team agreed to domain. Mom gave consent for team to complete agreed evaluations. – IEP meeting: [Staff] reviewed present levels, accommodations, minutes, new schedule ... IEP team agreed to the new schedule." The additional notes in a second IEP, dated 11/30/2015, reads "Based on the Domain Meeting on 10/7/2015, [Student] was to be observed for instructional and behavioral data as part of the evaluation that [Student's

mother] consented to on 10/7/2015. [Student] was in school only 5 days following the IEP and observations were not able to be completed. [Student] came to school on November 5 and had not been in attendance 13 out of 20 days. I was able to observe [Student] for 1 and a half hours before he was taken out of school for aggression.” The rest of the notes described the student’s day at school that ended in an aggressive situation where the police were called and the student was suspended. According to the student’s attendance report, the student had 7 excused absences, 20.50 unexcused absences, and one day tardy. Out of 64 possible school days, the student was at the school 36.50 days and absent 27.50 days. The manifest determination in the 11/30/2015 IEP, documented that the student received 10 days of out-of-school suspension on 11/5/2015.

The school policy titled “Education of Children with Disabilities” reads “The School District shall provide a free appropriate public education in the least restrictive environment and necessary related service to all children with disabilities enrolled in the District, as required by the Individuals with Disabilities Education Act (IDEA) and implementing provisions of the School Code, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.” The HRA also reviewed a policy titled “School Admissions and Student Transfers to and from Non-District Schools.” The policy does not specifically discuss students receiving special education services or having IEPs but reads “A student may transfer into or out of the District according to State law and procedures developed by the Superintendent or designee.” The facility did not provide policy on actions taken if there is a non-compliant IEP.

The state regulations read “a) Transfer Students. Provision of FAPE to students who transfer into a local school district shall be made in accordance with the requirements of 20 USC 1414(d)(2)(C). The additional requirements of this subsection (a) shall also apply. 1) In the case of an eligible student transferring into a district from another district within Illinois, when the new district obtains a copy of the student's IEP before or at the time the child is presented for enrollment: A) The district may adopt the IEP of the former local school district without an IEP meeting if: i) the parents indicate, either orally or in writing, satisfaction with the current IEP; and ii) the new district determines that the current IEP is appropriate and can be implemented as written. B) If the district does not adopt the former IEP and seeks to develop a new IEP for the child, within ten days after the date of the child's enrollment the district must provide written notice to the parent, including the proposed date of the IEP meeting, in conformance with Section 226.530 of this Part. While the new IEP is under development, the district shall implement services comparable to those described in the IEP from the former district” (23 II Admin Code 226.50). The federal regulations state “(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved;” (34 CFR 300.324). The state regulations also read “d) Upon completion of the assessments identified pursuant to subsection (c)(3), but no later than 60 school days following the date the parent signs the written consent to perform the needed assessments, the determination of eligibility shall be made and the IEP meeting shall be completed. If fewer than 60 school days remain in a school year after the date of parental consent, *the eligibility determination shall be made and the IEP meeting shall be completed prior to the first day of the following school year.* (Section 14-8.02(b) of the School Code)” (23 II Admin Code 226.110 (d)).

Complaint #1 - Conclusion

The student started school in mid-August but the student's first IEP meeting was dated 10/7/2015. The student's IEP was not in compliance but the school did place the student in a situation that was comparable to the previous placement as per the Illinois Administrative Code (23 Il Admin Code 226.50). With that being said, the school's practice for students with outdated IEPs is not in compliance with the state mandates regarding transfer students (23 Il Admin Code 226.50). The facility practice is to assess the student for 30 days and then have an IEP meeting but the mandates indicate that action to begin the IEP process should start within 10 days of the student starting the school. The HRA saw no evidence in the regulations supporting the school practices and saw that this was more in line for an initial determination of the student's eligibility for services per the Illinois Administrative Code (23 Il Admin Code 226.110). Staff even commented in the interview about legally having 60 days which complies with evaluation procedures for determining eligibility. Staff also mentioned that the student was not legally a student receiving special education services because he had no IEP yet some of the school processes, such as placement in the ED classroom and discipline (which will be addressed later in the report) indicate the student was partially being treated as a student receiving special education services. Because the practice of the school district is not in compliance with the regulations since the student was already deemed to need special education services, the HRA finds this complaint **substantiated** and **recommends** that when there is a transferring student in need of special education services, the facility begin with an IEP meeting to discuss the student's education options rather than wait 30 days for the meeting even if the IEP is out of compliance. The HRA requests evidence that this practice is updated. Even though special education mandates do not require it, the HRA also encourages the school provide evaluations and information in advance of IEP meetings whenever possible to facilitate parental participation in the IEP meeting as a team member.

Complaint #2 - School did not follow student's IEP.

The HRA reviewed the student's 10/7/2015 IEP which did have the student's current grade level at 8 but it was crossed out and 7 was added. The HRA reviewed another version of the same IEP provided by the student's mother where the 8 was not crossed out and the 7 was not added. In the IEP dated 10/7/2015, in the education accommodations and supports section it reads "Point level system followed in all school settings (including lunch/recess), assignments chunked into smaller parts, longer assignments should be provided in a sequence of tasks, visual supports including a daily visual schedule/visual timer, sensory breaks incorporated into his daily schedule, minimize the number of questions on a given assignment to reduce visual cluster, incorporate student's interest into curriculum/instruction, provide a 'safe place' for [Student] to go when he is feeling overwhelmed, extended time to complete assignments, option to complete assignments orally (use of a scribe)—upon student request." As far as supports for school personnel, it reads "SEAPCO behavior consultant to provide supports to classroom teacher and staff." Later in the IEP, in the educational services and placement section, it states the student will integrate "... into gen ed curriculum based on point/level system." It is stated that the student will receive supplementary aids in all academic areas and will participate in the art and PE general education classroom with student facilitators (which staff clarified are classroom aides) In the student progress report, it is also stated that the student is in 8th grade but there is a handwritten note that states "Wrong grade level." The 11/30/2015 IEP for the student has the

same wording for the supplementary aids, accommodations, and modifications section but also adds “Modify instructional material and assignments to align with [Student’s] academic skills; dictated answers if needed; quiet place with minimal distractions for tests/and or work; teacher notes provided to student (upon request); use of sensory strategies; breaks for fatigue” and the supports still consist of a SEAPCO behavioral consultant to provide supports to classroom teacher and staff. On both IEPs there are accommodations for classroom based assessments with extended time on tests, tests chunked into smaller parts, the option to complete tests orally (use of a scribe) upon student request, use of calculator, small group setting upon request and for district based assessments are small group/individual testing for AIMSweb. In the manifest determination of the IEP it is stated that the student’s mother stated the student was supposed to be taken around to his classes.

The HRA reviewed emails provided by the student’s mother, and one dated 9/8/2015 discusses other students and reads “I think [Student] would be better off around kids that make good choices all the time and a one-on-one aide to help him with school work.” The school staff does respond but does not make a statement about the request for the one-on-one but does make a statement about the student working on assignments.

The HRA reviewed another email exchange between the student’s mother and school staff which reads “We also discussed that he would have a one on one aid for him (also not written in accommodations) and that I could sit in the classroom at any time.” Another part of the email reads “Other accommodations that needed to be noted were, wearing a hat or hood to prevent from pulling his hair out on the back of his head. Music is calming for him. Use of bathroom at any time or to go to the hallway to pass gas, and have access to water at all time.” The response from staff states “An individual aide is written on the minute’s page. See ‘educational services and placement’ page in the IEP.” Below the body of the email, there is a section that appears to be a copy of the accommodations in the IEP. The email matches the accommodations section documented previously from 11/30/2015 but the email also adds “option to wear a hat in the classroom; bathroom breaks or stepping into hall to pass gas upon student request, option to wear headphones in noisy environments; warning in advance when approaching noisy environment.” This does not appear in the IEP. The HRA also could not find a mention of a one-on-one aide in the accommodations or the minutes, the only mention is in the parents’ section of the manifest determination when the student’s mother stated someone was supposed to take the student to his classes and the student facilitator is to be with the student for art and physical education.

The additional notes of the IEP describes the point system and the “changing levels” section. The IEP has it written that if a student earns required points for 5 consecutive days, they will move up one level; if the student fails to earn the required number of points more than once during a week, they will move back, and upon return from an unexcused absence, truancy, or suspension, a student will be placed one level lower than the level which they left but not lower than level 1. If a student is truant for part of a day, they will earn no points and the teacher may modify levels to meet student and classroom needs at any time. The point system is broken into 7 levels and while on level 1, there is no new integration into other classes to be considered while on level 1 at the time of an IEP meeting. For level 2 and 3, you will be considered moving into a general education or cross categorical special education class if you are on those levels at the time of the IEP meeting and for level 4, the students are integrated into general education as appropriate. If the students are on level 4 for 25 consecutive days, there will be a conference set up to re-evaluate placement and determine continued use of point system. In the restriction level

of the point system, students may only speak when called upon during class and may only speak when addressed by an adult. Other students will not earn points if speaking with a student on restriction. On the red level, if you are on the level for 5 consecutive days, a parent conference will be called to discuss behavior; the student has one week to improve on this behavior and if there is no improvement in one week, an IEP meeting will be called to review placement. The HRA received clarification from the school staff that these rules are similar to the rules of the classroom but they are tailored to each individual student depending on his/her needs.

The HRA reviewed a physician's letter dated 8/17/2015 stating that the student is under treatment for a gastrointestinal disorder and he should be allowed water at his desk and unrestricted restroom access as well as being allowed to leave the classroom to pass gas. In an email provided by the student's mother to staff dated 9/8/2015, there is mention of an aide asking him to stop making noises during lunch but there is no mention as to whether the aide was the student's one-on-one aide.

The school's education of children with disabilities policy reads that "The School District shall provide a free appropriate public education in the least restrictive environment and necessary related services to all children with disabilities enrolled in the District ..." The HRA also reviewed a document that was the classroom management plan for the emotional disability program. A section titled philosophy reads that "The opportunity to learn is a right to every child. The Emotional Disability (ED) Program is set up to modify those behaviors that interfere with learning, by using the least restrictive alternative. The success of this program will best be achieved through early identification and placement. The ultimate goal is the productive return of the child to a less restrictive placement, either in special education or regular division programs. Individual programming that is consistent and structured emphasizes the pupil's academic, emotional, and social adjustment in relation to peers, family, and community. The cooperation of the parents, teachers, and administrators is vital." The document defines emotional disability and then lays out classroom expectations guidelines which are respect, responsibility, safety and learning and each guideline has a list of examples with them.

The state regulations read "Each school district shall provide special education and related services to eligible children in accordance with their IEPs" (23 II Admin Code 226.200). The federal regulations also state "(i) 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;" (34 CFR 300.324).

Complaint #2 - Conclusion

In the HRA record review, the HRA saw that the student did have a safe place and visual cards written as accommodations into the IEP. There was no mention of the student having an aide take him from class to PE, wearing a hat, or leaving the room for flatulence within the IEP and the HRA also saw no evidence that these actions were not allowed by the facility. The facility staff produced an email that included these accommodations and stated that they were in the IEP, but they did not appear in the actual IEP provided to the HRA. The IEP did appear to have one version with the incorrect grade level that was corrected by hand but the student's mother's version was not corrected. The ED classroom is based off a point system and the HRA was told that the point system does follow the general rules for the classroom but is individualized for the student. The HRA did not find direct evidence that the student's IEP was not followed and finds this complaint **unsubstantiated** but offers the following **suggestions**:

- The restriction levels appear to be out of compliance with the federal regulations regarding positive reinforcements because they do not allow children to speak to each other or to speak until spoken to by an adult (34 CFR 300.324). The HRA **suggests** the facility review the supports to assure they are positive in nature and comply with the regulations.
- The staff presented accommodations in an email that do not appear in the IEP. The HRA **suggests** that the facility assure that the IEP is actually logging all the agreed accommodations and assure that this occurs for future IEPs.
- The grade levels did appear to be off and the HRA **suggests** the facility double check grade levels prior to IEP meetings.
- The HRA has concerns that in the policy regarding the ED classroom, the general education classrooms are referred to as “regular division programs” which may infer that special education would be considered irregular and have a stigma attached. The HRA **suggests** the facility change that language in the policy.
- Special education mandates (34 CFR 300.116) require that students with disabilities be placed in the least restrictive environment possible and that placement decisions be made by the IEP team and based on a student’s IEP. The HRA **strongly questions** the practice of students earning access to general education through the attainment of points (or, conversely being denied access to general education because they do not have enough points). The HRA encourages the district to **discontinue** the practice of including access to general education as part of the point system and ensure that placement decisions are made consistent with mandates.

Complaint #3 - Inadequate parental involvement with IEP team.

The HRA reviewed the student’s IEPs dated 10/7/2015 and 11/30/2015, both of which read, “Special ed teacher and special ed coordinator have been in constant communication with [Student’s mom] since [Student] started school. [Student’s mom] is worried that [Student] may not be in appropriate education setting and would like to see more sensory or OT time added into the IEP. She expressed that English and comprehension are his worst subject and he becomes frustrated.” In the additional notes and information for the IEP dated 11/30/2015, it reads “[Staff] reviewed the behavior intervention plan. [Student’s mother] would like it noted that she does not agree with the Behavior Intervention Plan. She would like it noted that it is difficult for [Student] to maintain that goal.” The HRA also saw a copy of an agenda for the 11/30/2015 IEP meeting.

The HRA reviewed an email from the student’s mother to the staff on 12/7/2015 which reads “We discussed and agreed at the IEP and manifestation meeting on November 30, 2015 that [Student] placement at SEAPCO Academy was only temporary placement until an opening at [Alternative school] opened up ... My mother ([Student’s] grandmother) and I was also concerned that day as well as present about the negative influences of other children’s behavior and [Student] picking up on them and contributing to the struggles he already has and lack of knowledge of those behaviors. I have been notified that there will be two other students and no prior knowledge of what those children’s behaviors are or their diagnoses and my concern is lack of supervision or training of school bus personnel. A Crisis Plan was never written in the IEP as we discussed previous, so I have provided (attached) a BIP plan to be in place. Also, the Behavioral Plan written in the IEP on Monday was not appropriate for [Student]. I believe we

would all want our children to behave and expect our children to behave in that manner, however, that is a 'long-term' goal and realistically, [Student] may never reach or obtain that goal. So, a more appropriate goal/plan and obtainable one for [Student] would be for him to recognize when he is starting to become frustrated and angry and to be able to choose a visual that could better regulate his emotions, etc.” The email proceeds to state that “due to all the inconsistent agreements” and her son’s anxiety from lack of support, she wanted to have Homebound Services for the student. The response from staff reads “As far as observing in the classroom, you would have to discuss that with [Staff] and [Staff] as I am unaware of their policy. I’m sure you can understand, but we are not able to disclose confidential information about other students to you. The accommodations from the IEP are listed below. The crisis plan is in the IEP written in the section of the behavior plan. As stated in the meeting, the IEP team recommendation was SEAPCO Academy pending placement at [Alternative school]. The IEP team agreed we would try SEAPCO Academy first before looking at tutoring services.” The HRA reviewed the section of the behavioral intervention plan and the crisis plan section reads “The crisis plan will follow the guidelines of the school policy.” The HRA asked for clarification and was told that the school policy was the student discipline policy. The HRA reviewed a copy of the student discipline policy which starts by providing examples of prohibited student conduct (eg. Dealing with tobacco products, weapons, using pagers, violating the criminal law) and then provides disciplinary measures like notifying parents and removal from the classroom. The policy also defines weapons and the discipline issued based on the type of weapons, required notices, and delegation of authority. The policy states the rules should be presented to the board and added to the handbook to provide to the students’ parents/guardians.

The HRA reviewed emails provided by the student’s mother. An email dated 11/9/2015 reads that the student will not be in school “...due to the incident last Thursday until I can speak with someone. I am still confused and upset why your staff, [Staff], did not contact me when the situation happened? On previous meltdowns I have been contacted and your staff did not touch my son, and nothing became of it. My son just doesn’t start hitting people for no reason. I understand he was not harming himself or anyone else. He was upset about the new PE class he was put in and if he was having a meltdown about that and was not going, someone should have just called me and I would have come just like any other time I have received a phone call, the situation would have been de-escalated and no one touched. Obviously since I have been previously refused to come and observe my son, he has verbally told me he does not feel safe there and his safety comes first.” The HRA saw another email between staff and the parent’s mother, dated 8/14/2015, which read that the student had a great day and they wanted the student’s mother to respond so they know she received the email, which the mother did. Another one dated 8/19/2015 was from staff stating that the student was sleeping for the better part of the last 2 periods that day and his consequence was that he does not earn most of these points for those periods and the student’s mother responded. In an email on 9/8/2015 there is another request from the student’s mother for the student’s points for the last week and the student’s mother was informed. An email from 9/4/2015 said that the points were not tallied because of a lockdown at the school. In an email on 9/15/2015, school staff emailed the student’s mother to let her know that the student was not at a level to have his phone at the school but he could email when the student is back at the level when he gets his phone. In an email on 9/16/2015 the student’s mother requests a copy of the IEP at least two days prior to the meeting and on 9/18/2015 an email exchange between staff and the student’s mother reads “In addition to anything we have already discussed this week, [Student] had a weekly average of 81 points.

However, he did not do any of his work today. Fortunately, there was not a lot as our classes were very short. I hope he can make it up on Monday.” The HRA reviewed another email from 10/15/2016 to 10/16/2015 in which staff stated that the student is not currently on the level to have an electronic device at school and the student’s mother wrote back that “This is ALL I have received this week. Nothing about not getting his work done or getting in trouble.” Another email from staff on 10/16/2015 to 10/17/2016 reads “I can meet you Monday morning. I have been extremely busy today and haven’t been able to reply prior to now. I am available to reply to emails/meet with you in person most day from 7:45 – 8:00, and from 3:15 – 3:45.” There is another email exchange on 10/16/2015 that begins with the student’s mother writing to the special education director stating that she needs to know what level the student is on and that she has not seen the behavior plan either. The response from the school was “[Staff] said he emailed you back this morning regarding what level he is on. The behavior plan is the point and level system, which we can discuss at the IEP. We hope to see [Student] later today so he can earn his points.” The student’s parent responded by saying “I have not seen the Behavior Plan as you told me that it was coming home. [Staff] just emailed me yesterday night about [Student] not having electronics. I have no idea where he is at on points because no one is informing me what they are. [Staff] told me that if I did NOT hear from him day to day, then [Staff] is receiving points and moving up on levels. Apparently that is not happening. And I have yet to receive any e-mail that there has been issues before today. I was hoping that there would not be an issue with communication but it is and I need to know on a daily basis how he’s doing and behavior so I can reward and discipline as needed at home and help him improve, so I will ask for communication to be put in IEP. I also would like to see his chart. I was told each child will have their own.” Staff responded by saying “Currently, the behavior plan we’re using is the point/level system, since we agreed the [Previous school] plan was not relevant. At the IEP meeting, you signed consent for our staff to conduct evaluations in order to do a Functional Behavior Assessment and current Behavior Intervention Plan. I think what you are referring to is the daily schedule/point chart that the behavior consultant was creating for [Student]. She works for 2 other schools, so she just dropped it off last night. I know [Staff] reviews with the students what level they are on each day. We are finishing up with an IEP meeting currently and have 2 more scheduled today. When we have a break, I will ask [Staff] to call you and talk with you regarding the points. I’m sorry you feel communication has not been present. What would you like to be put in the IEP?” The next email from the student’s mother asks for a meeting and says that she wants an email on whether the student is doing the work or moving up in points.

Another email on 10/21/2015 starts with the mother writing that there are triggers at the school and that maybe she needs to observe herself. Staff responded by saying the triggers should be reviewed with the classroom teacher and they can be listed on the IEP. Another email exchange on 10/19/2016 starts with the student’s mother stating that the student said that he wants to run away and was expressing frustrations through crying. The student’s mother wanted the student to be in a life skills program and “I know what he can and can’t do. And I know he can’t retain or remember even what day it is. I just want him to be able to function as an adult.” The staff responded that it is something they can discuss at the IEP meeting and they were getting dates together for the meeting. The student’s mother asked if he has been seen and evaluated by everyone and expressed more difficulties she was having and staff responded that hopefully she had answered that question in a previous email and that the student is doing well academically.

On 10/22/2016 the student's mother wrote staff that she is "... requesting and scheduling to observe next week. I think it will be beneficial all the way around." On 10/23/2015, there is an email response from staff reading "I consulted with administration regarding your request. We would like to see [Student] here at school for 2 weeks before discussing an observation. With his new schedule changes, a new classroom facilitator, and new classroom strategies being implemented, next week would not be an appropriate time. We are trying to reinforce the new changes and adding more distractions to the classroom would not be in the best interest of all students. Please email me back in 2 weeks if you are still interested in observing. At that time we can discuss the time frame of your observation in more detail. We look forward to seeing [Student] back at school and getting him into the routine of his new schedule." The parent responded on 10/23/2015 by stating she met with the classroom staff member and discussed the student's IEP, "his picture board and behavior and emotion or (behavioral plan-board) I thought was made and being implemented. Apparently we are still not on the same page." And then the student's mother stated that she explained she needed to know the student's behavior daily if he is not moving up. Staff responded that "The behavior consultant created that booklet [Staff] showed you at conferences, which has a visual schedule in it. She is in the process of making a more detailed Velcro picture schedule. I'm not sure what the behavioral-plan board is. We have a visual schedule in place. I believe you and [Staff] discussed at conferences how his daily behavior will be communicated." In another email on 10/23/2015 the student's mother requests a copy of the student's report card. In an email on 10/28/2015 the mother wrote to the staff stating "[Student] will not be back at school. The program he is in is not appropriate for him. There are constant triggers and I have asked and tried to schedule a time to come and observe to figure out those so [Student] would want to come back to school. He obviously needs the all day therapeutic day school like the doctors highly recommend and said he needed to be in from Chicago and it's not there. I am asking that a referral be put in to [Alternative School]. They are staffed, trained, and have dealt with Autism and all his diagnoses. I know he is complex. I appreciate your efforts and listening to me. I would like to know from this point from you what you need from me to move forward, so [Student] can get where he needs to be." The principal wrote back stating that the request is an IEP team decision but also stated that he knew that changes were made for the student on the IEP. He also stated that they have a problem with the student's evaluation because he has missed a lot of days of school. In another email between the principal and student's mother on 11/2/2015, it reads "I know we just spoke last Friday and I need to be allowed to observe my child to see what is triggering him so he 'wants' to come to school. I don't foresee [Student] coming back to school until I can be there. He does not feel comfortable. And by doing so, the staff should be able to follow up with their evaluations. It's important that he doesn't miss any more school. I look forward to hearing back from you." The Principal wrote back and stated "I received your e-mail and have read the content. We need your son to attend class in order for the behavior consultant to do her job and perform a full evaluation. Unfortunately, your attendance in this classroom at this time may impair what data we are able to collect." The student's mother wrote back "If I am being denied to come and observe my child and even asked to set up an appointment (common courtesy) to do so, and still being denied, it is my right and owe it to my son to see why he feels uncomfortable and what is triggering him. Hence, why I receive phone calls for the school of him hiding in confined spaces, leave me alone, pulling his hair out, constipation severe again, etc. from him. What I'm asking is not unreasonable and asked to come 3 different days. Speaking with friends whom are teachers and former employer of Special needs children, they all have told me that was a

wonderful idea and I cannot be denied. So, I will search for further help and contact some other individuals. I would highly suggest reading the full report from Chicago and what the doctors Highly recommend for my son. It's in black and white what he needs and how to reach those goals at school and to reinforce at home. I know my son better than anyone and I am trying. Me being in the room is no different than another teacher observing or therapist, etc. I've done it before for work purposes. And coming 3 different times, not just once because I'm well aware children don't 'act' like themselves if they think someone is watching them, would give me a good idea."

The HRA reviewed IEPs provided by the student's mother that were received before the meeting and during the meeting. There were pages missing, which was admitted by staff in the interview. The HRA also reviewed highlighted wording changes in the IEP. The HRA saw no documentation about the student learning the reproductive system in the records.

The HRA compared the student's behavioral plan in his IEP to the behavioral plan that the student's mother provided. The IEP from 10/7/2015 did not include a behavior plan so the HRA reviewed the plan from the 11/30/2015 IEP. The behavioral plan that the student's mother provided included multiple mentions of using sensory breaks and visual schedules and other visual tools, including no break cards for sensory breaks but these were not mentioned in the Farmington plan. The IEP behavioral plan mentions a point system and that is mentioned in the behavioral improvement plan provided by the student's mother. There is a section in the behavioral improvement plan provided by the student's mother that reads "With a student exhibiting obsessive compulsive disorder (trichotillomania) and gastrointestinal disorders there needs to be protocols addressed in the BIP to ensure a positive learning environment. Specific outcomes on the BIP should include interventions for managing these behaviors e.g. bathroom breaks, alternative to pulling hair (fidgets) including special permission to wear a cap/hat to conceal the trichotillomania. These protocols are best implemented using visual schedules." This does not appear in the behavior plan in the IEP. Also there is a section recommending mental health professionals and services of a behavioral specialist being used in addressing needs that appears in the behavior plan provided by the mother but not the IEP behavior plan.

Additionally, the 11/30/2015 behavioral intervention plan in the IEP reads that "The results of level changes will be communicated to parent as soon as a change is made." The facility parental involvement policy reads "In order to assure collaborative relationships between students' families and the District, and to enable parents/guardians to become active partners in their children's education, the Superintendent shall: 1. Keep parents/guardians thoroughly informed about their child's school and education. 2. Encourage parents/guardians to be involved in their child's school and education. 3. Establish effective two-way communication between parents/guardians and the District. 4. Seek input from parents/guardians on significant school-related issues. 5. Inform parents/guardians on how they can assist their children's learning. The Superintendent shall periodically report to the School Board on the implementation of this policy."

The state regulations read "... In addition, the district shall take whatever action is necessary to facilitate the parent's understanding of and participation in the proceedings at a meeting, including arranging for and covering the expense of an interpreter for parents whose native language is other than English or for an interpreter licensed pursuant to the Interpreter for the Deaf Licensure Act of 2007 [225 ILCS 443] for parents who are deaf" (23 Il Admin Code 226.530). The federal regulations read "(a) Development of IEP—(1) General. In developing

each child's IEP, the IEP Team must consider—(i) The strengths of the child; (ii) The concerns of the parents for enhancing the education of their child;” (34 CFR 300.324)

The School Code states “To ensure that a parent can participate fully and effectively with school personnel in the development of appropriate educational and related services for his or her child, the parent, an independent educational evaluator, or a qualified professional retained by or on behalf of a parent or child must be afforded reasonable access to educational facilities, personnel, classrooms, and buildings and to the child as provided in this subsection (g-5). The requirements of this subsection (g-5) apply to any public school facility, building, or program and to any facility, building, or program supported in whole or in part by public funds. Prior to visiting a school, school building, or school facility, the parent, independent educational evaluator, or qualified professional may be required by the school district to inform the building principal or supervisor in writing of the proposed visit, the purpose of the visit, and the approximate duration of the visit. The visitor and the school district shall arrange the visit or visits at times that are mutually agreeable. Visitors shall comply with school safety, security, and visitation policies at all times. School district visitation policies must not conflict with this subsection (g-5). Visitors shall be required to comply with the requirements of applicable privacy laws, including those laws protecting the confidentiality of education records such as the federal Family Educational Rights and Privacy Act and the Illinois School Student Records Act. The visitor shall not disrupt the educational process. (1) A parent must be afforded reasonable access of sufficient duration and scope for the purpose of observing his or her child in the child's current educational placement, services, or program or for the purpose of visiting an educational placement or program proposed for the child” (105 ILCS 5/14-8.02(g-5)).

Complaint #3 - Conclusion

The HRA reviewed records and policy and saw no documented evidence that the school was to contact the student's mother if a student meltdown was occurring. With that being said, the HRA saw an email questioning why this action did not take place and stated that it worked previously. Also, the staff stated in the interview that the student's mother was contacted, but the situation became more violent and staff had to protect themselves. The HRA also saw that the school expressed that there is a crisis plan in place in the IEP, which is correct but the plan is that the school follows the school policy for crisis situations and nothing individualized. The HRA determined from reviewing documentation that the school did not deny that the student's mother observation but made guidelines for observing the child at mutually agreeable times which is compliant with the School Code (105 ILCS 5/14.8.02 (g-5)). The HRA reviewed correspondence regarding the point system and it appeared that the IEP determined that if a level changed, then the parent would be contacted but there was no determination that the parent would be alerted daily. Along with this, the HRA did see that pages were missing from the IEP and saw changes in wording documented in the IEP. The HRA did not discover any regulations regarding reporting on the student's point system or that the IEP should be provided in a specific form prior to the meeting. The IEP also did document that there were visual supports for the student and that there were elements of the behavior plan taken from the behavior plan that was provided by the student's mother. The HRA saw no documented discussion in the IEP stating that the behavior plan was refused but it was noted that the student's mother disagreed with the plan and she felt that the goals were too hard to obtain. Although there appeared to be conflict regarding the IEP, it did appear that the student's mother was involved with the IEP team and,

because of this, the complaint is found **unsubstantiated**. The HRA does have concerns regarding the conflict with the IEP team. The IEP determinations should be a team decision and should not solely be determinations by one member. The regulations state that parental concerns should be taken into consideration 34 CFR 300.324. There were occasions when the parent reflected having concerns and the HRA suggests that future situations like this be immediately discussed in an IEP meeting. There also seemed to be multiple requests by the parent and there was not always corresponding documentation of the school's response to each request (e.g. request for 1:1 aide); again, a documented IEP meeting noting the parent's concerns and the school's response might have clarified the situation for all. The HRA also suggests, documenting in the IEP, when a parent is to receive notification (e.g. certain types of behaviors, points earned, concerns such as gym avoidance, etc.)

Complaint #4 - Inappropriate discipline of a student in a special education program.

The HRA reviewed an IEP dated 11/30/2015, where it was determined that the student had disciplinary code violations related to the child's disability and the student was going to be placed at the SEAPCO Academy pending placement at an alternative school and that the purpose of the conference was reevaluation, IEP review/revision, and a manifestation determination. In the documentation of the evaluation results, there is a statement that the student was suspended out of school on two occasions for a total of 12 days (the student suspension documents indicate 12 ½ days). The documentation states "He was both verbally and physical aggressive with staff. On the second occasion he was violent and caused injuries to two staff members." In the student's present level of academic achievement section, it reads that the student missed "30 of 60 days" and was suspended on 11/5 for 10 days following an "altercation in which he damaged school property and punched a staff member." Within that IEP, there is a behavioral intervention plan as well as a manifest determination. The behavioral intervention plan, with a date of 11/16/2015, reads that the student displays "Physical and verbal aggression when he does not want to follow directives from staff" and "Becomes noncompliant, frustrated, verbally and physically aggressive in the classroom when he does not get his way or demands are made. He swears and threatens staff when he does not get his way." The manifest determination states "On 11/5/15, [Student] received 10 days out of school suspension for the following reasons. Physical abuse of two staff members (violation of criminal law), gross disrespect of staff, disobeying rules of student conduct and directives from staff members, verbal abuse of staff ('[expletive]', '[expletive]', 'touch it again and I'll hurt you'), endangering the safety of others, damage to school property, engaging in an activity that disrupts the school environment (intimidation/threat of a staff member)." In the information provided by the parent section, it reads "Mom felt that the school should have called her and waited for her to deescalate the situation. Mom believes the conduct was a result of the school district's failure to implement the IEP." The determination states that the conduct was a result of the student's disability but not a result of the school district's failure to implement the IEP. In the additional notes and information it states "The IEP team attempted to meet on 11/17/15 for [student's] reevaluation, MDR meeting, and to discuss placement. [Student's mother] arrived with her lawyers, which was unannounced to Farmington staff prior to the meeting. [Staff] notified [student's mother] that the meeting will not proceed & will need to be re-scheduled since we did not have warning of her lawyer attending. [Staff] offered tutoring services until the next IEP meeting. [Student's mother] agreed and tutoring was conducted at the Farmington Public Library. The meeting was then re-scheduled for 11/30/15 at

1:30pm.” The student’s out-of-school suspension was from 11/6/2015 until 11/20/2015 in accordance with the suspension notice and the student’s attendance record lists 11/20/2015 as the last day of out-of-school suspension. In the manifest section of the IEP, it states that the team agreed that the behavior was a manifestation of the student’s disability and it also stated that the student’s mother did not agree with the behavior intervention plan. The IEP also states that the recommendation of the team is that the student attends SEAPCO Academy for half days and that “Between now and May, staff at SEAPCO Academy can observe [student] to identify if he would be a candidate for the Public Day full day program. [Farmington staff] will arrange for [Alternative school] to observe [Student] & see if he will be a candidate for the program. Staff will re-meet in May to determine what educational setting is best of [student]. If SEAPCO Academy does not work for [Student], the team will re-meet to look at tutoring services until opening at [Alternative school].”

On the student’s 11/30/2015 meeting, there are additional notes which described the situation as follows “4th Period: the majority of the class had work to complete in the computer lab. [Student] refused to go to PE so followed the class to the computer lab. At approximately 10:25 [staff] came to the classroom at our request to assist with [student] who was playing computer games instead of going to PE. His choices were communicated to him by [staff] (go to PE or sit in the lab, but playing computer games was not an option when he was refusing to follow his schedule). [Student] reacted with swearing and threats. He threw chairs, hit [staff] with a chair, pushed me and hit me several times on the side of the head, shoulder and back. Police were called for assistance.” The HRA reviewed a notice of suspension which indicated the student received a 10-day suspension from 11/6/2015 through 11/20/2015.

There was also a letter to the student’s mother dated 12/18/2015 which reads that on 11/30/2015 the student had an IEP meeting where it was determined that the student would attend SEAPCO Academy and that the student’s mother agreed to this arrangement but then, on 12/7/2015 the student’s mother sent an email stating that she would prefer tutoring services which the staff member stated she followed up with on 12/10/2015. The letter also reads “We’ve weighted the positives and negatives and feel [Student’s] needs would best be served at SEAPCO Academy, as stated in his IEP meeting. If you would like to pursue tutoring, the services would be a minimum of 5 hours a week at Farmington Area Public Library. This change does not require an IEP meeting, but a written IEP amendment. If you are wanting occupational therapy and social work services, that can also take place at the library. Since our staff works with students all day, tutoring and related services would need to be after school hours. I followed up with an email on December 16, 2015 and did not receive a response. [Student] has not attended SEAPCO Academy and therefore has been marked absent since his start date on December 7, 2015.” Another letter on 1/7/2016 reads that on 12/7/2015 the school received an email stating the student’s mother would like tutoring services instead of the alternative placement and the school followed-up with that email on 12/10/2015 with no response. The letter reads another email was sent on 12/16/2015 and then a certified letter was sent on 12/18/2015 and received on 12/21/2015. The letter then states the student has never attended SEAPCO Academy and therefore has been marked absent for 13 days. The letter reads “Per Farmington School District policy, once a student has been absent for 10 days, the student will be dropped from our active roll. We will officially drop [student] from Farmington Junior High and the [alternative school] waiting list if he does not attend SEAPCO Academy by Friday, January 15, 2016. If after January 15, 2016 you wish to re-enroll him at Farmington School District, please visit the central office staff to complete appropriate paperwork.” The HRA

reviewed the email from the student's mother making the request for tutoring services but saw no other emails. The HRA saw no record of the mother agreeing to the services at the public library or any other response from the student's mother.

The HRA reviewed the student's first notice of suspension, which states that the student was assigned a 2 ½ day out-of-school suspension from 9/30/2015 through 10/2/2015 for "Inappropriate language; 8. Disobeying rules of student conduct or directive of staff members or school officials; 16. Engaging in any activity, on or off campus, that interferes with, disrupts, or adversely affects the school environment, school operations, or an educational function, including but not limited to, conduct that may be reasonably be considered to; a) be a threat or an attempted intimidation of a staff member; or b) endanger the health or safety of students, staff, or school property." The HRA was not provided an exact description of the incident.

The district policy titled "Misconduct by Students with Disabilities" reads "Behavioral interventions shall be used with students with disabilities to promote and strengthen desirable behaviors and reduce identified inappropriate behaviors. The School Board will establish and maintain a committee to develop, implement, and monitor procedures on the use of behavioral interventions for children with disabilities." And under the section titled "Discipline of Special Education Students" it reads "The District shall comply with the Individuals With Disabilities Education Improvement Act of 2004 and the Illinois State Board of Education's *Special Education* rules when disciplining special education students. No special education student shall be expelled if the student's particular act of gross disobedience or misconduct is a manifestation of his or her disability."

The state regulations regarding discipline state "With respect to disciplinary action concerning children with disabilities, school districts shall conform to the requirements of 34 CFR 300.530 through 300.536, as well as Section 10-22.6 of the School Code [105 ILCS 5/10-22.6]. In addition, upon the occurrence of any act that may subject the student either to expulsion from school or suspension resulting in more than ten cumulative days of suspension during any one school year, the district shall be required to convene a meeting of the IEP Team to review the student's behavioral intervention plan or, if a behavioral intervention plan has not yet been developed, to develop one" (23 II Admin Code 226.400). Federal regulations regarding discipline reads " (b) General. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536) (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section ... Manifestation determination. (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP. (2) The conduct must be determined to be a

manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met. (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies. (f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—(1) Either—(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan” (34 CFR 300.530). The federal regulations also state “(a) For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if—(1) The removal is for more than 10 consecutive school days; or (2) The child has been subjected to a series of removals that constitute a pattern—(i) Because the series of removals total more than 10 school days in a school year; (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. (b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. (2) This determination is subject to review through due process and judicial proceedings” (34 CFR 300.536).

Federal regulations regarding placement state: “In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that— (a) The placement decision— (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118; (b) The child's placement— (1) Is determined at least annually;(2) Is based on the child's IEP; and (3) Is as close as possible to the child's home; (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled; (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum” (34 CFR 300.116).

Complaint #4 - Conclusion

From reviewing the records and policy, it appears that the school followed the proper procedures for discipline of the student. It appears that that a manifest determination meeting was scheduled within 10 school days (although that meeting was rescheduled due to the student's mother bringing an attorney), and that there was a determination that the behavior was a result of the student's disability and also the behavior plan was reviewed. According to the regulations, students are also not to be suspended for longer than 10 school days without receiving services

and the first IEP meeting was held on 11/17/2015, which was 3 days before the student's suspension was to end, equaling 10 days of total suspensions at that time (34 CFR 300.530). At that meeting, the student was offered tutoring services which was accepted by the student's mother and then at the next meeting, which was scheduled for 11/30/2015, the student's placement was changed to another school. According to regulations, determination on whether the actions of staff in the computer lab may have made the student agitated is out of the HRA's jurisdiction. HRA saw that homebound services were offered in the library but found no regulations stating that they could or could not be offered there under that circumstances described in this report. Without written consent, the HRA could not review other students who may have been arrested at the facility or get an accurate count of instances due to confidentiality. Because of this, the HRA finds the complaints **unsubstantiated** but offers the following **suggestions**:

- In reviewing the first notice of suspension, it appears that the two instances could be considered a pattern although making that exact determination is outside of the HRA's jurisdiction. The HRA **suggests** when suspending students, the facility reviews the incidents to assure it is not a pattern and comply with 34 CFR 300.536.
- The student's placement change to the SEAPCO Academy was documented on an IEP dated 11/30/2015, but the acceptance of tutoring could also be considered a placement change and should have been appropriately documented as such in a new IEP specific to the tutoring arrangements along with related goals and objectives that could be met under the tutoring situation and parental feedback on the arrangement. The HRA **suggests** that going forward the facility document all IEP meetings involving a placement change as their own IEP.

Complaint #5 - IEP changed based on student schedule rather than IEP development based on student's needs.

The strengths section of the student's IEP dated 10/7/2015 reads "He has good participation in PE class and teacher has noted he has displayed positive behaviors during PE. [Student] has made a few friends in this class." In the same IEP, it states that the student listens well and participates with his same aged peers in PE class. In the additional notes of the IEP, it reads "[Staff] reviewed present levels, accommodations, minutes, new schedule. Team had discussion on accommodations and mom gave recommendation to exempt [student] from MAP testing. Team agreed. IEP team agreed on new schedule." That IEP has the student's new schedule (which was to start in the second quarter) and reads that PE is in the 4th hour. The 11/30/2015 IEP has the same statement in the student's strengths (that section was dated 11/17/2015) and in the functional behavioral assessment, dated 11/16/2015, and attached to the IEP, it reads that the student's behaviors occur in all academic settings except PE and then reads "Similarly, his avoidance behaviors can occur at any time of the day and with any staff member. The disrespectful behaviors tend to be directed toward staff and not peers. These behaviors can occur in any setting, but especially those in which [student] is asked to complete a non-preferred activity." In the IEP on 11/30/2015, in the additional notes, the day of the incident was explained; it states that "Before the end of the period, his teacher had a private conversation with [student] about his new schedule and that he would be in PE 4th hour with [staff]. [Student] appeared upset about going to this PE class." In the manifestation determination, which is part

of the IEP on the date of 11/30/2015, it reads “Mom attended IEP meeting on 11/30/2015. Mom mentioned he was switched PE classes. Mom stated he was supposed to be taken around to his classes. Mom felt the old schedule should have stayed in place.” As stated before, the manifestation determination found the conduct was because of the student’s disability but not a failure to implement the student’s IEP. The HRA saw no documentation as to why the change was made in the schedule.

Federal regulations regarding IEP development reads “(1) General. In developing each child's IEP, the IEP Team must consider— (i) The strengths of the child; ... (iv) The academic, developmental, and functional needs of the child” (34 CFR 300.324).

Complaint #5 - Conclusion

The HRA saw no evidence indicating why the change was made to the schedule aside from what was discussed in the interview with staff about updating the student’s schedule to accommodate certain classes in the morning. The regulations state that the IEP team must consider the strengths of the child and the academic, developmental and functional needs of the child (34 CFR 300.324) but the HRA discovered direct evidence that this was not considered in making the decision although there was some evidence that the student was upset about going to the class. Because of this, the HRA finds the complaint to be **unsubstantiated** but would like to state that there is some concern as to why the change was made considering the gym class was one of the only settings where the student appeared to be thriving. In future IEP discussions, the HRA **suggests** that when the IEP makes a decision to move a child out of a situation student success is clearly documented, that the team document clear and concise reasoning for the change. The HRA also suggests that efforts be made to explore school situations that students with disabilities avoid.

RESPONSE

Notice: The following page(s) contain the provider response. Due to technical requirements, some provider responses appear verbatim in retyped format.



KERRY KLESATH
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108 N. Lightfoot Road
Farmington, IL 61531

To: Illinois Guardianship and Advocacy Commission
From: Kerry Klesath
Date: 8/23/16
Re: Human Rights Authority Case #16-090-9010

Dear Gene Seaman:

I am writing in response to your letter dated August 2nd, 2016 regarding Section 15 of the Guardianship and Advocacy Act (20ILCS 3955/1 *et seq.*) and Section 310.50c of the Human Rights Authority Administrative Rules (59 Ill. Admin. Code 310.50c). Below is the complaint that was deemed substantiated by the Authority, Farmington School District's response, and revised procedures based on the Authority's recommendations.

Complaint #1- School did not have an IEP for student for 30 days into the school year


- a. The school notified [REDACTED] at the beginning of the year that they would observe [REDACTED] for 30 days in the Emotional Disability (ED) classroom. During those 30 days, the IEP would observe [REDACTED] and write an IEP in order to choose an appropriate placement.
- b. From the first day of school [REDACTED] to the IEP meeting [REDACTED] was absent [REDACTED] days. Due to [REDACTED] absences, the IEP team had to cancel observations. The IEP meeting was postponed since the team could not get 30 days of observations completed.

Complaint #1- Revised procedures

Farmington Central School District will implement a new procedure for special education staff when a new student moves in with an IEP (see attachment). The new procedure will ensure the IEP team is aware of the students' educational needs. In addition, an "IEP checklist" (see attachment) has been created for teachers to utilize when writing IEPs. A section was added to encourage staff to send home evaluations, goal updates, and additional data prior to the meeting to encourage parental involvement. Staff will receive training on the new procedure and resource at the September 12th, 2016 special education staff meeting.

If you have any questions regarding Farmington School District responses to the complaint or the revised procedures, please contact me at kklesath@dist265.com or (309) 245-1000 ext. 1861.

Sincerely,


Kerry Klesath
Special Education Coordinator
Farmington School District