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HUMAN RIGHTS AUTHORITY - PEORIA REGION
REPORT OF FINDINGS

Case #16-090-9020
Macomb School District 185

INTRODUCTION

The Human Rights Authority (HRA) opened an investigation after receiving complaints of possible rights violations involving a child with disabilities who received special education services at Macomb School District 185. The allegations were as follows:

1. Inadequate Individualized Education Program (IEP) development, including lack of a behavior plan that addresses the student's needs.
2. School did not follow student IEP.

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

The school district has approximately 1900 students with 400 in the special education program. The district uses both a county based, special education cooperative (co-op) and staff within the school for the special education program. They have 24 teachers and then aides. They use a social worker through the co-op as well as occupational therapy and physical therapy services. The high school student involved with this complaint receives self-contained, special education classes and adaptive physical education (APE).

Complaint Statement

The allegations state that the school did not add actions to a behavior plan to address a student's needs. The student had an incident where he inappropriately touched another student in a swimming pool and was suspended for 3 days. The day that the student came back to school, there was an IEP meeting, and then the following day, there was another incident of inappropriate touching where the student was arrested. The student's behavior plan allegedly did not include anything addressing this type of behavior but it was addressed after the arrest.

The allegations also state that the school did not follow the student's IEP regarding the student's one-on-one aide. The complaint alleges that the student's aide leaves the school at

2:30pm but the school day ends at 3:30pm. The complaint alleges staff will pull the one-on-one away to teach while letting the teacher be the only one with the student in the class, although there are other aides for other children there. Also, when the above incidents occurred, the aide reportedly was on break and not around during either incident. Additionally, the aide allegedly lets the student do whatever he wants to do and converses with coworkers leaving the student unsupervised.

Interview with staff (4/27/2016)

Staff began the interview by stating the behavior intervention plan (BIP), in the February 25, 2016 IEP, does not address the behavior of inappropriately touching specifically because it was not a previous concern. Staff said that the behavior was specific toward the student's girlfriend and they worked with an Autism consultant using social stories and explaining how to interact appropriately. The student's behavior plan deals with anxiety and task avoidance. The student has a diagnosis of Autism and for most of his educational career, he has been in behavior programs. Currently he is in a life skills class and has the same teacher all the way through the day.

According to staff, the first incident occurred on February 19th when the student's girlfriend was floating in the pool during APE and he grabbed her inappropriately; she said stop and he grabbed her again. The student's assigned aide was helping another student in the men's locker room because that student's aide was female. The female aide remained in the pool with the two but witnessed nothing. Both of their parents just wanted to talk to the students but the student was still suspended. On February 25th, the student had an IEP meeting, but it was his annual review and re-evaluation and was not due to the incident. The incident was discussed but not added as part of the IEP. The team felt like it was a special circumstance because the couple was dating.

Staff reported that the next incident occurred on February 26th while the students were watching a movie in class. They were holding hands when the teacher approached them and told them to stop. The student's mother wanted him to be able to hold hands in the hallway like other students at the school. Later the girl told a school staff member that he touched her leg in class and the more they talked, she expressed that he touched her inappropriately and she asked him to stop and he did it again. Staff asked the student and he admitted to the allegation. The school has a resource officer and staff and, because of the nature of the touching, they called the police and charges were pressed. They had discussed the relationship the day before with the student's girlfriend and asked her if she still wanted to date and she said yes. This incident resulted in suspension and the student was given a new schedule because the request was made from the female student's father that they would no longer be in the same class. There was a manifest determination held after the second suspension and it was determined that the conduct was not a direct result of failure to implement the IEP but the behavior was because of the student's disability. The behavior plan still was not changed. Staff explained that they usually only have one target behavior on the IEP. They also did not add it because it was part of the student's disability but not part of the target behavior on the IEP. The target behaviors are agitation, refusing work, kicking, throwing, anxiety and being unable to monitor and regulate his behavior. Staff said that they could list the inappropriate touching but they would use the same strategies

for that as for the behavior listed. The IEP team and the student's mother decided not to change the behavior plan. Staff said that they decided that the student should receive the same services with a different teacher and he is now in a different class than his girlfriend.

The student's IEP states that he has a one-on-one, individual aide for 2100 minutes per week but they have others that cover when necessary. Staff explained that the students have one primary aide but there are multiple aides with the other children. In this student's class, there is one classroom aide and two individual aides. During the time of the second incident, the student's aide was on a break, but there were other aides in the classroom. Staff explained that generally aides do not sit next to the student at all times, they just supervise. There is a classroom aide and there was another individual aide and the teacher intervened when the student moved to hold her hand. No aide saw anything that occurred in either instance. They do not designate that the aide is always the same person. The aides alternate lunches and breaks so that there is always someone there with the students and they are always one-on-one if required in the IEP. The classroom aide is supposed to rotate to cover for the individual aide's breaks. In this instance, the classroom aide was covering the student while the other aide was at lunch. The aide was covering for the student but he was not sitting directly next to him, he was supervising. Staff explained that if it was not handled in this manner, students could not interact with the other students and they do not want to interfere with normal socialization or interactions. The aide's hours are 7:50am – 2:15pm. The student attends school from 8:05am – 3:05pm and from 2:15pm on aide supervision is covered by other aides. The student still receives a one-on-one aide, just a different one then during most of the day. Students arrive at school and get off a bus to go to a commons area and some aides are there early. The school staggers the coverage so aides are present for the entire day. There is always a one-on-one aide but it is just with different people. The aide is there to redirect or prompt the student when there is special instruction, and they may be working with the student. They assume that his needs are being met. If no direct instruction is needed, aides are close by. Sometimes the one-on-one may be working with a small group. That aide may be working with 2 or 3 students who are working together. The intent is to provide assistance and not make them stand out differently from others in the class. The aides still work as the specific student's one-on-one but there are other students working in the same group. The aides are not responsible for the students outside the one-on-one situation when working in groups. Staff explained that as far as teaching, if the aide is sick, they request a substitute but there are times where there are no substitutes for aides so they have to manage as best as they can. They have current aide vacancies. The aides are sometimes licensed teachers and they have been taken away to teach classes. If they do not have substitute teachers, and an aide is a licensed teacher, they will move them into those positions. When that occurs, another person covers the aide position. Aides have to have a license to be an aide in the school.

As far as the complaint that students are running around and the aide is allowing them to do whatever they want, staff assumed that the only time it would appear like this would be when the students are in the commons. Staff explained that it is a double edged sword; the student's mother wants him to be treated like the other students so he is allowed to run around while in the commons. While in the class, the behavior is not like that. The student is allowed to make his own choices and the aide is there to redirect and supervise. They step in and support as needed. The first incident took place in the APE class and the class is very structured and not like recess time. Sometimes the students are in health during this time. They usually do not have to worry

about the situation that occurred with the male aide covering for the female but this is their swimming unit. The student's mother requests that they try and have a male aide and staff attempts to do their best to oblige the request. In the past, if the student's mother has issues with the aides they have changed them and the student has had different aides each year because of the complaints. If there are complaints during the year, they try to take care of them and then switch the aides for the upcoming school year.

Part of the concern with staff is that the students both have developmental delays, so the accuracy of the reports are in question and also the student's girlfriend did not report issues in a timely manner. The student's girlfriend did not report the incident until after lunch and his story was different than her story. The girl was encouraged to report incidents right away and not wait to tell people things. In the past, something would happen and she would tell the teacher later. The student first said that he did not touch her in the same manner as was reported but then said that he had and cried and said he did not want to go to jail. The student received 3 days for the 1st suspension and 5 days for the 2nd suspension. The student also received a ½ day in October for throwing a chair and a 1 ½ day suspension in November for putting his hands on a staff member and cursing and leaving. There were no other incidents towards the student's girlfriend or that were sexual in nature.

FINDINGS (Include record review, mandates and conclusion)

The HRA reviewed records pertinent to the complaint with the consent of the student's guardian.

Complaint #1 - Inadequate IEP development, including lack of a behavior plan that addresses a student's needs.

The HRA reviewed the student's most recent IEP dated 2/25/16. The IEP contains a Behavior Intervention Plan (BIP) which discusses the student's target behaviors. The sections of the BIP that pertain to the complaint state "the target behavior is for [student] to follow directions with three or less prompts, not agitate others intentionally and use the correct tone of voice 90% of the time." It states that the behavior is a performance deficit not a skill deficit indicating "the student knows how to perform the desired behavior, but does not consistently do so." It also addresses more specific behaviors of "pouting, crying, whining, refusing to work, kicking the desk or wall, or throwing things" when acting out or attempting to agitate other students. It states that "when [student] gets anxious he is unable to regulate his behavior on his own all the time and make appropriate classroom/school behavioral choices." The hypothesis of the student's behavioral function discusses the student's expression of anxiety and avoidance of undesired tasks. It reads, "if [student] is not anxious he is a very hard worker. When [student] gets anxious is when we have the most trouble. He will choose to pick on other students/peers and/or act out verbally or physically." The summaries of previous interventions that have been attempted include "a 1:1 aide who is with him at almost all times who supports him, redirects him and offers assistance. When [student] gets anxious he can be taken to another area to calm down, have sensory stimulation, and assistance to get back on the track and working." Replacement behaviors include "direct instruction in the area of self-regulation when anxious. He will be taught to use his words to express his emotions instead of striking out verbally or physically at staff or peers. Listening and following through skills will be taught and reinforced."

The instruction and/or curriculum developed for this student includes receiving “small/concrete instructions, individualized assistance, and social stories to help him distinguish between acceptable and unacceptable behaviors.” Documentation presented to the HRA did note only one target behavior addressed on the BIP.

A manifestation determination was held for this student on 3/4/16 following both incidents of inappropriate touching which led to disciplinary actions taken by the school. It reads, “2-19-2016 During APE in the pool another student was floating and [student] came up to her and grabbed her boobs. She told him to stop and he did it again”. It continues, “2-26-2016 During a class [student] kissed and touched another students vagina. [Student] was asked to stop and he continued”. Regarding the student’s IEP and placement it reads, “[Student] has a new schedule so he is not in the same class as the other student”. The IEP team determined that “the student’s behavior was a manifestation of his disability” and not “the direct result of the school district’s failure to implement the IEP.” It continues, “the team must review and revise the student’s IEP as appropriate and the district must take appropriate action. A functional behavior analysis will or has been completed. The behavior intervention plan shall be completed or modified/reviewed as required to address behavior.” The HRA did not receive any documentation indicating that the student’s BIP was reviewed and/or changed to address the behavior of inappropriate touching following his manifestation determination.

The HRA reviewed the Macomb Senior High School student handbook regarding the discipline of students with disabilities. The handbook reads: “The school will comply with the Individuals with Disabilities Education Act (IDEA) when disciplining students. Behavioral interventions will be used with students with disabilities to promote and strengthen desirable behaviors and reduce identified inappropriate behaviors.” According to the Illinois State Board of Education (ISBE) website on instructions for Individualized Education Program (IEP), target behaviors should “identify the behavior(s) of concern. The targeted behavior(s) should be in a clear and specific written format.”

Federal regulations state that if the student’s behavior is found to be a manifestation of their disability the IEP team must “review the behavioral intervention plan, and modify it, as necessary, to address the behavior (34 C.F.R. § 300.530).” The HRA saw no regulations stating that a school can only target one behavior in a BIP. In addition, the U.S. Department of Education’s website, www.idea.ed.gov, reads “if the LEA [local educational agency], 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 either 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, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.”

Complaint #1 - Conclusion

The HRA found that the student had two incidents of inappropriate touching but the BIP was not revised to address the behavior although it resulted in two instances of discipline including police intervention. In addition, the district practice to only use one target behavior

does not appear in state or federal regulations and does not correlate with ISBE instructions on IEP development. The student's IEP team determined this behavior was a manifestation of his disability and not the school's failure to implement the IEP. Because of this determination, the IEP team should have reviewed and modified the student's BIP to address the behavior per federal mandates (34 CFR 300.530). Because the school did not properly develop the student's IEP and change it as necessary to reflect new or emerging target behaviors, HRA finds this complaint **substantiated** and offers the following **recommendations**:

- Review this student's IEP and BIP to include the behaviors and with future IEPs assure staff are reviewing behaviors in the intervention plan and modifying to address behaviors per 34 C.F.R. § 300.530. The HRA requests evidence that the facility has updated their practice and that staff training on this compliance is included with the update.
- Because the regulations do not state that a school must limit target behaviors, the school should no longer adhere to one target behavior per plan and address all behaviors accordingly, including this student's, to assure that needs are being addressed. Provide the HRA evidence that this is no longer a practice at the facility.

The HRA offers the following **suggestion**:

- Consider the need to provide students with disabilities and special education staff training on social interactions, sexuality and sexual assaults. Consider contact with an area sexual assault center or Illinois Imagines for training guidance.

Complaint #2 - School did not follow student IEP.

The student's IEP dated 2/25/16 states that the student will receive an individual 1:1 aide for 2100 minutes per week. The student's schedule starts at 8:05am and ends at 3:05pm totaling 2100 minutes per week indicating the student will have a one-to-one individual aide throughout the entire school day including lunch.

The aide schedule presented to the HRA titled "MJSHS NON-CERTIFIED MORNING/AFTERNOON 2015-2016" identifies the aide's one-to-one schedule with the student throughout the school day. The schedule shows all 8 class periods, the teacher for each class, the student and the aide's lunch break as well as other obligations the aide may have throughout the day such as lunch or detention duty. The schedule also indicates the aide is with the student from 7:50am until 2:15pm. The aide schedule shows that the aide is taking his lunch break during 4th period, is on lunch duty in the cafeteria during 5th and X's placed in the 8th period slot. The 8th period of the day starts at 2:15pm, the same time the student's 1:1 aide leaves for the day. The HRA requested clarification from staff regarding these periods and although it is not documented on the aide schedule it was explained by facility staff that the student is covered by other aides when his specific aide is not available. The aide schedule does show varying start/end times for each aide indicating there could be appropriate student coverage throughout the entire school day.

Concerning the first incident, the HRA received the female student's incident report written on 2/19/16. It reads: "I was floating on my back and [student] came up to me and touched

my boobs. I told him to stop and he didn't stop and then touched my boobs again. This was the first time he did it." The incident report was signed by the female student but told orally to someone who wrote the statement by hand as indicated at the bottom of the report. The HRA received no statement from the 1:1 aide who was with the student when the incident occurred.

The second incident occurred during the 4th period of the day per several incident reports written by both staff and the female student on 2/26/16. The incident report written by the student's classroom teacher reads: "During the 4th hour in my classroom we were watching a movie. During the movie [student] sat in the back of the room. [Female student] went and sat approximately 5 feet from him. A couple minutes later when I looked in the back of the classroom [student] was sitting next to [female student] and holding her hand. I told [student] that he could not hold her hand during class and could do that only during passing periods." A classroom aide with whom the female student reported the allegation stated: "During the start of the 6th hour [female student] asked me to go into the hallway to talk. In the hallway [female student] told me that during 4th hour [male student] kissed her and touched her in an inappropriate place." The female student also gave a statement regarding this incident which reads: "I was sitting in a desk in the back of the room and he came back to sit by me. He was touching my vagina under my pants. I told him to stop and he still kept trying to touch it. He refused to stop. I moved my desk away and he moved his desk towards me. He was still touching me. After that class ended and we went to lunch." The incident report was signed by the female student but told orally to someone who wrote the statement by hand as indicated at the top of the report. The assistant principal talked with the male student on 2/26/16 following the allegation and his statement reads: "I entered my office at 1:00 and found [student] sitting at the table. I had already received a text message from [classroom teacher] indicating that [student] had touched [female student] on the outside of her leg. She told him no, but he did it again. [Classroom teacher] enters the room. I asked [classroom teacher] what had happened. I told him what [student] had said to me. He said after investigating it turned out to be quite more serious. I then asked [student] what he had done. He said he rubbed her leg and toward the inside of her black sweatpants. I asked him if he puts his hand in her pants. He said no [but his body language indicated otherwise]. I asked him if she told him to stop. He said yes. I asked if he did it again after she told him to stop. He said yes. I then asked him if he put his hand in her pants. He was non-committal. I asked him if he touched her vagina. He said no. I said did you touch her vagina. He nodded his head and said yes. He then started crying and said he just didn't want to go to jail. Later, when I asked him to write he recanted having put his hand in her pants and touching her vagina. When I asked him why [female student] would have told us that then, he said I don't know. I just don't want to go to jail." The HRA received no statement from the 1:1 aide who was with the student when the incident occurred.

The Illinois Administrative Code (23 Ill. Admin. Code 226.200) requires that "each school district shall provide special education and related services to eligible children in accordance with their IEPs."

Complaint #2 – Conclusion

Clarification from staff regarding the "MJSHS NON-CERTIFIED MORNING/AFTERNOON 2015-2016" aide schedule does indicate the student is receiving 1:1

supervision as required in his IEP. Staff explained they rotate and stagger aide schedules throughout the day to provide coverage and the aide schedule does indicate this, and this staggering would also cover aides being pulled to cover absent teachers. The HRA was provided no scheduling regarding aides being pulled to cover absent teachers but also saw no evidence that this caused issues. However, it is noted that both incidents of inappropriate touching occurred when the student was not with his assigned 1:1 aide but with different aides covering for him. Neither aide who was 1:1 with the student reported hearing/seeing anything that occurred. Because of this, it brings into question the function the 1:1 aide serves if they are not witnessing and intervening on incidents like this in addition to training they are receiving. Their job is to supervise and redirect students when they need help or if displaying inappropriate behavior but it appears this is not occurring. Although there is no direct evidence that the school is not meeting the student's requirement regarding 1:1 supervision as stated in his IEP, it does appear the aides are lacking in the performance of their job duties. The HRA finds this complaint **unsubstantiated** but offers the following **suggestions**:

- Provide training to 1:1 aides on elements of their job that seem to be lacking and stress the importance of supervising students at all times to assist with maladaptive behaviors.
- Aide schedules should be more specific and not leave any question as to where and whom their assigned 1:1 is during times they are unavailable. This scheduling could also include aides being pulled for absent teachers. The creation of a student schedule indicating who the student's assigned 1:1 is for each class period with may help clear up or alleviate any confusion as well.