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Peoria Regional Human Rights Authority
Report of Findings
Case #10-090-9006
Charter Oaks School

The Peoria Regional Human Rights Authority, a division of the Illinois Guardianship and Advocacy Commission, accepted for investigation the following allegations concerning a student receiving special education services at Charter Oak School:

1. A bus driver addresses a student's behaviors in an inappropriate manner.
2. A student is bullied by peers and is unsafe.
3. The school failed to hold an IEP (Individualized Education Program) meeting to address parental concerns or consider alternative placement.

If found substantiated, the allegations represent violations of the Illinois School Code (105 ILCS 5) and state and federal regulations pertaining to special education (23 Ill. Admin. Code 226; 34 C.F.R. 300).

Charter Oaks School, an elementary school for grades kindergarten through fourth grade is located in Peoria and is part of Peoria School District #150. Of the 372 students who attend the school, approximately 85 students have IEPs.

To investigate the allegations, an HRA team met with and interviewed the District #150 special education director, the Charter Oak school principal and an attorney representing the school district. With consent, the team reviewed the record of a student who received special education services during the 2008-2009 school year. The team also examined pertinent district policies.

COMPLAINT STATEMENT

According to the complaint, a student who has a form of autism has been bullied by peers to the point that he is afraid to attend the school and cries at the mention of school. On one occasion a peer robbed him of his report card money after school let out and then stole his Nike tennis shoes off of his feet. More incidents occurred over the summer but off of the school grounds; however, the complaint contends that the peers have and will continue to bully the student at school The complaint also reports that a bus driver allowed a peer to hit the student several times and then stated that the student pretended to cry. The complaint further states that the bus driver has manhandled the student by squeezing his arm and pulling at him when the student exhibits any behaviors. A request for an IEP meeting was reportedly made to discuss concerns or to consider an alternative placement but the school allegedly failed to hold the IEP meeting.

FINDINGS

Interviews

In interviews with district representatives, the HRA first inquired about the delivery of special education services at Charter Oaks School. Staff explained that there is a special education teacher available at all grade levels; one special education teacher handles the combined grades of kindergarten and first grade. A coordinator facilitates IEP meetings and works with special education staff.

According to staff, the district maintains a policy on bullying. The principal addresses bullying incidents by interviewing all parties individually and then determining a resolution; examples of discipline associated with bullying include the loss of recess and/or suspensions. Parents of both sides are notified of any bullying incidents.

With regard to bus drivers, the drivers are district employees and a supervisor reviews all bus incidents. If a bus behavior is related to a student's disability, then a bus aide is often assigned and the bus aide is listed on a student's IEP. Buses have cameras and two weeks worth of tapes are maintained; when an incident occurs on the bus, the tape is reviewed, bus drivers and students are interviewed and parents are contacted. Bus drivers receive in-service training on disabilities as well as positive behavioral approaches and strategies.

Staff indicated that district-wide efforts are underway to address behaviors. A group of teachers meet monthly to review positive behaviors, incentives and supports. A social skills class is available to students. And, administration reviews discipline data to better target student needs. A district social worker and school psychologist are also available to district students.

Staff then shared information regarding the first grade student in this case. The district stated that the student's qualifying disability was "other health impaired" due to a diagnosis of Attention Deficit Hyperactive Disorder (ADHD). The district stated that there was no available diagnosis or data regarding autism. While a sensory profile was completed for the student, no assessments specific to autism were completed. The student reportedly had a behavior attendant at a prior school but this was discontinued at Charter Oaks. Staff stated that the student presented no classroom discipline problem and classroom behaviors were not significant enough to warrant a behavior plan. The student was also making progress in his special education program. The student is able to communicate concerns as well as provide reports of incidents.

Staff stated that the student reportedly was written up for bus incidents, some of which involved the student's siblings. Often, the student would be out of his seat. The student had one 3-day bus suspension and copies of incident reports were sent home. The student also had conflict with another student who received special education services and was in the same grade and class. In one incident, the student in the case received a bus suspension and, in another incident, both students lost a recess. The bus driver for the student has been employed by the district for more than 7 years; she maintains order on the bus and was described as compassionate. A bus monitor also sits on the bus, often at the front of the bus. The district has

been unable to review the tapes involving the incidents due to the length of time that has passed; the tapes have been erased.

The principal and a family member were reportedly in contact regularly. Bullying allegations involving the peer in the same grade and class were sometimes discussed, but according to the district, the incidents would originate in the student's neighborhood and the family member was concerned that it would carry over at school. The principal stated that no concerns regarding the student's fear were brought forth until August 2009, just before school started. The family member requested that the student and the peer be placed in separate classrooms but the school was unable to accommodate this request because it has only one classroom at that grade level. There was some discussion about the student's placement but the principal stated that there were three adults (a teacher and two aides) for 10 students in the classroom and the classroom and staffing levels were appropriate for the student's needs. Social skills teaching was planned. The principal reported that there were no requests for an IEP meeting and no need for an IEP meeting as the student's issues were not special education issues. However, a referral was made for a boundary waiver. The student has left the district.

The principal reported that there was no written correspondence between he and the family; all issues were discussed and handled over the telephone.

Record Review

The student's IEP dated 05-09-08 from a prior school district indicated that the student got along well with peers and adults but was beginning to act out in the general education classroom when corrected. The student's special education eligibility category was listed as specific learning disability. The student had goals related to reading, writing, mathematics, social skills, speech therapy and occupational therapy; progress was noted on all goals. The social skills goal included an objective that the student would cooperate with adults in the general education classroom when corrected; it appeared that the student accepted time outs and a one-to-one aide was discontinued. A note from March 2009 stated that when the student is on medications he is fine but without medications he cannot be successful in the classroom or on the bus. Listed accommodations included modified tests and assignments, restating/clarification of directions and questions and seating the student near a good role model. There was no documented behavior plan at the time of the IEP. Family participated in the IEP meeting.

An IEP conference summary by District #150 and dated 12-03-08 indicated special education eligibility categories of specific learning disability and other health impaired. Family, the coordinator, a general education teacher, a social worker, an occupational therapist and a school psychologist were all present. There were no other documents dated 12-03-08 available to the HRA with the exception of a goal review on writing skills; the conference summary indicated that the meeting was being held to review the existing data and IEP.

A summary of evaluation results dated 03-12-09 documented academic skills, functional performance, cognitive performance, communication skills, health, motor skills and social/emotional performance. Under functional performance, it was noted that the student had shown some noncompliance in class and had to be redirected; it also stated that the student had an attendant at the prior school for behavior management but that attendant was no longer

needed as per an annual review completed in December 2008. The summary indicated that the student had a history of seizures but was no longer taking medications, asthma, mild allergies and took medications for ADHD.

The most recent IEP was completed by Charter Oaks on 04-01-09 for the first grade student. The IEP indicated that the family was not present at the IEP meeting. The student's eligibility categories were listed as "other health impaired" and "specific learning disability." In the review section, the parental input section stated that family believes that the student has made good progress at Charter Oaks but the student did not always seek help appropriately. Under functional performance, the IEP stated that the student communicates feelings, accepts staff help and accepts consequences for inappropriate classroom behaviors. The accommodations of a modified curriculum, handwriting, redirection, praise and preferential seating when not wearing glasses were all listed. The student had goals related to reading, writing, math, speech, and fine motor skills. The HRA notes that there were no review dates or progress notes included on the IEP with the exception of goals related to fine motor skills. There is no mention of bullying, social skills or bus issues. The student's attendance record for 2009 listed a total of 8.5 days of absences; two of those days were unexcused.

The HRA examined 3 bus incident reports. In a report dated 01-09-09, the student directed a racial slur toward a peer; the peer then repeatedly hit the student. The student initially denied using the racial slur and indicated that the peer hit him first but then acknowledged to the bus driver that he used the racial slur and started to cry. The student lost recess for one day; the report did not indicate whether or not the peer was disciplined for striking the student. This was listed as a first offense. The HRA was not provided with a report regarding a second offense. In a report dated 02-24-09, which listed this as the third "plus" offense, the student failed to remain in his seat and would roll around on the floor of the bus. There is no indication of discipline given for the 02-24-09 incident. And, in a report dated 03-05-09 listed as the fourth offense, the student threw a sponge dart at a peer, hitting the peer in the eye. The student initially refused to turn the dart over to the bus driver but the driver eventually "got it away from him." The report then stated that the student refused to remove his legs and feet from the bus aisle and started spitting at peers when the driver indicated that she was "writing him up." There is no indication of discipline listed on the 03-05-09 report. For each of the 3 reports, the bus driver, supervisor, bus monitor and principal signed the forms as having reviewed.

District Policies

The HRA team examined policies pertinent to the allegations. A student harassment policy states that the district will not tolerate harassing or intimidating conduct, including physical, verbal, or visual harassment that "…affects tangible benefits of education, that unreasonably interferes with a student's educational performance, or that creates an intimidating, hostile or offensive educational environment." Examples of such conduct include derogatory slurs, possessing items that imply hatred or actually verbalizing hatred. Complaints can be reported to building administrators.

The district's disciplinary policy begins by identifying prohibited conduct, including insubordination, aggression, verbal abuse (racial slur), and "Engaging in any activity, on or off campus, that: (a) poses a threat or danger to the safety of other students, staff, or school property;

(b) constitutes an interference with school purposes or an educational function; or (c) is disruptive to the school environment." Resulting disciplinary measures are listed such as classroom removal, parental notification, in-school suspension, community service, out-of-school suspension, suspension of bus riding privileges, etc. According to the district's discipline procedure, behaviors are categorized by levels. Level 1 behaviors include defiance, horseplay, and inappropriate language and can result in loss of privileges, warnings, detention, parent contact, etc.; such behaviors are addressed by teachers or school staff. Level II and III behaviors require administration's involvement and may result in suspension, expulsion or the involvement of law enforcement. A bus violation, defined as "violating any school infraction while on the school bus," is a Level II behavior. Extortion ("use of force or threatened use of force to obtain another person's property or money"), insubordination, abuse language or profanity, aggression, threatening/bullying are also listed as Level II behaviors. Level III behaviors include possession of weapons, drugs, alcohol or other illegal substance. Consequences for Level II and III behaviors include loss of privileges, warnings, parental contact, conferences, detention, suspension and expulsion.

The discipline policy includes a section specific to students receiving special education which requires a special education conference when a student is facing expulsion to determine if the offense is a manifestation of the disability and, if so, the student cannot be expelled. After 10 aggregate days of suspension, the policy states that a student can be suspended for 3 more days and the team is to be notified. A separate policy statement entitled "Misconduct by Students with Disabilities," states that a student receiving special education is not to be suspended for more than 10 consecutive days for each incident.

Bus conduct is also addressed and states that certain behaviors can result in suspension from riding on the bus, including the repeated use of profanity, disobedience to the driver's directives and other behavior that jeopardizes the safety of the bus or other riders; the use of cameras on the bus is referenced.

Finally, the district maintains a formal grievance policy which allows for the filing of a complaint with a district complaint manager who initiates an investigation. The complaint manager's report is submitted to the superintendent within 10 days; the superintendent issues a final decision in the form of a written response to the complainant within 5 days of receiving the complaint manager's report. The complainant can file an appeal with the school board.

MANDATES

The Illinois School Code (105 ILCS 5/27-23.7) addresses the issue of bullying in schools. This section of the Code states that "Each school district may make suitable provisions for instruction in bullying prevention." In addition, "…each school district shall create and maintain a policy on bullying….Each district must communicate its policy on bullying to its students and their parent or guardian on an annual basis. The policy must be updated every 2 years…." Also, the School Code in Section 5/27-12, states that "Every public school teacher shall teach character education, which includes the teaching of respect, responsibility, fairness, caring, trustworthiness, and citizenship, in order to raise pupils' honesty, kindness, justice, discipline, respect for others, and moral courage for the purpose of lessening crime and raising the standard of good character." And, Section 5/10-20.14 requires that:

The school board, in consultation with the parent-teacher advisory committee and other community-based organizations, must include provisions in the student discipline policy to address students who have demonstrated behaviors that put them at risk for aggressive behavior, including without limitation bullying, as defined in the policy. These provisions must include procedures for notifying parents or legal guardians and early intervention procedures based upon available community-based and district resources.

State special education regulations (23 Ill. Admin. Code 226.220) require that "Either a child's educational provider or a child's parent may request an IEP meeting at any time. Within ten days after receipt of such a request, the district shall either agree and notify the parent…or notify the parents in writing of its refusal, including an explanation of the reason no meeting is necessary…."

The state regulations also require in Section 226.750 that a child eligible for special education is to be eligible for special transportation as warranted by the child's disability. This section also requires that persons responsible for special transportation "…shall be given training experiences which will enable them to understand and appropriately relate to children with disabilities."

Federal special education regulations (34 C.F.R. 300) require in section 300.324 that the IEP of a child receiving special education be revised if there is a lack of goal progress, to review evaluation results, to anticipate the child's needs, or if there is new information about the child. This section also addresses special factors, including the use of positive behavioral interventions and supports as well as supplementary aids and services.

CONCLUSIONS

Complaint #1: A bus driver addresses a student's behaviors in an inappropriate manner.

The complaint states that the bus driver manhandled a student receiving special education services and that a peer was allowed to hit the student. It appeared that the student entered Charter Oaks School in December 2008 after which there were at least four bus incidents (the HRA received only three reports) within a few weeks. The incident reports not only documented the incidents but indicated the existence of repeated prior warnings. One report indicated that a peer struck the student after the student directed a racial slur toward the peer; it is unknown if the peer received any discipline for striking the student. An IEP from a prior school referenced problem bus and classroom behaviors but an attendant was discontinued due to behavioral improvement; however, the student did have a social skills goal at the prior school while no social skills goals were included in the student's most recent IEP at Charter Oaks. The school stated that the student's classroom behaviors were fine, the student required no behavioral programming and there was no behavioral programming in the student's IEP. There is no mention of any behavioral issues, including bus behavioral issues, in the student's most recent IEP. The responsible family member was not at the IEP meeting. The principal stated that he had several telephone conversations with the family member regarding the student but nothing was documented as concerns were handled by telephone.

The school staff stated that the bus driver for the student had several years of experience and received specialized training related to disabilities. Reviews were conducted of the bus incident reports. And, videos taken by the bus camera are no longer available. Also, a bus monitor was available on the bus.

School discipline policies indicate that students can be suspended from the bus for certain behaviors including disobedience. Discipline policies also reference special considerations for students receiving special education. And, special education regulations indicate that some students may warrant special transportation arrangements and staff responsible for the transportation are to have disability related training.

Based on the available evidence, the HRA cannot substantiate the allegation that a bus driver manhandled a student and allowed a peer to hit him. There is documentation of an incident that the student was struck by a peer but no evidence that the bus driver allowed it to happen. Of the bus reports reviewed, none provided details as to how the bus driver intervened. At the same time, the HRA notes that the student had several bus incidents shortly after enrolling in school which indicates prior warnings, but there is no IEP mention of this issue. That, along with the documented prior history of bus and classroom behaviors as indicated by the student's previous school, warrants the following suggestions:

1. When a student receiving special education services begins exhibiting repeated behaviors in a particular setting, including the bus, monitor the behaviors and consider holding an IEP meeting to discuss the need for special transportation arrangements or positive behavioral interventions and/or supports as referenced in special education regulations.

2. Consider requiring bus drivers to document specific interventions used in bus incident reports.

Complaint #2: A student is bullied by peers and is unsafe.

The complaint states that a student was fearful of school due to a peer who harassed him and stole money and shoes from him. The incidents were reported to have occurred off of the school grounds. The school stated that they were aware of the student's conflict with a peer who was also receiving special education services but the concerns were reportedly not brought forth until just before the new school year was to start when family requested that the students be placed in separate classes. The principal indicated that the family member's focus was on incidents that occurred in the summer in the student's neighborhood rather than at school. The principal stated he could not accommodate the family's request for separate classrooms as the school only has one special education classroom for this age group. The principal stated that social skills training was being planned for the student; however, the student left the district before the training was implemented.

The student's IEP makes no mention of problems with a peer or concerns with bullying. An IEP from a previous school included a social skills goal.

The district does maintain a policy on student harassment as required by the School Code. The district's policy emphasizes harassment that negatively impacts the student's

education or educational environment. The district's discipline policy references behaviors that occur both on and off campus that pose a threat to students, interfere with a student's education and is disruptive to the educational environment.

Because of the available evidence does not document the existence of bullying, the HRA does not substantiate the complaint. However, the HRA does note the district's acknowledgement that the student had conflict with a peer and the family sought alternate placement for the student rather than continuing placement at Charter Oaks. As such, the HRA suggests the following:

1. When a student who receives special education services or his/her family voices concern regarding bullying or harassment, review the matter and its impact on the student attending school even if the alleged harassment/bullying occurs off-grounds consistent with the discipline policy that references behaviors that occur both on and off-campus if they pose a threat to a student, interferes with education or are disruptive to the school environment.

2. When a student has known conflicts with a peer, consider the possible existence of harassment and the need for further review or intervention.

3. The HRA noted that the discipline policy section on students with disabilities and a separate policy on misconduct by student with disabilities may be in conflict in terms of the number of allowable suspension days. The HRA suggests a review of these two items for consistency.

Complaint #3: The school failed to hold an IEP (Individualized Education Program) meeting to address parental concerns or consider alternative placement.

There was no documented parental request for an IEP meeting and no written correspondence from the school in response to a parental request for an IEP. The school principal stated that he handled all interactions with the student's family over the telephone. The principal stated that, regardless, there was no need for an IEP meeting as the student's issues were not special education issues.

Special education regulations allow parents/guardians to request an IEP meeting at any time. The school is required to provide a written response to the request and if the request is denied, the district is to include the reasoning.

Since there is no documented evidence of the parent's request for an IEP, the HRA cannot substantiate the complaint. The HRA does take issue with the principal's lack of documentation related to interactions with the family in this case as well as the assertion that the concerns were not special education issues particularly when the family subsequently sought a boundary waiver and special education placement elsewhere. The HRA suggests the following:

1. Clearly document special education related requests from students or families and the school's response.

2. Ensure that the district provides written responses within specified time frames when a parent/guardian requests an IEP meeting as per special education regulations.

3. The HRA noted that in the student's most recent IEP, only one goal (writing skills) documents review dates and student progress. The HRA suggests that the district ensures that progress is reviewed and documented on a regular basis.

4. When parents voice concerns and a matter is still unresolved or the parents are dissatisfied with the response at the school level, ensure that the parent is referred to the district grievance policy.