Illinois Guardianship & Advocacy Commission

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Egyptian Regional Human Rights Authority
Report of Findings
15-110-9009
Williamson County Special Education Services

The Egyptian Regional Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission has completed its investigation concerning an alleged rights violation involving Williamson County Special Education Services (WCSE) located in Marion. There are approximately 1800 students ages 3-21 that are served county wide. The specific allegations are as follows:

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

If substantiated, the allegations would be violations of the Individuals with Disabilities Education Act (IDEA) (20 USCA 1400); the Code of Federal Regulations (34 CFR 300 et al.); the Americans with Disabilities Act (28 CFR 35.130); and the Illinois Administrative Code (23 IL ADC 226).

According to the complaint, a student with a disability was not provided a Physical Therapy (PT) evaluation to assist with obtaining a wheelchair or Behavior Analyst services. It was also alleged that WCSE failed to notify a parent of an IEP meeting and breached confidentiality by discussing specifics of the student's case with a community autism center without a release of information signed by the parent. The final allegation was that the student was denied access to Music and Art classes due to her disability. The discrimination complaint concerned classroom participation while the student was at Crab Orchard School District, thus, complaint #4 is being addressed in the Report of Findings for Case #15-110-9010, Crab Orchard School District.

Investigation Information

To investigate the allegation, the HRA Investigation Team, consisting of two members and the HRA Coordinator conducted 5 site visits. During the visit the Team spoke with the Special Education Director (Director), the Behavior Analysts (BA), the student's mother, the student's personal support worker, the Superintendent and teachers from the public school and

the homebound instructor. The student's Individualized Education Program (IEP) was reviewed after the Authority received written authorization from the student's guardian.

I. Interviews:

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

When the mother requested a wheelchair, the WCSE contended that if she needed a wheelchair to access school, they would provide it. She stated that a PT evaluation wasn't necessary for educational needs because she wasn't accessing the school building. In order for the WCSE to provide PT/OT services, it has to improve her access to education. Since the teacher was coming to her home, they contended it was not needed to access education. The mother had requested the wheelchair due to her gaining weight and isolating herself and they thought it would help her to become more involved. The Director stated that they offered to have a speech therapist come to the home; however the mother refused the offer due to not wanting any more people in the house due to her daughter's extreme anxiety. The Director explained that the mother had requested the BA that had already been working with the student

and asked the WCSE to pay for that service as part of her homebound instruction. She explained that the board struggled with this request because it was more mental health based than educational based. They are not required to provide this service but they agreed to because they felt it was in the best interest of the student since rapport had already been built. The Director further explained that they have a Social Worker on staff who has a MSW (Master's degree in Social Work) and usually provides Functional Behavioral Assessments. They also have a BA through a memorandum of understanding with a local university to provide those services, but the parent wanted a Board Certified Behavior Analyst (BCBA). The Director explained that the state does not require a BCBA from the WCSE and they typically provide graduate internships to provide this service. The WCSE contended that the BA that the mother was requesting was less qualified than their social worker, and wanted to discuss it further so a meeting was scheduled. The graduate assistant was at the IEP meeting with her supervisor who is a BCBA and stated that the mother was confrontational with her. She explained that the intern came to the meeting as a consult and they did not discuss specifics after the introductions were made and the mother discovered where the intern was from, she "attacked her" due to the history between them. Apparently, her daughter was turned away from their program when she was 5 years old. They asked if the intern could stay and the mother said she didn't care. The Director contended that this was the only time the student's specifics were discussed and other than her name, anything the intern knew was from the meeting which the mother agreed for her to attend/stay at. The intern stated that it was a lot of time to commit to and explained that they were already short staffed and she was afraid she would not have the time to provide the service. After that, they discussed keeping the current BA due to rapport being built and they felt that this was what was best for the student. Although the BA was less credentialed in their opinion, she would be working under a BCBA. They requested credentials and a prescription from the doctor to comply with state requirements. The board then approved the request and a verbal contract was made. Later, the homebound instructor voiced concern that the BA was not following a behavior or educational plan; she also stated that the mother often cancelled her scheduled visits and she was not always able to get in her 5 hours each week. The Director also explained that there was a Department of Human Services (DHS) support person who also came to the house to help with activities of daily living (ADLs) like home healthcare.

The Director explained the process for IEP meetings and stated that they send notices 10 days prior to the meeting and send 2 more notifications by phone or mail. They document 3 contacts with the parents for IEP meetings. She stated that a meeting was scheduled in October or November but she did not have one on her calendar for October 8, 2014. This meeting was to discuss the BA services and what WCSE would pay for and that it was not an IEP meeting. They did not invite the mother but the BA asked to bring her. The Director stated that she felt bad having the mother involved because it was just to discuss money and not the student specifically and she did not want to offend the mother. She stated that she knew the mother was coming and that it was ok, she just felt bad discussing all the money issues in front of her. The BA had set parameters for evaluations, plan development, training to implement and ongoing maintenance that was incorporated into the service they would provide. The BA requested 60 hours for a Functional Behavioral Assessment (FBA), 60 hours for plan development and 20 hours per week for ongoing maintenance at $125 per hour. The board felt this was excessive for "uncertified services" and offered to pay for 25 hours for the FBA, 25 hours for plan development and 5-10 hours per week for ongoing maintenance. The Director stated that the BA

contract was done in November, 2014 and they received the billing in March, 2015 which was $8,000.00 more than they agreed to so the board had to discuss it and negotiate again with the BAs for the services provided.

B. Superintendent and Teachers: The HRA met with the Superintendent of the local public school. He has been the Superintendent for 11 years and was the Principal for 3 years prior to that. The Superintendent is employed by WCSE but is assigned to the specific district. When the student attended the school, she was more with the special education classroom than in a regular education classroom. While attending their school, the student had made significant progress; she had a 1:1 aide and was more verbal. He explained that her mother "pulled her out of school" on two different occasions. She was homeschooled sometime around her 5th grade year in 2009/2010 and she was gone for 1-2 years, returning her 7th grade year. When the student returned, she had regressed significantly. He explained that he was not sure why the mother had pulled the student out of school for homeschooling but the parent just has to say that they are homeschooling their child; no one regulates homeschooling. He stated that he has nothing against homeschooling and has had students in the past play sports and test high with homeschooling, but when this student returned she had regressed significantly. Upon her return, the Superintendent spoke to the Director of special education who recommended a program in a neighboring school district that was for students who are "more profound" to teach them life skills. He explained that they do some educational teaching but stated that "they're not going to read and write." He stated that the mother had refused to send the student to that school; he did not know what her reasoning was other than she had concerns about the bus route. The Superintendent stated that the student may have had problems initially with the bus route, but she is fine once she gets used to someone and he was of the opinion that she would have adjusted. He stated that they would have sent an aide with the student who had worked with her for approximately 4 years.

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

C. Behavior Analysts: The HRA met with both of the Behavior Analysts who are partners in the business that is providing services for the student. One is a board certified behavior analyst (BCBA) and the other is credentialed as a behavior therapist; the difference being that she has completed two masters programs instead of one (counseling and applied behavior analysis). She has a Bachelor's of Arts degree in Psychology and a minor in education as well as a Bachelor's of Science degree and a Master's degree in Nouthetic Counseling. She also stated

that she is qualified to sit for the board to become a BCBA but has not yet done so. They described the student's disabilities as "perceptual disorders" and Autism. They became aware of the student from her support worker. After getting permission from her mother, the support worker asked if they could work with the student to help with some of her anxiety/isolation issues. They agreed to consult with her to make a determination. The student liked the BA the first time they met and she agreed to be an unpaid advocate at first. She then went to the second IEP meeting as an advocate for the student and her mother. She looked at the FBA and Wheelchair issues. She stated that SST (Support Services Team) was involved and the Director of the community autism center and a student intern were also there. The Director of the autism center stated that they could not address the student's issues and did not have expertise in that area. The mother wanted someone with experience working with her daughter's issues and so this BA volunteered to provide services. The Director of WCSE asked to get a **contract proposal** which the BA stated she emailed to the Director and the SST (Support Services Team-Crisis Prevention Network) representative. The BA stated that her proposal was forwarded to the community autism center as well as to other BAs who told WCSE that they thought it was excessive. The Director then stated they had a Social Worker on staff that could do the FBA. The BA agreed to forward those emails that were allegedly sent out to others to the HRA for review. The HRA reviewed an email dated 9/12/14 from the SST representative which summarized the treatment plan for the student and stated the BA would work out the contract directly with the Director at WCSE. Another email dated 9/17/14 from the Director of WCSE to the BA and copied to the SST representative confirmed that the Director had received the initial proposal and stated that they would proceed once they had an "official contract."

The BA also stated that the student's mother had asked for a wheelchair for her daughter and stated that a physical therapist from a community physical therapy agency had told the mother that they could also access funds outside of the school system in order to obtain a wheelchair. The therapist was concerned about the student's hip and a foot fracture from the past. She stated that it looked like the student was still having pain with that and wrote a prescription for shoe insoles. The parents purchased an older wheelchair through a local thrift shop since the school had refused to provide one. The BA stated that the student was a homebound student without services being provided. They also felt that a wheelchair would be beneficial for "desensitizing" her due to her avoidance and withdrawal behaviors. She was not coming out of her room and would no longer swim, which in the past she loved to do. She stated that a chair would help because if she was uncomfortable, they could get her out of a situation quicker and stated that you cannot "force" her into situations. When asked if the BA was of the opinion that homebound status has hurt the student's progress, the response was, no, that is where she felt safe.

The BA stated that she had contacted the mother about all of the meetings and that the mother was unaware of the October 8, 2014 meeting that was scheduled to discuss the BA contract and what the school would provide such as hours of therapy etc... The BA informed the HRA that at the time of our interview on February 13, 2015, they still did not have a written contract, just a verbal one that was agreed upon October 8th after WCSE cut back the hours they had requested twice. However, she stated that the BA services were being provided even though a written contract had not been received. The BA stated that the goal was to get the student healthy enough to make her own decisions; she did not think the student would go to school, but

stated that if she wanted to they would honor her wishes. She stated that the parents' goal was to be able to integrate her into the community into long term care housing.

When asked about the most suitable educational setting for the student, both BAs stated they would "recommend gearing her for functional skills rather than traditional educational school." They were not aware of a "special school" in another local community being recommended for the student, but stated that they would be interested in exploring that for her. They stated that even though the homebound instructor is working on life skills and rapport building for now, in order to build trust with the student, they contend that those are educational based learning because it is a prerequisite to other things in life that she needs to be able to have the most success and independence. When asked about progress made in the few months they have been working with the student, they responded that her incontinence is now gone, she is dressing herself multiple times per day, discriminating times and addressing appropriate clothing for occasions. They are also seeing improvements in her making eye contact and focusing on people not "above them."

D. Mother: The student's mother explained that her daughter had been placed on homebound status through her school system per her doctor's order due to extreme anxiety. Her daughter was isolating into her room and would not come outside of the home either to go into their yard or to travel anywhere. She had attended public school most of her life with the exception of a few years when she homeschooled her. She stated that in August, 2014 the family approached the WCSE about obtaining a PT evaluation for their daughter so she could obtain a wheelchair. The parents and behavior analysts who had been working with her daughter thought it would be helpful in gradually getting her to come out of her room or outside of the family home. They were trying to assist her in overcoming this fear in the hopes that eventually, she would be able to return to the public school she had attended as well as other places necessary for everyday life. The WCSE denied the request for a PT evaluation due to her being a homebound student. The WCSE contended that she did not need the wheelchair to ambulate throughout her small home and since she was not attending school where it might be needed for her to get around campus. Prior to being on homebound status, she stated that her daughter's PT and OT were discontinued or reduced because she "accommodated herself in the classroom." Her new OT would not work with her and she stated that they were not working with her on speech.

The mother also stated that in 2013 and again in August, 2014 they had requested that the WCSE provide a Behavior Analyst (BA) and Therapy for their daughter. She stated that she had obtained prescriptions for Occupational Therapy (OT), Functional Behavioral Assessment (FBA) and Technology Assessment during the 2011 through 2013 school years which were ignored. In 2014, they were told that the WCSE had a contract with a community BA. The mother was familiar with the agency and stated she had tried to obtain services from them previously but they did not accept her daughter into their program because her case was "too complex." At an IEP meeting the BA from the community was invited to attend and at that time the family learned that not only did the WCSE not have a contract but that this BA did not have the time to provide this service for their daughter. The mother stated that they had obtained an independent BA on their own due to the length of time it was taking for the WCSE to provide this service. The family requested that the WCSE provide that service through the BA who had already been

working with their daughter. The mother stated that the WCSE had "flip flopped" back and forth about whether or not they would pay for this BA to provide the service. On October 8, 2014, they received the okay from the WCSE that this service would be provided through the BA who had been working with their daughter. However, at the time of our interview, there still was not a "working contract."

Another concern the mother had was that a meeting regarding her daughter's education plan was scheduled for October 8, 2014 to which the mother was not invited. She stated that this meeting was to discuss the behavioral services that would be provided for her daughter. The BA mentioned the meeting to the mother and that is how she found out that a meeting was scheduled. The mother did attend this meeting and stated they were discussing the fees and services that would be provided by the BA for her daughter and what the WCSE would pay for the services.

The mother stated that her daughter's confidentiality was breached due to WCSE discussing her case with people at a community autism center to determine "how to deal with" her mental health issues and therapy without first obtaining a release of information from her. She stated that "random people were just called and asked about services" for her daughter.

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

<u>E. Support Worker and Mother's 2nd Interview:</u> The HRA met with the mother a second time along with the student's support worker in May, 2015. They informed the HRA that there still had not been a PT evaluation and stated that the homebound instructor had also noticed the student limping at the table and not wanting to go to the toilet. The teacher shared that with them and thought that maybe it was due to hip problems. The mother said she had a doctor's order for a PT evaluation that was given to the WCSE in August, 2013 but they would not provide it. When they inquired about obtaining another order for the 2014 school year, the WCSE stated they would not provide it and stated it was not necessary due to her being in home and not at

school. Therefore, they "didn't bother getting one for this year." She explained that if the WCSE would have evaluated her and signed a form saying she needed the wheelchair, then the student's insurance would have provided it. They informed the HRA that the homebound instructor put in her notice to quit the day after she had the BA training which instructed everyone how to implement the Behavioral Intervention Plan (BIP) for the student, but stated the teacher finished the school year. The reason they were given that she was quitting was because it took too much time away from her family and she also stated that her job role was too much of a therapeutic role and not enough of an educational role. She often stated that "I don't feel like I'm accomplishing anything here." The mother and support worker were often reinforcing her and trying to explain the behavioral plan to her and stated that she always asked the mother what to do. The mother did say that the WCSE preferred that the teacher provide 10 hours of services each week, but the family requested 5 to start with because they were concerned that it would be too much of an "overload" for the student due to her being uncomfortable with strangers. They agreed to work up to the 10 hours per week, they just wanted to start small and increase when she was re-evaluated. The mother stated that she had cancelled recently with the teacher when her daughter had the stomach flu and then the teacher cancelled the next day. The mother stated that the teacher sent daily text messages asking if it was ok to come that day and would say things such as "I've had a rough day" so the mother felt like she didn't really want to come and would agree to skip that day. The mother thought that actual cancellations had occurred 5 times or a maybe a little less but stated that she did not do time sheets so she had no idea what hours the teacher had claimed. She said the teacher and she would just "flex" the schedule every week, but at first it was 1 hour a day except Fridays. The week of April 20, 2015, the family went on vacation and the student and her personal worker stayed home. The teacher had training that same week so they agreed that she did not have to come that week if she did not want to.

In May, the teacher had stated "you're going to have an IEP soon" for weeks, so the mother finally called and asked about it and picked a date, but stated she never received a notice confirming it. Then, on 5/11/15 she received a written notice of IEP which had the box marked stating she waived the 10 days' notice; the mother said she did not waive the notice so she did not sign the form. The mother stated that she only had 2-3 days to get in touch with the BA and support worker and they rearranged their schedules to be there because the school had not sent them a notice inviting them to attend.

<u>F. Homebound Instructor:</u> The homebound instructor that the HRA met with was the second instructor that the student had for the school year. The first teacher began in the fall and was no longer employed by the WCSE and was unavailable for interview. This instructor began in January and finished the school year with the student. The homebound instructor informed the HRA that this was her first homebound instruction experience. She described her homebound instruction with the student as being geared more towards compliance to become more involved. They would look at books, play with blocks and work on colors as much as the student would tolerate. They also worked on fine motor skills such as taking the lids off of potato chip containers and putting it back on and pouring her own drinks. The mother always sat at the table with them and would help initiate the student's instruction. The student had a very short attention span and food was a motivator for her. She would work as long as there was food present to keep the student at the table, but she would leave the table after the food was gone. There were a few times that they would go to a local fast food restaurant because the student enjoyed that and

stated that she did fine there and would tolerate it for 30-45 minutes at a time. The student would often go to her room to avoid tasks that she did not want to complete or would "push away" when she was not interested in a particular activity, but the student was never aggressive towards her. At first, when the student would go to her room the instructor just took that as her que that the student was done for the day. Eventually, she stated that she did go into her room and finish a book that they had started if the student would get up and leave the table prior to finishing the story; the instructor stated that the student tolerated that the few times that she tried it. The instructor stated that she typically worked 5 hours per week with the student at the request of the parents. It started out as Monday through Wednesday but after that the mother and she would just work out the schedule for schooling between the two of them via text message or emails. The teacher stated that there were some cancellations on both sides (hers and the mothers) but not a lot. She recalled one week when the student had the stomach flu that she did not come and another time when she was undergoing some medication adjustments. She stated that she did not make up the times that were cancelled but that the mother was ok with that. She conceded that the month of May was "hit and miss" due to the student's illness and training on her part. The instructor did state that the student "went backwards" during the stomach flu but she did see improvements during the time that she worked with the student. She stated that at first she would only sit for 10-15 minutes at a time and by the end of the school year she was sitting at the table for about an hour, hit and miss. When asked if activities of daily living (ADLs) are considered educational curriculum for this student, she responded that, yes, that would be educational for her. She was unaware of any WCSE policies that outlined what could or could not be provided during homebound instruction; she stated that she just followed the IEP. When asked if the instructor felt that the student was capable of attending "mainstream public school" again, her response was that she did not know how to answer that because she did not "push" the student to see what she was capable of. The behavior analyst was taking a "naturalistic" approach to treatment which meant that the student initiated what she would or would not do. The instructor did not want to jeopardize what they were trying to accomplish, therefore she did not push the student to do more like she normally would other students. The instructor explained to the HRA that she decided to not return to this job after the school year was finished because she lives in a town that was approximately 30 minutes away from the student's home and the long drive was cutting into her class preparation time and she would get home too late at night. She accepted the job as a school year position and it was explained to the HRA that at the time she accepted the position, it had not yet been determined if the homebound instruction would even continue past the current school year. The instructor is currently working at a school closer to her home in a self-contained special education classroom. She stated that at the time she was providing homebound instruction for this student, she was also teaching in a behavioral disorders classroom.

II. Chart Review:

A..Individualized Education Plan (IEP): The 2009/2010 5th Grade IEP lists the student's primary eligibility as "cognitive disability" and indicates time inside the regular classroom as "less than 40% of the day." The student's strength's section states the student *"is a sweet natured and polite young lady. She works hard to learn new skills in the classroom. She has increased her verbal skills and is learning new ways to communicate. She has started performing many jobs around the classroom and the school. She has many friends."* The parental concerns section

states *"mother is concerned with [name's] life skills. Mother is planning on home schooling [name] next school year. She thinks that life skills would best be learned at home with family. Mother would also like [name] to be tested to get current info of academics skills."* The current level of academic achievement stated that the student was learning to recognize new words and symbols and was *"learning many new skills and jobs at school. She helps by delivering mail and taking the school lunch count to the kitchen personnel."* The present level of functional performance section stated that the student carried her tray at lunch and opened her milk independently and was learning to put her coat and backpack on and off with little help. It was also documented that she had very good computer skills. The speech/communication performance section documented that the student *"utilized single words and/or single signs to imitate or utilize functional vocabulary. It also stated that she would participate in activities with prompting but does not frequently initiate interactions with peers or adults or demonstrate motivation to maintain interactions initiated by others."* The section was summarized with the statement *"The severity of [name's] deficits cognitively negatively impacts her involvement and progress in the gen. ed. Curriculum and, a specialized instructional program is indicated."* The student's fine motor and cognitive skills were rated to be *"around the 3-3 ½ year level."* The IEP stated that she would be with the general education class during PE with no supplementary aids and during Art and Music classes with supplementary aids. All other classes were to be held in the special education classroom (English, Reading, Math, Science, Social Studies.) The student had the related services of Occupational Therapy (OT), Speech/Language Services, Aide-Individual Student, Transportation, School Health Services for the duration of the school year.

The <u>2014/2015 10th Grade IEP</u> dated 9/11/14 lists the eligibility *as "Multiple Disabilities"* and indicates 100% of time in special education and none in regular education. This IEP was also held to update the home based education program using the BA. The student's functional performance report stated *"refuses to leave the house and displays non-compliant behaviors, including aggression, fear, hallucinations, growling, losing control of bowels and bladder, displaying severe agitation when any demands are placed on her. When demands are placed on her to leave the house she refuses and physically must be removed from the house."* The IEP documented that the student had been receiving home bound instruction since March 5, 2014. Her last school evaluation dated May, 2013 reported that she *"is a sweet girl. She can hang up her coat and backpack on her own, [name] can carry her own lunch tray and she wipes her table after lunch. She likes to use her Alphabet cards and watch aide or teacher sign the cards. She will watch her aide or teacher for the majority of the time and she will occasionally turn the cards."* The parental educational concerns section stated that the mother *"indicates that [student] is in a crisis situation. Her anxiety levels are extremely high, escalating to 'fight or flight' when surroundings change beyond her home, specifically, her bedroom. She wants [student] to engage in community activities and progress in life skill development. [Mom] has established contacts with local agencies and providers to assist [student]."* It was noted that in August, 2014 the student's doctor had requested home/hospitalization instruction for the student due to her diagnosis of "Down's Syndrome, Autism and severe anxiety" for the duration of the school year through June, 2015. The student's present level of academic achievement according to documentation provided in January, 2014 stated *"likes her Alphabet cards [student] will listen to aide when discussing calendar, days of week and months. [Student] is not responding to matching, numbers, her*

name, seasons or colors. She refuses to pick up a crayon or pencil the majority of the time. She has held a paintbrush and a marker but only for a few seconds...[student] will pick up a crayon or pencil when she doesn't want to do something and throws it into the box. Aid and Teacher try to do hand over hand with tracing a line with pencil or crayon. [Student] shows little to no participation at all when she doesn't want to do something…has been growling every morning when mom brings her into school…she will begin growling when she doesn't want to do something…was withdrawn from school in March, 2014 and entered home schooling by parents. [Mom] requested to continue her education and IEP through home/hospitalization program for 2014-2015 school year." The additional notes/information section further explained the BCBA services by stating that the mother had requested a BCBA *to "conduct, develop and train on the implementation of an accurate FBA/BIP"* for the student due to her *"inability to participate in the community, including access an educational program."* The WCSE honored the parents request by including [name] SLP/BCBA of the [community Autism Center] in the development of the student's home/hospital education program and IEP. It was documented that the mother expressed concern with that agency providing services because she had been told previously that the autism center could not offer services to assist with her daughter's needs. The mother suggested the community behavior Associates that had been working with her daughter to provide the services. It was noted that the BA *"ensures that monthly reports will be shared with WCSE and that [agency] will train the homebound teacher with the necessary skills to instruct [student's] curriculum on a contractual basis. Specifics of the contractual services will be discussed. [Student's] academic and functional goals will be updated upon the completion of the FBA/BIP evaluation. Current evaluation data is not applicable because of drastic changes in behavior over the last year…the team determined that 5 hours of direct instruction, along with 5 hours of instructional support would meet [student's] needs. [Mom] was in agreement with this type of delivery to reduce the amount of people in the home due to [student's]anxiety…[WCSE Director] will contact [community BA agency] in order to establish a contractual agreement to begin the process of the FBA/BIP development and training opportunities for WCSE staff."* This IEP also documented the student's fine motor skills and cognitive skills to be at the 3-3½ year level.

Another IEP was held on 1/21/15 which documented that the student was making progress with accepting a new individual with whom she had not had an extensive history. She enjoyed going to fast food restaurants and shares her snacks with others. She responds to her name and *"explores a variety of toys in the environment."* The team members reported that she enjoys painting and displays strength in toileting, dressing and eating, which she completes independently. The student's present level of academic achievement section stated that the teacher had been following the "initial desensitization protocol prior to structured rapport building" created by the BA and noted that the teacher *"reports that no academic work has been attempted with [student] due to the extensive time necessary for the aforementioned protocol. The instructor has participated in daily logs and progress collected to build an educational and function plan for [student]. Some team members are concerned for the accuracy of the reporting from the teacher. Her reports of behaviors are often optimistic according to [mom], although the teacher reports positive interactions; they are of the type that are not witnessed by others. The team will introduce additional team members with more extensive training in behavior data collection and crisis prevention following today's meeting. Parent indicates that [student] has regressed academically over the past several years. Many of the skills obtained in elementary*

school are no longer present." The next section "Present Levels of Functional Performance" provided a summary from 2010, 2013, 2014 and 2015. In 2010 she was able to recognize pictures of common objects, make requests using sign, follow simple single step directions, school routines, greet others in passing, participate in group activities and complete work jobs with and without assistance. In 2013 an evaluation was completed *"to see where [student's] current levels of functioning are to better program for her at school following an extended time of home schooling by parent."* This evaluation indicated that her adaptive skills fell in the low range noting she had difficulty with communication, cannot point to 3 body parts or common objects, sometimes smiles and uses first names of siblings. It was noted that she could ask to toilet and put on clothes that open in the front and feed herself with a fork and spoon. It was noted that she prefers to be alone, is overly nervous, avoids social interaction and lacks energy and interest and *"has delays in adaptive skills that impact her participation in the classroom."* In 2014 target behaviors to be addressed were physical aggression (PA) and non-compliance. PA occurred 1 time every 2 weeks and non-compliance occurred daily in the classroom and had also occurred in the bathroom and hallway 2 times. In 2015, following one semester of the home based program, the parent reported that the student did not attempt to communicate in any form. She would take known reinforcers when offered; she indicated preferred items by pointing to, pulling to or standing by the item. She was able to physically be near others without engaging in disruptive behavior for at least 30 minutes, occasionally approached others to initiate social interaction and could dress herself, feed herself and pour solids from a container. She could toilet herself appropriately at home with assistance.

The final IEP reviewed was dated 5/14/15 and her present level of academic achievement was summarized as *"from January to May the trained teacher reports little to no educational progress. The team indicated that the teacher has established rapport with [student], however, she is not able to participate in any educational opportunities during the home based program despite the use of the developed plan…the IEP team recommends that a plan to re-integrate [student] into an educational setting is necessary and should be considered as part of short term and long term planning."* The student's present level of functional performance listed an IQ Composite of 40 and cognitive functioning range was listed as "lower extreme." The May, 2015 summary stated that the student *"has shown no academic progress. She has demonstrated some decline in independent functioning skills such as toileting…currently showing little eye contact with teacher during table time, she remains at the table only when presented an edible. Teacher reports [student] has displayed hallucinatory behavior on one occasion. A variety of modes, including visual, auditory and kinetic activities have been presented. On one occasion, [student] appeared to be listening to the teacher read a story for less than 3 minutes. [Student] left the area, entering her preferred and isolated location of her bedroom, the teacher continued reading, noting an increase in growling. [Student] often growls during non-preferred activities or in the presence of unknown individuals, as well as, randomly without known antecedent."* The Adverse Effects section again stated that *"the severity of [student's] adaptive, communication, cognitive and academic impairments impact [student's] access to the standard academic curriculum. Access to the regular school setting is not precluded by disability. A physician request for home based programming was provided for the duration of the 2014-2015 school year indicating 'down syndrome and severe anxiety' as the medical diagnosis, request extended on 5/14/15 for extended school year and diagnosis of 'bipolar disorder, autistic, moderate mental retardation and down syndrome."* The Additional notes/information section

included a statement that "*Throughout the school term, WCSE has contacted [BA agency] in an effort to obtain a final evaluation report and treatment plan for [student.] It was not provided until March 16, 2015. The provided report and plan is available in records as it fills a one inch binder. Parents were provided a copy of the evaluation. Information obtained through the use of the independent provider was used to develop the current plan...The IEP team recommends a plan for re-integrating [student] into an educational setting. This plan should begin in June, 2015 during extended school year. A program focusing on independent and functional skills is available for [student] to attend on a part time basis, as a start of re-integration. The small group setting is ideal for [student] to begin to slowly attend a program with necessary supports and therapy. The home health provider will begin 'drive bys' at [special needs school] to assist in a transition of moving towards an educational program. The home based health care provider will gradually introduce [student] to the school setting. The special education home based teacher will meet [student] at the school, as tolerated, for interaction with peers. This will be a gradual process as careful attention will be placed on [student's] ability to generalize across settings. Parent brought physician prescription for OT, PT and Speech Services. She would like for related services to be provided in a gradual manner as part of the home base education program. As part of an educational therapy services, an evaluation for OT and PT is necessary. Due to the time limits, parent would like to begin with speech therapy, introducing other therapy providers in a staggering manner. This will help [student] acclimate to new people at a slower pace. Speech services will be included as part of 2015 ESY program at home. An occupational therapy evaluation will be conducted at the beginning of 2015-2016 school year and included in next year's program services."*

<u>The Initial Desensitization Protocol Prior to Structured Rapport Building</u> that was prepared by the BCBA working with the student was reviewed. This program was very detailed and had several, gradual steps outlined to be completed by the instructor. Some examples are "*initial contact will consist of seated within sit sight presences [sic] (3-5 min. max) immediately leaving the area at the first sign of guarded/anxious behavior [which is defined in the program].*" The next step increases the duration to 4-8 minutes then 5-10 minutes etc…working up to 25-30 minutes. Once this has been accomplished, the instructor would move on to "cooperative interaction and peer acceptance protocol" which is defined as "*sustained eye contact for 15 seconds and acknowledge [student] with 'hi'. After this the individual will revert back to the desensitization protocol. This session should last no more than 3-5 minutes.*" This also increased to 5-8 minutes then 7-10 minutes up to 27-30 minutes. The program continued to include sharing a reinforcer in small increments, gradually increasing times to then speaking with the student.

<u>Attendance Records:</u> The following attendance records were provided by WCSE.

- August 2004-June 2010 (Kindergarten through 5th grade) - all years completed in general education with special education classes and related services at local public elementary school. On average she was absent 25-40 days each school year.
- August 2010 – June 2013 (6th, 7th and 8th grade) - parent choice to home school child. It was discouraged by the school system. There was a brief period of re-enrollment November 27, 2012 during her 8th grade year.

- August 2013 – enrolled in 9th grade withdrawn by parent March 5, 2014 of same year to home school. [Parent indicated that the student was withdrawn at the request of her physician]
- August 2014 – enrolled in 10th grade with a homebound prescription from physician. Services were still being provided at the time of the HRA investigation.

B. Physical Therapy (PT) Evaluation: The student's chart included PT/OT and Speech Therapy orders for the year 2009. Also, a notification of conference dated 10/31/13 documented that the parent had requested evaluations that were recommended by the Down Syndrome Clinic be completed and noted that the school "will complete PT, OT and FBA evaluations." The HRA reviewed a PT evaluation completed November, 2013 through January, 2014. The findings included recommending orthotics, if the student would tolerate wearing them, due to low tone in her feet. It was noted that she was able to fully access all of her current environments without difficulty and did not have trouble navigating her classroom or halls. It was the evaluator's opinion that the student *"is accessing her educational needs without difficulty. She would benefit from more activity to help her with weight control and strength. [Student] should be encouraged and motivated in PE to be active in some way. [Student's] foot alignment is consistent with her low tone and laxity. This could be supported with an orthotics to allow her to clear her feet better and help with her balance….If changes in [student's] physical condition deem it necessary, a reassessment can be requested."*

C. Physician Orders: The HRA reviewed a prescription dated 5/14/13 from the student's pediatrician for Occupational Therapy (OT) for school year 2013-2014. Also, a specialized clinic had prescribed OT to "evaluate and treat for sensory processing difficulty" on 7/18/13. The HRA also reviewed a prescription from the student's pediatrician for "homebound services from 8/12/14-6/1/15 due to severe anxiety." The prescription requested that 10 hours weekly of homebound services be provided.

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

D. Releases: The HRA found the following releases of information: for Williamson County Special Education, A community case coordination service and a tri-county community agency to release *"medical, financial, personal and other program information for the purposes of determining my eligibility for programs, planning my services and supports and monitoring my service delivery."* Agencies authorized on the releases to receive this information were listed as US Department of Health and Human Services, Social Security Administration, Department of

Human Services, Healthcare and Family Services, Public Health, Other state agencies that operate a Medicaid Home and Community Based Services waiver program, State Board of Education and Local agencies under contract with DHS for the provision of service coordination, employer agent services or *"other supports and services which are involved in my individual service plan;"* the releases are valid through 5/21/19;

E. Emails from the Behavior Analyst (BA): At the request of the HRA and with a release from the mother, the BA forwarded several emails to the HRA that were dated September, 2014 through May, 2015. The HRA reviewed the emails to see if any were sent to anyone who would not have been a member of this student's treatment team to address the breach of confidentiality allegation. The emails reviewed were between the BA, the personal aide, SST (Support Service Team) workers, staff at WCSE and the ISSA (Individual Service and Support Advocacy) worker. The HRA found no emails to the community autism center within the emails that were received for review.

Regarding the contract between WCSE and the BA, an email dated 9/12/14 from the SST worker summarized the meeting and outlined the treatment plan for the student. The homebound instructor and the personal aide would share 10 hours per week (5 each) which would be worked out between the two of them and the mother. The FBA (functional behavioral assessment) was to be completed within 3 months and the BA and WCSE Director would work out the contract and then continue with the assessment. On 9/15/14 the SST worker sent a follow up email stating to *"let me know how I can help in moving forward with this contract and starting services in moving forward."* On 9/17/14, the BA sent the proposal to the Director who responded later that day and stated WCSE had *"hesitation with a few of the services as described in the proposal"* and in summary, stated they agreed to the top 3 service types listed under the services rendered in the proposal and stated that *"once we have an official contract, we can proceed."* A follow up email on 9/19/14 from the BA to SST stated that she had spoken with the Director who stated she cannot release any school files until there is a contract in place. The BA stated she *"plans to resubmit the proposal today."* A follow up email dated 9/24/14 was sent by the SST worker to see where they were on finalizing the contract and stated she would be working with the teacher, the aide and the mother to continue to work on goals. The BA responded that she did not think that was a good idea and that it *"would hurt the integrity of the assessments and the team needs to be involved in the treatment decision."* The BA continued to state that she was speaking with the mother the following day about services that they would agree to and stated she would resubmit the proposal after that. On 9/29/14 the WCSE Director emailed the BA and copied to the SST worker to touch base and stated *"since we are waiting for an agreement with [BA company] we have not copied her Special Education file."* The BA responded that she could talk the following day (9/30/14) on the telephone. The next emails were dated 11/18/14, 1/5/15 and 1/20/15 but did not mention the contract status. An email dated 4/21/15 from the BA to the Director of WCSE was sent requesting a meeting or phone call to discuss some issues and also the invoice that WCSE received on 3/9/15. The Director responded that they were out of school until 3/15/15 and therefore did not receive it until 3/16/15. The Director stated she was reviewing it and stated that it *"far exceeded our agreement and therefore, subject for concern to myself and the WCES Executive Board."* She further explained that it will be discussed at the board meeting on 5/15/15 and the BA could expect to receive written communication and agreed upon payment within the next week. That was the final email received by the HRA for review.

Statutes & Definitions

The Code of Federal Regulations (CFR) in Section 300.39 defines *special education* as "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability including instruction conducted in the classroom, in the home…." Travel training means "providing instruction, as appropriate, to… children with disabilities who require this instruction, to enable them to…learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community)." *Free Appropriate Public Education (FAPE)* is outlined in section 300.101 as "a free appropriate public education [that] must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d)." Section 300.5 outlines ***Assistive technology device*** **as "any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.** The term does not include a medical device that is surgically implanted, or the replacement of such device." Section 300.34 defines **Related Services** as "Related services means transportation and such developmental, corrective, and **other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology** and audiology services, interpreting services, psychological services, **physical and occupational therapy**, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and **mobility services**, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training."

The IDEA (20 USCA 1414) defines individualized education program (IEP) as "a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes… **(IV)** a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, *to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child"* The term individualized education program team (IEP Team) is defined as "a group of individuals composed of **(i)** the parents of a child with a disability; **(ii)** not less than 1 regular education teacher of such child…**(iii)** not less than 1 special education teacher…**(iv)** a representative of the local educational agency who **(I)** is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; **(II)** is knowledgeable about the general education curriculum; and **(III)** is knowledgeable about the availability of resources of the local educational agency; **(v)** an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi); **(vi)** at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and **(vii)** whenever appropriate, the child with a disability"

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

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

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

Section 300.107, on Nonacademic Services, provides that *"The State must ensure the following: (a) Each public agency must take steps,* ***including the provision of supplementary aids*** *and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available."*

Section 300.110 requires that *"the State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education."*

Section 300.305 states, *"Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services*

available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education , and vocational education."

Section 300.322 on Parent Participation requires that *"Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place…Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with § 300.328 (related to alternative means of meeting participation). (d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as--(1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits."*

The Code of Federal Regulations (28 CFR 35.130) prohibits discrimination on the basis of disability by stating *"No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. A public entity, in providing any aid, benefit, or service, <u>may not</u>, directly or through contractual, licensing, or other arrangements, <u>on the basis of disability</u>:*
(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;
(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;
(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;
(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service. A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities."

The Illinois Administrative Code (23 IL ADC 226.300) requires that each local school district ensure that a continuum of placement is available to meet the needs of children with disabilities for special education and related services and states the following with respect to home instruction *"the child receives services at home…because he or she is unable to attend school elsewhere due to a medical condition; when an eligible student has a medical condition that will cause an absence for two or more consecutive weeks of school…the IEP team for that child shall consider the need for home or hospital services. Such consideration shall be based upon a written statement from a physician licensed to practice medicine in all its branches which specifies…if an IEP team determines that home or hospital services are medically necessary, the team shall develop or revise the child's IEP accordingly. The amount of instructional or related service time provided through the home or hospital program shall be determined in relation the child's educational needs and physical and mental health needs. The amount of instructional time shall not be less than five hours per week unless the physician has certified in writing that the child should not receive as many as five hours of instruction in a school week…services required by the IEP shall be implemented as soon as possible after the district receives the physician's statement."*

Conclusion

The complaint alleged that accommodations were not made for a student with a disability. Specifically, she was not provided behavioral analyst services or a PT evaluation for a wheelchair. Although the HRA found some documentation indicating that there was some concern on the part of WCSE to provide Behavioral Analyst services from an outside contracted agency rather than using their staff to provide this service, WCSE agreed to provide the BA through the contracted agency since rapport had already been built between the BA and the student; WCSE felt it was in her best interest to continue with that established therapist. There was evidence to suggest that there was some dispute between WCSE and the community agency providing the service involving the agreed upon contract and what services would be paid for, the student still had access to the BA during the time that contract details were being resolved and this portion of the allegation is unsubstantiated.

The second part of this allegation involved access to a PT evaluation for a wheelchair. The parent explained that she was requesting WCSE to provide a PT evaluation to determine if the student needed a wheelchair to help with her seclusion issues due to anxiety, which is why the student was on homebound status. The BA was of the opinion that a wheelchair would be beneficial for "desensitizing" her due to her avoidance and withdrawal behaviors. She stated that a chair would help because if she was uncomfortable, they could get her out of a situation quicker and stated that you cannot "force" her into situations due to her anxiety issues. The parent contended that the chair should be considered for educational access because if the student could overcome her anxiety, then she would be able to return to school and eventually be able to work or live in the community. In addition, there had been some prior questions regarding hip pain, foot issues and possible mobility concerns that may have contributed to the avoidance and other behaviors. The parent stated that she had insurance that would have paid for the wheelchair if a PT evaluation would have been completed that indicated a wheelchair would be beneficial. WCSE contended that any service they provide, by law, must improve her access to education

and since this student was on homebound status and did not require a wheelchair to access a school building, then they could not provide the PT evaluation without a current physician's order, which has to be renewed each school year. The only orders provided to the HRA for review were from 2009 and 2013 and this would have been the 2014 school year. The HRA reviewed a PT evaluation that was completed November, 2013 through January, 2014 (previous school year at the local school). The findings included recommending orthotics and included a statement that the student was "*assessing her educational needs without difficulty. She would benefit from more activity to help her with weight control and strength. [Student] should be encouraged and motivated in PE to be active in some way."* There was no mention of a wheelchair assessment. However, this evaluation was completed before the student's issues of seclusion/anxiety had emerged, so not all of the current factors were included in this assessment.

The HRA contends that the wheelchair being used for anxiety/seclusion issues as well as to address possible physical mobility needs could be viewed as an aid to improve access to education according to the definition of related services in the Code of Federal Regulations (300.34) and the purpose of the IDEA (20 USCA 1400) which is listed as *"to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and* ***related services designed to meet their unique needs and prepare them for further education, employment, and independent living…"*** Due to the wheelchair and PT issues, the HRA **substantiates** the accommodation allegation as it pertains to related services; related services can facilitate access to education and further education, employment and independent living skills. The HRA contends that WCSE should consider all aspects of educational access when creating IEPs and determining which services should be provided in order to ensure that services provided incorporate all of the student's individual needs including those that may not be considered "typical" educational services as every child's needs are individualized according to his/her own needs. **The HRA recommends the following:**

1. **To ensure the provision of FAPE, consider the unique needs of students, including a review of related services such as PT and wheelchairs, to facilitate further education, employment and independent living as required by federal mandates.**

2. **Convene an IEP meeting for this student to review needed related services.**

The next allegation was that WCSE failed to communicate with the parent/guardian about an IEP (Individualized Educational Plan) meeting. The meeting in question allegedly occurred October 8th, however WCSE did not have a meeting on that specific date however there were meetings in October and November. The HRA discovered that the meeting was one that was scheduled with the behavior analysts (BA) to discuss their contract and what services and how many hours WCSE would provide for the student. The Director informed the HRA that she did not invite the mother to the meeting because she felt bad discussing finances in front of the mother and did not want to offend the mother by having her think she was referring to her daughter as dollar signs and not as a person. The BA felt that the mother should be involved in all meetings concerning her daughter and told her about the meeting. The mother did attend the meeting and the Director did not object to her being there. However, the HRA contends that although part of the meeting was to discuss contractual agreements with the BA and may not

have directly involved the student or mother, a portion of that meeting involved discussing the number of hours and which type of services/supports provided by the BA that WCSE would pay for and how services will be delivered. Therefore, the mother should have been included in the meeting as required by the IDEA (20 USCA 1414). The HRA **substantiates** this allegation and makes the following **recommendation:**

1. **WCSE should ensure that in the future parents/guardians are notified of all meetings involving their child and given the opportunity to participate if they chose to do so following the guidelines in the Code of Federal Regulations (34 CFR Section 300.322).**

Another allegation was that WCSE breached confidentiality when communicating with an outside agency regarding specifics about the student's disability and treatment options. It was alleged that the behavioral analyst's proposal for services had been forwarded to outside agencies for review including a community autism center. The HRA reviewed several emails that were provided and found that no one was included in those emails who was not a part of the student's treatment team. When questioned about this allegation, the Director explained that the state does not require a BCBA from WCSE and they typically provide graduate internships to provide this service. WCSE contended that the BA that the mother was requesting was less qualified than their social worker, therefore, she wanted to discuss it further so a meeting was scheduled. The graduate assistant was at the IEP meeting with her supervisor who is a BCBA. She explained that the intern came to the meeting as a consult and they did not discuss specifics when the introductions were made. The mother was familiar with this agency and stated they had turned her daughter away once before. WCSE asked the mother if she objected to the intern participating in the meeting and the mother said she didn't care. The Director contended that this was the only time the student's specifics were discussed and other than her name, anything the intern knew was from the meeting which the mother agreed for her to attend/stay at. The Director denied that any emails were sent to outside agencies that revealed anything specific about who this student was and the HRA found no emails to support this allegation. Therefore this allegation is **unsubstantiated**.

The final allegation concerning discrimination based on a student's disability is being deferred to Case #15-110-9010, Crab Orchard School District.

RESPONSE

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

WILLIAMSON COUNTY
Special Education District

October 7, 2015

As the service provider receiving recommendations regarding HRA Case # 15-110-9009, Williamson County Special Education Services offers the following response and request that our response be included as part of the public record.

The District/WCES convened an IEP meeting for the Student on September 21, 2015, at which time the Student's individual needs were discussed and all concerns of the parent were addressed.

The District/WCES will ensure that a parent is invited to any meeting (as defined by 34 CFR 300.322), but notes that the regulations make clear that "A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting." 34 C.F.R. §§ 300.501(b)(ii)(3).

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