

June 19, 2014

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This is a formal systemic complaint under 34 C.F.R. §§300.151-.153 and Iowa Administrative Code 281-41.151-.153. Please see the following pages showing how the school district did not follow the law and the facts outlining how that occurred.

Complainant:

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This systemic complaint is being filed on behalf of the students residing at the Clarinda Academy.

Name of District, School, and AEA:

Clarinda Community School District
423 East Nodaway
Clarinda, IA 51632

Clarinda Academy
1820 North 16th Street
Clarinda, IA 51632

Green Hills AEA
P.O. Box 1109
24997 Highway 92
Council Bluffs, IA 51502

Background Information:

Disability Rights Iowa (DRI) monitors facilities housing children with disabilities as part of its legal mandate under the federal laws that establish the Protection and Advocacy (P & A) system. One role of a P & A is to ensure that children and youth with disabilities are receiving appropriate special education and supports, including children and youth in privately run residential treatment facilities.

DRI began a limited monitoring of Clarinda Academy (hereinafter Clarinda) in January 2014 as a method of following-up on girls who were transferred from the Iowa Juvenile Home (IJH) to privately run facilities. There were four girls transferred to Clarinda that DRI interviewed and subsequently requested their IEPs. Three of the four girls had IEPs. The IEPs were provided to DRI on March 4, 2014.

DRI reviewed the IEPs and on May 22, 2014 DRI requested that Clarinda send any updated IEPs as a result of DRI's review comments. Clarinda responded that there were no updates to the three girls' IEPs.

The student exemplars are as follows:

- Student #1 – Admitted to Clarinda on 12/13/13. Her Clarinda IEP is dated 12/13/13. She just recently turned 17 years old. She is no longer at Clarinda. (See Exhibit A – IEP for Student #1)
- Student #2 – Admitted to Clarinda on 1/3/14. Her Clarinda IEP is dated 1/3/14. She is 16 years and 8 months old. (See Exhibit B – IEP for Student #2)

- Student #3 – Admitted to Clarinda on 11/20/13. Her Clarinda IEP is dated 11/20/13. She is 17 years and 10 months old. She is no longer at Clarinda. (See Exhibit C – IEP for Student #3)

DRI found many IDEA violations during the review of the three students' IEPs and due to the nature of the issues there is good reason to believe there is a systemic policy and procedure issue at Clarinda that warrants further investigation by the Iowa Department of Education.

Results of the Review

DRI found that supports and services for students with challenging behaviors were not being provided on an individualized basis.

- All three students had Functional Behavior Assessments and Behavior Intervention Plans prior to arriving at Clarinda but no longer have them at Clarinda.
- All three students' IEPs state that behavior will be addressed in the IEP.
- The language in all three students' behavior goals is exactly the same and there is no individualized description of the behavior that is of concern, the baseline observation of that behavior, and the goals for that behavior.
- In all three students' IEPs the language under "Other Information Essential for the development of this IEP" discusses Clarinda's institutional program of seven levels of intervention and the four core norms. It specifically states, "All students who attend Clarinda Academy are subject to this behavior plan, regardless of IEP behavioral goals."
- In all three students' IEPs the language under the section that describes the effect of the disability on accessing the general curriculum is exactly the same and there is no individualized description of the behaviors noted.
- All three students IEPs provide exactly the same service for behavior for exactly the same amount of time per day in the general education setting with exactly the same generic description of specially designed instruction.

DRI found that the transition planning was lacking in all areas and was not individualized.

- All three students' IEPs have exactly the same language stated in the "Living Results" field and none address living as an area of need that will be addressed with goals, services, or activities in the IEP.

- All three students' IEPs do not state any specific post-secondary goals in the Learning section nor do they provide for any needed instruction to reach any post-secondary goals.
- All three students' IEPs note that working is an area of need that will be addressed with goals, services or activities but fail to provide any of these within the IEP. No training or vocational needs are addressed in these IEPs.
- All three students had greater detail in their previous IEP transition plans than the current IEPs at Clarinda.
- Student #1 had a detailed transition plan including information regarding requirements for a Marshalltown Community College Human Services Degree, connections to vocational rehabilitation, and community linkages on the IJH revised IEP dated 7/25/13. The Clarinda IEP dated 12/13/13 does not include any of this information nor does it include any reason for deleting this information. (See Exhibit D – IJH IEP for Student #1).

DRI found that the academic goals and services are not addressing the areas in which the student is discrepant from peers and are not individualized.

- Student #1 had a STAR Reading score of 4.5 but reading is not addressed with goals, services, or activities in the IEP. There is no explanation given.
- Student #3 had a STAR Math score of 8.6 but math is not addressed with goals, services, or activities in the IEP. There is no explanation given.
- All three students' IEPs provided specialized instruction in academics at 30 min/day in general education setting with collaboration with the special education teacher. There is no difference in services even though the goals and discrepancies are different.
- In all three students' IEPs, the language under the section that describes the effect of the disability on accessing the general curriculum lists the areas of reading, writing, and math regardless of whether the individual student has goals in each of those areas.

DRI found that there does not seem to be a good understanding of the IDEA Child Find requirements at Clarinda

- Clarinda staff was not able to articulate the school's child find policy and procedure for identifying, locating, and evaluating students with disabilities. Clarinda stated that the MAP test is administered to every student at admission to Clarinda but could not explain the process for evaluating a student who may be identified as possibly needing special education.

- Many of the youth at Clarinda have a mental health diagnosis, have had multiple out of home placements, have been court ordered to the facility for behavioral reasons, and are academically behind when they are admitted to Clarinda.

Nature of the Problem

Clarinda has denied eligible students a free and appropriate public education (FAPE) by violating the IDEA in the following areas:

1) **Lack of individualized supports and services for students with challenging behaviors.**

In the case of a student whose behavior impedes the student's learning or that of others, the IEP team is required to consider the use of positive behavioral interventions and supports and other strategies when developing the student's IEP. 34 C.F.R. §300.324(a)(2)(i); 281-IAC 41.324(1)(b)(1).

If a student's behavior is to be addressed by goals in the IEP, then the specially designed instruction for meeting those goals must address the unique needs of the student and therefore must be individualized. 34 C.F.R. §300.39(b)(3); 281 IAC 41.39(3)(c). According to the Iowa Department of Education, "[c]ut-and-paste, one-size-fits-all IEP goals or services do not meet this definition." *Iowa Juvenile Home and Girls State Training School*, 62 IDELR 308 (December 20, 2013). Furthermore, "[i]f an entity develops look-a-like goals for all children with disabilities that it serves because that is how it conducts business, that entity is not providing special education. See generally *Gagliardo v. Arlington C. Sch. Dist.*, 489 F.3d 105 (2nd Cir. 2007)". *Id.*

Clarinda is violating these stated requirements of the IDEA. All three IEPs reviewed contain no descriptions of positive behavioral interventions or supports through the use of a Functional Behavior Assessment or Behavior Intervention Plan. All of the IEPs use a one-size-fits-all approach to the behavioral goals, supports, and services and therefore provide no individualized program in regards to behavior. Therefore, no special education is being provided by Clarinda in regards to behavior in these instances.

2) **Lack of transition planning**

IEPs are required to provide transition services beginning at the age of 14. The transition services must include appropriate, measureable postsecondary goals related to training, education, employment, and independent living skills. These

services must assist the student in reaching those goals. 20 U.S.C. §1414(d)(1)(A)(VIII); 34 C.F.R. §300.320(b); 281-IAC 41.320(2).

Transition services must be based on an individual student's needs, taking into account the student's strengths, preferences, and interests. Transition services must be designed using a results-oriented process that is focused on improving the academic and functional achievement of the student to facilitate movement from school to post-school activities. Transition services include instruction, related services, community experiences, and other activities. 34 C.F.R. §300.43; 281-IAC 41.43. Furthermore, transition goals and services are designed to be results-oriented; mere inclusion of language is not enough. See 72 Fed. Reg. 46668 (8/14/06).

The transition requirements in the IDEA are measured by the State of Iowa's Indicator 13 which is part of the state performance plans and annual reports that are required by the IDEA. 34 C.F.R. §§300.601-.602. There are six critical elements to Indicator 13 and the required target for all six elements is 100 percent. According to the Iowa Department of Education:

“These six elements are ‘critical’ not only because they are educationally meaningful and relevant but because each critical element directly corresponds with a legal requirement or requirements imposed by the IDEA. Attainment of each critical element for every child is a requirement of the law, see Iowa Admin. Code rr. 281-41.43, 281-41.320(2), 281-41.321(2), and a component of FAPE, see *id.* r. 281-41.17. Since transition requirements are primarily housed in the law's provisions on IEPs, noncompliance with these requirements strikes directly and deeply at the IDEA's core entitlement. They are manifestly more than ‘compliance hoops’ or ‘paperwork’. The law is uncompromising, and compels the following conclusion: failure to do transition well enough to satisfy the Indicator 13 standard is a failure to do special education at all.” *Iowa Juvenile Home and Girls State Training School*, 62 IDELR 308 (December 20, 2013).

Clarinda is violating these stated requirements of the IDEA. All three IEPs reviewed lacked appropriate post-secondary goals related to training, education, employment, and independent living skills. All of the IEPs lacked an individualized results-oriented process in the transition plan and it is highly doubtful that they would come close to 100% percent compliance on the State Indicator 13. Therefore, special education in the required area of transition is not being provided by Clarinda in these instances.

3) Lack of “Individualization” of IEPs

IEPs are required to include individualized measurable annual goals based on the student’s present levels of academic achievement and functional performance. They should provide special education and related services that enable the child to advance in their annual goals and access the general education curriculum. 20 U.S.C. §1414(d); 34 C.F.R. §300.320; 281-IAC 41.320.

Specially designed instruction must address the unique needs of the student and therefore must be individualized. 34 C.F.R. §300.39(b)(3); 281 IAC 41.39(3)(c). According to the Iowa Department of Education, “[c]ut-and-paste, one-size-fits-all IEP goals or services do not meet this definition.” *Iowa Juvenile Home and Girls State Training School*, 62 IDELR 308 (December 20, 2013). Furthermore, “[i]f an entity develops look-a-like goals for all children with disabilities that it serves because that is how it conducts business, that entity is not providing special education. See generally *Gagliardo v. Arlington C. Sch. Dist.*, 489 F.3d 105 (2nd Cir. 2007)”. *Id.*

Clarinda is violating these stated requirements of the IDEA. Two of the three IEPs reviewed provided testing results that were discrepant from their peers but did not provide services based on this measured present level of performance. All the IEPs had a one-size-fits-all approach to the specialized instruction and services for the student. Therefore, these IEPs show a lack of individualized measureable goals and specialized instruction based upon the student’s present levels of performance which leads to the conclusion that Clarinda is not providing special education in these areas.

4) Lack of a policy and procedure for ensuring Child Find

The LEA and AEA are required to identify, locate, and evaluate all children with disabilities. 20 U.S.C. §1412(a)(3); 34 C.F.R. §300.111; 281-IAC 41.111.

This includes students with a disability in need of special education even though they are advancing from grade to grade and it also includes students who are highly mobile. 34 C.F.R. §300.111(c); 281-IAC 41.111(3).

There is reason to believe Clarinda is violating these stated requirements of the IDEA. Given the demographics of the population at Clarinda, the staff of the school should be able to articulate how the school fulfills the child find

requirement of the IDEA. Inability to articulate this requirement leads one to believe that it is not being implemented and students who may be eligible are not being identified, located, and evaluated.

The IDEA Violations at Clarinda Are a Denial of FAPE

According to the IDEA, “a free appropriate public education is available to all children with disabilities residing in the state between the ages of 3 and 21.” 20 U.S.C. § 1412(a)(1); 34 C.F.R. §300.101; 281-IAC 41.101. FAPE is defined by the IDEA, in part, as special education and related services that meet the standards of the State educational agency and are provided in conformity with the legal requirements for the IEP. 20 U.S.C. §1401(9); 34 C.F.R. §300.17; 281-IAC 41.17. Special education is defined by the IDEA, in part, as specially designed instruction that meets the unique needs of a child with a disability. 20 U.S.C. §1401(28); 34 C.F.R. §300.39; 281-IAC 41.39. The U.S. Supreme Court established a two-prong test to decide whether the individual student’s education is appropriate: (1) Has the state complied with the procedures of the IDEA; and (2) Is the IEP developed through the IDEA’s procedures reasonably calculated to enable the child to receive educational benefits? *Board of Educ. Of the Hendrick Hudson Cent. Sch. Dist. V. Rowley*, 458 U.S. 176 (U.S. 1982).

As stated above, the boilerplate IEPs including the behavioral, academic, and transitional programs, are in violation of the IDEA and the unique needs of the child with a disability are not being addressed. Students in need of specialized instruction, who are receiving little to no specialized instruction, are probably not receiving any educational benefit through their IEP. Therefore, the students are not receiving an appropriate education and thus are being denied FAPE.

Proposed Corrective Action

1. For the SEA to conduct an independent review of all students residing at Clarinda for more than 30 days over the previous year who were eligible for transition planning. This review shall evaluate these cases for educational loss and order appropriate compensatory education in all cases in which violations of the IDEA and Iowa's special education regulations are found.
2. SEA to immediately reconvene IEP teams of all current students of Clarinda to ensure compliance with the IDEA and Section 504 requirements. SEA staff to attend such meetings and IEP team to consider compensatory education in all cases in which violations of IDEA and Iowa special education regulations are found.
3. SEA to ensure adequate number of certified personnel are working at Clarinda and adequate staff is provided by the AEA to support staff at Clarinda to meet IDEA obligations.
4. SEA to conduct training for all Clarinda educational staff and leadership on IDEA standards and obligations, and provide additional specific training(s) on any topic deemed appropriate by the SEA. The AEA staff assigned to work with Clarinda should attend all of these trainings. Written proof of attendance at such training(s) will be provided to DRI within 30 days of completion of the training(s).
5. Clarinda and AEA to review and revise policies and procedures to ensure child find, evaluations, IEPs, behavioral supports and services, and transition planning are in compliance with the IDEA.
6. SEA to require collaboration between the students' IEP teams and JCO's or DHS caseworkers.
7. SEA to monitor Clarinda's special education program quarterly for three years and report findings to DRI.

Disability Rights Iowa

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