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**OFFICE OF SPECIAL EDUCATION**

FINAL RESOLUTION for State Complaint C-7599-13 against  
the East Grand Rapids Public Schools  
April 25, 2013

Certified Mail

Sara Shubel, Ph.D., Superintendent  
East Grand Rapids Public Schools  
2915 Hall Street SE  
Grand Rapids, Michigan 49506-3111

and Dr. Shubel:

In state complaint C-7599-13, filed on March 25, 2013 against the East Grand Rapids Public Schools (district), (complainant) alleges that the district's publicly posted policy *East Grand Rapids Public Schools Procedures for Determining a Specific Learning Disability* systematically violates several regulations of the Individuals with Disabilities Education Act (IDEA), the Michigan Department of Education (MDE) Office of Special Education (OSE) *Michigan Criteria for Determining the Existence of a Specific Learning Disability* (October 2010) and Rule 340.1713 of the Michigan Administrative Rules for Special Education (MARSE).

The OSE *Michigan Criteria for Determining the Existence of a Specific Learning Disability* (October 2010) is a guidance document rather than a rule or regulation. Districts cannot be found to meet or not meet the requirements in using it.

The IDEA and the MARSE govern special education in Michigan. Districts can be found to meet or not meet the requirements of these regulations and rules.

The complainant cites the following regulations of the IDEA and a rule of the MARSE that he alleges the district has violated:

34 CFR § 300.111 requires that the state must have in effect policies and procedures to ensure that all children with disabilities residing in the state and who are in need of special education and related services are identified, located and evaluated.

34 CFR § 300.304(b)(2) Evaluation procedures – the district must not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student.

34 CFR § 300.306(c)(1)(i) Procedures for determining eligibility and educational need – in interpreting the evaluation data for the purpose of determining if a student is a student with a disability and the educational needs of the student, the district must draw on information from a variety of sources including aptitude and achievement tests, parent input and teacher recommendations as well as information about the student's physical condition, social or cultural background and adaptive behavior.

34 CFR § 300.307(b) requires that the district use the state criteria in determining whether a student has a specific learning disability.

34 CFR § 300.308(a) requires that the student's general education teacher must be a part of the group that determines whether a student has a specific learning disability.

34 CFR § 300.309(a)(1) indicates that the district team including the parent and qualified professionals may determine that a student has a specific learning disability if the student does not achieve adequately for the student's age or to meet state-approved grade-level standards in one or more of the following areas when provided with instruction appropriate for the student's age or state-approved grade level standards: oral expression, listening comprehension, written expression, basic reading skill, reading fluency, reading comprehension, mathematics calculation, mathematics problem solving.

34 CFR § 300.309(a)(2)(ii) indicates in part that as a part of the determination that a student is a student with a specific learning disability the district team may use a process based on the student exhibiting a pattern of strengths and weaknesses in performance, achievement or both relative to age, state-approved standards or intellectual development that is determined by the group to be relevant to the identification of a specific learning disability using appropriate assessments.

R 340.1713(3)(a) requires that the determination of a specific learning disability shall be based on a full and individual evaluation by a multidisciplinary evaluation team that includes a general education teacher.

The OSE reviewed the above rule and regulations as well as the following IDEA regulations in connection with the investigation:

34 CFR § 300.306(b)(1) requires that a student must not be determined to be a student with a disability if the determinant factor is lack of appropriate instruction in reading, including the essential components of reading, lack of appropriate instruction in math or limited English proficiency.

34 CFR § 300.321(a) requires the district to ensure that the individualized education program team for each student with a disability include at a minimum the student's parent, the student's general education teacher, a special education teacher, a representative of the district and an individual who can interpret the instructional implications of evaluation results.

The complainant notes that although there are 42 separate allegations, they all relate to the *East Grand Rapids Public Schools Procedures for Determining a Specific Learning Disability* posted on the district web site. The one fact presented by the complainant is the posted policy. The rest of the complaint is speculative, predicated on the complainant's assumption that the policy itself is noncompliant with the IDEA and the MARSE. The statistical analysis provided by the complainant on district eligibility rates for special education and specific learning disability assumes that correlation implies causation and contains methodological flaws. The complainant did not identify any student involved in the district's specific learning disability determination process who was impacted by the process. Therefore, the OSE reviewed the posted policy and the district's procedures with regard to the evaluation and identification of students for a specific learning disability to determine if they meet the requirements of the rule and regulations identified above.

As a part of the review, the OSE case manager and the Kent Intermediate School District (ISD) complaint investigator interviewed the following individuals:

- The complainant
- Sara Shubel, district superintendent
- Kathleen Wisniewski, district director of special education

In addition to the state complaint itself, the OSE reviewed the following documents:

- District written response to state complaint C-7599-13 dated April 10, 2013
- *East Grand Rapids Public Schools Procedures for Determining a Specific Learning Disability*
- *Pattern of Strengths and Weaknesses Guidelines* (Kent ISD) March 21, 2012
- Kent ISD training materials for the *Pattern of Strengths and Weaknesses Guidelines*
- OSE Memo: *Requirement to Make Public School District Processes for Determining the Existence of a Specific Learning Disability (10-7)*
- *Michigan Criteria for Determining the Existence of a Specific Learning Disability* (October 2010)
- *Fall 2012 K12 and SLD ID Rates.xls* submitted April 15, 2013 by the complainant

In May 2010 the OSE issued the memo *Requirement to Make Public School District Processes for Determining the Existence of a Specific Learning Disability (10-7)*.

This memo required districts to post on their web sites or otherwise make public the process or processes the district uses to determine eligibility as a student with a specific learning disability by September 1, 2010, pursuant to 34 CFR § 300.307(b). The *East Grand Rapids Public Schools Procedures for Determining a Specific Learning Disability* was posted on the district web site to meet this requirement. The district was only required to post or otherwise make public whether it was using a process based on the student's response to scientific, research-based intervention, a pattern of strengths and weaknesses or a combination of those two processes, which it did.

The district adopted the procedures in the Kent ISD *Pattern of Strengths and Weaknesses Guidelines* when they were published in March 2012. The district superintendent and director of special education indicated that evaluation procedures for determining eligibility as a student with a specific learning disability a specific learning disability are integrated into the district's general education multi-tiered system of supports in accordance with 34 CFR § 300.306(b)(1). The district provided additional information about their procedures in their written response to the complaint:

"East Grand Rapids Public Schools (EGRPS) staff has been working on the Response to Intervention (now termed Multi-Tiered System of Supports) process since the 2006-2007 school year, with formal committee work occurring during the 2008-2009, 2009-2010, and 2010-2011 school years. The district RTI-MTSS committee continues to meet periodically to review current student data, support services, and interventions. The RTI model in EGRPS has been structured from a "whole district K-12" perspective which includes both academic and behavioral supports. We use the core principles of RTI: we can effectively teach all children, intervene early, use a multi-tiered model of service delivery, and use a problem-solving method to make decisions within a multi-tier model. In using the problem solving model, multiple sources of information are reviewed to make decisions about the types of student support and services needed.

"Over the past several years EGRPS has developed many different general education interventions, at both the elementary and secondary level, that support our students' needs. Leveled literacy intervention and reading support, general education school social work, check and connect program, intervention specialist, math lab, study skills, and guided study classes, targeted tutoring, and guidance office counseling are some of the interventions that have successfully been put into place to support our students. As our students have successfully progressed in the curriculum with the support of general education interventions and services, fewer students have required special education services, the "top tier" of the RTI pyramid. The provision of RTI has resulted in the following; a decrease in referrals for special education evaluations, successfully maintaining students in their general education classrooms, and has also improved our indicators of disproportionality. Even as the ongoing budgetary difficulties in the state

of Michigan have necessitated many budget cuts in local school district programs and services, our general education academic and behavioral interventions have continued to be a priority for our district administrators, school board, teachers, and parents.

"Child Study Teams/Student Assistance Teams meet at a minimum, weekly at the elementary level and monthly at the secondary level. Team members include: building administrator(s), counselor (secondary level), general education teacher, reading teacher (elementary level), special education teacher, school psychologist, school social worker, and speech and language pathologist (elementary level). Teams review multiple sources of student data and develop interventions for students who struggle either academically or behaviorally, monitor student progress, and revise or develop new interventions as necessary.

Data sources for review of student progress include:

- Measures of Academic Progress (MAP) scores in reading, language, and mathematics
- MEAP scores
- K-6 Fountas and Pinnell Benchmark Assessment System scores
- K-5 monthly reading records
- Explore, Plan and ACT scores (middle school and high school)
- Pre and post assessments in content areas including mathematics
- Student attendance, health information, grades, homework completion, class work, test and quiz scores

"Parents often participate in Child Study Team meetings. As educators we believe that parent participation and involvement are an essential component for student progress and success.

"Multidisciplinary special education evaluations are completed at either the request of parents or building-level Child Study/Student Assistance Teams. Child Study Teams/Student Assistance Teams recommend a special education Multidisciplinary Evaluation Team (MET) assessment when there is a concern as to whether a student may have a disability that impedes or impacts the learning process. METs that evaluate students for specific learning disability always include at a minimum, a school psychologist and a general education teacher.

"For either school or parent initiated referrals, signed parental permission is necessary before evaluations can be completed. Once informed parent consent for evaluation is received by our school district, an Individualized Education Program Team meeting is held within 30 school days. Pursuant to 34 CFR § 300.321(a) the school district's IEP teams always include at a minimum the student's parent, the student's general education teacher, a special education teacher, a representative of the district and an individual who can interpret the instructional implications of evaluation results. The IEP

team determines whether a student meets special education eligibility criteria and requires special education programs/services. If a student is found eligible for special education, the IEP team determines the annual goals based on the student's eligibility and area(s) of need, and the programs/services required by the student to meet their goals. IEP teams also determine required student accommodations, supplementary aids, and program modifications and supports.

"The Individuals with Disabilities Education Act Regulations (2006) required a change in the identification process for students with learning disabilities. Rather than the continued use of the model known as "severe discrepancy" (significant difference between intellectual ability and academic achievement), districts were to use either a process based on the child's response to scientific, research-based intervention; a pattern of strengths and weaknesses in performance, achievement, or both; or other alternative research-based procedures. All districts within Kent County, including East Grand Rapids Public Schools use a pattern of strengths and weaknesses model or a combination of models for the identification of students with learning disabilities.

"As part of the evaluation process, multidisciplinary evaluation teams gather written information from parents and teachers, complete classroom observations in areas of suspected weakness(es), review all information collected as part of the Child Study Team/Student Assistance Team process and any other available information, including evaluation reports provided by parents. One of our school psychologists completes individual academic achievement testing with the referred student. Achievement tests are scored using both age and grade norms. Additional achievement test and curriculum based measures along with tests of cognitive ability are also used as needed for a recommendation regarding special education eligibility. East Grand Rapids Public Schools uses the Kent ISD Pattern of Strengths and Weaknesses Model (PSW) for Learning Disability Determination.

"The model includes the following guidelines in determining initial specific learning disability eligibility:

"Brief Summary of Weaknesses:

- For initial evaluations, at least four weaknesses evident within one or more SLD categories
- Progress monitoring falling below aim line for at least three consecutive data points
- Norm-referenced test score at or below the 9th percentile
- Curriculum-based measures in the 'at-risk' range or below the 10th percentile if using local norms
- Criterion-referenced assessments at least a year below grade level if in grades K-3 at least 1 ½ to 2 years below grade level if in grades 4+

- Curriculum assessment scores at or less than 70% - if using unit or teacher made tests, an average score of three or more assessments is recommended versus only using the score from the most recent assessment
- Professional teacher report compared to other students in the classroom
- Classroom observation(s) indicating below grade level performance in comparison to other students in the classroom
- Grades of D's or E's or 'does not meet' expectations

"Furthermore, regarding initial evaluations:

- At least two data points must be within the category of academic achievement with respect to grade level and/or with respect to age level expectations, one of which must be from an individually administered academic achievement measure
- At least one data point must be from classroom performance relative to grade level and/or age level experience
- A classroom observation is required in all areas identified as a weakness

"Brief Summary of Strengths:

- For initial evaluations, at least three strengths evident in one or more SLD categories
- Norm referenced test score at or above the 25th percentile
- Curriculum based measures at benchmark or at/above the local median or at/above 25th percentile
- Criterion referenced results at/above grade level
- Curricular assessment at/above 80%
- Teacher report as compared to class
- Classroom observation suggests understanding comparable to peers
- Letter grades of "A" or "B" or "meets/exceeds" expectations
- Furthermore, regarding initial evaluations:
- At least one data point identified must be within the category of academic achievement with respect to grade level or with respect to age level expectations.
- At least one data point must be from classroom performance relative to grade level and/or age level expectations.

"While the Kent ISD PSW guidelines include a norm referenced test score at or below the 9th percentile as part of the definition of a weakness, a rigid cut score on one test does not determine the Multidisciplinary Evaluation Team's (MET) recommendation for student eligibility. All information regarding a student's performance and achievement is considered by the multidisciplinary evaluation team when looking for a pattern of weakness."

The complainant completed and provided a statistical analysis of the fall 2012 percentages of total students eligible for special education programs and services and total students identified as eligible with a specific learning disability in the 352 school districts with 1000 or more students enrolled minus a few districts with data

the complainant considered flawed. However, there are 880 public agencies in Michigan that serve students with an individualized education program. The statistical analysis excludes all school districts with a total enrollment under 1000 students as well as all public school academies. In addition, no effort was made to identify and analyze other factors contributing to eligibility rates.

The information cited above does not provide any evidence of systemic noncompliance in the allegations filed by the complainant. The posted policy meets the criterion required by the OSE Memo, *Requirement to Make Public School District Processes for Determining the Existence of a Specific Learning Disability (10-7)*. The procedures used by the district in determining whether a particular student is a student with a specific learning disability meet the requirements of the rules and regulations. The speculation contained in the complaint is predicated on the complainant's assumption that the policy itself is noncompliant.

In the case of the statistical analysis provided by the complainant on district eligibility rates for special education and for specific learning disability, there is an assumption that correlation implies causation as well as methodological flaws, including the exclusion of districts with a total student population under 1000 and all public school academies. Given these flaws, speculation that the statistical analysis provides evidence of a deliberate effort on the part of the district to avoid identifying students as eligible students with a specific learning disability is also flawed.

Absent one or more students involved in the district's specific learning disability determination process who were impacted by the process, the district meets the requirements of 34 CFR §§ 300.111, 34 CFR § 300.304(b)(2), 300.306(b)(1), 300.306(c)(1)(i), 34 CFR § 300.307(b), 300.308(a), 300.309(a)(1) 300.309(a)(2)(ii) and 300.321(a), and R 340.1713(3)(a).

The Michigan Department of Education Special Education Complaint Procedures (December 2011) allows the complainant or the district to submit a request for reconsideration of a final decision. If a party has factual information that was not available during the investigation and that party believes the information will cause a change to the conclusion reached in the investigation, that information may be submitted to the OSE for reconsideration.

Requests for reconsideration should be sent to:

Supervisor  
Program Accountability  
Michigan Department of Education  
Office of Special Education  
608 West Allegan Street  
P.O. Box 30008  
Lansing, MI 48909



Page 9  
April 25, 2013

Pursuant to the State of Michigan Record Retention and Disposal Schedule the case file in this matter will be destroyed in when it has been inactive (closed) for three years.

If any of the parties has any questions, please contact the case manager, . . . . . . Any written correspondence should be clearly marked as pertaining to C-7599-13.

Sincerely,

Office of Special Education  
Program Accountability

C: