



OFFICE OF SPECIAL EDUCATION

FINAL REPORT for State Complaint C-7237-11
 against the
 Muskegon Heights School District
 April 4, 2012

BACKGROUND INFORMATION

Date Filed: December 14, 2011
 Muskegon Area Intermediate School Carolyn Smith-Gerdes
 District Investigator:
 MDE Case Manager: Susan Liebetreu
 Complainant:
 Address: [Redacted]
 Telephone: [Redacted]
 Student: Multiple Students
 Resident/Operating District: Muskegon Heights School District

INDIVIDUALS CONTACTED

1. Complainant
2. [Redacted], Secretary, District
3. [Redacted], Principal, District
4. [Redacted], Principal, District
5. [Redacted], Assistant Principal, District
6. [Redacted], Principal, District
7. [Redacted], Specialist, Intermediate School District
8. [Redacted], Specialist, Intermediate School District

DOCUMENTS REVIEWED

1. Special Education Files for Students Enrolled in the Muskegon Heights School District
2. Individual Class Schedules for Students with an Individualized Education Program (IEP) enrolled in the Middle School Who Receive Resource Services

ALLEGATIONS AND CONCLUSIONS

Conclusion	Allegation	
Noncompliant	Allegation 1	Whether the district completed an annual IEP in a timely manner for each student
Noncompliant	Allegation 2	Whether the district completed a reevaluation for each eligible student in a timely manner

Noncompliant	Allegation 3	Whether the district completed a full and individual evaluation in a timely manner following receipt of initial parental consent for evaluation for each student enrolled in the K-12 program
Noncompliant	Allegation 4	Whether the district completed a full and individual initial evaluation in a timely manner following receipt of initial parental consent for evaluation for each student enrolled in the Head Start Program
Noncompliant	Allegation 5	Whether the district implemented the IEP for each student at the middle school when insufficient staff were assigned to the school
Noncompliant	Allegation 6	Whether the district considered the least restrictive environment when the team determined the programs and services for each student with an IEP
Noncompliant	Allegation 7	Whether the district appropriately identified students as eligible for other health impairment and speech and language impairment
Noncompliant	Allegation 8	Whether the district provided parents with progress reports in a timely manner for each student

Office of Special Education Findings		
Noncompliant	Finding 9	Evaluation and Reevaluation
Noncompliant	Finding 10	Additional Procedures for Identifying Students with Specific Learning Disability
Noncompliant	Finding 11	Individualized Education Programs
Noncompliant	Finding 12	Prior Notice by Public Agency
Noncompliant	Finding 13	Request for Initial Evaluation – Child Find
Noncompliant	Finding 14	Eligibility Criteria and Multidisciplinary Evaluation Team Membership

Because the noncompliance discovered as a result of the investigation is so pervasive, the Office of Special Education finds the district systemically noncompliant with the provision of a free appropriate public education.

Corrective action and proof of compliance for the district's noncompliance is directed in the attached document entitled *Corrective Action and Proof of Compliance*.

INVESTIGATION

Allegation 1: Whether the district completed an annual IEP in a timely manner for each student

Regulation for Allegation 1:

Section 300.324(b)(1)(i)(ii) of the Individuals with Disabilities Education Act (IDEA) requires the district review a student's IEP periodically, but not less than annually, and revise the IEP as appropriate.

Findings of Fact for Allegation 1:

Interviews with staff members in Appendixes A through E indicate the district does not have a written procedure that defines how each student with a disability is provided with an annual IEP in a timely manner. Appendixes I and III identify students who were not provided with an IEP on an annual basis.

Conclusion for Allegation 1:

The district did not consistently review the IEP for each student with a disability annually. Therefore the district is noncompliant with § 300.324(b)(1)(i)(ii).

Allegation 2: Whether the district completed a reevaluation for each eligible student in a timely manner

Regulation for Allegation 2:

Section 300.303 of the IDEA requires a school district conduct a reevaluation if the district determines the educational or related service needs warrant, if the student's parent or teacher request a reevaluation, and at least once every three years unless the parent and district agree that a reevaluation is unnecessary.

Findings of Fact for Allegation 2:

Interviews with staff members found in Appendixes A through E indicate the district does not have a written procedure that defines how each student will be provided with a reevaluation at least once every three years unless the parent and district agree that a reevaluation is unnecessary. Appendixes II and III identify students who were not provided with a reevaluation every three years.

Conclusion for Allegation 2:

The district did not consistently provide each student with a disability a reevaluation or with the agreement of a parent determine a reevaluation is unnecessary every 3 years. Therefore the district is noncompliant with § 300.303(b)(2).

Allegation 3: Whether the district completed a full and individual evaluation in a timely manner following receipt of initial parental consent for evaluation for each student enrolled in the K-12 program

Rule for Allegation 3:

Rule 340.1721(b)(1) of the Michigan Administrative Rules for Special Education (MARSE) specifies the time from receipt of parental consent for an evaluation to notice

of an offer of a free appropriate public education or the determination of ineligibility shall not be more than 30 school days.

Findings of Fact for Allegation 3:

Interviews with staff members found in Appendixes A through E indicate the district does not have a written procedure that defines how each student will be provided with an evaluation and notice of a free appropriate public education or determination of ineligibility within 30 school days. Appendix IV identifies students who were not provided with a timely initial evaluation.

Conclusion for Allegation 3:

The district did not consistently provide each student enrolled in the K-12 program with an initial evaluation and notice of a free appropriate public education or determination of ineligibility within 30 school days. Therefore the district is noncompliant with R 340.1721b(1).

Allegation 4: Whether the district completed a full and individual initial evaluation in a timely manner following receipt of initial parental consent for evaluation for each student enrolled in the Head Start Program

Rule for Allegation 4:

Rule 340.1721(b)(1) of the MARSE specifies the time from receipt of parental consent for an evaluation to the notice of an offer of a free appropriate public education or the determination of ineligibility shall not be more than 30 school days.

Findings of Fact for Allegation 4:

Interviews with Head Start staff members found in Appendix F indicate the district does not have a written procedure that defines how each student will be provided with an evaluation and notice of a free appropriate public education or determination of ineligibility within 30 school days. Documentation provided by the Head Start staff and attached as Appendix V identifies students enrolled in the Head Start Program who were not provided with a timely initial evaluation.

Conclusion for Allegation 4:

The district did not consistently provide each student enrolled in the Head Start Program with an initial evaluation and notice of a free appropriate public education or determination of ineligibility within 30 school days. Therefore the district is noncompliant with R 340.1721b(1).

Allegation 5: Whether the district implemented the IEP for each student at the middle school when insufficient staff were assigned to the school

Rule for Allegation 5:

Rule 340.1722(2) of the MARSE requires students be provided with the programs and services identified in the student's IEP.

Findings of Fact for Allegation 5:

Appendix VI indicates 19 students were not provided resource services from October 2011 through January 2012 when the teacher assigned to provide the services was absent from work. Appendix VI additionally documents that 19 students assigned to a second resource program were not provided services from the beginning of the school year until January 23, 2012 when a teacher was finally hired to fill the position.

Conclusion for Allegation 5:

Documentation indicates 19 students were not provided resource services from the beginning of the school year until January 23, 2012 and an additional 19 students were not provided with resource services identified on the student's IEP from October 2011 through January 2012. The district is noncompliant with R 340.1722(2).

Allegation 6: Whether the district considered the least restrictive environment when the team determined the programs and services for each student with an IEP

Regulation for Allegation 6:

Section 300.320(a)(4) of the IDEA requires the IEP team include a statement of the special education, related services, supplementary aids and services, and the program modifications or supports that will enable the student to be involved in and progress in the general education curriculum and to participate with nondisabled students. Section 300.114(2) requires that to the maximum extent appropriate, students with disabilities are educated with students who are nondisabled.

Findings of Fact for Allegation 6:

Interviews with staff members found in Appendixes A through E indicate the district does not have a written procedure that defines how the IEP team determines that students with an IEP are educated to the maximum extent appropriate with students who are nondisabled. Appendix VII summarizes least restrictive environment considerations from multiple IEP reports randomly selected for students within the district.

Conclusion for Allegation 6:

District staff members indicate and the documentation supports the district does not consistently consider the least restrictive environment for the student during the IEP team meeting. The district is noncompliant with § 300.320(a)(4).

Allegation 7: Whether the district appropriately identified students as eligible for other health impairment and speech and language impairment

Rule for Allegation 7:

Rule 340.1709a of the MARSE defines the eligibility criteria and required multidisciplinary evaluation team membership for other health impairment. Rule 340.1710 defines the eligibility criteria and required multidisciplinary evaluation team membership for speech and language impairment.

Findings of Fact for Allegation 7:

Interviews with staff members found in Appendixes A through E indicate the district does not have a written procedure that defines how the district determines eligibility or identifies multidisciplinary evaluation team membership for other health impairment and speech and language impairment. Appendix I through V and VII through VIII summarizes data collected during a review of student files specific to the determination of eligibility and composition of multidisciplinary evaluation team membership for other health impairment and speech and language impairment.

Conclusion for Allegation 7:

A review of student files indicates the district did not consistently implement the requirements of the rules. Therefore the district is noncompliant with R 340.1709a and 340.1710.

Allegation 8: Whether the district provided parents with progress reports in a timely manner for each student

Rule and Regulation for Allegation 8:

Section 300.320(3) of the IDEA requires a district include in each student's IEP a description of when periodic reports on the progress the student is making toward meeting the annual goals will be provided. Rule 340.1722(2) requires students be provided with the programs and services identified in the student's IEP.

Findings of Fact for Allegation 8:

Appendix IX summarizes a review of 25 randomly selected student files which indicates students were not provided with progress reports as identified in the student's IEP in a timely manner.

Conclusion for Allegation 8:

Documentation indicates students were not provided with timely progress reports as required by the student's respective IEP. Therefore the district is noncompliant with R 340.1722(2).

Finding 9: Evaluation and Reevaluation

Regulation for Finding 9:

Section 300.300 of the IDEA defines the process for a district to obtain informed parent consent for an initial evaluation. Section 300.301 identifies the standards for conducting the initial evaluation for special education. Section 300.302 clarifies that screening for instructional purposes is not evaluation. Section 300.303 defines the timeline for reevaluation. Section 300.304 identifies evaluation procedures. Section 300.305 defines the additional requirements for evaluation and reevaluation including review of existing evaluation data. Section 300.306 identifies the procedures required for determination of eligibility.

Findings of Fact for Finding 9:

Interviews with staff members found in Appendixes A through F indicate the district does not have a written procedure that defines how the district completes a special education evaluation. Appendix I through V and VII through VIII summarizes data collected during a review of student files specific to special education evaluation procedures.

Conclusion for Finding 9:

Data collected during a review of student files and interviews with staff members indicate the district does not consistently implement the federal regulations for evaluation and reevaluation. Therefore the district is noncompliant with §§ 300.300 through 300.306.

Finding 10: Additional Procedures for Identifying Students with Specific Learning Disability

Regulation for Finding 10:

Section 300.307 of the IDEA identifies criteria for determining whether a student has a specific learning disability. Section 300.308 identifies additional group membership for the evaluation team. Section 300.309 describes the criteria for determining whether a student has a specific learning disability. Section 300.310 identifies the requirement for an observation of the student as a part of the evaluation procedure for specific learning disability. Section 300.311 identifies the required documentation for the determination of a specific learning disability.

Findings of Fact for Finding 10:

Interviews with staff members found in Appendixes A through E indicate the district does not have a written procedure that defines how the district completes a special education evaluation for a student suspected of being a student with a specific learning disability. Appendix I through V and VII through VIII summarize data collected during a review of student files specific to special education evaluation procedures to determine whether the student is a student with a specific learning disability.

Conclusion for Finding 10:

Data collected during a review of student files and interviews with staff members indicate the district does not consistently implement the federal regulations requiring additional procedures for identifying students with a specific learning disability. The district is noncompliant with §§ 300.300 through 300.306.

Finding 11: Individualized Education Programs

Regulation for Finding 11:

Section 300.320 of the IDEA defines an IEP. Section 300.321 identifies IEP team membership. Section 300.322 establishes the requirement for districts to obtain parent participation. Section 200.323 defines when an IEP must be in effect. Section 300.324 identifies the procedures for the development of an IEP. Section 300.327 clarifies that parents must be members of any group who makes placement decisions for a student with a disability. Section 300.328 identifies alternative means of meeting participation.

Findings of Fact for Finding 11:

Interviews with staff members found in Appendixes A through E indicate the district does not have a written procedure that defines how the district develops and implements a student's IEP. Appendix I through V and VII through VIII summarize data collected during a review of student files specific to the IEP procedures.

Conclusion for Finding 11:

Data collected during a review of student files and interviews with staff members indicate the district does not consistently implement the federal regulations regarding the IEP. Therefore the district is noncompliant with §§ 300.280 through 300.306.

Finding 12: Prior Notice by Public Agency

Regulation for Finding 12:

Section 300.503 of the IDEA identifies the procedure for prior notice and identifies the required content of the prior notice.

Findings of Fact for Finding 12:

Interviews with staff members found in Appendixes A through E indicate the district does not have a written procedure that defines how the district provides the parents with prior notice including the content of the notice. Appendix I through V and VII through VIII summarizes data collected during a review of student files specific to the provision of prior notice.

Conclusion for Finding 12:

Data collected during a review of student files and interviews with staff members indicate the district does not consistently implement the federal regulation for the provision of notice. Therefore the district is noncompliant with §§ 300.503.

Finding 13: Request for Initial Evaluation – Child Find

Rule for Finding 13:

Rule 340.1721 of the MARSE identifies the procedures and timeline following a written request for an initial evaluation of a student suspected of having a disability.

Findings of Fact for Finding 13:

Interviews with staff members found in Appendixes A through E indicate the district does not have a written procedure that defines how the district completes an initial evaluation for special education. Appendix I through V and VII through VIII summarizes data collected during a review of student files specific to an initial special education evaluation.

Conclusion for Finding 13:

Data collected during a review of student files and interviews with staff members indicate the district does not consistently implement the MARSE rule defining the guidelines for a request for an initial evaluation. Therefore the district is noncompliant with R 340.1721.

Finding 14: Eligibility Criteria and Multidisciplinary Evaluation Team Membership

Rule for Finding 14:

Rules 340.1705 through 340.1717 of the MARSE identify the eligibility criteria and the required multidisciplinary evaluation team membership for the thirteen eligibility areas identified in the Michigan Administrative Rules for Special Education.

Findings of Fact for Finding 14:

Interviews with staff members found in Appendixes A through E indicate the district does not have a written procedure that defines how the district determines eligibility or identifies multidisciplinary evaluation team membership for the thirteen eligibility areas identified in the rules. Appendix I through V and VII through VIII summarizes data collected during a review of student files specific to the determination of eligibility and composition of multidisciplinary evaluation team membership for the thirteen eligibility areas identified in the rules.

Conclusion for Finding 14:

Data collected during a review of student files and interviews with staff members indicate the district does not consistently implement the rules specific to the eligibility criteria and multidisciplinary evaluation team membership. Therefore the district is noncompliant with Rules 340.1705 through 340.1717.