

12 allegations  
8 violations  
4 no violations

**MICHIGAN DEPARTMENT OF CORRECTIONS  
INVESTIGATION REPORT**

Of  
The Complaint of  
Ms. Stacy A. Hickox  
Against the Michigan Youth Correctional Facility  
May 4, 2005

Investigated By:

Laurie VanderPloeg  
2155 Egypt Valley  
Ada, MI 49301

## Authority

Pursuant to Administrative Rule 340.1851 of P.A. of 1976, 300.660-300.662 of the final regulations implementing the Individuals with Disabilities Education Act (IDEA), and the Michigan Department of Education (MDE), Office of Special Education and Early Intervention Services (OSE/EIS), Complaint Procedures, Michigan Department of Corrections issues this investigation report of the complaint of Stacy A. Hickox, Attorney, against the Michigan Youth Correctional Facility, GEO Group, Michigan Department of Education and Michigan Department of Corrections.

## Background

<b>Date MDOC received the complaint:</b>	April 1, 2005
<b>Case Number:</b>	#C-5668-05
<b>Case Manager:</b>	Joe R. Gomez, Jr., Ph.D., Consultant
<b>Complainant:</b>	Stacy A. Hickox, Attorney Michigan Protection and Advocacy Services, Inc.
<b>Address:</b>	4095 Legacy Parkway, Suite 500 Lansing, MI 48911-4263
<b>Phone:</b>	517-487-1755
<b>Student Names:</b>	M.H., R.H., D.R., B.W.
<b>Operating District:</b>	Michigan Youth Correctional Facility
<b>Student's program and services:</b>	Resource Room

## Summary of Activities

4/12/05	Complaint received and reviewed
4/12/05	Personal contact with Julie DeRose, Education Manager, Michele Robinson
4/13/05	Telephone contact with Stacy A. Hickox, Attorney, Complainant to arrange interview
4/14/05	Letter with Part 8, Complaint Definition and Complaint Procedures sent to complainant
4/15/05	Personal interview with Stacy A. Hickox, Attorney, Complainant; Mark McWilliams, Attorney; Susan Hall, Advocate at Michigan Protection & Advocacy Services, Inc. (MPAS)
4/15/05	Telephone contact with Warden Elo, Michigan Youth Correctional Facility
4/15/05	Left voice mail message for Julie DeRose, Manager of Education, Michigan Department of Corrections
4/18/05	Telephone contact with Don Scramling, Education Director, Michigan Youth Correctional Facility
4/19/05	Extension request faxed to Michigan Department of Education. Office of Special Education
4/19/05	Extension request faxed to Stacy A. Hickox, Attorney, Complainant

4/19/05	Site visit to Michigan Youth Correctional Facility
4/19/05	Personal contact with Becky Jackson, Resource Room Teacher
4/19/05	Personal contact with Don Scramling, Education Director
4/19/05	Personal contact with Warden Elo
4/19/05	Personal contact with B. W., student
4/19/05	Personal contact with A. P., student
4/19/05	File review at Michigan Youth Correctional Facility
4/19/05	Left voice mail message for Julie DeRose, Education Manager, Michigan Department of Corrections File review at Michigan Youth Correctional Facility
4/20/05	Telephone contact with Joe Gomez, Jr., Consultant
4/20/05	Telephone contact with Julie DeRose, Education Manager
4/21/05	Telephone contact with Don Scramling, Education Director
4/21/05	Fax received and reviewed from MYCF
4/25/05	Telephone contact with Julie DeRose, Education Manager
4/26/05	Telephone contact with Don Scrambling, Principal
4/27/05	Site visit to Michigan Youth Correctional Facility
4/27/05	Personal contact with A.P., student
4/27/05	Personal contact with G.D., student
4/27/05	Personal contact with M.H., student
4/27/05	Personal contact with K.K., student
4/27/05	Personal contact with D.J., student
4/27/05	Personal contact with Arnelda Clark, Pre-GED teacher
4/27/05	Personal contact with Becky Jackson, Resource Room Teacher
4/27/05	Personal contact with Don Scramling, Education Director
4/28/05	Telephone contact with Michele Robinson
4/29/05	Telephone contact with James Gormick, Edgar Reception Center
4/29/05	Telephone contact with Stacy Hickox, Attorney, Complainant
4/29/05	Telephone contact with Julie De Rose, Education Manager
4/30/05	Received and reviewed the Michigan Department of Corrections Special Education Plan
5/02/05	Telephone contact with Chris Cali, State Monitor
5/02/05	Telephone contact with Don Scrambling, Education Manager
5/02/05	Telephone contact with Monica Butler, Qualify Assurance, Michigan Department of Education
5/02/05	Telephone message left for Pete Govorchin, Attorney Generals Office
5/03/05	Telephone contact with Leo Freedman, Attorney Generals Office
5/03/05	Telephone contact with D.J. Pascoe, Attorney Generals Office

**Complainant's Allegation #1** The special education eligible students receive an inadequate amount of special education instruction and related services time.

The complainant clarified the allegation to mean:

1. The students identified as special education are not receiving an adequate amount of special education instruction and related services time based on their needs.
2. The determination of time is not based on unique individual needs.
3. The students all receive the same amount of service time (cookie cutter), 3 hours per week.

4. The IEP Team reports are written to match the program delivery not the individual needs of the students.
5. The IEP Team meetings are held with the student and Resource teacher. Required IEP team members are not present.

**Findings in Complainant's Allegation #1:**

Governing Section: §300.350(a)(1)(2)

- (a) *Provisions of services.* Subject to paragraph (b) of this section, each public agency must-
- (1) Provide special education and related services to a child with a disability in accordance with the child's IEP; and
  - (2) Make good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

Governing Section: §300.344(a)(1)(2)(3)(4)(5) which states:

- (a) *General.* The public agency shall ensure that the IEP team for each child with a disability includes-
- (1) The parents of the child;
  - (2) At least one regular education teacher of the child
  - (3) At least one special education teacher of the child, or if appropriate, at least one special education provider of the child;
  - (4) A representative of the public agency who-
  - (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (6) of this section.

The investigator reviewed Governing Section: §300.347(d) which states:

- (d) Students with disabilities convicted as adults and incarcerated in adult prisons. Special rules concerning the content of the IEPs for students with disabilities convicted as adults and incarcerated in adult prisons are contained in §300.311(b) and (c)

The investigator reviewed Governing Section: §300.311(b)(c)(1)(2) which states:

- (b) *Requirements that do not apply.*

The following requirements do not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

- (c) *Modifications of IEP or placement.*

- (1) Subject to paragraph (c)(2) of this section, the IEP team of a student with a disability, who is convicted as an adult under State law and incarcerated in an adult prison, may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
- (2) The requirements in §300.347(b) (relating to transition planning and transition services), with respect to the students whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

The investigator reviewed the Contract and noted:

1. Section 24.4 Education Placement

The contractor shall enroll every Prisoner in an appropriate education program. Education program placement shall be based on the results of the assessment completed at the MDOC Reception Center.

2. Prisoner's academic and vocational needs are assessed.
3. Test scores below 8.0 shall be placed in full-time academic programming. A minimum of (30) hours of instruction per week.
4. Tests scores below 8.0 who have not attained a high school diploma or GED shall be placed in GED programming as indicated to fulfill goals established at the MDOC Reception Center.

The investigator interviewed the Education Director who stated:

1. The MYCF has five academic teachers.
2. The MDOC orientation center does the testing and evaluations of the inmates prior to placement at MYCF. The students fill out forms that designate special education Yes or No. Special education students are flagged by a green dot on their files.
3. All students must get a GED to be eligible for parole.
4. There are three options for educational services.
  - a. Pre-GED for the students who scored below 8 on their assessments. The students attend class 30 hours per week (6 hours per day, 5 times per week).
  - b. GED for the students who scored above 8 on their assessments. The students attend class 10 hours per week (2 hours per day/ 5 times per week). Sessions run from 7:30-9:30 am, 9:30-11:30 am, 1:00-3:00 PM. GED students attend all three sessions.
  - c. Special Education instruction is 6 hours per week (2 hours per day Monday, Wednesday and Friday).
5. Educational services are provided on a year-round basis. Students do not attend on holidays but do attend during the summer months.

The investigator interviewed the Resource Room Teacher who stated:

1. On Tuesday and Thursday the Resource teacher works on IEPs and works with students who are in segregation.
2. The Resource teacher services 15 students per class inclusive of both general education and special education students.
3. The student's IEPs are followed during that instructional time.
4. After the GED is completed, the academic services are done and the IEP is redone for continued transition support. This is done for any student no matter what age they are.
5. The pre-release program components address transition needs including self-awareness, job skills, life skills, and pre-release issues (Handbook).
6. The student's transition plan determines whether they are taking computers, horticulture, gym, maintenance or work assignments, etc. The students are scheduled into these classes. These address the vocational and transition needs of the students.
7. There is a Psychologist and two Social Workers that are part of the Mental Health team. Students are referred to the Mental Health team for anger management, assaultive behavior or on an as-need basis.

8. The IEP team that develops the plan is the student and the Resource teacher. Other outside resources such as medical, case managers, substance abuse director, etc. are invited when needed.

The investigator reviewed student files and noted:

1. The Special education program and service sections were not filled in on the IEP team reports. Unable to verify if students were receiving the services stated on the IEP team reports.
2. Resource program was not identified and no time was designated for the students to receive instructional services.
3. The students who have received their GED or are currently working on their GED did not all have IEP team reports with transition services listed.
4. Some students were scheduled into vocational classes without them being identified or stated under the transition sections of their IEP team reports.

The investigator interviewed the students who stated:

1. M.H. stated the Resource classes stopped after he completed his GED. M.H. has completed maintenance and business classes for his vocational training.
2. G.D. stated he is a GED grad, has no IEP and goals, had life skills, and pre-release classes and is currently working in the kitchen.
3. K.K. is a student with a visual impairment that participated in the development of his IEP team report and he helped identify his needs. He receives 2 hours of Resource support 3 times per week. He also has a magnifying bar and glasses as accommodations on his IEP team report. He stated he is also provided large print photo copies of his work. He sees the Mental Health team for anger management once every two weeks.
4. D.J. received special education support back at his local district. He currently is attending the GED classes and does not receive special education instruction. He stated he was struggling and having difficulty passing the GED tests. He stated he would like to go to the Resource class and receive special education support. He has completed many vocational classes and is not working in the POD cleaning and straightening up.
5. B.W. stated he goes to the Resource class 2 hours 3 times per week. His local school district did not have him identified as special education and he did not meet the criteria of eligibility when tested by the psychologist. He stated MPAS wanted to attend his IEP team meeting but he does not have an IEP.
6. D.R. has a moderately hard time in social situations and confrontation. Techniques such as talking to staff, talking to mental health team, working on breathing techniques, walking away from confrontation are all discussed. D.R. is part of the PAWS program and at his request Bible Study with a study partner. These are all unique to this individual not facility needs.

The investigator interviewed the State Monitor and reviewed the prior years monitoring reports and noted:

1. According to the MDOC Special Education Plan 1.8 the MYCF is monitored every two years.

2. Transition services are only provided for students who are eligible for release. Prior to release transition supports and resources are provided to the student to help ensure a successful transition.
3. The Resource Room teacher is able to provide instructional services to both special education and general education students.
4. IEP team reports are monitored for IEP participants including a representative of the public agency, and a general education teacher if the student is or will be participating in the general education setting.

The investigator reviewed the letter from Complainant dated April 28, 2005 and noted:

1. Records for the following inmates shows failure of MYCF to provide sufficient special education instruction: L.S., C.B., A.M., M.T., D.W., R.A., D.J.
2. Until March the students only received up to 3 hours per week.
3. According to their records only the students were invited to the IEP team meetings.

#### **Conclusion in Complainant's Allegation #1:**

~~Governing Section: §300. §300.347(d) Violation~~  
 Governing Section: §300.344(a)(1)(2)(3)(4)(5) Violation

The investigator finds the MYCF did not complete the program section of the IEP team reports therefore it could not be determined if the students received an adequate amount of time based on their unique needs. The amount of service time could only be verified by the teacher. The MYCF did not meet its obligation to invite the required IEP team participants to all special education students IEP team meetings. Therefore, the district violated §300.347(d) and §300.344(a)(1)(2)(3)(4)(5)

#### **Recommended Corrective Action in Complainant's Allegation #1**

The investigator recommends the MYCF provide training on filing out an IEP team report, specifically addressing the program and service section and the required IEP team participants. The MYCF must also determine if there was any degree of educational loss as a result of not appropriately identifying the program and service time to reflect the individual, unique need of the special education eligible students. The MYCF must also provide written assurances that all IEP team reports will be based on individual needs and the program and service determination will reflect those needs.

**Complainant's Allegation #2: Failure to base changes in IEPs on reevaluations, failure to relate IEP goals to specific needs arising from a student's disability, and failure to provide special education services and supports related to IEP goals.**

The complainant clarified the allegation to mean:

1. The students all receive the same amount of service time (cookie cutter), 3 hours per week.
2. The IEP Team reports are written to match the program delivery not the individual needs of the students.

3. The amount of service time is not based on student's eligibility or needs but on what the program provides.
4. Concerned that the Multidisciplinary Evaluation Team (MET) reports are not available in the file.
5. Concerned with the process of how the METs are requested by the Michigan Department of Corrections.

**Findings in Complainant's Allegation #2:**

Governing Section: §300.321(b) which states:

- (6) The results of any reevaluations are addressed by the child's IEP team under §§300.340-300.349 in reviewing and, as appropriate revising the child's IEP.

Governing Section: §300.347(a)(2)(i)(ii)(3) which states:

- (a) *General.* The IEP for each child with a disability must include-
  - (2) A statement of measurable annual goals, including benchmarks or short term objectives, related to-
    - (i) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the curriculum;
    - (ii) Meeting each of the child's other educational needs that result from the child's disability.
  - (3) A statement of the special education and related services and supplementary aids and services 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 investigator interviewed the Resource Room teacher who stated:

1. Not all the special education eligible students receive Resource Room support. There are approximately 60 students with IEP's and 1/3 of the GED graduates are special education students with IEPs.
2. In the IEP the student determines their needs, very self directed, the Resource teacher writes down their narrative.
3. Goals and objectives are determined based on the Test of Adult Basic Education (TABE) scores or classroom progress. Goals and objectives are academic.
4. EI students attend cage rage, assault, criminal sexual conduct, substance abuse meetings. They try to stay ticket free so they can get to a higher level.
5. EI students do not receive special education social work services through the IEP process they receive services through the Mental Health Team.

The investigator reviewed a response from Michigan Department of Corrections and noted:

1. Upon transfer to MYCF, if a student has an IEP over 3 years old, an "initial" referral is conducted.
2. Dependent upon the date, either a 3-year reevaluation or an annual review is conducted. According to amendments to IDEA 97, reevaluation may be required if "Conditions Warrant".
3. The students' conditions have truly changed when incarcerated requiring individual needs to be met for release from prison and these new conditions need to become part of the reevaluated IEP.



4. Special education IEPs are created via a number of different sources: one-on-one discussion, current and past classroom observations, student interests and preferences, background information, current and past school reviews, T.A.B.E. (Test of Adult Basic Education), psychological testing (e.g. Wechsler Adult Intelligence, Wechsler Individual Achievement), Transition Needs, Career Testing, Criminal History, GED testing and family if available.
5. The IEP and special education coordinator look at the students individual needs in all areas. Goals and objectives are related specifically to the individual.

The investigator interviewed the Education Director and noted:

1. The students who are in detention are not evaluated for their 3-year reevaluation due to safety issues. They are evaluated after they are out of detention.

The investigator interviewed the Reception Center coordinator who stated:

1. The Edgar Reception Center averages 60 inmates per day. The Reception Center identifies the prisoner's educational history. They look for a high school diploma, a GED, special education status and ESL status. If ESL, they go to one of the ESL centers.
2. If the student has a high school diploma, they receive a career scope assessment to determine vocational interests and vocational plans when they get out. They also look at the work history of the inmate.
3. A school psychologist does the educational evaluation (TABE) to determine academic levels. The results are sent with the student when placed in a correctional facility.
4. The Reception Center also requests by FAX from the local high school or the GED center the inmate's educational records after the inmate has filled out the transcript request form.
5. After two weeks, a second request is made. Each time the date is recorded on the transcript request form. After three weeks, a phone attempt is made. No log is kept on this information.
6. If the information has not been received; it is up to the correctional facility to continue to request the information.
7. It was expressed that it is difficult to get the information even after multiple requests are made.

The investigator reviewed the MDOC's Special Education Plan and noted:

1.4.A.3 Annual Reviews and Three-Year Evaluations

1. An IEP is convened at least on an annual basis.
2. Eligible disabled prisoner shall be provided with a comprehensive evaluation at least once every thirty-six (36) months.

The investigator reviewed the student status printout provided by MYCF and noted:

1. 133 students identified as special education.
2. 63 students listed with IEP team reports.
3. 69 students' educational records were requested and not received.
4. 1 left blank

**Conclusion in Complainant's Allegation #2:**

**Section §300.321(b) and Section §300.347(a)(2)(i)(ii)(3) Violation**

The investigator finds the Michigan Department of Corrections and the Michigan Youth Correctional Facility did not meet its obligation to obtain educational records on inmates in order to make appropriate special education program and service determinations. No MET eligibility from the prior local school district was used or available in 69 student files. The only evaluation data on students coming into the MYCF was the TABE and those scores were referenced in the Present Level of Educational Performance section of the IEP team reports. Therefore, there is no evidence that the students unique individual needs based on eligibility was used to determine current goals, objectives, programs and/or services. The investigator was unable to get the data to verify if all METs are completed within the 36 month timeline. Therefore, the MDOC and MYCF did not meet the requirements under Section §300.321(b) and Section §300.347(a)(2)(i)(ii)(3).

### **Recommended Corrective Action in Complainant's Allegation #2**

The investigator recommends the Michigan Department of Corrections develop a more efficient and timely process for requesting educational records for students coming through the Edgar Reception Center. The Michigan Youth Correctional Facility must follow up with additional requests for the information. In the absence of the local school district information, MYCF must conduct a new Multidisciplinary Evaluation Team (MET) and make recommendations of eligibility to the IEP Team.

### **Complainant's Allegation #3: Failure to grant access to the educational records to representatives and failure to make copies of educational records thus denying access.**

The complainant clarified the allegation to mean:

1. The students signed releases of information for Michigan Protection & Advocacy Services, Inc. (MPAS) to have access to their educational records. Out of approximately 65 students, 40 students signed the release of information form.
2. MPAS requested access to the special education student's records and requested copies of the student's file.
3. MYCF did not comply with the request for records.

### **Findings in Complainant's Allegation #3:**

Governing Section §300.562<sup>a?</sup>~~(k)~~ which states:

- (a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without necessary delay and before any meeting regarding an IEP, or any hearing pursuant to §§300.507 and 300.521-300.528, and in no case more than 45 days after the request was made.

The investigator reviewed the Procedural Safeguards for Special Education Prisoners and noted on page 12 #2 & #3:

1. The right to have a representative of the prisoner (with written permission from the prisoner) inspect and review the records.

2. The right to request that MDOC provide copies of the records containing the information if failure to provide those copies would effectively prevent the prisoner from exercising the right to inspect and review the records.

The investigator interviewed the Education Director and noted:

1. The educational records are the property of MDOC so MYCF did not have the authority to release based on the original FOIA request.
2. The MYCF received the original request on 3/17/05 for information on all students sent to detention and the segregated areas. MPAS was asked to pay for the copies. The copies were not mailed because the payment had not been received.
3. MPAS penciled in "please send special education records". This is not a correct procedure to pencil in after request was made.
4. MPAS has never spoken to the Principal or the Resource teacher to request the files.
5. The release of information forms were given to MDOC.
6. MPAS had the students sign blank forms then typed in MDOC. The students were told they would get free college from the state, get an extra tutor if they needed one, whatever you want you should demand it. MPAS also contacted parents offering legal services.
7. The copies of the requested education records were mailed out on 4/25/05. From the date of request to date sent is 39 calendar days. Payment of \$50.96 from MPAS was received.

The investigator reviewed a response from Michigan Department of Corrections and noted:

1. Access to inmates records are processed within the facility through the MYCF records office, and are governed by rules and regulations of F.O.I.A. MDOC Policy and Procedures 05.01.145, which requires that all requests must be facilitated through MDOC. At this time, ALL files requested by MPAS have been duplicated and forwarded to the Wardens office for transfer.

The investigator interviewed the complainant who stated:

1. No promises were made to the students. Students were informed about services that would be available to them post release. Those services include:
  - Mental Health Services
  - Center for Independent Living- services for housing
  - Michigan Rehabilitation Services
  - Community Mental Health in their areas
  - Medicaid (if eligible)
2. Suggested if they cannot get their GED work done to ask for additional help.

The investigator interviewed B.W., student who stated:

1. MPAS did not explain to him what he was signing. They made promises and then fell off. They said they would write to the judge but they have not.

### **Conclusion in Complainant's Allegation #3:**

Governing Section §300.562<sup>a</sup>(~~x~~): No Violation

The MYCF did send copies of the educational records within the 45 day timeline therefore, the MYCF did not violate Governing Section §300.562(b).

#### **Complainant's Allegation #4: Failure to provide notice of procedural safeguards**

The complainant clarified the allegation to mean:

1. The students are emancipated when entering the Michigan Youth Correctional Facility therefore being able to make their own educational decisions.
2. The students have not been provided with copies of the Procedural Safeguards when annual reviews are conducted or reevaluations completed.
3. The students do not understand their rights.
4. Notice was not given to the students when their rights were transferred to them.
5. Are surrogate parents considered?

#### **Findings in Complainant's Allegation #4:**

Governing Section: §300.504(a)(1)(2)(3) which states:

(a) *General*. A copy of the Procedural Safeguards available to the parents of a child with a disability must be given to the parents, at a minimum-

- (1) Upon initial referral for evaluation
- (2) Upon each notification of an IEP meeting
- (3) Upon reevaluation of the child

Governing Section: §300.517(a)(2)(3) which states:

(a) *General*. A state may provide that, when a student with a disability reaches the age of majority under State law that applies to all students (except for a student with a disability who has been determine to be incompetent under State law-

2. All rights accorded to parents under Part B of the Act transfer to students who are incarcerated in an adult or juvenile, State or local correctional facility.
3. Whenever a State transfers rights under this part pursuant to paragraph (a)(1) and (a)(2) of this section, the agency shall notify the individual and the parents of the transfer of rights.

The investigator reviewed the MDOC's Special Education Plan and noted:

Section 1.1 pg. 4 Procedural Safeguards Distribution Procedure

1. MDOC Special Education Procedural Safeguards are given, and if necessary read and explained, to the prisoner at the time the referral for special education services is initiated and again during the signing of the IEP at the IEP meetings. The prisoner shall sign his name and date on the signature page indicating that he received the Procedural Safeguards.

Section 1.1.B.1 Parent, Surrogate Parent

1. Individuals remanded to the MDOC are considered adults. Surrogate parents were discussed between the MDOC Office of Policy and Hearing and the State of Michigan Attorney General Office. Therefore, no parent or surrogate parent involvement is necessary.

The investigator reviewed the IEP team report and noted:

1. On the IEP team report there is a box to check to verify the student received MDOC Procedural Safeguards and Handbook of Services.

2. Parental rights and age of Majority (Check all applicable)
  - ✓ The prisoner was informed of the parental rights that were transferred to the prisoner at time of incarceration.

The investigator interviewed the Resource teacher who stated:

1. All students sign the Michigan Department of Corrections Procedural Safeguards Signature Page. This is stapled to the left side of the teacher file. The student signs and dates each time they receive a copy of the Handbook of Services for Special Education Prisoners, Pocketbook of Procedural Safeguards and Request for Release of Information.

The investigator reviewed a response from Michigan Department of Corrections and noted:

1. Each and every student is provided notice of their procedural safeguards in writing, and each IEP states in writing (signed by the special education student) that: I have been informed of all procedural safeguards and sources to obtain assistance.

The investigator interviewed students who stated:

1. A.P. stated he signed his IEP that he refused services and understands that this statement can be retracted at any time before the prisoner's 22<sup>nd</sup> birthday.
2. GED is helpful for parole and he was denied parole so there is no early out. Once parole was denied he was not interested in finishing his GED so he signed himself out. He understood that he could come back and finish his GED at any time.
3. He had attended the 2 hours per day 3 times per week in the Resource class and is not interested in completing his education at this time.
4. D.J. stated he got a copy of the Procedural Safeguards. IEP team report dated 5/20/04 did not have the box checked that the student received MDOC Procedural Safeguards and Handbook of Services.
5. B.H. IEP had the box checked.
6. K.K. IEP had the box checked but the student stated he had not received a copy of the Procedural Safeguards or the handbook.
7. G.D. stated he had not received a copy of the Procedural Safeguards or the handbook.
8. M.H. IEP did not have the box checked and the student stated he had not received a copy of the procedural safeguards.

The investigator reviewed the IEP and interviewed the students and noted:

1. The IEP team report under Parental rights and age of majority checked the prisoner was informed of the parental rights that were transferred to the prisoner at time of incarceration.
2. All IEP team reports reviewed had the box checked that the prisoner was informed at the time of incarceration and the students signed in agreement.
3. All students interviewed verified the judge during the court proceeding told them that their rights have been transferred to them.

**Conclusion in Complainant's Allegation #4:**

Governing Section: §300.504(a)(1)(2)(3) Violation

Governing Section: §300.517(a)(2)(3) No Violation

The MYCF failed to provide the students with a copy of the Procedural Safeguards during the IEP process. The MYCF also failed to check the box on the IEP team report that verifies the students received a copy of the MDOC Procedural Safeguards and Handbook for Services.

**Recommended Corrective Action in Complainant's Allegation #4**

The MDOC must provide a written assurance that copies of the Procedural Safeguards will be disseminated at all times required under §300.504(a)(1)(2)(3).

The MDOC must update their Handbook of Services. The information is outdated and not applicable to procedures being followed today. An updated copy must be submitted to the Michigan Department of Education as part of this corrective action.

**Complainant's Allegation #5: Failure to ensure that qualified staff are available to provide special education and related services.**

The complainant clarified the allegation to mean:

1. As of August 2004, the Resource teacher said she was working on getting the special education certification.
2. Resource teacher is not highly qualified.

**Findings in Complainant's Allegation #5:**

Michigan Administrative Code §340.1700 et.seq.

Michigan Administrative Rules R340.1781

Rule 81

- (1) A teacher seeking an endorsement or full approval by the state board of education or its designee shall meet all the following general skill requirements, in conjunction with those of R340.1782 to R340.1788, R340.1795 to R340.1797, and R340.1799 to R340.1799D, before being employed by an intermediate school district, local school district, public school academy, or other agency operating special education programs and services.

R340.1783

Under procedures established by the department, the department may grant temporary approval as a teacher of students with disabilities to persons who hold a valid Michigan teaching certificate.

The investigator reviewed the MDOC's Special Education Plan and noted:

- 1.6.A.1. MDOC will attempt to fill Secondary Resource Rooms with fully approved special education personnel. Emergency or Temporary approved teachers may be utilized as qualified.
- 2.1.A.4 Emergency/Temporary Personnel Approval Request Procedures

The investigator reviewed the full certificate and practicum application for Emotional Impairment and noted:

1. The Resource Room teacher has been accepted for her practicum in EDS 685 Emotional Impairment for the Spring/Summer 2005 semester.
2. The Resource Room teacher has a full certificate in general education.

The investigator interviewed the Resource teacher who stated:

1. This is her 5<sup>th</sup> year on emergency approval.
2. Averaging 9 credit hours per year at Grand Valley State University.
3. Contact was made with the Michigan Department of Education and was told if paperwork is submitted prior to June 1, 2005 it will be retroactive for this school year.

The investigator reviewed a response from Michigan Department of Corrections and noted:

1. The Resource teacher is not a fully certified special education instructor due to a shortage in Michigan. MYCF has gone a step further to meet the students needs by paying for an instructor to go to school to fulfill this need. The Resource teacher is a fully certified academic instructor and has procured temporary certification by the state. MDOC and MYCF arrange yearly for special education audits to ensure all special education students receive appropriate services and that the temporarily certified instructor is following all guidelines and regulations.

The investigator interviewed the Michigan Department of Education who stated:

1. The paperwork for a temporary approval for the 2004-2005 year has not been submitted to the Michigan Department of Education yet this school year.
2. The MYCF has until June 30, 2005 to process the paperwork. It will then become retroactive for this school year.
3. In 2001-2002 Mason Lake ISD requested temporary approval on 7/01/01.
4. No paperwork has been processed since 2001.

Attachment: Letter of support from Lori Ingraham, GED Examiner for the Resource Room teacher stating she is an ideal example of a qualified and efficient teacher.

#### **Conclusion in Complainant's Allegation #5:**

Michigan Administrative Code §340.1700 et.seq.  
R340.1781 and R340.1783 Violation

The MYCF did not submit appropriate paperwork for the Resource Room teacher to be approved for a temporary approval. Therefore, the MYCF violated the Michigan Administrative Code.

#### **Recommended Corrective Action in Complainants Allegation #5:**

To be highly qualified, a teacher must hold a full state certification. The MYCF must apply for temporary approval and show proof the teacher is participating in a route to meet the certification requirements within three years. The teacher must receive high-quality professional development that is sustained, intensive and classroom focused. The MYCF must show proof of application and acceptance of a temporary approval status. The MYCF must also provide an assurance statement that all full qualified personnel have been exhausted prior to submission of an application for temporary approval. The MYCF must determine if any of the students experienced any degree of educational loss as a result of not having a qualified teacher providing instruction.

**Complainant's Allegation #6: Failure to offer a continuum of alternative placements, including special education and supplemental services and supports.**

The complainant clarified the allegation to mean:

1. Michigan Youth Correctional Facility does not offer a full continuum of services for the special education eligible students.
2. Related service providers are not available.
3. The students are removed into Administrative Segregation for time periods of up to 3-4 months. The students are not provided with the Procedural Safeguards.

**Findings in Complainant's Allegation #6:**

Governing Section: §300.551(a)(b)(2) which states:

(a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(2) Make provisions for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Governing Section: §300.311(b)(c)(1)(2) which states:

(b) *Requirements that do not apply.*

The following requirements do not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

(c) *Modifications of IEP or placement.*

(1) Subject to paragraph (c)(2) of this section, the IEP team of a student with a disability, who is convicted as an adult under State law and incarcerated in an adult prison, may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

The investigator reviewed the Contract and noted:

1. Section 24.5 Educational Services to Prisoners in Segregation

If a Prisoner is in segregation for more than seven (7) consecutive days, the Contractor shall provide individualized instruction to meet education goals while the Prisoner is in segregation.

The investigator reviewed the MDOC's Special Education Plan and noted:

**Section 1.1 Continuum of Special Education Services**

1. 1.6.A All prisoners should have the opportunity to be educated together, regardless of disabling conditions, unless otherwise determined appropriate through the IEP process and/or custody and security prevail and/or medical reasons.
2. 1.6.A. In an effort to standardize MDOC special education services to meet the unique delivery system constraints encountered within a state prison environment, MDOC will designate facility special education classroom as Secondary Resource Room.
3. 1.6.A.4. Special Education prisoners in confinement may be permitted to continue their education plan through "Cell Study" instructional methods.

The investigator interviewed the Resource teacher who stated:

1. They start at the GED program as least restrictive environment and move up to special education services.
2. There are three levels of segregation:
  - Detention segregation – judge sentences



- Administrative segregation- unsure if the inmate is able to go back into the general population
  - Protective custody- for medical purposes
3. Resource teacher visits on Tuesdays and Thursdays (sometimes Fridays)
  4. The Resource teacher goes down and provides work, packets of information so the student can continue to progress in the GED curriculum. The Resource teacher also oversees that the student is completing the work and provides support if the student needs help.

The investigator reviewed the Segregation Report for months of January through April 2005 and noted:

1. The Resource teacher signed a log for each contact made with the students in segregation.
2. The Resource teacher documented what work was given to the student, whether the student was asleep and collected the completed work from the student.

The investigator interviewed the M.H., student who stated:

1. Out of the three months he was in Administrative Segregation and Detention, the Resource teacher came down two times per week with packets of work. The student worked on the work and the teacher collected it when she returned.
2. Currently receiving services in the Resource class.

The investigator interviewed the State Monitor and noted:

1. The premier item of concern is safety. Students who are in detention may not attend school.
2. Services can be provided in "Cell Study". "Cell study" is considered to be an extension of the special education classroom to which the student has been assigned.
3. No School Social Work services are provided to the students who qualify under Emotional Impairment. The MYCF has been sited on this regulation for non-compliance and were directed to bring this into compliance. To date no special education social work services are provided.

#### **Conclusion in Complainant's Allegation #6:**

Governing Section: §300.551(a)(b)(2) Violation

Governing Section: §300.311(b)(c)(1)(2) No Violation

#### **Recommended Corrective Action in Complainants Allegation #6:**

The MYCF does not provide any variation to their current program and service model. The IEP team has the responsibility to determine the program and service needs for each individual student. The MYCF must consider all individual needs when determining program and service decisions. The MYCF must determine if any of the students experienced any degree of educational loss as a result of not having a qualified teacher providing instruction.

**Complainant's Allegation #7: Failure to draw upon and consider information from a variety of sources in creating IEPs and identifying services and supports.**

The complainant clarified the allegation to mean:

1. The students are evaluated at the Reception Center and given scores to determine placement.

2. Concerned with multiple data sources being used to determine the appropriate level of services.

#### **Findings in Complainant's Allegation #7:**

Governing Section: §300.535(a)(1)

- (a) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.7 and the educational needs of the child,-
  - (1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

The investigator interviewed the Resource Room teacher who stated:

1. The students are administered the Test of Adult Basic Education (TABE) initially at the Reception Center.
2. The students are also administered the TABE twice per year while attending the educational programs. Progress is reported and kept in the teacher file.
3. Progress is recorded quarterly on goals and objectives and retained in the teacher file (CSJ-363 A.
4. The individual interests identified in the transition plan for vocational classes are considered.

The investigator interviewed the Education Director who stated:

1. GED tests scores are kept in a database on his computer.
2. The course schedule for each individual is kept in a database.
3. The courses completed could also be identified in the system.

The investigator interviewed the Reception Center coordinator who stated:

1. If the student has a high school diploma, they receive a career scope assessment to determine vocational interests and vocational plans when they get out. They also look at the work history of the inmate.
2. A school psychologist does the educational evaluation (TABE) to determine academic levels. The results are sent with the student when placed in a correctional facility.
3. The assessment results are transferred with the student to their facility placement.

#### **Conclusion in Complainant's Allegation #7:**

Governing Section: §300.535(a)(1) Violation

The MYCF uses past and current TABE scores, classroom data and progress reporting to determine the educational needs. Limited or no data relating to eligibility is drawn upon. Few IEP address the social, emotional and behavioral needs of the students. Therefore, the MYCF did not use a variety of sources for the purpose of determining educational needs.

#### **Recommended Corrective Action in Complainants Allegation #7:**

The MYCF must develop a system that allows them to draw from a variety of sources when determining student's educational needs. The MYCF must also provide a written assurance that different sources of information will be gathered prior to addressing needs. The MYCF must

determine if any of the students experienced any degree of educational loss as a result of having all the information available when making educational plans for the students.

**Complainant's Allegation #8: Failure to identify and evaluate potentially eligible students for special education.**

The complainant clarified the allegation to mean:

1. Does MYCF have a process for referring and identifying potentially eligible special education students?
2. Have any new students been referred and identified since entering MYCF?

**Findings in Complainant's Allegation #8:**

Governing Section: §300.125(a)(1)(i)

(a) *General requirement.* (1) The State must have in effect policies and procedures to ensure that-

- (i) All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education services, are identified, located, and evaluated.

Governing Section: §300.122(a)(2)(i)(A)(B)

(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

(2)(i) Students aged 18 to 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correction facility-

- (A) Were not actually identified as being a child with a disability under §300.7; and
- (B) Did not have an IEP under Part B of the Act.

The investigator reviewed the MDOC's Special Education Plan and noted:

1.2.D Special Education Awareness Procedures

1. In addition to education staff, suspected disabled prisoners are routinely identified and referred for special education services through MDOC Reception & Guidance Center intake procedures, facilities classification directors, and other staff members affiliated with treatment, health care and housing. Self-referrals by prisoners seeking admission to MDOC educational programs are also accepted.

The investigator reviewed the Special Education Referral form from the Michigan Department of Corrections is used and noted:

1. Students are formally referred for initial special education evaluations.

The investigator interviewed the Resource Teacher who stated:

1. Students are usually referred from the Pre-GED classroom since they were initially identified as the lower functioning group from the Reception Center testing. The Referral form is filled out and the Resource teacher interviews the general education teachers. Once that process is finalized, the Principal signs and the referral goes to the Medical Team.

2. There have been students who have also self referred. Both of these referrals start the timeline.
3. The Psychologist, schedules the tests, administers the tests, and participates on the MET team making the recommendation of eligibility or ineligibility.
4. Nine students have been referred, tested and have current IEPs at this time.
5. On the forms the student fills out at the Reception Center, they are asked to identify if they are special education Yes or No. If the student checked Yes on the form but was found not special education eligible by their exiting school, they become a new referral and are tested.

The investigator interviewed the Pre-GED teacher who stated:

1. She has referred students for special education evaluation from her Pre-GED classes that are functioning very low. Some students have requested a special education evaluation.

**Conclusion in Complainant's Allegation #8:**

Governing Section: §300.125(a)(1)(i) and §300.122(a)(2)(i)(A)(B) No Violation

The Michigan Youth Correctional Facility has referred students who identified themselves as special education on the Reception Center form who were not identified or received services back at their base school districts. The Pre-GED teacher has identified and referred students she believes could potentially be eligible for special education services. For students 18 to 21 years old that had not been identified as Part B from their previous district are exempt from FAPE. The MYCF has referred students from 14-19 for initial evaluations. Therefore, the MYCF did not violate §300.125(a)(1)(i).

**New Complainant's Allegation #9: Students were asked to sign a waiver of rights to educational services.**

The complainant clarified the allegation to mean:

1. The students need a GED for parole and some are asked to sign a waiver for their educational services.
2. The students are now attending other facilities and asking for reinstatement of the rights to an education (GED).
3. The student (S.B.) was asked to sign a waiver form because he was too stupid to remain in class.
4. The student filed a grievance to get extra help from the Resource Room teacher and was told by the Educational Director the grievance was denied.
5. The student (R.V.) was asked to sign a GED completion exemption form. He was not getting help to pass the GED so he signed the waiver. He was told by the Resource Room teacher that he was just taking up space. In the new facility he was to be reenrolled in a special education class.

**Findings in Complainant's New Allegation #9:**

Governing Section: §300.517(2)

(2) All rights accorded to parents under Part B of the Act transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution.

The investigator interviewed the Education Director who stated:

1. The MYCF no longer uses the waiver system as stated in the old Handbook.
2. One student has refused services through the IEP process but can activate services again at any time.
3. The GED Completion Exemption Form was used was to help protect the special education students from not having parole denied due to lack of completion of the GED. The MYCF did not want the judge's decision to be based on the special education students not meeting the GED requirement. This form is not exiting them from services it is protecting them from discrimination when going up for parole.
4. The students who have signed GEC Exemption forms still receive services.

The investigator review A.P. student file and noted:

1. On 4/25/05 A.P. checked on his IEP that he refused services and understands that this statement can be retracted at any time before the prisoner's 22<sup>nd</sup> birthday.

The investigator interviewed A.P. and noted:

1. A.P. stated he signed his IEP that he refused services and understands that this statement can be retracted at any time before the prisoner's 22<sup>nd</sup> birthday.
2. GED is helpful for parole and he was denied parole so there is no early out. Once parole was denied he was not interested in finishing his GED so he signed himself out. He understood that he could come back and finish his GED at any time. The student stated he was not interested in getting a GED even to support his future when he leaves prison. He was told he could come back at any time and his services would be reinstated.
3. He signed and checked the box on his current IEP team report. He currently is not attending any educational program including vocational education.
4. The student was unable to speak about prior program and services he received back at his local high school.

The investigator reviewed the letter and memo on behalf of Roger Valdez and noted:

2. A release of information was signed by Roger Valdez for the Michigan Protection & Advocacy Services, Inc.
3. A GED Completion Exemption forms was signed on 4/23/04 that checked the prisoner is a special education student and is progressing toward the goals of the Individualized Education Plan.
4. Roger was transferred to Bellamy Creek Correctional Facility. There he was identified as not meeting the criteria set forth by the education steering committee. He was placed back in the school program.
5. Roger submitted a request report stating he wanted to continue working on his GED and wanted a letter sent to the Parole Board.

The investigator reviewed the GED Completion Exemption Form and noted:

1. IF the prisoner agrees to sign the exemption form it gives them an exemption from GED completion. They are also agreeing to a change in their educational program plan.
2. A student cannot exempt themselves from educational services by completing a form. The services can only be terminated with the IEP Team process.

3. The student above did not terminate the educational services through the IEP.
6. It was not clear whether the students understood what their signature on the form meant.

**Conclusion in Complainant's New Allegation #9:**

Governing Section: §300.517(2) Violation

The MYCF removed students from their educational program by a signature on a GED Exemption Form instead of terminating or exiting the student through the IEP Team process.

**Recommended Corrective Action in Complainant's Allegation #9:**

The MYCF must change their procedures when using the GED Exemption Form with students eligible for special education services. The MYCF must determine if any of the students who signed GED Exemption Forms without terminating services through the IEP process experienced any degree of educational loss from the time the Exemption form was signed to date. If an educational loss is determined the MYCF must provide compensatory services to compensate for the lack of services provided.

**CLOSING STATEMENTS**

Pursuant to Rule 340.1852, §300.661(b)(2), and the Complaint Procedures, the OSE/EIS directs the Michigan Youth Correctional Facility to implement the corrective action(s) specified above and submit the proof of compliance specified above as evidence that the district corrected the violation(s).

The Michigan Department of Corrections is responsible for assisting the MYCF and for monitoring progress of the corrective action. The MYCF must submit a copy of the proof of compliance to the investigator.

The MYCF must submit the proof of compliance jointly under the signatures of the administrator primarily in charge of special education programs and services for the MYCF, and the Warden of MYCF.

The MYCF must submit proof of compliance within 30 calendar days of when the district receives this final decision. Please forward proof of compliance to: Mr. David Brock, Supervisor, Policy and Compliance Program, Office of Special Education and Early Intervention Services, P.O. Box 30008, Lansing, MI 48909 and Laurie VanderPloeg, Kent ISD, 2930 Knapp NE, Grand Rapids, MI 49525.

The complainant should note that if she desires, a civil rights complaint can be filed directly with the Office for Civil Rights, at the U.S. Department of Education, Bank One Center, Room 750, 600 Superior Avenue, East, Cleveland, Ohio 44114-2611.

**COMPLAINANT'S RIGHT TO APPEAL**

Pursuant to R340.1851, following the receipt of this report the complainant may contest in writing those conclusions of no violation and request a state investigation of those matters by the Michigan Department of Education's Special Education Services. This request shall be sent to:

Mr. David Brock, Supervisor  
Policy and Compliance Program  
Office of Special Education and Early Intervention Services  
P.O. Box 30008  
Lansing, MI 48909

### **Attachments**

Attachment A	Complaint dated 4/12/05
Attachment B	Release of Confidential Information dated
Attachment C	Michigan Department of Corrections Special Education Plan
Attachment D	Contract for the Michigan Youth Correctional Facility
Attachment E	Pocketbook of MDOC's Procedural Safeguard for Special Education Prisoners
Attachment F	Michigan Department of Corrections Notice of Intent to Conduct a Special Education Evaluation
Attachment G	Michigan Department of Corrections Special Education Referral Form
Attachment H	Michigan Department of Corrections IEP Team report including Transition Considerations
Attachment I	Michigan Department of Corrections Procedural Safeguard Signature Page
Attachment J	GED Exemption Form
Attachment K	Michigan Department of Education Transcript Request Form
Attachment L	Letter from Egeler Reception Center (attempts for request of file)
Attachment M	Practicum Application for Grand Valley State University
Attachment N	Letter of support from GED teacher
Attachment O	Letter from Michigan Protection & Advocacy Services, Inc. dated April 18, 2005
Attachment P	Letter from Michigan Protection & Advocacy Services, Inc. dated April 28, 2005
Attachment Q	GED Completion Form (RV)
Attachment R	Letter from Bellamy Creek Correctional Facility (RV)
Attachment S	Letter from RV
Attachment T	A.P. refusal of service IEP Team page
Attachment U	List of students with IEPs, and list of students without educational records transferred

Letter requesting extension of timeline.

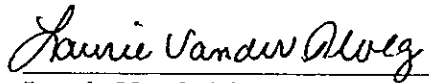
Additional copies of IEP Team reports and other information reviewed is available if needed.

### **Dissemination of Report**

Copies of this report, with all attachments, have been sent to or retained by the following persons or agencies:

1. Stacy A. Hickox, Attorney, Complainant
2. Warden Elo, Michigan Youth Correctional Facility
3. Julie DeRose, Education Manager, Michigan Department of Corrections
4. Don Scramling, Education Director of Michigan Youth Correctional Facility
5. Laurie VanderPloeg, Complaint Investigator
6. Joe R. Gomez, Jr., Ph.D., Consultant, Office of Special Education and Early Intervention Services, Michigan Department of Education

Investigator:

  
Laurie VanderPloeg  
Complaint Investigator