

**CONCLUSIONS OF EDUCATION CONSULTANT MARY MARGARET KERR, Ed.D.
RE: LAMONT A. ET AL. V. MILWAUKEE BOARD OF SCHOOL DIRECTORS
CASE NO. 01-C-0928 (E.D. Wis.)**

I. INTRODUCTION

Dr. Mary Margaret Kerr, Associate Professor of Child Psychiatry and Education, at the University of Pittsburgh Medical Center was retained by the United States Department of Justice, to review the claims made in, Lamont A. et al. v. Milwaukee Board of School Directors, and the Wisconsin Department of Public Instruction, et al. Dr. Kerr's overall conclusion was that:

The Wisconsin Department of Public Instruction (DPI) and the Milwaukee Public Schools (MPS) failed to safeguard the children's rights entrusted to them by Congress [under IDEA]. Consequently, many Milwaukee Children have lost their chance to attain the promise of 'equality of opportunity, full participation, independent living and economic self-sufficiency'.

II. PROCESS

Dr. Kerr reviewed records from 17 MPS schools and visits to 15 of those schools. She conducted face-to-face interviews with 144 people. She also attended group meeting with parents from different ethnic groups. Dr. Kerr reviewed eight major areas of special education related services and the general supervision of MPS by DPI. Directly quoted excerpts from her conclusions in each of these areas are included below. The footnote numbers in this summary of Dr. Kerr's report are the same as those in her full report. Additionally she identified other areas that warranted further investigation including transfer of records, parent access to records, changing the dates on records, tracking disciplinary actions, facilities and safety. Furthermore, she made recommendations for improvement of IDEA services within MPS and reviewed the specific complainants of the named plaintiffs. These latter items are not included in this summary.

III. EVALUATIONS AND RE-EVALUATIONS

IDEA requires that a team of persons evaluates a child with a suspected disability, and that the evaluation data be considered in the development of the resulting IEP.¹ The information I received supports a conclusion that this is not happening systemically in MPS. Members of the IEP team are either not present or their information is not considered or documented.² Teams do not always consider the evaluation data as they develop statements of present levels of performance or IEP goals and objectives. In fact, in many cases, there is little or no connection between the evaluation data and the subsequent sections of the IEP. Moreover, despite repeated findings of non-compliance by DPI, the problems persist.

IV. INDIVIDUAL EDUCATIONAL PROGRAM

My review of hundreds of IEPs and many other documents produced by MPS leads me to the conclusion that the District is misinforming IEP Teams on how to conduct their meetings, write their IEPs, and implement IEPs. While some of the District's efforts are positive, I remain concerned that these efforts are not founded on a solid understanding of the District's obligations under IDEA, Section 504 and their implementing regulations. Staff members wrestle with

¹ 20 U.S.C. 1414; 34CFR 300.534-5; 34 C.F.R. 104.35

²See section on Individualized Education Programs for additional information

multiple sources of advice that contradict the regulations. Because they do not understand how to carry out their legal responsibilities, their students are denied services to which they are lawfully entitled.

I also believe that MPS does not allocate sufficient resources to students with disabilities, as evidenced by the lack of related services in the IEPs I reviewed. This may be a direct result of the absence of the LEA Representatives who are charged with committing resources.

V. SECONDARY TRANSITION

My review revealed systemic deficiencies in the way Individualized Transition Plans are being developed and implemented in MPS. I observed problems in each of these areas: evaluation of student's preferences, interests, and needs; student input; description of needs, interests, and preferences; transition goals and statements of transition needs; participants in the IEP meeting to discuss transition. These requirements under IDEA are not being met in a systematic way. Consequently, students are not receiving the FAPE to which they are entitled.

I believe the non-compliance I observed is a direct result of the district's failure: (a) to acquire assessment resources, (b) to develop policies and procedures, (c) to adequately staff and supervise those working with students 14 and older, (d) to provide comprehensive staff training, and (e) to engage other agencies. Especially troubling is the fact that many of the instances of non-compliance occurred within the past year, suggesting that in spite of the Lamont A. complaint and DPI findings of non-compliance, MPS continues to pay inadequate attention to its transition services.

The Lamont A. complaint alleges, "Defendants have failed to ensure that the full range of transition services are available and provided to transition age students" (p.13). Based on my review, I concur with these allegations.

VI. BEHAVIOR AND DISCIPLINE

My review leads me to the conclusion that MPS has systemically failed to meet the requirements under IDEA, Section 504 and its implementing regulations, and ADA with respect to students whose behavior problems interfere with their own or others' learning. Staff members do not have a good understanding of the regulations and strategies required to meet the regulations. Therefore, students are without services, forced to remain in restrictive settings, or excluded from school altogether. In several cases, students were denied FAPE over several years.

I also concur with the Lamont A. complaint, which alleges that "Defendants have failed to ensure that the limitations on suspensions and constructive suspensions are enforced resulting in many students missing school without being provided functional behavioral assessments and plans, or any alternative educational placements" (p. 13). The District does not adequately monitor the removal of students and the review of those students' Functional Behavior Assessments and Behavioral Intervention Plans. Students with disabilities are suspended at a rate much higher than that of their non-disabled peers, and this rate has increased steadily since 1998. I believe that this disproportionate suspension pattern is the result of a systemic failure to conduct assessments of emotional and behavior problems (including Functional Behavior Assessments and Behavioral Intervention Plans) in a timely and effective manner.

VII. LEAST RESTRICTIVE ENVIRONMENT/PLACEMENT

My review of documents and interviews with parents, students, advocates, and MPS employees supports the finding that MPS has been and continues to be out of compliance with requirements of IDEA, Section 504, ADA, and their implementing regulations. My review supports the allegations raised in the Lamont A. complaint regarding the failure to provide appropriate placements and LRE.³

³"Defendants have failed to ensure that children are provided with educational placements that

VIII. PARENT INVOLVEMENT

34 C.F.R. 300.345 requires an LEA to take steps to ensure the participation of one or more parent of a child at each IEP meeting. Districts must notify parents of the meeting early enough to allow them an opportunity to attend, schedule the meeting at a mutually agreeable time, and ensure that the parents understand the proceedings of the meeting. If neither parent can attend, the LEA must use other methods to ensure parent participation, including individual or conference telephone calls. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend.

I believe that MPS has not taken adequate steps to ensure the participation of parents in the review of existing evaluation data and has, therefore, failed to meet this requirement of IDEA. Moreover, the information I received leads me to conclude that MPS has not met the requirements for parent participation in IEP meetings. Non-English speaking parents have not been offered the accommodations they require to understand the proceedings of the meetings. Attempts to reach some parents have either not been adequately documented or have not taken place. Some parents have not been afforded opportunities to meet at times convenient for them.

IX. STAFFING

Like many districts across the United States, MPS suffers from a shortage of qualified staff. While some of its efforts to recruit staff appear to be worthwhile (e.g., the METC intern program), there is evidence that the District has placed insufficient resources towards the retention of staff and the recruitment of staff, especially from other parts of the country or other countries. The District does not appear to have addressed systematically the retention of special education staff. Moreover, staff working with students who have disabilities do not always have the training to perform their specific duties. I concur with the Lamont A complaint allegation that MPS has failed to provide adequate staff to meet the needs of students with disabilities.⁴

X. SERVICES FOR STUDENTS ELIGIBLE FOR SECTION 504 PLANS

I believe that MPS school staff members are not fully knowledgeable about their responsibilities to identify and serve students eligible for Section 504 plans. This is not surprising, given the myriad of policy and procedure documents that staff must decipher. As a

can meet their individual needs and which have been chosen with the participation of parents and by a team that is knowledgeable about the child, the meaning of the evaluation data and the placement options. Defendants have adopted practices and policies which discourage or prevent children with disabilities from receiving their education in the least restrictive environment. Defendants have failed to ensure that a continuum of alternative placement, ranging from the least restrictive to the most restrictive is available for students with disabilities. Rather, students with disabilities are routinely placed in overly restrictive environment. Defendants do not determine each child's individual needs and then provide a program to meet those needs in the least restrictive environment possible along a continuum of placement. Instead, their policy and practice is to make placement decisions based on pre-existing programs, staffing arrangement, and transportation zones or to require the child's parent to find a school on his or her own that is willing to admit the child regardless of that school's ability) to provide the elements, of the child's IEP." (complaint, pp 12-13)

⁴ Defendants have failed to ensure that an adequate supply of qualified special education and related service personnel and other personnel necessary to educate children with disabilities are appropriately and adequately prepared. (Complaint p 13)

result, students eligible for Section 504 service plans do not always receive them.

XI. DISABILITY RELATED COMPLAINT PROCEDURES

MPS has a responsibility to establish complaint procedures under IDEA, Section 504, and ADA. Complaints may include those of disability harassment. Complaint procedures in MPS are not clearly articulated or understood by staff, leading me to the conclusion that MPS does not have a coordinated process for receiving, investigating, resolving, or tracking complaints filed by students or by parents on behalf of their children with disabilities.

XII. GENERAL SUPERVISION BY THE STATE EDUCATION AGENCY AND DIRECT RESPONSIBILITY FOR PROVISION OF SERVICES

A. MONITORING

Between 1992 and 2000 DPI suspended its onsite IDEA monitoring of MPS *despite its knowledge that the IDEA statute and regulations were being violated in the District*. Although DPI officials recognized that MPS had significant deficiencies dating back to 1991, DPI made no onsite IDEA monitoring visits for almost eight years. Through its abject failure to monitor for nearly eight years a district known to be out of compliance, I believe that DPI abandoned its responsibilities as required under IDEA.

Once it reinstated monitoring visits and found problems, DPI still failed to carry out its duties under 34 CFR 300.600. Despite a history of (a) compliance problems, (b) inadequate procedural oversight; and (c) mounting open complaints from MPS parents and advocates, DPI repeatedly relegated to MPS the design, implementation, and verification of its own corrective actions. DPI appears to have rubber-stamped Corrective Action Plans (CAPs) that, despite repeated evidence of failure, MPS submitted with only minimal revisions year after year. DPI endorsed a pattern of unsuccessful remedial plans based on tried-and-failed approaches, never offering any substantive technical assistance that might have made a significant difference for students and their families. Furthermore, DPI did not provide services directly to students, despite the IDEA requirement that an SEA do so when it determines that the LEA is unable to establish and maintain programs of FAPE that meet the requirements of IDEA.⁵ I believe that in so doing, DPI failed to execute its responsibilities as assigned by Congress.⁶

B. CORRECTIVE ACTIONS

34 CFR §300.197 (a) states that the State Education Agency shall reduce or may not provide any further payments to the LEA until the SEA is satisfied that the LEA is complying with the requirement. *DPI has been aware of the failure of MPS to effectively correct the violations addressed through CCAPs and individual CAPs for a period of at least four years*. Yet, DPI has withheld funds only once, for a period of six weeks, in reference to two timeline requirements. I believe that DPI has failed to meet the requirements of 34 CFR §300.197 (a).

34 CFR §300.556 requires the SEA to “(2) assist in planning and implementing any necessary corrective action” with respect to an LEA’s failure to implement LRE. There is an ongoing and ineffective CCAP (regarding LRE/placement in MPS). This CCAP includes complaints dating back to 1999 regarding the failure to implement LRE. Nevertheless, I could not find documentation for any meaningful assistance and implementation efforts on the part of DPI. Therefore, I believe that DPI has failed to meet the requirements of 34 C.F.R. §300.556.

34 C.F.R. §300.660 requires the SEA to address how to remediate the denial of services

⁵ 20 U.S.C. 1413(h)(1); 34 C.F.R. sec. 300.360(a)

⁶ See 34 C.F.R. sec. 300.600

when a complaint is substantiated. This requirement includes the awarding of monetary reimbursement or other corrective action appropriate to the child as well as appropriate future provisions of services for all children with disabilities. The cycle of failed CAPs and CCAPs in MPS indicates to me that DPI has not taken adequate measures to provide appropriate services for children with disabilities who have been denied FAPE. As a result, I conclude that DPI has not met the requirements of 34CFR §300.660.

20 U.S.C. §1413 (h) requires that a state education agency such as DPI provide special education and related services directly to children with disabilities residing in the area served by that district, if the SEA determines that the LEA is unable to establish and maintain programs of FAPE that meet the requirements of IDEA. Despite its acknowledgment of MPS's failure to provide FAPE, DPI did not engage in the direct provision of services. Therefore, I conclude that DPI has not met the requirements of 20 U.S.C. §1413 (h).