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HOUSE OF
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August 1, 2013

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

Dear Ms. Diamond,

This is in response to your letter of July 24, 2013. As you know, I submitted a state complaint listing five separate allegations of systemic violations involving the EAA. Each statement includes a description of the violation, the factual basis for the violation, and the applicable rules/regulations that were violated.

The MDE's position, that the complaint fails to include the facts supporting the violation, is either a gross misreading of the complaint, or an intentional refusal to investigate in violation of Federal and State regulations. The MDE's apparent refusal to initiate an investigation of the LEA (here, the Education Achievement Authority) is in violation of the applicable regulations, and thus both Federal and State law. Ultimately, the MDE's position is detrimental to the well-being of countless children in the State of Michigan.

The complaint obviously and unequivocally identifies facts in support of each statement. Merriam Webster's dictionary (a text not available at many of the schools under the EAA's jurisdiction) defines a fact as "a thing done." The "things done" identified in the systemic complaint filed on behalf of special education students in the EAA who were improperly denied educational accommodations pledged to them by our Federal and State governments since the Johnson administration include:

- The decertification of hundreds of students' special education services without an appropriate evaluation
- The decertification of hundreds of students' special education services without prior written notice to their parents
- The decertification of hundreds of students' special education services without convening an IEP team meeting
- The reduction, alteration and even elimination of services that were being provided to hundreds of students without convening an IEP team meeting for each child to ensure that the reduction, alteration or elimination would not adversely affect their opportunities
- The reduction, alteration and even elimination of services that were being provided to hundreds of students without informing their parents

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- The wholesale rejection of students by EAA schools merely due to their status as students entitled to special education services.

All of these allegations are statements of facts; they are each "things done." They may be inconvenient truths for the MDE; however, that does not give the MDE the right to be derelict in its duty to ensure that the students put into the EAA are receiving an education that prepares them for the new century. The MDE's failure to comply with the applicable regulations, and failure to investigate on behalf of the students of the EAA, specifically and the children of our State generally is a clear abrogation of its duty to the citizens of this State.

Moreover, the premise of the MDE's asserted refusal to investigate itself is a misreading of the authority granted to it, and restricted by, the applicable Federal and State regulations. For example:

1. Rather than allow an SEA like MDE to just deny or reject complaints which allegedly lack sufficient facts, IDEA's regulations at 34 C.F.R. 300.152(a)(2) clearly mandate that the SEA's procedures must "give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint". There is no authority granted to the SEA to deny or reject a complaint for pending receipt of this additional information. The MDE must investigate the statements on its own. There is simply no authority for OSE's "inability to accept it as a formal complaint or begin an investigation at this time."
2. The requirement that the complaint include "a description of the nature of the problem, including facts relating to the problem" is only in that provision of the regulations regarding "allegations with respect to a specific child" at 34 C.F.R. 300(b)(4). Complaints alleging systemic violations need only assert "a public agency has a policy, procedure, or practice applicable to a group of children that is inconsistent with [IDEA]." See Memorandum to Chief State School Officers and State Directors of Special Education from OSEP dated July 23, 2013 at Q&A B-9, p. 20. My complaint alleges just such practices.
3. The 60 day timeline set forth at 34 C.F.R. 300.152(a) can only be extended for "exceptional circumstances" under 34 C.F.R. 300.152(b). The MDE's denial and rejection of the complaint on the basis that additional facts must be alleged in support of the allegation, given the regulatory provisions noted above in effect constitutes an unwarranted and illegal extension of the 60 day timeline under circumstances that are not of such an exceptional nature as to even remotely justify an extension. To the contrary, the severity and breath of the systemic violations here alleged by their very nature demand a timely investigation and corrective action within the 60-day timeline, which began on July 23rd.
4. Previously the MDE accepted, investigated and ordered corrective action in State Complaint C-7514-13 regarding alleged systemic violations in the Muskegon Heights School District stated in terms very similar to those in my complaint. For the MDE to deny and reject this complaint containing similar allegations of systemic violations as in the Muskegon Heights complaint is both arbitrary and capricious, as well as violates my rights under IDEA, not to mention more importantly those of the children with disabilities this complaint procedure was intended to protect.

As a three times elected State Representative, I swore an oath to uphold the Constitution of our State. As a member of the House Committee on Education, I am charged with holding our governmental appointees accountable to those least able to protect themselves. I expect better from

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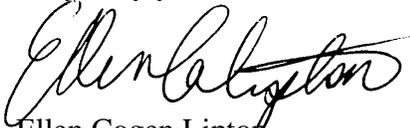
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the Office of Special Education, and those who serve at the upper echelons of the MDE, than to engage in game playing and obstructionist tactics. And, if you persist in your refusal to institute an immediate investigation of these allegations, you will find that, far from needing your "coaching" through the "federal maze" of regulations, I am more than capable of finding appropriate levers within our State system of governance to compel your action.

Finally, Federal and State regulations allow 60 days from receipt of a systemic complaint to complete the investigation. By my count, you have wasted too many of those days on a frivolous response. You should immediately redouble your efforts to complete the investigation as requested and required.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ellen Cogen Lipton". The signature is written in a cursive, flowing style.

Ellen Cogen Lipton

State Representative, 27th District