

# Exchange

MICHIGAN



PROTECTION & ADVOCACY  
SERVICE, INC.

*“Protecting the Rights of Persons With Disabilities”*

SPRING 2016

## Flint Mother Gets Courage to “Speak Up and Not Be Afraid”

In fall of 2014, Brandy Gladding of Flint was told her 5-year-old daughter, Maddeline, would not be permitted to enroll in kindergarten because she was not fully toilet trained. Maddeline, who is diagnosed with attention deficit hyperactivity disorder (ADHD), speech and language delays, and additional impairments, never received evaluations from the school district to determine if special education services were needed. With the help of Brandy’s community mental health (CMH) worker, Maddeline was able to eventually attend school. However, problems with the Flint Community Schools did not stop there.

“I was told Maddeline caused chaos in the classroom and was too much work for the staff,” said Brandy. “Her class took a field trip and left her in wet underpants because they refused to take her backpack and change her.”

Brandy, at a loss for options, called MPAS for assistance. Kris Keranen, an MPAS advocate, asked the Flint school district for a copy of Maddeline’s school records. Flint schools ignored repeated requests for records, which necessitated legal action by MPAS attorneys, Brad Dembs and Crystal Grant. After a prolonged delay, followed by a court ruling requiring action the district finally produced the documents.

After reviewing Maddeline’s records, MPAS filed a special education administrative complaint. The Michigan Department of Education, Office for Special Education (MDE-OSE) found the district noncompliant on five allegations. The MDE-OSE directed the district to provide specific amounts of compensatory services to Maddeline, including instructional services, speech and language services, and occupational therapy.

Maddeline is no longer a student at Flint Community Schools. Through school of choice, she is currently enrolled at Otisville Elementary, part of LakeVille Community Schools. The district provides one-on-one assistance from a teacher’s aide, speech therapy and occupational therapy as part of her special education services. Maddeline loves school. She has friends, is close to her teachers and has learned how to hold a pencil correctly and write her name.

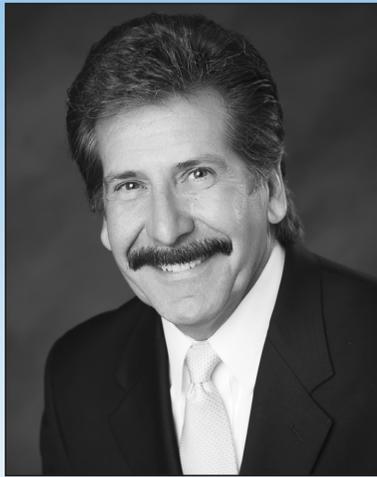
“I am so thankful for Michigan Protection & Advocacy Service,” said Brandy. “If it weren’t for their advocates and attorneys, Maddeline would not be in school. I want my story to help someone else. MPAS gave me the courage to speak up and not be afraid.”

*Maddeline’s case is one of many in Flint that prompted the current lawsuit by MPAS in federal court for the district’s failure to provide student records in a timely manner. See story on page 3.*

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*Elmer L. Cerano,  
MPAS Executive Director*

## Michigan Legislature Introduces Bills to Address Restraint and Seclusion in Michigan Schools

For years, MPAS has encouraged lawmakers to eliminate the use of restraint and seclusion in schools for students whose disruptive behaviors may be related to a disability. On March 1, 2016, the Michigan Legislature introduced a package of 14 bills that will finally address this issue.

Don't let the large package of 14 bills (10 in the House of Representatives and 4 in the Senate) give you great concern. Numerous legislators felt so strongly about this issue they wanted to sponsor key provisions. What a change from several years ago when we could not find even one legislator willing to put their name on such a bill.

The real credit for getting momentum on the issue this year goes to Michigan's Lieutenant Governor, Brian Calley. He was incredulous to learn that Michigan has no laws prohibiting or even restricting the use of restraint and seclusion in schools, that there are no reporting requirements, and no requirement to notify the parents.

Here at MPAS, we were aware of several anecdotal reports from parents who noticed bruises on their child or whose children exhibited unexplained fears and anxieties upon returning to school.

In 2003, MPAS learned about the deaths of two Michigan special education students. In both situations, the school's reaction to the student's acting out behaviors resulted in each student being held on the floor, in a prone position, with an adult sitting on their back. Both students were restrained and breathing was restricted.

At the time, MPAS conducted a survey to learn more about the use of restraint and seclusion, but the findings were limited at best. We learned that parents could not respond to the survey because the use of restraint and seclusion was never reported to them by the school. They had no idea such practices were being used.

Finally, the Michigan Legislature is not only willing to give the issue serious consideration, individual legislators are eager to add their names to the pending legislation.

The new bills do not totally eliminate the use of restraint and seclusion in schools. Lawmakers are proposing these measures be restricted to emergency situations ONLY. Restraints can be used to make the classroom safe for all students when there is an imminent danger to the individual or others in the school. One really positive aspect of the draft legislation is the (suggested) training on Positive Behavioral Interventions and Supports (PBIS). While I would like for PBIS to be more than a "suggestion," it will encourage a positive change in the system. Schools will learn very quickly that PBIS, if done correctly, WILL reduce inappropriate behaviors, increase academic achievement for all students and encourage an optimal learning environment because the classroom and the teacher are not distracted by inappropriate behaviors.

This legislation is not addressing the typical "quiet room" where a student can voluntary go in order to cool down. We are eliminating the use of restraint and seclusion as a punishment or outdated behavior modification technique. Reported incidents where students have been hit, rolled up in a carpet, placed in a headlock, or locked in a closet are simply barbaric and not acceptable.

For students with disruptive behaviors that may be related to a disability, an Individualized Education Program (IEP) must be designed, through effective and non-stigmatizing pre-planning, to address such behaviors. The IEP should be written to inform school personnel about possible behaviors, how to identify and eliminate the stimulation for those behaviors and strategies to effectively de-escalate the potential disruptive behaviors. The skill is in preventing the disruptive behaviors from occurring in the first place.

Congratulations to Lieutenant Governor Brian Calley, State Senators Margaret O'Brien, Rick Jones, Jim Marleau, Curtis Hertel, Jr., Hoon-Yung Hopgood and State Representatives Frank Liberati, Christine Greig, Amanda Price, Hank Vaupel, Jim Tedder, and Kurt Heise for their leadership and commitment to ending the inappropriate use of restraint and seclusion in schools.

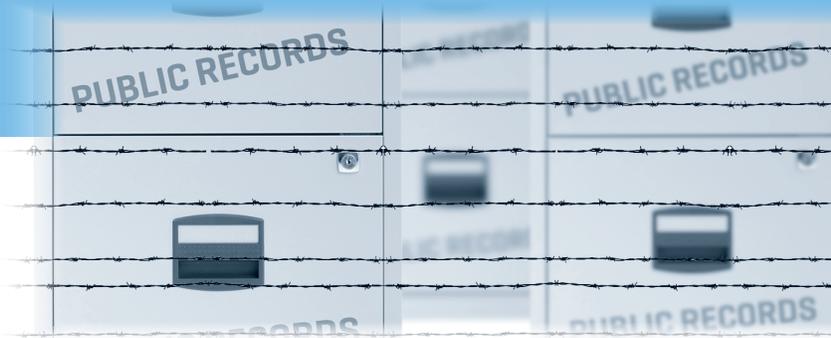
## Flint Records Access Update

**O**n Nov. 23, 2015, a federal court in Detroit ordered Flint Community Schools to provide copies of school records to Michigan Protection & Advocacy Service, Inc. (MPAS) promptly upon request. U.S. District Judge David M. Lawson recognized that, as the protection and advocacy system for the state of Michigan, MPAS has a unique right of access to its clients' records under federal law. Judge Lawson granted a preliminary injunction, ordering the district to provide records within three to five business days of a request.

MPAS brought suit in response to Flint's failure to respond in a timely manner to requests for school records on behalf of MPAS' clients. Over the past several years, MPAS has been contacted by numerous families of children with disabilities who attend school in Flint, raising concerns that the school district was violating their children's rights under federal and state law. Upon receiving notice of these alleged violations, as well as authorization from the parents, MPAS sent letters to Flint requesting copies of educational records. MPAS sought review of these records in order to develop a clear and accurate understanding of a client's situation and determine an appropriate course of action.

Unfortunately, the school district persistently ignored MPAS' requests for records or delayed in providing records for several months. While MPAS waited for the records, several of its clients continued to report they believed their children with disabilities were not being adequately served by Flint Community Schools. Some students were suspended by the district during this period, while others were removed by their parents and transferred to other school districts rather than wait for MPAS to receive the records needed to provide them with support. MPAS made various attempts to negotiate with the district to eliminate their practice of refusing to provide records. When these methods proved unsuccessful, MPAS was compelled to bring suit.

Since the district court issued its ruling, Flint has promptly responded to MPAS' records requests, in compliance with the preliminary injunction. However, on Dec. 22, 2015, the school district also filed a notice of appeal, claiming that the district court committed



an error in deciding that MPAS has a right of access to records. The case will now be heard by the Sixth Circuit Court of Appeals, with hearings likely to be held within the next several months. In the meantime, with the support of the district court, MPAS will continue to fulfill its role of zealously advocating for the rights of students with disabilities in Flint schools.

Preserving MPAS' right of access to records has become even more significant in light of the current water crisis in Flint. With the likely increase in behavior issues and developmental delays in Flint schoolchildren as a result of the exposure to toxins in their water, it is imperative that MPAS be able to provide services to its clients with as little delay as possible. Resolving the records access issue now will positively impact current and future clients as records will be received in a timely manner and limited MPAS resources will not be spent on repeated follow-up with the district.

### Michigan Legal Now Online

**T**he Michigan Legal Help website has posted its first articles on special education, featuring information from and links to MPAS' Special Education Advocate's Manual. The Michigan Legal Help website was created to help people, without a lawyer, handle simple civil legal problems. Supporters include the Michigan State Bar Foundation, Michigan Supreme Court, and Michigan legal services organizations. Go to <http://michiganlegalhelp.org/> to learn more.

## Ask the Advocate: Accessing Behavior Supports

### QUESTION:

I have a 10-year-old child with autism. I am being called by the school to pick him up frequently due to poor behavior. Is there anything the school can do to address my child's behavior and keep him in school?

### RESPONSE:

The Individuals with Disabilities Education Act (IDEA) is a law ensuring services to children with disabilities throughout the nation. IDEA focuses on positive behavioral support to prevent behavior problems in school. The law requires development of behavior support plans (BSPs), involvement by general education teachers, and use of behavior support as an alternative to discipline when a student's behavior impedes learning. The BSP can be developed as part of the Individualized Education Program (IEP) process whenever the student's behavior becomes an issue. By developing a comprehensive BSP during the IEP process, parents may be able to prevent the need for future discipline if the school fails to adhere to the BSP and the student misbehaves.

A BSP is only as good as the data that supports it. Whenever a student's behavior has become an issue, data should be collected by school staff through a functional behavior assessment (FBA). A FBA is flexible and should be revised as needed.

The four main goals of an FBA are to:

1. Describe the behavior
2. Predict when and where the behavior may occur
3. Identify the possible reasons for that individual's behavior across time and places
4. Propose supports that address the reasons why the behavior occurs and redirects the behavior appropriately

There are many positive outcomes that can result from IEP teams effectively conducting FBAs under the appropriate circumstances. These include enabling the student to derive meaningful benefit from the IEP through skill development and reduction in problem behavior, providing staff with positive approaches to short and long term support, and integrating relevant information, from a variety of sources, of contributing factors associated with problem behavior.

In short, your child has the right to receive behavioral supports in the form of BSPs, IEPs and FBAs when necessary to overcome behavior-created barriers to learning. The insight gleaned through these various resources can be directly translated into effective strategies and supports that result in positive outcomes for all involved in the process. For more information, see the "Special Education: An Advocates Manual" through MPAS. The manual is available in print or on-line at [www.mpas.org](http://www.mpas.org).

## Positive Behavioral Supports Receives Statewide Endorsements

**M**ulti-tiered support systems, including systems of positive behavioral supports, received two statewide endorsements in February 2016.

The Governor's Special Education Reform Task Force recommended in February that "the Michigan Department of Education (MDE), working through the Michigan Integrated Behavior and Learning Support Initiative, should create a strategic plan for statewide implementation of a Multi-Tiered System of Supports. This overall plan should include a strategic plan for expanding the use of Positive Behavioral Interventions and Supports in all Michigan schools to help all Michigan students." For more information, go to <http://www.michigan.gov/snyder/0,4668,7-277-73341-362221--,00.html>.

MDE State Superintendent, Brian J. Whiston, also unveiled his "Top 10 in 10 Years" strategy document in February. Goal 2 of the seven goals addressed high-quality, child-centered instruction and included as a strategy to "establish and implement with fidelity a high-quality, multi-tiered Positive Behavior Intervention and Support (PBIS) process." For more information about the Top 10 strategies, go to <http://www.michigan.gov/mde/0,4615,7-140--376451--,00.html>.

# Transition Services: The Road to Adulthood

Throughout school, young adults with disabilities will be exposed to a transitional process that will provide a foundation for the adult world. It is important to plan for the future and assure students have the opportunity to identify their goals, receive appropriate evaluations, have access to community supports and gain the skill sets necessary to succeed.

## GOALS

Students are individuals with dreams and goals of their own. Once goals are identified, it allows their team to develop appropriate and measurable objectives to achieve it. For example, if an individual is interested in being a veterinarian, find out why. Do they just like animals? Do they like the idea of caring for something? Answering these types of questions forecasts what life after school will look like. A goal ensures the necessary skills and educational experiences are integrated into the student's Individualized Education Program (IEP).

## EVALUATIONS

It is vital that a student's IEP reflect the objectives needed to ensure the transition is successful. Proper evaluations conducted on behalf of the student highlight areas that need attention. Schools tend to rely on the ESTR-J or ESTR III (Enderle-Severson Transition Rating Scale Form J/Form III). While it is a good screening tool, it doesn't really do enough to give a full picture of what the student's needs, interests and abilities are. Most of the questions are vague and can easily be interpreted several ways. Additional evaluations are needed in order to provide team members with a complete picture. A plan based on thorough assessments can support the student in their goals, whether they are in continued education, employment or both.

## SUPPORT SERVICES

According to Michigan law, transition starts at the age of 16. Parents or guardians should start asking what services are available in their school district before their student turns 16. Many districts have access to several types of programs. Research what resources are available. Determine if the programs provided will work based on the students goals and evaluation data. If not, ask the district to add additional services to their program or mirror what outside districts are currently doing.



## COMMUNITY ENGAGEMENT

School districts are not the only resource for transition services. Under the Federal Workforce Innovation and Opportunity Act (WIOA), Michigan Rehabilitation Services (MRS), Bureau of Services for Blind Persons (BSBP) and your local Community Mental Health (CMH) agencies are responsible for providing transitional support as well. Invite MRS, BSBP and CMH to the IEP meetings. Include MRS in the process prior to the student's senior year and understand what programs and services MRS provides in the community. The more opportunities and supports presented to the student, the more successful they will be.

Transition is an important piece of the education puzzle. Students, parents, and guardians should plan early and stay informed. Utilize the collaborative resources available to guide the process. The goal of transition is to put students first, allowing them to successfully enter into adulthood.

# 11 Helpful Tips - Filing An Education Complaint with the Michigan Department of Education

The Individuals with Disabilities Education Act (IDEA) allows parents or other interested parties to file a complaint with the Michigan Department of Education (MDE) if they feel the school district is not following the Individualized Education Program (IEP) written for their student. In order to get MDE to investigate whether or not your child is receiving the program written in the IEP, you must present your allegation in a way that is clear and concise. Here are 11 tips to help you get your allegations reviewed and investigated.

**1. CALENDAR YEAR** - You can file a complaint against the school district going back one calendar year. Any allegation that happened beyond the year will not be investigated.

**2. GET PROOF** - It is advisable to get proof of MDE's receipt of the complaint either through fax confirmation or a signed certified mail receipt. This information confirms the filing date and is critical if you are filing close to the one year deadline.

**3. COMPLAINT PROCESS** - It is important to know what can be investigated through a complaint versus what has to be reviewed by an administrative law judge at a due process hearing. Issued not related to the state or federal special education law may not be resolvable through a complaint or hearing. Some issues can be resolved by either method. You can find a comparison list on page 20 of the State's "Special Education Problem Solving Process" document at [http://www.michigan.gov/mde/0,4615,7-140-6530\\_6598\\_7363-299064--,00.html](http://www.michigan.gov/mde/0,4615,7-140-6530_6598_7363-299064--,00.html).

**4. LEGIBLE COMPLAINTS** - The complaint can be typed or handwritten. If you are handwriting your complaint, it needs to be legible. If the individuals who receive the complaint cannot read it, they will not investigate it.

**5. COMPLETE INFORMATION** - You do not need to use MDE's form but all the information needs to be present for it to be accepted. You can find the state's form on page 17 at [http://www.michigan.gov/mde/0,4615,7-140-6530\\_6598\\_7363-299064--,00.html](http://www.michigan.gov/mde/0,4615,7-140-6530_6598_7363-299064--,00.html).

**6. HIGHLIGHT ALLEGATIONS** - As you begin to write your complaint, highlight your allegations by

either "bolding" them in your narrative or place them in a separate section and number them. This will make it easier for MDE to determine what your allegations are against the school. There are no limits to the number of allegations allowed in a complaint, but you will need to give an explanation of why you feel the school is in violation for each.

**7. GIVE SPECIFIC EXAMPLES** - When explaining your allegation give specific examples of when the school failed to accommodate or provide the service mentioned in your allegation. Be careful of writing generalized statements such as: "the school failed to follow the student's goals" or "the student is always being sent home." It is better to state, "The school failed to have a social worker on staff from Sept. 2015 to Jan. 2016 and therefore my student did not have the social work services as stated on his/her IEP."

**8. SEND COPIES** - If you have copies of special education documents that support your allegations, send them with your complaint.

**9. IDENTIFY RELATIONSHIP** - Though not required by law, you might want to include a statement identifying your relationship to the student. If the student is over 18 years of age, you will want to include a release of information so MDE sends you the results of the complaint.

**10. CONSTRUCTIVE RECOMMENDATIONS** - As part of the complaint, you have the right to give recommendations for what the school should be required to do as a corrective action if the allegations are confirmed. Focus your recommendations on things that will make your child's school experience more productive. For example, "The district needs to provide training for staff specific to autism," is much better than, "My student's teacher doesn't know what she is doing and should be fired."

**11. SIGNATURE REQUIRED** - The complaint requires a signature. If you do not sign the complaint, MDE will not begin the investigation.

For more information on filing a complaint, see Chapter 10 of MPAS' Special Education Advocate's Manual at [www.mpas.org](http://www.mpas.org), or call MPAS' Information and Referral Team at (800) 288-5923.

# Michigan Department of Education

## Reviewing Current Complaint System

The state special education complaint process is critically important to children with disabilities and their parents. It is often the only viable dispute resolution process available to parents, and only through complaints can parents and children have a say in making fundamental systemic changes in school services and supports. It may be the only effective way to bring systemic problems to light in rural districts and districts with high levels of poverty.

MPAS has used the complaint process over the past six years to address the needs of children with challenging disability-related behavior. When these children are pushed out of school, they are set on the path to a grim future. Loss of instruction leads not only to academic failure, but also a failure to develop appropriate social and behavioral skills. For many children this becomes a downward spiral: skill deficits lead to removals, which lead to greater skill deficits. Students on this path are more likely to drop out, lowering their chance to graduate. Students who are not in school are far more likely to become involved in the criminal justice system and struggle to maintain employment or become active, involved citizens. The path to their future is the path to our shared future.

MPAS' complaints have recently included allegations made directly against the Michigan Department of Education (MDE), challenging its failure to conduct adequate investigations, ensure correction of noncompliance, and adequate internal processes. Recent findings by the U.S. Department of Education, the Governor's Special Education Task Force, and MDE's own complaint investigators have found the complaint system wanting. In response to these findings, MDE started a review of the process by an outside consultant.

A legally compliant state complaint system should:

- ◇ Accept, investigate, and correct a wide range of legal violations, including substantive and systemic violations;
- ◇ Be thorough, impartial, and rooted in direct contact with parents and the students affected by district noncompliance;
- ◇ Include complaint investigators in sufficient numbers who are adequately trained in both the law and sound investigative practices;
- ◇ Employ the full range of corrective actions described in federal and state law, focused on making students whole and ensuring future provision of appropriate services to all children with disabilities;
- ◇ Independently verify that correction has occurred; and,
- ◇ Coordinate with other state-level general and special education quality assurance initiatives, including monitoring.



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*Executive Director*

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