

Ex. A



STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING

RICK SNYDER  
GOVERNOR

MICHAEL P. FLANAGAN  
STATE SUPERINTENDENT

January 7, 2013

Christine Johns, Ed.D., Superintendent  
Utica Community Schools  
11303 Greendale Drive  
Sterling Heights, Michigan 48312

SEH #: 12-07

**Re: SEH# 12-07: Corrective Action/Proof of Compliance**

Dear Dr. Johns:

On July 23, 2012, Administrative Law Judge (ALJ) Susan Harris issued a Decision and Order (Order) in the above-referenced special education due process matter. In the Order the ALJ enumerated multiple actions the district must complete to comply with the Order. In a letter dated October 3, 2012 the Michigan Department of Education (MDE) informed the district of the status of each item in the ALJ Order.

The district submitted partial Proof of Compliance on October 12, 2012, and additional documents were submitted in November and December, 2012. The attached document entitled, *Corrective Action/Proof of Compliance, Sharbowski v Utica Community Schools, SEH# 12-07, January 4, 2013* summarizes the district's status regarding implementation of the ALJ Order. It identifies Corrective Action/Proof of Compliance that must be submitted.

The MDE finds that the district made good faith efforts to fully implement the ALJ Order in the timeline given. The following items require additional proof of compliance or were not able to be completed for the reasons identified:

**1a: *The district shall pay for an Independent Educational Evaluation, in the areas of CI, ASD and EI***

- EI Eligibility evaluation was not able to be completed; the parent did not provide consent for the district and the evaluator to release necessary information to each other
- The parent requested the evaluation be put on "hold" until spring 2013

**2: *The IEE is to... determine whether or not the student has an EI for the "purposes of special education eligibility"***

- EI Eligibility evaluation was not able to be completed; the parent did not consent to the district and the evaluator releasing necessary information to each other
- The parent requested the evaluation be put on "hold" until spring 2013

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**3a: Convene an IEPT meeting when the IEE is complete**

- The parent did not identify/confirm the evaluator until October 2012
- The IEE for CI and ASD was completed October 18, 2012
- EI Eligibility evaluation could not be completed; the parent did not provide consent for the district and the evaluator to release necessary information to each other
- The parent requested the evaluation be put on "hold" until spring 2013
- The parent requested that the "re-determination IEP" not be held until spring
- The parent requested that the IEP be conducted after additional evaluations were conducted (which were not included in the ALJ order.) The parent would not sign the Review of Existing Evaluation Data (REED) form or give consent for the evaluations offered by the district until the additional evaluations were included in the REED.
- The IEP was convened December 19, 2012, and was adjourned and rescheduled for February 13, or 27, 2013.

**3c: At the IEPT meeting the IEPT shall complete eligibility checklists for CI, ASD and EI. The IEP shall document:**

- i. which of the student's disabilities is his primary and secondary eligibility labels;*
  - The December 19, 2012 IEP does not document secondary eligibility
- ii. whether or not the student is eligible as EI*
  - EI Eligibility evaluation could not be completed; the parent did not provide consent for the district and the evaluator to release necessary information to each other
  - The parent requested the evaluation be put on "Hold" until spring 2013

**4b: The BCBA shall conduct a FBA and formulate a BIP**

- The parent discontinued the FBA/BIP (refused to attend meeting and refused necessary contact/exchange of information between the district and the BCBA)

**5b: The paraprofessional shall... assist the BCBA with tracking ESY regression - recoupment data**

- There have not been significant school breaks on which to document or report data regarding regression/recoupment for ESY determination

The MDE finds that the parent's actions delayed or prevented the district's ability to fully implement the ALJ Order. A parent cannot delay or nullify the actions required by an ALJ Order by interjecting issues and activities not addressed in a hearing or required in an ALJ Order. The district has submitted sufficient documentation of compliance with the ALJ Order. If the district chooses to address items 1a, 2, 3a, 3c ii., and 4b at a later time, it is within its prerogative to do so.

Christine Johns  
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The MDE directs the district to submit the following Proof of Compliance:

- 3c i: A copy of the IEP, or IEP Amendment, documenting the student's secondary disability
- 5b ii: A statement of assurance that the paraprofessional will assist the BCBA with tracking ESY regression/recoupment data

Please send the required Proof of Compliance by January 31, 2013, to my attention at:

The Michigan Department of Education  
Office of Special Education  
608 West Allegan Street  
P.O. Box 30008  
Lansing, Michigan 48909

If you have any questions, please contact me at (517) 241-7507.

Sincerely,

Harvalee Saunto, M.A., J.D.  
Due Process Coordinator  
Office of Special Education

HS/jam

c: Michael DeVault  
Beth Alberti  
Thomas Koepke  
Patricia McKinnon  
Gina Sharbowski

1/7

**Corrective Action/Proof of Compliance**  
**Sharbowski v Utica Community Schools, SEH# 12-7**  
**January 7, 2013**

Order #	Required Action	Completed; Proof of Compliance submitted	Proof of Compliance Due
1a	The district shall pay for an Independent Educational Evaluation, in the areas of CI, ASD and EI	<ul style="list-style-type: none"> <li>- Emails/letters: 8/2,7,8/12, 10/11/12</li> <li>- IEE Report: completed for CI and ASD, 9/11/12 and 9/18/12</li> <li>- *IEE/EI Eligibility could not be completed: *Evaluator was not able to complete an IEE/EI evaluation "for the purposes of special education eligibility." Parent did not provide consent for the district to release information to the evaluator or for evaluator to communicate/release information with the district. Parent asked that it be put on hold until spring.</li> </ul>	None
1b	The student and student's mother shall be administered the Autism Diagnostic Observation Schedule (ADOS) and the Autism Diagnostic Interview-Revised (A-DIR) - Administered by a psychologist with specialized training in ASD diagnostics and treatment.	IEE Report - 9/11/12 and 9/18/12	None
1c	The IEE is to determine the Student's IQ.	IEE Report - 9/11/12 and 9/18/12	None
2	The IEE is to: <ul style="list-style-type: none"> <li>- recommend to the IEPT which is a primary disability, secondary disability</li> <li>- determine whether or not the student has an EI for the "purposes of special education eligibility"</li> </ul>	<ul style="list-style-type: none"> <li>- IEE Report - 9/11/12 and 9/18/12 for CI and ASD:               <ul style="list-style-type: none"> <li>• Primary - CI</li> <li>• Secondary - ASD</li> </ul> </li> <li>- *IEE/EI Eligibility not able to be completed: *Evaluator was not able to complete an IEE/EI evaluation "for the purposes of special education eligibility." Parent did</li> </ul>	None

**Corrective Action/Proof of Compliance**  
**Sharbowski v Utica Community Schools, SEH# 12-7**  
**January 7, 2013**

		not provide consent for the district to release information to the evaluator or for evaluator to communicate/release information with the district. Parent asked that it be put on hold until spring.	
3a	<u>Convene an IEPT meeting when the IEE is complete</u>	<ul style="list-style-type: none"> <li>- IEE Report: 9/11/12 and 9/18/12 (for CI and ASD)</li> <li>- *IEE/EI Eligibility not able to be completed: <ul style="list-style-type: none"> <li>- *Evaluator was not able to complete an IEE/EI evaluation "for the purposes of special education eligibility. " Parent did not provide consent for the district to release information to the evaluator or for evaluator to communicate/release information with the district. Parent asked that it be put on hold until spring</li> </ul> </li> <li>- IEP convened 12/19/12, adjourned, rescheduled for 2/13/13 or 2/27/13</li> </ul>	None
3b	The student's mother is to have the complete report (IEE) at least one week in advance of the IEPT meeting	Email indicating IEE Report for CI and ASD sent 11/19/12	None
3c	<p>At the IEPT meeting the IEPT shall complete eligibility checklists for CI, ASD and EI</p> <ul style="list-style-type: none"> <li>i. The IEP shall document which of the student's disabilities is his primary and secondary eligibility labels; and</li> <li>ii. whether or not the student is eligible as EI</li> </ul>	<ul style="list-style-type: none"> <li>i. Copy of IEP: 12/19/12, does not document secondary eligibility</li> <li>ii. *IEE/EI Eligibility not able to be completed: <ul style="list-style-type: none"> <li>*Evaluator was not able to complete an IEE/EI evaluation "for the purposes of special education eligibility. " Parent did not provide consent for the district to release information to the evaluator or for evaluator to communicate/release information with the district.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>i. <b>Copy of IEP, or IEP Amendment, documenting the student's secondary eligibility</b></li> <li>ii. None</li> </ul>

*Letter #12-13 ASD  
 Letter Rev'd  
 2-1-13 dated  
 1-29-13*

**Corrective Action/Proof of Compliance**  
**Sharbowski v Utica Community Schools, SEH# 12-7**  
**January 7, 2013**

		Parent asked that it be put on hold until spring.	
4	The district shall hire and appoint a Board Certified Behavioral Analyst (BCBA) with specialized training in ASD behavioral issue to the Student's IEPT	Emails/letters: 8/2/12, 9/10/12, 9/18/12, 9/24/12, 10/11/12	None
4b	The BCBA shall: i. conduct a FBA and ii. formulate a BIP	DMC Children's Hospital Report, 11-5-12: Parent discontinued FBA/BIP (refused to attend meeting and refused contact between school and BCBA)	None
5a	The student shall be assigned a one-on-one paraprofessional with specialized training in ASD behavioral issues	List: Special Services Teacher Assistants	None
5b	The paraprofessional shall: i. Assist the BCBA with tracking ESY regression/recoupment data ii. At a minimum, attend the behavioral module of the START training	i. No data available at this time (no school breaks) ii. Sign-in sheet & agenda	i. <b>Statement of assurance that the paraprofessional will assist the BCBA with tracking ESY regression - recoupment data</b> ii. None
6a	The student shall be assigned a special education teacher with an endorsement in ASD	Class list, Transcripts	None
6b	The special education teacher and the paraprofessional will track the student's academics for ESY regression/recoupment data	Letter/assurance, dated October 12, 2012	None
7	All district staff that will be interacting with the student, including "specials teachers" shall receive the START training behavioral module; including the SSW (Ms. Weingarden)	Sign-in sheet & agenda	None



STATE OF MICHIGAN  
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RICK SNYDER  
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STATE SUPERINTENDENT

June 11, 2013

Christine Johns, Ed.D., Superintendent  
Utica Community Schools  
11303 Greendale  
Sterling Heights, Michigan 48312

SEH#: 12-7

Dear Dr. Johns:

The Michigan Department of Education, Office of Special Education (MDE-OSE) received the above referenced Due Process Hearing request on February 21, 2012. The request was forwarded to the Michigan Administrative Hearing System and the Administrative Law Judge (ALJ) assigned to the case issued a Decision and Order in the matter on July 23, 2012.

The parent prevailed in a number of allegations and the district was ordered to complete multiple actions. The district was also ordered to submit proof of compliance to the MDE-OSE to evidence district compliance with the Order. The district submitted partial proof of compliance in October, November, and December, 2012 for all but two of the items in the ALJ Order. In a letter dated January 7, 2013 the MDE-OSE informed the district that proof of compliance was sufficient for the items that had been submitted and redirected the district to submit proof of compliance for items 3c i and 5b ii. A summary of the status of the district's Corrective Action/Proof of Compliance was enclosed in the January 7, 2013 letter. The letter and the summary of Corrective Action/Proof of Compliance noted that the parent's actions delayed or prevented the district's ability to fully implement the ALJ Order.

Subsequently, the district submitted the following proof of compliance for 3c i and 5b ii:

- Letter dated January 29, 2013, received by the OSE on January 29, 2013, which stated,
  - "The IEP team continues to find the student only eligible as CI with no secondary eligibility. The IEPT meeting was adjourned and will reconvene in February.

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- "This is written assurance that the paraprofessional will assist with tracking ESY regression/recoupment data as per the training provided by the BCBA."
- Email dated March 26, 2013 from the district to the OSE, with attached IEP dated February 27, 2013.
- Notice Regarding Provision of Special Education, dated February 27, 2013 and signed by the district March 1, 2013; including statements that ASD eligibility, EI eligibility, and ESY were considered options by the IEP team, and were not selected.

The MDE-OSE reviewed the proof of compliance, deems it satisfactory, and determines that the district has complied with the ALJ Order. Therefore, the MDE-OSE has closed case SEH# 12-7.

Pursuant to the State of Michigan Record Retention and Disposal Schedule, the due process complaint file will be destroyed after three years.

Sincerely,

Harvalee Saunto, M.A., J.D.  
Due Process Coordinator  
Office of Special Education

HS/jam

C: Gina Sharbowski  
Pat McKinnon  
Kevin T. Sutton  
Robert T. Schindler