

APPENDIX 4:
Report and Recommendations of the Special Advisory Committee
on Special Education

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April 30, 2018

On January 25, 2018, the Board of Education created a Special Committee to serve as an advisory body to the Board. Board Resolution No. 2017-18: 561. The Special Committee was asked to:

- review the Board's policies on special education programming and services;
- review the District's practices and protocols relating to special education programs and services; and
- propose solutions to the District's challenges in special education.

The Members of the Board of Education and Empire Justice Center, which had threatened suit over the legal non-compliance throughout the District's special education system, were asked to suggest possible members of the Special Committee. The President of the Board appointed a diverse group of individuals to the Special Committee. The Special Committee was chaired by Commissioner Funchess.

The members of the Special Committee included parents of students with disabilities, advocates for students with disabilities, individuals with knowledge of the particular issues involving students and parents whose primary language is not English, individuals with deep knowledge of what works to successfully assess, educate, and provide services to students with disabilities, District staff, including a related service provider, the Interim Executive Director of Special Education and an attorney from the Counsel's Office for the District. The names of the members are attached.

The Special Committee met weekly from February 26, through April 23, 2018. Discussions were animated, but there was a remarkable degree of consensus about both the widespread scope of the problems, and the belief that they could be solved with appropriate actions by the District. The members reviewed:

- The Report from the Council of Great Cities Schools on special education prepared in 2008-09;
- The Report by Judy Elliott, Ph.D., prepared in April 2017, and presented to the Board of Education last summer;
- Information about the two reports of Patrick Tydings, Esq. on issues in the Committee on Education process prepared for Superintendent Vargas.

- Data about current District performance on a number of special education requirements that are subject to empirical measurement;
- Experiences of parents, advocates, administrators, school staff , and outside experts regarding the District's performance in evaluating and providing education and services to students with disabilities;
- Information from the District about current staffing levels and vacancies in special education;
- Information about findings of non-compliance from the State Education Department;
- Information on accountability structures or the lack thereof for key tasks in special education; and
- Information about the limits of the current data reporting system to provide front line staff and managers with the key information they need to ensure compliance with the law and quality programs and services

Based on the review, the Special Committee concluded that there are wide-spread and very serious problems in virtually every aspect of the District's special education programs and services. These problems both lead to non-compliance with the District's legal obligations and perhaps, more importantly, to the predictable failure of students with disabilities to succeed to the extent to which they are capable.

Problems identified in the reports and by the members of the Special Committee included:

- Parents are not treated as if they are full participants in all decisions involving special education for their children, as is required by law.
- Parents do not always receive written notices of CSE meetings within the legally required time, and meetings must be rescheduled with delays in decision and then in providing programs and services.
- Parents are not always provided with printed copies of fully completed IEPs and CSE minutes at the CSE meeting or within a few days thereafter.
- The low levels of academic performance of students with disabilities.
- Sometimes decisions made at CSE meetings are not reflected in the minutes or in the printed version of the IEP, and at other times, items on the IEP are changed without informed parental consent because of lack of space or services, or transfer to a program like Lynx.
- CSE meetings are rescheduled because not all the required evaluations have been completed on time. This delays the start of services or placement beyond the legally required time.

- Not enough trained staff are available to timely conduct all CSE meetings (including annual reviews and reevaluation reviews).
- Not enough trained and (where required) certified staff are available to deliver the programs and services on the IEPs of all students. This results in students illegally awaiting placements, and failing to receive services on IEPs.
- The District's lack of sufficient programs and services to meet the projected needs for placements and services has also resulted in: students not receiving their program and services in the school that they would have attended if they did not have a disability; being placed wherever there is an opening, rather than with students with similar needs; being placed in settings with more students with disabilities than is permitted; and having IEPs altered to provide for programs and services that are available, instead of those that the CSE believes are really needed.
- Students with disabilities are suspended at disproportional rates, and receive harsher penalties than non-classified students.
- The District's process for determining whether a potentially suspendable offense is a manifestation of a disability, relies on illegal criteria and fails to prevent suspension when the student is not receiving all the services on their IEP (in their primary language) or the staff has failed to comply with their BIP. Suspending children whose IEPs have not been implemented is illegal.
- Some building administrators use illegal strategies to avoid manifestation determinations including: repeat short term suspensions totaling more than 10 days; telling parents to keep children at home or sending children home without formally suspending them; and not determining whether students were receiving the program and all services on their IEPs before making truancy referrals.
- The District's CSEs fail to follow the state requirements for determining the appropriate classification of students with regard to certain disabilities, leading to inappropriate decisions about classification, and sometimes racial inequities in classification.
- The District's Special Education management information system does not currently permit senior managers to easily track and measure compliance (and the locations of non-compliance) with key quantifiable compliance metrics.
- The District does not conduct Functional Behavior Assessments (FBA's) or develop Behavior Improvement Plans (BIP's) for all students for whom they are required.
- When prepared, they are not consistently completed by appropriate staff and are not monitored for their continued effectiveness.

- RCSD does not have appropriate programs and services to adequately meet the needs of many of its students with emotional, psychological, or psychiatric disabilities.
- RCSD does not always provide qualified translators at all CSE meetings where the primary and preferred language of the parent and/or a child is other than English. This is even more true when the preferred non English language is not Spanish.
- RCSD does not translate all important documents concerning students with disabilities whose parents would prefer the documents in their primary language. This prevents RCSD from obtaining informed consent and the required parental participation in shared decision making.
- RCSD does not have the bilingual staff needed to conduct all the evaluations and deliver all the programs and services which should be provided in the primary language of the student.
- RCSD fails to provide tutors who can communicate in the student's primary language, or alternative services in the student's primary language to ELL students with disabilities who are suspended.
- RCSD fails to provide the quarterly IEP Progress Reports to the parents of all students with IEPs on the same schedule as report cards as is required
- RCSD fails to conduct the required transition planning in the years for which it is required for students with IEPs, and fails to update transition plans as student needs change. Transition plans are not thoroughly completed and do not meet the legal requirements, resulting in a denial of a "free appropriate public education" to students.. This results in a lack of meaningful planning to prepare the student for either integrated, competitive employment or higher education.
- RCSD does not have the staff and services needed to provide effective transition services to all students with disabilities.
- RCSD CSEs conducting Annual Reviews often continue the same placement and services in cases where the student has made little or no progress toward achieving their expected level of performance during the past year.
- RCSD is unable to provide the full continuum of services needed by its students with disabilities. This results in CSEs recommending both inappropriate placements as the next best option and unnecessary out-of-district placements.
- RCSD restricts access to Extended School Year programming and services to students classified with intellectual disabilities and autism, rather than conducting an individualized analysis of regression for students classified in other categories.

- Students with disabilities are not included to fullest extent possible in both instructional and extracurricular activities and opportunities at all schools.
- Understanding of and compliance with RCSD's section 504 process is highly variable based on school settings, which results in frequent violations of section 504. The section 504 process is frequently not used in cases where providing services under section 504 might be appropriate to avoid an eventual need for classification.
- There are not sufficient trained behavior specialists and analysts to meet the significant behavioral needs of special education students in the district.
- The professional development needs, across the board, of the special education staff are not being met in order to provide the education to which all children are entitled.
- There is a significant lack of accountability in Special Education in the district, in part caused by lack of specificity of roles and responsibilities, and in part because of the lack of continuity of supervisors.

In addition to the issues listed above, the Special Committee identified many areas in which current systems could be improved to help children with disabilities succeed.

The consequences of these problems have a profound effect on children. Most children with disabilities, with appropriate programs and services can be expected to graduate and to go on to either market rate employment or higher education. But despite modest improvements over the past several years, fewer than one third of Rochester's students with disabilities graduate.

The Committee further noted that over the past several years the number of people leading and supervising special education in the District has been significantly reduced, and many of the written guidelines, procedures, and documented processes covering special education were suppressed or removed, creating confusion and non-compliance. The current leadership of the Department is beginning to address this issue. In addition, the revolving leadership of the Department, coupled with lack of processes to ensure continuity of initiatives to improve performance, has led to initiatives to fix problems which were begun by one leader, and then simply stopped when that leader left the District.

An example of the lack of continuity can be seen in the failed efforts to ensure that the District conduct the planning needed to allow it to have sufficient staff and space available to meet the needs to place children whose needs for program and services are identified by the Committees on Special Education throughout the year. In recent years the Department's budget has been developed, and space and staff secured, for the number of children with disabilities expected to be in place in September. But each year as the year goes on, hundreds

of students are newly classified and predictably they need programs and services. With space at a premium because of Facilities Modernization, and certified special educators and service providers not being available for hire midyear, the lack of planning for expected growth has led to significant problems.

After a series of years in which the District could not place children in programs and provide appropriate services to them because it did not have the space and staff, in early 2016 Dr. Otuwa, convened a workgroup to solve the problem by the beginning of the 2017-18 school year. When she left the District no one was tasked with completing the work. As a result, again this year, the District is unable to provide appropriate programs and services with certified staff to all children whom the Committee on Special Education has determined to need them.

The scope of the District's problems was so broad and deep that the Special Committee believed that it was impossible to recommend specific solutions to all of them within the two months allotted for the first phase of our work. Instead, we agreed upon a series of overarching core recommendations, and developed a process to develop a series of specific recommendations for the Board of Education in the following areas over the next six months.

Core Recommendations:

1. The Board of Education commit that the District will become fully compliant with all its legal obligations to students with disabilities and to those suspected of having disabilities within three years, and will meet a series of milestones for compliance in specific areas over that period of time.
2. The Board authorizes Counsel to make this commitment in a legally enforceable Consent Decree, containing specified consequences should the District fail to substantially comply with its obligations, in order to make it likely that the resources needed to fix the problems are made available to those charged with fixing them, even if District senior leadership changes over the three years.
3. These consequences for failure to substantially bring its programs into compliance with its legal obligations under the Consent Decree would include appointment of a Special Master to externally oversee compliance activities; appointment of an outside monitor to guarantee accurate reporting of the District's performance on its obligations; and awarding Empire Justice Center the statutory attorney's fees that it has agreed not to ask the District to pay, if the District substantially complies with its obligations under the Consent Decree.

The Special Committee believes that it will take complete support, discipline, and focus from the most senior levels in the District in order for these initiatives to succeed. While many of them can be carried out by the Special Education Department, others will require action by

other Departments and individuals who do not report through Special Education. The enumerated consequences are intended to make sure that Senior Leadership of the District take all the actions needed for the District to comply with its legal obligations.

The consequences proposed, are precisely those that would be likely to be Ordered if the District, instead of resolving these problems consensually through this process, lost a class action lawsuit and then failed to substantially comply with a Court Order to bring the District into compliance with the law within a fixed period of time set by the Court (which might well be less than three years). One significant benefit to the District is that, if it does substantially comply with its obligations to end the current widespread noncompliance with three years, it will incur no legal costs for counsel for the students. Under law, reasonable attorney's fees for lawyers for students who prevail in special education cases must be paid by school Districts. This provision would be likely to save the District well in excess of \$1 Million.

In addition, the Special Committee has discussed and has reached consensus that the Special Education Department currently is not sufficiently staffed to complete all the activities that it must complete under law. In order to bring RCSD back into compliance, the Special Committee is recommending a number of new initiatives (some of which were previously recommended by Judy Elliott and others who have looked at the District) that will require additional staff time above that which would be required to run the department.

4. We also recommend that the District put aside sufficient funding in the 2018-19 budget to retain an outside consultant who can look objectively at the work that needs to be accomplished over the next three years, and make recommendations to RCSD about the number, positions, skills, and levels of staffing needed to successfully carry out the reformation of services and instruction for children with disabilities in accord with our recommendations.

Should the Board of Education approve the recommendations above, the Special Committee will take up the topics below in smaller work groups, again consisting of parents, advocates, experts and District staff and leaders and it will complete its work within six months.

The Process to Develop and Recommend Concrete Solutions

We believe that the process of engaging, parents, advocates, District staff and outside experts has worked well. We recommend that the District commit to a process in which smaller work groups, established by the Special Committee, study particular issues and bring their recommendations back to the full Special Committee. After review by the Special Committee, the recommendations of the workgroups would go to the Board for their consideration of them.

In conducting their review of their specific areas each of the work groups will be asked to look at how the work in their respective areas can promote high expectations, and be responsive to the cultural, linguistic and economic makeup of the children in the District. They will also be asked to make recommendations in their area that promote true belonging and the affirming of all students

After the work groups conclude their work, the full Special Committee would also make recommendations to the Board on:

- Accountability Systems;
- Needed information system improvements;
- A Professional Development strategy; and
- Supervision Structure, and Needed staffing for both administration and program delivery.

The seven work groups that the Special Committee proposes to create will look at:

Issues that Occur Before the Meetings of the Committee on Special Education

A common theme in our review of previous reports and current experiences is that a significant number of children are classified as in need of special education programs and services because the District does not have effective tools short of classification to keep children from falling so far behind their peers that they need to be classified. At the same time, the reports reviewed and the experiences of the Special Committee demonstrated significant issues with whether the decisions by Committees on Special Education conformed to the criteria for various classifications set out in law and regulation. A work group will examine all the issues that occur before the actual meeting of the Committee on Special Education including:

- actions the District could take to avoid unnecessary classification of students by intervening earlier;
- the factors that cause the District to fail to identify students in need of help before they are very far behind their peers;
- referral processes for children suspected of having disabilities,; and
- how to provide high quality, timely, and culturally appropriate assessments of students suspected of having disabilities.

Issues Involving Committee on Special Education Meetings and Placement

This work group will examine and make recommendations on all the issues involving the Committee on Special Education process. These will include:

- how to fix the widespread failure to convene CSE meetings, make decisions and provide Individualized Education Plans within the timelines required by law;
- how to eliminate the racial and other disparities in classification of students with disabilities;
- special issues involving the Preschool Committee on Special Education;
- issues involving the CSE meeting process and the quality of decisions and Individualized Education Plans;
- Issues that cause illegal and inappropriate placement of children (including the inability to timely place them or provide services; and
- Transportation Issues

Issues Involving Appropriate Program and Services

This work group will study and make recommendations about:

- Appropriate Range of Programs and how to end delays in placement because of lack of staff and space
- Ensuring students with disabilities have access to High Quality, Rigorous Academic Curriculum/Instruction (including Academic Pathways)
- Ensuring that all services and programs are timely delivered by appropriate staff
- Multi-Tiered System of Support

Four special area work groups will be convened to make recommendations about:

Evaluations and Services for Children on the Autism Spectrum

Transition Planning and Services

Behavior- suspensions, crisis intervention, and behavior specialists, including:

- Behavioral and Emotional Issues (including FBAs and BIPs)
- Disparities in Discipline
- Suspensions, Removals, and Manifestations

and

Special Issues involving Bilingual Students and Parents

Report and recommendations within accepted by the Rochester Board of Education on May 24, 2018.