

Exhibit 5

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

D.R., et al.,

Plaintiffs,

Case No. 16-cv-13694

vs.

Hon. Arthur J. Tarnow

Michigan Department of Education,
et al.,

Defendants.

DECLARATION OF KRIS KERANEN

I, Kris Keranen, hereby declare:

1. I am a non-attorney advocate employed by Michigan Protection & Advocacy Service, Inc. (MPAS). The primary office of MPAS is located at 4095 Legacy Parkway, Suite 500, Lansing, Michigan 48911. I work out of the MPAS satellite office located at 129 W. Baraga Ave., Suite A, Marquette, Michigan 49855.

2. MPAS is the agency designated by the State of Michigan, pursuant to state and federal laws, to protect and advocate for the rights of individuals with disabilities. MPAS is an independent, private nonprofit organization.

3. MPAS provides a range of services, which includes information and referral, technical assistance, selected direct representation, systemic advocacy and training. Selection of cases for direct representation is determined through a system of setting priorities, which are established by the agency, and are based on stakeholder input.

4. I began working for MPAS in August 2003. The majority of my case assignments have been related to protecting and advocating for students with disabilities in school. The cases have involved working with families of students

who receive special education services and supports, students who are covered under Section 504, and students with disabilities who have not yet been identified.

5. MPAS has two objectives under the Education Priority which are related to the protecting the rights of students with disabilities which manifest in behavioral challenges. The first is “Students with disability-related behavior will be identified and evaluated for special education.” The second is “Eligible students at risk of discipline or push-out due to disability-related behavior will remain in school.” Cases are selected for representation based on advancing these objectives.

6. In 2010, MPAS developed a plan to address those priorities in a more systemic way. The goal of the new plan was systemic improvement, by ensuring that the Michigan Department of Education, Office of Special Education (MDE-OSE) met their responsibility under the Individuals with Disabilities Education Act (IDEA) for general supervision. Rather than continuing the serial practice of attending IEP meetings for individual students to ensure that child’s IDEA rights were protected, MPAS planned to push MDE-OSE to take a more active role in ensuring statewide compliance with the IDEA.

7. MPAS developed a brief survey for callers who were the parents of students with disabilities in school. Questions were related to practices such as suspension, “send homes,” retention, partial day programming, and court involvement. Responses were tracked in a database, by school district. The survey data was used to help with case selection, and to identify districts where a high percentage of parents reported problematic practices related to push out.

8. MPAS also used federally mandated special education reporting to identify school districts which appeared to have problematic practices. Specifically, MPAS reviewed the IDEA mandated State Performance Plan/Annual Performance Report (SPP/APR) data related to special education students for graduation, drop-out, and suspension/expulsion (both for disproportionate rates of suspension/expulsion of students with disabilities, and disproportionate rates of students with disabilities by race/ethnicity).

9. MPAS used both the internal data (high percentages of callers reporting problems in the district) and state reported data to identify what school districts should be a focus of work on push out. The School District of the City of Flint (known as Flint Community Schools) was a district identified as one that MPAS should focus on, based on both criteria.

10. In addition to working towards systemic improvements for children with challenging disability-related behavior, MPAS' new work plan was also intended to ensure MDE-OSE exercised appropriate general supervision, that is, to fulfill its obligation to ensure that the requirements of the IDEA are carried out in the State. Specifically, MPAS set out to push MDE-OSE to make the state special education administrative complaint process a functional component of its general supervision, by bringing it into alignment with the IDEA, the Michigan Administrative Rules for Special Education (MARSE), and the federal guidance.

11. A state administrative complaint, unlike a due process complaint, can be filed by anyone, including an individual or an organization. It can allege violations related to any part of the IDEA, the MARSE, or an intermediate school district plan, among other things. It does not require representation by an attorney. It is time limited, in that MDE-OSE must investigate the allegations and issue a decision within a 60-day time frame. It is frequently the only avenue of special education dispute resolution available to parents.

12. The cases selected by MPAS for representation beginning in 2011 were chosen under the Child Find and Push Out priorities. The assigned advocate, with signed parental release of information forms, obtained the student's school records and reviewed them. In cases where a review of records provided documentary evidence of district noncompliance, the advocate filed a complaint with MDE-OSE. In essence, MPAS staff conducted an investigation, and then carefully outlined the documentation of the facts (taken from the school's own records) in the written complaint.

13. Based on previous experience with the inadequate functioning of the state complaint process, MPAS expected that MDE-OSE would not initially conduct complaint investigations and issue findings consistent with the requirements of the IDEA, MARSE and federal guidance.

14. On June 19, 2013, I filed a state complaint on behalf of a six-year-old first grade student, enrolled in Flint Community Schools. The child had ADHD, and the school records contained documentation of extensive behavioral problems, and a high number of exclusionary removals from school, most of which were documented as absences or were not documented in the attendance. I filed a Child Find complaint on the student's behalf. I alleged that the standard used by the district in finding the student "not eligible" was incorrect, and asked that MDE-OSE investigate that standard as a systemic issue.

15. MDE-OSE did not conduct a substantive investigation and did not conduct a systemic investigation. Based on its inadequate investigation, MDE-OSE found Flint Community Schools in compliance with Child Find.

16. An MPAS attorney filed a due process complaint on behalf of the student, and named MDE-OSE as a party to the due process complaint. The Administrative Law Judge assigned to the due process proceeding dismissed MDE-OSE, stating he lacked jurisdiction over the Department. Flint Community Schools ultimately agreed to settle the due process complaint, and provide for independent evaluations. The student was found eligible for special education and provided with an IEP and behavior supports in 2015.

17. MDE-OSE staff requested a meeting with MPAS to discuss making necessary changes to its procedures for complaint investigation. MPAS has continued to push MDE-OSE towards a state administrative complaint process that is both functional and legally compliant, as an important component of its general supervision. MPAS has also continued to file complaints to press that process forward.

18. Since 2011, I have filed approximately 115 state special education complaints, following a review of the student's records. Those complaints have been filed against various school districts across the state. I have reviewed records for many more students, cases in which it was not appropriate to file a complaint. The records review process is essential to understanding what a student has experienced and what a district has done to meet the student's needs.

19. On September 20, 2013, I filed a second state special education administrative complaint against Flint Community Schools. The complaint was on behalf of a second-grade student who was not making progress with the program the district was providing. MDE-OSE found the district noncompliant in several areas and ordered corrective action.

20. In October of 2013, based on review of the records of a number of students, I filed a systemic special education complaint against Flint Community Schools. The complaint alleged that the district failed to properly document removals from instruction. I further alleged that the district's failure to record "send homes" and/or other exclusionary removals resulted in a number of associated violations: Child Find failures, failures to provide positive behavior supports, failures to serve children in the Least Restrictive Environment, failures to

provide due process in disciplinary removal and failures to provide FAPE, including FAPE for students who have been suspended or expelled.

21. In investigating the complaint, MDE-OSE did not conduct a systemic investigation, instead limiting its investigation to the 5 named students. MDE-OSE then noted, “two of these students were not eligible for special education and related services, so their records were not reviewed.” MDE-OSE found Flint Schools noncompliant regarding failure to document removals, but did not make the connection to Child Find and did not address the allegations in a systemic fashion.

22. In the 2013-2014 school year, MPAS continued to view Flint Community Schools as a high interest district, based on continuing call data and SPP reporting. During the course of the school year, MPAS requested records for at least 9 students. Flint Community Schools ignored MPAS’s request for records.

23. After numerous unsuccessful attempts to get student records, which continued for additional new children throughout the 2014-2015 school year, MPAS attorneys filed a lawsuit to compel the district to provide educational records, upon receipt of a request with a signed parental release form. The lawsuit was successfully resolved and the district agreed to produce educational records within an agreed upon time frame.

24. I first heard about problems with the drinking water in Flint during a phone call with the parent of a Flint student, whose file I was reviewing. I thought the parent must be mistaken about the water, until I googled the local news story.

25. I followed the developing story about the Flint water crisis with concern and apprehension. My personal connections with the families I have worked with, coupled with my previous experiences regarding shortcomings in the school district, made me deeply concerned about how the water crisis would impact their children.

26. I have now reviewed the records of numerous children enrolled in Flint Community Schools. The recurring issues have been: failure to identify students with disabilities that manifest in challenging behavior as in need of special education, failure to provide appropriate, individualized behavior supports, and removal from instruction (which many times has been undocumented or improperly documented as absence).

27. I have repeatedly raised these concerns with MDE-OSE as systemic in nature. On November 2, 2015, I filed a state special education administrative complaint against MDE-OSE for failing to have procedures for effective implementation of corrective actions to achieve compliance. I cited six different complaints (filed between October 28, 2013 and March 30, 2015) in which MDE-OSE had found Flint Community Schools out of compliance regarding the same issues: removing students from school, but failing to document the removals, and a systemic failure to provide speech and language services.

28. MDE-OSE assigned the investigation of that complaint to a contracted party, and found themselves noncompliant, agreeing that they had failed to bring Flint Community Schools into compliance.

29. In all, I have filed 19 special education administrative complaints against Flint Community Schools on behalf of individual children. I have filed one systemic special education administrative complaint against the district. I have filed one complaint against both the district and the Genesee Intermediate School District, for failure to correct known noncompliance. Finally, I have filed two special education administrative complaints against MDE-OSE for failing to ensure that noncompliance is corrected.

30. In total, I have filed 23 state special education administrative complaints against, or related to, Flint Community Schools. There have been findings of noncompliance in 20 of them; two complaint investigations are still open, with no decision issued on them yet.

31. One of the open complaints (filed July 28, 2017) is against MDE-OSE, and is based on MDE-OSE's failure to ensure correction of identified noncompliance in Flint Community schools. The allegation against the Department is based on seven complaints (filed against the district between December 12, 2014 and May 9, 2017) in which MDE-OSE found Flint Community Schools noncompliant with its Child Find obligations.

32. The complaint against MDE-OSE for failing to ensure the District met its obligations under Child Find was filed concurrently with a separate complaint, also filed on July 28, 2017, on behalf of an individual student. That student had experienced behavioral difficulties in school, and had failed nearly every academic subject for at least two years. The response of the district was to suspend the student, first for one day, then for two, then for three, then for ten days at a time. The school records note that, on one occasion, the 11-year-old student attempted to

jump over a third-floor ramp, and was taken from school in handcuffs, and transported to the hospital for a psychiatric evaluation.

33. Flint Community Schools suspended the student for at least 77 days, but did not seek to evaluate him for special education, until his mother learned from his court worker that she should turn in written request for evaluations. On September 26, 2017, MDE-OSE found Flint Schools out of compliance in this individual complaint.

34. In the concurrently filed complaint against MDE-OSE (for failure to ensure correction) I quoted the corrective action plan (issued by MDE-OSE on June 9, 2017) for a previous complaint decision on behalf of a different student. In that decision, MDE-OSE had found the Flint Community Schools noncompliant with Child Find, but had failed to order systems level corrective action.

35. In failing to order corrective action in that earlier decision, MDE-OSE relied upon the fact that the District had revised its policies and procedures for conducting initial evaluations and reevaluations, which MDE-OSE had approved on July 19, 2016.

36. MDE-OSE further noted that the district had conducted professional development of relevant staff on August 3, 2016, and since that had taken place, no further corrective action was needed. MDE-OSE reasoned, "The evaluation process used with the Student was applied prior to appropriate practices being implemented; therefore, no additional District level corrective action is being ordered."

37. The facts of the complaint filed on July 28, 2017, on behalf of the new named student demonstrated that the district was still not in compliance regarding Child Find and behavior supports, a fact confirmed by MDE-OSE in its September 26, 2017 complaint decision.

38. In an August 17, 2017 letter MDE-OSE notified me it was extending the deadline for a decision on my complaint against the State, stating that supporting facts were dependent upon completion of investigation into the student-specific complaint. MDE-OSE sent me a second letter on October 2, 2017, notifying me that they had decided to stay a decision on that complaint, pending resolution of a federal case addressing the same issues.

39. The failure of Flint Community Schools to have a system adequate to proactively identify the student, described above, combined with MDE-OSE's failure to have a system to bring noncompliant districts into compliance puts the vulnerable children of Flint at risk of on-going harm, which is exacerbated by the fact that many children in Flint have ingested lead-contaminated water. I have grave concerns about the life-long negative impact it will have on Flint's children, unless immediate improvements to the system of identification and support can be implemented.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on October 13, 2017.

By: Kris Keranen
Kris Keranen