GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

SHEILA A. ALLES
INTERIM STATE SUPERINTENDENT

July 31, 2019

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Re: Traverse City Area Public Schools Audit Appeal MA 18-6

Dear Mr. Dietzel, Ms. Starlin, and Mr. Comstock:

Enclosed is a copy of my Final Report and Decision in Traverse City Area Public Schools' request for review of the Fall 2017 pupil membership count audit. I am transmitting this Final Report and Decision to the Office of Financial Management - State Aid and School Finance in the Department of Education for implementation. Please note that the effective date of this Final Report and Decision is set forth in the order.

Sincerely,

Sheila A. Alles
Interim State Superintendent

cc: Paul Soma, Superintendent, Traverse City Area Public Schools
Kyle Bruckner, Assistant Attorney General
Caitlin Hengesbach, Office of Financial Management - Audits
Phil Boone, Office of Financial Management - State Aid and School Finance

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Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Appeal by Traverse City Area Public Schools of the Fall 2017 Pupil Membership Count
Docket No. MA 18-6

BACKGROUND FACTS

In its Fall 2017 pupil membership count, Traverse City Area Public Schools (TCAPS) included pupils enrolled in its Northern Michigan Partnership program (NMP), a shared time program that, according to TCAPS, offers only virtual classes. The Traverse Bay Intermediate School District (ISD) conducted a desk audit of the count in December 2017 and made no deductions from the FTEs claimed for the NMP program. In July 2018, Gloria Suggitt, pupil membership auditor of the Michigan Department of Education (Department), conducted a quality control review of the ISD audit and, based on her review, she made several findings related to NMP. As a result of and in accordance with the quality control review, the ISD auditor adjusted the district's fall 2017 pupil membership count as it related to the NMP program. On December 3, 2018, TCAPS filed with the Department an appeal of the adjustments made by the ISD auditor. At the request of TCAPS, Robert Taylor, designee of the Interim Superintendent of Public Instruction, convened a review conference at the Department on June 13, 2019.[1]

DISCUSSION

[1]The report of the quality control review raised a concern about whether some of the NMP courses delivered essential content. The Department has agreed that, under *Brighton Area Schools* (17-4), that issue is no longer of concern in this case.

At the outset, I address TCAPS' argument that the Department is without authority to conduct quality control reviews of intermediate school district audits of local districts' pupil membership counts.

The Department has supervisory authority over the distribution of state school aid and is responsible for ensuring that state aid funds are disbursed in accordance with legal requirements. MCL 388.1615, 388.1618. To enable the Department to fulfill its responsibility to determine the reasonableness of state aid expenditures, to determine if a district has received the proper amount of state aid funds, and to verify compliance with the State School Aid Act, the Legislature conferred on the Department specific statutory authority to conduct audits of local districts' pupil accounting records and to direct such audits by designees of the Department. MCL 388.1615(4), 388.1618(4)(a). In addition, the Legislature requires that local districts retain pupil accounting records for the current and the three immediately preceding fiscal years and that those records comply with the Pupil Accounting Manual and the Pupil Membership Auditing Manual published by the Department. MCL 388.1618(4)(a) and (d). This statutory authority clearly supports the quality control review conducted by the Department in this case.

In addition, I find that quality control reviews are both reasonable and prudent. The practice of conducting such reviews conforms with both standard accounting practice[2] and with the findings set forth in the 2005 Auditor General performance audit of the Department's pupil membership accounting and auditing

[2] At the review conference in this matter, Paul Soma, TCAPS superintendent, stated that, as a certified public accountant, he recognizes the need for quality control reviews.

procedures.[3] As recognized by the Auditor General in 2005, the Department has "oversight responsibility to ensure that the distribution of State school aid funding is based on reliable and verified pupil membership counts submitted by local school districts." At the time of the Auditor General performance audit, the Department had discontinued its conduct of quality control reviews of pupil membership audits. The Auditor General recommended resumption of the process to help ensure the Department's consistent evaluation of pupil membership accounting and auditing functions and its identification of appropriate corrective action when it finds material noncompliance. In 2005, the Department resumed quality control reviews, which provide training and technical assistance to pupil membership auditors and foster uniformity in the application of legal requirements across the state.

In support of its challenge to the quality control review in this case, TCAPS notes that the ISD auditor's December 2017 desk audit of the district's Fall 2017 pupil membership count for NMP resulted in no FTE deductions. (TCAPS letter dated June 10, 2019 (Attachments D and E)). In response to the quality control review, however, the ISD auditor stated that the NMP program was new in the 2017-2018 school year and that it raised many questions from an auditing perspective. She stated that she initially audited the district to the best of her ability but that she agreed with the findings of the quality control review. In my judgment, the ISD auditor's candid observations lend support to the conclusion that, in addition to being statutorily authorized, the quality control review process serves a reasonable and important role in ensuring compliance with legal requirements and uniformity across school districts.

[3] https://audgen.michigan.gov/finalpdfs/04_05/r3140004.pdf

TCAPS points out that, until recently, the Pupil Accounting Manual and the Pupil Membership Auditing Manual did not specifically discuss appeals of audit adjustments that follow quality control reviews. I am not persuaded that this fact supports the district's challenge to the Department's authority to conduct such reviews under the State School Aid Act. Specific mention of quality control reviews in the manuals was prompted by a Department decision that appeals following such reviews, which were always available using the Department's two-step appeal process, would be heard directly by the Superintendent of Public Instruction, skipping the first step in the appeal process. Revision of the appeal process had no effect on the Department's authority to conduct quality control reviews; that authority, for the reasons discussed above, preceded the recent amendments of the manuals.

For these reasons, I reject TCAPS' challenge to the Department's authority to conduct quality control reviews of pupil membership audits. I further find that the procedures in this case have comported with the requirements of due process in that TCAPS has been apprised of the issues and has had a meaningful opportunity to be heard. *Galien Township School District v Department of Education (On Remand)*, 310 Mich App 238, 243 (2015) (constitutionally sufficient procedures are those that provide notice, an opportunity to be heard, and an impartial decisionmaker). I find that the report of the quality control review provided notice of concerns about the availability of NMP classes to full-time TCAPS pupils and about TCAPS' computation of the appropriate amount of FTE to be claimed for each NMP pupil. Post-review conference communication between the designee of the Superintendent of Public Instruction and TCAPS made it clear that the availability

issue and the FTE calculation issue were under consideration, and TCAPS was given ample opportunity to provide documentation to the Superintendent of Public Instruction related to those issues.[4] Thus, even if, as TCAPS argues, the district did not have adequate notice and an opportunity to respond during the quality control review process in this case, I find that any alleged weaknesses in the process have been cured in the course of this final review of the ISD's FTE adjustments, when TCAPS has been fully apprised of the bases for FTE adjustments and has been given ample opportunity to submit additional documentation in support of its claimed Fall 2017 membership. *Id.* at 245 (any alleged deficiencies occurring during the first level of review were cured on appeal to the superintendent of public instruction, where the school district was fully apprised of the nature of challenges to its claimed membership and was given an ample opportunity to present its arguments and supporting documentation).[5]

TCAPS asserts that the NMP program in Fall 2017 was a virtual program,[6] with an "optional" in-person meeting of each class at Interlochen Community

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[4] I exercised my discretion in this case to allow submission of additional documentation following the review conference. See *Suttons Bay Public Schools* (MA 14-2) (superintendent of public instruction has discretion to consider documentation belatedly submitted by a school district).

[5] The extent to which TCAPS was given an opportunity to present documentation to Ms. Suggitt or to the ISD auditor between the initiation of the quality control review and issuance of the revised ISD audit narrative is not established in the record. In my judgment, providing such an opportunity is sound practice and reflects the collaborative spirit that should prevail between districts and the Department in matters of pupil membership counts.

[6] See MCL 388.1621f(14)(f):

> "Virtual course" means a course of study that is capable of generating a credit or a grade and that is provided in an interactive learning environment where the majority of the curriculum is delivered using the Internet and in which

School every Wednesday.[7] According to TCAPS, each of the classes consisted of five hours of online content every week. Documentation submitted by TCAPS verifies that it was treating the NMP program as a virtual program, with documentation of pupils' completion of activities for scheduled classes on count day proffered as satisfaction of the participation requirement applicable to online courses. See Section 5-O-D (page 5-O-D-2) of the 2017-2018 edition of the Pupil Accounting Manual and June 10, 2019 letter from TCAPS (Attachment N).

TCAPS provided no documentation, and does not claim, that any of the district's over 11,000 full-time pupils enrolled in any NMP course in Fall 2017. The program was attended only by home school pupils.

Section 166b of the State School Aid Act, MCL 388.1766b, requires, and required at all times relevant to this appeal, that shared time classes be available to full-time pupils in the same grade levels or age groups as the nonpublic school or home-school pupils enrolled in the classes.[8] As stated in a memorandum that was issued to local and intermediate school district superintendents and public school academy directors in October 2017, the Department supports partnerships that offer legitimate courses and that try to meet the needs of all students. (Department of Education Memorandum #2017-111, dated October 5, 2017). The memorandum reiterated the statutory requirement of availability and informed

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pupils may be separated from their instructor or teacher of record by time or location, or both.

[7] One exception was apparently the class entitled "Human Nature School," which met in person from 9:00 a.m. to 3:00 p.m. every Thursday at Grand Traverse Commons in Traverse City, with the final three weeks of the class being 100% online.

[8] 2016 PA 249, effective October 1, 2016; 2017 PA 108, effective October 1, 2017; 2017 PA 143, effective November 2, 2017; 2018 PA 265, effective October 1, 2018.

superintendents and directors that Department staff are available to work with districts to ensure that programs and classes meet legal requirements.

The Legislature did not define "available" in the State School Aid Act. In the absence of a statutory definition, I find that it is appropriate, as courts have done, to apply the commonly understood meaning of the term, as reflected in ordinary dictionary definitions. See, e.g., *Adanalic v Harco National Insurance Co.*, 309 Mich App 173, 187 (2015) (appropriate to turn to dictionary definition of "available," a term used but not defined in the no-fault act, MCL 500.3106(2)). In *Adanalic*, for example, the Court of Appeals cited the definition of "available" in *Random House Webster's College Dictionary*. According to the 1997 edition of that dictionary, the definitions of "available" include: "suitable or ready for use; at hand," "readily obtainable; accessible," and "free or ready to be. . .employed." I also find instructive the Court of Appeals' construction of "available" in an insurance contract to mean "actually available," "actually accessible," and "reasonably available," "as opposed to that which is theoretically or hypothetically available." *Auto-Owners Insurance Co. v Leefers*, 203 Mich App 5, 11 (1993). In my judgment, these dictionary and judicial definitions reflect reasonable definitions of "available" as that term is used in MCL 388.1766b, including the requirement that such classes be available as a practical matter to all full-time pupils.

The burden of demonstrating satisfaction of all legal requirements to establish eligibility for state aid lies with the district claiming such eligibility. *Life Skills Center of Pontiac* (MA 12-2). Applying the commonly understood meanings of "available," I am troubled by several facts related to the issue of availability in this case. Notwithstanding that TCAPS asserts that all NMP classes were available to all

pupils enrolled full-time in the district, the documentation provided to support that assertion is less than persuasive. TCAPS submitted June 24, 2017, and September 13, 2017 versions of the NMP section of the district's web site. That section was accessed by clicking the "Programs" tab on the district's web site and locating the NMP program among a long list of district programs. Although both versions of the NMP pages referred to NMP classes being "offered to all students," the June 24 version was reasonably interpreted to refer only to the home school pupils described in the immediately preceding paragraph, and there was no documentation that the September 13 version was in place before the start of the 2017-2018 school year. (TCAPS July 15, 2019 letter, Attachment C). TCAPS presented no documentation that it prominently showcased the availability of NMP classes to all full-time pupils in an online location that would be readily and easily seen by full-time pupils and their families. Nor did it present a course catalog that was readily available to all full-time pupils and their families that clearly listed all NMP classes and that clearly offered those classes to those pupils.

Because the NMP classes were virtual classes, the district was required to satisfy the requirements of section 21f of the State School Aid Act, MCL 388.1621f. Among the statutory requirements in place in Fall 2017 was that the classes be published in the district's catalog of board-approved courses or in the statewide catalog of virtual courses maintained by the Michigan Virtual University. MCL 388.1621f(1). TCAPS did not provide documentation of satisfaction of this requirement. In fact, an Internet search disclosed the Traverse City West Senior High School Course Selection Guide for 2017-2018 that included references to online courses but made no mention of NMP or any of the classes offered in the

NMP program. In addition, TCAPS provided no documentation in support of its assertion that, from the inception of the NMP program in 2017, the district widely advertised the availability of NMP classes to full-time pupils via mailings, brochures, and posters; in print and broadcast media reports; and on social media.

Regarding whether NMP classes were practically available to all full-time TCAPS pupils, I reiterate the absence of documentation that even one of TCAPS' over 11,000 full-time pupils enrolled in an NMP course in 2017-2018. The district provided no documentation of any plan that was in place in fall 2017 to accommodate full-time pupils who chose to enroll in NMP classes. For example, there was no documentation of a general plan regarding transportation of full-time pupils from each of the TCAPS elementary, middle, and high schools to the in-person "optional" NMP classes that took place on Wednesdays at Interlochen Community School, which is located at a considerable distance from many of TCAPS' school buildings. The class entitled "Human Nature School" that met on Thursdays at Grand Traverse Commons[9] presented similar transportation questions. Nor did the district submit documentation of a plan for how it would address the disruption in full-time pupils' regular schedules that would inevitably result from their participation in the NMP classes at Interlochen and Grand Traverse Commons or for how to ensure full-time pupils' fulfillment of district and state requirements for grade progression and graduation notwithstanding their absences due to attendance at NMP classes. Similarly, TCAPS submitted no documentation of a specific plan for making up instruction and assessments that would be missed by

[9] TCAPS provided no additional documentation about the location of this course, which appears to have been offered at a renovated public space on the grounds of the former Traverse City State Hospital near downtown Traverse City.

full-time pupils who traveled to NMP classes or for enlisting the necessary services of teachers for those purposes.

My identification of deficiencies in TCAPS' submission is not intended to serve as a litmus test for resolution of the availability issue. In my judgment, the issue of availability must be determined on a case-by-case basis and I point out the deficiencies in this case only to highlight the lack of persuasive documentation submitted by TCAPS and to point out some ways in which an assertion of availability could possibly have been more persuasively supported.

Based on careful consideration of all documentation provided in this case, I find that, applying any reasonable definition of "available," TCAPS did not sustain its burden to establish that the NMP classes were available to all full-time TCAPS pupils as required by MCL 388.1766b. I find that TCAPS did not establish that the NMP classes were readily obtainable or accessible by all full-time pupils on the Fall 2017 count day. I also find that, even assuming that the NMP classes were theoretically available to all full-time pupils, they were not actually or reasonably available (i.e., not practically available) to them.

For these reasons, I deny TCAPS' appeal.

Although I find that the NMP courses were not available to full-time TCAPS pupils, I will briefly address the topic of the calculation of FTE for individual shared time pupils for individual classes. The minimum requirements for counting pupils in membership based on enrollment in online courses under MCL 388.1621f were found in Section 5-O-D of the 2017-2018 Pupil Accounting Manual. See MCL 388.1621f(13). According to the Pupil Accounting Manual (page 5-O-D-1), a virtual course could not generate more FTE than a comparable course if offered in a

traditional format; proration of FTE was required for courses that offered less instruction than comparable courses. See also Mich Admin Code, R 340.11. Because a shared time class could not generate more FTE than a comparable course offered in a traditional format, allowance of the typical FTE for comparable courses offered to a district's full-time elementary, middle school, and high school pupils may be appropriate if all other requirements are satisfied. At the elementary level, for example, a district cannot claim more FTE for a shared time pupil enrolled in nonessential courses than is scheduled for comparable "specials" courses for the district's full-time elementary pupils. If, for example, the elementary schedule for full-time pupils allows a total of 0.14 FTE for "specials," the maximum that the district can claim for a shared time elementary pupil enrolled in "specials" is a total of 0.14 FTE. As noted above, districts are required to maintain pupil accounting records for the current and three immediately preceding school years. MCL 388.1618(4)(a). This includes the obligation to maintain syllabi for online courses offered as part of a shared time program that meet the requirements of MCL 388.1621f(14)(g).

ORDER

Based on my review of this matter and for the above reasons, I deny Traverse City Area Public Schools' appeal of Traverse Bay Intermediate School District's adjustment of its Fall 2017 pupil membership count.

This final report and decision is being transmitted to the Department of Education's Office of Financial Management – State Aid and School Finance for implementation.



Sheila A. Alles
Interim Superintendent of Public Instruction

Dated: July 31, 2019