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March 7, 2017

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Ms. Rebecca Rider
Director of Special Education
Baltimore County Public Schools
The Jefferson Bldg. 4th Floor
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXX
Reference: #17-078

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On January 6, 2017, the MSDE received a complaint from Leslie Turner Percival, Esq., hereafter, “the complainant,” on behalf of the above-referenced student, and his parents, Mrs. XXXXXXXXXXXXXXXXXXXXXXXX. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The BCPS did not ensure that the student’s Individualized Education Program (IEP) was implemented from the start of the 2016 – 2017 school year until December 12, 2016, in accordance with 34 CFR §§300.101 and .323.
2. The BCPS did not ensure that the IEP team convened in a timely manner to review and revise the student’s IEP, as appropriate, to address lack of expected progress toward achieving the IEP goals and in the general education curriculum, in accordance with 34 CFR §300.324.

3. The BCPS did not ensure that the IEP team's decision to discontinue counseling services to the student was consistent with the data, in accordance with in accordance with 34 CFR §300.324.
4. The BCPS did not ensure that the student's parents were provided with proper written notice, prior to implementation, of the IEP team's decisions on December 12, 2016 to discontinue counseling services, and to provide the student with specialized instruction in a separate special education class, in accordance with 34 CFR §300.503.

INVESTIGATIVE PROCEDURES:

1. On January 16, 2017, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Denise Mabry, Coordinator, Compliance, Placement and Birth to Five, BCPS, and Ms. Conya Bailey, Compliance Supervisor, Department of Student Services, Office of Special Education, BCPS.
2. On January 23, 2017, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the BCPS of the allegations and requested that the BCPS review the alleged violations.
3. On February 8, 16 and 22, 2016, and March 3, 2017, Ms. K. Sabrina Austin, Education Specialist, MSDE, requested the BCPS to provide documentation.
4. On February 9, 2017, Ms. Austin, conducted a review of the student's educational record at XXXXXXXXXXXX School. Ms. Conya Bailey and Mr. XXXXXX, XXXXXXX, XXXXXXXXXXXXXXXXXXXX, BCPS, were also present. On the same date, the BCPS provided documents to the MSDE for consideration.
5. On February 16, 2017, Ms. Austin and Ms. Janet Zimmerman, Consultant, Division of Special Education, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX and interviewed the following school staff:
 - a. Mr. XXXXXXXXXXX, IEP Chairperson;
 - b. Ms. XXXXXXXXXXX, General Education Teacher;
 - c. Ms. XXXXXXXXXXX, Counselor;
 - d. Ms. XXXXXXX, Special Education Teacher and Case Manager;
 - e. Mr. XXXXXXX, General Education Teacher; and
 - g. Ms. XXXXXXXXXXX, Special Education Teacher.

Ms. Bailey participated in the site visit as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed.

6. On February 22 and 28, 2017, and March 3, 2017, the BCPS provided the MSDE with additional documentation for consideration.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEPs, dated May 4, 2016 and December 7, 2016;
 - b. Documentation of the IEP provided to the school staff, dated August 24, 2016;
 - c. The BCPS 2016 - 2017 school year calendar;
 - d. The student's interim grade report, and report card for the first (1st) quarter of the 2016 - 2017 school year;
 - e. Electronic mail communications (emails) between the parents and the school staff, and emails among the school staff, dated September 2016 to January 2017;
 - f. The student's schedule for the 2016 - 2017 school year, with teacher assignments;
 - g. The classroom assignments of special education teachers for the 2016 - 2017 school year;
 - h. Sample of the school staff's "Accommodation Instructional Planning Matrix," undated;
 - i. Samples of the student's work and materials provided to the student in language arts class, undated;
 - j. Report of the student's progress towards achievement of IEP goals, dated October 28, 2016, and November 22, 2016;
 - k. Chart identifying interventions provided to the student in language arts, music, science, world history, reading and math classes, dated November 7, 2016;
 - l. Logs of the school staff's observations, contacts with, and supports provided to the student, dated August 2016 to December 2016;
 - m. The school staff's record of the student's grades on individual assignments in math during the first marking period of the 2016 - 2017 school year;
 - n. Team Summary of the decisions made at the May 4, 2016 and December 7, 2016 IEP team meetings;
 - o. The BCPS Procedures for Dismissal of a Student from Special Education/Related Services, undated; and
 - p. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on January 6, 2017.

BACKGROUND:

The student is twelve (12) years old and is in the 6th grade at XXXXXXXXXXXXXXXXXXXX. He is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD), and has an IEP that requires the provision of special education and related services (Doc. a).

During the period of time addressed by this investigation, the student's parents participated in the education-making process and was provided with written notice of the procedural safeguards (Doc. a).

**ALLEGATION #1 IEP IMPLEMENTATION FROM THE START OF THE
2016 - 2017 SCHOOL YEAR UNTIL DECEMBER 12, 2016**

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2016 - 2017 school year was developed on May 5, 2016, in anticipation of the student's transition from elementary school to middle school. The IEP identifies that the student has needs in the areas of social, emotional and behavioral skills, math, and written language (Doc. a).
2. The IEP states that the student has weaknesses in attention and executive functioning that cause him to have difficulty with initiating tasks, working memory, planning, task-oriented organization, and problem-solving strategies. The IEP also states that the student requires clear directions and support to organize materials needed for assignments and projects, and support with organizing his backpack. It further identifies that the student has difficulty with making appropriate verbal and nonverbal communication for social contact, and in providing appropriate emotional responses in social situations (Doc. a).
3. The IEP states that, in the area of math, the student has difficulty with identifying the multiple steps in word problems that require the use of several operations, and with place value of numbers with decimals (Doc. a).
4. The IEP also states that, in the area of writing, the student has difficulty with demonstrating clear organization, using compound and complete sentence structure for elaboration, and with providing details or evidence from the text in his written responses (Doc. a).
5. In order to address the student's needs, the IEP includes one (1) goal in math, and one (1) goal in writing. It also includes accommodations, supplementary supports, and related services in order to address the student's organizational needs and assist in the development of social skills (Doc a).
6. The IEP requires the student to be provided with instructional and testing accommodations, including the following:
 - Monitoring test response;
 - Math tools and calculation devices;

- Extended time to initiate and complete tasks, to process directions and information, and to provide responses;
- Multiple or frequent breaks to regain and maintain focus; and
- A learning environment with reduced auditory and visual distractions.

The IEP reflects that the student will be provided with the accommodations and modifications on a daily basis, in all academic areas, and identifies general educators, special educators, and para-educators as providers (Doc. a).

7. The IEP requires the student to be provided with supplementary aids, services, program modifications and supports, including the following:

- Repetition and paraphrasing of information;
- Chunking of information and tasks;
- Prompting to assist the student with initiating,
- Monitoring and adjusting assignments;
- Math differentiation and modification;
- Encouragement to ask for assistance when needed;
- Structured time for organization of materials; and
- Strategies to initiate and sustain attention.

The IEP reflects that the student will be provided with supplementary supports and services on a daily basis, in all academic areas, and identifies general educators, special educators, and para-educators as providers (Doc. a).

8. In order to address his math, written language and attention needs, the IEP requires that the student be provided with seven and one-half (7.5) hours of specialized instruction each week, in the general education classroom, and specifies that the specialized instruction shall consist of five (5) sessions per week, forty-five (45) minutes each, in math and written language. The IEP identifies the general education teacher as the primary provider, and the special education classroom teacher and an instructional assistant as other providers (Doc. a).
9. The IEP also requires that the student be provided with two (2) sessions of counseling services each month, thirty (30) minutes per session, in the general education classroom, for structured opportunities to develop social interaction skills. The guidance counselor is identified as the provider of this service (Doc. a).
10. There is documentation that, on August 24, 2016, the student's teachers and the guidance counselor were provided with the student's IEP (Doc. b).
11. The student's schedule reflects that, during the period covered by the investigation, he was assigned to a language arts class taught by a general education teacher, together with a special education teacher. There is documentation indicating that the student was

provided with specialized instruction to support his needs in the area of writing in this language arts class (Docs. f, g, i, and j, and interview with the school staff).

12. The student's schedule also reflects that, during the period covered by the investigation, he was assigned to a math class taught by a general education teacher. The school staff report that no additional adult or teacher provided support or instruction in this math class. There is no documentation that, in this math class, the student was provided with specialized instruction, or the accommodations, modifications, and supplementary supports required by the IEP during this period of time (Docs. f and g, and interview with the school staff).
13. There is documentation that the school staff regularly provided the student with the supplementary support of structured opportunities to organize his materials. The documentation also reflects that, at times, the student did not make himself available for assistance with organization (Docs. e and l, interview with the school staff, and review of the school staff's personal calendar).
14. There is documentation that the student was provided with some of the accommodations, modifications, and supplementary supports required by the IEP. However, there is no documentation that the student was provided with all of the accommodations, modifications, and supplementary supports in all academic classes, as required by the IEP (Docs. a, e, i, k and l, and interview with the school system staff).
15. The school staff acknowledge that, although a guidance counselor was available and had a copy of the IEP, the student was not provided with the counseling services required by the IEP during the period covered by the investigation (Interview with the school staff).
16. On December 7, 2016, the IEP team convened. They reviewed the student's progress and discussed the specialized instruction and supports required by the current IEP. The IEP team agreed that the student's "needs were not being met in the general education setting" and revised the IEP to require specialized instruction in a separate special education class for language arts and math classes (Docs. a and n).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students are provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the student was not provided with specialized instruction in the areas of math and written language, counseling services, and supplementary aids, accommodations and supports in all academic areas, as required by the IEP.

Based on the Findings of Facts #1 - #8, and #10 - #12, the MSDE finds that, while there is some documentation that the student was provided with specialized instruction in written language,

there is no documentation that he received specialized instruction in math. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #6, #7, #10 and #12 - #14, the MSDE finds that there is no documentation that the BCPS provided the student with the accommodations, supplementary aids and services in all of his academic classes, in the manner required by the IEP. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #9, #10 and #15, the MSDE further finds that the BCPS did not provide the student with counseling services required by the IEP. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

**ALLEGATION #2 CONVENING AN IEP TEAM MEETING TO ADDRESS
LACK OF EXPECTED PROGRESS TOWARDS
ACHIEVING THE IEP GOALS AND IN THE GENERAL
EDUCATION CURRICULUM**

FINDINGS OF FACTS:

17. The interim reports developed by the school staff in early October 2016, approximately mid-way through the first (1st) quarter of the 2016 - 2017 school year, reflect that the student's grade in math was a D (Doc. d and interview with the school staff).
18. The math teacher's record of the student's grades, as of October 18, 2016, document that the student had not completed, or received a grade of zero on, eight (8) out of eleven (11) assignments, and that he had not achieved a passing grade on two (2) out of three (3) graded assignments (Doc. m).
19. On October 19, 2016, the parents sent an email to the school staff expressing concern that the student was "struggling." The parents requested an IEP meeting to be scheduled for the following week. In its response on October 21, 2016, the school staff informed the parents that they were "still trying to sort out availability," and "look[ing] forward to meeting [the] next week" (Doc. e).
20. On October 24, 2016, the parents sent a second (2nd) email to the school staff inquiring about their request for an IEP team meeting. In its response the following day, the school staff informed the parents that scheduling the meeting was "difficult" because of the various schedules of the school staff, but identified possible dates and times for a meeting (Doc. e).
21. On October 27, 2016, the school staff and the parents held a parent-teacher conference. They discussed the student's need for additional support with organization and with consistently recording homework assignments in his planner. The school staff agreed to check the student's planner, provided the parents with information to access the BCPS

- online system, "BCPS One," to view homework assignments and classwork for each of the student's classes, provide language arts textbooks for use at home, and request check-ins by additional adults in the student's classes (Docs. e and l, and interview with the school staff).
22. On November 2, 2016, the parents sent a third (3rd) email to the school staff requesting an IEP team meeting. On November 10, 2016, the parents sent a fourth (4th) email to the school staff requesting an IEP team meeting (Doc. e).
 23. The student's report card for the first (1st) quarter of the 2016 - 2017 school year reflects that he received a D in language arts class, and an E in math class. The BCPS 2016 - 2017 school year calendar documents that report cards were distributed on November 10, 2016, 2016 (Docs. c and d).
 24. There is documentation of efforts between the school staff to identify a date for the IEP team meeting that would be convenient for other school staff whose participation was needed. However, the school staff did not schedule an IEP team meeting to discuss the parents' concerns until November 11, 2016. The meeting was scheduled for December 7, 2016 (Doc. e).
 25. There is documentation that, during the time period covered by the investigation, the student was "polite" to school staff and peers, "well behaved," and quiet. However, there is also documentation that the student was "slow" to follow directions, "appears to zone out during class," did not communicate for help when needed, did not ask questions, seemed withdrawn, and that he required significant prompting and support to initiate and to stay on task (Docs. e, k and l, and interview with the school staff).
 26. On December 7, 2016, the IEP team convened. The team reviewed the student's progress, discussed his difficulty transitioning to middle school, considered his first quarter grades and parental input. The team determined that the student did not make progress in math and language arts in the general education classroom. The IEP team revised the IEP goals in math and written language, and developed an IEP goal in the area of behavior. They also revised the IEP based on the determination that the student requires specialized instruction in math and language arts in a separate special education classroom, and identified the provider as a special education teacher (Docs. a and n).

DISCUSSION/CONCLUSIONS:

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. The IEP team must also revise the IEP to address any lack of expected progress toward achieving the goals, to reflect the results of any reevaluation, to reflect information about the student provided to or by the student's parent, or to address the student's anticipated needs (34 CFR §300.324). In reviewing and revising an IEP, the team must

consider the concerns of the parents, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §300.324).

Based on the Findings of Facts #19, #20 and #22, the MSDE finds that the parents requested an IEP team meeting on October 19, 2016, and on three (3) subsequent occasions. Based on the Findings of Facts #21, #24 and #26, the MSDE finds that, while the school staff held a meeting with the parents on October 27, 2016, the IEP team did not convene until December 7, 2016, approximately seven (7) weeks after the parents' initial request for a meeting.

Based on the Findings of Facts #17, #18, #23, #25 and #26, the MSDE further finds that, at the December 7, 2016 meeting, the IEP team determined that the student did not make progress in math and language arts, and revised the student's IEP to require specialized instruction in the areas of math and language arts in a separate special education classroom. Based on these Findings of Facts, the MSDE finds that there was a delay in addressing the student's needs and that a violation occurred.

ALLEGATIONS #3 AND #4

**DISCONTINUATION OF COUNSELING SERVICES,
AND PRIOR WRITTEN NOTICE OF THE IEP
TEAM'S DECISIONS TO DISCONTINUE
COUNSELING SERVICES AND TO PROVIDE
SPECIALIZED INSTRUCTION IN A SEPARATE
SPECIAL EDUCATION CLASSROOM**

FINDINGS OF FACTS:

Counseling

27. The IEP in effect prior to December 7, 2016 IEP states that the student has difficulty using appropriate verbal and nonverbal communication for social contact, difficulty relating to children and adults, and difficulty providing appropriate emotional responses in social situations. It requires that the student be provided with counseling services twice a month, which are to be provided by a guidance counselor. There is documentation that counseling services to the student prior to the 2016 – 2017 school year were provided in a "lunch bunch" group setting focusing on instruction in social skills, including initiating and sustaining conversations ,and staying on topic (Docs. a and n).
28. The IEP developed by the IEP team on December 7, 2016 does not include counseling services (Doc. a).
29. The school staff acknowledge that the IEP team did not discuss counseling services at the December 7, 2016 IEP meeting (Doc. n and interview with the school staff).

Specialized Instruction in a Separate Special Education Classroom for Math and Language Arts

30. At the December 7, 2016 IEP team meeting, the IEP team revised the IEP to require specialized instruction in math and language arts in a separate special education classroom. This decision is documented in the “team summary” dated December 7, 2016 (Docs. a and n).
31. The team summary of the decisions made at the December 7, 2016 IEP team meeting reflects that the summary was given to the parents on December 7, 2016 (Doc. n)
32. The student’s class schedule for the 2016 - 2017 school year documents that, on December 12, 2016, the student’s class assignment was changed. It indicates that the student was assigned to math and language arts classes instructed by a special education teacher. The school staff report that instruction in these classes is provided in a separate special education classroom. Additionally, in an email sent to the parents on December 20, 2016, the school staff indicate that the change in the student’s schedule occurred on December 12, 2016 (Docs. e and f, and interview with the school staff).
33. On December 20, 2016, the parents sent an email to the school staff inquiring when they should “expect the final and approved IEP and written notices to change my son’s classroom.” In its email response on the same date, the school staff informed the parents that the “final IEP” would be sent home in the student’s backpack that day. In a subsequent email to the parents later on the same date, the school staff explained that they were unable to meet the student in time to put the IEP in his backpack, but that it would be put in his backpack the following day (Doc. e).

DISCUSSION/CONCLUSIONS:

Allegation #3 IEP Team Decision Consistent with the Data

Changes to an IEP must be made either by the IEP team at an IEP team meeting, or by agreement of the parent and the school system outside of the IEP team process (34 CFR §300.324).

Based on the Findings of Facts #27 and #28, the MSDE finds that, while the IEP in effect prior to December 7, 2016 requires monthly counseling services to the student, the IEP developed following the December 7, 2016 meeting does not require counseling services. Based on the Finding of Fact #29, the MSDE finds that the BCPS has acknowledged that the IEP team did not make the determination to discontinue counseling services. Therefore, the MSDE finds that a violation occurred.

Allegation #4 Prior written notice

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or

educational placement of the student or the provision of a Free Appropriate Public Education (FAPE) to the student (34 CFR §300.503).

In this case, the complainant alleges that the BCPS did not provide the parents with prior written notice of the decisions to remove counseling services from the student's IEP. The complainant also alleges that the parents were not provided with prior written notice of the IEP team's decision to provide the student with specialized instruction in a separate special education classroom before implementing the decision (Doc. p).

Based on the Findings of Facts #27 - #29, the MSDE finds that the BCPS did not provide prior written notice of the decision that was made unilaterally by the school staff to discontinue the counseling services. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Based on the Finding of Fact #30, the MSDE finds that, at the December 7, 2016 IEP team meeting, the IEP team determined that the student requires specialized instruction in math and language arts in a separate special education classroom. Based on the Finding of Fact #31, the MSDE finds that there is documentation that the BCPS provided the parents with prior written notice of this determination on the same date of the meeting, December 7, 2016.

Based on the Finding of Fact #32, the MSDE finds that, on December 12, 2016, the BCPS changed the student's schedule placing him in separate special education classrooms to receive specialized instruction in math and language arts. Therefore, the MSDE finds that notice of this decision was provided prior to its implementation, and does not find a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the BCPS to provide documentation by May 1, 2017, that the IEP team has convened and taken the following actions to remediate the violations in this Letter of Findings:

1. Determined the difference between the student's present levels of functioning and performance in all areas, and the levels of functioning and performance that were expected to have been demonstrated by that time.
2. Determined the amount and nature of compensatory services or other remedy to remediate the violations related to the lack of specialized instruction in math, the lack of the accommodations and supplementary aids and services in all of the student's classes¹, and the failure to convene an IEP team meeting in a timely manner in order to address the

¹ There is documentation that the student received two (2) Ds on the interim reports for the 1st quarter of the 2016 – 2017 school year, and two (2) E's and one (1) D as final grades on his report card for the 1st quarter of the 2016 – 2017 school year (Doc. d).

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student's lack of progress. The IEP team must also have developed a plan for the provision of compensatory services within one (1) year of the date of this Letter of Findings.

3. Determined whether the student requires counseling as a related service, and if so, revises the IEP to include those services, and determined the amount and nature of compensatory services or other remedy to remediate the violation. Additionally, the IEP team must also have developed a plan for the provision of compensatory services within one (1) year of the date of this Letter of Findings.

The BCPS must provide documentation, within one (1) year of the date of this Letter of Findings, that the student has been provided with the compensatory services or other remedy determined by the IEP team as a result of this investigation, or documentation of the parents' refusal of such compensatory services or other remedy.

School-Based

The MSDE requires the BCPS to provide documentation by May 1, 2017, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance XXXXXXXXXXXXXXXXXXXX.

Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the BCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date

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of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirement as reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parents maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

c: XXXXXXXXX
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 S. Dallas Dance
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