



Karen B. Salmon, Ph.D.
State Superintendent of Schools

May 3, 2019

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Ms. Trinell Bowman
Director of Special Education
Prince George's County Public Schools
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #19-105

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), 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.¹

ALLEGATIONS:

On February 5, 2019, the MSDE received a complaint from Kimm Massey, Esq.,² hereafter, “the complainant,” on behalf of the above-referenced student and her parent, Ms. XXXXXXXXX. In that correspondence, the complainant alleged that the Prince George’s County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

Specifically, this office investigated the allegation that the PGCPS did not provide the student with a Free Appropriate Public Education (FAPE). Specifically, the complainant alleges the following PGCPS allegations:

¹ The parties were informed that, due to exceptional circumstances to this investigation, the period of time for its completion has been extended beyond the 60 day timeline.

² As of this date, the MSDE has not received a consent form in order to release information to the complainant, and therefore, the findings of this investigation are being issued solely to the parent.

1. Inappropriate change of placement;
2. Did not provide specialized instruction through a certified special education teacher and with required alterations/adaptions/modifications as necessary;
3. Did not implement Individualized Education Program (IEP);
4. Development of inappropriate IEPs;
5. Did not follow required procedures regarding the determination of a Specific Learning Disability (SLD);
6. Did not comprehensively re-evaluate;
7. Inappropriate reduction of related services;
8. Did not convene proper IEP teams;
9. Did not convene an IEP meeting to review the provision of FAPE at parent's request;
10. Did not review and revise IEP as appropriate;
11. Did not provide agreed-upon compensatory services;
12. Did not provide report cards documenting the student's progress;
13. Did not comply with the Code of Maryland Regulations (COMAR) and Individuals with Disabilities Education Act (IDEA) provisions regarding in-home/home and hospital instruction services (HHT);
14. Did not comply with IDEA's procedural provisions in scheduling annual review IEP meeting;
15. Inappropriate denial of in-home visual services;
16. Did not develop a proper HHT transition plan; and
17. Did not schedule an IEP meeting to coordinate the student's return to school.

BACKGROUND:

The student is twenty (20) years old and is identified as a student with Multiple Disabilities under the IDEA. She is enrolled at XXXXXXXXXXXXXXX by the PGCPs and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

IEP Development and Verification of the Need for Home and Hospital Teaching Services

1. On December 8, 2017, the complainant enrolled the student at XXXXXXXXXXXXXXXX High School (XXXXX HS) after moving to Prince George's County. At that time, the student had an IEP from the Howard County Public Schools (HCPS), which required special education instruction in a nonpublic separate special education school.
2. The HCPS IEP included postsecondary goals and services in Cosmetology for the student, which were developed based on her present levels of achievement and functional performance, and information obtained about her interests and preferences.
3. At the time of the student's transfer to PGCPS, she was receiving HHT services based on an October 20, 2017 verification from the student's private physician of the student's need for those services for an indeterminate period of time. While the verification contains the statement that the "patient can miss 3-5 days of school when disease flares, which is unpredictable," it also states that the student was unable to attend a school-based program due to the medical condition.
4. On January 29, 2018, the PGCPS convened the IEP team. At that meeting, the team discussed identifying another nonpublic placement for the student, and the school staff informed the parent that she would have to provide reverification in order for HHT services to continue. On the same date, the parent submitted a reverification, dated January 29, 2018. While the verification continues to state that the student cannot attend a school-based program, it also states that the student requires "infusions every eight (8) weeks and will need to miss class for at least three (3) hours," and that "frequent flares disrupt attendance as well."
5. The PGCPS requested written consent from the parent to contact the private physician for additional information needed to clarify the apparent discrepancies regarding the student's availability for instruction and determine eligibility for HHT services, but the parent refused to provide the consent.
6. On January 30, 2018, the PGCPS denied the request for extension of HHT services.
7. The parent provided another verification from the private physician, dated January 31, 2018, stating that the student was unable to attend school for an indeterminate amount of time. This time the verification excluded the information about needing to miss class for only three (3) hours every eight (8) weeks and when flare-ups occur.
8. On February 9, 2018, the PGCPS approved of the request for extension of the HHT services until March 31, 2018.

9. On February 23, 2018, the IEP team met and decided that, while receiving HHT services, the student's reading comprehension, math problem solving, written language, and speech goals would be addressed through the provision of special education instruction for six (6) hours per week. The IEP team decided that related counseling and speech/language services were not required in the home because these services were to assist the student with improving social skills, and that these skills are not addressed when she is at home and unable to interact with others.
10. An IEP team meeting was scheduled for March 6, 2018, which was cancelled by the parent the day of the meeting. The draft IEP that was provided to the parent in preparation for the meeting reflected the disability category of Specific Learning Disability (SLD) in error. There is no documentation that the school system intended to change the student's disability category to a SLD, and the code was subsequently removed from the IEP on February 22, 2019.
11. On March 28, 2018, the parent provided a reverification of the need for HHT services from the student's private physician, stating that the student was "able to attend school intermittently as health permits." The form also indicated that the student may need to avoid strenuous activities and to be provided with extra time to get to class. The parent again refused to provide consent for the school system staff to contact the physician to obtain information about the student's needs.
12. On April 11, 2018, the PGCPS approved the student for intermittent HHT services.
13. On August 30, 2018, the IEP team developed a plan for the student to return to a school-based program. At that meeting, the school staff requested input from the parent about the student's needs related to her transition back to a school-based program. The parent stated that the student "fatigues easily," and that she would begin attending school at XXXXXXXXXXXX on September 13, 2018. The parent also raised concern about discussing the student's academics along with her medical diagnosis and the impact it would have on her ability to access instruction. The school-based members of the IEP team informed her that "the school system schedules placement review meetings at least thirty (30) days within placement and attendance to address concerns regarding program, placement, and IEP implementation."
14. On September 4, 2018, the parent provided another verification from the student's private physician stating that the student was able to attend a school-based program "intermittently as health permits." The PGCPS again requested permission to speak to the private physician as the verification form appeared to the school system to be an "altered version of an identical form" that had been submitted. However, the parent continued to refuse to permit the school system staff to obtain information about the student's needs from the private physician. On the same date, the PGCPS approved of the provision of HHT services on an intermittent basis.

15. On September 17, 2018, the student's parent provided a doctor's note stating that the student had a condition in her left eye that could last for several weeks. In response to the parent's report that the student was unable to read assignments due to this vision problem, the PGCPS provided audio and video books and enlarged font materials.
16. On October 1, 2018, the PGCPS notified the parent in writing that the HHT services would be discontinued on October 24, 2018.
17. On October 9, 2018, the parent provided another verification from the student's private physician stating that the student was able to attend a school-based program "intermittently as health permits." The PGCPS again requested permission to speak to the private physician as the verification form appeared to the school system to be an "altered version of an identical form" that had been submitted. However, the parent continued to refuse to permit the school system staff to obtain information about the student's needs from the private physician. The PGCPS staff also attempted to obtain information from the parent about the student's vision needs, but the parent refused to provide the information.
18. On October 17, 2018, the parent provided yet another verification from the student's private physician stating that the student was unable to come to school and that she may need to avoid strenuous activities and be provided with extra time to get to class upon her return to school. The parent continued to refuse to permit the school system staff to obtain information about the student's needs from the private physician.
19. On October 22, 2018, the IEP team met for an update of the student's progress. The parent reported that the student was currently unable to attend school. The school staff offered to provide the student with homework while the parent was awaiting a decision about HHT services, based on the recent verification provided by the parent. However, the parent stated that she did not feel she had the expertise to provide the necessary instruction to the student for her to complete the homework. The team also considered information by the parent that the student has diagnosed keratoconus, a progressive eye disease, resulting in 20/60 acuity. Based on the information, the team recommended vision, and orientation and mobility (O&M) assessments, and the parent provided partial consent, in that she did not consent for the mobility portion which allowed for the student needs to be assessed in a community-based setting. The team also agreed to reconvene on November 2, 2018 to discuss HHT services, if approved.
20. On November 2, 2018, the request for extension of HHT services was approved until December 17, 2018.
21. On November 2, 2018, the IEP team convened. The team acknowledged that the student had been approved for HHT services, and advised the parent to withdraw the student

- from XXXXXXXXXXXX and register her at her home school in order to access HHT instruction, which would resume on November 5, 2018. The team also determined that speech/language and counseling services for the student were not appropriate in the home because the goals focused on social interactions. The team indicated that the registrar would assist the family with the transition of services.
22. On November 20, 2018, the student's parent provided another verification from the student's private physician stating that the student was "able to attend school intermittently as health permits." This form also appeared to the school system to be an "altered version of an identical form" that had been previously submitted. However, the parent continued to refuse to permit the school system staff to contact the private physician to obtain clarification of the student's needs.
 23. On December 3 and 4, 2018, the PGCPS staff completed the vision and orientation assessments for the student.
 24. On December 14, 2018, the student was approved for intermittent HHT services.
 25. On December 19, 2018, the parent provided a letter from the student's private physician that the student's vision can be corrected to 20/30 in one (1) eye and to 20/25 in the other eye with the use of lenses.
 26. On December 20, 2018, the IEP team met to review assessment results. Based on the results, the team revised the IEP to include Visual Impairment as a secondary disability, vision services twice each month for sixty (60) minutes each, and copies of classwork materials. The team developed a vision goal and objectives to be included in the IEP.
 27. On January 25, 2019, the PGCPS informed the parent that HHT services would be discontinued on February 8, 2019.
 28. On January 28, 2019, the parent submitted another verification from the student's private physician stating that the student was "unable to attend school," and that she may need to avoid strenuous activities and be provided with extra time to get to class upon her return to school. The parent continued to refuse to provide permission for the school system staff to contact the physician.
 29. On January 31, 2019, the parent was informed that, because the verification form continued to appear to the school system to be an "altered version of an identical form" that had been submitted. forms and because she would not permit the school system to obtain clarification from the physician, the HHT services were denied.
 30. On February 22, 2019, the IEP team corrected the error on the IEP indicating that the student was a student with a SLD and recommended speech/language and educational assessments. The team also included individualized vision services on the student's IEP

to address her goal. The team also determined that the student requires Extended School Year (ESY) services. The parent, who had participated by telephone, refused to participate in the team's discussion about re-evaluation, and indicated that she had to end the telephone call before the meeting was concluded.

31. On April 8, 2019, the complainant provided the MSDE with another verification, dated April 2, 2019, from the student's private physician stating that the student was "able to attend school intermittently as health permits." An IEP team meeting was held on April 26 and 29, 2019, to discuss the student's return to a school-based program.
32. There is no documentation of a revision of the student's educational placement or that the student is being required to attend the school she would attend if not disabled.

IEP Implementation

33. The PGCPS requires that a responsible adult be present in the home during the provision of HHT services. The parent has refused to sign agreement to ensure that there is a responsible adult in the home during the provision of those services.
34. There was a delay in initiating the HHT services resulting from the parent's unavailability to be present in the home during the provision of those services during daytime hours. There is documentation that the parent indicated that she was not available to be present for the provision of HHT services during the regular school day, and was only available on specific days of the week. In order to accommodate the parent's schedule, the PGCPS scheduled the HHT services for after school hours on the days of the week when the parent indicated that she would be home. There is documentation that, in addition to these services, the PGCPS offered to provide compensatory services owed to the student by the HCPS in the home between 6 p.m. and 8:30 p.m.
35. The HHT services were initiated on February 22, 2018 once the school system was able to obtain HHT service providers to provide the services during the time period that the parent reported that she could be present. However, the student has been unavailable for the consistent provision of HHT services because there has not consistently been a responsible adult in the home. In addition, the PGCPS has documented that HHT services were not provided consistently due to the need to obtain new service providers when the parent became "abusive and volatile" with providers.
36. The HHT services have been provided by individuals who possess a bachelor's degree or who have demonstrated satisfactory performance as HHT service providers before July 1, 2001. The HHT teachers work with the student's assigned XXXXXXXXXXXX teachers, who plan and evaluate the effectiveness of the instruction provided.

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37. The PGCPS provided the student with an electronic magnifier to support her vision needs. The PGCPS vision specialist reported that, on November 15, 2018, when she inquired about the device during vision testing, she was informed by the parent that it was no longer at the home, and that she would provide no information on the location of the device. The PGCPS staff report that the device was eventually returned to the school system staff in a state of disrepair.

Progress Reports

38. The IEP requires that the student's progress towards achievement of her annual IEP goals be reported to the parent on a quarterly basis. There is documentation that progress was reported on the annual IEP goals consistent with the IEP and the IEP did not require the provision of report cards.

IEP Team Participants

39. There is documentation that an assigned special education teacher of the student from XXXXXXXXXXXXXXXX or a related service provider of the student was present at each IEP team meeting. There is no documentation that required IEP team members left the IEP team meetings prior to the conclusion of those meetings.
40. There is documentation that the student's parent participated in the IEP team meetings.

CONCLUSIONS:

Allegation #1: Inappropriate Change of Placement

In this case, the complainant alleges that the student was denied a FAPE because the school system required verification that the student was unable to attend a school-based program. She also alleges that the student was denied a FAPE because the school system unilaterally changed her educational placement from a nonpublic separate special education school to the school she would attend if not disabled, which had already been determined by the IEP team to not be able to implement the IEP.

Based on the Findings of Facts #1 - #32, the MSDE finds that the school system was required to ensure that there was proper verification of the student's need for HHT services, in accordance with COMAR 13A.03.05.04, and that the school system did not unilaterally change the student's educational placement. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2: Lack of Specialized Instruction Through a Certified Special Education Teacher

In this case, the complainant alleges that the student was required to be provided with HHT services by certified special education teachers, and that because the HHT teachers did not hold special education certification, the student was not provided with appropriate alterations, adaptation, and modifications. The complainant specifically alleges that the student was not provided with supports to assist her with her vision needs.

Based on the Finding of Fact #36 the MSDE finds that the HHT teachers were qualified to provide the HHT services, in accordance with COMAR 13A.03.05.03. Therefore, this office does not find that a violation occurred with respect to the allegation.

Based on the Findings of Facts #15, #19, # 25, #26, and #33 - #37, the MSDE further finds that the student was provided with supports to assist with her vision needs, in accordance with 34 CFR §§300.101 and .323, and that she has not been made consistently available for the HHT services offered. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #3: Implement the IEP

In this case, the complainant alleges that the PGCPS has not provided HHT services as required.

As stated in Allegation #2 above, based on the Findings of Facts #33 - #37, the MSDE finds that the student has not been made consistently available for the HHT services offered. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #4: IEP Development

In this case, the complainant alleges that the PGCPS has not ensured that the amount of HHT services offered were sufficient to enable the student to progress through the general curriculum.

Based on the Findings of Facts #1 - 24, #27 - #31, and #33 - #35 the MSDE finds that there is no information or documentation that the student could access an additional amount of HHT services, and that the team determined the services consistent with the data, in accordance with COMAR 13A.03.05.03 and COMAR 13A.05.01.10. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainant further alleges that the PGCPS did not ensure that the student's need for ESY services has been addressed.

Based on the Finding of Fact #30, the MSDE finds that there is documentation that the PGCPS has ensured that the IEP team has addressed the student's need for ESY services, in accordance

with 34 CFR §300.106. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainant also alleges that the PGCPS did not ensure that the IEP includes appropriate postsecondary goals based upon age appropriate transition assessments.

Based on the Findings of Facts #13, #14, #17, #19, #28, and #30, the MSDE finds that the parent has not made the student available for the school staff to determine her interests and preferences in order to develop updated postsecondary goals, in accordance with 34 CFR §300.320.

However, based on the Findings of Facts #1 and #2, the MSDE finds that the IEP includes information about the student's interests and preferences, which was obtained by the HCPS, and the IEP includes post-secondary goals and services based on those interests, which can be provided if the student is returned to school in accordance with 34 CFR §300.320. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Allegation #5: Proper Procedures Regarding the Determination of a Specific Learning Disability

In this case, the complainant alleges that, because the IEP stated that the student's Multiple Disabilities included a Specific Learning Disability, the public agency made the decision to add the disability coding for the student without ensuring that the decision was made by the IEP team through a re-evaluation.

Based on the Findings of Facts #10 and #30, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #6: Comprehensive Re-Evaluate

In this case, the complainant alleges that the PGCPS has not ensured that a comprehensive re-evaluation had been conducted.

Based on the Findings of Facts #5, #11, #13 - #15, #17 - #19, #22, #23, #25, #26, #28, #30, and #31, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #7: Reduction of Related Services

In this case, the complainant alleges that the IEP team's decision to revise the amount and nature of speech/language and counseling services denied the student a FAPE.

Based on the Findings of Facts #9, #21, #30, #33, and #35, the MSDE finds that the documentation does not support the allegation and that the team's decisions were consistent

with the data. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #8: Convening Proper IEP Teams

In this case, the complainant alleges that the student's HHT service provider was a required member of the IEP team as the "sole instructor" for the student, but did not participate in all of the student's IEP team meetings. She also alleges that the student's related service providers were required members of the IEP team, but did not consistently participate in the team meetings. In addition, the complainant alleges that required team members left IEP team meetings prior to the conclusion of those meetings.

Based on the Findings of Facts #4, #11, #13, #14, #17, #19, #21, #26, #30, #36, #39, and #40, the MSDE finds that the HHT service providers were not the sole instructors of the student, but were assisting in the provision of instruction by the student's special education teachers of record, who participated in the IEP team meetings.

Based on the Findings of Facts #1 - #4, and #32 - #36, the MSDE further finds that there was no expectation that the student would participate in a general education classroom, and therefore, no requirement that a general education teacher participate in the IEP team meetings.

Based on the Finding of Fact #39, the MSDE finds that there is no documentation that required members of the IEP team left meetings prior to their conclusion. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #9: IEP Review at Parent's Request

In this case, the complainant alleges that, at the August 30, 2018 IEP team meeting, the parent requested that the team consider the impact of the student's medical diagnosis on her academic progress, but that the team did not do so.

Based on the Findings of Facts #13 and #19, the MSDE finds that the student did not attend the school on September 13, 2018, and that the team had no data to support consideration of the impact of the student's medical diagnosis on her academic progress until October 22, 2018, when the parent permitted access to some of the requested data.

However, based on Findings of Facts #5, #11, #14, #17 and #18, #22, and #28, the MSDE finds that the student's parent continues to limit the school system's access to information about the student's medical conditions. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #10: IEP Review and Revision

In this case, the complainant alleges that the PGCPS has not ensured that the IEP has been reviewed and revised consistent with the data from a December 3, 2018 vision assessment and a December 4, 2018 orientation and mobility assessment. The complainant also alleges that the PGCPS has not ensured that the IEP has been reviewed and revised to address lack of expected progress towards achievement of the annual IEP goals.

Based on the Findings of Facts #1 - #30, the MSDE finds that the IEP has been reviewed and revised consistent with the assessment data, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #1 - #40, the MSDE further finds that the IEP team has met regularly about the student's needs, and continues to attempt to obtain additional data regarding those needs in order to address them, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #11: Compensatory Services

In this case, the complainant alleges that the PGCPS has not ensured that the student has been provided with compensatory services owed to the student by the HCPS.

Based on the Findings of Facts #33 - #36, the MSDE finds that the PGCPS has offered compensatory services to the student, in accordance with 34 CFR §§300.101 and .324. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #12: Student's Progress Reports

In this case, the complainant asserts that the IEP requires the provision of interim reports on the student's grades and quarterly progress reports. She alleges that the PGCPS has not ensured that a report card was issued for the first quarter of the 2018-2019 school year. She further alleges that the PGCPS has not provided reports on the student's progress on the goals because the reports issued reflect that some goals have not been introduced and the student is not completing work to achieve other goals.

Based on the Finding of Fact #38, the MSDE finds that the IEP does not require the provision of interim reports on the student's grades. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Finding of Fact #38, the MSDE finds that there is documentation that reports have been made on the annual IEP goals, as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #13: Home and Hospital Instruction Services

In this case, the complainant alleges that the PGCPS has not ensured that the student has been approved for HHT services despite the provision of verification of the need.

As stated above, based on the Findings of Facts #1 - #29, the MSDE finds that the PGCPS has worked with the parent to obtain the information necessary to determine the sufficiency of the verifications provided by the student's private physician, in accordance with COMAR 13A.03.05.03, but that the parent has consistently refused to provide the school system with access to this information.

As also stated above, based on the Findings of Facts #33 - #37, the MSDE further finds that HHT services have been offered to the student but her parent has not made her consistently available for those services. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #14: IEP Meeting Scheduling

In this case, the complainant alleges that the PGCPS did not take steps to ensure that the parent had the opportunity to participate in the annual IEP review by notifying her early enough to ensure participation and holding the meeting at a mutually agreed on time and place.

Based on the Finding of Fact #40, the MSDE finds that the parent participated in all of the IEP team meetings, in accordance with 34 CFR §§300.321 and .322. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #15: In-Home Vision Services

In this case, the complainant alleges that the PGCPS has inappropriately denied the student vision services in the evening when her parent is available.

As stated above, based on the Findings of Facts #33 - #37, the MSDE finds that services have been offered, as required, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #16: Develop of HHT Transition Plan

In this case, the complainant alleges that the PGCPS has failed to develop a proper HHT transition plan in order for the student to transition back to school following the receipt of HHT services.

Based on the Findings of Facts #3 - #31, the MSDE finds that the PGCPS has developed a HHT transition plan that is consistent with the data that the parent made available to the IEP team, in

accordance with 34 CFR §300.324 and COMAR 13A.05.01.10. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #17: IEP Meeting to Plan for the Student's Return to School

In this case, the complainant alleges that the PGCPS has not ensured that the IEP has been reviewed by the IEP team now that the student's period of convalescence has ended. Based on the Findings of Facts #13, #30, and #31, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find that a violation occurred with respect to the allegation.

TIMELINE:

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation.

The parent and the school system 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 Early Intervention/Special Education Services

MEF:ac

c: Monica E. Goldson
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