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July 7, 2017

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6110 Executive Boulevard, Suite 220
Rockville, Maryland 20852

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

RE: XXXXX
Reference: #17-139

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 May 8, 2017, the MSDE received a complaint from Ashley VanCleaf, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and his parents. 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 student.

The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the student’s Individualized Educational Program (IEP) has addressed his needs, since May 2016, in accordance with 34 CFR §§300.320 and .324;
2. The PGCPS has not ensured that reports of the student’s progress towards achievement of the annual IEP goals have been made since May 2016, in accordance with 34 CFR §§300.101, .320 and .323;

3. The PGCPS did not provide a copy of the IEP document to the parent within five (5) business days after the IEP team meeting convened in September 2016, in accordance with COMAR 13A.05.01.07D(3); and
4. The PGCPS did not ensure that the student was provided with the special education instruction and supplementary aids and services, as required by the IEP, and that each service provider responsible for the implementation of the student's IEP was informed of their specific responsibilities related to implementing the IEP, from May 2016 through the end of the 2015 – 2016 school year, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On May 9, 2017, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Trinell Bowman, Director of Special Education, PGCPS.
2. On May 24, 2017, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegations and requested that the PGCPS review the alleged violations.
3. On May 28, 2017, the complainant provided documentation to the MSDE.
4. On June 2, 2017, the MSDE requested the PGCPS to provide documentation for consideration.
5. On June 5, 2017, via telephone interview, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, discussed the allegations with the complainant.
6. On June 8 and 9, 2017, the PGCPS provided the MSDE with documentation for consideration.
7. On June 9, 2017, Ms. Austin and Dr. Nancy Birenbaum, Compliance Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXXXXXXXXXX and interviewed the following school staff:
 - a. Mr. XXXXXXXXXXXX, Principal;
 - b. Ms. XXXXXXXX, Special Education Department Chairperson;
 - c. Ms. XXXXXXXXXXXX, Assistant Principal; and
 - d. Mr. XXXXXXXXXXXX Assistant Principal.

Ms. Barbara VanDyke, Compliance Specialist, PGCPS, participated in the site visit as a representative of the PGCPS and to provide information on the school system's policies and procedures, as needed.

On the same date, Ms. Austin requested the PGCPs to provide additional documentation for consideration.

8. On July 7, 2017, the complainant provided documentation to the MSDE.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated April 13, 2016, and Amended IEPs, dated October 10, 2016, and November 1, 2016;
 - b. Prior Written Notices, dated April 13, 2016, and September 15 and 29, 2016;
 - c. The SchoolMAX report of the student's enrollment history for academic years 2014 to 2017;
 - d. The SchoolMAX report of the student's grades for the 2015 - 2016 school year;
 - e. Electronic mail (email) communications between the student's mother and the school system staff, dated February 2016 to November 2016;
 - f. The SchoolMAX reports of the student's class attendance for May and June 2016;
 - g. The reports of the student's progress towards achievement of the annual IEP goals, dated June 8, 2016;
 - h. The report of a psychological evaluation conducted by an independent evaluator on October 26, 2015;
 - i. Notification of Student's Suspension, dated June 16, 2016;
 - j. The PGCPs calendars for the 2015 - 2016 and 2016 - 2017 school years;
 - k. Notice of IEP team meeting scheduled for September 9, 2016;
 - l. Correspondence from the complainant to the PGCPs, dated August 5, 2016;
 - m. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on May 8, 2017;
 - n. The student's report card showing final grades earned for the 2015 - 2016 school year, dated July 25, 2016;
 - o. Behavioral Intervention Plan, dated November 16, 2011; and
 - p. The report of a psychological assessment conducted on March 22, 2016.

BACKGROUND:

The student is sixteen (16) years old, 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. At the start of the investigation period, the student was attending XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXX). He is currently enrolled at XXXXXXXXXXXXX, a private school, where he has been placed by his parents (Docs. a, c and m).

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

**ALLEGATION #1: IEP THAT ADDRESSES THE STUDENT'S NEEDS
SINCE MAY 2016**

FINDINGS OF FACTS:

1. The IEP in effect in May 2016, the start of the investigation period, was developed on April 13, 2016, and reflects that the student's primary disability is an Other Health Impairment. The IEP states that the student's overall level of academic achievement is "low," his ability to apply academic skills is within the "low average range," his fluency with academic tasks is within the "very low range," his broad reading and broad written language scores are "low average," and his broad math score is in the "low range" (Doc. a).
2. There is documentation that the IEP team discussed the results of the psychological assessment that was conducted on March 22, 2016 indicating his cognitive abilities below the expected range when compared to same aged peers. The evaluator noted that the student was "often" inattentive but was able to be redirected to task, and that he benefitted from extended time and repeated instructions. The report includes the following information about the student's functioning:
 - The student's capacity for storing information, and the rate and fluency with the retrieval of the information, is "limited."
 - His ability to encode, synthesize, and discriminate auditory stimuli and to use auditory information in task performance is "very limited and extremely difficult."
 - His ability to perform quantitative and inductive reasoning to solve problems is "limited," and he may have difficulty with identifying relationships, drawing inferences, and recognizing and forming concepts.
 - The parents reported "clinically significant concerns in the areas of academic difficulties, language and math."
 - The student is exhibiting inattentiveness, inhibitory, and organization skills in the "below average range across all settings."

While the report includes two and a half pages of very specific recommendations, there is no documentation that the IEP team considered the recommendations at the meeting (Docs. a, b and p).

3. The April 2016 IEP states that the student's "weaknesses in the area of hyperactivity, attention span, poor concentration, and impulsivity cause him to have difficulty accessing the curriculum at the pace that he should without support. His difficulty getting started, continuing assignments, and controlling his behaviors affect his performance in oral and written language, math, and social interaction skills" (Doc. a).

4. The April 2016 IEP identifies that the student has needs in the areas of math problem solving, written language expression and reading, where he is functioning at the 6th grade instructional level. The IEP includes goals addressing each of these areas (Doc. a).
5. The April 2016 IEP also identifies that the student has behavioral needs in the area of self-management skills, where he is functioning below grade level. The IEP states that the student “has been working hard on managing his behaviors to facilitate an appropriate learning environment for both himself and his peers.” It reflects that, while his behavior may be disruptive and off-task, and that he takes a long time to start independent class assignments, he responds well to praise and is improving his acceptance of constructive criticism. The IEP includes a goal requiring the student to “demonstrate school expected behaviors that facilitate achievement and learning” (Doc. a).
6. The IEP reflects that the student requires a Behavior Intervention Plan (BIP) that was developed in November 2011. The BIP identifies that the student does not stay on task without redirection, gets frustrated when work is difficult, and exhibits passive acting out behaviors (Docs. a and o).
7. The IEP requires the provision of testing and instructional accommodations, including extended time to fully process information and demonstrate his knowledge and understanding, and reduced distractions, and a small group setting away from distractions to complete work, as well as daily supplementary supports, including monitoring of independent work and frequent reminders of rules, to be provided in the general education classroom (Doc. a).
8. To assist the student with achieving the annual IEP goals, the IEP requires 17 hours and 35 minutes per week of specialized instruction in reading, writing and math by a general education teacher and a special education teacher to be provided in the general education classroom (Doc. a).
9. The IEP also reflects that the student requires 7 hours and 30 minutes per day of specialized instruction in math to be provided in a separate special education classroom. However, the Least Restrictive Environment (LRE) section of the IEP states that “all of [the student’s] instruction is in the general education environment, and that he “will not be removed from the general education environment” (Doc. a).
10. The student’s mid-quarter grades for the 4th quarter of the 2015 - 2016 school year consisted of D’s in U.S. history, Algebra 1, English Language Arts, and academic resource classes, a C in biology class, and an A in physical training class (Doc. d).
11. There is documentation that, on May 19, 2016, the student’s mother and the school staff discussed, by telephone, the possibility that XXXXXX is not be “the best fit” for the student, and that the school staff wanted to discuss the issue with other school staff working with the student and would follow up with the student’s mother (Doc. e).

12. On June 5, 2016, after receiving no communication from the school staff, the student's mother sent an email to the school staff to follow up on the earlier conversation and inquired whether the school staff had discussed the issue with the other school staff (Doc. e).
13. The email exchange between the school staff on June 6, 2016, states "Just looping you all in to [the student.] He has struggle[d] since coming to us halfway through the year and mom and I are in agreement he needs a better placement. What can we do to help them?" (Doc. e).
14. On June 8, 2016, the school staff sent an email to update the student's mother. The school staff reported that he had not received a response from other school staff, agreed to follow up again with the other school staff, and then let the student's mother "know our next steps for helping" the student (Doc. e).
15. There is documentation that, in the months of May 2016 and June 2016, the student did not attend fourteen (14) Algebra 1 classes although he was present at school on such days, and that the parents had expressed concern about this and not completing homework since February 2016 (Docs. e and f).
16. On June 8, 2016, the school staff reported that the student was making sufficient progress towards mastery of the IEP math problem solving, written language expression, and reading goals. The school staff also reported that the student was making sufficient progress towards mastery of the IEP behavioral goal addressing his self-management skills. With respect to the second objective within the behavioral goal, the school staff documented that "with reminders," the student "is able to follow school and classroom behavior expectations by coming to class on time, sitting down, and starting warmups before the bell rings." The progress report does not indicate the student's progress towards the first objective within the behavioral goal, requiring the student to start and complete assignments with no more than three (3) prompts per class, given adult encouragement, and as measured by a daily behavior log (Doc. g).
17. On June 16, 2016, the school staff suspended the student for loitering in the hallway and causing a disruption, and for being seen with a water balloon. The suspension documentation reflects that the student was suspended for two (2) days, beginning on June 17, 2016, and that he could return to school on August 23, 2016¹ (Doc. i).
18. There is documentation that, on June 16, 2016, during a conversation with the school staff, the student's mother expressed concern about the effectiveness of the IEP accommodations, her belief that the student's needs have not been addressed, and that he is not been "learning or experiencing success in the classroom." The student's mother requested that the IEP team convene in order to review the IEP, and that the student's IEP be submitted to the Central Office for assistance with an appropriate placement (Doc. e).

¹ June 20, 2016, was the last day of school for students in the 2015 - 2016 school year. August 23, 2016 was the first day of school for students in the 2016 - 2017 school year (Doc. j).

19. On June 22, 2016, the student's mother sent an email to the school staff in which she identified five (5) dates and times, between June 22 and 28, 2016, of her availability for an IEP team meeting, but an IEP team meeting was not scheduled (Doc. e).
20. On August 5, 2016, on behalf of the student's parents, the complainant notified the PGCPs that the parents were rejecting the IEP and continued placement at XXXXX HS (Doc. l).
21. On September 9, 2016, the IEP team convened. The invitation notice for the meeting identifies that the purpose of the meeting was to review, and if appropriate, revise the IEP, consider reevaluation, consider Extended School Year (ESY) services, and to review the student's program and placement. The IEP team discussed that although the student was registered at XXXXXX, he had not attended school there since the start of the 2016 - 2017 school year, and that he was registered and attending school at XXXXXXXX XXXXXXX (Docs. a, and d).
22. The prior written notice document states that the IEP team discussed and reviewed the student's report card, credits, graduation requirements, assessments, transition, academic performance, teacher comments, and parental and student concerns. The student's final 2015 – 2016 year end grades consisted of 2 Es, 4 Ds, and 1 B. The parents requested that the IEP team revise the IEP to include the accommodations and supplementary aids and services that were recommended in the report of the psychological evaluation that was conducted by the school system staff in March 2016. The IEP team agreed to reconvene on September 28, 2016 (Docs. b, d and n).
23. There is documentation that, on September 20, 2016, the student was withdrawn from XXXXXXXX due to nonattendance (Doc. a).
24. On September 28, 2016, the IEP team convened, with the participation of XXXXXX XXXXX staff. The IEP team considered reports by XXXXXXXXXXXX staff that the student receives instruction with supports in small class sizes of 2 to 8 students, has an advisory period to assist with making up incomplete assignments and additional assistance to improve his skills levels, and is receiving "average to above average" grades. They also reported that, while the student is "doing well socially," has formed friendships and enjoys school, he continues to have missing assignments, incomplete work and the need for re-direction (Doc. b).
25. A school staff member noted that, at XXXXXXXX, the student had demonstrated similar behaviors as those reported by XXXXXXXXXXXX. He reported that the student was "capable" of doing "average to above average" work, but that when unfocused, he did not complete work on a consistent basis, and slept during class (Doc. b).
26. The IEP team reviewed the results of the psychological assessment that was conducted on March 22, 2016. The IEP team documented that the student has weaknesses in the areas

of hyperactivity, attention span, poor concentration and impulsivity, and difficulty with organization and controlling his behaviors that affect his performance in written language, math, reading comprehension and vocabulary. They also documented that the student's "cognitive profile reflects a pattern of strengths and weaknesses that may also contribute to challenges learning new academic skills, however the first step to processing information is to attend to the information, and therefore a failure to attend to instruction interferes with his opportunity to cognitively process information" (Docs. a and b).

27. The IEP team revised the IEP to require many of the supports that were recommended in the report of the March 2016 psychological assessment, including recommendations that were presentation accommodations of visual cues and notes and outlines, additional supplementary supports, including frequent feedback, repetition of instructions, use of organizational needs, chunking of texts, and a home-school communication system to report daily progress. The team also added a math calculation goal requiring the student to increase his functional skills in the areas of algebra and geometry, and a behavioral goal to address the student's organization skills (Doc. a).
28. The IEP team reduced the amount of specialized instruction required in the general education classroom, from 17 hours and 55 minutes per week, to 11 hours and 15 minutes per to support the student in English, social studies and science classes. There is no documentation of the basis for this decision to reduce special education services, and there is no data to support the decision (Docs. a and b).
29. The IEP team, also revised the IEP to clarify that the student requires 7 hours and 30 minutes per week of specialized instruction to be provided in a separate special education classroom to support the student in math and academic resource skills (Doc. a).
30. The IEP team discussed the student's LRE. The school based members of the IEP team recommended that the student continue to receive specialized instruction in the general education classroom for all academic areas except math. The parents disagreed with this recommendation, while noting that the same services had not been successful for the student from February 2016 to June 2016. The IEP team then considered the provision of specialized instruction in a separate special education classroom for all academics. The parents requested the opportunity to observe a separate special education classroom, and the IEP team agreed to reconvene to continue the discussion about the student's LRE (Docs. a and b).
31. On November 9, 2016, via email, the school staff contacted the student's parents to request their availability for conducting a classroom visit. The school staff report that the student's mother observed a separate special education classroom in December 2016, and again in February 2017. There have been no subsequent IEP team meetings (Doc. e and interviews with the parties).

DISCUSSION/CONCLUSIONS:

A Free Appropriate Public Education (FAPE) means special education and related services that are provided in conformity with an IEP at public expense, under public supervision and direction, and without charge to the parent (34 CFR §§300.17, .101 and .323).

In order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. If a student's behavior impedes the student's learning, the team must consider interventions, supports, and strategies to address the behavior (34 CFR §§300.101, .320, and .324).

The IEP must include a statement of the services needed in a manner that ensures that they will be provided consistent with the intent of the IEP team (34 CFR §300.320, and *Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 1999).²

Based on the Findings of Facts #1 and #3 - #9, the MSDE finds that the IEP in effect since April 2016 does not include a clear statement of the services to be provided, and that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #2 - #27, the MSDE finds that, while the report of the March 2016 psychological assessment included numerous recommendations to address the student's needs, the IEP team did not consider the recommendations until September 2016. Therefore, the MSDE finds that there was a delay in addressing the student's needs, and that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #24 - 30, the MSDE finds that the IEP team did not document the basis for the IEP team's decision, in September 2016, to reduce the amount of specialized instruction in the general education classroom. As a result, this office finds that there is no documentation that the decision was consistent with the data. Therefore, the MSDE finds a violation occurred with respect to this aspect of the allegation.

ALLEGATION #2: IEP PROGRESS REPORTS MADE SINCE MAY 2016

FINDINGS OF FACTS:

32. The IEP requires the parent to be notified each quarter of the school year of the student's progress towards mastery of the IEP goals (Doc. a).

² In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

There is documentation that the school staff developed reports of the student's progress towards mastery of the annual IEP goals, dated June 8, 2016 (Doc. g).

There is no documentation that the school staff provided the June 8, 2016 IEP progress reports to the parents (Interview with the school staff).

DISCUSSION/CONCLUSIONS:

The IEP must include, among other things, a description of how the student's progress toward achieving the annual goals will be measured and when reports will be made of the student's progress to the parents (34 CFR §300.320). The public agency must give the parent a copy of the student's IEP at no cost to the parent (34 CFR §300.322).

Based on the Finding of Fact #33, the MSDE finds that the school staff prepared reports of the student's progress towards mastery of the IEP goals on June 8, 2016. However, based on the Findings of Facts #32 and #34, the MSDE finds that there is no documentation that the school staff have provided the progress reports to the parents, as required by the IEP, and therefore finds a violation with respect to this aspect of the allegation.

**ALLEGATION #3: PROVISION OF IEP TO THE PARENT WITHIN FIVE (5)
BUSINESS DAYS FOLLOWING THE SEPTEMBER 28, 2016
IEP TEAM MEETING**

FINDINGS OF FACTS:

35. The IEP team convened on September 28, 2016, and made revisions to the student's IEP (Docs. a and b).

36. On November 28, 2016, the school staff provided the parents with the revised IEP, via email (Doc. e).

DISCUSSION/CONCLUSION:

Not later than five (5) business days after a scheduled IEP team meeting, school personnel must provide a copy of the completed IEP to the parent (Md. Code, Ann., Educ. §8-405 (2010) and COMAR 13A.05.01.07).

Based on the Findings of Facts #35 and #36, the MSDE finds that a violation occurred.

ALLEGATION #4: PROVISION OF SPECIAL EDUCATION INSTRUCTION AND SUPPLEMENTARY AIDS AND SERVICES REQUIRED BY THE IEP, AND ENSURING THAT THE SERVICE PROVIDERS WERE INFORMED OF THEIR RESPONSIBILITIES FOR IMPLEMENTING THE IEP, SINCE MAY 2016

FINDINGS OF FACTS:

37. The IEP requires the provision of special education services, including specialized instruction in the general education classroom and in a separate special education classroom, as well as the provision of several supplementary aids and services to assist the student in achieving the IEP goals (Doc. a).
38. There is no documentation that the student was provided with the special education instruction and supplementary aids and services required by the IEP (Interview with the school staff).
39. The school staff have developed a form for service providers to sign to indicate that they have received a “snapshot” of a student’s IEP that contains information about the supports, accommodations annual IEP goals, and the special education and related services to be provided to a student (Interview with the school staff).
40. There is no documentation that the service providers were provided with the student’s IEP or informed of their responsibilities for implementing the student’s IEP (Interview with the school staff).

DISCUSSION/CONCLUSION:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101).

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP. In order to ensure the provision of the services, each public agency must ensure that the student’s IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. This is done to ensure that each teacher and provider is informed of his or her specific responsibilities related to implementing the student’s IEP and of the accommodations, modifications, and supports that must be provided to the student in accordance with the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #37 - #40, the MSDE finds a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by September 1, 2017, that the IEP team has convened with the parents and taken the following actions:

- a. Developed an appropriate IEP for the student following proper procedures; and
- b. Determined compensatory services to be provided to the student for the violation identified in this Letter of Findings, if the student returns to the PGCPS.

School-Based

The MSDE required the PGCPS to provide documentation, by October 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 at XXXXXX HS. Specifically, a review of child early intervention 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.

The MSDE also requires the PGCPS to provide documentation by September 1, 2017, of the steps it has taken, including training, to ensure that the XXXXXX HS staff comply with the requirements relating to the violations identified in this Letter of Findings.

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 PGCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date 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

Ashley S. VanCleaf, Esq.
Ms. Trinell Bowman
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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 and the PGCPs 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: XXXXXX
 XXXXXXXXXXXX
 Kevin Maxwell
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