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State Superintendent of Schools

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November 17, 2010

Ms. Ileana B. Luciani  
Maryland Disability Law Center  
1800 N. Charles Street  
Suite 400  
Baltimore, Maryland 21201

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

RE: XXXXX  
Reference: #11-022

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention 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.

**ALLEGATIONS:**

On September 28, 2010, MSDE received correspondence from Ms. Ileana B. Luciani, hereafter "the complainant," filed on behalf of the above-referenced student and Ms. XXXXXX, the student's mother. 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. This office investigated the following allegations:

1. PGCPS did not follow proper procedures when disciplinarily removing the student from school during the 2009-2010 school year, as required by 34 CFR §§300.530 and .536. Specifically, the complainant alleges that:
  - a. PGCPS did not conduct a manifestation meeting within ten (10) days of the decision to change the placement of the student;

- b. PGCPS did not conduct a Functional Behavioral Assessment (FBA) or develop a Behavior Intervention Plan (BIP) prior to March 25, 2010; and
  - c. PGCPS did not provide the student with special education services to enable her to continue to participate in the general education curriculum following the tenth (10<sup>th</sup>) day of disciplinary removal.
2. PGCPS did not provide the student with the special education instruction and related services required by the Individualized Education Program (IEP) during the 2009-2010 school year, in accordance with 34 CFR §300.101.
  3. PGCPS did not follow proper procedures in determining the student's need for Extended School Year (ESY) services during the 2009-2010 school year, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08B.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Vickie Frazier, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 30, 2010, a copy of the complaint was provided, via facsimile, to Ms. Joan Rothgeb, Interim Director of Special Education, PGCPS; Ms. Gail Viens, Staff Attorney, PGCPS, and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
3. On October 4 and 7, 2010, Ms. Frazier unsuccessfully attempted to contact the complainant, by telephone, to clarify the allegations.
4. On October 8, 2010, MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. The MSDE also notified Ms. Rothgeb of the allegations to be investigated and requested that her office review the alleged violations.
5. On November 5, 2010, Ms. Frazier and Ms. Dori Wilson, Chief, Complaint Investigation/Due Process Branch, MSDE, conducted a site visit at XXXXXXXX XXXXXXXX (XXXXXX) to review the student's education record, and interviewed the following school staff:
  - a. Ms. XXXXXXXX, Co-Principal;
  - b. Mr. XXXXXXX, General Education Teacher;
  - c. Ms. XXXXXXXXX, Special Education Chairperson; and
  - d. Mr. XXXXXXXXXX, Special Education Teacher.

Ms. Morrison attended the site visit as a representative of the PGCPS Central Office and to provide information regarding PGCPS policies and procedures, as needed.

6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
- a. Correspondence and attachments from the complainant to MSDE, dated September 23, 2010;
  - b. IEP, dated March 13, 2009;
  - c. Notification of Pupil's Suspension, dated October 5, 2009;
  - d. Notification of Pupil's Suspension, dated November 2, 2009;
  - e. Notification of Pupil's Suspension, dated December 14, 2009;
  - f. Manifestation Determination Worksheet, dated January 25, 2010;
  - g. FBA, dated January 27, 2010;
  - h. Notification of Pupil's Suspension, dated February 4, 2010;
  - i. Notification of Pupil's Suspension, dated March 10, 2010;
  - j. IEP, dated March 11, 2010;
  - k. FBA, dated March 13, 2010;
  - l. Behavioral intervention plan (BIP), dated March 13, 2010;
  - m. Manifestation Determination Worksheet, dated March 25, 2010;
  - n. Notification of Pupil's Suspension, dated April 14, 2010;
  - o. Manifestation Determination Worksheet, dated April 23, 2010;
  - p. Correspondence from PGCPs staff to the complainant, dated July 23, 2010;
  - q. Free appropriate public education (FAPE) services log, from April 27, 2010 through June 8, 2010; and
  - r. Reports on the student's progress toward achieving the IEP goals for the 2009-2010 school year.

**BACKGROUND:**

The student is fourteen (14) years old and she attends XXXXXXXX. She is identified as a student with an other health impairment under IDEA, related to a diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD) and she receives special education instruction and related services. During the time period covered by this investigation, the student's mother participated in the educational decision-making process and was provided with information regarding procedural safeguards and parent's rights (Docs. b and j).

**ALLEGATION #1:                   DISCIPLINARY REMOVAL**

**FINDINGS OF FACT:**

1. On October 5, 2009, the student was disciplinarily removed from school for four (4) school days for disrespect and insubordination (Doc. c).
2. On November 2, 2009, the student was disciplinarily removed from school for five (5) school days for disrespect, insubordination and profanity (Doc. d).

3. On December 14, 2009, the student was disciplinarily removed from school for two (2) school days for loitering, disrespect, and continued classroom disruption.
  - a. There is no documentation of consideration of whether the removal constituted a pattern that resulted in a change in educational placement and whether the student's behavior was a manifestation of her disability.
  - b. There is no documentation that the IEP team met to ensure that the student's program addresses the behavior that resulted in the December 14, 2009 disciplinary removal.
  - c. There is no documentation that the student was provided with educational services following the tenth (10<sup>th</sup>) day of disciplinary removal (Doc. e and review of the education record).
  
4. On January 13, 2010, the student was disciplinarily removed from school for five (5) school days. The documentation does not indicate the behaviors that resulted in this disciplinary removal.
  - a. There is no documentation of consideration of whether the removal constituted a pattern that resulted in a change in educational placement and whether the student's behavior was a manifestation of her disability.
  - b. There is no documentation that the IEP team met to ensure that the student's program addresses the behavior that resulted in the January 13, 2010 disciplinary removal.
  - c. There is no documentation that the student was provided with special education services during this disciplinary removal (Doc. f and review of the education record).
  
5. On January 21, 2010, the student was disciplinarily removed from school for five (5) school days for destruction of school property, disrespect, and insubordination.
  - a. On January 25, 2010, the IEP team met. There is no documentation of consideration of whether the removal constituted a pattern that resulted in a change in educational placement, but the team determined that the student's behavior was a manifestation of her disability because school staff had not implemented the student's IEP. As a result, the team required that the student be returned to school.
  - b. At the January 25, 2010 meeting, the team recommended that a BIP be updated to address behavioral concerns, but there is no documentation of a BIP in the record that existed at that time.

- c. There is no documentation that the student received educational services during this disciplinary removal.
  - d. On January 27, 2010, a FBA was conducted, which indicates that a Student Behavior Agreement was signed by the student, and that the FBA included an "attached plan." However, the education record does not contain such documents (Docs. f, g and review of the education record).
6. On February 4, 2010, the student was disciplinarily removed from school for five (5) school days for insubordination, inciting others to disruption, and refusing to stay in detention.
  - a. There is no documentation of consideration of whether the removal constituted a pattern that resulted in a change in educational placement and whether the student's behavior was a manifestation of her disability.
  - b. There is no documentation that the team developed a BIP to ensure that it addresses the behavior that resulted in the February 4, 2010 disciplinary removal.
  - c. There is no documentation that the student was provided with educational services during the period of this disciplinary removal (Doc. h and review of the education record).
7. On March 10, 2010, the student was disciplinarily removed from school for five (5) school days for use of profanity to a staff member, and disruption of the school environment.
  - a. There is no documentation of consideration of whether the removal constituted a pattern that resulted in a change in educational placement and whether the student's behavior was a manifestation of her disability.
  - b. There is no documentation that the student was provided with educational services during the period of this disciplinary removal.
  - c. There is documentation that, on March 13, 2010, the IEP team reviewed a FBA which documents that the student continues to have difficulty with concentration and organization, is defiant and argumentative, fails to follow instructions and often cuts class or arrives late to class. To address these behaviors, a BIP was developed that includes strategies such as use of reinforcement, direct instruction on problem solving skills, and use of time out (Docs. i, k, l and review of the education record).
8. On March 23, 2010, the student was disciplinarily removed from school for disrespect, use of profanity to a staff member, and disruption of the school environment.

- a. On March 25, 2010, an IEP team convened. There is no documentation of consideration of whether the removal constituted a pattern that resulted in a change in educational placement, but the team determined that the behavior was not a manifestation of her disability. The team also determined that the student would be provided with "work packets" to take home during the removal period, but there is no documentation that the team considered the student's need for educational services during her disciplinary removal.
  - b. The summary of the March 25, 2010 meeting documents that, as of the date of the meeting, the student had been disciplinarily removed from school for thirty-five (35) school days.
  - c. There is no documentation that the team reviewed the student's BIP to ensure that it addresses the behavior that resulted in the March 23, 2010 disciplinary removal (Doc. m and review of the education record).
9. On April 14, 2010, the student was disciplinarily removed from school for two (2) school days for disrespect and insubordination.
- a. There is no documentation of consideration of whether the removal constituted a pattern that resulted in a change in educational placement and whether the student's behavior was a manifestation of her disability.
  - b. There is no documentation that the team reviewed the BIP to ensure that it addresses the behavior that resulted in the April 14, 2010 disciplinary removal.
  - c. There is no documentation that the student was provided with educational services during the period of this disciplinary removal (Doc. n and review of the education record).
10. On April 21, 2010, the student was disciplinarily removed from school for the remainder of the school year for her involvement in a "Level IV XXXXXXXX."
- a. On April 23, 2010, an IEP team convened. There is no documentation of consideration of whether the removal constituted a pattern that resulted in a change in placement, but the team determined that the student's behavior was not a manifestation of her disability.
  - b. The summary of the April 23, 2010 IEP team meeting documents that the team decided that the student would receive two (2) hours of special education instruction to be provided one time each week at XXXXXXXX.
  - c. There is no documentation that the team reviewed the student's BIP to ensure that it addresses the behavior that resulted in the April 21, 2010 disciplinary removal.

- d. The meeting summary documents that, as of the date of the meeting, the student had been disciplinarily removed for thirty-three (33) days during the school year. This documentation is inconsistent with documentation of the March 23, 2010 manifestation determination worksheet which documents that the student had been disciplinarily removed from school for thirty-five (35) days.
- e. There is documentation that the student was provided with two (2) hours of special education instruction each week from April 27, 2010 through June 8, 2010 while she was disciplinarily removed from school (Docs. o, q and review of the education record).

### **LEGAL REQUIREMENTS:**

#### *General Disciplinary Requirements*

IDEA and COMAR provide protections to students with disabilities who are removed from school in excess of ten (10) school days in a school year as follows:

- A student with a disability may be removed from the student's current placement for up to ten (10) consecutive school days for each incident of misconduct in a school year if the cumulative effect of the removals does not constitute a change in placement (34 CFR §300.530).
- A change in placement occurs if the removal is for more than ten (10) consecutive school days or the student has been subjected to a series of removals that constitute a pattern because they total more than ten (10) school days in a school year and the student's behavior is substantially similar to the behavior in previous incidents that resulted in the removals (34 CFR §§300.530 and .536).

#### *Requirements for Removals That Do Not Constitute a Change in Placement*

- For each period of removal after a student has been removed for the cumulative equivalent of ten (10) school days in a school year, school personnel must consult with at least one (1) of the student's teachers to determine the services to be provided to the student to enable her to appropriately progress in the general curriculum and to advance toward achieving the annual IEP goals.
- Additionally, the IEP team must meet within ten (10) business days of the removal to review the student's behavioral intervention plan to address the behavior that resulted in the removal (34 CFR §300.530 and COMAR 13A.08.03.03).

*Requirements for Removals That Constitute a Change in Placement*

- Within ten (10) school days of the date in which the decision is made to change the placement of a student because of a violation of a code of student conduct, the IEP team must convene to determine whether the student's behavior was a manifestation of the student's disability.
- If the team determines that the behavior was a manifestation of the student's disability, it must return the student to the educational placement from which the student was removed (34 CFR §300.530 and COMAR 13A.08.03.08).
- If the behavior is determined not to be a manifestation of the student's disability, the public agency may apply discipline procedures to students with disabilities in the same manner as would be applied to students without disabilities, except:
  - a. the student with a disability who is removed from her current placement must continue to receive educational services, determined by the IEP team, to enable the student to progress in the general curriculum and advance toward achieving the goals of the student's IEP, although those services may be provided in an alternative setting, and
  - b. the student must receive, as appropriate, a functional behavioral assessment and behavior intervention services that are designed to address the behavior violation so that it does not recur (34 CFR §300.530 and COMAR 13A.08.03.08).

**DISCUSSION/CONCLUSIONS:**

*Change in Placement/Manifestation Determination:*

Based on Findings of Fact #1-9, MSDE finds that there is no documentation that a determination was made, following short-term removals that resulted in removals in excess of ten (10) days, regarding whether the removals constituted a change in placement in order to ensure that manifestation determinations were made, as appropriate. Therefore, MSDE finds that a violation occurred with respect to this aspect of the allegation.

*Behavior Intervention Plan:*

Based on Findings of Fact #3-10, MSDE finds that the IEP team did not review results of a FBA and develop a BIP to ensure that the program addressed the student's behaviors following any of the disciplinary removals during the 2009-2010 school year prior to March 13, 2010. Based on Findings of Fact #8 – 10, MSDE finds that the team did not review the BIP to ensure that it addressed the student's behaviors following subsequent disciplinary removals. Therefore, MSDE finds that violations occurred with respect to this aspect of the allegation.



*Provision of Special Education Service:*

Based on Findings of Fact #3- 9, MSDE finds that, although the student was provided with “work packets” to take home during her disciplinary removals, the student was not provided with special education instruction determined by the IEP team during periods of disciplinary removals prior to her April 21, 2010 disciplinary removal. Therefore, MSDE finds that a violation occurred with respect to this aspect of the allegation.

**ADDITIONAL VIOLATION:        MAINTENANCE OF RECORDS**

In order to ensure that students are provided with disciplinary removal protections and special education services in accordance with the requirements of IDEA, each public agency must accurately record information, including student attendance and disciplinary removals, as specified in the Maryland Student Records System Manual (COMAR 13A.08.02.04).

Based on Finding of Fact #4, MSDE finds that PGCPS did not document the behavior that was the subject of the January 13, 2010 disciplinary removal in order to enable school staff to determine whether the removal constituted a pattern that resulted in a change in placement. Additionally, based on Findings of Fact #8(b) and 10(d), MSDE finds PGCPS has not maintained accurate documentation of the number of days that the student was disciplinarily removed from school. Therefore, MSDE finds that violations occurred with this aspect of the allegation.

**ALLEGATION #2:                    IEP IMPLEMENTATION**

**FINDINGS OF FACT:**

11.     The IEP in effect during the 2009-2010 school year required that the student receive special education instruction in the general education classroom to assist her in achieving goals in the areas of reading, math, written language and social interaction. The IEP also required that the student receive weekly counseling services outside of the general education classroom. The IEP did not specify the amount of counseling services that were required (Docs. b and j).
  
12.     While the student’s education record contains reports of the student’s progress toward achieving the annual goals during the 2009-2010 school year, the IEP team determined on January 25, 2010 that the student had not been provided with the special education instruction and related services required by the IEP. Additionally, the student’s education record does not contain counseling service logs or any other documentation of the provision of the counseling services required by the IEP during the 2009-2010 school year (Docs. f, r, s, and review of the education record).

**DISCUSSION/CONCLUSIONS:**

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).

Based on Findings of Fact #5(a), 11, and 12, MSDE finds that PGCPs did not ensure that the student was provided with the special education instruction and related services required by the IEP during the 2009-2010 school year, and that a violation occurred with respect to this allegation.

**ADDITIONAL VIOLATION: CLEARLY WRITTEN IEP**

In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 12, 1999).<sup>1</sup> Based on Finding of Fact #11, MSDE finds that the IEP was not written in a manner that clearly states the amount of counseling services to be provided to the student during each counseling session. Therefore, MSDE finds a violation occurred.

**ALLEGATION #3: ESY SERVICES**

**FINDINGS OF FACT:**

13. On March 11, 2010, the IEP team convened to determine the student's need for ESY services. The IEP team determined that the student did not require ESY services. However, when considering the nature and severity of the student's disability, the IEP documents that the team determined that "the nature and severity of the disability warrant ESY" (Doc. j).
14. Documentation of the factors considered by the team when making the March 11, 2010 decision regarding the student's need for ESY services states that the team determined that there were no significant interfering behaviors (Doc. j).

**DISCUSSION/CONCLUSIONS:**

ESY services are an individualized extension of specific services beyond the regular school year that are designed to meet specific goals included in the student's IEP (34 CFR §300.106 and COMAR 13A.05.01.03B(26)). At least annually, the IEP team must determine whether the student requires ESY services in order to ensure that the student is not deprived of FAPE by virtue of the normal break in the regular school year (Md. Ann. Code, Education Art. §8-405(b)).

When determining whether ESY services are required for the provision of FAPE, the IEP team must consider the following:

1. Whether the student's IEP includes annual goals related to critical life skills;
2. Whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time;

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<sup>1</sup> In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

3. The student's degree of progress toward mastery of the annual IEP goals related to critical life skills;
4. The presence of emerging skills or breakthrough opportunities;
5. *Interfering behaviors*;
6. The nature and severity of the disability; and
7. *Special circumstances* (COMAR 13A.05.01.08B (2) (b))(emphasis added).

After considering the required factors, the IEP team must decide whether the benefits that a student received from the education program during the regular school year will be *significantly jeopardized* (emphasis added) if the student is not provided with ESY services (MM v. School District of Greenville Co. (S.C.), 303 F3d. 523, 37 IDELR 183 (4<sup>th</sup> Cir. 2002)). The school system must provide written notice to the parent of the team's decisions regarding the student's need for ESY services. This includes informing the parent of the decisions and providing the parent with an explanation of the bases for the decisions (34 CFR §300.503(b)).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under IDEA, the state educational agency must review the procedures used by a school system to reach determinations about the program. Additionally, the state educational agency must also review the evaluative data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

As stated above, in order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 12, 1999).<sup>2</sup>

Based on Finding of Fact #13, MSDE finds that the IEP is not written in a manner that is clear with respect to the team's decision regarding the student's need for ESY services. Additionally, Based on Finding of Fact #14, MSDE finds that the team's decision is inconsistent with the information regarding the student's ongoing behavioral issues during the 2009-2010 school year. Therefore, MSDE finds that violations occurred with respect to this allegation.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student-Specific:**

MSDE requires PGCPs to provide documentation by February 1, 2011 that the IEP team has convened and determined the amount and nature of *compensatory services*<sup>3</sup> or other remedy

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

<sup>3</sup> Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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necessary to redress the violations found in this letter<sup>4</sup>. PGCPS must provide the student's mother with proper written notice of the team's determinations, as required by 34 CFR §300.503, including a written explanation of the basis for the determinations. If the student's mother disagrees with the decisions, she maintains the right to request mediation and to file a due process complaint to resolve the dispute consistent with IDEA.

**School-Based/Systemic:**

MSDE requires PGCPS to provide documentation by March 1, 2011 of the steps taken to determine if the procedural violations found in this investigation are unique to this case or if they represent a pattern of noncompliance at XXXXXXXX. Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to MSDE. If the school system reports compliance with the requirements, MSDE Complaint Investigation and Due Process Branch staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the date of the school system's initial determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement currently has a Corrective Action Plan in place to address previous violations regarding PGCPS discipline procedures. Additionally, MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement will be conducting a comprehensive monitoring of PGCPS policies and procedures in May of 2011. Verification of the school system's compliance will also be conducted through this process consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP) Memorandum #09-02.

In addition, MSDE will conduct a review to verify compliance with the requirement to ensure that proper procedures are followed. Documentation of the completion of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

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<sup>4</sup> There is documentation that PGCPS has previously identified violations with regard to the discipline procedures and has offered compensatory services for those violations, to be provided in the form of tutoring service two (2) times a week for thirty (30) minutes each session. However, PGCPS staff acknowledge that, to date, those compensatory services have not been provided to the student (Doc. p and interview with school staff).

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**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this LOF if they disagree with the findings of fact, conclusions or corrective actions. The additional written documentation must not have been provided or otherwise been available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, amend its findings and conclusions, 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 requirements as reported in this LOF.

Questions regarding the findings of fact, conclusions or corrective actions contained in this LOF should be addressed to this office in writing. The student's mother 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 a State complaint investigation, in accordance with IDEA. The MSDE recommends that this LOF be included with any request for mediation or the filing of a due process complaint.

Sincerely,

Carol Ann Heath, Ed.D.  
Assistant State Superintendent  
Division of Special Education/  
Early Intervention Services

CAH/vf

c: William R. Hite  
Bonita Coleman-Potter  
Joan Rothgeb  
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LaRhonda Owens  
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