



STATE OF CONNECTICUT
STATE DEPARTMENT OF EDUCATION



August 17, 2016

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Hartford Public Schools
960 Main Street, 8th Floor
Hartford, CT 06103

Re: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Systemic Complaint No. 16-0400

Dear Ms. Sullivan and Attorneys Sicklick, Halm and Cochrane:

The Bureau of Special Education (BSE) is responding to the complaint filed with this office on March 3, 2016, by Attorneys Jay Sicklick and Marisa Halm of the Center for Children's Advocacy, and Lynn Cochrane of Greater Hartford Legal Aid, Inc. (the "Attorneys") on behalf of [REDACTED], [REDACTED], [REDACTED], [REDACTED] and all Students with disabilities who have been expelled and enrolled in the New Visions program (the "Students"), an educational program under the direction of the Hartford Public Schools (the "District"), during the 2014-15 and 2015-16 school years. In the complaint, the Attorneys alleged that the District has denied the Students a free, appropriate public education (FAPE) by placing them in the New Visions Program ("New Visions") outside the Planning and Placement Team ("PPT") process; failing to provide appropriate special education and related services within New Visions; failing to consistently provide instruction with certified special education teachers; failing to individualize instruction; and failing to monitor Students' progress. The complaint inquiry letter set forth the issues to be investigated as follow:

Issue 1: 34 CFR Section 300.531 states that the child's IEP Team (PPT in Connecticut) determines the interim alternative educational setting for services under 300.530(c) (for disciplinary changes in placement that exceed 10 consecutive school days if the behavior is determined not to be a manifestation of the child's disability), 300.530(d)(5) (if the removal from the child's usual school placement constitutes a change in placement) or 300.530(g) (if the removal of the child is under special circumstances involving weapons, drugs or serious

bodily injury). The complaint alleges that the District circumvents the PPT process by placing the Students (who are expelled special education Students) at New Visions without parental input or PPT consensus. Are District procedures in compliance with the regulations cited regarding the placement of the Students at New Visions? Please respond to the following questions regarding this allegation:

1. Have all Students at New Visions been placed at New Visions due to suspension, expulsion or other school removal?
2. If so, were appropriately noticed and constituted PPTs convened for each of the Students prior to placement at New Visions?
3. If appropriately noticed and constituted PPTs were not convened for each of the Students prior to placement at New Visions, why did this not occur? Please explain the process used by the District in placing the Students, including the *named* Students, at New Visions.

Issue 2: Regulations of Connecticut State Agencies (RCSA) Section 10-76d-1 and 34 CFR Section 300.101 require school districts to provide a free appropriate public education ("FAPE") for each child with a disability consistent with the requirements of the Individuals with Disabilities Education Act ("IDEA"). FAPE is defined by 34 CFR Section 300.17 as including special education and related services that are provided at public expenses and meet the standards of the state educational agency, include an appropriate secondary school education and that is provided in conformity with an individualized education program ("IEP") that meets the requirements of the IDEA. Has the District complied with these regulations by providing the Students with FAPE? The complaint alleges that the Students receive intermittent, inadequate or no special education and related services, and that when such education and services are provided, they are not appropriately individualized consistent with each Student's IEP. Please respond to the following questions regarding these allegations for all Students as well as each of the named Students:

1. Have all Students received their special education instruction from certified special education teachers? If not, why has this not occurred? Has the District provided any compensatory education services to the Students for any lapse in the provision of special education instruction? If so, please provide a detailed explanation of how, to whom, and by whom such services have been provided along with a schedule of such service provision.
2. 34 CFR Section 300.530(d)(i) requires that children removed from their current placement for disciplinary reasons must continue to receive educational services so as to enable them to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
 - a. Do the Students receive special education and related services in conformity with their IEPs such that they provided to each Student.
 - b. Do the Students at New Visions earn credits toward high school graduation? If so, how are credits reported to the Students and their parents? How and where are credits earned recorded by the District? Please provide a detailed explanation.
 - c. Does New Visions ensure that progress monitoring occurs in conformity with each Student's IEP and report cards are provided on the regular District schedule? How are Students and their parents informed of their progress?
 - d. Have the Students received assessments and evaluations such as triennial testing as required by their IEPs? Please explain how such testing is provided and monitored.
 - e. Do the Students take the same District and State testing required of all students? Please explain and provide a description of such testing required of the Students.

Issue 3: RCSA Section 10-76d-3 states that unless otherwise specified in a child's IEP, the minimum school day and year for children with disabilities shall be the same as that for children in general education. The complaint alleges that Students at New Visions receive 2.5 hours per day of education. Please provide a description and explanation of the length of the school day provided at New Visions for all Students.

Specific findings of fact and conclusions are set forth in this report, and, where appropriate, required corrective actions as well as recommendations for the District.

Investigation Procedures:

In May of 2016, the investigators reviewed 30 education record files of Students attending New Visions who received special education and related services. The following New Visions staff members were interviewed on May 9, 2016: Tina Jeter, Ed.D., Principal; Mrs. Amy Horesco, English teacher; Ms. Marilyn Jack-Ortique, Math teacher; Ms. Green-Liddell, guidance counselor; Mr. John Candella, special education substitute teacher; and Mr. Maxwell, social worker. The investigators observed three New Visions classes (English, Math and Special Education Resource) on May 13, 2016. The investigators conducted interviews on May 19, 2016 and May 24, 2016 of District staff from District schools attended by Students at the time of the Students' expulsion (High School Inc., Culinary Arts Academy; Hartford Public High School Law and Government Academy; Environmental Sciences Magnet School at Mary Hooker, Dr. Michael D. Fox Elementary and Alfred E. Burr Elementary). (Note, a Hartford Assistant Corporation Counsel was present at each of these District staff interviews. Additionally, some staff members who were interviewed were accompanied by their union representative):

The following documents were reviewed during the investigation:

- 1) 10-76d of the Connecticut General Statutes
- 2) 34 CFR Part 300 of the Federal Register
- 3) Complaint including a document entitled *Hartford Public Schools New Visions Program for Expelled Students 2014-2015 (as of June 5, 2014)*
- 4) Hartford Public Schools' response to the Bureau's complaint inquiry letter and follow-up requests for information including:
 - a. IEPs for all Students placed in the New Visions program during the 2014-15 and 2015-16 school years;
 - b. Email dated October 22, 2014, from Mr. Jonathan Swan to all principals: subject line *Expulsion Process for Special Education Students*;
 - c. Email dated September 8, 2015 from Mr. Eduardo Genao to district leadership staff: subject line *FW: Clarification re: PPTs and New Visions (Revised to add the first PPT meeting after an expulsion)*;
 - d. Document entitled *Expulsion Procedures for Principals 2015-16 Draft (As of Sept. 9, 2015)*;
 - e. Compensatory education chart for 2014-15 and 2015-16 school years;
 - f. Most Triennial assessment reports conducted during the 2014-15 and 2015-16 school years regarding special education Students;
 - g. List of all certified District personnel who worked at New Visions during the 2014-15 and 2015-16 school years;
 - h. Student daily schedules for the 2015-16 school year;
 - i. Document entitled *Hartford Public Schools New Visions Program for Expelled Students 2014-2015 (as of June 5, 2014)* and other documents used in the program;
 - j. Staff daily schedules;
 - k. May 2016 attendance report;
 - l. *New Visions Program Roster 2015-16*; and
 - m. Material regarding New Visions Students gathered during staff interviews at Burr School, High School Inc., Culinary Arts Academy and Hartford Public High School Law and Government Academy;
 - n. Information regarding certification of New Visions special education substitutes.

Findings of Fact:

The New Visions Program

1. The District operates a self-contained alternative education program, New Visions Program, for expelled Students in grades 6 through 12. A District document entitled *Hartford Public Schools New Visions Program for Expelled Students 2014-2015 (as of June 5, 2014)*, states:

The main goal and expectation of the New Visions Program for expelled students is that they are well prepared to return to their home school, graduate from high school and are ready for college. The program must be student centered. It should take into account each student's academic needs, looked at through the lenses of the particular grade and courses aligned to the theme and unique requirements of the home school. The program should also contain a high quality counseling component that not only helps students reflect and learn from the mistakes of the past, but also places special emphasis on future planning and visioning.

2. The New Visions Program is located on the campus of Bulkeley High School in a building that was previously used as vocational training site. The special education resource room is a garage bay complete with garage doors and a loud heating/cooling/ventilation unit that one would expect to see in a garage. Most of the District's expulsion hearings, estimated to number 100 a year by the Program's Principal, are held at New Visions. The District instituted a complicated process for conducting PPT meeting for Students who were expelled as set forth in a September 8, 2015, email from the District's Executive Director for Compliance. The process called for the New Visions special education teacher to schedule a PPT meeting upon a Student's expulsion. The meeting was to be conducted by the Student's home school but take place at New Visions. While the email states that the placement of the Student will be determined by the PPT at the first meeting, there is no indication that any Student in grades 6 through 12 received education services in a placement other than New Visions, with the exception of Students who were placed in out of district placements by their PPTs. An IEP would be drafted by the New Visions special education teacher and finalized in the District's electronic IEP system by the District's central office compliance team because New Visions staff is not authorized to finalize IEPs in the electronic IEP system. With the expulsion decision, the District sends the family of a Student receiving special education services a letter advising the family that the Student's home school will be contacting the family to schedule a PPT meeting and that pending the PPT placement decision, the Student can attend the New Visions Program if the parent and Student appear in person at New Visions and register the Student. The Student's cumulative file is not provided to New Visions.

3. The Program operates pursuant to a model whereby the Students' home school is responsible for providing "content, materials, and administers assessments for lessons" to New Visions staff, picking up the completed work, grading school work and assessments, entering assessments in District database, assessing progress on IEPs, reporting IEP progress to parents, issuing official report cards and sending the report cards to parents. Often, the home school opts to assign expelled Students attending New Visions to online classes. Different home schools use different online programs (e.g. Apex, Plato, Study Island). New Visions staff members are responsible for helping Students complete the home school assignments, preparing the completed work to be picked up by the home school staff, and communicating with parents regarding Student attendance and effort. Students only receive academic credit for work graded by the home school.

4. The New Visions Program is 2.5 hours long and has a morning session and an afternoon session; Students attend either the morning *or* the afternoon session. Each session begins with a 20 minute homeroom and then 2 class periods lasting an hour each followed by dismissal. According to the 2015-16 Student roster, as of May 13, 2016, 57 Students were enrolled in the New Visions Program; five of these Students were placed in out of

district placements by their PPT. Ten of these active Students received special education services under the Individuals with Disabilities Education Act (IDEA). Another 82 Students had been enrolled in the Program during the 2015-16 school year but by May of 2016, had completed the expulsion or were no longer enrolled as a Student in the District. An additional 13 Students had been expelled but did not register at New Visions. Most of the Students attending the program are male.

5. The Program is staffed by a Principal, one English teacher, one Math teacher, one school social worker and one guidance counselor. The school social worker maintains a caseload of 6-8 Students and provides each Student with 30 minutes a week of social work services as provided for in the Students' IEPs. He also runs counseling groups that all of the Students participate in.

6. The District conceded in its response to the BSE complaint inquiry letter that "New Visions had an assigned special education teacher. Unfortunately, each of these teachers were out on approved absences for some portion of the year and the district was not always able to find a substitute for the teacher." Ms. Nora Bernhard, a certified special education teacher, worked at New Visions from August 21, 2013 until June 30, 2015. She was on a leave of absence from March 3, 2015, until the end of the school year in June. For approximately 8 weeks the Program was without a special education teacher. A substitute teacher certified in special education, Ms. Wilder, was hired on April 27, 2015, to cover for Ms. Bernhard and stayed through the end of the school year. Mr. Martin McBride, a certified special education teacher, worked at New Visions from August 19, 2015, until December 7, 2015, when he left on a leave of absence. Mr. Candela, a substitute teacher, certified in special education as of January 18, 2016, started working at New Visions on January 14, 2016, 6 weeks after Mr. McBride left. The District determined Students had been denied FAPE as a result of the lapses in special education instruction and calculated compensatory education hours owed to the approximately 18 Students who were denied specialized instruction due to the absence of a special education teacher at New Visions over the year preceding the filing of this complaint. At the time of the investigation, the special education substitute teacher had 12 Students on his case load; 6 attending the morning session and 6 attending the afternoon session. The teacher spends time in the classrooms and provides special education instruction to eligible Students on a pull-out basis in the resource room either individually or in a small group.

7. The Program has no teachers qualified to teach core academic subjects other than Math and English. The Math teacher also provides instruction in Science as needed although there is no laboratory space or equipment; the English teacher tries to provide instruction in Social Studies. The guidance counselor is the liaison with the home schools. She receives material from the home school and prepares completed school work to be picked up by the home school staff. The guidance counselor spends the majority of her time maintaining a log where she *manually* records each Student's home school assignments and delivery of assignments to home school staff. The guidance counselor provides very little guidance counseling. No transition services are provided to Students attending New Visions. Additionally, New Visions is staffed by a secretary, a security officer and 2 part-time non-certified bi-lingual tutors.

8. Thirty Student files were reviewed during the investigation. This review revealed that in many cases, the District failed to convene the PPTs prior to the Student attending New Visions Program. PPTs did not revise IEPs to reflect the Students' placement change; many IEPs inaccurately stated the Student was in a full day program receiving 33 hours of instruction a day. None of the IEPs reviewed included related services such as speech or occupation therapy.

9. The District concedes that IEP progress monitoring and reporting was not consistently completed. Triennial reviews were conducted and reviewed by PPTs.

10. Students placed at New Visions are able to submit an application to the District's Superintendent of Schools for early readmission if the Student has served at least half of the expulsion period and if the Student has attended the New Visions Program 95% of the time.

Named Students

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Student 1

[Faded text block describing Student 1's background, including placement at New Visions and educational challenges.]

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Student 2

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Observations of New Visions classes

15. The investigators observed the morning session at New Visions which started at 8:55. Nine Students (one girl and eight boys) were in attendance in the English/Language Arts class. The class was staffed by a teacher, the special education substitute teacher and a tutor. Class began with a writing prompt that the entire class was expected to work on. The investigators observed that most of the Student did no work; many Students had their heads on their desks. Those Students who completed the writing assignment were given no follow-up work. At 9:30 the special education substitute teacher left the class with 2 Students to provide services in the resource room. The math class then began at 9:40 with eight Students (three girls and five boys).

New Visions Staff Interviews

16. Investigators interviewed New Visions current staff. Staff reported, in part, that:
- Weeks go by without a Student's home school providing school work to New Visions;
 - Not enough work is provided by the home schools;
 - Completed school work is often lost after being physically picked up at New Visions by home school representatives; Completed work is supposed to be received by the home school staff who are responsible for reviewing and grading the work, and then sending the next sequence of work to New Visions; when the Students' work is lost, they do not receive any credit;
 - When the home schools do not provide work, the New Visions teachers create work for which the Students do not receive credit;
 - 2.5 hours a day is not long enough to provide meaningful instruction;
 - Physically delivering and picking up school work is cumbersome; the home schools should be emailing school work to New Visions;
 - The home schools are not responsive to the special education substitute teacher's requests for work or information about the Students; they do not contact him to find out about the Students' functioning or progress;
 - Students are assigned far less work than they would be assigned if attending their home schools;

- It is not possible to provide effective instruction to all the New Visions Students when the classrooms are composed of Students who are each working on different assignments, are at various grade levels, and who have a variety of individual needs; and
- The program requires more physical space, such as a time-out room, to manage Students' behaviors and provide appropriate behavior interventions to Students.

Staff Interviews at Home Schools

17. Investigators interviewed staff from the New Visions' Students home schools. Home school special education case managers reported that they are not provided formal notice that a Student has registered and is attending New Visions. How carefully and timely Student school work was tracked varied from home school to home school and also varied depending on the responsible individual teachers at the home school. Some case managers viewed their role as letting the various home school teachers know the Student was at New Visions and then relying on the teachers to give them school work for delivery to New Visions; if the teachers did not provide the case managers with any work, then the New Visions Student received no work. One home school special education teacher stated he does not provide any progress reporting for the one Student he has attending New Visions. Another home school guidance counselor emails teachers and requests assignments from them which are then delivered to New Visions. In addition, different home schools deliver school work to New Visions on different schedules, whether weekly, every other week or even less regularly. Reportedly, it can be a struggle to get work back from New Visions in those cases where the Students are not doing the work. A special education staff member told the investigators that she marked Student's IEP progress as *satisfactory* even if she had no information regarding the Student's actual functioning; this was because she felt it was fairer to the Student. This same special education teacher had no contact with the special education teacher or substitute at New Visions. An English teacher said he had no set practice for providing work to a Student attending New Visions; he did so only when specifically asked by the school administrator (which did not occur on a regular basis). Another special education teacher reported that she didn't have enough work to mark progress on IEP goals; she simply repeated the last progress notation. She also reported that she had no contact with the New Visions special education teacher or substitute.

Conclusions:

1. All Students at New Visions have been placed at New Visions due to expulsions. Appropriately noticed and constituted PPTs were not convened for each Student prior to placement at New Visions; this includes the four named students (with the exception of ██████████ ██████████). Where PPTs were convened prior to placement at New Visions, the PPTs generally failed to develop an IEP that reflected the Students' New Visions placement. Pursuant to 34 CFR Section 300.530(d), a properly expelled Student with a disability has a continuing right to receive FAPE. Districts must provide all Students with disabilities a program of appropriate educational services individually designed to meet their unique learning needs. While the IDEA does not specify the alternative setting in which educational services must be provided, the law is clear that the determination of an appropriate IAES must be selected "so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP". The Student's PPT determines what services will be provided. It is concluded that in the year preceding the filing of this complaint, the District's intent was to place all expelled students in grades 6 through 12 who were receiving special education and related services under IDEA at New Visions regardless of the Students' individual needs and in violation of the legal requirement that the Students' PPTs determine the appropriate education setting for expelled Students to be placed during the expulsion term. Corrective action is required, see below.

2. RCSA Section 10-76d-1 and 34 CFR Section 300.101 require school districts to provide a FAPE for each child with a disability consistent with the requirements of the IDEA. FAPE is defined by 34 CFR Section 300.17 as including special education and related services that are provided at public expenses and meet the standards of the state educational agency, include an appropriate secondary school education and that is provided in conformity with an IEP that meets the requirements of the IDEA. It is concluded the district has not complied with these regulations. Rather, the Students placed at New Visions receive intermittent, inadequate or no special education and related services. The District did not ensure that Students' IEPs were monitored for progress or that progress reporting was provided to the Students' families. Any specialized education that was provided was not appropriately individualized consistent with each Student's IEP. Corrective action is required, see below.

3. 34 CFR Section 300.530(d)(i) requires that children removed from their current placement for disciplinary reasons must continue to receive educational services so as to enable them to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. While a district need not replicate all the services and instruction the district would have offered the Student had he remained in school, a district fails to meet its obligations to the student when it refers all Students to one education setting with no thought to the Students' individual needs. It is concluded Students have not received special education and related services in conformity with their IEPs so that they can make progress toward attaining their IEP goals. Further, Students have not received educational services so as to enable them to continue to participate in the general education curriculum. The District places expelled Students, who receive special education services, at the New Visions program where there is an expectation that Students will work independently. Students are placed at New Visions without any consideration by each Student's PPT as to whether the placement is appropriate to meet a Student's individualized needs. New Visions does not have the capacity to provide instruction to Students in most core academic subjects other than English and Math. The Program's 2.5 hour sessions do not offer sufficient instructional time that would allow Students to continue to participate in the general education curriculum. The home schools provide assignments to the Students that are inadequate and that bare only limited resemblance to the work (whether general or special education) the Students would be doing in their home schools. The New Visions model does not ensure that progress monitoring occurs in conformity with each Student's IEP or that report cards are provided on the regular District schedule. In fact, Students and their parents are provided with almost no information on Student progress. Any IEP progress monitoring that is provided is not based on each Student's IEP or their actual performance, but is merely an estimate made with inadequate information.

4. New Visions has a principal, classrooms and teachers but it is not a school. New Visions is, in essence, a 2 hour guided study hall with too many Students of different ages and grade levels, from different schools, working on different curriculums. The school day is not long enough to deliver meaningful instruction to a group of diverse students. The teachers are not qualified to provide instruction in classes other than Math and English and have neither the autonomy nor the authority to provide the Students with the meaningful instruction they require to meet their individualized needs. Students receiving special education have a variety of significant educational needs including attention deficits, intellectual disability, learning disabilities, and emotional disturbance. As a result of this investigation, it is clear that the New Visions' model is not meeting the Students' needs. Students are savvy to the fact that they only receive academic credit for school work from their home school; so if there is no work from the home school, the Students have no motivation to work on assignments - which are essentially busy work - provided by New Visions staff. New Visions has resulted in the provision of little education to some of the district's most educationally needy Students.

Required Corrective Actions:

1. The District must immediately discontinue placing expelled Students receiving special education in the New Visions Program. The District must develop and implement a plan to provide expelled Student receiving special education an appropriate alternative education program during the expulsion period as determined by the Students' PPTs. The plan must ensure that expelled Students receive FAPE, are able to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the Students' IEP. This will require PPTs to be convened for any Students currently placed at New Visions to determine an appropriate placement for the remaining expulsion period. The District must inform the BSE of the plan no later than August 25, 2016. This plan must include an attestation signed by the District's Executive Director for Special Education that the District will no longer place expelled Students receiving special education in the New Visions Program. Additionally, the District must provide a list of current Students receiving special education New Visions Program and, on a weekly basis, provide the BSE the dates of the PPT meetings held to change each of these Students' placements with information as to the placement provided.
2. For the next 10 Students who are expelled and who receive special education and related services, the District must provide the BSE the paperwork from the PPT meeting held to determine the Student's placement during the expulsion period in order for the BSE to verify that the District is in compliance with legal requirements.
3. If the District has not done so already, the District must convene PPTs for each Student who attended New Visions since March of 2015 to consider the Student's need for compensatory education to remedy the denial of a free appropriate public education. Compensatory services are available as an equitable remedy where the district fails to provide an appropriate education. An award of compensatory education should aim to place the student in the same position the student would have been had the district not violated the IDEA. The award of compensatory services must result from an assessment of the Student's individual needs going forward although such award does not necessarily have to be an hour for hour replacement of services. The Student's PPT will need to make the determination as to the nature and amount of compensatory services to be provided by discussing where the Student would be functioning with regard to his or her IEP goals and objectives had the Student received the services they were entitled to during the expulsion period. Where a Student is no longer enrolled in the District, the District is required to take action to contact the Student and offer compensatory education. In such a circumstance, the District is required to inform the BSE what specific steps were taken in an effort to communicate with Student and/or the Student's family.
4. Documentation that the team has met and conducted the compensatory education reviews must be sent to the BSE within five days of the PPT meeting.

Recommendations:

1. The District is strongly urged to cease the use of the New Visions building as an educational space. Not only does the building fail to provide adequate instructional space, it is dark and in disrepair and is not comparable to the physical space provided in other District school buildings. In addition, the special education resource room was formerly used as a garage bay and has not been renovated. Overall, the building is an unpleasant setting for both staff and students.
2. While beyond the scope of this investigation, it cannot be overlooked that the New Visions Program also fails to provide an adequate education to general education students. While these students have not been identified as eligible for services under IDEA, the general education students attending New Visions have been expelled from school and face many challenges. These students need extra support in order to stay in school and continue to work

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toward meeting graduation requirements. The program the District provides these students during a period of expulsion can be the District's last chance to make a difference in the students' life. The District is strongly encouraged to cease using the New Visions Program to provide alternative education to general education students.

This complaint report is final and not subject to appeal through the complaint resolution process. Please note that the parties may seek mediation and/or request a due process hearing on these same issues through this office if a party disagrees with the conclusions reached in this investigation and the request for mediation and/or due process hearing meet the applicable statute of limitations. You can reach either of us at 860-713-6943 if you have any questions.

Sincerely,

Gail Mangs
Education Consultant
Bureau of Special Education

Mary Jean Schierberl
Education Consultant
Bureau of Special Education

Cc: Dr. Beth Schiavino-Narvaez, Superintendent, Hartford Public Schools
Dr. Isabelina Rodriquez, Chief, Bureau of Special Education