



August 12, 2015

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Mr. Charles Baugh
Program Director
Baltimore City Infants and Toddlers Program
10 West Eager Street, 2nd Floor
Baltimore, Maryland 21201

RE: XXXXXXXXXXXXX and
Similarly-Situated Children
Reference: #16-002 (Part C)

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), has completed the investigation of the complaint regarding early intervention services for the above-referenced child. This correspondence is the report of the final results of our investigation.

ALLEGATION:

On July 2, 2015, MSDE received correspondence from Ms. XXXXXXXXXXXXX, hereafter the “complainant,” alleging that the Baltimore City Infants and Toddlers Program (BCITP) violated certain provisions of Part C of the Individuals with Disabilities Education Act (IDEA) and the corresponding federal and State regulations with respect to her daughter and similarly-situated children. This office investigated the allegation that the BCITP has not ensured that children are provided with year round early intervention services, in accordance with 34 CFR §303.13 and COMAR 13A.13.01.03.

INVESTIGATIVE PROCEDURES:

1. On July 2, 2015, the MSDE sent a copy of the complainant’s correspondence, via facsimile, to Mr. Charles Baugh, Program Director, BCITP.
2. On July 6, 2015, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On that same date, MSDE notified Mr. Baugh of the allegation to be investigated and requested that his office review the alleged violation.

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3. On July 17, 2015, Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with Mr. Baugh and Ms. Meghan Stepanek, BCITP legal counsel, regarding the allegation. On the same date, Ms. Mandis conducted a telephone interview with the complainant.
4. On July 20, 2015, the MSDE received correspondence from the complainant requesting that additional remedies be provided in order to resolve the complaint.
5. Documentation provided by the parties was reviewed. The documents relevant to the findings and conclusions referenced in this Letter of Findings include:
 - a. Memorandum to Local Infants and Toddler Program Directors, Local Directors of Special Education, Local Preschool Coordinators, and Local Lead Agency Heads from the MSDE, dated January 14, 2015;
 - b. The BCITP plan for ensuring ongoing early intervention services;
 - c. Individualized Family Service Plan (IFSP) for the named child, dated March 23, 2015;
 - d. Correspondence containing an allegation of a violation of Part C of the IDEA, received by the MSDE on July 2, 2015;
 - e. Electronic mail (email) correspondence between the MSDE and the BCITP, dated July 16, 2015; and
 - f. Email correspondence from the complainant to the MSDE, dated July 20, 2015.

BACKGROUND:

The child is thirty-two (32) months old, is identified as a child with a disability under Part C of the IDEA based on a condition with high probability of developmental delay, and has an Individualized Family Service Plan (IFSP) that requires the provision of early intervention services (Doc. c).

FINDINGS OF FACTS:

1. The named student's IFSP requires the provision of monthly special instruction and family counseling/training, and weekly occupational therapy, physical therapy, speech/language therapy (Doc. c).
2. By April 1, 2015, each Local Infants and Toddler Program was required to submit a plan to the MSDE for making the process of scheduling ongoing early intervention services during the summer months more family friendly and efficient. The plan submitted by the BCITP required that service coordinators prepare lists of the services to be provided to children and their families during the summer months based on meetings with the families. It also required that the Baltimore City Public Schools (BCPS), an early intervention services provider with the BCITP, submit to the BCITP by April 15, 2015 a list of children who would need alternate providers during the summer to cover those BCPS staff who would not be working during that time period (Docs. a and b).

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3. The BCITP acknowledges that there were some children who were not reported as requiring alternate providers, and as a result, these children did not receive the amount of services required during the summer of 2015 due to unavailability of the BCPS service providers. The BCITP reports that it is in the process of identifying all children who did not receive services and ensuring that compensatory services are provided (Doc. e and interview with the BCITP staff).

DISCUSSION/CONCLUSIONS:

For the purpose of the provision of early intervention services, infants and toddlers with disabilities are children, from birth until the beginning of the school year following the child's fourth birthday, who require early intervention services. This determination is made because these children are experiencing developmental delays or have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. Early intervention services are continuous services that are designed to meet the developmental needs of each eligible child and the needs of the family related to enhancing the child's development (34 CFR §§303.13, .21, and COMAR 13A.13.01.01- .03).

The lead agency must ensure that the IFSP is implemented for each eligible child and have in effect policies and procedures, including sanctions, to ensure that the policies and procedures are followed and that the IDEA requirements are met. While the lead agency and early intervention service providers are not held accountable if a child does not achieve the growth projected in the IFSP, each lead agency and early intervention services provider who has a direct role in the provision of services is responsible for making a good faith effort to assist each child in achieving the IFSP outcomes (34 USC §§303.120 and .201, .346, and .417).

Parents may determine whether they, their child, or other family members will accept or decline any early intervention service. Parents have the right to decline such a service after initially accepting it, without jeopardizing other early intervention services (34 CFR §303.420).

In this case, the complainant alleges that the named child, who receives her physical therapy from a BCPS provider, missed one (1) physical therapy session during the week of June 15, 2015 due to the changeover of staff for the summer months. She further alleges that other children have had a loss of services during the summer due to the lack of BCPS service providers (Docs. d and f).

Based on the Findings of Facts above, the MSDE finds that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires that BCITP to provide documentation by November 1, 2015 that it has identified all children who missed early intervention services during the summer of 2015 as the result of the lack of an assigned provider. For each child, the BCITP must provide documentation that an IFSP team meeting was held to determine the amount and nature of the services needed to remediate the violation and that a plan has been developed for the provision of those services within one (1) year of the date of this Letter of Findings.

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The MSDE also requires the BCITP to provide documentation by February 1, 2016, of the steps it has taken to ensure that children who receive early intervention services from BCPS providers do not miss services due to the unavailability of those providers during the summer months. The documentation must include a description of how the lead agency will evaluate the effectiveness of the steps taken and monitor to ensure that the violation does not recur.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Dr. Brian Morrison, Maryland Infants and Toddlers Program Director, MSDE. He may be contacted at (410) 767-0249.

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 letter if they disagree with the conclusions. 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 Letter of Findings. 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.

Questions regarding the findings of fact, conclusions, or corrective actions contained in this letter should be addressed to this office in writing. The parties maintain the right to initiate mediation or a due process hearing if they disagree with the identification, evaluation, placement, or provision of early intervention services for the child, including issues subject to an early intervention system complaint investigation. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process hearing.

Sincerely,

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

MEF/aam

c: Leana S. Wen
Gregory Thornton
Perry Gorgen
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