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State Superintendent of Schools

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January 8, 2013

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Ms. Paula Boykin, Supervisor
Baltimore County Infants and Toddlers Program
6901 Charles Street
Educational Support Services Building
Suite 211
Towson, Maryland 21204

RE: XXXXX
Reference: #13-024

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 child. This correspondence is the report of the final results of the investigation.

ALLEGATION:

On November 9, 2012, the MSDE received a complaint from Mr. XXXXXXXX and Mrs. XXXXXXXX, hereafter, “the complainants,” on behalf of their daughter, the above-referenced child. In that correspondence, the complainants alleged that the Baltimore County Infants and Toddler Program (BCITP) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced child.

The MSDE investigated the allegation that the BCITP did not ensure that a timely, comprehensive, multi-disciplinary evaluation of the child was conducted in February 2012 and as a result, an Individualized Family Service Plan (IFSP) has not been developed that includes early intervention services appropriate to meet the speech/language needs to achieve outcomes determined by the IFSP team, in accordance with 34 CFR §§ 303.321, .342, and .344.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 13, 2012, the MSDE sent a copy of the complaint, via facsimile, to Ms. Paula Boykin, Supervisor, BCITP.
3. On November 19, 2012, Ms. Moyo spoke with the child's mother by telephone to clarify the allegation to be investigated.
4. On November 28, 2012, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Ms. Boykin of the allegation and requested that her office review the alleged violation.
5. On November 30, 2012, the BCITP staff provided the MSDE with documentation from the child's early intervention record.
6. On December 4, 2012, Ms. Moyo and Ms. Kathy Stump, Education Program Specialist, MSDE and Mr. Brian Morrison, Maryland Infants and Toddler Lead Monitoring Specialist, MSDE, conducted a site visit at the Baltimore County Board of Education Office to review the child's early intervention record, and interviewed Ms. Lora Jeffers, High Risk Infant Nurse/Northwest Team Leader, BCITP.

Ms. Boykin and Ms. Sally Chapman, Infants and Toddlers Specialist, BCITP attended the site visit as representatives of the BCITP and to provide information on the BCITP policies and procedures, as needed.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - A. Correspondence and attachments from the complainants to the MSDE, received on November 9, 2012;
 - b. Report of audiological testing, dated February 23, 2012;
 - c. Maryland Infants & Toddlers Program Referral Summary, dated February 24, 2012;
 - d. BCITP Health and Developmental History Report, dated February 28, 2012;
 - e. Individualized Family Service Plan (IFSP), dated March 26, 2012;
 - f. BCITP Developmental Evaluation Report, dated March 26, 2012;
 - g. Consent for evaluation, dated March 26, 2012;
 - h. BCITP Nurse's log of contacts with the family for March and October 2012;
 - i. BCITP Physician's Health Summary Form, dated April 16, 2012;
 - j. IFSP, dated April 25, 2012;

- k. BCITP Special Instructor's log of contacts with the family for April, May, June, July, August, and September 2012;
- l. BCITP Request for Services Form, dated May 8, 2012;
- m. BCITP IFSP Add/Change Form, dated June 13, 2012;
- n. BCITP Speech/Language Therapist's log of contacts with the family for June, July, September, and October, and December 2012;
- o. BCITP Service Coordinator's log of contacts with the family for April, May, June, July, September, October, and November 2012;
- p. BCITP Speech and Language Evaluation Report, dated July 12, 2012;
- q. Private Speech/Language Therapist's progress report for July through September 2012;
- r. IFSP Add/Change Form, dated September 28, 2012;
- s. IFSP, dated September 28, 2012;
- t. IFSP Team Meeting Notice, dated October 30, 2012;
- u. BCITP IFSP Add/Change Form, dated October 31, 2012; and
- v. BCITP IFSP Team Meeting Notes, dated October 31, 2012.

BACKGROUND:

The child is twenty-two (22) months old. On March 26, 2012, when the child was twelve (12) months old, she was determined to be eligible to receive early intervention services under Part C of the IDEA based on a diagnosis of a physical condition that has a high probability of resulting in a developmental delay. Specifically, the child was identified with having a sensory impairment (deaf or hard of hearing) under Part C of the IDEA. She receives early intervention services through an IFSP.

The Baltimore County Department of Health is the lead agency for the BCITP. During the period of time addressed by this investigation, the complainants participated in the education decision-making process and were provided with written notice of the procedural safeguards (Docs. a - v).

FINDINGS OF FACTS:

- 1. On February 24, 2012, the complainants referred the child to the BCITP for an evaluation based on their concerns regarding the development of her speech and language skills (Doc. c).
- 2. On March 26, 2012, the BCITP team conducted an evaluation of the child's development in the areas of cognitive skills, social/emotional skills, self-care skills, speech/language skills, and physical development. The report of the evaluation indicates that at the age of twelve (12) months, the child's speech/language skills were at the thirteen (13) month level (Doc. f and g).

3. The IFSP team considered information from the complainants about the child's medical and developmental history as well as an assessment conducted by a private audiologist when the child was eleven (11) months old. The report of the assessment indicates that the child passed her newborn hearing screening, but developed hearing loss in both ears that may impact her speech/language and educational development. The report contains recommendations that the child be provided with the use of an amplification device (hearing aid) for both ears and "speech/language therapy" (Docs. b and d).
4. The team considered the results of a family assessment reflecting the complainants' concern that the child will not develop "normal" language skills as a result of her hearing loss. They also considered the complainants' desire for the child to speak in a manner in which her hearing loss cannot be detected, similar to her older sibling, who also has a hearing loss, but has developed speech with the provision of speech/language therapy (Docs. d and e).
5. The IFSP team determined that the child qualifies for Part C services based on the diagnosis of a physical condition that has a high probability of resulting in a developmental delay. An IFSP was developed that contains a statement that the family's priorities are for the child to continue to develop her language and developmental skills. The IFSP also contains a statement of the child's present levels of functioning in all areas of development (Doc. e).
6. The IFSP team determined the outcome to be achieved is that the child will use words and understand what is being said to her. The team decided that the child requires special instruction once a week for sixty (60) minutes per session to assist her with speaking and understanding what she is told (Doc. e).
7. The IFSP team also documented the decision that, no later than April 23, 2012, two (2) thirty (30) minute consultation sessions would be conducted to determine the speech/language services required. However, the documentation does not indicate who was to consult with whom (Doc. e).
8. On April 25, 2012, when the child was thirteen (13) months old, an IFSP team meeting was convened between the service coordinator and the complainants. At the meeting, it was decided that the child would be provided with speech/language therapy services once a month to begin on that date; the child's mother provided written consent for the initiation of these services. However, there is no indication of the intensity and method of delivering the service nor is there documentation of the results of consultation sessions conducted following the March 26, 2012 IFSP meeting or any other data used as the basis for the decision (Docs. j and o).
9. The service coordinator's log documents that she met with the child's mother on May 8, 2012. The log indicates that the child's mother requested speech/language therapy with the frequency, intensity, and delivery model that the child's older sibling received instead of the special instruction being provided (Doc. o).

10. On June 13, 2012, the IFSP team met to consider the mother's request for additional services. At the meeting, the child's mother also requested that a speech/language evaluation be conducted. There is documentation that the team decided that the child would continue to receive special instruction, but no documentation of the basis for the decision. The team also recommended that a speech/language evaluation be conducted (Docs. m and o).
11. On June 27, 2012, a speech/language evaluation was conducted. The evaluation report, dated July 12, 2012, states that the child was performing at the nine (9) to twelve (12) month level, and identifies communication skills that the child had not yet acquired (Doc. p).
12. On July 17, 2012, the service coordinator reviewed the results of the July 12, 2012 speech/language assessment with the child's mother. However, there is no indication that this was to constitute an IFSP team meeting or that the child's mother agreed that a review of the evaluation was sufficient without convening an IFSP team (Doc. o).
13. On September 28, 2012, the IFSP team conducted a six (6) month review of the IFSP. At the meeting, the team decided that the child was making progress with her cognition, play, and speech/language skills. The child's special instruction provider noted that the child is progressing well, using many single words, and following one-step directions. The child's mother reported that the progress made by the child is the result of the private speech/language therapy the complainants have obtained, and requested that these services be funded by the BCITP (Docs. k, o, r, and s).
14. At the September 28, 2012 the IFSP team meeting, the team decided that, in addition to the provision of special instruction being provided in the home, the child would be provided with special instruction in the community at the library. However, while the child's parent provided consent to the addition of this service on a group basis, the IFSP was revised to reflect that the service is to be provided on an individual basis. At the meeting, the child's mother also requested that services be provided by staff who are experienced in working with children with hearing loss; the team agreed to obtain input from staff with such experience (Docs. k, o, r, and s).
15. On October 31, 2012, the IFSP team met with a speech/language therapist from the Baltimore County Public Schools (BCPS) who works with children with hearing loss. At the meeting, the child's mother expressed concerns about the child's articulation skills and requested that the frequency of speech/language services be increased. The child's private speech/language therapy provider reported that, while the child is able to use expressive language, she uses gestures and single words to communicate her wants and needs instead. The private speech/language therapy provider reported that this indicates that the child is at risk of not developing appropriate speech (Docs. o, u, and v).

16. At the October 31, 2012 meeting, the BCPS speech/language therapist reported that, based upon her review of the child's record with the use of the hearing aid, the child has access to most sounds necessary for speech development and is making "excellent progress." She further reported that, while the child may be at risk for speech/language delays as a result of her hearing loss, she was not demonstrating weakness or delays at that time. She recommended that the child be monitored by a provider familiar with the needs of children with hearing loss (Doc. v).
17. Based on the information, the IFSP team decided that the BCPS speech/language therapist would consult with the BCITP speech/language service provider and increase the frequency of the speech/language therapy sessions (Docs. u and v).
18. On November 5, 2012, the child's mother contacted the BCITP staff and indicated that she did not agree with the changes discussed at the October 31, 2012 IFSP meeting. However, she agreed the BCITP could continue providing the services required by the September 28, 2012 IFSP (Doc. o).

DISCUSSION/CONCLUSIONS:

The lead agency must ensure that when a child is referred for evaluation and is suspected of having a disability, a timely, comprehensive, multidisciplinary evaluation is conducted. If the child is determined eligible as an infant or toddler with a disability, a multidisciplinary assessment of the unique strengths and needs of that infant or toddler must be conducted, and the services required to address the child's needs must be identified. In addition, a family-directed assessment of the resources, priorities, and concerns of the family must be conducted, and the supports and services necessary to enhance the family's capacity to meet the child's developmental needs must be identified (34 CFR §303.321).

The lead agency must ensure that an IFSP is developed for a child identified as an infant or toddler with a disability. The IFSP must include the specific early intervention services, based on the evaluation and assessments, that are designed to meet the child's developmental needs and the needs of the family (34 CFR §§303.13 and .20). This includes a statement of the length, duration, frequency, intensity, and method of delivering the early intervention services (34 CFR §§ 303.344).

A review of the IFSP must be conducted every six months or more frequently if conditions warrant. A periodic review must be conducted either through an IFSP team meeting or by another means that is acceptable to the parents (34 CFR §303.342). The IFSP team must include the parents, other family members and advocates requested by the parents, and the service coordinator. In addition, if conditions warrant, the IFSP team must include a person who was directly involved in conducting evaluations and assessments, and a person will be providing early intervention services (34 CFR §303.343).

In this case, the complainants allege that the BCITP cannot properly address the child's developmental needs arising out of her disability, specifically her communication skills needs, through the IFSP without the provision of speech/language therapy from a therapist specializing in hearing loss. Based on the Findings of Facts #1 - #7, the MSDE finds that a comprehensive multidisciplinary evaluation was conducted in response to the complainants' referral for evaluation. Based on the Findings of Facts #3 - #5 and #15 - #18, the MSDE finds that information was obtained to identify the child's strengths and needs and the family's concerns and priorities when developing the IFSP. Based on the Findings of Facts #9, #10, and #13, the MSDE also finds that the BCITP ensured that the IFSP was reviewed at least every six (6) months, as required.

However, based on the Findings of Facts #8 and #14, the MSDE finds that since April 25, 2012, the IFSP has not included a clear statement of the specific early intervention services required to meet the child's developmental needs and the needs of the family. Based on the Findings of Facts #9 - #12, and #14, the MSDE finds that, while the service coordinator reviewed the results of the July 12, 2012 speech/language evaluation with the child's mother, there is no documentation that this constituted an IFSP team meeting or was an acceptable alternative for the child's mother.

Thus, the MSDE finds that there is no documentation that the IFSP has been based on the evaluative and assessment data. Therefore, the MSDE finds that violations have occurred and that the BCITP has not followed proper procedures to ensure that the child has been provided with appropriate early intervention services since April 25, 2012.

CORRECTIVE ACTIONS/TIMELINES:

Child-specific

The BCITP must provide the MSDE with documentation by March 1, 2013, that the complainants have been offered an IFSP team meeting to review and revise, as appropriate, the IFSP. If the complainants agree to the IFSP team meeting, the BCITP must also provide documentation that the IFSP contains a statement of the specific early intervention services required, based on the evaluation and assessments, that are designed to meet the child's developmental needs and the needs of the family. The BCITP must also provide documentation that the complainants have been offered *compensatory services*¹ or another remedy for the violations identified in this investigation.

The BCITP must provide the complainants with proper written notice of the determinations made at the IFSP team meeting including a written explanation of the basis for the determinations, as required by 34 CFR §303.421. If the complainants disagree with the IFSP team's determinations, the complainants maintain the right to request mediation or file a due process complaint in order to resolve the dispute, in accordance with the IDEA.

¹ Compensatory services, for the purposes of this letter, mean the determination by the IFSP team as to how to remediate the denial of appropriate services to the child (34 CFR §303.432).

Program-based

The MSDE requires the BCITP to provide documentation by April 1, 2013, of the steps it has taken to determine if the procedural violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance. If it is determined that a pattern of noncompliance exists, the documentation must describe the actions taken to ensure that staff properly implement the requirements of the IDEA, and provide a description of how the BCITP will evaluate the effectiveness of the steps taken and provide agency monitoring to ensure that the violations do not recur.

Specifically, the BCITP is required to conduct a review of children's 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 the MSDE. If the BCITP reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

If the BCITP 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 BCITP must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of The United States Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE Office of Quality Assurance and Monitoring (QAM) for its consideration during present or future monitoring of the BCITP.

Documentation 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.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mr. Brian Morrison, Lead Monitoring Specialist, MSDE. Mr. Morrison may be contacted at (410) 767-0249.

Please be advised that both parties 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 fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

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Ms. Paula Boykin

January 8, 2013

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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 requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainants and the BCITP maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of Early Intervention Services for the child, including issues subject to a State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

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

MEF/km

cc : Sally Chapman
Dori Wilson
Anita Mandis
Brian Morrison
Koliwe Moyo