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June 29, 2017

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Ms. Gloria Valentine
Director of Early Intervention
Baltimore City Infants & Toddler Program
3002 Druid Park Drive
Baltimore, Maryland 21215

RE: XXXXX
Reference: #17-132 (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 special education services for the above-referenced child. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On May 2, 2017, the MSDE received a complaint from Robert Barlow, Esq., on behalf of Ms. XXXXXXXXXXXX, hereafter, “the complainant,” and the above-referenced child. In that correspondence, the complainant alleged that the Baltimore City Infants & Toddlers Program (BCITP) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced child.

The MSDE investigated the following allegations:

1. The BCITP has not ensured that a comprehensive evaluation has been conducted to address the child’s social emotional development needs, since May 2, 2016, in accordance with 34 CFR §§303.321 and .342 and COMAR 13A.13.01.05 and .08.
2. The BCITP did not provide prior written notice of the team’s refusal to conduct social behavioral assessments, since May 2, 2016, in accordance with 34 CFR §303.421 and COMAR 13A.13.01.11.

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3. The BCITP did not follow proper procedures when responding to a request to inspect and review the child's early intervention records, in accordance with 34 CFR §303.405 and COMAR 13A.13.01.10.

INVESTIGATIVE PROCEDURES:

1. On May 2, 2017, the MSDE received the State complaint and documentation to be considered.
2. On May 2, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Gloria Valentine, Director of Early Intervention Baltimore City Infants & Toddlers Program.
3. On May 17, 2017, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegations. On May 22, 2017, Mr. Chichester spoke with Mr. Robert Berlow and further clarified the allegations at the request of the complainant.
4. On May 31, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Ms. Valentine of the allegations to be investigated and requested that her office review the alleged violations.
5. On June 16, 2017, Mr. Chichester and Dr. Brian Morrison, Policy and Data/Maryland Infants and Toddlers Program, Section Chief, MSDE, conducted a site visit to the Baltimore City Infants and Toddlers Program (BCITP) to review the child's record, and interviewed Ms. Valentine.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. Individualized Family Service Plan (IFSP), dated May 25, 2016;
 - b. IFSP, dated December 12, 2016;
 - c. Service contact logs, dated between May and August 2016, October and December 2016, and January and June 2017; kept by the Family Service Coordinator;
 - d. Early Learning Accomplishment Profile (ELAP), dated May 25, 2016 and December 12, 2016;
 - e. Independent psychological evaluation, dated December 28, 2016;
 - f. Occupational therapy evaluation, dated May 9, 2016;
 - g. Electronic mail (email), dated between February 16 and 23, 2017, between the complainant and BCITP;
 - h. BCITP Log of Access and Request, dated between February 21 and 23, 2017;

- i. BCITP Certificate of Authenticity, dated February 22, 2017; and
- j. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on May 2, 2017.

BACKGROUND:

The child is three (3) years old and is not identified as a child with a disability. During the time period covered by this investigation, the child had an Individualized Family Service Plan (IFSP) that required the provision of early intervention services, based on a condition with the high probability of developmental delay. However, she has been evaluated under Part B of the IDEA and found to not meet the criteria for identification of a student with a disability (Docs. a - c).

ALLEGATIONS #1 AND #2: ADDRESSING THE CHILD'S SOCIAL EMOTIONAL DEVELOPMENT NEEDS AND THE PROVISION OF PRIOR WRITTEN NOTICE

FINDINGS OF FACTS:

1. The IFSP, dated May 25, 2016, reflects that, in the child's natural environment of the home and daycare, she demonstrates inappropriate "behavioral issues," and that maintaining routines for the child is challenging. However, in the "strengths and needs summary" section of the IFSP, it does not reflect any parental concerns related to the child's social and emotional needs. There is also documentation that in May 2016, the child's daycare staff reported to the child's Occupational Therapist that the child hits and scratches her peers while at daycare. However, the IFSP reflects that there are no "barriers that keep her from participating in daily routines and activities" (Docs. a, f, and j).
2. The service contact logs, dated between May 2016 and August 2016, reflect that the complainant raised concern to the BCITP on several occasions about the child's aggressive behavior in the home and daycare environment, such as hitting and kicking others. The logs further reflect that the complainant inquired about support services through the BCITP to address the child's behavior needs, but was informed that, based on the child's Early Learning Accomplishment Profile (ELAP) evaluation, dated May 2016, she demonstrated "age appropriate scores across all areas of development." There is no documentation that the BCITP provided the complainant with written notice of their refusal not to conduct an evaluation to determine if the child required behavioral support services (Docs. c, d, and j).
3. The service logs, dated October 2016 and November 2016, reflect that the complainant informed the BCITP that the child was being seen by an "outside agency" behavior specialist, and that she was "very disappointed that the BCITP had no services available to address behavior." The log further reflects that the BCITP referred the child for social

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work support services in May 2016, but that the child was put on a waiting list to be seen. There is no documentation that the BCITP made efforts to follow-up on the initial referral request (Docs. c and j).

4. The ELAP evaluation, dated December 2016, documents that the child is “inflexible in her behavior.” However, the IFSP, dated December 2016, continues to reflect that there are no “barriers that keep her from participating in daily routines and activities,” and does not document any parental concerns related to the child’s social and emotional needs. Further, the BCITP did not attempt to obtain consent from the complainant to observe and evaluate the child in the daycare environment to determine if additional support services were needed to address the behavioral needs (Docs. b, d, and j).
6. The service contact log, dated January 2017, reflects that the complainant continued to raise concern to the BCITP about the child’s inappropriate behavior while at home and in the daycare environment. The BCITP again informed the complainant that the December 2016 ELAP indicated that the child demonstrated “age appropriate scores across all areas of development.” There is no documentation that the BCITP provided the complainant with written notice of their refusal to conduct an evaluation to determine if the child required behavioral support services. The complainant informed the BCITP that she was having an independent evaluation conducted to determine the child’s behavioral needs and that she would provide the report to the BCITP upon completion (Docs. c, d, e, and j).
6. The service contact log, dated February 2017, reflects that BCITP received a copy of the independent evaluation from the complainant and indicated that the report was to be reviewed at the Individualized Education Program (IEP) eligibility determination meeting, scheduled for March 2017.¹ There is no documentation that BCITP reviewed the report prior to the IEP meeting to determine if the child required additional support to address her behavioral needs (Docs. c, e, and j).
7. The service contact logs, dated between February 2017 and June 2017, reflect that the complainant continued to raise concern to the BCITP on several occasions about the child’s inappropriate behavior in the home and daycare environment (Docs. c and j).
8. There is no documentation since May 2016, indicating that the BCITP has attempted to evaluate the child in the daycare environment in order to determine if additional support services were needed to address the behavioral needs (Doc. c and an interview with the complainant and BCITP staff).

¹ The child has turned 3 years old and the eligibility determination for IDEA services under Part B was held on March 3, 2017 (A telephone interview with the complainant).

DISCUSSION/CONCLUSIONS:

The lead agency must ensure that, subject to obtaining parental consent, each child under the age of three years old who is referred for evaluation or early intervention services under Part C and suspected of having a disability, receives a timely, comprehensive, multidisciplinary evaluation of the child. 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 and the identification of services appropriate to meet those need, a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler (34 CFR §303.321 and COMAR 13A.13.01.05).

A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine the degree to which progress toward achieving the results or outcomes identified in the IFSP is being made, and whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary. A statement of the child's present levels of physical development, including social or emotional development and a statement of the family's concerns, priorities, and resources related to enhancing the development of the child as identified through assessment, with the concurrence of the family (34 CFR §303.342 and COMAR 13A.13.01.08).

Once a child is determined eligible under Part C, the child must receive all services necessary to address the child's developmental needs as identified during the evaluation and assessment process and as listed in the IFSP (*Letter to Knickrehm, Office of Special Education Programs (OSEP), May 3, 2001*).

Prior written notice must be provided to parents a reasonable time before the lead agency or an Early Intervention Service (EIS) provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family. Written notice must be in sufficient detail to inform parents about the action that is being proposed or refused, the reasons for taking the action, all procedural safeguards that are available, including a description of mediation, how to file a State complaint and a due process complaint, and any timelines under those procedures (34 CFR §303.421 and COMAR 13A.13.01.11).

Based on the Findings of Facts #1 - #8, the MSDE finds that, although BCITP conducted evaluations to determine the areas of need for the child and the family, they did not address the concerns of the family with regard to the supports and services necessary to enhance their capacity to meet the child's behavioral needs. Therefore, this office finds that a violation occurred with respect to the allegation.

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Further, based on the Findings of Facts #1 - #8, the MSDE finds that the BCITP did not provide prior written notice of their refusal to provide support services to address the child's behavioral needs, which is not consistent with the data that indicates that the child demonstrates inappropriate behavior in the home and the daycare environment. Therefore, the MSDE finds that violation occurred with respect to the allegations.

**ALLEGATION #3: RESPONSE TO A REQUEST TO INSPECT AND REVIEW
THE CHILD'S EARLY INTERVENTION RECORD**

FINDINGS OF FACTS:

9. On February 16, 2017, the complainant made a request by email, to receive a copy of the child's early intervention record from the BCITP (Docs. g and h).
10. On February 22, 2017, a complete copy of the child's early intervention record was made available for pick-up by the complainant. However, the complainant emailed the BCITP to request that the record be mailed due to her "mobility issues." There is documentation that the record was mailed to the complainant on February 23, 2017 (Docs. g, h, i, and j).

DISCUSSION/CONCLUSIONS:

Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing, and in no case more than 10 days after the request has been made. This includes the right to have a representative of the parent inspect and review the early intervention records. The right to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records (34 CFR §303.405 and COMAR 13A.13.01.10 (c)).

Based on the Findings of Facts #9 - #10, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCITP to provide documentation by August 31, 2017, that it has developed behavior outcomes with the parent, to address the child's social-emotional needs, and that the services are to be provided to assist in achievement of the outcomes within one year of the date of this Letter of Findings.

School-Based

The MSDE requires the BCITP to provide documentation by September 30, 2017, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance within BCITP. Specifically, a review of child early intervention records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

The MSDE also requires the BCITP to provide documentation by September 30, 2017, of the steps taken to ensure that the BCITP service providers understand the requirements for ensuring that children with a physical or mental condition with high probability of developmental delay, receive all services necessary to address their developmental needs.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the parent and the BCITP have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise 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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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 within the timelines reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties 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 Free Appropriate Public Education (FAPE) for the child, including issues subject to this State complaint investigation, consistent with the IDEA.

The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

MEF:ac

c: Robert Berlow
Dori Wilson
Brian Morrison
Nancy Vorobey
Anita Mandis
Albert Chichester
Nancy Birenbaum