


December 8, 2023




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

RE: 
Reference: #24-057

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education 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 October 25, 2023, MSDE received a complaint from Ms. , hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainants alleged that the Baltimore City Infants and Toddlers Program (BCITP) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the following allegations:

1. The BCITP did not follow proper procedures when responding to a request to review and inspect the student’s education record since October 25, 2022, in accordance with 34 CFR §303.405.
2. The BCITP did not follow proper procedures to ensure the transition conference and the development of a transition plan occurred ninety days before the student’s third birthday, in accordance with 34 CFR §§303.209, .211, .343 and COMAR 13a.13.01.09.
3. The BCITP did not provide the parent with a copy of the Individualized Family Service Plan (IFSP) as soon as possible after each IFSP meeting, in accordance with 34 CFR §303.409 (c).
4. The BCITP did not ensure that the IFSP team convened to review the student’s IFSP before February 8, 2023, and August 8, 2023, in order to ensure that the IFSP was reviewed every six months and at least annually, in accordance with 34 CFR §303.342 and COMAR 13a.13.01.07.

5. The BCITP has not ensured that the student has been consistently provided with family counseling/training, as required by the IFSP, since October 25, 2022, in accordance with 34 CFR §303.342 and .344.
6. The BCITP has not developed an IFSP that addresses the student's social emotional, behavioral, and pre-writing needs since June 2023, in accordance with 34 CFR §§303.344.

BACKGROUND:

The student is three years old and attends a private daycare. He was determined eligible for early intervention services under the IDEA. He has an IFSP that requires the provision of early intervention services.

FINDING OF FACT:

1. In its written response, the BCITP acknowledges that the violations occurred with respect to the allegations. MSDE concurs with the BCITP's conclusions and appreciates the agency's response to the investigation.

CONCLUSIONS:

Early intervention services are provided to children with disabilities, from birth through the age of two (2) years old, through the Infants and Toddlers Program under Part C of the IDEA. Special education services are provided to children with disabilities who are aged three (3) through the end of the school year in which they turn twenty-one (21) years old under Part B of the IDEA and related State requirements (34 CFR § 300.101, 34 CFR § 303.21, COMAR 13A.05.01.01 and .02, and COMAR 13A.13.01.).

In Maryland, if a child who has been receiving services through an IFSP is found eligible for special education services under Part B of the IDEA prior to his or her third birthday, the child's parent can opt for the manner in which services will be provided. They may opt for the child to continue to receive services through an extended IFSP that has an educational component until the beginning of the school year following his or her fourth birthday, or for the child to receive preschool special education services through an IEP (COMAR 13A.13.01.01, .02, and .09)

In order to ensure a smooth transition from Part C early intervention services to Part B special education services or other community-based services, the Infants and Toddlers Program is required to conduct a transition planning meeting, with the approval of the parents, for all children receiving services under an IFSP. This meeting must be conducted no later than ninety (90) days prior to the child's third (3rd) birthday, unless the referral for early intervention services was made after the child reached the age of thirty-three (33) months. If the referral was made after the child turned thirty-three (33) months old, the transition planning meeting must be held as soon as possible (COMAR 13A.13.01.09).

Based upon the Findings of Fact #1, MSDE finds that the BCITP did not:

- follow proper procedures when responding to a request to review and inspect the student's education record since October 25, 2022;
- follow proper procedures to ensure the transition conference and the development of a transition plan occurred ninety days before the student's third birthday, in accordance with 34 CFR §§303.209, .211, .343 and COMAR 13a.13.01.09;
- provide the parent with a copy of the IFSP as soon as possible after each IFSP meeting, in accordance with 34 CFR §303.409;

- did not ensure that the IFSP team convened to review the student's IFSP before February 8, 2023, and August 8, 2023, in order to ensure that the IFSP was reviewed every six months and at least annually, in accordance with 34 CFR §303.342 and COMAR 13a.13.01.07;
- ensure that the IFSP team convened to review the student's IFSP before February 8, 2023, and August 8, 2023, in order to ensure that the IFSP was reviewed every six months and at least annually, in accordance with 34 CFR §303.342 and COMAR 13a.13.01.07.
- ensure that the student was consistently provided with family counseling/training, as required by the IFSP, since October 25, 2022, in accordance with 34 CFR §303.342 and .344; and
- develop an IFSP that addresses the student's social emotional, behavioral, and pre-writing needs since June 2023, in accordance with 34 CFR §§303.344.

Therefore, this office finds that a violation occurred with respect to these allegations.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that non-compliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it completes the required actions consistent with MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at Diane.Eisenstadt@maryland.gov.

Student Specific:

MSDE requires the BCITP to provide documentation by February 1, 2024, of the following actions:

- Provide the student with family/counseling and training in accordance with his IFSP;
- Provide the complainant with an opportunity to inspect and review the requested educational records;
- Provide the complainant with a copy of the IFSP;
- Convene an IFSP team meeting to determine the student's social emotional, behavioral, and pre-writing needs, develop an extended IFSP, and obtain the parent's informed written consent prior to implementing the extended IFSP developed for the student; and
- Determine the compensatory services or other remedy to address the violations in this Letter of Finding regarding transition plan procedures, provision of documents prior to and following IFSP

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

² MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

team meetings, provision of family counseling/training, failure to develop an IFSP that addresses the student's social emotional, behavioral, and pre-writing needs, educational records, and timely review of the IFSP and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

The BCITP must ensure that the parent is provided with written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

Systemic:

The public agency is required to ensure that the student is provided with early intervention services as required by the IFSP that includes service coordination services (34 CFR §303.114). In this case, the student was not provided with service coordination services and family counseling/training pursuant to the IFSP. Staffing concerns do not mitigate the requirement to provide a FAPE. MSDE has informed BCITP of the need to identify strategies to address shortages in order for students to continue to be provided with the services their IFSP requires, such as virtual, contract, reimbursement, or other means. BCITP has either not implemented their own strategies or not developed a viable plan to address the violations. BCITP is required to work with MSDE to develop a plan to address long term absences of service coordinators and to establish practices that will ensure compliance with federal and state requirements by March 1, 2024.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

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 student, including issues subject to this State complaint investigation, consistent with the IDEA. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Antoine Hickman, Ed.D.
Assistant Superintendent
Office of Early Intervention and Special Education

AH:tg

c: Alison Barmat
Diane Eisenstadt
Gerald Loiacono
Molly Conner
Marny Helfrich
Tracy Givens