

Complaint Investigation Report
Parents v. Franklin County CDS

December 5, 2008

Complaint #09.020C

Complaint Investigator: Jonathan Braff, Esq.

Date of Appointment: October 10, 2008

I. Identifying Information

Complainant: Parents
Address

Respondent: Ed Ferreira, Board Chair
Franklin County CDS
115 Learning Lane
Farmington, ME 04938

Site Director: Greg Armandi

Child: Child
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on October 9, 2008. The Complaint Investigator was appointed on October 10, 2008 and issued a draft allegations report on October 29, 2008, amended that same day. The Complaint Investigator conducted a complaint investigation meeting on October 30, 2008, resulting in a set of stipulations circulated on November 1, 2008, later amended. On or about November 3, 2008, the Complaint Investigator received a seven-page letter and 22 pages of documents in support of the allegations from the advocate for the Parents and on or about November 5, 2008 received 187 pages of documents and an 8 page memorandum from Respondent, Franklin County CDS (the "Site"). Interviews were conducted with the following: Greg Armandi, site director; Julie Shibel, case manager; Patty Wingo, case manager; Audrey Lattz, evaluator; Susan Zimmerman, speech therapist; Carla Phair, speech therapist; Noel Danforth, educational technician; and the child's parent.

III. Preliminary Statement

The Child is xx years and was found eligible for early intervention services under the eligibility criterion of developmental delay on May 20, 2008. This complaint was filed by the Child's parents, alleging violations of the Maine Unified Special Education Regulations,

Chapter 101, as set forth below. The Site initially agreed to participate in mediation and a mediation session was scheduled, but the Site later rescinded its agreement to mediate.

IV. Allegations

1. Failure to find the child eligible despite test scores satisfying the regulatory requirements in violation of MUSER §VII.1.A;
2. Failure to provide adequate written notice of the refusal to find the child eligible in violation of MUSER App. 1, 34 CFR §300.503 and 34 CFR§ 303.403;
3. Failure to fully and properly include the parents in the eligibility determination process in violation of MUSER §§VI.1.A, VI.1.B(1)(a) and VII.1.A(2)(c);
4. Failure to provide physical therapy services where necessary to prevent future dysfunction in violation of MUSER §XI and 34 CFR §303.12(d)(9)(iii);
5. Failure to properly supervise the provision of developmental therapy services by an educational technician in violation of MUSER §X.1.A(4) and (5);

V. Stipulations

1. The Written Notice dated 1/24/08 did not identify the attendees at the eligibility meeting.
2. Paragraphs 2 and 3 of the Summary section of the Dispute Resolution Request accurately state the child's Battelle Scores and their standard deviations below the mean.
3. Franklin CDS received the child's OT evaluation on 4/8/08, and her SL evaluation on 5/2/08.
4. No certified teacher or content area specialist has observed the child's Ed Tech III in the natural environment.

VI. Summary of Findings

1. The Child is xx years old and lives in xxxx with her parents and her brother. She was found eligible to receive early intervention services under eligibility criteria of developmental delay on May 20, 2008.
- 2 The Child was initially referred to the Site for evaluation on or about January 3, 2008.
3. After obtaining the Parents' consent for the evaluation, the Site scheduled an assessment of the Child for January 24, 2008 at the Parents' home and also scheduled an Individual Family Service Plan ("IFSP") team meeting for that same day.
4. The Site issued an Advance Written Notice of the meeting on January 14, 2008.
5. On January 24, 2008, an assessment of the Child was performed by Patti Wingo and Audrey Lattz using the Battelle Developmental Inventory. Afterwards, the Child's mother (hereinafter "Parent") declined to proceed to an IFSP team meeting on that day.

6. The results of the Battelle assessment showed scaled scores for the Adaptive Domain of 70 and for the Communication Domain of 73, the former 2.0 standard deviations and the latter more than 1.5 standard deviations below the mean. The Child's scores on the self-care and receptive communication components were both ranked in the 2nd percentile.

7. On February 1, 2008, Ms. Wingo and Ms. Lattz sent a copy of the Child's Battelle assessment to her pediatrician, Dr. Kathleen Hickey, under cover of a letter stating that the Child was found to have "mild delays" in the self-care and receptive communication areas, and that her overall score was low average. The letter further states that speech/language services were not being recommended at that time, but that they recommended reevaluation in four months.

8. The IFSP team meeting was rescheduled for February 12, 2008, and an Advance Written Notice was sent for that meeting.

9. In addition to the Battelle, the team also received the results of a physical therapy evaluation, including the administration of the Peabody Developmental Scales II, performed by Rhonda Norton, PT at Rumford Hospital on November 30, 2007. The Peabody results were average for the Stationary and Object Manipulation areas, and below average (9th percentile, 1-1/3 standard deviations below the mean) for Locomotion. The combined Gross Motor Quotient was rated as below average. The test administrator noted recent gains by the child, and indicated that a home program for her would be developed, with the child to be rechecked every two weeks. She also recommended occupational therapy and language evaluations in the near future.

10. The following individuals attended the IFSP team meeting on February 12, 2008: the Parent, Julie Shibel, case manager; and Patti Wingo, evaluator. At the meeting, the Parent was informed that some of the child's Battelle test scores were "low," but that the evaluators saw emerging skills in the child and wanted to reevaluate at a later date before finding the child eligible for early intervention services.

11. The Site sent out a Written Notice for what was identified as meetings dated January 24, 2007 and February 12, 2008. Paragraph one states that the Child's "developmental skills, including speech and language skills, within normal range at this time." The Notice goes on to indicate that the Child was not eligible for special services at this time, but that the team recommended reevaluation of speech/language skills at 18 months and gross motor skills at an unspecified time. Paragraph 6 states that the Parent's concern was with gross motor skills.

12. The Written Notice does not identify the team members who attended the meeting.

13. On February 25, 2008, the Site sent to the Parents a notice advising them that the Child's case records were being closed because the assessment information indicated that she was developing "typically and within age limits" and did not need early intervention services. The notice invited the Parents to contact the Site if they disagreed so that an IFSP team meeting could be scheduled, but that was followed on the form by the hand written words "Team met."

14. On the same date, at the Parents' request, Rhonda Norton performed an update on the Child's physical therapy evaluation, this time recommending physical therapy for two 30-minute sessions per month. The Parents had cancelled or failed to appear for 5 appointments between the two evaluations, and the Child had therapy on 3 occasions after February 25, 2008 until April 9, 2008, when the Child's mother informed the therapist that she was discontinuing the therapy.

15. After the February 12, 2008 team meeting, the Parents arranged for an occupational therapy evaluation (conducted on March 19, 2008) and a speech/language evaluation (conducted on April 16, 2008). The OT evaluation, conducted by Deborah Frino, MOT, OTR/L, found significant delays in grasping skills (three standard deviations below the mean), moderate delays in visual motor integration skills (1.67 standard deviations below the mean), definite difference scores (in excess of 2.0 standard deviations below the mean) in auditory processing, sensation avoiding and low registration. The speech/language evaluation, conducted by Stephanie Thomas, M.A., CCC-SLP, found the Child to have "severe overall language, phonological and pragmatic delays."

16. The Site received a copy of the OT evaluation report on April 8, 2008 and of the speech/language evaluation report on May 2, 2008.

17. After the Site received the OT evaluation, it sent out an Advance Written Notice for an IFSP team meeting to be held on April 28, 2008. The Parents notified the Site that there were additional evaluations they wanted to be considered, and asked that the meeting be rescheduled for a later date. After receiving the speech/language evaluation and a neurological evaluation dated April 23, 2008 by Anne Graham, the Site sent out on May 8, 2008 an Advance Written Notice for a meeting on May 20, 2008.

18. The neurological evaluation found that the Child had "significant development delay" and diagnosed Pervasive Development Disorder Not Otherwise Specified.

19. At the IFSP team meeting, it was agreed that the Child was eligible for early intervention. The team called for services in the following amounts: speech therapy 120 minutes per week; developmental therapy 6 hours per week; occupational therapy twice weekly for 30 minutes each; and physical therapy twice monthly for 30 minutes each.

20. At the meeting: the Parent requested more therapy than what was being offered; Ms. Thomas's speech/language evaluation report did not specify an amount of therapy; Ms. Frino left the meeting before the team had come to a decision about OT time; and Ms. Norton did not attend the meeting to discuss PT time. The amount of PT offered matches the amount that appears in the PT evaluation report of February 25, 2008.

21. On May 23, 2008, the Site sent out a Written Notice for the May 20th meeting. The Notice stated that an increase in PT was rejected because "the evaluation scores did [sic] meet eligibility criteria." The Site wrote that it would discuss the issue with a qualified therapist

and seek reevaluation. With regard to OT, the Site wrote that it would contact Ms. Frino to discuss therapy time.

22. After the meeting, on June 27, 2008, the Child was evaluated by Katherine Stanzel, PT. Ms. Stanzel's recommendation was for two 45-60 minute sessions per month.

23. The Child was seen by orthopedist James Greene, M.D. on July 2, 2008. In his report, Dr. Greene diagnosed pervasive developmental delays and bilateral lower extremity alignment issues. Dr. Greene wrote that the Child "does not receive enough therapy," and recommended up to three hours per week or more of a combination of PT, OT and DT. When the Site wrote to Dr. Greene asking him to clarify what he was recommending about PT time specifically, Dr. Greene answered on August 4, 2008 that he was not a developmental pediatrician, that in general his recommendation was "the more the better," and that he could not be more specific. Meanwhile, the Parents obtained a prescription from Dr. Greene dated July 30, 2008 for 3 hours of PT per week.

24. On July 14, 2008, the Child received a psychological evaluation from Ellen Popenoe, Ph.D., who diagnosed the Child as having Pervasive Developmental Disorder Not Otherwise Specified, and stated that while the Child was presently functioning in the autism spectrum, she had shown progress and had some nice strengths. Dr. Popenoe recommended intensive services of at least 20 to 24 hours per week, including speech, developmental and possibly occupational therapies.

25. An occupational therapy evaluation of the child by Aerica Richards MOT, OTR/L performed on July 21, 2008 confirmed previous diagnoses and recommended OT services for two 45 minute sessions per week, also providing goals and objectives.

26. An IFSP team meeting was held on August 13, 2008 following issuance of an Advance Written Notice on July 31, 2008. As a result of the meeting, the Child's physical therapy time was increased from twice monthly to 60 minutes per week.

27. Noel Danforth, an Educational Technician II, began working with the child on June 16, 2008. Mr. Danforth was being supervised by both Greg Armandi, Respondent's site director, and Susan Zimmerman, speech and language therapist. From June 16 until September 3, 2008, Mr. Danforth met with Mr. Armandi to discuss his work with the Child 10 times, once including Ms. Zimmerman as well, and another three times with Ms. Zimmerman. There were also several informal discussions between Mr. Danforth and Mr. Armandi. Neither Mr. Armandi nor Ms. Zimmerman supervised Mr. Danforth on-site while he was engaged in delivering services to the Child.

28. A Complaint Investigation Report issued on September 2, 2008, upon a complaint filed by the Parents against the Site regarding the Child's brother, included a recommendation that the Parents consider transferring responsibility for the brother to a different site, CDS Opportunities. Shortly after the Report was released, the Parents contacted the State CDS Office and requested that the change be made for both children. Over the Site director's objection, the transfer request was granted on October 1, 2008. This complaint was filed eight days later

29. During an interview conducted by the Complaint Investigator with Patty Wingo, Ms. Wingo stated that at the time of the January 24th assessment, the Parents related that the Child had come a long way in the recent weeks, and was progressing quickly. She noted that although some of the test scores were low, other scores were fairly high. She cited the high scores, clinician observation and the Parents' report as providing the basis for the decision to find the Child not eligible. She further stated that the Parent was in agreement with Ms. Lattz's recommendation that the Child be retested before services were provided, and was, in fact, relieved.

30. During an interview conducted by the Complaint Investigator with Julie Shibel, Ms. Shibel stated that she was present at the February 12th team meeting and that Ms. Wingo told the Parent that some of the assessment scores were low, but that the evaluators saw emerging skills and wanted further evaluations before concluding that the Child was eligible for special services. According to Ms. Shibel, the Parent said that she really had no concerns for the Child, and that she thought the Child would be fine. Ms. Shibel further stated that she concurred with the recommendation to find the Child not eligible because although some of the assessment scores were low, both the evaluators and the Parent felt that those scores did not accurately reflect how the Child was doing.

31. During an interview conducted by the Complaint Investigator with Audrey Lattz, Ms. Lattz stated that the Child's low scores on January 24th did not make her feel services were required because the Child had been making gains in the gross motor area recently, and, in her experience, when a child is making motor gains sometimes the development of speech skills "takes a back seat." Ms. Lattz recalled that she told the Parent that the Child's scores were "at the lower end of typical."

32. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated that she had requested evaluation of the Child due to certain peculiar physical behaviors on the Child's part and, because her oldest child was diagnosed with autism, she understood that the Child as his sibling had a 50% probability of also being autistic. Her concerns with the child at the time of the January 24th assessment were in the areas of speech, gross motor and sensory processing. She said that she declined to have the IFSP team meeting on January 24th because the evaluators had not yet scored the test. She explained further that her lack of protest regarding the team's determination of non-eligibility on February 12th was based on the representations of the educators present that the Child's test scores, although in "the low range," were not sufficient under the regulations (they were not 2 standard deviations below the mean) to entitle her to services. The Parent said that she assumed this was accurate and thought that there was therefore nothing she could do about eligibility. Soon after the meeting, however, the Parent set about to schedule the Child for OT and speech/language evaluations because she continued to have "grave concerns" and believed the Child needed services. The Parent further explained that the numerous cancellations that occurred for the Child's therapy sessions were the result of a combination of her own medical issues, home repair issues and the family's summer vacation.

33. During an interview conducted by the Complaint Investigator with Susan Zimmerman, Ms. Zimmerman stated that she became involved in treatment for the Child in early July of

2008. She only had three speech therapy sessions with the Child, due mainly to frequent cancellations by the Parents. She spent a long time going over the treatment plan with Noel Danforth, and felt completely comfortable that he understood the plan and the goals. She made several attempts to observe Mr. Danforth while he was engaged in therapy with the Child but, due in part to the frequent cancellations, wasn't able to accomplish it. She also was aware that Mr. Danforth was meeting frequently with Mr. Armandi. She met with Mr. Armandi as well, and he was completely familiar with her therapy plan. She claimed that she never worried whether her therapy plan was being followed.

34. During an interview conducted by the Complaint Investigator with Noel Danforth, Mr. Danforth stated that he began doing developmental therapy with the Child as an Educational Technician III in June, 2008. He was being supervised by Mr. Armandi and Ms. Zimmerman. He was on a schedule to have meetings with Mr. Armandi, but due to the frequent cancellations of his therapy sessions with the Child by the Parents, he did not always have those meetings. The cancellation rate was around 50%. He also often spoke on a more informal basis with Mr. Armandi about his work with the Child. In general, he met with Mr. Armandi at least once a week, and sometimes more. There were many meetings where the two had little to discuss due to the cancellations of therapy sessions. Mr. Danforth said he also met with Ms. Zimmerman a number of times to discuss the speech/language program and goals. Mr. Danforth found his work with the Child to be very frustrating, both as a result of the cancellations and also because he felt the Parent interfered with his efforts to provide therapy.

35. During an interview conducted by the Complaint Investigator with Greg Armandi, Mr. Armandi stated that he was involved in creating the developmental therapy goals and objectives for the Child's therapy program and thoroughly understood the program. In addition to his and Ms. Zimmerman's meetings with Mr. Danforth, he attempted to schedule Mr. Danforth to spend time with the PT and OT providers while they worked with the Child, however, the Parents never accessed those services for the Child. He also attempted to send other staff into the Child's home to supervise Mr. Danforth, but found that the staff was generally reluctant to engage with the Child's family due to the family's perceived hostility toward the Site.

VII. Conclusions

Allegation #1: Failure to find the Child eligible despite test scores satisfying the regulatory requirements in violation of MUSER §VII.1.A.

VIOLATION FOUND.

Allegation #3: Failure to fully and properly include the parents in the eligibility determination process in violation of MUSER §§VI.1.A, VI.1.B(1)(a) and VII.1.A(2)(c)

VIOLATION FOUND

MUSER §VII.1.A defines the level of developmental delay required for eligibility for early intervention services as a delay of at least 2.0 standard deviations below the mean in one of

the specified areas of development, or a delay of at least 1.5 standard deviations below the mean in two areas. As indicated above, the test scores obtained on the Child on January 24, 2008 met both of these criteria. The MUSER regulations, however, expressly avoid a slavish adherence to the dictates of test scores alone. MUSER §VII.1.A(2)(c) provides that the IFSP team must utilize informed clinical opinion in the administration and interpretation of assessment tools “as a safeguard against eligibility determination based upon isolated information or test scores alone.” Informed clinical opinion means the consensus of an early intervention team consisting of at least two early childhood professionals *and* the parent(s) of the child. Where the team rejects the findings of accepted evaluation standards and procedures, it must document the basis for its conclusion that those standards and procedures resulted in invalid findings for the child in question.

Although the evaluators reported in interviews with the Complaint Investigator that there was consensus among the early intervention team on February 12, 2008 that the Battelle test scores should not dictate a finding of eligibility, this is undercut by the Parent’s account that her willingness to agree was based entirely on the understanding given to her by the evaluators that the test scores, although in “the low range,” did *not* support eligibility. This description of events finds support in the letter written by Ms. Wingo and Ms. Lattz to Dr. Hickey in which they stated that the Child was found to have “mild delays,” in Ms. Lattz’s recollections of how the scores were described to the Parent (“lower end of typical”), and in the February 25, 2008 case closing letter informing the Parents that the Child was developing “typically and within age limits.” Scores which placed the Child in the 2nd percentile (Self-Care and Receptive Communication) cannot fairly be called mild or typical. Not being aware of the actual significance of the test scores, the Parent couldn’t agree to a decision to overlook that significance.

The problem was compounded by the Written Notice of the IFSP team meeting. Not only did the Notice not indicate that the team was making a specific decision to overrule the ordinary results of the Child’s test scores, it confirmed the Parent’s impression that the scores were not particularly low by describing the Child’s developmental skills as being “within normal range.”

It is not clear to the Complaint Investigator whether the evaluators failed to recognize the significance of the test scores, *i.e.*, that the scores met the criteria for eligibility, or else believed that the Child was not eligible despite those scores. If the former, then the determination was plainly invalid. If the latter, the decision is still suspect. One of the proffered bases for the team’s determination was the information supplied by the Parents. Indeed, parental input is expressly listed as one source of data to be utilized by the IFSP team (MUSER §VII.1.A(2)(c)(ii)). The team failed, however, to receive the Parents’ true input because the evaluators failed to accurately convey to the Parents the true significance of the test scores. Further, the other team members’ reports of the Parent’s lack of worry about the Child’s developmental status are belied by the fact of the initial referral itself, and by her prompt scheduling of additional evaluations following the February 12th meeting.

Those evaluations confirmed the validity of the low test scores obtained by the Site’s evaluators, with findings of delays both “significant” and “moderate” (3/19/08 OT evaluation)

and “severe” (4/16/08 speech/language evaluation), ultimately leading to the Site’s reversal of its position regarding eligibility. Had the Site given the Battelle test results the full weight they deserved, the child would have been found eligible for early intervention , and would have begun receiving services, at an earlier date.

With regard to the length of that delay, the Site argues that it was prepared to find the Child eligible when it sent out Advance Written Notice for a meeting to take place on April 28, 2008, and so that date should therefore be used for determination of any compensatory education due the Child. While it is true that the Parent requested postponement of that meeting, she did so in order that the results of the further evaluations she arranged to have conducted with the Child could be considered by the IFSP team. Particularly in view of the reaction of the other team members to the test results at the previous meeting, the Parent’s desire to have all available information taken into consideration before decisions were made as to the nature and frequency of services to be provided seems reasonable. There were therefore a total of 14 weeks between the dates when the Child should have been found eligible for early intervention services (2/12/08) and the date when the child was finally found eligible (5/20/08), during which time the Child did not receive services to address her developmental delays.

Allegation #2: Failure to provide adequate written notice of the refusal to find the child eligible in violation of MUSER App. 1, 34 CFR §300.503 and 34 CFR §303.403
VIOLATION FOUND

The Written Notice required under 34 CFR §300.503 and 34 CFR §303.403 must describe the action proposed or refused and explain why it is being proposed or refused. The first deficiency in the Written Notice issued by the Site dated 1/24/07 [sic] - 2/12/08 is that the statement of the refused action is in paragraph two where the explanation should be, and the explanation is in paragraph one where the proposed action should be. Far more importantly, the explanation given for the refusal to find the Child eligible for special education services is simply that the Child’s developmental skills are “within normal range at this time.” This description simply does not coincide with the results of the Battelle assessment. A decision that the Child was developing normally despite the scores that fell outside the normal range clearly required explanation. As an additional defect, the Notice fails to identify the participating team members, as required by the regulation and the form.

Mention should be made that the Written Notice of May 20, 2008 demonstrates a great improvement over its predecessor in all respects, including the identification of all participating team members. For this reason, corrective action is not being instituted for this violation.

Allegation #4: Failure to provide physical therapy services where necessary to prevent future dysfunction in violation of MUSER §XI and 34 CFR §303.12(d)(9)(iii).
NO VIOLATION FOUND

The frequency of physical therapy services provided to the Child under the May 20th IFSP, two 30 minute sessions per month, was consistent with the recommendations of the Physical

Therapy Plan of Care from Rhonda Norton, PT dated February 25, 2008. The next evaluation was performed by Katherine Stanzel, PT on June 27, 2008. Ms. Stanzel recommended PT services twice monthly for 45-60 minute sessions. The Parents obtained an orthopedic evaluation for the Child from Dr. James Greene on July 23, 2008. Dr. Greene stated that the Child “does not receive enough therapy,” and recommended “up to three hours a week” of a “combination of Physical, Occupational and Developmental Therapy.” The Site sought clarification of the recommendation with regard to PT specifically, and Dr. Greene responded on August 4, 2008 that he was not a developmental pediatrician and that he couldn’t be more specific. In the mean time, the Parents obtained from Dr. Greene a prescription dated July 30, 2008 for 3 hours of PT weekly.

When the IFSP team met on August 13, 2008, they decided to increase the Child’s PT services to 1 hour per week, which was considerably more than what Ms. Stanzel recommended but less than the 3 hours per week sought by the Parent. The Written Notice of August 21, 2008 states that the latter position was rejected on the basis that Dr. Greene’s report was unclear, and in fact the combined physical, occupational and developmental therapy being offered totaled more than the 3 hours suggested in Dr. Greene’s report. Not only was the Written Notice correct in its description of the report being “unclear,” but when asked to clarify the recommendation Dr. Greene would only say that he wasn’t a developmental pediatrician. This appears to be at odds with his issuance of a prescription for 3 hours of PT per week, and the decision of the IFSP team seems reasonable and adequately supported under the circumstances. Of course, the IFSP team was not in any event obligated to accept wholesale the recommendation of a physician or other consultant who has examined the child.

While the amounts of therapy provided to the Child do not amount to a violation of the applicable statutes and regulations, mention must be made of the reference in the Written Notice of May 20th to the rejection of the additional physical therapy requested by the Parent because the PT evaluation scores “did [sic] meet eligibility criteria.” The eligibility criteria are used to establish basic eligibility for services in the first instance. Once the child is found eligible, however, then MUSER §IX.1.D(4) requires that the child’s IFSP provide those early intervention services “necessary to meet the unique needs” of the child.

The IFSP team’s focus should be on establishing the appropriate outcomes to be listed in the IFSP, and the short-term objectives necessary in order to obtain those outcomes. Once those are in place, the team must decide what services are to be provided to the child in order to reach those objectives and obtain those outcomes. Thus, an eligible child who requires physical therapy services in order to reach the designated objectives should receive those services even though her physical therapy evaluation was not the deciding factor in the eligibility determination.

Allegation #5: Failure to properly supervise the provision of developmental therapy services by an educational technician in violation of MUSER §X.1.A(4) and (5).

NO VIOLATION FOUND

MUSER §X.1.A(4) provides that early intervention services provided under a child's IFSP may be delivered by an educational technician when supervised by a certified special education teacher. In the case of an Educational Technician III, MUSER §X.1.A(5) requires the educational technician to meet with the classroom/program teacher or appropriate content area specialist and receive direction twice a week "whenever possible."

In this case, the educational technician did sometimes but not always meet and receive direction twice a week, and never was observed while he was delivering services to the Child. He did, however, receive meaningful supervision on an ongoing basis, at least once a week and sometimes more. Both of the educators providing the supervision were very familiar with the treatment program (indeed, they created it) and were confident that the educational technician understood it fully as well. Additional efforts to provide supervision, including direct supervision during therapy sessions, were thwarted by the Parent's frequent cancellation of appointments and the strained relations between the Parents and the Site. Under all the circumstances, the level of supervision satisfies the regulatory requirements.

VIII. Corrective Action Plan

1. In order to remedy its failure to find the Child eligible for early intervention services on February 12, 2008, the Site would ordinarily be responsible for providing compensatory education to the Child to redress whatever harm was caused by that failure. In this case, however, further involvement by the Site is made problematic by the Parents' decision, over the Site's objection, to remove the Child from the Site and then to file this complaint against it. At the same time, any conclusion as to the lack of developmental progress experienced by the Child as a result of the Site's failure is necessarily difficult and involves consideration of at least the following factors: the number of weeks' delay before the Site began to provide services; the Parents' failure to access many of the services offered by the Site; and the Child's progress since leaving the Site's care both as a function of normal aging and development and of the additional services she has received since then. Those additional services have been provided by CDS Opportunities, which now is most familiar with her current status, has a working relationship with the Parents and is in the best position to make this assessment.

Accordingly, the Child's IFSP team at CDS Opportunities shall, as soon as practicable, meet to determine the nature and amount, if any (up to a total of 35 hours and to be provided until not later than the Child's third birthday (November 13, 2009)) of additional services the Child should receive as compensatory education to compensate for that additional developmental delay. Should the team determine that some compensatory services are to be provided, the team shall prepare a compensatory education plan documenting their determination and provide copies to the Due Process Office, the Site, the Parents and the advocate. The Site shall be responsible for funding all of said compensatory education. Documentation of compliance with the provision of compensatory education services will further consist of a log signed by each service provider indicating the name of the provider, a description of the services and the dates, times and duration of the services. This documentation shall likewise be submitted to the Due Process Office, the Site, the Parents and the advocate.

2. The Site shall arrange to conduct professional training for its staff on the subject of making eligibility determinations, including discussion of the analysis and interpretation of the Battelle Developmental Inventory. Documentation of the professional training shall include: the name and qualifications of the presenter; an agenda of the training; hand-outs for the training; names and job titles of those who attended the training; and anonymous evaluations of the training. The Site will submit this documentation to the Due Process Office, the Parents and the advocate.