

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of  
Multnomah ESD – (ECSE)

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FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 11-054-030

**I. BACKGROUND**

On November 14, 2011, the Oregon Department of Education (Department) received a letter of complaint from the parent on behalf of the child. The parent resides in Reynolds School District and the child attended the Multnomah Education Service District Early Childhood Special Education Program (MECP) (Program). The parent requested that the Department conduct a special education investigation under OAR 581-15-2030. The Department confirmed receipt of this complaint on November 14, 2011 and provided a copy of the complaint letter to the MECP on November 16, 2011.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.<sup>1</sup> This timeline may be extended if the parent and the Program agree to the extension in order to engage in mediation or for exceptional circumstances related to the complaint.<sup>2</sup>

On December 6, 2011, the Department's complaint investigator sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of December 20, 2011<sup>3</sup>.

On December 15, 2011, parent and the Program staff met in a facilitated Individualized Family Services Plan (IFSP) meeting to discuss the issues. The team agreed to meet again on January 9, 2012 and asked the Department for an extension to the timeline in the complaint. The Department granted the extension on December 30, 2011.

The team was unable to reach total agreement on the issues at the January 9, 2012 facilitated IFSP meeting and so the parent requested the complaint investigation be restarted. On January 12, 2012 the Department's Complaint Investigator re-issued the revised *Request for Response* and changed the response due date to January 26, 2012.

On January 20, the Program submitted a timely response indicating they disputed all of the allegations in the parent's complaint. The *Response* packet contained IFSPs, evaluation records, data records and progress reports, prior written notices and copies of correspondence between the Program and the parent. The Department's complaint investigator determined that on-site interviews were needed. On February 6, 2012 the complaint investigator interviewed the parent, the MECP speech and language therapist and the occupational therapist. On February 7, 2012, the complaint investigator interviewed the MECP teacher, the MECP physical therapist and the MECP supervisor. The parent gave the investigator some additional materials during the interview and the investigator shared these with the Program. The complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

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<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

<sup>3</sup>The Department's investigator was involved in an accident and was unable to work from November 19—30, 2011. In addition, the parent and the District spent time during that period trying to organize a local resolution process.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from November 14, 2010 to the filing of this complaint on November 14, 2011.

	<u>Allegations</u>	<u>Conclusions</u>
	<p>Allegations to be investigated. The written complaint alleges that the Program violated the IDEA in the following ways:</p>	
1.	<p><b><u>Placement and Least Restrictive Environment in ECSE:</u></b></p> <p>1.1 Failing to provide an appropriate education in the least restrictive environment when the Program did not provide services in a program where the child was integrated with typically developing peers for-at least 50% of the time.</p> <p>(Relevant Rules and Laws: OAR 581-015-2845 Placement and Least Restrictive Environment in ECSE; Part B 34 CFR 300.116 Placements).</p>	<p><b><u>Not Substantiated.</u></b></p> <p>Given the uncertainty of the number of typical peers who might attend this program, the IFSP Team reasonably determined that the child's early childhood special education and related services could be provided in a classroom which contained some typical peers at all times. Therefore, the Department does not substantiate the allegation, and orders no corrective action.</p>
2.	<p><b><u>Parent Participation – General – EI/ECSE Program:</u></b></p> <p>2.1 Failing to provide the parent with an opportunity to participate in decision-making regarding the child or IFSP when the Program:</p> <p>a. Limited Program contact with the parent and when the program supervisor did not respond to parental requests;</p> <p>b. Did not include the parent in a meeting when the Program made a "transition decision"; and,</p>	<p><b><u>2.1 (a) Not Substantiated.</u></b></p> <p>The team believed it had good rationale for not acquiescing to the parent's requests, but made multiple attempts to explain this to the parent. For this reason, the Department does not substantiate this part of the allegation and orders no corrective action.</p> <p><b><u>2.1 (b) Not Substantiated.</u></b></p> <p>When the team wrote the "transition plan", in order to transition the mother out of the classroom environment during services and to address the child's separation anxiety, they focused on the child's behavior and the antecedent of the parent being in the classroom continuously. An informal</p>

	<p>c. Sent the parent a different child's progress report and reported unclear information about the child's progress in physical therapy.</p> <p>(Relevant Rules and Laws:  OAR 581-015-2810 IFSP Meeting Procedures and Timelines,  OAR 581-015-2805 (EI and ECSE Transition)  OAR 581-015-2750 Parent Participation – General – EI/ECSE Program  OAR 581-015-275 Additional Parental Participation Requirements for IFSP and Placement Meetings – EI/ECSE Program  Part C: 34 CFR 303.342 Procedures for IFSP Development, Review, and Evaluation;  34 CFR 303.343 Participants in IFSP meetings and Periodic Reviews  Part B: 34 CFR 300.321 IEP Team and 300.322 and 300.501  34 CFR 300.324 Developments, Review, and Revision of IEP  34 CFR 300.124 Transitions from C to B).</p>	<p>transition plan is frequently used by ECSE providers, and it is not required in this IFSP. Furthermore, it was not directly related to the child's IFSP or FAPE needs. Nor was the mother's attendance in the classroom addressed or necessary pursuant to the IFSP. However, since this change concerned the parent so directly, rescheduling the meeting to go through the process with the parent would have produced more success and is a better administrative practice.</p> <p><b><u>2.1 (c) Not Substantiated.</u></b>  The ECSE Program inadvertently sent the parent the wrong progress report<sup>4</sup> and used a somewhat esoteric term to describe the child's movement in the classroom. Both of these occurrences confused the parent. As this mistake alone did not constitute a violation of the parent participation requirements, the Department does not substantiate this allegation.</p>
3.	<p><b><u>Individualized Family Service Plan (IFSP) Content:</u></b></p> <p>3.1 Failing to include goals from a previous IFSP on the current IFSP.</p> <p>(Relevant Rules and Laws:</p>	<p><b><u>Not Substantiated.</u></b></p> <p>The combination of the ECSE reformatted goals and criteria to emphasize school readiness skills looks very different from a home services (natural environment) IFSP;</p>

<sup>4</sup> The program subsequently addressed the records problem and provided the correct progress report to the complainant.

	<p>OAR 581-015-2815 IFSP Content  Part C 34 CFR 303.344 IFSP Content  Part B 34 CFR 300.320 Child Find).</p>	<p>however, the new IFSP contains all of the relevant skill areas. Therefore, the Department does not substantiate the complaint and orders no corrective action.</p>
<p>4.</p>	<p><b><u>Implementation of the IFSP:</u></b></p> <p>4.1 Failing to implement the IFSP by:</p> <ul style="list-style-type: none"> <li>a. Reducing Occupational Therapy, Physical Therapy and Speech/Language services by more than 30%;</li> <li>b. Leaving the child in the wheelchair instead of working on goals due to "limited time and space";</li> <li>c. Not providing Physical Therapy services after a Physical Therapist left the program; and,</li> <li>d. Refusing to change the IFSP and the child's placement.</li> </ul> <p>(Relevant Rules and Laws:  OAR 581-015-2830 Implementation of the IFSP, OAR 581-015-2815 IFSP Content, 34 CFR §303.346 Responsibility and Accountability (Part C);  Part B (300.323) When IEPs must be in Effect).</p>	<p><b><u>4.1 (a) Not Substantiated.</u></b>  Because the amount of service time actually increased in the ECSE program, the Department does not substantiate this part of the allegation and orders no corrective action.</p> <p><b><u>4.1 (b) Not Substantiated.</u></b>  Because the staff used the wheelchair on a partial basis to build the child's independence in the classroom, the Department does not substantiate the allegation and orders no corrective action.</p> <p><b><u>4.1 (c) Not Substantiated.</u></b>  Because the Program immediately assigned another therapist and that person provided services on the days the child was available, the Department does not substantiate this sub-allegation and orders no corrective action.</p> <p><b><u>4.1 (d) Substantiated.</u></b>  Given the fact that the team could not demonstrate significant data to support its contention that the placement was appropriate, did not use the State mandated Goals and Objectives portion of the IFSP to appropriately address child progress, and in the transition from EI to ECSE the IFSP development team did not demonstrate any consideration of the evaluation results and data related to important differences in the two evaluations used when transitioning the child into ECSE, the Department substantiates this allegation and orders corrective action.</p>

	<p><b><u>Proposed Corrective Actions:</u></b></p> <p>The parent is requesting the following corrective actions:</p>	
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<ol style="list-style-type: none"> <li>1. The Program provide a 1:1 assistant to insure the child's safety and for redirection;</li> <li>2. The Program increase the amount of time the child is in school to five days per week so that the child can adjust to the setting, learn the routine and work on the goals;</li> <li>3. The Program provide a new team with whom the parent can work; and,</li> <li>4. The Program provides a placement in a setting where more than 50% of the children are typically developing peers so that the child has more interaction and more opportunities for socialization.</li> </ol>	<p>See Corrective Action section.</p>
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### III. FINDINGS OF FACT

Program Information:

- 1) The provision of Early Intervention (EI) and Early Childhood Special Education (ECSE) programs to children who are eligible is the responsibility of the State Education Agency (SEA). The SEA contracts with Education Service Districts to establish and administer these programs.
- 2) EI and ECSE programs are open twelve months of the year and most generally provide services to children 184 days of the year; however, the number of days a service is provided will vary based on the needs of the individual child in question. For EI/ECSE programs there is no one vacation period as long as the summer vacation for school age children. However, during the scheduled breaks, just as in school age programs, children do not receive services.
- 3) In EI, the natural environment is considered to be the home or another appropriate community setting for a young child—such as a day care center or a setting that is natural or typical for a same aged infant or toddler without a disability.<sup>5</sup>
- 4) The MECP has Integrated Pre-School Classrooms located in a variety of schools throughout the Multnomah County area. These classrooms are open to “typical peers” for a small fee paid by the parents. The typical peers generally attend school three days per week. Although the MECP aims for a 50-50 ratio of typical peers to children eligible for early childhood special education; this ratio is difficult to maintain. Parents of typical peers could potentially move, choose other programs, or no longer be able to afford to maintain the cost of the child’s program at Multnomah ESD. In short, these peers are not mandated to attend—the program is one of myriad options available to parents in the area.
- 5) Although the parent believed that the MECP had guaranteed there would be a 50-50 ratio of typical peers to eligible children during the April 19, 2011, in reality there is no way to guarantee this.

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<sup>5</sup> EI rules and provisions are not necessarily applicable for the entire scope of this investigation, as the child turned 3 on September 9, 2011.

- 6) During the time this child attended the Integrated Pre-School Classroom (September 13—November 8, 2011) the numbers of peers and eligible children varied in the classroom. In September, 6 typical peers attended on Tuesdays with 7 eligible children; and on Wednesday there were 6 typical peers and 5 eligible children. In October, 3 typical peers attended on Tuesdays with 7 eligible children; and on Wednesday there were 3 typical peers and 5 eligible children. In November, 2 typical peers attended on Tuesdays with 7 eligible children; and on Wednesday there were 2 typical peers and 5 eligible children.
- 7) Among the children in the two day class who are eligible for ECSE services, 4 of those children receive services two days per week; 2 of those children receive services three days per week; and only one child receives services 4 days per week. The location and the amount of service time each child receives are decided by each IFSP team, and are related to the child's individualized needs, previous levels of progress and the evaluation information.

Child Specific Information:

- 8) The child is a resident of the Reynolds School District and turned three years old on September 9, 2011. The child had been attending the Multnomah Education Service District Early Childhood Program (MECP) but the parent removed the child from the program after filing the complaint with the Department.
- 9) The child was evaluated on April 9, 2009 after the parent referred the child because of concerns about the child's overall development. An MECP early intervention specialist and speech and language specialist evaluated the child using the Battelle Developmental Inventory (2<sup>nd</sup> edition); the Assessment, Evaluation and Programming System for Infants and Children (AEPS); and the Pre-School Language Scale (4<sup>th</sup> edition) (PLS-4). The child was seven months old and scored as follows:
  - a) Adaptive: Battelle – SS of 80; AEPS – 7 of 64 (11%) adaptive points
  - b) Cognitive: Battelle – SS of 64; AEPS – 25 of 116 (21%) cognitive points
  - c) Social: Battelle – SS of 90; AEPS – 8 of 50 (16%) social points
  - d) Receptive Language: PLS-4 – SS of 69
  - e) Expressive Language: PLS-4 – SS of 83
  - f) Social Communication: AEPS – 17 of 92 (18%) social communication points
  - g) Motor: Battelle – SS of 57; AEPS – 11%
  - h) Gross Motor Skills: AEPS -- 13 of 110 (12%) gross motor points
  - i) Fine Motor Skills: AEPS -- 8 of 66 (12%) fine motor points
- 10) The child is eligible for Early Childhood Special Education (ECSE) services as a child with an Orthopedic Impairment. The child was initially found to be eligible for Early Intervention (EI) services on April 9, 2009.
- 11) From April, 2009 until September, 2011, the child received early intervention services from MECP at home. Primarily, these services consisted of physical therapy (1 time per week for 45 minutes); speech and language therapy (2 times per month for 45 minutes each time); and occupational therapy (2 times per month for 45 minutes each time). The three MECP therapists worked directly with the child and also provided coaching to the family.
- 12) During this time the MECP also provided various toys and other adapted objects (spoon, cup, etc.) for the family to use to help the child increase gross motor, fine motor and speech skills. In addition, on October 22, 2010, the team added an augmentative communication device to the child's program so that the child could begin using a variety of communication functions. This is a

Flash 4 electronic AAC device<sup>6</sup> that combines a recorded word or phrase with a picture so that the child can push the button above the picture and communicate the recorded message.

- 13) As per OAR 581-015-2835<sup>7</sup>, all of these services were provided to the child in the natural environment of the home.
- 14) On April 19, 2011, the EI team met to conduct the child's annual IFSP meeting. At that time the child was working on the goals of increasing ability to engage during play; be independent during play; and eat independently. Although these are very global goals, each one incorporated a variety of gross and fine motor skills, and speech and language skills. For example, the independent play goal included the child initiating contact with others; being able to move safely from the floor to standing at a stable surface with adult assistance; and using a variety of manipulatives to play. With the exception of two objectives, the child was making sufficient progress to meet the goal on April 19, 2011. For the first exception (using babbling consonant-vowel-consonant-vowels sounds), the team chose to rewrite the goal. For the second exception (using the AAC device to make choices) the team chose to give the child more time to learn to use the Flash 4 device.
- 15) In addition, at this IFSP meeting, the team decided to change the child's service coordinator to the Occupational Therapist; and to increase occupational therapy services from 2 times per month to 1 time per week. The team added Assistive Technology to the IFSP in order to address the communication needs, and increased the speech language service from 2 times per month to 3 times per month. Finally, the team decreased the physical therapy services from 1 time per week to 3 times per month. The team sent the parent a Prior Written Notice outlining these changes on April 19, 2011. As a result of these decisions, the child received 7.5 hours per month of specialized instruction.
- 16) On June 2, 2011, the parent signed permission for MECP to evaluate the child for eligibility for early childhood special education services.
- 17) The child continued to receive EI services during June, July and August 2011, as per the IFSP. However, there were several calendar breaks during the summer months during which the child did not receive any services—as noted above. These breaks occurred during June 27—July 15, 2011; and August 22–September 9, 2011.
- 18) According to the IFSP effective 4/19/2011 to 9/9/2011, the child should have received Physical Therapy three times a month for 45 minutes, Speech Therapy three times a month for 45 minutes, and Occupational Therapy one time a week for 45 minutes.
- 19) On June 6 and August 2, 2011, MECP staff conducted assessments to determine if the child would be eligible for early childhood special education (ECSE). An MECP occupational therapist, physical therapist and speech and language specialist evaluated the child using the Battelle; the Assessment Evaluation and Programming System (AEPS); the Preschool Language Scale (PLS)-4; and the Peabody Developmental Motor Scales (2<sup>nd</sup> edition). The child was 35 months old and scored as follows:

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<sup>6</sup> Augmentative and alternative communication (AAC) umbrella term encompasses the communication methods used to supplement or replace speech or writing for those with impairments in the production or comprehension of spoken or written language.

<sup>7</sup> OAR 581-015- 2835 Natural Environments in EI

Contractors or subcontractors must ensure that: (1) To the maximum extent appropriate to the needs of the student and family, EI services are provided in natural environments, including the home and community settings in which children without disabilities participate.

- a) Adaptive: Battelle – SS of 2; AEPS – 19 of 64 (30%) adaptive points
- b) Cognitive: Battelle – SS of 2; AEPS – 34 of 116 (29%) cognitive points
- c) Social: Battelle – SS of 3; AEPS – 28 of 50 (56%) social points
- d) Receptive and Expressive Language: PLS-4—given with modifications due to limited mobility so no standardized scores were reported
- e) Social Communication: AEPS – 33 of 92 (35%) social communication points
- f) Motor: Peabody – Gross Motor -- SS of 45
- g) Motor: Battelle – Fine Motor – SS of 1
- h) Gross Motor Skills: AEPS -- 41 of 110 (37%) gross motor points
- i) Fine Motor Skills: AEPS -- 33 of 66 (50%) fine motor points

20) On August 16, 2011, the team met and found the child eligible for ECSE as a child with a Developmental Delay and an Orthopedic Impairment.<sup>8</sup> The parent signed the consent for initial provision of special education on September 12, 2011.

21) The ECSE team met twice to develop the IFSP. At the first meeting, held on September 7, 2011, the parent participated by telephone.<sup>9</sup> During that meeting, the team reviewed the child's progress toward the Early Intervention (EI) goals; and the early intervention services provided. The team discussed supplementary services and goals for the child for the 2011-2012 school year. The team met again on September 12, 2011 and the parent attended the meeting in person. During these two meetings, the team wrote the complete IFSP and decided on the child's placement.

22) The team decided that the child needed the services as outlined below:

Service <sup>10</sup>	Amount of Time	Location
Transportation	2 times per week	Home to School and return
Specialized instruction to address goals in social/emotional skills, receptive and expressive communication skills, cognitive skills, adaptive skills (bathroom routine), fine and gross motor skills, and independent feeding skills	2 hours and 15 minutes each day, two days per week	MECP classroom
Specialized instruction to address adaptive and fine motor goals and objectives	20 minutes , one time per week, direct <sup>11</sup>	MECP classroom
Specialized instruction to address gross motor goals and objectives	30 minutes , one time per week, direct <sup>12</sup>	MECP classroom
Specialized instruction to address communication goals and objectives	30 minutes , one time per week, direct <sup>13</sup>	MECP classroom
Supplemental services to include a	Use in the classroom to	MECP classroom

<sup>8</sup> Originally, the team sent the parent a Prior Written Notice that informed the parent that the child was only eligible as a child with an Orthopedic Impairment. After the paperwork mistake was discovered, a new Prior Written Notice was sent and included Developmental Disability as a second area of eligibility.

<sup>9</sup> Another child in the family was hospitalized at that time and the parent could not attend the meeting in person.

<sup>10</sup> These are only the services provided by MECP. The IFSP contains references to other physical therapy and medical services to be provided the child by such agencies as the Shriner's Hospital; therefore the amounts of time these services are provided are not counted in the total service provided by MECP.

<sup>11</sup> This service is delivered in the classroom as part of the 4.5 hours per week.

<sup>12</sup> This service is delivered in the classroom as part of the 4.5 hours per week.

<sup>13</sup> This service is delivered in the classroom as part of the 4.5 hours per week.



communication device, wheelchair, riptan chair, AFO's <sup>14</sup> and a walker;	facilitate movement and communication	
Nursing services	180 minutes per year	Classroom and phone
Access to equipment from CROS <sup>15</sup>	Access equipment as needed and available	MECP classroom
Augmentative communication	120 minutes per year	MECP classroom
Assistive Technology	120 minutes per year	MECP classroom
Support for Personnel in the areas of physical therapy, occupational therapy, and speech therapy	10 minutes, one time per month for each area of specialty	MECP classroom
Progress Reports sent to the parent	One time every two weeks until the (next) IFSP meeting	MECP classroom

- 23) In the Developmental Information section of the IFSP the team described the child as being very social, but shy initially. They noted that the child explores the environment by crawling, but can use a Pony Walker with steering help. They also noted that the child takes objects out of containers and puts them back in; drinks from a bottle or straw and eats foods with a variety of textures; reaches and grabs in supine, prone and supported sitting positions; follows some one-step instructions; participates in a play routine with another person for at least 1—2 minutes; and babbles two syllables together.
- 24) In addition, the team noted that they had considered parent and staff input and observations, the most recent evaluation and the results of the annual AEPS in developing the IFSP.
- 25) The EI services were provided in the home. The IFSP goals written for the child during the time the child received EI services were global in nature and reflected the skills children typically learn in the home environment as infants and toddlers. Those Early Intervention goals emphasized increasing the child's ability to engage during play; be independent during play; and eat independently. In contrast, the goals written for the child for the first year of ECSE services specify skills in the discrete skill areas. These goals are outlined as follows:

Goal and Objectives	Criteria	Evaluation Procedures
<u>Social or Emotional Goal:</u> <ul style="list-style-type: none"> <li>Child will participate in turn taking and/or back and forth play with another child</li> </ul>	4/5 opportunities over 2 data days	Teacher observations, staff data
<u>Receptive Communication Goal:</u> <ul style="list-style-type: none"> <li>Child will increase receptive vocabulary</li> </ul>	3—5 identified objects/play activities over 3 data days	Running list of vocabulary the child can identify
<u>Expressive Communication Goal:</u>		

<sup>14</sup> AFO's are ankle-foot orthoses

<sup>15</sup> Columbia Regional Orthopedic Services

<ul style="list-style-type: none"> <li>Child will use word approximations and communication device to express wants and needs during the classroom routine.</li> </ul>	3—5 word approximations / pictures used over 3 data days	Running list of approximations and pictures the child is using to communicate
<p><u>Cognitive goals:</u></p> <ul style="list-style-type: none"> <li>Child will follow classroom routines and transitions from one activity to the next;</li> <li>Child will follow 1—2 step routine directions</li> <li>Child will match colors and shapes</li> </ul>	Observed over 3 data days Out of 5 opportunities during activities 3—5 colors/shapes matched over 3 data days	Teacher's observations, staff observations, data Teacher's observations, staff observations, data Staff observations, data collecting with written progress notes
<p><u>Adaptive Goal:</u></p> <ul style="list-style-type: none"> <li>Child will participate in bathroom routine, i.e. sitting on toilet, flushing toilet, washing hands</li> </ul>	Child will participate to best of physical ability during bathroom routine	Teacher, staff observations and practice routine once during class.
<p><u>Fine Motor Goal:</u></p> <ul style="list-style-type: none"> <li>Child will increase functional play and fine motor skills, will use one hand to hold objects while other hand manipulates toys or objects</li> </ul>	Demonstrates skill set 4 of 5 opportunities with 2 data days	Work sample, teacher's report, observation, therapist's data
<p><u>Gross Motor Goal:</u></p> <ul style="list-style-type: none"> <li>Child will improve ability to walk with a walking device around the classroom to better engage with peers, teacher, classroom materials, and table activities as seen by completion of 4 of 6 of the short term objectives at school<sup>16</sup></li> </ul>	Completion of 4 out of 6 of the short term goals on 2 consecutive data days	Review of progress with team
<p><u>Independence with feeding goal:</u></p> <ul style="list-style-type: none"> <li>Child will use a spoon to feed self using a gross grasp</li> </ul>	4 of 5 opportunities	Teacher's report, AEPS and observation

26) After considering a continued educational placement of the home and another of an integrated

<sup>16</sup> The therapist wrote this goal using the word "Transitions" in the short term objectives. The therapist used the word transitions to describe the child's movement from one place in the classroom to another, i.e., moving from the sand table to the play kitchen is one transition, and moving from the play kitchen to the circle area is a second transition. The short term objectives specify that the student should eventually be able to make 3 transitions in a row, using a walking device.

preschool classroom, the team chose the integrated preschool classroom. The team's rationale for this decision was that the classroom setting would best prepare the child for a kindergarten transition and would provide opportunities for the child to generalize skills and practice appropriate social skills. Further, the team decided that the child would attend class for two hours and 15 minutes, two days per week. The team decided that the child would spend the 4.5 hours per week in the Integrated Pre-School Program.

- 27) During the IFSP team meeting, the parent expressed several concerns about the program as the team discussed it including, but not limited to transportation concerns, the amount of service time, use of a wheelchair in place of a walker, and various assistive technologies. Specifically, when the supervisor informed the parent that, for safety reasons, the child would need to use a wheelchair while riding the school bus, the parent disagreed and questioned why the child could not use the walker or a car seat.
- 28) Typically the school district in which the parent resides is responsible for providing the transportation for children in the ECSE programs, and a special education administrator from the parent's resident school district attended the September 9 IFSP meeting. The representative explained that industry safety standards for school buses recommend that standard car seats, designed for non-commercial vehicles, are difficult to secure safely to a bus seat. Similarly, the child could not be safely secured in the walker. Since the child is only minimally ambulatory with assistance, the only choice for safe transportation was a wheelchair. The resident district requires that children be able to walk on and off the bus either independently or with the assistance of a one-to-one aide.<sup>17</sup>
- 29) The parent expressed additional concerns about classroom safety and asked the team to provide a one to one assistant for the child. The parent expressed the concern that the amount of service time for the OT, PT and Speech/Language Therapist to work with the child was not adequate. The team responded that the child teacher ratio<sup>18</sup> in the classroom was adequate to meet the child's safety and educational needs. The team also explained that the program uses a coaching and consultation model wherein the specialist teaches the teacher and the educational assistants how to work with the child in a particular skill area, i.e., practicing using the walker to move around the classroom, or using the assistive technology device to communicate wants and needs. Finally the parent worried that the child would be "stuck" in the wheelchair for most of the day. The team explained that the rationale for using a wheelchair occasionally in the classroom was to allow the child to move independently from station to station in response to peers. For safety reasons, when using the walker, the child is dependent on staff to be right there.
- 30) Finally, the parent told the team that the two day per week schedule was not enough service time for the child to make a good transition to the classroom setting and to make progress on goals and objectives. The total amount of service time specified on the April 19, 2011 IFSP is 45 minutes per week of occupational therapy; 135 minutes per month of physical therapy; and, 135 minutes per month of speech/language services. After the service times were changed on the April 19, 2011 IFSP, until the child started in the ECSE classroom on September 13, 2011; there were opportunities for the child to receive 30 hours of services in OT, PT, and speech/language therapy. This is an average of 5.7 hours of service per month for this five month period. Taking into account the scheduled calendar breaks in the 10 month period from September 6, 2011 through June 15, 2012 the child would have received an average of 15 hours of service per month.
- 31) On September 12, 2011, the Program sent the parent a Prior Written Notice informing the parent

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<sup>17</sup> For safety reasons, the driver cannot provide this service, i.e., if the driver were to be incapacitated and there were no other adult on the bus, a child who cannot move independently would be at great risk.

<sup>18</sup> Staff to student ratio is 1:4 at its highest; but more frequently is 1:3 per ESD staff interviews.

that the Program believed the service time outlined in the IFSP was adequate to meet the child's needs and that the child did not need a one to one assistant.

- 32) The Program procured a wheelchair for the child to use while riding the bus. The child began attending school on September 13, 2011 and continued through November 8, 2011. The child attended the class for 16 of 17 possible days and in the 16 days of attendance the child received all services in OT, PT and Speech/Language as outlined on the IFSP.
- 33) The parent withdrew the child from school on November 9, 2011.
- 34) During the IFSP meeting on September 12, 2011, the team and the parent agreed that the parent would attend classes with the child initially to help the child transition to the classroom program. At that time no specific timetable was set for how long each day the parent would attend the class, or the total days the parent would attend. However, as time went on, the parent and the classroom staff had some informal conversations about how the parent could leave the classroom in order to allow the child to work independently with the staff. Although they tried a few informal strategies, i.e., the parent left the classroom for 15 minutes; nothing was successful and the child continued to cry loudly when the parent was not in the classroom.
- 35) The parent attended the class every day from September 13, 2011 until October 26, 2011. During this time, the child got upset every time the parent was out of sight in the classroom. The child would cry loudly and others could not easily console the child.
- 36) On September 22, 2011 the parent sent an email to the Program supervisor. In the email the parent again expressed concern that the child was not receiving enough service and that the placement was unsafe for the child due to a suppressed immune system.<sup>19</sup> The parent also stated that the two days per week were not enough for the child to get to know the routine and the peers and staff members well, and asked the team to reevaluate the child. The supervisor responded and asked the parent to contact the classroom teacher in order to set up an IFSP meeting.
- 37) After a series of emails between the parties, the team agreed to meet on October 12, 2011. At this meeting, the team discussed the concerns the parent had expressed and written about. These included the following:
  - a) The percentage of typical peers in the classroom had decreased significantly;
  - b) The classroom setting was not safe enough for the child;
  - c) The bathroom was too small for the child to enter using the walker;
  - d) When the child needed to be changed, the team had to lay the child down on the floor;
  - e) The child had too many goals to meet in the amount of time scheduled each week;
  - f) The parent would like to visit other classrooms;
  - g) The child was not getting enough one-to-one time with OT, PT and speech language specialists;
  - h) The parent would like the child to have a one-to-one assistant, and to have a combination of home and school services; and,
  - i) The parent believed that the child was not making adequate progress; and that the team was not offering any new solutions to increase the child's progress.
- 38) The Program team responded to the parent's stated concerns by explaining the structure and the philosophy of the program—coaching and consultation model; integration with typical peers as much as possible; and, the fact that children's placements are the result of decisions made by the individual IFSP team. The team also offered to change the child's placement to a home service

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<sup>19</sup> The student receives Botox treatments every three months and these treatments suppress the immune system. The parent was concerned about the fact that the classroom opens to an outside corridor which could increase the child's chances of becoming ill.

placement, and to arrange for the parent to visit other classrooms. Team members told the parent that it was too soon to do another evaluation of the child's progress. Team members also suggested that the parent consider not attending the classroom daily as a way to help the child begin to feel more comfortable in the program. The Program supervisor offered the mediation process to the parent as a way to resolve the concerns and differences of opinion.

- 39) The Program team members often referred to the fact that the child had made adequate progress during the time the child had attended the current classroom, but there is nothing in the IFSP meeting minutes to indicate that the team actually reviewed any progress reports or data sheets in the meetings.
- 40) On October 13, 2011, the Program team sent the parent three Prior Written Notices of special education action. One of the three corrected a clerical error made on a notice sent in September; and the second informed the parent that the Program team had offered mediation and the parent had refused the offer. The third notice informed the parent that the Program refused to extend the amount of time the child attended on a weekly basis and refused to provide a one-to-one assistant. In addition, the Program refused to reevaluate the child at that time. However, the Program did agree to install a changing table in the classroom; to arrange parental visits to other classrooms; and to change the actual days the child attended the program. The parent was asked to notify the Program about which two days the parent wanted the child to attend, i.e., Monday, Tuesday, Wednesday, or Thursday.
- 41) On October 19, 2011, the parent sent an email to the Program supervisor. In this email the parent reiterated the concern that the child was not making adequate progress, and asked the team to allow the child to try a 4-day schedule for 4 weeks to see if the child made increased progress on the IFSP goals.
- 42) On October 26, 2011, the Program coordinator wrote a letter to the parent and responded to the concerns the parent had expressed in a phone call and the October 19<sup>th</sup> email. In the letter the coordinator addressed three major concerns.
  - a) IFSP Goals: The coordinator stated that the team had reviewed the receptive communication goal on 9/12/2011, and 4/19/2011 and that the team revised the goal in September to be functional in the new classroom and to expand the ways the child could demonstrate understanding. In addition, the team had decided on 10/12/2011 that the child was making adequate progress and was receiving a Free and Appropriate Public Education (FAPE) at the current level of service.
  - b) Classroom: The coordinator stated that the child had a staff member by the child's side at all times to meet the child's needs and to maintain safety. The coordinator reiterated that the team had installed a changing table in the classroom per the parent's request. Finally, the coordinator stated that the configuration of the classroom was similar to all other MECP classrooms and that all pre-school children spent a portion of the day outside; so that a move to another classroom would not change any of those concerns. The coordinator also noted that the parent was concerned that even though the parent had been attending class all fall, the child was still crying and did not seem adjusted to the program. The coordinator wrote to the parent that the child was now familiar with the program and that the team would write a transition program to enable the parent to ease out of the classroom. The coordinator informed the parent that the teacher would call the parent to set up a meeting to discuss the plan.
  - c) Transportation: The coordinator informed the parent that the resident district required all children to be able to walk off and on the bus and that if the child could not do so independently; the child needed a wheelchair for transportation. (See footnote 15)

- 43) In closing, the coordinator reminded the parent that mediation was still an option for unresolved IFSP disputes.
- 44) The parent emailed the MECP coordinator and the MESD special education director on October 27, 2011 and expressed many of the same concerns. Later that day, the classroom teacher emailed the parent and asked if the parent could meet to discuss the transition plan on November 1, 2011. The parent emailed back and asked if the team intended to add or remove services from the IFSP. The supervisor replied and stated that this was a meeting to discuss a "transition plan" so that the child would have an easier time in the classroom without the parent being present. The parent replied the next day (10/28/1011) and again expressed concern about the amount of time the child was able to attend, and about the configuration of the classroom. The parent also asked the supervisor to communicate with the parent only by email; and stated that the parent was not comfortable meeting outside of the IFSP meeting structure.
- 45) On October 28, 2011, the supervisor emailed the parent and acknowledged the parent's request to communicate by email only. The supervisor also informed the parent that since the parent could not attend the November 1, 2011 meeting the team would mail the "transition plan" for the team to review. The parent wrote back and asked if or when the IFSP team had met without the parent, and the parent asked the supervisor to email her the new plan rather than sending it via U.S. Mail.<sup>20</sup> The supervisor wrote the plan, asked other staff members to review it, and then mailed it to the parent. The Support and Transition plan that the staff developed is a plan to assist the child with separation anxiety experienced when the mother leaves the classroom. The team reviewed the difficult behavior (screaming, crying) and deduced that these behaviors occurred when the child was separated from the parent in the school setting. The team conjectured that a strategy that might prevent the difficult behavior include the use of a visual transition strip to be presented to the child before the child gets on or off of the bus. The pictures would show the child riding the bus, arriving at school with the other children, and then returning home. In addition, while the parent might transport the child to or from school, the parent would not attend the classroom when the child was there. Finally, the team offered extra support for the child during the implementation of this transition plan.
- 46) On November 2, 2011, the teacher emailed the parent to say that the child did well getting off the bus on that day and that the child did well in class and did not cry.
- 47) On November 3, 2011, the parent emailed both the resident district assistant director of special education and the MESD director of special education and asked for help in changing the child's placement. Both referred the parent to the Program supervisor. On November 4, 2011, the supervisor emailed the parent and stated that the concerns the parent had expressed had been addressed in IFSP meetings; that the child was adjusting to the class and making progress.
- 48) On November 8, 2011, the supervisor emailed the parent and asked when the parent wanted to visit other classrooms. The parent called the teacher on November 9, 2011, and asked about the bump on the head. The teacher replied that the child had not received the bump in the classroom setting. On November 10, 2011, the parent emailed and asked to talk to the coordinator. In the email the parent stated that the child had arrived home the previous day with a small bump on the head, upset and crying. The parent asked for help. Later on November 10, 2011, the supervisor emailed the parent and again reiterated that the child was making progress in the program; that the location of the class was similar to other classrooms in different locations; and that there was no record of the child receiving a bump on the head in the classroom. The supervisor acknowledged that the teacher had erroneously sent another child's progress report to the parent,

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<sup>20</sup> The information was sent to parent via both email and U.S. mail.

but they had corrected the mistake as soon as possible. The parents of the other child whose information was involved were understanding and did not protest the mistake. The supervisor apologized for the mistake.

- 49) The parent replied to the supervisor later in the day and expressed the feeling that the parent could no longer work with the supervisor or the school team. The parent asked that another supervisor and team be assigned to the child.
- 50) On November 15, 2011, the parent and supervisor exchanged multiple emails. All of them concerned the parent visiting other classrooms. The parent had independently arranged a visit to a classroom in another area for November 16, 2011. The Program staff told the parent that the parent needed to be accompanied by a Program supervisor in order to visit other classrooms. The parent visited the other classroom on the scheduled day without a supervisor.
- 51) On November 18, 2011, the supervisor responded to the emails the parent had sent between November 10—15, 2011. Basically, the supervisor restated all of the parent's concerns and the Program responses under discussion since September, 2011. The supervisor informed the parent that the teacher would call to schedule another IFSP meeting.
- 52) On November 9, 2011, the parent withdrew the child from school, and on November 14<sup>th</sup>, the parent filed the complaint with the Department.
- 53) During the time the child attended the classroom, staff sent progress reports approximately every two weeks. The classroom teacher sent reports on September 22<sup>nd</sup>, October 6<sup>th</sup>, October 19<sup>th</sup>, and November 4<sup>th</sup>. In these reports the teacher outlined the child's behavior in the classroom, reporting how the child responded to other children, staff and objects in the classroom.
- 54) The speech/language therapist sent reports on September 16<sup>th</sup>, 22<sup>nd</sup>, October 7<sup>th</sup>, and November 8<sup>th</sup>. In the reports, the therapist explained the setting in which the therapist had worked with the child and how the child was doing on the specific communication goals.
- 55) The physical therapist sent reports on September 22<sup>nd</sup>, October 5<sup>th</sup>, 19<sup>th</sup>, and November 2<sup>nd</sup>. The physical therapist described working with the child and included such information as "student has walked 3 transitions but requires a great deal of assistance to do so" (10/19/11).
- 56) The occupational therapist sent reports on September 22<sup>nd</sup>, October 6<sup>th</sup>, 20<sup>th</sup>, and November 4<sup>th</sup>. The therapist described the child using a spoon, working on matching shapes in a puzzle with hand over hand assistance, and picking up small pieces of food.

#### IV. DISCUSSION

##### **Placement and Least Restrictive Environment in ECSE:**

The parent alleges that the Program failed to provide an appropriate education in the least restrictive environment when the Program did not provide services in a program where the child was integrated with typically developing peers for-at least 50% of the time. Under OAR 581-015-2845, the contractor or subcontractor must ensure that a child with a disability receives services in the least restrictive environment possible, including home and community settings in which children without disabilities participate. The Program must also make sure that there is a continuum of alternative placements available including placements in the home, hospitals, institutions, special schools, classrooms and community childcare or preschool settings. In this case, the Program offers a continuum of services that contains integrated pre-school classes, as well as home services and services provided in other

community settings, i.e., Head Start. The team chose, with the parent's agreement, the Integrated Pre-School classroom. These classrooms are open to both typically developing peers in the community for a cost and children who are eligible for services under IDEA Part C and applicable State laws. Typical peers are allowed to attend 3 of the 4 days the program operates per week. However, because the state does not mandate attendance in pre-school, there is no way the Program can guarantee that each Integrated Classroom will have a specified number of typical peers in attendance for the full year or even for portions of the year. In this child's classroom, the number of typical peers varied between a high of 7 and a low of 2 while the number of eligible children remained stable at 7 on one day per week and 5 on the other day. Given the uncertainty of the number of typical peers who might attend this program at any given time, the IFSP Team reasonably determined that the child's early childhood special education and related services could be provided in a classroom which contained some typical peers at all times. Therefore, the Department does not substantiate the allegation, and orders no corrective action.

### **Parent Participation – General –EI/ECSE Program:**

The parent alleges that the Program violated IDEA when it failed to provide the parent with an opportunity to participate in decision-making regarding the child or IFSP when the Program limited contact with the parent and the program supervisor did not respond to parental requests; and when it did not include the parent in a meeting when the Program made a transition decision; and, when it sent the parent a different child's progress report and reported unclear information about the child's progress in physical therapy.

Under 581-015-2750, a Program must provide parents with an opportunity to participate in meetings with respect to the child's identification, evaluation, IFSP, placement, provision of a free appropriate public education and transition to school age services. Under OAR 581-015-2750 and 2755, a Program meets its responsibility when it arranges a meeting sufficiently in advance so that the parent(s) have an opportunity to attend; and when it takes whatever action is necessary in advance to ensure that parents understand the proceedings at the meeting. In addition, OAR 581-015-2810 mandates that contractors and subcontractors must initiate and conduct, with the family's approval, an IFSP meeting at least 90 days in advance to plan the child's transition from Early Intervention to Early Childhood Special Education services. Parents may request a meeting at any time to review or revise the IFSP, and once the parent has requested a meeting, the contractor or subcontractor must hold a meeting within a reasonable time.<sup>21</sup> Under OAR 581-015-2815(3)(j)(B) the Program must regularly inform the child's parents of the child's progress toward major outcomes or annual goals; and the extent to which that progress is sufficient to enable the child to achieve the outcomes of the annual goals. Taken together these rules outline the formal involvement of a parent in the child's early childhood special education program.

In the first sub-allegation, the parent alleges that the Program limited the parent's contact with staff and that the supervisor failed to respond to the parent's requests. In fact, the parent had a great deal of contact with staff. First, the parent attended the classroom for the first two months the child attended the program and participated in all of the classroom activities with the parent and staff. The team held three IFSP meetings in the first month, and team members, including the supervisor, exchanged multiple emails and phone calls with the parent. Eventually, as the point of dispute between the parent and the team increased, the parent specifically requested that the team use only email for contact. Over the 7—8 weeks that the child participated in the program, the parent asked the same questions, raised the same issues and made the same requests multiple times. The Program supervisor, coordinator, and special education director all answered these questions and responded to the issues and the requests. However, they continually did not give the parent the answers the parent wanted to hear. For this reason, the parent told the complaint investigator that the parent felt

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<sup>21</sup> OAR 581-015-2810



the team was not hearing the parent correctly and as a result parent no longer trusted the team. The team believed it had good rationale for not acquiescing to the parent's requests, but made multiple attempts to explain this to the parent. For this reason, the Department does not substantiate this part of the allegation and orders no corrective action.

In the second sub-allegation, the parent alleges that the Program did not include the parent in a meeting when the Program made a "transition decision". During the process of the allegation, the parent clarified that the "transition" in question was the plan to remove the parent from the classroom and help the child transition independently to the educational setting or to support the child to overcome the child's perceived separation anxiety. The parent requested an IFSP meeting to discuss this decision, but when the Program scheduled a meeting for the Support and Transition Plan, the parent was not able to attend, and asked the Program to email her the plan instead. Because the plan was not specifically part of the child's ISFP, the Program did not believe an IFSP meeting was actually necessary to discuss the support and transition plan. This plan was needed because after a few weeks of the parent attending class with the child, all parties agreed that the parent should start to decrease the amount of time in the classroom. However, outside of a few informal attempts for parent to limit classroom involvement, nothing really changed for the child, and the situation became more difficult for all. When the team actually wrote the "support and transition plan", they focused it on the child's behavior in the classroom and the antecedent of the parent being in the classroom continuously. The support and transition plan in question gives the child extra support by providing extra staff in the classroom while implementing the plan, providing the child with a visual transition strip for use throughout the day, allowing the parent to pick up the child only from the parent room at the school rather than from the classroom, allowing for a staff member to transition the child to the parent room, and telling the parent to remain absent from the classroom setting during the two hour fifteen minute school day.<sup>22</sup> The plan in question did not impact the child's Free Appropriate Public Education (FAPE) or identification, evaluation, or education placement in any way; therefore, the meeting in question would not have required parent participation.<sup>23</sup> Additionally, behavior was never an issue or concern for the child during any of the IFSP meetings, so this document is not a Functional Behavior Plan. However, since this matter concerned the parent so directly, rescheduling the IFSP meeting to go through the process with the parent would have produced more success and is a better practice for the Program to follow. The Department does not substantiate this sub-allegation and orders no Corrective Action.

In the third sub-allegation, the parent alleges that the Program sent the parent a different child's progress report and reported unclear information about the child's progress in physical therapy. After the Program sent out the progress reports on November 14, 2011, staff immediately recognized that they had sent another child's progress report to the parent. The supervisor emailed the parent about the mistake, apologized, and the Program sent the correct copy to the parent. The parent also alleges the physical therapist sent unclear information to the parent about the child's progress in physical therapy. During interviews with the parent, the investigator learned that the parent did not understand the use of the word "transitions" as a way to explain the child's movement from one setting in the classroom to another (see footnote #14). The investigator explained this misunderstanding to the MECF team as well. The Program inadvertently sent the parent the wrong progress report and used a somewhat esoteric term to describe the child's movement in the classroom. Both of these occurrences confused the parent, but do not constitute a violation of IDEA. For this reason, the Department does not substantiate the parent's allegation and orders no corrective action.

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<sup>22</sup> Support and Transition Plan

<sup>23</sup> 34 CFR 300.501(b)

### **Individualized Family Service Plan (IFSP) Content:**

The parent alleged that the Program failed to include goals from a previous IFSP on the current IFSP. OAR 581-015-2815 specifies the types of major outcomes, annual goals and short-term objectives an IFSP must contain for both a child under three and a child over the age of three. For the child under the age of three, the goals must be focused on "vision, hearing and health status, cognitive, communication, social and adaptive development" (OAR 581-015-2815 (3)(a)). For children who are at least three years old, the IFSP must also include an educational component that promotes school readiness and incorporates pre-literacy, language and numeracy goals (CFR §303.344 (d)(4)) In this case, the change in the goals from the IFSP written for EI services to the IFSP written for ECSE services reflects the beginning of the inclusion of school-readiness skills. For example in EI the child was working on an independent play goal that included the child initiating contact with others. In ECSE that skill changed to a goal to help the child improve the ability to walk with a walking device around the classroom to better engage with peers, teacher, classroom materials, and table activities. Again, the parent found the differing styles very confusing. In addition, when the ECSE team wrote the goals for the ECSE services in September, 2011, team members concluded that some of the criteria in EI had been set too high for the child to reach in the given time period. Therefore, the team reduced some of the criteria. The combination of the reformatted goals and criteria to emphasize school readiness skills looks very different from a home services (the child's EI natural environment) IFSP; however, the new IFSP contains all of the relevant and requisite skill areas. Therefore, the Department does not substantiate the complaint and orders no corrective action.

### **Implementation of the IFSP:**

The parent alleges the Program violated IDEA when it failed to implement the IFSP by reducing Occupational Therapy, Physical Therapy and Speech/Language services by more than 30%; leaving the child in the wheelchair instead of working on goals due to "limited time and space"; not providing Physical Therapy services after a Physical Therapist left the program; and, refusing to change the IFSP and the child's placement. Under OAR 581-015-2830, an IFSP must be in place before the child begins receiving services, and must be provided at the beginning of the school year for children who are at least three years old. Under OAR 581-015-2830 (4) and (5), contractors or subcontractors must implement the IFSP and provide ECSE and related services to a child with a disability in accordance with that IFSP. Further, nothing in this rule limits a parent's right to ask for revisions of their child's IFSP or to invoke due process procedures.

The calculation of the amount of service time provided to a child in EI or ECSE is difficult to standardize. Services are provided on a 12 month basis, with multiple breaks during the year of varying lengths. In addition, some services are provided on a monthly basis, some weekly and some daily. Finally, the team is required to note on the IFSP when the child is receiving services from other agencies and how much other service the child is receiving. The parent alleges that the Program reduced the child's OT, PT and speech language services by more than 30% when the child transitioned from EI to ECSE. Comparing the service times listed on the child's IFSP, with the scheduled days of operation establishes that the child's potential service time for the ECSE program actually increased from 5.7 to 15 hours per month. Again, this does not include services provided by other agencies outside the MECF. Because the amount of service time actually increased in the ECSE program, the Department does not substantiate this part of the allegation and orders no corrective action.

In the second sub-allegation, the parent alleges that the staff left the child in the wheelchair for most of the day instead of working with the child on goals and objectives. The child uses several different devices in the classroom to navigate the classroom. For example, the child's walker provides support to the child's back (Kaye walker) and therefore, allows the child to move to a table with other children and engage in the activity. However, because the child is not very stable and balanced, staff must be

present beside the child at all times when the child uses this walker. In contrast, the child is well-supported in the small wheelchair and able to move around independently. This allows the child more freedom to engage with peers, staff and activities in the classroom at will. Because the staff used the wheelchair on a partial basis and in an appropriate manner to build the child's independence in the classroom, the Department does not substantiate the allegation and orders no corrective action.

In the third sub-allegation, the parent alleged that the Program did not provide physical therapy services to the child in June, 2011, while the child was in EI; because a physical therapist left the program. When the current therapist left in early June, 2011, the Program immediately assigned another therapist and the child received the appropriate amount of services. While it is true that the child missed some sessions of PT, this occurred because the parent cancelled the visits. The Program is not obligated to make up the therapy sessions when the parent cancels the visits. Because the Program immediately assigned another therapist and that person provided services on the days the child was available, the Department does not substantiate this sub-allegation and orders no corrective action.

In the fourth sub-allegation, the parent alleged that the Program refused to change the IFSP and the child's placement despite the fact that the child was allegedly not making any measurable progress towards goals. The parent believed that the 2 day per week placement was not adequate enough to allow the child to make progress toward the goals and major outcomes identified in the child's IFSP. The team discussed this multiple times with the parent and continuously reiterated their position that a.) the amount of time (4.5 hours per week) was enough to generate progress; and b.) the child was making progress. Another IFSP meeting was held on October 12, 2011 to discuss the parent's concerns regarding the perceived lack of progress toward the child's goals and the parents concerns regarding the placement. The IFSP and its meeting notes do not indicate that any actual measures of progress were discussed with the parent in this meeting, nor were the goals and objectives of the IFSP addressed with their respective criteria or evaluation procedures from the annual IFSP. At this meeting, the Program told the parent that "progress was being made" so the hours and days of service would not be increased. The meeting notes related that staff told the parent of their "model" and that the "longest class we have is two hours and 15 minutes." The meeting notes indicate that staff reported they did not "have enough time to measure progress for the child at that time,"<sup>24</sup> but the notes also do not reflect that the staff mentioned any previous progress from the EI program's goals, or analysis of any other evaluations or IFSP goals in discussing this perceived level of adequate progress or justifications for a lack of progress measurements. The staff and parent continued to discuss hours and days of service predominantly throughout the meeting. The notes further indicate that the Program claimed the child is "making progress in all areas of the classroom", despite their concurrent argument that the Program did not "have time to adequately measure progress". Furthermore, nothing measurable is offered to support the claim that the child was making progress in any area of the classroom. Goals stated in an IFSP are intended to indicate measurable criteria.<sup>25</sup> For example, the first IFSP written 9/16/2011 as the child entered Early Childhood Special Education included the following goal:

1. XX will identify 3-5 objects and play activities, using eye gaze, pointing, and/or the communication device.

The State's required reporting format for child progress toward the IFSP goal automatically prompts the writer with this question: "Is the progress sufficient to meet this goal?" Program staff entered "yes" in answer to this question on all goals of the IFSP, but the remainder of the progress reporting format was blank, raising questions regarding specifically what the child could do.<sup>26</sup> In IFSP meetings, when

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<sup>24</sup> "...the supervisor...again reminded mom that...five weeks has not been enough time to determine if child is making progress ..." October 12, IFSP Meeting Notes

<sup>25</sup> OAR 581-015-2815 (3)(j)

<sup>26</sup> For example, could the child use eye gaze to identify 3 objects, 4 objects, 5 objects? Or could the child point to the

discussing goals and progress, the criteria (or standard by which the skill is judged as successful)<sup>27</sup> and evaluation procedures (the process or procedures used to evaluate the child's performance)<sup>28</sup> must be discussed or reviewed along with measures of progress.

The program provided numerous individual progress and therapy session reports, records, and summaries, to the parent outside of the IFSP meetings, but these rarely included the IFSP goals' criteria or evaluation procedures, rather these notes are written most often in an anecdotal or narrative format without any quantifiable data.

Examples:

"XX was crying "on and off." <sup>29</sup>

"Good Mood" <sup>30</sup>

"XX has been using an increased amount of consonant vowel (CV) babbling in the classroom." <sup>31</sup>

In the first examples, there is no way to know how long or how often the child actually cried. The second example is subjective. In the last example, there is no way to know what "increased amount" means.<sup>32</sup> At least some quantifiable data is needed to determine whether or not the child is making adequate measurable progress in any area and to what extent. The State's emphasis on the requisite objective data needed for adequately defining a child's progress in relation to IFSP goals is further reflected in the ECSE parent notification provision for IFSP Content.<sup>33</sup> The IFSP must relate to parents how often they will be informed of a child's progress toward major outcomes or annual goals<sup>34</sup> and the extent to which that progress is sufficient to enable the child to achieve the outcomes or goals by the annual IFSP review date,<sup>35</sup> Therefore, even though the Program staff claimed the child was making progress toward all goals, the actual IFSP goals and their accompanying criteria and evaluation procedures should have been used in discussing, documenting, or detailing the existence of adequate IFSP goal progress.

Additionally, some of the child's exam scores drastically decreased at the time the child entered the ECSE program, which was not taken into account by the team. When the team reviewed the August 2011 evaluation, which included the Battelle and the AEPS test results, there is no evidence to suggest that the team compared these results with the initial evaluation completed in April 2009. Such a comparison shows that while the child made minimal progress in the skills tested by the AEPS; the test results of the Battelle showed severe regression in skills. Had the team discussed this comparison or these results further at the September IFSP meeting, they might have asked different questions and reached different conclusions about the child's ability to make progress toward goals in a given amount of time and the child's subsequent appropriate educational needs. While the team in this case, consistently used phraseology to indicate the child was making and had made progress, there is very little evidence to support such statements; and the team's failure to compare the 2009 and 2011 evaluations is an omission. If the drastic decline in the child's scores was due to the degenerative nature of an illness, or other factors, the team should have been able to account for or at least analyze those factors while looking at the differing scores.

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objects? Or could the child use the communication device successfully?

<sup>27</sup> ORS 343.521 and Oregon IFSP Forms

<sup>28</sup> OAR 581-015-2815 (1) and Oregon State IFSP Form Goals and Objectives Page- found at <http://www.ode.state.or.us/wma/pubs/forms/eiecse/1287p-en-goalsobj.pdf>

<sup>29</sup> Progress report to Parent 9-22-2011

<sup>30</sup> Progress note dated 10-04-2011

<sup>31</sup> Speech and Language Progress note Week of 10-12 to 10-19

<sup>32</sup> Speech and Language Progress note Week of 10-12 to 10-19 (*id*)

<sup>33</sup> OAR 581-015-2815(3)(j)(B)

<sup>34</sup> OAR 581-015-2815(3)(j)(B)(i)

<sup>35</sup> OAR 581-015-2815(3)(j)(B)(ii)

Due to the fact that the parent did not believe that progress was being made toward the child's goals, and the Program did not document or indicate how any progress was actually being made by the child, the parent was able to request that the IFSP be revised in order to achieve measurable progress towards IFSP goals.<sup>36</sup>

Given the fact that the team could not demonstrate any measurable or objective data to support its contention that the placement was appropriate, or that the child was making actual progress toward IFSP goals, and that the team did not consider or discuss the substantial differences in the two Battelle evaluations when transitioning the child, the Department substantiates this allegation and orders corrective action.

### CORRECTIVE ACTION<sup>37</sup>

*In the Matter of Multnomah Education Service District - ECSE  
Case No. 11-054-030*

	Actions	Submissions <sup>38</sup>	Due By
(1)	<p>Coordinate a meeting of any staff responsible for, or contributing to, the evaluation used to determine the child's eligibility for ECSE services as the child transitioned from early intervention (EI) to ECSE, and review with this staff:</p> <p>Elements of initial evaluation and eligibility determination under IDEA including, at a minimum, those found in OAR 581-015-2105 - 581-015-2125 581-015-2790, 581-015-2795, and 34 CFR §300.301 - 300.306.</p>	<p>List of individuals, including positions and titles, contributing to the initial evaluation for ECSE who will participate in this review.</p>	<b>March 16, 2012</b>
(2)	<p>Analyze the progression of the child's assessment and evaluation results from EI to ECSE and progress toward the goals using applicable criteria and evaluation procedure.<sup>39</sup></p>	<p>Analysis and explanation of the progress trend(s) from the EI program to the ECSE program and the applicable analysis of any progress made towards IFSP goals while in the ECSE program</p>	<b>April 6, 2012</b>

<sup>36</sup> OAR 581-015-2830(5)


<sup>37</sup> The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).

<sup>38</sup> Corrective action plans and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: [raeann.ray@state.or.us](mailto:raeann.ray@state.or.us) fax number (503) 378-5156.

<sup>39</sup> Using information and data available at the time of the child's evaluation for ECSE including, but not limited to, EI evaluation results, IFSP documents, and progress reports

		(until the filing of the complaint) <sup>40</sup> , with a copy to the parent. <sup>41</sup>	
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Dated: March 1, 2012



Nancy J. Latini, Ph.D.  
Assistant Superintendent  
Office of Student Learning & Partnerships

Mailing Date: March 1, 2012

**APPEAL RIGHTS:** You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which you reside. Judicial review is pursuant to the provisions of ORS 183.484.

Additionally, pursuant to OAR 581-015-2030(14)(b), the Department of Education will not reconsider complaints after a Final Order has been issued.

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<sup>40</sup> The complaint was filed November 14, 2011.

<sup>41</sup> Include with the report sources the parent may contact for additional explanation of this report if needed.