**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

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| In the Matter of Multnomah Education Service District Early Intervention/Early Childhood Special Education (Area 6) | ) ) ) ) | FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Redacted Case No. 08-054-019 |

## I. BACKGROUND

On May 13, 2008, the Oregon Department of Education (Department) received a letter of complaint from the parent of a child attending school and residing in the Multnomah Education Service District (ESD) Early Intervention/Early Childhood Special Education (EI/ECSE) Program, containing additional allegations to those made in a prior pending complaint, case number 08-054-012. The Department dismissed the previous complaint and consolidated the allegations into the current case. The parent requested that the Department conduct a special education investigation under OAR 581-015-2030.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint, unless exceptional circumstances require an extension.[1] On May 20, 2008, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On May 28, 2008, the District timely submitted its *Response* to the allegations (received on May 29, 2008) and sent the parent a copy. The parent has not provided a reply, other than to send some documents by facsimile to the complaint investigator on June 11, 2008, and June 15, 2008.

The Department's complaint investigator reviewed the information submitted by the ESD, and determined that on-site interviews were needed. The investigator conducted on site interviews with the ESD's special education director and school supervisor on June 11, 2008. On June 25, 2008, the parent briefly spoke with the complaint investigator and provided some information verbally. The parent declined the opportunity to meet with the investigator. The Department's investigator reviewed and considered all of the documents and interviews.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR 300.151-153. The allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact (Section III) and the Discussion (Section IV).

| No. | Allegations | Conclusions |
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| (1) | IFSP Implementation: failure to provide services from September 7, 2007, to October 17, 2007: | Not Substantiated |

[1] OAR 581-015-2030(12); 34 CFR 300.151-153.

| No. | Allegations | Conclusions |
|---|---|---|
| | The ESD failed to provide educational services for the child from September 7, 2007, to October 17, 2007. The parent also alleged that she attempted to have services begin on September 3, 2007, and September 7, 2007, with no response from the ESD. | |
| (2) | Evaluation delay and impact on services:<br><br>The parent alleged that the ESD's delay in obtaining an independent educational evaluation and in notifying the parent about the evaluation results prevented the Individualized Family Service Plan (IFSP) team from fully considering the evaluation results to modify education services prior to the end of the 2007-2008 school year. | Not Substantiated |
| (3) | Appropriate Level of Services:<br><br>(a) The parent alleged that the IFSP team failed to provide sufficient physical therapy services and add additional days as requested by the parent at the January 30, 2008 meeting. The parent also alleged that the IFSP team failed to provide sufficient occupational therapy services to address the child's fine motor skills.<br><br>(b) The parent alleged that the IFSP team at the March 13, 2008, meeting added only minimal occupational therapy services and those services were insufficient to address the child's regression in scissor skills. The parent alleged that the physical therapy services were insufficient to impact the child's progress on gross motor skills. | Not Substantiated<br><br>Not Substantiated |
| (4) | Extended Year Services<br><br>(a) The parent alleged that the IFSP team should have determined the need for extended year services at the March 13, 2008 meeting when the child's regular preschool teacher was available. | Not Substantiated |

| No. | Allegations | Conclusions |
|---|---|---|
| | (b) The parent alleged that the ESD denied extended year services to address the child's need for occupational therapy, speech and cognitive services and provided for only minimal services in physical therapy at the April 23, 2008 IFSP meeting. The parent also alleged that the ESD failed to properly determine whether the child needed extended year services during the summer of 2008 at the follow-up meeting on May 7, 2008. The parent specifically alleged that the ESD did not consider data from spring, summer, and winter breaks to determine if extended year services were needed to maintain the child's progress on cognitive, occupational therapy, speech and adaptive goals. | Not Substantiated |
| | (c) The parent alleged that the ESD should have provided early childhood special education services (ECSE) for the summer of 2008 because the ECSE runs a year long program. | Not Substantiated |
| (5) | Proposed Corrective Action:<br><br>The parent requests the following Corrective Action: Compensatory services in all areas in which the ESD did not provide sufficient services. | No Corrective Action was ordered |

## III. FINDINGS OF FACT[2]

**Background:**

1. The child is presently **[ ]** years old, and is eligible for Early Childhood Special Education Services (ECSE) as a child with an Orthopedic Impairment.

2. At the beginning of the 2007-2008 school year the child's May 31, 2007, Individualized Family Service Plan (IFSP) provided for placement in the ECSE classroom for three days per week, two hours and 15 minutes per day with specialized instruction in adaptive and cognitive goals. The IFSP also provided specialized instruction to address: (a) Gross motor goals, provided directly to the child by the physical therapist three times per month for 30 minutes each time, and consultation provided to the parent about these goals one

[2] Some of the findings of fact are taken from the Department's previous investigation in case number 07-054-053, involving the same child and the ESD, to provide context for the present issues.

time each month for 45 minutes; (b) Gross motor goals, provided directly to the child by the licensed physical therapist's assistant two times per month for 20 minutes each time; (c) Expressive and receptive communication goals, provided directly to the child by the speech/language therapist one time per week for 20 minutes, and by the speech/language assistant one time per week for 20 minutes; (d) Pre-writing goals, provided directly to the child once each month for 15 minutes and consultation provided to the staff one time each month for 10 minutes; and (e) Bus transportation to and from school.

**IFSP Implementation: failure to provide services from September 7, 2007, to October 17, 2007:**

1. On June 11, 2007, the Education Service District (ESD) sent the parent, by certified mail, a copy of the May 31, 2007 IFSP. The child was scheduled to attend a morning ECSE program starting on July 10, 2007,[3] but the ESD learned through a source other than the parent that the child would be out of the country for the summer. On July 17, 2007, an ESD supervisor attempted to contact the parent, with no success. In early July 2007, the parent, accompanied by the child, traveled outside the country. The ESD cancelled transportation for the summer session after finding no one was at home. The summer session ended on August 9, 2007.

2. On September 10, 2007, the first day of school after the August break, ESD supervisor called the parent to see if they were home. The parent reported they had just returned and were "jetlagged" and asked the supervisor to call back in a week. The contact log for the ESD did not show that the parent contacted the ESD on September 3 or September 7, 2007. On September 17, 2007, the ESD received verification that the child had been accepted and enrolled in the Head Start program on Tuesday, Thursday, and Friday mornings to begin on September 24, 2007. On September 17, 2007, the supervisor called the parent, who confirmed the child's acceptance into the Head Start program. Because the ECSE classes, which were scheduled for Tuesday, Wednesday, and Thursday mornings conflicted with the Head Start classes, the supervisor also discussed with the parent the possibility of attending an afternoon ECSE classroom until the IFSP team could meet to determine the child's appropriate placement.

3. The parent, without consulting with the ESD, arranged for the Head Start program to transport the child to the ECSE afternoon classes. A Head Start representative contacted the ESD to advise that they would transport the child to the ESD afternoon class beginning October 16, 2007. However, the child would arrive forty-five minutes early and staff would not be available to supervise the child. ESD staff were not available from 12:15-12:45 p.m. (during their duty free lunch) and the ESD did not provide childcare. The ESD requested a later drop off time, but the Head Start program could not accommodate that request. The ESD notified the parent and the Head Start program that it could not accept the child on October 16, 2007, and that the issue would be addressed at the scheduled October 17, 2007, IFSP meeting.

4. On September 24, 2007, the child started classes with the Head Start program, where the child received services, for 3 days per week, 3.5 hours per day.

[3] The ECSE program started its school year on July 10, 2007. The MESD ECSE calendar year runs year-round with breaks at various points during the year.

5. Between September 18, 2007, and October 15, 2007, approximately nine phone calls were made between ESD staff and the parent to schedule an IFSP meeting time and date. Due to parent unavailability and an ESD break from October 5, 2007, through October 12, 2007, the IFSP meeting took place on October 17, 2007.

6. At the IFSP meeting on October 17, 2007, the team discussed the child's IFSP goals, an additional evaluation and whether the child had regressed in skills. The team also discussed how specialized instruction could be imbedded in the Head Start program, training options and ECSE services that could be provided to Head Start staff, placement options, and procedural right options available if the parent disagreed with the ESD's provision of services.

7. At the IFSP meeting on October 17, 2007, the team revised the child's IFSP to reflect the child's change in placement from the ECSE classroom to the Head Start classroom. The IFSP specified. that the child would receive: (a) Classroom services directly for three days each week, 3.5 hours per day; (b) physical therapy services, provided directly to the child by the physical therapist one time each week for 30 minutes each time, and consultation provided to the parent about these goals one time per month for 60 minutes; (c) physical therapy services, provided directly to the child by the licensed physical therapist's assistant one time per week for 15 minutes each time; (d) speech/language therapy, provided directly to the child by the speech/language therapist one time each week for 20 minutes, and by the speech/language assistant one time per week for 20 minutes; and (e) occupational therapy services, consultation provide to the staff one time each month for 10 minutes.

8. The team also discussed transportation services at the October 17, 2007, meeting. Head Start provided transportation for the child to and from the child's home and the Head Start program. The team did not reach consensus on the afternoon ECSE classroom placement. The ESD members of the IFSP team determined that the ESD could provide a free appropriate public education in the Head Start program, and determined that the child would not attend the afternoon ECSE classroom. The parent member of the IFSP team did not agree with the decision to not place the child in the afternoon ECSE classroom.

9. On October 26, 2007, the ESD sent the parent a Prior Written Notice confirming the changes in the IFSP, including the decision denying the afternoon ECSE class.

**Evaluation Delay and Impact on Services**

10. The parent provided a copy of a written request for an independent evaluation dated November 1, 2006, which the parent stated had been faxed to the ESD on that day. Neither the ESD nor the parent provided documentation which indicated that the request had been faxed. Because the parent and the ESD disagreed on the child's present levels of performance and service needs, the ESD offered to pay for an independent evaluation in January of 2007, The ESD sent the independent evaluation packet to the parent the week of January 9, 2007. The independent evaluation packet stated that the parents would receive the report and then would provide the report to the ESD to ensure that the evaluation was independent.

11. The parent arranged with the evaluator for an evaluation to take place on February 2, 2007, and February 5, 2007. On February 5, 2007, the ESD sent a letter to the parent requesting that the parent provide the ESD with a copy of the evaluation.

12. On March 1, 2007, the evaluation (an assessment of current developmental levels and functional skills in the areas of cognitive skills, fine motor skills, and speech language skills) was completed. The parent did not provide a copy of the evaluation to the ESD. On March 12, 2007, the evaluator called and asked for the next step. The ESD asked that the evaluation be mailed directly to the parent. On March 22, 2007, the evaluator reported that at the parent's request they had sent the evaluation to the parent by certified mail. The evaluator reported that the parent declined a meeting to review the evaluation and asked that the report be mailed. The evaluator stated that the parent would call the evaluator if the parent had any questions.

13. On April 17, 2007, during a non-related meeting, the ESD learned from the evaluator that the evaluation had been returned, because the certified mail had been unclaimed by the parent. The ESD requested a copy of the evaluation on April 17, 2007, and the evaluator provided a copy to the ESD on that date. On April 18, 2007, the ESD mailed a copy of the evaluation to the parent. The evaluation showed that the child was able to complete cognitive and fine motor activities commensurate with her age expectations, and that the child demonstrated delay in overall language and communication skills.

14. After the ESD sent the evaluation to the parent on April 18, 2007, the parent did not request an IFSP meeting to consider the results. The ESD viewed the evaluation as consistent with the ESD's assessment of the child's current levels of performance.

15. On May 24, 2007, the IFSP team reviewed the evaluation. The team also reviewed the child's progress on physical therapy goals, and the parent's concerns about the child's safety when walking or running. The team agreed to amend the IFSP to include an additional adaptation and physical therapy goals. The team established new goals in catching, throwing and balance, and discussed using functional activities to help teach the child to keep the heel flat when walking. The team agreed to add stretching activities to the IFSP and discussed several options for providing these services. The physical therapist confirmed that all eight physical therapy sessions had been delivered to the child. The team discussed the difference between an educational and medical model of service delivery system. The communication specialist reviewed the child's progress on her speech and language goals and suggested new goals. The parent discussed concern about a "pull-out model for speech and language services. The team discussed the possibility of a placement in a Head Start classroom, and agreed to meet on May 31, 2007.

16. On May 31, 2007, the IFSP team discussed the child's occupational therapy, adaptive skills, cognitive skills, expressive and receptive language, service levels, and models. The parent expressed concern about the child's skill level in various areas, and the team discussed the concept that the IFSP is designed to provide instruction on the skills the child should have but does not. The team agreed to give the parent a copy of the core curriculum and of the Birth to Three Assessment, Evaluation, and Programming System (AEPS). The ESD gave the parent a summary of the AEPS on February 8, 2007.

**Appropriate Level of Services**

17. On October 3, 2007, the parent reported to the physical therapist that the child was falling and having difficulty with leg braces. The parent requested a once a month consultation with the physical therapist. The physical therapist agreed to work with the child's hospital to schedule an appointment for the child.

18. At the IFSP meeting on October 17, 2007, the team discussed the child's IFSP goals, an additional evaluation, whether the child had regressed in skills, how specialized instruction could be imbedded in the instruction provided in the Head Start classroom, training options, and ECSE services that could be provided to Head Start staff, placement options, and procedural right options available to the parent if the parent disagreed with the ESD's provision of services.

19. On November 8, 2007, the parent called the ESD supervisor and expressed her concern that the child was falling. The parent felt the child needed one to one physical therapy services. The parent raised concerns about the physical therapy regimen and requested another IFSP meeting to discuss these concerns and additional services for the child.

20. At the November 14, 2007, IFSP meeting, the parent expressed concern about the child's falling and regression in the child's occupational therapy goals. The Head Start teacher stated that the parent had observed skills that had regressed as well as new skills, but that the child was in a period of recoupment and regaining skills

21. On January 30, 2008, the IFSP team reviewed the child's goals. The occupational therapist noted that the child had progressed but was at the bottom of the typical range. The child had shown regression in scissor skills, so the team added a fine motor, occupational therapy goal to the IFSP calling for the use of "preschool scissors to cut out shapes that include curves and angles." The team increased the occupational therapy service to two times a month, with 20 minutes direct and 15 minutes consultation to the classroom. The child's prior IFSP provided for one time per month, with 15 minutes direct and ten minutes per month consultation. ESD staff expressed concern about the child's attendance and resulting loss of services. The child's physical therapist reported that the child missed 4 of 11 sessions due to attendance, but was doing great and was making progress. ESD staff offered to change physical therapy consultation with the child and the parent from one time each month for 60 minutes to two times each month for 30 minutes, to provide for more carry over. The parent agreed to this change. The parent had some difficulty scheduling consultation time. The parent requested that the physical therapist provide one to one physical therapy. The IFSP team other than the parent determined that the child was making progress on motor goals and did not require additional one to one services.

22. At the January 30, 2008 meeting, the parent requested an increase from three days of preschool to five days of preschool. ESD staff determined that the child was making progress on the child's IFSP goals in the Head Start classroom with ECSE supports and services, based on observation and data from the Head Start teacher and the ESD's occupational therapist. The ESD determined that the current service levels of three days of preschool were appropriate. The IFSP team scheduled a meeting to review progress in six weeks.

23. On March 13, 2008, the IFSP team met for a six month review, and to review the child's progress following the addition of services and an occupational therapy goal at the January 30, 2008, IFSP meeting. The occupational therapist reviewed progress on the child's goals of scissor use and copying simple shapes. Minimal progress was made on the goal for scissor use. The team increased occupational therapy service from two times each month, 20 minutes direct to one time each week, 20 minutes direct. The team increased occupational therapy classroom consultation from one fifteen minute consult each month, to two times each month, ten minutes.

24. At the March 13, 2008 meeting, the IFSP team also discussed scheduling of the consultation time with the physical therapist and the parent. These consultation sessions were to provide the parent with information and suggestions to use at home to enhance gross motor skills. Due to previous difficulty with scheduling dates for the physical therapist to provide physical therapy services to the parent, the team determined that regular meeting times and dates would be set. The parent stated concern about the child falling. The ESD staff did not see an increase in falling at school, reporting that the child was trying to keep up with peers and sometimes fell on uneven surfaces. The physical therapist reported sufficient progress on gross motor goals, other than the problems with scheduling physical therapy consultation time with the parent.

25. At the IFSP meeting on March 13, 2007, ESD staff noted that ESD services at the Head Start program would end in June of 2008, because the Head Start program follows a traditional school calendar and not the ESD's year-round calendar which includes intermittent breaks throughout the year. Both calendars provide the same level of services, one being traditional, and the other being a stretch calendar. Additionally, ESD staff noted that the child would turn five in June of 2008, and therefore would be going to kindergarten in September of 2008.

26. At the March 13, 2008, meeting, the ESD staff stated that extended year services would be addressed after spring break, at an upcoming IFSP meeting on April 23, 2008, which would allow use of data obtained following spring break. The child's Head Start teacher would not be available for the April 23, 2008, meeting, and stated at the March 13, 2008, meeting that the child's new Head Start teacher could discuss the extended year services issue, using the data following spring break. The ESD staff noted that services at the Head Start program would end in June of 2008. The March 13, 2008, meeting ended prior to completion of the review, and the ESD scheduled the continuation of the meeting (to include an EYS determination) for April 23, 2008.

27. On April 23, 2008, The IFSP team discussed the child's needs for extended year services during the ten week summer break. The ESD's speech language pathologist reported that the child was demonstrating skills with 80 percent accuracy, completing goals in imitation and with visual cueing. The parent requested addition of communication goals which ESD staff concluded were above the child's age-level. Additionally, the parent asked about regression in speech, but the data indicated that the child recouped all skills within a two-week period.

28. At the April 23, 2008, meeting, the IFSP team considered data following summer, winter, and spring breaks. The data showed no regression in the area of physical therapy. However, because the child experienced a slight increase in falling upon

beginning in the Head Start program, the IFSP determined that extended year services would be provided to address strengthening and balance, two times in July for 45 minutes and one time in August for 45 minutes to be provided in either a community setting or at the child's home. The data concerning the child's cognitive goals shows that as of December 11, 2007, the child met the cognitive goal, which was added to the child's May 31, 2007, IFSP. The ESD thus provided no extended year services in the area of cognitive goals. The data on the child's occupational therapy goals did not show regression following summer, winter, and spring breaks. The ESD's occupational therapist stated that the data did not show any regression, but that activities would be provided to the parent for the summer.

29. At the IFSP meeting on May 7, 2008, the ESD staff noted that there were gaps in the speech data as the child had had three different speech language pathologists since May of 2007. The IFSP team concluded that the child should receive extended year services to address the child's communication goals and the child's adaptive goal (a goal which can be embedded in the physical therapy activities. The ESD staff members concluded that the child would receive extended year services to address communication goals in small group instruction at a speech clinic one time a week for five weeks for 45 minutes each session. The IFSP team also decided that the ESD would provide extended year services on the child's adaptive goal during the three physical therapy sessions over the summer (as discussed in the April 23, 2008 meeting).

## IV. DISCUSSION

Early childhood special education (ECSE) means free, specially designed instruction to meet the unique needs of a preschool child with a disability, **[ ]** years of age until the age of eligibility for public school.[4] A contractor or subcontractor [5] must provide ECSE and related services to all resident children from three years of age until the age of eligibility for public school.[6]

### A. IFSP Implementation: failure to provide services from September 7, 2007 to October 17, 2007

The parent alleged that the ESD failed to provide educational services for the child from September 7, 2007, to October 17, 2007. The parent maintained that the ESD failed to respond when the parent attempted to have services begin for the child on September 3, 2007, and September 7, 2007.

The Department does not substantiate the parent's allegations. The child's Individualized Family Service Plan (IFSP), in effect at the beginning of the 2007-2008 school year, provided for placement three days per week, two hours per day in the Early Childhood Special Education (ECSE) classroom. The ESD was unable to provide ECSE services from September through October 17, 2007, due to the child's absence during the first week of ECSE classes in September, 2007 and the parent's enrollment of the child in the Head Start Program. The parent had enrolled the child in the morning session of the Head Start Program which conflicted with the ECSE class time. The ESD contact log does not show that the parent contacted the

[4] OAR 581-015-2700(6).
[5] EI/ECSE services are the responsibility of the state and not of local school districts. The state contracts and subcontracts with other agencies such as education service districts (ESD) to provide these services.
[6] OAR 581-015-2850(1).

ESD about resuming educational services for the child on September 3, 2007 or September 7, 2007.

ESD staff attempted to work with the parent to allow the child to attend both the morning session in the Head Start program and an afternoon ECSE class. Because of the difficulty of arranging transportation to accommodate the scheduling conflicts between the Head Start program and the ECSE afternoon program, the ESD was not able to provide services in its afternoon class for the child. At the October 17, 2007, meeting, the parent requested that the child attend both the Head Start and the ECSE classroom. The IFSP team other than the parent determined that the Head Start program with ECSE services delivered at the Head Start site provided the child with a free appropriate pubic education.

**B. Evaluation delay and impact on services**

The parent alleged that the ESD's delay in obtaining an independent education evaluation and in notifying the parent about the evaluation results prevented the IFSP team from fully considering the evaluation and modifying educational services prior to the end of the 2007-2008 school year.[7]

Any parent of a preschool child with disabilities three years of age through the age of eligibility for public school may request an independent educational evaluation at the expense of the contracting agency, if the parent disagrees with an evaluation obtained by the contractor or subcontractor.[8] The results of an evaluation must be considered by the school district, if it meets the district's criteria, in any decision made with respect to the provision of a free appropriate public education to the child.[9]

The Department does not substantiate the allegation of a delay by the ESD in completing or notifying the parent of the evaluation nor does the Department substantiate the allegation that the evaluation was not fully considered prior to the end of the 2006-2007 school year. The ESD first offered an independent educational evaluation to the parent in January of 2007, because both parties disagreed on the child's present level of performance and service needs. The ESD sent the parent an independent evaluation packet the week of January 9, 2007. Although the ESD requested in both its evaluation packet and in a February 5, 2007, letter, that the parent provide the evaluation to the ESD, the parent did not do so.

The evaluation was completed on March 1, 2007. The ESD did not receive the evaluation until April 17, 2007, and the ESD mailed the evaluation to the parent on April 18, 2007. The District did not receive a request from the parent for an IFSP meeting to discuss the evaluation. When the IFSP team met on May 24, 2007, the team reviewed the evaluation and compared the results with an ESD assessment of the child's skills. The evaluation results were consistent with the ESD's assessment of the child's current levels of performance. The IFSP team did not modify the amount or type of ECSE services that the child received based on the results of the independent evaluation.

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[7] The parent initially alleged that an independent evaluation had been requested in November of 2006, an allegation which is outside of the one year limitation period. There also was insufficient documentation to show that the parent made a request in November of 2006.
[8] OAR 581-015-2765(1)
[9] OAR 581-015-2305

**C. Appropriate level of services**

1. January 30, 2008, Meeting

The parent alleged that the IFSP team failed to provide sufficient services in physical therapy and add additional school days as requested by the parent at the January 30, 2008, meeting. The parent also alleged that the IFSP team failed to provide sufficient occupational therapy skills to deal with the child's regression in fine motor skills.

The department does not substantiate the parent's allegations. The IFSP team did not increase the amount of physical therapy service time, because the physical therapist reported that the child was making adequate progress on physical therapy goals. The physical therapist stated that attendance was a problem noting that the child had missed four out of eleven sessions. Based on the difficulty of scheduling consultation time with the parent, the parent agreed with the ESD staff to change the frequency of physical therapy services from sixty minutes once a month to thirty minutes twice a month. The parent requested one to one physical therapy service. The IFSP team other than the parent, noting that the child was making progress on motor skills, refused to replace the integrated physical therapy services with a one to one medical model.

In response to the parent's request for an increase in educational services from three days to five days, the IFSP team other than the parent refused to add additional days stating that the child was making progress on annual goals in the Head Start program with ECSE supports and services based on observation and data from the Head Start teacher and the EDS's occupational therapist

In response to the parent's concern about the child's fine motor skills, the data showed that the child was making adequate progress, and the child's fine motor skills were at the same level as before winter break. However, the IFSP team increased occupational therapy services to two times a month, twenty minute direct and fifteen minutes consultation with the Head Start staff based on data showing some regression in scissor skills.

2. March 13, 2008, Meeting

The parent alleged that the IFSP team at the March 13, 2008, meeting added only minimal occupational therapy services and those services were insufficient to address the child's regression in scissor and copying skills. The parent also alleged that the physical therapy services were insufficient to impact the child's progress on gross motor goals.

The Department does not substantiate the parent's allegations. The ESD uses the Assessment Evaluation and Programming System (AEPS) to monitor the developmental progress for children and to determine the child's present level of performance. The ESD also collects data on all the child's IFSP goals and tracks whether or not the child loses skills after each scheduled break in educational services. The IFSP team determined the amount of services the child received based on teacher observation and the data collected by ESD and the Head Start staff. At the meeting on March 13, 2008, the IFSP team agreed to increase occupational therapy by twenty-five minutes of direct service and an additional five minutes of classroom consultation based on observation and data taken by the Head Start teacher and the occupational therapist showing regression or loss of skills in the use of scissors and copying simple shapes, at the March 13, 2008, meeting the IFSP team agreed to increase occupational therapy time by twenty five minutes of direct service and an additional five minutes of classroom consultation. This

doubled direct occupational therapy services from two times each month for twenty minutes to one time each week for twenty minutes. The IFSP team also increased occupational therapy classroom consultation from fifteen minutes once a month to ten minutes twice a month.

In response to the parent's concern about the level of physical therapy services, the physical therapist reported that the child had made sufficient progress on all gross motor skills and therefore the level of service was appropriate. When the parent expressed concern about the child falling down at Head Start, the ESD and Head Start staff reported that they had not observed an increase in the child falling down at school. The staff also reported that the child was trying to keep up with peers and sometimes did not pay attention which resulted in falling on uneven surfaces.

**D. Extended Year Services**

Extended year services means Early Childhood Special Education Services and related services that are provided to a child with a disability beyond the normal service year at no cost to the parent. Extended year services also must be provided in accordance with an IFSP and meet state educational agency standards.[10] Extended year services must be provided if the child's IFSP team determines on an individualized basis that the services are necessary for a child to receive a free appropriate public education. The purpose of extended year services is "the maintenance of a child's learning skills or behaviors."[11] Criteria for extended year services must include regression and recoupment time based on documented evidence or, if no documented evidence, on predictions according to the professional judgment of the team.[12] Regression means a significant loss of skills or behaviors that will likely result if services are interrupted in an area specified in the IFSP.[13] Recoupment means the ability to recover skills or behavior before the interruption of services.[14]

1. Availability of Preschool Teacher at IFSP Meeting

The parent alleged that the IFSP team should have determined the need for extended year services at the March 13, 2008 meeting when the child's regular preschool teacher was available.

The Department does not substantiate the parent's allegation. OAR 581-015-2825(2) requires that a regular preschool teacher attend a meeting in which the IFSP is reviewed or revised. At the IFSP meeting on March 13, 2008, the IFSP team other than the parent determined that the child's need for extended year services would be addressed at the upcoming April 23, 2008 meeting so that data taken on the child's goals before and after spring break could be considered. The parent expressed concern that the child's current Head Start teacher was leaving her position and would not be available for the April meeting. The child's regular preschool teacher responded to that concern and stated that the new teacher would be able to discuss the issue of extended year services using the data taken before and after spring break. The minutes from the April IFSP meeting show that the new preschool teacher attended the meeting and contributed to the discussion.

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[10] OAR 581-015-2855(7)
[11] OAR 581-015-2855(4)
[12] OAR 581-015-2855(5)
[13] OAR 581-015-2855(6)
[14] OAR 581-015-2855(6)

2. Extended Year Services for Occupational, Speech, Cognitive, Physical Therapy and Adaptive Goals

The parent alleged that the ESD denied extended year services to address the child's needs for occupational therapy, speech, and cognitive services and provided for only minimal services in physical therapy at the April 23, 2008 IFSP meeting. The parent also alleged the ESD failed to properly determine whether the child needed extended year services during the summer of 2008 at the follow-up IFSP meeting on May 7, 2008. The parent specifically alleged that the ESD did not consider data from spring, summer, and winter breaks to determine if extended year services were needed to maintain child's progress on cognitive, occupational therapy, speech, physical therapy and adaptive goals.

The Department does not substantiate these allegations. The meeting minutes from the April 23, 2008, and May 7, 2008 meetings show that the IFSP team based its decisions on whether to provide extended year services on the individual needs of the child, ESD data documenting regression and recoupment on the child's goals, Head Start teacher observation and data, parent input and the professional judgment of therapists.

In the April 23, 2008 meeting, the IFSP team reviewed data for each of the child's goals taken after the summer, winter and spring breaks to determine whether or not regression had occurred in that goal and the amount of time required for the child to recover certain skills. The IFSP team also discussed whether extended year services would be necessary for the child to maintain skills over the ten week summer break. The occupational therapist stated that data taken after summer, winter and spring breaks did not show evidence of any regression, but that the therapist would provide the parent with activities to maintain the child's skills over the summer. The ESD did not offer extended year services to address cognitive skills, because the child had met the cognitive goals that had been added to the child's IFSP in May of 200, and the data also indicated that the child maintained cognitive skills after the break periods in January and March. Even though the child had completed two IFSP goals in speech and had recovered all skills within a two week period following an interruption in services, the ESD offered forty-five minute speech and language small group sessions one time a week for five weeks during the summer at a speech clinic to address the child's speech and adaptive goals. The IFSP team noted that the child had had three different speech language pathologists since May of 2007, and as a result there were gaps in the speech data. The IFSP team made the determination to offer small group instruction at the speech clinic in the best interests of the child due to the inconsistency of the data taken on the child's speech and communication goals.

Because the child had experienced a slight increase in falling upon beginning the Head Start program during the fall of 2007, the IFSP team determined that the ESD should provide physical therapy to address strengthening and balancing two times in July and one time in August for forty-five minutes each time either at home or in a community setting to maintain goals over the summer. The IFSP team also noted that data showed the child qualified for extended year services to work on adaptive goals to maintain skills over the summer. The team determined that adaptive skill instruction such as practicing putting and taking off shoes could be provided during the physical therapy sessions.

3. Classroom Services for Summer of 2008

The parent alleged that the ESD should have agreed to provide early childhood special education classroom services for the child during the summer of 2008, because the ESD program runs all year long. The parent specifically alleged that the IFSP team should have

placed the child in integrated class sessions so that the child could work on physical therapy and speech goals with other children.

ECSE services must be provided in the least restrictive environment including home and community settings in which children without disabilities participate.[15] Therefore, the IFSP team other than the parent determined that the child would receive physical therapy and adaptive skills instruction during the summer in either a community setting such as playground or nearby elementary school or at home. The IFSP team determined that speech and communication instruction would take place in a small group setting at a speech clinic one time a week for five weeks, because the speech clinic would provide an environment for focused instruction.

The Department does not substantiate the parent's allegation that the ESD decided not to provide appropriate services to the child during the ten week break for the summer of 2008. The child received a full year of services in the Head Start program based on a school calendar. Both the Head Start and the Early Childhood Special Education classroom programs provide the same level of services, one following a traditional school calendar and the other a year around calendar with intermittent breaks. The ESD, although not providing classroom services during the summer of 2008, is providing the child with extended year services in all areas where there are documented issues of regression and recoupment.

## V. CORRECTIVE ACTION

*In the Matter of Multnomah Education Service District EI/ECSE (Area 6)*
Case No. 08-054-019

The Department did not substantiate the allegations. Therefore, the Department does not order any corrective action.

Dated: July 11, 2008

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

Mailing Date: July 11, 2008

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.

[15] OAR 581-015-2845(1)