

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Northwest Regional)
ESD/EI/ECSE)
)
)

CORRECTED¹
FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 08-054-020

I. BACKGROUND

On May 22, 2008, the Oregon Department of Education (Department) received a letter of complaint from the parents of a student attending school and residing in the NW Regional ESD/EI/ECSE (ESD). The parents 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.² On June 2, 2008, the Department sent a *Request for Response* to the ESD identifying the specific allegations in the complaint to be investigated. On June 16, 2008, the ESD timely submitted its *Response* to the allegations and sent the parents a copy.

The Department’s complaint investigator reviewed the information submitted by the ESD, and determined that on-site interviews were needed. However, due to unavailability of ESD staff, the Department extended the time-line for the investigation by a total of 28 days. On July 17, 2008, the investigator conducted on-site interviews with the ESD’s early childhood specialist, EI/ECSE coordinator and autism specialist. On July 21, 2008, the investigator conducted on-site interviews of the ESD’s autism consultant, another EI/ECSE coordinator and director of EI/ECSE special education programs (director). On July 22, 2008, the complaint investigator conducted a telephone interview with one of the parents. The Department’s investigator reviewed and considered all of the documents and interviews.

¹ The Department issued a final order on August 13, 2008. Subsequent to the issuance, the Department became aware of errors within the order. Specifically, OAR 581-015-2900 was improperly titled on page 16. Additionally, the initial order contained an internal inconsistency regarding the amount of compensatory education services required. The inconsistency was resolved by changing the figure on page 21 to be consistent with the figure in the Corrective Action section on page 25. Both corrections appear in highlighted text. Neither correction affects the conclusions or changes the corrective action.

² OAR 581-015-2030 (12); 34 CFR 300.151-153.

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
(1)	<p><u>Teacher Qualifications:</u></p> <p>The parents allege that the Early Childhood Specialist who began working with the student in October of 2006, and who continues to provide services to the student in the ESD does not meet the appropriate qualification standards.</p>	<p><u>Not Substantiated</u></p> <p>The Department finds that ESD's early childhood specialist in this case meets the appropriate qualification standards to provide services as an Early Childhood Specialist in the ESD's Early Intervention/Early Childhood Special Education Program under OAR 581-015-2900(3).</p>
(2)	<p><u>Placement/services:</u></p> <p>The parents allege that at an IFSP meeting on October 19, 2007, the parents expressed concern with the student's placement and services, because the student does not have enough time to work on the goals in the student's IFSP in the Early Childhood Special Education Program (ECSE) classroom. The parents further allege that either the student's placement or schedule of services in the classroom needs to change. The parents further allege that since the student began attending Head Start in September of 2007, many of the student's activities in the ECSE classroom are unnecessary, including 20 minutes for "circle time", snack time and the toilet training routine. The parents allege that "circle time" and bathroom time inappropriately consume 40 of the 80 minutes the student is in the ECSE classroom. The parents allege that they have asked the ESD to</p>	<p><u>Not Substantiated</u></p> <p>The Department finds that the use of particular routines in the ECSE classroom are of educational value and that these routines are designed to allow progress on the student's goals. The Department does not sustain the parents' allegation that certain routines in the ECSE classroom are inappropriate.</p>

No.	Allegations	Conclusions
	discontinue the toilet training routine.	
(3)	<p><u>Parent Participation</u></p> <p>The parents allege that prior to the one-year limitations period in this case (prior to May 22, 2007) the parents had discussed the students placement and services several times with the student's former teacher, but by the time the student's new teacher began working with the student in October of 2006 the parents felt further discussion was useless. The parents allege that they again brought up their concerns about appropriate placement and services at the October 19, 2007 IFSP meeting and at meetings on November 14, 2007 and January 14, 2008. The parents allege that they agreed with the ESD to discuss the placement/services issues when the student's evaluations and new present levels, goals and short-term objectives were completed. The parents allege that the ESD refused to have an IFSP meeting until the student's transition meeting on April 29, 2008, when only 20 school days remained.</p>	<p><u>Not Substantiated</u></p> <p>The ESD engaged the parents in several informal discussions and at least one informal meeting concerning revisions to these components of the student's IFSP. On February 21, 2008, one of the parents contacted the ESD staff by phone and requested an IFSP meeting. In an e-mail message dated February 22, 2008, the ESD special education director confirmed the parents' request for an IFSP meeting and directed the parent to have the parents' attorney to contact the ESD's attorney to address the parents' concerns and request an IFSP meeting. The Department does not find persuasive evidence that the ESD refused to schedule an IFSP meeting or that it deliberately delayed the scheduling of an IFSP meeting.</p>
(4)	<p><u>Prior Written Notice (PWN)</u></p> <p>(a) The parents allege that the ESD did not provide a prior written notice within a reasonable time following the October 19, 2007 IFSP. The parents specifically allege that they did not receive the PWN which was dated October 19, 2007, until January 16, 2008.</p> <p>(b) The parents allege that they have repeatedly brought to the ESD's</p>	<p><u>Not contested</u></p> <p>(a) The ESD agreed that the prior written notice following the October 19, 2007 IFSP meeting was not sent until January, 2008. See Corrective Action.</p> <p><u>Not substantiated</u></p> <p>(b) The Department finds that the parents' attorney advised the</p>

No.	Allegations	Conclusions
	<p>attention their concern about the lack of program intensity, 1:1 intervention and minimal hours of intervention. The parents allege that at the October 19, 2007 IFSP meeting they requested an ABA home program for the student for 20 hours a week. The parents allege that the PWN states that the parents requests were taken under advisement with decisions to be postponed and discussed at a follow-up meeting with the entire team. The parents allege this discussion has never occurred.</p>	<p>ESD's attorney and director at the meeting on November 14, 2008 that parental requests made at the October 19, 2007 meeting were withdrawn by the parents' attorney, and that the ESD reasonably changed the focus, as requested by the parents' attorney, to the present levels, goals and gathering of baseline data. The Department does not substantiate the allegation that the ESD violated the IDEA by failing to discuss the withdrawn requests at a later date.</p>
(5)	<p><u>Placement: Failure to Individualize IFSP</u></p> <p>The parents allege that the ESD has failed to individualize the student's IFSPs. Specifically, the parents allege that the student receives inadequate services to address the student's communication problems, and that the student does not receive direct intervention as requested by the parents. The parents further allege that the ESD has failed to engage in appropriate data collection related to the student's IFSP goals and short-term objectives – and that this is especially important under the STAR program, which clearly outlines data collection methods and parameters and the importance thereof.</p>	<p><u>Not Substantiated</u></p> <p>The Department, upon review of the student's IFSPs and evaluations, finds that the student's IFSP is individualized to the student. The student's IFSPs in effect since May 22, 2007 (the limitations period in this case) contain present levels, goals and objectives to address the student's communication problems. Under the student's April 29, 2008 IFSP, the student receives specially designed instruction at the ECSE site to address communication. The student receives direct speech-language therapy for 30 minutes each week. The Department also finds, as reflected in the progress reports incorporated into the student's IFSPs, that ESD staff gathered data sufficient to report on the student's progress toward the student's goals and objectives. The Department does not substantiate these allegations.</p>

No.	Allegations	Conclusions
(6)	<p><u>IFSP Implementation:</u></p> <p>The parents allege that the student’s current IFSP provides, as a supplemental service, adaption and accommodation, “Access to STAR curriculum as per [the student’s] daily schedule – Mon – Thurs”, and that this is to occur daily. The parents further allege that since October of 2006 the student has not had any access to the STAR curriculum because the student’s teacher is not trained to administer the STAR program. The parents further allege that the IFSP does not appropriately delineate the amount of time to be spent on the STAR curriculum. The parents also allege that until April 8, 2008, the ESD refused to change the criteria and evaluation methods to reflect STAR program parameters, resulting in meaningless data concerning, for example, the student’s communication goals in the IFSP.</p>	<p><u>Substantiated, in part</u></p> <p>The Department finds that the fact that the IFSP does not state a specific amount of time to be devoted to the STAR program does not constitute a violation of the IDEA.</p> <p>The Department finds that the ESD did not adequately implement the STAR program from May 22, 2007 through the end of that school year in mid-June of 2007, and again from July 9, 2007 to February 15, 2008. The Department thus substantiates the allegation, as limited by the applicable limitations period, that the ESD failed to implement the student’s IFSP as concerns the STAR program. The Department finds that compensatory education is appropriate in this case. See Corrective Action.</p>
(7)	<p><u>Present Level of Educational Performance</u></p> <p>The parents allege that the present level of development in the student’s IFSP do not contain objective, measurable criteria from which to establish a baseline for the student’s goals.</p>	<p><u>Not Substantiated</u></p> <p>The Department finds that the present levels in the student’s October 10, 2007 and April 29, 2008 IFSPs adequately state the student’s present level of development. The ESD worked extensively with the parents to obtain baseline data and incorporate this data into the present levels. This baseline data is also included in the IFSPs, in the progress reports incorporated into the student’s goals. The Department does not substantiate the allegation that the present levels are inadequate.</p>

No.	Allegations	Conclusions
(8)	<p><u>IFSP Content: Goals</u></p> <p>The parents allege that the student's IFSP goals do not include several needs identified in the student's evaluations. The parents allege that a re-evaluation occurred in December of 2007 due to a lack of appropriate present levels and that several of the needs identified in the student's evaluations have not been incorporated into the student's IFSP goals.</p>	<p><u>Not Substantiated</u></p> <p>The IFSP team must review the evaluations and address the areas of need identified in the evaluations. The student's IFSP includes goals that address the student's areas of need after review of the evaluations. The absence of a particular suggestion in an evaluation, under the goal areas of cognitive, adaptive, receptive communication and expressive communication, does not render the IFSP goals inadequate. The parent has not shown that the absence of a particular concept under a particular goal area has impacted the student's ability to make educational progress. The Department does not substantiate this allegation.</p>
(9)	<p><u>IFSP Content; IFSP Implementation</u></p> <p>(a) The parents allege that several of the student's annual goals and short-term objectives are inappropriate, in that many of the short-term objectives should actually be annual goals. The parents further allege that the goals in the student's IFSPs are not objective or measurable. The parents allege that they requested that the ESD revise the student's goals and short-term objectives but that the ESD advised they would not change the language in the student's IFSP. The parents also allege that several of the student's goals are not being worked on with the student, and that several of the goals are inappropriate.</p> <p>(b) The parents further allege that the ESD refused to make further changes</p>	<p><u>Not Substantiated</u></p> <p>(a) The Department, upon reviewing the student's goals and objectives in the student's IFSPs dated October 10, 2007 and April 29, 2008, concludes that when the goals in the student's IFSPs are combined with the related objectives, they are measurable and sufficiently objective.</p> <p>(b) Following the IFSP meeting on January 14, 2008, the ESD staff</p>

No.	Allegations	Conclusions
	<p>to the student's goals in March, 2008. The parent states that a draft copy of goals sent to the parents by ESD staff on April 6, 2008 are satisfactory.</p>	<p>responded to parental input and worked informally with the parent on revisions to the student's goals and objectives for at least two months. The Department finds that the ESD's decision to not consider further revisions to the student's IFSP until the meeting of April 29, 2008 does not violate the IDEA.</p>
(10)	<p><u>Educational Records</u></p> <p><u>Access to Records</u></p> <p>(a) The parents allege that on September 21, 2007 they verbally requested the student's education records, and that they sent a written request to the ESD shortly thereafter. The parents allege that the records request expressly requested data collection (classroom observation reports), related correspondence and documentation from all ESD staff who has worked with the student. The parents also allege that following discussions concerning the definition of education records, at an IFSP meeting on November 14, 2007, the parents stated they had not received a particular staff person's data sheets and the ESD's legal counsel advised they would now be provided based on new legal precedent. The parents further allege that they recently requested, but have not received, copies of all e-mail messages between ESD staff and consultants. The parents further allege that they are not confident they have received all of the student's education records.</p>	<p><u>Substantiated, in part</u></p> <p>(a) The Department finds that the parent verbally requested the student's education records on September 21, 2007. On October 4, 2007, the parent wrote two letters to the ESD and clarified that the request includes "data collection sheets" and "everything else from every other teacher, aide, specialist, etc. who has records on [the student]". The ESD received the parents' letters on October 9, 2007. The parties agree that at a meeting on November 14, 2007, the ESD agreed to provide data collection documents to the parents, reversing the ESD's earlier position that data collection documents were "sole possession" documents not subject to disclosure. This occurred within 45 days of the clarification of the parents' records request to include the data collection documents.</p> <p>Concerning the e-mail messages from the autism consultant to or</p>

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	<p>(b) The parents allege that the ESD's policy of destroying raw data collection sheets after it was summarized without prior notification to the parents violated the parents' right of access to records.</p>	<p>from ESD staff, the Department finds that it is not clear whether these e-mail messages exist or that they were not provided to the parents. To the extent that there are e-mail messages from the autism consultant to or from ESD staff, the ESD shall assure they are provided to the parents. See Corrective Action.</p> <p><u>Substantiated</u></p> <p>(b) The ESD did not notify the parents that it no longer needed student's data collection sheets to provide educational services for student.</p> <p>Although it is not clear that any data collection documents were destroyed from October 9, 2007 to November 14, 2007, the Department substantiates the parents' allegation that data collection documents could not be destroyed, once the parents clarified their request to include data collection documents. See Corrective Action.</p>

III. FINDINGS OF FACT

Background:

1. The student is presently five years old and receives services through the ESD's Early Intervention/Early Childhood Special Education (EI/ECSE) program. The student is eligible for special education as a student with autism spectrum disorder. The student will begin kindergarten in the fall of 2008.

2. The ESD's EI/ECSE program does not follow the traditional school year calendar, but begins the Monday after July 4th each year, with the month of August off, a break at Thanksgiving time, a break during December, a break in mid-February, a break the last week of March and first week of April, with the school year ending in mid-June each year.
3. In September of 2007, the student began attending the Head Start program four days each week, for 3.5 hours each day. The student also continued to attend the ECSE classroom four days each week, for two hours each day. The student's October 10, 2007 Individualized Family Service Plan (IFSP) selected as appropriate placement for the student both the Head Start program and the ECSE program. This IFSP provides for EI/ECSE services including: "ECSE specialist observation/consultation to Head Start" once each month for 30 minutes, "Speech & Language observation/consultation to Head Start" once each month for 30 minutes, specially designed instruction in the ECSE site four times each week for two hours each class, "ECSE speech-language therapy to address IFSP goals and objectives in communication" 30 minutes weekly at the ECSE site, occupational therapy consultation for one hour, "ECSE Autism Spectrum Disorder Specialist consultation services to assist with programming and promoting progress toward IFSP goals and objectives" eight hours annually, Head Start four times each week for 3.5 hours each class, and transportation.
4. The student's current IFSP, dated April 29, 2008, provides the same level of services as the October 10, 2007 IFSP, except that the IFSP team increased consultation by the autism specialist from eight to twelve hours annually.

Qualifications:

5. The ESD's early childhood specialist who teaches the student holds a master's degree in elementary education, an associate degree in early childhood education and a bachelor's degree in child and family studies. The Teacher Standards and Practices Commission (TSPC) indicates on its website that the ESD's early childhood specialist holds an endorsement for "multiple subjects self-contained" with authorization levels of "ECE and ELE". The ESD's early childhood specialist confirmed the accuracy of this information. The ESD's early childhood specialist does not possess TSPC certification as a special education teacher. The ESD's early childhood specialist has a professional development plan filed with the human resources department at the ESD. The ESD has been advised by TSPC that TSPC does not have jurisdiction over teachers in EI/ECSE programs. The limitation on the endorsement and authorization of the ESD's early childhood specialist licensure, stating that the authorizations require separate endorsements to teach special education does not apply to Early Intervention and Early Childhood Special Education programs.

Placement/services

6. The routines included during the ECSE class time, including circle time, snack time and bathroom time, provide opportunities for generalization of skills, including social and language skills. Although the student occasionally asks to use the bathroom at times other than bathroom time, the student still has the opportunity to generalize skills during the structured bathroom time. These routines are appropriate components of the ECSE class and are part of, rather than a distraction from, delivery of services to the student.

Parent Participation

7. The parents' concerns about the ESD not being responsive to requests by the parents to discuss the student's placement and services mostly precede the limitations period in this case. The Department cannot address allegations concerning matters prior to May 22, 2007. The essence of this allegation is that the parents and the ESD agreed to discuss the placement and services issues after evaluations were completed, but that the ESD refused to have another IFSP meeting until April 29, 2008.
8. A chronology of the meetings during the relevant time period follows. On September 4, 2007, the IFSP team met to begin the annual review process. The IFSP team discussed that they were awaiting word on the student's application to enroll in the Head Start program, and that the teacher would share a copy of the student's current level in the STAR program. On October 10, 2007, the IFSP team met. The prior written notice states that the team determined that the student will benefit from a class with typical peers in order to practice goals and objectives, and noted the student's acceptance into the Head Start program. On October 19, 2007, the IFSP team met again. The parents or their advocate presented a prepared statement, in which the parent requested a change in placement to a home-based program. The prior written notice states that the parent requested "20 hours a week of at home ABA program paid for by NWRESO; 10 hours additional ABA at home provided as compensatory service; [A particular person] utilized as ABA consultant to in-home provider, consultant paid by NWRESO; Video camera and other materials necessary to run home program paid for by NWRESO; Speech therapy and occupational therapy services provided at either home or Head Start paid for by NWRESO; Transportation to and from Head Start paid for by NWRESO; Compensation for Advocate." According to the prior written notice, the parents' requests were "taken under ECSE leadership advisement with decision to be postponed and discussed at a follow-up meeting with the entire team" and cited the need for more information to resolve the issues discussed. The meeting minutes from the October 19, 2007 meeting indicate that the director stated that the ESD would not provide ABA or an advocate.

9. On November 14, 2007, the IFSP team met again. The meeting notice states that the purpose of the meeting is to develop and review an IFSP based on the most recent evaluation, progress reports and test results. At the meeting on November 14, 2007, the parents requested extensive re-evaluations. The IFSP team, including the parents, agreed to conduct the following 12 re-evaluations: adaptive behavior assessment, expressive language, functional communication, preschool language scale, articulation test, Batelle developmental inventory, pre-academic – DIAL (development indicators for the assessment of learning), autism, medical statement, fine motor addressed by DIAL and Batelle, social and AEPS (assessment educational programming system). The meeting minutes state that the eligibility determined by the evaluations could carry through to school age. The meeting minutes also state that “[g]athered information will be reflected in testing to gather information for present levels. Then, plan a transitional meeting. Reconvene on December 11 @ 1:00 pm”.
10. During the first week of December, a winter storm closed the ESD for several days which delayed the December 11, 2007 meeting and the completion of many of the assessments. The ESD’s two-week winter break also occurred the last week of December 2007 and the first week of January 2008.
11. The IFSP team next met on January 14, 2008. The meeting notice states that the purpose of the meeting is to review existing information about the student and develop the IFSP. At this meeting, the team discussed several revisions of the student’s IFSP, including revisions to present levels of development, goals and objectives. The ESD and the parents agreed to take one to two weeks of data to obtain solid baselines and then review the goals and incorporate them into the present levels section of the student’s IFSP. The meeting minutes state “Agreement to hope to gather data and then make adjustments. Will meet for transition meeting.” The team agreed that the next meeting, a transition meeting, would occur in April of 2008.
12. Following the IFSP meeting on January 14, 2008, several discussions concerning revisions to various components of the student’s IFSP occurred. On February 1, 2008, ESD staff faxed the proposed updated IFSP to the parents’ attorney and the ESD’s attorney. The ESD scheduled, and held, an informal meeting concerning the revisions to the IFSP for February 12, 2008. The ESD’s contact log notes a conversation with one of the parents about the upcoming February 12, 2008 meeting, and notes that the parent “wondered if we had the goals in draft form or if we had a copy of the wording from the last meeting to assist us in writing the goals.” The ESD’s contact log notes that on February 16, 2008 ESD staff sent “the updated expressive and receptive communication goals/objectives” to the parents by e-mail. On February 20, 2008, one of the parents told ESD staff that the expressive and receptive communication goals and objectives are not measurable. On February 21, 2008, ESD staff faxed a copy of the proposed revised IFSP to the parents’ attorney. On March 6, 2008, the ESD’s attorney sent an e-mail to the parents’ attorney advising

that the ESD does not agree that the student's goals need to be revised to meet the requirements of the IDEA. The ESD's attorney noted that "we need to stop continuously changing the goals so that we have a sufficient period of time to implement them and gather data on [the student's] progress before the end of the school year." On March 13, 2008, the ESD through its legal counsel, stated its willingness to seriously consider the parent's input and add IFSP goals to the agenda for the IFSP meeting on April 29, 2008. On April 11, 2008, ESD staff mailed a meeting notice to the parents for an April 29, 2008 meeting.

13. The parent reported that she called the ESD on February 21, 2008 to request an IFSP meeting to deal with proposed changes to the IFSP and placement. On that date, the ESD director had sent a copy of a proposed IFSP with revisions to the parent's attorney. The director also emailed the attorney, stating that the IFSP contained changes based on discussions in earlier meetings. The director also stated, "I'm assuming you would like an earlier IFSP date than the 4/29th date we had already scheduled. Correct?" On 2/22/08, the director also sent an email to the parent requesting that she ask her attorney to contact the ESD's attorney for purposes of scheduling an IFSP meeting.

14. On March 4, 2008, the parent's attorney wrote to the ESD's attorney and requested mediation concerning IFSP issues, placement and compensatory education. The ESD's attorney responded on that date, stating that the ESD believed the contents of the IFSP were appropriate, and the ESD was unwilling to engage in further discussions or in mediation on the subject. The ESD's attorney asked the parent's attorney if she believed that the team needed to finalize the IFSP changes at the upcoming April 29, 2008 meeting. She further stated:

I do not believe another meeting for this purpose is necessary, given the steps already taken, but if you intend to assert that the ESD has failed to meet any procedural requirements in its consideration of your client's input and modification of the IFSP goals, please inform me immediately and the ESD is willing to add this to the agenda for the IFSP meeting.

The parent's attorney responded in a March 4, 2008 email, inquiring about the agenda for the April 29, 2008 meeting

Prior Written Notice (PWN)

15. At the outset of the IFSP meeting on November 14, 2007, the parents' attorney told the ESD's attorney and director that the requests made at the October 19, 2007 meeting were off the table, including the home-based placement. The parents' attorney advised that they wanted to focus on the adequacy of the PLEP and the goals and whether adequate baseline data existed.

16. The ESD timely completed the prior written notice dated October 19, 2007, but ESD staff did not mail the prior written notice to the parents until approximately January 24, 2008.

Placement: failure to individualize IFSP

17. The student's October 10, 2007 and April 29, 2008 IFSPs contain present levels of development and goals concerning the student's receptive and expressive communication. Both IFSPs provide that the student receives specially designed instruction at the ECSE site to address the area of communication and 30 minutes of direct speech-language therapy 30 minutes each week, at the ECSE site. ESD staff gather data concerning the student's progress on his goals and objectives which is reflected in the progress reports incorporated into the student's IFSPs.

IFSP Implementation

18. From October 6, 2006 to February 15, 2008, the ESD failed to fully implement the provision of the student's October 10, 2007 and April 29, 2008 IFSPs requiring, as a supplemental service, adaptation and accommodation, "Access to STAR curriculum as per [the student's] daily schedule Mon. – Thurs.," daily at the ECSE site. This occurred because the student's new teacher, who began working with the student on October 6, 2006, was not adequately trained on the STAR program until February 15, 2008. The applicable limitations period precludes the Department from addressing matters occurring prior to May 22, 2007.
19. The STAR (Strategies for Teaching based on Autism Research) curriculum teaches children with autism the critical skills identified by the 2001 National Research Council. The ABA (Applied Behavior Analysis) instructional methods of discrete trial training, pivotal response training and functional routines form the instructional base of this comprehensive program for children with autism. The STAR Program includes detailed lesson plans, teaching materials, data systems and a curriculum-based assessment for teaching in the six curricular areas of receptive language, expressive language, spontaneous language, functional routines, academics, and play & social skills. Prior to February 15, 2008, the teacher did not adequately implement key components of the STAR program.
20. The ESD's EI/ECSE program does not follow the traditional school year calendar, but begins the Monday after July 4th each year, with the month of August off, a break at Thanksgiving time, a break during December, a break in mid-February, a break the last week of March and first week of April, with the school year ending in mid-June each year. Therefore, the ESD did not adequately implement the STAR program (as required by the student's IFSPs in effect since May 22, 2007), from May 22, 2007 through the end of that school year in mid-June of 2007, and again from July 9, 2007 to February 15, 2008.

Both the ESD's autism specialist and autism consultant confirmed that the STAR program was not implemented. The autism specialist observed that the student's goals were not changing which indicated that the student had reached a plateau and was not making adequate progress towards goals during the time period from October of 2006 to February of 2008. The autism consultant observed that from her first involvement with the student, beginning on January 29, 2008, the ESD did not adequately implement key components of the STAR program, including discrete trials.

21. Stating the time to be spent on the STAR program in a student's IFSP is not appropriate, because the STAR program is a curriculum and impacts the student's entire day, and must be individualized for discrete trials, pivotal response training and functional routines.

Present Level of Educational Performance (PLEP)

22. The present levels of performance in the student's last two IFSPs, dated October 10, 2007 and April 29, 2008, contain progress reports. These progress reports concern all of the goals stated in the student's IFSPs, and the goals are both objective and measurable. The ESD worked extensively with the parent on obtaining baseline data to be incorporated into the student's PLEP in the IFSPs. This baseline data is also reflected in the progress reports incorporated into the student's IFSPs.

IFSP Content: Goals

23. The student's IFSP developed following re-evaluations from November of 2007 to January of 2008 include five cognitive goals, three adaptive goals, five social/emotional goals, one fine motor goal, one receptive communication goal and four expressive communication goals. The student is making adequate progress toward these goals. Some of the many learning needs identified in a particular evaluation were not incorporated word-for-word into the student's IFSP.

IFSP Content: IFSP Implementation

24. Review of the student's goals and objectives in the October 10, 2007 and April 29, 2008 IFSPs reveal that none of the objectives may only be stated as a goal and not as an objective. The ESD's attorney did advise, on March 6, 2008, that the ESD would not make any more modifications to the student's goals. The progress reports incorporated into the student's IFSP show that the student's goals are being worked on. The goals in the student's IFSPs, when combined with the related objectives, are measurable and sufficiently objective.

Access to Records

25. The ESD's contact log documents a verbal request by one of the parents for a copy of the student's "file" on September 21, 2007. The ESD's contact log also reveals that on September 24, 2007, ESD staff called one of the parents and advised that a copy of the student's "file" was available for the parent to pick up. On September 28, 2007, one of the parents called ESD staff and discussed the requested files and frustration with what had been received. On October 4, 2007, ESD staff determined that ESD staff should "gather notes, data sheets, etc from classroom and providers and send to [the parent] as soon as possible." On October 8, 2007, ESD staff called one of the parents and informed her that everything had been copied and that the copies would be sent with ESD staff that day. On October 9, 2008, the ESD received two letters from one of the parents (dated October 4, 2007) clarifying that the parent wants copies of the data collection sheets. On October 24, 2007, the ESD's director called the parent and told her she would send the student's record to them. This date was within 45 days of the initial request for records made by the parents.
26. During an IFSP meeting on November 14, 2007, the parents stated they had not received a particular staff person's data sheets. The ESD's attorney advised that they would now provide data sheets, based on new legal precedent.
27. The ESD does not typically retain raw data collection documents after the information on those documents is incorporated into a report or summary. Once the parent requested data sheets in November of 2007, the ESD discontinued destruction of the raw data documents and has since provided copies of all such documents.

IV. DISCUSSION

Early Childhood Special Education (ECSE) means free, specially designed instruction to meet the unique needs of a preschool child with a disability, three years of age until the age of eligibility for public school.³ A contractor or subcontractor⁴ must provide ECSE and related services to all resident children from three years of age until the age of eligibility for public school.⁵

A. Teacher Qualifications⁶

³ OAR 581-015-2700(6)

⁴ 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 the services.

⁵ OAR 581-015-2850(1)

⁶ 20 USC 1401 (10)(E); see 34 CFR 300.18(f). Parent may file complaint about teacher qualifications with state educational agency in accordance with state complaint process. 34 CFR 300.18 (f); see 34 CFR 300.151-153 (complaint review procedure)

The parents allege that the Early Childhood Specialist who began working with the student in October of 2006, and who continues to provide services to the student in the ESD does not meet the appropriate qualification standards. The parents clarified during the investigation that the issue is primarily that this individual lacks a special education endorsement, but is providing services in an ECSE program to the student, who is eligible for special education.

According to OAR 581-015-2565, the Oregon Department of Education separately contracts for provision of Early Intervention and Early Childhood Special Education services, rather than including the EI/ECSE programs as part of the state's elementary and secondary school system. Teachers and therapists employed by the regional program or ESDs must hold the appropriate special education or appropriate state licensure.⁷ Early intervention and early childhood special education specialists either must meet the criteria specified in OAR 581-015-2900 (3) or qualify under the authorization process through the Oregon Department of Education under OAR 581-015-2905.

OAR 581-015-2900 provides:

581-015-2900

Personnel Standards

(3) EI and ECSE specialists must meet the following criteria:

- (a) Possess a minimum of a baccalaureate degree in early childhood, special education or a related field;
- (b) Have a professional development plan based on the content of the EI/ECSE competencies; and
- (c) Hold one of the following credentials:
 - (A) TSPC licensure or endorsement in EI/ECSE;
 - (B) TSPC licensure or endorsement in related field; or
 - (C) Within 12 months of employment, authorization as an Early Childhood Specialist under OAR 581-015-2905.

The Department finds that the ESD's Early Childhood specialist meets all three of the criteria outlined in OAR 581-015-2900 (3) to qualify as an Early Childhood special education specialist. The Early Childhood specialist possesses a master's degree in elementary education, an associate degree in early childhood education and a bachelor's degree in child and family studies. The Early Childhood specialist has a

⁷ OAR 581-015-2565 (4)

bachelor's degree in child and family studies which is a related field under the first criterion which requires a minimum of a bachelor's degree in early childhood, special education or a related field. The Early Childhood specialist also has a professional development plan which complies with the second criterion. The Early Childhood Specialist has an initial I teaching license with an endorsement in multiple subjects self-contained with authorization levels of Early Childhood and elementary which allows her to teach multiple general education subjects at grades pre-kindergarten through 4 in elementary school and general education subjects at grades 3 through 8. This type of licensure in regular Early Childhood education qualifies as TSPC licensure or endorsement in a related field under the third criterion at OAR 581-015-2900 (3) (c) (B).

The parents argue that the Early Childhood authorization on the licensure for the Early Childhood specialist specifically states that a separate endorsement is required to teach special education. However, in this case, the ESD's Early Childhood specialist is not relying exclusively on the TSPC endorsement or authorization to qualify to teach in the Early Childhood Special Education program. The ESD's Early Childhood Specialist qualifies to teach in the Early Childhood Special Education program by meeting all three criteria of OAR 581-015-2900(3).

The Department does not substantiate the parents' allegation that the ESD's Early Childhood specialist does not meet the requirements to qualify as an Early Childhood specialist in the ESD's EI/ECSE program.

B. Placement/Services

The parents allege that the student's placement and services in the ECSE program are inappropriate, because there is not enough time for the student to work on IFSP goals. The parents specifically allege that the routines in the ECSE classroom are unnecessary, including circle time, snack time and bathroom time. The parents also allege they have asked the ESD to discontinue the bathroom routine. The parents contend that the time spent on these routine activities takes away from the delivery of services called for in the IFSP.

The ESD responds that the ESD fully implemented the amount of services on the IFSP.

During the on-site interview, ESD staff discussed the educational value of the routines used in the ECSE classroom. These routines provide the opportunity for the generalization of skills, including social and language skills.

The Department finds that the use of particular routines in the ECSE classroom are of educational value and that these routines are designed to allow progress on the student's goals. The parents have not identified any violation of the IDEA by the use of the routines. The Department does not sustain the parents' allegation that certain routines in the ECSE classroom are inappropriate.

C. Parent Participation

The parents allege that their concerns about appropriate placement and services were brought up at the IFSP meetings on October 19, 2007, November 14, 2007 and January 14, 2008. The parents further allege that they agreed to discuss with the ESD the placement/services issues when the student's evaluations and new present levels, goals and objectives were completed, but the ESD refused to have an IFSP meeting until April 29, 2008.

The ESD responds that they did not refuse to have an IFSP meeting between the January 14, 2008 and April 29, 2008 IFSP meetings.

The Department finds that following the January 14, 2008 IFSP meeting, ESD staff responded to the parents' concerns about the present levels, goals and objectives. The ESD engaged the parents in several informal discussions and at least one informal meeting concerning revisions to these components of the student's IFSP. The ESD, through its legal counsel, told the parents on March 6, 2008 that the ESD disagreed with the parents' assertion that further revision of the present levels, goals and objectives was necessary.

The evidence shows that that the parent contacted ESD staff by phone on February 21, 2008 and requested an IFSP meeting. In an e-mail message dated February 22, 2008, the ESD special education director confirmed the parents' request for an IFSP meeting and directed the parent to have the parents' attorney contact the ESD's attorney to address the parents' concerns and request an IFSP meeting. At that point, the attorneys had been actively involved in the discussions and negotiations. Therefore, it would not be unusual for the attorneys to be involved in the scheduling of the IFSP meetings. The Department does not find persuasive evidence that the ESD refused to schedule an IFSP meeting or that it deliberately delayed the scheduling of an IFSP meeting. Instead the ESD relied on the attorneys to schedule a mutually available date, and the Department did not find documentation that the parent's attorney requested that the ESD move up the April 29, 2008 date.

D. Prior Written Notice (PWN)

A prior written notice must be given to the parent by the ESD a reasonable time before the ESD initiates or changes, or refuses to initiate or change, the identification, evaluation, placement of the child or the provision of a free appropriate public education to the child if the child is between three years of age and the age for eligibility for public school. The prior written notice must be given after the decision is made and a reasonable time before the decision is implemented.⁸

The complaint alleges that the ESD did not timely provide a prior written notice following the IFSP meeting on October 19, 2007. The parents also allege that although the prior written notice states that the parents' request for an ABA home program would be discussed at a later meeting, this discussion has never taken place.

⁸ OAR 581-015-2745, see regulation for complete set of requirements

During the on-site investigation, ESD staff agreed that the ESD did not send the prior written notice from the October 19, 2007 IFSP meeting until January of 2008.

The Department finds that the parents' attorney advised the ESD's attorney and director at the meeting on November 14, 2007 that the parents' requests made at the October 19, 2007 meeting for the ABA home program should be set aside. The ESD then reasonably changed the focus of discussion, as requested by the parents' attorney, to the present levels, goals and gathering of baseline data. The Department does not substantiate the allegation that the ESD violated the IDEA by failing to discuss the withdrawn requests for the ABA program at a later date, as stated in the prior written notice. The Department does order corrective action for the failure of the ESD to provide a prior written notice within a reasonable time following the October 19, 2007 IFSP meeting. See Corrective Action.

E. Placement: failure to individualize IFSP

The parents allege that the ESD has failed to individualize the student's IFSPs. Specifically, the parents allege that the student receives inadequate services to address the student's communication problems and that the student does not receive direct intervention as requested by the parents. The parents further allege that the ESD has failed to engage in appropriate data collection related to the student's IFSP goals and objectives.

The Department, upon review of the student's IFSPs and evaluations, finds that the student's IFSP is individualized to the student. The student's IFSPs in effect since May 22, 2007 (the limitations period in this case) contain present levels, goals and objectives to address the student's communication problems. Under the student's April 29, 2008 IFSP, the student receives specially designed instruction at the ECSE site to address communication. The student receives direct speech-language therapy for 30 minutes each week. The Department also finds, as reflected in the progress reports incorporated into the student's IFSPs, that ESD staff gather data sufficient to report on the student's progress toward the student's goals and objectives. The Department does not substantiate the allegation that the student's IFSPs are not individualized, nor does the Department substantiate the allegation that the ESD is providing inadequate services to address the student's communication problems. The ESD provides direct speech-language services to the student. The Department also does not substantiate the allegation that the data collection by ESD staff is insufficient to document progress towards the student's goals and objectives.

F. IFSP Implementation

The parents allege that ESD has not implemented the provision of the student's IFSPs providing for daily access to the STAR program. The parents further allege that the IFSP does not delineate the amount of time to be spent on the STAR program. The

parents further allege that until April 8, 2008, the ESD refused to change the criteria and evaluation methods to reflect the STAR program.

OAR 581-015-2830 provides:

581-015-2830

Implementation of the IFSP

- (1) An IFSP must:
 - (a) Be written before EI services or ECSE and related services are provided to the child;
 - (b) Begin as soon as possible following the meeting; and
 - (c) Be provided year round for children receiving EI services, unless agreed to otherwise by the parents; or
 - (d) Be in effect by the child's third birthday and at the beginning of the school year for children receiving ECSE services.
- (2) If a child's third birthday occurs during the summer, the child's IFSP team must determine when services begin under the IFSP.
- (3) Contractors and subcontractors must:
 - (a) Ensure that the IFSP is available to each regular preschool teacher, EI/ECSE specialist, related service provider and other service provider who is responsible for its implementation; and
 - (b) Inform each teacher and provider described in (2)(a) of his or her specific responsibilities for implementing the child's IFSP and the specific accommodations, modifications and supports that must be provided for on behalf of the child in accordance with the IFSP.
- (4) Contractors or subcontractors must provide EI or ECSE and related services to a child with a disability in accordance with an IFSP.
- (5) 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 Department finds that the fact that the IFSP does not state a specific amount of time to be devoted to the STAR program does not constitute a violation of the IDEA. The autism consultant and autism specialist explained why it is inappropriate to state in the IFSP a specific amount of time to be spent on the STAR program. The STAR program is a methodology and a curriculum that is used throughout the day as need arises. The Department thus does not substantiate the allegation that the IFSP is inappropriate because it does not state a specific amount of time to be spent on the STAR program.

Concerning failure to implement the STAR program, the Department finds that from October 6, 2006 to February 15, 2008, the ESD failed to adequately implement the provision of the student's IFSPs calling for access to the STAR program. The student's teacher as of October 6, 2006 did not implement the STAR program until involvement of the autism consultant on February 15, 2008. Both the ESD's autism specialist and autism consultant confirm that the ESD staff failed to adequately implement the STAR program with the student. The autism specialist observed that the student's goals were not changing which indicated that the student had reached a plateau and was not making adequate progress toward the student's goals from October of 2006 to February of 2008. However, the Department may not address matters occurring before May 22, 2007. Therefore, the Department finds that the ESD did not adequately implement the STAR program from May 22, 2007 through the end of the ECSE school year in mid-June of 2007, and again from July 10, 2007 to February 15, 2008. During that period of time, the student attended the ECSE classroom four days a week for two hours a day. The Department finds that the ESD failed to implement the STAR program during the above 104 school days as required in the student's IFSP.

The Department finds that the failure of the ESD to implement the STAR program is both material and substantial.⁹ The Department orders 208 hours of compensatory education based on 104 school days, two hours a day. See Corrective Action.

G. Present Level of Educational Performance

The parents allege that the present levels of educational performance in the student's IFSPs do not contain objective, measurable criteria from which to establish a baseline for the student's goals.

OAR 581-015-2815(3)(a) states that present level must include "a statement of the child's present level of development, including how the child's disability affects the child's participation in appropriate activities for the child's age. "The present level statement must be based on professionally acceptable objective criteria."

The Department finds that the present levels in the student's October 10, 2007 and April 29, 2008 IFSPs adequately state the student's present level of development. The ESD worked extensively with the parents to obtain baseline data and incorporate this data into the present levels. This baseline data is also included in the IFSPs, in the progress reports incorporated into the student's goals. The Department does not substantiate the allegation that the present levels are inadequate.

H. IFSP Content: Goals

The parents allege that the student's IFSP goals do not include several needs identified in the student's re-evaluations in December of 2007. The Department finds that some of the many learning needs identified in a particular evaluation were not incorporated into the student's IFSP. However, the ESD is not required to place all of the learning needs

⁹ Van Duyn ex rel, *Van Duyn v. Baker Sch. Dist.* 5J, 502 F. 3d 811, (9th Cir., 2007) 47 IDELR 182

identified in an evaluation in the student's IFSP. Rather, the IFSP team must review the evaluations and address the areas of need identified in the evaluations. This does not mean that every specific suggestion must be in the student's IFSP. In this case, the student's IFSP includes goals that address the student's areas of need after review of the evaluations. The absence of a particular suggestion in an evaluation, under the goal areas of cognitive, adaptive, receptive communication and expressive communication, does not render the IFSP goals inadequate. The parent has not shown that the absence of a particular concept under a particular goal area has impacted the student's ability to make educational progress. The Department does not substantiate this allegation.

I. IFSP Content; IFSP Implementation

The parents allege that several of the student's short-term objectives should be annual goals; and that several of the goals in the student's IFSPs are not objective or measurable. The parents further allege that the ESD refused to make further changes to the student's goals in March of 2008.

The Department, upon reviewing the student's goals and objectives in the student's October 10, 2007 and April 29, 2008 IFSPs, does not substantiate the parents' allegations that some of the objectives must be goals and that some of the goals are not objective or measurable. When the goals in the student's IFSPs are combined with the related objectives, they are measurable and sufficiently objective. See *In the Matter of the Education of E.W. and Beaverton School District*, Case No. 02-054-019 (ODE, June 27, 2007).

The ESD staff responded to parental input and continued to work informally on the parents' requests for revision of the student's IFSP for at least two months following the January 14, 2008 IFSP meeting. However, on March 6, 2008, the ESD, through its legal counsel, informed the parent that the goals were adequate and did not need further revision. On March 13, 2008, the ESD, through its legal counsel, stated its willingness to seriously consider the parent's input and add IFSP goals to the agenda for the IFSP meeting on April 29, 2008.

The Department finds that the ESD's decision in March, 2008 to not consider further revisions to the student's IFSP until the IFSP meeting on April 29, 2008, was reasonable and does not violate the IDEA.

J. Educational Records

1. Access to Records

The parents allege that the ESD violated IDEA by not providing the parents with access to student's educational records in a timely manner. The parents specifically allege that the ESD initially refused to provide the parents with the student's data collection sheets.

The parents further allege that the ESD has not provided them with access to copies of e-mail messages between ESD staff and consultants.

Under the IDEA, parents have a right to review all of their children's educational records.¹⁰ The ESD must comply with a parent request for access to records without unnecessary delay, before any meeting regarding an IEP, and no more than 45 days after the request.¹¹ Educational records mean those records that are directly related to a student and maintained by the ESD or primary contractor or subcontractor.¹² Educational records do not include "[r]ecords of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, are used only as a personal memory aid, and are not accessible or revealed to any other person except as a temporary substitute for the maker of the record."¹³ The Family Policy Compliance Office (FPCO), which is responsible for implementing federal legislation protecting students' and parents' rights regarding educational records, has explained that the sole possession exception applies only to records that are "of the nature of informal 'memory jogger notes.'"¹⁴ The exception does not apply to "detailed or comprehensive notes that record specific clinical, educational or other services provided to a student, or that record direct observations or evaluations of student behavior, including a student's success in attaining specified objectives, whether or not these records have been shared with another individual."¹⁵

The Department finds that the parent verbally requested the student's education records on September 21, 2007. On October 4, 2007, the parent wrote two letters to the ESD and clarified that the request includes "data collection sheets" and "everything else from every other teacher, aide, specialist, etc. who has records on [the student]". The ESD received the parents' letters on October 9, 2007. The parties agree that at a meeting on November 14, 2007, the ESD agreed to provide data collection documents to the parents, reversing the ESD's earlier position that data collection documents were "sole possession" documents not subject to disclosure. This occurred within 45 days of the clarification of the parents' records request to include the data collection documents.

The Department finds that the ESD complied with the general request for education records within 45 days of the verbal request made on September 21, 2007. The Department further finds that the parents clarified that the records request included data collection sheets in two letters received by the ESD on October 9, 2007. Within 45 days of that clarification, the ESD agreed to provide data collection sheets. One of the parents now states that all requested documents have been received, other than possible email messages to and from the autism consultant.

¹⁰ OAR 581-015-2300

¹¹ OAR 581-015-0270

¹² OAR 581-015-2700(10)

¹³ OAR 581-021-0220 (6)(b)(A)

¹⁴ Letter to Otter, 103 LRP 7471 (FPCO, 2002), posted at: <http://www.ed.gov/policy/speced/guid/idea/letters/2002-3/otter0729023q2002.doc>.

¹⁵ Letter to Salem-Keizer SD, (FPCO, December 29, 2006).

Concerning the e-mail messages from the autism consultant to or from ESD staff, the Department finds that it is not clear whether these e-mail messages exist or that they were not provided to the parents. To the extent that there are e-mail messages from the autism consultant to or from ESD staff, the ESD shall assure they are provided to the parents. See Corrective Action.

2. Destruction of Records

The parents allege that the ESD's policy of destroying raw data collection sheets after it was summarized without prior notification to the parent violated the parents' right of access to education records.

Under IDEA, if a school district no longer needs a student's educational record to provide educational services, it must notify the parents.¹⁶ Parents may then request destruction of information and districts must honor their request. Districts, however, may not destroy any educational records if there is an outstanding request to inspect and review the records.¹⁷

Although the ESD had a policy of destroying raw data collection sheets after the information on those documents was incorporated into a report or summary, once the parents made clear in October of 2007 that their records request included the data collection sheets, the ESD discontinued destruction of the data collection documents and has since provided copies of all such documents to the parents.

The Department finds that the ESD did not change its policy concerning destruction of raw data collection documents until November 14, 2007, following the parents request on October 9, 2007 for raw data collection sheets by the parents. Although it is not clear that any data collection documents were destroyed from October 9, 2007 to November 14, 2007, the Department substantiates the parents' allegation that data collection documents could not be destroyed, once the parents clarified their request to include data collection documents. The Department concludes that staff training is necessary to prevent reoccurrence of this problem and to ensure that staff notifies parents when the ESD no longer needs a student's educational record to provide educational services for the student. See Corrective Action.

¹⁶ 34 CFR 300.624

¹⁷ OAR 581-021-0270(5)

V. CORRECTIVE ACTION¹⁸

In the Matter of Northwest Regional ESD
Case No. 08-054-020

#	Action Required	Submissions ¹⁹	Due Date
(1)	<p><u>Prior Written Notice:</u></p> <p>The ESD will provide information and training to appropriate special education staff regarding the use of prior written notice, within a reasonable period of time, before the ESD proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.²⁰</p>	<p>Evidence of completed training, including agenda, training materials, and a copy of the sign-in sheet.</p>	<p>September 30, 2008</p>
(2)	<p><u>Compensatory education services:</u></p> <p>(a) The ESD shall offer 208 hours of instruction with the STAR program to be completed by August 18, 2009.</p> <p>(b) The ESD shall confer with the parent and student to develop a plan for implementation of the compensatory education services. The District shall reasonably accommodate parent and student preferences for scheduling these services.²¹</p>	<p>After conferring with the parent and student, the District shall submit a plan for the provision of compensatory education services to the Department, with</p>	<p>Plan due: September 30, 2008</p>

¹⁸ 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).

¹⁹ Initial Verification: The Department will review the submitted documents. Corrective action 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) 947-5752, Ext. 2311; e-mail: raeann.ray@state.or.us; fax number (503) 378-5156

²⁰ OAR 581-015-2310

²¹ To “confer” does not necessarily mean to have a meeting – it could be by phone, by exchange of drafts, etc. However, if the parent and ESD agree, the Department will reimburse the ESD for the use of a neutral facilitator for a meeting. For more information, contact Steve Woodcock, (503) 974-5797.

	<p>(c) The ESD shall provide transportation as necessary for the student to access these services.</p> <p>(d) Compensatory services shall be provided by qualified staff.</p> <p>(e) The ESD does not have to provide make-up sessions for sessions scheduled but missed due to student absence. The ESD shall provide make-up sessions for services scheduled but cancelled due to provider illness or unavailability.</p> <p>(f) The ESD shall complete the provision of compensatory education services by August 7, 2009.</p> <p>(g) The ESD and parent may agree in writing to modify any of the provisions (a) through (e).</p>	<p>a copy to the parent. The plan shall identify how the services will be provided, the schedule for services (including when services begin), and the contact person for the District for oversight of these services.</p> <p>The ESD shall provide written progress reports on completion of compensatory services to the parent and the Department.</p> <p>The ESD shall notify the Department and parent in writing when compensatory services are completed.</p> <p>The ESD shall submit to the Department and the parent any written agreement to modify the provisions of this compensatory education plan within seven days of the agreement .</p>	<p>Progress reports due: February 1, 2009 May 30, 2009 August 7, 2009</p> <p>If needed, within seven days of the written agreement</p>
(3)	<u>Access to Student Education Records</u>		

²² OAR 581-021-0270 and 34 CFR §300.624

	<p>The ESD shall provide training on the requirements of Access to Student Education Records²² to staff responsible for responding to requests for student education records, including the requirements to inform parents when personally identifiable information in a student's educational record is no longer needed to provide educational services to the child (destruction of records).</p> <p>The ESD shall provide copies of any e-mail messages from the autism consultant to or from ESD staff, for the period beginning in January of 2008, to the present.</p>	<p>Evidence of completed training, including agenda, training materials, and a copy of the sign-in sheet.</p> <p>Documentation that the ESD provided the documents to the parents, or an agreed upon statement that there are no such documents to provide.</p>	<p>September 30, 2008</p> <p>September 30, 2008</p>
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Dated: October 29, 2008

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

Date mailed: October 29, 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.