

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)	FINDINGS OF FACT,
Willamette Education Service District 9)	CONCLUSIONS,
)	AND FINAL ORDER
)	Case No. 24-054-068

I. BACKGROUND

On November 18, 2024, the Oregon Department of Education (the Department) received a written request for a special education complaint (Complaint) from the parents (Parent) of a student (Student) enrolled in a preschool in the area serviced by the Willamette Education Service District (ESD). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the ESD.

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

On November 22, 2024, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the ESD identifying specific allegations in the Complaint to be investigated and establishing a *Response* due date of December 6, 2024. The Department's Complaint Investigator and the ESD agreed to an extension for the ESD's *Response* due to the intervening holiday. On December 13, 2024, the ESD submitted a *Response*, disputing the allegations described in the Complaint. The ESD submitted the following relevant items:

1. ESD Written Response
2. Notice of IFSP Team Meeting, 11/17/2022
3. Notice of IFSP Team Meeting, 1/2/2023
4. Health, Hearing and Vision Annual Review, 1/30/2023
5. IFSP Meeting Notes, 1/30/2023
6. Child Progress Report, 1/30/2023
7. Individualized Family Service Plan (IFSP), 1/30/2023
8. Prior Notice of Early Intervention or Early Childhood Special Education Action, 1/30/2023
9. Child Progress Report, 7/19/23
10. Notice of IFSP Team Meeting, 1/9/2024

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)

² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

11. Health, Hearing and Vision Annual Review, 1/22/2024
12. IFSP Meeting Notes, 1/22/2024
13. Child Progress Report, 1/22/2024
14. Individualized Family Service Plan (IFSP), 1/22/2024
15. Prior Notice of Early Intervention or Early Childhood Special Education Action, 1/22/2024
16. Child Progress Report, 7/8/2024
17. Notice of IFSP Team Meeting, 8/13/2024
18. IFSP Meeting Notes, 8/29/2024
19. Prior Notice About Evaluation/Consent for Evaluation, 6/3/2024
20. Early Childhood Special Education Evaluation Report, 8/29/2024
21. Statement of Eligibility for Special Education, other Health Impairment (ECSE & School Age), 9/4/2021
22. Medical Statement or Health Assessment Statement, 4/16/2024
23. Prior Notice and Consent for Initial Provision of Special Education Services, 8/29/2024
24. Notice of IFSP Team Meeting, 8/30/2024
25. Individualized Family Service Plan (IFSP), 9/20/2024
26. Prior Notice of Early Intervention or Early Childhood Special Education Action, 10/15/2024
27. Notice of IFSP Team Meeting, 10/19/2024
28. Notice of IFSP Team Meeting, 10/30/2024
29. Written Agreements between the Parent and the EI/ECSE Program, 11/5/2024
30. IFSP Meeting Notes, 11/5/2024
31. Individualized Family Service Plan (IFSP), 10/25/2024
32. Prior Notice of Early Intervention of Early Childhood Special Education Action, 11/5/2024
33. Email: Fwd: Contact email, 10/1/2024
34. Email: Support, 10/4/2024
35. Email: Requesting, 10/14/2024
36. Email: Re: [Student] IFSP Request to WESD 10-20024 Final.pdf, 10/16/2024
37. Email: [Student] IFSP Request to WESD 10-2024 Final.pdf
38. Email: Re: Support, 10/10/2024
39. Email: IFSP as requested, 10/16/2024
40. Email: [Student] IFSP Request to WESD 10-2024.pdf
41. Email: updated meeting notice, 10/19/2024
42. Email: Re: IFSP for [Student], 10/29/2024
43. Email: Re: meeting notice, 10/30/2024
44. Email: Fwd: updated meeting notice, 10/22/2024
45. Email: 11/8/2024
46. Email: Implementation plan and resources, 9/23/2024
47. Email: RE: iPad for [Student], 9/23/2024
48. Home Implementation Plan (Draft), 9/20/2025
49. Email: Equipment Loan Agreement [Student] Between Willamette Regional ESD and [Parent] is Signed and Filed!, 1/4/2024
50. Email: Notice of action, 1/22/2024
51. Email: form_2280017_253833_021524_between Willamette Regional ESD and [Parent] is Signed and Filed, 2/15/2024

- 52. Email: [Student's] most current IFSP, 5/14/2024
- 53. Email: Re: Professional References, 10/13/2024
- 54. Email: Meeting information for [Student], 8/14/2024
- 55. Email: Signature requested on [Document], 9/20/2024
- 56. Email: Action Notice from yesterday, 8/30/2024
- 57. Email: New meeting information, 8/30/2024

The Parents submitted the following item on November 16, 2024:

1. Request for Complaint Investigation

On November 21, 2024, the Department's Complaint Investigator interviewed the Parent to gather more information regarding their concerns. On December 18, 2024, the Department's Complaint Investigator interviewed the ESD's Director of Early Childhood Education. The Complaint Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parents' allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from November 19, 2023, to the filing of this Complaint on November 18, 2024.

Allegations	Conclusions
<p>Individualized Educational Program/Individualized Family Service Plan</p> <p>The Complainant alleged that the ESD failed to develop an Individualized Family Service Plan (IFSP) for the Student.</p> <p>(OAR 581-015-2560)</p>	<p>Not Substantiated</p> <p>The ESD developed an IFSP for the Student in August, 2024.</p>
<p>Evaluation Planning</p> <p>The Complainant alleged that the ESD failed to determine the Student's related services by reference to relevant evaluation data. Specifically, it is alleged that the ESD determined or proposed nursing/medical support services for the Student, and decisions regarding the provision of social and emotional support services without refence to evaluation data.</p>	<p>Not Substantiated</p> <p>The ESD planned for nursing services to support the Student's IFSP during the times when IFSP services were to be provided.</p>

(OAR 581-015-2115; 34 CFR §300.305)	
IFSP Content The Complaint alleged that the ESD failed to include appropriate related services in the Student's IFSP that was proposed for the Student. Specifically, it is alleged that the ESD has not provided appropriate, or sufficient, nursing or medical support for the Student's needs; or that the ESD's determination of nursing or medical support was not based on peer-reviewed research. (OAR 581-015-2815)	Not Substantiated The ESD has proposed nursing services in support of the Student's IFSP services; however, the Student has not attended the preschool program due to the disagreement over how these services would be provided.
IFSP Team Considerations and Special Factors The Complaint alleged that the ESD failed to consider the concerns of the Parent for enhancing the development of their child, and the results of evaluations, when the ESD declined to offer social and emotional support for the Student. (OAR 581-015-2820)	Not Substantiated There is insufficient data in the records to support the Student's needs for a social emotional goal.

REQUESTED CORRECTIVE ACTION
The Parent requests that the ESD: <ul style="list-style-type: none"> • Update the Student's IFSP to include social-emotional goals; • Provides one on one accommodation to support the Student's health status so that they can continue to be successful in preparing for school readiness and engage with peers; • Arrange to meet the one-on-one accommodation with the current DSP provider, and that a medically trained individual will need to be appropriately trained and delegated by a nurse; • Utilize existing support staff utilized outside of school with the Student due to their existing medical training, and bilingual capabilities.

III. FINDINGS OF FACT

1. The Student in this case turned three years of age in September, 2024. The Student is eligible for special education under the category of Other Health Impairment (OHI).

2. On January 2, 2023, the ESD sent the Parent notice of an IFSP team meeting for the Student, scheduled for January 30, 2023.
3. On January 30, 2023, the ESD completed a health, hearing and vision annual review for the Student. The review documented the student's unique medical needs including a GJ-tube, choking concerns, serious allergies, recent hospitalizations, and medications.
4. During the January 30, 2023 IFSP meeting, the Parent reported that the Student has seizures and provided relevant information regarding the Student's medical history and needs.
5. On January 30, 2023, the ESD provided a Child Progress Report related to the Student's goals in fine motor skills, and gross motor skills.
6. On January 30, 2023, the Student's IFSP was updated to include the following services: Service Coordination, 8 hours per year; Early Intervention services in gross motor, cognitive, and expressive communication skills, 30 minutes once per month; and, physical therapy services, 45 minutes once per month.
7. On July 19, 2023, the ESD produced a progress report for the Student. The report indicated that the Student met their gross motor goals, cognitive goals, and expressive communication goals.
8. On January 9, 2024, the ESD sent the Parent notice of an IFSP team meeting scheduled for January 22, 2024.
9. On January 22, 2024, the ESD met to discuss the Student's needs, and completed a Health, Hearing and Vision Annual Review. The review documented the student's unique medical needs including a GJ-tube, choking concerns, serious allergies, recent hospitalizations, and medications.
10. On January 22, 2024, the ESD produced a progress report for the Student's IFSP goals, including gross motor goals, cognitive goals, and expressive communication goals. The ESD reported that the Student was then making progress sufficient to meet all of their goals.
11. On January 22, 2024, the Student's IFSP was updated to include the following services: Service Coordination, 8 hours per year; Early Intervention services in gross motor, cognitive, and expressive communication skills, 30 minutes twice per month; and, Physical Therapy Services, 45 minutes once per month. The Student's fine motor, gross motor, adaptive, cognitive, social or emotional, expressive communication, and receptive communication developmental areas were also updated.
12. On January 22, 2024, the ESD sent the Parent a Prior Notice of Early Intervention or

Early Childhood Special Education Action. The Notice indicated that the ESD proposed to initiate the provision of appropriate early intervention services, FAPE, and the Student's IFSP services.

13. On June 3, 2024, the Parent provided consent for the ESD to conduct an evaluation of the Student. The consent form listed the various assessments and procedures that the ESD intended to utilize in determining the Student's special education services.
14. On July 8, 2024, the ESD completed a Child Progress Report for the Student's IFSP goals. The report indicated that the Student made progress sufficient to meet all of their goals.
15. On August 13, 2024, the ESD sent the Parent a notice of IFSP team meeting. The purpose of the meeting was to determine the Student's initial eligibility for early childhood special education (ECSE).
16. On August 29, 2024, the ESD completed the Student's Early Childhood Special Education Evaluation Report. The Report included the Student's medical history, and the results of ESD administered assessments.
17. On August 29, 2024, the IFSP Team reviewed the Student's unique medical needs, and the manner in which the Student's motor scores impacted their education. The team discussed the eligibility criteria for OHI. The Parent expressed their interest in seeing the Student walk and speak more words, as well as use a communication device or use hands to sign. The Parent voiced concerns about the Student's ability to remain safe given their inability to communicate. The team discussed the benefit of the Community Preschool Program. At the meeting, the Parent reported that the Student was accepted by a preschool program. During the meeting, the Parent expressed interest in the Student's state-provided Direct Personal Service Provider (DSP) coming to the preschool program to meet all of the Student's medical needs. The team documented that the Community Preschool Program wanted the ESD to have a delegated individual to provide all of the Student's medical needs. The Parent explained that the Student's current DSPs are trained and can provide the services the Student needs. The team agreed to reconvene on September 19, 2024, at which time a ESD coordinator could attend to address funding questions.
18. As part of the August 29, 2024, meeting, the team determined that the Student was eligible for special education under the category of OHI.
19. On August 29, 2024, the Parent signed the consent for the Initial Provision of Special Education Services for the Student.
20. On August 30, 2024, the ESD sent the Parent a notice of IFSP team meeting scheduled for September 20, 2024. During the meeting, it was discussed that the Community Preschool Program would allow the Student's DSP to attend school with the Student,

but that the Community Preschool Program was not funded to pay for their services. The ESD explained that it provides services to assist students with making progress toward their goals. The Community Preschool Program has a separate responsibility to provide access to the program. During the meeting, the Community Preschool Program Representative acknowledged that they had a nurse but requested that the ESD provide nursing services for the Student. The ESD explained that its services are generally in support of the IFSP, not general attendance at community programs. The team determined that the services should be delivered to the Student in the Community Preschool Program. The Student's specific medical needs were also discussed at this meeting, including the use of a pulsometer, monitoring vitals during sleep, the Student's tracheotomy, feeding protocols, concerns around virus seasons, their vent, and other associated concerns.

21. On September 5, 2024, the ESD's Augmentative and Alternative Communication (AAC) Consultant sent an email to the Parent informing them that the iPad with a communication app was ready for the Student's use. The device would require that the AAC Consultant train the Student, the Parent, and the Student's DSP on its use and incorporation into home life. The AAC Consultant offered to schedule a mutually convenient time for this.
22. The Student's September 20, 2024, IFSP plan included service coordination of 8 hours per year; developmental consultation services of 20 minutes three times per month; physical therapy services of 45 minutes once per month; and speech language services 20 minutes three times per month. The team determined that these services would be delivered to the Student in the Community Preschool Program.
23. On September 20, 2024, the ESD's AAC met with the Parent and the Student in their home to set up an AAC device for the Student.
24. On September 20, 2025, the ESD produced a draft Home Implementation Plan for use with the Student's AAC device.
25. On October 4, 2024, the Parent sent an email to the ESD inquiring about the ESD providing support for the Student to attend the Community Preschool Program.
26. On October 4, 2024, the ESD responded to the Parent, reporting on communications between the ESD and the Community Preschool Program, the ESD wrote in part that the Community Preschool Program "has an obligation to provide children access to their full program, and hold responsibility for ensuring [the Student] has supports in place in regard to the adult support you are referring to." The ESD also observed that it was gathering additional information regarding the whether Direct Service Providers (DSPs) can support children accessing community preschool programs.
27. On October 15, 2024, the ESD sent the Parent a Prior Notice of Early Intervention or

Early Childhood Special Education Action, documenting the decisions from the Student's September 9, 2024 IFSP meeting.

28. On October 15, 2024, the Community Preschool Program sent the ESD an email with requests on behalf of the Parent.
29. On October 16, 2024, the ESD sent the Parent and other members of the IFSP team an email outlining past meeting dates.
 - a. The ESD observed that the transition between EI to ECSE occurred after the Student turned three years of age in September 2024. The team met on August 29, 2024, and September 20, 2024, to discuss IFSP for Early Childhood Special Education (ECSE) program.
 - b. The Student was previously eligible for a birth to three, Early Intervention (EI) program. At that time, the Student had an IFSP in place, which was developed January 22, 2024.
 - c. The ESD noted that it stood ready to provide the IFSP services discussed on August 29, 2024, and September 20, 2024. The ESD noted that these services could be provided in the home until the Student was able to start attending the Community Preschool Program.
 - d. The ESD also documented that it was the Parent's choice to enroll the Student in a community preschool program, and that the preschool program had the obligation to allow the Student to access their full program, separate from the ESD's responsibilities to provide special education.
30. On October 16, 2024, the ESD, responding to the Parent's request, sent the Parent a copy of the Student's draft IFSP, observing that the team page and placement page were not yet completed.
31. On October 19, 2024, the ESD sent the Parent notice of the IFSP team meeting scheduled for October 25, 2024.
32. On October 22, 2024, the Community Preschool Program sent an email to the ESD inquiring whether someone from the ESD would be present at the next IFSP team meeting who was capable of making decisions on funding issues.
33. On October 25, 2024, the Student's IFSP team met to review the Student's needs. The Parent reported that the Student's doctors released the Student to return to school with medical precautions. The Parent reported that at times the Student attempts to remove their tracheotomy tube, required tube feeds at school, and other relevant medical information. During the meeting, the ESD's Nurse reported their opinion that a Licensed Practical Nurse (LPN) or Registered Nurse (RN) should be available to support the Student at school. The Parent explained that others could provide care to the Student as the Parent has. The ESD recommended consulting doctors' orders on the matter.

During the meeting, the Parent requested social emotional goals in the IFSP for the Student. The ESD observed that the Student's scores when evaluated in the area of social emotional need were typical. The ESD observed that the specific skill that the Parent suggested the Student work on, engaging with typical peers, is something all preschoolers are working on. The Parent expressed frustration that they were not in control of the Student's IFSP, to which the ESD explained that the IFSP has team members, and that the Parent is one member of the team. At the meeting, the ESD offered nursing services to the Student at the Community Preschool Program two days per week, for three hours, and direct nursing support for those services time. This nursing service would assist the Student in making progress on their IFSP goals. The Community Preschool Program questioned why the ESD would not provide further nursing services for the Student. The ESD responded that the Community Preschool Program is responsible for nursing services beyond those required to support the Student's IFSP goals.

34. On October 30, 2024, the ESD sent the Parent notice of an IFSP team meeting scheduled for November 5, 2024.
35. On November 5, 2024, the Student's IFSP meeting was held. The Parent reported that the Student was then attending drop-in daycare with alternate community providers. On each occasion, the Student had difficulties. The Parent suggested that this was evidence of the Student's need for a social emotional goal being added to their IFSP. The ESD observed that while this is good data, it is also typical of students of that age, and that more information was needed before reassessing whether the Student had an actual need for a social emotional goal. The Parent expressed interest in the DSP continuing their responsibilities for the Student's daily health monitoring. During the meeting, the Parent reported their dissatisfaction with the manner in which the ESD was supporting the Student. The Parent left the meeting. The team concluded the meeting after the Parent left, without concluding their discussion about placement.
36. On November 5, 2024, the ESD sent the Parent a Prior Notice of Early Intervention or Early Childhood Special Education Action, documenting its refusal to provide a goal for social/emotional needs on the Student's August 29, 2024, IFSP. The ESD observed that standardized evaluations dated June 3, 2024, indicated that the Student's skills were in the typical range. During the August 29, 2024, IFSP meeting, the team also discussed that the Student had typical social skills, and that preschool would allow the Student to be around other children with typical social skills. The Student had not been exposed to social situations previously. The ESD noted that more data was needed to demonstrate that the Student had a unique need, in order to craft a specific goal with frequency, measure, and necessity.
37. On November 5, 2024, following the IFSP team meeting, the ESD sent the Parent a Prior Notice of Early Intervention or Early Childhood Special Education Action, documenting

its refusal to utilize the Student's DSP as a medical support while attending the Community Preschool Program.

38. On November 8, 2024, the ESD sent the two Prior Written Notices, dated November 5, 2024, to the Parent by email. The email noted that the ESD stood ready to complete the Student's IFSP, including a placement determination.
39. On November 18, 2024, the Parent filed this Complaint.
40. On November 21, 2024, the Department's Complaint Investigator interviewed the Parent. The Parent described the Student's various medical conditions and their relative fragility and need for nursing support. The Parent explained that the Student was accepted to the Community Preschool Program and required nursing service for the entire school day. The Parent reported that the ESD had only offered three hours per week of nursing services, suggesting that that was all that the Student needed.
41. The Parent reported that the Student currently has two DSPs who assist the Student in the home and in the community. The Parent explained their preference that the current DSPs continue to support the Student, go with the Student to the Community Preschool Program, and travel with the Student on the bus. The Parent expressed disappointment that the ESD would provide a nurse for the Student's needs, rather than utilize the DSPs. The Parent explained that the DSPs are delegated by a nurse, have experience working with the Student, and would be a better choice and were as equally qualified as the suggested LPN or RN. The Parent reported that the ESD was unwilling to discuss the use of the DSPs in support of the Student.
42. The Parent reported that the ESD was also unwilling to add an emotional support goal to the Student's IFSP. The Parent understood the ESD's reasoning for this as that the Student was where they were supposed to be developmentally. The Parent noted that the Student has social and emotional delays as the result of their disability. The Parent explained their interest in ensuring the Student develop appropriate social and emotional skills ahead of kindergarten. The Parent expressed interest in ensuring that the Student enjoys a regular school day with peers, engaging in regular preschool activities.
43. The Parent related that they had applied to the Community Preschool Program and received medical clearance from the Student's physicians for them to attend preschool. The Parent expressed the feeling that the ESD delayed consideration of support for the Student. The Parent reported that part of the initial discussion was who would pay for the DSPs to attend the Student in the preschool environment. The Parent suggested that the IFSP was not yet complete, as it did not take into consideration the Parent concerns. The Parent questioned how the ESD determined the Student's service hours, and why additional services were limited. The Parent reported that if the ESD did not pay for and utilize the Student's current DSPs, the Parent would likely lose community

funding for the DSPs for the Student.

44. The Parent also expressed disagreement with the ESD stating that it was necessary to gather data before adding a social and emotional goal for the Student. The Parent suggested that this was a denial of educational opportunity for the Student.
45. On December 18, 2024, the Department's Complaint Investigator interviewed the ESD's Director of Early Learning. The Director of Early Learning explained that the IFSP services are generally delivered where parents choose, and can be delivered in the home, in a childcare setting, or in a preschool environment.
46. The Director of Early Learning understood that the Student required nursing services, and that usually in the preschool environment, the preschool would provide that. The Director of Early Learning was also aware that the Community Preschool Program had nurses on staff to provide these services. The ESD reported that some preschool programs believe that students with IFSPs should have all medical supports provided by the ESD, rather than the medical support being linked to the IFSP services.
47. The ESD explained that it uses developmental tools, the Student's developmental profile, Battell Developmental Inventory (BDI-3), and developmental assessments for young children generally.

IV. DISCUSSION

Individualized Educational Program/Individualized Family Service Plan

The Complaint alleges that the ESD violated the IDEA when it failed to develop an individualized family service plan for the Student.

Eligible children must have an individualized educational plan (IEP), or individualized family service plan (IFSP).³ A child's IFSP must contain a statement of the child's present level of development, including how the child's disability affects their participation in appropriate activities for the child's age. The IFSP should also include a statement of major outcomes or annual goals, and short-term objectives expected to be achieved for the child and family. Such outcomes or goals are related to meeting the child's needs that result from their disability to enable them to participate in appropriate activities and meeting their developmental needs that result from their disability. For children older than three, the IFSP should contain IEP content including, a statement of ECSE and relates service and supplementary aide and services, to be provided to the child and a statement of the program modifications or support for personnel that will be provided for the child. These program modifications or support for personnel are those that will assist the child to advance appropriately toward attaining the

³ OAR 581-015-2560

annual goals, participate in appropriate activities, and be educated and participate with other children.⁴

In September, 2024, the Student turned three years of age. The Student's IFSP team met on August 29, 2024, and September 20, 2024 to develop an IFSP for the Student. The initial IFSP developed for the Student on August 29, 2024, anticipated delivery of IFSP services in the preschool environment. On August 29, 2024, the Parent signed consent for the provision of IFSP services to the Student. The ESD began providing some services to the Student, such as AAC services on September 20, 2024. The ESD and the Parent continued to discuss other matters relevant to the delivery of IFSP services to the Student thereafter which impacted the delivery of IFSP services.

The Department does not substantiate this allegation.

Evaluation Planning

The Complaint alleges that the ESD violated the IDEA by failing to determine the Student's related services by reference to relevant evaluation data. Specifically, it is alleged that the ESD determined or proposed nursing and medical support services for the Student, and decisions regarding the provision of social and emotional support services, without reference to evaluation data.

The public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent. This information may assist in determining whether the child is a child with a disability, and the content of the child's IEP. The public agency must ensure assessments and other evaluation materials used to assess a child are used for the purposes for which the assessments or measures are valid and reliable, and that the child is assessed in all areas related to the suspected disability. The public agency must also ensure that the evaluation is sufficiently comprehensive to identify all the child's special education and related services needs.⁵ As part of any reevaluation, child's IEP team must review existing evaluation data, including evaluations and information provided by the parents of a child. The IEP team should also review current classroom-based, assessments, observations, and observations by teachers and related service providers. Based on this review, the IEP team should determine what additional data is needed.⁶ Programs receiving Federal financial assistance from the Department of Education are prohibited from discriminating on the basis of disability.⁷ Furthermore, preschool programs which are recipients of federal funds are required to take into consideration the needs of persons with disabilities.⁸ Such a program must offer their

⁴ OAR 581-015-2815(3)(a)—(3)(m)

⁵ OAR 581-015-2110(1)—(4)

⁶ OAR 581-015-2115(1)—(4)

⁷ 34 C.F.R. §104.1 & 104.2

⁸ 34 C.F.R. §104.38

education program or activity to disabled students regardless of the nature of severity of that disability.⁹

The Student's IFSP team met on August 29, 2024 to review the Student's needs in the development of the IFSP. During this meeting, the IFSP team determined the Student's required specially designed instruction. The IFSP team met again October 25, 2024 to clarify the nursing services offered in conjunction with the Student's IFSP services. During the meeting, a nurse from the ESD reviewed the Student's medical needs and recommended that an RN or LPN oversee the Student during the provision of special education. The ESD allocated nursing staff for the Student to support their IFSP goals. During the same October 25, 2024 IFSP team meeting, the Student's prospective Community Preschool Program questioned why the ESD was not allotting nursing staffing for the entirety of the day. The ESD observed that it allocated nursing staff during the service times outlined in the Student's IFSP, specifically the nursing services required for the Student to make progress toward their IFSP goals. While the Community Preschool Program has nursing services, it asserted that the ESD should take responsibility for all of the Student's nursing services for all of the times that the Student participated in the Community Preschool Program.

The ESD is required to provide appropriate nursing services to support the Student's IFSP. Preschools receiving federal financial assistance from the U.S. Department of Education have the responsibility to make their programs available to disabled students. In this case, the ESD made arrangements for nursing services to support the Student's IFSP.

The Department does not substantiate this allegation.

IFSP Content

The Complaint alleges that the ESD violated the IDEA by failing to include appropriate related services in the IFSP that it proposed for the Student. Specifically, it is alleged that the ESD did not provide appropriate, or sufficient, nursing or medical support for the Student's needs; or that the ESD's determination of nursing or medical support was not based on peer-reviewed research.

IFSPs must include a statement of the child's preset level of development, including how the child's disability affects their participation in appropriate activities for the child's age. For children over the age of three, the IFSP must include a statement of the specific early intervention services, based on scientific research to the extent practicable, to be provided to the child and to the family to advance toward attaining the major outcomes or annual goals. The IFSP should also include how the parents will be regularly informed of the child's progress toward major outcomes or annual goals, and the extent to which that progress is sufficient to enable the child to achieve the outcomes of goals by the annual IFSP review date.¹⁰

⁹ 34 C.F.R. §104.33

¹⁰ OAR 581-015-2815(3)(a)—(3)(b); (3)(d)(A)—(3)(d)(C); (3)(i)—(3)(m)

The Student's IFSP team met on October 25, 2024. A nurse from the ESD was present. The Nurse provided input to the development of the IFSP specific to the Student's medical needs. The IFSP developed by the ESD includes specific nurse staffing for the Student's medical needs during the time IFSP services were to be provided. Due to the Parent's disagreement with the level of nursing staffing offered by ESD and the Parent's choice not to send the Student to the Community Preschool Program, the proposed nursing services to support the Student in that environment have not been provided.

The Department does not substantiate this allegation.

IFSP Team Considerations and Special Factors

The Complaint alleges that the ESD violated the IDEA by failing to consider the concerns of the Parent for enhancing the development of the Student, and the results of evaluations, when the ESD declined to offer social and emotional supports for the Student.

In developing, reviewing, and revising a child's IFSP, the team must consider, the strengths of the child and the concerns of the parents for enhancing the development of their child. The team should also consider the results of the initial or most recent evaluation of the child, and their academic, developmental, and functional needs. If the IFSP team determines that a child needs a particular device or service for the child to receive free appropriate public education, the team must include a statement to that effect in the child's IFSP.¹¹

On August 29, 2024, the Student's IFSP team found the Student eligible for special education. During that meeting, the team determined that the Student had communication needs requiring an AAC device. On September 20, 2024, the ESD delivered an AAC device to the Student for their use. At the October 25, 2024, IFSP team meeting, the Parent requested that the ESD add social and emotional supports to the IFSP. The Parent stressed that the Student may not have the skills and emotional capacity to engage with typical aged peers. The ESD observed that the specific skills that the Parent suggested the Student work on (engaging with typical peers), is something all preschoolers are working on. The ESD noted that in order to gather data around this area, it would be necessary for the Student to attend preschool and interact with peers. As of the date of this Complaint, the Student had not begun attending the Community Preschool Program. During interviews with the Department's Complaint Investigator, the ESD observed that it had no data upon which to base a social emotional goal because the Student had not attended the preschool, and had not utilized most of the IFSP services.

The Department does not substantiate this allegation.

¹¹ OAR 581-015-2820(1)—(4)

VII. CORRECTIVE ACTION

*In the Matter of the Willamette Education Service District
Case No. 24-054-068*

The Department does not order corrective action in this matter.

Dated: this 14th Day of January 2025



Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

Emailing date: January 14th, 2025

Appeal Rights: Partied may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provision of ORS § 183.484. (OAR 581-015-2030 (14).)