

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. 25-054-012

I. BACKGROUND

On February 28, 2025, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parents (the Parents) of a student (Student) enrolled in a preschool in the area serviced by the Willamette Education Service District 9 (the ESD). The Parents 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 District.

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

On March 4, 2025, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of March 18, 2025.

The District submitted a *Response* on March 18, 2025, denying the allegations, providing an explanation, and submitting documents in support of the District's position. On April 10, 2024, the District provided additional documents. The District submitted the following relevant items:

1. District's Written *Response* to Complaint, 3/18/25
2. Notice of IFSP Meeting on 9/13/24, 9/5/24
3. IFSP Agenda/Notes, 9/13/24
4. Individualized Family Service Plan (IFSP) Revision, 9/13/24
5. Prior Written Notice (PWN) re Change IFSP, 9/13/24
6. PWN re Initiate IFSP and FAPE, 9/13/24
7. PWN re Identification, 2/14/24
8. PWN re Change IFSP, 4/12/24
9. PWN, 11/19/24

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

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

10. District ECSE Evaluation Report, 1/30/25
11. District Early Intervention Report, 8/19/22
12. Developmental History and Current Functioning, 8/19/22
13. Notice of IFSP Meeting on 5/29/24, 5/8/24
14. IFSP Agenda/Notes, 5/29/24
15. Eligibility Evaluation Results - Deaf and Hard-of-Hearing Services, 5/29/24
16. Revised IFSP, 5/29/24
17. PWN, 5/29/24
18. IFSP Agenda/Notes, 10/24/23
19. CST Planning Notes, 10/24/23
20. District Prior Notice and Consent for Evaluation, 2/14/24
21. District Notice of IFSP Meeting on 2/14/24, 2/5/24
22. District PWN, 2/14/24
23. District Evaluation Meeting Minutes, 2/14/24
24. Statement of Eligibility (Speech or Language Impairment), 2/14/24
25. Statement of Eligibility (Developmental Delay), 2/14/24
26. District ECSE Evaluation Report, 2/14/24
27. Service/Contact log, 2/29/24 – 2/28/25
28. IFSP Agenda/Notes, 2/28/25
29. IFSP Agenda/Notes, 3/7/25
30. IFSP Agenda/Notes, 4/12/24
31. IFSP Evaluation Planning Meeting Agenda/Notes, 5/8/24
32. IFSP Evaluation Planning Meeting Agenda/Notes, 11/19/24
33. Parent's IFSP Meeting Minutes, 11/19/24
34. IFSP Agenda/Notes, 11/12/24
35. Consent for Teletherapy Services, 2/15/24 (signed 2/28/24)
36. Family Outcome/Resources, 2/15/24
37. Transition to ECSE Meeting Agenda/Notes, 2/15/24
38. Developmental Information, 2/15/24
39. Placement Decision, 2/15/24
40. Health, Hearing and Vision Annual Review, 8/24/23
41. Family Outcome/Resources, 9/6/23
42. Developmental Information, 9/7/23
43. IFSP Agenda/Notes, 9/7/23
44. ESD Program Information, 8/2024
45. Developmental History and Current Functioning, 1/10/24
46. Email from ESD Staff to Parents, undated
47. Physical Therapy Evaluation Report, 10/6/22
48. Email exchange between ESD Staff and Parents, 9/13/24-9/18/24
49. Service/Contact log, 9/21/22 – 9/7/23
50. Parent's ESD Complaints, 11/2/24
51. ESD Complaint documents, 10/13/24 - 11/2/24
52. ESD Response to Parent's Three Complaints filed 11/2/24, 11/7/24
53. Email exchange between ESD Staff and Parents Re 11/2/24 Complaints, 11/5/24 – 11/8/24
54. Email exchange between ESD Staff and Parents Re Interpreter Needs, 11/5/24 – 11/8/24

55. Report on House Bill 3412, undated
56. IFSP Meeting Notes re ESCSE Behavior Consultation, 11/15/24
57. IFSP Evaluation Planning Meeting Agenda/Notes, 11/19/24
58. Email exchange between ESD Staff and Parents, 11/12/24 – 12/5/24
59. Student's Word List, 7/31/24
60. Student's Word List, 11/30/24
61. Parent's ESD Complaint (Level Two) and attached documents, 11/24/24
62. ESD Program Information, 7/2023
63. ODE Deaf Students' Bill of Rights Toolkit, 9/2023
64. ESD Superintendent's Written Response to Complaint Appeal, 12/10/24
65. Parent's Reply to Superintendent's Written Response, 12/11/24
66. Email exchange between Resident District Staff, ESD Staff, and Parents, 2023-24 school year
67. Email exchange between Resident District Staff, ESD Staff, and Parents, 2024-25 school year 8/26/24 - 2/28/25
68. Audiogram, 5/3/24
69. IFSP, 2/15/24

The Parents submitted supportive documents with their Complaint. The Parents also submitted a *Reply* on March 25, 2025, providing an explanation and rebuttal, along with additional documents. Between April 9 and 15, 2025 the Parents provided additional documents. The Parents submitted the following relevant items:

1. Complaint, 2/28/25
2. Communication Planning Guide for Students Who are Deaf or Hard of Hearing, undated
3. Email exchanges between ESD Staff and Parents, 10/9/24 – 12/11/24
4. Parents' Complaints filed with ESD and Supportive Documents, 11/2/24
5. ESD Early Learning – Early Intervention and Early Childhood Special Education, July 2023
6. ESD Early Learning – Early Intervention and Early Childhood Special Education, August 2024
7. ODE Deaf Students' Bill or Rights Toolkit, September 2023
8. Parents' *Reply*, 3/25/25
9. Family Outcomes/Resources, 2/7/25
10. Email exchanges between ESD Staff and Parents, 12/11/24 – 3/5/25
11. Parent's IFSP Meeting Notes, 9/13/24
12. Parent's Meeting Notes, 10/31/24
13. Sign Language Interpreter Guidelines, undated
14. Family Outcomes/Resources, 2/15/24
15. Private Speech Service Notes and Information, 7/31/24 – 2/27/25
16. Sedated Auditory Brainstem Response (ABR) Test, 6/25/24
17. Private ENT Audiological Evaluation, 9/22/22

The Complaint Investigator interviewed the Parents on April 12, 2025. From April 7 to 11, 2025, the Complaint Investigator interviewed ESD personnel. On April 15, 2025, the Complaint Investigator interviewed the Student's Preschool Teacher. Virtual interviews were conducted

instead of on-site interviews. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Complainant's 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 February 29, 2024, to the filing of this Complaint on February 28, 2025.

Allegations	Conclusions
<p><b>Early Childhood Special Education (ECSE) Evaluation</b></p> <p>The Parents alleged that the ESD violated the IDEA when it failed to conduct an evaluation although it had reason to suspect the Student had a disability that had an adverse impact on the Student's education and development and the Student may need ECSE services as a result of the disability. Specifically, the ESD had information regarding concerns about hearing loss but failed to initiate any further evaluations.</p> <p>(OAR 581-015-2790; 34 CFR § 300.304)</p>	<p><b>Not Substantiated</b></p> <p>There is insufficient evidence to conclude that the ESD violated the IDEA during the complaint period by not conducting a hearing test before the Parent's obtained a private hearing test on May 3, 2024.</p>
<p><b>Individualized Family Service Plan (IFSP) Content</b></p> <p>The Parents alleged that the ESD violated the IDEA when it failed to include ECSE and related services and supplementary aids and services in the Student's IFSP necessary to fully address the Student's needs that result from the Student's disabilities.</p> <p>(OAR 581-015-2815; 34 CFR § 300.320)</p>	<p><b>Not Substantiated</b></p> <p>There is insufficient evidence to determine that the Student needed speech language services provided by an in-person SLP proficient in American Sign Language (ASL) to make progress on IFSP goals and participate in appropriate activities.</p>
<p><b>IFSP Team Consideration and Special Factors</b></p> <p>The Parent alleged that the ESD violated the IDEA by failing to consider the Student's language and communication</p>	<p><b>Not Substantiated</b></p> <p>The IFSP team considered the Student's needs related to the Deaf or Hard of Hearing (DHH)</p>

<p>needs as a child who is deaf or hard of hearing in developing, reviewing, and revising the Student's IFSP.</p> <p>(OAR 581-015-2820; 34 CFR § 300.324)</p>	<p>special factor at length. The IFSP team discussed the Student's language and communication needs, including developmental level, full range of needs, and opportunities for direct instruction and direct communication with peers and professional personnel in the Student's language and communication mode. The Student was provided with opportunities for instruction and communication with staff and peers in English and ASL.</p>
<p><b>Implementation of the IFSP</b></p> <p>The Parent alleged that the ESD violated the IDEA by failing to provide ECSE and related services in accordance with the Student's IFSP.</p> <p>(OAR 581-015-2830; 34 CFR § 300.323)</p>	<p><b>Not Substantiated</b></p> <p>The ESD acknowledged a delay in identifying an SLP to provide speech language services at the start of the 2024-25 school year. The ESD addressed this at the time by offering to make up all missed service minutes. Once available, the Parents declined the services offered because they were virtual. However, the virtual speech language services offered by the ESD complied with the Student's IFSPs.</p>
<p><b>Parent Participation</b></p> <p>The Parent alleged that the ESD violated the IDEA by interfering with the Parents' ability to participate in decisions with respect to the identification, evaluation, IFSP and educational placement of the Student, and the provision of a free appropriate public education to the Student.</p> <p>(OAR 581-015-2750; 34 CFR §300.501)</p>	<p><b>Substantiated</b></p> <p>The ESD failed to provide: (1) copies of the Student's IFSPs to the Parents, and (2) prior written notice when required. This failure interfered with the Parents' ability to participate and challenge decisions about the Student's identification, evaluation, placement, and provision of FAPE.</p>

## REQUESTED CORRECTIVE ACTION

The Parents requested the following corrective action:

- A communication plan must immediately be developed and implemented as part of the Student's IFSP/IEP.
- The Student is a deaf 3-year old child whose access to education and individualized support requires Speech/Language Services to be delivered by an in-person certified SLP (Direct services) who also is a qualified and certified provider fluent in the child's primary mode of communication, American Sign Language (ASL).
- The Student will receive the direct SLP services from a qualified and certified provider who is proficient/fluent in ASL. Compensatory services will be offered to make up for lack of services since 9/13/2004.
- If the Student's SLP service delivery includes a SLP-A, the Student shall be provided SLP-A services by a qualified and certified provider fluent in ASL.
- The ESD shall provide 600 minutes of SLP services by a qualified and certified provider fluent in the child's primary mode of communication, ASL. Services shall be delivered and completed prior to school beginning in September 2025, including service delivery over summer break. It is possible that more than 600 minutes of compensatory services will be required depending on when service delivery begins.
- The Department will provide clarity and direction to the ESD about the ability for parents to observe virtual therapy services when direct services are being provided. The ESD will update its handbook in accordance with the Department's guidance to provide clarity to parents/guardians. The guidance should include factors such as the child's age, communication and language abilities, the abilities of providers to communicate with the child, and parent/family needs and desired outcomes, etc.
- The ESD shall provide training to ESD Staff and family members of DHH students in their district to ensure that all licensed EI/ECSE staff members and DHH families served are knowledgeable of Oregon's Deaf Student Bill of Rights. The ESD leadership team shall ensure that the Oregon Law is being implemented with fidelity for the DHH students that are served in their district, by performing an internal audit of the Deaf Student Bill of Rights implementation by December 2025 (two years after the law took effect) and submitting it to the Department for review and compliance.
- ESD IFSP team members need to be trained on the importance and value of parents as IFSP team members. When parents raise concerns, present research, or question the direction of the IFSP team, parents shall be listened to and their voices valued at the same level as other IFSP team members.
- If an administrator is brought onto the IFSP team following a parent disagreement with an IFSP decision, the administrator should approach the situation from a lens of collaboration with the parent to understand and address the parent concerns, rather than present more barriers to the parent's ability to fully participate in the IFSP meeting.
- The ESD/District shall conduct a hearing screening prior to children receiving SLP services. At the 3-year Evaluation, if SLP services are continuing to be received, and hearing screening be conducted before SLP services are continued.
- When a parent notes concerns with their child's ability to hear, ESD staff members need to inform parents about the impacts of hearing loss on speech production, and schedule a hearing screening using ESD audiology services. ESD shall communicate to the parents when/where to follow up for screening and how a difference in the child's hearing levels might affect the evaluation results at initial EI/ECSE evaluation.

### III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before February 29, 2024. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student's disability and special education history.

1. The Student is four years old and attends a community preschool at the Oregon School for the Deaf (the Preschool). The Preschool is located outside the Student's resident school district (the District) and Early Childhood Special Education (ECSE) services are provided by the local education service district (the ESD).
2. The Student was initially identified and found eligible for Early Intervention (EI) services by the District in August 2022 at age 18 months, under the eligibility category of developmental delay (DD) based on gross motor and communication skills.
3. The Student is currently eligible for ECSE services under Speech or Language Impairment (SLI) and Deaf or Hard of Hearing (DHH).
4. The Parents reported the Student had a history of chronic ear infections, resulting in the Student's inability to hear between the ages of nine months and 18 months old. The Student had pressure equalizing (PE) tubes placed in August 2022.
5. The District's August 19, 2022 EI Evaluation Report indicated that, before the placement of PE tubes, the Student did not appear to hear sounds unless they were very loud. After, "[the Student] seem[ed] to be responding to sounds more[.]" "[P]arents are greatly concerned about [the Student's] hearing... parents were strongly encouraged to look into a full hearing evaluation for [the Student] to rule out a hearing impairment."
6. The ESD provided a "Composite log" (services and contacts) dated September 21, 2022 to September 7, 2023. A September 21, 2022 contact entry from an ESD EI/ECSE Specialist (the EI Specialist) stated, "Called [the Parent]... Does not seem to be picking up on sounds... does not seem to hear at all... [the Parent's other child] had same issues with tubes put in [their] ears at 10 months but it seemed like it worked right away and [the other child] was hearing better.... [The Parent] was worried about [appointments] taking so long. I assured [the Parent] we have audiology."
7. The Student had a sound booth hearing test conducted by a private ENT specialist (the ENT) on September 22, 2022. There is conflicting information in the record about the type of hearing test that occurred and the results of the test.

8. The Parents reported they did not understand the results of the test at the time. Because the ENT did not indicate that any further action or follow-up was necessary, the Parents assumed there was no reason to be concerned. The Parents shared this information with the EI Specialist and emailed a copy of the test results on September 26, 2022, stating, "Testing results from audiology are attached. [The Student] has hearing down to a conversational level, so good news! Admittedly I'm not super familiar with how to read the results, but the women who did the test were very happy with [the Student's] hearing."

In subsequent documents, the Parents indicated the Student "passed" the September 22, 2022 hearing test. This was copied into other ESD documents and, at some point, was labeled as a different type of hearing test (sedated auditory brainstem response (ABR) test).

9. The September 22, 2022 ENT audiological evaluation indicated some results below the normal hearing level, which were labeled as "mild."
10. It is unclear whether anyone at the ESD reviewed the ENT audiology report. Evidence indicated that it was not added to the Student's file.
11. The Parents reported the following about the ENT test:
  - a. They "left the September 22, 2022 hearing screening appointment with a misunderstanding of the sound booth screening test result." The Parents have since learned that reduced hearing in certain areas still can have a large impact.
  - b. "It is unclear whether [the Student] 'passed' the screening that day, because the audiologist notes simply state 'hearing testing overall normal for [the Student's] age,' with elevated results at 2000Hz."
  - c. "The results of the hearing screening were inconclusive, and the family was not supported by [the ESD] audiology staff in understanding the test results."
  - d. The ESD had authorization "to exchange information with [the Student's] private providers," including the ENT and the Student's other private providers. "[The ESD] appears to have never requested/reviewed the medical records from [the September 22, 2022 hearing test], or this error would have been identified."
  - e. The ESD subsequently initiated speech services "without a full understanding of the hearing assessment."
12. An October 6, 2022 Physical Therapy (PT) Evaluation Report stated, "A follow up audiology screening showed that [the Student's] hearing looks good with no concerns. [The Student] seems to be responding to sounds more now... but is not yet using words to communicate."



The Parents reported the information about the Student's hearing was copied from existing information in the Student's medical history about the September 22, 2022 test. "The PT did not ascertain new information or corroborate existing information."

13. An October 6, 2022 service log note from the EI Specialist stated, "9/22 passed audiology."
14. A March 2, 2023 service log entry from the EI Specialist stated, "[The Student] passed latest hearing test, appx [sic] January. [The Student] is scheduled to go again in 6 months... [The Parent] reports inconsistency with spontaneous language but frequent imitation. [The Student] is increasing skills each week."
15. Although the ESD reported the Student passed a hearing test in January 2023, the Parents reported a hearing test did not occur at that time. Rather, a January 2023 hearing test was mistakenly entered into the ESD service log and cited in subsequent records.
16. According to the Parents, the Student had hearing tests at birth and on September 22, 2022; May 3, 2024; June 25, 2024; October 15, 2024; December 19, 2024; and January 16, 2025.

#### **2023-24 School Year**

17. At the Student's annual IFSP meeting on September 7, 2023, the Parents shared the Student was getting frustrated and having behavior issues because they could not communicate. "After tubes, there was some improvement... If [the Student] is not in front of parent [the Student] does not respond. If [the Student] is in the middle of something [they] will not turn to [their] name." The Student had "about 6 words and 20 signs."

The IFSP documents included a developmental history for the Student, which indicated the Student started private speech services in May 2023. Under "Hearing Status," it stated, "[The Student] is followed by [the ENT]. [The Student] passed a hearing test in January 2023."

18. The ESD reported, "In September 2023, the Child's EI service provider changed to [a speech language pathologist (SLP)] EI provider... initiated services in September, noting the Child's ability to imitate sounds and indicated a 40% accuracy of imitated sounds. Through September and October session visits, EI SLP and Parent report during these visits indicated increase in sound and word approximations.... Subsequent visits through the end of January indicated increased ability to imitate sounds and word approximations following each visit, with indication of Parent agreement and input to the increase in skills."
19. On October 24, 2023, the District and ESD convened an evaluation planning meeting and agreed to evaluate the Student for possible eligibility in the category of Speech/Language Impairment (SLI) as part of the transition from EI to ECSE services. The Meeting Notes stated, "20-30 words signs/verbal. Suggested testing receptive vocabulary as well. Sometimes it is difficult to tell if [the Student] doesn't understand directions or if [the Student's] will gets in

the way from listening.” The evaluation planning documents indicated the District was responsible for the evaluations.

20. The ESD reported the District is generally responsible for identifying, evaluating, and determining eligibility for EI and ECSE students within the District, including reevaluations. Once a student is found eligible, the ESD is responsible for providing services and conducting any evaluations needed to determine services. However, for the eligibility categories of Deaf and Hard of Hearing and Vision Impairment, evaluations and eligibility are completed by the ESD.
21. In a January 10, 2024 developmental history, the Parents included concerns about the Student’s hearing and stated the Student was diagnosed with an articulation and expressive language disorder by a private provider. The Parents noted they “speak both English and [another language] at home.”
22. “[The Parents] noted that the 3-year evaluation was rescheduled a few different times and ended up happening on the last day before [the Student] turned three. Family felt like they were under a lot of pressure to sign the documents that day so that [the Student] could continue receiving services even though there were concerns with hearing loss... [the Parents] shared [their] concerns that [they] believed [the student] was having problems hearing at that 3-year evaluation, which were noted by the SLP in the evaluation notes from that day.”
23. The Parents reported receiving a phone call in February 2024 from the ESD, stating they had to meet the following day to evaluate the Student and determine eligibility or the Student’s services would be terminated.
24. On February 14, 2024, one of the Parents took the Student to the District and signed consent for the District to evaluate. The District evaluated the Student and determined eligibility that same day, finding the Student (1) eligible for ECSE services under the category of Speech or Language Impairment and (2) ineligible under Developmental Delay. The eligibility discussion included one of the Parents and two District evaluators.  
  
The Parents reported being told that the Student qualified but there was no evaluation report or discussion about the evaluation results.
25. The Parents reported that, during the Student’s hearing screening on February 14, 2024, the Parent was told the District could not complete the test that day because the Student did not let the evaluator put a probe in the Student’s ear. It was the Parents’ understanding that the test would be repeated on another day.
26. The District completed an ECSE Evaluation Report dated February 14, 2024. The Report included the following information, in relevant part:

- a. Parent concerns: “[The Student] has very limited communication using spoken words... doesn’t always respond to [their] name, directions, etc.”
- b. Early Development: “[The Student’s] communication skills are severely delayed.”
- c. “A hearing screening was attempted but not completed due to difficulty in following instructions and/or having a probe placed in the ear... results were unobtainable due to the child’s understanding of directions and developmental cooperation level... [the Student] passed a hearing screening in September 2022... During the evaluation, [the Student] did not seem to startle to any external sounds or loud sounds; [the Parent] reported that [the Student] had delayed responses at home[.]”
- d. Observation: “[The Student] would not or could not imitate or repeat” when the evaluator asked the Student to repeat a word. “[The Student] would not or could not follow directions, commands or invitations by the evaluator.”
- e. The Student was not demonstrating some receptive and expressive language skills typical for their age range. “[A]verage sentence length is less than 1 word.”

- 27. The ESD issued a February 14, 2024 Prior Notice of EI/ECSE Action (PWN) which stated, “[The Student] has been evaluated and found eligible under the category of Speech/Language Impairment in the following areas: communication (expressive, receptive, oral-motor).”
- 28. On February 15, 2024, the ESD convened a virtual “Transition to ECSE Services IFSP meeting.” The meeting did not include the evaluators or any other participants from the District.
- 29. According to the Parents, the District’s February 14, 2024 Evaluation Report was not completed and not shared with ESD staff or other team members before or during the February 15, 2024 IFSP meeting. It was unclear what communication occurred between the District and the ESD. The Parents were informed by the ESD that “a quick phone call happened between [District] Staff and [the ESD] Staff.” The IFSP team did not review or discuss evaluation results before developing the Student’s IFSP. The Parents reported the meeting was “very short and very procedural.”

A copy of the Evaluation Report was not provided to the Parents until December 12, 2024.

- 30. The Parents reported expressing concern at the February 15, 2024 IFSP meeting about the District’s inability to obtain hearing test results. They were told by the ESD that the team would figure it out later, but the team needed to focus on completing the IFSP.

“This process felt EXTREMELY rushed and unprofessional, but we were told the meeting and signatures had to be done before [the Student’s] birthday the next day on February 16, 202[4] prior to [the Student] turning 3-years old, otherwise [the Student’s] services would be suspended. We felt very rushed and uninformed through the entire process and felt like we were made to sign paperwork even though we had concerns about [the Student’s] ability to

hear. We immediately pursued a private hearing evaluation because no one at [the District] or [the ESD] was listening to our concerns and taking them seriously.”

31. The ESD reported, “The [ESD], relying on [the District’s] evaluation that had just been completed, participated in the creating of [the Student’s] Initial IFSP on February 15, 2024. At no time during this meeting did any team members voice concerns that the Child might be deaf, nor that the Child required additional hearing assessments/screenings. To the contrary, the IFSP team reached agreement that for the Consideration for Special Factors, the Child was not deaf or hard of hearing.”

“The ESD is not aware of anyone from [the District], including the SLP who conducted the assessment, recommending that further assessment be conducted, etc.”

32. The February 15, 2024 ESD Meeting Notes stated, “Parent and Team discussed information from evaluation and private speech therapist”; “Reviewed initial provision consent”; “Review of expiring IFSP Goals”; and listed the Parents’ primary concerns.

The Meeting Notes did not otherwise include any information about what was discussed at the meeting.

33. The February 15, 2024 IFSP (February 2024 IFSP) included the following:

a. ECSE Services:

Speech/Language Services: direct services provided by “Speech Language Pathologist” for 30 minutes per week, with the location listed as “Community Preschool/Virtual.”

Service Coordination: consultation services provided by “Speech Language Pathologist” for six hours per year, with the location listed as “Office/Home.”

- b. The Student attends an early childhood program 50 hours per week; ECSE services will be provided with typical peers in an early childhood program for 0.5 hours per week.
- c. Supplemental Services, Adaptions and Accommodations: “Adult Speech-Language models, slow rate of speech, pause and wait for processing/response time,” ten times per day, and “Visuals to support communication and routines,” [ten] times, as needed.” Both to be provided by SLP at “Community Preschool/Virtual.”
- d. Consideration of Special Factors: the Student requires assistive technology and has communication needs.
- e. Developmental Information: “Hearing Status... followed by [Private] ENT. [The Student] passed a hearing test in January 2023.” Expressive and receptive communication were the only developmental areas with concerns.

- f. Goals: one expressive communication goal (“use a variety of modalities (sign, visuals, spoken language etc.) to communicate for a variety of purposes”), and one receptive communication goal (“increase [their] receptive vocabulary by identifying a variety of objects/items, actions, and descriptors in pictures or [their] environment”).
- g. How Parents will be informed of progress toward annual goals: “Other review schedule... November... Written progress and annual meeting and update of AEPS.”
- h. Family Outcomes/Plan to Enhance Development: The family is most concerned about the Student’s communication and needs resources for “[s]trategies to increase communication and self-advocacy.”
- i. Placement: “special education services provided in a community preschool/daycare setting.”

34. According to the Parents, the ECSE Evaluation Report information, including a note that the Student “did not seem to startle to any external sounds or loud sounds,” should have been an indicator to schedule a follow-up test using ESD audiology services and obtain hearing screening results “before [the ESD] began providing SLP services.” The ESD failed “to inform parents about the impacts of hearing loss on speech production” and should have “communicate[d] to the parent when/where to follow up for screening and how a difference in the child’s hearing levels might affect the evaluation results.”

35. “[The Parent’s] indicated that, throughout the 1.5 years they received speech services, they indicated several times to [ESD] staff that they had concerns about [the Student’s] hearing loss. [The ESD] staff would then say that [the Student] could be screened for hearing that it was a service [the ESD] provided, but no one ever took action to have a screening done.”

36. When asked about whether the ESD should have followed up on the District’s inability to obtain results from the Student’s hearing test on February 14, 2024, ESD staff reported the following:

- a. The ESD’s Director of Special Services (the Director) stated it was the District evaluation team’s decision to determine whether to proceed with eligibility or not based on the information they had. Usually, the ESD would check if the family was following up medically if there are concerns but the ESD would not do a reevaluation.

“To refer a child to the regional program for a Deaf/Hard of Hearing evaluation, we would need to have medical documentation from an audiologist that there is a qualifying condition present.” The ESD would not pursue DHH eligibility until the team receives this information from a parent. “We only refer to our audiology program when there is an established hearing loss, as it becomes a regional service at that point, or if a family does not have access to medical services and we have a child find obligation.”

b. An SLP/DHH Specialist (the Speech/Language Specialist) from the ESD, who was not involved at the time, stated the ESD team would be responsible for determining how to follow up, which would depend on whether parents had concerns. It is not uncommon to attempt a hearing screening and not get results. But if parents expressed concerns about hearing, the Speech/Language Specialist would expect the ESD team to make sure the family was able to get another test scheduled, or have the ESD do it. If parents reported getting a private hearing test, the Speech/Language Specialist would follow-up to get a copy of the results or get permission to obtain information from the provider. The Speech/Language Specialist noted there was information in the Student's file indicating the Parents were seeking a hearing test from a private provider.

37. The ESD provided a "Family Outcomes/Resources" document dated February 15, 2024. Under the question, "What services or supports is your family receiving from other agencies," it stated "[Private ENT] looking for second ENT. Another hearing test may need [sic]. Last one 9/22. Looking into tribal services." When asked about this, the Parents reported, "We don't recall being a part of filling out this form, and certain responses don't reflect how we'd respond."

38. When asked whether the ESD would request records from a private provider, the Director stated the ESD does not always request medical records. In this case, the ESD would not need them until DHH eligibility came up. The ESD would rely on what was reported by the Parents.

39. The ESD provided a copy of an "Informed Consent for Teletherapy Services" dated February 15, 2024, which indicated it was signed by the Parents on February 28, 2024.

When asked, the Parents stated virtual services were not discussed at the February 15, 2024 IFSP meeting. Rather, the consent form was included in a packet of documents the ESD asked the Parents to sign after the meeting.

40. The ESD provided another Composite Log for the Student dated February 29, 2024 to February 28, 2025. A March 5, 2024 log entry indicated an SLP from the ESD was providing speech services at the Student's preschool.

41. The Parents reported asking the Student's Pediatrician for a referral for a hearing test at their March 14, 2024 three-year check-up. "Eventually [the Parent] was able to get their Pediatrician to make a referral for a hearing test, but because [the District] and [the ESD] weren't recommending it or taking action, it made it harder to get a referral out of the Pediatrician because they were convinced if there was a problem with [the Student's] hearing [they] would be receiving services for it."

42. A March 19, 2024 service and contact log entry stated, "Emailed initial IFSP paperwork to parents."

The Parents reported they did not receive an email with IFSP paperwork on March 19, 2024. The ESD never provided them with a copy of the February 2024 IFSP.

43. In April 2024, the Student's preschool informed the Parents that the Student could no longer attend because of the Student's behavior. When the Parents shared this information with the ESD, the ESD scheduled an IFSP meeting "to add on DD services for additional support."

At the end of April, the Student moved to a different preschool within the District.

44. On April 12, 2024, the ESD convened an IFSP meeting. A copy of a revised IFSP was not provided with the ESD's written *Response*. However, PWN from the ESD stated, "A meeting to revise [the Student's] IFSP was held on 4/12/24. A Developmental Specialist was added to [the IFSP], goals in the area of Social-Emotional and Cognitive were created, as well as additional accommodations."

The team added developmental consultation services, to be provided by an "EI/ECSE Specialist" for 30 minutes per week, with the location listed as "Community Preschool/Virtual."

45. The ESD reported there is no revised April 2024 IFSP because "the staff who did the April meeting did not complete and submit the paperwork."

46. On May 2, 2024, the Parents informed the ESD that the Student was getting their hearing tested by a medical provider the following day.

47. On May 3, 2024 an "audiological evaluation was completed with bone conduction testing." On May 5, 2024, the Parents emailed the ESD, stating the test indicated "sensorineural hearing loss, which is permanent and in the range from moderate to profound," with a copy of the test results attached. They were scheduling a sedated ABR test the following month, which "will tell us [the Student's] exact hearing condition." The Parents requested a meeting to discuss ways to support the Student.

48. On May 8, 2024, the ESD convened an evaluation planning meeting, which included an ESD Deaf or Hard of Hearing Specialist (the DHH Specialist). It was determined that the DHH Specialist would complete observations and assessments "to determine eligibility."

49. The DHH Specialist's May 13, 2024 evaluation report ("Eligibility Evaluation Results – Deaf and Hard-of-Hearing Services") included the following, among other things.

- a. History: "had an SABR at 18 months of age which passed with normal responses... scheduled for SABR in June. This will give us more ear specific information and then allow us to forecast the best technological options for accessing auditory information. [The Student's] current audiological testing is sufficient in moving forward with evaluation and eligibility determination for DHH services."
- b. "Parent report indicated concerns with [the Student] not responding to auditory information... needs visual queuing to make eye contact and relay information... is signing

more... used to say 'good job, more, bye bye' but isn't using these words anymore... is saying 'mama and dad' occasionally."

- c. Summary/Educational Impact: "the educational impacts of moderate to severe hearing loss can lead to delays in spoken language and auditory processing difficulties. With hearing aids, a child can usually 'hear' people, but may miss 'fragments' of what it said resulting in difficulty in situations requiring verbal communication in both groups and one on one conversations and without amplification, conversation must be very loud to be understood. Some effects of a loss at 55dB or greater may include missing up to 100% of verbal information, delayed spoken language, syntax, reduce speech intelligibility and flat voice quality is likely. Reliance on [the Student's] visual abilities to complement [their] hearing is necessary to achieve functional access to communication at least in the early stages of learning to listen... The age of amplification, consistency in wear and amount of early intervention are strongly tied to the development of [the Student's] speech, language and learning."

50. On May 29, 2024, the ESD convened an IFSP meeting to review evaluation results and determine eligibility. The team found the Student eligible under the category of DHH and revised the Student's IFSP.

51. The ESD's May 29, 2024 Meeting Notes included the following, in relevant part:

- a. "Results, expressive/receptive: 12-18 months... Understands a lot of signs, doesn't always use them [themselves]."
- b. "[The Student] will likely need to have [their] hearing checked every 3 months."
- c. No new goals or accommodations needed.

52. The May 29, 2024 Revised IFSP (May 2024 Revised IFSP) included the following changes:

- a. ECSE Services: additional services added.

Deaf and Hard of Hearing Services: direct services provided by "Deaf/Hard of Hearing Specialist" for 90 minutes per month, with the location listed as "Community Preschool/Virtual."

Audiology Service: direct services provided by Audiologist for one hour per year, with location listed as "Office."

Audiology Evaluations: direct services provided by Audiologist for six hours per year, with the location listed as "Clinic."

- b. The Student attends an early childhood program 50 hours per week; ECSE services will be provided with typical peers in an early childhood program for "1.38 hours per week."



c. Supplemental Services, Adaptions and Accommodations: added access to [Augmentative and Alternative Communication (AAC)], sensory support, and break area.

53. The May 2024 Revised IFSP did not update the Consideration of Special Factors and continued to state that the Student was not deaf or hard of hearing.
54. A May 29, 2024 PWN stated, "The DHH Specialist and Audiologist read off the report and found [the Student] eligible for services with the information we have right now... added accommodations to the preschool teachers for the fall."
55. On June 25, 2024, the Student had a sedated ABR hearing evaluation with a private medical specialist. The Parents notified the ESD that the results confirmed bilateral sensorineural hearing loss.
56. The ESD reported in the written *Response*, "The June 2024 sedated ABR had to estimate the amount of sensorineural loss and the left ear is still estimated as being mild to severe. The Child passed a sedated ABR at 18 months, which indicates that [the Student's] condition is degenerative, in addition to [their] history of ear infections and tubes. The Parents and providers frequently reported that the Child was observed to imitate language leading up to the hearing test in May 2024 by both the SLP and the Parent."
57. In response to this statement, the Parents noted: (1) the September 22, 2022 hearing test was a sound booth test, not an SABR test; and (2) "[The Student] did and still does make sound approximations for spoken words, but [they] can only make the sounds that [they] can hear. [The Student] did 'imitate [SIGN] language' leading up to the hearing test in May 2024. Determination of [the Student's] condition as 'degenerative' is speculative and is not supported by available data at this time."
58. In a July 8, 2024 email to the DHH Specialist, the Parents reported the June ABR test indicated the Student "has no hearing in [their] right ear, and limited hearing in the left ear." "We were told [the Student] won't be able to access any more sounds, but they can try to amplify the sounds that [the Student] can hear. We were told [the Student] does not hear enough sounds to make full speech production... [the Student] does say a few words with the sounds [they] can hear. [We] were told to learn ASL as [the Student's] primary language... we are doing lots of ASL learning at home. [The Student is] picking it up so quickly... We have also enrolled [the Student] in the Oregon School for the Deaf preschool which is starting this fall... at some point, I would like to have a conversation about how this was missed for so long. I feel like I expressed my concerns several times with various folks at [the ESD]... and no one ever validated my concerns or offered resources like a hearing test... no action was taken."

The DHH Specialist responded, "It saddens me that [the Student's] hearing loss was 'missed' for so many years... I agree that this should not happen to children, although for kids with middle ear involvement, it sometimes is a 'wait and see' situation, which clearly is not always

optimal... although we generally do not provide services for our ECSE 3-5 kids in the summer, I will plan on seeing [the Student] weekly on the weeks I do work.”

59. The OSD Preschool was a new program opening in the 2024-25 school year.

The Parents reported, “Once learning [the Student] was Deaf, our goal was to support [the Student’s] access to American Sign Language – [the Student’s] most accessible language, and OSD provided that support.”

## **2024-25 School Year**

60. On September 3, 2024, the Student started attending the new Preschool, which was located in a different county. This required a change in ESD team members, except for the DHH Specialist who transferred locations to continue serving the Student.
61. The Preschool was described as a “voices off” environment. The ESD reported the preschool teacher (the Teacher) occasionally used spoken language in class for clarification but not for instruction. All instruction was in American Sign Language (ASL).
62. In a September 5, 2024 email to the ESD, the Parents requested a meeting to update the Student’s IFSP and share information about the June ABR and the Student’s progress over the summer. The Parents noted the Student was getting hearing aids the following day, which would “give [the Student] some additional access to sound, but likely not enough access for full speech production.” The Parents asked to discuss services and what they would look like at the Preschool. The Parent also expressed concern that the team missed the Student’s hearing loss for so long and did not act sooner, although the Parents shared their concerns with the ESD multiple times.
63. On September 12, 2024, the ESD emailed the Parents a copy of the May 2024 Revised IFSP.
64. On September 13, 2024, the ESD convened an IFSP meeting to review the IFSP and discuss placement. The participants included the Parents, the Teacher, and the existing ESD team members (the DHH Specialist, an SLP who provided services in spring 2024, and an ECSE Coordinator).
65. The September 13, 2024 Revised IFSP (September 2024 Revised IFSP) included the following changes:
- a. ECSE Services: developmental consultation services were removed.
  - Audiology Services: increased from one to two hours per year.
  - b. The Student attends an early childhood program 32 hours per week; ECSE services will be provided with typical peers in an early childhood program for 32 hours per week.

- c. Supplemental services, adaptations and accommodations: removed the accommodations added in spring 2024. The original two accommodations from the February 2024 IFSP remained, to be provided by an SLP.
- d. Consideration of Special Factors: added deaf or hard of hearing.
- e. Goals: the expressive communication and receptive communication goals were updated, with one receptive language goal from the February IFSP remaining the same.

Expressive Communication: two goals (increase use of language and vocabulary; increase understanding of spoken and signed vocabulary).

Receptive Communication: two goals (follow 1-2 step directions; increase receptive vocabulary by identifying a variety of objects/items).

The Cognitive and Social-Emotional goals remained but were listed as "Goal met."

- 66. The ESD's September 13, 2024 Meeting Notes included the following information, among other things:

- a. Progress and next steps: The Student's behavioral issues "have mostly resolved." Retire cognitive and social emotional goals as they are no longer needed. Replace previous communication goals.

"Expressive: goal for thematic vocabulary in school setting, verbs, adjectives."

"Receptive: increased receptive vocabulary by following directions containing multiple word types, adverbs, adjectives, verbs."

- b. Placement: "[H]ome vs community preschool; team determined keeping services in community preschool."
- c. "Speech services: 30 minutes/week; let parents know that once new speech provider has been assigned, they can reach out if they want to increase/decrease frequency of services... [The DHH Specialist] to take over as service coordinator."

- 67. The ESD issued a PWN dated September 13, 2024, which stated, "IFSP team met to discuss placement of services. Team decided not to change placement... team reviewed goals and retired some that are no longer relevant due to new eligibility. The speech pathologist and hearing specialist will be creating alongside with the teacher goals for [the Student] with language development and sign language... remove some accommodations that are no longer needed due to them being around behavior."

- 68. The ESD's meeting notes did not mention any discussion of virtual services.

69. The Parents reported that virtual services were not discussed at this or any previous meeting.
70. The Parents' notes from September 13, 2024 meeting included the following:
- a. The Parents expressed frustration that the ESD did not listen to their concerns about the Student's hearing, which resulted in a delayed diagnosis.
  - b. The team discussed the need for new communication goals. The Parents requested goals be "split out between ASL and English so that progress in both languages could be tracked." "Goals were discussed at a very high level. Goal writing did not happen in the meeting." The DHH specialist indicated they would work on developing "more specific and appropriate goals" after the meeting, with input from ESD staff and the Teacher.
  - c. The team agreed speech services would occur at the Preschool. The ESD suggested pull-out services because "the classroom is primarily voice-off." The team discussed the need for the SLP to be close to the Student, within three to six feet, for the Student to locate where sound was coming from as part of learning to use hearing aids.
  - d. The Parents requested an increase in speech services because of the Student's significant language delay, necessitating more support with "accessing audio/verbal English." The ESD indicated the team could not increase services at the meeting because a new SLP had not been identified yet. Once identified, the Parents could request another IFSP meeting to address the request to increase services.
71. The Parents claimed they "were not involved in goal writing."
72. A September 13, 2024 service log note from the DHH Specialist stated, "Will rewrite expressive and receptive goals to reflect [the Student's] current language needs... Services will continue in [the Preschool]."
73. When asked which provider was intended to work on which goal, the Director stated, "both providers would be working on the receptive goals. For the expressive, the SLP would have been working on the spoken language, and the DHH provider would have been working on the sign."
- The Teacher reported the ESD stated both providers could work on the goals together because the goals included both English and ASL.
74. The Parent reported the IFSP team chose to keep the Student at the Preschool because no other placement options were presented for consideration. The Parents later learned the ESD had a special preschool program for DHH students "but that placement option was never presented to [the Parents] in either the May 29<sup>th</sup>, 2024 IFSP or September 13, 2024 IFSP meetings during placement discussion... Withholding information from [the Parents] about an additional placement option did not allow us to fully participate in IFSP meetings."

75. When asked why the ESD's special preschool program for DHH students was not mentioned to the family, ESD staff reported the following:
- a. The DHH Specialist reported they would have brought up the ESD special preschool program but the family had already chosen the Preschool; other options were "off the table."
  - b. The ESD Coordinator supervising the Student's ESD team stated it would not be offered as the Parents indicated they wanted the Student to attend a community preschool. The ESD's special preschool program was a more restrictive placement.
  - c. The Speech/Language Specialist was surprised that it was not discussed as a placement option.
76. On September 18, 2024, an ESD Early Learning Coordinator emailed the Parents in response to the Parents' concerns that the Student's hearing loss should have been identified earlier. The email stated the following, among other things:
- "Typically, when a child is presenting with medical challenges accompanied with their hearing, which includes addressing ear infections, needing tube placements and any other related issues supported by an ENT office, our specialists take the lead from the medical provider, our records indicate that updates were provided to the service coordinator about [the Student's] ongoing treatment by the ENT.
- In the most recent evaluation for speech, an evaluation or screening for hearing is required for the eligibility. According to the evaluation report the [District] team did attempt this... and cited that they were not able complete [sic] the screening... From the report, they attempted the hearing screen, reviewed the information about the tube placement, read that [the Student] passed the hearing screen in August 2022 after tube placement, and referred to current observations during the evaluation, as well as reports of what you see at home. Combined this information can be considered an attempt for the hearing component of the eligibility and as a team, including you as a parent, the decision was made to go forward with the eligibility... acknowledge that your hearing concerns were shared... when a child is being followed for medical reasons, we need to consider this information as well when considering any eligibility. As soon as we were provided information about the recent diagnosed hearing loss, the team followed up with this information and an evaluation was completed within what would be considered a reasonable amount of time."
77. The Parents, the Teacher, and ESD staff reported the Student's use of their hearing aids was limited due to discomfort. The Teacher's attempts to get the Student to wear hearing aids during class were unsuccessful. The DHH Specialist encouraged the Student's use of hearing aids and reported when the Student did wear them, they vocalized more when signing.
78. The ESD reported identifying a new SLP for the Student was delayed because the ESD did not immediately notice that an SLP was not assigned to the Preschool. The new SLP (the Virtual

SLP) reported the Student was assigned to their caseload on October 8, 2024. The Virtual SLP contacted the Parents on October 9, 2024 to schedule services but did not receive a response.

79. In the October 9, 2024 email to the Parents and ESD staff, the Virtual SLP introduced themselves and reported, "I am a full-time virtual therapist, so sessions will occur via [Z]oom link at the school... I would love to get started next week... please let me know if you have any questions[.]" The Virtual SLP additionally asked ESD staff, "please let me know if there's someone on site who can log [the Student] on or if I can work together with a staff member/co-treat so that [the Student] can receive [their] speech time."

80. The Parents did not respond to the Virtual SLP but forwarded the email to the DHH Specialist on October 9, 2024 and wrote, "We had not heard any update about speech services, and I was curious who was assigned, in talking with [the Teacher] no services have yet to be provided. We got the email below today from [the Virtual SLP]. This seems very odd. [The Student] is 3 and won't even facetime with my parents. Zoom wil not going [sic] to work, and we will need in person speech."

The DHH Specialist responded, stating, "I have reached out to my coordinator to problem solve this. I remember from our recent IFSP, we had recommended in person from someone serving in the [local] area, in order to provide at school site. I'll let you know what I hear back."

81. The Parents reported being very surprised because virtual services had never been discussed and the Student had never received virtual services.

82. An October 14, 2024 contact log note from the Virtual SLP stated, "updated that parent expressed concerns regarding virtual services... scheduled meeting with SLPA for 10/21 to discuss supporting student at [the Preschool]."

83. On October 15, 2024, the ESD emailed the Parents a copy of the September 2024 Revised IFSP.

84. On October 21, 2024, the Parents emailed the DHH Specialist to follow-up on their October 9, 2024 email. "[The Student] is seeing [their] private therapist every other week and has been making good progress with sounds. This seems like a very important period of time (just getting hearing aids) where [the Student] should be receiving services... it might also make sense to reevaluate the frequency of services. This was discussed at the end of the IFSP meeting, but no action was taken because [the previous SLP] didn't want to encumber a new SLP therapist. In reflection, transferring therapist should not have made a difference or influence the decision about the frequency of services provided."

The DHH Specialist responded, stating, "[the Virtual SLP] will be [the Student's] SLP. I know [the Virtual SLP] is virtual but [they have] an SLPA who provides services in person with [the Virtual SLP] supervising during services."

The Parents replied, asking about how the “180-minutes of missed Speech/Language services” since September 16, 2024 would be made up.

85. In an October 22, 2024 email to the Parents and the DHH Specialist, the Virtual SLP stated, “I am working with my SLPA to begin services next week... I was able to meet with my SLPA yesterday to confirm [they will] be able to go in person to the school. I will discuss make-up services with my SLPA[.]”
86. On October 22, 2024, the Parents emailed the DHH Specialist, asking, “Can you please let us know who within [the ESD] organization made the determination about remote SLP services for [the Student]? We’d like to have a conversation with that person to better understand how that decision was made, how it was informed, and what factors were considered. We don’t believe remote SLP services can meet [the Student’s] needs. It was discussed in our IFSP meeting that these Speech/Language services would occur in person, and when I signed the paperwork that’s what I understood to be the agreement.”
87. The DHH Specialist responded on October 23, 2024, writing, “[The Student] will be getting in person speech services. The SLPA will provide the services guided by the virtual SLP. The coordinators make the assignments for providers. [The Student’s assignment] was tricky because [the Student] is a resident in [resident county], which is one team and we requested services in [a different] county by that team.
88. When asked whether it was clear whether the Virtual SLP or SLPA were providing the services and whether the services were considered virtual or in-person, ESD staff reported conflicting information.
  - a. The ESD Coordinator stated the speech services would be considered virtual because the one directing is virtual. It would be virtual services with in-person support.
  - b. The DHH Specialist stated both the Virtual SLP and SLPA would be providing services. The Virtual SLP is providing the instruction and the SLPA is helping the Student stay focused and reinforcing the concepts. The Virtual SLP was the one who could sign.
  - c. The Speech/Language Specialist stated they were not part of the team at the time, but their understanding was that the Virtual SLP would provide instruction because they were the one who could sign. The SLPA would be in-person to encourage the Student to attend and stay engaged while the Virtual SLP was doing the activities.
  - d. The Director stated it would be the SLPA providing the services under the supervision of the Virtual SLP. Initially the services were going to be virtual, provided by the Virtual SLP, but because of the Parents’ concerns about virtual services the ESD added the SLPA. If the SLPA is providing the services, then they would be considered in-person services.
89. In an October 24, 2024 email to the Virtual SLP and the DHH Specialist, the Parents shared several concerns and questions about the proposed speech services, including the following:

- a. They requested a Zoom call to meet and talk with the Virtual SLP and the SLPA.
- b. They asked about the Virtual SLP's proficiency in sign language, stating, "Our private SLP uses a total communication approach, and [they speak and sign] to [the Student] during therapy. It's important that [the Student] is being both signed and spoken to throughout [their] therapy sessions to provide full access to speech/language."
- c. They requested "the opportunity to observe the sessions," with their video turned off.
- d. They reported, "[the Student's] sign language has exploded and [the Student] actively signs all day long... if [the Student is] signing something and you don't understand, [they] will become very frustrated. This ... needs to be avoided, we don't want to hinder any of [their] progress with [their] access to language... we are in a very delicate place... don't want to see any backsliding due to communication breakdowns."

90. The Virtual SLP emailed the Parents on October 25, 2024, reporting the SLPA could come to the school in person on October 28, 2024, but did not respond the Parents' other questions or concerns.

The Parents replied, asking the Virtual SLP to address the questions and concerns listed in their previous email. They asked who would be signing to the Student "during your speech/language session to provide [them] full access to language?"

91. After not receiving a response, the Parents emailed the Virtual SLP and the DHH Specialist on October 28, 2024, requesting a Zoom link for the session.

The Virtual SLP replied, "Due to [the Student's] service placement being at [their] school, we don't have parents join the Zoom link. However, I will be supervising our [name of SLPA] and supporting [the Student's] ASL communication needs, and I would be happy to meet with you after [their] session to answer some of your questions." They copied their supervisor, the ESD Coordinator, to help answer questions.

The Parents emailed again, stating, "[We] expressed concern about the arrangements that have been made for virtual learning. Our concerns remain unaddressed. We believe that a next step could be attending the session today virtually to observe virtual speech therapy before making a determination about if we will be supportive of virtual speech therapy. You have not provided us with the ability to attend the virtual session, so we are providing you with this notice: If [the DHH specialist] is not able to attend in person today, we do not consent to you or other [ESD staff] meeting with [the Student]. We have not met you or other staff and we are not open to [the Student] being in a room with people [the Student] or we have not met. We are requesting that your virtual session is recorded and that it be made available to us upon our request, if we determine this is needed."

92. The ESD reported, "Following this email, the session was cancelled."



93. The ESD Coordinator emailed the Parents on October 28, 2024, offering “to coordinate a time that we can connect to make sure all of your questions are answered and determine how to support and finding *[sic]* a pathway forward,” and “to help answer any questions about speech services.”

The Parents responded, stating they wanted to meet as soon as possible to get the Student services and expressed being “extremely disappointed this is taking so long.” They included their list of questions that had not been answered.

94. In an October 29, 2024 email response, the ESD Coordinator confirmed services did not occur because of the Parents’ email stating they did not consent to the Virtual SLP and other staff meeting with the Student. “We do need your consent to provide services and [the ESD’s] policy does not allow recordings of virtual session so [the Virtual SLP] was not able to move forward with the session.”

A meeting was scheduled for October 31, 2024.

95. The ESD convened an informal meeting on October 31, 2024, which included the ESD Coordinator, the Virtual SLP, the DHH Specialist, the Teacher, and the Parents.

96. The Parents’ October 31, 2024 meeting notes stated the following about what occurred, among other things:

- a. They expressed concern about “virtual service delivery and their inability to watch the service delivery to determine its effectiveness.” They had been told by the DHH Specialist that they would be able to attend the October 28, 2024 session virtually, but this was denied by the Virtual SLP. They expressed concern that the SLPA had not been identified by name and no information was shared about the providers’ ASL proficiency.
- b. They emphasized the importance of SLP providers to be proficient in ASL. The Student knew more sign language than speech and needed “to be signed to in order to follow directions and produced *[sic]* speech sounds.”
- c. The Parents reiterated that the service provider needed to be three to six feet away from the Student in order for the Student hear sound clearly and determine where the sound was coming from. They expressed concern about the Student’s ability to engage with a provider on a screen for 30 minutes.
- d. They asked about research on the effectiveness of virtual speech services for deaf students. They claimed the Virtual SLP “indicated that there was no research available to support the effectiveness of virtual speech therapy for Deaf students.”

- e. The ESD reported there were two different SLPAs who may attend the sessions depending on availability. The ESD did not have an SLP or SLPA on staff with ASL proficiency so this could not be provided. The Virtual SLP had some ASL knowledge.
  - f. The Parents asked what factors the ESD considered in making the decision about virtual speech services. The ESD Coordinator indicated they chose the virtual service model because the ESD did not have an in-person SLP covering the area of the Preschool. SLPs in nearby areas already had large caseloads and would have a hard time serving the Student in person due to their lack of availability.
  - g. The Parents asked about the use of an interpreter to support the Student's access to language during speech sessions. The ESD noted they had never provided an interpreter for an EI/ECSE child. The DHH Specialist indicated children that age "do not have theory of mind to understand the role of an interpreter and it would not be appropriate for [the Student]." The Parents expressed concern about multiple people in the room when providing speech services, which would be distracting to the Student and render services ineffective.
  - h. Because the ESD indicated no decisions could be made because it was not an IFSP meeting, the Parents requested an official IFSP meeting to discuss speech services.
97. According to the Parents, the determination about virtual services was based on the availability of resources and not on the Student's individual needs and supports required to access education.
98. The Parents reported that the ESD's "lack of communication left [them] feeling uneasy, uniformed [*sic*], and that [their] concerns weren't being taken seriously or addressed – ultimately excluding [them] from the IFSP team and process."
99. The Parents stated that "in discussion with their Pediatrician and Private SLP, both professionals have noted that virtual therapy is not developmentally appropriate for a 3-year old child and certainly not a 3-year old child that is deaf. It is pretty well established that in-person services are best practice and that teletherapy can be used in a setting where a family might be rurally located or not able to access services in person, but that is not the case for [the Student]."
100. An October 31, 2024 service log note from the Virtual SLP about the meeting noted, "[the DHH Specialist explained that the [Preschool] was brand new and the team was learning and working hard to navigate services... ASL proficiency: not required for SLPs/SLPAs, [the Virtual SLP] is proficient in ASL and can supervise the SLPA... Why virtual was chosen: across the district there are more virtual speech therapists, they are geographically assigned, SLPA's are provided to support in person... Parent is wanting to request an in-person SLP with an interpreter present: concerns with attending to speech with two people present... [the Parents] explained [they do] not consent to virtual services if [they] can't attend the session. [The ESD Coordinator] explained that in school services would be SLP virtual, SLPA in-person,

and interpreter in person... home services would look like SLP coming into the home to work with [the Student]... disadvantages: [the DHH Specialist] and teacher would not be there to support, in-person SLP with interpreter or virtual SLP with in-person SLPA... Conclusion: parents will discuss next steps, virtual vs home setting, and reach out via email, services will be paused until consent from parents is obtained.”

101. The ESD communicated to the Parents several times that “[the ESD] acknowledges they owe the 180 minutes of speech services that were missed between September 16, 2024-October 21, 2024” and agreed to provide the additional 30 minutes to make up services from October 28, 2024.

102. An IFSP meeting was scheduled for November 12, 2024. On November 12, 2024, the IFSP meeting was canceled because the DHH Specialist was sick. The team decided to use the time to have an informal meeting to discuss the Parents’ questions.

The IFSP meeting was rescheduled for November 19, 2024.

103. On November 19, 2024, the ESD convened an IFSP meeting to discuss services and evaluations.

104. The ESD’s November 19, 2024 IFSP Meeting Notes included the following information, in relevant part:

- a. Information from Parents: “[P]arent stated [the Student’s primary language] is ASL and they are working on access towards auditory/spoken language...family goal: total communication... Tri-Lingual family: ASL, English, tribal family.”

“Concerns: age-appropriate language development in ASL and English, language deprivation, developmental delays.”

- b. “[P]arents want virtual setting to be taken off of IFSP because they believe it is not developmentally appropriate... SLP explained that ASHA supports virtual therapy within our scope of practice, it is successful and an SLPA would work in-person for hands on support-SLP asked to be provided an opportunity to work with [the Student]... Parent declined wanting to try/experiment with virtual setting due to success with in-person SLP.”

“IFSP changes: parent requested to remove virtual services, district asked parent if they would like to pause services and parent stated they are not ready to answer at this time.”

- c. Evaluation Planning: The ESD suggested virtual evaluations. “[P]arents expressed concerns that virtual assessment/evaluation of [the Student] is not developmentally appropriate” and not accessible.

- d. Conclusion: “parent would like to proceed with ASL evaluations... parent would like to add all of the evaluation tools to the consent form and [they] will decide to revoke consent or not sign the document if [they do] not agree to the virtual evaluation... [The DHH Specialist] will send consent... parent will let us know decision within a few days.”

105. The Parents’ November 19, 2024 “Meeting Minutes” included the following information:

- a. “[The Student] is currently experiencing language deprivation due to late access to communication because of a late diagnosed hearing loss[.]”
- b. “[The Parents] really want to have separate evaluations of both [the Student’s] ASL in English proficiency so a benchmark can be set as a starting point. Currently [the Student’s] goals are combined goals inclusive of ALS [*sic*] and English which then fall under Expressive and Receptive, but progress cannot be measured for each language independently and instead the better of each language is measured. That type of approach won’t be able to accurately track or reflect [the Student’s] progress/needs... [The DHH Specialist] agreed that the goals could be rewritten so they’re more appropriate since we now know that [the Student’s] native language is ASL.”
- c. The Virtual SLP stated, “what’s been offered is technically not virtual because there will be an in person SLP present. [The Virtual SLP] indicated [they] just really [want] to try and if it fails we can have another conversation... [the Parents do not] want to experiment with unproven methodologies... don’t have the time to experiment.”
- d. “[The Parents] indicated [they] would need to do more research before consenting” to virtual evaluations.

106. The team did not make any changes to the Student’s IFSP at the November 19, 2024 meeting.

107. The ESD issued a November 19, 2024 PWN which stated, “Per parent request, team met as a follow up to discuss concerns with IFSP provision of services and evaluation planning in determining baseline of child’s English and ASL skills in writing appropriate goals to meet [the Student’s] educational needs.”

108. There is no evidence that the ESD provided PWN at any point related to the Parents’ requests that the virtual setting be removed from the Student’s IFSP, and the requests that speech language services be provided in-person by an SLP with ALS proficiency.

109. In a December 5, 2024 email to the Parents regarding their concerns about virtual evaluations, the ESD Coordinator wrote, “While we do stand by virtual SLP’s with the support of SLPAs an appropriate measure of evaluation, we have explored alternative options to address your concerns.”

The ESD conducted the Student’s evaluations in person, not virtually.

110. A December 19, 2024 service log note from an ESD Audiologist stated, “[The Student was] seen for audiological evaluation... continued to show profound sensorineural hearing loss for the right ear and moderately severe to profound sensorineural hearing loss for the left ear. This is a decrease compared to [their] ABR... [the Student’s] current hearing thresholds (no access to sound on the right and limited low frequency axis on the left).”
111. A meeting to review evaluations and revise the Student’s annual IFSP was scheduled for February 13, 2025, but canceled due to inclement weather. The meeting was rescheduled for February 28, 2025.
112. The ESD issued a January 30, 2025 Draft ECSE Evaluation Report, which included the following information, among other things:
- a. Language Development Scale: The Student’s hearing age was listed as “inconsistent use of hearing aids. 4 months.” The Student’s “overall average language is 2 years 6 months.”
  - b. Visual Communication and Sign Language Checklist: “[The Student’s] range falls between ages 2 years[,] 3 months and 2 years, 8 months which puts [their] ASL skills behind the typical aged development.”
113. The ESD convened a meeting on February 28, 2025 to review evaluation results and develop the Student’s annual IFSP. The team did not complete the review of evaluation results and did not discuss the IFSP. A follow-up meeting was scheduled for March 7, 2025.
114. The ESD’s February 28, 2025 Meeting Notes included the following information, among other things:
- a. Annual Health Review: “Previous audiology hearing result showed hearing was down.”
  - b. Goal Progress Review: “[The DHH Specialist] reviewed current goal for expressive communication... has met subobjectives.” The Parent reported “spoken language has not increased and this goal has not been met.”
  - c. The Parents “asked about date of sedated ABR on report at 18 months and confirmed” that the Student did not have an ABR test at that time. The ESD reported it would update the information in their records.
115. The ESD reported the IFSP team “has not yet identified [the Student’s] primary language. Instead, the team has taken a total language approach, which included teaching [the Student] communication skills in spoken language, ASL, visuals, and nonverbal communication.” The Student is “able to both respond to and initiate verbal communication.” “[T]he IFSP did not restrict [the Student’s] communication modality to signing, exclusively, moving forward.” “[A]t this point in time the team has not reached consensus that the data supports such a restrictive approach to [the Student’s] communication.”

The ESD reported that determining the Student's primary language or mode of communication is a team decision.

116. According to the Parents, "the recent evaluations clearly indicate that [the Student's] primary mode of communication/communication mode/native language is [ASL]."

"The SLP/SLPA service providers identified by [the ESD] cannot provide direct instruction in the child's language and communication mode because they are not fluent in the child's primary mode of communication, [ASL][.]" The Parents expressed concerns that the Student's services were not being provided in compliance with the IDEA.

The Parents reported they disagree with the total language approach. They wanted a bilingual (English and ASL) approach.

117. There was conflicting information provided about whether the Parents wanted an interpreter to support the Student's access to speech language services.

118. According to the Parents, they "have not asked for a sign language interpreter in any IFSP meeting. The use of an interpreter was discussed briefly outside of an IFSP meeting to learn more about how an educational interpreter *us [sic]* used by students." Rather, they have insisted "that an SLP provide [the Student] direct services (as noted in [the Student's] 9/13/24 IFSP) in [the Student's] primary language and communication mode, which is American Sign Language... an SLP-A is not listed for direct service delivery on the 9/13/24 IFSP service delivery page."

119. ESD staff reported the way services were written in the IFSP, either an SLP or SLPA could provide the services. If services are to be provided by an SLPA, the ESD needs to notify the family.

120. When asked whether the Student needed in-person speech language services from an SLP proficient in ASL, witnesses reported conflicting information:

- a. The DHH Specialist reported it depends on whether the goal of the services is speech therapy or language therapy. The Student, as a learner, would pay more attention to signing because they have more access to visual language and have to work harder for auditory information.

The Student's IFSP goals were generally written for language development and there were no specific articulation goals. At the time, the Student had been recently diagnosed and was just starting to learn ASL. They were working on increasing vocabulary and concepts, increased utterances, and receptively following directions. There is no reason a regular SLP could not have provided these services to the Student.

The DHH Specialist tried to share that the American Speech-Language-Hearing Association (ASHA) guidelines consider virtual services to be appropriate, but the Parents reported their pediatrician indicated virtual services were not suitable.

- b. The Speech/Language Specialist stated they were not sure if an SLP providing speech language services to the Student during the complaint period would need to be proficient in ASL. It would depend on the goals the SLP was working on and whether the focus was on speech or on language intervention. For intense language intervention, an SLP should be able to sign well.

There is some research to support that virtual services can be accessible by young children.

- c. The Director stated, because the goals were total communication, with the DHH Specialist working on ASL and an SLP working on receptive language, it should not have been a problem to have an SLP without proficiency in ASL. Additionally, the Virtual SLP had a fair amount of signing skills.
- d. The Teacher reported that having an SLP without ASL proficiency provide services would be limiting to the Student. The Teacher did not think a regular SLP could provide instruction on the IFSP goals as written. The Teacher was also concerned that an SLP without ASL proficiency might not understand what the Student was attempting to communicate and the Student would get very frustrated.

The Teacher stated, in their opinion, virtual services were not an option for the Student, because of their age and their individual needs. The Teacher reported the Student would not engage with anyone virtually that they did not know very well. Even with in-person services, the Student would need to know the provider well before the Student would engage.

121. On February 28, 2025, the Parents filed this Complaint.

122. As of February 28, 2025, the Parents have refused the speech language services offered by the ESD.

#### **IV. DISCUSSION**

##### **ECSE Evaluation**

The Parents alleged that the ESD violated the IDEA when it failed to conduct an evaluation although it had reason to suspect the Student had a disability that had an adverse impact on the Student's education and development and the Student may need ECSE services as a result of the disability. Specifically, the ESD had information regarding concerns about hearing loss but failed to initiate any further evaluations.

A district must evaluate a child to determine eligibility for ECSE services when it suspects or has reason to suspect the child has a disability adversely impacting their education or development and the child may need ECSE services.<sup>3</sup> In conducting the evaluation, the district 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 to assist in determining eligibility and the content of the child's IFSP. This includes information to enable the child to be involved in and make progress in appropriate activities. The district must assess the child in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.<sup>4</sup>

Assessments and other evaluation materials must be provided and administered in the child's native language or other mode of communication as determined developmentally appropriate by qualified personnel conducting the evaluations, and in the form most likely to yield accurate information. The evaluation must be sufficiently comprehensive to identify all of the child's ECSE and related service needs, whether or not commonly linked to the relevant disability category.<sup>5</sup>

When a child is suspected of having a speech or language impairment, a comprehensive evaluation must be conducted. This includes an evaluation or screening of the child's hearing acuity and, if needed, a measure of middle ear functioning. It must also include any additional assessments necessary to determine the impact of the suspected disability on the child's developmental progress and to identify the child's educational needs.<sup>6</sup>

In Oregon, "[EI/ECSE contractors have] joint responsibility with school districts to locate, identify, and evaluate all children birth up to age of eligibility for public school residing in its jurisdiction, suspected of being eligible for [EI or ECSE]... Local school districts are responsible, financially and legally, for EI/ECSE eligibility evaluations. School districts may contract with the local EI/ECSE program or other entity for fulfilling these requirements... Local EI/ECSE programs are responsible for providing a referral and evaluation process in each county, including... [c]onvening eligibility teams to determine eligibility for EI or ECSE services" and "[a]ssuring eligibility determinations are conducted in compliance with applicable federal and State of Oregon statutes, regulations and guidelines," among other things.<sup>7</sup>

In addition to regular EI/ECSE services, ESDs in Oregon help provide Regional Inclusive Services. These are "specialized services, often unavailable locally," including instruction in areas like sign language and assistive technology, and services like audiology, "with support for implementing [IFSPs]."<sup>8</sup>

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<sup>3</sup> OAR 581-15-2790(3); 34 CFR § 300.304.

<sup>4</sup> OAR 581-15-2790; 34 CFR § 300.304.

<sup>5</sup> OAR 581-15-2790; 34 CFR § 300.304.

<sup>6</sup> OAR 581-15-2135; 34 CFR § 300.306.

<sup>7</sup> Oregon Department of Education, *EI/ECSE Policies and Procedures Manual*, 6-7 (2021).

<sup>8</sup> [https://www.oregon.gov/ode/students-and-family/SpecialEducation/RegPrograms\\_BestPractice/Pages/Regional-Programs.aspx](https://www.oregon.gov/ode/students-and-family/SpecialEducation/RegPrograms_BestPractice/Pages/Regional-Programs.aspx)



In this particular case, the ESD reported the District was responsible for evaluations to determine eligibility, while the ESD was responsible for conducting evaluations to determine services. Additionally, the ESD was responsible for evaluations to determine certain eligibilities that fell under the ESD's Regional Inclusive Services, which included DHH eligibility.

The Parents expressed concern about the Student's hearing to the District and the ESD on multiple occasions, starting in August 2022. However, the actions the ESD did or did not take before February 29, 2024, are outside the complaint period.

The Parents claimed the ESD had a duty to conduct a hearing test following the District's February 14, 2024 failure to obtain test results. The Student was eventually evaluated and diagnosed with hearing loss by a private provider on May 3, 2024. The question of whether the ESD failed to evaluate the Student's hearing during the complaint period, either to determine services under SLI or to consider DHH eligibility, is therefore limited to the time between February 29 and May 3, 2024. While the ESD's statement that it would not consider DHH eligibility without medical documentation of a qualifying condition is concerning, there is insufficient evidence to conclude that the ESD violated the IDEA by not conducting a hearing test during this two-month period.

Once the ESD was informed of the Student's diagnosis, the ESD quickly convened an evaluation planning meeting and conducted an evaluation. The Student's eligibility determination for DHH occurred less than one month after the hearing loss diagnosis.

The Department does not substantiate this allegation.

### **IFSP Content**

The Parents alleged that the ESD violated the IDEA when it failed to include ECSE and related services and supplementary aids and services in the Student's IFSP necessary to fully address the Student's needs that result from the Student's disabilities.

An IFSP must contain: (1) a statement of the child's present level of development; (2) a statement of major outcomes or annual goals and short term objectives expected to be achieved for the child and family related to meeting the child's needs that result from their disability; and (3) a statement of ECSE and related services, supplementary aids and services, and program modifications or supports for personnel that will be provided for the child.<sup>9</sup>

The provision of services and supports must be based on peer-reviewed research to the extent practical. It must also be designed to enable the child to advance appropriately towards attaining annual goals; to participate in appropriate activities and extracurricular and other non-academic activities; and to be educated and participate with other children with disabilities and without disabilities. The IFSP must include the projected dates for initiation of services and

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<sup>9</sup> OAR 581-015-2815; 34 CFR § 300.320.

supports, as well as their anticipated frequency, location, intensity, method and duration, and payment arrangements, if any.<sup>10</sup>

In this case, the Parents claimed that speech language services in the Student's IFSPs were inappropriate and did not meet the Student's individual needs.

There is no data on the Student's ability to access the speech language services offered by the ESD as the services did not occur. Witnesses provided conflicting opinions about whether the services offered (virtual SLP with in-person SLPA) were able to meet the Student's needs. The Parents claimed they were inappropriate and not accessible to the Student. The Parents insisted the IFSP team accept their assertion that speech language services offered would not work, indicating they were not willing to let the ESD "experiment" with the Student. The Parents maintained the Student required an in-person SLP with ASL proficiency. Although the record contained some inconsistent information regarding interpreters, the Parents reported they did not want an interpreter for speech language services.

The Teacher agreed, stating they did not believe virtual services were a viable option for the Student. The Teacher also stated they did not think an SLP without ASL proficiency could provide instruction on the Student's goals, as written in the September 2024 Revised IFSP.

ESD staff reported there was research to support the appropriateness of virtual services for young children. Several stated the Student's ASL skill level in fall 2024 did not necessitate the need for an SLP proficient in ASL. Some indicated it would depend on the IFSP goals and whether the focus was on speech or language intervention. Several noted that the Student's goals were written for general language development, using a total communication approach, indicating an SLP without ASL proficiency could provide the services.

ESD staff also provided conflicting information on what the ESD's offer of speech language services would look like. Some stated the services were considered virtual, others stated in-person. Some stated the Virtual SLP would be providing instruction using ASL, with the SLPA helping the Student to focus and engage. Others stated the SLPA was providing instruction in-person, with the Virtual SLP supervising.

The ESD stated it did not have an SLP on staff that was proficient in ASL; therefore, the ESD could not offer this to the Student. However, the SLP assigned to the Student (the Virtual SLP) had some signing skills. While it is unclear whether the rejection of the requested in-person SLP proficient in ASL was motivated by the lack of ESD staff with these qualifications, there is insufficient evidence to determine that the Student needed it to make progress on goals or participate in appropriate activities.

The Student's IFSPs included some minor errors. The May 2024 Revised IFSP did not select deaf or hard of hearing as a special factor, but the IFSP otherwise addressed this special factor. The September 2024 Revised IFSP included cognitive and social emotional goals that the IFSP team

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<sup>10</sup> OAR 581-015-2815; 34 CFR § 300.320.

determined had been met and would be removed. However, these appear to be editing errors and there is no indication that they had any effect on services or supports.

The Department does not substantiate this allegation.

### **IFSP Team Considerations and Special Factors**

The Parent alleged that the ESD violated the IDEA by failing to consider the Student's language and communication needs as a child who is deaf or hard of hearing in developing, reviewing, and revising the Student's IFSP.

In developing, reviewing and revising an IFSP, the IFSP team must consider: (1) the strengths of the child and the concerns of the parents for enhancing the development of the child; (2) the results of the initial or most recent evaluation of the child; and (3) the academic, developmental, and functional needs of the child. The IFSP team must additionally consider special factors including, among other things, the communication needs of the child; whether the child requires assistive technology devices and services; and, for a child who is deaf or hard of hearing, the team must consider the child's language and communication needs, including developmental level, full range of needs, and opportunities for direct instruction and direct communications with peers and professional personnel in the child's language and communication mode.<sup>11</sup>

In considering these special factors, if the team determines a child needs a particular device or service for the child to receive a free appropriate public education, a statement to that effect must be included in the child's IFSP.<sup>12</sup>

As mentioned previously, the May 2024 Revised IFSP did not indicate deaf or hard of hearing as a special factor. However, there is no indication that the IFSP team failed to discuss or consider the Student's needs at the May 29, 2024 IFSP meeting or that their services and supports were affected.

During the complaint period, the District and ESD convened numerous meetings, including evaluation planning, eligibility, and IFSP review meetings, as well as informal meetings to address the Parents' questions. There is no indication that the ESD failed to consider the Parents' concerns. On the contrary, the Parents were afforded many opportunities to discuss concerns about the Student's language and communication needs and opportunities for direct instruction and direct communications with peers and professional personnel in the child's language and communication mode. Regardless of the IFSP team's disagreement on the determination of the Student's primary language and communication mode, the Student was provided with opportunities for instruction and communication with staff and peers in English and ASL.

The Department does not substantiate this allegation.

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<sup>11</sup> OAR 581-015-2820(2); 34 CFR § 300.324.

<sup>12</sup> OAR 581-015-2820(4); 34 CFR § 300.324.

## Implementation of the IFSP

The Parents alleged that the ESD violated the IDEA by failing to provide ECSE and related services in accordance with the Student's IFSP.

An IFSP must be written before ECSE or related services are provided to the child and must begin as soon as possible following the meeting. ECSE and related services must be provided to the child with the disability in accordance with the IFSP.<sup>13</sup>

Contractors and subcontractors must ensure that the IFSP is available to the parents at no cost and as soon as possible. Copies of the child's IFSP must also be made available to each regular preschool teacher, ECSE specialist, related services provider and other service provider who is responsible for its implementation. Contractors and subcontractors must also inform each teacher and provider of their specific responsibilities for implementing the child's IFSP and the specific accommodations, modifications, and supports that must be provided for or on behalf of the child in accordance with the IFSP.<sup>14</sup>

"[A] district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided... and those required by the IEP."<sup>15</sup>

The Student's IFSP stated direct services would be provided by an SLP for 30 minutes per week at "Community Preschool/Virtual." The speech language services offered by the ESD, with a virtual SLP and an in-person SLPA, complied with the Student's IFSP.

The ESD acknowledged that some of the Student's speech language services were not provided at the start of the 2024-25 school year because of a delay in identifying an SLP to provide services to the Student. The Virtual SLP was assigned on October 8, 2024 and emailed the Parents the following day to schedule speech language services. The Parents did not respond to the Virtual SLP's email, causing an additional delay in scheduling. Regardless, the ESD indicated its agreement to make up services for those missed between September 16 and October 28, 2024, for a total of 210 minutes. Despite the ESD's offer to provide the Student's IFSP speech language services and make-up minutes, the Parents rejected all virtual services. The Student has not received any speech language services from the ESD during the 2024-25 school year.

Because the September 2024 Revised IFSP continued to indicate that the Student's accommodations be provided by an SLP, the implementation of this IFSP provision was also affected by the delay in identifying an SLP.

The ESD's temporary failure to implement the speech language services included in the Student's IFSP was addressed by the ESD with the offer to provide make-up speech language

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<sup>13</sup> OAR 581-015-2830; 34 CFR § 300.323.

<sup>14</sup> OAR 581-015-2830; 34 CFR § 300.323.

<sup>15</sup> *Van Duyn v. Baker Sch. Dist.* 5J, 502 F3d 811, 815 (9<sup>th</sup> Cir. 2007).

services equal to the amount that were missed. This did not constitute a material failure to implement the IFSP.

The Department does not substantiate this allegation.

### **Parent Participation**

The Parents alleged that the ESD violated the IDEA by interfering with the Parent's ability to participate in decisions with respect to the identification, evaluation, IFSP and educational placement of the Student, and the provision of a free appropriate public education to the Student.

Contractors or subcontractors must provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, placement, and the provision of a free appropriate public education (FAPE) to the child. This includes providing parents with written notice of meetings sufficiently in advance to ensure that parents will have the opportunity to attend.<sup>16</sup> Contractors or subcontractors must also provide parents with a copy of the IFSP at no cost to the parents.<sup>17</sup>

Prior written notice must be given to parents a reasonable time before the contractor or subcontractor proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, placement, or provision of FAPE to the child. Prior written notice must include a description of the action proposed or refused; an explanation of why the action was proposed or refused; a description of any options the IFSP team considered and reasons why those options were rejected; a description of any other relevant factors; and a statement informing parents of procedural safeguards.<sup>18</sup>

As previously discussed, the ESD convened numerous meetings and provided the Parents the opportunity to provide input, express concerns, and discuss their questions.

The record indicated the ESD failed to provide the Parents with copies of the Student's IFSPs within a reasonable amount of time, if at all. Although a March 19, 2024 ESD log note indicated "initial IFSP paperwork" was emailed to the Parents, the Parents reported they did not receive an email from the ESD. The Parents claimed they never received a copy of the February 15, 2024 IFSP. For the April 12, 2024 IFSP meeting, the ESD stated that an April 2024 Revised IFSP was never issued because of a staff error. A copy of the May 2024 Revised IFSP was emailed to the Parents on September 12, 2024, and a copy of the September 2024 Revised IFSP was emailed to the Parents on October 15, 2024.

There is no evidence that the ESD provided PWN in response to the Parents' (1) requests for speech language services to be provided by an in-person SLP proficient in ASL, and (2) requests

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<sup>16</sup> OAR 581-015-2750; 34 CFR § 300.501.

<sup>17</sup> OAR 581-015-2755(3); 34 CFR § 300.501.

<sup>18</sup> OAR 581-015-2745; 34 CFR § 300.503.

that virtual services be removed from the Student's IFSP, although these requests were rejected by the ESD.

The ESD's failure to provide the Parents with copies of the Student's IFSPs and PWN as required by the IDEA interfered with the Parents' right to be notified, and have the opportunity to contest, decisions made about their child.

The Department substantiates this allegation.

#### **V. CORRECTIVE ACTION**

*In the Matter of Willamette Education Service District 9  
Case No. 25-054-012*

Based on the facts provided, the following corrective action is ordered:

<b>Action Required</b>	<b>Submissions</b>	<b>Due Date</b>
1. The ESD must ensure that the Parents are provided with copies of all IFSPs and PWNs as required.	Copies of IFSPs and PWNs provided to parents.	<b>May 12, 2025</b>
2. The ESD must ensure that all ESD staff who were responsible for developing and implementing the IFSPs for this Student receive training in each of the following areas: <ul style="list-style-type: none"><li>• IFSP Content;</li><li>• IFSP Implementation;</li><li>• Parent Participation;</li><li>• Prior Written Notice.</li></ul>	Training agenda/materials to ODE for review/approval.  Sign-in sheet for training.	<b>June 15, 2025</b>  <b>October 31, 2025</b>

Dated: this 28 Day of April 2025



Ramonda Olaloye  
Assistant Superintendent  
Office of Enhancing Student Opportunities

E-mailing Date: April 28, 2025

Appeal Rights: Parties 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 provisions of ORS § 183.484. (OAR 581-015-2030 (14).)