

## BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of  
EC Cares EI/ECSE

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FINDINGS OF FACT,  
CONCLUSIONS, AND FINAL ORDER  
Case No. 25-054-020

### I. BACKGROUND

On April 7, 2025, the Oregon Department of Education (the Department) received a special education complaint (Complaint) from a Parent (Parent) regarding the early intervention (EI) and early childhood special education (ECSE) of a preschool child (Child). The Parent alleged that the EI-ECSE provider, Early Childhood Cares (Program) had violated several provisions of the Individuals with Disabilities Education Act (IDEA). The Department conducted a special education complaint investigation pursuant to Oregon Administrative Rule 581-015-2030. The Department assigned the case to a contracted complaint investigator (Investigator). The Parent followed up with additional emails, elaborating upon the allegations. In response to the Investigator's attempt to schedule an introductory phone call, the Parent requested that all communication regarding the Complaint be in writing. The Investigator, agreeing to communicate only in writing, sent the Parent an email describing in detail the scope, sequence, and timeline of a special education complaint investigation and noted that some of the Parent's concerns could not be investigated because they did not allege violations of the IDEA.<sup>1</sup> The Parent requested that the Department "escalate" or "refer" the Parent's allegations to other agencies. The Investigator, having no authority to involve other agencies, proceeded with the special education complaint investigation pursuant to state and federal regulations.

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. This timeline may be extended if the Parent and the Program agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.

On April 17, 2025, the Investigator sent a *Request for Response* to the Program identifying the Parent's allegations of IDEA violation and requesting a narrative response and specified documents to be submitted to the Investigator by May 2, 2024. On April 25, 2025, the Program asked for additional time because of the number of allegations and the volume of requested documents. The Department agreed to a two-week extension of the due date and offered two additional weeks to the Parent to reply after receiving the *Response*.

The Program submitted a *Response* to the Complaint on May 16, 2025, denying all allegations. The Program submitted the following documents in support of its position:

1. Narrative *Response*
2. Table of Contents
3. EI Statement of Eligibility for Special Education

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<sup>1</sup> The Parent received direction from the Investigator and several Department staff members about avenues available for the Parent to pursue non-IDEA complaints. All emails from the Parent were directed to the relevant units at the Department.

4. Evaluation Procedures and Reports during the Complaint Period
5. Prior Notice About Evaluation, 8/2024
6. Early Childhood Special Education Evaluation Report
7. Statement of Eligibility for Special Education Other Health Impairment
8. IFSPs in effect during the Complaint Period
9. IFSP Revision, 12/11/04
10. IFSP, 8/2/24
11. IFSP, 2/20/24
12. Documentation related to meetings during the Complaint Period
13. Contact Log
14. Notice of IFSP Team Meeting for 8/2/24 meeting
15. IFSP Meeting Participants
16. Correspondence Parent-Program
17. Fwd: Formal Request for IFSP Additions & Immediate Action
18. FW: introduction
19. FW: Joint meeting request
20. RE: Reschedule today's IFSP meeting
21. Re: [School] transition and safety meeting
22. Re: Mutual Exchange Follow up
23. Email Re: Mutual Exchange Needed
24. FW: Continued Final Parent Request for All Documentation [The Child]
25. FW: Final Parent Request for All Documentation
26. FW: Formal Request for Clarification and Documentation – [The Child]
27. FW: Request for Written Safety Plan and Documentation of Communications Regarding [The Child]
28. Email Re: Continued inclusion of my advocate
29. Re: Final Notice – Incomplete and Noncompliant Records Response (April 1, 2025 Request)
30. IFSP and Evaluation
31. Re: Clarification and Revocation of Mutual Consent
32. Re: Clarification and Revocation of Mutual Consent
33. URGENT Incomplete Public Records Release – Formal Demand for Full Compliance Under ORS 192.324 and 192.329
34. Re: Records Request
35. Re: Independent Educational Evaluation (IEE) request
36. Formal Response Records Request Delay & Contradiction — Notification of Additional OCR and ODE Violation
37. Formal Notice Regarding Records Fragmentation and Unauthorized Distribution
38. Clarification Regarding IFSP Signatures and [Specific Person]'s Participation on 08 02 2024
39. Formal Legal Notice of Violations – [The Child] – Fraud, Disability Rights Violations, Procedural
40. Safeguard Breaches, and Federal Funding Misuse
41. Correction to Formal Legal Notice Sent today 4 27 25– [The Child]
42. Urgent Supplemental Records Demand – Procedural Compliance and Fraud ([The Child], DOB 08 13 2021)

43. Text Messages
44. Texts – [EI-ECSE Specialist]-Parent
45. Texts – [EI-ECSE Specialist]- Parent – Classroom Phone
46. Texts – [Occupational Therapist]
47. Phone – [Occupational Therapist]
48. Communications from file
49. Email regarding written consent to exchange information, 4/2/25 - 4/3/25
50. Email regarding consent for [County] County Behavioral, 1/26/25 – 1/28/25
51. Request for Client Information [County] County, DDS 3/31/25
52. Prior Written Notices
53. Prior Notice and Consent for Initial Provision of Special Education Services, 8/2/24
54. Prior Notice About Evaluation / Consent For Evaluation, 2/21/24
55. Prior Notice of Early Intervention or Early Childhood Special Education Action, 12/11/24
56. Prior Notice of Early Intervention or Early Childhood Special Education Action, 8/2/24
57. Other documentation related to the Complaint
58. Email confirming that [Program] was informed of Child's diagnosis
59. Cumulative Archive file shared through parent portal, 4/7/25
60. Consent for Mutual Exchange of Information indicating parent received parental rights, 8/2/24
61. Consent for Mutual Exchange of Information indicating parent received parental rights, 2/21/24
62. Consent for Mutual Exchange of Information indicating parent received parental rights, 1/31/24
63. Written Consent to Access Public Insurance (Medicaid) and Release Personally Identifiable Information
64. Information for Medicaid Billing Purposes (For Ages 3-21) dated 8/2/24
65. Contact Log
66. Nursing Services Request
67. Physician's Authorization
68. Seizure Protocol for [The Child]
69. Service Log
70. Service Provider Handbook Meeting Guidance
71. List of staff members and other people who are knowledgeable about matters related to this Complaint

During the complaint investigation period, the Parent submitted numerous email communications but did not provide documentation specifically supporting the allegations in the original Complaint. These communications contained additional concerns, including matters outside the jurisdiction of IDEA, as well as requests for the Department to act beyond the scope of a special education complaint investigation. The Investigator thoroughly reviewed all Parent correspondence to identify and address all allegations that potentially constituted violations of the IDEA. A comprehensive record of this correspondence from the Parent is documented below:

1. April 7, 2025 email with subject: URGENT ODE Formal Complaint. The email had seven attachments consisting of narrative allegations:

- a. OPENING FORMAL COMPLAINT [Student]
  - b. Fabricated IFSP
  - c. Continued Abandonment and Safety concerns
  - d. COMPENSATION & REMEDIES REQUEST
  - e. Public Humiliation, Forced Exposure, and Systemic Isolation
  - f. Systematic Review of All IFSPs Created by [Program]
  - g. LEGAL VIOLATIONS
2. April 7, 2025 emails with subject: #2 URGENT ODE Formal Complaint. The email had an attachment.
  3. April 7, 2025 email with subject: ODE Formal Complaint.
  4. April 12, 2025 email with subject: Fwd email evidence unlawful Evaluation and IFSP
  5. April 12, 2025 email with subject: Submission of New Evidence for Formal ODE Complaint – unlawful multidisciplinary evaluation and IFSP. The email had an attachment.
  6. April 12, 2025 email with subject: ODE addendum records access [Program] and [University]
  7. April 12, 2025 email with subject: Formal Violation Submission—Advocate Removal
  8. April 12, 2025 email with subject: Formal Addition to Complaint continuing harm– Request for [Program]-Funded Independent Evaluation Due to Violations
  9. April 12, 2025 email with subject: Formal Addendum continuing Harm- March 21 meeting with [Specific Community Partner]
  10. April 14, 2025 email with subject: ODE ADDENDUM Timeline March 15, 2024- August 2, 2024 with you. This email had an attachment
  11. April 14, 2025 email with subject: ODE Complaint – Preservation of Rights, Procedural Violations, and Protected Caregiver Status
  12. April 15, 2025 email with subject: [Parent] Statement of Evidence: Multidisciplinary Evaluation nonexistent
  13. April 15, 2025 email with subject: ODE FORMAL COMPLAINT addendum. The email has an attachment.
  14. April 15, 2025 email with subject: ODE FORMAL COMPLAINT ADDENDUM 8/2/24 IFSP [Psychologist Name] Psychologist Evaluator
  15. April 15, 2025 email with subject: ODE FORMAL COMPLAINT ADDENDUM, Parent Statement of Evidence
  16. April 16, 2025 email with subject: Addendum: Verified Rare Genetic Epilepsy and Documented Harm. The email has an attachment.
  17. April 16, 2025 email with subject: Additional Urgent Information—Follow-Up on [Child] case.
  18. April 16, 2025 email from the Parent to the Oregon Education Ombudsman
  19. April 17, 2025 email with subject: ODE Addendum 12/11/24 OT Observation Following 9-Month Delay Despite Known Medical and Sensory Diagnoses
  20. April 17, 2025 email with subject: ODE Addendum 12/17/24 Occupational Therapy Service Added Without IFSP Team Meeting, Review, or Informed Consent
  21. April 17, 2025 email with subject: ODE Addendum additional evidence 12/24/24
  22. April 17, 2024 email with subject: ODE Addendum 10/18/24 Failure to Initiate IFSP Meeting After First Report of Harm – Withholding, Retaliation, and Procedural Neglect
  23. April 20, 2025 email with subject: Confidentiality and HIPAA/FERPA Notice for All Submissions – [Child]

24. April 21, 2024 email to the Investigator replying to the Investigator's email sharing with the Parent the *Request for Response* sent to the Program
25. April 24, 2025 email with subject: ODE Complaint Addendum Continuing harm– Improper Records Classification, Withholding, and Fee Imposition (City of [City Name])
26. April 24, 2025 email with subject: ODE Formal Addendum 4/23/25 Unlawful Delay, Contradiction, and Withholding of Education Records by [Program] and the [University]
27. April 24, 2025 email with subject: ODE Complaint Addendum Continuing Harm – Custodial Denial & Record Evasion by [School District]
28. April 24, 2025 email with subject: ODE Complaint Addendum – Violation Denial of FAPE and Fraud in Publicly Funded Placement. Attached to the email are several screenshots and photos.
29. April 24, 2025 email with subject: ODE Complaint Addendum – Coercion Through Paid Placement, Dual Role Abuse, and Suppression of Transition Planning
30. April 25, 2025 email with subject: ODE Complaint Addendum – Violation Operating Without Required Licensure, Qualified Staff, or Disability Competence at [Program] / [Community Site]
31. April 25, 2025 email with subject: ODE Complaint Addendum – Violation Improper Billing, Potential Double-Dipping of Public Funds, and Concealed Use of IDEA/State Dollars
32. April 25, 2025 email with subject: ODE Complaint Addendum – Violation In-Classroom Observation Misrepresented as Occupational Therapy Evaluation – No Consent, No Team Meeting, No Legal Evaluation Conducted. 12/11/24. Attached to this email are several screenshots and photos.
33. April 25, 2025 email with subject: Signature by [University] Psychologist [Psychologist Name] and Document Manipulation to Justify Eligibility Without any legal multidisciplinary Evaluation. Attached to this email is a photo of the signature page of the Child's eligibility statement.
34. April 25, 2025 email with subject: Continuing Denial of Services, Supports, and Access – 7 Weeks and Counting
35. April 24, 2025 email with subject: ODE Complaint Addendum – Violation continuing harm : Records Access Obstruction & Entity Misrepresentation ([University] / [Person's Name])
36. April 25, 2025 email with subject: Immediate Escalation Request—Criminal Referral for Falsified OT Evaluation and Misuse of Funds
37. April 25, 2025 email with subject: ADDITIONAL Formal Allegation of Fraudulent Evaluation and Falsification of Records – Request for Immediate Federal Oversight
38. April 25, 2025 email with subject: Role Violation, Fraudulent IFSP Documentation, and Federal Oversight Referral Request
39. April 25, 2025 email with subject: IMMEDIATE ACTION Addendum Submission – Fraudulent Signature [University] Psychologist on 8/2/24 IFSP – Official Declaration Under Penalty of Perjury
40. April 27, 2025 email with subject: ODE Formal Addendum Evidence Dual Role
41. April 27, 2024 email with subject: Formal Addendum – Systemic FRAUD, Denial of Early Intervention and ECSE Services, and Prolonged Harm
42. April 28, 2025 email to the Investigator with subject: Obstruction and Denial of Legal rights by ODE. The email included a demand that the Department refer the Parent's complaints to several state and federal agencies.
43. April 28, 2025 email with subject: Formal Objection to Conflict of Interest and Demand for FEDERAL Independent Oversight Referral. This email objects to the Department's "ongoing

attempt to investigate my state special education complaint internally, without neutrality, despite overwhelming evidence of direct conflicts of interest, systemic violations, and criminal misconduct involving agencies under ODE's oversight responsibility — specifically [University] and [Program]"

44. April 28, 2025 email with subject: No Further Extension – Formal Notice of Procedural Obstruction, Due Process Violation, and Mandatory Referral to Federal Oversight. In this message, the Parent again makes a “Formal Demand” for immediate referral of all pending complaints, supporting evidence, and all procedural materials to several federal agencies.
45. April 28, 2025 email with subject: Formal Notice of Spoliation and Legal Document Hold
46. April 28, 2025 email with subject: Formal Submission: Exhibit A – August 2, 2024 IFSP Violations
47. April 28, 2025 email with subject: Exhibit A 8/2/24 IFSP Meeting Supplemental Fraud Finding: Fabricated Post-Dated Signature – [School Psychologist]
48. May 2, 2025 email with subject: Fraudulent Billing of Nonexistent Evaluation
49. May 12, 2025 email with subject: Formal Complaint Addendum – Systemic Violations by [Specific Community Partner]
50. May 13, 2025 email with subject: ODE Formal Complaint Addendum unauthorized documentation & withholding of public records
51. May 13, 2025 email with subject: ODE FORMAL COMPLAINT ADDENDUM Substitution of Informal Park Socialization
52. May 13, 2025 email with subject: ODE/OCR Formal Complaint Addendum Fraudulent IFSP and Evaluation Evidence 8/2/24
53. May 16, 2025 email with subject: Procedural Objection and Clarification – [Program] Response Prior to ODE Assignment
54. May 17, 2025 email with subject: Formal Complaint Additional Violations and Ongoing Harm Complaint Addendum/ Failure to Comply with ORS 192.329 & IDEA 34 C.F.R. § 300.613 – [University] [Program] / City of [City Name]
55. May 17, 2025 email with subject: Formal ODE Complaint Addendum: Response to [University] misrepresentations/ Systemic Obstruction, Misrepresentation, and Procedural Fraud
56. May 17, 2025 email with subject: Procedural Violation and Unauthorized Disclosure – Addition of Unknown Party to Secure Messaging
57. May 17, 2025 email with subject: Formal ODE Complaint Addendum Procedural Safeguards Violation – Inadequate Notice Additional Violation
58. May 17, 2025 email with subject: City of [City Name] - Public Records Request PRR-2025-239: Final Demand for Records past 45 days– Withholding Impact Statement and Notice of Legal Action
59. May 18, 2025 email with subject: ODE Complaint Addendum – Immediate Noncompliance Finding Required: Double Billing of FAPE-Eligible Child. With attachment.
60. May 18, 2025 email with subject: Formal Complaint Addendum: Systematic failures, No procedural safeguards, informal observation by dual role sole representative and CAP request. With attachment.
61. May 19, 2025 email with subject: Formal Complaint Addendum Notes by [School] Supervisor [Person's Name] released by City of [City Name] in response to public records request

62. May 29, 2025 email with subject: ODE Formal Complaint ADDENDUM/ March 21 2024 meeting/ Unsafe Environment, Denial of Placement in Least Restrictive Environment (LRE), and Interagency Failure to Implement IFSP
63. May 29, 2025 email with subject: ODE Formal Complaint ADDENDUM/ Written safety plan never received - ongoing harm

## 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 April 8, 2024 to the filing of this Complaint on April 7, 2025.

Allegations	Conclusions
<p><b>Child Find</b></p> <p>The Parent alleged that the Program has denied the Child a Free Appropriate Public Education (FAPE). The Parent was not specific about how the Program failed to satisfy this requirement.</p> <p>(OAR 581-015-2080; 34 CFR § 303.302)</p>	<p><b>Not Substantiated</b></p> <p>The Program identified, evaluated, and provided EI and ECSE services to the Child.</p>
<p><b>Parent Participation – General - EI/ECSE Program</b></p> <p>The Parent alleged that the Program violated the IDEA by infringing upon their parent participation rights.</p> <p>(OAR 581-015-2750; 34 CFR § 300.501(b))</p>	<p><b>Not Substantiated</b></p> <p>The Parent was invited to and participated in all meetings, formal and informal, related to the Child's identification, evaluation, IFSP, placement, and the provision of a FAPE.</p>
<p><b>ECSE Evaluation</b></p> <p>The Parent alleged that the Child's ECSE evaluation violated the IDEA in several ways: no parent notice, lack of "multidisciplinary" evaluation, one participant with "dual roles", no formal or comprehensive assessment evaluation. In addition, the Parent alleged that the Program failed to assess in all areas of suspected disability, including autism, sensory processing disorder, and epilepsy and "withholding of</p>	<p><b>Not Substantiated</b></p> <p>The Parent received written notice of the evaluation and provided informed consent to the assessment procedures and other data sources used for the evaluation. The Parent received a detailed evaluation report that included data for each assessment procedure and recommended IFSP goals.</p>

<b>Allegations</b>	<b>Conclusions</b>
<p>medical, developmental, and neurological evaluations, despite parent requests and documented medical need.”</p> <p>(OAR 581-015-2790; 34 CFR § 303.25, 34 CFR § 303.321(a)(5))</p>	
<p><b>ECSE Eligibility</b></p> <p>The Parent alleged that the Program violated ECSE eligibility requirements. The Parent was not specific about how the Program might have violated these requirements.</p> <p>(OAR 581-015-2795)</p>	<p><b>Not Substantiated</b></p> <p>The ECSE eligibility decision was fully compliant with the governing OARs.</p>
<p><b>Independent Educational Evaluation (IEE) - ECSE</b></p> <p>The Parent has asked the ECSE Program for an IEE at Program expense and alleged that the Program has imposed inappropriate criteria.</p> <p>(OAR 581-015-2765; 34 CFR § 300.502)</p>	<p><b>Not Substantiated</b></p> <p>The Program provided the IEE policy to the Parent. The Parent disputed the policy and did not obtain the IEE.</p>
<p><b>Individual Family Service Plan (IFSP) Meeting Procedures and Timelines</b></p> <p>The Parent alleged that the Program violated the IDEA by not convening an IFSP review meeting at the Parent’s request.</p> <p>(OAR 581-015-2810; 34 CFR § 300.101)</p>	<p><b>Not Substantiated</b></p> <p>The Program held IFSP meetings as required by OAR.</p>
<p><b>EI and ECSE Transition</b></p> <p>The Parent alleged that the Program violated the IDEA by not providing an EI to ECSE transition plan. This allegation is addressed above in the discussion of IFSP Meeting Procedures and Timelines.</p> <p>(OAR 581-015-2805; 34 CFR § 300.124 and 34 CFR § 303.209)</p>	<p><b>Not Substantiated</b></p> <p>EI to ECSE transition was discussed at the February 2024 meeting, roughly six months prior to the Child’s third birthday.</p>
<p><b>Participants in IFSP Team Meetings and Reviews</b></p>	<p><b>Substantiated in Part</b></p>



<b>Allegations</b>	<b>Conclusions</b>
<p>The Parent alleged that the IFSP meeting did not include the required persons and that the ECSE Specialist unlawfully held multiple positions on the Team.</p> <p>(OAR 581-015-2825; 34 CFR § 303.24)</p>	<p>The Preschool Teacher did not participate in IFSP development. Regulations expressly permit one team member to fill several roles.</p>
<p><b>IFSP Team Considerations and Special Factors</b></p> <p>The Parent alleged that, following an October 18, 2024 incident, the Child’s IFSP team “failed to initiate a behavior intervention plan or safety supports, and instead allowed punitive action, compounding trauma and educational exclusion.”</p> <p>(OAR 581-015-2820)</p>	<p><b>Not Substantiated</b></p> <p>The team did not find that the Child had behaviors that impeded development.</p>
<p><b>IFSP Content</b></p> <p>The Parent alleged that the Child’s IFSP was noncompliant with the IDEA. Because the Investigator was not able to speak with the Parent, the nature of the alleged non-compliance is uncertain.</p> <p>(OAR 581-015-2815)</p>	<p><b>Not Substantiated</b></p> <p>The Program used the IFSP form required by the Department, and all components were addressed.</p>
<p><b>IFSP Implementation</b></p> <p>The Parent alleged that the Program violated the IDEA by “Failure to implement the IFSP as written or to revise based on updated needs or family reports.” The Complaint did not identify any specific examples of non-implementation.</p> <p>(OAR 581-015-2830; 34 CFR § 300.101, 34 CFR § 303.409)</p>	<p><b>Not Substantiated</b></p> <p>Documents provided by the Program demonstrate that the IFSP was implemented with fidelity.</p>
<p><b>Placement and Least Restrictive Environment (LRE) in ECSE</b></p> <p>The Parent alleged that the Program violated the IDEA by placing the Student at the Community Preschool without prior evaluation or proper LRE determination. Because the Parent refused to</p>	<p><b>Not Substantiated</b></p> <p>Although the Parent chose to enroll the Child in the Community Preschool, the Program agreed that it was the Child’s LRE. The Parent did not elaborate on why</p>

<b>Allegations</b>	<b>Conclusions</b>
<p>Speak with the Investigator, it was not possible to obtain a more detailed allegation.</p> <p>(OAR 581-015-2845)</p>	<p>the placement no longer seemed appropriate, but the Program offered to meet with the Parent to discuss other placement options.</p>
<p><b>Prior Written Notice and Procedural Safeguards — EI-ECSE Program</b></p> <p>The Parent alleged that the Program violated the IDEA by not providing Prior Written Notice and not providing a physical copy of the Procedural Safeguards Notice booklet but only pointing out where the Parent could find it online.</p> <p>(OAR 581-015-2745; 34 CFR § 300.503 and 34 CFR § 300.504)</p>	<p><b>Not Substantiated</b></p> <p>The Program’s documentation shows PWNs for all Program actions. The Program’s documentation shows that the Parent received the Procedural Safeguards Notice at least once during the Complaint period.</p>
<p><b>Health and Safety</b></p> <p>The Parent alleged that the Program violated the IDEA by “not providing a written safety plan after documented behavioral incidents.”</p> <p>(OAR 581-015-2895)</p>	<p><b>Not Substantiated</b></p> <p>The Program was not aware of any health or safety risks to the Child while at the Community Preschool.</p>
<p><b>Access to Records/Confidentiality of Student Records for Preschool Children with Disabilities</b></p> <p>The Parent alleged that the Program failed to provide the Child’s educational records upon the Parent’s request and alleges that the Program withheld or destroyed documentation, “including classroom observations, emails, evaluation, and IFSP drafts.”</p> <p>(34 CFR § 300.501(a); OAR 581-015-2300)</p>	<p><b>Not Substantiated</b></p> <p>All records requested by the Parent were provided to the Parent in a timely manner. The Parent did not specify what confidential records were disclosed nor did the Investigator find any evidence of such disclosure.</p>
<p><b>Free Appropriate Public Education (FAPE) for ECSE</b></p> <p>The Parent alleged that the Program has denied the Child FAPE. The Parent was not specific about how the Program might have denied FAPE to the Child.</p> <p>(OAR 581-015-2850)</p>	<p><b>Not Substantiated</b></p> <p>The Program complied with IDEA procedural requirements with the exception noted above, and the Child made progress toward IFSP goals.</p>

<b>REQUESTED CORRECTIVE ACTION</b>
The Complainant requests corrective actions as follows: <ol style="list-style-type: none"><li>1. Compensatory services</li><li>2. Unspecified monetary damages</li><li>3. Reimbursement for lost work</li><li>4. Reimbursement for out-of-pocket expenditures</li><li>5. Reimbursement for expenditures related to outside therapies, evaluations, etc.</li><li>6. Compensation for in-kind professional services by a family member</li><li>7. A public acknowledgement of fault and apology</li><li>8. A declaration that the Child and family reserve all rights under IDEA, ADA [the Americans with Disabilities Act], Section 504 [of the Rehabilitation Act], FERPA [Family Educational Rights and Privacy Act], and HIPAA [Health Insurance Portability and Accountability Act], and may pursue civil or federal action at any time</li><li>9. Full Funding for family-selected micro-school placement</li><li>10. Investigation into all IFSPs authorized by the Program</li><li>11. Caregiver protection and safeguard clause</li></ol>



### 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 Investigation does not consider facts before or after the Complaint period. However, facts outside of the Complaint period may be included to provide context necessary to understand the history and trajectory of the Child's involvement with the Program.

1. The Child is three years and 10 months old. The Child experiences health problems, including epilepsy and a tumor (glioma) on the brain stem. The Child takes anti-seizure medications, which have numerous side effects.
2. A Consent for Mutual Exchange of Information dated February 21, 2024 listed several individuals and entities authorized to share information about the Child. The Parent added a developmental pediatrician to the list of those authorized to exchange information. The Parent signed this consent electronically via the Parent Portal on February 21, 2024. On the same form, the Parent signed and dated their agreement with the statement "I have received the brochure on parental rights".
3. On February 21, 2024, the Parent received a document titled Prior Notice About Evaluation / Consent for Evaluation. The notice informed the Parent(s) about the EI evaluation of the Child, and the Parent signed and dated the document. A check box on the document indicated that the Parent had been given a copy of the Procedural Safeguards.

4. The Program found the Child eligible for EI services on February 21, 2024 as a child with a Physical or Mental Condition Likely to Result in Developmental Delay. **(EC Cares Statement of Eligibility)**
5. The Child's first IFSP, dated February 20, 2024, provided for an EI-ECSE Specialist who would visit the Child and Parents in the family home coordinate services to be provided to and for the Child.
6. On March 7, 2024, the Parent received a text message from the EC-ECSE Specialist which stated: "I'm [Name] from [Program]. I'm the Home Visitor for you and [the Child]. Would you like us to set up a time for a Home Visit?" This was the first of many text messages between the Parent and the EC-ECSE Specialist, which continued for about a year. The tone of the messages was friendly. The Parent shared concerns about the Child's health problems but did not express dissatisfaction except for concerns about one individual, who was not an employee of the Program.
7. During Spring 2024, the Parent registered the Child for attendance at a Community Preschool.
8. A Medical or Health Assessment Statement, dated June 13, 2024 and signed by a pediatric neurologist indicates that the Child had two health impairments, focal epilepsy and a suspected brainstem glioma, expected to last more than 60 calendar days and likely to Result in Developmental Delay.
9. A Notice of IFSP Team Meeting dated July 29, 2024 notified the Parent that a meeting to take place at the family home was scheduled for August 2, 2024 for the purposes of: reviewing existing information about the Child, deciding whether additional testing is needed, deciding whether the Child was eligible for ESCE, and developing or reviewing the Child's IFSP. Persons invited to the meeting were: both parents, the EI/ECSE Specialist, a Program Coordinator, and the School Psychologist.
10. On July 31, 2024, the EI/ECSE Specialist requested nursing services for consultation about addressing the Child's seizures.
11. An August 2, 2024 Prior Notice About Evaluation/Consent for Evaluation stated that the Child had been receiving EI services, and that the educational team (the EI/ECSE Specialist, the School Psychologist, and the Parent) agreed that an evaluation was needed to determine if the Child was eligible for ECSE services. The Consent for Evaluation listed several evaluation procedures, assessments, and tests, some of which may have been administered previously. The Parent signed and dated the consent form.
12. An Early Childhood Special Education Evaluation Report dated August 2, 2024 described the ECSE Evaluation. It included information provided by the Parent as well as assessment procedures administered by the EI/ECSE Specialist who administered the assessments.

13. The Parent provided information about the Child's interests, medical, and health history. The Parent had no concerns about the Child's vision or hearing.
14. The evaluation included norm-referenced testing in the following domains: cognitive, social-emotional, and adaptive.
15. The evaluation included criterion-referenced testing of the following skills: fine and gross motor, adaptive, cognitive, social communication, and social.
16. Language, articulation, fluency, gross motor, and fine motor were not evaluated because screening results indicate that the skills are progressing as expected.
17. The evaluation included a home-based observation of the Child.
18. A Statement of Eligibility for Special Education indicates that the Child was found eligible for ECSE on August 2, 2024 as a Child with an Other Health Impairment (OHI). Both of the Child's Parents, the EI-ECSE Specialist, and the School Psychologist signed checkboxes indicating agreement with the eligibility decision.
19. The Child's August 2, 2024 IFSP included goals in two developmental areas: Adaptive and Social or Emotional. The IFSP Team determined that the Child did not need IFSP goals in the areas of cognitive, gross motor, fine motor, receptive communication, and expressive communication.
20. The IFSP provided for 9 hours/week specialized instruction in adaptive and social skills to be provided at the fee-based preschool that the Parent chose. At no cost to the family, Program staff would provide consultation to preschool staff and consultation to the Parents both through phone or virtual communication of home visits.
21. The IFSP lists the persons participating in IFSP development: the School Psychologist, the EI/ECSE Specialist, and both of the Child's parents. Both parents signed the IFSP indicating their agreement with the statement: I have participated in the development of this plan for Early Childhood Special Education service for my child. The School Psychologist told the Investigator that she consulted on the eligibility decision but did not participate in IFSP development.
22. A Placement Decision form dated 08/02/24 indicates that only one placement was considered, the Community Preschool where the Parent had independently chosen and enrolled the Child.
23. An August 2, 2024 Prior Notice of Early Intervention or Early Childhood Special Education Action informed the Parent that:

"The educational team, including [the] parents, has reviewed evaluation results and determined that [the Child] is eligible for Early Childhood Special Education (ECSE). An Individualized Family Service Plan (IFSP) has been developed that includes goals and

objectives, educational services, any needed accommodations or modifications and placement into Early Childhood Special Education.”

24. An August 2, 2024 Prior Notice and Consent for Initial Provision of Special Education Services stated that “The team has found [the Child] eligible to receive special education services.” The Parent signed and dated the text box titled Consent for Initial Provision of Special Education Services and made a checkmark at the statement, “I give my permission for initial provision of special education services as described. I understand my consent is voluntary and may be revoked for any reason before special education services begin.”
25. A Consent for Mutual Exchange of Information named several individuals and entities authorized to share information about the Child. The Parent signed this Consent electronically via the Parent Portal on August 2, 2024. On the same form, the Parent signed and dated their agreement with the statement “I have received the brochure on parental rights.”
26. On August 2, 2024, the Parent signed a consent form allowing the Program to access Medicaid and release personally identifiable information for Medicaid billing.
27. On August 23, 2024, a Nurse employed by the Program developed a Seizure Protocol that described the Child’s seizures and prescribed appropriate responses.
28. On October 18, 2024, the Parent sent a text message to the EI-ECSE Specialist stating:

“Hi ... [I] wanted to see if there’d be a time we could set up a meeting to speak. [The Child] had a rough day at school today hitting the teacher etc [sic] and I wanted to follow up.”

The EI-ECSE Specialist sent a reply text stating, “Yes! I have availability on Monday, is there a time that works for you? How about the 2 of us first and then I can follow [sic] with the teacher? Is a 9:15 phone call ok?”
29. The Complaint described the October 18, 2024 incident as follows:

“The incident on October 18, 2024, involved extreme public humiliation, where visibly frustrated [Community Preschool Teacher] publicly confronted parent on [sic] front of [the Child], other parents, children and staff as [the Child] was visibly dysregulated, pulling at my clothing, and trying to flee the environment.”

The Complaint described the Parent’s understanding of this incident as loud, indiscrete, deliberate, accusatory, punitive, humiliating, and traumatic to both the Parent and the Child.

The Parent asserted in the Complaint that this incident was unlawful and constituted several IDEA violations as well as violations of Section 504 of the Rehabilitation Act, the ADA, FERPA, and assorted tort claims.

30. A Physician's Authorization form signed by the Child's pediatric neurologist and dated October 21, 2024 authorized the Program to follow the Seizure Protocol.
31. On December 2, 2024, the Parent participated virtually in an informal meeting to discuss updates on the Child's medical status. Other participants in this meeting were the EI-ECSE Specialist, the Preschool Teacher, and a Teaching Assistant. The EI-ECSE Specialist had noticed some left-sided coordination issues. In addition, the participants discussed the side effects the Child was experiencing from seizure medication. The Parent and teaching staff discussed the need to help the Child with impulse control and sensory issues.
32. On December 2, 2024, the EI/ECSE Specialist prepared a Team Review Request. The Parent received notice of this request on December 2, 2024.
33. On December 11, 2024, a Program Occupational Therapist (OT) followed up on the Team Review Request with a classroom visit. The OT observed the Child participating in a variety of classroom activities and offered hands-on and verbal assistance. The OT recommended adding OT direct and consultation services to the Child's IFSP.
34. On December 11, 2024, the Parent and the Program agreed to revise the Child's IFSP between annual meetings without an IFSP meeting. The revised IFSP included specialized instruction in fine motor skills and OT consultation to preschool staff. The OT signed the agreement electronically on December 11, 2024, and the Parent signed the agreement electronically via the Parent Portal on December 17, 2024.
35. A Prior Written Notice dated December 11, 2024 notified the Parent that the Program proposed to change the Child's IFSP because the Child could benefit from additional supports to work on their sensory needs and fine motor skills.
36. On January 27, 2025, a meeting was convened to discuss updated medical information about the Child. Attending this meeting were: the Parent, the EI-ECSE Specialist, the Preschool Teacher, both Teaching Assistants (one employed by the Community Preschool and one by the Program), and the Director of the Community Preschool.
37. On February 6, 2025, the Parent sent a series of text messages to the EI-ECSE Specialist, including updates on the Child and on schedules for the following two weeks. The Parent then asked about the possibility of moving the Child to a different classroom for the next school year because the Child expressed reluctance to go to school because of tension with the Community Preschool Teacher. The EI-ECSE Specialist offered to assist the Parent and asked if the proposed classroom change should happen right away or in the next school year. The Parent said it was probably best to wait until the next school year and added, "I think the summer would [be] a good bridge into the transition."
38. On February 7, 2025, the Parent signed and dated an Authorization for Interagency Release of Confidential Information consenting to receipt and/or release of the Child's records to and by:

[County Name] County Developmental Disabilities, the Program, the Child's Primary Physician, an unnamed Mental/Behavioral Health Provider, and a psychologist.

39. On February 28, 2024, the Parent again texted the EI-ECSE about a classroom change for the following year. Over the next week, they exchanged several text messages regarding two possible teachers for the following year. They planned to meet at the Community Preschool on March 6 to introduce the Parent to one of the two teachers. This is the end of the text message record between the Parent and the EI-ECSE Specialist. The EC-ECSE Specialist told the investigator that the Parent abruptly stopped replying to her efforts to communicate after this date.
40. On March 7, 2025, the Parent withdrew the Student from the Community Preschool.
41. On March 17, 2025, the Parent sent an email to an EI-ECSE Program Coordinator (Program Coordinator), a Program Co-Director, and the Community Preschool Supervisor (Preschool Supervisor). The Parent submitted an "immediate IFSP amendment" request that included the following list of requested changes:

"Removal of the EI-ECSE Supervisor"

"Removal of the Community Preschool Teacher"

"A clear safety plan for [the Child] before any discussion of [the Child's] return to school."

The Parent added, "I do not believe the attendance of certain members is necessary, as my focus is not on debating past actions but rather on ensuring immediate safety measures so [the Child] can return to school and the long-term support for [the Child]."

The Parent further stated, "in light of this situation, I am requesting that [the Program] provide documentation on their official process and procedures for":

- a. "How parental requests for staff changes are handled in an IFSP."
- b. "The process for implementing an immediate transition plan. I expect [the Program] to ensure [the Child] is placed in a supportive, safe learning environment with the appropriate additional resources in place to facilitate a smooth transition."
- c. "The selection of a new [Program] staff member. [The Program] must provide a clear proposal on who will take [the EI-ECSE Specialist's] place"
- d. "A detailed response to each request outlined in the IFSP amendment."
- e. "Additionally, I need further clarification on [the Child's] eligibility for an IEP, as I was directed in our pre-enrollment meeting that an IFSP was all that was needed, no meeting with the school was appropriate and that our [Program] worker was [the Child's] safeguard. I need written confirmation of:"
  - a. "Why [the Child] was not transitioned to an IEP when they turned three."
  - b. "Who was responsible for initiating that transition and ensuring compliance."
  - c. "What corrective steps will be taken if an IEP should have been developed but was not."



“Due to the urgency of these I look forward to receiving confirmation on these points so that [the Child’s] needs are met without unnecessary delay.”

42. On March 18, 2025, the Co-Director replied to the Parent, the Preschool Supervisor, and the Program Coordinator, offering to schedule a meeting “as soon as possible”. The Co-Director offered a limited response to the Parent’s demands as follows: (paraphrased)
  - a. One change we can make without an IFSP meeting is to assign a different EI-ECSE Specialist.
  - b. The Preschool Supervisor is the person who could answer the question about changing the Preschool Teacher.
  - c. A safety plan for [the Child] can be one of the topics of the meeting.
  - d. In Oregon, when children transition from EI to ECSE services at age three, they continue to use an IFSP and do not transition to an IEP until they enter kindergarten.
43. On March 20, 2025, a Family Support Specialist (Advocate) emailed a Program Co-Director, the Program Coordinator, the Preschool Supervisor, and the Parent. The email asked to schedule “a meeting with the school prior to an official IFSP meeting to create a transition and safety plan to get [the Child] back into the classroom.”
44. On March 20, 2025, the Advocate emailed the Preschool Supervisor and copied the Program Coordinator, the Co-Director, and the Parent, saying “[W]e would prefer to meet with just you/school representatives and bring back [the Program] after their break. Focusing in on communication between the family and the school/teachers and getting [the Child] back to school and feeling safe.”
45. On March 31, 2025, [County Name] County Developmental Disabilities requested that the Program provide the Child’s records, including assessments and special education plan.
46. On April 3, 2025, the Parent sent an email to Program staff requesting that the Program:

“Please proceed with issuing an accurate and revised mutual consent form that: Revokes all prior authorization for [the Program] to exchange information with an[y] medical providers or entities, and continues to authorize mutual exchange solely between [the Program], the Community Preschool, [Resident] School District, and [the Advocacy organization].”
47. The Program Co-Director replied to the Parent’s email with an explanation of the revised mutual exchange form and concluding with the statement:

“I would like to reiterate that we are more than happy to meet with you and the [Advocate] via phone, [virtually], or in person to discuss this form and any other concerns you have.”
48. Later in the day, on April 3, 2025, the Parent sent an email to the Program Co-Director, authorizing the Program to “engage in exchange of information” with the Parent’s designated Advocate.

49. On April 7, 2025, the Program shared the Child’s entire cumulative file with the Parent through the Parent Portal.
50. On April 7, 2025, the Parent filed this Complaint, followed by multiple emails sent to the Department between April 7, 2025 and May 29, 2025. The allegations implicated a variety of laws (IDEA, Section 504 of the Rehabilitation Act, ADA, FERPA, among others).
51. On April 12, 2025, the Parent sent a lengthy email to several Department staff members as an Addendum to the Complaint. The Parent requested an IEE to be funded by the Program. The Parent stated that the request was based on alleged IDEA violations.
52. On April 15, 2025, the Program placed the Child on “inactive” status because the Program was unable to provide ECSE services since the Child was withdrawn from the Community Preschool, which was the site of service delivery for most IFSP services.
53. On April 15, 2025, the Parent sent the Program a request for an IEE. On April 22, a Program Co-Director replied to the request and forwarded to the Parent a copy of the Program’s IEE policy. The Parent replied, acknowledging receipt of the email and policy document. The Parent expressed dissatisfaction with the Program’s IEE policy and asserted that the IEE request was based not because of disagreement with a prior assessment but because of alleged IDEA violations. The Parent demanded several actions by the Program before seeking an IEE in accordance with Program policy.
54. An IFSP progress report dated April 21, 2025 indicates that the Child had made progress toward adaptive, social or emotional, and fine motor goals. This report was prepared several weeks after the Parent withdrew the Child from the preschool, and based on the data maintained during the time the Child was enrolled.
55. The Program indicated willingness to meet with the Parent to discuss the Child and to consider other options for serving the Child. The Program reports that the Parent has not responded to any contacts from Program staff, the Co-Directors, or the EI-ECSE Specialist.

## **IV. DISCUSSION**

### **Child Find**

The Parent alleged that the Program violated the Child Find provision of the IDEA.

Child Find is a foundational principle of the IDEA, placing responsibility on public school districts to identify, locate, and evaluate all children with disabilities who are in need of early intervention, early childhood special education, or special education services.<sup>2</sup>

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<sup>2</sup> OAR 581-015-2080; 34 CFR § 303.302

Nothing in the documents provided to the Investigator indicates a Child Find violation. Several months before the Complaint period, the Program identified and evaluated the Child and determined that the Child met the eligibility criteria for Early Intervention (EI).

Six months later, immediately before the Child's third birthday, the Program conducted an evaluation and determined that the Child met the eligibility criteria for Early Childhood Special Education (ECSE) as a child with an Other Health Impairment (OHI).

The Department does not substantiate this allegation.

### **Parent Participation**

The Parent alleged that the Program violated the IDEA by infringing upon their parent participation rights.

For a child age three and older, ECSE programs must give Parents an opportunity to participate in meetings with respect to the identification, evaluation, IFSP, placement of the child, the provision of a free appropriate public education, and transition to school age or other services.<sup>3</sup> ECSE programs must provide parents and other participants with a written notice of the meeting sufficiently in advance to ensure that parents and others will have an opportunity to attend.<sup>4</sup>

An ECSE program must take steps to ensure that one or both of the parents of a child with a disability are present at each IFSP or placement meeting or are afforded the opportunity to participate.<sup>5</sup>

Documents available to the Investigator, as well as text messages and emails demonstrate ongoing communication with the Parent throughout the Complaint period by the EI-ECSE Specialist and later by the Occupational Therapist. Both Parents have been involved in all decisions about the Child's evaluation, eligibility, and IFSP development. Both Parents have been invited to participate in all meetings, whether remote or in-person, including the August 2, 2024 IFSP meeting, December 2, 2024 informal meeting, and the January 27, 2025 informal meeting.

Since the Parent withdrew the Child from the Community Preschool on March 7, 2025, Program staff have made numerous efforts to connect with the Parent, in the hope of better understanding their concerns and collaborating with them to provide the ECSE services to which the Child is entitled. The Program Co-Directors report that the Parent does not acknowledge receipt of phone calls, certified mail, or documents sent to the Parent via the secure Parent Portal.

The Department does not substantiate this allegation.

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<sup>3</sup> OAR 581-015-2750(2); 34 CFR § 300.501(b)(1)

<sup>4</sup> OAR 581-015-2750(3); 34 CFR § 300.501(b)(2)

<sup>5</sup> OAR 581-015-2755; 34 CFR § 300.322 and § 303.501(c)

## ECSE Evaluation

The Parent alleged that the Child's ECSE evaluation violated the IDEA in several ways: no parent notice, lack of "multidisciplinary" evaluation, one participant with "dual roles", no formal or comprehensive assessment evaluation. In addition, the Parent alleged that the Program failed to assess in all areas of suspected disability, including autism, sensory processing disorder, and epilepsy and "withholding of medical, developmental, and neurological evaluations, despite parent requests and documented medical need."

State and federal IDEA regulations include a detailed process for ECSE evaluation. Evaluation planning is required before conducting any evaluation.<sup>6</sup> The parent, the IFSP team, and other qualified professionals must review existing evaluation data about the child, including information provided by the parent and observations by teachers and related services providers.<sup>7</sup> On the basis of that review and parent input, the team identifies what additional data, if any, are needed to determine: whether the child is a child with a disability; the child's present levels of academic achievement and related developmental need; and whether the child needs ECSE and related services.<sup>8</sup> This review may be conducted without a meeting but, if a meeting is held, the parent must be invited to participate.<sup>9</sup> If the evaluation planning team determines that additional data is needed, the ECSE program must administer the necessary assessment procedures.<sup>10</sup> If the team determines that no additional data is needed, the ECSE Program is not required to conduct any assessment unless the parents request it.<sup>11</sup>

An initial ECSE evaluation is required if the ECSE program has reason to suspect that a child has a disability that has an adverse impact on the child's education or development, and that the child may need ECSE services as a result of the disability.<sup>12</sup> The ECSE program must designate an evaluation team, including a parent and at least two professionals, at least one of whom is a specialist in the evaluation and education of children with disabilities.<sup>13</sup> The team may make a decision about whether to proceed with an evaluation without a meeting but, if a meeting is held, the parent must be invited to participate.<sup>14</sup>

Before conducting an evaluation, the ECSE program must give notice to the parent and obtain informed consent.<sup>15</sup> The notice must describe any evaluation procedures the program proposes to use.<sup>16</sup>

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<sup>6</sup> OAR 581-015-2790(4)

<sup>7</sup> OAR 581-015-2115(1)(a)

<sup>8</sup> OAR 581-015-2115(1)(b)

<sup>9</sup> OAR 581-015-2115(2)

<sup>10</sup> OAR 581-015-2115(3)

<sup>11</sup> OAR 581-015-2115(4)(b)

<sup>12</sup> OAR 581-015-2790(3)(a)

<sup>13</sup> OAR 581-015-2790 (3)

<sup>14</sup> Id.

<sup>15</sup> OAR 581-015-2790 (5)(a)

<sup>16</sup> OAR 581-015-2790(5)(b)

An ECSE program must assess a child in all areas related to the suspected disability.<sup>17</sup> OARs prescribe evaluation procedures and criteria specific to the suspected disability<sup>18</sup>, but some evaluation requirements apply regardless of the disability category.

For all suspected disabilities, the ECSE program must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child to determine: (a) whether the child is eligible for ECSE services, and (b) the content of the IFSP.<sup>19</sup> The evaluation must be “sufficiently comprehensive to identify all of the child’s EI/ECSE and related services needs, whether or not commonly linked to the disability category in which the child has been classified”<sup>20</sup> and must include assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

The Parent’s Complaint indicates that the Parent believed the Program was responsible for conducting medical assessments. This reflects a misunderstanding about the scope of a special education evaluation. Unless it is required for one of the purposes described above, the IDEA does not require school districts or EI-ECSE programs to assess a child’s medical conditions. The Child was under the care of multiple medical providers, and the Parent consented to mutual exchange of information with those providers. There was no need for further medical evaluation to make educational decisions about the Child.

In this case, the Parent received written notice of the evaluation and provided informed consent to the assessment procedures and other data sources used for the evaluation. The Parent received a detailed evaluation report that included data for each assessment procedure and recommended IFSP goals. The Parent alleges that there was no “multidisciplinary” evaluation. EI evaluations must “be conducted by a multidisciplinary team”.<sup>21</sup> However, this requirement does not exist for ECSE evaluations. There were no meetings specifically for planning and conducting of the Child’s ECSE evaluation, but the IDEA does not require such meetings.

The Department does not substantiate this allegation.

### **ECSE Eligibility**

The Parent alleges that the Program violated the IDEA eligibility requirements without identifying a specific violation.

ECSE eligibility decisions must be made by a team that includes the parents and two or more professionals, at least one of whom is knowledgeable and experienced in the evaluation and education of children with the suspected disability, and the team may be the child’s IFSP team.<sup>22</sup> The team must

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<sup>17</sup> OAR 581-015-2790(6)

<sup>18</sup> OAR 581-015-2790

<sup>19</sup> OAR 581-015-2790(8)

<sup>20</sup> OAR 581-015-2790(9)(e)

<sup>21</sup> OAR 581-015-2775

<sup>22</sup> OAR 581-015-2795(2)

prepare an evaluation report and a written statement of eligibility,<sup>23</sup> and all members of the eligibility team must sign indicating agreement or disagreement.<sup>24</sup>

Oregon ECSE regulations describe a specific process for determining whether a child is eligible for ECSE as a child with an “Other Health Impairment”, which is defined as “limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems ... and adversely affects a child’s educational performance.”<sup>25</sup>

If a child is suspected of having an OHI, a comprehensive evaluation must be conducted including a medical examination documenting a medical condition, a description of the impairment, and a statement that the child’s condition is permanent or is expected to last for more than 60 calendar days.<sup>26</sup> The evaluation must include any additional assessments necessary to determine the impact of the suspected disability on the child’s developmental progress or necessary to identify the child’s educational needs.<sup>27</sup>

To be eligible as a child with an OHI for early childhood or school age special education services, the child must meet all of the minimum criteria:<sup>28</sup>

- a. The child exhibits limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment;
- b. The child’s limited strength, vitality or alertness is due to a chronic or acute health problem; and
- c. The child’s condition is permanent or expected to last for more than 60 calendar days.

For a child to be eligible for early childhood or school age special education services as a child with an OHI, the eligibility team must also determine that:

- a. The child has an OHI; and
- b. By reason thereof, the child requires early childhood special education.

In this case, the Program followed the required process for the Child’s eligibility determination. The eligibility team, which included the Parent, the EI-ECSE Specialist, and the School Psychologist determined that the Child had an OHI and, by reason thereof, needed ECSE. All signed the eligibility report.

The Department does not substantiate this allegation.

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<sup>23</sup> OAR 581-015-2795(5)

<sup>24</sup> OAR 581-015-2795(5)(f)

<sup>25</sup> OAR 581-015-2165(1)

<sup>26</sup> OAR 581-015-2165(2)(a)

<sup>27</sup> OAR 581-015-2165(2)(b)

<sup>28</sup> OAR 581-015-2165(3)

## **Independent Educational Evaluation (IEE)**

The Parent has asked the ECSE Program for an IEE at Program expense and alleged that the Program has imposed inappropriate criteria.

State and federal IDEA regulations provide that a parent of a preschool child with disabilities three years old through the age of eligibility for public school may request an IEE at the expense of the ECSE program if the parent disagrees with an evaluation obtained by the ECSE program.<sup>29</sup>

When a parent of a preschool child requests an IEE, the ECSE program must provide information to parents about where an IEE may be obtained, and the program's criteria applicable for IEEs.<sup>30</sup> If the IEE is to be at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation, the qualifications of the examiner, and cost, must be the same as the criteria the ECSE program uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE.<sup>31</sup> The ECSE program may not impose any additional conditions or timelines, and the ECSE program must give parents an opportunity to demonstrate that unique circumstances may justify an IEE that does not meet program criteria. If a parent requests an IEE at public expense, the ECSE program must, without unnecessary delay, either ensure that an IEE is provided at public expense or initiate a due process hearing to show that its evaluation was appropriate.<sup>32</sup> If an ECSE program prevails at a due process hearing, a Parent may obtain an IEE but not at ECSE program expense.<sup>33</sup> If a parent obtains an IEE, regardless of who pays for it, the IFSP team must consider the results of the evaluation.<sup>34</sup>

The Program replied to the Parent's request for an IEE by sending the Parent the Program policy on IEEs so that one could be obtained. The Parent disputed the IEE policy and has not yet accepted the offer to obtain an IEE.

The Department does not substantiate this allegation.

## **IFSP Meeting Procedures and Timelines**

The Parent alleged that the Program violated the IDEA by not convening an IFSP review meeting at the Parent's request.

Oregon IDEA regulations establish IFSP meeting procedures and impose timelines for IFSP meetings. The relevant OAR information<sup>35</sup> follows:

- a. ECSE programs must conduct a meeting to develop an initial IFSP within 30 calendar days from the date the child is determined eligible for ECSE services.

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<sup>29</sup> OAR 581-015-2765; 34 CFR § 300.502

<sup>30</sup> OAR 581-015-2305(2)

<sup>31</sup> OAR 581-015-2305(3)

<sup>32</sup> OAR 581-015-2305(4)

<sup>33</sup> OAR 581-015-2305(5)

<sup>34</sup> OAR 581-015-2305(7)

<sup>35</sup> OAR 581-015-2810(1), (2), (5), (6), (7), & (8)

- b. ECSE programs must initiate and conduct, with the approval of the child's family, an IFSP meeting to plan the child's transition to ECSE services or other preschool services at least 90 calendar days, and at the discretion of the parties, up to nine months, before the child's third birthday.
- c. For children eligible for ECSE services, ECSE programs must initiate and conduct an IFSP meeting on or before the child's third birthday.
- d. ECSE programs must conduct an IFSP meeting if they believe that a change in the IFSP may be necessary to ensure the provision of a FAPE.
- e. A parent may request a meeting at any time to review or revise the IFSP.
- f. In response to a parent request for IFSP meeting, the contractor or subcontractor must hold an IFSP meeting within a reasonable time.

The Child was found eligible for EI services in February 2024, about six months before the Child's third birthday. Because the EI eligibility and EI IFSP were completed before the Complaint period, the Department makes no findings regarding their legal compliance. The Parent and the EI-ECSE communicated via text message about planning for the Child's transition to ECSE at age three.

The evidence in the record demonstrates the Program's attention to and compliance with all requirements for IFSP meeting procedures and timelines.

The Department does not substantiate this allegation.

### **EI and ECSE Transition**

The Parent alleged that the Program violated the IDEA by not providing an EI to ECSE transition plan. For the reasons described in the discussion of IFSP Meeting Procedures and Timelines above, the Department does not substantiate this allegation.

### **Participation in IFSP Team Meetings and Reviews**

The Parent alleged that the IFSP meeting did not include the required persons and that the ECSE Specialist unlawfully held multiple positions on the Team.

Oregon Administrative Rules (OARs) require the following persons to participate in IFSP meetings and reviews for ECSE (excluding provisions not relevant to ECSE):

- a. The child's parent or parents;
- b. The child's ECSE specialist and, as appropriate, persons who will be providing services to the child or family;
- c. A representative of the ECSE program *who may be another member of the team* and who is:
  - i. Qualified to provide or supervise the provision of ECSE services to meet the unique needs of children with disabilities;
  - ii. Knowledgeable of typical child development and appropriate activities for infants and young children; and



- iii. Knowledgeable about the availability of resources.
- d. For a child who is eligible for ECSE services, the child's preschool teacher if the child is or may be participating in a regular preschool;
- e. Family members and/or advocates as requested by the parents;
- f. Other individuals, including related services personnel as appropriate, invited by the parent, primary contractor, or subcontractor who have knowledge or special expertise regarding the child;
- g. An individual, *who may be another member of the team* who:
  - i. Was involved in conducting the evaluation of the child;
  - ii. Is knowledgeable about the child's disability; and
  - iii. Can interpret the developmental or instructional implications of the evaluation.
- h. The regular preschool teacher must participate, to the extent appropriate, in the development, review and revision of the child's IFSP, including assisting in the determination of:
  - i. Necessary modifications to appropriate preschool activities in the classroom and participation in the preschool environment;
  - ii. Supplementary aids and services, program modifications or supports for preschool personnel that will be provided for the child; and
  - iii. Appropriate positive behavioral interventions and strategies for the child.
- i. A member of the IFSP team is not required to attend an IFSP meeting, in whole or in part, if the parent of a child with a disability and the ECSE program agree in writing that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.
- j. A member of the IFSP team may be excused from attending an IFSP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:
  - i. The parent and ECSE consent in writing to the excusal; and
  - ii. The member submits, in writing to the parent and the IFSP team, input into the development of the IFSP before the meeting.<sup>36</sup>

The August 2, 2024 IEP lists both Parents, the EI-ECSE Specialist, and the School Psychologist as IFSP participants.

The ECSE Specialist was identified as filling three roles: EI-ECSE Specialist (ECSE service provider), Service Coordinator (ECSE program representative), and Evaluator. The OARs expressly provide that an individual team member may serve in more than one role on the Team. The ECSE Specialist was qualified to serve as the ECSE service provider, as the ECSE program representative, and as the evaluator who could interpret the developmental or instructional implications of the evaluation.

The Department does not substantiate this portion of the allegation.

The School Psychologist contributed to the eligibility determination but did not participate in IFSP development. The OARs do not require a school psychologist to be a member of the IFSP team, but the

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<sup>36</sup> OAR 581-015-2825, edited to add emphasis and to remove requirement for EI. See also Early Childhood CARES Service Provider Handbook.

IFSP should not have inaccurately identified the School Psychologist as a member of the team that developed the IFSP. However, the OARs expressly require the Preschool Teacher to participate on the IFSP team for a child who will or may receive ECSE services in an inclusive community setting.

The IFSP meeting did not include the Preschool Teacher as a participant, who was a required member of the IFSP team.

The Department substantiates this portion of the allegation.

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

The Parent alleged that, following the October 18, 2024 incident, the Child's IFSP team "failed to initiate a behavior intervention plan or safety supports, and instead allowed punitive action, compounding trauma and educational exclusion."

Oregon ECSE regulation requires that "For a child whose behavior impedes his or her development or that of others, [the IFSP team must] consider strategies, positive behavioral interventions and supports to address that behavior".<sup>37</sup>

This regulation does not require development of a behavior intervention plan (BIP) or safety supports. Documentation of the August 2, 2024 IFSP includes no indication that the Child had behaviors that might interfere with their development or that of others. If the IFSP team had concerns about the Child's behavior, they could have considered a BIP or other strategies to address the behavior.

Text messages between the EI-ECSE Specialist included occasional mention of the Child's behavior, but there is no written evidence that the Parent thought the IFSP should include goals, instruction, or services related to behavior. The Department was unable to obtain further information from the Parent about the Parent's concern that the Child's behavior impeded their development and for that reason required additional behavioral interventions and supports.

The Department does not substantiate this allegation.

### **IFSP Content**

The Parent alleged that the Child's IFSP did not comply with the IDEA. The Complaint did not specify the nature of the noncompliance.

State and federal IDEA regulations prescribe IFSP content.<sup>38</sup> The IFSP must include a statement of the child's present developmental levels based on professionally acceptable objective criteria; measurable major outcomes or annual goals; specific early intervention services for children under three or ECSE and related services for children three and older, based on scientifically based research when practicable; family resources and concerns for children under three; projected service dates,

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<sup>37</sup> OAR 581-015-2820(3)(a)

<sup>38</sup> OAR 581-015-2815

frequency, location, and duration; identification of a designated service coordinator; justification for any services not provided in natural environments for younger children or explanation of limited participation with non-disabled peers for older children; methods for measuring progress toward goals; procedures for keeping parents informed of progress; transition planning steps; and identification of other needed non-EI/ECSE services.

Oregon IDEA regulations require ECSE programs to use IFSP forms published by the Department, which combine all required IEP and IFSP components.<sup>39</sup>

In this case, the Child's IFSP used the Department's mandatory form and appropriately completed all elements.

The Department does not substantiate this allegation.

### **IFSP Implementation**

The Parent alleged that the Program violated the IDEA by "Failure to implement the IFSP as written or to revise based on updated needs or family reports." The Complaint did not identify any specific examples of non-implementation.

Oregon IDEA regulations regarding IFSP implementation provide that:

ECSE programs must provide ECSE and related services to a child with a disability in accordance with an IFSP.<sup>40</sup>

An IFSP must:<sup>41</sup>

- a. Be written before EI services or ECSE and related services are provided to the child;
- b. Begin as soon as possible following the meeting; and
- c. Be provided year-round for children receiving EI services, unless agreed to otherwise by the parents; or
- d. Be in effect by the child's third birthday and at the beginning of the school year for children receiving ECSE services.

If a child's third birthday occurs during the summer, the child's IFSP team must determine when services begin under the IFSP.<sup>42</sup>

ECSE programs must:<sup>43</sup>

- a. Ensure that the IFSP is available as soon as possible and at no cost to the parents. They must also ensure copies of the IFSP are available to each regular preschool teacher, EI/ECSE

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<sup>39</sup> OAR 581-015-2815(1) & (2)

<sup>40</sup> OAR 581-015-2830(4)

<sup>41</sup> OAR 581-015-2830(1)

<sup>42</sup> OAR 581-015-2830(2)

<sup>43</sup> OAR 581-015-2830(3)

specialist, related services provider and other service provider who is responsible for its implementation; and

- b. Inform each teacher and provider described in (2)(a) of their specific responsibilities for implementing the child's IFSP and the specific accommodations, modifications and supports that must be provided for on behalf of the child in accordance with the IFSP.

Nothing in the IFSP Implementation rule limits a parent's right to ask for revisions of their child's IFSP or to invoke due process procedures.<sup>44</sup>

In this case, documentation provided to the Investigator demonstrated the Program's compliance with requirements for IFSP implementation.

The Department does not substantiate this allegation.

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

The Parent alleged that the Program violated the IDEA by placing the Student at the Community Preschool without prior evaluation or proper LRE determination. Because the Parent refused to speak with the Investigator, it was not possible to obtain a more detailed allegation.

Oregon regulation governing ECSE placement provides in relevant part that:

ECSE programs must ensure that placement of a child with a disability is determined by a group of persons, including the parents, knowledgeable about the child, the meaning of the evaluation data, and the placement options and, to the maximum extent appropriate to the needs of the child, ECSE services are provided in the least restrictive environment (LRE) in which children without disabilities participate.<sup>45</sup>

Placement of the child must be determined at least every 365 days, must be based on the IFSP, and be as close as possible to the child's home.<sup>46</sup>

The ECSE Program must ensure that a continuum of alternative placements is available, including home, hospitals, institutions, special schools, classrooms, and community childcare or preschool settings.<sup>47</sup>

The Program makes available a continuum of alternative ECSE placements. The Parent selected and independently enrolled the Child in the Community Preschool. The IFSP Team determined that it was an appropriate placement and the LRE for the Child. The Parent became dissatisfied with the Child's Preschool Teacher, and the EI-ECSE Specialist offered to introduce the Parent to other possible classrooms, but the Parent chose to delay a change until the following year.

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<sup>44</sup> OAR 581-015-2830(5)

<sup>45</sup> OAR 581-015-2845(1) & (6)

<sup>46</sup> OAR 581-015-2845(2)

<sup>47</sup> OAR 581-015-2845(4)

The Department does not substantiate this allegation.

### **Prior Written Notice and Procedural Safeguards—EI-ECSE Program**

The Parent alleged that the Program violated the IDEA by not providing Prior Written Notice and not providing a physical copy of the Procedural Safeguards Notice booklet but only pointing out where the Parent could find it online.

Oregon administrative rules for special education requires ECSE programs to give parents written notice a reasonable time before the program proposes or refuses to initiate or change the identification, evaluation, placement, or the provision of a free appropriate public education to a child.<sup>48</sup>

Prior Written Notice must include:

- a. A description of the action proposed or refused;
- b. An explanation of why the program proposed or refused to take the action;
- c. A description of any options that the IFSP team considered and reasons why those options were rejected;
- d. A description of each evaluation procedure, assessment, test, record, or report that was relevant to the proposal or refusal;
- e. A description of any other factors relevant to the proposal or refusal;
- f. A statement that the parents of a child with a disability have procedural safeguards; and
- g. Sources for parents to contact to obtain assistance in understanding their procedural safeguards.

ECSE programs must also provide notice of procedural safeguards, which explains to parents what rights the IDEA provides to them and their children.<sup>49</sup> A copy of the procedural safeguards notice must be given to parents at least once per year, and also: (a) upon initial referral for special education, and (b) upon parent request.

The Parent in this case received Prior Written Notice for every required occasion, including: Prior Notice about Evaluation/Consent for Evaluation, February 21, 2024; Prior Notice About Evaluation/Consent for Evaluation, August 2, 2024; Prior Notice of Early Intervention or Early Childhood Special Education, August 2, 2024; Prior Notice and Consent for Initial Provision of Special Education Services, August 2, 2024; and Prior Notice of Special Education Action, December 11, 2024.

Several forms that the Parent(s) signed included checkboxes indicating the Program had provided a copy of the Procedural Safeguards Notice. In addition, Program staff informed the Investigator that, upon initial referral for EI-ECSE, parents are given folders that include Program information, and those folders include Procedural Safeguards.

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<sup>48</sup> OAR 581-015-2745

<sup>49</sup> OAR 581-015-2315; 34 CFR § 300.503 and 504

The Department does not substantiate this allegation.

### **Health and Safety**

The Parent alleged that the Program violated the IDEA by “not providing a written safety plan after documented behavioral incidents.”

Oregon administrative rules provide that, if EI or ECSE services are provided in any setting other than the family home, the EI-ECSE program shall ensure compliance with all applicable state and local requirements including health and safety regulations.<sup>50</sup> The EI-ECSE program must ensure that a subcontractor has policies or procedures in place regarding staff hiring that include careful checking of personal and professional references for all potential employees, with regularly scheduled evaluations to evaluate the employee’s competence to work with young children.<sup>51</sup>

The Program had no reason to believe that the Community Preschool was unsafe. The Parent expressed concerns on at least two occasions to the EI-ECSE Specialist about the Community Preschool Teacher. The EI-ECSE Specialist did not observe any health or safety risks to the Child and did not understand the Parent to have expressed fear for the Child’s health and safety at the Community Preschool. When the EI-ECSE Specialist offered to find a different preschool classroom for the Child, the Parent indicated that waiting until the next school year for the change was preferred.

The Department does not substantiate this allegation.

### **Access to Records/Confidentiality of Records for Preschool Children with Disabilities**

The Parent alleged that the Program failed to provide the Child’s educational records upon the Parent’s request and alleges that the Program withheld or destroyed documentation, “including classroom observations, emails, evaluation, and IFSP drafts.”

The IDEA provides that parents are entitled to access all education records with respect to: (a) the identification, evaluation, and educational placement of the child; and (b) the provision of a free appropriate public education to the child.<sup>52</sup>

The IDEA incorporates by reference the access provisions of FERPA, which defines student educational records as “those records, files, documents, and other materials which--(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.”<sup>53</sup>

An ECSE program must comply with a parent’s request to inspect and review records without unnecessary delay. For children over the age of three, the program must provide copies of these

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<sup>50</sup> OAR 581-015-2895(1)

<sup>51</sup> OAR 581-015-2895(3)

<sup>52</sup> OAR 581-015-2300(2)

<sup>53</sup> 34 CFR § 99.3

records to the parent before any meeting regarding an IFSP, or any due process hearing, or resolution session related to a due process hearing, and in no case more than 10 business days after the request has been made.<sup>54</sup>

On March 7, 2025, the Parent asked the Program to provide all the Child's records. The Program provided the Child's complete file on that same day. The Parent again requested records on the date of filing this Complaint, and again the Program immediately provided all of the Child's records maintained by the Program. The Program does not maintain emails; Program email is provided by a different public agency. The Program has no access to those email servers and advised the Parent that a public records request to that agency was required to access any emails related to the Child's EI-ECSE.

The Parent also alleged that Program staff disclosed protected medical information to staff and non-IFSP members without parental consent and the Parent further alleged that virtual IFSP team meetings held from private homes had no safeguards for the Child's medical privacy.

The confidentiality provisions of FERPA require a signed and dated written consent of parent or adult student.<sup>55</sup> The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records. The written consent must:

- a. Specify the records that may be disclosed;
- b. State the purpose of the disclosure; and
- c. Identify the party or class of parties to whom the disclosure may be made.<sup>56</sup>

When a record is disclosed, the educational agency or institution shall provide a copy of the disclosed record to the parent or adult student.<sup>57</sup>

The Parent did not describe any specific instances of disclosure of the Child's confidential records. The Investigator found no evidence of disclosures and was unable to find to clarify the Parent's concerns.

The Department does not substantiate this allegation.

### **Free Appropriate Public Education (FAPE) for ECSE**

The Parent alleged that the Program has denied the Child a FAPE. The Parent was not specific about how the Program might have denied FAPE to the Child.

The IDEA provides that ECSE programs must provide ECSE and related services for children from the age of three to the age of eligibility for public school.<sup>58</sup>

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<sup>54</sup> OAR 581-015-2300(3)(b)

<sup>55</sup> 34 CFR §99.30(a)

<sup>56</sup> 34 CFR §99.30(b)

<sup>57</sup> 34 CFR §99.30(c)

<sup>58</sup> OAR 581-015-2850

Courts have wrestled with the question of what FAPE means, but virtually all case law has involved school-age children. The Supreme Court has twice attempted to add clarity to this requirement. In the first case,<sup>59</sup> the Court held that a school district provided FAPE if it complied with IDEA procedural safeguards and the child’s IEP was reasonably calculated to enable the child to receive educational benefit. That two-part test left open the question of how much benefit the child was entitled to. In a later case,<sup>60</sup> the Supreme Court determined held that “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

Other than the Preschool Teacher not being a member of the IFSP team, the Program complied with procedural requirements. While holding an IFSP meeting without the preschool teacher was a procedural violation, , the Department cannot determine that this error caused a loss of educational opportunity. The Child’s team developed an IFSP that established goals for adaptive and social skills. When the Child exhibited fine motor challenges, the team agreed to add OT services. The question is whether the IFSP offered benefit to the Child. Applying the *Endrew* standard in this case requires investigation into whether the IFSP enabled the Child to make progress. The Child’s circumstances were challenging because of epilepsy, illness, and side effects from medications, and absences due to illness and medical appointments. Nevertheless, the April 21, 2025 IFSP Progress Report showed satisfactory progress toward all annual goals.

The Department does not substantiate this allegation.

## V. CORRECTIVE ACTION<sup>61</sup>

*In the Matter of EC Cares EI/ECSE*  
Case No. 25-054-020

Action Required	Submissions	Due As Soon As Possible But No Later Than
The Program is to train all personnel involved in scheduling and conducting IFSP meetings in meeting requirements, including mandatory participants.	Training materials to ODE for review/approval.	<b>August 15, 2025</b>
	Sign-in sheet.	<b>October 15, 2025</b>

<sup>59</sup>Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176 (1982)

<sup>60</sup> Endrew F. v. Douglas County Sch Dist RE-1, 580 US 386 (2017)

<sup>61</sup> The Department’s order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18))



Dated: this 6th Day of June, 2025

A handwritten signature in black ink that reads "Ramonda Olaloye". The signature is written in a cursive, flowing style.

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Ramonda Olaloye  
Assistant Superintendent  
Office of Enhancing Student Opportunities  
E-mailing Date: June 6, 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)).