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Jorge A. Aguilar, Superintendent

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January 27, 2021

Via E-Mail: dfisher@saccityta.com

David Fisher, President
Sacramento City Teachers Association
5300 Elvas Avenue
Sacramento, CA 95819

Re: CDE Complaints

Dear Mr. Fisher:

We write to provide you with an update concerning Special Education Compliance Complaints recently filed with the California Department of Education (CDE) by Disability Rights California (DRC) on behalf of three specific District students which we referenced in our letter of January 22, 2021. With respect to these matters, DRC alleges the District has failed to timely provide assessments to the students *and similarly situated students* who are suspected to have a disability and who may be eligible for special education and related services. Redacted copies of these complaints are attached hereto for your reference.

CDE issued the attached **Investigation Report** from the first of these complaints, finding that the District is out of compliance with regard to both (1) providing assessments for the individual student and (2) completing assessments or convening IEP's to discuss assessment results for all similarly situated students District-wide:

Conclusion (Student One)

*The District failed to meet the requirements of EC Section 56043(f)(1). The District did not complete special education assessments within 60 days of receiving the educational rights holder's consent to assess the student. **The District is out of compliance.***

Conclusion (District Wide Assessment)

*The District failed to meet the requirements of EC Section 56043(f)(1). The District did not, during the period of COVID-19 distance learning, submit evidence of either completing special education assessments as listed on signed assessment plans, or convening IEPs to discuss the results of said assessments, within 60 days of receiving parental consent. **The District is out of compliance.***

CDE issued Required Corrective Actions which are summarized below:

1. **By February 22, 2021**, conduct the special education assessment for Student KB, convene an IEP meeting to review them, and determine the student's services.
2. Provide the investigation report to the Board by February 2, 2021.
3. Provide training by February 2, 2021 to all District special education assessment administrators, school site special education case managers, and assessment service providers, regarding EC Section 56043(f)(1)'s 60 day timeline, and the findings of this case, with a directive to comply with the law.
4. **By February 2, 2021**, the District shall provide the CDE a list of students who have either an overdue initial or triennial reevaluation assessment, the current progress on the students' assessments, and the **date in which an IEP meeting will be held to review assessment data**.
5. **February 2, 2021**, the District shall develop a plan, using the information in the list prepared in response to corrective action four above, that **ensures all overdue assessments from March to November 20, 2020, will be completed by July 30, 2021**. The plan must include the number of assessments that will be completed weekly and by whom, whether District staff or qualified, non-District, contracted assessors.
6. **By February 19, 2021**, the District shall provide evidence of written communication with the individual affected parents/guardians of the students in the lists compiled for corrective action 4, that describes the District's plan for completing the individual student assessments respectively.
7. Provide the CDE with a weekly report regarding status of outstanding assessments between now and July 30, 2021.
8. By July 30, 2021, complete a determination of compensatory education after each special education assessment and IEP is completed for all students per number 4 above.

Please note that there are two additional Compliance Complaints pending with CDE, and we expect to receive similar required actions for these cases as well. The District is currently making plans for addressing the aforementioned items from the CDE's investigation report, including providing training regarding the requirements for timely special education assessments as well as a **plan to complete all such outstanding assessments by July 30, 2021**. In order to meet CDE's required timeline for assessment completion, the District must promptly commence with conducting the large backlog of hundreds of such assessments.

To meet these legal obligations and moral imperatives, the District first made a proposal for in-person special education assessments to SCTA on [October 14, 2020](#), and made its last counter-proposal on [November 20, 2020](#). We understand that SCTA plans to share a counter proposal at our meeting this evening and we hope that the parties will reach an agreement on this matter.

Unfortunately, the parties have yet to come to an agreement on this matter that is so critical to meeting the needs of our students. As such, in order to meet the legal mandates outlined by CDE, including Education Code Section 56043(f)(1), the District must commence with its assessment planning and begin conducting said required assessments no later than **February 22**,

2021, as required by CDE's Investigation Report for the specific student. Furthermore, pursuant to required action number 5 above, in order to make the required plan and share it with CDE by February 2, 2021 for conducting all overdue assessments by July 30, 2021, **the District and SCTA must reach an agreement on or before February 1, 2021, otherwise the District will make necessary arrangements to have these assessments conducted by independent third party qualified assessors.**

Thank you for your prompt consideration of this matter which is so critical to meet the needs of our students with disabilities as well as satisfy the District's legal obligations.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Aguilar', with a stylized flourish at the end.

Jorge A. Aguilar
Superintendent

CALIFORNIA DEPARTMENT OF EDUCATION
Investigation Report
Case S-0297-20/21

Public Agency Jorge Aguilar, Superintendent Sacramento City Unified School District 5735 47th Avenue Sacramento, CA 95824	Complainant Lauren Lystrup 2111 J Street, Suite 406 Sacramento, CA 95816
Special Education Director Becky Bryant, Director, Special Education Sacramento City Unified School District	Parent Various
Special Education Local Plan Area (SELPA) Becky Bryant, Director Sacramento City Unified SELPA	Student Various
Complaint Received November 20, 2020	Report Mailed January 19, 2021

INVESTIGATION PROCEDURES

The investigation and conclusions are based on the investigator’s review of materials and documents provided by the Complainant and the District, as well as telephone contacts with the Complainant on December 2, 2020, and the District on December 16, 2020. Emails were exchanged with the Complainant on November 24 and December 2 and 23, 2020, and January 7, 2021, and the District on December 3, 16, 17, 22, 23, 24, and 30, 2020, and January 4 and 8, 2021.

This is a student specific complaint that also alleges district-wide issues for other similarly situated District students. The student in the case is referred to as “Student One.” Other District students are referred to as “Students.”

A complaint filed with the California Department of Education (CDE) shall allege a violation of the federal Individuals with Disabilities Education Act (United States Code, Title 20, sections 1400 et seq.), or a provision of this part, that occurred not more than one year before the date the complaint is received by the CDE, pursuant to California *Education Code (EC)* Section 56500.2 and *Code of Federal Regulations*, Title 34 (34 *CFR*), Section 300.153(c).

The investigation period associated with this complaint investigation is November 20, 2019, to November 20, 2020; however, the report includes a chronology of events outside of the one-year timeframe to provide context.

SUMMARY OF THE ALLEGATION

The Complainant alleges the District failed to comply with requirements pertaining to evaluations set forth in *EC* Section 56043(f)(1), when the District did not conduct or complete special education assessments for students within 60 days of receiving signed assessment plans since June 1, 2020.

APPLICABLE CITATIONS

EC Section 56043(f)(1) implements 34 *CFR* Section 300.303.

EC Section 56043(f)(1) requires:

(f)(1) An individualized education program [IEP] required as a result of an assessment of a pupil shall be developed within a total time not to exceed 60 calendar days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's or guardian's written consent for assessment, unless the parent or guardian agrees in writing to an extension, pursuant to Section 56344.

FINDINGS OF FACT

Student One

1. Student One was ten years old and in the fourth grade during the timeframe of the complaint and qualified for special education under the eligibility category of emotional disturbance with a secondary category of other health impairment. The student's triennial reevaluation was due by April 17, 2020. An IEP amendment meeting was held on May 29, 2019, where the educational rights holder expressed concerns about further assessment for student; and on June 13, 2019, the District provided the educational rights holder an early assessment plan for the triennial evaluation. The District began assessing the student in September 2019. The student was not enrolled in the District from October to December 2019. On June 1, 2020, the District convened an annual and interim IEP meeting where a new assessment plan was created to include an updated psychoeducational assessment since the IEP team never reviewed the September 2019 assessment information. Evidence for this finding is based on the June 13, 2019, assessment plan; the June 1, 2020, IEP, signed by the educational rights holder in agreement but with exceptions not related to assessments on June 26, 2019; the June 1, 2020, assessment plan, and the January 4, 2021, email from the District to the CDE.
2. The last day of the 2019–20 school year was May 28, 2020. Evidence for this finding is based on the District's 2019–20 calendar.

3. The educational rights holder provided the District with the signed June 1, 2020, assessment plan on June 26, 2020. Evidence for this finding is based on the June 1, 2020, assessment plan, signed in consent on June 26, 2020.
4. From May 29 to September 2, 2020, the District was closed due to summer vacation. The first day of school was September 3, 2020, requiring the student's assessments to be completed and an IEP meeting held to discuss the assessment results, by November 2, 2020. Evidence for this finding is based on the District's 2019–20 and 2020–21 calendars.
5. On October 28, 2020, the District convened an IEP meeting for the student. The student's assessments had not been completed, and the IEP team discussed the student's pending assessments. The District stated that due to the student's needs, assessments would have to be completed in person; however, due to the Coronavirus Disease 2019 (COVID-19) pandemic, the District was not conducting in-person assessments. Evidence for this finding is based on the October 28, 2020, IEP, signed by the educational rights holder in agreement but with exceptions on November 19, 2020.
6. The District acknowledges that it has not completed the student's assessments to date. Evidence for this finding is based on the December 24, 2020, District response to the complaint.

District Wide Assessments

7. On March 16, 2020, the District closed due to COVID-19 and reopened via distance learning on April 13, 2020. Evidence for this finding is based on the District's December 24, 2020, response.
8. The District has special education policies and procedures in place for documenting and responding to initial special education evaluations, re-evaluations, and related procedural safeguards for parents and timelines as required by state and federal regulations. Evidence for this finding is based on the District special education policies and procedures, administrative regulation-6164.4, dated November 16, 1998, and April 15, 2002, and the District's 2018–19 special education handbook.
9. As of October 9, 2020, the District counted 325 initial assessments overdue and did not provide numbers for the initial assessments actually conducted, nor for the number of re-evaluations administered or overdue. Additionally, the District counted over 1,000 triennial assessments overdue and did not provide numbers for the triennial assessments actually conducted. The District acknowledges that during the period of time when schools have been closed due to the COVID-19 pandemic, when the District was only open for distance learning, it has not been able to complete assessments or hold IEP meetings to discuss those assessments, within 60 days of receiving parental consent. Evidence for this finding is based on the

March 2020 to November 2020 student lists; the December 24, 2020, District response to the complaint; and the January 8, 2021, email from the District to the CDE.

Conclusion (Student One)

The District failed to meet the requirements of *EC* Section 56043(f)(1). The District did not complete special education assessments within 60 days of receiving the educational rights holder's consent to assess the student. **The District is out of compliance.**

Conclusion (District Wide Assessment)

The District failed to meet the requirements of *EC* Section 56043(f)(1). The District did not, during the period of COVID-19 distance learning, submit evidence of either completing special education assessments as listed on signed assessment plans, or convening IEPs to discuss the results of said assessments, within 60 days of receiving parental consent. **The District is out of compliance.**

SUMMARY CONCLUSION

The District failed to meet the requirements of *EC* Section 56043(f)(1). The District did not provide evidence of administering, conducting, or completing initial and triennial special education assessments, or holding related IEP meetings within 60 days, during the period of physical school closure, from June 1 to November 20, 2020, when the District was open for distance learning. **The District is out of compliance.**

REQUIRED CORRECTIVE ACTIONS

Student One

1. For Student One, on or before February 22, 2021, the District shall provide evidence that it has completed the student's assessments, convened an IEP meeting to review them, and determined the student's services. If the IEP team determines compensatory services are needed, over and above the regular IEP services for the student, the District shall also provide the educational rights holder a plan for the provision of compensatory services, if agreed to by the educational rights holder, based on the delay in completing the assessments and timely holding and completing the IEP. Acceptable evidence should include a copy of the completed assessment report(s), the completed IEP, and the compensatory service plan if applicable.

Student One and District Wide

2. On or before February 2, 2021, the District special education director or designee shall provide this report to the District's board of education. Acceptable evidence should include a copy of the meeting notes.
3. On or before February 2, 2021, the District shall provide a training to all District special education assessment administrators, school site special education case managers, and assessment service providers, regarding *EC* Section 56043(f)(1) and the findings of this case, with a directive to comply with the law. Acceptable evidence should include a copy of the training agenda and a list of recipients and training participants, including their titles and verification of attendance. Training by webinar or other electronic means is acceptable, and dividing training sessions to accommodate the scheduling needs of attendees is acceptable.
4. On or before February 2, 2021, the District shall provide the CDE a list of students who have either an overdue initial or triennial reevaluation assessment. The list shall include the name of the student, the original initial/triennial due date, the current progress on the students' assessments, and the date in which an IEP meeting will be held to review assessment data. Acceptable evidence should include a copy of the list.
5. On or before February 2, 2021, the District shall develop a plan, using the information in the list prepared in response to corrective action four above, that ensures all overdue assessments from March to November 20, 2020, will be completed by July 30, 2021. The plan must include the number of assessments that will be completed weekly and by whom, whether District staff or qualified, non-District, contracted assessors. Acceptable evidence should include a copy of the plan.
6. On or before February 19, 2021, the District shall provide evidence of written communication with the individual affected parents/guardians of the students in the lists compiled corrective action 4, that describes the District's plan for completing the individual student assessments respectively. Acceptable evidence should include copies of the letters.
7. On or before July 30, 2021, the District shall have provided the CDE with weekly spreadsheets or weekly reports, between the date of this report and July 30, 2021, showing outstanding assessments and IEP meetings to discuss assessments completed, as identified in the plan prepared in response to corrective action five above. Acceptable evidence should include a copy of the weekly spreadsheet or report.
8. On or before July 30, 2021, based on the students' completed IEPs, if the IEP teams determine compensatory services are needed, over and above the regular IEP services for the students respectively, the District shall provide letters to the parents/guardians respectively, with a plan for the provision of compensatory services

as appropriate, if agreed to by the parent/guardian, based on the delay in completing the assessments and timely holding and completing the IEPs. Acceptable evidence should include a copy of the students' IEPs and plans for providing compensatory services over and above the regular services already included in the students' IEPs, if applicable.

RECONSIDERATION NOTICE

The findings in this investigation report are specific to this case. While general rules are cited, findings in other investigations may differ due to the facts and issues in each case.

Within 30 days of the "Report Mailed" date on this CDE report, either party may request reconsideration [*California Code of Regulations*, Title 5, Section 3204]. The request for reconsideration must state and explain the reason for the request based on one or more of the following:

1. The report lacks material findings of fact
2. The material findings of fact in the report are unsupported
3. The legal conclusion in the report is inconsistent with the law
4. The corrective actions in the report fail to provide proper remedy

Pending the Superintendent's reconsideration, the Department report, including corrective actions remains in effect and enforceable.

A request for reconsideration of the CDE's Investigation Report must be postmarked within 30 days of the "Report Mailed" date on the CDE report and sent to:

Ana Marsh, Education Administrator II
Complaint Resolution Unit
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814
916-445-4623 Phone
916-327-8878 Fax

Evidence of required corrective actions or questions regarding corrective actions shall be directed to:

Donna DeMartini, Education Administrator I
Focused Monitoring and Technical Assistance Unit Two
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814
916-445-4632 Phone
916-327-0326 Fax

If compliance is determined in this investigation and no corrective actions are required, consider this case closed.

Ana Marsh
Education Administrator II
Complaint Resolution Unit

Melissa Branson
Education Administrator I
Complaint Investigation Unit I

Jane Canty
Education Administrator I
Complaint Investigation Unit II

California Department of Education
Special Education Division