



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 8.6

Meeting Date: April 22, 2021

Subject: Special Education Assessments and CDE Determinations Update

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: _____)
- Conference/Action
- Action
- Public Hearing

Division: Special Education

Recommendation: N/A

Background/Rationale: Special education assessments of students with, or suspected of having, disabilities have been challenging for the District in light of school closures due to the COVID-19 pandemic, during which time the District was not been able to complete those assessments or hold IEP meetings to discuss those assessments, within 60 days of receiving parental consent as required by Education Code section 56043(c). Due to the significant backlog of assessments, California Department of Education (CDE) has issued decisions and required action steps being issued by the District to remedy this failure. The District previously reported on the CDE decision of January 19, 2021 for Case S-0297-20/21 at the February 18, 2021 Board Meeting.

In addition, on March 8, 2021, the District received a report from the California Department of Education (“CDE”) for Case S-0401-20/21 which summarizes the complainant’s allegations, finds that the District is out of compliance regarding timely completion of Special Education assessments, and provides corrective actions for the District to address.

On April 8, 2021, the District received a letter from the California Department of Education (“CDE”) for Case S-0297-20/21 addressing the District’s responses to the CDE’s corrective actions and providing that the District did not complete reports in March 2021 and did not submit the Comprehensive Coordinated Early Intervening Services plan in December 2020.

The Board will receive an update on the District's plan for addressing the backlog of Special Education Assessments, including an update concerning the addendum to the Reopening MOU on this topic recently reached with SCTA.

Documents Attached:

1. CDE 4.8.21 Letter - S-0297-20/21
2. Investigation Report Case S-0401-20/21

<p>Estimated Time of Presentation: 20 minutes Submitted by: Dr. Sadie Hedegard, Assistant Superintendent, Special Education Approved by: Jorge A. Aguilar, Superintendent</p>
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**CALIFORNIA DEPARTMENT
OF EDUCATION**

TONY THURMOND
STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION

1430 N STREET, SACRAMENTO, CA 95814-5901 • 916-319-0800 • WWW.CDE.CA.GOV

April 8, 2021

Jorge Aguilar, Superintendent
Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824

Dear Superintendent Aguilar,

This letter is in response to your March 23, 2021, correspondence to Donna DeMartini, Education Administrator I in the Special Education Division, California Department of Education (CDE). The CDE would like to provide clarifications to specific items identified by the District and share with you the concerns raised by the District's assertions about its compliance with the Corrective Actions identified in the January 19, 2021, Compliance Decision (Decision) S-0297-20/21 and current items required under the CDE's authority under 34 *Code of Federal Regulations* (CFR) Section 300.600 (d).

The District did not submit a complete report on either March 19, 2021, or March 26 2021, citing the need to update the format. On April 2, 2021, the District did not submit a report at all, and when asked, stated that it was closed for spring break that week. Thus, the CDE has not received a complete report from the District since March 12, and that report indicated that essentially no progress had been made.

Additionally, as of the date of this letter, the District has not submitted the Comprehensive Coordinated Early Intervening Services plan required under 34 CFR 300.646 (d), that was due to the CDE on December 15, 2020.

Federal and state law requires the state educational agency to enforce local compliance with the laws guaranteeing children with disabilities a free appropriate public education (Title 20 *United States Code* (20 USC) Section 1412(a) (11); Title 34, *Code of Federal Regulations* (34 CFR) Section 300.600; California *Education Code* Section 56000.

Under California *Education Code* 56045, the CDE is formally notifying your governing board that the SSPI has determined that Sacramento City Unified School District:

1. Is substantially out of compliance with the provisions of the IDEA as set forth in the notice of corrective actions (56045(a)(1)), and;
2. Has failed to substantially comply with corrective action orders issued by CDE resulting from a complaint investigation. (56045(a)(2));

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Upon receipt of this notice, we ask that the governing board agendaize this matter at its next board hearing to address the issue of noncompliance, as contemplated by Education Code section 56045(c). Please provide us with the date of the SCUSD Board meeting at which this matter will be heard.

Based on the on-going failures to comply with the corrective actions CDE, as the state educational agency, will consider exercising its authority to withhold special education funds allocated to the District under state and federal law, pursuant to Title 5, California Code of Regulations (5 CCR), sections 3088.1(b) and (c). Such a withholding may occur when a District, has failed to comply substantially with a provision of law regarding special education and related services, 5 CCR Section 3088.1(a).

The CDE encourages the District to implement its February 5, 2021 plan as revised on March 19, 2021 which will support the District on its path to compliance. However, based on the District's 2019-20 Annual Determination under IDEA and the current concerns with the District's identified issues in unsuccessful implementation of its plan to clear the current Corrective Actions issued January 19, 2021, the CDE is identifying Sacramento City Unified as a high-risk grantee. CDE will assign special conditions on the IDEA grant and further direct the District to use its 611 funds for assessing its students who are waiting for assessments per CFR section 300.604 (a)(2-3). Because SCUSD has been identified as Needs Intervention under 34 CFR 300.604(c) for more than 3 years, the CDE may move to withhold future payments or refer the matter to the Office of Inspector General at the US. Department of Education or the Department of Justice if the District continue to neglect or defer its responsibilities under IDEA.

If you have any questions regarding this subject, please contact Heather Calomese, Director, Special Education Division, by email at hcalomese@cde.ca.gov.

Sincerely,

/s/

Heather Calomese

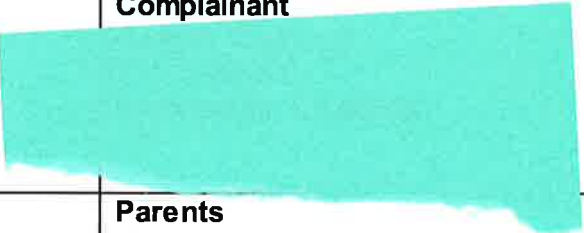
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cc: Dr. Sadie Hedegard, Assistant Superintendent, Special Education, Sacramento City Unified/SELPA

Sarah Neville-Morgan, Deputy Superintendent, Opportunities for All Branch, California Department of Education

Dr. Stephanie Gregson, Chief Deputy Superintendent, California Department of Education

**CALIFORNIA DEPARTMENT OF EDUCATION
Investigation Report
Case S-0401-20/21**

Public Agency Jorge Aguilar, Superintendent Sacramento City Unified School District 5735 47th Avenue Sacramento, CA 95824	Complainant 
Special Education Director Sadie Hedegard, Assistant Superintendent, Special Education Sacramento City Unified School District	Parents Various
Special Education Local Plan Area (SELPA) Geo Linares, Director Sacramento City Unified SELPA 5735 47th Avenue Sacramento, CA 95824	Student Various
Complaint Received January 7, 2021	Report Mailed March 8, 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 January 11, 2021, and emails exchanged with the District on January 12, 22, and 27, and February 18 and 22, 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.”

SUMMARY OF ALLEGATION ONE

The Complainant alleges the District failed to comply with evaluation procedures set forth in California *Education Code (EC)* Section 56321(a), when the District failed to provide an assessment plan within the 15-day timeline from the August 25, 2020, parental request for an assessment, and when it also did not respond to initial assessment requests for similarly situated students.

APPLICABLE CITATIONS

EC Section 56321(a) requires:

If an assessment for the development or revision of the individualized education program [IEP] is to be conducted, the parent or guardian of the pupil shall be given, in writing, a proposed assessment plan within 15 days of the referral for assessment not counting days between the pupil's regular school sessions or terms or days of school vacation in excess of five schooldays from the date of receipt of the referral, unless the parent or guardian agrees, in writing, to an extension.

Code of Federal Regulations, Title 34 (34 *CFR*), Section 300.301(a) requires, "Each public agency must conduct a full and individual initial evaluation, in accordance with sections 300.304 through 300.306, before the initial provision of special education and related services to a child with a disability under this part."

FINDINGS OF FACT

Student One

1. On August 25, 2020, during the summer break, the student's parent requested an initial assessment to determine special education eligibility. On August 27, 2020, the District responded to the parent in an email stating initial face-to-face assessments and eligibility meetings were not being scheduled due to the Novel Coronavirus Disease 2019 (COVID-19), by orders of the health department. Parent was not provided an assessment plan at this time. Evidence for this finding is based on the August 25 and 27, 2020, emails between the parent and District.
2. September 3, 2020, was the first day of the District's 2020–21 school year, and the District began the school year in full distance learning. The District provided an assessment plan to the parent on October 14, 2020, 41 days after the start of the new school year and the initial assessment request. The parent agreed to the assessment plan on October 21, 2020, and sent it to the District. The date the District received the assessment plan was not provided. Evidence for this finding is based on the District's January 26, 2021, response to the complaint; the District's 2020–21 school year calendar; and the October 5, 2020, agreed to assessment plan.
3. The District acknowledges that the student's initial assessments had not been initiated as of the time the complaint was filed, nor had they been started as of the date of the District's response to the complaint. Evidence for this finding is based on the District's January 26, 2021, response to the complaint.

District-Wide Assessment Plans

4. September 3, 2020, was the first day of the District's 2020–21 school year in full distance learning. Evidence for this finding is based on the District's 2020–21 school

year calendar and the District's January 26, 2021, response to the complaint.

5. As of January 7, 2021, the District provided the CDE with a list of 46 signed assessment plans from parents in the District, out of 166 initial assessment requests received since September 3, 2021, the first day of the District's 2020–21 school year. Documentation, however, was not provided to verify that the 46 assessment plans were sent to the parents within 15 days of their requests. Evidence for this finding is based on the District's 2020–21 school year calendar; the list of initial assessment requests for the 2020–21 school year; and the February 24, 2021, email from the District to the California Department of Education.
6. The District has special education policies and procedures for documenting and responding to initial special education 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 Board Policy dated November 16, 1998, and revised April 14, 2002; and Administrative Regulation 1664.4, dated November 16, 1998, and revised June 11, 2002.
7. As of January 7, 2021, the District had not provided assessment plans to the remaining 120 assessment requests made since the first day of the District's 2020–21 school year. Evidence for this finding is based on the January 26, 2021, District response to the complaint and the list of initial assessment requests for the 2020–21 school year.

Conclusion (Student One)

The District failed to meet the requirements of *EC* Section 56321(a). The District took 41 days to provide the parent with the requested initial assessment plan, and therefore, did not provide the parent with the assessment plan within the required 15-day timeline. **The District is out of compliance.**

Conclusion (District-Wide Initial Assessment Plans)

The District failed to meet the requirements of *EC* Section 56321(a). The District has not provided 166 initial assessment plans either within fifteen days, or at all, as required for conducting initial special education assessments from September 3, 2020 to January 7, 2021. **The District is out of compliance.**

SUMMARY CONCLUSION

The District failed to meet the requirements of *EC* Section 56321(a). The District failed to provide assessment plans as required for initial special education assessments within the 15-day time line of the request for Student One's assessments and when it also did not respond to initial assessment requests for all similarly situated students. **The District is out of compliance.**

SUMMARY OF ALLEGATION TWO

The Complainant alleges the District failed to comply with evaluation requirements as set forth in 34 *CFR* Section 300.301(c)(1), when the District failed to conduct an initial assessment and schedule an IEP team meeting within 60 days of parental consent for assessment.

APPLICABLE CITATION

34 *CFR* Section 300.301(c) requires:

(c) Procedures for initial evaluation. The initial evaluation (1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation . . . and Must consist of procedures—To determine if the child is a child with a disability under 34 *CFR* 300.8; and (ii) To determine the educational needs of the child.

FINDINGS OF FACT

Student One

8. The parent requested an assessment of the student on August 25, 2020. The District provided the October 5, 2020, assessment plan on October 14, 2020, and the parent agreed to the assessment on October 21, 2020. Evidence for this finding is based on the August 25, 2020, parental request and the agreed to October 5, 2020, assessment plan.
9. As of January 7, 2021, the date the complaint was filed, as well as the District's response to the complaint, the District had neither assessed the student nor convened an IEP meeting to review the assessments within 60 days. Evidence for this finding is based on the District's January 26, 2021, response to the complaint.

District-Wide Initial Assessments

10. As of January 7, 2021, the District had received 166 requests for initial special education assessments. The District had received 46 signed assessment plans back, and none of the initial assessments had been initiated. Evidence for this finding is based on the January 26, 2021, District response to the complaint and the list of initial assessment requests for the 2020–21 school year.

Conclusion (Student One)

The District failed to meet the requirements of 34 *CFR* Section 300.301(c)(1). The District has not initiated the initial assessment for the student since receiving the October 21, 2020, consented to assessment plan, and therefore did not assess and convene the IEP team meeting to review the assessments within 60 days. **The District is out of compliance.**

Conclusion (District-Wide Initial Assessments)

The District failed to meet the requirements of 34 *CFR* Section 300.301(c)(1). The District has not assessed or convened the IEP meetings to review the 46 consented initial assessment plans since September 3, 2020, the first day of the 2020–21 school year. **The District is out of compliance.**

SUMMARY CONCLUSION

The District failed to meet the requirements of 34 *CFR* Section 300.301 (c)(1). The District has not initiated or completed initial assessments or convened the IEP meetings to review the student assessments within the required 60-day timeline for the 2020–21 school year. **The District is out of compliance.**

REQUIRED CORRECTIVE ACTIONS

Allegation One and Two

Student One

1. On or before April 20, 2021, the District shall provide evidence that it has completed the student's assessments, convened an IEP team meeting to review the assessment results, and determined the student's eligibility for special education and the requirements for needed 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 parent a plan for the provision of compensatory services, if agreed to by the parent, 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.

District-Wide Initial Assessments

2. On or before April 8, 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 board agenda listing this item and the Board meeting notes.
3. On or before April 16, 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 34 *CFR* Section 300.301 and *EC* 56321(a), and the findings of this case, with a directive to comply with the law. Training by webinar or other electronic means is acceptable, and dividing training sessions to accommodate the scheduling needs of attendees is acceptable. Acceptable evidence should include a copy of the training agenda and a list of recipients and training participants, including their names, titles, and verification of attendance.

4. On or before May 1, 2021, the District shall develop a plan that ensures all overdue initial assessments from September 3, 2020, to January 7, 2021, will be completed by July 30, 2021. The plan must include the number of assessments that will be completed weekly and by whom, whether by District staff or qualified, non-District, contracted assessors. Acceptable evidence should include a copy of the plan.
5. On or before May 12, 2021, the District shall provide evidence of written communication with the individual affected parents/guardians of the students on the District provided list of the 166 requested initial assessments, that describes the District's schedule for providing assessment plans to parents who have not yet received them and obtaining parent signatures of agreement for those who have received assessment plans. The District should also provide evidence of completing the individual student assessments respectively for those students for whom the District had already received parent consent to assess as discussed in this report. Acceptable evidence should include copies of the District's plan, the written communications to parents/guardians, and a listing of the completed assessment reports by student.
6. On or before July 30, 2021, the District shall have provided the CDE with on-going weekly spreadsheets or weekly reports, for the timeframe between the date of this report and July 30, 2021, showing outstanding assessments needed and completed and IEP meetings to discuss completed assessments, as identified in the plan prepared in response to corrective action five above. Acceptable evidence should include copies of the weekly spreadsheets or reports, submitted to the CDE on a weekly basis.
7. On or before July 30, 2021, based on the students' completed initial IEPs, and 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 plans for the provision of compensatory services as appropriate, if agreed to by the parents/guardians, 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 California Department of Education (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:

- a. The report lacks material findings of fact
- b. The material findings of fact in the report are unsupported
- c. The legal conclusion in the report is inconsistent with the law
- d. 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