

CALIFORNIA DEPARTMENT OF EDUCATION
Investigation Report
Case S-0080-20/21

Public Agency Doc Ervin, Superintendent Bakersfield City Elementary School District 1300 Baker Street Bakersfield, CA 93305-4326	Complainant Robert Borrelle 350 South Bixel Street, Suite 290 Los Angeles, CA 90017
Special Education Director Shirley Nicholas, Director, Special Education Bakersfield City Elementary School District 714 Williams Street Bakersfield, CA 93305	Parent Various
Special Education Local Plan Area (SELPA) Shirley Nicholas, Director Bakersfield City Elementary SELPA	Student Various
Complaint Received August 7, 2020	Report Mailed October 6, 2020

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 August 13 and September 11, 2020, and the District on September 9 and 23, 2020. Emails were exchanged with the Complainant on September 11, 14, 22, and 23, 2020, and the District on August 19 and 31 and September 9, 16, 17, 18, 22, and 23, and October 2, 2020.

The District has approximately 3,600 students with active individualized education programs (IEPs) and this report has used a sampling of 25 students from 25 different elementary and middle schools to determine compliance or non-compliance.

A separate complaint report, S-0079-20/21, was completed as a single-student complaint. The student in the S-0079-20/21 complaint is not included in this report.

SUMMARY OF THE ALLEGATION

The Complainant alleges the District failed to comply with IEP requirements set forth in *Code of Federal Regulations*, Title 34 (34 CFR), Section 300.323(c)(2), when the

District did not provide specialized academic instruction (SAI) or related services to any student with disabilities since closing its campuses due to the novel Coronavirus-19 Disease (COVID-19) pandemic from March 2020 to August 7, 2020, the date of the complaint.

APPLICABLE CITATION

34 *CFR* Section 300.323(c)(2) requires, “. . . provision of services. Each public agency must ensure that. . . (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.”

FINDINGS OF FACT

1. On March 18, 2020, the District closed due to the COVID-19 pandemic. The last day of the 2019–20 school year was May 28, 2020. On March 17, 2020, the parents of students with IEPs (parents) were advised in a prior written notice (PWN) that the District would be closed due to the COVID-19 pandemic, beginning March 18 until April 14, 2020. The District would also be on a pre-planned spring break from April 4 to 13, 2020. During this time, instruction was not provided to any student in the District; however, packets were provided to special education students starting March 18, 2020, and enrichment packets were made available starting March 23, 2020, at the students’ school sites. Evidence for this finding is based on the September 11, 2020, parent telephone contact; the March 17, 2020, PWN; the April 30, 2020, PWN; the District’s 2019–20 school calendar; and the September 9, 2020, telephone contact with the District.
2. On April 1, 2020, the District provided a PWN to parents informing them that the school closure would be extended until May 5, 2020, as evidenced by the April 1, 2020, PWN.
3. On April 20, 2020, teachers began contacting parents to develop distance learning plans (DLPs) based on the District’s overall virtual learning plan; virtual learning by Zoom; other online platforms; enrichment packets; and teacher/service provider availability for phone consultation. Differentiated instruction enrichment packets were made available for pick up on April 29, 2020. Evidence for this finding is based on a September 11, 2020, telephone contact with a parent; the September 9, 2020, telephone contact with the District; and the August 28, 2020, District response to the complaint.
4. On April 30, 2020, the District provided a PWN to parents informing them that the District would remain closed for the remainder of the school year and the District would not be providing direct instructional services to students. The District would, however, provide special education supports and services through distance learning (DL) opportunities. Parents were informed as to how to access internet links for

virtual lessons for general and special education students in grades three to eight on the District's website; pick up instructions for DL packets at the students' school sites; obtaining District Chromebooks for students by contacting the District's information technology/IT department at the given number; and locating mobile WIFI hotspots throughout the District. Evidence for this finding is based on a September 11, 2020, telephone contact with a parent; the April 30, 2020, PWN to all parents; and the September 9, 2020, telephone contact with the District.

5. As of May 1, 2020, DLPs were completed for all special education students. A random sample review of 25 special education students, across all school sites, reflects that students received DLPs that were supposed to indicate how services in the students' IEPs would be implemented, including goals, methods of support, schedules, and how consultation with the parent would take place. Evidence for this finding is based on the creation dates on the DLPs, and the August 28, 2020, District response to the complaint.
6. Student One's IEP requires SAI and speech and language (S/L) consult services; however, the DLP addresses only S/L and social emotional goals. The District provided progress on the student's goals for SAI, S/L, and social/emotional, during DL. Though the attendance report indicates student participation in DL, the evidence does not indicate whether the specific SAI and S/L consult services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page; the DLP, the progress on goals report, and the attendance sheet.
7. Student Two's IEP requires SAI services and the DLP addresses SAI goals. The District did not provide progress on the student's goals for SAI during DL. Though the attendance logs indicate student participation in DL, the evidence does not indicate whether the specific SAI services in the student's IEP were provided. Evidence for this finding is based on the student's service page, the DLP, and the attendance sheet.
8. Student Three's IEP requires SAI, health and nursing, S/L, and individual counseling services; however, the DLP addresses only S/L. The District provided progress on the student's goals for SAI, S/L, and social/emotional during DL. Though the attendance log indicates student participation in DL, the evidence does not indicate whether the specific SAI and related services in the student's IEP were provided. Evidence for this finding is based on the student's service page, the DLP, the progress on goals report, and the attendance sheet.
9. Student Four's IEP requires SAI and S/L services, and the DLP addresses SAI and S/L. The District provided progress on the student's goals for SAI and S/L during DL. Though the attendance information indicates student participation in DL, the evidence does not indicate whether the specific SAI and S/L services in the student's IEP were provided. Evidence for this finding is based on the student's service page, the DLP, the progress on goals report, and the attendance sheet.

10. Student Five's IEP requires SAI and S/L; however, the DLP addresses only SAI. The District provided progress on the student's goals for SAI and S/L during DL. Though the attendance report indicates student participation in DL, the evidence does not indicate whether the specific SAI and S/L services in the student's IEP were provided. Evidence for this finding is based on the student's service page, the DLP, the progress on goals report, and the attendance sheet.
11. Student Six's IEP requires SAI and S/L services and the DLP addresses SAI and S/L. The District did not provide progress on the student's goals for SAI and S/L during DL. The attendance log indicates student participation in DL. The evidence does not indicate whether the specific SAI and S/L services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, and the attendance sheet.
12. Student Seven's IEP requires SAI, S/L, and occupational therapy (OT) services; however, the DLP addresses only SAI and S/L. The District did not provide progress on the student's goals for SAI and S/L during DL. Although the attendance report indicates student participation in DL, the evidence does not indicate whether the specific SAI and related services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, and the attendance sheet.
13. Student Eight's IEP requires SAI and S/L consult services, the DLP addresses SAI and S/L. The District provided progress on the student's goals for SAI and S/L during DL. Although the attendance information indicates student participation in DL, the evidence does not indicate whether the specific SAI and S/L consult services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, the progress on goals report, and the attendance sheet.
14. Student Nine's IEP requires SAI and S/L services, and the DLP addresses SAI and S/L. The District did not provide progress on the student's goals for SAI and S/L during DL. Although the attendance log indicates student participation in DL, the evidence does not indicate whether the specific SAI and S/L services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, and the attendance sheet.
15. Student Ten's IEP requires SAI (resource specialist and special day class) and S/L services; however, the DLP only addresses SAI. The District did not provide progress on the student's goals for SAI and S/L during DL. Although the attendance log indicates student participation in DL, the evidence does not indicate whether the specific SAI and S/L services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, and the attendance sheet.

16. Student Eleven's IEP requires SAI, health and nursing, adaptive physical education (APE), low incidence assistance, orthopedic consult, and intensive individual services (IIS) services; however, the DLP addresses only SAI. The District did not provide progress on the student's goals for SAI, health and nursing, APE, low incidence assistance, orthopedic, and IIS during DL. Although the attendance report indicates student participation in DL, the evidence does not indicate whether the specific SAI and related services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, and the attendance sheet.
17. Student Twelve's IEP requires SAI, specialized health care, and other health and nursing services; however, the DLP addresses only SAI. The District provided progress on the student's goals for only SAI, social/emotional, and S/L during DL. Although the attendance log indicates student participation in DL, the evidence does not indicate whether the specific SAI and related services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, the progress on goals report, and the attendance sheet.
18. Student Thirteen's IEP requires SAI, S/L, and OT services. The DLP addresses SAI and S/L and OT. The District provided progress on the student's goals for SAI, S/L, social/emotional, and health and nursing during DL. Although the attendance report indicates student participation in DL, the evidence does not indicate whether the specific SAI and related services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, the progress on goals report, and the attendance sheet.
19. Although the notes page of the DLP for Student Fourteen indicates the parent declined the services offered during the DLP meeting held on April 22, 2020, via telephone contact, the attendance records indicate the student participated in DL. The evidence, however, does not indicate whether the specific IEP services of SAI and individual counseling were provided. Evidence for this finding is based on the DLP notes page and the attendance sheet.
20. Student Fifteen's IEP requires individual and small group instruction and S/L services. The DLP addresses SAI and S/L. The District provided progress on the student's goals for SAI and S/L during DL. Although the attendance log indicates student participation in DL, the evidence does not indicate whether the specific services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, the progress on goals report, and the attendance sheet.
21. Student Sixteen's IEP requires SAI and S/L services; however, the DLP addresses only SAI. The District did not provide progress on the student's goals for SAI and S/L during DL. Although the attendance report indicates student participation in DL, the evidence does not indicate whether the specific SAI and S/L services in the

student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, and the attendance sheet.

22. Student Seventeen's IEP requires SAI, S/L, low incidence assistance, and deaf and hard of hearing (DHH) services; however, the DLP addresses only SAI and S/L. The District did not provide progress on the student's goals for SAI and S/L during DL. Although the attendance report indicates student participation in DL, the evidence does not indicate whether the specific SAI, S/L, low incidence, and DHH services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, and the attendance sheet.
23. Although the notes page of the DLP for Student Eighteen indicates the parent declined the services offered during the DLP meeting held on April 23, 2020, via Google Voice, the attendance records indicate the student participated in distance learning. The evidence, however, does not indicate whether the specific IEP services of SAI, S/L consult, and individual counseling, were provided. Evidence for this finding is based on the DLP notes page, and the attendance sheet.
24. Student Nineteen's IEP requires SAI, assistive technology (AT), S/L, IIS, behavior intervention services (BIS), and health and nursing services; however, the DLP addresses only SAI and OT. The District provided progress on the student's goals for SAI, S/L, OT, mobility, functional academics, and social/emotional, which are not all in the IEP, during DL. Although the attendance log indicates student participation in DL, the evidence does not indicate whether the specific SAI and related services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, the progress on goals report, and the attendance sheet.
25. Student Twenty's IEP requires SAI, low incidence, audiological, and S/L services; however, the service log from the county program addresses only SAI. The District provided progress on the student's goals for only SAI, S/L, and amplification during DL. Although the attendance information indicates student participation in DL, the evidence does not indicate whether the specific SAI and related IEP services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, and the attendance sheet.
26. Student Twenty-One's IEP requires SAI and S/L services, and the DLP addresses SAI and S/L. The District did not provide progress on the student's goals for SAI; and S/L during DL. Although the attendance log information indicates student participation in DL, the evidence does not indicate whether the specific SAI and S/L services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, and the attendance sheet.
27. Student Twenty-Two's IEP requires SAI, S/L consult, S/L, IIS, physical therapy (PT), specialized physical health care, BIS, health and nursing, and OT services; however,

the DLP addresses only SAI, PT, OT, and S/L. The District did not provide progress on the student's goals for SAI, S/L, S/L consult, IIS, PT, specialized physical health care, BIS, health and nursing, and OT during DL, though attendance information indicates student participation in DL. Although the attendance report indicates student participation in DL, the evidence does not show whether the specific SAI and related services in the student's IEP were provided. Evidence for this finding is based on the student's service page, the DLP, and the attendance sheet.

28. Student Twenty-Three's IEP requires SAI and S/L services; however, the DLP addresses only SAI. The District did not provide progress on the student's goals for SAI and S/L during DL. Although the attendance report indicates student participation in DL, the evidence does not indicate whether the specific SAI and S/L services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, and the attendance sheet.
29. Student Twenty-Four's IEP requires SAI, health and nursing, PT, OT, low incidence assistance, APE, IIS, and orthopedic consult services; however, the DLP addresses only SAI, OT, PT, and APE. The District did not provide progress on the student's goals for SAI, health and nursing, PT, OT, low incidence, APE, IIS, and orthopedic consult during DL. Although the attendance report indicates student participation in DL, the evidence does not indicate whether the specific SAI and related services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, and the attendance sheet.
30. Student Twenty-Five's IEP requires SAI, S/L, OT, AT, and IIS services; however, the DLP addresses only S/L, OT, and social/emotional. The District provided progress on the student's goals for SAI, S/L, community access, self-care, and social/emotional during DL. Though the attendance report indicates student participation in DL, the evidence does not indicate whether the specific SAI and related services in the student's IEP were provided. Evidence for this finding is based on the student's IEP service page, the DLP, the progress on goals report, and the attendance sheet.
31. The twenty-five students have DLPs that require certain IEP services to be provided through a combination of the following: learning packets; classroom dojo; Google Classroom; online platforms; and emails and phone calls/texts. Evidence for this finding is based on the 25 DLPs and the students' IEP service pages.

CONCLUSION

The District failed to meet the requirements of 34 *CFR* Section 300.323(c)(2). Beginning in March 2020, there was a period of time when District schools were closed and no services were being provided to any students. Once the District began providing DL to its students, the District was required to implement IEPs to the greatest extent possible. In some cases, the students' DLPs did not address required SAI or related services at

all. Although there was some evidence that the District provided some educational services to students with IEPs via DL, the evidence does not specifically demonstrate how those educational services addressed the particular SAI and related services called for in the IEPs. The evidence does not show the 25 reviewed students with DLPs were provided the services required in the students' IEPs to the greatest extent possible between March 2020 and August 7, 2020. **The District is out of compliance.**

REQUIRED CORRECTIVE ACTIONS

1. On or before November 6, 2020, 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 dated meeting notes.
2. On or before November 6, 2020, the District shall provide a memorandum to all District special education administrators and school site special education case managers and service providers, regarding 34 *CFR* Section 300.323(c)(2), and the findings of this case, with a directive to comply with the law. Acceptable evidence should include a copy of the memorandum and a list of recipients and titles and verification of distribution. Electronic distribution is acceptable.
3. On or before November 6, 2020, the District shall create a service log to be used by all District special education teachers and service providers to document how required services in each student's IEP were implemented during DL, since distance learning began after March 2020, including method, frequency, and duration as well as the service provider's signature. Acceptable evidence should include a copy of the service log, directions that the log is to be used for every student on an IEP receiving DL, and the method the District will use to monitor the completion of the logs.
4. On or before November 6, 2020, the District shall provide evidence it has created an overall district-wide plan for immediate monitoring and monthly reporting of service delivery for all District students with IEPs. The plan must include tracking of services by staff, oversight of service implementation by LEA administration, and assurance any services missed since distance learning began after March 2020, including missed services moving forward, are documented and addressed as make-up services. Acceptable evidence shall include a copy of the plan and CDE access to the reporting system, which may be electronic, on a monthly basis for each preceding month.
5. On or before December 31, 2020, the District shall conduct a meeting with the parent(s) of each of the 25 students identified in this investigation in order to identify one or two areas in which the student has the most need. The meeting may be conducted virtually or by phone. The District will also send the parent a summary of the meeting identifying the one or two areas to be the focus of needed compensatory services. Acceptable evidence should include a copy of the areas of need letter sent to the parent and proof of delivery.

6. On or before December 31, 2020 the District shall send the parent(s) of the 25 students an offer letter indicating that the District will provide up to 30 hours respectively of compensatory services by either district or nonpublic agency available service providers, for example: instruction/tutoring by a certificated teacher; speech and language by a therapist; OT, PT, or APE by a certificated provider; or other identified service by a staff person or service provider, selected by the parent in corrective action five, as compensation for service(s) missed. The letter will include the list of service providers available and request the parent to indicate how the parent would like their child to receive the service. Evidence should include a copy of the letter with proof of mailing.
7. On or before June 31, 2021, the District shall provide evidence the services selected by the parent, as indicated in corrective action five, have been completed. Acceptable evidence should include service logs indicating service provision by date, minutes or hours provided, and related service provider name, title, and signature.

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:

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:

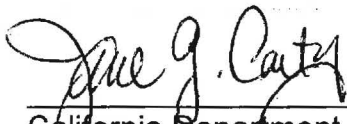
**Donna DeMartini, Education Administrator I
Focused Monitoring and Technical Assistance Unit Two
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814
916-445-4632 Phone
916-327-0326 Fax**

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