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November 20, 2020

*Via Certified Mail and E-mail ([speceducation@cde.ca.gov](mailto:speceducation@cde.ca.gov))*

California Department of Education  
Special Education Division, Complaint Resolution Unit  
1430 N Street, Suite 2401  
Sacramento, CA 95814-5901

**Re: Various Compliance Complaint, 34 C.F.R. § 300.153; 5 C.C.R. § 3202, On Behalf of [REDACTED] and All Similarly Situated Students Against the Sacramento City Unified School District**

Dear Sir or Madam:

Disability Rights California ("DRC") files this various compliance complaint on behalf of [REDACTED] a fourth grader in the Sacramento City Unified School District ("District"), and all similarly situated students in the District. The District has failed to complete special education assessments for [REDACTED] in the areas of academics and psychoeducation within the statutorily required 60-day timeline. The District was required to complete these assessments by November 2, 2020; however, as of the date of this Complaint, the District has not completed these assessments. As a result, the District is out of compliance with the law.

DRC further alleges that the District's noncompliance is systemic. On information and belief, the District has not completed any special education

assessments that require in-person assessment since March 2020.<sup>1</sup> During [REDACTED] most recent Individual Education Program (“IEP”) meeting on October 28, 2020, the District stated it was not conducting any in-person special education assessments because the District and the labor union had not reached an agreement regarding this issue. DRC files this various compliance complaint pursuant to the Individuals with Disabilities Education Act (“IDEA”) state complaint procedures, 34 C.F.R. §§ 300.151-153, and corresponding state procedures, 5 C.C.R. §§ 3200 *et seq.* The U.S. Department of Education (“USDOE”) has long maintained that state education agencies (“SEAs”) like the California Department of Education (“CDE”) must investigate complaints that raise systemic allegations. 71 Fed. Reg. 46605.

DRC recognizes that the District faces an unprecedented health crisis as a result of COVID-19. Still, the District must comply with federal and state special education laws, including conducting and completing special education assessments. The CDE and USDOE affirmed months ago that, despite the COVID-19 pandemic, school districts must provide a Free and Appropriate Public Education (“FAPE”) to students with disabilities in a manner that protects the health and safety of students and service providers. Many California districts have found a way to strike this balance. The District, which educates over 6,500 students with IEPs, still has not.

Through this Complaint, DRC, on behalf of [REDACTED] and similarly situated students, asks the CDE to (1) conduct a full and comprehensive investigation of this Complaint<sup>2</sup> treating the Complainant’s allegations as

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<sup>1</sup> On or about March 16, 2020, the District closed its schools due to the COVID-19 pandemic. The District later extended its school closures through the end of the 2019-2020 school year and then through the start of the 2020-2021 school year. As of the filing of this Complaint, District schools are closed. Since April 2020 to the present, the District has allegedly offered distance learning to its students.

<sup>2</sup> “[O]nce a State complaint is properly filed, it is solely the SEA’s duty to investigate the complaint, gather evidence, and make a determination as to whether a public agency violated the IDEA. It is not the burden of the complainant – or any other party – to produce sufficient evidence to persuade the SEA to make a determination one way or another. Rather, the SEA must independently review and weigh the evidence, generally by reviewing student and school records, data and other relevant information, and come to a determination supported by relevant facts.” OSEP, *Letter to Reilly* (2014), <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/acc-13-020871r-me-reillystatecomplaints.pdf>.

raising systemic violations;<sup>3</sup> (2) order the District to revise its special education policies, practices, and procedures to ensure the District complies with its obligations to conduct timely special education assessments under California Education Code §§ 56043(f)(1), 56344(a) during school closures due to COVID-19; (3) order the District to complete [REDACTED] outstanding assessments in the areas of academics and psychoeducation within 30 days, or alternatively, fund independent educational evaluations; (4) order the District to provide [REDACTED] with compensatory education services for the District's failure to timely assess her; (5) order the District to identify the names of any students with outstanding special education assessments that have not been completed within 60 days since April 2020; to conduct and complete those assessments within 60 days, barring any objection from student's parent or guardian; hold IEP meetings within 60 days to review those assessments; and, make individualized determinations as to whether and to what extent it will provide those students with compensatory services; and (6) order the District to report to CDE their determinations and actions regarding the proposed relief number five, where the CDE shall approve or adjust the amount of compensatory services the District must provide to the identified students, as appropriate.

## **I. Facts**

[REDACTED] is a fourth-grade student in the District.<sup>4</sup> [REDACTED] became eligible for special education under the category of Emotional Disturbance in March 2017, when she was in first grade; [REDACTED] is still eligible for an IEP. She currently attends a non-public school through an IEP with the District.

[REDACTED] is also a foster youth. [REDACTED] is friendly, caring, and creative. She enjoys taking care of her younger brother and playing softball.

[REDACTED] is her Foster Parent and Education Rights Holder. Declaration of [REDACTED] in support of this Various Compliance Complaint is attached hereto as **Exhibit B**.

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<sup>3</sup> See 71 Fed. Reg. 46605 ("An SEA is required to resolve any complaint that meets the requirements of § 300.153, including complaints that raise systemic issues[.]").

<sup>4</sup> Attached as Exhibit A is the Complainant contact information pursuant to 5 C.C.R. § 3202(b)(4).

*a. The District Has a History of Failing to Conduct and Complete Timely Assessments of [REDACTED]*

Similar to the allegations set forth in this Complaint, the District has previously failed to conduct and complete timely assessments of [REDACTED]. For example, just last school year, the District failed to timely complete its psychoeducational assessment of [REDACTED] and hold an IEP meeting to review this assessment.

By way of background, during [REDACTED] annual IEP meeting on May 29, 2019, [REDACTED] requested that the District assess [REDACTED] for Dyslexia. The May 29, 2019 IEP is attached hereto as **Exhibit C**; see Exhibit B. Jeri Chase-DuCray, a Program Specialist with the District, stated that the District could not assess [REDACTED] for Dyslexia but that the District could instead assess [REDACTED] phonological skills. Exhibit C.

The District provided [REDACTED] with an Assessment Plan on or around June 11, 2019 to assess [REDACTED] in the areas of: (1) Academic Achievement; (2) Psycho-motor Development; (3) Intellectual Development; (4) Health; (5) Social Emotional/Behavior; and (6) Functional Behavior Assessment. The June 2019 Assessment Plan is attached hereto as **Exhibit D**; see Exhibit B. [REDACTED] signed and returned this Assessment Plan to the District on June 14, 2019. Exhibit B; Exhibit D.

On September 13, 2019, the District allegedly completed [REDACTED] psychoeducational assessment. The September 2019 assessment report is attached hereto as **Exhibit E**; see Exhibit B. According to this assessment, [REDACTED] demonstrated poor phonological awareness, scoring in the 6<sup>th</sup> percentile. Exhibit E. However, this assessment was incomplete because it did not include any academic assessments necessary to identify whether [REDACTED] had a specific learning disability. Exhibit E.

Moreover, the District did not provide [REDACTED] a copy of the psychoeducational assessment report until January 16, 2020<sup>6</sup> and never held an IEP meeting to review the assessment. Exhibit B.

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<sup>5</sup> Complainant presents facts outside of the one-year statute of limitations for foundational purposes only.

<sup>6</sup> In October 2019, [REDACTED] experienced a temporary change in her foster care placement, which changed her residency to another school district. [REDACTED] returned to the District on

The District held ██████ annual IEP meeting on June 1, 2020. The District did not have a copy of its September 2019 psychoeducational assessment and therefore could not address ██████ phonological awareness and ██████ concern that ██████ may have Dyslexia. The June 1, 2020 IEP is attached hereto as **Exhibit F**. As a result, more than one year after ██████ expressed concern that ██████ may have Dyslexia, the District was still unable to adequately assess whether ██████ has a learning disability, such as Dyslexia. Since ██████ experienced significant disruptions to her education since the September 2019 psychoeducational assessment, ██████ agreed that the District should conduct a new psychoeducational assessment to better understand ██████ present levels of performance and disability-related needs.

*b. The District Failed to Timely Complete ██████ Academic and Psychoeducational Assessments Pursuant to the June 1, 2020 Assessment Plan*

On June 1, 2020, the District presented ██████ with a new Assessment Plan for ██████ to be assessed in the following areas: (1) Academic Achievement; (2) Intellectual Development; (3) Social Emotional/Behavior; and (4) Functional Behavior Assessment. The June 2020 Assessment Plan is attached as **Exhibit G**; see Exhibit B.<sup>7</sup>

█████ signed and returned the Assessment Plan to the District on June 26, 2020. Exhibit B; Exhibit F. The District was required to complete the assessments by November 2, 2020, but as of the date of this Complaint, the District has not completed the academic and the psychoeducational assessments. Exhibit H; see Exhibit B.

*c. The District's Failure to Timely Complete ██████ Assessments is Systemic and Impacts Similarly Situated Students in the District*

During ██████ October 28, 2020 IEP meeting, Becky Bryant, the Sacramento City Unified Special Education Local Plan Area ("SELPA") Director, stated that the District was unable to reach an agreement with its

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December 2, 2019, but, the District did not have a placement for her until February 5, 2020. See Exhibit B.

<sup>7</sup> In this Complaint, ██████ challenges only the District's failure to complete the academic and psychoeducational assessments. She consents to the District conducting the functional behavior assessment at a later date.

labor union to provide in-person special education assessments, including assessments in the areas of academics and psychoeducation. The October 28, 2020 IEP Amendment is attached hereto as **Exhibit H**, and an audio recording of the October 28, 2020 IEP meeting is attached *via email only* as **Exhibit I**.<sup>8</sup> As a result, the District is unable to comply with their obligations to complete timely special education assessments for all special education students, including [REDACTED].

The District's failure to conduct *any* special education assessments is further corroborated by the District's own proposal to the Sacramento City Teachers Association ("SCTA"), a labor union of teachers and staff<sup>9</sup> within the District. On October 14, 2020, Jorge Aguilar, the Superintendent for the District, submitted a proposal to the SCTA to conduct in-person special education assessments. Superintendent Aguilar's October 14, 2020 Letter to SCTA Regarding In-Person Assessments for Students with Disabilities is attached hereto as **Exhibit J**.

In this letter, Superintendent Aguilar acknowledged that the District still had an obligation to conduct in-person special education assessments – "We are also acutely aware that our District, like all local educational agencies across the state, are not exempt from conducting these assessments while our students are attending school in a distance learning model." Exhibit J. Superintendent Aguilar warned that the District's failure to conduct these assessments would result in (1) the District "being out of compliance with required procedures" and (2) "potentially impeding a student's ability to achieve the meaningful progress to which students with disabilities are entitled." Exhibit J. Indeed, Superintendent Aguilar admitted that as of October 9, 2020, the District has approximately 325 initial assessments that were overdue because of the District's failure to conduct these special education assessments.<sup>10</sup> Exhibit J. That figure does not even capture the

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<sup>8</sup> Becky Bryant's statements regarding the District's inability to conduct in-person assessments begin at 7:25.

<sup>9</sup> SCTA represents "all full and part-time teachers and substitutes, adult education, special education, pre-school and children's centers, school counselors, psychologists, nurses, social workers, librarians, and many others in the" District." Sacramento City Teachers Association, About Us, available at: <https://sacteachers.org/about/>.

<sup>10</sup> Concerningly, Superintendent Aguilar proposed to reduce the number of overdue initial assessments by just twenty percent per month, potentially only completing these assessments in the Spring of 2021. Exhibit J. This plan does not begin to address the backlogged assessments for students who, like [REDACTED] are already eligible for special education.

number of outstanding assessments for students who, like [REDACTED], already qualify for special education. Thus, the District, through admissions of its administrators and representatives, has confirmed that the District is not conducting any in-person special education assessments.

*d. Federal and State Guidance Require School Districts to Conduct and Complete Special Education Assessments Despite COVID-19*

Federal and state guidance make clear that the IDEA and its implementing state law are still in effect – school districts must conduct special education assessments, and those assessments may be conducted in-person. COVID-19 does not excuse the District’s failure to conduct and complete in-person special education assessments for [REDACTED] and other students with disabilities within the District.

On March 21, 2020, USDOE issued a supplemental fact sheet that made clear the IDEA was still in effect.<sup>11</sup> On April 27, 2020, Secretary DeVos of USDOE reaffirmed this position and declined to recommend that Congress waive the FAPE requirements of the IDEA.<sup>12</sup>

While the California Legislature enacted Senate Bill 117 to give districts some flexibility with providing Assessment Plans,<sup>13</sup> it did not give flexibility for *completing* special education assessments within 60 days pursuant to Cal. Educ. Code §§ 56043(f)(1), 56344(a).<sup>14</sup> Moreover, in September 2020, the CDE issued “Special Education Guidance for COVID-19”, which reaffirmed that school districts, like the District, must comply with state and federal special education timelines.<sup>15</sup> According to CDE guidance, school

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<sup>11</sup> USDOE, *Supplemental Fact Sheet Addressing Risk of COVID-19 in Preschool, Elementary & Secondary Schools* (Mar. 21, 2020), available at: <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>.

<sup>12</sup> USDOE, *Secretary DeVos Reiterates Learning Must Continue for All Students, Declines to Seek Congressional Waivers to FAPE, LRE Requirements of IDEA* (Apr. 27, 2020), available at: <https://www.ed.gov/news/press-releases/secretary-devos-reiterates-learning-must-continue-all-students-declines-seek-congressional-waivers-fape-lre-requirements-idea>.

<sup>13</sup> Sen. Bill 117, § 8(a) (2019-20 Reg. Sess.), available at: [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=20192000SB117](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=20192000SB117).

<sup>14</sup> In September 2020, Senate Bill 820 reinstated all timelines that had been impacted by Senate Bill 117 as of July 1, 2020.

<sup>15</sup> California Department of Education, *Special Education Guidance for COVID-19* (Sept. 30, 2020), available at: <https://www.cde.ca.gov/ls/he/hn/specialedcovid19guidance.asp> (“LEAs must



districts, like the District, are required to conduct all special education assessments, including initial and triennial assessments.<sup>16</sup> Moreover, CDE affirmed that “[c]urrent guidance from the California Department of Public Health and the CDE does not expressly prohibit in-person assessments.”<sup>17</sup>

## II. Allegations

██████████ alleges that the District has unlawfully delayed ██████████ special education assessments in the areas of academics and psychoeducation, in violation of federal and state special education laws. This procedural violation infringed on her ability to participate in educational decisions regarding ██████████ and denied ██████████ a FAPE.<sup>18</sup>

██████████ further alleges that the District’s violation of federal and state special education laws are systemic. The District is refusing to complete *any* in-person special education assessments until the District and the labor union reach an agreement to conduct in-person assessments. As a result, the District’s failure to complete timely in-person special education assessments negatively impacts hundreds of District students. The District cannot, and will not, appropriately serve these students with outstanding assessments because the District does not have up-to-date assessments that identify these students’ present disability-related needs. The CDE must investigate and order systemic remedies as appropriate. See 34 C.F.R. § 300.151(b)(2) (“In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA...must address...[a]ppropriate future provision of services for all children with disabilities”).

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adhere to all state and federal special education timelines, including those related to assessments and access to educational records.”).

<sup>16</sup> *Id.* (“The U.S. Department of Education (USDOE) has not waived the requirement for LEAs to conduct a full and individual initial evaluation for a student suspected of having a disability, nor has the USDOE waived requirements relating to triennial assessments.”).

<sup>17</sup> *Id.*

<sup>18</sup> USDOE’s longstanding policy is that SEAs must resolve state complaints that allege a denial of FAPE. “If a parent believes that the program offered or provided to his or her child with a disability does not constitute FAPE and files a State complaint instead of a due process complaint, the SEA must resolve the State complaint.” OSERS, *Dispute Resolution Procedures under Part B of the IDEA* at 19 (2013), available at: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf> (accessed November 17, 2020).



*1. The District Failed to Conduct [REDACTED] Special Education Assessments in the Areas of Academics and Psychoeducation Within 60 Days, Cal. Educ. Code §§ 56043(f)(1), 56344(a)*

The California Education Code requires districts to complete special education assessments and convene IEP team meetings to review these assessments within 60 calendar days of receiving parental consent to the assessment plan. Cal. Educ. Code §§ 56043(f)(1), 56344(a); see also 34 C.F.R. § 300.303. This timeline is tolled for breaks in excess of 5 schooldays. Cal. Educ. Code §§ 56043(f)(1), 56344(a).

The District presented [REDACTED] with an Assessment Plan on June 1, 2020. Exhibit B. [REDACTED] signed and returned this Assessment Plan on June 26, 2020. Exhibit B; Exhibit G. The District was on summer break when [REDACTED] returned the Assessment Plan. The 2019-2020 District calendar is attached hereto as **Exhibit K**. Therefore, the District should have completed [REDACTED] assessments 60 days from September 3, 2020, when the District started the 2020-2021 school year, or by November 2, 2020. The 2020-2021 District calendar is attached hereto as **Exhibit L**.

To date, the District has failed to complete [REDACTED] academic and psychoeducational assessments.<sup>19</sup> During [REDACTED] most recent October 28, 2020 IEP meeting the Sacramento City SELPA Director, Ms. Bryant, stated that the District was unable to complete those assessments because the District had not reached agreement with the labor union to conduct in-person assessments. Exhibit H; Exhibit I.

*2. The District Failed to Conduct Special Education Assessments of Similarly Situated Students in the District Within 60 Days, Cal. Educ. Code §§ 56043(f)(1), 56344(a)*

As noted above, state law requires districts to conduct assessments and convene IEP team meetings to review assessments within 60 calendar days of the school district's receipt of the parent's consent to the assessment plan. Cal. Educ. Code §§ 56043(f)(1), 56344(a); see also 34 C.F.R. § 300.303.

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<sup>19</sup> See footnote 7, *supra*.

The District's failure to conduct [REDACTED] assessments within 60 days is a systemic failure impacting similarly situated students with disabilities within the District. As discussed above, the District is unable to complete any special education assessments in-person, including assessments in academics and psychoeducation, because the District has not reached an agreement with the labor union to provide in-person assessments. Exhibit H; Exhibit I; Exhibit J. The District therefore cannot comply with its obligation to complete special education assessments within 60 days of parental consent to an assessment plan for any assessments that must be conducted in-person. Such delays will have serious, negative ramifications for students with disabilities because the District will not know their present levels of performance, in order for IEP teams to develop and offer appropriate goals, supports, and services.

### **III. Proposed Resolutions**

1. The CDE shall conduct a full and comprehensive investigation of this Complaint in accordance with the Office of Special Education Program's *Letter to Reilly*<sup>20</sup> and issue appropriate corrective actions regarding all relevant policies and practices of the District. The CDE investigation shall treat the Complainant's allegations as raising systemic violations. See 71 Fed. Reg. 46605 ("An SEA is required to resolve any complaint that meets the requirements of § 300.153, including complaints that raise systemic issues[.]").
2. The CDE shall order the District to revise its special education policies, practices, and procedures to ensure the District complies with its obligations to conduct timely assessments under California Education Code §§ 56043(f)(1), 56344(a) during school closures due to COVID-19.
3. The CDE shall order the District to either complete [REDACTED] outstanding assessments in the areas of academics and psychoeducation within 30-days or fund these assessments as independent educational evaluations by a provider selected by [REDACTED]  
[REDACTED]

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<sup>20</sup> See footnote 2, *supra*.

4. The CDE shall order the District to provide [REDACTED] compensatory services as appropriate. The CDE shall order the District to report to CDE the amount of compensatory services it will provide to [REDACTED] and the basis for this determination. The CDE shall approve or adjust the amount of compensatory services the District must provide [REDACTED] as appropriate.
5. Where appropriate, the CDE shall order the District (1) to identify the names of any students who have special education assessments that have not been completed within 60 days since April 2020 as well as the type of outstanding special education assessment (i.e., psychoeducation, speech and language, etc.), (2) to conduct and complete any identified outstanding special education assessment(s) that has/have not been completed within 60 days, barring any objection from student's parent or guardian to the District conducting those outstanding assessments in-person, (3) to hold IEP meetings within 60 days to review those completed special education assessments with IEP teams, and (4) to make individualized determinations as to whether and to what extent it will provide compensatory services to each student for whom the District has failed to complete timely special education assessments due to their inability to conduct in-person assessments from April 2020 through present.
6. The CDE shall order the District to report to CDE (1) the names of the students who have not had special education assessments completed within 60 days since April 2020 as well as the type of outstanding special education assessment (i.e., psychoeducation, speech and language, etc.), (2) the date by which the District completed the identified outstanding special education assessments and held an IEP meeting to review the assessments, or by which the student's parent or guardian objected to the District conducting those outstanding assessments in-person, and (3) as appropriate, the District's determinations as to whether and to what extent it will provide compensatory services to each student for whom the District has failed to complete timely special education assessments due to their inability to conduct in-person assessments from April 2020 through present. The CDE shall approve or adjust the amount of

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compensatory services the District must provide these students, as appropriate.

#### **IV. Conclusion**

Thank you in advance for your attention to this complaint. We look forward to receiving notice of the assigned investigator and reserve the right to submit additional documentation. See 5 C.C.R. § 4663(b). We also ask that the investigator conduct a phone interview with [REDACTED]

Finally, per OSERS COVID-19 guidance on IDEA dispute resolution procedures,<sup>21</sup> please notify DRC in writing if you determine that “exceptional circumstances” exist to warrant extending the 60-day timeline.

Please contact me with any questions or concerns.

Sincerely,



Lauren Lystrup

Enclosures

CC: Kyle Raney, Counsel for SCUSD  
Via Email Only: [kraney@lozanosmith.com](mailto:kraney@lozanosmith.com)

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<sup>21</sup> USDOE, *Part B Dispute Resolution in COVID-19 Environment Q-&-A Document* (June 22, 2020)  
<https://sites.ed.gov/idea/idea-files/part-b-dispute-resolution-in-covid-19-environment-q-a-document-june-22-2020/#Q2>