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March 16, 2015

***Via Facsimile to 916-327-3704 (Complaint only) and FEDEX (Complaint and Exhibit Packet)***

California Department of Education

Special Education Division, Procedural Safeguards Service

1430 “N” Street, Suite 2401

Sacramento, CA 95814-5901

**Re: BR, GE, GJ, LI, SA, SL, TA, TK, VG, ZE, and a Class of Similarly Situated Students Attending Oakland Unified School District Schools (including Charter Schools)**

Dear Sir or Madam:

Enclosed is a various compliance complaint that our office is filing on behalf of ten named students and all similarly situated students within the Oakland Unified School District (OUSD) against OUSD. This is also a complaint against the California Department of Education (CDE) for its failure to monitor and supervise OUSD, under CDE’s duty to ensure students with disabilities a free appropriate public education in the least restrictive environment pursuant. In addition to direct intervention and investigation by the California Department of Education (CDE), we are requesting that CDE provide an independent negotiation process, technical assistance activities to OUSD, and corrective action to achieve compliance, in accordance with 34 C.F.R 300.151-153.

This complaint alleges serious, engrained systemic deficiencies that result in district-wide noncompliance with the Individuals with Disabilities Education Act (IDEA), its implementing regulations, and corresponding California law. These deficiencies deprive the ten named students and other students with disabilities of a free, appropriate public education. In addition to requesting relief for individual OUSD students, we are seeking comprehensive systemic relief to be determined through a structured negotiation process and/or a stakeholder driven process.

State and Federal law require that this case be investigated and resolved within 60 days of the filing of this complaint.[[1]](#footnote-1) While we are committed to ensuring a timely resolution to this matter, we are equally committed to ensuring that each of these claims is fully investigated by your staff and that there is the opportunity to explore resolutions through a structured negotiation process. We understand that given the extensive nature of the claims and the substantial documentation that we have provided, it may be difficult to resolve this case through structured negotiations within sixty days. If your office believes that this complaint cannot be adequately investigated or resolved through medication in the legally mandated time frame, we invite you to contact our office so that we can discuss the possibility of a limited waiver of the sixty day time frame. While we are not amenable to an open-ended time period, we are open to working with your office to determine a reasonable period of time to conduct this investigation and to engage in a structured negotiation process.

Thank you in advance for your attention to this letter and commitment to ensuring that all students with disabilities receive their legally mandated right to a free, appropriate, public education.

Sincerely,



Maggie Roberts

Associate Managing Attorney

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**Re: BR, GE, GJ, LI, SA, SL, TA, TK, VG, ZE, and a Class of Similarly Situated Students Attending Oakland Unified School District Schools (including Charter Schools)**

Dear Sir or Madam:

Disability Rights California (DRC) is filing this various complaint against Oakland Unified School District and Oakland Unified School District Special Education Local Planning Area (hereafter referred to collectively as “OUSD”) on behalf of BR, GE, GJ, LI, SA, SL, TA, TK, VG, ZE and all other students attending Oakland Unified School District schools (including charter schools) who are eligible for special education services (hereafter collectively referred to as “Students”).[[2]](#footnote-2)

Disability Rights Californiais a non-profit federally funded disability rights organization, working since 1978 to advance the human and legal rights of Californians with disabilities. Disability Rights California is the federally funded protection and advocacy system in California.

Through this complaint, DRC is providing the California Department of Education (hereafter referred to as “CDE”) with notice that there are system-wide practices and policies within OUSD that result in wholesale noncompliance of the rights of children with disabilities under the Individuals with Disabilities Education Act and its implementing regulations (hereafter collectively referred to as “IDEA”). This systemic noncompliance demands an immediate and vigorous response from CDE in the form of investigation, technical assistance, the development and oversight of a comprehensive, systemic multi-year corrective action plan.

This is also a complaint against CDE for its failure to ensure the provision of a free appropriate public education in violation of state and federal law. *See, e.g*. 20 U.S.C. 1400 §§ *et seq*., 1412(a)(11)(A)(i); 1416; 34 CFR §§ 300.101; Cal. Code of Regulations, title 5, §§ 4600 (a),(d); 4650(a)(7).[[3]](#footnote-3)[1]

# Jurisdiction for Complaint

This complaint alleges individual and systemic violations of IDEA including the failure to develop, review, revise, and comply with IEPs in accordance with IDEA, and the failure to implement settlement agreements arising from due process procedures and CDE corrective action plans. In addition, this complaint alleges facts that indicate that the welfare of a group of children is threatened. Therefore, under the California Uniform Complaint Procedures, direct intervention and investigation by the CDE is required. 5 Cal. Code of Regs, §§ 4650(a)(viii)(B), (C), (D), and (E).

# Introduction

For the past two years, the Bay Area Office of DRC has received an increase in calls from OUSD families seeking help in accessing appropriate educational services for their children with disabilities. These calls reveal that OUSD is engaging in patterns and practices of not complying with the Individuals with Disabilities Education Act and its implementing regulations and these practices are preventing students with disabilities from benefitting from education and from having access to education that is equal to their non-disabled peers.

As a result of these calls for assistance, DRC’s Bay Area Office has primarily focused its special education advocacy resources in the past two year on students within OUSD. These efforts have included: obtaining and reviewing records related to the provision of special education at OUSD pursuant to the Public Records Act Request; meeting with numerous other attorneys and agencies who advocate on behalf of OUSD students about the numbers and types of problems they are seeing; providing counsel and advice to numerous parents and guardians of OUSD students with disabilities; filing or assisting parents in filing compliance complaints against OUSD; attending IEPs of OUSD students; reviewing reports related to provision of special education services at OUSD; representing OUSD clients in five due process proceedings (all of which resulted in settlement agreements); and providing training on self-advocacy to parents of OUSD students with disabilities.

Information we gathered from these activities reveals the presence of engrained systemic problems within OUSD related to the provision of special education that result in wholesale non-compliance with the spirit, intent and specific provisions of IDEA. These systemic problems include, but are not limited to:

* Policies and processes for hiring, recruiting, and compensating special education teachers and personnel that are not reasonably calculated to result in, and do not result in, sufficient qualified staff to develop and revise IEPs to meet the needs of students’ with disabilities and to implement IEPs, CDE corrective actions and due process hearing settlement agreements;
* Policies and processes for training, monitoring, evaluating and supervising special education teachers and personnel that are not reasonably calculated to result in, and do not result in, personnel that are equipped to develop, revise and implement IEPs according to IDEA and to understand their legal obligations towards such students under IDEA;
* A critical lack of staff to provide interpretation and translation services to the non-English language proficient families of students with disabilities resulting in wholesale violations of IDEA related to parents’ rights to understand the IEP process and to have documents and notices related to special education in their primary language;
* An engrained practice of making placement and educational decisions based on OUSD’s administrative convenience and based on the limited and inadequate special education programs and staff that are readily available, rather on the unique disability related needs of students with disabilities;
* A lack of policy and practices to ensure that parents are involved in developing and revising the IEP in a meaningful way;
* A lack of policies and practices in place, or even an allocation in its current budget, to provide individualized accommodations, modifications, and supports, including adequate curriculum modification and behavioral support, to students with disabilities placed in regular education;
* A lack of a plan, policies, or practices to adequately address the needs of students with mental health or behavioral challenges that interfere with learning or that limit their ability to benefit from education other than placing them in segregated environments; and
* A lack of a system and plan to ensure accountability for developing, revising, and implementing IEPs in compliance with IDEA and for fully complying with settlement agreements and corrective action plans.

Although the systemic inadequacies in OUSD’s special education system appears to impact all students with disabilities, on information and belief, OUSD’s systemic noncompliance with IDEA has a disparate impact on students of color, particularly on Latino students whose families are not proficient in English.

Disability Rights California has sought relief on behalf of students with disabilities for the systemic problems at OUSD that result in widespread noncompliance with IDEA. Efforts to resolve systemic or individual issues with OUSD directly or through the fair hearing process have been ineffective. Specifically, in 2014 DRC filed requests for due process claims on behalf of two Latino OUSD students that included systemic claims needed to be addressed to avoid repeated violations of the named student’s rights and those of similarly situated students. The Office of Administrative Hearings (OAH) dismissed these systemic claims for lack of jurisdiction upon OUSD’s motion. Each of the five due process hearings complaints DRC filed in the past two years on behalf of OUSD students were resolved favorably for the student through the due process mediation process; however, in every case OUSD has substantially failed to comply with these settlement agreements, despite coordinated efforts from DRC attorneys and advocates to monitor and ensure compliance with these agreements. OUSD appears to have no system of accountability at all for ensuring compliance with settlement agreements.

The ten named students are all OUSD students and are filing this complaint with the CDE seeking (1) compensatory educational services for themselves and other similarly situated students, (2) systemic remedies to redress the underlying problems that result in institutional noncompliance with IDEA, and (3) a long-term monitoring and technical plan to ensure that these longstanding systemic problems do not recur. These students are filing this complaint, instead of immediately filing a lawsuit in federal or state court, to provide CDE with notice of the extent of the problems within OUSD and to give CDE and OUSD an opportunity to fix these problems. Among other systemic remedies, complainants seek assistance from the state in the form of providing a mediation process so that OUSD, CDE, and complainants can participate in structured negotiaton process to try to resolve at least some of the issues in this complaint, a OUSD and detailed technical assistance activities and oversight activities by CDE to assist OUSD in developing and implementing a plan to redress these systemic deficiencies.

# Background Facts

The dropout rate of high school students with IEPs in OUSD is 24.5%, approximately 60% percent higher than the already high 15% drop rate out for students with disabilities in California.[[4]](#footnote-4) At least equally alarming, only 13.5% of OUSD students who had an IEP and are no longer in secondary school are either in higher education or are competitively employed (as opposed to the 65% target set by CDE).[[5]](#footnote-5)

Underlying these poor outcomes are inadequate and inequitable systemic policies and practices for educating students with disabilities that result in extensive non-compliance with IDEA and its implementing regulations and state counterpart. These policies and practices have been summarized in reports by independent reviewers who have analyzed OUSD’s special education programs over the years.

In 2013 OUSD contracted with Marilyn K. Shepherd, PhD. to conduct a review of its special education program. Shepherd’s June 2013 report reveals a number of systemic problems within OUSD which are adversely impacting OUSD special education students and their access to a free appropriate education in the least restrictive environment. These problems were generally the same as those identified by five experts from the Fiscal Crisis Management Assistance Team who analyzed OUSD’s special education program in 2007.[[6]](#footnote-6) [[7]](#footnote-7) The issues identified by Dr. Shepherd include the following:

* Due to a lack of human resources and budget oversight, a lack of policy development, and poor communication between the Department, Human Resources and school site administrators, the Department has critical staff shortages in many positions, but especially in paraprofessionals and psychologist positions, and as a result cannot meet the academic and behavior needs of its students with disabilities.
* The special education budget does not allocate funds to cover basic needs including: staff development to prepare department staff to meet the needs of students with disabilities in the areas of classroom instruction, curricula development, and behavior planning.
* The program budget for special education services is not managed in a cost effective way. For example, the school district spends substantial funds on highly paid outside contractors for positions such as speech therapists, because they are unable to hire sufficient numbers of appropriately trained staff to fill vacancies or deliver services due to the district’s low salary scale. In addition, the school is not maximizing billing options to generate mental health funds.
* Professional learning for teachers, paraprofessionals and other staff is virtually nonexistent regarding student instruction. Professional learning only occurs as a knee-jerk response to state and federal compliance issues.
* There is no accountability for implementation of approved special education curriculum and the special education curriculum is inconsistently implemented across the school district.
* Instructional materials for students with disabilities are lacking both common core and other specialized curriculum for both teachers and students.
* The Program for Exceptional Children Department suffers from a lack of organizational structure, written policies, clear roles and responsibilities for department staff and a monitoring processes to effectively manage the Department’s operations.
* Failure to comply with state and federal mandate over the years has resulted in threats of sanctions by CDE and has consumed many staff hours of attention. Accountability systems, adequate oversight and professional learning are critical to ensure that compliance issues are resolved.
* CASEMIS data reviewed by the California Department of Education reveals that the School District was noncompliant in 1,448 cases for the 2012-2013 school year.
* A high number of students are placed in segregated mental health programs because the School District does not have the programs and services to meet the mental health and behavior needs of students in less restrictive settings.
* Written special education program descriptions, curricular design and structures are lacking which impacts the ability to offer a consistent continuum of instruction programs and services.

The problems identified by Dr. Shepherd have continued based on reports received by DRC, Disability Rights Educational Defense Fund, and other advocacy agencies and as evidenced by the problems the named students in this complaint are encountering.

The systemic problems within OUSD have an adverse impact on all students with disabilities, however, they particularly impact students of color, many of whom are non-native English speakers. More than 48% of the students in the School District are non-native English speakers. Approximately 33% of its students come from Spanish speaking households. Because of the high number of students from Spanish speaking families, the School District is required to translate all correspondence to these families into Spanish. As Dr. Shepherd notes, there is a critical lack of staff within OUSD who can translate documents. Parents who are not English language proficient are routinely sent letters, prior written notices, assessment plans and other documents critical to their understanding of their child’s IEP process in English. OUSD’s website contains specific publications for parents of students with disabilities, including procedural safeguards and a parent handbook. All of these parent directed publications are posted in English only. Non-English proficient parents lack access to the most basic information related to the development and implementation of their child’s IEPs and as a result, these IEP are often not designed or revised to meet the child’s needs.

Nine of the ten named petitioners in this state complaint are Latino, the tenth student is African American. The parents of these students have struggled unsuccessfully for years to get their children a free appropriate education. Even with the efforts of their parents and legal advocacy from DRC attorneys and advocates and other advocates, OUSD has continuously failed to comply with numerous provisions of IDEA with respect to these students’ IEPs, resulting in substantial loss of educational benefit to these children. DRC believes based on its conversations with other parents and advocates that the facts of these cases are typical of similarly situated students at OUSD.

# Individual Complainants

BR

BR is a 17-year-old Latino student.[[8]](#footnote-8) He attends 11th grade at a charter school. He has qualified for special education under the criteria for Specific Learning Disorder (“SLD”) and Other Health Impairment (“OHI”) since 2009. He also has speech and language and mental health needs. This is the third year in a row that OUSD has not implemented BR’s IEP due to lack of adequate special education staffing.

In June of 2014, BR filed a due process complaint/request for hearing against OUSD.[[9]](#footnote-9) The issues in the complaint included OUSD’s failure to evaluate him in all areas of suspected disability, failure to develop an IEP to meet his needs, and failure to implement his IEP for the past two years.

On October 25, 2014, OUSD and BR’s parents entered into a settlement agreement during OAH mediation proceedings. The agreement requires OUSD to provide the following special education services: Five hundred minutes a week of RSP instruction; a monthly update to OUSD and BR’s parent from the RSP teacher, 60 minutes a week of consultation/mentoring to BR’s RSP teacher; 60 minutes a month of speech and language services; and the following mental health services: a 30 minute a week social/emotional check-in with the RSP teacher and a mental health assessment[[10]](#footnote-10) with 1.5 hours of direct diagnostic counseling. This agreement also provides for the following assessments: speech/language mental health, functional behavior, vocational and an assistive technology, to be reviewed in an IEP meeting held by January 30, 2015.

Pursuant to the settlement agreement, OUSD and BR’s parent executed an IEP addendum, dated October 30, 2014, that incorporated the special education services agreed upon in the settlement agreement. (The IEP addendum failed to include the monthly update to the parent and the district from the RSP teacher in this addendum in violation of the settlement agreement, and OUSD has never complied with this provision.)

OUSD has failed to comply with the October 30, 2014 IEP addendum in many respects, including not providing: speech services and increased RSP services in a timely manner; 30 minute weekly social/emotional check-in; the full amount of RSP academic services, or the full amount of weekly mentoring consultation/services to the RSP’s teacher. BR’s current IEP shows that OUSD still does not have the resources to provide at least 40 minutes a week of the RSP services required by the October 30, 2015 addendum. OUSD also failed to provide timely completion of and/or IEP team review of assessments required by the settlement agreement, including in the areas of mental health, speech, and functional behavioral (FBA).

The IEP currently proposed by OUSD does not contain 30 minutes of mental health-related RSP check in that was in both the October 30, 2014 IEP addendum and the settlement agreement. OUSD has never explained why it proposed dropping this service, and BR’s parent has never agreed to stop this service. The January 15, 2015 IEP draft contains statements from his teachers that he continues to struggle with anxiety and some behavioral issues. The current proposed IEP contains one behavioral goal but it does not include a behavioral support plan or other behavioral supports and strategies, despite recommendations in his January 15, 2015 FBA for an incentive system and other strategies. .

OUSD has not offered to provide any compensatory services for the failure to timely provide speech services and increased RSP academic services, and the failure to provide 30 minutes a week of social emotional check-in by the RSP teacher, and 60 minutes a week of consultation services to BR’s RSP teacher, despite repeated requests by BR’s parent for such services.[[11]](#footnote-11)

BR’s mother’s primary language is Spanish and she is not English Language Proficient (“ELP”). At the January 15, 2015, OUSD did not have a translator present at the meeting; the RSP teacher provided partial interpretation. This interfered with both BR’s parents’ and the RSP teacher’s ability to understand and participate in the meeting.

BR’s parent did not sign the IEP offered at the January 15, 2015 meeting because it did not conform to the October 15, 2015 settlement agreement and did not address BR’s academic and functional needs. The January 15, 2015 IEP meeting was continued to February 17, 2015 because the district had not completed all of the assessments. This meeting was cancelled at the last minute by OUSD and was rescheduled to March 24, 2015, despite BR’s parents’ objections to this delay.

OUSD has not sent BR’s parent a prior written notice (PWN) with respect to its refusal to implement the services in the October 30, 2015 IEP addendum or its refusal to provide compensation for the delay in services.

GE

GE is a 15-year-old student who attends high school in OUSD.[[12]](#footnote-12) He has a history of inattention in school. The district has diagnosed him with a specific learning disability with deficits in auditory processing. GE has a history of mental health concerns, and his psychological evaluator in 2013 indicated that she was extremely concerned with GE’s obsession with aliens, death, and being watched. Despite this, he has never received a mental health assessment from the district and he still does not receive any mental health services. GE’s parent does not know what is currently being offered through his IEP. She attended an IEP meeting with him on February 20, 2015, but was not provided a translator despite two requests for one. Therefore, her ability to participate was minimal. Additionally, she was not provided with a copy of the IEP in English or Spanish when she left and to date has not received a copy of his IEP. AS a result, she does not know what her son’s IEP contains.

GE’s IEPs have never contained appropriate mental health services, social skills training or supports, accommodations to address his auditory processing deficits, or direct services to address his behavioral needs.

OUSD IEP team members have put the blame on GE for his lack of progress on his goals or in the general education curriculum. They have not offered not offered or even considered any additional or alternative services to address these issues. GE continues to fall behind academically and his social skills continue to decline.

GJ

GJ is a 17-year-old who currently is an 11th grade student at a nonpublic school. [[13]](#footnote-13) He qualifies for special education under the categories of SLD (primary) and emotional disturbance (secondary.)

On April 30, 2014, GJ’s attorneys and the school district executed a settlement agreement. OUSD’s Attorney signed the agreement for content on May 1, 2014. However, OUSD did not make reasonable efforts to get the settlement agreement approved by OUSD’s Board of Education, and it was not ratified until more than two months later, on July 2, 2015. This failure to timely ratify the agreement violated a provision of the agreement stating that OUSD would not unduly delay Board approval of the agreement. This settlement agreement contained the following provisions: GJ would be placed a Sojourner Truth independent study throughout the 2013-2014 extended school year; Student would be provided with one hour a week of speech and language services while at Sojourner Truth; OUSD would hold an IEP meeting on May 23, 2014 to determine placement for next year; OUSD will provide student with 10 hours of at services pending an assistive technology assessment; and OUSD would provide student with 250 hours of compensatory services through Professional Tutors of America.

OUSD has failed to comply with each of these provisions. Instead of placing GJ in the agreed upon placement, Sojourner Truth Independent Study, GJ continued to be placed in the Temporary Alternative Placement (“TAP”) Center, a placement designed for special education students who are out of regular placement due to disciplinary reasons. He received little to no instruction while at the TAP center, and he did not receive any speech and language services, nor did he receive extended school year services. No IEP meeting was held by May 23, 2014. The nonpublic agency contracted by OUSD to provide GJ with tutoring, provided these services for several months and then terminated services: stating that it was too noisy in Student’s home for services. OUSD has done nothing to address this situation and to ensure that GJ gets the full amount of compensatory services provided in the settlement agreement.

GJ’s November, 2014 IEP notes contain a long list of IEP team recommended accommodations but none of these are included in the section for accommodations in the services page of his IEP. The accommodations sections of the IEP is blank.

LI

LI is an 8-year-old Latino boy attending elementary school in OUSD.[[14]](#footnote-14) He has a learning disability and ADD/ADHD and qualifies for special education under speech and language impairment and other health impairment. He is currently placed in the general education environment with RSP services.

LI’s mother’s primary language is Spanish and she is not English Language Proficient. OUSD did not provide a Spanish language interpreter at LI’s June 10, 2014 or October 23, 2014 IEP meetings.[[15]](#footnote-15)

LI’s IEP for the 2013-2014 school year provided for 45 minutes of RSP services, three times per week. Between March 14, 2014 and the end of the 2013-2014 school year, OUSD did not provide any RSP services. When his parent raised this at the June 10, 2014 IEP meeting, OUSD staff told LI’s parents that he received no RSP services because they had not been able to fill the position for a RSP teacher at his elementary school for the entire 2013-2014 school year.

At the June 10, 2014 IEP meeting, LI’s mother requested additional push-in RSP services because LI was struggling in class, due to problems with reading and writing. His IEP was amended on June 10, 2014 to provide 30 minutes two times per week of RSP push-in until October 25, 2014 and at that point the need for continuation of services would be discussed by the IEP team. IL’s parent also requested reading specialist services. OUSD did not respond to this request at the meeting and did not send IL’s parents a PWN.

LI’s mother also requested compensatory services to make up for the many hours of RSP pull-out support that IL had not received. OUSD responded to this request in a letter dated July 29, 2014. This letter acknowledged that IL had not received the RSP services in his IEP from March 14, 2014 through June 13, 2014, and offered 27 hours of RSP services to be used during the 2014-2015 school year.

LI’s IEP team reconvened on October 23, 2014. At that meeting, LI’s mother raised her concerns, and the concerns of his health care providers, that LI needed mental health services due to anxiety and depression. OUSD did not offer either mental health services or assessment, stating it was not needed without explaining why. At that meeting, OUSD proposed eliminating the RSP push-in services, which were provided in math class only, although his regular education teacher reported that LI was struggling with reading and writing, and that his deficits in writing were impacting his ability to do math problems. OUSD provided no explanation for reduction and did not provide his parent with a PWN regarding this.[[16]](#footnote-16)

At that same meeting, OUSD rejected his mother’s request that compensatory services be provided after school hours so LI would not miss additional classes. The district then offered to increase the amount of speech LI received. The IEP, written in English and never translated, states that the increase in Speech services was in exchange for a waiver of the RSP compensatory services. There was no Spanish interpreter at the meeting and LI’s mother agreed to the additional speech services, not understanding that she was being asked to give up compensatory RSP services in return.

At the January 20, 2015 IEP, LI’s DRC attorney asked why he had not received the offered compensatory services offered in OUSD’s. OUSD first said that she had agreed to give this up in return for extra speech services. When LI’s mother explained that she did not understand that OUSD was proposing eliminating LI’s compensatory services when she agreed to the increase speech and language services. OUSD staff then stated that the compensatory services were satisfied by the 30 minutes twice a week RSP push-in services that was in the June 10, 2014 IEP (and discontinued in October of 2014). At the continuation of that meeting, held on February 18, 2015, LI’s Attorney pointed out that this was inaccurate because the push-in RSP services were included in June 10, 2014 IEP before OUSD’s July 29, 2014 letter offering the compensatory services for its failure to provide RSP services for 2014-2015 school year, and the June 10, 2014 IEP does not explain that the addition of push in services was meant to be compensatory.[[17]](#footnote-17) OUSD still has not provided LI with the 27 hours of compensatory services.

At the February 18, 2015 IEP meeting, LI’s parent again asked for increased RSP push-in support because of teacher statements that LI was not concentrating in class and was not making expected progress in reading and writing. OUSD staff responded that the RSP teachers schedule had already been established, and they would not be able to accommodate additional RSP hours for LI unless LI’s mother agreed to eliminate the same amount of pull-out RSP support. She agreed to do so only under written protest, reiterating her request for both push-in RSP and the full amount of RSP pull-out services he has been receiving. OUSD never provided IL’s parents with a PWN related to this.

SA

SA is 12-year-old Latino student who attends middle school.[[18]](#footnote-18) She qualifies for Special Education Services under the primary category of SLD and a secondary eligibility category of Speech/Language Impairment. Her parents are not English Language Proficient.

SA has not had an annual IEP meeting for more than two years. Her last annual IEP meeting was held on February 20, 2013. Her last IEP addendum meeting was held on November 11, 2013. Her IEP places her in in the regular education environment with 60 minutes of RSP pull-out services and 45 minutes speech language services. OUSD has not reviewed or revised her goals, or updated her level of academic and functional performance since February of 2013. Her parents have received no report or information regarding current level of academic functioning, or her progress on her IEP goals since 2013.

SA’s parents found out from SA in late 2013 that she had not been getting the speech and language services in her IEP. Her parents filed a compliance complaint with CDE on January 7, 2014 alleging OUSD’s failure to provide the speech and language services[[19]](#footnote-19) and its failure to provide her with written translation of IEP documents despite her written request. CDE investigated and concluded that OUSD was non-complaint on both counts. On June 23, 2014, CDE ordered OUSD to provide a translated IEP and to provide 765 minutes of compensatory speech services. OUSD did provide SA’s parents a translated copy of the 2013 IEP, but it has not provided SA with the 765 minutes of compensatory services.

SA’s parents, through Disability Rights California, requested a copy of her records in a letter dated August 25, 2014. SA’s parents did not receive a copy of her records until late December, despite two follow-up letters from DRC in September and October.

During the current school year, OUSD has not implemented the provision of SA’s IEP to provide pull-out RSP services. SA is pulled out of her class on most weeks with two other students. They meet only with an instructional aide. There is never an RSP teacher at these sessions.

SA’s parents has been requesting an IEP meeting in writing for months now. An IEP meeting was finally scheduled for February 11, 2015, however at 4:30 p.m. the day before the scheduled IEP, the District notified parents that the IEP was cancelled because OUSD’s attorney was not available to participate in the IEP meeting.[[20]](#footnote-20) On February 11, 2015 and February 20, 2015, DRC contacted OUSD on client’s behalf reminding the district that SA’s annual and triennial assessments were a year overdue, and requesting that the IEP be rescheduled as soon as possible. In response, the District proposed a meeting date of March 20, 2015, significantly delaying the meeting once again.

Student’s last triennial assessment was completed on March 18, 2011. Her last triennial assessment should have been completed by March 2014. However, no assessment was completed in 2014 and her triennial assessment and IEP meeting are now a year overdue. On February 10, 2015, the district contacted AS’s parents claiming that they had completed assessments. Her parents had never received or signed an assessment plan and were never aware SA’s triennial assessments were due on March 2014. In the past month, DRC, on SA’s behalf, has made numerous requests to OUSD for copies of the assessments that have allegedly been completed. Neither DRC nor SA’s parents have received any copies of the assessment reports, nor have SA’s parents been informed of the type of assessments that have completed without their knowledge or consent.

Not only is SA’s February 2013 IEP long overdue to be review, revised and implemented, it was not appropriately developed or revised. Although her IEPs note that SA has a history of anxiety, no friends, and problems getting along with her peers, the District has never addressed these needs with assessment or services. OUSD has only ever provided her with minimal RSP and speech language services although she has not met her goals or made academic progress.

SL

SL is a 17-year-old African American OUSD student with SLD and longstanding intensive mental health needs, including hallucinations, and fears of leaving his home.[[21]](#footnote-21) He has not received appropriate mental health services or an appropriate educational placement for the last year and a half, and his IEP was not revised in compliance with IDEA. He has made no educational progress during that time and met none of his IEP goals.

SL was placed by OUSD in a residential treatment program with embedded, intensive therapeutic supports from April of 2012 through July 2013. A primary reason for this placement was his marginal school attendance due to serious mental health needs. In July 2013, OUSD determined, without benefit of a mental health assessment, that SL no longer needed residential treatment to benefit from education. OUSD placed SL in a nonpublic school (“NPS”) school for students with behavioral problems that does not provide intensive mental health services.

Since being placed at the nonpublic school, SL has had only marginal school attendance, at best, due to his mental illness, consistent with his pattern before being placed in residential treatment. At his November 17, 2014 IEP meeting, SL’s mother and teachers raised concern that his poor attendance was not being addressed. His teacher confirmed that SL is not motivated by the school’s incentive program and reported that SL made no progress on his IEP goals or in his academic achievement. Despite these concerns and SL’s long history of serious mental illness, OUSD did not offer a change of placement or consider placing him in other schools or programs that had more mental health supports; nor did it offer to increase the 30 minutes a week of therapy in SL’s IEP or provide other mental health related supports.

SL’s November 17, 2015 IEP is deficient in other ways. It does not contain any goals related to his level of academic achievement nor does it contain a description of his current level of academic achievement or functional performance. This IEP contains a barebones individualized transition plan (“ITP”) This ITP has not been updated in two years, does not address in any way student’s intensive mental health needs, lack of independent living skills and contains no transition services. The copy of the November 17, 2014 IEP does not contain a behavior support plan, although a box is checked on the IEP indicating that he has one.

SL’s mother signed the November 17, 2015 IEP because she was told there were no other options for SL. She was not been provided with written reports or annotated goals indicating his progress on goals in the year prior to this IEP, nor since then.

SL stopped going to school completely in December of 2014. OUSD representatives never contacted his parent to discuss this or offer services. In early January of 2015, SL’s parent requested an IEP meeting to discuss a change in his educational placement. OUSD convened an IEP meeting on February 26, 2015 to discuss this issue. SL’s parent was provided with written notice of the IEP meeting the same day of the meeting. No special education or other teacher was present at the meeting or even listed on the IEP scheduling notice. At the meeting, SL’s parent again described her son’s current mental health needs and his fears of going to school.

At the February 26, 2015 meeting, after SL’s DRC attorney pointed out the complete lack of progress he has made in the past year and a half, OUSD administrators finally agreed that his current NPS does not meet his needs. OUSD offered to have SL look at three other nonpublic schools. Two of these three schools did not have intensive mental health services. After SL’s DRC attorney and his mother repeatedly asked for mental health services, and for in-home instruction and services while an alternate placement was being located, OUSD agreed to provide the mental health assessment and a mental health case (“ERMHS”) manager but refused to provide Student with any interim services at home. The February 26, 2015 IEP addendum notes states that the ERMHS case manager will be on an as-needed basis and will start on February 26, 2015. The OUSD administrator stated at the meeting that both the ERMHS case manager and the OUSD case carrier would contact SL’s parent right away to schedule visits to look at other placement options. To date, OUSD has not provided SL’s parent or his Attorney with any information regarding how to access the ERMHS case management services, and how to visit these placement options, and the ERMHS case manager has not contacted her.

OUSD did not offer to or agree to provide any compensatory services for the extensive amount of time that SL has missed this past year. OUSD did not provide SL’s mother with a prior written notice regarding its refusal to provide SL with interim home instruction.[[22]](#footnote-22) SL remains at home with no educational or mental health services.

TA

TA is 9-year-old third grade student who is eligible for special education under TBI and SLI categories.[[23]](#footnote-23) His brain injury impact his cognitive functioning, behavior and speech language. He is currently placed in a day treatment program at Lafayette Elementary School.

In October of 2014, TA’s mother filed a due process complaint/request for hearing against OUSD. The issues raised included OUSD’s failure to offer TA any educational program or placement for the first seven weeks of the 2014-15 school year; failure to develop an IEP to meet his need for special education services, and the failure to implement his IEP for the past year.

On October, 2014, OUSD and TA’s parent entered into a settlement agreement during OAH mediation proceedings to resolve the issues in the due process complaint. The agreement requires OUSD to immediately place Student in a day treatment program and provide the following special education and related services: a 1:1 behaviorally trained aide in the classroom; 5 hours of consultation and training to the aide prior to January 15, 2015 and 10 hours afterward; weekly email from classroom staff regarding TA’s progress and behaviors; 15 minute monthly consultation to the parent regarding progress and behaviors; and 30 minute per week of individual speech, in addition to the 45 minutes of group speech TA was already receiving.

OUSD failed to provide these services or incorporate these services into TA’s IEP as agreed upon through settlement. TA has not received 15 hours of consultation by a behavioral specialist to the 1:1 aide; 30 minutes of individual speech therapy a week, in addition to 45 minutes of group speech he was already getting; a weekly email update from TA’s classroom staff; and 60 hours of 1:1 aide services.

The settlement agreement included assessments, including speech language assessment and a functional behavioral assessment[[24]](#footnote-24) that was required to be based on at least five observations, and provided for an IEP meeting to be held by January 15, 2015 to review these assessments.

By the time an IEP meeting was held on January 16, 2015, the functional behavioral assessment was not completed. As a result, the IEP meeting had to be continued to February 18, 2015. Although the IEP team discussed the functional behavioral assessment at the February 2015 IEP and agreed with the assessor’s recommendations, none of the recommendations have been incorporated into TA’s behavior support plan. Also, no qualified person was present at the January 16, 2015 or the February 18, 2015 IEP meetings to explain the speech assessment report to the IEP team.

Under the settlement agreement, a 1:1 aide is supposed to be assigned to work with TA, however the aide often is working with other children in the classroom, leaving TA unattended. TA’s aide lacks appropriate training, has not received the consultation services by a behavior specialist as agreed upon in the IEP. TA’s IEP does not include an appropriate behavior support plan because OUSD has failed to incorporate the recommendations of the recent FBA OUSD, instead of implementing the services and supports agreed upon, or exploring additional services, and supports, is now proposing moving TA to a more restrictive, nonpublic school placement. This will be his eighth change of placement since he started his school career.

TK

TK is a Latino fourteen-year-old student who attends middle school in OUSD. [[25]](#footnote-25) He has been eligible for special education and related services since age three when he qualified under Speech and Language Impairment (“SLI”). At age nine, he was belatedly diagnosed by OUSD with severe auditory processing disorder. At age 12, he was belatedly diagnosed with autistic-like disorder, the current primary eligibility category listed on his IEP. TK’s IEP has never been developed or revised to meet his needs in accordance with IDEA.

TK’s RSP teacher confirmed to his IEP team at his March 4, 2015 IEP meeting that TK’s IEP is not being implemented by his regular education teachers. His regular education teachers are not providing the accommodations and supports listed in his IEP and are not implementing his behavior plan. OUSD has not offered any compensatory services for its failure to implement TK’s IEP.

TK is struggling in all of his classes. The lack of support that he is getting in the classroom is causing him to fall far behind his peers. He has depression and low self-esteem, related to being so far behind his peers, that further interferes with his learning. OUSD has never offered him mental health services or assessment.

TK’s IEP meetings have not included required IEP team members. At his annual IEP in April 2014, no OUSD administrator or school psychologist was present to interpret or explain TK’s recent psychological report. At his March 4, 2015 IEP meeting, his regular education teachers and the principal signed the attendance sheet and then left the meeting after 30 minutes. They did not participate in any educational decisions regarding TK.

At TK’s April 2014 IEP meeting, IEP team members stated that he did not meet his goals. They did not revise his IEP to address this, offer any assessment, nor did they discuss why he did not meet his goals. OUSD simply continued his unmet goals for the following year. TK’s April 2014 IEP eliminates all reference to the accommodations listed in his 2013 IEP, which had been recommended by the OUSD psychologist, without any explanation. At that meeting, his mother requested an occupational therapy assessment and speech assessment or services based on OUSD’s assessment findings of pragmatic weaknesses and occupational needs. , OUSD rejected this request without any explanation and never provided TK’s parent with a PWN related to this.

On April 4, 2014, OUSD significantly reduced TK’s RSP services – from 180 minutes of pull-out and 90 minutes of push-in (270 minutes total) per his April 2013 IEP, to 120 minutes of pull-out to services and 30 minutes of push-in (150 minutes total) in his April 2014 IEP. This significant reduction in services was made despite the fact that TK was not making progress and not meet his goals. There was no interpreter present at this IEP meeting and TK’s mother, who is not English Language proficient, was not aware of this proposed reduction at the time she signed the April 4, 2014 IEP document, written only in English. OUSD never provided TK’s parents with a PWN before it made this substantial reduction in TK’s services. His parents only found out that TK’s RSP services had been greatly reduced when a DRC attorney reviewed his IEPs with her.

VG

VG is a sixteen-year-old high school sophomore.[[26]](#footnote-26) He has been eligible for special education under category of OHI due to attention deficit disorder since 2007. VG’s last IEP meeting was on October 1, 2014. OUSD reported at that meeting that VG did not meet his goals, and merely suggested that his goals be continued for another year. OUSD did not offer services or supports, accommodations, or assessment to address his lack of progress on his goals. This year is the third year in the past four years that OUSD has continued the majority of goals that he did not meet the prior year instead of revising the IEP to include new services, supports or accommodations, or offering assessment to explore why he is not making expected progress on his goals.

Although the recommendations for accommodations and supports that were made by the psychologist who assessed him last, in 2013, and were incorporated in his 2013 IEP, these accommodations and modifications were eliminated from his current IEP. VG’s current IEP and his prior IEPs provided him with push-in RSP services only. He has never been offered pull-out RSP services although he has difficulty focusing in large classroom settings and has not met his academic goals with push-in services alone. He has a behavior support plans that has never been effective in addressing his behavior needs. His teachers are not aware of and do not implement his behavior plan.

VG has an individualized transition plan (ITP). His ITP is not supported by goals or services in the IEP.

ZA

ZA is 16-year-old Latino high school student.[[27]](#footnote-27) He is currently in the 11th grade. He has a diagnosis of ADHD and visual processing disorder. He has a long history of difficulty at school in particular difficulties focusing, writing and work completion. ZA was found eligible for Section 504 services in approximately 2011, when he was attending an OUSD charter school.

He has been a student at an OUSD high school since 2012. On September 24, 2014, his parents made a written request for special education assessment because ZA’s continued problems with focus and writing and his lack of academic progress. On September 30, 2014, Parents received a Prior Written Notice (“PWN”) and a letter refusing to initiate an initial evaluation for special education eligibility because they did not have ZA’s medical records. This letter was in English despite the fact his parent’s primary language is Spanish and she is not English language proficient. OUSD did not request that his parents consent for release of medical records or explain while he could not be assessed for special education without medical records.

His parents again wrote a letter requesting special education assessment on January 14, 2015. The Academic Resource Specialist at an afterschool academic program who worked regularly with ZA on academics, wrote a letter to OUSD on January 26, of 2015 in support of referring ZA for special education eligibility. This letter provides details related to ZA’ areas of suspected disability, including poor writing and inability to take notes.

On February 14, 2015, almost five months after his parent’s written request for a special education assessment, and a month after their second request, provided ZA with an assessment plan.[[28]](#footnote-28) This assessment plan did not include an Occupational Theraphy (“O.T.”) assessment despite ZA’s documented history of problems with the mechanics of writing. The plan include an assessment of ZA’s motor functioning but states that this is to be by the school psychologist, who is not qualified to assess in this area.

Other Similarly Situated Students

On information and belief, there are numerous other OUSD Students with disabilities who have IEPs that were not properly developed, revised or implemented.

# Applicable Law and Allegations

## State Responsibility

### SEA Responsibility for resolving state complaints

In resolving a complaint in which the state educational agency (“SEA”) has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of IDEA, must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
2. Appropriate future provision of services for all children with disabilities.

20 U.S.C. § 1221(e)(3); 34 C.F.R. § 300.151(b).

The SEA’s procedures for state complaint procedures must include procedures for effective implementation of the SEA’s final decision, if needed, including (i) technical assistance activities; (ii) negotiations; and (iii) corrective actions. SEAs may provide direct services to children with disabilities. *See* 34 C.F.R. § 300.175.

### SEA supervisory responsibility

The SEA is responsible for ensuring that children with disabilities have a free appropriate public education in the least restrictive environment. 20 USC §§ 1400 *et seq*.; 1412(a)(1)(A); 1412(A)4(A); 1412(a)(11)(A)(i); 34 CFR §§ 300.101.

The SEA also is responsible for general supervision to make sure that the provision of IDEA are complied with. § 1412(a)(11)(A)(i).

### Allegations of non-compliance.

CDE has failed to ensure that the requirements of 20 USC §§ 1411 *et seq.,* are met with respect to children with disabilities residing with the OUSD school district.

CDE has failed to ensure that the provision of a free appropriate education (“FAPE”) in the least restrictive environment to children with disabilities residing with the OUSD school.

CDE has failed to ensure that it provides adequate and appropriate monitoring of and technical assistance to OUSD to ensure that the requirements of 20 USC §§ 1411 *et seq.*

The depth and breadth of non-compliance with IDEA within OUSD, as illustrated by the examples provided in this complaint, Dr. Shepherd’s report, and OUSD findings of extensive noncompliance during its general and focused monitoring activities shows that CDE does not have an adequate and appropriate plan for activities related monitoring of, and corrective action and technical assistance to OUSD.

## LEA Responsibilities

### IEP Members

#### Legal requirements for IEP Team Members

The public agency must ensure that the IEP team for each child with a disability includes: 34 CFR § 300.322.

1. The parents of the child. § 300.321(a)(1).
2. Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment.) § 300.321(a)(2).
3. Not less than one special education teacher of the child; or where appropriate, not less than special education provider of the child. § 300.321(a)(3).
4. A representative of the public agency who:
   * 1. Is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
     2. is knowledgeable about the general education curriculum; and
     3. Is knowledgeable about the availability of resources of the public agency. § 300.321(a)(4).
5. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs. § 300.321(a)(5).

#### Allegations of Non-Compliance with Requirements for IEP Team

##### Individual Allegations

BR

At BR’s January 15, 2015 IEP meeting, no one regular education teacher stayed throughout the meeting in violation of § 300.321(a)(2); instead various regular education teachers stayed for an hour or less during the meeting. In addition, at that January 15, 2015 IEP, there was no one present who was qualified to interpret instructional implications of the functional behavioral assessment or the vocational assessment in violation of § 300.321(a)(5). Although BR’s RSP teacher was present at the meeting, she also was required to act as the Spanish interpreter so she was unable to fully participate in the meeting in violation of § 300.321(a)(3).

TA

TA’s January 15, 2015 and February 18, 2015 IEP meetings, were convened, in part, to discuss the results of a speech and language assessment. The speech and language person was not present at either meeting nor was any other person at the meeting who was qualified to interpret the instructional implications of a speech and language assessment in violation of § 300.321(a)(5).

SL

SL’s February 26, 2015 IEP meeting, convened at the request of SL’s mother to discuss a change in placement, did not include either a special education or regular education teacher present in violation of §§ 300.321(a)(2) and (3). The notice to SL’s parent regarding the meeting, which parent received on the same day as the meeting, shows that OUSD did not invite any of his teachers to be present at the meeting.

VG

During VG’s 2014 IEP meeting, the regular education teacher and administrator showed up at the beginning of the meeting, signed the attendance sheet and both left after ten minutes without participating in any educational decisions in violation of § 300.321(a)(2).

SA

OUSD failed to convene a meeting of an IEP team for SA since November of 2013.

TK

At TK’s annual IEP in 2014, no administer attended that meeting in violation of § 300.321(a)(4). At TK’s March 4, 2014 meeting, his teachers and principal attended only the first 30 minutes of the IEP meeting in violation of § 300.321(a)(2). They did not participate in making decisions.

GE

At GE’s February 20, 2015 IEP meeting, there was no administrator present in violation of § 300.321(a)(4).

##### Systemic Allegations

OUSD does not have a plan in place to ensure that all required IEP members are present at a meeting. OUSD frequently requires parents to waive the presence of required IEP team member if the parent wants to proceed with the meeting.

OUSD has a policy and practice of limiting the attendance teachers to one hour or less so that they do not have to get a substitute teacher. The enclosed email from OUSD contracted attorney, David Mishook confirms that OUSD does not have one regular education teacher stay for most of the meeting unless this is specifically requested in advance. This policy violates § 300.321(a)(2) as well as § 300.324(a) as it does not permit the regular education teachers to participate in making educational decisions.

OUSD has a common practice of having required IEP members sign attendance at the meeting and then leave within the first thirty minutes or less, generally before all information is reviewed or decisions are made.

### Parent Participation

#### Legal Requirements for Parent Participation

Each public agency must take steps to ensure that one or both of the parents of the child are present at each IEP team meeting and are afforded the opportunity to participate, including taking whatever action is necessary to ensure that the parent understands the proceeding of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. 34 CFR § 300.322(e).

#### Allegations of Non-Compliance with Parent Participation Requirements

##### Individual allegations

OUSD has violated § 300.322(e) as follows:

BR

At BR’s January 15, 2015 IEP meeting, OUSD did not make arrangements for an interpreter to be present at the meeting. None of the assessments or other documents that were passed out or discussed at the meeting were translated in Spanish or interpreted for BR’s parent, who is not English language proficient.

LI

At LI’s June 10, 2014, and October 24, 2014 IEP meetings, OUSD did not make arrangements for an interpreter to be present. None of the assessments or other documents that were discussed at the meeting were translated in English or interpreted for IL’s parent, who is not English language proficient. None of the assessments or other documents that were passed out or discussed at the meeting were translated in Spanish or interpreted for IL’s parent, who is not English language proficient.

TK

In his annual 2014 IEP meeting, TK was not provided with basic information regarding OUSD’s plan to significantly reduce his RSP services, and why they were proposing to do this. As a result of her lack of understanding of the process, she signed agreement to a major reduction in services without realizing this.

VG

VG’s mother has not been provided with sufficient information about his academic performance to meaningfully participate in his IEP development. For example, OUSD eliminated the accommodations in his prior IEP in his October 1, 2014 IEP without explaining this to VG’s mother.

ZA

At ZA’s SST/IEP meetings, none of the assessments or other documents that were discussed at the meeting were translated into Spanish or interpreted for ZA’s parent, who is not English language proficient, at the meeting. His parents did not understand the proceedings.

SA

SA’s parent has been deprived of the ability to participate in IEP meetings because she has not had an IEP since November 2013, and no annual IEP meeting has been convened for SA since February 2013 despite her parent’s frequent pleas for an IEP meeting.

TA

TA’s mother does not understand much of the proceedings at her son’s IEP meetings, including the two meetings in 2015, because of the acronyms and technical terminology used by IEP team members.

GE

There was no interpreter at GE’s February 20, 2015 IEP although his parents’ primary language is Spanish and they are not English language proficient. They were not able to communicate their concerns at that meeting.

SL

SL’s mother does not understand much of the proceedings of IEP meetings because of the abbreviations and terminology used and has not been able to participate in a meaningful way in meetings in which she has not been represented by an advocate or attorney.

##### Systemic allegations

As recognized by Dr. Shepherd, OUSD has a severe shortage of staff to interpret in IEP and related meetings and to translate documents into Spanish and other languages. OUSD does not generally provide documents in advance to parents, interpret or translate them to the parents before or during IEP meetings. OUSD does not have a plan in place to ensure that non-English proficient parents, such as the parents of BR, LI, AS, JG understand the content of the numerous documents, including assessments, teacher reports, and IEP drafts that are circulated in English at IEP meetings and frequently referred to by staff, and understand the discussions at meetings. Gloria Riley Declaration, Exhibit A3**.** OUSD does not even post translations of its parent handbook and procedural safeguards on its website in Spanish and other languages so that parents who are not English language proficient have a basic understanding of special education procedures and their rights before attending IEP meetings.

OUSD also does not have a plan in place to ensure that OUSD parents who are English language proficient also understand IEP proceedings. OUSD staff frequently use abbreviations and technical terms that parents do not understand and that impeded their ability to understand the meeting proceedings. OUSD staff do not generally take the time to explain documents, processes and services options to parents. Gloria Riley Dec., Exh. A3.

### IEP Development

#### Legal Requirements for Content, Development, Review and Revision of IEP

An IEP means a written statement for each child with a disability that is develop, reviewed and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include (34 CFR § 300.320(a)):

* a statement of present level of academic achievement and functional performance, including (I) how the child’s disability impacts affects the child’s involvement and progress in the general education curriculum (§ 300-320(a)(1));
* a statement of measureable annual goals, including academic and functional goals designed to (A) meet the child’s needs that result from the child’s disability that enable the child to be involved in and make progress in the general education curriculum; and (B) meet the child’s other educational needs that result from the disability (§ 300.320(a)(2));
* a statement of the special education and related services and supplemental aids and services, based on peer reviewed research to the extent practicable, to be provided to the child or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to (i) to advance appropriately towards attainting annual goals; (ii) be involved and make progress in general education curriculum and to participate in extracurricular/non-academic; and (iii) be educated/participate in nonacademic extracurricular activities with other children with and without disabilities (§ 300.320(a)(4));
* An explanation of the extent, if any to which the child will not participate with nondisabled children in the regular education class and in the activities described in paragraph (a)(4) (which includes extracurricular and other nonacademic activities (§ 300.320(5)); and
* The projected date for the beginning of these services and modifications (described in § 300.320(a)(4)), and the anticipated frequency, location, and duration of these services and modifications. § 300.320(a)(5).

In developing each child’s IEP, the IEP team must consider (i) the child’s strengths; (ii) concerns of parent; (iii) results of evaluation; and (iv) academic, developmental and functional needs of child in developing IEP. § 300.324(a)(1).

Consideration of special factors. In the case of a child whose behavior interferes with the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies to address the behavior. § 300.324(a)(2)(I).

(iv) Consider the communication needs of the child. § 300.324(a)(2)(iv).

(v) Consider whether the child needs assistive technology devices and other strategies § 300.324(a)(2)(v).

A regular education teacher must, to the extent appropriate, participation in the development of the IEP of the child, including the determination of (I) appropriate positive behavior intervention and supports; and (2) supplementary aids and services, program modifications and support for school personnel. § 300.324(a)(3).

Each public agency must ensure that the IEP team reviews that child’s IEP periodically, and not less than annually, to determine whether the annual goals for the child are being achieved and revises the IEP, as appropriate, to address: (A) any lack of expected progress towards annual goals and general education curriculum, if appropriate; (B) the results of any reevaluation; (C) information about the child presented by the parents; and (D) the child’s anticipated needs; or other matters. § 300.324(b)(I).

In reviewing and revising the IEP the team must consider special factors, including whether a child has behaviors that interfere with learning, and whether the child needs assistive technology. § 300.324(b)(2).

Each public agency must ensure that the IEP team reviews each student's IEP periodically, and not less than annually, to determine whether the annual goals for the student are being achieved. § 300.324(b)(I).

Allegations of Noncompliance with Requirements for IEP Content, Development, Review and Revision.

Individual Allegations

##### Individual Allegations

BR

In developing and revising the services in BR’s February 15, 2015 IEP, OUSD team members did not consider his functional needs in violation of § 300.324(a)(1), including the social, emotional and behavioral needs identified by his teacher and parent.

Even though his recent functional behavioral assessment, conducted as a result of a settlement agreement recommended various behavioral strategies, BR’s IEP team did not consider and OUSD did not offer the use of positive behavioral interventions and supports, and other strategies to address his behaviors in violation of §§ 300.324(a)(2)(I) and 300.324(a)(1).

BR’s IEP prior to January 15, 2015, contained a checked box stating that he does not need assistive technology devices or services although his IEP team never considered whether he needed these services in violation of § 300.324(a)(2)(v). An assistive technology assessment conducted in January 2015, pursuant to a due process settlement agreement, confirms that due to his longstanding auditory processing disorder, BR does need such devices and services**.**

SL

SL’s current IEP does not include a statement of his present level of academic achievement and functional performance, as required by § 300.320(a)(1). His current IEP does not include academic goals as required by § 300.320(a)(2)(I). This IEP includes a checked box indicating that he does not need assistive technology devices and services, but no consideration was given at any of IEP meetings as to his need for such devices or services in violation of by § 300.324(a)(2)(v). His IEP contains no statement of supplemental aids and services, or program modifications or support for school personnel as required by § 300.320(4)

Although SL has not been in school for several months and had only marginal attendance prior to that for the past year which prevented from making any progress on his IEP goals or in the general education curriculum, OUSD has not offered him home instruction or services to address his chronic absenteeism in violation of §§ 300.320(a)(4)(i) and (ii).

SL is over 16 and his IEP does not contain appropriate measureable postsecondary goals based upon age appropriate assessment and transition services needed to assist him in obtaining these goals as required by § 300.320(b).

VG

VG’s IEP dated October 10, 2014 does not contain a description of his levels of academic achievement but instead merely recites his grades from the previous semester. It also fails to describe his current level of functional performance regarding his behavior, as required by § 300.320(a)(1), merely referring to a psychological assessment from a year prior and stating he has some improvement but still needs behavioral supports. His IEP does not include a description of how his disability affects his classroom involvement or progress in the curriculum as required by 34 CFR § 300.320(a)(1)(I). The goals in this IEP are not measureable and are not designed to meet his needs that result from his disability and to enable him to be involved in the general education curriculum. For example, his behavior goals states that he has to comply with school rules a percentage of the time, and his academic goal that requires him to get a 2.5 grade point average, complete his work, and to write a four paragraph essay with 90% accuracy. These standards are all vague and/or subjective, and merely repeat expectations that are required of all students, and thus do not comply with § 300.320(a)(2)(ii).

Although he has these goals (except for the writing goal) for years and has not met them, VG was not provided with any additional increased services or supplemental aids or accommodations to help him achieve these goals, nor was he provided with any services or supports to meet his writing goal. His IEP mentions that he has difficulty with visual processing and cannot keep up with the speed of instruction in some of his classes, but no services, supports or assessments were offered to assist him with these things. His IEP indicates that he benefits from small group instruction but OUSD has never offered him pull out RSP services in his current IEP or prior IEPs. The RSP services, he is getting 90 minutes of RSP push in a week, are minimal and have never been sufficient to help him meet his goals. For the above reasons, his IEP does not do not comply with §§ 300.320(a)(4)(I), (ii) and 300.324(b)(ii).

TA

TA’s current IEP incorrectly states that he is outside of regular education 90 percent of the time in violation of § 300.320(a)(5). At his January 15, 2015 and February 18, 2015 IEP meetings, OUSD staff confirmed that he spends 100% of his time in his day treatment program, including lunch and recess; his current IEP does not explain why he has no academic or extracurricular activities with his non-disabled peers in violation of 34 CFR § 300.320(5). TA’s IEP includes checked boxes showing that he does not need assistive technology despite the fact that the evaluating psychologist and TA’s teachers stated at the IEP that TA’s benefits from the occasions when he is able to use a computer or IPad in school.

SA

SA’s has not had her IEP reviewed to determine if her annual goals are being achieved or her IEP revised in over two years in violation of 34 C.F.R. § 300.324(b)(I). Therefore, the IEP team has not had an opportunity to consider her parent’s concerns, her academic, developmental or functional needs, or the results of any evaluations in order to develop an IEP in compliance with § 300.324; and her IEP no longer complies with the requirements of § 300.320 which requires a statement level of achievement performance, and need, and services designed to address the student’s current needs.

LI

LI’s IEP does not contain special education and related services, and supplemental aides and services designed to enable him (1) to advance appropriately towards attainting annual goals and be involved and make progress in general education curriculum, as required by § 300.320(a)(4)**.** His IEP team determined at the January 20, 2015 IEP meeting that he needed 1:1 assistance during reading projects because of his low reading level, but this was not incorporated into his IEP. The IEP team agreed that LI needs push-in RSP services but OUSD only agreed to provide this service if the parent agreed to reduce LI’s current amount of RSP push-in services in his 2014 IEP because the RSP teacher’s schedule was fixed and could not accommodate additional RSP hours. OUSD checked the box stating that LI not need AT services in the January 20, 2015 proposed IEP, as is OUSD’s standard practice, without considering his need for assistive technology in violation of § 300.324(a)(5) despite the fact that his parents specifically requested he be assessed for AT. OUSD did not consider including supplementary, aids and services, program modifications, and support for school personnel in his January 20, 2015 IEP to help address his difficulty staying focused in regular education problems in violation and his lack of expected progress on annual goals in violation of §§ 324(b) and 300.320(4).

TK

TK’s April 4, 2014 IEP does not include a statement of present levels of academic achievement and functional performance, as required by § 300.320(a). OUSD’s offer of services for RSP services on April 4, 2014 is 120 minutes less than his offer of services the previous year although there was nothing in the IEP to justify such a reduction and TK was not meeting his IEP goals, therefor his IEP was revised in violation of § 300.324(b)(1)(ii).

VG

VG’s IEP dated October 10, 2014 does not contain a description of his levels of academic achievement but merely recites his grades from the previous semester. It also fails to describe his current level of functional performance regarding his behavior, as required by § 300.320(a)(1), referring to a psychological assessment from a year prior and stating he has some improvement but still needs behavioral supports. His IEP does not include a description of how his disability affects his classroom involvement or progress in the curriculum as required by 34 CFR § 300.320(a)(1)(I). The goals in this IEP are not measureable and are not designed to meet his needs that result from his disability and to enable him to be involved in the general education curriculum. For example, his behavior goals states that he has to comply with school rules a percentage of the time, and his academic goal that requires him to get a 2.5 grade point average, complete his work, and to write a four paragraph essay with 90% accuracy. These standards are all vague and/or subjective, and merely repeat expectations that are required of all students, and thus do not comply with § 300.320(a)(2)(ii).

Although he has these goals (except for the writing goal) for years and has not met them, VG was provided with any additional increased services or supplemental aids or accommodations to help him achieve these goals, nor was he provided with any services or supports to meet his writing goal. His IEP mentions that he has difficulty with visual processing and cannot keep up with the speed of instruction in some of his classes, but no services, supports or assessments were offered to assist him with these things. His IEP indicates that he benefits from small group instruction but OUSD has never offered him pull out RSP services in his current IEP or prior IEPs. The RSP services he is getting (90 minutes of RSP push in a week) are minimal and have never been sufficient to help him meet his goals. For the above reasons, his IEP does not do not comply with §§ 300.320(a)(4)(1)(ii) and 300.324(b)(1)(ii).

GJ

There are no accommodations or supplementary aids or supports written into the current IEP services page, in violation of § 300.320(a)(4), although his IEP notes contain many recommendations for such accommodations and supports.

GE

GE’s February 20, 2015 IEP does not include services to address his identified mental health needs and has not been revised to include new services to address the fact that he has not benefitted from the services and supports currently in his IEP, in violation §§ 300.320(a)(4) and 300.324(b)(1)(ii). On information and belief, there are other deficiencies in his current IEP, but his parent has never been given a copy of that IEP so she does not know the exact contents.

##### Systemic Allegations

OUSD has an engrained practice of developing and revising IEPs based on the resources it has on hand at the school site the student is plan and on its own convenience rather than on the student’s individual needs. As a result, OUSD rarely increases or changes student’s services from one IEP to the next unless the student is changing school sites or the resources at the student’s school site change, regardless of whether the student is making meaningful progress on the IEP goals or in the general education curriculum.

According to OUSD practice, OUSD staff routinely prepare IEP drafts in advance in which they check boxes indicating that a student does not need TA or ESY (unless the student is in a special day class or NPS that provides such services to all students). OUSD staff do not initiate discussion of whether a student needs such services at IEP meetings. (*See* Gloria Riley Dec., Exhibit A4.)

Underlying OUSD’s failures to develop and revise IEPs in conformance with IDEA are policies related to hiring, compensating, training, and supervising special education staff that are not reasonably calculated to result in sufficient numbers of trained staff who are equipped to meet the needs of students with disabilities. A recent study of OUSD staffing policies reveals that the salary scale for teachers and aides in OUSD is by far the lowest in the Bay Area.[[29]](#footnote-29) OUSD has been advised by National Council on Teacher Quality to offer incentives to ensure it can attract sufficient number of special education teaching staff, but it has not done so.[[30]](#footnote-30)

OUSD does not have policies or practices in place, or even a budget allocation,[[31]](#footnote-31) to ensure that students get the accommodations, supplementary aids and services they need. OUSD generally only offers standard accommodations such as seating preference and more time on tests.

OUSD also lacks a plan, policies, or practices to adequately address the students with mental health or behavioral needs that interfere with learning or that limit their ability to benefit from education. OUSD does not have a plan for offering mental health services to students who are in the regular education environment.

### IEP Implementation

#### Legal Requirements for Implementing the IEP

As soon as possible following the development of the IEP special education and related services must be made available to the child in accordance with the child’s IEP. 34 CFR § 300.323(b)(2).

Each regular education teacher, special education teacher, related services provide, and any other service provider responsible for its implementation, must be informed of his or her specific responsibilities related to implementing the child’s IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. 34 CFR § 300.323.

#### Allegations of non-compliance with Requirements for Implementing the IEP

##### Individual allegations

OUSD has not implemented many of the named students’ IEPs, in violation of 34 CFR § 300.323(b)(2), as follows:

BR

BR did not receive many of the services he was entitled to under his October 30, 2014 signed IEP addendum (and as required by settlement agreement.) Currently, he is not receiving the following services included in this IEP: at least of 40 minutes a week of the 500 minutes RSP academic services; 30 minutes of RSP social emotional services; one and a half hours of diagnostic counseling; 60 minutes a week of consultation mentoring to his RSP teacher. The speech services and the increase in his RSP academic services did not start for one or more months after the October 30, 2014 IEP was executed. His parents have not received progress reports in accordance with his IEP.

SA

Although SA is supposed to receive RSP pull-out services, her parents on multiple occasions have witnessed that the RSP pull-out class is being taught by unqualified aides, and SA confirms that she is not receiving services from RSP teacher. S did not receive speech ad language services according to her IEP, during the 2013-2014 school year. Her parents have not received progress reports in accordance with his IEP.

LI

OUSD acknowledged in a letter dated July of 2014, that they did not implement the RSP services provision in his IEP between April of 2014 and June of 2014. They offered him 27 hours of compensatory RSP services, but they have not provided these services. His parents have not received progress reports in accordance with his IEP.

TK

By report of TK and his RSP teacher, TK has not received many of the accommodations and supports included in his IEP, including implementation of his behavior plan because his regular education teachers refuse to provide them. An OUSD administrator was made aware of this at TK’s last IEP meeting and did nothing to ensure that the regular education teacher provided this accommodations and supports or that he gets compensatory services. His parents have not received progress reports in accordance with his IEP.

VG

VG has a behavior plan in place, but it has not been implemented. His parents have not received progress reports in accordance with his IEP.

SL

SL has not received ERMHS case management services, which according to his current IEP, were supposed to start on February 26, 2015. His mother has not received progress reports in accordance with his IEP.

GE

His parents have not received progress reports in accordance with his IEP.

##### Systemic Allegations

OUSD has inadequate policies and practices relating to recruiting, hiring, training, and supervision of staff that result in wide scale noncompliance with IEPs. OUSD does have a system of accountability, including an internal monitoring system, to ensure that IEPs are complied with, to ensure that parents are notified if IEPs are not complied with, and offered adequate and appropriate compensatory services.

### Evaluations

#### Legal Requirements for Conducting Evaluations

* Public agencies must have informed consent from the parent prior to conducting an evaluation or reevaluation of the child. §§ 300.300(a)(1), (c)(1).

§§ 300.301 through 300.311 set forth requirements related to evaluations and reevaluations including:

* Evaluations must be conducted within 60 days of parental consent. § 300.301.
* A public agency must ensure that a reevaluation of each child with a disability is conducted if the public agency determines that the educational or related service needs of the child warrant a reevaluation; or the child’s parent or teacher requests a reevaluation. § 300.303(a)(2).
* A reevaluation must occur at least once every three years. § 300.303(a)(2).
* The public agency must be provided notice to the parents of child with a disability in accordance with § 300.503 that describes any evaluation procedures the agency proposes to conduct. § 300.304(a).
* The child must be assessed in all areas related to the suspected disability. § 300.304(a)(4).
* Assessments must be administered by trained and knowledgeable personnel. § 300.304(c)(4).
* A public agency must provide a parent with an assessment plan that is in the parent’s primary language within 15 days of the parents referral or request for special education assessment. Cal. Ed. Code §§ 56321(a), (b).

#### Allegations of Non-compliance with Requirements for Conducting Evaluations

##### Individual Allegations

BR

The District has not completed his mental health and speech assessments in a timely manner as required by § 300.301, or as agreed in settlement agreement. Although BR’s parent and OUSD agreed that these assessments would be completed by January 30, 2015, these assessments have still not been completed.

SA

SA’s triennial assessment was due on March 18, 2014 and OUSD still has not provided her parents with an assessment plan. OUSD claims to have completed several assessments in the past month. They have not obtained her parent’s consent for these assessments or notified them of the type of assessments they plan to do in violation of § 300 .304(a).

ZA

ZA’s parents made multiple referrals for evaluation for special education eligibility. OUSD failed to provide his parents with an assessment plan within 15 days of their September of 2014 request or January 14, 2015 request in violation of California Education Code section 56321(a). The assessment plan that it finally provided to ZA’s parents did not include all areas of suspected disability, including occupational therapy in violation of § 300.304(a)(3)(4). The plan proposed having a school psychologist, who is not trained and knowledgeable to test motor functioning, to provide assessment in this area in violation of § 300.304(c)(iv).

TK

TK’s parent requested an occupational therapy assessment in April of 2014. OUSD did not provide his parent with an assessment plan within 15 days as required by California Education Code sections 56321(a) and (b).

##### Systemic Allegations

OUSD does not have a system in place to ensure that assessments are provided in compliance with IDEA. OUSD does not have sufficient, qualified individuals to provide timely evaluation in compliance with IDEA and the California Education Code. OUSD staff are not adequately informed of student’s rights to initial evaluation and reevaluation pursuant to IDEA.

### Due Process Related Settlement Agreements or Corrective Action Plans

#### Allegations of Non-Compliance with Settlement Agreements or Corrective Action Plans

##### Individual Allegations

BR

BR still has not received many of the services provided for in his October 2014 settlement agreement, including 40 minutes a week of RSP academic services, plus 30 minutes of RSP emotional/social check, the full 60 minutes of weekly mentoring/consultation to his RSP teacher, and monthly reports to his parent. OUSD did not provide the increased RSP services in his agreement until three months after the agreement was signed and did not provide the increased speech services until one month after the agreement was signed. OUSD did not complete the mental health and speech assessment of BR and did not review the FBA with the IEP team by mid-January as required by the settlement agreement.

GJ

OUSD failed to implement his 2014 settlement agreement as follows: it did not place GJ in Sojourner Truth Independent Study for the remainder of the 2013-2014 school year, did not provide the speech and language services provided for in the agreement, and only provided a small portion of the tutoring services provided for in the agreement.

AT

OUSD failed to provide most services it is required to provide through the October of 2014 settlement agreement, including a providing a 1:1 behaviorally trained aide in the classroom; 15 hours of consultation and training (including five hours of consultation prior to January 15, 2015 IEP) by a NPA behavioral specialist to the aide; weekly email from classroom staff regarding AT’s progress and behaviors; and 30 minutes per week individual speech in addition to the 45 minutes of group speech AT was already receiving. OUSD also failed to complete an FBA by January 15, 2015 as provided by the agreement, and the FBA was not based on five hours of observation as agreed upon in the settlement agreement.

SA

Pursuant to CDE’s corrective order, the district was required to provide 765 minutes of compensatory speech services. SA’s family was informed that these services would be provided by “doubling up” her time in speech. However, these services were never provided.

LI

Pursuant to the June 10, 2014 letter from an OUSD administrator, OUSD acknowledged that it had not provide 17 hours of RSP services to LI and offered 17 hours of compensatory RSP services. OUSD has not provided these services.

##### Systemic Allegations

OUSD does not have a plan and practice to ensure that due process settlement agreements with students, corrective actions, and offers of compensatory services are complied with in timely and comprehensive manner. OUSD does not have sufficient resources in place to comply with such orders and agreements. OUSD has a pattern and practice of trying to bargain away students’ rights under corrective action plans and settlement agreements by offering substitute services that match students’ needs but match OUSD resources on-site. OUSD does not explain to parents that they do not have to accept substitutions for services they have a right to under settlement agreements, corrective action plans, and written compensatory offers by OUSD administrators.

### Procedural Safeguards

#### Procedural Safeguards Requirements

Each school district must permit parents to review and inspect their child’s records without an unnecessary delay. § 300.613 (a).

School districts are required to provide parents with a copy of student records within five business days of their request for parent review. Cal. Ed. Code § 56504.

Prior written notice. School districts are required to provide written notice that meets requirements of § 300.503 a reasonable time before the district proposes to initiate or change, or refuses to initiate or change, the identification of , evaluation, or educational placement of a child with a disability. § 300.503(a).

Prior written notice must be provided in the native language of the parent. § 300.503(c)(ii).

#### Allegations of Non-Compliance with Procedural Safeguards

##### Individual Allegations

TK

On February 3, 2015 TK’s DRC Attorney requested, on behalf of his parent, all records created since April 1, 2013 for her review. She received one single document as a result of this request, a copy of a blank IEP dated April 4, 2014 with no Attendance page or parent signature, pursuant to that request. No other records have been provided, in violation California Education Code section 56504; and 34 CFR § 300.613(a).

OUSD substantially reduced the RSP services in his 2014 annual IEP without providing a PWN, in violation of § 300.503(a) to his parent or even informing her at that IEP meeting what it was proposing to do. OUSD refused to provide TK with an Occupational Therapy assessment as requested by his mother in April 2014 and never provided his parents with PWN.

SA

Beginning on August 25, 2014, DRC made repeated requests for SA’s records and did not get them until four months later after repeated requests, in violation of California Education Code section 56504. OUSD has never provided SA’s parents with a PRN this school year (§ 300.503(a)) despite failing to hold an annual IEP meeting for over two years, and despite its failure to assess student in past four years, actions that effectively resulted in refusal to change IEP services.

BR

OUSD has failed, over BR’s parents and attorney’s strong objections, to provide, or list in his proposed January 2015 IEP, many of the services listed in BR’s October 30, 2014 IEP addendum and it has not provided BR’s parent with a PWN related to this refusal in violation of § 300.503(a).

TA

OUSD has failed to provide many of the services in TA’s settlement agreement, despite the repeated requests of TA’s parent and attorney during TA’s IEP January and February IEP meetings that they immediately provide these services; they have not provided his parent with a PWN related to this matter in violation of § 300.503(a).

ZA

OUSD sent two PWNs to ZA’s parents, one in January of 2015 and one in February of 2015; both of these PWNs were in English only, despite the fact that parents native language is in Spanish, in violation of § 300.503(c)(ii).

SL

OUSD refused SL’s mother’s request, made in early February and reiterated at an IEP meeting on February 26, 2015, for home-based special education and related services until an appropriate placement can be found for him. OUSD has never provided her with a PWN related to this refusal, in violation of § 300.503(a).

LI

OUSD refused LI’s parents request, made at both his October 2014 IEP and his February 23, 2015, for increased RSP services. OUSD has never provided them with a PWN related to this refusal, in violation of § 300.503(a).

TK

OUSD did not provide TK’s parents with a PWN before it significantly reduced his RSP in his April 4, 2014 IEP.

##### Systemic Allegations

OUSD does not have plan in place to ensure that Student’s procedural safeguards are protected. Parents are denied timely PWNs with the content required by law, including notice of their due process rights whenever OUSD changes or refuses to change their child’s IEP. Many parents are also denied access to the complete records of their child. Due to these violations, parents do not have sufficient knowledge of their rights to file a due process proceeding if they choose to do or to participate in meaningful discussions about their child’s placement and services.

# Proposed Resolution

To resolve this complaint, we are requesting the California Department of Education (CDE) to order OUSD to immediately undertake the following corrective actions:

Individual Remedies

1. Convene IEPs, supervised by CDE, with adequate notice to the parent and DRC, for each of the named students to determine appropriate services to ensure FAPE in the LRE and adequate and appropriate compensatory services.
2. Convene IEPs, supervised by CDE, with adequate notice to the parent and DRC, fur each student identified during the course of CDE’s investigation of this compliance complaint who have been deprived of services, supports or opportunities by the District’s current policies and/or practices, to determine appropriate services to ensure FAPE in the LRE and adequate and appropriate compensatory services.
3. Provide all services in their settlement agreements and/or corrective action plan/written offer of compensatory services to BR, BR, TA, GJ, LI and SA.
4. Provide written description of the services offered pursuant to paragraphs A-C above and provide written confirmation to CDE and DRC and each child’s parent, in their primary language, that these services have commenced and when they have been provided in full.
5. Identify individuals within OUSD who will be responsible for ensuring that all services offered pursuant to paragraphs A-C are provided, and provide these individuals’ contact information to DRC, CDE and students’ parents in their primary language.

Systemic Remedies

1. Provide a structured mediation process with an independent mediator to try to develop an agreed upon comprehensive plan, including timelines and identified experts, to address the violations and systemic deficiencies described in this complaint.
2. To the extent that the issues described in this complaint are not resolved in a structured mediation process, CDE will develop, in consultation with experts, and in conjunction with a stakeholders group including OUSD, DRC, DREDF and OUSD parents, a comprehensive plan to address all of the violations and deficiencies described in this complaint. This plan will include, a timeline, identify experts to consult with, and will contain corrective actions and penalties in the event OUSD does not comply with this plan. CDE will appoint a monitor to oversee the implementation of this plan.
3. CDE will develop and implement a written plan, in consultation with two independent experts agreed upon by CDE and DRC, to increase its monitoring and oversight of and the provision of technical assistance to OUSD to ensure compliance with IDEA.
4. CDE will develop and implement a plan, provided to OUSD and DRC, to ensure that OUSD provides all of the services and supports pursuant to individual remedies proposed in items A-E above.
5. DRC will be awarded reasonable attorneys and costs due to the extraordinary circumstances involved in this matter and the amount of time, skill, and effort required in this case. .

We reserve the right to amend this complaint and to seek additional or different remedies on behalf of the named complainants and all other students similarly situated as the investigation progresses.

Please contact Maggie Roberts or Suge Lee at (510) 267-1200 if you have any questions. Thank you for your prompt attention to this matter.

Sincerely,



Maggie Roberts

Associate Managing Attorney

Encs.

cc: Sheilagh Andujar, OUSD Deputy Chief (*via Federal Express & email)*

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1. Cal. Ed. Code §§56043, 56500.2(a)(1), 34 C.F.R 300.151-153. [↑](#footnote-ref-1)
2. The identities of BR, GE, GJ, LI, SA, SL, TA, TK, VG, ZE, their respective parent/guardian, and required contact information are listed separately in Confidential Exhibit A to protect them from unnecessary public exposure. [↑](#footnote-ref-2)
3. [1]  OSERS  has recognized in its official comments to IDEA regulations that, pursuant to 34 CFR § 300.151, an SEA must comply with all procedures and remedies provided for in Part 300  in redressing state complaints filed against the SEA itself. [↑](#footnote-ref-3)
4. Data source: June 2013 Casemis: <http://www.cde.ca.gov/sp/se/ds/documents/indrptlea1213no.pdf> [↑](#footnote-ref-4)
5. Data source: June 2013 Casemis: <http://www.cde.ca.gov/sp/se/ds/documents/indrptlea1213no.pdf> [↑](#footnote-ref-5)
6. *See* cmat.org/wp-content/uploads/sites/4/2014/02/Oakland07.pdf and http://fcmat.org/wp-content/uploads/sites/4/2014/02/Oaklandcompletereport1208.pdf [↑](#footnote-ref-6)
7. Although FCMAT’s final report on in 2008 indicates that the problems within the special education department in OUSD had improved significantly by 2008, the reoccurrence of the same type of problems in 2013 indicates that long-term supervision and monitoring of OUSD is needed. http://fcmat.org/wp-content/uploads/sites/4/2014/02/Oaklandcompletereport1208.pdf [↑](#footnote-ref-7)
8. Copies of BR’s relevant documents, including his most recent IEP, are attached hereto as Exhibit B. [↑](#footnote-ref-8)
9. This complaint included systemic special education claims on behalf of BR and similarly situated OUSD students that were dismissed by OAH for lack of jurisdiction. [↑](#footnote-ref-9)
10. OUSD agreed to provide the diagnostic counseling 30 minutes weekly of RSP check in on social emotional issues because BR has an immediate need for social/emotional supports. To date, OUSD has provided none of these supports to BR [↑](#footnote-ref-10)
11. When the issue of compensatory services was raised at last IEP meeting, OUSD responded by stating that BR would be best served in a more restrictive environment. This is a common practice of OUSD – countering requests that an IEP or agreement be implemented by suggested that the student would be better placed in more restrictive setting that receiving the services to which he or she is entitled. [↑](#footnote-ref-11)
12. Copies of GE’s relevant documents, including his most recent IEP, are attached hereto as Exhibit C. [↑](#footnote-ref-12)
13. Copies of GJ’s relevant documents including his most recent IEP, are attached hereto as Exhibit D. [↑](#footnote-ref-13)
14. Copies of LI’s relevant school documents, including his most recent IEP, are attached hereto as Exhibit E. [↑](#footnote-ref-14)
15. The school district’s attorney provided sporadic translation at the June 10, 2014 IEP, a situation that made LI’s mother very uncomfortable and did not enable her to understand all of the proceedings. [↑](#footnote-ref-15)
16. At the following January 20, 2015 IEP, the team learned that the reason why LI was benefiting from push-in RSP services is because he was receiving push-in only during math, LI’s stronger subject, rather than in reading or writing where he had the most need. [↑](#footnote-ref-16)
17. OUSD has a practice of confusing, or purporting to confuse, offered compensatory services with services in the IEP resulting in a denial of agreed upon compensatory services because there is no system of accountability related to providing such services. [↑](#footnote-ref-17)
18. Copies of SA’s relevant school documents, including her most recent IEP, are attached hereto as Exhibit F. [↑](#footnote-ref-18)
19. These services were not provided due to a lack of a speech language provider assigned to SA’s school. Consistent with their usual practice, OUSD never informed SA’s parents that she was not receiving these services. They found out from SA. [↑](#footnote-ref-19)
20. OUSD has a policy of having an attorney present at IEP meetings whenever a student will be represented by an attorney. Compliance with this policy at OUSD takes precedence over complying with legally mandated timelines for holding IEPs, even in cases like this where OUSD is already more than year late in holding an annual IEP. [↑](#footnote-ref-20)
21. Copies of SL’s relevant school documents, including his most recent IEP, are attached hereto as Exhibit G. [↑](#footnote-ref-21)
22. The IEP notes do not state that SL’s parent requested home instruction; she also requested this in early February in phone conversation with the OUSD case carrier. This is consistent with OUSD’s recurrent practice of ignoring requests for specific services. [↑](#footnote-ref-22)
23. Copies of TA’s relevant school documents, including his most recent IEP, are attached hereto as Exhibit H. [↑](#footnote-ref-23)
24. The FBA also does not comply with the settlement agreement in that it was based on only four observations, not five. [↑](#footnote-ref-24)
25. Copies of TK’s relevant school documents, including his most recent IEP, are attached hereto as Exhibit I. [↑](#footnote-ref-25)
26. Copies of VG’s relevant school documents, including his most recent IEP, are attached hereto as Exhibit J. [↑](#footnote-ref-26)
27. Copies of ZA’s relevant school documents, including his most recent IEP, are attached hereto as Exhibit K. [↑](#footnote-ref-27)
28. Inexplicably, OUSD sent ZA’s parents a second PWN (in English), denying their request for a special education assessment on January 29, 2015, two weeks before it sent them an assessment plan for this assessment. This PWN lists the fact that he had a prior 504 plan as the primary reason for its refusal to assess him. [↑](#footnote-ref-28)
29. Teacher Quality Roadmap: Improving Policies and Practices in OUSD (March 2103) <http://www.nctq.org/p/publications/nctq_oakland.pdf> [↑](#footnote-ref-29)
30. *Id.;* <http://www.nctq.org/p/publications/nctq_oakland.pdf> [↑](#footnote-ref-30)
31. California Ed Code requires each SELPA to report in its Annual Services Plan the amount it expends for supplementary aids and services for special education students placed in regular education. OUSD SELPA’s 2014-2015 service plan reports that it will spend zero dollars on services and supports to students in the regular education environment. (Ex. A-4). [↑](#footnote-ref-31)