

**CALIFORNIA DEPARTMENT OF EDUCATION**  
**Investigation Report**  
**Case S-0643-21/22**

<b>Public Agency</b> David Haglund, Superintendent Pleasanton Unified School District 4665 Bernal Avenue Pleasanton, CA 94566	<b>Complainant</b> Sally Kirk 1005 Northgate Drive, Unit 333 San Rafael, CA 94903
<b>Special Education Director</b> Jeni Rickard, Assistant Director, Special Education Pleasanton Unified School District	<b>Parents</b>
<b>Special Education Local Plan Area (SELPA)</b> Nanette Gray, Director Tri-Valley SELPA 4665 Bernal Avenue Pleasanton, CA 94566	
<b>Complaint Received</b> April 12, 2022	<b>Report Mailed</b> June 10, 2022

**INVESTIGATION PROCEDURES**

The investigation and conclusions are based on the investigator's review of materials and documents provided by the Complainant and the District, as well as telephone contact with the Complainant on April 14 and May 31, 2022, and with the District on May 31, 2022. Email contact with the Complainant occurred on April 14, 2022, and with the District on April 19 and 28, and May 2, 9, 10, 16, 18, 24, 26, and 31, 2022.

**SUMMARY OF ALLEGATION ONE**

The Complainant alleges the District failed to comply with California *Education Code* (EC) Section 56445(a), when the District did not initiate an assessment or an individualized education program (IEP) meeting prior to the student's transition to kindergarten.

**APPLICABLE CITATION**

EC Section 56445(a) requires, "Prior to transitioning an individual with exceptional needs from a preschool program to kindergarten or first grade as the case may be, an appropriate reassessment of the individual shall be conducted . . . to determine if the individual is still in need of special education and services."

## FINDINGS OF FACT

1. The District's policies require students with disabilities who are in a preschool program to be reevaluated to determine if they still need special education before entering kindergarten or first grade. Evidence for this finding is based on the District's Board Policy Manual.
2. The student previously attended the District's preschool with an IEP dated December 9, 2019. The parent disenrolled the student from the public school and placed the student in a private preschool for the 2020–21 school year. On February 14, 2021, the parent enrolled the student in the District in kindergarten for the 2021–22 school year. On July 21, 2021, the parent informed the District that the student was enrolled in the District for the 2021–22 school year and requested an IEP meeting. The student should have been assessed and an IEP meeting convened before the student transitioned to kindergarten on August 11, 2021, the first day of instruction for the 2021–22 school year. The District informed the parent that the District would consider a "diagnostic placement" to reinstate the student's previous IEP and would assess the student when school started. Evidence for this finding is based on the December 9, 2019, IEP and the July 22, 2021, emails between the parent and the District, the enrollment record, and the District's 2021–22 school calendar.
3. On August 24, 2021, the District provided an assessment plan to assess the student in the areas of academic achievement, health, intellectual development, language/speech communication development, motor development, social emotional/behavior, and adaptive behavior, consented to, by the parent on August 26, 2021. Evidence for this finding is based on the August 24, 2021, assessment plan.

## CONCLUSION

The District failed to meet the requirements of *EC* Section 56445(a). The District failed to assess the student before the student transitioned to kindergarten from preschool. **The District is out of compliance.**

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## SUMMARY OF ALLEGATION TWO

The Complainant alleges the District failed to comply with IEP requirements set forth in *Code of Federal Regulations*, Title 34 (34 *CFR*), Section 300.323(a), when the District failed to have an IEP in effect at the beginning of the 2021–2022 school year.

## APPLICABLE CITATION

34 *CFR* Section 300.323(a) requires, "At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320."

### **FINDINGS OF FACT**

4. August 11, 2021, was the first day of instruction for the 2021–22 school year. The student had previously attended a District school for the 2019–20 school year with an IEP dated December 9, 2019. Although the District had informed the parent that they would consider a “diagnostic placement” to reinstate the student’s previous IEP, and would assess the student when school started, the District did not have an IEP in effect for the student on August 11, 2021, the first day of instruction. The District convened an IEP meeting on August 24, 2021, to reinstate the student’s December 9, 2019, IEP, 13 days after the start of the 2021–22 school year. Evidence for this finding is based on the July 22, 2021, email from the District to the parent, the District’s 2021–22 school calendar and the August 24, 2021, IEP, signed in agreement by the parent on August 31, 2021.

### **CONCLUSION**

The District failed to meet the requirements of 34 *CFR* Section 300.323(a). The District did not have an IEP in effect for the student at the beginning of the 2021–22 school year. **The District is out of compliance.**

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### **SUMMARY OF ALLEGATION THREE**

The Complainant alleges the District failed to comply with IEP requirements set forth in 34 *CFR* Section 300.323(c)(2), when the District provided aide support between August 16 and November 30, 2021, that was not documented in the student’s IEP.

### **APPLICABLE CITATION**

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

### **FINDINGS OF FACT**

5. The student’s August 24, 2021, and the October 21, 2021, IEPs do not require aide services to be provided to the student. However, the District confirmed the student was provided aide services between August 16 and November 30, 2021. Evidence for this finding is based on the August 24, 2021, IEP, signed in agreement by the parent on August 31, 2021; the October 21, 2021, IEP, signed in partial agreement by the parent on October 29, 2021; the District’s May 10, 2022, response to the complaint; the May 18, 2022, email from the District to the California Department of Education (CDE); and the May 31, 2022, telephone contact with one of the student’s teachers.

## CONCLUSION

The District failed to meet the requirements of 34 *CFR* Section 300.323(c)(2). The District provided the student aide services not documented in the student's IEP. **The District is out of compliance.**

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## SUMMARY OF ALLEGATION FOUR

The Complainant alleges the District failed to comply with IEP requirements set forth in 34 *CFR* Section 300.323(c)(2), when the District removed the student from the regular class to the special day class (SDC) on campus between September 1, 2021, and February 11, 2022, and the instructional time in the separate setting was not documented in the IEP.

## APPLICABLE CITATION

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

## FINDINGS OF FACT

6. The student's IEPs require the following:
  - The August 24, 2021, IEP requires the student to be in the regular classroom for 98 percent of the time and for two percent of the time outside the regular classroom because the student requires specialized support to access social rules in the classroom and to understand classroom expectations. The IEP also requires the student receive group, pull-out speech and language (S/L) services for 25 minutes weekly in a separate classroom.
  - The October 21, 2021, annual/triennial IEP requires the student to be in the regular classroom for 98 percent of the time and for two percent of the time outside the regular classroom. However, the student was required to receive group, pull-out S/L services for 25 minutes weekly in a separate classroom. Although the IEP states that the educational setting was reviewed, including minutes spent in and outside the general education classroom, there were no changes made to the educational setting page of the IEP.
  - The December 1, 2021, amendment IEP requires the student to receive group, pull-out S/L services for 25 minutes weekly in a separate classroom
  - The January 24, 2022, amendment IEP requires the student to receive group, pull-out S/L services for 25 minutes weekly in a separate classroom and

individual occupational therapy (OT) for 30 minutes weekly in a separate classroom.

Evidence for this finding is based on the August 24, 2021, the October 21, 2021, the December 1, 2021, and the January 24, 2022, IEPs; the District's May 10, 2022, response to the complaint; and the May 18, 2022, email from the District to the CDE.

7. The District and the parent's advocate confirmed that the student was sent to the SDC classroom from the general education classroom between September 1, 2021, and February 11, 2022; however, the instructional time in the separate setting was not documented in the IEP. Evidence for this finding is based on the District's May 10, 2022, response to the complaint, the May 18, 2022, email from the District to the CDE, and the April 14 and the May 31, 2022, telephone contacts with the parent's advocate and one of the student's teachers.

## CONCLUSION

The District failed to meet the requirements of 34 *CFR* Section 300.323(c)(2). The District did not implement the student's IEP, when it pulled the student from the general education class setting required by the IEP and sent the student to the SDC between September 1, 2021, and February 11, 2022. **The District is out of compliance.**

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## SUMMARY OF ALLEGATION FIVE

The Complainant alleges the District failed to adhere to the procedural requirements set forth in 34 *CFR* Section 300.503, when the District did not provide a prior written notice (PWN), when the student was provided aide services between August 16 and November 30, 2021, that was not documented in the IEP, and when the student was removed from the general education class to the SDC between September 1, 2021, and February 11, 2022, without documenting the instructional time in a separate setting in the student's IEP.

## APPLICABLE CITATION

34 *CFR* Section 300.503 requires:

- (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE [free appropriate public education] to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- (b) Content of notice. The notice required under paragraph (a) of this section must include—(1) A description of the action proposed or refused

by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency's proposal or refusal.

### **FINDINGS OF FACT**

8. Although the District confirmed that the student was provided an aide between August 16 and November 30, 2021, not documented in the IEP, and the student was sent to the SDC from the general education classroom between September 1, 2021, and February 11, 2022, without updating the instructional time the student spent in the SDC in the student's IEP, the District did not provide a PWN to the parent, when it made those changes. Evidence for this finding is based on the District's May 10, 2022, response to the complaint and the May 18, 2022, email from the District to the CDE.

### **CONCLUSION**

The District failed to meet the requirements of 34 *CFR* Section 300.503(a). The District failed to provide the parent with a PWN, when it provided aide services that were not documented in the IEP, and when it pulled the student from the general education class setting required by the IEP, and sent the student to the SDC. **The District is out of compliance.**

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### **SUMMARY OF ALLEGATION SIX**

The Complainant alleges the District failed to comply with requirements pertaining to evaluations set forth in 34 *CFR* Section 300.304(c)(4), when the District did not assess the student in all areas of suspected disability, when it did not include behavior, aide, and OT evaluations in the August 24, 2021, assessment plan.

### **APPLICABLE CITATION**

34 *CFR* Section 300.304(c)(4) requires, "Each public agency must ensure that . . . (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities . . ."

## FINDINGS OF FACT

9. At the August 24, 2021, IEP team meeting to add S/L services to the student's December 9, 2019, IEP, the parents expressed concerns regarding the student's struggles when in a group, social behavior, and the ability to participate with peers. The District agreed to assess the student and provided an assessment plan in the areas of academic achievement, health, intellectual development, language/speech communication development, motor development, social emotional/behavior, and adaptive behavior. The parent consented to the assessments on August 26, 2021. Evidence for this finding is based on the August 24, 2021, IEP and the August 24, 2021, assessment plan.
10. On September 27, 2021, the District provided the parent with an assessment plan in the areas of a one-to-one (1:1) aide and an educational evaluation by a behaviorist. The District clarified that the educational evaluation was a functional behavior assessment (FBA). Evidence for this finding is based on the September 27, 2021, assessment plan, consented to by the parent on the same day; the May 18, 2022, email from the District; and the May 26, 2022, clarification email from the District.
11. On October 29, 2021, the parent requested an OT assessment to determine the student's fine motor and sensory needs. The District provided an assessment plan in the area of motor development and a sensory profile assessment from teachers/parents. Evidence for this finding is based on the November 1, 2021, assessment plan, consented to by the parent on the same day.

## CONCLUSION

The District met the requirements of 34 *CFR* Section 300.304(c)(4). The District assessed the student in all areas of suspected disability when it included assessments in the areas of social emotional/behavior and motor development in the August 24, 2021, assessment plan. **The District is in compliance.**

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## SUMMARY OF ALLEGATION SEVEN

The Complainant alleges the District failed to comply with IEP requirements set forth in 34 *CFR* Section 300.324(a)(2)(i), when the District failed to consider the use of positive behavioral supports and other strategies to address the student's behavior at the October 21, 2021, IEP meeting.

## APPLICABLE CITATION

34 *CFR* Section 300.324(a)(2)(i) requires, "The IEP Team must . . . In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior . . .

## FINDINGS OF FACT

12. The parents were informed of numerous behavior incidents the student had in the classroom between September 1, 2021, and October 19, 2022, and how the student's behavior was impeding the student's learning and that of the other students in the classroom. At the IEP meeting on October 21, 2021, the teacher reported that the student had behavioral issues in the classroom and needed 1:1 assistance. The student's behaviors were indicative of characteristics associated with autism. The student had behavioral and attention challenges. The parent was concerned that the student, the aide, and the classroom teacher were not receiving support from a trained behaviorist. However, the District did not develop any goals for behavior and informed the parent that it was waiting for the completion of the behavior assessment. Evidence for this finding is based on teacher notes and behavior calendar; the multidisciplinary assessment report; and the October 21, 2021, IEP, consented to October 29, 2021, with exceptions stating that goals for behavior should have been developed at the October 21, 2021, IEP meeting.

## CONCLUSION

The District failed to meet the requirements of 34 *CFR* Section 300.324(a)(2)(i). Although the District was aware that the student's behavior was impeding the student's learning and that of others, the District failed to consider the use of positive behavioral interventions and supports and strategies to address the student's behavior at the October 21, 2021, IEP meeting. **The District is out of compliance.**

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## SUMMARY OF ALLEGATION EIGHT

The Complainant alleges the District failed to comply with IEP requirements set forth in *EC* Section 56344(a), when the District did not complete the student's educational behavior assessment within 60 days of September 27, 2021, the date the parent consented to the assessment.

## APPLICABLE CITATION

*EC* Section 56344(a) implements 34 *CFR* Section 300.303.

*EC* Section 56344(a) requires:

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



### FINDINGS OF FACT

13. On September 27, 2021, the District provided the parent with an assessment plan in the area of educational behavior, identified as an FBA by the District. The parent consented to the assessment on the same day. Evidence for this finding is based on the September 27, 2021, assessment plan, and the May 26, 2022, email from the District.
14. The District completed the assessment and convened an IEP meeting on January 24, 2022, to review the assessment report, 59 days beyond the 60-day timeline. The District continued the meeting on February 11, 2022, and offered individual behavior intervention services for 2,400 minutes yearly and compensatory individual behavior intervention services for 840 minutes yearly to be completed by June 3, 2022. Evidence for this finding is based on the January 24, 2022, IEP, the February 11, 2022, IEP pages 219-220, and the District's 2021-22 school calendar.

### CONCLUSION

The District failed to meet the requirements of *EC* Section 56344(a). The District failed to complete the behavior assessment and convene an IEP team meeting within the 60-day timeline. **The District is out of compliance.**

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### SUMMARY OF ALLEGATION NINE

The Complainant alleges the District failed to comply with IEP requirements set forth in 34 *CFR* Section 300.320(a)(5), when the District failed to include an explanation of the extent to which the student would not be participating with nondisabled pupils in the regular class and school activities in the January 24 and February 11, 2022, IEPs.

### APPLICABLE CITATION

34 *CFR* Section 300.320(a)(5) requires:

(a) As used in this part, the term [IEP] means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 34 *CFR* Section 300.320 through 300.324, and that must include . . . (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section . . .

### FINDINGS OF FACT

15. The January 24, 2022, amendment IEP requires the student to receive pull-out group S/L services for 25 minutes weekly, and individual OT services for 30 minutes weekly, in a separate classroom. However, the District did not include an explanation

of the extent of time the student would not be participating with nondisabled children in the regular classroom and activities in the student's IEP. Evidence for this finding is based on the January 24, 2022, amendment IEP, signed in partial agreement by the parent and the District's May 10, 2022, response to the complaint.

16. The February 11, 2022, amendment IEP requires the student to receive pull-out group S/L services for 25 minutes weekly, individual OT services for 30 minutes weekly, in a separate classroom. and group resource specialist program services referred to as specialized academic instruction in the IEP for 525 minutes weekly in a separate classroom. However, the District did not include an explanation of the extent of time the student would not be participating with nondisabled children in the regular classroom and activities in the student's IEP. Evidence for this finding is based on the February 11, 2022, IEP, signed in agreement by the parent on February 18, 2022, and the District's May 10, 2022, response to the complaint.

## CONCLUSION

The District failed to meet the requirements of 34 *CFR* Section 300.320(a)(5). The District failed to include an explanation of the extent of time the student would not be participating with nondisabled children in the regular classroom and activities in the January 24 and February 11, 2022, IEPs. **The District is out of compliance.**

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## REQUIRED CORRECTIVE ACTIONS

### Allegations One, Two, Three, Four, Five, Seven, Eight, and Nine

1. On or before September 15, 2022, the District shall provide evidence it has provided a training regarding the implementation of *EC* sections 56445(a) and 56344(a), and 34 *CFR* sections 300.323(a), 300.323(c)(2), 300.503(a), 300.324(a)(2)(i), and 300.320(a)(5), and the findings of noncompliance in this case. Required attendees shall include special education administrators and staff at the student's school, responsible for implementing *EC* sections 56445(a) and 56344(a), and 34 *CFR* sections 300.323(a), 300.323(c)(2), 300.503(a), 300.324(a)(2)(i), and 300.320(a)(5). Acceptable evidence should include a copy of the dated training agenda and a list of attendees, including their names and job titles.

### Allegations One, Two, and Four

2. On or before September 15, 2022, the District shall provide the parent with a plan for the provision of 20 hours of academic tutoring by a credentialed teacher, for the loss of time in the general education setting, not assessing the student before the student's transition to kindergarten, not having an IEP in place before the start of the school year, and the student's removals to the SDC. Acceptable evidence should include a copy of the compensatory services plan with proof of transmittal to the parent.

3. On or before March 31, 2023, the District shall provide evidence that it has provided the compensatory services in corrective action two. Acceptable evidence should include copies of dated service logs or other documentation showing the services provided, the location and duration of services provided, and the name, and signature of the service provider.

Allegation Five

4. On or before July 15, 2022, the Charter shall provide evidence that it has sent the parent a PWN for providing aide services not documented in the IEP and for pulling the student from the general education classroom and placing the student in the SDC. Acceptable evidence should include a copy of the PWN and proof that it was provided to the parent.

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**RECONSIDERATION NOTICE**

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

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

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

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

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

**Ana Marsh, Education Administrator II**  
**Complaint Resolution Unit**  
**[speceducation@cde.ca.gov](mailto:speceducation@cde.ca.gov) Email**  
**or**  
**916-327-8878 Fax**  
**or**  
**California Department of Education**  
**Complaint Resolution Unit**  
**1430 N Street, Suite 2401**  
**Sacramento, CA 95814**

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

**Corrective Actions  
Complaint Resolution Unit  
California Department of Education  
1430 N Street, Suite 2401  
Sacramento, CA 95814 or  
916-327-8878 Fax or Email:  
[SEDCorrectiveAction@cde.ca.gov](mailto:SEDCorrectiveAction@cde.ca.gov)**

When submitting evidence please make sure to include the case number.

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

Ana Marsh  
Education Administrator II  
Complaint Resolution Unit

Melissa Branson  
Education Administrator I  
Complaint Investigation Unit I

Jane Canty  
Education Administrator I  
Complaint Investigation Unit II

Melissa Branson  
Digitally signed by Melissa Branson  
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California Department of Education  
Special Education Division