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VIA EMAIL

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April 12, 2022

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

Dear Sir or Madam:

I am submitting this complaint in my role assisting _____ to
assert their parent rights with regard to their son _____'s education.

SPECIAL EDUCATION COMPLIANCE COMPLAINT

This is a special education compliance complaint under 5 C.C.R. § 4600 *et seq.* against the Pleasanton Unified School District (District) for non-compliance with federal and state special education laws in regard to Christopher's Individualized Education Program (IEP).

A) REQUIRED INFORMATION

Student name: _____ (Student)
Date of birth: _____/2015
Parents: _____ (Parents)
Family address: _____, Pleasanton, CA 94566
Home phone: _____
Parent emails: _____
School: Alisal Elementary School

B) ALLEGATIONS

The District has demonstrated a pattern of hesitating, incremental and inadequate provision of services and supports to Student, resulting in:

1. **Failure to assess prior to transitioning from preschool to kindergarten:** Although parents enrolled student in the District for kindergarten in February 2021, the District did not initiate an assessment or an IEP meeting prior to Student's transition into kindergarten. (Ed. Code, § 56445, subd. (a).)
2. **Failure to have an IEP in effect at the beginning of the school year:** No IEP was in effect from August 11-August 24, 2021. The District had ample opportunity to establish an IEP for Student prior to the first day of school. (Ed. Code, § 56344, subd. (c).)
3. **Failure to document general education removals and aide services in the IEP:** Student received aide support from approximately August 16-November 30, 2021, but this service was not documented in the IEP during that period. Student was removed from his regular class with increasing frequency from approximately September 1, 2021, through February 11, 2022. These absences from the regular class were spent with the special day class program on campus. The instructional time in a separate setting was not documented in the IEP. Parents did not receive prior written notice. (Ed. Code, §§ 56345, subd. (a)(4) and 56500.4.)
4. **Failure to assess in all areas of suspected disability:** The District was well aware that Student had behavioral and sensory-motor needs by August 24, 2021, but the assessment plan generated on that date did not include behavior, aide or occupational therapy evaluations. The delay in assessing Student in these areas resulted in delays providing vital services Student needed to access his educational environment. (Ed. Code, § 56341.1, subd. (b)(1).)
5. **Failure to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior:** The District refused to address behavior at the October 21, 2021, IEP meeting, resulting in delays providing critical services student needed to access his educational environment. (Ed. Code, § 56341.1, subd. (b)(1).)
6. **Failure to complete an assessment within 60 days:** Parents signed an assessment plan for an "Educational Behavior Assessment" on September 27, 2021. The resulting report was presented to the IEP team on January 24, 2022. (Ed. Code, § 56344, subd. (a).)
7. **Failure to include required information in the IEP document:** The January 24 and February 11, 2022, IEPs did not include an explanation of the extent to which Student would not participate with nondisabled pupils in the regular class and school activities. (Ed. Code, § 56345, subd. (a)(5).)

C) SUPPORTING FACTS: PRIOR TO APRIL 2021

1. Student is a smart, verbal 6-year-old boy residing in Pleasanton, within the boundaries of the District. Student attends kindergarten at Alisal Elementary School.
2. Student was diagnosed with speech-language difficulties at 28 months old, followed by a diagnosis of autism spectrum disorder when he was 35 months old. Student had an IFSP on the basis of developmental delay until his third birthday. In December 2018, an initial IEP was developed with eligibility under the autism category. Parents agreed to the IEP and Student attended various preschool special day classes starting in January 2019.
3. In December 2019, an annual IEP was developed for Student, with eligibility under the autism category, three goals, no accommodations, and 900 minutes per week of specialized academic instruction. Parents consented promptly to the IEP.
4. In mid-March 2020, instruction shifted to virtual programming due to the Covid-19 pandemic. By August 2020, Parents realized that Student was not benefitting from virtual instruction. They disenrolled Student from the public school program in August 2020 and arranged for him to attend a private preschool that could provide in-person learning. Student was supported by an aide from his home-based applied behavior analysis program at the preschool. Parents did not revoke consent for special education.
5. On February 24, 2021, Parents enrolled Student in the District for the 2021-2022 school year (kindergarten). They noted that he had a current IEP on the registration form and included the IEP in the enrollment packet.

D) SUPPORTING FACTS: APRIL 2021 – APRIL 2022

1. After enrolling student in February 2021, Parents waited for someone from the District to initiate the appropriate process to prepare for Student's entry to kindergarten in fall 2021. No one from the District initiated an IEP meeting or an appropriate reassessment in anticipation of Student entering kindergarten.
2. On July 21, 2021, having received no communication from the District about Student's IEP or planning for kindergarten, Parents requested an IEP meeting. No IEP meeting was initiated by the District prior to the first day of school.
3. On August 11, 2021, Student began attending Melinda Firpo's kindergarten class at Alisal Elementary School – without an IEP in effect (the IEP from 2019 was not implemented).
4. On August 12, 2021, the resource specialist at Alisal emailed Parents that she would be sending out an assessment plan "in a couple of weeks."
5. Student soon experienced behavior dysregulation in Ms. Firpo's class (hitting and screaming at the aide, tantrums and moving about the room).
6. On August 24, 2021, the District convened a "plan review" IEP meeting. Parents expressed concerns about Student's struggles when in a group, his social behavior, and his ability to participate with his peers. The meeting resulted in an IEP offering continued eligibility under

autism, two goals addressing communication, no accommodations, 50 minutes per week of language and speech related services, no behavior intervention services or consultation, no intensive individual support services, no occupational therapy services or consultation, and no specialized academic instruction. Behavior was identified as a special factor. One of the two speech and language goals was that “[Student] identify unexpected and expected behaviors in the classroom” Parents consented to the entire IEP on August 31, 2021.

7. On August 24, 2021, the District presented an assessment plan to Parents, proposing to evaluate Student in the areas of academic achievement, health, intellectual development, language/speech communication development, motor development, social emotional/behavior, and adaptive behavior. Parents consented to this plan on August 26, 2021.
8. By September 2021, Parents believed Alisal was providing some 1:1 aide support to Student, but this was not documented in his IEP or any other formal, written offer.
9. On September 24, 2021, at parent request, there was an IEP amendment to add parent-requested accommodations to the IEP, and Parents consented promptly.
10. On September 27, 2021, the District proposed a second assessment plan for “1:1 aide assessment and Educational Behavior Assessment,” and Parents consented to the plan.
11. On October 21, 2021, the District convened a “Plan Review” and “Eligibility Evaluation” IEP meeting. Prior to the meeting, the case manager told Parents that “behavior will not be included.” At the meeting, the District presented its Multi-Disciplinary Initial Psycho-Educational Assessment. The IEP was revised to add secondary eligibility under the Other Health Impairment category, change the two speech-language goals, and add accommodations. Services listed two 25-minute sessions of language and speech services. The IEP did not offer intensive individual services, behavior intervention services or consultation, occupational therapy services or consultation or any specialized academic instruction. It did not document time that Student was spending in the special day class on campus. At a minimum, Student was going to the special class each Friday from 11:00-11:50 a.m. for “Dinosaur Time from September 3, 2021, through February 11, 2022. Parents consented to implementation of the entire IEP on October 29, but expressing concerns about inadequate goals, lack of behavioral services, the aide not being in the IEP and delays evaluating all areas (aide, behavior or occupational therapy). They requested that the aide and behavior assessments be expedited and for the team to meet and consider the results before the Thanksgiving break. Parents also requested an occupational therapy evaluation.
12. On November 1, 2021, the District proposed a third assessment plan related to occupational therapy. Parents consented to the plan the same day.
13. From August-November 2021, Student’s teacher made many written and verbal complaints to Parents about his behavioral needs in the classroom. These complaints continued through November, and escalated until Parents requested an urgent IEP meeting on November 13, 2021, to develop “an appropriate program that addresses all of [Student’s] needs, including the need for a teacher who behaves professionally and will educate him ...”. No IEP meeting

was convened before the Thanksgiving break, but on November 29, 2021, Student was moved to the general education kindergarten class taught by Laura Moore at Alisal Elementary.

14. On December 1, 2021, the District convened an IEP team meeting to consider its Additional Adult Support Assessment. The District added a 1:1 aide for 240 minutes per day. The District did not add any behavior goals, behavior intervention services, behaviorist consultation supports or a behavior intervention plan to the IEP. Pullouts to the special day class were not documented in the IEP. Parents consented in full to the IEP amendment the same day.
15. On December 8, 2021, Student's case manager emailed parents saying that the behaviorist "won't be able to complete the assessment before break."
16. On January 24, 2022, the District convened an IEP amendment meeting to consider its Occupational Therapy Evaluation and Functional Behavior Assessment reports. The IEP was revised to add three accommodations, consultation by the occupational therapist 45 minutes monthly, consultation between the behaviorist and psychologist 20 minutes per month, 30 minutes per week of occupational therapy direct individual services, and 1200 minutes per year of behavior intervention services. Pullouts to the special day class were not documented in the IEP. On January 25, Parents consented to implement the entire IEP amendment with the exception that they did not agree the IEP offers to date by the District provided Student with a Free Appropriate Public Education.
17. On February 11, 2022, the District convened an IEP meeting to consider a Behavior Intervention Plan and new goals. The resulting IEP, received by Parents on February 15, 2021, included two motor/sensory goals and three behavior goals, revised accommodations, 20 minutes monthly of various consultation between Parents and school staff, 525 minutes per week of specialized academic instruction (the first time specialized academic instruction was included in the kindergarten IEP), 1200 minutes per year of Behavior Intervention Services (for "BIP writing and aide"), and 840 minutes of compensatory Behavior Intervention Services. Extended school year programming was offered for the first time, consisting of placement in regular district summer school class, with 25 minutes per week of language and speech, 30 minutes per week of Behavior Intervention Services and 1350 minutes per week of intensive individual services. No educational setting page was included to reflect the addition of specialized academic instruction to Student's program or inform Parents of the percentage of time Student would spend outside the regular class. On February 18, 2022, Parents consented to the implementation of the entire IEP amendment, but they disagreed that the compensatory behavior services were sufficient to put Student in the same position he would be in, had services been appropriate and timely.
18. On March 10, 2022, the District convened an IEP meeting to revise the Extended School Year offer to consist of placement in a special day class 800 minutes per week, 25 minutes per week of language and speech services, 30 minutes per week of behavior intervention services, and 1350 minutes per week of intensive individual services. Parents consented to implement the entire IEP amendment on March 22, 2022, with exceptions, noting that their consent exception to the February 11, 2022, amendment continued, and their concern about the sharp reduction in extended school year services in the IEP.

E) HOW ALLEGED VIOLATIONS HAVE AFFECTED STUDENT

1. As a result of the District's failures, Student has:
 - a. Missed occupational therapy services that should have been in place at the start of school, if District had assessed him spring of 2021 an anticipation of his transition to kindergarten.
 - b. Missed academic instruction and other opportunities in the regular class, due to informal removals and times spent in a special education classroom that were not documented in the IEP or consented to by Parents.
 - c. Experienced behavioral regression to a such a degree that his access the general education program was significantly reduced.
 - d. Experienced alienation from his teachers, peers and wider school community as a result of his behavioral regression and incidents at school.

F) PROPOSED RESOLUTIONS

The following remedies can help to mitigate the harm Student has experienced this school year and put Student in the same position he would have occupied but for the District's violations of federal and state education regulations:

1. The District will hire an inclusion specialist or contract with an inclusion specialist to evaluate Student's program at Alisal Elementary School, make recommendations to the IEP team, attend IEP meetings, and provide services to support the implementation of recommendations adopted by the IEP team, to ensure that Student has a meaningful opportunity to participate in his general education class and school activities to the maximum extent possible.
2. A minimum of twenty hours of compensatory private academic instruction services, in grade level general education subjects to address undocumented removals from the general education classroom from September 3, 2021, through February 11, 2022. (Calculated at 60 minutes weekly for 20 weeks = 20 hours). Parents believe that removals were more than just the "Dinosaur Time" each Friday. Other removals included elopements from class, "breaks" that would not have been necessary with appropriate behavioral supports and services, and other unknown removals to the special education class. Parents believe that weekly time in the special education class increased from September 3, 2021, to February 11, 2022.
3. Nine and one half hours of compensatory occupational therapy services due to the failure to assess student and develop an appropriate kindergarten IEP prior to the start of school, to result in appropriate occupational therapy in the IEP, from August 16, 2021, through January 24, 2022 (19 school weeks). (Calculated at 30 minutes weekly for 19 weeks = 9.5 hours.)
4. Seven additional hours of compensatory behavior intervention services, in addition to the 840 minutes already offered by the District, to address the failure to assess student and develop an appropriate kindergarten IEP prior to the start of school to ensure appropriate behavioral services, from August 11, 2021, through January 24, 2022. (Calculated at 66.7 minutes weekly

for 19 weeks = 21.1 hours, less 14 hours of compensatory behavior intervention services already added to the IEP on February 11, 2021 = 7.1 hours.)

5. Training for school staff in IEP development and standards for FAPE, in the writing, processing and recording of IEPs and the legal requirements surrounding the completion and presentation of IEPs. The training shall be presented to Student's present and potential case managers, and other District employees if directed by the California Department of Education. The training shall be in addition to any other training the District has previously been ordered to provide by the Office of Administrative Hearings. The training shall be presented by special education attorneys or experienced administrators, but not by the District's attorneys or employees.
6. Any other relief determined to be appropriate by California Department of Education.

I appreciate your department's consideration of this complaint and the remedies requested on behalf of this child and his parents.

Yours truly,

A handwritten signature in black ink, appearing to read 'Sally Kirk', with a large, sweeping flourish at the end.

Sally Kirk

Cc: David Haglund, Superintendent, Pleasanton Unified School District,
dhaglund@pleasantonUSD.net

Encl: *see list of attachments next page*

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