



CALIFORNIA
DEPARTMENT OF
EDUCATION

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STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

SPECIAL EDUCATION

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Donald Evans, Superintendent
Berkeley Unified School District
2020 Bonar Street,
Berkeley, CA 94702

Dear Superintendent Evans:

Subject: 2014–15 Verification Review of Berkeley Unified School District

This letter provides an overview of the results of the Verification Review (VR) of the Berkeley Unified School District (District). The District was chosen for the VR based on not having met 5 out of the 11 indicators on the 2012–13 Special Education Annual Performance Report Measures (APR). The District was also identified as having disproportionate representation in the category of African American students identified as having a disability of emotional disturbance (ED). They have had this disproportionate representation for greater than five years. The California Department of Education (CDE), Special Education Division conducted an on-site review from April 6–10, 2015, and May 20–22, 2015.

Process Used by CDE Staff for the BUSD Verification Review

Monitoring Plan Development: Prior to conducting the on-site review, staff of the CDE developed a Monitoring Plan to guide the CDE's review of the District's special education program. The CDE's staff held multiple meetings to analyze information about the District derived from parents of children in the District, past compliance records and various data reports submitted to the CDE over the last several years.

Parent Input: The CDE solicited parent input from the Disability Rights Education and Defense Fund (DREDF), the Parent Training and Information Center (PTIC) for the District. The DREDF used two methods to secure input from families, parent surveys, and parent phone calls directly to the CDE. A total of 91 parents, representing 9 percent of the parents of students receiving special education services, provided input to the CDE either directly or via DREDF's parent surveys. The number of families is summarized by the method below:

Parent Surveys	87 parents
Individual parent phone calls	4 parents

Past Compliance Records: The CDE reviewed a variety of compliance documents to ensure that the review tested items that had been previously noncompliant. The CDE staff reviewed previous findings of noncompliance from the 2012–13 APR or the State Performance Plan (SPP) indicators, Office of Administrative Hearings (OAH) due process decisions, state complaints, and 2011 and 2012 Data Identified Noncompliance (DINC). In addition, all related compliance concerns expressed by DREDF were tested.

Performance Data: A review of the following reports suggested potential concerns for investigation. These data reports, primarily drawn from the California Special Education Management Information System (CASEMIS), included:

- Special Education Enrollment by Age and Disability, District of Service (DoS)
- Special Education Enrollment by Age and Disability, District of Residence (DoR)
- DataQuest Suspension, Expulsion and Truancy Report, by Federal Offense
- DataQuest Suspension, Expulsion and Truancy Report, Defiance Suspension and Expulsion
- DataQuest No Child Left Behind (NCLB) Core and Compliant Classes by Subject Area
- Special Education Enrollment by Age and Major Ethnic Group-DoS
- Special Education Enrollment by Age and Major Ethnic Group-DoR
- Special Education Enrollment by Age and Grade-DoR
- Special Education Enrollment by Age and Grade-DoS
- English Learner Students by Language by Grade
- California English Language Development Test (CELDT)
- DataQuest Local Educational Agency Report, Growth API
- DataQuest Local Educational Agency Report, AYP
- School Type by Age, December 1, 2012

- Services by Provider, December 1, 2012
- Annual Service Plan
- Services by Student by Type, December 1, 2012

Annual Performance Report Measures: Each year the CDE calculates SPP indicator data and makes a compliance determination for each district. These indicators are required by federal law and include compliance and performance issues. This data is used to select districts for VR. In 2014–15, this data was also used to inform the Monitoring Plan. For 2011–12, the District did not meet the statewide targets for the following indicators:

- SPP 1- Graduation Four Year Rate;
- SPP 3- Statewide Assessments;
- SPP 5- Least Restrictive Environment (LRE);
- SPP 8- Parent Involvement;
- SPP 10- Disproportionality by Disability;
- SPP 11- Eligibility Evaluation; and
- SPP 13- Secondary Transition Goals and Services.

Monitoring Plan Contents: The CDE's Monitoring Plan addressed the following broad areas:

Parent Surveys

Parents responding to the survey or calling the CDE expressed concerns around assessments. Of the 87 parents who responded to the PTIC survey, 35.3 percent indicated the District did not provide them with an Assessment Plan or written notice refusing to assess their children within 15 days of receiving a request for special education evaluation. In addition, 15.9 percent specified the results of their children's assessment were not used to plan Individualized Education Program (IEP) goals and 47.8 percent indicated the IEP team did not evaluate for and consider the use of assistive technologies that their children may need to access or benefit from their education. Eleven percent indicated their children were not re-evaluated every three years and the District's 2011 and 2012 DINC reports showed five student files had late triennials.

Concerns around LRE program options and appropriate services, modifications and accommodations in accordance with the students' IEPs were also expressed through the surveys and phone calls. Of the 87 parents who responded to the PTIC survey, 14.7 percent indicated the team did not discuss their children's programs in terms of the LRE. This issue is also addressed in SPP indicator 5, LRE, where the District did not meet this target. Approximately 47.1 percent of the parents specified a variety of program options were not discussed for their children at the IEP meetings. In relation to the lack of program options, 54.3 percent of the parents reported the District did not offer or provide appropriate services for their children. In addition, 40 percent of the parents indicated the services their children are receiving are not in accordance with their IEPs. This issue was also confirmed when a 2012–13 complaint investigation found the District failed to implement the IEP as amended by the settlement agreement.

The services and supports in the students' IEP programs are not individualized to their unique needs according to 27.1 percent of the respondents with children under the age of sixteen. Nearly 31.9 percent of the parents stated the District did not provide and use assistive technologies (e.g., books on tape, communication devices, text to speech, large print, etc.) that are written in their children's IEPs while 20.6 percent indicated their children did not have the opportunity to participate in school and extra-curricular activities (e.g., assemblies, field trips, and after-school activities) with the appropriate supports and services. Many of the parents attributed this to the general education teachers and service providers not being informed of their specific responsibilities related to implementing their children's IEPs and the specific accommodations, program modifications and supports for school personnel, according to the 36.8 percent of the parents who responded to the PTIC survey.

Goals, objectives, and progress reports were areas that received large percentages of replies from the 87 parents who responded to the PTIC survey or called directly to the CDE. Twenty-two point one percent of the parents indicated their children's goals and objectives were not reviewed and revised at the IEP meetings based on progress or lack of progress while 42 percent stated the District did not make a good faith effort to assist their children with achieving the goals and objectives or benchmarks listed in their IEPs. Likewise, 42 percent indicated they did not receive progress reports on how their children were meeting their IEP goals and outcomes at least as often as the regular report card schedule.

Parents expressed apprehension about the District's lack of parent involvement although the District's SPP target for this indicator was met. In addition, the District met this target for the last three years. Despite the District meeting this target, 42.7 percent of the 87 parents who responded to the PTIC survey indicated the District did not facilitate parent involvement as a means of improving services and results for their children. Similarly, a 2014–15 complaint investigation found the District failed to ensure

that parents are present at each IEP team meeting or are afforded the opportunity to participate. Sixteen point two percent of the parents who responded indicated their children's IEPs did not indicate they were English learners and for parents who do not speak English as their primary language, the District did not provide an interpreter at their children's IEP meetings and they did not receive information from the school upon their request in their native language.

Additionally, 29.9 percent of the parents indicated their concerns were not considered when planning, developing, and reviewing their children's IEPs and 14.5 percent specified their children's strengths were not considered during the IEP meetings. The DREDF shared a concern in their August 29, 2014, letter to the CDE administration regarding the utilization of adequate data, formal, and informal, in determining specialized academic and related service needs. They stated information from the following sources should be considered when determining the needs: 1) functional behavioral assessments (FBAs), behavioral intervention plans (BIPs), behavioral service plans (BSPs), mental health services, social skills support, applied behavior analysis (ABA) services, assistive technology, and 1:1 aides. Furthermore, 10.5 percent of the 87 parents who responded to the PTIC survey indicated the IEP team did not consider the use of positive behavioral interventions and support such as BIPs based on FBAs. It should be noted, however, that the District met its targets for Indicator 3 - Suspension and Expulsion.

Other concerns shared through the parent surveys included ten percent of the parents not receiving copies of their procedural safeguards at least once a year. A related 2011–12 complaint investigation also found the District failed to follow procedures when a parent requested an amendment to their child's record. Also, 32.4 percent of the parents indicated the IEP team did not discuss how their children would participate in state and district testing. An issue related to this is documented in SPP indicator 3, Statewide Assessments, where the District did not meet the target.

Performance Indicators

Graduation Four Year Rate (SPP 1 - Percent of all exiting students in grade twelve, and exiting ungraded students eighteen and over, who graduate from high school with a regular diploma).

The target was 82.99 percent. The District scored 77.2 percent. This target was met because of the safe harbor calculation. The District did not meet this target for the last five years.

Statewide Assessments (SPP 3 - Academic achievement testing to meet the requirements of NCLB).

The English Language Arts (ELA) proficiency target was 89 percent. The District scored 43.5 percent. The math proficiency target was 89.1 percent. The District scored 42.9 percent. The District did not test proficient for ELA or math for the last five years. Parents reported in the PTIC parent survey, the District did not provide services and/or language support to assist with progress in English language development or to learn subjects other than English such as math or science.

Least Restrictive Environment (SPP 5 - The average amount of time students ages six to twenty-two receive their special education or services in settings apart from their non-disabled peers).

The target for receiving special education services inside the regular classroom for 80 percent or more of the day was 76 percent. The District scored 75.9 percent. The target for receiving special education services inside the regular classroom for less than 40 percent of the day was no more than 9 percent. The District scored 9.4 percent. The target for receiving special education services in separate schools was no more than 3.8 percent. The District scored 3.9 percent.

Although very close, targets were not met. The District has not met any of the targets for the last three years. Related issues were identified in the PTIC parent surveys where 14.7 percent of the 87 parents responding respectively stated the District did not discuss their children's programs in terms of the least restrictive environment (e.g., general education classroom, resource, special day class, etc.).

Parent Involvement (SPP 8 - Percent of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities).

The target for facilitating parent involvement was 90 percent. The District scored 99.4 percent. This target was met and exceeded by 9.4 percent. The five-year SPP Indicator (SPPI) report shows the District met this target for the last three years. However, 42.7 percent of the 87 parents responding to the PTIC parent survey stated the District did not facilitate parent involvement as a means of improving services and results for their children whereas 29.9 percent indicated the District did not take into consideration parent's concerns when planning, developing, and reviewing their children's IEPs. Parents who do not speak English as their primary language reported the District did not provide an interpreter at their children's IEP meetings and they did not receive information from the school upon their request in their native language. In addition, a 2014–15 complaint investigation found the District failed to ensure that parents are present at each IEP team meeting or are afforded the opportunity to participate.

Disproportionality by Disability (SPP 10 - Percent of racial and ethnic disproportionality by disability among students ages six to twenty-two which may be due to policies, procedures, or practices).

The District is disproportionate for African American students with the qualifying disability of ED. The District has been significantly disproportionate in this category for the last five years. As a result, they are required to complete a Coordinated Early Intervening Services (CEIS) plan to mitigate the disproportionality. The CDE conducted a special review to determine the reasons for this continued noncompliance despite implementation of their CEIS plan over the last three years. Please refer to the staff interview section of this report for a more comprehensive discussion of the District's significant disproportionality.

Eligibility Evaluation (SPP 11 - Percent of children ages birth through twenty-two years whose eligibility for special education was determined within 60 days of receipt of parental consent for evaluation).

The target for students assessed within 60 days of receipt of parental consent was 100 percent. The District scored 94.7 percent. The target was not met and the percentage decreased from the previous year when the District scored 98.3 percent.

A 2014 OAH Case decision was reviewed by the CDE for procedural violations. The CDE found the District's child find policy and/or practice violated parent's rights. A related issue was identified in the PTIC parent surveys where 35.3 percent of the 87 parents responding stated the District did not provide an Assessment Plan or written notice refusing to assess within 15 days of receiving the request for special education evaluation.

Secondary Transition Goals and Services (SPP 13 - Percent of youth aged 16 and above with an IEP that includes all eight coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the postsecondary goals).

The target for students having postsecondary goals and services was 100 percent. The District scored 95.6 percent. The target was not met. The last year that this target was met was 2007–08.

Fewer than 10 percent of the parents responding to the PTIC parent survey reported the District did not discuss transition services at most meetings or evaluate their children for transition interests and present level skills to identify their children's unique needs for postsecondary schooling, career, training, and independent living. The District's 2011

and 2012 DINC indicated 16 student files were noncompliant for transition goals and services for each of those years.

Compliance History – Complaint Investigations

Parent Involvement:

A complaint investigation found the District failed to ensure that parents are present at each IEP team meeting or are afforded the opportunity to participate. A related issue was identified in the PTIC parent surveys where 42.7 percent of the 70 parents responding stated the District did not facilitate parent involvement as a means of improving services and results for their children. Thirty percent indicated the District did not take into consideration parent's concerns when planning, developing, and reviewing their children's IEPs.

Three complaint investigations found the District failed to file due process, adhere to required procedures or fund an independent educational evaluation (IEE) when parents requested an evaluation at public expense.

Suspension/Expulsion:

A complaint investigation found the District failed to follow required suspension and expulsion procedures. Parents responding to the PTIC parent surveys reported the District did not provide the required information regarding discipline protections for students with disabilities, including manifestation determinations, and the District did not continue to provide educational services to enable their children to participate in the general education curriculum and progress toward meeting goals set out in the IEP.

Failure to implement the IEP:

A complaint investigation found the District failed to implement the IEP as amended by the settlement agreement. A related issue was identified in the PTIC parent surveys where 40 percent of the 87 parents responding stated the District did not provide the services according to their children's IEPs. Additionally, 36.8 percent indicated teachers and service providers were not informed of specific responsibilities related to implementing their children's IEPs and the specific accommodations, program modifications and supports for school personnel.

Procedural Safeguards:

A complaint investigation found the District failed to follow procedures when a parent requested an amendment to their child's record. A related issue was identified in the

PTIC parent surveys where 10 percent of the 87 parents responding stated the District did not provide a copy of their parental rights (procedural safeguards) at least one time per year.

Assessment Plan 15 day timeline:

A complaint investigation found the District failed to adhere to the 15 day timeline for the development of the proposed Assessment Plan. A related 2014 OAH Case decision was reviewed by the CDE for procedural violations. The CDE found the District's child find policy and/or practice violated parent's rights. A related issue was identified in the PTIC parent surveys where 35.3 percent of the 87 parents responding stated the District did not provide an Assessment Plan or written notice refusing to assess within 15 days of receiving request for special education evaluation.

Compliance History – DINC

2011–12 DINC Overdue Annual IEP - Two student files were found noncompliant for not holding annual IEPs each year. A parent responding to the PTIC parent survey reported her child did not have an IEP meeting at least once a year.

2011–12 DINC Overdue Triennial - Five student files were found noncompliant for not holding triennials at least every three years. A related issue was identified in the PTIC parent survey where 11.8 percent of the 87 parents responding stated their children were not re-evaluated every three years for special education.

2011–12 DINC Incomplete Transition Goals and Services - Sixteen student files were found noncompliant for having incomplete transition goals and services each year. Parents responding to the PTIC parent survey reported transition services were not discussed at the first IEP before their children turned sixteen years of age and their children were not assessed for transition services. The District has not met their target of 100 percent for SPP indicator 13, Secondary Transition Goals and Services, since 2007–08. The District's score was 95.6 percent.

Compliance History – OAH Decision

Child Find – The 2014 OAH Case decision was reviewed by the CDE for procedural violations. The CDE found the District's child find policy and/or practice violated parent's rights and ordered the local educational agency (LEA) to revise the child find practice. A related issue was identified in the PTIC parent surveys where 35.3 percent of the 87 parents responding stated the District did not provide an Assessment Plan or written notice refusing to assess within 15 days of receiving the request for special education evaluation. This is also addressed in SPP indicator 11, Eligibility Evaluation.

Compliance History – Special Education Self-review and Verification Review

This District has not had a Special Education Self-review (SESR) within the last seven years. The last VR, which was conducted in 2007–08, was closed on August 6, 2010. The District was excused from completing a SESR in the last cycle because they were going through a VR during that time.

Significant Disproportionality

The District has been significantly disproportionate the last five years for African American students identified as having the qualifying disability of ED. As a result, the District had been required to submit a CEIS plan that outlines a strategy with interventions the District had to engage in to mitigate the disproportionality. This is also addressed in SPP indicator 10, Disproportionality by Disability. The analysis of the District's demographic data, as reported through CASEMIS, revealed that although African American students only make up 20 percent of the entire student population, they represent 42 percent of all students in the District who have IEPs. Additional data was gathered to further investigate what is happening with the District's referral, assessment and identification of African American students and remediation of their significant disproportionality. See the staff interviews section of this letter for a comprehensive discussion on the District's significant disproportionality.

Verification Review Activities

To address these concerns, the CDE tested protocol compliance items in 85 student records, validated CASEMIS information on student records, examined Special Education Local Plan Area (SELPA) and District policies and procedures, interviewed 38 staff, talked to over 11 parents and visited nine school sites.

The table below shows the individual activities that comprised the Verification Review.

Review Activity	Documents Reviewed	Number of Records
SELPA Governance	SELPA Administrative Regulations	NA
Policies and Procedures	LEA Administrative Policies and Board Policies	NA

Review Activity	Documents Reviewed	Number of Records
<p>Student Record Reviews:</p> <p>School Age English Learners African American Other Health Impaired (OHI) with Diabetes Transition</p> <p>Initial Identification Triennial Reviews Low Incidence Behavior Intervention Plans Statewide Assessments Interim Placement Significant Disproportionality</p>	<p>Student Special Education Records:</p> <p>Annual IEPs Triennial IEPs Initial IEPs Amended IEPs</p>	<p>Number of files reviewed:</p> <p>15 English Learners 85 School Age 65 African Americans 0 OHI with Diabetes 40 Transition</p> <p>29 Initial Identification 29 Triennial Reviews 2 Low Incidence 31 Behavior Intervention Plans Statewide Assessments 0 Interim Placement 25 Significant Disproportionality</p>
IEP Implementation	Student Records, LEA Billing Information, Provider Interview and Attendance Logs, Parent Interviews	15 Student files
Educational Benefit Review	Student Special Education Files	5 Student files
CASEMIS Validation Review	Student Records	60 Student files

Findings

Each item reviewed can generate a finding of compliance, noncompliance, or not applicable when the item does not apply to the record. The table below synthesizes the findings made for the Verification Review as a whole.

Percent of Total Review Items with Compliant Findings	78
Percent of Total Review Items with Noncompliant Findings	10
Percent of Total Review Items with Not Applicable Findings	12

District Level Findings – Policy and Procedure Review

The District's policies and procedures and SELPA governance were reviewed to determine compliance in the areas of free appropriate public education (FAPE), child find, written notification of referrals, IEP assessments, meetings, development, timelines, implementation, and amendments, procedural safeguards, parent rights and participation, LRE and student participation with their non-disabled peers, annual notification to parents, transition processes (secondary), English language development, interagency agreements, program reviews, participation in statewide and district assessments, access to instructional material, suspension and expulsion, over-identification and disproportionate representation and the annual budget and service plan. There were no noncompliant findings from the review of the District's policies and procedures and SELPA governance. Each of the student level findings generates a District level finding and corrective action that will include a training component and a follow-up re-evaluation of additional student files.

Two specific policy area concerns were investigated again during this VR to confirm compliance with the corrective action ordered for a procedural violation stemming from a review of the 2014 OAH decision and DREDF's response to the CDE regarding the corrective action. The CDE's review of the 2014 OAH decision for procedural violations found the District's child find policy and/or practice violated parent's rights and ordered the LEA to revise their child find practice. The revised policy, approved by the CDE in February 2015, was included in the SELPA governance and adopted as the District policy and practice. The District remains compliant with this policy.

An August 29, 2014, letter to the CDE's administration from DREDF, regarding the corrective actions issued to the District as a result of the OAH decision review, identified numerous additional concerns about the District's special education policies and practices they believe need to be reformed. The DREDF urged the CDE to ensure the District be required to reform its exclusionary eligibility policies related to specific learning disabilities, "especially regarding dyslexia. 34 C.F.R. § 300.8(c) (10)." Review of the SELPA governance's eligibility criteria overview section did not find any exclusionary language regarding dyslexia. The section related to this states, "A student has a disorder in one or more of the basic psychological processes (specific learning

disability (SLD)) involved in understanding or in using language, spoken or written, which may manifest itself in an impaired ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia and has a severe discrepancy between intellectual ability and achievement in one or more of the academic areas specified in Education Code, Section 56337(a)."

Student Level Findings

Of the 85 student records reviewed, compliance was tested in the areas listed within this section. Items in each area with greater than 10 percent noncompliance are reported below. Please refer to the Student Level findings report for a comprehensive listing of all noncompliant findings.

IEP Content and Process (85 student records tested)

The CDE team found that 15.3 percent or 13 of the IEPs did not include a statement of the student's present levels of performance including how the disability affects the student's involvement and progress in the general curriculum. IEP notes typically indicated the student's disability affected his or her involvement and progress in the general curriculum, however, what was not indicated was the characteristics of the student's disability that prevented him or her from participating or made it difficult for him or her to participate in the general education curriculum. Furthermore, some IEPs did not include present levels of performance in most areas which might contribute to the 15.3 percent or 13 IEPs not including measurable annual goals, academic and functional, related to the student's needs. The District would benefit from training on how to accurately document students' present levels of performance to also include the characteristics that make it difficult or prevent the student from participating in the general curriculum.

The District was noncompliant for both 2011 and 2012 DINC for having overdue annual IEPs. This was verified in the findings where 20 percent or 17 of the IEPs did not document an annual review of progress toward annual goals and 15.3 percent or 13 of the IEPs were not reviewed within the 12 month timeline. When staff were asked, during the interviews, the reason for not being able to meet timelines, including review of IEPs and progress towards annual goals, staff responded it is due to lack of timely communication, high caseloads and teacher shortage. It would be helpful for the District to implement a tracking system to identify due dates early enough that the information is shared with staff timely, so that annual reviews can be completed on time.

The District uses a one page form that lists various accommodations and modifications with check boxes to indicate which accommodations and or modifications the students

need. However, the form did not include the dates, frequency, or location for the accommodations or modifications. As a result, 34.12 percent or 29 of the IEPs did not include the projected date (month, day and year) for initiating accommodations and/or modifications, and 36.5 percent or 31 of the IEPs did not include the anticipated frequency, duration and location for the needed accommodations and/or modifications. The District could either add the required information to the form or use the identified space provided for this information on the page that includes the services the student is to receive.

A review of the records determined that 16.5 percent or 14 IEPs did not indicate the general education teacher helps decide behavioral interventions, supplementary aids and services, and program modifications and supports for school personnel, whereas 14.12 percent or 12 IEPs did not document that placement decisions were made by a team that included the parent, at least one general education teacher, one special educator, and an LEA representative. General education teachers were not attending the IEP meetings, not completing excusal forms or providing written input to the parents prior to the meeting, as confirmed by 22.4 percent or 19 student files that did not include documentation of a team member's excusal from attending an IEP meeting.

The absence of a general education teacher at the IEP meetings could account for teachers not knowing their responsibilities for implementing the IEPs of students. Questions posed to staff during the IEP implementation review corroborated this finding in that 33.3 percent or 10 employees providing services to the 15 students whose records were tested for IEP implementation were unable to describe how they are informed of specific responsibilities related to implementing the student's IEP, and the specific accommodations, program modifications and support for school personnel.

Training must be conducted district-wide with both special education, general education and school site administrators to implement the requirements of the IEP. The largest noncompliant finding for this review was that 81.2 percent or 69 of the IEPs reviewed did not document that consideration was given to the potential harmful effect of the placement on the student or quality of services needed. The case managers thought that by answering the question regarding the service options or LRE, they had documented the considerations of the potential harmful effects of the placement. The District has begun conversation on how to document considerations of the potential harmful effects of the placement and staff training on how to document discussion of this requirement will be a required District level corrective action.

Of the student files reviewed, 16.5 percent or 14 files did not include a Notice of Meeting stating the purpose, time, location and individuals who would be in attendance and 20 percent did not include a Notice of Meeting with information relating to the participation of other individuals on the IEP team that the parents may invite who have knowledge or

special expertise about the student. Most of the files reviewed for this question were missing the Notice of Meeting form. Confirmation that parents were given a copy of the IEP was not documented in 33 percent or 28 of the IEPs reviewed. Some of the signed copies of IEPs were missing and for others, the box indicating this requirement was not checked. District administration staff also confirmed that parents would take IEPs home and never return them.

Twenty-two point four percent or 19 of the student files did not include prior written notice (PWN) before the LEA proposed to initiate or change the identification, evaluation or educational placement of the student or the provision of FAPE. Prior to the VR, the District's interpretation of the requirement for PWN was that it was only needed for an initial, triennial, change of placement, termination of services or whenever the District and the parent disagreed about a change in the student's services.

Initial Identification and Triennial Assessment (29 student records tested)

The review team determined that 13.8 percent or 4 of the student files revealed that an Assessment Plan was not provided to parents within 15 days of the referral for any proposed evaluation nor provided in the primary language of the parents. In addition, 13.6 percent or 4 of the IEPs did not include dated parental consent. This finding verified concerns expressed by parents in the PTIC survey, a complaint investigation finding and results of the review of a 2014 OAH Case decision. During staff interviews, staff revealed that reasons for missing the 15 day timeline was communication failure. One site reported they had a psychologist out all year. When asked how could this situation be remedied, they suggested solutions such as making sure assessment requests got to the special education department coordinator timely, having administration follow up when communication failed and holding weekly site team meetings to go over assessment requests.

Of the files reviewed, 20.6 percent or 6 of the assessments were not comprehensive or administered in all areas related to the suspected disability. Seventeen point three percent or five of the IEPs did not include vision or hearing screening results whereas 10.3 percent or 3 of the assessments did not include health and developmental information. Ten point three percent or 3 of the assessments did not include information related to enabling the student to be involved in and progress in the general curriculum and 10.3 percent or 3 of the student files did not document a review of existing data or identify additional data needs. The Educational Benefit review also revealed that the assessment of one of the student files was not comprehensive as it did not identify all of the needs of the student.

Thirteen point eight percent or 4 of the student files did not include timely (three years) reevaluations while 17.2 percent or 5 of the IEPs were not developed within sixty days

of obtaining written parental consent. Thirty one percent or 9 of the student files did not confirm that parents were provided a copy of the Assessment Report as the boxes on the signature page of the IEPs were not marked.

English Learners (15 student records tested)

The CDE and District staff detected 20 percent or 3 of the student files did not include an Assessment Plan with the individual's primary language and language proficiency status. Thirty-three point three percent or 5 of the student files revealed the District did not assess all students identified as English learners annually using the results of the CELDT or an alternative assessment or consider the results of the CELDT when determining English language proficiency. In addition, 20 percent or 3 of the student files did not include a determination of whether the CELDT would be administered with or without accommodations or modifications or whether English proficiency would be measured using alternative assessments.

Thirty-three point three percent or 5 of the IEPs did not include linguistically appropriate goals and 13.3 percent or 2 of the files did not include activities which led to the development of English language proficiency nor included instructional systems which met the language and development needs of the student to ensure access to the general education curriculum. Staff at one of the charter school sites indicated peers were used to translate and the administrator reported there were no English language services provided until this year. Other school site staff reported bilingual general education teachers provided support. The District had not tested proficient for ELA and math in the last five years. Parents responding to the PTIC parent survey also indicated the District did not provide services and/or language support to assist with progress in English language development or to learn subjects other than English such as math or science. With an ELA target of 89 percent and the District's score of 43.5 percent, it will be beneficial for the District to review their staffing needs and English language services and make adjustments and revisions in order to ensure compliance in this area.

Behavior (31 student records tested)

Twelve point nine percent or five of the student files revealed there were no provisions of positive behavior interventions and strategies implemented for students whose behavior impeded his/her learning or that of other students. The PTIC reported the District needs to use adequate data, formal and informal, in determining behavioral service needs, especially FBAs, BIPs and BSPs.

Suspension Expulsion (2 student records tested)

Only one of the student files revealed that all relevant information was not reviewed to determine if the conduct in question was the direct result of the District's failure to implement the IEP.

Transition (40 student records tested)

The District had not met their target of 100 percent for SPP indicator 13, Secondary Transition Goals and Services, since 2007–08. Their score was 95.6 percent. Some parents responding to the PTIC parent survey also reported the district did not discuss transition services at most meetings or evaluate their children for transition interests and present level skills to identify their children's unique needs for postsecondary schooling, career/training and independent living. The District's 2011 and 2012 DINC also indicated 16 student files were noncompliant for transition services each of those years. This finding was verified in 15 percent or 5 of the IEPs that did not include any alternative means necessary for the student to complete the District's prescribed course of study and to meet or exceed proficiency standards for graduation.

Of the files reviewed, 47.5 percent or 19 IEPs did not include courses of study that focus on improving the academic and functional achievement of the student to facilitate movement from high school to post-school. In addition, 17.5 percent or 7 of the IEPs did not include measurable postsecondary goals based on age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills. Twenty percent or 8 of the IEPs did not include transition services that were based on the students' needs, preferences and interests and 25 percent or 10 IEPs did not include a statement of the needed transition services in all required areas.

A large percent, 45 or 18 of the student files did not include a Notice of Meeting stating the purpose of the meeting was transition planning and 17.5 percent or 7 of the student files revealed the student was not invited to attend the IEP meeting when the purpose was to consider needed transition goals and services. Ten percent or 4 of the IEPs did not provide students and their parents a written notice transferring all rights to the student when the student reached eighteen years of age.

Educational Benefit and IEP Implementation

There are two special areas that are addressed in monitoring reviews: Educational Benefit and IEP Implementation.

The Educational Benefit review examined student records, from three consecutive years, beginning with an initial or triennial IEP, to determine if the IEPs were reasonably calculated to result in educational benefit for the student. Eighty percent or four of the

five student records tested were found noncompliant in the area of educational benefit. These student files did not: 1) include a direct relationship between the present levels of performance, goals and the specific educational services to be provided; 2) provide services in conformity with the students' IEPs; or 3) provide assistance in order for the students to achieve the goals listed in their IEPs. In addition, one of these student's file did not include a comprehensive Assessment Report identifying all the needs of the student.

This lack of information led to present levels of performance, goals, and services not being appropriately identified and included in the student's IEP. Program modifications that would enable the student to advance towards attaining annual goals, be involved in the general education curriculum and be educated and participate with non-disabled students were also missing. As a result, determinations could not be made that these IEPs were reasonably calculated to result in educational benefit.

The IEP implementation review verified whether services (including accommodations, modifications and supports) were provided to students as they were written in their IEPs. Verification was done through interviews with the students' teachers, designated instructional service providers, paraprofessionals, parents, through review of service, attendance and billing logs, and provider notes. Thirty-three point three percent or 10 employees providing services to the 15 students whose records were tested for IEP implementation were unable to describe how general education teachers were informed of specific responsibilities related to implementing the student's IEP and the specific accommodations, program modifications and support for school personnel. This finding was verified during the staff interviews at nine school sites. Seventy-three point three percent or 28 providers were unable to demonstrate that services were delivered in accordance with the student's IEP as they were unable to produce documentation (service logs, attendance reports, etc.) of the services provided to the students. Two staff members reported the frequency and duration was written as guidelines. The number of times and minutes written were just estimates. Services were provided as needed which could have been more or less than what was written in the students' IEPs.

Staff Interviews

Based on trends identified in the review and analysis of the data, hypotheses were drawn and questions developed around noncompliances related to SPP indicators, compliance complaints and DINC. Thirty-eight school site staff, one district administrator and one SELPA Director, were interviewed to confirm service delivery, validate or disprove hypotheses, answer questions regarding the IEP process, professional development, data noncompliance, and verify policies and procedures. The CDE also utilized the interview process to investigate the DREDF's concerns, parent concerns

expressed through the parent input surveys submitted by the DREDF, the DREDF's August 29, 2014 letter to the CDE's administration regarding pending corrective actions issued to the District and complaints received by the CDE through the Procedural Safeguards Referral Services (PSRS) unit.

The twelfth grade is comprised of 10 percent of all students with IEPs and the District has not met the graduation target, SPP 1, in the last five years. How would this group of students contribute to the District not meeting the graduation target? One hypothesis is that inadequate or no postsecondary transition services led to missing the graduation target. Review of records found there were no alternative means necessary for the student to complete the District's prescribed course of study and to meet or exceed proficiency standards for graduation. In addition, secondary transition goals and services were not included in student IEPs. Interviews with school site administrators revealed that identifying students who needed IEPs took time. Students who required services were identified too late. School site staff all agreed that more training is required on transition. One administrator's suggestion for remediating this noncompliance is a need for tighter policies and earlier interventions and identification. While it cannot be said conclusively that inadequate or lack of postsecondary transition goals and services led to missing the graduation target, it is safe to reason that it is a determining factor.

The District exceeded the target for parent involvement in the SPP indicator 8, and the file review did not produce a significant number of noncompliant findings for this item. However, because 42.7 percent of the 87 parents responding to the PTIC parent survey stated the District did not facilitate parent involvement as a means of improving services and results for their children, questions were posed to staff and parents regarding parent involvement. The District staff reported that parents are kept informed via newsletters, bi-annual family meetings, parent-teacher conferences, back to school night, family orientation, student warning notices, quarterly progress reports, post cards to parents of students who are high achieving, outreach to parents when students are in trouble, outreach to underrepresented parents, and discussion at every IEP meeting. Staff stated they talk about appropriate placements in the District, talk with parents prior to the IEP meeting and ask about their concerns and if they have any goals for their children. They shared that they provide parents with resources such as the student and parent resource center, parent advocate and counseling programs for parents. They also expressed that parents want more personal contact from teachers on a daily basis and some parents do not have reasonable expectations about the special education program given the resources available.

Interviewees responding to the question regarding ELA and math statewide assessments, SPP 3, indicated there are different responses to intervention (RTI) models at different school sites, producing inconsistencies. To quote one provider, "It

also takes time to produce desired outcomes in ELA." Staff responses to what could be done to meet the ELA and math statewide assessment targets included having language labs, reading clubs, paraprofessional support to assist students, matching the best teachers with kids needing the most interventions, having structured language curriculum, connections, frequent writing samples, consistent frequency of performance, formative assessments, feedback, addressing unique needs, scaffolding, structured assignments, extensive reading instructions, modifying teacher delivery, and reading books.

The analysis of the District's demographic data, as reported through CASEMIS, reveals that although African American students only make up 20 percent of the entire student population, they represent 42 percent of all students in the District who have IEPs. That is almost half of the special education population and twice the percentage of African American students in relation to the general population. The District has been identified as significantly disproportionate for African American students with the disability of ED, SPP 10, for greater than five years. The District was directed to develop a CEIS plan that outlines a strategy with interventions the District engages in to eliminate the over identification of this group of students. Although the plan has been in effect for three years, the District continues to be disproportionate in the identification of this group of students leading one to form the conclusion that ineffective interventions and strategies lead to over identification of African American students being diagnosed with ED.

To test this hypothesis and answer questions regarding why this over identification continues to occur, 25 additional records of African American students identified as having a disability of ED were reviewed for a total of 65 African American student files reviewed. Did changes in practices lead to an increase in the over identification of this group of students? Why is there an over representation of African American students in relation to other ethnic groups who represent larger percentages of the entire student population? Does the District's referral process lead to over identification of African American students with IEPs? Did the African American students referred for evaluations receive any interventions prior to the referral? If so, what types of interventions and for how long? Has the initial disability for these students changed from something else to ED?

Of the 65 student files reviewed, 25 or 39 percent had a primary disability of ED. Eighteen had a specific learning disability, 7 had a disability of autism, 4 had speech and language impairments and 11 had other disabilities. Only one student was re-evaluated whose disability was changed from SLD to ED. Only 2 of the 65 students had student study team (SST) interventions. There was, however, no documentation in the files of how long their interventions were provided or what they included. The remaining 63 students were directly referred for special education evaluations. It is interesting to note that within the last three years, 3 African American students, at the very beginning

of their educational experience, in grades kindergarten, second, and third, were also referred for evaluations without any interventions. These findings appear to validate the hypothesis that ineffective interventions (no interventions) have a correlation with the over identification of African American students in general and specifically with the disability of ED. It also appears that the District's practice is to directly refer African American students for evaluations without first trying any interventions.

Many of the African American students were referred for evaluations and qualified for IEPs prior to the District's development and implementation of their CEIS plan. However, since the implementation of the CEIS plan, the District continues to be significantly disproportionate in the identification of African American students with ED. Three of the students identified within the last three years did not have any interventions prior to being evaluated for special education services even though the CEIS plan was implemented. Since African American students are still being directly referred for evaluations without interventions, what is the benefit of the CEIS plan? What are the strategies in the plan and are they designed to rectify the cause of the over identification of African American students with ED? Who has been benefiting from the plan? Which staff knows about the plan and who is responsible for implementing the strategies? What is the process for evaluating the effectiveness of the CEIS strategies and making revisions as needed? The lack of a reduction in the over identification raises these and other questions that the District must pursue in order for the CEIS plan to be an effective tool in helping to reduce and eliminate the over identification of this group of students.

School site staff were interviewed to determine how much they knew about the CEIS plan and to ascertain their understanding of the reason for the over identification of this group of students. Only a few administrators and general education teachers knew the District has a CEIS plan, however, no one was able to explain the purpose of or details about the plan. None of the special education staff were aware of the plan or the strategies the District has implemented to reduce the over identification of African American students with ED. The District administrators need to review the CEIS plan, engage school site administrators, parents, and impacted staff, to help determine the cause of the over identification and develop strategies that will be effective in eliminating the over identification of African American students with ED. Strategies must be developed and implemented that will target the root cause of the over identification.

The LEA must also provide district-wide training on the CEIS strategies with specific instructions on roles and responsibilities. When asked to provide their opinion of why this group of students are being over identified, administrators shared that teachers are not culturally aware of working with young African American students, particularly adolescent boys. The staff does not know how to effectively communicate with adolescent African American students. There is not much communication from school to

home until problems occur. Teachers need more training on normal, adolescent development, particularly African American boys, and training on classroom management. There is a lack of teacher experience dealing with students living in underserved, lower socio-economic, stressful, conditions. Teachers are not aware of the CEIS plan. Staff need to receive training on ethnic cultured aspects of education.

Teachers and providers also shared there is a need to enhance culturally competent teaching practices. Many teachers need professional development in this area. There is a real problem early on with pre-labeling African American students. Other thoughts included institutional racism, perceptions are wide ranged and priority is not placed on students from lower, socio-economic status. Special education providers added the discussion needs to go beyond the special education department. One school site administrator, did share that his school is making psychological services more available to deal with behavior issues that would normally result in referrals for an assessment. He stated they have only referred and identified one African American student with ED this year but there is still lots more that needs to be done.

The eligibility evaluation indicator, SPP 11, target has not been met for the last 2 years and the percentage decreased from the previous year. A related issue is the DINC has also been noncompliant for assessments completed within 60 days of receiving parental consent during the last 2 years. This leads one to question if changes to the District's referral practices have produced a higher rate of noncompliance with this indicator. The CDE posed questions to district staff to find out about the referral process and if changes to the process contributed to the District's noncompliance regarding assessing students within 60 days of parental consent.

Questions to staff related to why the 60 day timeline for assessing students is not being met returned responses of staff shortages, high work load and not being able to meet with parents to conduct or complete the interview process. Staff from one school stated they did not project due dates out far enough causing them to miss timelines and other staff reported they met weekly to go over the upcoming meetings. One fairly new school site administrator referred the issue to his special education coordinator. Parents expressed concern that the District did not provide an Assessment Plan or written notice refusing to assess within 15 days of receiving the request for special education evaluation. When staff was asked about the referral process and who made referrals for evaluations, school site administrators, general and special education teachers and providers all reported referrals came from different sources. Parents requested their children be evaluated for services, teachers contacted the special education department directly when they perceived a student was struggling and interventions they had put in place did not seem to be making a difference. Special education teachers and providers working with other students in the classroom noticed students without IEPs struggling and referred those students for evaluations. Staff all agreed that the process is to go

through the SST first, collaborate with the general education teacher, put interventions in place in the general education classroom and if there is no or slow improvement, a written referral is sent over to the special education department for an evaluation.

All staff reported that direct referrals from parents went straight to the principal when parents made a request. The parents would meet with the principal and RTI coordinator, discuss the referral and forward the referral, if parents still wanted it, to the special education department. If the request was verbal, school staff would tell the parents they needed to put the request in writing. If parents needed assistance writing up the request, teachers confirmed they would assist the parents. Most of the staff indicated that parents were immediately referred to special education if they did not want to wait to see if the intervention process produced results. One general education teacher stated students were put through the intervention process even if the teacher felt that special education services were needed right away.

The DREDF's position that the District has exclusionary eligibility policies related to SLD, "especially regarding Dyslexia" was also examined through interviews with school site therapists, special education teachers and the SELPA Director. The psychologist interviewed reported that dyslexia was not a qualifying disability. He stated, "Evaluators go over several tests the District uses to determine dyslexia as well as look at other areas for students suspected of having a SLD." The psychologist and other designated instructional service therapists indicated they utilize a variety of instruments to assess students suspected of having dyslexia. They collect student work samples, conduct student observations, interview teachers and parents, review cumulative files, look at developmental milestones and family history, review medical records, look at standard scores, performance in classroom, and language history.

The psychologist and teachers reported they are aware that dyslexia is a processing disorder and they utilize a variety of instructional strategies including audio, video and other techniques when serving students who have dyslexia. They also use sensory strategies, dry erase board, visual/graphing aids, reading augmentation programs, accommodations and modifications.

The last year the District met the target for having secondary transition goals and services was 2007–08. This item was also identified as noncompliant through the 2011–12 DINC. To understand why the District has not been able to meet the target and compliance threshold for this item, school site staff were asked to share their thoughts on why transition goals and services are not included in student IEPs. Staff at the District high schools related this to not having the appropriate training to be able to write appropriate goals and services for students who are sixteen years old or older. One administrator indicated that professional development, common preparatory time and instructional goals were needed for staff to be compliant with developing transition goals

and services. Another administrator reported that, in addition to training, school wide goals and benchmarks are needed.

Questions to staff regarding overdue annuals and triennials produced the same rationale. Heavy workloads, staff shortages, not enough or absent psychologists, the inability to meet with parents and student's not accessing services were reasons provided. The majority of staff reported that if they had more time to complete the paperwork, they would be able to meet the timelines.

District staff were asked about training needs to determine staff's capacity and the type of training that would be beneficial to increase compliance in the District. School site staff reported there is not a lot of internal training. The charter school administrator stated there is no coordination of training with the District office. General education teachers indicated there is no training for staff who work with students who have IEPs. Paraprofessionals indicated they only receive training and direction from case managers and none from the District office. It should be noted that training needs related to many of the areas of noncompliance had been identified prior to the VR and the Special Education Director composed a professional development (PD) plan for IEP compliance with the first scheduled PD shortly after school resumed this fall. Training related to this list of findings should be added into the District's PD plan.

Parent Interviews

The CDE staff called 15 parents to verify services their children were receiving and answer questions related to the special education program at their children's respective school sites. Questions were also developed from concerns expressed in the DREDF's August 29, 2014, letter and the parent input survey responses provided by the DREDF. The CDE staff spoke with 11 parents. Five parents indicated the District did not facilitate parent involvement as frequently as they should. Two responders stated they did not get progress reports and teachers were doing the minimum they needed to with students. The other 6 interviewed reported being involved in their children's IEP programs. Parents reported volunteering in class and were active in Parent Teachers Association and IEP meetings. One parent expressed pleasure with the assessment process and the school's ability to invite the parents to the IEPs.

Corrective Actions

The enclosed reports specify corrective actions along with the dates when documentation must be given to the CDE.

Donald Evans, Superintendent
February 29, 2016
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All findings of noncompliance must be corrected by the due dates indicated in the reports. The District must submit evidence of completion to:

Ruby Chandler Smith, Special Education Consultant
Focused Monitoring and Technical Assistance Unit IV
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814

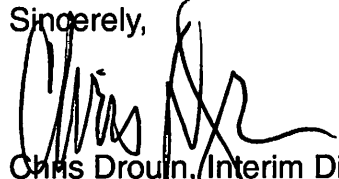
Enclosed please find:

- A report providing a listing of the District level findings and corrective actions
- A report providing a listing of the student level findings and corrective actions
- A copy of DREDF's August 29, 2014 letter to CDE's administrator regarding "Pending Corrective Actions Issued to Berkeley Unified School District"

Once the CDE has received and accepted the District's evidence of completion for all required corrective actions, the assigned regional consultant will schedule a follow-up review. The purpose of the follow-up will be to determine if the corrective actions implemented by the District have remedied the previously noncompliant items.

If you have any questions regarding this matter, please contact Ruby Chandler Smith, Special Education Consultant, Focused Monitoring and Technical Assistance Unit IV, by phone at 916-445-4547, or by e-mail at rsmith@cde.ca.gov.

Sincerely,



Chris Drouin, Interim Director
Special Education Division

CD:rs
Enclosures

cc: Lisa Graham, Director of Special Education, Berkeley Unified School District
Martha Schultz, Director, North Region Special Education Local Plan Area
Susan Henderson, Director, Parent Training & Information Center,
Disability Rights Education & Defense Fund