

- TEXAS EDUCATION AGENCY -



AUSTIN

INDEPENDENT SCHOOL DISTRICT

SPECIAL INVESTIGATION

IR2021-08-001 & IR2023-10-004

Final REPORT

1701 NORTH CONGRESS AVE
AUSTIN, TX 78701

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March 31, 2023

Arati Singh, Board President
Austin ISD
4000 South I-H 35 Frontage Road
Austin, Texas 78704

Matias Segura, Interim Superintendent
Austin Independent School District
4000 South I-H 35 Frontage Road
Austin, Texas 78704

Final Report

Request an Informal Review:

April 17, 2023

Dear Board President Singh and Interim Superintendent Segura,

The enclosed final report presents the findings and recommendations for intervention resulting from a Special Investigation (SI) conducted by the Texas Education Agency's (TEA) Special Investigations Unit (SIU). This investigation relates to allegations of systemic noncompliance by the Austin Independent School District's ("AISD") special education program.

The final report addresses only the allegations described herein, and fully incorporates its previously issued preliminary report by reference. The findings may not address all allegations raised before, during, or after the investigation. Additional investigative work may be conducted to address any remaining allegations. Furthermore, other TEA divisions may be in the process of investigating AISD. These divisions may issue additional investigative reports.

TEA issued a preliminary report on December 30, 2022. In accordance with the Texas Education Code § 39.004 and 19 Texas Administrative Code § 157.1121, TEA provided AISD, and any person identified in the preliminary report as having violated a law, rule, or policy the opportunity to respond to the preliminary findings and dispute any findings of fact.

Having fully considered AISD's response to the preliminary report in accordance with Tex. Educ. Code § 39.004(g), TEA issues this final report that consists of: 1) Cover letter 2) Notification of Informal Review; 3) Final Investigation Report; and 4) Exhibits/Appendices in accordance with 19 Texas Administrative Code §157.1121.

AISD will be afforded the opportunity to request an informal review and discuss the recommended intervention in accordance with 19 Texas Administrative Code § 157.1121.

Please Contact me at adam.benthall@tea.texas.gov, should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Adam Benthall". The signature is written in a cursive, slightly slanted style.

Adam Benthall, Ed.D.
Director of Special Investigations
Texas Education Agency

Notice of Informal Review

This notice, along with the corresponding final investigation report, cover letter, and attachments, constitutes a *Notice of Informal Review*, pursuant to Texas Administrative Code (Tex. Admin. Code) §157.1122. In accordance with 19 Tex. Admin. Code §157.1121, the district may request an informal review related to the final investigation report and the appointment of a conservator. However, an informal review shall be provided only if the district submits a written request for informal review not later than April 17, 2023. 19 Tex. Admin. Code §157.1123(b), written information may be submitted by the required deadline for requesting an informal review. 19 Tex. Admin. Code §157.1123(c). A final decision may be made based solely on the written correspondence sent by the district. A request for informal review must be in writing and received by TEA no later than April 17, 2023, and addressed as follows:

Division of Enforcement Coordination
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701
EnforcementCoordination@tea.texas.gov

If no informal review is requested by the deadline, a final decision may be issued without informal review. 19 Tex. Admin. Code §157.1123(d).

If you submit a timely request for an informal review of the assignment of a conservator and the commissioner, or his designee, assigns a conservator following the informal review, you will have an opportunity to file a petition for review with the State Office of Administrative Hearings (SOAH), pursuant to Tex. Educ. Code §39A.301, if you first satisfy the requirements of 19 Tex. Admin. Code §157.1155. Any SOAH hearing provided under §39A.301 shall be limited to the specific findings and/or recommendations detailed in the final report. Pursuant to Tex. Educ. Code §39A.301(b), the administrative law judge must uphold the decision to assign a conservator unless the administrative law judge finds the decision is not supported by substantial evidence. The decision of the administrative law judge is final and may not be appealed. Tex. Educ. Code §39A.301(c)(3).

Any questions relating to the informal review may be addressed to the Division of Enforcement Coordination at (512) 463-5899 or via email at EnforcementCoordination@tea.texas.gov

TEA Special Investigation
Final Investigative Report
Austin Independent School District
CDN: 227-901

I. Introduction

Austin Independent School District (“AISD” or “District”) is a public education agency headquartered in Austin, Texas, and is supported by the Region 13 Education Service Center. According to the 2020-2021 Texas Academic Performance Report (TAPR), AISD had a student enrollment of 74,725 and a “B” overall accountability rating. AISD also reported that 13.3% (10,032) of students enrolled in the District require or receive special education services. Moreover, AISD received a Special Education Determination status of “Needs Assistance” during the same accountability reporting period. The District’s governance structure is historically composed of a seven-member board of trustees and a superintendent.

On August 16, 2021, the TEA Office of Special Populations and Monitoring (“OSPM”) submitted an intra-agency referral to the TEA Special Investigations Unit (“SIU”) requesting a special investigation (“SI”) of the AISD special education program, as authorized by 19 Tex. Admin. Code § 89.1076 (6).¹ According to the referral, OSPM had investigated special education complaints submitted directly to TEA and had identified ongoing, systemic noncompliance within AISD’s special education program. Specific to one special education complaint, OSPM had issued a Corrective Action Plan (“CAP”) that the District was required to complete as soon as possible but no later than October 31, 2021; however, the District failed to satisfy the requirements in the CAP by the due date.

On October 18, 2022, OSPM submitted a second referral to SIU. OSPM reported that AISD had been issued a separate CAP on October 20, 2021, to address noncompliance identified

¹ See Appendix A
Austin Independent School District
Special Investigation

on indicators 11 and 12 on the State Performance Plan (“SPP 11” and “SPP 12”). The District did not complete that CAP within the one-calendar-year timeline either. In consideration of the SPP data, and given that AISD had a significant number of initial evaluations pending, OSPM believed that an additional referral was warranted to review the ongoing noncompliance.

Pursuant to Tex. Educ. Code § 39.003 Special Investigations², the Commissioner of Education authorized a special investigation to be conducted by SIU to address the alleged violations. On November 8, 2021, and on July 22, 2022, SIU notified AISD of the allegations relating to a special investigation, along with a copy of the SIU investigative procedures. The allegations and findings in this report are a result of the analysis of the systemic failures by the District to follow special education requirements set forth under the Individuals with Disabilities Education Act³ (“IDEA”), the Texas Education Code (“TEC”) and the Texas Administrative Code (“TAC”) that relate to initial evaluations of students, determination of eligibility of students, and the requirement to provide a Free Appropriate Public Education (“FAPE”) under the IDEA.

Please note that, to maintain student confidentiality requirements, any students involved in a complaint mentioned in this report will be identified as “Student” and a corresponding alphabetical marker based on individual OSPM investigations (e.g., “Student A”). The investigations have been identified by their corresponding OSPM complaint number.

II. Background Information

According to the OSPM, TEA received multiple state complaints under 34 CFR §§ 300.151-153⁴⁵⁶ regarding the AISD special education program from July 2019 to the present.

² See Appendix B

³ See Appendix C

⁴ See Appendix D

⁵ See Appendix E

⁶ See Appendix F

On October 30, 2020, the OSPM provided AISD with a report of investigative findings regarding complaint number 202116617. This investigation found that AISD violated special education requirements, and OSPM required corrective actions to address the noncompliance (the “Complaints CAP”). By federal regulation under IDEA, AISD was required to fully satisfy the requirements of the CAP as soon as possible, but no later than one-calendar-year after the date the noncompliance was identified; however, AISD failed to do so. As OSPM continued to investigate multiple incoming complaints, the investigations identified additional noncompliance, and, therefore, additional CAPs were issued. As OSPM continued to substantiate findings of noncompliance on a large scale, OSPM determined that AISD was repeatedly noncompliant in timely convening admission, review, and dismissal (ARD) committee meetings to determine students’ eligibility for special education services and to develop an individualized education program (IEP) and determine placement, as applicable.

As per OSPM, the District repeatedly failed to conduct initial evaluations in a timely manner and to meet other special education requirements.

In 2021, OSPM issued an additional corrective action plan that addressed AISD’s deficiencies in State Performance Plan indicators, specifically SPP 11 and SPP 12 (the “SPP CAP”). SPP 11 measures the percentage of school-aged children who are evaluated within the state-mandated timeline following the receipt of parental consent for initial evaluation. SPP 12 measures the percentage of children referred by Part C of IDEA prior to aged 3 who are found eligible for Part B of IDEA and who have an IEP developed and implemented by their third birthdays. These data sources are submitted to TEA directly by the District.

OSPM substantiated 40 violations from 43 special education complaints submitted to TEA on behalf of students in AISD during the 2020-2021, 2021-2022, and 2022-2023 federal fiscal

years (FFY).⁷ As a result of these investigations and substantiated violations, OSPM concluded that AISD has struggled for at least three years with developing and implementing effective systems to manage its evaluation and identification processes.

III. Allegations & Analysis

a) Allegation One

AISD has continuously failed to meet special education requirements under federal and state statutes regarding initial evaluations, eligibility, IEPs, placement determinations, and the provision of special education and related services to qualifying students.

i. Findings of Fact – Allegation One

A review of 43 OSPM investigative reports regarding violations that occurred during the 2020-2021, 2021-2022, and 2022-2023 federal fiscal years found a repetitive and pervasive pattern of violations relating to 19 Tex. Admin. Code § 89.1011, Full Individual and Initial Evaluations⁸ and 34 CFR § 300.323 which describes when IEPs must be in effect.⁹ These violations also amount to violations of companion statutes in the TEC, specifically TEC § 29.004¹⁰, Full Individual and Initial Evaluation, and TEC § 29.005¹¹, Individualized Education Program.

TEA's findings are based on complaints submitted directly to TEA on behalf of AISD students.¹² It should be noted that the findings listed below are a snapshot of the detailed reports compiled by OSPM and are summarized in this report to provide an overview. However, the OSPM reports are attached hereto as exhibits and should be accessed in their entirety when

⁷ The federal fiscal year (FFY) runs from October 1st of one calendar year through September 30th of the next (e.g., FFY 2022 runs from October 1, 2021, to September 30, 2022).

⁸ See Appendix G

⁹ See Appendix H

¹⁰ See Appendix I

¹¹ See Appendix J

¹² The District did not submit any requests for reconsideration in the OSPM investigations that were reviewed by SIU. Therefore, initial OSPM determinations are final.

referencing the evidence in support of TEA’s findings below. Findings 1 through 13 summarize violations substantiated by the OSPM regarding 19 TAC § 89.1011¹³. The next set of findings (14 through 23) summarize violations substantiated by OSPM regarding 34 CFR § 300.323¹⁴. Violations of 19 TAC § 89.1011 and 34 CFR § 300.323 may also amount to violations of TEC § 29.004 and § 29.005 when applicable.

Findings Relating to Evaluations and Eligibility Determinations

1. On October 30, 2020, OSPM provided AISD with a report of investigative findings based on complaint number 202116617, which was filed on behalf of multiple students in AISD. As per this investigative report, AISD received parental consent on January 17, 2020, to complete Student A’s Full Individual and Initial Evaluation (“FIIE”).¹⁵ Although AISD was required to complete Student A’s FIIE by March 24, 2020, the District delayed almost nine months and did not complete the evaluation until December 14, 2020.
2. On May 5, 2021, OSPM provided AISD with a report of investigative findings based on complaint number 202117056.¹⁶ According to OSPM, Student B’s FIIE was due on November 1, 2020, but AISD did not evaluate the student until January 21, 2021. AISD also failed to meet requirements under 19 TAC § 89.1011 relating to the eligibility determination timeline. On February 4, 2021, the ARD committee determined that Student B was ineligible for special education services; however, the student’s parent disagreed with the ARD committee’s determination. Because of the parent’s disagreement with the eligibility outcome, AISD was required to offer the parent the opportunity to meet in a reconvened ARD committee meeting within 10 school days unless the parties mutually

¹³ See Appendix G

¹⁴ See Appendix H

¹⁵ See Exhibit 1

¹⁶ See Exhibit 2

agreed otherwise as required by 19 TAC 89.1050(g)(1)¹⁷, but the District failed to do so.¹⁸ As a result, the ARD committee did not finalize the student's eligibility determination during the 30-calendar-day timeline set out in 19 TAC § 89.1011¹⁹. Furthermore, the record shows that the District predetermined the student's ineligibility for special education and related services on or before the completion of the FIIE, and therefore, OSPM substantiated AISD's violation of 34 CFR § 300.306(a)(1).²⁰

3. On May 11, 2021, OSPM provided AISD with a report of investigative findings based on complaint number 202117062.²¹ According to the OSPM report, AISD received a parental request to complete an FIIE of Student C on July 27, 2020. Upon receipt of this request, AISD was required to respond to the parent no later than the 15th school day as per 19 TAC § 89.1011(b), but failed to do so.²² AISD did not formally request written parental consent for the FIIE until April 26, 2021, which was almost nine months after the original communication from the parent to the District.
4. On December 15, 2021, OSPM provided AISD with a report of investigative findings based on complaint number 202217641.²³ OSPM found that AISD failed to determine Student D's initial eligibility in accordance with 34 CFR § 300.306²⁴ when the student's ARD committee failed to address the student's eligibility for special education services despite the results of the FIIE that indicated the student was eligible.

¹⁷ See Appendix K

¹⁸ See Exhibit 2

¹⁹ See Appendix G

²⁰ Federal regulations require that "A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (c) of this section and the educational needs of the child." 34 CFR §300.306(a)(1). See Appendix L

²¹ See Exhibit 3

²² See Appendix G

²³ See Exhibit 4

²⁴ See Appendix L

5. On December 22, 2021, OSPM provided AISD with a report of investigative findings based on complaint number 202217748.²⁵ OSPM found that AISD received parental consent to complete an FIIE of Student E on September 13, 2021, which AISD was required to have completed by November 16, 2021; however, AISD failed to meet the 45-school-day timeline, and Student E's FIIE was not completed until December 13, 2021.
6. On January 26, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202217760.²⁶ On February 11, 2021, AISD received parental consent to conduct a FIIE of Student F, which should have been completed by April 26, 2021. Instead, OSPM determined that AISD did not complete the FIIE until July 13, 2021, five months after receiving parental consent, thus exceeding the 45-school-day timeline. Further, the District failed to satisfy procedural obligations that require the student's ARD committee to meet prior to the first day of class to finalize decisions regarding the student's initial eligibility determination, as required by 19 TAC § 89.1011(d).²⁷ Finally, OSPM substantiated the third allegation and found that AISD's evaluation of Student F was not sufficiently comprehensive to identify all of the student's needs, as required by 34 CFR § 300.306.²⁸
7. On February 7, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202217858.²⁹ OSPM found that AISD received parental consent for Student G's FIIE on May 14, 2021. After factoring Student G's absences into the 45-school-day timeline, the FIIE was due on October 26, 2021. AISD admitted that the student's evaluation was not complete until January 31, 2022, which is about 6 months past the deadline.

²⁵ See Exhibit 5

²⁶ See Exhibit 6

²⁷ See Exhibit 6 and Appendix G

²⁸ See Appendix L

²⁹ See Exhibit 7

8. On March 21, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202217990.³⁰ AISD received parental consent for an FIIE of Student H on September 2, 2021, which was due on November 8, 2021. OSPM determined that AISD did not complete the evaluation until February 1, 2022, which was five months after receiving parental consent.
9. On March 30, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202218007.³¹ AISD received parental consent for a FIIE of Student I on September 1, 2022. Although AISD was required to complete Student I's FIIE by November 5, 2022, AISD admitted that Student I's FIIE was not complete until March 6, 2022, which was six months after the District received parental consent.
10. On April 8, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202218055.³² OSPM found that AISD received parental consent for an FIIE of Student J on May 4, 2021, which AISD still had not completed as of March 10, 2022. The record shows that Student J required intensive behavioral interventions, which AISD failed to address as required by 19 TAC § 89.1011(c)(1).³³
11. On May 26, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202218296.³⁴ The record shows that AISD failed to meet its obligations to complete Student K's FIIE under 19 TAC § 89.1011(c)³⁵, 34 CFR § 300.111³⁶, and 34 CFR § 300.301.³⁷ OSPM's report explains that the fact the student withdrew from AISD

³⁰ See Exhibit 8

³¹ See Exhibit 9

³² See Exhibit 10

³³ See Exhibit 10 and Appendix G

³⁴ See Exhibit 11

³⁵ See Appendix G

³⁶ See Appendix M

³⁷ See Appendix N

during the timeline for the initial evaluation did not relieve AISD's obligations to evaluate the student.

12. On August 16, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202219790.³⁸ This investigation concluded that AISD received parental consent for a FIIE of Student L on June 6, 2021; however, the District did not complete the evaluation until February 2022, which was eight months after receiving parental consent to initiate the evaluation. OSPM also found that AISD failed to provide Student L's parent with adequate notice of the ARD committee meeting in accordance with 19 TAC § 89.1050(d)³⁹ and 34 CFR § 300.322.
13. On November 1, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202320117.⁴⁰ According to OSPM's report, AISD received parental consent to evaluate Student L on March 29, 2022, which was due on August 22, 2022, when factoring in student absences. AISD failed to complete the student's FIIE within 45 school days, as required by TAC § 89.1011.⁴¹

Findings relating to Individualized Education Programs (IEP)

14. In addition to the substantiation of AISD's failure to timely complete FIIEs under 19 TAC § 89.1011⁴², the October 30th OSPM Report⁴³ substantiated an IDEA violation relating to 34 CFR § 300.323.⁴⁴ OSPM's investigation of the second allegation in the complaint revealed that, during Student M's ARD committee meeting, the committee agreed that AISD would evaluate Student M for dyslexia and had set a target date for April 15, 2020.

³⁸ See Exhibit 12

³⁹ See Appendix K

⁴⁰ See Exhibit 13

⁴¹ See Exhibit 13 and Appendix G

⁴² See Appendix G

⁴³ See Exhibit 1

⁴⁴ See Appendix H

As per the OSPM report, the student was withdrawn from AISD on August 14, 2020, and was enrolled in a private school. AISD would evaluate Student M for dyslexia and had set a target date for April 15, 2020. As per the OSPM report, the student was withdrawn from AISD on August 14, 2020, and was enrolled in a private school.⁴⁵ AISD reported that Student M had not been evaluated as of the date of the complaint submitted to TEA and further indicated that the student would not be evaluated until October 28, 2020, which was seven months after the ARD Committee recommended and agreed to the evaluation.

15. On March 24, 2021, OSPM provided AISD with a report of investigative findings based on complaint number 202116911.⁴⁶ OSPM determined that AISD did not implement Student N's IEP regarding the implementation of services while in remote learning from December 4, 2020, in accordance with 34 CFR § 300.323.⁴⁷ OSPM also substantiated the allegation that AISD did not develop, review, and/or revise Student N's IEP to consider the parents' concerns and the student's needs regarding difficulties in the student receiving remote instruction, which was in violation of 34 CFR § 300.324.⁴⁸

16. On April 6, 2021, OSPM provided AISD with a report of investigative findings based on complaint number 202116927.⁴⁹ OSPM confirmed that Student O's IEP was not implemented during the time frame of the complaint regarding all accommodations, special education service minutes, and IEP progress reports. In the absence of IEP progress reports, there is no documentation to show whether the student's IEP goals were implemented with fidelity throughout the time frame of the complaint. OSPM substantiated

⁴⁵ 34 CFR § 300.111 requires the students' local education agency to provide special education services to students enrolled in a private school.

⁴⁶ See Exhibit 14

⁴⁷ See Appendix H

⁴⁸ See Appendix O

⁴⁹ See Exhibit 15

the allegation that AISD failed to implement Student O's IEP pursuant to 34 CFR § 300.323.⁵⁰

17. On April 26, 2021, OSPM provided AISD with a report of investigative findings based on complaint number 202116995.⁵¹ OSPM confirmed that AISD failed to implement a provision of Student P's IEP that required the District to provide the parent with timely progress reports, which amounted to a violation of 34 CFR § 300.323.⁵² Additionally, OSPM substantiated the allegation that AISD failed to protect Student P's confidential personally identifiable information when it shared Student P's progress report without parental consent, which violated 34 CFR § 300.623.⁵³

18. On May 26, 2021, OSPM provided AISD with a report of investigative findings based on complaint number 202117113.⁵⁴ OSPM found that AISD failed to provide Student Q with accommodations in conformity with the student's IEPs. While AISD may have implemented some accommodations in Student Q's IEP, AISD was required to implement all of Student Q's accommodations pursuant to 34 CFR § 300.323.⁵⁵

19. On May 26, 2021, OSPM provided AISD with a report of investigative findings based on complaint number 202117138.⁵⁶ The May 12, 2020, IEP requires AISD to reevaluate Student R within 45 school days after direct in-person instruction resumed the fall of 2020, but the reevaluation still had not been completed by Student R's May 7, 2021, ARD committee meeting. OSPM therefore substantiated the allegation that AISD failed to implement Student R's IEP under 34 CFR § 300.323.⁵⁷

⁵⁰ See Exhibit 15 and Appendix H

⁵¹ See Exhibit 16

⁵² See Exhibit 16 and Appendix H

⁵³ See Appendix O

⁵⁴ See Exhibit 17

⁵⁵ See Exhibit 17 and Appendix H

⁵⁶ See Exhibit 18

⁵⁷ See Exhibit 18 and Appendix H

20. On March 15, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202217979.⁵⁸ OSPM found that AISD failed to implement Student S's IEP in accordance with 34 CFR § 300.323 when it failed to complete the evaluations within the agreed-upon timeline.⁵⁹
21. On March 31, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202217984.⁶⁰ OSPM substantiated the allegation 0 AISD failed to provide related services as prescribed in Student T's IEP as required by 34 CFR § 300.323.⁶¹ OSPM also found that Student T's ARD committee failed to take appropriate actions to address ongoing behavioral issues, attendance concerns, and limited progress, as required by 34 CFR § 300.324.⁶²
22. On July 19, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202219022.⁶³ The April 6, 2022, ARD committee determined that Student U required accommodations. OSPM found that AISD failed to provide these accommodations during the student's initial interview process for PALS pursuant to 34 CFR § 300.323.⁶⁴
23. On September 27, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202320241. OSPM substantiated the allegation that AISD failed to implement Student V's IEP, which required AISD to provide thirty minutes of direct instruction weekly.⁶⁵

⁵⁸ See Exhibit 19

⁵⁹ See Exhibit 19 and Appendix H

⁶⁰ See Exhibit 20

⁶¹ See Exhibit 20 and Appendix H

⁶² See Appendix O

⁶³ See Exhibit 21

⁶⁴ See Exhibit 21 and Appendix H

⁶⁵ See Exhibit 22

ii. Analysis of Allegation One

TEA finds that Allegation One is substantiated. SIU reviewed 43 OSPM investigations from FFYs 2020-2021, 2021-2022, and 2022-2023 based on complaints on behalf of individual students that were submitted directly to TEA. From those 43 investigations, OSPM confirmed that AISD committed 40 violations of special education requirements. Out of the 40 substantiated violations, SIU identified 13 violations regarding the District's failure to meet requirements regarding child find and/or initial evaluations and initial eligibility timelines, and 11 violations concerning the implementation of IEPs. Based on the findings of fact for Allegation One, TEA determined that AISD has repeatedly failed to meet special education requirements under state and federal statutes, rules, and regulations.

Local education agencies, such as AISD, are required under IDEA, Part B to ensure the provision of special education and related services to *all* eligible students in the district. IDEA and state laws and rules require school districts to identify and evaluate students who are suspected to be eligible for special education and related services and ensure that eligible students are provided with a free and appropriate public education ("FAPE"). Regulations consisting of strict timelines and requirements surrounding the evaluation of eligible students were promulgated to ensure that students with disabilities are properly identified and receive a FAPE. Once a student is determined by the student's ARD committee to be eligible to receive a FAPE, the school district must adhere to additional regulations in the provision of special education services through the IEP process. Failure to comply with these regulations can deprive students from receiving a FAPE. Accordingly, the repeated failures by the District were detrimental to students with disabilities both individually and systemically.

The Texas Education Agency has codified IDEA's requirements, as well as the requirements of the TEC, in Title 19, Chapter 89 of the TAC, further affirming Texas local education agencies' obligations to provide special education services to eligible students and in

a way that conforms with all applicable provisions under the law. The scope and applicability of the *Commissioner's Rules Concerning Special Education* reads in part below:

Special education services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education (SBOE) and commissioner of education, and the State Plan Under Part B of the Individuals with Disabilities Education Act (IDEA). (*emphasis added*)⁶⁶

Under Tex. Educ. Code § 29.004⁶⁷ and 19 Tex. Admin. Code § 89.1011⁶⁸, local education agencies such as AISD are required to respond to parents' written requests for FIIEs, complete initial evaluations, and determine students' eligibility for special education and related services within strict timeframes prescribed by law. First, TEC § 29.004(c)⁶⁹ and 19 TAC § 89.1011(b)⁷⁰ require AISD to respond to written parent requests for a FIIE that are made to a district administrative employee or the special education department no later than 15 school days from the date of receipt. When a school district determines that an FIIE is required, in most cases the district must complete the FIIE no later than 45 school days following receipt of written parental consent pursuant to TEC § 29.004(a)(1)⁷¹ and 19 TAC § 89.1011(c).⁷² Finally, 19 TAC § 89.1011(d)⁷³ requires that, in most circumstances, within 30 calendar days of the completion of a FIIE, an ARD committee must make decisions regarding initial eligibility, and if appropriate, develop an IEP and determine the student's educational placement.⁷⁴ Findings 1 through 13 exemplify repeated failures by AISD to identify, evaluate, and determine special education eligibility for students throughout AISD. Although most of the OSPM investigations above focused on individual students, a pattern of noncompliance prompted OSPM to address system-wide deficiencies in AISD's evaluation process, which is further discussed in the next section.

⁶⁶ 19 TAC § 89.1001(a) Appendix P

⁶⁷ See Appendix I

⁶⁸ See Appendix G

⁶⁹ See Appendix I

⁷⁰ See Appendix G

⁷¹ See Appendix I

⁷² See Appendix G

⁷³ See Appendix G

⁷⁴ See also, 34 CFR, §300.301(c)(1)(ii) Appendix N

Additionally, AISD is required to develop students' IEPs and determine students' educational placements while adhering to deadlines required by rule.⁷⁵ The IEP is the vehicle for carrying out a student's special education program that is tailored to the student's individual needs. In short, the IEP is not only the written description of a student's special education program, but it binds the local education agency to provide the services as prescribed by the IEP. Regulations surrounding this binding document were promulgated to ensure that local education agencies were appropriately developing and implementing IEPs. 34 CFR § 300.323⁷⁶ requires that "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 34 CFR § 300.320⁷⁷" (*emphasis added*). Therefore, AISD, as a public education agency, is required to develop and implement all eligible students' IEPs as soon as possible following the development of the IEP.⁷⁸

As detailed in findings of fact 14 through 23, AISD failed to develop and implement students' IEPs. AISD is required to convene ARD committee meetings and include the eligible student's parent, who is a member of the student's ARD committee, in the development and implementation of IEPs. AISD's repeated failures surrounding students' IEPs not only amounted to violations of regulations, but deprived eligible students from receiving a FAPE.

The OSPM investigations as detailed in findings of fact 1-23, show a pattern of noncompliance by AISD in the identification and evaluation of, and the provision of special education services to students with disabilities. For more than two years, AISD has failed to remedy and prevent systemic noncompliance regarding initial evaluations, eligibility determinations, and the provision of special education and related services. Despite the corrective actions imposed and monitored by OSPM, AISD continues to violate regulations promulgated to

⁷⁵ See Appendix G

⁷⁶ See Appendix H

⁷⁷ See Appendix Q

⁷⁸ See Appendix H

ensure students within the District receive a FAPE. Not only does AISD continue to fall short of the requirement to provide a FAPE to all eligible students in the District, but AISD's failures indicate widespread and systemic problems within the District. This is further supported by a 2021 Special Education program evaluation report conducted at the expense of Austin ISD by Stetson and Associates, Inc (hereinafter referred to as the "Stetson Report").⁷⁹ This report found, among other things, that in the Stetson team's review of Austin ISD, "observations of instructional practices also provided evidence that the use of IEP determined, student-specific instructional accommodations and curricular modifications is minimal at 22%."

Therefore, based on the findings of fact for Allegation One, TEA determined that AISD has demonstrated a systemic failure in its obligation to meet special education requirements during FFY 2020-2021, FFY 2021-2022, and FFY 2022-2023.

b) Allegation Two

AISD has failed to complete corrective actions issued by TEA to address systemic noncompliance with special education requirements within the mandated one-year timeframe. As discussed in the previous section, OSPM investigated and substantiated AISD's failures to evaluate eligible students and implement students' IEPs. The repetitive and frequent nature of these valid complaints amounted to ongoing and systemic problems within AISD's special education program. To address continued noncompliance in AISD's special education system, OSPM issued a corrective action plan to address systemic deficiencies identified in the October 30, 2020, complaint within one calendar year, which AISD failed to do, and has still not corrected. AISD was also required to correct identified noncompliance relating to State Performance Plan indicators (SPP 11 and SPP 12) within one calendar year from the date that the noncompliance

⁷⁹ See Exhibit 23

was identified as required by 34 CFR § 300.600(e)⁸⁰, but AISD failed to satisfy this corrective action plan within one year.

iii. Findings of Fact – Allegation Two

1. On November 2, 2020, regarding OSPM complaint number 202116617, OSPM requested that AISD provide TEA with 1) a plan for how the District would ensure that all similarly situated students' initial evaluations would be completed as quickly as possible, and 2) AISD's plan for ensuring that these students' ARD committees consider whether compensatory services are required to address any delay in addressing evaluations. The deadline for the District to submit the plan was set for November 29, 2020.⁸¹
2. On December 1, 2020, AISD requested that OSPM extend the deadline to submit the District's plans to address outstanding evaluations and any compensatory services required to address delays. In an email from AISD to TEA, the District representative writes in part below:

With regard [to] the systemic issue of untimely initial evaluations, we agreed that AISD will have until Friday, December 18, 2020, to submit its plan for conducting the evaluations and considering compensatory services. We also agreed that the timeline for correcting the systemic issue is October 30, 2021, which is one year from the date on which the investigative report was issued.⁸²

3. On December 4, 2020, OSPM issued a Notice and Receipt of Special Education Corrective Action regarding identified noncompliance relating to complaint number 202116617. This notice acknowledged the extended deadline for AISD to submit additional documentation on December 18, 2020. This notice, along with all notices issued by OSPM relating to the prescribed corrective actions, contained the following language regarding the mandated one-year timeframe.

⁸⁰ See Appendix R

⁸¹ See Exhibit 1

⁸² See Exhibit 24

4. On December 18, 2020, OSPM issued an Amended Notice and Receipt of Special Education Corrective Action⁸³ ("Notice") regarding complaint number 202116617 ("Systemic CAP").⁸⁴ The Systemic CAP requires the following corrective actions regarding AISD's ongoing violations to evaluate students and determine eligibility for special education and related services:⁸⁵ 1) AISD must provide TEA with a copy of its plan for how it will ensure that initial evaluations will be completed as quickly as possible and its plan for how it will ensure that evaluated students' initial IEP teams consider whether compensatory services are required to address any delay in completing their initial evaluations, 2) AISD will submit documentation of completed proposed timelines of evaluations, as in the Systemic CAP, and 3) AISD's progress in the completion of initiatives outlined in the Systemic CAP, which address systemwide problems in the evaluation and provision of special education services in the District.⁸⁶
5. On February 2, 2021, OSPM provided AISD with another notice detailing AISD's progress regarding corrective actions. This notice was based on data submitted by AISD for OSPM's review. At this time, the corrective actions in the Systemic CAP were in progress.⁸⁷
6. On April 8, 2021, OSPM provided the District with another notice detailing AISD's progress on the Systemic CAP. During this reporting period, AISD requested that the proposed timelines of evaluations be revised due to "additional disruptions in school operations in January and February." Additionally, AISD's March 31, 2021, submission of documentation reads in part:

⁸³ The Amended Notice and Receipt of Special Education Corrective Action details AISD's progress on corrective actions stemming from an OSPM investigation. See Exhibit 25

⁸⁴ See Exhibit 25

⁸⁵ Note that the discussion of the Systemic CAP is limited to the corrective actions relating to systemic issues. Accordingly, this section will not discuss noncompliance relating to corrective actions relating to a specific student.

⁸⁶ See Exhibit 25

⁸⁷ See Exhibit 26

Of the 624 initial evaluations that the District previously identified as delayed due to COVID-19 issues, 214 have been completed, 380 remain pending, and 18 students have withdrawn from the District. In addition, we have determined that 12 of the evaluations are no longer pending as a result of the parents' having withdrawn consent for the evaluations.⁸⁸

7. As a result of the backlog identified in AISD's March 31, 2021, submission, OSPM added the following corrective actions to the Systemic CAP: "On or by May 7, 2021, [AISD] must submit an update to TEA to show how many of the 624 initial evaluation that [AISD] previously identified as delayed due to COVID-19 issues have been completed and how many are still pending."
8. During the next reporting period, TEA increased the frequency of check-ins with AISD to a monthly basis. On May 10, 2021, OSPM provided AISD with another Notice detailing AISD's progress on the Systemic CAP. AISD reported that "of the 624 identified initial evaluations that were previously identified, 316 remain pending, 14 correspond to students who have withdrawn from the District, and 34 are no longer considered pending."⁸⁹
9. On June 1, 2021, OSPM provided AISD with another notice of corrective actions addressing continued and systemic non-compliance. At this point, the District still had not completed Systemic CAP requirements detailed in the December 18, 2020 Notice, which included the completion of certain initiatives by May 31, 2021.⁹⁰ AISD still had not generated a report of students who were found eligible for special education services and owed compensatory services (the "Tracking System"). By this submission deadline, AISD's progress on requesting a vendor to generate the report was still pending and AISD stated the report would be ready during that summer. OSPM gave AISD a due date of September 30, 2021, to complete this initiative.

⁸⁸ See Exhibit 27

⁸⁹ See Exhibit 28

⁹⁰ See Exhibit 29

10. The June 1, 2021, reporting period also showed that the District had not completed pending evaluations identified in the April 8, 2021, Notice. Therefore, OSPM issued the following: "On or by June 30, 2021, [AISD] must submit an update to TEA to show how many of the 624 initial evaluations that [AISD] previously identified as delayed due to COVID-19 issues have been completed and how many are still pending."
11. On July 2, 2021, OSPM provided AISD with another notice detailing AISD's progress on the Systemic CAP requirements, which required AISD to complete 100% of proposed timelines of evaluations by June 30, 2021. AISD failed to complete 100% of the 624 initial evaluations identified as outstanding. During this submission period, the District reported that of the 624 pending evaluations identified in AISD's March 31, 2021, submission, 77 initial evaluations had not been completed. AISD communicated to OSPM that the District intends to complete the remaining evaluations by July 15, 2021. The tracking system was still under development.⁹¹
12. On August 17, 2021, OSPM provided AISD with another notice detailing AISD's progress on the Systemic CAP. AISD failed to complete 100% of the outstanding evaluations by July 15, 2021, as previously stated by AISD. As part of its submission, AISD identified 94 completed evaluations, but at least 38 ARD committee meetings that had not convened within the required 30-day timeline. Further, the District reported that it still needed to evaluate 84 students, increasing the previous amount by seven.
13. Additionally, OSPM identified additional concerns with AISD's data submission, which required OSPM to exercise its authority to amend the CAP to address the identified concerns (the "Amended Systemic CAP"). The Amended Systemic CAP addressed a variety of systemic issues, including the need to monitor the timeline for determining students' eligibility for special education and related services, developing students' IEPs,

⁹¹ See Exhibit 30

and determining educational placements. The Amended Systemic CAP not only contained the two original corrective actions identified in the December 18, 2020, Notice, but addressed specific systemic concerns relating to AISD's failure to evaluate students and implement IEPs.⁹² AISD was required to comply with all items in the Amended Systemic CAP by November 1, 2021, which marked the one-year deadline to comply with the corrective actions issued by OSPM.

14. On October 1, 2021, OSPM provided AISD with another notice of detailing AISD's progress in the Amended Systemic CAP. Based on this data submission, OSPM concluded that the District would not fully execute the requirements of the Amended Systemic CAP by the date of maturity in 30 days. Further, AISD had not completed 100% of the 624 initial evaluations identified in AISD's March 31, 2021, submission. The District also failed to demonstrate any progress in developing a functional tracking system by the end of the summer, as previously communicated to OSPM.⁹³

15. On October 20, 2021, OSPM issued an additional corrective action plan (the "SPP CAP"), which is based on AISD's ongoing noncompliance with SPP 11 and 12 submission requirements.⁹⁴ As previously mentioned, SPP 11 and 12 indicators measure the percentage of school-aged children who are evaluated within state-mandated timelines and the percentage of preschool-aged children whose evaluations and IEPs were implemented as required by Child Find.⁹⁵ Similar to the Amended Systemic CAP, AISD was required to correct the identified deficiencies within one-calendar year by October 20, 2022, but failed to do so.⁹⁶

⁹² See Exhibit 31

⁹³ See Exhibit 32

⁹⁴ See Exhibit 33

⁹⁵ See Appendix M

⁹⁶ See Exhibit 33

16. On November 9, 2021, OSPM confirmed that AISD failed to fully comply with the Amended Systemic CAP within one year after OSPM first identified systemic noncompliance with special education requirements. With outstanding issues still remaining in the CAP, OSPM provided AISD with another notice detailing AISD's progress after the one-year timeframe. AISD could not provide data to confirm the effectiveness of the processes and procedures the District had established to complete initial evaluations within the required timelines. AISD still had a list of initial evaluations that remained pending, and the District reported that 27 ARD committee meetings were convened beyond the required timeline. Additionally, the District still had not convened ARD committee meetings for students whose initial evaluations were delayed in determining compensatory services. Regarding the Tracking System, the District reported that the vendor responsible for developing the system could not generate an accurate report.⁹⁷
17. On February 3, 2022, OSPM provided AISD with a notice detailing the District's progress on the Amended Systemic CAP. However, the District still had not completed the remaining corrective actions by the January 31, 2022, deadline.⁹⁸ This included failures on a system-wide scale to track and comply with timelines regarding evaluations, eligibility determinations, and implementation of IEPs. AISD was required to submit data on the District's progress by May 31, 2022.
18. On June 1, 2022, OSPM provided AISD with another notice detailing the District's progress on outstanding corrective actions. By this date, AISD still had not developed an effective process to demonstrate that initial evaluations could be completed within the required timelines. Additionally, AISD was still unable to secure a tracking system for compensatory

⁹⁷ See Exhibit 34

⁹⁸ See Exhibit 35

services from the selected vendor and indicated that a new vendor would have a system in place by August 2022.⁹⁹

19. On August 16, 2022, OSPM provided AISD with a notice detailing AISD's progress on the Amended Systemic CAP. With ten months now having lapsed following the November 1, 2021, Amended Systemic CAP deadline, the District still did not have a process in place to ensure that it could meet requirements for conducting students' initial evaluations or for determining students' eligibility, developing IEPs, and determining students' education placements. Additionally, the District continued to struggle with implementing a functional tracking system.¹⁰⁰
20. On October 25, 2022, OSPM issued a notice of continuing noncompliance following the October 20, 2022, expiration of the SPP CAP. This notice alerted the District that it had failed to correct ongoing noncompliance with SPP 11 and SPP 12.¹⁰¹
21. On December 2, 2022, OSPM and AISD met to discuss its progress on corrective actions regarding the Amended Systemic CAP and the SPP CAP.¹⁰² AISD reported that the 624 pending initial evaluations from the 2021-2022 school year were 100% complete as of the November 28, 2022, submission.¹⁰³ However, the data submitted during this reporting period indicated ongoing noncompliance with mandated timelines for evaluations and eligibility determinations during the 2022-2023 school year. As it pertains to school-aged children during the 2021-2022 school year, AISD's data showed that out of "2,903 consents for initial evaluations that were signed and not later revoked," there were "2,162 initial evaluation reports [that] have been written as of November 18, 2022."¹⁰⁴ Therefore,

⁹⁹ See Exhibit 36

¹⁰⁰ See Exhibit 37

¹⁰¹ See Exhibit 38

¹⁰² See Exhibit 39

¹⁰³ See Exhibit 40

¹⁰⁴ See Exhibit 41

741 initial evaluation reports are still pending. Of the 2,162 initial evaluation reports that have been written, "528 ARD Committee meetings were not completed within the 30-calendar-day timeline." Additionally, AISD reported that it failed to address compensatory services for 1,147 completed initial evaluations. Regarding early childhood students during the 2021-2022 school year, AISD reported that 35 out of 505 evaluation reports remained pending, 191 out of 454 completed evaluations were not completed within the 30-calendar timeline, and 117 cases did not address compensatory services.

iv. Analysis of Allegation Two

TEA finds that Allegation Two is substantiated. After OSPM confirmed that AISD was noncompliant with state and federal special education requirements, the District proposed, and TEA accepted, a Corrective Action Plan, to be executed within one (1) calendar year of the identification of noncompliance. As of October 30, 2021, AISD exceeded the one (1) calendar year timeline, and as of the writing of this report, has not been able to fully implement the corrective actions. Although OSPM continuously monitored and supported AISD, the District failed to complete the requirements of the CAP and remains noncompliant. AISD also failed to comply with the CAP issued by OSPM, which was due October 20, 2022. The purpose of this CAP was to rectify noncompliance with SPP 11 and SPP 12.

According to 34 CFR § 300.600(e)¹⁰⁵, states are required to exercise monitoring responsibilities over school districts and ensure that, when noncompliance with special education requirements is identified, the cited school districts correct any noncompliance "as soon as possible, and in no case later than one year from the state's identification of the noncompliance."¹⁰⁶ Failure to correct identified compliance within the mandated timeframe may

¹⁰⁵ See Appendix R

¹⁰⁶ See Appendix A

result in additional sanctions against the school district, as outlined in 19 TAC § 89.1076.¹⁰⁷, which states that TEA must establish and implement a system of interventions and sanctions, in accordance with IDEA¹⁰⁸, 20 USC §§ 1400 et seq., TEC § 29.010¹⁰⁹, and TEC, Chapter 39, as necessary to ensure program effectiveness and compliance with federal and state requirements regarding the implementation of special education and related services.

As detailed in findings of fact 1-4, OSPM notified AISD about district-wide noncompliance with initial evaluation timelines and providing compensatory services. OSPM requested that AISD submit a CAP to address the systemic noncompliance. AISD agreed with OSPM's findings and submitted a CAP for OSPM's approval on December 18, 2020. OSPM approved AISD's CAP proposal to resolve the noncompliance and set the deadline for October 31, 2021.

As detailed in findings of fact 5-16 OSPM continuously monitored and supported AISD by tracking and reviewing the District's efforts through monthly notices detailing AISD's progress on corrective actions. The District exceeded the one (1) calendar year deadline to address the identified noncompliance and is currently still in the process of satisfying the requirements of the CAP.

As detailed in findings of fact 15 and 20, AISD's noncompliance with requirements related to SPP 11 and SPP 12 prompted OSPM to issue a corrective action plan to rectify the issues with Initial Evaluation Timelines and Early Childhood Transition. As per IDEA requirements, AISD was required to resolve identified noncompliance with SPP 11 and SPP 12 within one-calendar year of notification. The District was notified of its noncompliance on October 20, 2021, and as of the writing of this report, AISD has not been able to demonstrate full compliance with both indicators.

Finally, as detailed in finding of fact 21, systemic problems identified by OSPM during the 2020-2021 school year have continued into 2021-2022 and 2022-2023 school years. As

¹⁰⁷ See Appendix A

¹⁰⁸ See Appendix C

¹⁰⁹ See Appendix S

previously mentioned, AISD failed to complete 100% of the 624 pending evaluations first reported to OSPM in the April 8, 2021, submission period by the required deadline; instead, it took AISD almost 19 months to complete. To date, AISD has not fully implemented a functioning tracking system to assist in AISD's noncompliance in special education monitoring, data collection, and organization of evaluations and IEP deadlines. OSPM provided ongoing support through corrective action plans, but AISD has struggled to meet statutory requirements on a systemwide scale for students who may be eligible for special education and related services.

AISD exceeded regulatory deadlines to resolve the terms of both CAPs issued by OSPM and currently remains noncompliant with special education rules and requirements. Therefore, TEA finds that AISD failed to correct identified noncompliance resulting from a special education complaint investigation and review of SPP 11 and 12 indicators within one calendar year from the date that the noncompliance was identified.

IV. AISD Response to the Preliminary Report ¹¹⁰

In its response to TEA's preliminary report (the "Report"), AISD does not contest most of the Report's findings and conclusions, but does provide additional information and clarifications regarding the following: (A) introduces the new Board and Interim Superintendent and explains their goals; (B) explains the remedial steps the District has taken to address the identified issues; (C) clarifies some points from the Report; (D) proposes the District's recommended course of action to achieve compliance (the Action Plan); and (E) requests assistance from the TEA in accomplishing these goals.¹¹¹

¹¹⁰ See Exhibit 42.

¹¹¹ Exhibit 42 at 2.

The first two sections of the AISD response to the preliminary report (the "AISD Response") provide additional background to changes within the District, as well as the remedial efforts by the District to provide special education services. According to the District, AISD has recently gone through significant leadership changes, which included the election of four new trustees during the November 2022 election cycle and the appointment of Mr. Matias Segura as Interim Superintendent in December 2022. As per the District, the significant factors behind the evaluation backlog included COVID-19 restrictions, changes in the TEA Dyslexia Handbook, and insufficient human capital capable of conducting evaluations. Consequently, the AISD established improved accountability standards relating to evaluations and IEP meetings and has employed a multi-prong approach in its response to ongoing staffing challenges.

The Agency reviewed AISD's *Clarifications to the Report*¹¹², which outlined six bullet points containing additional information and clarifications. While TEA acknowledges the additional context provided to TEA, AISD correctly notes and TEA agrees, that most of the information provided is outside the narrow scope and purpose of the Report.¹¹³ As it relates to AISD's clarification that six complaints have been unsubstantiated since the 2021-2022 school year, TEA points to the Report's narrow focus regarding specific *substantiated* complaints relating to violations of laws for conducting FIEs or implementing IEPs. As it relates to AISD's clarification that increased check-ins began in 2022 and not in 2021, TEA has noted and considered that check-ins between OSPM were increased in March of 2022. While the remaining points raise implications observed by AISD and/or additional information that go beyond the scope of the Report, TEA noted and considered AISD's overall responsiveness to TEA and extensive efforts

¹¹² Exhibit 42 at 8.

¹¹³ See Section V of the Report: "The purpose of this investigation was to determine whether AISD's systemic failures to timely address noncompliance within its special education program require TEA to pursue heightened intervention to ensure that the District's special education students' individual needs are supported in accordance with state and federal law and rule."

by the District to collaborate with parents, to attempt to resolve systemic issues, and attempts to comply with special education laws.

Lastly, the AISD Response laid out a Proposed Action Plan and Request for TEA assistance, which included the request for a TEA monitor. TEA acknowledges and agrees that the path towards AISD's full compliance and complete resolution of systemic issues in special education of such a large scale will require TEA interventions. TEA notes and considers AISD's willingness to work with TEA in the recommendations set forth below.

V. Summary

The purpose of this investigation was to determine whether AISD's systemic failures to timely address noncompliance within its special education program and require TEA to pursue heightened intervention to ensure that the District's special education students' individual needs are supported in accordance with state and federal law and rule. Despite the issuance of multiple CAPs, ongoing initiatives, and collaborative efforts to bring the District into compliance, AISD continues to demonstrate systemic issues with effectively administering special education services as required by law. OSPM concluded that AISD violated 19 Tex. Admin. Code § 89.1001¹¹⁴, which mandates that special education services be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules, and the state plan under Part B of IDEA. AISD delayed, and in some cases completely failed to timely evaluate and/or provide, special education and related services to students even after students had been identified as being eligible for special education. The district has not been responsive to or compliant with TEA's prior intervention attempts to ensure compliance with special education requirements.

¹¹⁴ See Appendix P
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Overall, AISD has failed to demonstrate that it can timely remediate or prevent noncompliance regarding initial evaluation timelines, initial ARD committee meeting timelines, and the provision of FAPE. The District has a pattern of noncompliance as set out in Allegation One and has failed to meet federal requirements set forth by 34 CFR § 300.600(e)¹¹⁵ as indicated in Allegation Two. Based on these findings, TEA establishes that the AISD special education program has significant and systematic challenges complying with special education requirements and with correcting associated noncompliance.

Although this final report concludes TEA's review as it relates to the above allegations and findings, given the nature, duration, and extent of the issues identified, as well as the District's ongoing non-compliance, the agency may choose to continue its investigation of the District under TEC § 39.003¹¹⁶ to ensure AISD's compliance and determine which factors may have contributed to these failures.

VI. Recommendations for Intervention

SIU recommends to the Commissioner of Education the following interventions:

Management Team

After an extensive analysis and consideration of the AISD response, TEA sustains the findings in its preliminary report and recommends the appointment of a Management Team who will work with AISD to identify the issues that led to non-compliance and report to the agency on the development and implementation of a plan to address the issue in accordance with TEC §§ 39A.001(2), 39A.002(8), and 39A.003.

¹¹⁵ See Appendix R

¹¹⁶ See Appendix B

The ongoing complaints and findings from the OSPM investigations and the continued systemic noncompliance in special education demonstrates that AISD has failed to create and implement effective changes that correct the long-standing noncompliance. Consequently, the SIU is recommending to the Commissioner of Education that a conservator management team be installed in AISD who will make directives as necessary, to improve special education services in the District.

The Texas Education Code authorizes the Commissioner of Education to appoint a management team to oversee the operations of the District. Further, the Texas Education Code requires the Commissioner of Education "to clearly define the powers and duties of the conservator or management team appointed to oversee the operations of a school district." The nature of special education requires that the management team be provided adequate powers to effectuate change in many areas of the District. The duties and powers assigned to the Management Team should be expansive enough to direct all areas affecting, or affected by, special education, even if not made immediately obvious by its name.

Acquisition of Professional Services

In addition to the appointment of a Management Team, TEA recommends that AISD acquire professional services to perform an external audit, as authorized by TEC § 39A.902. The Texas Education Code authorizes the Commissioner "to order a school district or campus to acquire professional services at the expense of the district or campus to address the applicable financial, assessment, data quality, program, performance or governance deficiency" in addition to other interventions and sanctions authorized by Chapter 39A.¹¹⁷ Pursuant to TEC § 39A.902(1), it is recommended that the Commissioner's order require AISD to be assigned an external auditor who will perform a full and complete audit of the deficiencies that contribute to ongoing challenges

¹¹⁷ See Tex. Educ. Code § 39A.902.
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in AISD's special education program. The report resulting from this audit must, at a minimum, suggest structural and procedural improvements. AISD must secure appropriate training for its staff, officers, and board to address the structural and procedural deficiencies identified in this report and any future related investigatory findings. An external, independent organization or organizations must be retained, at the expense of the district, to complete these requirements, and district board members, staff, and agents must fully cooperate with the review as requested. The agency reserves the right of final approval over all service providers selected to complete this directive, and to establish requirements related to the minimum scope of services to be provided.

The Agency reserves the right to implement all available interventions and sanctions under TEC Chapters 39 and 39A, and Title 19 Tex. Admin. Code, Chapter 97, to address the current and future deficiencies identified for AISD.