

- TEXAS EDUCATION AGENCY -



# AUSTIN

## INDEPENDENT SCHOOL DISTRICT

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SPECIAL INVESTIGATION

IR2021-08-001 & IR2023-10-004

# Final

# REPORT

1701 NORTH CONGRESS AVE  
AUSTIN, TX 78701



March 31, 2023

Arati Singh, Board President  
Austin ISD  
4000 South I-H 35 Frontage Road  
Austin, Texas 78704  
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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](mailto:adam.benthall@tea.texas.gov), should you have any questions.

Sincerely,

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),  
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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](mailto:EnforcementCoordination@tea.texas.gov)









years (FFY).<sup>7</sup> 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

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AISD has struggled to manage its evaluation

referencing the evidence in support of TEA’s findings below. Findings 1 through 13 summarize violations substantiated by the OSPM regarding 19 TAC § 89.1011<sup>13</sup>. The next set of findings (14 through 23) summarize violations substantiated by OSPM regarding 34 CFR § 300.323<sup>14</sup>. 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”).<sup>15</sup> 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.<sup>16</sup> 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

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<sup>13</sup> See Appendix G

<sup>14</sup> See Appendix H

<sup>15</sup> See Exhibit 1

<sup>16</sup> See Exhibit 2

agreed otherwise as required by 19 TAC 89.1050(g)(1)<sup>17</sup>, but the District failed to do so.<sup>18</sup> 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 § 89.1011<sup>19</sup>. 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).<sup>20</sup>

3. On May 11, 2021, OSPM provided AISD with a report of investigative findings based on complaint number 202117062.<sup>21</sup> 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 15<sup>th</sup> school day as per 19 TAC § 89.1011(b), but failed to do so.<sup>22</sup> 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.<sup>23</sup> OSPM found that AISD failed to determine Student D's initial eligibility in accordance with 34 CFR § 300.306<sup>24</sup> 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.

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<sup>17</sup> See Appendix K

<sup>18</sup> See Exhibit 2

<sup>19</sup> See Appendix G

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5. On December 22, 2021, OSPM provided AISD with a report of investigative findings based on complaint number 202217748.<sup>25</sup> 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.<sup>26</sup> 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).<sup>27</sup> 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.<sup>28</sup>
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8. On March 21, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202217990.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> 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).<sup>33</sup>
11. On May 26, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202218296.<sup>34</sup> The record shows that AISD failed to meet its obligations to complete Student K's FIIE under 19 TAC § 89.1011(c)<sup>35</sup>, 34 CFR § 300.111<sup>36</sup>, and 34 CFR § 300.301.<sup>37</sup> OSPM's report explains that the fact the student withdrew from AISD

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<sup>30</sup> See Exhibit 8

<sup>31</sup> See Exhibit 9

<sup>32</sup> See Exhibit 10

<sup>33</sup> See Exhibit 10 and Appendix G

<sup>34</sup> See Exhibit 11

<sup>35</sup> See Appendix G

<sup>36</sup> See Appendix M

<sup>37</sup> See Appendix N



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.<sup>45</sup> 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 2020.



the allegation that AISD failed to implement Student O's IEP pursuant to 34 CFR § 300.323.<sup>50</sup>

17. On April 26, 2021, OSPM provided AISD with a report of investigative findings based on complaint number 202116995.<sup>51</sup> 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.<sup>52</sup> 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.<sup>53</sup>

18. On May 26, 2021, OSPM provided AISD with a report of investigative findings based on complaint number 202117113.<sup>54</sup> 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.<sup>55</sup>

19. On May 26, 2021, OSPM provided AISD with a report of investigative findings based on complaint number 202117138.<sup>56</sup> 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 dAe126..6 ( )

20. On March 15, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202217979.<sup>58</sup> 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.<sup>59</sup>
21. On March 31, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202217984.<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup>
22. On July 19, 2022, OSPM provided AISD with a report of investigative findings based on complaint number 202219022.<sup>63</sup> 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.<sup>64</sup>
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.<sup>65</sup>

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<sup>58</sup> See Exhibit 19

<sup>59</sup> See Exhibit 19 and Appendix H

<sup>60</sup> See Exhibit 20

<sup>61</sup> See Exhibit 20 and Appendix H

<sup>62</sup> See Appendix O

<sup>63</sup> See Exhibit 21

<sup>64</sup> See Exhibit 21 and Appendix H

<sup>65</sup> See Exhibit 22



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*)<sup>66</sup>

Under Tex. Educ. Code § 29.004<sup>67</sup> and 19 Tex. Admin. Code § 89.1011<sup>68</sup>, local education agencies such as AISD are required to respond to parents' written requests for FIEs, complete initial evaluations, and determine students' eligibility for special education and related services within strict timeframes prescribed by law. First, TEC § 29.004(c)<sup>69</sup> and 19 TAC § 89.1011(b)<sup>70</sup>

Additionally, AISD is required to develop students' IEPs and determine students' educational placements while adhering to deadlines required by rule.<sup>75</sup> 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 § 300.323<sup>76</sup> 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 § 300.320<sup>77</sup>" (*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.<sup>78</sup>

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

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<sup>75</sup> See Appendix G

<sup>76</sup> See Appendix H

<sup>77</sup> See Appendix Q

<sup>78</sup> 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



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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.<sup>88</sup>

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."<sup>89</sup>
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.<sup>90</sup> 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.

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<sup>88</sup> See Exhibit 27

<sup>89</sup> See Exhibit 28

<sup>90</sup> 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.<sup>91</sup>

12. On August 17, 2021, OSPM provided AISD with another notice detailing AISD's progress on the Systemic CAI ISD. It complete e% of-4.3 ( t)-6.6 (he)10.5 (oun)10.5 (t)-6.6 (s)8.8 (t)-6.6 aending (t)-6.72(pl)2.7 (et)-6.6 (d( ev)-2 (al)2.6 (ua)1052 (t)-6.6 (i)276 (ons)-2 (,)-6.6 ( )05.9 bou

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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.<sup>92</sup> 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.<sup>93</sup>

15. On October 20, 2021, OSPM issued an additional corrective action plan (the "SPP CAP"),

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services from the selected vendor and indicated that a new vendor would have a system in place by August 2022.<sup>99</sup>

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.<sup>100</sup>
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.<sup>101</sup>
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.<sup>102</sup> AISD reported that the 624 pending initial evaluations from the 2021-2022 school year were 100% complete as of the November 28, 2022, submission.<sup>103</sup> 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."<sup>104</sup> Therefore,

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<sup>99</sup> See Exhibit 36

<sup>100</sup> See Exhibit 37

<sup>101</sup> See Exhibit 38

<sup>102</sup> See Exhibit 39

<sup>103</sup> See Exhibit 40

<sup>104</sup> 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)<sup>105</sup>, 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."<sup>106</sup> Failure to correct identified compliance within the mandated timeframe may

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<sup>105</sup> See Appendix R

<sup>106</sup> See Appendix A







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

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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

in AISD's special education program. The report resulting from this audit