

5.8.20

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Patricia,

, , , and (Parents) file this complaint related to their children. Parents request that this be investigated as a systemic complaint and not be bifurcated as has previously been VDOE's approach to joint complaint filings.

Parents' children are enrolled in the Fairfax County Public School system and are eligible for protection under the Individuals with Disabilities Education Act (IDEA") through an Individualized Education Program ("IEP").

Parents seek an equitable remedy for FCPS's noncompliance and denial of rights, in the form of 1) immediate enrollment in education programs of the parents' choices, 2) reimbursement for these programs; 3) reimbursement to cover the periods of denial of rights; and 4) full implementation of students' IEPs.

Parents herein agree that implementation may look different during online learning and building shutdowns, but FCPS's blanket refusal to attempt to implement IEPs equate to changes in placement, denial of FAPE and violation of IDEA.

Parents recognize FCPS's situation but wish to protect their Students by establishing a violation of their rights, and prevent additional lost educational opportunities and regression.

The documents cited within this document will be provided to you via a separate Dropbox link that will be mailed to you by . Please confirm receipt of the link and access to the documents.

If you have any questions, please let us know.

## **COMPLAINT**

1. Students are subject to material failure in the implementation of their educational programs designed to provide them meaningful access and/or meet their educational needs as adequate as FCPS provided/provides for the needs of non-disabled students.
2. FCPS is required to implement Students' IEPs in order to meet its legal obligation to provide Students a free appropriate public education ("FAPE") but are failing to do so in violation of federal and state laws.
3. FCPS' actions have caused and continue to cause harm to Students by materially failing to provide FAPE and by disparate impact caused by such action against Students.
4. Students have experienced a material failure of their educational and/or related services specified in their IEPs.
5. Students have sustained lost educational opportunity where FCPS has materially failed to implement their IEPs.
6. Students have been disparately impacted by the educational policies of FCPS.
7. FCPS discriminates against Students based on their disability by depriving them of the services and supports deemed necessary for FAPE in their IEPs while providing educational services to students who are ineligible for Section 504 and/or IDEA protections.
8. FCPS continues to cause harm to Students by its actions and inactions.

9. As a result of FCPS's illegal and/or discriminatory policies, Students are being deprived of critical services in violation of their civil and statutory rights.
10. FCPS has not ensured continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. See TLPs and IEPs.
11. Evidenced based practices have not been implemented that align with a distance learning placement as well as being individualized to meet the unique disability-based needs of each student.
12. FCPS has changed the placement and services of students without providing a PWN and without receiving consent from parents.
13. FCPS has not provided instructional settings designed to meet the unique needs in the distance learning environment.
14. FCPS has not attempted to implement IEPs to the "greatest extent possible".

## ADDITIONAL INFORMATION

- March 2020 guidance from the U.S. Department of Education: "If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)).
  - The large gap between IEPs and TLPs for \_\_\_\_\_ and \_\_\_\_\_ indicate FCPS is not trying to implement IEPs to the "greatest extent possible". (See IEPs and TLPs for \_\_\_\_\_.)
  - Jane Strong's 5.4.20 email to \_\_\_\_\_ states, "During the pandemic and Governor's order that schools be shut down, Fairfax County Public Schools is not able to implement an entire school day for any students. Consequently, entire

IEP services are also not able to be provided at this time. The Temporary Learning Plan is the list of selected services, accommodations and goals that can feasibly be provided during a distance learning format.” (See “5.4.20 email Jane to [redacted]”.)

- Private professionals are providing the exact types of services outlined in IEPs, yet FCPS says this isn’t feasible. For example, [redacted] is receiving private services online, yet FCPS has cut back on the one-on-one speech services owed to [redacted]. FCPS choice to truncate services is a choice, not what is actually feasible.
- FCPS 5.4.20 email to FCPS parents states, “The Virginia Department of Education advised school divisions to develop a plan that meets its own individual needs during the time of the emergency school closure. Like other large school divisions in Virginia, FCPS developed the temporary learning plan model to identify what goals, accommodations and services could be provided to students during this time of closure. The TLP is not an IEP and it is not a waiver of rights under IDEA. Your child’s IEP will be implemented when we resume school. A parent may elect to not provide a signature on the TLP. If you do not sign the TLP, school staff will collaborate with you to resolve your concern. This may include having an administrator, department chair/ lead teacher, and or procedural support liaison (PSL) participate in the conversation. If necessary, an IEP meeting with relevant members of the team can be scheduled. If you choose not to sign the TLP, the outlined service(s) will still be offered and will be delivered, unless you choose to opt out of instruction.” (See 5.4.20 email FCPS to parents”)
- The TLPs issued by FCPS, state that IEPs won’t be in effect until schools reopen and in themselves indicate FCPS is coming up with plans that are void of efforts to implement IEPs to “best extent possible”. (See IEPs and TLPs for [redacted], [redacted] .)
- [redacted] 5.4.20 emails to [redacted] (See “5.4.20 emails [redacted] and [redacted]”) indicate that FCPS implemented the TLP with consent and that services are being provided by making office hour appointments and special ed teachers sitting silently in an online class while the gen ed teacher provides instruction.
- VDOE’s 5.24.19 Letter of Findings to [redacted] states: “Informal agreements” do not supersede or supplant IEP accommodations for which parental consent has been obtained. Accordingly, absent a revision to Student’s ... accommodation by the IEP team and parent consent, LEA remained obligated to implement this accommodation as written in the governing IEP...”

- VDOE is implementing TLPs absent a revision to the IEP and absent consent from Parents. FCPS 5.4.20 email to FCPS parents states, “If you choose not to sign the TLP, the outlined service(s) will still be offered and will be delivered, unless you choose to opt out of instruction.” (See 5.4.20 email FCPS to parents”)
- VDOE’s 5.7.20 Letter of Findings to \_\_\_\_\_ states, “Because the proposal was not complete, and the team had already determined the need to meet again to complete the IEP proposal, [Parent’s] inquiry regarding partial consent was not considered to be in the best interest of [Student] or [Student’s] teachers for implementing the IEP. Until a complete IEP has been proposed, the IEP team may revisit the consensus of items, and future discussions may impact previous items. . . . As LEA had not proposed an IEP or IEP addendum, Parent’s attempted partial “consent” was premature and had no effect.”
  - Although VDOE and FCPS have stated that IEPs had not proposed an IEP or IEP addendum, FCPS has inserted Temporary Learning Plans (TLPs) into the development of annual IEPs without first receiving parental input, and FCPS is asking these TLPs be approved, without first discussing the TLPs and without “proposing” a final IEP. Jean Massie has emailed \_\_\_\_\_ a few times, requesting that \_\_\_\_\_ sign off on the TLP, even though 1) it is in her son’s IEP; 2) the IEP hasn’t been completed; and 3) FCPS inserted the verbiage about the TLP with speaking with \_\_\_\_\_ and ensuring full parent understanding. (See 5.6.20 emails Jean and \_\_\_\_\_ ”)
  - FCPS inserted the TLP into the annual IEP for \_\_\_\_\_ children, too. \_\_\_\_\_ requested that it be removed, but it took some pushback for it to be removed. However, draft IEP is still in progress. FCPS stated that the IEP in progress will start when schools resume full time and that language will be inserted on PLOP to describe services from now until end of year. The current working IEP draft does not contain the TLP language.
- FCPS has implemented TLPs without receiving parent consent, even though the TLPs are changes in both placement and services - and FCPS has not provided PWNs explaining their decisions to deny Student’s full implementation of their IEPs and full access to FAPE.
- FCPS has stated that IEP plans will not be implemented until schools open.
- With general education students, FCPS is measuring work accomplished during temporary learning, to determine if a student’s grade will be bumped up. Therefore, FCPS is measuring progress in general education students and is obligated to provide measurements for students in special education programs, to include Students with IEPs.

- FCPS has stated that compensatory education “should be determined and provided on a case-by-case basis and that compensatory services “would be determined after normal school operations resume.”
- It is assumed that “normal school operations” to quote FCPS is defined as students attending school in brick and mortar buildings instead of online.
- This will be months in the future. Determining compensatory education at that point means additional months past “normal operations” while IEP Teams meet to determine compensatory education, which will time-intensive given the number of students. All the while, Students will continue to go without FAPE.
- § 300.320 Definition of individualized education program. (a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include - (1) A statement of the child's present levels of academic achievement and functional performance, including - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; (2) (i) A statement of measurable annual goals, including academic and functional goals designed to - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (B) Meet each of the child's other educational needs that result from the child's disability; (ii) For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives; (3) A description of - (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided; (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child - (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section; (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section; (6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and

districtwide assessments consistent with section 612(a)(16) of the Act; and (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why - (A) The child cannot participate in the regular assessment; and (B) The particular alternate assessment selected is appropriate for the child; and (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications. (b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include - (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

- §300.23 Individualized education program team or IEP Team means a group of individuals described in §300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.
- §Sec 300.323 (a) At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.
- §300.115 (a) Continuum of alternative placements. (a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. (b) Continuum of alternative placements. (b) The continuum required in paragraph (a) of this section must—(1) Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.
- §300.116 Placements. In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—(a) The placement decision—(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (2) Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118; (b) The child’s placement—(1) Is determined at least annually; (2) Is based on the child’s IEP; and (3) Is as close as possible to the child’s home; (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled; (d) In selecting the LRE, consideration is given to any

potential harmful effect on the child or on the quality of services that he or she needs; and (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

- §300.117 Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.
- §300.9 (a) Consent means that—(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication; §300.9 (b) Consent means that—(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom;
- §300.327 Consistent with §300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.
- §300.501(b) Parent participation in meetings. (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—(i) The identification, evaluation, and educational placement of the child; and (ii) The provision of FAPE to the child. (2) Each public agency must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.
- §300.501(c) (c) Parent involvement in placement decisions. (1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child. (2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in §300.322(a) through (b)(1). (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. (4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's



participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

- §300.503 Prior notice by the public agency; content of notice. (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (b) Content of notice. The notice required under paragraph (a) of this section must include—(1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency's proposal or refusal. (c) Notice in understandable language.