



COMMONWEALTH of VIRGINIA

DEPARTMENT OF EDUCATION

P.O. BOX 2120

RICHMOND, VA 23218-2120

March 1, 2018

Ms. Callie Oettinger
[REDACTED]

Ms. Irene Meier
Director of Special Education
Ms. Dawn Schaefer
Coordinator of Due Process and Eligibility
Fairfax County Public Schools
8270 Willow Oaks Corporate Drive
Fairfax, Virginia 22031-4516

LETTER OF INQUIRY

Re: [REDACTED]
Fairfax County Public Schools (FCPS)

Dear Ms. Oettinger, Ms. Meier, and Ms. Schaefer:

This letter acknowledges that the Office of Dispute Resolution and Administrative Services within the Virginia Department of Education (VDOE) received the parent's complaint submission via email correspondence on February 22, 2018.

This office is charged with the responsibility of investigating and resolving all valid special education complaints on behalf of eligible students with disabilities when the complaint alleges a violation of the applicable state and federal laws and regulations. The 2006 implementing regulations of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA '04) outline the required components of a valid state special education complaint at 34 CFR § 300.153.

This office has reviewed your correspondence to determine if it meets the content requirements of the federal special education regulations. Upon review of your correspondence, your letter is being returned to you for the following reasons denoted by an "X," below:

- ___ The complaint does not allege that the local educational agency or VDOE has violated a requirement of federal and/or state special education laws and/or regulations.
- ___ The complaint does not include the signature of the person filing the complaint.

- ___ The complaint does not include the contact information for the person filing the complaint.
- ___ The complaint does not include the contact information for the student.
- ___ The complaint is time-barred as it addresses an action occurring more than one year prior to the date the complaint was received.
- X The complaint includes insufficient facts to support the alleged violations.

- **Training of school personnel.** The submission cites what appears to be an undated school division document with the heading “Region 4 Summary FY15-FY17” in which, the complainant asserts, FCPS has acknowledged various “failures” to comply with special education regulations. More specifically, the complainant has alleged that the following statements (or recommendations) regarding the need for training are indicative of a systemic violation of special education regulations regarding, among other things, (i) “the effective provision of reading programs” (denial of FAPE); (ii) child find; (iii) highly qualified personnel; and (iv) confidentiality of records, as follows:
 - “Schools continue to need additional training on dyslexia and implementation of evidence-based reading programs.”
 - “Schools need additional training on confidentiality of student information.”

The training of school personnel, whether (i) required by statute,¹ regulation, or what appear to be two corrective action plans following state special education complaint investigations that may or may not have been completed in the 365 days preceding February 22, 2018 (the date this office received the complaint submission)² or (ii) provided at the initiative of the school division, is not sufficient to support the initiation of an investigation of an allegation of a systemic violation of special education regulations.

- **“Failures to ensure the effective provision of reading programs constitute a denial of FAPE.”** The complainant has alleged that the following information within the *Region 4 Summary FY15-FY17* is indicative of systemic violations of special education regulations with regard to the provision of “effective” reading programs (presumably IEP implementation and/or the provision of FAPE):

¹ Va. Code §§ 22.1-253.13:2 (employment of reading specialists having training in dyslexia); 22.1-298.1 (awareness training on “indicators of dyslexia” and “evidence-based interventions and accommodations for dyslexia” a requirement for initial licensure and renewal of license for teachers); and 22.1-298.4 (teacher preparation programs at public institutions of higher education to “convey information on the identification of students at risk for learning disabilities, including dyslexia”).

² In accordance with the 2006 implementing regulations, at 34 C.F.R. § 300.153, and the Virginia Regulations, at 8 VAC 20-81-200.B.6, this office is charged with the responsibility of investigating and resolving all valid special education complaints on behalf of eligible students with disabilities when the complaint alleges a violation of the applicable state and federal laws and regulations that has occurred not more than one year preceding the date on which the allegation was received by our office.

- “Dyslexia and fidelity of instruction continue to be significant concerns across the division.”
- “...two requests for due process hearings, two mediations held, and...five pending state complaints” (no dates or other context provided, including which of these actions may have been initiated by the Complainant).³
 - The document included a table indicating that at least one due process request addressed a failure to identify dyslexia in the Complainant’s son more than 365 days before February 22, 2018 (timebarred).
- A table indicating three “changes of placement due to dispute resolution processes” addressing “adequate reading instruction” for students E.D., M.Y., and M.D. The table does not define “dispute resolution processes”; it is unclear whether this term is limited to the state dispute resolution processes (mediation, complaint, or due process) or also includes local or informal resolution processes.
 - The table, covering two “fiscal years,” lacked dates indicating whether the incidents forming the bases of these apparently resolved disputes occurred within the 365 days preceding February 22, 2018.
 - There is no indication that resolution for any of the three identified students (E.D., M.Y., and M.D.) was the result of a formal finding of a violation of special education regulations or a settlement between the parties.⁴

As a preliminary matter, we note that more than 26,000 (14%) of FCPS’ 188,000 students in grades prekindergarten through 12 receive special education services.⁵ Accordingly, our review of the sufficiency of complaint submissions alleging systemic violations of special education regulations is necessarily based, in part, on the number of students for which the Complainant has provided information supporting the systemic allegations.

Here, we find (i) general statements regarding “significant concerns” regarding dyslexia services and (ii) the information regarding the three apparently previously resolved and undated cases regarding E.D., M.Y., and M.D. (even if added to the Complainant’s ongoing or recent complaints regarding her son), insufficient to support an allegation of a systemic violation

³ Our records indicate that the parent has filed at least (9) complaint submissions with this office since May 1, 2017, including this current submission, at least three (3) of which were dismissed. One Letter of Findings, consolidating several complaint submissions, is currently under appeal by the parent.

⁴ Although some of the table entries indicate “lack of adequate reading instruction” under the column “outcome/takeaway,” the table does not indicate any formal finding of a violation of special education regulations, but may suggest FCPS’ agreement that services were not “adequate.”

⁵ Fairfax County Public Schools, *About FCPS* < <https://www.fcps.edu/about-fcps> >

regarding the provision of “effective” programs for students with dyslexia (IEP implementation and/or FAPE).

- **“FCPS’ failures to ensure the identification of students with Dyslexia is a violation of Child Find provisions.”** The complainant has alleged that the following information within the *Region 4 Summary* is indicative of systemic violations of special education regulations with regard to the child find and eligibility, specifically with regard to dyslexia:
 - “...two requests for due process hearings, two mediations held, and...five pending state complaints” (no dates or other context provided, including which of these actions may have been initiated by the Complainant).
 - An “issues” table denoting three child find and six eligibility “issues” during “FY15-FY17”;
 - The document included a table of “major cases” identifying what appears to be an undated mediation for student J.A. that addressed “lack of acceptance of dyslexia by teachers” but for which no result (or any violation) is indicated.
 - The “major cases” table also included entries indicating:
 - an “AR” [local administrative review] panel upheld FCPS’ finding of ineligibility for student G.D., who had a private diagnosis of dyslexia. There is no indication of a violation of special education regulations regarding this student.
 - A.R. panels regarding FCPS’ findings of ineligibility under SLD (specific learning disability), and withdrawals of the parents’ “AR request” “based on results of IEE and eligibility committee reconsidering...eligibility” for students L.M. and M.P., respectively. There is no indication of a violation of child find or eligibility regulations for either student.
 - The Complainant added students M.D. and E.D. to her assertion of failures in child find, but no table entries indicate eligibility or child find as “issues” for these students (see table, “Changes in Placement”).
 - The “Changes in Placement” table indicated a timeliness issue regarding eligibility for student J.F. and referred to a due process hearing for which the parties reached a settlement. The entry includes no indication of a finding of a special education violation regarding identification of dyslexia.
 - The document included a table (“Monies paid out during dispute resolution processes”) indicating that at least one due process request addressed a failure to identify dyslexia in the Complainant’s son more than 365 days before February 22, 2018; however, our records indicate this concern is now timebarred.

- The document included a table (“Monies paid out during dispute resolution processes”) indicating that at least one due process request addressed a failure to identify dyslexia in the Complainant’s son more than 365 days before February 22, 2018 (timebarred).

The documentation provided by Complainant includes insufficient information identifying any violations of regulations child find or eligibility; some of the information provided seemingly undermines the Complainant’s assertions. We note that evidence of isolated disagreements, AR requests, mediation sessions, and settlements are not sufficient to support the initiation of an investigation of alleged systemic violations regarding child find and eligibility regulations.

- **Highly qualified personnel.** We have already noted above that the provision of teacher training is not sufficient to indicate an alleged failure to provide “highly qualified personnel.”
 - Complainant has also asserted that the information she has proffered regarding child find, eligibility, and the provision of “effective” reading programs indicates a failure to provide highly qualified personnel. While we have already stated that the information provided was insufficient to support the primary allegations, we nonetheless note that, even if the information had been sufficient to support the initiation of a systemic investigation, Complainant has failed to establish any nexus between her allegations regarding child find, eligibility, and effective reading programs to the qualifications of school personnel.
 - Again citing the *Region 4 Summary*, Complainant has asserted that FCPS has failed to provide highly qualified personnel for “Type I Diabetes.” Complainant has noted references to three complaints filed with the Office for Civil Rights for students with Type I diabetes, but has failed to include any information indicating that these students are eligible for special education services under IDEA ’04.
 - Complainant asserted that a corrective action plan, apparently already implemented and addressing a FERPA violation involving her son and another student (one shared incident), indicates a failure to provide highly qualified personnel on a systemic basis. A single corrective action plan addressing what appears to be a single, undated incident is not sufficient to support the initiation of an alleged systemic violation of special education regulations. Further, any description by FCPS in the Region 4 Summary of “privacy” as an area of “significant concern” is not sufficient to support an allegation of a systemic violation.
 - Finally, we note Superintendent’s Memo #076-16 (revised July 22, 2016),⁶ which advised:

On December 10, 2015, President Obama signed the *Every Student Succeeds Act of 2015* (ESSA), which reauthorizes the *Elementary and Secondary Education Act of 1965* (ESEA) and replaces the *No Child Left Behind Act of 2001* (NCLB). ESSA contains several provisions which impact “highly qualified teacher” (HQT) requirements beginning with the 2016-2017 school year. The terms “highly qualified teacher” and “highly qualified paraprofessional” will be eliminated as of August 1, 2016. As

⁶ Virginia Department of Education, Superintendent’s Memo #076-16 (April 1, 2016; revised July 22, 2016) < http://www.doe.virginia.gov/administrators/superintendents_memos/2016/076-16.shtml>

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such, starting with the 2016-2017 school year, "highly qualified" data will no longer be collected or reported, nor will calculations be made related to percentages of classes being taught by highly qualified teachers. However, under ESSA and §22.1-298.1 of the Code of Virginia, students must still be taught by teachers who are properly licensed and endorsed for the classes they are assigned to teach. These data will continue to be collected through the Master Schedule Collection (MSC) and Instructional Personnel and Licensure Report (IPAL). Additional information regarding licensure for teachers in Virginia may be found at <http://www.doe.virginia.gov/teaching/licensure/index.shtml>.

___ The complaint was not simultaneously forwarded to the local school division.

___ The complaint does not include a proposed resolution.

___ Other

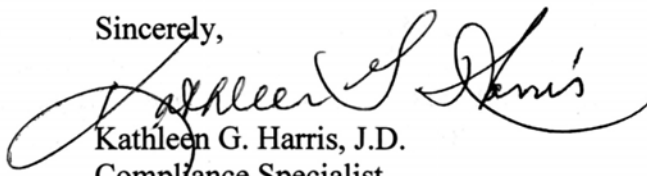
This office cannot move forward to investigate your concerns until the above-noted deficiencies are addressed. If appropriate, the complaint may be resubmitted to this office for action. All resubmitted complaints will be treated as new complaints and are subject to review. Accordingly, we will file this correspondence as an inquiry, and will await any subsequent correspondence.

You may find materials addressing special education generally at http://www.doe.virginia.gov/special_ed/parents/index.shtml, and may find electronic versions of this form and other information regarding state special education dispute resolution options at http://www.doe.virginia.gov/special_ed/resolving_disputes/index.shtml.

We note that this office strongly believes that special education concerns are better resolved at the local level, if at all possible. Parents and school divisions are encouraged to work together to come to an understanding of mutual concerns and come to an agreement in the best interests of children with disabilities.

Should you have any questions, please contact this office at (804) 225-2013.

Sincerely,



Kathleen G. Harris, J.D.
Compliance Specialist
Dispute Resolution and Administrative Services