

REDACTED

From: REDACTED
Sent: Thursday, April 20, 2023 1:24 PM
To: 'DOE - ODRAS, rr'; 'Hollins, Samantha'; 'Patricia Haymes'
Cc: 'Austin, Ayorkor'; 'Schneer, Matthew'; 'Reid, Michelle C'; 'Boyd, Michelle'; 'Ritenour, Tracy M'
Subject: 4.20.23 systemic complaint

Importance: High

This is a systemic complaint against Fairfax County Public Schools (FCPS), which includes REDACTED

FCPS is in violation of IDEA, Section 504, and implementing state regulations. While I know VDOE doesn't address Section 504, I include it as additional support of the argument below and as a broader perspective as to the size of the noncompliance.

FCPS has a practice of refusing the "related service" and "supplementary aid and service" of vision therapy to special education students countywide.

FCPS is at fault for refusing this service to REDACTED between December 2020 (when he diagnosed by an ophthalmologist with vision therapy struggles) and today. In addition, it is at fault under Child Find for failure to identify this issue between K-12, and it is at fault for denial of FAPE during K-12 after visual processing was first identified as a problem by the private provider who evaluated Student during December 2015/January 2016 (after FCPS first refused three other evaluation requests).

2009-2016: FCPS refused to evaluate Student for special education three times between first and sixth grades.

2016: Parent presented private evaluation. FCPS subsequently did its own evaluation. FCPS did not contest private provider's diagnosis of vision processing. FCPS found Student eligible under vision processing among other issues. However, FCPS never advised Parent that vision therapy existed and that, while it would not get rid of Dyslexia, vision therapy would help reduce the fatigue that was exasperated by Dyslexia, which in turn would impact Student's reading comprehension. Although Student could comprehend, his impaired rate of reading impacted his comprehension as he moved through content that was longer in words and in amount of time needed to read.

2016-2022: It is undisputed that Student suffered from fatigue. This is documented throughout IEPs and FCPS teacher narratives throughout Student's enrollment in FCPS. Headaches, slow rates, needing to take breaks also is heavily documented during this time period.

2016-2018: Parent emailed FCPS staff on numerous occasions throughout the years an online simulation of letters jumping around on pages, to provide FCPS staff a representation of what Student said was representative of his experience with reading. Things moved around and weren't clear. Parent thought this was due to Dyslexia and did not know that vision processing played a role, and that vision therapy existed. Staff continued its failures to advise Parent of vision therapy options.

July 2020: Student was evaluated by neuropsychologist William Ling. Upon completion of his evaluation presentation to Parent, Dr. Ling advised Parent take Student to a developmental ophthalmologist. His evaluation led him to believe Student had convergence insufficiency and that this was impacting student academically.

December 2020: Student evaluated by Dr. Tod Davis. The delay between the July appointment with Ling and the December appointment with Davis occurred due to COVID impacts on scheduling availability.

Jan-end of 2020/21 school year: Student had two medical procedures:

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Prior to, and following, both procedures, Student missed school repeatedly due to

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Prior to the procedures, Parent requested home-bound instruction for student, because he could not sit in front of a computer all day long, per the online school placement of that time, and could not sit in one position for long period, and, in addition, had to be attached to a machine in the beginning to exercise his hip post-surgery. FCPS initially refused home-bound instruction. Parent had to fight FCPS to obtain this service. At the time, Student was months behind on work and had stopped communicating with the majority of his teachers (after watching his IEP case manager Tina Wrubluski lie during an October 2020 due process hearing). IEPs document REDACTED Regional Superintendent Jay Pearson had to get involved to help Parent obtain this for Student. The IEP team, led by FCPS central office staff, repeatedly refused to provide the service and state Student's good grades indicated he's not academically impacted by vision processing.

June 2021-end of summer 2021: Student continued weighty schedule of

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2021-22 school year: Student missed school two-to-four times a week for the majority of the school year due to

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Student struggled throughout the year to make up the work and class missed, however the accommodation of a reduced load helped. In addition, his IEP case manager Telia Johnson stated repeatedly that she had to give him extensive support. When FCPS central office staff and school staff who'd never worked with Student tried to pull service hours away from student, Johnson was among those who was adamant about not stripping student of these services.

2020-2022: FCPS staff refused to provide vision therapy to Student, even though a neuropsychologist, a developmental ophthalmologist, a school psychologist, two of the student's teachers, and a school counselor all stated vision processing was impacting student. FCPS's "experts" continued to state that FCPS does not offer vision therapy, that it is outside the scope of what it offers, and that Student did not need vision therapy. None of the individuals making these denials had the credentials, training, or licensure to interpret the data in the evaluations, nor did they have the credentials, training, or licensure to make a medical diagnosis. In stating that Student did not need services, FCPS staff were making their own diagnosis about state of student's vision processing. Four FCPS staff members on the IEP team – the only ones on the team who had worked with Student and/or had the credentials to interpret the evaluations of Student, wrote a statement of dissent regarding FCPS's refusal of services, stating instead that Student does need services. FCPS later misrepresented this to VDOE and to Superintendent Michelle Reid, who advised Parent that she'd heard that just two teachers disagreed.

20 U. S. C. § 1412 expressly states the obligation to provide special education and related services is a condition for a state to receive funds under the Act. See 20 U. S. C. § 1412; see also S. Rep. No. 94-168, p. 16 (1975).

20 U. S. C. § 1401(9) states FAPE is from the term "free appropriate public education" and means special education and related services that—(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U. S. C. § 1401(16) defines related services as, "(A) In general The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling

services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. (B)Exception The term does not include a medical device that is surgically implanted, or the replacement of such device.”

20 U. S. C. § 1412(5)(A) and (B)(i), state “(A) In general To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (B) Additional requirement (i) In general A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child’s IEP.

Supreme Court Justices Brennan, Marshall, and Stevens rules the following in their decision for Irving Independent School District v Tatro Et Ux, Individually and as next friends of Tatro, a minor (468 U.S. 883, 1984) Irving Independent School Dist. v. Tatro, 468 US 883 - Supreme Court 1984 - Google Scholar:

“As we have stated before, "Congress sought primarily to make public education available to handicapped children" and "to make such access meaningful." Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U. S. 176, 192 (1982). **A service that enables a handicapped child to remain at school during the day is an important means of providing the child with the meaningful access to education that Congress envisioned. [emphasis added]** The Act makes specific provision for services, like transportation, for example, that do no more than enable a child to be physically present in class, see 20 U. S. C. § 1401(17); and the Act specifically authorizes grants for schools to alter buildings and equipment to make them accessible to the handicapped, § 1406; see S. Rep. No. 94-168, p. 38 (1975); 121 Cong. Rec. 19483-19484 (1975) (remarks of Sen. Stafford). Services like CIC that permit a child to remain at school during the day are no less related to the effort to educate than are services that enable the child to reach, enter, or exit the school.”

“ . . . schools are obligat[ed] to provide services that relate to both the health and educational needs of handicapped students . . . ”

“ . . . those services necessary to aid a handicapped child to benefit from special education must be provided . . . ”
[emphasis added]

“The regulations define "related services" for handicapped children to include "school health services," 34 CFR § 300.13(a) (1983), which are defined in turn as "services provided by a qualified school nurse or other qualified person," § 300.13(b) (10). "Medical services" are defined as "services provided by a licensed physician." § 300.13(b)(4).[10] Thus, the Secretary has determined that the services of a school nurse otherwise qualifying as a "related service" are not subject to exclusion as a "medical service," but that the services of a physician are excludable as such.

“This definition of "medical services" is a reasonable interpretation of congressional intent. Although Congress devoted little discussion to the "medical services" exclusion, the Secretary could reasonably have concluded that it was designed to spare schools from an obligation to provide a service that might well prove unduly expensive and beyond the range of their competence.[11] From this understanding of 893*893 congressional purpose, the Secretary could reasonably have concluded that Congress intended to impose the obligation to provide school nursing services.

“Congress plainly required schools to hire various specially trained personnel to help handicapped children, such as "trained occupational therapists, speech therapists, psychologists, social workers and other appropriately trained personnel." S. Rep. No. 94-168, supra, at 33. School nurses have long been a part of the educational system, and the Secretary could therefore reasonably conclude that school nursing services are not the sort of burden that Congress

intended to exclude as a "medical service." By limiting the "medical services" exclusion to the services of a physician or hospital, both far more expensive, the Secretary has given a permissible construction to the provision."

Like CIC services on which the Supreme Court decision above is based, vision therapy services are not a "medical service" that must be provided by a physician. They are "related service" and a "supportive aid and service".

Student needed vision therapy to receive FAPE.

Student already was missing a lot of school due to **REDACTED** and could not afford the hour-and-a-half round-trip travel time to another provider during the day for vision therapy. Hence, Parent did not pay for vision therapy out-of-pocket, out of concern of what would occur should Student miss more school. Student had a history of being behind on assignments and needed extensive supports, especially after missing class.

As a resolution, I'm requesting that FCPS be forced to change its practices countywide of refusing vision therapy and that it contact those families to whom it has refused vision therapy and/or never mentioned it to.

In addition, I'm requesting FCPS pay for vision therapy for Student until it is completed, an evaluation of vision processing twice to assess where student is at with progress, transportation until services are completed, and loss of wages for student during the time he would be working this summer, but must instead spend time attending vision therapy. For transportation, this must include gas and at times a driver, since participants in vision therapy aren't always allowed to drive right after therapy and Parent is not available at all times to provide transportation for Student.

Please confirm receipt of this complaint.

Callie Oettinger

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