

The following additional information should be applied to Complaints Parent 1 submitted April 20 and 24, 2023. The issues alleged in the two complaints include:

- a. Denial of FAPE
- b. Child find failures
- c. Refusal to provide related and supportive services
- d. Refusal of parent participation and informed consent
- e. Refusal to convene a duly constituted IEP and/or eligibility meeting

VDOE has repeatedly pulled in information from beyond the one-year timeline to support its findings for past complaints submitted by Parent 1 (see VDOE's 6.16.22 LOF as one example). Hence, VDOE should not have a problem including data from Parent 1 that falls before or after the one-year timeline for state complaints, which shows the noncompliance has occurred for years and thus supports that it is at a systemic level, rather than being a one-off situation.

1. History of fraud, providing false and misleading information.

FCPS has a long history of fraud, and of providing false and misleading information to parents, educators, Virginia Department of Education (VDOE) staff, Office for Civil Rights (OCR) staff, investigators, hearing officers, and others in regards to due process hearings, state complaints, and other investigations, as well as during the eligibility process and during development of IEPs.

Hence, nothing FCPS states in its affidavits and/or narrative responses and/or IEP narrative notes of meetings, nor anything other such "documentation" can be trusted without hard evidence (such as a recording of a meeting) — a.k.a. something other than hearsay — to support its claims.

For example:

- a. FCPS repeatedly vilifies Parents 1 and 2 and makes false and misleading statements regarding them and their students, yet fails to provide evidence such as meeting recordings that support FCPS's allegations, and VDOE accepts this without question.
- b. Summer 2020: Parent 1 and Parent 2 filed a systemic complaint against FCPS. In its response, FCPS withheld and provided misleading information to VDOE and VDOE refused to investigate clear pre-determination practices of noncompliance and/or found FCPS in compliance of what VDOE eventually did investigate. This is supported by OCR's 11.30.22 letter of findings against FCPS.
- c. Sept-Oct 2020: FCPS staff misled and/or lied to due process hearing officer and testified that FCPS was providing FAPE and the 9.2.22 IEP FCPS proposed for Student 1 provided FAPE, even though FCPS stripped Student 1 of services due to COVID and

watered down Student 1's IEP in numerous other ways. This is supported by OCR's 11.30.22 letter of findings against FCPS.

- d. During the Sept-Oct. 2020 due process hearing, special education teacher Jen Martin admitted that FCPS special education teachers were "alarmed" about stripping students of services, but they followed Central Office staff's guidance and training and stripped students of services anyway, even though they knew it was wrong, and limited services to a set number of service hours. In addition to admitting denial of FAPE, Jen Martin vilified Parent 1 as a problem because Parent 1 wanted the noncompliance addressed, such as FCPS proposing an inappropriate reading program for Student 1 four school years in a row. Jen Martin stated that Parent 1 "fixating" on issues such a reading programs to be nonproductive and a problem, even though Parent 1 had a right to provide input proving that the program "Just Words", which FCPS proposed four school years in a row a) was not endorsed by its publisher, Wilson, for students with Dyslexia and 2) a previous Virginia hearing officer had ruled previously that "Just Words" is not appropriate for students who have Dyslexia. Martin's comment support that FCPS did not want Parent 1 to participate during IEP meetings and that it considered Parent 1's input to be a problem rather than data points it should carefully considered pursuant to IDEA and implementing state regulations. During her October 14, 2020 testimony, Jen Martin specifically stated:

Page 373 **[emphasis added]**

7 However, [Parent 1] -- back to your  
8 point -- in the -- in August -- **much to the alarm of**  
9 **9 special education teachers in FCPS** -- we were told  
10 that we needed to change th service hours -- because  
11 the number of hours for every student in the virtual  
12 setting is slightly different. And I don't -- I'm not  
13 a -- I, I, I'm trying to remember the exact number of  
14 hours. It's 80 hours per class period -- and that's  
15 not the same as the weekly hours that we previously  
16 had in the IEP.  
17 **So we were told that we needed to move**  
18 **from monthly hours -- and that is to reflect a**  
19 **particular number. And so we made those changes, as**  
20 **20 per FCPS guidelines. And in addition -- we were asked**  
21 **to look at what was appropriate and not appropriate --**  
22 **and make adjustments to the IEP.**

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11 BY [PARENT 1]:  
12 Q Are you aware that ATS has worked with [Student 1]  
13 in your class on planning tools and writing and  
14 reading tools?

15 A I, I one time received an email -- suggest  
16 -- asking me the question whether [Student 1] required ATS.  
17 And I responded to that email -- but I have no  
18 knowledge of [Student 1] utilizing ATS services.  
19 Q Are you aware if they were provided to him  
20 to use?  
21 A I don't. I'm not aware. I'm sorry.  
22 Q You mentioned that some IEPs were held up

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1 because of things such as procedural concerns. Are  
2 procedural concerns not important?  
3 A Well -- I see. At first, I didn't understand  
4 your question. I think that procedural concerns are  
5 important.  
6 Q But you were saying that I was holding up  
7 the IEP -- and a lot of it was for procedural  
8 concerns. So that was a problem -- was my  
9 understanding. So --  
10 A I think -- so sorry -- I apologize. I did  
11 not mean to interrupt you.  
12 Q Go ahead.  
13 A So I think that it is problematic when we  
14 become so -- when anyone in an IEP meeting becomes  
15 fixated on a particular detail, to the extent that  
16 we're no longer focusing on the needs of the student.  
17 Q I agree. So what kind of details would that  
18 be? Can you give an example?  
19 A Yes. So again -- I'll go back to an agenda  
20 item -- so arguing over an agenda for 30 minutes is  
21 problematic. Going back to meetings -- going back and  
22 talking about meetings that occurred in middle school

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1 -- and talking about things that happened -- and  
2 rehashing what occurred in middle school, versus  
3 talking about now.  
**4 Going -- fixating on a particular program**  
**5 that you do or do not want. I think all of those**  
**6 things are, are not -- are moving away from the needs**  
**7 of a student -- and requirements about what the**  
**8 student needs -- and getting through -- so the, the**  
**9 work can be done for the student.**  
**10 And I'm not suggesting that those things**

**11 don't have a place; however, they made the meetings  
12 take a really long time. And they have made it so that  
13 those meetings did not end as successfully with a  
14 completed IEP that could be signed.**

15 Q Do you recall [Student 1] having an evaluation --  
16 and me saying that the evaluator -- is there somebody  
17 out there?

18 A No -- it's just me. I'm listening. I'm  
19 sorry. I'm just listening. I apologize.

20 Q Do you recall [Student 1] having an evaluation and  
21 the evaluator only having a very specific time? And so  
22 me saying to the team, "He has to be put up on the

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1 agenda"?

2 A I do.

3 Q Do you remember me making an issue of it  
4 because he only had a specific amount of time and he  
5 wasn't going to be able to do it at the end?

6 A I do.

7 Q So do you think that that's something valid  
8 to push -- and have the agenda changed for?

9 A A hundred percent. That is not the meeting I  
10 was referring to.

11 Q Okay. And what about when [Student 1]'s IEP isn't  
12 being implemented in full -- and we start the meeting  
13 -- and somebody wants to talk about something else --  
14 but I think we need to address the issue -- which is  
15 that his IEP isn't being implemented in full? Is that  
16 a valid thing to talk about?

17 A I think that IEP meetings are for the  
18 purpose -- annual IEP meetings are for the purpose of  
19 writing a new -- or reviewing the new annual IEP. And  
20 that's what the agenda should reflect -- and that we  
21 should stick with that agenda -- and that other things  
22 should be brought in, in other types of meetings.

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1 Q What other kinds of meetings?

2 A I mean -- [Parent 1] -- I regularly have  
3 conversations with parents about their concerns about  
4 implementation -- if there is one -- a question -- or  
5 concerns about accommodations or what have you. So  
6 there are many different types of meetings. There

7 could be meetings that are via phone; there could be  
8 meetings that are set up specifically as a -- as a --  
9 like aside -- that addresses those issues.

10 But I believe that annual IEP meetings are  
11 for the purpose of reviewing the current plan on the  
12 table -- and ensuring that it is appropriate -- so  
13 they can get signed and be moved into action for our  
14 student.

15 Q Are you aware that Assistant Principal Karen  
16 Lowder said that they would not hold any meeting with  
17 me that wasn't in an IEP format?

18 A I, I've not been privy to all of Ms.

19 Lowder's communications. Sorry.

20 Q Are you aware of Mrs. Prestipino -- or Mrs.

21 Massie -- stating that they would not hold meetings  
22 with me unless it was in an IEP format?

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1 MR. ALLEN: Your Honor -- object to  
2 form.

3 HEARING OFFICER: Objection sustained.

See October 14, 2020 testimony.

- e. 11.30.22: Office for Civil Rights cited 2020 systemic complaint in its Letter of Findings against FCPS, and found FCPS in noncompliance for issues included in the 2020 systemic complaint that VDOE either chose not to investigate and/or for which it found FCPS in compliance, such as denying FAPE by stripping students of services and watering down IEPs.
- f. 2019-20, 2020-21, and 2021-22 school years, FCPS falsified the December 1 count data it submitted to VDOE.
  - i. FCPS submitted fraudulent information about Student 1 in its annual December 1 count information submitted to Virginia Department of Education (VDOE). Parent 1 obtained this information from VDOE, in VDOE's response to a FOIA request submitted by Parent 1, which Parent 1 emailed to ODRAS 5.30.23.
  - ii. FCPS fraudulently reported the following:

That Student 1 has a secondary disability of hearing impairment (HI) and that FCPS provided Student 1 services under the category of HI, even though HI has never been included in Student 1's IEPs or discussed during IEP meetings;

HI services, related services and supports, and accommodations have never been included in Student 1's IEPs or discussed during IEP meetings; HI eligibility has never been discussed with Parent 1 or Student 1, nor has it been documented in any PWN or eligibility paperwork, or anything else related to HI eligibility and/or findings related to eligibility that FCPS provided to Parent 1 and/or Student 1; FCPS has never gone through the HI hearing impairment eligibility process for Student 1, even though FCPS states students must be found eligible in specific categories before FCPS can provide services to the student; and FCPS has never provided HI services to Student 1.

That the number of special education hours increased and the number of regular education hours decreased over three different school years, even though FCPS stripped Student 1's IEP of services in 2020 due to COVID; FCPS staff lied and/or provided false information to a due process hearing officer in 2020, leading the hearing officer to believe that the IEP it proposed provided FAPE (OCR later found that IEP's stripped of services due to COVID did not provide FAPE), even though the IEP stripped Student 1 of services and decreased the number of special education service hours, which should have indicated a decrease, not an increase, in special education services in Student 1's IEP and in FCPS's reporting; Student 1 was all virtual, so his percentages in both regular and special education should have been 0%, since neither were being provided in the setting set forth in IEPs; FCPS repeatedly refused Student 1 eligibility and services in areas of eligibility, even though evaluations by multiple IEE providers, as well as the school psychologist, the school counselor, Student 1's IEP case manager/special education teacher, and general education teacher all said that Student 1 needed specially-designed instruction in that particular area of eligibility need.

- g. VDOE's December 1 Child Count Collection guidance states: "The fact that the special education teacher is in the classroom does not mean that the student is receiving special education." See: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.doe.virginia.gov%2Fhome%2Fshowpublisheddocument%2F18852%2F638041316793730000&wdOrigin=BROWSELINK>
- h. 2016-2023: FCPS stated Student 1 ('22 grad) and Student 2 ('23 grad) received services simply by teachers being in team-taught classes with their teachers. During 2020-21 all-virtual school-year, Student 1 and Student 2 allegedly received services because team-taught teachers were logged into the online classroom. However, neither Student 1 or Student 2 were receiving services in accordance with their IEPs.
- i. Student 1's special education IEP case manager and other South County High School (SCHS) special education teachers weren't in the classroom for the 2020-21 virtual

year since Student 1 was home, yet stated to the DP hearing officer that they were providing FAPE to student, as did other regular education educators.

- j. VDOE's December 1 Child Count Collection guidance states the following is required for the secondary disability field: "This is required if the student is receiving special education services for a secondary disability." See: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.doe.virginia.gov%2Fhome%2Fshowpublisheddocument%2F18852%2F638041316793730000&wdOrigin=BROWSELINK>
- k. FCPS should not have filled out the secondary disability field because Student 1 has never "receiv[ed] special education services for a secondary disability."
- l. FCPS should not have filled out the secondary disability field because Student 1 has never received special education services for a hearing impairment.
- m. FCPS should not have filled out the secondary disability field because Student 1 has never been found eligible under the special education category of "hearing impairment."
- n. IDEA caselaw indicates that the needs, assessments, and evaluations – not the area of eligibility under which students are found eligible – drive services for Students.
- o. Between 2017-2023, South County Middle School (SCMS), SCHS, and FCPS Central office staff advised Parent 1 and Student 1 that Student 1 can only receive special education services if Student 1 is found eligible under a specific special education eligibility category. For example, FCPS repeatedly refused therapy to address Student 1's and Student 2's visual processing and other related deficits because FCPS stated students weren't found eligible under the category of Vision Impairment and/or Other Health Impairment for these specific issues.
- p. However, in its December 1 count data, FCPS reported that it provided Student 1 services under the eligibility category of Hearing Impairment, even though FCPS had never gone through eligibility for Hearing Impairment in the presence of Parent 1 or Student 1.
- q. FCPS repeatedly withheld information from Parent 1 and refused in-person access to student records under FERPA, hence Parent 1 never knew FCPS allegedly found Student 1 eligible under hearing impairment, that FCPS was allegedly providing Student 1 services under hearing impairment, and that FCPS was allegedly providing Student 1 more special education and fewer regular education services year after year. VDOE has been provided numerous emails providing evidence of this already.

- r. FCPS repeatedly misled Parents 1 and 2 to believe that IEP teams were duly constituted, even though they lacked reading teachers, psychologists, and others with the credentials to interpret evaluations done by neuropsychologists and/or medical doctors and/or other experts. For example, FCPS repeatedly presented Shira Brothers as an “expert” in issues such as convergence insufficiencies, yet she holds no license or state endorsements. In addition, FCPS’s own school psychologist coordinator states that assessments related to visual processing are in the realm of the school psychologist.
- s. 9.23.21, FCPS School Psychologist coordinator Michael Axler released a document that states FCPS considers vision-related assessments to be under the category of “Information Processing” that is measured by its school psychologists. He lists the Beery-Buktenica Developmental Test of Visual-Motor Integration: Sixth edition under this category. See: <https://www.fcps.edu/sites/default/files/media/pdf/2022-23FCPSInternshipApplicationPacket.pdf>
- t. In 4.22.22 and other eligibility meetings for Student 1, FCPS ignored School Psychologist Tonya Blanchard’s input and deferred to FCPS vision “experts”, even though FCPS School Psychologist coordinator Michael Axler indicated that Tonya should have been the one interpreting the data, and the expert in the room. Instead, FCPS repeatedly deferred to Shira Brothers and Teia Westbrook-Johnson, who had neither the licensing nor the state endorsements to trump or even equal Tonya’s experience. Shira’s and Teia’s licensing and endorsement information has previously been provided to VDOE.
- u. 4.22.22: FCPS falsely advised staff about eligibility procedures, to include who is a member of the team and documentation of dissent, and how to handle dissent, and predetermined that [Student 1] did not need services before all members of the team provided input (see Samantha Tolan’s comment to Student 1) – all of which led to Parent 1 and Student 1 not being full members of the eligibility team and their input not being weighed as it should have pursuant to IDEA and implementing state regulations.
  - i. Throughout the meeting, FCPS repeatedly stated Parent 1 and Student 1 are participants, but not members of the team.
  - ii. Carolyn Edner, a procedural support liaison for FCPS, and Samantha Tolan, a special education lead at South County High School are considered “experts” by FCPS.
  - iii. Carolyn Edner and/or Samantha Tolan represent FCPS at hundreds of IEP and/or eligibility meetings a year, thus, although the examples below are pulled from meetings regarding Student, it must be believed that Edner



and Tolan are enforcing the same practices throughout SCHS and/or other schools countywide.

- iv. Criterion C of FCPS's Other Health Impairment (OHI) Basis for Committee Decision (BCD) form has a "yes" and a "no" box next to the following verbiage and asks the committee to indicate "yes" or "no" and provide additional information: "The limited strength, vitality, or alertness results in an adverse effect on the student's educational performance. Functional academic performance is significantly impacted (e.g., performance on standardized tests, daily classroom performance, functional impact of medical condition on day-to-day performance, etc.)."
- v. 3.24.22: Jeremiah Caven, assistant principal who had never worked with Student, and who doesn't hold the endorsements or degrees to interpret and/or make diagnosis based up the evaluations considered; Samantha Tolan, South County High School (SCHS) special education head, who had never worked with Student, and who doesn't hold the endorsements or degrees to interpret and/or make diagnosis based up the evaluations considered; Carolyn Edner, FCPS procedural support liaison (PSL), who had never worked with Student and who had never met Student in person, and who doesn't hold the endorsements or degrees to interpret and/or make diagnosis based up the evaluations considered; and Teia Westbrook-Johnson, an educator FCPS brought in from a different school, who had never worked with Student, and who doesn't hold the endorsements or degrees to interpret and/or make diagnosis based up the evaluations considered stated "no" for Criterion C.
- vi. 3.24.22: Tonya Blanchard, SCHS school psychologist, who had met Student on numerous occasions; Telia Johnson, SCHS special education co-chair, Student's IEP case manager for 2021-22 school year, Student's Anatomy Special education teacher, who had started working with Student in 8<sup>th</sup> grade, during IEP meetings for transition from middle to high school; Dennis Bennett, Student's general education government teacher and IEP case manager for end of 2018-19 school year, who had worked with student starting Student's 9<sup>th</sup> grade; and Armin Mustedangic, Student's counselor, who had started working with Student starting in 12<sup>th</sup> grade; Parent; and Student stated "yes" for Criterion C.
- vii. 3.24.22: Carolyn Edner stated the eligibility meeting must be stopped until the team could come into consensus, since the team was split evenly. Parent pointed out that the split wasn't even, but that it was 6-4 in favor of choosing "yes" for Criterion C. Carolyn stated that Parent and Student aren't included in the team that must come to consensus. Although Parent protested against this decision, Carolyn and Samantha

Tolan shut down the eligibility meeting and refused to continue, and waited almost another month (next meeting was 4.22.22) to have the next eligibility meeting.

- viii. 20 U.S.C. 1414(b)(4) states **[emphasis added]**: “[\(4\)](#) Determination of eligibility and educational need Upon completion of the administration of assessments and other evaluation measures—[\(A\)](#) the determination of whether the child is a child with a disability as defined in section [1401\(3\)](#) of this title and the educational needs of the child shall be made by a team of qualified professionals **and the parent** of the child in accordance with paragraph (5); and [\(B\)](#) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.
- ix. Sec 300.306 states **[emphasis added]**: “[300.306](#) Determination of eligibility. [\(a\)](#) General. Upon completion of the administration of assessments and other evaluation measures—[\(1\)](#) 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”
- x. Sec. 300.305 states **[emphasis added]**: “Additional requirements for evaluations and reevaluations. [\(a\)](#) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, **the IEP Team** and other qualified professionals, as appropriate, must—”
- xi. Sec 300.321(a)(1) states **[emphasis added]**: [\(a\)](#) General. The public agency must ensure that the IEP Team for each child with a disability includes—[\(1\)](#) **The parents of the child**;
- xii. 8VAC20-81-80(B) states, “The determination that a child is eligible for special education and related services shall be made on an individual basis by a group as designated in subdivision C 2 of this section.)
- xiii. 8VAC20-81-80(C)(1) states, “Upon completion of the administration of assessments and other evaluation materials or after determining that additional data are not needed, a group of qualified professionals and the parent(s) of the child shall determine whether the child is, or continues to be, a child with a disability and the educational needs of the child. If a determination is made that a child has a disability and requires special education and related services, an IEP shall be developed in accordance with the requirements of [8VAC20-81-110](#). (34 CFR 300.306, 34 CFR 300.308) 1. The determination of whether a child is a child with a disability is **made by the child's parent(s)** and a group that is collectively

qualified to: a. Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development and social-emotional development; b. Interpret assessment and intervention data, and apply critical analysis to those data; and c. Develop appropriate educational and transitional recommendations based on the assessment data.”

- xiv. 8VAC20-81-80(C)(2) states [**emphasis added**], “C. Upon completion of the administration of assessments and other evaluation materials or after determining that additional data are not needed, a group of qualified professionals **and the parent(s) of the child** shall determine whether the child is, or continues to be, a child with a disability and the educational needs of the child. If a determination is made that a child has a disability and requires special education and related services, an IEP shall be developed in accordance with the requirements of [8VAC20-81-110](#). (34 CFR 300.306, 34 CFR 300.308) 2. The eligibility group composition. a. The group may be an IEP team, as defined in [8VAC20-81-110](#), as long as the above requirements and notice requirements of [8VAC20-81-170](#) are met. b. The group shall include, but not be limited to: (1) Local educational agency personnel representing the disciplines providing assessments; (2) The special education administrator or designee; (3) **The parent(s)**; (4) A special education teacher; (5) The child's general education teacher or if the child does not have a general education teacher, a general education teacher qualified to teach a child of the child's age; or for a child of less than school age, an individual qualified to teach a child of the child's age; and (6) At least one person qualified to conduct individual diagnostic examinations of children, such as school psychologist, speech-language pathologist, or remedial reading teacher.
- xv. 4.22.22: The eligibility team met again. On this date, all team members consented to Criterion C. However, the same split occurred regarding Criterion D, which asks eligibility team members to indicate “yes” or “no” for the following: “The student requires specially designed instruction as a result of the other health impairment.”
- xvi. 4.22.22: The four eligibility team members who said no to Criterion D (Samantha Tolan, Jeremiah Caven, Carolyn Edner, Teia Westbrook-Johnson) indicated that they don’t agree with the data in the evaluations and that there isn’t enough data to say “yes”. None of these four team members hold the license or endorsements to make determinations, interpretations, and/or diagnosis based on the evaluations presented.
- xvii. 4.22.22: The six eligibility team members who said yes to Criterion D (Parent, Student, Tonya Blanchard, Telia Johnson, Dennis Bennett, Armin

Mustedanagic) indicated that there is enough data to say “yes”. All of these team either held the license or endorsements to make determinations, interpretations, and/or diagnosis based on the evaluations presented, and/or had worked with Student.

- xviii. 4.22.22: As she did on 3.24.22, Carolyn Edner again stated that the eligibility team was evenly split and that Parent and Student aren’t included in the team that must come to consensus. Specifically, Carolyn stated the following at about the 1:51:47 mark of the meeting recording:

“So for the BCD, we take input from Parent and Student, but the FCPS team is the one making the proposal. So your input is noted, this meeting is being recorded. We have heard and considered both your input and [Parent 1]'s input.”

- xix. 4.22.22: Unlike the 3.24.22 meeting, Carolyn Edner did not shut down the meeting and state that the 4-4- “evenly split” team must come to consensus, thus the meeting had to end until that could happen.

- xx. 4.22.22: Although the eligibility team was split 6-4 on Criterion D, Carolyn Edner, Samantha Tolan, Jeremiah Caven, and Teia Westbrook-Johnson decided that the answer to Criterion D would be “no” and thus Student was not eligible under OHI and FCPS would refuse specially-designed instruction.

- xxi. 4.22.22: Tonya Blanchard, the only member of the team with the credentials to interpret the evaluations considered at the eligibility meetings, repeatedly stated that Student was impacted, was eligible, and did need specially-designed instruction. Her comments were supported by Telia Johnson, Dennis Bennett, and Armin Mustedanagic, who provided teacher reports on what Student experiences in class. However, the other FCPS team members – who had no credentials and/or had never worked with Student, disagreed with them. The following are a few of the interactions that took place:

At about the 1:39:18 point of meeting recording:

Carolyn Edner: And then Ms. Blanchard, Ms. Johnston, Mr. Bennett and Mr. Mustedanagic. If you all could craft your statement also. It would be four members of the team believe whatever.

Tonya Blanchard: Though, I don't I don't I don't believe it.

Carolyn Edner: Okay.

Tonya Blanchard: I think that there is evidence so it's not a belief. It's not a feeling. There is evidence supported by the neuropsychological and the educational, and Dr. Davis's report.

At about the 1:44:13 point of the meeting recording:

Samantha Tolan: It's still believe. You guys believe that, that the data shows that he requires specially-designed instruction.

Tonya Blanchard: I don't believe. It's, it's the word belief is like a feeling. I don't feel it. The data is there. So it's not a belief.

Carolyn Edner: So you are stating—

Tonya Blanchard: The information is there. I'm stating it as, it's a fact. The information is in these reports. It's not a belief.

- xxii. Sec. 300.306(c) states: “(c) Procedures for determining eligibility and educational need. (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must—(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior; and (ii) Ensure that information obtained from all of these sources is documented and carefully considered.
- xxiii. 8VAC20-81-80(D)(1) states: “Procedures for determining eligibility and educational need. (34 CFR 300.306 through 34 CFR 300.311) 1. In interpreting evaluation data for the purpose of determining if a child is a child with a disability and determining the educational needs of the child, the local educational agency shall: a. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and b. Ensure that information from all these sources is documented and carefully considered.
- xxiv. 4.22.22: Carolyn Edner, as a procedural support liaison, is trained by FCPS’s Office of Due Process Eligibility and considered an expert in procedures by FCPS. Carolyn’s training led the team to refuse to agree with the data in the IEE reports, refuse to agree with school psychologist

Tonya Blanchard's interpretations of the IEEs, and refuse to agree with teacher reports providing first-hand information on how Student is academically-impacted.

xxv. 4.22.22: After Parent repeatedly opposed Carolyn Edner's noncompliant statements, Samantha Tolan repeatedly threatened to end meeting; Carolyn and Samantha repeatedly told Parent that information she wanted included was not relevant; and/or that information Parent wanted included in the BCD form and other paperwork being filled out for the eligibility would not be included, because Parent was not a member of the team that filled out the paperwork (listen to all of 4.22.22 meeting recording).

xxvi. 4.22.22: Carolyn Edner stated that Parent, Student, and the four other team members who disagreed with Carolyn, Samantha Tolan, Jeremiah Craven, and Teia Westbrook-Johnson, could write a letter of dissent. However, Carolyn stated that Parent's and Student's dissent would not be included in the paperwork. After Parent asked for specific wording to be inserted into the statement of dissent, the following conversation took place at the 2:21:23 mark of the meeting recording:

Carolyn Edner: Just to clarify, [Parent 1], you can add your own statement separately. This is for FCPS team members in dissent and—

[Parent 1]: That's not what it says.

Carolyn Edner: --they are welcome to get input from whoever they wish. And you may also you always have the ability to write whatever statement you want.

[Parent 1]: No, but it says members in disagreement. So, I'm not a member? [Parent was referring to FCPS's Special Education Eligibility form, which states, "Members in disagreement must provide a statement of dissent below or on an attached sheet"]

Carolyn Edner: Members of the eligibility committee and the FCPS team.

[Parent 1]: I thought I was a member of the eligibility—

Carolyn Edner: Parent input is welcomed and valued. But this is dissent from the decision that the FCPS team made.

[Parent 1]: Okay, you're gonna need to add that to the list of the procedural safeguards, because that's not in federal, state or Fairfax

regulations. So if you could find me where it says that maybe it's in Carolyn's regulations?

8VAC20-81-80(D)(7) states: "The eligibility group shall work toward consensus. If the group does not reach consensus and the decision does not reflect a particular member's conclusion, then the group member shall submit a written statement presenting that member's conclusions."

- xxvii. 8VAC20-81-80(D)(9) states: "9. The eligibility group shall have a written summary that consists of the basis for making its determination as to the eligibility of the child for special education and related services. The written summary shall include any written statement from a member whose conclusion differs from the other members' determination. The summary statement may include other recommendations. The written summary shall be maintained in the child's scholastic record."
- xxviii. To date, FCPS has not provided Parent evidence of the existence of a "written statement" in compliance with 8VAC20-81-80(D)(9).
- xxix. 4.22.22: Carolyn Edner stated the prior written notice would not be created during the meeting and that she would write it. The following conversation took place at about the 2:39:13 mark of the meeting recording:

Telia Johnson: Okay. And then Ms. Edner, you said that we have to go to the prior written notice?

Carolyn Edner: We are not going to do that as a group. I will I will make sure to write the prior written notice and send it to [Parent 1] within 10 business days.
- xxx. The prior written notice written by Carolyn Edner and emailed to Parent includes no mention of any dissention.
- xxxi. Because Student had already been qualified as eligible as a student with eligibilities, Student did not have to go through the eligibility process again under another category, such as "other health impairment" before decisions could be made about provision of related services for Student. However, after the four IEEs that took place in 2020 were completed, FCPS insisted that student had to be found eligible under other special education categories, and thus delayed the provision of FAPE to student. The eligibility meetings started in Fall 2021 and served to delay the IEP meetings.

- xxxii. 8VAC20-81-80(F) states: “F. Eligibility for related services. A child with a disability shall be found eligible for special education in order to receive related services. Once a child is found eligible for special education, decisions about the need for related services shall be made by the IEP team. An evaluation may be conducted as determined by the IEP team. (34 CFR 300.34 and 34 CFR 300.306(c)(2))”
- xxxiii. After the March and April 2022 meetings, FCPS held IEP meetings. Based on the above, FCPS proposed IEP for the 2021-22 school year (which it refused to provide to Parent until day after student graduated) failed to provide FAPE.
- xxxiv. In its 6.16.22 LOF, VDOE states on page 12:  
“LEA has also correctly noted that Adult Student, accordingly, would continue to receive specialized instruction and stated that *It is not within the purview of the eligibility team to determine the nature of required specially designed instruction.* o We agree, and find this aspect of Complainant’s allegations **without merit.**”
- xxxv. 4.22.22. FCPS repeatedly tried to make the eligibility decision based on the “nature of specially-designed instruction. IEP case manager/special education teacher/so-chair special education department at SCHS Telia Johnson, tried to say that the eligibility meeting is NOT supposed to be the place to discuss the nature of the specially designed instruction – yet Sam Tolan, Carolyn Edner, and Teia Westbrook-Johnson pushed otherwise, and the fourth on their team – Jeremiah Caven – remained the quiet sheep who only spoke when time to agree with the other three. The following was specifically stated [**emphasis added**]:
- Telia Johnson 1:01:38  
I'll go first. So based off of the information and the data that we have, and the medical condition. I say, since there is an impact on [Student 1's] reading due to this medical condition, he does require a specially designed instruction for reading.
- Samantha Tolan 1:01:57  
**My question, Telia, is what is that specially designed instruction? And what would it look like.**
- Telia Johnson 1:02:04  
**Well, that's not the purview of the eligibility when we're talking about the BCD.**



Samantha Tolan 1:02:11

**I'm just curious. What is the specially designed instruction?**

Parent 1 1:02:14

Nope. No, Sam. You don't get it both ways. A few minutes ago, you were shutting me down. You're saying well, that's an accommodation. We can talk about that later. Goals services, we can talk about that later. We're talking about eligibility, does he or doesn't he need it? Okay. So if you want to, you're just trying to do this because Telia didn't agree with you.

Samantha Tolan 1:02:31

**That's not true. I'm trying to understand what is the specially designed instruction that he needs.**

Parent 1 1:02:36

Then read Dr. Davis's report and read everything else that has been provided. Well, you guys, paid for.

Telia Johnson 1:02:45

**The specially design instruction in reading due to the medical condition. That is the specially designed instruction, in reading, for reading.**

Carolyn Edner 1:02:56

So, Telia, I'm asking this as a clarifying question.

Telia Johnson 1:03:00

Okay.

Carolyn Edner 1:03:01

We have a great deal of data that does show he requires specially designed instruction, due to his reading issues as a student with a specific learning disability. I do not see specific data that shows he requires the specially designed instruction for this medical condition.

Telia Johnson 1:03:22

So based off of--

Student 1 1:03:26

I have a question Ms Edner, since you seem to kind of know so much. How much I mean, do you really know about me? I mean, you're never with me in class like Ms. Johnson is, I mean, I haven't really ever had an interaction with you. I mean, do you know what I do even know what I look like?

Carolyn Edner 1:03:45  
[Student 1], I appreciate the--

Student 1 1:03:47  
I'm just I'm just wondering, because you're making all these points, like how you know so much. But I mean, are you aware like, you know, you've walked by me multiple times C200 I mean, do you even know what I look like? I mean, cuz you seem like you know so much about trying to what I need and what I don't need, but how much do you really know? I mean, Ms. Johnson is in a class with me, I, she's right there firsthand. And you're reading stuff off a piece of paper, and probably don't know much more other than that.

Parent 1 1:04:24  
Actually, she's not reading it off a piece of paper. The piece of paper from Dr. Davis 100% says that you need this specially designed instruction. What she's getting this from is, I don't know where, I don't know where.

Samantha Tolan 1:04:36  
So again, I'd like to just remind everyone of the norms that we need to respect everyone's opportunity to speak in this meeting so that we can come to a team consensus,

Student 1 1:04:46  
Or we could respect what I need, like what I need to succeed in an educational environment, instead of just not giving it to me--

Samantha Tolan 1:04:55  
**And [Student 1], that isn't something that you need.**

[Student 1] 1:04:56  
--like its a big issue. I mean--

Tonya Blanchard 1:05:01  
According to the report, this—

Samantha Tolan 1:05:02  
**I'm asking Student 1, what is it that you need for the specially designed instruction?**

Student 1 1:05:02  
Again, we're not talking about we're talking about eligibility. So--

Samantha Tolan 1:05:03

**I'm asking [Student 1], what is it that you need for the specially designed instruction? I'm asking you about what is it that you need.**

Student 1 1:05:06

--if we're not going to talk about what the specialized program is, then we should move on to accommodations, because we're talking about eligibility right now.

Tonya Blanchard 1:05:22

So the experts are saying, in both of the reports, they're are talking about well, in Dr. Ling's report, you're talking about reading rate and arithmetic rate, arithmetic rates, we're talking about the fluency component. So it spills into both domains. It's not unheard of that that a medical condition is going to affect reading, and or math. And so this is what, if, it impacts, their fluency.

Telia Johnson 1:05:56

So, so, thinking back on that, because that's what I was getting ready to say. Thank you, Ms. Blanchard. So to answer your question, Ms. Edner, it impacts the slowed fluency, and accuracy. **And so that's why I said specially specially designed instruction in reading.**

Carolyn Edner 1:06:19

Thank you for that clarification. **Ms. Westbrook, to help, my understanding is, while we discussed under specific learning disability, specially designed instruction, for the decoding and encoding and other factors that are contributing to his reading difficulties through his specific learning disability, while acknowledging the part that convergence insufficiency plays in his reading issues, I, I don't see what the specially designed in, what specially designed instruction would be required to support the convergence insufficiency.** I completely see the accommodations. And I very much want to make sure that when we move to the IEP, we give [Student 1] the accommodations that he needs. So I want to be open to looking at information and having that informed position even though I've already stated what I see from the data. That is why I'm asking other team members so that if there is additional information, we are all hearing it.

Parent 1 1:07:34

Well, why don't you read Dr. Davis's report? And also, again, it doesn't ask you what specially designed instruction. That's to be determined later. If we said that over and over again. You're you're you're being very hypocritical, when I've tried to when I've gone down this route before you shut me down. So now let's make sure the same rules apply to everybody.

It says specially designed instruction. It doesn't say what exactly is it? All right? But if you want to know what exactly it is, let's defer to the guy who actually did the functional vision assessment, which you guys paid for, which met all your criteria, and which you guys accepted. Okay? Let's go with that. That is the expert. That's the one who did the evaluation. You guys had an opportunity when, when I asked for these IEEs, you had the opportunity to take me to due process, to stand up and say that our evaluations are correct, we stand by our evaluations, and we are going to deny the IEE request. You had the opportunity to do that. You did not do that. Therefore, your evaluations-gone-out of there. Alright? And my IEEs that we had, which you guys paid for, are what rule right now. You had the opportunity, you didn't do it. And for those of you that don't understand I've sent multiple emails since the last, the last meeting and now on that, this is just the way it's supposed to work. And this is actually how it should have been working for years. If you don't agree with me on something if we get to a stalemate, you guys are actually, if you really believe something should happen, you're supposed to take me to due process. And you guys don't do that. If you believe so wholeheartedly about it, take me to due process, but you didn't do it. Instead, you talked to the doctors, you contracted with them, they did their IEEs, you paid for them, you accepted them. That's what rules.

Carolyn Edner 1:09:32

So I am looking at the report and **I am seeing medical therapy recommended and accommodations.**

Tonya Blanchard 1:09:40

**But part, but part of this, it doesn't I don't think that Dr. Davis needs to say that and I mean it seems like you're looking for him to say it specifically. But when you know about the disorder, you know that it affects the rate, reading and arithmetic fluency. And so I Dr. Davis doesn't say that specifically in his report, he doesn't spell that out. But when you put it all together and look at all of the reports, and you understand how it affects it, how it's a negative impact.**

Samantha Tolan 1:10:17

So I don't think anybody's denying that there's an impact. I think what we're asking is if it requires specially designed instruction.

Tonya Blanchard 1:10:24

Right.

Samantha Tolan 1:10:24

What I'm hearing from Ms. Edner is that she believes that specially designed instruction is not required, and that the impact can be rectified through accommodations.

Tonya Blanchard 1:10:33

I get it. So what I'm hearing is that we are not going to be in consensus here. And so in order to move on, where do we go from here, procedurally, do, do, for instance, do I write a dissent? How, where do we go from here, because we're going to be stuck here and not going to go anywhere in this on D.

Carolyn Edner 1:10:53

So procedurally, I would like to hear from all members of the FCPS team and then once we have input from everyone, I can inform the team of our next procedural step.

Tonya Blanchard 1:11:05

Okay.

Carolyn Edner 1:11:07

So Ms. Blanchard, do you would you like to follow up with your feeling on criterion D?

Tonya Blanchard 1:11:11

I think I've already stated my feelings. So it is, you know, maybe Mr. Bennett can chime in, in terms of how he's functioning in the class. And if he believes that, if he agrees or not.

[Parent 1] 1:11:27

Dennis, before you jump in, I just have one thing to say. I just want to remind all of you guys, when you guys were proposing all of these reading programs for Student 1 for years, right for years, and you guys got nailed, because you got nailed for proposing an inappropriate program for [Student 1] four years in a row. All right? And I sat in all these IEP meetings, and I said, give me details about what the program is that you're going to do. And you wouldn't give it to me, you wouldn't tell me exactly what you were going to do with—

Samantha Tolan 1:11:55

[Parent], those are all things that have happened---

[Parent 1] 1:11:56

No, no, no. Let me. You're interrupting me. You're interrupting me.

Samantha Tolan 1:11:57

--and doesn't relate to any of the members on this team

[Parent 1] 1:11:56

Stop talking and let me finish. Okay? You're making it longer, you would not put it down there, you wouldn't put the specific program down there. You wouldn't put in put the specific instruction down there, you wouldn't do anything down there. Now we have an outsider who's saying specifically what [Student 1's] needs, and now all of a sudden you guys want well, what specifically is it, what is the specific instruction? Again, hypocritical. I just want to seed that for all of you who haven't been at all the other meetings. Okay. I'm done. Dennis. Sorry about that.

Dennis Bennett 1:12:10

No worries, that's okay. Um, so for me, personally, I um, let's see, I I'm kind of I'm kind of torn on this one. And I could be, I'm leaning towards what Telia and Tonya are advocating for which is that the student would require specifically designed instruction. Now, where I am getting caught up is on what that specifically designed instruction would look like. Now, I do understand that this isn't necessarily the area where we go into that detail on what that design instruction would look like. But for me if if the student is being impacted by the other health impairment, and I'm thinking as broadly as I can, if a student is being impacted by an other health impairment, I would, I would think that yes, that student would require some specifically designed instruction to assist them with that other health impairment. Now, what that designed instruction, again, is going to entail I'm not exactly sure what that might look like.

- v. For Student 1, the four FCPS staff, including FCPS "expert" Teia Westbrook-Johnson, who refused eligibility to Student 1, repeatedly focused on Convergence Insufficiency and refused to discuss the impact of the other issues identified by the developmental ophthalmologist Dr. Tod Davis, even though School Psychologist Tonya Blanchard repeatedly brought them up, and included them in the statement of dissent for which she was the main crafter of the dissent, but which represented all four remaining FCPS staff members on the team (IEP case manager/special education teacher Telia Johnson, general education teacher Dennis Bennett, and school counselor Armin Mustedanagic.)
- w. FCPS repeatedly stated to Parent 1 and Parent 2 that it doesn't provide therapy and refused Students 1 and 2 therapy, yet FCPS outwardly made VDOE and OCR believe it does provide therapies. For example, in its OCR findings, OCR made note of the following information it obtained from FCPS during its investigation, which shows

FCPS stating it does provide therapy, albeit limiting that therapy to a budget that matched FCPS's CARES Act grant:

"A June 30, 2020, e-mail from the Director to the Assistant Superintendent for Special Services included a modified version of the compensatory services projection described above. The chart, dated May 13, 2020, was titled "Anticipated Compensatory Costs for Special Education," and set forth estimates for anticipated "comp claims" and "special education IEP related services missed within the time since distance learning started week of 4/13/20." Under the category "comp claims," the chart stated that the anticipated number of students "varied" and the number of services "varied" and included private placements and private tutoring, for a total approximate cost of \$869,393. The second category was titled "Related Service Therapies (OT/PT/Speech)" and listed 9,820 students with approximately 40,608 sessions of services missed since April 13, for a total cost of \$2,030,400. The chart projected \$2,899,793 total anticipated compensatory costs for special education, approximately the amount the Division received through the CARES Act grant."

- x. FCPS repeatedly stated that FAPE has been provided to students at schools like Burke School in response to state complaints (see FCPS 2020 systemic complaint response from FCPS, which includes a student who was then attending Burke School), yet FCPS knew that the school was failing students and educators at the school. See day school survey of staff and parents, which was already provided to VDOE.
  - y. FCPS stripped Student 1's IEP of working memory and other deficits without Parent 1's knowledge or consent.
  - z. Procedural Support Liaison Carolyn Edner repeatedly stated FCPS does not provide therapy for medical issues. However, Dyslexia is a medical diagnosis and FCPS provides therapy to address Dyslexia. Speech-language is a medical diagnosis. FCPS provides therapy to addresses speech-language. Physical therapy is provided by FCPS, but the underlying issues leading to the need for physical therapy are diagnoses by medical professionals, too.
2. Other counties in Virginia offer vision therapy. For example:
- a. King and Queen County Public Schools provides vision therapy. It's site specifically states:

**Special Education Programs and Services:** Based on the findings of the evaluation, the child may be eligible for the following Special Education programs and related services: ● Itinerant Vision Therapy ● Occupational Therapy

See <https://www.kqps.net/page/child-find>

- b. Arlington Public Schools (APS), which borders FCPS, has a long history of providing vision therapy.
    - i. APS's FY 2012 Accepted Budget states that its Stratford Program "Services are based upon a student's individual needs and can include speech/language therapy, occupational therapy, physical therapy, adaptive physical education, ESOL instruction, vision therapy, and behavior management." See: <https://www.apsva.us/wp-content/uploads/2014/11/FY-2012-Adopted-Budget.pdf>
    - ii. APS's FY 2018 Accepted Budget states that its Stratford Program "Services are based upon a student's individual needs and can include speech/language therapy, occupational therapy, physical therapy, adaptive physical education, ESOL instruction, transition services, vision therapy, and behavior management." See: [https://www.apsva.us/wp-content/uploads/2017/08/Budget\\_FY2018\\_Adopted\\_BW\\_Final\\_ForWeb.pdf](https://www.apsva.us/wp-content/uploads/2017/08/Budget_FY2018_Adopted_BW_Final_ForWeb.pdf)
    - iii. APS's FY 2019 Accepted Budget states that its Stratford Program "Services are based upon a student's individual needs and can include speech/language therapy, occupational therapy, physical therapy, adaptive physical education, ESOL instruction, transition services, vision therapy, and behavior management." See: <https://www.apsva.us/wp-content/uploads/2018/09/FY-2019-School-Boards-Adopted-Budget.pdf>
    - iv. APS's Accepted budgets after 2019 reflect the renaming and reopening of its Stratford Center and the description of vision therapy was reworded to vision services.
  - c. Loudoun County Public Schools 2019-2020 Systemic Special Education Needs and Recommended Actions report indicates that LCPS provides vision therapy to its students. See: [https://www.lcps.org/cms/lib/VA01000195/Centricity/domain/32727/annual\\_reports/SEAC\\_Annual\\_Report\\_Final2019\\_2020.pdf](https://www.lcps.org/cms/lib/VA01000195/Centricity/domain/32727/annual_reports/SEAC_Annual_Report_Final2019_2020.pdf)
  - d. For years, vision therapy has been listed as a service on the "Provider Directory" for 2020-2024, created by Fairfax County, for FCPS, Falls Church City Public Schools for accessing services funded by the Fairfax-Falls Church Children's Services Act. See: <https://www.fairfaxcounty.gov/healthymindsfairfax/sites/healthymindsfairfax/files/assets/documents/csa-forms/provider-directory.pdf>
3. 6.8.00: Federal Register / Vol. 65, No. 111 / Thursday, June 8, 2000 states [**emphasis added**], "The challenge for educators of blind and visually impaired children, including those with other disabilities, is how to teach skills that sighted children typically acquire through vision. Blind and visually impaired students have used a variety of methods to



learn to read, write, and acquire other skills, both academic and nonacademic. **For example, for reading purposes,** some students use Braille exclusively; others use large print or regular print with or without low vision aids. Still others use a combination of methods, including Braille, **large print,** low vision aids and devices with computer-generated speech, **while others have sufficient functional vision to use regular print, although with difficulty.** In order to receive an appropriate education under Part B, it is generally understood that students who are blind or visually impaired must be provided appropriate instruction in a variety of subjects, including language arts, composition, and science and mathematics. **However, in order to be educated in these subject areas effectively, blind and visually impaired children must be taught the necessary skills to enable them to learn to read and to use other appropriate technology to obtain access to information.** It also is very important for blind and visually impaired children, including those with other disabilities, **who need orientation and mobility services, to receive appropriate instruction in orientation and mobility as early as possible.** Providing these children with needed orientation and mobility services at the appropriate time increases the likelihood that they can participate meaningfully in a variety of aspects of their schooling, including academic, nonacademic, and extracurricular activities. Once these individuals are no longer in school, their use of acquired orientation and mobility skills should greatly enhance their ability to move around independently in a variety of educational, employment, and community settings. These skills also should enhance the ability of blind and visually impaired students to obtain employment, retain their jobs, and participate more fully in family and community life. . . . In addition to mastering the skills taught to all children, blind and visually impaired children, including those with other disabilities, must receive instruction in the skills that the IEP team determines are necessary for the **child to obtain access to information needed to participate in the general curriculum, as a supplement to instruction in the reading method determined appropriate for the child. The skills that could be taught to access information include use of cassette recordings, including recordings that utilize compressed speech, personal computers with speech output or a Braille display, and optical scanners with speech output.** Use of these devices, methods, and services should be considered on an individual basis to supplement Braille instruction for students for whom Braille is the primary reading medium, or to supplement print or large print for children using print as their primary reading medium. While instruction in the skills necessary to access information is extremely important, local educational agencies also are required by Part B and Section 504 to provide instructional materials in the format determined appropriate for the child by the IEP team to enable the child to participate in the public agency's program. **In addition, for most students who are blind or visually impaired, including those with other disabilities, the development of skills related to future employment, vocational training, or postsecondary education, such as the use of reader services, would be appropriate.** For example, reader services have proven to be vital for the workplace success of many adults who are blind or visually impaired. As appropriate, IEP teams should consider making reader services available, as well as **providing instruction in the skills necessary to the effective use of those services.** In considering whether reader

services or other services related to the workplace success of these students would be appropriate, **IEP teams should consider whether those services would be necessary to supplement the techniques that the student already may be receiving to access information, or necessary for the student's successful transition from school to post-school activities.** . . . Issues related to accessing information frequently arise in the education of blind and visually impaired students, as well as those with other disabilities. **Therefore, it is especially important that IEP teams for blind and visually impaired students give appropriate consideration to these students' needs for assistive technology and the full range of assistive technology devices and services that are available for them, and this consideration needs to occur as early as possible.** As is true for students with other disabilities, **a blind or visually impaired student's ability to become proficient in the use of appropriate assistive technology could have a positive effect on the development of the student's overall self-confidence and self-esteem. Students taught the skills necessary to address their disability-specific needs are more capable of participating meaningfully in the general curriculum offered to nondisabled students."** <https://www.govinfo.gov/content/pkg/FR-2000-06-08/html/00-14485.htm>

4. 5.22.17: United States Department of Education Office of Special Education and Rehabilitative Services issued Memorandum "OSEP 17-05", which states **[emphasis added]:** SEAs and LEAs **"must not narrow the definitions in the IDEA."** USDOE OSER uses the following example: **"For example, State eligibility guidelines and definitions for "visual impairment including blindness" may not exclude a child with convergence insufficiency or other visual impairment from meeting the IDEA's definition of "visual impairment including blindness" if that condition, even with correction, adversely affects that child's educational performance (e.g., the child's ability to read and write)."** <https://sites.ed.gov/idea/files/letter-on-visual-impairment-5-22-17.pdf>
5. 7.26.17: In response to USDOE OSERS' Memorandum "OSEP 17-05", American Council of the Blind; American Council of the Blind of New York, Inc.; American Foundation for the Blind; Association for the Education and Rehabilitation of the Blind and Visually Impaired (AER); Central Texas Professionals for the Visually Impaired; Conference of Educational Administrators of Schools and Programs for the Deaf; Hadley Institute for the Blind and Visually Impaired; National Family Association for Deaf-Blind; New Jersey Consortium on Deaf-blindness; New York Institute for Special Education (NYISE); Pennsylvania Partnership for the Deafblind (PPDB); Perkins School for the Blind; St. Joseph's School for the Blind; Texas School for the Blind and Visually Impaired; University of Arizona, Visual Impairments Specialization Program; Virginia AER; and VISIONS/Services for the Blind and Visually Impaired issued a joint statement that applauds USDOE OSERS 5.22.17 Memo "OSEP 17-25" and states **[emphasis added]:** "In reading the memorandum, we are reminded of two basic principles of IDEA: **1. Eligibility for special education is individualized and based on evaluation of educational need, not diagnoses or medical conditions. 2. Services and supports for students in special education are individualized and based on evaluation and assessment, not diagnoses or medical conditions nor the categories or labels used to determine eligibility.**" In addition, the

letter states, "As recommended in this memo, we will continue to support the individualized provision of a range of special education services for children with all types of educationally significant visual conditions, regardless of diagnoses, including children with neurological, cortical, and/or cerebral visual impairments, as well as children with issues of binocularity and convergence, which, even after correction, adversely impact their access to education. . . . **Where an evaluation determines that any student - regardless of eligibility category - needs supports and services that fall within the scope of training and expertise of teachers of students with visual impairments (defined differently from state to state but commonly known as TVIs), we know that the professionals in our field stand ready to support and serve these students. TVIs are also prepared to actively collaborate with multidisciplinary special education teams whenever needed, so that if an evaluation determines that a student needs supports or services which are outside the scope of TVI training and expertise, teams can identify and coordinate with the best trained professionals to provide needed services.**" <https://www.afb.org/research-and-initiatives/education/education-initiatives-afb/response-field-osep-memo>

6. Dr. Tod Davis, who identified deficiencies for both Students 1 and 2 recommends occupational therapy be a part of vision therapy, and recommended this course for Students 1 and 2. FCPS "expert" Shira Brothers agreed with the use of occupational therapy as a part of vision therapy. (See direct quotes from Shira Brothers below).
7. In invoices from Dr. Tod Davis, the CPT codes for vision therapy have included CPT codes 97110, 97112, 97530, and 92065. The following is from the American Optometric Association's guidance document "Vision Therapy and Neuro-Rehabilitation: Optometric Considerations in Third Party Reimbursement", which provides descriptions for all of the codes. All but three are related to services that can be provided by an occupational therapist, yet they still qualify as vision therapy:
  - a. "The CPT code 97110 is for therapeutic exercises to develop strength and endurance, range of motion and flexibility. This could be considered for reimbursement when managing patients with convergence insufficiency or accommodative dysfunctions."
  - b. "The CPT code 97112 is for neuromuscular reeducation of movement, balance coordination, kinesthetic sense, posture and proprioception. This could be considered for reimbursement when managing patients with eccentric fixation training."
  - c. "The CPT code 97530 is for therapeutic activities utilized to restore a patient's functional performance with dynamic activities, such as training in specific functional movements or activities performed during daily living routines. This could be considered for reimbursement when managing patients with oculomotor/saccadic dysfunctions that are impacting performance."

- d. The CPT code 92065 is the only one that has to be overseen by a medical doctor, since it is “Orthoptic and/or pleoptic training, with continuing medical direction and evaluation.”
8. The American Optometric Association’s guidance document “Vision Therapy and Neuro-Rehabilitation: Optometric Considerations in Third Party Reimbursement” states **[emphasis added]** that the 97000 code services “**may be provided by a physician as defined in §1861 (r)(1) and (4) of the Social Security Act, a qualified occupational therapist, or a qualified physical therapist.**”
9. FCPS has a long history of providing physical therapy and occupational therapy to its students.
10. The American Optometric Association’s guidance document “Vision Therapy and Neuro-Rehabilitation: Optometric Considerations in Third Party Reimbursement” lists occupational and physical therapists numerous times as providers of vision therapy-related services.
11. Leading experts in the field of occupational therapy have for years advocated for occupational therapists being included in reading and writing intervention teams, to address issues related to vision processing and other deficits that Dr. Tod identified for Students 1 and 2.
  - a. 4.26.16: In an article published in the peer-review journal “Journal of Occupational Therapy” by the expert Dr. Gloria Frolek Clark, the role of the occupational therapist in working with reading and writing teams is emphasized:

“Nationally, student proficiency in reading and writing is very low and requires ongoing focus from state and local agencies. With almost 25% of occupational therapists working in early intervention and school settings (AOTA, 2015), their role of facilitating literacy (e.g., reading, writing, speaking and listening) is critical. Occupational therapy practitioners support the development and growth of literacy at the system, home or school, and individual levels.”

<https://eric.ed.gov/?id=EJ1099259>
  - b. 4.27.17: In the article “OT and PT Support for Literacy in Schools”, expert Jean Polichino emphasized the importance of OT and PT being parts of reading and writing interventions. Among the lists of interventions she suggests should be addressed is stamina, which also is an area with which both Student 1 and Student 2 have long-documented struggles, and which Shira Brothers identified herself in the 8.20.19 IEP meeting for Student 2, when she noted fatigue as one of the “big pieces”:

“Interventions to Promote Access and Reduce Barriers: Development of physical stamina and balance, if these are interfering with the child's ability to make progress in literacy areas

<https://www.occupationaltherapy.com/articles/ot-and-pt-support-for-3715>

- c. 1.15.19: The peer-reviewed journal “The Open Journal of Occupational Therapy” published the article titled “The Role of Occupational Therapy in Functional Literacy”, by experts in the field, Dr. Lenin C. Grajo and Dr. Sharon A. Gutman, both of Columbia University. In the article, these experts focus on functional literacy and the occupational therapist’s role in providing therapy, and they cite U.S. Department of Health and Human Services “Healthy People 2030” initiative, which focuses on functional literacy:

“One of the foundational principles of Healthy People 2030, a U.S. Department of Health and Human Services (2017) initiative, is the achievement of health and well-being through the elimination of health disparities, the achievement of health equity, and the attainment of health literacy. Occupational therapists can have a critical role in eliminating health disparities by not only facilitating clients’ health literacy but also addressing functional literacy. As occupational therapists, we have traditionally supported clients in literacy development by addressing prerequisite skills, such as visual-motor and perceptual skills, fine motor skills, cognitive and executive function skills, and sensory processing skills. Given the impact of literacy challenges on health, well-being, and adaptation, however, our roles cannot end with supporting prerequisite skill development alone. A holistic approach to functional literacy must promote literacy from the perspective of occupational participation and the enhancement of resiliency in the face of literacy challenges.

“One example of this practice is the Occupation and Participation Approach to Reading Intervention (Grajo & Candler, 2016), in which occupational therapists work conjointly with clients to develop the literacy strategies of adaptation, compensation, and remediation. Examples of adaptation could include strategies to reduce the amount of screen/page words to enhance visual attention and organization, magnifiers to increase readability, replacing or coding words with pictographs and photos that enhance learning and comprehension, using tactile aids and colored highlighting to increase visual attention to important details, and teaching clients to take structured breaks to reduce cognitive overload. Compensation could include such methods as using mnemonics to assist memory and voice activated technology to interpret unfamiliar words and obtain needed information. Remediation would involve the practice of real-life occupations requiring functional literacy skills, such as check writing, bill paying, ATM machine use, transportation schedule interpretation, meal preparation using package directions, medication label interpretation, and written job application submission.

In these activities, occupational therapists must continuously ask, “What strategies and tools does the client use to overcome literacy challenges?” “Are the client’s strategies and tools effective?” “How can I facilitate the development of new tools and strategies that may be more effective?”

<https://www.researchgate.net/publication/330437326> The Role of Occupational Therapy in Functional Literacy

- d. In a separate “Occupational Therapy for Literacy Development” presentation hosted by Colorado Department of Education, Dr. Lenin Grajo further emphasized the importance of occupational therapists being a part of literacy intervention teams. In the powerpoint slides for the presentation, he includes some of the following examples of goals related to vision therapy:

“● Student will move eyes and head to visually focus on ELA materials in horizontal, vertical and diagonal planes \_\_\_ % of the time. ● Student will maintain visual attention on the teacher or other visuals \_\_\_% of the time. ● Student will be able to break words into syllables by rhythmically clapping to represent at least two syllables in a word \_\_\_% of the time.”

<https://www.cde.state.co.us/cdesped/otlit> powerpoint

- e. 4.13.23: The peer-reviewed journal “Applied Neuropsychology: Child” published the research article “Effects of the Visual Praxis-Based Occupational Therapy Education Program on different kinds of reading skills: Single-blind randomized follow-up study”. The results of the study provide additional proof of visual-based occupational therapy helping students with reading:

“A total of 126 children with Developmental Dyslexia participated in the study. The participants were then divided into two groups (Intervention and Control groups) of equal sizes ( $n = 63$ ) using a random number generator without replacement. The intervention group received VP-OTP in two weekly sessions for 8 weeks. All participants were assessed with the Oral Reading Skills and Comprehension Test-II (Sobat®-II) at three time points; pretest, post-test, and follow-up. The intervention group showed promising results as the Sobat®-II’s Reading Accuracy, Reading Speed, Fluent Reading, Reading Comprehension Total Score significantly increased after the intervention ( $p \leq 0.05$ ) and the scores were maintained at the follow-up ( $p > 0.05$ ). The VP-OTP intervention provided a maintained improvement in reading skills of children with Developmental Dyslexia.”

<https://www.tandfonline.com/doi/full/10.1080/21622965.2023.2200186?scroll=top&needAccess=true&role=tab&aria-labelledby=full-article>

12. 8.1.19: An IEP meeting occurred for Student 2 and during the meeting, FCPS vision “expert” Shira Brothers attended the meeting and agreed that occupational therapy is a part of vision therapy and that it is important. (see specific quotes from Shira Brothers in the below)
13. The 8.1.19 PLOP pages (27-28) for the meeting states: “**Parent shared** that through the course of their communications with FCPS, they have been ignored. Parent shared that they have requested a new PSL for the last two years, and that **the Developmental Vision assessment has been ignored in past meetings**. Parents want data that is discussed documented on the PLOP.” See “9.13.19 Tisler IEP”.
14. 8.20.19: Shira Brothers attended the IEP meeting for Student 2 as the “vision expert”, to address Parent 2’s concerns voiced during previous 8.1.19 IEP meeting. At about the 00:00:25 mark of the recording for the meeting, she introduces herself as “Shira Brothers, manager for hearing and vision services.” She is noted in the sign-in sheet for the 8.20.19 IEP meeting as “Program Manager-Hearing/Vision”. See “9.13.19 Tisler IEP”.
15. Shira Brothers is not licensed or endorsed in the area of vision impairment. According to her Virginia licensing, (already provided to VDOE) According to her LinkedIn profile (See “Shira Brothers LinkedIn 1” and “Shira Brothers LinkedIn 2” and licensing information previously provided to VDOE), Shira had a BA in Education/Teaching of Individuals with Hearing Impairments Including Deafness; she has a M.Ed. in Human Development, Family Studies, and Related Services; she worked as an ASL teacher in FCPS between 1999-2003; she worked as a School Counselor at FCPS between 2004-2011, where she “worked with students, staff and parents”; and between 2011-Present she works as Programs Manager Hearing and Vision for FCPS, where she “Supervise[s] itinerant teachers of the Deaf and Hard of Hearing. Teachers of the Visually Impaired, and Audiologists,” even though she doesn’t have the licensing or endorsements related to Vision.
16. Shira Brothers does not have the credentials to interpret evaluations. However, she was repeatedly presented as the expert in vision for Student 2 in 2019 and for Student 1 in 2020-21. See licensing for Shira that has already been provided to VDOE.
17. 8.20.19: Although a lengthy conversation occurred about Student 2’s vision assessment, the vision therapy being provided by an occupational therapist, and other related issues, it isn’t documented anywhere in the IEP or in subsequent PWNs, even though Shira Brothers stated during the meeting that specific things regarding related services for vision therapy would be included in the IEP (see specific quotes from Shira Brothers below).
18. 8.20.19: During the IEP meeting for Student 2, Shira Brothers stated that vision therapy is helpful for students, but that FCPS doesn’t offer any, and that it only offers accommodations “for students who have things like ocular motor dysfunction,

convergence insufficiency, weaker eye muscles, things of that nature.” In addition, she states that the role of vision impairment teachers is to do things like uncluttering. She specifically stated:

Shira Brothers 1:13:20 **[emphasis added]**

So, my role as I'm kind of here as representing an administrator, but I also work with the teachers of the visually impaired to make sure that we provide specialized instruction to students who need it. **And we also take a look at accommodations for students who have things like ocular motor dysfunction, convergence insufficiency, weaker eye muscles, things of that nature.** So in reviewing the report here, it looks like the big pieces that I was able to hone in on were fatigue. And also, looking at concerns, you know, we've mentioned a lot about reading. We've mentioned a lot about fluency. **And I saw in this report that the doctor had recommended some vision therapy. And that is a potential thing that could help. We don't do those kinds of therapy in the schools. A specialized instruction by a teacher, the visually impaired really is like making things larger, things of that nature.** I do think that there is the possibility you could benefit from things that are decluttered. So, you know, looking at a font per se, that might be like less cluttered. For example, do you have that thing that you just showed me? You just showed me something that was decluttered. That was beautiful that--.

Parent 2 1:14:38

Oh, yes--

Shira Brothers 1:14:38

--he worked on a few minutes ago ago--

Shira Brothers 1:14:39 **[emphasis added]**

--that he, that he worked on. And that would be an accommodation. Copying from the board was also something that seemed like it might be a weakness that the developmental optometrist had indicated that that's another accommodation that could be put in the IEP. His visual acuity with him without glasses without glasses is 20/20, so we would be looking at, you know, I, muscles needing strengthening. **In terms of fluency, with the eye itself, there's no ocular dysfunction, meaning there is no, you know, dysfunction or etiology of the disease of the eye or anything, but certainly when it comes to reading the eyes are employed, and I would say that fatigue is quite possible when you have convergence insufficiency. That means that either one or both of the eyes aren't, aren't maybe tracking in unison with each other.** So, Christine here had showed me this lovely piece of paper is an example of how something could be adapted and that goes hand in hand with handwriting. We know that the motor and the visual go together. And so what he's proposing here is some accommodations essentially, that we'd be happy, from my perspective, somewhat universal learning for design, but probably the frequent breaks and the decluttering of, of high-level thick content would be appropriate accommodations for him.



Shira Brothers 1:17:26 [emphasis added]

**It's that ocular motor making that chain between vision and we also know oral language and reading are connected, it's all connected. So we know that when we're speaking, and writing and reading, we're also using these same skills, where we're using our vision, and we're using our brain to track those things. And that could potentially lead into greater fluency, you know, as part of systematic instruction, because haven't gotten through this whole, like, IEP yet, but I understand that we've got some systematic instruction. Yes, that's composed. So we can, you know, we can work with the teachers to say, Well, what's here that's, that's cluttering up and taking up parts of his brain. So history, for example, the online textbooks that you guys have, right? Sometimes they've got those little pictures and things. It's like, okay, can we just like take a section of that and put it on a piece of paper, and take away some of the fluff? I've worked with teachers before in that way. You know, we can help you to do that.**

19. 8.20.19: During the IEP meeting for Student 2, Shira Brothers went on to admit she knows the impact on reading and that she thinks vision therapy is limited to “taking him to the developmental optometrist [to] strengthen those muscles quicker.”

Shira Brothers 1:21:15

Correct. And then the last thing I just would guess, I would say is, you know, in reading the report, it is possible that vision therapy and taking him to the developmental optometrist could strengthen those muscles quicker. And it could just develop over time on its own. But those were the three main things that I took away from the report.

20. 8.20.19: During the IEP meeting for Student 2, Shira Brothers acknowledged that occupational therapists provide vision therapy for students, that OT in this arena for students is important, that “vision and OT go hand in hand” and – again – that FCPS does not provide “therapy”.

Parent 2 1:21:35

He had, so private OT, consulted with Dr. Davis, and through also the report, and so since there's that overlap there, they worked on a lot. So that January of 2018, this year, up through the summer, he did sessions--

Shira Brothers 1:21:58

With so with the developmental optometrist and the OT together?

Parent 2 1:22:03

He went through OT.

Shira Brothers 1:22:05

Okay.

Parent 2 1:22:06

Developmental optometrist just is out of pocket cost.

Shira Brothers 1:22:08

Right.

Parent 2 1:22:08

So, but OT was not.

Shira Brothers 1:22:10

Okay.

Parent 2 1:22:10

And so many of the things, you know, OT felt that was within her scope, and so did Dr. Davis, so like the copying of, you know, certain things she could do which he thought would be very good get him--

Shira Brothers 1:22:25

Yeah.

Parent 2 1:22:25

--started with, and then we're gonna meet again--

Shira Brothers 1:22:28

Okay.

Parent 2 1:22:28

--to see how he's doing soon. Another, more through athletics, but it's still with the vision, hand, eye--

Shira Brothers 1:22:36

Okay, that's fantastic.

Parent 2 1:22:37

He connects with it. So--

Shira Brothers 1:22:39

Yeah, I think that's wonderful.

Angelina Prestipino 1:22:40

That is, and that's through the OT?

Shira Brothers 1:22:42

So the other thing I just, I guess, I mentioned is just the role of related services in the school. And the good thing about therapy, you know, I get a lot of questions of, can we do this here at school? And, unfortunately, that's therapy, so I always feel badly telling parents, yeah, you have to go get this therapy, but you know, as educators, we really have to kind of draw the line at accommodations, but certainly I have suggestions, if, if what we recommended today doesn't work, or we need to revisit it, there are other suggestions we could employ. But I don't know. It's kind of on your part--

Parent 2 1:23:15

I, I have the same suggestions-

Shira Brothers 1:23:17

I know we're--

Parent 2 1:23:18

that you do, so--

Shira Brothers 1:23:19

Vision and OT go hand in hand, you do with, vision OT go hand in hand. Right?

21. 8.20.19: During the IEP meeting for Student 2, Shira Brothers says that they could revisit related services, but she would rely on teachers, because they are the ones who really know Student 2, and that having Student 2 evaluated “cold” by someone who didn’t know him wouldn’t make sense, because things might be missed. She later says that an occupational therapist could be pulled in for Student 2, although a few minutes prior she said FCPS doesn’t provide “therapy.” In addition, she notes that this should go into the PLOP on the IEP, yet FCPS refused to include it on the PLOP page or in any subsequent PWNs—and she notes strategies that Student 2 could use when he’s struggling, but FCPS did not say who would teach him these strategies and monitor the strategies to see if they are working for Student 2.

Shira Brothers 1:24:28 **[emphasis added]**

And through just for related services standpoint, I'm a manager in related services. So you know, I've supervised folks like Christine and you know what, what I would say if you were a vision teacher is right now he's getting accommodations that need for me it's however, during the course of the IEP, if we see that his needs fall into the category of questionable we could always come back and say, hey, look, we need another consult, because I would think you all who are with him every day are going to start to notice you know what he's getting, he is really really slowed down third quarter with taking notes or he's really slow down when I have a picture on the, on the smartboard, and then he has to write a passage. **So those connections you all are going to see first, as opposed to somebody who comes in cold and just kind of does a cold consult with him, isn't going to notice on the day to day. So my suggestion would be to put in the PLOP,**

**throughout the course of this IEP, if we see concerns with either vision or OT, that we put our main number in there and call for a consult, [Parent 2], so that's my thoughts.**

Parent 2 1:25:39

So then that would just be done informally?

Shira Brothers 1:25:41 **[emphasis added]**

Well, it's not informally, it would be it's actually integrated daily, because **I'm going to rely on Ms. Gray and Mr. Burns, and Ms. [inaudible] She's his tech ed, so she's gonna see that almost probably more than anybody with the systems that she's using. You know, we're gonna rely on you all to tell Lauren, hey, look, we're really seeing, he's having trouble tracking, he's having trouble, you know, forming letters all of a sudden, or, you know, we put something on the board, and he's not able to keep up. But two months ago, he was able to keep up that shows us there's a decline somewhere in that process, and that we need to take another look of hey, does he require specialized instruction.** At this time, based on both of these reports, we see that these accommodations will meet him where he's at.

Parent 2 1:26:28

Thank you, because that was a concern before he, before he received the OT, the private OT, that's he was struggling in that manner on all through elementary school. It was really, it was an extreme struggle ahead in sixth grade.

Shira Brothers 1:26:48

Okay.

Parent 2 1:26:49

It kind of all hit right there. Right, so and then what was happening, all that work that he was unable to keep up with, then was rolling into his Raise time, and so he was like, it's like a snowball, just constantly, like washing back at him.

Shira Brothers 1:27:06

That makes sense. I also hear that he's using the computer a lot, and that he's in pretty audit, automated on it, and so we've been working-- We we don't, we don't give up on handwriting, and we don't give up on the other things, but you know, that is a way for him to keep up. But we're gonna put in the PLOP, if you're already a team, that, you know, if at any time during the course of the IEP, either OTA or vision consult is needed, we're happy to come out and do that.

Parent 2 1:27:35

Because before, like I said, he couldn't keep up. I just didn't want, I just want to make sure that as the workload intensive, gets more intense, that he's still able to maintain the skills that he learned through private OT.

Shira Brothers 1:27:47

Yes. Yes. And it will conti, it will take continued practice, and it will take your continued encouragement and all of our continued encouragement to, you know, there's taking a break, there's pushing through, and then there's, you know, I'm too fatigued to continue. And I think as teachers, we know our students. We see them almost every day. So we can we know our kids well enough to say, he's just taking a break or Wow, this is, he's really struggling.

Angelina Prestipino 1:28:11

More than usually. Right.

Shira Brothers 1:28:12

And so during the course of the IEP, that is progress monitoring for us to be able to say, Hey, I think it's time for the OT to get called in. right, and I think it's time for the vision lady to come back. So they do that through the IEP.

Angelina Prestipino 1:28:24

We do that through the IEP.

Parent 2 1:28:25

Yeah, and the typing, they worked on typing with him.

Angelina Prestipino 1:28:28

Great. That's another one.

Parent 2 1:28:30

That's how his typing--

Shira Brothers 1:28:32

Great.

Parent 2 1:28:32

--was able to improve to a point where he is more functional--

Shira Brothers 1:28:37

Good.

Parent 2 1:28:37

Independently.

Shira Brothers 1:28:38

That's fantastic. And there's also programs you can do, I'm sure you know, at home, like on the internet.

[unknown speaker] 1:28:44  
That's how I taught my eighth graders to type.

Shira Brothers 1:28:47  
So alright, so when we get to the PLOP, we'll just add that in there. Anything else you can think of for OT or vision?

Parent 2 1:28:55  
No.

22. March 2020: FCPS shuttered its doors to in-person instruction and stopped doing evaluations of students. VDOE has extensive documentation of this and this is extensively documented in OCR's findings on FCPS, which VDOE should have already accessed.
23. 7.9.20: According to FCPS's 9.8.20 complaint response letter to VDOE (page 9), FCPS states that on 7.9.20, Parent 1 asked FCPS how FCPS would evaluate students since it wasn't currently doing evaluations and FCPS stated evaluations wouldn't take place until the fall – and that they would follow the social-distancing regulations. Although the context is audiological, both VDOE and OCR have documentation that this applied to all evaluations at that time. FCPS specifically wrote:  
  
“On July 9, 2020, [Parent 1] responded to Ms. Krempasky, questioning how the evaluation would be completed during the school closures. Ms. Krempasky responded on July 14, 2020, sharing that FCPS would begin conducting in-person audiological evaluations at the beginning of August and the evaluations would be conducted under the prevailing social distancing guidelines at that time. Additionally, Ms. Krempasky shared that should [Parent 1] provide consent for this evaluation, it would be completed within the 65-day timeline for this proposal, which would end on September 28, 2020.”
24. Summer 2020: FCPS refused Parent 1's request for IEEs.
25. October 2020: VDOE found FCPS in noncompliance for its refusal of Parent 1's request for IEEs.
26. Fall 2020: FCPS refused to reimburse Parent 1 for full amount of IEEs.
27. FCPS eventually reimbursed Parent 1 for full amount of Auditory IEE and Vision IEE, but refused to reimburse Parent 1 for full amount of neuropsychological IEE. After OCR's findings were released, FCPS stated in 2023 that it would reimburse Parent 1 for full cost of neuropsychological IEE. However, to date, FCPS has not followed through on this.
28. 7.22.20: Speech pathologist Dr. Jay Lucker stated in his IEE report, “Since the problems discussed in this report involve higher-level language factors, the professional providing

the therapy should be a speech=language pathologist familiar with and able to provide appropriate treatment for high-level language processing.” Dr. Lucker suggested numerous goals and accommodations, too. FCPS refused to include these in the IEP and refused speech-language THERAPY.

29. During its 9.2.20 IEP meeting, FCPS listened to Dr. Lucker who joined the call by phone. However, after he hung up, FCPS staff who had no licensing or credentials to interpret Dr. Lucker’s evaluations stated they disagreed with Dr. Lucker and refused to provide speech-language therapy to student.
30. During the 2020-21 and 2021-22 school years, FCPS refused to consider vision therapy for Student 1 unless he was found eligible under the Vision Impaired or Other Health Impairment areas of eligibility. However, during that same period, FCPS allegedly provided Student 1 hearing impairment services even though Student 1 had never been found eligible in the area of hearing impairment. (See FCPS Dec. 1 count data submitted to VDOE above)
31. December 15, 2020: Student 1 received IEE for functional and developmental vision assessment.
32. 2020-21 school year, Shira Brothers attended IEP meetings for Student 1.
33. 2020-21 school year: Student 1 remained in the virtual, at-home format for almost the entire school year. The exception was that, in the remaining weeks, student had hip surgery, at which point FCPS placed 3 homebound teachers to work with him.
34. 2.5.21: Eligibility meeting under the category of Vision Impairment (VI) held for Student 1. Shira Brothers attended as FCPS’s vision expert. Shira Brothers stated that there wasn’t enough data and that a functional vision assessment was needed. The specific wording in the 2.5.21 Notice and Consent for Evaluation developed the same date states:  
  
“to be conducted in the child's learning environment to document academic performance and behavior in the areas of difficulty.” See “2.5.21 reevaluation paperwork”
35. On 2.5.21, Student 1’s learning environment was at-home and virtual. However, Shira Brothers, Angelina Prestipino, and other FCPS members of the IEP team insisted Student 1 go into a school building during COVID closures and be evaluated in an environment that wasn’t actually his learning environment. See “2.5.21 reevaluation paperwork”
36. Shira Brothers’ and Angelina Prestipino’s insistence that Student 1 go into a school and have a “cold” evaluation by someone who didn’t know him, in an environment that wasn’t his learning environment, contradicted their 2019 emphasis on the importance of

Student 2 being evaluated by someone who knew him, rather than a “cold” evaluation by a stranger who might miss something. (See above quotes from Brothers and Prestipino) See “2.5.21 reevaluation paperwork” and See 8.24.19 transcript for Student 2.

37. Parent 1 initially approved evaluation. Although the Reevaluation paperwork states the assessments teacher reports and state/county assessments led to the determination that the FVA was needed, these reports were never provided to Parent 1. Parent 1 noted this on the Reevaluation paperwork before signing it. See “2.5.21 reevaluation paperwork”
38. Parent 1 later said no to the evaluation because of COVID issues, “cold” testing outside of Student 1’s learning environment, the current social-distancing regulations in effect that would further dictate Student 1 would not be assessed in his “learning environment”, and because Student 1 was suffering with other issues (to include heading into hip surgery and an elbow procedure) and resisting additional evaluations. See FCPS’s 9.8.20 response to VDOE, in which it confirms the alternative format of evaluations done under social distancing regulations.
39. 3.2.21: Shira Brothers attended IEP meeting for Student 1, as “Hearing & Vision Manager” and the vision “expert” on the team.
40. 3.5.21: 3.2.21: Shira Brothers attended IEP meeting for Student 1, as “Hearing & Vision Manager” and the vision “expert” on the team.
41. 3.16.21: IEP meeting held. Shira Brothers did not attend and individuals who didn’t have licensing or endorsements related to vision processing or any of the other vision issues Student 1 has made determination related to Student 1’s needs.
42. 3.2.21: Shira Brothers attended IEP meeting for Student 1, as “Hearing & Vision Manager” and the vision “expert” on the team.
43. 4.6.21: Shira Brothers attended IEP meeting for Student 1, as “Hearing & Vision Manager” and the vision “expert” on the team.
44. 4.20.21: Shira Brothers attended IEP meeting for Student 1, as “Hearing & Vision Manager” and the vision “expert” on the team.
45. 5.5.21: Shira Brothers attended IEP meeting for Student 1, as “Hearing & Vision Manager” and the vision “expert” on the team.
46. 5.7.21: IEP meeting held. Shira Brothers did not attend and individuals who didn’t have licensing or endorsements related to vision processing or any of the other vision issues Student 1 has made determination related to Student 1’s needs.



47. Spring 2021: Student 1 had **REDACTED** less than 6 months after being diagnosed with Ocular-Motor and Visual Processing deficits and spent the 6 months preceding the surgery in numerous medical and physical therapy and other therapy appointments. The same occurred in the post-surgery remaining months of the 2020-21 school year and summer 2021, as Student 1 rehabbed from the surgery.
48. According to FCPS's records, Student missed 54 classes during the 2020-21 school year, yet the number was far greater. During the 2020-21 school year, Student 1 was logging into class, but not attending, and Student 1's appointments outside of school weren't fully reflected in his attendance record maintained by FCPS. Student 1's attendance record was previously provided to VDOE.
49. According to FCPS's records, during the 2021-22 school year, Student 1 continued to leave school to attend **REDACTED** and, according to FCPS, missed 160 classes, yet the number was far greater. During the 2021-22 school year, Student 1's appointments outside of school weren't fully reflected in his attendance record maintained by FCPS.
50. Student 1's high school had four classes a day. Hence missing 54 classes equates to missing 13.5 days of school and missing 160 classes equates to missing 40 days of school.
51. [8VAC20-131-150](#) states "The standard school year shall be 180 instructional days or 990 instructional hours."
52. Based on FCPS's use of 180 instructional days and the 4-class-per-day schedule, FCPS's attendance record for Student 1 indicates Student 1 missed about 10% of the 2020-21 school year and about 25% of the 2021-22 school year. In both school years, Student 1's schedule indicates FCPS didn't accurately record attendance, since FCPS has Student in attendance on days he 100% missed school due to appointments, such as being evaluated.
53. FCPS never advised Parent or Student 1 on how Student 1 would be provided all of the missed instruction. FCPS excused dozens and dozens of assignments and assessments, and in 2020-21, Student 1 went from failing/D's/incompletes, to A's and B's within a matter of weeks. FCPS later stated this proved Student 1 progressed.
54. Student 1 didn't receive instruction necessary to be provided FAPE and Student 1 didn't have more time during the school day to spend an additional 1.5-2 hours even just once a week for travel time to address vision therapy needs. It needed to be done at school, during the school day.

55. During the 2022 OHI eligibility, Teia Westbrook-Johnson repeatedly stated that Braille is the only specially-designed instruction that FCPS provides to students who have visual impairments, that there are no other related services or supports, and that convergence insufficiency does not impact reading.

56. Acclaimed experts whose work has been covered in peer-reviewed journals, as well as FCPS's own "experts" disagree with Teia Westbrook-Johnson's statement that Braille is the only instruction and that convergence insufficiency does not impact reading. See 4.2.22 transcript.

- i. During Student 2's IEP meetings, Shira Brothers repeatedly noted the impact of convergence insufficiency on reading and writing (see direct quotes already provided above).
- ii. 4.22.22: During Student 1's IEP meeting, school psychologist Tonya Blanchard disagreed with Teia Westbrook-Johnson's statement:

**But part, but part of this, it doesn't I don't think that Dr. Davis needs to say that and I mean it seems like you're looking for him to say it specifically. But when you know about the disorder, you know that it affects the rate, reading and arithmetic fluency. And so I Dr. Davis doesn't say that specifically in his report, he doesn't spell that out. But when you put it all together and look at all of the reports, and you understand how it affects it, how it's a negative impact.**

- iii. USDOE's 2017 Letter stating that students can be found eligible who have convergence insufficiency, which means a) convergence insufficiency does have an academic and functional impact on students and b) it is impossible for the teaching of Braille to be the only specially-designed instruction available.
- iv. The National Institutes of Health's National Eye Institute, which has "been on the front lines of vision research" for over 50 years (<https://www.nei.nih.gov/about>) states, "People with convergence insufficiency often have vision problems when they do close-up activities, like reading or using a computer. The most common symptoms are: Tired or sore eyes, Blurry vision, Double vision, Headaches, Trouble concentrating." In addition, NIH NIE states of individuals with CI, "You may also have trouble reading. You might lose your place, read slowly, or feel like the words move or float around on the page." In addition, NIH NIE states that CI impacts learning, "Parents and teachers might think kids with convergence insufficiency have trouble reading or learning — but it's actually a vision problem that needs to be treated."
- v. NIH NEI provided the following example for CI vision therapy, "Convergence insufficiency can be treated with a type of vision therapy called convergence exercises. This often includes working with a specialist to practice focusing on objects at different distances. You can also do exercises at home. Sometimes a

special type of glasses called prism glasses can be used in treatment.” This therapy aligns with what Dr. Davis suggested for Student’s 1 and 2, and supports integration of occupational therapy as discussed previously.

- vi. Dr. Davis, who evaluated Students 1 and 2, both of whom have Dyslexia, said vision therapy would not address Dyslexia, however it would help eliminate the struggles of headaches, concentration, fatigue, stamina, comprehension, and other issues caused by convergence insufficiency, which compound Student 1’s and 2’s struggles with Dyslexia.

57. 2021-22: South County High School School Psychologist Tonya Blanchard advised Parent that she has personal knowledge of convergence insufficiency, since **REDACTED** was diagnosed with it. She said FCPS told her that FCPS does not provide therapy and that **REDACTED**. Parent advised Tonya that FCPS isn’t supposed to refuse related and/or supportive services just because FCPS doesn’t provide the services itself.

58. 2021-22: Tonya Blanchard asked Parent why Parent didn’t provide vision therapy herself and Parent explained 1) the cost would be another out-of-pocket cost for Parent, 2) COVID issues, and 3) student was already missing schools 2-to-4 times a week for **REDACTED**. Student didn’t have more time during the school week to spend an additional 1.5-2 hours even just once a week for travel time to vision therapy. (This doesn’t account for the time required for therapy itself.)

59. Visual-Motor Integration is an option for consideration on FCPS’s Specific Learning Disability (SLD) Basis for Committee Decision (BSC) paperwork.

60. 2019: FCPS’s psychological evaluation of Student 1 lists “tests administered and procedures used”. This list includes the Beery-Buktenica Developmental Test of Visual-Motor Integration. FCPS failed to include the subtests assessed or the data collected in its evaluation. To date, school psychologist Lisa VanLahr refuses to add this information to the appendix of her report, even though the appendix lists all other testing data, and Parent 1’s request to have the record amended have been refused by FCPS leadership.

61. 2019: School Psychologist Lisa Van Lahr limited her testing to one assessment of the Beery-Buktenica Developmental Test of Visual-Motor Integration and stated in her evaluation **[emphasis added]**:

“[Student 1] was given the Beery-Buktenica Developmental Test of Visual-Motor Integration: Sixth edition. (Beery VMI). This pencil and paper test **required him to analyze and reproduce simple geometric designs. [Student 1’s] score of 101 falls within the average range** compared to others his age and suggests no deficit in the area of visual motor integration.

62. Lisa Van Lahr's 2019 assessment contradicts evaluations done in 2016 by Dr. Sonal Pancholi and in 2020 by Dr. William Ling, whom both found Student 1 struggled in the same task.

63. 2016: Dr. Pancholi wrote the following in her report **[emphasis added]**:

"[Student 1's] visual-spatial skills are variable. [Student 1] scored in the low end of Average range on a measure of visual perception, analysis, and construction (Block Design). On another measure of visual-spatial perception, involving mental manipulation of visual designs, he also scored in the Average range. However, on a task of complex visual-spatial perception and organization, [Student 1] has extreme problems. **His copy of the complex geometric figure was not only poorly organized, but some distortions in the design were noted. This resulted in a score in the Impaired range,** which is extremely below his peer group as well as his own abilities. Based on the above, although [Student 1's] VSI on the WISC-IV suggests Average visual-spatial skills, it is misleading. His visual-spatial skills, especially for complex tasks, are in fact significantly weaker than his verbal skills and his overall estimated intellectual functioning."

64. July 2020 **[emphasis added]**: Dr. William Ling identified Student 1 to be low average in Visual-Motor Integration, specifically in the visual-motor index (as measured by the Beery-Buktenica Development Test of Visual-Motor Integration), with a score of 29<sup>th</sup> percentile, **which was an age equivalence of 12 yrs and 3 months, even though Student 1 was almost 17 years old at the time of the assessment.**

65. FCPS denied Student 1 an evaluation three times between K-6<sup>th</sup> grades.

66. In Dr. Pancholi's 2016 evaluation, Pancholi identified Student 1 with visual processing deficiencies, yet FCPS did not say it needed to do a FVA, nor did it buck her diagnosis.

67. FCPS had a responsibility to ensure Parent 1 understood Student 1's disabilities, yet it wasn't until years later that Parent 1 fully understood that Student 1 needed services related to vision and that FCPS should have been providing them since his reading and writing were impacted.

68. When Parent 1 tried to engage as a team member, FCPS told her she wasn't a member of the team; FCPS staff vilified her in due process hearings and state complaints because meetings took longer because Parent 1 wanted to be involved in all the development of the IEP, rather than an IEP that had been pre-drafted and for which she would be limited to comment upon; and FCPS refused to allow Parent 1 to make comments she believed important to the conversation.

69. In addition to the 4.22.22 meeting examples when Parent 1 was advised she wasn't a member, on 11.2.22, FCPS repeatedly refused to allow Parent 1 to discuss FCPS's failure

to implement Student 1's IEP, saying that such a discussion wasn't relevant, even though they were there to discuss implementation of IEPs during COVID.

Dawn Schaefer

They continued to implement the previous IEP, because they felt that that was in REDACTED best interest to continue to receive those services, rather than to change his schedule around.

Callie Oettinger

His schedule wasn't going to need to be changed around. By law, you guys were actually supposed to implement it again. So had I known that that was going to happen, heck, I wouldn't have gone to the course of appealing and going to federal court. So what's great, so what's crazy to me is if you felt REDACTED to those services, so now all of a sudden, you're not going to implement the IEP that you insisted in a due process hearing as a correct IEP.

Dawn Schaefer 54:30

We're gonna move on.

Callie Oettinger 54:31

No, no, you by law, were supposed to implement that IEP after the appeal stopped. That was supposed to go back into play, and now you're telling me that they felt he still needed it. So they went ahead and just gave it to him anyway? I talked to Telia that's not what happened. At no point. Did anybody ever say anything to her? So what did happen was when after the due process hearing happened, you guys push that IEP in the play, you stripped REDACTED of all his services. And he, that's when he really tanked because that coincided obviously with him seeing Tina and Shawn, and everything went to shit. Okay? But but if you felt like you he needed it, why wouldn't you have given it to him all of that the rest of his junior year? But then I file an appeal, which means you guys have to put the previous IEPs back into play, and the one from the due process hearing officer is put on hold. But then when I stopped trying with the appeal, which was dismissed without prejudice, you guys are supposed to go ahead and put the one from the due process hearing officer back into play.

Carolyn Edner 55:45

So once again, this is a separate issue and -

Callie Oettinger 55:47

Actually it isn't.

Carolyn Edner 55:48

We are right now talking about -

Callie Oettinger 55:49

You're supposed to be giving me data based on on on an IEP, you're supposed to be given me an IEP progress report that is based on an IEP that was supposed to be implemented. And you can say that he might have needed more services. But 2017, we've got goals from 2017, you're telling me he's getting fives on him now, why wouldn't you guys, at a minimum, tried to do the goals that you insisted he needed to have in his IEP? And by the way, you don't get to make a unilateral decision on whether or not you're going to implement one IEP or another. There's laws.

Carolyn Edner 56:24

So right now, the agenda of this meeting is about the recovery and compensatory services related to COVID

Callie Oettinger 56:32

Sure, I understand that, but you're not gonna-

Carolyn Edner 56:34

We only have a few more minutes left.

Callie Oettinger 56:37

Ok, but just to be clear-

Samantha Tolan 56:39

You're interrupting her. You're raising your voice.

Callie Oettinger 56:41

Am I raising my voice? I didn't realize that.

Samantha Tolan 56:41

You have raised your voice in this meeting.

Callie Oettinger 56:34

I didn't realize that.

Samantha Tolan 56:34

You're the only person around the table who has done that.

Callie Oettinger 56:34

Really? Because I thought you raised your voice, but I guess that's just you know, eye the beholder, right? So what I'm so what I am saying is that you're giving me data on an IEP that you weren't supposed to be implementing, and you're but Carolyn, you're telling me that that's not relevant, that doesn't that shouldn't play into this meaning? Is that a correct understanding?

