

June 14, 2023

Patricia Haymes
Director
Virginia Department of Education
Dispute Resolution and Administrative Services
P.O. Box 2120
Richmond, Virginia 23218-2120

Re: Systemic Complaint

Dear Ms. Haymes:

Fairfax County Public Schools (FCPS) received a notice of complaint dated May 23, 2023, from the Office of Dispute Resolution and Administrative Services (ODRAS) of the Virginia Department of Education (VDOE) that Callie Oettinger filed a systemic complaint alleging that FCPS has violated state and federal laws and regulations governing special education programs.

FCPS denies that it violated the Individuals with Disabilities Education Act (IDEA) or its federal and state implementing regulations as they relate to the provision of accommodations, provision of related services, and parent participation in the FCPS Advisory Committee for Students with Disabilities (ACSD).

The following addresses the issues raised in the complaint in so far as it alleges violations occurring not more than one year prior to VDOE's receipt of the underlying complaint, as any allegations outside of that timeframe do not fall under the purview of the VDOE complaint system. See 8 VAC § 20-81-200. The information provided herein is responsive to the issues timely raised in the complaint and provides the documentation requested by VDOE via the narrative below.

Response

Issue 1. Provision of Related Services to Preschool Students

Allegation: Complainant has alleged that FCPS preschool students “are being categorically denied occupational therapy, physical therapy, and speech/language therapy, and related services and services of being provided a communication device and training on how to use it.”

Response: FCPS denies this allegation. Preschool students in FCPS are provided systematic and explicit instruction in all domains of development. Learning environments (activities,

materials, furniture, etc.) are created to promote skill acquisition in alignment with a student's individual needs. If a student is not making progress towards IEP goals or if an IEP team would like additional data to inform new areas of need, a related service evaluation can be requested. Occupational therapists, physical therapists, and speech-language pathologists are assigned to serve all preschool sites within FCPS and providers complete multi-faceted evaluations using multiple data sources. If data indicates that a related service is required for a student to make progress in their primary program, teams recommend those services. Assistive technology accommodations are considered for every student with an IEP, to include the use of augmentative communication devices (AAC). If a team determines that an AAC device is required for a student, device training is offered to caregivers and the school team, in addition to embedded coaching within the educational environment. FCPS conducts evaluations of preschool students according to the requirements of the Virginia special education regulations to determine their individualized needs, and provides related services through trained service providers consistent with each student's IEP.

Issue 2. Advisory Committee

Allegation: *Complainant has alleged "over the past year, numerous parents of FCPS preschool students have testified at ACSD meetings" about FCPS refusing to provide the services discussed in Issue One. Complainant further alleges that FCPS staff "haven't addressed these parents' concerns or denial of FAPE to these children and don't even bother to show up to the ACSD meetings in person any more, instead logging in virtually, even though some of their offices are in the same buildings the ACSD meetings are held."*

Response: FCPS denies this allegation. FCPS established the ACSD to advise the Division on matters pertaining to special education in accordance with 8 VAC § 20-81-230(D). The ACSD consists of FCPS parents of students with disabilities, representatives from local community organizations and community service providers, and an FCPS teacher. The FCPS Director of Special Education Instruction, Mike Bloom, serves as the staff liaison to the ACSD. Because FCPS values ACSD input and is committed to active collaboration with ACSD members, several other leaders in the Department of Special Services also attend all ACSD meetings and support ACSD requests beyond the meetings. During the 2021-22 and the majority of the 2022-23 school years, Fairfax County was under a local state of emergency and the ACSD provided the option for members, guest speakers, and FCPS staff to attend in-person or virtually via Zoom. Since the state of emergency was lifted in March 2023, ACSD members have returned to in-person meetings pursuant to the Virginia Freedom of Information Act, but staff, guest speakers, or other non-member attendees continue to be permitted to attend virtually as only ACSD members are required under state regulation to attend in person.

Pursuant to FCPS ACSD Bylaw Section 5.7, a portion of each ACSD meeting is set aside for public comments with a three-minute time limit for each speaker. Similar to public comment at school board meetings, members of the ACSD and FCPS staff in attendance do not respond directly to the public comments during the meeting. The Reporting Secretary of the ACSD collects contact information for any public commenters and provides that information to FCPS staff so that staff may follow up on concerns raised in the meeting, especially if they related to concerns about the appropriateness or implementation of a student's IEP.

Throughout the past year, leaders within the Office of Special Education Instruction have attended several ACSD meetings and heard public comments around numerous topics, including services for preschool students. Although FCPS staff did not respond to public

comment during the meeting, leadership from therapy services and early childhood have met with smaller parent advocacy groups to hear and address similar concerns. Additionally, the topic of related services and communication devices have been addressed formally through ACSD's annual recommendations. As discussed in response to Issue One, FCPS IEP teams for preschool students also evaluate and consistently implement IEP services, goals, and accommodations for eligible preschool students.

Issue 3. Transportation Services

Allegation: *Complainant has alleged that “parents attending ACSD meetings have made the committee, and FCPS leadership in attendance (Schaeffer [sic], Boyd, etc), aware that FCPS is refusing to provide the related service of transportation.”*

Response: FCPS denies this allegation. As noted in the underlying complaint, the U.S. Department of Education Office for Civil Rights (OCR) opened an investigation on April 12, 2021, based on a complaint that alleged FCPS failed to accommodate students with disabilities taking the PSATs by not providing them bus transportation. FCPS responded to OCR's data request, denying the allegations and providing requested documentation, and is currently awaiting the outcome of that investigation. More broadly, FCPS provides transportation services to students with IEPs who require them. IEP teams meet to discuss a student's individualized needs and whether transportation is necessary to enable the student to obtain the benefit of their educational programs and other educational opportunities in accordance with Va. Code § 22.1-221, 8 VAC § 20- 81-100(G). If the IEP team determines the student requires transportation services, FCPS provides those services with fidelity.

Issue 4. Services for Students in Honors and Foreign Language Classes.

Allegation: *Complainant has alleged that, from 2017 through 2023, “FCPS [Procedural Support Liaisons (PSL)] and PSL managers “advised parents repeatedly that they aren't required to provide services in Honors classes or foreign language classes, that FCPS is only responsible for English-language classes and for general education.”*

Response: FCPS has not provided guidance to IEP teams to limit or restrict services based on a student's course enrollment. Instead, FCPS directs IEP teams to make individualized decisions regarding the need for special education and related services for a student to receive a free appropriate public education (FAPE). FCPS implements all student IEPs with fidelity regardless of whether a student is enrolled in a standard core class, an elective, an Honors class, or an Advanced Placement (AP) class. Honors and foreign language teachers provide accommodations and staff can push-in to these settings in accordance with the individualized needs of the student reflected in their IEP. During IEP team meetings, parents and FCPS staff will discuss recommendations of classes to best support the student's needs. In an effort to continually improve the IEP team's analysis of the least restrictive environment (LRE) for a student, FCPS has developed and is training staff on an LRE tool to ensure that teams are maximizing not only exposure to general education classes and peers, but also to opportunities for educational challenges through advanced coursework and electives. FCPS does not deny services and accommodations to students in Honors and foreign language classes.

Issue 5. Accommodations for Students in Honors Classes at West Springfield High School (WSHS).

Allegation: *Complainant has alleged that “West Springfield High School (WSHS) Assistant Principal and Special Education Supervisor Amy Brown admitted FCPS isn’t staffed for providing accommodations to students in Honors classes, that WSHS has only five 9th graders enrolled in honors for next year, and that WSHS is transitioning into supporting honors and obtaining staffing. However, this doesn’t change the fact past students were denied services, and ‘transitioning’ indicates WSHS and FCPS are not fully providing services.” Complainant further specified that WSHS Assistant Principal Amy Brown stated the following in response to a parent asking, “Do you provide accommodations in Honors classes?”:*

That is a good question. That is becoming more and more popular. So the answer to that is yes—right?—because if your student requires to access honors level curriculum, then we have to provide that service. So I think this year we are transitioning, and so far we have about five students that are taking honors level to start, um, and so, yep, so we’re going to provide those services and have teachers push in for that. We’re not staffed for that typically, um, with that being said, so what I do is I [inaudible] and so I send that to our human resources department, and I work with Mr. Mukai [principal], and that’s how we get, we work together to get additional staffing that will can continue to support that.

Response: FCPS denies this allegation. WSHS has several students with IEPs participating in Honors and AP courses and those students receive their IEP accommodations in those classes. In fact, WSHS has been at the forefront in FCPS of maximizing access to Honors and AP courses for students with disabilities by piloting both team-taught Honors courses and a self-contained Honors course.

Complainant is taking Amy Brown’s quote out of context. To the best of Ms. Brown’s recollection, this quote attributed to her is from a discussion about how to implement push-in IEP services in an Honors class for a student who would be attending WSHS during the 2023-24 school year.¹ Ms. Brown noted that WSHS was seeking additional staffing to accommodate the handful of students with similar IEP services specifically written to be implemented during Honors classes for the coming school year. Her statements were *not* an admission of WSHS’s alleged failure to accommodate students in Honors classes. Rather, it is an example of WSHS’s commitment to implementing student IEPs in full in the least restrictive environment and making sure they have the appropriate staffing to do so.

Issue 6. Services and Behavioral Supports at FCPS Public Day Schools.

Allegation: *Complainant has alleged that, based on staff survey data presented to the ACSD in March 2023, services, particularly in terms of behavioral supports are not being provided to students in FCPS public day schools and that the schools are not able to provide access to certain aspects of the general curriculum.*

¹ FCPS is informed and believes that Complainant is not the parent nor guardian of any students discussed in this meeting and was not in attendance at the meeting. Accordingly, FCPS cannot provide more specific detail about the quoted discussion, as a copy of this response is also provided to Complainant. Should VDOE require more detailed information about the nature of the meeting, the discussion, or the students in question, FCPS is open to discussing options for sharing that information in a way that does not violate student privacy or FERPA protections.

Response: FCPS denies this allegation. FCPS consistently implements the IEPs of students in its public day schools, both in terms of behavioral supports and access to general curriculum. Students attending these schools frequently have significant behavioral needs and those needs are addressed through IEP team-developed, evaluation-based behavioral supports that are updated as the students' needs change and develop. FCPS continues to focus on the improvement of behavioral supports for FCPS students by collaborating with outside experts, including Dr. Ross Greene, and by implementing a Division-wide [Behavior Professional Development Plan](#).

FCPS does, however, acknowledge its current focus on improving staffing and supports at its public day schools to ensure the best student outcomes and improve staff retention. Each year, the ACSD is required to submit a report to the FCPS School Board with recommendations that advise the local school division of needs in the education of children with disabilities who are enrolled in FCPS. This school year, the ACSD was charged by the FCPS School Board to examine the five public separate day schools and make recommendations to be included in their annual report. Specifically, the FCPS School Board charged ACSD with the following:

2022-23 ACSD School Board Charge

- Examine current practices regarding the referral process; staffing standards; academic, behavioral, and wellness programming; and the provision of special education and related services at the five Public Separate Day Sites in FCPS (Key Center, Kilmer Center, Burke School, Cedar Lane School, Quander Road School).
- Review evidenced-based and research-based practices regarding public separate day schools for students with disabilities.
- Based on a review of evidenced-based and research-based practices, make recommendations designed to improve staff recruitment and retention at FCPS Public Separate Day sites.
- Based on a review of evidenced-based and research-based practices, make recommendations designed to ensure consistency in the student referral process to a FCPS Public Separate Day site compliant with the Least Restrictive Environment (LRE) requirements in the Individuals with Disabilities Education Act (IDEA).

The School Board Charge Subcommittee of the ACSD requested that the Department of Special Services sponsor a staff survey and family survey at each of the five public separate day schools to collect data that would help to inform their recommendations included in the annual report. The survey window was open for staff and families from February 20, 2023, through March 3, 2023. Survey data was shared with the ACSD School Board Charge subcommittee on March 20, 2023, for review and analysis to help inform recommendations for this year's charge. Specific recommendations will be outlined in the ACSD Annual Report presented to the School Board at a June 22, 2023, work session.

The survey results have been shared with the respective principals and Regional Assistant Superintendents (RAS) to allow school and region leadership to address some of these concerns. The Department of Special Services is also working collaboratively with school and region leadership to review the data and discuss next steps to ensure a safe, supportive learning environment at all the public day schools.

Ms. Patricia Haymes

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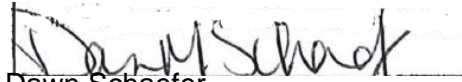
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Conclusion

In summary, Complainant's allegations of systemic discrimination against students with disabilities is completely unfounded. FCPS remains committed to serving all students and providing special education services specifically tailored to meet the needs of each eligible student.

Should you have questions or require additional information regarding this complaint or the FCPS response, please contact Kristina Roman, coordinator of Due Process and Eligibility, at 571-423-4470.

Sincerely,

A handwritten signature in black ink, appearing to read "Dawn Schaefer", written over a horizontal line.

Dawn Schaefer

Director

Office of Special Education Procedural Support

cc: Michelle C. Reid, Ed.D., Division Superintendent
Michelle Boyd, Ed.D., assistant superintendent, Department of Special Services
Kristina Roman, coordinator, Due Process and Eligibility
Callie Oettinger, Complainant