

The below is additional information for the 5.23.23 Notice of Complaint issued by VDOE, for which VDOE extended the additional information timeline to 6.28.23.

I. Separate and Not Equal

- a. The issues in this complaint are tied together by the common thread of “Separate and Not Equal”.
- b. In its decision for the Supreme Court case *Brown v Board of Education*, the court states **[emphasis added]**:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; **for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn.** Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system. . . . **We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.** Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.[12]"

- c. Research indicates the same is true for students who have disabilities. As the Court stated, “Separate educational facilities are inherently unequal.” Yet FCPS has a long-standing practice of utilizing separate educational facilities and/or practices—be they classrooms or entirely separate school buildings—for disabled and gifted students and students who are both disabled and gifted.
- d. FCPS has a longstanding practice of bussing “gifted” students to elementary schools with AAP centers, because the students’ home-based school don’t have adequate programming to meet the students’ needs and FCPS is willing to pay the extra cost of bussing in order to ensure “gifted” students needs are met, while leaving the remaining students at the school with the inadequate programming.
- e. FCPS has a longstanding practice of limiting preK, especially inclusive preK, which is an admission that FCPS is not willing to meet the needs of students in special

education - or to financially invest in them in the same manner in which FCPS invests in “gifted” students. In addition, while FCPS does bus to some day schools, it does this because the students’ base schools are not deemed “adequate” for these students.

- f. Bussing itself is an admission that FCPS schools are not created equal and that FCPS would rather invest in the high cost of gas and transportation, than in ensuring the needs of students are met at their home-based schools.
- g. In addition, FCPS’s practice of segregating “gifted” students, so they are only in classes with other “gifted” students in 3rd-6th grades, is segregation itself, depriving these students of the experience of inclusivity, just as it deprives students in special education-only classes of inclusivity. This practice creates a class system within the school, that provides students an early example of separation of haves and have nots – whether the students are day school or preK forced into non-inclusive schools, or disabled students denied advanced academic courses, or gifted students bussed to better facilities, or to a separate school altogether.
- h. The above points are supported by the hard evidence presented in the below and in the documents, transcripts, emails, and other formats supporting the evidence cited.

II. VDOE’s investigation

- a. VDOE withheld monitoring reports from the public, even though the monitoring reports consisted of findings of LEA noncompliance that directly relates to state complaints.

See Fairfax County Public Schools Review Summary Report

- i. VDOE has a responsibility to apply its findings to complaints proposed. If VDOE can do onsite investigations and pull other information outside of what Complainants submit to VDOE as evidence, VDOE can provide apply its own findings to complaints at hand.
- ii. Withholding knowledge of noncompliance impacts parents’ rights to due process and is an ethical crime taken against the best interests of students.

- iii. VDOE and FCPS have relied on past Letters of Finding to make decisions regarding current complaints.

See VDOE's past LOF's and evidence submitted by FCPS in response to the 5.19.23 Notice of Complaint.

- b. 300.152(a)(4) and (5) state **[emphasis added]**:

*Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to—(4) **Review all relevant information and make an independent determination** as to whether the public agency is violating a requirement of Part B of the Act or of this part; and (5) **Issue a written decision to the complainant that addresses each allegation** in the complaint and contains—(i) **Findings of fact and conclusions; and (ii) The reasons for the SEA's final decision.***

- i. VDOE's past findings have stated that the LEA advised VDOE of something, or said something, or VDOE found something during an onsite, yet VDOE has REFUSED to the reasons for its final decision. There are no findings of fact provided, because VDOE too often fails to provide evidence to buttress its decisions.
- ii. IDEA does not prohibit issues raised in and/or related to previous complaints from being investigated within future complaints, nor does it prohibit previous complaints from being reinvestigated, yet VDOE continues to rely on previous decisions made without new evidence and/or without VDOE's full consideration of previous evidence.
- iii. VDOE's "Complaint Resolution Procedures" state **VDOE is required to investigate ALL evidence**. The Procedures do not state VDOE will ignore evidence and make decisions based on past Letters of Finding. VDOE's Procedures specifically state **[emphasis added]**:

*"IV. Complaint Investigation A. ODRAS conducts an investigation of the complaint, which includes **a complete review of all relevant documentation** and may include an independent on-site investigation, if deemed necessary."*

See "Complaint Resolution Procedures", updated January 2022.

- iv. VDOE's Complaint Resolution Procedures addresses complaints that have already been decided in due process hearings, and specifically states:

“If an issue in the complaint has already been decided in a due process hearing involving the same parties, ODRAS informs the parties that the due process hearing decision is binding and, as such, the complaint will be dismissed.”

See “Complaint Resolution Procedures”, updated January 2022.

- v. VDOE’s Procedures do not prohibit issues raised in and/or related to previous complaints from being investigated within future complaints, nor does the Procedures prohibit previous complaints from being reinvestigated.

See “Complaint Resolution Procedures”, updated January 2022.

III. FCPS’s involvement in state complaint investigation

- a. FCPS’s Dawn Schaefer and Michelle Boyd have either signed off on and/or developed FCPS’s responses to Parent’s complaints.
- b. Dawn Schaefer and Michelle Boyd have a history of providing and/or being aware of provision of false information in response to complaints filed by Parent, hence their denials are tainted and can’t be considered truth, especially in light of FCPS’s evidence historically relying heavily of affidavits that have no evidence supporting the statements within them.

- i. Dawn Schaefer admits FCPS provided false information to Office of Civil Rights in response to Parent’s complaint.

- 1. 4.12.21: OCR opened an investigation into FCPS in response to complaint filed by Parent, based on FCPS’s denial of the related service of transportation.

- 2. 4.13.21: Dawn Schaefer admitted FCPS’s fault in an email to colleagues. She specifically stated **[emphasis added]**:

*“We received the attached complaint yesterday regarding transportation for students with disabilities and the PSAT from October 2019. Kathy has looked into it a bit, and spoke with the OCR attorney today. I also talked with Gary Morris, principal of South County. **Unfortunately, the allegation in the complaint appears to be true.**”*

See “4.13.21 Dawn Schaefer OCR Admits Fault email_Redacted”

3. The 4.13.21 email had a cc to a FCPS parent whose name is similar to FCPS's then-504 head Kathy Murphy, who is addressed in the message of the email even though FCPS sent the email to the parent instead of Kathy.
4. The parent who received the 4.13.21 email forwarded it to Parent, who subsequently forwarded it to OCR as proof of FCPS admitting noncompliance.
5. See "4.14.21 email Parent to OCR_Redacted.pdf"
6. 6.14.23: Two years after admitting noncompliance to colleagues, Dawn Schaefer advised VDOE that FCPS had denied allegations to OCR. In FCPS's response to VDOE's 5.23.23 Notice of Complaint, Dawn Schaefer specifically states **[emphasis added]**:

*"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."*

- ii. Michelle Boyd provided false information to VDOE in response to Parent's complaint:

1. In FCPS's 6.1.23 response to the 5.11.23 NOC, Michelle Boyd wrote the following on page 4:

"FCPS' special education teams do not engage and have never engaged in, "unauthorized practice without a license; unlicensed diagnosis and treatment of human physical or mental ailments, conditions, diseases, pain, or infirmities".

2. VDOE's 2022 FCPS Review Summary Report's findings contradict FCPS's statements. Page five of VDOE's report states:

Item 1: Personnel Assignment – 8VAC20-81-40. A.2.a.

A small percentage of special education teachers are teaching subjects outside of their teaching license endorsements.

3. 8VAC20-81-40. A.2.a. states:

a. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel

- iii. Dawn Schaefer and Michelle Boyd previously advised parents, VDOE, and/or hearing officers that FCPS's IEPs are in compliance. However, FCPS's have long been out of compliance – and both finally admitted knowledge of the noncompliance during a 9.14.22 ACSD meeting. Minutes from the meeting indicate they tried to change FCPS's IEP with knowledge of the ACSD committee, which is an action that could have helped them hide knowledge of their noncompliance.

1. 9.14.22: At an ACSD meeting, **Dawn Schaefer admitted that FCPS's IEPs were in noncompliance with IDEA and state regulations**, that it was changing the PLOP page in the IEP to a PLAAFP page, and moving meeting notes to a different section. This contradicts her 2020 testimony to Due Process Hearing Officer Rhonda Mitchell and affirms she knew there was a problem with FCPS's IEPs at the time of the hearing.
 - a. A slide at the 00:42:05 mark states the “updates to the Present Level of Academic Achievement and Functional Performance (PLAAFP) section of the individualized education program (IEP) [are] **being proposed to foster collaboration of all members of the IEP team and ensure all IEP components, outlined in the Regulations Governing Special Education Programs for Children with Disabilities in Virginia is documented, are documented.**”
 - b. At the 00:51:44 mark, Dawn Schaeffer states the change “**brings our practice into alignment with special education regulations.**”
 - c. At the 1:34:00 mark: Michelle Boyd states, “**We sat and met as a team to ensure we would be able to be in accordance with Virginia Special Education Regulation.**”
 - d. At the 1:35:00 mark, Michelle Boyd states, “**The spirit of these changes truly are, as we shared, to bring us into compliance with our special education regulations.**”

- e. Listen to 9.14.22 ACSD meeting recording and read minutes (slide presentation is included at the end).
- f. Dawn Schaefer's and Michelle Boyd's admissions on noncompliance during the 9.14.22 ACSD meetings are supported by the two-year special education audit done by American Institutes for Research (AIR). The audit identified numerous problems with the PLOP page, to include, but not limited to the following:

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"Most present levels of performance statements rely on subjective information rather than objective, measurable terms."

"Within each student's IEP, state regulations require the PLOP statement to include the child's present levels of academic achievement and functional performance and a rationale for how the child's disability affects involvement and progress in the general curriculum (34 CFR 300.320(a)(1)). The regulations also require PLOP statements to be written in objective, measurable terms to the greatest extent possible and include test scores, if appropriate. Finally, PLOP statements should be directly related to the other components of the IEP. Within FCPS IEPs, a PLOP statement appears with each annual goal and is customized for that particular area. Therefore, if an IEP includes an annual goal for reading and an annual goal for mathematics, there are two unique PLOP statements. Quality PLOP statements should clearly identify all areas of need as well as the supports necessary to address those needs, specific and measurable baseline data, and strengths related to the areas of need. PLOP statements can include data from state testing, diagnostic assessments, classroom assessments, progress monitoring, universal screeners, teacher reports, observation data, and other sources."

"Our review found that only 26% of the IEPs in our sample included objective, measurable data in the PLOP statements. The other 74% of IEPs reported subjective information rather than objective, measurable data."

Pages 52-53:

According to federal regulations, the IEP development process should be a collaboration between all members of the multidisciplinary team. On the FCPS IEP form, IEP teams must provide a statement of parent/family concerns regarding their child's education to guide the PLOP statement (e.g., parent reports that the child likes school, parent would like the child placed in all general education classes).

Our review identified a discrepancy between perceptions of parent involvement in the IEP process from the surveys and parent input documented on the IEPs. The parent and staff surveys asked respondents to indicate their level of agreement that IEPs were developed with adequate input from parents (see Appendix Exhibits D7 and E13). Results show similar rates of agreement among staff (92.2%) and parents (93.9%). Despite these perceptions, results from the IEP sample review show minimal documentation of parent input on IEP documents (see Appendix Exhibit C8). Nearly 38% of the IEPs in our sample did not include any written evidence of parent input within the IEP itself. Moreover, among the subsample of the full history evaluations, 84% included evidence that parents were present for the reevaluation meeting, but only 20% of reports included evidence of parent input on the reevaluation reports. Documenting parent input and concerns within the IEP is a way to document compliance with federal special education regulations that require IEP teams to consider "the concerns of the parents for enhancing the education of their child."

See pages 49 and 52-53 of FCPS 2-yr special education audit final report.

2. Dawn Schaefer provides proof that she provided false information in 2020 to due process hearing officer Rhonda Mitchell.
 - a. "Fairfax County Public Schools (FCPS) contracted with the American Institutes for Research® (AIR®) in October 2020 to conduct an independent, third-party review of its special education program."

See page 7 of AIR report.

- b. 10.13.20: Two years prior to the ACSD meeting and during the same month FCPS contracted with AIR, Dawn Schaefer took an opposing stance when she testified during a due process hearing Parent filed.
- c. During the hearing, Dawn Schaefer maintained the IEP components - to include the PLOP page - were in compliance with special education regulations. In addition, Dawn and FCPS's lawyer John Cafferky indicate FCPS believes that it does not have to follow VDOE's guidance, to include that a) if VDOE issues a warning, VDOE doesn't have to follow it; b) that although there were issues with FCPS staff using the PLOP page incorrectly, FCPS is a large county, so that is expected; and c) that due process can't be used to enforce compliance with a state complaint finding, even though VDOE's appeal documentation states otherwise.
- d. The following is reflected in the 10.13.20 transcript for the due process hearing, which also shows that FCPS did not train Parent to use online platform, as well as other problems with the online platform **[emphasis added]**:

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Parent: Ms. Schaefer, is it coming up on your screen?

Dawn Schaefer: I can see it. It just needs to be bigger if you're wanting me to read anything there.

Parent: Okay. How do I blow it up? Do you know?

Dawn Schaefer: You should be able to on your screen, but I think because you're viewing it side by side, I'll just use the magnification on my screen. Hold on. Am I looking at the left page or the right page?

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Parent: Page five. It should be the present level of academic achievement page.

Dawn Schaefer: Okay. I can see it.

Parent: Can you read that -- just read that paragraph that describes what that page is?

Dawn Schaefer: "The present level of academic achievement and functional performance summarize the results of assessments that identify the student's interests, preferences, strengths and areas of need, included assistive technology and/or accessible materials." Oh, it's glitching.

Parent: Is it back?

Dawn Schaefer: "It also describes the effect of the student's disability on his or her involvement and progress in the general education curriculum. And for preschool children as appropriate, how the disability affects the student's participation in appropriate activities. This includes the student's performance and achievement in academic areas, such as writing, reading, mathematics, science and history/social sciences. It includes the student's performance in functional areas such as self-determination, social

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competence, communication, behavior and personal management. Test scores, if included, should be self explanatory or an explanation should be included. And the present level of academic achievement and functional performance should be written in objective, measurable terms to the extent possible. There should be a" -- I can't see it now.

Parent: I didn't do anything.

Dawn Schaefer: You closed it.

Parent: What?

Dawn Schaefer: You closed it.

Parent: I didn't mean to. I was trying not to. All right. Are you still there? I think we have enough on it. Has the VDOE

ever advised FCPS that its PLOP page is not in line with VDOE's PLOP page? That it doesn't have the right criteria?

Dawn Schaefer: Can you point me to an exhibit, please?

Parent: I can point you to a piece of new evidence if that will be allowed?

John Cafferky: I again object to this. Why do we have a five-day rule—

Parent: Q Do you recall -- do you recall -- do you recall VDOE ever being advised that -- do you ever recall VDOE ever advising FCPS that its PLOP page is not in line with the criteria -- the state's mandated the criteria of the state's PLOP page?

Dawn Schaefer: I believe Mr. Cafferky objected.

Hearing Officer Rhonda Mitchell: Yeah, but she's not going to submit that piece of paper. So she's just asking you the question right now.

Dawn Schaefer: And I asked for an exhibit.

Parent: And I asked you do you recall if VDOE ever advised Fairfax County that its PLOP page is not in line with the state mandated regulations for PLOP pages?

John Cafferky: I'm going to make a different objection, Your Honor, which is how is this germane at all to the claims that have been raised in this case, which is not about the congruity or incongruity of IEP forms. It's about special education for [STUDENT]. So –

Parent: And this isn't about forms. This is –

John Cafferky: We're talking about -- I just -- this is just to finish my objection, it's not relevant to the claims in this case.

Parent: It's about my son's IEP and what should and shouldn't be on the IEP. So if Fairfax County's IEPs are not in line -- and I'm not talking about format. I'm talking about

regulations. I'm talking about what VDOE wants in an IEP. That's what I'm talking about. And that directly impacts my son.

John Cafferky: Well, it's certainly not a claim that's been articulated in this complaint I would submit. And furthermore—

Parent: It's the content of the IEP.

John Cafferky: -- **the regulations are the regulations, regardless of what VDOE thinks, frankly.**

Parent: It's the content of the IEP. That is what we're talking about. Did my son's IEP provide FAPE? Well—

John Cafferky: -- object to that question.

Hearing Officer Rhonda Mitchell: Are you contending that the absence of these format this format information is impacting his FAPE?

Parent: Yes, ma'am. I am. It's not the format. I mean, I don't care if it's on a piece of paper that's red, white or blue, or triangles or whatever. It's not the format. It's the actual information that VDOE requires versus what Fairfax County has. What is in line with IDEA?

Hearing Officer Rhonda Mitchell: All right. I will sustain the objection, but you better get to a point. And you better get to a point quick.

Parent: Okay. Q So has VDOE ever advised – Well, can I skip over that since I asked it and put in my -- and put in the

Hearing Officer: You have to lay a foundation for the question. You have to lay a foundation.

Parent: Do you recall VDOE ever advising Fairfax County that its PLOP page is not in line with VDOE's regulations?

Dawn Schaefer: I think the premise of your question is wrong. I think you're trying to make a question say something that the finding didn't say.

Parent: Do you recall if VDOE has ever advised Fairfax County that Fairfax County's IEP is not in compliance?

Dawn Schaefer: No.

Parent: Okay. May I submit evidence which shows otherwise?

John Cafferky: Well –

Dawn Schaefer: I think that's your interpretation.

Parent: Well, it's from VDOE.

John Cafferky: Well, the witness can be

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asked a question about anything that pertains to that, but again, I have an objection to -- and I don't even know what the evidence is -- to submitting additional evidence in the questioning of her own witness.

Hearing Officer Rhonda Mitchell: If you're going to establish that Ms. Schaefer is incorrect, then I would like to see it.

Parent: Thank you. Well, it's from the Virginia Department of Education. All right. Let me try this again. Give me a minute.

Hearing Officer Rhonda Mitchell: What is it? Is it an opinion letter?

Parent: No. It's a letter of findings. Hold on. It's about to come up. Okay. This is the May 7, 2020, letter issued by the Virginia Department of Education. And I am going to scroll down.

Hearing Officer Rhonda Mitchell: Why didn't you submit this as evidence? It says [Student]. Is this –

Parent: Because I didn't know that -- I was naive and I thought that people would

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answer correctly. And Ms. Schaefer has already testified that she's involved in all of these complaints and that's part of her job.

Hearing Officer Rhonda Mitchell: Well, you should have submitted this in evidence. It's about [Student]. I thought you were going to bring up something else.

Parent: I don't know what else to say. Ms. Schaefer, can you see page 24 and 25 right next to each other?

Dawn Schaefer: I can.

Parent: Can you blow them up and read the last paragraph on page 24, and the first paragraph on page 25?

*Dawn Schaefer: Yes. **"Further, we caution LEA that as a best practice, the PLOP section of an IEP should be designed to address that which it – that which its name addresses. The student's present levels of academic and functional performance and the regulation is there. While special education regulations mandate the consideration of parental concerns, again,***

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referencing a regulation, nowhere do these regulations dictate the inclusion of summaries of IEP team discussion -- in essence, meeting minutes"

John Cafferky: Okay.

Parent: Hello?

John Cafferky: Yeah.

Parent: Hello?

John Cafferky: Everybody dropped out for a minute, but I'm back.

Parent: Hold on. The whole thing's glitching. Hello?

Dawn Schaefer: I'm here.

Hearing Officer Rhonda Mitchell: We're here, but you need to correct the problem.

Parent: It's -- it's not me if it's just the whole thing is glitching. It's the connection.

Dawn Schaefer: I can see it fine. Do you want me to continue reading?

Parent: Yes. Just go back to the meeting minutes "Special education regulations mandate" –

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Dawn Schaefer: "the consideration of parental concerns and the regulation is cited. Nowhere do these regulations dictate the inclusion of summaries of IEP team discussion -- in essence, meeting minutes in the IEP document itself as part of student's present levels of performance. We note that in some cases, the inclusion of extensive discussion of informal arrangements, understandings or good practice within the PLOP may prompt confusion between parents and school personnel responsible for IEP implementation. LEA's seeking to document IEP team discussions and detailing parental input may be better advised to develop separate, underlined, IEP meeting minutes or maintain audio recordings of IEP meetings for this purpose."

Parent: Ms. Schaefer, why are Fairfax County's PLOP pages used for minutes rather than just what they're named, as VDOE wrote, which is present level of performance?

Dawn Schaefer: A I think you're generalizing to the entire county. We were not found out of compliance on that letter of findings. That was a caution. It wasn't

*that our forms are incorrect. It's that they don't think that we were using the form as it was intended, and it was a caution that we need to not use the PLOP page as meeting minutes. **That's VDOE's opinion. It wasn't out of compliance. It was a caution.** And I'm again, that's why I said to you your -- the basis of your question was incorrect.*

*Parent: Okay. **So when VDOE, which is the state, offers you a caution, do you take their caution into consideration, or you continue on your same track?***

*Dawn Schaefer: **It depends on what the caution is.***

Parent: In this instance, when they came back and asked each of -- suggested using the present level PLOP page for that which it is named, did you change your practices? And I won't ask about the entire county. I'll just ask about [Student].

Dawn Schaefer: I'm not sure.

Hearing Officer Rhonda Mitchell: Take that down, please. Please take that down. Thank you.

Parent: Okay.

Dawn Schaefer: I'm not sure if [Student's] team has met since that letter of findings was issued.

But I would say that we are reviewing practices regarding the PLOP pages across the county and providing additional guidance to staff about not using them as meeting minutes. Again, we're the tenth largest division in the country with almost 30,000 special education students. And it's something that we are working to train staff on.

*John Cafferky: Good news. Good news. I withdraw my objection to that letter of finding. It finds FCPS in compliance. **It offers an editorial opinion about how VDOE***

would do it if they were running the schools. I withdraw my objection to it. Ms. Oettinger is welcome to put it into evidence if she wants.

Hearing Officer Rhonda Mitchell: Okay.

Parent: Why did they give you a warning? Why did they give you a caution?

Dawn Schaefer: I think that the facts in [Student's] specific situation warranted them thinking that perhaps because there have been 45 IEP meetings for [REDACTED] since 2016, that there was -- and very little agreement -- that

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there was too much on the PLOP pages of the IEPs. Much like Ms. Massie testified. **[Witnesses are not supposed to hear other witnesses testify and they are not supposed to discuss their testimonies, but since Dawn Schaefer was handling the online platform for the due process hearing, she heard all testimonies and this is an example of her crafting her testimony to match the testimony of another witness.]** It's really hard to figure out what's what because there have been so many meetings, and so many conversations, and so many proposals, and so many people involved that I think the caution was for us to streamline and think about how that PLOP page is used rather than using it perhaps as meeting minutes as they characterized it.

Parent: In spite of all the meetings that [Student] has had or IEP meetings that [Student] has had, why would you not still use -- why aren't you using the PLOP page for his present levels? It doesn't matter how many meetings. Why aren't you using the PLOP page to reflect [Student's] present levels?

John Cafferky: Objection. Objection to -- the question lacks foundation. She didn't say that they weren't using it to reflect his present levels, **she just said they also were using it for meeting minutes.**

Hearing Officer Rhonda Mitchell: Objection sustained.

Parent: Do [Student's] IEPs have his present levels

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listed?

Dawn Schaefer: Can you point me to an exhibit, please?

Parent: All right. Let's go to -- actually, let's go someplace else. Has VDOE ever cautioned Fairfax County that it isn't listing services on its IEPs?

Dawn Schaefer: You're going to need to -- you have filed 36 state complaints.

Parent: Okay.

Dawn Schaefer: If you want to talk about one of those, you're going to have to point me to some evidence.

Parent: All right. For example, if Fairfax County suggested a service for [Student], has VDOE ever come back to Fairfax County and pointed out that Fairfax County did not actually include it on the services page?

Dawn Schaefer: Again, I -- I can't --

Parent: Okay.

Dawn Schaefer: answer your question without --

John Cafferky: Objection, overly broad.

Parent: All right. Please turn to Volume 8, No. 15.

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Hearing Officer Rhonda Mitchell: Somebody put it up on the screen.

Parent: All right. Give me one second. Hold On.

John Cafferky: Number what?

Parent: Fifteen. Volume eight, number fifteen.

John Cafferky: I don't even have it in what we received. I'll look at it on the screen, I guess.

Parent: Hold on.

Hearing Officer Rhonda Mitchell: I can get to your exhibits, but it takes a long time and it wipes out the whole -my whole setup here.

Parent: It's a May 24, '19, letter of findings. Hold on. I almost have it. This process is bulky, doing it this way. A little archaic. Let's see. My goodness gracious. This is a pain in the butt. Hold on.

John Cafferky: While Ms. Oettinger is trying to find her exhibit or get her exhibit up on the screen, Your Honor, I just want to make an

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*overarching objection. It seems as though we're going to be going through a bunch of these state complaint letters that [Parent] has filed. And here's my objection. **A due process hearing is not a state complaint finding enforcement process. The two processes are separate. They are separate sections of the regulations and if there's not compliance with a state complaint finding, there's a separate enforcement proceeding, essentially it is an enforcement proceeding through the Virginia Department of Education. So if it's [Parent's] contention that somehow FCPS has not complied with a state complaint finding or corrective action plan or something like that, her recourse is through the Virginia Department of Education, not to a hearing office in a special education case. We're talking about two different enforcement regimes.***

Parent: That's not my intention and I never said it was. So we're not going to go through all of them, I just have a few things I want to point out. All right. This is a –

John Cafferky: I

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Parent: This is a letter of finding—

Hearing Officer Rhonda Mitchell: If it is determined that [Parent] is trying to use this process as an enforcement mechanism for complaints that she filed through VDOE, then your objection is sustained.

Parent: That is not my intent and I'm just trying to get to the next page. Hold on. Okay. Hold on. All right. Do you see page 53, or is it glitching on your end?

Dawn Schaefer: It's glitching.

Parent: All right. Let me try. Let me try it again. Excuse me.

Hearing Officer Rhonda Mitchell: Fairfax included -- or did you? Include some letters of find -- letter of findings? I read some somewhere where they --

John Cafferky: Sure. There's some in the evidence and we haven't objected to these put in, we haven't raised any objection to them. My point was they are what they are from an evidentiary point

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of view.

Hearing Officer Rhonda Mitchell: No, no, no. What I -- no. That's not the point I'm trying to make. The point I'm trying to make is can we find them in Fairfax books?

John Cafferky: Oh, I don't think that one is -- we put only a couple in.

Parent: This is -- 24, '19. Do you have that in your book? I'm just having a hard time here with this.

John Cafferky: Well, actually I defer to you, since you put these together.

Dawn Schaefer: Ms. Mitchell, would you like me to put it up?

Hearing Officer Rhonda Mitchell: If you have it, yeah.

John Cafferky: Sure. Okay. Much better.

Parent: Look at that. How do you do it so much faster and how do you get it onto one page instead of two pages? Ms. Schaefer?

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Dawn Schaefer: Practice.

Hearing Officer Rhonda Mitchell: We don't have time to go through a tutorial, [Parent].

Parent: I'm just saying because I want to be able to do it in the future. All right. Please turn to page 53.

Hearing Officer Rhonda Mitchell: Okay.

Parent: Is that 53?

Dawn Schaefer: I'm sorry. What did you say?

Parent: Page 53.

Dawn Schaefer: This is page 53.

Parent: Okay. Please go to the last open bullet. The last paragraph. Okay. Okay. Hold on. All right. Can you go ahead and read the first two sentences, starting with, "The PLOP in the IEP"?

Dawn Schaefer: "The PLOP in the IEP developed at the November 2, 2018, facilitated IEP meeting indicated that AP shared that some services for students were not provided earlier in the school year. The school team has arranged for a teacher to provide those

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services totaling 10 hours to compensate for the missed time based on the IEP service hours." That was two sentences.

Parent: All right. Please turn to page 54 of the same document. Please read the second open bullet starting with, "Five days later."

Dawn Schaefer: "Five days later, at the December 11, 2018, IEP meeting, **the PLOP recorded that school team is proposing emphasis added to provide the 10 hours within the school day during the advisory time to be completed by April 29, 2018.**" Do you want me to read more?

Parent: Yes, please. It should have -- I'm sorry. The second open bullet is what I wanted you to read that says -- that starts with, "Five days later."

Dawn Schaefer: That's what I just read.

John Cafferky: That's what she was just reading.

Parent: The whole thing? Yeah, read the whole thing.

Dawn Schaefer: "**The school team will provide an overview of**

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the focus of the compensatory services to the parent by December 17, 2018. These proposed services did not appear in the services section of the December 11, 2018, addendum."

Parent: Ms. Schaefer, how does a parent provide informed written consent for proposed services that VDOE itself says aren't on the services page?

Dawn Schaefer: Would you like me to stop sharing this now? I -- all I'm seeing is the document.

Parent: That's fine. And, Ms. Mitchell, just so you know, this wasn't -- I mean, this wasn't something that -- I'm not

*trying to prove a, or retry a complaint. I just want to know -
- this is something that VDOE pointed out itself. So how
does a parent provide informed written consent for
proposed services that VDOE itself says aren't on the
services page?*

***Dawn Schaefer: Those proposed services were
compensatory services. They were for missed services, so
we wouldn't be putting compensatory services on the
services page. Those would need to be outlined either***

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***on the PLOP page or in the PWN that goes with -- the
prior written notice that goes with the IEP. They wouldn't
be listed on the -- on the services page of the IEP.***

- c. FCPS at large has a long history of providing false and misleading information and/or withholding information in response to complaints filed by Parent.

See 5.11.23 Additional Information previously provided to VDOE for earlier complaint. VDOE has exhibited it is adept at pulling information related to prior complaints into current complaints, however if VDOE needs this document resent, please advise Parent ASAP.

During COVID, FCPS unilaterally stripped Student of services and OCR found FCPS in noncompliance for refusing to provide and/or watering down services.

IV. Preschool Students

- a. FCPS has five full-day preK inclusion programs. They are located at Belvedere Elementary School (Region 2), Mason Crest Elementary School (Region 2), Halley Elementary School (Region 4), Annandale Terrace Elementary School (Region 2), and Centreville Elementary School (Region 4).

See 5.12.23 email from Laura Jane Cohen

- b. FCPS has six regions. Although the sixth region is not yet up on FCPS's site. On June 27, 2023, it was announced that Michelle Boyd had been named as assistant superintendent of Region Six.

See Twitter screenshot from FCPS Region 2 Twitter feed.

- c. The five full-day preK inclusion programs are in Regions 2 (3 programs) and 4 (2 programs). There are no full-day preK inclusion programs in the remaining four regions.

See: <https://www.fcps.edu/resources/maps>

- d. All five full-day preK inclusion programs are mixed inclusion classrooms that include six students with IEPs and eight students from the PreK (formally Head Start) program.

See 5.12.23 email from Laura Jane Cohen

- e. FCPS's "Special Education Enhancement Plan 2023-30" contradicts Laura Cohen's statement that each inclusive classroom currently has six students. Page 20, the plan states the following [**emphasis added**]:

"Increase the number of seats reserved for SWD in inclusive preschool classes from five to six beginning the 2023-24 SY"

See "Special Education Enhancement Plan 2023-30"

- f. FCPS's "Special Education Enhancement Plan 2023-30" confirms that the enrollment of students in inclusive preK is based on availability and not LRE. The plan specifically states:

"Develop a multi-year plan to increase the number of inclusive preschool classes to increase the percent of of [sic] preschool students with disabilities served in general education settings, as appropriate." (Deadline: November 3, 2023)

"Initiate implementation of the multi-year plan to increase the number of inclusive preschool classes to increase the percent of preschool students with disabilities served in general education settings, as appropriate." (Deadline: June 30, 2026)

See "Special Education Enhancement Plan 2023-30"

- g. FCPS's two-year special education audit confirms that FCPS is not meeting targets for inclusion - and has NOT met those targets for years:

"Inclusion data for preschool-age students also show that FCPS is not meeting targets for inclusion. In 2018–19, IDEA SPP/APR Indicator 6a shows 25.2% of the students with IEPs ages 3– 5 attended regular early childhood programs in FCPS, which did not meet the Virginia state target of having more than 35% of students

attend regular early childhood programs. This rate shows a considerable decline from 2016–17 and 2017–18, in which 32.1% and 34.5%, respectively, of students attended regular early childhood programs (see Exhibit B9). At 46.3%, the percentage of preschool students with IEPs attending a separate special education class, separate school, or residential facility (IDEA APP/APR Indicator 6b) also did not meet the Virginia state target, which was less than 17% of students. FCPS was higher than both the Virginia average (29.3%) and all other comparison districts except for Montgomery (48.9%; see Exhibit B10). This rate also was a considerable increase from 2016–17 and 2017–18, in which 36.6% and 31.2%, respectively, of preschool students with IEPs in FCPS attended separate classes, schools, or facilities.”

See: FCPS-Special-Education-Audit-Final-Report-September-2022

- h. “The FCPS PreK and Early Head Start (EHS) program provides high-quality comprehensive services to children ages 6 weeks to 5 years and pregnant women from income-eligible families living in Fairfax County.”

See page 2 of “FCPS PreK and Early Head Start 2022-23 Annual Report”

- i. FCPS’s Academic Matters Presentation confirms that students with disabilities are being provided pre-K programming:

“FCPS early childhood programs serve diverse student populations, including English language learners, students from low-income households, and students with identified special needs.”

See page 4 of Academic Matters Presentation

- j. IDEA requires FCPS to provide a free appropriate public education (FAPE) to all qualified students with disabilities in its division.
- k. FCPS offers inclusive K-12 for ALL IEP students, not some.
- l. FCPS does not offer inclusive preK for ALL IEP students, even though the LRE for students is an inclusive preK program.
- m. Economic need and Funding are not accepted reasons for denying FAPE—and OCR’s November 2022 findings on FCPS support that FCPS can not limit inclusions, participation, and/or opportunities to some students with IEPs while at the same time depriving others.
- n. June 28, 2021, FCPS indicated that its refusal to provide inclusive preK is related to funding:

School Board Member Requesting Information: Melanie Meren

Answer Prepared By: Instructional Services

Date Prepared: June 28, 2021

Question: Please provide the cost to include PreK classrooms in the staffing projections for schools? This would allow PreK students to be included in the specials classes and have access to additional instructional opportunities, such as STEM programming. This would also allow PreK teachers to have dedicated planning time that would not require the program to fund weekly planning time substitutes.

Response:

PreK students are currently not included in the TTT staffing formula. The estimated cost to include PreK classrooms in TTT staffing using FY 2022 Approved Budget projections is \$1.9 million. It should be noted that the average school with PreK classroom(s) would add somewhere between 0.2 and 0.4 TTT allowing for an increase in only one or two of the three disciplines (Art, Music and PE). The cost will be greater if this additional staffing proves to be insufficient and the TTT formula needs to be changed.

See FY 2022 Budget Question Responses

o. October 12, 2022: ACSD meeting held.

- i. FCPS Parent **REDACTED** submitted a public comment. Although his son is not preschool in age, his comments regarding overall failure to provide the related service of AAC training provides another example of this being a systemic problem. Toby stated **[emphasis added]**:

*I'm here tonight to keep alive a conversation that I've had with many of you at this table—that is, **the need for FCPS to improve its supports and services for students who need and use AAC in the classroom.** Two summers ago, my son **REDACTED** attended ESY to work on communication goals and **was assigned an ESY team that had no experience with his AAC system.** That experience among others prompted me and my wife to work with our state delegate to attempt to pass a law that would require school systems to train their staff appropriately so that students like **REDACTED** did not become on-the-job-training opportunities. That effort ultimately failed—but it got a response out of this school system—and last summer **REDACTED**'s ESY team got timely training and adequate support—and for the first time in his 5 and a half years of enrollment in FCPS—he met a communication goal on time. **Despite our many conversations with FCPS personnel about training—REDACTED** walked into a*

classroom this year with a team that received only operational training. That is, training on how to navigate his AAC system and some basics on the importance of core words and Modeling. The data sheet creation. The team approach to modeling language while instruction is delivered. None of that information and training was passed on to the team at REDACTED's base school—despite its key role in his success this summer. And that's a problem not only because it doesn't sound like a best practice—but also because research shows that operational training alone will not produce successful outcomes no matter how much buy-in you have from the folks supporting an AAC user. So my wife Lindsay testified last week at the school board meeting demanding that they direct the superintendent to make this a priority and explore a model policy for AAC instruction. From having served on this committee, I know that you all have this issue on your radar—I know Mike Bloom has it on his radar. But from my experience, I've learned that until it becomes a priority in this committee's report—as opposed to another thing on the wish list—it will not become a priority for this school board and it will continue to linger as an unmet need. For those wondering, this isn't an IEP team level fix. I've asked for training records—just to see if I could get them and meaningfully participate in a detailed discussion about training for individual IEP team members—and those records were never provided. And, frankly, as a parent I don't want them. I don't want to get into the day-to-day operations of my kid's school. I'd prefer getting to a point where someone automatically says: Hey, that kid is an AAC user, and we're going to need to ensure that his team has the support and training necessary to design instruction for that student. And that's only going to happen if this committee tells the school board that it's a priority. And if that's not enough to convince you or this school district that it needs to be a priority, I ask that all of you watch closely a case that was recently granted cert in the Supreme Court—the case is *Perez v. Sturgis Public Schools*. If that case turns out the way I think it will and FCPS finds itself in front of families with more money and less patience than mine—the expense of that litigation will be far greater than just proactively implementing a gold-standard policy.

p. November 9, 2022: ACSD meeting held.

- i. FCPS Parent REDACTED stated the following during public comments [emphasis added]:

*Good evening, I am here to speak to you about the importance of an inclusive preschool. **Currently, FCPS does not have an inclusive preschool option that is accessible by all of its special education students.** FCPS's failure to develop an inclusive preschool as suggested by OSEP guidance*

and VDOE has had a significant impact on my son's schooling. We are a military family and we were stationed here in May of 2021 While we were stationed at Fort Bragg and lived in Moore County, North Carolina, my son had access to a publicly funded, inclusive preschool environment. When we moved here, I was shocked to learn that Fairfax County, the 11th largest school district in the nation, and a county that purports itself to be progressive did not have a publicly funded, inclusive preschool environment that could be accessed by all of its special education students. Instead our son, and other military students, who come from inclusive school districts are shoved into contained classrooms, a more restrictive environment, simply because the opportunity to access an inclusive education is not available. This is really hard for military families because we move frequently. We may move every one to three years and its even more difficult when your child is a special education student and even MORE difficult when the receiving school district can't even fulfill our children's basic rights to access a free, appropriate, public education as outlined in the LRE of their IEP. **My son's LRE was determined to be an inclusive preschool environment by a team who had provided services to him for 2 years. When we moved here, Fairfax county told me over and over again, "We can't even do this IEP." In fact, they changed his LRE in his transfer IEP to a contained classroom, which meant that he could not access services.** I can assure you that we are not the only family that this has happened to. This really sets a dangerous precedent for military students. **Our children are placed in a more restrictive environment because FCPS refuses to honor the incoming IEP or even just satisfy FAPE.** Eventually, we will move and the new receiving district will continue the more restrictive environment. It is important that Fairfax County establishes an inclusive preschool to ensure that incoming students, such as military students, can continue to access the appropriate LREs well as to prepare other special education students for a successful academic experience in a general classroom setting. Forty years of research shows that inclusion benefits all children. In fact, inclusion early on is a predictor for later inclusion and future success in a general education setting. IDEA is clear that high standards must be set and that IEPs should be developed to prepare students for future education, employment, and independent living. That goal starts with preschool and inclusion. I'm not sure if you're aware, but **for the last 5 years, Fairfax County has not met the state standards for inclusion for students in preschool through high school.** The problem with an inclusive education starts in preschool and clearly continues for the rest of their time in the school district Fairfax County always talks about the importance of equity and diversity. I'm here to tell you that if you're doing equity and diversity without disabilities, you're doing it wrong.

See 11.9.22 meeting minutes and

<https://www.youtube.com/embed/MQJ9wD9KK24?feature=youtu.be>

- ii. FCPS Parent **REDACTED** stated the following during public comments [emphasis added]:

*My name is **REDACTED**. My daughter **REDACTED**, who has Down syndrome, is currently enrolled in FCPS's preschool class-based program. We are a military family and are relatively new to Fairfax County. **I am speaking on behalf of 9 families with preschool age children that are seeking inclusive preschool options. As is our collective experience, FCPS does not offer an inclusive preschool option for students with disabilities to have access to their typically developing peers. In April 2018 VDOE published their Virginia Guidelines for Early Childhood Inclusion. These guidelines outline how critical preschool inclusion is to improve the outcomes for students with disabilities. The benefits of inclusion in the early childhood education setting are foundational. Long term, inclusion in early childhood programs can set a path for inclusion throughout a student's life. Studies show that these students will require less supports in elementary, middle and high school, leading to better post-secondary options and better access to competitive employment. Additionally, research indicates that early childhood inclusion is beneficial to both children with and without disabilities. An inclusive preschool option is markedly absent at FCPS. Many of the surrounding school divisions in Virginia, to include Falls Church and Alexandria, have an inclusive preschool option. What has FCPS done or what is FCPS doing to create an inclusive preschool option for its students? Why aren't Headstart classes blended with the class-based preschool program? In our conversations with Denise Forrest, FCPS Director of Special Education Preschool Program, she indicated that there have been many roadblocks to adding an inclusive preschool option at FCPS. **We have not received a clear answer as to what those roadblocks are or may have been. So, we are here asking ACSD, what are the roadblocks? Why hasn't FCPS joined surrounding divisions and pursued an inclusive preschool option? It is our aim to bring this issue to the attention of the ACSD.*****

- q. December 14, 2022, ACSD Meeting held.

- i. During the Q&A session between ACSD members and Superintendent Michelle Reid, Members Elizabeth Zielinski posed a question and Reid admitted that there are inclusion problems across the county that surprised her:

Elizabeth Zielinski: What have you learned about Fairfax County that we don't realize about ourselves? What surprises you that you can see as an outsider that we wouldn't see? A: She has worked in divisions that don't have the resources we do. She hears from the military families that they request our schools due to the array of services provided. She feels there is a track record of success and dedication to the work. She feels the inclusion data is a surprise. There are also opportunities regarding twice exceptional students, for example in these students accessing more advanced courses. She is surprised about the variability across the county, which sometimes can be a good thing. But perhaps we need "swim lanes" for the variability.

See 12.14..22 meeting minutes and

<https://www.youtube.com/embed/OSICAvrhq70?feature=youtu.be>

- ii. FCPS Parent **REDACTED** (whose wife **REDACTED** spoke at the 11.9.22 ACSD meeting) stated the following during public comments **[emphasis added]**:

*As a matter of introduction, I am **REDACTED**. We are a military family. My daughter, **REDACTED**, has Down syndrome and is enrolled in FCPS's preschool class-based program. I am writing the Committee to voice growing frustrations with the FCPS IEP progress and preschool class-based program as well as to offer suggestions on improvement strategies. **It has been our experience, as well as the experience of others in our preschool cohort of families, that there is a lack of consistency across the FCPS network in how IEPs are developed, and most alarmingly, put into practice. The concern is an absence of consistency in interpretation and implementation which leads to questionable equity and an increased gap of opportunities for students with disabilities.** As an example of an administrative matter, each FCPS school with a preschool class-based program seemingly has a different interpretation on the purported requirement and method to document student attendance. During our own IEP meeting to discuss this suggested requirement, we received vastly different responses from school staff and from the PSL, the former eluding to a FCPS policy that couldn't be produced upon request and the latter referencing vague catch-all state regulations. Needless to say, we left the meetings lacking confidence in the IEP process. It is my understanding that FCPS each year received approximately 12% of Virginia's total IDEA Part B, Section 619 federal grant funds. The most recent allotment for award year 2022-2023 being \$7,367,734 for FCPS programs alone. I also understand that the majority of these funds are allocated to staff costs. For an improvement strategy, I urge that this Committee and the School Board scrutinize the FCPS IDEA Part B Section*

619 preschool grant budget to identify the measured, trainings, opportunities, and resources being provided to all FCPS IEP teams. Specifically, to identify what measures are being provided and offered to educate and train on IEP policies and procedures covered under IDEA, state regulations, and FCPS doctrine with the aim to establish consistency of interpretation and implementation across the division. **Regarding the preschool class-based program on a more broad level, it has also been our shared experience that the FCPS preschool program is markedly absent of community peer models to provide consistent access and opportunity for inclusion in the classroom.** I offer that this Committee conduct a deep dive into the FCPS IDEA Part B Section 619 preschool grant budget to revisit and challenge current resource allocation to make a more intentional effort to conform to VDOE's 2013 Virginia Guidelines for Early Education with the purpose to assist local divisions "in identifying, developing, and sustaining inclusive opportunities within high-quality early childhood programs for children with disabilities."

See 12.14.22 meeting minutes and

<https://www.youtube.com/embed/OSICAvrhq70?feature=youtu.be>

- iii. FCPS parent **REDACTED** presented public comment again.

She has a kindergartener who has down syndrome and autism. Advocating for FCPS offer an inclusive pre-K option, which her son never had. FCPS should offer inclusive pre-K countywide. This will benefit kids with and without disabilities. Her understanding is that pre-pandemic, there were some inclusive preschool programs, but it was up to the principals to do so, not a division policy. Says that Alexandria City and Falls Church offer them. Offer lottery option for neurotypical students to be offered free preschool, or combine with Head Start preschools.

See 12.14..22 meeting minutes and

<https://www.youtube.com/embed/OSICAvrhq70?feature=youtu.be>

- iv. FCPS parent **REDACTED** provided public comment. Although her child is not preK, this is another examples of technology not working - whether it is a communication device or not - which hampers access for FCPS students. **REDACTED** stated:

Technologies not working together to make the HS accessible for her daughter. Learning Ally did not work together with the tech she needed to annotate her reading material.

See 12.14..22 meeting minutes and
<https://www.youtube.com/embed/OSICAvrhq70?feature=youtu.be>

r. January 11, 2023 ACSD Meeting held.

i. FCPS Parent **REDACTED** presented public comments again:

Her preschool son has Down Syndrome and was not offered an inclusive preschool option. Options for preschool students seem to vary based on neighborhood, leading to equity concerns. Inclusion in preschool helps students with and without disabilities.

ii. FCPS Parent **REDACTED** said:

As a military parent, she has seen two other schools and is disappointed with FCPS and their failure to offer non-segregated preschool. She also finds the related services offered to be inadequate.

s. March 8, 2023 ACSD Meeting held

i. FCPS Parent **REDACTED** stated:

FCPS does not have a division-wide inclusive pre-k program.

FCPS Parent **REDACTED** presented a public comment again:

FCPS does not have a division-wide inclusive pre-k program. Her daughter has down syndrome and is in a non-inclusive pre-k program. Says if she lived in a different area in the division, she might have had access to an inclusive preschool. [Although FCPS busses AAP students to AAP centers, this is an example of FCPS not bussing pre-k students to inclusive pre-k programs.]

See:

<https://www.youtube.com/embed/y4p1FhmHOFE?feature=youtu.be>

ii. FCPS Parent **REDACTED**, whose son has down syndrome, and now is in kindergarten, provided public comment again:

When we first met with FCPS to discuss our son's goals I requested that he have speech-language therapy, however, I was told that giving him speech therapy was inappropriate . . . I was further assured that he would be in a "language rich environment". Unfortunately, this was not enough. Just by openly asking for speech and OT from there, he was

ignored until he was assessed for communication skills . . . when he had just turned 5. . .

See:

<https://www.youtube.com/embed/y4p1FhmHOFE?feature=youtu.be>

- iii. FCPS Parent **REDACTED**, in her THIRD comment at an ACSD Meeting during the 2022-23 school provided public comments again, about failure to provide inclusive preschools and related services.

See:

<https://www.youtube.com/embed/y4p1FhmHOFE?feature=youtu.be>

- iv. After the above four parents spoke, Fairfax County School Board Member Laura Jane Cohen walked over to them and asked them to come speak with the school board about the problems the parents had expressed. Complainant was at the same ACSD meeting and watched Cohen walk over to the parents and heard her make the request. This is documented in the recording of the meeting.

See:

<https://www.youtube.com/embed/y4p1FhmHOFE?feature=youtu.be>

- v. After watching parents advocate at the March 8, 2023, ACSD meeting, School Board Member Laura Jane Cohen emailed Parent **REDACTED** and admitted FCPS's preK inclusion program "MUST be improved."

See 5.12.23 email from Laura Jane Cohen

- t. May 10, 2023 ACSD meeting held.

- i. During the School Board Liaison Update, School Board Member Laura Jane Cohen again brought up concerns with preschools.

She is increasingly concerned about hearing repeatedly the same reports from special education preschool parents about a "language rich environment." She thanked the ACSD committees for being a megaphone for this issue.

See May meeting minutes and

<https://www.youtube.com/embed/703mQpeGrSY?feature=youtu.be>

- ii. FCPS parent **REDACTED** stated [**emphasis added**]:

Related services have not been offered to his child with Down Syndrome in special education preschool. Special ed teachers can't be expected to be experts in all areas that related service providers should be supporting. It shouldn't take parents having to move out of Fairfax County to get the support they need for their children.

See 5.10.23 minutes and

<https://www.youtube.com/embed/703mQpeGrSY?feature=youtu.be>

- iii. FCPS parent **REDACTED** again submitted public comment, this time in writing, in which she states **[emphasis added]**:

Writing to advocate for related services (speech, OT, and PT) for preschool students with IEPs. She has been told that it is a "language rich environment" and that the teachers there are all educated in supporting speech and all needs. Too much strain is being put on these teachers, and they can't be experts in all areas.

See 5.10.23 minutes and

<https://www.youtube.com/embed/703mQpeGrSY?feature=youtu.be>

- iv. FCPS parent **REDACTED** stated **[emphasis added]**:

Speaking on lack of related services provided to FCPS preschool students with disabilities. Her daughter was not offered related services. She was told repeatedly that services weren't necessary, and that it was "a language rich environment." Early intervention is key, and "wait and see" is no longer the model.

See 5.10.23 minutes and

<https://www.youtube.com/embed/703mQpeGrSY?feature=youtu.be>

- v. FCPS parents **REDACTED** **[emphasis added]**:

Their son with Down syndrome was denied speech services. They had a speech evaluation, and were denied because he didn't have enough words to practice articulation with (he was utilizing signs and gestures for communication). Parents report being told repeatedly it was a "language rich environment" and that all teachers had a Master's degree and were highly trained. Therapy services given, including just one hour a month of PT, seemed to be limited by staff availability.

See 5.10.23 minutes and

<https://www.youtube.com/embed/703mQpeGrSY?feature=youtu.be>

- vi. FCPS parent **REDACTED** again provided public comments **[emphasis added]**:

Wrote to advocate for an increase in special services for preschool students. FCPS has a dearth of providers, and that results in fewer and fewer students getting services. Getting services early in life has been shown to improve outcomes overall, and the expenditure here for more early intervention would pay off in gains in the end. Again, a special education teacher is not a speech therapist.

See 5.10.23 minutes and

<https://www.youtube.com/embed/703mQpeGrSY?feature=youtu.be>

- vii. FCPS ACSD member, ACSD representative for school board member Laura Jane Cohen, and FCPS Parent **REDACTED** stated **[emphasis added]**:

REDACTED is speaking as an individual. She represents Lauren Jane Cohen on the ACSD, but is speaking for herself and does have the support of Ms. Cohen to make her statements. **REDACTED** recounted **Dr. Boyd's acknowledgment that over ten thousand FCPS students were screened for speech services and not granted an evaluation.**

REDACTED says her daughter is an example of a student who was denied services who could have benefited. **REDACTED** says her daughter has not received adequate services to be able to communicate with her AAC device. Her inability to communicate recently impacted the medical care and resulted in a lot of discomfort and treatment delays when medical staff weren't able to appreciate signs of an acute injury and assumed her symptoms were from a developmental disability.

See 5.10.23 minutes and

<https://www.youtube.com/embed/703mQpeGrSY?feature=youtu.be>

- u. During the 2022-23 school year, Special Services Director Michelle Boyd, Director of Office of Procedural Support Dawn Schaefer, Superintendent Michell Reid, and/or other FCPS staff attended the ACSD meetings and heard FCPS parents **REDACTED** submit comments 5 times; **REDACTED** and/or **REDACTED** submit comments 4 times; **REDACTED** and her husband submit comments three times, and other parents.

Although these parents repeated the same messaging month after month, FCPS purports to have met with such parents - and the noncompliance continues.

- v. For **REDACTED** son, **REDACTED**, the following is a timeline of his denial:
- i. Parents requested Speech Therapy at initial IEP meeting in July of 2019 and were denied.
 - ii. **REDACTED** began pre-K at **REDACTED** in September 2019
 - iii. At second annual IEP meeting in May of 2020, parents requested speech therapy again, and were told FCPS would look into it at the beginning of the 2020-2021 school year.
 - iv. From the PWN for IEP Addendum meeting in October of 2020 **REDACTED** mother stated that she is concerned about articulation and would like to reconvene the IEP within 30 days of returning to school to determine the need for a speech evaluation. Has the IEP recommended any evaluations during the meeting? No Does the evaluator need to consider the student EL status and/or mode of communication? No"
 - v. In February/March of 2021 parents asked teacher about AAC device
 - vi. In June of 2021, parent reached out to FCPS for a communications device and told that they couldn't begin over the summer (documented)
 - vii. In September 2021 Assistive Technology Services completes evaluation and **REDACTED** is approved for FCPS-issued AAC device
 - viii. In January of 2022, FCPS completes Speech and Language Evaluation for **REDACTED**
 - ix. **REDACTED** is approved for 30 minutes/week Speech Language Services in late January 2022

See 3.10.23 email from **REDACTED**

- w. For **REDACTED** son **REDACTED** the following is the timeline for his denial:
- i. May 11, 2021: Student found eligible for an IEP in the Developmental Delay category. Student's IEP team in Moore County, NC, provided services to student two years prior through IFSP and determined based on its assessments that student's LRE was an inclusive preschool environment.
 - ii. May 14, 2021: Parent and her family moved from Moore County, NC, to Fairfax County, VA.
 - iii. May 20, 2021: Parent contacted FCPS to enroll student and emailed student's IEP. FCPS advised Parent she had two options: Student could start receiving services immediately, but could only receive them for two weeks or Parent could wait until the start of the 2021-22 school year for student to be provided services.
 - iv. May 26, 2021: Parent emailed FCPS and asked about ESY.
 - v. May 27, 2021: FCPS advised Parent 3 that ESY services are "typically based on data collected throughout the school year" and that "ESY are not possible for [Student] this summer", and offered to speak further. FCPS's Kelly Thys advised that there just wasn't enough data for student

to be provided ESY. She made this decision alone, without an IEP meeting or team convened to make this refusal. She later stated “we can’t even fulfill this IEP.” This was not discussed in an IEP meeting. Thys and Amy Fieldman advised that any services rendered would be provided in a contained classroom (not consistent with student’s IEP). Parent emailed the same day and requested an in-person meeting. FCPS refused in-person meeting. ***It is now known that FCPS did not have enough ESY teachers for summer 2021 and there was widespread denial of ESY. [REDACTED] [REDACTED] was proposed ESY every year he had an IEP, until 2020 when COVID hit. All of a sudden, FCPS started saying ESY wasn’t needed, but provided no data or rationale for this change.

- vi. June 2, 2021: Parent 3 and FCPS met virtually.
- vii. July 29, 2021: Parent 3 emailed Thys to request an IEP meeting and initiate registration/enrollment process. Thys emailed she was on vacation and forwarded Parent 3 to Early Childhood Identification Services (ECIS) manager Amy Fieldman, because staff were off contract until mid-August, 2021. The manager advised Parent 3 that student services would be provided in a contained classroom.
- viii. August 3, 2021: Without convening an IEP meeting, ECIS manager changed student’s placement to a more restrictive environment and advised Parent 3 that student would be receiving classroom-based services at Tiber Lane ES. Parent’s request for an IEP meeting was denied. Instead Fieldman stated, “A Fairfax County Public Schools IEP will be completed by the end of September”. Parent responded that she wanted student to receive services at Easterseals, which in accordance with the IEP, and which has therapy rooms where services can be delivered in a less distracting environment, but without removing student from the inclusive classroom.
- ix. August 5, 2021: Fieldman stated, “Currently, FCPS does not have an inclusive early childhood special education class option.” ECIS manager suggested informal observation of student after teacher returned to work.
- x. August 16, 2021: FCPS teachers returned to work.
- xi. August 17, 2021: FCPS did a 20-minute observation of student via phone. Parent later emailed FCPS, “I am going to need in writing whether or not [FCPS] can comply with [Student’s] hours of related services as stated in the IEP.” She stated she needed this information by end of business the following day and that she and her husband were “trying to strike a balance between inclusion and support.”
- xii. August 18, 2021: Parent contacted FCPS procedural support liaison (PSL) and posed her previous August 17, 2021, question to her. PSL forwarded Parent back to ECIS manager. After she realized Parent and Fieldman had already been in touch, the PSL requested Parent’s phone number to call her. Parent sent PSL email with phone number, but PSL never responded.

ECIS manager emailed Parent to offer transfer IEP that would include the related service hours from the student's current IEP for a 30-day period, and then an annual IEP would be created by FCPS by end of September, and that the IIEP team may make adjustments over 30 days of collecting data.

- xiii. August 19, 2021: Parent asked for an IEP meeting again. FCPS chose Sept, 1, 2021.
- xiv. August 25, 2021: FCPS emailed parent meeting notice and stated a FCPS's already-created draft – done without an IEP meeting or parent input – would be provided. Parent provided FCPS paperwork for student's enrollment in private placement program.
- xv. August 26, 2021: FCPS provided Parent transfer student documentation outlining his services in a non-inclusive contained classroom and she was advised the transfer documentation would no longer be valid after the Sept. 2, 2021, IEP meeting. FCPS advised Parent she had option to start student's services in a contained classroom on August 30th or wait until the "initial/annual IEP has been completed on September 1". FCPS all of a sudden moved up the date of providing an IEP by almost a month, but never proposed evaluations of its own. It had only done an in-home observation of student.
- xvi. September 1, 2021: IEP meeting conducted/annual IEP proposed – without any evaluations having been done by FCPS. It used the same data Moore County used, but came to a different decision, after having only done one 20-minute observation via phone. FCPS did not contact student's prior school or present any of its own data to support its decision that student had "too many goal" to be achieved in an inclusive setting. Parent did not consent to FCPS's IEP. After the meeting, FCPS sent Parent procedural safeguards. This was not provided in advance of meeting.
- xvii. September 2, 2021: FCPS emailed parent draft of IEP developed during IEP meeting.
- xviii. September 6, 2021: Parent emailed FCPS, "Change the language to indicate that FCPS staff proposed and agreed to the items on Page 22. It stated that this was proposed by the IEP Team which is inaccurate as we, the parents, did not propose nor agree to the items. It also stated that ESY was deemed not necessary. This was incorrect as we agreed to table that discussion. We wanted language included as to why we rejected the IEP. FCPS did not respond and the IEP was never updated.
- xix. September 13, 2021: Parent contacted VDOE. VDOE advised parent that FCPS has to offer an inclusive preschool and VDOE reached out to FCPS. A meeting was scheduled for September 16, 2021. At the meeting with FCPS and VDOE representatives in attendance, Parent was offered 3 inclusive, private preschool options. Parent 3 was told that FCPS places teachers at these locations as long as they take in a certain amount of

FCPS students with an IEP. This is a “gentleman’s agreement” and is not official with FCPS. Parent was encouraged to reach out to the schools to see if student could gain access to any of these schools. FCPS’s representative, Ms. Forrest, provided the names of the schools in a later email. Ms. Forrest later clarified that PT and OT services would come to the school student attended. She further stated that Speech services would be delivered at the nearby elementary school. FCPS only staffs a resource teacher at the preschools. Parent reached out to VDOE’s rep, Ms. Meehling, to confirm her understanding of how OT/PT would work in the school. She stated that her understanding was that student would spend 70% of his time in an inclusive setting and was unsure about related services.

- xx. September 27, 2021: Parent emailed FCPS and asked when student would receive services, since none had been provided to date.
- xxi. September 28, 2021: FCPS emailed Parent and told her FCPS’s IEP had not been consented to and that Parent would have to partially agree to FCPS’s proposed IEP for student to receive services.
- xxii. September 30, 2021: Parent updated Forrest that Main Street CDC would not accept student because he was not potty trained.
- xxiii. October 11, 2021: Parent emailed meeting notes, including the option that FCPS had proposed: fully agreeing to IEP and receive services in a contained classroom; partial agreement so that related services can be delivered, placing student at ACCA inclusive preschool; or reject the FCPS IEP completely and have services delivered according to the Moore County IEP. Parent 3 later advised that she toured ACCA and that they might not be able to meet student’s needs and wanted to review his IEP.
- xxiv. October 12, 2021: Parent emailed VDOE about progress with FCPS. Fieldman informed Parent that when FCPS discussed the three inclusive schools with her, FCPS had no intention of changing student’s IEP to reflect an inclusive preschool. Parent advised her that the three schools proposed were not able to accept student. Parent mentioned in hindsight that she hadn’t received a PWN from FCPS proposing the three schools in the first place.
- xxv. October 15, 2021: Parent emailed FCPS that ACAA could not accommodate student and she partially consented to FCPS’s IEP and consented to related service (OT, PT & speech), since student had not received any services from FCPS to date. She noted that the IEP didn’t include a proposal for an inclusive preschool program. FCPS issued a letter of agreement that it would deliver services at student’s private, inclusive preschool but . FCPS continued to refuse inclusive preschool setting.
- xxvi. Late March 2022, Parent advised FCPS that it would be moving again, leaving in June.
- xxvii.

V. Transportation

a. FCPS provided VDOE false information about its history of noncompliance regarding refusing the related service of transportation.

i. 2018: In October 2018, high schools throughout FCPS sent their usual emails to families subscribed to their newsletters. Readers who made their way through all the information listed, found a small notice about the PSAT and students with accommodations being required to provide their own transportation or waive their accommodations.

ii. As one example, October 1st and October 6th of 2018, South County High School (SCHS) twice included the following message in their email newsletter:

“Students receiving College Board Approved Accommodations will finish after the dismissal and will need to ensure their own transportation home. If students wish to waive their accommodations, a letter signed by parent/guardian must be received by Friday September 28.”

See emails.

iii. October 10, 2018, SCHS IEP case manager Sean McCormally, continued this noncompliant practice when he contacted me to arrange transportation for a student:

Good morning/afternoon Callie, I wanted to confirm the pick-up time for [STUDENT] this afternoon, after [STUDENT] has completed the first two sections of the PSAT. I happened to be [STUDENT’S] room proctor and I wanted to keep you updated on [STUDENT’S] estimated time of completion. Currently, [STUDENT] should be finishing between 1:15 and 1:30pm. I’ll keep you updated if [STUDENT] finishes early. Let me know if you have any questions 😊

See emails.

iv. In 2019, FCPS again required students to arrange their own transportation, so on October 15, 2019, I filed a complaint with OCR, alleging FCPS had a practice of denying the related service of transportation to students who have IEPs or 504s, who weren’t finishing the PSAT testing at the same time as their peers, and who were being required to secure their own transportation home or waive their accommodations. OCR didn’t advise me if it would open or dismiss the complaint.

- v. The noncompliance continued in 2020. However, due to COVID, things played out differently. At the time, the majority of FCPS students were working from home, attending school virtually, so FCPS sent email surveys, in an effort to find out how many students needed transportation to and from their schools so they could take the PSAT. Yet, FCPS still chose to refuse transportation to students who wouldn't finish testing at the same time as the general education population. In the case of one FCPS family with two students taking the PSAT, FCPS provided transportation for one but refused it for the other. The school administrator specifically stated:

I wanted to reach out to you regarding your response to the transportation options on the PSAT FCPS Intent to Participate form. You noted that both [STUDENT 1] and [STUDENT 2] would require transportation to and from school on October 29. FCPS can provide morning transportation to both [STUDENT 1] and [STUDENT 2], but only [STUDENT 1] will be able to take FCPS transportation home. Due to the length of [STUDENT 2's] test based on [STUDENT 2's] accommodations, FCPS cannot run buses for this unique schedule. [STUDENT 2] will be permitted to bring [STUDENT 2's] cell phone so that [STUDENT 2] can reach out to you to arrange transportation at the end of [STUDENT 2's] test.

w. April 12, 2021, OCR opened an investigation in response to my October 15, 2019, complaint. The letter OCR issued to me and the letter OCR issued to then-Superintendent Scott Brabrand, arrived on the heels of OCR's January 12, 2021, letter to Scott Brabrand, announcing that it was opening an investigation into FCPS's COVID-era practices.

The next day, April 13, 2021, FCPS staff admitted fault and discussed resolution options via email. However, instead of using the email address for FCPS's then-504 head Kathy Murphy, who is referenced in the email, FCPS used an email address for a parent whose name is similar to Kathy's. The parent forwarded the email to me and I forwarded the email to OCR as proof of FCPS's admittance of noncompliance.

In the email, Dawn Schaefer, FCPS's current director of the office of special education procedural support specifically states [emphasis added]:

We received the attached complaint yesterday regarding transportation for students with disabilities and the PSAT from October 2019. Kathy has looked into it a bit, and spoke with the OCR attorney today. I also talked with Gary Morris, principal of South County. Unfortunately, the allegation in the complaint appears to be true.

I recall that we were doing a lot of work around PSATs last fall so I'd like to meet to discuss whether we should enter into what OCR is calling a "Rapid Resolution Process" (RRP), which

seems to be a new name for the old VRA/304 resolution process. We'll need to meet quickly so we can respond in a timely manner. Michelle, can Tina help schedule this meeting?

2022: By the end of the year, OCR released the findings from its investigation into FCPS's COVID-era noncompliance, but failed to release findings on the complaint based on FCPS's refusal to provide the related service of transportation.

June 14, 2023: Dawn Schaefer advised Virginia Department of Education (VDOE) that FCPS had denied allegations that it knew to be true to OCR. In FCPS's response to a May 23, 2023, Notice of Complaint issued by VDOE, Dawn Schaefer specifically states [emphasis added]:

"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."

Status of complaint: I provided Dawn Schaefer's 6.14.23 comments to Office for Civil Rights to include with the complaint. One of the lead attorneys is tracking down the status of the complaint.

This is another example of FCPS's practice of providing false statements in response to complaints filed against it.

December 14, 2022, FCPS ACSD meeting held.

Parent **REDACTED** addressed transportation of her son. Although her son is not preK, this provides another example of FCPS's failures in the area of the related service of transportation. **REDACTED** specifically addressed emergency evacuation, and FCPS's failures to address this denial of such a basic related service. She stated:

Spoke on emergency evacuation procedures for students with disabilities. One of her children is in a wheelchair, and had an escape sled to use for emergency evacuation before the COVID shutdown in March 2020. At the middle school transition they were told escape sleds were not allowed. She asks the committee to urge a policy on emergency procedures for students with disabilities. It shouldn't be on the parents to plan for and fight for their students' safe emergency evacuation.

Later, ACSD member Amanda Cambell posed a question about this topic during a conversation with Superintendent Michelle Reid:

Amanda Campbell: Asked Dr. Reid what experiences she had in prior divisions with policy and procedures for emergency evacuation. A: She heard this question at a Chantilly community

conversation and was surprised to find the current policy included emergency personnel recovering the students vs educators evacuating them. She needs to understand the reasoning behind this, if it is best practice, and conversations are in place.

A response was never provided. During the June 2023 ACSD meeting, School Board Member Laura Jane Cohen noted that this issue had never been addressed.

See 12.14..22 meeting minutes and <https://www.youtube.com/embed/OSICAvrhq70?feature=youtu.be> and See June minutes (not yet up on FCPS's site and videos)

May 10, 2023 ACSD Meeting

FCPS parents **REDACTED** stated **[emphasis added]**:

They are parents of separate FCPS preschool students who both also attend Easter Seals. Both families are no longer offered bus services to Easter Seals, which has been essential to getting their children the services they need. Not having bus services means that their students will not be able to attend both programs, which have been integral to the progress the children have made thus far.

See 5.10.23 minutes and <https://www.youtube.com/embed/703mQpeGrSY?feature=youtu.be>

In IEP and 504 meetings FCPS has held pursuant to its resolution agreement with OCR, FCPS staff have denied or not brought up reimbursement for the related service of transportation. Parents who are more aware of their rights have pushed back against denials and secured reimbursement. To date, FCPS continues to refuse reimbursement of the related service of transportation to Complainant.

VI. Honors/AAP/IB and Foreign Language

8VAC20-40-20 states:

"Appropriately differentiated curriculum and instruction" means curriculum and instruction adapted or modified to accommodate the accelerated learning aptitudes of identified students in their areas of strength. Such curriculum and instructional strategies provide accelerated and enrichment opportunities that recognize gifted students' needs for (i) advanced content and pacing of instruction; (ii) original research or production; (iii) problem finding and solving; (iv) higher level thinking that leads to the generation of products; and (v) a focus on issues, themes, and ideas within and across areas of study. Such curriculum and instruction are offered continuously and sequentially to support the achievement of student outcomes, and provide support necessary for these students to work at increasing levels of complexity that differ significantly from those of their age-level peers."

December 14, 2022, ACSD Meeting held.

During the Q&A session between ACSD members and Superintendent Michelle Reid, Members Elizabeth Zielinski posed a question and Reid admitted that there are inclusion problems across the county that surprised her, to include students with disabilities accessing advanced courses:

Elizabeth Zielinski: What have you learned about Fairfax County that we don't realize about ourselves? What surprises you that you can see as an outsider that we wouldn't see? A: She has worked in divisions that don't have the resources we do. She hears from the military families that they request our schools due to the array of services provided. She feels there is a track record of success and dedication to the work. She feels the inclusion data is a surprise. There are also opportunities regarding twice exceptional students, for example in these students accessing more advanced courses. She is surprised about the variability across the county, which sometimes can be a good thing. But perhaps we need "swim lanes" for the variability.

See 12.14..22 meeting minutes and <https://www.youtube.com/embed/OSICAvrhq70?feature=youtu.be>

FCPS does not provide curriculum and instruction that is modified to accommodate the learning of students with disabilities AND to accommodate the accelerated learning aptitudes of identified students in their areas of strength.

FCPS's January 21, 2020 AAP Overview points out "existing gaps in AAP Levels in K-8 AAP, with an underrepresentation of SWD and EL students:

SY 2017-18, 2% of EL students and 7% of SWDs participated in AAP Level IV Services; SY 2018-19, 2% of EL students and 6% of SWDs participated in AAP Level IV Services. The target for SY 2019-20 was 9% for EL and 12% for SWD, but there is no information verifying whether this target was met.

See FCPS AAP Overview

FCPS's 2020 AAP Staff Response presentation provides a "model for us of local norms for second grade screening pool". Although the graph provides norms based on race and ethnicity, it provides no norm for students who have disabilities.

See AAP Staff Responses

FCPS's 2020 AAP Staff Response presentation indicates that FCPS knows there is a lack of support for students who are both SWD and/or EL and/or gifted in at least one area.

Researchers state that FCPS should commit to providing all division personnel with professional development and place short-term priority on training administrators about research-based strategies for supporting advanced achievement and twice-exceptional students. They note that, "Without strong administrator support, it is difficult to envision continued progress toward FCPS' AAP equity goals."

See AAP Staff Responses

FCPS's 2023-30 Special Education Plan indicates that FCPS defines advanced courses such as honors/AAP/AP/IB as general education curriculum. This is clear in Action 1.2.9, on page 18 of its report, which states [**emphasis added**]:

Provide required professional development on co-teaching (e.g., co-planning, models, scheduling, expectations) to administrators who support students accessing the **general (i.e., grade level, advanced)** and adapted curriculum to foster increased instructional effectiveness. New Standard of Practice; AIR Recommendation 3b

FCPS's 2023-30 Special Education Plan states an immediate need to provide professional training for educators in advanced courses, for SWD. See Action 2.1.2:

Provide targeted professional development and resources to honors, advanced placement (AP), and International Baccalaureate (IB) teachers regarding supporting SWD in advanced courses; New Standard of Practice; New Resource

FCPS's Special Education Audit Final Report identified problems with addressing the needs of students who have disabilities and who seek to attend Honors, AAP programming, AP, and/or IB courses. The report specifically states:

2e learners. FCPS defines 2e learners, or twice-exceptional learners, as students who have the ability to think, reason, and problem-solve at very high levels who also have special education needs. The FCPS Twice-Exceptional (2e) Handbook notes the following:

FCPS believes that each student is entitled to an excellent education that meets his or her individual needs, and that partnerships among students, parents, educators, and the community are critical to student success. The district is committed to evidence-based identification processes, interventions, and instructional practices designed to meet the diverse

needs of 2e students. FCPS embraces a student-centered, strengths-based approach to educating all students. For 2e learners, the focus is on addressing the students' high abilities while supporting their unique learning needs. (p. 6)

However, comments from surveys, focus groups, and document analysis indicate that the programming and services in place for these students may not reflect the procedures and expectations outlined within the handbook. Parent comments noted that the quality of instructional programming and placements for 2e learners is a concern, particularly regarding the rigor of content and the ability for 2e learners to take classes that meet their needs. The following are some examples of parent comments:

- “We feel that we have had to fight with teachers and administrators to get our twiceexceptional student fair access to a challenging curriculum.”
- “Not enough being done for twice-exceptional students. The standards for AAP [advanced academic programs] are for neurotypical students. Atypical students, whose giftedness would manifest in slightly different ways, are not being given adequate opportunities to AAP.”
- “Twice exceptionality is not just ‘typical special-ed’ plus ‘typical honors course.’ Often these students can use their stronger abilities to scaffold their weaker ones, and the accommodations that help them may be different than those that help other students with the same eligibility category.”
- “The issue now for my twice-exceptional student is lack of access to honors classes. They’re insisting on keeping him in [a] team-taught class which they don’t offer at the honors level.”
- “2e kids and their parents are commonly told in IEP meetings that either they could take the regular class and have it be team taught or they could take the honors class without support.”

Staff comments from focus groups also point to concerns with access to and quality of programming and instruction for 2e learners, particularly at the middle and high school levels. Below we share examples that illustrate these concerns:

- “...they still need accommodations, even when they're in the advanced academic program. [I]f they have an IEP they still need these accommodations. It shouldn't prohibit them from being able to be successful in an environment where they can academically align with their peers. A lot of times it's a staffing issue, like trying to figure out schedules and how to get people into the level four classrooms for one kid. Because we don't have a ton of twice exceptional students, so it's hard resource wise to divvy it up.”
- “And I think moving on from just the elementary level, it's thinking about middle and high school honors, AP and IB classes. That the reality is you pick. Either, do you want to be in an AP class or do you want to get your SPED services, because they're not offering you both? And from an equity perspective, how are we getting away with that? I don't quite understand. I

think we're much better at the elementary level. There's just a fluidness. Whereas there's a rigidity to the period system at middle and high school, but that just feels a little wrong to me. And has for, it's been that way forever. Like it's in either or, and just feels like that's something that would need to change at the secondary level.”

- “I do think freshman year, if we have freshmen coming in that are in honors classes, the case manager really has to have those discussions with the parents and also the teachers, because sometimes they're like, the accommodations and things like that. But I also agree, going back to what I think was said earlier, the conversation when we're looking at doing an honors or an AP class, is them understanding that it's not like a team taught class, right. There is no other support in that class. You're kind of on your own. So that discussion has to be had. It changes their hours and things like that. So when we have a student go AP or honors, they're pretty strong. Like we feel that they're strong enough that they can do it without that additional support.”

- “I feel like every school in Fairfax is going to do stuff a little bit different. So I know high schools that have worked really hard to have students supported in honors, and IB, with IEP... They've worked to scaffold that. And then I know schools that are like, take no prisoner with their honors and AP classes. And so we are all little silos of practice.”

See: FCPS-Special-Education-Audit-Final-Report-September-2022

The case is even worse for students who have disabilities, and are English language learners, and are exceptional. FCPS’s Special Education Audit Final Report states:

ELs. ELs with disabilities represent another population of students with complex needs. On the staff survey, only 69.2% of staff agreed or strongly agreed that there are sufficient resources, interventions, and specialized programs at their school to meet the needs of ELs with disabilities (see Exhibit D15). To help contextualize this survey finding, staff comments during focus groups offered examples of specific concerns that impact programming and instruction for ELs with disabilities. To begin, in a key informant focus group, one staff member expressed concern with staff understanding of EL needs versus special education needs:

... [I]t gets...tricky when we start thinking about our English learners and kind of the connection between language, proficiency, and language development, and [the] team making that determination between...referring students for eligibility and making those determinations between that disability and language proficiency, and I think teams often struggle with that.

In other comments, staff members expressed concern with ESOL caseload size impacting service delivery for ELs with disabilities. For example, one staff member commented:

...at the elementary level, ESOL caseloads are just simply too high. So it's inequitable because a [special education] teacher might be servicing seven students, and an ESOL teacher might be

servicing several hundred students. And so that disparity makes it really hard for ESOL teachers to support students with disabilities, knowing they're already getting a lot of support via the special education route.

Another staff member shared this same perception:

ESOL is spread too thin and a kid probably [doesn't] get enough services in that area.

Staff also shared thoughts on attitudes and perceptions among staff that create a siloed/either or approach for ESOL and special education supports that impacts service provision. To illustrate this point, one staff member commented:

I also believe that there's this negative lingo in Fairfax County where people start to say, '[special education] trumps ESOL or ESOL trumps [special education] when your decision making.' And I think that we need to get away from that and really work together collaboratively to ensure that students who are ELs, who also receive services as a student with disability, do have access and opportunity to both types of services because they are different, and very much different in nature. And I think that a lot of times, SPED students get pulled and then it's happening simultaneously as ESOL groups are being pulled. And then, so that student then loses access to both services.

Similarly, another staff member reported: ...

[O]ne of the things I find challenging is that there's a level of respect, more for [special education] than for ESOL. And oftentimes the history has been to defer to the [special education] side of it for a dually identified student and not recognizing the linguistic needs of the student, and really not respecting and honoring the data and the research behind that in a way that is giving deference to the [special education] side.

In addition, a staff member commented about resource constraints impacting service delivery for dually identified students:

But then we also realized that our ESOL teachers want some of our [special education] kids in one of their elective classes, and we can't give up that period because of their schedules...So it ...is making it into more of a discussion. And we're not sure what is the right way. Do they go into any ESOL class because they need the support, or do they go into a [special education] class because they need that support[?]

See: FCPS-Special-Education-Audit-Final-Report-September-2022

5.14.19: A meeting was held with Student 1, Parent, Honors Geometry teacher Chris Walton (who VDOE found in noncompliance on multiple occasions for denial of FAPE and violations of FERPA), and AP Kaaren Lowder.

Although 2019 occurred beyond the one-year timeline for state complaints, since VDOE itself continues to pull in LOFs, DP hearings, and other info from well beyond one year in writing of its LOFs, I expect the ability to do the same.

During the meet Chris Walton stated that there is a difference in how students with disabilities are treated in honors classes. AP Kaaren Lowder did not correct her. Chris Walton specifically stated:

The other thing that you need to consider is that the your differences whether it is a ged ed class versus an honors class. In an honors class, the responsibility is always on the student first, to review any material missed whether he was sick, if he was on a field trip, doesn't matter what the cause the responsibility is first on the student to review the material.

Chris Walton ignores that responsibility doesn't change just because a student takes honors classes. If the student struggles to read and needs to speak with the teacher FIRST, before reviewing the material, it doesn't matter if the course is honors or remedial or AP or anything else. The accommodations remain the same.

8.14.19: An IEP meeting was held for Student 1.

During the IEP meeting, FCPS refused to provide Student 1 services in foreign language, even though Student 1 has identified deficits in both reading, writing, and comprehension.

FCPS staff stated a practice of out-right denying services for students in foreign language and ignoring data supporting need for services. Although this conversation took place in 2019, a) VDOE was previously made aware of this discriminatory practice and refused to take action and b) this practice continues today. The following is excerpted from the audio recording and indicates FCPS ignored data supporting need and instead made decisions based on electives that have nothing to do with foreign language:

Callie Oettinger, 1:21:46:

Are you going to give him services in Latin? Hours in Latin?

Angelina Prestipino, 1:21:51:

At this time Ms. Oettinger, I don't see any need for services in Latin. I'd be really interested to hear yours, but I'm not seeing- Again, services. It's not the content that-

Callie Oettinger, 1:22:01:

I understand that.

Angelina Prestipino, 1:22:02:

So the goals-

Callie Oettinger 1:22:03:

So the goals apply the goals apply

Mixed Voices, 1:22:03:

[inaudible]

Callie Oettinger, 1:22:06

Okay, I got it.

Angelina Prestipino, 1:22:08:

For [REDACTED], first of all, we don't have any data. He has been successful in every elective class he's taken since seventh grade that I've been a part of IEP meetings for [REDACTED]. He has never required specialized instruction in any elective regardless of the content areas. And so I'm not seeing the need at this time for any specialized instruction in an elective course, that is a general education elective.

Callie Oettinger, 1:22:31:

So he-

Angelina Prestipino, 1:22:32:

And he has never taken a world language for which we would have any data to support that he may or may not need services. However, as has been shared with you again throughout multiple iterations of combinations that are proposed in this IEP. And as Miss Jarrow confirmed for us, as did Ms Johnson and Ms Lowder, that collaboration is constant with teachers case manager will collaborate with all of [REDACTED] teachers, accommodations will be delivered to [REDACTED] regardless of the content area. That is my perspective that is my lens again.

Mixed Voices, 1:23:03:

IEP team members we would agree.

Callie Oettinger 1:23:05

So those goals are going to apply to Latin you're going to be collecting data points from his Latin class, too.

Angelina Prestipino, 1:23:12:

I'm not saying I'm not saying services to be provided at this time. I don't see a need for them.

Callie Oettinger, 1:23:17:

Okay. We know that he has issues with reading and writing, which he's going to have to do. His past electives have been guitar, which is not-

Jean Massie, 1:23:27:

That's a different kind of reading.

Callie Oettinger, 1:23:29:

That's a different kind of reading.

Jean Massie, 1:23:30:

You read music, though.

Callie Oettinger, 1:23:30:

Actually, he doesn't read music. [REDACTED] does not read music. [REDACTED] memor- [REDACTED] Somebody plays something for [REDACTED] and [REDACTED] memorizes it. He can still not read music just so that you know. He does not read-

Angelina Prestipino, 1:23:34:

And so again-

Callie Oettinger, 1:23:42:

I'm just saying if you're gonna bring that up to me, but you know how he gets- But- I am I'm talking. I'm talking. Let me finish talking.

Angelina Prestipino, 1:23:48:

Ms. Oettinger

Callie Oettinger, 1:23:49:

And the way that he's been able to get around guitar is he gets a video and he watches a video and he actually find it until he can see how see how somebody is playing somebody and He in it's been brought up his guitar- I'm talking. And that's how he learned it. So when he has actually had, so when he is asked, I'm trying to get parental input. So when he has struggles, he goes to a video and that's what he's had to do on his own for all of his electives. He's had to do that on his own. So but for Latin, we know that he's going to have reading and writing which are struggles, but you're not going to do it for new services. No, no Latin services. No foreign language services? Allright.

Angelina Prestipino, 1:23:27

As a member of the IEP team-

Callie Oettinger, 1:24:28:

I don't agree with that.

Angelina Prestipino, 1:24:30:

Service.

Callie Oettinger, 1:24:31:
Okay. No Service hours.

Jean Massie, 1:24:33
Certainly accommodations.

Angelina Prestipino, 1:24:36:
Accommodations will be applied.

Callie Oettinger, 1:24:38:
Well, I'm just... okay. Well, I look forward to seeing the data points that you collect from his Latin class for his goals.

Angelina Prestipino, 1:24:46:
I'm saying that I don't see that there are services we'll-

Callie Oettinger, 1:24:49:
So you're not, so you won't, so you won't, nothing.

Angelina Prestipino, 1:24:56:
I'm not seeing the connection between services in the Latin class. related to the goals that we have proposed for [REDACTED] so if other team members need to share their thoughts. It can't just be mine

Kaaren Lowder, 1:25:07:
he will get accommodations as as according to his IEP, I have not seen- Matt has done well at

Callie Oettinger, 1:25:15

[REDACTED]

Kaaren Lowder, 1:25:17:
[REDACTED] is done well, in all across the board electives that he's taken and, um, I say get [inaudible] some data and we'll certainly consider it

Jean Massie, 1:25:17
I agree. So now we go to the clarifying hours.

VII. FCPS Day School Denial of FAPE

In its NOC, VDOE left out quotes from the submitted complaint and characterized them as mainly administrative comments. VDOE can not dismiss portions of a complaint and

characterize them in a certain light before investigating them. In addition, VDOE, at one point, portrays this as an issue related to a school, rather than SCHOOLS (plural).

April 12, 2023, ACSD meeting held.

Survey of day school staff and administrators was presented. This survey has already been provided to VDOE.

ACSD members were so disturbed that they passed a motion for emergency action to be taken to address the emergency situation at the schools - Burke School in particular.

At the Advisory Committee for Students with Disabilities' April 12, 2023 meeting, the Committee unanimously passed the motion below. For more information about the public day school study and its results, please contact survey sponsor Dr. Michelle Boyd. Thank you and we look forward to hearing back on this important subject.

The ACSD has a set of recommendations with brief report/rationale to submit to you for transmission to the school board pursuant to the ACSD's mandate under 8VAC20-81-230.D(2)(C). The function of a local advisory committee includes a duty to "submit periodic reports and recommendations regarding the education of children with disabilities to the division superintendent for transmission to the local school board."

The following recommendations and report for the School Board regards emergency action necessary at the Burke School. We recommend the School Board direct the Department of Special Services to:

- Immediately consult with the administration of the Burke School regarding the safety the staff experiences and their other most salient concerns. The collaboration with Burke School administrators must end with a prioritized list of actions to address and a timeline for implementation of these actions.
- Concurrently, the School Board must estimate the required budget for these actions and determine what is necessary to reallocate funds and ensure the budget is available.
- We recommend the school board request data on workman's compensation claims and injury reports involving staff and students at the Burke School for the 2022-2023 school year, as well as the 2018-2019, 2020-2021, and 2021-2022 school years for comparison.
- We ask the School Board to schedule a work session to include a presentation/discussion of the public day school survey data (all 5 schools) with survey sponsor Dr. Boyd, an ACSD representative, and administrators of the five public day schools.

This recommendation results from the School Board Charge Subcommittee's survey of public day school staff, which was sponsored by Dr Boyd and approved by the FCPS Office of Research and Strategic Improvement (ORSI). In response to Question #15, "How satisfied are you in your school's ability to keep you safe?" 78% of the 32 staff respondents answered "Very Dissatisfied", and NONE answered either "Very" or "Somewhat Satisfied." Similarly, 50% of Burke School staff chose "Very Dissatisfied" in response to the school's ability to keep students safe. The data also records overwhelming dissatisfaction recorded by Burke School staff in regards to their compensation, work/life balance, and overall job satisfaction. Finally, thirty staff members entered long answers to describe the extent of staff injuries, understaffing, overwork, feelings of despair; and feelings of ineffectiveness in their academic and behavioral programming due to lack of staff, substitutes, and other resources.

See last two pages of April minutes and

<https://www.youtube.com/embed/pOdE0BWUPhg?feature=youtu.be>

3. May 10, 2023: ACSD meeting held.

During her presentation, School Board Member Laura Jane Cohen stated:

The level of urgency for staffing at Key, Kilmer and Burke school has been transferred to Dr. Reid, and she herself had a conversation with Dr. Reid about this last Friday. Strategic supports are being developed for these schools.

See May meeting minutes and

<https://www.youtube.com/embed/703mQpeGrSY?feature=youtu.be>

Michael Bloom provided the department of special services update and addressed the day school emergency situation:

Burke School - Immediate actions have been taken to support them through the end of this school year. They have allocated two full-time permanent behavior intervention teachers. These two additional teachers are based there and stay exclusively at the Burke School through the end of the year. They also allocated 1.4 curriculum resource teachers to provide job-embedded support in the classrooms. These teachers provide instructional support as well, directly engaging with students. This should free up administrators to be administrators vs being the behavioral support in the classroom. The Behavior Intervention Services team is also working with the Burke School to develop short and long term goals to plan for SEL supports, instructional, and professional development. Also embedded in the Special Education Enhancement Plan (SEEP) are a number of things related to looking into the public day sites and their overall frameworks and how to staff them.

See May meeting minutes and

<https://www.youtube.com/embed/703mQpeGrSY?feature=youtu.be>

Presentation of report from the School Board Charge Subcommittee: Recruiting and Retaining Ready and Qualified Staff for FCPS's Public Day Schools i. Ally Baldassari moved for the ACSD to vote on transmitting the report to the school board through the Superintendent. This report was sent to ACSD members the previous week. ii. Amanda Campbell asked a clarifying question, and Carolyn Haydon thanked the subcommittee for gathering the information and uncovering a situation, especially at the Burke School, that was dangerous.

See May meeting minutes and

<https://www.youtube.com/embed/703mQpeGrSY?feature=youtu.be>