

Advocating 4 Kids Inc

5900 East Virginia Beach Blvd *JANAF building 6th Floor* Suite 602* Norfolk VA 23502 *adv4kids@gmail.com* 757-306-1942*

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VIA ELECTRONIC MAIL: patricia.haymes@doe.virginia.gov
Pat Haymes Director of the Office of Dispute and Resolution
Office of Dispute Resolution and Administrative Service
Virginia Department of Education
P.O. Box 2120
Richmond, VA 23218

VIA ELECTRONIC MAIL: Aaron.Spence@vbschools.com
Dr. Spence- Superintendent
2512 George Mason
Virginia Beach, VA 23456

RE: Citizen systemic state complaint against Virginia Beach City Public Schools Special Education Department

Dear Educational Leader:

Please accept this citizen systemic state complaint against Virginia Beach City Public Schools district (LEA) on behalf of special education students and parents for district-wide violations of both federal and state laws, and regulations that govern children with disabilities.

We assert that the State Education Agency (SEA) is required to resolve any complaint that meets the requirements of §300.662, including a complaint alleging that a public agency *has failed to provide a FAPE to a child with a disability*. Thus, the SEA would be required to follow the State complaint procedures outlined in §300.661 as it would any other case where a violation of Part B is alleged.

Under the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1400 *et seq.* (IDEA), all students with disabilities are entitled to a free and appropriate public education (FAPE). Virginia has enacted legislation and regulations with the intent to ensure conformity with IDEA and its implementing regulations. Va. Code Ann. §§ 22.1-7, 22.1-213 *et seq.*; 8 Va. Admin. Code § 20-81-10 *et seq.*

As set forth below, the LEA has engaged and continues to engage in systemic violations of IDEA and Virginia's implementing regulations by denying a FAPE to many students.

The LEA has engaged in an ongoing and systemic pattern of violating the substantive rights of the Complainants, as well as of similarly situated students with disabilities, under IDEA and Virginia's implementing regulations. We request that the VDOE conduct site visits, parent interviews and hold public forums in order to thoroughly address the systemic concern. These violations include:

1. **8VAC20-81-50 Child Find:** The LEA has failed to appropriately identify, locate, and evaluate students who need special education services and fails to identify all suspected disabilities.
2. **8VAC20-81-120 Children Who Transfer:** The LEA has failed to ensure that a child has available special education and related services, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous LEA, until the new local educational agency either evaluates the child or presents an IEP that adequately addresses the child's needs.
3. **8VAC20-81-110 Individualized Education Plan:** The LEA has failed to develop IEPs that would include goals tied to the Present Level of Performance and Functioning; develop IEP goals that are not ambitious; and fails to provide appropriate transition plans for students starting at age 14.
4. **8VAC20-81-210. Due process hearing: (34 CFR 300.504, 34 CFR 300.506, 34 CFR 300.507 and 34 CFR 300.511):** This LEA has failed to provide documents and exhibits necessary for the hearing within required timelines.
5. **8VAC20-81-100 Free Appropriate Public Education N. Disability harassment.** The LEA has failed to adequately investigate reported acts of bullying, failed to provide reports to parents, and failed to protect students with disabilities from harm due to bullying or disability harassment.

1. Allegation One: 8VAC20-81-50 Child Find:

The LEA has an affirmative duty to identify, locate, and evaluate children in need of special education services.

IDEA and Virginia's regulations require the LEA to "maintain an active and continuing child find program designed to identify, locate, and evaluate those children . . . who are in need of special education and related services." 8 Va. Admin. Code § 20-81-50(A). This includes

children who “are in need of special education, even though they are advancing from grade to grade.” *Id.*

The Child Find duty “functions as one of the most important elements in the pre-determination stage [of eligibility for special education services.]” *Jamie S. v. Milwaukee Pub. Sch.*, 519 F. Supp. 2d 870, 882 (E.D.Wis. 2007).⁶ ***“If a child is not found, that child will not receive any special education.”*** *Id.* (emphasis added).

Below we have provided three samplings of how this LEA fails to meet its Child Find mandates. We assert that these three students, and other similarly situated students with disabilities, have been denied FAPE due to this LEA's failures.

Student One

Student One is a [age redacted] Black Male student attending Brookwood Elementary school. The start of the 2017- 2018 school year he was enrolled and attended the full day kindergarten program. Due to Student One's struggles the end of the previous school year in the Pre- K program, Parent requested that Student One be screened for services under IDEA. Even though the LEA knew Student One was struggling at school they failed to evaluate as required under the child find requirements for special educational services

Facts of the Case:

1. At the 9/21/2017 Special Education Committee meeting the LEA failed to appropriately identify and evaluate this student for all suspected disabilities. Specifically, the LEA stated:
"VBCPS does not suspect a disability under the Individual with Disabilities Education Act (IDEA) and therefore refuses to refer Student One for a comprehensive evaluation."
2. On 9/28/2017 the LEA documented on a Student Response Team report the following:
“The area of concern for Student One is behavior. Student One is struggling with the structure of the classroom. Student One is observed to run around the classroom and from the classroom. Even when Student One is in the office, he will run through the office and try to run outside the office. This is a safety concern for Student One. Student One often throws things, hits people and screams within the classroom setting. He was unable to transfer the strategies independently. He often separated himself from whole and small group activities. He has mentioned that the noise bothers him within the classroom. Student One always seems hungry and will often put inanimate objects in his mouth.”
3. The LEA suspended this student for two days on September 28th and 29th for being disruptive to the educational process. Specifically, Student One was throwing items,

running out of the classroom, hit the psychologist with his shoe, hitting other students, punched the counselor, and hit the Assistant Principal.

4. The LEA suspended this student a second time for four days, from Tuesday, October 3, 2017, Wednesday, October 4, 2017, Thursday, October 5, 2017 and Friday, October 6, 2017 for disruption of the educational process. Student One's behaviors included running around the classroom, throwing materials, grabbed scissors then climbed on top of furniture, attempted to run out of the classroom, intended to run out the front door once in the hallway, and he hit, bit, and kicked staff members.
5. Due the escalating behaviors and amount of days suspended the parent feared that the LEA would expel and/or have police involvement, the Mother did not return Student One to school and hired an advocate.
6. With the support of the advocacy services the LEA agreed to conduct full evaluations under Section 504 (something that the Special Education Committee refused to do) and found the student eligible for accommodations under Section 504.
7. The student was allowed to return to the full day program but only for a *half a day* where his peers were allowed to attend a full day program.
8. After the evaluations were completed under Section 504, the LEA 504 members decided the student needed services under IDEA and referred the parent back to a SEC meeting. In February 15, 2018 student was found eligible under IDEA.

Student Two

Student Two is [age redacted] Black Male student who currently attends 10th grade at Ocean Lakes High School. Student Two was found eligible for Special education services in December of 2013 by Charlottesville Public Schools. He was identified with ADHD and was serviced under OHI. He has been served by Burley Middle School and then Virginia Beach City Public Schools. Once enrolled in this LEA for 2013-2014 school year, this student only received services for his disability of ADHD though his educational record showed he was not performing on grade level.

Facts of the Case:

1. The student is receiving services for ADHD only.
2. The LEA never conducted any evaluations on this student to identify all this student disabilities even though this student never passed an SOL, received D's and E's in all course work and was not producing grade level work.
3. This student is an [age redacted] high school student whose current reading level is 3rd

grade and is performing below grade level in Math.

4. The LEA never evaluated that student to identify other disabilities that are impacting his ability to read and produce grade level academics until after the parent obtained the services of an advocate in 2018.

Student Three

Student Three is an [age redacted] Caucasian Male 6th grade student who attends Corporate Landing Middle School. Student Three receives special educational services for the diagnosis of Mood Disorder, ADHD, Nocturnal Seizures, and Sensory Processing Disorder. The LEA never evaluated Student Three, and relied on evaluations completed in the 6th grade year by Dr. Schofield at CHKD.

Facts of the Case:

1. At no point did the LEA conduct any evaluations or assessments to ensure all suspected disabilities were identified and proper services provided.
2. The LEA refused the Parents numerous requests for an assessment to address behaviors that Student Three was being suspended for but denied those requests.
3. The Student continued to receive punishment for engaging in behaviors associated with his disabilities and instead of honoring its obligation under Child Find the LEA offered the student a program called Choices.

The LEA overlooked clear signs of disability and negligently failed to evaluate these students and other similarly situated students with disabilities in need of special education services. “[T]he ‘child find’ obligation is triggered where the state has *reason to suspect* that the child may have a disability and that special education services may be necessary to address that disability.” *Sch. Bd. of the City of Norfolk v. Brown*, 769 F. Supp. 2d 928, 942 (E.D. Va. 2010) (citing *Dept. of Educ., State of Haw. v. Can Rae S.*, 158 F. Supp. 2d 1190, 1194 (D. Haw. 2001)).

Instead of identifying, locating, and evaluating students in need of special education services, VBCPS repeatedly overlooks clear signs of disability, particularly when students demonstrate a pattern of behavior that impedes their learning and the learning of others.

2. Allegation Two: 8VAC20-81-120 Children Who Transfer:

The LEA has failed to honor its state and federal obligations under all the provisions of 8VAC20-81-120 and instead intentionally misinformed and coerced parents into signing IEP’s that do not provide comparable services. This LEA regularly refused to implement, accept, or provide comparable services on out of state and instate IEPs for children who transfer. This is especially true if the transfer IEP has one-on-one services or direct aide support to the student.

Student Four

Student Four is a [age redacted] Caucasian Male student in the 5th grade at Red Mill Elementary School. Student Four was first found eligible for services by this LEA in 2009 in the Early Intervention program for speech. The family moved to Tenn. in 2011, to Va. in 2013, and then to Newton Public schools in Mass. in 2016

While in Mass., the student received special education services for math and reading. He also received pull out services in to the special education classroom, and one-to-one aide in general settings.

This LEA refused to accept the out of state IEP, failed to provide comparable services and failed to evaluate the students as mandated under 8VAC20-81-120

Facts of the Case:

1. Student Four has a disability and has been receiving special education services since early intervention.
2. The family reached out to the Red Mill Elementary school in July 2017 to prepare for a smooth transition back into the district.
3. The Parents attended an IEP meeting on 8/25/2017 with intentions of obtaining an IEP that was comparable to the out of state IEP.
4. The PWN for this meeting states: “*VBCPS refused to implement the out of state IEP.*” It also stated that: “*the IEP is not able to be implemented as written due to shared Aide services*”.

We assert this reason does not meet the requirements under the regulations and that the LEA failed to offer comparable or relevant services for this student.

5. The LEA failed to evaluate the student before rejecting services documented on the out of state IEP.
6. The LEA failed to collect any data on the students' abilities before rejecting and refusing the services on the out of state IEP.
7. This LEA made a pre-determination regarding the refusal of services documented on the out of state IEP based on the Aides services documented on the out of state IEP.

The provisions of 8 VAC 20-81-120 A.2 ensure that children with disabilities who transfer from school divisions located in Virginia or elsewhere are provided a FAPE while the new school division works to secure information from the previous school division. These requirements protect the child’s FAPE entitlement by ensuring that the right to services is not interrupted. The requirements also take into consideration the fact that school divisions may organize and implement their approaches to services in ways that meet children’s needs differently, although as effectively, and that other states may have requirements that differ in some respects from those in Virginia.

The Office of Special Education Programs (“OSEP”) has also opined that the requirement to provide “comparable services” includes a duty to provide “temporary goals aligned with the annual goals in the student’s prior IEP.” Letter to Finch, 56 IDELR 174 (OSEP Aug. 5, 2010)

In Prince George’s County Pub. Schs. 7 ECLPR 62 (Md. SEA June 29, 2009), the State found that the District violated the student’s IEP by providing less speech-language services than were required by a transfer student’s existing IEP. The Student transferred into the District in December 2008. From the time of the transfer until May 2009, student received “some speech/language therapy services,” but “did not receive the amount required by the IEP” that was in place at the time of the transfer. The District was required to provide the student with compensatory services.

We assert that this LEA failed to honor its obligations for this student and other similarly situated students with disabilities under 8VAC20-81-120

3. Allegation 8VAC20-81-110 Individualized Education Plan: VBCPS has failed to develop IEPs to provide meaningful educational benefits to students with disabilities who need special education services, to address behavioral, social and emotional areas, thus depriving them of a free and appropriate public education (FAPE).

Student Five

Student Five is a [age redacted] Caucasian student who attended Three Oaks Elementary School (TOES) for the 2017-2018 school year. Student Five was initially found eligible by this LEA on 2/9/2014 for the disability of Autism and a “re-eligibility” was done on 2/17/17 however the LEA failed to conduct any additional testing to identify if the student’s academic, social, emotional or behavioral needs had changed.

Facts of the case:

1. Student Five is a student who currently receives special education service for his disability of Autism and is currently in Kindergarten at TOES.
2. Student Five has struggled with meeting the LEA’s expectations related to behaviors. The 2/17/2017 IEP documents the following:
 - a. Vineland score of 76 in the social domain which is a delayed score;
 - b. Under areas of need the team stated that student is unable to attend, is very distracted, does not follow directions, screams, and will run.
3. The LEA failed to conduct an FBA to identify cause of behaviors, they failed to produce a data driven behavior support or intervention plan, they failed to consider or discuss the need for related services such as O.T., (to address sensory needs), individual one-on-one Counseling services (to address social needs) and Psychological Services (to address screaming and elopement issues)

4. Student Five continued to struggle with behaviors for the rest of the 2017 year.
5. At the 2/7/2018 IEP meeting (*a full year later*) the LEA reported trivial to no progress on Student Five's social, emotional, and behavioral needs.
The 2/7/2018 IEP states:
 - a. Student Five screams when told no which is disruptive to instruction;
 - b. Student Five does not follow directions; and
 - c. Student Five throws things when frustrated.
6. On 2/20/18 the Mother was called at 10:35 AM from the LEA informing her Student Five was having a bad day and she needed to come to the school and "pick him up."
7. The Mother was escorted to Student Five's classroom and once in the classroom the Mother witnessed Ms. Sidone, the Principal, in the doorway of the bathroom using her body to hold the door open and the Principal said something towards the inside of the bathroom. The Mother witnessed these actions causing her son to have a meltdown (crying and screaming inside the bathroom). At NO point did the Mother see Student Five's teacher or the Principal using any other of supports or interventions documented on the IEP used to deescalate the situation.
8. "The Principal announced to the mother: *"This is what we are dealing with!"*
9. The Mother witnessed whenever Student Five would calm down, the Principal would make a statement to him such as, *"you made bad choices today"* or *"you can't come to school tomorrow."* No where on his IEP does it say that the student is be **shamed** during a behavioral crisis or meltdown.
10. On 2/20/2018, the Parents received a letter from the Principal at TOES informing them that Student Five was being given an out of school suspension for "Non-Compliance with Administration and Teacher and for Disruptions of the Educational Process."
11. The Parents feared for their son's safety based on what the Mother witnessed and has not sent the student back to school this year.

Student Six

Student Six is a [age redacted] Black Male student who attends Thalia Elementary School (TES). This student has weakness in the domains of social communication, all areas of academics, and in social/emotional/behavior skills and is receiving special education services for Developmental Delays. This LEA removed this student from full day educational services to half day educational services due to behaviors related to his delays. The LEA failed to provide appropriate supports, aides and related services to allow the student to receive a FAPE. Only after the LEA placed the student on half days and the parents hired an advocate did the LEA

conduct a Functional Behavior Assessment (May 2018) by a BCBA (Board Certified Behavior Analyst)

Facts of the Case:

1. Student Six is a student currently attending Thalia Elementary School (TES).
2. TES offers a Full Day Kindergarten class and Student Six was allowed to participate in that program until February 2018.
3. In February 2018 this LEA reduced Student Six's class to half day but failed to provide supports, aides, and related services to support behaviors related to his developmental delays in the domains of emotional and social before reducing his instructional day. The LEA failed to share with the parents or all the parent to have access to any and all data to support this termination of services.
4. The LEA documented on his 11/3/2017 IEP that the student jumps around in the class, stands on chairs; invades the personal space of peers; and throws himself on the floor. However, no FBA had been conducted nor had an effective BIP been implemented.
5. The student missed instruction due to the LEA's failure to develop and implement an IEP to address all of his needs.
6. In January of 2018, a new Teacher was assigned to the class at which time the LEA called the parents almost weekly for someone to pick him from school. This was occurring after the student was already only in school a half day.
7. Due to the numerous calls from the school to pick up his son, the father lost his job from missing so much time from work. This caused an incredible financial hardship on the family.
8. The new teacher sent the parents a Video she recorded on her personal phone of Student Six having a meltdown. There is no footage of any adult implementing the services and interventions documented in the IEP.
9. This Teacher failed to follow laws regarding destroying student records when she reported to the parents that she deleted the video of her son's behavior from her phone. (I still have copy and can provide if requested)
10. This LEA failed acknowledge or allow the parents and their representative access to the following records. This request was made in writing on 4/13/2018. Some of the records requested include:

Any notes, case notes, meeting minutes, logs, memory books by teacher, Principal, Assistant Principal, counselors, psychologists, emails, faxes or other electronic transfers that concern the “student” or his parents regarding any matter related to the "student". This includes any internal emails and regarding either the "student" or parent. This includes communication sent by or sent to; teachers, Para-Professionals, Principal, Assistant Principal, behavior support professionals, related services personnel, administrative staff, school or district administration, special education department, transportation employees or any persons employed by or contracted with the district at any time.

(Please see Exhibits under student’s name for list of additional records requested)

11. The 11/3/2017 IEP fails to list baselines for speech and language services which makes it impossible to accurately or correctly measure the student’s progress toward achieving the goal.

Regulations Governing Special Education Programs for Children with Disabilities in Virginia; see also 20 U.S.C. § 1400. A FAPE based on a child’s unique needs must be provided to all children with disabilities, including services that address all of the child’s identified special education and related services needs. 8 Va. Admin. Code § 20-81-100(A).

This LEA deprived the above students and other similarly situated students with disabilities experiencing emotional and behavioral challenges associated with their disabilities of educational services, resulting in a failure to provide a FAPE.

Instead of providing educational services, supports and related services designed to meet the student’s individual needs and provide educational benefit, this LEA allows the needs to go unmet and then put the student out of school by calling the parents to pick them up or discipline the disability causing out of school suspensions.

The LEA develops IEP goals that can’t be accurately measured because they failed to identify and document baselines for skills. [34 CFR §300.320(a)(3)(i)]. This LEA infringes on and deprives parents the opportunities to be an equal at IEP meetings when they failed to honor 8VAC20-81-170. Procedural safeguards. G. Confidentiality of information; (1. Access rights. (34 CFR 300.613)) (a).

Student Seven

Student Seven is a [age redacted] Caucasian Female attending Brandon Middle School in the 2017-2018 school year. This student has deficits in the areas of speech and language, social skills, specific learning disability, and sensory deficits. This LEA failed to develop a Transition plan that meets the regulatory requirements.

Facts of the Case:

1. The plan to transition from secondary school on the IEP dated 5/5/2017, required when a student will be 14 years or older during the IEP year, was inadequate and failed to address areas of concern that would impede Student Seven's transition to college.
2. Parents requested the transition plan be updated to reflect needs.
3. IEP dated 5/9/2018 fails to include additional goals to support the student's transitional goals.
4. The LEA does not identify any outside agency that would be able to assist Student Seven in the transition, nor did they explain or discuss the interagency release form with the parent or student.
5. Parents have not been provided with information on any community resources that may be appropriate for Student Seven to receive transition services.

Student Eight

Student Eight is a [age redacted] Caucasian Male student who attends Tallwood High School. He was only found eligible for special education services in March 2017 after the parents filed for Due Process against this district. The Parents were unable to get the LEA to develop an IEP that met all of Student Eight's needs.

Facts of the Case:

1. Student Eight is a student who is diagnosed with Autism and ADHD and currently is a Sophomore.
2. Student Eight has weaknesses in area of attending to auditory and visual information when presented together, social awkwardness with limited social skills and is both inattentive and hyperactive. He also displays speech and language delays and weaknesses.
3. Since being found eligible this LEA has not proposed an IEP that provides for a FAPE and the LEA engaged in harassing behaviors such as having the LEA's attorney attend and participate in IEP meetings even though the Parents are not represented.
4. The parents filed an OCR complaint against this district for violations under Section 504 and OCR is investigating the Parents complaint.
5. The level of retaliation and harassment behaviors by the LEA caused the parents to sign the IEP under duress on 3/19/2018.
6. The IEP does not adequately address the following areas of need: Dyspraxia, difficulties with motor skills, behavior issues, coordination issues and executive functioning needs.

7. The Transition plan does not indicate any outside agency that has been identified to provide services for post secondary education. Nor has anyone at the LEA discussed this with the Parent and student.
8. The Parents were never provided information on outside agencies that may be able to assist in transition.
9. The IEP fails to develop IEP goals that would support the Educational outcomes in the transition plan.

Virginia's special education regulations are based on the legal requirement that special education and related services are to be provided and implemented to meet the unique needs of children with disabilities, provide educational opportunity in the general curriculum to the maximum extent possible in accordance with each child's IEP, and prepare children with disabilities for opportunities in postsecondary education, employment, and independent living.

Regulations Governing Special Education Programs for Children with Disabilities in Virginia; *see also* 20 U.S.C. § 1400. A FAPE based on a child's unique needs must be provided to all children with disabilities, including services that address all of the child's identified special education and related services needs. 8 Va. Admin. Code § 20-81-100(A).

In the recent case of *Andrew v. Douglas County*, Justice Roberts noted that:

"[T]he broad purpose of the IDEA, an 'ambitious' piece of legislation enacted 'in response to Congress' perception that a majority of handicapped children in the United States 'were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to drop out.' . . . A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act." (Page 11)

The Court also set a standard when opining a "*child progressing smoothly through the regular curriculum. However, if the child is not fully included, then the school officials must look to the child's unique needs to develop an IEP which is "pursuing academic and functional advancement."*

Virginia Beach City Public Schools regularly deprives students with disabilities with related services, supplementary aides and ambitious goals that full address their unique needs, resulting in a failure to provide a FAPE.

Allegation 4 8VAC20-81-210.

Due process hearing: Responsibilities of the local educational agency. The local educational agency shall: (34 CFR 300.504, 34 CFR 300.506, 34 CFR 300.507 and 34 CFR 300.511):
Provide documents and exhibits necessary for the hearing within required timelines.

Student Nine

Student Nine is a [age redacted] Hispanic Male student identified as a student with Autism. His home school is Ocean Lakes High School but currently is not attending school or receiving any of his special educational services.

The family filed due process against this LEA to address denial of a FAPE the LEA failed provide exhibits within required timeline, the H.O. refuses to address this issue.

Facts of the Case:

1. Student Nine is a student qualified for special educational in this LEA for the disability of Autism.
2. An amended due process complaint was submitted and accepted by the Hearing Officer.
3. A Prehearing Conference was held on March 20, 2018 and a third Prehearing Report and Order was received.
4. The Prehearing Report required the following:
" No later than April 9, 2018, at 5:00 p.m., five (5) business days prior to the commencement of this case, the parties shall exchange a list of anticipated witnesses to be called and the exhibits/documents (including evaluations) intended to be introduced at the hearing"
5. Additional directives were that: *"Each party will submit their exhibits to the other party in a loose-leaf binder(s), on or before April 9, 2018, at 5:00 p.m."*
6. The LEA failed to provide the exhibits in the loose- leaf binders 5 business days before the hearing.
7. Because the Hearing Officer was biased against this family, and their representatives, the H.O., wrongfully allowed the LEA to provide the binders containing the LEA exhibits to the Parents by 4/11/18 which was only three business day before the hearing date of the April 16th.
8. The LEA again ignored this Order after receiving extended days beyond the Parents to provide the exhibit books. The Parents did not receive the exhibit books until April 12th late afternoon. The LEA also submitted an additional 816 documents electronically. The exhibit was not given the parents until the day of the hearing.
9. The LEA did not file a motion for leave to alter or amend the Order and did so as if it were entitled to do so without seeking the permission of the H.O.

The LEA willfully and boldly ignored Orders and requirements to provide the parents with exhibits in the time frame outline nor in a manner that allowed them to review and properly

prepare for the hearing. This behavior was purposeful and with malice, it also limited and infringed on the Parents rights to fair and impartial hearing.

Allegation 5 8VAC20-81-100 Free Appropriate Public Education N. Disability harassment

Student Two

Student Two is [age redacted] Black Male student who currently attends 10th grade at Ocean Lakes High School. Student Two was found eligible for Special education services in December of 2013 by Charlottesville Public Schools. He was identified with ADHD and was serviced under OHI. He has been served by Burley Middle School and then Virginia Beach City Public Schools. Once enrolled in this LEA for 2013-2014 school year, this student only received services for his disability of ADHD though his educational record showed he was not performing on grade level.

Facts of the Case:

1. On 2/20/18 Student Nine was jumped and harassed by a group (gang) of Ocean Lakes students (inside the school) around 12:30 p.m.
2. School cameras were just out of the viewing angle. But was able to make out that a group of students approached Student Nine. Student Nine asked to call his mom and school refused.
3. The mother was never notified by the school any details about what has happened to her son. The mother picked up Student Nine from the Main Office and noticed that his eyes were swollen and he had been crying. The mother learned that the LEA failed to provide Student Nine any medical attention nor was he sent to the school nurse after he was jumped by the gang of students.
4. The mother immediately took Student Nine to his Pediatrician at CHKD and then to Urgent Care for X-rays. Student Nine was kept for 2-3 hours for observations for head trauma. Student Nine blacked out, had swelling and deep bruising on the bone, and his right arm was placed in a temporary cast for a week.
5. This LEA failed to provide the Parents a copy of the teacher's incident report or a copy of the SRO's (Officer Shawn Coarse) report. They never explained why she was not informed of the incidence or why her son was not sent to see the nurse after he was assaulted by a gang of students.
6. On 2/23/2018 concerned with how the LEA handled this situation a CHKD Social Worker referred the Mother to Mr. Hank Millward with the VDOE but was unable to speak with him.

7. In March 2018 the mother applied for homebound in that her son could not return to school due to the physical and mental injuries he sustained by the bullies who attacked and harassed him but the LEA refused the Parent's request.
8. March 20, 2018 concerned that the LEA would charge Parents with Truancy once the school rejected the Homebound paperwork, the Mother called Dr. Spence, (Superintendent) but he refused to take her call.
9. Due to the LEA's failure to keep this student safe at school he is not receiving any of his IEP services.

In 2000, Office for Civil Rights and the Office of Special Education and Rehabilitative Services (OSERS) issued joint guidance informing schools that disability-based harassment may deny a student equal educational opportunity under Section 504 and Title II. The 2000 guidance also noted the responsibilities of schools under Section 504 and the Individuals with Disabilities Education Act (IDEA) to ensure that students receive a free appropriate public education (FAPE), and alerted schools that harassment of a student based on disability may adversely impact the school's provision of FAPE to the student.

The U.S. Dept. of Ed, 2014 letter states that "*bullying on any basis of a student with a disability who is receiving IDEA FAPE services*" can result in denial of a FAPE. The LEA denied a FAPE to this student and other similarly situated students who are bullied and harassed within this district.

The OSERS 2013 Dear Colleague Letter clarified that, under IDEA, as part of a school's appropriate response to bullying on any basis, the school should convene the IEP team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide a meaningful educational benefit. If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP team must determine the extent to which additional or different IDEA FAPE services are needed to address the student's individualized needs and then revise the IEP accordingly. Any decisions made by the IEP team must be consistent with the IDEA provisions addressing parental participation and should keep the student with a disability in the original placement or setting (e.g., the same school and classroom) unless the student can no longer receive a FAPE in that placement or setting. Under IDEA, schools have an ongoing obligation to ensure that a student with a disability who is the target of bullying continues to receive a FAPE in accordance with his or her IEP—an obligation that exists whether the student is being bullied based on his or her disability or is being bullied based on other reasons.

A formal request is being made to VDOE for relief.

Request for Relief:

1. Compensatory services for any and all instruction time lost due to VBCPS not following regulations that govern children with disabilities. Services should be provided to both students identified in the systemic state complaint and similarly situated students with disabilities through VDOE's site-based visit.
2. District-wide training on any and all issues in which the VDOE identified as violations. Training materials should be provided to Parents for FAPE Support Group and Advocating 4 Kids, Inc.
3. A Memorandum of Agreement (MOA) by the Superintendent that VBCPS will honor, implement, and take necessary disciplinary actions against staff who fail to follow the law.
4. VBCPS will implement all recommendations from the March 2016 Audit of the Special Education Department.
5. VBCPS Leadership, to include Director of OPEC, Director of Compliance for Special Education and Three school board members will meet quarterly with community based organizations. This includes Special Education families (with a focus to the underserved populations), Military Family support groups, and nonprofit organizations to review and discuss ongoing concerns and brainstorm solutions.
6. For families of all students covered by IDEA or Section 504, provide parent training once a year by an independent contractor of the family's choosing to evaluate IEPs and Section 504 Plans at VBCPS expense.
7. Prior to any IEP or Section 504 Meeting, Parents should be offered training on how to advocate for their child by a third-party advocate of their own choice at VBCPS expense.
8. Reimbursement to families for advocacy services, tutoring and tuition (homeschool or privately-placed due to not providing FAPE) incurred during the 2017-2018 school year.
9. Provide training to all VBCPS administration and educational staff about unique struggles for military families to include a thorough review of federal and state laws regarding transferring of IEPs.
10. Require that VBCPS offer comparable services for all out of district Transfer students, until all evaluations are completed, or the parents exercise their rights under dispute resolution.

11. Require VBCPS to only allow city attorneys to attend IEP Meetings once the Parents have indicated they will bring an attorney and the attorney is present.
12. Request that VBCPS adopt IDEA procedures for Section 504 and move Section 504 governing from Guidance to OPEC.
13. Distribute annual customer satisfaction surveys to all families that have qualified for an IEP or Section 504 Plan to ensure VBCPS is meeting the needs of the student.
14. Provide exit customer satisfaction surveys to families who decide to homeschool and privately-place their child.
15. Certified training and implementation of the Wilson reading program or Orton Gillingham Reading program for students diagnosed with disabilities who are not reading on grade level.
16. VBCPS will provide a of list of attorneys and advocates to represent parents at IEP or Section 504 Meetings.
17. Provide a quarterly report outlining how all military impact aid funding is used specifically for students receiving special education services.
18. Institute an anti-bullying program to include the following: 1) provide a way for students to make anonymous reports; 2) ensure complete investigations are made following on incidence reported; and 3) designate at least 2 school district personnel that are highly trained in anti-bully intervention that are made available for any student to report incidents of bullying at their school. Their contact information should be available to all students without having to make a request or seek it out.
19. Provide counseling services for students who are victims of bullying.
20. Provide annual district-wide training to all teachers and staff members by third party experts in the fields of bullying and disability harassment prevention.

Please free to contact us at: Cheryl A Poe 757-306-1942 or Cathy Heinz 757-839-2857 if clarification or additional information is needed.

Respectfully,

Cheryl A Poe, M.A., Advocating 4 Kids, In

Cathy Heinz - Parents for FAPE

Michelle Norman – Parents for FAPE