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March 7, 2016

VIA U.S. MAIL AND ELECTRONIC MAIL

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Ms. Anne Raish, Acting Principal Deputy Chief
Disability Rights Section – NYA
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Rebecca.Bond@usdoj.gov

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Re: Civil Rights Complaint Against Arlington Public Schools (VA)

Dear Ms. Bond and Ms. Raish:

This discrimination complaint is brought against the Arlington Public Schools system (“APS”) in Arlington, Virginia, by APS students Huan Vuong, Emma Budway, A.S., M.R., and S.N.¹ (each a “Complainant” and together the “Complainants”) through their parents and legal guardians. This Complaint alleges that APS violates Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12131, *et seq.*, and 28 C.F.R. Part 35, in discriminating against and harming students with speech-related disabilities by failing to provide auxiliary aids and services to enable them to communicate as effectively as nondisabled students, and by depriving them of the opportunity to participate in and benefit from educational services equal to those afforded to other students. Complainants allege that APS’s failure to provide them with an effective means of communication has also led to them being unnecessarily segregated in violation of Title II of the ADA and its integration mandate, 28 C.F.R. § 35.130(d), and the U.S. Supreme Court’s decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999). This Complaint covers acts and omissions dating to September 2000, which are continuing today.

Complainants and others similarly situated have suffered and continue to suffer serious harms as a result of APS’s refusal to provide them with a means of effective communication. These harms include being prevented from communicating their

¹ Initials of some Complainants have been changed to preserve anonymity.

thoughts, ideas, and feelings; being prevented from showing the depth of their knowledge, intelligence, and thirst for learning; being prevented from advocating on their own behalf; being isolated from their nondisabled peers and deprived of the benefits of normal socialization; being consigned to an inferior education with fewer opportunities and lower expectations; and suffering the same harms and indignities as any other victims of segregation and discrimination.

I. BACKGROUND

Each Complainant has a disability that manifests in an inability to communicate effectively through speech. Colloquially, Complainants have been characterized as “nonspeaking,” “functionally nonverbal,” “minimally verbal,” or “unreliably verbal.” For the purposes of this Complaint, Complainants will be described as “nonspeaking,” the term many of them prefer.² A motor planning disorder (apraxia) causes each of them to be either incapable of intelligible speech, or capable of only single-phrase, word, or letter utterances that are difficult for others to understand or difficult for Complainants to control. Verbal speech is impossible, unpredictable, or otherwise ineffective for Complainants. The same motor planning disorder that prevents them from manipulating their mouths to communicate effectively with speech also prevents them from manipulating their hands and fingers to write or type effectively.

Complainants range in age from 9 to 19 and have been enrolled at APS for their entire educational careers, with the exception of one Complainant who recently withdrew due to APS’s failure to accommodate his communication needs,³ and another Complainant who spent two years overseas. Each Complainant happens to also have a diagnosis of autism, and has spent all or most of their time at APS in a segregated county-wide classroom designed exclusively for autistic students. APS has dozens of segregated county-wide classrooms that hold up to 6-8 students each, including at least 13 classrooms designated specifically for autistic students, starting in pre-school. *See Exhibit A (APS, Special Education, Countywide Programs and Services).*

Students in the county-wide classrooms for students with disabilities, which span as many as six grade levels, are rarely if ever exposed to the standard grade-level curriculum. Instead, their curriculum is focused on basic life skills. Complainants are segregated from typical peers for most or all of the school day. They are generally not provided with the same educational and recreational opportunities as their nondisabled

² The term “nonspeaking” recognizes that certain individuals (including Complainants, stroke survivors, and those with Amyotrophic Lateral Sclerosis and Parkinson’s Disease), despite their inability to communicate words through speech, are capable of communicating words in other ways, including through letterboards, typing, sign language, eye gaze and blinking, and other methods. Because the term “nonverbal” derives from the Latin word for “without words,” it may inaccurately imply that individuals without speech are unable to use words entirely.

³ This Complainant, M.R., is eligible to re-enroll as a school-aged resident of Arlington, and would likely do so if APS agreed to accommodate his communication and educational needs.

peers, such as opportunities to participate in enrichment opportunities, electives, extracurricular activities, and school trips.

The only way to graduate with a standard high school diploma in Virginia is to take certain classes and to pass Standards of Learning (“SOL”) assessments associated with those subjects.⁴ Complainants and other students in APS’s segregated programs for students with disabilities are, by policy or practice, prevented from taking the SOLs and instead take Virginia Alternative Assessment Program (“VAAP”) tests that by state law may be given only to students with “significant cognitive disabilities.”⁵ VAAP-track students like Complainants are not eligible to receive a standard or advanced standard high school diploma. Most colleges, including community colleges, require a standard diploma for enrollment.

Over the last few years, each of the Complainants has learned to communicate effectively for the first time in their lives. Complainants’ families have had to privately finance Complainants’ development of effective communication because APS has limited their access to communication to simple icon-based methods that focus on making basic, pre-programmed requests. Through private speech therapy and diligent practice at home, each Complainant now communicates effectively, by using an index finger to point to letters on a laminated letterboard to spell out sentences. A trained supporter or “interpreter” holds the letterboard for them, uses visual or spoken prompts to focus attention and help them initiate limb movement to overcome their apraxia when necessary, and then writes down or reads out loud to the intended communication recipient the letters to which the Complainant has pointed. This is the only method of communication that Complainants can use to demonstrate and express their thoughts, fears, creativity, morality, and ambition.

Between January and May 2015, each Complainant requested in writing that APS provide auxiliary aids and services to enable them to communicate effectively using their primary method of communication during the school day. *See, e.g.*, Exhibit B (Request of Emma Budway) and Exhibit C (Request of A.S.). Specifically, each Complainant requested that APS provide a laminated letterboard and access to an adult supporter or interpreter trained in supporting each student’s method of effective communication. Each Complainant desires to communicate effectively throughout the school day and this is the only method by which they are able to do so.

Each Complainant’s request was summarily denied. In denying these requests, APS failed to give “‘primary consideration’ to the auxiliary aid or service requested by the student with the disability when determining what is appropriate for that student.” U.S. Department of Justice & U.S. Department of Education, “Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech

⁴ See Virginia Department of Education, Standard Diploma: Minimum Course & Credit Requirements, at <http://www.doe.virginia.gov/instruction/graduation/standard.shtml>.

⁵ Virginia Department of Education, Virginia Alternate Assessment Program, at http://www.doe.virginia.gov/testing/alternative_assessments/vaap_va_alt_assessment_prog/.

Disabilities in Public Elementary and Secondary Schools” (Nov. 14, 2014)⁶ (“Effective Communication Guidance”) at 6 (quoting 28 C.F.R. § 35.160(b)(2)). APS also failed to offer to any Complainant an alternative method of communication that is as effective as communication with students without disabilities, or any substantiation that a letterboard constitutes an “undue financial and administrative burden” or “fundamental alteration of a service, program, or activity.” 28 C.F.R. § 35.164; *see also* Effective Communication Guidance at 12-13. In fact, APS did not articulate *any* valid reason for denying Complainants’ requests, or supply *any* improved method of communication.

Instead of allowing Complainants to communicate in an open-ended manner as effectively as nondisabled students using the auxiliary aids and services they require and requested in writing, APS continues to severely limit Complainants’ ability to communicate during the school day. APS provides them with methods of communication that are limited to simple, usually picture-based icons—on laminated paper squares, iPad apps, or other icon-based electronic devices. The icons available to them are limited in number and, importantly, are *pre-selected by teachers and staff* without input from Complainants. Teachers and staff thus have nearly complete control over the small universe of topics that Complainants are able to communicate at school. APS refuses to allow Complainants to communicate on their own terms.

The picture-based icons available to Complainants typically are limited to enabling them to request basic needs like food, drink, and access to the toilet. Unlike the method of communication Complainants use and prefer, these systems do not enable them to ask questions about curricular content, to participate in classroom conversations, to write poetry, to demonstrate knowledge of and curiosity about chemistry, biology, world history, or current events, or to express their ambitions and thoughts about morality and injustice. The communication methods provided by APS to Complainants, for instance, would prevent Complainants from making statements their peers without speech disabilities might make, like: “Do you ever feel like the beige sock guy in that hilarious Christopher Walken Kia Optima ad from this year’s Superbowl?” or “Brooke’s new hair looks like something out of the ‘80s,” or “That homework problem in A.P. Chemistry over the weekend absolutely killed me!” or “I’d like to learn more about the slavery-related drivers of the Civil War and what they meant for the Reconstruction-era Democratic Party.” In other words, the communication methods provided by APS are not effective forms of communication for Complainants, and certainly cannot be characterized “as effective as [the methods] provided to students without disabilities,” as required by the ADA. Effective Communication Guidance at 9; *see also* 28 C.F.R. § 35.160(a)(1) (“A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.”).

Upon information and belief, APS has failed to provide dozens or more other APS students with speech-related disabilities the auxiliary aids and services they need to

⁶ The Effective Communication Guidance is available at <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faqs-effective-communication-201411.pdf>.

communicate as effectively as students without disabilities. These students have therefore have been denied the opportunity to benefit on an equal basis as their nondisabled peers from a public education. Like Complainants, these students have been unnecessarily segregated in violation of the ADA. Complainants are representative of this broader class of APS students with speech-related disabilities who are denied effective communication and access to the educational opportunities afforded to their nondisabled peers.

II. ABOUT THE COMPLAINANTS



**Huan Vuong, Emma Budway, and A.S. with an interpreter
at the TASH Conference in Portland, Oregon, in December 2015.**

A. A.S.

A.S. is a 19-year-old African-American student who, except for two years overseas, has spent his entire schooling in APS's segregated autism classrooms, currently at the county-wide Stratford Program for students with disabilities in the lower level of [Redacted] Middle and High School. As a person who is effectively nonspeaking, he is an individual with a disability. He also has an autism diagnosis. A.S. joins this Complaint through his parents, who are his legal guardians. He has personally reviewed this Complaint and consents to its filing.

A.S. learned how to communicate effectively by pointing to letters on a letterboard in 2014. Since then, he has frequently advocated for his civil rights and for a proper education. On September 21, 2015, A.S. provided public comment at an Arlington Special Education Advisory Committee meeting, stating: "My education is important to

me. Please give me a chance to learn.”⁷ On October 8, 2015, A.S. spoke in a public meeting of the APS School Board: “Hi, my name is [A.S.] I want to ask you to consider our request for inclusion. I also want you to create opportunities for autistic students like us to learn.”⁸

On December 2, 2015, in public remarks in Portland, Oregon, at the annual conference of TASH, a national organization focused on the inclusion of people with significant support needs, he said, “I am an expert in advocacy and leadership. My expertise comes from years of being left out. Left out of education. Left out of conversations. Left out of decisions. Left out of everything. Because I don’t talk, I have been presumed incompetent and, worse, insufficient to matter. This must stop.” He also said:

I am in my last year of high school. I have been in autism classrooms all my years of school. I have never been instructed beyond a second grade level. Stop treating autistics like they can’t learn. Speech is not a sign of intelligence. Everyone needs to be educated. This is my challenge to you—find a way to include nonspeaking autistics.⁹

During the 2014-15 school year, after A.S. and his parents advocated for his inclusion, A.S. was allowed to sit in on three regular education classes in the [Redacted] School. This school year, he is sitting in on two regular education classes. He is not receiving credit for these classes and, despite his desire to go to college, his current placement at Stratford categorically prevents him from obtaining a standard high school diploma, a prerequisite for enrolling in most colleges. Every student in the Stratford Program is on the VAAP-track and is prohibited from earning a standard diploma.¹⁰

B. Huan Vuong

Huan Vuong is an 18-year-old, Vietnamese-American student who has spent 15 years in APS’s segregated autism classrooms. As a person who is functionally nonspeaking, he is an individual with a disability. He also has been diagnosed with autism. Huan is currently enrolled in the segregated county-wide autism program at Wakefield High School, the Arlington high school that is farthest from his home. He receives limited academic instruction in this classroom and, on November 4, 2014,

⁷ A video of A.S. making that comment is available here: (Video link redacted)

⁸ A video of A.S. making that comments is available here: (Video link redacted)

⁹ A video of A.S. making part of that comment is available here: (Video link redacted)

¹⁰ See Exhibit D (APS, Welcome to Stratford) (“Students receive a Special Diploma upon program completion or reaching the age of eligibility.... Students participate in the Virginia Alternate Assessment Program (VAAP) and not the Standard of Learning Assessments (SOLs).”); see also Exhibit A at 3 (“In addition to instruction in functional academics and adaptive skills, the Stratford Program provides specific training to prepare students for participation in post-secondary settings, such as sheltered workshops, semi-sheltered enclaves, supported work, and competitive job placement.”).

described the autism classroom as “a waste of my time.” Huan joins this Complaint through his parents, who are his legal guardians. He has personally reviewed this Complaint and consents to its filing.

Huan learned how to communicate effectively by pointing to letters on a letterboard in 2013. He often speaks letters aloud as he points to them, and is able to use the letterboard to express his goals and plans for the future, as well as to demonstrate his understanding of and interest in many different academic subjects. He has said that his career goal is to become a writer.¹¹ On weekends, he volunteers at the public library reshelving books.

Huan would like to earn a regular high school diploma and go to college like his brothers have before him. During an IEP meeting on August 28, 2014, he told his IEP team, “I want to be in regular classes so very much.” On January 6, 2015, Huan described his experience in the autism classrooms as “terrible” and said: “I want to make up for what I have not been taught from this terrible education I have wasted my life receiving. It is time to end this long ordeal in school.”

Through several years of his own advocacy and that of his parents, he finally was allowed to attend two regular-education classes during the 2014-15 school year, and to date has been allowed to do the same during the 2015-16 school year. In these classes, despite understanding the material, he has no way to effectively ask questions, participate in class discussions, take exams, or complete the homework.

On September 21, 2015, Huan provided public comment at an Arlington Special Education Advisory Committee meeting alongside two other Complainants, stating: “I echo what my friends said. I am smart and so are they. Please respect us and give us a meaningful education. Thank you.”¹² On October 8, 2015, Huan spoke to the School Board and said: “My name is Huan Vuong. My friends and I make our repeated plea. We ask only for our basic right to education. Though we don’t talk and lack motor control, we are very smart. Time to rethink autistics and how we should be educated. Thank you.”¹³

On December 2, 2015, Huan spoke using his letterboard at the TASH annual conference: “Not having reliable speech should not remove my right to learn. I am a citizen, an American, and an eager learner. I want the same access to education as every other public school student.” During a different panel at the conference, he said:

¹¹ A short video of Huan communicating with a letterboard is available here: <https://youtu.be/diOaNHZ6tnw>.

¹² A video of Huan making that comment is available here: <http://youtu.be/p1Mh22a4CCE>.

¹³ A video of Huan making that comment is available here: <http://www.apsva.us/site/Default.aspx?PageID=32222> (scroll down to Citizen Comment on Non-Agenda Items; Speakers 1-3).

My name is Huan Vuong. I am nonspeaking and autistic. I communicate via spelling on a letterboard. My school does not accept my method of communication. I am therefore denied a meaningful education. My ongoing fight with the school is yielding no results. I am clearly capable of learning, yet no school will teach me. This must stop. I am not alone. There are so many like me who do not speak who are being robbed of an education. This is an atrocity that our education system must stop. Thank you for listening.¹⁴

C. Emma Budway

Emma Budway is an 18-year-old white student who has spent 16 years in APS's segregated autism classrooms and currently attends Wakefield High School, which is not her neighborhood school. Emma is a talented writer and would like to be recognized for her intellect and creativity. As a person who is functionally nonspeaking, she is an individual with a disability. She also has an autism diagnosis. She joins this Complaint through her parents, who are her legal guardians. She has personally reviewed this Complaint and consents to its filing.

Emma learned how to communicate effectively by pointing to letters on a letterboard in the summer of 2014. Since then, she has requested to be taught "age-appropriate curriculum and [to be] respected for [her] ability to learn." She has described her experience in the autism classrooms as "limiting." On September 21, 2015, Emma provided public comment at an Arlington Special Education Advisory Committee meeting, stating: "Stop treating me like I can't learn."¹⁵ On October 8, 2015, Emma spoke to the APS School Board, saying, "I am Emma. Students like me and my friends want and need to learn."¹⁶

On December 2, 2015, Emma also presented at the annual TASH conference, and used her letterboard to say: "I cannot speak but I can think;" "No one teaches us because we don't speak;" and "Teach us like we want to learn." She also said:

It takes me a while to spell however spelling is the communication method I use best.... My mouth is not reliable. Most of what I show with my body is ridiculously inappropriate or at best unreliable. So if you see or hear me do something stupid it is not me it is my body. Now that I have explained about the disconnect between my brain and body can you understand

¹⁴ A video of a portion of Huan's presentation is available here: <http://tinyurl.com/hnw7m5r>.

¹⁵ A video of Emma making that comment is available here: <http://youtu.be/p1Mh22a4CCE>.

¹⁶ A video of Emma making that comment is available here: <https://vimeo.com/153177885>. Another video showing a different angle of Emma making that comment is available here: <http://www.apsva.us/site/Default.aspx?PageID=32222> (scroll down to Citizen Comment on Non-Agenda Items; Speakers 1-3).

when I [say I] have been denied a meaningful education? I am sympathetic to teachers who had to deal with my outbursts but that does not mean that I should not have been shut away in special education. Kept away from normal classes and denied the chance to learn with peers. One thing I want you to know is there are so many out there like me. Nonspeaking autistics like me that want you to know how much they want to learn. I am asking on behalf of those who do not have a voice to hear our plea to teach us. Respect our brains as tough as it may be. Please accept our lack of motor control.

D. M.R.

M.R. is a nine-year-old, white student who, until November 2015, spent six years in APS's segregated autism classrooms, for much of that time at [Redacted] Elementary School. Beginning in September 2015, due to a policy decision by APS, all students in the autism classroom at [Redacted] were moved to new schools, and M.R. was moved to [Redacted] Elementary School. As a person who is functionally nonspeaking, he is an individual with a disability. He also possesses an autism diagnosis. As a minor, M.R. joins this Complaint through his parents.

M.R. learned how to communicate effectively by pointing to letters on a letterboard in 2014. Since then, his parents have been denied their repeated requests that APS provide a trained supporter or interpreter to allow M.R. to use a letterboard to communicate at school. M.R. has told his parents that his school thinks he is "stupid." He has also told them that he "deserve[s] [an] ordinary education."

During the 2014-15 school year, M.R.'s mother taught him age-appropriate, third-grade level math and reading concepts before and after school. M.R. was able to demonstrate that he was learning the concepts through multiple choice questions and by pointing to letters and numbers on the letterboard. During the summer of 2015, through a privately-hired special education tutor, M.R. learned long division and fractions. His parents presented this information to the school in September 2015, and requested that M.R. be allowed to attend math instruction in a fourth-grade general education classroom. The school refused. Instead, in October 2015, M.R.'s parents were informed by school staff that M.R. was being taught the preschool-level math concepts of "more and less," "big and little," and counting. *See Exhibit E.*

In November 2015, work materials were sent home evidencing that M.R. was being taught Word Study materials that he had learned two to three years earlier at [Redacted] Elementary. Despite his parents presenting videos and transcripts showing M.R. using age-appropriate vocabulary and demonstrating age-appropriate reading comprehension, the school continued to provide M.R. with curricular materials that were far below his age level, refusing him access to educational services that are equal to that afforded students without disabilities.

M.R.'s difficult transition to a new school in 2015 was exacerbated by APS's denial of auxiliary aids and services that would enable him to communicate effectively. M.R. became extremely anxious and upset about going to school each day. He was often isolated from other students. School staff told his parents that he was having "miserable" days. M.R.'s emotional distress, APS's failure to adequately support his communication needs, and APS's failure to allow M.R. to access grade-level curricular materials forced his mother to decide in November 2015 to quit her job and homeschool him.

E. S.N.

S.N. is a nine-year-old white student who has spent five-and-a-half years in APS's segregated autism classrooms and currently attends [Redacted] Elementary School, after having been moved in September 2015 from [Redacted] Elementary as part of an APS policy decision. As a person who is functionally nonspeaking, S.N. is an individual with a disability. He also has an autism diagnosis. As a minor, S.N. joins this Complaint through his parents.

S.N. began communicating effectively by pointing to letters on a letterboard in November 2014.¹⁷ Since then, he has stated that he feels alone at school. He has described his experience in the autism classrooms as "loud and lame," and has noted that school staff "are obsessed with the bathroom." S.N. enjoys "reading," "geology and flight," "shopping at Trader Joe's," and "swimming." His favorite subject is "science," and he is good at "having a good mood and P.E."

After S.N. was refused access to the general education setting, S.N.'s parents requested mediation. As part of the resulting mediation agreement in summer 2015, APS agreed to allow S.N. to attend 45 minutes of science instruction in the general education setting four days a week during the 2015-16 school year. S.N. also is allowed to attend two physical education sessions a week with nondisabled peers. While APS has failed to provide the communication supports S.N.'s parents requested in May 2015, school staff have provided S.N. with inconsistent access to multiple choice and yes/no cards, as well as to an adapted keyboard. However, these aids and services do not allow S.N. to communicate as effectively as he does when he is provided access to a letterboard with a trained supporter.

On January 12, 2016, a private speech-language pathologist evaluated S.N. and noted that he:

communicates using an Augmentative and Alternative Communication System (AAC). He currently communicates answers to questions, preference choices, and novel thoughts using alphabet boards. He has two options, a large letter board which contains the letters A-Z. He also has the alphabet broken between three boards and another board with numbers 1-

¹⁷ A short video of S.N. communicating with a letterboard with his speech therapist is available here: (video redacted).

3. He selects which alphabet board using 1-3. Additionally, [S.N.] has a yes/no board that he uses to answer preference and basic questions.

Based on his communication abilities with the letterboard, she concluded the following:

It is recommended that [S.N.] ... receive grade-level academic instruction in a general education setting in all academic subject areas, which would reflect his abilities and afford him both academic learning and social opportunities. He has shown the ability to listen and answer grade-level questions pertaining to paragraphs related to science, history, grammar and works of literature. Homework sent home by this therapist also focuses on math and specific language skills (e.g., idioms, rhyming, inference, deduction, etc.). Additionally, it is recommended that [S.N.] use his letter boards to communicate a variety of pragmatic intents (i.e., requests, questions, answers, directives, etc.) throughout his day, across settings and with all adult assistants/teachers/therapists. [S.N.] needs to practice expressing a variety of pragmatic intents (i.e. greetings, questions, answers, directives, etc.) throughout his school day and with typical peers so that his accuracy on the letter boards will continue to improve.

* * *

With the auxiliary aids and services to which they are legally entitled under the ADA, Complainants are each capable of learning grade-level instruction alongside their nondisabled peers and earning a standard high school diploma. Without these auxiliary aids and services, Complainants receive a dramatically inferior education and many fewer academic and social opportunities than their peers without disabilities. Because of APS's failure to provide Complainants with the auxiliary aids and services they require, Complainants lack any form of effective communication in school, are isolated from their nondisabled peers, are denied access to grade-level academic instruction, have fallen many years behind their nondisabled peers, and without immediate enforcement of their legal rights and the provision of appropriate remedies, have little hope of receiving a meaningful education in the public schools, earning a standard high school diploma and being able to go to college, and reaching their highest potential.

III. VIOLATIONS OF THE ADA

As a public entity, APS's ongoing actions and omissions with regard to Complainants and others similarly situated violate the ADA's requirements that public entities provide effective communication auxiliary aids and services for students with disabilities and equal access to educational opportunities. APS's actions and omissions also violate more than a dozen other distinct provisions of the ADA, the Attorney General's regulations implementing the ADA, the U.S. Department of Justice's Effective Communication Guidance, and U.S. Supreme Court case law interpreting the ADA.¹⁸ These violations are summarized briefly here, and explained in greater detail below.

¹⁸ The allegations enumerated in this Complaint should not be construed to be exhaustive.

First, in failing to provide any information regarding the ADA on its website, in parent or student handbooks, or elsewhere, APS unlawfully fails to “make available to ... interested persons information regarding” the ADA and “its applicability to [APS’s] services, programs, or activities,” and fails to “make such information available to them in such manner as ... necessary to apprise such persons of the protections against discrimination assured them by the” ADA and its implementing regulations. 28 C.F.R. § 35.106.

Second, APS has unlawfully failed to “designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under” the ADA, and has failed to “make available to all interested individuals the name, office address, and telephone number of the employee or employees designated” to coordinate ADA compliance. 28 C.F.R. § 35.107(a).

Third, APS has unlawfully failed to “adopt and publish grievance procedures providing for prompt and equitable resolution of complaints” under the ADA. 28 C.F.R. § 35.107(b).

Fourth, APS unlawfully fails to “take appropriate steps to ensure that communications with” Complainants and others similarly situated are “as effective as communications with others.” 28 C.F.R. § 35.160(a)(1).

Fifth, APS unlawfully fails to “furnish appropriate auxiliary aids and services to afford” Complainants and others similarly situated “an equal opportunity to participate in, and enjoy the benefits of” APS’s “service[s], program[s], or activit[ies].” 28 C.F.R. § 35.160(b)(1).

Sixth, in denying and continuing to fail to provide each Complainant’s requested effective communication auxiliary aid or service, APS has unlawfully failed and continues to unlawfully fail to “give primary consideration to the requests of individuals with disabilities in a timely manner.” 28 C.F.R. § 35.160(b)(2).

Seventh, in part as a result of APS’s failure to provide effective communication to Complainants and others similarly situated, APS unlawfully “exclude[s] from participation in [and] denie[s]” Complainants and others similarly situated “on the basis of [their] disability” “the benefits of the services, programs, or activities of a public entity,” and has “subject[ed] to discrimination” those students with disabilities. 28 C.F.R. § 35.130(a).¹⁹

¹⁹ Section 504 of the Rehabilitation Act also provides that “[n]o otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” 29 U.S.C. § 794(a).

Eighth, in failing to provide effective communication for Complainants and others similarly situated, APS has unlawfully denied and continues to unlawfully “[d]eny a qualified individual with a disability the opportunity to participate in or benefit from [an] aid, benefit, or service” that it provides to others. 28 C.F.R. § 35.130(b)(1)(i).

Ninth, in failing to provide effective communication for Complainants and others similarly situated, APS unlawfully fails to “[a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service ... equal to that afforded others.” 28 C.F.R. § 35.130(b)(1)(ii).

Tenth, in failing to provide effective communication for Complainants and others similarly situated, APS unlawfully fails to “[p]rovide a qualified individual with a disability with an aid, benefit, or service that is ... as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.” 28 C.F.R. § 35.130(b)(1)(iii).

Eleventh, in failing to provide effective communication for Complainants and others similarly situated, APS unlawfully fails to provide “a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.” 28 C.F.R. § 35.130(b)(2).

Twelfth, in relegating Complainants and others similarly situated to segregated instructional settings, applying low academic expectations, and failing to ensure they have the opportunity to reach their highest potential, APS unlawfully carries out practices that “have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability,” and “[t]hat have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of” APS, which include becoming “a diverse and inclusive school community, committed to academic excellence and integrity..., [being] responsive to each student, in collaboration with families and the community,” and to “instill[] a love of learning in its students and prepare[] them to be responsible and productive global citizens.”²⁰ 28 C.F.R. § 35.130(b)(3)(i), (ii).

Thirteenth, in failing to provide effective communication for Complainants and others similarly situated, APS unlawfully fails to “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.” 28 C.F.R. § 35.130(b)(7).

Fourteenth, in failing to allow individuals with speech-related disabilities to attend general education classes and activities and to otherwise provide access to the same opportunities, programs, and services as students without disabilities, APS “impose[s] or appl[ies] eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity.” 28 C.F.R. § 35.130(b)(8).

²⁰ See APS, Mission, Vision, and Core Values, at <http://www.apsva.us/domain/3>.

Fifteenth, in relegating Complainants and others similarly situated to segregated instructional settings without addressing their needs individually, APS “fails to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d); *see also Olmstead*, 527 U.S. at 600 (“unjustified institutional isolation of persons with disabilities is a form of discrimination”).

In short, and as explained in greater detail below, APS’s failure to provide Complainants and others similarly situated with the auxiliary aids and services they need to effectively communicate, and to provide them with equal educational opportunities, has deprived Complainants and others similarly situated of the education to which they are legally entitled as Arlington residents. These actions and omissions by APS discriminate against Complainants and others similarly situated and violate their civil rights. Because APS’s actions and omissions are unlawful, discriminatory, and harmful, Complainants seek the U.S. Department of Justice’s immediate intervention to enforce APS’s compliance with the ADA.

A. APS Is Subject to Title II of the ADA.

APS is a public entity subject to Title II of the ADA. 42 U.S.C. § 12131(1); *see also K.M. ex rel. Bright v. Tustin Unified School Dist.*, 725 F.3d 1088, 1097 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 1493, and *cert. denied*, 134 S. Ct. 1494 (2014) (“*Tustin*”) (citing *Tennessee v. Lane*, 541 U.S. 509, 525 (2004) (“There is ... no question that public schools are among the public entities governed by Title II.”)); *Toledo v. Sanchez*, 454 F.3d 24, 40 (1st Cir. 2006) (applying Title II to public education and finding such application “justified by the persistent pattern of exclusion and irrational treatment of disabled students in public education, coupled with the gravity of the harm worked by such discrimination.”); *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 290 (5th Cir. 2005) (acknowledging that “Title II of the ADA ... applies to ... public schools”). Title II applies to all public services and programs, including public education. APS provides a free public education for primary, elementary, and secondary students that reside in Arlington, Virginia. Title II prohibits public entities like APS from discriminating against people with disabilities in their services, programs or activities. 42 U.S.C. § 12132.

According to its website, APS projects an enrollment of more than 25,000 students, and has a current annual budget of over \$557 million.²¹ APS has approximately 36 schools which enroll individuals with and without disabilities. As a school district employing 50 or more persons, APS is required to “adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by” Title II. 28 C.F.R. § 35.107(b). APS does not make available to the public any kind of grievance procedure as required by the ADA.

²¹ APS, Quick Facts (Aug. 2015), <http://www.arlington.k12.va.us/cms/lib2/VA01000586/Centricity/Shared/QuickFacts.pdf>.

All public entities, including APS, are also required to “make available to ... interested persons information regarding the [ADA regulations] and [their] applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.” *Id.* § 35.106. But as of the date of this Complaint, there is no information available on its website, in its parent handbook, or anywhere else publicly accessible regarding the ADA or APS’s compliance with the ADA, or how a student or parent may file a grievance or complaint alleging a violation of the ADA.²² Moreover, in violation of 28 C.F.R. § 35.107(a), no ADA Title II Coordinator is publicly identified by APS. Without these procedures in place, Complainants have no choice but to file this Complaint with the U.S. Department of Justice.

B. Complainants Are Qualified Individuals with Disabilities.

Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130. A “qualified individual with a disability” is defined to mean “an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).

As school-aged individuals²³ residing in Arlington, Complainants are eligible and “qualified” to participate in and be afforded access to the benefits of APS’s educational programs.

As discussed above, each Complainant possesses a disability rendering him or her incapable of communicating effectively with speech. The ADA defines a disabled individual as one who has “a physical or mental impairment that substantially limits one or more major life activities.” *Id.* § 12102(1)(A). The ADA defines “major life activities” to include “communicating” and “speaking.” *Id.* § 12102(2)(A); *see also* 28 C.F.R.

²² *See, e.g.*, APS, Arlington Public Schools Parent Handbook, at <http://www.arlington.k12.va.us/cms/lib2/VA01000586/Centricity/Domain/8/APSHandbook2015-16.pdf> (failing to name ADA Coordinator or to describe any ADA grievance procedure); APS, Section 504 Procedural Manual, at <http://www.apsva.us/cms/lib2/VA01000586/Centricity/Domain/144/504%20Procedural%20Manual%20December%202015.pdf> (noting that Section 504 requires that each school establish a grievance procedure, but failing to note the similar requirement under Title II of the ADA).

²³ Although some Complainants are over the age of 18, individuals with disabilities are guaranteed the right to public education through the age of 21. 20 U.S.C. § 1412(a)(1)(A). Virginia guarantees students with disabilities the right to public education for the remainder of the school year if they turn 22 after September 30. 8 V.A.C. § 20-81-10 (definition of “age of eligibility”).

§ 35.104. Without question, the inability to communicate through speech “substantially limits” Complainants’ “major life activities.” Complainants are therefore “qualified individuals with disabilities” under the ADA.

C. APS Violates the ADA by Failing To Provide Complainants with Effective Communication Auxiliary Aids and Services and an Equal Opportunity To Benefit From and Reach an Equal Level of Achievement in its Educational Programs.

The ADA prohibits public entities like APS from discriminating against individuals with disabilities. 42 U.S.C. § 12132 (“no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”). To this end, public entities like APS are required to provide services to people with disabilities, including education, that are equal to and as effective as those provided to individuals without disabilities.

Specifically, APS is required to provide students with disabilities services that are “as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.” 28 C.F.R. § 35.130(b)(1)(iii). Correspondingly, Title II prohibits public entities from providing students with disabilities an “opportunity to ... benefit from [educational programs] that is not equal to that afforded others.” *Id.* § 35.130(b)(1)(ii).

Moreover, the ADA requires that a public entity like APS “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability[.]” *Id.* § 35.130(b)(7).²⁴ “Reasonable modifications” include using an effective method of communication with the person with a disability. The U.S. Department of Justice’s specific regulations on effective communication require public entities to “take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.” *Id.* § 35.160(a). Public entities like APS must also ensure that the communication-related auxiliary services provided afford “an equal opportunity [for the individual with a disability] to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.” *Id.* § 35.160(b)(1).

The regulation specifies that “[i]n determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.” *Id.* § 35.160(b)(2). Effective communication aids or services

²⁴ APS’s obligations under the ADA are separate and independent from its obligations under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.* *Tustin*, 725 F.3d at 1100 (U.S. Court of Appeals concluding that school districts’ obligations under the IDEA and ADA with regard to communication supports “are significantly different.”). The Ninth Circuit determined that “in some situations ... schools may be required under the ADA to provide services to ... students that are different than the services required by the IDEA.” *Id.*

must be provided “as soon as possible” after they have been requested. Effective Communication Guidance at 11. In finalizing the ADA effective communication regulations in 1991, the U.S. Department of Justice explained that the public entity must

honor the choice [of the individual with a disability] unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under [28 C.F.R.] § 35.164. Deference to the request of the individual with a disability is desirable because of the range of disabilities, the variety of auxiliary aids and services, and different circumstances requiring effective communication.

56 Fed. Reg. 35,694, 35,711-12 (July 26, 1991). This statement was explicitly reaffirmed by the Department in September 2010. *See* U.S. Department of Justice, Appendix A to Part 35—Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services (Sept. 15, 2010).

Any denial of a requested auxiliary aid or service must be justified in writing by the public entity on the basis that the requested aid or service would cause “a fundamental alteration in the nature of a service, program, or activity” or would result in “undue financial and administrative burdens.” 28 C.F.R. § 35.164. Even when the public entity is able to establish one of these two bases for denial, it remains obligated to take other action that would “ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.” *Id.* § 35.164; *see also* Effective Communication Guidance at 12-13. A district may also provide an alternative auxiliary aid or service that the district can prove is “as effective as” the requested aid or service. Effective Communication Guidance at 9.

As described above, each Complainant is either entirely or effectively nonspeaking. They communicate by pointing to letters on a letterboard and spelling out words and sentences. A trained supporter or “interpreter” holds the letterboard for them, prompts them visually and verbally to initiate limb movement to overcome their apraxia when necessary, and then reads out loud to the communication recipient the letters Complainant has pointed to, if the communication recipient cannot see the letterboard. None of the Complainants are hard of hearing; unlike with a sign language interpreter, the “interpretation” goes only one way. Complainants can hear and understand questions and statements of others; they simply respond by pointing at letters on the letterboard with their interpreter reading aloud the letters and words they are forming by pointing. The Effective Communication Guidance includes a “letter board” and “spelling to communicate” as examples of viable and established auxiliary aids and services for students with speech disabilities. *Id.* at 8.

As noted above, each Complainant submitted one or more formal requests in writing to APS between January and May 2015, requesting that APS provide them with their effective method of communication. In each case, the request was directed to the student’s school, with a copy to APS’s Assistant Superintendent for Student Services and

Special Education and APS's Director of Special Education. APS denied each request. By refusing to provide Complainants with their requested effective method of communication without any legally justifiable explanation, APS has violated the ADA and failed to "give primary consideration to the requests of an individual with a disability." 28 C.F.R. § 35.160(b)(2). Notwithstanding Complainants' formal requests, APS continues to fail to provide any form of communication aid or service that ensures Complainants and others similarly situated can communicate "as effectively as" their nondisabled peers. *See* Effective Communication Guidance at 7; *see also id.* at 3, 6, 9, 14, 15, 19; 28 C.F.R. § 35.164.

As this Complaint indicates, Complainants are denied the only form of communication that is effective for them. APS's provision of a limited number of picture-based icons, pre-selected by staff, severely limits the number and type of thoughts that the student can express. These systems cannot express the wide and complex variety of concepts any student might wish to communicate in an academic or social context. When Complainants have access to a letterboard with the entire alphabet and a trained interpreter, in contrast, they are able to express anything in the entire English language. Because students *without* disabilities are able to access and use to communicate all the words of the English language with which they are familiar, the communication methods APS provides to Complainants and others similarly situated cannot be considered "as effective as communications with others." 28 C.F.R. § 35.160(a).

By failing to provide Complainants and others similarly situated with any auxiliary aid or service that ensures they are able to communicate "as effectively as" students without disabilities, Effective Communication Guidance at 7, APS unlawfully bars the "equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others." 28 C.F.R. § 35.130(b)(1)(iii).

D. In its Failure To Provide Effective Communication and Equal Educational Opportunities, APS Also Violates the ADA by Unnecessarily and Inappropriately Isolating and Segregating Complainants and Other Students with Speech-Related Disabilities.

The U.S. Supreme Court has held that unjustified isolation of disabled persons who, with reasonable accommodations, could participate in an integrated setting is unlawful discrimination that violates the ADA. *Olmstead*, 527 U.S. at 600. The Court found that (1) segregation "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life," and (2) segregation "severely diminishes life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." *Id.* at 600-01; *see also* 2011 Statement of the U.S. Department of Justice on Enforcement of the Integration Mandate of Title II of the ADA and *Olmstead* (June 22, 2011). The harmful and discriminatory effects of segregation in education are well-established. More than six decades ago, the Supreme Court held "that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational

facilities are inherently unequal.” *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483, 495 (1954).

Congress enacted the ADA to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities and to provide strong and enforceable standards for addressing such discrimination. 42 U.S.C. § 12101(b)(1), (2). One “fundamental” aspect of the statute’s anti-discrimination focus is “integration.” 56 Fed. Reg. at 35,703. Congress recognized that “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem,” and that “individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of ... communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.” 42 U.S.C. § 12101(a)(2), (5).

Congress also found that “discrimination against individuals with disabilities persists in such critical areas as ... education.” *Id.* § 12101(a)(3). The Attorney General’s ADA regulations require public entities like APS to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities,”²⁵ which is defined as “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.” 28 C.F.R. pt. 35, App. A, p. 450 (1998) (defining “the most integrated setting appropriate to the needs of qualified individuals with disabilities” to mean “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”).²⁶

The U.S. Department of Justice, in adopting the first suite of ADA regulations in 1991, explained that “[a] public entity may not refuse to provide an individual with a disability with an equal opportunity to participate in or benefit from its program simply because the person has a disability.” 56 Fed. Reg. at 35,703. It went on to explain that:

Even when separate programs are permitted, individuals with disabilities cannot be denied the opportunity to participate in programs that are not separate or different. This is an important and overarching principle of the

²⁵ A “qualified individual with a disability” is defined as “an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).

²⁶ The U.S. Department of Justice’s interpretation of the integration mandate and other regulations must be afforded “great weight” and “substantial deference.” *Olmstead*, 527 U.S. at 598.

Americans with Disabilities Act. Separate, special, or different programs that are designed to provide a benefit to persons with disabilities cannot be used to restrict the participation of persons with disabilities in general, integrated activities. ... Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) [of 28 C.F.R. § 35.130] provides that a qualified individual with a disability still has the right to choose to participate in the program that is not designed to accommodate individuals with disabilities.

Id. The Department concluded:

Taken together, these provisions are intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities. Consistent with these standards, public entities are required to ensure that their actions are based on facts applicable to individuals and not on presumptions as to what a class of individuals with disabilities can or cannot do.

Id.

By placing Complainants and other students with speech-related disabilities in segregated classrooms with alternate curricula and fewer academic and social opportunities, APS has made “presumptions as to what a class of individuals with disabilities can or cannot do.” *Id.* at 35,703. As Complainants and others similarly situated have repeatedly emphasized to APS, spending the entire school day in a separate program is not “in fact necessary or appropriate for” them. *Id.* at 35,704. They could instead be successfully educated in classrooms alongside their nondisabled peers if provided with “reasonable modifications” to APS practices, including the auxiliary aids and services they require to communicate effectively.

As discussed above, each Complainant spends most or all of the school day in a segregated classroom exclusively for students with autism. But APS’s relegation of students with disabilities to segregated settings is not limited to Complainants. On information and belief, in the current school year, APS operates *dozens* of segregated “county-wide” classrooms that hold up to 6-8 students each. *See* Exhibit A (describing dozens of centralized segregated classrooms in APS for students with disabilities, including at least 13 classrooms for students with autism).

APS’s denial of access to effective communication aids and services for Complainants and other nonspeaking students has resulted in these students being segregated from their nondisabled peers for the vast majority or entirety of the day, in many cases in schools that are not their neighborhood schools. This segregation has consigned them to an inferior education, refused them access to academic, social, enrichment, and recreational opportunities, isolated them from their nondisabled peers,

deprived them of the benefits of normal socialization, and imposed the same harms as any other victims of segregation and discrimination. They are thus denied access to the same educational opportunities as their nondisabled peers.

The segregated classrooms in which Complainants and other students with speech-related disabilities in APS are housed are ill-equipped to meet their academic or social needs, denying these students equal opportunity for educational achievement. Academic expectations are low and students make little academic and social progress there. The classrooms become a trap, offering little hope of returning to the general education classroom, if they ever had the opportunity to be there in the first place.²⁷ Instead, these students face the likely prospect of falling further behind academically. With limited exceptions, these students have not been exposed to grade-level curriculum and are prevented from pursuing the opportunity to earn a standard high school diploma. Instruction in these segregated classrooms is taught to lower academic standards and otherwise inferior to instruction received by students without disabilities, and is based on the unwarranted assumption that they are incapable of achieving academically at the same level as their peers without a disability. Moreover, students from a range of grades—in some cases, kindergarten to 5th grade, or 9th to 12th grade—are placed in the same classroom, making differentiated instruction challenging. In the limited academic instruction they do receive, the students have no way to communicate, participate in class, or to show what they know due to APS’s refusal to provide them with effective communication auxiliary aids and services.

This denial of the opportunity to demonstrate understanding of academic topics has led to further exclusion from mainstream academic settings, perpetuating a cycle of segregation. Their isolation denies them opportunities to develop appropriate social skills, including through interacting with peers without disabilities. Segregated students are stigmatized as a result of the unwarranted assumption that they are incapable or unworthy of attending classes with their nondisabled peers.

In May 2015, the state-mandated Arlington Special Education Advisory Committee sent a letter to the APS Assistant Superintendent for Student Services and Special Education and the Director of Special Education, copying the Superintendent and School Board, to alert them to widespread community concerns about APS’s segregated classrooms for students with disabilities.²⁸ *See* Exhibit F. Among the noted concerns

²⁷ Each Complainant began their educational career in a segregated preschool classroom.

²⁸ Virginia law requires each local school division to have a committee of parent and community members that advise the School Board on issues related to special education. 8 VAC 20-81-230(D). The mandated functions of the local special education advisory committees include: “(a) Advise the local school division of needs in the education of children with disabilities; (b) Participate in the development of priorities and strategies for meeting the identified needs of children with disabilities; (c) Submit periodic reports and recommendations regarding the education of children with disabilities to the division superintendent for transmission to the local school board; (d) Assist the local school division in interpreting plans to the community for meeting the special needs of children with disabilities for educational services;

expressed were (1) “lack of exposure to grade level curriculum”; (2) “inappropriately low expectations”; (3) “the default assumption for the students in the self-contained programs appears to be that they will take the VAAP instead of SOLs”; (4) “[f]ew of these students meet all of the criteria for the VAAP, including demonstrating ‘significant cognitive disabilities,’”; (5) “classroom instruction is IEP-based, focusing largely on functional/life skills, managing behavior and low-level communication and does not adequately incorporate the grade-level ASOL- or SOL-based content that these students require to continue to lessen the gap between themselves and their non-disabled peers”; (6) “do not appear in many cases to be individualized in practice or to take into account students’ cognitive abilities”; (7) “ASOL curricular materials appear to be presented as a matter of course [in grades K-2, before VAAP or SOL testing begins in 3rd grade], to the exclusion of SOL-based general curriculum materials”; and (8) “standards-based IEPs appear to be the exception rather than the norm.” *Id.* APS has not responded to this letter.

APS has not reasonably modified its schools and classrooms to provide services for students with speech-related disabilities. It has not provided the services necessary to afford Complainants and others similarly situated an equal opportunity to advance academically and graduate, and the opportunity to be educated in neighborhood schools alongside their non-disabled peers. By removing Complainants and others similarly situated from the schools and classrooms they would attend if they were not disabled, APS needlessly segregates these students from their peers without disabilities. The isolation of Complainants and others similarly situated severely diminishes their educational opportunity. They are denied the same opportunity to learn and graduate that is afforded their peers.

If APS complied with its obligation to provide the reasonable modifications and auxiliary aids and services Complainants need to effectively communicate, Complainants could succeed in general education classrooms. In violation of the ADA, APS discriminates against these students on the basis of their disabilities by denying them reasonable accommodations and access to existing educational and related programs, services, and supports, and by requiring them to be in segregated settings. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d).

E. This Complaint Is Timely.

APS’s acts of discrimination against Complainants and others similarly situated, in violation of the ADA, are continuing and therefore this Complaint is timely.

IV. RELIEF REQUESTED

Complainants respectfully request that the U.S. Department of Justice promptly investigate the violations described above, and issue a finding that APS violated Title II of the ADA by unlawfully denying Complainants and others similarly situated with

and (e) Review the policies and procedures for the provision of special education and related services prior to submission to the local school board.” *Id.*

access to the auxiliary aids and services required for effective communication, by depriving them of equal educational opportunities, and by unlawfully segregating them. 42 U.S.C. § 12101(b)(3) (“It is the purpose of [the ADA] to ... ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities.”).

To remedy its ADA violations, APS must immediately provide the auxiliary aids and services Complainants and those similarly situated require to be able to communicate as effectively as students without disabilities and must afford them the same educational opportunities afforded to their non-disabled peers. APS must also educate Complainants and those similarly situated in the most integrated setting appropriate to their needs.

Specifically, Complainants request that the U.S. Department of Justice declare that APS is violating the rights of Complainants and others similarly situated under the ADA, and ensure APS’s immediate compliance with its ADA obligations, including to cease its pervasive and harmful discrimination against students with speech-related disabilities by:

1. Providing Effective Communication Aids and Services: APS must immediately provide Complainants and all other APS students with speech-related disabilities with appropriate auxiliary aids and services to enable communication as effective as people without disabilities, giving primary consideration to any aids and services a student (or his parent or legal guardian) requests.
2. Providing Non-Discriminatory Access to Public Education: APS must immediately modify its policies and practices to ensure Complainants and all other APS students with disabilities are provided the opportunity to meaningfully benefit from a public education alongside and to the same extent as their nondisabled peers, including to allow Complainants and all other APS students with speech disabilities to attend classes and activities with nondisabled peers, to access educational and related programs in the most integrated settings appropriate to their needs, and to allow the opportunity to earn a standard diploma or better.
 - a. APS must modify its instructional methods and interventions, and provide the necessary aids and services to afford Complainants and other APS students with speech-related disabilities the opportunity to benefit from public education that is equal to that afforded non-disabled students.
 - b. APS must provide regular training, support, and resources to staff members on how to effectively and meaningfully include students with speech disabilities in the general education setting as full, equal, and participating members of the school community.
3. Providing Compensatory Measures and Damages: APS must ensure that Complainants and all others similarly situated are placed in the same position they would have been had APS complied with its obligations under the ADA, which

are to “afford[] equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others,” including the opportunity to earn a standard diploma.

4. Providing Staff Training on ADA Obligations: APS must immediately provide training to all schools and departments to ensure staff members understand that APS is a public entity subject to the ADA, has a legal obligation under the ADA to provide auxiliary aids and services to ensure effective communication for and with each individual with a disability, and APS’s legal obligations under the ADA generally to avoid discriminating against individuals with disabilities by isolating them from their non-disabled peers and preventing their access to and opportunity to meaningfully benefit from a public education to the same extent as their non-disabled peers.
5. Adopting ADA Grievance Procedure and Appointing Coordinator: APS must immediately adopt and maintain a documented ADA Title II grievance procedure, designate an ADA Coordinator, and provide information on the availability of such procedure and coordinator that is easily accessible to the public, including to individuals with disabilities.
6. Awarding Attorneys’ Fees and Costs: As appropriate and authorized by law, 42 U.S.C. § 12205; 28 C.F.R. § 35.175, Complainants respectfully request that the U.S. Department of Justice award attorneys’ fees and costs incurred in bringing this Complaint and in ensuring its appropriate and satisfactory resolution.

Granting the requested relief would not fundamentally alter APS’s programs, services, and activities.

V. CONCLUSION

APS discriminates against Complainants and others similarly situated in violation of the ADA by failing to provide the auxiliary aids or services they need to communicate effectively. This failure further violates the ADA by denying these students an equal opportunity to benefit from and reach an equal level of achievement in APS’s educational programs, and by unnecessarily isolating and segregating them in classrooms apart from their non-disabled peers. These discriminatory practices are antithetical to APS’s vision of being “a diverse and inclusive school community, committed to academic excellence and integrity.”²⁹ The legal violations described in this Complaint result in serious harm to Complainants and others similarly situated, undermine APS’s mission, and result in academic failure and unnecessary segregation that injures the entire Arlington community.

Thank you for your attention to this Complaint. Counsel for Complainants would be happy to provide additional information upon request. Complainants reserve the right

²⁹ See APS, Mission, Vision, and Core Values, at <http://www.apsva.us/domain/3>.

to amend this Complaint at any time. Please contact me at scrane@autisticadvocacy.org with questions or requests for additional information.

Respectfully submitted,



Samantha Crane
Legal Director and Director of Public Policy
Counsel for Complainants

cc: Mr. Michael Yudin, Assistant Secretary for Special Education and Rehabilitative Services, U.S. Department of Education

Exhibits

- Exhibit A: APS, Special Education, Countywide Programs and Services, at <http://www.apsva.us/Page/2870>
- Exhibit B: First Sample Complainant Request (of Emma Budway) to APS for Effective Communication Auxiliary Aid or Service
- Exhibit C: Second Sample Complainant Request (of A.S.) to APS for Effective Communication Auxiliary Aid or Service
- Exhibit D: APS, Welcome to Stratford, at <http://www.apsva.us/site/Default.aspx?PageID=12259>
- Exhibit E: Email from APS Autism Teacher to 3rd-5th Grade Autism Class Parents Regarding Math Content
- Exhibit F: May 4, 2015 Letter from Arlington Special Education Advisory Committee to APS School Board Concerning APS Self-Contained Classrooms

EXHIBIT A

Special Education

Countywide Programs and Services

In Arlington Public Schools (APS), the majority of students with disabilities will receive Individualized Education Programs (IEP's) implemented within the student's home school by school-based staff. Each school is able to provide levels of service from "consult/monitor" through "self-contained." Determination of a student's level of service is based on the number of hours of special education support provided to the student, regardless of setting. Related service hours are not included in the determination as such services may be provided at any level or setting, based on the IEP team's determination of what the student requires.

In order to most effectively meet the needs of students with specialized needs, APS has established a variety of countywide programs. These programs allow APS to concentrate resources in order to provide intensified, high fidelity special education instruction in a continuous manner to students with similar needs. Such programs allow students to benefit from specially-designed instruction with staff that have knowledge and skills specific to their individual disabilities. Each program follows the standards of learning or the aligned standards of learning curriculum while providing specially designed instruction to address specific disability needs. Placement of a student into a countywide program is a carefully considered IEP team decision, since such programs represent a more restrictive placement. Inclusion opportunities and experiences with non-disabled peers are expected for all students, regardless of placement.

Below are brief descriptions of current countywide programs. Program classrooms are considered self-contained settings, although opportunities for inclusion are sought for each student. All program classrooms are supervised by the principal of the building in which they are located, with support from the Office of Special Education. Each program classroom has one teacher and one or two classroom assistants. Each program is supported by additional staff from the Office of Special Education, to include related service providers, specialists, and special education coordinators.

Interlude (Countywide at Elementary level only)

The focus of the Interlude program is on improving social and emotional functioning in students who have significant interfering behaviors due to psychological or behavioral disorders. Students who are receiving special education support due to an emotional disability or significant behavioral issues, but whose academic skills are at or near grade-level, may be candidates for Interlude. The program provides a therapeutic environment designed to foster increased self-regulation, improved self-concept, positive relationship skills, and academic success. Supplemental curriculum emphasizes resiliency, self-regulation, interpersonal and problem-solving skills. The team-oriented approach draws upon academic, therapeutic, family and interagency resources to develop educational plans to serve the needs of the students.

Location	Phone	Special Ed Coordinator	Phone
Campbell	703-228-6770	Suhani Vakil	703-228-6047

Communications Classes (Elementary only)

The focus of the Communication classes is on increasing and enhancing expressive and receptive language skills. Students who are receiving special education support due to significant language impairments which are not associated with significant cognitive impairments may be candidates for the Communications classes. These classes use a total communication approach with access to assistive technology. Instruction is based on grade-level standards, and does not include explicit instruction for adaptive skills, such as feeding or toileting skills. The goal of the communication program is to determine the mode(s) of communication that will allow each student to achieve academic success. Students are then given opportunities to practice the skills they have learned throughout the school day. Once a student is able to successfully communicate using the skills they have learned, they can return to their previous school setting.

Location	Phone	Special Ed Coordinator	Phone
Patrick Henry	703-228-5820	Donna Crawford-Towsend	703-228-6064

Functional Life Skills Program (FLS)

Elementary: The focus of the FLS program, elementary level, is on establishing basic academic skills, increasing daily living skills, communication, motor/mobility skills, and sensory development. Students who receive special education support due to cognitive or intellectual disabilities, sensory impairments, orthopedic impairments, or other health impairments, may be candidates for the Functional Life Skills program. The program provides highly individualized educational programming with intensified related services. FLS, elementary level, utilizes a variety of research supported curricula and practices, such as the Unique Learning curriculum for academic and pre-vocational skills. As one component of instruction, Unique Learning provides individualized assessment, monitoring, and lessons in the critical skill areas of reading, writing, math, science and social studies. The team-oriented approach draws upon a variety of strategies and interventions to develop educational plans to serve the needs of the students. Elementary FLS locations are Ashlawn and Barrett.

Secondary: The FLS program, secondary level, is designed to provide students with opportunities and experiences for developing and refining academic and adaptive skills as they move toward greater independence. FLS, secondary level, utilizes a variety of instructional resources, including the Unique Learning curriculum for academic and vocational skills. Unique Learning, for example, provides individualized assessment, monitoring, and lessons in the critical skill areas of reading, writing, math, science and social studies, as well as transition readiness preparation. In addition, FLS, secondary utilizes the Life Centered Career Education Curriculum, developed by the Council for Exceptional Children, and designed primarily for students with severe disabilities (i.e. cognitive disabilities, traumatic brain injury, multiple disabilities, severe and profound disabilities) who require specialized instruction in the following skill areas: self-help, personal/social, daily living, functional academics, and job/vocational. The curriculum is designed to be used in natural settings with connections made for concrete applications of skill development. Therefore, community-based experiences play a large role in the program as students practice skills in real life settings. Students in the FLS program usually participate in state-wide assessment via the Virginia Alternative Assessment Program (VAAP). However, each student's IEP team determines whether students participate in the Standards of Learning (SOL) curriculum or the Aligned Standards of Learning (ASOL) curriculum, as well as how the individual student will participate in state-wide assessments. Each APS middle and high school, as well as the Stratford program, provides an FLS program on site.

Location	Phone	Special Ed Coordinator	Phone
Ashlawn	703-228-5270	Elizabeth Walsh	703-228-6052
Barrett	703-228-6285	Dr. Patricia Jones	703-228-8630

Multi-Intervention Program for Students with Autism (MIPA)

The focus of the MIPA program is on increasing communication, independent life skills, social skills, and academic performance. Students who are receiving special education support due to autism may be candidates for the MIPA program. The program provides a highly structured environment and research-based academic and behavioral interventions for autism. The program uses a variety of strategies to prepare students to transition to less restrictive settings. Examples of curricula used in MIPA classes include the STAR Program (Strategies for Teaching based on Autism Research, Arick, Loos, Falco, Krug, 2004) and the Links Curriculum.

Preschool Location	Phone	Special Ed Coordinator	Phone
Arlington Traditional	703-228-6290	Donna Crawford-Townsend	703-228-6048
Reed	703-533-3396	Elaine Perkins	703-228-2762
Long Branch	703-228-4220	Suhani Vakil	703-228-6064
Hoffman-Boston	703-228-5845	Kelsey Gongwer	703-228-6148

Elementary & Secondary Location	Phone	Special Ed Coordinator	Phone
Abingdon	703-228-6650	Alysia Troiano	703-228-8630
Hoffman Boston	703-228-5845	Kelsey Gongwer	703-228-6040
Taylor	703-228-6275	Kelsey Gongwer	703-228-6040
Jamestown	703-228-5275	Catherine Nilsson	703-228-6052
Drew Model	703-228-5500	Suhani Vakil	703-228-6047
Kenmore (2 classes)	703-228-6800	Catherine Nilsson	703-228-6052
Wakefield	703-228-6700	Yvette Bullock	703-228-8631
Long Branch	703-228-4220	Suhani Vakil	703-228-6048

Secondary Program for Students with High Functioning Autism

Students who are identified to receive special education services due to autism and who are working on grade-level (or higher) curriculum may access specially designed classes which address social skills and executive functioning. This programming will focus on the development of interpersonal and organizational skills, while encouraging a challenging academic experience. Students will integrate into general education classes per services on their IEP's and are instructed on grade-level SOL curriculum. Supplemental curricula may include Unstuck and On-Target!: An Executive Function Curriculum to Improve Flexibility for Children with Autism Spectrum Disorders, and the PEERS Curriculum for School-Based Social Skills Training for

Adolescents with Autism Spectrum Disorder.

Stratford Program

The Stratford Program provides a highly individualized, supportive environment for students with significant disabilities within a smaller school setting with a low student-to-staff ratio throughout the program. Students in the Stratford Program require intensive, explicit instruction in functional academic and vocational skills, as well as community-based educational program. Instruction is provided primarily in a self-contained special education setting with opportunities for inclusion and interaction with non-disabled peers on-site, at the H.B. Woodlawn Program. Specific classes within the Stratford Program follow the Functional Life Skills (FLS) or Multi-Intervention Program for Autism (MIPA) curricula. Students who require FLS or MIPA in a small school setting with a low student-to-staff ratio, may receive those programs at Stratford.

In addition to instruction in functional academics and adaptive skills, the Stratford Program provides specific training to prepare students for participation in post-secondary settings, such as sheltered workshops, semi-sheltered enclaves, supported work, and competitive job placement. Individual student programs are developed to achieve maximum social, emotional, physical, and cognitive growth while acquiring the related skills necessary to function in the community as independently as possible. Students may participate in the Stratford Program up to age 22 (as of September 30).

Deaf and Hard of Hearing Program

The Deaf and Hard of Hearing program is designed for students with deafness or significant hearing impairment who require a specialized language rich program. It is taught by a Teacher of the Deaf and Hard-of-Hearing (TDHH) with support from a speech-language pathologist and audiologist. The goal of the program is to improve the language and communication skills of students and provide full access to the general education curriculum. Sign Language, spoken English, and/or visual aids are used to support students in general education classes. The program serves students age 2 through high school. Preschool students attend Henry Elementary, where the elementary program is located. Middle and high school locations are Jefferson Middle and Washington-Lee High schools.

Location	Phone	Special Ed Coordinator	Phone
Patrick Henry	703-228-5820	Donna Crawford-Townsend	703-228-6064
Jefferson Middle School	703-228-5900	carolyn.thiell@apsva.us	703-228-6056
Washington Lee High School	703-228-6200	gina.piccolini@apsva.us	703-228-6023

Program for Employment Preparedness (PEP)

The Program for Employment Preparedness (PEP), launched in school year 2014-15 and located at the Arlington Career Center, is a job training and transition program. This program is multi-tiered and creates a dynamic and targeted approach to meeting the transitional needs of students. PEP is based on specific competencies developed in consultation with Virginia Commonwealth University (VCU) using resources such as Virginia's "Workplace Readiness Skills for the Commonwealth." PEP provides students with experiences and learning opportunities based on current business trends and needs so that students may gain relevant skills for obtaining employment in today's market, including the requisite social skills necessary to secure and maintain long-term, meaningful employment. The program is designed for students to receive internship and apprenticeship experiences, trade certifications, licenses, college credit and/or networking connections that may lead to employment directly upon graduation.

Referrals should be made to PEP during the student's final year of high school participation, with specific transition preparation programming to be determined subsequent to acceptance. Student participation is individualized, according to needs, and if appropriate for the student, courses may simultaneously be taken for academic credit.

Secondary students with disabilities receiving special education support for 50% or more of the school day as they exit high school are candidates for PEP. The program is non-categorical and students with various disabling conditions may be referred.

Location	Phone	Coordinator	Phone
Career Center	703-228-5800	Brian Stapleton	703-228-8691
Career Center	703-228-5800	Linda Saidifar	703-228-6063

Preschool Special Education Programs (Cross Categorical)

Two Year Old Toddler Program

Location	Phone	Special Ed Coordinator	Phone
Ashlawn	703-228-5270	Elizabeth Walsh	703-228-6052
Claremont	703-228-2500	Alysia Troiano	703-228-6045

Reed	703-533-3396	Elaine Perkins	703-533-3396
Jamestown	703-228-5275	Catherine Nilsson	703-228-5275

Three-Five Year Old Program

Location	Phone	Special Ed Coordinator	Phone
Abingdon	703-228-6650	Alysia Troiano	703-228-6046
Barcroft	703-228-5838	Dr. Patricia Jones	703-228-8630
Barrett	703-228-6288	Dr. Patricia Jones	703-228-8630
Campbell	703-228-6770	Suhani Vakil	703-228-6047
Carlin Springs	703-228-6645	Catherine Thompson	703-228-6045
Drew	703-228-5825	Suhani Vakil	703-228-6047
Glebe	703-228-6280	Kelsey Gongwer	703-228-6043
Hoffman-Boston (2 classes)	703-228-5845	Kelsey Gongwer	703-228-6175
Jamestown	703-228-5275	Elizabeth Walsh	703-228-6052
Key	703-228-4210	Alysia Troiano	703-228-8661
Oakridge	703-228-5840	Gina Piccolini	703-228-6023
Randolph	703-228-5830	Catherine Nilsson	703-228-5830
Reed	703-228-2760	Elaine Perkins	703-228-2760
Taylor	703-228-6275	Kelsey Gongwer	703-228-6043
Tuckahoe	703-228-5288	Dr. Patricia Jones	703-228-8630

45-Day Program

Students who require an alternative program as a result of long-term suspension.

Wendy Carria, Supervisor Special Education

703-228-6050

Last Modified on November 3, 2015

EXHIBIT B

From: [REDACTED]
To: [REDACTED]
CC: [REDACTED]
Sent: 5/21/2015 11:05:19 P.M. Eastern Daylight Time
Subj: Request to Support Emma Budway's Effective Method of Communication

[REDACTED]
Arlington, Virginia 22203
May 6, 2015

To: Emma Budway's IEP Team
[REDACTED]
Wakefield High School
1325 S. Dinwiddie Street
Arlington, VA 22206

**Re: Request to Support Emma May Budway's Effective Method
of Communication Under Title II of the Americans with Disabilities
Act and Individuals with Disabilities Education Act**

Dear [REDACTED]:

Thank you for meeting with us Tuesday to discuss Emma's situation at Wakefield High School. As we stated during the meeting, there are two issues which should be addressed by the Wakefield team:

1) [UNRELATED ISSUE DELETED]

2) The second issue is the implementation of a more challenging and grade appropriate curriculum to be introduced into the classroom. At home and in private therapy sessions, Emma has successfully demonstrated her ability to tackle more challenging curriculum. With the use of a letter board, Emma can correctly respond to questions about advanced materials and texts. As stated in both of our recent meetings with school staff, we are happy and eager to share Emma's short essays and videos and to have staff observe Emma during private speech sessions. During the meeting, school staff have defended their current teaching methods based on their observations that Emma's use of the letter board, her preferred method of communication, is "too slow"; additionally staff stated that Emma's very limited speech reflects her attenuated abilities and understanding. As her parents, we are certain that Emma has more to say than what her significant challenges with motor planning and speech allow her to communicate. The idea that Emma's intellectual abilities are limited by her speech disability is an alarming and dangerous presumption. We believe Emma has demonstrated a high degree of understanding and intellect and we are dismayed that critical members on her IEP team do not share that observation; and henceforth, we should discuss the possibility of withdrawing Emma from speech services at Wakefield. As her parents we have to validate the cognitive capacity she demonstrates using the letter board at home and with her private therapist, and additionally argue that APS staff have not demonstrated the ability to achieve sophisticated work from Emma using their more traditional methods. We will continue to ask for expanded opportunities for Emma to use the letter board throughout the school day, and would suggest the school

reconsider its position in light of not only the efficacy and quality of results Emma has demonstrated through the use of the letter board, but also the necessary civil rights guidance proffered by the U.S. Department of Justice and Department of Education.

Our objective is to give Emma access to the general education curriculum. As noted educator, Anne Donnellan stated in 1984, "In the absence of conclusive data, educational decisions ought to be based on assumptions which, if incorrect, will have the least dangerous effect on the likelihood that students will be able to function independently as adults." We hope that you want nothing less for Emma's remaining years in APS.

Thank you again for meeting with us. We look forward to our next meeting on June 12th.

Sincerely,

Robert and Donna Budway

EXHIBIT C

[REDACTED]
Arlington, VA 22205

May 6, 2015

[REDACTED], Principal
Stratford Program
4102 Vacation Lane
Arlington, VA 22207

Dear [REDACTED]:

As you know, [REDACTED] is challenged by poor verbal expressive communication skills. As is common with many individuals with nonverbal autism, he also has significant fine motor impairments and a generalized difficulty initiating intentional actions. The purpose of this letter is to request, under both Title II of the Americans with Disabilities Act ("ADA") and the Individuals with Disabilities Education Act ("IDEA"), that the Stratford Program support [REDACTED]'s chosen effective method of communication at school.

After years of exploring multiple alternative and augmentative communication methods and devices, including *PECS*, sign language, *Pro Loquo*, *AlphaSmart*, and others, [REDACTED] is demonstrating the capacity to express thoughts, analyze a range of situations, and empathize using the letterboard, which he demonstrated at his most recent IEP meeting. As you are aware, using the letterboard is labor intensive, and requires the assistance of someone holding a letterboard vertically in front of the student and the student pointing at each letter to spell out words and sentences. The supporter writes down what the student is communicating and verbalizes the student's message. Rapid prompting is used to build fluency, and ensure continuity of attention and focus. The prompting, when needed enables our students to respond to questions and to communicate in an open-ended manner, all of which is critical to classroom participation. Within the last year, through the use of the letterboard, [REDACTED] communicated that he is aware of teachers' low expectations throughout his school years, that he is insulted when people assume he cannot think simply because he cannot talk, and that he is sad that so much time has been lost simply because teachers assumed he could not learn.

We recently learned that the U.S. Department of Justice and the U.S. Department of Education released official guidance on November 12, 2014, to clarify the responsibility of public schools to provide effective communication supports for students with hearing, vision, and speech disabilities. See "Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools" ("Effective Communication Guidance" or "Guidance").¹ The Guidance states that public schools are subject to

¹ Available at http://www.ada.gov/doe_doj_eff_comm/doe_doj_eff_comm_faqs.htm.

both the IDEA and Title II of the ADA "in determining how to meet the communication needs of an IDEA-eligible student with a hearing, vision, or speech disability." Guidance at 1.

The Effective Communication Guidance specifically lists "letterboards" and "spelling to communicate" as auxiliary aids and services that might be requested by a person with a speech disability and might be required to be provided. *Id.* at 8.

As you can imagine, everyone is trying to catch up in order to assist [REDACTED] to access broader educational opportunities. [REDACTED] is amazed by the reactions of others to his thoughts and comments, and this is resulting in increased confidence in expressive communication. [REDACTED]'s teacher, [REDACTED], notices this as do I. We want to maintain this momentum.

I look forward to continuing to work with you to identify how we might expand [REDACTED]'s use of the letterboard during the school day. Something that I do, [REDACTED], is ensure that the letterboard always is available – at church, in the grocery store, watching the basketball game, etc. As we mobilize for [REDACTED]'s transition, it is increasingly important that he have a reliable means of communication. He has demonstrated the highest agility using the letterboard. Could we schedule a conversation in the next week to discuss further [REDACTED]'s use of the letterboard, and how we can motivate others in his orbit to elicit communication with [REDACTED] using the letterboard?

Sincerely,

[REDACTED]

CC: Brenda Wilks, APS Assistant Superintendent for Student Services
Kristi Murphy, APS Director of Special Education

EXHIBIT D

Welcome to Stratford

Welcome to Stratford

Stratford Program is a secondary school for Arlington Public School students who have special needs. The program is located in Arlington, Virginia. Students attend middle and high school life skills classes as well as classes for students with autism. All students have been found eligible for and receive special education services. Students receive a Special Diploma upon program completion or reaching the age of eligibility.

Placement considerations are made for this program after parents, students, staff of their home school and Stratford staff have met to discuss the special education needs of the student. Placement at Stratford is an IEP decision.

Stratford Program is fully accredited by the Commonwealth of Virginia and the Southern Association of Colleges and Schools.

Students participate in the Virginia Alternate Assessment Program (VAAP) and not the Standard of Learning Assessments (SOLs). Each student has an Individual Education Plan (IEP) to address his or her instructional needs. Parents, staff and students work together to develop independent skills for participation in the Arlington Community.

If you would like more information about our program please contact the principal Dr. Karen Gerry, at Karen.Gerry@apsva.us or call her at 703-228-6440.



Last Modified on September 22, 2011

EXHIBIT E

From: [REDACTED]
Date: Oct 16, 2015 6:13 PM
Subject: School Pictures, Supplies, Math update
To: [REDACTED]
Cc: [REDACTED]

Hi Families,

I hope you all had a good week and are enjoying this beautiful weather. Just a reminder that school pictures are this coming Tuesday. We are scheduled for 11:00 am. I have already received envelopes and checks from a few families. If you are interested in purchasing photos, please send the envelope and payment in the orange folder by Tuesday.

I know you probably all saw my quick note about losing power this afternoon. The whole building had a power outage due to construction in the area. We lost power at 1:10 pm and it was restored approximately an hour and a half later. We are fortunate that we have so many windows in our classroom, so art class took place in our classroom today. This was a bit different and somewhat confusing to the boys. However, Mrs. [REDACTED], our wonderful art teacher did a great job as always.

I have a short list of supplies which I'm hoping you can send in some time next week. We are in need of tissues (1 box per family), clorox/lysol wipes (1 per family), headphones (to plug into the iPad), and a package of large glue sticks. I believe they come three or four to a package.

In math this week, we have been focusing on the concepts of more and less. We will continue working on this next week. At home, whenever possible, please try to use those words in natural settings (which plate of food has more/less, which pile of laundry has more/less, which pile of leaves has more/less, etc.

Thanks for all your continued support. Enjoy the weekend!

[REDACTED]

[REDACTED]
3rd-5th grade MIPA teacher
[REDACTED] Elementary School
Arlington Public Schools
[\[REDACTED\]](#)

EXHIBIT F

**To: Dr. Brenda Wilks, Assistant Superintendent for Student Services & Special Education
Dr. Kristi Murphy, Director of Special Education
Arlington Public Schools (APS)**

**Cc: Dr. Patrick Murphy, Superintendent
Mr. James Lander, Chair, Arlington County School Board
Dr. Emma Violand-Sanchez, Vice Chair, Arlington County School Board
Ms. Abby Raphael, Member, Arlington County School Board
Ms. Nancy Van Doren, Member, Arlington County School Board
Dr. Barbara Kanninen, Member, Arlington County School Board**

From: Arlington Special Education Advisory Committee (ASEAC)

Date: May 4, 2015

Re: Establishing Appropriate Expectations, Curriculum Access and Testing for Special Education Students in Self-Contained "County-Wide" Programs

The purpose of this letter is to convey several concerns that have surfaced from parents of children in (primarily) county-wide self-contained programs. The ASEAC is raising these issues with you as there appear to be varying degrees of implementation of Federal Law, Virginia Department of Education (VDOE) guidance and APS policy regarding the county-wide programs. Specifically, it has come to our attention that parents of students in many self-contained programs throughout Arlington (e.g., the Multi-Intervention Program for Students with Autism (MIPA), Functional Life Skills (FLS), non-categorical special education classrooms, and "resource rooms") in Elementary and Secondary Schools are concerned about the lack of exposure to grade level curriculum and what they believe are inappropriately low expectations for their students. APS established self-contained programs as a means to provide specialized instruction in a separate setting to special education students, at the convenience of the school system and as part of the continuum of special education services. These programs are designed, in theory, to provide individualized and small group attention and to ensure each student has the opportunity to achieve on a level commensurate with their non-disabled peers. There is concern that expectations for the individual student and/or the entire self-contained program are set too low, widening the gap between a student with disabilities and their non-disabled peer with each passing year.

Of equal concern is that many parents are not aware of the long-term implications of decisions made at the elementary level for their child's ability to graduate with a "useful" diploma when agreeing to the goals to be addressed in their child's Individualized Education Program (IEP) or the placement itself in a self-contained program. While IEP teams may be implementing the IEPs and following the process with fidelity, sections may be "glossed over" by team members and important discussions fail to take place, most specifically on the *range* of special education services that can be provided to support access to the general education setting and curriculum and educational attainment. Boxes are pre-checked. While we believe that there are examples of teachers and classrooms that have established appropriate expectations for our students (best practices that need to be shared), we believe that there are too many examples that indicate a widespread implementation issue within APS rather than limited to issues within just one or two schools. We outline the concerns we have heard in more detail below, and would appreciate the opportunity to discuss these concerns with you.

I. Students in Self-Contained Programs Are “Tracked” Toward the Alternative Assessments.

We have received reports from parents that, at many schools, students in self-contained programs are presumed to be on the Virginia Alternate Assessment Program (VAAP) track as early as Kindergarten. The VAAP is designed for a very small number of students – approximately one percent or less – those with “the most significant cognitive disabilities” according to the State. The VAAP is in line with federal policy that alternate assessments are used to ensure: Educational accountability for all students with disabilities; that test results are complete; and that students with disabilities are not denied educational opportunities available to other students. It is important to note, however, that alternate assessments were included in the 1997 amendments to the IDEA to ensure children with highly complex disabilities were a part of the state accountability system who were otherwise not included in state testing systems. It was not intended to include a broader range of children with disabilities. Instead, the assumption was, and is, that the vast majority of children with disabilities should be accounted for in the regular assessment system.

In APS, the default assumption for the students in the self-contained programs appears to be that they will take the VAAP instead of SOLs, and that they will receive the equivalent of a Certificate of Program Completion after high school, rather than a Special, Standard or Advanced Diploma. Once students reach testing age, parents of students in self-contained programs are strongly encouraged to agree to VAAP testing rather than SOL testing. These decisions are made in IEP meetings without school officials explaining the ramifications of this decision, and without an affirmative determination that students meet all of the criteria for taking such assessments. In most cases, boxes are pre-checked and not reviewed in detail. Few of these students meet all of the criteria for the VAAP, including demonstrating “significant cognitive disabilities,” as explained by the VDOE Guidance Document on VAAP Participation Criteria and the Determination of Significant Cognitive Disability.¹ If a student does not meet each of the criteria for the VAAP then the student must participate in the SOL. This practice in APS seems to go against the intent of having an alternate assessment and the basic purpose of special education.

II. Students in Self-Contained Programs May Not Be Exposed to the General Education Curriculum.

Following the 2004 IDEA and the 2007 ESEA, the Virginia Department of Education encouraged all IEPs in the commonwealth to be “standards-based IEPs.”² The law stipulates that the curriculum presented to students with IEPs be grade-level and follow the SOL or ASOL standards, as applicable for each child. The Introduction to the VDOE Guidance for Standards-Based IEPs provides that “the State must: . . . (iii) Ensure that students who are assessed based on modified academic achievement standards have access to the curriculum, including instruction, for the grade in which the students are enrolled; [and] (iv) Ensure that students who take alternate assessments based on modified academic achievement standards are not precluded from attempting to complete the requirements, as

¹ http://www.doe.virginia.gov/special_ed/disabilities/intellectual_disability/guidance_significant_cognitive_disabilities.pdf.

² VDOE, Guidance Document: Standards-Based Individualized Education Program (IEP), A Guide for School Divisions (Feb. 22, 2011), available at http://www.doe.virginia.gov/special_ed/iep_instruct_svcs/stds-based_iep/stds_based_iep_guidance.pdf.

defined by the State, for a regular high school diploma” (p. 6). The law also indicates that each student’s IEP will dictate the ways in which the goals will be met – in terms of methodology, placement, and accommodation.

As recently as the last two years, the APS Office of Special Education ensured that grade level or adapted curricula were present in every self-contained classroom. Having grade level or adapted curricula present in the classroom is distinctly different from delivering grade level instruction. Parents report that in some instances, the way the county-wide programs in the Self-Contained classrooms are implemented in practice appears to be inconsistent with the federal law and state policy. From what parents describe, the classroom instruction is IEP-based, focusing largely on functional/life skills, managing behavior and low-level communication and does not adequately incorporate the grade-level ASOL- or SOL-based content that these students require to continue to lessen the gap between themselves and their non-disabled peers. In addition, it is not evident to parents, whether these self-contained classes have the materials and are not using them, do not have the materials, or are only utilizing materials from the lowest grade levels for all students in the classroom. In the Elementary School programs, the grade range of students may be as wide Kindergarten to 5th Grade. In other words, the MIPA and FLS curricular programs, specifically, do not appear in many cases to be individualized in practice or to take into account students’ cognitive abilities. As an illustration, for students in K-2, for whom no official testing determination has been made as to whether the VAAP or SOLs will be taken, as these tests begin in 3rd grade, ASOL curricular materials appear to be presented as a matter of course, to the exclusion of SOL-based general curriculum materials. Furthermore, as a general practice, no list of standards (either ASOL or SOL) is provided to parents as members of the IEP team to compare to proposed IEP goals. For students in self-contained programs in APS, standards-based IEPs appear to be the exception rather than the norm.

III. Lack of Parent Education.

Parents of children in self-contained programs – and parents of children with IEPs in general - are not informed of the significant consequences of agreeing to allow APS to assess their child with the VAAP instead of the SOL. Parents are also often not informed that agreeing to a particular placement (whether a self-contained program or not) may have the unintended consequence that their child is inadequately exposed to or taught from the SOL-goal level curriculum, which is required for SOL testing. And families who knowingly agree to have their student take the VAAP in their earlier years, may not realize the longer term ramification of missing the opportunity to be exposed to or taught the content needed to eventually earn a Special, Standard or Advanced Diploma.

IV. Lack of a Broader Continuum of Services.

Special education is intended to be a service – not a placement – that supports through accommodations the ability of children with disabilities to learn alongside their peers and to have access to the same educational and other opportunities as their non-disabled peers. In particular, access to the general curriculum has been reinforced in federal law in recent years and there is more accountability for state and local education agencies to ensure that children with disabilities are held to the same expectations and outcomes as their non-disabled peers. To ensure that children with disabilities are receiving the special education and related services needed to support their learning and educational attainment, there generally is a continuum of services provided to students with disabilities. This continuum

can range from adaptations made to classroom materials, to resource support in the regular classroom, to specialized instruction in a separate setting, to name a few. Regardless of the continuum, the intent is to ensure that the special education services are designed and delivered to support access to the general curriculum and educational outcomes for students with disabilities. The concerns and issues raised in this letter call into question whether APS has a continuum of special education services that is sufficient to support all students in their learning and access to the general education curriculum.

Recommendations: Parent and APS Staff Education.

Given the report of these circumstances and the desire of many parents to give their children a chance at a Special, Standard or Advanced Diploma, it behooves APS to consider the following:

- Encourage all Principals to fully integrate all students in county-wide special education programs or to work with parents in their schools on a mutually-agreeable model.
- Provide the training, support and resources necessary to prepare **all** teachers at all grade levels to instruct and include students with disabilities into their classrooms.
- Set high expectations for and presume competence in **all** students.
- Examine *first* how the school environment (including attitudes) might need to change and what supports each student needs, rather than providing parents and students with boilerplate IEPs that do not examine individual needs.
- Require Principals to ensure that the appropriate continuum of services is being provided to each of their students with disabilities, as determined on an individual basis.
- Ensure that the Local Educational Agency (LEA) Representative (often the Vice Principal or Principal) and the Special Education Coordinators allow time in IEP meetings to review the less often regarded pages of the lengthy IEP documents, including placement, testing, accommodations, related services and assistive technology needs and ensure that parents have adequate information about the necessary decisions that need to be made in the IEP meetings.
- Eliminate the practice of “pre-checking” boxes on IEP documents.
- To support further parent education in IEP meetings, through the Parent Resource Center (PRC), provide parents of children with IEPs information and instruction on the ramifications of the decisions being made within the IEP meetings, beyond providing the Disability Rights handbook.

We hope that this letter and the many discussions occurring at ASEAC meetings and between parents and among IEP team members can lead to greater partnership within IEP teams; that all parties demonstrate interest in the individual needs of the child and that all children are given a chance to learn at the highest level possible and to earn a Special, Standard or Advanced Diploma.

The following Schools had at least one representative contribute to the content of this letter:

Abingdon Elementary School
Barcroft Elementary School
Drew Model School
Hoffman Boston Elementary School

Jamestown Elementary School
Nottingham Elementary School
Taylor Elementary School
Wakefield High School
Washington-Lee High School
Williamsburg Middle School

Appendix – Parent Comments

Statements Recently Made by APS Staff as Reported to ASEAC.

Parents of students in self-contained programs across the county at all levels report the following paraphrased statements from members of their IEP teams, which we understand to be inaccurate.

- MIPA/FLS classes do not have standards-based IEPs.
- MIPA/FLS classes always teach to the ASOLs.
- MIPA/FLS students are always assessed using the VAAP.
- MIPA/FLS students may not take the SOLs.
- Parents' reporting of skills and knowledge demonstrated and learned at home or in other therapeutic settings cannot be included in the IEP.
- Successful methodologies for communication and presenting and evaluating comprehension of curricular content utilized at home or in other therapeutic settings may not be considered, unless they are “research-based” (as defined by APS).
- Determination of what diploma a child will work toward is not made until 8th grade and so parents should not be concerned about what type of testing the student is given in elementary school.

Parents from the following schools participated in answering the following questions. ASEAC members will send out the same questions next year to a wider population in order to gather more data and track any changes on the issues raised by these questions (schools are in alphabetical order):

Barcroft Elementary School
Drew Model School
Hoffman Boston Elementary School
Taylor Elementary School
Wakefield High School
Washington-Lee High School
Williamsburg Middle School

1) Does your child have a standards-based IEP? (SOL or ASOL)

Response: Our IEP is aligned to subsets of the SOL. Interestingly enough, our [child's] IEP only covers subsets of the SOL. Additionally, the IEP committee has never discussed that the IEP is based upon the SOLs.

Response: I THINK that my [child] finally has a standards-based IEP (SOL), but not in previous grades (in high school now).

Response: No, we are on the VAAP track.

Response: No, we are on the VAAP track.

Response: Loosely based on behavior-based ASOLs and very very low level ASOLs for kindergarten (child is in 3rd grade). However, none of these connections is clear in the IEP document or made clear by anyone on the IEP team (except me).

Response: No, his IEP has academic goals but I cannot determine the connection to either the ASOLs or the SOLs. I had never heard of the ASOLs until this year when the IEP team started talking to me about the VAAP.

Response: My son is on the SOL track NOW, but before that he was in MIPA and on the VAAP. When my son was in 1st grade, we were told he would not be able to handle the

SOL exams and should be on the VAAP. The teacher at the time, backed by administration, assured us that my son would get the same education as his general ed peers, it was just the testing thing. We hired a private tutor who taught him how to do math via Touch Math (and in 6 weeks he went from barely being able to add to doing multiplication), additional speech therapy. Besides those two, he now gets tutoring in science (again, trying to make up ground for what he wasn't taught) and reading. The school likes to take credit for my son's dramatic improvement, but we all know it was nothing to do with them, it was due to us working really hard on behaviors, and all the private specialists we hired working to cover the subjects he should have learned and improve his communication skills.

2) Has or will your child take SOLs? Why or why not?

Response: Yes - our intent is for our [child] to take the SOLs.

Response: I do not think [child] has taken any SOLs yet. Since [child] has taken very little academics in school yet, [child] is behind in academics, i.e. definitely not at grade level. I am not confident [child] could handle taking SOLs at this time. [Child] will need extensive test taking practice as well as practice in reading comprehension, math and science skills, etc.

Response: When my [child] was in 1st grade, we were told [child] would not be able to handle the SOL exams and should be on the VAAP. The teacher at the time, backed by administration, assured us that my [child] would get the same education as [child's] general ed peers, it was just the testing thing. There was no discussion of how this would impact his future academically (i.e. ability to graduate with a diploma that was at least worth the paper it was printed on). I remember at an IEP meeting asking that some academic content be put on his IEP, and we were told that because he was going to be on the SOL curriculum, there was no need for that.

What I was told was such a lie. At the end of third grade he could barely add. It was evident that the school was teaching him what they felt like teaching him, and weren't even making an effort to keep him on pace with the general ed classroom. And since there were no academic goals in his IEP there was nothing to enforce.

Response: My son was on an SOL track until 5th grade after failing the SOLs in 3rd and 4th grades. His behaviors seemed to be the main reason he was directed to the VAAP, not as much his cognitive ability.

Response: We were encouraged to go the VAAP route, and there was no discussion about the negative implications on the diploma options by making that choice.

Response: He has never taken the SOL and was taught the regular curriculum. However, we plan to request the SOL for two general education courses he is taking.

Response: No SOLs.

Response: We are fighting to allow our child to take the SOL, even though [child] is eligible if we refuse the VAAP. The school is so resistant and they are trying their best to set [child] up for failure by not attempting any grade-level instruction or test preparation. It's too bad they can't put more effort toward educating him!

Response: When we learned that our child would have no chance at a diploma of any kind if he got on the VAAP track, we did not consent to the VAAP. However it is still not clear if our child will be able to take the SOLs. We are also concerned that if he gets on the VAAP track, his access to general education curriculum will be limited.

Response: No way, no how, did they teach him what he would need to know to pass the SOLs. We knew early on (like 3rd grade) that he had an issue with reading comprehension and asked that he get sessions with the school's reading specialist. We were turned down flat with no explanation. He is going to be taking the SOLs for the first time this year – 5th grade after fighting the school system for a year and going to

mediation to get him out of the MIPA environment.

3) Are you aware of the relationship between passing SOLs for verified credits and the type of diploma your child is eligible for?

Response: Absolutely, but this was never communicated by our school. Rather, we researched this via the VDOE website for special education as well as other websites/blogs such as Wright's Law etc. Essentially, if your child is placed on VAAP, they will not get a normal HS diploma, which in effect will make it nearly impossible to attend college.

Response: Not at all. Is there hyperlink or some information I can receive that explains this? Now that I know, I will ask this question to his current IEP Team.

Response: This morning in our IEP meeting, we got to the section at the back of the IEP regarding testing and [an IEP team member] raised the testing thing. He said we don't need to talk about it until 2nd grade, but he felt strongly that he should at least raise the issue now to make us familiar with the issues and distinctions. I told him I was very familiar with the issues, but really appreciated him raising the issue and that it was very important. He did say at one point that it's not until high school that taking the VAAP vs. taking the SOLs has any effect on the diploma. I don't know whether that is true or not, but thought I'd pass it along.

Response: No, I'm not well versed at it.

Response: I think we all just assumed [child] didn't have a chance at this...now I think I might have been wrong?

Response: Yes, very much so! That is why I am pushing for [child] to take the SOLs because that seems to be the only way for the school to be "forced" to teach at grade level and to focus on academics.

Response: Yes, but only because I attended a SEPTA meeting where an educational consultant trained us on the different assessments and the outcomes of each assessment. This was never communicated to me by my IEP team.

4) Does your child receive grade-level curriculum instruction in his/her MIPA class?

Response: Our son has ASD but is currently accessing the general curriculum with push-in and pull out. However, he is not performing on grade level at this point in time.

Response: I do not believe the curriculum instruction he previously received in his MIPA classes and in his Life Skills classes were ever at grade level. If I make a estimation of what "grade-level" he is at now based on his knowledge, I would say he is between 5th grade or 7th grade depending on the subject matter. Actually I always requested more inclusion when he was in MIPA and more general education, but he was segregated and not provided FAPE at his proper level. Finally now that he is in the Asperger's Program (W-L), he is getting instruction in Academics. I am sure however, that it will take significant effort and time for him to catch up to the appropriate level. For example, in Math he is still doing basic addition and subtraction, and starting to do multiplication. I believe he is capable of much more, and have requested so in his IEP. Also have requested work in Microsoft Office Word, Excel (e.g. Budgeting), PowerPoint, etc. In other subjects, such as History or Reading and Writing, he has to overcome his handwriting challenges and work with his excellent computer skills. Also, he will have to catch up with Reading Comprehension and Language Arts, where he is substantially delayed (most likely about 5 grades).

Response: My son has been at MIPA at WMS for 7th and now 8th grades. But I've ALWAYS been suspicious that the teachers HAVE NO INCENTIVE to work hard on his academics! Why should they? It's the VAAP! Unlike gen ed/subject teachers, teachers in the VAAP do not get evaluated based on their students' performance on the SOLs! [Son]

is busy everyday, but never comes home from school with homework, projects, or even class work that seems to push him past the level of math and reading he's had since 5th grade. My other 3 kids are exhausted from working their butts off in academics all day. Not [Son].

Response: He's not taught the regular curriculum in the MIPA classroom, but he's currently taking co-taught classes of Biology and World History.

Response: Don't think so, but honestly, we should have been pushing for this all along!

Response: No. And what is most frustrating is that in the classroom spanning K-3, when the teacher was sent the third grade modified curriculum, she sent it back and requested the K level! For third and second graders! I am teaching age-appropriate (and beyond) material at home.

Response: No. He is learning kindergarten and maybe some first grade level material in his MIPA class and he is in third grade. I am having to tutor him in third grade material at home.

Response: I do not think the MIPA classroom did anything to prepare my son to transition to a general ed setting. Part of the reason I think my son acted out is because he was bored out of his mind. He doesn't test well, but he is extremely bright, and he comprehends more than he can express (though he is verbal, he can't always get the words out). The work in MIPA was not challenging at all. I think the MIPA teachers see their role as to work on behavior more than academics, but they don't do a very good job of working on behavior.

5) If you are answering no to any of these questions, what impact has this had on your child in school (e.g., no or few integration opportunities, sadness/frustration with school, little or no progress on IEP goals, etc.)?

Response: This year, our son has experience quite a bit of frustration with school, mostly due to the fact that there has been little or no progress on his IEP. He is aware that he is falling behind and it has been a blow to his confidence.

Response: My child had none or few integration opportunities while he was in the MIPA Program in elementary schools and in the Life Skills Programs in Middle through 9th grades. He was not encouraged to participate in clubs or any extracurricular activities. Academics instruction for him has been greatly reduced, limiting his IEP progress goals. As a parent, I found it frustrating that his behavioral issues were emphasized to the detriment of his academic, social skills, executive skills. He was not allowed to be in classes with his peers. In fact, he was held back in the MIPA program in elementary school when I was advocating for at least some inclusion. Although now he is in the right program, it will take significant effort and time to catch up the 3 to 5 grades that he has fallen behind. Fortunately my son has a family that works with him constantly, provides him with outside opportunities, and nurtures him emotionally as well as academically. In fact, he is on his way right now to advocate for himself, take private swimming classes, Career Enrichment Classes at the Career Center (e.g. Television Production and Media), volunteer, prepare himself for college and for a job, and lead an independent life in the community.

Response: My son had inclusion in kindergarten but it was recommended that we remove it (again in 1st grade) because he was falling behind academically, and so I agreed because I didn't want him to get behind. After that was off his IEP he never saw his general ed peers, not even at recess. Here's an example of how benighted things are in MIPA - the 4th grade class had a field trip to the Navy Yard as part of an engineering thing they were working on in science. My son's field trip in the MIPA classroom? The MIPA classroom went to Build a Bear.

Response: Definitely little or no progress on IEP goals, few integration opportunities until

we pushed for them this year.

Response: And also few integration opportunities. And other than being terrorized by a student in class, [child] actually seems quite happy.

Response: IEP goals based on behaviors are a joke. They provide the school an “out” to avoid teaching any academics. They assume all our children are incompetent and drill and drill every day on the same worthless so-called “goals.” I refuse to sign the IEP until the team indicates that they will start with the assumption that my child can learn and we can move on from there. At home, my son is learning a robust variety of topics and at school he has goals such as “labeling numbers.” Meanwhile, at home, he can add and subtract double digit numbers. No integration opportunities are suggested and our teacher had to remind the principal that our third graders could go on the swimming unit with the other third graders – swimming! Our children were not allowed on another field trip to a nature center because “they are not doing the 3rd grade curriculum.”

Response: I am concerned that my child has had few integration opportunities since starting the elementary MIPA program. I have heard the term “when he is ready” from the IEP team over the years but it has been several years without integration and if I wait until the team thinks he is ready, he will be graduating. He also is expressing sadness about going to school each day and I suspect some of his behaviors are expressions of frustration about being drilled on the same low-level goals over and over. I think an understanding of autism and dyspraxia needs to be incorporated into how our children are assessed so that they can show their true abilities and not get stuck on the same goals for years.