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VIA FACSIMILE AND FIRST CLASS MAIL

Mr. John Seeker
Seeker Law Offices
2920 University Drive Suite 213
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Re: **Colin McMurray**

Dear John:

My firm has been retained to represent Mr. and Mrs. McMurray with regard to the educational placement of their son, Colin McMurray, ("Colin.") Colin is a six-year old, kindergarten special education student at Simms Elementary School in Richmond County Public Schools (RCPS.) Mr. and Mrs. McMurray have significant concerns that Colin's placement and services are not providing him with a Free and Appropriate Education (FAPE). Further, it appears that when Colin's parents have made repeated requests to the school system for information and evaluations, the school system has denied some of those requests in violation of IDEA.

Colin has been diagnosed with autism, and he has been receiving special education services in RCPS since the Fall of 2003. Currently, he is in an autism kindergarten classroom all day, and he receives speech and language services, occupational therapy, and adaptive physical education. At this time, there are three major issues: Colin's lack of progress, his severe behavior problems, and the denial of Mr. and Mrs. McMurray's substantive rights under IDEA and the Family Educational Rights and Privacy Act (FERPA.)

The first issue is that Colin is non-verbal and has no functional communication system. This was the case in 2003 and continues to be the situation now. Additionally, Colin is not showing progress in his academic and independent living skills. Simms produced progress reports in January 2007 that state Colin is "beginning to make progress in some areas." However, based on a comparison of data it is clear that Colin is only performing the skills he has demonstrated in the past and that he is not learning new skills. See attached progress reports and data.

June 2006 IEP Short Term Objectives	January 2007 Progress Report
Receptively identify at least 25 pictures.	No progress
Follow 5 one step directions	Some progress See below; inconsistent with private evaluations.
Demonstrating understanding of prepositions	Some progress; he understands "in." According to RCPS documents, he did this in 2005.
Follow 2 step directions	No progress
Will go to the bathroom independently.	Some progress According to RCPS documents, he did this in 2005.
Hang up his jacket using visuals fading to independence.	No progress
Wash and dry his hands using visuals.	No progress
Put on his coat and fasten independently.	No progress
Beginning to use toys in a more functional manner with prompts.	Some progress See below; inconsistent with private evaluations.
Use a ball or car reciprocally with classmates.	No progress
Will share toys and play equipment.	No progress
Decrease self-stimulating behaviors with toys/objects.	Some progress; but school provided no comments. Additionally, school data logs show this behavior is increasing.
Transition to activities in the classroom and throughout the school with no more than 1 visual and fading verbal reminder.	Some progress
Come to any teacher at a variety of situations.	Some progress
Independently wave in response to greetings and farewells.	No progress School reports show he could do this in 2005.
Mand for reinforcers from 2 different adults.	No progress
3 short term objectives for adapted PE.	All objectives for adapted PE show either some progress or sufficient progress; however this goal was just added in November and these reports are not consistent with the rest of his evaluations.
Identify new classroom objects/pictures of an object with a choice of 2.	Sufficient progress when compliant and attending. Based on his behavior problems, it is questionable if he is ever compliant and attending.
Use pictures to make choices between 3 items without adult assistance.	School reports sufficient progress and then repeats the comments made in November 2006.

Request mand for objects and wants at least 10 times per day.	Sufficient progress; however, school data shows that teachers are modeling manding, but Colin is not actually manding, which indicates lack of progress.
Imitate early developing sounds.	No progress
Cut along simple curved and angled line within ½ inch.	Some progress According to school documents, he did this in 2005.
Turn the paper when cutting out simple geometric shapes.	No progress
Trace and connect dots when writing letters and numbers.	Some progress
Will draw a face with 3 features.	Some progress, but adds that this is with hand over hand help.

The following comparisons further demonstrate Colin’s lack of progress as indicated by RCPS’s own evaluations as well as those by private evaluators. See Attached Report by Dr. Thunder; and by INOVA Hospital

RCPS reports that in August 2003, Colin evaluated with Bayley Scales of Infant Development	RCPS Psychological Evaluation; Same Test; November 2006 (three years later)
Language Development: below 7 months	Verbal Skills: 5-9 month level

RCPS Speech and Language Report; Fall 2005	INOVA Hospital; Pediatric Speech Pathology Evaluation; 1/19/07	IEP Progress Report; 1/24/07
Demonstrated comprehension of clear directions in the classroom, eg. “Come here,” and “stop.”	Did not respond to his name nor follow simple verbal and/or gestural commands.	
Demonstrated emerging comprehension prepositions “in” and “on.”		School reports progress because he can respond to the preposition, “In.”
Noted to wave “bye” on occasion when given verbal and visual cues.		Imitates a wave, but does not wave independently.
Initiating a turn taking game, such as ball play, was an emerging skill.		Using a ball or car reciprocally with other classmates; No progress in 11/06 and is aggressive toward classmates in 1/07.
Engaged in vocal play when excited, producing mostly vowels and less frequently the consonants, “n” and “d.”	Did not exhibit any verbal utterances. Occasionally vocalized neutral vowel but no repertoire of consonants phonemes.	

Had difficulty imitating	Had difficulty imitating	
Demonstrated communicative intent to request, gain attention, and protest.	Exhibited no overt communicative intent. He did not direct his attention toward an adult to “communicate” his emotions or any desire for adult intervention.	
Demonstrated the appropriate use of very few items in play. He was noted to push a car briefly; although he preferred to hold toy cars by the wheels and swing them back and forth.	Demonstrated undeveloped play schemes with a variety of toys; pushing or throwing the objects without overt intent or appreciation for function.	

Occupational Therapy Update RCPS; 3/13/06	IEP Progress Report; 1/24/07
When cutting with scissors, once started on a line will stay within 1/4 to 1/2 inch of the line.	Requires hand over hand, but will then maintain cut within 1/2 inch. School reports some progress.

RCPS OT Report; 3/13/06	RCPS Progress Report; 1/24/07
Is independent using the bathroom at school.	Beginning to indicate to staff his need to go to the bathroom, but still needs to be taken on a schedule. School Reports Progress “3”

RCPS IEP; June 2006	RCPS Progress Report; 1/24/07
Putting on shoes and socks gives him difficulty.	The school reports he is making some progress, and says, “attempted to put on his shoes.”

Overall, RCPS seems to be collecting sparse data and using that to show Colin is making progress. However, the skills in which it is indicated he is making progress are skills that he had already learned. In other cases, the school reports he is making progress, but then the data is in direct contradiction to these reports. For example, in his IEP progress report in January 2007, it says that Colin is making sufficient progress “4,” in classifying a variety of objects and pictures. Data supplied by the school shows that Colin can classify unlike items such as vehicles, foods, and animals. However, in the March 2006 RCPS reevaluation, it says he could already do this skill, “He was able to sort non-identical picture cards; for example, sorting shirts, balls, and birds.”

In the January 2007 progress report, the school reports that Colin is making “some” progress on cutting. However, the school data shows that in a one week time period, he was not able to do this skill once.

Significantly, Colin cannot communicate. His functional communication goal says that he is making sufficient progress at manding. However, the data supplied by the school shows that he is not manding. Instead, the teachers are indicating that they are modeling the sign for him, but he is not doing it. This does not show a child that is making “sufficient progress” in his progress of manding.

Overall, it appears from the data that Colin has not learned any new skills since he was evaluated in March 2006, and in some cases, he appears to have lost skills.

The second issue is that Colin’s behavior is deteriorating quickly. School data for February and March shows that he is spitting sometimes as much as 900-1000 times a day. This behavior is occurring during instructional and noninstructional times, including when Colin is working 1:1 with an adult. Colin is also throwing objects, hitting, and scratching himself, other students, and adults. For example on February 20, in addition to all his spitting, Colin threw items 15 times. In another example, on March 1, he scratched 6 times. Due to his behavior, Colin is kept isolated from the other students in his classroom and an aide is assigned to him to keep him from spitting on and hurting the other children in the class. Further, Colin has been prohibited from the school office since he spit on a school secretary. Mrs. McMurray has been instructed not to sign Colin into the school, but to keep him out of the office until a teacher can pick him up each morning.

The third issue is that both Simms and RCPS special education staff have repeatedly and substantively violated IDEA in their relationship with Mr. and Mrs. McMurray. A few examples of those violations are as follows:

- In approximately the Fall of 2005, Colin participated in an enhanced autism program evaluation after it was requested by Mrs. McMurray. This evaluation included the Vineland, a communication profile instrument, and an ABC checklist. On approximately December 8, 2005, Ms. Elizabeth Taylor, ABA Program Specialist for RCPS, called to orally give Mrs. McMurray the results of these assessments. When Mrs. McMurray asked to explain the results back to Ms. Taylor, she responded that Mrs. McMurray “should not worry about understanding,” and “As a mom, you do not need to understand everything.” Ms. Taylor also said that she would email the substance of the conversation to members of the IEP team so Colin’s IEP could be modified. At the IEP meeting on December 12, no member of the IEP team had heard from or received an email from Ms. Taylor, regarding these evaluations. On January 12, 2006, Mrs. McMurray asked for a written report of the test results. See Attached Letter. On January 25, Ms. Taylor responded and provided a report outlining observations of Colin. See Attached Letter. Ms. Taylor did not provide a written report of any of the assessments completed. Throughout the course of the last year, Ms. McMurray has asked for a written report of these tests. To date, no reports regarding the Vineland, the communication profile, and the ABC checklist have been provided to Mrs. McMurray. We question whether these assessments were ever completed. Further, Mrs. McMurray has been continuously denied her right to participate as a member of the IEP team as knowledge regarding her son has been deliberately kept from her.

- Colin began having more serious behavioral problems in approximately April 2006. Mrs. McMurray requested an Functional Behavioral Assessment and Behavior Intervention Plan. The school refused to do this. This was finally agreed to in an Administrative Review, which was held in approximately June 2006. Mrs. McMurray asked for this to be completed over the summer as Colin was in a RCPS preschool autism class. Mrs. McMurray was told that RCPS did not have the personnel available to do this. Colin's behavior continued to escalate over the summer. In the Fall, Mrs. McMurray again asked for an FBA and was told that the school wanted to wait and observe Colin for a month. When the IEP team finally met on October 20, 2006, they had dated the FBA and BIP for September 13, 2006. The IEP team has now told Mrs. McMurray that they are having a difficult time eliminating this poor behavior because it is so well-established.
- In Spring 2006, Mrs. McMurray asked the school principal, Jessica Biel, if she could see Colin's school records. The principal would not allow her to see his records. Ms. Biel told Mrs. McMurray to go home, review her records, and let Ms. Biel know if any documents were missing. Ms. Biel should know that this is an impossible task. Mrs. McMurray had retained an educational advocate, Sharon Stone, who again requested that Mrs. McMurray be able to review Colin's records. When Mrs. McMurray and Ms. Stone arrived at school to review the records, they were told that there was a \$57.00 copying charge. Ms. Stone said we do not want copies, and we only requested to review the file. While the school system may have the right to charge parents for copying records, this is not the standard course of conduct engaged in by RCPS. We assert that the principal of Simms violated Ms. McMurray's FERPA rights by denying her access to her son's records. This violation was further compounded by the copying charge that the principal tried to assess in a discriminatory fashion.
- On September 20, 2005, Dr. Coffee, Colin's developmental pediatrician, wrote a letter to the school expressing her concern that Colin was non-verbal. She strongly emphasized that Colin receive intensive and individual speech therapy. See Attached Letter. Several IEP meetings were held that Fall and Winter 2005 and 2006 and Mrs. McMurray repeatedly asked that Colin's speech services be increased and that he receive at least some individual speech. Mitchell Copeland, RCPS Preschool Specialist, responded in a letter dated January 11, 2006 that Colin services included 4.25 hours of speech a month. Mr. Copeland also responded that the school would not increase Colin's hours of speech, nor would any individual speech be provided. Mr. Copeland stated, "School Division staff believe that the services offered are consistent with the provision of related services in the least restrictive environment and with professional discretion related to the particular tasks, in terms of providing whatever level of educational assistance is appropriate for Colin to make progress." "Specification of one-to-one services would limit the teacher's and the therapist's ability to move the child within a continuum of supports and services on a daily basis and limit their ability to provide instruction in a natural context." See Attached Letter. It is now a year later and Colin is still non-verbal and he has no communication system. His June 2006 IEP which is his current IEP only increased his speech services to 6 hours a month, and none of that time is individual. Mrs. McMurray observed a ½ hour group speech lesson with Colin. During that session, Colin had one interaction with the teacher and for the remainder of the lesson, an

instructional assistant was trying to control his behavior. Despite Colin's lack of progress in speech and despite Mrs. McMurray's continued requests for increased speech, the IEP team steadfastly refuses to increase his services beyond the six hours a month nor provide any individual services.

- On January 25, 2006, Mrs. McMurray wrote a letter to Jean Henderson in the Office of Monitoring and Compliance explaining her reasons for rejecting the proposed IEP. Those reasons included, among other things, no provision of a statement of special education and related services, no provision explaining how Colin's progress would be measured, and failure to provide an FBA for Colin's high rate of self-stimulatory behavior. See Attached Letter. Subsequent to this letter, an administrative review was held to address many of Mrs. McMurray's concerns. While some of her concerns were taken care of, this letter is further evidence of Simms' lack of compliance with IDEA. See Attached Letter

Based on our review of the documents, we conclude that RCPS is not providing Colin with FAPE as his behavioral problems are rapidly increasing and he is not making meaningful progress under IDEA. Further, RCPS is substantively violating both Colin and his parents rights under IDEA.

We are choosing to delay a Due Process request at this time. Rather, we are asking for a resolution conference chaired by Mr. Lawrence to discuss the following: an immediate change in placement for Colin, compensatory services, appropriate teaching for Colin's disabilities, meaningful data collection, services based on peer-reviewed research that is disclosed to the parents, and precise opportunities for the parents to have information regarding his progress or lack of progress. Overall, we want assurances that Colin will have an appropriate placement, that he will be provided acceptable services, and that Colin and his parents will have the same special education rights as any other family.

Please contact me immediately so we that can begin to resolve this situation as soon as possible.

Sincerely,

Joan Heishman Proper, Esquire

cc: Mr. and Mrs. McMurray
Mr. Martin Lawrence, RCPS, Office of Monitoring and Compliance
Ms. Jessica Biel, Principal, Simms Elementary School
Sharon Stone, Educational Advocate