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VIA FACSIMILE AND FIRST CLASS MAIL

Dr. Jane Erye, Director
Special Education Department
Richmond County Public Schools
P.O. Box 498
Manassas, Virginia 20108

Ms. Kathleen Harold, Esquire
Deed & Swiss
9500 East Wing Street, Suite 1200
Richmond, Virginia 23219

Re: Camden Shields

Dear Dr. Erye and Ms. Harold:

My firm has been retained to represent Mr. and Mrs. Shields with regard to the educational placement and services of their son, Camden Shields, ("Camden.") Camden is a fifteen-year old, ninth grade special education student at Westside High School in Richmond County Public Schools (RCPS.) Mr. and Mrs. Shields have serious and significant concerns that Camden's placement has not and is not providing him with a Free and Appropriate Education (FAPE), in accordance with IDEA. Further, RCPS does not know Camden's academic skill level, his emotional needs, or the appropriate interventions to address his increasingly severe behavioral condition. Additionally, RCPS is not implementing all of the services agreed to by the IEP team. There are also significant concerns that Camden's rights are being denied under Title II of the Americans with Disabilities Act and Section 504 of The Rehabilitation Act of 1973.

Camden has been diagnosed with Down Syndrome and has been receiving special education services since he was a very young child. He has been in RCPS since early 2004. In March 2004, he was reevaluated by RCPS and his disability category was modified to Mental Retardation. At this time, Camden is in a special education classroom at Westside High School with a very low staff to student ratio. His IEP indicates that he receives speech and language

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services and occupational therapy. At this time, there are several major issues: Camden's severe behavior problems, his lack of progress and regression in some areas, the lack of an appropriate placement, the lack of certain services written into his IEP and/or agreed to in an IEP meeting, and the lack of appropriate equipment and furniture for Camden. We assert that RCPS is violating IDEA, the Americans with Disabilities Act, and The Rehabilitation Act of 1973 in its relationship with Mr. and Mrs. Shields and Camden.

Lack of an Appropriate Placement

At this time, Camden's IEP team has proposed one placement for him, a 45 school day placement to "evaluate and diagnose...his educational, emotional, and behavioral needs," at Independent Rock. It is my understanding that in IEP meetings, the IEP team called this a "diagnostic placement." We assert that this is an inappropriate placement for Camden.

Camden has been a student in RCPS for over three years. The IEP team should know Camden's needs without having to change his placement in the middle of the school year so he can be assessed. Additionally, his triennial evaluation was due in March 2007. Under Virginia Regulations, when a student is due for reevaluation, the IEP team has to determine if additional data is needed and then administer assessments, if needed, before the reevaluation is due. In March 2007, the IEP team did not administer any assessments. Nor did the IEP team find Camden eligible for ESY so that the assessments could be completed over the summer. Now, eight months after Camden's reevaluation, the IEP team states that they do not know any of his needs.

Additionally, an appropriate IEP and placement is required to be in place at the beginning of each school year. That has not happened in this case. Not only is an appropriate IEP and placement not in place, it is unknown when an appropriate IEP can be written because Camden's behavior is so severe. Since there is not an appropriate IEP at this time, there is no way for the IEP team to prescribe Independent Rock as an appropriate placement because they do not know Camden's needs.

The placement is also inappropriate because the teachers in his proposed classroom will not be able to consistently communicate with him. Camden is supposed to be communicating with sign language, along with other communication systems. However, none of the staff in his proposed classroom at Independent Rock are proficient in sign language.

Further, the proposed placement does not have a complete behavioral system in place for Camden's needs. Independent Rock uses a behavioral protocol that they use for all children in their program. It does not appear that they design individual behavior programs to meet the

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needs of each individual student. The behavioral system used by Independent Rock relies on the use of a time-out room (quiet room) as the main deterrent for poor behavior. The time-out room is a carpeted room (on all four walls) housed within the current classroom. It is approximately 5 foot by 5 foot with a 4 inch by 8 inch window placed at least 5.5 feet from the ground with a door locking mechanism that locks from the outside. When this classroom was first observed the window was covered with a black piece of construction paper; however, on a subsequent visit the paper had been removed.

Mr. and Mrs. Shields asked about the possible psychological effects and/or damage by the use of the time-out room on Camden and the IEP team did not know. The IEP team decided that the time-out room would not be used at Independent Rock, but then proposed as an alternative that Camden would be sent home if his aggressive behavior could not be controlled. We assert that sending a child home is not an appropriate behavioral intervention and that RCPS has demonstrated by this decision that it does not have an appropriate placement for Camden.

Of further concern, the RCPS Educational Assessment of Camden in March 2004 states, "Camden's previous behavior plan included the use of timeout. This was not working for Camden and therefore removed from his behavior plan. Camden sought to go to timeout and it reinforced his negative behaviors." Despite this Assessment, RCPS has consistently used timeout and is still employing the use of time-out room by sending Camden to a wooden chair in a designated area of the room called "The Bull Pen." The parents have stated that they too believe that the use of time-out reinforces his negative behavior; however, RCPS has continued to use this technique.

Behavior

Camden has a history of significant behavioral problems. RCPS' documents, since 2004, discuss Camden's behaviors and recommend that his behavior plan be followed. Earlier documents also show that rather than address Camden's behavior, his teachers had work prepared for him so staff could follow him when he eloped from the classroom and have him work wherever he ended up in the building. This tactic, which RCPS used for years, has allowed Camden's behavior issues to become much more difficult to eradicate. During the 2006-2007 school year, Camden developed more severe behaviors, such as throwing furniture, more frequent elopement which often resulted in him leaving the building, and kicking, isolating himself from others, hitting himself and other students. A behavior specialist, Jennifer Garner, was brought in last year, and an FBA was completed. Behavior Data was also collected from September 2006-June 2007. Ms. Garner has again been involved this school year, as has an Autism Specialist and behavior data has been kept since the beginning of school this year. Despite all the interventions tried by RCPS, Camden's behavior has escalated. For example, on October 22, 2007, Camden hit others 32 times, he hit himself 36 times, he kicked 8 times, he

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pushed 5 times, and he threw things 2 times. The daily communication logs kept by school staff primarily address behavior and it is currently unclear if Camden is available for learning at all during his school day.

Camden has also been suspended four times this year for a total of twelve days. The use of suspension for Camden is completely inconsistent, and the motivation behind these suspensions is suspect. Camden has a history of pinching others. For example, he received a referral for this behavior at least once this year, rather than a suspension. Last week, he was suspended for the same behavior. Camden has a long history of leaving the classroom or work area. He was suspended for this behavior last week. Camden was not suspended for engaging in these same behaviors during the last school year. Further, the IEP team said that Camden would not be suspended for this behavior if he was attending Independent Rock. Camden also has a BIP which is supposed to prescribe the consequences for Camden's inappropriate behaviors, and suspension is not one of the consequences listed. Westside High School's choice to manage Camden's behavior, which is a manifestation of his disability, as agreed to in at least one Manifestation Determination Review, with suspensions is highly questionable.

Additionally, the parents have repeatedly raised concerns regarding the use of suspension as a way to manage Camden's behavior as they believe it is reinforcing his maladaptive behaviors and only serves to exacerbate the current situation. Parents have repeatedly requested a Board Certified Behavior Analyst (BCBA) be employed to assist RCPS staff in development of a BIP to meet Camden's specific needs; however, this request has been denied.

In addition to the suspensions, the IEP team also decided that Camden would only attend school for shortened days. This began on September 20 and is continuing now. The IEP team wanted the shortened schedule to continue until Thanksgiving; however, Mr. and Mrs. Shields are only agreeing to this in two week increments because they feel they have no other alternative.

The IEP team admits that they cannot adequately address Camden's current behavior concerns at Westside. The IEP from October 2007 proposes a 45 school day diagnostic placement so that more data can be collected and a baseline can be established for his behavior. The purpose of the placement is to "evaluate and diagnose his least restrictive special education status, as well as his educational, emotional, and behavioral needs." However, if the IEP team does not know Camden's behavioral and emotional needs after collecting data for over a year with the help of a behavioral specialist and an autism specialist, there is no reason to believe that collecting data and studying his behavior for another 45 school days is going to allow RCPS to provide FAPE to Camden.

Lack of Progress and Regression of Skills

Camden is non-verbal. He has some words, but it is very hard to understand him and he has no functional communication system. He has some signs, but again they are modified signs. While Camden appeared to be developing some communication skills in 2004, he now has almost no ability to consistently communicate. Additionally, Camden is showing regression in his academic and independent living skills. Based on a comparison of RCPS's own paperwork it is clear that Camden is not performing some skills he could demonstrate in the past, and he has lost his ability to perform at least one basic life skill. We assert that Camden did not make meaningful education progress during the 2005-2006 and 2006-2007 school years, nor is he making progress during this school year. In addition to the inconsistent and incomplete documentation by RCPS, there are some disturbing emails by school system administration. In recent emails, there is a discussion that goals on his IEP will have to be reviewed and/or closed out because there is no data supporting mastery. There is another email that states that the DRA levels reported in at least one IEP do not match the DRA system. The following are some other skill areas that are of concern. These are only examples of Camden's apparent areas of weakness.

March 2004-June 2006 PWCPS Documents	Fall 2007 PWCPS Documents
Observed to toilet independently (Reevaluation in March 2004)	Needs physical assistance to use the bathroom. (Present Level of Performance in Proposed IEP; October 2007) Description of direct physical assistance by staff helping Camden use the bathroom. (Communication Log)
Recognizes numbers to 20. (Educational Assessment March 2004) Recognizes numbers to 20. (IEP May 2004) Recognizes numbers to 50. (IEP June 2005)	Working on recognizing numbers 1-5. (Communication Log)
Camden was able to state the names or use sign language to identify seventeen letters of the alphabet. He was also able to read or use sign language to identify eleven sight words on the preprimer level. (Educational Assessment March 2004.)	No academic data provided. (September 2006 to date)
Camden was able to count with one to one correspondence (no number identified) and identify shapes. (Ed. Assessment March 2004)	While documents say he can count with one to one correspondence, there is no information on to what number he can do this. (September 2006 to date)
Regularly uses four signs to make requests. (IEP June 2005)	Documents say that he uses sign language, but there is no information on what new signs he has learned or how many signs he can use. (September 2006 to date)

Camden is skilled with a calculator, using all four operation keys with prompting. (June 2006 PLOP)	Documents say that he can identify all four keys. (September 2006 to date)
He is willing to count by 10s, less willing to count by 5's, but will with his cards, and uses pennies to find sums that do not end in a zero or a five. (June 2006 PLOP.)	No academic data provided. (September 2006 to date)

Camden also appears to have lost his ability to interact with his peers. In a January 2007 email written by Dr. Robert Langdon, Camden's special education teacher, Dr. Langdon wrote, "For the first two years he (Camden) was here (Tutt Middle School), he would work with his peers in a variety of settings and a on a variety of assignments. He hasn't worked with his peers since September. He has stopped trying to communicate with them, except for when they have something he wants." Dr. Langdon also goes on to describe his concern about Camden's new habit of isolating himself from other people.

In addition to the fact that Camden has lost some skills, his behavior has deteriorated so much over the last three years that RCPS can no longer assess him. While in RCPS, Camden was evaluated with standardized tests in 2004. However, his IEP dated March 29, 2007 says, "It has been difficult this year to assess Camden's achievement levels, because he has been so hesitant to engage with traditional academic assessments."

The IEP team also wrote in the proposed IEP on October 18, 2007, under the placement justification, that Camden needs the placement so that his educational needs can be evaluated and diagnosed. At this point in time, the IEP team should know what his needs are. Further, the IEP team should be able to write achievement levels into his IEP. In the proposed IEP, no academic data was provided. The only skills listed that Camden can do independently are to turn on and off the TV and use a VCR/DVD.

Other Issues

RCPS has also procedurally and substantively violated IDEA in their relationship with Mr. and Mrs. Shields and in the education of Camden. Additionally, we assert that Camden's rights under the ADA and The Rehabilitation Act of 1973 are being violated. A few examples of those violations are as follows:

- As stated earlier, Camden has been suspended for a total of twelve days for this school year. On November 2, 2007, when Mr. Shields went to Westside to pick-up the paperwork regarding the suspension, he was told that Camden would receive home based instruction for days eleven and twelve of the suspension. There was no IEP meeting to

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discuss this change in placement for a special education student who has been suspended for more than ten days. There was no opportunity for Mr. and Mrs. Shields to sign the IEP accepting or denying home based services. Instead, Mr. Shields was given a piece of paper signed by school staff stating that Camden would receive home based services beginning on Monday. Mr. and Mrs. Shields have rejected the home based services by providing written notice to Westside.

- When the IEP team this year started mentioning the Independent Rock temporary placement, Mr. and Mrs. Shields were told that they could not visit the placement until there was a proposed IEP recommending placement to Independent Rock. Many hours were then spent in IEP meetings before Mr. and Mrs. Shields were ultimately allowed to visit Independent Rock to see the classroom when school was in session. When asked what assessments would be completed at Independent Rock, the IEP team said they could not answer that question until Camden was at Independent Rock. When Mr. Shields asked what criteria would be used to assess when Camden could return to Westside, the IEP team could not answer the question.
- The IEP team has not provided Mr. and Mrs. Shields with fourth quarter progress reports for Camden for the 2006-2007 school year. Mrs. Shields has repeatedly asked for these documents and to date, none have been provided. The school did respond to a FERPA request and there were no fourth quarter progress reports in this response. Additionally, other information has been sporadically provided by the school as it appears that information has been misplaced or lost altogether.
- Camden was not provided ESY for the summers of 2006 and 2007. There was an ongoing email exchange between Mrs. Shields and Dr. Robert Langdon, one of Camden's teachers, from March – June 2007. Dr. Langdon expressed in an email on June 6, 2007, "I have data that shows his regression in reading over the summer, and this is the first year that he did not meet his reading goal during the regular school year." He also told Mrs. Shields in the email exchange that Cathy Muffler, Administrative Coordinator, would have to approve it. Mrs. Shields was told orally in about June 2007 that ESY was not approved. No information is available on why Camden was not provided ESY for the Summer of 2006.
- Camden receives Speech and Language Services and Occupational Therapy. Mr. and Mrs. Shields did not receive any quarterly summaries of Camden's progress from these services during the 2006-2007 school year.
- Camden has not received speech services since June 2007 even though 270 minutes a month is written into his IEP. RCPS offered some options since they do not currently have a speech pathologist for Camden, but as the parents are pointing out in a separate letter, none of these are viable options for Camden.
- Camden's proposed IEP has no goals for Reading, Math, Writing (other than writing his name), or Social Skills/Peer Communication, and he has a very limited communication goal.

- At least two of the five IEP goals that are written into the proposed IEP are the same goals he had in much earlier years. For example, the goal that Camden will dress himself...to include zipping, snapping, and buttoning, is the same goal he had in June 2006. The goal that Camden will trace his name is the same objective he had in November 2003 and June 2004.
- It is completely unclear from school documents whether Camden received adaptive physical education (“APE”) during the 2006-2007 school year. If he did not receive this service, it is unclear why he was not found eligible for it as he cannot access most of the equipment generally used by middle and high school students in physical education. Mrs. Shields was told last Spring that it would be written into the 2007-2008 IEP, but this was not done. Mrs. Shields has been told as recently as this month that an assessment was done for Adaptive PE, but Westside High School does not have the assessment and APE has not been implemented for him. It is our understanding that the APE teacher tried to do an assessment of Camden, but he would not cooperate. The APE teacher attempted to assess his ability to do crunches and took Camden to the track where he eloped to the parking lot and tried to get into cars. In October, Mrs. Shields was told by Laura Croft, Westside Special Education Teacher, that Westside will not provide Adaptive PE for Camden until they figure out his placement. Behavioral notes state that the APE teacher has worked with Camden, but during at least one session he threw a ball at other students, took off his shoes and threw them at other students, and while sitting on a mat grabbed another student’s foot and received a discipline referral for his actions and ultimately was suspended.
- There are discrepancies in the RCPS documents about whether a Behavior Intervention Plan (BIP) has ever been written for Camden. Documents from 2004 repeatedly state that staff should continue to follow the BIP, but then other documents say that no BIP was written. In meetings, the IEP team has insisted that a BIP was done last year, but in the proposed IEP from September 2007, the present level of performance says, “While Camden has an exhaustive functional behavioral analysis from his middle school, there is no accompanying behavior intervention plan.” The school currently has developed a BIP which targets Camden’s lack of communication skills as the targeted behavior. As far as we can tell, it does not address his severe behaviors of elopement, hitting, pinching, throwing objects, clearing work areas, and noncompliance/avoidance.
- Behavior Data was collected during the 2006-2007 school year with the assistance of a Jennifer Garner, a RCPS behavior specialist. While Mr. and Mrs. Shields were given some data during the Fall of 2006, they were not notified or given data that showed very severe behaviors (outlined above) of Camden that were occurring and continuing into the Spring of 2007.
- When Camden attended Bull Run Middle School, he was able to go to the gym, library, and other locations for a sensory break when he became overwhelmed. At a March 2007 IEP meeting, Mrs. Shields was told by Laura Croft, Westside Special Education Teacher, that Camden would not be allowed to go to those locations at Westside and would have to

stay in his classroom. During a September 17, 2007 meeting, Mrs. Shields asked about appropriate sensory equipment that Camden could use at Westside, such as therapy balls, sensory swings, bean bag chairs, etc. The sensory equipment would enable Camden to regain his attention so that he could access his educational programs. One of the autism teachers, Mrs. Clark, responded that Westside did not have such equipment, there is not any room for it, and that she had been asking for such equipment for a couple of years, but still did not have it. At this same meeting, the Education Advocate, Sharon Stone, pointed out to the Westside staff that they were no visual aids for Camden. For example, Camden does not have a picture schedule on his desk as he did in middle school. Additionally, appropriate seating is not available for Camden at Westside. The classroom has desks with attached chairs that he cannot sit in due to his stature. There is a round table in the room, but it would be difficult for Camden to sit at because of the protruding bars in the table. There is one wooden chair in the classroom where Camden can sit, but it is the time-out area. There is a mat on the floor with a TV on a chair for Camden to sit and watch a movie for his reinforcer. This location is wedged between the wall and the round table.

- Mr. and Mrs. Shields and Ms. Stone went to visit the proposed placement at Independent Rock on October 26, 2007. There were not any observable picture schedules or visuals in place for Camden. As stated earlier, there are no teachers that know sign language in his proposed classroom placement, even though sign language is one of the ways he communicates and it has been written into his IEP goals for several years.
- In prior years, Camden had a communication device that he used at school. In his 2005 IEP, the present level of performance says that Camden uses his communication device in four settings. The IEP also says, "His best way of communicating with unfamiliar listeners is with his communication device." His June 2006 IEP also describes when and how he uses his communication device. His June 2006 IEP had a goal that included the use of the communication device. However, in an email on September 26, 2007, Peg Slingback wrote, "He (Camden) had a communication device that he was supposedly using when he came to RCPS and then I recently learned that he had not been using it last year. Am not sure why..."
- During October and November, Mrs. Shields has been trying to observe the behaviorist when she is working with Camden at Westside so that she could implement the same behavior strategies at home that are being used at school. About a week ago, she asked the assistant principal, Ms. McGriffin if she could come observe the behaviorist. Ms. McGriffin responded that Mrs. Shields should contact the behaviorist. Then Mrs. McGriffin contacted Mrs. Shields and said the behaviorist does not actually work with Camden so there is nothing to observe. Instead, she works with staff to make suggestions. Mrs. Shields emailed the behaviorist last week to find out the dates both this year and last year that she worked with Camden and she has received no response. Mrs. Shields has left four messages for Ms. Amanda Lammers, Ms. Garner's supervisor, to find out about the training of the behaviorists. Ms. Lammers has not returned any of these calls.

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Mr. and Mrs. Shields have been repeatedly denied information regarding the instruction and services provided to their son. Those documents that have been provided are inconsistent or the IEP team has made inconsistent statements in meetings. This lack of accurate information has made it and continues to make it impossible for the Shields' to meaningfully participate in the IEP process and to make informed decisions on behalf of their son.

Due to the fact that Camden is regressing both academically and behaviorally, and due to the fact that RCPS has only proposed one temporary placement for their son, Mr. and Mrs. Shields have rejected the proposed IEP. They asked for the IEP team to consider a private day placement. There were at least three meetings where it was promised the private day placement would be discussed. However, at each meeting, the IEP team just reiterated that the public day 45 school day placement was the only option. The IEP team made no effort to investigate the McDonald's Center per the parents' request, nor did the IEP team gather any information about any other private day placements. When asked why the IEP team did not investigate the McDonald's Center, the response was they did not have time to investigate. The IEP team told the parents that they should request an Administrative Review regarding their request for alternative placements.

Based on our review of the documents, we conclude that RCPS is not providing Camden with FAPE as his behavioral problems are rapidly increasing and he is not making meaningful progress under IDEA. Further, RCPS is substantively violating both Camden and his parents' rights under IDEA. We also have serious concerns about Camden's rights under the ADA and The Rehabilitation Act.

We are choosing to delay a Due Process request at this time. We are also choosing to delay filing claims under the ADA and The Rehabilitation Act. Rather, we are asking for a resolution conference **within ten days** to discuss the following: a private day placement for Camden and compensatory services.

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. Shields
Sharon Stone, Educational Advocate

Amy White, Principal, Westside High School