

**VIRGINIA:**

**DEPARTMENT OF EDUCATION  
DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES  
OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES**

**In the matter of**

**, a minor,**  
**by his parent,** \_\_\_\_\_, **Petitioner**

**and** \_\_\_\_\_ **VDOE Case #: 21-**  
**FAIRFAX COUNTY PUBLIC SCHOOLS,** **Respondent**

**Hearing Officer: Rhonda J. S. Mitchell**

**Representatives:**  
**, pro se, Parent of**  
**John Cafferky and Wesley Allen, Counsel for Fairfax County Public Schools**

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**FOURTH PREHEARING ORDER**

*September 21, 2020 Conference Call*

A fourth prescheduled prehearing conference call was conducted on September 21, 2020. The following persons were present on the call:

Rhonda Mitchell, Hearing Officer;  
\_\_\_\_\_, Petitioner;  
Wesley Allen, Counsel for Fairfax County Public Schools (FCPS);  
Dawn Schaefer, Coordinator, Due Process and Eligibility, FCPS;  
Brian Miller, Case Monitor, Virginia Department of Education; and  
Carl Hellandsjo, Court Reporter.

The final conference call before the hearing is scheduled for 4:30 PM, September 25, 2020. A notice for the call has been electronically transmitted to the parties. Dawn Schaefer agreed to make the link for the virtual hearing available to the parties on September 25, 2020.

Petitioner reported that the FCPS resolution team made her what she considers an unacceptable resolution offer. Accordingly, she intends to proceed to the due process hearing.

As previously promised by Dawn Schaefer, a copy of \_\_\_\_\_' student records was delivered to petitioner on September 18, 2020. On the call, petitioner claimed that some of the information was missing. She is particularly interested in the log-in sheet that shows who has accessed \_\_\_\_\_' files through the Sea Stars system. Ms. Schaefer explained that the system does not have such a tracking mechanism.

However, petitioner insists that such a tracking mechanism exists within the Sea Stars system and called for sanctions against FCPS for providing misleading information. The Hearing Officer accepted Ms. Schaefer's representation that no tracking mechanism exists for Sea Stars.

Counsel for FCPS reported that there was a privacy breach on three of the thumb drives that were sent to petitioner on September 18, 2020. Apparently another student's information was contained on the drives. Petitioner, from the beginning of this process, has expressed concern about a potential privacy breach by FCPS. She alleged that FCPS had a history of privacy breaches. In an effort to deter such a breach and provide a remedy if a breach should occur, the Hearing Officer entered a protective order on September 14, 2020. Therein, she ordered the following:

*To the extent any inadvertent disclosure is made pertaining to the educational records of \_\_\_\_\_ and/or any other FCPS student, the receiving party will immediately notify the other party of such disclosure and return or destroy such record. The receiving party agrees to take actions to prevent the further disclosure of such inadvertently produced educational records.*

Petitioner claimed that she had not yet reviewed the information on the drives and agreed to refrain from viewing them. Pursuant to the protective order and in an attempt to cure the breach, the parties were directed to promptly exchange the drives. Petitioner is to return the drives with the breach and respondent is to provide her with the uncompromised drives containing only \_\_\_\_\_' information.

The Hearing Officer is very concerned about this privacy breach by FCPS, particularly in light of petitioner's on-going and repeated concerns about privacy. If FCPS has a history of such privacy breaches as alleged by petitioner, it should have been extremely careful to insure no privacy breach occurred when it delivered the information. In fact, with or without a history of privacy breaches, FCPS should be careful with student records and in no way breach a student's privacy.

On the conference call, counsel for FCPS claimed to have only served as a conduit to get the information to petitioner. Conduit or not, counsel for FCPS is held responsible for the breach along with whoever assembled the information for delivery to petitioner. Counsel is representing FCPS in this case and should have insured that the information being sent under his firm's cover did not include another student's information. Counsel for FCPS is hereby admonished for the privacy breach.

Also during the conference call, counsel for FCPS raised concerns about the numerous email messages received from petitioner on a daily basis. The Hearing Officer also expressed concern about the abundance of messages and asked petitioner to refrain from sending so many messages. The Hearing Officer explained the cost to FCPS every time she and counsel for FCPS reviewed her messages and the attachments. Petitioner understood the concern and agreed to adhere.

Mr. Allen stated that he had reviewed the resume's of two of petitioner's possible expert witnesses, \_\_\_\_\_ and \_\_\_\_\_, but could not agree to prequalify them as experts without *voir dire*. The Hearing Officer understands and accepts this decision.

### *September 22, 2020 Conference Call*

On September 22, 2020, an emergency prehearing conference call was conducted. This was the fifth conference call in this matter. Present on the call were:

Rhonda Mitchell, Hearing Officer;  
Callie Oettinger, Petitioner;  
Wesley Allen, Counsel for Fairfax County Public Schools (FCPS); and  
Jane Strong, Director, Special Education and Procedural Support, FCPS.

The call was initiated by the Hearing Officer due to another privacy breach alleged by petitioner. Petitioner identified what she perceived as another privacy breach in the information she received from FCPS. While on the call, counsel for FCPS concurrently reviewed the information petitioner claimed to be a privacy breach.

Once reviewed, counsel for FCPS pointed out that the information was in response to another case also involving petitioner and was a matter of public record. The Hearing Officer accepted this representation and concluded that the information was a responsive pleading. However, it is here noted that the Hearing Officer did not have access to the information and has not seen the information herself. The Hearing Officer may ask to independently review the information during the hearing if this remains an issue.

The conference call was also convened to discuss petitioner's allegation that FCPS misled both she and the Hearing Officer regarding Sea Stars. She sent an electronic message with a screen shot of another student's file from Sea Stars that she represented was a log-in or access sheet. FCPS claims that the Sea Stars system does not have such a tracking mechanism.

In an effort to resolve this on-going issue, the Hearing Officer asked Dr. Strong and/or Mr. Allen to check with FCPS' IT data management and ask them to provide a similar screen shot of Max' Sea Stars information to petitioner. Via email today, counsel for FCPS provided a screen shot to the Hearing Officer and petitioner. Petitioner is directed to view the screen shot to determine whether this is the information she is seeking or not. Once viewed, petitioner is to contact Mr. Allen, copy to the Hearing Officer, advising whether this is the information she was seeking. If available, the screen shot information should be provided for at least two years prior to August 26, 2020 and thru September 23, 2020. Petitioner is also granted permission to amend her witness list up to 24 hours following receipt of the Sea Stars access list.

Considering the mix-up with the thumb drives, petitioner asked for a 24-hour delay to provide her exhibit books and witness list. She also asked that the hearing be delayed by one day. Counsel for FCPS did not object. Therefore, the hearing has been rescheduled for September 30, October 1, 2 and 5, 2020. Exhibit books and witness lists will be due by 5:00 PM, September 23, 2020. An amended formal notice of the hearing has been electronically transmitted to the parties.

The parties are directed that, between now and the time the Hearing Officer decision is entered, should any dispute arise, they must first attempt to resolve the problem. In the event the parties cannot resolve the dispute between themselves, they may submit by electronic mail any appropriate written motion, concern or documentation and arrange a status conference to present the matter to the Hearing Officer for decision. Motions or any significant case developments should be submitted to the Hearing Officer as soon as practicable.

The parties and their representatives will be held to the matters agreed upon, ordered, directed or otherwise set forth in this Order. If either party believes this Hearing Officer has overlooked or misstated any item, the party is directed to advise this Hearing Officer of the omission or misstatement within five (5) calendar days of the date of this Order (and provide a copy to the opposing party). The Hearing Officer will promptly address the party's concern(s). Additional prehearing orders will be entered as appropriate.

The parties' rights to appeal can be found at 8 VAC 21-81-T and §22.214 D of the Code of Virginia, 1950, as amended.

IT IS SO ORDERED.

ENTERED: September 23, 2020

/s/

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RHONDA J. S. MITCHELL  
Hearing Officer

***Certificate of Service***

I, Rhonda J. S. Mitchell, Hearing Officer in this case, do hereby certify that a true copy of the above was emailed to John Cafferky and Wesley Allen, counsel for Fairfax County Public Schools, and to Callie Oettinger, petitioner, on the 23<sup>rd</sup> day of September, 2020.

/s/

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Rhonda J. S. Mitchell  
Hearing Officer

CF (via email):  
VDOE  
Case Monitor  
FCPS Coordinator