

ATTACHMENT 23:

VDOE, Division of Special Education and Student Services, Office of Dispute Resolution and Administrative Services, Systemic Letter of Findings, August 24, 2020

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

SYSTEMIC LETTER OF FINDINGS

For ease of reading throughout this Letter of Findings, quotations may be designated by the following typeface/colors: *Red italics* = parent(s); *blue italics* = LEA; *black italics*: US ED; VDOE/ODRAS; other.

School Division Fairfax County Public Schools Dr. Jane Strong, Director, Office of Special Education Procedural Support Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility 8270 Willow Oaks Corporate Drive—2 nd Floor Fairfax, Virginia 22031	Parent(s) - SYSTEMIC COMPLAINT Ms. Callie Oettinger Parents 1-4
	Student(s) - SYSTEMIC COMPLAINT Student A-F
Date Complaint Received May 8, 2020	Complainant (if other than parent) Ms. Callie Oettinger <div style="background-color: red; color: white; text-align: center; padding: 5px;">REDACTED</div>
Notice of Complaint Date May 18, 2020	
Findings Date¹ August 24, 2020	Complaint Appeal Date September 23, 2020
Complaints Department Phone # (804) 225-2013	Corrective Action Plan Date: N/A

SYSTEMIC COMPLAINT: FAIRFAX COUNTY PUBLIC SCHOOLS

Introduction

On May 8, 2020, this office received a complaint submission via email from Complainant/Parent, filed on behalf of six identified students—and on a systemic basis—against Fairfax County Public Schools (FCPS or LEA (local educational agency)). At the time of the complaint submission, the six identified students were eligible for special education and related services under a variety of categories.² The complaint submission contained allegations addressing systemic practices regarding LEA’s implementation of its distance learning initiative during the extended statewide school closure period prompted by the COVID-19 pandemic.

Accordingly, this office initiated its investigation including the identified students, and as a systemic violation, as we will describe further in Section D, below.

A. Applicable Regulations

On May 28, 2009, the Virginia Board of Education adopted revised regulations to reflect IDEA ’04 and its 2006 implementing regulations. The Board’s revised regulations became effective on July 7, 2009, and were reissued on January 25, 2010, and on July 29, 2015, at 8 VAC 20-81-10 *et seq.* (the “Virginia Regulations”). Accordingly, this office based its investigation and findings on

¹ See **Appendix A** for an explanation of the timeline extension and a chronology documenting email correspondence addressing the timelines and procedures associated with this complaint investigation.

² With regard to the six identified students, the record indicated eligibility categories of Other Health Impairment (OHI)(three students); Specific Learning Disability (SLD)(four students); Developmentally Delay (DD)(one student); and Autism (one student).

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 2 of 84

the Virginia Regulations, which are applicable to the allegations forming the basis of the complaint. The Virginia Regulations are available online at http://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf.

B. Sufficiency of Complaint (See 34 C.F.R. § 300.153)

Prior to the issuance of the *Notice of Complaint* in this case, this office reviewed the complaint documentation and determined that it met the filing requirements of the regulations.

C. Release Authorization(s)

The complaint submission was filed by Complainant/Parent, who indicated that four (4) other parents and Complainant/Parent were requesting an investigation of a “systemic complaint.” Complainant/Parent then described the submission as a “joint complaint filing” regarding the respective parents’ children (six total students). The submission included names, addresses, and contact information for Complainant/Parent and the other four parents/five students.

Complainant/Parent transmitted the submission via Complainant/Parent’s personal email; accordingly, Complainant/Parent’s electronic signature was sufficient to authenticate the complaint submission by Complainant/Parent for purposes of 8 VAC 20-81-200.B.2³ with regard to Complainant/Parent’s child, as well as the complaints involving the other five children and the systemic complaint. However, the submission failed to include a valid signature (electronic or other) for all other parents.⁴ While this failure to provide signatures and releases in no way interfered with our ability to investigate the complaint with regard to the six students and, indeed, the county as a whole, it does prevent this office from sharing student level information *among* the five parents.

As a result, this office provided Complainant/Parent and each of the identified parents with a copy of the Notice of Complaint, advising that it was not authorized to discuss the complaint with or provide additional information to Complainant/Parent with regard to the identified students (other than the student identified as Complainant/Parent’s child) until such time as a release authorizing this office to communicate with Complainant/Parent regarding our investigation into the complaint allegations with regard to the identified students is provided by the respective parents. Similarly, ODRAS advised it would communicate with the identified parents only with regard to their respective children.

³ The Virginia Regulations, at 8 VAC 20-81-170.I, provide that “[i]f an electronically filed document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. An electronic signature is an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” See also Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 of the Code of Virginia.

⁴ Complainant/Parent’s simultaneous transmission of the complaint submission via email to this office and the four other parents does not constitute a valid “signature” or authorization by any of the other four parents.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 3 of 84

On several occasions, this Office requested clarification from the parents regarding permission for this office to share student level information with Complainant/Parent and among the group.⁵

Having never received unambiguous authorizations from Parents 1-4 to release information to Complainant/Parent and among the group of parents, we have excised those portions of the Letters of Findings regarding other students in the respective Letters of Findings distributed to each parent. We have continued to identify the named students by the letters A through F (as in the Notice of Complaint).

D. Authority to Investigate Systemic Violation

Complainant/Parent had requested that the submission “be investigated as a systemic complaint.” In its *Analysis of Comments and Changes* for the 2006 implementing regulations, the U.S. Department of Education (US ED), Office of Special Education Programs (OSEP) has stated that state education agencies—such as the VDOE—are “required to resolve any complaint that meets the [sufficiency] requirements” set forth in the 2006 implementing regulations, “including complaints that raise systemic issues....”⁶ OSEP has also stated that “the broad scope of the State complaint procedures, as permitted in the regulations, is critical to each State’s exercise of its general supervision responsibilities. The complaint procedures provide parents, organizations, and other individuals with an important means of ensuring that the educational needs of children with disabilities are met and provide the SEA [state education agency] with a powerful tool to identify and correct noncompliance....”⁷ Accordingly, this office is authorized to investigate alleged systemic violations of special education regulations.

More recently, the Office of Special Education and Rehabilitative Services (OSERS)(US ED) has clarified that a “State complaint alleging systemic noncompliance could be one that alleges that a public agency has a policy, procedure, or practice applicable to a group of children that is inconsistent with Part B or the Part B regulations. An example of a complaint alleging systemic

⁵ See **Appendix B** for a chronology documenting email correspondence addressing our efforts to clarify the parents’ intent regarding sharing information among the group.

⁶ U.S. Department of Education, Office of Special Education Programs, *Analysis of Comments and Changes*, at 46605, Federal Register, Vol. 71, No. 156 (August 14, 2006) [hereinafter referred to *Analysis*].

⁷ *Analysis*, at 46601. In this instance, OSEP was responding to a number of commenters, including one who stated that the State complaint procedures should be used only for systemic violations that reach beyond the involvement of one child in a school....” Further, OSEP stated that “placing limits on the scope of the State complaint system, as suggested by the commenters, would diminish the SEA’s ability to ensure its LEAs [local education agencies] are in compliance with [IDEA ’04] and its implementing regulations, and may result in an increase in the number of due process complaints filed and the number of due process hearings held.” OSEP has reiterated its position that “State complaint procedures are a very important tool in a State’s exercise of its general supervision responsibilities...to monitor LEA implementation of the requirements [of IDEA’04]. These responsibilities extend to both systemic and child-specific issues” (*Analysis* at 46694).

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 4 of 84

noncompliance is a complaint alleging that an LEA has a policy, procedure, or practice that would limit extended school year (ESY) services to children in particular disability categories or the type, amount, or duration of services that can be provided as ESY services. If the complaint names certain children and alleges that the same violations apply to a class, category, or similarly situated children, the SEA [state education agency] must review all relevant information to resolve the complaint, but would not need to examine additional children if no violations are identified in the policies, procedures, or practices for the named children. However, if the SEA identifies violations for any of the named children, the SEA's complaint resolution must include measures to ensure correction of the violations for all children affected by the alleged systemic noncompliance described in the complaint. Additionally, the SEA would need to examine the policies, procedures, and practices that may be causing the violations, and the SEA's written decision on the complaint must contain procedures for effective implementation of that decision, including corrective actions to achieve compliance....”⁸

Defining a “Systemic Violation”

To address whether an LEA has systemically violated laws, regulations, or judicial precedent relating to IEP implementation, development, review, and revision and the issuance of prior written notice with regard to its distance learning initiative, we must first describe the nature of a systemic violation. While we consider any violation of the regulations to be a serious matter, a systemic violation requires that there be a pattern of noncompliance across populations within the school division. We may identify patterns in various ways within VDOE’s oversight of special education programs through its general monitoring activities, through its Office of Dispute Resolution and Administrative Services (ODRAS), through its data collection, and through other activities.

VDOE may identify a systemic violation when a pattern of similar violations occurs in a particular school, across certain grade levels (i.e., elementary, middle or high school), in a single disability category, or more broadly across the school division. In addition, to constitute a pattern, there must be a number of violations in relation to the population being considered that would suggest that the violations are more than “random.”

E. Scope of Review; Methodology

This investigation required our office to develop a case-specific methodology for addressing the issues raised by Complainant/Parent. Rather than being called upon to determine whether a particular regulatory violation affecting a number of students had occurred on a systemic basis, we were required to determine whether a known systemic practice—here, LEA’s use of Temporary

⁸ U.S. Department of Education, Office of Special Education Programs, *Memorandum, Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)* 61 IDELR 232; 113 LRP 30291 (July 23, 2013).

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 5 of 84

Learning Plans (TLPs) during the statewide extended school closure in spring 2020—violated IDEA and its associated federal and state regulations.

To accomplish this, we examined the nature of the TLP itself—its design, function, and operation. While LEA’s TLP format and resource materials clarified these elements, our review of Complainant/Parent’s extensive submission and additional information regarding Students A-F provided real-life “dimension” to this TLP model. Given the unique nature of our query, a statistical sampling of other student files was not necessary; that the TLP initiative was implemented on a systemic basis was clearly established at the initiation of the investigation.

To counter any health/safety and building closure concerns that may have hampered an on-site visit,⁹ VDOE opted to obtain additional clarifications from LEA via a July 27, 2020, “virtual” interview with LEA’s Director of Special Education Procedural Support (OSEPS) and its Coordinator of Due Process and Eligibility. During this interview, we sought clarifications regarding the nature and implementation of TLPs systemically and with regard to Students A-F. We also obtained additional demographic/statistical data regarding LEA generally.

Based on careful consideration and review of (i) relevant statutes and regulations; (ii) judicial precedent; (iii) non-binding federal and state guidance; (iv) legal and educational resources; (v) Complainant/Parent’s submission, supporting materials, and extensive additional information; (vi) various email correspondence by and among the parties; (vii) LEA’s response documentation—including its parent and teacher distance learning resources and records for Students A-F; and (viii) the virtual interview, this office determined it had sufficient information to bring our investigation to closure.¹⁰ Our analysis and findings arising from these endeavors are set forth below.

⁹ Complainant/Parent’s email correspondence (see June 12, 2020 (5:20 p.m.); June 15, 2020 (12:11 p.m.)) seemingly suggested individual interviews of complainants/parents were a required part of a complaint investigation—specifically, a systemic investigation. We note that the Virginia Regulations (8 VAC 20-81-200.D.4.a) direct ODRAS’ investigations—whether individual or systemic—to include “a complete review of all relevant documentation”; this review “may include interviews with appropriate individuals, and an independent on-site investigation, if necessary [emphases added].

¹⁰ The investigation of special education complaints is governed by regulation, principles of due process, and agency procedures. Although this office is authorized to investigate allegations of violations of the provision of a free appropriate public education (FAPE), the complaint process does not include the mechanisms used in a due process hearing or a court proceeding that ensure the full provision of procedural due process to the parties, such as the right to cross examine witnesses, the rules for introduction of evidence, and standards for qualification of expert witnesses. While the complaint investigation process includes rules designed to provide a basic level of fairness to the parties, this process relies on the existence of documentary evidence rather than on the credibility of the parties.

As chronicled in the email excerpts in **Appendix A**, this office eliminated from its review several audio files (e.g., recordings of trainings regarding distance learning and adapted curriculum, etc.) provided by LEA that parents identified as inaccessible. ODRAS determined that the files in question were not critical to the conduct of the review, and advised the parents that, should ODRAS determine a need to examine these recordings, it would ensure parents equitable access. Ultimately, we did not find these recordings necessary to complete a comprehensive investigation.

Having asserted that this office should refuse to accept LEA’s response materials submitted after 5 p.m. on July 13, 2020, Complainant/Parent subsequently (i) asserted that LEA’s response failed to include various supporting materials

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 6 of 84

F. Fairfax County Public Schools Demographic Data

To provide further context for this systemic investigation, we examined basic demographic data for Fairfax County—data that demonstrates the unique challenges—and benefits—surrounding LEA. From April 2010 to July 2019, the county’s population increased from 1,081,726 to 1,147,532.¹¹ In 2018, its median household income stood at \$121,133; the median income of households having students in public school was \$132,123. Married couples account for 77% of households, while female householders (no husband present) and male householders (no wife present) account for 17% and 6% of households, respectively. According to the National Center for Education Statistics (NCES), 93% of its 394,447 households had broadband internet.¹²

Significantly, its fall 2016 public school enrollment made FCPS the 11th largest school division in the United States, surpassed only by such major metropolitan divisions as New York City, Los Angeles, Chicago, Clark County (Las Vegas), Houston, and five Florida divisions (Dade (Miami); Hillsborough (Tampa); Broward (Fort Lauderdale); Orange (Orlando); and Palm Beach (West Palm Beach)).¹³ Its fall 2019 membership (enrollment) of 188,940 more than doubles that of the second largest school division in the Commonwealth (Prince William County; 92,270).¹⁴

cited in LEA’s narrative response; and (ii) repeatedly requested that LEA provide these “materials.” Complainant/Parent also requested “proof” of LEA’s various assertions. We remind the parties that it is the entity conducting the investigation that determines not only the need for additional clarifications, but also the due weight to be ascribed to various items included in—or omitted from—the record. Unlike many states, the Commonwealth of Virginia has provided for an appeal of Letters of Findings (8 VAC 20-81-200.E). Virginia’s special education complaint appeal procedures, included with the Letter of Findings, specify that appeals must be based on (i) newly discovered information; or (ii) an error of fact or law upon which the findings were based. See < http://www.doe.virginia.gov/special_ed/resolving_disputes/complaints/complaint_appeal_procedures.pdf >

¹¹ See U.S. Census, *County Population Totals: 2010-2019* <https://www.census.gov/data/datasets/time-series/demo/popest/2010s-counties-total.html#par_textimage_739801612>

¹² U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics (NCES) Education Demographic and Geographic Estimates, ACS School District Profile 2014-18, District Demographic Dashboard 2014-2018, Fairfax County Public Schools <<https://nces.ed.gov/Programs/Edge/ACSDashboard/5101260>>

¹³ See U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics (NCES), *Digest of Education Statistics*, Table 215.30, Enrollment, poverty, and federal funds for the 120 largest school districts, by enrollment size in 2016: 2015-16 and fiscal year 2018 < https://nces.ed.gov/programs/digest/d18/tables/dt18_215.30.asp?current=yes >

LEA’s own website states that it is the 10th largest school division in the United States. <<https://www.fcps.edu/about-fcps>>

¹⁴ “The Virginia Department of Education annually collects statistics on the number of students enrolled in public schools on September 30 [‘fall membership’]. Student counts are reported by grade assignment, race, ethnicity, disability, English proficiency, and economic status. The collection of race and ethnicity information as specified by the U.S. Department of Education is required for eligibility for federal education funds and for accountability reports....” See Virginia Department of Education, *School Quality Profiles* <<https://schoolquality.virginia.gov/divisions/fairfax-county-public-schools#desktopTabs-3>>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 7 of 84

Students with disabilities—totaling 27,778, as of December 1, 2019—constituted 14.7% of LEA’s total 2019 fall membership. Twenty-nine percent of LEA’s student population is economically disadvantaged; 27.4% are English language learners. The school division’s student racial/ethnic data are as follows: (i) 37.8% white; (ii) 26.8% Hispanic; (iii) 19.5% Asian; (iv) 9.8% Black; (v) 5.7% multiple races; (vi) 0.3% American Indian; and (vii) 0.1% Native Hawaiian.¹⁵

For fiscal year 2019, LEA received \$648,604,588 in state funding for its public schools, with \$49,428,110 designated for special education.¹⁶ An additional \$2,103,123,560 in local funds and \$128,540,226 in federal monies also support LEA’s public schools.¹⁷

FCPS has tailored an administrative and organizational model to address its size and student population. LEA’s 198 schools and centers are distributed among five “regions,” each led by a regional assistant superintendent. Each of these five regions includes two to five high school “pyramids,” and their respective “feeder” elementary and middle schools.¹⁸ [LEA] reports that “[e]ach region ... has more students than an average size school district in the United States.”¹⁹

All six identified students—Students A-F—are enrolled within schools in a single region—Region 4, which includes five different high school pyramids. Three of these six identified students attend schools within the same high school pyramid.

ISSUE(S) AND REGULATIONS:

1. Individualized Education Program (IEP)—Implementation.

Individualized Education Program (IEP)—Development, Review, and Revision.

Procedural Safeguards—Prior Written Notice (PWN).

Complainant/Parent has alleged that LEA has violated special education laws and regulations governing IEP implementation and development, review, and revision with regard to **Students A, B, C, D, E, and F, and on a systemic basis.**

¹⁵ Id.

¹⁶ *Superintendent’s Annual Report 2018-2019*, at Table 14A, *Distribution of State Funds (in dollars) - Standards of Quality Accounts* < http://www.doe.virginia.gov/statistics_reports/supts_annual_report/2018-19/index.shtml >

¹⁷ Id., at Table 12.

¹⁸ See < <https://www.fcps.edu/index.php/about-fcps> >; <https://www.fcps.edu/about-fcps/departments-and-offices> >; <https://www.fcps.edu/index.php/schools-centers> >; < <https://www.fcps.edu/department/region-4> > E.g., Region 4 includes five high schools, five middle schools, 26 elementary schools, and five “special services” schools or centers. < <https://www.fcps.edu/sites/default/files/media/pdf/1%20RegionsSY2019-20%20County%20Border.pdf> >

¹⁹ See < <https://www.fcps.edu/about-fcps/departments-and-offices> >

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 8 of 84

More specifically, Complainant/Parent has alleged that:

- LEA “is required to implement Students’ IEPs in order to meet its legal obligation to provide Students a free appropriate public education...but are [sic] failing to do so in violation of federal and state laws”;
- In the context of the closure of all public schools due to the COVID-19 pandemic, LEA’s “blanket refusal to attempt to implement IEPs equate [sic] to ... denial of FAPE and violation of IDEA”;
- LEA “has not attempted to implement IEPs to the ‘greatest extent possible’”;
 - “The TLPs [Temporary Learning Plans]²⁰ issued by [LEA], [sic] state that IEPs won’t be in effect until schools reopen and in themselves indicate [LEA] is coming up with plans that are void of efforts to implement IEPs to ‘best extent possible’”;
- LEA has “implemented TLPs without receiving parent consent” and “absent a revision to the IEP”; and LEA “has not provided PWNs explaining their [sic] decisions to deny Student’s [sic] full implementation of their [sic] IEPs and full access to FAPE”;
- “Although VDOE and [LEA] have stated that IEPs [sic] had not proposed an IEP or IEP addendum, [LEA] has inserted Temporary Learning Plans...into the development of annual IEPs without first receiving parental input, and [LEA] is asking these TLPs be approved, without first discussing the TLPs and without ‘proposing’ a final IEP,” as, more specifically:
 - With regard to **Students A and B**, LEA “inserted the TLP into the annual IEP[s] for [**Students A and B**].... [Parent] requested that it be removed, but it took some pushback for it to be removed. However, draft IEP is still in progress. [LEA] stated that the IEP in progress will start when schools resume full time and that language will be inserted on PLOP to describe services from now until end of year. The current working IEP draft does not contain the TLP language”; and
 - With regard to **Student C**, LEA “has emailed [Parent] a few times, requesting that [Parent] sign off on the TLP, even though 1) it is in [**Student C’s**] IEP; 2) the IEP hasn’t been completed; and 3) [LEA] inserted the verbiage about the TLP with [sic] speaking with [Parent] and ensuring full parent understanding”; and

²⁰ Complainant/Parent quoted a May 4, 2020, email from LEA to Complainant/Parent: “During the pandemic and Governor’s order that schools be shut down, [LEA] is not able to implement an entire school day for any students. Consequently, entire IEP services are also not able to be provided at this time. The Temporary Learning Plan is the list of selected services, accommodations and goals that can feasibly be provided during a distance learning format.”

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 9 of 84

- LEA has developed Temporary Learning Plans that:
 - demonstrate “large gaps” from Students’ IEPs; and
 - fail to incorporate “[e]videnced[sic][-]based practices ... that align with a distance learning placement as well as being individualized.”

Applicable Regulations:

- 34 C.F.R. § 300.11; 8 VAC 20-81-10.
- 34 C.F.R. § 300.101; 8 VAC 20-81-100.
- 34 C.F.R. § 300.17; 8 VAC 20-81-10.
- 34 C.F.R. § 300.323; 8 VAC 20-81-110.B.6.
- 34 C.F.R. § 300.23; 8 VAC 20-81-10.
- 8 VAC 20-81-110.B.4; 8 VAC 20-81-110.B.6.
- 34 C.F.R. § 300.324; 8 VAC 20-81-110.
- 34 C.F.R. § 300.324(b); 8 VAC 20-81-110.B.5.
- 8 VAC 20-81-110.F.1.b.
- 34 C.F.R. § 300.503; 8 VAC 20-81-170.C.

Findings:

The Office of Dispute Resolution and Administrative Services find LEA in compliance on **Subissue 1A** and **1B on a systemic basis**. With regard to **Students A- F individually** on **Subissue 1B**, we find as follows:

	Subissue 1B Finding
Student A	compliance
Student B	compliance
Student C	compliance
Student D	compliance
Student E	compliance
Student F	compliance

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 10 of 84

Background: COVID-19 Pandemic and School Closures Generally

- Characterized as a pandemic by the World Health Organization on March 11, 2020,²¹ the spread of COVID-19 prompted a “near-total shutdown of school buildings in the spring of 2020”—described as “an historic upheaval of K-12 schooling in the United States.”²²
- On March 12, 2020, the Governor of Virginia issued Executive Order No. 51, declaring a state of emergency due to the COVID-19 pandemic. The President of the United States declared a national emergency on March 13, 2020;²³ that same day, the Governor of Virginia ordered the closure of all public schools for a two-week minimum, commencing March 16, 2020.
 - Also on March 13, 2020, LEA’s Superintendent announced the closure of LEA’s schools through April 10, 2020, at a minimum.²⁴ LEA’s school year calendar had already designated the week of April 6, 2020, as spring break.
- On March 23, 2020, the Commonwealth became the second state in the country²⁵ to close its schools for the year, as the Governor issued Executive Order No. 53, directing the “cessation of all in-person instruction at K-12 schools, public and private, for the remainder of the 2019-2020 school year.”²⁶

²¹ World Health Organization, *WHO Timeline—COVID-19* <<https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>>

²² Education Week, *Map: Coronavirus and School Closures* (updated May 15, 2020) <<https://www.edweek.org/ew/section/multimedia/map-coronavirus-and-school-closures.html>> “At their peak, the closures affected at least 55.1 million students in 124,000 U.S. public and private schools. Nearly every state either ordered or recommended that schools remain closed through the end of the 2019-20 school year.”

²³ See <https://www.whitehouse.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/>

²⁴ “The Virginia Department of Education has recommended that all public school systems provide continuity of learning programming for the next three weeks. We will promote digital and online resources to [LEA] students that will help student learning continue. This work will not be required nor graded.” *Coronavirus Update - Message from the Superintendent - March 13* (March 13, 2020) <<https://www.fcps.edu/news/coronavirus-update-mar13>> [hereinafter *March 13 Message*].

²⁵ Kansas was the first state to close its schools for the remainder of the school year. See, e.g., Richmond Times-Dispatch, *Northam orders Virginia schools closed for rest of the school year, outlines new rules for businesses* (March 23, 2020) <https://godanriver.com/news/local/northam-orders-virginia-schools-closed-for-rest-of-the-school-year-outlines-new-rules-for/article_2bbc199c-6d31-11ea-832f-ef3cb6e56ffa.html>

²⁶ See Executive Order No. 53 (March 23, 2020) <[https://www.governor.virginia.gov/media/governorviriniagov/executive-actions/EO-53-Temporary-Restrictions-Due-To-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorviriniagov/executive-actions/EO-53-Temporary-Restrictions-Due-To-Novel-Coronavirus-(COVID-19).pdf)>

In Executive Order No. 61 (May 8, 2020), the Governor reiterated that Executive Order No. 53 “closed all K-12 schools for the remainder of the academic school year” See Executive Order No. 61 <<https://www.governor.virginia.gov/media/governorviriniagov/executive-actions/EO-61-and-Order-of-Public-Health-Emergency>>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 11 of 84

- One week later, on March 30, 2020, the Governor issued a temporary stay-home order via Executive Order No. 55, effective through June 10, 2020.²⁷
 - On March 26, 2020, LEA's Superintendent announced LEA's intention to commence distance learning on April 14, 2020:

...[LEA] is planning to begin distance instruction and learning with our students on April 14. Launching a distance learning plan to reach 189,000 students that engages nearly 16,000 classroom teachers is a complex challenge. We acknowledge that distance learning cannot reasonably replace daily in-person instructional programs, and we will not be trying to replicate the regular school day. Our Distance Learning Plan provides for students to continue learning in developmentally appropriate ways, while being mindful of their health and wellness. The plan includes paper learning packets, video broadcasts, lessons/assignments and learning materials posted to Blackboard and completed individually or collaboratively, along with scheduled web chats....

[LEA] staff is working hard to prepare distance learning materials to ensure that all students have access to educational materials and activities, including our students with Individualized Education Programs and 504 Plans. Many disability-related modifications and services may be effectively provided online. These may include, for instance, extensions of time for assignments, modifications to assignments, videos with captioning or embedded sign language interpreting, accessible reading materials, and speech or language services through video conferencing. ...²⁸

- Following the issuance of the Executive Orders, the Virginia Department of Education issued a broad range of guidance materials, including regularly updated FAQs, to assist parents and school divisions in navigating the unprecedented extended closure.²⁹ The VDOE also established a Continuity for Learning (C4L) Task Force, comprised of educators, leaders, and “collaborating educational partners” to provide “comprehensive guidance that will ensure learning continues for all students, while also ensuring students are served equitably, regardless of income level, access to technology, English Learner status, or special needs.”

[-Three---Phase-One-Easing-Of-Certain-Temporary-Restrictions-Due -To-Novel-Coronavirus-\(COVID-19\).pdf>](#)

²⁷ See Executive Order No. 55 (March 30, 2020) < [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-\(COVID-19\)>](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19)>)

²⁸ See *Coronavirus Update - Message from the Superintendent - March 26* (March 26, 2020) <<https://www.fcps.edu/news-features-and-events/news/coronavirus-update/coronavirus-update-superintendents-messages-1>>

²⁹ See, inter alia, Virginia Department of Education, *COVID-19 and Virginia Public Schools, School Closure Frequently Asked Questions* (June 1, 2020) < http://www.doe.virginia.gov/support/health_medical/office/covid-19-faq.shtml> [hereinafter VDOE FAQ].

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 12 of 84

- The Task Force encouraged school divisions to “develop and implement continuous learning plans in partnership with local county health departments, families, staff, and local boards of education” and cited “instructional models that could include blending of non-technology; face-to-face, small-group learning sessions; virtual platforms; and/or a combination of all of these models.”³⁰
 - School divisions were specifically reminded that, in exploring “options for virtual or online instruction...and other instructional delivery methods, careful consideration should be made to provide equitable access and support for a variety of student learning needs. Care should be taken not to exacerbate existing gaps in student achievement throughout this period of school closure. It is critically important that all educators are mindful of the needs of vulnerable student groups including early learners, English Learners, students experiencing homelessness, students from low socio-economic backgrounds, and students with disabilities.”³¹

LEA's Distance Learning Plan Generally

- As a preliminary matter, we note that pursuant to the Standards of Accreditation (8 VAC 20-81-131-150), the standard school day, “including passing time for class changes and excluding breaks for meals, shall average a minimum of five and one-half instructional hours for students in grades 1 through 12 and a minimum of three hours for kindergarten.”³²
 - In its *FAQ* materials, VDOE advised that *school division leaders will be making decisions about how learning will continue and when/how students will make up the rest of the content from this year...*³³ Further, the C4L Task Force recognized that *continuity for learning plans will vary in each local school division. Local school boards and divisions will have to make local decisions that are unique to their student population, staff and resources.*³⁴
 - The C4L Task Force encouraged the provision of *a continuum of learning opportunities to engage a range of parent desires during an extended closure. Some parents will*

³⁰ Virginia Department of Education, *Virginia Learns Anywhere* (see Executive Summary and Foreword) <<http://www.doe.virginia.gov/instruction/c4l/virginia-learns-anywhere.pdf>>; <<http://www.doe.virginia.gov/instruction/c4l/virginia-learns-anywhere.shtml>> [hereinafter referred to as C4L].

³¹ C4L at 12.

³² Further, the standard school year is 180 instructional days or 990 instructional hours.

³³ See *VDOE FAQ* (Question 10).

³⁴ C4L (Foreword).

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 13 of 84

*desire a large amount of work while others may not have the capacity (time, resources, energy, technical skills, etc.) to place the same emphasis on work completion.*³⁵

- Similarly, LEA leadership acknowledged that *distance learning cannot substitute for daily in-person instructional programs. Distance learning will require adjustments to the scope and sequence of our learning curriculum.*³⁶
- LEA's distance learning plan for all students incorporated synchronous (student and teacher are engaging directly via virtual means) and asynchronous (student independently completes online assignment) activities. The plan consisted of a "blend of review, practice, and new learning" via weekly printed instructional packets and a "Digital Ecosystem" consisting of, among other resources, (i) LEA's three cable channels (for elementary, middle, and high school instructional programming, respectively); (ii) online textbooks; (iii) library eBooks and databases; (iv) Google GSuite for "students to create and collaborate on work"; and (v) Google Classroom for posting and student completion of assignments.³⁷
- LEA's plan set forth different—and approximate—time frames for distance learning for elementary, middle, and high school students, as follows:³⁸

GRADES PRE-K-6

Subject/Focus	Daily Time on Task	Activities
Language Arts and Math	Approximately 1-1.5 hours	Complete weekly learning packets. View video lessons available on cable Channel 21 and through Channel 21 web streaming. Meet virtually with class at scheduled time. Access additional teacher support thru [sic] office hours
Science and Social Studies	Varies	Content integrated in Language Arts as possible. Engage in learning activities posted on FCPS 24-7. Learning Blackboard by teacher or division.

³⁵ C4L, p. 20.

³⁶ See LEA response, Attachment 7b, *Staying Connected and Ready to Learn—Our Distance Learning Plan for Continuity of Learning Spring 2020* (March 26, 2020) [hereinafter referred to as *Staying Connected*].

³⁷ See *Staying Connected*. The challenges and delays in LEA's initial roll-out of this distance learning initiative via Blackboard are well-documented by various media outlets and are not relevant to the complaint investigation. See, e.g., Washington Post, *Failed tech, missed warnings: How Fairfax schools' online learning debut went sideways* (April 18, 2020) < https://www.washingtonpost.com/local/education/fairfax-schools-online-learning-blackboard/2020/04/18/3db6b19c-80b5-11ea-9040-68981f488eed_story.html>.

³⁸ See *Staying Connected*.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 14 of 84

Specials (Physical Education, Art, Music, etc.)	Suggested 15-45 minutes per day, depending on grade	Engage in choice learning activities that have been posted by specials teachers.
Flex Learning	Student/family choice	Reading aloud and independent reading for pleasure: PreK-K: 15 mins Grades 1-2: 20 mins Grades 3-4: 25 mins Grades 5-6: 30 mins Be active. Explore personal interests/passions.

GRADES 7-8

Subject/Focus	Daily Time on Task	Activities
Language Arts, Mathematics (Math 7, Pre[-]algebra, Algebra 1), Science, and Social Studies	Approximately 2.5 [hrs.]	Complete weekly learning packets. Meet virtually with class at scheduled time. Complete asynchronous work independently or collaboratively. Access additional teacher support thru [sic] office hours.
Mathematics (Geometry, Algebra 2), World Language	Additional time for enrolled courses	Meet virtually with class at scheduled time. Complete asynchronous work independently or collaboratively. Access additional teacher support thru [sic] office hours.
Electives/Health and Physical Education (HPE)	Suggested 30 minutes per day	Complete choice learning activities that have been posted by elective/HPE teachers.
Flex Learning	Student/family choice	Read for pleasure. Be active. Explore personal interests/passions. Continue to develop and engage with academic language. College and Career Planning

GRADES 9-12

Subject/Focus	Daily Time on Task	Activities
All Courses	Approximately 3 hours	Meet virtually with class at scheduled time. Complete asynchronous work independently or collaboratively. Access additional teacher support thru [sic] office hours.
Flex Learning	Student choice	Read for pleasure. Be active. Explore personal interests/passions. Continue to develop and engage with academic language. College and Career Planning

- In additional information, Complainant/Parent has asserted, inter alia, that (i) entities such as *Lindamood Bell have long had online programs, which they continued to provide students after the cessation of in-person instruction*; (ii) *LEA was simply unprepared to provide full-time instruction*; (iii) *LEA's distance learning service hours were a choice made by [LEA]. It could have chosen more. It did not*; (iv) *LEA suspended one-on-one services and drastically cut*

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 15 of 84

service hours period; and (v) LEA had staff available to work additional hours, beyond contracted hours, but did not tap into them.

- We find these assertions without merit. At no time were school divisions required—or expected—to duplicate a regular school day in hours or content during the extended statewide closure.³⁹

Analysis:

Subissue 1A: IEP Implementation During Extended School Closures

Complainant/Parent has alleged that:

- LEA “is required to implement Students’ IEPs in order to meet its legal obligation to provide Students a free appropriate public education...but are [sic] failing to do so in violation of federal and state laws”;
- LEA’s “blanket refusal to attempt to implement IEPs equate [sic] to ... denial of FAPE and violation of IDEA”;
- LEA “has not attempted to implement IEPs to the ‘greatest extent possible’”;⁴⁰ and
- LEA’s Temporary Learning Plans “state that IEPs won’t be in effect until schools reopen and in themselves indicate [LEA] is coming up with plans that are void of efforts to implement IEPs to ‘best extent possible.’”
- Special education regulations (34 C.F.R. § 300.101; 8 VAC 20-81-100) mandate that all individuals with disabilities, from age 2 to 21 inclusive, residing in Virginia, shall have available a free and appropriate public education (FAPE). Further, these regulations (34 C.F.R. § 300.17; 8 VAC 20-81-10) define FAPE to mean special education and related services that, among other things, are provided in conformity with an IEP that meets applicable regulatory requirements.

³⁹ The statewide school closures affected the instructional hours and services provided to all students in the Commonwealth. Further, to the extent Complainant/Parent asserts that LEA *considered the instruction it provided to fulfill its mandated 180 days or a minimum of 990 hours*, we find these claims inapposite. The amount of services LEA determined to provide via its distance learning for all its students is a local decision. The C4L Task Force advised that *school divisions should seek approval from the VDOE if they plan to include “remote learning” instructional time towards meeting the instructional requirements of 180 days/990 hours at any time following the COVID-19 crisis* [emphasis added]. See C4L, p. 35.

⁴⁰ Complainant/Parent seemingly quotes the US ED March 2020 Q & A document, cited above.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 16 of 84

- These regulations are clear; school divisions must implement student IEPs as written (34 C.F.R. § 300.323; 8 VAC 20-81-110.B.6). Significantly, however, nowhere do IDEA '04, its implementing regulations, or the Virginia Regulations address the delivery of FAPE during extended school closures.
- The U.S. Department of Education also acknowledged this statutory and regulatory silence in its March 12, 2020, Q & A document:

The IDEA, Section 504, and Title II of the ADA do not specifically address a situation in which elementary and secondary schools are closed for an extended period of time (generally more than 10 consecutive days) because of exceptional circumstances, such as an outbreak of a particular disease.⁴¹

- Significantly, US ED further advised:

If an LEA closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services [emphasis added] to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP).... The Department understands there may be exceptional circumstances that could affect how a particular service is provided. In addition, an IEP Team...would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.

If an LEA continues to provide educational opportunities [emphasis added] to the general student population during a school closure, the school must ensure that students with disabilities also have equal access [emphasis added] to the same opportunities, including the provision of FAPE. [citations to regulations regarding Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act omitted]. SEAs, LEAs, and schools must ensure that, to the greatest extent possible [emphasis added], each student with a

⁴¹ Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (March 12, 2020) [hereinafter referred to as "Q & A document"] <<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>>

The US ED also cited this statutory omission with regard to extended school closures due to disasters in 2017 and 2018, following a number of hurricanes. See U.S. Department of Education, *Non-Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters* (September 2017) <<https://safesupportivelearning.ed.gov/sites/default/files/disaster-guidance.pdf>>; *Non-Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters* (September 2018) <<https://www2.ed.gov/policy/gen/guid/secletter/180920.html>>.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 17 of 84

*disability can be provided the special education and related services identified in the student's IEP developed under IDEA....*⁴²

- Stated another way, when schools are closed and no **educational services** are provided to “students in the general population...neither the child with an IEP nor the child with a [Section] 504 plan is entitled to FAPE.”⁴³ When schools are closed but undertake to provide **educational opportunities**, the focus shifts to **equal access** to those services under Section 504 of the Rehabilitation Act of 1973 and the ADA, “including the provision of FAPE.”
 - We find this limited reference to FAPE significant; the Q & A document cites FAPE with regard to Section 504, but not in the context of IDEA. With regard to IDEA, the Q & A document simply contemplates the delivery of IEP services “to the greatest extent possible,” but fails to clarify this amorphous standard.⁴⁴
 - Further, the Q & A document does not define what constitutes “educational services” and “educational opportunities.” We will address this distinction further, below.
- Given the unprecedented nature of the extended school closure and a perceived lack of clear legal authority, school divisions nationwide delayed taking action or proceeded with caution. In response to this perceived “reluctance” by school divisions to initiate distance learning opportunities, the US ED issued additional guidance on March 21, 2020:

*Some educators...have been reluctant to provide any distance instruction because they believe that federal disability law presents insurmountable barriers to remote education. This is simply not true. We remind schools they should not opt to close or decline to provide distance instruction, at the expense of students, to address matters pertaining to services for students with disabilities. Rather, school systems must make local decisions that take into consideration the health, safety, and well-being of all their students and staff.*⁴⁵

⁴² Q & A document.

⁴³ P. Zirkel, *COVID-19 and K-12 Students with Disabilities: Initial Guidance* (March 20, 2020) <<https://perryzirkel.com/2020/03/20/special-supplement-covid-19-and-k-12-students-with-disabilities-initial-guidance/>> [hereinafter referred to as Zirkel I].

⁴⁴ The Q & A document includes the delivery of services outlined in Section 504 plans “to the greatest extent possible.”

⁴⁵ U.S. Department of Education, Office for Civil Rights; Office of Special Education and Rehabilitative Services, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* (March 21, 2020) <<https://sites.ed.gov/idea/idea-files/supplemental-fact-sheet-addressing-risk-covid-19-preschool-elementary-secondary-schools-serving-children-disabilities-march-21-2020/>> [hereinafter referred to as *Supplemental Fact Sheet*].

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 18 of 84

- Citing the unclear—and unfolding—legal implications of extended school closures, legal scholars have cautioned that federal and state guidance materials are “all just that—guidance, or interpretations by the agencies responsible for administering the IDEA, § 504/ADA, and corollary state laws, respectively. None of these documents has the force of law; whether courts will find them persuasive is an ‘it depends’ matter.”⁴⁶
 - Even US ED has acknowledged that its *Q & A* document “does not create or confer any rights for or on any person. This *Q & A* document does not impose any additional requirements beyond those included in applicable law and regulations. The responses presented in this document generally constitute informal guidance representing the interpretation of the Department ... and are not legally binding.”⁴⁷

⁴⁶Zirkel I. On July 15, 2020, a U.S. federal district court denied a preliminary injunction seeking to require the Guam Department of Education to implement IEPs for five students with disabilities during mandated school closures due to the COVID-19 pandemic. *J.C., et al., v. Fernandez*, 120 LRP 21447 (July 15, 2020)(U.S. Guam). The court cited a 2010 ruling by the Ninth Circuit Court of Appeals, stating that “Congress did not intend for the IDEA to apply to system wide administrative decisions.” In *N.D. v. State of Hawaii, Dept. of Educ.*, 54 IDELR 111 (9th Cir. 2010), the Ninth Circuit Court of Appeals addressed challenges regarding Hawaii’s decision to eliminate 17 Fridays from its school calendar during a statewide fiscal crisis: “School children, disabled and non-disabled alike, would not attend school on those Fridays. The elimination of those seventeen Fridays from the school calendar constitutes a reduction in instructional days of approximately ten percent.” *N.D.*, joined by other students with disabilities, sought to enjoin these “Furlough Fridays,” alleging “the furloughs constituted a change in his educational placement, and as part of his request for a due process hearing, he was entitled to remain in his then-current educational placement.”

In determining whether *N.D.* was entitled to a preliminary injunction, the Court was required to determine, inter alia, the likelihood of *N.D.* prevailing on the merits of his claim—that “furloughs are a change in the educational placement of the disabled children such that the stay-put provisions apply.” The Court cited “Congress’s overall expressed intent in the ... IDEA....We extract from the statute that the overarching goal of the IDEA is to prevent the isolation and exclusion of disabled children, and provide them with a classroom setting as similar to non-disabled children as possible....”

The Court concluded that “Hawaii’s teacher furloughs and concurrent shut down of public schools is not a change in the educational placement of disabled children.... The educational setting of the disabled children remains the same post-furloughs. When Congress enacted the IDEA, Congress did not intend for the IDEA to apply to system wide administrative decisions. Hawaii’s furloughs affect all public schools and all students, disabled and non-disabled alike. An across the board reduction of school days such as the one here does not conflict with Congress’s intent of protecting disabled children from being singled out [emphasis added].”

Noting some “distinguishing characteristics” between *N.D.* and its own case, the U.S. District Court (Guam) cited its “serious questions whether *N.D.* dictates the outcome here”; significantly, plaintiffs in *J.C.* had failed to address the question of whether the COVID-19 closures constituted a change in placement. The Court was also unpersuaded by *J.C.*’s contention that “a failure to implement the IEPs in their entirety constitutes per se irreparable harm,” a showing necessary to support the requested preliminary injunction.

More recently, on July 28, 2020, a class action on behalf of over 100 plaintiffs with disabilities was filed in federal district court against every state and school division in the nation regarding the extended school closures. The complaint, *J.T. v. de Blasio*, No. 20 Civ. 5878 (S.D.N.Y. 07/28/20, *complaint filed*) cited violations of IDEA as well as Section 504 and the Americans with Disabilities Act (ADA). We note that issues regarding exhaustion of administrative remedies under IDEA, in light of the U.S. Supreme Court ruling in *Fry v. Napoleon Community Schools*, 137 S. Ct. 74 (2017), may arise as the filing proceeds.

⁴⁷ *Q & A* document. Similarly, at least one state education agency, in addressing a complaint regarding IEP implementation during COVID-19 school closures, has stated: “This non-binding guidance document is entitled to

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 19 of 84

- Absent any legally binding authority, at least one legal expert has suggested that a “reasonableness” standard may be applicable regarding FAPE responsibility during COVID-19 school closures: “...as a legal matter...the courts have generally adopted the standard of *reasonable* accommodations, with the prevailing ultimate prerequisite for denial of FAPE being gross misjudgment, bad faith, or deliberate indifference. Correspondingly, under the IDEA the ultimate FAPE standard is being “*reasonably calculated* to enable [the] child to make progress appropriate *in light of the child’s circumstances* [italics in original].”⁴⁸
- Further, this “reasonableness” suggests a degree of flexibility cited by both federal and state guidance.
 - Specifically, the US ED advised: (i) it “did not want to stand in the way of good faith efforts to educate students on-line”; (ii) “federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities”; (iii) “schools may not be able to provide all services in the same manner they are typically provided.” The US ED encouraged parents and school divisions to “collaborate creatively to continue to meet the needs of students with disabilities.”⁴⁹
 - Similarly, the C4L Task Force also advised that “continuity for learning plans will vary in each local school division. Local school boards and divisions will have to make local decisions that are unique to their student population, staff and resources [emphasis added]. School divisions are encouraged to utilize the Task Force guidance to develop and implement continuity for learning plans in partnership with families, staff members, and local school boards.”⁵⁰
- This guidance suggests that “[a]s an overall matter... FAPE in these circumstances allows for flexibility both substantively and procedurally rather than being an all-or-nothing approach.”⁵¹
- Finally, we also note that flexibility and reasonableness are also warranted, given the practical impossibilities imposed by mandated school closures. In examining FAPE responsibility

weight only to the extent that it has the power to persuade. *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944); see also, e.g., Anuradha Vaitheswaran & Thomas A. Mayes, *The Role of Deference in Judicial Review of Agency Action: A Comparison of Federal Law, Uniform State Acts, and the Iowa APA*, 27 J. Nat’l Ass’n Admin. L. Judiciary 402, 407-09 (2007)....” See Iowa SEA, Complaint 19-19 (June 8, 2020), *infra*.

⁴⁸ Zirkel I, citing *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 & 1001 (2017).

⁴⁹ *Supplemental Fact Sheet*.

⁵⁰ C4L (Foreword).

⁵¹ P. Zirkel, *COVID-19 and K-12 Students with Disabilities: A Second Legal Look* (April 13, 2020) <<https://perryzirkel.com/2020/04/13/covid-19-and-k-12-students-with-disabilities-a-second-legal-look/>>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 20 of 84

during the extended closure period, we note the contractual concept of “force majeure.” Although an IEP is not a “contract” by legal definition,⁵² the concept of “force majeure” is instructive by analogy. In essence, a force majeure clause is designed “to protect the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.”⁵³ It is not insignificant that LEA’s IEP software template contains the following standardized language:

** FCPS will provide services on days that school is in session and will not provide or compensate for services missed on days when schools are closed due to holidays, inclement weather, or for reduced services that are the result of a partial day schedule.

- In its response, LEA asserted that neither federal nor state law required it to implement IEPs fully during the 2019-2020 school closure. LEA correctly noted that “[f]undamentally, students’ IEPs are predicated on the assumption that schools will be open for the full school day to deliver the services prescribed in those IEPs. Neither IDEA nor the Virginia special education regulations specifically address a situation in which elementary and secondary schools are closed for an extended period of time because of exceptional circumstances, such as a pandemic.”⁵⁴

⁵² See generally, Black’s Law Dictionary <https://blacks.law.enacademic.com/11167/force_majeure>

⁵³ While an IEP is a legal document is enforceable under IDEA ’04, it lacks critical elements of a “contract,” which is an “agreement between private parties creating mutual obligations enforceable by law. The basic elements required for the agreement to be a legally enforceable contract are: mutual assent, expressed by a valid offer and acceptance; adequate consideration; capacity; and legality.” Cornell Law School, Legal Information Institute <<https://www.law.cornell.edu/wex/contract>>

Experts have also cited the doctrines of “impossibility” and “frustration of purpose” in considering the effect of COVID-19 closures on contract performance. See, e.g., National Law Review, *Client Alert, An Introduction to the Doctrines of Impossibility and Frustration of Purpose* (March 18, 2020) <<https://www.natlawreview.com/article/client-alert-introduction-to-doctrines-impossibility-and-frustration-purpose>>

⁵⁴ LEA correctly cites VDOE’s *FAQ 025-12* regarding provision of services during school closures due to inclement weather, emergency situations, holidays, and teacher workdays. VDOE has advised that judicial precedent regarding planned holiday closures may inform LEA obligations regarding other closures—“whether planned or unplanned.” Similarly, a due process hearing officer has found that *[u]nless some other written agreement so provides, however, there is no expectation that a school will provide any services when the school is closed.* Virginia Department of Education, *FAQ 025-12, School Closures and Obligation for Services*, citing *In re: Student with a Disability* (Department of Defense - Defense Legal Services Agency), 109 LRP 47582 (2008) <http://www.doe.virginia.gov/special_ed/regulations/state/faq_implementing_regulations/2012/025-12_sch_div_closures.shtml>

The FAQ also advised: *Additional authority may be found in the federal and state regulations governing special education in the definition of “school day.” (34 CFR § 300.106(b); corresponding Virginia Regulations at 8 VAC 20-81-10. “School day” means “any day, including a partial day, that children are in attendance at school for instructional purposes. The term has the same meaning for all children in school, including children with and without disabilities.” Put most simply, services cannot be provided when the school division is closed, for either general education or special education students.*

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 21 of 84

- LEA further stated that while it “is attempting to provide ungraded and nonmandatory extension and enrichment learning activities for all students [emphasis added](doing so for students with disabilities via a TLP), [LEA] is not providing the kind of ‘instruction/instructional services’ generally to students—nor are schools ‘open’ – in a way that would constitute a full ‘school day’, [sic] even on a virtual basis. There is no required attendance[,] and technology was provided only for certain grade levels.”
- The weight of the record indicates LEA’s voluntary, ungraded distance learning initiative is consistent with the “positive proactive strategies” outlined in VDOE’s FAQ materials:

*If a division has extended school closures, ... school divisions should consider options and ideas to **engage students in reading, thinking and learning**. Creating such opportunities should be done with careful consideration of providing equitable access and support for a variety of students. Due to the waivers that are likely to be granted for school closures related to COVID-19, schools should not consider these strategies for continuity of learning as make-up days or hours. **Positive proactive strategies to continue engagement in learning are not a form of instruction/instructional day and thus would not require school divisions to offer FAPE.** If a school division does begin to offer instructional services by alternative means[,] the division will remain responsible for the free appropriate public education (FAPE) of its students eligible for special education services with an individualized education program (IEP)[emphases added].⁵⁵*

- In reaching our finding on this Subissue, we find the voluntary nature of LEA’s distance learning initiative—and its TLPs—compelling.
 - While US ED’s March 12, 2020, guidance failed to define “educational services” and “educational opportunities,” OSEP leadership explained these terms at a March 13, 2020, webinar hosted by CASE, the Council of Chief State School Officers (CCSSO), and the National Association of State Directors of Special Education (NASDE).⁵⁶

⁵⁵ See VDOE FAQ (Question 79).

⁵⁶ “The questions [proffered at the webinar] illustrated the practical difficulties states and school districts would have in implementing the OSEP FAQ.... Many of these questions remain unanswered. We draw two conclusions from this webinar. First, the OSEP FAQ is premised on an overly simple open-or-closed dichotomy; however, the states were considering options between ‘completely open’ and ‘completely closed.’ Second, the non-binding OSEP FAQ does not completely address the many problems and options confronting states, school districts, and intermediate agencies. Fundamentally, the OSEP FAQ and the joint webinar left the states, school districts, and intermediate agencies to fend for themselves in light of challenges raised by a global pandemic.” Iowa SEA, Complaint 19-19 (June 8, 2020) [hereinafter Iowa SEA], posted by P. Zirkel, *COVID-19 (IDEA and § 504) Case Law: Limited Beginnings and Potential Analogies* (June 30, 2020) < <https://perryzirkel.com/2020/06/29/covid-19-case-law-idea-and-504/>> at <<https://perryzirkel.files.wordpress.com/2020/06/iowa-cp-covid-decision.pdf>>.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 22 of 84

- More specifically, OSEP leadership explained that “educational services” would encompass “the IEP services that would be provided,” while “educational opportunity” is “making sure that they [students with disabilities] have equal access...[to] what will be provided to the general education population.”⁵⁷
 - The findings of another state education agency (SEA) are also instructive. In a June 8, 2020, decision, the Iowa SEA addressed similar allegations regarding one school division’s implementation of a voluntary learning initiative during the COVID-19 school closure period. The Iowa SEA noted that “the OSEP FAQ ...does not seem to contemplate districts making a choice to provide *only* [italics in original] educational opportunities.... [OSEP statements at the CASE webinar,] when considered with the other questions that were not answered and other concerns raised in the webinar, provide a reasonable basis for the Department and Iowa’s school districts ...to choose to provide voluntary services and choose to provide such special education services and supports that are necessary for an equal opportunity for participation....”⁵⁸
 - In the Iowa case, as here, the school division had elected to provide voluntary—rather than required—services for all students.⁵⁹ The Iowa SEA found no violation of IDEA with regard to the school division’s voluntary learning initiative that provided “such special education services and supports that are necessary for an equal opportunity for participation.”⁶⁰
- We find our colleague’s interpretation sound. One may reasonably conclude that, given US ED’s explanation and OCR precedent,⁶¹ school divisions that elect to provide **voluntary**

⁵⁷ See Iowa SEA, *supra*.

⁵⁸ The Iowa SEA noted that US ED’s *Q & A* document “[i]n its context and as to the points at issue in this state complaint, ... has limited persuasive power. We conclude this document starts, but not ends, conversations.”

⁵⁹ “This required-voluntary choice that districts make for all students has implications for special education. If a district is providing voluntary educational enrichment opportunities, in a manner consistent with the Department’s guidance, these voluntary educational enrichment opportunities become the key comparison point for determining what a child with a disability is entitled to receive from the school district. If a district provides voluntary educational enrichment opportunities, the district must provide children with disabilities an equal opportunity for participation in those educational services.....” See Iowa SEA, *supra*.

⁶⁰ See Iowa SEA, *supra*.

⁶¹ The Office for Civil Rights has found that school divisions must provide students with disabilities an “equal opportunity” in participating in voluntary academic enrichment programs. “Although the District was not required to implement the complainant’s son’s IEP during summer school, the District had an obligation to consider whether he needed any program modifications for summer school in order to ensure that the complainant’s son had an equal opportunity to participate in summer school as other students without disabilities.” See *Savannah (Mo). Sch. Dist.*, 50 IDELR 262 (OCR 2007).

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 23 of 84

“**educational opportunities**” must also provide those “special education services and supports that are necessary for an equal opportunity for participation.”⁶²

- Stated another way, **participation in voluntary educational opportunities does not require full IEP implementation**. Rather, school divisions are to provide supports and services “not because they were specified in the IEP, but because they were necessary for an equal opportunity for participation in the voluntary services”⁶³ that the school division has elected to provide during the extended school closure.
- Accordingly, because LEA’s initiation of a voluntary distance learning for all students triggered its obligation to provide equal access to those distance learning opportunities for students with disabilities, rather than full IEP implementation, we find Complainant/Parent’s allegations with regard to a “blanket refusal” to implement IEPs without merit.

Additional information

- In additional information, Complainant/Parent has asserted: *[LEA] knows that it remained open and 1) was providing new instruction (and not just “educational opportunities”) and 2) was grading those assignments.*
 - **Schools remained “open.”** Complainant/Parent specifically challenged LEA’s assertion that the *governor [sic] ordered schools to be shut. He did not order that. He ordered the cessation of in-person instruction.... [LEA] was able to implement an entire school day for its students. It chose not to do so.*
 - As we have indicated above, on March 13, 2020, the Governor “ordered all K-12 schools in the Commonwealth closed for two weeks.” While Executive Order No. 53

⁶² See Iowa SEA.

⁶³ See Iowa SEA. For a similar interpretation and notes regarding a lack of clear federal regulatory guidance, see generally, *Questions and Answers about Special Education after OSERS and NDE’s “Continuity of Learning” Guidance During COVID-19 Closure* (March 24, 2020): For a similar interpretation and notes regarding a lack of clear federal regulatory guidance, see generally, *Questions and Answers about Special Education after OSERS and NDE’s “Continuity of Learning” Guidance During COVID-19 Closure* (March 24, 2020): “If a district ‘does not provide any educational services,’ then it does not owe FAPE to special education students. While subsequent ‘guidance’...does purport to provide flexibility (from OSERS/OCRE) on how to implement FAPE, it does not change the more fundamental conclusion that if educational services are provided to general education students, then the requirements of FAPE apply. Based on this guidance and a common sense reading of cases resulting from other emergencies and catastrophes, there is a difference between providing services which seek to allow students to advance along the curriculum compared to supplemental, voluntary learning serving as enrichment opportunities [emphasis added]. We believe this is where the distinction lies, though admittedly no regulatory agency has undertaken to draw this line with any certainty.” <<https://www.ksbschoollaw.com/blog/2020/3/24/questions-and-answers-about-special-education-after-osers-and-ndes-continuity-of-learning-guidance-during-covid-19-closure>>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 24 of 84

(March 23, 2020) specifically directed the “cessation of all in-person instruction at K-12 schools, public and private, for the remainder of the 2019-2020 school year,”⁶⁴ the Governor’s Office issued a press release reiterating that “All schools will remain closed through the end of this academic year.”⁶⁵

- Further, in Executive Order No. 61 (May 8, 2020), the Governor reiterated that Executive Order No. 53 “closed all K-12 schools for the remainder of the academic school year”⁶⁶
- Accordingly, Complainant/Parent’s assertion that public schools remained “open” without merit.
- **“New instruction.”** Complainant/Parent asserted that LEA *launched an online campus and provided new instruction to all students mentioned in this complaint. This wasn’t a case of “positive proactive strategies to continue engagement in learning.”* Complainant/Parent further asserted that LEA provided “new instruction,” as School Principal advised parents via an April 18, 2020, email that LEA would *ensure that students have work to do to that will assist in leading them to mastery of their content.* Complainant/Parent surmises that *it is impossible to obtain mastery without being provided new instruction.*⁶⁷
 - As we established above, LEA’s resource materials clearly indicate that its distance learning constituted a “blend of review, practice, and new learning.” In the July 27, 2020, interview with this office, LEA reaffirmed that its voluntary learning initiative combined varying degrees of new instruction as well as other learning activities. For purposes of our inquiry here, however, we are not persuaded that the content of any voluntary distance learning activities triggered FAPE responsibility under IDEA.⁶⁸

⁶⁴ See Executive Order No. 53 <[https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-53-Temporary-Restrictions-Due-To-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-53-Temporary-Restrictions-Due-To-Novel-Coronavirus-(COVID-19).pdf)>

⁶⁵ Governor Northam Orders Statewide Closure of Certain Non-Essential Businesses, K-12 Schools (March 23, 2020) <<https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline-855292-en.html>>

⁶⁶ See Executive Order No. 61, *supra*.

⁶⁷ In additional information, Complainant/Parent also asserted that, because LEA provided “instruction,” this instruction *did constitute a school day*. Complainant/Parent also stated that *[e]ach parent on this complaint has submitted a statement that all of their [LEA-]enrolled students were provided NEW instruction and not simply ‘positive proactive strategies to continue engagement in learning.’*

⁶⁸ Again, in this context, we find the analogy to nonmandatory summer school attendance instructive. “New instruction” may be offered in voluntary summer school without triggering FAPE responsibility under IDEA.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 25 of 84

- **Grading.** Complainant/Parent has asserted that LEA graded student assignments⁶⁹ during the extended closure, seemingly suggesting that grading student work indicated mandatory participation in learning activities or triggered FAPE responsibility.⁷⁰
 - The C4L Task Force advised that “[w]hile there may be a push [during school closure] to assign grades to student work, the VDOE has recommended against this. The Task Force recognizes assigning grades to student work does not necessarily lead to greater learning or increased growth. The focus should be on the continuity for learning, the equitable growth of all students, and engaging students through feedback.”⁷¹
 - Further, as VDOE stated in its FAQ document, the “authority to award grades and determine grade point averages rests with local school divisions. School divisions

⁶⁹ In a seeming incongruity, Complainant/Parent also asserted (in additional information) that LEA “[s]uspended [p]rogress [m]onitoring.” We note that “progress” may be measured in numerous ways, such as in the scoring or “grading” of voluntary learning activities for purposes of informing any recoupment/recovery initiatives. See footnote 75, *infra*.

⁷⁰ More specifically, Complainant/Parent asserted:

- The third quarter progress report for one of the identified students “was based on work that [identified student] completed AFTER the close of schools, which [identified student] completed at home via extensive supports from [identified student’s] mother.”
- School Principal’s April 24, 2020, email to parents, advised, *inter alia*, of (i) acceptance of third quarter work until May 1, 2020; and (ii) inclusion of “new work...into fourth quarter gradebooks.”
- On May 4 and 11, 2020, one identified student’s teacher posted regarding an assessment and a “grade bump policy” providing teachers discretion in increasing a student’s final grade by “one grade distribution (B to B+), based on demonstrated proficiency of Quarter 4 learning.”
- LEA Superintendent stated in a May 5, 2020, interview: “So we came up with a grading policy that was really, while on no mark for fourth quarter, we did want to give kids in some incentive to try to uh, you know, engage in learning.”
- Also on May 5, 2020, (in what appears to be a transcript of a telephone conversation between a special education teacher and both parents of one of the identified students), a special education teacher advised regarding measurement of progress toward goals and lack of grades.
- On June 3 and 8, 2020, LEA advised two of the identified parents via email, respectively, regarding “grading fourth quarter work.”
- On June 11, 2020, one of the identified parents “pulled screenshots from SIS [Student Information System], which indicates [identified student] was being graded and that points were assigned for each assignment.”
- On June 12, 2020, another identified student “was assessed on the topic of Genetics and earned a calculated grade and percentage.”

We note that several of these allegations address matters occurring after submission of the May 8, 2020, complaint.

⁷¹ See C4L at 24.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 26 of 84

- should consider the guidance related to distance and online learning and the considerations regarding equity and a thoughtful approach to instruction, and the impact of alternative measures of achievement and mastery. Whereas the VDOE recognizes that decisions on grades are a local decision, the VDOE does not recommend grading work completed during the closures since schools are closed.”⁷²
- LEA Superintendent announced the ungraded and voluntary nature of participation in LEA’s distance learning on March 13, 2020. “We will promote digital and online resources to [LEA] students that will help student learning continue. This work will not be required nor graded.”⁷³ In its response, LEA stated that “[t]here were no graded activities[,] and no fourth quarter grades were assigned.”
 - Significantly, LEA’s March 27, 2020, press release (provided by Complainant/Parent as additional information) clearly indicated LEA’s plan that (i) “no student work assigned after March 13 will be graded, at the recommendation of VDOE”; (ii) “work assigned prior to March 13 will still be accepted up until April 24 in order to be applied in the calculation of students’ third quarter grades”; (iii) “middle school and high school students will be assigned a ‘no mark’ for the fourth quarter, with assignments submitted being allowed to positively influence the student’s overall grade for the year based on mastery of learning concepts, in accordance with [LEA] grading policy”; (iv) “[n]o fourth quarter grades will be assigned to elementary students due to equity issues of access to technology and limited student ability to submit work during distance learning.”⁷⁴
 - We find Complainant/Parent’s assertions regarding any “grading” of voluntary learning activities—and opportunities to enhance final grades by demonstrating “proficiency”—without merit. The record demonstrates that LEA engaged in a local grading practice to (i) provide additional incentives to students; (ii) help ensure equity; and (iii) monitor student progress as a basis for determining any recoupment/recovery services for all students—not just those eligible for special education.
 - Further, we may distinguish the scoring of assignments and activities—for purposes of monitoring student progress generally and informing future recoupment/recovery

⁷² “Additionally, VDOE recognizes that grade calculations and GPA are a local policy issue. VDOE does recommend that school divisions establish a methodology to fairly calculate grades based on work previously completed and a methodology for including said grades in GPA calculations and on student transcripts.” See *VDOE FAQ*.

⁷³ See *March 13 Message*, supra.

⁷⁴ Press Release, *School Board Hears Learning, Grading, Graduation Plans for Remainder of 2019-2020 School Year* (March 27, 2020) < <https://www.fcps.edu/news/school-board-hears-learning-grading-graduation-plans-remainder-2019-20-school-year> >

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 27 of 84

determinations—from the assignment of final “grades.” The weight of the record supports LEA’s assertions regarding its grading practice during the extended closure.

- Finally, in this context, we again find the voluntary nature of LEA’s distance learning initiative persuasive. There were no negative consequences for students who declined to participate fully—or at all—in LEA’s distance learning plan (e.g., truancy; grade penalties, etc.). That students had the opportunity to improve their final grades by a small margin based on participation in fourth-quarter distance learning is of no consequence. In any case, grading remains a local issue, and is not indicative of FAPE responsibility.⁷⁵

⁷⁵ In the May 8, 2020, Notice of Complaint, this office specifically declined to address Complainant/Parent’s initial allegations regarding grading and measurement of progress:

Complainant/Parent has asserted: “With general education students, [LEA] is measuring work accomplished during temporary learning, [sic] to determine if a student’s grade will be bumped up. Therefore, [LEA] is measuring progress in general education students and is obligated to provide measurements for students in special education programs, to include Students with IEPs.” Issues regarding the grading of student work lie outside the scope of our investigative authority and must be addressed at the local level. Further, the issuance of grades for assignments does not trigger LEA’s obligation to issue progress reports addressing annual goals. This allegation contains insufficient information to the initiation of a special education complaint investigation.

Subsequently, in a July 6, 2020 (1:58 a.m.) email, Complainant/Parent stated: *Please explain to me the contradictions in the attached NOC and the guidance VDOE issued on its site http://doe.virginia.gov/support/health_medical/office/covid-19-sess-faq.shtml*

On VDOE’s site, you state: “When providing services, it is important to continue to monitor progress; as this will provide a starting point for consideration of services required after the reopening of schools.”

Yet in the attached [Notice of Complaint], you DENIED the portion of the complaint related to failure to monitor.

You specifically wrote, “the issuance of grades for assignments does not trigger LEA’s obligation to issue progress reports addressing annual goals. This allegation contains insufficient information to the initiation of a special education complaint investigation.” You and I both know that if an LEA is providing instruction to a general ed student, then it must implement the IEPs of students who have them. Given the school was grading, then that meant it was providing instruction. That also means that the LEA 100% should have been providing progress reports....[LEA’s] decision NOT TO monitor and provide IEP progress reports is 100% a systemic violation and you know that.

While Complainant/Parent, via this email (after the fourth and final grading period, which had yet to occur when the complaint was filed on May 8, 2020), additionally alleged that LEA failed to issue “IEP progress reports,” nowhere did the complaint submission include this assertion. The complaint submission did not indicate that LEA had issued report cards for students in general education and had failed to issue progress reports for students with IEPs (see 8 VAC 20-81-110.G.8, regarding issuance of progress reports). Further, it is our understanding that LEA in fact issued progress reports for the third quarter grading period, after the pandemic prompted the closure of schools across the Commonwealth and before the complaint filing.

In any case, the issuance of grades for assignments or the scoring of activities provided during LEA’s voluntary distance learning does not trigger LEA’s obligation to issue progress reports addressing annual IEP goals.

Additionally, we note that “monitoring progress” may take a variety of forms and does not necessarily dictate the issuance of progress reports. As indicated in the VDOE guidance Complainant/Parent has cited, monitoring of student progress during the extended closure “will require consideration of the student’s baseline performance at the time of the school closure, any progress or lack thereof during distance learning, and the student’s performance after school reopens. What data collection looks like during the time schools are closed will be driven by the nature of the programming provided by the school division [emphasis added]. Likewise, the provision of progress reports will be driven by the student’s IEP. It is important to remember that students with disabilities must receive progress reports

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 28 of 84

Conclusions

- To the extent Complainant/Parent alleges that LEA failed to implement IEPs “to the greatest extent possible,”⁷⁶ we find that LEA’s voluntary distance learning initiative was reasonably based on federal and state guidance providing flexibility to school divisions during the extended closure period.⁷⁷
 - In reaching our finding on this Subissue, we construe this undefined “standard”—for which there is no binding statutory, regulatory, or judicial authority or interpretation—broadly. To do otherwise would fail to acknowledge the practical challenges inherent in swiftly shifting to distance learning in a global pandemic.⁷⁸ As we have noted above, the statewide school closure rendered the implementation of many—if not most—IEP services impossible.
 - Further, viewed through the lens of *Endrew F.*, any FAPE responsibility during the statewide school closure must address what is “*reasonably calculated* to enable [the] child to make progress appropriate *in light of the child’s circumstances* [italics in original].”⁷⁹ One might well conclude that the “circumstances” of all Virginia students—whether in

at least as often as students without disabilities.” (See FAQ #7, <http://doe.virginia.gov/support/health_medical/office/covid-19-sess-faq.shtml>)

To the extent Complainant/Parent may have attempted to assert that LEA was “measuring progress” by scoring assignments or activities, etc. for students in general education but was failing to similarly address assignments or activities completed by students with IEPs, we note that our office has authority only to address issues arising under IDEA and its related federal and state regulations. If Parent has concerns regarding disability, racial, or other discrimination, Parent may contact the Office for Civil Rights within the United States Department of Education at: Washington DC (Metro)

Office for Civil Rights ~ U.S. Department of Education

400 Maryland Avenue, SW ~ Washington, D.C. 20202-1475

Telephone: 202-453-6020; FAX: 202-453-6021; TDD: 877-521-2172; Email: OCR.DC@ed.gov

⁷⁶ Complainant/Parent also cites implementation to the “best extent possible”; however, this is not a term used in federal or state guidance.

⁷⁷ As we will address more fully below (Subissue 1B), LEA sought to develop and implement Temporary Learning Plans based on student IEPs, in consultation with parents, and provided parents an opportunity for input in these plans “to the greatest extent possible.”

⁷⁸ Additionally, Virginia school divisions have no direct fiscal authority; their budgets and funding are tied to the local governing body.

It is the locality, and not the school board, that is empowered (and required) to “raise money by a tax on all property subject to local taxation at such rate as will insure a sum which, together with other available funds, will provide that portion of the cost apportioned to such county, city or town by law for maintaining an educational program meeting the standards of quality for the several school divisions prescribed as provided by law.” Va. Code § 22.1-95. See also, Division of Legislative Services, *A Legislator’s Guide to Public Education in Virginia* (Public School Finance 2002)

⁷⁹ *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 & 1001 (2017).

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 29 of 84

general or special education—changed dramatically upon the statewide closure of all public schools and prohibition of in-person instruction in March 2020.⁸⁰

- Accordingly, absent any binding legal authority regarding what constitutes the “greatest extent possible,” we rely on a standard of reasonableness in light of *Endrew F.*⁸¹
- Finally, we also find Complainant/Parent’s assertion that LEA was required to provide prior written notice “explaining their [sic] decisions to deny Student’s [sic] full implementation of their [sic] IEPs and full access to FAPE” without merit.
 - LEA’s distance learning initiative did not constitute a proposed systemic change in placement or in the delivery of FAPE for its students with disabilities. Rather, a government-ordered closure of schools prohibited LEA from implementing IEPs as written—or providing educational services to any students as would be contemplated under “normal” circumstances.⁸²
- In reaching our finding on this Subissue, we are compelled to include the observation of our Iowa colleagues:

... at the time these decisions were made...and with the immediacy that such decisions were required, these decisions were reasonable responses applying the IDEA in light of an

⁸⁰ We note, but are not persuaded by, Complainant/Parent’s argument to the contrary (see Complainant/Parent’s additional information): *The students’ circumstances did not change. A child with Dyslexia did not all of a sudden not have Dyslexia, nor did a child with Autism wake one day without Autism. What changed was the school’s circumstances.... Circumstances are not defined by the school’s circumstance....*

⁸¹ In July 13, 2020, additional information, addressing this LEA’s preparation for—and delivery of services during—the extended school closure, Complainant/Parent cited the distance learning implemented by an out-of-state private school: *months before [LEA] launched its own online program — this small private school was already successfully providing robust online instruction, with both classroom and one-on-one instruction similar to how a student might approach a teacher during class.* We note that this out-of-state private school serves “bright, college-bound students” who “have mild to moderate language-based learning needs” and “average to above-average abilities” and who are “emotionally healthy and behaviorally appropriate.” See <https://www.thesienaschool.org/admissions/>. We find any comparison between private school services and the challenges facing public school divisions in addressing the extended school closure and the standard imposed by *Endrew F.* inapposite.

⁸² Unlike most states, the Commonwealth of Virginia requires parental consent before a school division may implement any change in placement, identification, or special education services (8 VAC 20-81-170.E). This consent requirement underscores the importance of prior written notice: to provide the parent with sufficient information to ensure an understanding of the rationale behind a particular proposed or refused action so that the parent may participate on an informed basis in decision-making regarding the child’s special education. Additionally, the PWN provides the parent with information upon which the parent can determine the basis for any disagreement with the proposed or refused action, and to decide whether to seek resolution of a dispute through mediation or due process.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 30 of 84

unimaginable planetary disaster. The fact that different or better decisions could have been made is immaterial....We cannot conclude the [LEA's actions] violated the IDEA.⁸³

- Based on the foregoing, we find LEA in compliance on this Subissue.

Subissue 1B: Temporary Learning Plans and IEP Development, Review, and Revision

- Special education regulations (34 C.F.R. § 300.23; 8 VAC 20-81-10) identify the responsibility of the IEP team for IEP development, review, and revision and specify requirements for the development, review, and revision of a student's IEP (34 C.F.R. § 300.324; 8 VAC 20-81-110).⁸⁴
- The Virginia Regulations, at 8 VAC 20-81-110.B.4, vest local school divisions with the responsibility for "initiating and conducting meetings to develop, review, and revise the IEP of a child with a disability." Further, these regulations (8 VAC 20-81-110.B.6) set forth the parent's right to ask for revisions of the child's IEP.

LEA's Temporary Learning Plans (TLP) Generally

- Many of Complainant/Parent's allegations address the nature of TLPs generally, and are based on an apparent assumption that these documents were subject to various regulatory requirements regarding IEP development, review, and revision (as well as implementation).
 - Specifically, Complainant/Parent has alleged, among other things, that LEA developed and implemented TLPs:
 - "without receiving parental consent";
 - "absent a revision to the IEP"; and

⁸³ See Iowa SEA. "In sum, the state of the law... remains a rather fluid and largely indefinite picture that warrants the continued resiliency and creative cooperation of both special educator and parents. It is unlikely that we will have definitive legal answers as to the FAPE and remedy questions until not only the pandemic but also the courts have finished their ponderous process." See P. Zirkel, COVID-19 Guidance and Case Law: The Next Update (August 10, 2020) <<https://perryzirkel.com/2020/08/12/covid-19-guidance-and-case-law-update/>>

⁸⁴ These regulations (34 C.F.R. § 300.324(b); 8 VAC 20-81-110.B.5) direct school divisions to ensure that the IEP team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved, to revise its provisions, as appropriate, to address, among other things, information about the student provided to or by the parents, the student's anticipated needs, or other matters. Further, the Virginia Regulations (8 VAC 20-81-110.F.1.b) direct the IEP team, within the IEP development, review, and revision process, to consider, among other things, the parent's concerns for enhancing the student's education.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 31 of 84

- without “provid[ing] PWNs explaining their [sic] decisions to deny Student [sic] full implementation of their [sic] IEPs and full access to FAPE.”
- Accordingly, we must first examine the nature of TLPs as developed and implemented by LEA.
 - On April 16, 2020, LEA Assistant Superintendent advised parents of students with IEPs that distance learning would be accomplished via Temporary Learning Plans (TLPs). The TLP was to consist of “a letter that will identify the continuity of learning services that will be provided to students between now and the end of the school year.”
 - Special education case managers and related services providers were to consult with parents to identify for each student TLP “the prioritized [IEP] goals, accommodations and services that will be addressed during the school closure.”⁸⁵
 - LEA has stated that its TLP model was based on a March 27, 2020, presentation by the Council of Administrators of Special Education (CASE) and the Council for Exceptional Children. This distance learning model is “**a separate individualized plan**, developed in collaboration with parents, for the provision of temporary services until such time as this pandemic ends [emphasis added].”⁸⁶
 - LEA further responded that “Additionally, principals and teachers determined specific instructional experiences for students to learn essential concepts through asynchronous and limited synchronous learning opportunities....Nevertheless, utilizing the flexibility as provided in the VDOE’s guidance, [LEA] has based its TLPs upon students’ IEPs, as practicable, given the extremely significant challenges involved with delivering education and related services during this pandemic.”
 - LEA stated: “TLPs are only **temporary arrangements to provide for the continuity of learning** [emphasis added] during [LEA’s] provision of distance learning. TLPs in no way modify a student’s identification, evaluation, or educational placement.”
 - LEA’s online *FAQ* resource—available to parents—further explained the TLP:

The Temporary Learning Plan is a one page, letter format that documents the selected goals, accommodations and services that will be provided to a student with a disability (IEP) to

⁸⁵ Distance Learning Plan for Students with Disabilities—Message from Assistant Superintendent Teresa Johnson
<<https://www.fcps.edu/node/40612>>

⁸⁶ See <<https://cec.sped.org/~media/Files/Resources/COVID19/Slides%20%20CASE%20Webinar%203%20COVID19%20%20March%2027%202020.pdf>>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 32 of 84

*ensure continuity of learning during school closure and distance learning. [LEA] understands the concerns of parents with respect to providing FAPE for students with disabilities when instruction is provided to all students. What constitutes FAPE will necessarily look different in light of the current pandemic and the closure of schools, and parents can be assured that [LEA] will make educational opportunities available to all students, including students with disabilities, and will be doing its best to provide FAPE within the constraints of distance learning [emphasis added].*⁸⁷

- LEA's FAQ document identified critical features of the TLP:
 - The TLP **"is not an IEP and it is not a waiver of rights under IDEA. Your child's IEP will be implemented when we resume school"** [emphasis added].⁸⁷
 - Regardless of written parental consent, "TLP services will still be offered and delivered, unless the parent chooses to opt out of instruction";
 - Parental agreement to a TLP is not a "waiver" of special education rights; rather, the TLP is simply "a good faith agreement between school and parents about what can reasonably and creatively provided in the distance learning format"; and
 - Parents disagreeing with or having concerns regarding a TLP might (i) contact the student's case manager or Procedural Support Liaison (PSL); or (ii) request an IEP meeting.⁸⁸
- The weight of the record indicates that LEA's TLPs did not constitute IEP "addenda"; these temporary plans did not serve to amend student IEPs. **Accordingly, neither prior written notice nor parental consent to these TLPs was required for their implementation.**⁸⁹

⁸⁷ LEA included this resource as Attachment 9h; the resource is also available on its website. See Coronavirus Update—Frequently Asked Questions and Answers Special Education <<https://www.fcps.edu/news-features-and-events/news/coronavirus-update/faqs-special-education>>

⁸⁸ <<https://www.fcps.edu/news-features-and-events/news/coronavirus-update/faqs-special-education>>

⁸⁹ We note and distinguish the July 27, 2020, decision by the Kansas SEA, which found a school division had violated IDEA when it developed a student's Individualized Continuous Learning Plan (ICLP) for implementation during the statewide school closure. Among other things, the supports and accommodations section of the ICLP was left blank—omitting the student's modifications necessary for access to curriculum. More specifically, the Kansas SEA noted *there is nothing in [Kansas SEA's] guidance that indicates a school district may bypass the IDEA or in the [state special education statute] procedural requirements regarding how IEPs may be changed* [emphasis added]. Significantly, the Kansas SEA noted that *to the extent the ICLP was to act as the IEP for this student during school closure, it was incomplete. The result is that the program modifications in this student's IEP were still in force.* In the case before us, as the record clearly indicates that TLPs were not an IEP addendum or a modification of student IEPs. See *In re: Student with a Disability*, 77 IDELR 25, 120 LRP 22907 (Kansas SEA) (July 27, 2020).

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 33 of 84

- In a July 27, 2020, interview with ODRAS, LEA personnel explained that it sought parental agreement⁹⁰ to TLPs primarily to ensure (and document) parental participation and investment in TLP development. Delivery of the particular services outlined in the TLP was not, however, contingent upon this agreement,⁹¹ as LEA would offer and deliver these services in an effort to ensure access to the voluntary learning opportunities.
- In follow-up email correspondence that same day, LEA advised that only .5% of parents “actually declined to sign in agreement to a TLP,” while another 22% of parents did not respond. Accordingly, over 75% of parents of students with IEPs provided written agreement to TLPs.⁹²
- Simply stated, we find **LEA’s TLPs did not constitute IEP addenda**; accordingly, any regulatory requirements governing (i) IEP development, review, and revision; and (ii) parental consent were not applicable to their development and implementation, respectively. Thus, we find Complainant/Parent’s allegations regarding these matters without merit.
 - Further, nowhere do special education regulations dictate the inclusion of informal arrangements—such as a TLP—within an IEP. Additionally, given the voluntary nature of LEA’s continuity of learning initiative (Subissue 1A, above) and the flexibility voiced by federal and state guidance, we find no basis for imposing an additional obligation on LEAs or IEP teams to seek revision to student IEPs during the unprecedented extended school closure period. We conclude that LEA’s creation of voluntary temporary learning plans rested outside the IEP development, review, and revision process.

IEP Development, Review, and Revision and the “Insertion” of TLPs

- Having alleged that LEA should have revised every IEP to address a TLP during the extended closure, Complainant/Parent has also alleged that LEA “inserted Temporary Learning Plans...into the development of IEPs without first receiving parental input....and without ‘proposing a final IEP....’”
 - Parent/Complainant cited specific circumstances regarding Students A, B, and C with regard to this allegation, which we will address below.
- In describing the development of TLPs, LEA has indicated that:

⁹⁰ We note that special education regulations (8 VAC 20-81-10) are clear that “consent” does not have “the same...meaning...as the term ‘agree’ or ‘agreement.’”

⁹¹ See also, LEA response, Attachment 2c, *COVID-19 Frequently Asked Questions 2 for Staff—April 28, 2020* (Question 6).

⁹² LEA advised that about 15% of TLPs were addressed “within the annual IEP meeting. The TLP was documented on the [PLOP] and consent for the IEP for fall was separate.”

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 34 of 84

- Students' "individual goals, accommodations, and services set forth in their respective TLPs have been derived from the goals, accommodations, and services identified in [LEA's] students' respective IEPs, which were either being implemented prior to the school closure or that have been subsequently consented to by students' parents. Nonetheless, given the real limitations on providing instruction resulting from a distance learning format while schools are closed, they are in no way intended to replace or change IEPs";
- Although TLPs are not IEP addenda for which parental participation and input are required, "[n]evertheless, before the issuance of a student's TLP, [LEA] has discussed the individualized TLP with that student's parents."⁹³
 - LEA included a copy of its *Distance Learning Plan Supports for Students with Disabilities*. This resource clearly outlined LEA's plan for special education case managers to "proceed with contacting parents to discuss a Temporary Learning Plan or 'TLP.' The special education teachers will discuss with parents their ability to utilize virtual means and/or instructional packets for educational activities in the home as well as the specific needs your child has in the distance learning environment due to his or her disability. Selected and modified IEP goals and services will be offered that [are] individualized for students in the present situation."⁹⁴
- To document discussions, LEA's TLP template displayed the following language:

Thank you for speaking with me on _____ regarding the development of this Temporary Learning Plan while schools are closed for the remainder of the 2019-20 school year, during the COVID-19 pandemic. During these unprecedented times, we are continuing to look at ways to support you and your child through this process. This Temporary Learning Plan does not take the place of your child's Individualized Education Program (IEP), and it does not contain the same services and accommodations provided for in your child's IEP. However, it does identify the continuity of learning services and consultation that will be provided for your child between now and the end of the school year.
- LEA responded: "Each student's TLP includes a line to reflect the date of such discussion Additionally, as is reflected on each student's TLP, [LEA] has offered to collaborate with any parents who may have concerns, including offering to hold an IEP meeting to address such concerns. Therefore, as TLPs are based on individual students' IEPs and input from those students' respective case managers and parents, they are narrowly-tailored to each student."
- With regard to the six identified Students, the record indicates the following:

⁹³ See LEA response, Attachment 9g.

⁹⁴ Id.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 35 of 84

- Although TLPs are not IEP addenda, LEA provided Complainant/Parent and Parents 1-4 the opportunity to participate in the TLP development process.
 - LEA and parents communicated regarding TLP development and implementation either by email, telephone conference call (e.g., Student E),⁹⁵ or via IEP meeting.
 - Although each TLP document already advised of the opportunity to discuss the TLP within an IEP meeting, LEA specifically offered this opportunity for discussion to Complainant/Parent and parents of Students.
 - None of the parents provided written agreement to the TLPs; one parent (Student C) specifically refused to agree to the TLP.⁹⁶
 - TLPs were not cited in draft IEPs for three of the six identified students.
 - Despite lack of parental agreement to any TLP, at least five of the six identified students opted to access LEA's distance learning initiative. The record indicates that, of these five, at least four accessed TLP services/accommodations. Finally, the record indicates that LEA arranged for delivery of laptops and learning packets to ensure TLP access to the two students who appear to have elected to access few or no TLP services.

Inclusion of TLP in IEPs

- Complainant/Parent as included allegations regarding "inserting TLPs into...IEPs" specifically with regard to three of the six identified students.
- In a July 27, 2020, interview with ODRAS, LEA clarified that TLPs were cited in the PLOP sections of IEPs for those students whose annual IEP reviews were conducted within the extended closure period, as IEP teams simply sought to combine meetings addressing (i) IEP services for the upcoming 2020-2021 school year; and (ii) parental questions and concerns regarding TLPs.
 - As we will document below, this practice did not have the effect of rendering the TLP a "part" of the IEP requiring parental consent. Rather, its inclusion in an IEP—while not required—simply documented the proffered voluntary continuity of learning opportunities.

⁹⁵ The record indicates that LEA also offered a telephone conference to Student E's parent (See April 14, 2020 (3:53 p.m.), email).

⁹⁶ See May 6, 2020 (5:09 p.m.), email by Student C's parent to LEA, indicating, inter alia: *I do not consent [sic] to the TLP. [Student C] will still need one[-]to[-]one help.*

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 36 of 84

Students A and B

- Complainant/Parent has asserted that, with regard to Students A and B, LEA “inserted the TLP into the annual IEP[s] for [Students A and B]....[Parent] requested that it be removed, but it took some pushback for it to be removed. However, draft IEP is still in progress. [LEA] stated that the IEP in progress will start when schools resume full time and that language will be inserted on PLOP to describe services from now until end of year. The current working IEP draft does not contain the TLP language.”

Student A

- The record indicates that a May 20, 2020, IEP governed Student A’s special education services and included goals in writing, reading, and study skills. Eligible under the OHI and SLD categories, Student A was to receive 5.5 and 4.5 hours of special education services weekly in the general and special education settings, respectively.
- The record indicates that, following LEA’s spring break, Student A’s case manager contacted Student A’s parent on April 14, 2020; on April 15, 2020, the case manager and parent discussed Student A’s “access to technology and ability to engage independently” as well as parent’s perspectives regarding Student A’s goals and accommodations “that were most appropriate during distance learning.”⁹⁷
 - On April 27, 2020, Student A’s case manager sent parent a copy of Student A’s draft TLP. On May 1, 2020, parent emailed case manager regarding, inter alia, the amount of services contained in the draft TLP (30 minutes weekly) and the use of a particular spelling program.
 - On May 7, 2020, Student A’s parent advised case manager that Student A required 30 minutes of daily instruction; Student A’s case manager responded the next day asking parent(s) to contact case manager regarding questions and finalizing TLP.
 - Student A’s IEP team convened on May 27 and June 4, 2020, to conduct Student A’s annual IEP meeting. The Information Related to Present Levels of Academic and Functional Performance (PLOP) documented the use of Student A’s TLP during the extended closure period. The PLOP indicated that “this IEP will begin when school buildings reopen.” LEA

⁹⁷ Student A’s TLP included the following excerpts:

Thank you for speaking with me on April 15, 2020 regarding the development of this Temporary Learning Plan while schools are closed for the remainder of the 2019-20 school year, during the COVID-19 pandemic. During these

....

When school resumes, your child's current IEP will go back into effect. Should you wish to discuss this plan further, we can arrange a time to discuss it or hold an IEP meeting. If you agree with this proposal, please reply to me no later than 4/24/2020, confirming your agreement. If it is easier for you, you may sign the bottom of this page under

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 37 of 84

proposed a new IEP for Student addressing services commencing in Fall 2020 and issued a corresponding PWN.

- While Complainant/Parent alleges “push back” in the IEP development, review, and revision process regarding “inserting” Student A’s TLP into Student A’s annual IEP while a “draft IEP is still in progress,” we find no evidence of any failure by LEA to consider the concerns of Student A’s parent. To the extent any draft annual IEP might have contained additional language regarding Student A’s TLP, we note that draft IEPs are not proposed IEPs, but may be proffered for discussion purposes.⁹⁸ To date, Student A’s parent has not provided consent to Student A’s proposed annual IEP.
- As summarized above, the record indicates that Student A’s parent did not consent to the TLP, but that Student A accessed 30 minutes of weekly TLP services on April 28 and May 5, 2020.⁹⁹
- Based on the foregoing, we find Complainant/Parent’s allegations regarding (i) developing a TLP without parental input; and (ii) “inserting” a TLP into Student A’s IEP without merit.
 - As stated above, the record clearly indicates that TLPs are informal arrangements lying outside the IEP; including language in a draft or proposed IEP regarding the use of a TLP did not somehow “convert” the TLP into an IEP addendum for which parental consent was required. Finally, although not required to do so, LEA clearly sought parental input in the refinement of Student A’s TLP, as documented in Student A’s TLP itself.

⁹⁸ There is no requirement that school divisions create a draft IEP for consideration before or during an IEP meeting. The U.S. Department of Education, Office of Special Education Programs, has stated that “[w]ith respect to a draft IEP, we encourage public agency staff to come to an IEP Team meeting prepared to discuss evaluation findings and preliminary recommendations. Likewise, parents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child’s needs and the services to be provided to meet those needs. We do not encourage public agencies to prepare a draft IEP prior to the IEP Team meeting, particularly if doing so would inhibit a full discussion of the child’s needs. However, if a public agency develops a draft IEP prior to the IEP Team meeting, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents. The public agency also should provide the parents with a copy of its draft proposals, if the agency has developed them, prior to the IEP Team meeting so as to give the parents an opportunity to review the recommendations of the public agency prior to the IEP Team meeting, and be better able to engage in a full discussion of the proposals for the IEP. It is not permissible for an agency to have the final IEP completed before an IEP Team meeting begins.” U.S. Department of Education, Office of Special Education Programs, *Analysis of Comments and Changes*, at 46678, Federal Register, Vol. 71, No. 156 (August 14, 2006).

⁹⁹ The record indicates that Student A accessed these services on several occasions after the May 8, 2020, complaint submission, as well.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 38 of 84

Student B

- Complainant/Parent proffered similar allegations that LEA attempted to “insert” a TLP into Student B’s annual IEP. The record indicates that Student B is eligible for special education under IDEA as a student with autism and Other Health Impairment (OHI), and that Student B’s parent signed in partial consent an IEP for Student B on January 6, 2020.¹⁰⁰ This IEP provided for eight hours of special education services weekly and 30 minutes monthly, both in the general education setting. Student B’s goals addressed attentiveness, task initiation, and social skills.
 - Student B’s January 6, 2020, IEP indicated Student B is home-schooled pursuant to Va. Code § 22.1-254.1, but that Student B had been attending public school in LEA for on a part-time basis for two classes (English; Science) only during the 2019-2020 school year, pursuant to Va. Code § 22.1-253.13:2.N.¹⁰¹
 - The record included Student B’s TLP providing for .75 hours monthly of special education services “in the general education setting” and .25 hours monthly of services “from the

¹⁰⁰ Although Student B’s IEP identifies the eligibility categories of autism and OHI, the Services page of Student B’s IEP indicates services for Learning Disability (LD) and Emotional Disability (ED).

¹⁰¹ We make no finding regarding whether Student B is entitled to receive services under an IEP as a home-schooled student who is not enrolled in school on a full-time basis. Further, Student’s IEP does not indicate that part-time enrollment is necessary for FAPE.

The Standards of Quality (Va. Code § 22.1-253.13:2.N) provide that students enrolled in a public school on a less than full-time basis are to counted in the division’s ADM (average daily membership). More specifically, students who are either (i) enrolled in a nonpublic school or (ii) receiving home instruction pursuant to § 22.1-254.1, and who are enrolled in public school on a less than full-time basis in any mathematics, science, English, history, social science, career and technical education, fine arts, foreign language, or health education or physical education course shall be counted in the ADM in the relevant school division on a pro rata basis as provided in the appropriation act. Each such course enrollment by such students shall be counted as 0.25 in the ADM; however, no such nonpublic or home school student shall be counted as more than one-half a student for purposes of such pro rata calculation. Such calculation shall not include enrollments of such students in any other public school courses.

However, special education regulations specify that students who are eligible for special education under IDEA but who elect home instruction or private school, etc. are deemed to be private school students (8 VAC 20-81-150.C.1.a.4) and are entitled to an individualized services plan (ISP). These regulations (8 VAC 20-81-150.C.6.a; C.7.b.c) further provide (i) “No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school”; (ii) “Parentally placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools”; and (iii) “No parentally placed private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.”

Although the LEA would have proposed IEPs for eligible students residing in the school division (regardless of enrollment in private school or home instruction), nowhere do special education regulations contemplate implementation of an IEP for students who are not enrolled in public school on a full-time basis. Further, we make no finding regarding any other federal statutes under which Student B may be entitled to accommodations to access this part-time enrollment.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 39 of 84

special education teacher.” LEA has stated that this TLP was based on Student’s January 6, 2020, IEP as well as Student B’s subsequent spring 2020 “draft IEP.”

- The record indicates that Student B’s parent did not consent to the TLP, but that Student B accessed “all online 3rd period English class opportunities” and “attended the 1st period science classes, online, each week since [LEA] began Distance Learning.”
- The April 2020 draft IEP included language in the PLOP tracking the TLP, indicating that the TLP does not “take the place of your child’s IEP” but simply addresses “continuity of learning.”
 - The record includes an April 21, 2020 (7:00 p.m.) email from Student B’s parent to LEA inquiring about the draft PLOP language regarding Student B’s TLP and requesting clarification of the TLP process. LEA responded the next day (April 22, 2020, 11:49 a.m.), advising that the PLOP language tracked the TLP. LEA attached a copy of the “free-standing” TLP to this correspondence.
 - The record indicates that Student B’s parent requested that this language be removed from the draft IEP (April 23, 2020 (11:50 a.m.), email), and that LEA complied with this request.
 - Student B’s parent advised LEA that, if the IEP team discussed Student B’s TLP, this discussion could be documented in the PLOP; LEA confirmed that the TLP could be discussed at the April 24, 2020, IEP meeting (see April 23, 2020 (3:59 p.m.; 4:07 p.m.), email exchanges).
- Student B’s IEP team met on April 24, May 13, and June 10, 2020, to develop Student B’s annual IEP. Accordingly, the record indicates that LEA considered parent concerns in removing references to Student B’s TLP from the 2020 annual IEP. Further, there is no indication in the record that LEA precluded Student B’s parent from providing input regarding Student B’s TLP.
- As with Student A, above, we find Complainant/Parent’s allegations regarding “inserting” a TLP into Student B’s “annual IEP” without merit with regard to the IEP development, review, and revision process.

Student C

- With regard to Student C, Complainant/Parent asserted that LEA “has emailed [Parent] a few times, requesting that [Parent] sign off on the TLP, even though 1) it is in [Student C’s] IEP; 2) the IEP hasn’t been completed; and 3) [LEA] inserted the verbiage about the TLP with [sic] speaking with [Parent] and ensuring full parent understanding.”

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 40 of 84

- The record indicates that Student C is eligible for special education as a student with an IEP for Developmental Delay (DD) and attends an alternative learning center. The record documents six IEP meetings in between February 27 and May 8, 2020, to develop Student C's annual IEP.
 - Student C's draft May 8, 2020, IEP displayed language—in the April 16, 2020, entry of the PLOP—tracking proposed TLP goals and accommodations. This language also clearly indicated that the TLP “does not take the place of your child's IEP” but, rather, identifies “continuity of learning services and consultation” to be provided to Student C during the extended school closure; the entry indicated the TLP was to be discussed at the next IEP meeting.
 - The April 22 and May 8, 2020, PLOP entries outlined an IEP meeting agenda, which included Student C's TLP; however, no further discussion of Student C's TLP is documented.¹⁰²
 - The record indicates that LEA provided Student C's parent a copy of the TLP as a separate document via email on April 29, 2020. This TLP provided for certain accommodations as well as one hour weekly in a special education setting and one hour weekly in a general education setting “to support general education instruction.” The TLP also provided for one hour monthly of counseling services.
 - LEA responded that Student C's TLP was based on Student C's draft IEP, rather than Student's last-agreed-upon IEP of October 2018, as LEA had more recent data and parental input from IEP meetings.
 - LEA included numerous email exchanges between Student C's parent and LEA regarding the nature of the TLP and parental consent. On May 6, 2020, LEA advised parent that

¹⁰² We note LEA's seeming use of the PLOP to document IEP team meeting discussion—essentially serving as meeting “minutes.” We remind LEA that, as a best practice, the PLOP section of an IEP should be designed to address that which its name addresses—the student's present levels of academic and functional performance (8 VAC 20-81-110.G.1). While special education regulations mandate the consideration of parental concerns (8 VAC 20-81-110.F.1.b), nowhere do these regulations dictate the inclusion of summaries of IEP team discussion (in essence, “meeting minutes”)—in the IEP document itself as part of a student's present levels of performance.

In some cases, the inclusion of extensive discussion of informal “arrangements,” “understandings,” or “good practices” within the PLOP may prompt confusion between parents and school personnel responsible for IEP implementation. LEAs seeking to document IEP team discussions and detailing parental input may be better advised to develop separate IEP meeting minutes or maintain audio recordings of IEP meetings for this purpose. We note, too, that prior written notices may well document consideration of parental input and concerns in the development of a FAPE proposal. Similarly, however, special education regulations do not dictate that PWN serve as a literal transcript of IEP team discussions or as IEP meeting “minutes.”

Here, documenting discussion of TLPs within the PLOP may have prompted confusion for some parents regarding the nature of the TLP as an independent, informal arrangement lying outside the IEP development, review, and revision process.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 41 of 84

Student C could participate in distance learning without parental consent to the TLP, but that, with parental consent, Student C would receive “the benefits of all the components of the TLP.”

- Via email on May 6, 2020 (5:06 p.m.), Student C’s parent specifically refused consent to the TLP and stated parent’s desire that Student C participate in the “general education” distance learning. Seemingly incongruously, Student C’s parent also stated that Student C “will still need one[-]to[-]one help.”
- LEA responded within one hour, advising Student C’s parent that “we can certainly discuss the TLP in more detail at our [May 8, 2020,] IEP meeting.”
- The record indicates that Student C participated in distance learning “Google meet” sessions during the extended school closure after ODRAS’ receipt of the May 8, 2020, complaint.
- Although the record suggests that the inclusion of draft PLOP language regarding Student C’s TLP may have prompted confusion, the record, again, clearly indicates that TLPs were designed as separate, informal arrangements, and not as IEP addenda. LEA provided Student C’s parent a copy of the TLP as a separate document and clearly advised that the draft PLOP language simply reported (and repeated) the TLP’s content.
- Further, there is no indication that Student C’s parent was precluded from providing input regarding the TLP or—separately—in the ongoing development, review, and revision of Student C’s IEP.
- Accordingly, as with Students A and B, above, we find Complainant/Parent’s allegations regarding “inclusion” of Student C’s TLP in Student C’s draft IEP without merit.
- We find no violation of special education regulations governing IEP development, review, and revision with regard to the consideration of TLPs at IEP meetings, or the documentation of TLP discussions in IEPs, with regard to Students A-C. Absent a finding of any violation with regard to these identified students, Complainant/Parent has failed to provide sufficient basis to support any systemic violation with regard to this allegation as well.

Students D-F

- With regard to the remaining three identified students, the record indicates that LEA communicated with the respective parents, who asserted, inter alia, that the various TLPs were inadequate or failed to duplicate fully all IEP services. For the reasons cited above, LEA was simply not required to provide students with the full range of services parents requested.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 42 of 84

- The record fails to indicate any violation of special education regulations governing IEP development, review, and revision with regard to the creation of TLPs for Students D-F. Chronologies addressing these students and communications are set forth at **Appendix C**.

“Gaps” between TLPs and IEPs

- Complainant/Parent has asserted that LEA’s TLPs demonstrate “large gaps” from Students’ IEPs and “fail to incorporate evidence-based practices” that are individualized and align with distance learning.
 - LEA stated that the identified Students’ TLPs were based on “goals, accommodations, and services that [LEA] can feasibly provide through its digital learning platform.”
 - LEA further rejected Complainant/Parent’s assertions, by noting that “before the issuance of a student’s TLP, [LEA] has discussed the individualized TLP with that student’s parents Each student’s TLP includes a line to reflect the date of such discussion.... Additionally, as is reflected on each student’s TLP, [LEA] has offered to collaborate with any parents who may have concerns, including offering to hold an IEP meeting to address such concerns. Therefore, as TLPs are based on individual students’ IEPs and input from those students’ respective case managers and parents, they are narrowly-tailored to each student.”
- As we indicated in Subissue 1A, **participation in voluntary educational opportunities does not require full IEP implementation**. Rather, school divisions were to provide supports and services “not because they were specified in the IEP, but because they were necessary for an equal opportunity for participation in the voluntary services”¹⁰³ that LEA has elected to provide during the extended school closure.
- Accordingly, we find any claims that TLPs demonstrated “large gaps” from student IEPs on an individual or systemic basis are without merit within the context of IDEA and IEP implementation. LEA’s voluntary “educational opportunities” did not dictate “appropriateness” of learning plans under IDEA. As school divisions across the Commonwealth re-open for all students in Fall 2020, determinations may be made regarding recovery and recoupment for all students.
 - This office has authority to investigate allegations arising under IDEA. We make no finding regarding the sufficiency of TLPs in providing any equitable access to LEA’s voluntary educational opportunities—on an individual or systemic basis—that may be required under other federal statutes and regulations.

¹⁰³ See Iowa SEA, *supra*.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 43 of 84

- For the reasons cited above, we have found that LEA's TLPs did not constitute IEP addenda; therefore, Complainant/Parent's claims, as set forth above, are without merit. Accordingly, we find LEA in compliance on this Subissue **with regard to Students A-F and on a systemic basis.**
 - Our findings here are specifically limited to distance learning provided during the spring 2020 mandated statewide school closure. Had Virginia public schools not been closed due to the COVID-19 pandemic, the provision of voluntary distance learning services offered by the LEA may not have met the standard for an instructional day or for the provision of a free and appropriate education. The voluntary distance learning provided during the spring 2020 mandated school closure and the reopening of schools based on the June 9, 2020 announcement of a phased reopening provides a bright line of comparison for the expectation for services to students.
 - As of the date of this Letter of Findings, many school divisions are nearing the start of a new school year. In other divisions, school is already in session. The programs offered in those divisions are as diverse as the Commonwealth's geography and population. When school opens, participation will not be voluntary. Parents must elect to enroll their children in public school and have them participate in the program offered by their school division, enroll the students in private school, or comply with the legal requirements for and provide home schooling. When Virginia public schools reopen, they will be required to provide FAPE, although the programming used to provide students with IEPs a free appropriate public education may look quite different from that offered prior to March 13, 2020.¹⁰⁴

OTHER:

New Allegations. In July 13, 2020, additional information, Complainant/Parent proffered a number of allegations and identified specific students not included in the original complaint submission.

To the extent that Complainant/Parent attempted to add specific students to the complaint investigation, we note that concerns regarding the impact of LEA's practices on these additional students are necessarily subsumed within this systemic investigation.

However, Complainant/Parent also added a number of issues and allegations (some involving the identified students as well as "new" students) that were not included in the original complaint

¹⁰⁴ See generally, Virginia Department of Education, *Recover, Redesign, Restart* (2020)< http://www.doe.virginia.gov/support/health_medical/covid-19/recover-redesign-restart-2020.pdf>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support
Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility
Ms. Callie Oettinger, Complainant/Parent
Parents 1-4
August 24, 2020
Page 44 of 84

submission and, accordingly, were not addressed in the systemic investigation.¹⁰⁵ These include, but are not limited to:

- *[LEA] provided misleading and inaccurate information to [LEA] families and VDOE about FAPE.*
- *[LEA] focused on obtaining waivers before the governor ordered the cessation of in-person instruction.*
- *[LEA] Suspended Behavior Implementation Plans.*
- *[LEA] Suspended Evaluations and Related Meetings.*
- *[LEA] operated two distinctly different virtual learning platforms with dissimilar programming and allotted instructional time as well as calendar days.*
- *[LEA] eliminated ESY for students who had previously been proposed ESY.*

Discrimination; “disparate” impact. In additional information, Complainant/Parent challenged ODRAS’ refusal to address allegations regarding discrimination and “disparate impact.”¹⁰⁶ We again remind Complainant/Parent that our office has authority only to address issues arising under IDEA and its related federal and state regulations. However, we note that, if Complainant/Parent has concerns regarding disability, racial, or other discrimination, Complainant/Parent may contact the Office for Civil Rights within the United States Department of Education at:

Washington DC (Metro)
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1475
Telephone: 202-453-6020; FAX: 202-453-6021; TDD: 877-521-2172
Email: OCR.DC@ed.gov

CORRECTIVE ACTION PLAN:

This office found LEA in compliance on **Subissues 1A and 1B with regard to Students A-F and on a systemic basis.** Accordingly, no corrective action is necessary.

¹⁰⁵ By citing these new allegations, we make no finding that these concerns constitute alleged violations of special education regulations under IDEA.

¹⁰⁶ Complainant/Parent cited original allegations from the submission:

6. *Students have been disparately impacted by the educational policies of [LEA].*
7. *[LEA] discriminates against Students [sic] based on their disability by depriving them of the services and supports deemed necessary for FAPE in their IEPs while providing educational services to students who are ineligible for Section 504 and/or IDEA protections....*
9. *As a result of [LEA’s] illegal and/or discriminatory policies, Students are being deprived of critical services in violation of their civil and statutory rights.*

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page **45** of **84**

APPEAL INFORMATION:

Please note that the findings in this Letter of Findings are specific to this case. While general rules are cited, findings in other cases may differ due to distinctions in the specific facts and issues in each case.

Either party to this complaint has the right to appeal these findings within 30 calendar days of our office's issuance of the Letter of Findings. Any appeal must be received by our office no later than **September 23, 2020**.

Enclosed is a copy of the appeal procedures. Written appeals should be sent directly to:

Patricia V. Haymes

Director - Office of Dispute Resolution and Administrative Services

Virginia Department of Education

P. O. Box 2120

Richmond, Virginia 23218

An appeal may also be filed via e-mail correspondence to ODRAS@doe.virginia.gov, or via facsimile transmission to (804) 786-8520.

A copy of the appeal, along with any submitted documentation, must be sent simultaneously to the non-appealing party. Questions regarding these procedures should be addressed to Ms. Sheila Gray at (804) 225-2771, or e-mail at: Sheila.gray@doe.virginia.gov.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support
Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility
Ms. Callie Oettinger, Complainant/Parent
Parents 1-4
August 24, 2020
Page 46 of 84

APPENDIX A

Extensions of Timelines; Procedures Generally

The original findings due date was July 7, 2020. On June 23, 2020 (11:37 a.m.), ODRAS advised the parties that it would extend the 60-day timeline for the completion of the investigation due to *exceptional circumstances (8 VAC 20-81-200)(e.g., inter alia, complex and comprehensive nature of investigation; inaccessibility of staff, technology, and necessary materials due to building closures and other health and safety conditions resulting from the COVID-19 pandemic; parents' respective inability to access response materials)*. We will advise of the revised timeline as soon as practicable. Some of the events contributing to this Office's determination that exceptional circumstances existed are outlined below:

On **May 19, 2020**, this office granted LEA's request to extend the LEA's response due date from **June 4, 2020**, to **June 11, 2020**. At that time, we advised that the extension would not change (i) the 60-day due date for the completion of this office's investigation; or (ii) the time period for the submission of additional information by the parties (June 18, 2020).

On **Thursday, June 11, 2020, at 5:01 p.m.**, LEA initiated its transmission of its response via 16 emails containing numerous file attachments. Ten (10) of these transmissions occurred between 5:01 and 5:02 p.m., followed by five separate transmissions between 5:04 and 5:32 p.m. The last of these transmissions occurred at 6:10 p.m. In its penultimate transmission, LEA advised that a number of attachments *are too large to email, even as zip files. We are working to get them to you quickly*. At **5:30 p.m.**, Complainant/Parent advised that LEA's response was transmitted *after business hours....I'm asking that [LEA]'s response not be permitted....[as LEA's response is] late and its response unacceptable for consideration*. LEA then provided a thumb drive to parents and this office. While this office successfully accessed the thumb drive (and advised the parties accordingly on **June 17, 2020**), parents advised that file formatting and damaged files hampered their access. This office sought clarification from parents regarding their respective receipt and access to LEA's files.

Given the gravity of the allegations and the systemic nature of the investigation, we determined that consideration of LEA's response materials—by this office as well as Complainant/Parent and Parents 1-4—outweighed concerns regarding LEA's post-5:00 p.m. submission. In the ensuing days, ODRAS attempted to coordinate with LEA and the parents to ensure equity of access to LEA's response materials as well as an appropriate, adjusted timeline for the submission of additional information by both parties. When file size and formatting issues again hindered transmission and accessibility, this office (i) eliminated various audio recordings included in LEA's response, as parents cited inaccessibility; and (ii) determined that the need for a thorough review of the record factored significantly in creating an exceptional circumstance, and (iii) ultimately directed LEA to deliver printed copies of its response to the parents. LEA accomplished this task nearly one week ahead of the **July 6, 2020**, delivery date directed by this office. This

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 47 of 84

early delivery (**June 30, 2020**) granted both parties an additional information period of nearly two weeks (**July 13, 2020**).

Complainant/Parent asserted (July 30, 2020 (11:19 a.m.), email) that VDOE “has stated COVID as one of its reasons for waiving the timeline for the systemic complaint investigation. However, [U.S.] Secretary [of Education] DeVos specifically stated no timeline waivers were granted.”

While the U.S. Secretary of Education did not recommend any Congressional “waivers” of the 60-day dispute resolution timeline, special education regulations authorizing extensions due to “exceptional circumstances” remain intact. The US ED, in its June 22, 2020, *Part B Dispute Resolution in COVID-19 Environment Q-&-A Document*, affirmed that state education agencies (SEAs) may extend the 60-day timeline “for resolving a state complaint due to circumstances related to the pandemic...on a case-by-case basis.” The US ED specifically cited the “exceptional circumstances” exception to the 60-day timeline, and advised that an SEA “may not categorically determine that it will not undertake complaint resolutions during the pandemic based solely on its assumption that COVID-19 is an exceptional circumstance that would warrant an extension of the 60-day complaint resolution timeline for all complaints.” The US ED stated that “conditions related to the pandemic could be deemed an exceptional circumstance with respect to a particular complaint if, for example, a large number of SEA staff are unavailable or absent for an extended period of time as a result of the pandemic, or where the SEA cannot access specific information from school/agency staff or the child’s education records needed to resolve the complaint due to conditions related to the pandemic.” See <https://sites.ed.gov/idea/idea-files/part-b-dispute-resolution-in-covid-19-environment-q-a-document-june-22-2020/#Q2> See also, Virginia Department of Education, *VDOE Special Education and Student Services (SESS) Frequently Asked Questions* (Question 31) <http://www.doe.virginia.gov/support/health_medical/office/covid-19-sess-faq.shtml#disp>

To be clear, this office identified a myriad of “exceptional circumstances” supporting its extension of the 60-day timeline—specifically: *“inter alia, complex and comprehensive nature of investigation; inaccessibility of staff, technology, and necessary materials due to building closures and other health and safety conditions resulting from the COVID-19 pandemic; parents’ respective inability to access response materials.”* (June 23, 2020 (11:37 a.m.) email).

Again, the gravity of the allegations demanded that this office ensure a comprehensive and equitable investigation of complex, unprecedented legal questions—the findings for which would affect students with disabilities in the largest school division in the Commonwealth and the 11th largest school division in the nation. To have issued findings without thorough examination of an LEA response, parent submissions, and additional information would have constituted an abdication of our responsibilities.

The table below provides a chronology of various correspondence associated with the investigation timelines and procedures.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 48 of 84

Email Correspondence—Investigation Timelines

Date	Email correspondence
May 19, 2020 Tuesday	11:10 a.m.: ODRAS advised the parties that it had received LEA's request for an extension to respond to the complaint allegations. This office extended the school division's response due date from June 4, 2020 , to June 11, 2020 , without specifying a particular hour for delivery. At that time, we advised that the extension would not change (i) the 60-day due date for the completion of this office's investigation; or (ii) the time period for the submission of additional information by the parties (June 18, 2020).
June 11, 2020 Thursday	<p>5:01 p.m.: LEA commenced transmission of its response materials via a series of 16 emails to this office, Complainant/Parent, and Parents 1-4. At 5:32 p.m., LEA advised that a number of attachments <i>are too large to email, even as zip files. We are working to get them to you quickly.</i></p> <p>5:16 p.m.: Complainant/Parent to ODRAS, LEA, and other parents: <i>Email 12 of 14 didn't come through. Please resend.</i></p> <p>5:30 p.m.: Complainant/Parent to ODRAS, LEA, and other parents: <i>It's after business hours and [LEA] has NOT submitted the LEA response. VDOE already provided [LEA] a week extension. I'm asking that [LEA]'s response not be permitted. As you know, VDOE has long moved complaints submitted by parents to the next day when they've been submitted after business hours. This makes [LEA] late and its response unacceptable for consideration.</i></p> <p>5:36 p.m.: Complainant/Parent again emailed: <i>[LEA] did not make its deadline. In addition to asking that its response not be accepted, I'm asking that all the attachments submitted after business hours be barred. [LEA] knew the deadline. It requested a week extension. It knew the deadline of the extension. It's still late.... [LEA] should have planned for this. It didn't. Instead, this late piecemeal approach to submitting is what they've provided.</i></p> <p>6:14 p.m.: Complainant/Parent again emailed: <i>I'm again asking that VDOE not accept [LEA's] response. It was late on its response, even after being provided an extension. To boot, it hasn't even submitted all of its attachments, although from past experience, I know you'll let them in on that via the additional information. What say you. [sic] Will you hold them to the deadline? Or will you hold them to a different standard than you hold parents?</i></p> <p>7:35 p.m.: Parent 3 emailed: <i>I would like to remind VDOE that during a conversation with [ODRAS] on my first state complaint [ODRAS] made it VERY clear to me that no information received after business hours on the day of the deadline would be accepted. It would seem to be discriminatory to deny parents the ability to submit anything after business hours. I believe [ODRAS] said 4:30pm [sic] EST was the end of business hours for VDOE. I would also like to remind VDOE that on at least two of my previous complaints that were not during COVID emergencies [LEA] asked and received an extension to the deadline due to extenuating [sic] circumstances. It seems no matter what it is always unprecedented times for [LEA]. These special exceptions have never seemed fair since [LEA] has a full staff to respond to complaints, plus the help of a powerful well[-]paid law firm yet they still cannot make a deadline and require multiple extensions. Parents on the other hand have to work full time, teach their children, and educate themselves on Virginia and Federal [sic] special education law but are still able and held accountable by VDOE to meet hard deadlines. Seems like it is discriminatory to have different standards for LEAs and parents.</i></p>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 49 of 84

	<p>8:15 p.m.: Complainant/Parent responded: <i>I couldn't agree more. However, what VDOE likes to say is that [LEA] provided its response materials by the deadline and then will allow the narrative response in under the additional information deadline, even though an LEA Response deadline is earlier. Evidently, VDOE considers the attachments to the LEA response as the actual LEA response. Even though we still haven't received all the attachments either, I fully expect to see VDOE consider some response as adequate to check the box. Vdoe [sic], If you want to surprise us and follow the law, that would be great - to include requiring an actual response by the LEA response date.</i></p>
<p>June 12, 2020 Friday</p>	<p>12:22 a.m.: Complainant/Parent wrote: <i>[LEA's] own documentation offers proof that it did not make the 6.11.20 deadline. [LEA'S] narrative document specifically states, "The discussion and attachments which follow address the issues raised in the complaint, including that requested by VDOE. The specific information requested by VDOE is either referenced in narrative form within the body of this response or is provided in the form of attachments, as noted below." The specific information requested by VDOE had a deadline associated with it. It is now 6.12.20. [LEA] did not make that deadline.</i></p> <p><i>In addition to the zip file that was attached to this email NOT including the files [LEA] said it did, a voluminous number of attachments have still not been sent. A brief look at the narrative document's list of attachments provides proof of this. [LEA] did NOT make the deadline. I, and the other parents on this email, would like to know if you'll be accepting [LEA's] late response. Please respond.</i></p> <p>11:06 a.m.: Complainant/Parent wrote: <i>VDOE, Your immediate response would be appreciated. While we understand that "additional information" is not defined as a response to the LEA's response, it remains that it is an opportunity to respond. How can parents - indeed, how can VDOE - review documentation that has not been provided in full? In addition, as [parent] pointed out, "unprecedented times" seems to be [LEA's] daily status. They [sic] are routinely late....</i></p> <p>1:11 p.m.: Complainant/Parent emailed Virginia Secretary of Education, State Superintendent of Public Instruction, Virginia Board of Education, a state legislator, VDOE, LEA, and parents: <i>...Again, VDOE is not following regulations, to include its own process related to complaints and monitoring.... Yesterday, [LEA] started emailing documents after office hours, then stated problems with emailing - and as of this writing has not responded in full. VDOE has not responded either. I need you to take this issue out of the hands of [ODRAS] and provide oversight. [sic]</i></p> <p><i>Too often, VDOE allows [LEA] to be late, but holds a different standard for parents...This is a serious issue....Parents such as myself, and those included on the complaint, are doing this along. [sic] without lawyers, assistants, and the deep pockets of [LEA].That [LEA] is routinely late - and VDOE allows it - is unacceptable....</i></p> <p>4:54 p.m.: Complainant/Parent emailed Virginia Secretary of Education, State Superintendent of Public Instruction, Virginia Board of Education, a state legislator, VDOE, LEA, and parents: <i>Please note that it is now past what VDOE has advised its office hours to be in the past. No one from VDOE has addressed the concerns related to [LEA's] late and partial submission to the SYSTEMIC complaint. No one from [LEA] has addressed the missing documents, either. As parents, we had to provide documentation to buttress are [sic] statements. However, I can give you a long list of times when VDOE asked [LEA] a question and then accepted [LEA's] answer without documentation - only for me and other parents to have to go back and correct the record with documentation that supports the truth vs [sic] [LEA's] version. Is this what is going to happen again? How is it that neither VDOE nor [LEA] have made this a priority?</i></p>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 50 of 84

	<p>4:55 p.m.: Complainant/Parent re-sent 4:54 p.m. email.</p> <p>5:20 p.m.: Complainant/Parent emailed: <i>I apologize for the repeat e-mails. Please note that VDOE has not contacted the parents on the complaint about scheduling interviews with us. VDOE set precedent when [it] took this step with the systemic complaint helmed by [advocate]. To date, VDOE has never done an on-site investigation in relation to any of the complaints I, or any of the other parents on this complaint, have followed....</i></p>
June 13, 2020 Saturday	<p>11:49 a.m.: Complainant/Parent emailed: <i>Both VDOE and [LEA] have emailed me on the weekends before, yet we've still not received a response. [LEA] was late on what it did submit - and to date some documents cited as part of its response are still missing. In addition, upon a look at the meta data for the narrative document it submitted late, it seems the document was last saved after hours, just before it was sent, and that it was created of the "Office of Monitoring and Compliance". [sic] To my knowledge, there is no such office at [LEA].</i></p> <p>9:42 p.m.: LEA to ODRAS and parents: <i>A thumb drive containing Attachments 8c, 8d, 12a, 12b, 12c, and 12d was mailed to VDOE and each complainant today via USPS. They should arrive Monday.</i></p>
June 15 2020 Monday	<p>10:27 a.m.: VDOE emailed Complainant/Parent... <i>The VDOE seeks to ensure that the staff reviewing the complaint have access to comprehensive information from both parties to determine whether violations occurred as well as ensuring timely decisions can be rendered within the 60-day timeline. As you note, the local school division has submitted material responsive to the complaint....</i></p> <p>10:54 a.m.: Complainant/Parent emailed: <i>Please see the attached email that [VDOE] just sent me. It is additional proof of VDOE's favoring [LEA].... The attached Notice of Complaint specifically states: "Both the school division's response and supporting documentation must be provided by the response due date in order to be considered for review by this office. Should the supporting documentation not be included, our review will rest on the documentation submitted by the response due date." [quotes VDOE 10:27 a.m. email] That tells me that VDOE is letting [LEA] off the hook AGAIN. [LEA] did not submit this material before close of business - even AFTER it received a week-long extension - and this isn't the first time this has happened. [LEA] routinely sends responses in late - and I can provide documentation of this, and of VDOE accepting the late responses. I, and other parents, have been denied the opportunity to submit information late. I, and other parents, have been advised that information provided AFTER close of business will be considered as arriving the next day. For [LEA]? Different rules. ...[parent] and I subscribe to USPS online delivery tracking. See the attached two screen shots. The packages were dropped off at USPS around 12:30 pm Saturday, yet [LEA] waited another almost 10 hours to say something. In addition, it states the packages won't arrive until late today -hopefully by 8 pm - which puts it after business hours again. I and the other parents on this email, who are also on this systemic complaint, again ask that VDOE follow established law, regulations, rules, and so on. [LEA] DID NOT submit its response in time. Therefore, it's [sic] response should NOT be included.</i></p> <p>12:05 p.m.: ODRAS to LEA, with "cc" to parents: <i>Please clarify whether the 6th attachment for 8b... is correct—below—or if a file has been omitted.</i></p> <p>12:11 p.m.: Complainant/Parent emailed: <i>Please see the attached [12:05 p.m.] email from [ODRAS] to [LEA]. This - in addition to [VDOE's] earlier email - indicates that VDOE is, indeed, going to accept the late information. ***Note that VDOE has not been in touch about interviewing the parents on this complaint - even though it did interview parents related to the</i></p>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 51 of 84

systemic complaint filed by [advocate], which was the first systemic complaint VDOE investigated before this one. Why the different treatment?

1:16 p.m.: Complainant/Parent emailed: *...The additional information deadline for this complaint is this Thursday - yet we haven't received [LEA's] full response. How can parent's [sic] be expected to respond by the deadline? [LEA] has repeatedly forward [sic] incorrect information to VDOE in the past, which means parents have to have an opportunity to respond. In this case, however, NONE of VDOE's [sic] information should be accepted.*

2:58 p.m.: Parent 1 emailed: *I am confused. Page 10 of the "Notice of Complaint" compiled by ODRAS clearly states: "School Division Response Timeline. Both the school division's response and supporting documentation must be provided by the response due date in order to be considered for review by this office. Should the supporting documentation not be included, our review will rest on the documentation submitted by the response due date." As evidenced in [LEA's] email below, [LEA] has NOT submitted all the supporting documentation it cites in its response (specifically Attachments 8c, 8d, 12a, 12b, 12c, and 12d.) According to VDOE's own procedure and clearly stated guidelines above, VDOE must NOT include the missing documentation in its review of the complaint. VDOE had already provided [LEA] a 7-day extension on the original response due date. [LEA] has now exceeded that extension by at least another 4 days.*

As a complainant in this dispute, I expect to be treated equitably. However, if VDOE does not adhere to its own rules and guidelines regarding response deadlines, I am left to conclude that the dispute resolution process will also be inequitable.

How will the VDOE respond to this appearance of bias? Will VDOE adhere to its own procedural guidelines?

3:04 p.m.: Complainant/Parent responded: *Thank you for your email. VDOE, What say you? [Superintendent of Public of Instruction], I'm curious about you in particular. This acceptable to you? Will you hold you staff accountable? Or, will you be a leader who encourages a culture of ass-covering instead of helping children who so desperately need help, which means calling out the LEA's and VDOE staff who have long been a part of the problem?*

3:08 p.m.: ODRAS advised the parties: *LEA has advised that it has transmitted the remain[ing] attachments (stored on thumbdrives) included in its response to the May 18, 2020, Notice of Complaint.*

- *As we have done in the past, to ensure that all parties have sufficient time to review the record--including LEA's complete response materials, we will establish an adjusted timeline for the submission of additional information by all parties upon receipt of the remaining attachments.*
- *We will advise all parties of this adjusted timeline as soon as possible. We anticipate that this adjusted timeline will address the delay between June 11, 2020, and final receipt of the remaining attachments.*
- *In the meantime, we encourage all parties to begin preparing any additional information for submission by the adjusted timeline. This information may include, inter alia, any signed statements (e.g., by Complainant or other participating parents Complainant/parents wish to submit; signed teacher/staff statements LEA wishes to submit, etc.), as well as any other materials pertinent to the specific complaint allegations.*
- *All parties are advised that VDOE/ODRAS is unable to accept any additional information or other materials via Dropbox. VDOE is working toward incorporating updated, enhanced technology that will accommodate other means of transmission of materials.*

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 52 of 84

	<ul style="list-style-type: none">• Accordingly, please make arrangements to transmit any additional information via other means, such as hard copies via U.S. mail or other delivery service, email attachments, thumbdrive, or facsimile (804-786-8520).• As in any complaint investigation, this office may request clarification by the parties at any point; however, as stated in the Notice of Complaint, information and/or materials submitted after this adjusted additional information date will not be considered by this office, unless specifically requested by ODRAS for the purposes of clarification.• Finally, we remind the parties that the actions (e.g., review of record; on-site review, etc.) ODRAS may deem necessary to investigate a complaint--whether of an individual or systemic nature--are necessarily tailored to address the particular allegations and issues, and, accordingly, may vary based on the unique aspects of the investigation. <p>3:54 p.m.: Complainant/Parent emailed: <i>VDOE wants full into [sic] from parents and LEA. So, even though VDOE gave [LEA] a week extension, and [LEA] was still late, VDOE is going to give [LEA] more time. This is business as usual for both VDOE and [LEA]. This isn't a COVID-related issue. Parents aren't treated equally. LEA gets treated favorably....</i></p> <p>6:07 p.m.: Complainant/Parent emailed: <i>I received the thumb drive sent to me. It's useless. Whoever [sic] packaged it, [sic] did a shoddy job. I'll need another sent to me. The least [LEA] could do is take care to fully package whatever it sends. [Parent] hasn't received [the thumbdrive] yet. See attached screen shot and email from [parent]. I'm not sure where [other parents] are with their mail. *In addition, there's still NO SOLID ANSWER FROM VDOE.</i></p> <p>6:28 p.m.: Parent 3 emailed ODRAS, LEA, and Complainant/Parent: <i>Please note that as of 6:28pm [sic], I still have not received my thumb drive from [LEA]. I have screen shot the USPS tracking system several times today so that my statements can be verified by all to be accurate and true. Please note that [LEA] did not send the required documents to VDOE and all the respondents via USPS until almost 2 DAYS AFTER THE DEADLINE. I believe the Federal Government and the State [sic] of Virginia often uses [sic] a post date as verification deadline, both in voting, for taxes and many other legal documents. Why does VDOE operate on a system that allows [LEA] to extend, miss the deadline and then not have to adhere to a well[-]recognized standard of a post date. LET ME REPEAT... these files from [LEA] were NOT POSTMARKED UNTIL ALMOST 2 DAYS AFTER THE DEADLINE. How is this acceptable?</i></p>
June 16, 2020 Tuesday	<p>1:16 p.m.: Complainant/Parent emailed: <i>VDOE stated it is going to extend timelines, yet VDOE is MIA on providing any information on what those timelines will be. We're now 24 hours out from when parents have to mail additional information for the original add info deadline - and yet we haven't all received the information submitted by the LEA in full.</i></p> <p><i>I received a physically broken thumbdrive yesterday. After business hours, [another parent] received a thumbdrive that shut down [parent's] computer and set of [sic] that spiraling circle of death. [Two other parents] received thumbdrives yesterday. [Another parent] has not received a thumbdrive.</i></p> <p><i>In addition, VDOE isn't including all parents on all emails, which is a problem. We filed this together - and the parents have submitted information to VDOE numerous times to this point - yet VDOE is inconsistent with its messaging.¹⁰⁷</i></p> <p><i>Last, but not lease [sic], [VDOE] emailed that they've put this issue with its constituent's services team, yet what's the use of that? This problem continues. It would be great if someone would step in and address this. I'm asking, AGAIN, that this be taken out of the hands of [ODRAS] since we can't get straight answers from them. When it comes down to it, we haven't been able to get answers period for the most part.</i></p>

¹⁰⁷ See Release Authorization(s), supra, and at **Appendix B**, infra.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 53 of 84

2:26 p.m.: ODRAS emailed the parties: *We have been advised that two parents identified in the May 8, 2020, Notice of Complaint received LEA's remaining response materials via thumbdrives, but that these thumbdrives were either inoperative or damaged. We ask that the remaining parents advise this office of receipt and access to these remaining response materials.*

VDOE's mailroom did not receive a thumbdrive on Monday, June 15, 2020. Further, due to COVID-19 restrictions, our mailroom will not be accessible until Wednesday, June 17, 2020.

We ask that the parents advise this office and LEA of their respective receipt of/access to the remaining LEA response materials.

Once we have confirmed receipt of accessible materials by all parties, we will (i) establish a revised additional information timeline that incorporates the delay from the June 11, 2020, date, permitting all parties time to prepare and submit any additional information relevant to the specific allegations and (ii) advise all parties accordingly. In the meantime, the parties are again encouraged to examine the materials already transmitted, which include LEA's narrative response. We again remind the parties that Dropbox is not available for further submissions [to ODRAS]. We encourage all parties to use email/attachments; thumbdrives; facsimile; or transmission of hard copies via USPS or other delivery service.

Finally, we ask that LEA promptly address delivery of accessible materials to the parents who have indicated receipt of inoperative/damaged materials and advise this office accordingly.

2:41 p.m.: Complainant/Parent emailed ODRAS, LEA, and US ED: *The attached just arrived from VDOE. Note that they still have NOT provided what their revised timeline is - and that they haven't received a thumbdrive from [LEA] either. We're five days passed the LEA's response deadline. AT A MINIMUM: Could someone with authority agree that the additional information won't be due until June 23rd (as of today), which adds five days to the additional information due date?*

Right now, we're rushing to have everything pulled and ready for mailing tomorrow, even though we shouldn't have to do that given the LEA's delay and VDOE once again allowing the LEA to operate under different standards than those afforded parents.

I reiterate: In NO WAY should this impact the 60[-]day timeline for investigations. We DO NOT approve for that deadline to be changed.

****Note, too, that VDOE admits problems with its mailroom. VDOE's mailroom has long been a problem. I would hate to pay to rush something to VDOE, only to find out that its mailroom doesn't work again.*

3:28 p.m.: Parent 3 wrote: *I am confirming that I did receive a thumb drive from [LEA] last night. The thumb drive appears to be corrupted so I do not have access to information. I do not want the 60[-]day timeline extended. I am requesting that VDOE give parents the same number of days that would have been given to review all the documents had [LEA] provided all the documents by the deadline.¹⁰⁸*

4:20 p.m.: ODRAS advised: *... once we have confirmed receipt of accessible materials by all parties, we will (i) establish a revised additional information timeline that incorporates the delay from the June 11, 2020, date, permitting all parties time to prepare and submit any*

¹⁰⁸ As indicated above, ODRAS ensured the parties had the same one-week period for the submission of additional information as would have been available had LEA's complete response materials arrived on the original extension date. In fact, the parties had a nearly two-week period (or more, given that some parties had partial, if not complete access, to LEA's response) to prepare and submit additional information, due to LEA's June 30, 2020, delivery of printed materials.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 54 of 84

	<p>additional information relevant to the specific allegations and (ii) advise all parties accordingly.</p> <p>Stated more simply, because all parties were entitled to a week (five business days) following receipt of LEA's response to provide additional information, it is anticipated that we will provide a week from the date of confirmed receipt of that information. We will advise the parties of the revised timeline upon confirmation of receipt of the materials.</p> <p>5:10 p.m.: Complainant/Parent wrote: <i>Another email from VDOE - WITHOUT timelines. Among other things, it states, "Stated more simply, because all parties were entitled to a week (five business days) following receipt of LEA's response to provide additional information, it is anticipated that we will provide a week from the date of confirmed receipt of that information". "Anticipated" is not 100%. Could someone please advise if parents still have to submit additional information for receipt by June 18th?!?!? Give us something concrete - something other than that VDOE is bending over backwards to accommodate the LEA. In addition: I don't want to hear VDOE state "extenuating [sic] circumstances"¹⁰⁹ as a reason for needing to go over the 60[-]day timeline. From where I sit, [LEA] ALWAYS requests extensions to LEA response deadlines - and then [LEA] waits until the last minute and/or is late. This is not a COVID situations [sic]. It is [an LEA] situation. And, it is a VDOE situation for letting things get to this point.</i></p> <p>9:05 p.m.: Parent 1: <i>I received the thumb drive from [LEA] with attachments 8c, 8d, 12_1a, 12_1b, 12_2c, 12_2d. I am able to open all attachments; however the attachments submitted as "outlook" documents can only be opened using Microsoft Outlook. These include all documents in the following folder: Attachment 12_2 > Attachment 12_2 > c ... > Emails. This may be problematic for any parties who do not have a Microsoft Outlook account.</i></p> <p>9:42 p.m.: Complainant/Parent wrote: <i>Note that in the past, VDOE itself has advised me it can't open Outlook files, so I've had to save emails as PDFs. [LEA] should be well aware of this by now, yet it still provided files in a format VDOE itself has stayed [sic] as problematic. It should be clear to everyone at this point that [LEA] wasn't just late, but it didn't even take the time to format its documentation in VDOE-approved formats. I ask again that NONE of [LEA's] response be accepted. [LEA] isn't new to this. Why does VDOE keep letting them off the hook? I thought VDOE was supposed to monitor the LEAs vs [sic] handing out free passes.</i></p> <p>9:52 p.m.: Parent 2 wrote: <i>I received the usb drive today. I can not [sic] open the zip files with Outlook emails on them.</i></p> <p>10:48 p.m.: Parent 4 wrote: <i>I received the thumb drive but I am unable to open the files.</i></p> <p>11:34 p.m.: LEA emailed ODRAS and parents: <i>[LEA] submitted its response to the May 18, 2020, Notice of Complaint on June 11, 2020. [LEA] was also able to submit 68 of the 74 attachments by that same date. Six attachments were too large to be emailed, even after the files were compressed. As a result, those six attachments were saved to thumb drives and mailed to the Virginia Department of Education (VDOE) and each complainant on June 13, 2020, well within the time period for additional information, as noted in the May 18, 2020, Notice of Complaint, and confirmed in [ODRAS'] June 15, 2020 (3:08 p.m.), email. The thumb drives were tested prior to mailing, but if you experience difficulty opening the drive, please let us know so we can provide a replacement.</i></p>
June 17, 2020 Wednesday	<p>3:44 p.m.: ODRAS advised the parties: <i>VDOE has received LEA's thumbdrive containing Attachments 8c, 8d, 12a, 12b, 12c, and 12d. VDOE has successfully accessed and downloaded</i></p>

¹⁰⁹ The 60-day timeline may be extended due to, inter alia, exceptional circumstances (8 VAC 20-81-200.D.4.c.2).

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 55 of 84

	<p><i>these materials, completing LEA's response [emphasis added]. It is our understanding that 4 of 5 parents identified in the investigation were unable to access the thumbdrives they received. By way of this post, we ask that the parties promptly coordinate to ensure delivery of the remaining files <u>as soon as possible</u>. We ask that LEA and parents confirm this delivery and access.</i></p> <p><i>Should the identified parents wish to coordinate among themselves to obtain the remaining attachments, they may certainly do so. Again, we ask that all parents confirm access/delivery. Again, the parties (LEA and identified parents) will be given the one-week period to which they were previously entitled to provide additional information; the specific due date will be calculated upon confirmation of delivery/receipt of the remaining LEA materials by parents. We look forward to updates regarding delivery completion.</i></p>
June 18, 2020 Thursday	<p>12:10 a.m.: LEA advised: <i>The remaining files were shared with the complainants via Dropbox. Please confirm receipt.</i></p> <p>12:43 a.m.: Parent 2 emailed: <i>Is there a link for getting the documents from Dropbox? I did not get anything. VDOE- I thought we could not utilize Dropbox any longer?</i></p> <p>10:10 a.m.: VDOE wrote: <i>As this office advised yesterday, VDOE received LEA's thumbdrive containing Attachments 8c, 8d, 12a, 12b, 12c, and 12d. <u>VDOE successfully accessed and downloaded these materials</u>, completing LEA's response.</i></p> <p><i>LEA has now advised that it has made these attachments available to parents via Dropbox. While VDOE is unable to accept materials via Dropbox, we have encouraged LEA and parents to collaborate to ensure delivery of the remaining materials. Dropbox may be one method to do so.</i></p> <p><i>Again, we request that parents confirm with this office their respective receipt and access to these remaining items as soon as practicable. We will then confirm the adjusted additional information timeline for all parties. We look forward to updates regarding delivery completion.</i></p> <p>10:44 a.m.: Complainant/Parent wrote: <i>As noted in previous emails, VDOE has not allowed msg/outlook files as a format - and it specifically advised me of this in the past, which resulted in me having to reformat all files in that format. Yet, it accepts them now from [LEA]. Not everyone can access msg/Outlook files, so we request they be reformatted, just as VDOE requested previously. In addition, after almost four years of using Dropbox, VDOE has now prohibited its use, yet [LEA], per the attached, said it sent the files via Dropbox - and that is ok with VDOE. Why is that? Why the different standards for parents and [LEA]? Please respond. Please provide all of the files in formats that are accessible to ALL individuals.</i></p> <p>1:49 a.m.: LEA wrote: <i>I emailed just after midnight to confirm that the remaining attachments had been shared with the complainants via Dropbox. I saw this morning that [parent] requested a link to the attachments in Dropbox. This link: [link] will only work for the complainants as it is tied to their email addresses.</i></p> <p>12:08 p.m.: Complainant/Parent wrote: <i>See the email from [LEA]. I can't open the msg files, I'm usually able to access msg's, but my computer isn't allowing me access to these. All of these need to be converted to PDFs in order to be accessed. In addition, file 8D is too large to open. Please unzip the file and add the files in separately. If someone could speak with [LEA] about making all files accessible to all involved, I'd appreciate it. It is appalling that VDOE is allowing this from [LEA], even though in the past, VDOE has expressly stated that msg files can't be submitted.</i></p> <p>2:17 p.m.: Complainant/Parent wrote: <i>Could VDOE please make this a priority? Please ask that [LEA] reformat the documents so that they are accessible to EVERYONE. It isn't our job to go to [parent] to obtain files [parent] was able to access. Nor is it [parent's] job to</i></p>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 56 of 84

reformat them. That VDOE suggested this, during a pandemic, is mind-boggling. We're all supposed to go to her home when VDOE isn't even working out of its own offices in full?!?!'

4:19 p.m.: Parent 1 wrote: *There is an error in one of [LEA's] attachments regarding [Student]. The document is "[Student] IEP TLP comparison" in the following folders: Attachment 12_1 > In the IEP (5/9/19) column, 2. Reading, the goal is incorrect. The correct annual goal as it reads in [Student's] current IEP (5/9/19) is:*

"After explicit instruction, [Student] will apply learned strategies to read real single and multi-syllable, new and review words in a list with all syllable types (ie. [sic] vowel teams, FSS and syllable division, etc.) with at least 90% accuracy on 3 out of 4 trials per quarter."

The STO (short[-]term objective) for that goal is correct. [LEA], please correct the error and provide a corrected file, so that VDOE's investigators have correct information.

4:51 p.m.: ODRAS emailed the parties: *Please coordinate directly with each other to resolve remaining challenges in accessing response materials promptly and advise this office of completion. Requests to amend student records should be addressed via the amendment of record option (8 VAC 20-81-170.G.6). State offices are closed Friday, June 18, 2020.*

5:45 p.m.: Complainant/Parent wrote: *See the attached two emails - one from a parent and the other from VDOE. VDOE wants the parents and LEA to work together, for parents to obtain the response from the LEA in full. However, to date, the LEA hasn't done anything unless specifically asked by VDOE.*

Could VDOE please specifically ask that the LEA provide the documents in a format accessible by everyone? As I have said numerous times, [LEA] provided documents in a format that VDOE has previously refused to accept from parents.

I've already made this request from [LEA], and [LEA] has not responded. In addition, when [parent] pointed out incorrect information in what was provided by the LEA to VDOE, VDOE's response was to ask for a record amendment. That's exactly what [parent] tried to do. How is VDOE going to do a thorough investigation if the material provided to it by the LEA is incorrect - in addition to be late? I've spotted other errors, too. This is classic [LEA]. Why must the parents be the ones holding [LEA] accountable? Isn't monitoring VDOE's job?

5:53 p.m.: LEA to parents and ODRAS: *Per your request, the files in Attachment 8d have been unzipped and uploaded individually [link] and the Outlook messages (Attachment 12c) were uploaded as PDFs [link]. Both were shared with you via Dropbox a few moments ago. Please let us know if you continue to have issues accessing the files.*

6:22 p.m.: Parent 1 wrote: *In response to notifying [LEA] (and you,) that there is an error in a document submitted by [LEA], you have replied:*

"Requests to amend student records should be addressed via the amendment of record option (8 VAC 20-81-170.G.6)." The "record" in question is a document created by [LEA] to respond to this complaint. It was compiled by [LEA] as a "Comparison" between the goals on my child's IEP and the "goals" in [Student's] "TLP."

My child's IEP (also submitted by [LEA]) clearly [sic] shows the correct goal. A formal "request to amend record" puts an undue burden on me. [LEA] provided incorrect information on that document. I am pointing out that error. [LEA] should either correct that document or withdraw it. My child's IEP (also submitted by [LEA]) clearly [sic] shows the correct goal.

6:58 p.m.: VDOE wrote to Parent 1: *Your correspondence regarding the errors you cited in response materials will be maintained as "additional information" for the complaint investigation [emphasis added]. Additional information, while not designed to constitute a "rebuttal," may include materials that supplement or clarify materials provided by the other party. If you have concerns regarding errors in your child's education records, you may seek an amendment of record as advised.*

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 57 of 84

	<p>10:50 p.m.: Parent 3: <i>I am unable to access all the documents provided by [LEA] through the Dropbox link. I have wasted countless hours trying to open documents not accessible to parents. Please let me know when ALL documents are available to parents via Dropbox. Please [sic] include all the documents for the entire response by [LEA] in this Dropbox file in order to insure [sic] that no document has been missed by [LEA's] use of multiple complicated email chains, thumb drives and now Dropbox. Please send me a new Dropbox link to this updated and corrected set of files so that I may finally review them as required by law. If providing documents via Dropbox, [LEA] needs to put all the response documents in a commonly accepted format such as pdf.</i></p> <p><i>It is ridiculous that VDOE expects the parents to wade through this mess of a submission to figure out what files they can open and what files are locked, saved to a non[-]universal file program and organize the whole thing to line up with [LEA's] response letter. [LEA] has a full legal department, an outside law firm and a full IT department yet no one can figure out how to organize and disseminate files [LEA]?</i></p> <p><i>I look forward to being able to confirm that I finally have received a complete copy of [LEA's] response to this systematic [sic] complaint as required by law.</i></p>
<p>June 19, 2020 Friday</p>	<p>10: 54 a.m.: Complainant/Parent to US ED, et al.: <i>Is there anything that the Dept [sic] of Ed [sic] can do about this? The LEA provided incorrect documentation to VDOE....Why would VDOE not want correct information immediately?... For this investigation to be based on facts, VDOE should require that facts – not misinformation – be provided. Yet, instead, it advises the parent to have a record amended. Anything U.S. DOE can do would be appreciated.</i></p> <p>11:20 a.m.: Parent 4 to US ED et al.: <i>This is not the first time the LEA has submitted documents requiring correction to the VDOE....Is the modification of documents and/or misrepresentation of the education record an acceptable practice? It is my understanding that when the representatives of the LEA ...submit documents to the VDOE they do so in a certified manner within the confines [sic] of an affidavit.</i></p> <p>12:42 p.m.: Complainant/Parent to US ED et al.: <i>My understanding is that this is either a typo or perjury. [LEA] is aware of the error. If it corrects it, then it is understood to have been a typo. If it doesn't correct it, then it is understood to be intentional, which makes it perjury.¹¹⁰ If you believe me to be incorrect on this, please advise.</i></p>

¹¹⁰ The Code of Virginia (§ 18.2-434) defines what constitutes perjury: “If any person **to whom an oath is lawfully administered on any occasion willfully swears falsely** on such occasion touching any material matter or thing, ... or if any person in any **written declaration, certificate, verification, or statement under penalty of perjury pursuant to § 8.01-4.3** willfully subscribes as true any material matter which he does not believe is true, he is guilty of perjury, punishable as a Class 5 felony. Upon the conviction of any person for perjury, such person thereby shall be adjudged forever incapable of holding any office of honor, profit or trust under the Constitution of Virginia, or of serving as a juror [emphases added].”

Section 8.01-4.3 specifies: “If a **matter in any judicial proceeding or administrative hearing is required or permitted to be established by a sworn written declaration, verification, certificate, statement, oath, or affidavit [emphasis added]**, such matter may, with like force and effect, be evidenced, by the unsworn written declaration, certificate, verification, or statement, which is subscribed by the maker as true under penalty of perjury, and dated, in substantially the following form: ‘I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.’ This section shall not apply to a deposition, an oath of office, or an oath required to be taken before a specified official other than a notary public.”

The state special education complaint process is not a “judicial proceeding or administrative hearing.”

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 58 of 84

	<p>4:59 p.m.: Complainant/Parent: <i>Documents are missing. I was able to access the 8d link noted in your email below – HOWEVER, it does not include all of the documents that your narrative states should be included. In [LEA's] timeline, on April 1, it states:</i></p> <p><i>"April 1, 2020 Special education lead teachers and department chairs were provided with COVID-19 Special Education Procedural Guidance. Blackboard Collaborate Ultra (BBCU) sessions, titled Navigating Special Education/504 Meetings During COVID-19 were held for special education lead teachers and department chairs. These sessions were facilitated by [LEA personnel]. Please see Attachment 8d for the recordings and associated documents pertaining to these sessions." There is NO recording dated April 1 in the link you provided below.</i></p> <p><i>Where are the training sessions you noted for this date? This indicates that [LEA] has STILL NOT PROVIDED ALL DATA. At what point will it be provided to parents?</i></p> <p>5:10 p.m.: Complainant/Parent: <i>More missing documents. [LEA'S] timeline states that on April 13, "Special education teachers provided Temporary Learning Plan training." I obtained a video for this day via a FOIA request, so I know there is more available. Where is it and why didn't [LEA] note it in its response and provide it?</i></p> <p>5:14 p.m.: Complainant/Parent: <i>Still more missing info. [LEA's] timeline states, that on April 20, "Dr. Strong sent additional guidance regarding TLPs to procedural support liaisons, which included sample TLPs (Attachments 5k-5u) and the document How to Determine the Contents of the TLP (Attachment 5f)." Where's the documentation proving this was actually sent? An email? Video? Where's the proof?¹¹¹</i></p>
<p>June 22, 2020 Monday</p>	<p>7:25 p.m.: ODRAS to parents and LEA: <i>Our records indicate, per the email below, that LEA has (i) converted msg files into PDF format (Attachment 12c); and (ii) materials in Attachment 8d have been uploaded and provided to the parties via Dropbox. These were the only materials that remained inaccessible to Complainant/Parent and the other identified parents.</i></p> <ul style="list-style-type: none">• <i>Complainant/Parent has subsequently asserted that LEA failed to provide materials supporting its timeline statements regarding "additional guidance regarding TLPs to procedural support liaisons, which included sample TLPs (Attachments 5k-5u) and the document How to Determine the Contents of the TLP (Attachment 5f)." Complainant/Parent asserted[:]"Where's the documentation proving this was actually sent? An email? Video? Where's the proof?"</i>• <i>With regard to LEA's timeline statement that "Special education teachers provided Temporary Learning Plan training," Complainant/Parent insists that LEA should have included an April 13, 2020, video in its response as "I obtained a video for this day via a FOIA request, so I know there is more available. Where is it and why didn't [LEA] note it in its response and provide it?"</i>• <i>Complainant/parent further asserted: "Documents are missing. I was able to access the 8d link noted in your email below – HOWEVER, it does not include all of the documents that your narrative states should be included" regarding April 1, 2020, training sessions cited to in LEA's narrative response (e.g., "Please see Attachment 8d for the recordings and associated documents pertaining to these sessions"). Complainant/Parent stated "There is NO recording dated April 1 in the link you provided below. Where are the training sessions you noted for this date? This indicates that [LEA] has STILL NOT PROVIDED ALL DATA."</i> <p><u>Significantly, these concerns do not address a failure by LEA to provide its response materials to Complainant/Parent or other identified parents.</u> <i>Complainant/Parent seemingly conflates FOIA requests and state special education complaint investigation procedures. That LEA failed</i></p>

¹¹¹ Complainant/Parent conflates "missing information" with regard to receipt of LEA response with the probative sufficiency of the response materials themselves.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 59 of 84

	<p>to include a particular recording or other document in its response does not constitute a failure to make its response materials <u>accessible</u> to Complainant/Parent and the other identified parents.</p> <p>We remind all parties that our office retains discretion to request clarifications from all parties and will do so as it deems necessary to ensure a comprehensive investigation.</p> <p>Absent a specific indication by Complainant/Parent and other identified parents <u>communicated to this office no later than 1:00 p.m. on Tuesday, June 23, 2020</u>, regarding an <u>inability to access</u> any particular, named attachment <u>specifically provided</u> in LEA's response materials (via email, thumbdrive, or Dropbox) (rather than assertions regarding items LEA omitted), we anticipate advising the parties of the adjusted timeline for the submission of additional information sometime tomorrow, Tuesday, June 23, 2020.</p> <p>7:45 p.m.: Parent 4 to ODRAS, LEA, and other parents: <i>Below is the previous email I sent to both VDOE and [LEA]. In order for me to access [LEA] documents, I require a hard copy couriered to me. [LEA] has been unable to provide an accessible format. I have not received a response....</i></p> <p><i>Previously sent:</i></p> <p><i>Please provide hard copies of the complete file with all attachments purported to be included in the LEA's response via courier today.</i></p> <p><i>As we all know, [LEA] has the capacity to do this and utilizes a courier service to deliver documents and payments to their contracted legal representatives on a daily basis. At this point we have all experienced difficulties and have serious concerns about the format and possible extensions to the electronic files [LEA] has sent to the parents. Time is of the essence for our children and the continued "Pivoting" of this matter is unacceptable.</i></p> <p>8:41 p.m.: Parent 3 to ODRAS, LEA, and other parents: <i>I am not able to access the all the attachment material that [LEA] has provided. The fact that some parents have been given this material and another obtained it through FOIA request does negate the obligation of the LEA to provide ALL attachments to all the parents as required by law. Please confirm when [LEA] has provided all their attachments in the Dropbox in an accessible format for everyone. I also cannot believe that [LEA] as of today was still adding items to the Dropbox. Now VDOE is requiring me at 7:35pm [sic] at night to go through the whole complaint and write down exactly what [LEA] OMITTED by 1pm [sic] tomorrow or I lose my right to have [LEA] provide the legally required documents? How is this legal? How is this fair to make It [sic] my responsibility to match documents to the complaint and insure [LEA] provided them to me? I [sic] tonight I have private therapy followed by more work. Tomorrow morning I will leave for a construction site at 6:30am [sic]. Filing complaints is not my full time job like VDOE and the LEA['s] due process department. I am an essential worker that is doing more and longer hours because of COVID[,] but VDOE is requiring me to pull an all[-]nighter to insure [sic] the LEA provided me all the documents that is required by law? You would think that VDOE would have a greater standard of care for the LEA that has whole departments, plus outside legal counsel rather than requiring parents that are advocating for their child in addition to providing services, and basic necessities with their time. Parents (taxpayers) should not be the ones perpetually at a disadvantage over the LEA by VDOE.</i></p>
June 23, 2020 Tuesday	<p>11:37 a.m.: ODRAS to the parties: Complainant/Parent requests a listing of items from the thumbdrive provided by LEA. This office and identified parents received the bulk of LEA's response via a series of group emails (with attachments) on June 11, 2020.</p> <p>Attached is a pdf document with screenshots of the contents of the thumbdrive materials this office received (and successfully accessed) from LEA.</p>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 60 of 84

To accommodate Complainant/parent's request and concerns, we now ask Complainant/parent and identified parents to advise this office **no later than 12:00 noon on WEDNESDAY, June 24, 2020**, regarding **any specific items on the list** that they are unable to ACCESS/VIEW.

Claims that LEA omitted items to which it may have referred in its response are not responsive to this request. We only ask parents to identify inability to open/access materials LEA actually provided.

As we advised yesterday—and as indicated in the Notice of Complaint--this office retains discretion to request clarifications/information from all parties throughout the course of the investigation. This office [may] seek information as it deems necessary to ensure a comprehensive investigation.

We will advise of the adjusted timeline for the submission of additional information following receipt and review of responses from all identified parents (due no later than 12:00 noon, Wednesday, June 24, 2020).

Finally, the 60-day timeline for the completion of the investigation will be extended due to exceptional circumstances (8 VAC 20-81-200)(e.g., inter alia, complex and comprehensive nature of investigation; inaccessibility of staff, technology, and necessary materials due to building closures and other health and safety conditions resulting from the COVID-19 pandemic; parents' respective inability to access response materials). We will advise of the revised timeline as soon as practicable.

9:59 p.m.: Parent 3 to ODRAS, LEA, and other parents: *I was able to go into the Dropbox files submitted by [LEA] but have found the following errors:*

8-c_Special Education Instruction Training Materials-zip

File	Inaccessible Issue
<i>Adapted curriculum recording mp4</i>	<i>Not able to open</i>
<i>Adapted curriculum Research Based Program</i>	<i>Some slides cut off with missing words and/or missing portions of words</i>
<i>Powerpoint-2 pptx (1). Pdf</i>	<i>Some slides cut off with missing words and/or missing portions of words</i>
<i>Researched based programs pdf</i>	<i>Some slides cut off with missing words and/or missing portions of words</i>
<i>Secondary Adapted Curriculum</i>	<i>Some slides cut off with missing words and/or missing portions of words</i>

8_DPE_proceedural trainings Zip

Would not open or download because file size was too big error. Tried multiple ways and from my own DropBox application and the file still would not open

File	Inaccessible Issue
<i>Case Manager_Emails_classroomteachers</i>	<i>Some areas of text have been highlighted and dark so they are unreadable</i>
<i>Teacher emails__[redacted] pdf</i>	<i>Some pdf areas cut off with missing words and/or missing portions of words</i>

At this point could [LEA] deliver hardcopies of the files to me via courier. [Another parent] has pointed out this regularly occurs with [LEA] delivering legal files to their private law firm. In past complaints, [LEA] has sent hardcopies of files to my home so I know it is possible.

All of my time available outside my work/home obligation hours are being spent troubleshooting [LEA] digital file issues. I need all the documents so I can properly spend time reviewing the documents for accuracy. I need all the documents so I can respond to [LEA's] response as provided by law. [LEA's] digital issues are monopolizing my time so that I cannot review documents. Maybe that is [LEA] and VDOE's plan to put parents at a disadvantage when VDOE

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 61 of 84

	<i>that already given the LEA numerous time advantages through their use of extensions and exceptions, not just in this complaint but in other pre[-]COVID complaints.</i>
June 24, 2020 Wednesday	<p>10:03 a.m.: Complainant/Parent wrote: <i>Attached is [another parent's] response to the LEA's inaccessible response, which [parent] sent yesterday. The parents on this complaint have asked over and over for the LEA to provide fully [sic] access to its response to the complaint. We have asked that printouts be sent to us - which is [LEA's] usual M.O. - yet, [LEA] has yet to take action or respond. Instead, this has dragged out - and VDOE has allowed this, rather than stepping forward to lead. And, now, VDOE has extended the 60[-]day timeline. How does any of this help our children? I again ask that this process be taken out of the hands of [ODRAS]...job security should not come before the children.</i></p> <p>10:55 a.m.: Parent 2 wrote: <i>I am requesting that these documents be delivered by courier so I can have the unhindered access to these documents; so as to properly respond. Lastly, these ad hominem [sic] attacks from VDOE on them having the "right" to clarify documents and to request additional information is not only untrue when dealing with providing documents in what is a matter of legality,¹¹² but is discrimination against these parents in the state complaint with their relation to children with a disability and outright disability discrimination to the children represented. Not to mention, these actions are retaliatory in nature. Please reverse course[.] VDOE.</i></p> <p>11:20 a.m.: Complainant/Parent wrote VDOE, et al.: <i>You've now heard from all parents on this complaint a few times. When will you take action? [Superintendent], I've long complained about VDOE's failure to monitor the LEA's [sic], VDOE erring on the side of the LEA, and VDOE doing sloppy, error-filled investigations - and I've provided extensive proof of this to you. Is this acceptable to you? Is this the best you can do for the children of Virginia? Is this to be your legacy?</i></p>
June 26, 2020 Friday	<p>4:44 p.m.: ODRAS advised the parties: <i>For the past two weeks, we have attempted to broker an equitable resolution to concerns regarding parents' access to LEA response materials, which LEA transmitted to parents via email, thumbdrive, and dropbox [sic]. Our attempts have failed. Accordingly, we now request that LEA provide Complainant/Parent and each identified parent print copies of all response materials (with the exception of any audio or video recordings). LEA is to ensure these materials are delivered to these individuals <u>on or before midnight Monday, July 6, 2020.</u> To be clear, we do not direct the additional transmission of audio or video recordings LEA has already provided. Further, <u>at this time, we find no identified need to dictate a conversion of such previously delivered materials to transcript/written format.</u> However, should we determine the need to examine and consider these audio or video materials to complete our investigation, we will advise the parties accordingly and ensure equity of access. The new timeline for all parties--parents and LEA--to submit additional information to this office and each other is <u>5:00 p.m. (DST) Monday, July 13, 2020.</u> Finally, additional information and/or materials submitted after this adjusted timeline <u>will not be considered by this office, unless specifically requested by ODRAS for the purposes of clarification.</u> [emphases in original].</i></p> <p>5:05 p.m.: Complainant/Parent wrote: <i>VDOE, Thank you for finally responding in the attached email. All, Please note that the LEA is being given until day 59 to submit its</i></p>

¹¹² As a matter of practice (and in this case), ODRAS' Notices of Complaint advise the parties of ODRAS' option of requesting clarifications after the additional information timeline.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 62 of 84

	<p><i>information. The additional information isn't due until well AFTER the 60 day timeline. ***IMPORTANT***: The attached includes a message from VDOE, saying it won't accept any additional information after 5 pm [sic] on 7.13.20. That statement (different date/time) appeared on its Notice of Complaint, too, yet VDOE allowed the LEA an extension, and then allowed it to submit information late, after the extension deadline. I find it hard to take anything VDOE says seriously. I appreciate receiving communication today[:] however, what if the LEA replies late again?</i></p> <p><i>This should NEVER have gone past the 60[-]day timeline, but VDOE's mismanagement of the situation - and it once again erring on the side of the LEA - put all of us in this position. Worst of all: Children continue to be negatively impacted.</i></p>
June 27, 2020 Saturday	<p>9:23 a.m.: Parent 4 wrote: <i>On June 19, 2020[,] I requested a print copy of the [LEA] documents. I did not receive a response from VDOE or [LEA]. Now I am told I might receive access 18 days after my request. How, VDOE, is your decision fair and impartial? It's my understanding you all have been trained and directed to PIVOT during these challenging times for you all, but this is far too twisted.</i></p> <p><i>The Parents require access in a timely manner so we may prepare and provide our response. Please stop allowing the LEA to control our access. [LEA] owns a print shop and utilizes a courier service. If [LEA] can pay \$21,000 for one expedited transcript, [LEA] can get a few paper copies prepared and delivered for tax paying Parents. There is no reason for this delay and denial of access.</i></p>
June 29, 2020 Monday	<p>6:28 p.m.: Complainant/Parent wrote: <i>VDOE, I'm requesting a record amendment. In the attached email, VDOE stated:</i></p> <p><i>"For the past two weeks, we have attempted to broker an equitable resolution to concerns regarding parents' access to LEA response materials, which LEA transmitted to parents via email, thumbdrive, and dropbox [sic]. Our attempts have failed."</i></p> <p><i>This is not true. I would like this record corrected.</i></p> <p><i>The LEA's NOC [Notice of Complaint] response was due June 4th.</i></p> <p><i>VDOE gave the LEA an extension until June 11th.</i></p> <p><i>June 11: AFTER BUSINESS HOURS, [LEA] sent 17 emails over a period of over an hour, and admitted within those emails that it was having problems sending files. June 11- June 26: On almost a daily basis, parents emailed VDOE about problems accessing [LEA's] response.</i></p> <p><i>June 13: [LEA] stated that it sent thumbdrives.</i></p> <p><i>June 15th - Some of the parents received the thumbdrives. VDOE did not receive the thumbdrive. All parents had difficulties accessing the files - to include "msg" documents, which VDOE previously said it doesn't accept.</i></p> <p><i>June 18th - [LEA] stated that it reformatted the msg files as PDFs and unzipped some problematic files and sent them to parents via Dropbox – even though VDOE specifically told me that it no longer accepts Dropbox (after almost four years of me using it for file transfer with VDOE).</i></p> <p><i>June 23rd - VDOE emailed that it was able to access the documents it received. June 26th - VDOE asked [LEA] to mail printed copies of its reply to parents. NONE of the above constitutes you "brokering" a solution.</i></p> <p><i>What it does "constitute" is a leadership and communication failure. Please amend the record.</i></p> <p><i>***In addition, when parents made VDOE aware of problems with the files provided by VDOE, VDOE's response was to say the parent had to ask for [LEA] to amend the record,¹¹³ rather than VDOE holding [LEA] accountable for providing it accurate information for an investigation.</i></p>

¹¹³ ODRAS had followed up with Parent via email; see June 18, 2020 (6:58 p.m.), entry, supra.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 63 of 84

June 30, 2020 Tuesday	LEA delivered printed response materials to parents.
July 1, 2020 Wednesday	11:41 a.m.: LEA to ODRAS and parents: <i>...paper copies of all response materials were delivered to each family via courier yesterday afternoon [Tuesday, June 30, 2020].</i>
July 6, 2020 Monday	Due date for delivery of LEA printed response materials to parents.
July 13, 2020 Monday	<p>8:25 p.m.: Parent 3 wrote: <i>VDOE, You said you could not accept Dropbox files, but then when [LEA] was unable to send information after multiple attempts you found their Dropbox information acceptable. Why is it ok for [LEA] to transfer files via Dropbox but it is not ok for the parents to send items via Dropbox?¹¹⁴</i></p> <p><i>Isn't that how whites kept black voters disenfranchised from the political system, by allowing one group of people privileges and unlimited extensions, but requiring others to jump through hoop after hoop?</i></p> <p><i>Our items were on time and supplied multiple methods to insure we made the deadline. Can you say that about [LEA] or are they entitled to special considerations not given to plain old citizens of Virginia?</i></p> <p>4:07 p.m.: Complainant/Parent to ODRAS, et al.: <i>The screenshot pasted below indicates that the thumb drive sent to you was delivered this morning.</i></p> <p><i>Attached is the cover letter and narrative which, with the files on the thumb drive, consist of our additional information.</i></p> <p><i>Please confirm that you have received this and that you are able to access all documents provided.</i></p> <p><i>I have sent an invite via Dropbox, too, to access the files that way.</i></p> <p><i>Please confirm that you have received this email and the thumb drive and that you are able to access all documents provided.</i></p> <p><i>[LEA] has been cc'd and sent a link to Dropbox.</i></p> <p>4:42 p.m.: VDOE wrote: <i>As previously advised, this office is unable to accept files via Dropbox. We will provide an update regarding any receipt of the thumbdrive as soon as practicable.</i></p> <p>5:14 p.m.: Complainant/Parent emailed: <i>As previously emailed, you were provided a thumb drive and USPS confirmed delivery at 7:11 AM today. I provided Dropbox as back up. You were able to access Dropbox for almost four years, and [ODRAS staff] accessed it recently, too. If you choose not to do so now, that's on you. However, given all the problems VDOE has had through the years, I decided to be proactive and provide an additional option, rather than waiting to hear that VDOE once again is having problems.</i></p> <p><i>If you could confirm receipt of the thumb drive and the other email I sent, with the additional information narrative, I'd appreciate it.</i></p> <p><i>Also: Given that I am not the only individual on this complaint, please include all complainants in your correspondences. You were able to add numerous [LEA] individuals to your response to this complaint, so it stands that you should have been able to add ALL complainants, too.</i></p> <p><i>In addition, note how I have provided all documentation on time and have proactively requested your confirmation of receipt and access to the documents.</i></p> <p><i>If we don't hear from you today – especially since VDOE received the thumb drive at 7:11 AM – we'll consider VDOE to again be at fault for extending timelines.</i></p> <p><i>Although [LEA] routinely fails to hit deadlines, we parents have been on time.</i></p> <p><i>Although VDOE and [LEA] routinely err on the reactive side, we parents are being proactive.</i></p>

¹¹⁴ ODRAS did not accept files from LEA or parents via Dropbox. Further, ODRAS did not require or prohibit LEA and parents from exchanging materials among themselves via Dropbox. See June 18, 2020 (10:10 a.m.), entry, supra.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 64 of 84

	<p><i>As already asked, please confirm receipt of all additional information.</i></p> <p>5:42 p.m.: Complainant/Parent to Superintendent of Public Instruction, et al.: <i>...Given there have been so many problems with VDOE and practices under [ODRAS] in particular, if there's anything you can do to help, I'd greatly appreciate it.</i></p> <p><i>As you may know, VDOE's mail system is kin to the Bermuda Triangle. Mail goes missing, undelivered, etc. Many parents have complained about this, so this isn't just a [Complainant/Parent] issue. Unfortunately, in my case, important docs from VDOE went missing once and I didn't have time to submit a full appeal – and VDOE's response was to deny my request for an appeal. Strange given VDOE gave [LEA] extensions over and over again in relation to this complaint.</i></p>
July 14, 2020 Tuesday	<p>10:14 a.m.: Complainant/Parent wrote: <i>VDOE, Please confirm receipt of the attached email, sent yesterday, with the narrative for our additional information.</i></p> <p><i>Please confirm receipt of the thumb drive, which was delivered at 7:11 AM yesterday.</i></p> <p><i>Your continued failure to respond to the receipt of time-sensitive materials is concerning – and additional indication of VDOE extending the timeline for this complaint.</i></p> <p><i>The parents on this complaint have done everything required – to include hitting every deadline and being proactive in communicating issues and confirming receipt of materials.</i></p> <p><i>VDOE and [LEA] continue to remain mute.</i></p> <p><i>It would be helpful if you made this a priority as the lives of children are at stake here.</i></p> <p>4:55 p.m.: Complainant/Parent wrote US ED, State Superintendent of Public Instruction, et al.: <i>[Superintendent], Could you speak with your team about confirming time-sensitive information in a timeline manner (see below and attached).</i></p> <p><i>[US ED Office of Special Education Programs],</i></p> <p><i>Please file this under "failure" for VDOE. Why is it that VDOE is there to respond to the LEA and offer extension after extension, but VDOE can't be bothered to respond to parents – to[,] at a minimum[,] confirm receipt of time-sensitive information?</i></p> <p><i>****In addition, VDOE blue [sic] through the 60[-]day timeline for the complaint, rather than refusing to accept [LEA's] LATE documentation. Now, the children listed on this complaint continue to have their lives hijacked by both [LEA] and VDOE. At what point does this stop?</i></p>
July 15, 2020 Wednesday	<p>8:22 a.m.: Complainant/Parent wrote US ED, State Superintendent of Public Instruction, et al.: <i>Still no response from VDOE. VDOE allows [LEA] to be late and blow threw [sic] the 60[-]day timeline and now VDOE won't even confirm receipt of time sensitive information, thus delaying the issues even more. Adding salt to the wound: This is a systemic complaint and the issues continue while VDOE remains silent. Put the children first, please.</i></p> <p>2:44 p.m.: ODRAS to parties: <i>This office has received Complainant/Parent's additional information consisting of (i) a July 13, 2020 (4:07 p.m.), email and its attached 104-page letter; and (ii) a Sandisk thumbdrive (received by ODRAS today, July 15, 2020). This office is attempting to access the files included on the thumbdrive and will advise of any concerns as soon as practicable....</i></p> <p>3:15 p.m.: Complainant/Parent responded: <i>Thank you for confirming receipt of the narrative document and thumb drive. It is unfortunate that it took you another two days to confirm time sensitive information. When will you provide a deadline for the Letter of Findings? I hope within the next two weeks, given you allowed [LEA's] incompetence to blow through the complaint timeline... I remind you that, to date, we have not received all of the documentation that [LEA] cited in its LEA response....</i></p> <p>6:27 p.m.: ODRAS to parties: <i>Complainant/Parent has stated that "we have not received all of the documentation that [LEA] cited in its LEA response." Complainant/Parent has not</i></p>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 65 of 84

	<p>identified any <u>printed materials</u> LEA has failed to provide. As stated in our June 26, 2020 (4:44 p.m.), email, we directed LEA to provide Complainant/Parent and each identified parent <u>print copies of all response materials with the exception of any audio or video recordings</u>. LEA was to ensure these print materials were delivered to these individuals on or before midnight Monday, July 6, 2020. The record indicates that these deliveries were accomplished within the timeline.</p> <p>Further, as stated in our June 26, 2020, correspondence: "To be clear, we do not direct the additional transmission of audio or video recordings LEA has already provided. Further, <u>at this time, we find no identified need to dictate a conversion of such previously delivered materials to transcript/written format</u>. However, should we determine the need to examine and consider these audio or video materials to complete our investigation, we will advise the parties accordingly and ensure equity of access [emphasis added]."</p> <p>At this time, we have not determined any need to access/consider these audio or video materials. Accordingly, we request no further action from LEA in regard to this matter at this time.</p> <p>6:35 p.m.: Complainant/Parent wrote State Superintendent of Public Instruction, et al.: <i>I again ask for you to intervene and remove this investigation from the hands of [ODRAS]. [LEA] cites specific materials in its LEA response. [LEA] does not include those materials in what it sends. Parents request the materials. VDOE says it hasn't determined any need to access the materials. Again I ask: How does VDOE do an unbiased investigation when it doesn't deem materials cited important enough to examine – or even prove existence of the materials? What is the point of deadlines for submitting materials if VDOE lets [LEA] off the hook? Why does VDOE allow the LEA such leeway, but not parents?</i> <i>AND: Will you please include all parents who are on this complaint on ALL correspondence. You have no problem emailing the LEA, but once again your communication with parents is lacking. Our children are waiting to have their needs addressed. If you could make the children a priority, we'd appreciate it.</i></p>
July 17, 2020 Friday	<p>9:34 a.m.: Complainant/Parent to Superintendent of Public Instruction, et al.: <i>Please note your teams [sic] continued failure to communicate. I again ask that this be removed from the hands of [ODRAS].</i> <i>I have proof from USPS that the thumbdrive was delivered at 7:11 am on 7.13.20. Yet somehow VDOE said it didn't receive it until the 15th – which means VDOE delayed the process two more days. In addition, VDOE extended the timeline on this complaint – as a result of it allowing [LEA] to submit a late and incomplete response, even though VDOE's own regulations do NOT ALLOW the acceptance of late submissions. When will VDOE set a deadline for the letter of findings?</i> <i>Or will VDOE take advantage of the fact that it blew through the mandated timeline, and will just take all the time in the world now?</i></p>
July 20, 2020 Monday	<p>3:19 p.m.: VDOE Assistant Superintendent to Complainant/Parent, et al.: As shared in the email dated July 15, 2020, the VDOE has no record of parents identifying any printed materials that the local school division failed to provide. Also, as stated in our June 26, 2020, email, the VDOE directed LEA to provide Complainant/Parent and each identified parent print copies of all response materials with the exception of any audio or video recordings. The school division was to ensure these print materials were delivered to these individuals on or before midnight Monday, July 6, 2020. The record indicates that these deliveries were accomplished within the timeline. Subsequently, in an email dated June 26, 2020, the VDOE did not direct the additional transmission of audio or video recordings that the school division had already provided based on the fact that there was no identified need to convert previously delivered materials to transcript/written format. However, should VDOE staff determine the need to</p>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 66 of 84

	<p><i>examine and consider these audio or video materials to complete the investigation, the VDOE complaints specialist will advise the parties accordingly and ensure equity of access. Once again, at this time, VDOE staff has not determined any need to access/consider these audio or video materials as a part of the current investigation. Any additional inquiries should be shared with the specific complaint specialist addressing your case.</i></p> <p>3:24 p.m.: VDOE to Complainant/Parent, et al.: <i>As communicated in an email dated July 15, 2020 the Office of Dispute Resolution and Administrative Services provided an update regarding the receipt of the materials you noted in your email. When mail is delivered physically to the VDOE, it may take time, particularly given the limited staffing onsite, for materials to be able to be confirmed as received. In the same email, VDOE confirmed its inability to receive materials through the application Dropbox. The VDOE is aware that this is a difference from its normal operating procedure and has provided an update on the agency website to ensure that the Department is transparent about this delay and how staff can work to support parents and stakeholders....</i></p>
July 21, 2020 Tuesday	<p>10:50 a.m.: Complainant/Parent to Superintendent of Public Instruction, et al.: <i>I again ask that you take this investigation out of the hands of [ODRAS]. I emailed the narrative additional information. VDOE could not be bothered to confirm receipt. Instead, it responded to the email I sent with the back-up Dropbox files, letting me know it doesn't accept Dropbox files anymore. At a minimum, VDOE could have confirmed received of the additional info narrative. Know that VDOE blew through the timeline, at a minimum, VDPE [sic] should have had staff go in and pick up the thumbdrive delivered the morning it was due. Instead . . . Radio silence. I'm tired of hearing VDOE's excuses. We are all operating under different circumstances due to COVID. The difference is that some of us still take deadlines seriously. I, nor any of the other parents on this complaint, [sic] appreciate the added delays. Please remove this from the hands of [ODRAS]. They've shown that they can't maintain deadlines and their complaint management is negligent at best.</i></p> <p>11:02 a.m.: Complainant/Parent to Superintendent of Public Instruction, et al.: <i>Another example of [Assistant Superintendent's] incompetence. Again, please remove [Assistant Superintendent] and...staff from this investigation. [LEA] failed to provide audio files that it cited in its response. I made this clear. VDOE then told [LEA] to provide print version, but not audio.¹¹⁵ Why? Why are the parents not being provided all of this documentation? Where is [Assistant Superintendent's] proof that these audio files were provided to us, given we're saying they weren't? Is it not enough that the parents said they didn't receive it? Who is [Assistant Superintendent] to say we did receive it? Again: Remove [Assistant Superintendent].</i></p>
July 22, 2020 Wednesday	<p>5:25 p.m.: Complainant/Parent wrote Superintendent, et al.: <i>I again ask that the systemic complaint I filed be removed from [Assistant Superintendent's office, whose] radio silence and poor leadership led to this complaint's deadline being non-existent. Absolutely no one has bothered to explain when parents can expect a Letter of Findings. Please don't tell me of "extraordinary times". [sic] We all have a lot on our plates – and [ODRAS] exhibited numerous problems before COVID. Your help would be appreciated.</i></p>
July 24, 2020 Friday	<p>10:37 a.m.: VDOE Deputy Superintendent to Complainant/Parent, et al.: <i>The Office of Dispute Resolution has confirmed receipt of the email containing the additional information narrative and the confirmation of delivery of the materials through USPS.</i></p>

¹¹⁵ ODRAS did not direct LEA to provide written transcripts of any audio files that parents identified as inaccessible.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 67 of 84

	<p>10:39 a.m.: VDOE Deputy Superintendent to Complainant/Parent, et al.: <i>The point of contention you shared in your email is the consideration of provision of the audio file that [LEA] provided in its response materials. The audio and video recordings included in the LEA's response have been excluded from the investigation at this time, meaning that staff have currently identified all materials necessary to address the complaint issue submitted to the VDOE. However, should VDOE staff determine the need to examine/consider these audio or video materials to complete the investigation, the VDOE complaints specialist will advise the parties accordingly and ensure equity of access by all parties.</i></p> <p>2:14 p.m.: Complainant/Parent to Deputy Superintendent: <i>The point of contention is not that the audio wasn't provided. The point of contention is that that LEA did not provide the complainants and the SEA access to the same information. The result is that complainants were not able to review the LEA's response in full, in advance of the additional information dur [sic] date. While VDOE might have decided not to use the LEA info. at this time, the fact remains that the complainants weren't offered the opportunity to provide anything else that might have deemed it necessary for VDOE. In addition, if VDOE does eventually deem it vital to the investigation, this means – AGAIN – that complainants were not provided the same info as the LEA. VDOE is in violation of its own regulations – and continues to err on the side of the LEA. In addition, the LEA was LATE in submitting its response, yet VDOE allowed the late info to be submitted, even though that, too, is in violation of VDOE's own regulations – and in violation of the guidance that appears on VDOE's very own NOCs. I look forward to your response. [Superintendent], I look forward to you one day responding yourself.</i></p> <p>2:20 p.m.: Complainant/Parent to VDOE Deputy Superintendent: <i>Thank you for confirming receipt of the additional materials. Please confirm that VDOE has been able to access all of the files provided. Please provide the deadline for the Letter of Findings. Complainants have hit every deadline – yet [LEA] requested a deadline extension and then missed it, and VDOE extended the LOF deadline to accommodate [LEA]. At what points are the complainants considered? At what point are the children of the complainants a priority to VDOE? I look forward to your response.</i></p>
July 27, 2020 Monday	<p>11:29 a.m.: Complainant/Parent to VDOE Deputy Superintendent, et al.: <i>Gov. Cuomo's and Gov. Northam's staff members flagged issues with [LEA] and you responded by offering to help [LEA] and craft messaging. See attached. At a minimum, all the parents on the systemic complaint would appreciate VDOE offering to help us, by providing us timely information. Can you give us messaging on when the Letter of Findings will be released? Can you give us messaging on why VDOE continues to clean up for the LEA, but is MIA when it comes to responding to questions related to students?</i></p> <p>7:03 p.m.: Complainant/Parent to State Superintendent, et al.: <i>I appreciate hearing from [Deputy Superintendent] instead of [VDOE], but here we are, at the end of another day, and VDOE has not responded. When will the Letter of Findings related to the systemic complaint be provided? VDOE blew past the 60[-]day timeline when it allowed [LEA] to be late and then when it allowed [LEA's] failures related to documentation to drag out. When will children be the priority?</i></p>
July 28, 2020 Tuesday	<p>7:59 a.m.: Deputy Superintendent wrote: <i>On June 23, 2020, the Office of Dispute Resolution and Administrative Services (ODRAS) advised the parties that the 60-day timeline for the</i></p>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 68 of 84

	<p>completion of the investigation would be extended due to exceptional circumstances (8 VAC 20-81-200)(e.g., inter alia, complex and comprehensive nature of investigation; inaccessibility of staff, technology, and necessary materials due to building closures and other health and safety conditions resulting from the COVID-19 pandemic; parents' respective inability to access LEA response materials). To ensure equitable access to LEA's response materials, ODRAS adjusted the timeline for the submission of additional information. The ODRAS received a 104-page narrative and thumb drive on July 13 and 15, 2020, respectively. As part of a comprehensive investigation, the team continues to review this documentation and gather other information. The complaints specialist will advise of a timeline for the issuance of the Letter of Findings as soon as practicable.</p> <p>11:04 a.m.: Complainant/Parent wrote Deputy Superintendent, et al.: <i>Your response indicates VDOE is in noncompliance of [sic] IDEA 2004. You stated COVID as a reason for delaying the 60-day timeline for the investigation. Betsy DeVos did not waive the timelines. VDOE's "inaccessibility of staff, technology, and necessary materials due to building closures and other health and safety conditions resulting from the COVID-19 pandemic" is not a valid reason for waiving timelines. That's VDOE's responsibility to address, not the parents' responsibility to be negatively impacted by it. The parents, too, have their own COVID-19 balls to juggle, yet we nailed every deadline and didn't request extensions. Per our inability to access the documents submitted by the LEA, the LEA was late in submitting these, VDOE allowed the late submission, and then VDOE failed to manage the situation – and parents are again negatively impacted. Had VDOE wanted the additional information earlier, it should have said something. Stating that it received a 104-page narrative is not an excuse, either. It is VDOE's responsibility to investigate. I ask again: When will the Letter of Findings be submitted? This isn't a difficult question. Please provide us a date instead of excuses.</i></p>
July 30, 2020 Friday	<p>11:19 a.m.: Complainant/Parent wrote US ED OSEP, et al.: <i>I'm requesting official guidance from OSEP. VDOE has stated COVID as one of its reasons for waiving the timeline for the systemic complaint investigation. However, Secretary DeVos specifically stated no timeline waivers were granted. Given OSEP recently released a monitoring report related to Virginia, can this issue be added to it? If not, can OSEP address it? As you may know from my other emails, in addition to VDOE waiving this deadline, they've allowed [LEA] to waive evaluation, too. [LEA] isn't doing any evaluations as I write this – and at the same time are denying IEE requests, stating that [LEA] has to evaluate first. How does that happen if [LEA] isn't even doing evaluations itself? I'm confused by VDOE's actions and the example it has set for [LEA], which [LEA] is following. I thought Secretary DeVos was clear. Please advise.</i></p>
August 4, 2020	<p>2:24 p.m.: Complainant/Parent to US ED/OSEP: <i>Is it OSEP's position that states can waive timelines in response to COVID, even though Secretary DeVos specifically said no to waiving timelines in response to COVID?</i></p>
August 17, 2020	<p>3:53 p.m.: Complainant/Parent emailed VDOE, et al.: <i>VDOE, You've been MIA for almost another week. While it was great to hear from you last week, your failure to respond to previous emails made me wonder if your entire office had gone missing, if we'd ever receive a response. So . . . You are way beyond the date for the LOF. The extenuating [sic] circumstances were of [LEA's] and VDOE's making. And yet . . . Complainants were on time for EVERYTHING. At what point do you make children a priority and provide an LOF? Shall we all start school and be in the same position?</i></p>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 69 of 84

	5:30 p.m.: Complainant/Parent emailed ODRAS, et al.: <i>You just responded to one of my emails. Is it possible for you or someone else at VDOE to address this one? Clock is tick-tocking away on the lives of our children as VDOE's delays continue. Please advise.</i>
--	--

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 70 of 84

APPENDIX B

Release Authorizations

On May 20, 2020, ODRAS contacted Complainant/Parent and the other identified parents to clarify the purpose of a release authorization. This office received no response. On August 7, 2020, as our investigation neared completion, we again contacted Complainant/Parent and the other identified parents regarding authorization for this office to release information about the individual students to/among Complainant/Parent and the identified parents.

As the table below documents, the responses we received throughout this process were internally inconsistent and contradictory. While we received parent correspondence authorizing Complainant/Parent to file a complaint on behalf of the identified students, we never received unambiguous releases from Parents 1-4 authorizing this office to share information among the group of parents.

- Although this office had previously advised the parents regarding the nature of electronic signatures, Complainant/Parent attempted to indicate a release authorization on behalf of all identified parents via Complainant/Parent's personal email (August 11, 2020)(*[W]e are ok with sharing information with each other*). This communication also—somewhat incongruously—indicated *We would ALL like to have our children's info. redacted in the Letter of Findings*.
 - Simply stated, this communication had no effect regarding the other parents and their children; the lack of valid electronic signatures from each parent eliminates any capacity to trace consent to the individual parents.
- Despite Complainant/Parent's August 11, 2020, email representation that Complainant/Parent and Parents 1-4 *are ok with sharing information with each other*, some parents subsequently stated that they did not want “personally identifiable information”¹¹⁶ regarding their children shared with “other parties,” Complainant/Parent, or the other parents.

¹¹⁶ The FERPA regulations (34 C.F.R. § 99.3) state that the term “personally identifiable information” (PII) includes, but is not limited to (a) the student's name; (b) the name of the student's parent or other family members; (c) the address of the student or student's family; (d) a personal identifier, such as the student's social security number, student number, or biometric record; (e) other indirect identifiers (e.g., the student's date of birth, place of birth, and mother's maiden name); (f) “other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty” [emphasis added]; or (g) information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. Further—and significantly—the Privacy Technical Assistance Center within the U.S. Department of Education (US ED) has further stated that PII “includes information that can be used to distinguish or trace an individual's identity either directly or indirectly through linkages with other information.” U.S. Department of Education, Privacy Technical Assistance Center, *Data Governance Checklist*, PTAC-CL-1, December 2011 (revised June 2015) <https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Data%20Governance%20

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 71 of 84

Some parents requested that this office “redact” information for fear that LEA would err in doing so should LEA receive a request for the Letter of Findings under the Virginia Freedom of Information Act (FOIA). Our office is not responsible for any redaction of documents that may be the focus of a FOIA request directed to LEA.

These responses demonstrated a continuing misunderstanding of (i) electronic signatures; (ii) the purpose of release authorizations within the context of a state special education complaint investigation; and (iii) the distinction between a “joint filing” of a complaint and a systemic complaint. Further, the responses indicate a conflation of the purpose of these release authorizations with redaction responsibilities that may attach to a FOIA request.

On August 17, 2020, ODRAS again contacted Parents 1-4 to confirm authorization to release information regarding their children to Complainant/Parent and the identified parents. As the table documents, we did not receive such authorizations.

Accordingly, absent release authorizations from Parents 1-4, we were required to issue separate Letters of Findings that only included information regarding their respective children. Complainant/Parent would receive a Letter of Findings that included student-specific information regarding Complainant/Parent’s child.

Email Correspondence Regarding Release Authorizations

May 18, 2020 Monday	<p>10:57 a.m.: ODRAS issued Notice of Complaint to Complainant/Parent and parents.</p> <p>11:50 a.m.: Complainant/Parent emailed parents and ODRAS: <i>Please email VDOE that the complaint I emailed – which was from all of us – was done with your approval and that you provided me authorization to release the information about your children for purposes of the complaint.</i></p> <p><i>All of your names and email addresses were on the complaint submission, which indicated your permission to 1) be a part of the complaint and 2) <u>release your children’s information to VDOE</u> [emphasis added] for the complaint.</i></p> <p><i>VDOE is trying to pull apart the complaint as it has done in the past.</i></p> <p><i>Please contact them immediately.</i></p> <p><i>VDOE – You have exhibited a pattern of asking [LEA] when you have questions about something they’ve submitted. And you’ve backchannelled [sic] information to them. Why not the same courtesy for parents? If you questioned the release of information, why didn’t you ask?</i></p> <p>12:37 p.m.: Parent 2: <i>Yes, please proceed VDOE with this complaint [sic] as is. I agreed to it on behalf of [Student]. It is a systemic complaint and is allowed.</i></p>
-------------------------------	--

[Checklist 0.pdf](#) > In its April 15, 2009, *Letter to Schwartz* (12 FAB 31, 109 LRP 25237), the Family Policy Compliance Office (FPCO) stated that the *simple removal of nominal or direct identifiers, such as name and SSN (or other ID number), does not necessarily avoid the release of personally identifiable information. Other information can indirectly identify someone depending on the combination of factors and level of detail released. ...*

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 72 of 84

	<p>12:44 p.m.: Complainant/Parent to Parent 2: <i>Please confirm that you provided permission to me for release of information [emphasis added] since the information was sent from my email and Dropbox accounts.</i></p> <p>1:18 p.m.: Parent 2 wrote: <i>I give release of information for [student] for the purposes of this complaint [sic].</i></p> <p>1:26 p.m.: Parent 4 wrote: <i>Permission was granted to [Complainant/Parent] to submit and include the attached and referenced complaint on my behalf. Time is of the essence and the continuous delay in the processing of this complaint is evidence to the ongoing truncation of parental procedural rights.</i></p> <p>4:25 p.m.: Parent 3 wrote: <i>[Complainant/Parent] has my full permission to include [student] in systematic [sic] complaints [sic] against [LEA]. I have been eagerly following [Complainant/Parent's] repeated requests for VDOE to acknowledge receipt of this complaint and VDOE's lack of response. I urge you to please proceed with thorough investigation not just for the 6 children listed in this complaint, but also for the hundreds of other children that have been harmed by the systematic [sic] denial of education for special education children by [LEA].</i></p> <p>5:56 p.m.: Parent 1 wrote: <i>I provide my consent to be included in the aforementioned systemic complaint. I authorize the release of information related to this complaint for [student]. I would like this complaint investigated as a systemic violation. Students across [LEA] are not having their IEPs implemented to the "greatest extent possible" during this period of distance learning....</i></p>
May 20, 2020	<p>3:24 p.m.: ODRAS emailed Parents 1-4 separately: <i>This email offers additional clarification concerning release authorizations—specifically, with regard to the Notice of Complaint that included your child.</i></p> <p><i>The Virginia Regulations (8 VAC 20-81-200.D.1.c) specify:</i></p> <p><i>If the complaint is filed by an individual other than the child's parent(s) and/or their legal counsel, the Virginia Department of Education sends written notification to the complainant acknowledging receipt of the complaint. The complainant is notified that the parent will be informed of the receipt of the complaint and provided a copy of the complaint and pertinent correspondence. The Virginia Department of Education's final determination of compliance or noncompliance will be issued to the parent(s) and the local educational agency, unless the complainant has obtained and filed the appropriate consent for release of information.</i></p> <p><i>VDOE's complaint procedures echo this requirement (Item II.A.5):</i></p> <p><i>If any individual other than a parent, a student who has reached the age of majority, or their attorney, files a complaint, ODRAS notifies the complainant that it will inform such parent or student of its receipt of the complaint and will provide copies of the complaint; relevant correspondence, if any; and this Complaint Resolution Procedures document to the complainant and the parent or adult student. Unless a release of information is on file with ODRAS, the complainant receives no further written communication resulting from the complaint process. <http://www.doe.virginia.gov/special_ed/resolving_disputes/complaints/complaint_resolution_procedures.pdf></i></p> <p><i>Accordingly, in the May 18, 2020, Notice of Complaint, this office specifically advised Complainant and each Parent: Further, the submission failed to include a release authorization from the other parents. Therefore, this office will provide Complainant/Parent and each of the identified parents with a copy of this Notice of Complaint, but will not discuss the complaint with or provide additional information to Complainant/Parent with regard to the identified students (other than the student identified as Complainant/Parent's child) until such time as a release authorizing this office to communicate with Complainant/Parent</i></p>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 73 of 84

	<p><i>regarding our investigation into the complaint allegations with regard to the identified students is provided by the respective parents [emphases added]. Similarly, ODRAS will communicate with the identified parents only with regard to their respective children. Stated another way, a properly signed release authorization is necessary from each Parent to permit VDOE to share information with Complainant regarding the respective Parents' children. Further, absent properly signed release authorizations from each Parent permitting VDOE to share information regarding Students A-F among the respective Parents identified in the complaint submission, our communications must be issued individually to these identified Parents.</i></p>
August 7, 2020	<p>2:21 p.m.: ODRAS emailed Complainant/Parent and Parents 1-4: <i>Dear Parent, as our investigation nears completion and we prepare for the issuance of our Letter of Findings, we ask that you indicate whether you specifically authorize this office to release information regarding your child to the identified parents (Complainant/Parent and Parents 1-4) in the systemic complaint Letter of Findings (May 18, 2020, Notice of Complaint). While your previous correspondence indicated your permission for Complainant/Parent to file the complaint on behalf of your child, a release authorization is necessary for this office to share information with Complainant/Parent and the other identified parents, as we advised in our May 20, 2020, email, below. If you do not authorize this release, please so advise so that we may issue an appropriately redacted Letter of Findings. If you have any questions, please do not hesitate to contact us. Thank you in advance.</i></p> <p>2:51 p.m.: Complainant/Parent replied: <i>You have my permission. Did you contact all of the parents?</i></p>
August 10, 2020	<p>4:08 p.m.: Parent 3 emailed: <i>I give consent to release my [student's] information to the other compliant [sic] parents in the referred to systemic complaint.</i></p> <p>7:34 p.m.: Parent 4 emailed: <i>Please redact my [Student's] name from the Letter of Findings that will be shared.</i></p>
August 11, 2020	<p>4:21 p.m.: Complainant/Parent emailed: <i>VDOE, Please note that all of the parents on the systemic complaint are cc'd here. Your request has been discussed. We would ALL like to have our children's info. redacted in the Letter of Findings. While we are ok with sharing information with each other, the fact remains that [LEA] has a bad track record when it comes to breach of confidentiality. We know people will be FOIAing this document and we don't want to rely on [LEA] to redact it in full. If you have any questions, please let us know.</i></p> <p>4:47 p.m.: Parent 1 emailed ODRAS: <i>I do not want any personally identifiable information regarding my children to be released to anyone other than me. Please ensure that my children's information is redacted in the Letter of Findings provided to other parties.</i></p> <p>5:55 p.m.: Parent 3 emailed ODRAS: <i>Due to [LEA's] numerous violations of disclosing my child's information to others: [sic] I do not want any personally identifiable information regarding my children to be released to anyone other than me. Please ensure that [student's] information is redacted in the Letter of Findings provided to other parties.</i></p>
August 17, 2020	<p>10:08 a.m.: ODRAS wrote: <i>On August 11, 2020 (4:21 p.m.), Complainant/Parent emailed this office that the identified parents in the systemic complaint are ok with sharing information with each other.... This third-party communication is not effective to serve as an authorization from you for this office to release information about your child(ren) in the Letter of Findings to Complainant/Parent and the other identified parents. Please advise this office whether we may release information about your child(ren) in the Letter of</i></p>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 74 of 84

	<p><i>Findings to Complainant/Parent and the other identified parents. Should you have any questions or concerns, please do not hesitate to contact us.</i></p> <p>1:21 p.m.: Parent 1 wrote: <i>As stated in my previous email on 8-11-20 (attached,) I do not want personally identifiable information about my children released to anyone other than me. Therefore, please do not release personally identifiable information about my children in the Letter of Findings to Complainant/Parent and other identified Parents or Parties.</i></p> <p>4:15 p.m.: Parent 2 wrote: <i>I do not consent nor do I want any personally identifiable information regarding my children to be released to anyone other than me. Please ensure that my children's information is redacted in the Letter of Findings provided to other parties.</i></p>
August 18, 2020	<p>12:18 p.m.: Complainant/Parent emailed VDOE, et al.: <i>It's been brought to my attention that you've been contacting each parent individually, asking that they provide consent for redaction – even though the very same parents already sent you a separate email. What makes NO SENSE about this is that you released a redacted NOC, because you stated you didn't have the individual sign-offs from parents to share their children's info with other parents. So if you provide a redacted document w/out parent permission previously, why do you need individual parent permission to redact¹¹⁷ it now? As usual, you make no sense. Please advise.</i></p>
August 19, 2020	<p>4:23 p.m.: Parent 3 wrote ODRAS: <i>I am confused. I sent an email to you stating that I wanted [student's] information redacted from the letter of findings. I do not want [student's] information in the letter of findings released to anyone but myself. I did this in a legal email addressed to VDOE. The state of Virginia finds email a legal way to correspond per your own LOF previously released in a complaint regarding [student]. Please produce this third party email that was NOT from me to which you refer in your email. I am concerned and unclear from your vague email to what "third party" to which you are referring. Please explain to me the exact criteria for VDOE accepting an email requesting a child's personal information be redacted from the Letter of Findings.</i></p> <p>4:46 p.m.: ODRAS responded: <i>thank you for your correspondence. Our August 17, 2020, email specifically referred to Complainant/Parent's August 11, 2020, email sent to you, this office, and others. We have included a screenshot of this August 11, 2020, correspondence-sent from Complainant/Parent (a "third party"), below.</i> [screenshot of Complainant/Parent's August 11, 2020 (4:21 p.m.), email] <i>We hope this is helpful.</i></p> <p>5:10 p.m.: Complainant/Parent to OSEP, et al.: <i>Please see more VDOE incompetence in the attached and below. At what point does this insanity stop? VDOE, I already had low expectations related to your ability to do a professional job. I now have no expectation that you'll be able to do anything that would qualify as "professional." The incompetence is astounding.</i> <i>Please see the attached e-mail, which I sent you 8.21 [sic].20 at 4:21 pm.</i> <i>Within it, I stated: "We would ALL like to have our children's info. redacted in the Letter of Findings. While we are ok with sharing information with each other, the fact remains that [LEA] has a bad track record when it comes to breach of confidentiality. We know people will be FOIAing this document and we don't want to rely on [LEA] to redact it in full."</i> <i>Compare it with the attached email that you sent [parent], which supposedly cites my 8.21[sic].20 at 4:21 pm email. With it, you state: "On August 11, 2020 (4:21 p.m.),</i></p>

¹¹⁷ Complainant/Parent misunderstands the purpose of a release authorization; as stated in the Notice of Complaint and in subsequent emails from this office, none of the four identified parents authorized this office to communicate with Complainant/Parent or release/provide information about their children regarding the complaint investigation.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 75 of 84

	<p><i>Complainant/Parent emailed this office that the identified parents in the systemic complaint "are ok with sharing information with each other...." This third-party communication is not effective to serve as an authorization from you for this office to release information about your child(ren) in the Letter of Findings to Complainant/Parent and the other identified parents."</i></p> <p><i>If you can't fully comprehend a clear email – and then send the correct information to parents – how can we expect you to comprehend the information provided to you with the complaint?...</i></p>
August 20, 2020	<p>3:03 p.m.: Complainant/Parent wrote: <i>Is it possible for you to answer us today? You issued a redacted NOC [Notice of Complaint] because you didn't have permissions on file for the information of each child to be shared with the different families on the complaint. Yet, when it comes to the LOF, you do nothing – even after I, and other parents, tell you to redact. We don't want to take the chance of it being FOIA'd and [LEA] failing to redact yet another document in full before releasing it. Are you stalling to help [LEA]?</i></p> <p><i>We all know the law is on the side of the parents. VDOE regulations were not halted, nor were federal regulations. Among other things, [LEA] denied FAPE, didn't provide PWNs, denied evaluations, again didn't provide PWNs, denied services and accommodations, and again didn't provide PWNs, chose to deny services even though private providers were offering services in person and/or virtually, failed to monitor and collect data for IEP progress reports – and that's just the short list.... How long will you continue to hold the children in this complaint hostage?...</i></p>
August 21, 2020	<p>3:21 a.m.: Complainant/Parent wrote: <i>OSEP and VDOE, Our complaint addressed compensatory services. However, VDOE chose not to look at comp services. It called allegations that it would be months before comp ed [sic] was assessed to be "speculative and premature and will not be included in the complaint investigation." This week, [LEA] stated it will not assess students until AFTER the first 9 weeks (first quarter) of school to determine recovery services.... Since you haven't given us your LOF yet, how about including comp ed [sic] in it. By the time any of our kids are assessed, they'll have been denied FAPE for almost 7 months. Do we really have to refile this portion of the complaint? Or will you address it in the interest of helping student ASAP? And then there's the fact that you didn't have the foresight that parents have, to know just how [LEA] would play this out – just like it always does. Delay, deny, and hope the issue disappears and the parents will tire of advocating.</i></p>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 76 of 84

APPENDIX C

Chronologies: Students D-F

Student D

April 14,2020	<ul style="list-style-type: none">• LEA emailed parent to advise of upcoming contact to discuss student's TLP.
April 24,2020	<ul style="list-style-type: none">• LEA emailed parent to seek <i>thoughts and /or concerns regarding [Student's] needs</i> during extended closure.
April 27, 2020	<ul style="list-style-type: none">• Parent responded: <i>[Student] needs everything in [Student's] IEPs. However, given COVID, I understand the need for flexibility. I answered your question and advised you of what [Student] needs—[Student's] full IEP.</i>
April 28, 2020	<ul style="list-style-type: none">• Via email, LEA advised parent that the “goal through TLP is to provide [Student] with access to instruction and move forward in [Student's] learning.”• LEA asked parent to identify “specific areas of concern...and...any specific accommodations that you believe are most important for [Student] during distance learning?”• Via email, Parent (i) reiterated need for <i>everything in all of [Student's] IEP</i>; (ii) <i>changing [Student's] IEP due to COVID-related issues is illegal</i>; (iii) <i>perhaps an outside organization...[can] provide what is needed....</i>
April 30, 2020	<ul style="list-style-type: none">• LEA emailed parent draft TLP.¹¹⁸• Via email, parent asked LEA what it was <i>unable to do</i>, and noted that <i>I underst[and] some things are impossible—such as [Student's] teachers physically signing [Student's] planner.</i>
May 4, 2020	<ul style="list-style-type: none">• LEA and parent exchanged email correspondence regarding (i) service and office hours; (ii) draft TLP.• Via email, parent stated: <i>I did not consent to this TLP. No one contacted me to schedule a meeting to discuss it....Instead, [LEA] developed a TLP and implemented it. No one provided a PWN before changing...services and placement.</i>• LEA advised parent: “if you do not wish for the proposed TLP service to be provided, you may decline via email reply.”

¹¹⁸ The TLP included three hours weekly of services (45 minutes each in history, English, and chemistry in general education setting; 45 minutes in special education setting) and four of student's 15+ IEP accommodations.

The record indicates that this parent has not provided consent to IEP goals or services for this high school student in 18 months, but has provided partial consent only for accommodations. Further, the last-agreed-upon services included specialized reading instruction, which this parent has refused to permit the student to access. The record indicates that, between May 2019 and June 2, 2020, LEA has conducted 16 IEP meetings to address this student's services.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 77 of 84

May 6, 2020	• Parent emailed LEA: <i>Please implement [Student's] IEP in full.</i>
May 7, 2020	• Via email, LEA advised: "If you would like to add the TLP to the agenda for Monday's [IEP] meeting, please let me know."
May 8, 2020	• ODRAS received complaint submission.

Student E¹¹⁹

April 8,2020	<ul style="list-style-type: none">• LEA emailed contacted parents to advise of April 13, 2020, "Blackboard Collaborate Session [BBC]."• Parent declined participation in BBC as Student E <i>has virtual gymnastics at this time and is unable to attend this suggested session.</i>
April 13,2020	<ul style="list-style-type: none">• Parent emailed LEA advising of failures to implement IEP accommodations (printed notes) during initiation of distance learning. Parent advised that Student E has been <i>shown how to log in to google [sic] classrooms by [Student's] parents. [Student's parents] remain essential personnel and are not at home to insure [sic] [Student] logs onto [LEA] classrooms at the appropriate time or place. [Student's] adult [sibling] is home to insure [sic] [Student's] safety but is responsible for [sibling's] own classes and cannot insure [sic] attendance for [LEA] online work....Neither [Student] nor us [sic] as parents can be held accountable for [Student's] work or attendance at [LEA's] new online school.</i>
April 15, 2020	<ul style="list-style-type: none">• Parent emailed LEA: <i>I will be happy to have a conference call with you if [LEA] refuses to use email as a legal way to correspond with parents. I cannot assure you that [Student] will attend any online [LEA] classes unless [LEA] is able to provide a Free [sic] and appropriate public education....At this time [LEA] is not providing any of those services contained in [Student's] IEP....If you would like to discuss how [LEA] is going to provide those services...I am happy to schedule a conference call if you are unable to document this in an email. If you would like a conference call for any other reason, please be kind enough not to waste my time....</i>
April 16, 2020	<ul style="list-style-type: none">• LEA speech therapist emailed parent following LEA spring break: <i>Now that school is back in session, I am excited to be embarking on a new adventure in distance learning. Each week, I will be sending home one or two activities. These activities can be worked on anytime and they are not due back to me. Anytime you are having a challenging week, it is fine to focus on other areas of learning or save the activity for a later time. If your student enjoys a particular activity, feel free to use it again. Repetition and</i>

¹¹⁹ Student E is a fourth grader with an IEP for a specific learning disability. Student E's (apparently initial and only) IEP, signed on January 16, 2020, provided (i) 7.5 hours and 3.25 hours of specialized instruction weekly in the general and special education settings, respectively; (ii) 2.0 hours of speech/language monthly; and (iii) .50 hours monthly for assistive technology.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 78 of 84

	<p><i>repetitive practice enhance learning! ... If you have any questions about the activities and information I have sent, please let me know. ...</i></p> <ul style="list-style-type: none">• Parent responded: <i>This sounds like you intend for me to give [Student] speech therapy. I am happy to provide [Student] with the activities but I am not a Speech therapist and not qualified to give [Student] the services outlined in [Student]'s IEP and agreed upon by [LEA] as a free and appropriate public education. No where [sic] in the IEP does it say the school will provide me worksheets and activities and require me to do all the work. [Student] also has plenty of busy work and does not need more worksheets or suggested activities. [Student] needs speech therapy from a qualified individual.</i> <p><i>If you would like to schedule a time for you to give [Student] [the] agreed upon IEP hours[,] please let me know your availability. I know [Student's] private speech therapist is providing [Student] individual appropriate services remotely without requiring me to be [Student's] speech therapist.</i></p>
April 22, 2020	<ul style="list-style-type: none">• Via email, LEA advised parent that <i>we prefer a conference call to gain in put on the temporary learning plan but we can use the information provided in your email. During the state mandated closure, we will not be implementing a full IEP. The Temporary Learning Plan is developed to share what we are able to provide in the distance format. [LEA] is recommending Lexia for students who were using Just Words before the closure [LEA provided information regarding access].</i>• Parent responded: <i>This is the first time you've mentioned putting together a Temporary Learning Plan for [Student]. I have read that this plan needs to be put together in conjunction with the parent. It seems liken the school has already developed and decided what, when and how [Student] will receive services. How am I allowed to be involved other than the teachers ordering me on how to deliver services?....</i> <p><i>My questions are as follows: What is your plan to help deliver special services for children with parents that are still working full time during this crisis? [Student] is a child with dyslexia. Just Words is by the [sic] own developers not appropriate for dyslexic children. I requested in our last IEP an appropriate program for a dyslexic child be used with [Student]. [LEA] has failed to provide prior written notice on why an appropriate program for a dyslexic child is not being provided for my child.</i></p> <p><i>Is Lexia a multi[-]sensory program for dyslexic children? As an outside program[,] is [LEA] guaranteeing my child's privacy and safety as they would while using a program within the school? Is this program individualized to [Student]'s level of learning? Who will be reviewing the data to show if [Student] is making progress or not on Lexia and that [LEA] is attempting to provide. [sic] Fair [sic] and equitable learning environment for my dyslexic child simply by providing this one program on Blackboard? Do you have plans to work on any other of [Student's] goals to prevent regression? Any and all information on this Temporary Learning Plan that</i></p>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 79 of 84

	<p><i>you have developed without me would be greatly appreciated, especially since I am the one expected to implement it.</i></p> <p><i>I was contacted by the [Student]'s speech therapist and given worksheets with directions to provide [Student][Student's] own speech therapy. I wrote back explaining that I was not qualified to implement such a program as I am not a speech therapist I also explained that [Student] had plenty of worksheets and did not need the additional busy work. ...</i></p> <p><i>While I understand that [LEA speech therapist] is at home taking care of [speech therapist's] own children, it does not negate the fact that [LEA] is continuing to pay [LEA speech therapist] to work full time. Perhaps we could get creative and do online after regular school hours so [LEA speech therapist's spouse] can watch [the] children while [LEA speech therapist] works online? That would also be helpful to [Student] as both ... parents are continuing to work full timeout [sic] of the house. Perhaps another Speech Therapist without children at home can conduct [Student]'s one on one speech therapy? ... I am not open to [LEA] just slapping together inappropriate One[-]size[-]fits[-]all worksheets, programs, and dictates to the parent teachers without first looking at my child's needs, my child's current learning environment and parent partner[']s abilities. I look forward to hearing your answers so that we all can develop [Student]'s Temporary Learning Plan together.</i></p>
April 23, 2020	<ul style="list-style-type: none">• LEA emailed parent(s) regarding consent for speech-language therapy to use "virtual platform."• LEA emailed parents(s) regarding speech-language services during school closure.
April 24, 2020	<ul style="list-style-type: none">• LEA emailed parent: <i>I wanted to let you know that a Temporary Learning Plan has not been created yet. I was just reaching out to speak to you last week on the phone to get your feedback but I understand you prefer email and so we can have the discussion this way.</i> LEA posed specific questions regarding, inter alia, Student's access to technology, ability to engage independently, and parent's priorities regarding Student's goals and accommodations.
April 26, 2020	<ul style="list-style-type: none">• Parent responded to LEA: <i>I'm not sure why you would be reaching out to me by phone for a meeting considering I already told you I would like email two weeks ago and because I have spent the better part of 2 years with [School], [LEA,] and VDOE asking for email. I have also established with you that both my [spouse] and I are essential personnel and working full time as well as providing both private therapy through outside providers and at[-]home individualized private instruction to [Student].</i><i>I have already advised you via email that [Student] is in need of his accommodations that [LEA] has the ability to provide via distance learning such as teacher notes prior to the online sessions.</i><i>I have already advised you that the mailed curriculum is not appropriate for a dyslexic child an [sic] is not individual [sic] as required by [Student]'s</i>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 80 of 84

IEP.... I have already shown you during the last IEP meeting that Just Words is not appropriate for a dyslexic child like [Student]....

I have specifically asked for information on your proposed Lexia program that you said in your last email was being proposed for children on Just Words (again not appropriate for a dyslexic child like [Student])....

I have specifically asked when [LEA speech therapist] will be able to provide the in[-]person one[-]on[-]one speech therapy that [LEA speech therapist] was providing [Student] in school. I understand that [LEA speech therapist] is at home with [LEA speech therapist's] children and have proposed being creative and giving the therapy during a later time when [LEA speech therapist] may have help covering [LEA speech therapist's] childcare issue.... I AM NOT A SPEECH THERAPIST AND CANNOT PROVIDE MY CHILD APPROPRIATE SERVICES.

I have listened to [LEA's] presentation ... that Temporary Learning Plan is supposed to put into place those items that [LEA] is not able to provide via distance learning. So far I have not been advised exactly which of those items in [Student's] IEP cannot be provided by [LEA] online. It seems reasonable that [LEA] should be able to provide an [i]ndividual learning program for a dyslexic child via the web to pick up exactly where [Student] left off at school. It seems reasonable that [Student] should receive all [Student's] accommodations including such items as prewritten and mailed notes prior to the distance learning modules, extra time to complete the modules, [Student's] special education teacher hours to go over those lessons individually just as [Student] has within the classroom. I do understand that because some of [Student's] services were provided with no more than 4 students [, Student's] 2 hours in the classroom and 45 minutes phonetic learning programs may have to be divided by 4 for privacy issues since I do not plan to waive my child's privacy rights and have [Student's] name flashed on screen for all to see.

I DO NOT UNDERSTAND WHY IF SPECIAL EDUCATION TEACHERS ARE STILL GETTING PAID TO WORK FULL TIME THEY ARE NOT PROVIDING AT LEAST SOME INDIVIDUAL SERVICES TO CHILDREN AS THEY DO EVERY DAY IN SCHOOL [all caps in original]. I understand that they may have had to have time to figure out how to provide these services, but special education parents have been waiting 4 weeks for [LEA] to figure this out. What has [LEA] been doing with this time?

Parent also addressed LEA's questions regarding the TLP:

I haven't tried [to determine whether Student can engage independently] because [LEA] has not attempted to provide any services for my child as outline [sic] in [Student's] IEP...

I can tell [Student] how to get on the computer but I am not qualified to be a dyslexic education [teacher] nor speech pathologist. [LEA] special education [sic] teachers and speech pathologists must still be willing to do their jobs.... I am not willing to use [LEA's] inappropriate, non[-]individualistic and poorly created mailing curriculum if it is just busy work. That is not appropriate, can be detrimental to my child and will only

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 81 of 84

	<p><i>place my child further behind in [Student's] reading, writing, and hearing skills....</i></p> <p><i>All [goals and accommodations] are important. [The biggest priority is] that my child receive a free and appropriate education at equal value to the free and appropriate education that is now being offered to regular students at [LEA]....</i></p> <p><i>I would like my child to receive ... individual [speech] therapy just like [Student] was receiving in school. I would like ...teachers to reinforce the correct neural pathways by having him pronounce his /th/ correctly and not reinforce inaccurate mispronunciations....</i></p> <ul style="list-style-type: none">• Parent emailed LEA Speech Therapist: <i>You still have not answered me regarding scheduling times for individual therapy as was being provided to [Student] in school. I know [Student] is being provided this by [Student's] private therapist. Does this consent mean that you intend to start providing these individual sessions online? This waiver seems to indicate that I am consenting to waive my child's right to privacy? [sic] Why do I need to sign away my child's privacy when you're conducting one on one sessions via an [LEA] web application?</i> <p><i>This also seems like a group email? [sic]Are you requiring this of all speech parents. [sic] Can you please explain what you propose to do to provide [Student the] services as outline [sic] in [Student's] IEP. [LEA staff] testified to the ... school board last week that only those services that cannot [sic] be provided via distance learning will need to be outline [sic] in [Student's] FTP [sic]. No one has told me what you can't provide and why you can't provide them via distance learning. [LEA staff] has also indicated that Special Education Services will continue to be individual in nature as is required by law.</i></p>
April 27, 2020	<ul style="list-style-type: none">• Via email, LEA Speech Therapist advised parent regarding speech sessions to be included in Student's TLP: <i>If you do not agree to the proposed plan, the team can schedule an IEP addendum meeting.</i>
April 28, 2020	<ul style="list-style-type: none">• Parent responded to LEA Speech Therapist: <i>Is there a reason why [Student] is not receiving his full number of hours of one[-]on[-]one therapy [Student] would have received in school.[sic] They were one[-]on[-]one therapy, [sic] these services can be provided online through video conferencing and you should already have this time scheduled into a normal day/week? [sic] Please provide justification for not providing what is in [Student's] IEP. I eagerly await [LEA] to present their [sic] proposed FTP [sic] plan so we all can have a meaningful conversation and collaborate together as ... presented to the board that would happen.</i>
April 29, 2020	<ul style="list-style-type: none">• LEA Speech Therapist emailed parent: <i>We would be happy to schedule an IEP addendum [meeting] to discuss how much speech-language services will be provided during distance learning. Please let me know if this [is] something you would like to schedule...</i>

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 82 of 84

	<ul style="list-style-type: none">• Parent responded: <i>We don't need a meeting. Simple question: Why isn't [Student] receiving all of [Student's] services?</i>
April 30, 2020	<ul style="list-style-type: none">• LEA emailed parent a copy of Student's TLP: <i>We have read and considered your input in the creation of theTLP...</i>¹²⁰
May 1, 2020	<ul style="list-style-type: none">• Parent emailed LEA Speech Therapist: <i>I am still awaiting your answer on why [Student] is not receiving [Student's] one[-]on[-]one hours with you as documented in [Student's] IEP. We continue to document that these services are one[-]on[-]one and can be provided via teleconferencing as they are to [sic] many other students within [LEA]. We eagerly await your response so that we can set up a mutually agreeable time for [Student's] services to be provided as documented in [Student's] IEP.</i>• LEA Speech Therapist responded: <i>Due to the closure of schools, it is not possible to provide the same level of IEP speech services to students in a distance learning environment....[T]he TLP does not take the place of [Student's] IEP and it does not contain the same service time provided in [Student's] IEP. It does identify the continuity of learning services and consultation that will be provided...between now and the end of the school year....</i> LEA Speech Therapist again advised regarding the need for parent's consent to initiate speech services via virtual platform <i>to comply with HIPAA and VA health profession licensure laws associated with virtual multimedia platforms.</i>
May 8, 2020	<ul style="list-style-type: none">• LEA provided Student's third quarter progress report and offered parent assistance <i>with [Student] participating in distance learning.</i>• ODRAS received complaint submission.
May 14, 2020	<ul style="list-style-type: none">• LEA Speech Therapist again emailed parent regarding need for parent's informed consent for Student E's participation in "virtual multimedia platform" learning.
May 17, 2020	<ul style="list-style-type: none">• Parent emailed LEA Speech Therapist: (i) <i>Is anyone from Fairfax County Public Schools available to set up [Student's LEA] computer in order to be able to attend your virtual therapy sessions?</i> (ii) <i>Can you give the exact HIPAA and VA Health Professionals licensure laws that are involved with the requirement of signing the [LEA] waiver of privacy rights? I would like to read through them so that I can be "informed" prior to signing any informed consent;</i> (iii) <i>Can you give me a copy of the privacy protocol and education that [LEA] is requiring of you prior to using virtual therapy meetings? I would like to be assured that the below waiver does not indemnify you or any other staff member that fails to follow the [LEA], VA and US privacy protocol as contained in law;</i> and (iv) <i>Can you forward me the [LEA] information on the platform you wish to conduct virtual Speech Therapy? I would like to be assured that [LEA] has done their [sic] due</i>

¹²⁰ Student E's TLP provided for 60 minutes of "LD services" weekly and 20 minutes of speech/language services twice weekly as well as several accommodations.

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 83 of 84

	<i>diligence in researching the platform you will be using in order to mitigate any foreseeable student privacy threats while using your chosen platform.</i>
May 19, 2020	<ul style="list-style-type: none">• LEA Speech Therapist advised parent regarding licensure requirements governing confidentiality and links addressing, inter alia, <i>approved tools for distance learning</i>.• Parent responded: <i>You have not answered all my questions regarding privacy. I continue to ask what sort of training have YOU received from [LEA]. I would like to see how [LEA's] documents on the training all the teachers have been given....Please respond as soon as possible as [Student] has not received any IEP services since school was canceled in March. I do not want him to regress any further.</i>

Student F¹²¹

April 8, 2020	<ul style="list-style-type: none">• Student's case manager contacted parents regarding access to accommodations during distance learning generally.
April 27, 2020	<ul style="list-style-type: none">• LEA advised emailed parents, proposing April 29, 2020, conference call to discuss development of TLP.
May 1, 2020	<ul style="list-style-type: none">• IEP meeting conducted; no proposal completed.¹²²• Draft IEP (May 1, 2020, PLOP entry) did not cite TLP.

¹²¹ The record indicates that (i) Student F is a ninth grader eligible for special education services under the OHI and SLD categories; and (ii) Student F's parents have not consented to an IEP since November 17, 2017. The November 2017 IEP (addendum)—completed when Student was in sixth grade—included goals addressing writing, self-advocacy, and attention/organization and five hours of special education services weekly in a general education setting. An April 2, 2019, Letter of Findings found LEA in compliance regarding, inter alia, IEP development, review, and revision allegations: *The underlying issue in this complaint is that Parent disagreed with the proposed delivery of some of Student's services in a special education setting and instead requested that all specialized instruction for reading and executive function skills be provided in only the general education setting—a model that LEA has indicated is inherently unworkable, as Student's receipt of specialized instruction would have essentially precluded simultaneous access to ongoing instruction in the general education classroom. A disagreement, however, is not a violation of a special education regulation.*

In a January 14, 2020, decision, a Virginia due process hearing officer found that *[w]hile the current IEP for Student appears inadequate[,] this is not the fault of [LEA] as the Parents have refused the multitude of new and revised offers made by [LEA]. The Parents will not even agree to a partial change to Student's IEP, forcing [Student] to receive fewer services than are recommended by [LEA] experts. The Parents have given their input to [LEA] and made numerous demands which [LEA] simply does not agree with. Despite the low level of services called for under the current IEP, Student continues to progress in the school system and is deriving educational benefit. ... The Parents have failed to meet their burden to prove that [LEA] has failed to develop a proper IEP for Student. For the above stated reasons it is found that the Complainants, Parents, have failed to meet their burden of proof to establish that [LEA] denied Student a free appropriate public education. It is further found that [LEA] is the prevailing party.*

Our records indicate that Student F's parents have filed an appeal of the due process decision in federal district court.

¹²² The May 1, 2020, PLOP entry indicates that Complainant/Parent participated in the meeting as a "family friend."

LETTER OF FINDINGS

Dr. Jane Strong, Director, Office of Special Education Procedural Support

Ms. Dawn Schaefer, Coordinator of Due Process and Eligibility

Ms. Callie Oettinger, Complainant/Parent

Parents 1-4

August 24, 2020

Page 84 of 84

May 5, 2020	<ul style="list-style-type: none">• LEA emailed draft TLP¹²³ to parents.• LEA and parents discussed TLP via telephone conference.¹²⁴
May 8, 2020	<ul style="list-style-type: none">• ODRAS received complaint submission.
May 13, 2020	<ul style="list-style-type: none">• LEA emailed parents: <i>I wanted to follow up with you regarding your review of the temporary learning plan. I've attached another copy to this email. Please let me know if you provide consent or if you would like to discuss it further.</i>

¹²³ The draft TLP included (i) goals addressing writing, organization, and advocacy; and (ii) three hours of services monthly to address learning disability.

¹²⁴ LEA's response included meeting notes documenting LEA's responses to parents' questions.