

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

NOTICE OF COMPLAINT

School Division Fairfax County Public Schools Dr. Michelle Boyd, Assistant Superintendent, Special Services Ms. Dawn Schaefer, Director, Special Education Procedural Support 8270 Willow Oaks Corporate Drive—Second Floor Fairfax, Virginia 22031 mboyd@fcps.edu DMSchaefer@fcps.edu	Parent Systemic Complaint
	Student Systemic Complaint
Date Complaint Received October 6, 2022	Complainant (if other than parent) Callie Oettinger REDACTED
Notice of Complaint Date October 18, 2022	Findings Due Date December 5, 2022
Early Resolution Date/ LEA Response Due Date November 1, 2022	Additional Information Due Date November 9, 2022
Complaints Department Phone # (804) 225-2013	

The Office of Dispute Resolution and Administrative Services in the Virginia Department of Education (VDOE) has received a complaint alleging that Fairfax County Public Schools (FCPS or “LEA”) has violated federal and state laws and regulations governing special education programs. This notice of complaint gives official notice to all parties that a formal written complaint has been filed with our office and confirms that it is sufficient pursuant to federal special education regulations.

APPLICABLE REGULATIONS:

This office will base its investigation and findings on the reauthorization of the federal Individuals with Disabilities Education Improvement Act, December 3, 2004 (IDEA '04), its implementing federal regulations, adopted October 13, 2006 (the 2006 implementing regulations), and the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, effective on July 7, 2009, and were reissued on January 25, 2010, and on July 29, 2015, (the Virginia Regulations). The Virginia Regulations are available online at https://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf.

Authority to investigate systemic violation. Complainant has requested that the submission “be investigated as a systemic complaint.” In its *Analysis of Comments and Changes* for the 2006

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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...”¹ 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...”² 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 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.”³

1. Individualized Education Program – Implementation.

Complainant has alleged that the LEA is failing to provide services to students with disabilities due to scheduling the administration of PSAT and SAT testing on a school day, resulting in a denial of services to students with disabilities. Specifically, Parent has alleged that:

¹ 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*].

² *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).

³ 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).

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- FCPS administered the SAT and PSAT to students on October 12, 2022.
- “FCPS told all freshman and anyone else not taking the SAT and PSAT to stay home.”
- “FCPS said CAT B high school students will be in school that day, but there will be a two-hour early release. Elementary and Middle School students in FCPS will have a full day of school on October 12, 2022.”
- Freshman and all others not taking the test will not receive services....”
- “All students taking the SAT or PSAT, who have IEPs, will not receive services because 1) they’ll be testing; 2) they’ll have an abbreviated schedule (leaving after the end of the exam) – even though all elementary school and middle school students will be on a regular schedule, and hence should be receiving all services — and 3) they might be testing on a second day if they have an accommodation for 2-day testing.
- “All students taking the SAT or PSAT, who have IEPs, and who will require two-day testing accommodations, will not receive services because 1) they’ll be testing, 2) they’ll have an abbreviated schedule October 12, and 3) they will have testing on a second day – even though all elementary school and middle school students will be on a regular schedule, and hence should be receiving all services.”
- “GEN ED students have the option of taking the SAT on the weekends at different facilities, by signing up for alternative dates with College Board.”
- “For SPED students who require two-day accommodations, they must take the SAT at school, since College Board facilities don’t provide the two-day testing accommodation.”

Applicable Regulations:

Free Appropriate Public Education (FAPE) Generally

- The 2006 implementing regulations for the Individuals with Disabilities Education Improvement Act of 2004, at 34 C.F.R. § 300.17, define a free appropriate public education (FAPE) to mean special education and related services that, among other things, are provided in conformity with an IEP that meets the applicable regulatory requirements.
- The 2006 implementing regulations, at 34 C.F.R. § 300.101 and the Virginia Regulations, at 8 VAC 20-81-100, mandate that all individuals with disabilities, from age 2 to 21 inclusive,

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residing in Virginia, shall have available a free and appropriate public education (FAPE).

- In its 2017 decision in *Andrew F. v. Douglas Co. Sch. Dist. Re-1*, the U.S. Supreme Court revisited its 1982 ruling in *Board of Ed. of Hendrick Hudson Central Sch. Dist., Westchester Cty. v. Rowley*,⁴ both addressing the determination of FAPE.
 - In *Andrew*, the U.S. Supreme Court advised, among other things: *To meet its substantive obligation under the IDEA, a school must offer an IEP **reasonably calculated** to enable a child to make **progress appropriate in light of the child's circumstances** [emphases added]. Significantly, the Court further stated: *The “reasonably calculated” qualification reflects a recognition that **crafting an appropriate program of education requires a prospective judgment** by school officials.... The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child’s parents or guardians.... Any review of an IEP must appreciate that **the question is whether the IEP is reasonable, not whether the court regards it as ideal** [emphases added].*⁵*

IEP – Implementation

- The 2006 implementing regulations, at 34 C.F.R. § 300.323, and the Virginia Regulations, at 8 VAC 20-81-110.B.3, state, in part, that the school division must provide special education and related services to a child with a disability in accordance with the child’s IEP.
- The IDEA 2006 implementing regulations, at 34 C.F.R. § 300.323(c), and the Virginia Regulations, at 8 VAC 20-81-110.B.2, require each local education agency to ensure that an IEP is implemented as soon as possible following parental consent to the IEP.

General

- The Code of Virginia, at Section 22.1-98.B, provides that: “the length of every school’s term in every school division shall be at least 180 teaching days or 990 teaching hours in any school year.”

OTHER ISSUES:

Discrimination. The Complainant alleges that the actions recited constitute discrimination

⁴ 458 U.S. 176; 102 S.Ct. 3034 (1982).

⁵ *Andrew F. v. Douglas Co. Sch. Dist. Re-1*, 580 U.S. ___, 137 S. Ct. 988 (2017).

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against students with disabilities. Our office has authority only to address issues arising under IDEA and its related federal and state regulations. However, we note that, 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**

EARLY RESOLUTION REQUIREMENTS:

Our complaint system has an Early Resolution System that supports both parties working cooperatively to resolve this matter prior to the due date for the school division's response without formal investigation by our office. We believe early resolution will benefit both parties and that it is in the best interest of students. Early resolution may include use of the statewide special education mediation system. We have enclosed a brochure for the complainant that describes mediation that is voluntary on the part of both parties. Both parties are asked to keep our office informed of changes in the status of this complaint.

If this complaint is resolved within the 10-day timeline, the school division must furnish a written response, including the following:

1. A record of contacts with the complainant;
2. A statement of the proposed resolution;
3. A signed statement indicating that the complainant has agreed to the resolution and the details of the resolution.

If the complaint is not resolved, the school division must furnish a written response, including all requested documentation in the areas noted below, by the designated due date, as indicated above. The school division must simultaneously provide a copy of the response, along with all submitted documentation, to the complainant if the complaint was filed by the parent or parents of the student, a student who has reached the age of majority, or their attorney. If the complaint was filed by another individual, the school division must provide a copy of the response and documentation to

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the complainant only if a release signed by the parent or parents or the student who has reached the age of majority has been provided.

For technical assistance in resolving the complaint, please contact your VDOE Regional School Division Technical Assistance Specialist or one of the VDOE Training and Technical Assistance Centers (T/TACs).

INFORMATION/DOCUMENTATION REQUESTED:

- [] A **detailed chronology of events** related to these allegations, including any related documentation;
- [] A **narrative statement** regarding each allegation, including a specific statement indicating **whether LEA complied with or violated** regulatory requirements, and any supporting documentation or related materials outlining LEA's position regarding each allegation, documenting, among other things, LEA's compliance or noncompliance with regard to the issues set forth above. Specifically, LEA should address whether students with disabilities who missed services due to the administration of the PSAT and SAT have makeup services made available, as well as the effect of the foregoing event on the number of instructional hours provided in affected schools.
- [] Any additional statements, along with any supporting documentation, that LEA deems appropriate for addressing the complaint allegations or, if appropriate, to support the actions taken by LEA in regards to these allegations.

TIMELINES FOR RESPONSE AND ADDITIONAL INFORMATION:

School Division Response Timeline

Please mail all documentation to our office, so that it is received by **November 1, 2022** at the following address:

Office of Dispute Resolution and Administrative Services
Virginia Department of Education
P. O. Box 2120
Richmond, Virginia 23218

ODRAS retains discretion to base its review of LEA's materials on the documentation LEA submitted by the response due date.

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Additional Information that may be submitted by either party

The complainant and the school division may submit *additional information*, either orally, electronically, by facsimile, or in writing, about the allegations in this complaint. This information must be received by the Office of Dispute Resolution and Administrative Services no later than **November 9, 2022**.

The parties are instructed to copy all response and additional information submissions to each other. Information and/or materials submitted after this date will not be considered by this office, unless specifically requested by the compliance specialist for the purposes of clarification.

Attachments - Complaint Resolution Procedures
Mediation Brochure