

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

**NOTICE OF COMPLAINT**

<p><b>School Division</b> Fairfax County Public Schools Dr. Michelle Boyd, Assistant Superintendent, Special Services Ms. Dawn Schaefer, Acting Director, Special Education Procedural Support 8270 Willow Oaks Corporate Drive—Second Floor Fairfax, Virginia 22031 <a href="mailto:mboyd@fcps.edu">mboyd@fcps.edu</a> <a href="mailto:DMSchaefer@fcps.edu">DMSchaefer@fcps.edu</a></p>	<p><b>Parent</b> REDACTED</p> <hr/> <p><b>Adult Student</b> REDACTED</p>
<p><b>Date Complaint Received</b> September 22, 2022</p>	<p><b>Complainant (if other than parent)</b> N/A</p>
<p><b>Notice of Complaint Date</b> October 3, 2022</p>	<p><b>Findings Due Date</b> November 21, 2022</p>
<p><b>Early Resolution Date/ LEA Response Due Date</b> October 20, 2022</p>	<p><b>Additional Information Due Date</b> October 27, 2022</p>
<p><b>Complaints Department Phone # (804) 225-2013</b></p>	

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](https://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf).



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### **PRELIMINARY ISSUE: Adult Student; Release Authorization**

Our records indicated that Adult Student reached age 18 in December 2021. Special education regulations (34 C.F.R. § 300.520; 8 VAC 20-81-180) provide that all rights accorded to the parent(s) under IDEA '04 transfer to the student upon reaching the age of majority (age 18). **An adult student is presumed to be a competent adult unless certain specific actions have occurred**, such as the adult student (i) has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and a representative has been appointed by the court to make decisions for the student; (ii) has designated, in writing, by power of attorney or similar legal document, another competent adult to be the student's agent to receive notices and to participate in meetings and all other procedures related to the student's educational program; (iii) is certified, according to the specific procedures, as unable to provide informed consent; (iv) based on certification by written order from a judge of competent jurisdiction, has been admitted to a facility for the training, treatment and habilitation of persons with intellectual disabilities.

The Virginia Regulations (8 VAC 20-81-200.D.1.c) specify that if the complaint is filed by an individual other than the child's parent(s) (here, **Adult Student**) 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 (again, **Adult Student**) 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) (again, in this case, **Adult Student**) and the school division, unless the Complainant/Parent has obtained and filed the appropriate consent for release of information.

Complainant has provided this office with a copy of a durable power of attorney, signed by Adult Student on December 13, 2021, authorizing Complainant to, among other things, *[i]nstitute...complaints with the Department of Education....* Accordingly, this office is authorized to provide Complainant with a copy of this Notice of Complaint, to discuss the complaint with Complainant, and to provide Complainant with any additional information regarding our investigation into the complaint allegations.

### **SCOPE OF INVESTIGATION:**

Parent's allegations in the instant complaint arise from her position that Student is entitled to recovery and/or compensatory services because of violations occurring before Student's graduation on June 6, 2022, with an advanced studies diploma. As outlined below, Parent alleges that the LEA has predetermined that it is not required to provide such services because Student's eligibility under IDEA ended with his graduation. However, OSEP has indicated that a student's right to compensatory education is independent of any current right to FAPE. In other words, the



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student's graduation does not automatically relieve the district of its responsibility to provide compensatory education and related services for previous FAPE violations. *Letter to Riffel*, [33 IDELR 188](#) (OSEP 2000); and *Letter to Riffel*, [34 IDELR 292](#) (OSEP 2000).

### **ISSUE(S) AND REGULATIONS:**

#### **1. IEP – Development, Review, and Revision. Free Appropriate Public Education.**

Complainant alleges that LEA violated state and federal regulations by predetermining that compensatory services/recovery services are not owed to the Student.

More specifically, the Parent alleges that:

- "... FCPS is at fault for predetermination – stating that “because REDACTED graduated from high school with an advanced studies diploma in June 2022, FCPS has fulfilled its responsibility to provide REDACTED with a free and appropriate education.” Although FCPS has offered to have a meeting, PSL Carolyn Edner continues to make it clear in her statement that FCPS has predetermined that ‘FCPS has fulfilled its responsibility to provide him with a free and appropriate education.’”

#### 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, 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*,<sup>1</sup> both addressing the determination of FAPE.

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<sup>1</sup> 458 U.S. 176; 102 S.Ct. 3034 (1982).

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- In *Endrew*, 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].<sup>2</sup>**

### *IEP – Development, Review and Revision*

- 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, residing in Virginia, shall have available a free and appropriate public education (FAPE). Further, the 2006 implementing regulations, at 34 C.F.R. § 300.17, and the Virginia Regulations, at 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.
  - Special education regulations (8 VAC 20-81-10) define *special education* as ***specially designed instruction*** [emphasis added] *at no cost to the parent, to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, in institutions, and in other settings and instruction in physical education.*
    - These regulations specify that ***specially designed instruction*** means *adapting, as appropriate to the needs of an eligible child ..., the content, methodology, or delivery of instruction* to (i) *address the unique needs of the child that result from the child’s disability*; and (ii) *ensure access of the child to the general curriculum, so that the child can meet the educational standards that apply to all children within the school division.*
- 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, the Virginia Regulations, at 8 VAC 20-110.B.6, set forth the parent’s right to ask for revisions of the child’s IEP.

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<sup>2</sup> *Endrew F. v. Douglas Co. Sch. Dist. Re-1*, 580 U.S. \_\_\_, 137 S. Ct. 988 (2017).



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- The 2006 implementing regulations, at 34 C.F.R. § 300.324, and the Virginia Regulations, at 8 VAC 20-81-110, specify requirements for the development, review, and revision of a student's IEP.
- The 2006 implementing regulations, at 34 C.F.R. § 300.324(b), and the Virginia Regulations, at 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, any lack of expected progress toward the annual goals and in the general curriculum (if appropriate), or other matters.
  - The Virginia Regulations, at 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.

### **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 (such as **signed teacher statements**, IEP meeting recordings (if any), **PW**Ns, email correspondence, and other documents) 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.
- [ ] A copy of any correspondence and records of any other communications between LEA and Complainant/Parent and/or Adult Student regarding each issue and complaint allegation; and
- [ ] 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 **October 20, 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 **October 27, 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