

June 23, 2023

Dr. Beth Teigen, Superintendent  
Dr. Lynn Clayton-Prince, Assistant Superintendent for Special Education/Equity and Diversity  
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Dr. Teigen and Dr. Clayton-Prince,

The Virginia Department of Education has recently been advised of delays in resolving the dispute between Powhatan County Public Schools' (PCPS) and the provision of a free appropriate public education for **REDACTED**.

On June 27, 2022, the Office of Dispute Resolution and Administrative Services (ODRAS) received the Implementation Plan for the May 13, 2022, Hearing Officer decision in reference to Case 22-094. The Hearing Officer decision was in favor of the LEA and ordered placement in a private day school. The Implementation Plan indicated that there was a parentally signed IEP provided to PCPS on May 13, 2022.

While VDOE, as did the Hearing Officer in the subsequent due process case decision of September 11, 2022, recognizes the process has been delayed by the return of a consented IEP or providing additional consents to investigate additional potential placements, the school division's responsibilities in this case, are clear and unambiguous, and further delay in implementation is unacceptable.

The Virginia Regulations, at 8 VAC 20-81-30.B, states:

"Each local school division shall ensure that all children with disabilities aged two to 21, inclusive, residing in that school division have a right to a free and appropriate public education."

In addition, while 8 VAC 20-81-250.F.1.a and 3 provide that funds are available through the Comprehensive Services Act (now known as the Children's Services Act) to support costs of private day placement, and that, under the Act, certain requirements must be met to access these funds, there is no requirement in the Code of Virginia that restricts the payment source for public placements in private day schools to these funds. In fact, such a requirement would be contrary to federal law, as IDEA simply does not allow the provision of FAPE to be conditioned on a funding source. While we recognize the obvious fiscal burden placed on school divisions when CSA funds are not an option to be accessed, absent judicial order or legislative relief, we have no option other than to demand that the placement be completed, as (i) hearing officer decision has ruled that the placement in private day setting is appropriate; (ii) the school division has, in essence, conceded that the parent's preferred placement would meet the student's needs; and (iii) the parent has consented to an IEP for the placement.

Documentation that placement at a private day school and a contract between the LEA and the private day school has been agreed upon should be provided to Sandra Ramsey, Compliance and Corrective Action Plan Specialist, at [Sandra.Ramsey@doe.virginia.gov](mailto:Sandra.Ramsey@doe.virginia.gov).

In the event that PCPS fails to come into compliance with the CAP within fourteen days of this letter, VDOE will forward the matter to the Superintendent of Public Instruction for further action.