



COMMONWEALTH of VIRGINIA

Lisa Coons, Ed.D.
Superintendent of Public Instruction

DEPARTMENT OF EDUCATION
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August 28, 2023

Dr. Beth Teigen, Superintendent
Powhatan County Public Schools
Pocahontas Landmark Center
4290 Anderson Highway
Powhatan, Virginia 23139

Beth.Teigen@powhatan.k12.va.us

Dear Dr. Teigen:

The Virginia Department of Education's (VDOE's) Department of Special Populations has forwarded communication regarding the below matter to my office for further action as detailed in the letter from that Department dated June 23, 2023. I have also reviewed the response sent to the Virginia Department of Education (VDOE) dated July 7, 2023. I am greatly concerned by the delays regarding the enrollment of **REDACTED** into a private placement that was recommended by Powhatan County Public Schools (PCPS), consented to by the parent, and in accordance with the June 27, 2022, Implementation Plan.

As communicated in the letter from the VDOE on June 23, 2023, and 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's decision was in favor of the Local Educational Agency (LEA) and the student's placement in a private day school was never in dispute. The Implementation Plan indicated that there was a parentally signed individualized education program (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 as the school division sought additional consents that would have allowed the school division to access funding under the *Children's Services Act (CSA)* and to explore additional private day schools, 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."

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While PCPS has responded that lack of parent consent has hindered its ability to utilize funds available through CSA to support costs of private day placement, 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 the *Individuals with Disabilities Education Act* (IDEA) simply does not allow the provision of FAPE to be conditioned on a funding source.

This letter provides notice that PCPS may no longer delay completion of the placement, as (i) the student's placement in a private day school was not at issue (ii) the school division has, in essence, conceded that the private day school for which the parent has returned a signed release for application would meet the student's needs; and (iii) the parent has consented to an IEP for the placement. Should this matter not be resolved and PCPS continue to delay actions to comply, the VDOE will seek remedies available under CFR 200.339 and 200.208, which may include restrictions on or withholding of federal funding.

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 the previous VDOE staff contact shared no later than 30 days from the date of this letter.

Sincerely,

Digitally signed by Lisa
Coons
Date: 2023.08.28 21:42:56
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Lisa Coons
Lisa Coons, Ed.D.
Superintendent of Public Instruction

LC/SMH