

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

LETTER OF FINDINGS

School Division Fairfax County Public Schools (FCPS)	Name of Parents REDACTED
Assistant Division Superintendent Dr. Alice M. Farling 8115 Gatehouse Road Suite 3300 Falls Church, Virginia 22042	Parents' Address REDACTED
Special Education Coordinator for Monitoring and Compliance Mr. Martin L. Humbertson 8115 Gatehouse Road Suite 3600 Falls Church, Virginia 22042	Name of Student REDACTED
Date Complaint Received November 15, 2007	Complainant (if other than parent) N/A
Notice of Complaint Date November 28, 2007	Findings Date January 14, 2008
Complaint Appeal Date February 13, 2008	Corrective Action Plan Due Date February 14, 2008
Complaints Specialist/Case Manager Henry J. Millward, Jr.	Complaints Department Phone # (804) 225-2013
On-Site Visit Date: N/A	

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At the time of this complaint, **REDACTED** was **REDACTED** years old and eligible for special education and related services as a student with the primary disability category of Other Health Impairment (OHI). During the 2007-2008 school year, **REDACTED** received special education services in the general education and special education programs and related services of occupational therapy.

SUFFICIENCY OF COMPLAINT:

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. (See. 34 C.F.R. §300.153)

ISSUE(S) & REGULATIONS:

1. Procedural Safeguards – Independent Educational Evaluation (IEE) Procedures

Mr. and Mrs. **REDACTED** alleged that FCPS violated state and federal regulations when they failed to follow the established procedures related to Independent Educational Evaluation (IEE) procedures.

Specifically, Mr. and Mrs. **REDACTED** alleged that:

- after an IEP meeting convened on May 16, 2007, they requested and received permission to go forward with an independent educational evaluation (IEE) to determine if their son, **REDACTED** qualified for speech/language services;
- FCPS provided a list of independent evaluators; however, none of the independent evaluators could provide a comprehensive speech/language evaluation within the \$400.00 limit set by FCPS;
- their research determined that the “usual and customary” cost for such an evaluation was within the \$500.00 to \$900.00 range;
- the independent evaluator they chose charged \$500.00 and that a “comprehensive Speech-Language Evaluation could not be conducted for our son within FCPS['] \$400.00 cap”;
- “the \$500.00 charged by our independent evaluator was reasonable and reflected usual

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and customary costs for our area”;

- FCPS has denied their reimbursement of the full charge of \$500.00 and has limited the reimbursement to just \$400.00; and
- “the \$400.00 dollar limit imposed by FCPS is in violation of IDEA and the *Virginia Procedural Safeguards Notice* (October 2006) that require IEE’s to be conducted at public expense.”

Applicable Regulations:

- The 2006 implementing regulations of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), at 34 C.F.R. §300.502, and the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, effective March 27, 2002 (the Virginia Regulations), at 8 VAC 20-80-70.B, outline the procedures for providing an Independent Educational Evaluation (IEE) when requested by the parents.

Findings:

The Office of Dispute Resolution and Administrative Services finds the school division to be in noncompliance regarding the provision of an IEE at no cost to the parent as brought forth in this complaint.

Analysis:

Complainant’s Additional Information

- In their submission of additional information, the **REDACTED** reiterated what they stated in their original complaint, that the \$400.00 cap established by FCPS was not in line with what was usual and customary and limited “the type and number of tests a Speech Therapist is able to administer during an IEE at public expense.”
- Additionally, the **REDACTED** provided a letter from Reston Speech and Language Center, PLLC to support their assertion that obtaining a speech/language assessment that would adequately address **REDACTED** needs would exceed the \$400.00 cap established by FCPS.

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- The **REDACTED** also pointed out that several of the providers cited by FCPS, in their response to the complaint, as being able to provide a speech/language assessment meeting their criteria, were not on the list of providers that they received from FCPS when their request for an IEE was approved.

LEA's Response

- In their response documentation, FCPS provided information which reflected that:
 - on April 20, 2007, the **REDACTED** sent FCPS letters requesting speech-language, occupational therapy, and neuropsychological independent educational evaluations (IEE);
 - upon receipt of the **REDACTED** requests on April 23, 2007, FCPS sent them a letter acknowledging their request and providing them with information on where an IEE could be obtained at public expense; however **REDACTED** scholastic record would need to be reviewed before FCPS would agree to fund the IEEs;
 - on April 27, 2007, FCPS sent the **REDACTED** a letter advising them that **REDACTED** scholastic record had been reviewed and that they were entitled to an IEE for speech and language, among others assessments, at public expense and provided them with the same information on where the IEE could be obtained as was provided in FCPS' letter of April 23, 2007;
 - the April 27, 2007 letter also informed the **REDACTED** that they could use a provider not on the list, such as the one they indicated they wanted to utilize in their April 20, 2007 request, as long they provided FCPS with the contact information for the evaluator so that FCPS could:
 - verify the evaluator's credentials;
 - obtain certification that the evaluator had not been convicted of a felony or child abuse offense;
 - provide the evaluator with a copy of FCPS' *Guidelines for Independent Educational Evaluations*; and
 - provide the evaluator with information concerning compensation;

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- additionally, the April 27, 2007 letter informed the **REDACTED** that FCPS had established a cap of \$400.00 dollars for a speech/language assessment, which was based on usual and customary costs and that any expense exceeding that amount would be the **REDACTED** responsibility and outlined the procedures for how payment would be rendered;
 - on September 16, 2007, the **REDACTED** provided FCPS with a speech/language assessment, completed by Skill Builders, Inc. on September 6, 2007, and requested reimbursement in the amount of \$500.00;
 - on September 21, 2007, FCPS sent the **REDACTED** a reimbursement check in the amount of \$400.00, based on the information contained in their April 27, 2007 letter that informed the **REDACTED** of the monetary caps that FCPS had established for speech/language IEEs;
 - on September 25, 2007, the **REDACTED** returned the \$400.00 check and resubmitted their request, which was received by FCPS on September 28, 2007, for reimbursement of the \$500.00 they incurred for the speech/language assessment performed by Skill Builder's, Inc.; and
 - on October 1, 2007, FCPS sent the **REDACTED** a letter, with the previously dispersed check for \$400.00 enclosed, restating their position that the **REDACTED** were informed of the monetary cap and their responsibility for any expense in excess of that cap in FCPS' letter of April 27, 2007.
- Additionally, FCPS stated that they recognize the parents' right to an IEE at public expense; however, "in keeping with both the regulatory requirements regarding IEEs and [their] fiduciary responsibilities, FCPS has set a monetary cap for IEEs based upon usual and customary costs for assessments in the private sector."
 - FCPS also provided copies of nine invoices, from other speech/language IEEs conducted as recently as December 10, 2007, "as proof" that a speech/language IEE could be obtained at a cost of \$400.00.

VDOE's Analysis and Findings

- Once FCPS determined that an IEE was warranted, FCPS was obligated to provide the **REDACTED** with an IEE at public expense, meaning that the school division either pays for

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the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, in accordance with 34 C.F.R. §300.502(a)(3)(ii), or demonstrates through a due process hearing that the evaluation obtained by the **REDACTED** did not meet FCPS' established criteria, in accordance with 34 C.F.R. §300.502(b)(2)(ii).

- In this instance, the cost of the speech/language assessment is the criteria in dispute. The record supports that FCPS informed the **REDACTED** of the cost criteria; however, the **REDACTED** obtained an IEE that exceeded that cost and FCPS subsequently refused to reimburse the **REDACTED** beyond what was set forth in their criteria. Compounding this issue is the fact that evaluator utilized by the **REDACTED** was one that appeared on FCPS' list of providers that met their criteria.
- Although a school division may, in an attempt to avoid unreasonable cost for IEEs, establish a cap on the allowable charges for such evaluations, the school division must allow the parents an opportunity to demonstrate that unique circumstances existed that warranted an IEE that did not meet the school division's criteria. Should the school division believe that there is no justification for the excess cost; the school division cannot in its sole judgment determine that it will pay only the maximum allowable cost and no further. The school division must, without unnecessary delay, initiate a due process hearing to demonstrate that the evaluation obtained by the parent did not meet the agency's criteria and that there were no unique circumstances that would have justified a rate than normally allowed. *Letter to Anonymous*, 103 LRP 22731 (OSEP 2002). If the school division chooses not to initiate a due process hearing, then the school division must ensure that the parent is reimbursed for the full cost of the IEE. *Letter to Parker*, 41 IDELR 155 (OSEP 2004).
- FCPS' demonstration that speech/language IEEs which meet their criteria have been obtained by other individuals within the school division is insufficient to find that FCPS satisfied compliance in this instance. The record supports that the **REDACTED** attempted to locate an evaluator that would provide an IEE within the criteria established by FCPS. However, when this proved to be unsuccessful they chose a provider, Skill Builders, LLC, from the list provided by FCPS.
- FCPS actions in preparing a list of names and addresses of evaluators that meet their established criteria, including costs limitations, is consistent with the requirements of applicable state and federal special education regulations. However, in this case, the **REDACTED** submitted documentation to support that there were mitigating circumstances in finding an evaluator that could provide all of the speech and language assessments that

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they considered were necessary to ensure a comprehensive evaluation of their son, at the cost specified by FCPS. At that point, as required by the regulations stated above, and reinforced through OSEP memorandums, FCPS incurred an obligation of initiating due process to contest the excess cost or reimbursing the REDACTED for the full costs which they incurred in obtaining a speech/language IEE.

- Our review of the record reflected that FCPS did not initiate a due process hearing to demonstrate that the IEE did not meet their criteria or that there were no unique circumstances that warranted the excess cost and refused to reimburse the REDACTED for the full cost of the IEE they obtained from Skill Builders.
- For the foregoing reason, FCPS is found to be in noncompliance on this issue.

CORRECTIVE ACTION PLAN:

In that FCPS' noncompliance is related a procedural error that did not impact an REDACTED access to a free and appropriate public education (FAPE) it is not necessary to address the provisions of remedial or compensatory services in this Letter of Findings. However, in order to fully resolve the issue of noncompliance, FCPS is requested to accomplish the following corrective actions no later than February 14, 2008:

1. Prepare and disseminate an instructional memorandum to the personnel FCPS deems appropriate to address the requirements of the federal and state special education laws outlined above as a reminder of the procedures that must be followed to ensure that independent educational evaluations (IEEs) are provided at public expense or how the school division may challenge the IEE through a due process hearing.
2. Reimburse the REDACTED for the full cost of the IEE they obtained from Skill Builders. LLC.

Please submit documentation that these corrective actions have been taken to our office by **February 14, 2008**.

FCPS is asked to please maintain documentation of the actions taken required in this Corrective Action Plan (CAP), as this information may be requested during our CAP implementation follow-up process on a later date.

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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. If not appealed by close of business, 5:00 p.m., E.S.T., on February 13, 2008, our file on this complaint will be closed if no Corrective Action Plan is required; otherwise, the school division must submit the requested Corrective Action Plan by February 14, 2008.

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

Dr. Judith Douglas
Director - Office of Dispute Resolution and Administrative Services
Virginia Department of Education
P. O. Box 2120
Richmond, Virginia 23218

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 Dr. Douglas at (804) 225-2771, or e-mail at: Judy.Douglas@doe.virginia.gov



Henry J. Millward, Jr.
Complaints Specialist

Attachment - Appeal Procedures

c: Mr. Martin L. Humbertson
Mr. James Burgess
Ms. Irene Walker-Bolton
Ms. Diane Gillam