


From: DMSchaefer@fcps.edu
To: [John Cafferky](mailto:John.Cafferky@fcps.edu)
Cc: [Duddridge, Lourrie](mailto:Duddridge.Lourrie@fcps.edu); [Emily Haslebacher](mailto:Emily.Haslebacher@fcps.edu)
Subject: Re:  Letter of Findings / Procedural violations
Date: Tuesday, September 17, 2019 8:53:55 AM

Thanks, John. I'm not sure how far Lourrie had gotten with writing the appeal.

Dawn Schaefer
Dmschaefer@fcps.edu
Fairfax County Public Schools
Coordinator, Due Process and Eligibility
571-423-4470

Sent from my iPhone

On Sep 17, 2019, at 6:40 AM, John Cafferky <jcafferky@bklawva.com> wrote:

Dawn and Lourrie, Emily and I talked about this one yesterday. The LOF is mind-numbingly long, but it seems to me that there are two essential, and related, points, that can be put in an appeal letter of just a few pages:

- Even the model electronic signature act requires some unambiguous communication of intent, and we don't have that here, given mom's repeated responses to FCPS' inquiries, which did not match the inquiries (stating, e.g. that she was consenting to a comprehensive evaluation when had proposed just certain specific assessments;
- While it may be true that a parent need not respond on a particular form, the form does at least make clear what is being consented to, and parent's lengthy e-mails, burying consent to unspecified evaluations in lengthy passages of sometimes unrelated information, did not do that.

I'll leave to you all whether to have us do the first draft, or to respond to one you all do.

I know that this is due September 23rd. **Note that at least in my experience, we need to get this to VDOE well before 5 PM on that date. They will not accept it one second late.**

John F. Cafferky

Partner

[<image001.gif>](#)

Blankingship & Keith, PC

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[<image002.gif>](#)

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From: Schaefer, Dawn M <DMSchaefer@fcps.edu>
Sent: Wednesday, September 11, 2019 4:27 PM
To: John Cafferky <jcafferky@bklawva.com>
Cc: Duddridge, Lourrie <leduddridge@fcps.edu>
Subject: RE: **REDACTED** Letter of Findings / Procedural violations
Importance: High

John,

Do you want to assign this appeal to Emily? Lourrie is happy to work with her for all the details.

It is due 9/23.

Thanks,
Dawn

Dawn M. Schaefer, M.Ed.
Coordinator, Due Process and Eligibility
Willow Oaks Administrative Center
8270 Willow Oaks Corporate Drive
Fairfax, Virginia 22031
Phone: 571-423-4470
FAX: 571-423-4037
Dawn.Schaefer@fcps.edu

From: Duddridge, Lourrie <leduddridge@fcps.edu>
Sent: Tuesday, September 10, 2019 4:25 PM
To: John Cafferky <jcafferky@bklawva.com>; Schaefer, Dawn M <DMSchaefer@fcps.edu>
Subject: RE: **REDACTED** Letter of Findings / Procedural violations

Hello John,

I am in the process of developing our appeal response and was wondering if you were able to find any additional information.

Regards,

Lourrie Duddridge
Senior Educational Services Specialist,
Due Process and Eligibility
Willow Oaks Administrative Center
8270 Willow Oaks Corporate Drive,
Second Floor
Fairfax, Va 22031

571-423-4470 (Mainline)
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571-423-4037 (Fax)

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From: John Cafferky [<mailto:jcafferky@bklawva.com>]
Sent: Wednesday, August 28, 2019 1:13 PM
To: Duddridge, Lourrie <leduddridge@fcps.edu>; Strong, Jane <jestrong@fcps.edu>; Schaefer, Dawn M <DMSchaefer@fcps.edu>; Johnson, Teresa L <TJohnson4@fcps.edu>
Cc: John Cafferky <jcafferky@bklawva.com>
Subject: RE: **REDACTED** Letter of Findings / Procedural violations

This piece of it is a bit more complicated. Under the Uniform Electronic Transactions Act (Va. Code 59.1-479 et seq.):

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

That could potentially include an e-mail, unless otherwise excluded by School Board policy or otherwise. I'm checking to see whether FCPS policy addresses it, and what other school divisions do on that score.

The other issue, of course, is that permission for one kind of evaluation is buried in a string of verbiage, and we should not require staff to have to parse all that out in order to figure out whether consent has been granted or not.

John F. Cafferky

Partner

<[image001.gif](#)>

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From: Duddridge, Lourrie <leduddridge@fcps.edu>
Sent: Wednesday, August 28, 2019 12:25 PM
To: Strong, Jane <jstrong@fcps.edu>; John Cafferky <jcafferky@bklawva.com>; Schaefer, Dawn M <DMSchaefer@fcps.edu>; Johnson, Teresa L <TJJohnson4@fcps.edu>
Subject: RE: **REDACTED** Letter of Findings / Procedural violations

Hello all,

She did provide an e-signature on the notice and consent form she emailed. What VDOE is considering "consent" is the attached email. A parent sending an email to give consent in this manner cannot possibly be valid. If I follow VDOE's logic here then a parent could email, with no signature of any kind other than their typed name, blanket consent for IEPs and other actions. This is not a door I want open.

Regards,

Lourrie Duddridge
Senior Educational Services Specialist,
Due Process and Eligibility
Willow Oaks Administrative Center
8270 Willow Oaks Corporate Drive,
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Fairfax, Va 22031
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From: Strong, Jane
Sent: Wednesday, August 28, 2019 11:16 AM
To: John Cafferky <jcafferky@bklawva.com>; Schaefer, Dawn M <DMSchaefer@fcps.edu>; Johnson, Teresa L <TJJohnson4@fcps.edu>
Cc: Duddridge, Lourrie <leduddridge@fcps.edu>
Subject: RE: **REDACTED** Letter of Findings / Procedural violations
Importance: High

Hi John,

On page 16 of the LOF, Kathy Harris uses the email as compliance with the regulation allowing "electronic signature." That would be the basis in my opinion of an appeal, that we do not believe a

simple email conforms to the regulation for Esignature. If parent had sent back our form with her typed name on the line....I might feel different.

Thoughts?

Jane Strong, Ph.D.
Director
Office of Special Education Procedural Support
Fairfax County Public Schools
571-423-4290

President, Virginia Council of Administrators of Special Education (VCASE)

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From: John Cafferky <jcafferky@bklawva.com>
Sent: Wednesday, August 28, 2019 9:57 AM
To: Strong, Jane <jstrong@fcps.edu>; Schaefer, Dawn M <DMSchaefer@fcps.edu>; Johnson, Teresa L <TJJohnson4@fcps.edu>
Cc: Duddridge, Lourrie <leduddridge@fcps.edu>; John Cafferky <jcafferky@bklawva.com>
Subject: RE: [REDACTED] Letter of Findings / Procedural violations

To say that the consent issue ruled upon by VDOE here is absurd is not to do full justice to the word "absurd." in any event, whether it makes sense to pursue an appeal of that ruling here turns on a couple of factors.

First, let me make sure I at least broadly understand the facts. I have not dived into the mind-numbing granularity recited in the LOF, nor do I think that is necessary. I gather, however, that:

- It was a local screening committee on February 14, 2018 which proposed speech language evaluation;
- By correspondence on May 11, 2018, Ms. [REDACTED] authorized FCPS to complete "comprehensive individualized educational testing", not specifically mentioning the speech language evaluation. She did not execute the FCPS consent form;
- In the many months that followed, FCPS tried repeatedly to clarify and confirm Ms. [REDACTED]'s consent, including whether she wanted a full battery of evaluations. Presumably FCPS tried to get her to sign the consent form;
- Ms. [REDACTED] sent repeated emails referring back to her May 11, 2018 "consent" but declining to sign the FCPS form out of concern that it would somehow compromise her rights.

- Another LSC met on December 19, 2018 and proposed a full battery of evaluations, including speech-language and others;
- Ms. REDACTED, in emails on December 19, 2019 and March 6, 2019 provided a statement giving blanket consent to any and all evaluations, not specific to what had been requested by FCPS;
- Ms. REDACTED did finally sign the December 18, 2018 consent form and email it on May 10, 2019.

VDOE evidently concluded that under the facts of this situation, Ms. REDACTED's consent was adequate to be effective, and that she was not required to express it on a form. You will notice that VDOE went to great pains to say that this is a narrow decision confined to these facts, and that they do not discourage school division use of consent forms.

Assuming I have these facts correct (do I ?), is our essential position here that the consent expressed in these emails was not effective because it was not congruent with/specific to the consent that had been requested? If those are the facts, we may have a viable basis for appeal. Form or no form, it seems to me that school divisions should not have to guess as to which evaluations they have permission to conduct. I would want to do a bit more research on consent to be sure, however.

Second, alternatively - and indeed you may need to do this anyway, since ordinarily VDOE will not hold execution of CAP pending the disposition of a state complaint appeal -- you might consider holding an IEP, and just coming to the conclusion that this alleged noncompliance did not result in any educational deprivation that requires compensatory education. Simply put, do we think that the failure to conduct the specified evaluations at the time when "consent" was allegedly received, and the time they were actually conducted (were they?) made any substantive difference to the education of this student? If not, we should consider having an IEP team say that. My experience is that VDOE ordinarily will not second-guess this type of substantive decision by an IEP team considering compensatory education.

Let me know your thoughts on this. Dawn, can you send a calendar invite with the appeal date?

John F. Cafferky

Partner

[<image001.gif>](#)

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From: Strong, Jane <jestrong@fcps.edu>
Sent: Monday, August 26, 2019 1:00 PM
To: Schaefer, Dawn M <DMSchaefer@fcps.edu>; John Cafferky <jcafferky@bklawva.com>; Johnson, Teresa L <TJJohnson4@fcps.edu>
Cc: Duddridge, Lourrie <leduddridge@fcps.edu>
Subject: REDACTED Letter of Findings / Procedural violations

I'm in favor of an appeal. John?

Jane Strong, Ph.D.
Director
Office of Special Education Procedural Support
Fairfax County Public Schools
571-423-4290

President, Virginia Council of Administrators of Special Education (VCASE)

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From: Schaefer, Dawn M <DMSchaefer@fcps.edu>
Sent: Monday, August 26, 2019 12:13 PM
To: John Cafferky (jcafferky@bklawva.com) <jcafferky@bklawva.com>; Strong, Jane <jestrong@fcps.edu>; Johnson, Teresa L <TJJohnson4@fcps.edu>
Cc: Duddridge, Lourrie <leduddridge@fcps.edu>
Subject: FW: [External] Fwd: REDACTED Letter of Findings / Procedural violations

FYI—I don't think we have the LOF via mail yet.

We were found out of compliance on the issue of whether or not we need an actual signature from a parent to provide consent. I think we should consider appealing this decision.

Dawn M. Schaefer, M.Ed.
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