

**33w3a7y 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 Dr. Terri Edmunds-Heard, Assistant Superintendent Dawn Schaefer, Director, Special Education Procedural Support 8720 Willow Oaks Corporate Drive – Second Floor Fairfax, Virginia 22031 tledmundshea@fcps.edu Dmschaefer@fcps.edu	Parent(s) REDACTED
Case # C24-123	Student REDACTED
Date Complaint Received December 28, 2023	Complainant (if other than parent) N/A
Notice of Complaint Date January 8, 2024	Findings Due Date February 26, 2024
Complaint Appeal Date March 27, 2024	Corrective Action Plan Date March 27, 2024 Send CAP to Sandra Ramsey Sandra.ramsey@doe.virginia.gov
Compliance Specialist Hallie J. Bereny, J.D.	Complaints Department Phone # (804) 750 -8143

During the period addressed in the complaint allegations, Student used to be a student in Fairfax County Public Schools (LEA (local education agency) or FCPS). Student was eligible for special education and related services as a student with a specific learning disability (SLD). Student currently resides in REDACTED, and was withdrawn from FCPS for the 2020-2021 school year. FCPS was required to meet to discuss and consider COVID-19 compensatory services as part of Office of Civil Rights (OCR) resolution agreement between FCPS and OCR.

A. Applicable Regulations

On May 28, 2009, the Virginia Board of Education adopted revised regulations to reflect IDEA '04 and its 2006 implementing regulations. The Board's revised regulations became effective on July 7, 2009, and were reissued on January 25, 2010, and on July 29, 2015, at 8 VAC 20-81-10 *et seq.* (the "Virginia Regulations"). Accordingly, this office based its investigation and findings on the Virginia Regulations, which are applicable to the allegations forming the basis of the complaint. The Virginia Regulations are available online at <https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/>

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B. Sufficiency of Complaint (See 34 C.F.R. § 300.153)

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.

C. On-Site Visit

Based on Complainant's supporting materials, the school division's response documentation, and additional information, this office determined that conducting an on-site visit would not have produced any more determinative facts than were presented in the written correspondence, and therefore, we had sufficient information to bring our investigation to closure without an on-site visit.

ISSUE(S) AND REGULATIONS:

1. Individualized Education Program (IEP) –Implementation

Parent alleges that Fairfax County Public Schools (LEA) has violated federal and state special education regulations with regard to the implementation of Student's IEP.

More specifically, she alleges that:

- “Fairfax County Public Schools has not implemented the services provided in my son’s IEP dated 10/09/2023. FCPS is required by law to implement services from the IEP they signed in a timely manner. My son’s IEP dated 10/9/2023 included a corrective action plan due to FCPS failing to provide services in the past. FCPS is failing to provide the compensatory services contained in that IEP plan without circumstances or cause. FCPS refuses to communicate when they intend to provide services contained in my son’s 10/9/2023 IEP.”

Applicable Regulations:

- 34 C.F.R. § 300.323(c)(2); 8 VAC 20-81-110.B.6.
- 34 C.F.R. § 300.323(c)(2); 8 VAC 20-81-110.B.2.d.

Findings:

The Office of Dispute Resolution and Administrative Services finds LEA in noncompliance on this Issue.

Analysis:

- The 2006 implementing regulations, at 34 C.F.R. Section § 300.323(c)(2), and the Virginia

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Regulations, at 8 VAC 20-81-110.B.6, provide that the LEA must provide special education and related services in accordance with the child's IEP.

- The 2006 implementing regulations, at 34 C.F.R. § 300.323(c)(2), and the Virginia Regulations, at 8 VAC 20-81-110.B.2.d, direct school divisions to ensure that an IEP is implemented “as soon as possible following parental consent to the IEP.”
- On October 9, 2023, Parent partially consented to August 2023 IEP. The Parent wrote on the August 2023 IEP, “I agree to the monetary compensation of \$9056.70 for hours paid by parents. FCPS has received invoices for services and mileage already paid by parents for services. I agree to [Student] receiving an additional 114.50 [hours] of reading/writing compensatory services from FCPS for the COVID period. I agree to receive mileage based on the IRS milage rate for all miles provided by the parent for the related services of transportation. I agree to that services should be the customary rate for REDACTED and expect services to cost between \$125-150 per hour. I will look for a provider that can bill FCPS directly but cannot guarantee a reasonable and customary provider will be willing to bill directly.”
 - The IEP team proposed compensatory services for services during COVID and missed instruction for a total of \$9,056.70 with 108.25 hours of compensatory services for reading/writing remaining. The team also proposed that 6.25 hours for speech language will be used towards reading/writing instruction for a total of 114.50 hours. The agreed upon hourly rate for services for a private provider will not exceed \$150 per hour. [Parent] would like to set up direct pay with the vendor who will be delivering the instructional services. The FCPS IEP team agreed to reimburse mileage incurred for transportation to/from for the instructional services for the 114.50 hours.

Review of the record

- Student's IEP meeting was held on August 23, 2023, and reconvened on September 12, 2023.
 - Parent partially consented to the IEP on October 9, 2023.
- The IEP PLAAF for September 12, 2023, notes that Parent provided FCPS with speech language therapy services receipts including mileage for a total reimbursement of \$5,845.70 and stated that FCPS approves this reimbursement. Parent provided receipts for 26 hours of vision therapy from the COVID period that were used to improve [Student's] reading, writing, comprehension, and fluency. These 26 hours of service were received between 10/14/21 to 5/10/22 and the team agreed that they will be deducted from the 134.25 reading/writing compensatory services hours previously agree upon leaving a total of 108.25 reading/writing compensatory services. This reimbursement totals an additional \$3,211.00.
- Between September 12, 2023, through October 16, 2023; Parent and Ms. Theresa Allen, (LEA's Special Education Dept Chair and Local Screening Chair)[SPED Teacher] exchanged

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emails regarding the IEP documents, the IEP team proposal, and about the paperwork for reimbursement.

- On September 24, 2023, Parent emailed SPED Teacher asking for clarification on the compensatory services proposal.
- On September 28, 2023, SPED Teacher emailed Parent, stating she will double check everything and get back to her.
- On October 2, 2023, SPED Teacher followed up with Parent providing clarification on the compensatory services proposal. Student's IEP proposed the following for compensatory services:
 - Reimbursement – 40 hours of Skillbuilders \$5845.70
 - In additional, FCPS proposed that he required 134.25 hours of reading, writing and 6.25 hours of speech = 140.50 hours of compensatory owed (converted speech hours into read/write).
 - The 26 hours of vision therapy were proposed to take place of 26 hours of 140.50 hours owed. New total owed is 114.50.
 - Additional reimbursement for the 26 hours of vision therapy for \$3211 – total reimbursement of \$9056.70.
- On October 9, 2023, Parent partially consented to Student's August 2023 IEP.
- On October 13, 2023, SPED Teacher emailed Parent to confirm her address to send the audio recording from the September IEP meeting.
- On October 14, 2023, Parent emailed SPED Teacher confirming her address and requested from the LEA when she has official notice to proceed on the signed IEP.; "I won't start unless I know FCPS is going to for sure reimburse for the outstanding hours".
- On October 16, 2023, SPED Teacher stated in part, "I will submit the paperwork to the compensatory services office this week and cc you on the email, so you know it's been done."
- On October 20, 2023, SPED Teacher emailed Ms. Scott and Ms. Schaefer, submitting the reimbursement request for Student with the necessary documentation and let them know to reach out to her if need for anything else. Additionally, SPED Teacher noted Parent is requesting that their private vendor be reimbursed directly by the LEA and want to know how to initiate the process.

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- Ms. Scott followed up on SPED Teacher’s email acknowledging receipt and to have the parents reach out to her with provider information.
- On November 11, 2023, Parent emailed Ms. Scott, Ms. Schaefer, SPED Teacher, and other members of the LEA, that she found a provider for Student. She noted that the provider would contract directly with the LEA and requested information how she can submit monthly billing statements for reimbursement. Parent noted she has not received any payment for previous contracted services covered by the compensatory agreement. Parent also notes she cannot contract with a new provider to start the compensatory services until she receives the funds from the LEA. Parent requested when she can expect the reimbursement so she can start compensatory services.
- On November 27, 2023, Parent emailed the LEA again requesting when she could expect reimbursement and approval to start the compensatory services. Parent found a provider that can be working with Student starting in December 2023.
 - On November 27, 2023, SPED Teacher following up with Parent – there is nothing she can do hasten her payments and Ms. Schaefer will update parent shortly of the status of the payments.
- On December 28, 2023, Parent filed a state complaint on the LEA.
- On January 8, 2024, Parent emailed the LEA, stating on 10/9/2023, Parent signed an IEP to provide compensatory services to her Student. “To date Fairfax County Public Schools has provided no services and Ms. Dawn Schaefer has failed to respond to any of my inquires as to when FCPS will begin providing those services as required by law, despite my months of inquiries. Ms. Schaefer has failed to respond to any email despite staff saying that she would provide information to me over 3 months ago.” “[Student] will begin his tutoring covered by his IEP today. I am instructing his tutor to bill FCPS directly. I will be filing at the end of the month for the related service of transportation as contained in my son's IEP signed on 10/9/2023.”
- On January 9, 2024, Ms. Schaefer followed up Parent’s email, requesting IRS W-9 forms to be completed for Parent to receive her reimbursement of \$9056.70 for past services. Additionally, she said, Parent may send “any paid receipts for the additional 114.5 hours of tutoring services to C19Receipt@fcps.edu. Alternatively, you can provide me or someone else working on this project consent to communicate with your private provider(s) so that we can provide them with the information and assurances needed so they can invoice FCPS directly.”
- On January 9, 2024, Parent followed to Ms. Schaefer email, stating the following: “I assume this is notification that I can begin compensatory service hours with a provider here in REDACTED? Please confirm that if I begin services as written in my son’s IEP, Fairfax County will reimburse all invoices submitted in a timely manner. Please provide me with the number of

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days between submitting an invoice for services and when I or the provider can expect payment. In addition, please provide me with a written detailed invoice submission procedure on Fairfax County Public Schools letterhead. As Fairfax County Public Schools is out of state and not a known school system to my provider. She is hesitant to do direct pay. School systems have been known to delay or default on payments to outside providers. My provider would like a formal contract so that it is legally enforceable if FCPS decides to default or neglects to pay its bills on time; You can forward this information directly to me as private provider payment procedures for Fairfax County Public Schools should be public information available to anyone. You have also neglected to include the procedure for submission of the related service of transportation. The related service of transportation is included in my son's IEP that details the agreed upon compensatory services. As stated in my IEP meeting, FCPS should have my W-9 form from the last compensatory hours that were awarded to my son and completed October 2022. As a courtesy, I have enclosed a new copy.”

- The regulations require LEA must provide special education and related services in accordance with the child's IEP and ensure that the IEP is implemented “as soon as possible following parental consent to the IEP.”
- The LEA denies Parent's allegations. “FCPS acknowledges that [Parent] has not been reimbursed at this time but remains ready and able to timely reimburse [Parent] once she submits the proper supporting documentation for reimbursement. [Parent's] reimbursement for out-of-pocket expenses has not been processed yet for several reasons. First, [Parent] did not indicate agreement with the IEP proposal above until October 9, 2023. Due to the late IEP meeting compared to other COVID compensatory meetings and [Parent's] delayed consent decision, her reimbursement had placed her further down in the queue. Additionally, FCPS did not receive an accurate and complete W-9 tax form from [Parent] until January 21, 2024, to establish her in the system so that her reimbursement can be processed. FCPS has established that it can take up to 45 calendar days for payments to be made once the paid invoices and necessary documents have been received. FCPS staff will follow up with [Parent] directly regarding the status of her reimbursement for out-of-pocket expenses.”
- Parent consented to Student's IEP on October 9, 2023, and LEA did not let the Parent know until after this state complaint was filed and Parent followed emailed the LEA's Superintendent January 8, 2024, that IRS documents were required to be updated for the reimbursement to occur. The Parent reached out several times in the fall to LEA requesting information about reimbursement and start of the compensatory services. Nonetheless, the LEA took 92 days to let Parent know tax documents were now required to be updated. The LEA failed to let Parent know in October, November, December, and was only until a complaint was filed an email was sent stating more documentation was to be completed in order for parent to be reimbursed. This is not ensuring that the IEP was as soon as possible following parent consent.

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- This office understands that reimbursement according to LEA could take up to 45 days to be received if all proper documentation is in order. However, the LEA took more than double that amount of time to let the Parent know additional paperwork was required.
- Based on the forgoing the LEA is found to be in noncompliance on this Issue.

CORRECTIVE ACTION PLAN:

To address the noncompliance finding for **Issue 1**, this office requests that LEA:

1. Provides documentation within 30 days that reimbursement for \$9,056.70, the agreed upon reimbursement in the August 2023 IEP, consented to on October 9, 2023, has been processed.¹ Provide documentation from the LEA's finance department, not solely an email stating the reimbursement has been processed.
2. In the next 30 days either work with Parent or identified Student vendor to set up either monthly reimbursement or direct payments to vendor are provided – oversee it until all of the compensatory service that started in January 2024 is completed. If the parties cannot agree, then Parent should provide services receipts and transportation mileage costs on a monthly basis – parent should be reimbursed no later than 45 days after providing the monthly statements.
3. Create a LEA policy or procedure, if one does not currently exist, to ensure an agreed upon reimbursement or direct payment to a provider is completed no more than 45 days after the identified required reimbursement or invoice document(s) are/is submitted.

The school division must complete the corrective action plan and submit supporting documentation to the CAP specialist no later than the date set forth above, or if no date is specified, no more than thirty calendar days from the date of this Letter of Findings. In the event the school division anticipates that any portion of the corrective action will require more than thirty days for completion, school division must contact the CAP specialist to provide documentation of the status of the corrective action, and to obtain approval for a revised completion schedule prior to the due date for the CAP. Any subsequent steps required to satisfy the corrective action should be documented, and such documentation submitted to this office on a schedule to be established by the Corrective Action Specialist in consultation with the LEA but should be completed no later than [30 business days from the LOF date unless circumstances warrant otherwise].²

¹ VDOE is aware as of February 8, 2024, LEA let Parent know reimbursement for vision therapy was calculated incorrectly at the amount of \$3211, and the reimbursement for vision therapy should be \$3401.

² In accordance with 8 VAC 81-200.F, "such plan shall include timelines to correct violations not to exceed 30 business

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Please note all corrective plan documentation and correspondence should be sent to the Corrective Action plan Specialist no later than March 27, 2024:

Sandra Ramsey
Sandra.ramsey@doe.virginia.gov

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.

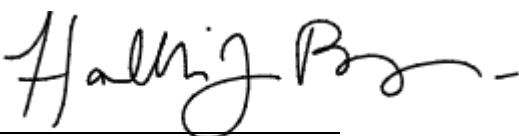
Either party to this complaint has the right to appeal these findings within 30 calendar days of our office’s issuance of the Letter of Findings. Any appeal must be received by our office no later than **March 27, 2024**.

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

Patricia V. Haymes
Director - Office of Dispute Resolution and Administrative Services
Virginia Department of Education
P. O. Box 2120
Richmond, Virginia 23218

An appeal may also be filed via e-mail correspondence to ODRAS@doe.virginia.gov, or via facsimile transmission to (804) 786-8520.

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 Ms. Sheila Gray at (804) 750 -8143, or e-mail at: Sheila.gray@doe.virginia.gov.



days unless circumstances warrant otherwise.” The plan of action should include a description of all changes contemplated and is subject to approval of the Virginia Department of Education. Failure to provide a plan of action which is subsequently approved by this office that may include corrective actions extending beyond 30 business days may result in a referral to the Superintendent of Public Instruction or designee for review and may result in a referral to the Virginia Board of Education. (8 VAC 81-200.G)

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Compliance Specialist

Attachment - Appeal Procedures