

January 30, 2024

Hallie J. Bereny, J.D.
Virginia Department of Education
Dispute Resolution and Administrative Services
P.O. Box 2120
Richmond, Virginia 23218-2120

REDACTED

Dear Ms. Bereny:

Fairfax County Public Schools (FCPS) received a notice of complaint dated January 8, 2024, from the Office of Dispute Resolution and Administrative Services (ODRAS) of the Virginia Department of Education (VDOE) that **REDACTED** filed a complaint regarding her child, **REDACTED** alleging that FCPS has violated state and federal laws and regulations governing special education programs.

FCPS denies that it violated the Individuals with Disabilities Education Act (IDEA) or its federal and state implementing regulations as they relate to the implementation of **REDACTED** individualized education program (IEP). The documentation and information provided herein is responsive to the issues raised in the complaint and provides the documentation requested by VDOE. The specific information requested by VDOE is either referenced in narrative form within the body of this response or is provided in the form of attachments, as noted below.

Attachments:

1. Student special education records
2. Correspondence records

Brief Background

REDACTED is an eighth-grade student who currently resides in **REDACTED** and was last enrolled in FCPS during the 2019-20 school year. He was initially found eligible for special education services on June 12, 2019, while in the third grade and attending FCPS, after meeting criteria for a student with a specific learning disability (SLD). An IEP was proposed on August 26, 2019, and **REDACTED** received special education supports and services beginning September 3, 2019, when parent consent was received. **REDACTED** was withdrawn from FCPS for the 2020-21 school year and has not attended FCPS since, due to living out of state with his family. On August 23, 2023, an IEP meeting was held, per parent request, to discuss and consider COVID-19 compensatory services as part of the November 2022, Office for Civil Rights (OCR) resolution agreement (OCR Agreement) between FCPS and

the OCR¹. In that meeting, compensatory services were agreed upon and REDACTED also requested reimbursement for out-of-pocket expenses that occurred during the COVID-19 school closure and virtual instruction of the 2019-20 school year. A second IEP meeting was held on September 12, 2023, to discuss and consider REDACTED reimbursement request along with her supporting documents, which ultimately resulted in an agreement for reimbursement and proposed compensatory services.

Specifically, the team agreed to reimburse REDACTED \$9,056.70 for private services provided to REDACTED during the COVID-19 remote learning period. The team also agreed to provide an additional 114.50 total hours of reading and writing compensatory services to be provided by a private provider at an hourly rate not to exceed \$150 and mileage reimbursement for transportation to and from those compensatory services. Per REDACTED request, the team agreed to fund the 114.50 compensatory service hours through direct payment to a vendor selected by REDACTED

The table below outlines a chronology of events related to the parents' complaint allegations and issues:

SY 2023-24	
July 31, 2023	FCPS confirmed parent request for an IEP meeting to discuss COVID-19 compensatory services.
August 3, 2023	FCPS contacted REDACTED with proposed meeting dates and times.
August 21, 2023	IEP notification letter was created and sent.
August 23, 2023	IEP meeting began and team agreed to reconvene to finish proposal.
September 7, 2023	IEP notification letter was created and sent.
September 12, 2023	Continuation of the August 23, 2023, IEP meeting. The final proposal/determination was made.
October 9, 2023	REDACTED provided partial consent, indicating agreement to the compensatory services and reimbursement proposal but did not agree with the vision therapy discussion notes.
October 20, 2023	REDACTED sent the reimbursement request to the FCPS COVID-19 compensatory services plan administrator.
November 11, 2023	REDACTED informed FCPS that a private service provider had been identified but did not indicate a name or provide contact information.
November 27, 2023	REDACTED emailed FCPS inquiring about the status of her reimbursement.
January 8, 2024	REDACTED emailed multiple FCPS employees indicating that she has not received her reimbursement and that she would be instructing their private tutor to bill FCPS directly.
January 9, 2024	Dawn Schaefer, director of the Office of Special Education Procedural Support, requested and received an updated but incomplete Internal Revenue Service (IRS) W-9 tax form from REDACTED
January 18, 2024	REDACTED provided the name of the vendor providing private compensatory services to REDACTED

¹ Additional information on the COVID-19 Compensatory Education Plan can be found here: <https://www.fcps.edu/academics/academic-overview/special-education-instruction/special-education-procedural-support-13>

January 21, 2024	REDACTED provided an updated and complete IRS W-9 form to Kristina Roman, coordinator of Due Process and Eligibility.
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Issue 1. Individualized Education Program (IEP)-Implementation.

Allegation: Parent has alleged that LEA has violated special education laws and regulations governing IEP implementation.

More specifically, Parent has alleged:

- 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.

Response: FCPS denies this allegation. Virginia regulation 8VAC20-81-110.B.2.d directs school divisions to ensure that an IEP is implemented "as soon as possible following parental consent to the IEP." The IDEA and federal and state implementing regulations do not contain any specific timeline or required number of days for IEP implementation. FCPS acknowledges that REDACTED has not been reimbursed at this time but remains ready and able to timely reimburse REDACTED once she submits the proper supporting documentation for reimbursement.

Under the OCR Agreement, FCPS agreed to convene IEP meetings to determine whether current or former FCPS students were entitled to COVID-19 compensatory services. If it is determined that compensatory services are required, or that parents are to be reimbursed for out-of-pocket costs for private services received during the COVID-19 pandemic, FCPS required parents to provide copies of the paid invoices or some other proof of payment. Parents or vendors who are being paid are also required to complete an IRS W-9 tax form to establish them as a vendor and to track payments by FCPS. It is noteworthy that FCPS has thousands of COVID-19 reimbursements to process and pay. Due to the unexpected high number of reimbursements, FCPS has hired and appointed additional staff to help with this effort to ensure that the necessary supporting documents were provided and that the tenets of the OCR Agreement were followed by IEP teams and 504 teams in order to process reimbursements. FCPS is processing these reimbursements for out-of-pocket expenses incurred during the Pandemic Period in the order they are received, and as quickly as possible.

REDACTED reimbursement for out-of-pocket expenses has not been processed yet for several reasons. First, REDACTED 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 REDACTED REDACTED 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 REDACTED 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 REDACTED REDACTED directly regarding the status of her reimbursement for out-of-pocket expenses.

To date FCPS has made three attempts to engage in early resolution with REDACTED. Unfortunately, these attempts have been unsuccessful.

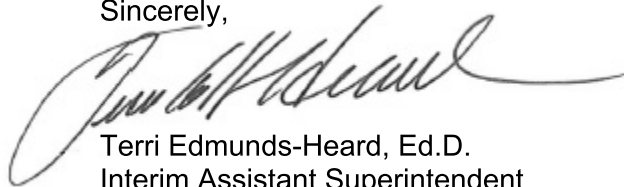
The IEP proposal for future compensatory services is for a total of 114.50 hours. In the present level of performance (PLOP) page of the IEP, it states that "REDACTED would like to set up direct pay with the vendor who will be delivering the instructional services". FCPS agreed to this and has established a process in which the parent identifies who will conduct the private educational services. On January 18, 2024, REDACTED informed FCPS who will be providing services to REDACTED. To date, FCPS still needs an IRS W-9 and invoices from the private provider in order to initiate payment. FCPS has not and does not refuse to communicate with REDACTED regarding the payment of the agreed upon reimbursement, or the compensatory services.

Conclusion

In summary, FCPS is fully committed to paying REDACTED the agreed upon reimbursement amount once all the necessary documents have been received. Delay in payment is due to her position in the payment queue, as well as her lack of adherence to FCPS' established procedures. Likewise, FCPS is fully committed to paying the private service provider selected by REDACTED once they have provided FCPS with the necessary documentation. FCPS asserts that we have not purposely delayed any of the agreed upon proposals outlined in the IEP; rather, REDACTED has failed to adhere to FCPS procedures in order to initiate the reimbursement payment and compensatory services which has led to the delay.

Should you have questions or require additional information regarding this complaint or the FCPS response, please contact Kristina Roman, coordinator of Due Process and Eligibility, at 571-423-4470.

Sincerely,



Terri Edmunds-Heard, Ed.D.
Interim Assistant Superintendent
Department of Special Services

TE-H/rd

Attachments

cc: Michelle C. Reid, Ed.D., Division Superintendent
Dawn Schaefer, director, Office of Special Education Procedural Support
Kristina Roman, coordinator, Due Process and Eligibility
REDACTED complainant