

March 28, 2024

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

Re: Systemic – OCR Reimbursement  
Case #: C24-166

Dear Ms. Haymes:

Fairfax County Public Schools (FCPS) received a notice of complaint dated March 7, 2024, from the Office of Dispute Resolution and Administrative Services (ODRAS) of the Virginia Department of Education (VDOE) that **Redacted** filed a systemic complaint regarding allegations 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 students' 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.

### **Issue 1. Individualized Education Program (IEP) - Implementation.**

***Allegation:*** Parent has alleged that LEA has violated federal and state regulations regarding implementation of IEPs.

*More specifically, Parent has alleged:*

- *Complainant alleges that LEA has systemically failed to implement IEPs that provide reimbursement of expenses and compensatory education owed to students following a resolution agreement between the Office for Civil Rights (OCR) and LEA related to services following the closure of schools due to the COVID-19 Pandemic.*

- *Complainant's full complaint, which references a previous complaint decision by this office (C24-123) and includes documentation evidentiary and legal argument, is attached to this notice of complaint and should be referenced by the parties.*
- *Complainant alleges that FCPS, in a previous filing with this office, "admits that it is implementing the IEPs on a first-come, first-served basis, and that IEPs are in a queue for implementation."*
- *Complainant further states as follows:*
  - *2.8.24: FCPS staff repeated this 'queue' comment, when its finance office emailed Complainant: 'The finance team is working diligently to process request in the cue.' [sic]*
  - *2.12.24: FCPS submitted a letter to parents/guardians, stating that it has "almost" processed half of the reimbursements. "Almost" half is not the same as half. See 2.12.24 letter.*
  - *30 days = FCPS' turnaround for paying vendors. Yet, it won't provide the same courtesy to parents/guardians/students. See: <https://www.fcps.edu/about-fcps/departments-and-offices/departments-financial-services/comptroller/payment>*
  - *Less than a week prior, FCPS led families to believe it had reimbursed at least 50%.*
  - *FCPS' Dawn Schaefer and Terri Edmonds-Heard spoke at a FCPS SEPTA meeting (listen to 2.6.28 SEPTA Feb meeting recording)."*
  - *The Complainant then includes quotes from the meeting including the following excerpt attributed to Dawn Schaefer:*

*"...we, we have a lot of folks working on this part time. Believe it or not, we have one person who's allocated full time for this at this time, and that's one of our finance management technicians. And otherwise, we have probably, I don't know, Terri, you might have the numbers right in front of you, but it's probably 30 people working part time on this. We do hope that the new OCR plan administrator can start soon. That person has been selected and is still in the process of being hired. And so that would give us some additional assistance. And we're also looking at some other ways to creatively use some funding that was allocated that we can hire a couple other folks to assist. In terms of completion we completed 50% of reimbursements as of Friday, this past Friday, and we are working diligently to complete the rest of them as soon as possible. We have been meeting with the Comptroller and with finance staff, to look at our processes, our financial processes to ensure that they are as smooth as possible. And so just this week, there was a meeting today, in fact, with our staff supporting this to talk about the way that those processes are smoothing out, and so we, we're hoping that things will pick up even more as as we add add more staff and have smoothed out the processes....Last week, I reassigned one of our staff who has been working part time on this to start working on the future, what*

*we call future reimbursements for services, where families have decided to use a private provider for services that were allocated. And she is processing those. I think I know who may have submitted that question, because we're in touch regularly. But we are working on it. And please feel free to call or email me for a very specific update for your child."*

- *Complainant further alleges that: "although standalone reimbursements and the reimbursements for current/future compensatory education and other services are written into IEPs that FCPS is mandated to implement within a reasonable time, FCPS has only accomplished 50% of the reimbursements....Pursuant to IDEA and implementing state regulations, IEPs must be implemented in a timely manner/reasonable time. "Backlogs" are not acceptable and/or valid reasons to delay IEP, evaluation, identification, and/or any other timelines." Parent then cites legal authority relating to timeliness of IEP implementation and other related authority regarding IDEA timelines.*
- *Parent continues:*
  - *"2.6.24: During a FCPS SEPTA meeting, Dawn Schaefer advised attendees that parents can sign IEPs with a partial consent....At about the 00:45:25, the following Q&A occurred:*

***SEPTA President Amanda Campbell:***

*"We have been asked in not too many words to accept goals we don't agree with so we can get the IEP signed, which I don't want to do, this is a legal document. Is this, should this not be something that families can sign in partial consent where they agreed to compensatory service services but do not agree with the goals and then compensatory services can be instituted from there?"*

***Dawn Schaefer 46:20***

*Absolutely. You can always agree on partial consent.*

- *Neither IDEA nor implementing state regulations dictate, allow, and/or approve of LEAs placing restrictions and/or conditions on the implementation of fully and/or partially consented to IEPs subsequent to them being consented to.*

**Response:** FCPS denies this allegation. 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 was determined that compensatory services were 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 hired and appointed additional staff to help with this effort to ensure that the necessary supporting documents were provided and that the principles of the OCR Agreement were followed by IEP teams and 504 teams to process reimbursements. Additionally, FCPS has taken significant steps to improve efficiency. A new special projects plan administrator has been hired, FCPS has restructured and redistributed

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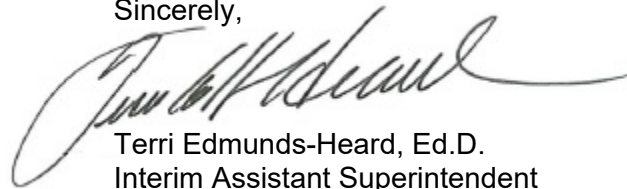
resources within our staff, and we have reassigned personnel specifically to address the backlog of reimbursement requests. FCPS continues to process these reimbursements incurred during the Pandemic Period in the order they are received, and as quickly as possible.

### Conclusion

In summary, FCPS is fully committed to paying all families the agreed amount indicated in the IEP or 504 Plan. Due to the high number of reimbursements to process and the intricacies by the finance department to approve payment, they are taking longer than expected to complete. Any additional delay in payment may be due to the position in the payment queue or a lack of proper documentation required to process and issue payment in accordance with FCPS' established procedures. FCPS asserts that we have not purposely delayed any reimbursement payments.

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/ld

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