

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

NOTICE OF COMPLAINT

<p>School Division Fairfax County Public Schools Terri Edmunds-Heard, Acting Assistant Superintendent, Special Services Dawn Schaefer, Director, Special Education Procedural Support Kristina Roman, M.Ed., Coordinator, Due Process & Eligibility 8270 Willow Oaks Corporate Drive—Second Floor Fairfax, Virginia 22031 tledmundshea@fcps.edu DMSchaefer@fcps.edu kmroman@fcps.edu</p>	<p>Parent</p> <hr/> <p>Student Systemic</p>
<p>Case Number C24-166</p>	<p>Complainant (if other than parent) Redacted</p>
<p>Date Complaint Received February 27, 2024</p>	
<p>Notice of Complaint Date March 7, 2024</p>	<p>Findings Due Date April 27, 2024</p>
<p>Early Resolution Date/LEA Response Due Date March 21, 2024</p>	<p>Additional Information Due Date April 4, 2024</p>
<p>Compliance Specialist Patricia Haymes, J.D.</p>	<p>Complaints Department Phone # (804) 750-8143</p>

The Office of Dispute Resolution and Administrative Services in the Virginia Department of Education (VDOE) has received a complaint alleging that Fairfax County Public Schools (FCPS or “LEA”) has violated federal and state laws and regulations governing special education programs. This notice of complaint gives official notice to all parties that a formal written complaint has been filed with our office and confirms that it is sufficient pursuant to federal special education regulations.

APPLICABLE REGULATIONS:

This office will base its investigation and findings on the reauthorization of the federal Individuals with Disabilities Education Improvement Act, December 3, 2004 (IDEA '04), its implementing

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federal regulations, adopted October 13, 2006 (the 2006 implementing regulations), and the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, effective on July 7, 2009, and were reissued on January 25, 2010, and on July 29, 2015, (the Virginia Regulations). The Virginia Regulations are available online at:

<https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/>.

ISSUE(S) AND REGULATIONS:

1. Individualized Education Program (IEP) - Implementation.

Complainant alleges that LEA has violated state and federal regulations regarding implementation of IEPs. Specifically:

- 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%.

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- 2.6.24 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:

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- “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.

Applicable Regulations:

- The IDEA implementing regulations, at 34 C.F.R. § 300.323(c), and the corresponding Virginia Regulations, at 8 VAC 20-81-110.B.2 provides that “Each local educational agency shall ensure that an IEP: a. Is in effect before special education and related services are provided to an eligible child; b. Is developed within 30 calendar days of the date of the initial determination that the child needs special education and related services; c. Is developed within 30 calendar days of the date the eligibility group determines that the child remains eligible for special education and related services following reevaluation, if the IEP team determines that changes are needed to the child’s IEP, or if the parent requests it; and d. Is implemented as soon as possible following parental consent to the IEP.

OTHER ISSUES:

Parent raises certain concerns about reimbursements she states were owed to her in 2017 through 2020 related to disputes with FCPS. Those matters, having occurred more than one year prior to the filing of this state complaint, are time-barred.

Complainant has made a number of allegations, more specifically set forth in items 66 through 89 of the complaint, regarding the implementation of the OCR resolution agreement with regard to

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students who are no longer enrolled or reside in the LEA. This allegation goes to the scope of the resolution agreement between LEA and OCR. While we have the authority to investigate failures to implement IEPs, we have no authority to investigate whether a settlement between a school division and OCR is being properly implemented. Accordingly, we will not investigate these allegations. Complainant should direct these concerns to OCR.

EARLY RESOLUTION REQUIREMENTS:

Our complaint system has an Early Resolution System that supports both parties working cooperatively to resolve this matter prior to the due date for the school division's response without formal investigation by our office. We believe early resolution will benefit both parties and that it is in the best interest of students. Early resolution may include use of the statewide special education mediation system. We have enclosed a brochure for the complainant that describes mediation that is voluntary on the part of both parties. Both parties are asked to keep our office informed of changes in the status of this complaint.

If this complaint is resolved within the 10-day timeline, the school division must furnish a written response, including the following:

1. A record of contacts with the complainant;
2. A statement of the proposed resolution;
3. A signed statement indicating that the complainant has agreed to the resolution and the details of the resolution.

If the complaint is not resolved, the school division must furnish a written response, including all requested documentation in the areas noted below, by the designated due date, as indicated above. The school division must simultaneously provide a copy of the response, along with all submitted documentation, to the complainant if the complaint was filed by the parent or parents of the student, a student who has reached the age of majority, or their attorney. If the complaint was filed by another individual, the school division must provide a copy of the response and documentation to the complainant only if a release signed by the parent or parents or the student who has reached the age of majority has been provided.

For technical assistance in resolving the complaint, please contact your VDOE Regional School Division Technical Assistance Specialist or one of the VDOE Training and Technical Assistance Centers (T/TACs).

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INFORMATION/DOCUMENTATION REQUESTED:

- A **detailed chronology of events** related to these allegations, including any related documentation;
- A **narrative statement** regarding each allegation, including a specific statement indicating **whether LEA complied with or violated** regulatory requirements, and any supporting documentation (such as IEP meeting recordings (if any), PWNs, email correspondence, and other documents) or related materials outlining LEA's position regarding each allegation, documenting, among other things, LEA's compliance or noncompliance with regard to the issues set forth above;
- Copies of any reports provided by LEA to OCR concerning the resolution agreement and progress toward coming into compliance;
- A copy of any correspondence and records of any other communications between LEA and Complainant regarding each issue and complaint allegation; and,
- Any additional statements, along with any supporting documentation, that LEA deems appropriate for addressing the complaint allegations or, if appropriate, to support the actions taken by LEA in regards to these allegations.
- Our office anticipates using a sampling methodology to test compliance on this systemic issue. This Office will be in contact with the school division with regard to selection of a random sample of relevant files. The school division should also make any arguments, as supported by applicable legal authority, it may wish our office to consider regarding our continuing jurisdiction over this matter.

TIMELINES FOR RESPONSE AND ADDITIONAL INFORMATION:

School Division Response Timeline

LEA is to transmit all documentation to our office so that it is received by **March 21, 2024**, at the following address:

Office of Dispute Resolution and Administrative Services
Virginia Department of Education
P. O. Box 2120
Richmond, Virginia 23218

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ODRAS retains discretion to base its review of LEA's materials on the documentation LEA submitted by the response due date.

Additional Information that may be submitted by either party

The complainant and the school division may submit *additional information*, either orally, electronically, by facsimile, or in writing, about the allegations in this complaint. This information must be received by the Office of Dispute Resolution and Administrative Services no later than **April 4, 2024**.

The parties are instructed to copy all response and additional information submissions to each other.

Information and/or materials submitted after this date will not be considered by this office, unless specifically requested by the compliance specialist for the purposes of clarification.

Attachments - Complaint Resolution Procedures
Mediation Brochure