

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

LETTER OF FINDINGS

<p>School Division Prince William County Public Schools Dr. LaTanya D. McDade, Superintendent Amanda Mallory, Assistant Director, SED Procedural Support 14715 Bristow Road Manassas, Virginia 20112-3945 pwcssupt@pwcs.edu mallorAV@pwcs.edu</p>	<p>Parent/Complainant REDACTED</p>
<p>Case Number C24-148</p>	<p>Student REDACTED (Student 4)¹ Systemic Complaint</p>
<p>Date Complaint Received February 6, 2024</p>	<p>Complainant (if other than parent) N/A</p>
<p>Notice of Complaint Date² February 8, 2024</p>	<p>Findings Date May 3, 2024</p>
<p>Appeal Due Date³ June 3, 2024</p>	<p>Corrective Action Plan Due Date June 3, 2024</p>
<p>Complaints Department Phone # (804) 750-8143</p>	

Systemic Complaint Authority

In its *Analysis of Comments and Changes* for the 2006 implementing regulations, the U.S. Department of Education (USED), Office of Special Education Programs (OSEP) has stated that state education agencies—such as the VDOE—are “required to resolve any complaint that meets the [sufficiency] requirements” set forth in the 2006 implementing regulations, “including

¹ PWCPS’ response to the systemic portion of the complaint identifies **REDACTED** as Student 4. For consistency, the *Letter of Findings* will refer to **REDACTED** as Student 4.

² This *Notice of Complaint* includes a reissuance of **REDACTED** complaint (Case # C24-138) dated January 29, 2024. ODRAS determined that it was necessary to consolidate Case # C24-138 into Case # C24-148 since the Complainant is the same and the complaints allege similar IEE violations. Consequently, the parties’ Early Resolution Response Due Date, Additional Information Due Date, and Findings Due Date associated with the Case #C24-138 are extended to the the dates outlined in this *Notice of Complaint*.

³ The thirty (30) day period for filing an appeal under the Virginia Regulations, at 8 VAC 20-81-200.E, expires on Sunday, June 2, 2024, which is a Sunday. Accordingly, the appeal will be due on the following business day, Monday, June 3, 2024.

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complaints that raise systemic issues....”⁴ OSEP has also stated that “the broad scope of the State complaint procedures, as permitted in the regulations, is critical to each State’s exercise of its general supervision responsibilities. The complaint procedures provide parents, organizations, and other individuals with an important means of ensuring that the educational needs of children with disabilities are met and provide the SEA [state education agency] with a powerful tool to identify and correct noncompliance....”⁵ Accordingly, this office is authorized to investigate alleged systemic violations of special education regulations. In this specific complaint, Complainant had provided the names of other students, however, because Complainant failed to provide a release, we will identify the students by number in this *Letter of Findings*. These students have been included in this complaint to demonstrate certain alleged violations committed by PWCPs against similarly situated students.⁶

A. Applicable Regulations

This office based its investigation and findings on the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-81-10 *et seq.* (the “Virginia Regulations”)), as amended, available online at <https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/>.

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 other 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.

D. Chronology

A review of the record indicates the following chronology:

⁴ U.S. Department of Education, Office of Special Education Programs, *Analysis of Comments and Changes*, at 46605, Federal Register, Vol. 71, No. 156 (August 14, 2006) [hereinafter referred as *Analysis*].

⁵ *Analysis*, at 46601. In this instance, OSEP was responding to a number of commenters, including one who stated that the State complaint procedures should be used only for systemic violations that reach beyond the involvement of one child in a school....” Further, OSEP stated that “placing limits on the scope of the State complaint system, as suggested by the commenters, would diminish the SEA’s ability to ensure its LEAs [local education agencies] are in compliance with [IDEA ’04] and its implementing regulations, and may result in an increase in the number of due process complaints filed and the number of due process hearings held.”

⁶ Furthermore, this office will not release the **Appendix** portion of this *Letter of Findings* to Complainant as it details records related to the individual students.

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Date	Event
Events Occurring Within 365 Days of February 6, 2024	
April 10, 2023	<ul style="list-style-type: none">• In an email sent at 6:03 p.m., Parent requested an Independent Educational Evaluation (IEE) “at public expense based on [Parent’s] disagreement with the results of PWCS’s psychological and educational evaluations.” Further, Parent expressed being “concerned that there are additional areas of need that have not been adequately identified through PWCS’s evaluations.”• At 10:08 p.m., PWCPS Assistant Director, SED Procedural Support emailed PWCPS staff advising that a “psychoeducational evaluation was most recently completed for [Student 4] on 11/23/2020 and an IEE can be approved in this area.”
April 14, 2023	<ul style="list-style-type: none">• At 8:37 a.m., Parent emailed PWCPS staff stating that the previous email was not responded to and asserted that PWCPS staff’s failure to respond violated the Elementary and Secondary Education Act (ESEA).• At 11:00 a.m., PWCPS Executive Administrative Assistant emailed Parent a letter approving an Independent Psychological-Educational evaluation. The letter further advised that PWCPS would pay \$1,500 - \$3,000 for the IEE.• At 11:09 a.m., Parent selected Dr. Ling [IEE Evaluator] to complete the evaluation.• At 11:39 a.m., PWCPS Executive Administrative Assistant emailed the IEE Evaluator to advise of Parent’s selection and attached the approval letter.
July 18, 2023	<ul style="list-style-type: none">• At 11:03 a.m., Parent emailed PWCPS requesting an IEP meeting to discuss “needs and transition and findings from the IEE.”
July 19, 2023	<ul style="list-style-type: none">• In an email sent to Parent at 10:16 a.m., PWCPS Procedural Support wrote: “[PWCPS Procedural Support] [was] working to get proposed availability for this meeting to communicate to [Parent]. Can [Parent] clarify when [Parent] expect[ed] to have the results from the IEE? PWCS would like a copy of the report prior to the next meeting.”• In a responsive email sent at 10:34 a.m., Parent advised that Student 4’s IEE had been completed, however Parent was not sure when the report would be shared with all parties. Parent further stated that having a copy of the report prior to the meeting was “not a requirement” and requested a meeting as soon as possible to discuss Student’s needs. Parent advised that the email served as Parent’s “10 day notice that due to the demonstrable failures of PWCS” Student would need to be placed in a private school setting “to receive appropriate remediation.”
July 28, 2023	<ul style="list-style-type: none">• In an email, Parent advised that IEE Evaluator’s findings indicated that Student 4 needed to be evaluated for auditory processing and speech and language. Parent provided the name of an evaluator to conduct the additional testing and requested an “addendum to the IEE” to include the additional evaluation needed to ensure Student 4 a FAPE.• In an email sent to the IEE Evaluator at 1:43 p.m., PWCPS Executive Administrative Assistant requested the IEE report.• In a responsive email, the IEE Evaluator advised that the report would be “out in a couple of weeks” and Parent’s email referred to a “verbal recommendation based on a preliminary review of the information.”

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August 18, 2023	<ul style="list-style-type: none">• The parties held an IEP meeting.
September 7, 2023	<ul style="list-style-type: none">• PWCPS Executive Administrative Assistant emailed the IEE Evaluator requesting a copy of Student 4's IEE report and an invoice.• In a responsive email, the IEE Evaluator wrote: "Situation is that [IEE Evaluator] completed the direct testing, but [Parent] had questionnaires that [Parent] needed to complete for [IEE Evaluator] and [IEE Evaluator] ha[d] not received them as of yet."
September 8, 2023	<ul style="list-style-type: none">• PWCPS Executive Administrative Assistant emailed Parent the proposed IEP, associated Prior Written Notice (PWN), and Procedural Safeguards. PWCPS Executive Administrative Assistant advised that PWCPS wanted to convene a multi-disciplinary team to review Student 4's existing data and determine whether additional evaluations were needed in the areas of "auditory processing, assistive technology, and vocation." PWCPS proposed the following dates September 19, 2023, 8-10 a.m.; September 26, 2023, 11-1 p.m.; October 3, 2023, 10-12 p.m.; and October 5, 2023, 11-1 p.m.
September 20, 2023	<ul style="list-style-type: none">• PWCPS Executive Administrative Assistant emailed the IEE Evaluator requesting the IEE report and invoice.• In a responsive email, the IEE Evaluator explained that Parent had not responded but the report would be generated soon.
September 21, 2023	<ul style="list-style-type: none">• The IEE Evaluator emailed Student 4's Preliminary Summary.
September 26, 2023	<ul style="list-style-type: none">• The parties held an IEP meeting.
October 4, 2023	<ul style="list-style-type: none">• PWCPS Procedural Support emailed Parent the Team Review of Referral and Team Review of Existing Data Summary, Parental Consent to Evaluate, Prior Written Notice, and Procedural Safeguards.
October 5, 2023	<ul style="list-style-type: none">• In an email, Parent advised PWCPS that Parent was not in agreement with the assessment components being requested to determine eligibility and believed eligibility could be determined based on the information available.
October 6, 2023	<ul style="list-style-type: none">• In an email, Parent requested PWCPS to "pay for an assessment for Auditory Processing Disorder" that Parent requested over the summer when the IEE Evaluator mentioned it. Parent asked PWCPS to state, in writing, whether the IEE request was approved or denied.
November 8, 2023	<ul style="list-style-type: none">• The IEE Evaluator sent PWCPS a copy of the IEE, the authorizing letter, and invoice.
November 30, 2023	<ul style="list-style-type: none">• At 9:33 a.m., PWCPS Procedural Support emailed Parent advising that PWCPS received the IEE and proposed dates to convene an eligibility meeting since Student 4's "three-year eligibility determination (re-evaluation) is due on or before January 6, 2024."• PWCPS processed a payment for the Psychoeducational IEE.
December 20, 2023	<ul style="list-style-type: none">• In an email, Parent "made another formal request for the IEE for auditory processing" and asked why PWCPS denied the request. Parent also requested "an IEP meeting to discuss FAPE, PWCS's offered accommodations, [IEE Evaluator's] recommendations, etc."
January 2, 2024	<ul style="list-style-type: none">• In an email, Parent questioned whether PWCPS approved Parent's auditory processing IEE request.
January 8, 2024	<ul style="list-style-type: none">• In an email, Parent questioned whether PWCPS approved the IEE request.

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January 17, 2024	<ul style="list-style-type: none">• PWCPS Executive Administrative Assistant emailed Parent a letter stating, in part, "...an [IEE] at public expense is agreed upon in order to assist the multi-disciplinary team in determining if [Student 4] is a student with a Speech Language Impairment (SLI)."• PWCPS Executive Administrative Assistant emailed the selected private provider to inform that PWCPS approved the auditory processing disorder (APD) evaluation and agreed to pay \$800 for its completion.• In a responsive email to PWCPS, Parent expressed disagreement with PWCPS' approval letter.
January 30, 2024	<ul style="list-style-type: none">• PWCPS received the APD IEE and associated invoice.
February 1, 2024	<ul style="list-style-type: none">• PWCPS processed a payment for the APD IEE.
February 2, 2024	<ul style="list-style-type: none">• In an email, Parent requested a "speech and language IEE."• PWCPS sent emails to internal staff and agreed to approve the request.• At 3:09 p.m. PWCPS Executive Administrative Assistant emailed the selected provider an approval letter to complete the speech and language IEE. The letter advised that PWCPS agreed to pay \$400 for the IEE.
February 6, 2024	<ul style="list-style-type: none">• ODRAS received complaint submission.
February 8, 2024	<ul style="list-style-type: none">• ODRAS issued <i>Notice of Complaint</i>.

ISSUE(S) AND REGULATIONS:

1. Procedural Safeguards – Independent Educational Evaluation (IEE).

Parent has alleged that LEA systemically violated federal and state special education regulations governing the procedural safeguards. More specifically, Parent has alleged that:

- PWCPS denies parents their right to obtain an IEE by imposing an unreasonable delay on processing parental requests for an IEE at public expense.
- PWCPS' improperly denies parental requests for an IEE at public expense.

Applicable Regulations and other Guidance/Authority:

- 34 C.F.R. § 300.502(a)(3)(i); 8 VAC 20-81-10
- 34 C.F.R. § 300.502; 8 VAC 20-81-170.B
- 34 C.F.R. § 300.502(a)(2); 8 VAC 20-81-170.B.1.b and B.2.f
- 34 C.F.R. § 300.502(e); 8 VAC 20-81-170.B.2.f
- 34 C.F.R. § 300.502(c); 8 VAC 20-81-170.B.3
- U.S. Department of Education (USED), Office of Special Education Programs (OSEP):
 - *Letter to Wilson*, 16 IDELR 83 (October 17, 1989).
 - *Letter to Thorne*, February 5, 1990 (16 IDELR 606).
 - *Letter to Anonymous*, February 2, 1995 (22 IDELR 637).
 - *Letter to Anonymous*, 103 LRP 22731 (2002).

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- *Letter to Baus*, 65 IDELR 81; 115 LRP 8855 (February 23, 2015).⁷
- *Letter to Carroll*, 68 IDELR 279; 116 LRP 46076 (October 22, 2016).⁸
- *Analysis of Comments and Changes* at 46689-46690, Federal Register, Vol. 71, No. 156 (August 14, 2006).
- *Seth B. v. Orlean Parish Sch.*, 810 F.3d 961 (5th Cir. 2016).
- *Abarca v. Goleta Union Sch. Dist.*, 2017 WL 700082, 69 IDELR 156, 2017 WL 700082 (C.D. Cal. 2017).

Findings:

- The Office of Dispute Resolution and Administrative Services (ODRAS) finds PWCPS in noncompliance with this **Issue**.

Analysis:

Regulatory Background

- Special education regulations (34 CFR 300.15; 8 VAC 20-81-10), define “evaluation” as “procedures used ... to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.”
- These regulations (34 C.F.R. § 300.502(a)(3)(i); 8 VAC 20-81-10) define an IEE as “an evaluation conducted by a qualified examiner or examiners who are not employed by the local educational agency [school division] responsible for the education of the child in question.”
 - Parents have the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the school division. More specifically, the regulations provide that, upon receipt of a parental request for an IEE, the school division must, without unnecessary delay, either (i) **initiate** a due process hearing to show that its evaluation

⁷ In addressing whether a parent can request an IEE in an area that was not previously assessed by the school [division’s] evaluation in its 2015 Letter to Baus (65 IDELR 81; 115 LRP 8855), OSEP stated that [w]hen an evaluation is conducted in accordance with 34 CFR §§ 300.304 through 300.311 and a parent disagrees with the evaluation because a child was not assessed in a particular area, the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs.

⁸ In its October 22, 2016, *Letter to Carroll* (68 IDELR 279; 116 LRP 46076), the OSEP, US ED, addressed an inquiry regarding whether, once a [school division’s] evaluation is complete and the parent communicates a desire for a child to be assessed in a particular area in which they [sic] have not previously expressed concern, would the [school division] have the opportunity to conduct an evaluation in the given area before a parent invokes the right to an IEE. The OSEP advised that the IDEA affords a parent the right to an IEE at public expense and does not condition that right on a [school division’s] ability to cure the defects of the evaluation it conducted prior to granting the parent’s request for an IEE. Therefore, it would be inconsistent with the provisions of 34 CFR § 300.502 to allow the [school division] to conduct an assessment in an area that was not part of the initial evaluation or reevaluation before either granting the parents’ request for an IEE at public expense or filing a due process complaint to show that its evaluation was appropriate. Under 34 CFR § 300.502(b)(5), a parent is entitled to **only one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees** [emphasis added].

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is appropriate; or (ii) ensure that an IEE is conducted at public expense unless the school division demonstrates in a due process hearing that the evaluation obtained by the parent does not meet the school division's criteria (34 C.F.R. § 300.502).

- Further, the regulations (34 C.F.R. § 300.502(a)(2); 8 VAC 20-81-170.B.1.b and B.2.f) direct school divisions to provide to the parent, upon request for an IEE, information about where an independent educational evaluation may be obtained and the applicable criteria for IEEs.
- Additionally, these regulations (34 C.F.R. § 300.502(e); 8 VAC 20-81-170.B.2.f) specify that, if the IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school division agency uses when it initiates an evaluation, **to the extent those criteria are consistent with the parent's right to an IEE** [emphasis added]. Except for the criteria, a local educational agency may not impose conditions or timelines related to obtaining an IEE at public expense.⁹
- Both federal and state special education regulations (34 C.F.R. § 300.502(c); 8 VAC 20-81-170.B) further set requirements for parent-initiated evaluations. The regulations state that if the parent obtains an IEE at public expense or shares with the local educational agency an evaluation obtained at private expense, the results of the evaluation: a. shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding the provision of a free appropriate public education to the child; and b. may be presented by any party as evidence at a hearing under 8 VAC 20-81-210.

Review of the record

- PWCPS denies systemically violating special education regulations governing the procedural safeguards. PWCPS maintains that the school division does not “improperly” deny or impose an “unreasonable delay” on processing parental requests for an IEE at public expense.
- During investigatory timeline, PWCPS asserts the school division only denied three IEE requests which further demonstrates that PWCPS “routinely grants requests for IEEs when a parent requests the same as defined by law.” Notably, since February 6, 2023, the school division “has granted fifty-six (56) evaluations for an IEE at public expense without unreasonable delay” across thirty-one students. “To the extent that PWCS has denied a parental request for an IEE at public expense, it is because the parent was not entitled to an IEE under the law 8 VAC 20-81-170(B), states that parents have the right to an IEE at public expense *if the parent disagrees with an evaluation obtained by the school division.* (Emphasis added).”

⁹See also, U.S. Department of Education, Office of Special Education Programs, *Analysis of Comments and Changes*, at 46689-46690, Federal Register, Vol. 71, No. 156 (August 14, 2006). VDOE has also stated that the qualifications of the IEE evaluator must be the same as the criteria that the LEA uses when it initiates an evaluation... Virginia Department of Education, *Discipline of Children with Disabilities Technical Assistance Resource Document* (Fall 2010) <http://www.doe.virginia.gov/support/student_conduct/discipline_children_disabilities.pdf>

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- PWCPS' response further discusses each parental request that was denied. Regarding Student 1, PWCPS argues the parent was not entitled to an IEE because the parent "was not disagreeing 'with an evaluation obtained by the local school division' since PWCPS had not conducted an evaluation for which the parent could disagree." PWCPS admits that Student 1's parent consented to PWCPS conducting an observation, socio-cultural report, and a teacher educational report for Student 1's re-evaluation.

On May 4, 2022, Student 1 was found eligible as a student with autism and the parent consented to eligibility on May 11, 2022. However, on November 8, 2022, PWCPS requested parental consent to evaluate Student 1 again because Student 1's parent "wanted to determine if Student #1 also qualified for services under the category of specific learning disability." Due to ongoing medical concerns, PWCPS argues the parties agreed to extend the sixty-five (65) day timeline. Nevertheless, on April 23, 2023, Parent revoked consent to conduct the psycho-educational testing. Thus, when PWCPS received the parental request for an IEE it was denied. PWCPS reiterates that the denial was appropriate because PWCPS had not completed a psycho-educational evaluation during the most recent testing cycle.

PWCPS' "acknowledges the October 22, 2016, letter from the U.S. Department of Education's Office of Special Education Programs ('OSEP')" but argues that Student 1 did not "meet the criteria presented in the OSEP letter[.]" PWCPS maintains that Student 1 "was evaluated in all areas of suspected disability in 2022 and PWCS tried to evaluate him in another area of suspected disability in 2023, but consent to evaluate was revoked. Therefore, the parent was not entitled to an IEE under 8 VAC 20-81-170(B)(2)(a)."

- Regarding Student 2, PWCPS again contends that PWCPS had not completed an evaluation with which Student 2's parent could disagree. PWCPS further contends, "this was not a situation in which PWCS disagreed with the Parent about the need to evaluate in the requested area as discussed in the letter from OSEP" because PWCPS agreed that Student 2 needed to be evaluated for a central auditory processing disorder. Rather, in this case, PWCPS argues that the school division "had the ability to conduct its own evaluation with its full time Educational Audiologist who holds a Doctor of Audiology (Au.D.) and a Certificate of Clinical Competence in Audiology (CCC-A). Once PWCPS conducted its own evaluation, PWCPS notes that the parent's request for an IEE was granted.
- Finally, regarding Student 3, PWCPS asserts in February 2021, the school division "requested parental consent to conduct evaluations due to a concern with communication." PWCPS contends that after Student 3's initial screening, the parents reported that Student demonstrated progress and did not provide consent for the requested evaluations. However, in April 2023, Student 3's parents requested "an IEE based on recommendations for assessment from the developmental pediatrician. After speaking with Central Office staff, a plan for intervention was developed and the parents consented to evaluations. PWCPS notes Student 3 was identified as a student with a disability and currently receives special education services.

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- PWCPS submitted the following documents for our office’s review:
 - Emails dated April 10, 2023, April 14, 2023, July 18, 2023, July 19, 2023, July 28, 2023, September 7, 2023, September 8, 2023, September 20, 2023, October 4, 2023, October 5, 2023, October 6, 2023, November 30, 2023, December 20, 2023, January 2, 2024, January 8, 2024, January 14, 2024, January 17, 2024, January 30, 2024, February 2, 2024,
 - PWCPS IEE approval letter dated April 14, 2023
 - PWCPS IEE approval letter sent to IEE evaluator dated April 14, 2023
 - IEP created on September 7, 2023, and associated PWN
 - IEE Evaluator’s Preliminary Summary dated September 21, 2023
 - PWCPS Team Review of Referral and Team Review of Existing Data Summary and Parental Consent to Evaluate and associated PWN created October 3, 2023
 - IEE Evaluator’s Report dated July 14, 2023
 - PWCPS Specific Learning Disability Worksheet created December 20, 2023
 - PWCPS Eligibility Summary created December 21, 2023
 - PWN dated December 21, 2023
 - Parental Consent for Related Services or Other Non-Eligibility Purposes created on December 21, 2023
 - Family Educational Rights and Privacy Act (FERPA) Information Disclosure Consent
 - PWCPS APD evaluation approval letter dated January 17, 2024
 - Auditory Information Processing Assessment dated January 30, 2024
 - PWCPS Speech and Language approval letter dated February 2, 2024
 - IEE list
 - PWCPS letter dated October 26, 2023 (for Student 1)
 - PWCPS Eligibility Summary signed April 2021 (for Student 3)
 - Student’s IEP created July 5, 2022
 - Student’s IEP created March 15, 2023
 - Procedural Safeguards: Parental Involvement revised July 2023
 - PWCPS IEE approval letter
 - PWCPS Criteria for Independent Educational Evaluation
- On March 22, 2024, Parent submits additional information and documents for our office’s review. As a part of Parent’s additional information, Parent clarifies that the systemic complaint “wasn’t simply about the DENIAL [emphasis in original] of IEEs but the unreasonable DELAY. While PWCS admits they denied three IEEs, I know for a fact they have not openly disclosed all of those that were unnecessarily DELAYED for months [emphasis in original].”
- Contrary to PWCPS’ acknowledgement of OSEP’s guidance, the record fails to demonstrate that PWCPS has acted in accordance with this guidance.
- As clearly explained in OSEP’s October 22, 2016, *Letter to Carroll*, school divisions have an affirmative obligation when conducting an evaluation, to use a variety of assessment tools and

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strategies to gather relevant functional, developmental, and academic information about the child that may assist in determining whether the child is a child with a disability and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum.¹⁰ (34 CFR §300.304(b)(1), 8 VAC 20-81-70.C.3).

Federal and state special education regulations further require school divisions to ensure that in evaluating each child with a disability under 34 CFR §§300.304 through 300.311, the evaluation is sufficiently comprehensive to assess the child in all areas related to the suspected disability, and must identify all of the child's special needs, whether or not commonly linked to the disability category in which the child has been classified. (34 CFR §300.304(c)(4) and (6), 8 VAC 20-81-70.C.9).

Pursuant to 34 CFR §300.502, parents of a child with a disability have a right to seek an IEE at public expense, if the parents disagree with the evaluation conducted by the public agency. However, this is so even if the reason for the parent's disagreement is that the public agency's evaluation did not assess the child in all areas related to the suspected disability.

Federal and state special education regulations are clear, if a parent requests an IEE at public expense, the LEA must, without unnecessary delay, either: (i) initiate a hearing to show that its evaluation is appropriate; or (ii) ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing pursuant to 34 CFR §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. It is well settled that a parent can disagree with an evaluation because a child was not assessed in a particular area, and parents have the right to request an IEE to assess their child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs. Thus, an IEE may indeed expand the scope of the evaluation.

Furthermore, an LEA may not deny an IEE at public expense because the parental request expands the scope of the evaluation. If the LEA believes that it completed a comprehensive evaluation, it may deny the publicly funded IEE and pursue a due process hearing to demonstrate the appropriateness of its own evaluation, but it cannot direct the evaluator as to which assessments for which it will or will not pay. This would be an impermissible condition on the IEE as it limits the scope of the IEE.¹¹

- Because a parent is entitled to only one IEE at public expense each time the school division conducts an evaluation with which the parent disagrees, this office further reasons it becomes imperative to ascertain a child's disability and/or need for special education. Moreover, parents also cannot expand their initial request for an IEE at public expense by challenging

¹⁰ *Letter to Carroll*, 68 IDELR 279; 116 LRP 46076 (October 22, 2016).

¹¹ OSEP *Differentiated Monitoring and Support Report (DMS Report)*. See also *Letter to Baus*, 65 IDELR 81; 115 LRP 8855 (February 23, 2015).

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additional aspects of the same evaluation later as school divisions have no regulatory obligation to consider such requests.¹²

- Even though the record clearly supports PWCPS' approval of numerous IEEs, we find that the procedure by which PWCPS processes its IEE requests is flawed. In arriving at this determination, we find the following emails to be compelling:
 - Emails exchanged on October 18, 2023 (see **Appendix A**)
 - Emails exchanged on March 17, 2023 (see **Appendix D**)
 - Emails exchanged on March 21, 2023 (see **Appendix E**)
 - Emails exchanged on March 29, 2023, December 5, 2023, December 6, 2023, December 11, 2023, January 25, 2024, January 26, 2024, January 29, 2024 (see **Appendix G**)
 - Emails exchanged on April 14, 2023, April 17, 2023 (see **Appendix H**)
 - Emails exchanged on May 5, 2023 (see **Appendix J**)
 - Emails exchanged on May 19, 2023 (see **Appendix M**)
 - Emails exchanged on June 30, 2023, December 11, 2023, December 12, 2023, December 13, 2023, December 19, 2023 (see **Appendix O**)
 - Emails exchanged on September 29, 2023 (see **Appendix R**)
 - Emails exchanged on November 30, 2023 (see **Appendix S**)
 - Emails exchanged on November 30, 2023, December 2, 2023 (see **Appendix T**)
 - Emails exchanged on December 5, 2023, December 7, 2023, December 8, 2023, December 13, 2023 (see **Appendix U**)
 - Emails exchanged on December 11, 2023 (see **Appendix V**)
 - Emails exchanged on January 11, 2024 (see **Appendix Y**)
 - Emails exchanged on January 24, 2024, January 25, 2024 (see **Appendix BB**)
 - Emails exchanged on February 1, 2024 (see **Appendix CC**)
- The emails recount several instances of PWCPS staff contacting parents and asking parents to identify the evaluation and/or component of the evaluation that the parent disagrees with. Once confirmed, PWCPS (i) issues an approval letter approving the parentally identified evaluation(s) and or evaluation PWCPS staff determines was conducted in the past two years, (ii) provides the associated cost cap, and (iii) provides the IEE provider list associated with the evaluation(s) identified in the approval letter. As Student 5's attorney explains, in an email provided at **Appendix D**, in 2021 the Virginia Department of Education removed the requirement that a parent identify the evaluation component to which the parent disagrees to obtain an IEE at public expense.¹³ Furthermore, OSEP's guidance has undoubtedly established

¹² See, e.g., *Alex W. v. Poudre Sch. Dist. R-1*, 124 LRP 7692 (10th Cir. 03/07/24) (Parents who waited until after a Colorado district funded their IEE request to challenge the lack of neuropsychological testing in their son's triennial reevaluation could not compel the district to fund another IEE.).

¹³ Commonwealth of Virginia, Virginia Department of Education, Superintendent's Memo #330-21, dated December 17, 2021, confirmed that House Bill 2314 required the Board of Education to amend the *Virginia Regulations* "addressing the right of a parent to an independent educational evaluation at public expense, to remove the word 'component' following the word 'evaluation.'" The change is intended to ensure consistency of the Virginia

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that an IEE at public expense is not limited to the specific evaluation/assessment previously conducted by the LEA.

- We further find in reviewing PWCPs' IEE Procedure Checklist in conjunction with emails exchanged, upon receipt of IEE requests, the Cluster team reviewed students' files to determine the exact evaluation(s) that were conducted by PWCPs within two years. PWCPs' approval hinged on whether the exact evaluation was conducted within that timeframe. Again, PWCPs' approval letters only provided IEE criteria for the evaluation approved. Thus, limiting the scope of the IEE request to evaluations conducted by PWCPs within two years.
- Moreover, a review of PWCPs' letter issued to Student 1 establishes that PWCPs' improperly denied the parent's request for an IEE by asserting that PWCPs had not conducted an evaluation "in the area" of psychological-educational despite the record clearly establishing that PWCPs conducted a sociocultural evaluation for Student 1 within two years of the request which triggered the parent's right to an IEE. PWCPs' denial of Student 1 parent's request for an IEE at public expense also required PWCPs to do more than issue a denial letter, federal and state special education regulations required PWCPs to initiate a due process hearing.
- While this office understands PWCPs' efforts to clarify parental IEE requests, it is imperative that PWCPs either approves an IEE request at public expense and provides IEE criteria or denies the request and takes the parent to due process. By failing to approve IEEs that were not previously conducted by PWCPs and failing to provide IEE criteria associated with all evaluations, we find PWCPs' limitations improperly deny parental requests for an IEE at public expense.¹⁴
 - Notably, although the Part B regulations do not provide a specific time limit for responding to parental requests for an IEE, we found instances that may constitute an "unnecessary delay." While PWCPs' response fails to directly address the delays detailed at **Appendix J** and **Appendix H**, the only logical explanation we can surmise is that the school division misplaced the initial IEE requests that were submitted by letter.
- In investigating Parent's allegation, this office requested and reviewed PWCPs' Criteria for IEE. Significantly we note, in its 2006 Analysis of Comments and Changes, the USED, OSEP has described the "broad scope of the State complaint procedures" as "critical to each State's exercise of its general supervision responsibilities. The complaint procedures provide parents, organizations, and other individuals with an important means of ensuring that the educational needs of children with disabilities are met and provide the SEA with a powerful tool to identify

Regulations with federal guidance."

¹⁴ Significantly, we note that this office also considered a recent *Letter of Findings* associated with Case Number C24-111. In that *Letter of Findings*, issued February 2, 2024, we identified PWCPs' documents that contained references to the "component" language formally associated with IEEs in violation of state and federal special education regulations.

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and correct noncompliance” under IDEA ’04.¹⁵ OSEP has also advised that state complaint procedures “are available for resolving *any* complaint that meets the requirements of § 300.662, including: (1) complaints that raise systemic issues, and (2) individual child complaints [emphasis in the original].”¹⁶

- More recently, in its 2010 Letter to Anderson, OSEP has stated that “if the State complaint alleges systemic noncompliance or the State has reason to believe that the violations are systemic, it must investigate the matter. If the State finds systemic violations, it must provide for appropriate remedies to other affected students, including corrective actions to address both past violations and future compliance.”¹⁷
- Thus, pursuant to our general supervisory authority, it is critical that this office identifies systemic violations and issues corrective action to address both past and future compliance. We find that PWCPS’ IEE Criteria fails to identify criteria regarding the location of the evaluation, qualifications of the examiner, cost containment, and a waiver for unique circumstances. Consequently, this office will issue corrective action below.
- Based on the foregoing, we find PWCPS to be in noncompliance with **Issue 1**.

2. Procedural Safeguards – Independent Educational Evaluation (IEE). Free Appropriate Public Education (FAPE).

Parent has alleged that LEA violated federal and state special education regulations governing the procedural safeguards. More specifically, Parent has alleged that:

- On July 28, 2023, at 10:19 a.m. Parent emailed PWCPS staff “requesting an IEE of [Student] for a suspected auditory processing disorder[.]”
- PWCPS staff did not respond to Parent’s IEE request submitted on July 18, 2023.
- During an IEP meeting held on August 18, 2023, Parent requested an IEE.

¹⁵ U.S. Department of Education, Office of Special Education Programs, *Analysis of Comments and Changes*, at 46601, Federal Register, Vol. 71, No. 157 (August 14, 2006).

¹⁶ U.S. Department of Education, Office of Special Education Programs, *Memorandum to Chief State School Officers* 00-20 (34 IDELR 264; 101 LRP 56) (July 17, 2000). *See also*, U.S. Department of Education, Office of Special Education Programs, *Letter to Nann* (36 IDELR 212; 102 LRP 9458)(September 21, 2001); U.S. Department of Education, Office of Special Education Programs, *Letter to Zimring* (109 LRP 15076)(July 1, 2008); U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), *Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities*, (52 IDELR 266; 107 LRP 41916)(June 1, 2009).

¹⁷ 34 C.F.R. § 300.153; 8 VAC 20-81-200.B.4; Virginia Department of Education, Division of Special Education and Student Services, Office of Dispute Resolution and Administrative Services, *Complaint Resolution Procedures* (February 2012) OSERS, *Questions and Answers* (June 1, 2009), *supra*.

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- On September 7, 2023, PWCPS issued a Prior Written Notice (PWN) refusing the IEE.
- On September 21, 2023, Dr. Ling provided PWCPS a “preliminary report outlining concerns” regarding Student’s auditory processing.
- During an eligibility meeting convened on September 26, 2023, Parent requested an IEE for auditory processing.
- On October 4, 2023, Parent received a PWN stating that PWCPS refused to agree to an IEE for auditory processing until PWCPS received a complete report from Dr. Ling.
- In an email dated October 6, 2023, Parent asked PWCPS staff whether the school division would pay “for an assessment for Auditory Processing Disorder.” PWCPS did not respond to the October 6th email.
- Parent requested to convene an IEP meeting to discuss, among other things, PWCPS’ failure to respond to Parent’s request for an IEE. However, on October 10, 2023, Parent received PWN from PWCPS denying Parent’s request to convene a meeting.
- On November 9, 2023, PWCPS “received the final report for [Student’s] IEE from Dr. Ling.”
- On December 20, 2023, during an IEP meeting, Parent requested an IEE for auditory processing. PWCPS had the complete report from Dr. Ling for 41 days “but still failed to approve the IEE that had been originally requested almost FIVE MONTHS [emphasis in original] prior.”
- On December 22, 2023, Parent received correspondence from PWCPS, however it did not approve Parent’s request for an IEE.
- Parent sent emails on January 2, 2024, and January 8, 2024, asking PWCPS staff to confirm whether PWCPS would approve Parent’s request for an IEE.
- On January 17, 2024, Parent received approval for the auditory processing IEE, almost six months after the initial request.
- PWCPS “failed to comply with federal and state law by ignoring, denying, and unnecessarily delaying [Student’s] IEE for auditory processing.”
- “Testing and remediation for DYSLEXIA [emphasis in original] and auditory processing has been unnecessarily delayed by PWCS and thereby resulting in a denial of FAPE.”

Applicable Regulations and Other Guidance/Authority:

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- 34 C.F.R. § 300.2, 34 C.F.R. § 300.101, 34 C.F.R. § 300.124 and 34 C.F.R. § 300.209; 8VAC20-81-30.B
- 34 C.F.R. § 300.17
- 34 C.F.R. § 300.101-109; 8 VAC 20-81-100
- U.S. Department of Education’s Office of Special Education Programs Memorandum, July 17, 2000, Complaint Resolution Procedures under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), effective July 1, 2005, at 20 U.S.C § 1415(f)(3)(F), OSEP 00-20.
- 71 FR 46601 (August 14, 2006).
- 34 C.F.R. § 300.502(a)(3)(i); 8 VAC 20-81-10
- 34 C.F.R. § 300.502; 8 VAC 20-81-170.B
- 34 C.F.R. § 300.502(a)(2); 8 VAC 20-81-170.B.1.b and B.2.f
- 34 C.F.R. § 300.502(e); 8 VAC 20-81-170.B.2.f
- 34 C.F.R. § 300.502(c); 8 VAC 20-81-170.B.3

Findings:

- ODRAS finds PWCPs in noncompliance with **Subissue 1A**.

Analysis:

Regulatory Background

- Special education regulations (34 CFR 300.15; 8 VAC 20-81-10), define “evaluation” as “procedures used ... to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.”
- These regulations (34 C.F.R. § 300.502(a)(3)(i); 8 VAC 20-81-10) define an IEE as “an evaluation conducted by a qualified examiner or examiners who are not employed by the local educational agency [school division] responsible for the education of the child in question.”
 - Parents have the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the school division. More specifically, the regulations provide that, upon receipt of a parental request for an IEE, the school division must, without unnecessary delay, either (i) **initiate** a due process hearing to show that its evaluation is appropriate; or (ii) ensure that an IEE is conducted at public expense unless the school division demonstrates in a due process hearing that the evaluation obtained by the parent does not meet the school division’s criteria (34 C.F.R. § 300.502).
- Further, the regulations (34 C.F.R. § 300.502(a)(2); 8 VAC 20-81-170.B.1.b and B.2.f) direct school divisions to provide to the parent, upon request for an IEE, information about where an independent educational evaluation may be obtained and the applicable criteria for IEEs.

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- Additionally, these regulations (34 C.F.R. § 300.502(e); 8 VAC 20-81-170.B.2.f) specify that, if the IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school division agency uses when it initiates an evaluation, **to the extent those criteria are consistent with the parent's right to an IEE** [emphasis added]. Except for the criteria, a local educational agency may not impose conditions or timelines related to obtaining an IEE at public expense.¹⁸
- Both federal and state special education regulations (34 C.F.R. § 300.502(c); 8 VAC 20-81-170.B) further set requirements for parent-initiated evaluations. The regulations state that if the parent obtains an IEE at public expense or shares with the local educational agency an evaluation obtained at private expense, the results of the evaluation: a. shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding the provision of a free appropriate public education to the child; and b. may be presented by any party as evidence at a hearing under 8 VAC 20-81-210.

Review of the record

- PWCPS “disagrees with [Parent’s] allegations regarding [Student] and denies there was a failure to comply with federal and state law by ignoring, denying, and unnecessarily delaying [Parent’s] request for an IEE in auditory processing.” PWCS further asserts the “procedural safeguards section of the VA Regulations is not implicated in this matter and [Student] was not deprived of FAPE.” In support of PWCPS’ assertions, PWCPS submits the documents detailed at **Issue 1**.
- By way of background, PWCPS’ response clarifies that the school division conducted a psychoeducational evaluation on March 26, 2021. PWCPS concedes that Parent disagreed with the evaluation and requested an IEE on April 10, 2023. PWCPS Director of Specialized Instruction approved the request on April 14, 2023, and promptly contacted the selected IEE Evaluator. Despite the prompt approval, the IEE was not conducted for approximately three months on July 10, 2023, and July 14, 2023.
- PWCPS admits that Parent requested to convene an IEP meeting to discuss Student’s needs and IEE findings on July 18, 2023. At that time however, PWCPS argues that the school division had not received the IEE results and admittedly requested a copy of the report prior to convening a meeting. Ten days later, on July 28, 2023, PWCPS also admits that Parent requested “‘an addendum to the IEE,’ to include auditory processing and speech and language.” Parent indicated the basis for the request derived from the preliminary IEE

¹⁸See also, U.S. Department of Education, Office of Special Education Programs, *Analysis of Comments and Changes*, at 46689-46690, Federal Register, Vol. 71, No. 156 (August 14, 2006). VDOE has also stated that *the qualifications of the IEE evaluator must be the same as the criteria that the LEA uses when it initiates an evaluation....* Virginia Department of Education, *Discipline of Children with Disabilities Technical Assistance Resource Document* (Fall 2010) <http://www.doe.virginia.gov/support/student_conduct/discipline_children_disabilities.pdf>

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findings; however, the school division continued to await a completed IEE report. PWCPS further argues that the record will show (1) the school division promptly and repeatedly requested the results from the IEE Evaluator and (2) the delay in PWCPS receipt of the final report was due to Parent's failure to provide questionnaires to the IEE Evaluator.

- PWCPS admits to convening an IEP meeting on August 18, 2023, during which Parent again requested an APD IEE. However, PWCPS argues the school division notified Parent in a PWN that the team “was awaiting a copy of the IEE evaluation report and would schedule a meeting with [Parent] to discuss the evaluation report, upon receipt, and consider this request and any additional information required to complete [Student’s] three-year eligibility by January of 2024.” Despite the school division’s response, Parent continued to fail to respond to the IEE Evaluator and PWCPS did not receive the Preliminary IEE Summary until September 21, 2023.
 - PWCPS notes, that the language in the preliminary summary supports this contention as the IEE Evaluator wrote: “[IEE Evaluator] will furnish a written copy of the full report once [IEE Evaluator] receive[s] questionnaires from the family[.]”
- PWCPS also admits to convening a multidisciplinary team on September 26, 2023, to review existing data and determine whether additional data was needed to conduct Student’s required three-year eligibility. During this meeting, PWCPS psychologist reviewed the Preliminary Summary and explained that the IEE Evaluator already assessed Student’s auditory processing. The school psychologist further asserted the summary “did not include recommendations for additional assessments.” Despite this, the school psychologist conceded that the IEE Evaluator’s prior verbal confirmation suggested otherwise. PWCPS argues that the associated PWN “clearly documents” the team’s consideration of Parent’s request for an APD IEE and “requested the full summary of the IEE prior to the eligibility.”
- Contrary to Parent’s allegation, PWCPS asserts that the school division received the full IEE report on November 16, 2023.
- On December 20, 2023, the parties convened an IEP meeting to discuss the IEE results and PWCPS admits that Parent requested an APD IEE at the meeting. PWCPS argues the team considered the IEE results as “part of the eligibility process” and “proposed additional evaluation data be collected in the areas of auditory and language processing, behavioral/social emotional rating scales, and Teacher Education Reports.”
 - PWCPS notes the school division’s closure for winter break at the end of the day on December 20, 2023.
- PWCPS asserts Parent’s request for an APD IEE “for the exact same testing that was being conducted in the IEE that was already approved” was odd, nevertheless PWCPS argues that the evaluation was “immediately approved” by the school division on January 17, 2023.
- Regarding filing for Due Process and Parent’s FAPE allegation, PWCPS argues the school

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division “did not violate 8 VAC 20-81-170(B) and was not required to file for due process” because (1) the evaluation requested was not an IEE as defined by the regulations and (2) the testing Parent requested was being completed as a part of an approved IEE. It is reasoned by PWCPS that “Dr. Ling’s report *was the IEE* [emphasis in original] as defined by 8 VAC 20-81-10 and 8 VAC 20-81-170(B). On April 10, 2023, the Parent requested an IEE for that component of the testing.” Thus, PWCPS “did not have to file for due process because PWCS did not refuse to provide an IEE to [Parent].” Moreover, PWCPS argues Dr. Ling’s evaluation should not trigger 8 VAC 20-81-170 (B)(2) because the report was not issued by an employee of the public educational agency and was conducted on behalf of the public educational agency,’ “or else it would not be considered ‘independent’” and there is “no indication that [Parent] disagreed with Dr. Ling’s preliminary findings. In fact, it appears that [Parent] asked for the subsequent evaluation regarding auditory processing because [Parent] agreed with Dr. Ling’s report.”

PWCPS further asserts, “[s]ince Dr. Ling’s evaluation was the IEE for the psychoeducational, the Parent was not entitled to an additional evaluation at public expense. 8 VAC 20-81-170(B)(2)(e) clearly states that a Parent is only entitled to an IEE each time the ‘public educational agency conducts an evaluation component with the parent disagrees.’” Furthermore, “Parent has never requested, and PWCS has never denied a request to have [Student] evaluated for deficits regarding auditory processing” and Parent “has never made [Student] available to conduct auditory processing testing.”

- PWCPS maintains “FAPE is not implicated in this matter,” and Student 4 was not deprived of FAPE due to the evaluation for auditory processing not being received until January 30, 2024. Furthermore, PWCPS contends that Student was not deprived a FAPE because Student does not attend PWCPS. Rather, Student 4 attends “a private, college preparatory school that does not provide special education services” because of a unilateral parental placement. Thus, “Parent cannot validly claim that PWCS is depriving [Student 4] of [a] FAPE when [Parent] has unilaterally placed [Student] in a school in which the Head of the School candidly and publicly stated that the school will not implement an IEP written by a local school division.”
- Per VDOE regulations, PWCPS asserts “it is the county where [Student’s] school is located that is to provide [Student 4] with a services plan. 8 VAC 20-81-150(C)(3). While PWCS acknowledges that, as a resident of Prince William County, PWCS would only be responsible for a FAPE if Student was enrolled in a public school, “given that [Student] is a parentally placed private school student, PWCS maintains that FAPE is not implicated in this matter.”
- In closing, PWCPS notes, if “for some reason VDOE finds that FAPE is implicated in this matter regarding [Student], PWCS still has not violated the VA Special Education Regulations and/or deprived [Student] of FAPE. Nothing [in] the Parent’s initial complaint, and/or in the Notice of Complaint provides any information that VDOE could rely on to determine that [Student] did not receive FAPE, as defined by the VA Special Education Regulations, because PWCS did not agree to pay for subsequent, duplicative testing of [Student] when the first round of testing had not yet been completed.”

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- On March 22, 2024, Parent submits additional information asserting that Parent did not request an IEE addendum. Rather, Parent reports to have requested a new IEE for an auditory processing delay. Parent also provides a medical explanation regarding the September 7th email sent to Dr. Ling.
- As a preliminary matter, we note that this office's longstanding procedure is to apply a two-year statute of limitations to parental requests for an IEE at public expense as the plain language of the statute of limitations makes no exceptions to the subject matter of the due process hearings. Thus, we must conclude that the two-year statute of limitations applies to all due process hearing requests, including those pertaining to IEEs. However, our application of a two-year statute of limitations does not bar local school divisions from approving parental requests for IEEs at its discretion. Here, upon receipt of Parent's initial request, PWCS' Supervisor of Procedural Support promptly emailed staff advising that a "psychoeducational evaluation was most recently completed for [Student 4] on 11/23/2020 and an IEE can be approved in this area." As previously discussed at **Issue 1**, PWCS' approval process was flawed.

- Parent's initial IEE request, dated April 10, 2023, states:

"I am requesting Independent Educational Evaluations ("IEEs") at public expense based on my disagreement with the results of PWCS's psychological and educational evaluations. I have seen a deterioration in [Student 4's] self-confidence and [Student 4's] mental health, and am concerned that there are additional areas of need that have not been adequately identified through PWCS's evaluations. I would like to know [Student 4's] present levels of performance and current needs according to [Student 4's] disabilities.

As stated during IEP meetings and subsequent correspondence, the IEPs proposed on 1/18 and 3/30 do not offer [Student 4] a Free and Appropriate Public Education.

At no time did I consent to either of those IEPs. Under threat of denying [Student 4] an accommodation for [Student 4's] SOL, I signed an IEP that I edited on 3/15 (received and implemented by PWCS on 3/16). On 3/29 I received an untimely Prior Written Notice that threatened to (in my opinion illegally) apply my signature to the 1/18 IEP, despite it being revised by PWCS and Me on 3/15. I rescind any consent that PWCS has (in my opinion illegally and impermissibly) applied to the 1/18 and 3/30 IEPs, but again, I did not and would not ever consent to these documents, especially considering the misinformation contained therein.

Please provide [Student 4's] IEEs at public expense without further delay, as the window for remediation is closing. Failure to provide my child with FAPE may have serious and lifelong consequences."

- In the April 10th email Parent not only expresses disagreement with PWCS' psychological

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and education evaluations, Parent further asserts suspecting that there are additional areas of need. According to OSEP's guidance, in these instances a parent has a right to an IEE at public expense to fill the gaps in the school division's evaluation.¹⁹ Nevertheless, PWCPS' approval letter issued on April 14, 2023, only approved an IEE for a complete Independent Psychological-Educational evaluation at public expense. Furthermore, PWCPS' own response to Parent's allegation suggests that "8 VAC 20-81-170(B)(2)(e) clearly states" that parents are only entitled to an IEE each time the LEA conducts an "evaluation component" with which the parent disagrees. As explained at **Issue 1**, PWCPS' approval was improper.

- However, contrary to Parent's additional information, the July 28, 2023, email includes a request from Parent for PWCPS to "approve an addendum to the IEE" as Student 4 needed to be evaluated for auditory processing and speech and language based on the IEE's preliminary findings.
- As discussed at **Issue 1**, PWCPS is correct in asserting that PWCPS had no regulatory obligation to approve more than one IEE at public expense since the school division had not conducted another evaluation since PWCPS' April 2023 approval. Furthermore, we agree that Parent's July 2023 request to expand the previously approved IEE at public expense by challenging additional aspects of the school division's evaluation and/or the preliminary findings associated with the previously granted IEE was improper. We agree, PWCPS' April 2023 IEE approval provided Parent the one bite at the apple until PWCPS conducted an additional evaluation. Thus, in consideration of the limiting nature of an IEE at public expense, it further establishes the importance of PWCPS not issuing approval letters limiting a parent's IEE at public expense to evaluations previously conducted by the school division.
- Finally, despite PWCPS' assertions, federal and state special education regulations provide that the results of an IEE must be considered by the school division to ensure that a child with a disability is receiving a FAPE. Even though we agree that the record does not contain data demonstrating Student's 4 regression, we do find that PWCPS' limited approval in April 2023 caused a significant delay in Student 4's educational deficits being identified. Thus, it is reasonable to conclude that Parent's ability to participate effectively in the educational decision-making process was limited.
- Based on the foregoing, we find PWCPS to be in noncompliance with **Issue 2**.

CORRECTIVE ACTION PLAN:

This Office found PWCPS in noncompliance for Issue 1 and Issue 2. Pursuant to our general supervisory authority, we also identified additional areas of noncompliance related to the procedural safeguards. To address these noncompliance findings, we request that LEA review and complete the following:

¹⁹ *Letter to Baus*, 65 IDELR 81 (OSEP 2015).

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1. Ensure that all PWCPS' documents that reference "component" in relation to IEEs are removed. Within thirty (30) days, develop an instructional memorandum advising all staff and administrators that parental requests for an IEE at public expense are not limited to the evaluations previously conducted by the school division. The memorandum must also echo OSEP's guidance from the *Letter to Carroll*. LEA must submit a copy of the draft memorandum for approval and upon receipt this office retains the right to request additional information. Once approved, LEA must disseminate the instructional memorandum to relevant staff and administrators and provide this office with proof of dissemination, such as an email and/or bcc this office at issuance.
2. Submit any correspondence related to parental requests for IEEs at public expense to this office for review each quarter from May 2024 to May 2025. These correspondences must include, but are not limited to, the initial request, emails exchanged with parents/advocates/attorneys, and approval and/or denial letters issued by PWCPS over the relevant timeframe. Once received, we reserve the right to request additional information and/or require additional corrective action.
3. As written, PWCPS' Criteria for Independent Educational Evaluation fails to include criteria related to the location of the evaluation and the qualifications of the examiner. Furthermore, PWCPS' approval letters direct parents to contact PWCPS' office to obtain information regarding Virginia certification and location requirements. In accordance with 8 VAC 20-81-170.B, PWCPS' IEE Criteria must include the location of the evaluation and the qualifications of the examiner. Thus, PWCPS must review and revise its criteria and submit a draft to this office within thirty (30) days. Once received, we reserve the right to request additional information. Once approved, PWCPS must disseminate this information to relevant staff and provide proof of dissemination, such as an email and/or bcc to this office at issuance.
4. Although we identified that the communication/process was flawed, it appears that for other students, parents received what they requested without unreasonable delay, resulting in our concluding that, although the process was flawed, we had insufficient evidence demonstrating it amounted to an individual denial of a FAPE for these particular students. However, due to PWCPS' unexplained delay in processing Student 11's parental request for an IEE at public expense, PWCPS must contact the parents to and provide this office with documentation demonstrating its efforts to determine whether the parents are still seeking an IEE at public expense. Provide the documented efforts within thirty (30) days.
5. Within thirty (30) days, convene a properly comprised IEP team meeting with Parent. During the meeting, PWCPS must review IEEs, consider eligibility for special education services, propose services that offer Student 4 a FAPE, and determine whether compensatory services are necessary to address PWCPS' limited IEE approval in April 2023.

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- In developing a proposal and, if necessary, in calculating compensatory services, the IEP team is to consider, among other things:
 - i. Any self-corrective actions PWCPS may have already undertaken; and
 - ii. The general rule set forth by the U.S. Department of Education, Office of Special Education Programs, in *Letter to Balkman* (1995): *if the school district makes IEP services available to the student at the normally scheduled time [emphasis added], it has no obligation to make other arrangements to provide services if the disabled student is absent from school at that time for reasons other than his or her participation in school-sponsored activities.*²⁰
- The parties may wish to consider conducting a facilitated IEP meeting. The parties may contact:

Sandra Ramsey, Ed. D., Corrective Action Specialist
P.O. Box 2120
Richmond, Virginia 23218-2120
ODRAS@doe.virginia.gov
FAX: 804-786-8520

- **Should Parent not agree to the compensatory services offered, if any, PWCPS must document its efforts and provide this office with the documentation.**

The LEA must complete the corrective action plan and submit supporting documentation, including a proposed and/or consented to IEP, meeting invitation(s), and prior written notice to Sandra Ramsey, Ed. D. at Sandra.ramsey@doe.virginia.gov no later than the date set forth above, 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, the LEA must contact Sandra Ramsey, Ed. D. prior to the due date to provide documentation of the status of the corrective action, and to obtain approval for a revised completion schedule. 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.

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

²⁰ U.S. Department of Education, Office of Special Education Programs, *Letter to Balkman*, 23 IDELR 646, 23 LRP 3417 (1995). OSEP affirmed that its guidance in *Balkman* “continue[d] to reflect the Department's position” in 2008, in *Letter to Copenhaver*, 108 LRP 33574 (March 11, 2008).

LETTER OF FINDINGS

Dr. LaTanya D. McDade, Superintendent
Amanda Mallory, Assistant Director, SED Procedural Support

REDACTED Parent

May 3, 2024

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office's issuance of the Letter of Findings. Any appeal must be received by our office no later than **June 3, 2024**.

It should be noted that an appeal by either party does not obviate LEA from initiating the completion of the requested Corrective Action Plan by June 3, 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.

Attachments - Appeal Procedures