

**CECIL H. CREASEY, JR.**  
**COMPLAINT APPEAL REVIEWER**  
**2820 WATERFORD LAKE DRIVE, SUITE 105**  
**MIDLOTHIAN, VIRGINIA 23112**

September 13, 2023

Ms. Wendy Little  
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**Re: Eryn Little**  
**Chesterfield County Public Schools**  
**Complaint Appeal Decision (LOF 7/17/2023)**

Dear Ms. Little and Dr. Gould:

This matter comes before the reviewer on both the school division's and parent's appeals of the Letter of Findings (LOF) issued by the Virginia Department of Education (VDOE) on July 17, 2023. The complaint was filed April 18, 2023, on behalf of the complainant's child (the student),<sup>1</sup> alleging that Chesterfield County Public Schools (CCPS) (also referred to as local education agency, school division, or LEA) violated state and federal special education laws and regulations governing implementation of individualized education program (IEP); development, review, and revision of the IEP; and provision of a free appropriate public education (FAPE). VDOE found CCPS noncompliant regarding implementation of the IEP and provision of FAPE. On the second issue of IEP development, review and revision, VDOE found the school division compliant with requirements. CCPS appealed the noncompliance findings and the parent appealed the issue of parental engagement.

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<sup>1</sup> During the time of the complaint allegations, the student was fourteen-years-old and had a prior IEP dated October 26, 2021, for a private day school, addressing autism, other health impairment, and emotional disability.

VDOE appointed the complaint appeals reviewer on August 22, 2023, pursuant to Virginia’s Special Education *Complaint Appeals Procedures* adopted by the Virginia Department of Education in November 2009. The parties had until August 29, 2023, to file a responsive position statement, pursuant to the *Complaint Appeal Procedures*, at ¶ 6. Both parties filed responsive position statements, and they are made a part of the complaint appeal record. The complaint appeal decision is due by September 21, 2023. The parties are familiar with the underlying facts of the complaint, and they will only be repeated or recited herein to explain this decision, as necessary.

On appeal, the complaint appeals officer may consider (a) newly discovered information, or (b) an error in fact or law on which the complaint findings were based. General disagreement is not sufficient for the complaint appeal reviewer to reverse the Letter of Findings. *Complaint Appeal Procedures*, at ¶ 9.b. VDOE has been entrusted with wide discretion by the General Assembly to administer special education programs and the administrative complaint system. Va. Code § 22.1-214. VDOE’s responsibility is to apply its agency expertise and resources to its investigation. The complaint investigation and findings involve VDOE’s interpretation of facts and application of its authority. Where the question involves an interpretation and application of authority that is within the specialized competence of the agency and the agency has been entrusted with wide discretion by the General Assembly, the agency’s judgment is entitled to special weight in the absence of a clear abuse of delegated discretion. *Avalon Assisted Living Facilities, Inc. v. Zager*, 39 Va. App. 484, 574 S.E.2d 298 (2002). “Where the agency has the statutory authorization to make the kind of decision it did and it did so within the statutory limits of its discretion and with the intent of the statute in mind it has not committed an error of law . . .” *Johnston-Willis v. Kenley*, 6 Va. App. 231, 242, 369 S.E. 2d 1, 7 (1988).

## I.

The school division appealed the LOF, asserting that VDOE exceeded its authority regarding partial consent to IEPs. CCPS correctly states that there is no specific requirement in the IDEA regulations that public schools implement an IEP to which a parent has provided “partial consent.” The parent provided only partial consent to the IEP developed August 19, 2022.<sup>2</sup> (The student’s last agreed IEP, dated October 26, 2021, was for a private day school. The proposed August 19, 2022, IEP was for a public day school, and the parent agreed to the

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<sup>2</sup> The parent returned the draft IEP from the August 19, 2022, IEP meeting with several handwritten notations and changes.

change to public day school.) There is also no question about whether the LEA refused to implement the August 19, 2022, IEP with partial consent, asserting that the partial consent was not clear enough for the school division to proceed. In this standoff, the school division provided the student with no educational opportunity whatsoever, and it is defending this stance on appeal. VDOE found that the school division, believing that the parent's partial consent and changes rendered the IEP unclear and untenable, still had the obligation to provide FAPE to the student. VDOE found that CCPS

should have accepted the complainant's consent to the change in placement and special transportation and then implemented the last agreed upon IEP with regard to services, goals, accommodations, etc. No additional consent was needed to implement the last agreed upon IEP in the public-school setting.

LOF at p. 19. While there are no specific regulations requiring a school division to implement an IEP with only partial consent, there is, likewise, no regulation that prohibits such approach to ensure that it provides FAPE. Disenrolling the student from school when the school division has not provided FAPE is indefensible. Regardless of the parental consent requirement in Virginia regulations, VDOE must ensure that each public agency in the state establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE. 34 CFR 300.300(d)(2). CCPS, believing it faced some sort of impasse, had an obligation to do more than nothing, including filing for a due process hearing. Here, CCPS ultimately filed for due process in May 2023, near the end of the school year, before withdrawing the due process complaint. This is too little too late, and it does not approach its responsibility to provide the student with FAPE.

The facts are not in dispute, and the LEA presents only disagreement with VDOE's conclusions of law. However, as stated above, general disagreement is not sufficient for the complaint appeal reviewer to reverse the Letter of Findings. *Complaint Appeal Procedures*, at ¶ 9.b. The school division has not met its burden to show (a) newly discovered information, or (b) an error in fact or law on which the complaint findings were based that justify reversal of the LOF. The role and authority of the complaint appeal reviewer is limited; I do not have the authority to reinvestigate or substitute my judgment for the discretionary authority vested in VDOE for complaint investigations and determinations. I have authority to correct errors of fact or law and to consider newly discovered information that would materially change the bases of or the actual findings by VDOE. VDOE has the statutory authorization to make the kind of decision it did, and it did so within the statutory limits of its discretion and with the intent of the statute in mind. It is incumbent on the appealing party to show the legal authority that requires a

different finding; not merely an interpretation that differs from VDOE's. Here, the school division has not met its burden on appeal.

After careful consideration and review, I find that the LEA's appeal is tantamount to general disagreement with VDOE's findings, which is insufficient under the *Complaint Appeal Procedures* to challenge or reverse the LOF.

As for the Corrective Action Plan (CAP), the LEA was directed to address the noncompliance with appropriate remedial steps. This CAP is appropriate and a reasonable plan consistent with the finding of noncompliance.

## II.

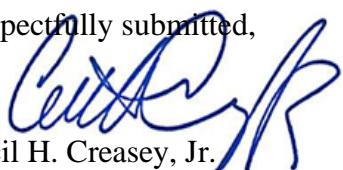
The parent's appeal asserts that an IEP document was not produced on August 19, 2022, the date of the IEP meeting. The parent complains that the proposed IEP document was provided on August 22, 2022, asserting a violation of applicable regulations. The parent does not cite the applicable authority for the appeal contention. I find there is no requirement for the written proposed IEP to be produced simultaneously with the IEP meeting. While a school division is permitted to draft a proposal, it is not required to do so by applicable regulations. In fact, preparing an IEP proposal in advance can be viewed by sceptics as impermissible predetermination.

After careful consideration and review, I find that the parent's appeal is tantamount to general disagreement with VDOE's findings, which is insufficient under the *Complaint Appeal Procedures* to challenge or reverse the LOF.

### Summary and Conclusion

In summary, as explained above, I affirm the July 17, 2023, Letter of Findings and Corrective Action Plan.

Respectfully submitted,

  
Cecil H. Creasey, Jr.  
Complaint Appeal Reviewer

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