

**CECIL H. CREASEY, JR.**  
**COMPLAINT APPEAL REVIEWER**  
**2820 WATERFORD LAKE DRIVE, SUITE 105**  
**MIDLOTHIAN, VIRGINIA 23112-4077**

December 11, 2023

Ms. Callie Oettinger  
8110 Bellingham Court  
Fairfax Station, Virginia 22039  
*Email:* callie.oettinger@gmail.com

Dr. Terry Edmunds-Heard  
Interim Assistant Superintendent  
Fairfax County Public Schools  
8270 Willow Oaks Corporate Drive—2nd Floor  
Fairfax, Virginia 22031  
*Email:* tledmundshea@fcps.edu

**Re: Max Oettinger (Adult Student); FERPA Issues**  
**Fairfax County Public Schools**  
Complaint Appeal Decision (Original LOF 7/17/2023; Remand LOF 10/19/2023)

Dear Ms. Oettinger and Dr. Edmunds-Heard:

This matter comes before the reviewer on the parent's appeal of the Remand Letter of Findings (LOF) issued by the Virginia Department of Education (VDOE) on October 19, 2023. The complaint was originally filed by the Complainant on May 18, 2023, on behalf of the complainant's son (the Student),<sup>1</sup> alleging that Fairfax County Public Schools (FCPS, also referred to as school division, local education agency, or LEA) violated state and federal special education laws and regulations governing access to records. 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.

VDOE appointed the complaint appeals reviewer on November 14, 2023, pursuant to Virginia's Special Education *Complaint Appeals Procedures* adopted by the Virginia

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<sup>1</sup> At the time of the complaint, Student was a former adult student in Fairfax County Public Schools who was eligible for special education and related services under IDEA '04 as a student with a Specific Learning Disability (SLD). Student graduated from LEA in June 2022 with an advanced studies diploma.

Department of Education in November 2009. The non-appealing party, the school division, had until November 21, 2023, to file a responsive position statement, pursuant to the *Complaint Appeal Procedures*, at ¶ 6. The school division's November 21, 2023, response was received and made a part of the complaint appeal record. The complaint appeal decision is due by December 14, 2023.

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).

Because the school division described the steps it has taken, as well as steps planned for the near future regarding its responsibilities for student records, VDOE found those systemic concerns have been satisfied. Thus, VDOE made no additional finding on a systemic basis. The complainant asserts that the school division is systemically in violation of confidentiality of student records, and VDOE has erred. The complainant zealously expresses anecdotal instances of the school division's confidentiality mistakes and argues, inferentially, that such mistakes by the school division constitute a systemic violation. The underlying complaint here centered on access to student records, not confidentiality. 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. Of course, any error of confidentiality is concerning. However, there is no authority that prescribes that a series of mistakes *necessarily* establishes a systemic violation. This school division is the Commonwealth's largest. While size does not provide an excuse for violations, it does provide context for an argument relying on a number of errors to establish a systemic practice. The complainant has not asserted any deficiencies in the school division's policies and

procedures. As for the practices complained of, they constitute human error rather than policy result.

VDOE considered the school division's policies and procedures and concluded that the record here does not establish a systemic violation of student record maintenance, access and confidentiality. VDOE found nothing to indicate that any policy, procedure, or practice exists that results in a systemic violation regarding student records. This finding, being one of a legal conclusion, involves an interpretation and application of authority that is within the specialized competence of the agency. This determination is particularly within the discretionary authority of VDOE.

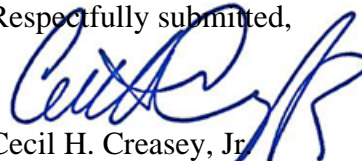
The complainant, during appeal, has presented new information that was not part of the initial complaint. This new information, if it sufficiently constitutes a new complaint, must be handled outside the confines of this remanded Letter of Findings, as the authority of the complaint appeals reviewer does not allow a continuing investigation of the complaint issues.

Within its statutorily invested discretion, VDOE has interpreted the applicable regulations consistent with their purpose, applied required standards, and reached a determination that is supported within its discretion for the systemic complaint. The complainant is voicing conflict and dissent with VDOE's interpretation and exercise of its role, but she does not set forth binding authority that challenges VDOE's analysis of the applicable law and regulation applied to this remanded Letter of Findings. There is information in the record to support VDOE's findings, and VDOE's analysis is consistent with applied authority.

### **Summary and Conclusion**

In summary, as explained above, VDOE's exercise of its professional investigation and findings regarding the individual complaint is within its specialized competence and supported by the complaint record. A complaint appeal reviewer may not re-investigate a complaint or substitute judgment for that of VDOE, and the reviewer may not reverse a finding without sound basis of authority. Accordingly, I affirm VDOE's Remand Letter of Findings on the issue of the systemic nature of the complaint.

Respectfully submitted,



Cecil H. Creasey, Jr.  
Complaint Appeal Reviewer

cc: Patricia V. Haymes, Director  
Dispute Resolution &  
Administrative Services  
Virginia Department of Education  
P. O. Box 2120  
Richmond, Virginia 23218-2120

Ms. Kristina Roman  
Due Process and Eligibility  
Fairfax County Public Schools  
8270 Willow Oaks Corporate Drive  
Fairfax, Virginia 22031  
*Email: kmroman@fcps.edu*