

## Federal Investigation Finds Students With Disabilities Denied FAPE During Pandemic

by Michelle Diamant | December 6, 2022



For the second time this year, federal officials say they have reached an agreement with one of the nation's largest school districts for failing to properly serve students with disabilities during the COVID-19 pandemic.

The U.S. Department of Education's Office for Civil Rights said last week that it has come to a resolution with the Fairfax County Public Schools in Virginia after the district fell short in

meeting its obligations to provide a free appropriate public education, or FAPE, to thousands of students with disabilities when schools shifted to remote learning as COVID-19 emerged.

In particular, the federal agency's investigation found that Fairfax County schools reduced or limited services to students with disabilities for reasons other than their individual educational needs. In addition, the district incorrectly told staff that they were not required to provide compensatory services to students with disabilities who were denied FAPE since the district was not at fault.

Fairfax County schools did not properly remedy situations where children were denied FAPE and there were concerns about inadequate recordkeeping, the Education Department said.

Under the agreement, the school district will develop and implement a plan to provide compensatory services as appropriate and take other steps.

"I am relieved that the more than 25,000 students with disabilities in Fairfax County will now receive services federal law promises to them, even during a pandemic, to ensure

their equal access to education,” said Catherine E. Lhamon, assistant secretary for civil rights at the Education Department.

Fairfax County Public Schools was one of four entities under investigation by the Education Department’s Office for Civil Rights related to its handling of services for students with disabilities during the COVID-19 pandemic. The federal agency reached an agreement with the Los Angeles Unified School District earlier this year while a similar inquiry into the Indiana Department of Education was dropped. The department’s investigation of the Seattle Public Schools is ongoing.

The Education Department has consistently reminded schools since the start of the pandemic about their ongoing obligations to provide FAPE under the Individuals with Disabilities Education Act, which can include compensatory services.

Denise Marshall, CEO of the Council of Parent Attorneys and Advocates, or COPAA, said the agreement with Fairfax County Public Schools shows that the Education Department is serious about these expectations.

“By taking this action, OCR is demonstrating that no district can shun its obligations to students and must use the resources provided by Congress to address their educational needs,” she said.

As a result of the agreement, Fairfax County schools said it will convene meetings for all students with individualized education programs and Section 504 plans to assess whether compensatory services are needed.

“As we emerge from the global pandemic, FCPS remains committed to working diligently to provide the support needed to ensure each and every student recovers from learning loss,” the district said in a statement. “FCPS has and will continue to leverage resources to ensure students with the greatest need receive prioritized support for enhanced outcomes.”