VIRGINIA:

DUE PROCESS HEARING

 Complainant

 v. In Re:

 COUNTY PUBLIC SCHOOLS

 Respondent

DECISION

STATEMENT OF THE CASE

 On August 28, 2018, , son of the Complainant, was suspended from Secondary School by Assistant Principal for engaging in a fight while on school grounds in violation of CPS Student Rights and Responsibilities, Regulation 2610P. He was suspended for three school days. His “In School Suspension” (ISS) was on Tuesday August 28, 2018. His “Out of School Suspension” (OSS) was on August 29 and 30 2018. [ CPS Ex 18]

 On September 14, 2018, Mr. Principal of Secondary School suspended from school for 7 school days. This action was necessary because assaulted and participated in the robbery of another student on public school grounds during a school sponsored activity, which was in violation of County Public Schools ( CPS) Regulation 2601P, Student Rights and Responsibilities and in accordance with §22.1-277 of the Code of Virginia. was referred to the Division Superintendent, who would determine whether it is appropriate to impose additional disciplinary consequences, which could include one or more of the following: a long-term suspension, a reassignment, or a recommendation to the School Board for expulsion. The suspension will be effective September 14, 2018. The Principal further recommended to the Superintendent’s Hearing Officer that his suspension be extended until this disciplinary process is resolved. may not return to school pending the outcome of the administrative hearing regarding the disciplinary referral to the Division Superintendent. [ CPS Ex 24]

 On September 19, 2018, a Manifest Determination Review Hearing was held. The Review team considering all the written and oral data presented concerning the three day suspension determined that ‘s conduct was not caused by or did not have a direct and substantial relationship to the student’s disability and that ‘s conduct was not a direct result of the school division’s failure to implement ‘s IEP.

 The MDR Team determination was that ‘s conduct was not a manifestation of his disability. The Decision’s rationale was that

 “The Committee determined that the suspendable offense did

 not have a direct and substantial relationship to ‘s

 special education eligibility due to his documented Specific

 Learning disability which impacted his processing speed

 which impact his processing speed which impact his written

 expression in the classroom setting.” [ CPS Ex 27]

 On September 24, 2018, the Complainant secured an additional medical examination by Dr. which resulted in assessments by Dr. of having Attention-Deficit Hyperactivity Disorder, combined type and Oppositional Defiant Disorder. Based upon this report ‘s IEP team modified the basis for ‘s eligibility to receive special education services to include ADHD and ODD as Other Health Impairment.

 On October 10, 2018, a second MDR hearing was held as the result of the additional medical data being submitted by the Complainant. As did the prior MDR Team, the second MDR team after considering all the written and oral data presented concerning the seven day suspension determined that ‘s conduct was not caused by or did not have a direct and substantial relationship to the student’s disability and that ‘s conduct was not a direct result of the school division’s failure to implement ‘s IEP.

 The MDR Team determination was that ‘s conduct was not a manifestation of ‘s disability.

 The Decision’s Rationale in the second hearing stated:

 “Based on the current areas of disability for which

 is eligible to include a Learning Disability resulting from a

 perceptual motor speed processing deficit impacting written

 expression only and Other Health Impairment due to a

 medical diagnosis of ADHD Combined Type the school

 based committee does not find the incident to have a direct

 and substantial relationship to ‘s disabilities and is

 therefore not causal.” [ CPS Ex 36]

 The matter was then referred to Lisa S. Forest a Hearing Officer for the Division

Superintendent. After an administrative hearing before the Hearing Officer by letter dated October 9, 2018, the Hearing Officer advised the Complainant that she was withholding a final decision until the matter could be referred to ‘s IEP team to determine whether a change in ‘s eligibility status was appropriate. Pending a final administrative decision the Hearing Officer directed that be suspended from and would receive in home educational services. [ CPS Ex 37]

 The Complainant then requested an Administrative Review (AR) which was held on November 1, 2018. The AR panel was tasked with reviewing the written records and listening to parent and school staff members’ statements to assess the relationship between ‘s specific learning disability (LD) and other health impairment (OHI) and the conduct, assault and robbery, that was subject to disciplinary action. Based on the information reviewed, the AR committee unanimously determined that the conduct was not caused by nor did it have a direct and substantial relationship to ‘s disability. The AR committee also unanimously determined that the conduct of assault and robbery was not a direct result of the school division’s failure to implement ‘s IEP as written. Based on the AR committee’s administrative decision, the MDR decision made on October 9, 2018, was upheld. Therefore the Due Process and Eligibility Office determined that the conduct subject to disciplinary action *was not*  a manifestation of xxxxxxxxxxx’s disability. **[xCPS Ex 41]**

 However, before the AR panel convened the Complainant on October 31, 2018 filed a Notice of Appeal of the deicision by the second MDR Committee. The Notice asserted that the decision of the second MDR Committee was based upon an incorrect incident report in that

was being accused of robbery. A copy of the Notice was not included with the Exhibits of either party and so will be attached to as an exhibit to this Decision. **[Hearing Officer Exhibit A]**

 The Hearing in this matter commenced on December 3rd and continued on to December 4 and 5. **[Transcript Vols 1, 2, and 3]**

# STATEMENT OF FACTS

 The factual background of the events leading to the disciplinary penalties imposed on is relatively clear. The penalties imposed upon were for “assault” and “robbery”. There was no question on behalf of ‘s parent of the correctness of the assault penalty. The correctness was substantiated by video evidence obtained from a video security camera outside an entrance to County High School in , Virginia.

 The complainant parent’s main objection to the disciplinary penalty arose from the robbery charge. There was a variety of evidence developed with regard to the robbery charge.

 First was the language contained in the written statement provided on August 24, 2018, by the student assaulted and robbed to the The County Police Student Resource Officer (SRO) . wrote in his statement:

 *“And I was trying to keep my tone down so they wouldn’t find me but 3*

 *of them found me sitting on the phone with my brother. Student told me to*

 *hang up the phone and he won’t touch me so I had to hang up and he*

 *ran my pockets checking my pockets and I said “****Bruh ion got no money***

 ***bruh****” and they kept checking and found my key and threw it behind me.*

 *Then Student kept talking and talking and talking I didn’t know what he*

 *said but I heard Student 3 say “stop screaming bruh stop screaming”and*

 *Student punched my 3 times. The 3rd hit had me gushing blood from my*

 *nose and lip. Then I walked away and Student 3 said “****aye bruh what size***

 ***dem shoes.****” I lied and said size 7 and he said let me get those and*

 *came back thinking he all that and I gave him my shoes because I was*

 *already hurt. After that I ran down to the first traffic light in front of*

 *High School.” [Bold type added]* [ **CPS EX 13]**

The second additional report concerning these events was prepared by the

 Secondary School SRO . The report read as follows:

 *“On 08/24/2018 at 2204 hours, Student 2 reported he was*

 *assaulted and robbed of his Air Jordon shoes while attending the*

 *football game at High School*

 *I spoke to Student 2 (student at ES) and he reported the*

 *he was attending the football game and during the third quarter what*

 *Student 3 and Student came up to him stating: “come out with us or we*

 *will jump you.” Student 2 stated he was scared so he went outside the*

 *game and walked with them. They said if he didn’t go with them they*

 *would beat him up Ere they beat up his cousin. While walking with*

 *them, Student 2 said: “ Student spit on me.” After they all got outside,*

 *Student 2 stated he ran across the parking lot toward entrance*

 *number one and sat down on the bench and he thought he was safe.*

 *Student 2 got on the phone and Facetimed his brother at 2118*

 *hours hoping Student and Student 3 wouldn’t do anything Student 2 stated:*

 *Student and Student 3 walked up to me and threatened me, Student punched*

 *me three times in the face/mouth which can be seen on school*

 *video, took his house key and threw it which was located in the*

 *mulch by the bench Student 2 suffered from a bloody/swollen lip and*

 *got blood on his tee-shirt. Medics were refused. Student 2 then walked*

 *toward door #2 (off-camera) and Student 3 asked “what shoe size I am”*

 *and replied “8 ½.” Student 2 said there was six black males around*

 *him and he was scared he was going to get jumped by all of them.*

 *Student 3 then came over and took my shoes off me. Student 2 advised*

 *the shoes were Air Jordan; model Red 11, color all red with a white*

 *sole, size 8 ½ and valued at $300.00. Student 2 advised that Student 3’s name*

 *is actually which is a student at High*

 *School. Student 2 advised Student is actually or and*

 *is a student at H.S. Student 2 added that a*

 *and a kid named were also there during the assault and*

 *robbery. They didn’t do anything but he was scared they were going*

 *to imp in and attack him. I asked Student 2 why there was a delay of*

 *reporting the robbery and he stated: I was so scared of getting jumped/*

 *beat up that I walked to the light at road/ Drive*

 *and got a ride to by an unknown person. I called my dad so*

 *he could protect me and help me report it.*

 *On 10/27/2018 I spoke with my Assistant Principal Mr. and*

 *he advised he saw Student 3 walking with a pair of red shoes*

 *in his hand and walking with .*

 *School security burned videos of the incident and delivered the DVD to*

 *me at High School.*

 *On 08/28/2018 I emailed the video of the incident to SRO .*

 *On 08/28/2018 at approximately 1145 hours Mr. observed*

 *Student 3 wearing the Air Jordon Reds sitting eating lunch*

 *by the front office and brought it to my attention. Since this was time*

 *sensitive and I did not want the evidence of the shoes lost, Mr.*

 *had Student 3 brought into my office which is right in the front office.*

 *At approximately 1201 hours I read Student 3 his Miranda Right*

 *told him he was free to leave at anytime, didn’t have to answer my*

 *questions and that I wasn’t taking him to detention today. Student 3 said he*

 *understood them. I asked to see just one shoe to check the size. The*

 *size of 8 ½, color and model of shoe matched my victims shoes that*

 *were stolen by Student 3 . I asked if he wanted to make a written*

 *statement and he declined. I asked where he got the shoes and he said*

 *he bought them from “Student“ for $100.00. I told him I am taking the*

 *shoes as evidence and Student 3 demanded I give him his money back.*

 *He even said he was going to take them and I suggested that would*

 *be a very bad idea. Student 3 continued to demand his money back. I*

 *contacted his mother and advised her of the incident and she said*

 *she was at work and couldn’t leave work until around 1500 to 1600*

 *hours. I asked her if she could bring some shoes and she replied: “he*

 *can walk home without shoes.” Ms. helped me acquire*

 *shoes for Student 3 . Ms. (Assistant Principal) at High*

 *School was notified and responded to my office to get Student 3 to*

 *write a statement. As he was leaving he told Mr. he paid his*

 *fti. Student $125.00 for the shoes.*

 *On 08/28/2018 at 1721 hours I arrived at Student’s moms*

 *House located at < > and spoke with Ms. about*

 *the Friday night incident with Student 3 . She is aware of the*

 *fight but said it was mutual according to Student . Ms.*

 *did share some instantgram messages about Student and Student 2*

 *planning on fighting but I advised her of a video which it does not*

 *depicted this scenario. She advised she would like to see the video*

 *and would come to my school tomorrow after school. I advised*

 *Student would also need to be present t explain his actions in this*

 *incident*

 *On 08/29/2018 at approximately 1600 hours Ms. came*

 *to High School with Student to view the video. She*

 *believed that there was a actual fight between Student and Student 2*

 *as Student described to her but the video only shows Student*

 *assaulting Student 2 with Student 3 present. Ms.*

 *then shared some Snapchat posts showing Student 2*

 *and Student having a conversion about a possible fight with*

 *Student 2 appearing to be Snapchat a possible future fight*

 *between each other. Student did admit to spitting on*

 *at the game and said he did strike him like the video shows but only*

 *because he ran his mouth.*

 *On 08/29/2018 at approximately 1740 hours I responded to*

 *Student 2’s (?) house in to speak with him*

 *and his father about the messages he set and talk about the case.*

 *I showed the messages to Student 2 and his father. Student 2 advised*

 *those messages were fake and he didn’t send them. Student 2 showed and*

 *explained how easy it was to make a fake Sychap conversion. I*

 *explained I am not an expert in these messages but he doesn’t change*

 *the way the Robbery investigation is handled. I advised I recovered*

 *the stolen shoes and will return the shoes to Student 2 also sent me a*

 *revised statement of the incident that happened on 08/24/2018 at the*

 *football game. In this statement he adds that was hiding between cars*

 *in the parking lot while on the phone with his brother before going to*

 *the bench at entrance number one. Student 2 stated: “Student and Student 3*

 *came up to me, Student punched me three times with the third punch had*

 *my mouth gushing with blood and Student 3 said to stop screaming.”*

 *Student 3 asked me what the size of those shoes and I lied saying*

 *they were size 7 and Student 3 said let me get those and I handed them*

 *to Student . Student 2 said he was in fear of getting punched again so that’s*

 *why he gave up the shoes.*

 *On 10/30/2018 at approximately 1600 hours Ms.*

 *brought Student again to school to talk to me and we talked about*

 *the messages, whether the messages are fake or not that charges are*

 *still going forward Robbery charges as well as Assault. Since both boys*

 *are pointing the finger at each other about the Robbery, I needed*

 *Student to testify against Student 3 . While in my office, Student got*

 *extremely upset and mom Ms. then called Student’s father,*

 *Student got even more upset, stormed out of my office and walked*

 *out of the School. Ms. left to follow and have Student’s father*

 *head that way to talk to Student . There was no violence or violations*

 *of law.*

 *On 09/07/2018 at approximately 1630 hours I met with Student 2 and his*

 *Mother in which I handed over the shoes to Student 2. Student 2*

 *advised these are the shoes. They are still clean, in good condition and*

 *liked the way the shoe laces were tied. Student 2 shook my hand and said*

 *thank you very much.*

 *This Officer will seek Petitions for Robbery on both*

 *and .”*

 *Case closed by Arrest: Petitions* **[ Ex 8]**

 During the course of the Hearing the Complainant attempted to highlight was she considered evidence that it was who secured the sneakers from and

that this somehow exonerated despite the fact that was later seen in video carrying the sneakers. Unfortunately for the complainant even if I were to believe that the sneakers were initially transferred directly from to that doesn’t exonerate with regard to the robbery charge. The Virginia Board of Education Student Code of Conduct Policy Guidelines (January 2015) in its definitions of assault and battery (13) states

 “An assault is a threat of bodily injury. A battery is any bodily hurt, however slight, done to another in an angry, rude or vengeful manner.” The Guidelines define bullying as “…any aggressive and unwanted behavior that is intended to harm, intimidate or humiliate the victim.” The Guidelines also state “Non-criminal behavior associated with bullying includes intimidation…”. “The guidelines also provide that “Patterns of behavior associated with bullying that are criminal offenses are as follows: Assault,…, Battery,….”

 Clearly the presence of the prior assault and battery by together with

 ‘s comments about turning over the sneakers served to intimidate and to make both students participants in the robbery.

**WAS THE CONDUCT CAUSED BY OR DID IT HAVE A DIRECT AND SUBSTANTIAL RELATIONSHIP TO THE STUDENT’S DISABILITY?**

 Principal was questioned as to the initial test of the MDR determination, i.e. was the student’s conduct caused by or did it have a direct and substantial relationship to the student’s disability? On this issue he testified;
 (Principal Secondary School Vol I & II)

 *Q. Okay. Now, what about whether this was something that*

 *was related to ADHD; did you think this was something that*

 *was caused – Student‘s conduct on August 24, 2018, did you*

 *think it was caused by ADHD?*

1. *No.*

*Q. How come?*

*A. Well, first of all, it’s not impulsive behavior.*

*Q. Why do you say that?*

*A. Well, however many days prior, it started with the text messages.*

*Q. All right.*

*A. At some point, the students agreed to leave the game where*

*there’s adult supervision and go to somewhere where there wouldn’t*

*be supervision, and I think it’s in one of the statements so that we*

*wouldn’t get caught or they used different language, but so that*

*they wouldn’t get caught. There was something that occurred and then*

*the time passes between what occurred to the assault where the*

*student is not even next to them. They have to go find him in order to*

*assault him. None of that – to me, all of that time, to me, that’s*

*poor decision making.* **[Tr Vol 1 P196 L3 to Tr Vol 1 P197 L5]**

*Q. Right.*

*A. But that’s not impulsive behavior.* **{Tr Vol 1 P197 L6-7]**

*Q. All right. So – okay. You mentioned that you mentioned that this*

*thing had gotten started through some sort of texting that occurred*

*some days prior, that there was a decision to go outside so as not to*

*get caught. Were there other things that entered into your thought*

*process as to why you didn’t think Student‘s behavior was caused by*

*ADHD?*

1. *Well, I mean, OHI and ADHD is pretty common. You know, in a school of 3100, I don’t think it’s an overstatement to say that we have*

*hundreds of students with ADHD and they all manifest themselves*

*differently, but there has not necessarily – there’s been no real indication*

*of any violence that’s associated with that. As far as the impulsivity goes –*

*Q. You mean as a general matter with respect to ADHD in your*

*Experience?*

1. *Yes.* ***[Tr. Vol 1 P198 L5-22]***

*Q. I’m sorry. Go ahead.*

*A. And then as far as the impulsivity is concerned, I mean I’ve been*

*on an MDR Committee where we have actually found a causal*

*for impulsivity, and the time between the act that the student was*

*disciplined for, and the trigger, I guess, would be, to use that word,*

*instantaneous.*

*Q. Well, how is that different that the situation that we’re dealing*

*with in this case?*

1. *So that student had an IEP. He had goals surrounding his impulsivity*

*and, specifically, his low threshold for frustration that we were*

*implementing as a school and, again, it was spontaneous. There was*

*no thought. There was no -- it was a quick and instant reaction to*

*the comment that was made to him.*

*Q. So how is that different than the situation we have here with Student ?*

*A. I mean, there’s a lot of time here. There’s a lot of time here. There’s*

*-- I don’t know how many days before that the text messages are going*

*back and forth. My recollection of the statements is that at one point,*

*the victim told Student he was going to spit on him, and so then they*

*meet up. Student spits on him first because he said he was going to be*

*spit on. They go outside to not get caught. Then there’s time to search.*

*Based on that –* **[Tr Vol 1 P200 L1 to Tr Vol 1 P201 L6]**

*Q. Well, let me just pursue that. There’s time to search. We know there’s*

*time to find. Right?*

1. *Right.*

*Q. And when Student finds him, are there some decisions that he makes there*

*That are inconsistent with instantaneous impulsive behavior?*

1. *So what it appears to me is, first of all, at that point, the victim is*

*not fighting. The victim is done. The hands are up and they’re back here*

*like this. There’s going through the pockets.*

*Q. Why is that decision – how does that factor in, in your view?*

*A. I do not have an explanation from Student why he went through the pockets.*

*The victim interpreted it as he was looking for money. It’s been said that he*

*Was looking – padding him down for a weapon. I don’t know why he went*

*through his pockets. I just know he went through his pockets.*

**[Tr Vol 1 P201 L1 to Tr Vol 1 P202 L4]**

*Q. Whether he was looking for money or he’s looking for a weapon,*

*Are those impulsive behaviors or calculated ones?*

1. *I would say either one of those is a calculated behavior I mean, you’re not again. It’s not impulsive to strike, strike, strike. It’s not impulsive*

*to look for something that could potentially harm you in an altercation.*

*Q. Would you say that during the course of this period there at the football*

*stadium and the front of the school and so forth that Student suffered from*

*a lack of focus in regards to this other student?*

1. *He looks very focused to me, that he’s looking for the student.*

*Q. Now, one final thing on this: We know from the video that, at least in*

*the final portion that we see, Student is carrying the shoes. Right?*

**[Tr Vol 1 P202 L1 to Tr Vol 1 P203 L1]**

1. *Correct.*

*Q. Now, do you know whether the other student, Student 3, played a part in getting the shoes away from Student 2?*

*A. Yes he did.*

*Q. All right. In terms of whether this is conduct that is disciplinary in nature*

*for Student, does that matter or not?*

1. *No.*

*Q. Why do you say that?*

*A. Well, it matters for Student 3, for his role in it.*

*Q. As far as Student is concerned –*

*A. No.*

*Q. –does it matter—let me put it slightly differently. As far as Student is*

*concerned, in terms of his culpability for the situation and whether this was*

*preventable on his part, does it matter whether, given what we saw on the*

*video, whether Student 2 initially gives the shoes to Student 3 or to Student?*

**[Tr Vol 1 P203 L2-22]**

1. *No.*

*Q. Again, why do you say that?*

*A. Student assaults the student, clearly, and then whether he initially takes*

*possession of the shoes or the shoes go to the other, and I still don’t know*

*which happened. Either way, that assault is the instigator to the giving up*

*of the shoes. We have situations all the time where students come together*

*and they all go after each other verbally and then walk away from each*

*other. Those never result in somebody giving up their property.*

**[Tr. Vol 1 P204 L1-11]**

*Q. All right. Following the receipt of the information that the committee*

*received, what was the decision of the committee as to whether the*

*conduct for which Student had been referred by you for disciplinary*

*action, whether that was caused by his disability or by any failing to implement*

*an IEP?*

1. *It was found not causal.*

*Q. All right. And were you in agreement with that conclusion?*

*A. I was.*

# WAS STUDENT’S CONDUCT A DIRECT RESULT OF THE SCHOOL DIVISION’S FAILURE TO IMPLEMENT STUDENT’S IEP?

 The second element to be considered by the MDR team dealt with whether the School Division’s failure to implement ‘s caused his conduct which was the subject of his discipline. Principal and School Psychologist PhD addressed these issues with their testimony.

 (Principal Secondary School Vol I and II)

 Q. Let me start with this: On the prong of this test that has

 to do with – well, let me ask based upon your involvement in

 the meeting and so forth, why did you conclude that ‘s

 conduct, misconduct, on August 24, 2018 didn’t have anything

 to do with implementation of his IEP?

1. So this occurred before the school year. We had not had

classes yet. In addition, there was a new eligibility. So there

would have been no IEP in place for that piece of it, and then

the fact of the matter is we weren’t in school. **[Tr Vol 1 P194 L6**

**to Tr Vol 1 P195 L5]**

Q. I mean, as far as – I mean, , when the year

started, would have had an IEP from the previous

year?

1. Correct, for his L.D.

Q. But in terms of whether this had anything to do with his

IEP services, he wasn’t getting any IEP services because the

year hadn’t even started?

1. That’s correct.

Q. Now, as far as what was your conclusion as to whether

this had anything to do with ‘s learning disability or

weakness in writing, did you think it had anything to do with

that?

1. No.

Q. How come?

A. It’s not part of the situation that occurred. This was in a

Social setting. It wasn’t in an academic setting, and there was

Really no writing involved.

**[Tr Vol 1 P195 L6 to Tr Vol 1 P196 L2]**

SCHOOL PSYCHOLOGIST

(VOL 2 P345 Line 5)

*Q. What was the – at least the school members of the*

*committee –well, let me ask you this. Based upon the*

*information that you had, did you formulate an opinion*

*about whether the misconduct that you had heard described,*

*whether it was something that was related to any failing on*

*the part of the school system to implement ‘s IEP?*

1. *No. I didn’t hear anything that suggested that to me.*

*Q. All right. So listen to my question though. My first – I’ll get*

*there. My question is were you –did you have enough*

*information to be able to formulate an opinion about whether*

*it had anything to do with his IEP?*

1. *Yes.*

*Q. All right. And what ws your opinion about whether it was*

*--whether the misconduct was related to any failure to deliver*

*Services under ‘s IEP?*

1. *What was my opinion?*

*Q. Yeah. What was your opinion?*

*A. My opinion was that it didn’t have. It wasn’t due to a failure*

*to implement the IEP.*

*Q. Okay. How come?*

*A. Because he – his IEP goals were academic based, and this – the*

*Incident that we heard seemed to have nothing to do*

*With that, in my opinion.*

# CONCLUSION

 Based upon the testimony presented to the Hearing Officer it was clear that there was no relationship between ‘s disabilities and the behavior that was disciplined. This included the evidence of ADHD and ODD as set forth the CPS Exhibit 35 submitted after the first MDR hearing.

Dated: Thursday, December 20, 2018

 George C. Towner, Jr.

 Hearing Officer

# AMENDED DECISION

Substitute the following as the Appeal Notice in this matter.

***8VAC20-81-210. Due Process Hearing***

***T. Right of appeal. (34 CFR 300.516; § 22.1-214 D of the Code of Virginia)***

1. ***A decision by the special education hearing officer in any hearing, including an expedited hearing, is final and binding unless the decision is appealed by a party in a state circuit court within 180 days of the issuance of the decision, or in a federal district court within 90 days of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under § 1415 of the Act without regard to the amount in controversy.***
2. ***On appeal, the court receives the record of the administrative proceedings, hears additional evidence at the request of a party, bases its decision on a preponderance of evidence, and grants the relief that the court determines to be appropriate.***
3. ***If the special education hearing officer’s decision is appealed in court, implementation of the special education hearing officer’s order is held in abeyance except in those cases where the special education hearing officer has agreed with the child’s parent (s) that a change in placement is appropriate in accordance with subsection J of this section. In those cases, the special education hearing officer’s order shall be implemented while the case is being appealed.***
4. ***If the special education hearing officer’s decision is not implemented, a complaint may be filed with the Virginia Department of Education for an investigation through the provisions of 8VAC20-81-200.***

Dated: February 16, 2019

 George C Towner, Jr.

 Hearing Officer