**VIRGINIA DEPARTMENT OF EDUCATION**

**DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES**

**OFFICE DISPUTE RESOLUTION AND ADMINISTRATION SERVICES**

**VDOE Case No.: 21-062 & 21-067**

# **DECISION**

XXXXXXXXXXXXX Public Schools XXXXXXXXXXXXXX

**School Division Name of Guardian**

Dr. XXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXX

**Division Superintendent Name of Child**

Mary Kathryn Hart, Esquire Kandise Lucas

**Counsel Representing LEA Advocate for the Guardian/Child**

Robert J. Hartsoe, Esquire Guardian/Child

**Hearing Officer Effectuation Party Initiating Hearing**

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**LEGEND**

Guardian XXXXXXXXXXXXXX

Child XXXXXXXXXXXXXXXXXXXXXXX

LEA XXXXXXXXXXXXX Public Schools

Advocate Kandise Lucas

Trauma Expert Dr. XXXXXXXXXXX

Proposed IEP LEA Exhibit 21

Resolution Agreement LEA Exhibit 16

Resolution Meeting Recording contained in LEA Exhibit 7

Private Psychological Evaluation Guardian Exhibit 17

Child’s Psychologist Dr. XXXXXXXX

Consultant XXXXXXXXXX

Teacher XXXXXXXXXX

AP (Associate Principal) XXXXXXXXX

Facilitated IEP Meeting IEP Meeting (March 8, 2021; LEA Exhibit 13)

SEE (Special Educational Expert) XXXXXXXXXXXXX

Counselor XXXXXXXXXXXXX

XXXXXXXXXXXXXXX School Counselor

Principal XXXXXXXXXXXXXXXX

LEA Employee XXXXXXXXXXXX

Play Therapist Child’s Play Therapist (Did Not Testify)

# **DECISION**

**INTRODUCTION**

This matter was extremely difficult under the shadow of the Covid-19 virus which greatly affected deadlines. Further, this matter was extremely adversarial for unclear reasons. All pleadings, transcripts, *etc*. have been considered.[[1]](#footnote-1)1 The Guardian failed to carry the burden of proof to allow the remedies requested. For the reasons stated herein, the LEA is the prevailing party.

## **PROCEDURAL BACKGROUND:**

The previous Prehearing Reports describe the procedural history and are incorporated herein by reference.

As to this Decision, the following is reviewed:

1. Paragraph 2 of the Resolution Agreement states:

In addition, [the LEA] will assign a new school case manager, school based administrator and Central Office representative to the student’s IEP team per the Guardian’s report.

1. Paragraph 8 of the Resolution Agreement states:

This Agreement resolves all issues between the parties up to the date of the complaint[, *i.e.*, January 15, 2021]. The Guardian reserves the right to exercise her dispute resolution rights under IDEA regarding [the Child].

1. As a result of Paragraph 8 of the Resolution Agreement, no decision was required regarding issues, if any, which may have existed before January 15, 2021. Any evidence regarding pre-January 15th was taken for historical content to allow an analysis of relevant evidence.
2. By agreement, the Child’s Section 504 plan and its implementation were not adjudicated.
3. **ISSUES DEFINED**:

1. **Whether the LEA denied the Child FAPE by failing to consider “evidence-based trauma-informed interventions and practices,” in the creation of the IEP (or amendment) on or after January 16, 2021?**
2. **Whether the LEA denied the Child FAPE by failing to include a participant in the IEP team with necessary and sufficient knowledge of “evidence-based trauma-informed interventions and practices” in the Child’s eligibility or the IEP’s creation including the proposed amendment, on or after January 16, 2021?**
3. **Whether the LEA committed procedural errors under IDEA regarding the creation of the IEP (or its amendments) after January 16, 2021, and, if so, did such violations deny the Child FAPE?**

1. **Whether the LEA denied the Child FAPE by improper actions regarding the effectuation of the Resolution Period allowed by VDOE Case No. 21-062 and, if so, what is the remedy?**

1. **Whether the Child should be placed in “a private educational program” in accordance with applicable law?**

## **RELEVANT TESTIMONY REVIEW:**

The Guardian/Child called three witnesses: Trauma Expert, the Guardian and Consultant.

The Trauma Expert was qualified as an expert in the following areas: social work, trauma in general, and child's trauma assessments, including Childhood Adolescent Needs Assessment. (Hearing Transcript (HT) at 40-41.) (She was not qualified as a psychologist or similar mental-health professional.) She testified that trauma for a child has the “possibility” of impacting an individual's quality of life, and that can be from of affecting various perspectives: developmentally, and especially when you're talking about children, but just in general, social, economic, academic, physical, which includes health and developmental, economic. (HT at 41-42.) She spoke of various applicable theories. (HT at 42-51.) In her area of designated expertise, she opined:

* Attention-deficit/hyperactivity disorder is a disorder where children are unable to maintain focus and attention over a period of time, and hyperactivity generally kind of manifests itself in children not being able to sit still, fidgeting, having an excessive need for movement.” (HT at 58.)
* As this relates to the academic experience, a child with ADHD would have problems focusing, following directions, remaining still, especially in a setting where children are required to sit and observe or learn or work in one place for a prolonged period of time. ADHD also can either influence trauma or ADHD can be a result of trauma as well. (HT at 58.)
* Adjustment disorder is where a child has significant impairments in adjusting to a situation, and usually adjustment disorder is related to some form of significant change or transition in a child's life. It could be manifested by anything from parents getting divorced and a child not adjusting to that. The difference between simply not adjusting and having adjustment disorder is where you have adjustment disorder, there are significant and marked impairments in a child's -- in their sphere. It could be social. It could be academic. It could be psychological. It could be behavioral. But adjustment disorder just means that there are significant impairments in a child's ability to adjust to something that has occurred in their life, in their environment. (HT at 60-61.)
* Everything that impacts a child, especially a child who has experienced trauma, the manifestation of childhood trauma impacts the areas of a child's being, behavioral, social, cognitive, developmental, that are fundamental to academic success. (HT at 63.)
* As to a child’s coping -- self-regulation, coping skills, impulsivity, redirection, as well as planning and organizational skills that may impact her handwriting --they don't have the fine motor skills -- are all indicators of trauma and can be the repercussions or the consequences of trauma. (HT at 64.)
* After reviewing LEA Exhibits 3-7, she opined that the Child presented with the symptoms of ADHD. (HT at 67.)
* Although not qualified as an expert in special education, she opined that the LEA should have administered a behavior intervention plan (BIP). (HT at 68, 117. The LEA should assess the Child’s capacity regarding communication. (HT at 75-76.)
* By implication, an IEP team requires members from a multi-disciplinary background. (HT at 81.)
* Although not qualified in special education, she opined that a child with an assessment or diagnosis of PTSD and adjustment disorder, ADHD, there should be a barrage of other assessments that are done to see how these diagnoses are impacting her in other areas. (HT at 81.)
* Although not qualified in special education, the IEP team should include a professional with expertise in trauma and severe neglect. (HT at 86.)
* Although not qualified in special education, the Trauma Expert opined that the proposed IEP’s reference to counseling services was insufficient. (HT at 88-89 and 94-95.)
* Cognitive behavioral therapy is a therapeutic approach that addresses the interrelation or correlation between one's cognitive development and their behavior. (HT at 89-90.)
* Although not qualified as an expert in special education, she opined that the Proposed IEP did not provide the Child with FAPE. (HT at 91, 117.)
* The Child’s needs require an approach by LEA professionals both in the school setting and at home. (HT at 99.)
* Failure to evaluate the Child by, implication, the LEA would continue the Child’s trauma circumstance. (HT at 101.)
* Failure to provide evidence-based, trauma-informed interventions is a form of neglect.
* The Child’s difficulty with transitions and maintaining boundaries are a manifestation of her diagnosis of ADHD and Adjustment Disorder. (HT at 102.)
* The Child’s past negative experiences could affect her capacity to read as well as her academic performance, her academic success, and her self-esteem. (HT at 107-109, 112-116.)
* Although not qualified as an expert in special education, she opined that LEA’s staff is insufficiently trained regarding a child with trauma--trauma-informed practices. (HT at 118-199.)
* The Child experienced trauma. (HT at 127-128.)
* She has a relationship with the Advocate and has testified, by implication, on behalf of parents on several occasions. (HT at 129.)
* She had not reviewed Private Psychological Evaluation. (HT at 137.)
* Although not designated as an expert in special education, she opined that a “play therapist” participation at an IEP meeting would be important a great asset. (HT at 141-142.)
* Although not designated as an expert in special education, she opined that the IEP team was not “trauma informed,” based on her information, denying the Child FAPE. (HT at 144-145.)
* A gifted child may still suffer the effects of trauma. (HT at 152.) While the Trauma Expert’s general opinions on trauma were very much appreciated, her opinions regarding the Child were severely discounted. There no evidence that she: professionally interacted with the Child; professionally treated the child; observed the Child in an academic setting; spoke with LEA professionals; or review mental-health evaluations. Further, she was not designated as an expert in special education. Her appearance, while informative, appeared (and concluded) to be the Guardian’s attempt to allow a “rock star” to emphasize the need for schools, in general, to allow “trauma-informed” professionals to participate in IEP meetings. As to the instant matter and with all due respect, her lack of contact with the Child and her academic environment, evaluations, *etc.*, robbed her opinions of credibility. Her testimony was given little if any weight in the instant matter.

The Trauma Expert’s general opinions were appreciated. However, her opinions regarding the Child were severely discounted (without fault) on the basis that there was no evidence she: interacted with the Child; professionally treated the child; observed the Child in an academic setting; spoke with LEA professionals, or review mental-health evaluations. Further, she was not designated as an expert in special education. Her appearance, while informative and entertaining, appeared (and concluded) to be the Guardian’s attempt to allow a “rock star” to emphasize the need for schools, in general, to allow “trauma-informed” professionals to participate in IEP meetings. As to the instant matter and with all due respect, her lack of contact with the Child and her academic environment, evaluations, *etc.*, robbed her opinions of credibility. Her testimony was of little, if any, value in the instant matter.

The Guardian testified as a fact witness. Although she rendered opinions, such evidence was not received as an expert. By court order, she was granted custody of the Child. (HT at 155; 230.) She testified that she had no input in the Proposed IEP. (HT at 160, 201.) The Proposed IEP incorrectly referenced that both parents participated. (HT at 161.) She was muted on IEP meetings without clarification as to when for purposes of the Resolution Agreement. (HT at 161-167, 179.) She had concerns regarding the Child’s participation. (HT at 170.) At the Resolution Meeting, the LEA hung up and such effort was unproductive. (HT at 170-171; 179.) She requested the LEA to provide a “trauma-informed” participant at IEP meetings. (HT at 173; 277.) She never received “training” as to “trauma-informed practices.” (HT at 174.) She has never received the Child’s records from the LEA. (HT at 176.) The LEA requested payment for such records. (HT at 177; 236.) She had concerns regarding the Child’s capacity to communicate. (HT at 190.) She felt that private placement was appropriate without details. (HT at 191-192.) She requested the LEA to assist the Child in virtual learning. (HT at 195-196.) The LEA rejected private placement. (HT at 203.) She investigated placement in a Montessori school. (HT at 204.) She does not trust the LEA. (HT at 205.) The Parent did not invite any of the Child’s professionals to participate in the IEP meetings or provide updates. (HT at 254-255.) She did not feel that she was an “equal” member of the IEP team. (HT at 270-271.) She felt that any suggested changes to the IEP were not implemented. (HT at 271

-272.) While her love for the Child was evident, her testimony was discounted on the basis of bias towards her pre-conceived perception of the Child's academic needs, and her, at times, negative perception of (and actions against) the LEA without evidential basis. Overall, the Guardian evidenced a sincere commitment to forwarding the Child's educational opportunity as evidenced by her efforts and input as described in the Proposed IEP. Unfortunately, her credibility was severely discounted by her actions including the actions in the December, 2020, IEP meeting and the Resolution Meeting. She appeared to be engaged in forwarding an unknown agenda. (See, *e.g*., LEA Exhibit 7 with its recording wherein she agreed to send the recording to the Office of Civil Rights.) Further, she attempted to intimidate, or at least improperly, negatively, influence, LEA witnesses during the instant matter. (See LEA Exhibit 7 with its recording.) Her negative conduct was found to be extremely outrageous without justification or excuse and inconsistent with IDEA’s underlying need that parties collaborate. As a result, the Guardian’s testimony was given no weight except as to her testimony regarding her legal authority of the Child and her love for the Child.

The Consultant was called as a fact witness and an expert in the areas of special education including IEP development, evidence-based interventions and compliance with the IDEA requirements. (HT at 297.) To the extent that this professional has referenced psychological evaluations, her opinions thereof will not be taken as someone who has expertise in psychology, but in the designated areas. She educated the Guardian as to her “rights” under, by implication, the IDEA including an explanation of the process, *etc*. (HT at 299-300.) Based on her contact with the Guardian and attending the two IEP meetings (and evidently despite the Consultant’s participation as a resource), she felt that the Guardian was unable to participate in the IDEA process meaningfully. (HT at 300, 305, 320.) She opined that the LEA members of the IEP team did not “fully understand” the Child’s academic needs given, by implication, the Child’s traumatic past. (HT at 301.) Further, such LEA members were not “open-minded” to such issues. (HT at 301-303.) She felt that she was ignored at the “facilitated IEP meeting” held on March 8, 2021. (HT at 305, 311, 323.) She opined that the LEA (to the detriment of the effort) did not provide “a teacher that was a behavior interventionist that was also trained in conducting [Functional Behavioral Assessments]”. (HT at 313.) There was no audiologist or vision-impaired participant. (*Id*.) The LEA should have had a private psychologist attend. (HT at 315.) She had issues with the Proposed IEP. (HT at 317-319.) Without a date, the Consultant felt the Proposed IEP was finalized before presentation at an IEP meeting in a PDF form. (HT at 320; 323; 373-374.) She opined a concern that the LEA failed to conduct a “basic screener measurement” on the Child. (HT at 323.) She had “concerns” that the LEA had not gathered data for “assistive technology.” (HT at 325.) The LEA failed to collet data overall, especially from classroom observation. (*Id*.) The Child learned virtually, by implication, because of COVID. (HT at 326.) She did not see the accommodations by the LEA to support the Child’s deficits in “visual motor integration” or “gross motor skills.” (*Id*.) She is agreed with the IEP that “there was no data to support the need for assistive technology,” suggesting that data should have collected. (HT at 328.) A FBA should have been conducted to investigate “triggers” of negative behavior by the Child. (HT at 330; 355; and 389.) She felt that the Proposed IEP was “already completed” before the IEP on March 8, 2021. (HT at 331, 346-347; 380.) The Proposed IEP lacked the necessary detailed information to allow a “stranger” to its creation to effectuate its efforts. (HT at 333, 347-349, 352-357.) The implication was that any IEP must contain sufficient information to allow another LEA to interpret data and implement its goals. *(Id*.) She was concerned that the IEP team did not have an expert in “developmental vision evaluation” such as a neuro-developmental optometrist. (HT at 335.) She opined that no member of the IEP was “trauma-informed trained.” (HT at 342.) She had concerns

regarding the implementation of the Proposed IEP in a virtual, academic, setting. (HT at 363, 366.) Her concerns regarding the deficiency of the Proposed IEP would remain even if the Child is taught “in-person.” (HT at 366.) Overall, she opined that the Proposed IEP was missing many components, requiring the IEP to be re-assembled to provide concrete, properly-written IEP. (HT at 367.) She did not feel that the Proposed IEP was “appropriate” implying inconsistent with FAPE. (HT at 377.) For example, the section of the Proposed IEP concerning “present level of performance” is not up to date and, overall, the document was not updated from December, 2020. (HT at 381; 392; and 445.) Parent/Child Exhibit 5-18, a portion of an LEA, IEP planning document, should have been drafted with the Parent/Child’s participation. (HT at 383.) Parent Exhibit 5-17 should have been included in the Proposed IEP. (HT at 397.) In addition to ADHD, the Proposed IEP should have referenced, under “Other Health Impairment,” the Child’s diagnoses of adjustment disorder and PTSD. (HT at 439.) The Parent participated in the IEP meeting of March 8, 2021. (HT at 445.) The professional possessed special knowledge in the areas of the expert designation and provided some insightful opinions. By her participation, her commitment to children with special needs was evident. However, her testimony was discounted for various reasons on the basis that she: has not been licensed as a professional since 2014 in Virginia; and last drafted an IEP in 2014. (HT at 290.) Moreover, she never: taught the Child or provided the Child educational services; spoke with the Child's private “play therapist”; contacted

the Child’s Psychologist; saw the Child in a classroom, in a virtual classroom setting; and, interviewed or spoke with the Child's teachers outside an IEP or similar meeting. The impression is that her role was to attack, or at least confront, the IEP process as opposed to an effort of collaboration as contemplated by IDEA. Her testimony appeared to “cherry-pick” issues regarding the Proposed IEP without any persuasive evidence as required by the standards required by Rowley and Endrew; *i.e.*, an IEP must be reasonably calculated to provide a student FAPE and enable such student with a disability to make progress appropriate in light of his or her circumstances. Similarly, her testimony regarding the need for a FBA or similar evaluations was found to be general and unpersuasive--all students would "benefit" from such efforts, socially as well as functionally. Further, in response to specific questions from the Parent/Child, the Consultant provided responses beyond the scope of the question, indicating a design to take the opportunity to present a position as opposed to providing persuasive opinions as an expert opinion. Overall and with that stated, her testimony did underline the need for the Proposed IEP to be updated regarding the Child’s academic progress and current needs given the lapse of time from creation (December, 2020) to date. While having a wealth of knowledge on the areas of expertise, she appeared to be an advocate for an unknown agenda as opposed to a persuasive expert in the instant matter. Her testimony was compromised.

The LEA called seven witnesses: Teacher AP, SEE, Counselor, School Counselor, Principal and LEA Employee.

The Teacher was called as a fact witness, and expert witness in the following areas: early childhood education, PK through third grade with “training” in “trauma identification.” (HT at 464-467; 594-595.) She was the Child’s kindergarten teacher, *i.e.*, the general education teacher. (HT at 467; 530.) The Child was timid regarding academic participation virtually. (HT at 468-469.) She progressed academically through the school year. (HT at 470-477.) LEA Exhibit 1 reflects, *via* the comments and otherwise, the Child’s academic progress. (*Id*.) Learning the necessary routine for any new student in the first quarter, basic academic gains were made. (HT at 477-481.) Data was collected from September 8, 2020 to October 20, 2020. (HT at 478-482.) Despite the absence of IEP services, the Child academically progressed. (HT at 484-512; LEA Exhibit 4.) The expert opined that as the year progressed, the Child “needs redirection. She needs prompting.” (HT at 520; 550; 606.) However, the Teacher testified that “I did have to redirect her, but this **was not a typical snapshot of** [the Child]. [Emphasis added.] (HT at 606.) Further, the Child “was working more independently. (HT at 520.) At the “[F]acilitated IEP meeting, this professional did not respond to an inquiry regarding her “trauma-based” training because she felt intimidated, by implication, by communications from the Guardian. (HT at 521; 588.) As the Child’s classroom teacher, she opined that the Child, *via* the Proposed IEP, would receive resources from several professionals: the IEP case manager; instructional assistant; special-ed instructional assistant, and guidance counselor. (HT at pages 524-525.) The Child is prepared for the next grade–first grade. (HT at 531; 597.) She made observations of the child in-person and virtually. (HT at 540.) By her participation *via* the virtual classroom setting, the Teacher did not see the Child display interfering behaviors to obstruct her educational progress. (HT at 544; 604.) She participated in the creation of the Proposed IEP. (HT at 556.) The Proposed IEP would address, at least, the Child’s non-academic needs. (HT at page 592.) Any proposed IEP from the LEA was “open to discussion.” (HT at 601.) The Teacher was found to be a credible witness with professional insights on specific areas regarding the Child’s academic progress and the validity of the Proposed IEP. Her testimony was given great weight. The Teacher’s daily interaction with the Child, although virtual, support this conclusion.

AP testified as an expert in the implementations of administration, literacy, and special education. She participated in the Facilitated IEP Meeting. (HT at 621.) In preparation, she communicated with relevant LEA employees, review “reports” submitted by “outside agencies” and the Proposed IEP. (HT at 622-623; 664.) She did not observe the Child in the classroom setting. (*Id*.) She felt that the Facilitated IEP Meeting was unproductive. (HT at 624-625.) The recording of the Facilitated IEP was submitted as LEA Exhibit 13. The Proposed IEP’s allowing “sixty minutes of counseling services” “seems ample,” implying appropriate. (HT at 630; and, 666.) After implementation of the Proposed IEP, the IEP team may access and (by implication) modify or provide additional services in the event the “child appeared to need additional services.” (HT at 631.) In reading development, the Child was making “appropriate” progress. (HT at 632-633.) The Child was attending kindergarten. (HT at 633-635.) The Parent/Child did not request private placement at the Facilitated Meeting although the subject was discussed at the end of the meeting. (HT at 638.) The Proposed IEP was not “updated” before the Facilitated IEP meeting because there was “nothing accepted or rejected” at that point in time. (HT at 639.) The Proposed IEP would provide the Child FAPE. (HT at 640.) The Proposed IEP as reviewed at the Facilitated IEP was not a “final” document, but a “work in progress” subject to modification. (HT at 640-641.) The LEA “counselor” possessed trauma-informed training and participated in the Facilitated IEP meeting. (HT at 650.) No update to the Child’s “present-level performance data” was not required because no IDEA services had been provided. (HT at 652.) An IEP is a draft until signed by the Parent/Child. (HT at 654.) The Proposed IEP was created by the “IEP team.” (HT at 655.) The Proposed IEP references the Child’s disability “OHI” or Other Health Impaired on the basis of the ADHD and PTSD diagnoses. (HT at 663.) AP was found to be a very credible witness with professional insights on specific areas regarding the Child’s academic progress and the validity of the Proposed IEP and IEP process. Her testimony was given great weight.

SEE was designated an expert in special education. (HT at 677.) She became the Child’s case manager to conduct the Facilitated IEP Meeting and is the current Case Manager. (HT at 680; 697; and 711.) She participated in the Facilitated IEP Meeting. (HT at 701.) She did not participate in the drafting of the Proposed IEP. (HT at 682.) She reviewed the Proposed IEP. (HT at 684-692.) She opined that the “special-education supports” contained in the Proposed IEP were “reasonably calculated” implying such supports provided the Child FAPE. (HT at 692-696.) An IEP is subject to modification based on parental communications. (HT at 697.) The Proposed IEP was subject to change based on IEP actions and decisions. (HT at 701; and, 725.) Before the Facilitated IEP Meeting, she received “trauma-informed training.” (*Id*.) She has dealt with children who have been subject to trauma over a number of years. (HT at 702.) Resources were available to the Child regarding trauma and emotional issues in her school: counselor, school psychologist, or school social worker. (HT at 705-706.) The Child would have “benefitted” from the implementation of the Proposed IEP, implying that it provided FAPE. (HT at 708; and 726.) The Child made academic progress without an IEP. (*Id.*) Because no IEP has been finalized by consent of the Parent, she had no basis to contact the Parent regarding such implementation. (HT at 713-714.) The Proposed IEP contains the concerns of the Parent/Child. (HT at 718.) The Parent/Child does not have access to the software to modify the IEP. (HT at 732.) The Parent did not have access to the entire IEP to help develop it; the parts

that were not sent are “services, which are [IEP] team decisions, services, and placement.” (HT at 733; and 736.) Some members of the IEP do have access to the, by implication, software that created the Proposed IEP. (HT at 736.) Because IEP generation may require several IEP meetings, an IEP is updated as the parties progress in the effort, implying not before every meeting. (HT at 744.) SEE was found to be a very credible witness with professional insights on specific areas regarding the Child’s academic progress and the validity of the Proposed IEP and the IEP process. Her testimony was given great weight.

The Counselor was a fact witness and qualified as an expert in school psychology, test administration, and trauma-informed schools. (HT at 773.) Specifically, the Counselor was certified as a Certified Trauma Practitioner which required hours of training (with annual training) in understanding trauma and treatment methodologies for trauma, *i.e.*, support individuals (including children) that have been impacted by trauma. (HT at 786; and 791-793.) She is not certified in the development of “trauma-informed IEPs.” (HT at 770-771.) She has served on IEP eligibility teams as a school psychologist. (HT at 771.) She reviewed the Private Psychological Report and was aware of the Child’s diagnoses. (HT at 775; and 803.) She opined that the Child presented with strong cognitive abilities, within the average to the superior range, with no significant weaknesses. Further, there were relative strengths identified in the area of visual spacial and relative weakness in the area of working memory. (HT at page 779-780.) A child who experienced trauma is more inclined to display negative behaviors at home as opposed to in a school setting. (HT at 783.) She opined that the Private Psychological Report recommended Section 504 services and not IDEA services. (HT at 787-790.) Play therapy and Cognitive behavior therapy are not typically provided in a school setting. (HT at 791.) The Proposed IEP provides the Child FAPE by providing the Child the emotional support. (HT at 804-807.) She opined that the IEP team would be responsible for establishing a FBA. (HT at 809-810.) She routinely reviewed IEP members regarding completion of “base level of training related to trauma-informed strategies.” (HT at 814.) The LEA reached out to the Child’s Psychologist. (HT at 818.) The Child Psychologist’s Report was considered by the IEP team. (HT at 820.) She does not know why any Party failed to invite the Child’s Psychologist to IEP meetings. (HT at 829.) Her input would be helpful. (*Id.*) A Behavior Intervention Plan (BIP) or Functional Behavior Assessment (FBA) were not required for the Child. (HT at 807; 821-822; and 832-833.) The Counselor has received trauma-informed training from various sources. (HT at 866-869.) The Counselor was found to be a very credible witness with professional insights on specific areas regarding the Child’s academic progress. Her testimony was given great weight. The School Counselor was qualified as an expert in the area of school counseling. (HT at 884.) She has a certificate as a “specialist of anxiety and stress management with the American School Counselor Association.” (HT at 886.) She has trauma training from various sources. (HT at 887-889.) She observed the Child in her classroom setting in September, 2020, for one-half hour, *i.e*., virtually due to COVID. (HT at 891-892; and 897.) She observed that the Child displayed behaviors consistent with other children. (HT at 898; and 901.) The December, 2020, IEP meeting did not go well. (HT at 908.) She could not be heard and felt threatened and bullied due to the Guardian’s implying inappropriate and/or unprofessional behavior. (HT at 908-909; 963-966.) The Child has not displayed (by implication in an academic setting) responses consistent with a child inflicted by trauma. (HT at 910.) The Propose IEP’s allowance of sixty minutes for counseling was sufficient. (HT at 911.) If the Proposed IEP is implemented, the LEA would allow services to ensure the goals would be achieved. (HT at 917-920.) The Child displays seventeen maladaptive behaviors that are inconsistent with her developmental level. (HT at 944.) No “behavior support plan” was required. (*Id*.) The eligibility team did determine that the Child did have clinically significant impairment. (HT at 944.) The Guardian denied virtual appointment with the Counselor for reasons unexplained. (HT at 953-956.) The School Counselor was found to be a very credible witness with professional insights on specific areas regarding the Child’s academic progress. Her testimony was given great weight.

The Principal was a fact witness as well as designated as an expert in the areas of special education and supervision implying administration. (HT at 981.) She was a member of the IEP team. (HT at 985.) At IEP meetings, the LEA provides participants with a working draft. (HT at 988-990.) The Resolution Meeting was unproductive. (HT at 991.) The Guardian prevented meaningful discussion regarding outstanding issues. (HT at 1003; and LEA Exhibit 7.) Specifically, by example, the Principal “asked for the parent to provide specific information about what components the - of input from the play therapist,” and the Guardian shut her down. (HT at 1007; 1022; and LEA Exhibit 7.) At the Resolution Meeting, the Parent refused to provide relevant information despite several attempts. (HT at 1011; and LEA Exhibit 7.) She possessed the necessary information to effectuate the Resolution Meeting. (HT at 1013.) The Play Therapist recommendations were in the Proposed IEP. (HT at 1016.) The Advocate communicated to the Parents “[d]o not communicate with the school team by any means other than e-mail.” (HT at 1020.) The Guardian does not trust the LEA. (HT at 1025.) The Guardian “has access to review the [the Child’s educational] records in the same manner as a school-based IEP team member....” (HT at 1022.) The Guardian can take copies or take pictures. (*Id*.) The Play Therapist did participate in the Eligibility Meeting. (HT at 1043.) The Principal was found to be a very credible witness with professional insights. Her testimony was given great weight.

The LEA Employee was designated an expert in the area of special education and supervision. (HT at 1047.) She opined that the Child possessed “really great strengths: solidly average in some areas, either high average or superior cognitive skills.” (HT at 1050.) At the Resolution Meeting, the Guardian was told “not to talk” by, implication, the Advocate. See HT at 1056-1057; LEA Exhibit 7.) She opined that the Proposed IEP’s goals were sufficient. (HT at 1058-1063.) The Proposed IEP was not finalized before any IEP meeting. (HT at 1081-1082.) The Proposed IEP would address the Child’s social-emotional needs. (HT at 1087.) The Guardian expressed her concerns. (*Id*.) The Guardian was not muted at IEP meetings. (HT at 1004.) She spoke with the Guardian virtually. (HT at 1117.) She reviewed the Proposed IEP. (HT at 1127.) The LEA Employee was found to be a very credible witness with professional insights. Her testimony was given great weight.

## **EXHIBITS**

From the Parent/Child’s Exhibit Binder, the following Exhibits were admitted into evidence by page number: 3, 4, 5, 6, 9, 14, 15, 17, 22, 23, 27, and 30. From the LEA Exhibit Binder, the following Exhibits were introduced into evidence: 1, 3, 4 (pages 1-3 plus four videos filed on the flash drive), 5, 7 (with the hyperlink recorded on the filed flash drive), 11, 13, 14, 20, 21, 25, 28, 31, 32, 33, 35, 38, 41, 44 and 45 (minus first page). Overall, a court reporter attended the Hearing.

## **FACTUAL FINDINGS (By a Preponderance of the Evidence)**

After reviewing the testimony and exhibits, the following factual findings are made:

1. Despite the absence of IEP services, the Child academically progressed.
2. The Guardian created a hostile environment during the Facilitated Meeting, severely undermining the IDEA’s inherent requirement of collaboration.
3. Under the Proposed IEP, several professionals would be available to allow its effectuation: an IEP case manager; instructional assistant; special-ed instructional assistant and guidance counselor.

1. The Child’s classroom setting was virtual at relevant times hereto, due to COVID, her kindergarten year.
2. The Guardian declined to return the Child to a non-virtual classroom environment in March, 2021.
3. In the virtual classroom setting, the Child did not display interfering behaviors to obstruct her educational progress.
4. In the virtual classroom setting, the Child did not display responses consistent with a child inflicted by trauma.
5. The Proposed IEP would address, at least, the Child’s non-academic needs.
6. The Teacher was trained in trauma at all times relevant hereto.
7. The LEA collected data on the Child’s academic participation from September 8, 2020 to October 20, 2020.
8. The Proposed IEP’s allowing “sixty minutes of counseling services” was appropriate for the Child.
9. After implementation of the Proposed IEP, the IEP team may modify or provide additional services in the event the “child appeared to need additional services” thereafter.
10. In reading development, the Child made appropriate progress.
11. The Parent/Child did not request private placement at the Facilitated Meeting although the subject was discussed at the end of the meeting.
12. Appropriately, the Proposed IEP was not updated before the Facilitated IEP meeting because there was nothing accepted or rejected at that point in time.
13. The Proposed IEP would provide the Child FAPE.
14. At all times relevant hereto, the LEA “counselor” possessed trauma-informed training and participated in the Facilitated IEP meeting.
15. No update to the Child’s “present-level performance data” was not required because no IDEA services had been provided.
16. The Proposed IEP was created by the IEP team (which included the Parent) in accordance with IDEA.
17. The Proposed IEP references the Child’s disability with Other Health Impaired on the basis of the ADHD and PTSD diagnoses.
18. The Guardian did not provide consent to the Proposed IEP.
19. The “special-education supports” contained in the Proposed IEP were “reasonably calculated” to provide the Child FAPE.
20. SEE participated in the Facilitated IEP Meeting and had received "trauma-informed training.
21. SEE has dealt with children who have been subject to trauma over a number of years.
22. At all times relevant, the overwhelming evidence was that the LEA provided IEP members who were sufficiently trained in “trauma” regarding this Child to allow any relevant IDEA services to be considered.
23. In the school setting, resources were available to the Child regarding trauma and emotional issues in her school: counselor, school psychologist, or school social worker.

1. Because no IEP has been finalized by consent of the Guardian, the LEA could not administer services to the Child as described by the Proposed IEP.
2. The Guardian does not have access to the software to modify the IEP.
3. The Guardian did not have access to the entire IEP to help develop it; the parts that were not sent are services, which are IEP team decisions.
4. Because IEP generation may require several IEP meetings, an IEP is updated as the parties progress in the effort, implying not before every meeting.
5. The LEA did not breach Paragraph 2 of the Resolution Agreement.
6. The Proposed IEP incorrectly referenced that both parents participated, an oversight in a draft document. IDEA’s need for collaboration should have allowed such information to be provided by the members of the IEP.
7. The Proposed IEP was not pre-determined or finalized by the LEA or members of the IEP team in anyway before any IEP meeting.
8. The Counselor was certified as a Certified Trauma Practitioner which required hours of training (with annual training) in understanding trauma and treatment methodologies for trauma, *i.e.*, support individuals (including children) that have been impacted by trauma.

1. At all times relevant hereto, the Counselor has received trauma-informed training from various sources.
2. At all times, the LEA considered the Guardian’s input in the drafting of the Proposed IEP.
3. The Child presented with strong cognitive abilities, within the average to superior range, with no significant weaknesses as well as with relative strengths in the area of visual spacial and relative weakness in the area of working memory.
4. The Private Psychological Report recommended Section 504 services.
5. The Private Psychological Report does not reference the needs for IDEA services.
6. The Private Psychological Report does describe the Child’s emotional needs.
7. The Proposed IEP provides the Child FAPE by providing the Child the emotional support.
8. The LEA reached out to the Child’s Psychologist.
9. The Child Psychologist’s Report was considered by the IEP team.
10. A Behavior Intervention Plan (BIP) or Functional Behavior Assessment (FBA) were not required for the Child.
11. The Proposed IEP was generated after the IEP team reviewed all applicable information, documents and evaluations in accordance with the mandates of IDEA.
12. The Child displays seventeen maladaptive behaviors that are inconsistent with her developmental level.
13. The Guardian was educated as to her “rights” under IDEA via the Advocate and Consultant.
14. The Guardian denied virtual appointment with the Counselor for reasons without justification.
15. The School Counselor has trauma training and participated in the December, 2020 IEP meeting wherein the Proposed IEP was discussed.
16. The December 2020 IEP meeting did not go well.
17. At the December 2020 IEP, the School Counselor could not be heard and felt threatened and bullied, due to the Guardian’s inappropriate and/or unprofessional behavior for reasons unexplained.
18. The eligibility team did determine that the Child did have clinically significant impairment.
19. At IEP meetings, the LEA provided participants with a working draft.
20. The Principal participated in the Resolution Meeting.
21. The Resolution Meeting was unproductive.
22. The Guardian, with extremely rude, unprofessional and improper behavior (and without legitimate cause), prevented meaningful discussion regarding outstanding issues at the Resolution Meeting.
23. At the Resolution Meeting, the Guardian refused to provide relevant information despite several attempts by the LEA.
24. The Principle possessed the necessary information to effectuate the Resolution Meeting.
25. The Proposed IEP contained recommendations from the Play Therapist.
26. The Advocate communicated to the Guardian “[d]o not communicate with the school team by any means other than e-mail” undermining the IDEA’s need to have the parties collaborate.
27. The Guardian does not trust the LEA.
28. The Guardian improperly attempted to intimate, or at least negatively influence, LEA witnesses.
29. The Guardian has access to review the Child’s educational records in the same manner as a school-based IEP team member.
30. The Proposed IEP was not finalized before any IEP meeting.
31. The Proposed IEP was not pre-determined before any IEP meeting.
32. As of the date of the Hearing, the Proposed IEP has not been finalized.
33. No evidence was introduced regarding the quality of any proposed private placement or its capacity to provide the Child FAPE.
34. The Principal was not demoted by the LEA.
35. The Child’s Psychologist generated the Private Psychology Evaluation.
36. The location of the Due Process Hearing was consistent with IDEA requirements.
37. The Due Process Hearing was open to the public consistent with IDEA requirements.
38. For reasons unexplained, the Guardian failed to call the Child’s Psychologist as a witness, subject to expert designation, *voir dire*, cross examination, *etc*. As a result, her Private Psychology Evaluation was required to be discounted, unfortunately, given its potential content, except as its being a part of the Child’s school record (without the potential of judicial findings) as well as may be interpreted in expert opinions regarding its contents.[[2]](#footnote-2)2
39. For reasons unexplained, the Guardian failed to call the individuals who daily monitored the Child’s participation in her virtual classroom setting, providing insight as to the Child’s behavior in the classroom setting. This failure created the impression, but not presumption or conclusion, that such witnesses would have testified inconsistent with the allegations contained in the Due Process Request.
40. The Resolution Agreement resolved all disputes between the Parties which may exist on or before January 15, 2021.
41. The Proposed IEP was not amended.
42. The LEA staffed the IEP meetings with participants consistent with the requirements of IDEA.
43. The LEA did not waive any IDEA requirements.

1. The Guardian improperly attempted to intimate or at least negatively affect, LEA witnesses, the Principal and LEA Employee--outrageous conduct.

1. Any Party’s decision regarding participation of expert witnesses at a meeting regarding the Proposed IEP is consistent with such party’s discretion under 8VAC20-81-110C1f.
2. The Play Therapist did participate in an eligibility meeting.
3. The Guardian is found to have accepted or ratified all actions of the Advocate as referenced herein.

## **ANALYSIS:**

**Legal Analysis**

While the Child was not subject to an IEP, her eligibility for IDEA services was at issue. By agreement, the Child’s Section 504 plan and its implementation were not adjudicated except the Parties may introduce such evidence as may be relevant to adjudicate the issues raised pertaining to IDEA issues. Despite the lack of existence of an IEP, the Child progressed academically. Further, she did not display behaviors in an academic setting consistent with a child victimized by trauma.

The burden of proof in this proceeding is on the Guardian who initiated the hearing. *See* Schaffer v. Weast, 546 U.S. 49, 62 (2005). The burden of proof encompasses both the “‘burden of persuasion,’ *i.e*., which party loses if the evidence is closely balanced, and the ‘burden of production,’ *i.e*., which party bears the obligation to come forward with the evidence at different points in the proceeding.” *Id*. at 56. To satisfy their burden of proof, the parent/child must offer expert testimony in support of their position. Weast v. Schaffer, 377 F.3d 449, 456 (4th Cir. 2004). The standard of proof is a preponderance of the evidence. County Schl. Bd. of Henrico County v. Z.P., 399 F.3d 298, 304 (4th Cir. 2005).

In Arlington County School Board v. Smith, 230 F.Supp.2d 704, 715 (E.D. Va. 2002), the Court reversed the decision of the Hearing Officer on the basis that he made factual findings that were not supported by expert testimony:

In summary, the preponderance of the record evidence points persuasively to the conclusion that APS's proposed placement of Jane in the Interlude program would provide her with a FAPE because it was “reasonably calculated to enable [her] to receive educational benefit.” *See* Rowley, 458 U.S. at 206-07, 102 S. Ct. 3034. The hearing officer's contrary conclusion that Jane would not benefit from the Interlude program finds no support in the record, **as no expert testified to this effect**, and Jane had not yet fully experienced the program. It is apparent that the hearing officer succumbed to the temptation, which exists for judges and hearing officers alike in IDEA cases, to make his own independent judgment as to the best placement for Jane, instead of relying on the record evidence presented in the hearing. This temptation stems from the fact that judges and hearing officers are typically parents who are in the habit of making such judgments. Yet, the Supreme Court and Fourth Circuit have admonished hearing officers and reviewing courts alike when they substitute personal opinions or judgments as to proper educational policy, and best placements for the disabled student, in the place of the local educators' expert judgments. *See* Rowley, 458 U.S. at 206, 102 S. Ct. 3034; Hartmann v. Loudoun County Bd. Of Educ., 118 F.3d 996, 1000-1001. These courts have also reminded hearing officers and reviewing courts that school districts are not required to provide a disabled child with the best possible education. *See* Rowley, 458 U.S. at 192, 102 S. Ct. 3034. The result reached here is properly deferential to Jane's educators' unanimous determination that the Interlude placement was appropriate. *See also* Hartmann, 118 F.3d at 1001 (holding that “local educators deserve latitude in determining the [IEP] most appropriate for a disabled child”) [Emphasis added.]

A review of Smith is important to emphasize the restrictions, constraints or limitations placed on hearing officers when deciding IDEA cases in Virginia. Although a child is involved, current law prevents a hearing officer’s reviewing evidence as a Virginia juvenile district court judge must review in a custody matter with the “**best interests of the child**” standard as described in §20-124.3 of the Virginia Code. Instead, hearing officers must respect the limitations that evidence, **especially expert testimony**, determine the outcome in IDEA cases as well as respect the Federal directive that IEPs and IDEA eligibility are reviewed with the standard established by Rowley and Endrew and their progeny. The difference between the standard established by the “best interests of the child” and the standard established by Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982) (and its progeny) can never be reconciled. **Quite frankly, this difference causes a great deal of litigation, cost and heartache.**

Educational determinations by LEA experts involved in the Child's education are entitled to deference. A.B. v. Lawson, 354 F. 3rd 315 at 328 (4th Cir 2004); Hartmann v. Loudoun County Board of Education, 118 F.3rd 996, 1001 (4th Cir. 1997). In E. L. v. Chapel Hill-Carrboro Bd. of Educ., 773 F.3d 509, 517 (4th Cir. 2014), the Court confirmed that it afforded “**great deference to the judgment of education professionals in implementing the IDEA.”** As long as an individualized education program provides the basic floor of opportunity for a special needs child, **a court should not attempt to resolve disagreements over methodology**. [Emphasis added.] *In accord,* O.S. v. Fairfax County Sch. Bd., 804 F.3d 354, 360 (4th Cir. 2015). Reviews of Heffernan and E.L. are important to show that a hearing officer or a parent cannot micro-manage the implementation of a Child’s education, deferring to the expertise of LEA professionals.[[3]](#footnote-3)3

In R.F. v. Cecil County Pub. Sch., 919 F.3d 237 (4th Cir. 2019), *cert. denied* 140 S. Ct. 157 (Oct. 7, 2019), the Court found that all “... must answer each of the following in the affirmative to find that a procedural violation of the parental rights provisions of the IDEA constitutes a violation of the IDEA: (1) whether the plaintiffs ‘alleged a procedural violation, (2) whether that violation significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents’ child, and (3) whether the child did not receive a FAPE as a result.”

In regard to private placement matters, case law is clear and undisputed. In A.B. ex rel. D.B. v. Lawson, 354 F.3d 315, 326-27 (4th Cir. 2004), a child’s parent argued that her son required private placement because he “was not fulfilling his potential” in the public school system. The court rejected that argument, holding that “nowhere does IDEA require that a school system ‘maximize’ a student’s potential.” (*Id*. at 327 (*quoting* Rowley, 458 U.S. at 189)). To provide FAPE, an LEA must simply “provide personalized instruction with sufficient support services to enable the handicapped child to benefit educationally from that instruction.” Hessler ex rel. Britt v. State Bd. of Educ., 700 F.2d 134, 139 (4th Cir. 1983). **Only if an LEA cannot provide FAPE** to a child with a disability does the IDEA provide for placement in a private school at public expense. Sch. Comm. of Burlington v. Dep’t of Educ., 471 U.S. 359, 369 (1985). *See* *also* R.H. v. Plano Indep. Sch. Dist., 607 F.3d 1003, 1014-15 (5th Cir. 2010) (“If it appears that the district is not in a position to provide [FAPE] in the public school setting, then (and only then) must it place the child (at public expense) in a private school that can provide those services.” (*quoting* W.S. ex rel. C.S. v. Rye City Sch. Dist., 454 F. Supp. 2d 134, 148 (S.D.N.Y. 2006)). *See also* Lawson, 354 F.3d at 320 (“The parent may recover if (1) the proposed IEP was inadequate to offer the child a FAPE and (2) the private education services ... were appropriate to the child’s needs.”).

The Resolution Agreement resolved all disputes between the Parties which may exist on or before January 15, 2021.

In terms of the composition of an IEP team, 8VAC20-81-110C1f provides that an IEP team consist of:

**At the discretion of the parent(s) or local educational agency**, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of knowledge or special expertise of any individual shall be made by the party (parent(s) or local educational agency) who invited the individual to be a member of the team. [Emphasis added.)

### **Specific Issues**

**I. Whether the LEA denied the Child FAPE by failing to consider “evidence-based trauma-informed interventions and practices,” in the creation of the IEP (or amendment) on or after January 16, 2021?**

The overwhelming evidence is that the LEA engaged appropriate professionals in the creation of the Proposed IEP. The IEP considered all appropriate sources to generate the Proposed IEP which would provide the Child FAPE. The reality is that the Guardian shut down meaningful communications to allow the IEP Team, eligibility team and Resolution Meeting to progress. The Guardian’s negative actions are inconsistent with the IDEA’s inherent requirement that parties collaborate. Overall, the IEP team’s efforts were consistent with IDEA. The Proposed IEP provides FAPE.

**II. Whether the LEA denied the Child FAPE by failing to include a participant in the IEP team with necessary and sufficient knowledge of “evidence-based trauma-informed interventions and practices” in the Child’s eligibility or the IEP’s creation including the proposed amendment, on or after January 16, 2021?**

The overwhelming evidence is that the LEA engaged appropriate professionals in the creation of the Proposed IEP. For example, the Play Therapist did participate in the eligibility meeting. Similarly, the LEA provided qualified experts at all times relevant hereto. No party arranged for the participation of the Child’s Psychologist in any relevant meetings. (*See* 8VAC20-81-110C1f .) While such professionals’ participation would have been potentially beneficial, the blame cannot be assessed against any Party. Both parties may allow the participation of such professionals in their respective **discretion**. The reality is that the Guardian intentionally shut down meaningful communications to allow the IEP Team, Facilitated IEP Meeting and Resolution Meeting to progress meaningfully. Such actions are inconsistent with the inherent IDEA requirement that participants collaborate. Further, the actions of the Guardian disallowed any real possibility of completion of the IDEA process. Overall, the efforts to serve this Child would greatly benefit by IDEA collaboration by the parties.

**III. Whether the LEA committed procedural errors under IDEA regarding the creation of the IEP (or its amendments) after January 16, 2021, and, if so, did such violations deny the Child FAPE?**

The overwhelming evidence is that no procedural errors occurred. A “trauma-informed” professional is not required to attend IEP meetings per IDEA. Under 8VAC20-81-110C1f, any party may allow such professionals in their “discretion.” Even if such professionals were required under the IDEA, the Child’s IEP team contained requisite, relevant, and over-qualified experts. Further, Proposed IEP references several descriptions wherein the Guardian’s concerns were address; *i.e*., she had meaningful input into the IEP process. **Per Rowley and Endrews, the standard is not to require an LEA to provided either a “perfect” IEP or and IEP “in the best interests of the child.”**  In addition, the overwhelming evidence was that the Proposed IEP was not, in any way, pre-determined, finalized, or complete by the LEA before any meeting (n bad faith or otherwise), as asserted by the Guardian. In contrast, the Propose IEP was prepared in accordance with IDEA. No procedural errors occurred but, even if such alleged errors existed (*e.g*., the alleged muting of the Advocate), there was no persuasive evidence that such errors denied the Child FAPE.

**IV. Whether the LEA denied the Child FAPE by improper actions regarding the effectuation of the Resolution Period allowed by VDOE Case No. 21-062 and, if so, what is the remedy?**

The overwhelming evidence is that there was no improper action by the LEA. The Guardian’s negative, outrageous behavior ruined the Resolution Process meeting without justification or excuse. In contrast to the allegations contained in the Due Process Request, the LEA’s representative was professional, patient, and prepared--an example. Further, no persuasive evidence was introduced to support a finding that the Resolution process was not conducted in accordance with IDEA. The Guardian’s conduct at the Resolution Meeting was outrageous and inconsistent with the IDEA’s inherent need for collaboration. Overall, the Resolution Process was conducted in accordance with the IDEA.

**V. Whether the Child should be placed in “a private educational program” in accordance with applicable law?**

The Proposed IEP provides the Child FAPE and must be implemented as soon as possible. In addition, the Guardian introduced no evidence that any contemplated or referenced, private placement would provide FAPE. As a result, the request for private placement must be denied.

## **RELIEF GRANTED:**

The Due Process Requests are denied. With that stated, as may be allowed by applicable law, the Proposed IEP provides the Child FAPE and should be implemented as soon as possible. Further, as the IEP team may decide at its discretion, the Proposed IEP should be reviewed and updated as appropriate under the IDEA, **after implementation**. Further, the IEP team may, at its discretion, review the need for data collection, FBA or BIP, **after implementation**.

**CONCLUSION**

The Guardian/Child failed to carry the burden of proof to grant the relief requested by the Due Process Request.

### **APPEAL, IMPLEMENTATION AND PREVAILING PARTY NOTIFICATIONS**

1. **Appeal**. Pursuant to 8 VAC 21-81-T and §22.214 D of the Virginia Code, this decision is final and binding unless either party appeals in a federal district court within 90 days of the date of this decision, or in a state court within 180 days of the date of this decision.

2. **Implementation**. The LEA shall develop and submit an implementation plan within 45 calendar days of the rendering of a decision.

3. **Prevailing Party**. The LEA is deemed the prevailing party.

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Hearing Officer Date

**CERTIFICATE OF SERVICE**

I certify that on this 21st day of September, 2021, a true and accurate copy of this pleading was mailed, *via* First-class, postage prepaid mail, to:

Ms. XXXXXXXXXXXXXX

XXXXXXXXXXXXX

XXXXXX, Virginia XXXXX

Guardian/Child

Kandise Lucas, Advocate

4206 Chamberlayne Avenue

Richmond, Virginia 23227

Mary Kathryn Hart, Esquire

Senior Assistant County Attorney

3820 Nine Mile Road

Henrico, Virginia 23223

Counsel for LEA

Kathryn D. Jones, Esquire

Coordinator for Due Process Services

ODRAS/VDE

PO Box 2120

Richmond, Virginia 23218-2120

Brian K. Miller, Esquire

2119 West Main Street

Richmond, Virginia 23220

VDOE Evaluator

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Robert J. Hartsoe

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1. 1By Email, dated September 17, 2021, the Guardian filed her “Guardian’s Closing Argument” and was considered; the Guardian made a judicial request. The email included a second document referred to as “Exhibit 1" which was not introduced into evidence or otherwise part of the Hearing. Therefore, Exhibit 1 could not be considered. Any alleged (direct or potential impeachment) evidence may have been probative, a post-Hearing memorandum is not a vehicle to introduce new evidence exhibits, *etc*. For reasons unclear, Exhibit 1 was not provided at the Hearing and no motion to re-open the Hearing for additional evidence was filed. No action can, or will, be taken. [↑](#footnote-ref-1)
2. 2The Private Psychology Evaluation contains extremely important and, at times, heart-rendering, information, findings and opinions on the Child’s mental health as well as such as to her being a victim of trauma. The Guardian’s failure to call this extremely important witness (without explanation) supports the impression (but not presumption or conclusion) that such testimony would have been inconsistent with the allegations in the Due Process Request especially insofar as the Private Psychology Evaluation recommended Section 504 services, not IDEA services. [↑](#footnote-ref-2)
3. 3A court or hearing officer is required to give deference to the judgment of school board witnesses who are professional educators. Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1, No. 15-827, 137 S. Ct. 988 (2017); Springer by Springer v. Fairfax Cnty. Sch. Bd., 134 F.3d 659, 663 (4th Cir. 1998) ("[C]ourts are required to give deference to the state and local education authorities whose primary duty is to administer the IDEA."); M.M. by DM and EM v. Sch. Dist. of Greenville Cnty., 303 F.3d 523, 531 (4th Cir. 2002) ("The court is not, however, to substitute its own notions of sound educational policy for those of local school authorities." *Citing* Hartmann, 118 F.3d 996, 999 (4th Cir. 1997)) The IDEA requires "great deference to the views of the school system rather than those of even the most well-meaning parent." A.B. v. Lawson, 354 F.3d 315 (4th Cir. 2004). [↑](#footnote-ref-3)