**#21-010**

 **VIRGINIA DEPARTMENT OF EDUCATION**

**DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES**

**OFFICE DISPUTE RESOLUTION AND ADMINISTRATION SERVICES**

**CASE NO. 21-010**

AMENDED DECISION**[[1]](#footnote-1)**

XXXXXXXXXX Public Schools Ms. XXXXXX & Mr. XXXXXXXX

**School Division Name of Parents**

Dr. XXXXXXXXX XXXXX XXXXXXXX

**Division Superintendent Name of Child**

Jason H. Ballum, Esquire

Katherine K. Ballou, Esquire None

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

Robert J. Hartsoe, Esquire Parent/Child

**Hearing Officer Party Initiating Hearing**

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# LEGEND

Parents Ms. XXXXXX & Mr. XXXXXXXX

Mother Ms. XXXXXX

Father Mr. XXXXXXXX

Child XXXXX XXXXXXXX

LEA XXXXXXXXXX Public Schools

Director XXXXXXXXX, ED.D.

Assistant Principal XXXXXXXXXXX, ED.D.

Teacher XXXXXXXXX

# DECISION

**INTRODUCTION**

Under the shadow of the Covid-19 virus, this was a difficult matter insofar as the Child possesses great gifts and potential. With that said, material facts and law are undisputed. In this adversarial matter, the Parties, counsel and witnesses are commended for their presentation and professional manner, a blessing. For the reasons stated herein, the LEA is the prevailing party.

## PROCEDURAL BACKGROUND:

Pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), this matter came upon the Parent/Child’s Request for an expedited Due Process Hearing, filed on August 27, 2020. Several issues were raised and addressed as referenced in the PreHearing Reports which are filed herein and incorporated by reference.

### ISSUES DEFINED:

**I. Whether the Parties entered into a settlement agreement which releases and/or bars some or all the claims raised by the Amended Due Process Request?**

**II. Whether the Child’s current restriction from attending school is in violation of the IDEA?**

**III. Whether the LEA followed the applicable regulations regarding the expulsion of the Child in March, 2019 and, if not, what is the remedy?**

**IV. Whether the Child was denied FAPE on the basis that the LEA failed to identify the Child’s disability for the 2018-2019 school year?**

**V. Whether the LEA denied the Child FAPE by allegedly failing to implement the Child’s IEP for the 2018‑2019 school year?**

**VI. Whether the Child was denied FAPE on the basis that the LEA failed to identify the Child’s disability for the 2019-2020 school year?**

**VII. Whether the LEA denied the Child FAPE by allegedly failing to implement the Child’s IEP for the 2019‑2020 school year?**

**VIII. Whether the Child was denied FAPE on the basis that the LEA failed to identify the Child’s disability for the 2020-2021 school year?**

**IX. Whether the LEA denied the Child FAPE by allegedly failing to implement the Child’s IEP for the 2020‑2021 school year?**

### PERTINENT TESTIMONY REVIEW:

The Parent/Child called three fact witnesses: the Assistant Principal, Teacher and Mother.

The Assistant Principal testified as a fact witness. She testified that the Teacher was the Child’s special education teacher in an enclosed classroom. (HT at 40.) The overall implication was that most of the Child’s academic time was spent in a general educational setting. The Child is not allowed to attend XX local middle school. (HT at 45.) Parent’s Exhibit page 624 is a letter dated September 20, 2019, from the LEA to the Parent/Child. (HT at 50.) A Behavior Intervention Plan (BIP) is unnecessary because the IEP, dated December 14, 2018 (LEA Exhibit 10) (Current IEP) addresses such behaviors properly. (HT at 61.) With the exception of the Covid-19 restrictions applying to all students from March 13 to the date of the Hearing, the Child is not expelled, suspended or otherwise prevented from physically appearing at XX local school under the IDEA or Section 504. (HT at 70, 76; Parent Exhibit page 624; LEA Exhibit 28.) In contrast, the Child cannot physically appear at XX local school due to the reasons stated in Parent’s Exhibit page 624 which states, in pertinent part:

[LEA] has been notified of a felonious criminal charge pending against [the Child] regarding an incident that happened in the community. In accordance with Virginia Code Section 22.1-277.2:1[[2]](#footnote-2) and [LEA] Policy..., the Office of Student Conduct and Support is excluding [the Child] from [the LEA schools] and an alternative education program will be provided to XX.... Your child’s [IEP] team will convene to determine [the Child’s] services while XX is excluded from attending [XX local school].... Please be advised that because [the Child] is excluded from attending [LEA schools], XX is hereby prohibited from access to any and all campuses of [the LEA]. [The Child’s] presented on any campus, at any time, may result in charges being filed for trespassing.

The Assistant Principal was found to be credible, providing, undisputed and persuasive evidence.

The Teacher testified as a fact witness. The Child was identified as other health impairment due to ADHD, ODD and dysthymia. (HT at 80.) She was the Child’s special education teacher for approximately four to five weeks in the 2018-2019 school year and approximately forty-five minutes a day. (HT at 80, 87.) She taught the Child socialization skills in a self-enclosed school room among students with IEPs. (HT at 80, 87.) The Child exhibited significant behaviors outside her class, *i.e.*, the general education environment, including negative behaviors with peers, fighting as well as disrespectful and disruptive behaviors. (HT at 88.) The teacher was found to be credible but testimony was discounted due to her lack of recent contact with the Child academically or otherwise.

The Mother rested her case.

LEA called one witness: the Director. On Issue I, the Director was called purely as a factual witness. LEA Exhibit 32, a document entitled “Agreement,” dated December 17, 2019, is a valid contract between the parties. (HT at 12-15, 26.) The terms are not ambiguous or vague. (HT at 16-28.) The LEA performed obligations under the Agreement. (HT at 12-15.) The Agreement states, in pertinent part:

9. The Agreement resolves all issues between the parties, including FAPE, retaliation, and evaluation, up to the date of the Agreement [December 17, 2019]. The Parents agree not to file any state or federal complaint, due process hearing, or any other legal proceedings regarding issues under the IDEA, Section 504 or any other disability related laws that occurred prior to the date of the Agreement [December 17, 2019] and which relate to [the Child]. Nothing in this Agreement prevents the parties from enforcing the terms of the Agreement.

Later during the Hearing, the Director was qualified as an expert witness in the field of special education program development and implementation as well as the supervision of special education programming. (HT at 98.) The decision to place the Child in an “alternative education program” was not a special education decision under the IDEA. (HT at 100.) On or about September 25, 2019, the IEP team (including a Parent) met to address issues raised by the Child’s barment from school property, LEA Exhibit 28. (HT at 101-102.) The IEP decision was to place the Child in a private day school. (LEA Exhibit 29; HT at 102.) The expert opined that this placement was necessary and appropriate under the IDEA:

Based on a number of behavioral concerns and observations that XXXXX has exhibited with respect to XX socioemotional interactions with both peers and adults that manifested itself in terms of[,] at times, physical aggression, disrespect, insubordination with staff. And that extended to multiple settings within the school setting. The type of program that is available to a student at a private day program works intensely with those types of behaviors in a way that provides a lower staff to student ratio, and also provides another layer of therapeutic support that can really address those socioemotional needs and help students dealing with those types of concerns.

The Parents did not consent to this IEP. (HT at 106.) Outside medical providers recommended homebound instruction. (HT at 108.) On or about February 27, 2020, the IEP team met without the Mother to address the Child’s barment. (HT at 109; Exhibit 35.) This IEP was necessary and appropriate under the IDEA. (HT at 110.) The Parents did not consent. (HT at 110.) Given the existence of the barment, the LEA proposed Exhibit 36A, a document entitled “Amendment to the IEP Without a Meeting,” for homebound services from March 30, 2020, to June 11, 2020. (LEA Exhibit 36A; HT at 111-112.) Because the schools were closed as a result of COVID-19, the homebound services rendered would provided the Child FAPE. (HT at 112-113.) On or about June 1, 2020, another IEP was proposed which included private placement at two day schools (Proposed IEP). (HT at 114-115; LEA Exhibit 38.) The expert was familiar with both institutions. (HT at 115.) He described in detail why each facility would provide the Child FAPE. (HT at 115-119.) This IEP would provide FAPE to the Child. (HT at 118.) The Current IEP (LEA Exhibit 10) is the last agreed-upon IEP. (HT at 120.) The Child did not require a BIP given the terms of the Current IEP. (HT at 136.) The Director was found to be credible, providing persuasive evidence.

In rebuttal, the Parents called the Mother. She continued to testify as a fact witness. Parent Exhibit 325 to 339 is the Current IEP but with unilateral revisions from the Mother who delivered to the LEA approximately three days after the IEP meeting which produced LEA Exhibit 10. (HT at 153.) The Mother signed this unilaterally modified IEP. (HT at 153.) The Mother disputed the legitimacy of the Current IEP. (HT at 159-160.)

RELEVANT FACTUAL FINDINGS (By a Preponderance of the Evidence)**[[3]](#footnote-3)**

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

1. LEA Exhibit 32, a document entitled “Agreement,” dated December 17, 2019, is a valid, binding, contract between the parties.
2. The party references as the school board, is the LEA in this matter.
3. The terms of the Agreement are not ambiguous or vague.
4. The Mother’s signature on the Agreement is valid and enforceable by its parties.
5. The Mother signed the Agreement individually and on behalf of the Child.
6. The LEA performed obligations under the Agreement.
7. The Agreement states, in pertinent part:

9. The Agreement resolves all issues between the parties, including FAPE, retaliation, and evaluation, up to the date of the Agreement [December 17, 2019]. The Parents agrees not to file any state or federal complaint, due process hearing, or any other legal proceedings regarding issues under the IDEA, Section 504 or any other disability related laws that occurred prior to the date of the Agreement [December 17, 2019] and which relate to [the Child]. Nothing in this Agreement prevents the parties from enforcing the terms of the Agreement.

1. The Agreement releases and bars any and all claims against the LEA under the IDEA, Section 504 or any other disability related laws which arose on or before December 17, 2019.
2. Under the Agreement, the Current IEP, LEA Exhibit 10, is valid, viable and enforceable under IDEA.
3. Under the Current IEP, the Child is designated as other health impairment due to ADHD, ODD and dysthymia.
4. With the exception of the Covid-19 restrictions applying to all students from March 13 to the date of the Hearing, the Child is not expelled, suspended or otherwise prevented from physically appearing at his local school under the IDEA or Section 504.
5. The Child’s current barment from LEA properties was solely caused by the matters as described in Parent Exhibit page 624; LEA Exhibit 28.

 Because the schools were closed as a result of COVID-19, the current homebound services rendered provides the Child FAPE.

1. The Proposed IEP (LEA Exhibit 38) is necessary, appropriate and would provide FAPE to the Child.
2. The Mother and, by implication, Grandmother, love the Child.

## ANALYSIS:

**Legal Analysis**

Major areas of the law are undisputed.

In Board of Education v. Rowley, 458 U.S. 176, 207, 102 S.Ct. 3034 (1982), the Supreme Court found that a disabled child is deprived of FAPE under either of two sets of circumstances: (1) if the LEA has violated IDEA’s procedural requirements to such an extent that the violations are serious and detrimentally impact upon the disabled child’s right to FAPE; or (2) if the IEP that was developed by the LEA is not reasonably calculated to enable the disabled child to receive an educational benefit. Further, the Supreme Court opined “ [i]nsofar as a State is required to provide a handicapped child with [FAPE], we hold that this satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from the instruction.” (Rowley, 458 U.S. at 200.) In Hall v. Vance County Board of Education, 774 F.2d 629, 636 (4th Cir. 1985), the Court opined that no single substantive standard can describe how much educational benefit is sufficient to satisfy IDEA and that educational services must be reasonably calculated to produce more than some minimal academic achievement. (*See* Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3rd Cir. 1988), where the Court stated that IDEA “calls for more than a trivial educational benefit,” but requires that the child receive a meaningful benefit and an opportunity to receive significant learning.

In this administrative due-process proceeding initiated by the Parent/Child, they have the burden of proof. Schaffer, *ex rel*. Schaffer v. Weast, 126 S.Ct. 528 (2005). 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 contrast on a specific issue, the LEA possessed the burden of proof (by a preponderance of the evidence) and production on the issue of whether the Agreement barred, in whole or in part, the relief requested by the Due Process Request. The LEA carried the burden.

In DeVries v. Fairfax County School Bd., 882 F.2d 876, 878 (4th Cir. 1989), the Court recognized the importance of mainstreaming when it opined that “[m]ainstreaming of handicapped children into regular school programs where they might have opportunities to study and to socialize with non-handicapped children is not only a laudable goal but is also a requirement of the Act.” *In accord* Barnett v. Fairfax County School Bd.*,* 927 F.2d 146, 153 (4th Cir. 1991).

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 are reviewed with the standard established by Rowley and its progeny. The difference between the standard established by the “best interests of the child” and the standard established by Rowley (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 Sumter County Sch. Dist. 17 v. Heffernan, 642 F.3d 478, 484 (4th Cir. 2011), the Court addressed situations where a local school board failed to implement, in material part, an IEP by opining:

Given the relatively limited scope of a state's obligations under the IDEA, we agree with the District that the failure to perfectly execute an IEP does not necessarily amount to the denial of a free, appropriate public education. However, as other courts have recognized, the failure to implement a material or significant portion of the IEP can amount to a denial of FAPE. *See* Van Duyn *ex rel*. Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007) (“[A] material failure to implement an IEP violates the IDEA.”); Neosho R‑V Sch. Dist. v. Clark, 315 F.3d 1022, 1027 n.3 (8th Cir. 2003) (“[W]e cannot conclude that an IEP is reasonably calculated to provide a free appropriate public education if there is evidence that the school actually failed to implement an essential element of the IEP that was necessary for the child to receive an educational benefit.”); Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 349 (5th Cir. 2000) (“[A] party challenging the implementation of an IEP **must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP**.”). Accordingly, we conclude that a material failure to implement an IEP, or, put another way, a failure to implement a material portion of an IEP, violates the IDEA. [Emphasis added.]

Similarly, 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 the Parent was required to prove, by a preponderance of the evidence, that RPS denied the Child FAPE by failing to implement material portions of the Current IEP. In other words, a court, a hearing officer or a parent cannot micro-manage the implementation of an IEP, deferring to the expertise of LEA professionals.

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 “...and 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.”

## Specific Issues

**I. Whether the Parties entered into a settlement agreement which releases and/or bars some or all the claims raised by the Amended Due Process Request?**

The overwhelming evidence was that the Parties entered into a settlement agreement as contained in the Agreement. As a result, any and all claims against the LEA under the IDEA, Section 504 or any other disability related laws which arose on or before December 17, 2019 were released. This specifically includes any dispute arising from the execution of the Current IEP by the Mother in December, 2018. Similarly, assuming but not deciding the existence of such irregularities regarding the expulsion of the Child in March 2019, such claims are also barred.

**II. Whether the Child’s current restriction from attending school is in violation of the IDEA?**

The undisputed evidence is that the Child’s current barment from LEA property was caused solely by the existence of felonious charges as referenced in the letter, dated September 20, 2019, as described in Parent Exhibit page 624 and LEA Exhibit 28. No IDEA violation is involved. Thus, the barment is outside the jurisdiction of the Hearing Officer to address.

**III. Whether the LEA followed the applicable regulations regarding the expulsion of the Child in March, 2019 and, if not, what is the remedy?**

The Parents failed to carry the burden of proof on this issue. No persuasive evidence was introduced. Notwithstanding and even assuming any irregularities, such claims are barred by the Agreement insofar as such claims arose on or before December 17, 2019.

**IV. Whether the Child was denied FAPE on the basis that the LEA failed to identify the Child’s disability for the 2018-2019 school year?**

The Parents failed to carry the burden of proof on this issue. No persuasive evidence was introduced. Notwithstanding and even assuming the existence of any irregularities, such claims are barred by the Agreement as to claims which arise on or before December 17, 2019.

**V. Whether the LEA denied the Child FAPE by allegedly failing to implement the Child’s IEP for the 2018‑2019 school year?**

The Parents failed to carry the burden of proof on this issue. No persuasive evidence was introduced. Notwithstanding and even assuming the existence of any such irregularities, such claims are barred by the Agreement as to claims which arise on or before December 17, 2019.

**VI. Whether the Child was denied FAPE on the basis that the LEA failed to identify the Child’s disability for the 2019-2020 school year?**

The Parents failed to carry the burden of proof on this issue. No persuasive evidence was introduced. Notwithstanding and even assuming the existence of any irregularities, such claims are barred by the Agreement as to claims which arise on or before December 17, 2019. In addition, the Child was and is currently barred from LEA properties due to XX felonious behavior and charges as stated in the letter, dated September 20, 2019, LEA Exhibit 28, Parent Exhibit page 624. The evidence was undisputed that the resulting homebound services provided and/or offered by the IDEA are appropriate given the circumstances and in accordance with IDEA requirements.

**VII. Whether the LEA denied the Child FAPE by allegedly failing to implement the Child’s IEP for the 2019‑2020 school year?**

The Parents failed to carry the burden of proof on this issue. No persuasive evidence was introduced. Notwithstanding and even assuming the existence of any irregularities, such claims are barred by the Agreement as to claims which arise on or before December 17, 2019. In addition, the Child was and is currently barred from LEA properties due to XX felonious behavior and charges as stated in the letter, dated September 20, 2019, LEA Exhibit 28, Parent Exhibit page 624. The evidence was undisputed that the resulting homebound services provided and/or offered by the IDEA are appropriate given the circumstances and in accordance with IDEA requirements.

**VIII. Whether the Child was denied FAPE on the basis that the LEA failed to identify the Child’s disability for the 2020-2021 school year?**

The Parents failed to carry the burden of proof on this issue. No persuasive evidence was introduced. Notwithstanding and even assuming the existence of any irregularities, such claims are barred by the Agreement as to claims which arise on or before December 17, 2019. In addition, the overwhelming evidence was that the Proposed IEP (LEA Exhibit 38) would provide FAPE to the Child. In addition, the Child was and is currently barred from LEA properties due to XX felonious behavior and charges as stated in the letter, dated September 20, 2019, LEA Exhibit 28, Parent Exhibit page 624. The undisputed evidence was that the resulting homebound services provided and/or offered by the IDEA are appropriate given the circumstances and in accordance with IDEA requirements.

**IX. Whether the LEA denied the Child FAPE by allegedly failing to implement the Child’s IEP for the 2020‑2021 school year?**

The Parents failed to carry the burden of proof on this issue. No persuasive evidence was introduced. The undisputed evidence was that the implementation of the Current IEP was prevented by the Child’s illegal behavior and, in time, the governmental shutdown of LEA physical locations. The LEA’s supplementation to home study as found in LEA Exhibit 36A. In addition, the Child was and is currently barred from LEA properties due to XX felonious behavior and charges as stated in the letter, dated September 20, 2019, LEA Exhibit 28, Parent Exhibit page 624. The undisputed evidence was that the resulting homebound services provided and/or offered by the IDEA are appropriate given the circumstances and in accordance with IDEA requirements. With that stated, the undisputed evidence was that the LEA’ Proposed IEP provides FAPE to the Child.

## RELIEF GRANTED:

None.

## CONCLUSION

The Parents failed to introduce sufficient evidence to carry the burden of proof to grant the relief requested in their Due Process Request regarding IDEA claims.

# 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 6th day of October, 2020, a true and accurate copy of this pleading was mailed, *via* First-class, postage prepaid mail, to:

Ms. XXXXXX & Mr. XXXXXXXX

XXXXXXXXXXX

XXXXXXXXX, Virginia XXXXX

Parent/Child

Jason H. Ballum, Esquire

Katherine K. Ballou, Esquire

Sands Anderson, PC

PO Box 1998

Richmond, Virginia 23218-1998

Counsel for the LEA

Kathryn D. Jones, Esquire

Coordinator for Due Process Services

ODRAS/VDE

PO Box 2120

Richmond, Virginia 23218-2120

Reginald B. Frazier, Sr., Esquire

1998 Angora Drive

Chesapeake, Virginia 23325

VDOE Evaluator

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Robert J. Hartsoe

1. This decision, issued on October 3, 2020, has been amended to provide the correct Case number. [↑](#footnote-ref-1)
2. 22.1‑277.2:1. Disciplinary authority of school boards under certain circumstances; alternative education program.

A. A school board may, in accordance with the procedures set forth in this article, require any student who has been (I) charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person, or with an offense that is required to be disclosed to the superintendent of the school division pursuant to subsection G of 16.1‑260; (ii) found guilty or not innocent of an offense relating to the Commonwealth's laws on weapons, alcohol, or drugs, or of a crime that resulted in or could have resulted in injury to others, or of an offense that is required to be disclosed to the superintendent of the school division pursuant to subsection G of 16.1‑260; (iii) found to have committed a serious offense or repeated offenses in violation of school board policies; (iv) suspended pursuant to 22.1‑277.05; or (v) expelled pursuant to 22.1‑277.06, 22.1‑277.07, or 22.1‑277.08, or subsection C of 22.1‑277, to attend an alternative education program. A school board may require such student to attend such programs regardless of where the crime occurred. School boards may require any student who has been found, in accordance with the procedures set forth in this article, to have been in possession of, or under the influence of, drugs or alcohol on a school bus, on school property, or at a school‑sponsored activity in violation of school board policies, to undergo evaluation for drug or alcohol abuse, or both, and, if recommended by the evaluator and with the consent of the student's parent, to participate in a treatment program.

As used in this section, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.

B. A school board may adopt regulations authorizing the division superintendent or his designee to require students to attend an alternative education program consistent with the provisions of subsection A after (I) written notice to the student and his parent that the student will be required to attend an alternative education program and (ii) notice of the opportunity for the student or his parent to participate in a hearing to be conducted by the division superintendent or his designee regarding such placement. The decision of the superintendent or his designee regarding such alternative education placement shall be final unless altered by the school board, upon timely written petition, as established in regulation, by the student or his parent, for a review of the record by the school board.

C. A school board may adopt regulations authorizing the principal or his designee to impose a short‑term suspension, pursuant to 22.1‑277.04, upon a student who has been charged with an offense involving intentional injury enumerated in subsection G of 16.1‑260, to another student in the same school pending a decision as to whether to require that such student attend an alternative education program. (1990, c. 835; 1995, cc. 724, 755, 801; 1998, c. 355; 1999, c. 457; 2000, c. 577, 22.1‑277.1; 2001, cc. 688, 820; 2003, c. 119; 2009, c. 208; 2018, c. 585.) [↑](#footnote-ref-2)
3. Because the Agreement was found viable, enforceable and barred all claims arising before December 17, 2019, much of the Parent’s evidence was not included herein as irrelevant or untimely such, *e.g*., the implementation of an IEP over two years before the Hearing, the mental health of the Child over two years ago, *etc*. In contrast and as referenced in LEA witness testimony, the Child was subjected to current mental health and academic evaluations which were not placed in evidence by the Parents. [↑](#footnote-ref-3)