

Local Hearing

State Level Appeal

CASE CLOSURE SUMMARY REPORT

(This summary sheet must be used as a cover sheet for the hearing officer's decision at the end of the special education hearing and submitted to the Department of Education before testing.)



[Redacted] School
School Division

[Redacted]
Name of Parents

[Redacted]
Name of Child

[Redacted]
Date of Decision

[Redacted] Esc
Counsel Representing LEA

[Redacted] Esc
Counsel Representing Parent/Child

[Redacted]
Party Initiating Hearing

Split decision.
Prevailing Party

Hearing Officer's Determination of Issue(s).

1. Was child's placement in [Redacted] ALC pursuant to disciplinary decision and as per [Redacted] IEP proper?
2. Was the amount of special ed services appropriate (1+ 4 hours as per [Redacted] IEP)?

Hearing Officer's Orders and Outcome of Hearing:

1. Child's ([Redacted]) placement at [Redacted] ALC for [Redacted] school year is appropriate and provides [Redacted] with FAPE.
2. Special ed services for child increased from 4 hours to 8 hours, to be provided at teachers (sp.ed) at [Redacted] deem best.

This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision from this hearing is attached in which I have also advised the LEA of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days.

[Redacted]
Printed Name of Hearing Officer

[Redacted]
Signature

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF EDUCATION



[REDACTED]
Parent,

v.
[REDACTED] PUBLIC SCHOOLS
[REDACTED] School
School

IN RE: [REDACTED]
(Student)

I.

PROCEDURAL HISTORY

By letter dated [REDACTED] [REDACTED], Esquire, attorney for [REDACTED] ("Parent") requested an Expedited Due Process Hearing pursuant to 8 VAC 20-8-76 B(3)(b) on behalf of [REDACTED] ([REDACTED]), who had been attending [REDACTED] School. [REDACTED] a [REDACTED] year old [REDACTED] grade student at [REDACTED] School ([REDACTED]) had been found eligible in [REDACTED] for special education services as a student with a [REDACTED] ([REDACTED]) due to a discrepancy between ability and achievement in reading with functional deficits in perceptual organization and visual motor integration. [REDACTED] and right to Special Education Services ("sp. ed") continues to this day. Parent, by way of the aforesaid letter from [REDACTED] attorney, contended that [REDACTED] Schools ([REDACTED] PS") and [REDACTED] had failed to properly implement the pertinent Individualized Educational Placements (IEP's) for [REDACTED] had failed to properly place [REDACTED] in an interim setting and was planning to make an improper placement of [REDACTED]

The undersigned was appointed as Hearing Officer by [REDACTED] PS by letter dated [REDACTED]

[REDACTED] The Parent was notified of this appointment and [REDACTED] rights by letter dated [REDACTED]

[REDACTED] [REDACTED] Esquire was listed as counsel for [REDACTED] PS.

Counsel for the parties were contacted on [REDACTED], and a Pretrial was set for [REDACTED]

[REDACTED] In the interim, [REDACTED] PS challenged the legal propriety of the Parent's request for an expedited hearing. After extensive argument, both oral and written, Parent, by

express consent of the parties and the undersigned, converted [REDACTED] request for an

expedited hearing to a request for non-expedited due process hearing. The following

dates were then agreed upon for the disposition of the cause: [REDACTED]

Designation of Issues by Student; [REDACTED] School's response, if any; [REDACTED]

[REDACTED] - Exchange of List of Witnesses of the parties, and exchange of documents

proposed to be introduced at trial; [REDACTED] Trial [REDACTED]

[REDACTED] - Briefs [REDACTED] Decision. (See Pretrial Order, attached as Exhibit

A). Numerous requests for the production of relevant documents and for issuance of

subpoenas were addressed and disposed of by said Pretrial Order. Sweeping requests

for discovery by [REDACTED] PS and the Student relating to private correspondence and

disciplinary data relating to other students were denied.

The time lines set forth above were followed by the parties. [REDACTED] PS exchanged

some 112 exhibits; Parent exchanged some 19 exhibits; lists of witnesses were duly

exchanged.

Trial began at 9:30 a.m. at the [REDACTED] on [REDACTED]

[REDACTED] and continued until 8:03 p.m. Trial resumed at 8:30 a.m. on [REDACTED] and

concluded at [REDACTED]. Briefs and Reply Briefs by [REDACTED] PS and Parent were duly filed. This decision entered [REDACTED], followed.

II.

TESTIMONY

(a)

Introduction

At the outset of the trial, [REDACTED] PS renewed its Motion to Dismiss, which was again denied. By consent, the School's exhibits and Parent's exhibits were admitted into evidence (Tr. 26)*.

By agreement of counsel, it was stipulated that [REDACTED] PS would proceed with its case first; and the Parent's case would follow. (Tr. 6 - 7). Parent renewed [REDACTED] request for copies of the various statistics relating to punishment by [REDACTED] PS for possession of marijuana, which was held in abeyance pending a showing of relevance (Tr. 8 - 15).

(b)

Officer [REDACTED]

[REDACTED] (" [REDACTED] ") is a [REDACTED] Police Officer who was assigned to [REDACTED] as a School Resource Officer (See Parent's Ex. T for the SRO description) during the time periods relevant here (Tr. 50). According to [REDACTED], the subschool principal at [REDACTED] was told that a student, later identified as [REDACTED], was showing some white powder (later identified as marijuana) to students in a classroom (Tr. 50).

* References to the transcript will be by "Tr." Followed by the page number.

Around noon of [REDACTED], [REDACTED] was brought to [REDACTED] office along with [REDACTED] (Tr. 50). At that time [REDACTED] was discovered to have in [REDACTED] possession a "very little quantity" of marijuana, some of which had been smoked (Tr. 53). [REDACTED] admitted it was [REDACTED]; and that a week prior [REDACTED] and another [REDACTED] had smoked some of it (Tr. 53). [REDACTED] also had a small bottle of "Clear Eyes" (Tr. 54), and a paper about growing marijuana (Tr. 55). [REDACTED] denied the paper was [REDACTED] (Tr. 55). [REDACTED] remained in [REDACTED] office where [REDACTED] ultimately joined [REDACTED] (Tr. 61).

On cross examination [REDACTED] testified that [REDACTED] was not placed under arrest at that point. Later [REDACTED], acting solely for the [REDACTED] Police, on [REDACTED] [REDACTED] filed charges against [REDACTED], which are now pending before the Juvenile Court in [REDACTED] (Tr. 79, 81).

(c)

[REDACTED] Ph.D

[REDACTED] is the "Hearing Officer" for the superintendent of [REDACTED] PS (Tr. 87). [REDACTED] runs the disciplinary hearing office of [REDACTED] PS, which consists of some 6 assistant hearing officers in addition to [REDACTED] (Tr. 87). [REDACTED] testified that the hearings [REDACTED] and [REDACTED] fellow hearing officers conduct primarily involves discipline and expulsions (Tr. 87).

[REDACTED] (who has a Master's Degree in clinical psychology and a Doctorate in education has an extensive background in clinical school psychology) received an expulsion recommendation for [REDACTED] from the principal of [REDACTED] (School Ex. 6, Tr. 95 - 96).

By [REDACTED] a Manifestation Determination (MD) had been held which determined, without objection from [REDACTED] or [REDACTED], that [REDACTED] misconduct was not related to [REDACTED] learning disorder (Tr. 98-99, School Exhibit 48). Based upon this determination of non-causality, [REDACTED] testified that [REDACTED] and the School Board could expel [REDACTED] (Tr. 98 -99). [REDACTED] the assistant hearing officer and the School Board, however, recommended that [REDACTED] be placed in an Alternative Learning Center (School Ex. 9, 9A).

On [REDACTED] a disciplinary review hearing was held to determine whether [REDACTED] should be expelled from [REDACTED] PS (Tr. 97). [REDACTED] who had been on a 10 day homebound suspension since [REDACTED] (Tr. 98 - 99), appeared at that hearing with [REDACTED] counsel and [REDACTED]. The transcript of that hearing is in evidence herein and will not be repeated here, except to note that [REDACTED] recommended the transfer of [REDACTED] to an Alternative Learning Center ("ALC"). (See School Ex. 9). This recommendation was upheld by the School Board (See School Ex. 9A).

[REDACTED] testified further that although the Code (i.e., Virginia Code) directs expulsion for drug possession at school, the Code also allows a lesser penalty if special circumstances exist (Tr. 101 - 102).

In [REDACTED] case - namely, where a special ed student had no prior disciplinary problems and who admitted [REDACTED] wrong doing and who had been honest and forthright - an alternate route to expulsion existed - namely, transfer to an ALC according to [REDACTED] in [REDACTED] (Tr. 101 - 103). The purpose of the transfer to an ALC was "... to find a place for [REDACTED] which was designed to help [REDACTED] improve academically, as well as communicate a clear message to [REDACTED] [REDACTED] that there were consequences for

the poor decision making that [redacted] engaged in" (Tr. 103). Accordingly, it was decided by [redacted] that instead of being expelled from [redacted] PS, [redacted] would be sent to an ALC to be recommended by [redacted] IEP team (Tr. 108), namely the [redacted] Learning Center (Tr. 109).

The ALC program was established as a "second chance" program designed to help basically "good kids" who had made a poor decision, many of whom also had corresponding academic difficulties (Tr. 109 - 112). As pointed out by [redacted] the ALC program is not designed to be a permanent placement, but rather, an interim placement for a limited period (Tr. 123) usually a year; designed not solely to punish, but also to improve the academic performance of the students sent there (Tr. 116 - 128). In short, it is a "back to basics" core study program (Tr. 129 - 130).

While at an ALC [redacted] could not participate in high school sports - this because an ALC has no high school sports program (Tr. 124 - 128).

Special Educational Services are available at [redacted] (Tr. 131), which has a few special ed students attending the ALC. The classes at [redacted] ALC normally have a 10 - 15 student/teacher ratio (Tr. 130). In this regard, based upon [redacted] review of [redacted] academic history and test scores, [redacted] felt that [redacted] had the ability to be academically successful at [redacted] ALC (Tr. 134 - 137, 138-139).

Upon cross-examination, [redacted] disagreed with the contention by counsel for [redacted] that VAC 20-80-68 required that there be an initial 45 day suspension for special ed students who bring marijuana to school before expulsion (Tr. 156 - 168).

(d)

[REDACTED] a parole officer with the [REDACTED] Juvenile Court system was called by the Parent. [REDACTED] testified, in essence, that, in [REDACTED] opinion, as a parole officer for the [REDACTED] Juvenile Court system, transfer from the student's base school to an ALC was unduly harsh for a first time offender possessing marijuana who had an otherwise good conduct record (Tr. 228 - 232). [REDACTED] felt that the Court would not be so harsh but would allow the student to return to [REDACTED] base school (Tr. 230-231). In response to questions from the undersigned, [REDACTED] noted that a school's disciplinary action route for possession of marijuana by a student and the Juvenile Court's disposition of such a case represented essentially two separate and different paths, although they might impact one another (Tr. 256-257, 258).

[REDACTED] also made various trips to [REDACTED] ALC in connection with a student under [REDACTED] supervision and testified about what [REDACTED] saw there (Tr. 235 - 250).

(e)

[REDACTED] is a certified, experienced special ed teacher for [REDACTED] PS, working at [REDACTED]. [REDACTED] taught [REDACTED] last year, meeting with [REDACTED] three days a week, for a total of about 4 hours of special ed teaching per week (Tr. 259 - 260). [REDACTED] testified that [REDACTED] had a [REDACTED] (Tr. 264). [REDACTED] noted that [REDACTED] IEP for the [REDACTED] school year ([REDACTED] grade) called for 8 hours of special ed per week; this was reduced to 4 hours of special ed per week for the current year. (Tr. 264-266; Cf. School Exs. 45, 46).

Based upon [redacted] personal observations, discussions with [redacted] regular education teachers and the Stanford 9 test given in [redacted], [redacted] felt that [redacted] was a capable student, who was willing to work and, indeed, stayed after school for extra help; a student who had good ability in [redacted] core subjects (i.e., English, science, social studies and math) (Tr. 267-269). [redacted] described [redacted] as a quiet student who liked to work on [redacted] own and who would rarely ask for help if [redacted] needed it (Tr. 272, 274). However, according to [redacted] [redacted] would only work to a passing level, not a higher standard (Tr. 272 - 273). Accordingly [redacted] felt [redacted] had the potential to do better in [redacted] core classes (Tr. 273). [redacted] biggest failure was in failing to turn in [redacted] homework (Tr. 274).

[redacted] when shown a copy of a report from [redacted] biology teacher early in the current school year, disagreed with the suggestion that [redacted] needed self-contained biology classes (i.e., special ed, biology classes, this because [redacted] was at a higher level of functioning than the other students in the self contained biology class (Tr. 276 - 277). [redacted] also felt that 4 hours of special ed was appropriate for [redacted] and that [redacted] was properly placed at [redacted] ALC (Tr. 278). [redacted] felt the decline in [redacted] grades from the [redacted] grade to the [redacted] grade was not the sole result of decreased special ed services, but rather because the courses were becoming more difficult (Tr. 280); but later [redacted] said [redacted] did not know the reason for the decline in grades (Tr. 280, lines 20-21).

[redacted] testified that [redacted] became aware that [redacted] had been suspended for possession of marijuana (Tr. 233-234). In connection therewith [redacted] teachers were asked to provide work for [redacted], which [redacted] would pick up (Tr. 284).

further testified that in opinion there was no connection between misconduct, which was a social decision, and disorder which is based on a deficit in reading and written expression (Tr. 285). who was present at the Manifestation IEP meeting of (School Ex. 48), testified there was no disagreement by those present at this meeting, including with the determination that misconduct (i.e., possession of marijuana) was not related to disorder (Tr. 286-287); and that educational placement at as of the time of the incident, had been appropriate (Tr. 287). pointed out that had passed Standard of Learning (SOL) tests (It should be noted here that was not required to consent to the manifestation determination; and did not either agree or disagree, signature being absent from the form (School Ex. 48). However, later testified did not dispute the determination that misconduct was not due to disorder).

also participated in the IEP meeting which was to consider placement at ALC (See School ex. 50). testified that supported placement at ALC (Tr. 291). This because of its structured environment, smaller classes, and opportunity to receive more one-on-one attention there (Tr. 291-292), as well as its ability to provide with special ed services (Tr. 294). In sum, felt the IEP for at was reasonably designed to meet educational goals (Tr. 296); that 4 hours of special education services would be sufficient and (that could be successful at (Tr. 307). also noted that at the IEP meeting no learning centers other than were discussed (Tr. 301).

[REDACTED] was extensively cross examined by counsel for [REDACTED]. [REDACTED] admitted that [REDACTED], [REDACTED] science teacher in the [REDACTED] grade at [REDACTED], had "concerns" about [REDACTED] throughout [REDACTED] grade at [REDACTED] (See Parent's Exhibit B, Tr. 318-319).

[REDACTED] who chaired [REDACTED] regular IEP reiterated that IEP met [REDACTED] educational needs. However, [REDACTED] had no explanation as to why page 4 of the [REDACTED] IEP had been Xeroxed and attached to the [REDACTED] IEP (i.e., the "homebound IEP") and the [REDACTED] IEP (Tr. 321), other than to note that [REDACTED] did not chair the later IEP meetings (Tr. 323).

According to [REDACTED] the basics of [REDACTED] IEP were not changed despite the fact [REDACTED] would be attending [REDACTED] instead of [REDACTED] because the goals were the same (Tr. 327-330). [REDACTED] stressed felt that the [REDACTED] IEP goals (which set the goals for [REDACTED] next school year) were proper, and [REDACTED] would not have changed them regardless of where [REDACTED] program was offered (Tr. 326). [REDACTED] offered no assistance as to whether [REDACTED] IEP should be changed because of [REDACTED] suspension (resulting in [REDACTED] enforced absence from School from [REDACTED] to the end of the year, and failure to receive special ed while [REDACTED] was homebound during that period) (Tr. 331, 334). Indeed, [REDACTED] assumed [REDACTED] would receive special ed services while [REDACTED] was homebound (Tr. 342, 348).

[REDACTED] also testified that a functional behavioral assessment, was prepared for [REDACTED] on [REDACTED] (Tr. 357, 359). [REDACTED] who was aware that [REDACTED] could not play [REDACTED] at [REDACTED] did not feel that this deprivation would adversely affect [REDACTED] ability or desire to achieve [REDACTED] academic goals (Tr. 368).

██████████ also admitted that ██████████ had given ██████████ an "F" on ██████████ final exam in Basic Skills (which ██████████ taught) because ██████████ did not show up for ██████████ final exam (Tr. 369), which caused ██████████ to reduce ██████████ final grade to a "D" (Tr. 372). (This grade was changed to a "B" when it was discovered that ██████████ PS failed to notify ██████████ of the date and time for that exam).

Upon redirect ██████████ noted that in both the ██████████ IEP an additional goal in reading was added at ██████████ request (Tr. 378). And, ██████████ reiterated ██████████ position that the basic educational goals set in ██████████ IEP meeting for ██████████ for the next school year would not substantially change because of a change in the location of the school delivering the educational services (Tr. 377 - 379).

(f)

██████████ is the ██████████ resource specialist in the special ed department of ██████████ PS. ██████████ coordinates special ed services in ██████████ providing support to teachers, principals, as well as parents (Tr. 389). ██████████ is familiar with ALC's and has visited ██████████ (Tr. 391).

██████████ conducted the Manifestation Hearing for ██████████ on ██████████ ██████████ testified that there was a consensus at that meeting, including ██████████ ██████████ (Tr. 395). ██████████ noted that parental consent was not required at a Manifestation Determination - thus ██████████ did not sign the first page, the others signed it merely to show who was present (Tr. 395-396). ██████████ testified that at this meeting ██████████ was given a copy of the Rights and Procedural Safeguards.

██████████ also chaired the Homebound meeting IEP (School Ex. 47) which followed immediately after the Manifestation Determination (Tr. 396). Since ██████████ already had two copies of the Procedural Safeguards, ██████████ was not given a third copy (Tr. 396). ██████████ also chaired the ██████████ IEP meeting for ██████████ (Tr. 387).

With regard to the ██████████ IEP Meeting, ██████████ made sure ██████████ would be able to attend (Tr. 405); ██████████ also testified that there was considerable discussion about ALC's; that a representative from ██████████ was present; and that ██████████ questions and concerns about ALC's and ██████████ were thoroughly explored (Tr. 407-411). ██████████ noted that, given the decision of the LPS hearing officer: ██████████, placing ██████████ in an ALC, ██████████ (and the other representative present at the ██████████ IEP meeting) believed that they could not return ██████████ to ██████████ that ██████████ had to attend an ALC (Tr. 410-413). And, because of its geographical location, namely, serving the area where ██████████ lived, ██████████ ALC was selected as the appropriate ALC to provide ██████████ with ██████████ grade education (Tr. 414).

At the ██████████ IEP meeting, the provision of educational services for ██████████ at ██████████ were fully discussed (Tr. 414-417). It was noted that ██████████ ALC had small size classes, that it had a special ed teacher, and that ██████████ could be well served there (Tr. 414-417). And, at ██████████ request additional special ed support in reading was provided for (Tr. 399). In sum, after considering all of the circumstances surrounding ██████████ education; the ██████████ IEP for ██████████ was arrived at, including 4 hours of special ed services (Tr. 398-404). ██████████ was adamant in believing that ██████████ could achieve ██████████ learning objectives at ██████████ ALC (Tr. 421-422).

The cross examination of [REDACTED] centered upon whether the [REDACTED] IEP for [REDACTED] provided, in essence, lesser special ed services for [REDACTED] this because in the [REDACTED] IEP, the box calling for sp. ed. Services to be in a self contained mode had not been checked (i.e., required) whereas in the earlier IEP's for [REDACTED] that box had been checked. (See e.g., Tr. 429-430; 433-437). In response, it was [REDACTED] opinion that there was no reduction in the special ed services being provided for [REDACTED] at [REDACTED] (Tr. 430); that there was merely a difference in how those services were to be supplied (Tr. 430). More specifically [REDACTED] felt that given the smaller size classes and the greater structure at [REDACTED] the need for provision of special ed services solely in a self contained mode was reduced (Tr. 435-439; Tr. 468-471). [REDACTED] also thought that the deletion of special ed services in a separate classroom in the early page of the [REDACTED] IEP form followed by an express statement at a later page that special ed be provided in a separate classroom was merely a recording mistake (Tr. 456). And, as before noted, given the structure and small classes at [REDACTED] [REDACTED] concluded that "in class" special ed services, as distinguished from pull outs to a self contained classroom was the optimum for delivery of special ed services for [REDACTED] (Tr. 418-419).

(f)

[REDACTED]
[REDACTED] who was a most compelling witness, is the principal at [REDACTED] ALC (Tr. 476). [REDACTED] has [REDACTED] years of experience in [REDACTED] PS, much at ALC's, and much in special ed (Tr. 477).

described in great detail, the physical characteristics, teacher composition, and method of delivery of educational services at ALC. noted that the students at ALC's, such as are placed there because of disciplinary action - either by the school system or the community (Tr. 484). ALC includes the grades from school through year at school (Tr. 481). About 30% of students are special ed students (Tr. 501).

It does not graduate students - rather the purpose of an ALC is to rehabilitate them and get them back to their base school after one year (Tr. 481, 518-520), sometime 6 months (Tr. 519). Some 90% of its students make the transition back to their base school.

then detailed how a student such as would be educated, and specifically how would be helped with disability (Tr. 486-491, 510-518, 519-522) which includes close cooperation with the parents (Tr. 480). And, there are daily 7 to 8 a.m. meetings of the teachers and staff so that each of the student's academic progress can be closely monitored (Tr. 492-493).

The Students at ALC must wear similar uniforms (a white "T" shirt tucked in - to tan pants); and, once they arrive at school they are closely monitored and required to keep up with 5 hours of intensive academic training (Tr. 493-499), while being constantly motivated to achieve better results (Tr. 497).

Although the students at ALC are placed there because of disciplinary infractions (Tr. 564), ALC is primarily a highly structured learning facility (See e.g., Tr. 482-484, 493-498); this because many, if not most, of their students also suffer from academic mediocrity or worse. The class size is small - usually 10 students, and

never more than 15 - with either two teachers or a teacher and assistant teacher per class (Tr. 483). The curriculum is basic core studies - English, math, science, social studies and physical education (Tr. 483).

██████████ like other ALC's, has a highly rated special ed teacher (Tr. 489). The combination of small class size, low student to teacher ratio, and intense academic supervision combined with a highly skilled teaching staff (Tr. 486), allows for a multiple of teaching methods (Tr. 486) which, in turn, allows most of the students to progress at least one grade, if not more, from when they come in (Tr. 488).

In short, ██████████ ALC is a highly structured disciplined learning center designed to get a basically good child back on track after ██████████ or ██████████ had made a mistake of judgement (Tr. 565). This is done by providing an intensive one year program, stressing academic achievement in the core studies and behavioral adjustment. And, ██████████ ALC tracks the record of its returns for the first year after they are returned to their respective base schools (Tr. 571-572).

██████████ like the other ALC's does not offer team athletics, thus, ██████████ could not participate in ██████████ at ██████████ (Tr. 527). ██████████ could receive, however, ██████████ and ██████████ at ██████████ (Tr. 527). The physical education offered is basically the same as in general ██████████ PS schools, performed in the same clothes as they wear to school (Tr. 537), but without ██████████ sports (Tr. 583, 585-586).

While ██████████ ALC is located in the same physical area as ██████████ the ALC has its own classrooms and its own special ed room (Tr. 557). It may, share, the lab and other facilities of the ██████████ school, albeit at different times (Tr. 559-560).

(g)

[REDACTED] was [REDACTED] science teacher in the [REDACTED] grade at [REDACTED] (Tr. 596). [REDACTED] is certified both as a regular and special ed teacher (Tr. 596). [REDACTED] described [REDACTED] as an extremely quiet student (Tr. 597), who is generally capable, passing [REDACTED] tests (Tr. 597). However, [REDACTED] noted that [REDACTED] was barely passing (Tr. 603), and not getting better as the year progressed (Tr. 602). [REDACTED] felt [REDACTED] would only do the minimum amount of work needed to pass - and no more (Tr. 615). [REDACTED] stated that [REDACTED] was in agreement with [REDACTED] placement at [REDACTED] and with [REDACTED] [REDACTED] IEP (Tr. 611-616).

Upon cross examination, [REDACTED] admitted that [REDACTED] did not know that [REDACTED] special ed had been reduced from 8 hours in [REDACTED] grade to 4 hours in [REDACTED] grade (Tr. 625). [REDACTED] testified that based upon [REDACTED] initial observations of [REDACTED] in [REDACTED] class, [REDACTED] felt that 8 hours of special ed was appropriate (Tr. 625-626). [REDACTED] felt also that it would not have been appropriate for [REDACTED] to be in the self contained biology class [REDACTED] this because the special ed students in the self contained classes were functioning at a much lower level than [REDACTED] (Tr. 629).

Although [REDACTED] originally felt that [REDACTED] was misplaced (Tr. 631, School Ex. 4), [REDACTED] now believed [REDACTED] IEP (including placement at [REDACTED] was appropriate (Tr. 632).

[REDACTED] also stated that when the [REDACTED] IEP committee met to consider which ALC would be best for [REDACTED] it arrived at a consensus (other than [REDACTED] namely, that [REDACTED] was the best location and placement, particularly since

it was geared more to [redacted] age group than other ALC's (Tr. 659). Finally, [redacted] felt that although [redacted] had missed a portion of [redacted] biology because of [redacted] expulsion, [redacted] had passed [redacted] biology - thus, additional hours in special education biology class was not necessary at [redacted] (Tr. 662-664). [redacted] felt [redacted] poor record in [redacted] subject was due to lack of motivation (Tr. 665), not to [redacted] disorder (Tr. 665).

(h)

[redacted] is the assistant principal at subschool (i.e., for [redacted] at [redacted]). [redacted] detailed the timing leading up to [redacted] suspension. [redacted] was found with marijuana on [redacted] a Friday. [redacted] was suspended on the following Monday, [redacted]. The "homebound IEP" was held on [redacted] (i.e., within ten school days of the date of suspension) (Tr. 671). Classes were over on [redacted] for the [redacted] grade (Tr. 672). During the period [redacted] was at home, namely from [redacted] to [redacted] [redacted] was supplied with study materials and assignments (Tr. 674). [redacted] was allowed to and took [redacted] final exams at [redacted] (Tr. 672-674). [redacted] also noted that due to [redacted] error, [redacted] was not allowed to take [redacted] final exam in Basic Studies, resulting in an "F" (Tr. 689). And, that [redacted] final grade has now been changed to a "B" (Tr. 690). [redacted] passed all of [redacted] other exams, and was promoted to the [redacted] grade.

[redacted] also testified that under the Virginia High School League rules, only students in good standing could play team, i.e., [redacted] sports. Thus, while [redacted] was at [redacted] [redacted] could not play - this because [redacted] had no [redacted] team and [redacted]

would not be a student in good standing at [REDACTED] (which had a [REDACTED] team) or while at [REDACTED] (Tr. 677-679).

(i)

[REDACTED]
[REDACTED] is a special ed teacher for [REDACTED] PS (Tr. 700). [REDACTED] testified that due to a lack of teachers, [REDACTED] did not receive any homebound services, scheduled for [REDACTED] until [REDACTED] (Tr. 701). [REDACTED] was contacted to give [REDACTED] 22 1/2 hours of homebound services, which [REDACTED] delivered beginning [REDACTED] [REDACTED] (Tr. 702). [REDACTED] worked with [REDACTED] with [REDACTED] reading and writing skills, sentence structure, and the like (Tr. 703, 704-705). [REDACTED] testified that [REDACTED] struggled with [REDACTED] reading (Tr. 706), and needed real help in that area in the [REDACTED] grade in a mode to be selected as best suited for [REDACTED] (Tr. 712-713).

(j)

[REDACTED]
[REDACTED] was the special ed teacher at [REDACTED] ALC last year (Tr. 721). [REDACTED] was a member of the [REDACTED] IEP for [REDACTED] (Tr. 723); [REDACTED] usually attended the IEP meetings for special ed students who are sent to [REDACTED] ALC (Tr. 725). [REDACTED] agreed with the [REDACTED] IEP for [REDACTED] (Tr. 725). [REDACTED] stated that [REDACTED] ALC was being renovated and would be ready for the upcoming year (Tr. 728). As had [REDACTED] [REDACTED] described the services offered at [REDACTED] noting that it stressed the core subjects (Tr. 726). [REDACTED] testified that while [REDACTED] was moving up to another position at [REDACTED] the incoming special ed teacher would serve the special ed students much the way [REDACTED] did - this because a model had been adopted for [REDACTED] ALC (Tr. 727). [REDACTED]

pointed out also that the new space at [REDACTED] for special ed students was most attractive and well suited (Tr. 728). [REDACTED] stressed that [REDACTED] could receive at [REDACTED] the special ed services called for under [REDACTED], IEP (Tr. 729-732); that it was a "perfect fit" for [REDACTED] (Tr. 732), concluding that given the small class size, the design of the educational programs, the close monitoring of students by focused staff, personnel attention that [REDACTED] goals would be well served (Tr. 738-740).

Considerable time was spent in cross examination upon the changes in special ed services found in [REDACTED] IEP to those in [REDACTED] IEP. [REDACTED] felt that the changes were primarily those: (1) That related to method of delivery - this because of the way [REDACTED] (as distinguished from [REDACTED]) could deliver those services (Tr. 755-756), such as by smaller class sizes, more instructors per student and their overall expertise (Tr. 763-765). [REDACTED] noted also that the method of delivery could always be adjusted (Tr. 767-767). Likewise, [REDACTED] felt that the insertion of additional goals of reading comprehension (inserted in the [REDACTED] IEP at [REDACTED] request) did not require additional hours of special ed services (Tr. 775). [REDACTED] testified that [REDACTED] was interested in attending [REDACTED] which not only had a good [REDACTED] team - but also had an [REDACTED] program (Tr. 815).

(k)

[REDACTED]
[REDACTED] began [REDACTED] testimony by giving [REDACTED] age, namely [REDACTED] and a recognition by [REDACTED] of the marijuana incident (Tr. 780-781). [REDACTED] disagreed with certain of [REDACTED]'s findings, namely, that [REDACTED] wrote or owned the document concerning growing pot - which [REDACTED] said was untrue (Tr. 783-784); and

any inference therefrom that [REDACTED] was an often user of pot (Tr. 784). [REDACTED] said [REDACTED] was a truthful [REDACTED] and said the paper on pot was not [REDACTED] and that [REDACTED] had smoke marijuana but once (Tr. 784).

[REDACTED] noted that as soon as [REDACTED] learned of [REDACTED] suspension [REDACTED] took [REDACTED] immediately for drug and related counseling, because [REDACTED] was severely traumatized by the marijuana incident and suspension - which had weakened [REDACTED] already marginal self-esteem (Tr. 785-787).

With regard to [REDACTED] IEP's, [REDACTED] testified that [REDACTED] agreed to the reduction in special ed services in English in the [REDACTED] IEP because [REDACTED] was led to believe that [REDACTED] must have mainstream English in order to go to college - an ambition of [REDACTED] (Cf. Parent's Ex. N, Tr. 783). [REDACTED] stated that [REDACTED] was not aware of [REDACTED] concerns at this time (Tr. 788).

[REDACTED] testified that [REDACTED] was a tremendous motivator for [REDACTED] and it was a sport at which [REDACTED] excelled (Tr. 790-793; see Parent's Ex. K). [REDACTED] was concerned that [REDACTED] might lose [REDACTED] motivation for school without it.

[REDACTED] confirmed that [REDACTED] had notice of the MDR hearing and that a date was set at a convenient time for [REDACTED] namely, [REDACTED] (Tr. 793). While [REDACTED] [REDACTED] knew of the purpose of the MDR hearing [REDACTED] was not aware of the IEP meeting immediately following, nor was [REDACTED] aware of the fact that [REDACTED] could immediately appeal a non-causal MDR determination. (Tr. 7985-796). [REDACTED] also understood that upon [REDACTED] suspension, [REDACTED] could not receive educational services other than at home (Tr. 796, 800). Likewise, [REDACTED] was not told about any option for a 45 day interim placement

(Tr. 797-798), nor was [REDACTED] told about the Functional Behavioral Assessment form or its need (Tr. 799).

[REDACTED] assumed that a special ed teacher would be coming to [REDACTED] home during [REDACTED] suspension period, but no one showed up until weeks later when [REDACTED] biology teacher showed up for about 1 1/2 hours (Tr. 803).

[REDACTED] (and [REDACTED] counsel) participated at the [REDACTED] PS disciplinary hearing before [REDACTED] and received a copy of [REDACTED] decision (Tr. 804). [REDACTED] recalled that at that hearing, on [REDACTED] [REDACTED] told [REDACTED] that [REDACTED] would remain suspended through the end of the school year (i.e., [REDACTED]).

[REDACTED] likewise had notice of and attended the [REDACTED] IEP meeting along with [REDACTED] (Tr. 806). It was [REDACTED] understanding that the only school [REDACTED] could attend for [REDACTED] grade year was [REDACTED] ALC (Tr. 807-808) which had no [REDACTED] available (Tr. 815). [REDACTED] preference was to have [REDACTED] return to [REDACTED] or a similar [REDACTED] school (Tr. 808) where [REDACTED] could play [REDACTED]. [REDACTED] testified that [REDACTED] was interested in attending Virginia Tech, which not only had a good [REDACTED] team but also had an [REDACTED] program (Tr. 815).

[REDACTED] noted that [REDACTED] was essentially a good [REDACTED] who posed no threat to anyone and who was well regarded by [REDACTED] friends and their parents and that [REDACTED] marijuana episode was just an isolated error of judgment (Tr. 817-818).

Upon cross examination, [REDACTED] testified that [REDACTED] moved to [REDACTED] when [REDACTED] was in the [REDACTED] grade this because [REDACTED] would not provide special ed for [REDACTED] (Tr. 825). [REDACTED] admitted [REDACTED] was knowledgeable about the special ed process, IEP and special ed goals (Tr. 827-829).

██████████ also admitted that up to the ██████████ IEP for ██████████ had always been in agreement with such IEP's - this because ██████████ relied upon the teaching professionals (Tr. 831-832). ██████████ added that ██████████ always was able to express ██████████ opinions in the IEP meetings (Tr. 832), and that ██████████ received copies of the Procedural Safeguards (Tr. 836). In this regard, it should be noted that ██████████ immediately exercised ██████████ appellate rights when ██████████ got ██████████ letter (Tr. 844), and that ██████████ had been advised of ██████████ procedural rights in advance of the MDR hearing (Tr. 849). ██████████ also acknowledged that ██████████ regularly had picked up work for ██████████ while ██████████ was suspended.

With regard to the MDR meeting, ██████████ admitted that ██████████ expressed no disagreement, and, in fact, was in agreement with the remainder of the committee members who viewed ██████████ misconduct as unrelated to ██████████ disorder (i.e., that ██████████ marijuana episode was not a manifestation of ██████████ disorder), and ██████████ placement as proper (Tr. 851-852). ██████████ also admitted that ██████████ had received copies of the notice of Procedural Safeguards (Tr. 853), including the homebound IEP (Tr. 854-855) on ██████████ (Tr. 858), which ██████████ signed as agreeing to (Tr. 858).

In conclusion, ██████████ reiterated ██████████ passion for ██████████ and desire to place in the ██████████ (Tr. 864-867) and ██████████ desire to have ██████████ back at ██████████ (Tr. 872) where ██████████ could play ██████████ ██████████ was also most concerned about how ██████████ would function at ██████████ (Tr. 879-880); and ██████████ viewed ██████████ which offered no languages) as limiting ██████████ chances to get into Virginia Tech, which required ██████████ foreign language (Tr. 880-881).

(1)

[REDACTED] who was neat, clean cut and courteous, was obviously overwhelmed by the marijuana incident and following disciplinary action. [REDACTED] was also awed by the hearing process. [REDACTED] testified that [REDACTED] had problems with reading and writing - as well as biology (Tr. 890-891). [REDACTED] was aware that to go back to [REDACTED] [REDACTED] could not violate school rules (i.e., smoke marijuana) (Tr. 896). [REDACTED] did not want to go to [REDACTED] because it had no [REDACTED] (Tr. 897); and [REDACTED] was concerned that if [REDACTED] went to [REDACTED] [REDACTED] might not be able to go to Virginia Tech (Tr. 897). [REDACTED] recognized that bringing marijuana to school was a mistake and testified [REDACTED] would not do it again (Tr. 902).

III.

ISSUES

1. Does the educational placement of [REDACTED] at [REDACTED] ALC pursuant to [REDACTED] IEP provide [REDACTED], as a [REDACTED] disabled student, with a Free Appropriate Public Education (FAPE), as required by IDEA?
 - a. Was [REDACTED] placement at [REDACTED] ALC a disciplinary placement, and if so, does FAPE apply and in what degree?
 - b. Is such placement reviewable in this proceeding, and, if so, should [REDACTED] be returned to [REDACTED] at this time?
2. Were appropriate procedural safeguards followed with regard to:
 - a. the [REDACTED] MDR hearing and ensuing homebound IEP of that date?
 - b. The [REDACTED] IEP.

3. Was [redacted] supplied with appropriate educational services during [redacted] suspension, and if not, what relief, if any should [redacted] receive?

IV.

DISCUSSION

A.

Governing Facts

The governing facts in this case are, relatively brief for the most part, unchallenged.

[redacted] the student here, entered the [redacted] PS system in [redacted] grade. At that time [redacted] was determined to be learning disabled, namely lacking the customary skills in reading and writing. This condition was diagnosed as relatively mild. From the [redacted] grade forward [redacted] has been receiving special ed services of 8 hours per week. [redacted] is [redacted] years old and completed [redacted] grade at [redacted] School this past [redacted]. Beginning with [redacted] grade [redacted] special ed services were reduced to 4 hours per week.

[redacted] grades during [redacted] matriculation in [redacted] PS from the [redacted] grade through the [redacted] grade with the assistance of special ed service were satisfactory and allowed [redacted] to progress from grade to grade along with [redacted] general education class (School Exs. 51-90).

[redacted] had virtually no disciplinary problem during this period, and was regarded a "good [redacted]" by [redacted] teachers. [redacted] was very quiet and somewhat withdrawn. And, by [redacted] own admission, [redacted] disliked reading and writing, often not understanding various words, a condition which exists to this day.

Regular IEP meetings and annual reviews thereof were held and prepared during this period, to which [REDACTED] always consented. On [REDACTED] [REDACTED] IEP was again reviewed (School Ex. 44) resulting in [REDACTED] IEP. In this IEP [REDACTED] special ed services were reduced from 8 hours per week to 4 hours beginning [REDACTED] [REDACTED] who had due notice and was in attendance, consented to this revision (i.e., [REDACTED] IEP (School Ex. 45).

On [REDACTED] [REDACTED] IEP was again reviewed. [REDACTED] 4 hours per week of special ed was continued. And, for the most part, [REDACTED] goals and learning methodologies remained unchanged. [REDACTED] had notice and participated in the meeting; [REDACTED] again consented to the resulting IEP (School Ex. 45).

On [REDACTED] [REDACTED] had a lapse of good judgment: [REDACTED] brought a small amount of marijuana to school. [REDACTED] was turned in, and brought to the assistant principal's office by the [REDACTED] Police Officer assigned to [REDACTED] [REDACTED] admitted [REDACTED] guilt (and that on an earlier occasion, off school premises, [REDACTED] had tried marijuana). [REDACTED] [REDACTED] was informed and came immediately to school.

As a result of the above, [REDACTED] was given a 10 day school suspension, beginning [REDACTED] and ending [REDACTED] [REDACTED] immediately arranged for outside drug counseling for [REDACTED] by an experienced child psychologist, which [REDACTED] attended.

On [REDACTED] a detailed incident report was prepared. On [REDACTED] the [REDACTED] PS form calling for [REDACTED] expulsion were submitted. By letter dated [REDACTED]

[REDACTED] was advised that the principal of [REDACTED] School (namely [REDACTED]) that:

- a. [REDACTED] was suspended from school through [REDACTED] and
- b. that [REDACTED] was to be permanently expelled from [REDACTED] PS, subject to formal approval by [REDACTED] PS's disciplinary officer, namely [REDACTED]

An administrative hearing was then scheduled for [REDACTED], before [REDACTED] [REDACTED] and [REDACTED] attended and were permitted to make full arguments.

By letter dated [REDACTED] [REDACTED] was advised by [REDACTED] that instead of being expelled from the [REDACTED] PS system [REDACTED] would be sent to an Alternative Learning Center - this because of [REDACTED] forthright admissions and because it was [REDACTED] first major offense (School Ex. 9).

[REDACTED] disagreed with the results of this decision and appealed to the School Board. A hearing was then held before a Committee of the Board on [REDACTED] [REDACTED], [REDACTED] and [REDACTED] attorney again attended and made a full presentation. On [REDACTED], the committee affirmed [REDACTED] decision.

In the interim, on [REDACTED] a Manifestation Determination Hearing was held by [REDACTED] IEP committee to determine whether [REDACTED] disciplinary problem was a manifestation of [REDACTED] disorder. They determined there was no causal connection (School Ex. 48). [REDACTED] who had notice of this meeting, attended and agreed with that determination.

Immediately following this determination a "homebound IEP meeting" was held - this to allow [REDACTED] PS, with [REDACTED]'s consent, to provide homebound instruction for

██████████ during ██████████ absence from school. Due to a lack of available teacher, this instruction was not provided until late ██████████.

School ended on ██████████. On ██████████, a further IEP meeting was convened. ██████████ who received advance notice, attended. At the ██████████ IEP meeting, ██████████ placement at ██████████ ALC was confirmed. As before, ██████████ was to have 4 hours of special ed at ██████████. ██████████ did not agree with the placement, wishing to have ██████████ either returned to ██████████ or to be placed in another regular ██████████ school. ██████████ accordingly disagreed with that IEP and sought, and was granted, the instant due process hearing.

During ██████████'s suspension from school, namely from ██████████ to the end of the school year, ██████████ was given ██████████ homework and study materials on a regular basis which ██████████ took for ██████████. One of ██████████ teachers, ██████████ also met with ██████████ while ██████████ was at home. ██████████ was also allowed to take ██████████ final tests at ██████████. Although ██████████ grades were not high, ██████████ nonetheless passed and was promoted to the ██████████ grade.

The alternative learning center program was instituted as an alternative to expulsion for students who by their conduct and past history were considered to be redeemable. The ALC program which was thoroughly discussed by ██████████ will not be repeated here, except to note that in addition to providing behavioral correction, such centers also stress academic rehabilitation - this because most of the students who are sent there have academic problems. And, as noted by ██████████ most (90%) of the students are returned to the base school at the end of one year - if not sooner. And,

██████████ ALC (which was recently renovated) has a full time special ed teacher as well as a dedicated special ed room.

██████████ is a gifted athlete with exceptional prowess in ██████████. ██████████ was one of the stars on the ██████████ team at ██████████. ██████████'s ambition is to attend Virginia Tech, play ██████████ there, and then go on to the ██████████. Unfortunately, the ALC program has no organized athletic programs (i.e., team football, baseball, basketball, etc.). The students who attend ALC's are not regarded as students in good standing of ██████████ general ██████████ schools. Therefore, under the ██████████ Athletic rules, students who attend an ALC, such as ██████████ at ██████████ ALC, cannot engage in team sports. The inability for ██████████ to play ██████████ while at ██████████ constitutes a primary reason ██████████ has objected to ██████████ placement at ██████████ ALC.

B.

Was ██████████ Placement at ██████████ ALC Appropriate?

The Individuals With Disabilities Act of 1997 (IDEA), 20 USC Section 1400, et seq, provides for the state education with federal assistance of students who have learning disorders or disabilities. It requires that such students be provided with a free, appropriate public education ("FAPE") Board of Education v. Rowley, 458 U.S. 176 (1982).

IDEA does not require the local school system to provide the best education possible - merely one, that under the circumstances, is appropriate Board of Education v. Rowley, supra.

Central to the provision of educational services to a learning disabled child, is the preparation of periodic individualized educational programs (IEP) for that

child. See: Hoenig v. Does, 484 US 305 (1988). The IEP is prepared by a committee composed of the parents, a representative of the school, the special ed teacher, a general teacher, an individual who can interpret the evaluations, and such other persons as may be appropriate See: 34 CRF 300.344. The IEP, in essence, is the blueprint of what the educational goals are for the student in question and how the educational services designed to meet those goals are to be delivered. See: 34 CRF 300.343.

Parents, under IDEA, are granted various due process rights, ensuring that they would get notice of and be able to participate in the formulation of the educational services (i.e., the IEP) to be provided by the pertinent school to their learning disabled child, including the right to appeal to an independent hearing officer from the determination of the school, as has been done here Honig v. Doe, *supra*; 34 C.F.R. 300.500 *et seq.*

And, as provided for by IDEA, a dissatisfied parent can request a Due Process Hearing, as was done here. Cf. IDEA, Section 1415 (b)(1)(2), 300 C.F.R. 507, 509, Hoenig v. Doe, *supra*.

Thus, the basic inquiry here is whether FAPE will be provided to [REDACTED] by [REDACTED] pertinent IEP, namely the [REDACTED] IEP, to be implemented at [REDACTED] ALC. However, before that issue can be resolved, it must first be ascertained whether [REDACTED] transfer to [REDACTED] ALC placement as per [REDACTED] IEP is a disciplinary one Cf. 34 CRF 300.354.

Prior to the amendment of IDEA in June 1997, the U.S. Court of Appeals for the Fourth Circuit (which governs here), held that if a learning disabled student engages in serious misconduct, such as a drug violation, he or she may be expelled with no

provision thereafter of educational service of any kind. Commonwealth of Virginia Department of Education v. Riley, 106 F. 3d 559 (4th Cir. 1997).

To obviate the harsh results of Riley and similar cases decided in other circuits, Congress amended IDEA to provide that a learning disabled student covered by IDEA could be disciplined in the same way as any general student, providing, however, that his or her misconduct was not caused by his or her learning disability (Cf. IDEA, 20USC Section 1415 (k)(5)(A); 34 CFR 354. However, also under these amendments some educational services to that disciplined disabled child must nonetheless be provided 20 USC 1412 (a)(1)(A), 34 CFR 300.121 (d)(2)(B).

Here, it is undisputed that [REDACTED] was and is [REDACTED] and thus covered by IDEA; it is also undisputed that [REDACTED] disorder was not the cause of the drug infraction involved here (See School Ex. 48 being the Manifestation Determination to which [REDACTED] agreed and consented). Nor can there be any doubt that [REDACTED] placement at [REDACTED] ALC was a disciplinary one for more than ten (10) days. Indeed, the student body at an ALC is limited to students placed there as a result of a disciplinary process. Further, a basic function of an ALC, in addition to providing educational services, is behavioral adjustment. Accordingly, the undersigned finds that [REDACTED] placement at [REDACTED] is a disciplinary one.

Thus, the inquiry here now becomes whether the [REDACTED] IEP for [REDACTED] and [REDACTED] placement at [REDACTED] ALC for [REDACTED] ([REDACTED] grade) year, meet the educational requirements set forth in Section 1415(k)(5)(A), 34 CFR 300.121(d)(2)(I)(B), thereby providing [REDACTED] with FAPE. The standard of learning applicable when IDEA Section 1415 (k)(5)(A) pertains (namely, where the misconduct

was not caused by the student's disability and the suspension is for more than ten (10) days) is set forth in 34 CRF 300.121(d)(2)(I). It requires the School to provide:

"... services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP." (underscoring supplied). (34 CRF 300.121(d)(2)(I)), See also: IDEA Section 1412 (a)(1).

The Virginia Regulations provide a similar standard, but add that the student's special educational services must be addressed likewise.

At the outset, it should be noted that there is no requirement in the above language that such educational services be provided in a least restrictive environment. And, since Section 1415(k)(5)(A), 34 CRF 121 (d)(2)(I) deal with disciplined children, and discipline, by definition involves the ability to restrict, any imposition of a standard of least restrictive environment upon that section would negate, if not nullify its purpose.

Accordingly, [REDACTED] educational services can be provided in a restricted environment such as [REDACTED] ALC without violating the Act or negating FAPE. See e.g. Troy City Board of Education, 27 IDELR 555 (SEA Alabama, 1998), in which a homebound placement was upheld, even though it lacked many classes and programs of a regular high school; See also: Parents v. [REDACTED] (VA) Public Schools, ... (which was appended to the School's Pretrial Memorandum) in which placement at [REDACTED] ALC was upheld; In Re Boston Public Schools, 26 IDELR 202 (1997) wherein placement in an alternative learning center upheld; In Re Potect Independent School District, 29 IDELR 423 (SEA Tr 1998) in which placement in an ALC for a marijuana possession offense was upheld.

Likewise, there is no requirement that extra curricular services, such as team sports, be provided, pursuant to IDEA. M.H. v. Montana High School Ass'n, 929 P.2d, 244 (Mt. 1996), Alief Indep S. Dist., 26 IDELR 202 (SEA Texas 1997).

We turn now to the fundamental questions: Will [redacted] placement at [redacted] ALC provide [redacted] with: (a) services [i.e., educational] necessary to enable the child to appropriately progress in the general curriculum; (b) will [redacted] be able at [redacted] ALC to appropriately advance towards achieving [redacted] educational goals; and (c) will [redacted] special ed needs be addressed?

(a)

[redacted] ALC Provides Services Allowing [redacted] to
Appropriately Progress in [redacted] General Curriculum

As revealed earlier by the pertinent facts, [redacted] ALC provides an intensive delivery of core subjects, namely English (reading and writing), math, basic studies and science. The classes are very small (10-15 students per class); the ratio to teachers is one to two per class; and the teachers are high skilled. Also, [redacted] ALC has a special ed teacher and a dedicated special ed classroom. Further, a close rapport is maintained with the student's parents and homework is closely monitored. As a result, most students at [redacted] ALC exceed the normal academic requirements for the grade they are attending and return to their base school far better prepared than before. And, 90% of the students at [redacted] ALC successfully complete the transition after a year (or less) at [redacted]. Accordingly, I find that [redacted] ALC provides educational services, including the availability of special ed services, which will allow [redacted] to appropriately progress in [redacted] general curriculum.

(b)

██████████ at ██████████ ALC Will Allow ██████████ to
Appropriately Advance Towards Achieving The Goals
Set Forth in ██████████ IEP

As before noted, the tight structure at ██████████ ALC is ideally constituted to allow ██████████ to achieve appropriate advancement toward ██████████ scholastic goals as set forth in ██████████ IEP. ██████████ teachers, including ██████████ special ed teacher at ██████████ were unanimous in this view, as were the principal at ██████████ ALC and its former special ed teacher. Moreover, ██████████ ALC will address one of ██████████ major academic shortcomings - namely, failure to do ██████████ homework. This, because ██████████ ALC carefully monitors each student's daily progress (there a daily pre-school teacher meeting); and it closely coordinates each student's daily educational program with ██████████ or ██████████ parents. In short, if ██████████ fails or is unable to do or turn in ██████████ homework - such will be immediately discovered and quickly resolved by involvement by both the school and ██████████ parents. Accordingly, I find that ██████████ attendance at ██████████ ALC will allow ██████████ to make appropriate progress towards achieving ██████████ educational goals as set forth in ██████████ IEP.

(c)

Will ██████████ Placement At ██████████ ALC Address
██████████ Special Education Needs?

There is no question that ██████████ ALC can address ██████████ special educational needs. ██████████ learning disorder relates to ██████████ weakness in reading comprehension and written expression. ██████████ ALC is particularly strong in this area, and, as before

noted, the small class size, teacher expertise, and tight structure provide an ideal setting in which to deliver these educational services. Further, ██████████ ALC has a special ed teacher who not only is skilled, but because of the small classroom size, is able to interact with ██████████ in this area of ██████████ educational needs in a far more effective manner than could a special ed teacher working in the larger class size and less structured environment found in a general ██████████ school.

The undersigned, however, diverges from ██████████ ██████████ IEP in one respect - namely, the amount of special ed services to be supplied at ██████████ ALC. Prior to ██████████ entrance into the ██████████ grade at ██████████ ██████████ had been receiving 8 hours per week of special ed services. This was reduced to 4 hours in ██████████ ██████████ grade, ██████████ most recent school year. ██████████ grades fell. Although most of ██████████ teachers in the ██████████ grade attributed this to ██████████ failure to do ██████████ homework, and pointed to ██████████ passing grades in statewide and school testing - there was evidence to the contrary. ██████████ science teacher, ██████████, as late as ██████████ felt that ██████████ was not getting the special ed assistance ██████████ needed. While ██████████ attempted to dilute ██████████ concern at the hearing and agreed with the ██████████ IEP, that concern clearly existed. ██████████, who is a devoted parent, intimately involved with ██████████ educational progress, also expressed concern about the reduction of special ed services and felt ██████████ was not doing as well in the ██████████ grade as ██████████ expected. Most importantly, the special ed teacher, who supplied ██████████ with ██████████ homebound educational services believed that ██████████ had very real weaknesses in English, particularly in reading comprehension and writing. And, the brief written statements by ██████████ appearing at School Ex. 50, page 03/16 likewise revealed a far lower level of expression than is

expected of a [REDACTED] school student. Indeed, [REDACTED] at the instant hearing reiterated that [REDACTED] did not like to read and often did not know the meaning of words.

Balancing the testimony and evidence, I conclude, and so find, that [REDACTED] special ed services at 4 hours per week are not sufficient; and that such services should be returned to the pre-[REDACTED] grade level of 8 hours per week. I leave to the discretion of the teachers at [REDACTED] ALC in what manner such services are to be supplied. If [REDACTED] ALC is to succeed in its mission to return [REDACTED] promptly to [REDACTED] general school, and [REDACTED] is to succeed in [REDACTED] desire to go to college and play [REDACTED] - it is imperative that every resource be fully utilized. There is no harm in supplying [REDACTED] with a few more hours of special ed than may be minimally needed, but there would be real harm in failing to supply [REDACTED] with the minimum amount of special ed needed. Accordingly, [REDACTED] IEP is hereby amended to include 8 hours per week to be delivered in such manner as [REDACTED] teachers, or [REDACTED] ALC deem to be in the best interest of [REDACTED]

C.

Were There Substantial Procedural Errors Requiring
Invalidation of [REDACTED] Placement at [REDACTED] ALC?

It is undisputed that [REDACTED] [REDACTED] was given advance notice of the [REDACTED] IEP committee meeting. The results of the earlier MDR and [REDACTED] decision were known. It was set at a time wherein [REDACTED] could be available. [REDACTED] attended and made known [REDACTED] views, some which were adopted into that IEP. [REDACTED] admitted being advised of [REDACTED] due process rights and received written statements thereof. [REDACTED] thereafter sought, and was granted the instant hearing. Such facts reveal

no procedural violations, and certainly nothing of such magnitude as would justify a negation of the [REDACTED] IEP. See: Burke County Bd. Of Ed. V. Denton, 895 F.2d 973, 982 (4th Cir. 1990). It is true that [REDACTED] did not agree with [REDACTED] placement at [REDACTED] ALC and wished [REDACTED] to be returned to [REDACTED], but a denial of those wishes does not constitute a loss of educational opportunity. In this regard, in order for there to be a procedural violation warranting a reversal of the placement, there must be a resultant loss of educational opportunity. Hall v. Vance County Bd. Of Ed., 774 F.2d 629 (4th Cir. 1985), Burke County Bd. Of Ed. V. Denton, *supra*.

[REDACTED] also complained [REDACTED] had no advance notice of the [REDACTED] "homebound IEP" Committee Meeting. This meeting followed immediately after the Manifestation Determination Review, as to which [REDACTED] had advance notice and attended. And, [REDACTED] likewise attended the homebound IEP Committee Meeting. There was nothing discussed in the homebound IEP Committee Meeting as to which [REDACTED] was unaware; and neither [REDACTED] nor [REDACTED] were prejudiced in any way by the purpose or results of the homebound Committee Meeting and resultant IEP. In point of fact that meeting and its resultant directive for homebound services were not truly IEP driven. Rather, it was a procedure adopted by [REDACTED] PS to provide [REDACTED] with educational services while [REDACTED] suspended from [REDACTED]. It would have been better if those proceedings had been so labeled. In any event, if there were procedural errors such were de minimus and cured by the month later [REDACTED] IEP Committee meeting and the resultant [REDACTED] IEP, which governs here.

The more serious question, however, is not any alleged procedural failings, but rather in the undisputed fact that [REDACTED] received virtually no teaching services from

date of suspension until after the school year had ended. Only [REDACTED] appeared in [REDACTED] home and then only once for about 1 1/2 hours. I concur with [REDACTED] counsel that the [REDACTED] IEP was, for all practical purposes, a nullity.

In mitigation of its failure, [REDACTED] PS did arrange for bi-weekly pickups by [REDACTED] of [REDACTED] studies - which were duly obtained and used by [REDACTED] with [REDACTED]. And, [REDACTED] PS arranged for [REDACTED] to take [REDACTED] year end tests at [REDACTED] which [REDACTED] passed. And, likewise [REDACTED] passed [REDACTED] SOL tests, and [REDACTED] grade subjects; and [REDACTED] was promoted to the [REDACTED] grade. And, of course, in late [REDACTED] [REDACTED] did receive some 22 hours of special ed. instruction.

To some extent the loss of teaching in late [REDACTED] and early [REDACTED] in [REDACTED] building block core classes, as English, math, social studies and the like, such can be compensated for by [REDACTED] ALC in its small size classes, as well by in the additional special ed services required by this decision. Fortunately, [REDACTED] missed little of these classes. As to the portions of studies missed in [REDACTED] studies such as biology, which are no longer taught after the [REDACTED] grade, as aptly noted by [REDACTED] [REDACTED] there is little that can be done by way of remedy at this late date. [REDACTED] PS simply did not have the teachers available to supply the homebound services called by the [REDACTED] IEP. Hopefully, this will be addressed by [REDACTED] PS for the future. Nevertheless, to use this limited failure as a device to overturn the entire disciplinary procedure here involved, and to overturn [REDACTED] placement at [REDACTED] ALC, would be unjust to the school. In this regard, it should be remembered that the sequence of events here involved were caused by [REDACTED] - namely, bringing drugs (i.e., marijuana)

to school in violation of the laws of the Commonwealth and the rules of [REDACTED] PS. In any event, the procedural failings with regard to the [REDACTED] IEP did not deprive [REDACTED] of any substantial educational opportunity - and thus, at best, was harmless error. Cf. Burke County Bd. Of Ed. V. Denton, *supra*.¹

D.

May [REDACTED] Disciplinary Proceedings and Placement

Be Reviewed in this Proceeding

A substantial part of Parent's case here involved the request that the undersigned review and overturn for procedural and substantive reasons (including alleged procedural failure relating to the requisite behavioral analysis the results of [REDACTED] disciplinary proceedings held by [REDACTED] PS.

No authority has been provided to the undersigned or found by him granting to him such oversight authority. Much authority exists to the contrary: First and foremost, the Code of Virginia entrusts the hearing of and resolution of school disciplinary matters to the pertinent school superintendent and ultimately the School Board. See e.g. VAC 20-22.1-277.06. Interim placement for breach of rules are on a different track entirely from special ed. due process appeals. Compare 20 USC Section 1415 (f)(I) and 34 CFR 300.507-11 with 20 USC 1415 (k) and 34 CFR 300.521. With regard to special ed due process appeals, the Virginia Special Ed Regulations which parallel the Federal requirements, clearly set forth the issues which can be raised therein- namely, identification of a child with disabilities, his or her evaluation, educational placement and placement services, and whether FAPE has been provided (8

¹ Complainant also claims that there was no notice given to [REDACTED] of [REDACTED] right to appeal the MD decision. However, [REDACTED] consented, so this failure, even if true, is moot.

VAC 20-8-76(B)). Nowhere is any jurisdiction set forth which allows for a review of disciplinary procedures in a special ed due process hearing.

While the undersigned, if [REDACTED] had the authority to hear and had heard the original disciplinary case against [REDACTED], might have been more lenient and imposed a brief suspension followed by an in school parole - the undersigned has no such original jurisdiction. And, if the undersigned had review authority - which [REDACTED] still does not - would be most reluctant to overturn [REDACTED]'s disciplinary decision. This because of the well settled doctrine that a reviewing judicial body should extend great deference to a school's exercise of discretion. Wood v. Strickland, 420 U.S. 308, 326 (1975); Shaw v. Board of Trustees of Frederick Comm. College, 549 F.2d 929 (4th Cir. 1976), Mitchell v. Board of Trustees of Oxford, 625 F.2d 660, 664 (5th Cir. 1980) (wherein the Court held that disciplinary matters are "best resolved" in the local community within the school system").

The Commonwealth of Virginia has seen fit to treat drug possession in its schools as a most serious matter. [REDACTED] PS adheres to that policy. The undersigned will not by way of an unauthorized extension of [REDACTED] jurisdiction undercut that policy in this proceeding, albeit [REDACTED] may personally disagree with the severity of the punishment meted out to [REDACTED].

V.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A.

Findings of Fact

1. [REDACTED] is the [REDACTED] of [REDACTED] ([REDACTED]), a [REDACTED] year old who is the student involved in this case.
2. [REDACTED] and children have resided in [REDACTED] for many years, namely since [REDACTED] when [REDACTED] was in the [REDACTED] grade.
3. [REDACTED] has been attending [REDACTED] Public Schools ("PS") since [REDACTED] grade ([REDACTED]).
4. [REDACTED] was determined as [REDACTED] ("") before [REDACTED] grade, being deficient primarily in reading and writing and the cognitive skills relating thereto.
 - a. This condition still exists.
5. [REDACTED] has been receiving special educational services, since [REDACTED] grade, and with that assistance has been able to progress from grade to grade along with [REDACTED] general class.
6. During [REDACTED] and [REDACTED] grades at [REDACTED] School [REDACTED] received 8 hours per week of special education services, which enabled [REDACTED] to receive mostly B's and C's in [REDACTED] primary subjects (Parents Ex. "O"). [REDACTED] also passed [REDACTED] SOL and state tests.
7. In [REDACTED], [REDACTED] was promoted into the [REDACTED] grade at [REDACTED] School.

8. [REDACTED] is an unusually gifted athlete, specializing in [REDACTED]

a. [REDACTED] made the [REDACTED] team at [REDACTED]

b. [REDACTED] was one of its star players, being highly regarded by [REDACTED] coach

and teammates.

9. Shortly before [REDACTED] entered the [REDACTED] grade at [REDACTED]

Special Educational ("Special Ed") services were reduced from 8 hours per week to 4 hours per week.

a. [REDACTED] acquiesced in and agreed to the [REDACTED] IEP

which reduced [REDACTED] special ed services, as above noted, because [REDACTED] relied upon the expertise of [REDACTED] teachers.

10. [REDACTED] who was [REDACTED] teacher in science (biology) in the [REDACTED]

grade was very concerned about [REDACTED] lack of progress in [REDACTED] class beginning in

[REDACTED] and continuing for the remainder of the school year.

a. In [REDACTED] comments in [REDACTED] report of [REDACTED] [REDACTED] stated: "I did

not receive any help or interest when I appealed to the [REDACTED] [Special Ed] department,

counselors or others RE: [REDACTED] I felt [REDACTED] was misplaced" (Parent's Ex. B).

11. [REDACTED] grades declined during [REDACTED] grade at [REDACTED]

School (School Ex. 88).

12. Notwithstanding the decline in [REDACTED] grades in the [REDACTED] grade, [REDACTED] was

able to pass [REDACTED] SOL, and was passed into the [REDACTED] grade.

13. Most of [REDACTED] teachers attributed the decline in [REDACTED] grades to

[REDACTED] deficiencies in turning in [REDACTED] homework and lack of application, along with the

increasing difficulty of [REDACTED] school courses.

14. ██████████ attributed the decline in ██████████ grades to the diminution of special ed services being provided to ██████████

a. At the ██████████ IEP meeting for ██████████ at ██████████ request additional special ed goals were set, but there was no increase in the special ed time of 4 hours.

15. On ██████████ ██████████ brought a small amount of marijuana to school.

a. Acting on a tip from a fellow student ██████████ was brought to the assistant principal's office (██████████) by Officer ██████████ a ██████████ Police Officer assigned to ██████████ School as its School Resource Officer.

16. During the meeting with Officer ██████████ and the assistant principal, ██████████ admitted that ██████████ had brought a small amount of marijuana to school; and that ██████████ and a friend had smoked some a week earlier off campus.

17. ██████████ ██████████ was immediately told of the problem and went to ██████████ ██████████ office in the afternoon of ██████████

a. At this time the decision was made to suspend ██████████ for 10 days.

b. At this time Officer ██████████ decided to charge ██████████, as a juvenile, for possession of marijuana, but due to various administrative delays, ██████████ was not charged until ██████████

c. ██████████ case is pending before ██████████ Juvenile Court.

18. The 10 day suspension for ██████████ began ██████████

19. [REDACTED] PS views possession of marijuana by a student as an extremely serious offense warranting total expulsion from the [REDACTED] school's unless it is determined that exceptional (mitigating) circumstances existed.

20. A Manifestation Determination Review ("MDR") was scheduled and held on [REDACTED] to determine whether [REDACTED] possession of marijuana was due to [REDACTED] disorder.

a. At this hearing, it was the consensus of all of the [REDACTED] PS participants that [REDACTED] abovesaid misconduct was not a manifestation of [REDACTED] disorder.

b. [REDACTED] who received advance notice of this hearing and was present, "acquiesced and agreed" with this determination (Tr.).

21. Immediately following the MDR, a purported homebound IEP meeting was held for [REDACTED] at which time [REDACTED] was recommended for homebound educational services.

a. Such services were not supplied until late [REDACTED]

22. [REDACTED] neither signed nor objected to the [REDACTED] IEP.

23. Although [REDACTED] had been suspended, and was not allowed to attend classes after [REDACTED] [REDACTED] was permitted to return to school to take all but one of [REDACTED] final examinations.

a. Due to a mix up by [REDACTED] [REDACTED] did not take [REDACTED] Basic Skills final exam, and thus, received an "F" for that exam. When that mistake was discovered, the "F" was deleted and [REDACTED] received a "B" for [REDACTED] final grade.

24. School ended at [REDACTED] on [REDACTED]

a. Classes ended about a week earlier - the balance of time being used for final examinations.

25. On [REDACTED], a further IEP committee meeting was held for [REDACTED] (School Ex. 50).

a. [REDACTED] had notice of and attended this meeting.

b. [REDACTED] did not agree with the recommendations in that IEP.

26. At the [REDACTED] IEP meeting it was determined in accordance with [REDACTED] ruling that [REDACTED] should attend an Alternative Learning Center ("ALC"), later identified as [REDACTED] ALC.

a. It was also decided to continue on with 4 hours of special ed for [REDACTED]

27. The ALC program was instituted as an alternative to expulsion for students who had made an error in judgment, but who were deemed to be redeemable.

a. The ALC schools such as [REDACTED] are highly structured, teaching basic core studies (i.e., English, math, science, social studies) on an intensive basis.

b. The classes at [REDACTED] ALC are small - 10 to 15 students per class - never more than 20, with either two teachers or a teacher and assistant per class.

c. The students at [REDACTED] ALC are closely monitored - have no "free time" and must wear a prescribed uniform.

d. The students at [REDACTED] ALC are constantly urged and motivated to do well in these studies.

e. There are daily pre-school meetings of the teachers at [REDACTED] ALC who carefully monitor each student's progress.

f. The parents are closely involved with the teachers in the [REDACTED] ALC program and homework there is closely monitored.

28. While the only students sent to an ALC school are sent there for disciplinary reasons and receive behavioral adjustment, once at an ALC the focus changes to that of intensive education combined with rehabilitative instruction.

29. There are no team sports at an ALC.

a. Physical ed and exercises are taught.

30. ALC's, and specifically [REDACTED] ALC, have special ed programs.

a. [REDACTED] ALC has a separate special ed classroom.

b. [REDACTED] ALC has a full-time special ed teacher.

31. The principal at [REDACTED] ALC is a highly experienced educator with a strong background in special ed.

a. The teachers at [REDACTED] ALC are highly skilled, and are used to teaching academically slower students - this because most of the students with disciplinary problems also are poor students.

32. The purpose of an ALC, and [REDACTED] specifically, is to rehabilitate its students, increase their academic powers - by hopefully, at least at a year's increment - and to return them to their base school.

a. The normal schedule is that the student's are returned to their base school by the ALC after one year, sometimes sooner.

b. For this reason the ALC's do not graduate students or have a [REDACTED] school year.

c. About 90% of the students at [REDACTED] ALC return to their base school after a year at [REDACTED] ALC.

33. Only students in good standing at a school having team sports can participate in school team sports.

a. Thus, [REDACTED] cannot play [REDACTED] while at an ALC such as [REDACTED]

34. Earlier, on [REDACTED], an administrative disciplinary hearing was held by [REDACTED] at which time the decision by [REDACTED] principal ([REDACTED]) to suspend [REDACTED] for ten (10) days was affirmed; and, pursuant to a decision by [REDACTED] dated [REDACTED]

a. It was decided that [REDACTED] would be suspended from [REDACTED] for at least one year.

b. It was decided that [REDACTED] would be permitted to attend an ALC - determined by [REDACTED] IEP as [REDACTED] ALC - for one year.

c. It was further decided that after [REDACTED] [REDACTED] would be permitted to return to [REDACTED], provided [REDACTED] successfully completed [REDACTED] program and had no further disciplinary problems.

35. On [REDACTED], an appeal was held before the [REDACTED] School Board.

36. [REDACTED] and [REDACTED] counsel (who was also [REDACTED] counsel in this proceeding - and who is most skilled and effective advocate) were permitted to make extensive arguments in this appeal seeking lesser penalties and allowing [REDACTED] return to

either [REDACTED] or a similar regular [REDACTED] school (See Transcript attached School Ex. 9A).

a. The School Board rejected these arguments, and, sustained [REDACTED] transfer to [REDACTED]

(NOTE: the letter from [REDACTED] detailing the positions taken in the administrative hearing and results, and the transcript and results of the School Board Hearing are in evidence as School's Ex. 9, 9A, and will not be repeated here except to note that [REDACTED] PS regarded possession of marijuana as a most serious infraction warranting [REDACTED] transfer to an ALC; albeit it was [REDACTED] first serious offense and despite [REDACTED] otherwise excellent conduct record throughout [REDACTED] attendance at [REDACTED] PS.)

37. [REDACTED] at the times relevant hereto was made aware of [REDACTED] due process rights and appellate rights, and received appropriate advance notice.

a. [REDACTED], in fact, attended all of the relevant IEP meetings and re-evaluations here involved, namely those of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] MDR of [REDACTED], [REDACTED] and the [REDACTED] IEP which controls this case.

38. [REDACTED] received, acting upon [REDACTED] due process rights, requested and was granted the instant hearing challenging the placement set forth in the [REDACTED] IEP for [REDACTED]

B.

CONCLUSIONS OF LAW

1. The removal of [REDACTED] to [REDACTED] ALC was disciplinary and is not subject to review in this due process appeal except with regard to whether such placement provides [REDACTED] with a Free Appropriate Public Education ("FAPE").
2. The placement of [REDACTED] at [REDACTED] ALC pursuant to [REDACTED] IEP was appropriate and provides [REDACTED] with FAPE.
3. [REDACTED] ALC is able to supply appropriate educational services to the extent necessary to enable [REDACTED] to progress in the general applicable curriculum and appropriately advance toward achieving the goals set forth in [REDACTED] IEP.
4. The [REDACTED] IEP for [REDACTED] is appropriate except that the provision of Special Education services in the amount of 4 hours per week is inadequate.
 - a. Special education services of 8 hours a week, as supplied to [REDACTED] in the years prior to [REDACTED] grade (i.e., late year) are adequate to meet the goals for [REDACTED] as contained in [REDACTED] IEP.
 - b. These special education services should be supplied to [REDACTED] in such manner as deemed by [REDACTED] teachers at [REDACTED] ALC as best for [REDACTED]
5. There were no substantial procedural violations with regard to [REDACTED] MDR and determination of non-manifestation based herein.
6. There were no procedural violations as to [REDACTED] [REDACTED] IEP Committee meeting and resultant IEP, which govern the disposition of this instant case.

7. While there were procedural and substantive deficiencies in the "homebound IEP of [REDACTED]" such neither adversely affected the provision of appropriate education services to [REDACTED] nor did such prohibit [REDACTED] from meeting [REDACTED] IEP goals as set forth in [REDACTED] IEP.

a. The deficient homebound IEP of [REDACTED] and its failure to supply promptly some services called for thereunder will not adversely affect [REDACTED] ability to make appropriate progress in [REDACTED] applicable general curriculum at [REDACTED] ALC.

8. The severity of the disciplinary action taken by [REDACTED] PS with regard to [REDACTED] marijuana possession at [REDACTED] School is not subject to review in this proceeding.

VI.

ORDER

1. The placement of [REDACTED] at [REDACTED] ALC by [REDACTED] Public Schools is hereby affirmed.

2. The [REDACTED] IEP for [REDACTED] at [REDACTED] ALC is hereby affirmed except that the hours of special educational services is increased from four (4) hours to eight (8) per week, to be supplied to [REDACTED] in such manner as [REDACTED] teachers at [REDACTED] deem best for [REDACTED]

3. The request by [REDACTED] to have [REDACTED] immediately returned to [REDACTED] School be and hereby is denied.

VII

APPELLATE RIGHTS

This decision may be appealed within one (1) year of its issuance by the filing of an appeal in either a Commonwealth Circuit Court or a Federal District Court regardless of the amount in controversy, if any.

Decided this [redacted] day of [redacted]

[redacted signature]

Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that copies of the instant decision were either delivered or mailed, postage prepaid to:

- 1) [redacted], Esquire, [redacted]
[redacted] Virginia [redacted]
- 2) [redacted], Esquire, [redacted]
[redacted] Virginia [redacted]
- 3) [redacted] Public Schools, [redacted]
Virginia [redacted] (attn: [redacted])
- 4) Virginia Department of Education, Due Process and Complaints, P.O.
Box 2120, Richmond, Virginia 23218-2120.

[redacted signature]