**XXXXXXXXXXXXXXX PUBLIC SCHOOLS**

**XXXXXXXXXXXXXXXXXXXX**, a minor, by and through

Student’s Xxxxxxxxxxxxxx, **XXXXXXXXXXXXXXXXXXXXXX**,

 Petitioner, DECISION AND ORDER

 - and - VDOE Case No. 24-081

**XXXXXXXXXXXXXXX SCHOOL BOARD**, Carl Schmidt

 Hearing Officer

 Respondent.

## PROCEDURAL HISTORY

 On March 13, 2024, Student’s Xxxxxxxxxxxxxx requested a due process hearing with the Xxxxxxxxxxxxxxx Public School Board (“Local Educational Authority” or “LEA”) pursuant to the Individuals with Disabilities Education Act (“IDEA”). The Xxxxxxxxxxxxxx used the Virginia Department of Education Form, Request for Due Process Hearing, to make the request. The form was dated March 7, 2024 but received by the LEA on March 13, 2024.

 The LEA was represented by Joi Brown, Esquire.

 Hearing Officer, Carl Schmidt, accepted the appointment to preside over this case on March 15, 2024.

 On March 15, 2024, Ms. Kathryn Jones, Coordinator of Due Process Services, Office of Dispute Resolution and Administrative Services, Virginia Department of Education, informed the Hearing Officer that the case number was 24-081 and the Evaluator was Brian Miller, Esquire.

 On March 21, 2024, a pre-hearing video conference was held from 2:00 p.m. to 3 p.m. The issues were identified as:

1. Whether the Local Educational Authority (LEA) is providing a Free Appropriate Public Education to the Student?

2. Whether the LEA is providing services to the Student in accordance with the Student's Individualized Education Program (IEP)?

3. Whether the LEA removed services required by the IEP without the Xxxxxxxxxxxxxx's knowledge?

4. Whether the Student's special education services should be provided by a private school or organization and paid for by the LEA?

5. Whether the LEA is ruining and defaming the Student's character?

The parties held a resolution meeting on March 29, 2024. Xxxxxxxxxxxxxx did not seek mediation.

 A hearing was held in-person on April 19, 2024 beginning at 10 a.m. In attendance were:

Mrs. Xxxxxxxxxxxxxxxx, Director of Special Education with Xxxxxxxxxxxxxxx Schools. (Party Representative and Witness)

Joi Brown Esquire, Xxxxxxxxxxxxxx Attorney, Xxxxxxxxxxxxxxx Schools.

Ms. Xxxxxxxxxxxxxxxx, paralegal, Office of the School Board Attorney, Xxxxxxxxxxxxxxx Schools.

Ms. Xxxxxxxxxxxxxxxx, Xxxxxxxxxxxxxx (Petitioner)

Brian Miller, Esquire, VDOE Evaluator

Carl Schmidt, Esquire, Hearing Officer

Mr. Xxxxxxxxxxxxxx, Xxxxxxxxxxxxx (Witness)

Ms. Xxxxxxxxxxxxx, xxxx grade math teacher, Xxxxxxxxxxxxxxx School (Witness)

Ms. Xxxxxxxxxxxxxxxx, xxxx grade science teacher, Xxxxxxxxxxxxxxx School (Witness)

Ms. Xxxxxxxxxxxxxxx, Assistant Principal, Xxxxxxxxxxxxxxx School (Witness)

Ms. Xxxxxxxxxxxxxxxxxxxx (Witness)

Ms. Xxxxxxxxxxxxxx, Special Education Coordinator (Witness)

 At the LEA’s request, the Hearing Officer issued witness subpoenas for Student Xxxxxxxxxxxxxxxxxxxx.

 Xxxxxxxxxxxxxx’s and the LEA’s exhibits were admitted as evidence.

## BURDEN OF PROOF

 In a special education administrative due process proceeding initiated by the parents, the burden of proof is on the parents to establish by a preponderance of the evidence that the Local Educational Authority, School Board, has failed to provide the student with a Free Appropriate Public Education concerning the issues they have raised. *Schaffer, ex rel. Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005).

## FINDINGS OF FACT

 Xxxxxxxxxxxxxxxxxxxx (“Student”), was born Xxxxxxxxxxxxxxxxxxxx. Xxxx resides at an address in Xxxxxxxxxxx, Virginia with the zip code xxxxxxx.

 Student attends Xxxxxxxxxxxxxxx School in Xxxxxxxxxxx, Virginia. Xxxx is a xxxx-grade student during the 2023-2024 school year.[[1]](#footnote-1)

 Student receives special education services under the category of Specific Learning Disability in the area of math.[[2]](#footnote-2) Student’s disability does not affect xxxx reading.[[3]](#footnote-3)

Initial IEP August 16, 2022

Student was found eligible for special education services on June 14, 2022.

Student’s initial IEP was completed August 16, 2022. This IEP included accommodations of:

* Annotation strategy for solving problems
* Copies of notes to minimize hand writing/copying of numbers
* Extended time for writing, annotating, and problem solving on assignments and assessments
* Preferential seating
* Self-talk or think aloud strategies to accompany writing of numbers, operators, and math problems
* Shorten lengthy assignments by 25% to support information processing
* Speech to text technology to support written expression
* Use of visual aids, graphic organizers for information processing.[[4]](#footnote-4)

Student was to receive services:

* Mathematics Instruction – 100 minutes 1 time every two weeks.
* Mathematics Instruction – 80 minutes 1 time every two weeks
* Reading Instruction – 300 minutes 1 time every two weeks
* Written Language Instruction – 150 minutes 1 time every two weeks
* Reading Instruction – 100 minutes 1 time every two weeks[[5]](#footnote-5)

June 7, 2023, IEP Meeting

The LEA notified Xxxxxxxxxxxxxx of an IEP meeting to be held on June 7, 2023. Xxxxxxxxxxxxxx and Xxxxxxxxxxxxx indicated they would attend the meeting.[[6]](#footnote-6)

The xxxxxxxxxxxxxxs met with a Special Education Teacher, Special Education Coordinator, Assistant Principal, and General Education Teacher on June 7, 2023 as part of an IEP meeting. This was the second IEP meeting.

The June 7, 2023, IEP was completed in full. Student was found eligible “to receive special education services under the category of Specific Learning Disability due to weakness in long term verbal memory, verbal comprehension skills, and slow processing speed adversely impacts xxxx access to instruction in the areas of math calculations and problem solving. (Initial eligibility 6/14/2022).” The IEP concluded, “[Student] demonstrates a significant strength in Reading and a significant weakness in Math Fluency. \*\*\* For the aforementioned reasons, and supporting school data, xxxx was found eligible for special education services under SLD due to deficits in mathematics.”

Student was to receive mathematics instructions 100 minutes one time every two weeks in a general education setting from June 7, 2023 to June 6, 2024. Student was to receive accommodations of additional time to complete math assignments, prompts to task, use of visual/math aids, graphic organizers, and 30 second wait time for response.[[7]](#footnote-7)

Xxxxxxxxxxxxxx shared a report from a local Children’s Hospital during the IEP meeting. The June 7, 2023, IEP states:

[Student] does not have identified deficits in the area of overall Reading skills, nor Written Language, according to the evaluations completed by XXS and outside evaluations completed by [Children’s Hospital].

Although xxxx does not have identified deficits or a learning disability in the area of Reading or Written Language, xxxx qualifies for a reading elective that will work on the below average areas identified in the evaluation. Students are identified for the reading elective(s) according to performance on the Scholastic Reading Mastery (SRM) and SOL data. Xxxx will have the option to be enrolled in the Tier 2 reading elective.[[8]](#footnote-8)

 On June 7, 2023, Xxxxxxxxxxxxxx and Xxxxxxxxxxxxx signed a Prior Notice stating, “I give consent to implement this IEP.” The Prior Notice stated:

The team considered having a goal and service for reading and writing for the Tier 3 reading intervention class. This was rejected following a review of xxxx needs and disability. There was a decision that [Student] will receive additional reading/writing support in the Tier 2 reading elective, which is a general education course and not a sped decision. Due to that decision, the team rejected the inclusion of a reading and writing goal and corresponding service.[[9]](#footnote-9)

Second IEP June 7, 2023

Student’s Second IEP was issued on June 7, 2023. This IEP included accommodations of:

* Extended time to complete math assignments with more than 10 problems
* Prompts to task – verbal and nonverbal
* Use of visual/math aids, graphic organizers for information processing
* Wait time to respond orally (30 seconds)

 Student was to receive services:

* Math Instruction – 100 minutes 1 time every two weeks.[[10]](#footnote-10)

Subsequent Meetings

Several addendum IEP meetings were held later at the request of Xxxxxxxxxxxxxx because of Student’s poor academic performance and Xxxxxxxxxxxxxx’s concern about Student’s processing skills.[[11]](#footnote-11) The majority of the concerns were not special education related.[[12]](#footnote-12) Special Education Coordinator described the meetings as:

We did speak kind of at nauseam about the processing and going through the evaluation reports and the data related to xxxx cognitive functions and xxxx processing skills, so there was disagreement about that. Then also disagreement about certain factors being related to special education services and not just general education in nature.[[13]](#footnote-13)

Xxxxxxxxxxxxxx’s concerns during IEP meetings did not include the LEA’s provision of math services to Student.[[14]](#footnote-14)

The LEA did not unilaterally remove items from the June 7, 2023 IEP.[[15]](#footnote-15)

## General Findings

 Student has a cell phone. Xxxx watches videos and listens to music on xxxx cell phone.[[16]](#footnote-16) Student stays up late to watch videos on xxxx cell phone.[[17]](#footnote-17) One day in 2023, Student did not go to sleep at night and stayed up until 6 a.m. the following morning using xxxx cell phone.[[18]](#footnote-18) Student does not receive help with homework at home.[[19]](#footnote-19) Xxxxxxxxxxxxxx regularly asked Student if Student completed xxxx homework and sometimes Student told Xxxxxxxxxxxxxx xxxx had completed xxxx homework even though Student had not completed the homework.[[20]](#footnote-20)

 Student’s Xxxxxxxxxxxxxx works from her home overnight and ends work in the morning. Xxxxxxxxxxxxxx usually starts working at 9 p.m.[[21]](#footnote-21)

The 2023/2024 school year started in the last week of August 2023.[[22]](#footnote-22) Student takes classes in math, language arts, science, history, art, and band. Xxxx favorite subject is history. Xxxx least favorite subject is math.[[23]](#footnote-23)

Math Class

Student is in a math three course in the middle school’s first block.[[24]](#footnote-24) Approximately 18 students are in the math class. Five of those students have IEPs and two are on 504 plans.[[25]](#footnote-25) Math class starts at 9:00 a.m. and lasts until 10:30 a.m., Monday through Friday.[[26]](#footnote-26)

In September 2023, Math Teacher called Xxxxxxxxxxxxxx and told Xxxxxxxxxxxxxx that Student was struggling a bit in class and had a couple of missing assignments. Math Teacher offered to tutor Student the next morning.[[27]](#footnote-27) Xxxxxxxxxxxxxx agreed but Student did not come to class the next morning for tutoring. Math Teacher would notify Student of missing assignments, but Student did not always complete them.[[28]](#footnote-28)

Students have binders to keep three-hole punched documents separated by class.[[29]](#footnote-29) Student has a binder with work for different subjects. Math Teacher placed separators in the binder to better organize Student.[[30]](#footnote-30)

Under the LEA’s homework policy, xxxx grade students could be assigned approximately 80 minutes of homework each night.[[31]](#footnote-31)

Student would come to math class “a little bit after the bell” and would be “nodding off” during class.[[32]](#footnote-32) Even when Student first arrived at math class, xxxx would be sleepy.[[33]](#footnote-33)

Assistant Principal suggested Math Teacher set up a sleep chart to track when Student was falling asleep to determine if the school could identify a pattern.[[34]](#footnote-34) The sleep chart was utilized during the second nine week period.[[35]](#footnote-35)

Math Teacher had Student sit right in front of Math Teacher and would prompt Student to wake up.[[36]](#footnote-36) Math Teacher did this continuously.[[37]](#footnote-37) During the first sixty minutes of the integrated reading and writing SOLs, Math Teacher woke up Student six times per hour.[[38]](#footnote-38)

Student received a grade of “D” in the first, second, and third quarters of the school year. At the start of the fourth quarter, Student had two missing assignments that would result in a grade of “F”.[[39]](#footnote-39)

Student completed 50 percent of xxxx classroom assignments. Uncompleted assignments became homework to be turned in the following day.[[40]](#footnote-40) Student could perform better in math class if xxxx completed xxxx assignments.[[41]](#footnote-41)

Math Teacher believes that Student wants to complete xxxx work and is capable of completing the work but Student is not putting forth xxxx best efforts and is not completing work at home.[[42]](#footnote-42)

Science Class

Student takes science in the second block which is from 10:35 a.m. to 12:05 p.m., Monday through Friday.[[43]](#footnote-43) Science class has 18 students including five special education students.[[44]](#footnote-44)

Science Teacher called Xxxxxxxxxxxxxx on October 18, 2023 to let Xxxxxxxxxxxxxx know Student was sleeping in class.[[45]](#footnote-45) Student was sleeping every day in science class at first. At some point, Student was sleeping in class but not every day. Science Teacher attempted to call Xxxxxxxxxxxxxx on March 26, 2024 to let her know that Student made some improvement by sleeping less during class.

Student received a grade of “D” in the first quarter, “D” in the second quarter, and “F” in the third quarter of science class.[[46]](#footnote-46)

Student understands the material in science class and loves the class. Student is capable of completing xxxx coursework in science class.[[47]](#footnote-47) Student is a “top student” and “engaged” when xxxx is not sleeping.[[48]](#footnote-48)

Science Teacher offers tutoring to struggling students. The tutoring is available at 8 a.m. or students can meet with Science Teacher during their lunch times. During the March 2024 IEP meeting,[[49]](#footnote-49) Science Teacher offered to tutor Student but Xxxxxxxxxxxxxx refused.[[50]](#footnote-50)

Assistant Principal Oversight

Assistant Principal oversees the special education department and is responsible for ensuring that Student’s IEP was implemented.[[51]](#footnote-51) Assistant Principal did her job of ensuring that Student’s IEP was implemented.[[52]](#footnote-52) During the first nine weeks, Assistant Principal contacted Xxxxxxxxxxxxxx for a conference to discuss Student’s grades.[[53]](#footnote-53) Xxxxxxxxxxxxxx did not want to meet unless the conference was about Student’s IEP.[[54]](#footnote-54)

Student does not have an IEP indicating that xxxx has a processing disorder in reading.[[55]](#footnote-55)

Local Children’s Hospital Evaluation

 Xxxxxxxxxxxxxx gave Assistant Principal a document dated April 25, 2023 from a local Children’s Hospital.[[56]](#footnote-56) The document showed an ST Literacy Evaluation performed May 8, 2023 which indicated, “xxxxxxxxxxxxxx expressed concerns regarding [Student’s] reading comprehension and processing skills which impacted xxxx overall academic performance.”[[57]](#footnote-57) The Evaluation stated:

According to the assessment, clinical observation and caregiver interview, [Student] presented with average skills in reading/decoding real and nonsense words and passage comprehension. [Student] demonstrated average scores on spelling/encoding skills. [Student] displayed below average skills in reading and word comprehension when compared to same aged peers.

Speech. Language and literacy therapy is recommended in the area of reading comprehension. Overall, it is recommended for [Student] to receive outpatient speech, language, and literacy therapy services 1x a week for 45-minute sessions with the intended end date of 11/08/2023. The family will be mailed out a copy of the speech, language, and literacy report. \*\*\* Since the parent requested services here at [Children’s Hospital] this patient’s evaluation report will be submitted to the patient account technician who will seek insurance authorization for therapy here in the speech/language department.[[58]](#footnote-58)

The Children’s Hospital evaluation does not show Student has a processing disorder. The IEP team discussed the document presented by Xxxxxxxxxxxxxx.[[59]](#footnote-59) The IEP team scheduled an eligibility meeting to discuss the data.[[60]](#footnote-60)

Xxxxxxxxxxxxxx showed the IEP team a document dated October 30, 2023 from Children’s Hospital. Student received an updated SL Literacy Plan of Care showing xxxx had “demonstrated progress with reading comprehension” and “displayed increased skills with answering reading comprehension questions.” The updated Evaluation stated, “It is highly recommended for [Student] to continue receiving weekly speech and language literacy therapy, that a strong home program continue to be implemented for home practice concepts taught here and to attend consistently with the intended end date of 05/08/2024.”[[61]](#footnote-61)

 In response to the October 30, 2023 SL Literacy Plan of Care, the LEA “sent emails to all teachers to make sure they were communicative with [Xxxxxxxxxxxxxx] and also offered before-school tutoring, tutoring during lunch and after-school tutoring.”[[62]](#footnote-62) Students can eat while being tutored. Xxxxxxxxxxxxxx did not want Student to miss lunch because that is the Student’s social time and a time to eat.[[63]](#footnote-63)

Disciplinary Action

In general, Student is very quiet and well-behaved in class but sometimes sleepy.[[64]](#footnote-64)

On February 21, 2024, Male Student told Student that he vaped. He said, “yeah, I smoke.” Student did not agree with that behavior so xxxx “told him to go KYS.” “KYS” refers to “kill yourself.” [[65]](#footnote-65)

After the incident, Student and Male Student spoke with a Counselor. The Counselor asked Male Student what happened. The Counselor asked Student what happened.[[66]](#footnote-66)

Assistant Principal asked Student what happened[[67]](#footnote-67) and Student wrote a statement.[[68]](#footnote-68) Student wrote the truth in the statement. Xxxx was not asked to lie in xxxx statement.[[69]](#footnote-69)

Student’s statement to the Male Student to “KYS” was a threat and level four offense according to the school’s handbook which could have resulted in a ten day out-of-school suspension with long-term recommendations.[[70]](#footnote-70) Student received a three day in-school suspension.[[71]](#footnote-71)

Assistant Principal notified Xxxxxxxxxxxxxx of Student’s in-school suspension. Xxxxxxxxxxxxxx did not think the discipline was appropriate because it was the Student’s first time being in trouble and the discipline should have been a warning.[[72]](#footnote-72)

On February 23, 2024, Xxxxxxxxxxxxxx delivered a “CEASE AND DECIST LETTER – DEFAMATION OF CHARACTER” to the LEA. Xxxxxxxxxxxxxx instructed certain individuals, “to cease from having private meetings with [Student] without a parent, guardian, and or parental representative being present.” Xxxxxxxxxxxxxx claimed Student was not asked “to explain the full story” and “words were put in xxxx mouth which caused xxxx character to be questioned.”

Assistant Principal did not agree to comply with Xxxxxxxxxxxxxx’s letter because:

We're a public school entity and we have to be able to talk to the students in the building to be able to maintain a safe and functioning environment.[[73]](#footnote-73)

Below Average Work Performance

The Assistant Principal addressed Student’s below average work performance:

In my opinion it would be lack of motivation and being able to complete xxxx work. Xxxx can do the work. When xxxx does do the assignments, xxxx completes them. Xxxx can master the skills. Xxxx knows how to do it. It's more of the will and motivation to get it done.[[74]](#footnote-74)

Student’s lack of motivation was not related to xxxx disability.[[75]](#footnote-75)

Choice Between Band Class and Tier 2 Reading

The LEA offers all students a Tier 2 reading class as an elective. Students receive an additional 90 minutes of language arts in the class.[[76]](#footnote-76) The LEA included Tier 2 reading on Student’s schedule at the beginning of the year. Xxxxxxxxxxxxxx removed Student from Tier 2 reading so that Student could attend band class. Student loved band and Xxxxxxxxxxxxxx wanted Student to be in band class.[[77]](#footnote-77)

Band class and Tier 2 reading are offered every other day from 2:20 p.m. to 3:49 p.m.[[78]](#footnote-78) Tier 2 reading is part of the LEA’s master schedule and cannot be changed to accommodate Student’s schedule.[[79]](#footnote-79) Tier 2 reading is not a special education service; it is a general education service.[[80]](#footnote-80)

Language Arts Tutoring

The LEA has begun offering language arts tutoring to Student.[[81]](#footnote-81) Student has begun attending tutoring in March 2024.[[82]](#footnote-82) Language arts tutoring was not offered prior to March 2024 because of staffing issues.[[83]](#footnote-83)

Student does not have a reading disability.[[84]](#footnote-84) Student attended six after-school tutoring sessions.[[85]](#footnote-85)

Future Eligibility Meeting

The LEA conducts eligibility meetings on the second and fourth Tuesdays of every month.[[86]](#footnote-86)

The LEA scheduled an eligibility meeting to discuss Xxxxxxxxxxxxxx’s claim of processing disorder on April 23, 2024.[[87]](#footnote-87) The hearing was prior to the meeting.

Tier 3 Reading

 Tier 3 Reading is taught by a special education teacher in a special education environment.[[88]](#footnote-88) A student in a Tier 3 Reading class must have a reading goal, a writing goal and services that align with those goals.[[89]](#footnote-89) Lexile and SOL scores are the primary way to identify students who require Tier 3 reading. A Lexile score shows how a student is reading in comparison to the student’s age and grade. Those students can also be in a Tier 2 reading class.[[90]](#footnote-90) Student was not identified as needing Tier 3 reading intervention.[[91]](#footnote-91)

The LEA was supposed to provide Student with Tier 3 reading as part of the initial IEP but failed to do so. As a result, the LEA provided Student with ten hours of compensatory services from June 8, 2023 through August 25, 2023.[[92]](#footnote-92)

## CONCLUSIONS OF LAW

This case involves five issues.

### Issue 1. Whether the Local Educational Authority (LEA) is providing a Free Appropriate Public Education to the Student?

 Virginia administrative regulation defines free appropriate public education. 8 VAC 20-81-10 provides:

"Free appropriate public education" or "FAPE" means special education and related services that: (34 CFR 300.17)

1. Are provided at public expense, under public supervision and direction, and without charge;

2. Meet the standards of the Virginia Board of Education;

3. Include an appropriate preschool, elementary school, middle school or secondary school education in Virginia; and

4. Are provided in conformity with an individualized education program that meets the requirements of this chapter.

 The LEA provides Student with special education services at public expense under public supervision and direction. These services meet the standards of the Virginia Board of Education. Student receives special education services at Xxxxxxxxxxxxxxx School in Xxxxxxxxxxx Virginia. Student receives special education services as provided in the June 7, 2023 IEP. The LEA is providing Student with a free appropriate public education.

 Xxxxxxxxxxxxxx asserted that Student should receive Tier 3 reading in a special education setting instead of having to choose between Tier 2 reading and band class. The evidence shows that Student’s scores were:

Broad Reading – Low Average

Word Reading – Average

Reading Comprehension – Low Average

Broad Written Language – Low Average

Spelling – Low Average

Sentence Composition – Average

Essay Composition – Low Average[[93]](#footnote-93)

Student’s average scores support the LEA’s conclusion that Student did not have a reading disability that would require Tier 3 reading services. The LEA offered Tier 2 reading services, but Xxxxxxxxxxxxxx declined to have Student substitute Tier 2 reading for band classes.

 Xxxxxxxxxxxxxx presented testimony from Xxxxxxxxxxxxx who indicated the LEA did not provide an alternative so that Student could take both band class and Tier 2 reading. The evidence showed that Tier 2 reading and band class were electives held at the same time on the same days. Neither band class nor Tier 2 reading were special education classes. Both classes were available to many students in the school. The LEA was not obligated to change the dates and times of either class to accommodate Student.

 Xxxxxxxxxxxxxx asserted that the initial IEP showed Student had a processing concern. The evidence showed that in June 2023 the processing issue was with respect to mathematics and not language arts. The LEA provided special education services directly related to mathematics.

 On several occasions, Xxxxxxxxxxxxxx brought her concerns to the LEA. The LEA met with Xxxxxxxxxxxxxx, listened to her concerns, and issued Prior Notice addressing those concerns.

 Xxxxxxxxxxxxxx presented an evaluation and update from a Children’s Hospital. These evaluations do not show Student has a disability in reading. No reading or language arts teacher testified regarding Student’s language skills. The LEA’s testing showed Student did not have a reading disability. The evidence is insufficient to override the LEA’s conclusion that Student does not have a processing concern relating to reading and language arts.

 Student’s below average academic performance is significantly impacted by Student’s pattern of not getting enough sleep during the night and falling asleep during class. Xxxx pattern of behavior did not result from a disability.

### Issue 2. Whether the LEA is providing services to the Student in accordance with the Student's Individualized Education Program (IEP)?

 Student’s Initial IEP dated August 16, 2022 was replaced by the June 7, 2023 IEP. During the 2023/2024 school year, the LEA was obligated to provide services in accordance with the June 7, 2023 and not the initial IEP. The June 7, 2023 IEP included accommodations:

* Extended time to complete math assignments with more than 10 problems
* Prompts to task – verbal and nonverbal
* Use of visual/math aids, graphic organizers for information processing
* Wait time to respond orally (30 seconds)

The June 7, 2023 IEP requires services:

* Math Instruction – 100 minutes 1 time every two weeks.[[94]](#footnote-94)

The LEA presented evidence showing it provided the accommodations and services required by the June 7, 2023 IEP. Xxxxxxxxxxxxxx did not present sufficient evidence showing that the LEA failed to comply with the June 7, 2023 IEP. The Hearing Officer finds and concludes that the LEA adequately implemented the June 7, 2023 IEP.

### Issue 3. Whether the LEA removed services required by the IEP without the Xxxxxxxxxxxxxx's knowledge?

 The IEP in effect during the 2023/2024 school year was the June 7, 2023 and not the initial IEP. The LEA did not remove any services from the June 7, 2023 IEP.

 The LEA excluded some of the services required by the August 16, 2022 IEP when it created the June 7, 2023. These changes were made with Xxxxxxxxxxxxxx’s knowledge and consent.

 Xxxxxxxxxxxxxx’s assertion that the LEA remove services required by the IEP without her consent is not supported by the evidence.

### Issue 4. Whether the Student's special education services should be provided by a private school or organization and paid for by the LEA?

 No evidence was presented identifying a specific private school to provide special education services to Student. The evidence showed that the LEA is providing adequate special education services to Student and, thus, the LEA is not obligated to arrange for the provision of special education services by a private school.

 Xxxxxxxxxxxxxx presented a recommendation from Children’s Hospital that Student receive outpatient speech, language, and literacy therapy services. Student does not have a disability requiring these services. It is unclear how these services differ from Tier 2 reading and tutoring offered by the LEA. It is unclear whether insurance or other funding sources are available to pay for these services.

### Issue 5. Whether the LEA is ruining and defaming the Student's character?

 Xxxxxxxxxxxxxx alleged the LEA is ruining and defaming Student’s character. Damage to Student’s character requires a showing of false statements by the LEA heard by other people that diminished Student’s reputation. No evidence was presented showing the LEA made false statements about Student. The LEA investigated the statements made by Student and Male Student. Student was given an opportunity to tell what happened. Xxxx wrote a statement describing what occurred. The LEA concluded Student’s statement was an inappropriate threat and took disciplinary action consistent with its disciplinary policies. Although Xxxxxxxxxxxxxx did not agree with the level of discipline taken by the LEA, the LEA did not ruin or defame Student’s character.

## ORDER

 Xxxxxxxxxxxxxx’s request for relief is **denied**.

 Dated: May 27, 2024

 *s/ Carl Schmidt*

Carl Schmidt

Hearing Officer

8853 Porto Court

New Kent, VA 23124

804-557-3031

Carl.schmidt@usa.net

## APPEALS

 Each party has the right to appeal this decision within 180 days to State Circuit Court or within 90 days to Federal District Court from issuance of the decision.

Copies to:

Ms. Xxxxxxxxxxxxxxxx

Mrs. Xxxxxxxxxxxxxxxx

Joi Brown, Esquire

Brian Miller, Esquire

Ms. Kathryn Jones, VDOE

1. Transcript p. 54. [↑](#footnote-ref-1)
2. Transcript p. 146. [↑](#footnote-ref-2)
3. Transcript p. 147. [↑](#footnote-ref-3)
4. LEA Exhibit 3. [↑](#footnote-ref-4)
5. LEA Exhibit 3. [↑](#footnote-ref-5)
6. LEA Exhibit 3. [↑](#footnote-ref-6)
7. LEA Exhibit 3. [↑](#footnote-ref-7)
8. LEA Exhibit 3. [↑](#footnote-ref-8)
9. LEA Exhibit 3. [↑](#footnote-ref-9)
10. LEA Exhibit 3. [↑](#footnote-ref-10)
11. Transcript p. 198. [↑](#footnote-ref-11)
12. Transcript p. 200. [↑](#footnote-ref-12)
13. Transcript p. 200. [↑](#footnote-ref-13)
14. Transcript p. 73. [↑](#footnote-ref-14)
15. Transcript p. 228. [↑](#footnote-ref-15)
16. Transcript p. 162. [↑](#footnote-ref-16)
17. Transcript p. 82. [↑](#footnote-ref-17)
18. Transcript p. 168. [↑](#footnote-ref-18)
19. Transcript p. 168. [↑](#footnote-ref-19)
20. Transcript p. 169. [↑](#footnote-ref-20)
21. Transcript p. 167. [↑](#footnote-ref-21)
22. Transcript p. 55. [↑](#footnote-ref-22)
23. Transcript p. 157. [↑](#footnote-ref-23)
24. Transcript p. 42. [↑](#footnote-ref-24)
25. Transcript p. 74. [↑](#footnote-ref-25)
26. Transcript p. 76. [↑](#footnote-ref-26)
27. Transcript p. 43. [↑](#footnote-ref-27)
28. Transcript p. 56. [↑](#footnote-ref-28)
29. Transcript p. 75. [↑](#footnote-ref-29)
30. Transcript p. 49. [↑](#footnote-ref-30)
31. Transcript p. 129. [↑](#footnote-ref-31)
32. Transcript p. 50. [↑](#footnote-ref-32)
33. Transcript p. 51. [↑](#footnote-ref-33)
34. Transcript p. 50. [↑](#footnote-ref-34)
35. Transcript p. 51. [↑](#footnote-ref-35)
36. Transcript p. 51. [↑](#footnote-ref-36)
37. Transcript p. 51. [↑](#footnote-ref-37)
38. Transcript p. 52. [↑](#footnote-ref-38)
39. Transcript p. 57. [↑](#footnote-ref-39)
40. Transcript p. 58. [↑](#footnote-ref-40)
41. Transcript p. 63. [↑](#footnote-ref-41)
42. Transcript p. 59. [↑](#footnote-ref-42)
43. Transcript p. 99. [↑](#footnote-ref-43)
44. Transcript p. 99. [↑](#footnote-ref-44)
45. Transcript p. 80. [↑](#footnote-ref-45)
46. Transcript p. 84. [↑](#footnote-ref-46)
47. Transcript p. 94. [↑](#footnote-ref-47)
48. Transcript p. 88. [↑](#footnote-ref-48)
49. Transcript p. 96. [↑](#footnote-ref-49)
50. Transcript p. 91. [↑](#footnote-ref-50)
51. Transcript p. 102. [↑](#footnote-ref-51)
52. Transcript p. 102. [↑](#footnote-ref-52)
53. Transcript p. 104. [↑](#footnote-ref-53)
54. Transcript p. 104. [↑](#footnote-ref-54)
55. Transcript p. 107. [↑](#footnote-ref-55)
56. Transcript p. 108. [↑](#footnote-ref-56)
57. LEA Exhibit 1. [↑](#footnote-ref-57)
58. LEA Exhibit 1. [↑](#footnote-ref-58)
59. Transcript p. 109. [↑](#footnote-ref-59)
60. Transcript p. 109. [↑](#footnote-ref-60)
61. LEA Exhibit 1. [↑](#footnote-ref-61)
62. Transcript p. 112. [↑](#footnote-ref-62)
63. Transcript p. 112. [↑](#footnote-ref-63)
64. Transcript p. 114. [↑](#footnote-ref-64)
65. Transcript p. 116. LEA Exhibit 9. [↑](#footnote-ref-65)
66. Transcript p. 189. [↑](#footnote-ref-66)
67. Transcript p. 125. [↑](#footnote-ref-67)
68. LEA Exhibit 9. [↑](#footnote-ref-68)
69. Transcript p. 191. [↑](#footnote-ref-69)
70. Transcript p. 120. [↑](#footnote-ref-70)
71. Transcript p. 121. [↑](#footnote-ref-71)
72. Transcript p. 122. [↑](#footnote-ref-72)
73. Transcript p. 125. [↑](#footnote-ref-73)
74. Transcript p. 130. [↑](#footnote-ref-74)
75. Transcript p. 147. [↑](#footnote-ref-75)
76. Transcript p. 134. [↑](#footnote-ref-76)
77. Transcript p. 135. [↑](#footnote-ref-77)
78. Transcript p. 138. [↑](#footnote-ref-78)
79. Transcript p. 136. [↑](#footnote-ref-79)
80. Transcript p. 139. [↑](#footnote-ref-80)
81. Transcript p. 132. [↑](#footnote-ref-81)
82. Transcript p. 133. [↑](#footnote-ref-82)
83. Transcript p. 140. [↑](#footnote-ref-83)
84. Transcript p. 133. [↑](#footnote-ref-84)
85. Transcript p. 133. [↑](#footnote-ref-85)
86. Transcript p. 152. [↑](#footnote-ref-86)
87. Transcript p. 147. [↑](#footnote-ref-87)
88. Transcript p. 235. [↑](#footnote-ref-88)
89. Transcript p. 234. [↑](#footnote-ref-89)
90. Transcript p. 236. [↑](#footnote-ref-90)
91. Transcript p. 237. [↑](#footnote-ref-91)
92. Transcript p. 239. [↑](#footnote-ref-92)
93. LEA Exhibit 3. [↑](#footnote-ref-93)
94. LEA Exhibit 3. [↑](#footnote-ref-94)