VIRGINIA DEPARTMENT OF EDUCATION

DIVISION OF INSTRUCTIONAL SUPPORT SERVICES

OFFICE OF DUE PROCESS AND COMPLAINTS

# DECISION

**School Division Name of Parents**

**Division Superintendent Name of Child**

John F. Cafferky, Esquire

Linda K. Stevens, Esquire Kandise Lucas, Advocate

**Counsel Representing PS Representing Parent/Child**

James M. Mansfield, Esquire

**Hearing Officer Party Initiating Hearing**

# PROCEEDINGS

Xxxx xxxxx and xxxxxx xxxxx (“Parents”) requested a Due Process Hearing on behalf of their son xxxxxxxxxx “xxxxxx” xxxxxxx (“Student”) alleging, *inter alia,* that County Public Schools (“ PS”) denied the Student a free appropriate public education (“FAPE”) pursuant to the Individuals with Disabilities Act (“IDEA”) 20 U.S.C. §1400 *et seq.* The Parents also requested reimbursement for expenses they incurred in their enrollment of the Student in a private school.

This Hearing Officer was appointed and a pre-hearing telephone conference was held with the Parties on March 30, 2018. At the conclusion of which a Due Process Hearing was scheduled for May 20, 30 and 31, 2018. The Hearing commenced as scheduled. Both Parties and their representatives and Counsel were present as reflected in the record. Opening Statements were made, testimony received and Exhibits presented and admitted into evidence. On the third day, despite their best efforts, neither Party was able to present all the evidence in their cases necessary for the Hearing Officer to properly evaluate the merits of the issues in dispute.

On Joint Motion of the Parties and finding it in the best interest of the Student to receive all the evidence necessary to make an informed decision, the Motion was Granted and the Hearing was recessed and continued to Saturday, June 2, 2018, commencing at 9:00 a.m.; Thursday, June 14, commencing at 9:00 a.m. and Friday, June 15, 2018 commencing at 8:00 a.m.

At the conclusion of the Hearing the Parties again requested an extension of time to submit written closing arguments. Given that there were six days of testimony (with transcripts not yet available), some 125 Exhibits and hundreds of pages of correspondence and supporting documents, and again finding it in the Student’s best interest to have the issues fully briefed and the transcripts reviewed, a second continuance was granted.

Subsequently, the Parties each submitted their closing arguments totaling fifty-seven written pages of arguments, containing over forty-eight case citations, together with numerous statutory and regulatory citations, outlining their respective positions. The case was taken under advisement for consideration of the same.

# ISSUES PRESENTED

1. Was the Student denied a FAPE during the 2017-2018 academic year in that PS did not adequately provide a proper placement or services that would enable the Student to make any meaningful academic progress?
2. As a result of these alleged violations, is the Student entitled to placement in the private school where he is presently enrolled?
3. As a result of these alleged violations, are the Parents entitled to reimbursement for the expenses incurred in the Student’s private placement, as well as other expenses the Parents incurred as a result of PS’s alleged denial of a FAPE?

# FINDINGS OF FACT

The Student is seventeen years old currently attending xxxxxxxx Academy (“xxxxx”). The Student was found eligible for special education in 2011 and again in 2014 based on Other Health Impairment (“OHI”), Attention Deficit Hyperactivity Disorder (“ADHD”), and Celiac disease. During the 2015-2016 academic year the Student attended eighth grade at xxxxxxx Middle School (“xxxxx”) where he received special education services. In January 2016 the Student stopped attending xxxxx for medical reasons and PS offered the Student home-based services. The Student was unable to take advantage of the home-based or homebound instruction and repeated eighth grade the following academic year.

Dr. xxxxx xxxxxxxxx, an expert for the Parents, in a document titled Reported of the Student’s Neuropsychological Evaluation, which was based on his review of the Student’s medical records, confirmed the Student’s diagnosis of celiac disease; chronic asthma; allergies; chronic fatigue; chronic pain; a sleep disorder; chronic gastrointestinal difficulties; and a diagnosis of Postural Orthostatic Tachcardia Syndrome (“POTS”). Parents’ Exhibit No. 9. In the summer of 2016 the Student successfully participated in the Pediatric Pain Rehabilitation Center (“PPRC”) program at the Mayo Clinic in Rochester, Minnesota.

The PPRC is an intensive 3-week out-patient program providing multidisciplinary

rehabilitative therapy to adolescents with chronic pain/symptoms and their

families. The primary goal of the PPRC is to improve quality of life and facilitate

a return to regular daily activities for adolescents experiencing chronic pain.

Functional goals are the priority of the rehabilitation program and include return

to school….

Parents’ Exhibit No. 10.

In the fall of 2016 the Student returned to xxxxx to repeat eighth grade. He participated in self-contained special education classes in math, English and science; a one-on-one special education Strategies for Success class; an Honors-level Civics class; and a regular Physical Education class. PS Exhibit No. 43. For the first quarter he received A’s in all his courses except he received a C- in Honors Civics and a D+ in math. PS Exhibit No. 50. PS maintains that these grades, together with the testimony of the Student’s teachers clearly demonstrate that during the fall of 2016 the Student was progressing and receiving an educational benefit.

In the fall of 2016 PS received a Psychological Evaluation; a Report of Educational Evaluation; a Speech and Language Evaluation Report; a Sociocultural Assessment Reevaluation; an Occupational Therapy Evaluation Report; and a Physical Therapy Report. Parents’ Exhibits Nos 3 – 9, PS additionally sought updated evaluations of the Student, including a complete psychological evaluation, as well as a pragmatic language assessment because a complete psychological evaluation had not been conducted since 2011. PS Exhibit No. 50. The Parents declined to permit a psychological clinical interview and a pragmatic assessment of the Student, maintaining that they would be detrimental to his health.

In November 2016 the Student stopped attending school entirely. Dr. later reported that the Student was catatonic, nonfunctional, and in imminent need of hospitalization. PS Exhibit No. 71. There was no evidence introduced that the Student was ever hospitalized. PS requests for evaluations were refused as were PS offers to provide home instruction or have the Student participate in any school based program. *Id.*

Based on the available information on the Student, an Eligibility Meeting was conducted on January 23, 2017, at the conclusion of which the Student was found to continue to be eligible as a student with an Other Health Impairment and also newly eligible in the areas of Autism, Special Learning Disability and Multiple Disabilities. PS Exhibit Nos. 69 and 70. An IEP Meeting was convened on February 28, 2017. PS Exhibit No. 71. The IEP Team considered placement at High School

(“ ”), the Student’s base school; High School Comprehensive Services Site (“ ”) School (“ “); and offered the option of providing education services should the Student attend a non-educational, medical facility. The Team three times requested the Parents authorize an updated psychological evaluation and interview and a pragmatic and a language speech evaluation in order to assist them with an appropriate placement for the Student. *Id.* The Parents and Advocate requested a therapeutic residential program for the Student. The Parents proposed several residential programs they believed would meet the Student’s needs. However, the Team determined at the time, they did not have enough information to recommend a residential placement. The Team ultimately proposed as the least restrictive appropriate placement for the Student. *Id.* The Parents disagreed and did not sign the IEP.

On June 6, 2017 PS convened another IEP meeting. The Parents did not attend but requested that the meeting take place without their participation. Again the Team considered the three schools that were considered at the February 28, 2017 IEP meeting. The Team determined that both

and were too large to meet the Student’s needs and again proposed to be the appropriate placement that would meet the Student’s social, emotional and academic needs. PS Exhibit No. 73.

At the Parents’ request the IEP Team met again on November 16, 2017. PS Exhibit 78. Both parents were in attendance. Dr. was also in attendance (signing the IEP for “attendance only noted”). A letter dated November 13, 2017 that he authored was considered by the Team. Dr.

Opined that, based on the Student’s overall neuropsychological profile, he was nonfunctional and in a psychotic state of anhedonic/catatonic depression. The Doctor further opined that “[t]here is absolutely and unequivocally no possibility for [the Student] to attend school at this time as he needs a therapeutic residential treatment program.” PS Exhibit No. 77. The Parents’ and their Advocates’ position was that the Student required a therapeutic residential program for students with Autism who require intensive language intervention. PS Exhibit 78. PS renewed its offer that, if the Student were to be admitted for medical treatment in a non-educational placement, the school system would provide educational services while the Student stabilizes and then propose IEP services after receipt of updated information. *Id.* After considering all of the available information, PS proposed a three month “non-stay put” trial placement in residential placement for treatment, assessment and educational planning. *Id.*

The Parents signed a qualified consent to the November 16th proposed IEP, recommending placement at the School (“ “) in Connecticut. *Id.* The Parents applied to enroll the Student at ,, but PS received an email dated January 18, 2018 from stating: “We have done a significant amount of due diligence on this case and feel that at this point in time we are not the right fit for [the Student]. We would be willing to reconsider this case after we can see some success in a day placement that is best suited to meet [the Student’s] needs.” PS Exhibit No. 88. In response to ‘s decision, PS unsuccessfully sought Parental permission to seek other residential placements for the Student consistent with the November 16th IEP. Tr. 1132.

It appears that after receiving ‘s decision the Parents applied to the Academy,

Campus (“ “). has forty-five schools across the country (five in the D.C. metropolitan area) and has been in existence for twenty years. Tr. 1371 and 1374. Its mission is to provide a one-on-one learning environment in an academic setting. *Id.* is not licenses or certified with the state as a special education provider. Tr. 1411. At the campus, the majority of ‘s approximately sixty-five students are full-time, but they also accept part-time students for tutoring services, test preparation, college counseling and related services. Tr. 1373. The students range from sixth through twelfth grade with ninety percent being high school age. T. 1414. None of the students have been placed at by their local school divisions and does not implement IEPs. Tr. 14115 and 1416. Nevertheless, is a fully accredited private school that follows Virginia’s requirements and can issue standard diplomas. Tr. 1375.

On January 26, 2018 the Parents emailed , head of , stating:

We are very excited to get [the Student] started next week at the School.

County needs a letter of acceptance and any other pertinent information you can

provide ASAP. As discussed our goal is to start [the Student] slowly, part-time for a few weeks, and then gradually increase the time he attends until he is attending full time. Our

ultimate goal is to get [the Student] into the School. Dr. believes

this will be proved [sic] the full therapeutic support he needs.

Tr. 1382 and PS Exhibit No. 92.

On January 30, 2018 the Parents signed a Tutoring and Mentoring Contract and Payment Agreement with xxxxxxx. *Id.* and Parents’ Exhibit No. 17. Prior to making these contractual commitments with , no notice was given to PS nor had the Parents ever proposed as a potential placement at any IEP meeting. 6/29/18 Tr. 6/29/18 263 and PS Exhibit No. 92.

By letter dated February 14, 2018, in response to the Parents’ request, PS responded with proposed dates for an IEP meeting and requested updated assessments be conducted, to include an observation of the Student. PS Exhibit No. 89; Parents’ Exhibit No. 19. By Prior Written Notice dated March 6, 2018, the Parents were advised that at the conclusion of an Addendum meeting the IEP Team:

[P]roposed 28 hours a week of Autism services in a special educational setting with 2

hours a month of physical therapy (PT), 2 hours a month of occupational therapy (OT),

and 2 hours a month on speech and language services in a special education setting to

be provided at a private day level of service. The PS members of the IEP Team’

proposed the , School, and School as potential ‘locations for

the placement, if parental consent is obtained to seek application’.

PS Exhibit No. 82.

The consensus of the PS members of the IEP Team was that the Student required a private day level of service, which is the least restrictive placement that would meet his needs. *Id.* A private day school would also offer the Student the programming with a curriculum that would permit the Student to work toward s graduation with a high school diploma. Tr. 1139.

The Parents were concerned that the private school placements were too far from the Student’s home, as he becomes sick on extended travels. The Parents reported that the Student was currently attending two hours a day, three times a week, Tuesday, Wednesday and Fridays, working on mathematics and English in a one-on-one setting. The goal for the Student is to increase his attendance

at with the hope that, as his stamina increases, he would have more time at school which would also afford him time to interact with his peers. The Parents reported that is working for the Student and that he is making progress. The PS members of the IEP Team did not believe can meet the Student’s social, emotional and academic needs, as is not a special education placement and does not implement IEPs. PS Exhibit 82.

By letter dated March 23, 2018, received by PS March 26, 2018 the Parents requested a Due Process hearing alleging that PS denied the Student a FAPE. Parents’ Exhibit No. 1. The Parents declined Mediation. *Id*. Pursuant to 8 VAC 20-81-210 Q [20 U.S.C. § 1415 (f) (l) (B)] a Resolution meeting was scheduled and held on April 6, 2018. At the meeting PS recommended placement at Road, a school which had been considered as a potential placement for the Student at prior IEP meetings.

Mr. , Principal of , testified he had twenty years experience in special education, with a Masters Degree in education and human development. After being questioned about his credentials and experience, he was received without objection as an expert in the field of special education. Tr.678 and PS No. 84J. He testified that is a public day school located in

that provides services for students who cannot successfully manage their education in the generalized setting of their base school or in a comprehensive service site located within another school that is in the middle of the least restrictive continuum. is the most restrictive school in the public setting. Tr. 678. There are approximately ninety to one hundred students at with students starting in ninth grade. Tr. 675. The school is a comprehensive site serving students with almost every single eligibility designation to include other health impairment, emotional disability, learning disability, physical impairment, and students with multiple disabilities. Approximately twelve percent of the student population have a designation of Autism, either primary or secondary. Tr. 676. Almost all the teachers at

are certified in special education. Tr. 6802 and 681. There is also a clinical staff comprised of two full-time psychologists and two full-time school-based social workers. Tr. 682. The curriculum at

allows students to earn a standard Virginia high school diploma, offering courses at all four levels of English; four levels of math including pre-algebra, algebra, and algebra 2, four sciences including an AP environmental science course, four social studies, as well as electives. Tr. 684. The school has a “blended learning model” that does not negatively enforce attendance.

In addition to Mr. , PS called six other witnesses:

, Ph.D., Director, Office of Special Education Procedural Support for PS, with thirty four years of special education experience and qualified as an expert in special education. Tr. 1337, 1345 and PS Exhibit No. 84H.

, Psy.D., PS School Psychologist with ten years experience as a school psychologist and qualified, without objection, as an expert in the field of school psychology. Tr. 855, 861, 862 and PS Exhibit No. 93.

, Program Manager, School Psychology Services for PS. She testified that she has approximately twenty-eight years of experience in the field of school psychology and she qualified as an expert witness in that field without objection. Tr. 924, 928 and PS Exhibit N. 84D.

, Manager, Children’s Services Act, Office of Special Education Procedural Support for PS, with ten years experience in special education. He was qualified as an expert witness in special education. Tr. 1099, 1100, 1104, 1105, 1106 and PS Exhibit 84A.

, Department Chair, Special Education Middle School, and Special Education Teacher, qualified as an expert witness in the field of special education. PS Exhibit No. 84K.

, Coordinator, Due Process and Eligibility, Office of Special Education Procedural Support. She testified that she has approximately nineteen years experience in special education and she was received as an expert witness in that field without objection. Tr. 5, 7, 9 and PS Exhibit N. 84F.

The Parents called , Ph.D. He testified concerning his credentials and reported that he did not hold a medical degree, that he had never served as a school psychologist, and that he never worked in a school. He testified that he estimated that he had served on a couple of hundred IEP Teams. He was received, without objection, as an expert in the fields of Autism and school psychology. Tr. 27, 28, 29, 31 and Parents’ Exhibit 26. His testimony was consistent with his Reports o Neuropsychological Evaluation of the Student. Parents’ Exhibit No. 9.

Dr. was also called as a witness for the Parents. She testified about her credentials and her Curriculum Vita was received into evidence. She testified that she has testified in approximately twenty due process hearings. She participated in the March 6, 2018 IEP meeting as well as Resolution. Her opinion was that PS had predetermined that was the appropriate placement for the Student. She further opined that was an appropriate placement in part because the 28 hours a week of instruction under the proposed IEP was too ambitious for the Student at the present time. 6/29//18 Tr. 297, 304, 332 and Parents’ Exhibit No. 27.

Ms. , the only representative from called as a witness, testified that she is “the head of school, which is equivalent to the principal” responsible for, *inter alia*, overall school academics, school profitability and that she participates in the schools admission process. Tr. 1370 and 1372. She testified that she holds a Bachelor of Science Degree in the areas child development and human ecology with a minor in Psychology; that she has fifteen years experience in the financial industry; and that she became involved in education administration seven years ago. Tr. 1370, 1371, 1382 and Tr. 1386. However, she also testified she has never served as a full-time special education teacher, nor as a regular education teacher and that she was not certified or endorsed as either a regular or a special education teacher. Tr. 1382. After voir dire by PS’s counsel, Ms. was received as an expert in school administration, but not as an expert in special education. Tr. 1388. She testified that at the Student engaged in tutoring sessions that would not support the goal of obtaining a standard high school diploma. Tr. 1392 and 1393. She testified that the Student was going to school about eight hours a week and that is providing services to ultimately enable him to take actual courses for academic credit and to be able to do independent homework. Tr. 1394 and 1395.

, a self described “surrogate grandfather” who came in contact with the

Through an ad he placed on Craig’s List. 6/29/2018 Tr. 110 and 124. He testified he has been working with the Student for a little over a year to “basically draw him out of his room, re-socialize him.” He will pick the Student up from and go to gym to workout with him. He testified that since attending , the Student’s attitude towards school has improved, that he is at a delicate stage in his development, and that he does not believe the Student is capable of attending the hours of instruction proposed by PS. While he was a member of the March 6, 2018 IEP Team, he has no credentials in special education, psychology or physical therapy. His background is in Economics. 6/29/2018 Tr. 110 – 137.

The Student appeared briefly at the Hearing to respond to the Advocate’s questions. However, based on his reported health conditions, PS was not afforded the opportunity to cross-exam him. The Student stated that he likes going to , and that he was learning there, unlike . His answers to his Advocate’s and the Hearing Officer’s questions were responsive and he understood the nature of the proceeding concerned his school placement. He clearly wants to stay at and definitely does not want to attend . 6/29/18 Tr. 117 -187. He appeared to be a pleasant well-mannered young man.

The Student’s father testified concerning his son’s medical conditions, his personality, and his academic experiences while attending school in PS. Tr. 188-196. He testified that he stopped working in order to take care of his son. While the Student is improving, he believes to be a temporary placement and plans to reapply for enrollment at . At the conclusion of the evidence, the Student’s mother read a brief statement into the record. 6/29/2018 Tr. 423 – 442.

# CONCLUSION OF LAW

First, finding the Parents’ Request for Due Process sufficient, PS’s motion to Dismiss is overruled. Second, the Parents, as the initiating party of this administrative Due Process Hearing, have the burden of proof on all issues presented. *Schaffer ex rel. v. Weast,* 546 U.S. 49, 126 S.Ct. 528 (2005). The Parents must carry this burden by a preponderance of the evidence. *County School Board of Enrico County v. UP.,*  399 F.3d 298 (4th Cir. 2005).

The seminal case establishing the standard to be applied in evaluating whether a student has received a FAPE under IDEA is *Board of Eudcation v. Riley,* 458 U.S. 176, 102 S.Ct. 3034 (1982). There the Court held that a student’s right to a FAPE is denied if the IEP for the student is not reasonably calculated to enable the student to receive an educational benefit. *Id.* This standard has been applied for decades by the Fourth Circuit in evaluating whether a student has received a FAPE under IDEA. *O.S. v. Fairfax County Public Schools,* 804 F.3d. 354 (2015). In that case the Court defined an educational benefit to mean a benefit that is more than minimal or trivial, from special instruction and services. *Id.*

More recently, citing *Riley* extensively, the Supreme Court in the case of *Endrew F. Ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1,* 137 S.Ct. 988 (2017) the Court reaffirmed and elaborated on the holding in *Riley.* First, the Court noted that *Riley* declined to establish any one test for determining the adequacy of educational benefits conferred on all students under the IDEA. *Id.* The Court stated that “[to meet its substantive obligation under IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Id.* The development of an IEP is prospective in nature and the question presented when evaluating an IEP is not whether it is ideal, but whether it is reasonable. The Court concluded that the IDEA requires that an IEP must be developed to enable a student to make more than “some progress.” “The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Id.* While appropriate progress in light of the child’s circumstances is the touchstone in determining whether an IEP provides a FAPE, placement in the least restrictive environment is also a requirement of IDEA. *Board of Education v. Riley,* 458 U.S. 176, 102 S.Ct. 3034 (1982), *see also Series v. Fairfax County School Board., 882 F.2d 876 (4th Cir. 1989); Doyle v. Arlington County School Board.* 806 F. Supp. 253 (E.D. Va. 1992), *aff’d* 39 F.3d 1176 (4th Cir. 1994).

A school system may be responsible for reimbursement for a unilateral private placement of a student in an educational program if the school district failed to provide a FAPE and the unilateral placement is appropriate. *See Burlington School Comm. V. Mass. Dept. of Ed.,* 471 U.S. 359 (1985).

Moreover, 8 VAAC 20-150 B. 1. (20 U.S.C. § 1412 (10) (i)) specifically provides:

Local school divisions are not required to pay for the cost of education, including special

education and related services, of a child with a disability at a private school or facility if

the local school division made a free appropriate public educational available to the child

and the parent(s) elected to place the child in a private school or facility.

Additionally, 8 VAC 20 150 B. 3. (20 U.S.C. § 1412 (10) (C) (ii)) provides:

If the parent(s) of a child with a disability, who previously received special education and

related services under the authority of a local school division, enrolls the child in a

private preschool, elementary, middle, or secondary school without the consent of or

referral by the local school division, a court or a special education hearing officer may

require the local school division to reimburse the parent(s) for the cost of that

enrollment if the court or the special education hearing officer finds that the local school

division had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate.

A parental placement may be found to be appropriate by a special education hearing officer or a court even if it does not meet the standards of the Virginia Department of

Education that apply to education provided by the Virginia Department of Education

and provided by the local school division.

8 VAC 20-81-150 B. 4. (20 U.S.C. § 1412 (10) (C) (iii)) provides:

The cost of reimbursement described in this section [20 VAC 20-150] may be reduced or

denied:

1. If: (1) At the most recent IEP meeting that the parent(s) attended prior to

removal of the child from the public school, the parent(s) did not inform the IEP

team that they were rejecting the placement proposed by the local school

division to provide a free appropriate public education to their child, including

stating their concerns and their intent to enroll their child in a private day school

at public expense; or (2) At least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parent(s) did not give written notice to the local school of the information described above; b. If, prior to the parent(s) removal of the child from the public school, the local school division informed the parent(s), through proper notice of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent(s) did not make the child available for the evaluation; or c. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

8 VAC 20-81-150 B. 5. (20 U.S.C. § 1412 (10) (C) (iv)) provides that “[n]otwithstanding the above notice requirement [8 VAC – 81 – 150 B.4.], the cost of reimbursement may not be reduced or denied for the parent’s(s’) failure to provide notice to the local school division if . . . [c]ompliance with this section would likely result in physical or serious emotional harm to the child.”

Finally, as previously cited, under *Schaffer,*  the Parents have the burden of proof on all issues presented. And in evaluating the evidence presented "“DEA requires great deference to the views of the school system rather than those of even the most well-meaning parents.” *A.B. v. Lawson,* 354 F.3d 315 (4th Cir. 2004). That deference be given to local educators in determining the appropriateness of individual education program for a disabled child based on their expertise and the exercise of their judgment was acknowledged in *Endrew F. v. Douglas.* The Court stated IDEA “vests [school] officials with responsibility for decisions of critical importance to the life of a disabled child.” *Id.*

# DECISION

The Parents obviously wants to provide their child the best education services available to compensate him for identified learning disabilities and related health issues. However, providing the best, ideal education is not the obligation or standard imposed on PS by statute and case law. While the Student enjoys attending , as it gets him out of the house, he is learning, and he has demonstrated improvements socially, he is enrolled in a tutorial program, not earning any academic credit towards obtaining a high school diploma and he is not receiving any physical or therapeutic services. He has limited or no contact with his peers.

Conversely, PS’s evidence clearly and unequivocally established that the Student’s proposed IEPs in question, as well as proposed placement offer at the Resolution Meeting, were reasonably calculated, based on the information available to the IEP Team, to enable a Student to make progress appropriate in light of the his’s circumstances. PS offered six alternative placements, one of which, unfortunately, declined to enroll the Student. Moreover, PS’s seven witnesses all qualified as experts in the areas related to the development and delivery of special education and related services, were credible and consistently testified the proposed placements PS offered would provide the Student with a FAPE. They also testified that , as described to them, was not able to deliver the special education and related services that the Student requires in order to make appropriate progress in light of the Student’s circumstances. The Parents’ experts had little or no experience in delivering special education and related services that could overcome the testimony of PS’s expert opinions.

Therefore, after careful consideration of all the pleadings, correspondence, testimony of the witness and exhibits introduced in this matter and applying the law as it has been developed and applies to this case, the Parents did not meet the burden of establishing by a preponderance of the evidence that PS failed to provide the Student with a FAPE. Further, the evidence presented did not establish that the Student’s unilateral private placement was “appropriate.”

Based on these findings it is unnecessary to rule on the adequacy of IDEA’s notice requirement for a unilateral placement of the Student by his Parents and on the issues of whether the Parents’ cooperated with PS’s request for additional evaluations and observation of the Student.

Accordingly, the Parents’ request for reimbursement for the expenses incurred in their unilateral private placement of the Student, as well as other related expenses, is denied. PS is the prevailing party in this matter.

# APPEAL NOTICE

This Decision is final and binding unless it is appealed by a party in a state circuit court within one hundred eighty (180) days of the date issued, or in a federal district court within ninety (90) days of the date of issuance.

James M. Mansfield November 13, 2018

Signature Hearing Officer Date

# CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a copy of the foregoing Decision was sent *via* email and first-class mail on this 13th day of November 2018 to:

Kandise Lucas

Advocates for Equity in Schools

1805 Monument Avenue, Suite 314

Richmond, Virginia 23220

John F. Cafferky, Esq.

Lindy K. Stevens, Esq,

4020 University Drive, Suite 300

Fairfax, Virginia 22030

Patricia Haymes

Director, Dispute Resolution and

Administrative Services

Virginia Department of Education

Office of Dispute Resolution and Administrative Services

PO Box 2120

Richmond, Virginia 23218

James M. Mansfield