VIRGINIA I.

# VIRGINIA DEPARTMENT OF EDUCATION

# SPECIAL EDUCATION DUE PROCESS PROCEEDING

&

Parents Student

v.

Public Schools

, Virginia

School

# DECISION

# I

# NATURE OF THIS CASE

(“Student”), now years old, is a resident of , Virginia. His home high school is High School. Prior to moving to Virginia from in December 2016, Student was diagnosed as a child with a Schizoaffective Disorder depressant style and Emotional Disorder (ED) and, therefore, found entitled to the protection and rights conferred by the Individuals with Disabilities Education Act. 20 U.S.C. Sec. 1400 et seq. (IDEA).

There is no dispute that Student has an IQ in the average range of a student of his age, or that he possesses superior (93%) math skills. Nor is it in doubt that when interested and engaged he can learn. In this regard, he wishes to attend college and looks forward to a career based upon his math skills. A basic problem according to the Children’s Hospital’s psychiatrists (part of the Medical School) is Student’s school avoidance syndrome.

The parties differ as to the solution of this problem. While the Parents agree that Student is entitled to Special Education Services, and further agree that at this time Student should be educated in a non-public high school, they disagree as to the specific private school to be selected and the individual education plan to be employed.

Parents unilaterally placed Student at the ( ), a private school located in County in March 2018. Parents, in this proceeding, seek reimbursement for their expenditures for tuition expenses for Student’s education at . Public Schools ( PS) denies any liability.

In order to recover their costs, Parents must: 1) Establish that the Individual Education Plan (IEP) proposed by PS is not reasonably calculated to allow Student to make appropriate educational progress in light of his disability. Endrew v. Douglas County School District, 137 S.Ct. 988 (2017); and 2) That can supply Student with an appropriate education. Burlington v. Dept. of Education of Mass., 105 S.Ct. 1996(1985) Equitable factors may be taken into consideration. Burlington,supra.

# II

# PRIOR ADMINISTRATIVE PROCEEDINGS

Parents filed a Due Process Request herein on June 18, 2018. The undersigned was appointed to hear this case on June 18, 2018. Parents were granted leave to file an Amended Request which was filed on July 17, 2018. PS answered and the case was set for trial on September 10, 11, and 12, 2018. Parents requested a later date for trial due to witness unavailability. Trial was set for October 1, 2018.

Trial began on October 1, 2018, and continued through October 2 and 3 when it was suspended due to counsels’ conflicts. Trial was set to resume on October 29, 2018. However, on October 22, 2018, Parents filed a Motion to Withdraw their Request, seeking a dismissal without prejudice. School objected and a hearing on their motion was held on October 29, 2018 at which time Parents withdrew their Motion to Withdraw. Trial on the merits was set to resume and did resume on November 9, 2018 when all testimony was completed. Briefs containing closing arguments were set to be filed, and were filed on December 5, 2018.

# (III)

# FACTS

# Student’s History Prior to His Move to Virginia

Student was born on , 2000 to and (Parents). He has a younger sister and brother. Student turned 18 on , 2018.

Student’s early history reveals that he was a personable child with an appealing and cheerful disposition and a genuine desire to learn. He was socially popular among his peers and had many friends. There is no record of early health problems. (Tr. 308).

On 2013, he took the Kaufman Educational Achievement Test. It revealed that his reading skills and math skills were superior and his writing skills were above average. (S1-001, S4-001).

In July 2013, Student and his family moved to School District, ,

( S). The Registration Form (undated) showed that Student had no health issues, and was transferring from Montessori School in , . Student was entering the 7th grade at S (S2-001).

Student’s health history indicates that, as early as March, 2015, Student began to complain of migraine headaches. (S5-002-3). On October 14, 2014, Student suffered a concussion due to a football injury (Tr. 483), and his mental health began to decline. (S8-001). He became very depressed and suffered from extreme anxiety. (S8-001); and, he was unable to attend school. (S7, 8-001, 11-001).

Student on November 18, 2014, was evaluated by the Children’s Hospital (allied with the Medical School) (S8-001), and various educational accommodations were recommended (S8-001). At this time it was believed that Student’s symptoms and inability to access schooling were due to his earlier concussion. (S8-001).

A Section 504 plan was prepared in 2015, consented to, but never implemented due to Student’s inability to attend school. (S19-002).

As a result of numerous discussions between Parents and S, it was decided to have Student further evaluated. (S19-001 et seq.). As shown by the psychological report of S of November 28, 2018, Student was diagnosed as suffering from anxiety and depression. (S19-002). The medications being then prescribed, however, were not working well. (S19-002).

The aforesaid report also noted that although Student did not exhibit any obvious emotional distress while attending school, there were significant concerns showing up at home, namely a severe fear of attending school – fear that he would be ill-perceived by his teachers and fellow students and fear of making mistakes. He displayed quick mood changes, self-depreciation, suicidal statements, as well as symptoms of distress, such as headaches, pain, and general health complaints. (S19-004).

On December 8, 2015, Student’s team at S met in order to ascertain Student’s eligibility for protection under IDEA. (S20-002). Parents reported that it was now suspected that Student was suffering from a Schizoaffective Disorder. (S20-002)

In the beginning of 2016, Student was classified as a student with emotional disabilities under IDEA (S20-002), and an IEP meeting was held on January 4, 2016. (S22-001 et seq.). On February 12, 2016, Student’s S IEP team met; (S25-001 et seq.). Student’s mother stated that his psychiatric team believed that Student would be best educated in a therapeutic setting with other students that are college bound. S and Parents discussed various possible placements for either part time or limited schooling, with various private schools being considered. (S25-002). Student’s socialization was again a major objective. (S25-002-3).

Student’s S IEP team met again on March 16, 2016 with study skills, short home tutoring, day placements, and potential private schools being extensively considered (S27-007-4). The Academy was visited. (S29-001).

The S IEP team set three goals for Student: (1) Social-behavioral; (2) School participation; and (3) Academic. The team could not comment on goal 1 due to lack of daily attendance by Student. As to goal 2, Student was making no progress towards school participation due to lack of school attendance; and as to goal 3, Student made little or no progress on his independent homework. (S31-001).

Student’s mental health experts in April and June again reported Student’s school avoidance, and the need to help Student return to a traditional classroom environment, stressing the need for tutoring to aid on this transition. (See P35-001).

At the next S IEP meeting on June 15, 2016, Student was offered tutoring throughout the summer of 2016. Parents wanted an incremental growth plan during the summer; S continued to address the need to find an appropriate placement after the summer. Some minor changes were made in Student’s IEP. (S 37-2002).

Student’s S IEP team met again on August 23, 2016 to discuss Student’s summer progress – which was minimal. (S40-002). Turning to the future, S suggested home schooling – which Student and Parents did not want. (S40-002). And, once again, no real progress was made. (S40-002). The S IEP team met again on September 6, 2016, but again little progress was made due to lack of needed information. On September 9, 2016, the IEP team again met in order to discuss Student’s plan and classes for the fall term for 2016. A transfer to another public high school was offered and rejected by Parents. Private placement was again discussed. (S43-002). Student continued to be absent from school. (S45-001), and no resolution of the differences between S and Parents (and Student) was reached.

Student’s education in during the end of 2015 and virtually all of 2016 is best characterized as ineffective. He was repeatedly hospitalized. Attempts to educate him while hospitalized were failures, and an agreed upon placement was never realized. As a result, Student received little education, with S and Parents left as totally frustrated.

Finally, on October 22, 2016, Parents and S entered into a formal agreement pursuant to which Parents received various reimbursement payments and S was relieved of any further liability. Student’s status as entitled to protection under IDEA was ended. (S46).

Shortly, after the agreement was signed, namely in December 2016, Student and his family moved to County, Virginia, so his mother could take a new job in Washington, D.C. See Tr. 301-334 for mother’s narrative, which verified Student’s history at S. Student was registered as a high school student in the PS system on January 19, 2017 with High School designated as his base school (S49).

Originally, it was believed by PS that Student’s transfer to the PS system from S was a simple transfer with no change in Student’s classification, namely as entitled to the protection of IDEA as emotionally handicapped. (S52-001). When PS learned that the Parents’ agreement with S also included Student’s termination under IDEA, PS advised Parents that PS had to begin anew the formal process of determining whether Student was covered by IDEA. (S52-005).

On February 10, 2017, PS’s IEP team met with Parents. The primary purpose of this meeting was to obtain Parents’ consent to PS’s requests for detailed educational, sociocultural, and psychological reports on Student. (See S55). Further, Student, as an interim placement, was authorized to receive homebound instruction. (Tr. 591, 593).

Student’s homebound instruction included the core subjects of Math, Science, English, and Social Studies. (S 70-001). The instruction was in a library and paralleled the normal scholastic instruction given in high school.

Student’s homebound teachers reported that he was self motivated to learn and complete his work. (S103-001-002; Tr. 490; 600-01). He earned final grades of a B- in Geometry and an A in World History, respectively) and displayed a positive attitude during his one-to-one homebound sessions. (*Id*; S72-001). Student’s participation in transition planning reflected his desire to attend a four-year college to study math and science and attain a career at a research company that specializes in theoretical math and physics, an aspiration that ‘s mother confirmed he still has. (Ex. S-94-018; Tr. 411).

After completing its reevaluations of Student on May 11 and 23 (S67, 69). PS found him eligible for special education services as a student with an Emotional Disability (S66-001). Psychological testing indicated a Full Scale IQ of 106, superior verbal comprehension and reasoning abilities, superior math skills, average nonverbal perceptual, fluid reasoning abilities, strong auditory and working memory abilities, and below average processing speed. (Ex. S-64-006). Psychological testing also suggested that Student may have some difficulty establishing and maintaining close and lasting relationships with others and that he might lack adequate resources with which to cope with everyday demands. (Ex. S-64-004 through 005; Ex. S-66-004; TR. 899-900). Educational testing indicated overall average to above average achievement across all areas of reading, written language, and math. (Ex. S-66-004).

The IEP team determined that Student required clear, explicit expectations with simplified tasks. PS’s psychologist recommended small group discussions outside class to bolster Student’s coping skills; and further recommended modeling appropriate communication and expressions of emotion to address Student’s needs. (Ex. S-64-005).

On June 5, 2017, Parents executed a Contract Referral Form, requesting Multi-Agency Services (“MAS”) for Student (S-73-001). On June 22, 2017, the IEP team met with representatives from MAS present. MAS has expertise in private school placements. (Ex. S-74-009 through 011). The IEP team also discussed other services available to Student. (See e.g. S74).

Student’s IEP team reconvened on August 30, 2017 in order to designate a specific placement for Student for the 2017-2018 school year. (S75-013). During that IEP meeting PS and Parents agreed that due to Student’s emotional and behavioral needs, and his resistance to attending a public school, a private day school which provided explicit instruction in the identified areas of need (social, emotional, and executive functioning) would be the most appropriate and least restrictive placement. (S 76-010).

The PS members of the IEP team stressed that the private day school should be small and should have a small student-teacher ratio. PS believed that Student needs special education teachers who are specially trained and experienced in order to support Student’s social and/or emotional needs, while implementing specialized academic instruction. (S76).

PS’s view is consistent with the recommendations of Student’s treating physicians at Children’s Hospital which had been working with Student to take responsibility for his actions and build acceptance for his mental health needs (Ex. S-76-010). Specifically, the IEP team proposed private school placements at either the School or School (later merged into ). (Ev. S76-023). As a result of the August 30, 2017 IEP meeting, , PS Multi-Agency Services Educational Support Liaison, suggested that Student attend . (S78-001). On September 19, 2017, offered to enroll Student. (S80-001). In this regard, Parents then agreed with the proposed IEP. (Ex. S76-026).

Is a private day school which educates special education students (See e.g. Tr 796). is accredited by the Virginia Department of Education. (Tr. 790-791; Ex.S-102). provides its students with the opportunity to receive credit towards a standard diploma issued by the school. (Tr. 792).

As Principal and Director explained, has extensive experience with students who have mental health concerns, including others diagnosed with the Schizoaffective Disorder (Tr. 870-71). While helps its students overcome mental barriers that may be preventing them from learning, it does not offer or provide clinical therapy. (Tr. 814, 836-37); Nor it is a clinical facility. (Tr. 841).

Serves students in Grades 7-12 (as well as a few post-grads), and its enrollment averages approximately 32 students at any given time. (Tr. 792-93). currently has a staff of seven certified, special education educators who teach class sizes between three-to-eight students in a classroom environment - does not use instructional aides in its classrooms.

At , students begin their academic day in a homeroom where they meet with their IEP case management team for approximately 15 minutes to check-in and “get a barometer of the student.” And then they proceed to attend structured hour-long class periods for core academics and forty-five minutes course for their electives.

does not subject its students to pre-recorded lectures, but rather provides students with access to teachers who can interest them in their instruction. (Tr. 837). In short, ‘s experienced teachers adjust their instruction to the student’s cognitive ability. (Tr. 820). At the same time, it offers students the opportunity to learn and engage with like-aged peers.

In late April 2017, Dr. , a certified child psychiatrist, first met Student. (Tr. 76). In June 2016, she was able to confirm that Student had a severe form of Schizoaffective Disorder depressed type (Tr. 32, 53) along with a generalized anxiety disorder. (Tr. 33).

Dr. testified that there were five components to the disorder, namely 1) delusions 2) hallucinations 3) disorganized thought process 4) disorganized speech, and 5) disorganized motor behavior. (Tr. 34-35). Student had all of these symptoms which are caused by a chemical imbalance in the brain. This imbalance is treated by medications. (Tr. 52).

Dr. ‘s opinion as to how Student’s Schizoaffective Disorder impacts his mode of education is critical to the resolution of this case.

Both parties agree that Student has a deep mistrust of large structured settings such as a public high school. Further, there is no doubt that Student is easily distracted, and, because of his disorder, external stimulate unrelated to the task at hand interfere with his ability to perform the task at hand. Nor is there any; doubt that Student possesses an average to superior IQ excelling at Math. And, there is universal agreement that cognitively, he can access and pass high school and college. (See, e.g. Tr. 109). The issue is what forum and methodology of teaching is required.

In this regard, Dr. testified:

“Q: What is your opinion regarding whether or not [Student] should have one-on-one instruction?

A: As explained about [Student’s] brain and everything he has to manage from a sensory perspective being like a crowded Los Angeles highway, he is going to best learn in a low stimulus environment one-on-one because that’s less attending to all of the people around him that he might misinterpret as threatening.” (Tr. 68). (Underscoring supplied).

Dr. was particularly concerned about combining Student’s education and the clinical treatment of his Schizoaffective and Emotional Disorder. (Tr. 58). Based on past history and her meetings with Student, she believed that such combination was toxic presenting a situation which his brain could not handle. (Tr. 58-59, 61-63).

Thus, according to Dr. , an educational setting which offers one-on-one teaching in a solitary setting provides the “best” forum for academic learning for Student. Dr. also believed that there must be socialization stating: “It is very important that [Student] have contact with [his] peers especially during break time, lunchtime, [and] after school time. Dr. added that this interaction was “incredibly” important (Tr. 68), particularly since the Student is in his late adolescence, and further, that such interaction would help address the paranoia. (Tr. 67-8).

Student began his school year at in late September 2017. Shortly before attending , Student had an extremely severe ongoing psychotic episode. This attack severely impacted his ability to attend or function at . (Tr. 47.77). While Dr. was ultimately able to change medications and stabilize Student, “See e.g. Tr. 51-53). This stabilization did not come until after Student had left . (See e.g. Tr. 44, 102-104).

On October 30, 2017, Student’s IEP team again met (S85-001), as well as a representative of . All of the parties agreed that Student must be mentally stabilized before any full time school plan could be determined. (S85).

PS and , however, expressed their willingness to accommodate Student’s mental and emotional needs, such as offering a shortened school day, providing Student with breaks to help him get through work he felt was mundane, and auditing classes at Community College. (S-85-010 through 011; Ex. S-86-001). While its staff understood that Student had other interests, advised that it would need to teach content consistent with a curriculum based on the SOLs, in order for Student to take and pass the culminating SOL examinations to attain a standard diploma. *Id* Further, Director and Principal of , had advised Student that it is a functional skill to learn foundational material as a prerequisite to demonstrate the maturity, growth, and readiness for an advanced curriculum. (Ex. S-84-001 through 003).

The October 30, 2017 Student’s IEP meeting was the last IEP meeting to which Student’s Parents agreed. (S85-027). Therefore, it is important to recognize the goals set forth and the particular school placement which were agreed to.

As to placement, PS advocated . (S85-025). Parents offered no alternative at that time.

The October 30, 2017 IEP report meticulously reviewed Student’s entire prior IEP meetings. All of these meetings, including that of October 30, 2017, determined that Student had an IQ equal to his peers, but superior in Math. And further, that Student had no academic needs. (S85-10-18). His problem was attending a normal high school. (S85-006). In this regard, all agreed that a private day school was best for Student. The ultimate objective was to slowly integrate Student into a normal classroom. (S85-006). Thus, the annual goal stated: “[Student] will gain insight into his emotional state that impedes his participation in school…” In short, the ultimate goal was to socialize Student and enable him to function in a real world high school.

Student’s mental health problems at this time were so serious and ongoing that he was admitted to Center’s PHP (a wholly distinct program from School) on November 20, 2017. (Ex. S-87-036; S-79-003; Tr. 101-02).

After leaving PHP, Student remained at home as Parents and Dr. struggled to get him stabilized. (Ex. S-79-003; Tr. 101-2). Dr. explained during her testimony:

Q: All right. And then during that period, December of 2017 through sometime in February of 2018, were you focused primarily on having [Student]…helping stabilize [Student’s] mental health condition?

A: Yes.

Q: What were you doing to make that happen?

A: Medication changes (Tr. 102).

During that time, she further testified, school had to be put on the “back burner,” because Student’s mental health had been destabilized and Dr. testified:

“So in my mind, I put school on the back burner. I was doing a major switch in his

Antipsychotic, from Giadone which he had been on for years and at max dosing to a

new antipsychotic which that was a process. So that’s where my focus was.” (Tr. 75).

On January 2, 2018, discharged Student because of lack of attendance. The Discharge Report reflects that during Student’s two month tenure at , he was present (at least partially) for only 11 days, with 40 excused absences and 8 medical leaves of absence. (Ex. S-88-001).

In its discharge recommendation, however, staff advised Student to “continue at the private day school level of education, as he demonstrated a need for a structured environment and therapeutic supports outlined in his IEP in order to fully access the academic curriculum” and that such placement was necessary to “meet both his educational and emotional needs.” (Ex. S-88-002). staff further recommended that Student continue working and be receptive to working with clinical staff to address his mental health and behavioral patterns; and that Parents follow through with intensive in-home counseling, since events at home can impact ‘s ability to attend school. *Id.* The staff believed that it simply did not have enough time to work with Student during his limited enrollment there, but could have been successful with more time. (Tr. 855/870). staff continued to believe that a private day is appropriate. (Tr. 833-34, 845; Ex. 88-002).

The PS IEP team reconvened on February 7, 2018 for Student’s annual IEP. At that time, Student was not enrolled in PS or any other school. Parents reported, that during this period, they were working with Dr. to get Student’s medications “right.” (Ex. S-94-033). At the conclusion of the February 7, 2018 IEP team meeting, in addition to the programs

PS offered the Lodge Program at the School “” “) as an option. Parents dismissed

as geographically too far away.

At the same time in February, 2018, Parents advised the IEP team that they had toured

Academy in County, *Id;* (Tr. 689). Unfamiliar with , PS (Mr.

) agreed to visit to learn more about it. (Ex. S94-033; Tr. 689).

Without waiting for Mr. to visit , however, the Parents decided to place Student at . was elated. (S909-005). By letter dated February 22, 2018, Parents’ counsel informed PS of their intent to withdraw Student from PS and place him at .

is a private co-ed private day school founded in California in 1989. (P44, page 0334). It consists of a chain of 45 schools located across the country. The school was founded on September 5, 2017 (P. Ex. 44 supra). The School ( ) is located in a leased second floor of a shopping center. (Tr. 205). There is an elevator to the street level which houses a number of commercial restaurants (Tr 205), and presumably other typical shopping center commercial stores.

has no lunch room nor any campus; (Tr. 205); nor does it have any athletic or recreational facilities. (P 44)

, as all other schools in the chain, offers only one-on-one education. (P44, p.1, Tr. 135) in private class rooms. (P 44, p1). The classrooms are separate rooms off a hallway with a teacher’s desk and a table with two chairs. (Tr. 292). This is where the Student and his teacher interact. (T.292).

is open Mondays through Fridays, 12 hours per school day, 7:30 a.m. until 7:30 p.m. (P44, p 0336). The teaching classes are Monday through Thursday. Friday is for homework (Tr. 135). No homework is taken home. (Tr. 136). The students at set their own school schedule, and may attend part time or full time during the aforesaid school hours. (P44. Tr. 336). The head of is certified as a teacher by Virginia, (Tr. 170), but the school and its other teachers are not certified by Virginia. (Tr. 171) And, there are no licensed special education teachers. (Tr. 171).

also does not provide an IEP such as required by IDEA. Rather, it offers and FEP ( Education Plan) (P. 44) which tracks traditional State educational requirements. It also does not hold Standards of Learning tests, but is willing to allow its students to take them. (P. 44).

Student’s annual IEP discussions began in April 2018 and continued until June 5, when PS issued its annual IEP proposal. In these discussions, it was clear that PS did not agree with Parents’ demanded placement of Student at . Nor did Parents agree with any placement at . See Amended Petition). More specifically, PS did not agree with a one-on-one format of teaching, nor a placement where Student had little or no opportunity to interact with his peers.

Also, of concern to PS teachers was ‘s initial refusal to implement PS’s proffered IEP as written (S95-001). And, PS was extremely concerned about ‘s refusal to address Student’s area of needs associated with social and executive functioning. (S95, Tr. 727). In summary, PS believed that ‘s one-on-one instruction in an isolated forum was overly restrictive and in violation of IDEA’s doctrine of placement in the least restrictive school environment. (LRE).

Turning to the June 5, 2018 proposed annual IEP, PS continued to assert that Student should be educated in a small private school staffed with certified special education teachers. (See e.g. S84 et seq.). PS also specified that Student’s education be provided with Emotional Disability services for 30 hours, with proposed areas of need for Behavioral Improvement – Emotional Reactions, and corresponding goals focusing on school participation and executive functioning. (Ex. S94-040). The IEP team additionally proposed modified curriculum/classroom accommodations and modifications, such as: a flexible schedule to include extended time on assignments, frequent breaks as needed. (*Id.*).

While the June 5 proposed IEP clearly sets forth a program of proposed learning, it did not specify a particular school placement. It said only that this selection was “pending.” )S94-0041). However, all of the parties knew that was PS’s choice. (See Petition, Amended Petition, and School’s Answer). And it is equally clear that Parents insistence upon a placement at with one-on-one teaching, with limited opportunity for socialization was not acceptable to PS. Accordingly, Parents requested the instant proceeding in order to resolve the conflict as to which school should be designated for Student.

IV

# ISSUES

1. May the Parents, after receiving notice of their procedural rights and after having received in advance a copy of the IEP, retroactively revoke their earlier written agreement with that IEP?
2. Can the Parents receive reimbursement for tuition costs for an unconsented placement of Student in a private school of their choice ( )?

V

# DISCUSSION

The U.S. Supreme Court in Endrew F. v. Douglas County School District, 137 S. Ct. 988 (2017) stated:

“…the essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” (at p. 999). (underscoring supplied).

An IEP is the most critical document when determining a disabled child’s future education in light of his or her disability. See e.g. Board of Education v. Rowley, 102 S. Ct. 3034 (1982)., Endrew, supra. And for it to be implemented without a judicial determination, it requires Parental agreement.

Here, Parents agreed with the October 30, 2017 IEP. But at trial they sought to undermine its validity; this, in turn, would negate PS’s ability to educate Student in compliance with IDEA. The undersigned believes that the Parents’ retroactive attack should be rejected; and so ruled.

Turning now to the core issue in this case, the law is clear that to obtain reimbursement of their tuition expenditures for Student at [School], Parents must prove by a preponderance of the evidence (Schaeffer v. Weast, 126 S. Ct. 528 (2005); Fairfax Cy. School Bd. V. Knight, 554 F. 3rd 470 (4th Cir. 2009) that:

1. PS’s proposed IEP of June 5, 2018 does not provide Student with FAPE, and
2. The private school selected by Parents ( ) can supply Student with an “appropriate education” as required by IDEA. Burlington v. Dept. f Education of Mass., supra; A.B. v. Lawson, 354 F. 3rd 315 (4th Cir. 2004).

PS in its written closing argument asserts that Parents are prevented from obtaining any monetary recovery of Student’s tuition fees at because neither nor its teachers instructing Student are licensed by Virginia. (See. e.g. S 92). While the undersigned believes that any private school and its teachers proposing to education handicapped students in compliance with IDEA should be licensed by Virginia, this position is simply not the law. See Florence County School District Four v. Carter, 114 S. Ct. 361 (1998) (which expressly rejected this position, at pp. 355-6). That is not to say, however, that the absence of certified teachers is not a fact to be considered. It simply is not a “bar.” (Florence, supra.).

The two core issues involved here, as per Burlington, supra are:

1. Can supply an appropriate education to Student, and
2. Is PS’s proposed IEP of June 5, 2018 appropriate? With regard to the inquiry #1, the absence of an IEP or its equivalent does not per se bar any recovery. Florence, supra. It is simply another fact which the undersigned considered when ascertaining whether is an appropriate educational setting for Student. IDEA repeatedly uses the terms “education” and “appropriate education.” But

What is the scope of the term “education”? Is it limited to academic instruction or does it include a broader definition which includes socialization and ultimate integration into society in the real world?

The undersigned could not find any case in the Fourth Circuit or in the U.S. Supreme Court which squarely defined the term “education.” However, it is clear beyond peradventure that the term “education” as used in IDEA includes socialization and integration into society as a whole. Thus, IDEA expressly requires that a disabled Student be academically taught in the Least Restrictive Environment (LRE). See, e.g. 20 U.S.C. 140 (5)(b) and 34 CFR Sect, 300, 114 (a)(1), Endrew, supra at p. 1000. Or to put that requirement in the active tense, IDEA requires that a disabled child be education in a traditional high school classroom to the maximum extent possible consistent with his or her disability. This concept of LRE when asserted in the active tense is often referred to by the courts as “mainstreaming”. See De Vries v. Fairfax County School Board, 882 F.2d 876 (4th Cir. 1089) (which held that child there could not attend a regular classroom). And it is further clear that the term “socialization” includes not only integration into society as a whole, but also integration within a structured environment such as a high school.

Any case involving parental unilateral placement is by its nature sui generis. But there are some broad legal guidelines: First, as before noted, Parents have the burden to prove their case by a preponderance of the evidence, Schaeffer v. Weast, supra. Second, they have a dual burden – a) To show that their chosen school can supply an “education” similar to that required by IDEA, and b) That the school’s proposed IEP does not supply FAPE. And, as before set forth, the term “education” is a broad term including integration into a structural environment such as a high school as well as society as a whole. C.f. Endrew, supra.

Finally, educational determinations by the School’s experts are entitled to deference. A.B. v. Lawson, 354 F. 3rd 315 at 328 (4th Cir 2004); Hartmann v. Loudoun County Board of Education, 118 F.3rd 996 at 1001 (4th Cir. 1997); Endrew, supra at 1001.

There are also certain undisputed facts; This case is atypical because Student here has no cognitive barrier which inhibits his ability to learn at a high school or college level…Student’s problem concerns the situs in which the learning is supplied, and the methodology by which the learning is supplied.

At this point, it is desirable to define the term “therapeutic” support. Parents correctly use this term as providing clinical, i.e. psychiatric support. School and its experts use the term to describe an educational modem which takes into account the manifestations of Student’s Schizoaffective disorder and then molds an educational plan which supplies his academic needs despite the existence of such manifestations.

Mr. , an experienced special education teacher, (Tr. 785), who is the “principal and director” of the school (Tr. 785), testified:

“Q. What [are] you trying to do for [Student] at school; provide treatment for his underlying mental health condition or support for his learning?”

“A. Support for learning. (Tr. 84). … The school is not a treatment facility. We take the identified information of a student and implement a program of study that is congruent. ….” (Tr. 841).

See also (Tr. 872-873) where Mr. testified that was “trying to adapt or modify the learning module to the manifestations of Student’s mental disabilities.” Ms. , PS’s experienced psychologist, in different words, testified that School adapts a learning module to best educate the student taking into consideration his disabilities. (Tr. 922-924); and this, also, is the testimony of Mr. . (Tr. 180-181).

An example of fitting the module of learning to Student’s manifestations is the recommendation by PS that Student be educated at a private day school. Parents readily agreed with this determination, but insisted upon the one-on-one learning module utilized at .

At trial Parents and PS were asked to address socialization and both did so. Dr. readily agreed that socialization was “extremely important, both with regard in addressing some of Student’s mental needs, but also helping him to adjust to the real world. (See Tr. 67-69). Dr. further believed that socialization at school during “break times, lunchtimes, and after school time” with his peers was important. (Tr. 60). Nevertheless, she believed that Student’s manifestations from his Schizoaffective and emotional disorders (presumably his limited attention span, his inability to filter out extraneous distractions, and his inability to combine educational instruction with clinical psychiatric treatment) were “best” (Tr. 69) accommodated by one-on-one instruction in an isolated environment. (Tr. 68-69). IDEA does not require that a disabled student’s education be the “best.” (Tr. 69, only that it be reasonable. See, e.g. Endrew, supra, Rowley, supra.

The undersigned also believes that Dr. overstated the extent of Student’s manifestations insofar that they require one-on-one teaching in an isolated classroom. Why does the undersigned hold this position? Answer – There are too many contradictory facts. In her Physicians Report filed with the D.C. Superior Court in connection with a Guardianship proceeding, Dr. stated that Student could make educational decisions. (P59, p3). This contradicts the assumption that Student’s mental illness prevents anything except a one-on-one teaching mode.

More to the point, how can Dr. say that Student can drive? Student lives in a traffic heavy urban area. Distractions that interfere with safe driving are continuously present. How can Student overcome those distractions, but tolerate none when it comes to classroom schooling? Further, how can Student work as a cashier in a large store such as Target (which requires careful attention to details in spite of the existence of many external extractions), yet be unable to function in a small classroom with two or three other students?

Parents seek to nullify the above conclusion by asserting that does supply mainstreaming.

The burden to prove that did supply mainstreaming fell upon Ms. , the head of (Tr. 168) and Ms. , a teacher who taught Student Math and Chemistry at . (Tr. 240-241). The undersigned found Ms. to be expansive when it came to ‘s virtues, but guarded when it came to any specific insight into Student’s socialization there. For example, she referred to ‘s location as a “campus.” (See e.g. Tr. 133, 147, 148, 150). A “campus” is defined as the grounds and surrounding buildings of a college or school. (See Webster’s Collegiate Dictionary, 10th Edition). has no campus; it has no grounds. It is located on the second floor of a commercial building in a shopping center. The first floor is the street floor which houses various commercial restaurants and shops totally unrelated to .

In this vein, she and refer to as having a “homework café”. In reality, the homework café is a study hall. (Tr. 201).

As before stated, Ms. and Ms. confirmed that was located on the second floor of a shopping center building; that the Student was taught solely upon a one-on-one basis in a small room with no one else present but his teacher. And they confirmed that there is no lunchroom – only a small room which contained a coffeemaker and microwave oven which could be accessed by students (and presumably by the staff at ). (Tr. 147). And there is no campus-the first floor being the street floor which contained various commercial restaurants and other stores typical of a shopping center. (Tr. 205).

There are apparently two “Homework Cafes”-one a typical study hall, and the second less formal study room in which socialization was permitted.

Mrs. testified she occasionally saw Student outside of the classroom talking to other students in the second Homework Café. (Tr. 251). But we have no idea how often Student went to this second Homework Café. However, it was apparently not that significant because Ms. also testified:

“Q. And as an educator, you’d agree that socialization is…the aspect of socialization in schooling is important for students to progress functionally? Correct?

1. Yes, but he can get socialization also in many other environments as well as School.” (Tr. 291).

But again, at , there are no after school athletics. (Tr. 149). There is no campus (only a shopping center). There are no uniform recess periods, and no school lunches. The absence of opportunities to socialize at is magnified by the absence of special education teachers trained to overcome barriers. Mr. visited when Student and his teacher were present. A female student was struggling with her books and needed help. Student obviously wanted to help her, but did not know what to do. A special education teacher would have intervened suggesting to Student let’s help here. But Student’s regular teacher at did nothing. Student, therefore, did nothing and is left as isolated as before. (Tr. 712-713).

PS and Parents agree that at this time, Student cannot be educated in a conventional large high school. And they both agree that at this time, a small private day school is appropriate. They further agree that Student has the IQ and intellect to pass high school and college courses. And they agree that clinical treatment of his mental condition cannot be combined with academic teaching. They disagree upon the need of only one-on-one academic education at a socially restricted school. PS’s education experts believe that Student can be academically educated in a private day school environment taught solely by special education experts. Parents insist upon ‘s one-on-one methodology.

While a one-on-one methodology may be the “best” methodology or the most “efficient”, it is not the only or customary methodology. We therefore turn to to ascertain if another methodology is acceptable.

is a small (33 students on average) private day school. It instructs its students solely by special education teachers certified by Virginia. The average ratio of teachers to students is three to one. It is a traditional type of school with uniform start-up times. All students and teachers meet at the inception of each school day to briefly discuss pertinent matters. (Tr. 797). The students then go with their teachers for instruction. (Tr. 797).

Further, primarily deals with students who have mental problems and it is familiar with the Schizoaffective emotional disorders having previously taught such students. And it tracks the customary learning path of a conventional high school.

, however, does not supply clinical treatment of mental disorders. (Tr. 372). Rather it “supports” an educational modem (Tr. 827), which accepts as true the manifestations of the disorder, but charts an educational path around the disorder. (Tr. 841). In the opinion of XX PS’s experts and ‘s expert, this approach can be successful for Student, and as a by-product improves Student’s ability to function in the real world. (See e.g. Tr. 837-838).

Parents dismiss by saying that it was an admitted failure for Student. This takes out of context Mr. ‘s testimony. He stated that Student was not present at for a sufficient time in order to allow to set a baseline of education. (Tr. 870). In this regard, Student while at was in the midst of a severe psychological attack. He could only attend for a period of nine to eleven days part time or full time. Dr. , after Student ceased attending xx, was able to stabilize Student with new medications. By then, Student was removed from xx and placed in .

Mr. ‘s admission of failure at was in response to a question which assumed that xx’s failure was the non-attendance of Student. (See e.g. Tr. 857). To this question, Mr. agreed- but he never agreed that Student’s lack of attendance was due to anything did. To the contrary, the evidence is uniform that Student’s non-attendance was due to his severe psychotic attack.

Could student be successfully educated at ? We don’t know for certain because he was absent for so long as to require his dismissal from .

The test of the validity of an IEP under IDEA, however, is prospective. Namely, is the IEP reasonably calculated to provide an appropriate educational path? See Endrew, supra, Roland M. v. Concord School Commission, 910 F. 2d 982 at 992 (1st Cir. 1990).

In this case, the goals and educational plan (IEP) set forth in the agreed upon October 30, 2017 IEP are similar to those set forth in the proposed June 5, 2018 IEP. (CfS 585 with S94). The major difference is that in the June 5, 2018 IEP, PS specifically agreed that it would assess further placements with a more shortened schedule, flexible start times, rigorous but interesting academics and time for independent study. And further in the June 5, 2018 proposal, ninety minutes of special education training per semester was required.

Before reaching the final conclusion herein, certain myths about this case should be exposed. First, this case is about money. is very expensive. Parents want to be reimbursed $65,445 for past tuition costs which they paid. They also want $81,900 for prospective tuition costs. (See Parents’ brief p. 26). Secondly, Parents’ suggestion that PS was not aware of, nor interested in Student’s mental health is pure nonsense. You need only look at the record of the numerous IEP meetings conducted by PS. (See School’s Exhibits). Third, Parents’ attempt via Dr. ’s testimony to portray themselves as sympathetic to PS’s concerns is not accurate. Parents’ conduct at the instant hearing was contentious- eye-rolling, posture changes, head nodding, etc. This occurred whenever PS’s witnesses testified to something they did not agree with: This, is precisely what Mr. described as occurring with regard to the June 5, 2018 IEP meeting.

However, despite these myths, the disposition of this case is based solely upon the failure of to provide mainstreaming. Or to put it differently, the failure by Parents to prove by a preponderance of evidence that Student’s disability (Schizoeffective Emotional Disorder) was so profound as to prevent mainstreaming. Dr. ‘s testimony related to the “best” method (i.e. One-on-one) of teaching. She did not say that it was the only possible methodology.

There is simply too much extrinsic evidence (Such as driving, working as a cashier at Target) to conclude that only one-on-one teaching by the preponderance of the evidence.

# VI

# CONCLUSION

Parents cannot recover their tuition expenses if their choice of schools does not comply

with IDEA’s requirements. Here, Parents did not sustain their burden of proof that ‘s

educational methodology complied with IDEA’s requirement of integration into society and

integration into a structured setting.

Even if Parents had sustained their burden of proof, the undersigned, under the second

doctrine set forth in Florence, supra, would have awarded compensation based upon the costs at

a more traditional school. In this regard, the U.S. Supreme Court in Florence at p. 16 held:

“Courts fashioning relief under IDEA must consider all relevant factors, including

the appropriate and reasonable level of reimbursement that should be required. Total

reimbursement [to a parent for recovery of tuition expenses] will not be appropriate if

the court determines that the cost of the private education was unreasonable. (510 U.S.

7 at p.16). (underscoring supplied).

# VII

# FINDINGS OF FACT

1. Student’s early educational history in need not be restated here since it is not essential to the narrow issue presented here.
2. Parents and were never able to reconcile their differences as to Student’s education.
3. On September 22, 2017, and Parents executed an agreement which provided Parents with certain monetary reimbursements and Student was reclassified as no longer subject to IDEA.
4. In December 2016, Parents and Student moved to County, Virginia.
5. On January 19, 2017, Student entered the PS system and was assigned to High School as his home school. (S 49).
6. Student, at that time, and for a year before, while in , was not attending public school. (See e.g. S-55).
7. On February 10, 2017, PS held Student’s initial PS IEP meeting. (S55).
8. At that time, Student, because of his mental health issues, was assigned to homebound instruction. (S33; Tr. 593).
9. In connection with Student’s enrollment in the PS system, PS requested and received all of Student’s school records. (S55.001).
10. PS also requested a detailed psychological evaluation; a detailed educational review, and a detailed sociological report. (S57, 58, 59, and 64).
11. These reports confirmed that Student had a normal IQ with superior abilities in Math; and that he had the cognitive ability to pass high school and college academics.
12. These reports confirmed that Student suffered from a Schizoactive/Emotional Disorder which acted as a preliminary barrier to accessing academics in a typical public high school.
13. When PS learned that Student had exited IDEA as per the September Agreement, it began anew the reclassification of Student as eligible for IDEA concluding that he was eligible.
14. Student passed all of his core subjects except for Chemistry while being home-schooled. (S 72-001, Tr. 490, 600-01).
15. In late March, 2017, Student came under the care of Dr. , a certified child psychiatrist with about three years experience, (Tr. 26).
16. Dr. reconfirmed Student’s diagnosis of Schizoaffective Disorder. (Tr. 32).
17. The Schizoaffective disorder is a lifetime mental disorder resulting from a chemical imbalance in the brain. (Tr. 52).
18. The disorder is treated by various medications which help restore normal mental functioning.
19. Among the manifestations of this disorder are self depreciation, hallucinations, suicidal thoughts, hearing voices, and a fear of structured entities, such as a public school. (Tr. 33-45).
20. Educationally, the pertinent manifestations are limited attention span, inability to filter out extraneous distractions when engaged in a specific task fear of being treated as “different” and need for specific task requests and additional time to process said tasks. (Tr. 40-56).
21. Thus while Student has the inherent cognitive ability to learn and pass academics as any normal child, his educational path must be chartered to work around his manifestations. (Tr. 872).
22. The various IEP meetings for Student up to and including the IEP meeting of August 30, 2017 (namely May 23, June 22, 2017) were agreed to by Parents and were concerned mainly with trying to establish an appropriate educational path and school forum for Student.
23. In the IEP meeting of August 30, 2017, CPS and Parents agreed that Student should be educated at a private day school. (S76-010).
24. CPS suggested either the private school or the private day school. (S76).
25. The August 30, 2017 IEP meeting reiterated that Student needed “social/emotional” improvements, and that he has anxiety problems. It also noted: “When Student is able to be academically engaged, he has no academic needs.” (S 76-006). It also set as an annual goal that: “Student will gain insight into his emotional state that impedes his participation in school…” (S 76-006).
26. In August of 2017, Student suffered a major psychotic episode. (Tr. 46, 47). Requiring his hospitalization.
27. Dr. in early 2018 was able to change his medications and greatly improve Student’s functioning.
28. In late September 2017, Student began to attend School, but after eleven days of partial or full time attendance, he dropped out, and never returned.
29. , in early January 2018, dismissed Student from because of lack of attendance. (S88).
30. In early March 2018, Parents unilaterally placed Student in the School ( County). (Tr. 137).
31. From that date forward, Parents have insisted that Student be educated solely at .
32. Parents dismissed School as a possible placement because it was too far away.
33. While CPS asserts (and Parents deny) that CPS’s proposed placement of Student at is appropriate and that its proposed June 2018 IEP presents an appropriate proposed educational plan, no determination of this issue is required in view of the undersigned’s ruling that is not an appropriate placement.
34. The undersigned believes that is appropriate and that the June 2018 IEP is appropriate, but does not make a final decision on this issue because of Student’s lack of attendance at School prevents a full consideration of all of the needed facts.
35. We come now to the central issue in this case: Is an appropriate placement pursuant to the requirements of IDEA?
36. To this question, the undersigned rules that is not an appropriate placement pursuant to the requirements of IDEA?
37. is part of a chain of 50 private schools located across the United States. (Tr. 134).
38. is not certified by Virginia; nor are any of the Student’s teachers, except Ms. . (Tr. 133).
39. , as all of the schools, teaches solely upon a one-on-one tutorial basis. (Tr. 135).
40. is located on the second floor of a commercial building in a shopping center. (Tr. 205).
41. There is no campus; The first floor is the street level which is occupied by various restaurants and shops which are unrelated to . (Tr. 205).
42. The second floor occupied by contains a number of teaching classrooms, two “Homework Cafes”, and a small room with a coffeemaker, refrigerator, and a microwave. (Tr. 292).
43. The two “Homework Cafes” are not cafes- one is a strict study hall, and the other is an informal second study hall where the students can leave when desired, walk around and talk. (Tr. 146).
44. The teaching rooms contain a teacher’s desk and a table with two chairs. Student is taught at this table alongside his teacher. (Tr. 292).
45. Each student sets his or her own agenda; there is no special time to begin School.
46. Ms. testified that the students had time to socialize when at school. (Tr. 146-148), but absent proof of Student’s schedule, such testimony is given little weight.
47. ‘s premises provide little opportunity for socialization, as it lacks a campus and required isolated teaching.
48. Further does not prepare an IEP as required by IDEA; Rather, it has a Educational Plan ( EP). (P44).
49. The EP prepared by is virtually non-existent; It does little other than confirm that Student is diagnosed with a Schizoaffective Disorder. (P42).
50. Does not require or provide the minimum classroom time, namely 140 hours required to obtain a standard degree by Virginia. (Tr. 298, 8 VAC 20-113-110).
51. Has no special education teachers so it cannot provide the specialized strategies needed to chart an appropriate educational path for Student around his barriers.
52. Based upon the overall evidence, Student can be taught academically in a small private day school setting, in a classroom of 3 to 4 students taught by a certified special education teacher.
53. Student’s ability to drive, to work as a cashier at Target, and to make educational decisions contradicts any argument that Student, because of his inability to ignore extraneous diversions, requires one-one-one teaching in a very restrictive environment.
54. Neither CPS, , nor offer or provide any clinical psychiatric services.
55. CPS and offer learning to help chart an appropriate learning path around Student’s disabilities.
56. The cost of Student’s education at for his junior and senior years of high school is very high, namely $147,345 of which $65,445 has been paid for by Parents. (See Petitioners Brief, p. 26).

# IX

# CONCLUSIONS OF LAW

1. Student is entitled to the protection of IDEA as a child with an Emotional Disorder (which includes his diagnosis as Schizoaffective). (See IDEA supra. Rowley, supra.)
2. The term “educate” as used in IDEA and its regulations is very broad, and includes not only academic education, but also integration into society as a whole as well as into a structured environment in society, such as a typical work place or public school or college. (See Endrew, supra).
3. IDEA requires that a disabled child covered by IDEA be educated in the Least Restrictive Environment (LRE); ideally in a conventional public school. (34 FR 300.114 (a)(2)(i))).
4. The only restriction to IDEA’s requirement of LRE is the limitation caused by the child’s disability. See Endrew, supra.
5. In order for Parents to be reimbursed for the tuition costs incurred by their unilateral placement of Student at , they must prove by a preponderance of the evidence that:
6. CPS’s proposed IEP will not supply Student with a free appropriate education, and
7. That their placement of Student at will supply Student with an education complying with IDEA. (Burlington, supra, Schaeffer, supra).
8. Parent’s placement of Student at did not comply with IDEA’s requirement of the Least Restrictive Environment (LRE). (See Arlington County School Board, 806 F. Supp. 1253 at 1260 (E.D. Va. 1992), aff’d 39 F. 3rd 1176 (4th Cir. 1994).
9. Parents did not prove by a preponderance of the evidence that Student’s disability required a one-on-one educational mode in a highly restricted school environment. (See Schaeffer v. Weast, supra).
10. CPS’s learning experts testified that was overly restrictive and not in compliance with the LRE requirements of IDEA; This testimony is entitled to deference. (A.B/v. Lawson. 354 F. 3rd 315 at 328 (4th Cir. 2004); Endrew, supra.

# X

# ORDER

Parent’s claim for reimbursement for past and anticipated costs of the tuition at is denied.

December 31, 2018 William E. Rollow, Hearing Officer

# FINAL DECISION- RIGHT OF APPEAL

This decision is final and binding unless either party appeals in a federal district court within 90 calendar days of this decision or in state court within 180 days of this decision.