

hearing is attached. I have also advised the LEA of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days.

[REDACTED]

Printed Name of Hearing Officer

[REDACTED]

Signature

[REDACTED]



VIRGINIA:

IN THE [REDACTED]

In the Matter of [REDACTED], a minor,
by [REDACTED]

v.

DUE PROCESS HEARING
[REDACTED] 2002

[REDACTED]
PUBLIC SCHOOLS

DECISION OF THE HEARING OFFICER

INTRODUCTORY STATEMENT:

This matter came to be heard upon the request of [REDACTED] for a due process hearing on behalf of [REDACTED] who is a minor and the subject of this case. This action is brought against [REDACTED] Public Schools ([REDACTED] PS) pursuant to the Individuals with Disabilities Education Act (IDEA).

[REDACTED] alleges that [REDACTED] Public Schools failed to provide [REDACTED] with an adequate Individualized Education Plan (IEP) and an appropriate placement, thereby precluding [REDACTED] from receiving a "free appropriate public education (FAPE)." [REDACTED] is also seeking reimbursement for expenses [REDACTED] incurred to have an Independent Educational Evaluation (IEE) conducted on [REDACTED] -- an evaluation [REDACTED] contends the school relied upon to complete their proposed, but inadequate, IEP.

Prior to this hearing, mediation was attempted but failed. Both parties requested a delay in these proceedings in an attempt to bring this matter to settlement through mediation. A second delay was requested by the parties to accommodate witness schedules. Both requests for delay were deemed to be in [REDACTED] best interest therefore both requests for delay were granted. On [REDACTED] 2002, the due process hearing was conducted.

FACTS:

██████████ is a ██████████-year-old ██████████ who was diagnosed in ██████████ by ██████████, an independent clinical psychologist, with "attention deficit hyperactivity disorder" (ADHD). At the request of ██████████ ██████████ was referred for a child study in August of ██████████ ██████████ was evaluated and diagnosed by the school psychologist, ██████████, who found ██████████ to have a processing problem. In ██████████ 2001, ██████████ was also diagnosed with schizoaffective disorder, which the evidence shows is a notably rare diagnosis for a child of ██████████ young age. However, ██████████ initially qualified for special education services in ██████████ because of the ADHD diagnosis. ██████████ is now qualified for services under IDEA for ADHD and "emotionally disturbed" (ED) as a result of ██████████ diagnosis of schizoaffective disorder, both disabilities being classified under IDEA's qualification category of "other health impaired" (ohi).

In ██████████ ██████████ first IEP was developed and implemented to address ██████████ identified processing problem. At that time, ██████████ was provided with one hour of special education services per day.

In ██████████ ██████████ PS recommended that ██████████ special education resource services be reduced to one-half hour per day, as it appeared that ██████████ was progressing in school. ██████████ agreed and the modified IEP was implemented.

In ██████████ ██████████ requested an IEP meeting because ██████████ noticed a decline in ██████████ grades during the third marking period. ██████████ complained that ██████████ seemed frustrated at home and was experiencing great anxiety from ██████████ homework assignments. ██████████ was now in the ██████████ grade. To accommodate ██████████ concerns, ██████████ IEP was modified to reduce ██████████ homework assignments to no more than thirty minutes of

homework per day. At this same IEP meeting, [REDACTED] PS suggested that [REDACTED] special education resource services be reduced from one-half hour per day to two, thirty minute sessions per week since it appeared that [REDACTED] was not having as much difficulty with [REDACTED] processing problem as previously. [REDACTED] agreed and signed the revised IEP.

Despite the reduction in homework authorized by the new IEP, [REDACTED] continued to complain of [REDACTED] anxiety regarding homework assignments. [REDACTED] claimed that [REDACTED] felt pressured to complete [REDACTED] homework and that [REDACTED] assignments were taking more than three hours per night. [REDACTED] also claimed that [REDACTED], [REDACTED] grade teacher, expressed concern to [REDACTED] during class about [REDACTED] reduced homework requirements and that this too caused [REDACTED] great anxiety, stress and embarrassment.

Shortly after that, [REDACTED] claims to have found disturbing song lyrics in [REDACTED] room. [REDACTED] reviewed the lyrics with [REDACTED] and opined the lyrics as an indication of "suicidal ideation." [REDACTED] then wrote [REDACTED] PS a letter of concern.

In [REDACTED], an IEP meeting was called to discuss [REDACTED] letter, in which [REDACTED] wrote, "[REDACTED] has developed a Major Depressive Disorder with Melancholia accompanied by suicidal ideation." [REDACTED] also wrote that [REDACTED] was particularly concerned about the academic stress [REDACTED] was experiencing and that [REDACTED] considered this academic stress to be a major component of [REDACTED] slide into depression. School officials were surprised to receive this letter from [REDACTED].

[REDACTED] was present for the [REDACTED] IEP meeting where [REDACTED] recommended that [REDACTED] be placed in a small academic setting such as a self-contained classroom. [REDACTED] PS officials did not agree with [REDACTED] recommendations at that time and no significant changes were made to [REDACTED] IEP.

During the summer between [REDACTED] and [REDACTED] grade years, [REDACTED] expressed concern about [REDACTED] i.e. anxiety about returning to school. [REDACTED] arranged for [REDACTED] to meet with [REDACTED] for several special appointments to work through this anxiety problem and prepare [REDACTED] to return to school.

In [REDACTED], [REDACTED] began [REDACTED] grade year. According to [REDACTED] once [REDACTED] started school, [REDACTED] made several attempts at self-mutilation. As a result of this alleged self-mutilation, [REDACTED] took [REDACTED] to see [REDACTED] on [REDACTED] [REDACTED]. It was during this appointment that [REDACTED] explained that [REDACTED] had tried to kill [REDACTED]

[REDACTED], as well as [REDACTED] psychiatrist, [REDACTED] recommended that [REDACTED] be hospitalized for [REDACTED] own safety. Although [REDACTED] took [REDACTED] to the hospital as recommended, [REDACTED] did not leave [REDACTED] (which was contrary to the advice of [REDACTED] doctors) because of a disturbing incident [REDACTED] witnessed involving another youth and hospital staff. Instead, [REDACTED] personally performed a 24-hour suicide watch over [REDACTED] in their home.

[REDACTED] then recommended that [REDACTED] not return to school. [REDACTED] immediately requested homebound instruction for [REDACTED]. [REDACTED] PS promptly approved and commenced homebound instruction on [REDACTED]

On [REDACTED] while still on homebound instruction, [REDACTED] ran away from home and was found two miles away in a tree at the home of [REDACTED] homebound teacher. Once found, [REDACTED] behavior required both [REDACTED] and the police to subdue [REDACTED]. [REDACTED] was hospitalized and remained in the hospital for [REDACTED] days. It was at this point, upon discharge from the hospital, that [REDACTED] was first diagnosed with schizoaffective disorder. [REDACTED]

hospital discharge summary showed a diagnosis of schizoaffective disorder and ADHD.

Thereafter, [REDACTED] and the [REDACTED] PS were unable to agree on an appropriate IEP and [REDACTED] continued to receive homebound instruction for the rest of [REDACTED] grade year.

Since [REDACTED] hospitalization, [REDACTED] has been independently tested by [REDACTED] [REDACTED] (a neuropsychologist), [REDACTED] (a child neurologist), and [REDACTED] (an educational consultant). All tests confirmed that [REDACTED] had processing problems that were affecting [REDACTED] learning.

With exception of a meeting notice sent by [REDACTED] School to [REDACTED] on [REDACTED], the evidence suggests that there was no contact between the [REDACTED] and [REDACTED] PS during the [REDACTED]. It should also be noted that the evidence clearly indicates that [REDACTED] behavior problems and bouts of depression seemed to only manifest themselves at home and not at school. In fact, [REDACTED] progress reports, teacher reports, standardized test results, and Standards of Learning (SOL) throughout school, all seemed to indicate that [REDACTED] was solidly progressing academically. [REDACTED] teachers reported no disciplinary problems but at some point noted that [REDACTED] was shy and quiet. Despite being shy and quiet, [REDACTED] teachers reported that [REDACTED] appeared to be a happy, well-behaved child with good peer relations.

In [REDACTED] when [REDACTED] first requested that [REDACTED] be placed in a self-contained classroom, [REDACTED] PS denied [REDACTED] request because [REDACTED] was progressing in school under [REDACTED] present IEP. However, [REDACTED] PS did later agree that certain modifications could be made to the IEP that would accommodate [REDACTED] anxiety, stress and sensitivities.

In [REDACTED] [REDACTED] PS amended its position and proposed two self-contained placements for [REDACTED] both within the public school setting. [REDACTED] rejected both

proposals and requested a private placement at either [redacted] or [redacted] School, both of which specialize in the education of children with disabilities.

The record also seems to indicate that it was in [redacted] that [redacted] eligibility for special education services was amended by [redacted] PS to include "emotionally disturbed" (ED). Therefore, [redacted] was qualified for special education services under the [redacted] category for both ADHD and ED.

ISSUES:

The issues in this case are as follows:

- * Whether [redacted] should be reimbursed in the amount of \$200.00 for tests performed by [redacted], an educational consultant.
- * Whether the placement proposed by [redacted] PS for [redacted] is appropriate, given [redacted] disabilities, and will such a placement provide [redacted] with a FAPE.
- * Whether [redacted] PS has proposed an adequate IEP to provide [redacted], a disabled child, with a FAPE, as required by the IDEA.

DISCUSSION and FINDINGS:

Whether [redacted] should be reimbursed in the amount of \$200.00 for tests performed by [redacted], an educational consultant.

[redacted] alleges that [redacted] PS relied on the IEE results of [redacted] at the [redacted] IEP meeting. The IEE was completed at the request of the [redacted] and paid for by the [redacted]. There is no evidence in the record to refute the fact that [redacted] evaluation results and findings were considered when discussing the proposed [redacted] IEP.

During the hearing, [redacted] was qualified as an expert in [redacted] field. [redacted] testified that [redacted] attended an IEP meeting on [redacted] where school personnel, [redacted] and [redacted] were present to discuss an appropriate IEP and placement for [redacted].

participated in and contributed to the discussions during that [REDACTED] IEP meeting, where [REDACTED] referred to the findings contained in the IEE conducted on [REDACTED] to substantiate [REDACTED] recommendations.

I therefore FIND that [REDACTED] PS did use the results of [REDACTED] evaluation when discussing an appropriate placement and IEP for [REDACTED]. [REDACTED] is therefore entitled to reimbursement in the amount of \$200.00 from [REDACTED] PS. See *Warren v. Cumberland School District*, 31 IDELR 27 (3rd Cir. Ct. App. 1999).

Whether the placement proposed by [REDACTED] PS for [REDACTED] is appropriate, given [REDACTED] disabilities, and will such a placement provide [REDACTED] with a FAPE.

[REDACTED] contends that given [REDACTED] disabilities, i.e. schizoaffective disorder and ADHD, and the associated problems with these conditions, [REDACTED] should be placed in a private school setting (either [REDACTED] or [REDACTED] School) and that neither of the two placements proposed by [REDACTED] PS (self-contained classrooms at [REDACTED] School for children with "learning disabilities" (LD), or, placement at [REDACTED] School for children with "emotional disabilities" (ED)) would adequately address [REDACTED] needs and disabilities, thereby effectively denying [REDACTED] a FAPE.

[REDACTED] was first diagnosed with schizoaffective disorder in [REDACTED] after a [REDACTED] hospitalization. [REDACTED] was first diagnosed with ADHD in [REDACTED] the disability for which [REDACTED] was first authorized special education services. The evidence is clear that it is rare to find a diagnosis of schizoaffective disorder in a child of [REDACTED] age as explained by [REDACTED] and by research materials. Of all the testimony presented during the hearing, [REDACTED] was by far the most familiar with schizoaffective disorder and its effects on [REDACTED]

depression and behavior problems have not been witnessed by any of teachers. It seems that those misbehaviors associated with diagnosis of schizoaffective disorder only manifest themselves at home. Initially, this would lead one to believe that problems are with home environment, however, the only expert witness to testify during the hearing on the symptoms and behaviors associated with schizoaffective disorder as seen in dismissed the home environment as being the source of stress, depression, suicidal ideations, or acting out. According to disorder was caused by stress from the school and not the home. According to it is not unusual for a child diagnosed with schizoaffective disorder to act out in an environment in which they feel safe (such as the home) and not in the school environment where they feel stress and are concerned about what others may think of them.

PS argues that teachers should be given deference, especially when the school professionals have seen on a daily basis over an extended period of time and site *Faulders v. Henrico County School Board*, 190 F. Supp.2d 849 (E.D. Va. 2002) as one of their authorities for that position. In the *Faulders* case, the court found that the Hearing Officer relied too heavily on and wrongfully based his decision on the testimony of experts that had not visited the school to observe the student's program nor had the experts observed the student in the school environment or with his peers. Such is the case here. Although qualified as an expert, failed to visit any of the programs proposed by the school, had not observed in classroom environment, or with peers.

Further, the experts in *Faulders* had not reviewed the school file or talked to the teachers, assistants, principal or any other service providers. Such is not entirely the case here as did have some correspondence and dialog with school officials and also

attended an IEP meeting for [REDACTED]. [REDACTED] had also been seeing and treating [REDACTED] for ADHD on a regular basis since [REDACTED] which gives [REDACTED] a [REDACTED] history with [REDACTED]. It is also noteworthy to mention that [REDACTED] was able to provide invaluable insight into [REDACTED] mental illness -- schizoaffective disorder. But it is disturbing that [REDACTED] would make a judgment regarding the placements proposed by [REDACTED] PS, opting instead for a private placement, without first seeing the programs offered by the school system.

I therefore FIND that [REDACTED] expert testimony should be relied upon as it relates to [REDACTED] and appropriate treatment for [REDACTED] mental illness, and, that [REDACTED] testimony should be considered when exploring placement for [REDACTED], but that [REDACTED] opinion should not be controlling regarding [REDACTED] educational placement options.

The IDEA guarantees each child a FAPE in the least restrictive environment along with related services required to enable a child to benefit from his or her education. This does not necessarily mean that the best possible environment must be provided for the child, nor does it mean that the child must be provided with ALL the related services available to children with medical or mental conditions that affect their learning. Instead, it means that the schools must provide an environment and related services that a particular child needs in order to benefit from a FAPE. Deciding the best environment and related services for [REDACTED] is clearly a dilemma, given the rare nature of [REDACTED] disability in children of [REDACTED] age, to include [REDACTED] sensitivities, depression, hallucinations, suicidal ideations, hearing voices, and the need for stress reductions.

Federal guidelines call for placing a child with a disability in the least restrictive environment. Although the regular education classroom is often considered the least restrictive environment for a child with a disability, the needs of some children cannot be met

in a regular classroom setting, even with accommodations such as a full-time aide. Such students, like [REDACTED], require the security of a more restrictive environment.

According to [REDACTED] and other experts who testified during the hearing, the following recommendations for [REDACTED] school environment are required to make [REDACTED] feel safe and reduce the chances for making [REDACTED] condition worse: (1) A school environment with an extreme degree of support and protection, (2) low teacher to student ratio; and (3) a highly supervised self-contained *school*. I FIND that the self-contained classroom for learning disabled (LD) students at [REDACTED] will satisfy these requirements. Since

[REDACTED] did not visit this program, [REDACTED] could provide no personal knowledge regarding either of the two programs offered by [REDACTED] PS. I therefore rely on and accept the expertise and recommendation of [REDACTED], Assistant Director of Exceptional Education, [REDACTED] PS, who testified that the LD self-contained classroom at [REDACTED] School could and would provide [REDACTED] with an extreme degree of support and protection; provide an eight or nine to one student ratio (which is far less than a regular classroom environment); and that the classroom was self-contained and always highly supervised.

Although the self-contained LD classroom at [REDACTED] is not located in a self-contained *school*, but rather a public school, I FIND that the LD self-contained classroom proposed by [REDACTED] PS satisfies [REDACTED] recommendations and should provide [REDACTED] with a FAPE as required by IDEA. I also FIND this placement the least restrictive and appropriate placement for [REDACTED] at this time. One of the primary purposes of the self-contained classroom environment is to provide students who need a small class size with much individualized instruction and supervision. [REDACTED] failed to meet [REDACTED] burden of proving that instruction in the LD self-contained classroom at [REDACTED] School

on a regular public school campus would not provide [REDACTED] with any meaningful educational benefit. See *Swift v. Rapides Parish Public School System*, 812 F. Supp. 666 (W.D. La. 1993).

I found [REDACTED] testimony regarding the anticipated deterioration of [REDACTED] condition most disturbing. [REDACTED] testified that [REDACTED] condition could worsen with time and that [REDACTED] episodes of hallucinations, delusions, suicide ideations and hearing voices could continue. [REDACTED] testified that [REDACTED] would probably require more hospitalizations in the future. If [REDACTED] condition should continue to deteriorate as discussed by [REDACTED] and if [REDACTED] condition should make [REDACTED] a danger to [REDACTED] and others, [REDACTED] and [REDACTED] should consider enrolling [REDACTED] in a state sponsored therapeutic day school (if available) or a state sponsored residential treatment facility (if available), where [REDACTED] would receive the most educational benefit. Of course an IEP meeting would be conducted to determine the educational benefit of such a possible future placement.

If [REDACTED] condition in the future should require frequent hospitalizations due to uncontrollable behavior deterioration, hallucinations, hearing voices, delusions, suicide attempts and suicidal ideations, such that [REDACTED] becomes a danger to [REDACTED] and to others,

[REDACTED] and [REDACTED] PS may be forced to consider an even more restrictive environment that provides a secure facility where children, with similar disabilities as [REDACTED], live in a therapeutic setting and learn coping strategies to help them function successfully in a less restrictive environment. Such facilities usually have a psychiatrist on staff and all medications are administered and monitored at the facility by trained staff. The emphasis at such facilities is usually treating the illness, although the child is still educated according to [REDACTED] IEP.

Whether [REDACTED] PS has proposed an adequate IEP to provide [REDACTED] a disabled child, with a FAPE, as required by the IDEA.

[REDACTED] an expert in educational evaluation, suggested numerous recommendations for [REDACTED] IEP during an IEP meeting on [REDACTED]. [REDACTED] testified that [REDACTED] IEP lacked phonemic manipulation, sequencing goals, math goals, and other matters important to developing an appropriate IEP for [REDACTED] (See Exhibit 87). Generally, I FIND [REDACTED] recommendations to be reasonable and appropriate, and if at all possible, should have been incorporated in the [REDACTED] IEP. However, I do not FIND [REDACTED] PS responsible for implementing recommendations for which they have no means to implement. In other words, [REDACTED] IEP should be developed to encompass as many of [REDACTED] recommendations as are practicable and possible within the constraints of the present public educational system.

IDEA requires the development and implementation of IEPs that are reasonably calculated to provide an educational benefit to the disabled student. See *Hartmann v. Loudoun County Board of Education*, 118 F 3d 996, 1001 (4th Cir. 1997.) The substance of [REDACTED] IEP must be reasonably calculated to provide [REDACTED] with educational benefit. See *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 205, 102 S. Ct. 3034, 3050, 73 L.Ed. 2d 690 (1982). [REDACTED] PS is under no obligation to provide [REDACTED] with the *maximum* educational benefit; however, both IDEA and Virginia law require more than just *minimal* educational benefit to a handicapped child. See *Martin v. School Board of Prince George County*, 3 Va. App. 197 (1986). Accordingly, I FIND that [REDACTED] PS should work within the recommendations set forth by [REDACTED] wherever possible.

ORDERS:

Accordingly, it is hereby **ORDERED** that [REDACTED] S reimburse [REDACTED] in the amount of \$200.00 for the IEE conducted by [REDACTED] an independent educational consultant. [REDACTED] is hereby **ORDERED** to provide a copy of the bill to PS prior to reimbursement; and

It is further **ORDERED** that [REDACTED] be placed in the LD self-contained classroom at [REDACTED] School for the up-coming school year; and

It is **ORDERED** that whenever reasonably possible, [REDACTED] PS shall adhere to the recommendations of [REDACTED] an independent educational consultant, when developing [REDACTED] new IEP.

Be advised that the LEA is responsible for submitting an implementation plan to the parties, the hearing officer, and the State Education Agency within 45 calendar days.

RIGHTS OF APPEAL:

This decision shall be final and binding unless the decision is appealed by either party within one year of its issuance. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. See 8 VAC 20-80-76.

ENTERED: [REDACTED] 2002

[REDACTED]
[REDACTED]
[REDACTED] *Hearing Officer*