VIRGINIA DEPARTMENT OF EDUCATION

DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES

OFFICE DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES

Xxxxx County Public Schools Ms. Xxxxx & Mr. Xxxxx

School Division Parents

John F. Cafferky, Esq. Xxxxx

Wesley D. Allen, Esq. Child

Counsel Representing the LEA

Morgan Brooke-Devlin, Esq. Parents initiated Hearing

Hearing Officer

# HEARING OFFICER DECISION

A Due Process hearing was held on May 1-4 and 7-9, 2018, in Xxxxx County Virginia. Ms. Xxxxx and Mr. xxxxx (“Parents”) were present throughout the hearing as well as Counsel for the Xxxxx County Public Schools (“XCPS” or “the School System”), Mr. John F. Cafferky, Esquire and Mr. Wesley D. Allen Esquire (“Counsel”). Also present were Ms. xxxxx, Coordinator, Due Process and Eligibility for Xxxxx County Public Schools, and Mr. Brian K. Miller, Esquire, who was appointed by the Virginia Supreme Court to monitor the hearing. The Parents were not represented by counsel. Both the Parents and the School System introduced expert and other testimony during the hearing. The hearing was open to the public and transcribed by a court reporter. The record includes written orders, pre-hearing reports, Parent’s exhibit books 1-7; School System exhibit books 1-3, Parent’s written closing argument; School System written closing argument and the transcript.

There were three Amended Due Process Complaints filed by the Parents and ten Pre-Hearing Conferences were held. Several continuances granted in this matter following a determination by the Hearing Officer that they were in the best interests of the child. The continuances were unopposed by the School System. The parties made joint motions to extend the date for the Hearing Officer’s Decision following each continuance which was granted. An additional continuance was granted to the Parent to extend the time period for submission of her Closing Argument due to severe illness.

The Hearing Officer also reviewed extensive redacted documents provided by the School System to the Parents. The redacted documents were challenged by the Parents. The Parties agxxxxx to have the Hearing Officer review the redacted and un-redacted documents and determine if the redactions were warranted. This decision is timely.

# STATEMENT OF THE CASE:

Xxxxx (“Xxxxx” or “Student”) is an eighteen year old young man who has Down syndrome and is hearing impaired. Xxxxx receives special education services from Xxxxx County Public Schools based on a determination of Intellectual Disability.

He has been a student at xxxxxxxx High School since 2015. Xxxxx lives at home with his Parents and sibxxxxxs.

The Parents filed this Amended Due Process Request because they believe that the Xxxxx County Public School System has failed to provide Xxxxx with FAPE and that his academic and functional progress had stalled: “Xxxxx made very little progress, if any, in math in his sophomore and junior years. In summary, these programs and classes at Xxxxx did not address Xxxxx's learning needs.” The Parent’s listed the following in their Complaint: Teachers failed to provide Xxxxx access to the curriculum in his general education classes; XCPS did not provide Xxxxx an opportunity afforded to other students to work on his reading goals; XCPS has refused Parent’s request that they be provided with adequate IEP goal measures; XCPS has refused to provide Xxxxx with keyboarding training; Xxxxx High School principal restricted Xxxxx’s Parents from communication with Xxxxx’s teachers and staff; Xxxxx was not provided appropriate transition service; XCPS did not provide Xxxxx the same opportunity that other students have to participate, particularly in areas such as Theatre productions; Failure of FAPE due to lack of recent thorough, objective educational, psychological and neuropsychological evaluations. The last educational and psychological tests were completed in 2016, and that Xxxxx HS did not provide Xxxxx an opportunity to get extra help after school as the non-disabled community does;

Ms. Xxxxx stated that she believed that Xxxxx's “education has not been appropriate for many years, and as a result he is faixxxxx to make sufficient progress (Tr. 16-17). And that “He has just – he has never achieved and never made progress because the programs are not working, they are not appropriate, and they are, obviously, clearly not meeting his needs.” (Tr. 24)

The last IEP that the Parents agxxxxx to was done in December of 2015 and is the stay-put IEP. The Parents signed a partial agreement to the June 16, 2016 and August 4, 2017 Proposed IEPs. Other than that the Parents have rejected the nine IEPs proposed by the School System.

The School System maintains that it has provided Xxxxx with FAPE; that its teachers and staff, by implementing Xxxxx’s December 7, 2015 IEP, have provided Xxxxx with FAPE and that as a result he has made meaningful and, demonstrative educational progress. It is the School System’s position that Xxxxx has received an appropriate education; has made and continues to make overall educational progress towards his IEP goals commensurate with, and in some respects to a greater degree, than his measured cognitive ability.” (Tr.26) The School System also asserts that their proposed IEPs include appropriate annual goals and educational services to help Xxxxx continue to progress and prepare him for the transition to adult life goals, and in particular they cite the November 3, 2017 IEP that further targets Xxxxx’s post-school vocational needs.

# ISSUES:

1. Does the December 7, 2015 IEP provide Xxxxx with FAPE?

2. Have the Xxxxx County Public Schools provided Xxxxx with a free and appropriate public education (FAPE) during the 2015-2016; 2016-2017 and 2017-2018 school years, in the least restrictive environment, within the meaning of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, *et seq*. (“IDEA”) ?

3. Do the School System’s proposed IEPs include appropriate annual goals and educational services to enable Xxxxx to make meaningful progress and prepare him for transition to adult life and thus provide him with FAPE?

# BURDEN OF PROOF:

In *Schaffer v. Weast,* 546 U.S. 49, 126 S. Ct. 528, 163 L.Ed.2d

387 (2005), the United States Supreme Court held that the burden of proof, in an administrative hearing challenging the IEP, is properly placed upon the party seeking relief, whether that is the disabled child or the school district. *Id.,* at 537. Parents filed this due process hearing request. Accordingly the Parents have the burden of proof at this due process hearing.

# LEGAL DISCUSSION:

The IDEA, enacted in 1990, requires school districts to provide disabled students with a FAPE as a condition of receiving federal funding. *See* 20 U.S.C. § 1412(a) (1). A school district ensures that a disabled student is receiving a FAPE by providing the student with an IEP. *See* 20 U.S.C. 1414(d). Where, as here, the adequacy of an IEP is in issue, the Supreme Court has mandated a two-prong inquiry to determine whether a student's IEP fulfills the school district's obligation to provide a FAPE. Under the first prong, not at issue here, there first must be a determination whether the state has complied with IDEA's procedural requirements. *See* [*Hendrick Hudson Dist. Bd. of Educ. v. Rowley,* 458 U.S. 176, 206-07, 102 S. Ct. 3034, 73 L.Ed.2d 690(1982)](https://scholar.google.com/scholar_case?case=16407799260147120534&q=arlington+cty+sch.+bd.+v.+smith&hl=en&as_sdt=6,47&as_vis=1). Under the second prong, which is the relevant inquiry, there must be a determination whether the IEP is "reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” by providing a child with an IEP that is “tailored to the unique needs of a particular child. “*Endrew F. ex rel*. Joseph F. v. *Douglas County School Dist.* RE-I, 137 S. Ct. 988 (2017)*.* In that regard, the Supreme Court has defined a FAPE as providing disabled children with a "basic floor of educational opportunity, [which] consists of access to specialized instruction and related services which are individually designed to provide educational xxxxxefit to the handicapped child." [*Rowley,* 458 U.S. at 200-01, 102 S. Ct. 3034](https://scholar.google.com/scholar_case?case=16407799260147120534&q=arlington+cty+sch.+bd.+v.+smith&hl=en&as_sdt=6,47&as_vis=1). Yet, it is important to note that the IDEA does not require a school district to provide a child with the best possible or ideal education; only a reasonable and appropriate one that provides the child with FAPE. *Endrew Id.*

“IDEA requires great deference to the views of the school system rather than those of even the most well-meaning parents. “ A.B. Lawson, 354 F. 3’d 315, 328 (4th Cir. 2004)

The Court in *Endrew* adopted the approach used in *Rowley* and held that “The reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials, informed by their own expertise and the views of a child’s Parents or guardians; any review of an IEP must appreciate that the question is whether the IEP is *reasonable* not whether the court regards it as ideal.” *Endrew Id.; “*[O]nce a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of educational professionals. “ *Rowley, Id. and Endrew Id.,* Holding that "local educators deserve latitude in determining the [IEP] most appropriate for a disabled child."

# FINDINGS OF FACT:

1. Xxxxx is eighteen years old; he has Down syndrome and is hearing impaired. He also suffers from hypotonia which affects his ability to speak clearly. Xxxxx receives special education services from Xxxxx County Public Schools based on a determination of Intellectual Disability.

2. Xxxxx has attended xxxxx Xxxxx High School for the 2015-2016; 2016-2017 and 2017-2018 school years.

3. The December 7, 2015 IEP is the last IEP signed by the Parents and as such is the stay-put IEP.

4. The Parents signed a partial agreement to the June 16, 2016 and August 4, 2017 IEPs. Otherwise, the Parents have rejected all IEPs proposed by the School System since the December 7, 2017 IEP, which include IEPs proposed on May 12, 2016, June 8, 2016, June 16, 2016, August 8, 2016, September 21, 2016, June 22, 2017, October 10, 2017, November 3, 2017, and most recently, January 12, 2018. (P. Ex. Book Two: H3 3-12)

5. The Parent’s complaint that XCPS failed to provide Xxxxx with FAPE due to lack of recent thorough, objective educational, psychological and neuropsychological evaluations is not supported by testimony or evidence. Dr. Xxxxx[[1]](#footnote-1) conducted a psychological evaluation of Xxxxx in 2016, to which the Parent’s took exception. The School System approved the Parent’s request in 2016 for an IEE[[2]](#footnote-2). The Parents were provided with a list of approved providers at that time but waited until the fall of 2017 to contact and later retain Dr. Xxxxx: Xxxxx County Public Schools paid Dr. Xxxxx’s fee.

Dr. Xxxxx conducted an independent educational evaluation (IEE) of Xxxxx in March of 2018. He testified at the hearing and was accepted as the Parent’s Expert in clinical psychology and neuropsychology. Dr. Xxxxx stated that he saw Xxxxx twice in March of 2018, at which time he administered tests in the following areas: “Cognitive functioning, attention, verbal information processing, nonverbal information, processing, executive functioning, academic achievement, adaptive behavior functioning, psychological functioning, and presents on the autistic spectrum. Dr. Xxxxx prepared an evaluation that included both direct testing, as well as questionnaires that were provided to the Parents as well as the school, to provide responses for questionnaires. (Tr. 421-422) (Ex. S-115-009)

Dr. Xxxxx found the results of his testing to be in line with the testing done by the School System in July of 2016 and earlier. As an example, he discussed the results of his cognitive testing: “… data, for example -- indicated that he was functioning, on standardizing quantitative test of cognitive functioning, in the lowest 1 percent of the population as compared to his age peers, he was identified at a fairly early age in the lowest 1 percentile.” (Tr. 424) And that: “ I don't think that there's any difference in my testing results from the cognitive perspective as compared to the test results in the history. He's still coming out at about the first percentile.” (Tr.425) However, the Doctor noted that Xxxxx actually did better than expected in word reading and pseudo word decoding, where he scored in the 41st and 71st percentiles.

Psychological evaluations done in July of 2016 and by Dr. Xxxxx in March of 2018 place Xxxxx’s intellectual abilities within the extremely low or deficient range, with a full scale IQ of 55-56 and component composite scores ranging from 56-68 (E x. S-54,115-009) indicating cognitive limitations, including significant difficulties “ingesting, analyzing, and responding to information” and “in engaging in abstract forms of thought (Ex. S-115-009) Accordingly , I find that Xxxxx continues to present with global delays in his intellectual functioning which impact his ability to learn.

6. In his report Dr. Xxxxx provided his opinion and a list of 20 recommendations including the methods by which oral and reading comprehension; speech and language therapy and occupational therapy should be provided to Xxxxx. (Tr. 437-450) However, when questioned about his professional qualifications he acknowledged that his professional licensure and certification is in the area of clinical psychology and neuropsychology and not speech and language therapy or occupational therapy: nor had he any training as a special education teacher. (Tr. 451)

From his testimony it appears that Dr. Xxxxx’s area of expertise may overlap with the area of speech and language and occupational therapy, however, Dr. Xxxxx was not qualified as a speech and language pathologist or occupational therapy expert so I would give more credibility to the opinion of the School’s expert witness, Dr. Xxxxx, who was qualified as an expert in the area of speech and language pathology and who has worked with Xxxxx at Xxxxx High School since 2016, and to the opinion of Dr. xxxxx, an expert witness in occupational therapy who testified that Xxxxx has made meaningful progress in his IEP goals and objectives. However, it should be noted that Dr. Xxxxx as well as Ms. xxxxx and Ms. xxxxx are all in agreement regarding Xxxxx’s need for vocational and job training to assist him in transition.

7. PROGRESS IN 2015 IEP GOALS:

Xxxxx’s teachers, who were almost all qualified as experts, testified to his continued educational progress and their opinions that he has received a meaningful educational xxxxxefit while attending Xxxxx High School. See: Ms. xxxxx (Tr. 164-165); Ms. xxxxx (Tr.207-210,232-233); Mr. xxxxx (Tr.273); Mr. xxxxx (Tr.921-922); Ms. xxxxx (Tr.1172-1175); Ms. xxxxx (Tr.889); Mr. Xxxxx (Tr.1295-1307): Ms. Xxxxx (Tr.1486-1487): Sr. Xxxxx (Tr.1358-1359) All teachers were found to be credible. Principal Xxxxx[[3]](#footnote-3) testified that: “In speaking and working with my staff on a regular basis, we all agree that we have seen progress in him, particularly around the areas of reading, writing, and math.” (Tr. 915) He went on to describe the progress that Xxxxx has made at Xxxxx High School:”… I think it's fairly substantial. I am aware that when Xxxxx came to us, according to the Brigance, he was operating on approximately a 2nd grade level in math and approximately a third grade level in reading. And I am aware that there are scores that show that he has made significant progress in both of those areas particularly. “(Tr. 923)

8. Xxxxx has made appropriate and meaningful progress in light of his circumstances while a student at xxxxx Xxxxx High School in accordance with goals and objectives of his December 7, 2015 IEP:

A. Reading Comprehension:

Xxxxx has made meaningful progress in his reading comprehension in accordance with the goals set out in the December 7, 2015 IEP.

The April 21, 2016 IEP Progress Report noted that Xxxxx had achieved “great success” in achieving his goal towards independently reading at 3.5 grade level.

Dr. Xxxxx, Ms. Xxxxx, and Ms. Xxxxx, who were all accepted as experts in their fields, testified that the CARS and STARS program appropriately provided Xxxxx with an opportunity to hone his Reading goals and enabled Xxxxx to make progress on the goals and objectives listed in the December 7, 2015 IEP. (Tr. 370; Tr. 869; Tr. 889; Tr. 1126; Tr. 1146-1147)

Xxxxx was described in the June 8, 2016 Proposed IEP as an excellent reader who takes great pride in his abilities. “He has success when 6 or less questions are asked about his comprehension of what the main idea is as well as identifying supporting details. He scores at least 70% on class activities when this is the case. “(P. Ex. H3: Tab 5 p.19)

In the June 22, 2017 Proposed IEP, it was noted in the Reading Present Level of Performance section that “Xxxxx has made sufficient progress in reaching his reading goals of 70% with minimal prompting from his teacher. He has demonstrated the ability to independently read a text and identify the main idea of the story; he has learned about how to look at the story and identify the beginning, middle and the end of the story when focused; Xxxxx is able to answer basic comprehension questions about a text, and Xxxxx has learned to evaluate multiple choice questions. (P Ex. H3; Tab 9 p. 7) Xxxxx’s teacher, Ms. Xxxxx, who was qualified as an expert, testified that when she taught Xxxxx reading during his freshman year at Xxxxx High School he made progress throughout the Cars and Stars reading program (Tr. 208). When asked:

Q. Based on your work with Xxxxx then, and the progression you saw in CARS and STARS[[4]](#footnote-4) would you say during the year you worked with Xxxxx, he progressed in his educational goals? She responded: A. Sure. (Tr. 210)

Ms. Xxxxx, who was Xxxxx’s Developmental Reading Instructor while he was a sophomore, testified that Xxxxx had made progress and real improvement in reading based on her before and after assessments with CARS and STARS[[5]](#footnote-5). Ms. Xxxxx was asked:

Q. All right. So you gave him a pre-test and then there's a benchmark, and then you give him a post-test. Is that right?

A. Right.

Q. Overall, does this show progress in the areas of reading in which you were working with him?

A. Yes. Exactly.

Q. Why do you say that?

A. Because the test results say that.

A. Because, see, the numbers -- for example, when he's gone from, like, cause and effect -- which was one of his favorite subjects -- it goes from two to three to five. That means that he has made really good improvement. Five is the best. (Tr. 159-160)

She explained that:“For reading, for example, some areas Xxxxx really, really likes. For example, what, who, where, when, those areas, like some other areas, he really, really likes those areas. So he was there. He was paying attention. He enjoyed learning that. And that's why I -- rarely give to students a 5; and here, page 23, for this score, I have given him a 5 because I knew -- I knew that he has made excellent improvement. “ (Tr. 164)

Accordingly, I find that Xxxxx has consistently made meaningful progress in the Reading Comprehension goals and objectives contained in the December 7, 2015 IEP.

# B. Speech and Language:

Although Xxxxx has hypotonia and continues to struggle with intelligible speech the June 22, 2017 Proposed IEP, noted that “Xxxxx has made significant progress with correct use of past, present and future grammatical tense markers. “(P Ex. H3: Tab 9 p. 10)

Parent’s witness, Ms. Xxxxx, a speech pathologist who is the owner of Children’s Speech and Language Services, Inc. has been working with Xxxxx since October of 2017, although he has received speech and language therapy with the practice since 2012.

Ms. Xxxxx acknowledged that although she was familiar with IEPs from her years working as a special education teacher she had never reviewed Xxxxx’s IEPs or communicated with the Xxxxx County Public Schools about Xxxxx. She confirmed that she had not had the benefit of being able to review the many evaluations and updates and progress notes and documents from the Xxxxx County Schools' speech and language staff who have been working with Xxxxx for years because the Parent specifically instructed her that she was not to contact or share information with the Xxxxx School System. (Tr. 81-82)

Ms. Xxxxx was accepted as an expert having demonstrated that she was experienced and knowledgeable in her field of speech pathology. However, she did not offer any opinions regarding the speech and language services being provided to Xxxxx by the Xxxxx County Public Schools. She had never reviewed Xxxxx’s IEPs or records or spoken with Dr. Xxxxx or Xxxxx’s other speech and language teachers. Her testimony was interesting but not relevant to the issue of whether the December 7, 2015 IEP provided Xxxxx with FAPE or whether subsequent proposed IEPs include goals and services reasonably calculated to enable Xxxxx to make progress in speech and language skills. For that reason I give less weight to her testimony.

I give greater weight to the testimony of Dr. xxxx Xxxxx, who was qualified as an expert in Speech and Language Pathology and who has worked with Xxxxx at Xxxxx High School since 2016. She identified and reviewed Xxxxx’s current progress report which runs from October 2015 until present. (Ex. S. Book 1 tab 33)

Her opinion was that Xxxxx’s progress in speech and language has been “definitely meaningful.” (Tr.1486-1487) She went on to testify that:

“Well, I've seen him progress on all of his goals. We've been working very hard on really focusing on these goals and objectives. As you can see, in the progress, we have seen an increase in the percentage of accuracy on all of the sounds. And, “He's been heading towards mastery since I've been working with him.” (Tr. 1450) Dr. Xxxxx, who works with Xxxxx, in a one- on- one setting, testified that Xxxxx has mastered his IEP communications goals set out in his December 2015 IEP, and his progress in the area of speech and language has been “definitely meaningful.” (Tr. 1486-87) In support of her opinion that Xxxxx has made progress she gave as an example a series of sounds that she has been focusing on with Xxxxx and the data that she collected to measure his progress on that goal:

“Well, in the structured context where I work with him and collect the data, he has mastered this goal as it's written. He is accurately producing those sounds at least 80 percent of the time in the longer words when he's having conversation or reading. So this was data collected throughout the quarter, the third quarter of 2017-2018, and we have the data to report that he mastered that goal.” (Tr. 1456)

In the 6/22/17 Proposed IEP in the Present Level of Performance section of the Communication and Speech Intelligibility it was noted that: “Xxxxx has made significant progress with correct use of past, present and future grammatical markers.” And that data taken in May 2017 indicates that during a therapy session, Xxxxx volunteers upcoming information using full sentences with correct tense and article inclusion with at least 90% accuracy.” (P. Ex H3; Tab 9 p. 10) I find that Xxxxx has consistently made progress in the Speech and Language goals and objectives contained in the December 7, 2015 IEP.

# C. Writing and Written Language:

The June 22, 2017 Proposed IEP, reported that: “Xxxxx has demonstrated an increasing ability to accurately capitalize words that need capitalization. Xxxxx has shown to use basic punctuation such as periods, exclamation points and question marks correctly with 90% accuracy.” (P Ex. H3: Tab 9 p. 18)

xxxxx testified that he taught Xxxxx Foundations of English last year and that he is currently working with him in Strategies for Success; Active Physics and Strategies for the School Year. He explained that last year he taught Xxxxx in a small class of around seven students and that there were two teaching assistants in the classroom. “…we mainly worked on the things that were in his IEP, particularly with articles, prepositions, capitalization, sentence structure, and things like that, throughout the entire year. (Tr. 222-223). When asked whether Xxxxx had made progress he replied: “…I think he's certainly made progress. There's always room for improvement with everyone. I know I was learning as well. But he definitely progressed.” (Tr. 233) Mr. Xxxxx testified that he believed that the work that he has done with Xxxxx in Strategies for Success and Foundation of English and the assistance that he has given him in the Active Physics class has been beneficial to Xxxxx and helped him make educational progress. As an example he noted that during Xxxxx’s sophomore year in the Foundation of English class he made progress towards his IEP goals in writing and that Xxxxx consistently mastered capitalization for every letter with 100 percent accuracy in three writing samples. (Tr.272; Ex.S-33-025-036) I find that Xxxxx has consistently made meaningful progress in the Writing and Written Language goals and objectives contained in the December 7, 2015 IEP.

# D. Math:

The April 21, 2016, IEP Progress Report stated that Xxxxx had made 100% improvement when comparing and ordering whole numbers, 80% improvement in fractions, and a 60% improvement in decimals on recent testing with respect to his math skills. (Ex. S. 33-002)

The June 22, 2017 Proposed IEP stated that:

“Xxxxx has shown mastery in some areas of number sense and computation; he has performed with at least 70% accuracy and ordering whole and decimal numbers, subtracting 4 digits minus 4 digits, and solving practical word problems with whole numbers. In addition, in the area of computation, he mastered using subtraction with and without regrouping to make change for currency values. Furthermore, Xxxxx is making consistent progress in number sense; he is able to perform 2 digits times 2 digits multiplication with the use of a multiplication table, as a math aid. He has demonstrated this skill with at least 70% accuracy. “

“(P Ex. H3: Tab 9 16)

xxxxx Xxxxx who also teaches Xxxxx Active Physics testified that he had seen Xxxxx’s math skills improve during his junior year and noted that that Xxxxx is able to do much of the math course work independently. (Tr. 251)

Xxxxx took Foundations of Math in his freshman and junior year. The class was taught by Ms. Xxxxx, an expert witness in special education instruction. When asked what progress she has seen Xxxxx make towards his IEP goals from her first year teaching him until his junior year she responded that Xxxxx’s math IEP goals in the December 7, 2015 IEP were very hard for him and because of that she had to first focus on the basics with him, but that now “Really, right now, I see how much improvement Xxxxx has made. “ (Tr. 120) She went on to testify that Xxxxx has progressed in his Connecting Math Concepts program from Level C to Level D [[6]](#endnote-1)[[7]](#footnote-6)from his sophomore to junior years (Tr. 113-116).; that he had improved Brigance test scores (Tr. 122-123; 125) and that he now displayed math skills that he could not complete with proficiency in his freshman school year, such as one digit addition and subtraction. (Tr. 129, 148-149, 151)

Ms. Xxxxx testified that she had observed Xxxxx making “real-progress” as demonstrated on the bi-weekly work samples that were sent home to the Parents. (Tr. 134,140,148) (S. Ex. 140)

Accordingly, I find that Xxxxx has consistently made meaningful progress in his mathematics studies in the goals and objectives contained in the December 7, 2015 IEP.

# E.Occupational Therapy**:**

Dr. xxxxx Xxxxx, an expert in occupational therapy, who has worked with Xxxxx at Xxxxx High School since August of 2017, identified the July 20, 2016 Occupational Therapy Evaluation which reported that Xxxxx had mastered both of his IEP goals as set out in the December 7, 2015 IEP. (Ex. S. 33 & 53) She testified that she had taken part in his reevaluation conducted in October of 2017 and that based on the evaluation data at that time it was confirmed that Xxxxx had mastered his two occupation therapy goals. (Tr. 1344-1347) She also noted that Xxxxx’s technical skills were rated as independent. (Tr. 1344-1345) Accordingly, she recommended that Xxxxx’s occupational therapy services be discontinued due to his mastery of his life skills goals. [[8]](#footnote-7) During the August 14, 2017 IEP meeting the IEP team discussed and selected the following services for Xxxxx’s transition goals and objectives: (1) Employment and Transition Services (ETR); (2) Career/College Related Course(s)/Experiences: Theater (given Xxxxx’s expressed postsecondary employment goal of working as a ticket taker and usher): Individual Math: and, Foundation of English; and (3) the Education for Employment for the Office (EFEO) course. The Parents declined to sign the Proposed IEP or enroll Xxxxx in the EFEO course for the fall 2017 semester.

I find that Xxxxx has made progress to the point that he has mastered the Occupational Therapy goals and objectives contained in the December 7, 2015 IEP.

9. XCPS is mandated to provide Xxxxx with a free and appropriate public education. The operative term is appropriate-not ideal. It is indisputable that Xxxxx County Public Schools has provided Xxxxx with FAPE.

# Parent’s Remaining Specific Complaints:

10. The Parent’s failed to introduce any credible testimony or evidence to sustain their burden of proof regarding any issues raised in their Complaint. Xxxxx County Public Schools approved and paid for Dr. Xxxxx to perform an IEE, so that issue is moot. And, as discussed above in detail, Xxxxx has made meaningful progress with the goals and objectives contained in his December 7, 2015 IEP. He has shown meaningful progress in reading comprehension, speech and language, writing and written language, math and occupational therapy.

The Parents complaints are that: A. Teachers failed to provide Xxxxx access to the curriculum in his general education classes; B. XCPS did not provide Xxxxx an opportunity afforded to other students to work on his reading goals; C. XCPS has refused Parent’s request that they be provided with adequate IEP goal measures; D. Xxxxx High School principal restricted Xxxxx’s Parents from communication with Xxxxx’s teachers and staff; E. XCPS has refused to provide Xxxxx with keyboarding training; F. Xxxxx was not provided appropriate transition service; G. XCPS did not provide Xxxxx the same opportunity that other students have to participate, particularly in areas such as Theatre productions; H. Failure of FAPE due to lack of recent thorough, objective educational, psychological and neuropsychological evaluations (now moot), and that I. Xxxxx HS did not provide Xxxxx an opportunity to get extra help after school as the non-disabled community does. The Parent also complained that Xxxxx was not being given one-on-one assistance; that he was being allowed to play in class instead of learning and that his teachers were giving him answers to his schoolwork. I find all of the complaints to be without merit.

The Supreme Court and Fourth Circuit have admonished hearing officers and reviewing courts alike when they substitute personal opinions or judgments as to proper educational policy, and best placements for the disabled student, in the place of the local educators' expert judgments. See *Rowley Id.* In *Hartman*, the Court noted that IDEA does not require a school system to furnish a student with every special service necessary to maximize each handicapped child’s potential. *Hartman v. Loudoun County Board of Education*, 118 F. 3d 996 (1997).

Ms. Xxxxx testified on her own behalf regarding her complaints and her observation of Xxxxx being taught in his classrooms. She had Ms. Xxxxx, Xxxxx’s at-home tutor; testify regarding her frustration with Xxxxx’s homework and her observation of Xxxxx’s classrooms. I give little weight to their testimony. Foremost in my determination is that neither Ms. Xxxxx nor Ms. Xxxxx has any training in special education. Ms. Xxxxx co-taught elementary school with a special education teacher years ago but that does not qualify her to give her opinion regarding whether Xxxxx is being provided FAPE by the School System. Ms. Xxxxx admitted that she had no actual special education training or degrees in special education. She cannot substitute her preferences and opinions as to Xxxxx’s education by XCPS for that of the expert teachers and staff who are charged with providing Xxxxx with FAPE.

# A. Complaint that Xxxxx is not being provided modified Access to the Curriculum in his General Education Classes:

Ms. Xxxxx, a specialist in the office of Special Education testified that beginning in 2015 she observed the following teachers as they were working in classrooms with Xxxxx:

Ms. Xxxxx, biology; Mr. Xxxxx, history; government was Mr. Xxxxx; U.S. VA history was Mr. Xxxxx; and then Xxxxx was moved to the team-taught class with Mr. Xxxxx and his co-teacher. And then after, physics with Mr. Xxxxx, and then Strategies for Success with Mr. Xxxxx. (Ex. S. 73) Dr. Xxxxx also conducted several observations of Xxxxx’ classes at Xxxxx High School. Both Ms. Xxxxx and Dr. Xxxxx were accepted as experts in their field. Both of them testified that following their observations they consulted with and coached Xxxxx’s teachers to make certain that they were providing Xxxxx with the agreed-upon accommodation to modify tests and presenting material in “in plain English.” (Tr. 328; Tr. 317; Tr.330; Tr. 346-348)

They also testified that the teachers at Xxxxx were providing Xxxxx access to the curriculum and modifying his courses appropriately, through utilizing such techniques and tools as the “gradual release “ approach, MyOn[[9]](#footnote-8), an interactive notebook and the Strategies for Success class. (Tr. 328; Tr. 330; Tr. 346).

Mr. Xxxxx described his use of the MyOn and the interactive notebook when working with Xxxxx. (Tr.264-. 265) He also discussed how Xxxxx’s work is modified and that:

“But in terms of modifying them, they're already modified to a point that is -- with assistance, Xxxxx understands, and he's able to just work through just as everyone else in the class. But the quizzes and tests are -- they do need some modifying. But he does need assistance to work through it.” Referring to Xxxxx’s ability to do the modified work he stated that: “He can do it. He been able to -- he's shown that he can do it.” (Tr. 255; 274-277) I find that the Parent’s claims are without merit.

# B. Complaint that XCPS did not provide Xxxxx with an opportunity afforded other students to work on his reading goals.

As discussed above Xxxxx has made progress in his reading comprehension in accordance with the goals set out in the December 7, 2015 IEP.

Dr. Xxxxx, Ms. Xxxxx, and Ms. Xxxxx, who were all accepted as experts in their fields, testified that the CARS and STARS program appropriately provided Xxxxx with an opportunity to hone his Reading goals and enabled Xxxxx to make progress on the goals and objectives listed in the December 7, 2015 IEP. (Tr. 370; Tr. 869; Tr. 889; Tr. 1126; Tr. 1146-1147)

Mr. Xxxxx testified that Xxxxx was given the opportunity to work on his reading goals by giving him access to appropriate level reading material through the use of the MyOn computer based library which “has a couple of thousands of books in every subject” and which he used that with Xxxxx to “…supplement what he is either learning in class and try to find something that correlates with the unit. “ He went on to explain that Xxxxx is not reading at an 11th grade level so the MyOn system is a way to provide him with materials are related to some of the things that he is studying such as science or history that are at a level that Xxxxx is comfortable with. (Tr. 263-264)

Principal Xxxxx testified that Ms. Xxxxx had claimed that there was a lack of appropriate reading for Xxxxx in the school library:

“Very soon after Xxxxx came to Xxxxx, Ms. Xxxxx was expressing concerns that there were not books in our library that were appropriate for students of Xxxxx's reading level. That is something I eventually talked to our librarian about. What you see in this exhibit are packing slips from over 100 books that we purchased to put in our library to help accommodate Ms. Xxxxx's request that there were books in the library that were appropriate to Xxxxx's reading level, that weren't simply, you know, cartoons and bunnies and that sort of stuff, but were real books about real things that Xxxxx could go in and check out.” He went on to say that to his knowledge these books have never been utilized by Xxxxx or Ms. Xxxxx and that two weeks ago Ms. Xxxxx was supposed to come to the library to get some of the books but did not make the scheduled appointment with the librarian. (Tr. 958-960)

It is clear from the above testimony that the teachers and staff of Xxxxx High School made a concerted effort to provide Xxxxx with books appropriate to his level of learning and that the Parent’s complaint is meritless.

# C. Parent’s complaint that XCPS has refused Parent’s request that they be provided with adequate IEP goal measures.

The Parents have been provided with copies of Xxxxx’s schoolwork every two weeks. (Tr. 1104; Tr. 1172-1174) They also receive copies of the IEP Progress Reports which include qualitative comments supplementing the quantitative representations of Xxxxx’s progress on each of his IEP goals and objectives. These are provided to assist the Parents in understanding how Xxxxx is performing on his specific goals and how close he is to mastering them. (Tr. 1095-1099).

Additionally, Xxxxx’s IEP team have held extensive IEP meeting during the 2016 and 2017 summer periods to meet with the Parents and review data and compare and discuss the data relating to each goal and objective .(Ex. S. 82-029 through S-82-032) I find that XCPS has provided the Parents with adequate IEP goal measures and that the Parent’s claim is without merit.

# D. Complaint that Xxxxx High School Principal restricted Xxxxx’s Parents from communication with Xxxxx’s teachers and staff.

I find that the Principal had the authority and justification to divert the e-mails sent by Ms. Xxxxx to his office instead of directly to the teachers and staff. Being a zealous advocate for your child does not entitle a parent to hector, harass and insult teachers and staff. Throughout the Hearing it was evident that Xxxxx is treated with kindness and respect at Xxxxx High School and that the teachers and staff are dedicated to providing him not only with FAPE but with an inclusive and positive school experience.

# E. Complaint that Xxxxx is not being provided keyboarding training:

When asked how Xxxxx is doing on using the computer keyboard his teacher, Mr. Xxxxx, responded “He always needs kind of some reminders, but it's going well. But, again, his work ethic and his approach helps out, because he knows when he -- he know what he should be doing, and he's able to fix that and say -- like when I tell him something, he'll say, you know, like, "I know. I know." And he'll use, whichever fingers, the right fingers.“ (Tr. p. 243)

Dr. Xxxxx testified that Xxxxx’s technical skills were rated as independent. She explained that Xxxxx could independently open up a new Word document, type his name using both hands, and working with a mouse at a slow pace, close and save the documents. (Tr. 1344-1345) She went on to testify that Xxxxx has the functional motor skills to type and that he is able to access keys in a functional way ant that he has the foundational keyboarding skills required. (Tr. 1354) It should be noted that the Parent’s rejected XCPS recommendations that Xxxxx be enrolled in classes that focused on functional skill building and job experience which would have included Microsoft Suite, PowerPoint, and specific typing courses. (Tr. 88) I find that the Parent’s claims are without merit.

F. Complaint that Xxxxx is not being provided appropriate transition services:

I find that this complaint is not supported by the evidence or the testimony presented. The School System has proposed nine IEPs to the Parents each of which contain appropriate transition goals. The Parents have rejected every one of them. Throughout the hearing witness after witness testified about how important it is for Xxxxx to attend classes in vocational and work skills. I find that the December 7, 2015 IEP and each subsequent Proposed IEP contains appropriate transition services for Xxxxx which would assist him in his transition to adulthood and independence

The Parent’s expert witness, Ms. Xxxxx, the Speech and Language Pathologist, testified about the recommendations she made in her January 19, 2018 report, in which she emphasized that:

“It is highly recommended that Xxxxx's Parents and a team of professionals working with him continue to prepare Xxxxx for adulthood by focusing on functional skill building and job experience.” (Tr. 88)

Dr. Xxxxx also stressed that because Xxxxx has a limited period of time before he ages out of secondary school it is important to move towards helping and supporting him in advancing towards independent living and gaining job skills that would help make the transition when he does age out. (Tr. 435)

Ms. Xxxxx Xxxxx, [[10]](#footnote-9) who is the Employment and Transition representative at Xxxxx High School, testified that Xxxxx’s transition services began when he was 14 years old. The first proposed transition services were contained in Xxxxx’s June 8, 2015 IEP. (Tr. 1380) (Ex. S. 22) She went on to testify that classes called WAT and EFEO have been recommended for Xxxxx since he was in 9th grade, and that:

“WAT is Work Awareness and Transition. It's a class where students basically learn work skills in the classroom, and then they practice those work skills in a work setting out in the community.” And that WAT works on work skills for retail stores, general housekeeping, food service ..” When asked why Xxxxx was not enrolled in this class she responded that she was told that the Parents did not want him to take the class. (Tr. 1385)

She explained that EFEO[[11]](#footnote-10), is specifically for training students to work in an office and that students attend every school day. “So it's very similar to WAT except all the jobs are related to working in office. The students do -- they learn everything in the classroom that they would need to work in the office; for example, Microsoft Suite, PowerPoint, they do specific typing courses in that class, and then they go out to work in the community in an office setting.” (Tr. 1392) She testified that she understood that Xxxxx was not enrolled in this class because the Parents did not want him in the class.

Ms. Xxxxx testified that she interviews the student, not the Parents, about what the student’s goals are and that Xxxxx told her that he was interested in getting vocational training. “He's interested in going to the xxxxx Center[[12]](#footnote-11). He's shared that with me that he's interested in attending PERT, which is a vocational assessment period in Fishersville, Virginia.” (Tr. 1397)

Xxxxx’s career goals listed on page 3 of the January 12, 2018 IEP states: “Xxxxx shared that he is interested in exploring careers working in a theater or a sports venue as a ticket taker and usher, working in an office setting, a restaurant or hotel or working outside when the weather is nice.” (P Ex. H3:Tab 12 p. 3)

When asked on cross-examination by Mr. Xxxxx: ”Are you aware in your discussions with Xxxxx that he wants to get a diploma and go to college?” Ms. Xxxxx responded “No.”

Ms. Xxxxx’s professional opinion was that that it is important for Xxxxx’s vocational skills to be addressed immediately and that Xxxxx should be focusing on transition services rather than taking courses that are more academic in nature. (Tr.1397)

# G. Complaint that XCPS did not provide Xxxxx the same opportunity that other students have to participate, particularly in areas such as Theatre productions.

Contrary to the Parent’s complaint, XCPS has given Xxxxx the opportunity to participate in the theatre productions, just not in the way they would prefer. Xxxxx is not able to pass the state mandated safety exam required to permit him to safely use theatre equipment so he cannot perform technical jobs during a theatre production. To accommodate Xxxxx and allow him to participate in theatre Xxxxx has been provided with a student mentor who works with Xxxxx on group projects so that Xxxxx can safely participate in and enjoy the class. (Tr. 1158-1160; Tr. 1247-48; Ex. S. 137)

Xxxxx also participates in choir, and manages the basketball team. Mr. Xxxxx testified that he often sees Xxxxx performing that role at basketball games. (Tr. 908) Numerous witnesses testified to Xxxxx’s love of sports. By giving Xxxxx the job of managing the basketball team, having him participate in choir and providing accommodation so that can safely participate in theatre production demonstrates that XCPS has given Xxxxx the same opportunities as other students to participate in school activities.

# I. Complaint that Xxxxx did not get after-hours assistance:

Principal Xxxxx testified that : “Ms. Xxxxx has been trying -- since she came to Xxxxx, one of her concerns that she has raised over the years is that special education teachers do not seem to stay after school at the rate that some of my non-special educators do. I have tried to explain on numerous occasions that teachers, regardless of whether they're special ed. teachers or not, stay after school at their own choice -that after their contract hours are fulfilled, I cannot and do not require them to stay after. If I were to require them to stay after, I would have to essentially pay them all to stay after.” (Tr. 952-953) It was noted by Principal Xxxxx that when Xxxxx was out of school due to surgery he paid teachers extra to stay after school to work with

Xxxxx to help him catch up. I find that there is no basis to the Parent’s complaint that Xxxxx is being treated differently by the special education teachers and that the School System is not under any duty or required by any IDEA regulation to engage and pay teachers to stay after hours to work with a student who attends classes daily at the school.

# Request for one-on-one assistance for Xxxxx:

Dr. Xxxxx testified that he would not recommend Xxxxx have someone with him one-on-one at all times during the school day. He explained that aside from some areas where Xxxxx needs individualized support in areas of specific weakness: “I think that he's demonstrated the fact that he can be independent and that he does not need someone with him.” (Tr. 467)

Xxxxx’s teachers testified that he does not need a one-on-one assistant to be with during the school hours due to his degree of independence and ability to navigate the school setting. Dr. Xxxxx, as well as the teachers, warned that providing Xxxxx with a one-on-one aide would risk his becoming overly dependent on the assistant and hinder his progress towards independence. Xxxxx’s IEP team determined that one-on-one assistance would “create.. a very restrictive setting for Xxxxx and inhibit.. his ability to generalize learned skills and function independently “ (Ex. S. 55-026)

When asked if he believes that Xxxxx requires one-on-one assistance Principal Xxxxx stated that as a member of Xxxxx’s IEP team he would not recommend the one-on-one assistance requested for Xxxxx by Ms. Xxxxx because “You know, we're trying to create independent students. And I know that Ms. Xxxxx, on several occasions, has said that she wants us to do everything we can to ensure that Xxxxx is independent. And I think that, you know, there's these two competing philosophies that, I want him to be independent, yet I want a one-on-one aide with him, and those two things don't go together. It is very rare in my experience -- in fact, I can't think of a time in my experience as an administrator or as a teacher for that matter that I am aware of that a student has gotten a full-time one-to-one aide unless they have a very severe medical condition.” (Tr. 954-955)

The testimony presented by the Xxxxx teachers and staff describe Xxxxx as a sociable and engaging person who takes great pride in his accomplishments and, be it sports, theatre, choir or in the classroom, experiences pleasure and enrichment from his interaction with other students, teachers and staff. Not only do I find that Xxxxx does not require a one-on-one assistant but I find that this would be detrimental to his transition towards an independent adulthood.

# Complaint that teachers allow Xxxxx to play instead of teaching him:

Ms. Xxxxx testified that it was her belief that Xxxxx’s teachers spent too much time letting him play on the computer and engage in other non-academic activities while in class. The testimony from Xxxxx’s teachers does not support this claim. In fact, the Parent’s own expert witness Ms. Xxxxx explained that she uses games in her therapy with Xxxxx: “He also just loves games. So a lot of times I can do our practice by playing a game with him just to kind of get him motivated, and he really enjoys that. So, you know, we'll do a little bit of rough practice and play a game, then I'm monitoring his communication during that time. But he loves all kinds of stuff like that. Just -- sports and games get him going.” (Tr. 87)

Ms. Xxxxx has no educational background that would qualify her to substitute her opinion and judgment as to how special education students should be taught for that of Xxxxx’s special education teachers at Xxxxx High School. I find that this complaint is not supported by the evidence or the testimony presented.

Complaint that teachers are giving Xxxxx answers to tests:

Parent’s own witness, Mr. xxxxx, who had worked as an Instructional Assistant in Xxxxx’s fall 2015 and spring 2016 History and English classes denied that Xxxxx was given the answers to tests and observed that Xxxxx learned the material on which he was tested. In his responses to questions from Ms. Xxxxx he testified:

A. Yeah. So us three of in the classrooms, Mr. Xxxxx, Ms. xxxxx, and myself, we would read their answer, and then we would try to guide them to the answer in the material, and then they would --

Q. Then they could put that answer down?

A. Mm-hmm.

Q. How about for testing? Was that the same?

A. Yeah. If any of the students in the classroom needed a question read, we would read the questions. We never gave them the answer. They would have to answer on their own.

Q. Did you help them with that, though, or the answers to the questions?

A. I would never help them with the answers to the question. They would have to find that out on their own for a quiz or a test.

Q. How was Xxxxx doing in that class, Mr. Xxxxx’ class -- in the history class -- overall, in general?

A. You mean --

Q. In learning the material.

A. Oh. Yeah. I think Xxxxx was learning the material pretty well in the class. (Tr. p. 46-47)

Mr. Xxxxx testified that he uses a structured way of teaching Xxxxx in which he helps Xxxxx progress to where he is able to do the work on his own :”…specially for physics, because it is a lot of math involved. So it's very -- this is the best way for me to introduce something to him. You know, I wouldn't expect Xxxxx to just know how to do it.That's something that I have to show him how to do several times, and then we'll do it together, and then he'll eventually do it on his own. (Tr. 265)

It is unrealistic to expect Xxxxx to be able to execute all of his classwork independently without any assistance or guidance. I find that the methods used by Xxxxx’s teachers are appropriate and calculated to help him learn and have resulted in his making meaningful progress in all his IEP goals and objectives.

# RULING

Based upon all of the evidence and testimony presented, applicable statutes, regulations, case law, and the arguments presented by the parties, the Hearing Officer makes the following findings and conclusions of law:

1. Xxxxx County Public Schools was able, through the testimony of its witnesses, experts and exhibits, to provide a cogent and responsive explanation for its decisions that demonstrate that the December 7, 2015 IEP and the additional nine Proposed IEPs were reasonably calculated to enable Xxxxx to make meaningful progress appropriate in light of his circumstances; that he has made meaningful progress in his goals and objectives, and that he has consistently been provided FAPE from December 7, 2015 through May of 2018.

2. Xxxxx County Public School’s December 7, 2015 IEP and the subsequent Proposed IEPs include appropriate annual goals and educational services to help Xxxxx continue to progress and prepare him for the transition to adult life goals, and are tailored to his unique needs.

**PREVAILING PARTY**: Xxxxx County Public Schools

# RIGHT OF APPEAL

This decision shall be final and binding unless either party appeals in federal district court within 90 calendar days of the date of this decision, or in a state circuit court within 180 calendar days of the date of this decision.

**Date: August 19, 2018**

Morgan Brooke-Devlin

Hearing Officer

**Morgan Brooke-Devlin, Esq**.

Hearing Officer

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# CERTIFICATE

I hereby certify that a true copy of the foregoing Decision was sent by e-mail on August 19, 2018, to the following Parties:

Ms. Xxxxx and Mr. Xxxxx

Xxxxxxx

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Morgan Brooke-Devlin

Hearing Officer

1. XCPS Psychologist [↑](#footnote-ref-1)
2. Independent Educational Evaluation [↑](#footnote-ref-2)
3. Principal xxxxx was qualified as an expert in Educational Administration. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. Comprehensive Assessment of Reading Strategies to Achieve Reading Success [↑](#footnote-ref-5)
6. [↑](#endnote-ref-1)
7. “D is better than C”. (Tr. p. 114) [↑](#footnote-ref-6)
8. Contained in XCPS 8/7/17 Prior Written Notice to the Parents (Ex. S. 87) [↑](#footnote-ref-7)
9. A computer based library available through the XCPS [↑](#footnote-ref-8)
10. Ms. xxxxx was qualified as an expert [↑](#footnote-ref-9)
11. Employment for the Office [↑](#footnote-ref-10)
12. Davis Center is a program where students go out to work at jobs during the week. (Tr. 1393) [↑](#footnote-ref-11)