**VIRGINIA DEPARTMENT OF EDUCATION**

**DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES**

**OFFICE DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES**

Public Schools Mr. and

School Division Mrs.

Parents

Ms. Danielle Hall-McIvor, Esq.

Mr. Mathew Simmons, Esq. Student

Counsel Representing the LEA

Mr. Saad El-Amin

Ms. Cheryl Poe

Ms. Barbara Cummings

Ms. Milinda Knipfer

Parent Advocates

Morgan Brooke-Devlin, Esq. Parents initiated the Hearing

Hearing Officer

# HEARING OFFICER DECISION

A Due Process hearing was held on April 16-20, 2018; May 14, 16 and 29, 2018, in Xxxx, Virginia.

Ms. Xxxx (“Parent”) was present throughout the hearing as well as her Advocates: Mr. Sa’ad El-Amin; Ms. Barbara Cummings; Ms. Milinda Knipfer and Ms. Cheryl Poe who attended electronically and also in person on various days.

Appearing for the City of Xxxx Public Schools (“xCPS” or “the School System” or “LEA”), were Ms. Danielle Hal- McIvor, Esquire and Mr. Matthew Simmons, Esquire (“LEA Counsel” or “Counsel”). Also present for the School System was Ms. Xxxx Xxxx, Director of Compliance and Special Education for Xxxx Public City Public Schools, and Mr. Reginald B. Frazier, Esquire, Virginia Supreme Court, Evaluator, who attended the first two days of the hearing.

The hearing was open to the public and transcribed by a court reporter. The record includes Hearing Officer’s Orders, the first Due Process Request and the Amended Due Process Request, Pre-Hearing Reports, Motions, the Parent’s written closing argument, School System written closing argument, Exhibits as noted below and the transcript[[1]](#footnote-1).

The following witnesses were called to testify by the Parents

Ms. Xxxx: Parent

Xxxx, Ph. d.: Parent’s expert witness

Xxxx: xxCPS Director of Compliance and Special Education Services

Xxxx: Executive xCPS Director of the Office of Programs for

Exceptional Children

Xxxx: Assistant Principal of Xxxx High School

Xxxx: xCPS Coordinator

Xxxx City Public Schools called to testify:

Xxxx, Psy. D.: xCPS School System Psychologist

Xxxx: *Id.*

Xxxx: X.X.’s special education case worker at Xxxx High School

**STATEMENT OF THE CASE**:

X.X. (“child” or “student”) is a 16 year old young man who lives at home with his Parents, Grandmother, and siblings. X.X. is of average intelligence and is not learning impaired. By all accounts X.X. is a well behaved, respectful and well liked student who tries to do his best in school.

X.X. has been receiving special education services from Xxxx City Public Schools since 2007 when he was diagnosed with Asperger’s Disorder (Autism Spectrum Disorder). X.X. began attending Xxxx High School (XXHS) for 9th grade in the fall of 2016. Due to excessive absences and failure to pass classes he was repeating 9th grade at XXHS in 2017. X.X.’s Mother reported that he had a suicidal ideation in 2016 which resulted in X.X. being taken to Children’s Hospital of the Kings Daughters (CHKD) for an evaluation.

X.X. has a long history of elopement when “overwxxxxxxed.” (P. Ex. 24) He eloped from Xxxx High School several times by going outside the school building and once across the street. He missed more than 44 days of school by December 2016, and was subsequently withdrawn from school by his Parents. X.X. received home-based services during most of the 2017 fall semester. Home-bound services were applied for twice by the Parents but the applications were rejected for non-compliance with the application requirements**.** As of the Due Process Hearing held in May of 2018, X.X. had only attended several days of school in 2018.

The Parents filed an Amended Due Process Complaint on February 8, 2018 claiming, among other things, that the Xxxx Public City School System had failed to provide X.X. with FAPE during the 2016-2017 and 2017-2018 school years. (S. Ex. 149-166)

In its Prior Written Notice dated February 29, 2018, the School System denied the Parents’ claims and asserted that it had developed an IEP that appropriately addressed the student’s needs related to his disability of autism. The School System denied each of the Parent’s allegations. (S. Ex. 475)

X.X.’s Xxxx High School special education case manager, Ms. Xxxx, stated that X.X. became overwxxxxxxed in 2016 when he was taken out of self-contained classes [[2]](#footnote-2) and put in all credit bearing classes when he started high school. Ms. Xxxx believed that when X.X. fell behind in his classes it triggered his anxiety and caused him to elope from school. (Tr. 1607-1609)

Ms. Xxxxxx noted that the IEP team held a meeting on October 17, 2016 in an attempt to try and lighten X.X.’s class schedule and give him more special education support which would have resulted in his graduating in five years instead of four. The Parents rejected the IEP proposal and stated that they wanted X.X. to graduate on time. (Ex. S. 0525-0526)

**ISSUES:**

**1**. Did the Xxxx City Public Schools provided X.X. with a free and appropriate public education (FAPE) during the 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”) ?

**2.** Were the IEPs offered to X.X. by XCPS in 2016-2017and 2017-2018 reasonably calculated to enable X.X. to make progress appropriate in light of his circumstances by providing him with an IEP tailored to his unique needs?

**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. This Due Process Complaint was filed by the Parents. Accordingly the Parents have the burden of proof at this due process hearing.

The Parent’s first Amended Due Process Complaint allegation is that “the LEA deprived X.X. of educational benefit for the 2016-2017 and 2017-2018 school years when it failed to construct an IEP that (a) included IEP goals for his specialized educational services in calculation/math problem, reading/writing expression and organizational skills; and (b) failed to address his emotional disabilities of depression.” They also complained that XCPS failed to evaluate X.X. for all areas of disabilities and identify if he would benefit from related aides or services under Section 504 to address his depression and anxiety which led to a denial of FAPE.

# 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 and developed an IEP for the student. *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 in this matter, 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 benefit 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."

In Order to determine if XCPS provided X.X. with FAPE a review of the procedural history and content of X.X.’s 2016-2017 and 2017-2018 IEPs and Proposed IEPs is required:.

# October 17, 2016 IEP Amendment (P. Ex. 5)

On October 17, 2016, X.X.’s IEP team, which included Ms. Xxxxxx and the Parents, met to review X.X.’s current progress and instructional needs. Xxxxxx had begun attending Xxxx High School in September of 2016 as a freshman and was working towards a general education curriculum. His last Annual IEP had been done in December of 2015. (S. Ex. 302) The meeting was called to discuss an amendment to X.X.’s IEP. (P. Ex 5)

Of concern was the report from X.X.’s general education teacher that X.X. was displaying “unique behaviors within the class setting” For example, he was covering his head, fidgeting with his clothing and re-writing math questions. It was noted that X.X. appeared to be “overwxxxxxxed with some of the class needs and routine, ...and that these behaviors are unique from class to class.” X.X. was observed to be extremely aware of his social interaction associated with his behaviors in class.

In the section of the Prior Written Notice labeled “Descriptions of the factors relevant to the actions proposed or refused.” VBCS proposed an amended IEP with Level I special education services, 48% or less with support in English, math, and a resource class to assist with X.X.’s social/emotional skill.

It had been noted that X.X.’s teachers had provided data to indicate that X.X. could access the curriculum but that X.X.’s instructional needs required that he access the curriculum through educational accommodations and special education services.

The team reviewed current accommodations and proposed a change of accommodations to include: preferential seating, chunking tasks on assignments, visual prompting to initiate and change tasks. XCPS also proposed a change in services to increase X.X.’s special education services, noting that X.X. continues to require specially designed instruction in English and Math. It was determined that X.X. would benefit from additional support through a resource class for social/emotional skills. X.X.’s goals were reviewed and a social/emotional goal was developed. The team agreed that it would compile additional information to complete development of the Amended IEP.

The Amended IEP contained Annual Academic and Social/Emotional Goals. In addition, there was a Statement of Special Education Related Services. These were: allowing X.X. to request to go to guidance, or talk with case manager when anxiety begins to occur; small group testing, chunking information into smaller sections and presenting it to X.X. one section at a time; have X.X. restate directions to ensure that his understanding is accurate; gain X.X.’s attention prior to giving oral directions and prior to transitions in classroom; monitor his work for compliance with directions on task behaviors; shorten assignments when progress towards objectives can be measured/evaluated by fewer attempts; provide wait times of 2-3 minutes when asking a question or making a request, allow time for attention to shift from one task to another; preferential seating near positive student role model and space to stand/pace if necessary; provide a copy of lengthy notes over one paragraph and have X.X. in a small group SOL testing.

In addition there was a list of services designated “Specially Designed Instruction: These included:

**1**. Math calculation/Math problem solving in the general education classroom 40 minutes 5 times every two weeks starting 10/17/16 and ending 12/21/16.

**2.** Reading/Written expression in the general education classroom for 30 minutes 5 times every two weeks starting 10/17/16 and ending 12/21/16.

**3.** Social/Emotional services to be provided in the special education classroom 90 minutes 5 times every two weeks starting 10/17/16 and ending 12/21/16.

The team considered and rejected the need for related services and ESY. The Parents signed the Amended IEP. (P. Ex. 5)

# DECEMBER 19, 2016 ANNUAL IEP (S. Ex. 291--308)

It was related in the Summary of Present Levels of Academic Achievement and Functional Performance that:

“The IEP case manager had a phone conference with Mr. Xxxxxx on 12/7/16 regarding concerns for Xxxxxx’s emotional state: crawling under his desk, banging his head and pinching his cheeks and refusal to attend his math class. Due to these concerns a parent, teacher and guidance counselor conference was held on 12/13/16. At which time, processing demands placed on X.X. were reviewed and his feeling of being overwxxxxxxed was discussed. His current grades were reviewed and possible changes to his schedule were presented for consideration for his IEP.” (Ex. S. 0300)

On December 19, 2016, X.X.’s IEP team, which included both Parents, met to draft X.X.’s Annual IEP, which included, among other things a review of his current progress; instructional needs, goals and objectives and a proposed change to X.X.’s schedule.

Ms. Xxxxxx testified that: “Teachers had reported the growing concern for his withdrawal. It had been reported that he was pinching his cheeks to the point where they were leaving bruises He had broken some pencils, put his head in his hands, crawled under a desk, so behaviors like that were reported.“ Ms. Xxxxxx spoke with X.X. who told her that the classes were too big, that he was very aware that the other students knew that he wasn’t keeping up in class. He talked about being wrong in that he thought that he could do these classes but maybe he needs smaller classes. He said that “this was very difficult for him.” (Tr. 1193)

Ms. Xxxxxx testified that the proposed changes to X.X.’s schedule correlated with the behaviors observed by her and reported by the other teachers who attended the meeting.

“The discussion was that he was overwxxxxxxed and that he could do this but if we gave him less academics to focus on and provided more time for that support or to decompress during the day, that he would be less overwxxxxxxed and therefore able to perform the tasks that were being asked of him each day in each class. “ (Tr. 1194)

The IEP reported in the section designated “Description of Factors relevant to the actions proposed or rejected” that:

“X.X. had received more support with his academic curriculum in Middle School but that services were reduced when he began high school so that he could enter the general education curriculum. As a result, X.X. had difficulties with the “rigor and pace of many of these classes,” Several parent teacher conferences were held to strategize X.X.’s instructional needs.”

It was also noted that:

“Teachers and school staff have noted additional stress with X.X. as he has continued to progress with these content courses. X.X. has stated that he has been overwxxxxxxed with many of his classes. In addition, his disability presents social/emotional needs that require direct instruction. XCPS proposed that X.X. receive additional services in an academic resource class that proactively supports his social/emotional needs and promotes instructional support to address his specific needs related to his disability. Annual goals were developed to address his areas of need.” *Id*.

The IEP team discussed each class at the IEP meeting to determine the level of support needed by X.X. to be successful in a curriculum that met his needs. The data contained in X.X.’s cumulative record, current IEP, progress reports and input from the IEP team, and Parents was used to make all decisions. The IEP team proposed an Annual IEP with Level 1 special education services, 49% or less, with support in English, Math, Science, and an academic resource class to support social and emotional goals. The team considered and rejected having X.X. attend Extended Year Service (ESY) based on data which included relevant information from the student’s cumulative records, current IEP, progress reports, and input from the IEP team, including the Parent. It was noted that “Gains during the regular school year will not be significantly jeopardized if the student is not provided with educational programming beyond the regular school year.” The IEP team considered the individual student need, nature and severity of his disability, and determined that the student did not meet the criteria for ESY. The Parent, Mr. Xxxxxx, signed the December 19, 2016 IEP.

# JANUARY 24, 2017 AMENDED IEP (P. Ex. 7)

Ms. Xxxxxx testified that on January 5, 2017 X.X. X.X. arrived late to class very agitated and upset. He asked to speak to her privately and told her that he was very sad and stressed out. He stated that “school is killing me.” When asked why he would say that he responded that he wasn’t keeping up with his school work and that the other students knew that he wasn’t keeping up and that he was a bad boy. (Tr. 1207) Ms. Xxxxxx calmed him down and he was able to join the class. An e-mail was sent to the Parents Ms. Xxxxxx relating what had occurred. (S. Ex. 598)

The Parent responded by asking the teacher to contact her to go over what the therapist was suggesting for X.X... They spoke but Mrs. Xxxxxx never told her what the therapist suggestions were for X.X. nor did the Parent provide Ms. Xxxxxx or XCPS with any documentation or suggestions from the therapist. The Parents signed a release to permit Ms. Xxxxxx to speak with the behavioral therapist but her repeated attempts to communicate with him were unsuccessful.

Following her conversation with Ms. Xxxxxx, Ms. Xxxxxx scheduled an IEP meeting for January 24, 2017 to discuss modification of X.X.’s IEP. Ms. Xxxxxx testified that the IEP team proposed increased services for X.X., due to:

“Growing concerns about his social/emotional state, conversations with Ms. Xxxxxx, you know, the fact that he had been taken to CHKD to be evaluated, would he hurt himself, was significant to the team. And we wanted to meet with Ms. Xxxxxx to see if there was any more information from that event and what else could be done at school to help X.X. “(Tr.1218)

The IEP team, which included Mr. and Ms. xxxxxx, met On January 24, 2017 to discuss modifications and amendments to the December 19, 2016 Annual IEP. XCPS proposed an increase in services for X.X. ... Specifically, they proposed that his special education services would be delivered through an inclusion model or English and Earth Science; that he would receive self-contained services for history, social/emotional support and PE. The self-contained classes would build foundational skills for future classes needed for a standard diploma. In addition, XCPS proposed consultative services to assist across the academic curriculum.

In support of its proposals it was noted that:

“Xxxxxx’s previous academic setting during the 2015-2016 school year was more restrictive and provided support within academic content areas. The IEP team amended his IEP prior to his entering high school. Since then X.X. has demonstrated an increase in anxiety and had expressed difficulties with his current academic curriculum. Despite previous IEP amendments since entering high school to facilitate the transfer to high school and to assist with deficit areas, X.X. has continued to struggle. With these modifications to the curriculum X.X. would continue to be working towards a standard diploma at a slower pace. This would impact his graduation year.”

Mr. Xxxxxx is the assistant principal at Xxxx High School. He serves as the principal’s designee at IEP meetings. As such, he is part of the decision making IEP team but also oversees the hearing to assure that it follows procedure.

He testified that he attended the January 24, 2017 IEP meeting and described how the Parents reacted to proposed modifications:

“Well, initially, they wanted X.X. to graduate, I believe, in four years. And Mrs. Xxxxxx in working with the student felt as though a five-year window initially would have been a better programming for him. They [Parents] weren’t too thrilled about that. So it was always this kind of give and take as to what we were seeing in terms of sensory overload in the building, the rigor , the pace, the demands of general education classes, and what we thought might have been a better overall team decision for X.X..” (Tr. 1068)

The Parents rejected the proposed change of services and said that they had been consulting with a behavioral therapist outside of school. The IEP notes state that:

“Indications from family and professionals outside of school suggest that X.X. requires a change in medication. The Parents have consulted with medical professionals and are in the process of changing medications. The Parents are applying for home-bound[[3]](#footnote-3) services to allow for medical interventions.”

Mr. Mr. Xxxxxx testified that he did not think that the Parents were being realistic about X.X. because:

“We saw that X.X. was beginning to- X.X. was struggling just with the basic, I’ll say academia. We had suggested some re-programming , even some alternative or, you know, kind of attendance plans to also combat the absenteeism, but we—it was sometimes a tough sell because we felt that the Parents were very, I’ll say, value-centered on X.X. graduating in like a four year window.” (Tr.1069)

The IEP team planned to reconvene once home-bound paperwork was completed, or in the event that changes needed to be addressed. (Ex. S. 0313-0326)

# MARCH 3, 2017 IEP MEETING (S. Ex. 239-335))

X.X. underwent a Mental Health Assessment by xxxxxx on January 30, 2017. The assessment reported that X.X. was being evaluated due to Parental concerns regarding X.X.’s increased depression, suicidal ideation and discussion of weapons. X.X. had made comments about wanting a knife following a disagreement with his brother. Mrs. Xxxxxx stated that X.X.’s depressive symptoms began in 2013 when his father[[4]](#footnote-4) was sent out of state for a two year tour of duty. X.X. denied that he wanted to hurt himself or his brother. However, it was advised that all sharp objects should be removed from X.X.’s reach and locked away. It was noted on the assessment that X.X. was not taking any medication. The assessment also stated that X.X. did not have an IEP or a 504 Plan which is odd since it is assumed that the Mother provided all of the information to the clinician conducting the assessment. (S. Ex.2105- 2106)

Review of X.X.’s IEPs and his school record does not reflect that the Parents provided information about the knife or the recommendation to keep sharp objects away from X.X. to the IEP team or that a copy of the Mental Health Assessment was provided to them or XCPS.

It should be noted that as a result of increasing concern about X.X. and his behavior at school the IEP team had proposed a significantly more supportive IEP for X.X. at the January 24, 2017 IEP meeting which was refused by the Parents on the basis that they were consulting with a behavioral therapist outside of school and that they and professionals believed that X.X. was in need of a change of medication. There was no mention that a Mental Health Assessment was going to be performed six days later.

The IEP team met on March 3, 2017 for the purpose of review. The Parents had been unable to obtain home-bound services due to the application forms not containing the required professional signatures and information. At this time X.X. had missed around 44 days of school. XCPS continued to offer the Proposed Amended IEP from the January 24, 2017 IEP meeting which proposed and increased to Level II the special education services to 50% or more*. Id.* The Parents again refused the proposed Amended IEP and explained that they were having difficulties scheduling psychiatric appointments and therapy sessions.

XCPS explained its truancy policy to the Parents. When a student has been absent from school for more than 15 consecutive days the student is withdrawn from school. It was discussed that removal from school did not mean that XCPS would not continue to support X.X. The IEP team explained that the school would continue to follow his progress with outside agencies and work with X.X. so that he could return to Xxxx High School (XXHS), or support him through home-bound services. The Parents were told that because X.X. had missed more than 15 days the school was required to refer the case to the school social worker to assist X.X. and his Parents. X.X. was withdrawn from XCPS by his Parents as of March 3, 2017 and a referral was made to the school social worker. (S. Ex. 329-330)

# MARCH 22, 2017 IEP MEETING (P. Ex. 9)

The IEP team met on March 22, 2017 to develop an amended IEP for X.X. to re-enroll him in school. X.X. had been withdrawn from school on 3/3/17. The Parents reported that they were still waiting for medical appointments. The IEP team agreed that X.X. needed to be back in school. The Parents reported that they felt that X.X. had anxiety issues related to social situations in school and that he has told them that he needs to have a person to check on him throughout the day. X.X.’s teacher responded that X.X. has a number of supports in school as well as peer/staff that support him in the school setting. The Parents advised the team that X.X. was not on medication. It was decided that X.X. would return to school for one social/emotional resource class per day that would addresses X.X.’s ASD needs and that as his anxiety and socialization skills stabilized, additional classes would be added. The Parents signed the Amended IEP. (Ex. S. 0336-0353)

# APRIL 20, 2017 AMENDED IEP (P. Ex. 10)

An IEP meeting was held on April 20, 2017 to develop and Amended IEP to further integrate X.X. back into school. X.X. had been attending one class at the high school on A days and had transitioned back into the school environment for that class. The IEP team met to review current data to determine the level of school that X.X. would be able to tolerates. The Parents reported that X.X. had continuing anxiety issues and that they were working with outside agencies to assist him. The Parents told the team that X.X. had been recently diagnosed with major depression and that he had started taking medication that week and that X.X. was “doing well in the home environment and has shown great gains.” The Parents did not provide the IEP team with any further information or documentation of the depression diagnosis.

The proposed amendment was for X.X. to reintegrate into three additional classes (every A day) beginning April 20, 2017 until May 8, 2017. At that time he was to begin attending school every day (A/B days). His B day schedule would consist of 1 class for the week of May 6, 2017 through May 12, 2017. Beginning May 15, 2017 X.X. would be attending a full A/B day. He would receive social emotional support through his resource class as he continues to integrate back into a full school day. It was proposed that X.X. would receive special education services in all of his academic classes with the exception of Earth Science which would be delivered by his case manager in an inclusive model in the general education classroom. The Parents signed the Amended IEP (Ex. S. 0354-0372)

# MAY 31, 2017 AMENDED IEP (P. Ex. 11)

The IEP team met on May 31, 2017 to review X.X.’s progress since the last meeting on April 20, 2017 as well as to determine what X.X. needed in order to access his current schedule. Since he had returned to school X.X. had experienced a few difficult incidents. He had been unsuccessful in attending school on both A and B days. He did manage to make it through two consecutive A days and demonstrated more success in participating while at school. His case manager had provided supports and instructional support to assist X.X. in attending his classes and participating in class activities. The team anticipated that X.X. would begin attending B days beginning June 5, 2017. ESY was discussed and rejected.

For the next school year XCPS proposed that X.X. would begin by taking English 9 and Algebra I in the general education setting with inclusion support to enable him to work towards his diploma option. In addition, XCPS proposed that X.X. receive special education support in a social/emotional resource class to address specific needs with his disability. X.X. was to receive special education supports in a self-contained setting for additional academic support and content delivery. Mr. Xxxxxx approved the proposed amendments and signed the IEP. (Ex. S. 0373-0391)

# SEPTEMBER 12, 2017 IEP (P. Ex. 17)

X.X. had completed the 2016-2017 school year on a modified schedule to reintroducing him into the school setting. He was repeating 9th grade in the 2017 fall semester. X.X. was making progress; however, he had not completed a full school day with success. He started the new school year with a regular schedule with special education supports to assist in his transition. Things did not go well. On the third day of school X.X. left his class and attempted to leave the school grounds. X.X. was found and escorted to the Principal’s office. Mrs. Xxxxxx was contacted and came to the school. While she was speaking with the Assistant Principal X.X. tried to leave the office and school grounds again. X.X. was retrieved and brought back. His mother asked for X.X. to be dismissed from school that day so that she could contact his psychologist and or a hospital for assistance. X.X. did not return to school.

The school contacted the Parents and requested an IEP meeting at the first mutually agreed upon time to discuss X.X.’s needs and options to provide a least restrictive environment for X.X.

The IEP team met on September 12, 2017 to discuss the various options available. X.X.’s leaving the building and his emotional responses to school related issues had become a safety concern and stressful to X.X... There continued to be behaviors that impacted X.X.’s involvement in the general education curriculum, as well as the comprehensive school setting. Mrs. Xxxxxx said that X.X. was having behavior issues at home and that she was attempting various strategies to help him and that she was currently discussing medication changes with his doctors. X.X.’s case manager discussed his current as well as past progress in the general education setting. X.X. had passed several of his SOL assessments but he had difficulty maintaining the pace of the general education curriculum at the high school.

Mrs. Xxxxxx disagreed. She said that she felt that X.X. is capable of following the curriculum and completing his general education curriculum.

Ms. xxxxxx, the special education coordinator, who attended the IEP meeting discussed SECEP and programming involved with the specialized instruction. She provided Mrs. Xxxxxx with information regarding their specific programs and procedures to have X.X. observed by SECEP.

The IEP team amended X.X.’s IEP. They determined that X.X. required home-based service to start on September 12, 2017 and conclude on October 3, 2017. It was noted that that would not be a stay-put placement and that X.X. would return to the school and his scheduled services in his IEP on October 3, 2017. The parent signed a consent form to permit the SECEP to observe and evaluate X.X. for further assistance. The Team agreed to meet again once home-based services were completed or in the event that changes needed to be addressed. The Parent agreed with the proposed amendment and signed the IEP. (Ex. S. 0396-0414)

# OCTOBER 2, 2017 IEP MEETING (S. Ex. 418-427)

On September 27, 2017 the Parents revoked their September 12, 2017 consent to have X.X. evaluated by a SECEP ASP[[5]](#footnote-5) observation for the purpose of assisting with programming and assisting with X.X.’s needs. At that time the Parents, in concert with their Advocates, requested that XCPS conduct comprehensive evaluations for X.X. including psychological, speech and language (SLI), and occupational therapy (OT) The OT, SLI and Dr. xxxxxx the School Psychologist attended the meeting to address testing needs. Despite some reservations from XCPS for the need for the evaluations they agreed to have them done.

The Team proposed putting a transition plan in place for X.X. to return to school and requested the Parent’s input. The Parent responded that “She and X.X. are not comfortable with him returning to school.” She then asked that X.X.’s schedule be changed and that he be placed in general education classes. The team discussed that X.X. experiences a high level of anxiety when he is in the general education classes.

X.X. had begun to receive home-based tutoring. The school psychologist proposed that X.X. have a transition plan consisting of a partial-day with X.X. meeting the home-based teacher at school. The parent disagreed and stated that X.X. should not have to return to school until he had received the remaining four hours of home-based services in the home setting. The coordinator explained that the assigned home-based services would end on October 3, 2017 and that if X.X. did not return to school he would be counted as absent. The team again requested that the parent agree to have the remaining four house of home-based services provided in the school building to assist with X.X.’s transition back to school. The parent responded that X.X. was” not in a place” to return to school until after the testing had been completed and asked that the testing be expedited. The team agreed to expedite the testing providing that X.X. was made available for evaluation at a mutually agreed date, time and location. It was also agreed that home-based services would continue to be provided to meet the documented hours in the previous IEP. (Ex. S. 0418-0428)

# NOVEMBER 8, 2017 IEP MEETING (S. Ex. 418-427)

The IEP team met again on November 8, 2017 to amend X.X.’s IEP. The parent advised that X.X. is refusing to go to school and stated that this was due to his disability, anxiety and depression. In response the team proposed home-based services for 4 hours a week from 11/13/17 until 12/8/17. XCPS proposed a follow up meeting the week of December 4, 2017, prior to the expiration of the home-based services, in order to determine if the homebound services should continue; if the amount of services should change or if X.X. is ready to transition back to school.

The team discussed that the goal was to have X.X. return to the educational setting and that home-based services do not supplant school services and do not count as seat hours towards graduation. The Parents stated that they wanted XCPS to continue extending the home-based program and to provide X.X. with instruction in his core based classes as they did not believe that the current IEP provides FAPE. It was explained that home-based services are temporary and address the specially designed instruction X.X. receives in a school setting not his core based classes...

The team discussed other programs and the possibility of exploring other options. The Parents stated that they would only discuss home-based services as they were in the process of filing for a Due Process Hearing with the VDOE. The Parent signed her partial agreement to the IEP team proposal writing that “I agree to the home-based services but I disagree that this IEP does not [Sic] provide x\*\*\*\*\* with FAPE” (Ex. S. 0431-0450)

# DECEMBER 18, 2017 IEP MEETING (S. Ex. 455-474)

The Parents did not attend the December 18, 2017 IEP meeting. On December 18th, the team noted that X.X.had only attended 2 days of school during the 2017-2018 school semesters. He had been receiving home-based instruction in math and English until December 8, 2017. The IEP team attempted to meet to revisit the home-based services prior their ending but the Parents did not agree to attend any of the proposed meeting dates. X.X. had not returned to the educational setting as of December 18, 2017. It was noted that X.X. had not made progress on his goals as he has missed a significant amount of school and that his goals would be continued in the Annual review. The IEP team had been working to reintegrate X.X. back into attending classes at the high school but the Parents had ceased responding to the IEP team’s requests to meet or for input from them.

The team reviewed the results of X.X.’s comprehensive evaluations including psychological, speech and language (SLI), and occupational therapy (OT). Among other results X.X. was found to have average intelligence and no learning disabilities. Dr. Xxxxxx’s Psychological and Education Report found clinically significant scores in the areas of anxiety, worry and social anxiety. There did not appear to have been any suicidal ideation since the prior year but it was observed that X.X. tested at high levels for depression. (S. Ex. 525-529)

Dr. Xxxxxx noted in his Summary that the test results provide support for X.X.’s historical diagnosis of Autism Spectrum Disorder and that it can be very typical for an individual with Autism Spectrum Disorder to experience anxiety and depression and have a dual diagnosis. He stated” It appears that when X.X. was placed into six credit bearing classes that his anxiety was exacerbated and he began to experience increased school anxiety/school refusal.” He also stressed that:” It is recommended for any child with school anxiety/refusal to be transitioned back into the school environment as quickly as possible so that the anxiety is not reinforced. “(S. Ex. 529)

Results from the educational testing [[6]](#footnote-6) determined that X.X. did not exhibit a significant and unusual discrepancy in any areas. Reports indicate that X.X. appeared to be working to his potential at that time. X.X. did not exhibit a learning disability in any of the areas measured: reading comprehension; sight word vocabulary; phonics; written expression; applied math reasoning or math calculation. (S. Ex. 491-524)

In the Summary of Present Levels of Academic Achievement and Functional Performance it was noted that among X.X.’s strengths is that he is a friendly and respectful young man. Although the data was limited due to his lack of attendance X.X.’s teachers reported that when he was in class he attempted all his assignments, and followed class rules. Based on grade level curriculum assessments in English X.X. had demonstrated progress in reading comprehension, written expression and vocabulary, etc., and was able to demonstrate above average understanding of Algebra 1, etc., based on grade level assessments.[[7]](#footnote-7)

The team noted, however, that X.X. has academic challenges such as off-task behavior that is not attention seeking or defiant but is rather a coping mechanism for being overwhelmed with sensory input and academic demands. The team proposed revised accommodations and supplementation to support X.X.’s academic challenges, sensory, social skills and speech. It was also determined there was a need for additional related services and XCPS proposed that X.X. receive Psychological services 20 minutes per week and Speech/Language Therapy 20 minutes per month. The team also determined that they needed additional data to determine if X.X. met the criteria for Extended School Year (ESY). [[8]](#footnote-8)

In determining the least restrictive environment the team proposed that due to deficits resulting from Autism Spectrum Disorder, X.X. requires Level II services and proposed that he receive specially designed instruction in the general and special education setting for social emotional skills. He would also receive related psychological and speech language services. It was proposed that X.X. would participate with non-disabled peers during his English, math, elective and PE classes, and while he is transitioning through the school.

It was noted that X.X. is working towards a Standard or Applied Studies diploma and that his educational progress may be impacted by his disability.

The team found that it would be necessary to provide X.X.’s with positive behavioral interventions, (BIP) supports and strategies to address behaviors that impede his learning when he returned to school. They proposed that when X.X. returned to school the IEP team would consider a functional assessment (FBA); accommodations and that goals had been developed to provide support for X.X... At that time the team would consider if X.X. required a more therapeutic setting once X.X. demonstrated his ability to participate in the proposed psychological services.

The proposed IEP was sent to the Parents. The Parent or Guardian Approval/Denial statement at the end of the IEP was not signed but the box is checked where it is printed “I do not agree to the proposed placement in Special Education.” (Ex. S. 474)

# FEBRUARY 20, 2018 PRIOR WRITTEN NOTICE (S. Ex. 475-480)

The Parent’s Amended Due Process Request was accepted on February 14, 2018 (S. Ex. 149-166): XCPS provided its response on February 20, 2018 in a Prior Written Notice. The school denied the Parent’s allegations and responded specifically to each allegation. (S. Ed. 475-480)

In an attempt to resolve one of the Parents’s Due Process issues XCPS offered to re-open the home-bound application and waive the referral process. They provided the Parents with another Certification of Request for Home-bound services form and requested that they have Dr. Xxxxxx complete the form and return it. (S. Ex. 476) Neither the Parents nor Dr. Xxxxxx ever responded.

# FINDING OF FACT:

X.X. was diagnosed with autism in 2007. He is (was) a student in the Xxxx City School System and had been receiving special education services since his diagnosis in 2007.[[9]](#footnote-9)

Autism is a neurodevelopmental disorder generally marked by impaired social and communicative skills, "engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences."34 C.F.R. § 300.8(c) (1) (i) (2016); 8. Achild with autism qualifies as a "[c]hild with a disability" under the IDEA, and as Virginia accepts IDEA funding. § 1401(3) (A), therefore, X.X.is entitled to the benefits of the Act, including a FAPE provided by the State.

A FAPE, as the Act defines it, includes both "special education" and "related services." § 1401(9). "Special education" is "specially designed instruction ... to meet the unique needs of a child with a disability"; "related services" are the support services "required to assist a child ... to benefit from" that instruction. §§ 1401 (26), (29). A State covered by the IDEA must provide a disabled child with such special education and related services "in conformity with the [child's] individualized education program," or IEP. § 1401(9) (D). *Endrew Id.*

After thorough review of the above IEPs and the testimony of the IEP team members and XCPS staff regarding X.X.’s IEPs I find from the persuasive weight of the evidence that that XCPS offered X.X. IEPs that were reasonably calculated to provided him with FAPE and to enable him to make meaningful progress during the 2016-2017 and 2017-2018 school years; that the IEPs constructed during the relevant periods (a) included, among other things, IEP goals for his specialized educational services in calculation/math problem, reading/writing expression and organizational skills; and (b) addressed his emotional disabilities, including depression and anxiety.

I find that the XCPS IEPs offered to X.X. were reasonably calculated to enable him to make meaningful progress in light of his circumstances. It was noted that X.X. had made some progress but that because X.X. had only attended several days of school during the 2016-2017 school period the IEP team was not able to obtain data to quantify his progress. (S. Ex. 455-474)

At the Parents request the December 2015 Annual IEP was amended so that X.X. began high school in the general curriculum taking content/core classes. I find that having X.X. in the general curriculum at XXHS, taking core classes without the special education supports that he had in Middle School to be largely responsible for his intensifying psychological difficulties and depression.. (S. Ex. 525-529)

There is no question but that the Parents love their son and want him to do well in school and in life. However, they were not being realistic about his ability to cope with participation in the general curriculum and core classes at XXHS. When X.X. started attending high school it became evident almost immediately that he could not function in the general curriculum or manage the demands of core classes. His elopement and behavior were foreseeable responses for an autistic student to the pressure being placed on him.

Ms. Xxxxxx, X.X.’s special education case manager testified that she had repeatedly recommended that X.X.’s caseload be reduced and that a reduction of the caseload would “absolutely” reduce his stress levels. She went on to state that she believed that the Parents were not being realistic in thinking that X.X. could stay in the general curriculum, pass his classes and graduate in four years, and that “I do not see that happening.” It was her observation that a tremendous amount of X.X.’s stress was emanating from the Parents wanting X.X. to graduate in four years and that this pressure being placed on X.X. had a part in his elopement and other problems that he was having at school. (Tr. 1608)

When asked if she had discussed this with the Parents she responded that she been discussing this with them since she first met them and that their response had been that they did not want to entertain a five-year plan for X.X. to accomplish the requirements for graduation. (Tr. 1609) Ms. Xxxxxx has taught special education for twenty four years and has specialized training and experience with students on the autism spectrum. (Tr. 1144) She was found to be credible and great weight was placed on her testimony.

Once the IEP team received Dr. Xxxxxx’s Report which confirmed that X.X. was suffering from depression the IEP team held a meeting in December of 2017 to specifically address the Report; review the results from the other testing and evaluations and consider an extension of home-based services for X.X. The Parents, who had insisted that VBVCPS conduct a full range of testing on X.X., failed to attend the IEP meetings to, among other things, review and provide their input on how his depression was to be addressed so that X.X. could return to school.

The Parents rejection of the IEP team proposals and the ensuing impact on X.X. was demonstrated most strikingly in the January 24, 2017 proposed modification/amendment meeting which was called to address X.X.’s overwhelmed state, his anxiety and behaviors and refusal to attend school. The IEP team proposed significant modifications and amendments to X.X.’s December 2016 IEP. This was done to address X.X.’s escalating social and emotional problems and allow him to could return to school and access his education. The Parents rejected the IEP team proposals. In doing so the Parents frustrated the School’s best efforts to enact the proposed IEP modifications and amendments that were reasonably calculated to enable X.X. to make progress appropriate in light of his circumstances and which were tailored to his unique needs. As a result, X.X. failed thereafter to return to school for more than a few days.[[10]](#footnote-10)

The Parent’s claim that X.X. was denied FAPE because the School System failed to address X.X.’s emotional disability of major depression once it was informed that X.X. had received the diagnosis is found to be without merit. The evidence and testimony established that the Parents had never provided XCPS or the IEP team with any documentation or assessments, psychiatric or psychological diagnosis, testing or therapy reports that established that X.X. had been diagnosed with depression. Nor did the Parents introduce any testimony or evidence to establish what XCPS should have done differently or how this resulted in a denial of FAPE.

Dr. Xxxxxx testified that he had reviewed X.X.’s school record while preparing his psychological evaluation of X.X. [in October-November of 2017] and that it only contained the XCPS psychological evaluation done in 2007. He confirmed that there were no other psychological reports and that the Parents had not mentioned any. (Tr. 1725) Ms. Xxxxxx also confirmed that the Parents had never given the IEP team any medical records or other documentation regarding X.X...

When he was asked about the Parents participation in the IEP team decisions Mr. Xxxxxx testified that:” We always tried to solicit their input and support and consent” (Tr. 1069) It is clear from a review of the above IPEs as well as the testimony of witnesses at the hearing that the Parents had been afforded the opportunity to fully participate as part of X.X.’s IEP team and that their views and preferences were considered and incorporated in to X.X.’s IEPs. It is also apparent that the Parents fully participated in each of X.X.’s IEP meetings through the November 8, 2017 IEP meeting. Thereafter, despite the IEP teams numerous attempts to have the Parents attend the IEP meetings the Parents did not respond or attend the meetings. Accordingly, I find that the Parent’s claim that they were ignored and not allowed to participate in IEP meetings is not supported by the evidence or testimony.

After November 2011, the Parents stopped communicating with XCPS and failed to attend any further IEP meetings or provide input for the IEP team.

I find that Xxxx City Public Schools provided X.X. with a free and appropriate public education (FAPE) during the 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”)

I also find that the IEPs offered to X.X. by XCPS in 2016-2017and 2017-2018 were reasonably calculated to enable X.X. to make progress appropriate in light of his circumstances by providing him with an IEP tailored to his unique needs.

In determining the relative weight to be given to the testimony of the witnesses I find that the testimony of the Xxxx City Public School’s teachers and professionals to be the most persuasive.

# Parent’s Expert Witness:

Dr. xxxxxx appeared for the Parents *pro-bono* and met with X.X. two times for about an hour each one month to several weeks before the hearing but had not observed him at school. She was not providing X.X. with therapy; instead she had been hired by the Parents to assist X.X. with self-esteem building. Although Dr. Xxxxxx had never testified as an expert witness before her academic credentials and experience were sufficient to find that she had the knowledge to proffer an opinion in the limited range for which she was being presented.

Dr. Xxxxxx had not prepared a Report but she described in great detail, during *voir dire*, a Matrix that she had created for the hearing which formed the basis of her opinions regarding the sufficiency of X.X.’s IEPs. This Matrix was a positive factor considered when qualifying her as an expert. (Tr.122-126) Over the objection of School Counsel Dr. Xxxxxx was accepted as an expert witness.

During her testimony Dr. Xxxxxx stated that she had only reviewed the documents provided by the Parents in their Exhibit Book. She testified that she had focused on the IEPs and had briefly reviewed medical reports and other documents. She confirmed that the last IEP that she had reviewed was for the September 12, 2017 meeting.[[11]](#footnote-11) Dr. Xxxxxx did not offer her opinion regarding the December 2015 Annual IEP and she did not review or offer an opinion regarding the December 2017Annual IEP.

The Parent’s Advocate did not ask Dr. Xxxxxx anything about the Matrix she had prepared for the hearing when questioning her nor was the Matrix ever produced. On the second day of her testimony, during cross-examination, the School Counsel asked for a copy of the Matrix. Dr. Xxxxxx said that she had not brought it to the hearing.[[12]](#footnote-12) She had previously testified that she had prepared a Matrix for the Parents and that it had been prepared for the due process hearing. (Tr. 122) Dr. Xxxxxx confirmed that she had given a copy of the Matrix to the Advocates and the Parents before her testimony at the hearing and that she had not prepared any other report. (Tr. 902) I draw a negative inference from the Parent’s failure to introduce the Matrix prepared by their expert witness as an exhibit at the hearing.

Dr. Xxxxxx was asked” So, you’re basically going through the IEPs as you’re testifying here today and noting what catches your eye: is that correct” She answered “Yes, refreshing my memory.” *Id.*

Dr. Xxxxxx primarily testified about her review and opinions regarding the January 24, 2017 IEP meeting. Her opinion was that it was insufficient, among other things, because it did not include all of X.X.’s academic goals for organization or off –task behavior, etc. (Tr. 273)

Ms. Xxxxxx, Director of Compliance and Special Education for Xxxx Public City Public Schools was called as a witness on behalf of the Parents.[[13]](#footnote-13) She testified that the Parent’s Exhibit 5 IEP only contained the pages that were addressed at that meeting.” It does not contain the full IEP. “(Tr. 235) (P. Ex. 5)[[14]](#footnote-14)

When asked why certain data was not included in the October 2016 IEP she responded “As I indicated earlier, this is just the pages that the team discussed during this amendment meeting. This is not the Annual IEP, so this is just a portion of that IEP. That would be the December 2015 Annual IEP. “(Tr. 264-265)

Ms. Xxxxxx has been working in the special education field for twenty years and has attended thousands of IEPs during her career. (Tr. 252) During her testimony she explained what goes into formulating an IEP, the source of data used in an IEP, how it is collected; that XCPS had done a Functional Behavior Assessment (FBO) and a Behavior Improvement Plan (BIP) for X.X. in middle school. (Tr. 252-260); how progress is reported in the goals and objectives section of the IEP; that goals do not report to accommodations; the data used to formulate IEPs and from where it is collected, and how progress is measured (Tr. 269-273) Ms. Xxxxxx testified in detail about X.X.’s IEP’s and identified where his Annual goals and benchmarks, short –term objectives, accommodations and progress, etc., are located and discussed what data was used to quantify how his progress was measured (Tr. 269-271)

It appears that Dr. Xxxxxx was not aware that only the Annual IEP contains the complete IEP for that year and that when an IEP team meets to amend or modify an IEP the record only contains a Prior Written Notice and the pages that were addressed at the meeting: it does not contain the full IEP. Consequently, because of that and the failure to provide a copy of the Matrix I give no weight to Dr. Xxxxxx’s opinion that the IEPs she reviewed and testified about were inadequate resulting in a denial of FAPE.

I g*i*ve significant weight to the testimony of Ms. Xxxxxx due to her many years of experience, her familiarity with the IEP process and her testimony at the hearing. I found her credible.

# ELOPEMENT:

Based on review of the 2016-2018 IEPs, the Due Process Complaint and the Parent’s testimony one would conclude that X.X. running away from Xxxx High School was something that had never happened before. It does not appear that the Parents ever informed XCPS that X.X. had a long history of eloping when overwhelmed. Therefore, the High School had no reason to anticipate that X.X. would elope from the building when he started 9th grade. If they had been advised by the Parents in advance they could have enacted measures or a plan to prevent X.X.’s elopement from XXHS.

Once X.X. eloped from XXHS in September of 2016 X.X.’s teachers and staff instituted a plan to monitor him when he went from class to class to assure that he was not leaving the building.

Mr. Xxxxxx testified that he did not recall the Parents raising concerns about X.X.’s safety at any of X.X.’s IEP meetings until the September 27, 2017 meeting where the issue was raised by the advocate. “I remember more of the academic side and kind of the social/emotional side. “ (Tr. 1074) He also testified that going forward XXHS would agree to put in place additional safety components for X.X... (Tr. 1072)

Ms. xxxxxx testified that a plan had been put into place at Xxxx High School in 2016 to deal with X.X. eloping from school: “They had a plan where he was to go to an assigned person for assistance when he felt like he was stressed; There were several people assigned to him in the building; and he was not allowed to leave the classroom unescorted.” (Tr. 489-491)

Ms. xxxxxx, an Occupational therapist treating X.X. in 2011 reported Mrs. Xxxxxx told her that X.X. had been “running away from her in all environments, however, it is primarily at home…” Ms. xxxxxx related that at the end of a therapy session X.X. ran out of the office into the parking lot (while a car started to back up) and that she had to run after him to stop and redirect him into the building. (P Ex. 24)

During a therapy appointment on February 6, 2017, with a private behavioral therapist xxxxxx, X.X. told Mr. xxxxxx that he had absconded from the doctor’s office when he was upset on February 3, 2017. Mrs. Xxxxxx reported the incident to the police: X.X. was found three miles away from the Doctor’s office. X.X. agreed to be placed on GPS monitoring and the Mother told Mr. Xxxxxx that she would be taking X.X. to the police department to have the monitor installed on X.X.’s ankle that week. (Tr. 989-993)(S. Ex. 2115-2117)

Mrs. Xxxxxx testified that X.X. was provided with the GPS monitor through Project Lifesaver, which is a program designed for children with autism and people with dementia and that it enables the police to find X.X. quickly if he were to elope. If X.X. elopes the Parents can contact the police and they are able to use the GPS bracelet to track him. . (Tr. 992)

The GPS device was not installed until December of 2017 and X.X. was still wearing the unit at the time of the due process hearing in May of 2018. His Mother testified that wearing the GPS ankle bracelet had succeeded in preventing X.X. from eloping since it was installed in December of 2017. However, it does not appear that the Parents ever advised XCPS or the IEP team of the possibility of having the GPS monitor installed in February of 2017 or provide them with a copy of Mr. Xxxxxx’s Final Report. (S. Ex. 2115) (Tr. 991-993)

The fact that during the 2016-2017 school years X.X. ran away not only from school but historically from home, doctor and therapist’s offices does not relieve XCPS of its obligation to devise a way of dealing with X.X. absconding from XXHS. I find that XCPS responded appropriately to X.X.’s elopement from school and that they were in the process of instituting a plan designed to provide safety to X.X. when he failed to return to school.

The information that X.X. could have had a GPS device installed in February of 2017 should have been conveyed to the School by the Parents. They should have had the GPS monitor installed then and advised the School about the monitor and its operation. That alone could have been instrumental in keeping X.X. from eloping from school or in finding him quickly if he did elope.

# HOME-BASED SERVICES:

In their Amended Due Process Complaint IDEA allegation number four the Parents claimed that the LEA denied X.X. FAPE when it failed to provide home-based services as documented on his IEP and that XCPS rejected the Parents’ request to extend those services until supports and services were put in place to address his school refusal.

An IEP meeting was held on September 12, 2017 following X.X.’s elopement from the High School. The IEP team amended X.X.’s IEP and determined that X.X. required home-based service to start on September 12, 2017 and conclude on October 3, 2017. (Ex. S. 0396-0414)

At the October 3, 2017 IEP meeting the home-based services were continued.

The IEP team met again on November 8, 2017 to amend X.X.’s IEP. At the meeting Ms. Xxxxxx told the team that X.X. was refusing to go to school and stated that this was due to his disability, anxiety and depression. In response the team proposed home-based services for 4 hours a week from 11/13/17 until 12/8/17. A follow up meeting was scheduled for the week of December 4, 2017, prior to the expiration of the homebased services, in order to determine if the homebound services should continue; if the amount of services should change or if X.X. was ready to transition back to school.

An IEP meeting was held on December 14, 2017. It was reported that the team had reached out to the Parents asking them to attend an IEP meeting before the home-based services expired but that the Parents did not attend any meeting proposed by the school division despite the fact that multiple dates and times were offered. Consequently, the home-based services expired.

XCPS received a Home-bound Medical Certification of Need signed by Dr. Xxxxxx[[15]](#footnote-15) on December 1, 2017. The Doctor responded “no” to the question: “Could this child attend school if accommodations are made by the school. As an explanation he wrote” School makes child highly anxious” He estimated the date of X.X.’s return to school to be seven months. The Home-bound paperwork clearly stated that the limit of the Home-bound period was 9 weeks. (P. Ex. 30 p. 5) Despite repeated requests from the Home-bound office and Dr. Xxxxxx, Dr. Xxxxxx never submitted a correctly completed form and X.X.’s Home-bound application was closed on January 19, 2018.(S. Ex. 533;537; 548; 553-554, 556)

I find that the Parents failed to sustain their burden of proving that the LEA denied X.X. FAPE by failing to provide X.X. with home-based servicesorthat XCPS rejected the Parents’ request to extend those services until supports and services were put in place to address his school refusal. I also find that the Parents failed to provide any evidence or testimony to support their claims that the School wrongfully withheld home-bound services from RR.

# ESY SERVICES:

Parents claim that XCPS wrongfully denied X.X. Extended School Year Services (ESY) for the summer of 2017. The IEP team appropriately considered whether X.X. qualified for (ESY) at each IEP meeting held in 2017. *Id.* Until 2018 it was determined that X.X. did not meet the Virginia Department of Education (VDOE) criteria. In 2018 the IEP team determined that it needed additional data in order to know if X.X. met the VDOE criteria for ESY before determining whether to propose ESY for X.X...

The Court in *Cordrey v. Euckert*, 917 F.2d 1460, 1474 (6th Cir.1990) held that: “plaintiff would have to establish that ESY would prevent significant regression of skills or knowledge retained by the child so as to seriously affect his progress toward self-sufficiency, or that benefits accrued to the child during the regular school year would be significantly jeopardized if he were not provided an educational program during the summer.”

ESY Services are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months. We have observed that “[t]he determination whether services beyond the regular school day are essential for the child to receive any educational benefit is necessarily fact and case specific.” *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir.1990). Because a showing of actual regression is not required, a disabled child's need for ESY Services may be established by expert testimony, based on a professional individual evaluation. However, the mere fact of likely regression is not a sufficient basis, because all students, disabled or not, may regress to some extent during lengthy breaks from school. ESY Services are required under the IDEA only when such regression will substantially thwart the goal of “meaningful progress.” *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 184 (3d Cir.1988).

The Parents failed to introduce any expert testimony or evidence that would support their claim of denial of FAPE; therefore, I find that the Parents have failed to sustain their burden of proof on this allegation.

To the extent that the statement of the case, procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and *vice versa. Bonnie Ann F. v. Calallan Independent School District,* 835 F. Supp. 340 (S.D. Tex. 1993*); SAS Institute Inc. v. H. Computer Systems, Inc.* 605 F. Supp. 816 (M.D. Tenn. 1985)

# DECISION

For the reasons set out above I find that the Parents have not met their burden of proof on any of the allegations raised in their Amended Due Process Complaint and their requests for relief are denied.

**PREVAILING PARTY:** Xxxx xxxx Public Schools

**ENTERED**: August 29, 2018

Morgan Brooke-Devlin, Esq.

Hearing Officer

**RIGHT OF APPEAL NOTICE**

This decision shall be final and binding unless either party files an appeal 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.

Morgan Brooke-Devlin, Esq.

Hearing Officer

**CERTIFICATE**

I certify that I have sent a copy of this Decision to all parties by e-mail on August 29, 2018.

Ms. Cheryl A. Poe, Parent Advocate

Mr. Sa’ad El-Amin, MA JD, Parent Advocate

Ms. Danielle Hall-McIvor, Esq.  
Mr. Matthew Simmons, Esq.

Mr. Reginald Frazier, Esq.

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1. It should be noted that: S. Ex. 525-529; S. Ex. 1313-1320; P. Ex. 26 and S. Ex. 459 were the only exhibits admitted into evidence by VBCPS during the hearing: the Parents failed to have any exhibits admitted into evidence.

   During the hearing the Hearing Officer reminded the parties that “Nothing has been admitted into evidence.” (Tr. 427)

   In order for the Hearing Officer to render her Decision it was determined that she would accept, *sua sponte*, the exhibits identified in the Decision because they are relevant and necessary to the Findings of Fact, determinations and decision in this matter. Any exhibits that are not identified in the Decision or that were not admitted into evidence during the hearing are rejected and do not form part of the record in this matter. (See *In re: Student with a Disability*, 57 IDELR 299, 111 LRP 67327) [↑](#footnote-ref-1)
2. At Princess Anne Middle School [↑](#footnote-ref-2)
3. Home-bound services are made available to students who are

   confined to home or in a heath care facility for periods that would

   prevent normal school attendance. “Confined at home” means that

   the student is unable to participate in the normal day-to-day activities

   typically expected during school attendance; and, absences from the

   home are infrequent, for periods of relatively short duration, or to

   receive health care treatment. (8 VAC 20-131-180) [↑](#footnote-ref-3)
4. Mr. xxxxxx is in the Navy [↑](#footnote-ref-4)
5. **SECEP**: In 1978, the school systems of Chesapeake, Franklin, Isle of Wight, Norfolk, Portsmouth, Southampton, Suffolk and Virginia Beach established the Southeastern Cooperative Educational Programs (SECEP),   
   The organization provides a formal structure through which the participating school systems can plan and operate programs for children with special needs. [↑](#footnote-ref-5)
6. October-November 2017 [↑](#footnote-ref-6)
7. Educational reports October-November 2017 [↑](#footnote-ref-7)
8. Based on VDOE criteria. [↑](#footnote-ref-8)
9. The Hearing Officer does not

   know X.X.’s current school status. [↑](#footnote-ref-9)
10. R.R. had not returned to school as of

    May 29, 2018-the last day of the Due

    Process Hearing. [↑](#footnote-ref-10)
11. It should also be noted that the Parents

    did not include a copy of their Amended Due

    Process Complaint in their Exhibit Book for

    Dr. xxxxxx to review. [↑](#footnote-ref-11)
12. Dr. xxxxxx testified on two separate days. [↑](#footnote-ref-12)
13. The full IEP is contained in the Annual IEP [↑](#footnote-ref-13)
14. Annual Reviews last an entire year. [↑](#footnote-ref-14)
15. Student’s Psychiatrist [↑](#footnote-ref-15)