**# 20-027**

VIRGINIA DEPARTMENT OF EDUCATION

DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES

OFFICE OF DISPUTE RESOLUTIONS AND ADMINISTRATIVE SERVICES

DUE PROCESS HEARING CASE NO:20-027

IN RE: XXXXXX XXXXXX

# THE CANS ASSESSMENT IS PROPER. COMPENSATORY EDUCATION IS ORDERED

This due process hearing was brought and went forward under the Individuals with Disabilities

Education Act, 20 U.S.C. §1400, et seq (“IDEA”). Under the IDEA, students with

disabilities are entitled to a Free Appropriate Education (“FAPE”). 20 U.S.C. § 1412 (a)(1)(A).

The FAPE is provided through an individualized educational program (“IEP”), 20 U.S.C. §

1414(d), that is to be arrived through a collaborative process undertaken between parents and

educators (referred to as an individualized education program (“IEP Team”)). 20 U.S.C. §

1414(d)(1)(A).

The case involves the above named student. XX is xx years old and resides in the xxxxxx of

xxxxxxxxxxxxxx, Virginia. XX presently attends xxxxxxxxxxxx Academy, a private day school

located in xxxxxxxxxxxxx xxxxxx. The educational expenses of the private day school are the

responsibility of Xxxxxxxxxxxxxxxxxxxxx, and those expenses are being paid by the Xxxxxxx.

The evidence shows, without issue whatsoever, that the student is flourishing at the private

Day school. XX is flourishing academically, emotionally and socially since being placed in the

xxxxxxxxxxx Academy. There is no disagreement that this private placement did and does

continue to provide FAPE and educational benefits for this student.

The issues, though appearing from the enormous volume of evidence through three days of

testimony and almost a thousand pages of exhibits are determined to be only two, which I decide

herein. The first issue involves what is labeled throughout the case as CANS; defined as

childhood adolescent needs assessment. The second issue is whether or not the student is entitled

to compensatory education from the Xxxxxxxxxxxxxxxxxxxxx Schoolboard.

Upon my detailed review and study of all the evidence, I have made my decision based upon

the burden of proof being upon parent, the preponderance of evidence in regard thereto and that

same preponderance with regard to that of period of time in September and October of 2018

when the student did not attend school.

It is my decision that the CANS document prepared by Xxxxxxxxxxxxxxxxxxxxx or on its

behalf, was done and used properly under the law. It it is also my decision that no further CANS

assessment, private or otherwise will be ordered. Quite simply I find that the CANS procedure

was not used in the development of this student’s IEP, and therefore in no way persuasive to

judge its propriety.

The second and only other determinative issue, defined herein as compensatory education, is

a factual determination that I make herein relying upon the burden of proof. As well as I know

the burden of proof is upon the student to prove xxx case beyond a preponderance of the

evidence, I have applied that same burden to the question of compensatory education. In order

to satisfy that burden by a preponderance, I only need a decision arrived at 51% acceptance of

the testimony.

In this case that involved a factual determination based upon the volumes of evidence offered

in regard to the conduct of the parties during the time that this student was not going to school in

Xxxxxxxxxxxxxxxxxxxxx Public Schools or attending the private day school. I am convinced

however by the evidence from both sides in the three days of hearings, that neither party has any

confidence any faith or any trust in the other side. The hostility of the respective parties

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including their counsel and advocate and most of the witnesses was clearly and objectively

observed throughout the due process hearing. Both parties claim fault with regard to the other

side dealing with production of records, consent and partial consent, meetings and the like and

participation and notice thereof and as well noted in issue one, the parent’s lack of knowledge in

and preparation and completion of the CANS document. Without the confident faith of each side

in the other, leads to my determination that both sides were equally at fault with regard to the

period of time that the student received no education.

However, fault is not determinative. The cause of the fault determined my decision. The

student prevails and compensatory education to this student from the Xxxxxxxxxxxxxxxxxxxxx

School Board is ORDERED in the amount of twenty-two hours (22 hrs.). The student has

prevailed by the very minimal of preponderance of the evidence. The reason for that

determination in favor of the student is as follows: My determination of the propriety of the

preparation of the CANS and whether or not a further CANS assessment should be ordered is

primarily based upon the testimony of witnesses XxxxxXxxx and XxxxxxxxXxxxxxx. I have

considered the preponderance involving the CANS and taken in the consideration the demeanor

of those witnesses on the witness stand, their candor, fairness, their interest and intelligence or

lack thereof in the outcome of the case as well as the opportunity or lack of knowing the truth

and having observed the facts to which each of those witnesses testified to. These are the

witnesses which I primarily determined to be creditable and persuaded me with regard to the

preponderance of the evidence relating to the issues of CANS in favor of the xxxxxxxxxxxxx

Public Schools.

The contradictive evidence from both sides shows conclusively that all witnesses were

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eminently qualified to offer their evidence as experts or otherwise as to conduct. The witnesses

employed by or otherwise involved with Xxxxxxxxxxxxxxxxxxxxx Public Schools, were and I

so find extremely qualified with regard to special education though their abundance of

experience, education and administrative understanding of due process issues under IDEA. For

that reason, balancing the equities; and I have determined the lack of trust of each side with the

other should have been determined more professionally by Xxxxxxxxxxxxxxxxxxxxx as

opposed to being somewhat reactionary. The determination of the number of twenty-two

compensatory hours is also a product of my equitable authority under the preponderance of

evidence standard. Essentially, Xxxxxxxxxxxxxxxxxxxxx Public Schools is therefore directed

to provide that compensatory education in the amount twenty-two hours. All other requests or

motions are denied. SO ORDERED.

ENTER: 4/ 22 /2020

*William S. Francis, Jr. (es)*

William S. Francis, Jr.

Hearing Officer

**Appeal:** Pursuant to 8 VAC 21-81-T and §22.214 D of the Virginia Code, this decision is final and binding unless either party appeals in federal district court within 90 days of the date of this decision, or in a state court within 180 days of the date of this decision.

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April 22, 2020

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Richmond, Virginia 23219

Kandice Lucas, Advocate (*via electronic mail)*

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xxxxxxxx, Virginia xxxxx

Re: ***Xxxxxxxxxxxxxxx/ Xxxxxxxxxxxxxxxxxxxxx Public Schools***

Dear Mr. Andriano, Mrs. Owens and Ms. Lucas:

Enclosed is my Decision in the above matter for your review and filing.

Sincerely,

William S. Francis, Jr (es)

William S. Francis, Jr.

Hearing Officer

WSFjr:sdw

Enclosure

Cc: Kathryn Jones, Esq./VDOE electronic mail only

Reggie Frazier, Esq. electronic mail only

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***LAW OFFICE OF WILLIAM S. FRANCIS, JR***