#20-039

#  VIRGINIA DEPARTMENT OF EDUCATION DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES

Xxxxxxxxx xxxxxx Public Schools Ms. Xxxxxxxxx Xxxxx

School Division (xxPS) Parent

Mr. John F. Cafferky, Esq. X.X.

Ms. Aneta Nikolic, Esq. Child

Counsel Representing xPS

Mr. Harold G. Belkowitz, Esq.

Counsel Representing Parent

Mr. Reginald Frazier, Esq. Evaluator

Morgan Brooke-Devlin, Esq. Parent initiated Hearing

Hearing Officer

#  HEARING OFFICER DECISION

#  Procedural Background:

This action stems from the filing of a Due Process Complaint with the Virginia Department of Special Education and Student Services Office of Dispute Resolution by Ms. Xxxxxxxx Xxxxx against Xxxxxxxxx xxxxx Public Schools (xxPS) alleging that defendant failed to provide X.X. (XX) a free appropriate public education (“FAPE”) in contravention of the Individuals with Disabilities Education Act, [20 U.S.C. §§ 1400](https://casetext.com/statute/united-states-code/title-20-education/chapter-33-education-of-individuals-with-disabilities/subchapter-i-general-provisions/section-1400-short-title-findings-purposes) *et seq.* (“IDEA”). The Parent asserts that XXPS has failed to provide an Individualized Education Program (IEP) that contained appropriate goals, accommodations, services and placement to enable XX to access a meaningful educational benefit during the 2018-2019 school years, given XX’s unique educational needs.

 The Due Process Complaint was filed on December 31, 2019. The Due Process Hearing was conducted by this Hearing Officer on February 18, 19, 20, 21 and 24, 2020. The parties introduced a total of One Hundred and Seventy Three exhibits and 13 witnesses.

This Decision is within the time limitation period under the IDEA. The record includes the electronic recording of the February 18-21 and 24, 2019 IE Hearing, Parent’s Due Process Request, Xxxxxxxxx Xxxxxx Public Schools Response to the Due Process Request, Orders, the Parent’s exhibit book, the XXPS exhibit book, Parent’s and XXPS closing and response briefs including Proposed Findings of Fact and Conclusions of Law as well as the full written transcript of the Hearing.

#  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. The Parent filed this due process hearing request. Accordingly, I find that the Parent has the burden of proof at this Due Process Hearing.

# A. Threshold Issue: Statute of Limitations:

 In her Due Process Complaint the Parent referenced, among other things, alleged violations by XXPS concerning XX’s special educational eligibility in 2011, 2015 and 2017. Therefore, the threshold issue in this case is whether the Parent has met her burden of proof in establishing that there exists in her favor an exception to the two year statute of limitations regarding alleged violations regarding Child Find and XXPS’s failure to find XX to be a student with disabilities in need of an IEP in 2011, 2015 and 2017.

The IDEA as well as the Commonwealth of Virginia have a two-year statute of limitations period within which parents can raise concerns and note objections regarding their child’s educational process and/or bring complaints regarding the actions taken or not taken by the School system in the delivery of a free and appropriate education to the child (FAPE). 20 U.S.C. Section 1415 (b)(6)(B). The two year period runs from the date the party knew or should have known about the alleged violations of the law or regulations.(20.U.S. C. Section 1415(f)(3)(C)). According to 34 CFR 300.511(f) the only exceptions are when the parent is prevented from requesting a due process hearing due to (a) specific misrepresentations by the District that it had resolved the problems forming the basis of the complaint, or (b) the district’s withholding of information from the parent that the IDEA required it to provide and if because of that the parent was prevented from filing a complaint.

The Parent’s Complaint was filed on December 31, 2019. Accordingly, the two-year statute of limitations period begins on December 31, 2017 and ended on December 31, 2019. Therefore, any claims made regarding the period prior to December 31, 2017 are found to be time-barred. The Court in *Emery v. Roanoke City Sch. Bd*., 423 F. 3d 294,300 n.2 (4th Cir. 2005 ) found that the two-year statute of limitations bars parent’s request for a due process hearing and in *Fairfax Cnty. Sch. Bd. v. Knight*, 107 LPR, 2101 (E.D. Va. 2006) the parent’s recovery was limited to the alleged violations by the school district which had occurred within the two years prior to the filing of their Due Process Request.

The Attorney for XXPS objected to the Parent introducing testimony and evidence at the hearing that pre-dated December 31, 2017. The objection was sustained. Subsequently, XXPS included discussion in its closing brief of events that occurred prior to the 2017 time period primarily in a narrative of XX’s history as a student in XXPS.

In his response brief the Attorney for the Parent took issue with the inclusion of this information and argument claiming that it was inappropriate for XXPS to raise and discuss these issues where there had been no testimony regarding these issues at the hearing as a result of XXPS’s objection. The Parent’s objection is well founded; however, there is a distinction to be drawn between providing a narrative of the child’s educational timeline which pre-dates the two year period and being permitted to introduce evidence and testimony at the Due Process Hearing to support allegations of denial of FAPE which occurred prior to the two year statute of limitation period.

Other than evidence needed to determine whether FAPE was provided to XX within the two year time period leading up to December 31, 2019, allegations made in the Parent’s Due Process Complaint and in the parties’ closing arguments regarding the pre December 31, 2019 time period will be disregarded, [[1]](#footnote-1)

Based on my review of the evidence and testimony I find that neither of the exception to the two year statute of limitations as set out in 34 CFR 300.511(f) have been established by the Parent in this matter. Consequently, I limit the time frame in this Decision to the allegations of denial of FAPE and other matters raised for the period between December 31, 2017 and December 31, 2019.

Factual Findings:

 **1.** XX is a xxxxxxxx year old child who, until being placed by xxx Mother in a xxxxx residential facility known as Xxxxx Xxxx in June of 2019, lived with her in Xxxxxxxxx, Virginia.[[2]](#footnote-2)

2. During January and until the first of February 2018, XX continued to attend xxxxx xxxxxx Xxxxxxxxxx Xxxxxxxxxx’s residential program in Xxxxxxxx, Virginia. XX’s placement in Xxxxxxxxxxxx was for mental health medical purposes. XX’s admission to the Xxxxxx Xxxxxx facility was made unilaterally by the Parent. XXPS had no involvement in placing XX in Xxxxxx Xxxxxx.

3. XX was discharged from Xxxxxx Xxxxxx on February 1, 2018, during what would have been xxx 9th grade school year. (P. Ex. 29).

4. The Xxxxxx Xxxxxx Xxxxxxx Education Discharge Summary dated February 2, 2018 noted that:

“Upon admission, XX presenting behaviors included anxiety, depression, fearfulness, helplessness, isolation, manipulation, oppositional behavior, poor self-esteem and poor social skills.” *Id.*

5. The Parent did not claim that placement in Xxxxxx Xxxxxx was an educational placement. Nor did she request that XXPS fund the placement.

**6.** On February 2, 2018 XXPS issued a Prior Written Notice which notified XX’s Parents that the Student Study Committee had reviewed existing date including: a teacher narrative, SOL’s, Xxxxxx Xxxxxx Xxxxxxxxxx Xxxxxxxxxx documents (case management discharge summary**),** BRIEF 2 teacher Form**,** medical history & physician exam, safety crisis plan, and concerns of committee members and student. After reviewing the existing information the committee decided to collect additional data for evaluation. (P. Ex. 30).

**7.** On February 9, 2018 a Referral and Student meeting was held which was attended by Ms. Xxxxx and XX. The reason for the referral was to address XX’s mental health needs and to develop a plan to assure xxx safety and transition back to school. (P. Ex. 32) At the time of this meeting XX was participating in the partial hospitalization program at Xxxxxxxx Hospital, a step down treatment from the residential setting at Xxxxxx Xxxxxx. (P. Ex. 35)

 **8.** While the evaluation was being conductedXX was approved for Homebound services. A Memorandum was sent to the Parents on February 23, 2018 by xxxxxxxxxxxxxxxxxxxxxx, XXPS Special Education Supervisor, advising them that XX had been approved for Homebound services through March 30,2018, and “that at the end of that period, an extension may be requested by submitting an updated medical certification of need.” (P. Ex. 31)

 **9.** The Parents hired Dr. Xxxxxxxx Xx., a Pediatric Neuropsychologist, to conduct a Neuropsychological Evaluation of XX. The Doctor’s report is undated but notes that services were rendered on 1/2/2018, 1/23/2018 and 1/29/2018. In a March 9, 2018 e-mail sent by XX’s Father, XxxxXxxxx, to Xxxxxx Xxxxxxx, the XXPS Special Education Coordinator, the Father referenced and attached Dr. XX’s Report. I find that the Report was provided to XXPS around the beginning of March, 2018. (P. Ex. 27 & 33)

 **10.** In her Report, Dr. XX noted that there had not been any prior evaluations before hers and that XX had participated in intermittent private counseling services since age 6. (Apparently, Dr. XX was not told that XXPS had done psychological evaluations of XX in 2015) She noted that XX met the DSM-5 criteria for Major Depressive Disorder, recurrent severe and Generalized Anxiety Disorder. She also found that XX met the DSM-5 criteria for high functioning Autism Spectrum Disorder.

 Dr. XX noted that X is a ‘brilliant xxxx who performed within the Extremely High range on the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V GAI-134)”, and that “There are no academic concerns despite limited attendance. xxx is a bright conscientious student who excels in all subjects and is motivated to do well.” *Id.*

In her Recommendations for academic placementDr. Xx made a number of specific suggestions including her belief that XX qualified for an IEP based on her diagnosis. She did not, however, recommend that XX needed to be enrolled in a residential placement. *Id.*

 **11.** To assist the eligibility committee in its determinations**,** XXPS School Psychologist, XxxxxXxxxx, NCSP, prepared a Review of Prior Psychological Evaluations. In his review he noted that comprehensive evaluations, including a psychological evaluation, were performed in 2015 to determine XX’s eligibility for special education.In his report, dated March 26, 2018, Mr. Xxxxx also summarized Dr. Xx’s March 2018 Report and incorporated some of her recommendations intohis recommendations to the Eligibility Committee for their consideration. (EX. P. 34)

 **12.** A Special Education Committee met on April 2, 2018 to determine XX’s eligibility for Special Education services. Ms. Xxxxx and XX attended and formed part of the Evaluation Committee Team. The Special Education Committee Report included sections titled “Parent Information, Eligibility and Essential findings. Included in these sections was a detailed discussion of Dr. Xxxxxxxx Xx’s neuropsychological evaluation of XX, including specific mention of the new additional diagnosis of Autism Spectrum Disorder. The Committee incorporated some of Dr. Xx’s findings and recommendations in its Report. (Ex. S-7-0001-0007)

The Report stated that:

 “After an extended review and discussion of all evaluative information and considering input and concerns from committee members of the team determined that X requires special education services as a student with an Emotional Disability, while recognizing that some of xxx behaviors may be associated with xxx new private diagnosis of Autism. The school team felt strongly that it is X’s significant difficulties with emotional functioning that currently impedes xxx ability to attend school. Complete new IEP within 30 calendar days.” *Id.*

 **13.** Review of the Eligibility Report demonstrates that the Parent’s claim that XXPS disregarded Dr. Xx’s Report and her Autism diagnosis for XX is without merit. It is clear that the Committee considered all relevant documentation and evaluations before it determined that XX’s emotional disability was the primary factor in their eligibility determination for special education services. The teams conclusion that XX’s was eligible for services upon a finding of Emotional Disability was supported by the available documents and evaluations. The team considered Dr. Xx’s evaluation which found that XX met the criteria for high functioning autism but determined that XX required special education services as a student with Emotional Disability. I find that the IEP eligibility team decision was appropriate and incorporated all necessary criteria for a determination of eligibility for XX.

**14.** An eligibility Letter was sent by XXPS to the Parents on April 2, 2018 notifying them that “Based on a review of all available information, it was determined that your child is: Eligible for special education services under the classification of: Emotional Disability.” Enclosed with the letter was a copy of the eligibility meeting minutes and a copy of “Your Family’s Special Education Rights-Virginia Procedural Safeguards Notice. The Letter also advises the Parents that if they had any questions regarding the Committee decision they could contact the author of the Letter, Ms. Xxxxxx Xxxxxxx, XXPS Special Education Coordinator. (Ex. S-7-001-910). Ms. Xxxxxxx was never contacted by Mr. or Ms. Xxxxx with concerns that the autism diagnosis had not been specifically designated as a disability.

 **15.** On April 23, 2018 an IEP meeting was held. Both Mr. and Ms. Xxxxx as well as XX attended and took part in the meeting. This was XX’s initial IEP. (Ex. P. 37) Ms. Xxxxx signed her agreement to the IEP.

 The Committee considered the student’s “Strengths and Needs.” Enumerated in this section are references to “a private neuropsychological evaluation.” Since the only private neuropsychological evaluation that was performed was the one done by Dr. Xx this establishes that the Committee did review and consider Dr. Xx’s Evaluation and Report in its deliberations. Dr. Xx’s diagnosis of Autism is found in the section of her Report dealing with Social Functioning. The IEP, while not specifically identifying Autism, does reference Dr. Xx’s diagnosis that XX has difficulties with social emotional functioning. The IEP notes that “Social/Emotional functioning has shown to interfere with her learning.”; and xxx is “easily overloaded in social situations.”

The IEP established appropriate goals, accommodations, services and related services as well as addressing Transition and Extended School Year (ESY).

In the IEP section identified “Parent’s Input for Enhancing Child’s Education”, it is noted that the “Parent desires for Xxxxxxx to be in a stable school environment to best meet xxx educational and emotional challenges.” A Safety plan was also recommended.

 The Team considered both public day school and private day schools and selected the private Xxxxxx School as the least restrictive placement for XX. In conjunction with choosing Xxxxxx the Team also found that XX should receive transportation as well ESY Services. *Id.*

The April 23, 2018, Prior Written Notice relates in the Description of the factors relevant to the actions proposed or refused that: “X and xxx Parents visited some proposed private day schools” and that “The Xxxxxx School accepted XX and the IEP team, parents and student agreed to the placement. XX will begin with a social emotional goal and counseling as related service. Accommodations will be attempted.” (P. Ex. 38)

**16.** I find that the April 23, 2018 IEP providedXX with a free and appropriate public education (FAPE), because XXPS provided XX with an educational program reasonably calculated to provide xxx meaningful educational benefit specially designed for xxx unique educational needs and to make progress appropriate in light of xxx circumstances. Further evidence of the appropriateness of the IEP was the high level of success that XX achieved at the Xxxxxx School.

 **17.** The Xxxxxx School, located in Xxxxxxx Virginia, is an accredited, therapeutic private day school for students with emotional disabilities, high-functioning autism and other related disabilities, who can benefit from a regular high school curriculum. (Tr. 2/18/20- 271-273).

XX began attending the Xxxxxx School in April of 2018 and continued to attend the school until January of 2019. The Xxxxxx School has a few dozen students and very small classes. XX’s classes usually had 5-6 students. (Tr. 2/18/20-180) (Tr. 2/21/20-179, 273). All teachers are certified in special education and experienced with working with students with emotional disabilities. (Tr. (2/21/20- 271-273).

 Emotional support for student’s education is built into the program. The school uses a level system for the students in which they progress through four levels of responsibility and independence. (Tr. 2/18/20-194)

Xxxxxxx Xxxxxxx, the Parent’s expert testified that the assistance provided to students depends on the needs of the student, regardless of their particular disability classifications or labels they have or don’t have. (Tr. 2/18/20-205)

 **18**. XX did very well at Xxxxxx. Xxx grades were mainly in the mid to high 90th percentile and XX passed xxx Virginia Standards of Learning exams (SOLs) in Biology, Geometry, and World History, (Ex. S-12-001 to 002). Importantly, XX also appropriately accessed the counseling and other therapeutic supports offered. (Tr. 2/20/20-237; Ex. S 16-003) (Ex. S-2-001)

 During the 2018 ESY summer period XX successfully completed two classes on line: Spanish and Health P/E.-earning an A in both. (Ex. S-12-004). *Id.*

 XX continued to make good progress at Xxxxxx as reflected in xxx Extended School Year Progress Report that noted that xx “was able to successfully complete 100% of focal goal points based on recognizing xxx emotions, rating them and using coping skills when needed.” (Ex. S. S-14-001). Xxx attendance was also quite good. During the ESY summer period xx attended 16 out of 22 days with six excused absences.

 XX’s Xxxxxx Quarterly Report School for school year 2018-2019 demonstrated progress in educational as well as in social and emotional issues, and an excellent attendance record of forty one out of forty four days from August 28 through November 2, 2018. (Ex. S-15-001-003)

 XX made excellent educational progress. Xx earned a 98% in Chemistry, a 90% in History, an 84% in Algebra II, 96% in independent living skills and 97% in English. Progress was noted in xxx goals as evidenced by xxx asking for help and advocating for xxxself in 4 out of 5 observations. It was also observed that there were no disciplinary concerns with XX. *Id.*

XX continued to attend Xxxxxx School through January 24, 2019, for a total of approximately nine months. Xxx Second Quarter grades reflected that xxx had brought up xxx 84% in Algebra II to 96% and that the remainder of xxx grades remained in the 90% level. (Ex. S. 16-001). During the November through December 2018 period xxx grades were very good. XX got 94 in Chemistry, 85 in World History & Geography from 1500, 95 in Algebra, 90 in Independent Living Skills and 93 in English 10. XX attended seventeen out of twenty days with three excused absences. (Ex. S-19-001)

**19.** Of special note is that during XX’s nine months at the Xxxxxx School XX had no suicidal episodes, no hospitalizations and no emotional breakdowns. XX also had very good attendance and appeared to thrive at Xxxxxx. I give little weight to Ms. Xxxxx’ testimony that XX was only “faking it” at Xxxxxx in order to get to Xxxxxxxxx Tech. (Tr. 2/18/19-p. 52) Whatever the motivation XX demonstrated that XX was able to access xxx education, make very good progress educationally and remain psychologically stable while a student there.

 **20.** In the summer of 2018,XX had expressed a desire to take a class in Animal Science at the Xxxxxxxx Academy at the Xxxxxxxxx Career Center. An IEP Amendment meeting was held on August 1, 2018 to determine if that would be appropriate. Ms. Xxxxx was present and XX was noted as having been consulted. The Amended IEP provided that XX would continue to attend Xxxxxx and take one course of study through the Xxxxxxxxx Career Center in the public day school setting. (Ex. S-13-016). Of note are Ms. Xxxxx’ comments in the Parental Input section of the Amended IEP:

“Parent shared that she would like Xxxx to consider a year at XXXX. Parent also shared that she would like Xxxx to continue to progress at Xxxxxx and to remain at Xxxxxx. The greatest concern for both Xxxx and xxx parents is to be sure that Xxxx is being academically challenged. The parents also shared that Xxxx is applying to several local jobs (movie theater).” *Id.* [[3]](#footnote-3)

**21.** Amended IEP 8/10/18: In determining that it would be appropriate for XX to take a course at the XXPS Career Center while continuing to attend the Xxxxxx School, the IEP team considered XX’s progress in the ESY program, parental and student input, etc. XX’s success while taking the animal science class at the Career Center demonstrated that this IEP amendment was appropriate and provided XX with FAPE.

**22.** In the fall of 2018 XX began to attend one Animal Science class per week at the Xxxxxxxxx Career Center. This class was taught by Mr. Xxxxx Xxxxxxxx who had been teaching at the Career Center for twenty three years. The class that XX attended was titled Technical Animal Science and is a Veterinary Science class. (Tr. 2/21/20-p. 6)

 **23.** Mr. Xxxxxxxx testified that the animal science class that XX attended included approximately ten students; that xxx attendance was very good; and that XX “did very well in the class: was an A student each quarter.” (Tr. 2/21/20 p. 10-11; 15)

 **24.** XX wanted to leave Xxxxxx and attend the Xxxxxxxxx Career Center full time. The XXPS IEP team met on October 31, 2018, to consider whether this was appropriate. The October 31, 2018 Prior Written Notice stated that the reason for action being taken was:

 “The team feels that X. has made sufficient progress both academically and socially and emotionally. They would like to see X. returning to an XXPS school with provided emotional supports and accommodations” and

The other factors relevant to their decision were that: “The IEP team met to discuss X’s academic and social-emotional progress while concurrently enrolled at Xxxxxx and Xxxxxxxxx Career Center. The team discussed the Academic Academy program in XXPS and agreed to initiate the referral and application process.” (Ex. S. 001-003)

Ms. Xxxxxxx, XX’s therapist at Xxxxxx, agreed that XX was ready to leave the private day school and attend the XXPS Career Center full time. When asked whether she had concerns about XX possibly relapsing in going back to a less restrictive setting she replied “I did not have any concerns, no. (Tr. 2/16/20 p. 200)

At the time XX left Xxxxxx “Xxx had successfully completed a partial transition with the Animal Science class. Xxx earned an A.” Ms. Xxxxxxx added that “We hadn’t had any concerns about xxx behaviorally or emotionally. So we all thought that xxx was ready. And we talked about different options. *Id* at p. 194. Xxx believed that the Career Center was “a good fit because it was a smaller environment and they did have supports there.” *Id.* at 195

Xxx did, however, have concerns about XX’s relationship with a xxxxfriend. “When XX and xxx xxxxfriend broke up, it was a bad situation. XX was super reliant on this xxxxfriend and also very hyper-focused on their relationship. And in my conversations with X following, it seemed to me like that relationship was probably way more unhealthy than I think any of us ever identified.” (Tr. 2/16/20 p. 201) Ms. Xxxxxxx also believed that “…the xxxx was manipulating xxx and was really inappropriate with xxx and making xxx feel really bad about xxxself.” (Tr. 2/16/20 p. 201)

**25.** Amended IEP 10/31/18: In determining that it would be appropriate for XX to leave the Xxxxxx School to attend the XXPS Career Center as a full time student, the IEP team considered XX’s excellent progress at the Xxxxxx School as detailed by Ms. Xxxxxxx Xxxxxxx, XX’s therapist at Xxxxxx, parental and student input, etc. (Ex.2/18/20 p. 001-003) I find that the IEP provided XX with FAPE, The IEP was calculated to provide XX an educational program reasonably calculated to enable xxx to make meaningful progress appropriate in light of xxx circumstances.

**26.** XXPS convened an IEP meeting on January 24, 2019. The IEP implemented the team’s decision that XX would be leaving Xxxxxx School and attending the XXPS Career Center full time. The team reviewed XX’s need for Accommodations and specially Designed Services and increased the services. Ms. Xxxxxx and XX attended the meeting and Ms. Xxxxxx signed her agreement to the IEP.

**27.** XX saw xxx Psychiatrist, Doctor Xxxxx X. Xxxxxx, with Xxxxxxxx Associates in Psychiatry on the twenty-eighth day of each month during January, February and March of 2019. Dr. Xxxxxx prepared Reports following each session with XX.

In the Report dated 1/28/19 under the paragraph identified as “Chief Complaint” XX reported that XX has conflict with father/stepmother; social stressors. When asked about xxx anxiety XX responded that it is “All right, sometimes it is a little bad, sometimes not bad… more teenager abnormality. Not mental health abnormality.” (Ex. S. 20-001-002)

The February 28, 2019 Report continued to list XX’s major psychosocial complaint as conflict with xxx father and stepmother and social stressors. XX also reported that XX liked going to the Xxxxxxxxx Career Center. Xxx Father, Mr. Xxxxxx, attended this session and stated that XX seems to be doing well, not cycling out of control when xxx has these rough patches and that xxx handles adapting to new things better than in the past. (Ex. S. 21-001-002)

Conflict with xxx Father and Step Mother continued to be listed as XX’s Chief Complaint. XX also said that xxx relationship with xxx Mother was always a “little rough” and that their relationship was not especially “parental” And that “We don’t argue all the time but we don’t spend much time with each other either.”

XX reported that XX had an A grade in all but one class (at the XXPS Career Center) and that despite missing classes due to xxx being in the in the hospital XX was doing well in school. (Ex. S. 22-001-002)

**28.** Xxxxxxx Xxxxxxxx, XXPS Special Education Coordinator, asked Ms. Xxxxxx in a March 15, 2019 e-mail how XX was doing at the Center. Ms. Xxxxxx responded on March 18, 2019:

“Hi Xxxxxxx: Thanks for checking in. Honestly, I don’t know what the answer is. Xxxx was doing well, but then xxx had a breakdown and ended up back in Xxxxxxxx for a week. Xxx said the problem is that xxx wants to be a xxx. Ok, so now my child is Xxxxxxx. Not an issue except that Xxxxxxx is still talking about going to an all-xxxxx early college program. I don’t think XX is even remotely ready for college, but I get so sick of arguing and being blamed for xxxxxxxxxx problems. Apparently, I’m abusive and the mental health issues are my fault. So…I can’t really say how Xxxx/Xxxxxxx is doing other than to say that xxxxxx is doing very well academically.” (Ex. P-59)

**29.** XX was admitted to Xxxxxxxx Hospital[[4]](#footnote-4) several times in the first quarter of 2019. Dr. Xxxx Xxxxxx was xxx treating physician during the April 1-11, 2019 admission and produced a series of Physician Progress Notes dating April 1-9, 2019. [[5]](#footnote-5)(Ex. S-57-011-019)

Dr. Xxxxxxx reported that at the 5/2/19 session that he and XX worked on xxx relationship with xxx Mother. XX told him that:

 “My mother is refusing to visit me for a couple of days-she says that when she is around me she feels helpless-and so she does not visit me. I was crying when my mom told me this-and tried to get my uncle to me and invited my father-even thought I hate him. “(Ex. S-57-013)

On 5/4/19 XX told xxx doctor that” I think that I need to live somewhere other than my house. I am thinking about living with my Uncle-or go to college next year-to get out of the house.” (Ex/ S. 57-011 & 014)

In the5/7/19 Report Dr. Xxxxxxx noted that XX had “Worked in therapy on issues of how XX will handle the police interview. xx is understandably very anxious about it. X is going by medical transport to the police interview today. (Ex/ S. 57-015)

Dr. Xxxxxxx noted in his 5/8/19 Report that “I met with parents along with social worker in family therapy session to discuss progress to date and further treatment plans. They say that the police interview-X was pretty upset about the outcome-saying it was a “he-said and she-said situation.” XX said that “I did not think that friends could not meet during the week-I never did while I was a child.” And that “Mom yells a lot and is unpredictable.” (Ex/ S. 57-016)

On 5/9/19 Dr. Xxxxxxx reported that XX was crying and upset because XX felt that a staff member had snapped at xxx. XX said that “Authority being mad at me is one of my biggest triggers-even when I know it is not my fault-and it is very hard at home because my mom is constantly upset with me for something. When she is upset with me-I hate myself.” (Ex/ S. 57-017)

In his March 11, 2019 Psychiatric Discharge Summary Doctor Xxxxxxx relates under the History of Present Illness that:

 “X said that xxx had a lot of self-injurious behavior and does not care if xx died. The patient reported “my self –injurious ideation comes and goes”. And “When I came out to my mom, I told her that I hated myself so much and my xxxfriend has confronted me and I told her I did not want to be a xxxx. I wanted to be a XXX. I felt that I am a XXX for the past year and this has been on my mind this last week.” (Ex/ S. 57-001)

**30.** All parties agree that XX continued to do well academically. Review of the medical reports, therapist communications, evaluations and pertinent documents establishes that it was XX’s conflicts with xxx family and XXXfriend(s), sexual abuse trauma, xxxxxxxxxxxxxxxxx, as well as concomitant psychological problems that were the root cause of xxx hospitalizations: not educational difficulties.

**31.** In response to XX’s hospitalizations XXPS conducted a review on March 25, 2019, of XX’s IEP. XX’s ability to continue to attend the Xxxxxxxxx Career Center was of concern. The team met. XX and both of xxx parents participated in the IEP meeting and both parents signed their agreement with the IEP.

 The team met to review the current supports and services in place following the student’s return from xxx hospitalizations. XX’s medical information was reviewed and additions were made to the amount of dosage in the IEP and two additional goals were added.

The IEP team explained in the March 25, 2019 Prior Written Notice under “Actions Proposed or Refused by the District” what they had considered and what was proposed based on their review of medical and other information available. It was noted that there were concerns about the school’s ability to meet the student’s mental health needs during the school day and that in order to support xxx needs there needed to be a greater focus on mental health supports. XX agreed to participate in IOP or another similar level of intensive support program. XX noted that xx may have rushed to return to the school after xxx hospitalization. (Ex. S.23-001-002)

XX’s safety plan was reviewed and a system where XX would use different colored post-it notes to non-verbally communicate xxx needs to teachers and school personnel was proposed.

The IEP included appropriate Summaries of Present Levels of Academic Achievement and Functional Performance, Annual Goals and Accommodations as well as Specially Designed Services and Related Services were also appropriate. The team also determined that the benefit that XX received from xxx school year would not be significantly jeopardized if XX was not provided ESY and reviewed Transition.

 Included in the Summary of Current Assessments was: “X. within the last two weeks (3/9/18 to present) has decided to change xxx name and gender to XXXX and name to X. X. did not officially change xxx name to X. through the courts but made it clear to xxx mother and the school that xxx wanted to be referred to as XX.” (Ex. S.22-001-015)

 **32.** Review of the March 25, 2019 IEP established that XXPS provided XX with FAPE, The IEP was calculated to provide XX an educational program reasonably calculated to enable xxx to make meaningful progress appropriate in light of xxx circumstances. XX wanted to stay at the XXPS Career Center and was given the opportunity to continue there and succeed with additional mental health supports.

 **33.** On April 9, 2019 Ms. Xxxxxx sent out an e-mail to XxxxxxxXxx, Xxxxxxx Xxxxx (social worker) (XXPS employees), XxxxxxXxxxx, therapist, and Xxx Xxxxxx. In it she wrote:

“Xxxxxxx has often gone to the school nurse saying Xx’s sick and I have to leave work to come pick xxx up. Then XX’s miraculously feeling better at the end of the school day and wants to spend time with xxx XXxfriend. When I say “no” to that the tears flow, I’m scared of you mom”, I want to hurt myself and only my XXxfriend makes me feel better.” Etc.

 “Is there a way we could get some criteria for the school nurse wherein Xxxxxxx would be told to go back in class if XX doesn’t have a fever and appears to be fine? Is there some way that I can put some of this on someone else?” (Ex. P-64)

**34.** A Progress Note written on April 11, 2018, by Ms. Xxxxxxx Xxx, PA-C, a Physician Assistant at Xxxxxxxx Associates in Psychiatry records that XX’s chief presenting complaint is that “XX says XX is very stressed about xxx mom recently. XX says xxx mom is constantly yelling all the time.” And that “Xxx relationship with xxx dad isn’t good either.” XX also reported that things are “Okay” at school and that XX feels good about xxx friendships at school. It was found that xxx level of Insight and Judgement were good and that xxx need for Supervision and Precautions was low. (Ex. S. 26, 001-002)

 **35.** In the April 25th, 2019 Prior Written Notice it was recorded that the IEP team met to review XX’s current level of functioning during the school day. XX had missed entire school days of school or gone home early for the past few weeks since the team last met. XX said that the most major stress for xxx had been xxx math class. The team reviewed the amount of support that XX would require to remain in class or access instruction. (Ex. S-28-001-002)

 XxxxxxxxXxxxx, Assistant Principal at the Xxxxxxxxx Career Center, testified that she was a member of the April 25, 2019, team. She explained that this meeting was held following XX’s return from a hospitalization because the committee was trying to review what needed to be in place to allow XX to be successful, (Tr. 2/21/20 p.188)

 Alternative placements were discussed and the team reviewed the least restrictive environment options. XX returning to the Xxxxxx School was discussed but XX and xxx mother strongly rejected Xxxxxx or any other private day school.

 Ms. Xxxxx testified that at the April IEP meeting it was proposed that XX return to a private day setting and that “… when the topic of private day school was raised at the meeting, there was—whether it was Xxxxxx or any other, there was a vehement dismissal and refusal to consider a private day school site.” (Tr. 2/21/20 p.190) and that:

 “The discussion at the meeting was centered around the fact that Ms. Xxxxxx and XX were concerned with the level of academics that were offered at, specifically, Xxxxxx, or any private day school and they wanted to be able to insure that XX was able to continue accessing highly rigorous coursework.” (Tr. 2/21/20 p.191-192)

 In an effort to try to work collaboratively as a team with Ms. Xxxxxx and XX the committee then discussed the XXPS Xxxxxxxxx Program. When this placement was discussed Ms. Xxxxxx asked if XX would still be eligible to enroll in a XXPS Forensic Science course. She was advised that XX could. The team then recommended that the least restrictive placement for XX would be in the Xxxxxxxxx Program. The Xxxxxxxxx Program includes increased therapeutic supports and more accessible access to counselors than are available at the Xxxxxxxxx Career Center. Ms. Xxxxxx signed her agreement to the IEP.

**36.** Ms. Xxxxxx met with Xxxxx Xxxxxxx, the Assistant Principal at Xxxxxxxxx High School, regarding the Xxxxxxxxx Program. In response to a May 13, 2019 e-mail from Ms. Xxxxxxx about the meeting and need for an additional IEP meeting, Ms. Xxxxxx responded:” For now I think Xxxxxxxx will be in php (Partial Hospitalization Program) for a while. I have no idea what the time frame is: “I’d like to find a residential treatment center for xxx rather than having xxx go back to school at this point, but I am not sure that it is feasible. I will let you know asap.” (Tr. P. 67.)

**37.** Ms. Xxxxxx exchanged e-mail with Xxxxxx Xxx, MSW who was the XXXX representative in the May 23, 2019 IEP meeting on May 13, 2019. Ms. Xxx wrote, “Remember when I told you that I would look into residentials as much as I could for you? Unfortunately, this is all I got…Not that there isn’t more but this was all I could get and it’s also in Va…as I know you were looking outside of Va.:/ Xxxxxxxx Academy in Xxxxxxx, Va. (Ex. P. 68.)

**38.** The IEP team met again on May 23, 2019. An Amended IEP was drafted on that date and signed by Ms. Xxxxxx. (Ex. S-28-00-016)

 Ms. Xxxxx, XXPS Career Center Assistant Principal, testified that because private day schools had previously been rejected by Ms. Xxxxxx and XX the next option was the Xxxxxxxxx Program at Xxxxxxxxx High School, which was XX’s home school. This would provide “the next possible level of support to move forward with.” (Tr. 2/21/20 p.197)

 Although the IEP stated that XX would begin the Xxxxxxxxx Program on May 24th, 2019, it was recognized that XX might not be ready for that. So, as an additional option Homebound services were also proposed for XX until the end of the school year. (Tr. 2/21/20 p.202)

 In the 5/23/19, Prior Written Notice section, “Description of each evaluation procedure, assessment, record, or report used as the basis for this proposed or refused action” it was noted that the IEP team relied upon “Parent input and medical updates.”

In the section “Description of the factors relevant to the action proposed or refused”, it was reported that:

 I. “The team met to review updates from Ms. Xxxxxx related to X (XX’s) hospitalization and pending release from the Partial Hospitalization Program (PHP) that XX is currently attending. Ms. Xxxxxx shared that she and X are exploring a residential treatment center in Xxxx, based on a recommendation from an educational consultant.”

III. The team reviewed the proposal for Xxxxxxxxx as the Least Restrictive Environment for X. The team also considered a placement in Homebound. The team agreed that “the placement in Homebound would be the most beneficial for X for the interim time between release from PHP and parent enrollment at the residential placement center.”

IV. The team agreed to “update the service hours on the IEP to document that Counseling as a Related Service (CARS) will not be provided during the time XX is participating in Homebound services. The team agreed to continue CARS hours for the start of the school year in September.”

V. “The team will reconvene upon X’s release from the parent placement at the residential treatment center and return to XXPS. At that time the IEP team will discuss the placement and the previously proposed placement options.” (Ex. S-30-002)

 **39.** Ms. Xxxxxxxxxxxxxxx, the XPS Career Center Vice-Principal, testified that she was aware that Ms. Xxxxxx had mentioned a possible residential placement for XX at the meeting but that it was understood that the placement would be for mental health purposes and that Ms. Xxxxxx “Communicated purpose of that location was primarily for mental health needs, not educational needs.” (Tr. 2/21/20- pp. 232-233)

 **40.** The XXPS May 23, 2019 IEP Amendment provided XX with FAPE.Review of IEP and Prior Notice established that XXPS proposed amendments provided XX with FAPE, The IEP was calculated to provide XX an educational program reasonably calculated to enable xxx to make meaningful progress appropriate in light of xxx circumstances. XX’s circumstances were that xx needed more special education supports than were available at the Career Center. Proposals that xx return to Xxxxxx, where xxx had done so well or other proposed private day schools were rejected by Ms. Xxxxxx and XX as not being sufficiently educationally rigorous. The alternative proposed and accepted by Ms. Xxxxxx was for Homebound services through the end of the school year and summer and beginning the 2019-2020 school year the Xxxxxxxxx Program at Xxxxxxxxx high school which could offer XX more special education and counseling services than were available at the Career Center. (Ex. P- 70)

**41.** On May 30, 2019, Ms. Xxxxxx signed an Enrollment Agreement for XX to attend Xxxxxx Xxxx, a residential facility in Xxxx. Xxx placement was made unilaterally without any required prior notice to XXPS**.**

**42.** Ms. Xxxxxx was asked by her Attorney:

**Q:** “Was there a reason why you believed that residential as opposed to a day program was going to be appropriate for Xxxxxxx at that point?

**A:** “Oh, yeah, absolutely, because if Xx was in a day program, I would not be allowed to sleep. I would have to be with xxx all day. In fact, when Xx was at home, I took xxx door off the hinges.” (Tr. 2/18/20 p.79)

**43.** Ms. Xxxxxx failed to provide appropriate notice to XXPS of her intention to remove XX from XXPS and enroll xxx in Xxxxxx Xxxx and have the school pay the cost. Nor did she send XXPS a letter within 10 business days prior to the removal of XX from the public school notifying the school district that she intended to place XX in a private residential center and that she wanted XXPS to pay for the placement.

The May 23, 2019 IEP meeting was the most recent IEP meeting that Ms. Xxxxxx attended prior to her removal of XX from the public school, Ms. Xxxxxx did not inform the IEP Team during the meeting that she was rejecting the placement proposed by XXPS to provide a free appropriate public education to XX, nor did she express or state any concerns.

While she mentioned her considering a residential placement in passing to several counselors and at the IEP meeting she did not state her intent to enroll XX in any specific residential placement or ask that a residential placement be made at public expense. Instead, Ms. Xxxxxx signed her agreement to the IEP.

**44.** Ms. Xxxxxxx Xxxxxxxxxxxxxx, the XXPS Supervisor of Special Education sent Mr. and Ms. Xxxxxx a letter on June 7, 2019. In the letter she wrote:

 “I received the notification of June 3, 2019 stating that Xxxxxxx would be transferring to a residential treatment center (located in Xxxx) within the week.

 By way of this letter, I am notifying you that Xxxxxxx continues to be eligible for special education services. XXPS will continue to offer these services to xxxxxxxx based on xxx unique needs. The Individualized education program (IEP) team is available to meet and review Xxxxxxx’s special education needs and services at any time.” She went on to explain that: “In the interim, please note that XXPS will not be held responsible for any unilateral placement that occurs outside the IEP process.” (Ex. S-32-001)

**45.**  On August 12, 2019, Mr. Harold Berkowitz, Esq., sent a letter to XXPS advising that he was representing Ms. Xxxxxx and requesting that XXPS convene an IEP meeting promptly to discuss XX’s placement. He stated that the March 25, 2019 IEP failed to consider other placement options and that “The student, however, requires private residential placement in order to receive a free appropriate public education (“FAPE). (Ex. P-72)

**46.** XXPS conducted an IEP meeting on August 28, 2019 in response to the Parent’s request that the team consider a residential treatment center as placement for XX. Xxxxxx Xxxxx (therapist) and Xxxx Xxxxxxxx (Principal of XxxxXxxx Academy), Xxxxxx Xxxx employees, participated by phone. The Xxxxxx Xxxx team described their program and stated that educational and therapy services are available at the center. The described how XX was doing (XX demonstrated 90% on task behavior in a four week period); that XX is under 24 hour supervision and, that Xx has weekly sessions with a psychiatrist, therapy, and group sessions, etc.

It was mentioned that the Career Center social worker had referred the Xxxxxx’ to FAPT (for funding). The Parents responded that they had contacted FAPT but that FAPT had told them that they would only support two residential placement options. The Parents rejected the options offered and ceased communicating with FAPT. (Ex. S-45-001-002)

The morning of the meeting, Parent’s counsel provided the team with a forty-nine page Psychological Evaluation, dated August 23, 2019, prepared by Dr. Xxxxx XxXxxxxxx, Ph.D., for Xxxxxx Xxxx. (Ex. P. 73).

The team noted that they would be considering the Parent’s request to support the current placement at Xxxxxx Xxxx. The Supervisor of Special Education stated that the school team would need time to complete some additional review, including fully reviewing the psychological report and speaking with the current residential treatment center to determine additional information about Xxxxxx Xxxx. The IEP team, Parents, and Parent’s Counsel agreed to meet again on September 10, 2019. (Ex. S-45-001)

**47.** The IEP team, including Ms. Xxxxxx and her Attorney, Mr. Berkowitz and the Xxxxxx Xxxx team, Ms. Xxxxxxx and Mr. Xxxxxxxx, met on September10, 2019. A review of Dr. XxXxxxxxxx’s Evaluation had revealed that XX had “Occurrences of homicidal ideation - which was new information from prior evaluations.” And that “Prior to this report, the school team have not seen or heard expressions of homicidal ideation.” In her Psychological Evaluation Dr. XxXxxxxxx, the parent’s expert, also discussed that XX had been the victim of sexual assault and that xxx was suffering from posttraumatic stress as a result.

 “Xxxxxxx has disclosed details over the past year that xxx Xxxfriend Xx met in an Asperger’s social skills group during eighth grade sexually assaulted xxx and would coerce xxx into being sexual with xxx. Xxxxxxx reported that “I didn’t say anything until after Xx dumped me and then I told my mom what Xx did. Xxxxxxx and xxx mother have reported the sexual abuse to the authorities.”(Ex. P-73 p. 1424-1428). None of this very relevant important information was communicated by Ms. Xxxxxx to the prior IEP teams in in 2018 or 2019. In fact, it appears to have been intentionally withheld[[6]](#footnote-6).

 Dr. XxXxxxxxxx’s evaluation, especially her disclosure of XX’s homicidal ideations and sexual abuse, had caused the team to appropriately propose many additional supports and goals for XX. Ms. Xxxxxx and her attorney were involved in the discussions and many of their suggestions were incorporated into the IEP.

The Parent and her Attorney as well as the Xxxxxx Xxxx team proposed that Xxxxxxx’s least restrictive environment should be a private residential school. This was not agreed upon by the school based on team members, due to data of success related to no hospitalizations or risk of assessments completed for the duration of the time enrolled in the private day setting. The team felt that Xxxxxxx could be successful in a private day setting.

The IEP team, including Ms. Xxxxxx and Mr. Berkowitz, reviewed XX’s academic functioning and present levels of performance statement. The team proposed adding and updating the socio-functioning and adding the list of diagnosis from p. 16 of Dr. XxxxxxXxxx’s Psychological Evaluation. The team proposed increasing many of the goals in the IEP. For example, the team proposed adding a goal related to suicide and homicidal ideation, social emotional functioning, updating current counseling goals, setting short-term objectives, adding executive functioning goals. The team reviewed current service hours and proposed additional support for executive functioning in the area or organization. The team proposed twenty-five hours additional support per week in the special education setting per week. The team proposed 2 hours per week for counseling as a related service. It was also agreed that XXPS would provide ESY for the summer of 2020. The concerns raised by Ms. Xxxxxx’ Attorney were addressed and many of his suggestions were added; for the most part the team added the goals and services he requested.

The team considered the Least Restrictive Environment options. First considered was the public day school, which the team agreed was not appropriate. Private day school was considered next. The school team discussed that the previous private day school placement had been successful in regards to XX not needing a risk assessment or any hospitalizations. X “Mr. Berkowitz expressed concern that XX requires continuous support available from a residential setting and particular the supports that are available at Xxxxxx Xxxx.”

“The team considered a private residential school. The family and private Attorney expressed that this would be the least restrictive environment. School team members did not agree that this level of restriction was necessary to access the educational environment,”

**48**. Xxxxxxx xxxx, Career Center Assistant Principal, was a member of the September 10, 2019 IEP team. She testified that the Xxxxxx Xxxx team, Ms. Xxxxxx and Mr. Xxxxxxxx, who participated telephonically at the IEP meeting, both opined that XX needed to continue residential placement at Xxxxxx Xxxx.

She testified that the IEP team considered what they had to say in making their deliberations. But that the team did not agree with their recommendations.

Q. “Ultimately, the school system members of the IEP team, did they agree or disagree with that position?”

A. “The school team did not agree that Xxxxxxx required residential treatment to access education.”

Ms. Xxxxx testified that despite her disagreement she understood the Xxxxxx Xxxx team’s position for the need for a residential placement and that she absolutely considered their position. (Tr. 2/21/20 p. 222, 226), and:

**49**. The school team “reviewed the discussions that were held in the Xxxxxx of 2019 which included private day school settings and Xxxxxxxxx within the comprehensive school setting. At that time XX and Ms. Xxxxxx expressed concern with the level of academic rigor available through a private day school and that was why the team proposed considering a placement in the Xxxxxxxxx program.” Mrs. Xxxxxx stated that with a private day school setting there is a lack of support once XX leaves the setting in the evenings.

The school team also reviewed that there was a degree of success when XX was attending a private day school setting as recognized through a lack of risk assessments or hospitalizations for the longest time period since middle school.

The IEP team goal was to identify the least restrictive appropriate educational setting. The team determined that the much more restrictive level of restriction at Xxxxxx Xxxx was not necessary in order for XX to access xxx education. (Tr. 2/221/20 273-279)

The team proposed a Least Restrictive Environment would be a private day school setting. Some private day schools considered included Xxxxxx, Xxxxx and Xxxxxxxx Xxxxxxx the team clarified that they felt that XX could be successful in a private day school setting. (Ex. S-48-110-004) The proposed private day schools are small schools with class size of 3-7 students, all are accredited as special education schools and have certified special education teachers and related service providers. All have the required coursework necessary for XX to earn a Virginia high school diploma. (Tr. 2/21/20 p. 270-271)

**50.** Review of the Proposed September 10, 2019 IEP, and the testimony related to the IEP meeting and the considerations of the team established that all opinions were considered: specifically that Dr. Xxxxx XxxxxxXxxx’s Evaluation and recommendations therein were considered and in part incorporated. Increased goals and services were proposed and, most of those proposed by the Parent were include. The IEP was calculated to provide XX an educational program reasonably calculated to enable xxx to make meaningful progress appropriate in light of xxx circumstances and provide xxx with a free and appropriate public education (FAPE).

**51.** Ms. Xxxxxx signed the Parental Consent for Individual Evaluation. The purpose of the evaluation is because the XXPS IEP team recommends additional evaluations to inform the supports and services provided to Xxxxxxx and consider eligibility for autism. Also to determine potential eligibility or continued eligibility for Special Education services: evaluation will be conducted by a multidisciplinary team. (Ex. S-47-001-002)

**52.** Ms. Xxxxxx did not sign the IEP on September 10, 2019. XXPS contacted her to see if she wanted any changes to the proposed IEP or if she was going to consent. On October 2, 2019, Ms. Xxxxxx informed XXPS that she did not agree with the IEP and would not consent. She listed why she was rejecting the IEP. (Ex. P-77)

**53.** On November 21, 2019, Mr. Berkowitz sent a letter to Ms. Xxxxxxxxxxxxxx restating Ms. Xxxxxx’ reasons for her rejection of the September IEP. Also included for the first time was Ms. Xxxxxx’ request that XXPS make a residential placement for XX at Xxxxxx Xxxx for educational purposes and that XXPS reimburse her for XX’s placement at Xxxxxx Xxxx. (Ex. P. p. 78-2)

**54.** Ms. Xxxxxxx Xxxxxxxx, XXPS School Counselor and XXPS expert, testified that after the September 10th, 2019, the IEP meeting the team agreed to do a psychological evaluation to look more specifically at autism. She conducted her evaluation on November 4-5, 2019 at the Xxxxxx Xxxx residential center in Xxxx. Following that, she wrote a report that was presented at the December 3, 2019 eligibility meeting and participated in that meeting. ” (Ex. P. 79) (Tr. 2/20/20 p. 18)

She testified that the decision of the eligibility team was that XX met the criteria for both emotional disability and autism spectrum disorder. (Tr. 2/20/20 p. 50)

 She found that XX’s emotional disability characteristics and symptoms were very strong, and that they were the primary presenting problem. She discussed the difficulty of determining root cause versus presenting problems. “I think that the symptoms related to the emotional disabilities, in my opinion, were primary. But because some of the criteria were here, we ended up having to go with autism as the primary.”(Tr. 2/20/20 p. 54)

When asked what effect, if any, does that have on the actual educational services that a student receives, if it makes any difference? She stated: “No, Frankly, The eligibility is the one thing but the IEP is really what drives the services and the placement and the accommodations and everything within the IEP.” (Tr. 2/20/20 p. 54)

**55.** XXPS conducted another IEP meeting on December 10, 2019. The Parents, Mr. Berkowitz and Ms. Xxxxxxxxxxxx from Xxxxxx Xxxx attended along with the XXPS members of the team. (Ex. P. 81)

The team reviewed XX’s academic situation and what courses and SOL’s were needed for xxx to graduate as well as xxx needs, goals, and accommodations. Parents stated that they believed that XX requires full time placement at Xxxxxx Xxxx. Ms. Xxxxxx participated fully in the teams discussions. Ultimately, the team discussed the least restrictive (LRE) and determined that XX needed more support than is available in the public day school and again recommended a private day school placement as the least restrictive alternative.

In an attempt to work with the Parents and achieve an agreed upon IEP, XXPS team proposed that the private day placement site for XX to receive services could be at Xxxxxx Xxxx with XXPS funding the educational portion of the Xxxxxx Xxxx program as a day school, providing certain pre-requisites were met, such as permissions of the Parent; itemization of services by Xxxxxx Xxxx; a contract with Xxxxxx Xxxx including an agreed upon rate for day placement (Tr.2/21/19 284-87)

XXPS never received any of the requested information so the proposed IEP could not be finalized at that time; Ms. Xxxxxx filed this Due Process Request on December 31, 2019.

**56.** I reject Ms. Xxxxxx’ claims that her consent to the XXPS 2018 and 2019 IEPS were not “informed consents.” Ms. Xxxxxx, Mr. Xxxxxx as well as XX had the opportunity to fully participate in the IEP meetings; the private neuropsychological evaluation provided to the Committee was considered and utilized in drafting the IEP and, her concerns were noted and acted upon. Ms. Xxxxxx is an educated and forceful person who would not be easily ignored.

Ms. Xxxxxx signed the Parent Statements agreeing to the IEPs. This statement informed the Parent that if the Parent needs assistance in understanding the information in the IEP she could contact the Office of Special Education at the given phone number. Ms. Xxxxxx never contacted anyone regarding any questions or concerns about the April 23, 2018 IEP or any other IEP.

Further, Ms. Xxxxxx did not testify to any failure on the part of the IEP Team to include her in the IEP considerations or any effort to exclude her or ignore her concerns. Nor did she identify which sections or provisions of the IEPs she did not agree with at that time or when she discovered that she had disagreements with the IEP. Her main comment was that she relied upon and trusted the guidance and advice of the XXPS school employees. (Tr. 2/19/20 -pp.46-48)

**57.** The Parent has failed to sustain her burden of proving that XX’s educational, medical and behavioral and emotional issues are so intertwined that Xx would not be “available for learning” unless placed in a residential school. She has not proven that XX would be unable to make meaningful educational progress as a student in the private day school placements proposed in the XXPS IEPs.

**58.** Ms. Xxxxx Xxxxxx is the Associate Clinical Director and primary therapist at Xxxxxx Xxxx. She was qualified as an expert witness in the field of marriage and family therapy. (Tr. 2/18/20 p. 242) Ms. Xxxxxx produced a Master Treatment Plan for XX on June 26, 2019, which was entirely directed toward XX’s psychiatric problems. She noted under Reason for Admission: “At the most recent admission the doctor said RTC was a good way to go at this point.” She testified that when XX arrived at Xxxxxx Xxxx Xx was extremely dysregulated, suicidal; thoughts of self- harming and in tears. (Tr. 2/16/20 p. 248).

 Ms. Xxxxxx attended the September 10, 2019 IEP meeting telephonically. She recommended that XX needed to be in a residential program. Instead, the IEP team recommended a private day school placement. She also attended the December 10, 2019 IEP meeting.

During her testimony she was asked if, as of September 2019 “Would it have been appropriate placement for XX to be in a private day school setting in Virginia? She responded “No, for the same reasons. I believe that XX would have very quickly decompensated and very likely would have been able to find a way to either self-harm or commit suicide outside the 24/7 care.” *Id.* 260.

 When asked if she was aware of what specific therapeutic day schools had been proposed by XXPS she responded that she did not. She did not know that XX had been in a therapeutic private day school in Virginia from April 2018 through January of 2019 and that XX had done very well in the school.

When asked if wasn’t important to know, in formulating her opinion, whether XX had progressed in a prior private therapeutic day school, where XX had attended almost every day, gotten really good grades, had good work habits and availed xxxself of the therapeutic portions of the program. She responded, “I don’t know the details of that, no.” Id 288-289). During the December IEP meeting, Ms. Xxxxxx continued to recommend that XX needed the support of a private residential placement.

 **59.** Mr. Xxxx Xxxxxxxx is the Academic Director of the Xxxx Xxxxx Academy; the educational component of Xxxxxx Xxxx. Mr. Xxxxxxxx has a BA degree in Special Education mild to moderate disabilities, and is pursuing a masters in special education administration. His teaching license is not currently active. He is not licensed in any professional discipline related to special education or educational therapy. Mr. Xxxxxxxx was accepted as a witness with reluctance. (Tr. 2/19/20 p. 146-154) He discussed his responsibilities, how the school operated, and his interactions with XX. Mr. Xxxxxxxx didn’t remember attending any XXPS IEP meetings for XX. When his memory was refreshed he said that he had participated and that it was his recommendation that residential placement was appropriate for XX at that time. He added that his current recommendation remained the same “Considering the level of care that XX is still requiring, it is still my recommendation that an IPC be the level of placement. (Tr. 2/19/20 172-174)

 60. Dr. Xxxxx XxxxxxXxxx was admitted as an expert school psychologist who had been retained by Xxxxxx Xxxx to perform a psychological evaluation in August of 2019. (Ex. P. 73) Dr. XxxxxxXxxx reviewed records that were provided by Xxxxxx Xxxx, spoke to Ms. Xxxxxx on the phone and met with XX for around one and a half to two hours. She testified at great length regarding students like XX and also made some specific observations regarding XX. Her opinion was that XX needed to be in a residential placement center.

# DISCUSSION:

 **FAPE:** The IDEA is a federal statute that provides students with disabilities and the right to a FAPE designed to meet their needs. 20 U.S.C. § 1400(d)(1)(A). Central to the IDEA is the requirement that local school districts develop, implement, and annually revise an IEP that is calculated to meet the eligible student's specific educational needs. *Thompson R2-J Sch. Dist. v. Luke P., ex rel. Jeff P.,* [540 F.3d 1143](http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=540+F.3d+1143), 1148-49 (10th Cir. 2008); 20 U.S.C. § 1414(d). Thus, the determination of whether a FAPE has been provided turns in large Part on the sufficiency of the IEP for each disabled child. *Tyler V., ex rel. Desiree V. v. St. Vrain Valley Sch. Dist. No. RE-1J,* 2011 WL 1045434 (D. Colo. 2011) (unpublished) (*citing A.K. v. Alexandria City Sch. Bd.,* 484 F.3d 672, 675 (4th Cir. 2007)).

 In *Rowley*, 458 U.S. 176 (1982) [553 IDELR 656](http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=553+IDELR+656), the Supreme Court established the following two-Part test that courts should use to decide the appropriateness of a student's education:

* 1. Has the state complied with the procedures set forth in the IDEA?
	2. Is the IEP, developed through the IDEA's procedures, reasonably calculated to enable the child to receive educational benefits?

The Supreme Court held that when this two-part test is satisfied, the state has complied with the obligation imposed by Congress, and the courts can require no more.

In *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist*.,RE-1,137 S. Ct. 999 (2017) enlarged upon the 1982 *Rowley* case, holding that an appropriate education for a student with a disability is one that is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. “ The Court further stated that an IEP must be “reasonable” but need not be “ideal” *Id.* There is no doubt but that the XXPS 2018 and 2019 IEPs as well as the proposed IEPs in September and December of 2019 met this standard.

School Districts need not cater to a Parent’s preference and place the student in what the Parent considers the "better" placement. *Z.W. v. Smith*,[47 IDELR 4](http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=47+IDELR+4)(4th Cir. 2006, *unpublished*); *Bradley v. Arkansas Dep't of Educ.*, [106 LRP 21288](http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=106+LRP+21288) , 443 F.3d 965 (8th Cir. 2006); and *A.S. v. New York City Dep't of Educ.*,[63 IDELR 246](http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=63+IDELR+246)(2d Cir. 2014), *unpublished*).

In *Hartmann v. Loudoun County,* 118 F.3d 996, 1004 (4th Cir. 1997), cert. denied, 552 U.S. 1046 (1998), the 4th Circuit, quoting the *Rowley* decision, stated that federal courts cannot run local schools and must be given "latitude" in creating an IEP.

Parents have the right to participate in decisions about their children’s placements. However, the IDEA does not give Parents the right to control or veto placement decisions. *White v. Ascension Parish Sch. Bd*., 343 F. 3’d 373, (5th Cir. 2003). While Ms. Xxxxxx had an absolute right to make her placement preference for a residential placement known to the September 10, 2019 and December 10, 2019 IEP teams, their failure to grant her request is not a violation on the part of the IEP team.

The Parent’s claim that placement was predetermined is found to be without merit and unsupported by the evidence or testimony. However, it should be noted that the court in T. P. v. *Mamaroneck Union Free Sch. Dist*. 554 F 3’d 247, 51 IDELR 176 (2’d Cir.) held that the school staff can discuss potential services and placements in advance of the IEP meeting, so long as the school staff arrive at the meeting with an open mind.

In addition, IDEA requires disabled students to be educated in the "least restrictive environment," which means, "to the maximum extent appropriate . . . with children who are not disabled." *See I.E. v. Ramsey Bd. of Educ,* [435 F.3d 384, 389](https://casetext.com/case/le-v-ramsey-bd-of-educ#p389) (3d Cir. 2006)(quoting [20 U.S.C. § 1412(a)(g)(A)](https://casetext.com/statute/united-states-code/title-20-education/chapter-33-education-of-individuals-with-disabilities/subchapter-ii-assistance-for-education-of-all-children-with-disabilities/section-1412-state-eligibility)).

According to a well-worn analogy from the 6th U.S. Circuit Court of Appeals, FAPE does not require a "Cadillac." Rather, it requires a "Chevrolet." The 6th Circuit observed that: "The Act requires that the Tullahoma schools provide the educational equivalent of a serviceable Chevrolet to every handicapped student. Appellant, however, demands that the Tullahoma school system provide a Cadillac solely for appellant's use. We suspect that the Chevrolet offered to appellant is in fact a much nicer model than that offered to the average Tullahoma student. Be that as it may, we hold that the Board is not required to provide a Cadillac, and that the proposed IEP is reasonably calculated to provide educational benefits to appellant, and is therefore in compliance with the requirements of the IDEA." *Doe v. Board of Educ. of Tullahoma City Sch.*,[20 IDELR 617](http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=20+IDELR+617)(6th Cir. 1993), *cert. denied*,[111 LRP 3215](http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=111+LRP+3215) , 511 U.S. 1108 (1994).

 The XXPS 2018-2019 IEPs and the 2019 Proposed IEPs have been carefully reviewed for their appropriateness on the basis of whether or not they are reasonably calculated to confer some educational benefit on XX and it has determined that they would provide FAPE to XX. The LEA is not required to provide the best education or an ideal education in order to provide a FAPE to the Child. *Endrew, Id.*

 A student receives a free appropriate public education through the IEP process. *MM v. School District of Greenville Xxxxxx,* 303 F.3d 523 (4th Cir. 2002). Appropriate IEPs "must contain statements concerning a disabled child's level of functioning, set forth measurable annual achievement goals, describe the services to be provided, and establish objective criteria for evaluating the child's progress." *J.P. ex rel. Peterson v. County Sch. Bd. of Hanover County, Va.,* [516 F.3d 254](http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=516+F.3d+254), 257 (4th Cir. 2008); 20 U.S.C. § 1414(d).

The Parent’s claims that XX’s educational and behavioral issues are so interwoven that they cannot be separated thus mandating a finding that a residential placement is required to provide xxx with meaningful education and FAPE is found to be unsupported by the record and without merit. *Kruelle v. New Castle County School District,* 552 IDELR 350, 642 F. 2d (3’d Cir. 1981)., concerned a thirteen year old boy who was profoundly retarded and afflicted with cerebral palsy; who could not walk, dress himself or eat unaided. He was not toilet trained and did not speak. His I.Q. was well below 30 and he had a history of emotional problems which resulted in choking and self-induced vomiting when under stress.

In that case, all parties agreed that the child needed a residential placement: the main question at issue was who was going to pay for it. *Kruelle* can be easily distinguished from the present case, first by the relative degrees of disability, and where the evidence and testimony demonstrate that XX was able, despite xxx emotional disabilities and autism, to receive meaningful educational benefits and FAPE from xxx attendance at the Xxxxxx School and the XXPS Career Center.

In *Schaffer v. Weast*, 554 F. 3d.470 (4th Cir. 2009) the Court held that the District Court was correct when it “declined to use evidence to Monday-morning quarterback the school system.” The Court also noted that: Judicial review would simply not be fair to school districts, whose decisions would be judged in hindsight based on later assessments of a student’s needs at a later point in time.” *Id.* at 477

#  Unilateral Placement at Xxxxxx Xxxx and Request for Re-imbursement:

 On May 30, 2019, Ms. Xxxxxx signed an Enrollment Agreement for XX to attend Xxxxxx Xxxx, a residential facility in Xxxx. Xxx placement was made unilaterally without any required prior notice to XXPS. She is now asking that she be reimbursed for her costs and that XXPS be required to pay the cost of Xxxxxx Xxxx residential private school for XX.

With regard to whether Ms. Xxxxxx is entitled to reimbursement for a parentally selected private school placement, I have first applied the three-part test pursuant to *Burlington Sch. Committee v. Dep't of Educ. of Massachusetts,* [471 U.S. 359](https://casetext.com/case/school-committee-of-town-of-burlington-massachusetts-v-department-of-education-of-massachusetts) (1985) and *Florence County Sch. Dist. v. Carter,* [510 U.S. 7](https://casetext.com/case/florence-county-school-dist-four-v-carter) (1993). “The first step is to determine whether the program and placement offered by the school district is appropriate for the child, and only if that issue is resolved against the School District are the second and third steps considered, i.e., is the program proposed by the parents appropriate for the child and, if so, whether there are equitable considerations that counsel against reimbursement or affect the amount of relief." "A decision against the parents at any step of the process results in a denial of reimbursement." *(Id.)*

As stated herein, I find by a preponderance of the evidence that t**he 2018 and 2019 IEPs as well as the September 10, 2019 Proposed IEP and the unfinished Proposed IEP of December 2019 were appropriate and calculated to** provide XX with FAPE pursuant to the Individuals with Disabilities Education Act, [20 U.S.C. §§ 1400](https://casetext.com/statute/united-states-code/title-20-education/chapter-33-education-of-individuals-with-disabilities/subchapter-i-general-provisions/section-1400-short-title-findings-purposes) *et seq.* (“IDEA”) and in accordance with *Endrew F. v. Douglas County School District*, [137 S. Ct. 988](https://casetext.com/case/f-jennifer-f-v-douglas-cnty-sch-dist-re-1) (2017). All 2018-2019 IEPs and the September 10, 2019 Proposed IEP were calculated to provide XX an educational program reasonably calculated to enable xxx to make meaningful progress appropriate in light of xxx circumstances.

The primary purpose of XX’s residential placement was not education, but mental health treatment. Based upon review of all relevant testimony and exhibits I reject the claims of the Parent and her Attorney that the residential placement was needed for educational purposes. (Ex. S. 48 003; Tr. p. 84)

The Parents have repeatedly sought and obtained significant payment for Xxxxxx Xxxx services under their health insurance mental health coverage on the basis that the services were “medically necessary.” (Tr. 2/19/20 p.240-241,257) In their appeal of the insurance company’s decision to cease coverage in 2019, the Parents asserted that the Xxxxxx Xxxx services were “medically necessary.”(Tr. 2/18/20 p. 279-281; 2/19/20 p. 124,139-41, 249). In addition, Xxxxxx Xxxx is required to certify that the services that it provides to XX are medically necessary. (Tr. 2/18/20 p. 279-281; 2/19/20 p. 140-141). The Parents have been pursuing payment for Xxxxxx Xxxx for mental health reasons while at the same time maintaining that XXPS should provide payment for Xxxxxx Xxxx residential placement for educational reasons.

Reimbursement to the Parent is only permitted if XX's placement in the residential facility was necessary primarily to provide appropriate educational services.

Tuition reimbursement is expressly precluded for a unilateral parental placement of a student at a private facility where the district “made FAPE available to the child” in a timely manner prior to the placement. 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300. 148. *S.H. v. Fairfax County Bd. of Educ.,* 875 F. Supp. 2d. 633,657 (E.D. Va. 2012).

With regard to whether Ms. Xxxxxx is entitled to reimbursement, I find that the facts are not in dispute, and that as a matter of law, reimbursement is not permitted. Xxxxxxxxx Public Schools is under no obligation to pay for the services XX received at Xxxxxx Xxxx when the basis for xxx admission there was medical/mental health problems. *Mary Courtney T. v. School District of Philadelphia,* [575 F.3d 235](https://casetext.com/case/mary-v-school-dist) (3d Cir. 2009), *Munir v. Pottisville Area School District*, 61 IDELR 152 (3d Cir. 2013)

In *Mary Courtney T., supra,* the Court of Appeals "explained that in deciding whether a school district is responsible for paying the costs of a unilateral residential placement that provides xxx both treatment and education, it is essential to determine whether its primary purpose is providing special education or mental health treatment." XXPS can only be responsible for the expenses of XX’s placement at Xxxxxx Xxxx if the placement there was necessary primarily to provide appropriate educational services*.*

Ms. Xxxxxx and Ms. Xxxxxx from Xxxxxx Xxxx testified that XX needed to attend Xxxxxx Xxxx in order to keep xxx safe, primarily from suicidal ideations, which XX continues to experience at Xxxxxx Xxxx. Since the inescapable conclusion from the record is that the Xxxxxx Xxxx placement was primarily for medical not educational purposes, there is no legal basis for making XXPS financially responsible for the costs associated with the Xxxxxx Xxxx placement.

Finally, the description of XX’s progress at Xxxxxx Xxxx establishes that while Xx is doing well educationally, XX still suffers from multiple mental health issues, including Major Depressive Disorder, Social Anxiety Disorder, Post-Traumatic Stress Disorder, Gender Dysphoria and high functioning Autism. XX does not appear to have improved while at Xxxxxx Xxxx.

There is no evidence that the educational program XXPS has offered, including the services and curriculum to address XX’s emotional support needs will not effectively address those needs and afford XX the opportunity for significant learning. There is no objective basis for determining that Xxxxxx Xxxx provided a better alternative for XX aside from the residential component. Accordingly, I find that the record provides no basis for ordering XXPS to reimburse Ms. Xxxxxx for her costs or for tuition at the Xxxxxx Xxxx residential school.

It is not enough for parents to establish the existence of a condition that meets the criteria for a disabling condition as defined in the statute. Parents are also required to establish that the condition adversely affected Student's educational progress. *Munir v. Pottsville Area Sch. Dist*. 61 IDELR 152 (2012)

Finally, I find that Ms. Xxxxxx made a unilateral private placement for XX at Xxxxxx Xxxx for non-educational reasons and is thus not entitled to have XXPS fund the placement or reimburse her for her costs incurred.

# WEIGHT GIVEN TO WITNESSES:

In determining the relative weight to be given to the testimony of the witnesses I find that the testimony of the Xxxxxxxxx Public School’s experts which included XX’s therapists, school counselors, school psychologist, and other professionals who were actively involved with XX during 2018-2019 and who took part in the drafting of xxx 2018-2019 IEPs to be the most persuasive. Many of the witnesses had known and worked with XX for years. Witnesses who testified about the IEP meetings and proposed placements had met and worked with XX at the IEP meetings and had the opportunity to observe xxx and listen to xxx concerns. They reviewed xxx academic records, report cards and progress notes as well as the medical information provided by Ms. Xxxxxx to reach their IEP recommendations. I also find that deference should be given to the opinions of the XXPS witnesses.

I do not give a great deal of weight to the Parent’s expert’s opinions that XX needs to be in a residential placement center because I do not believe that their opinions were fully informed. The parent’s experts who testified telephonically, Ms. Xxxxx Xxxxxx, Mr. Xxxx Xxxxxxxx and Dr. Xxxxx XxxxxxXxxx, while accepted as experts in their fields, had no knowledge of XX’s years at XXPS; did not know that XX had successfully attended Xxxxxx private day school; did not know any information regarding the private day schools proposed in the September and December IEP meetings. Additionally Xxxxxx Xxxx had never requested XX’s educational records from XXPS, nor did anyone from Xxxxxx Xxxx contact XX’s teachers at Xxxxxx or the XXPS Career Center to discuss XX’s educational progress. It was also clear that Xxxxxx Xxxx never reviewed XX’s prior IEPs or had knowledge of the basis for the XXPS recommendations. The only records and information utilized by Dr. XxxxxxXxxx were those provided to her by Xxxxxx Xxxx, which in turn received them from Ms. Xxxxxx. It is unknown what was or was not provided to Xxxxxx Xxxx by Ms. Xxxxxx.

Ms. Xxxxxxxx and Dr. xxXxxxxxXxxx appear to be very accomplished in their fields and I found Ms. Xxxxxxxx’ and Dr. XxxxxxXxxx’s testimony regarding XX’s mental health diagnoses and problems to be credible. However, no one disagreed that XX has mental health issues. I did not find their opinions that XX needed to have a residential placement to be persuasive. I gave more weight to XXPS testimony regarding how well XX did at the Xxxxxx School and xxx part time at the XXPS career center.

I found Mr. Xxxxxxxx’s lack of a teacher’s license and the absence of advanced special education training to be of concern and this further minimized the weight I gave to his opinions. I was also concerned that he had never obtained or requested XX’s educational records from XXPS or Xxxxxx School.

I found Ms. Xxxxxx testimony to be somewhat credible and sincere but note that she was not transparent about XX’s sexual abuse and homicidal ideations to the IEP teams or during her testimony and I fail to be persuaded by her testimony when considered against the XXPS witnesses.

#  RULING

Ms. Xxxxxx did not succeed in meeting her burden of proof in her assignments of violations and errors by XXPS of XX’s right to FAPE. The facts set out above as well as a thorough review of the exhibits, including the 2018 and 2019 IEPs and the proposed 2019 IEPs, the supporting documents, and the testimony of XXPS personnel and other witnesses conclusively demonstrates that XX was provided with FAPE during the relevant periods.

Ms. Xxxxxx’ placement of XX in Xxxxxx Xxxx was a Unilateral Placement and accordingly she is not entitled to reimbursement. Nor Ms. Xxxxxx has not sustained her burden of proving that XX is entitled to compensatory services.

#  PREVAILING PARTY:

 Xxxxxxxxx Xxxxxx 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.

ENTERED: April 13, 2020

 Morgan Brooke-Devlin

 Morgan Brooke-Devlin, Esq.

 Hearing Officer

#  CERTIFICATE

 I certify that I have e-mailed copies of the above Decision to the following parties on this 13th day of January, 2020.

Mr. Harold G. Belkowitz, Esq.

 Mr. John F. Cafferky, Esq.

 Ms. Aneta Nikolic, Esq.

Dr. Xxxxxxx X. Xxxxx

Mr. Reginald Frazier, Esq

 Morgan Brooke-Devlin

Morgan Brooke-Devlin, Esq.

Hearing Officer

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1. The Parties Moved to have all exhibits in their exhibit binders entered into evidence. The Motion was granted and all exhibits were admitted. It should be noted that these exhibits included documents that pre-dated the December 31, 2017 two year statute of limitation date. [↑](#footnote-ref-1)
2. XX was born XX: a xxxxx. In March of 2019 XX advised xxx Mother and others that xxx was a xxxxxxxxxxx xxxxx and asked to be called XX and to be referred to as a xxxxxx. As such, the student will be referred to as XX and xxxx throughout this Decision. [↑](#footnote-ref-2)
3. Ms. Xxxxx apparently considered Xxxxx to be sufficiently academically challenging in August of 2018. However, in April and May of 2019 she and XX rejected Xxxxxx and all other IEP team proposed private days schools as not being sufficiently academically challenging. [↑](#footnote-ref-3)
4. Xxxxxxxxx Hospital is a Psychiatric Hospital [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
6. *See*: e-mail exchange between Ms. Xxxxxxx and Ms. Xxxxx

(Ex. P. 47) and Dr. Xxxxxxx’s notes (Ex. S-57, 015-016) [↑](#footnote-ref-6)