

Before the  
Administrative Hearing Commission  
State of Missouri



, in the interest of, )  
 )  
 Petitioner, )  
 )  
 vs. ) No. 17-0315  
 )  
 ST. LOUIS PUBLIC SCHOOL DISTRICT, )  
 )  
 Respondent. )  
 )  
 )  
 )  
 )  
 )  
 )

**DECISION**

(Parent) failed to carry her burden of showing the District denied a free appropriate public education (FAPE).

**Procedure**

On March 17, 2017, Parent filed a due process complaint against the District on behalf of . Also on March 17, 2017, we sent a notice of hearing to the parties, in which we set the hearing for April 25-26, 2017. The parties held a resolution session on March 28, 2017, but were unsuccessful in resolving the case. We held a prehearing conference on April 6, 2017.

On the morning scheduled for the hearing, the District filed a motion *in limine*, or in the alternative motion for continuance in response to Parent’s Exhibit 5, tendered as part of her five-day disclosure, consisting of some 774 pages of ’s medical records. We convened the hearing

to hear argument on the motion, and ultimately granted the District's motion for a continuance to permit 's IEP team to reconvene to consider those medical records. The IEP team met on May 3, 2017, after which the District issued its Notice of Action, proposing to change 's placement to a separate, private placement and to provide up to \$5,000 worth of private educational or therapeutic compensatory services.

The District filed a motion to dismiss on May 10 2017, arguing that the Notice of Action offered everything requested by Parent in her due process complaint, and that the case was therefore moot. Parent filed a response opposing the motion to dismiss, and asking us to grant a motion *in limine* "to exclude 's new [IEP], all testimony regarding this IEP, and any information or testimony regarding what the District and/or IEP team planned or wanted to do after the due process complaint was filed." We denied both motions, and proceeded to a hearing on May 22-23, 2017. Thomas E. Kennedy, III and Susannah Porter Lake appeared on behalf of Parent, and James G. Thomeczek appeared for the District. The court reporter filed the transcript on May 26, 2017. The parties filed briefs on June 6, 2017, and reply briefs on June 12, 2017. A decision is due on or before June 23, 2017.

### **Findings of Fact**

1. is a -year-old female student who resides with her mother within the boundaries of the District.
2. In her home environment, interacts with few, if any other peers of her own age.
3. 's current medical diagnoses include Schizophrenia, Major Depressive Disorder, and a history of Autism Spectrum Disorder.
4. currently sees Dr. Vivian Knipp and Dr. Juee Phalak at Affinia Healthcare Child Development Center to manage medication and receive therapeutic treatment She has been a patient there since 2009 and attends therapy on a bi-weekly basis. had a change in

psychiatrist at Affinia from Dr. Ji Su Hong to Dr. Phalek in 2016.

5. Additionally, receives one hour of in-home behavioral therapy per week with Tanya Coates, a therapist from R. S. Counseling in St. Louis. has been working with Coates for approximately two years.

#### *History of Special Education Services*

6. 's initial evaluation for special education services was completed on May 9, 2012, in the second semester of her fifth grade year. She was found to be eligible for services with a Specific Learning Disability in the areas of reading comprehension and mathematic reasoning.

7. At the time of the evaluation, 's medical diagnoses were Depression and Autism Spectrum Disorder.

8. The first IEP in the record<sup>1</sup> is one created near the end of 's fifth grade year. The IEP takes note of 's medical and educational diagnoses, and concludes:

[ ] can read fluently on grade level but she lags behind her same age peers in reading comprehension skills therefore, [ ] needs the support of special services to increase her reading comprehension skills in order to compete with other students in the general education curriculum. [ ]'s mathematic reasoning skills are affected by her disability in the general education curriculum. She needs one on one support or a small group setting to provide instruction in mathematics reasoning to increase her skills.

Ex. B, at 7. Aside from 180 minutes per week of specialized instruction, the IEP required no modifications or accommodations “to be used in general and/or special education.” *Id.* at 27.

This IEP called for to be in the regular curriculum classroom at least 80% of the time.

9. The IEP for the next school year (completed near the end of 's sixth grade year) is based on the same medical and educational diagnoses, and determination of eligibility for services from the 2012 evaluation. It contains goals similar to the previous year – improved reading comprehension and mathematical skills. As to progress, “[s]ince [ ]'s initial IEP meeting,

---

<sup>1</sup> It is designated as “Annual” rather than “Initial.” Apparently, 's initial IEP was prepared in conjunction with the evaluation near the end of her fourth grade year, but those documents are not part of the record.

her written expression skills have improved. Her vocabulary skills have also improved through the use of the Prentice Hall literature program. Her math skills have improved too through the use of memorization of her multiplication facts.” Ex. C, at 35. was reported to be reading at a second-grade level. A variety of accommodations were called for, including lower difficulty level, shorter assignments, extended time to complete exams, exams of shorter length, and modified format. ’s time in specialized instruction was increased to 300 minutes per week; she was still scheduled at least 80% of the time in the regular classroom.

10. was evaluated a second time on January 7, 2015. She was found to be no longer eligible for services based on a diagnosis of Specific Learning Disability in the areas of reading comprehension and mathematic problem solving, but instead eligible for services based on a diagnosis of Emotional Disturbance.

11. The evaluation documents the District having received information from Dr. Knipp, and lists medical diagnoses of depression and autism spectrum disorder. It also notes Parent’s report that had been diagnosed with ADHD. The evaluation summarizes the team’s findings, in part, as follows:

[ ] is a student who is currently functioning in the Very Poor range of intellectual ability based on intelligence tests that have language removed as a factor. When compared to her previous intelligence tests where language was utilized, [ ]’s current scores were much lower on nonverbal tests. The possibility of [ ]’s depression, ADHD, and increased behaviors such as visual and auditory hallucinations, paranoia and distinguishing fantasy from reality have an impact on her current performance and some difficulties with academics cut. Although [ ]’s teachers reported that she appears to function well in a classroom setting, there are modifications in place for some subject areas that renders some success for [ ]. The second possibility for these observations may be due to the medications that [ ] is currently taking before school that aids [*sic*] in controlling significant behaviors not observed in the school setting. Ms. , [ ]’s parent, reported that clinically significant behaviors are exhibited in the home environment when medications are almost at completion by the end of the day. There are

concerns with [ ]’s self esteem, impulsiveness, and her ability to establish positive relationships. She will continue to need specifically designed

instruction in order to meet her needs.

Ex. F at 83.

12. 's next IEP was completed in February of her seventh grade year. It made note of her new educational diagnosis of emotional disturbance. The IEP described that struggled with telling time on an analog clock; that she could read words at a fifth-grade level, but comprehended at a third-grade level; that she struggled to count money; and that her overall academic functioning was at a second-grade level in the seventh grade.

13. This IEP contained a Behavior Intervention Plan ("BIP") to address 's visual and auditory hallucinations, growing paranoia, and difficulty distinguishing fantasy from reality. As part of this BIP, the school counselor was supposed to meet with for 15 minutes every other week, and then the school counselor was supposed to share the data she collected on 's hallucinations and paranoia with her private therapist, Dr. Knipp. Knipp testified that she never received any reports.

14. By the beginning of the eighth grade, Dr. Hong had diagnosed with "full criteria of Schizophrenia." Ex. 2. In a letter, he asked school officials to consider reviewing 's IEP, and to consider moving her to a smaller classroom or that she could receive more supervision from teachers and school staff. It is not clear from the record when the District received this letter; it is addressed to at her home address.

15. Beginning with her eighth-grade (February 4, 2016) IEP, the District moved 's placement from a regular classroom at least 80% of the time to inside the regular classroom less than 40% (a self-contained setting). "Due to []'s lack of academic progress, the IEP team met and decided that a more restrictive setting is necessary." Exhibit H, p. 125. remained reading at a fifth-grade level, but was still only able to comprehend at a third-grade level, which was the same performance level as her sixth and seventh grade years.

16. According to the February 4, 2016 IEP, 's special education eligibility was for an Emotional Disturbance due to her medical diagnoses of Autism Spectrum Disorder and Major Depressive Disorder and how these diagnoses manifest in the school environment. It also notes that had recently been diagnosed with Schizophrenia. Her IEP details that she was under doctors' care and takes medications for her diagnoses. The IEP concluded that needed a small, highly structured group with strong support from the teacher in order to learn. was to participate in the regular education program 40% of the school day. Additionally, the IEP documented Parent's desire for to attend a small high school when she started in the fall. Dr. Knipp's reports of 's hallucinations are noted in the IEP.

17. This IEP included a BIP that provides for the school counselor to review and monitor a journal was to keep. was also supposed to write about her positive experiences at school to help her manage her negative perceptions of the school environment. There are no records of 's journal entries or progress on her BIP in the record before this Commission.

18. In the self-contained classroom in eighth grade, began to do somewhat better academically and behaviorally. Bullying towards decreased, she had fewer hallucinations, and her grades showed some progress. After moving classrooms, she reported that she neither saw nor spoke to her imaginary friends at school and began making friends with peers in the class. Dr. Knipp reported that 's mood and affect also improved and that seemed less stressed about school during their therapy sessions.

19. started her ninth-grade year at Sumner High School ("Sumner") in the District in August 2016. She was listed as a student with an IEP and BIP in an internal e-mail, dated September 9, 2016, from ninth-grade Principal Christopher McNeil to staff members. Her February 4, 2016 IEP from Gateway was to carry over to Sumner, keeping her in the self-contained setting. was supposed to receive the following special education minutes in the self-contained setting: 377 minutes weekly in math; 377 minutes weekly in basic reading; 377

minutes weekly in basic reading;<sup>2</sup> and 379 minutes weekly in written expression, totaling 1510 minutes.

20. For some period of time at the beginning of the school year, was not in a self-contained classroom at Sumner while the team set up the self-contained classroom. The minutes of special education were adjusted to accommodate the larger number and shorter duration of class periods in the high school environment. was assigned to two general education classes, JROTC and Art. was scheduled to be in the regular classroom less than 40% of the time.

21. During the fall semester, 's psychotic symptoms increased, including more frequent interactions with imaginary friends. threatened her mother, pulled her mother's necklace off during a physical altercation, and made a statement about killing herself and stabbing her grandmother. In school, was involved in altercations with other students in September and November, and following the November incident, had to visit the emergency room for injuries she sustained.

22. Dr. Phalak and Dr. Knipp submitted a joint letter to the school on November 14, 2016, recommending 's transfer to a therapeutic school setting.

23. The IEP team met at Sumner on December 2, 2017. During the meeting, the team discussed the fact that the observations of school personnel differed from observations of in the home setting and the observations of 's mental health providers in a clinical setting. Parent signed an authorization for release of information form for the team to communicate with Dr. Knipp and receive information about 's medical diagnoses and treatment.

24. On December 16, 2016, Meghan Bradshaw, the District's psychological examiner, called Dr. Knipp and spoke with her for 20 minutes. At the hearing, Knipp recalled that

---

<sup>2</sup> The duplication may be an error.

Bradshaw said that 's teachers had not reported signs of hallucinations. Knipp encouraged Bradshaw to sit one on one with because then she would clearly see how hallucinates. Neither Knipp nor Bradshaw made notes of the conversation.

25. The IEP team met again on December 20, 2016. Bradshaw related her conversation with Knipp to the IEP team and suggested a re-evaluation. Also at the December 20, 2016 meeting, Parent, through legal counsel, requested a Notice of Action-Refused with respect to placement in a private separate day facility. The District responded instead with a letter stating that the team had not come to any decision regarding a change of placement. 's safety plan was revised to reduce unsupervised contact with the general student population.

26. Coates, 's in-home therapist, attended these meetings along with Parent and legal counsel. She testified that what came to light during those meetings was that was not presenting with the aggressive behaviors at school that she was presenting with in the home setting. Instead, at school was "able to be cooperative, to listen, to be on task. Those are positive behaviors, or ways of coping. Instead of being in a negative way and letting external stimuli upset her." Tr. at 315.

27. On January 30, 2017, the District conducted a review of existing data, and proposed reevaluating . While 's eighth-grade IEP made note of her diagnosis of schizophrenia, had not been evaluated since that diagnosis came to light. Parent consented to the evaluation on January 30, 2017.

28. In February of 2017, was involved in another (nonphysical) altercation with a student. On February 8, 2017, a disagreement with another student from 's self-contained classroom escalated to threats of physical violence against , with her classmate saying that she would kill and her mother and threatening to bring weapons to school to hurt . was sent to a room alone to keep her separated from the other student, and Parent was called to take home to de-escalate the situation. was not disciplined. By March, 's psychiatrist

was transitioning her to an older anti-psychotic medication no longer in frequent use because of its serious long-term side effects in an attempt to manage her worsening symptoms.

29. The District completed the evaluation and reviewed the results with Parent on March 9, 2017. In the evaluation document, Bradshaw reported that during the course of examinations that were part of the evaluation, pointed out her imaginary friend “,” an active hallucination. Bradshaw also reported other behaviors that appear to have been manifestations of her schizophrenia, as well as some age-inappropriate behavior such as speaking in a high-pitched, sing-song tone of voice. The evaluation also acknowledges receipt of information from ’s health care providers regarding her diagnosis of schizophrenia.

30. During this March 9, 2017 meeting, the team also discussed ’s most recent academic test scores. On the Wechsler’s Intelligence Scales for Children, Fifth Edition (WISC-V), ’s full-scale IQ was measured at 71, which places her in the “Very Low/Borderline range of intelligence on a standardized measure of intellectual ability.” Ex. P at 171. was also given the Test of Nonverbal Intelligence -Third Edition (TONI-3) to test her IQ due to the significant discrepancy between her abilities on the Fluid Reasoning Index and the Processing Speed Index. This test is suited for individuals who are known or believed to have communication or thinking disorders that may be the result of certain disabilities, including autism. On the TONI- 3, produced a score of 81, which places her in the low average range.

31. performed at the 1.5 grade level on her STAR Reading test and the 2.5 grade level on her STAR Math test. By contrast, she was reading at a third-grade level at the beginning of 2016.

32. Parent made it known that her preference was to have the District move to a separate, private placement because was not making academic or behavioral progress and she was in danger of retaliation from other students.

33. Dr. Knipp also testified that during this period, ’s personal hygiene declined.

*The March 9, 2017 IEP*

34. Immediately following the review of the evaluation March 9, 2017, the IEP team convened and prepared an IEP. It notes 's educational weaknesses brought on by her educational diagnosis of Emotional Disturbance. Those weaknesses are in the areas of basic reading, reading comprehension, math calculation, math problem solving, and written expression. The present level section of the March 9, 2017 IEP also provides some insight into 's learning style and suggests teaching strategies that may be successful when working with . It also reports the concerns brought on by 's audio and visual hallucinations and delusional thinking, and Bradshaw's observations of 's interacting with an imaginary friend during the recently completed evaluation are also captured in the present level.

35. The March 9, 2017 IEP notes that also struggles with making age appropriate friendships.

36. The March 9, 2017 IEP then sets out six goals: Goal 1 addresses 's weaknesses in written expression; Goal 2 focuses on Math skills; Goal 3 is designed to provide specialized instruction in basic reading skills; Goal 4 addresses reading comprehension; Goal 5 addresses 's advancement through high school and is aimed at developing prevocational skills; and Goal 6 looks to build on 's socialization skills.

37. The March 9, 2017 IEP includes a behavior intervention plan that attempts to address 's schizoaffective disorder and any negative perceptions of school that she may have with a trial period of therapeutic counseling, and alternatives based on 's success, or lack thereof.

38. On March 17, 2017, Parent, through counsel, filed a due process complaint alleging that the District denied a FAPE because the District placed her in auxiliary classes multiple times a week with large groups of non-disabled peers after determining that she required a self-contained setting and because the District did not modify her IEP to adopt and implement goals,

objectives, a behavior improvement plan, and/or a safety plan to address her schizophrenia and ignored her active hallucinations by leaving her in a non-therapeutic setting.

*The May 3, 2017 IEP*

39. The hearing in this matter was originally convened on, April 25, 2017. At that time, we granted the District's motion for continuance to permit the District to reconvene 's IEP team and review and, if necessary, revise 's IEP, taking into consideration the information in Petitioner's Exhibit 5.

40. The new May 3, 2017 IEP was received into evidence as Exhibit X. In it, the District agreed to change 's placement to a private separate day facility. The District also agreed to provide additional compensatory services to .

41. The same day, the District issued a new Notice of Action proposing a change in 's placement to a private separate day facility. It advanced Great Circle (one of the two private schools mentioned in the due process complaint prayer for relief) as the assigned private agency. But the District also informed Parent that it was open to discussing other private school options

42. Under the IDEA's "stay put" provision, the District has not changed 's placement to the private separate day facility.

Individual Witness Testimony

(Parent)

43. Parent testified that she is 's mother. She only has one child, and she and live with 's maternal grandparents. Parent testified that liked Giant Steps the best as a potential placement, and she liked it better than other options because of the therapy options, including music and art therapy, and the one-on-one academic support. Parent also testified that she likes that the children at Giant Steps go out into the community and participate as citizens.

44. Parent testified that began having behavioral problems and hallucinating in elementary school. Parent said 's teachers reported her looking off in a "daze" in her elementary school classrooms and that sometimes she would mumble to herself.

45. Parent testified that During 's eighth-grade year, was moved into the self-contained setting at Gateway because of her increasing hallucinations and declining academics. She did better both academically and behaviorally in this setting because she was not as stressed at school and the hallucinations died down. Parent testified that is doing worse now.

46. Parent testified that Sumner did not have a self-contained classroom for at the beginning of the 2016-2017 school year. was depressed from the very beginning of school, her hallucinations increased, and she started talking to her imaginary friends again. Parent spoke to personnel at Sumner about her concerns.

47. Parent testified that she had two physical altercations with during this time period, and around February or March, walked up behind her grandmother in the kitchen with a knife in her hand and said that, her imaginary friend, had told her to stab her grandmother.

#### Dr. Vivian Knipp

48. Dr. Vivian Knipp testified that she is a psychologist with Affinia Health Care Child Developmental Center and has been there for the last 12 years. She attended the University of Missouri Columbia for her undergraduate degree, where she received a Bachelor of Arts degree magna cum laude. She attended Saint Louis University for her Master's degree and Ph.D., where she graduated with distinction. She is a licensed psychologist in Missouri. She has been practicing for 28 years and specializes in children and adolescents.

49. Dr. Knipp sees approximately every two weeks, sometimes more or less, depending on how well is doing with her treatment and management of the symptoms of her disabilities. Knipp tries to see more often when struggles to manage her symptoms increase.

50. Knipp testified that 's maturity level is that of a 10 or 11-year old (or younger, since she still plays with dolls) rather than a 14-year old. She believes this is likely due to her autism diagnosis since children with depression or schizophrenia can be of an age-appropriate maturity level.

51. Knipp testified that 's schizophrenia manifests itself in ongoing hallucinations, specifically, speaking to her imaginary friends. Sometimes she makes verbal threats while talking to these friends. Additionally, experiences paranoia and engages in ideas of reference, meaning that if she hears a person around her laughing, she is going to assume that the person is laughing at her. She believes that the television talks to her and that she can control the actions and images on the television screen. will become upset if she tells the characters on the television to do something and they do not do it because she believes they are not listening to her. This is referred to as thought broadcasting persecution reference. Sometimes when hallucinates, she stops in the middle of a sentence, turns in another direction, and starts speaking to her imaginary friends.

52. Knipp testified that it is possible for someone around to not notice that she is hallucinating.

So in the school setting in particular, I could see her sitting at her desk, and oftentimes she will mumble softly when she is having these discussions with her imaginary friends. And she doesn't want to make a scene because she doesn't want to call attention to herself. And she will be mumbling or doing something like that and she may laugh inappropriately, but they may not realize what that's about.

Tr. 156.

53. Knipp testified that when is doing well, she realizes her hallucinations are not real. When she is not doing well, she will argue with Knipp and tell her the hallucinations are her real friends. Knipp testified that cannot focus or do work well when she is hallucinating because she has difficulty paying attention.

54. Knipp testified that sometimes during summer break, 's hallucinations cease completely. finds school a very stressful place where she has to interact with others, confront people every day, manage the input of everything she observes, and attempt to understand social situations, which she can easily misread. Her hallucinations are a coping skill for her, but not an adaptive (positive) one.

55. Knipp testified that needs very small classes with one-on-one instruction because she is so far behind academically and behaviorally.

#### Tanya Coates

56. Tanya Coates testified that she is a licensed professional counselor. She has known for two and a half years, and sees her once weekly for one hour. She attended St. Louis Community College and then transferred to the University of Missouri St. Louis for her undergraduate degree, as well as her Master's degree for education and counseling. She is a licensed professional counselor in Missouri.

57. Coates testified that does not have any friends in the community or family members whom she meets outside the home. Coates testified that cannot walk in the community by herself because she has conflicts and arguments with strangers.

58. Coates has observed 's hallucinations, but has never observed interacting with more than one imaginary friend, as has Dr. Knipp.

59. Coates testified that she has been to about five meetings over the course of this past school year. Ms. Coates testified that in her opinion, is not currently making academic progress.

60. Coates testified that she works with on appropriate coping skills, but that has not progressed in therapy to the place where she can immediately think of an appropriate coping skill when confronted with a stressor. She needs constant, daily reminders of the coping skills. Coates testified that she hopes will be placed in therapeutic school to be around other children like her.

#### **Conclusions of Law**

This Commission has jurisdiction over matters relating to the identification, evaluation, placement or the provision of FAPE to students with disabilities. Section 162.961.<sup>3</sup> The burden of proof in an administrative hearing is on the party seeking relief, which in this case is Parent. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). One of our tasks is to determine the credibility of witnesses. *J.L. v. Francis Howell R-3 School Dist.*, 693 F. Supp.2d 1009, 1033 (E.D. Mo. 2010). Our findings of fact reflect our credibility determinations.

We note first several evidentiary rulings. The parties filed motions *in limine* with regard to certain documentary evidence and testimony related to it. The District moved to exclude Parent's Exhibit 5, tendered as part of her five-day disclosure, consisting of some 774 pages of 's medical records. The district contended that they should not be considered because they were not before the IEP team on March 9, 2017. We denied that motion because, first, it was unclear that Exhibit 5 consisted solely of documents that the district had never been privy to, and second, because it contained valuable background information relevant to 's medical conditions. We admitted Exhibit 5 at the hearing and permitted Dr. Knipp to use it extensively to refresh her recollection about 's diagnoses and treatment. Parent filed her own motion *in limine* "to exclude 's [May 3, 2017 IEP], all testimony regarding this IEP, and any information or testimony regarding what the District and/or IEP team planned or wanted to do after the due process complaint was filed." We denied Parent's motion as well and admitted the May 3, 2017 IEP because we believed it relevant to the question of what services in the community were available and at the disposal of the District. We sustained an objection to certain testimony related to whether the new IEP provided a FAPE because "an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated." *Roland M. v. Concord Sch. Comm.* 910 F.2d 983, 992 (1<sup>st</sup> Cir 1990). Other

---

<sup>3</sup> Statutory references are to RSMo Supp. 2016 unless otherwise indicated.

testimony related to Great Circle School (the District’s proposed placement) was admitted without objection.

Under the IDEA, all children with disabilities are entitled to a FAPE designed to meet their unique needs. 20 U.S.C. §1400(d)(1)(A) and 34 C.F.R. §300.1(a). Missouri’s State Plan for Special Education (2016) (State Plan) generally defines FAPE as regular and specialized special education and related services provided at public expense, under public supervision and direction without charge to the parents that meet the educational standards of the state educational agency and are provided in conformity with the Student’s IEP. State Plan, Regulation I, §3.<sup>4</sup>

An IEP is a specialized course of instruction developed for each disabled student, taking into account the “unique needs” of a particular child. *Andrew F. ex Rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988, 999 (2017). “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Id.* It is well established that “[t]he IEP is ‘the centerpiece of the statute’s education delivery system for disabled children.’” *Id.* at 994, quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988). In reviewing an IEP, however, the question is not whether it is ideal, but whether it is reasonable. *Id.* at 992.

Children not fully integrated into a regular classroom, such as , must have an IEP that provides an educational program “appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” *Andrew F.*, 137 S.Ct. at 1000. Parent asserts that the District fell short in two ways. To summarize the first, it is Parent’s contention that the District, having decided that a low level of interaction between and her non-disabled peers was appropriate, placing her in two general education classes denied her a FAPE because the general high school environment is a trigger for the symptoms of her schizophrenia. In the second, Parent contends that ’s March 9, 2017 IEP did

---

<sup>4</sup> See also, 20 U.S.C. § 1401(9).

not adequately address 's diagnosis of schizophrenia and that in implementing the IEP, school officials and teachers ignored 's symptoms that could have been more appropriately attended to in a therapeutic setting. We address each issue in turn.

I.

*Did the district deny a FAPE by restricting her special education placement to inside the general education classroom less than 40% of the time and then placing her in auxiliary class and multiple times with large groups of her non-disabled peers?*

Dr. Knipp testified that finds school a very stressful place, and that it is a “trigger” for the symptoms of her schizophrenia. But along with the requirement of a FAPE, the IDEA contains a provision requiring students with disabilities to be educated in the “least restrictive environment.” 20 U.S.C. § 1412(a)(5)(A). The requirement reflects a “strong preference” that children with disabilities attend regular classes with non-disabled children and a presumption in favor of placement in the public schools. *Independent School Dist. No. 283 v. S.D.*, 88 F.3d 556, 561 (8th Cir.1996). And although only the March 9, 2017 IEP is before this Commission for review, the parties presented extensive evidence about 's history with the District.

's IEPs have changed through the years as her diagnosed disorders and symptoms have progressed. Her fifth-grade IEP describes a girl who has fallen a little behind her classmates in reading comprehension and mathematical reasoning. Its goal was quite straightforward – to improve her skills with special education instruction so that she could compete with her classmates. It called for her to be in the general education classroom more than 80% of the time. The following year, her skills had improved slightly, but not to the extent that she could compete with her peers in the classroom. As a result, she was prescribed more special education instruction, and a variety of adjustments to her curriculum and testing environment. The sixth-grade IEP still called for her to be in the regular classroom more than 80% of the time.

In 's seventh-grade year, Parent requested a reevaluation. Dr. Knipp provided a letter to the District, and while a diagnosis of schizophrenia had not yet been made, Knipp noted that

was experiencing symptoms of paranoia and visual and auditory hallucinations. Knipp recommended certain strategies for reducing stress at school, including slow breathing, a seat near the teacher to reduce bullying, and an identified adult in whom could confide. The resultant IEP made note of 's new educational diagnosis of emotional disturbance, and again increased the number of hours of special education instruction, but still placed her in the regular classroom more than 80% of the time. In addition, a behavior intervention plan was created to deal with 's visual and auditory hallucinations, paranoia, and difficulty distinguishing fantasy from reality that included bi-weekly meetings with the school counselor.

By the beginning of the eighth grade, Dr. Hong had diagnosed with "full criteria of Schizophrenia." Ex. 2. In a letter, he asked school officials to consider the review of 's IEP and to consider moving her to a smaller classroom or that she could receive more supervision from teachers and school staff. It is not clear from the record when the District received this letter; it is addressed to at her home address. Nonetheless, the IEP developed in February 2016 noted that even though accommodations and modifications had been made to the general education curriculum, had not been successful in the regular classroom setting. The IEP further increased the number of hours of special education instruction, placing in the regular classroom less than 40% of the time. In the self-contained classroom in eighth grade, began to do somewhat better academically and behaviorally. Bullying towards decreased, she had fewer hallucinations, and her grades showed some progress.

In the fall 2016 semester at Sumner, did not progress. The school was not well prepared for her arrival, and for some period of time, she was not in a self-contained classroom as called for in her eighth-grade IEP. The special education classed called for in her IEP did not match the length of high school class periods, and had to be adjusted. 's psychotic symptoms increased, including more frequent interactions with imaginary friends. threatened her mother, pulled her mother's necklace off during a physical altercation, and made a statement about killing herself

and stabbing her grandmother. She was involved in three altercations with other students, and in November, had to visit the emergency room for injuries she sustained. By March, 's psychiatrist was transitioning her to an older anti-psychotic medication no longer in frequent use because of its serious long-term side effects in an attempt to manage her worsening symptoms. Her reading and math scores declined. Even her personal hygiene declined.

But the appropriateness of an IEP is judged prospectively. *See, Carlisle Area Sch. v. Scott P. By & Through Bess P.*, 62 F.3d 520, 530 (3d Cir. 1995). "An IEP is a snapshot, not a retrospective," and we must "take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated." *Roland M.*, 910 F.2d at 992. So the question before us is not, did make actual progress in the fall semester, or even, was the District at fault for her lack of progress; but given 's situation, did the District offer a forward-looking IEP, reasonably calculated allow to "make progress appropriate in light of [her] circumstances?" *Andrew F.* at 999. We conclude that it did.

The March 9, 2017 IEP built upon the modest successes achieved in the self-contained classroom in the eighth grade by formally reconfiguring the self-contained classroom for the high school setting, recognized the District's duty to educate in the least restrictive environment by placing her into two non-academic classes with her non-disabled peers, and addressed 's worsening symptoms by offering therapeutic counseling as a related service. The IEP sets out six goals: Goal 1 addresses 's weaknesses in written expression; Goal 2 focuses on math skills; Goal 3 is designed to provide specialized instruction in basic reading skills; Goal 4 addresses reading comprehension; Goal 5 recognizes 's advancement through high school and is aimed at developing prevocational skills; and Goal 6 focuses on socialization skills. Parent's argument is, at its core, that the only reasonable alternative was to remove from Sumner into a private therapeutic placement. But is a human being with an illness that impairs her perception of reality and defies formulaic treatment. There is no tried-and-true combination of therapeutic and

educational services that will guarantee her success at school. Just as 's doctors have used their best professional judgment to appropriately balance her medications and therapy, District officials used their best professional judgment to balance 's curriculum to meet her needs. The evidence presented does not attack the goals or the methods outlined in the IEP, it only presents an alternative placement that 's mother and counselors believe would be better. We cannot see that it was objectively unreasonable under the circumstances to follow the IDEA's "strong preference" for educating students with disabilities alongside their non-disabled peers. was not denied a FAPE by reason of her placement in classes with her non-disabled peers for a portion of the school week.

## II.

*Did the District deny a FAPE when it failed to modify Student's IEP to adopt and implement goals, objectives, a behavior improvement plan, and/or safety plan to address 's schizophrenia and did District deny Student a FAPE by ignoring her active hallucinations by leaving her in a nontherapeutic setting?*

For purposes of the IEP before us, met the State Plan eligibility criteria with an educational diagnosis of Emotional Disturbance. The District contends it prepared an IEP for on March 9, 2017, based on the information available to it. Parent contends, on the other hand, that the District ignored a duty to seek out relevant information about from her doctors, either specifically or by way of example, the 744 pages of medical records that comprise Exhibit 5 in this case. Parent's argument, though, confuses two concepts under the IDEA. The District does have an affirmative obligation to seek out information under "child find." Child find is the affirmative, ongoing obligation of districts to identify, locate, and evaluate children with disabilities residing within their jurisdiction who either have, or are suspected of having, disabilities and need special education as a result of those disabilities. 34 CFR § 300.111. But once a child is identified and evaluated, the formulation of the IEP is intended to be a collaborative exercise. "If a child requires special education, a school district must convene a

team to formulate an IEP in light of the child’s abilities and parental views about the child’s education. 34 CFR. §§ 300.343(b)(2), 300.346(a)(1). The parents, the child’s teacher, and a school official knowledgeable about special education must be included on the team which devises and reviews the IEP, and parents are free to *invite other individuals with expertise to participate.*” *Gill v. Columbia 93 Sch. Dist.*, 217 F.3d 1027, 1034–35 (8th Cir. 2000)(emphasis added).

Dr. Knipp wrote a letter addressed to the Special Education Case Manager at Sumner High School on November 14, 2016, in which she related ’s diagnoses of schizophrenia and major depression; described some of the manifestations of those diagnoses in ’s behavior; and concluded: “given the emotional and learning challenges that [] experiences, we recommend that she transfer to a therapeutic school setting such as Logos School<sup>5</sup> where her learning deficits, as well as, her emotional needs can be better met.” Ex. 4. She invited the school to call her for further information.

’s IEP team met on December 2, 2016. The team discussed the fact that the observations of school personnel differed from observations of in the home setting and the clinical setting. On December 16, 2016, Meghan Bradshaw, the District’s psychological examiner, called Dr. Knipp and spoke with her for 20 minutes, noting that ’s teachers had not reported signs of hallucinations. At a subsequent meeting on December 20, 2016, Bradshaw related her conversation with Knipp to the IEP team and suggested a re-evaluation.

On January 30, 2017, the District conducted a review of existing data, and proposed re-evaluating . Parent consented to the evaluation on January 30, 2017. The District completed the evaluation and reviewed the results with Parent on March 9, 2017. In the evaluation document, Bradshaw reported that during the course of examinations that were part of the evaluation, pointed out her imaginary friend “,” an active hallucination. Regardless of when the District can

---

<sup>5</sup> Dr. Knipp no longer believes the Logos School would be “the best fit” for . Tr. 221.

be considered to have been on notice of .'s diagnosis of schizophrenia, the 2017 evaluation that was the basis for the March 9, 2017 IEP documents it.

On that same day, the team reviewed and revised .'s IEP. Far from ignoring .'s schizophrenia, the March 9, 2017 IEP was created directly to recognize and respond to it. It contains the goals outlined above, and offers a behavior intervention plan intended to help cope with her symptoms. As much as we wish an IEP could be designed to "cure" .'s schizophrenia, that is not its purpose. As noted above, its purpose is to recognize that there are barriers to .'s success in school, and to devise a strategy to allow her to make appropriate progress. *See, Endrew F.* at 999.

As to the District ignoring the manifestations of .'s disorder, Dr. Knipp's testimony succinctly explains the discrepancy between observations in the home and clinical environments, and the school environment:

So in the school setting in particular, I could see her sitting at her desk, and oftentimes she will mumble softly when she is having these discussions with her imaginary friends. And she doesn't want to make a scene because she doesn't want to call attention to herself. And she will be mumbling or doing something like that and she may laugh inappropriately, but they may not realize what that's about.

Tr. 156. There is also the possibility, noted in .'s eighth-grade IEP, that .'s medication was often working while she was at school, but wearing off by the end of the day when she went home.

Due to the "stay put" provisions of the IDEA, during the pendency of this litigation, the March 9, 2017 IEP has never truly been implemented. As we discuss further below, it likely never will be. But before today, the District cannot be faulted for ignoring behavior that is not disruptive, alarming, or even particularly remarkable in a 14-year-old. We find that was not denied a FAPE by reason of the District failing to recognize her schizophrenia.

### *III. The May 3, 2017 IEP Meeting*

On the morning scheduled for the hearing, the District filed a motion *in limine*, or in the alternative, motion for continuance in response to Parent’s Exhibit 5, tendered as part of her five-day disclosure, consisting of some 774 pages of ’s medical records. We convened the hearing to hear argument on the motion. We declined to exclude documentary evidence relevant to ’s ability to learn, but granted the District’s motion for a continuance to permit ’s IEP Team to reconvene to consider Exhibit 5. The IEP team met on May 3, 2017, after which the District issued a Notice of Action, proposing to change ’s placement to a separate, private placement and proposing to provide up to \$5,000 worth of private educational or therapeutic compensatory services. We sustained an objection to certain testimony regarding whether the May 5, 2017 IEP provided with a FAPE.

We agree with the District that “[t]he core of the [IDEA] ... is the cooperative process that it establishes between parents and schools.” *Schaffer v. Weast*, 546 U.S. 49, 53 (2005), and that the filing of a due process complaint should not act as a bar to seeking out a non-adversarial resolution. “The stay-put provision was never intended to suspend or otherwise frustrate the ongoing cooperation of parents and the school district to reach an amenable resolution of a disagreement over educational services.” *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 72 (3d Cir. 2010).

The District must ensure that the IEP team:

(ii) Revises the IEP, as appropriate, to address -

(A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under § 300.303;

(C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.

34 CFR § 300.324(b)(1)(ii).

After the IEP team met on May 3, 2017, the District issued a new Notice of Action proposing a change in 's placement to a private separate day facility. It advanced Great Circle (one of the two private schools mentioned in the due process complaint prayer for relief) as the assigned private agency. But the District also informed Parent that it was open to discussing other private school options. Parent offered testimony about another private school, Giant Steps, which now appears to be her preferred placement for . is to attend a summer program there, independent of the school's proposed placement action. We believe that at the conclusion of this case, when the "stay put" provision of the IDEA is lifted, the May 3, 2017 Notice of Action changing 's placement will supersede the March 9, 2017 IEP, and she can begin in a private separate day facility, as Parent requested in her due process complaint. We believe 's summer session at Giant Steps will help to inform the parties further about the specific school will attend.

## Summary

Parent failed to carry her burden of showing the District denied a FAPE.

SO ORDERED on June 23, 2017.

---

BRETT W. BERRI  
Commissioner

## Appeal Procedure

Please take notice that this is a final decision of the Administrative Hearing Commission and you have a right to request review of this decision. Per § 162.962, when a review of this decision is sought, either party may appeal as follows:

- (1) The court shall hear the case without a jury and shall:
  - (a) Receive the records of the administrative proceedings;
  - (b) Hear additional evidence at the request of a party; and
  - (c) Grant the relief that the court determines to be appropriate, basing its decision on the preponderance of the evidence.
- (2) Appeals may be taken from the judgment of the court as in other civil cases.
- (3) Judicial review of the administrative hearing commission's decision may be instituted by filing a petition in a state or federal court of competent jurisdiction. Appeals to state court shall be filed within forty-five days after the receipt of the notice of the agency's final decision.
- (4) Except when provided otherwise within this chapter or Part 300 of Title 34 of the Code of Federal Regulations, the provisions of chapter 536 are applicable to special education due process hearings and appeal of same.
- (5) When a commissioner renders a final decision, such decision shall not be amended or modified by the commissioner or administrative hearing commission.

The right to appeal is also addressed in 34 C.F.R. § 300.516.