

Before the
Administrative Hearing Commission
State of Missouri



, in the interest of)
,)
)
Petitioner,)
)
vs.) Case No. 20-0199
)
PARKWAY C-2 SCHOOL DISTRICT and)
SPECIAL SCHOOL DISTRICT OF)
ST. LOUIS COUNTY,)
)
Respondents.)

DECISION

We find that the Special School District of St. Louis County (SSD) and the Parkway C-2 School District (Parkway) (collectively the Districts) did not deny (Student) a free and appropriate public education (FAPE) and fulfilled the requirements of Student’s Individualized Education Program (IEP).

Procedure

On January 6, 2020, (Parent) filed a due process complaint on behalf of her daughter, Student, against the Districts.¹ On January 17, 2020, the Districts filed a joint response to the due process complaint. On February 3, 2020, we held a pre-hearing conference

¹ Section 162.825, allows for the creation of a special school district, which is a distinct public school district for the purpose of providing special education and related services. *See* Missouri State Plan for Special Education, 2019 (State Plan), Regulation XV: Special School Districts at 136 (see this same discussion regarding joint compliance requirements for Parkway School District). Statutory references are to RSMo 2016, unless otherwise noted.

with the parties. On March 12 and 13, 2020, and May 7, 2020², we held a hearing. Parent appeared in person and was self-represented, and Student appeared in person. James Thomeczek with Thomeczek & Brink, LLC, represented the SSD, and Amy Clendennen with Tueth, Keeney, Cooper, Mohan, Jackstadt, represented Parkway. On May 19, 2020, the parties filed their written briefs. On May 22, 2020, they filed their reply briefs.

Findings of Fact

1. At the time of the hearing, Student was years old and in the 8th grade at Central Middle School within the Parkway School District.

Student's Background Information

2. Parent adopted Student when she was three years old.

3. In February 2011, Parent had Student evaluated by Linda Sharpe-Taylor, Ph.D., a licensed psychologist with the Urban Behavioral HealthCare Institute in St. Louis, Missouri, who concluded, in part, that Student (age years, months):

... has problems with self-regulation, organization, understanding social cues, and attention in group situations such as the classroom ... [h]er ability to learn is above average; however, she lacks the necessary executive functioning skills that would help her academically.

Ex A. These characteristics remain to this date, except for Student's lack of understanding of social cues. These characteristics are likely permanent, and she will require behavior modification skills to manage them.

4. In 2006, if not before, Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). She does not take any ongoing medication for it.

5. Student suffers from anxiety.

² We held a third day of hearing due to the medical needs of one of the witnesses.

6. Student is a kind individual who wants to please. She is generally happy and personable, except when her anxiety manifests itself. Her teachers view her as a leader. Student serves as an ambassador to her school when younger students come to visit, and she is engaged in extracurricular activities at school, such as theater and a leadership group.

7. At five years old, Student began receiving counseling services from Kristie Tyson, a licensed professional counselor. Tyson counseled Student on and off until Student was in the 6th grade, when she began counseling Student regularly to help manage Student's anxiety, stress, and past trauma.³ With regard to Student's anxiety, Tyson explained that it manifests itself in the form of restlessness, excessive thoughts, worry, difficulty concentrating, and some self-esteem issues.

8. After an evaluation of Student on February 16, 2011, Tyson opined that:

- a) Student is doing very well with her social-emotional needs at the present time, but anticipates that once Student transitions to high school she will experience more issues;
- b) In order to maintain Student's current social-emotional level, Student must receive school accommodations because her educational disabilities cannot be cured, but instead, must be managed to prevent regression; and
- c) Student requires the following educational accommodations: i) take tests in a quiet location; ii) be allowed to move to a quiet location when she needs to calm herself; and iii) most importantly, Student needs someone at school that she can talk to about issues she is experiencing.

9. In October 2016, when Student was 10 years old and in the 5th grade, an initial multidisciplinary evaluation of Student was conducted, which concluded, in part:

- a. Student was below grade level in math, with significant concerns with Student's "math calculation, math problem solving, and task focus/attention."

³ The record does not provide any information to explain the trauma.

- b. Student was “functioning in the middle to top third of her class in reading and writing, and the bottom fourth of her class in math.”
- c. During direct observation, Student was off task 67% of the time.
- d. Student’s “impairment adversely affects her educational performance and indicates the need for special education supports, particularly in the areas of inhibit/emotional control, working memory, and self-management, along with math computation.”
- e. Student “will need support to remain on task and to develop the necessary organizational and time management skills needed to complete 5th grade level work.”
- f. Student’s full IQ as 92, falling within the average range of cognitive ability.
- g. Student met the qualifications for the specific learning disability of Other Health Impairment (OHI).

Ex. 5.

10. In January 2017, when Student was in 5th grade, SSD initiated Student’s first IEP. In the IEP it noted that Student had difficulty maintaining focus, retrieving information (working memory) in the area of math, initiating tasks, planning and organizing self for completing assignments, and emotional control. The IEP stated that “An average 5th grade student remains on task an average of 80 to 85% of recorded time. . . [Student’s] average academic engagement measured at 34%, which is significantly below expectancy.” Ex. 6.

11. In the January 2017 IEP, Student had two math goals and one task-related concern goal. She was to receive 150 minutes per week of special education in math instruction, 90 minutes per week in special education instruction in task related skills, 225 minutes of regular education in math instruction, and various accommodations such as extended time to take tests, class instruction and directions given in multiple ways.

12. Student’s IEP was later amended to reduce her math instruction to 210 minutes so that she could participate in an extracurricular leadership program.

13. In November 2017, student was in the 6th grade and 11 years old. She received a new IEP, which noted that she was meeting her 2016 IEP goals with the aid of her accommodations, except for one of her math goals in which she was reaching it with 65% accuracy instead of 70%.

14. Student's November 2017 IEP goals contained two math goals and one task related goal that were more advanced than her 2016 IEP goals

15. In 6th and 7th grade, Nichole Hendrix was Student's case manager and special education teacher. Hendrix has a Bachelor's degree in elementary education and has worked for SSD for eight years as a special education teacher.

16. Hendrix worked with Student on her IEP goals in Student' co-taught math class.

17. Hendrix had a very good relationship with Student. Hendrix was the designated person for Student to talk to when she needed someone to speak with regarding her issues, and Student found Hendrix to be very helpful.

18. Student's special education remained at 210 minutes per week of math instruction, and her accommodations remained generally the same. Her 90 minutes per week of special education instruction in task related skills was eliminated.

19. In September 2018, Student received a new IEP, when she was in 7th grade and 12 years old.

20. At the time of the IEP meeting, Student met one of her 2017 IEP math goals, and was making progress on her other two goals in that she met the other math goal an average of 78% versus 80% and achieved her task initiation goal an average of 78% versus 80%.

21. Student's September 2018 IEP contained two math goals, one task related concern goal, and one emotional behavioral skills concern goal. The math and task related goals were more advanced than Student's 2017 IEP goals.

22. Student's Emotional Behavioral Skills Concern goal was new. It was noted that:

This is a new goal for [Student]. [Student] struggles with making decisions impulsively and needs time to think through her actions and discuss them once she has had time to process. Processing through situations and choosing an alternative response should help [Student] create a bank of alternative responses for future situations.

Id.

23. In September 2018, Student was well liked by her peers, worked well in groups, was cooperative, was organized with her planner, was a strong reader, and participated in class.

Student's teacher saw an improvement in Student's behavior. At times Student struggled with initiating, planning and organizing, could give up easily, and "revert to a child-like attitude when things are hard or confusing rather than asking for help . . . [and] [p]erseverates on things such as another student's distraction or wanting to do something to which a teacher has already said no." The hardest time for Student was when she should be working during quiet time. *Id.*

Student also required time to process information in class and socially, and it was helpful for her to process through situations verbally by accessing a safe place to clear her brain.

24. At times, Student became emotionally dysregulated, which manifested as anxiety, disorientation, or vocal tics.

25. Student's special education math instruction remained at 210 minutes per week, and her accommodations remained the same.

April 2019 - Review of Existing Data and IEP

26. On April 15, 2019, a review of existing data (RED) meeting was held. It was determined that Student continued to meet the criteria for OHI. The RED documentation also stated, in part, that:

- a. Student's State-wide MAP assessment for 2016 indicated she was below basic in math and proficient in communication arts; 2017 she was basic in

math and proficient in communication arts; and 2018 she was below basic in math and proficient in communication arts.

- b. She had maintained As and Bs in her core classes, and had an A in math.
- c. She could apply what she reads but at times had trouble with drawing inferences, conclusions, generalizations, and sequencing.
- d. She benefited from extended time, repeated directions in a variety of ways, one-on-one help and attention, sentence starters, breaks, working in an alternative setting, and chunking assignments into parts.
- e. She tends to react strongly to others in the room; such as she may admonish a student for staring at her, state that she does not want to work with a student she does not like, but generally works well in groups.

27. It was determined that Student would not be re-evaluated.

28. An IEP meeting was held on April 15, 2019, in which Parent and Student attended. It resulted in an IEP initiated on the same date that was written by Hendrix. At the time, Student was 12 years old and in the 7th grade at Parkway Central Middle School.

29. Parent informed the IEP team,⁴ in part:

[Student] needs her teachers to understand that she requires patience and understanding . . . [and] how her neurodevelopment impacts her ability to stay focused for long periods of time, unexplainable headaches/dizziness, and brief bouts of passing out by her pediatrician's diagnosis of syncope.

[Parent] would like to see [Student]: increase her attention to tasks, increase organizational skills, increase math computation and reasoning skills, and increase emotional regulation.

Ex. 19 at 4.

30. The April 2019 IEP noted, in part, that Student had: a) "difficultly maintaining focus throughout a task or assignment across all settings;" b) difficulty retrieving information over a

⁴ A student's IEP team consists of the student's parent and not less than one regular education teacher if the student is or may be participating in the regular education environment, not less than one special education teacher (or special education provider when appropriate); a qualified and knowledgeable representative of the public agency; an individual who can interpret the instructional implications of evaluation results; other individuals who have knowledge or special expertise regarding the student, per the discretion of the parent or state agency; and whenever appropriate, the student. 34 C.F.R. § 300.321(a).

long period of time (working memory) in math; c) “difficulty initiating a task;”- “can become distracted by noises, activity, visual stimuli, and peers; can also be internally distracted – both can keep her from finishing or initiating a task;” d) can be impulsive (shouting in class); and e) has “difficulty self-regulating and consistently making /choosing an alternative response to situations with peer groups in the school setting.” Ex. 19 at 3.

31. SSD concluded that Student:

learns best through: structure and routine, visuals (needs things broken down into steps in order to see the part to the whole), hands-on instruction, repetition of concepts and skills, and regular encouragement/support/praise, having materials presented from concrete level to abstract, circling back to [Student] several times during an activity to re-explain directions, having check points on extended assignments and pairing visuals and auditory.

Id. at 3.

32. Student reported, in part, that “she learns best when she works by herself and is able to block out people around her.” *Id.* at 3.

33. Student met her 2018 IEP math goals and her task initiation goal. She did not meet her emotional/social goal in that she met it 63% of the time instead of 80% - “[Student] is able to identify the emotion that led to the behavior 5 out of 5 times but only chooses an alternative response on 3 out of the 5 occasions when discussing the situation [and] 3 out of 8 times, [Student] states she would choose the same response again.” *Id.* at 5.

34. The April 2019 IEP also noted:

[Student’s] behaviors have included blurting out during teacher instruction, talking to peers during independent work time, and impulsively saying unkind things to her peers. [Student] needs time to reflect on the behavior before being asked the questions that go along with the goal. She is always able to identify how the behavior impacts the learning environment and takes away from her

education. At times, [Student] does not take the questions seriously and jokes when I ask her what alternative behavior she would use in the future.[⁵]

Id. at 9.

35. Student's April 2019 IEP goals were:

- a. Emotional Behavioral Skills Concern Goal - By April 13, 2020, after making a decision that impacts the learning environment, when the teacher asks guiding questions and gives 3 alternative response options for the future, [Student] will choose 1 alternative response option, for 4 out of 5 decisions.
- b. Task Related Concern Goals - By April 13, 2020, [Student] will increase her task initiation skills by beginning an assignment or self-advocating for clarification within one minute of class instruction with no more than one prompt as measured by [Student's] ability to explain to her teacher what she needs to do in order to begin and complete the task with at least 90% accuracy.

Id.

36. The April 2019 IEP did not contain a math goal.

37. In 7th grade, Student was taught in a co-taught math class. Student could choose to take her math tests outside of the classroom in either the special education classroom or outside in the hallway between her math class and Hendrix's special education classroom where she could ask questions of either teacher.

38. The April 2019 IEP continued to state that Student would receive 210 minutes per week in special education math instruction, but this was not the Districts' intent. Hendrix testified that the Districts intended that Student not receive special education instruction in math, but receive special education instruction related to her task and emotional behavioral skills goals in her co-taught math class where data could be recorded.

⁵ Many positive things were also stated about Student's behavior and conduct, such as she is very outgoing, helpful and kind. She has a good sense of humor, creative ideas, likes by peers, works well in a group, organized with her planner, prepared for class, completes homework; an avid reader, shows great leadership, and is bright and positive.

39. Hendrix was not concerned with Student's math abilities. Student was on grade level and proficient in math, but required accommodations in math, as with other classes, and these accommodations were placed in Student's IEP.

40. Student demonstrated the ability to self-advocate when she needed to access an IEP accommodation.

41. Student's daily accommodations for all classes were extended time for completion of tests/examinations; testing in a quiet setting - inside or outside the classroom - where Student is able to easily ask questions when needed; preferential seating next to a peer role model and/or teacher to help focus; directions given in variety of ways; give oral cues/prompts; maintain assignment book; extended time for assignments per conversation with the teacher; use positive/concrete reinforcers; frequent reminders of rules; check often for understanding /review; frequent eye contact/proximity control; chunking tests and large assignments; self-initiated or teacher directed breaks; and access to safe place or an adult to talk through situations.

42. Student no longer had the daily accommodation in which an adult would check in with her at the beginning and end of the school day.

43. During the IEP meeting, Parent disagreed with dropping Student's math goals. Parent also wanted Student reassessed in the area of social-emotional concerns since she was last assessed in 5th grade. These requests were denied.

44. At the end of the 2018-2019 school year, Student made As or Bs in her classes. During the school year, Student made As on her quarterly report cards, except one B+ toward the beginning of the year.

Student's 8th Grade Year (2019-2020 School Year)

45. At the beginning of Student's 8th grade year, she was in general education classes doing 8th grade curriculum work, except she was in a co-taught math class learning grade level

math by a general education math teacher (Kathleen Schweiss) with access to a special education teacher (Caitlyn Werkmeister). Werkmeister was a new, first year special education teacher who was being mentored by Hendrix.

46. Generally, co-teaching can take different forms based on the subject and teaching styles of the teachers, such as breaking students into small groups.

47. Student's case manager was Abigail Bendick, a special education teacher with SSD. Bendick has a Bachelor's degree in education in both special education cross categorical and elementary education. She has a Master's degree in education. She began working for SSD in 2000.

48. As Student's case manager, Bendick was responsible to ensure that: a) Student's special education services and accommodations were provided; b) progress reports for each IEP goal were completed by Werkmeister; and c) Parent received the progress reports.

49. Before the start of Student's 8th grade year, Bendick provided Student's teachers with a profile sheet that stated Student's: a) learning style; b) strengths and weaknesses; c) IEP goals; and d) IEP services.

50. Bendick asked Student's teachers to review the profile sheet, ask any questions they had regarding the information, and implement Student's IEP as appropriate.

51. In August 2019, at Parent's request, Parent met with Bendick and Student's teachers to introduce herself, discuss Student's strengths and weaknesses, open lines of communication, and discuss what helped Student learn best so that Parent could ensure Student's team had information about Student's educational, social, and emotional needs, and what support she required.

52. Bendick did not monitor how Student was co-taught, but properly monitored Student's progress on her IEP goals.

53. During Student's 8th grade year, Student required extra processing time to learn; the ability to ask additional questions; have instructions rephrased; take extra time for assignments; and the ability to request to take tests in a quiet location. Student also needed a safe person to talk to, especially when she was dealing with interpersonal issues between herself and her friends.

54. Student still had math weaknesses (recalling math facts and setting up math problems, especially multi-step problems), some difficulty with writing because it is a multi-step process, and her hyperactivity manifested itself at times. Student no longer had aggression issues, but still had trouble with some anxiety.

55. Student was "bullied" at time by her peers in the form of name calling. Tr. at 297.

56. Before October 18, 2019, Student was denied the accommodation to take a test in a quiet place in her English Language Arts (ELA) class, and denied a right to take an assessment in a quiet place in her family and consumer sciences (FACS) class.

57. On October 18, 2019, Parent attended Student's parent-teacher conferences and learned that Student's alternative test location was in the 8th grade hallway outside her classrooms. Parent did not believe this was an appropriate testing location because Student had difficulty with task initiation and needed to be able to ask questions. Student was not prevented from asking questions while taking tests in the hallway and there is no evidence the location hindered her task initiation.

58. After the parent-teacher conferences, Parent expressed to Bendick and other school administrators that: a) Student's special education math teacher was not consistently providing Student support, but was only "managing the paperwork;" b) Student should not be taking her tests in the hallway; c) Bendick was not properly monitoring Student's progress on her IEP goals; and d) Parent wanted an IEP meeting to review Student's IEP.

59. Bendick responded to Parent's concern by informing Parent that Student was being serviced through a collaborative co-taught teaching model with both a general education and special education teacher available every day; that Student had a mid-term math grade of a B+, but her current grade was a C because she did not turn in worksheets; and Student's testing location was discussed during their August 2019 meeting. Bendick also asked what revisions Parent was seeking to the IEP, and if the concern was implementation, then that could be addressed in a team meeting.

60. Parent responded that Student's special education teacher never works with Student; Bendick is likewise not working with Student; Student's missing assignments is indicative of her disability; and she never agreed to the hallway as Student's alternative test taking location. Parent did not seek a team meeting as offered.

61. As a result of these communications and per Parent's request, Bendick began asking Student's teachers on Mondays what tests Student had for the week, and then determined where Student would take each test and informed Parent.

62. In November 2019, Tyson's recommendations were provided to the Districts, which were the same as her finding back in 2006,⁶ and such recommendations had previously been incorporated into Student's IEPs.

63. On November 5, 2019, Parent requested that Student be allowed to retake her ELA test and FACS assessment in a quiet location and for Student to be given an apology.

64. On November 6, 2019, Parent e-mailed school administrators, including Bendick, and stated: a) all of Student's teachers are not implementing Student's IEP as Parent has stated many times in the past; b) Bendick is not implementing the IEP and just started supporting

⁶ See Finding of Fact 8 above.

Student after October 18, 2019; d) Parent expects Bendick to inform her at the beginning of each week where Student will be taking her tests; and e) Parent wanted Student to be able to retake a formative assessment outside of the classroom.

65. A school administrator responded, in part, by stating that all teachers were implementing the IEP as written, teachers exercise judgment in decision making throughout the instructional process, and Bendick will continue to work with Student's team on a weekly testing location schedule and provide Parent with the information, as well as how Student did on the tests, whether she completed them, and "possible implications for homework." Ex. M.

66. Student was permitted to retake the math test and FACS assessment.

67. On November 8, 2019, Student e-mailed her assistant principal, Dr. Cathy Lorenz, and stated, in part:

- a. she was having more difficulty in 8th grade as compared to 6th and 7th grade;
- b. in prior years she had someone who helped her organize her day and checked in with her regularly;
- c. in prior years when she had difficulties with her friends she could speak with Hendrix, who helped her by talking through the issues, explained options, role played, and gave advice. Student explained she did not know who this person was for her in 8th grade, and when she talked with McBride,⁷ she did not feel she was getting routine help;
- d. she needed help with organization, turning in assignments, and focusing in class, and some of her teachers understood, but not all of them;
- e. some teachers allowed her to take tests in the hallway and others did not; and
- f. she was frustrated that she did not have a quiet place to refocus or calm herself.

⁷ The school counselor.

68. On November 11, 2019, Student's ELA teacher informed Parent that Student was given extra time to complete an assignment, and she turned in an essay she completed in 7th grade.

69. On November 11, 2019, SSD issued a notice of action denying Parent's request for an IEP meeting because it believed no new information was available, and noted that it "has offered to convene an IEP meeting at semester (mid to late December 2019) to review [Student's] current IEP, the fall semester instructional data and to consider any needs for her transition to high school." Ex. 22.

70. In November 2019, at Parent's request, Student was moved into a co-taught ELA class in which Werkmeister was the special education teacher.

71. Werkmeister worked with Student on her IEP goals throughout the school year but became more responsive after Parent complained in October 2019.

72. Student received 210 minutes per week of special education math instruction in accordance with her IEP in her 8th grade year through the assistance of her general education teacher and her special education teacher.

December 2019 – RED Meeting

73. On December 18, 2019, SSD held a RED meeting to review, in part, Student's existing data, current teacher reports, parent report, and a letter from Student's private counselor, Tyson, which included that Student was diagnosed with general anxiety disorder.⁸

74. Student's 2019 teacher reports note Student's positive attributes, such as she is outgoing, helpful, kind, advocates incredibly well for herself, has a good sense of humor, has creative ideas, is liked by her peers, works well in groups, cooperates and wants to do well in

⁸ Parent requested an in-person RED meeting with SSD. She was not granted this request.

class, is very organized with her planner, participates in class, loves to answer questions, shows great leadership, is incredibly positive, and she obtained a swing dance part in the winter concert.

75. Student's 2019 teacher reports note such relevant concerns regarding Student as: a) lack of group participation when Student does not like group members; b) passive and withdrawn behavior, usually after an encounter with a peer when she has not yet had time to process the event; c) anxiety/fearfulness/self-critical in that she can doubt herself and lacks confidence depending upon the type of day she is having and external factors; d) can do grade level work when focused; e) has difficulty staying focused in class and inconsistent with completing assignments that are not completed during the school day; f) appears more immature than her peers; g) displays attention seeking behavior; h) more recently displays difficulty following normal routines and expectations (refused to sit in assigned seat and admonished another student for staring at her); i) benefits from having large projects broken down into manageable steps; j) requires frequent check-ins from her teachers to make sure she is on task due to distractibility; k) benefits from extended time, repeated directions in a variety of ways, one-on-one help, and chunking assignments; l) benefits from regular schedules and reminders; and m) occasionally gets irritated with peers and has difficulty regulating her frustration without help from teachers.

76. Student's 2019 math teacher specifically noted that Student was very capable and understood and applied the material; she benefits from additional time to work on assignments and to process rote memorization of math facts; she asks questions when she does not understand the material; benefits from talking out word problems; works in quiet setting; and needs redirection to stay focused when working in group setting.

77. Tyson noted that Student had previous concerning behavior when she was in 6th grade, such as accessing inappropriate websites and self-injurious behaviors such as cutting, but these behaviors had since reduced. Tyson noted that Student currently deals with some attachment issues, and Tyson is currently working with Student on anxiety concerns. According to Tyson, Student was doing well and Tyson was interested in keeping Student stable in that next year as she moves into high school.

78. According to Student's statewide MAP assessment, her 2019 math skills were basic.

79. As of December 18, 2019, Student had As and Bs in her classes, with a B+ in math.

80. Parent's current noted concerns included that Student struggled with long term assignments and showed a decrease interest in math.

81. The RED documentation noted that Student was working toward her IEP goals, and as of October 10, 2019: a) she met her task initiation goal 80% rather than 90% of the time with one prompt and the other 20% of the time she required two prompts and an additional explanation of the directions; and b) with regard to Student's goal designed to help her make good decisions, she chose an appropriate alternative response 70% of the time instead of 80%, and of the other 30% she states she would choose the same inappropriate behavior.

82. At the conclusion of the RED meeting, SSD determined that no additional information was needed to confirm Student's disability of OHI or to make an educational decision regarding Student. Parent requested an independent educational evaluation (IEE) to assess Student's social emotional behavior, listening comprehension, and executive functioning, as she believed SSD should have assessed these areas during the RED process.

83. On January 15, 2020, SSD agreed to Parent's request for an IEE.⁹

⁹ SSD granted this request after Parent filed her due process complaint in this case. No evidence was presented at the hearing as to whether the IEE was obtained.

School Personnel Interactions with Student and Observations

Cathy Lorenz, Assistant Principal

84. Cathy Lorenz has been the assistant principal in Student's school during Student's 6th – 8th grade years. Lorenz has a Bachelor's degree in political science, a Master's degree in curriculum and instruction secondary education, social studies, and a Doctorate degree in educational leadership. She is also board certified as a human resource specialist. She has worked in the education field for 27 years, 17 of which has been in school administration.

85. During the 2019-2020 school year, Lorenz was one of two individuals that Student could meet with as part of her IEP accommodation that she have access to a safe person to talk to.

86. Student discussed with Lorenz personal issues approximately seven times. One incident involved Student's belief that another girl broke her water bottle in science class, and another was when another student called Student a hurtful name. Student also went to Lorenz's office two times to take a test or work on an assignment in a quiet place.

87. Lorenz did not see herself as directly involved in assisting Student achieve her IEP goals, and Lorenz did not chart or keep statistical data on her interactions with Student.

88. Lorenz did not report her interactions with Student to Student's case manager, but believed Bendick was aware of the incidents that caused Student to go speak with Lorenz. Lorenz spoke to Student's teachers about the events giving rise to her interactions with Student if Lorenz believed the teachers needed to be aware of them to monitor for further conflicts.

89. Lorenz used calming strategies with Student, such as having a stuffed animal available. Lorenz saw herself as a safe person that Student could access to discuss Student's issues, same as she would provide to all students.

90. Lorenz observed growth in Student, but recognizes that Student still requires special education services.

Kathleen Schweiss- Math Teacher

91. Kathleen Schweiss is Student's 8th grade general education math teacher. She has taught math for 11 years, is nationally board certified, a google educator, and has a Bachelor's degree in mathematics and a Master's degree in curriculum and instruction.

92. Schweiss observed Werkmeister speaking with Student one on one about the curriculum, but she is not aware of what those discussions entailed. She believes Student's IEP goals were being implemented in her classroom, but she cannot speak about what type of instruction the special education teacher provided to Student.¹⁰

93. Student requested accommodations from Schweiss, such as asking that directions be rephrased or Schweiss go over something again step by step.

94. In math class, Student was a hard worker, but required "a lot of repeated instruction and repeated drills in order to feel comfortable," which Schweiss provided. Tr. at 357.

95. Schweiss gave Student encouragement when Student observed something that she considered hard, worked with Student to go over multiple examples of math problems to help her learn, and allowed Student to talk through a problem out loud. Schweiss did not need to remind Student to start an assignment very often, and Schweiss worked with Student to present assignments in chunks so Student was not overwhelmed and could practice one skill at a time.

96. Student did better with more algebraic concepts because she could follow a procedure. Student struggled with recalling some math facts, mainly with positive and negative numbers, adding and subtracting, and multi-step processes. Student could solve one and two-

¹⁰ Werkmeister did not testify.

step equations very well and some multi-step equations, but more complex math problems cause her problems.

97. Student mainly choose to take her math tests in the classroom as opposed to an alternative quiet place. Student was very well behaved in math class. Schweiss had no social-emotional concerns regarding Student in her classroom.

98. Student received the same math assignments as the non-disabled students in the class, and they all did 8th grade level work. Student learned strategies to be successful in math.

99. Student received 210 minutes of special education math instruction per week with required accommodations between the services of Schweiss and Werkmeister.

100. Schweiss and Werkmeister often checked on Student to see if she understood the assignment. Student occasionally requested extended time for assignments, which was provided.

101. Schweiss offered Student the ability to retake tests, but Student did not do so.

102. Student is prepared to take 9th grade algebra and compares favorably to other students in her class.

Jamie Ostermeyer- Science Teacher

103. Jamie Ostermeyer is Student's 8th grade science teacher, except when she was out on maternity leave. Ostermeyer has a Bachelor's degree and a Master's degree in teaching and she is certified in middle school math.

104. Ostermeyer was familiar with Student's IEP goals and accommodations and allowed Student to take breaks that were either initiated by her or Student and to take tests in an alternative setting.

105. Ostermeyer recognized that Student liked to work independently so she could focus, and benefited from working beside certain peer role models and from chunking activities in order to give her more breaks. Ostermeyer observed Student being able to focus better after

taking a one or two minute break outside of the classroom. Sometimes Ostermeyer had a short chat with Student to help her re-center herself. Ostermeyer observed that Student did not like working with certain peers, and Ostermeyer discussed this with Student. Ostermeyer also rephrased things for Student or explained things a different way.

106. Ostermeyer believed Student's IEP accommodations were appropriate for her, and Student did well in her class with a B or B-.

107. Ostermeyer worked with Student on task initiation and completion and some organization.

108. Ostermeyer provided Student with her necessary IEP accommodations.

Tiffany McBride

109. Tiffany McBride is a school counselor at Parkway Central Middle School. She has worked at Parkway for 12 years and has a Master's degree in education and one in counseling. She is certified as an elementary teacher.

110. McBride has worked with Student since 6th grade and participated in her IEP meetings since then. She was Student's 8th grade counselor and worked with her on some extracurricular activities.

111. All students are able to access a school counselor for social-emotional support. Counselors can meet with students on a weekly basis or students can make an appointment using an on-line application.

112. During Student's 8th grade year, McBride worked with Student occasionally to talk about friendship concerns and met with Student and friends. McBride met with Student if Student came to see her. When McBride met with Student, Lorenz was usually present.

113. McBride encouraged Student to get involved with extracurricular activities, develop friendships, learn skills, and feel connected.

114. McBride and Lorenz met with the 8th grade teams of teachers once a week and generally discussed all of the students assigned to the teams. During these meetings, Student was not often a topic of conversation. Once the team discussed encouraging Student to participate in the spring play.

115. McBride observed Student improve in the areas of distractibility, ability to focus, initiate tasks, and self-advocacy.

116. McBride or Lorenz was designated as Student's safe person.

Student's Testimony

117. Student believes that her teachers got annoyed with her at times because she did not understand things and they have to repeat instructions. At times Student felt like her teachers were talking about her and she worried they were saying negative things. She also got embarrassed when kids complained at her for not understanding class material, such as saying, "oh my God, we already learned about this, and like laugh and stuff." Tr. at 476.

118. Student's ADHD manifests itself in her inability to focus, she becomes really hyper at times, is anxious, and has a hard time controlling her emotions both in and outside of school -- "there's like all these colors and things all around me; so I like focus on that or like sound and stuff like that, I focus on that instead of like --- but it's mostly like in school ...[.]" Tr. 477.

119. Student talks with her teachers and school principal each school year about her ADHD issues.

120. In the first couple months of Student's 8th grade year, there were a few times that Student asked for a break and was denied one. Also, Werkmeister did not work with her as often as she did later in the year, and Student did not understand that Bendick was her case manager. After Parent complained to the school personnel in October 2019, this changed.

Also, Bendick and Werkmeister checked in on Student more often, and Student understood that Werkmeister was there for her.

121. After parent-teacher conferences, Werkmeister began to discuss more often with Student what alternative decisions Student could make when she made a bad choice.

122. Student felt that her academic needs were being met at school, but not her social-emotional needs. She wants to be able to talk about her feelings more in-depth without being told she is fine or will be fine and she is not being judged. She sent Lorenz the e-mail because she thought she was being ignored.

123. Student recognized that she is getting As and Bs, but feels like she is not being taught in the way that is most helpful to her.

124. Student understands that if she has an emotional issues she can speak with McBride, but Student chooses to go to Parent more for her emotional needs. Tr. at 535. Student did not feel as comfortable going to McBride as she did Hendrix.

Parent

125. Parent is concerned that Student is not understanding basic math concepts.

126. Parent believes Student has been hindered by not being re-evaluated, not having a math goal, and inconsistency in updating the team on her needs and looking at how she functions in various environments. Parent believes that Student's needs are being met in math and ELA, where data is being collected, but not in other learning environments. She believes school staff alter the data to make sure it looks like progress is being met. Student told Parent several times that she does not want to go to school due to treatment by peers and teachers.

127. Parent has been issued a civility policy so she can no longer communicate with the teachers. She has to talk only with school administrators.

Parent and Student's Communications with
School Personnel in 2020

128. On January 10, 2020, at 2:25 a.m., Student e-mailed Lorenz to address personal conflicts she was having with another student that started before winter break (name calling and other inappropriate behaviors of which Student was being accused) and were continuing. Student stated that she felt lightheaded and sick, did not want to go to a certain class, expressed her personal feelings about the situation, and requested a mediation with the other student to sort through issues.

129. On January 10, 2020 (5:28 a.m.) Parent e-mailed Lorenz asking for information about what Lorenz may have learned regarding Student's issues with her peers before winter break and requested a mediation and a meeting with Lorenz after the mediation to discuss the situation and determine how the school will protect Student from bullying. Lorenz e-mailed Parent stating she would meet with Student.

130. On January 10, 2020 (8:08 p.m.), Parent e-mailed Lorenz to follow up on a conversation the two had earlier in the day that was cut short. Parent expressed, in part, concerns that Student was internalizing the situation with her friends and Student's emotional well-being was not being addressed, and that Parent did not want Student to have a room assignment with the other girl since mediation had been unsuccessful.

131. On January 14, 2020, Parent requested a meeting with Lorenz and other school personnel.

132. On January 17, 2020, at 10:55 p.m., Student sent an e-mail to Lorenz because Lorenz had not been present at school. The e-mail reported, in part, that Student had a confrontation with two students, she was "sick of everything that is going on"; it was too much

for her, she did not want to go to a certain class; and she felt as if meeting with students was not helping; and she asked Dr. Lorenz to get back with her. Ex. P.

133. On January 22, 2020, Parent e-mailed Lorenz with concerns regarding Student and Lorenz's interactions with Student. Parent stated, in part, that Parent wanted to be part of Lorenz's conversations with Student; expressed that school staff had mistreated Student; Student was uncomfortable going to Lorenz due to Lorenz's tone, demeanor and non-verbal communication; Student required help working through her issues with other students because Student was having difficulty internalizing the situation; and Parent was seeking outside support for Student.

134. On January 22, 2020, Lorenz e-mailed Parent and acknowledged she "missed the mark somewhere" with Student, and would strive to provide a "unified front." Ex. P. She also informed Parent that she would not meet with Student alone on any issue regarding a due process complaint.

135. On January 28, 2020, Parent notified Lorenz that Parent believed that Lorenz had made Student feel unsupported, dehumanized, and minimized; had allowed Student's team to marginalize Student without holding them accountable; staff's macroaggressions were real; and Parent wanted to be present at all times that Lorenz communicated with Student, regardless of the topic.

February 2020 IEP

136. In February 2020, Student received a new IEP. It was noted that Student met her social emotional goal with 100% accuracy on 5 decisions, and made progress on her task initiation goal averaging 80% (rather than 90%). It noted that Student "asks for clarification when she is confused on how to do something in under two minutes on 9 out of 10 occasions."

Ex. 25 at 4. It was noted that Student's IEP goal was being modified so that Student "is able to do so under one minute." Ex. 25.

137. The February 2020 IEP increased Student's math instruction to 325 minutes per week and contained the following three goals:

- a. Math Problem Solving Concern Goal - By February 24, 2021, Student will increase her math problem solving skills by setting up and solving multi-step equations or expressions with various operations with 80% accuracy.
- b. Social Behavioral Skills Concern – By February 24, 2021, Student will increase her self advocacy skills by initiating weekly conversations with her teachers either in person or electronically regarding progress on assignments, projects, tests and missing work on 80% of occasions. It was noted that this is a new goal to help Student develop self advocacy skills of communicating with teachers regarding her progress on given assignments, project, tests and missing work. There is no indication was to how this goal will be measured.
- c. Social Behavioral Concern Goal – By February 24, 2021, Student will increase her task related and organizational skills by effectively using her planner to break down large assignments, projects, papers and tests preparation activities into smaller, manageable pieces on 75% of occasions.

138. The IEP noted that Student's math goal was new and it was designed to assist Student with her current math struggles and assist her with more complicated math problems in high school algebra. The IEP stated:

The IEP team brought up concerns with [Student's] understanding and application of math vocabulary concepts to set up and solve various equations or expressions. Connects to Missouri State Standard 2.REI.A.1 Reasoning with Equations and Inequalities.

Ex. 26.

139. In the February 2020 IEP, Student's special education instruction changed to the following minutes per week located in a regular education classroom: a) 210 in math instruction from March 7, 2020 to August 23, 2020; b) 115 in math instruction from August 24, 2020 to February 21, 2021; c) 30 in organizational skills instructions; d) 30 in organizational instruction from March 7, 2020 to August 23, 2020; e) 60 in organizational instruction from August 24,

2020 to February 24, 2021; f) 115 in organizational skills from August 24, 2020 to February 24, 2021; and g) 210 in organizational skills from March 7, 2020 to February 24, 2021.

140. The notable changes to Student's accommodations were that she was to receive:
a) Tests/Exam - separate setting unless Student decides to stay with the teacher; b) reinforcement - rephrase questions on assignments and tests; c) use of calculator and multiplication chart; and d) test to speech when available to aid with focus and attention.

141. In the 2019-2020 school year, Student received As and Bs after the first semester and was earning As and Bs at the time of the hearing.

142. At the time of the hearing, Student's new math goal was being implemented and data was being collected. It was written with high school algebra in mind, and it took into consideration that Student had trouble when she worked with large problems that incorporate a lot of math skills or numbers.

Conclusions of Law

This Commission has jurisdiction over this case. Section 162.961. The burden of proof is on the party seeking relief, in this case the Parent. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Parent must prove her case by a preponderance of the evidence. *Tate v. Dept. of Social Services*, 18 S.W.3d 3, 8 (Mo. App. E.D. 2000).

We must judge the credibility of witnesses, as well as the weight and value of the evidence. *Faenger v. Petty*, 441 S.W.3d 199, 204 (Mo. App. W.D., 2014). We have the discretion to believe all, part, or none of the testimony of any witness. *Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo. App. W.D., 2001). When there is a direct conflict in the testimony, we must make a choice between the conflicting testimonies. *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App. W.D. 1992). Our findings of fact reflect our credibility determinations.

IDEA Summary Information

Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.*, all children with disabilities are entitled to a free appropriate public education (FAPE) designed to meet their unique needs and to prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d)(1)(A) and 34 C.F.R. §300.1(a). The Missouri State Plan for Special Education (2019) (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 pertaining to the education of disabled students that are provided in conformity with the Student’s IEP. State Plan, Regulation I, § G, page 6-7.¹¹

The primary vehicle for carrying out the IDEA’s goals is the IEP. 20 U.S.C. § 1414(d). “An IEP is a written statement that ‘sets out the child’s present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives.’” *A.H. by and through D’Avis v. Independence School District*, 466 S.W.3d 17, n.6 (Mo. App. W.D. 2015), quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988), *see also* 20 U.S.C. § 1414(d)(1)(A). The IEP is not required to maximize the educational benefit to the child, or to provide each and every service and accommodation that could conceivably be of some educational benefit. *Board of Education of Hendrick Hudson Central School District, Westchester County, et al. v. Rowley*, 458 U.S. 176, 207 (1982).

“To meet its substantive obligations under the IDEA” an IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

¹¹*Also see*, 20 U.S.C. §1401(9).

Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S.Ct. 988, 999 (2017). “[F]or a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” *Id.*, at 999, quoting *Rowley*, 458 U.S. at 203–204. This is not a bright-line rule and it “requires a prospective judgment by school officials” that is a “fact-intensive exercise” incorporating information from both school officials and the child’s parents. *Id.*, citing *Rowley*, 458 U.S. at 207-209.

The absence of the court providing a “bright-line rule” is not “an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review” and such deference is “based on the application of expertise and the exercise of judgment by school authorities” and “[a] reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decision that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Andrew*, 137 U.S. at 1001-1002, citing, in part, *Rowley*, 458 U.S. at 206. Nevertheless, this does not negate a hearing officer’s duty to weigh the credibility of the witnesses, and consider the impact of the testimony of expert witnesses. *Bd. of Educ. of Montgomery County v. S.G.*, 2006 WL 544529 (D.Md. Mar. 6, 2006).

Educational authorities must identify and evaluate disabled children, develop an IEP for each one, review every IEP at least once a year, and reevaluate a student every three years. Section 1414(a)-(d) and 34 C.F.R. §300.303(b)(2). In developing an IEP, a Student’s IEP team must consider:

- The student’s strengths;
- The parent’s concerns for enhancing the child’s education;
- The results of the student’s initial evaluation or most recent evaluation;

- The student’s academic, developmental and functional needs;
- The student’s communication needs; and
- Whether the student needs assistive technology devices and services.

34 C.F.R. § 300.324(a)(1). In addition, when a student’s behavior impedes his or her learning or the learning of other students, the IEP team must consider the use of positive behavioral interventions and support, and other strategies, to address such behavior. 34 C.F.R. § 300.324(a)(2).

Each IEP must include, in relevant part: a) an assessment of the child’s current educational performance; b) a statement of measurable annual educational and functional goals designed to meet the child’s disability needs in order “to be involved in and make progress in the general education curriculum and [that] [m]eet the child’s other educational needs that result from the child’s disability;” c) describe how the “child’s progress toward meeting the annual goals ... will be measured;” d) when progress reports will be provided; e) “a statement of the special education and related services ... based on peer-reviewed research to the extent practicable [that will] be provided;” and f) “a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act.” 34 C.F.R. § 300.320.

The procedural details set forth in IDEA “emphasize collaboration among parents and educators and require careful consideration of the child’s individual circumstances.” *Andrew*, 137 S.Ct. at 994, citing §1414. However, not every procedural violation amounts to a denial of FAPE. “[A] hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies – (i) impeded the child’s right to a FAPE; (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provisions of FAPE to the student; or (iii) or caused a deprivation of educational benefits. 34 C.F.R. §300.513(a)(2).

Parent's Due Process Complaint

In her due process complaint (and as further defined in her pre-hearing conference statement), Parent identified the following issues in dispute and her request for resolution:

- a. **Issue 1:** Did Respondents violate Petitioner's child rights under IDEA by failing to convene an IEP meeting within 10 days of parent's request on October 18, 2019 (NOA refused dated 11/11/19) however received after 10 days?

Proposed Resolution: Order Respondent to provide notice of action within the specified timeline under IDEA. Order Respondents to reconvene IEP to address provisions for Student's goals, minutes, and accommodations.

- b. **Issue 2:** Did Respondents deny Student the right to special education instruction according to the provisions in the IEP?

Proposed Resolution: Order Respondents to identify qualified special education teacher to provide direct teaching as they relate to the goals written in the IEP so she is able to make more than adequate progress on goals. Order Respondents to provide compensatory services for services not received as outlined in IEP.

- c. **Issue 3:** Did Respondents deny Student's accommodations outlined in her current IEP by denying a separate setting in which to take a benchmark assessment?

Proposed Resolution: Order Respondent to remove barriers for Student and follow Student IEP despite whether it is the belief of individuals who does not think the child needs the accommodations coming from the general education setting.

- d. **Issue 4:** Did Respondents deny Student FAPE by refusing to allow Parent meaningful participation in the IEP development process during the 2019-2020 school year; failing to develop appropriate goals to address Student's needs in executive functioning, anxiety and social skills development; failing to provide direct teaching for goals and supplementary aids and services; failing to offer appropriate accommodations to address Student's disability of ADHD; failing to provide accommodations necessary for Student to demonstrate progress on IEP goals?

Proposed Resolution: Order Respondents to reconvene IEP within 10 days to include appropriate goals to address executive functioning, social skills, especially anxiety, incorporate accommodations to help Student make progress on goals.

- e. **Issue 5:** Did Respondents deny Student FAPE by failing to assess Student after being provided new information regarding on-going concerns in school and outside of school?

Proposed Resolution: Order Respondents to schedule a RED meeting to consider all areas through a Review of Existing Meeting to afford the Petitioner's meaningful participation under IDEA and her child's team the ability to request additional information in areas needed. Order Respondent to amend Petitioner's child's record by removing the parent's name from the document because the Petitioner did not agree with the outcomes in the December 2019 Review of Existing Data.

We address each of these below.

Issue One: Failure to Convene an IEP Meeting

As discussed above, the Districts were required to hold an IEP meeting periodically, but not less than annually to determine whether Student's annual goals were being achieved. 34 C.F.R. § 300.324(b)(i). They did this. There is no requirement that a school district convene an IEP meeting within 10 days of a parent's request.

Student's IEP goals were revised toward the end of her 7th grade year in April 2019, after an IEP meeting was held. Student's 8th grade school year had only been in session approximately two months when Parent requested an IEP meeting. Furthermore, Parent's stated concerns were more in regard to how the IEP was being implemented as opposed to the goals themselves (albeit Parent was dissatisfied the math goal had been removed). The Districts offered Parent a team meeting to discuss her concerns, but Parent declined the offer.

The Districts did not violate the IDEA by failing to convene an IEP meeting within 10 days of Parent's request. Moreover, Parent's requested resolution of this issue was to have this Commission order the Districts to reconvene an IEP meeting to address Student's goals, minutes, and accommodations. The District convened an IEP meeting in February 2020. Parent participated in this meeting, and Student's IEP was revised. Accordingly, ordering another IEP meeting would be redundant.

Issue 2: Denial of Special Education Instruction per IEP

The only special education instruction contained in Student's April 2019 IEP was 210 minutes of math instruction. Student also had two goals that addressed her emotional/social concerns and her task initiation concerns. The two goals were designed to teach Student coping strategies so she could work within her disabilities. Parent asserts that Student was not provided 210 minutes of special education instruction because Werkmeister did not provide adequate instruction to Student, and the IEP did not provide a math goal. The District states that Student's IEP was intended to provide her instruction on her two goals in her co-taught math class, but not to provide 210 minutes of special education. However, her IEP stated she was to receive 210 minutes of special education, similar to Student's prior IEPs. Moreover, the IEP did not provide any information or explanation regarding the District's intended approach. Accordingly, Student was entitled to 210 minutes of special education in math.

Student was provided general and special education math instruction through her general and special education teachers. Schweiss provided Student with accommodations, such as providing step-by-step instructions, redirecting Student, providing positive reinforcements, talking through math problems, chunking work assignments, checking on Student to ensure she understood the assignments, and giving her extra time to complete assignments.

With regard to Werkmeister, we have less information. Werkmeister appears to have provided Student with less math instruction in the beginning of the school year (August through mid-October 2019), but concentrated on Student's IEP goals. Once Parent complained in mid-October 2019, Student received more direct special education instruction, accommodations, and monitoring from Werkmeister. The evidence does not support that Student was denied FAPE. While it appears that Werkmeister could have been more responsive to Student at the beginning of the school year, Schweiss made up for the lack of direct instruction. Student was provided

such instruction between the efforts of Schweiss and Werkmeister. Student's math grade, 2019 MAP score, and Schweiss' testimony, which we found credible, reflects that Student learned and was capable of performing grade level material, with accommodations.

Student's special education math instruction through the co-taught math class was specially designed to meet Student's unique needs, and Student received services necessary for her to benefit from the instruction. The fact that Student received part of her special education math instruction through her general education teacher is not a violation of FAPE. *See Department of Education v. Acen T. by and through Wayne T.*, 2020 WL 1673674 (D. Hawaii, April 6, 2020)(the fact that the student was receiving special education instruction from a general education teacher was not a violation of FAPE).

Parent also argues that Student was not provided special education instruction in math because her IEP failed to have a math goal related to her special education in math. While the IDEA does require an IEP to have measurable goals per 20 U.S.C. § 1414(d)(1)(A)(II), the lack of such a goal is not an automatic violation of FAPE. While it may be a procedural violation, the question is was it a substantive violation. In this case it did not because it did not: (i) impede Student's right to a FAPE; (ii) significantly impede Parent's opportunity to participate in the decision-making process regarding the provisions of FAPE to Student; or (iii) cause a deprivation of educational benefits. 34 C.F.R. §300.513(a)(2). Student received her special education math instruction, was able to make grade level advancement, received a successful grade, and was found to be "basic" on the state assessment in 2019. *See, e.g., Rodrigues v. Fort Lee Bd. of Educ.*, 458 Fed.Appx. 124, 127 (3d Cir. 2011) (finding that a lack of measurable goals in an IEP was a procedural error but did not affect a student's substantive rights or deny a FAPE where student was mainstreamed and progress was measured by grades and state proficiency assessments); *N.M. ex rel. M.M. v. Sch. Dist. of Philadelphia*, 394 Fed.Appx. 920, 923 (3d Cir.

2010) (finding that IEP lacking annual goals relating to some of a student's needs stemming from his disability was not a procedural flaw rising to substantive harm because the IEP still provided a FAPE); *L.M., ex rel. M.M. v. Downingtown Area Sch. Dist.*, 2015 WL 1725091 (E.D. Pa. Apr. 15, 2015)(“While a lack of goals or progress monitoring for particular areas of need may render an IEP procedurally defective, plaintiffs have not provided evidence that any procedural defects rose to the level of substantial harm necessary to award the compensatory education or tuition reimbursement sought.”).

In February 2020, the Districts added a math goal back into Student’s IEP. The math goal should have been there the whole time, as discussed above so adding it back in was proper. The Districts also increased Student’s special education math instruction. The weight of the evidence does not show that it was increased because Student did not receive such instruction during her 8th grade year. Rather, the weight of the evidence shows that Student benefited from special education instruction in math in 8th grade and will need additional instruction as she moves into more advanced math.

In addition, the weight of the evidence establishes that the Districts properly worked with Student on her two IEP goals and no violation of FAPE occurred. In further evidence of this, Student met her social emotional goal with 100% accuracy by February 2020, and made significant progress on her task initiation goal achieving an average of 80% when the percentage goal was 90%.

Parent’s request for a resolution of this issue was to have the Districts identify a qualified special education teacher to provide direct teaching related to the IEP goals and to provide compensatory services. There is no indication that Student requires a special education teacher full time to provide the direct instruction in math as opposed to a co-taught math class.

Issue 3: Failure to Provide Accommodation
for Benchmark Assessment

Student was originally denied the opportunity to take a benchmark assessment in a quiet location in her FACS class. The parties disagree if this was a test or not. Either way, Student was allowed to retake it in a quiet location. To the extent this may have been a procedural violation of the Student's IEP, it was not a denial of FAPE because it did not: (i) impeded Student's right to a FAPE; (ii) significantly impeded Parent's opportunity to participate in the decision-making process regarding the provisions of FAPE to Student; or (iii) cause a deprivation of educational benefits. 34 C.F.R. §300.513(a)(2).

Issue 4: Failure to Allow Parent Meaningful Participation,
Develop Appropriate IEP Goals, Provide Direct Teaching,
and Offer Appropriate Accommodations

Parent's Meaningful Participation

We do not find that Parent was denied meaningful participation in the IEP development process during the 2019-2020 school year. During the relevant time period, Student was operating under her April 2019 IEP. This was initiated in Student's prior school year. In addition, as discussed above, we do not find that SSD failed to schedule an IEP meeting in the fall of 2019. Furthermore, many of Parent's requests were implemented. Parent asked for a meeting with Student's team at the beginning of the school year, which was granted. Parent asked for a weekly schedule of Student's test and testing locations, and this was provided. Parent asked for Student to be moved into a co-taught ELA class, and this was granted. In addition, Parent did not take SSD up on the offer to have a team meeting. This was a logical starting point to address Parent's concerns.

Develop Appropriate IEP Goals

Parent also argues that the Districts failed to properly develop IEP goals for Student. In particular, Parent argues that the Districts should not have removed Student's math goal from her

IEP and that this denied Student FAPE. A lack of a stated goal is not necessarily an IDEA/FAPE violation, and we do not find it to be the case as discussed above.

*Failed to Provide Direct Teaching for Goals
and Supplemental Aids and Services*

Student's April 2019 IEP had an emotional behavioral skills goal and a task related goal. Werkmeister worked directly with Student on these goals in Student's co-taught math class as discussed above.

Likewise, as discussed above, we do not find that a lack of math goal in Student's IEP was a denial of FAPE, nor did the Districts deny Student direct teaching. In addition, Student was provided her IEP accommodations, except for two times in which she was not allowed to take a test in a quiet location and she was not allowed to take a break when requested a couple times at the beginning of her 8th grade year. Parent's advocacy on behalf of Student ensured that these issues were resolved and no violation of FAPE occurred.

As noted by Tyson, one of the most important accommodations required by Student is her need to talk with a school counselor or administrator to process her emotional/behavioral concerns, particularly her peer interaction at school. Student clearly liked and found Hendrix to be such a person in her 6th and 7th grade years. Student benefited from her interaction with Hendrix. In 8th grade, Student was provided access to the school counselor, McBride; the assistant principal, Lorenz, as individuals she could talk with about her issues. Student did not relate to these two individuals as well as she did with Hendrix. In addition, Lorenz did not see herself as helping Student directly with her IEP needs. Nevertheless, the Districts provided Student with options of whom she could speak with about her concerns or issues. McBride was a trained counselor who was skilled with working with young adults. While it would have been ideal if Student could have related better to either of these two women, as she did with Hendrix,

the Districts fulfilled their IEP accommodation responsibilities, and they were not required to maximize the educational benefit of Student. *A.H. by and through D'Avis*, 466 S.W.3d at n.6.

Finally, the weight of the evidence supports a conclusion that the Districts provided all other accommodations required in Student's IEP. There is a lack of evidence that Student was denied her other accommodations to a level that a violation of FAPE occurred. For example, Student's science and general education math teachers clearly worked with Student and provided her the necessary IEP accommodations.

Offer Appropriate Accommodations

Parent asserts that allowing Student to take her tests in the 8th grade hallway before mid-October 2019 was a violation of Student's IEP. While the hallway may have not been ideal for Student because she was working on a task initiation goal, we do not find it was a violation of the IEP, which stated that Student will be allowed to take her tests "in a quiet setting, inside or outside the classroom, where [Student] is able to ask questions when needed." Ex. 19 at 15. There is no evidence that Student was not allowed to ask questions or that taking her tests in the hallway hindered her education or her grades.

In addition, Parent's proposed resolution for this concern is to reconvene an IEP meeting within 10 days to include appropriate goals to address executive functioning, social skills, especially anxiety, and incorporate accommodations to help Student make progress on goals. The parties reconvened an IEP meeting and thereafter executed an IEP for Student in February 2020. This occurred after Parent filed the due process complaint in this case.

Issue 5: Failure to Assess Student after New Information Provided

In December 2019, SSD conducted a RED following receipt of a letter from Tyson. Tyson's recommendations were already incorporated into Student's IEP. Tyson testified that Student was progressing well, but required ongoing accommodation to maintain her stability

especially as she moved into high school. Upon completion of the RED, SSD determined that no further testing was necessary to determine that Student continued to be eligible for services. Parent wanted testing in the area of social/emotional. The weight of the evidence establishes that no additional testing was required in this area. Student's disability and characteristics had been identified for several years, and no new information warranted additional testing or evaluation.

Request for Attorney Fees

In her complaint, Parent made a request for attorney fees. No attorney has entered an appearance on behalf of Parent. Moreover, this Commission is without statutory authority to award attorney fees. Therefore, Parent's request is denied.

Summary

The Districts did not deny Student FAPE and fulfilled the requirements of Student's IEP.

SO ORDERED on June 2, 2020.

RENEE T. SLUSHER
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.