

BEFORE THE UTAH STATE BOARD OF EDUCATION
(Administrative Hearing)

IN THE MATTER OF THE)	
DUE PROCESS HEARING REQUEST)	
)	
██████████ a minor)	
child)	No: DP-2425-03
)	
Petitioner)	Memorandum Decision and Order
v.)	
)	
Jordan School District, Respondent.)	
_____)	

INTRODUCTION

This is an administrative proceeding under the Individuals with Disabilities Education Act (IDEA.) Petitioner is the parent (Petitioner of ██████, a minor (Student enrolled in the Jordan School District (Respondent.) Petitioner filed this Request for Due Process Hearing on August 14, 2024 alleging Respondent denied Student a free appropriate public education (FAPE by committing procedural and substantive violations of the IDEA. On October 18, 2024, Respondent filed a Motion for Partial Summary Judgment which was denied. A due process hearing was held in the above referenced matter from November 13-15, 2024. Laura Henrie and Mitchell Roundy of Disability Law Center represented Petitioner. Joan M. Andrews and Sarah C. Vaughn of Fabian Vancott represented Respondent. The hearing was held in accordance with the procedural requirements of the IDEA (20 USC 1415 et seq., and 34 CFR 300.507-515, and the Utah State Board of Education (USBE Special Education Rules (Rules.) At the close of the

hearing and based on the extensive record developed over three full days of testimony, and in light of the voluminous pages of exhibits, the Parties requested and verbally stipulated to an extension of time to allow publication of the court reporter's transcript to submit written closing briefs, and then to allow this Hearing Officer sufficient time to consider the evidence, arguments, and issue this Decision and Order.

The following witness testified and were found credible:

- Kim Deverall, parent
- Karina Sobreira Clark, community-based Board Certified Behavior Analyst BCBA non-district employee, home setting ¹
- Nichole Clyde, registered behavior technician RBT, BCBA intern, student's former grade teacher in another district, non-district employee
- Leota Person, special educator at South Hills Middle School during Student's grade year, former cluster leader
- Dr. Aaron Fischer, Licensed Psychologist, BCBA-D
- Krystin Wingert, BCBA, assistant principal, former cluster leader, licensed special education teacher, licensed behavior analysis (LBA.)
- Rebecca McPartland, speech language pathologist (SLP, member Utah Assistive Technology Team (UATT.)
- Cheri Wilde Blue, assistant technology specialist
- Kelly Wood, occupational therapist
- Kristan Thompson, caseworker, special education teacher in the functional behavior class, severe endorsement

- Susan Call, support classroom leader, former resource math and special education teacher
- Dr. Radley, Licensed Psychologist, Professor in the Department of Educational Psychology at University of Utah, BCBA-D
- Kimberly Lloyd, Jordan School District Director of Special Education

The following Exhibits were admitted:

- Petitioner's Exhibit 3
- Petitioner's Exhibit 4
- Petitioner's Exhibit 5
- Petitioner's Exhibit 6
- Petitioner's Exhibit 7
- Petitioner's Exhibit 8
- Petitioner's Exhibit 10
- Petitioner's Exhibit 11
- Petitioner's Exhibit 12
- Petitioner's Exhibit 14
- Petitioner's Exhibit 15
- Petitioner's Exhibit 16
- Petitioner's Exhibit 17
- Petitioner's Exhibit 18
- Petitioner's Exhibit 21
- Petitioner's Exhibit 22
- Petitioner's Exhibit 23
- Petitioner's Exhibit 25

- Petitioner's Exhibit 26
- Petitioner's Exhibit 27
- Petitioner's Exhibit 29
- Petitioner's Exhibit 30
- Petitioner's Exhibit 31
- Petitioner's Exhibit 34
- Petitioner's Exhibit 35
- Petitioner's Exhibit 36
- Petitioner's Exhibit 44
- Petitioner's Exhibit 45
- Petitioner's Exhibit 46
- Petitioner's Exhibit 47
- Petitioner's Exhibit 48
- Petitioner's Exhibit 49
- Petitioner's Exhibit 51
- Respondent's Exhibit 1-5
- Respondent's Exhibit 7
- Respondent's Exhibit 9-10
- Respondent's Exhibit 13
- Respondent's Exhibit 15-16
- Respondent's Exhibit 19
- Respondent's Exhibit 24
- Respondent's Exhibit 29

- Respondent's Exhibit 30
- Respondent's Exhibit 33
- Respondent's Exhibit 34
- Respondent's Exhibit 35
- Respondent's Exhibit 36
- Respondent's Exhibit 37
- Respondent's Exhibit 40
- Respondent's Exhibit 41
- Respondent's Exhibit 62
- Respondent s Exhibit 89
- Respondent s Exhibit 120
- Respondent's Exhibit 121 through 131
- Respondent's Exhibit 132
- Respondent s Exhibit 133
- Respondent's Exhibit 134
- Respondent's Exhibit 135
- Respondent's Exhibit 138
- Respondent's Exhibit 140-141
- Respondent's Exhibit 164-167
- Respondent s Exhibit 191
- Respondent s Exhibit 192
- Respondent s Exhibit 193
- Respondent s Exhibit 194

- Respondent s Exhibit 195

ISSUES

Whether the LEA denied Student a FAPE by:

- 1) failing to develop and implement an adequate individualized education plan (IEP and behavior intervention plan BIP over the last two years, including the provision of a registered behavior technician (RBT ;
- 2) unilaterally predetermining placement at Kauri Sue Hamilton without regard to other options or parents' expressed concerns;
- 3) failing to provide Student's parents with meaningful participation in meetings and decision making.

BURDEN OF PROOF

Petitioner as the party seeking relief in this IDEA due process administrative proceeding bears the burden of proof by a preponderance of the evidence to demonstrate that Respondent denied Student a FAPE. *Schaffer v. Weast* 546 U.S. 49, 52 (2005).))

FINDINGS OF FACT

1. Student is in the [REDACTED] grade enrolled in Respondent District at South Middle School. Student's [REDACTED] grade year was during 2022-2023, and [REDACTED] grade year was during 2023-2024. Student was on an IEP at all times during the relevant time period of this proceeding.

2. Student has global delays, is considered non-speaking, and was recently diagnosed with White-Sutton Syndrome.² (HT p. 40, ln 1-2.) f
3. Student has behavior issues, struggles with sleep, anxiety, new environments, and transitions. (HT p. 40, ln. 16, p. 41, ln 11-15.)
4. Student struggled with transitions such as going from one place to another, including from the bus to the classroom, from the classroom to the bathroom or sensory room. (HT Day 2, p. 269, ln. 4-11.)
5. Student is currently in a functional academic class. HT p. 49, ln 46.
6. During Student's ■ and ■ grade years, there were four self-contained classrooms at Student's school including the functional academics classroom and Social Emotional Behavioral (SEB) classrooms. The functional academic classroom has students with lower cognitive skills. The SEB classroom students had higher cognitive skills but behavioral or emotional support needs. (HT Day 2, p. 258-259, ln. 25-.)
7. During the ■ grade year that falls within the due process time period, Student's relevant IEP was dated February 3, 2022. Student's IEP had 14 goals and provided for 700 minutes weekly of behavioral support. Ex. 1.)
8. During the ■ grade, Student had a BIP in placed dated January 20, 2022. (Ex. 193.)
9. Student had BCBA Kristyn Wingert on his IEP team in the ■ grade during the 2022-2023 school year. (HT p. 49, ln. 6-9, HT Day 2 p. 111, ln. 3-4.)

² Petitioner testified that White-Sutton Syndrome is a newly discovered diagnosis that helped explain Student's GI issues as well as receptive and expressive language skills. HT p. 40, ln 8-13.)

10. Ms. Wingert was the cluster leader and had three to four additional classrooms, but was a “very active” member of Student’s IEP team. Much of Ms. Wingert’s effort went into supporting Student, and she collaborated extensively with the teacher, ensured staff was trained, and touched base daily with team members. (HT Day 2 p. 115-116, ln. 18-2.)
11. A BCBA must have a master’s degree in psychology or education, 2000 hours of fieldwork experience, and pass a board exam. A registered behavior technician RBT has 40 hours of training, passes a competency assessment, is assessed by a BCBA, and must pass an exam. (HT p. 164, ln. 5-10.)
12. An RBT provides direct ABA therapy, and implements the behavior plan to teach communication, social, and interaction skills to replace a problem behavior. (HT p. 163, ln. 7-12.)
13. An RBT does not need anything beyond a high school diploma. (HT p. 191, ln. 3.)
14. 5% of an RBT’s hours are supervised by a BCBA. (HT Day 2 p. 53, ln. 17-23.)
15. Dr. Radley testified that in his opinion, contingent upon training, a paraprofessional would be able to deliver the same types of supports of an RBT. (HT Day 3 p. 117, ln. 10-12.)
16. Ms. Wingert’s scope of competency is consultative behavior analysis in the private sector and educational behavioral analysis. HT Day 2 p. 114, ln. 6-8.)
17. Ms. Wingert testified that she did a full training for every paraprofessional that they had in the self-contained classrooms at the beginning of Student’s ■ grade year to be sure everybody was “on the same page with the Student.” (HT Day 2 p. 116, ln. 8-23.)

18. Ms. Wingert testified that she had confidence in the school team's ability to implement Student's BIP and provide services during the ■ grade year because most of the staff were the same. (HT Day 2 p. 169, ln 2-10.)
19. Ms. Call testified that during ■ grade, four paraprofessionals worked with Student. Two found the BIP overwhelming. The paraprofessionals had concerns that they were not following the BIP correctly, and had "lots of questions" that they would ask Ms. Wingert and Ms. Call to clarify. (HT Day 3 p. 10, ln. 1-16.)
20. Ms. Call testified that the BIP "just had a lot in it" and the team wanted to simplify it. (HT Day 3 p. 17, ln. 17-18.)
21. During testimony, Ms. Clark³ clarified that BCBA's work with behavior modifications by decreasing or by implementing interventions that will decrease challenging behaviors and replace them with skills that a person may lack, or teach them communication skills to replace those challenging behaviors. BCBA's provide supervision for a therapist providing applied behavior analysis (ABA.) (HT p. 161, ln. 2-9.)
22. During the spring into summer before ■ grade, Student began regressing with toileting which resulted in having to wear a pull-up or brief. (HT p. 51, ln. 17-23.)
23. Ms. Wingert testified that she reviewed Student's BIP upon entering ■ grade, and "[t] was pretty overwhelming." She noticed "there were a lot of targets. It was very intensive, and generally they do not see plans with that amount of targets targeted at one time." (HT Day 2, p. 114, ln. 2-6.)

³ Ms. Clark resides in Oregon, and provides telehealth supervision of Student's community based RBT via zoom twice a week for two hours each session. Ms. Clark creates BIPs to decrease targeted behaviors in the home and community, but not in the school, although she has collaborated with school staff. She previously worked with Student in-person before moving to Oregon.

24. Ms. Wingert testified that she prioritizes the most intensive targets like the ones centered around safety concerns and disrupt the learning environment of others. (HT Day 2 p. 114, ln. 21-25.)
25. Ms. Wingert testified that the team was gathering data on all target behaviors in the BIP “as well as replacement... behaviors as well as what [Student] ate during the day and then the frequency of when [staff was] changing [Student] and if [Student] urinated or had a bowel movement.” Ms. Wingert would compile the data into graphs and and send to Petitioner. (HT Day 2 p. 121, ln. 7-13.)
26. As of November 21, 2022, Student had not been attending general education classes due to the transition to a new school and feeling overwhelmed. (HT p. 53 ln. 20 – p. 54, ln. 4.)
27. Ms. Wingert testified that the team attempted to slowly integrate Student into art class and Ms. Call’s resource math class. (HT Day 2 p. 125, ln. 1-13.)
28. Ms. Call testified that she trained her students for Student’s arrival to the classroom after Ms. Wingert asked Ms. Call to have her students socialize with Student, and prepped them to say hi and give high-fives. (HT Day 2 p. 254, ln. 1-9.)
29. Ms. Call testified that in resource math, Student did not participate in instruction. (HT Day 2, p. 255, ln. 5.)
30. Ms. Call testified that Student would spend ten to fifteen minutes in the math resource room. (HT Day 2, p. 256, ln. 15.)
31. Ms. Wingert testified that when observing Student around peers, Student often did not engage independently with other students, and that staff had to prompt Student to engage. This was consistent across all setting. (HT Day 2 p.126, ln. 3-13.)

32. Ms. McPartland, who observed Student multiple times a week in the classroom during ■ and ■ grade testified that Student did not interact with peers. (HT Day 2, p. 216, ln. 7-9.)
33. Petitioner testified that Student cannot tell her what happened during the day [at school] so she does not “have a clear picture of exactly what it looks like, which is why a lot of times there’s a lot of emails with questions of clarification of what happens during [Student’s] day.” (HT p. 55, ln. 7-11.)
34. Petitioner would get a daily take-home note from staff. (HT p. 78, ln. 18-21.)
35. Staff communicated regularly with Petitioner through the Remind App. (HT Day 3 p. 48, ln. 25) (Ex. 133.)
36. Ms. Wingert testified that she set up a Class Tag account because communication with Petitioner was extensive and daily. (HT Day 2 p., 118, ln. 5-11.) She testified that “anytime [Petitioner] brought a concern to [the team] there was always an open discussion about it.” [HT Day 2 p. 145, ln. 12-14.)
37. Petitioner testified that during ■ grade, she reached out to Respondent with concerns, and there were “quite a bit of emails and meetings over those last two years.” (HT p.59, ln. 1-2.) Petitioner would attempt to resolve an issue with the designated communication person,⁴ and if they did not have a clear answer, Petitioner would reach out to district employees. (HT p. 59, ln 3-6.)
38. Ms. McPartland testified that the volume of communication received from Petitioner was “a lot more” than with other parents. HT Day 2 p. 214, ln. 5-11.)
39. Ms. Thompson testified that staff “feared” Petitioner. (HT Day 3 p. 87, ln. 1.)

⁴ Krystin Wingert, BCBA was the point of contact for 7th grade. Susan Call was the point of contact for 8th grade.

40. Petitioner testified that she started to see a trend of Student's augmentative and alternative communications AAC ⁵ device battery coming home full. (HT p. 55, ln. 18-20.) Petitioner testified that Student's teacher or BCBA at Rose Creek Elementary School⁶ would send a note home letting her know that they tried to charge the battery to have it on the bus ride home, which is why Petitioner had concerns that the device came home with a full battery. (HT p. 56, ln 4-10.) Petitioner saw a "trend" where she did not need to change the device. (HT p. 57, ln. 16.)
41. Petitioner expressed concerns to Ms. Wingert about Ms. McPartland's competency as a speech language pathologist (SLP.) Ms. Wingert did not share those concerns because Ms. Wingert found Ms. McPartland to be one of the top SLP's she has worked with. (HT Day 2 p. 128, ln. 3-24.)
42. Ms. McPartland testified that to model appropriate use of the AAC device, she would prompt Student and try to gesture at the appropriate button, or give the option between two buttons to describe appropriately. Student is the only student that Ms. McPartland worked with who had a separate device. (HT Day 2 p. 218, ln. 10-22.) - 0987890- 456782345612345643556
43. At one point, Petitioner emailed Utah Assistive Technology Team (UATT which reached Ms. Blue. As a result of the email, Ms. Blue reached out to Student's IEP team to make sure they had all the resources they needed. The team felt well equipped but participated in another training to make sure they were doing all of the evidence-based practices. (HT Day 2 p. 186, ln. 7-25.)

⁵ Student used a Proloquo2Go augmentative device described as an application put on a tablet or iPad used to express Peti. HT p. 60, ln. 11-15.)

⁶ This is another school within Respondent District and the school that Student attended prior to middle school.

44. Petitioner testified that when she reached out to UATT regarding Student's communication device and application, Respondent replied that they would provide some training to the IEP team members and staff who worked directly with Student. (HT p. 60, ln 1-4.)
45. In response to the concerns regarding the battery of the AAC device, Ms. Blue testified that when Student arrived at school, staff charged the personal device and Student used the district-issued device to communicate while at school. Ex. 159.) Respondent had two devices checked out for Student. (HT Day 2 p. 193, ln. 16-19.) It is uncommon for a student to have two AAC licensed devices check out to them, but it is appropriate based on a student's individual needs. In Student's case, Respondent determined it was appropriate to have a second device. (HT Day 2 p. 195, ln. 3-17.)
46. Ms. Blue testified that she had no concerns regarding the team's ability to model the use of the AAC device for Student. (HT p. 201, ln. 18-21.)
47. Petitioner emailed UATT regarding Ms. McPartland's competency or continued education. (HT Day 2 p. 187, ln 12-15.) Ms. McPartland is a member of UATT. (HT Day 2 p. 187-188, ln. 25-1.) Ms. Blue is the team lead, and testified that Ms. McPartland "was very experienced." (HT Day 2 p. 188, ln. 4-14.)
48. During ■■■ grade, the IEP team worked with Petitioner to add terms to Student's AAC device. (Ex. 166-167.)
49. Ms. Wingert testified that when Student had a behavior, it was "very challenging" because "the amount of effort... bodies, that were needed to help diffuse or de-escalate a situation was upwards of three to four at one time." (HT Day 2 p. 165, ln. 19-22.) She explained that "[w]hen we had multiple people involved, we needed

support for one person to maybe do some redirection tactics and another person to grab the belongings and another person to help lead the way to the transition... it was a very big team effort and everybody had their part in what was needed to help [Student] be successful [in school.]” (HT Day 2 p. 166, ln 2-11.)

50. Ms. Wingert testified that during the ■ grade school year, a “big reason” for Student maintaining progress was that a lot of the IEP goals had been the same for several years, referencing communications with Petitioner. Student was not working on anything new, and she felt like he was not being challenged. (HT Day 2 p. 175, ln. 4-14.)

51. Student had an annual IEP team meeting at South Middle School on February 8, 2023. Meeting participants included Petitioner, LEA representative, general education teacher, speech language pathologist, SCSC Leader/BCBA, special education teacher, occupational therapist, and school psychologist. (Ex 4.)

52. Petitioner testified that she provided input. (HT p. 64, ln 4-5.)

53. The IEP team met on April 21, 2023 to review and update Student’s BIP. The BIP was a 12 pages document that summarized the following negative behaviors (with identified antecedents and accompanying frequency data : Ex 5.)

- Yelling
- Head Banging
- Elopement
- Disrobing
- Exposure
- Physical Aggression

- Objection Aggression
 - Property Disruption
 - Directive/Direction Refusal
54. Petitioner reviewed the BIP and submitted handwritten feedback on the signature page regarding a question/comment on “staff approach,” as well as requesting bus intervention plans, short term goals, baseline data, and documentation on the bus in order to help identify and quantify behavior issues. Petitioner requested a bussing/transportation goal. Ex 5.) The team met again on May 26, 2023 to review the BIP and review data. Ex 6., HT p. 18-23.)
55. Petitioner testified she knew who the Student’s speech and occupational therapists were, as well as the special education teacher and a BCBA, as well as paraprofessional, although she testified it was unclear who spent the majority of the day with Student, what Student’s day looked like, and did have questions whether the paraprofessional’s training was individualized enough for Student. (HT p. 70-71, ln. 5-3.)
56. Student regressed in toileting during █ grade. Petitioner testified that Respondent contacted her because Student struggled with transitions to the bathroom and would not let anyone change him. At home, Petitioner noticed a “roller coaster” with toileting and different procedures Student had. Student began withholding bowel movements which is related to White-Sutton Syndrome. (HT p. 62, ln. 7-25.)
57. Karina Clark developed Student’s toileting plan for the school setting dated April 14, 2023. (Ex. 44.)

58. Ms. Wingert testified that she reached out to Ms. Clark requesting the toileting plan. Ms. Wingert testified that “it’s uncommon for one student to have three BCBA’s...so in an effort to kind of mitigate any confusion around that and to streamline the process and get us on the same page [the witness] created meetings with Dr. Fischer and Karina Clark.” (HT Day 2 p. 132, ln. 7-21.)
59. Ms. Winger testified that all BCBA’s have different competencies, and while she appreciated the collaboration, she found it difficult to know if there was a clear understanding of what behavior analysis looks like in the school setting, as a lot of BCBA tasks are written for a clinical setting, and are not practical to school setting. (HT Day 2 p. 143, ln. 16-24.)
60. Ms. Thompson worked as Student’s teacher during extended school year (ESY between ■ and ■ grade. Ms. Thompson testified that Student was very successful. Student attended to academics more, crafts, and behaviors decreased significantly. He would walk into the bathroom, sit, and come back out. (HT Day 3 p. 45, ln. 2-25.)
61. During ESY, Student was the only student accompanied by Ms. Thompson and an aide. (HT Day 3 p. 46, ln. 1-8.)
62. Ms. Thompson testified that at the end of ESY, the team was “very optimistic” and “excited” about ■ grade. (HT Day 3 p. 46, ln. 13-18.)
63. Petitioner testified that she was in communication with Respondent, that a staff member “was really great... with communicating what was going on and if [Student] had a rough day, or just in general what was going on.” Petitioner testified that she wanted to be transparent about Student’s medical issues, since what happens at home affects school and vice versa. (HT p. 63, ln 11-18.)

64. During Student's █ grade year, Ms. Call reached out to Petitioner to discuss training of paraprofessionals on Student's BIP and planning a communication plan. (Ex 138, HT p. 259-260, ln 19-10.) Communications were regular throughout the year. (Ex. 133.)
65. During Student's █ grade here, Petitioner noticed a "significant change in behaviors" but they were "trying work as a team to support [Student.]" (HT p. 76, ln. 17-18.) Petitioner testified that things got "hairy" in October 2023 and that Respondent was going to involve its Jordan Assistant Behavior Team (JBAT which included a BCBA.⁷ (HT p. 76, ln. 20-24.) Petitioner sent an email to the JBAT point of contact to introduce herself, but did not receive a response other than from Dr. Trimmell stating that she was not following the proper flow of communication. (HT p. 77, ln. 17-22.)
66. During the Fall of █ grade, the JBAT team "check[ed] in a few times" to make sure staff were doing things correctly. (HT Day 3 p. 12, ln. 5-12.) The JBAT team visited Student's school and went over the BIP to clarify questions and ensure its correct implementation. (HT Day 3 p. 10-11, ln. 6-8, Day 3 p. 12 ln. 3-12.) , Ex. 134.)
67. During Student's █ grade year, the sensory room (room 110) had the bathroom that Student used. Ms. Wingert's classroom was just across the way in 112, so Student would transition from room 112 to 110. In █ grade, the sensory room was moved to room 717, room 110 with the bathroom became Leota Pearson's classroom, and room 121 across from 110 became Ms. Call's office. Shortly after parent-teacher

⁷ Ms. Lloyd testified that the JBAT team has a BCBA. HT Day 3 p. 185, ln. 18-19.)

- conferences, in order to address struggles with toileting and transitions, Respondent relocated teacher Leota Pearson's classroom from what used to be the sensory room (room 110) to room 121 Ms. Call's office, and Ms. Call switched to room 110 with the bathroom. (HT Day 2 p. 272, ln. 4-25.)
68. Upon review of Student's Fall 2023 Goal Progress Report, several entries included that "no progress has been made...due to non-compliance" or that the "goal has been attempted, but not enough data to report progress at this time." Ex. 7.) Petitioner had concerns regarding non-compliance and lack of data. (HT p. 82, ln. 17-18.)
69. During the Fall of 2023, Student was struggling with toileting and transitions. Staff attempted to bring Student to the the bathroom three times a day and have him sit on the toilet, but attempts were not always successful. [HT p. 267, ln. 5-11.)
70. Student's struggle with transitions led to an escalation of behaviors around toileting. There were times when Student threw objects and became physically aggressive towards staff. (HT p. 267, ln. 12-21.)
71. Around the time Respondent made changes and switched teacher classroom assignments to accommodate Student in attempt to mitigate against the difficulty of bathroom transitions, Petitioner requested staff take Student to the toilet hourly. (HT Day 3 p. 91, ln 7-14.) Ms. Pearson testified that the primary barrier to Student's receipt of services was the "fact that [staff was] trying to get [Student] in the bathroom all day." (HT Day 2, p. 31, ln. 13-15.)
72. Ms. Thompson testified that the challenges in ■ grade started in early September when the toileting plan changed to going hourly. HT Day 3 p. 56, ln. 8-12.)

73. During ■ grade, Student spent approximately 20% of time in the classroom and 80% of time outside of a classroom setting, mostly due to transitioning to/from the bathroom, bus, attempting to access general education class, or elopement. (HT Day 3, ln. 13-25.)
74. Respondent held a “pre-IEP” meeting with staff and district employees on December 6, 2023. District asked staff at South Hills Middle School what they needed to serve Student, and they replied “bodies, people.” School staff needed multiple people. (HT Day 3 p. 53, ln. 2-16.) The group did not discuss placement. (HT Day 3 p. 54, 21-24.)
75. On December 7, 2023, Respondent held an IEP meeting which included Petitioner. Petitioner testified that when there were meetings, she tried to voice her concerns. (HT p. 85, ln. 11.) At this meeting, Petitioner testified that she had quite a few questions and concerns, that she had five or ten questions, that there was a “trend of concerns” including use of the bus restraint, getting home early from school, behavior, staffing, and training. She testified that if there were behaviors, the team needed to re-evaluate the BIP. (HT p. 88, ln. 13.)
76. During the December 7, 2023 meeting, Respondent suggested involving an outside BCBA, Dr. Radley through University of Utah to which Petitioner agreed. (HT p.91, ln. 12-17, p. 92, ln. 10, 19-20.) Petitioner had questions regarding the BCBA because she was “unfamiliar,” and wanted to know if the BCBA was somebody providing observation and support directly to the student or a constant role. (HT p. 94, ln. 4-8.)

77. Respondent’s rationale for bringing in the BCBA was to “help the parent trust what the team was doing.” (HT Day 3 p. 182, ln. 12-21.)
78. Ms. Thompson testified that the team suggested bringing on Dr. Radley because Student’s behaviors became “very intense and extreme” once Petitioner requested hourly toileting. (HT Day 3 p. 91, ln. 10-14.)
79. Ms. Thompson testified that Dr. Radley’s support helped, but it was not a “100 percent problem solver.” (HT Day 3 p. 92, ln. 17-19.)
80. Dr. Radley testified that his involvement was to look at the BIP, do some observations, and provide suggestions or thoughts about strategies. (HT Day 3 p. 142, ln. 14-19.)
81. Dr. Radley testified that he was not directly involved in assessment of Student’s academics or evaluation of whether academic goals were appropriate. (HT Day 3 p. 144, ln. 19-23.)
82. Dr. Radley testified that the team streamlined the BIP by reducing the number of strategies, and considering the previous BIP, there were a large number of strategies included that he personally would find difficult to implement. (HT Day 3 p. 143, ln. 2-13.)
83. In early January 2024, Petitioner had continuing concerns about Student’s lack of time in the general education setting. (HT p. 2-3.)
84. Student’s February 8, 2024 IEP contained the following 19 goals: 3 writing goals, 3 math time and money goals; 1 personal development social skills goal; 5 personal development behavior goals; 1 personal development functional skills goal; 1 basic

- reading goal; 1 comprehension goal; 1 occupational therapy goal; 3 language and speech communication goals. (Ex. 4.)
85. Student's February 8, 2024 IEP contained the following service and support: 250 minutes weekly reading basic skills in the special education classroom; 250 minutes weekly of math basics skill in the special education classroom; 250 minutes weekly of written language in the special education classroom; 700 minutes weekly of behavior support in the special education classroom. 450 minutes weekly of functional life skills in the special education classroom. (Ex 4.)
86. Student's February 8, 2024 IEP contained the following related services: 60 minutes monthly of occupational therapy services; 120 minutes monthly of counseling services; 180 minutes monthly of speech and language services. All services were delivered in a special education setting. Ex 4.)
87. Student's February 8, 2024 IEP contained the following: (Ex 4.)
- Communication Device: Student will have access to the AAC device within arm's length and at all time in order to communicate wants and needs.
 - Manipulatives.
 - Reading Test aloud.
 - Extended Response Time.
 - Minimized Distractions.
 - Small Group Setting.
 - Special Seating.

- Setting Adaptation (additional support): Student will be prompted to request the bathroom and be taken to the bathroom in the morning, before lunch, and afternoon (before going home.)
- Setting Adaption One-on-One: qualified adult support staff will provide 1:1 supervision. One-on-one is defined as an adult that is only responsible for services for [Student.] The team agrees that [Student] requires continuous adult support and supervision in order to ensure [their] safety and progress academically as well as behaviorally.
- Transportation: [Student's] bus paraprofessional and driver will be fully trained on the elements of [their] behavior plan BIP relating to transportation at the beginning of each school year and ongoing as necessary.
- During the school day there will be an adult with training to supervise/assist and otherwise ensure that [Student's] educational (academic, behavior, safety, communication) needs are being met as specific in the Behavior Intervention Plan BIP and IEP.
- Writing Typing and Regulation Supports: OT to explore and trial writing, typing, and self regulation supports...train staff...teaching staff will contact OT if.. strategies appear to be ineffective...
- Mechanical restrained to be used during transportation to prevent student from injuring or endangering him/herself or others.

88. Petitioner provided input in preparing Student's Functional Behavioral Assessment (FBA.) The FBA identified that Student was working with the following outside agencies: Karina Clark, BCBA, Continuum Behavioral Health; Aaron Fischer,

BCBA, University of Utah (DSPD Behavior Services); Brady's Place (DSPD Services); Motility Clinic (Gastrointestinal Treatment.) (Ex. 6.)

89. Dr. Fischer testified that Students' needs are "dynamic" and "highly intensive," (HT Day 2, p. 60, ln. 13-14.)
90. Ms. Wingert testified that Student "is a more severe individual... requires a considerable amount of support in helping to be successful." HT Day 2 p. 169, ln. 15-17.
91. Ms. Wingert testified that there were times when "it was very, very difficult to preserve the learning environments because of [Student's] behavior." (HT Day 2 p. 170, ln. 4-6.) When Student was in the classroom, they would often be disruptive; Student would yell, scream, or throw objects at other students.⁸ There were incidents resulting in injury to other students. Ms. Wingert described it as "chaotic." (HT Day 2 p. 170, ln. 10-16.)
92. Student "trashed" a classroom so many times that staff had to remove everything from it including filing cabinets, a printer, and computer. Ex. 48., HT Day 3 p. 18, ln. 13-17.)
93. Dr. Fischer testified that there is a distinction between the school and home environment. He testified that school is a "much more dynamic environment" because there are a lot of people walking around the hallways, more people to interact with; at home, there is a clear sense of reinforcers and motivations, and home is a rich environment to maximize learning. (HT Day 2 p. 101, ln 15-21.)

⁸ Examples of disruption include when Student became escalated and ran through the resource math classroom chased by adults, or when Student became escalated in resource math and ran around the room and threw calculators off desks. HT Day 2 p. 256, ln. 20-22.)

94. Dr. Fischer testified that he was aware of Student’s newer medical diagnosis of White-Sutton Syndrome which presents like a student who would have autism spectrum disorder or other developmental/intellectual disabilities and complex medical needs. (HT Day 2 p. 104, ln. 2-5.) Dr. Fischer testified that he believed Student’s toileting issues are related to White-Sutton Syndrome, and acknowledged stating at a meeting that the team “might not ABA our way out of this.” (HT Day 2 p. 104, ln. 17-25.)
95. The IEP team held a meeting on January 12, 2024. Ex. 36.)
96. The IEP team held a meeting on January 22, 2024 to discuss Student’s follow up procedure, maintenance plan, Student’s writing, communication, and parent’s concerns regarding a specific goal. Petitioner wanted additional input from the occupational therapist. (HT p. 24.)
97. On January 29, 2024, Petitioner emailed the IEP team input and changes to the shared meeting minutes. Included was the following input: Ex. 11.)

Writing Goal

[Petitioner] expressed concern about a goal... that [Student] could do in elementary school and now is not doing. It is not appropriate to remove a goal if [Student] is unable to meet the goal,

Math Goal

From my perspective, goals keep being tweaked each year. There is no way to know if goals are being met if the working keeps changing. From my perspective it seems that when [Student] doesn’t meet the goal, the goal is tweaked or

changed so there is no accountability and that the data shows progress. There should be a flow of goals in steps, not different goals each year. (Petitioner's added input

Reading-Umbrella goal

Read the goal to use the goal- cvc words to recognize medial and ending goal-

Mom has a difficult time with understanding how it is different from last goal.

Teaching phonetically instead of sight words- moving the goal to something else if

he isn't meeting the goal- [staff] said that since we reached the plateau we want to

change a goal to give some flexibility [Petitioner] wants to make sure we aren't

limiting [Student.] (Respondent's Notes.)

[Staff] noted that kids like [Student] often read by memorization and not

phonetically. [Petitioner doesn't] care about reading phonetically. [Petitioner

feels] the goal is being changed o make it easier on the staff rather than the

approach. (Petitioner's input.)

98. The IEP team held a meeting on January 31, 2024 to revise and finalize the BIP with input from Dr. Radley. At this meeting, Respondent offered to serve Student at Kauri Sue Hamilton. (HT p. 106, ln 8-25.)

99. Kauri Sue is considered a "severe and profound" school. (HT Day 3 p. 153, ln. 25.)

100. Ms. Call testified that she agreed with Ms. Pearson's statement contained in an email that Student's current placement was more restrictive than Kauri Sue Hamilton,

- and that Student is not safe enough to teach in the academic cluster or a mainstream class. Ex. 48, HT Day 3 p. 19, ln. 2-13.)
101. Ms. Call testified that since Student was in her classroom “so often, [he] was not with his peers from... class.” Student spent a significant of time in Ms. Call’s room due to the location of the bathroom and trying to get Student into the bathroom every hour with slow transitions. HT Day 3 p. 19, ln. 10-21.)
102. Dr. Radley remained active in Student’s BIP revision. HT Day 3 p. 24, ln. 24-25, Ex. 67, 69, 77, 78.)
103. Dr. Radley testified that he visited Kauri Sue Hamilton to get a sense and determine the range of services and supports available there. He opined that there is a continuum of behavioral supports that are offered on a universal level to all students at Kauri Sue Hamilton, and he interpreted them as generally similar to Student’s BIP and the behavioral strategies implemented in the classroom. (HT Day 3 p. 120, ln. 8-25.)
104. A reason listed for the January 31, 2024 meeting was to discuss educational placement, as Student “was not making meaningful progress in the setting, despite all the supplements and aide supports.” (HT Day 3, p. 73, ln. 8, Ex. 41.)
105. At the meeting, Respondent told Petitioner that Student would begin at Kauri Sue Hamilton in one week. (HT p. 108, ln. 9-10.) Petitioner testified that Respondent did not provide an explanation as to the change in schools or how goals would be implemented. (HT 109, ln. 4-7.)
106. Respondent prepared a Change of Placement dated January 31, 2024. The Change of Placement identified that Student “is in the most restrictive environment currently

- in a special class. [Student] requires intensive supports and is not making progress on current goals. Degree of curricular instruction and behavior supports needed are not sufficient in the current placement of special class and require special school supports. [Student] requires intensive academic and behavioral supports and modification.” (Ex. 12.)
107. Petitioner was shocked at the offer of Kauri Sue Hamilton, disagreed, and Respondent stated it was their offer of FAPE. (HT p. 107, ln. 3-10.)
108. Dr. Fischer testified that he had “some concerns” because he had not visited the proposed location. (HT Day 2 p. 96, ln. 2-3.)
109. Ms. Call testified that at the meeting, Petitioner requested to delay the move to Kauri Sue Hamilton to see if the changes to the BIP helped. (HT Day 2, p. 274, ln. 11-14.)
110. The decision to change placement was put on hold to work on the behavior plan in collaboration with Dr. Radley and Petitioner. (HT Day 3 p. 76, ln. 21.)
111. Petitioner testified that she did not believe the January 31, 2024 meeting was collaborative or that her input was considered. (HT p. 111, ln. 19-25.)
112. At a meeting in either January or February, Petitioner requested and Registered Behavior Technician RBT and collection of data or consideration of another placement. (HT p. 107, ln. 23-25.)
113. The team agreed that instead of addressing every behavior, they would address “the top behaviors and work on those... three or four behaviors.” (HT Day 3 p. 76-77, ln. 24-5.)

114. Ms. Thompson testified that the team spent eight to nine weeks trying to implement the new behavior plan. Student made some behavioral progress, but staff had to significantly reduce academic and “all sorts of demands.” (HT Day 3 p. 78, ln. 17-24.)
115. Ms. Thompson testified that adding more staff to work with Student would not make a meaningful difference. She has seven paraprofessionals, which is more than anybody else in the district. (HT Day 3 p. 80, ln. 3-11.)
116. Ms. Call testified that Student was spending a lot of time in her classroom; a move to Kauri Sue Hamilton would help Student have access to peers because there is a smaller school setting with shorter transitions and more resources and access to sensory needs. (HT Day 3 p. 39, ln. 3-11.)
117. Dr. Radley testified that at Kauri Sue Hamilton, Student would be in a classroom with approximately twelve other students, and not be in a classroom with just teachers. (HT Day 3 p. 125, ln. 20-24.)
118. Ms. Thompson testified that Student’s current school is “very over-stimulating.” She has “about 25 people in [her] classroom at all times.” The school has 1,200 students, and twenty-two exits, while Kauri Sue Hamilton has four exits. (HT Day 3 p. 75, ln. 4-10) and two to three hundred students. (HT Day 3 p. 74, ln. 19.) Kauri Sue has a smaller gym and enclosed playground where Student could run and play chase which is not appropriate in the current middle school setting. (HT Day 3 p. 75, ln. 12-18.)

119. Ms. Thompson testified that often Student’s dignity was compromised due to running around the halls and behaviors in the presence of other students. (HT Day 3 p. 99, ln. 3-20.)
120. Ms. Call testified that she supported the change in placement because while Student was making some behavioral progress, there was minimal academic progress because the behaviors were impeding academics. (HT Day 2 p. 274-275, ln. 24-9.)
121. Ms. Wood testified that she agreed with the recommendation of change of placement because she believed Kauri Sue had access to “many more opportunities for [Student] to participate in two-based activities, which are incentivizing for [them.] Also ...they... have an occupational therapy housed at their school, which is unique to anywhere within the district.” (HT Day 2 p. 244, ln. 7-17.)
122. Dr. Fischer testified that “the beginning of 2024 was when [the team] really started to see some great collaboration and having the team really come together”. (HT Day 2 p. 66, ln 15-18.)
123. Dr. Fischer testified that Student’s needs for behavior support put them in the top 1% of students whom he has supported in his career. (HT Day 2 p. 93, ln. 12-14.)
124. On February 5, 2024, Petitioner emailed the IEP team “Corrections of Meeting Notes and Input” and color-coded corrections in red and input in purple. Much of Petitioner’s input focused on paraprofessionals versus Registered Behavior Technicians. (Ex. 13-14.)
125. Respondent convened an IEP team meeting on February 6, 2024. The IEP team agreed to “maintain current placement” and not move Student to Kauri Sue. (Ex. 15.)

126. The IEP team's plan was to implement the BIP created by Dr. Radley, take data, and reconvene. (HT p. 119-120, ln. 22-6.) (Ex. 17.)
127. Ms. Call testified that neither the IEP nor BIP identified Student's appropriate setting to receive services as alone in a classroom. She testified that the team implemented the BIP appropriately, but Student was resistant to complying. (HT Day 3 p. 20, ln. 10-19.) At times, the BIP was not effective. (HT Day 3 p. 26, ln. 11-13.)
128. Ms. Call testified that "the behavior plan can't make [Student] do anything. Even following the behavior plan, it is up to [Student] to do this. We were implementing our part of the behavior plan, but [Student] was resistant to our efforts." [HT Day 3 p. 26, ln. 18-21.)
129. Ms. Call testified that there are times that a third adult was needed when Student escalated and staff's training or ability to implement the BIP was not the reason but that it was to maintain staff safety and try to de-escalate. (HT Day 3 p. 21-22, ln. 17-1.)
130. Ms. Call testified that Respondent was responsive to her concerns regarding increase staffing to have more staff to help rotate members so they were not with Student for extended periods of time. (HT Day 3 p. 22-23, ln. 23-4.)
131. Petitioner testified that there was a smaller group meeting monthly including Dr. Radley, Student's special education teacher, Susan Call, Petitioner, and two outside BCBA's, who would discuss data and give each other input or tips on what is working and what is not. (HT p. 120, ln. 10-23.) Dr. Fischer testified that the team included himself, Student's outside BCBA, Dr. Bradley, Petitioner, Student's in-home RBT,

classroom teacher, special education lead, speech and language pathologist, school psychologist, school building principal. (HT Day 2 p. 65-66, ln. 20-1.)

132. Ms. Call testified that during Student's ■■■ grade year, Student sometimes exhibited behaviors in connection with staff's toileting efforts. There was difficulty transitioning, where Student would not go into the bathroom; when "pressed for time," Student would escalate into throwing objects, hitting and kicking at people.⁹ (HT Day 2 p. 276, ln. 13-21.) Sometimes Student would disrobe more than necessary. (HT Day 2 p. 277, ln. 6-11.)

133. On February 9, 2024, Respondent sent Petitioner Prior Written Notice (PWN) addressing the concerns and refusals brought up during IEP meeting held on December 7, 2023, January 12, 2024, January 22, 2024, and January 31, 2024. Specifically, the PWN addressed the math goal, occupational therapy¹⁰, increasing speech minutes, and the RBT. (Ex. 21.)

134. The PWN addressed the request for RBT as follows:

The Parent stated the current instructional assistants are not trained enough to work with [Student.] The Parent requested a Registered Behavior Technician be placed with [Student.] The school members of the IEP team explained that classroom instructional assistants receive 40 hours of training. This training includes: the role of the paraeducator, building relationships, specially designed instruction, accommodations, modifications, engaging strategies, transition, social

⁹ Ms. Call testified that Student has thrown and hit her with objects, including iPads and toy pianos. HT Day 2 p. 267-268, ln- 22-7.)

¹⁰ District granted Petitioner's request for IEE, and there was a discussion about OT in a medical versus educational setting. Ex. 118.) Ms. Wood testified that Student does not need direct occupational therapy services but that they could benefit from consultative services which can "look like any variety of ways." HT Day 2 p. 245, ln. 3-25.)

emotional practices, and de-escalation with specific behaviors. This course is modeled after the Utah State Board of Education's para educator manual with the addition of the above listed strategies as part of our advanced training. The school team feels that maintaining full-time aide support for [Student] is appropriate. [Student currently has at least two trained adult aides, teachers, or related service providers with him throughout the day.

135. Petitioner testified that she disagreed with Respondent's offer of paraeducators as being able to serve the same function as an RBT, that "[i]t's just somebody to make sure things are being consistent and being done correctly. (HT p. 2-3.) Petitioner testified that Student had received ABA services since age 18 months, and that she thought that the fidelity of the data and ethics code that RBTs and BCBA's must follow to maintain their license are at a standard above paraprofessionals. (HT p. 6-18.)
136. Ms. Pearson testified that paraprofessionals are highly trained; she explained that they are given two sets of training from the district: a basic level training and then a high-level training; then annually when possible, the team would have a four-hour training specific to the students and needs of the classroom. (HT Day 2 p. 43-44, ln. 17-6.)
137. Ms. Lloyd testified that Respondent's paraprofessionals are highly trained. When first hired, a paraprofessional must have five hours of trainings already completed, then complete the remaining thirty-five hours under the CANVAS program that meet the standards of the Utah State Board of Education USBE paraprofessional manual. (HT Day 3 p. 157, ln. 7-14.)

138. Ms. Wingert testified that she has not worked with RBTs in the school setting, but in the clinical setting. (HT Day 2 p. 167, ln. 16-18.) She explained that the purpose of an RBT is to implement programming from a BCBA, and that supervision is to ensure that the program is being implemented with fidelity. She opined that in a school setting, an RBT is not necessary because their paraprofessionals are highly trained. Paraprofessionals in self-contained classrooms go through additional training. The school based model of licensed teacher overseeing a paraprofessional is the same as RBT and BCBA. Ms. Wingert testified that paraprofessionals are “a lot more valuable in a school setting because they’re scope... of tasks is broader... [t]hey can not only support behavior, but they can support with academics as well where an RBT can’t support with academics.” (HT Day 2 p. 168, ln. 1-21.)
139. During Student’s ■■■ grade year, the paraprofessionals had a training in the functional academics classroom regarding Student, and nobody could work with them unless they had been through the training. (HT Day 2 p. 44, ln 14-18. f
140. The IEP team convened a meeting to review an updated BIP dated March 14, 2024. This meeting was one of the “smaller” meetings to review the BIP to occur monthly. (HT p126. 7-23.) Petitioner testified that there were no concerns expressed that the BIP was interfering with the school team’s ability to work on academic goals. (HT p. 126, ln. 23.) Petitioner was cautiously optimistic. (HT p. 127, ln. 19-20.)
141. During March 2024, Petitioner believed that the Respondent was having more success with Student regarding toileting. (HT 128, p. 13-15.)
142. The IEP team convened a meeting on May 28, 2024.

143. At that meeting, the IEP team discussed behavior, academics, and placement. (HT Day 3, p. 196, ln.13-20.)
144. There was minimal academic progress reported although the team noted some progress regarding behaviors. (HT p. 274-275, ln. 22-1.)
145. Ms. Thompson testified that Student does not play with friends at school and that Petitioner did not grasp what school looked like for Student. (HT Day 3 p. 101, ln. 16-24.)
146. Ms. Call testified that between January and May 2024, in an effort to decrease problem behaviors and teach replacement behaviors per the BIP, staff reduced task demands. (HT Day 2 p. 275, ln. 13-15.)
147. Ms. Thompson testified that Student attended to academics five to ten minutes per day. (HT Day 3 p. 105, ln. 5-6.)
148. Ms. Thompson testified that Student’s goals “are extremely simple and low.” (HT Day 3 p. 104, ln. 5-6. She testified that they were “reachable and attainable” and the team set goals that Student could master. “HT Day 3 p. 104, ln. 12-18.)
149. Ms. Call testified that Student was not able to sustain work for long periods of time. Staff would work, stop, take a break, and then review where they were to continue working which would impede his progress; occasionally, Student’s behaviors would interfere with the learning of others. Student would escalate, run around a classroom and throw objects, knocking things off desks, which distracted and upset peers. (HT Day 2 p. 276, ln. 5-17.)
150. The IEP team believed that a smaller school setting with shorter transitions and more resources and access would benefit Student. (HT Day 3 p. 39, ln. 6-11.)

151. Meeting notes reflected that behaviors were the biggest struggle. Student was not able to participate with peers, or make sufficient academic progress. Ex. 85.)
152. Ms. Call testified that the continuing concerns in May and the proposed change in placement was due to academic progress, transition progress, and accessing classroom peers. (HT Day 3 p. 38, ln. 18-25.) While Student made some academic progress, staff felt that Student could make more meaningful progress at Kauri Sue Hamilton. (HT Day 3 p. 34, ln. 2-23.)
153. Petitioner objected to Kauri Sue Hamilton because Student would not have “access to peer models” and that previously when she asked to observe, staff at Kauri Sue Hamilton declined, and she wanted collaboration and transparency. (HT p. 156, ln. 12-13, p. 157, ln. 20-25, p. 158, ln. 1-7.)
154. Ms. Lloyd testified that Respondent offered to have Petitioner visit Kauri Sue Hamilton and to have Student participate in extended school year there. Petitioner declined. (HT Day 3 p. 178, ln. 12-25.)

CONCLUSIONS OF LAW

A. Procedural and substantive violations under the IDEA

Petitioner alleges that Respondent’s predetermination of placement, failure to provide for meaningful parental participation, and a failure to provide Student with a FAPE resulted in violations of the IDEA. Petitioner argues that Respondent did not consider the Student’s individual or unique needs, but rather “chose to fit” Student in a preexisting service structure without regard to evidence that Student required more. Petitioner’s arguments regarding both procedural and substantive violations of IDEA are unpersuasive and unsupported by the record.

The IDEA and supporting caselaw distinguish between procedural versus substantive violations. In *Hendrick Hudson Central School District v. Rowley*,¹¹ the Supreme Court put forth a two-pronged inquiry regarding an alleged violation of a FAPE. First, a court must consider whether a district has satisfied the IDEA's procedural requirements. Second, the court must consider whether the child's educational program was reasonably calculated to enable the child to receive educational benefit. This inquiry opens the door to determine whether a procedural violation rises to the level of a denial of FAPE, which is the threshold to determine whether a district is in or out of compliance with the IDEA.

A substantive violation arises under the IDEA when a substantive content, such as educational services contained in an IEP, are insufficient to afford access to a FAPE. A procedural violation occurs when a district fails to comply with the IDEA's process-based requirements. Substantive violations typically lead to a denial of FAPE, while procedural violations lead to a denial of FAPE when it caused a substantive harm to the child or their parents. A procedural violation does not necessarily mean that the child failed to receive FAPE and that relief is warranted, although cumulative procedural violations may rise to the level of substantive ones. Specifically, the IDEA provides that a procedural violation will only amount to a denial of FAPE if it 1) impeded the child's right to a free appropriate public education; 2) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE; or 3) caused a deprivation of educational benefit.

Petitioner failed to establish that Respondent committed either procedural or substantive violations resulting in a denial of FAPE.

¹¹ 458 U.S. 176, 203-4 (1982).

B. Petitioner did not meet their burden to show that Respondent failed to develop and implement an appropriate IEP and BIP, including the Provision of a Registered Behavior Technician supervised by a BCBA leading to a deprivation of FAPE.

Utah, in conformity with the IDEA,¹² defines a free appropriate public education (FAPE) as: Special education and related services that:

- a. Are provided at public expense, under public supervision and direction, and without charge;
- b. Meet the standards of the Utah State Board of Education and Part B of the IDEA;
- c. Include preschool, elementary, and secondary school education in Utah; and
- d. Are provided in conformity with an IEP that meets the requirements of Part B of the IDEA and the Utah Special Education Rules Section I.E.(20).

Special Education and related services are to be provided pursuant to an IEP which is written developed, reviewed, and revised consistent with the needs of the student per 34 CFR 300.320 – 300.324. In *Andrew F. V. Douglas Cnty Sch. Dist RE-1*, 508 U.S. 386, 399 (2017), the Supreme Court clarified that an appropriate education for a student with a disability is one that is “reasonably calculated to enable a child to make progress in light of the child’s circumstances.” The IEP, which is the vehicle to deliver the student’s education, must be appropriately ambitious in light of the Student’s circumstances and designed to meet the child’s unique needs. The appropriateness of an IEP is determined at the time it is written.¹³ The record clearly establishes that Respondent developed, and repeatedly reviewed and revised Student’s IEP and BIP consistent with Student’s unique needs and the IDEA.

¹² 34 CFR 300.317

¹³ See *Roland M.V. Concord Sch. Comm.*, 16 IDELR 1129 1st Cir. 1990 .

i. RBT and BCBA versus Paraprofessionals

Petitioner challenges the propriety of Student's IEP and BIP and focuses on the lack of an RBT. Petitioner failed to meet her burden of proof to show that Student needs an RBT to receive a FAPE.

Petitioner's testimony expressed her desire for an RBT supervised by a BCBA in the school setting, but her testimony did not support the need for professionals with those licensures as opposed to Respondent's highly trained paraprofessionals. Petitioner testified that the fidelity of the data and ethics code that RBTs and BCBA's must follow to maintain their licenses are at a "standard above paraprofessionals". There is nothing in the record to support that assumption. Ms. Clyde's testimony was unhelpful to the trier of fact, as her experience with Student in the [REDACTED] grade was far too removed to be relevant to Student's current educational plan, and she did not have adequate foundation to form an opinion regarding Student's current needs.

Ms. Clark provided general information that BCBA's work with behavior modifications by implementing interventions that will decrease challenging behaviors and supplement replacement behaviors or teach communication skills. She testified that BCBA's provide supervision for a therapist providing applied behavior analysis. But her testimony does not support Petitioner's contention that Student must have an RBT supervised by a BCBA to provide this type of behavior modification in the school setting to receive a FAPE. Indeed, nothing in the record suggests that only an RBT supervised by a BCBA may provide such services. Furthermore, Ms. Clark's competency as a BCBA was not in the school setting, she did not work with Student in school, and only observed him twice. Her opinions regarding the need for an

RBT supervised by a BCBA are appropriate for a community-based setting, but her testimony regarding Student's needs in the school setting does not carry much weight.

Dr. Fischer's testimony, while credible, did not establish Student's need for an RBT supervised by a BCBA in the school setting, as opposed to a highly trained paraprofessional. Dr. Fischer recognized Student's significant needs for behavioral support, putting Student in the top 1% of his career; testimony by multiple district witnesses underscored Student's behavioral challenges, identifying self-injurious, destructive, and dangerous behaviors. Nonetheless, Dr. Fischer did not testify that only an RBT supervised by a BCBA can manage Student's behaviors, or implement the IEP or BIP.

Contrary to Petitioner's assertion, testimony elicited by Respondent's witnesses established that, in light of Jordan School District's available resources, Student did not need an RBT supervised by a BCBA to receive a FAPE. Dr. Radley testified that contingent upon training, Respondent's paraprofessionals can provide the same level of support to Student. Multiple witnesses supported the strong qualifications and training of Jordan School District's staff. Significantly, Ms. Wingert, whose testimony merits the most weight given her competencies in both the school and clinical settings as a BCBA, as well as her regular work with Student, explained that an RBT is unnecessary for Student in the school setting because an RBT cannot provide academic support. Ms. Wingert, who has first-hand knowledge, testified that Respondent's paraprofessionals are highly trained and are more valuable because of the ability to address both behavior and academics. Paraprofessionals in Jordan School District receive 40 hours of training and their training is consistent with Utah's Paraeducator's Manual. During Student's 7th grade year, Ms. Wingert trained staff on Student's unique needs, and the majority of the staff remained with Student the following year.

Petitioner's case-in-chief did not support examples of a scenario where Student's paraprofessionals did not possess the skills necessary to work with Student that an RBT would have had, despite Petitioner's argument that staff struggled to implement the BIP. Testimony did support the complexity of the BIP, and in fact Dr. Radley testified that his participation was to streamline the BIP; even he, a BCBA-D, would have found it difficult to implement the BIP. Ms. Wingert testified that when she first saw the BIP, it was overwhelming because of how many targets it included, and that it was unusual to include so many. Student's most recent IEP had nineteen goals, and there were exceptional demands placed on staff who worked with Student to collect data, educate Student, communicate with Petitioner, manage behaviors, and execute a toileting plan requested by Petitioner that clearly contributed to Student's behaviors.¹⁴

Testimony established that when paraprofessionals had questions or needed clarification, they appropriately sought support from Ms. Wingert, Ms. Call, or JBAT. None of Student's paraprofessionals testified, and therefore there is no persuasive evidence to support the assertion that they could not implement the BIP, or that their skill set was somehow inferior to that of an RBT, other than through conjecture.

ii. Failure to include ABA principles in Student's IEP

In closing, Petitioner argues that the IEP's deficiency is due to the fact that it fails to include formalized principles of ABA therapy, and that Respondent has a de facto policy of refusing this type of service. Petitioner did not prove by a preponderance of the evidence that

¹⁴ It must be noted that Petitioner's request that staff take Student to the bathroom hourly created a challenging scenario, as multiple witnesses testified that the primary barrier to Student's receipt of services was the fact that staff spent much of the day getting Student to the bathroom who struggled with transitions.

Student's IEP must identify the methodology of ABA therapy in order to receive a FAPE nor that there is a de facto policy of refusing ABA therapy principles.

Districts have great leeway in selecting the educational methodology for a Student with a disability as long as the methodology provides a FAPE. In fact, courts have established that the choice of methodology falls within the sole discretion of a district. *See Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982.) As long as an IEP is reasonably calculated to enable a child to make progress in light of the child's circumstances, the IDEA does not require adherence to a particular methodology.¹⁵

There is no evidence in the record to suggest that Student must have ABA methodology identified in the IEP to receive a FAPE, nor that the methodology employed by Respondent was inappropriate to meet Student's needs. The majority of testimony regarding an RBT and BCBA had to do with *who* would deliver services to Student based on professional licensures, with very little exploration of what methodology of services are needed aside from the generalized explanation of behavior modification. There was no testimony presented from a witness qualified to opine that Student must have ABA in the school setting to be able to make progress in light of their circumstances. A review of the hearing transcript revealed that the term "applied behavioral analysis" only appeared once, aside from Petitioner's testimony that Student has received ABA therapy since age eighteen months. Ms. Clark, who does not work in a school setting, would not be competent to testify to educational methodology. Dr. Fischer explicitly stated that he did not work on Student's academics. None of Jordan School District's staff, who would be competent to opine, testified about methodology. Petitioner did not meet her burden of proof to show that Student's IEP was not reasonably calculated to provide meaningful educational benefit.

¹⁵Andrew F. V. Douglas Cnty Sch. Dist RE-1, 508 U.S. 386, 399 (2017)

Petitioner failed to establish by a preponderance of the evidence that there is a de facto policy denying ABA methodology. Petitioner points to testimony regarding generalized lack of participation of BCBA's in the formulation of IEPs and BIPs within the District in an attempt to establish such policy. The generalized information was inconsistent with the actual practice in Student's case, showing the highly tailored nature of Student's IEP team and educational plan. Respondent involved not one but up to four BCBA's in Student's educational planning. Ms. Wingert was involved in Student's educational plan throughout █ grade. In █ grade, Dr. Fischer, Dr. Radley, and Ms. Clark, all BCBA's with varying competencies, participated in the development of Student's BIP. JBAT has a BCBA on its team, which supported Student's IEP team. Petitioner failed to meet her burden of proof that Respondent has a de facto policy denying ABA services.

iii. Respondent's inability to implement Student's IEP at Kauri Sue Hamilton

Petitioner argues that Respondent cannot implement Student's IEP at Kauri Sue Hamilton because the same amount of service minutes do not coincide with the length of the school day, and that Respondent would "retrofit" Student's IEP to fit a more restrictive placement. Petitioner's arguments are not supported by the record.

First, it must be noted that nothing in the record established that Kauri Sue Hamilton is a more restrictive placement than Student's current situation, nor did Petitioner's complaint challenge Kauri Sue Hamilton as an overly restrictive placement. Nonetheless, the record supports the opposite. The record demonstrates that Student's current placement, given the challenging behaviors and transitions to the bathroom, is more restrictive than Kauri Sue Hamilton. Testimony and exhibits demonstrated that Student is not safe enough to teach in the

academic cluster or a mainstream class. Ms. Call testified that since Student was in her classroom so often, he was not with peers from class. Student spent a significant of time in Ms. Call's room due to the location of the bathroom and trying to get Student into the bathroom every hour with slow transitions. In fact, in 8th grade, Student spent 80% of time outside of the classroom. Dr. Radley testified that he visited Kauri Sue Hamilton to determine the range of services and supports available there. He opined that there is a continuum of behavioral supports that are offered on a universal level to all students at Kauri Sue Hamilton, and he interpreted them as generally similar to Student's BIP and the behavioral strategies implemented in the classroom. Dr. Radley's testimony is persuasive, and demonstrates that Respondent can indeed implement Student's IEP in that setting. The record supports that in light of Student's current and unique circumstances, despite being a "severe and profound" school, the placement change is not to a more restrictive setting, but instead, testimony supports that Student would have more access to peers.¹⁶

Second, the manner in which Student's IEP would be implemented at Kauri Sue Hamilton remains speculative. Petitioner did not offer any testimony or evidence as to how Respondent would offer a FAPE to Student, as nobody from a potential Kauri Sue Hamilton IEP team testified. Ms. Lloyd testified that the Kauri Sue Hamilton team would "get together and determine what the amount of service minutes would be" and that the team "becomes creative." This testimony is not dispositive of anything to support an inability to provide a FAPE to Student at Kauri Sue Hamilton. Petitioner has not met her burden of proof to show that Respondent could not implement Student's IEP and offer a FAPE.

¹⁶ Peers refers to any peers, rather than non-disabled peers.

C. Petitioner did not meet their burden to show that Respondent unilaterally predetermined Student's placement

A central component of the IDEA is the requirement that parents of a child with a disability participate in the IEP process, including decisions regarding placement. Under IDEA, "placement" is a significant term of art, as it does not refer to a specific location but to the appropriate balance of settings and services designed to meet the student's unique needs. Placement decisions are made following an evaluation that assesses a student in all areas of suspected disability, and is the final decision to be made by the IEP team after the determination of needs, goals, and required services.

Predetermination occurs where a district adheres to premature placement decisions regardless of any evidence concerning the student's individual needs. Predetermination also occurs if a district makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team. While this does not categorically prohibit a district from having any pre-formed opinions about what is appropriate for a student, any pre-formed opinion the district might have must not obstruct a parent's participation in the planning process. The threshold question is whether team members came to the IEP team meeting with an open mind. Parental role as an equal member on the IEP team does not mean that the Parent has the final say regarding the offer of FAPE, including placement.

A parent cannot prevail on a predetermination claim when the record shows that they had meaningful opportunity to participate in educational decision making. Here, Petitioner fails to assert any scenario where her participation in the process was somehow impeded. In fact, Petitioner did not just have ample opportunity to participate, but utilized that opportunity to the

maximum extent possible. Respondent suggested placement at Kauri Sue Hamilton at the January 31, 2024 IEP team meeting. While this does indicate that Respondent developed an opinion that Kauri Sue Hamilton would be an appropriate placement for the student, that opinion, however well reasoned,¹⁷ did not in any way obstruct Petitioner's participation in the planning process.

To the contrary, the record demonstrates overwhelmingly that Petitioner attended and meaningfully participated constantly in Student's educational plan. Petitioner had daily communications with staff. Petitioner received support from UATT. After a discussion around parent teacher conferences, Respondent went to great lengths to address parent concerns and rearranged classrooms and offices in order to accommodate bathroom access. During a brief three months period, Respondent convened and Petitioner participated in IEP team meetings on December 7, 2023, January 12, 2024, January 22, 2024, January 31, 2024, and February 8, 2024. Members of the IEP team, including Petitioner and outside BCBA's collaborated monthly in smaller meetings to collect data and continually streamline and revise the Student's BIP. Petitioner provided significant feedback which Respondent considered, including submitting color coded emails providing corrections and notes to meeting minutes. The record demonstrates that Respondent was attentive consistently to Petitioner's questions and concerns, whether addressing Student's AAC device or toileting plan, concerns about goals, the bus, or occupational therapy, and the parties engaged in constant communication regarding Student's education via email, Class Tag, and a daily home note; Petitioner remained an active and vocal participant in

¹⁷ Testimony supported Respondent's rationale for the change in placement: Kauri Sue Hamilton is a significantly smaller school, serving 200-300 students as opposed to 1200. There are fewer exits, an enclosed playground, sensory rooms, smaller class sizes, available bathrooms, and less stimulation – all points that address Student's unique needs and challenges.

the development of the IEP and placement decision and any argument to the contrary is simply not supported factually.

Furthermore, the record demonstrates that the IEP team had an “open mind” and listened to Petitioner’s input because the IEP team agreed to reconsider the move to Kauri Sue Hamilton. Respondent maintained Student at South Jordan Middle School while the IEP team updated Student’s BIP and collected data between January and May 2024. It is incontrovertible that Respondent pivoted from its position based on Respondent’s input and objection. The mere fact that after a period of months, Respondent still believed that a change of placement to Kauri Sue Hamilton remained appropriate based on significant data collection and consideration of Student’s unique needs does not support Petitioner’s assertion that Respondent predetermined placement and obfuscated her participation in the process. Indeed, the parties participated in multiple meetings, the BIP was in a constant state of revision, and while the BIP was streamlined and Student was demonstrating some success regarding behavior, the testimony showed that this minor success came at the expense of academic progress because staff had to reduce demands significantly in order to address behaviors. The evidence supports that the placement decision came after the development of the IEP, was data driven, and that Student could make more progress at Kauri Sue Hamilton. Petitioner simply disagreed with Respondent’s ultimate offer of FAPE after much consideration. Petitioner did not meet her burden of proof that Respondent unilaterally determined placement.

D. Petitioner failed to show that Respondent failed to provide meaningful participation to parent.

IDEA’s regulations and Utah Special Education Rules III.G require that Respondent ensure that parents are afforded the opportunity to participate in each IEP meeting and that

they are part of any group that makes placement decisions. 34 CFR 300.322 provides that Respondent must take steps to ensure that one or both parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including 1) notifying parent early enough to ensure they will have an opportunity to attend and 2) scheduling a meeting at a mutually agreed upon time and place. The IDEA further requires that a parent “must be afforded an opportunity to participate in meetings with respect to... [t]he identification, evaluation, and educational placement of the child; and [t]he provision of FAPE to the child. 34 CFR 300.501(b) i -(ii . IDEA also provides that a parent be a part of the groups that determines what additional data are needed as part of an evaluation of their child and determine their child’s placement. Here, Petitioner alleges that Respondent impeded their opportunity as parent to participate in the decision making process regarding the provision of FAPE in violation of 34 CFR 300.513(a)(2)(ii.) Her arguments that Respondent did not consider her concerns are unpersuasive.

The record demonstrates that Petitioner was notified of each meeting, attended, and meaningfully participated. There were multiple IEP team meeting during Student’s 7th and 8th grade years, as well as smaller collaborative meetings with Petitioner, staff, and outside BCBA’s. The record is replete with constant communications between Petitioner and staff, including post-meeting input and feedback provided by Petitioner.¹⁸ In response to Petitioner’s concerns, Respondent added Dr. Radley to the IEP team who remained active throughout the second half of 8th grade. Respondent welcomed the input of Dr. Fischer and Ms. Clark, and her participation in preparing the toileting plan. Ms. Winger testified that she requested Ms. Clark’s toileting plan, but had some reservations regarding having so many

¹⁸ For example, Petitioner’s January 29, 2024 email to Respondent.

BCBAs involved in Student's planning, as often BCBAs write plans that are appropriate for the clinical setting, but not necessarily an educational one. Nonetheless, it is clear that Respondent worked collaboratively with all involved. Dr. Fischer testified that there collaboration during the second half of 8th grade. Nothing in the record supports Petitioner's argument that Respondent failed to consider her input, as the record is full of examples of staff consistently addressing her questions and concerns.

Petitioner's argument that Respondent never informed her of concerns regarding implementation of the BIP misunderstands what it means to meaningfully participate in the process. Parental participation does not open the door to the expectation that a parent is privy to every communication or concern, or has the right to micromanage school staff. Petitioner knew that the IEP team was revising the BIP because she was a part of the smaller monthly meetings. Witness testimony also explained that when paraprofessionals had questions or needed clarification regarding the BIP, they went to Ms. Wingert, Ms. Call, and received support from JBAT. When teachers needed more staff to support Student, Jordan School District provided it; Ms. Thompson testified that she had more staff than any other teacher. Indeed, it would be inappropriate for teachers or paraprofessionals to reach out to a parent regarding implementation of the IEP or BIP as suggested in closing brief. It is up to school staff, and not a parent, to execute the educational plan. Petitioner did not meet her burden that Respondent prevented her from meaningfully participating in the process.

DECISION and ORDER

Petitioner has not shown that any procedural or substantive violations of IDEA occurred denying Student a FAPE. Based upon the findings of fact and conclusions of law, Petitioner's Due Process Hearing Request and the relief sought therein is **DENIED**, and the Complaint is hereby **DISMISSED**.

Dated December 31, 2024

/s/ Courtney S. Wucetich

Courtney S. Wucetich

Hearing Officer

Notice emailed 1/1/25

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Right to Appeal

This is the final administrative decision in this matter. A party may appeal this decision to a civil action under 34 CFR 300.516. Pursuant to State Board of Education, Special Education Rules, this decision may be appealed. If appealed, the appeal must be filed within thirty (30) days of the due process hearing decision. SpEd. Rule IV.Q.