
**UTAH STATE BOARD OF EDUCATION
SPECIAL EDUCATION SERVICES
DUE PROCESS HEARING**

In the Matter of:

[REDACTED], a Minor Child, (“the Student”⁰,
by and through **[REDACTED]**, (“the Parents”)

Petitioners,

vs.

Park City School District, (“the School
District”)

And

The Utah State Board of Education, (“the
USBE”)

Memorandum Decision and Order

USBE #DP2223-08

INTRODUCTION

A Due Process Hearing pursuant to the Individuals with Disabilities Education Act (IDEA) was held beginning on August 08, 2023, continuing through August 15, 2023, at the Park City School District (PCSD or alternatively the District) Administrative Offices.

The Petitioners are often referred to as the “Parents” or individually as “Mother” or “Father” and were represented by Attorneys William Pohl who appeared in person and Katheryn Doebel who appeared via Zoom but did not participate in the presentation of the Parent’s Case. The District was represented by Attorney Joan Andrews of Fabian VanCott.

Fourteen witnesses were called who are identified by their job or professional titles for purposes of preserving the confidentiality of the individuals involved in this matter pursuant to the Family Education Rights and Privacy Act (FERPA). FERPA provides unique confidentiality protection for persons who are involved in the provision of public education and particularly students eligible for special education.

A Personally Identifiable Information (PII) Cover Sheet is attached to this Memorandum Decision but is not made a part of the record and is to be removed as an attachment to this Memorandum Decision to protect the confidentiality of individuals upon submission of the Record to the Utah State Board of Education (USBE). In the drafting of the Memorandum Decision efforts were made to limit gender identification to further protect the identity of the Student and the participants in the education process.

The Parents called as witnesses:

- The Student’s Mother
- The Student’s Father
- The Student’s Treating Psychiatrist
- The District’s Elementary School Principal
- The Student’s Applied Behavioral Analysis Case Manager and Provider
- The District Director of Special Education
- The District Behavior Specialist
- The Elementary School Social worker
- The Elementary School Counselor
- The Elementary School Special Education Teacher
- The Parent’s Consulting Psychologist
- The Principal of the Student’s Present Placement
- The Clinical Director and Therapist of the Student’s Present Placement
- The Staff Therapist at the Student’s Present Placement

The District was given some latitude in the cross examination of the District employees called by the Parents to include the direct examination that might have occurred if the District had called the District employees in the District’s case. Often this created some awkwardness in determining what was direct or cross examination.

The District called as witnesses:

- The District Director of Special Education

The Neuropsychologist Expert, the Student’s Treating Psychiatrist, the Principal, Clinical Director and Therapist of the Student’s present placement testified remotely. The rest of the witnesses testified in person. The Parties professionally weathered the technological travails of this hybrid hearing process. The Court Reporters were particularly helpful in creating what is believed to be an accurate record of the proceedings.

Two hundred and fifty two exhibits were identified and introduced into the Record. The Exhibit Lists submitted by the Parties are made part of the record and are included in the Transmittal of

the Record. The Exhibits contained some duplicates which are noted on the Exhibit Lists. The labels of the Exhibits are not made part of the record.

The Hearing was recorded by able and professional court reporters who were provided copies of the exhibits which are to be attached to the official transcript of the Hearing. IDEA provides that parents are entitled to the transcript of the hearing at no charge which for this purpose will include the exhibits provided by Counsel digitally. However, the Hearing Officer's Transmittal of the Record is the official record of the exhibits admitted in the Record. The Transmittal of the Record includes the digitally provided Exhibits and the Six Binders of the paper copies of the Exhibits.

During the course of the Hearing exhibits were often identified for the witness by reference to the 'tab' number of the bound exhibits and not the exhibit number on the Exhibit List.

IDEA permits parents of a child with a disability to challenge the "identification, evaluation or educational placement of a child with a disability or the provision of a free and appropriate education (FAPE) to the child" (34 CFR 300.507(a)(1)).

IDEA limits the hearing officer's consideration of events that occurred two years prior to the filing of the Hearing Request. An Amended Complaint was filed on May 5, 2023, and the lookback date for purposes of historical or contextual information is reflected as May 6, 2021.

The date for the completion of the hearing officer's decision is a function of IDEA. 34 CFR 300.515 The Parties stipulated in writing that the date for the Hearing Officer's would be August 25, 2023. As a result of the date for the Hearing Officer's decision, references to the testimony of witnesses is made generally and not to specific pages in the Transcript, which at the time of preparing this Memorandum Decision was not completed.

IDEA and the education of a child with a disability utilize a language and acronyms which are unique to special education, often puzzling and are where appropriate referenced by the formal name and resulting acronyms.

The Parties submitted written closing arguments which have been considered here.

The Hearing Officer acknowledges that the issues raised by the Parents of behalf their child are complicated, often emotional and involve a number of service providers and entities in addition to PCSD Staff. Reference to their child as the "Student" is not intended to depersonalize or diminish their relationship, efforts, and love for their child, but serves the legal purpose of maintaining the required confidentiality of the IDEA proceedings. The Parents are passionate, well intended and caring advocates on behalf of the Student whose love and compassion for the Student was well represented and is acknowledged.

ISSUES BEFORE THE HEARING OFFICER

The Issue for resolution is whether the District should be required to reimburse the Parents for the therapeutic placement occurring in October of 2022 and thereafter. To determine whether the Parents are entitled to reimbursement for the cost of the therapeutic placement of the Student requires a determination of whether the Student received a Free Appropriate Public Education (FAPE) while attending school in the District. If FAPE was not provided the Student, a separate determination of whether the Parents are entitled to reimbursement occurs.

BURDEN OF PROOF

The Parents as the petitioners have the burden of proof and are required to establish that the District failed to meet the obligations required by IDEA (*Schaffer v. Weast* 546 U.S. 49 (2005)).

MEMORANDUM DECISION AND ORDER

This is the Memorandum Decision and Order of the Hearing Officer. This Memorandum Decision constitutes the Hearing Officer's Findings of Fact and Conclusions of Law regardless of the form of the Memorandum Decision.

What follows is the Chronology of the relevant events and facts referencing the source of the relevant events and actions. The Chronology sets out the Hearing Officer's Findings of Fact identifying the relevant events in context and references testimony and exhibits that form the factual basis of this Decision.

To the extent that the Chronology contains references to events occurring before May 6, 2021, the findings are for context or are included where the effect of the decision or event may have an effect on the provision of FAPE and are further addressed where appropriate to determine whether FAPE was provided to the Student.

The Analysis and Discussion set out the Conclusions of Law.

THE CHRONOLOGY

1. Prior to attending the Park City School District's [School], the Student attended the [REDACTED] Grade in [REDACTED] County California in the 2028-2019 School Year.
2. The Student had been identified as a student with a disability and eligible for special education under the category of Autism by the California School District.
3. The Student was hospitalized in March of 2019, as a result of the Student's "level of agitation and emotional lability and increasing aggression" toward the Student's younger sibling, parents, babysitters and neighborhood peers. The attending psychiatrist at that

time recommended an intensive therapeutic residential treatment program. (Ex. P-08)

4. In March of 2019, the Student was assessed in California to determine continued eligibility as a student with a disability under the category of emotional disturbance. (Ex. D-501)
5. The [California] County IEP Team determined that the Student was not eligible for Special Education and declined to further provide special education services. (Ex. D- 501)
6. In April of 2019, the Student's hospitalization continued in a therapeutic treatment center in Georgia. (Ex. D-501 and Testimony of Mother)
7. In June of 2019, the Student was admitted to the University of Utah Neuropsychiatric Unit (UNI) in the Comprehensive Assessment and Treatment Program (CAT). (Ex. P-017)
8. The Student was released from UNI-CAT in early August 2019 to participate in KidStar, a day treatment program associated with UNI. (Ex. P-017)
9. The CAT Discharge Summary indicated that the Student was responsive to a "level" behavioral program, frequent breaks from activities or peers, ongoing social skills training and close and careful monitoring across all settings to timely address social interactions. (Ex. D-503)
10. The Student participated in KidStar until the Student's attendance at ([School]) on September 25, 2019. The Student then began [REDACTED] Grade.
11. The Student was referred for an Evaluation for Special Education services by the Student's Special Education Teacher at [School] on September 26, 2019. The Evaluation was to consider current behavioral data based on [School] observations, information provided in the UNI-CAT Report and the [California] County School District records received by PCSD. (Ex. D-504)
12. PCSD conducted a Functional Behavior Assessment (FBA) for the period of September 25 to November 8, 2019. The behavior assessed included physical aggression towards others, threatening or engaging in self-injurious behavior and tantrums. (Ex. D-506)
13. No instances of the Student's targeted behavior were observed during the assessment period. (Ex. D-506). However, the Parents reported that the Student had described behavior directed at the Student by peers, primarily in the school yard during the period of time of the assessment. (Ex. P-20, 21, 22A and 26)
14. The collected data resulted in a recommendation that Tier 2 behavioral supports were appropriate with progress monitoring and consultation with the PCSD Behavior Specialist. More restrictive, intensive and individualized behavioral supports at Tier 3

were considered but it was determined that less restrictive behavioral supports were appropriate. (Ex. D-506)

15. Tiered behavioral supports describe the manner in which the behavior of a Student is responded to with increasingly more restrictive or intensive interventions between Tier 1 and Tier 3. Tier 3 behavior interventions become special education as a result of the intensity and nature of the interventions. (Testimony of PCSD Behavioral Specialist)
16. The Parents and behavioral home healthcare providers expressed concern that the Student may bottle up stress during the school day and act out at home. (Ex. D-506)
17. A properly composed Eligibility Team Meeting was held on November 13, 2019. (Ex. D-508)
18. At the time of the Eligibility Team Meeting, the Student was hospitalized at UNI beginning on November 16, 2019, as a result of escalating behavior at home. The Student returned to [School] on December 2, 2019. (Ex. P-28 & 159A)
19. The Eligibility Team met again on December 4, 2019, to continue the eligibility determination.
20. The Eligibility Team determined that the Student was not eligible for special education under the category of Autism and provided Prior Written Notice (PWN) of that decision. The PWN recommended that data collection continue and that an Independent Education Evaluation (IEE) by an outside psychologist be conducted at PCSD expense. (Ex. D-508)
21. The Parents continued to report that the Student engaged in threatening behavior directed at the Student's sibling, other family members and made what the Parents characterized as threats of violence toward the school and self-harm and not wanting to return to school after the 2019-2020 holiday break. (Ex. P 39 & 40)
22. The Parents also reported while the IEE was pending that the Student continued to have difficult behaviors at home, including physical aggression toward family members.
23. The IEE dated February 3, 2020, recommended a 504 Plan; continuing behavioral supports and interventions including providing the Student breaks; a structured check in and check out procedure; acknowledging that the Student behavior is different at home and at school, that behavioral consequences are not carried over between home and school and continued collaboration between home and school.
24. The Psychologist recommendation of a 504 Plan was not a recommendation that the Student be considered for special education, but confirmed the IEP Eligibility Team determination that the Student was a child with a disability. The Student's disability could

be accommodated with the Tier 2 interventions recommended by the Eligibility Team but not special education.

25. The COVID Pandemic resulted in PCSD closures in March of 2020.
26. The Parents continued to share with PCSD the Student's behavior at home and the Student's concerns upon returning to school for [REDACTED] Grade in the fall of 2020. In particular, in May 2020 the Parents reported considering returning the Student to UNI and KidStar in the summer of 2020. (Ex. P-46B)
27. As a result of COVID, PCSD offered remote and in-person attendance at the beginning of the 2020-21 school year for the Student's [REDACTED] grade. The Parents elected to have the Student attend remotely. (Testimony of Mother)
28. The Parents continued to report on the Student's behavioral challenges attending remotely and the need for increased support in the home including full time child care, the assistance of an Applied Behavioral Analysis case worker in the home and recurring therapy with UNI therapists. (Ex. P-50 &51)
29. The Student's 504 Plan was finalized in the middle of September 2020 and provided to the Parents. (Ex. P-53)
30. PCSD acknowledged the difficulties of attending school remotely particularly noting the Student's struggles in written language that were made more difficult by remote attendance. (Ex. P-56)
31. The Parents reported that the Student continued to be anxious about the timely completion of assignments. (Ex. P-64).
32. PCSD continued to encourage the Students participation and reported that the Student was neither falling behind nor not completing assigned assignments. (Ex. P-62)
33. The Student was admitted to UNI on February 7, 2020 (Ex. P-65) and was released on March 3, 2020. (Ex. P-66)
34. The Student was readmitted to UNI on March 11, 2020, and discharged on March 18th, 2020. These two hospitalizations were a result of increased physically aggressive behavior which was occurring at home. (Ex. P-70)
35. PCSD, responding to requests of the Parents, scheduled a 504 Planning Meeting anticipating a return to in person attendance for the Student's [REDACTED] Grade. (Ex. P-76A)
36. A 504 Plan was approved by the Parents for the purpose of providing the Student the accommodations identified in the 504 Plan. (Ex. P-76B)

37. The Student began attending [REDACTED] grade in person at [School] in the middle of August 2021.
38. The Parents reported that the Student had made threats of physical harm at home toward the Student's classroom teachers at the beginning of the school year. (Ex. P-81)
39. The Parents provided the 504 Team with their concerns about the increasing threatening behavior especially toward the Student's younger sibling. The Parents acknowledged that the Student seemed to be able to hold it together at school but was increasingly engaging in unsafe behavior at home. (Ex. P-83)
40. Email exchanges among the PCSD staff, the Parents and the Student's outside ABA provider continued in early and to the middle of September 2021 to address what was characterized as behavior to avoid undesirable tasks and assignments at home. (Ex. P 84-88 and 98-99)
41. PCSD continued to track and collect data of the Student's behavior, make suggestions of how the 504 Behavior Plan could be adjusted to meet the Student's needs and communicate with the Parents. (Ex. P 88-94)
42. On September 15, 2021, the Student melted down at the end of the school day, resulting in confrontations with [School] staff and the Parents. The behavior was physical but not directed at any one person and the Student attempted to avoid [School] Staff.
43. The Student was admitted by the Parents into UNI on September 16, 2021, without consultation with or prior notice to PCSD. (Ex. P-101) PCSD was not given an opportunity to address the Student's behavior occurring the day before.
44. The Student was discharged from UNI to the KidStar day treatment program on September 30, 2021 (Ex. P-104)
45. The Student was released to the Parents and attended KidStar until November 16, 2021
46. PCSD referred the Student for an Evaluation for Special Education services on October 22, 2021, to determine the necessary level of support for the Student upon a return to [School]. (Ex. D-513)
47. The Eligibility Evaluation included a records review, a psychological assessment and recommendations for interventions to address anxiety, aggression, social skills training and a teaching plan for self-monitoring by the PCSD School Psychologist.
48. An Eligibility Team Meeting to consider whether the Student was eligible for special education was held on November 11, 2021.
49. The Eligibility Team considered a Team Evaluation Report which included reports of the

Student's behavior in September prior to the most recent UNI and KidStar placements, the academic achievement of the Student and the behavioral, adaptive and functional skills of the Student. The Student was determined to be eligible for Special Education under the category of Emotional Disturbance. (Ex. P-110)

50. The Parents consented to the Student's placement in Special Education. (Ex. D-522)
51. On November 16, 2021, PCSD Behavior Specialist met with Student at KidStar to introduce the behavior plan that was going to be utilized when the Student returned to school the next day. (Testimony of PCSD Behavioral Specialist)
52. The Behavior Intervention Plan (BIP) addressed the Student's behavior with a variety of interventions, the use of breaks, identifying antecedent or triggering behaviors, the response to those behaviors, how replacement behaviors would be taught and how those replacement behaviors would be responded to and the necessary resources to implement the BIP. (Ex. D-536)
53. The BIP also described how the Student's behavior would be tracked and reported.
54. The Student returned to [REDACTED] Grade at [School] on a reduced school day basis on November 17, 2021. The Behavioral Specialist, the Behavior Technician who would accompany the Student throughout the school day and the Student's classroom teacher met the Student at the start of the day. (Ex. P-114)
55. The Parents reported that the Student's younger sibling who also now attended [School], had been upset when the Student was observed passing in a [School] hallway and encouraged [School] staff to be with the Student at all times. (Ex. P-115)
56. An Individual Education Program (IEP) Team Meeting held on January 26, 2022, considered the Student's Present Levels of Academic Achievement and Functional Performance and a proposed IEP. The IEP provided that the Student would be in General education setting at least 80% of the school day when the Student returned to full day attendance. (Ex. P-120A)
57. The IEP Team contained the necessary members and considered the information provided by the Parents. The IEP Team Meeting was timely based on the Eligibility Team's determination.
58. The Student's IEP contained three behavioral goals including appropriate verbal expression of thoughts and feelings; increased independence completing tasks and demonstrating appropriate behaviors based on the BIP's levels of behavior.
59. The Goals contained measurable quarterly outcomes. Benchmarks setting out the measurement methods were calculated to enable the Student to make progress toward

the completion of the goals. (Ex. P-157)

60. The Student's IEP did not contain any academic goals, nor was any specially designed instruction for academic subjects provided based on the academic achievement evaluations considered by the Student's IEP Team. (Ex. P-120A)
61. The Parents did not request an alternative placement and agreed to the IEP Team's placement of the Student primarily in the general education classroom. (Testimony of PCSD Special Education Director)
62. The Student continued to attend [School] on a partial school day schedule until the end of April 2022 (Ex. P-122)
63. The Parents and the Staff at [School] including the PCSD Behavior Specialist continued to correspond about the Students disruptive behavior, discuss what adjustment could be made in the behavior plan if necessary and how to anticipate and respond to the Student's behavior. (Ex. P-120C-123)
64. The Student's Behavior was tracked daily consistent with the BIP, reporting the Student's behavior with the level system and narratively describing any particularly significant disruptive or dysregulated behavior. (Ex. D-570 and 570A [a color coded enlarged print out of the Behavior log])
65. Whether the Student was compliant with instructions, completed assigned work or dysregulated was reported contemporaneously using a number system consistent with the BIP indicating the intensity or inappropriateness of the behavior on the Behavior Tracking Sheet.
66. Beginning upon the Student's return to [School] in November of 2021, the Student was reported to have 11 days out of 100 days of school of behavior that warranted a narration on the Behavior tracking log. (Ex D-570)
67. Not completely noted on the Behavior log was the Student's behavior on the last day of school June 3, 2022. The Student was significantly dysregulated when leaving the school grounds.
68. A significant amount of the reported behavior involved the relations with the Student's peers and the difficulties of being in the [REDACTED] grade. The behavior often involved the Student using inappropriate language with peers, resulting in the Student crying about what had happened as [School] staff worked with Student to resolve the behavior.
69. The Student was accompanied or observed by District Staff during the entire school day following the implementation of the IEP. (Testimony of District Behavior Specialist and Behavior Technician)

70. There were occasions when the Student might have attempted to avoid a situation or a staff member, but the Student did not leave the physical grounds of the [School]. No elopement from [School] occurred. (Testimony of [School] Principal and Behavior Technician)
71. The Parents often provided PCSD with information about the Student's behavior at home, observing that often when the Student threatened self-harm the Student was dysregulated, but was accompanied by an adult, closely supervised, lessening the concern about acting on the threat but still acknowledging the behavior. (Ex. P-125)
72. The Student's [REDACTED] grade began August 17, 2022.
73. On August 18, 2022, the Student was observed crying after escalating behavior with peers. The Student was able to settle down while meeting the [School] Social Worker and was able to process and suggest some behavior that would help mitigate the Student's relationships with peers. (Ex. P-130)
74. The Parents had previously planned a Labor Day Weekend trip with the Family and including the Family's au pairs.
75. On September 4, 2022, the Student attacked the younger sibling with a knife. The incident did not result in any physical injury to either the Student or sibling. The Family returned from Labor Day without further incident. (Testimony of Mother and Father)
76. The Student attended school on September 6, 2022. The Parent advised [School] by email that the Student had demonstrated some highly troubling behaviors over the weekend and requested an IEP Team Meeting. (Ex. P-136)
77. There were no reported disruptive or dysregulated behaviors at school on September 6, 2022.
78. The Student was admitted into UNI later on September 6, 2022, by the Parents. (Ex. P-137)
79. This was the sixth psychiatric admission to UNI since 2019. The UNI admissions had followed either physical aggression at home or reported dysregulated behavior at school without physical aggression toward staff or peers.
80. None of the prior UNI admissions had been recommended by the PCSD or the Student's IEP Team and were made by the Parents without consultation with PCSD staff or requesting an IEP Team Meeting to discuss alternative educational placements for the Student. (Testimony of PCSD Special Education Director)
81. Soon after the Student's admission to UNI, the Parents notified PCSD that in consultation

with the Student's Psychiatrist and ABA Provider, the Student was being considered for a long-term Residential Therapy placement. The Parents also asked that the IEP Team Meeting not be scheduled at this time. (Ex. P-138)

82. This admission to UNI was also based on the recommendation of the Student's outside Board Certified Behavior Analyst (BCBA) that the Student be considered for a Residential Therapy Center (RTC) placement for the Student's and the Family's safety.
83. The Student had been observed to be increasingly physically aggressive with the Parents and the younger sibling, including physically striking family members with fists.
84. The UNI Psychiatrist also noted at the time of admission to UNI that RTC placement had been recommended for the Student for several years. (Ex. P-141)
85. The Parents continued to provide PCSD with information about the Student, how best to address the Student's absence from school and the younger sibling's concerns about what people might think about the Student's absence from school, the short term plans and plans for RTC placement. (Ex. P-145)
86. The Student's Special Education Teacher advised the Parents that if the Student was to be enrolled at a private school, PCSD Special Education Director should be notified in writing. (Ex. P-146)
87. As the Parents considered the appropriate course of action for the Student's hospitalization or RTC care, the Student's outside treating psychiatrist and the younger sibling's treating psychiatrist advised that the Student could not return home because of their safety concerns for the Family. (Ex. P-151)
88. UNI discharged the Student for purposes of residential treatment which the Parents had elected to pursue on October 9, 2022. (Ex. P-152)
89. The Parents advised PCSD that the Student would be admitted to the [Residential Treatment Center or RTC] in New Mexico on October 10, 2022, and would be attending school full-time at [RTC School], [RTC]'s on site school. (Ex P-153)
90. The [RTC] employs a neuropsychiatric or neuro-sequential model of therapy which is intended to address how the various levels of the brain reacts, identifying what level of the brain is engaged when behavior occurs and addresses how to get the brain to operate at its highest functional level instead at its lowest level. (Testimony of Parent's Consulting Neuropsychologist)
91. The [RTC] therapeutic model does not utilize the Tiered behavioral level model employed by PCSD. Therapeutic data is reported daily but not contemporaneously with the observed behavior.

92. On October 12, 2022, the Parents requested that PCSD convene an IEP Team Meeting now that the Student had been enrolled in The [RTC]'s private school, [RTC School]. (Ex. P-154)
93. The Parents had not consulted with PCSD Staff about the decision to place the Student in residential treatment in September of 2022, though the Parents did keep PCSD advised of the therapeutic recommendations being made by the Student's UNI treatment team.
94. PCSD provided a Notice of an IEP Team Meeting to be held November 2, 2022. (Ex. P-155)
95. A Progress Report was prepared for the scheduled IEP Team Meeting. Student had demonstrated good progress, or the mastery of the behavioral goals set out in the January 26, 2022, IEP. (Ex. P-157)
96. The IEP Team met November 2, 2022. The IEP Team was advised by the Parent's Attorney that the Parents were requesting that PCSD pay for the residential treatment of the Student at the [RTC]. (Ex. P-157)
97. The Student's IEP Team considered the Parent's concern for the safety of their Family and discussed the Student's progress in the general education curriculum. (Ex D-523)
98. The IEP Team concluded that a free appropriate public education had been provided to the Student in the general education setting and that current data did not support a change of placement. (Ex. D-523)
99. PCSD provided Written Notice of its refusal to place the Student in the residential therapeutic setting proposed by the Parents. The Prior Written Notice dated November 7, 2022, was delivered to the Parents by email on November 12, 2022. (Ex. P-158)
100. On January 10, 2023, the Parents requested that an IEP Team Meeting be convened to review the Student's progress at [RTC] and to discuss transitional goals upon the Student's return to PCSD. (Ex. P-160)
101. PCSD had not convened an IEP Team Meeting by January 25, 2023, though email correspondence had occurred wherein the PCSD Special Education Director indicated PCSD's reluctance to convene an IEP Team Meeting because the Student was not enrolled in the PCSD based on the Parent's decision place the Student at [RTC]/[RTC School]. (Ex. P-162)
102. The Parents continued to provide the PCSD with information from [RTC]/[RTC School] about the Student's progress.
103. The Parents filed a Request for a Due Process Hearing dated April 20, 2021 on March 20, 2022. An Amended Due Process Hearing Request was filed May 5, 2023.

104. Subsequent to the filing of the Due Process Hearing Request (and prior to the Amended Due Process Hearing Request), PCSD agreed to conduct an assessment of the Student while in the residential therapeutic placement at [RTC].
105. Assessments in the areas of cognitive ability, academic performance, adaptive functioning and social and behavioral functioning were conducted in June of 2023 by PCSD Staff at [RTC]. The written assessment report had been completed by the time of the Due Process Hearing but was not admitted into the Hearing Record.
106. A Neuropsychology assessment was conducted on behalf of the [RTC] and the Parents with the knowledge that the Report would be used in this proceeding prior to the evaluations conducted by PCSD also in June. (Ex. P-174)
107. The Parents continued to provide PCSD with information from [RTC], including the Consulting Neuropsychological Report prior to the commencement of the Due Process Hearing. The Parents also renewed their request for an IEP Team Meeting. (Ex. P-174-175)
108. The [RTC] Progress Notes beginning with the Student's admission in October 2022 and continuing through April 2023 were made a part of the Record. (Ex. P-175)
109. The 266 pages of the [RTC]'s Progress Notes were a therapeutic reporting of the Student's responses to a variety of interventions but did not contain information about the Student's academic performance and progress in the general education curriculum. (Ex. P-175)
110. Though the Student had continued to experience dysregulation, difficult peer interaction, and the use of inappropriate and threatening language, no significant aggressive or physical behavior had been observed by [RTC]. (Ex. P-175)
111. The Teacher's Aide signing off on the daily progress reports also served as the residential staff supporting the Student's behavior. (Ex D-39)
112. On April 17, 2023, [RTC] reported that the Student had received "Bs" in the classes provided by [RTC School]. (Ex. D-39) [RTC School] reports of academic progress were not made part of the Record other than the grades reported in the [RTC] Treatment Plan.
113. The Parents had incurred \$171,847.49 in expenses associated with the residential treatment of the Student at [RTC], including Parental travel costs to participate in [RTC] Therapy as of the end of July 2023. (Ex. P-178)
114. The Parent estimated that expense of [RTC] between August and December 2023 would be \$85,770.00. (Ex P-178)

115. The costs incurred at [RTC] were on a daily lump sum basis of \$465.00 and were not broken into the expenses of the cost of residing at [RTC], the costs of the neuropsychological services programs provided by [RTC] and the cost of attending [RTC School]. (Ex P-178)

ANALYSIS AND DISCUSSION

ISSUES FOR RESOLUTION

The Parent's Closing Argument characterizes the issues for resolution as Procedural and Substantive violations of the IDEA. The Parent's issues are characterized below giving the Parents the benefit of the doubt for purposes of considering the testimony offered, even where the issues described in the Closing Argument do not fully address the issues that were pled in the Amended Request for a Due Process Hearing. The substantive issues are organized based on the chronology of the special education and related services provided to the Student.

For these purposes the following procedural issues are addressed:

1. Did PCSD violate the child find requirements of the IDEA by failing to timely consider the Student for eligibility for special education and failing to properly evaluate the Student for all suspected disabilities?
2. Did PCSD fail to determine if the Student was eligible for the delivery of special education while at UNI or [RTC]?
3. Failure to Convene the Student's IEP Team?
 - a. Did PCSD fail to convene an IEP Team Meeting when requested by the Parent in September of 2022 to consider whether the Student should be placed at [RTC]?
 - b. Did PCSD fail to convene an IEP Team Meeting when requested the Parent in November of 2022 to determine if [RTC] was an appropriate education placement for the Student?
 - c. Did PCSD fail to convene an IEP Team Meeting when requested by the Parents in January of 2023 to consider if [RTC] was an appropriate educational placement for the Student?

The Parent also raise the following substantive issues:

1. Did PCSD fail to provide an appropriate IEP reasonably calculated to provide the Student a meaningful education benefit?
2. Did PCSD fail to implement the Student's January 22, 2022, IEP?
3. Did PCSD have an IEP in place to provide special education and related services for the 2023-2024 school year?
4. Did PCSD fail to provide special education and related services to the Student while in

UNI and/or [RTC]?

The distinction between procedural issues and substantive issues under the IDEA results from a determination that a procedural violation can only be a basis to determine whether a student suffered a denial of FAPE when procedural violation results in the loss of a meaningful educational benefit (34 CFR 300.513; *Sytsema ex rel. Sytsema v. Acad. Sch. Dist. No 20*, 538 F. 3d 1306, 50 IDELR 213 (10th Cir. 2008)).

CHILD FIND

Initially it is necessary to consider the statutory and regulatory framework for “identifying, locating and evaluating” children with a disability who are in need of special education and related services. Utah Board of Education Special Education Rules (SpEd Rules) IIA and 34 CFR 300.111.

PCSD upon the attendance of the Student at [School] referred the Student for an evaluation to determine if the Student was a child with a disability in need of special education on September 26, 2019.

The Student was timely evaluated in a manner reasonably calculated to determine if the Student was a Child with a disability. PCSD considered information provided by the Parents and information provided by the Student’s California School District determining that the Student was not eligible for special education six months before PCSD’s evaluation.

PCSD determined that the Student was a child with a disability, however, it was determined that the Student was not eligible for special education.

PCSD drafted and implemented a 504 Plan consistent with the evaluation and appropriately addresses the Student’s Disability.

Additionally, PCSD provided the Parent with an Independent Educational Evaluation (IEE) at public expense in connection with the determination that the Student was not eligible for special education. The IEE also concluded that the Student was a child with a disability and that the Student would benefit from a 504 Plan, not special education.

Though the Parents in this time frame continued to provide information about the Student’s behavior in the home or community setting, the Parents did not pursue any of the remedies available under IDEA to contest the determination that the Student was not eligible for special education.

The Student was referred for a second special education evaluation in October 2021 pending the Student’s return to [School] from UNI hospitalization and KidStar placement.

The Eligibility Team found that the Student was eligible for special education under the disability category of emotional disturbance. The IEP Team met timely to develop and adopt an IEP in

January 2022.

The Parents did not indicate to the Eligibility Team that the Student had not been evaluated for all suspected disabilities and accepted the Eligibility Team's determination that the Student was a child with an emotional disturbance. The Eligibility Team was provided a substantial amount of information about the Student as this Record indicates and considered that information appropriately in its discussions to consider whether the Student was eligible.

The Parents did not meet their burden to show that PCSD failed to meet its child find obligation in either the timing of the evaluation or the information considered by the Eligibility Team. PCSD fulfilled its child find obligation.

SERVICES AT UNI AND [RTC]

The characterization of this issue as a procedural issue by the Parents is somewhat troublesome. The procedural violation characterization of this issue does not raise issues of parental participation or a lack of notice of PCSD actions.

The Parents did not request reimbursement at any time as a result of the numerous UNI hospitalizations in the four years that the Student attended the PCSD. The Parents kept PCSD advised of the UNI hospitalizations; however, the Parents did not consult or collaborate with PCSD or the Student's IEP Team until after the Student had been placed at [RTC] and the nonpublic school [RTC School]. The Parents did not to request placement at UNI or [RTC] or reimbursement for services at UNI or [RTC] until the Student was placed at UNI or ultimately the [RTC].

Since the determination by PCSD that the Student was a student with a disability who would benefit from special education and related services in January 2022, the only UNI hospitalization was in September of 2022. This hospitalization was necessitated by the behavior of the Student at home and toward the Student's Family. The Student's psychiatric, medical, and behavioral providers specifically identified behaviors at home and the physician's aggression toward the Family as the need for the hospitalization.

In response to the Parent's request in October of 2022, PCSD convened an IEP Team Meeting to consider the placement at and the reimbursement of the costs of [RTC].

The Parents did not establish that the PCSD committed a generalized procedural violation. The analysis and discussion of whether the Student received FAPE that follows is also applicable here.

PCSD FAILURES TO CONVENE AN IEP TEAM MEETING

The Hearing Officer is entitled to consider whether PCSD "impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE" to the Student. 34 CFR 300.513(a)(2)(ii)

Where a school district fails to convene a student's IEP Team Meeting at the parent's request, parental participation may be impeded (34 CFR 300.501(c)(1)).

The Parents requested an IEP Team Meeting on September 6, 2022, when notifying PCSD of the Labor Day Weekend concerns.

On September 7, 2022, and after the Student was hospitalized at UNI, the Parent's asked that the IEP Team Meeting be postponed based on the crisis that the Family was experiencing.

The failure to convene the IEP Team in September based on the Parents request was not a procedural violation.

The Student's IEP Team met after the Student had been placed at [RTC] in November 2022. The IEP Team considered the Parent's request that PCSD change the Student's educational placement to [RTC]/[RTC School].

A properly composed IEP Team considered the Parents' request. The Student's IEP Team determined that a change in placement was not appropriate. The Parents were properly given notice of the IEP Team Decision.

The Parents did not meet their burden to show that the IEP Team Meeting in November did not comply with the IDEA.

The Parents renewed their request for an IEP Team Meeting in January of 2023. PCSD did not convene an IEP Team Meeting after November of 2022. The District confirmed that the Student had been unilaterally enrolled in an out-of-state nonpublic school. PCSD did not believe that the District had any obligation to provide special education to the Student who was enrolled in and attending a private school outside the state of Utah.

The characterization of the decision to enroll the Student in [RTC]/[RTC School] as a "unilateral decision" of the Parents was disputed by the Parents. However, the Parents did not consult PCSD in the decision to change the placement of the Student from PCSD to the nonpublic school [RTC School]. Nor did the Parents request that the IEP Team consider the placement of the Student at [RTC]/[RTC School] prior to the Student being placed at [RTC].

The Parents argued that the emails that followed Labor Day 2022, should have provided PCSD with sufficient notice of the Parents' intention to request a change of placement and reimbursement for the costs of that placement. However, the Student's four prior hospitalizations while attending [School] did not result in parental requests for reimbursement.

It is clear that the Parents relied on the Student's private medical, psychiatric and behavioral providers recommendations that the Student required residential care and the resulting private school placement. There is nothing in the record which substantiates a claim that the Parent relied on or consulted with PCSD in the decision-making process resulting in the Student's

placement at [RTC].

The Parents failed to meet their burden to demonstrate that PCSD impeded their participation in an IEP Team decision-making process as a result of failing to convene an IEP Team Meeting in January of 2023 or thereafter. No procedural violation occurred.

THE SUBSTANTIVE ISSUES

In order to analyze the substantive claims of the Parents, it is necessary to discuss several concepts unique to special education and IDEA. It is particularly necessary to consider and define a free appropriate public education (FAPE).

Utah, in conformity with IDEA, defined FAPE as:

20. Free appropriate public education (FAPE) means 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 USBE and Part B of the IDEA;
 - c. Include preschool, elementary school, 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 these Rules. SpEd Rules Section I.E. (20).

This definition is consistent with IDEA and 34 CFR 300.17.

The 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 as required by 34 CFR 300.320 through 300.324 (34 CFR 300.22).

1. Did PCSD fail to provide an appropriate IEP reasonably calculated to provide the Student a meaningful education benefit?

The U.S. Supreme Court in *Endrew F v. Douglas Cnty Sch. Dist RE-1*, 169 IDELR 174, 508 U.S. 386, 399 (2017), determined that an appropriate education for a student with a disability is one “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Though reasonable, the student’s education program (the IEP) must be appropriately ambitious in light of the student’s circumstances and designed to meet the unique needs of the student.

Whether the IEP is appropriate is a prospective consideration at the time that the IEP is written, not with respect to additional information that becomes available about the Student following the IEP’s development. *Roland M.V. Concord Sch. Comm.*, 16 IDELR 1129 (1st Cir. 1990). This requires

the Hearing Officer to consider the reasonableness and appropriateness of the IEP based on what was available to the IEP Team at the time the IEP was drafted.

PCSD considered the substantial educational and medical record, acknowledging that the Student had engaged in behavior at home and at school that might be different and crafted an IEP reasonably calculated to provide educational benefit.

The IEP Team had the benefit of the behavior data that had been collected by the [School] 504 Team and the Student's responses to the tiered interventions. The IEP Team determined that the supports available to the Student should be intensified to include Tier 3 interventions, anticipated that behavior would be timely reported and provided appropriate interventions.

In *Andrew F.*, the Court also gave consideration to whether the Student participated in the general education curriculum or was not fully integrated into the general education classroom to determine if the student was making progress in the general education curriculum.

The Student here did not fully participate in the general education classroom based on the Student's unique behavioral needs and the opportunity for PCSD staff and the Student individually to process and address the Student's behavior.

The Student's IEP contained only behavior goals, acknowledging that the Student's behavior affected the Student's education and the education of other students. The Goals were reasonable calculated to enable the Student to make educational progress in the general education curriculum given the Student's unique needs.

The Student did not have any academic goals and based on the Eligibility Determination in November of 2021 was progressing at grade level. The Student continued to perform at grade level.

Additionally, PCSD only had from the adoption of the IEP in January 2022 through the 2021-22 SY and approximately two weeks in the 2022-2023 school year before the Student was removed from PCSD by Parents to implement the IEP and to better understand the Student's behavior.

The Parents signed the IEP in January of 2022 and did not until the crisis of Labor Day Weekend 2022 ask that the IEP be reviewed. Though an IEP can be reviewed at the Parents' request, no such request was made in the approximately 6 months of the 2021-2022 and 2022-2023 school years that the Student's IEP had been in effect.

The Parents contended at the time of the Hearing that the IEP created an unreasonable and unachievable behavior plan, which negatively affected the Student's behavior at home.

The Parents also acknowledged that the Student's behavior could be different at home and at school. PCSD behavioral staff also explained that the Student could keep it together at school and may well act differently at home.

PCSD developed an IEP that was calculated to address the Student's behavior at school to enable the Student to access and make progress in the general education curriculum.

It is acknowledged that the Student had problematic behaviors at home. However, the Parents do not provide any authority requiring that PCSD provide at public expense special education supports where the Student is demonstrating progress in the general education curriculum but struggles with behavior in the home. *L.J. v Pittsburg Unified Sch. Dist.* 114 LRP 22240 2014 WL 1947115 (N.D Cal., May 14, 2014).

The question is, did the Student's dysregulated or physically aggressive behavior at home substantially impact the Student's behavior at school. Though an argument was made, there was no testimony which tied the behavior at home to the behavior at school. There was no demonstration of a relationship or connection between the behaviors at home and at school other than the fact that the behaviors occurred.

Factually significant is the Parent's decision to send the Student to school on September 6, 2022, after the Labor Day Crisis.

The fact that the Parents regularly advised PCSD about the Student's behavior at home, the threats and physically aggressive behavior particularly toward the Parents and the Student's younger sibling was not a basis without more, to find that a connection or relationship existed to the behavior at school. The Student was able to participate in the general education curriculum.

The behavior that had resulted in the Parents' decision to hospitalize the Student in September of 2022 was consistent with the Student's behavior necessitating the prior hospitalizations. The events of Labor Day 2022, though frightening were also consistent with the behavior that was reported by the Parent's in the Summer of 2022.

The Parent's argue that the 10th Circuit's decision in *Jefferson Cnty Sch. Dist. R-1 v. Elizabeth E.* 60 IDELR 91, 702 F.3d 1227 (10th Cir, 2012) requires that PCSD reimburse the Parents for the cost of [RTC]. The Jefferson County School District conceded that the District had not provided the student FAPE. Here, PCSD maintained that the Student was provided FAPE. Based on this record the Student was provided FAPE.

The Student's IEP contained behavior goals consistent with the FBA, the IEE and the BIP. The IEP was appropriately ambitious and gave the Student an opportunity to meet challenging objectives.

The Parents contend that the behavior model employed by PCSD was not effective and the neuro-sequential model employed by [RTC] was more appropriate based on the Student's progress at [RTC]. The Progress Notes at [RTC] described similar behavior to the behavior addressed by the Student's IEP.

The methodology utilized in the inpatient therapeutic program based on this record demonstrates

progress comparable to the progress of the Student in PCSD. The Student's continued dysregulated behavior, inappropriate peer interactions and the use of inappropriate language indicates that the behavior of the Student continues.

Generally, the school district's choice of methodology is the province of IEP Team. (see *Bd of Educ. Hendrick Hudson Central Sch. Dist. v. Rowley* 553 IDELR 656, 458 U.S. 176 (U.S. 1982)). Further, the methodology utilized by PCSD was appropriate considering the recommendations of the IEE and PCSD Behavior Specialist. There is nothing in this Record to suggest that the methodology used by PCSD was not educationally appropriate.

The Parents did not meet their burden to show that the Student's IEP was not reasonably calculated to provide the Student with a meaningful educational benefit. The Student was provided FAPE.

2. Did PCSD fail to implement the Student's January 22, 2022 IEP?

The Student's IEP required PCSD to observe, intervene where appropriate and give the Student an opportunity to manage the identified behavior. PCSD also collected data about the nature, kind, intensity and circumstances of the Student's behavior for the purpose of addressing the behavior and to determine if additional or different interventions were appropriate.

The Parents argued that the manner and method of collecting and reporting the Students behavior was imprecise and incomplete, emphasizing that the particular behavior that was narrated should have been addressed as more serious escalating behavior. The behavior reported on the Student's behavior log was consistently reported and where appropriate responded to with the interventions described in the BIP and in the IEP Goals.

PCSD collected specific information about the Student's behavior, accompanied the Student throughout the school day and timely addressed serious dysregulated or disruptive behavior in the context of that behavior as provided in the Student's IEP.

As discussed above, PCSD only had approximately 6 months to implement the IEP, to see the Student's behavior in light of the IEP and to see if the IEP was appropriate based on the decisions made in January of 2022 when the Student's IEP was adopted.

IDEA does not require that the IEP be reviewed more often than annually if progress was being made (34 CFR 300.324(b)).

The Parents were appropriately concerned that the Student's behavior created a risk of harm to the Student or other students, however PCSD was not given the opportunity to address a potential escalation of behavior or a lack of progress in the school setting when the Student was placed at [RTC]/[RTC School] without input or consultation with the Student's IEP Team.

The Progress Report prepared for the November 2022 IEP Team Meeting indicated that the

Student had made appropriate progress toward the IEP Goals.

PCSD staff were appropriately certified and qualified to implement the provision of the Student's IEP.

There had not been an escalation of behavior at [School] in the Spring of 2022. The Student's school day behavior on September 6, 2022, did not demonstrate any further escalation in the Student's behavior at school. The Parents trusted that the Student would be safe and supervised by PCSD even after behavior that was frightening as they explored options to address the Student's behavior while not at school.

The Parents failed to demonstrate that the Student's January 2022 IEP had not been implemented.

3. Did PCSD have an IEP in place to provide special education and related services for the 2023-2024 school year?

The Parent's argued that PCSD should have an IEP in place should the Student return to PCSD.

The Student at the time of hearing was enrolled in a non-public school outside the state of Utah. The Student was anticipated to continue to be placed at [RTC] and attend [RTC School] for an extended period of time. The Parent's claim for reimbursement included the anticipated cost of the [RTC] placement until January 2024.

Based on this record there is no reason to speculate about what PCSD would have done should the Student have returned to attend school in the District.

The Parents failed to show that PCSD had any obligation to provide the Student with an IEP while attending [RTC School].

4. Did PCSD fail to provide special education and related services to the Student while in UNI and/or [RTC]?

In Closing Argument, the Parents argued that the Student has not had a "single in-patient treatment since entering [RTC], nor has (the Student) met criteria for one". The Student continues to be placed at [RTC], and according to the daily progress notes, receives inpatient treatment constantly throughout the day. The Student apparently meets the criteria for inpatient treatment based on the Student's continued placement at [RTC].

It is clear that PCSD did not provide special education and related services to the Student at UNI and/or [RTC]. The Parents did not demonstrate that PCSD had any obligation to provide special education to the Student while at [RTC].

Further, the Parents failed to show that PCSD had any obligation to provide special education and related services to a student attending a nonpublic school of the Parent's choosing.

It would be further speculation to discuss whether PCSD would have considered a residential therapy placement for the Student had PCSD been asked by the Parents prior to the placement at [RTC].

THE PARENT'S RIGHT TO A REIMBURSEMENT OF THE COST OF [RTC] AND [RTC SCHOOL]

The IDEA does not require a school district to reimburse parents for the costs of the student attending a private school if FAPE was made available to the student and the parents elected to place the student at the private school (20 USC 1412(a)(10)(c)(ii), 34 CFR 300.148(a), SpEd Rules VIC.3).

The Parents did not meet their burden to show that FAPE was not provided by PCSD. Though the Parents argued that the placement was necessitated by the recommendation of the Student's medical, psychiatric and behavioral providers, there is no question that the decision to place the Student at [RTC] was the Parents' and not PCSDs'.

Since FAPE was provided to the Student, it is not necessary to determine if the Parents are entitled to reimbursement.

DECISION

The Parents have not shown that procedural violations of IDEA occurred or that the procedural violations alleged denied the Student FAPE.

The Parents failed to show that PCSD denied the Student FAPE. Without a showing that FAPE was denied, the Parents are **not entitled** to recover reimbursement of the cost of residential therapeutic placement provided to the Student at [RTC].

The Parents' Due Process Hearing Request and the relief sought therein is **denied** and the Parents **shall take nothing** by way of the Request for a Due Process Hearing.

The Parents' Due Process Complaint **shall be and is hereby dismissed**.

Dated August 25, 2023

/s/ Edwin L. Litteneker

Edwin L Litteneker

Hearing Officer