

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

WESTMINSTER SCHOOL DISTRICT.

OAH CASE NO. 2010110730

DECISION

Elsa H. Jones, Administrative Law Judge, Office of Administrative Hearings (OAH), heard this expedited matter on December 14, 15, and 16, 2010, in Huntington Beach, California.

Student was represented by Brian R. Sciacca, Attorney at Law, of Champlin & Sciacca, LLP. Student's Mother (Mother) and Father (Father), (collectively, Parents), were present on all days of hearing.

District was represented by Caroline A. Zuk, Attorney at Law, of the Law Office of Caroline A. Zuk. Leisa Winston, Administrator, Student Services of the Westminster School District (District), and Robyn Moses, Program Director of the West Orange County Consortium for Special Education (WOCCSE), the special education local plan area (SELPA), were present on all days of hearing.

Student filed his expedited request for due process hearing (Complaint) on November 22, 2010. Sworn testimony and documentary evidence were received at the hearing, and the matter was submitted at the conclusion of the hearing on December 16, 2010. District's winter break commenced on December 20, 2010, and continued through December 31, 2010.

At the request of the parties, the parties were permitted to file written closing briefs by no later than 5:00 p.m. on December 20, 2010. The parties timely filed their written closing briefs.

ISSUES¹

1. Whether the District's decision to move Student to an interim alternative educational setting (IAES) at Rossier Park Elementary School (Rossier) for no more than 45 school days was supported by the special circumstances of serious bodily injury;
2. Whether the District's decision to move Student to an IAES for no more than 45 school days was prohibited by the settlement agreement between the parties dated December 15, 2009; and
3. Whether the IAES at Rossier was an appropriate placement for Student so as to meet his unique needs.

Student requests an Order that the District may not place Student in an IAES and that Student return to his agreed-upon placement at Hayden Elementary School (Hayden).

FINDINGS OF FACT

GENERAL BACKGROUND AND JURISDICTIONAL MATTERS

1. Student is a six-year-old boy who, at all relevant times, has resided in the District with Parents. He most recently attended Hayden, located in the District, where he was in the first grade in a special day class (SDC). He has not attended any school as of November 3, 2010. He has been eligible for special education as a student with

¹The issues have been refined from those set forth in the Prehearing Conference Order, to more accurately reflect the evidence produced at the hearing.

autistic-like behaviors since preschool. He has had behavioral and emotional difficulties since preschool.

SETTLEMENT AGREEMENT

2. On December 15, 2009, Parents, on the one hand, and the District and the District's special education local plan area (SELPA), on the other hand, entered into a settlement agreement (Settlement Agreement) to resolve a due process complaint that District had filed regarding Student's educational program. There was no evidence that the Settlement Agreement was entered into at a resolution session or mediation. Parents were not represented by counsel with respect to the negotiation of the Settlement Agreement, but the District was. The Settlement Agreement resolved all disputes between the parties at that time regarding Student's educational placement and services. In particular, the Settlement Agreement provided that Student's educational program for the period from January 4, 2010, through December 31, 2010, shall include placement in a mild to moderate kindergarten to second grade SDC at Hayden, five days per week, from 8:00 a.m. to 2:00 p.m., on Mondays, Tuesdays, Thursdays, and Fridays, and from 8:00 a.m. to 1:05 p.m. on Wednesdays. This schedule would apply except when Student would be removed from the SDC to participate in the related services specified in the Settlement Agreement. The Settlement Agreement also provided that any modifications to the agreement must be in writing and signed by each party to the Settlement Agreement. The Settlement Agreement was never modified using this procedure. Alternatively, the Settlement Agreement provided that any modifications to the Student's educational program and services as set forth in the Settlement Agreement must be agreed to unanimously by the individualized education program (IEP) team. The Settlement Agreement included a provision that an IEP meeting would occur on or before March 20, 2010, and the annual IEP meeting would occur on or before December 30, 2010.

3. The Settlement Agreement provided that the parties waived their rights to initiate a legal proceeding, including a special education due process hearing or a compliance complaint with the California Department of Education regarding Student's education from September 1, 2009, through December 31, 2010, except as may be necessary to enforce the Settlement Agreement. The Settlement Agreement did not mention discipline of the Student by the District, and contained no explicit waiver of the District's right to take disciplinary action against Student. In addition to Parents, the Settlement Agreement was executed by Ms. Winston on behalf of the District, and by Ms. Moses on behalf of the SELPA.

4. At hearing, Mother was aware only that the Settlement Agreement did not prohibit the District from removing Student from his placement for disciplinary proceedings for illegal conduct, such as for drugs and weapons-related offenses. She testified that, had she known that the District could remove Student from his placement for hitting, kicking, or biting, despite the Settlement Agreement, she would not have entered into the Settlement Agreement. Mother testified that District knew of Student's proclivity for serious assaultive behaviors when it entered into the Settlement Agreement, as the District had disciplined Student for assaultive behaviors when he was in preschool. Mother presented no details as to the circumstances surrounding such discipline, or when it was imposed. Ms. Winston, the District administrator, testified that District had no documentation that Student had been disciplined at school prior to the current 2010-2011 school year. Student produced no documentary evidence of any discipline imposed upon Student by the District prior to the 2010-2011 school year. Under these circumstances, Ms. Winston's testimony that Student had not been disciplined by the District prior to the 2010-2011 school year is more persuasive than Mother's.

STUDENT'S IEP OF MARCH 4, 2010

5. In January 2010, when Student was five years old, he entered the SDC at Hayden taught by Janika Faulkner. Ms. Faulkner's SDC was for students with mild to moderate disabilities. Ms. Faulkner has been a special education teacher for over 12 years as of the time of the hearing. She has taught a kindergarten to second grade SDC at Hayden for over six years as of the time of the hearing. She received her B.A. in education/special education, kindergarten through grade 12 in 1998 from Pfeiffer University in North Carolina. She received her M.A. in education, curriculum and instruction, in 2007 from Concordia University, Irvine, California. She has received additional training in a variety of subjects, including autism, Pro-ACT (Professional Assault Crisis Training), conflict management, and classroom management. She was elected by her peers at Hayden as Teacher of the Year in 2010.

6. From the time Student entered the class in January 2010, through October 2010, Student engaged in throwing, hitting, kicking, and biting behaviors on a daily basis. He also had a tendency to run away from authority. He would elope from the classroom, but not from campus.

7. On March 4, 2010, when Student was five years old and in kindergarten, the District convened an IEP meeting pursuant to the Settlement Agreement. The team included Parents; Ms. Winston, the District's administrator; Carolyn Hunter, the school psychologist and behavioral intervention case manager (BICM); Ms. Faulkner, the special education teacher; Robyn Moses, the SELPA Program Director/BICM; as well as an autism specialist; a general education teacher; an occupational therapist; and a speech pathologist.

8. Ms. Hunter has been a school psychologist since 2007, and she has been employed as such by the District since then. She received her B.A. in psychology from California State University, Long Beach, in 2003, and her M.A. in school psychology in

2006 from Alliant International University in Irvine, California. She holds a California Professional Clear Pupil Personnel Services Credential in school psychology. She became a BICM in May 2010.

9. Ms. Moses, the SELPA Program Director/BICM, has been a California school psychologist since 1989, a Pro-ACT instructor, and a presenter on autism, manifestation determinations, and behavior and emotional disorders in the school environment. She received her B.S. in child development with a minor in psychology in 1987 from California State University, Northridge, and her M.S. in educational psychology and counseling in 1989 from the same institution. She holds a Clear Pupil Personnel Services Credential; an Administrative Services Credential, and a Professional Clear Administrative Services Credential.

10. The team noted Student's eligibility of autism and that Student had good academic skills. Parents were concerned that Student's academic and emotional needs were not being met at school. Mother disagreed with the eligibility of autism, and wanted Student to be eligible under speech or language impairment, and hard of hearing, with a secondary disability of attention deficit hyperactivity disorder (ADHD). The team determined that Student had unique needs in the areas of communication development, gross motor development (sensory processing), and social/emotional development. In the area of health, according to Parent report, Student had demonstrated seizure activity. Parent reported that Student's medications were being adjusted. The team noted that Student's behavior impeded his learning or that of others, and that he required a behavior support plan (BSP), a behavioral intervention plan (BIP), and behavior goals. He was expected to meet the same standards of curriculum content mastery as a typical student in the classroom, with accommodations. The team formulated a total of 13 goals, to address sensory processing, sound production-imitation, transitioning from one activity to another, turn taking, safety,

following teacher's lead, following directions, attention, functional communication, self-regulation, oral motor (demonstration of voluntary lingual movements to improve lingual strength and range of motion), expressive language, and self-calming. With respect to the description of the goals regarding transitioning, self-regulation and self-calming, the IEP team noted Student's aggressive behaviors, such as biting, hitting, kicking, and throwing objects, as well as eloping from the classroom.

11. Mother disagreed with various aspects of the team's conclusions regarding Student's needs, and did not consent to the implementation of all of the goals. Mother consented to implement the sensory processing goal for no more than 30 days, and disagreed with the turn-taking goal, the following directions goal, the functional communication goal (to the extent it included the use of functional signs), the self-regulation goal, and the oral-motor goal (as written). The Student's teachers and service providers only worked on the goals to which Mother agreed.

12. The IEP team also offered Student related services. Student was to receive speech and language (LAS) services twice per week for 30 minutes per session. One session was to be in small group, and one session was to be individual. Student was also to receive occupational therapy (OT), on a consulting basis, one time per week, for 15 minutes per session. The IEP also provided that Student receive intensive individual instruction in the form of applied behavior analysis/discrete trial training (ABA/DTT) four times per week, in a separate classroom, for 30 minutes each session. The team provided that supervision of the ABA/DTT individual instruction would occur one time per month, for 90 minutes.

13. The team reviewed a report of a functional behavior assessment of Student and a proposed BSP. Since Student had demonstrated behavior problems, the team developed an interim BIP and proposed to conduct a functional analysis assessment (FAA). Parent refused to consent to the FAA.

14. The BSP stated that when Student was given a specific demand/task request, when he transitioned, or when he was overstimulated, he displayed aggressive behaviors toward staff and peers, such as throwing objects, hitting, kicking, pushing, and biting. He also demonstrated eloping behaviors such as getting out of his seat, running around the classroom, and running out of the classroom. The BSP listed replacement behaviors including self-calming strategies such as counting down, using his break card to request a break, and using supports to communicate wants and needs. The staff would prompt Student with a "first-then" card. Student would earn tangible reinforcers through a token system. The BSP was to be implemented by the special education teacher, the school psychologist, instructional assistants, the speech pathologist, occupational therapist, and ABA/DTT provider. Parents would be informed of all behavioral incidents every three months. The team stated that further information on Student's behaviors, and the interventions for them, would be determined by the FAA.

15. The interim BIP drafted by the IEP team referred to Student's results on previous District assessments. The team noted that Student was taking Lamictal to prevent seizures and Concerta for his medically-diagnosed ADHD. The team did not know the consistency of the administration of these medications. The team also noted that Student had been diagnosed with Eustachian tube dysfunction, and was prescribed an allergy decongestant. The team noted that this condition could be associated with intermittent hearing loss. The team noted that the District's speech and language assessment demonstrated that Student's overall language skills were significantly delayed when compared to his same age peers. Based on the Motivational Assessment Scale (MAS) Student was motivated by escape and tangible reinforcement. Parents requested a copy of the MAS protocols. The team listed a variety of reinforcers. The team also recommended a variety of special behavioral interventions regarding Student's hitting, kicking, and biting behaviors, ranging from evasion techniques, two-

person escorts to guide Student away from the area, and two-person seated restraint of arms. Parents did not consent to the implementation of the interim BIP.

APRIL 30, 2010, AMENDMENT IEP MEETING

16. On April 30, 2010, the District convened an IEP meeting to discuss the results of Student's FAA and his proposed BIP. The IEP team included Parents, Ms. Moses, Ms. Faulkner, Ms. Hunter, a regular education teacher, and an autism specialist. The team offered psychological services on a consulting basis for one time per week, at 30 minutes per session, during which the school psychologist would consult on a weekly basis with Student's classroom teacher regarding Student's BIP. Parents did not agree to implement the BIP at that time, and did not stay for the entire meeting. In September, 2010, Parents agreed to implement portions of the BIP.

EVENTS OF NOVEMBER 2, 2010

17. Student's assaultive behaviors became more severe in June and July 2010, continuing into fall 2010. In fall 2010, when Student turned six years old, he was still attending Ms. Faulkner's SDC at Hayden, where he was in first grade and accessing first grade instructional materials. He was verbal. There were 16 children in the class, and four adults, including Ms. Faulkner. Student had a difficult time following school procedures.

18. During October 2010, Parents were in the process of adjusting Student's medication. Student's behaviors escalated throughout October. During this time, Parents and Ms. Moses were also discussing Student's placement, in anticipation of the termination of the Settlement Agreement, by its terms, on December 31, 2010. In this regard, District had attempted to schedule an IEP meeting to discuss Student's placement. Mother had indicated to the District that she was available for such a meeting on November 10, 2010.

19. On Tuesday, November 2, 2010, Parents ceased giving Student his Concerta. Student arrived at school that day at approximately 8:00 a.m. Later in the morning, Ms. Faulkner attempted to have Student clean up and go to lunch. Student jabbed his pencil on her arm several times. Then, when he was several feet away from her, she asked him to clean up and he said, "No," ran towards her, and head butted her in the left part of her chest with all of his force. The blow knocked the wind out of her, and she felt she could not breathe. She did not feel pain then. She did not demonstrate her discomfort, since her training had taught her to focus on keeping the child safe and calm, and that if she showed her distress, the child's behaviors could escalate. Either she or her classroom aide then called Ms. Hunter, the school psychologist, to come to the room. Ms. Hunter had worked with Student directly, and also consulted with Ms. Faulkner once or twice a week regarding Student. When Ms. Hunter arrived, Ms. Faulkner sent the aide out to deal with the other children. Student began to throw things in the room. Ms. Faulkner and Ms. Hunter tried to calm him by various methods, including taking his shoes off, and having him squeeze Ms. Faulkner's hands. They tried to encourage him to put on his shoes and go to the room where he received his DTT therapy for a break. They thought they could calm Student in the DTT room, and it would be safer for the other children if Student was temporarily taken from the vicinity. They both escorted him to the DTT room. There was a discrepancy in Ms. Faulkner's and Ms. Hunter's testimony as to whether Student willingly went to the DTT room during the incident. In view of the rather intense event, their lack of consistent recall on this relatively minor point did not adversely reflect on the credibility of either witness.

20. When they arrived at the DTT room, Ms. Reed, Hayden's principal, and Mark Murphy, Hayden's assistant principal, were at the door, waiting for Mother to arrive. At the DTT room, Ms. Hunter and Ms. Faulkner were careful that only one person spoke at a time, which is another calming strategy. Ms. Hunter sang to him, and

engaged him playing with a toy car. At some point while Ms. Hunter was playing with Student, Student began to hit Ms. Hunter with the cars, and when she attempted to protect herself, he bit her once in the arm. Later, when Student was on the floor and attempting to kick Ms. Faulkner, he bit Ms. Hunter in the other arm when she attempted to block the kick. Ms. Hunter sustained pain at the time of the bites, but did not scream aloud when she was bitten, as, like Ms. Faulkner, she had been trained not to display pain or stress to Student during a behavioral event. Ms. Faulkner and Ms. Hunter did not learn of each other's injuries until after the event.

21. Student threw items and ran in the room. Ms. Faulkner engaged him in coloring, but he soon began to throw toys again. Ms. Faulkner felt the situation was dangerous. She kneeled to bring herself closer to Student's height. While she was kneeling, Student kicked her in the center of her chest. She felt pain but she did not scream or show any discomfort, pursuant to her training. Then, while she was kneeling to get to his level, he again threw toys. Ms. Hunter was sitting in a chair at that time, and Student went over to hug her. His behavior was erratic during this event, as he was loud and overactive at times, and then crying at other times. Ms. Faulkner was able to engage Student in coloring again, and then Mother arrived.

22. At some point during the event, Mother called the school, to check on how Student was doing without the Concerta. She spoke to Ms. Reed, the principal, who advised her that Student was having a "hard day." Mother advised that she would come to school and pick up Student. When Mother arrived, Student was sitting in a chair in the DTT room, very limp and lethargic. Ms. Reed, Ms. Faulkner, and Ms. Hunter described to her what had happened, but Mother "zoned out" and was not able to recall what they told her, as she was concerned about Student's condition. Ms. Hunter showed her the bite marks on her arms. Mother noticed they looked like red bruises, but did not notice any bleeding. Mother did not observe that Ms. Hunter or Ms.

Faulkner was in pain. Rather, Ms. Faulkner and Ms. Hunter seemed more concerned about Student's well-being than their own. Mother and Student left school after the event.

23. As a result of the incident, District suspended Student for five school days, commencing on November 4, 2010. District timely sent Parents notice of the suspension, which specified that Student had violated Education Code section 48900, subdivision (a)(1) [causing or attempting to cause, or threatening to cause physical injury to another person]; section 48900, subdivision (k) [disrupting school activities or otherwise willfully defying the valid authority of teachers or other school personnel engaged in the performance of their duties]; and section 48915, subdivision (a)(1) [willfully using force or violence upon the person of another, except in self-defense].

TREATMENT OF INJURIES SUSTAINED BY MS. FAULKNER AND MS. HUNTER

24. After Student had been subdued and Mother arrived at school, Ms. Reed advised Ms. Hunter and Ms. Faulkner to receive medical attention, and the two of them left together, at about noon, to go to Memorial Prompt Care (Prompt Care), the medical provider for the District. Ms. Faulkner would have sought medical care on her own even if Ms. Reed had not advised her to do so.

Ms. Faulkner's Injury and Treatment

25. While Ms. Faulkner was at Prompt Care, she began to feel pain in her chest. She had a bruise on her chest. She had an x-ray, which showed no broken bones. The doctor advised her that she had suffered an internal contusion. There was no medical evidence as to whether the contusion was caused by the head butt, the kick, or both. The doctor placed Ms. Faulkner on disability for the following workday, and prescribed both prescription-strength ibuprofen, to be taken two times per day and Vicodin, to be taken four times per day. She took them as prescribed.

26. Ms. Faulkner went home. During the evening, she felt heaviness and discomfort in her chest. She could not raise her left arm. She woke up at 3:00 a.m., and the pain was bad. She rated it as a 10 on a scale of 1 to 10. She took a Vicodin. Ms. Faulkner went back to Prompt Care at 8:00 a.m. on November 3, and was examined by a different doctor. The doctor wanted to prescribe stronger pain medications, but Ms. Faulkner refused to take them. She was told to consistently take her pain medications, and to return to Prompt Care the next day, November 4. The doctor told her that she had a chest contusion, and was unable to work. She returned to Prompt Care on November 4, where she was examined by another doctor. She was told to continue to take her pain medications, and to return to Prompt Care on Monday, November 8, and not to return to work in the meantime. Ms. Faulkner returned to Prompt Care on Monday, November 8, at which time she was cleared to return to work Tuesday, November 9. At that time, she felt well enough to return to work on November 8. She was no longer in pain, and has not had pain from that time forward. She returned to work on Tuesday, November 9, 2010.

27. After the injury, Ms. Faulkner did not need anyone to care for her. She felt nausea and dizziness. She could feed herself, but she could not cook. The bruise resolved in about 48 hours. She took the Vicodin and prescription-strength ibuprofen for four days, but she did not think they were effective at first. She stayed at home, except for her medical visits, until Friday, November 5, when she went to San Diego with a friend. While there, she went to dinner, and walked around, but she felt "miserable" so she returned home the next day. She characterized her injury from the Student's kick as the worst injury she had ever had in terms of the pain it caused her.

Ms. Hunter's Injuries and Treatment

28. At the time of the incident, Ms. Hunter was wearing a Kevlar sleeve on each arm, and a long-sleeved sweatshirt. A Kevlar sleeve is a sleeve that extends to the

upper arm, and was designed to protect the wearer from injuries such as those that may be caused by a bite. The bite on her left arm bled. Both bites left bruises on her arms. When she went to Prompt Care immediately after the incident, the doctor wrote a note saying she could go to work the next day. However, her arms hurt and swelled after the visit to Prompt Care. She suffered pain that night, and it interfered with her sleep, so she returned to Prompt Care on the morning of November 3rd. The doctor gave her prescription pain medication, which she believed was Tylenol and codeine, and told her she could go back to work on November 4th, but to restrict her work duties. After her visit to Prompt Care on November 3, she rested and iced her arm, and went out to have her hair cut. She returned to work on November 4, and did not miss any additional days of work due to the injuries. On November 9, she returned to Prompt Care for a check-up. The bruise on her right arm faded in approximately one-and-one-half weeks. There was no scarring. The bite on her left arm, which broke through the skin, caused bruising and swelling, which faded in approximately one week. The bite left a scar of approximately one-quarter of an inch in diameter. At the time of the hearing, Ms. Hunter was scheduled to have a blood test to determine whether she has contracted any diseases from Student's bites.

29. The District prepared reports pertaining to both Ms. Hunter's and Ms. Faulkner's injuries pursuant to California law for use by the District's insurance company, as a step in processing their potential worker's compensation claims.

MEETINGS OF NOVEMBER 15 AND 18, 2010

30. On November 5, 2010, District sent to Parents a notice that Student's manifestation determination IEP had been scheduled for November 10, 2010. This was the date to which Mother had previously agreed that an IEP meeting could be held to discuss Student's placement. However, upon receipt of the notice, Mother did not agree to the date, as she wanted the entire IEP team present. Therefore, on November 9,

2010, the District sent notice that the manifestation determination meeting would be held on November 15, 2010. Prior to the meeting, Ms. Moses contacted Rossier, which is a certified California NPS, to investigate the possibility that Student could be placed there, and sent Student's IEP and BIP to Rossier, with identifying information redacted.

31. The District convened the manifestation determination meeting on November 15, 2010, as noticed. The attendees at the meeting included Mother, Ms. Faulkner, Ms. Hunter, Ms. Winston (the District's administrator), Linda Reed (Hayden's principal), Mark Murphy (Hayden's assistant principal), and Ms. Moses (the SELPA Program Director/BICM). The team, including Mother, permitted Ms. Hunter to leave the meeting before it ended. Mother stayed at the meeting for approximately 30 to 40 minutes, and was present for at least part of the placement discussion. Prior to the meeting, Ms. Winston, Ms. Moses, Ms. Hunter, and Ms. Faulkner met to discuss the November 2 incident, Ms. Faulkner's and Ms. Hunter's injuries and a possible placement for 45 school days to Rossier or at other District SDCs due to those injuries, and other strategies for handling Student's behavior at Hayden. There was no evidence that the District had predetermined the outcome of the meeting, or made any decisions to present the District's position on a "take it or leave it" basis.

32. At the manifestation determination meeting, the team noted that, during the November 2, incident, Student was removed from the classroom for assaultive behavior, and that when redirected he would comply for a short period of time before continuing to assault staff members. The team noted that Student's repeated head butting caused severe bruising to the chest area of one staff member, and two staff members were stabbed repeatedly in their arms with a pencil.² Further, Student bit one

²This description of the events of November 2, 2010, is not entirely consistent with the witness testimony at the hearing. There was no evidence at hearing of "repeated head butting," and there was no evidence that Student repeatedly stabbed

staff member through a Kevlar sleeve and sweatshirt, breaking the skin on the staff member's arm. The team reviewed the current IEP, assessment results, the behavior plan, Student's current school performance, parent input, teacher observations, and medical information. The team determined that Student's conduct was related to his disability and unique needs in communication and behavior. The meeting notes stated that Mother believed Student's conduct was not caused by or substantially related to Student's disability. The team determined that Student's IEP had been fully implemented.

33. The manifestation determination meeting notes reflected Parent's statement that Student's Concerta had been discontinued, and that his Lamictal dosage was changing weekly. The notes stated that District determined to place Student in an IAES at Rossier. Parent had arranged to visit the school the next day. The District would continue related services pursuant to the IEP of March 4, 2010, and the District would also provide transportation.

34. The team was told that staff received medical treatment after the November 2 event and had to take disability leave. Ms. Moses explained the disciplinary process, and the change of placement to an IAES. Mother contended that the Settlement Agreement prevented the District from unilaterally changing Student's placement, but the District members of the team explained that the change in placement was necessary, despite the Settlement Agreement, in view of the special circumstances presented by Student's behavior, which jeopardized the safety of Student

two staff members with a pencil. The description fails to include that Ms. Faulkner was kicked in the chest. However, the description accurately conveys the injuries to the chest and the bites that school staff sustained, which were the most significant factors to convey at the meeting. No party raised these discrepancies as an issue at hearing.

and staff. The team discussed whether the District was meeting Student's needs, and discussed a placement change on an interim basis to see how Student would manage in another environment. The team felt that Rossier was appropriate as it had a smaller class size, well-trained staff, could provide specialized instruction but kept Student with peers at his academic level, and Rossier could implement Student's behavior plan. Mother did not agree with the proposed placement, but wanted time to make a decision. District offered Rossier as Student's long-term placement, including his "stay put" placement, if events proved that it was an appropriate placement and if Parents so desired. At hearing, the evidence showed that District made this offer to address Mother's reluctance to place Student in a short-term, interim placement.

35. The team also considered several NPS's. Parents suggested placement in a Montessori school in Santa Ana. The team also invited Mother to visit other SDCs in the District.

36. Mother did not agree with the manifestation determination and the IAES placement, as she felt that Student's conduct was due to his medication changes and was not a manifestation of his disability. One of the Parents wrote a note on the manifestation determination meeting notes, stating, "The school has informed me/us today that they have no classes for [Student] within their school district." During the meeting, Mother became very frustrated, because she felt that the District was not including her comments in the meeting notes, and she ripped up several pages of the District's paperwork pertaining to the meeting.

37. At hearing, there was conflicting evidence as to the degree to which the team discussed the term "serious bodily injury" and its definition at the meeting. Ms. Hunter and Ms. Faulkner testified that the term and the circumstances which would constitute "serious bodily injury" were discussed; Mother testified that the term was not mentioned at the meetings. It is not necessary to resolve this conflict, as Mother was

able to meaningfully participate in the meeting, and she understood its significance and the significance of the decisions made at the meeting.

38. The District convened a follow-up meeting on November 18, 2010, to include a general education teacher, and because Parents had asserted that they had not received proper notice of the November 15 meeting. The attendees at the meeting included Mother, a general education teacher, Ms. Faulkner, Ms. Hunter, Ms. Reed, and Ms. Moses. The notes from the meeting contained an identical description of the Student's behavior, and reflected that the team had reviewed and considered the same information as was reported in the notes from the November 15, 2010, meeting. The team modified the language regarding the cause of Student's conduct as stated in the November 15, 2010 meeting notes to state that Student's aggressive behavior was related to his autism, diagnosis of ADHD, and possibly medications.

39. Mother reported that Student's behaviors were intense and aggressive at home during October 2010, but he had exhibited no such behaviors for approximately a week. Parents considered the November 2, 2010, event to be attributable to changes in Student's medications. The team considered an undated letter from John Sarrouf, D.O., of Pediatric Care Medical Group, Inc., regarding Student's medications, which was received on November 17 and November 18. The letter stated that Student was previously on Concerta, which caused a side effect of aggressive behavior. The letter stated that Student was switched to Intuniv, without side effect, and Mother had reported he was doing well on this new medication. The team requested more information from Parents regarding Student's medications, as well as an authorization to release information so that the District could follow up with the doctor. Parent informed the team that Student had been on Intuniv for almost three weeks, and Intuniv and Lamictal were his only medications.

40. Barbara Casey, the Executive Director/Principal at Rossier, participated in the meeting telephonically. The team answered Parent questions regarding pat-down, transportation, availability of computers, the classroom routine at Rossier, and the size of the classroom. It was anticipated that the bus ride would be approximately one hour to one hour and 15 minutes each way, using Rossier's bus. The evidence at hearing demonstrated that until Student was placed at an IAES, District could not ascertain the precise method of transportation it would provide, and the length of Student's trip to and from school. However, District had agreed to provide transportation as well as the other related services in Student's IEP at the manifestation determination meetings, and was capable of providing Student efficient transportation to and from Rossier.

41. The team considered Beacon Day School (Beacon) as a possible placement. Mother had observed Beacon since the November 15 meeting. Beacon was a California certified NPS, but at no relevant time has the District had a contract with Beacon. Parents requested that Beacon be Student's placement, with a one-to-one aide. Mother stated that the bus ride would only be 30 minutes each way. District and SELPA team members expressed concern regarding the academic levels and behavioral intervention used at Beacon based upon information provided by District and SELPA staff members, including Ms. Moses. District typically relied upon information from the SELPA in recommending placements, as the SELPA had more contact with NPS's. Specifically, the District members of the team believed that students were not working at grade level at Beacon, and that its behavioral intervention policies were overly physical. The team also discussed Student's needs and other SDC classes in the District for students with autism. Mother signed an authorization for release of information between the District and Beacon, so that the District could further explore Beacon as a placement. Parents refused to sign such an authorization pertaining to Rossier. Instead, Mother wrote on the authorization form for Rossier that she did not want the school or

the District to send any information to Rossier. At the end of the meeting, District agreed to place Student in an IAES for no more than 45 school days, and identified Rossier as that placement. Parents did not agree with the District's offer of placement at Rossier.

42. Student has not attended any school since he left Hayden on November 2, 2010. At hearing, Mother stated that Student was kept at home based on a doctor's recommendation. No document containing any doctor's recommendation or order was produced at hearing. After the IEP meetings, and while their Complaint was pending, Parents supplied District with a prescription slip dated November 18, 2010, of limited legibility, signed by Wissly Wallis, a nurse practitioner from CHOC Pediatric Subspecialty Faculty. The prescription requested that Student be allowed to stay home for 30 days while his medication was being adjusted. The District nurse followed-up with Ms. Wallis approximately one week prior to the hearing, after Parents authorized the District to contact her. Ms. Wallis reported to the school nurse that Student had not been examined since September 23, 2010, there was no current plan of care or plan to treat Student in the future, there was no evidence of seizures, and Ms. Wallis did not believe that Student was required to stay home. The school nurse also spoke to Dr. Sharouf, who reported that there were no restrictions on Student attending school. At hearing, Mother testified that if the District had offered Beacon as an IAES placement at the manifestation determination meetings, she would have sent Student there. This testimony is inconsistent with the contention that Student's medical condition required him to stay home from school for 30 days.

THE IAES PLACEMENT AT ROSSIER

43. Rossier only accepts students who are referred by school districts. It is certified by the state of California to serve students with several types of disabilities, including emotional disturbance, autism, and other health impaired, and it specializes in

students with behavioral issues. Student's IAES was to be in a classroom that served children in first-grade, with a first-grade academic curriculum taught by a credentialed special education teacher and at least two instructional aides. Additionally, behavioral therapists would be in the classroom regularly. The school had a positive behavior system to reinforce appropriate behavior and to assist students in learning to behave in public school, so that the student's maladaptive behaviors will be reduced when the student returns to public school. Its teachers and staff have ongoing trainings in autism and behavior, including Pro-ACT training. Barbara Casey, Rossier's Executive Director and Principal, testified without contradiction that she had reviewed Student's IEP of March 4, 2010, and his BIP, and that Rossier could implement them. The evidence was also undisputed that Student would receive all related services provided in his IEP while at Rossier, and that District would provide any related services that Rossier could not provide, such as Student's ABA/DTT services. Rossier had a policy of "patting-down" all students' pockets upon their arrival at school, and did not allow backpacks. The evidence was uncontradicted that Rossier would be able to accommodate any discomfort Student may have regarding the "pat-downs," as well as Student's need for a transition object, including a backpack.

44. Mother objected to Rossier for several reasons. First, she had concerns for Student's safety. She believed that the classroom Student would be in at Rossier was not large enough to safely accommodate Student when he threw himself on the floor, as he had a tendency to do. There was no evidence that any child had been injured at Rossier in this manner due to the small size of the classroom. Mother was also concerned that Rossier kept the gate to its campus unlocked, and it sometimes swung open. The gate faced Tustin Street, a busy street, Student's classroom would be only 50 feet or so from the gate, and she feared he would elope and run out into the street. There was no evidence that Student had ever eloped onto a busy street, nor that any

child from Rossier had ever eloped through its gate and into the street. In this regard, a sidewalk with a grass area and a parking lot were situated between the gate and Tustin Street. Second, Mother was concerned that Student would not be able to tolerate the length of the bus rides to and from Rossier. When Student attended Hayden, he rode the bus to school, which was a 45-minute ride, and Parents would pick him up after school.

45. Mother was also concerned that Student would not tolerate Rossier's policies of "patting down" students pockets when they came to campus, and of not permitting backpacks. Student's backpack was his "transition" object. Finally, she did not think Student wanted to attend Rossier, because of an incident that occurred when he visited the campus with Mother on November 16. Student had reached for some candy in a bowl located on a counter, and Ms. Casey had removed the bowl, stating that the candy was only for staff. This hurt Student's feelings, such that Student hid under chairs for 10-15 minutes until several staff members coaxed him out.

46. Mother had visited Beacon with Student and favored Beacon. She felt that the concerns of the District and SELPA regarding Beacon were based upon misinformation. When she and Student visited, other students were friendly to Student, and he had spent several hours playing there with them. Furthermore, Beacon was closer to Student's home than Rossier, and Beacon was more accessible via surface streets than was Rossier. This was important to Mother, as Mother did not drive on the freeway. Mapquest directions reflected that both Beacon and Rossier were each approximately the same distance from Student's house, in terms of mileage.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. The petitioner in a special education due process hearing has the burden of proving his or her contentions at the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-57 [126 S. Ct. 528].) As the petitioning party, Student has the burden of proof.

ISSUE 1: WHETHER THERE WAS "SERIOUS BODILY INJURY" SO AS TO JUSTIFY AN IAES PLACEMENT

2. The Individuals with Disabilities in Education Act (IDEA), provides that the parent of a child with a disability who disagrees with any decision regarding placement in the IAES, or the manifestation determination, may appeal the decision by requesting an expedited due process hearing. (20 U.S.C. § 1415(k)(3); 34 C.F.R. § 300.532 (a)-(c).) In this case, Student contends that the District improperly disciplined Student by removing him from Hayden. Student contends that neither Ms. Faulkner nor Ms. Hunter sustained serious bodily injury so as to justify any disciplinary action. District contends that both Ms. Faulkner and Ms. Hunter sustained serious bodily injury, such that it could properly remove Student to an IAES for up to 45 school days.

3. Title 20 United States Code section 1415(k) and Title 34 Code of Federal Regulations, part 300.530 (2006), et seq., govern the discipline of special education students.³ (See Ed. Code, § 48915.5.) In many instances, whether, and how, a special education student can be disciplined is dependent upon a determination at a manifestation determination IEP meeting as to whether the student's conduct was related to his disability. (20 U.S.C. § 1415(k)(1)(E),(F).)

³All subsequent references to the Code of Federal Regulations are to the 2006 revisions, unless otherwise stated.

4. The law also provides that an IEP team may place a student in an IAES for not more than 45 school days, regardless of whether the student's behavior is determined to be a manifestation of the student's disability, under any of three "special circumstances." These "special circumstances" include conduct involving drugs and weapons. Another of these "special circumstances" occurs when the student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the supervision of the district. (20 U.S.C. § 1415(k)(1)(G); 20 U.S.C. § 1415(k)(2); 34 C.F.R. § 300.530 (g); 34 C.F.R. § 300.531.) The term "serious bodily injury" for these purposes is the same as that found in title 18 United States Code section 1365(h)(3). (34 C.F.R. § 300.530(g)(3)(i)(3).) The term is defined as: bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (18 U.S.C. § 1365(h)(3). "Serious bodily injury" is not simply a cut, abrasion, bruise, burn, or disfigurement; physical pain, illness, or impairment of the function of a bodily member, organ, or mental faculty. (18 U.S.C. § 1365 (h)(4).) Whether there has been a serious bodily injury is a question of fact that is determined based upon the totality of the circumstances of the injury. (See *United States v. Johnson* (9th Cir. 1980) 637 F.2d 1224, 1246).

5. The statute does not contain any objective indicia of "extreme physical pain," such as a particular time during which the pain must last, or that the injury that caused the pain must also cause scarring or disfigurement, or that the pain must be so severe as to require prescription medication or a doctor's visit. The failure of the statute to include objective indicia with respect to "extreme physical pain" highlights the relatively subjective nature of pain.

6. Neither party cited any authority which further defines the term "extreme physical pain." Student cited several administrative law cases, which illustrated that the

determination of the existence of "extreme physical pain" is dependent upon the facts of each case. For example, Student relied upon a California OAH case in which the ALJ found that when a student's conduct resulted in a mild concussion to one pupil, and a broken nose to yet another pupil, there was "no evidence" of extreme physical pain, substantial risk of death, or protracted injuries so as to meet the statutory definition of serious bodily injury. (*Student v. Tehachapi Unified School District*, (2006), OAH Case No. N2006010238.) As a special education administrative law decision, it is not binding authority. (Cal.Code Regs., tit. 5, § 3085.) Moreover, the case is not instructive on this issue. First, unlike in this case, neither of the injured victims testified, thereby supporting the ALJ's finding that there was "no evidence" of "extreme physical pain." Second, the ALJ's determination of this issue was dicta, as it was not necessary to a determination of the issues in the case. Rather, the issues of the case concerned the District's compliance with the procedural requirements of the IDEA in disciplining a Student, and whether the Student's conduct was a manifestation of his disability.

7. In this case, the evidence demonstrated that Student caused injury to Ms. Hunter, but the evidence did not demonstrate that Student's bites caused Ms. Hunter serious bodily injury. Ms. Hunter's injury did not cause her extreme physical pain. She was not prescribed any pain medication at first, and she returned to work on the second day after the incident. She managed to perform many of her daily routines after her initial visit to Prompt Care, and the single prescription medication she took resolved her pain. Her forearms were bruised, but the bruising resolved rather quickly and she was left with only a minor scar. Under these circumstances, Ms. Hunter did not suffer "serious bodily injury," whether defined as "extreme physical pain" or "protracted and obvious disfigurement" so as to constitute the special circumstances that are legally required to support the District's decision to place Student to an IAES for up to 45 school days.

8. However, the evidence demonstrated that Student's conduct caused Ms. Faulkner extreme physical pain. Ms. Faulkner's testimony was undisputed that she saw a physician three times in one week after the initial visit, due to the pain of her chest injury. Two prescription painkillers taken together did not alleviate her pain, and one of the doctors who examined her recommended she take additional doses of painkillers. Her activities were curtailed due to the pain from her chest injury. On doctor's orders, she was out of work for a week following the chest injury. Additionally, Ms. Faulkner's testimony that the pain she suffered was a 10 on a scale of 1-10, and that the pain she suffered made the kick to her chest the worst injury she had suffered in her life, was undisputed. Such testimony reflects that Ms. Faulkner suffered "extreme physical pain." Student contends that Ms. Faulkner did not define the "scale" she was using to describe her pain. In view of the subjective nature of pain, it is impossible to define it as one might a scale of objective conditions, such as temperature, pressure, length, weight, and the like. Ms. Faulkner's credibility with respect to her pain is buttressed by the fact that she did not appear to exaggerate her condition. She admitted that she felt well enough to go to work on the Monday following the incident, but, on doctor's orders, did not return to work until Tuesday following the incident. Under these circumstances, Ms. Faulkner suffered "serious bodily injury," defined as "extreme physical pain," so as to constitute the special circumstances that are legally required to support the District's decision to place Student in an IAES for up to 45 school days. Accordingly, the District was justified in removing Student to an IAES. (Findings of Fact 1-3, 17-41; Legal Conclusions 1-8.)

ISSUE 2: IMPACT OF THE SETTLEMENT AGREEMENT ON SCHOOL DISCIPLINE

9. Student contends that the Settlement Agreement the parties entered into in December 2009, in which they agreed that Student "shall" be placed at Hayden, prohibited the District from changing Student's placement to an IAES without Parents'

consent, as that would constitute a unilateral change in the terms of the Settlement Agreement. Student also contends that to allow the District to do so would violate the policy of the IDEA, which favors settlement agreements. District contends that the Settlement Agreement did not prohibit the District from temporarily changing Student's placement, as the IDEA grants District the authority to temporarily place students in an IAES for disciplinary purposes under specified circumstances. District contends that Student is not exempt from disciplinary procedures merely because his placement was agreed to in a Settlement Agreement rather than in an IEP meeting, and that District did not waive its authority to impose discipline pursuant to the IDEA and its regulations by entering into the Settlement Agreement.

10. OAH has limited jurisdiction to hear due process complaints to enforce the IDEA and the state Education Code, which does not extend to the enforcement of settlement agreements. Pursuant to Education Code section 56501, subdivision (a), a parent or school district may request a due process hearing with respect to the following issues: (1) there is a proposal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free appropriate public education (FAPE) to the child; (2) there is a refusal to initiate or change the identification, assessment or educational placement of the child or the provision of a FAPE to the child; (3) the parent or guardian refuses to consent to an assessment of the child; (4) there is a disagreement between a parent or guardian and a district regarding the availability of a program appropriate for the child.

11. Education Code section 56501, subdivision (a) does not include the issue of a school district's alleged failure to comply with a settlement agreement. Rather, a compliance complaint pursuant to California Code of Regulations, title 5, sections 4600 et seq. is the appropriate means by which a student may address a school district's alleged failure to comply with a settlement agreement. (See *Wyner v. Manhattan Beach*

Unified School District (9th Cir. 2000) 223 F.3d 1026.) Specifically, California Code of Regulations, title 5, section 4650, subdivision (a)(4), provides for the filing of such a complaint. However, there is authority that if the school district's violation of the settlement agreement may constitute a denial of a FAPE, OAH has jurisdiction. (*Pedraza v. Alameda Unified Sch. Dist.*, 2007 WL 949603 (N.D. Cal. 2007).) In this case, OAH has jurisdiction to consider the Settlement Agreement because Student contends the District's decision to change Student's placement to an IAES violated the Settlement Agreement and deprived Student of a FAPE.

12. As was stated in Legal Conclusion 4, a school district may place a student in an IAES for no more than 45 school days, regardless of whether the student's behavior is determined to be a manifestation of the student's disability, under "special circumstances," including when a student has inflicted serious bodily injury upon another person while at school. (20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530 (g); 34 C.F.R. § 300.531.)

13. Well-established principles of contract law govern the interpretation and enforceability of settlement agreements. (*Miller v. Fairchild Indus.* (9th Cir. 1986) 797 F.2d 727, 733.) If a written agreement is not equivocal or ambiguous, "the writing or writings will constitute the contract of the parties, and one party is not permitted to escape from its obligations by showing that he did not intend to do what his words bound him to do." (*Brant v. California Dairies, Inc.* (1935) 4 Cal.2d 128, 134; see also 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 118 ["Ordinarily, one who accepts or signs an instrument, which on its face is a contract, is deemed to assent to all its terms. . . ."])

14. The express terms of the Settlement Agreement do not address discipline of the Student by the District. However, among the well-established principles of contract law that apply to the Settlement Agreement is the principle that the object of a

contract must be lawful, and may not conflict with either express statutes or public policy. (Civ. Code, § 1550; 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 420, p. 461.) Another principle is that a law established for a public reason cannot be waived by a private agreement. (Civ. Code, § 3513; 1 Witkin, Summary of Cal. Law, *supra*, § 679, p. 164.) Another principle is that performance of a contract is excused when performance is impracticable because of excessive and unreasonable difficulty or expense. (*Id.* § 842, p. 928.)

15. The IDEA is, in general, solicitous of the needs and rights of special education students, even in disciplinary matters. It provides that a student with a disability who violates a code of student conduct may be removed from school for a length of time in excess of 10 school days only if the student's conduct is not found to be a manifestation of his disability, and so long as the student is still provided a FAPE. If the student's conduct is found to be a manifestation of his disability, the District's options are more limited, and other procedures must be followed. (20 U.S.C. § 1415(k)(1)(C),(F).) However, the IDEA recognizes that a school district may remove a student with a disability from school for no more than 45 school days for certain illegal and dangerous conduct, even if the conduct was a manifestation of the student's disability. Thus, as was referenced in Legal Conclusion 4, if a student with a disability engages in specified conduct involving drugs or weapons, or inflicts serious bodily injury on a school employee in the school setting, that student's placement may be changed, regardless of whether that conduct was a manifestation of the student's disability. The exceptions to those portions of the IDEA that limit discipline of special education students reflects an acknowledgement of the public policy that society cannot tolerate certain types of illegal and unsafe conduct in the school environment, even if such conduct is a manifestation of a special education student's disability. This public policy is supported not only by the ideals that schoolchildren should obey the law and not

injure others. It is also supported by the practical reality, that, when students use drugs, brandish weapons, and cause serious bodily injury to others, there is a negative impact on a school district's abilities to provide a safe environment, to educate students, to attract and retain employees, and to be free of costly litigation. Therefore, to interpret the Settlement Agreement so as to constitute a promise by the school district not to change Student's placement even when he has caused serious bodily injury to a teacher would violate the public policy that underlies the statutory scheme of the IDEA statutes pertaining to discipline. Such an interpretation would also violate the contractual principle that the school district cannot waive a law established for a public reason.

16. Further, the defense of impracticability of performance of the Settlement Agreement could also apply to justify the District in changing Student's placement to an IAES. At the IEP meetings of November 15 and 18, 2010, the District determined that Hayden was not an appropriate placement for Student at that time, and that it would not be practicable for Student to continue to attend Ms. Faulkner's SDC, at least for a time.

17. Under these circumstances, the Settlement Agreement did not bar the District from changing Student's placement to an IAES. (Findings of Fact 1-46; Legal Conclusions 1-17.)

ISSUE 3: THE APPROPRIATENESS OF THE IAES

18. Student contends that Rossier was an inappropriate IAES, as Rossier would not meet Student's unique needs in the areas of academics, safety, transportation, and transitions. District contends that Rossier was an appropriate placement, with trained personnel who could implement Student's IEP and BIP, and who could help Student decrease his maladaptive behaviors so that he could return to public school.

19. As was mentioned in Legal Conclusion 4 above, the IEP team determines placement when a student is removed to a 45-day IAES. (20 U.S.C. § 1415(k)(2).) A

student who is removed from his current placement to an IAES must continue to receive a free appropriate public education (FAPE), so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to make progress toward meeting the goals set forth in the student's IEP. (20 U.S.C. § 1415(k)(1)(D)(i); 34 C.F.R. § 300.530(d)(1).) Additionally, the IDEA requires that a child with a disability who has been removed to an IAES receive, as appropriate, behavioral intervention services and modifications so that the behavior for which the student has been placed in the IAES does not reoccur. (20 U.S.C. § 1415(k)(1)(D)(ii); 34 C.F.R. § 300.530(d)(1)(ii).) The IDEA does not require that parents consent to placement in the IAES, or that the District must place a student in the IAES that parents prefer. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

20. Pursuant to California special education law and the IDEA, children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. §1400(d); Ed. Code, § 56000.) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the state educational standards, include an appropriate school education in the state involved, and conform to the child's IEP. (20 U.S.C. § 1401(9).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1401(29).) Similarly, California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) The term "related services" includes transportation and such developmental, corrective, and other supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(26).)

21. In *Board of Education of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982), 458 U.S. 106 [102 S.Ct. 3034] (*Rowley*), the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the substantive requirements of the IDEA. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Id.* at pp.198-200.) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student. (*Id.* at 201.)

22. The evidence was undisputed that Rossier could implement Student's IEP, including his BSP and BIP, and that Rossier or District would provide Student's OT, LAS, and ABA/DTT services, thereby providing Student a FAPE. The evidence was also undisputed that Rossier's staff was well-trained in behavioral techniques, that staff had experience with children with numerous behavioral difficulties, and that staff would attempt to ameliorate Student's behaviors so that he could return to Hayden. With respect to safety, there was no evidence that any child had injured himself in Student's proposed classroom at Rossier because the classroom was too small, or that any child had eloped from Student's proposed classroom at Rossier, and ran into the street. Further, there was no evidence that Student had ever eloped onto a busy street. The evidence also demonstrated that Rossier would be sensitive to Student's possible unwillingness to be "patted down," and to his need for a backpack as a transition object. With respect to a transition plan, there is no legal authority to support the contention that such a plan is required for a disciplinary change in placement. Furthermore, the evidence at hearing demonstrated Student's transitioning difficulties occurred during

transitions between activities, not between school sites. Finally, the evidence at hearing demonstrated that Rossier was reasonably close to Student's home, and that the District would be able to arrange for efficient transportation to and from Rossier. Under these circumstances, Rossier was an appropriate IAES for Student. (Findings of Fact 1-46; Legal Conclusions 1-8; 18-22.)

ORDER

All relief sought by Student in his Complaint is denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. District prevailed on all of the issues heard and decided in this matter.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

Dated: January 13, 2011

Elsa H. Jones

ELSA H. JONES

Administrative Law Judge

Office of Administrative Hearings