

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ARCADIA UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2018120032

EXPEDITED DECISION

On November 28, 2018, Arcadia Unified School District filed an expedited due process hearing request as part of its due process hearing request with the Office of Administrative Hearings, State of California, naming (Student).¹

Administrative Law Judge Sabrina Kong heard this matter in Arcadia, California on January 8, 2019.

Attorney Meagan Kinsey represented Arcadia. Katherine Mahoney, Arcadia's special education director, attended the hearing on Arcadia's behalf. Mother and Father, each held separate educational rights; each represented Student individually and attended the hearing on Student's behalf.

On January 8, 2019, the matter was submitted for decision. The ALJ allowed the

¹ The complaint contained expedited and non-expedited claims. OAH set the expedited and non-expedited claims for separate hearings. This Expedited Decision resolves only the expedited claims. (34 C.F.R. § 300.532(c)(2).)

parties to submit written closing argument by January 11, 2019. The parties timely filed closing briefs and the record was closed.

ISSUES

1. Is maintaining Student's current educational placement substantially likely to result in injury to Student or to others?

2. Can Arcadia change Student's placement to an appropriate interim alternative educational setting at Gaining Opportunities for Achievement of Lifelong Skills ("GOALS") for not more than 45 school days?

SUMMARY OF DECISION

Arcadia met its burden of persuasion that Student's continued general education placement at Hugo Reid Elementary School would substantially likely result in injury to himself or others, and GOALS was an appropriate interim alternative educational setting. Student agreed that Arcadia was ineffective in anticipating and preventing Student's maladaptive behaviors. Student's contention that he was not substantially likely to injure anyone more than a typical child his age was unsupported. Student's contention that because he did not intend to harm and had not seriously injured anyone, Arcadia could not place him in an interim alternative educational setting was not supported by current law.

Arcadia prevailed on all issues, and may place Student at GOALS as an interim alternative educational setting for a period not exceeding 45 school days.

FACTUAL FINDINGS

1. Student was an eight-year-old boy at the time of the hearing and resided within Arcadia's boundaries at all relevant times. He attended Hugo Reid Elementary School. He was eligible for special education since January 10, 2018, under the

classification of emotional disturbance. He was placed in the general education program with a full time instructional aide and received counseling services from January 10, 2018 until the end of the 2017-2018 school year. Throughout the 2017-2018 school year, Student exhibited maladaptive aggressive behaviors towards Arcadia's staff and peers, such as kicking, hitting, and throwing furniture and other items, elopement and non-compliance. In the 2017-2018 school year, Student kicked a substitute teacher and injured an office assistant, placing marks on the assistant's arm, which resulted in both individuals filing workers' compensation claims against Arcadia.

2. Arcadia's school psychologist, Karina Herrera, designed a behavior intervention plan with the individualized education program team on January 10, 2018, to address Student's maladaptive behaviors. Ms. Herrera held a bachelor's degree in psychology; was certified in applied behavior analysis; certified in crisis prevention intervention²; was a behavioral consultant for five years and had extensive experience conducting functional behavior assessments, collecting data and supervising behavior therapists.

3. Ms. Herrera conducted a functional behavior assessment to develop a behavior intervention plan for Student. In developing the January 10, 2018 behavior intervention plan, Ms. Herrera identified maladaptive behaviors that seriously impeded Student's education as shouting; ripping assignments; aggression towards staff and peers such as punching, scratching, kicking, pushing, throwing objects including furniture, and spitting; elopement; verbal threats; name calling; and non-compliance. She observed Student exhibiting aggressive behavior or elopement 19 out of 26 school days, with aggression over five times per hour, and elopement once every three hours.

² Staff trained in crisis prevention intervention were authorized to safely support students with non-violent physical restraints when needed.

Each episode of maladaptive behavior lasted from 11 minutes to two and a half hours.

4. As part of her functional behavior assessment, she identified antecedents, or triggers to Student's maladaptive behaviors, as denial of a preferred activity or item, transition from a preferred activity, and increased task demands such as performing classroom work. She recommended providing Student with: designated breaks throughout the day, with a designated break area within the classroom and supervised breaks outside of the classroom; replacement behaviors including direct instruction and role playing to help Student learn alternative, appropriate replacement behaviors; and clear consequences to be implemented at home and in school. Ms. Herrera instructed staff to prompt Student to ask for breaks until he learned to request them himself.³ If Student engaged in positive interactions with appropriate replacement behaviors, he would earn tokens; after earning 10 tokens, Student could select a prize from the treasure/prize box. If Student did not engage in aggression or elopement, he would earn a golden ticket; and staff would notify Parents so Student could access electronics at home. The behavior intervention plan instructed staff to: engage in positive conversation, and review alternatives with Student about acceptable behaviors when he was calm; avoid chasing Student when he ran; and implement non-violent crisis prevention intervention physical restraints when Student engaged in behaviors that endangered himself or others. Ms. Herrera also supervised Student's instructional aide, including the aide's collection of Student's behavioral data; and reviewed, summarized, and analyzed the behavioral data collected by Student's aide to track Student's progress and provided strategies to help him access his education.

5. Student attended GOALS, a special day class, during the 2018 extended

³ At some point, Ms. Herrera gave Student the option to verbally request a break, or turn over a Pokémon card as a non-verbal signal to request a break.

school year, a total of 20 school days as a trial period. GOALS was located in the comprehensive general education campus of Longden Elementary School in Temple City, but fenced off from the rest of the school. Student exhibited similar maladaptive behaviors in the extended school year as he did during the 2017-2018 school year including aggression, throwing furniture and other items, elopement and non-compliance. Because there were only 20 school days of the extended school year, Student did not have enough time to acclimate to the GOALS program and spent 18 of the 20 school days with negative consequences for his maladaptive behaviors. Mother was displeased with the program based on Student's reports that he did not like the program because staff denied him lunch, punished him often and placed him in the "boring room". The boring room was a procedure which required Student to complete a folder of independent work before rejoining the entire class. Mother found the independent work to be excessive. She was also displeased that the program had a jail-like atmosphere, as it was fenced off from the rest of the school. She found the program too extreme because of the limited range of acceptable behavior and language. Father believed that Student's maladaptive behaviors in the general education environment would progress with appropriate supports. He also shared that appropriate reading intervention supports would lessen Student's frustration and could decrease maladaptive behaviors.

6. Because Parents did not consent to Student's continued placement in GOALS during the 2018-2019 school year, Student returned to the general education placement with a full time instructional aide at Hugo Reid Elementary School. Student was in Kristine Morris' class with 26 students for the 2018-2019 school year which started on August 16, 2018. Ms. Morris' classroom was located close to the main school entrance with a front gate and a side entrance gate which abutted ongoing construction of a sensory garden and a parking lot. Both gates were locked from the outside, but

could be opened from the inside with a push-bar mechanism as a safety precaution.

STUDENT BEHAVIORS THAT POSE RISK OF INJURY

7. Student had a full time instructional aide who was also staffed to help Ms. Morris with the rest of the class, but never did as Student required all of the aide's attention. Student had two instructional aides during the first semester of the 2018-2019 school year. One was Mr. Randy⁴ who had good rapport with Student; when Mr. Randy left, Katherine Hyche became Student's aide. Student initially did well, and but by August 29, 2018, the ninth school day, he started eloping and demonstrating maladaptive aggressive behaviors; was non-compliant and had great difficulty de-escalating. When Mr. Randy left, Student's behaviors escalated during Ms. Hyche's transition. Elopement was defined as Student leaving a designated area without permission, which included on-campus elopement (*e.g.* leaving a designated area on campus to move to another area on campus without permission), and off-campus elopement (*e.g.* leaving school premises such as stepping into the parking lot). On several occasions, Student eloped within campus and attempted to exit the campus by accessing the push-bar to open the gate. On one occasion, Student had successfully eloped to a parking lot by pushing the push-bar mechanism on a gate, but was stopped by his aide from running farther into the parking lot. Arcadia was concerned for Student's safety when Student eloped outside the gate into the parking lot because of nearby traffic and construction. Specifically, Arcadia was concerned that the construction truck drivers would have difficulty seeing Student because of Student's small stature.

8. Arcadia convened an amendment IEP team meeting on the September 11,

⁴ Neither party presented evidence as to Mr. Randy's full name, or exactly when he left. However, sometime in September 2018, Ms. Hyche starting working as Student's aide.

2018, to discuss and offer Student educationally related intensive counseling services to support Student's emotional and behavioral needs to which Parents consented. Arcadia offered GOALS as the appropriate placement, but Parents did not consent. Student's October 2018 behavioral data showed that he eloped approximately two times per day; exhibited aggression approximately four times per day; and earned a golden ticket 31 percent of his time at school. Arcadia suspended Student for maladaptive aggressive behaviors towards staff and peers, including attempts to injure them, on four separate occasions: one day in August; two separate days in October; and one day in early November. Additionally, on November 27, 2018, Arcadia suspended Student for two days. On that day, after completing his math work, Student spat on his book, taped his own mouth and refused to read during reading time. He then threw a pencil and a book at which time Ms. Morris asked him to go outside for 10 minutes. Student first refused, then ran outside. While outside, he emptied a bottle of bubbles onto a student planted garden, used profanity with staff and peers, threw rocks at classroom windows, pushed and grabbed staff including the aide and principal Lauren Leahy who came to help the aide calm Student.

9. Arcadia convened an amendment IEP team meeting on November 28, 2018, to discuss Student's inability to access his curriculum, his maladaptive aggressive behaviors, elopement, and suspensions. Arcadia's IEP team, including the Student's counselor, recommended GOALS as the appropriate placement because of Student's limited behavioral progress, and his maladaptive behaviors prevented him from accessing his education and could injure others and himself. Arcadia again offered placement in the GOALS program; Parents did not consent.

10. During the first semester of the 2018-2019 school year, Student spent 75 percent of the time outside of Ms. Morris' class because of his maladaptive behaviors. The maladaptive aggressive behaviors included throwing and kicking items in his

surroundings such as pencils, scissors, classroom furniture, lunch boxes, rocks, crumbling papers, knocking items off of desks; throwing items at peers and staff; hitting peers and staff; spitting at peers and staff; threatening a peer with a pushpin after taking it off of a board; biting staff; destroying school property by throwing and breaking the frame of a Chrome-book, throwing golf-ball sized rocks at the classroom windows, pulling out school plants; and using profanity. Student was frequently disruptive in Ms. Morris' class. Student once threw a pencil and hit Ms. Morris' glasses, but did not injure her. Ms. Morris shared that Student frequently threw objects which fortuitously did not result in injury mainly because of Student's imprecise aim.

11. However, Student's maladaptive aggressive behaviors injured Arcadia's staff and at least two peers during the first semester of the 2018-2019 school year. Student injured one of his aides with marks to the arm which resulted in the aide filing a workers' compensation claim against Arcadia. On another occasion Student pushed another one of his aides and caused her to stumble backwards and fall, but she was not seriously injured. On two other occasions, Student bit his aide. On another occasion, Student pushed a metal basket cart which fell and injured a peer's back, causing the peer to be sent to the school health aide. Ms. Morris shared that the peer required ice on the injury, but did not require other medical attention. On December 21, 2018, Student inexplicably, without any provocation, hit a peer on the temple with a closed fist. The nurse conducted a concussion check and reported that the peer exhibited concussion symptoms. When the peer returned to the classroom, Ms. Morris asked the peer on two occasions whether the peer would like to stay and participate in the classroom holiday party. The peer declined, informed Ms. Morris he was not feeling well and wished to go home. On one occasion, Student climbed on top of a long row of tables in his classroom and ran back and forth. Ms. Morris was concerned for Student's and his peers' safety as he could fall off the table and injure himself and/or his peers.

Ms. Morris shared that although Student's aide was right next to Student when this occurred, the aide was unable to prevent the incident because Student was fast and in an escalated state.

12. During the first semester of the 2018-2019 school year, Student demonstrated maladaptive aggressive behaviors and/or elopement approximately 45 of the 74 school days, in addition to being suspended six school days. The staff's data on the frequency of Student's daily maladaptive behaviors were conservative because not all of Student's maladaptive behaviors were recorded as he engaged in so many that staff was unable to document every incident throughout the day. Student also engaged in maladaptive behaviors which did not result in suspension because the maladaptive behavior occurred right before a scheduled school break. Student had difficulty de-escalating and the maladaptive behavior episodes generally lasted about 45 minutes each during the first semester of the 2018-2019 school year. Arcadia's staff, including Ms. Leahy, the school counselor and psychologist, was often summoned to help Ms. Morris and Student's aide calm Student when he was in an escalated state to prevent him from injuring himself and/or others. Ms. Leahy shared that peers reported to her approximately once a week of being afraid of being injured by Student, and documented five students' reports of fear. Arcadia's staff all credibly opined that despite having a full time aide, Arcadia could not prevent Student from injuring himself, or others, with his maladaptive aggressive behaviors or elopement because Student was fast and unpredictable when he was in an escalated state, and staff did not have specialized training to work with Student's emotional disturbance and serious maladaptive behaviors. Ms. Herrera opined that although Student made limited progress, he had not demonstrated any significant improvement in behaviors since the implementation of the behavior intervention plan.

13. Ms. Leahy held a master's degree in education and a multiple subjects

teaching credential; and was certified in crisis prevention intervention. Ms. Leahy's crisis prevention intervention certification lapsed in 2017. As principal, she did not see the need to renew the certification when she had other individuals on site, such as the classroom teachers, aides, and school counselors, who were also certified in crisis prevention intervention. Ms. Morris was certified in crisis prevention intervention, held a master's degree in education and a multiple subjects teaching credential. Ms. Morris was not trained to work with students with behavioral difficulties. Ms. Leahy shared that all aides have access to crisis prevention intervention training certification, but was unsure if Ms. Hyche had received the training. Ms. Morris shared that Student's aide, Ms. Hyche received one-week of training to work with students with behavioral difficulties.

14. Katherine Mahoney was knowledgeable about available programs both in Arcadia and the Special Education Local Plan Area (SELPA) programs to which Arcadia was a member. Ms. Mahoney held a master's degree in special education, a Clear Level II education specialist instruction credential to teach children with mild to moderate disabilities. She had been Arcadia's special education director since 2015, and a special education director of a neighboring school district from 2012-2015. Ms. Mahoney shared that Arcadia did not have any programs for elementary school aged students with emotional disturbance profiles. When a student required an emotional disturbance focused program, Arcadia would find an appropriate one in the SELPA, from other school districts, or look to a non-public school based on a student's needs. Arcadia's SELPA had one program at Longden Elementary School in Temple City for elementary school students with behavioral needs and emotional disturbance, the GOALS program.

APPROPRIATENESS OF GOALS

15. Ms. Mahoney, Ms. Leahy, Ms. Morris and Ms. Herrera testified at hearing and all opined that the GOALS program was appropriate for Student for a variety of the reasons.

16. First, GOALS was a comprehensive therapeutic, self-contained classroom/special day class, with embedded social emotional supports and an embedded social skills program to address students' behavioral problems including those students with emotional disturbance special educational eligibility, so students could access classroom instruction. GOALS worked on a grade level curriculum with students. GOALS began in 2014 in collaboration between the SELPA and Diana Browning Wright and Dr. Clayton Cook, individuals who researched and wrote about responses to problem behaviors using positive strategies. Both Ms. Wright and Dr. Cook provided continuous training to all GOALS' staff including data collection, peer conflict resolution, behavioral and mental health training. All staff at GOALS were trained in de-escalation strategies; possessed well-honed skills to manage students with behavioral difficulties and emotional disturbance profiles; trained to anticipate triggers to maladaptive behaviors; and certified in crisis prevention intervention without any lapse in certification. The GOALS teacher held a special education certification along with an added authorization to work with students with emotional disturbance. GOALS had a dedicated psychologist with more time allocated specifically to GOALS' students, approximately 80 percent of her work time. Part of the GOALS reward system involved students' ability to earn their way back into different levels of the general education environment, with complete integration as a goal, by engaging in appropriate behaviors. This aspect of general environment integration renders GOALS appropriate for Student based on his current IEP.

17. Next, GOALS has a low adult to student ratio, currently: 10 students; with a cap of no more than 12 students; one teacher; two and a half aides; and two one-to-one aides for two students. Because GOALS had more adults, and a consistent team of highly trained staff, the GOALS staff would be more effective in building rapport with Student, and more successful in preventing elopement and maladaptive aggressive

behaviors so he could access his education. GOALS would work with Student to learn self-management skills to avoid elopement and maladaptive behaviors. GOALS had field trips and a student store as rewards for appropriate behavior, which were more effective motivators than the treasure chest selection and electronics access rewards available to Student at his current placement. Ms. Morris opined that Student was frequently indifferent to the rewards in his behavior intervention plan. Further, GOALS was surrounded by a fence which was an effective barrier to prevent Student from eloping into an unsafe environment, such as traffic and construction present at Student's current placement.

18. Finally, Ms. Mahoney, Ms. Leahy, Ms. Morris and Ms. Herrera all opined that Student's continued current placement would be substantially likely to result in injury to himself, staff, and peers because Arcadia's staff was simply unable to handle Student's unique needs. Ms. Herrera explained that Student could only tolerate very little academic demands in his current placement, and that academic demands were decreased to eliminate the work escape trigger for his maladaptive behaviors so he could experience some success and rewards from his behavior intervention plan. The behavior intervention plan was successful in that Student learned to request breaks some of the time. However, despite fully implementing Student's behavior implementation plan, adjusting his academic demands, and adding more intensive counseling services, Arcadia's staff was unable to mitigate Student's maladaptive aggressive behaviors and elopement to an extent that would render the educational environment safe for Student and others.

MOTHER'S AND FATHER'S OPINIONS

19. Parents both agreed that Arcadia's staff was ineffective in preventing Student's maladaptive aggressive behaviors and elopement. Mother opined that Student was not malicious, threatening, or scary. She shared that one Arcadia staff who

filed a workers' compensation claim provoked Student's maladaptive behaviors by filming Student and threatening to send the footage to Parents. She attributed Arcadia's staff's ineffectiveness in preventing Student's maladaptive aggressive behaviors and elopement to staff's lack of care, irritation with, and not wanting to deal with Student. Father also did not dispute that Student had injured staff and peers, but did not believe that Student would be substantially likely to injure himself or others any more than his peers, and opined that Student had not caused any severe injuries. Father also opined that Student's maladaptive behaviors had improved since the 2017-2018 school year, and changing placement would disrupt his progress. Parents expressed incredulity at the speed with which Student successfully eloped and/or climbed atop a table as described by Arcadia's staff and believed that Arcadia's staff could have done better in properly monitoring Student. However, they did not provide any facts to support that Arcadia improperly implemented Student's IEP or behavior intervention plan, or that proper implementation would have eliminated the need to remove Student to an alternative interim educational setting.

20. Both Parents opined that GOALS was an inappropriate placement for Student because the level of independent work required was excessive. Mother characterized GOALS' methods and treatment of Student during the 2018 extended school year as abusive, extreme, and ineffective to help Student improve his maladaptive behaviors. Father shared that Student's current progress, albeit minimal, at Hugo Reid Elementary School should not be disrupted. Further, Father characterized Student's trial period at GOALS during the 2018 extended school year as unsuccessful because Student engaged in the same maladaptive behaviors as he did during the 2017-2018 school year. Therefore, Father was skeptical that 45 school days, an extra 25-days than the 2018 extended school year, would be effective in improving Student's maladaptive behaviors especially when Arcadia was unable to provide a definitive

timeframe for Student's behavioral improvements even if Student were placed at GOALS.

LEGAL CITATIONS AND ANALYSIS

INTRODUCTION – LEGAL FRAMEWORK FOR STUDENT DISCIPLINE UNDER THE IDEA⁵

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁶ et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) Under the IDEA and California law, children with disabilities have the right to a free appropriate public education. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) A free appropriate public education is defined as appropriate special education, and related services, that are available to the child at no cost to the parent or guardian, that meet the state educational standards, and that conform to the child's individualized education program. (20 U.S.C. § 1401(9); Ed. Code, §§ 56031 & 56040; Cal. Code Regs., tit. 5 § 3001, subd. (o).) A child's unique educational needs must be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2016.)

LEGAL FRAMEWORK ON DISCIPLINARY CHANGE OF PLACEMENT

2. Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq., govern the discipline of special education students.

⁵ Unless otherwise indicated, the legal citations are incorporated by reference into the analysis of each issue decided below.

⁶ All references to the Code of Federal Regulations are to the 2006 version.

(Ed. Code, § 48915.5.) A school district may request a due process hearing to authorize a change of placement if the district “believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others....” (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) A special education student’s educational placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to the student. (Cal. Code Regs., tit. 5, § 3042, subd. (a).) An expedited hearing must be conducted within 20 school days of the date an expedited due process hearing request is filed, and a decision must be rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).) The rules for a due process hearing under title 20 of the United States Code section 1415(k) must be consistent with those of other IDEA hearings. (34 C.F.R. § 300.532(c)(1).)

3. Conduct that had been found substantially likely to result in injury to self and others includes spitting; throwing furniture and other objects; eloping; non-compliance; hitting, kicking, punching, pulling hair and glasses, biting and lunging at staff and other children; and climbing and jumping from cabinets and windows. (*Capistrano Unified School Dist. v. Student* (Feb. 3, 2016) OAH Case No. 2015120782.) Throwing furniture and other objects at classmates, attempting to stab another child in the back with a pencil, attacking a classmate with a plastic knife, kicking staff, hitting a classmate in the face with a lunch pail, and eloping into a street were behaviors considered substantially likely to result in injury to self and others. (*San Leandro Unified School Dist. v. Student* (Dec. 16, 2013) OAH Case No. 2013100168.) Behaviors that resulted in, or were substantially likely to result in, injury to children and district personnel include kicking, hitting, and throwing chairs at staff, threatening another child with a pair of scissors, and hitting things and threatening to hit children with drumsticks. (*Rialto Unified School Dist. v. Student* (Nov. 19, 2013) OAH Case No. 2013090966.)

Eloping into a parking lot, bolting from the classroom, climbing onto the top of a filing cabinet, running and falling while attempting to escape with scissors, and attempting to pull a file cabinet onto himself, were found to be substantially likely to injure the student. (*Ibid.*)

4. The Eighth Circuit Court interpreting the meaning of “substantially likely to result in injury to the child or to others” in the context of a school district seeking injunctive relief to remove a child from her placement concluded that intent to harm and/or serious harm were not needed to meet the standard. In *Light v. Parkway C-2 School Dist.* (8th Cir. 1995) 41 F.3d 1223 (*Light*), the student engaged in a “steady stream of aggressive and disruptive behaviors,” including hitting other children, biting her teacher, throwing pencils and other objects at children, and attempting to overturn desks and tables. (*Id.* at pp. 1225, 1229.) The Eighth Circuit Court of Appeals rejected the parents’ argument that a disabled child must be “truly dangerous” as well as substantially likely to cause injury, and commented that the “substantially likely” test “looks only to the objective likelihood of injury.” (*Id.* at p. 1228.) The court also rejected the contention that “injury is inflicted only when blood is drawn or the emergency room visited,” and “[m]ore broadly ... reject[ed] the proposition that a child must first inflict serious harm before that child can be deemed substantially likely to cause injury.” (*Id.* at 1230.) The Eighth Circuit held that there is no requirement that a child must intend to cause injury, reasoning, “Even a child whose behaviors flow directly and demonstrably from her disability is subject to removal where that child poses a substantial risk of injury to herself or others.” (*Id.* at 1228; See also *Alex G. v. Board of Trustees of Davis Joint Unified School Dist.* (E.D. Cal. 2005) 387 F.Supp.2d 1119, 1127.)

5. If the ALJ deciding the case determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, the ALJ may order a change in placement to an appropriate interim alternative

educational setting for not more than 45 school days. (20 U.S.C. § 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 300.532(b)(2)(ii).) The interim alternative educational setting must enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP. (20 U.S.C. § 1415(k)(1)(D)(i); 34 C.F.R. § 300.530(d).) Additionally, the IDEA requires that a student with a disability who has been removed to an interim alternative educational setting receive behavioral intervention services and modifications so that the behavior for which the student has been placed in the interim alternative educational setting does not recur. (20 U.S.C. § 1415(k)(1)(D)(ii); 34 C.F.R. § 300.530(d)(1)(ii).)

6. IDEA does not require parental consent to placement in the interim alternative educational setting, or that a district must place a student in the interim alternative educational setting that parents prefer. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

7. At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Arcadia is the filing party and has the burden of persuasion on all issues.

ANALYSIS OF ISSUE 1: CONDUCT SUBSTANTIALLY LIKELY TO RESULT IN HARM TO SELF OR OTHERS

8. Arcadia contends that Student's continued current placement would substantially likely result in injury to Student and others. Student contends his behaviors would not result in injury to himself or others if Arcadia's staff was more effective in preventing them. Further, Student contends that he did not intend to injure or severely injure anyone and was not substantially likely to injure anyone more than his peers would. Arcadia prevailed on this issue.

9. The evidence convincingly established Student's general education placement at Hugo Reid Elementary School caused and would substantially likely continue to cause injury to Student, or others. Arcadia demonstrated that Student engaged in maladaptive behaviors frequently and unpredictably, and that it did not have the resources to keep Student, or others, safe if Student were to remain in his current placement. Arcadia implemented Student's behavior intervention plan and provided the services and supports in Student's IEP, none of which reduced his maladaptive behaviors significantly enough to prevent him from injuring himself and others. Student injured staff and peers during the first semester of the 2018-2019 school year. Most recently, on December 21, 2018, Student injured his peer who demonstrated concussion symptoms after Student inexplicably hit the peer. Student did not rebut Arcadia's evidence.

10. Parents both agreed that Arcadia's staff was unable to prevent Student from engaging in maladaptive aggressive behaviors and elopement, but attributed this inability to staff incompetence as justification for remaining in the current placement, and downplaying the severity of Student's maladaptive behaviors. Mother opined that Student's maladaptive behaviors were not malicious; Father opined that Student's behavioral progress should not be disrupted with a placement change, and disputed that Student would be "substantially likely to cause injury" because Student had not severely injured anyone. As Ms. Morris credibly noted, it was Student's imprecise aim which fortuitously prevented more injuries during his maladaptive behavioral episodes; fortuity could not be relied upon to keep Student and others safe.

11. Parents' opinions for Student to remain in the current placement, albeit understandable, were not supported by the law which stated that intent and serious harm need not be present to conclude that a student would be considered "substantially likely to cause injury" justifying removal from school placement. (*See*,

Light, supra, 41 F.3d at 1228-1230.) Further, many cases found that the maladaptive behaviors which Student engaged in including kicking, hitting, and throwing objects at staff and peers, eloping into a parking lot, climbing onto the table and running, and non-compliance met the standard of “substantially likely to injure” both the student, and others. (See, specifically paragraphs 3 and 4 of Legal Citations and Analysis.) Further, Student’s maladaptive behaviors resulted in injury to staff and peers, and was substantially likely to continue. Student’s elopement was also substantially likely to cause injury to himself because of Hugo Reid Elementary School’s proximity to traffic, construction, and classroom location without additional barriers to ensure safety when Student eloped off-campus.

12. Arcadia met its burden and therefore could place Student in an interim alternative educational setting for not more than 45 days from the first day of attendance at the interim alternative educational setting.

ANALYSIS OF ISSUE 2: INTERIM ALTERNATIVE EDUCATIONAL SETTING

13. Arcadia contends that GOALS was the appropriate interim alternative educational setting for Student. Student contends that GOALS was inappropriate because Student and Parents did not like the program and deemed GOALS unsuccessful when Student was previously placed there. Further, Student contends that a placement change would disrupt his current progress.

14. Arcadia met its burden of establishing that GOALS was an appropriate interim alternative educational setting for Student, for not more than 45 days. Student’s elopement required a safe environment. GOALS was located within a general education campus with a fence surrounding the self-contained classroom, and had a consistent group of experienced and trained staff to work with Student’s emotional and behavioral problems. The staff to student ratio was low. Student needed a highly structured environment with staff trained in anticipating Student’s maladaptive behaviors and

helping him control them so he would not injure anyone and access his education. A 45-day interim placement at GOALS would enable Student to earn his way back into the general education environment, which was conveniently located outside the GOALS' fence, by engaging in appropriate behaviors.

15. Although Parents and Student did not like GOALS, they did not offer any persuasive evidence to refute Arcadia's evidence that GOALS would be an appropriate interim alternative educational setting for Student. Parents' displeasure with the amount of independent work GOALS required of Student during the 2018 extended school year was insufficient to establish that it was an inappropriate placement for Student, especially when balanced against the evidence Arcadia presented as to why GOALS was appropriate for Student as discussed in the preceding paragraph. Further, Father's opinion that a change of placement would disrupt Student's current progress was unpersuasive because Student's progress was minimal and did not justify staying in the current placement because of the substantial likelihood that Student would injure himself and others if he remained.

16. Equally unpersuasive was Parents' argument that GOALS proved to be ineffective in working with Student because Student engaged in the same maladaptive behaviors at GOALS during the 2018 extended school as Student did during the 2017-2018 school year. Ms. Mahoney, Ms. Leahy, and Ms. Herrera persuasively provided details as to why GOALS was a good fit for Student in terms of addressing the safety risk driving the removal; staff specifically trained to address Student's unique needs related to his emotional disturbance, such as his maladaptive behaviors, so he could work on his IEP goals and access his general education curriculum; and the ability to access the general education environment when maladaptive behaviors improved. Ms. Mahoney further explained that the 20 school days Student spent at GOALS during the extended school year were insufficient for Student to fully experience the program because

Student had not experienced the rewards stage of the program, but only the negative consequences stage, as Student engaged in maladaptive behaviors 18 out of the 20 days of the extended school year.

17. Arcadia established that GOALS could provide an age appropriate learning environment as Ms. Mahoney and Ms. Herrera were familiar with GOALS; Ms. Herrera, was an experienced behaviorist, who helped designed Student's behavior intervention plan and tracked Student's maladaptive behaviors and progress; both persuasively opined that GOALS provided the trained staff, the structure and therapeutic environment Student required to access his education. This provided Arcadia with a credible basis for concluding GOALS was appropriate for Student. Mother's characterization of the program's structure as abusive was unsupported. Student offered no evidence that GOALS could not provide an age appropriate environment for Student beyond parental preference for his current placement.

18. In conclusion, Arcadia met its burden of establishing that GOALS was an appropriate interim alternative educational setting for Student to keep him from injuring himself, and others, and to access his education.

ORDER

Maintaining Student's current general education placement at Hugo Reid Elementary School will result in a substantial likelihood of injury to Student and to others. GOALS is an appropriate interim alternative educational setting for Student. Arcadia may change Student's placement to an appropriate interim alternative educational setting at GOALS for not more than 45 school days, starting from the first day of attendance at GOALS.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing

decision must indicate the extent to which each party has prevailed on each issue heard and decided. Arcadia is the prevailing party on all issues.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: January 18, 2019

_____/s/

SABRINA KONG

Administrative Law Judge

Office of Administrative Hearings