

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2022010223

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ODYSSEY CHARTER SCHOOL,

v.

PARENTS ON BEHALF OF STUDENT.

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EXPEDITED DECISION

FEBRUARY 23, 2022

On January 7, 2022, Odyssey Charter School filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Parents on behalf of Student. Odyssey Charter's complaint contained expedited and non-expedited hearing claims. OAH set the expedited and non-expedited matters for separate hearings. The expedited claims proceeded to hearing with no continuances. This Decision resolves only the expedited claims.

Administrative Law Judge Paul H. Kamoroff heard this matter by videoconference on February 2, 3, 8, and 9, 2022.

Attorney Ernest L. Bell represented Odyssey Charter School. Chasityflame Price, Odyssey's Co-Director of Special Education, attended all hearing days. Kathleen Peters, Director, Desert Mountain Special Education Local Plan Area, also attended all hearing days.

Attorneys Melissa J. Amster and Andrea M. Valdez represented Parents and Student. Parents attended all hearing days. Student did not attend the hearing.

On February 9, 2022, the record was closed and the matter was submitted for decision. The ALJ granted the parties' joint request to submit written closing briefs during the submittal time. The parties each timely submitted closing briefs on February 10, 2022.

## EXPEDITED ISSUES

1. May Odyssey Charter School remove Student from Odyssey Charter's North Campus, sometimes called Altadena Campus, because Student's behavior on campus is substantially likely to result in injury to Student or to others?
2. May Odyssey Charter School place Student at Odyssey Charter's South Campus as an appropriate interim alternative educational setting, following Student's removal from Odyssey Charter's North Campus?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a free appropriate public education, called FAPE, that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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. (Ed. Code, § 48915.5.) A student receiving special education services may be suspended or expelled from school as provided by federal law. (20 U.S.C. §1412(a)(1)(A); Ed. Code, § 48915.5, subd. (a).) If a special education student violates a code of student conduct, school personnel may remove the student from his or her educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3).)

The law also provides that school personnel may remove a student to an interim alternative educational setting 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 certain circumstances. (20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g).)

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).) The 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).)

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. 49, 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, Odyssey Charter filed the complaint and has the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was five years and six months old and in kindergarten at the time of hearing. Student was eligible for special education under autism and speech and language impairment. Student resided within the Pasadena Unified School District and,

based upon Parents' choice, attended Odyssey Charter. Odyssey Charter was an independent charter school with two school locations, a North Campus, sometimes called Altadena Campus, and a South Campus. Student attended a general education classroom at the North campus.

# ISSUE 1: MAY ODYSSEY CHARTER SCHOOL REMOVE STUDENT FROM ODYSSEY'S NORTH CAMPUS, BECAUSE STUDENT'S BEHAVIOR ON CAMPUS IS SUBSTANTIALLY LIKELY TO RESULT IN INJURY TO STUDENT OR OTHERS?

Odyssey Charter contends Student engaged in a consistent pattern of elopement from the classroom and physical aggression that placed Student, classmates and school staff in substantial danger of injury. Odyssey Charter seeks permission to make an interim change of Student's placement from Odyssey Charter's North Campus to its South Campus, pending the outcome of a due process hearing on Odyssey Charter's individualized education program, called IEP, offer of placement at the South Campus.

Student contends that Odyssey Charter is barred from removing Student from the North Campus because this matter is not the result of a disciplinary action. Student also contends that maintaining Student's placement at Odyssey Charter's North Campus is not substantially likely to result in injury to Student or others.

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).) Conduct that has been found substantially likely

to result in injury includes hitting, kicking, shoving, biting, climbing on classroom furniture and cabinets, shouting obscenities, throwing objects at people, running out of the classroom, and banging on the doors of other classrooms. (*Long Beach Unified Sch. Dist. v. Student* (2008) OAH Case No. 2008030017.) Behaviors that have been found likely to result in injury also include:

- hitting an adult in the back, lunging at the teacher and trying to punch and hit her, yelling at and threatening people (*Fort Bragg Unified Sch. Dist. v. Parent on behalf of Student* (2008) OAH Case No. 2008100507);
- throwing desks, knocking over a computer, yelling and screaming, hitting, kicking, punching, and biting adults (*Fullerton Joint Union High Sch. Dist. v. Student* (2007) OAH Case No. 2007040584); and
- throwing objects, kicking other children, punching and kicking school staff, eloping from school and running into the street, knocking over another child, screaming, and destroying property (*Lancaster Elementary Sch. Dist. v. Student* (2006) OAH Case No. 2006030771).

If the ALJ deciding the case determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, the ALJ may order a change in placement of a child with a disability 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 child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP. (20

U.S.C. § 1415(k)(1)(D)(i); 34 C.F.R. § 300.530(d).) The interim alternative educational setting must also enable the child to receive, as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications that are designed to address the behavior violation so that it does not recur. (34 C.F.R. § 300.530(d)(1)(ii).)

These due process procedures may be repeated after the initial 45 days if the district “believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.” (34 C.F.R. § 300.532(a)(3).)

Student began attending the Odyssey Charter on August 12, 2021, the beginning of the 2021-2022 school year. He was five years old and in kindergarten. Student last attended a school placement, a private parochial school, in 2020, when he was three years old. Although diagnosed with autism at three and a half years old, Student had not been previously assessed or found eligible for special education.

## THE NORTH CAMPUS CLASSROOM

Based upon the normal enrollment process, Odyssey Charter placed Student in a general education classroom at the North Campus. The North Campus was an open campus, with unobstructed access from the classrooms to the school parking lot. Student’s classroom had three entrances/exits, each which led to an outside area where Student could access the school parking lot.

There was a fence surrounding the school parking lot and a gate that could be closed to deny access to the parking lot during weekends and school closures. The gate was open during school days and it was normal for parents, staff, and others to drive vehicles in and out of the parking lot throughout the school day.

Student's classroom was taught by Laura Chavez. Chavez was qualified to teach general education. Her classroom had one instructional assistant and 20 students. Chavez's classroom had the environmental distractions commonly found in general education classrooms. It was noisy, bright, had blocks and toys, and desks and cabinets that could be climbed on. Student immediately began demonstrating serious behavior problems in the kindergarten classroom, including spitting, hitting, punching, climbing on furniture, and throwing items. Student had a short attention span and was easily distracted by toys and preferred items in the classroom. Student refused to wear his face mask, a COVID-19 pandemic related restriction, removed his shoes and socks, and sometimes urinated in the classroom. Student eloped several times a day from the classroom, running past the teacher and aide and through one of the three classroom doors to the open campus. Once outside, Student frequently ran to the school parking lot, running through parked and moving cars. Student was frequently at risk of serious injury by falling off classroom furniture or by getting hit by a car. Student frequently injured school staff by hitting spitting, punching, pushing, kicking, or biting, and risked injuring other students by throwing chairs, stools and other objects. Student demonstrated these dangerous behaviors each school day.

By September, Odyssey Charter assigned two full-time staff members to Student, in addition to Chavez and the classroom aide, to help deescalate Student's behavior and to protect Student from himself and others. Nonetheless, Student continued to exhibit serious dangerous behaviors. Almost daily, Student hit, kicked, punched, or bit school staff, including breaking through their skin. Even with the aides, Student was distracted by items, climbed and jumped off furniture, and eloped from the classroom. Student was fast, and ran past the aides to the parking lot. As a result, Student was in danger of serious injury each day.



In class, Student wantonly threw chairs, stools, and other items at staff and near other students. Chavez sometimes barricaded the other students from Student. Even with multiple adult aides, Chavez was overwhelmed and it was necessary for a special education teacher from a nearby classroom, Sara Westin, to help Chavez with Student.

Westin was an experienced special education teacher and inclusion specialist. During the hearing, Westin persuasively testified that a general education placement was woefully inappropriate for Student. Instead, Student required a small, structured special day class, with less students and less distractions. Student also required a placement in a closed campus, where he would be less likely to elope to a dangerous place like a school parking lot.

Westin was called to assist Chavez almost daily, resulting in a serious disruption to Westin's class along with Chavez's class. Westin was seriously injured by Student on several occasions. Student pushed, punched, kicked and bit Westin, puncturing her skin. At the time of the hearing, Westin had several bruises caused by Student.

During hearing, Chavez persuasively echoed Westin's testimony, calling for a smaller, structured special day class, with less distractions, to help prevent Student from injuring himself or others. Each day, Chavez observed Student injure, seriously injure, or attempt to injure himself or others.

As a result of Student's short attention span, Student became distracted after just a few minutes of starting in the classroom. Student was easily distracted by other students, noise, lights, and preferred objects. And blocking student from elopement or

a preferred item was a common trigger for aggressive behavior. Daily, Student quickly escalated to maladaptive behaviors and was removed to spend the majority of the school day on a bench outside the classroom with his two aides. Chavez persuasively described that Student was in constant risk for self-injury and, emotionally testified, that she worried Student would get hit by a car in the school parking lot.

## THE IEP

Prior to the 2021-2022 school year, Student had not been assessed for special education or related services. Student had substantial academic and behavioral problems when he began Odyssey Charter, and it was clear to the school's staff and administration that Student required help beyond what was offered in general education. Accordingly, in August 2021, Odyssey Charter's Co-Director for Special Education, Chasityflame Price, provided Parents an assessment plan to evaluate Student for special education and related services. Parents agreed to the assessment plan and the school began assessing Student in Fall 2021.

On October 19, and 21, 2021, Odyssey Charter held initial IEP team meetings to review the assessments and develop Student's educational program. Student was significantly delayed and unable to, or refused, to complete standardized testing. Student could not read, count, or write, and was unable to follow one-step directions. Student had delayed school readiness and significant behavior problems in the classroom.

The school selected Savannah Phelan to conduct a functional behavior assessment. Phelan was an experienced behavior intervention developer and Board

Certified Behavior Analyst. A functional behavior assessment is used to identify and target maladaptive behaviors and develop interventions to reduce or eliminate those behaviors. Phelan's assessment targeted Student's aggression, elopement and protesting behaviors. Student could not remain in the classroom for more than five minutes and engaged in high rates of elopement. Beginning August 16, 2021, Parents were frequently called to the school to pick up Student because of his behaviors causing significant safety concerns. Triggers for maladaptive behavior included when Student was told to do something, denied access to a preferred item, or transitioned between activities.

From the functional behavior assessment, Phelan assisted the IEP team in formulating a behavior intervention plan, level two. A behavior intervention plan is a written plan developed to address individual behavioral needs of disabled students whose behavior interferes with his/her learning or that of others. The plan targets behavior problems and seeks to reduce or eliminate the behaviors using positive behavioral intervention strategies. A level two behavior plan is used for students with extreme behaviors. Student's behavior intervention plan was included on pages 31 through 35 of the IEP document, under the emboldened heading "Behavior Intervention Plan, Level II." The plan provided a careful and detailed process for targeting and reducing Student's problem behaviors, including aggression and elopement, through the introduction of positive replacement behaviors and strategies.

The October 2021 IEP team found Student eligible for special education and related services under the eligibility categories autism and speech and language

impairment. The IEP team formulated 16 goals in the areas of speech and language, academics, and behavior. To meet those goals, the IEP offered various accommodations and the following services:

- specialized academic instruction, 945 minutes per week;
- speech and language services, two times weekly;
- individual and consultative occupational therapy;
- intensive individual services, 1800 minutes per week;
- behavior intervention development services, 480 minutes per month;
- extended school year services; and
- the behavior intervention plan.

The intensive individual services consisted of an individual behavior aide, assigned to Student throughout the entire school day. The behavior intervention development services consisted of direct and consultative services by a Board Certified Behavior Analyst.

The Odyssey Charter IEP team recommended placement in a special day class at Odyssey's Charter's South Campus. The South Campus was an enclosed campus, and the special day class had less students, less distractions and a single classroom door, which led to an inside hallway. Odyssey Charter IEP team members believed the campus change was necessary to reduce Student's substantial risk of injury to himself at the North Campus, caused by eloping to the school parking lot. Odyssey Charter IEP team members also believed the environmental change, from a general education classroom to a small, self-contained special day class with less students, noise, transitions, and distractions, would reduce Student's problem behaviors and risk of injury to others.

Parents did not consent to the October 2021 IEP. Odyssey Charter staff was concerned for Student's safety and attempted to obtain Parents' consent to the IEP following the meeting. For example, Odyssey Charter Director Lauren O'Neill contacted Parents by phone and email for several weeks following the IEP team meeting to obtain consent or to schedule a meeting. Parents were frustrated by the school's frequent communications regarding Student's behaviors and believed the school was trying to pressure them into agreeing to the IEP. On November 3, 2021, Mother emailed O'Neill, requesting for the school to stop contacting Parents regarding signing the IEP. Odyssey Charter attempted to respect Parents' wishes by decreasing their contacts to Parents. Absent IEP consent, the school continued to provide Student two adult aides, along with the classroom aide and teacher.

On November 5, 2021, Parents consented only to the individual behavior aide and behavior intervention development services. While Parents disagreed with the majority of the IEP offer, Parents' consent to the special education behavior services served as consent to the school district's initial offer for special education eligibility.

Initially, Price mistakenly believed that Parents needed to consent to the IEP placement offer for Student to receive the behavior services. Price became aware of her mistake and Odyssey Charter began providing Student an individual behavior aide and behavior intervention development services in the general education classroom at the North Campus, within two weeks of Parents' consent to those services.

Odyssey Charter School reconvened an IEP team meeting for Student on November 18, 2021, to further discuss Student's needs and Parents' concerns. Along

with school staff, Parents attended with their attorney. Following this meeting, Odyssey Charter offered materially the same educational program as the October 2021 IEP offer. Parents did not consent to the IEP.

On December 1, 2021, Parents consented to the speech and occupational therapy services. On January 7, 2022, Odyssey Charter filed the present case, in great part because Student's behaviors were a danger to himself and others. As of the hearing, Parents had not consented to the remainder of the IEP, including the behavior intervention plan, goals, or placement.

## THE SUSPENSIONS

Odyssey Charter did not consistently suspend Student as a result of his problem behaviors or routine violations of school codes of conduct. Nor did the school track injuries to staff caused by Student. During the hearing, Price testified the school was reluctant to suspend Student because suspensions reinforced dangerous behaviors, as Student preferred being at home. Price also testified that it would be overwhelming to track staff injuries because Student injured staff every day, sometimes several times per day.

During hearing, Parents agreed with Price's analysis regarding the suspensions. Parents were dismayed that Odyssey Charter had suspended Student at all, believing that each suspension was perceived as a reward by Student, and a punishment to Parents. Student's aggressive behaviors increased following each suspension, as Student preferred being at home.

Nonetheless, Odyssey Charter did suspend Student on four occasions during Fall 2021, and recorded the cause for those suspensions in disciplinary reports. On September 13, 2021, Student was suspended for biting, hitting, and kicking staff members, and throwing blocks at other students in the kindergarten classroom. On October 29, 2021, Student was suspended for biting a staff member. On November 9, 2021, Student was suspended for eloping from his classroom, exposing himself, and urinating on a play structure in front of a seventh-grade class that was outside for a physical education class. On December 3, 2021, Student was suspended for destroying classroom materials, hitting and kicking staff, urinating in his classroom, urinating on the playground, taking off his clothes in the classroom, and defecating in the sand on the playground. Student's biting sometimes punctured the skin, causing serious injury.

Odyssey Charter informed Parents of each suspension and provided a written disciplinary record for each instance. School staff, including Ms. Price, frequently called Parents to inform them of Student's behaviors, in addition to the behavioral incidents that resulted in suspensions. Also, School staff frequently called Parents to request they pick up Student early from school, because of dangerous behaviors.

Parents were not receptive to these communications and requested for the school to stop contacting them. During hearing, Father testified that Parents were busy at work and frustrated by the negative contacts from school staff. Parents did not want to be contacted unless the school had positive information regarding Student. The school complied with Parents' request, and following December 2021, stopped contacting Parents regarding Student's behaviors.

## THE SCHOOL'S WITNESSES

Several school witnesses testified in support of Odyssey Charter. Co-Director Price, Board Certified Behavior Analyst Savannah Phelan, School Psychologist Heather Anastasia, Inclusion Specialist and special day class teacher Sara Westin, School Principal Sylvia Corona, classroom teacher Laura Chavez, and Board Certified Behavior Analyst and Behavior Intervention Developer Carol Santacruz, each testified in support of removing Student from the North Campus and placing him at the South Campus. Each school witness was familiar with Student and his IEP. Each school witness was an experienced educator and qualified to testify in their area of testimony. Each witness had observed Student at school on many occasions. Some, like Anastasia and Phelan, had formally assessed Student. Each witness had observed Student punch, hit, kick, push or bite a staff member. Westin and Chavez observed Student throw chairs or stools at or near other students. Chavez described how Student would climb and jump off desks and cabinets, risking serious injury to himself.

Westin and Santacruz were seriously injured by Student. For example, during a 97-minute uncontrollable tantrum, Student tackled Santacruz to the ground and continued to push her while on the ground. Santacruz suffered serious physical injury, including a strained muscle. She filed a worker's compensation claim and requires ongoing physical therapy as a result of her injuries caused by Student. Westin was hit, bit, kicked, pushed and punched by Student. Every school witness expressed valid and persuasive concerns that there was a substantial risk that Student would again hurt a staff member, or seriously hurt himself or another student.

Finally, each school witness had observed Student elope to the school parking lot on many occasions, risking serious injury or death.



The school witnesses testified persuasively and in conformity that environmental factors endemic to the general education classroom, and the North Campus, were intertwined with Student's behaviors and risk of injury. The number of students and distractions in the general education classroom constantly triggered Student's behaviors. The open layout of the North Campus created a safety risk for Student that could not be alleviated by modifying Student's educational program. In sum, it was necessary to remove Student from his educational placement to prevent Student from injuring himself or others.

## STUDENT'S WITNESSES

Student called Parents and Man Chi C. Dieu to support not removing him from the North Campus. Dieu was a Board Certified Behavior Analyst at Autism Learning Partners, a private agency, from September 2019, to December 2021. From February 2020, to December 2021, she supervised a behavior program at Student's home. The program was implemented daily by a behavior aide, under Dieu's weekly supervision.

Dieu described that Student had a history of behavior problems. Since he was three years old, Parents provided Student at-home behavior services, called applied behavior analysis, through Autism Learning Partners, to help curb those behaviors. The at-home therapy sought to reduce aggression and tantrums in the home and community. While Dieu testified that Student's aggressive behaviors had been extinguished in the home, she inconsistently stated that, as of December 2021, Student was physically aggressive, twice weekly, towards the at-home behavior aide. Dieu also inconsistently testified that Student was not easily distracted in the home, but later testified that Student was easily distracted by his sister, birds, and preferred items while at home.

Dieu observed Student at school on one occasion. This observation occurred at the beginning of the 2021-2022 school year, while Student attended the general education classroom at Odyssey Charter's North Campus. Dieu recalled that Student was resistant to prompting and redirection in the classroom. Student's in-class attention span was approximately one minute, before he began eloping. At one point during her 60-minute observation, Student ran outside the classroom and to the school parking lot, where he risked serious injury.

Notwithstanding her observation, Dieu testified the North Campus, general education classroom could be appropriate for Student, if substantial changes were made to Students' program and classroom. However, Dieu failed to testify that Student was not substantially at risk for injury in his educational placement. Student's closing brief relied heavily on Dieu's testimony to show that Student had improved behaviorally at home, along with her recommendation for continued placement in general education at the North Campus. Student asserts that because Student's behavior improved at home, it would also improve at school, if provided similar services. Student's argument fails as this case is not about a hypothetical program with desired changes, but whether there was substantial risk of injury to Student or others in his present program. Student's argument is also flawed because, even if Student's behavior had improved at home after years of intensive, individual behavior therapy, there was no evidence that showed those skills had been generalized into the community or classroom.

Parents also testified in support of not removing Student from his educational placement. Neither persuasively supported this request. For example, Father admitted the testimony from the school witnesses was correct and that Student was substantially at risk of injury at the North Campus.

There were problems with Mother's testimony. For example, Mother testified she was unaware that Student had harmed any school staff prior to the hearing. Yet, Mother was familiar with the suspension records showing that Student had bit, hit, and kicked staff members. Moreover, school staff had contacted Parents on numerous occasions, outside of the suspensions, including to pick Student up early from school, because of his aggressive behaviors.

Mother complained the school failed to implement Student's behavior intervention plan with fidelity, while intermittently testifying she did not know the IEP included a behavior intervention plan. Mother also testified she did not know she had to consent to the behavior intervention plan for it to be fully implemented. Given that the behavior intervention plan was prominently included in Student's IEP, and that Parents' attorney accompanied them to the November 2021 IEP team meeting and reviewed the IEP document, it is unreasonable to believe that Mother was unaware of the behavior intervention plan or that it required consent.

Mother also complained that Odyssey Charter did not communicate with her enough, or at all, regarding Student's behaviors. Yet, a preponderance of evidence showed that Odyssey Charter staff frequently contacted Parents regarding Student's behaviors and Parents had expressed a desire for less communication from the school staff. Overall, Mother's testimony was inconsistent or contrary to a preponderance of evidence submitted for this matter. Therefore, diminished weight was given to her testimony.

Consequently, Students witnesses did not persuasively dispute overwhelming evidence that showed there was a substantial risk of injury to Student or others if he remained in his educational placement.

In his closing brief, Student contends that Odyssey Charter is not permitted to remove Student from his present placement because this case was not an appeal from a manifestation determination review based upon a disciplinary action against Student. This identical argument was denied in OAH's January 27, 2022 Order Denying Motion to Dismiss. As noted in that Order and herein, an ALJ may authorize a change of placement to an interim alternative educational setting, regardless if Student's behavior was determined to be a manifestation of the student's disability, if 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).) Consequently, Student errs in this argument.

Based upon the foregoing, Odyssey Charter showed by a preponderance of evidence that Student's behavior on campus is substantially likely to result in injury to Student or to others, thereby warranting lawful removal from that placement.

## ISSUE 2: MAY ODYSSEY CHARTER SCHOOL PLACE STUDENT AT ODYSSEY'S SOUTH CAMPUS AS AN APPROPRIATE INTERIM ALTERNATIVE EDUCATIONAL SETTING, FOLLOWING STUDENT'S REMOVAL FROM ODYSSEY'S NORTH CAMPUS?

Odyssey Charter argues that placing Student at the South Campus will help prevent Student from injuring himself or others. Odyssey Charter therefore requests an order placing Student at the South Campus, as an interim alternative educational setting, pending a hearing regarding the appropriateness of its IEP offer for placement at the South Campus.

Parents contend that Student could be safe at the North Campus, if provided behavior services that mirror his home program, and therefore should not be removed to the South Campus.

If the ALJ deciding the case determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, the ALJ may order a change in placement of a child with a disability 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).) As found in Issue One, this Decision has found that maintaining Student's placement at the North Campus is substantially likely to result in injury to Student or to others. It is therefore proper to order a change of Student's placement to an interim alternative educational setting for not more than 45 school days.

If ordered, the interim alternative educational setting must enable the child to continue to participate in the general education curriculum as appropriate, and to progress toward meeting the goals set out in the child's IEP. (20 U.S.C. § 1415(k)(1)(D)(i); 34 C.F.R. § 300.530(d).) The interim alternative educational setting must also enable the child to receive, as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications that are designed to address the problem behavior so that it does not recur. (34 C.F.R. § 300.530(d)(1)(ii).)

The 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. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

On October 19, 21, and November 18, 2021, Odyssey Charter held IEP team meetings for Student. The purpose of the meetings was to review initial assessments, determine special education eligibility, and formulate a FAPE offer. Along with Parents, qualified school staff attended the IEP team meetings. After reviewing Student's assessments, present levels of performance, and classroom observations, the Odyssey Charter IEP team members recommended placement in a special day class at Odyssey's Charter's South Campus.

During the hearing, school witnesses Price, Phelan, Anastasia, Westin, Corona, Chavez, Santacruz, and South Campus special education teacher Amanda Larranaga, persuasively testified in support of placing Student at the South Campus. Each school witness was familiar with Student, his IEP, and the South Campus. Each witness was an experienced educator, qualified to testify in their area of testimony, and provided credible recommendations.

Unlike the open North Campus, the South Campus was an enclosed campus. The special day class had a single classroom door, which led to an inside hallway. To exit the school, Student would have to go through one door, down a hallway, and through the administrative office filled with adults, and then out another door. Logistically, it was a more difficult process to elope from the classroom to the school parking lot at the South Campus, than at the North Campus. Moreover, the special day class was self-contained with its own restroom. There were less transitions and opportunities for Student to escape to the school parking lot than at the North Campus. Odyssey Charter witnesses persuasively testified that placing Student at the South Campus would substantially reduce the risk of Student being seriously injured or killed by a moving car in the school parking lot.

Odyssey Charter IEP team members persuasively testified that the South Campus special day class had less distractions than Student's present placement, thereby reducing triggers for maladaptive behavior. Each school witness believed the environmental change, from a general education classroom to a small, self-contained special day class with less students, noise, transitions, and distractions, would reduce Student's problem behaviors and risk of injury to others.

Larranaga taught the requested alternative interim educational setting. She had a masters' in education and six years of teaching experience. Larranaga had experience implementing IEPs and behavior intervention plans. Larranaga was familiar with Student's IEP. She persuasively testified that Student's IEP, including accommodations, goals, behavior intervention plan, and services, could be implemented with fidelity in her classroom at the South Campus.

There was a maximum of nine students in Larranaga's classroom, with normally only five students present, because of students being pulled out for related services or inclusion in a general education class. There were four adults in the classroom, and more could be added as provided by Student's IEP.

It was normal for students in the special day class to receive general education curriculum, or to be pulled out to attend a general education classroom, per their IEPs. Larranaga persuasively described that Student could also access general education curriculum in her classroom, or be pulled out to a general education classroom, per his IEP.

Larranaga credibly described her classroom as a safe environment with minimal distractions. Larranaga had experience working with students with behavior problems

and was aware that reducing classroom items and noises helped reduce a student's distractibility, which was often a trigger for aggressive behaviors. Larranaga also had experience implementing behavior intervention plans. In sum, Larranaga credibly described the special day class at the South Campus as an appropriate interim educational setting for Student.

Overall, Odyssey Charter showed that its requested interim alternative educational setting would enable Student to be safe from self-injury or injury to others, to participate in the general education curriculum as appropriate, and to progress toward meeting the goals set out in his IEP. The interim alternative educational setting would also enable Student to receive a functional behavioral assessment, behavioral intervention services, and modifications designed to address his behavior problems.

Student failed to impugn the testimony of Odyssey Charters' witnesses or present persuasive evidence against placing Student at the interim alternative educational setting.

Based upon the foregoing, Odyssey Charter showed by a preponderance of the evidence that Odyssey's South Campus was an appropriate interim alternative educational setting for Student. Consequently, Odyssey Charter may place Student at the South Campus, following Student's removal from the North Campus.

## CONCLUSIONS AND PREVAILING PARTY

As required by 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.



Issue 1:

Odyssey Charter proved that it may remove Student from Odyssey Charter's North Campus, because Student's behavior on campus is substantially likely to result in injury to Student or to others.

Odyssey Charter prevailed on this issue.

Issue 2:

Odyssey Charter proved that it may place Student at Odyssey Charter's South Campus, as an appropriate interim alternative setting, following Student's removal from Odyssey Charter's North Campus.

Odyssey Charter prevailed on this issue.

## ORDER

1. Within fifteen days of this Decision, Odyssey Charter may remove Student from Odyssey Charter's North Campus, the Altadena Campus, and place Student in the special day class at Odyssey Charter's South Campus, as an interim alternative educational setting.
2. The interim alternative educational setting shall last a maximum of 45 school days, at which point Odyssey Charter shall return Student to his placement at the North Campus, unless otherwise ordered.
3. The non-expedited hearing shall proceed as set, unless otherwise ordered.

## RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

Paul Kamoroff  
Administrative Law Judge  
Office of Administrative Hearings