

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2023020875

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GROSSMONT UNION HIGH SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

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EXPEDITED DECISION

April 18, 2023

On February 27, 2023, the Office of Administrative Hearings, called OAH, received an expedited due process hearing request from Grossmont Union High School District, called Grossmont, naming Parent on behalf of Student. The complaint contained only expedited hearing claims which proceeded to hearing with no continuances.

Administrative Law Judge Sabrina Kong heard this matter by videoconference on March 21 and 22, 2023.

Attorney Sarah Sutherland represented Grossmont. Attorney Edward Southcott from Sutherland's firm also attended the hearing. Director of Special Education Rose Tagnesi attended all hearing days on Grossmont's behalf. Parent represented Student and attended all hearing days on Student's behalf.

On March 22, 2023, the last day of hearing, the record was closed, and the matter was submitted for decision. Grossmont's spring break was April 3 to 14, 2023. The ALJ allowed the parties to file closing arguments by March 29, 2023, but did not continue the matter. Grossmont filed closing arguments, but Student did not.

Grossmont's school site Making Education Relevant Innovative and Therapeutic is called MERIT Academy. The proposed placement of Oak Grove Residential Treatment Center is called Oak Grove.

## EXPEDITED ISSUES

1. Is maintaining Student's current placement at MERIT Academy substantially likely to result in injury to Student or others?
2. Was Grossmont's proposed placement of Student at Oak Grove an appropriate interim alternative educational setting for Student for up to 45 school days?

Issue 2 was delineated as a separate issue and renumbered for clarity because Grossmont specified Oak Grove as the interim alternative educational setting in its complaint and prehearing conference statement. The ALJ has authority to clarify a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School District* (9th Cir. 2010) 626 F.3d 431, 442-443).

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as the 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 a 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).)

The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Grossmont requested the hearing and bears the burden of proof. The factual statements in this Expedited 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 15 years old and in the 10th grade at the time of hearing. Student was placed in a special education setting with grade level general education curriculum. Student lived within Grossmont's boundaries at all relevant times.

The hearing exhibits and testimony used seven names and three pronouns all of which referred to Student and reflected Student's preference at different times. Thus, this Expedited Decision refers to Student using gender-neutral language.

## BACKGROUND

Student's middle school district found Student eligible for special education under the eligibility of emotional disturbance and offered Student an initial individualized education program, called an IEP, on June 8, 2021. Student experienced trauma at home including witnessing parental abuse. Student had many mental health and behavior related psychiatric hospitalizations. Student was medically diagnosed with

- depression,
- anxiety,
- post-traumatic stress disorder,
- obsessive compulsive disorder, and
- attention deficit hyperactivity disorder.

Student also struggled with suicidal ideation and self-harm. The June 8, 2021 IEP offered Student intensive mental health and behavior intervention services to address social emotional functioning and behaviors that interfered with Student's access to education. The June 8, 2021 IEP placed Student 80 percent in the special education and 20 percent in the general education settings as Student transitioned to Grossmont's Plus Program for ninth grade in the 2021-2022 school year.

The Plus Program was located on one of Grossmont's comprehensive general education high school campuses of approximately 1,800 students. The Plus Program was a separate special education program of two small classes with approximately 36

students in total, three teachers, three aides, and a therapist who provided immediate crisis management and support. The Plus Program students all received academic and therapeutic supports, and 120 minutes of monthly counseling services with access to extracurricular activities on the general education campus based on their IEP. The middle school IEP team determined the Plus Program was the appropriate placement for Student.

However, from June to September 2021, Student experienced multiple mental health crises. Student was hospitalized from June 23, 2021 through July 2, 2021, September 22, 2021 through September 25, 2021, and on September 27, 2021, for psychiatric care. Additionally, Parent placed Student at Newport Residential Treatment Center from July 8, 2021 to July 23, 2021, for 24-hour medical observation and care. Student did not attend school until September 30, 2021, of the 2021-2022 school year. When Parent informed Grossmont of Student's summer mental health crisis, Grossmont's IEP team was concerned that the Plus Program did not have enough therapeutic supports to meet Student's increased mental health needs.

On September 30, 2021, the IEP team determined that Student's updated mental health issues required changing the placement to MERIT Academy. MERIT Academy was a school with its own campus, and a total of approximately 70 to 80 students. MERIT Academy offered a higher level of mental health and behavioral supports than the Plus Program, and Student would receive specialized academic instruction and behavior intervention services in a special education setting 100 percent of the school day. MERIT Academy had three therapists and several aides who moved between classrooms offering, as needed, therapeutic support to all students. Each class at MERIT Academy had 10 to 12 students, a teacher, an instructional aide, and a rehabilitation

specialist. The rehabilitation specialist, received training slightly below that of a therapist from an outside agency, provided students with mental health and therapeutic support.

Because of Student's demonstrated need for increased mental health and behavioral supports during summer 2021, Grossmont offered MERIT Academy as the appropriate placement for the start of the 2021-2022 school year. Parent consented to placement at MERIT Academy.

Grossmont offered the same special education services and accommodations in the September 30, 2021 amended IEP, as in the June 8, 2021 IEP. It offered 120 minutes monthly each of group and individual counseling, and extended school year services. As accommodations, Grossmont offered Student extended time to complete work and up to five minutes outside of the classroom for physical movement breaks. Physical movement helped Student cope with anger and manage explosive behaviors. Grossmont offered consultation services between the counselor and teachers of up to 30 minutes monthly and 15 minutes of individual Parent counseling monthly to help Student generalize coping skills. Parent consented to the September 30, 2021 amended IEP. Student's first day of school at MERIT Academy was September 30, 2021.

## ISSUE 1: IS MAINTAINING STUDENT'S CURRENT PLACEMENT AT MERIT ACADEMY SUBSTANTIALLY LIKELY TO RESULT IN INJURY TO STUDENT OR OTHERS?

Grossmont contends Student's continued placement at MERIT Academy is substantially likely to result in injury to Student and others. Student disagrees that Student is substantially likely to injure anyone.

Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq. (2006), 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 also not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3) (2006).)

Parents and local educational agencies may request an expedited due process hearing of claims based on a disciplinary change of educational placement under title 20 United States Code section 1415(k). (20 U.S.C. § 1415(k).). An expedited hearing must be conducted within 20 school days of the date the 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) (2006).) The rules for a due process hearing under title 20 United States Code section 1415(k), must be consistent with those of other IDEA hearings. (34 C.F.R. § 300.532(c) (2006).)

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) (2006).) 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. (*Capistrano Unified*

*School Dist. v. Student* (2015) OAH case number 2015120782; *Long Beach Unified School Dist. v. Student* (2008) OAH case number 2008030017.). Behaviors that have been found likely to result in injury also included:

- From (*Fort Bragg Unified School Dist. v. Parent on behalf of Student* (2008) OAH case number 2008100507:
  - hitting an adult in the back
  - lunging at and trying to pinch and hit the teacher, and
  - yelling at and threatening people;
- From *Fullerton Joint Union High School Dist. v. Student* (2007) OAH case number 2007040584:
  - Throwing desks,
  - Knocking over a computer,
  - Yelling and screaming, and
  - Hitting, kicking, punching, and biting adults;
- From *Lancaster Elementary School Dist. v. Student* (2006) OAH case number 2006030771:
  - 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.



The Eighth Circuit Court held there was no requirement a child must be “truly dangerous” or shown to “intend to cause injury,” reasoning, even a child whose behaviors flow directly and demonstrably from their disability was subject to removal where that child posed a substantial risk of injury to themselves or others. (*Light v. Parkway C-2 Sch. Dist.* (8th Cir. 1994) 41 F.3d 1223, 1228.). The Eighth Circuit Court rejected that a child must first inflict serious harm before that child can be deemed substantially likely to cause injury. (*Id.* at 1230.) OAH also found that injury was not required to conclude a student was substantially likely to cause injury to self or others. (See *Capistrano Unified School Dist. v. Student* (2015) OAH case number 2015120782.)

Here, Student’s uncontrollable escalation of aggressive behaviors at MERIT Academy showed that Student’s continued placement there would substantially likely result in injury to Student or others. Specifically, Student’s uncontrollable behaviors included an attempted suicide, rage and aggression when denied a field trip participation, and aggressive defiance and self-injury during an incident with chalk.

## STUDENT’S AGGRESSION SURFACED IN FALL 2021 AT MERIT ACADEMY

On October 26, 2021, Grossmont held an IEP team meeting to review Student’s 30-day progress at MERIT Academy. Student consistently completed work individually and in groups, enjoyed physical activity, self-advocated well, and communicated to staff when Student needed space or a break. Although Student progressed academically, Student demonstrated extreme social difficulties that included yelling at peers and staff, aggressive defiance, and noncompliance to school staff. Student became enraged and

on one occasion, damaged school property by ripping window screens. Grossmont requested permission to conduct an educationally related mental health assessment, and Parent consented.

At home, between October and December 2021, Student self-cut, had high anxiety, and hit and argued with Parent. Parent placed Student in Willow Springs Residential Treatment Center in Nevada, called Willow Springs, on December 17, 2021. Willow Springs diagnosed Student with borderline personality disorder. Student did not return to MERIT Academy until March 14, 2022.

When Student returned to MERIT Academy, Grossmont's school psychologist, Brian Russell, completed the educationally related mental health assessment and issued a report on April 27, 2022. The educationally related mental health assessment included:

- standardized rating scales;
- interviews with Student, teachers, and Parent;
- a review of Student's cumulative file including educational records, prior assessments, past IEPs; and
- Student's mental health and hospitalization history.

Russell did not testify at hearing. However, at hearing, both special education director Tagnesi and MERIT Academy's principal, Alicia Owens, agreed with Russell's assessment findings and recommendations that Student needed a comprehensive 24-hour intensive mental health and behavioral support educational program.

Russell found that while Student still earned good grades in spring 2022, teachers reported Student possessed a significantly negative outlook on relationships

with teachers, peers, and overall self-perception. Teachers also reported clinically significant levels of anxiety and depression, excessive worry, and feelings of worthlessness that manifested in class as a need for frequent breaks to deescalate from emotional outbursts. Student self-reported deficits in social skills, perspective taking, and identifying other people's emotions. However, Student's teachers reported appropriate social skills and confirmed strengths in perspective taking and identifying other people's emotions. Russell concluded the teachers' perceptions of Student's peer interpersonal relationships differed significantly from Student's self-report, which resulted in a communication breakdown between Student and the teachers. Russell reported that Student required more intensive therapeutic supports than MERIT Academy's day program provided. He recommended that the IEP team consider adding educationally related mental health services to Student's IEP, which included monitoring and observing Student on a 24-hour basis, individual and group therapy, crisis stabilization and prevention support, family education, and coordination services.

## STUDENT'S UNCONTROLLABLE DYSREGULATION AND ESCALATION CONTINUED UPON RETURNING TO MERIT ACADEMY IN SPRING 2022

Since returning to MERIT Academy in March 2022, through January 2023, Student demonstrated weekly, and at times daily, uncontrollable dysregulated moods with extreme swings and escalation periods. Student vacillated from tearful to laughing with rapid cycling, during which Student was unresponsive to staff prompts. Student frequently

- eloped from campus into traffic,
- climbed gates,
- attempted to climb on the roofs of buildings,

- aggressively threatened to harm peers and school staff, and
- repeated self-harm statements.

MERIT Academy staff could not keep Student safe and had to call for community supports such as emergency services and the psychiatric emergency response team on many occasions to help manage Student's mental and behavioral health crisis.

## STUDENT'S ATTEMPTED SUICIDE

On May 24, 2022, Student arrived at school from home agitated, and requested permission to use the bathroom. MERIT Academy bathrooms were typically locked. When Student needed the bathroom, staff accompanied Student, unlocked the bathroom door, and waited outside for Student. On May 24, 2022, Student remained in the bathroom for a while, and in accordance with bathroom protocols, staff knocked on the door, and waited for a response. When staff did not get a response after the second knock on the door, staff opened the door and found Student blue-faced and on the floor with a sweatshirt sleeve tied around the neck. MERIT Academy staff called emergency medical services and the psychiatric emergency response team to transport Student to the hospital.

Grossmont held a May 26, 2022 IEP team meeting to discuss Student's suicide attempt and the educationally related mental health assessment results. Grossmont's IEP team noted that while academics were Student's strength when Student was mentally well, Student's deteriorating mental health and suicide attempt impacted Student's attendance, safety, and engagement with peers and the curriculum. Grossmont's IEP team shared that individuals Student considered to be friends would

suddenly become triggers for Student. Student struggled using coping skills when Student became uncontrollably dysregulated and enraged or, as described by Owens and Tagnesi, escalated "from zero to 100."

Grossmont's IEP team recommended placement in a residential treatment center with an integrated school program. Grossmont concluded that Student needed the intense therapeutic supports of 24-hour residential treatment and the small classes and specialized supports of a certified nonpublic school to access education. A residential treatment center provided a higher level of family and therapeutic supports to help Student learn and generalize coping skills than MERIT Academy could as a day school program. Grossmont offered additional behavioral services to the family and Student for addressing and coordinating home and school needs, called wrap services, at the May 26, 2022 IEP team meeting.

Despite Student's suicide attempt in May 2022, Parent disagreed with the residential treatment center placement recommendation and declined the wrap services. Parent stated in May 2022 that Student did not need a residential treatment center because Student already knew coping skills. Parent expressed that she could best address Student's stressors at home and did not want Student to leave home. San Diego County of Education's liaison for residents with increased needs attended the May 26, 2022 IEP team meeting. The liaison provided information, and offered to discuss residential treatment center and certified non-public school options with Parent after the IEP team meeting. Grossmont proposed the San Diego Center for Children and Oak Grove as options to explore because both were residential treatment centers with integrated certified non-public school programs that could meet Student's needs. Parent signed a release consenting to program explorations in May 2022, but revoked

the consent before the 2022-2023 school year started in August 2022. Parent objected to any residential treatment center and certified non-public school placement, and therefore disagreed with Grossmont's two proposed placement options.

Grossmont held another IEP team meeting to discuss placement options at the beginning of the 2022-2023 school year. Parent and Student attended the August 31, 2022 IEP team meeting. Parent stated that Student's mental health improved since the May 2022 attempted suicide. Student shared with the IEP team that the stressors were home related, and not school related. Although Parent questioned if MERIT Academy was still appropriate for Student, Student wanted to remain at MERIT Academy. Therefore, the IEP team agreed that Student would remain at MERIT Academy.

At the September 21, 2022 annual IEP team meeting, the MERIT Academy school therapist reported that Student had not met social emotional or behavioral goals because of Student's clinically significant levels of emotional distress. The IEP team noted that Student had been hospitalized five times for attempted suicide between September 2021 and September 2022. Further, Student did not attend class consistently and Student's grades had declined since the beginning of the 2022-2023 school year. The therapist recommended increased supports for Student to cope with distress. Grossmont increased parent counseling to 60 minutes per month; added 180 minutes per week of behavior intervention wrap services from an outside agency; and added 120 minutes yearly of career awareness and other transition services. Parent agreed to the increased services offered including the wrap services she declined on May 26, 2022.

## STUDENT AGGRESSIVELY THREATENED OWENS WITH PHYSICAL INJURY WHEN NOT PERMITTED TO PARTICIPATE IN A FIELD TRIP

On September 30, 2022, Student cursed at and aggressively threatened to physically hurt staff, and to commit suicide, when every teacher Student asked said Student could not participate in a beach field trip that day. Days earlier, Student had been informed that because of past behaviors, Student was not eligible for the beach field trip. Student arrived at school on the day of the field trip upset because of an argument that occurred at home. Multiple teachers told Student that Student could not participate in the field trip. Student nevertheless called Grandmother to bring beach paraphernalia and informed Owens, incorrectly, that a teacher gave Student permission to participate in the field trip. After confirming with the teacher that he had not given Student permission, Owens ended the discussion about the field trip and returned to her office.

Student was very upset and followed Owens. Student demanded to speak with Owens. Owens was on the phone and her administrative assistant informed Student that Owens was not available and would speak with Student later. Student saw Owens through a window, opened her office door, loudly cursed, yelled, called Owens impolite names, and refused to leave the office. Student cornered Owens behind her desk. Student turned red, ignored the administrative assistant's instructions to leave, and repeatedly threatened Owens with clenched fists stating:

- "I want to hit you so bad right now."
- "I am going to hit you bitch."
- "Your mother should have had an abortion. I wish you were never born."
- "You are a lying bitch."

The administrative assistant concluded that Owens was in danger based on

- Student's proximity to Owens,
- Student's pervasive threats, raised fists, rapid and disruptive speech pattern, and
- agitated presentation.

The administrative assistant called a police officer from the El Cajon Police Department stationed at MERIT Academy, called the School Resource Officer, for immediate help.

The School Resource Officer, a therapist, and program manager arrived quickly and attempted to de-escalate Student. The School Resource Officer moved Student out of Owens's office. Student sat on the floor outside of Owen's office, non-responsive to de-escalation attempts, cried, continued to threaten Owens, and threatened self-injury and suicide. When Owens attempted to leave her office so the team could continue de-escalation supports, Student jumped up to prevent Owens from leaving. The School Resource Officer positioned herself between Student and Owens so she could safely exit the office. Grandmother arrived at MERIT Academy's office and assisted with de-escalation. After Owens left, the team continued de-escalation supports for another 15 minutes. Student finally de-escalated and left with Grandmother. During this incident, MERIT Academy locked down the campus for approximately one hour to keep the other students safe.

On October 7, 2022, MERIT Academy staff held a meeting and determined that the field trip incident was a manifestation of Student's disability. Grossmont convened an IEP team meeting that same day to discuss appropriate placements for Student. Since August 31, 2022, Student exhibited emotional dysregulation daily, often resulting in Student leaving school early. Further, Student engaged in impulsive and unsafe



behaviors which resulted in staff calling the School Resource Officer to help de-escalate Student at least once a week. Grossmont's IEP team again recommended placement in a residential treatment center with an integrated non-public school.

Parent again disagreed with changing Student's placement at the October 7, 2022 IEP team meeting. Parent stated that Student's condition had generally improved, and explained that the uncontrollable aggressive behaviors were typical of Student's various diagnoses. While Parent conceded that Student's impulsive and explosive behaviors resulted in safety concerns, Parent concluded that Student should remain at MERIT Academy because Student had received good grades while there. Parent suggested other options including medication, more services, and a locked day facility that prevented elopement and enabled Student to return home at night. Parent also suggested medical placements including Discovery Mood and Evolve Treatment Center. Grossmont explained to Parent that it was required to offer placements that met Student's educational needs, and could not offer a medical program that did not include academic instruction. Grossmont also explained that California did not have locked facilities.

Parent alternatively requested that Student attend MERIT Academy four days per week, and work online at home one day per week so Student could access education without the triggers present at MERIT Academy. Parent wanted Grossmont to research and propose programs that complied with Parent's insistence that Student continue living at home. Grossmont did not agree to Parent's proposed school-home hybrid program. Grossmont continued to offer Student placement full-time at MERIT Academy.

On January 9, 2023, the IEP team met at Parent's request to discuss Student's schedule and placement. Parent told the Grossmont IEP team that Student wanted a typical high school experience. Parent stated that Student did not trust MERIT Academy staff and was not happy at MERIT Academy because it had too many triggers for Student's uncontrollable and aggressive behaviors. Parent renewed her request that Student attend school four days at MERIT Academy and work online at home one day. Grossmont agreed. Parent also requested that Student be matched with certain preferred teachers including a different therapist. Parent wanted a therapist with whom Student could trust and connect so therapy would be more successful. Grossmont agreed.

At the January 9, 2023 IEP team meeting, Parent asked that Grossmont specify milestones Student needed to meet before moving to a less restrictive setting than MERIT Academy, preferably a comprehensive high school campus. The IEP team agreed to revisit Student's progress in three months, and informed Parent that Student needed to attend classes daily, access IEP services, progress towards annual goals, exhibit positive behaviors, and work successfully within MERIT Academy's system before Student could move to a program on a comprehensive high school campus. The IEP team agreed that Grossmont would conduct an updated functional behavior assessment to identify emotional and behavior triggers in the school environment.

Since the beginning of the 2022-2023 school year, Student had not attended school or therapist meetings regularly because of uncontrollable escalation of aggressive behaviors and unexcused absences. By January 9, 2023, Student did not attend or participate in class discussions because Student insisted on completing work while sitting outside the classroom the entire school day. In reality, Student was not completing any work.

## STUDENT'S DEFIANCE OVER A CHALK DRAWING UNCONTROLLABLY ESCALATED INTO AGGRESSIVE THREATS OF PHYSICAL INJURY TO STAFF AND RUNNING INTO TRAFFIC

On January 31, 2023, Student was outside of the classroom without permission. Student became upset when Student thought that two other classmates were talking about, or making fun of, Student. Student obtained some chalk and used it to draw a face with two penises and wrote, "Cynthia is a bitch," on the sidewalk. A rehabilitation specialist told Student the picture was inappropriate and asked for the chalk. Student laughed and gave the chalk to a classmate who added inappropriate words to the drawing. The rehabilitation specialist informed both students that she would call their parents and walked toward the office.

Student became angry, ran, and stood between the rehabilitation specialist and the office door with a closed fist, stating, "Take off your glasses. I'm going to hit you in the face!" A teacher and an aide positioned themselves between the rehabilitation specialist and Student, and the teacher escorted the rehabilitation specialist away. Student ran toward the rehabilitation specialist. An aide stood in front of the rehabilitation specialist to ensure she entered the closest open room to safety. Both the aide and the teacher created a human wall as Student lunged at and attempted to push past them to prevent the rehabilitation specialist from escaping into a room.

Once the rehabilitation specialist entered the room and locked the door, Student repeatedly punched the windows, climbed a fence to get behind the building, and punched windows on the other side of the building. Student then climbed back

over the fence, shouted, and cursed at the rehabilitation specialist. When the School Resource Officer and Owens arrived to de-escalate and talk to Student, Student shouted and cursed profanities at them.

Student then tried to enter an adjacent school's campus, separated from MERIT Academy by a driveway and steps. Student believed the rehabilitation specialist's office was located on the adjacent campus and attempted to confront her there. The School Resource Officer brought Student back to MERIT Academy.

MERIT Academy called Grandmother to take Student home because Student's explosive rage had escalated beyond control. Student de-escalated by the time Grandmother arrived and had been using ice packs on Student's hands which were red from window pounding. When Grandmother talked to Student about Student's explosive behavior and the incident, Student escalated again, made self-injurious and suicidal statements, and ran off-campus into traffic. Two MERIT Academy staff members and Grandmother followed Student off-campus and eventually Student calmed and went home with Grandmother. During this incident, MERIT Academy locked down the campus for approximately one hour to keep the other students safe.

On February 6, 2023, Grossmont held a meeting and determined the chalk incident was a manifestation of Student's disability, and convened an IEP team meeting to review Student's needs. The IEP team concluded that Student's uncontrollable escalation of aggressive behaviors, and the chalk incident, showed that MERIT Academy could not provide the supports Student needed to be successful. Grossmont's IEP team also concluded Student's behaviors posed a significant threat to the safety of others and to Student. Grossmont offered Student placement at a residential treatment center with an integrated non-public school because Student needed the intensive supports in that

setting to access the curriculum. Grandmother attended the IEP team meeting on Parent's behalf and declined the placement offer. Grandmother told Grossmont's IEP team that Parent would not agree to placement in a residential treatment center.

On February 7, 2023, Grossmont offered Student a residential treatment center with an integrated school program, Oak Grove, as the appropriate interim alternative educational setting for Student because Student's dysregulated behaviors were substantially likely to result in injury to Student or others if Student remained at MERIT Academy. Parent agreed that Merit Academy was no longer appropriate for Student, but disagreed that Student's continued placement at MERIT Academy would result in injury because Parent did not want Student to leave home and be placed in a residential treatment center. Parent kept Student home from approximately February 27, 2023, after Grossmont filed for due process hearing in this case.

## GROSSMONT PROVED THAT STUDENT'S CONTINUED PLACEMENT AT MERIT ACADEMY WOULD SUBSTANTIALLY RESULT IN INJURY

At hearing, Tagnesi and Owens specifically and persuasively opined that the May 2022 attempted suicide, the October 2022 field trip incident, and the January 2023 chalk incident showed that Student's continued placement at MERIT Academy would substantially likely result in injury to Student or others. Both Tagnesi and Owens were credible and persuasive because of their extensive training, experience, and familiarity with special education students with high need levels and with Student's needs.

Tagnesi and Owens were both psychologists experienced and trained in working with special education students with extensive needs. Tagnesi held a master's degree in counseling, a special education credential, and a multiple subjects credential qualifying

her to teach self-contained classes. She worked in special education for approximately 30 years both as a teacher and an administrator overseeing IEPs for students in a variety of special education settings. Tagnesi first became aware of Student when Student transitioned into Grossmont, and became more involved with Student's needs after the May 24, 2022 attempted suicide at MERIT Academy.

Owens held a bachelor's degree in psychology and a master's degree in educational school psychology. Prior to becoming a high school principal, Owens had approximately 15 years of experience as a school psychologist. As a school psychologist, Owens worked with special education students in a variety of placements, including 24-hour residential treatment centers and non-public schools. Owens also conducted over 250 educationally related mental health assessments.

Owens was personally familiar with Student. Owens consulted with the program specialist on Student's placement when Student transitioned into Grossmont, and attended Student's IEP team meetings. Owens was the target of Student's enraged aggression during the field trip incident requiring help from a School Resource Officer to ensure her safety. Owens also witnessed Student's multiple dysregulation and uncontrollable escalation of aggressive behaviors at MERIT Academy, including Student's attempted suicide and aggression towards a rehabilitation specialist during the chalk incident.

Owen's thoughtful and reasoned responses and demeanor when responding to questioning by both sides rendered her testimony credible. Her extensive background in working with emotionally dysregulated students and her familiarity with Student made her opinions on Student's needs and the program and services to meet those needs persuasive. Owens opined that when Student became uncontrollably dysregulated,

Student's behaviors escalated so quickly that MERIT Academy and its team of trained therapists and staff could not ensure Student's and others' safety. MERIT Academy was unsuccessful in preventing Student's school bathroom suicide attempt or injuries to Student's hand from repeated window pounding during the chalk incident. Likewise, MERIT Academy had great difficulty preventing injury to its staff and Student in both the field trip and chalk incidents when Student's anger escalated out of control. Even with support from the School Resource Officer, MERIT Academy staff could not prevent Student from climbing fences, running from campus into traffic, and punching objects.

Grossmont documented other incidents where Student made self-injurious and suicidal statements, yelled, cursed, and aggressively threatened others at MERIT Academy, from September 2021 through January 2023. Although Grossmont's witnesses did not testify specifically as to each of these other incidents at the hearing, both Tagnesi and Owens credibly described them as incidences when MERIT Academy could not ensure safety because Student was uncontrollably enraged, escalating "from zero to 100." Student's frequent and rapid uncontrollable dysregulation and escalation of behaviors rendered Student substantially likely to hurt self or others if Student remained at MERIT Academy.

Parent was the only witness who opined that Student was unlikely to injure self or others at MERIT Academy. Parent was a nurse who worked with patients with schizophrenia, bi-polar and borderline personality disorders, and was trained to contact the police, the psychiatric emergency response team and other community supports if she determined that a patient was suicidal. Parent distinguished between a plan to commit suicide and suicidal ideations which did not include an actual plan. Parent

concluded that Student did not have an actual plan to commit suicide, so would not actually harm self or others because by January 2023, Student's condition had generally improved since September 2021.

Parent offered conflicting and inconsistent opinions at hearing regarding the likelihood of Student injuring self and others. Parent disputed that the May 24, 2022 bathroom incident was a suicide attempt, describing the incident as Student wrapping a sweater around the neck too tightly. Parent then conceded the May 24, 2022 incident may have been a suicide attempt, but to minimize the likelihood that Student would attempt self-harm in the future, Parent emphasized that it was the only suicide attempt at MERIT Academy. Parent's opinions were unsupported by any evidence other than parental optimism and were therefore unpersuasive.

Student did not successfully rebut Grossmont's showing that Student's continued placement at MERIT Academy would substantially likely result in injury to Student or others. Parent did not dispute Owens's or Tagnesi's opinions that Student's impulsive, aggressive behaviors, and uncontrollable rages, impacted safety at MERIT Academy. Parent was not an educator or psychologist and was not at MERIT Academy witnessing Student's sudden uncontrollable dysregulation and escalations. Therefore, Parent's opinions on whether Student's sudden dysregulation and escalations in the school environment would likely result in injury, and MERIT Academy's ability to maintain safety, were unpersuasive in comparison to Owens's and Tagnesi's opinions on these subjects. Both Owens and Tagnesi were experienced psychologists and had personal knowledge of MERIT Academy's capabilities and familiarity with its team's ability to manage Student's school behaviors.



The totality of evidence including Student's suicide attempt, Student's repeated statements of self-injury, and Student's sudden and rapid dysregulation and escalation incidents between September 2021 and January 2023, showed that Student's continued placement at MERIT Academy would substantially likely result in injury to Student or others.

## ISSUE 2: WAS GROSSMONT'S PROPOSED PLACEMENT OF STUDENT AT OAK GROVE AN APPROPRIATE INTERIM ALTERNATIVE EDUCATIONAL SETTING FOR STUDENT FOR UP TO 45 SCHOOL DAYS?

Grossmont contends that Oak Grove would be an appropriate interim alternative educational setting for Student for up to 45 school days because Student needs 24-hour intensive therapeutic supports to access the curriculum. Student contends that Oak Grove is inappropriate because previous parentally placed residential treatment centers were ineffective. Student also contends that Oak Grove is inappropriate because contact between Student and the family was dependent on Student demonstrating appropriate behaviors. Student further contends Student would likely elope from an unlocked facility like Oak Grove. Student contends a virtual on-line educational home placement program was appropriate for Student.

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) (2006).) 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) (2006).) The interim alternative educational setting must also enable the child to receive, as appropriate, a functional behavioral assessment, and 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) (2006).) 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) (2006).)

The student's IEP team determines the interim alternative educational setting. (20 U.S.C. § 1415(k)(2); 34 C.F.R. § 300.531 (2006).) 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. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*).)

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 special circumstances. (20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g) (2006).)

Grossmont persuasively showed that Oak Grove was the appropriate alternative interim educational setting for Student for up to 45 school days. Tagnesi and Owens opined that Oak Grove provided the comprehensive intensive therapeutic supports to manage Student's dysregulated behaviors and implement Student's IEP so Student could access education and progress on IEP goals. For example, Student had arrived at school dysregulated from home triggers which rapidly escalated beyond MERIT Academy staff's control on the days of the suicide attempt and the day of the field trip incident. Further, Student reported at the August 2022 IEP team meeting that the

triggers were primarily home, and not school, related. Student's home uncontrollable dysregulated behaviors included arguing with and hitting Parent and cutting self. In the 2022-2023 school year, Student did not attend most of the classes, did not complete work at school or at home, and was less successful academically, receiving two Ds and four Fs by the end of the first semester. This decline was because of Student's intensive mental health and behavioral needs.

Owens and Tagnesi were familiar with Student's mental health and behavioral challenges in the school setting and with Oak Grove. Both had visited and placed other students at Oak Grove. Therefore, Owens's and Tagnesi's opinion that Oak Grove was an appropriate interim educational setting for Student for up to 45 school days was persuasive.

Oak Grove is a residential treatment center with an embedded certified non-public school. It is located within San Diego County, the same county in which Grossmont is located. Oak Grove has a high staff to student ratio, and 24-hour supports including therapists present both day and night. Oak Grove has a residential component that Student needs for mental health and behavioral management to keep Student and others safe. It has an integrated educational non-public school component so Student can continue to participate in the general education curriculum and progress on IEP goals. Oak Grove provides the intense therapeutic supports Student requires that a day school without the integrated residential and educational components cannot. Oak Grove has already accepted Student based on Tagnesi's submission of Student's records, which were redacted of personally identifiable information because Parent did not authorize a release of information about Student. (See 34 C.F.R. § 99.31(b)(1)(2012) [Educational agencies may share redacted copies of a student's educational records without parental consent after removal of all personally identifiable information].)

Student required 24-hour intensive therapeutic supports from a residential treatment center so Student could access education. Despite Grossmont's offer of increased and different supports to Student, Student did not meet any IEP goals, received declining grades, and was on the verge of failing all classes during the 2022 2023 school year. Grossmont matched Student with preferred teachers, changed therapists, and offered four-days in school and one-day of online home learning. By January 2023, Grossmont exhausted available supports and accommodations to manage Student's dysregulated and escalated behaviors in its attempt to educate Student safely at MERIT Academy. Overwhelming evidence showed that Student required intensive integrated residential and educational services for mental health and behavioral management so Student could access education, which were available at Oak Grove.

Parent was the only witness who opined that Oak Grove was inappropriate and objected to placing Student in a residential treatment center. Parent opined that Parent and Grandmother could keep Student safe and educate Student at home with an online program. Parent opined that the appropriate placement for Student was unequivocally a virtual online home study program until Student could take and pass a California high school proficiency exam and transition to a community college. Parent also opined that Student would run away from Oak Grove, or any unlocked facility, as Student had done so in the past from unlocked campuses. Through a phone conversation with an Oak Grove representative, Parent realized that Student's ability to call Parent and Grandmother from Oak Grove would be dependent on Student behaving appropriately. Although Oak Grove permitted family contact and visits, Parent concluded that unrestricted access to family trumped all therapeutic and educational supports that Oak Grove offered Student.

Parent's opinions and objections to Oak Grove were unsupported, unpersuasive, and unsuccessful in rebutting Grossmont's showing that Oak Grove was the appropriate interim alternative educational setting for up to 45 school days. Parent's objections to Oak Grove were based on past experiences with placing Student in medical residential treatment centers, and not based on personal knowledge of educational residential placements. Student had never attended an integrated residential treatment center and certified non-public school. Parent was not familiar with Oak Grove or residential treatment centers with integrated certified non-public schools. Parent never visited Oak Grove. Finally, Parent's opinions were clouded by a strong preference for Student to remain at home with Parent and Grandmother and an aspiration for Student to have a typical high school experience, as opposed to an objective evaluation of Student's educational needs.

Student did not successfully rebut Grossmont's showing that an integrated residential treatment center and non-public school, specifically Oak Grove, was appropriate for Student. Although Parent preferred Student to be educated at home in a virtual online program, parental preference does not dictate the appropriate interim alternative education setting. (See 20 U.S.C. § 1415(k)(2); 34 C.F.R. § 300.531 [The IEP team determines the interim alternative educational setting].) The IDEA does not require parental consent to placement in the interim alternative educational setting, or that Grossmont place Student in the interim alternative educational setting that Parent preferred. (See *Adams*, 195 F.3d at 1149.) Further, Grossmont was legally required to offer Student an appropriate interim alternative educational setting and could not shift the duty to educate Student for Parent to undertake at home. (*Id.*) A virtual online program was also not an appropriate interim alternative educational setting for Student

because the evidence was overwhelming that Student could not access education or progress on Student's IEP goals without intensive therapeutic supports for Student's mental health and behavioral struggles.

Grossmont proved by a preponderance of the evidence that Oak Grove is an appropriate interim alternative educational setting for Student for no more than 45 school days.

## 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:

Maintaining Student's current placement at MERIT Academy is substantially likely to result in injury to Student or others.

Grossmont prevailed on Issue 1.

### ISSUE 2:

Oak Grove is an appropriate interim alternative educational setting for Student for up to 45 school days.

Grossmont prevailed on Issue 2.

## ORDER

Grossmont may immediately remove Student from MERIT Academy and place Student at Oak Grove, which shall be Student's interim alternative educational setting for not more than 45 school days from the first date of Student's attendance at Oak Grove.

## 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.

Sabrina Kong  
Administrative Law Judge  
Office of Administrative Hearings