

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

SANTA ANA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2023030528

DECISION

JULY 10, 2023

On March 15, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from the Santa Ana Unified School District, naming Student. The matter was continued on April 4, 2023. Administrative Law Judge Charles Marson heard the matter by videoconference on May 16, 17, 18, 23, 30 and 31, 2023.

Jennifer Fant, Attorney at Law represented Santa Ana. Rae Rice, Executive Director for Special Education, attended all hearing days on Santa Ana's behalf, except for one afternoon during which Diane Nicholas, Assistant Director of Special Education, attended for Santa Ana. Parents represented Student. Both Parents were present on May 16, 2023. Father was present on May 17, 18 and 23, 2023. No one appeared for Student on May 30 and 31, 2023.

On May 31, 2023, the matter was continued to June 19, 2023, for the filing of written closing briefs. Santa Ana timely filed a closing brief, but Student did not. The record was closed, and the matter was submitted on June 19, 2023.

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, 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 Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education 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 IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, called a FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) 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 Santa Ana requested the due process hearing and bore 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 nine years old and in third grade at the time of hearing. He resided within Santa Ana's geographic boundaries at all relevant times. Student was eligible for special education in the categories of emotional disturbance and other health impairment.

ISSUE

Does Santa Ana's proposed 2022 IEP, as amended February 15, 2023, with placement at Rossier Park non-public school, offer Student a FAPE, such that Santa Ana may implement it without Parents' consent?

Santa Ana wants to move Student from his special day class in the ATLAS program on the Santa Ana's Elementary School campus to Rossier Park School, a non-public school. The ATLAS program is a group of special day classes for students with behavioral challenges. Santa Ana contends that Student cannot receive a FAPE in his current placement because Santa Ana cannot adequately control his undesirable behaviors in its special day class. It argues that his needs, particularly in the area of mental health, require placement in a smaller, safer, more specialized environment such as Rossier Park. On February 15, 2023, Santa Ana proposed to Parents an IEP that would have moved Student to Rossier. Parents agreed to nearly all of the IEP offer, but not to the change of placement to Rossier.

Student did not file a closing brief, but Parents each testified, and their contentions may be inferred from that testimony and their examination of other witnesses. Student contends that he is receiving a FAPE in his current special day class and that, while his conduct is sometimes difficult, he is succeeding academically and his behaviors are improving enough to allow him to remain there. Student has changed schools frequently, and Parents believe that another change, the proposed move to Rossier, would destabilize and upset him, and separate him from his friends. Parents also believe that Student's behaviors could be controlled with a one-to-one aide.

Parents presented no witnesses except themselves. Their only criticism of the offered IEP was that they did not agree that Student should be moved to Rossier or anywhere else.

THE OFFERED IEP MEETS ALL THE PROCEDURAL REQUIREMENTS OF THE LAW

PARENTS PARTICIPATED FULLY IN THE CREATION OF THE IEP

Federal and State law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) At IEP team meetings parents have the right to present information in person or through a representative. (Ed. Code, § 56341.1.)

An IEP team must include at least one parent; a representative of the local educational agency; a regular education teacher of the child if the child is, or may be, participating in the regular education environment; a special education teacher or

provider of the child; an individual who can interpret the instructional implications of assessment results, and other individuals who have knowledge or special expertise regarding the pupil, as invited at the discretion of the district, the parent, and when appropriate, the student. (20 U.S.C. § 1414(d)(1)(B)(i), (iv-vi); Ed. Code, § 56341, subds. (b)(1), (5-6).) 7.

A parent has meaningfully participated in the development of an IEP when the parent is informed of his child's problems, attends the IEP meeting, expresses his disagreement with the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688, 693.) A parent who has an opportunity to discuss a proposed IEP, and whose concerns are considered by the IEP team, has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.)

Santa Ana afforded Parents full participation in the process that produced the February 15, 2023 IEP offer. Santa Ana IEP team members drafted the initial IEP at IEP team meetings on September 27, October 3, and October 5, 2022. They amended it during another team meeting on December 8, 2022. At another team meeting on January 12, 2023, the parties discussed two emergency incident reports from the previous month. In between meetings, the parties communicated by telephone and email. On February 15, 2023, they met again, and that last meeting produced the offer at issue here.

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SANTA ANA'S FEBRUARY 15, 2023 IEP COMPLIES WITH ALL OTHER PROCEDURAL REQUIREMENTS OF THE IDEA

In its written content, the proposed IEP of February 15, 2023, addresses all the subjects that the IDEA and related laws require it to address. It contains:

- an identification of Student's disability;
- a statement of how it affects his involvement in the general education curriculum;
- his present levels of academic achievement and functional performance, including strengths, weaknesses and assessment data;
- descriptions of his progress on previous goals;
- eight measurable annual goals; and
- a variety of supplementary aids, accommodations, modifications and related services including a one-to-one aide, extended school year, and transportation.

Santa Ana's compliance with the most important of these requirements is briefly reviewed here.

SANTA ANA PROVIDED AN ACCURATE STATEMENT OF STUDENT'S NEEDS BASED ON APPROPRIATE ASSESSMENTS

An IEP must contain a statement of the student's present levels of academic achievement and functional performance, including the effects of the student's disability on the student's involvement and progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R § 300.320 (a)(1)(2007); Ed. Code, § 56345, subd. (a)(1).)

The present levels of performance become baselines for designing educational programming and measuring a student's future progress toward annual goals.

A student's present levels of performances must be based on adequate assessments. Before any action is taken with respect to the initial placement of an eligible student in special education, an individual assessment of the student's needs must be conducted by qualified persons. ((34 C.F.R. § 300.322(b)(1)(i)(2006); Ed. Code, § 56320.) The school district must provide adequate notice of proposed assessments in an assessment plan and obtain parental consent for them. (34 C.F.R. § 300.304(a)(2006) ; Ed. Code, § 56321, subd. (a).)

The assessors must report their findings in writing, and the assessment reports must be given to the parent of the child assessed. (20 U.S.C, § 1414(b)(4)(B); 34 C.F.R. § 300.306(a)(2)(2017); Ed. Code, § 56329, subd. (a)(3).) The assessors, or someone else able to interpret the educational implications of the assessments, must attend an IEP team meeting to discuss their findings and answer questions. (34 C.F.R. § 300.321(a)(5)(2007); Ed. Code, § 56341, subd. (b)(5).)

Santa Ana's assessments of Student complied with all of these requirements. In September and October 2022, qualified assessors conducted assessments of Student in the areas of

- academic achievement,
- health,
- intellectual development,
- language/speech communication development,

- motor development,
- social-emotional behavior, and
- adaptive behavior.

In fall 2022 Santa Ana also administered a functional behavior assessment and evaluated Student's need for a special circumstances instructional assistant. In addition, from August 24, 2022 to February 15, 2023, Santa Ana's Behavior Support Team closely tracked and charted Student's behaviors, usually on a daily basis. In crafting the offered IEP, the IEP team was unusually well informed.

The offered IEP sets forth Student's present levels of academic achievement and functional performance based on the assessments completed in September 2022, the functional behavioral analysis and special circumstances instructional assistant analysis that followed and the data gathered by the Behavior Support Team. The present levels describe in detail how Student's disabilities affect his progress and are reliable bases for formulating annual goals.

GOALS

An IEP must contain a statement of measurable annual goals designed to:

1. meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and
2. meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).

The offered IEP contains eight annual goals. Three of them address Student's relationship and self-management skills. Since writing is especially difficult for Student and sometimes triggers his misbehavior, three of the goals address various aspects of writing. Two goals addressed his needs in mathematics.

The annual goals were all carefully drafted, and addressed all of Student's areas of need. They reflected the findings of Santa Ana's assessments. All of the annual goals had specific baselines reflecting Student's present levels of academic and functional performance so that they were measurable. The goals in the offered IEP were needed and measurable. No additional goals were needed.

ACCOMMODATIONS AND MODIFICATIONS

An IEP must also contain a statement of the program modifications or supports that will be provided for the student to advance appropriately toward attaining his annual goals, and to be involved in and make progress in the regular education curriculum; and a statement of any individual accommodations that are necessary to measure the student's academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VI)(aa); Ed. Code, § 56345, subds. (a)(4), (6)(A).)

The accommodations in the offered IEP contained

- several self-regulation strategies,
- several adaptive writing strategies,
- visual cues,
- the assistance of a scribe,
- speech-to-text conversion,
- multiple or frequent breaks,

- a human reader,
- flexible seating to ensure auditory and visual access,
- a behavioral chart,
- a reward/point system,
- a visual schedule,
- reinforcement options and
- additional time on tests and projects.

Modifications included the provision of alternative books with concepts similar to standard texts but at an easier reading level, and shortening assignments to focus on mastery of key concepts.

These accommodations and modifications directly addressed the specific difficulties Student had in his education. Nothing in the record suggested that any additional accommodation or modification was needed. The accommodations and modifications were adequate, and no more were needed.

RELATED SERVICES

The related services Student required were counseling, parent counseling, and occupational therapy. Parents did not argue that there were any related services Student needs that would not be available to him at Rossier, and the record did not reveal any. The one related service Rossier does not deliver on campus is occupational therapy. Cheryl Henderson, Student's current occupational therapist, established that if the IEP were implemented, she would travel to Rossier to provide occupational therapy to Student. She already does that for other District students at Rossier.

OTHER REQUIREMENTS FOR IEP'S

The IDEA requires an IEP to contain a wide variety of matters in addition to those already discussed. Student does not contend the offered IEP was defective for failure to contain any of those additional required provisions. Independent examination of the IEP reveals that it does contain all of the matters, statements, and provisions required by law.

In its written content, the proposed IEP of April 10, 2017, addressed all the subjects that the IDEA and related laws required it to address. It contained

- an identification of Student's disability;
- a statement of how it affects his involvement in the general education curriculum;
- his present levels of academic achievement and functional performance, including strengths, weaknesses and assessment data;
- descriptions of his progress on previous goals;
- a statement that he will participate in alternate statewide assessments and curriculum;
- eight measurable annual goals; and
- a variety of supplementary aids, accommodations, modifications, supports; and related services including a one-to-one aide, extended school year, and transportation.

The proposed IEP contained everything the law requires it to contain, and Student does not argue otherwise.

The evidence showed that in creating and offering the disputed IEP, Santa Ana afforded Parents all the procedural rights to which they were entitled. The offer was procedurally valid.

THE OFFERED IEP MEETS ALL THE SUBSTANTIVE REQUIREMENTS OF THE LAW

STUDENT'S CURRENT PLACEMENT IS NOT HIS LEAST RESTRICTIVE ENVIRONMENT

In the ATLAS program, Student studies core subjects among disabled children only, but he is mainstreamed for lunch and recess with nondisabled peers. Rossier Park's students are all disabled children. Rossier has no nondisabled students on the campus, though it offers some mainstreaming to some students. Rossier Park is a more restrictive environment than the ATLAS program.

Federal and state law require a school district to provide special education in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. 1412(a)(5); 34 C.F.R. § 300.114(a)(2006); Ed. Code, § 56040.1.) This means a school district must educate a special needs pupil with nondisabled peers "to the maximum extent appropriate," and the pupil may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. §300.114(a)(2)(ii)(2006); Ed. Code, § 56040.1; see *Sacramento City Unified Sch. Dist. v. Rachel H.* (1994) 14 F.3d 1398,1403; *Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1136-1137.)

Placement in general education is not an absolute requirement. A placement must ensure that a student receives a FAPE: "The IDEA does not permit, let alone require, a school district to mainstream a student where the student is unlikely to make significant educational and non-academic progress." (*D.F. v. Western School Corp.* (S.D.Ind. 1996) 921 F.Supp. 559, 571 [citation omitted]; see also *Rowley, supra*, 458 U.S. at p. 181, fn. 4.)

Consequently, courts frequently approve placements outside of general education. When it is clear that a student cannot benefit academically or socially from general education, the Ninth Circuit has repeatedly approved placements for all or part of a school day in self-contained special education classrooms. (See, e.g., *Baquerizo v Garden Grove Unified Sch. Dist.* (9th Cir. 2016) 826 F.3d 1179, 1181, 1187-1188; *A.R. v. Santa Monica Malibu Sch. Dist.* (9th Cir. 2016) 636 Fed.Appx. 385, 386 [nonpub. opn.]; *B.S. v. Placentia-Yorba Linda Unified Sch. Dist.* (9th Cir. 2009) 306 Fed.Appx. 397, 398-400 [nonpub. opn.]; *Ms. S. v Vashon Island Sch. Dist., supra*, 337 F.3d at pp. 1136-1137; *Clyde K. v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 35 F.3d 1396, 1398, 1400-1402.]

In *Rachel H., supra*, 14 F.3d 1398, the Ninth Circuit set forth four factors that must be evaluated and balanced to determine whether a student is placed in the least restrictive environment:

- the educational benefits of full-time placement in a regular classroom;
- the non-academic benefits of full-time placement in a regular classroom;
- the effects the presence of the child with a disability has on the teacher and children in a regular classroom; and
- the cost of placing the child with a disability full time in a regular classroom. (*Id.* at p. 1404).

Application of these criteria to Student shows that the ATLAS program is not his least restrictive environment because he cannot make satisfactory progress there and is disruptive to others.

STUDENT IS NOT BENEFITING ACADEMICALLY FROM HIS CURRENT PLACEMENT

STUDENT'S BEHAVIORAL CHALLENGES

All witnesses at hearing, except Parents, established that Student's maladaptive behaviors were preventing him from obtaining significant academic benefit from the ATLAS program. The facts described below were derived from the testimony of Santa Ana's witnesses including

- the District's Coordinator of Special Education,
- Student's classroom teacher and case manager,
- a school psychologist,
- a behavior analyst,
- an educational specialist and former case manager,
- an occupational therapist,
- Seneca Services wraparound therapist, and
- Rossier's Program Director.

The testimony of the District witnesses was consistent and detailed, and was supported by extensive documentary evidence. Parents cross-examined two of them without revealing any weaknesses in their testimony, and then ceased to participate in the hearing. The District's witnesses were uniformly credible and their testimony is

given substantial weight here. Their testimony was essentially unchallenged. All of them opined that Student cannot progress in the ATLAS program and could obtain a FAPE at Rossier.

Student's outbursts of maladaptive behavior were not new on his arrival at Adams Elementary. For second grade, Student attended a special day class at Adams Elementary school in the Tustin Unified School District. At the end of the 2021-2022 school year, Tustin proposed to Parents an IEP that would have placed Student in a non-public school specializing in students needing extensive behavioral supports. Parents declined to agree to Tustin's proposed IEP. Although Parents testified to the contrary, an email exchange between Father and Tustin showed that Parents revoked all consent to special education at Tustin.

In the summer of 2022, Parents enrolled Student in Santa Ana. They did not inform the District that Student had previously had an IEP or that he presented behavioral difficulties. Santa Ana placed Student in a general education third grade classroom for the school year 2022-2023. He began attending the classroom on August 24, 2022.

Santa Ana staff realized almost immediately that Student's dysregulated behaviors were serious and disruptive. On September 9, 2022, after a series of lesser incidents, Student set fire to the boys' bathroom. The bathroom required between \$50,000 and \$60,000 in repairs and was not usable until late fall. During September 2022, Student would bite, kick, stab, push or hit others, climb on furniture, and elope. He would threaten violence to others, and his language was usually profane. He would

utter racial slurs, and engage in name-calling and rude gestures. He would tip over furniture or climb on it, rip objects off walls, steal or break items on desks, and throw things across the room.

By September 22, 2022, District staff had recorded

- 27 incidents of non-compliance,
- 35 incidences of property destruction,
- nine incidences of physical aggression, and
- 56 incidences of verbal aggression.

In early September, Santa Ana proposed an extensive set of assessments of Student, to which Parents agreed. The parties analyzed the results of those assessments at an IEP team meeting on September 27, 2023. There the District proposed to move Student to its ATLAS program. Parents agreed to the change, and Student began to attend an ATLAS special day class.

Santa Ana's ATLAS program consisted of three classrooms separate from the rest of the campus where students who required significant behavioral and social-emotional support were taught. Student was in a class with four other students. Each classroom had one teacher and two instructional assistants trained in behavior support. In addition, psychologists frequently visited the program on an itinerant basis, meaning that they were not full-time at ATLAS and were sometimes assigned to other District schools. All ATLAS students were mainstreamed for lunch and recess, and some attended selected general education classes.

At or near the IEP team meeting of September 27, 2022, and a continuation of that meeting on October 3, 2022, Santa Ana proposed to conduct a functional behavior

analysis of Student and to measure his need for special circumstance instructional assistance. The team added a behavior intervention plan to Student's IEP. Parents agreed to the new measures.

Student's behaviors in the ATLAS program did not significantly improve. His physical aggression toward others lessened, but his physical aggression toward property, his non-compliance and his verbal aggression all increased. The functional behavior analysis reported that serious behavioral problems "occur almost daily," and that he posed "a safety issue to self and others." A staff member had to be within five feet of Student about half the time, or his maladaptive behaviors would appear. Sometimes it took two adults that close to him to regulate his behavior. Student was also injuring himself, sometimes seriously, and threatening suicide.

By the end of November, 2022, Student had been the subject of eight assertive discipline reports for such conduct as

- possessing or selling a firearm, knife or other dangerous weapon,
- threatening or using physical force on others, and
- assault and battery of a staff member.

At some time during the fall of 2022, District staff began searching Student for weapons or other contraband when he arrived at school in the morning. He had been found with lighters. The District also sometimes engaged in what some witnesses called a soft lockdown when Student had eloped from class and was still on the grounds. The word "butterfly" was announced over the public address system, which meant that all doors were locked, all access and exit points were closed, and other students stayed where they were and were not permitted to move from place to place.

At an amendment IEP team meeting on December 8, 2022, the IEP team agreed on additions to Student's IEP. These included a

- modified behavior intervention plan,
- modified social/emotional goals,
- behavioral consultation,
- an increase in counseling hours, and
- wraparound services.

On the next day, December 9, 2022, Student maladaptive behaviors caused the District to make two reports of behavioral emergencies. During a hockey game at recess, Student refused to stop yelling profanities, swung his hockey stick at a staffer and attempted to bite him. One staffer's hand was injured blocking the hockey stick. Later the same day, Student learned that because of his behaviors he could only participate in half the class activities of Fun Friday. He pushed over furniture, threw objects at staff, and hit windows with his fists. He yelled profanity and death threats. He kicked desks and chairs, threw water bottles at staff, attempted to bite them, and then struck one or more staff members with closed fists. He was sent home.

Student's IEP team met on January 12, 2023, to discuss the two emergency incidents of December 9, 2022. Parents had no questions about the incidents, and Student's IEP was not changed.

Between January 11, 2023 and February 10, 2023, staff logging showed that Student showed physical aggression to others twice, which was less than previous time periods. But it also showed 28 incidences of physical aggression against property, 60 incidences of non-compliance, and 80 incidences of verbal aggression.

From November 2022 to February 15, 2023, Student's classroom teacher and case manager was Sarah Lazar, an experienced and respected special education teacher whom Parents as well as District witnesses praised. Lazar held a clear education specialist credential and had worked for many years in schools and facilities that concentrated on serving emotionally disturbed youth. She had been at the Adams campus for four years. She trained other teachers in crisis intervention. Starting in 2008, Lazar was a teacher, a program specialist, and then the Director of Spectrum Schools, a network of non-public schools specializing in educating emotionally disturbed students. Before those experiences she had been a classroom teacher for eight years. She joined Santa Ana in 2019.

Lazar began her testimony by describing Student as bright, and one of the sweetest students she had ever met when he was calm. He had wonderful manners, and held the door open for her even when he was angry at her. He brought extra hot chocolate to class, and was observant of birthdays. He loved to help others, particularly younger students.

However, Lazar was also the principal witness to Student's behavioral outbursts. Student, in his bad periods, engaged in verbal aggression every day. Student's attacks on property "annihilated" her classroom almost every day, which frequently meant the other students had to be evacuated. He would

- climb furniture,
- throw everything off shelves,
- open water bottles and pour them over the work of other students,

- try to cut down hanging light fixtures with scissors, and
- try to swing on the light fixtures.

Student also threw pencils and pens, which was dangerous to himself and others.

Every time Student destroyed the classroom in that manner, Lazar and staff would have to put it back together before instruction could resume.

Lazar and several other District witnesses emphasized that these behaviors occurred in spite of every effort they made to reduce them. Student had a one-to-one aide, in a class of five, and sometimes an additional adult serving a similar function. Everyone in the classroom and outside of it was behaviorally trained. Student had been the subject of many assessments, observations, and data collections, and staff knew with some precision what behaviors to anticipate. All were trained in implementing Student's behavior intervention plan.

Notwithstanding that level of behavioral support, Student's maladaptive behaviors continued. For example, sometimes it took two adults within five feet of Student in order to deter negative behaviors. As soon as they were further away, Student would begin to act out.

District staff knew that they were unable to cope with Student's behavior at Adams. The campus was open, and an eloping student could leave it. Counseling was available and there were itinerant psychologists, but they were sometimes at other District schools. Critically, there was no psychologist or behavioral professional present at all times in the ATLAS classroom to address Student's mental health needs in the moment when they happened. District witnesses agreed that was his most pressing need.

Starting with the IEP team meeting of December 8, 2022, Santa Ana proposed in its IEP offers to place Student in a non-public school. At first they proposed the Rio Del Sol School, but by February 15, 2023, that school had no room for Student. They then proposed Rossier Park instead. Parents were adamant that they would not agree to any change of placement, particularly to any non-public school. They refused all offers to tour non-public schools, and had no interest in learning about them. When a representative of Del Sol attended the December 8, 2022, IEP team meeting to describe her school, Father asked her to leave the meeting, which she did.

Student's behavioral challenges prevented him from achieving academic success in the ATLAS program. Although he achieved passing grades, these were uninformative about his academic progress because they were reported in categories like "satisfactory" or "needs improvement." The assessments Santa Ana conducted in Fall 2022 may not have fully captured Student's academic skills, because he refused to cooperate with many elements of the assessments. The assessments showed that he was reading at a first grade level, his reading comprehension was that of a third grader, his spelling was that of a kindergarten student, and his math was at first grade level.

Emma Nartea, a school psychologist who participated in Student's assessments and had extensively observed him, opined that Student had the ability to learn. However, Nartea estimated at hearing that Student had missed about half his instructional time because of his behaviors. Often, he defiantly resisted academic instruction, and frequently claimed he could not do something that he actually could do. Occasionally, for example, he claimed he could not read at all.

Student was not making significant progress on his annual goals, which provided the best measurement of his academic achievement in his current placement. (See *D.R. v. Redondo Beach Unified Sch. Dist.* (9th Cir. 2022) 56 F.4th 636, 644-645.)

Throughout the 2022-2023 school year, Student made minimal progress on two of his eight goals but he either made no progress, or regressed, on the other six. Special Education Coordinator Greg Stowers established that sometimes Student appeared to make progress, but then regressed. Stowers, Lazar and others established that an additional one-to-one aide would not help, as Student has already shown he could not be regulated by two adults within five feet.

All District witnesses established that Student's dysregulated behaviors greatly retarded his academic progress. There was no evidence to the contrary.

STUDENT IS NOT OBTAINING NON-ACADEMIC BENEFIT IN HIS CURRENT PLACEMENT

One consequence of Student's setting fire to the boys' bathroom shortly after his arrival at Adams Elementary was that his peers distanced themselves from him. Many feared him and avoided activities involving him. School psychologist Bryan Guthrie established that the other students acted as if they are "walking on eggshells" when around Student, because his behavior was so unpredictable. They never knew what he would say or do. In addition, Student's classroom peers were witnesses to his defiance and his destructive behaviors in class. They were frequently evacuated from class until Student was brought under control or removed from the classroom.

District witnesses agreed that Student wanted and tried to have friends, but his behaviors prevented that. When he played with other students at recess, for example,

he frequently insisted on changing the rules of games and insisted that his peers play the game his way. Student was habitually profane in and out of class. One District witness estimated that 70 to 80 percent of his statements contained profanities. Student frequently resorted to threats to injure or kill some peers. As a result, he interacted with peers only in planned activities, and had made no meaningful friends at school. Father testified that when he picked Student up from school, he had seen Student play with friends. His mother, however, testified that he has no friends. Since Father had never observed him on the campus, his perceptions about Student's social success were not convincing.

The preponderance of evidence showed that Student did not significantly benefit from his presence among his general education peers.

STUDENT'S BEHAVIORS GREATLY DISRUPT HIS TEACHERS' INSTRUCTION AND HIS PEERS' OPPORTUNITY TO LEARN

As explained earlier, Student required constant attention from teachers and school staff. Staff searched him every morning and had to watch him at all times, even supervising him when he went to the bathroom. About half the time in class, Student required at least one adult within five feet of him to deter his misconduct. Lazar, Student's classroom teacher, frequently had to evacuate the classroom until Student calmed down, and then supervised its cleanup before students returned.

Student's many verbal outbursts distracted both teachers and students. Staff and other students were subjected to his verbal abuse every school day. When Student eloped but remained on the campus, staff sometimes had to invoke the soft lockdown procedure described above, shutting other students in classrooms and closing all points

of access and exit to the campus. School psychologist Nartea, who estimated that Student lost half his instructional time due to his behaviors, also estimated that his fellow students also lost half their instructional time because of Student's unregulated behaviors.

Student's behaviors posed a threat to the physical safety of other students and staff. Stowers, the Coordinator of Special Education, had observed Student in and out of class more than 50 times due to his concern for the safety of students and staff, and the severity of Student's behaviors. Stowers recognized that Student wanted to please people and worked hard at it. Student could be sweet and fun-loving. Stowers thought Student had the ability to learn. But Stowers thought Student's behavioral difficulties were so severe that Student should not be allowed to play hockey because he could use the hockey stick as a weapon. Several other District witnesses expressed similar concerns both for Student's own safety and that of others.

In short, Student's presence in the ATLAS program was a major disruption for both school staff and other students, and a threat to his and others' safety.

Parents testified that they wanted Student to remain where he is because his behavior was improving. They pointed to District behavioral data showing that between November 1 and November 17, 2022, Student's behavior became significantly less troublesome. However, as several District witnesses pointed out, Student's behavior was episodic. He had calm days and then difficult days. A period of 11 school days was far too short to draw the conclusion Parents drew. In addition, the same set of behavioral data showed that after November 17, 2022, Student's behaviors worsened again.

Parents' view of how Student behaves at school cannot be given significant weight because they have never observed Student on the campus or in class, except

when they dropped him off in the morning and picked him up in the afternoon. They based their argument largely on reports of improvements in his accumulation of “dojo points,” which were part of ATLAS’s behavioral program.

Every morning students at ATLAS started out with a certain number of dojo points, and could lose some of them during the morning if they presented behavioral difficulties. The students started with a fresh supply of points in the afternoon. Several desirable class activities were open only to students with sufficient dojo points. In this manner, school staff were able to discourage bad behavior and encourage and reward good behavior.

Between November 2022 and February 2023, Student managed to retain more dojo points than he had earlier in the school year. The school kept parents informed about their children’s dojo point scores, and Parents argued in their testimony that Student’s improving point scores showed he should remain in the ATLAS program.

But Parents misunderstood the significance of the point scores on which they relied. District witnesses explained that the purpose of the point system was not to track undesirable behaviors but to provide a system of rewards, and it was not a reliable guide to behavioral improvement. As Lazar explained, a student who avoids some maladaptive behaviors can accumulate a high number of dojo points while still engaging in a variety of maladaptive behaviors not considered in the point system. For example, a student who sat frozen in his chair in class, doing nothing, would get points for not eloping, not disrupting the class, and not distracting other students. But that student would still be refusing instruction.

The many assessments conducted by the District, and the observations of its teachers and staff, were more reliable measurements of Student’s behavioral

development than the point system, and they showed conclusively that Student's behavior did not significantly improve between November 2022 and February 2023. For example, staff logged 15 disciplinary incidents in January and February 2023, including causing or attempting to cause physical injury to another person, willfully using force or violence on another person, and engaging in self-injurious behavior. Several District witnesses noted that Student's self-injurious behaviors, like head-banging, increased in January and February 2023.

Only Parents testified in favor of Student's current placement. No professional appeared at hearing to support their position, and no reliable data supported it either. District teachers and staff, on the other hand, were able to recount Student's behavioral development in detail. All the documentary data about Student's behaviors that was introduced in evidence supported the testimony of the District witnesses.

On balance, the evidence showed convincingly that Student cannot be satisfactorily educated in the District's program. His unregulated behaviors prevent him from achieving academically, distance him from his peers, and constitute serious and frequent disruptions to teachers and fellow students.

Student's ATLAS program is not his least restrictive environment.

STUDENT CAN OBTAIN A FAPE AT ROSSIER PARK

Substantial evidence showed that Student could obtain a FAPE by being placed at Rossier Park. Alecia Fernandez, the Program Director of Rossier and a Board Certified Behavior Analyst, testified at length about its program. So did teacher Lazar, who had

taught and then directed the Spectrum School organization that runs Rossier, and was especially knowledgeable about it. Santa Ana has other students at Rossier, so District witnesses were familiar with it.

Rossier Park is a small campus with 50 students and 40 staff members which specializes in teaching students with behavioral challenges. Its students are all special education students and have IEP's. Rossier provides a much smaller environment with fewer stimuli than Student is subjected to at Adams.

The Rossier campus is closed and locked, as are its bathrooms and classrooms. Rossier staff are experienced in controlling student elopement. All staff are behaviorally trained, and accompany students wherever they go. There was an aide with behavioral training on the bus that provides transportation for the students. As a last behavioral resort, the campus has a "refocus room" that serves as a safe space for students in crisis to calm down and de-escalate. The room has nothing potentially harmful in it and nothing students can destroy. The ATLAS program has no such safe space.

Rossier has two full-time behaviorists and one part-time behaviorist on campus all day. Some professional with behavior support training is in the classroom at all times. This is especially important for Student, because he needs "in the moment" or real time behavioral support that is not available from the itinerant psychologists at ATLAS.

Rossier staff meet every morning to discuss the day and the students, and meet again in the afternoon to debrief after the students have gone home.

Rossier complies with state academic standards. It is focused on returning students to their districts when possible. The school has a point system that rewards

or discourages various behaviors and places students on five levels of behavioral self-regulation. The school starts planning for a student's return to the campus of origin when the student shows three months of level five behavior.

Fernandez reviewed the details of the proposed IEP and testified persuasively that Rossier was able to implement all of it. Several District witnesses agreed.

Parents knew nothing about Rossier Park because they had refused to visit it or learn about it. Their objection to it was that it would be yet another change of placement for Student who has had too many such changes recently, so moving him to Rossier would destabilize him and injure his self-esteem.

There might be some transitional difficulties when Student leaves Adams for Rossier. But that prospect is far from sufficiently serious to justify leaving Student in an environment in which he cannot obtain a FAPE and is a danger to self and others. Student is not balanced now, and his self-esteem suffers in the ATLAS program, as evidenced by his lack of meaningful friendships, the recent increase in self-injurious behaviors and threats of suicide. It was the consensus of District witnesses that Student would handle the transition to Rossier Park better than he is handling the chaos and frustration that he experiences at ATLAS. No educational or psychological witness agreed with Parents that Student would be unable to make the transition to Rossier.

For all the reasons above, the evidence showed that Student will be able to obtain a FAPE at Rossier Park, and that it is both an appropriate choice and his least restrictive environment.

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.

The February 15, 2023 IEP offered Student a FAPE.

Santa Ana prevailed on the only issue heard.

ORDER

Santa Ana's February 15, 2023 proposed IEP offers Student a FAPE. Santa Ana may implement the IEP without parental consent.

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.

Charles Marson

Administrative Law Judge

Office of Administrative Hearings