

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

ESCONDIDO UNION SCHOOL DISTRICT,

V.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2024100187

EXPEDITED DECISION

NOVEMBER 22, 2024

On October 3, 2024, Escondido Union School District filed an expedited due process hearing request with the Office of Administrative Hearings, called OAH, naming Parent on behalf of Student. Escondido Union School District is called Escondido. The complaint contained expedited and non-expedited hearing claims. OAH set the expedited and non-expedited matters for separate hearings. This Decision resolves only the expedited claims.

Administrative Law Judge Deborah Myers-Cregar heard the expedited matter by videoconference on October 29, 30, November 5, 6, and 7, 2024. The Administrative Law Judge is called ALJ.

Attorneys Deborah Cesario and Katherine Yuna represented Escondido. Patrick Newton, Escondido's special education director, attended all hearing days except November 6, 2024, when Giuliana Rumbin attended as Escondido's representative. Attorney Michelle Wilkolaski represented Student. Parent attended all hearing days on Student's behalf. Parent's wife, who is not an educational rights holder, attended on October 29 and 30, 2024. Student's grandmother attended all hearings days.

On November 7, 2024, the last day of hearing, the record was closed, and the matter was submitted for decision. The ALJ allowed the parties to file closing arguments, which they did on November 13, 2024.

EXPEDITED ISSUES

1. Will maintaining Student's current educational placement in his mild moderate special day class be substantially likely to result in injury to Student or others?
2. Is Escondido's proposed placement at Social Emotional Academic Success, with door-to-door private transportation, an appropriate 45-day interim alternative educational setting?

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JURISDICTION

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

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

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

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would apply to children without disabilities. (20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c).) However, school personnel may remove a student to an interim alternative educational setting for not more than 45 school days, regardless of whether the student's behavior is determined to be a manifestation of the student's disability, under certain circumstances. (20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g).

A school district may request a due process hearing to authorize a change of placement if the district believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) The hearing must be conducted within 20 school days of the date an expedited due process hearing request is filed and a decision must be rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. 300.532(c)(2).)

At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Escondido filed the complaint and has the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was five years old and in transitional kindergarten at the time of hearing. Student resided within Escondido's geographic boundaries. Student was eligible for special education under autism, other health impairment, and speech or language impairment.

ISSUE 1: WILL MAINTAINING STUDENT'S CURRENT EDUCATIONAL PLACEMENT IN HIS MILD MODERATE SPECIAL DAY CLASS BE SUBSTANTIALLY LIKELY TO RESULT IN INJURY TO STUDENT OR OTHERS?

Escondido contends Student engaged in significant physical, object, and verbally aggressive behavior that placed Student, classmates, and school staff in substantial danger of injury.

Student contends Escondido's reports of his behaviors are only allegations and were not proved. Student further contends Escondido's failure to properly implement Student's behavior intervention plan contributed to his behaviors. Student contends his behavior has recently improved and he should stay in his current placement.

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).)

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Several OAH cases have addressed what constitutes conduct substantially likely to result in injury to the child or others. While OAH decision are not binding authority, they may be persuasive. Conduct that OAH has found substantially likely to result in injury includes:

- Hitting, kicking, shoving, biting, climbing on classroom furniture and cabinets, shouting obscenities, throwing objects at people, running out of the classroom, and banging on the doors of other classrooms. (*Long Beach Unified School Dist. v. Student* (2008) OAH case number 2008030017.)
- Hitting an adult in the back, lunging at the teacher and trying to punch and hit her, and yelling at and threatening people. (*Fort Bragg Unified School Dist. v. Parent on behalf of Student* (2008) OAH case number 2008100507.)
- Throwing desks, knocking over a computer, yelling and screaming, hitting, kicking, punching, and biting adults. (*Fullerton Joint Union High School Dist. v. Student* (2007) OAH case number 2007040584.)
- Throwing objects, kicking other children, punching and kicking school staff, eloping from school and running into the street, knocking over another child, screaming, and destroying property. (*Lancaster Elementary School Dist. v. Student* (2006) OAH case number 2006030771.)

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2023-2024 SCHOOL YEAR SOCIAL COMMUNICATION STRUCTURED BEHAVIOR PRESCHOOL PROGRAM AT CENTRAL ELEMENTARY SCHOOL

For the 2023-2024 school year, Student attended preschool in the social communication structured behavior program at Central Elementary. Escondido held several individualized education program, called IEP, team meetings, during this school year. Escondido held an IEP on November 17, 2023, reviewed Student's functional behavior assessment and a social emotional assessment and added a behavior implementation plan. Parent reported Student had been kicked out of several preschools due to his behavior. Student was aggressive at home and in the classroom.

Student's annual February 9, 2024 IEP reviewed Student's progress on 10 goals related to his preacademic and academic skills, social emotional regulation, transitioning activities, and participating in preferred and non-preferred activities. He met three goals, made substantial progress on four goals, and partial progress on three goals.

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The IEP team developed six new goals for transition kindergarten for expressive and receptive language, social pragmatic language, preacademic and academic, and social and emotional skills. The goal for social emotional self-regulation, tracked Student's use of a calming corner, frequent breaks, a choice board, and a contingency map, because he

- hit,
- kicked,
- pushed, and
- threw shoes, toys, and chairs at staff and other students.

Student's behavior impeded his progress on his goals because he did not focus and follow instructions, and he did not participate in activities.

Student's February 9, 2024 IEP contained a behavior intervention plan based on the functional behavior assessment report, data collection, and the social emotional assessment. Student used maladaptive behaviors of physical, object, and verbal aggression to escape from a non-preferred task and to gain attention. The behavior intervention plan addressed Student's early escalations, his serious escalations, and his de-escalations. The behavior intervention plan identified antecedent events, and provided environmental structure and supports to reduce the problem behavior. The behavior intervention plan suggested functionally equivalent replacement behavior. It recommended Student learn to ask for items he wanted to obtain, and ask to take a break from activities he did not want to participate in.

The behavior intervention plan listed strategies and successive teaching steps for Student to learn replacement behavior. For example, Student would receive a preferred item after successfully transitioning to class from the school bus. Classroom staff would

provide Student with a visual calm down menu and be taught to request it when he becomes frustrated. The visual calm down menu included calming items like a weighted vest, a squish fidget, and time in the calm down room. Student would be taught to request time with a preferred staff member by using a picture card or making a verbal request. Student would be taught self-regulation strategies through the use of a social story or video modeling. Student would be given immediate positive verbal praise and tangible tokens as a reinforcer when he was successful in engaging in the functionally equivalent replacement behavior.

Student's February 9, 2024 IEP also contained a transition plan from his preschool to transition kindergarten. Student would remain at his preschool program through the end of the 2023-2024 school year. For the 2024-2025 school year, Student would attend transition kindergarten in the mild moderate special day class at Central Elementary School with general education curriculum. He would be in special education for 75 percent of his day, and participate in general education for 25 percent of his day in the enrichment wheel with specialized academic support. Student would receive speech and language, occupational therapy, counseling, and behavior intervention services. Student would receive extended school year services.

Parent consented to the IEP.

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2024-2025 SCHOOL YEAR MILD MODERATE TRANSITION KINDERGARTEN PROGRAM AT CENTRAL ELEMENTARY

On August 20, 2024, Student began his transition kindergarten mild moderate program at Central Elementary School. Beginning August 21, 2024, Student's special education teacher Delma Kells, and her paraprofessional staff, observed and documented multiple episodes of physical aggression, object aggression, and verbal aggression each day.

John Lieu, Escondido's behaviorist, analyzed the raw data from the daily behavior charts to track Student's behavioral trends. Lieu used the data to implement Student's behavior intervention plan.

On August 29, 2024, Escondido held an IEP team meeting to address concerns for Student's aggressive behavior in class, on the bus, and at home. Parent described Student as aggressive, angry, and forceful.

Escondido discussed the Social Emotional Academic Success Program at Miller Elementary as an alternate placement to better support his emotional needs. Because the behavior intervention plan was not consistently successful, Escondido offered a special circumstance instructional assistant assessment, to determine whether Student required a one-to-one aide, and an educationally related mental health services assessment. Parent consented to the assessments and the August 29, 2024 IEP.

On September 5, 2024, the IEP team met to remove the use of a weighted vest for Student.

Kells used the interventions, but she could not manage Student's behavior, even with the help of two adult paraprofessionals. By early September, Escondido added a third paraprofessional to the classroom to help monitor Student's behavior, although it was not added to the IEP. However, his behavior continued to escalate, and he regressed on his behavior goals.

Escondido held an IEP team meeting on September 12, 2024, to review the assessment results. The assessments recommended a one-to-one aide; individual, group, and parent counseling; and a more highly structured school program. Escondido offered

- a dedicated one-to-one aide,
- 30 minutes per week of individual counseling,
- 30 minutes per week of group and guidance counseling, and
- 15 minutes per months of parent counseling.

Escondido recommended a change of placement to the Social Emotional Academic Success Program at Miller Elementary transition kindergarten program and Parent agreed to tour the program before the next IEP team meeting.

Although Escondido offered the dedicated one-to-one aide at the IEP team meeting, Parent did not consent. Parent's claim that she thought the dedicated one-to-one aide was only offered for Student at the Miller SEAS program was not persuasive because the IEP authorized the aide to start on September 13, 2024, the day after the IEP team meeting.

Student's behavior impacted his safety and the safety of other students. Student's teacher Kells changed her classroom schedule to avoid Student's triggering events. She held lunch and nutrition breaks in her own classroom instead of the cafeteria so Student could be served lunch first. Student did not like waiting and sometimes climbed the cafeteria tables, jumped, hit, and demanded other children's food. Kells moved recess to a smaller playground for just her students in the mild moderate program to have fewer students and staff around Student when he became violent. Student punched staff and students all day long.

Kells moved her classroom furniture because Student sometimes pushed over the wooden bookcase, kicked and broke the plastic and wooden toy kitchen appliances, and threw plastic chairs with metal legs. Kells removed toys to limit Student's access to throwing and kicking objects, which impacted the other students' access to classroom materials.

The September 26, 2024 IEP team met to discuss Parent's tour of Miller Elementary's SEAS transitional kindergarten program. Parent did not like many things about the Miller program. Specifically, Parent did not like the calm down room, a quiet room off the classroom. Parent did not like the idea that staff could physically restrain Student and put their hands on him if he had a severe behavioral episode. Parent did not like how iPads were used in class because it could trigger Student's behavior. For these reasons, Parent did not consent to the Miller program.

Parent also did not consent to a one-to-one aide in the Central Elementary program, or to the recommended individual, group, and family counseling.

On October 1, 2024, Escondido advised Parent in writing it would be seeking a change of Student's placement to Miller SEAS even without Parent's consent, by filing an expedited complaint with OAH to move Student's placement for 45 days.

STUDENT'S BEHAVIOR ESCALATED FROM AUGUST THROUGH NOVEMBER 2024

The evidence established Student's behavior escalated between August 20, and November 7, 2024. Escondido's daily behavior charts, incident reports, and credible witness testimony established the increased frequency, severity, and trend of Student's behaviors. Behaviorist Lieu tracked Student's physical aggression, object aggression, and verbal aggression. Between August 20, 2024, and November 7, 2024, Escondido staff documented over 186 incidents of physical aggression, over 52 instances of object aggression, and over 72 instances of verbal aggression.

The linear trend of Student's physical aggression was increasing, with as many as 16 episodes on October 14, 2024. Student's verbal aggression was also increasing. Student's object aggression was decreasing after Kells rearranged her classroom furniture against the wall to limit Student's access.

Despite adding the third paraprofessional aide in early September 2024, Student's behaviors continued to escalate, caused disruption in the classroom, and posed substantial harm to himself, staff, and other students.

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Student's more extreme behavioral incidents are highlighted below:

Student swore daily when he was angry. He became physically aggressive and yelled various combinations of "fuck you," "bitch ass whore," "I fucking hate you," "you fucking bastard," "fucking bitch," and "shut the fuck up." His classmates started repeating his curse words. As discussed below, in early October 2024, Student used violent and threatening language, saying he wanted "to kill them all with a knife," seemingly referring to staff and other students.

On August 28, 2024, Kells and speech and language pathologist Ann Marie Hartung, saw Student punch a pregnant staff member's stomach, sending her to the emergency room. The same afternoon, Hartung saw Student forcefully swing his arms attempting to hit another pregnant woman's stomach. Hartung stood between the pregnant woman and Student and blocked his hands.

There were several incidents on September 4, 2024. Hartung, Kells, and Lieu saw Student push over a 30-pound, three-foot by five-foot wooden bookcase toward his classmates. Student threw a plastic chair with metal legs at Hartung, hitting her with the plastic seat. Student punched a classmate really hard in the chest. The classmate was scared and said he was afraid of Student.

On September 5, 2024, Student punched a classmate above the eye.

On September 6, 2024, Student threw plastic chairs with metal legs across the classroom and Kells evacuated the classroom. There was no antecedent event noted. Forty minutes later, Student repeatedly punched Kells in the back hard for 25 seconds. Student pushed over the 30-pound wooden bookcase and threw plastic chairs with metal legs across the classroom. There was no antecedent event noted.

On September 9, 2024, Student again threw plastic chairs with metal legs around the classroom and Kells evacuated the classroom.

On September 12, 2024, Student punched a student in their stomach.

On September 13, Student threw a plastic chair with metal legs at another student and part of the chair hit them in the face. The classroom had to be evacuated.

On September 24, 2024, Student hit Kells and a paraprofessional aide, and they evacuated the classroom. Student spat, hit, and kicked Kells. Student threw a plastic chair with metal legs at his teacher twice. Student yelled "fucking bitch ass."

On September 30, 2024, Student said "I want to hit her and I want to kick her and I want her dead," referring to one of the classroom paraprofessional aides.

On October 3, 2024, Student's behavior escalated on the school bus at another campus. Donna Bryan, Escondido's transportation coordinator, arrived at the incident and observed Student act combatively and out of control. Student refused to get in his seat on the bus and he injured three people. Student cursed, yelled, punched, hit, scratched and kicked her, the bus driver, the bus monitor aide, and another student. Student attacked the bus driver and then hit the bus monitor aide with his shoe, scratching the monitor's nose, causing it to bleed, and breaking his glasses, for the second time that year. Student sat down in the bus stairwell and forcefully and repeatedly kicked both feet against the glass bus door. Student finally calmed down and got off the bus at Central Elementary.

Bryan prepared two transportation incident reports that same day. Bryan was worried Student was strong enough to kick and break the glass on the bus door. Bryan was worried for the safety of Student, transportation staff, and other students.

On October 3, 2024, within 15 minutes of arriving on campus after the bus incident, Student told a paraprofessional aide "I will kill them all with a knife," because he did not want to share Legos with other students. Kells' paraprofessional aide filed an incident report because of the potentially dangerous and threatening nature of Student's words.

On October 14, 2024, Student threw a crayon which hit Kells' eye at close range. Kells experienced a strong sharp pain, but it did not damage her vision.

Hartung provided speech and language therapy to Student once per week. She observed many of his maladaptive behaviors as she sees him on campus three times per week. Student frequently hit her. Hartung described Student as impulsive and very strong. His behavior escalated quickly, and it was hard for him to control his body. He often blocked the door to her speech office and hit other students receiving speech therapy when he wanted an unscheduled session. He often cursed with variations of "fuck you" and other profanity.

Hartung helped evacuate Kells' classroom many times after Student had a behavioral episode. It often took 15 to 30 minutes to calm Student down before allowing the other students to return. During that time, Student and his classmates were missing out on instruction.

Giuliana Rumbin, Escondido's program specialist, credibly testified she observed Student

- hitting,
- kicking,
- biting,

- spitting,
- punching with a closed fist, throwing chairs, and
- pushing over furniture towards staff and other students.

In August and September, Student punched her directly in the chest, hit, and kicked her. Student told her "Fuck you." During that time, Rumbin also saw Student hit and kick Lieu. Student threw chairs at both of them.

Rumbin opined Student was not getting academic benefits from his program because he refused to participate in class activities. Student instead engaged in behaviors that took away time from him and his classmates learning.

Student's behavior also affected his classmates ability to learn. Kells evacuated the class several times, between August and November 2024, which took 15 to 20 minutes, or longer, to calm down Student, return to class, and resume class activities. Two students left the program because Student kept hitting them and they were afraid.

Rumbin, Lieu, and Kells persuasively testified it was difficult to implement Student's behavior intervention plan when he was not emotionally regulated. Student's behavior escalated quickly and unexpectedly, many times each day. Student had difficulty controlling his body and his emotions. Student used curse words, used physical aggression against others, pushed furniture down, and threw chairs and objects toward others.

Parent opined Student's behavior had recently improved because of a new home applied behavior analysis therapist provided by the regional center. Parent opined Student did not act out at home, and she did not see the behavior at school.

However, Parent's testimony is inconsistent with her statements during IEP team meetings, and parent interviews during Student's assessments. The September 12, 2024 Behavior Assessment of Children results noted Parent's responses confirmed Student had clinically significant behaviors including hyperactivity and depression, and that he engaged in aggression at home when given a non-preferred task. During the special circumstances instructional assistant assessment, Parent reported Student had difficulty staying in the car safely, screamed, and threw objects. She confirmed the regional center provided Student applied behavior analysis at home. At the September 12, 2024 IEP team meeting when those assessments were reviewed, Parent stated she wanted Student to regulate his emotions and see a decrease in aggression. His behavior at home was inconsistent. Parent was not enrolling Student in sports programs because she was worried about his aggression toward other children.

Additionally, Student's grandmother reported Student had the same behavior at home as at school and he hit, bit, and cussed at family members. Further, Parent's spouse testified how Student displayed aggression and was hard to handle at home. Student has hit her. Student destroyed toys and used an object to punch a hole in their bedroom door.

Although Student's object aggression may have recently improved, it has not extinguished. More significantly, Student's physical and verbal aggression increased.

Parent was not a persuasive witness. Parent believed reports of Student's behavior were only allegations and not proved. Parent seemed unmoved by multiple Escondido witnesses and the documented behavioral incidents. Parent appeared disinterested in the testimony of Escondido's witnesses, even when they tearfully spoke about how Student's behavior affected, hurt, and scared them and others. Parent

appeared detached from the full impact of Student's numerous behavioral incidents, reports, and charts. During the final two days of hearing, Parent intermittently closed her eyes and had difficulty paying attention and staying awake.

Student remaining at Central Elementary would substantially likely result in injury to Student or to others. The sheer number of behavioral incidents, their severity, their escalation, and staff's inability to manage the behaviors even with four adults in the classroom, conclusively demonstrates that Student's continued placement at Central Elementary is substantially likely to result in injury to Student or to others.

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

ISSUE 2: IS ESCONDIDO'S PROPOSED PLACEMENT AT SOCIAL EMOTIONAL ACADEMIC SUCCESS, WITH DOOR-TO-DOOR PRIVATE TRANSPORTATION, AN APPROPRIATE 45-DAY INTERIM ALTERNATIVE EDUCATIONAL SETTING?

Escondido seeks permission to make an interim change of Student's placement from the mild moderate special day class at Central Elementary, to Social Emotional Academic Success transitional kindergarten at Miller Elementary, for 45 days. Escondido asserts Student needs placement at Miller with private door-to-door transportation, and a one-to-one aide, to make progress toward his IEP goals. Escondido asserts Student requires the additional therapeutic and behavioral support available at Miller.

Student contends the proposed program is a more restrictive setting. Student argues Escondido should consider alternative placements.

As found in Issue 1, maintaining Student's placement at Central Elementary is substantially likely to result in injury to Student or to others. Therefore, it is proper to order a change of Student's placement to an interim alternative educational setting for not more than 45 school days.

If ordered, the interim alternative educational setting must enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP. (20 U.S.C. § 1415(k)(1)(D)(i); 34 C.F.R. § 300.530(d).) The interim alternative educational setting must also enable the child to receive, as appropriate, a functional behavioral assessment, 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).) The student's IEP team determines the interim alternative educational setting. (20 U.S.C. § 1415(k)(2); 34 C.F.R. § 300.531.)

The IDEA does not require parental consent to placement in the interim alternative educational setting, or that a school 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.)

THE SOCIAL EMOTIONAL ACADEMIC SUCCESS PROGRAM AT MILLER ELEMENTARY IS AN APPROPRIATE INTERIM ALTERNATIVE EDUCATIONAL SETTING

The September 12, 2024 IEP offered a one-to-one aide; individual, group, and parent counseling; and a highly structured transitional kindergarten program at Miller

Elementary. Escondido offered 30 minutes per week of individual counseling, 30 minutes per week of group and guidance counseling, and 15 minutes per month of parent counseling, which were available at Miller.

Behaviorist Lieu and Dena Moore, Escondido's program specialist, were familiar with Student's behavior and with the Miller Elementary social emotional transition kindergarten program. They persuasively testified Miller was an appropriate 45-day interim alternative educational setting for Student because of its intensive mental health and behavioral support.

Moore explained Miller Elementary is a comprehensive campus with general education students. The social emotional classroom has students from transitional kindergarten to third grade. At the time of hearing, the class had eight students and four adults, including a special education teacher, two adult paraprofessionals, and a program behavior intervention technician. The behavior intervention technician monitors daily data and implements a student's behavior intervention plan by providing on the spot behavioral coaching and support. If a student is struggling, then restorative practices can be used. The behavior intervention technician also monitors trend lines of behavior up to five levels. The Miller social emotional program had a social worker for its three classrooms, with a ratio of 21 students to one social worker. It shared a school psychologist with the three campuses, with office hours on the Miller campus once per week.

Moore described the social worker's therapeutic room is connected to the social emotional program classrooms through a small hallway. The therapeutic room is the size of a regular classroom and is cheerfully decorated with soothing and child friendly furniture, toys, games, and activities.

Moore explained how each social emotional classroom includes a separate calm down room for a quieter environment, connected to the classroom through a door. The calm down room is a small room, with a cot, a pillow, bean bag chairs, and a rug. It is intended for one child to use it at a time. There are no objects in the room for students to hurt themselves. Students may request the calm down room to rest on the cot or bean bag chairs.

The Miller social emotional program is designed for students with significant social, emotional, and behavioral needs who require more intensive treatment. It has a higher rate of positive reinforcement, and a higher ratio of individual and group therapy. It is a highly structured program with an explicit token economy and behavioral level systems with highly trained staff.

The Miller social emotional program uses trauma informed practices to explicitly teach social and behavioral skills to students and their families. The program is structured to build behavioral compliance skills and to remediate social, emotional, and academic deficits. The goal is to carefully re-integrate the students into less restrictive environments when they acquire the skills and demonstrate positive student and adult interactions.

Behaviorist Lieu persuasively testified as an expert witness and behaviorist that Student required more support than his current classroom at Central Elementary School can provide. Student needed to work on his emotional regulation. Lieu was personally familiar with the Miller social emotional program and had toured it. He opined it was appropriate for Student because he required the mental health component to help support his behavior intervention plan. Lieu further opined the Miller program was appropriate because of the highly trained special education and mental health staff,

including a social worker, school psychologist, behavior technician, and special education teacher trained in mental health. Lieu was concerned for the safety of Student, staff and other students. Lieu was also concerned Student was not accessing instruction in his current placement.

Escondido established the social emotional program at Miller Elementary is an appropriate 45-day placement for Student. Specifically, Escondido established Student remaining at Central Elementary would substantially likely result in injury to Student or others, and that the Miller Elementary program provides the behavioral and social emotional supports Student needs to access the general educational curriculum and make progress towards his IEP goals.

The educationally related mental health services assessment determined Student exhibited emotional and behavioral characteristics that adversely affected his educational performance. As such, Escondido offered Student counseling and a one-to-one aide. These components of Student's IEP can be implemented at Miller Elementary, in addition to services from the classroom behavior technician and the program's social worker.

Despite Parent's contention that the Miller Elementary social emotional program is more restrictive, it is located on a comprehensive campus with general education and special education students. Student would have the continued opportunity to participate in the general education curriculum and to interact with general education peers. At Central Elementary, Student was not accessing general education, nor much academic instruction, because of the type, frequency and severity of his behaviors.

The social emotional program at Miller will enable Student to receive a functional behavioral assessment, and behavioral intervention services and modifications, as needed, that are designed to address Student's ongoing behavior challenges.

PARENT'S OBJECTIONS TO THE SOCIAL EMOTIONAL ACADEMIC SUCCESS PROGRAM AT MILLER WERE NOT PERSUASIVE

Parent disagreed with placing Student at Miller Elementary for many reasons. However, none of Parent's objections to the program were persuasive and they were often inconsistent with testimony from Escondido's witnesses and documentary evidence.

Parent testified she toured the social emotional program at Miller Elementary and it was not appropriate because staff was allowed to use "restraints." Parent did not explain what she meant by restraints. However, Escondido's district wide policy is the same at all its schools. First, staff trained in ProAct use the program's positive behavior interventions before resorting to other measures such as restraints. The use of restraints means holding a student's arms, legs, or body parts as needed, when they are aggressive to protect Student and others from injury. It does not mean straps, or ties, or straitjackets.

Parent reported the calm down room had a hospital bed and black walls. However, the evidence did not support this assertion. Instead, Escondido established the calm down room had a padded cot, a pillow, and bean bag chairs, with minimal furniture to reduce stimulation. Students often took naps or rested on the cot.

Parent was concerned the program used iPads in class, and she believed this would trigger Student into a behavioral episode. However, Escondido assured Parent that Student would be able to use pen and paper instead of an iPad for his class assignments, if needed.

Finally, Parent testified the IEP team told her Student could only have a one-to-one aide if she agreed to the social emotional program at Miller. This was not supported by the evidence and the credible testimony of Escondido's witnesses. Escondido's witnesses had specialized education and training, and decades of experience in their field. Each of them appeared earnest, concerned, kind, and very motivated to help Student receive the services and placement he requires.

Based on the preponderance of evidence, Escondido showed the Social Emotional Academic Success program at Miller Elementary is an appropriate 45-day interim alternative educational setting, pursuant to title 20 United States Code section 1415(k)(3)(B)(ii).

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:

Escondido proved that maintaining Student's current educational placement in his mild moderate special day class will be substantially likely to result in injury to Student or others.

Escondido prevailed on Issue 1.

ISSUE 2:

Escondido proved its proposed placement at Social Emotional Academic Success, with door-to-door private transportation, is as an appropriate 45-day interim alternative educational setting.

Escondido prevailed on Issue 2.

ORDER

1. Within 15 school days of this Decision, Escondido may remove Student from the mild moderate transitional kindergarten program at Central Elementary School, and place Student in the Social Emotional Academic Success program at Miller Elementary, with door-to-door transportation, as an interim alternative educational placement for 45 school days.
2. At the expiration of the 45 school days, Escondido shall return Student to his placement at Central Elementary, unless otherwise ordered, or by mutual written agreement of the parties.

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.

Deborah Myers-Cregar
Administrative Law Judge
Office of Administrative Hearings