

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

MOUNTAIN VIEW-WHISMAN SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2024010738

EXPEDITED DECISION

MARCH 15, 2024

On January 23, 2024, the Office of Administrative Hearings, called OAH, received an expedited due process hearing request from Mountain View-Whisman School District, naming Parent on behalf of Student. Administrative Law Judge Rommel P. Cruz heard this matter by videoconference on February 27, 28, and 29, 2024, and March 1, and 5, 2024.

Attorneys Summer Vicknair and Elizabeth Rho-Ng represented Mountain View-Whisman. Director of Student Support Services and Special Education Karin Jinbo attended all hearing days on behalf of Mountain View-Whisman.

Parent appeared on February 27 and 28, 2024, to represent Student. Neither Parent, nor any representative, appeared on behalf of Student on February 29, 2024, and March 1 and 5, 2024. Student did not attend the hearing.

On March 5, 2024, OAH granted Mountain View-Whisman's request to file a closing brief. On March 5, 2024, OAH issued an Order for Closing Briefs, with instructions for closing briefs, and ordering closing briefs to be filed with OAH no later than 5:00 p.m. on March 8, 2024. Parent and Mountain View-Whisman were served with the Order on March 5, 2024. Mountain View-Whisman timely filed its closing brief on March 8, 2024. Student did not file a closing brief.

ISSUES

1. Is maintaining Student's current placement at Monta Loma Elementary School substantially likely to result in injury to Student, or to others, such that an interim alternative educational setting is appropriate?
2. Is Mountain View-Whisman's proposed nonpublic school placement an appropriate interim alternative educational setting for Student for no more than 45 school days?

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, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; 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, Mountain View-Whisman requested the expedited hearing and bore the burden of proof as to each issue. 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 seven years old and in first grade at the time of hearing. He resided within Mountain View-Whisman's geographic boundaries at all relevant times. Student was eligible for special education under the category of other health impairment and had a diagnosis of post-traumatic stress disorder.

ISSUE 1: IS MAINTAINING STUDENT'S CURRENT PLACEMENT AT MONTA LOMA ELEMENTARY SCHOOL SUBSTANTIALLY LIKELY TO RESULT IN INJURY TO STUDENT, OR TO OTHERS, SUCH THAT AN INTERIM ALTERNATIVE EDUCATIONAL SETTING IS APPROPRIATE?

Mountain View-Whisman contends maintaining Student's educational placement at Monta Loma Elementary is substantially likely to result in injury to Student or others. As a result, Mountain View-Whisman argues that an interim alternative educational setting for Student is appropriate.

When a school district seeks to discipline a child with a disability for violating a code of student conduct it must convene a meeting to determine whether the child's conduct was a manifestation of the child's disability. (20 U.S.C § 1415(k); 34 C.F.R. § 300.530 (2006).) This is known as a manifestation determination. The manifestation determination must be made by the school district, the parents, and relevant members of the individualized education program, called IEP, team as determined by the parents and the school district. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530 (e)(1) & (h).)

In conducting a manifestation determination, the team analyzes the child's behavior as demonstrated across settings and across times. (Assistance to States for the Education of Children with Disabilities, et. al. [71 Fed. Reg. 46540, 46720 (August 14, 2006) (Comments on 2006 Regulations)].) All relevant information in the student's file,

including the IEP, observations of teachers, and any relevant information from the parents must be reviewed as part of the manifestation determination process.

(Comments to 2006 Regulations, *supra*, 71 Fed. Reg. 46721.)

If the school district, parents, and relevant members of the IEP team determine the child's conduct in question was caused by, or had a direct and substantial relationship to, the child's disability, the IEP team must:

- conduct a functional behavior assessment, and implement a behavioral intervention plan for the child if such an assessment had not yet been conducted prior to the conduct in question;
- if a behavioral intervention plan is in place, review the behavioral intervention plan, and modify it, if necessary, to address the behavior; and
- with the exception of certain special circumstances, return the child to the placement from which the child was removed, unless the parent and the school district agree to a change in placement as part of the modification of the behavioral intervention plan. (20 U.S.C. § 1415(k)(1)(F).)

A school district that believes maintaining the current placement of the child is substantially likely to result in injury to the child, or to others, may request a hearing. (20 U.S.C. § 1415(k)(3)(A).) The hearing officer deciding whether maintaining the current placement of the child with a disability is substantially likely to result in injury to the child, or to others, may:

- return the child with a disability to the placement from which the child was removed, or

- order a change in placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in the injury to the child or to others. (20 U.S.C. § 1415(k)(3)(B).)

INITIAL SPECIAL EDUCATION ASSESSMENTS

Student was enrolled in Santa Clara Unified School District for the 2022-2023 school year. Student was referred for special education assessments because of concerns regarding his behavior, speech, and academic skills. Santa Clara Unified initiated assessments of Student in spring 2023 to determine Student's eligibility for special education services.

Student began the 2023-2024 school year at Santa Clara Unified School District. Student was in first grade. At the start of the school year, Santa Clara Unified completed assessments of Student's

- auditory processing,
- visual processing,
- adaptive behavior skills,
- behaviors, executive functioning,
- academic achievement, and
- speech and language development.

Santa Clara Unified also completed a functional behavior assessment of Student and drafted a behavior intervention plan.

Student transferred to Mountain View-Whisman prior to Santa Clara Unified convening an IEP team meeting to review the assessments. Student's first day of school at Mountain View-Whisman was September 27, 2023, at Monta Loma Elementary School.

INITIAL IEP TEAM MEETING

Mountain View-Whisman convened an initial IEP team meeting on October 11, 2023, to review the assessments conducted by Santa Clara Unified and to determine whether Student qualified for special education services. General education teacher Alicia Dunne, special education coordinator Jennifer Morgen, Ph.D., behavior specialist Dieredre Ryan-Booth, Ph.D., Monta Loma Elementary school principal Trisha Lee, a special education teacher, a school psychologist, and a speech-language pathologist attended the meeting. Parent attended the meeting, along with Parent's advocate.

The IEP team reviewed the psychoeducational assessment report prepared by Santa Clara Unified. Student's teachers at Santa Clara Unified reported Student was verbally and physically aggressive. Student got angry quickly, and would hit, punch, and break property. Student also left the classroom without permission, often referred to as elopement.

Academically, Student was in the very low range in reading and writing, and in the low range in math. The psychoeducational assessment found Student eligible for special education services under the categories of emotional disturbance and other health impairment.

The IEP team also reviewed Santa Clara Unified's speech and language assessment report. The speech assessor found Student qualified for special education services because of an articulation disorder.

The IEP team reviewed Santa Clara Unified's functional behavior assessment and the proposed behavior intervention plan. The functional behavior assessment identified three target behaviors: physical aggression, physical disruption, and elopement. The assessment defined physical aggression as making contact and or attempting to contact a peer or adult, by:

- hitting with an open or closed fist,
- wrapping arms or hands around another person,
- kicking,
- shoving with one or both hands, or
- using another item to hit, with the potential to cause harm to another person.

The functional behavior assessment defined physical disruption as using classroom items outside of their intended function that may cause damage to the item or other objects in the surrounding area. Elopement was defined as leaving the classroom or current instructional area without asking appropriately or being given permission to do so. Data for the assessment showed that Student was physically aggressive at an average rate of 0.59 times per hour, eloped at an average rate of 1.48 times per hour, and was physically disruptive at an average rate of 0.83 times an hour.

Santa Clara Unified's proposed behavior intervention plan offered strategies to support Student before his target behaviors occurred. These strategies included

- offering frequent breaks,
- transition warnings,
- behavior specific praises,
- a visual schedule,
- timers,
- fixed choices between preferred and nonpreferred activities, and
- timers to support his transition between preferred and nonpreferred activities.

The behavior intervention plan also offered strategies to implement when Student was engaged in the target behaviors. Strategies included having staff move at least five feet away from Student, and to maintain the distance if Student moved towards staff aggressively. Staff was also required to block Student's attempts of physical aggression towards peers, and to prompt Student to communicate his wants and needs, such as a break, before eloping. In response to property destruction, staff was expected to move peers away from harm's way when Student was aggressive, and to remove furniture and materials from Student's reach.

The October 11, 2023 IEP team determined Student qualified for special education services under the category of other health impairment. The IEP team also determined Student required a behavior intervention plan, and offered a behavior intervention plan consistent with the plan developed by Santa Clara Unified.

Mountain View-Whisman offered an IEP that included goals in

- reading,
- writing,
- math,
- communication, and
- social emotional and behavioral skills.

The IEP offered specialized academic instruction, speech and language services, behavior intervention services, and two behavior interventionists to support Student the entire school day. Mountain View-Whisman's behavior interventionists, referred to behavior technicians, were aides trained in deescalating and responding to students' problem behaviors.

The IEP offered Student placement in the general education classroom for most of the school day, except for the specialized academic instruction and speech and language services which would be delivered in a separate classroom. On October 13, 2023, Parent consented to the October 11, 2023 IEP.

STUDENT'S BEHAVIORS RESULTING IN INJURY, OR SUBSTANTIAL LIKLIHOOD OF INJURY, TO SELF OR OTHERS

While at Monta Loma Elementary, Student engaged in frequent and aggressive behaviors resulting in injury to staff and students. Student's behaviors also put himself at risk of injury.

On September 27, 2023, Student eloped to a nearby community park adjacent to the school campus. The community park is an open space next to a street with car traffic.

Also, on September 27, 2023, Student attempted to hit staff in the library. In the classroom, Student hit his teacher, Dunne, on the arm with an open hand, destroyed property, and eloped. Dunne testified that the hit on her arm was painful.

On September 28, 2023, Student knocked items off Dunne's desk. He again attempted to elope to the community park.

On September 29, 2023, Student eloped to the community park. Behavior specialist Dr. Ryan-Booth, principal Lee, and at-risk intervention supervisor Omar Hernandez Leon followed Student to the park. Hernandez Leon's responsibilities as an at-risk intervention supervisor was to monitor at-risk students to determine appropriate interventions and to support behavior technicians.

Hernandez Leon testified he heard Student yell, "I'm going to kill myself" before running towards the street. Hernandez Leon caught up to Student at the sidewalk and prevented him from running into the street. Four staff members were needed to keep Student safe until Parent came to the school to pick him up.

On October 2, 2023, Student threw classroom chairs and pushed staff in the morning. After school, Student threw cafeteria items on the floor, jumped on tables, and yelled and shouted in front of other students.

Mountain View-Whisman suspended Student on October 3, 2023, following an outburst where he threw other students' backpacks to the floor, entered a staff lounge, and threw chairs and tables. Student exited the lounge and attempted to reenter his classroom. Hernandez Leon followed and prevented Student from entering his

classroom for fear that Student could injure other students in his state of anger. Student punched Hernandez Leon in the rib cage and stomach area multiple times. Student also kicked Hernandez Leon on the calf multiple times.

Behavior technician Christopher Montoya was assigned to Student. Student threw punches at him and landed a punch to his rib cage during the October 3, 2023 incident. Dunne and Montoya described Student as large, strong, and comparable in size to students three to four years older. Student was unpredictable, highly impulsive, did not respond to verbal prompts, and would charge at staff when angry.

On October 4, 2023, Student pushed two students to the ground during physical education class, injuring the students. On October 5, 2023, Student eloped from physical education class to a classroom where he threw items around, flipped tables, and emptied and threw bins.

Mountain View-Whisman suspended Student on October 6, 2023. Student punched Hernandez Leon in the chest multiple times while he attempted to stop Student from opening a door. Student also threw parts of a toy train set at staff.

Montoya was involved in the October 6, 2023 behavior incident. Student punched him on the side of his torso with a closed fist. Photo evidence of the injury showed a large, dark bruise on the side of Montoya's torso. Montoya experienced pain for a week as a result of the injury.

From October 9, 2023, to October 20, 2023, Student continued to act aggressively towards staff and peers. On one occasion, staff had to evacuate a classroom because Student was throwing items and knocking over desks. On another occasion, the

transitional kindergarten students were evacuated from the playground when Student approached the younger students and threw punches in the direction of the students, stopping inches away from their faces.

On October 18, 2023, Student attempted to swing into another student while they were both on the playground swings. Hernandez Leon positioned himself between the students. Student then punched and kicked Hernandez Leon and used his body and head to ram himself into Hernandez Leon while swinging.

On October 18, 2023, staff evacuated the classroom because Student activated a fire extinguisher, spraying fire retardant solution on himself and into the classroom. That same day, Student was upset with Dunne, accusing her of taking a picture of him. He grabbed a plastic clip, about four inches long, and pointed the clip at Dunne's face in a threatening manner. Fearful, Dunne backed away as Student moved towards her. Student then threw the clip at the direction of other students, which hit a student in the head, injuring the student. The other student was escorted out of the classroom by Dunne.

On October 19, 2023, Student threw chairs requiring Dunne to evacuate the other students from the classroom. Student jumped on Dunne's desk, leaping from desk to desk. Later that day, Student punched, slapped, and slammed his body and head into a drop-down metal security window in the cafeteria in an effort to get into the kitchen area.

On October 20, 2023, Student threw other students' backpacks to the ground. Student's two aides, along with principal Lee were present, but could not calm Student down. He entered a classroom and proceeded to throw chairs at staff, and knock over supplies and boxes.

Lee testified that she attempted to keep her distance from Student while attempting to protect equipment, such as a television. However, Lee had to get closer to Student to hold heavy tables down that Student was attempting to flip over while under the tables. This concerned Lee because Student could have been injured had the tables fell on him.

During the October 20, 2023 incident that lasted about 30 minutes, Student punched Lee in the eye, pulled her hair, and punched her several times in the torso and arm. Lee suffered tenderness in the eye and headaches for several days. At hearing, Lee was visibly upset recounting the event. Mountain View-Whisman suspended Student for five days.

Mountain View-Whisman convened an emergency IEP team meeting on October 24, 2023, to discuss Student's escalated behaviors and safety at school. Lee, Dunne, Dr. Morgen, Dr. Ryan-Booth, Parent, and a member of Rebakah Children's Services attended the meeting. Student was receiving therapeutic services from Rebekah Children's Services. Dr. Morgen shared that despite two behaviorally trained aides to support Student, Monta Loma Elementary could not meet Student's behavioral needs. Mountain View-Whisman recommended a nonpublic school for Student.

The meeting was reconvened on October 30, 2023, to allow Parent's advocate to attend. Dr. Morgen shared at the meeting that staff at Monta Loma Elementary did not

feel safe working with Student and that Mountain View-Whisman was considering seeking a temporary restraining order against Student. Parent did not agree with placing Student at another school, and did not consent to amending the October 11, 2023 IEP.

Student continued to be physically aggressive to staff when he returned to school from suspension. On November 6, 2023, Student forcefully hit a behavior technician with a plastic stick seven times on one occasion, and hit a behavior technician twice on two other occasions. On November 9, 2023, Student punched Hernandez Leon in the right ear as he prevented Student from opening a door. Student also punched an instructional aide during the altercation. On November 13, 2023, Student hit Dr. Ryan-Booth and a behavior technician. Mountain View-Whisman suspended Student for three days.

On November 16, 2023, the Superior Court of California, County of Santa Clara, granted a temporary workplace violence prevention restraining order sought by Mountain View-Whisman's employees against Student. Lee, Dunne, and Montoya were named as the protected employees. The temporary restraining order required Student to stay at least 100 yards from the protected employees, their workplace, including all Mountain View-Whisman

- sites,
- offices,
- grounds,
- buildings,
- facilities, and
- school-sponsored activities.

The restraining order was initially ordered to expire on December 18, 2023.

The temporary restraining order did not take effect until it was served on Parent on November 29, 2023, at 2:32 p.m. Earlier that day, Student punched a behavior technician in the stomach at least 50 times, in the back about 30 times, kicked the technician five times, and slapped the technician in the face five times. Student was suspended for three days, through December 4, 2023.

Mountain View-Whisman emailed Parent on December 4, 2023, a prior written notice dated November 29, 2023, regarding Student's interim alternative educational placement during the restraining order period. While the temporary restraining was in effect, Mountain View-Whisman offered Student virtual home instruction pending acceptance to an appropriate nonpublic school as an alternative educational setting. Student would receive five hours of home-based instruction, with 60 minutes of virtual specialized academic instruction services each week, and virtual speech and language services for 240 minutes a month.

MANIFESTATION DETERMINATION REVIEW AND ALTERNATIVE EDUCATIONAL SETTING

Mountain View-Whisman convened meetings on December 5 and 15, 2023, for a manifestation determination review to determine if Student's conduct in October and November 2023 resulting in 13 days of suspension, were a manifestation of his disability. Parent, Parent's advocate, staff from Rebekah Children's Services, Lee, Dr. Morgen, Dunne, and Dr. Ryan-Booth, were among those who attended the meetings.

At the December 15, 2023 manifestation determination review meeting, Student's therapist from Rebekah Children's Services offered insight into the cause of Student's problem behaviors. The therapist reported that Student's behaviors were directly related

to his post-traumatic stress disorder. Student was in a constant state of fight or flight. Student constantly assessed whether his surroundings were safe or not as a result of the trauma he experienced. Student's post-traumatic stress disorder impeded his ability to properly process information to make an informed, sound judgment about his surroundings when he felt unsafe. This quickly triggered a fight or flight response from Student. Student's therapist opined Student needed consistency and routine.

The IEP team reviewed a special education report prepared by Mountain View-Whisman's school psychologist. The assessor found the frequency of Student's behaviors increased since October 11, 2023. Mountain View-Whisman's staff determined Student's conduct in October and November 2023, resulting in 13 days of suspension was caused by or had a direct and substantial relationship to his disability. Mountain View-Whisman's staff did not find Student's conduct in question was the direct result of a failure to implement the October 11, 2023 IEP. The manifestation determination review document noted Parent disagreed with the determination made by the manifestation determination team. However, Parent did not appeal the determinations made at the manifestation determination review meeting.

On December 18, 2023, the Superior Court of California extended the temporary restraining order to January 22, 2024. On January 22, 2024, the Superior Court of California lifted the temporary restraining order against Student.

On January 23, 2024, Mountain View-Whisman provided Parent prior written notice of its decision, effective January 23, 2023, through the duration of the expedited due process matter, to place Student in a nonpublic school as an interim alternative educational setting. The notice provided that Mountain View-Whisman would continue

to offer Student home-based instruction pending acceptance and enrollment to an appropriate nonpublic school and until the expedited due process matter concluded.

The prior written notice stated Student would be provided at a nonpublic school, 1,875 minutes a day of specialized academic instruction, 240 minutes a month of speech and language services, intensive individualized services for 1,875 minutes weekly, and 60 minutes a week of counseling services, along with accommodations and other supports. In addition, Student would continue to receive a behavior intervention plan, with 60 minutes a week of consultation between a behavior specialist and the classroom teacher. Furthermore, Mountain View-Whisman offered Student transportation to and from the nonpublic school. At the time of the hearing, Student was receiving home-based instruction, and was not enrolled at a nonpublic school.

Dr. Jennifer Morgen testified at the hearing. Dr. Morgen was a special education coordinator with Mountain View-Whisman. As a coordinator, she was responsible for coordinating and supporting the planning, implementation, and monitoring of program supports and services. She held master's degrees in special education and school psychology, and a doctoral degree in psychology. She was a school psychologist for more than 10 years, for three different school districts, between 2007 and 2023. From 2019-2022, Dr. Morgen was the interim director for special education elementary programs for another school district where she directed, developed, implemented, and monitored special education preschool and elementary special education programs.

Dr. Morgen was familiar with Student's needs. She reviewed assessments of Student, his educational records, met with school staff working with Student, and attended Student's IEP team meetings to lead discussions about appropriate educational settings for Student. She was knowledgeable of programs outside of Mountain View-

Whisman that could support Student's needs. Accordingly, Dr. Morgen's testimony was persuasive, and given substantial weight. At the hearing, Dr. Morgen opined that modifying Student's behavior intervention plan would not alleviate Student's problem behaviors at Monta Loma Elementary because his flight or fight responses were triggered by his environment, and therefore, a change in setting was needed.

Mountain View-Whisman established that maintaining Student's placement at Monta Loma Elementary would substantially likely result in injury to Student or others. Student's assaultive behaviors were violent and unpredictable. His physical aggression resulted in serious injuries to school staff and placed other students at risk of serious injury. Student's aggression, lack of impulse control, and elopement also placed his own safety at risk at Monta Loma Elementary. The evidence established that the risk of Student injuring staff and students, and himself, at Monta Loma Elementary is substantial and likely if he were to return.

Monta Loma Elementary staff could not protect themselves and other students from Student's unpredictable aggressive behaviors, despite having two behaviorally trained aides supporting him throughout his school day, and the support of other staff, such as principal Lee and at-risk intervention specialist Hernandez Leon. As a result, an interim alternative educational setting outside of Monta Loma Elementary is necessary to avoid injuries to Student and others. Accordingly, Mountain View-Whisman proved by a preponderance of the evidence that maintaining Student's current placement at Monta Loma Elementary would substantially likely result in injury to Student, or to others, such that an interim alternative educational setting is appropriate. Mountain View-Whisman prevailed on Issue 1.

ISSUE 2: IS MOUNTAIN VIEW-WHISMAN'S PROPOSED NONPUBLIC SCHOOL PLACEMENT AN APPROPRIATE INTERIM ALTERNATIVE EDUCATIONAL SETTING FOR STUDENT FOR NO MORE THAN 45 SCHOOL DAYS?

Mountain View-Whisman contends a nonpublic school, such as Kinship Academy or a comparable program to Kinship Academy, is an appropriate interim alternative educational setting for 45 days. Mountain View-Whisman argues a nonpublic school such as Kinship Academy in the interim would be an appropriate setting to meet Student's educational and behavioral needs.

A student who is removed from his current placement to an interim alternative educational setting must continue to receive a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to make progress toward meeting the goals set forth in the student's IEP. (20 U.S.C. § 1415(k)(1)(D)(i); 34 C.F.R. § 300.530(d)(1)(i).) Additionally, the IDEA requires that a child with a disability who has been removed to an interim alternative educational setting receive, as appropriate, behavioral intervention services and modifications designed to address the behavior violation so that it does not recur. (20 U.S.C. § 1415(k)(1)(D)(ii); 34 C.F.R. § 300.530(d)(1)(ii).)

Mountain View-Whisman established that a nonpublic school placement is an appropriate interim alternative educational setting for Student. Student's diagnosis of post-traumatic stress disorder, and his aggressive and elopement behaviors triggered by the trauma he experienced, requires an educational setting that is secure and safe, with therapeutic supports and services that can meet his significant social emotional and behavioral needs.

Mountain View-Whisman's staff offered persuasive testimony from Dr. Ryan-Booth and Dr. Morgen, as to why a nonpublic school would be appropriate for Student's interim alternative educational setting. Dr. Ryan-Booth was a board-certified behavior analyst for 24 years. She held a doctoral degree in school psychology and carried a pupil personnel services credential, with a specialization in school psychology, since 1995. Dr. Ryan-Booth had extensive experience assessing student behaviors, developing behavior intervention plans, and delivering direct behavioral intervention services to students. Dr. Ryan-Booth was knowledgeable in the strategies and techniques to deescalate a student's behaviors, and regularly trained school staff on these methods.

Dr. Ryan-Booth was familiar with Student's needs. She attended his IEP team meetings. She observed him in school and was involved in responding to Student's problem behaviors at Monta Loma Elementary. She had extensive experience in assessing and supporting children with problem behaviors at school, and was knowledgeable about Student's needs and the supports he required to be successful at school. Accordingly, Dr. Ryan-Booth's testimony was given substantial weight.

At hearing, Dr. Ryan-Booth and Dr. Morgen opined that Student required a small, secure, enclosed educational setting. An appropriate setting would include a small number of students, with a small adult to student ratio. The setting would require therapeutic and behavioral supports and services, with a therapist and behavior specialist on site. The school would also need a separate space to help Student calm down.

Dr. Morgen testified that Mountain View-Whisman did not have a secure, therapeutic special day class to offer Student. Mountain View-Whisman partnered with a neighboring school district, Los Altos School District, that allows Mountain View-Whisman to request placement of its students in Los Altos School's therapeutic special day program. Los Altos did not accept Student into the program because of Student's aggressive behaviors.

Dr. Morgen contacted various nonpublic schools and the Santa Clara County Office of Education about interim placements. However, Parent did not consent to releasing information of Student to other schools. As a result, Dr. Morgen sent potential nonpublic schools information about Student, without identifiable information of Student, to allow the schools to make an informed decision about accepting Student on an interim basis.

Dr. Morgen testified that nonpublic school Kinship Academy informed Mountain View-Whisman on March 1, 2024, that the nonpublic school had accepted Student for a 45-day interim placement. Dr. Morgen opined that Kinship Academy had the facilities and staff to support Student's academic, social emotional, and behavioral needs. Kinship Academy had 16 students, between kindergarten and 12th grades. There were 12 adults in the classroom, with most of the adults assigned to younger students. Dr. Morgen testified that Mountain View-Whisman would transport Student to and from Kinship Academy, and provide Student a one-to-one aide during transportation, and at Kinship Academy for the school day. Kinship Academy was about a 35-minute drive from Student's home.

Kinship Academy had a dedicated calming space for students, with a team for the calming space to support and teach students skills to self-regulate. Their staff were trained in responding to problem behaviors. Behavior specialists and mental health professionals were available onsite.

Kinship Academy had credentialed staff to implement Student's IEP goals and accommodations, and to deliver the instruction, services, and supports offered in Student's IEP and those proposed in the January 23, 2024 prior written notice, to ensure Student continued to receive a FAPE. In addition, Kinship Academy was flexible on when to deliver instruction to a student. If a student required time away from instruction, teachers would reteach the material to the student at another time of the day.

A preponderance of the evidence established a nonpublic school, such as Kinship Academy, with a secure, enclosed campus, and behavioral and therapeutic supports and services embedded in the program is an appropriate interim alternative educational setting for Student. Student's trauma related aggression and elopement presents a significant risk to himself and others. In the interim, Student requires a small, secure educational setting to successfully access his instruction and related services, to be delivered by trained providers with therapeutic and behavioral expertise. Accordingly, Mountain View-Whisman proved by a preponderance of the evidence that the proposed nonpublic school placement, such as Kinship Academy or a comparable nonpublic school program, is an appropriate interim alternative educational setting for Student for no more than 45 school days. Mountain View-Whisman prevailed on Issue 2.

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 Monta Loma Elementary would substantially likely result in injury to Student, or to others, such that an interim alternative educational setting is appropriate.

Mountain View-Whisman prevailed on Issue 1.

ISSUE 2:

Mountain View-Whisman's proposed nonpublic school placement is an appropriate interim alternative educational setting for Student for no more than 45 school days.

Mountain View-Whisman prevailed on Issue 2.

ORDER

Mountain View-Whisman may place Student at Kinship Academy, or a comparable nonpublic school, as an interim alternative educational setting for not more than 45 school days from the date of this Order.

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.

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings