

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CAPISTRANO UNIFIED SCHOOL DISTRICT,

V.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2024030280

EXPEDITED DECISION

APRIL 10, 2024

On March 7, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Capistrano Unified School District, naming Student. Capistrano's complaint contained expedited and non-expedited hearing claims. OAH set the expedited and non-expedited matters for separate hearings. The expedited claims proceeded to hearing with no continuances. (34 C.F.R. § 300.532(c)(2)(2006).) All references in this Expedited Decision to the Code of Federal Regulations are to the 2006 Edition unless otherwise noted. This Expedited Decision resolves only the expedited claims.

Administrative Law Judge June R. Lehrman heard this matter via videoconference on March 26, 2024. Tracy Petznick Johnson represented Capistrano. Executive Director of Alternative Dispute Resolution and Compliance Kathy Purcell attended on Capistrano's behalf. Timothy Adams represented Student. No one attended on Student's behalf.

On March 26, 2024, the single day of hearing, the record was closed, and the matter was submitted for decision. The ALJ allowed the parties to file closing arguments during the submittal time.

ISSUE

1. Is maintaining Student's current educational placement within District's schools substantially likely to result in injury to Student or to others, such that District can remove Student to an interim alternative education setting, or IAES, of in-home instruction, remote speech, and occupational therapy consultation for not 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.

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§ 300.1 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).) In this matter, Capistrano filed the complaint and bears 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 eight years old at the time of hearing. Student resided within Capistrano's geographic boundaries at the times relevant to this Expedited Decision.

ISSUE 1: IS MAINTAINING STUDENT'S CURRENT EDUCATIONAL PLACEMENT WITHIN DISTRICT'S SCHOOLS SUBSTANTIALLY LIKELY TO RESULT IN INJURY TO STUDENT OR TO OTHERS, SUCH THAT DISTRICT CAN REMOVE STUDENT TO AN INTERIM ALTERNATIVE EDUCATION SETTING, OR IAES, OF IN-HOME INSTRUCTION, REMOTE SPEECH, AND OCCUPATIONAL THERAPY CONSULTATION FOR NOT MORE THAN 45 SCHOOL DAYS?

Capistrano contends that maintaining Student's current educational placement is substantially likely to result in injury to Student or to others, such that it can remove Student to an interim alternative education setting, of one hour per day of in-home instruction, remote speech, and occupational therapy consultation for not more than 45 school days. Interim alternative educational setting will be referred to as IAES in this Decision. Capistrano seeks an enforceable order for Student's removal for 45 school days and contends that the IAES that it has proposed for Student is appropriate during the removal period.

Student agrees that maintaining Student's current educational placement is substantially likely to result in injury to Student or to others, such that an IAES might be appropriate during the removal period. However, Student contends that the Capistrano-proposed IAES program of only one hour per day of in-home instruction, remote speech, and occupational therapy consultation will not enable him to participate

in the general education curriculum or progress toward meeting his IEP goals. Title 20 United States Code section 1415(k), and 34 Code of Federal Regulations part 300.530 et seq., govern the discipline of special education students. (Ed. Code, § 48915.5.)

The IDEA permits a child to be removed from their current educational setting to an IAES, after an expedited hearing requested by a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others. (20 U.S.C. §1415(k)(3(A) and (B).) After such a hearing, a hearing examiner may order a change of placement to an appropriate IAES for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others. (20 U.S.C. § 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 300.532 (b)(2)(ii).)

STIPULATED FACTS

The parties stipulated to the following facts, all of which are therefore accepted as proven.

Student has a history of physically aggressive behaviors, including against peers and staff. These behaviors are a manifestation of Student's disability.

Capistrano and Parents entered into a Settlement Agreement on October 13, 2022, wherein Capistrano agreed to place Student in its therapeutic behavior intervention class, or TBIC at Arroyo Vista Elementary School. Capistrano conducted a Functional Behavior Assessment of Student in January 2023, and developed a Behavior Intervention Plan for him at that time. Towards the end of his first-grade year, at Capistrano's May 9, 2023 annual individualized educational program, or IEP team meeting, the team discussed

some local nonpublic schools, called NPS options, and indicated Capistrano would begin the referral process to various NPS options. Capistrano also offered new annual IEP goals, supported by speech and language and occupational therapy services. Following the May 9, 2023 IEP, Capistrano referred Student to various local NPSs, including applications to the following locations:

- Mardan NPS,
- Port View Preparatory,
- Del Sol NPS,
- Speech and Language Development Center,
- Rossier NPS, and
- Olive Crest Academy.

Mardan NPS and Port View Preparatory declined to admit Student.

Parents have not consented to any change of placement during the 2023-2024 school year. Following the Settlement Agreement, Student has stayed in his last implemented program of the TBIC at Arroyo Vista Elementary School. During the 2023-2024 school year, Student is in second grade. Within the TBIC program, Student receives the following special education and related services:

- specialized academic instruction,
- additional program support of a full-time TBIC aide assigned to him,
- speech therapy,
- occupational therapy, and
- transportation.

During the 2023-2024 school year, Student has engaged in the following behaviors:

- eloping,
- hitting,
- punching,
- destruction of property,
- aggression,
- head-butting,
- profanity,
- exposing his genitals,
- urinating, and
- defecating on the floor.

Student's behaviors resulted in formal, behavioral incident reports wherein it was documented that he caused injury to staff and his peers and exposed his genitals to other students on several occasions. District interventions within the setting of the TBIC have not reduced Student's problem behaviors effectively to prevent Student from harming District staff or his classmates. Maintaining Student's current educational placement in the TBIC program at Arroyo Vista Elementary School is substantially likely to result in injury to Student or to others.

Student has been suspended a total of 17 days, to date, during the 2023-2024 school year. On February 14, 2024 and March 7, 2024, Capistrano convened manifestation determination meetings and determined that Student's conduct was related to his disability. At the February 14, 2024 IEP meeting, the IEP team reviewed and revised Student's Behavior Intervention Plan and adjusted his annual IEP goals. At

the February 14, 2024 IEP meeting, the IEP team discussed and offered Student placement at an NPS. The IEP team noted that Student's application was pending with the following NPS locations, but that a parent tour was required before any of the NPS options would accept Student:

- Rossier NPS,
- Olive Crest Academy,
- Del Sol NPS, and
- Speech and Language Development Center.

To date, Student's parents have not participated in tours at any of these possible NPS sites.

At the March 7, 2024 IEP meeting, the IEP team discussed and offered the following placement and services as an IAES.

- a. 60 minutes per day of in-person instruction by a credentialed education specialist;
- b. 30 minutes of individual speech, provided remotely, per every five school days; and
- c. 30 minutes of occupational therapy consultations per month, to be between a Capistrano occupational therapist, parent, and in-person IAES teacher.

Capistrano members of the IEP team believe that the March 7, 2024 offer of IAES is reasonably calculated to provide Student ongoing access to the general education curriculum, to permit him to receive the services and modifications in his current IEP, to

provide him with the opportunity to make progress towards his IEP goals during any disciplinary removals from school, and to ensure that the services and modification designed to assess his behavior will be provided.

Within the month of March 2024, Capistrano proposed a triennial assessment plan, which includes an offer to conduct a new Functional Behavior Assessment for Student and a special circumstances instructional assistance assessment, which is for the purposes of determining a child's possible need for one-to-one aide support.

Student's parents agree that one or both of them will participate in tours of the following NPS locations, if invited to do so by the NPS, prior to May 1, 2024:

- Rossier NPS,
- Olive Crest Academy,
- Del Sol NPS, and
- Speech and Language Development Center.

REQUIREMENTS FOR AN IAES

A student in an IAES is entitled to receive "educational services as provided in [20 U.S.C. § 1412 (a)(1)]," which calls for a FAPE for all children with disabilities including those who have been suspended or expelled, "so as to enable the child to continue to participate in the general education curriculum, although in another setting, 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)(i).)

The regulatory history of the regulations implementing the 2004 amendments to the IDEA clarifies that the “educational services” required in an IAES must enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP. “Participate” does not mean that a school or district must replicate every aspect of the services that a child would receive if in his or her normal classroom.

For example, it would not generally be feasible for a child removed for disciplinary reasons to receive every aspect of the services that a child would receive if in his or her chemistry or auto mechanics classroom as these classes generally are taught using a hands-on component or specialized equipment or facilities. we believe the Act modifies the concept of FAPE in these circumstances to encompass those services necessary to enable the child to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the child’s IEP. (Assistance to States for the Education of Children with Disabilities & Preschool Grants for Children with Disabilities (Aug. 14, 2006) 71 Fed. Reg. 46,540, 46716.)

Thus, a school district is not required to provide children suspended for more than 10 school days in a school year for disciplinary reasons, exactly the same services in exactly the same settings as they were receiving prior to the imposition of discipline. However, the special education and related services the child does receive must enable the child to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the child’s IEP.

As stated above, we read the Act as modifying the concept of FAPE in circumstances where a child is removed from his or her current placement for disciplinary reasons. Specifically, we interpret section [1415(k)(1)(D)(i)] of the Act to require that the special education and related services that are necessary to 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, must be provided at public expense, under public supervision and direction, and, to the extent appropriate to the circumstances, be provided in conformity with the child's IEP. (Ibid.)

However, this statutory and regulatory guidance as to the required elements of the educational services to be provided in an IAES applies specifically only to disciplinary removals under 20 United States Code section 1415 (k)(1) which is entitled "authority of school personnel." (20 U.S.C. § 1415 (k)(1); 34 C.F.R. § 300.530.) By its terms, the guidance governs the educational services to be provided in IAES's that school personnel authorize, pursuant to certain manifestation determinations not applicable here, and to certain determinations of "special circumstances" that are also not applicable here. (See 20 U.S.C. § 1415(k)(1)(D)(i) [specifying that these "educational services" relate to IAES removals pursuant to 20 U.S.C. § (k)(1)(C) and (G) and not, as here, pursuant to subparagraph 20 U.S.C. § 1415(k)(3)(B) ["authority of hearing officer"]; 34 C.F.R. § 300.530(d)(i) [specifically referring to removals pursuant to 34 C.F.R. §§ 300.530 (c) and (g) and not, as here, pursuant to 34 C.F.R. § 300.532(b)[same].)

Here, the removal is not by the authority of school personnel, but pursuant to those sections of the statute and regulations whereby a district may request the hearing examiner after an expedited hearing to order a change of placement to an

appropriate interim alternative setting for not more than 45 school days if the hearing officer determines that a student is substantially likely to injure himself or others. (20 U.S.C. § 1415(k)(3)]; 34 C.F.R. § 300.532].) The specific requirements for “educational services” required in IAES’s under the “authority of school personnel” do not by their specific terms apply to IAES’s ordered by a hearing examiner under the authority granted by 20 United States Code section 1415 (k)(3) and 34 Code of Federal Regulations part 300.532, where a student is substantially likely to injure himself or others.

However, the educational services that the law requires be provided in other IAES’s are persuasive authority and should be applied by analogy to the IAES requested here.

ANALYSIS

MAINTAINING STUDENT'S CURRENT EDUCATIONAL PLACEMENT IS SUBSTANTIALLY LIKELY TO RESULT IN INJURY TO STUDENT OR TO OTHERS.

The stipulated facts establish that maintaining Student's current educational placement is substantially likely to result in injury to Student or to others. Student’s closing argument submitted after the hearing confirms the stipulation. Testimony at hearing from school psychologist Amelia Koskella, teacher Lindsey Bickley, speech language pathologist Melinda Jill Edwards, and occupational therapist Ma-Regina Sunico also established these facts.

The TBIC was a therapeutic self-contained class operating within a general education campus. The class contained other students with significant behaviors, such as throwing chairs and desks, outbursts, punching, tantrums, and the like. The other students in the class had average to above average cognitive scores and language abilities, whereas Student's cognitive and speech and language abilities, according to assessments last conducted in or around 2021, more than three years ago, fell significantly below average.

Thus, Student's ability to access the TBIC curriculum was more limited than those of his peers, and his behaviors were more severe than the TBIC could accommodate. Student grew frustrated by the rewards and point systems used in the TBIC class, which he did not comprehend. Cognitively and behaviorally, the TBIC was not the appropriate setting for him. Examples of his behaviors included disrobing, defecating, urinating, and exposing his genitals. These behaviors were most often exhibited during unstructured time. As a result of the behaviors, he was unable to access academic instruction. The demands of the TBIC were too high for him, such that he required a more restrictive setting in order to receive a FAPE.

It is therefore within the hearing examiner's authority to order a change of placement to an appropriate IAES 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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ONE-TO-ONE INSTRUCTION IS APPROPRIATE

Student's last agreed upon and implemented IEP was dated May 9, 2023 as amended February 14, 2024. It set forth four communication goals, five behavior goals, and four social emotional goals. The last consented to and implemented services included the following:

- Specialized Academic Instruction for 6 hours daily.
- Speech and Language Group 60 minutes weekly.
- Occupational Therapy Group 30 minutes weekly.
- Occupational Therapy Consult 30 minutes monthly.

For an IAES, Capistrano offered 60 minutes per day of in-home instruction by a credentialed education specialist; 30 minutes of individual speech, provided remotely, per every five school days; and 30 minutes of occupational therapy consultations per month, to be between a Capistrano occupational therapist, parent, and in-person IAES teacher.

Parent agreed that in-person one-to-one services would be best for Student's academics. This was consistent with Student's learning preferences to work alone or one-to-one with an adult.

With the exception of a classroom participation goal and a parallel play goal, Student would be able to work towards each of his individualized goals within a one-to-one instructional setting. Even for the classroom participation and parallel play goals that were written to be practiced with peers, Student would benefit from practicing necessary precursor skills – like whole body listening - with an adult role model. The

evidence established that within a one-to-one setting, Student would be able to work on his behaviors, which Capistrano professionals believed was the first necessary precursor to enabling him to learn.

For example, if his more severe behaviors had the function of seeking attention, as school psychologist Koskella hypothesized, in a one-to-one setting the behaviors could better be ignored and thereby extinguished. On the other hand, in a classroom the behaviors had to be addressed, thereby garnering attention, and reinforcing those behaviors. And, in a one-to-one setting Student would be able to practice pre-taught vocabulary, by which Capistrano hoped to teach him to use words rather than actions to express needs and emotions. Further, in a one-to-one setting the content of the curriculum could better be tailored to Student's abilities, as opposed to the more advanced cognitive levels of the other children in the TBIC class, thereby lessening Student's frustration. Further, the evidence established that Student's behaviors were more severe and pronounced when the environment was overstimulating, for example in the chaotic TBIC classroom itself and the comprehensive campus it was located on.

The behavior supports of Student's Behavior Intervention Plan, such as a visual and positive reinforcement system, could be implemented by the IAES teacher to work on his goals in the alternative setting. For all these reasons, one-to-one instruction would comprise an appropriate IAES.

CAPISTRANO DID NOT SUSTAIN ITS BURDEN TO PROVE THAT ONE HOUR A DAY WAS APPROPRIATE FOR AN IAES, NOR THAT THE REMOTE RELATED SERVICES IT PROPOSED WERE APPROPRIATE

However, Bickley acknowledged that the offer of one-to-one intensive instruction for 60 minutes per day would be far fewer total minutes than a regular school day, which lasted approximately six hours. District's proposal significantly reduced Student's services from those in his May 9, 2023 IEP, as amended on February 14, 2024, from six hours daily to one hour daily. It reduced in-person speech services from 60 minutes weekly to 30 minutes weekly provided via Zoom, and it removed direct occupational therapy services altogether by proposing only occupational therapy consult once a month.

Bickley testified that in a six-hour day, she observed Student to be disengaged for multiple hours and if Student was able to pay attention and stay on task for three to five minutes, he was making progress. Bickley further testified that over the course of a six-hour school day, Student only spent approximately 10 to 20 minutes meaningfully accessing the general education curriculum. He was unable to keep pace with the general education curriculum presented in TBIC, so he "checked out" and often sat under his desk, rather than participating. Bickley opined that the 60 minutes offered, in a more controlled one-to-one setting without the distractions of peers who have their own behaviors, would be likely to allow him to make more progress than he had in his TBIC setting. Thus, because Student was known to have difficulties with disengagement and had only been able to show limited engagement, Bickley believed that one hour of instruction per day would be the amount of time Student would be able to sustain receiving the information and participating in the curriculum.

However, this belief seems to have assumed that Student could sustain attention for the entire hour. It failed to consider the fact that it apparently required a six-hour day in the TBIC program, to enable Student to engage for up to 20 minutes in total over the course of the day in three-to-five-minute increments. Therefore Capistrano, who had the burden to prove that its proposed IAES was appropriate, did not prove that its proposal of one hour of instruction daily was sufficient to ensure Student was able to participate in the general education curriculum, although in another setting, and to progress toward meeting his IEP goals.

Similarly, Student's speech services were also reduced from 60 minutes weekly to 30 minutes weekly and changed from in-person to virtual speech. Edwards recommended that her services could be provided via Zoom once per week. Because she had built up significant rapport with Student, she believed that a single intensive session, with less transition time, could allow Student to make progress on his speech goals. Part of her reasoning for recommending virtual services was to allow Student to continue working with her, based on her rapport with Student, keeping in mind her schedule. Edwards shared her belief that she has established a relationship with Student, and it was important that she continue to provide services to him, which is why she recommended virtual services. When asked if Student coming to school to receive speech services in person was a considered option, Edwards stated that she did not remember this being discussed or being an option. As such, Edwards' proposed speech services during IAES appear to be tailored more towards convenience, and her availability to provide services to Student, rather than his individualized needs.

Notes from the February 14, 2024 IEP meeting, expressed that Student's deficits in social interaction and communication, along with inattention and impulsivity, were significantly impacting his progress in the educational setting, as he required significant

adult support to engage in the curriculum as well as socially. As such, despite Student's significant needs in social interaction and communication and despite acknowledging that Student required significant adult support to engage both in the curriculum and socially, Capistrano proposed a reduction in services.

Although Capistrano's proposed IAES need not exactly replicate Student's TBIC placement, it must meet the minimum standard of enabling Student to participate in the general education curriculum and progress toward meeting his IEP goals. Testimony from Bickley, Koskella, and Edwards expressed their belief that Student would be able to work on his goals in the IAES, although some of these goals could not fully be worked on as written; though, the concepts behind the goals could still be worked on. However, Capistrano failed to identify whether these goals could reasonably be worked on in the limited time proposed and the manner in which these services were proposed.

Thus, it is unclear how the proposed IAES would enable Student to participate in the general education curriculum if Student would only be receiving one hour of instruction a day.

In addition, Capistrano proposed an IAES that placed the burden of overseeing Student's educational programming on his parents. Capistrano proposed one hour per day of one-to-one instruction with a credentialed teacher. Capistrano did not propose a plan for how the rest of Student's day would look. When asked what the rest of Student's day would look like after the teacher completed her one hour of instruction, Bickley testified that it was not for her to decide what would happen for the rest of the day. When asked further about the proposed in-home program, Bickley testified that Student would receive one hour per day with the education specialist, and the rest of Student's day would be determined by anything else Student's mother had set up.

Accordingly, Capistrano's proposed IAES not only significantly reduced the services Student would receive, but also placed the responsibility on Student's parents to implement programming for him for the remainder of his day. Here, Capistrano essentially proposed to make Student's mother responsible for Student throughout the school day, inappropriately shifting the duty of educating Student and providing him with educational services and behavioral support, to his parents. Thus, Capistrano ultimately acknowledges that Student's needs are so severe that it cannot properly support him in its program and rather Student requires placement in a more structured environment; yet, by proposing only one hour per day of services to Student, it expected Parents to supplement the rest of Student's days on their own, with no guidance.

IDEA's definition FAPE requires that special education and related services be provided "at public expense, under public supervision and direction" and without charge, and "meet the standards of the State educational agency." (20 U.S.C. §1401 (9)(A) and (B)). It has not been established that Capistrano's proposed program complied with these requirements, which should still be provided even in an alternate setting.

In conclusion, the evidence and testimony have shown that maintaining Student's current educational placement within Capistrano's TBIC program is substantially likely to result in injury to himself or others. Therefore, the Parties agree, and Capistrano established that Student can be removed from his current placement within Capistrano's TBIC program for a period not to exceed 45 school days, as indicated in the parties' joint stipulation.

However, the Parties do not agree, and Capistrano did not establish, that Capistrano's proposed IAES is appropriate. Capistrano's proposed IAES not only

significantly reduces Student's services, but it also relies on Parents providing support to a student Capistrano has identified exhibits significant behavioral needs, requiring a level of support Capistrano's program is unable to provide.

For these reasons, although maintaining Student's current educational placement within Capistrano's schools is substantially likely to result in injury to Student or to others, and this fact justified removing Student to an appropriate interim alternative education setting not to exceed 45 school days, Capistrano failed to meet its burden that its proposed IAES of 60 minutes per day of in-person instruction by a credentialed education specialist; 30 minutes weekly of individual virtual speech, and 30 minutes monthly of occupational therapy consultation, is appropriate to enable Student to participate in the general education curriculum and progress towards meeting his IEP goals.

In its closing brief, Capistrano contends that if the ALJ finds the proposed IAES to be inappropriate, the ALJ herself should craft another or different more appropriate option. However, insufficient evidence was presented as to what possible placements might be feasible or appropriate. Therefore, Capistrano failed to meet its burden of proof either that its proposed IAES was appropriate or, what theoretical other remedy should be ordered.

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 educational placement within District's schools is substantially likely to result in injury to Student or to others, however District may not remove Student to the proposed interim alternative education setting of in-home instruction, remote speech, and occupational therapy consultation for not more than 45 school days. District partially prevailed on Issue 1.

ORDER

1. Maintaining Student's current educational placement will result in substantial risk of injury to Student and to others.
2. Capistrano did not meet its burden to prove that its proposed IAES was appropriate.
3. Student immediately requires an appropriate IAES for not more than 45 school days that shall afford the opportunity to participate in the general education curriculum and make progress on IEP goals. The IAES need not exactly replicate Student's TBIC placement, but it must meet the minimum standard of enabling Student to participate in the general education curriculum and progress toward meeting his IEP goals. Capistrano shall develop a new IAES proposal that specifies the time, place and the manner in which Student's special education and related services will be provided. The IAES will not place the burden of overseeing Student's educational programming on his parents. It shall propose a plan for how Student's school days will progress when or if not engaged in direct instruction. The

IAES shall be provided at public expense, under public supervision and direction and without charge, and meet the standards of the State educational agency. Capistrano shall identify an appropriate IAES, consistent with the findings, conclusions and order herein, and disclose this to Student, and make a placement offer for the IAES within three business days of this Decision.

4. Nothing in this Decision prevents the parties from bringing a new expedited appeal concerning the IAES Capistrano is ordered herein to identify.
5. Nothing in this Decision prevents the parties from determining on their own, and agreeing to, another appropriate interim alternative educational setting.

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.

June R. Lehrman

Administrative Law Judge

Office of Administrative Hearings