

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

WEAVER UNION SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2024110575

EXPEDITED DECISION

JANUARY 15, 2025

On November 18, 2024, Weaver Union School District, called Weaver, filed an expedited request for due process hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Student. Administrative Law Judge Thanayi Lindsey heard this matter on December 17, 18, and 19, 2024. The Administrative Law Judge is called ALJ.

Attorneys Rebecca Buchsbaum and Jennifer Fain represented Weaver. Special Education Director Mayra Garcia attended all hearing days on Weaver's behalf. Student's maternal grandmother, who will be referred to as Parent, attended the hearing on December 17, 2024, on Student's behalf.

On December 17, 2024, during Parent's cross examination of Weaver's witness, Parent raised her voice, while speaking over the witness and the ALJ and accused Weaver's witness of lying after hearing the response to her question. The ALJ attempted to calm down Parent and her ability to ask more cross-examination questions, but to no avail. Parent abruptly left the hearing and did not return for the remaining hearing days, despite OAH sending her videoconference invites to join each day.

On December 19, 2024, Weaver rested its case-in-chief, the record was closed, and the expedited matter submitted for decision. The ALJ scheduled for written closing briefs to be submitted on December 27, 2024, by 12:00 p.m. On December 23, 2024, OAH made two unsuccessful attempts to contact Parent about the closing briefs; however, Parent's voicemail box was full.

EXPEDITED ISSUES

1. Is maintaining Student's current placement substantially likely to result in injury to self or others such that Weaver may remove Student to an interim alternative educational setting for not more than 45 school days?
2. Is Weaver's proposed placement at Merced County Office of Education's Sierra Program as offered in the December 15, 2023 individualized education program, called IEP, as amended on November 4 and 12, 2024, an appropriate interim alternative educational setting?

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).)

Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq., govern the discipline of special education students (Ed. Code, § 48915.5.) A local educational agency may suspend or expel a special education student 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, the local educational agency may remove the student from his or her educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities.) (20 U.S.C. § 1415(k)(1)(B); 34

C.F.R. § 300.530(b)(1).) If the local educational agency seeks to change a special education student's placement for more than 10 days, it must meet the requirements of Section 1415(k).

Within 10 school days of any decision to change the placement of a special education student because they violated a code of student conduct, the local educational agency, the parent, and relevant members of the individualized education program, called IEP, team must review all relevant information in the student's file, and any relevant information provided by the parents, to determine if the conduct in question was:

- caused by, or had a direct and substantial relationship to, the child's disability; or
- the direct result of the local educational agency's failure to implement the IEP. (20 U.S.C. 1415(k)(1)(E)(i).)

The meeting to review the student's conduct is called a manifestation determination review meeting. If the manifestation determination review team determines that the student's conduct was related to his or her disability or that the local educational agency did not implement the IEP, the team must determine the conduct was a manifestation of the child's disability, and return the child to the placement from which they were removed. (20 U.S.C. § 1415(k)(1)(e)(ii) & (F).)

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).) The hearing officer may return the child to the placement from which the child was removed or order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the child or to others. (20 U.S.C. § 1415(k)(3)(B)(ii); 34 C.F.R. § 300.532(b)(2)(ii).)

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, Weaver 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 eight years old and in second grade attending Pioneer Elementary School's referred to as Pioneer, general education classroom setting at the time of hearing. Student resided within Weaver's geographic boundaries at all relevant times. Student was eligible for special education under other health impairment, due to symptoms related to attention deficit hyperactivity disorder, called ADHD.

BACKGROUND

In September 2023, when Student was in first grade, Weaver administered a psychoeducational assessment and a functional behavior assessment to determine whether Student was eligible for special education and related services due to Student's behavioral struggles. On December 15, 2023, Weaver held an IEP team meeting where they found Student eligible for special education services, under the category of other health impairment. Weaver offered the following special education and related services in the December 15, 2023 IEP:

- A placement offer in the general education classroom with specialized academic instruction for a total of 240 minutes per week in the resource classroom with four times per week for 30 minutes in English language arts and four times per week for 30 minutes in math.
- Accommodations of
 - preferential seating,
 - shortened/reduced assignments in all subject areas,
 - flexible test setting and timing,
 - noise canceling headphones,
 - visual cues/prompts,

- visual schedule/checklist,
 - modified schedule,
 - breaks, and
 - reward system.
- Sierra Vista, individual counseling services held off campus and an on-campus individual counseling service at Pioneer called Boy's Club.
 - Consultation between a board-certified behavior analyst and a general education teacher for 30 minutes per month.

The IEP team developed four goals of foundational skills in reading, addition, subtraction, and compliance. Parent consented and Weaver implemented the December 15, 2023 IEP. On March 19, 2024, the IEP team found Student eligible for educationally related mental health services and a one-to-one aide. The IEP team amended the December 15, 2023 IEP to include the following:

- 20 minutes per week of individual counseling services.
- A one-to-one aide for 360 minutes per day.
- Academic goals of fundamental skills in reading, addition, and subtraction.
- A behavior goal of compliance for academic and non-academic demands.
- Social emotional behavioral goals for transition from general education to the resource classroom, requesting needs, utilizing learned coping strategies, and accepting choices.

- A social goal of playing games and taking turns.
- A compliance goal of staying on task with academic demands.
- Board-certified behavior analyst services 30 minutes twice per month.
- A behavioral intervention plan to focus on staying in class with preferred activities, transitioning to a designated class within 10 minutes, and complying with non-academic demands.
- Accommodations of
 - preferential seating,
 - shortened/reduced assignments in all subject areas,
 - flexible test setting and timing,
 - noise canceling headphones,
 - visual cues/prompts,
 - visual schedule/checklist,
 - modified schedule,
 - breaks, and
 - reward system.

Weaver implemented the March 19, 2024 amendment IEP, including the behavior intervention plan. Nevertheless, during the 2023-2024 school year, Weaver suspended Student five times and reported 11 incidences of discipline ranging from

- eloping (leaving an area without permission),
- refusal/noncompliance behavior,
- laying on the floor,
- hitting,

- kicking,
- climbing fences and trees, and
- throwing objects.

Based on Student's kindergarten and first-grade behaviors, Weaver took a proactive position about Student's placement by discussing the possibility of seeking a referral to the Merced County Office of Education's Sierra Program. Parent consented for Merced County Office of Education to observe Student at Pioneer and to collaborate with Weaver District for placement options.

ISSUE 1: IS MAINTAINING STUDENT'S CURRENT PLACEMENT SUBSTANTIALLY LIKELY TO RESULT IN INJURY TO SELF OR OTHERS SUCH THAT WEAVER MAY REMOVE STUDENT TO AN INTERIM ALTERNATIVE EDUCATIONAL SETTING FOR NOT MORE THAN 45 SCHOOL DAYS?

Weaver contends Student engaged in significant physical, verbal, and aggressive behavior which includes the use of objects that placed Student, other classmates, and school staff in substantial danger of injury. Weaver contends Student's needs would be better met in the Merced County Office of Education's Sierra Program.

Student contends Weaver did not properly educate Student in kindergarten and first grade, and that Student's behavior is a result of a lack of academic progress. Student opposes placement at the Sierra Program and argues he should stay in the current placement.

When considering whether maintaining the current placement of the child is substantially likely to result in injury to the child or to others, the United States Court of Appeals for the Eighth Circuit rejected the proposition that a child must first inflict serious

harm before that child can be deemed substantially likely to cause injury. (*Light v. Parkway C-2 School Dist.* (8th Cir. 1994) 41 F.3d 1223,1230.) The Court held there is no requirement a child must be “truly dangerous” or “intend to cause injury,” reasoning, “[e]ven a child whose behaviors flow directly and demonstrably from [their] disability is subject to removal where that child poses a substantial risk of injury to [them]self or others.” (*Id.* at p. 1228.)

Several OAH cases have discussed conduct that is substantially likely to result in injury to a student or to others. While OAH decisions are not binding authority, they may be persuasive authority in subsequent proceedings. (Cal. Code Regs., tit. 5, § 3085.)

For example, conduct that has been found substantially likely to result in injury includes shoving and threatening people. (*Long Beach Unified School Dist. v. Student* (2008) OAH Case No. 2008030017; *Fort Bragg Unified School Dist. v. Parent on behalf of Student* (2008) OAH Case No. 2008100507; orders and decisions rendered in several OAH cases have addressed what constitutes conduct substantially likely to result in injury to the child or others.)

Other examples of conduct that OAH has found substantially likely to result in injury includes:

- Per *Long Beach Unified School Dist. v. Student* (2008) OAH Case Number 2008030017:
 - hitting, kicking, shoving, and 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.

- Per *Fort Bragg Unified School Dist. v. Parent on behalf of Student* (2008) OAH Case Number 2008100507:
 - hitting an adult in the back;
 - lunging at the teacher and trying to punch and hit her; and
 - yelling at and threatening people.
- Per *Fullerton Joint Union High School Dist. v. Student* (2007) OAH Case Number 2007040584:
 - throwing desks;
 - knocking over a computer;
 - yelling and screaming, and
 - hitting, kicking, punching, and biting adults.
- Per *Lancaster Elementary School Dist. v. Student* (2006) OAH Case Number 2006030771;
 - throwing objects;
 - kicking other children;
 - punching and kicking school staff;
 - eloping from school and running into the street;
 - knocking over another child;
 - screaming; and
 - destroying property.

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STUDENT'S BEHAVIOR POSED A THREAT TO HIMSELF AND OTHERS

Student's behavior was reckless and unsafe that posed a threat to himself and others while at Pioneer. Student engaged in erratic and sometimes dangerous behavior during the spring semester of the 2023-2024 school year. His behavior resulted in injury to staff and could have resulted in injury to himself and other students. On April 17, 2024, Student engaged in dangerous behavior by eloping from the classroom and running inside a construction site on campus. Student pulled several landscaping flags with a point edge and pointed them at other students and his aide. Student was quick, yet aimless as he ran into a teacher and pushed the school counselor.

On April 26, 2024, Student poked the aide in the leg after sharpening a pencil and ran over the aide's foot with an office chair. When asked the reason for his behavior, Student indicated his actions were for the sole reason of returning home. On May 2, 2024, Student eloped from the classroom and ran inside the office area of the school. Student was not aware of his surroundings and ran swiftly past the room divider and pushed forcefully a teacher who was entering the room at the same time. This teacher had a health issue that Student could have potentially aggravated.

Weaver held manifestation determination review meetings on April 30, 2024, May 6, 2024, and May 13, 2024. Each manifestation determination report described Student's behavior as moderate to severe disruptions occurring daily for 20 to 60 minutes. Parent and the manifestation determination review team determined that the incidents on April 17, 2024, and May 2, 2024, were a manifestation of Student's disability and were not a result of Weaver's failure to implement the December 15, 2023 IEP as

amended. However, the manifestation determination review team and Parent disagreed about the April 26, 2024 incident. The team determined the incident was intentional and therefore not a manifestation of Student's disability.

On May 13, 2024, the manifestation determination team amended Student's IEP by changing his specialized academic instruction services from group to individual for the rest of the 2023-2024 school year. The group specialized academic instruction resumed on June 8, 2024, and continued to December 15, 2024. Parent consented and Weaver implemented the May 13, 2024 amendment IEP.

STUDENT CONTINUED TO ENGAGE IN UNSAFE BEHAVIOR DURING THE 2024-2025 SCHOOL YEAR

Although Parent consented for the Merced County Office of Education to observe Student at Pioneer, review his educational records, and collaborate with Weaver about placement options in March 2024, the findings and recommendations were not discussed until September 2024. Siobhan Hanna, referred to as Hanna, was the senior coordinator at Merced County Office of Education who observed Student at Pioneer's educational settings. Hanna observed Student eloping and engaging in dangerous behaviors while not responding to his aide's redirections for an hour. During the September 24, 2024 IEP team meeting, Hanna discussed her recommendation for Student to be placed at the Sierra Program. The IEP team discussed the continuum of placement and determined Student's elopements and dangerous behavior hindered him from accessing most of his academic instructions and related services and meeting any

IEP goals. However, Parent opposed the recommendation and refused to engage in further discussions. The IEP team continued the discussions about the continuum of placement to November 4, 2024.

On October 8, 2024, Student engaged in dangerous behavior by eloping from the classroom and attempting to join a third-grade class's field trip. Student attempted to board the bus, ran between the buses, kicked the glass bus doors, and threatened to chase behind the bus if it left the campus. Because Student's safety was at issue, Pioneer's principal, Elijah Gong, called Gong, ordered the bus drivers to secure the bus doors to prevent Student from getting onto the bus. Gong blocked Student's kicks by standing in front of the bus door. Student continued to kick Gong for at least three minutes. Student placed his leg under the tires. Upon seeing the potential danger, Gong, who is trained in handling student safety and crisis intervention, deployed a low-level standing hold to support Student's return to campus where Gong used his arms to firmly hold Student around the upper shoulders to protect Student and others while leading Student to the office area. Gong completed a behavior emergency report after the incident.

Suchismita Kadam, a board-certified behavior analyst at Pioneer, called Kadam witnessed Student's dangerous behavior numerous times. Kadam observed Student's dangerous and risky behavior at Pioneer and gave input at IEP team meetings to support Student's behavioral needs. However, Student continued to engage in uncontrollable behaviors that showed a lack of awareness of his consequences. Pioneer's supports did not remove the behavioral barriers that prevented Student from accessing his academic instructions.

On October 16, 2024, the manifestation determination review team convened and determined that Student's behavior on October 8, 2024 was a manifestation of his disability, and that Student's behavior was not the direct result of Weaver's failure to implement the December 15, 2023 IEP as amended. The team amended Student's behavior intervention plan to address his struggles with eloping on and off campus. The team continued the meeting to November 4, 2024. Parent consented to the IEP amendments and Weaver implemented the December 15, 2023 IEP as amended on October 16, 2024.

Student's aggressive behavior continued after the bus incident. The next day, on October 9, 2024, Student eloped and ran to an electrical box on campus. Student began throwing rocks at his aide, striking the aide twice. Student turned his attention to the electrical box and began pulling its wires. Lastly, Student took control of another student's scooter and rode on campus.

On October 11, 2024, Student's aggressive behaviors involved his aide and Principal Gong. Student bit his aide, leaving a bite mark; eloped and took a two-way radio from a custodian's cart. Student ran into the office; where he ripped Gong's hat, and while in his office, ripped a nail from the wall and used it to poke holes in the boxes. Student climbed on Gong's desk and later climbed under the desk where electrical cords posed a harm if pulled, climbed tables, and threw objects. Weaver suspended Student for three days and recommended expulsion from school.

On November 4, 2024, the manifestation determination team reconvened to review the manifestation determination of the October 11, 2024 incident. The team determined that Student's behavior was a manifestation of his disability and not a failure of Weaver in implementing Student's IEP. Upon concluding the manifestation

determination, the IEP team continued the September 2024 IEP team meeting. The IEP team offered placement at the Merced County Office of Education's Sierra Program as follows:

- 1,575 specialized academic instruction minutes per week,
- Group counseling at 80 minutes per month,
- Individual counseling at 80 minutes per month, and
- Behavior intervention specialist services at 40 minutes per month.

Parent consented to the IEP with the exception of the placement at the Sierra Program. Additionally, on November 12, 2024, Student engaged in dangerous behavior by running with sharp pushpins in his mouth. Student could not be redirected as staff reminded him of the dangers of running with pushpins in his mouth. Also on November 12, 2024, Weaver sent Parent a prior written notice, in which Weaver notified Parent of its intentions to file an expedited due process hearing for an interim alternative educational placement at the Sierra Program as presented at the September 24, 2024 and November 4, 2024 IEP team meetings. On November 18, 2024, the manifestation determination team reconvened and determined that the November 12, 2024 incident was a manifestation of Student's disability, and Student's behavior was not the direct result of Weaver's failure to implement the December 15, 2023 IEP as amended.

On December 6, 2024, Student engaged in a series of dangerous behaviors when he grabbed a drill from the custodian's cart and engaged the drill while pointing at other students; grabbed an umbrella and swung it; punched his cousin in the stomach who was waiting in the office; and pushed Pioneer's vice principal. Student continued to elope

from staff when he ran into the teacher's lounge, then entered the copy room. Gong had to be pulled out of a meeting to handle Student's uncontrollable behavior. Once inside of Gong's office, Student threw a pen with force at him and climbed on his desk.

On December 6, 2024, Weaver suspended Student for three days. On December 16, 2024, the IEP team determined that Student's behavior was a manifestation of his disability and not Weaver's failure to implement the IEP. Also, the team determined Student did not make any progress on his goals per the September 24, 2024 IEP team meeting.

WEAVER PROVED THAT STUDENT'S CONTINUED PLACEMENT AT PIONEER WOULD SUBSTANTIALLY LIKELY RESULT IN INJURY TO HIMSELF OR OTHERS

Weaver's witnesses gave overwhelming testimonies that Student's behavior would substantially likely result in injury to himself or others if he remained at Pioneer. Gong and Kadam testified how Student's elopements involved multiple incidences of dangerous behavior which Student missed crucial academic instruction and services. Although, Weaver implemented, and adjusted Student's IEP by adding new social emotional goals to address eloping and dangerous behaviors, Student did not make academic progress or achieved any IEP goals at Pioneer despite Weaver's educational and professional interventions to improve Student's behavior.

Student's behavior continued to be problematic. Student regularly disrupted classroom instruction, often ran out of the classroom or school creating dangerous situations for Student and others, and threatened students and staff. Pioneer's staff, including Student's teacher, and one-to-one aide, could not successfully address Student's behaviors. Student's IEP team amended Student's IEP to include more

individualized instruction, new behavior goals, and an updated behavior intervention plan. However, Student's behavior did not improve and at times, seemed to worsen.

Student's continued placement at Pioneer is substantially likely to result in injury to himself or others because his behavior has already resulted in the injury to others and potential injury to himself. Student's behavior is consistent with many of the behaviors previous OAH decisions discussed above found likely to result in injury to self or others, including:

- Student's history of
 - hitting, biting, and kicking;
 - eloping on and off campus;
 - pushing;
 - climbing furniture; and
 - disrupting the learning environment;
- Student
 - placing pushpins in his mouth while running;
 - Pushing and threatening staff;
 - Running around campus without awareness of others and
 - entering staff offices without permission;
 - Student climbing fences and trees of more than five feet high; and
 - Student attempting to board a school bus for another class's field trip.

Any of these behaviors individually could have resulted in a substantial likelihood of injury to Student or others, but in combination with each other, there is no doubt that Student's continued placement at Pioneer may result in a harmful outcome.

Weaver met its burden of proof on this issue.

ISSUE 2: IS WEAVER'S PROPOSED PLACEMENT AT THE SIERRA PROGRAM AS OFFERED IN THE DECEMBER 15, 2023 IEP, AS AMENDED ON NOVEMBER 4 AND 12, 2024, AN APPROPRIATE INTERIM ALTERNATIVE EDUCATIONAL SETTING?

Weaver contends Merced County Office of Education's Sierra Program would be an appropriate interim alternative educational setting for Student for up to 45 school days because despite implementing the December 15, 2023 IEP as amended through September 24, 2024,

- Student's behavior at Pioneer was substantially likely to injure himself or others;
- Student did not make any educational progress; and that
- the Sierra Program was an appropriate placement.

The Sierra Program reduced the need for Student to transition which was a trigger for Student's elopement. The program offered Student more opportunities to access his services and academic instruction, and meeting his IEP goals.

Parent contends that Pioneer is an appropriate placement and refused to consent to placement at the Sierra Program because of her belief there was a strong possibility that Student would be restrained.

An 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, 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 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.)

Pioneer's general education classroom setting did not meet Student's behavioral challenges and struggles. Pioneer's other option was the mild-to-moderate special education class. However, Student's behavioral struggles made the mild-to-moderate class an inappropriate option because he could potentially endanger other students with a disability.

The Sierra Program was housed on the Winfield campus. It offered a credentialed teacher and two aides in a large classroom setting with 14 students. Each classroom contained a bathroom, kitchen sink, and a calming room. Sierra's program included staff to prevent elopement. Sierra's staff included a full-time board-certified behavior analyst and behavior specialist located on site at least 80 percent of the time and a school psychologist on site 90 percent of the time. These three professionals collaborated with staff and parents to make modifications and adjustments to the IEP and behavior

intervention plan to better serve their students. The program included group and individual counseling that focused on improving social skills, academic goals, as well as parental involvement. These behavioral intervention services were designed to address Student's behavior struggles so they will not recur.

Mayra Garcia, the director of special education for Weaver, opined Pioneer was no longer an appropriate placement for Student. Pioneer could not minimize transitions, which triggered Student's elopement behavior. Student did not make any progress on his goals due to his behavioral struggles while attending Pioneer.

Parent's concerns about the use of force or restraints were not a compelling reason to find the Sierra Program inappropriate. In fact, the Sierra Program used Safety Care, a non-violent technique for de-escalation and crisis intervention. The techniques were used as a last resort and were not harmful when deployed.

Hanna, Kadam, and Garcia gave persuasive professional opinions based on their observations of Student and firsthand knowledge about each program. Pioneer did not have the necessary supports to address Student's eloping and unsafe behaviors. The Sierra Program was a more appropriate educational setting to address Student's behavioral barriers and assist Student to access his academic instructions needed for academic progress.

Weaver met its burden of proving the Sierra Program was an appropriate interim educational setting for Student.

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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 Pioneer is substantially likely to result in injury to Student or others.

Weaver prevailed on Issue 1.

ISSUE 2:

The Sierra Program is an appropriate interim alternative educational setting for Student to attend for up to 45 school days from the first date of Student's attendance at the Sierra Program.

Weaver prevailed on Issue 2.

ORDER

Weaver may immediately remove Student from Pioneer Elementary School and place Student at the Merced County Office of Education's Sierra Program as an interim alternative educational setting for not more than 45 school days, from the first date of Student's attendance at the Sierra Program, at which point Weaver must return Student to his placement at Pioneer unless otherwise ordered or agreed to by 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.

Thanayi Lindsey

Administrative Law Judge

Office of Administrative Hearings