

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IRVINE UNIFIED SCHOOL DISTRICT,

V.

PARENTS ON BEHALF OF STUDENT.

CASE NO. 2025070601

EXPEDITED DECISION

August 22, 2025

On July 15, 2025, Irvine Unified School District filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Parents on behalf of Student. In addition to other issues, the complaint included expedited claims and OAH set dual hearings for the expedited and unexpedited issues.

Administrative Law Judge Paul H. Kamoroff heard the expedited matter by videoconference on August 12, and 13, 2025.

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Attorneys Amy E. Rogers and Megan J. Resnik represented Irvine Unified School District, called Irvine. Katie Purnick, Irvine's director of special education, attended all hearing days on Irvine's behalf. No appearance was made for Student. OAH delayed the hearing for 30 minutes to allow self-represented Parents additional time to appear. Despite notice of the due process hearing by telephone, electronic mail and express, ground service delivery, Parents did not appear.

Pursuant to Irvine's request, OAH permitted Irvine to submit a written closing brief on August 14, 2025. The record was closed, and the matter was submitted on August 14, 2025.

## ISSUES

1. Is maintaining Student's current educational placement at Irvine's Extensive Support Needs Autism program substantially likely to result in injury to Student or to others, such that Irvine may place Student in an interim alternative educational setting for a period not to exceed 45 school days, without Parents' consent?
2. Is the Speech and Language Development Center an appropriate interim alternative educational setting for Student's placement?

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## JURISDICTION

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

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 student receiving special education services may be suspended or expelled from school as provided by federal law. (20 U.S.C. §1412(a)(1)(A); Ed. Code, § 48915.5, subd. (a).) If a special education student violates a code of student conduct, school personnel may remove the student from his or her educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3).)

The law also provides that 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).) This issue requires an expedited hearing that must be conducted within 20 school days of the date an expedited due process hearing request is filed and a decision must be issued within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. 300.532(c)(2).)

Student was nine years old and entering the fourth grade at the time of the hearing. Student resided within Irvine's geographic boundaries at all relevant times. Student was eligible for special education under the primary category of autism and secondary category of intellectual disability. As a result of his disabilities, Student has significant deficits in verbal and nonverbal communication, academic development, and maladaptive behaviors.

## ISSUE 1: IS MAINTAINING STUDENT'S CURRENT PLACEMENT SUBSTANTIALLY LIKELY TO RESULT IN INJURY TO STUDENT OR OTHERS?

Irvine complains that Student routinely engages in aggressive and unsafe behaviors that have caused serious injury to school staff members and Student's classmates. Irvine therefore contends that maintaining Student's current placement in its Extensive Support Needs Autism program at Cypress Village Elementary School, an Irvine public school, is substantially likely to result in injury to Student and continued injury to staff and peers. Irvine seeks permission to change Student's placement to the Speech and Language Development Center, a nonpublic school, as an interim alternative educational setting for not more than 45 school days, without Parent's consent.

While Student was not represented at hearing, Parents have declined Irvine's multiple requests to change Student's educational placement.

If the Administrative Law Judge, called ALJ, deciding the case determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, the ALJ may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than

45 school days. (20 U.S.C. § 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 300.532(b)(2)(ii).) The interim alternative educational setting must enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's individualized education program, called 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).)

These due process procedures may be repeated after the initial 45 school days if the district "believes that returning the child to the original placement is substantially likely to result in injury to the child or to others." (34 C.F.R. § 300.532(b)(3).)

Conduct that has been found substantially likely to result in injury includes shoving and threatening people. (*Long Beach Unified Sch. Dist. v. Student* (2008) OAH Case No. 2008030017; *Fort Bragg Unified Sch. Dist. v. Student* (2008) OAH Case No. 2008100507.)

During the 2024–2025 regular and extended school year, Student attended Maria Salazar's Extensive Support Needs Autism class at Cypress Village Elementary School, called Cypress Village. The classroom included eight students, one credentialed special education teacher, and four support staff, including a trained classroom behavior interventionist and Student's one-to-one aide. All staff were trained in behavioral strategies and received ongoing training and consultation from the site-assigned Board-Certified Behavior Analyst, Diane Gonzalez, who was responsible for several schools. School staff were also trained to work with students with significant behavioral challenges.

Shortly into the school year, Student began exhibiting significantly increased behavioral problems. Compared to the previous year, Student's behaviors intensified in both frequency and severity. At that time, Irvine was implementing his IEP dated November 7, 2023. By September 2024, Student committed multiple acts of aggression towards school staff and classmates, which were recorded in his discipline file due to their severity and resulting injuries.

In response, Irvine conducted a Special Circumstance Instructional Assistance assessment between September and October 2024, concluding that Student continued to require one-to-one support. Despite this and other supports, Student's aggressive behaviors persisted. For example:

- On October 22, 2024, Student became behaviorally escalated, defecated in the classroom, and threw feces. Another student sat in the feces, and walls, floor, mats, and furniture were soiled, requiring evacuation of the room. That same day, Student also attempted to run off campus.
- On October 24, 2024, Student escalated when asked to engage in academic work. Despite incentives, he remained dysregulated, kicking his aide and hitting a peer.
- On October 28, 2024, Student threw tablet computers, called iPads, at staff and bit his one-to-one aide, breaking the skin. The aide required medical attention at urgent care.

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During the hearing, Student's classroom teacher Maria Salazar testified that these incidents represented only a portion of the unsafe behaviors which were occurring daily.

On October 28, 2024, Irvine convened an annual IEP team meeting for Student. The team reviewed Student's progress toward his annual goals, present levels, and a multidisciplinary assessment report completed as part of Student's three-year reassessment. The IEP team also reviewed Student's current behavior intervention plan, and input from the IEP team, including Parents. Student had not met his previous three behavior goals, which intended to decrease the frequency, duration, and intensity of behaviors, including property destruction; scratching and hitting peers' faces; and biting and hitting his behavior aide.

The IEP team also reviewed Student's educational needs and developed new goals, including functional communication, academic skills, on-task behavior, peer interaction, and behavior reduction.

Due to the severity and frequency of Student's behaviors, Irvine recommended placement at a nonpublic school, a private school for students with disabilities regulated by the California Department of Education, that was better equipped to meet his behavioral needs. Student's behaviors had grown worse since the last annual IEP team meeting and had resulted in almost daily injury to school staff, sometimes requiring medical attention. To meet Student's unique needs, the IEP team proposed the following offer of FAPE:

- 360 minutes daily of specialized academic instruction, provided at a nonpublic school;
- 360 minutes daily of individual behavior intervention services;

- 1,800 minutes yearly of individual speech and language services;
- 600 minutes yearly of individual occupational therapy;
- 450 minutes yearly of group adapted physical education;
- extended school year services; and
- transportation.

Parents did not consent to the IEP's offer of placement.

Following the October 2024 IEP, Student's behaviors continued to result in serious injury to school staff and peers, and to place himself in serious risk of injury. For example:

- On November 8, 2024, Student hit a staff member multiple times, yelled, and ran outside of the classroom and onto the school's busy parking lot. Student scratched and hit several staff members who attempted to restrain him. During her testimony, Salazar expressed serious safety concerns because of Student's attempts to run into nearby traffic.
- On November 12, 2024, Student hit and kicked two staff members, climbed a six-foot divider while another student was using a calming space nearby. The divider fell on the peer, who required medical care. Student also pushed a staff member into a desk, causing a back injury that required urgent care. Irvine suspended Student for one day.

- On November 13, 2024, Student hit and kicked classmates on the playground, kicked a staff member causing bruising, destroyed another student's desk and possessions, broke the classroom air filter, and kicked a teacher's computer. Student engaged in a nearly three-hour behavioral episode, hitting peers, banging his head on the wall, and climbing furniture, requiring classroom evacuation. Multiple staff members were scratched and bruised. Irvine suspended Student for one day.
- On November 15, 2024, Student hit several staff members and students, and urinated multiple times around the classroom. The classroom was evacuated again.

On December 11, 2024, Irvine convened another IEP team meeting to continue the discussion of nonpublic school placement with Parents, who had toured two nonpublic schools. These schools included the Speech and Language Development Center, which was willing to accept Student. Irvine recommended placing Student at the Speech and Language Development Center based on the school having:

- a small student population;
- significant behavior supports including four, full-time board-certified behavior analysts on site;
- low student-to-teacher ratio;
- individualized aide support;
- a large outdoor space for students to access that was fenced; and
- occupational and physical therapy gyms.

Irvine also offered transportation services for the Speech and Language Development Center, which was located 30 minutes from Student's home. Parents did not agree with the school placement.

Following the IEP, Irvine continued to implement Student's services and supports which Parents had consented to, at Cypress Village. Student continued to demonstrate serious behaviors that placed school staff, other students, and himself, in substantial risk for injury. These incidents included:

- On December 18, 2024, Student hit multiple staff members, left the classroom without permission, ran outside and tried to leave the open campus, and got naked in front of several students. Irvine suspended him for two days.
- On January 7, 2025, Student attempted to bite a staff member, grabbed her sweatshirt, and scratched her face, drawing blood and causing serious injury. Irvine suspended him for two days.
- On January 13, 2025, Student scratched his instructional assistant from her neck down to the top of her chest, causing her to bleed from the injury and requiring medical intervention. Irvine suspended him for two days.
- On February 7, 2025, Student
  - escalated in his calm space,
  - charged at his teacher,
  - pushed her to the floor,

- straddled her, then
- scratched, bit, and pulled her hair.

The teacher was seriously injured and required medical care. Irvine suspended him for two days.

On February 12, 2025, Irvine convened a manifestation determination review and IEP team meeting. Student's suspensions for behavioral incidents had reached 10 days during the school year and the IEP team was called to determine if Student's behaviors were a manifestation of his disability. The IEP team determined that Student's behaviors were a manifestation of his disability, and his behaviors were significantly impacting his ability to access instruction. Irvine again described to Parents that Student's current educational setting at a comprehensive, public school campus was insufficient to meet his significant behavior needs and offered placement at the nonpublic school. Parents did not consent to a change of placement.

Following the February 2025 manifestation determination review and IEP team meeting, Student engaged in an average of 12 isolated aggressive acts per day, mostly targeting school staff but also included attacks on peers. His behavior became increasingly unpredictable and dangerous, and included hitting and kicking staff and peers, smearing feces in the classroom, taking off his clothes, and trying to escape to the parking lot or street. Irvine had to evacuate Student's classroom almost daily to protect the other classmates from Student.

On May 9, 2025, Irvine convened an amendment IEP team meeting. The team shared that Student's isolated aggression (aggressive behaviors that happen outside of Student's maladaptive behavior episodes) was 12 times daily, with most of the

aggression targeting school staff and sometimes targeting classmates. As a result, Student was removed to a calming room for most of each school day. Irvine proposed a new behavioral goal to address increasing Student's tolerance inside the classroom and continued to offer placement at the Speech and Language Development Center. Parents declined the change of placement.

On May 16, 2025, Student injured a school staff member by twisting her finger. She required medical attention, a splint, and a week-long absence. On the same day, Student tore the thermostat from the wall. Irvine again suspended Student.

On May 23, 2025, Student eloped to the library, took his clothes off, and kicked multiple staff members, including the speech-language pathologist in the abdomen. He also engaged in fecal smearing, including in his mouth, in May 2025, on at least three occasions, sometimes refusing to allow staff to clean him.

On June 6, 2025, Irvine held another manifestation determination review and IEP team meeting. The IEP team again found Student's behaviors to be a manifestation of his disability. The IEP team made updates to Student's accommodations and behavior intervention plan and again offered to change Student's placement to the Speech and Language Development Center. Parents declined the offer.

On July 7, 2025, Irvine sent Parents prior written notice requesting consent to placement at the Speech and Language Development Center. Parents did not respond and Irvine filed the complaint for this matter on July 15, 2025.

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Irvine called four witnesses to support its case. These included Salazar, who served as Student's classroom teacher during the 2024–2025 school year and extended school year. Salazar had over six years of experience as an extensive support needs education specialist and special education teacher. She was directly familiar with Student and his unique needs, having taught him daily.

Irvine also called Speech-Language Pathologist Jessica Haffar, an experienced therapist who provided weekly speech-language services to Student during the 2024-2025 school year. Haffar observed Student daily, as his calming room was located across the hall from her office. Student frequently escaped to the hallway outside her office and often pushed his way into her office while she was conducting therapy sessions with other students. She personally witnessed Student engaging in injurious behavior, including frequent physical attacks on both classmates and school staff.

In addition, Irvine presented testimony from Courtney Belzano, a program specialist with over 15 years of experience working with special education students, and Diane Gonzalez, a board-certified behavior analyst with 10 years of experience supporting children with special needs. Both testified on Irvine's behalf.

Each witness had direct experience working with Student, had observed him injure staff and classmates, and had personally been injured by him. The witnesses, including Salazar, Haffar, and Belzano, were also familiar with the Speech and Language Development Center and persuasively testified in support of this nonpublic school as an appropriate placement for Student. Their testimony was supported by extensive documentary evidence, including behavior logs and discipline records, and was given significant weight.

Despite multiple interventions, including a behavior intervention plan implemented with fidelity, trained staff, an individual aide, and use of calming spaces, Student's behaviors continued to pose a significant threat to staff, classmates, and himself. Each witness testified that even with intensive supports, Student remained unsafe on campus, particularly due to his ability to elope from the ungated school site. Other students regularly expressed fear when Student was present, including cowering, screaming, and attempting to leave.

A school district is not required to wait for a student to inflict serious harm before removing the student to an interim alternative educational setting. The school district needs to only show that the student's current placement is substantially likely to result in injury to the student or others. Student's aggressive, dangerous, and escalating behavior, including repeated physical assaults, object throwing, eloping, and fecal incidents, established a clear and substantial likelihood of future injury. Irvine exhausted available interventions at Cypress Village and proved that Student's removal to a more supportive, structured setting to ensure the safety of staff, classmates, and Student, is lawful and necessary.

## ISSUE 2: IS THE SPEECH AND LANGUAGE DEVELOPMENT CENTER AN APPROPRIATE INTERIM ALTERNATIVE EDUCATIONAL SETTING?

Irvine asserts that placement at the Speech and Language Development Center is an appropriate interim alternative educational setting for Student.

A student's placement in an interim alternative educational setting must allow the student to continue making progress toward the goals outlined in their IEP. Additionally, the IDEA mandates that students placed in an interim alternative educational setting

receive appropriate behavioral intervention services and supports designed to address the behavior that led to the placement, thereby reducing the likelihood of recurrence. (20 U.S.C. § 1415(k)(1)(D)(ii); 34 C.F.R. § 300.530(d)(1)(ii).) The law does not require parental consent for the proposed interim alternative educational setting, nor is a school district obligated to place a student in a setting preferred by the parent. (*Adams v. State of Oregon* (9th Cir. 1995) 195 F.3d 1141, 1149.)

Irvine's IEP team recommended placement for Student at the Speech and Language Development Center during multiple IEP team meetings held on

- October 28, 2024;
- December 11, 2024;
- February 12, 2025;
- May 9, 2025; and
- June 6, 2025.

With the exception of Parents, the IEP team, including Student's special education teacher, board-certified behavior analyst, speech-language pathologist, and other team members, unanimously agreed that the Speech and Language Development Center constitutes an appropriate placement. During the hearing, Irvine personnel, including Salazar, Haffar, and Belzano, persuasively testified that the Speech and Language Development Center is an appropriate interim alternative educational setting for Student. No evidence was submitted to contradict this testimony.

The Speech and Language Development Center offers a low student-to-teacher ratio and the daily presence of multiple board-certified behavior analysts on campus, ensuring that Student receives individualized behavioral support and that staff can respond swiftly and effectively to maintain safety in the event of dangerous behaviors.

Evidence also showed that placement at the Speech and Language Development Center will support Student's continued progress toward IEP goals within a structured and enclosed environment. Testimony from Salazar, Belzano, and Gonzalez illustrated that the program includes comprehensive supports for students with behavioral and social-emotional needs, such as a small campus population, a large gated outdoor space to prevent elopement, multiple sensory and calming rooms, and an indoor swing area. Student was accepted into the Speech and Language Development Center following the IEP team's referral and it can immediately begin supporting Student.

The behavioral supports, therapeutic services, and resources available at the Speech and Language Development Center are designed to help Student manage his behavior while maintaining his safety and academic needs, as well as the safety of others.

Irvine demonstrated that maintaining Student's current placement at Irvine's Extensive Support Needs Autism program poses a substantial risk of injury to Student and others. Student's history of harmful behavior, including incidents of elopement on and off campus, physical aggression toward staff and peers, climbing on furniture and structures, and engaging in unsanitary behaviors such as urination and fecal smearing, shows the ongoing risk of harm. These behaviors have already resulted in injuries and are likely to result in further harm if the current placement continues.

In contrast, the Speech and Language Development Center offers a safe and supportive environment with specialized behavioral and social-emotional services that are not available at Cypress Village. A preponderance of the evidence has shown that the Speech and Language Development Center is an appropriate interim alternative educational setting that meets both the educational and behavioral needs of Student.

## 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:

Irvine proved that maintaining Student's current placement at Irvine's Extensive Support Needs Autism program causes a substantial risk of injury to Student or others such that Irvine may remove Student to an interim alternative educational setting for not more than 45 school days, without Parents' consent.

Irvine prevailed on this issue.

### ISSUE 2:

The Speech and Language Development Center is an appropriate interim alternative educational setting for Student's placement. Irvine prevailed on this issue.

## ORDER

1. Irvine may remove Student from his current placement at Irvine's Extensive Support Needs Autism program and place Student at the Speech and Language Development Center or comparable nonpublic school, as an interim alternative educational setting.

2. The interim alternative educational setting shall last a maximum of 45 school days, at which point Irvine shall return Student to his placement at Irvine's Extensive Support Needs Autism program, 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.

PAUL H. KAMOROFF

Administrative Law Judge

Office of Administrative Hearings