

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2022080223

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SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

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EXPEDITED DECISION

September 22, 2022

On August 8, 2022, Sacramento City Unified School District filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Parent on behalf of Student. The complaint included an expedited claim and OAH set the matter for an expedited hearing.

Administrative Law Judge Paul H. Kamoroff heard this matter by videoconference on August 31, 2022, and September 1, 6, 7, 8, and 13, 2022.

Attorneys Kaitlyn M. Tucker and Jennifer N. Baldassari represented Sacramento City Unified School District, called Sacramento City. Geovanni Linares, Director, Sacramento City's Special Education Local Plan Area, attended each day of the hearing.

Mother represented Student. Student did not attend the hearing except during his testimony.

The record was closed, and the matter was submitted on September 13, 2022.

## ISSUE

Does maintaining Student's current placement at John F. Kennedy High School cause a substantial risk of injury to Student or others such that Sacramento City may remove Student to an interim alternative educational setting for not more than 45 school days without Parent's consent?

## 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 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 rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. 300.532(c)(2).)

At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct.

528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Sacramento City 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 15 years old and in tenth grade at the time of the hearing. Student resided with his mother within Sacramento City's geographic boundaries at all relevant times. Sacramento initially found Student eligible for special education in 2012, kindergarten, under the eligibility category autism. In 2017, Parent exited Student from special education. In fall 2021, ninth grade, Parent agreed to Sacramento City's request to assess Student for special education. In spring 2022, Sacramento City found Student eligible for special education under the categories specific learning disability and other health impairment.

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

Sacramento City contends that Student engaged in a pattern of threats, intimidation, and violence at his current school placement that placed pupils and school staff in substantial risk of injury. Sacramento City seeks permission to change Student's placement from his current placement at John F. Kennedy High School, a Sacramento City public school, to an interim alternative educational setting for not more than 45 school days, without Parent's consent.

Student contends that his conduct does not warrant removal from his current placement.

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).) 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. Parent on behalf of Student* (2008) OAH Case No. 2008100507.)

If the ALJ deciding the case determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, the ALJ may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days. (20 U.S.C. § 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 300.532(b)(2)(ii).) The interim alternative educational setting must enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child’s IEP. (20 U.S.C. § 1415(k)(1)(D)(i); 34 C.F.R. § 300.530(d).) The interim alternative educational setting must also enable the child to receive, as appropriate, a functional behavioral assessment, 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).)

Student began attending John F. Kennedy High School on September 2, 2021, the beginning of the 2021-2022 regular school year. He was 14 years old and beginning ninth grade. John F. Kennedy High School is a large, college preparatory high school

with over two thousand students. Student was in general education and did not receive an individualized education program, called IEP. Student last received an IEP in 2017, when Mother withdrew Student from special education because she did not want Student removed from general education classes.

By mid-September 2021, Student was brought to the attention of the school's Vice Principal Amy Baldini, school social worker Sangita Vakis, and school psychologist Jesse Garza, because he was viewing and searching inappropriate content on his school computer during class. Student had a fascination with school shootings, terrorist beheadings and other forms of murder. He often searched for these topics and viewed violent videos during class while other students participated in classroom assignments. Also, during class, Student read from Mein Kampf, a book by Adolf Hitler, which was not part of the classroom curriculum.

On September 16, 2021, Garza and Vakis met with Student to determine his well-being and to offer him counseling services. On the same day, Garza contacted Mother, who was aware of Student's online searches and fascination with videos depicting murder. Garza also inquired if there were weapons in the home and offered counseling services. Mother reported there were no weapons in the home. She also declined counseling services, stating that Student was receiving private counseling. During the hearing, it was revealed that Student did not begin private counseling until spring 2022. It was also revealed that Mother owned a handgun which she claimed had been stolen years earlier, yet there was no police record of the firearm being stolen and the Sacramento Police Department still had the weapon registered to Mother.

Despite Student declining counseling services, Garza and Vakis frequently met with Student to check on his welfare during fall 2021. During his brief meetings with

Garza or Vakis, Student informed them he empathized with school shooters and enjoyed watching “snuff” films, meaning non-fictionalized videos of people or animals being killed.

On October 4, 2021, as part of a risk assessment, Student shared with Garza that he had thoughts of physically harming his classmates but lacked a comprehensive plan to do so.

On November 4, 2021, Student’s English teacher, Carolyn Zierenberg-Senge, met with Student outside of the classroom. Zierenberg-Senge was concerned about Student’s welfare because of his online searches for violent content during class. Student quickly became irate with Zierenberg-Senge and slammed the classroom door near her face, returning into the classroom before Zierenberg-Senge could complete her inquiry. Zierenberg-Senge was shaken by the incident.

On November 9, 2021, Sacramento City recommended that Student be assessed for special education. Mother agreed to the request but delayed her consent to the assessment plan and put unreasonable restrictions on the assessment process, including that Sacramento City could not assess Student during regular school hours. Nonetheless, Sacramento City was able to complete its initial assessments of Student for special education in spring 2022.

Student’s behaviors grew worse during spring 2022. Student began targeting minority students online and in-person at school. Student held several online accounts with alias usernames, and frequently used these accounts to threaten and bully minority students. In particular, Student targeted peers who identified as members of the lesbian, gay, bisexual, transgender, and queer, called LGBTQ, community. At school, Student frequently sought out and followed a minority peer, trapped them in the

hallway and roughly shoved them into a locker, sometimes while a friend of Student's video-recorded the assault. School administration received complaints from over 20 students who were assaulted, or witnessed the assaults, committed by Student. Approximately 12 students were physically assaulted by Student during this time. Most of these students were non-white, female, and identified as members of the LGBTQ community. Written victim and witness statements identified Student as the attacker. Victim and witness statements elucidated that they were terrified of Student and believed he would seriously harm themselves or others. Often, victims had been threatened online by Student at some point close in time to the in-person assault. Evidence also showed that Student was sexually aroused when he shoved students against a locker.

Some examples of Student's assaults include, but were not limited to, the following:

- On January 18, 2022, Student assaulted a female student in the parking lot, where, unprovoked, he shoved her. The female student reported to school administrators that she was frightened by Student and had observed Student push other students in a similar, unprovoked manner.
- On February 7, 2022, Student physically assaulted a Muslim student who was wearing a hijab. Student made racist and anti-Islamic comments during the assault.
- On March 3, 2022, school administration received six reports that Student was shoving peers in the hallway during passing periods. Statements from classmates reported that Student hit the other students "very hard" and "on purpose." Student went out of his way to target minority classmates



who described they were physically hurt and emotionally traumatized by Student. Victim statements described they were “afraid,” “really scared” and “shocked” by Student, and one classmate described a panic attack she suffered as the result of being targeted by Student.

- Student assaulted additional classmates on March 4, and March 7, 2022. Classmates described being followed, trapped, and shoved by Student against a locker. Student was laughing during the assaults. Other classmates reported similar assaults by Student following these incidents.
- On March 7, 2022, Zierenberg-Senge confiscated, for the remainder of the day, a comb from Student that closely resembled a switch-blade knife. Student had the item on his desk during class and enjoyed the attention from students who believed the comb was a knife. In response to the confiscation, Student became aggressive and hostile towards Zierenberg-Senge and Vice Principal Amy Baldini. Student directed a misogynist, antisemitic slur towards Zierenberg-Senge, and, multiple times, called Baldini an offensive name and made sexually explicit remarks. Zierenberg-Senge and Baldini each testified they felt threatened by Student and were afraid he would physically harm them or others.

On March 16, 2022, Sacramento City began expulsion proceedings against Student. The expulsion proceedings were delayed because Sacramento City believed Student may qualify for special education. Sacramento City suspended Student from March 8, 2022, through April 19, 2022.

On March 17, 2022, Student’s private therapist informed school administrators that Student made threats to rape and murder a classmate at John F. Kennedy High

School. The private therapist broke his confidential obligations to Student because he believed the threats were credible and imminent. (*Tarasoff v. Regents of Univ. of Cal.* (1976) 17 Cal.3d 425, 440.) School administrators contacted Sacramento Police Department, which began a series of welfare checks of Student, including through the Sacramento Police Department's Mental Health Unit.

On May 20, 2022, school administrators received five separate complaints from students at Jon F. Kennedy High School that Student had sent them violent and disturbing messages through different social media accounts. Graphic content included mutilated genitalia, references to pedophilia and zoophilia, and threats of sodomy and rape.

On May 24, 2022, Sacramento City convened an IEP team meeting to review its initial assessments of Student. The IEP team determined Student met eligibility for special education and related services under the categories of specific learning disability and other health impairment. Student did not meet eligibility for autism, as previously found by Sacramento City in 2012. Student attended the IEP team meeting but responded aggressively when offered special education services, including an individual aide. Student stormed out of the meeting. Mother consented to the IEP on the same day.

Student continued to use his school computer to search inappropriate content during classroom instruction. For example, on May 10, 2022, a teacher caught Student searching for weapons online during class. On May 12, 2022, Student was caught searching "how to bomb minorities," and "how to kill minorities" during class. On May 13, 2022, Student used a racial slur against an African American girl at school.

On May 26, 2022, Student was arrested for various counts of making criminal threats. Student's charges were enhanced to felony hate crimes because they were motivated by the victim's race, gender, or sexual orientation. (Penal Code §§ 422 and 422.7). The charges were the result of Student sending online messages to pupils at John F. Kennedy High School that threatened rape and murder. The charges were also the result of Student threatening a student at McClatchy High School, a different public high school within Sacramento City. During the hearing, evidence showed that Student threatened four students in this manner, including three at John F. Kennedy High School. Student was known to the victims at John F. Kennedy High school, and Student had assaulted some of those victims on several occasions in the school's hallway. Student had not personally met the pupil at McClatchy High School but sought her out because of her affiliation with the LGBTQ community. Each of the victims was a female who identified as a member of the LGBTQ community.

After his arrest, Student served 20 days in juvenile detention. During that time, he was the educational responsibility of Sacramento County Office of Education. Upon his release from juvenile detention, Sacramento City resumed being the responsible educational agency.

During the hearing, on September 1, 2022, Student began his tenth grade at John F. Kennedy High School. Student was on probation and required to wear an ankle-bracelet monitor as a term of his probation.

## STUDENT'S WITNESSES

Student and his mother testified in support of Student's desire to remain at John F. Kennedy High School. In sum, Student and Mother did not believe that Student's conduct was serious or rose to a level that required removing him from his current placement.

In great part, Student and Mother's belief stems from a prejudice against people in the LGBTQ community and a belief that the LGBTQ community had conspired against Student. This alleged conspiracy included school administrators and staff Mother believed were members of the LGBTQ community. On this basis, Student and Mother blamed the LGBTQ community for Student's school problems. Student and Mother err, as a preponderance of evidence showed that Student's actions, and not an unfounded conspiracy theory, resulted in Student's problems at school.

Other defenses by Student were similarly rejected by this court. For example, during testimony, Mother admitted that Student frequently shoved other students against lockers but minimized this conduct as pranks or not serious because none of the victims required hospitalization. Mother errs, as it is not necessary for an injury to result in hospitalization to show that maintaining Student's current placement is substantially likely to cause injury to himself or others. Nor can these incidents be deemed pranks, as they were not consensual or amongst friends, or designed to be playful in any manner. To the contrary, Student's conduct was designed to intimidate and harm others, and did so. Student targeted people he felt were different than himself, followed them, verbally intimidated them, and physically assaulted them. The targeted students were not Student's friends or willful participants to any prank. Rather, they were terrorized by Student online and in-person.

Mother admitted that Student threatened to rape and murder a student at John F. Kennedy High School. She did not believe that was problematic because Student had admitted to those threats. Mother did not believe Student's threats toward the McClatchy High School student were problematic because he had never met that student in-person. Mother disregarded several online threats made from alias online accounts because Student had not confessed to those threats. Mother's testimony was less persuasive than a preponderance of evidence that linked the alias online accounts to Student, including testimony from Police Officer Joseph Swaleh that he had connected Student to the alias accounts during his investigation. Mother's inability to understand the seriousness of Student's conduct and attempt to shift blame onto others undermined the veracity and persuasiveness of her testimony.

## SACRAMENTO CITY'S WITNESSES

Sacramento City submitted volumes of behavior logs and reports, victim and witness statements, and police reports in support of its request to remove Student from his current educational placement. Sacramento City also called Vice Principal Baldini, Student's teacher Zierenberg-Senge, school psychologist Garza, and social worker Vakis, in support of its case. Each witness was familiar with Student, had personal knowledge of Student and his conduct, and was experienced in their area of vocation. Some, like Garza and Zierenberg-Senge, had directly assessed or taught Student. Others, like Vakis and Baldini, frequently met with and observed Student. Each witness was deliberate and careful in their testimony and expressed an authentic belief that Student was a danger to others at his current placement.

Witness testimony from Baldini, Zierenberg-Senge, Vakis and Garza persuasively showed that school staff and students had been threatened, intimidated, and physically harmed by Student. School staff and students were afraid of Student and concerned that he would cause greater harm to others if he remained at John F. Kennedy High School. Each witness credibly testified that Student's current placement at John F. Kennedy High School posed a substantial risk of injury to others.

Sacramento City also called several police officers in support of its case. Testimony from Sacramento Police Officers Ariel Paul-Butolph, Joseph Swaleh, Michelle Owen, Allison Smith, and Guillermo Alvarado, credibly supported the school's concerns regarding Student's behavior and the seriousness, and uniqueness, of Student's conduct. Police testimony also described that neo-Nazi flags and weapons paraphernalia, including two high-capacity ammunition belts, were discovered during a search of Student's room at his residence. Despite attempts by Mother to normalize or diminish Student's behavior, his online threats coupled with in-person intimidation, targeting of those he felt held different beliefs, and physical shoving of others, was extraordinary and posed a substantial risk of injury to others.

## THE INTERIM ALTERNATIVE EDUCATIONAL SETTING

During hearing, school psychologist Garza credibly opined that Student required placement at a small, therapeutic, nonpublic school, called Point Quest.

A nonpublic school is a private, nonsectarian school that is certified by the California Department of Education, called CDE. (Ed. Code, §§ 56034, 56366.1.) A nonpublic school must meet state standards to be certified by the CDE. (Ed. Code, § 56034.)

Point Quest has a location in the Sacramento area and offers a small, structured, educational placement that would allow Student to participate in the general education curriculum and to receive his IEP services. Point Quest has a lower adult-to-student ratio than a comprehensive, public-school campus like John F. Kennedy High School, and has staff trained to address behavior problems like those demonstrated by Student.

While Sacramento City did not have an opportunity to fully implement Student's IEP for an extended period, Garza credibly opined that full implementation of Student's IEP, even with an individual aid and behavior services, would not eliminate the substantial risk of injury to others posed by Student. Student's behavior problems rose above what could adequately be addressed at a large, comprehensive school like John F. Kennedy High school.

Garza had 19 years' experience as an educator and five years' experience as a school psychologist. He was thoughtful and persuasive in his testimony in support of placing Student at Point Quest, or a similar nonpublic school, as an interim alternative educational setting. Student failed to present any evidence that impugned Garza or his testimony.

Based upon the foregoing, Student showed by a preponderance of the evidence that maintaining his current placement at John F. Kennedy High School posed a substantial risk of injury to himself or others. Sacramento City met its burden of proof in this matter and may remove Student to an interim alternative educational setting.

## 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:

Sacramento City proved that maintaining Student's current placement at John F. Kennedy High School causes a substantial risk of injury to Student or others such that Sacramento City may remove Student to an interim alternative educational setting for not more than 45 school days, without Parent's consent. Sacramento City prevailed on this issue.

### ORDER

1. Within 15 days of this Decision, Sacramento City may remove Student from his current placement at John F. Kennedy High School and place Student at Point Quest or similar 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 Sacramento City shall return Student to his placement at John F. Kennedy High School, 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.

/s/

Paul H. Kamoroff

Administrative Law Judge

Office of Administrative Hearings