

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022110728

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

EXPEDITED DECISION

January 5, 2023

On November 28, 2022, Sacramento City Unified School District, called Sacramento City, filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Parent on behalf of Student. The due process hearing request included both expedited and non-expedited claims. This Decision addresses the expedited issues. Administrative Law Judge Cynthia Fritz heard this matter by videoconference on December 13, 14, and 15, 2022.

Attorney Kaitlyn Tucker represented Sacramento City. Geovanni Linares, Sacramento City's special education local plan area director, attended each day of the hearing. Attorney Hailey Fagan observed the hearing on December 13 and 14, 2022.

Mother represented Student. Student attended the hearing intermittently each day and during his testimony.

On December 15, 2022, the evidentiary portion of the expedited record was closed, and the matter was submitted. The undersigned granted Sacramento City's request to submit a closing brief during the submittal time. The parties agreed to and timely submitted closing briefs on December 20, 2022.

ISSUES

1. Is maintaining Student's current placement at John F. Kennedy High School substantially likely to result in injury to Student or others?
2. Is Sacramento City's proposed placement 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).)

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) (2006).) This interim alternative educational setting request 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) (2006).)

The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and bears 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.Ed2d 387]; and see 20 U.S.C.

§ 1415(i)(2)(C)(iii.) Sacramento City filed the complaint and bore 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 Parent within Sacramento City's geographic boundaries at all relevant times. On May 24, 2022, Sacramento City found Student special education eligible under the categories of specific learning disability and other health impairment.

Student began the 2022-2023 school year at John F. Kennedy High School, called Kennedy. On September 22, 2022, OAH issued a decision in *Sacramento City Unified School District v. Parent on Behalf of Student*, (2022) OAH case number 2022080223. OAH case number 2022080223 involved the same parties and expedited issues at this matter for the period of September 2021 through the beginning of September 2022. On December 7, 2022, OAH granted Sacramento City's motion to take official notice of the decision in OAH case number 2022080223.

The administrative law judge in that matter determined Student's behavior at Kennedy during September 2021 through the beginning of September 2022 included:

- repeated viewing and searching of violent content on his school computer during class;
- multiple threats to female minority students online and in-person, predominantly peers who identified as lesbian, gay, bisexual, transgender, and queer;
- multiple assaults of minority female students while on the Kennedy campus;

- in-person threats to Kennedy staff including antisemitic and sexually explicit remarks; and
- on-line threats of rape and murder directed at multiple Kennedy female minority students and another minority student at a different public high school in the vicinity.

The administrative law judge found that maintaining Student's placement at Kennedy was substantially likely to result in injury to Student or others and that Point Quest nonpublic school was an appropriate interim alternate educational placement. On September 22, 2022, OAH ordered Student's removal from Kennedy to Point Quest. Student attended Point Quest from September 29, 2022, through December 2, 2022, and returned to Sacramento City. While at Point Quest, Student was on probation for criminal threats to Kennedy students and wore an ankle monitor until October 2022. Student is currently enrolled at Kennedy but receives his education virtually and at a different district location.

Sacramento City now requests an additional 45-day interim alternate education placement at Point Quest. The 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) (2006).) Thus, Sacramento City's request for an additional 45-day interim alternate education placement is permissible.

ISSUE 1: IS MAINTAINING STUDENT'S CURRENT PLACEMENT AT JOHN F. KENNEDY HIGH SCHOOL SUBSTANTIALLY LIKELY TO RESULT IN INJURY TO STUDENT OR OTHERS?

Sacramento City contends Student continues to express the desire to commit violence against a Kennedy student and a Kennedy staff member such that maintaining his placement at that school poses a substantial risk of injury to others. Sacramento City seeks permission to change Student's placement from his current placement at Kennedy, a Sacramento City public school, back to the interim alternative educational setting, Point Quest, for not more than 45 school days, without Parent's consent.

Student contends that his conduct does not warrant an additional 45-day removal from Kennedy to Point Quest as Student is not a threat to anyone at Kennedy.

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) (2006).) For disciplinary changes in placement greater than 10 consecutive school days (or that are a pattern that amounts to a change in placement), the disciplinary measures applicable to students without disabilities may be applied to special education students if the conduct resulting in

discipline is determined not to have been a manifestation of the special education student's disability. (20 U.S.C. § 1415(k)(C); 34 C.F.R. § 300.530(c) (2006) & 300.536(a)(1)(2) (2006).)

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 special circumstances. (20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g) (2006).) The individualized education program, called IEP, team, determines the interim alternative educational setting. (20 U.S.C. § 1415(k)(2); 34 C.F.R. § 300.531 (2006).)

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) (2006).) 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 Sch. 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 her disability is subject to removal where that child poses a substantial risk of injury to herself or others." (*Id.* at 1228.) OAH previously found that physical violence was not required to find a student substantially likely to cause injury to self or others. (*Grossmont Union High School Dist. v. Parent on Behalf of Student*, (2011) OAH case number 2011020431.) This Decision finds that maintaining Student's placement at Kennedy is substantially likely to result in injury to self or others.

OCTOBER 2022 INCIDENT

On October 7, 2022, Student acted atypically while writing a journal entry during class by covering it up and turning the page whenever an adult passed his desk. Student was called to the office and the instructional aide in his classroom retrieved the notebook and gave it to Point Quest's Assistant Director and Board Certified Behavioral Analyst Sarah Marohl. At that time, Student remained with Michael Padilla, Point Quest's Program Supervisor. Both Marohl and Padilla reviewed the journal entry. It was titled "Person[e]l note 10/7/22 no one may view this." In the entry, Student identified himself as a necrophile, then graphically detailed his dream where he murdered a current 15-year old female Kennedy student and had sexual intercourse with her dead body. This current Kennedy student is personally known to Student.

Point Quest immediately notified law enforcement as both Marohl and Padilla were concerned over Student's account of rape and murder of a Kennedy student. Law enforcement arrived with a mental health professional and determined after a mental health evaluation that Student was not a threat to students at Point Quest and he was returned to his classroom. Law enforcement requested that Point Quest monitor the situation, inform Parent, and facilitate notification of the parents of the person named in the journal entry. While Student's journal entry did not threaten harm to staff or students at Point Quest, it did threaten significant violence on a Kennedy student.

Padilla, with years of experience working with students with emotional and behavioral needs, described Student's notebook entry as concerning and exhibited genuine fright over it because he did not believe it was normal for a student his age to understand what necrophilia is, the nature and detail of the violence and aggression

described, and naming a specific person as the potential victim. Based on his personal observations and conversations with Student at the time of the incident, Student understood that his writing was inappropriate and could get him into trouble. Student's fear at the time concerned the possibility of him getting into trouble legally and at school, and not due to the contents of the writing itself. Padilla believes Student is unpredictable and struggles with what is real and does not believe a public high school has the resources to meet Student's needs. Padilla's opinions were candid and transparent, based on personal knowledge of the incident, corroborated by other evidence, and not persuasively challenged. Thus, Padilla's testimony was given great weight.

Marohl, a licensed board certified behavior analyst since 2014 who has worked in both public and nonpublic school settings, described Student's writing entry as disturbing, abnormal, violent, and aggressive. Marohl interpreted the notebook entry as Student's fantasy or desire based on how it was written and opined that Student was a danger to himself and others if placed at a public high school because it is less supervised and controlled with less intensive behavior supports, which would result in the behaviors that lead him to Point Quest. Marohl further explained that Student required additional intensive mental health support that Point Quest could provide him. Marohl was convincing because she was qualified, knowledgeable of Student and the incident, and had careful, detailed, and corroborated testimony. Her testimony was given significant weight.

Sacramento City's Board Certified Behavior Analyst Omar Ponce conducted a mental health evaluation of Student in October 2022 and reviewed the journal entry. He opined that the entry detailed a fantasy and that Student "wanted to move forward with the act." He concluded that this behavior was consistent with Student's prior behavior

at Kennedy and continued to demonstrate a “pattern of wanting to harm others”, and his attendance at Kennedy would make it easier for him to make those fantasies real. According to Ponce, Student’s attendance at Kennedy would give him closer proximity to the intended victims and would increase the risk of harm to those individuals. Ponce had personal knowledge of Student, Point Quest, and Sacramento City, and had recently assessed Student. His testimony was thoughtful and well-reasoned and did not reveal any significant shortcomings. Thus, Ponce’s testimony was deemed persuasive and given substantial weight.

Scott Allen, Student’s Point Quest teacher, was present during the incident and corroborated that Student was visibly upset when he realized his journal was retrieved. Allen only reviewed a few sentences of Student’s journal entry but found it concerning because it named a specific Kennedy student and directed harm toward that person. Allen had not experienced this from other students but believed there was “intention behind” Student’s writing. Allen testified that Student could attend either Point Quest or Kennedy. Allen was the only school-based witness who held this opinion; however, he had no specific knowledge of Kennedy, never worked in a public school, and did not know the available resources for Student at Kennedy. Further, Allen only read a few sentences of the journal entry and did not recall its specifics. Thus, Allen’s opinion regarding whether maintaining Student’s placement at Kennedy would cause significant risk of injury to Student or others was unpersuasive.

Parent minimized and normalized the incident calling it a nightmare, Student’s way of venting out, and believed it was a result of watching scary movies. Parent also downplayed Student’s self-identification as a necrophile. However, Parent conceded that if she were the parent of the girl named in Student’s journal, she would be concerned. Regardless, Parent showed little insight into other’s concerns over the

journal entry and disregarded anything negative about Student. Parent's unwillingness to accept the gravity of the incident, especially given Student's prior conduct while at Kennedy, diminished her credibility and persuasiveness. Thus, Parent's testimony was given less weight.

Student also described the writing as a nightmare. However, his behavior at the time of the incident did not support Parent or Student's journal entry explanation. As corroborated by multiple staff, Student knew at the time that the entry was inappropriate. Student attempted to hide it from adults during class. After the notebook was confiscated, he understood that he may get into trouble for it and was visibly upset when he realized it was retrieved. At the time, Student was aware of the severity of his actions. Additionally, Student did not display any fear over the substance of his writing, rather, only for the consequences that may ensue due to its discovery. Thus, Student's testimony lacked reliability and was neither supported by his behavior at the time of the incident nor staff observations and opinions. Thus, it was given less weight.

NOVEMBER 2022 INCIDENT

Point Quest's Marriage and Family Therapist Dana Alarian provided group counseling to Student weekly in his classroom. Based on her qualifications and experience, Student struggled with empathy and suffered from conduct disorder which he was previously diagnosed with by his private therapist. Conduct disorder is an ongoing pattern of aggression toward others, that includes violent behavior and violations of age-appropriate norms.

While participating in an empathy building exercise with Student at the beginning of November 2022, Alarian asked Student if he would have done anything differently to prevent being removed from Kennedy. Student responded that he would have punched and bashed the Kennedy vice principal in the face so he would not have to deal with her anymore. While trying to further redirect him, Student said the best thing to do is to get rid of people like that. It was determined that the person Student was referring to was Kennedy Vice Principal Amy Baldini, a staff member that was afraid of Student due to his previous threats and sexually explicit comments to her while at Kennedy.

These statements concerned Alarian because Student was not able to be redirected and continued to desire acting out violence against Baldini. Based on her interactions with Student, Alarian determined that Student felt discriminated by Baldini and would likely act out these desires if given the opportunity to return to Kennedy. Alarian further expressed concern that Student would be unable to prevent himself from engaging in this conduct were he to encounter the vice principal again, as he is incapable of identifying appropriate alternative behaviors and seeing Baldini would be an immediate trigger for increased aggression. Alarian surmised that given Student's diagnosis of conduct disorder coupled with his verbal aggression at Point Quest directed at persons at Kennedy, it would likely "lead into more physical aggression" if returned to Kennedy because it does not have the same level of supervision and supports to deescalate his behavior. Alarian's opinion was based on personal knowledge, experience in the field, and was not challenged in any significant way in cross-examination over this incident.

Linares disclosed that some persons at Kennedy continue to be afraid of Student. They are afraid because of Student's continued aggressive behaviors that specifically target persons at Kennedy.

Parent downplayed this incident. Parent accused Baldini of discriminating against Student. Parent considered it normal to be angry and unforgiving of a person who you felt mistreated by. Parent's flippant attitude further exemplified the blame-shifting, lack of insight, and attempts to allow Student to escape responsibility regarding his verbally aggressive behavior toward others at Kennedy which further diminished her persuasiveness.

While Student had not threatened students and staff at Point Quest, the verbally aggressive behavior and threats directed at a Kennedy staff member and a Kennedy student while at Point Quest are a continuation of the behaviors Student manifested at Kennedy. Student continues to exhibit threatening behavior and a propensity for violence, including the desire to murder and rape a Kennedy classmate, and a threat of serious bodily injury toward a Kennedy staff member who was also a victim of Student while he attended Kennedy. As previously determined, Student physically acted upon his aggressive desires while attending Kennedy, physically assaulting approximately 12 students, and was sexually aroused when he shoved students against lockers. While at Point Quest, he continued to want to commit harm upon a female student and a female staff member at Kennedy. Maintaining Student's placement at Kennedy would allow direct view and proximity to the individuals that he desires to harm and this would significantly increase the risk of harm to those individuals. Thus, Sacramento City showed by the preponderance of the evidence that maintaining Student's placement at Kennedy is substantially likely to result in injury to Student or others.

ISSUE 2: IS SACRAMENTO CITY'S PROPOSED PLACEMENT AN APPROPRIATE INTERIM ALTERNATIVE EDUCATIONAL SETTING?

Sacramento City seeks permission to change Student's placement from Kennedy to Point Quest nonpublic school, for not more than 45 school days without parental consent. It asserts Point Quest is an appropriate setting for Student because of its intensive therapeutic supports, small class size, and high level of supervision.

Student disagrees and believes Point Quest is too far away, too distracting, and that Student is not disabled like the other students at Point Quest. Thus, Parent argued it was an unsuitable placement for him.

If the administrative law judge 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 administrative law judge 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) (2006).) 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)(1)(i) (2006).) 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) (2006).)

Sacramento City proposed an appropriate alternative educational setting for Student, Point Quest nonpublic school in El Dorado Hills. Point Quest serves children

with varying levels of disabilities who have difficulties in the regular classroom setting including children with autism spectrum disorder, intellectual disability, emotional disturbance, and other health impairment. It has approximately 130 students and 60 staff at its El Dorado Hills campus, and it takes approximately 60 to 75 minutes to transport Student one-way depending on road conditions unless there is an accident or a transport staff person calls in sick which is not a regular occurrence.

Point Quest staff are trained on de-escalation techniques, redirection, empathy building, and nonviolent crisis prevention and intervention. It employs a full-time mental health therapist and full-time board certified behavior analyst.

While at Point Quest, Student participated in a self-contained classroom with a maximum of eight students, one teacher, and one behavior aide, and sometimes an additional instructional aide which allowed for close monitoring and immediate response to behaviors. The class included students that qualify for special education under the categories of emotional disturbance and other health impairment and receive general education curriculum. It had an all-male staff and one female student while Student attended Point Quest which assisted in his pro-social behavior. Student only transitioned for breaks and lunch which lessened his unstructured time. Students turn in their cellphones at the office before school to lesson distractions and the ability to search inappropriate topics. Allen taught Student since September 2022. He endorsed Student's progress on goals while at Point Quest and its ability to implement his individualized education program. Student responded well to supports, did not engage in any physical aggression while at Point Quest, and displayed appropriate social skills in class. Allen supported Student's return to his classroom at Point Quest.

While Parent argued that Student's classroom was too distracting because of other student's behaviors and an incident of a student throwing a desk, Allen did not agree and explained that the class had a limited number of distractions and no desk was thrown since he had taught in the classroom. Since Allen had personal knowledge of what occurred in his classroom, his explanation was more persuasive than Parent.

Alarian, Padilla, and Marohl persuasively endorsed Point Quest as an appropriate placement due to the more intensive mental health resources, small teacher-to-student ratio, and higher level of monitoring and supervision that allows more successful behavior regulation. Marohl persuasively pointed out that Student's concerning behaviors seen at Kennedy have decreased significantly with no physical altercations while at Point Quest due to the intensive behaviors supports and supervision available to Student. Alarian, Padilla, and Marohl were thoughtful and persuasive in their position that maintaining Student at Point Quest was appropriate. Student failed to present any persuasive evidence that impugned their testimony.

Point Quest provides Student a high staff-to-student-ratio, embedded intensive therapeutic and behavioral supports, an integrated behavior modification system, a self-contained classroom with few transitions and distractions, no access to a cellular phone while at school, a safe environment, reasonable transport to and from school, and Student participation in the general education curriculum. Student made progress on goals and Point Quest was able to implement Student's IEP. Thus, Sacramento City proved by a preponderance of the evidence that Point Quest is an appropriate 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 1:

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.

Sacramento City prevailed on Issue 1.

ISSUE 2:

Sacramento City proved that its proposed interim alternative educational placement is appropriate.

Sacramento City prevailed on Issue 2.

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, as an interim alternative educational setting.
2. The interim alternative educational setting must not exceed 45 school days, at which point Sacramento City must 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. Under Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings