

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the matter of :

LANCASTER ELEMENTARY SCHOOL
DISTRICT,

Petitioner,

vs.

STUDENT,

Respondent.

OAH CASE NO. N 2006030771

DECISION

Martha J. Rosett, Administrative Law Judge (ALJ), for the Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on April 20 and 21, 2006, at the offices of the Lancaster Elementary School District office in Lancaster, California.

Kathleen LaMay, Attorney at Law, represented Petitioner Lancaster Elementary School District (District). District representative Janis Rivera was present throughout the proceedings.

Michael J. Smith, Attorney at Law, represented Respondent Student (Student). Student's guardian and grandmother, Legal Guardian, was present throughout the proceedings.

Oral and documentary evidence was received. The record was left open to allow the parties to submit written closing arguments, which were received from each party on April 26, 2006. The record was then closed and the matter was submitted for decision.

ISSUES

1. Is maintaining Student's current placement substantially likely to result in injury to Student or to others?
2. If so, is the proposed placement at Crossroads an appropriate interim alternative educational setting (IAES)?

FACTUAL FINDINGS

1. On March 22, 2006, the District filed a due process request and a request for an expedited hearing, pursuant to Title 20 United States Code, section 1415(k)(2).
2. Student is an eight-year-old pupil who lives within the jurisdictional boundaries of the District. Student has been attending second grade at Joshua Elementary School.
3. On or about November 7, 2005, the District held an initial IEP meeting to address Student's academic and behavioral difficulties. Student's grandmother attended the IEP meeting. She expressed concerns with Student's academic difficulties, with safety issues related to Student's pattern of leaving the classroom without permission, and with his ability to stay in the school for the academic year without being sent home. She requested an aide to help manage Student's behaviors. At the IEP meeting, Student was found eligible to receive special education services under the primary classification of Specific Learning Disabled, due to processing deficits in the area of sensory-motor integration and attention. In addition, Student was found to be eligible under the secondary classification of Other Health Impaired, due to his medical diagnoses of Attention-Deficit Hyperactivity Disorder and Oppositional Defiance Disorder. The IEP team agreed that Student would continue in his general education class, but would benefit from Resource Specialist Program support for his reading, math and written language skills, and from DIS counseling services with the school psychologist, who would also collaborate with the teachers. To address Student's safety, an extra aide was added to his class to help monitor him during transition times. Student's grandmother signed the IEP signifying her agreement on November 7, 2005.
4. Student's history of academic and behavioral difficulties began prior to his enrollment at Joshua Elementary School in May of 2005. Student's specific behavioral difficulties include not following school and classroom rules, disrupting the work of others in class, and at times refusing to complete class assignments. Of particular concern to the school and Student's guardian is Student's running out of classrooms, and out of school grounds. The IEP included a Behavior Support Plan to develop interventions and behavior modification goals. Since the IEP meeting, Student has continued to have academic and behavioral difficulties. District staff and Student's grandmother have met several times to attempt to develop more effective means of addressing Student's needs and related safety

concerns, but they have not been able to come to an agreement about the appropriate course of action.

5. In the months preceding the filing of the District's expedited hearing request, Student's misbehaviors escalated. There were numerous incidents of Student's disruptive behavior in which other students and staff, as well as Student himself, were either placed in danger or actually harmed. In January 2006, Student was suspended three times for leaving campus and/or for incidents of defiance and disrespect towards school personnel.

6. Examples of Student's escalating unsafe behavior occurred on February 9, 2006. In the morning, after recess, Student refused to return to his class from the playground. When the classroom aide tried to talk him into returning to class, Student began throwing objects at him, then ran away. Student continued to play on the playground for an additional 30 minutes before returning to class. During the afternoon recess, Student was in the lavatory, repeatedly kicking another student, and was taken to the resource room to talk with the school psychologist. Later in the afternoon, Student was working with a resource specialist on math when he became frustrated and walked out of the classroom. The classroom aide was not able to persuade Student to return to class. The aide and several other staff members, including the school psychologist, were involved in chasing Student across the playground, to the fence, which he tried to climb. The school psychologist succeeded in pulling Student down off of the fence, telling him that his behavior was not safe. Student protested, punched the school psychologist in the arm, then picked up a tree branch and hit her across the legs. Student finally succeeded in climbing over the fence. The psychologist called to him to come back, but Student proceeded to run into the street. One of the other staff members eventually caught up with Student and brought him back to campus.

7. On February 15, 2006, an IEP meeting was held to address Student's escalating behavior problems. Student's grandmother expressed concerns regarding alleged lack of compliance with the IEP, and Student's complaints that the classroom aide was taunting and abusing him. The District agreed to change Student's aide. In addition, the IEP team and Student's grandmother agreed that a Functional Analysis Assessment (FAA) of Student should be performed, and a mental health referral made. Alternative educational plans and alternative educational placements were discussed, but Student's grandmother was not in agreement, so no changes were made. An additional meeting was held on February 28, 2006, and again, alternatives were discussed and offers made, including placement at Crossroads school. Crossroads is a small alternative educational setting within the District, which is designed to meet the special needs of students who are having difficulties in general education classrooms. No agreement was reached.

8. On March 1, 2006, Student became upset on the playground when he lost in a game of handball. He knocked over another student, popped the ball he had been playing with, and ran to the cafeteria to try to get a new one. Student refused to follow instructions from staff and began running around the yard, with staff chasing after him. Student twice tried to climb the fence, then ran towards the classrooms, gathering rocks as he went. Staff unsuccessfully tried to catch him and remove the rocks from his hands, but Student instead

threw the rocks into two open doors of classrooms filled with children. He had to be physically restrained by two classroom aides. When he was allowed to walk freely, Student resumed running for doors and fences. When he was blocked, Student shoved and kicked staff, disregarding verbal instructions, and again had to be physically restrained to prevent him from hurting himself and others. When the principal tried to approach Student to talk with him, Student again ran to the fence, then back into the classrooms, where he tried to open the cabinets and throw chairs at staff. Student eventually ran back out of the classrooms, into the yard and then out onto the street. At that point, Student's grandmother arrived and met with the principal and staff in the principal's office.

9. On March 6, 2006, the principal was called to a classroom Student had entered during recess (not Student's own class). Student was screaming and throwing a tantrum, smashing pencil boxes and tearing up other students' work. He removed a padlock from one of the cabinets and threw it at the teacher, narrowly missing her. Two aides with the student tried unsuccessfully to reason with him. They radioed the office for help, at which time the principal arrived. At one point, Student was out of the classroom building, running across the yard to the fence, and then out into the street. Law enforcement was called.

10. On March 9, 2006, Student was suspended for four days for his misbehavior. On March 14, 2006, the suspension was extended for an additional three days. As of March 17, 2006, Student had been suspended for a total of 31 school days during the school year.

11. On March 24, 2006, the District obtained temporary injunctive relief from the Los Angeles County Superior Court, North District, in Case No. MS005257. Pursuant to the Order to Show Cause and Preliminary Injunction, Student was restrained and enjoined from attending Joshua Elementary School and ordered to resume his educational program at Crossroads on March 27, 2006.

12. Student's grandmother agreed to look into Crossroads. As of April 20, 2006, Student had not enrolled in or attended classes at Crossroads.

13. Under current circumstances, Joshua Elementary School is not a safe placement for Student. The school is not equipped to handle a pupil with Student's behavioral needs. Crossroads would be an appropriate IAES for Student at this time. Placement at Crossroads has a host of purposes, including helping Student develop social skills and providing special education services in an environment with a reduced class-size and specially trained personnel.

14. A special "behavior system" at Crossroads has been designed for Student by District staff and outside behavior consultant Adam Bluestone. This includes a classroom management system specially designed to provide positive behavioral supports for all students in the class, not just Student. The design is modeled after a research based program known as "BEST", which emphasizes specific rules for each situation and reinforces behaviors positively. In Student's proposed classroom at Crossroads, three main rules will be

focused on: being respectful, being responsible and being safe. The entire staff at Crossroads is trained in the BEST system.

15. Crossroads is a small campus, with approximately 53 students, compared to Joshua's approximately 1,078 students. The Crossroads staff has more specific training and background in behavior than does the staff at Joshua Elementary. There is a greater chance of keeping Student interested and engaged in the classroom, and less of a likelihood that he will want to try to escape. In the event that he does try to leave class, the smaller size of Crossroads and related lower student-teacher ratio, taken together with the special training of all the school's staff members, lessens the likelihood of Student being able to leave school grounds. Additionally, the staff is better equipped to address Student's behavioral difficulties.

16. There is a substantial likelihood that continued placement of Student at Joshua Elementary School would result in injury to Student or others.

17. Placement at Crossroads is an appropriate interim alternative educational setting for Student.

LEGAL CONCLUSIONS

Applicable Law

1. A child with a disability has the right to a free appropriate public education (FAPE) under the Individuals with Disabilities Education Improvement Act (IDEIA) and California law. (20 U.S.C. § 1400 (d)(1)(A)¹; Ed.Code § 56001.²) A FAPE is defined in pertinent part as special education and related services that are provided at public expense and under public supervision and direction, that meet the State's educational standards, and that conform to the student's individualized education program (IEP). (20 U.S.C. § 1401(9); Cal.Code Regs. Tit. 5, § 3001, subd. (o).) Special education is defined, in pertinent part, as specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); Ed.Code §, section 56031.) Special education related services include, in pertinent part, developmental, corrective, and supportive services, such as speech-language pathology services and occupational therapy, as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. §1401(26); Ed.Code, § 56363.)

2. The IDEIA leaves to each State the responsibility for developing and implementing educational programs for disabled children, but imposes significant

¹ The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), effective July 1, 2005, amended and reauthorized the Individuals with Disabilities Education Act (IDEA). All citations to Title 20 United States Code are to sections currently in effect.

² The California Education Code was amended, effective October 7, 2005, in response to the IDEIA. (Stats. 2005, ch. 653.) All citations to the Education Code are to sections in effect subsequent to October 7, 2005.

requirements in the discharge of that responsibility. (*Board of Ed. Of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, (1982) 458 U.S.176, 183.) The statute establishes a cooperative process between parents and schools. *Rowley, supra* at 205-206. The central vehicle for this collaboration is the IEP process. (*Schaffer v. Weast*, (2005) 546 U.S. [126 S.Ct.528, 532].) Parents and guardians play a significant role in the IEP process. They must be informed about and consent to evaluations of their child, must be included as members of the IEP teams, and have the right to examine any records relating to their child.

3. The IDEIA sets forth procedural safeguards to ensure that children with disabilities and their parents and guardians are guaranteed due process with respect to the provisions of FAPE. (20 U.S.C. §1415, et seq.) Among the safeguards is the right to an impartial due process hearing whenever a complaint is made relating to the identification, evaluation, or educational placement of the child pursuant to 20 U.S.C. § 1415(b)(6); or when there is a proposed change of placement of a child with a disability to an appropriate interim alternative educational setting, pursuant to 20 U.S.C. § 1415(k). (20 U.S.C. § 1415(f)(1).)

4. A student with a disability may be placed in an appropriate interim alternative educational setting for not more than 45 days, if the substantial evidence shows that maintaining the current placement of such child is substantially likely to result in injury to the child or to others. Consideration must be given to the appropriateness of the child's current placement, and whether reasonable efforts have been made to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services. (20 U.S.C. § 1415(k)(2); 34 C.F.R. § 300.521; Ed. Code § 48915.5(a).) The interim alternative educational setting must enable the child to continue to participate in the general curriculum, and to continue to receive those services and modifications described in the child's current IEP. The interim alternative setting must include services and modifications designed to prevent the behavior which led to the alternative placement from recurring. (20 U.S.C. § 1415(k)(3)(B); 34 C.F.R. § 300.522(b).)

Conclusions

1. The District established by substantial evidence that maintaining the current placement of Student is substantially likely to result in injury to him or to others. The District made reasonable efforts to minimize the risk of harm in Student's current placement, including the use of supplementary aids and services. However, without undergoing an intensive behavior modification program, Student will most likely continue to engage in unsafe, disruptive behavior in order to get his needs met. The dynamic between Student and teaching staff must be improved in order for Student to be able to make progress towards his academic, social and emotional goals. This will require specialized attention that is not available at Joshua Elementary School.

2. Crossroads is an appropriate IAES which will enable Student to participate in the general curriculum, while continuing to receive the services and modifications described in the November 2005 IEP. The program set up at Crossroads is designed to prevent

Student's behavior which led to the alternative placement from recurring, and will enhance the possibility that Student will be able to ultimately return to the general education setting, which is a less restrictive environment.

ORDER

The District's request that Student be placed in Crossroads as an interim alternative educational setting, for a period not to exceed 45-days, is granted.

PREVAILING PARTY

The following findings are made in accordance with this California Education Code section 56507, subdivision (d): The District prevailed on all issues heard.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this decision. (Cal. Ed. Code § 56505, subd. (k).)

Dated: May 1, 2006

Martha J. Rosett
Administrative Law Judge
Office of Administrative Hearings
Special Education Division