

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GROSSMONT UNION HIGH SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011020431

DECISION

Administrative Law Judge Susan Ruff, Office of Administrative Hearings, State of California (OAH) heard this matter on March 1 and 2, 2011, in La Mesa, California.

Sarah Sutherland, Esq., represented the Grossmont Union High School District (District). Rose Tagnesi, Assistant Director of Special Education, also appeared on behalf of the District.

Student's mother represented Student. Student was present throughout the hearing.

The District's request for an expedited due process hearing was filed on February 9, 2011. At the close of evidence on March 2, 2011, this matter was taken under submission.

ISSUES

a) Is maintaining Student's current placement substantially likely to result in injury to Student or to others?

b) If so, is the District's proposed placement at Chaparral High School an appropriate interim alternative educational setting for not more than 45 school days?

FACTUAL FINDINGS

1. Student is a 16-year-old who is eligible for special education and related services under the category of emotional disturbance.¹ The parties do not dispute that Student lives within the jurisdiction of the District.

2. Student started attending school in the District during the 2009 – 2010 school year, Student's ninth grade year. Student is very intelligent and has the capability to perform well in academic subjects. Most of Student's unique educational needs involve problems with behavior and attendance. He tends to exhibit behavioral problems during unstructured times such as lunch, transitions between classes, and breaks, rather than in structured classroom settings. He is frequently tardy to classes and has had unexcused absences from classes.

3. Under Student's current individualized educational program (IEP), he attends what is known as the "Plus Program." The Plus Program consists of self-contained, supported classrooms located on the campus of the high school that Student would normally attend. The Plus Program classes contain fewer pupils than typical high school classes and have the support of two special education teachers, aides and a full time counselor. The program is designed to provide additional behavioral and academic supports for pupils and to support their transition onto the regular campus for some classes.

4. The Plus Program classes utilize a point system to teach pupils to self-regulate. The pupils earn points based on their behaviors. Those points can be used to earn privileges such as attending lunch or breaks on the main school campus, pizza parties, or other benefits. Point sheets are sent home daily to the parents of the pupils in the Plus Program. Depending on a pupil's ability to regulate his or her behaviors, the pupil can attain different levels in the Plus Program. Higher levels afford the pupil more mainstreaming opportunities on the main campus.

5. Student's program currently consists of attending classes at the Plus Program for four periods a day and general education classes on the main campus for two periods a day. In addition to the smaller class size and the point system in the Plus Program, Student receives other supports and accommodations in accordance with his IEP, such as redirection by staff and the ability to take breaks. Student also has a behavior support plan in place to assist staff with addressing his problem behaviors. Student's IEP includes goals related to behavior and attendance.

6. Student's problem behaviors have been escalating recently. Student has become more disrespectful to staff, less willing to follow direction and redirection, and more physical in his misbehavior. Student has been suspended from school multiple times during

¹ Student was 15 at the time of the hearing, but turned 16 while the case was under submission.

the past three months. The District staff believes that Student's behaviors are now putting both Student and others at risk.

7. Vice Principal Jenine Henry, who oversees the District's Plus Program at various schools, believes that the Plus Program is no longer a sufficient environment to address Student's problem behaviors. The pupils in the Plus Program need a certain amount of self control, which Student lacks. Student wanders away, teases and bullies other students, and ignores adult direction. For example, if the principal ordered him to stay in a certain place, Student might leave while the principal was making a telephone call. Henry explained that Student is supposed to check in with the Plus Program, but does not always do so. At times, Student has come to school but not gone to the Plus Program or attended class. When an aide went to find him, he would run away. In Henry's opinion, if Student remains in his current placement, it is substantially likely to result in injury to Student or others.

8. Logan Sebela is a special education teacher in the Plus Program who acts as Student's advocate teacher. As the advocate teacher, he oversees Student's program, coordinates with the general campus, checks with Student about issues, attends Student's IEP team meetings and teaches one or more of Student's Plus Program classes. Sebela is concerned about the safety of Student and others if Student stays in his current placement. Sebela believes that Student's behaviors have become worse recently. He has seen Student posturing aggressively toward other pupils this school year, which is a new behavior for him. Student will talk to other pupils in an aggressive fashion and "get in other students' faces." As described in Factual Finding 10 below, on January 6, 2011, Sebela was forced to break up a verbal altercation between Student and another pupil that almost became a physical fight. During the last couple of months, the school staff has been unable to find Student at times. In Sebela's opinion, the inability to locate Student is a safety issue in and of itself. Sebela has heard Student talking about using drugs and not being caught.

9. Janelle Anderson, Student's teacher for world history and independent study in the Plus Program, also has concerns about the safety of Student and others if Student stays in his current placement. She has seen Student throw things, leave class without permission, leave the school without permission, and instigate disputes with his classmates that have disrupted class. She has witnessed him trip his peers and bully his peers.

10. Several incidents over the last three months have been of particular concern to school staff:

a. On December 8, 2010, during the lunch hour, another pupil made a sexual comment to Student about Shanna Tierman, a female aide in the Plus Program. Student told the other pupils in the Plus Program that, "He wants to fuck Ms. Tierman!" Student continued screaming this and laughing hysterically for several minutes in the classroom. Tierman felt so uncomfortable about Student's conduct that she left the room. Student was suspended for three days for sexual harassment because of the incident.

b. On January 4, 2011, Student was late to his first period class at the Plus Program. Student had been at the cafeteria on the main high school campus without permission prior to the start of school. As part of the Plus Program, Student was supposed to be escorted to and from the main campus by school staff. When Sebela reminded him that his conduct was improper, Student walked past Sebela and postured aggressively toward his back, as if he was going to strike Sebela.

c. On January 6, 2011, Sebela had to break up a verbal altercation between Student and another pupil. A pupil had a sandwich that was knocked to the ground. It was not clear whether Student or a companion had knocked it down. The pupil with the sandwich became very angry. Student's companion walked away, but Student remained and got into an argument. Student was yelling and cursing at the other pupil. Sebela was forced to intervene before the argument became a physical altercation. After Sebela separated the two youths, they began arguing again. Sebela separated them once more and took them to the office. Student was suspended from school for two days.

d. On February 1, 2011, Student threw things at a peer who was working outside of his class at the Plus Program. Student also made harassing and bullying comments to the peer. On the same day, Student took a soccer ball from the back of the custodian's truck. When directed by staff to give it back, Student was initially resistant but finally complied.

e. The next day, on February 2, 2011, Tierman saw Student sitting on a roof of one of the buildings in the Plus Program, throwing rocks. Student was brought to the office. The vice-principal Mr. Sullivan told Student he was being suspended. Student became very upset and started walking toward the Plus Program. District staff followed him and told him that he needed to leave campus. They instructed him to stop going toward the Plus Program. Student disobeyed them and continued into one of the Plus Program classrooms. Staff was eventually able to get him outside of the room, but he sat down on a bench outside the Plus Program and refused to leave. He was cursing and very angry about the suspension. The campus safety officer arrived and Student finally left the campus. However, Student did not go home. Instead, he sat down in front of the school and waited. He was still there near the end of the school day and staff was concerned about some type of retribution. The campus supervisor agreed to follow the aides by car as they left. As the aides were leaving, Student got up and started walking towards them, but noticed the campus supervisor and sat back down.

f. Student was suspended for three days as a result of the February 1 and 2 incidents. Student's mother kept him out of school for several days after that. On February 18, 2011, shortly after Student returned to school, he was found on campus in possession of drug paraphernalia, including a plastic

container with marijuana residue and a lighter. Student was suspended again, and had not yet returned to school at the time of the hearing.

11. During his testimony, Student denied that these events occurred in the manner in which they were described by the District staff. He admitted that the December 8, 2010 incident with Tierman occurred, but he denied that he was screaming or laughing inside the classroom. He said he only repeated the comment about Tierman to one or two other pupils as they were going into class. He denied that on January 4, 2011, he had been at the cafeteria without permission. He said he did not posture aggressively behind Sebela's back. He explained that he might have looked at Sebela "kind of weird," but he never postured aggressively toward him.

12. With respect to the January 6, 2011 altercation, Student admitted that the other pupil was trying to fight him that day, but denied that he threatened the other pupil or hit the other pupil. He said that, "I was standing my ground," because he was afraid that the other pupil would hit him in the back if he walked away.

13. Student denied that he made harassing comments to a peer on February 1, 2011. He said that another student had made the comments. He testified that he had thrown fruit on at least one occasion, but not at another pupil. Student denied that he took a soccer ball from the back of the custodian's truck. He said that he found the ball lying near a dumpster as he was walking toward the field. When Staff asked him for the soccer ball, he wanted to know why he had to give it to them. They asked him to return it a couple times more, and then he gave it to them.

14. With respect to the incidents on February 2, Student denied that he had been on the roof of the building. He said he was angry when he found out he was suspended for something he did not do. He cursed and refused to obey the staff when they told him not to go to the Plus Program. He testified that he went to the Plus Program to get his backpack. However, he did not tell any of the staff that his backpack was there or that he was going to get it. He said that they threatened to call the sheriff so he left the Plus Program. He testified that he sat down outside the campus, but denied that he did anything harmful to the administrators or threatened the administrators.

15. Student denied that he brought the drug paraphernalia to school with him on February 18, 2011. He said that he found the container on campus and that he got the lighter from a friend. He testified that he did not know there was marijuana residue in the container. Student said that he had been drug tested twice in February and came up negative for drug use on both occasions.²

16. Student and his mother do not believe that it is necessary to move Student to a different placement to avoid injury to Student or others. During their testimony, Student's

² Student's drug testing was not done by the school staff. Apparently it was done as part of a juvenile proceeding unrelated to the present case.

mother and Student described many of Student's good qualities. Student is highly intelligent and has strong leadership potential. He is active in his youth group at church, is an avid reader, helps homeless and needy people, and acts as a mentor to the younger children in the church. He has assisted his teachers in their classes. Student testified that he teases his friends, but has never engaged in any dangerous behavior with other pupils. Student hopes to play professional basketball some day or go into the practice of law.

17. Student does not like taking classes at the Plus Program. He is bored there. He explained that he is surrounded by other pupils with discipline problems and feels that the pupils there are labeled as troublemakers. The Plus Program monitors pupils and requires them to wait for aides to escort them. Student does not believe he is likely to injure himself or others if he stays in his current placement at the Plus Program.

18. Student's mother believes that Student's behavioral problems are due to the District's failure to implement Student's behavior support plan properly and failure to place Student in an appropriate school program. She feels that the Plus Program stresses the negative about Student rather than the positive and does not teach him at his academic level. She believes that Student does well when he attends an innovative program where he will feel challenged academically. In her opinion, Student is most successful when the program nourishes his strengths, rather than focusing on his defiance. She thinks that the Plus Program is not good for him because it focuses on punitive action, rather than building up Student's self-esteem. Student's mother directed Student to keep a log of one good thing that he did during each period of the school day so that he would not be focused solely on the negative behaviors. She feels that Student wants to be seen as normal and that special education has done him more harm than good.

19. Student's teachers in his two mainstream classes who testified at the hearing, Stephen Bulette and Nicole Sabell, did not see any misbehavior by Student during the time Student was in their classes. Bulette had never observed Student outside his classroom. Sabell might have seen him once outside of class passing in the hall. Student earned a "C" in Sabell's English class and she was pleased with his class participation. Bulette reported that Student's grade in his geometry class was very poor. Student did not attend Bulette's class regularly and did not participate in class.

The Proposed Alternative Placement at Chaparral

20. The District has proposed that Student be placed at an interim alternative educational setting at Chaparral High School (Chaparral). Chaparral is a small high school campus, with approximately 300 students, including 80 special education students. Chaparral has smaller class sizes than a comprehensive school campus and more adult supervision. Many of the students at Chaparral have behavioral issues, so the program is structured to deal with those issues. Chaparral has a higher staff-to-student ratio than a comprehensive high school and can monitor the pupils more easily. Pupils can work on a contract system to complete work at their own pace and gain class credit without waiting for a semester to end.

21. Sebela believes that the Chaparral program would be a better placement for Student at the present time than his current placement. Student could attend classes there without the need for a separate program such as the Plus Program, so Student would not feel alienated. Student tends to have problems during unstructured times, so the structure of the Chaparral program would benefit him. Because Student would have access to general education classes, he would find the academic work challenging and more at his skill level. Sebela believes that Student would have a better chance for success at Chaparral than his current placement.

22. Rose Tagnesi, an Assistant Director of Special Education for the District, also agrees that Chaparral would be a better placement for Student. Tagnesi holds a Bachelors Degree in special education and a Masters Degree in counseling. She has worked as a special education teacher and has attended thousands of IEP meetings in her career, including IEP meetings for Student. She supervises Chaparral as part of her duties and is familiar with the program there. In her opinion, Student may be feeling smothered by the Plus Program. At Chaparral, he can attend general education classes with the rest of the students. He will have no reason to feel different from the rest of the student body. Chaparral has an associate student body organization (similar to a student council) that can provide Student with leadership opportunities, and there are other clubs on campus as well as an opportunity to take field trips.

23. Student does not believe that Chaparral is an appropriate alternative educational placement for him. He testified that there are gang members at that school and pupils who take drugs. However, Student admitted that he also knows of gang members and pupils who take drugs at his current high school placement. Student is concerned that it would be hard for him to start over making friends at Chaparral.

24. Student wants to stay at the comprehensive high school campus so he can play varsity basketball and take honors classes. Student plays basketball, but has not played for a school team since he started high school. He also wants to take a computer class, an auto shop or a metal shop class. Student feels that he would be successful if he attended a regular high school campus in all general education classes. He believes pupils who attend Chaparral are labeled negatively and that he will not do well on a smaller campus such as Chaparral.

25. Student's mother also believes that Chaparral is not an appropriate placement for Student. Chaparral is a program improvement school that is not meeting District standards. Student's current high school placement is also a program improvement school. Student's mother wants her son to have opportunities to be involved in leadership organizations at school related to his ethnic group. Student's mother feels that he should be around peers engaged in positive activities where he shares the same cultural ethnic background. She wants Student to stay connected to his community, and Chaparral is outside his community. She is concerned that at Chaparral he will not have the opportunity to "shine" on a high school basketball team as he might on a comprehensive high school campus. She has heard from other parents in the community that the pupils at Chaparral are

labeled. In her opinion, Student will be isolated and labeled at that school. She is afraid that Student will regress at Chaparral.

LEGAL CONCLUSIONS

1. The District, as the party filing this due process case, has the burden of proof in this proceeding. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].)

2. 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 administrative law judge deciding such a case 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 if the [administrative law judge] determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(20 U.S.C. 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 300.532(b)(2)(ii) (2006).)

3. The interim placement 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) (2006).)

4. As discussed in Factual Findings 1 – 19 above, the evidence supports a finding that if Student stays in his current placement, it is substantially likely to result in injury to Student or others. Student’s increasing aggression, his defiance and refusal to follow adult direction, and his attitude when confronted with wrongdoing, all point toward a volatile and uncontrollable situation. Student has been suspended numerous times over the past three months, has thrown objects, has engaged in harassment and bullying, has been in a verbal altercation with a peer that nearly resulted in physical violence, has sexually harassed a staff member, and has refused to comply with adult direction to the point that it was necessary to call a security officer.

5. As discussed above in Factual Findings 16 – 19 above, Student possesses many good qualities, including his high intelligence, his strong leadership potential, his willingness to help others at school and in the community, and his involvement in church activities. However, at this time, his increasing defiance and aggression leave Student and others at risk if he remains in his current placement. The District has met its burden of proof in this regard.

6. As discussed in Factual Findings 20 – 25 above, the evidence also supports a finding that Chaparral is an appropriate interim alternative educational setting for Student. Chaparral has structure and monitoring that is lacking on a comprehensive high school

campus. Because of that structure, it will not be necessary for Student to attend a program such as the Plus Program while he is there. Student's objections to the Plus Program will not be an issue at Chaparral. Student will have the opportunity to attend general education classes with his peers, while at the same time obtain the benefits of smaller class sizes, more individualized attention, and the availability of a contract study system to let him progress at his own pace. The evidence supports a finding that a placement at Chaparral will enable Student to participate in the general education environment and make progress on the goals set forth in his IEP.

ORDER

1. The District may change Student's placement to Chaparral High School for a period not to exceed 45 school days.

PREVAILING PARTY

Pursuant to 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. Here the District prevailed on all issues heard and decided in this matter.

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. (Ed Code, § 56505, subd. (k).)

DATED: March 14, 2011

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings