BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021020645

PARENT ON BEHALF OF STUDENT

v.

CORONADO UNIFIED SCHOOL DISTRICT.

DECISION

JUNE 9, 2021

On February 16, 2021, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Coronado Unified School District, called Coronado. OAH granted Coronado's request for continuance on April 1, 2021.

Administrative Law Judge Robert G. Martin heard this matter by videoconference on April 27 and 29, 2021, and May 4, 5, and 6, 2021.

Parent represented Student. Student attended all days of hearing. Attorney Justin Shinnefield represented Coronado. Niamh Foley, Director of Special Education, attended all days of hearing on Coronado's behalf.

At the request of the parties, OAH granted a continuance to May 18, 2021, to file written closing briefs. OAH closed the record and submitted the case for decision on May 18, 2021.

ISSUES

1. Did Coronado deny Student a free appropriate public education, called FAPE, by failing to timely locate, identify, or evaluate Student under its child find obligation, from September 3, 2020, to February 16, 2021?
2. Did Coronado deny Student a FAPE by failing to find Student eligible for special education and related services under the eligibility category of specific learning disability during an October 1, 2020 meeting, held under Section 504 of the Rehabilitation Act of 1973?

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 et seq. (2006); 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).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. §1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. §1415(i)(2)(C)(iii).) Student, as the filing party, had the burden of proof by a preponderance of the evidence in this matter. The factual statements below 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 18 years old at the time of hearing. Student assigned his right to represent himself at the hearing to Parent, orally and in writing. Parent and Student resided within Coronado's attendance boundaries at all relevant times. Student received services or accommodations from Coronado during the relevant period under Section 504 of the Rehabilitation Act of 1973, called a Section 504 plan, but Coronado never found Student eligible for special education.

ISSUE 1: DID CORONADO FAIL TO MEET ITS CHILD FIND MANDATES TO ASSESS, IDENTIFY, AND SERVE STUDENT FROM SEPTEMBER 3, 2020, TO FEBRUARY 16, 2021?

Student contended that Coronado's child find obligations were triggered by Parent's September 3, 2020 written request that Coronado assess Student for special education and related services. Student asserted that Coronado delayed and denied

Parent's requests for assessment, and failed to assess Student through the filing of the complaint. Coronado contended it satisfied its child find obligations by providing Parent a timely proposed assessment plan after receiving Parent's request to assess Student, and repeatedly asking for Parent's consent to the assessments, which Parent never gave.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031,56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ___ [137 S.Ct. 988, 1000].)

The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and assess all children with disabilities residing in the state who are in need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); Ed. Code, § 56301, subd. (a).) This duty is commonly referred to as "child find." The purpose of the child find evaluation is to provide access to special education. (*Fitzgerald v. Camdenton R-III School Dist.* (8th Cir. 2006) 439 F.3d 773, 776.)

A school district's duty to assess a student's eligibility for special education is triggered by any request for special education or assessment from the student's parent. (Cal. Code Regs., tit. 5, § 3021(a).) Additionally, a school district still has a child find duty even if the parent has not requested special education testing or services. (*Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518.)

A district's duty to assess a child for a possible disability is broader than its duty to provide special education, and more easily triggered. A school district's child find obligation toward a specific child is triggered when there is reason to suspect the child may have a disability, and may need special education and related services. (Ed. Code, § 56301, subd. (a).) The Education Code describes such a child as "an individual with exceptional needs." (Ed. Code, § 56026.) The obligation to assess for possible exceptional needs applies even if the child is advancing from grade to grade. (Ed. Code, § 56301, subd (b)(1).)

A disability becomes "suspected," and therefore must be assessed by a school district, when the district has notice that the child has displayed symptoms of that disability. (*Timothy O. v. Paso Robles Unified School Dist.*, 822 F.3d 1105, 1119-20 (9th Cir. 2016), cert. denied, 137 S. Ct. 1578 (2017) (*Timothy O.*) A district may be put on notice through concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or by other less formal indicators, such as the child's behavior. (Id. at pp. 1119-1121 [citing *Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, and *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202].)

In deciding whether there is reason to suspect that a student has exceptional needs, a school district's appropriate inquiry is whether the student should be referred for an assessment, not whether the student actually qualifies for special education

services. (*Dept. of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1195 (*Cari Rae S.*).) School districts cannot rely on informal observations, or the subjective opinion of a staff member, to circumvent the district's responsibility to use the thorough and reliable procedures specified in the IDEA to assess a child in all areas of suspected disability. (*Timothy O.*, *supra*, 822 F.3d at p. 1119.) Thus, the suspicion that a student might have an impairment affecting the student's educational performance is enough to trigger a need for assessment. (See, e.g., *Park v. Anaheim Union High School Dist.*, et al. (9th Cir. 2006) 464 F.3d 1025, 1032.)

The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041).)

Once a child is identified as potentially needing special education services, the district must conduct an initial evaluation to determine whether the child is eligible for special education. (34 C.F.R § 300.301; Ed. Code, § 56302.1.) No action may be taken to place a student with exceptional needs in a program of special education without first conducting assessment of the student's educational needs. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) The evaluation of a child previously exited from special education is considered an initial evaluation. (United States Department of Education Office of Special Education Programs, *Non-Regulatory Guidance* [regarding parental revocation of consent for continued special education and related services] (March 2009) ("If a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, a [school district] must treat this

request as a request for an initial evaluation under [34 Code of Federal Regulations section 300.301] (rather than a reevaluation under §300.303).")

An initial evaluation cannot be limited in scope, but must assess a child's needs in all areas of suspected disability, to determine whether the child has a disability and gather the relevant functional, developmental, and academic information about the child necessary to develop an appropriate educational program. (20 U.S.C. §1414(b)(3)(B); Ed. Code, §56320 (f); *Timothy O., supra,* 822 F3d at pp. 1111 and 1119.)

A district receiving a referral for assessment of a child has 15 days to provide the parent a written proposed assessment plan and explanation of the IDEA's procedural safeguards, including information on the procedures for requesting an informal meeting, prehearing mediation conference, mediation conference, or due process hearing; the timelines for completing each process; whether the process is optional; and the type of representative who may be invited to participate. (Ed. Code, § 56321, subd. (a).) The proposed assessment plan must be in language easily understood by the general public, be in the native language of the parent, explain the types of assessments to be conducted, and state that no IEP will result from the assessment without the consent of the parent. (Ed. Code, § 56321, subd. (b).)

The district must make reasonable efforts to obtain informed consent from the parent before conducting an initial assessment. (20 U.S.C. § 1414(a)(1)(D)(i); Ed. Code, § 56321, subd.(c)(1); 34 C.F.R. § 300.300(d)(5).) Once the parent consents in writing to the proposed assessment plan, the district has 60 days to complete the assessments and hold an IEP team meeting to discuss the assessment results and determine the student's special education eligibility and educational needs. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f)(1), 56302.1, subd. (a), and 56344, subd. (a).) If the parent does

not provide consent for an initial assessment, or the parent fails to respond to a request to provide the consent, the district may, but is not required to, pursue the initial assessment. (20 U.S.C. § 1414(a)(1)(D)(ii); Ed. Code, § 56321, subd.(c)(2).) The district specifically does not violate its child find obligations if it declines to pursue the assessment. (20 U.S.C. § 1414(a)(1)(D)(iii); Ed. Code, § 56321, subd.(c)(3).)

2019-2020 SCHOOL YEAR

Student began attending school in Coronado in August 2019, at the start of 11th grade. Student was not eligible for special education when he arrived at Coronado, but had an accommodation plan, called a 504 plan, developed pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794; 34 C.F.R. § 104.1 et. seq. (2000).) The Rehabilitation Act of 1973 is a federal anti-discrimination law, and is separate from the IDEA. Among other things, it protects the rights of children with disabilities in public schools by requiring districts to provide accommodations, and in some cases program modifications and services, to children who have physical or mental impairments that substantially limit learning. Claims regarding defects in developing or implementing a 504 plan are not within OAH's special education jurisdiction, which is limited to due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Student received special education and related services from second grade through 10th grade under the eligibility category of other health impairment, based on needs arising from attention deficit hyperactivity disorder and treatment for severe eczema. However, after Student's 10th grade year, during which he was enrolled in an online learning program provided by Audeo Charter School, Parent requested Student be transitioned from his IEP to a 504 plan. Student performed well academically in 10th

grade, and Parent and Student felt Student no longer required special education related services, such as the specialized academic instruction provided through Student's IEP. Student wanted to continue receiving accommodations that were provided in his IEP, including preferential seating, testing accommodations on standardized tests, and extended time on homework, class assignments, and classroom tests, but through a 504 plan instead of an IEP. In an August 19, 2019 email, Parent revoked consent for Student to receive special education, and Student transitioned to a 504 plan.

Coronado held a meeting for Student on October 1, 2019, to review and revise Student's 504 plan. The 504 Accommodation Plan developed through the meeting, dated October 9, 2019, noted Student was diagnosed with dyslexia, and in the brief time since the start of the school year he had demonstrated poor test-taking skills and math skills, and difficulties with reading, writing, and completing homework and classwork. The 504 plan provided Student accommodations including access to audio books when available, preferential seating, extra time to complete homework, classwork, and tests, access to class lecture notes or power point presentations, and authorization to type written work and use text to speech software. On California state tests, Student was allowed access to embedded designated supports such as text to speech software when taking the electronically administered tests.

In spring 2020, Coronado shifted to remote learning in response to the COVID-19 pandemic. Student had difficulty in some classes understanding his assignments, and when they were due. Student also had difficulty in most of his classes obtaining his 504 plan accommodations such as lecture notes, extra time on homework and assignments, and access to text to speech software. Despite these difficulties, Student was able to improve his grades from a 2.6 grade point average in his fall 2019 semester, to a 3.14 in the spring 2020 semester.

STUDENT'S REQUEST FOR SPECIAL EDUCATION ASSESSMENT

Student began his senior year on August 22, 2020. On September 3, 2020, Parent sent an email to Student's 504 plan coordinator, Afsaneh Doctor-Safaie, asking Coronado to assess Student for special education. Parent requested the assessment because she was concerned Coronado was not adequately implementing the accommodations in Student's 504 plan, and believed Coronado would more diligently provide the accommodations if they were included in an IEP. Safaie forwarded Parent's request for assessment to Coronado school psychologist, Denise Garibay. Garibay emailed Parent to arrange a conversation with Parent to discuss Parent's areas of concern, so that Garibay could prepare an assessment plan that would include the appropriate assessments to address those areas.

Parent was unable to schedule time to speak with Garibay within the 15 days in which Coronado was required to provide Parent a proposed assessment plan. Garibay therefore prepared a proposed assessment plan based on available information without Parent's input, and emailed Parent the plan and a copy of IDEA procedural safeguards on September 17, 2020. The proposed assessment plan was in Parent's native language, English, and used language easily understood by the general public. It proposed to assess Student in the areas of academic achievement, health, and intellectual development, and stated no IEP would result from the assessment without Parent's consent.

After sending the proposed assessment plan, Garibay made reasonable efforts to obtain Parent's consent to conduct the assessments. Garibay and Parent discussed the proposed assessment plan on September 25, 2020. Garibay explained the assessment process and the 60-day timeline for completing and reviewing the assessments and

determining Student's special education eligibility and needs. Parent said she was reluctant to have Student pulled from his classes for assessments, and did not want to wait 60 days for the assessment results and an IEP team meeting to determine Student's eligibility for special education. Parent said she was obtaining a private assessment of Student that she wanted to have before consenting to Coronado's proposed assessment plan. Parent did not object to the assessments proposed by Coronado, or otherwise suggest that the assessment plan was not appropriate.

On September 29, 2020, Parent sent Garibay an email requesting a comprehensive reading assessment to determine Student's present levels of performance. Garibay contacted Parent, sent her an electronic copy of Coronado's proposed assessment plan with an option to generate an electronic signature using DocuSign software, and asked Parent to return a signed copy consenting to the proposed assessments. Parent said she did not want to move forward with a comprehensive assessment of Student in all areas, but wanted Coronado to assess only Student's reading. To accommodate Parent, Coronado assessed Student's reading using tests included in Read 180 software, used by Coronado to assess general education students for possible reading interventions. On October 1, 2020, Student's 504 plan team met and reviewed the Read 180 reading assessment results. Neither party offered the test results as evidence at hearing. Student's 504 plan team agreed to administer additional reading assessments – the Woodcock-Johnson Test of Achievement, and the Gray Oral Reading Test.

In early October 2020, Garibay emailed Parent to ask if Parent now wanted to proceed with Coronado's proposed assessment plan. Parent replied that she was having trouble using DocuSign to electronically sign the assessment plan, and Garibay emailed Parent a new DocuSign link. Parent replied that she was pursuing outside testing, and

would let Garibay know if Parent decided to proceed with the proposed Coronado assessments.

On October 12, 2020, Coronado provided Parent the results of Student's district-administered Woodcock-Johnson and Gray Oral reading tests, which were not offered as evidence at hearing. On October 22, 2020, Garibay and Parent discussed the test results. Garibay again asked Parent for consent to the September 17, 2020 assessment plan, and Parent again declined.

On November 17 and 30, 2020, Student's 504 plan team convened at Parent's request by videoconference to review the reading tests conducted by Coronado, and private reading test results Parent obtained from neuropsychologist Spencer Wetter. Parent testified that she intended to consent to Coronado's proposed assessment plan at one of these meetings, but was prevented from doing so because Coronado muted her videoconference microphone. Coronado denied that any of its personnel muted Parent, but even if this did happen at one meeting, it did not prevent Parent from providing written consent to the assessment before or after that meeting, either electronically by email or DocuSign, or by returning a signed hard copy of the plan to Coronado in person or by regular mail.

Coronado never withdrew the September 17, 2020 proposed assessment plan. Parent never consented to the assessment plan, nor did Student after his 18th birthday.

Student did not meet his burden of proof of demonstrating by a preponderance of the evidence that Coronado failed to timely locate, identify, or evaluate Student under its child find obligation, from September 3, 2020, to February 16, 2021. Coronado's duty to assess Student's eligibility for special education was triggered by Parent's September 3, 2020 request for a special education assessment. Coronado

provided Parent a timely and appropriate proposed assessment plan, made reasonable efforts to obtain Parent's informed consent to the plan, and never withdrew the proposed assessment plan during the relevant time period. When Parent repeatedly declined to consent to the assessment plan, Coronado was within its rights to not proceed with an initial assessment of Student's eligibility and needs, and did not violate its child find obligations by declining to pursue the assessment.

ISSUE 2: DID CORONADO DENY STUDENT A FAPE BY FAILING TO FIND STUDENT ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES UNDER THE ELIGIBILITY CATEGORY OF SPECIFIC LEARNING DISABILITY DURING AN OCTOBER 1, 2020 MEETING, HELD UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973?

Student contended Coronado denied Student a FAPE, by failing to find Student eligible for special education under the category of specific learning disability based on the reading assessment scores presented at Student's 504 plan meetings on October 1, 2020, November 17, 2020, and November 30, 2020. Coronado contended the reading assessment scores alone did not satisfy the requirements for a comprehensive initial evaluation of Student, and would not provide enough information for an IEP team to determine Student's eligibility and develop an appropriate education program. Coronado also contends it had already agreed to conduct an initial evaluation of Student's eligibility for special education before the 504 plan meetings were held, and any failure to determine Student's eligibility and provide related services was due to Parent not consenting to the September 17, 2020 proposed assessment plan.

On October 1, 2020, and November 17 and 30, 2020, Student's 504 plan team convened at Parent's request by videoconference to review reading assessments conducted by Coronado, and private reading test results Parent obtained from neuropsychologist Spencer Wetter. Parent provided the team a single sheet of paper form containing four tables summarizing Woodcock-Johnson and Gray Oral reading test scores for Student from testing in March 2018, and on October 8, 2020. The summary included no narrative explaining how the testing was conducted or the significance of the scores. Dr. Wetter did not participate in the 504 plan team meetings.

Parent argued at the 504 plan meetings that Coronado should make Student eligible for special education under the category of specific learning disability based on the reading assessments presented to the 504 plan team. Coronado team members contended the test scores indicated that Student did not have a reading disability but was instead reading at grade level, and also that the reading tests alone would not provide sufficient information for an IEP team to determine Student's eligibility and develop an appropriate education program. Three of the four reading assessments were not offered as evidence, and the fourth, the test scores attributed to Dr. Wetter, was not authenticated at hearing but admitted solely as administrative hearsay. Student did not offer any expert opinion explaining the reading assessments.

Student's reading assessments did not constitute the comprehensive initial evaluation of all areas of suspected disability required before a child may be found eligible for special education. For example, a reading assessment did not assess previously identified areas of disability arising from Student's attention deficit hyperactivity disorder and eczema. Student failed to prove the reading assessments were sufficient by themselves for Coronado to find Student eligible for special education and related services and develop an initial IEP for Student.

Assuming the reading assessments were sufficient to trigger a child find obligation for Coronado, it had already complied with that obligation by providing Parent the September 17, 2020 proposed initial assessment plan.

Finally, a child can only be denied a FAPE by a district's action or omission if the child is eligible for special education at the time of the district's conduct, or would be eligible for special education but for the district's conduct. (*R.B. v. Napa Valley Unified Sch. Dist*. (9th Cir. 2007) 496 F.3d 932, 942 ("[A] procedural violation cannot qualify an otherwise ineligible student for IDEA relief.").) Having met its child find obligations, Coronado was not responsible for Student's ineligibility for special education during the relevant time period. Coronado therefore could not, and did not, deny Student a FAPE.

For the foregoing reasons, Student failed to show by a preponderance of evidence that Coronado denied Student a FAPE, by failing to find him eligible for special education in October 2020, under the category specific learning disability.

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: Coronado did not deny Student a FAPE, by failing to timely locate, identify, or evaluate Student under its child find obligation, from September 3, 2020, to February 16, 2021. Coronado prevailed on Issue 1.

Issue 2: Coronado did not deny Student a FAPE, by failing to find Student eligible for special education and related services under the eligibility category of specific

learning disability during an October 1, 2020 meeting, held under Section 504 of the Rehabilitation Act of 1973. Coronado prevailed on Issue 2.

ORDER

All of Student's requests for relief are denied.

RIGHT TO APPEAL

This is a final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

/s/
Robert G. Martin
Administrative Law Judge
Office of Administrative Hearings