

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

CORONA-NORCO UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2023030821

DECISION

NOVEMBER 15, 2023

On March 31, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from the Corona-Norco Unified School District, naming Parents on behalf of Student. OAH granted a continuance on April 10, 2023. Administrative Law Judge Charles Marson heard this matter by videoconference on October 17 and 18, 2023.

Attorneys Julie C. Coate and Jasey L. Mahon represented Corona-Norco. Dawn Rust, Corona-Norco's Administrative Special Education Local Plan Area Director, attended both hearing days on Corona-Norco's behalf. Parents represented Student on

October 17, 2023, but did not attend the hearing on October 18, 2023. Student did not attend the hearing. An interpreter fluent in Cairo Arabic attended both hearing days at Parents' request.

At Corona-Norco's request the matter was continued to November 1, 2023, for written closing briefs. On November 1, 2023, Corona-Norco filed a closing brief. Student did not file a closing brief. The record was closed, and the matter was submitted on November 1, 2023.

## ISSUE

Is Corona-Norco entitled to conduct the reassessments proposed in its February 15 and April 18, 2022, assessment plans without parental consent?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education, called a FAPE, 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 free appropriate public education to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, and 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, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here Corona-Norco requested the due process hearing 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 17 years old and in 11th grade at the time of hearing. She resided within Corona-Norco's geographic boundaries at all relevant times. Student was eligible for special education under the categories of multiple disabilities and autism.

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## ISSUE: IS CORONA-NORCO ENTITLED TO CONDUCT THE REASSESSMENTS PROPOSED IN ITS FEBRUARY 15 AND APRIL 18, 2022, ASSESSMENT PLANS WITHOUT PARENTAL CONSENT?

Corona-Norco contends that it should be allowed to assess Student because her triennial reassessments are overdue. It argues that conditions warrant assessing her because it cannot write a legally compliant individualized education program, called an IEP, for her without knowing her present levels of performance and the nature and extent of her needs. Student was last assessed in June 2019. Her triennial review was due by August 26, 2022.

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 (2006). Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320 (2007), 300.321 (2007), and 300.501 (2006).)

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 [102 S.Ct. 3034; 73 L.Ed.2d 690]; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 403 [137 S.Ct. 988; 197 L.Ed.2d 335].)

School district evaluations of students with disabilities under the IDEA serve two purposes: (1) identifying students who need specialized instruction and related services because of an IDEA-eligible disability, and (2) helping IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 (2007) and 300.303 (2006).)

Corona-Norco's evidence supported the following factual findings. There was no evidence that contradicted these facts. Parents represented Student for most of the hearing, and cross-examined witnesses, but did not testify, call witnesses, or present evidence.

## STUDENT'S TRIENNIAL ASSESSMENTS ARE OVERDUE

Reassessment of a student eligible for special education must be conducted at least every three years, or more frequently if the local educational agency determines that conditions warrant reassessment, or if a reassessment is requested by the student's teacher or parent. (20 U.S.C. § 1414(a)(2)(A); 34 C.F.R. § 300.303(b)(2)(2006); Ed. Code, § 56381, subds. (a)(1), (2).) The IDEA uses the term evaluation, while the California Education Code uses the term assessment. The terms are interchangeable. (20 U.S.C. § 1414(a); Ed. Code, § 56302.5.)

Student's last triennial assessments were conducted in June 2019, more than three years ago. Her last triennial review occurred at a series of IEP team meetings between August 2019 and March 2020, more than three years ago. Student's next triennial assessment was due on August 26, 2022, but has not been conducted. Since

2019, Corona-Norco has been unable to assess Student either because Parents have been unwilling to consent to an assessment plan or have insisted on conditions that effectively nullified their consent.

## THE CIRCUMSTANCES WARRANT REASSESSMENT OF STUDENT

The parties have not agreed on an IEP for Student since the family moved into Corona-Norco in 2017. The evidence showed that since 2019, the parties have been unable to resolve numerous disputes concerning Student's academic, social, physical, medical, and other needs due to the absence of current assessment information. A few examples of the need for assessment follow.

Parents kept Student out of Corona-Norco's schools during most of the 2021-2022 school year. Student returned for the 2022-2023 school year but had several periods of extended absence and has not attended during the school year 2023-2024. Corona-Norco needs to know, among other things, whether Student is capable of attending school regularly. Corona-Norco has no recent grades on classwork or teacher-supervised assignments, or any recent information about her classroom behavior, academic and functional skills, or health. Student's ability to interact with peers is unknown. Student has health problems, but their nature and extent are also unknown.

Since September 2021, Parents have sought to justify Student's absences from school by presenting to the IEP team a series of letters from Edward Curry, M.D., a physician at Kaiser Permanente in Fontana. Those letters typically announced Dr. Curry's advice in a few words but did not explain it. For example, Dr. Curry's letter of

September 16, 2021, stated that Student would be “unable to attend school from 9/30/21 through 10/29/21.” Other letters stated that Student was also unable to attend school from October 29, 2021, through January 10, 2022, and November 1, 2021, through February 22, 2022. Typically, these letters contained nothing but the bare statement that Student was unable to attend school between specific dates.

In a rare exception, Dr. Curry wrote a letter dated January 14, 2022, stating that Student had sustained “a severe third degree burn across her face with significant facial deformities.” He added that Student had developed severe post-traumatic stress, which was worsened by her anxiety, mood disorder, attention deficit hyperactivity disorder and autism spectrum disorder. He advised, without explanation, that Student should be excused from school from April 22 to July 30, 2022. He concluded by stating that Student was not a candidate for home hospital instruction due to her inability to remain on task in the home setting.

Corona-Norco does not have enough current information about Student to implement supports for Student that would respond to Dr. Curry’s diagnoses and opinions. It has repeatedly requested that Parents sign an authorization for the school nurse to speak with Dr. Curry about his letters, Student’s medical condition, and how it affects her abilities to learn or to access a school campus. However, Parents have consistently declined to authorize Dr. Curry to share any information with Corona-Norco, to invite him to an IEP team meeting, or to authorize Corona-Norco to contact him in any way.

Without current assessment information, Corona-Norco has been unable to determine whether Student’s lengthy absences have affected her academic and

functional abilities, or whether she would need medical attention during the school day in order to return to school. It has been unable to determine the effects of her burn injury on her social and emotional status. Student has been observed to cover her face on occasion, and the skin graft on her face has caused irregularities in her speech. However, Corona-Norco has no information that would allow it to understand how to address Student's restricted physical abilities, pain or sensory issues, or the social and emotional effects of her injury on her education.

Student may have new and serious behavioral challenges. On returning to school in August 2022, after many months of absence, Student engaged in inexplicable maladaptive behavior including eloping, eating dirt, drinking out of a toilet in the boy's restroom, attempting to eat toilet paper, and stripping off her clothes. Corona-Norco lacks sufficient information to address these behavioral difficulties without new assessments.

The evidence revealed other disputes between Parents and Corona-Norco. For example, Parents have repeatedly requested that Student be retained for one grade. Corona-Norco has declined to retain her. Without current academic achievement information, it is not possible to determine whether Student's progress or lack of progress supports retention.

Parents have repeatedly requested that Corona-Norco provide Student a one-to-one aide in class. Corona-Norco has very little information on which to evaluate that request, or to determine whether a behavioral assessment should precede that evaluation.



Parents have made many other requests that cannot be adequately evaluated by Corona-Norco because it lacks necessary and current information. These include requests that Corona-Norco:

- address Student's
  - post-traumatic stress disorder,
  - anxiety,
  - hyperarousal,
  - feelings of hopelessness,
  - helplessness, and inferiority,
  - tendency for self-harm,
  - severe near-death burn trauma and
  - possible suicidal ideation,
- avoid allowing sunlight on her skin graft by providing physical education only indoors,
- address her visual impairment, for example by providing large print books, bring Student's cafeteria food to a separate room where she can eat alone,
- provide a behavior intervention plan, and
- allow Mother to act as a one-to-one aide.

The new assessment information that would be provided by the proposed assessments would enable Student's IEP team to develop an educational program that would provide Student with a FAPE. The facts above show that new assessments are warranted.

## THE ASSESSMENT PLANS WERE LEGALLY COMPLIANT

A reassessment usually requires parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To obtain consent, a school district must develop and propose to parents a reassessment plan and include a statement of parents' procedural rights under the IDEA. (20 U.S.C. § 1414(b)(1); 34 C.F.R. § 300.304(a)(2006); Ed. Code, § 56321, subd. (a).) The assessment plan must:

- Be in language easily understood by the general public.
- Be provided in the native language of the parent or guardian or other mode of communication used by the parent or guardian, unless to do so is clearly not feasible.
- Explain the types of assessments to be conducted, and
- State that no individualized education program will result from the assessment without the consent of the parent.

(Ed. Code, § 56321, subds. (b)(1)-(4).) The district must give the parent at least 15 days to review, sign and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

If the student's parents do not consent to the plan, the district may conduct the reassessment only by showing at a due process hearing that it needs to reassess the student and is lawfully entitled to do so. (34 C.F.R. §§ 300.300(a)(3)(i)(2007); Ed Code,

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§§ 56381, subd. (f)(3); 56501, subd. (a)(3).) Accordingly, to proceed with a reassessment over parents' objection, a school district must demonstrate at a due process hearing that:

- the student's three-year assessment is due,
- that conditions warrant reassessment, or
- that the student's parent or teacher has requested reassessment.

(20 U.S.C. § 1414(a)(2)(A); Ed. Code, §§ 56381, subds. (a) & (f)(3).)

On February 15, 2022, Corona-Norco sent Parents a triennial assessment plan by email, which Parents received that day or the next. The plan proposed to assess Student in the areas of:

- academic achievement,
- social emotional status,
- processing,
- perceptual and motor development,
- communication development,
- cognitive development,
- health, and
- need for a special circumstances instructional assistant.

The plan specified the title of a qualified examiner for each area. Corona-Norco included a written statement of Parents' procedural rights.

The February 15, 2022, assessment plan contained all the information required by law. The assessment plan was written in English and in language easily understood by

the general public. Parent's native language is Cairo Arabic, but at least one Parent is proficient in English, and English was the Parent's usual mode of communication on all school matters. Parents spoke English at all IEP team meetings. All communications from Parents to Corona-Norco that were introduced in evidence were in English and demonstrated fluency in English. In addition, Mother demonstrated her proficiency in English on the first day of hearing in her communications with the ALJ, Corona-Norco's attorney, and witnesses. A certified and qualified interpreter of Cairo Arabic was present at hearing at Parents' request, but Mother almost never found it necessary to use the interpreter. The assessment plan was therefore readily understandable by at least one Parent. The plan explained the assessments to be conducted, and informed Parents that no IEP would result from the assessments without their consent. Parents had more than 15 days to consent to the February 15, 2022, assessment plan, but did not.

On April 18, 2022, Corona-Norco sent Parents an additional assessment plan by email and regular mail, including another copy of Parents' procedural rights. Parents received the new plan within a day or two. The April 18, 2022, plan supplemented the plan sent on February 15, 2022, by proposing a functional vision assessment in addition to the assessments previously offered. Again, the plan was in English, a language used and understood by at least one Parent. It explained the assessments, and assured Parents that no IEP would result from the assessments without their consent.

After Corona-Norco provided the February 15 and April 18 assessment plans to Parents, it made many additional reasonable efforts both orally at IEP team meetings and in writing, to persuade Parents to consent to the plans. Parents expressly and repeatedly declined to consent.

## PARENTS EFFECTIVELY DECLINED CONSENT TO THE REASSESSMENTS BY INSISTING ON CONDITIONS THAT WOULD HAVE RENDERED THE RESULTS INVALID

In several IEP team meetings and writings, Parents expressed willingness to approve the triennial assessments if Corona-Norco would agree to various conditions. Parents contended that these conditions were appropriate and were recommended by Dr. Curry. Corona-Norco's IEP team members contended that adherence to the conditions would invalidate the assessment results.

The conditions Parents sought to impose were stated in an October 7, 2022, letter from Dr. Curry. He recommended that the assessments be divided into different sessions, done in the morning with multiple breaks, spaced apart in days, done one at a time, done away from Student's menstruation time, and done in Mother's presence. In another letter on April 12, 2023, Dr. Curry added that the assessments should be "informal."

Parents who want their child to receive special education and related services must allow the school district to reassess if conditions warrant it. In *Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1315 (citation omitted); the court stated that "if the parents want [their child] to receive special education under the Act, they are obliged to permit such testing." (See also *Patricia P. v. Board of Educ. of Oak Park and River Forest High Sch. Dist. No. 200* (7th Cir. 2000) 203 F.3d 462, 468 (citation omitted); *Johnson v. Duneland Sch. Corp.* (7th Cir. 1996) 92 F.3d 554, 557-558.) In *Andress v. Cleveland Independent Sch. Dist.* (5th Cir. 1995) 64 F.3d 176, 179, the court concluded: "[T]here is no exception to the rule that a school district has a right to test a student itself in order to evaluate or reevaluate the student's eligibility under IDEA."

Parents may not insist that conditions be placed on the assessments. In *Student R.A. v West Contra Costa Sch. Dist.* (N.D. Cal., Aug. 17, 2015, Case No. 14-cv-0931-PJH) 2015 WL 4914795 [nonpub. opn.], for example, a parent refused to allow an assessment of her child without a one-way mirror and an audio feed through which she could see and hear the assessment as it took place. The school district declined because it believed this would interfere with the accuracy of the results. (*Id.* at p. 5.)

The District Court in *R.A.* agreed with an ALJ's holding that the demand to observe the assessments amounted to the imposition of improper conditions or restrictions on the assessments, and that the school district had no obligation to accept or accommodate those conditions. It held that the parent's refusal to proceed without being able to see and hear the assessment in real time amounted to the withdrawal of consent for the assessment. (*Id.* at p. 13.) The Ninth Circuit affirmed, agreeing with the ALJ and the District Court that the parent could not impose such a condition on the assessment. (*R.A. v. West Contra Costa Sch. Dist.* (9th Cir. 2017) 696 Fed.Appx. 171, 172 [nonpub. opn.].)

In *G.J. v. Muskogee Cty. Sch. Dist.* (M.D. Ga. 2010) 704 F.Supp.2d 1299, parents had insisted on six lengthy conditions before they would authorize evaluations. The District Court held that these conditions constituted a refusal to consent to the evaluations. (*Id.* at p. 1309.) The Eleventh Circuit agreed and affirmed, holding that the parents had effectively denied consent and violated the right of the school district to evaluate the student. (*G.J. v. Muskogee Cty. Sch. Dist.* (11th Cir. 2012) 668 F.3d 1258, 1264-1265.)

At hearing, Corona-Norco's speech and language pathologist Kimberly Reola established that adherence to the conditions Parents sought to impose would invalidate

the results of her testing. Corona-Norco's assessments would not be normed, and Student's performance could not be compared to that of other students her age. Reola also established that Mother's presence at the assessments would invalidate their results because it would violate the instructions of the publishers of the test instruments that the Student be alone with the assessor. Reola's reasoning applied to all the assessments Corona-Norco proposed.

Reola had 13 years of experience as a speech and language pathologist, and her testimony was not contradicted. She testified thoughtfully and was familiar with Student and her disabilities. Reola was a credible and persuasive witness, and her conclusions were given substantial weight. As Corona-Norco proved, the conditions Parents required for their consent to the triennial assessments would have invalidated the results. Parents therefore did not effectively consent to the assessments.

## 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.

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## ISSUE:

Corona-Norco is entitled to conduct the reassessments proposed in its April 18, 2022, assessment plans without parental consent. Corona-Norco prevailed on the single issue decided.

## ORDER

1. Corona-Norco may reassess Student according to its February 15 and April 18, 2022, assessment plans.
2. Parents shall timely produce Student for those assessments and shall not attempt to attach any conditions to the manner in which Corona-Norco's assessments are conducted. Corona-Norco may reject any such proposed conditions.
3. Parents shall timely complete, sign, and return any documents reasonably requested by Corona-Norco as part of its assessment process, without conditions.
4. If Parents do not comply with this Order, Corona-Norco will have no obligation to consider Student's educational programming at an IEP team meeting, to provide her special education or related services, or otherwise to accord Student the rights of a special education student.
5. If Parents do not comply with this Order, Corona-Norco will have no obligation to recognize any rights in Parents that would otherwise be conferred by the IDEA and related laws.



## RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Charles Marson

Administrative Law Judge

Office of Administrative Hearings