

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

CASE NO. 2023100162

CORONA-NORCO UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

AMENDED EXPEDITED DECISION

November 20, 2023

On October 3, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Hueneme Elementary School District, naming Parent, on behalf of Student as respondent. Administrative Law Judge Judith L. Pasewark heard this matter by videoconference on October 31, through November 1, 2023.

Attorney David Graham represented Corona-Norco. Administrative Special Education Local Plan Area Director Dawn Rust attended on behalf of Corona-Norco.

On October 19, 2023 Student, through his attorney, filed a Prehearing Conference Statement which indicated Student did not intend to call any witnesses or offer any exhibits, other than the evidence offered at hearing by Corona-Norco.

On October 30, 2023, OAH received a Notice of Withdrawal for Student's attorney. OAH sent the Zoom invite and instructions for hearing directly to Parent's email address as confirmed in the Notice of Withdrawal. Parents did not appear for hearing. Corona-Norco's attorney reported that on the morning of October 31, 2023, his office received a notification from Parents that they would not attend the hearing. Student did not attend the hearing.

## ISSUE

Does Student's behavior pose a significant risk of injury to himself and others such that Corona-Norco can remove Student to its intensive intervention program, an interim alternative educational setting for an additional 45 days?

## JURISDICTION

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

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected.  
(20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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, called a FAPE, 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]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Hueneme requested this hearing; therefore, Hueneme bears 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 a seven-year-old who resided with his parents within Corona-Norco. Student first qualified for special education and related services on January 23, 2023, with primary eligibility as other health impairment.

Student attended a general education classroom in the second grade at Ronald Reagan Elementary School. However, as of October 3, 2023, Corona-Norco removed Student to its intensive intervention program at Sierra Vista Elementary School, an alternate educational placement, as part of an interim 45-school day removal from his general education classroom due to a series of violent and dangerous behaviors which caused multiple injuries to both classroom peers and staff.

ISSUE: DOES STUDENT'S POSE A SIGNIFICANT RISK OF INJURY TO HIMSELF AND OTHERS SUCH THAT CORONA-NORCO CAN REMOVE STUDENT TO ITS INTENSIVE INTERVENTION PROGRAM, AN INTERIM ALTERNATIVE EDUCATIONAL SETTING FOR AN ADDITIONAL 45 DAYS?

When a school district seeks to discipline a child with a disability for violating a code of student conduct it must convene a meeting to determine whether the child's conduct was a manifestation of the child's disability (20 U.S.C § 1415(k); 34 C.F.R. § 300.530 (2006).) This is known as a manifestation determination.

The manifestation determination must be made by the school district, the parents, and relevant members of the IEP team as determined by the parents and the school district. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530 (e)(1) & (h) (2006).)

On September 25, 2023, Corona-Norco held a manifestation determination review, due to a series of behaviors culminating in an incident in which Student inflicted serious bodily harm to another child at school. Corona-Norco determined that Student's behavior was a manifestation of his disability. Due to Student's extreme behaviors and an overall concern for safety, Corona-Norco also determined Student's behavior was substantially likely to result in injury to Student or to others. Corona-Norco sought an interim alternate education setting for Student. Parents did not consent to an interim placement. Therefore, Corona-Norco invoked the special circumstance provisions contained in 20 United States Code, section 1415(k)(1)(G) which provides for the removal of a student to a 45-school-day interim alternate education setting without parental consent where the student inflicted serious bodily injury upon

another person while at school. Corona-Norco reasoned Student's very dangerous behavior, and the likelihood such behavior occurring again, posed an increasingly high risk of injury to Student and others. (Also see, 34 C.F.R. § 300.531)(2006).)

Whether Student's conduct in September 2023, rose to the level of serious bodily injury is not at issue in this matter. Title 34 Code of Federal Regulation, part 300.532 provides authority for expedited hearings on due process complaint disciplinary matters. In general, the regulation allows a parent of a child with a disability who disagrees with a placement decision or manifestation determination. Student did not contest Corona-Norco's decision to place Student in a 45-day interim alternate education setting, nor did Student participate or present evidence in this hearing. Therefore, the validity of the September 25, 2023 manifestation determination review and Corona-Norco's determination that Student's behavior qualified as a special circumstance for an involuntary interim alternate education are presumed proper.

Instead, Corona-Norco presented a much narrower issue regarding the extension of the 45-school day interim education setting placement. Specifically, the procedures under paragraph (A) and (B)(1) & (2) of title 34 Code of Federal Regulation, part 300.532 (2006), may be repeated if the school district believes returning the child to the original placement is substantially likely to result in injury to the child or to others. (34 C.F.R. § 300.532(b)(3)(2006).) Thusly a school district has recourse under the regulation to seek an order to extend the interim placement if it established that returning the child to the original placement is substantially likely to result in injury to the child or to others.

In conducting a manifestation determination, the team analyzes the child's behavior as demonstrated across settings and across times. (Assistance to States for the Education of Children with Disabilities, et. al. (71 Fed. Reg. 46540, 46720 (August 14,

2006)( Comments on 2006 Regulations).) All relevant information in the student's file including the IEP, observations of teachers. and any relevant information from the parents must be reviewed as part of the manifestation determination process.

(Comments to 2006 Regulations, supra, 71 Fed. Reg. 46720.)

## RELEVANT BACKGROUND

Ronald Regan was a year-round elementary school, with class schedules divided into four tracks. General education classes contain 27-to-29 students. As early as kindergarten, concerns arose about the physicality of Student's behaviors.

Once in first grade, Student's developed a consistent pattern of physicality primarily towards females and smaller children. These behaviors included kicking and pushing other children. Student's behaviors often exhibited sexual undertones, which included attempting to kiss girls, hitting girls on the bottom, exposing himself and inappropriately touching his aide, to the extent the aide refused to work with Student. Student's classroom peers were afraid of him. Student received private counseling and was diagnosed with attention deficit hyperactivity disorder and mood disorder.

In response to Student's maladaptive behaviors, Corona-Norco assessed Student for special education and related services. Student's initial IEP team meeting was held on January 13, 2023.

Student's assessments and classroom observation indicated Student exhibited impulsive behaviors and aggression towards peers, which occurred during unstructured times and during non-preferred tasks. Student experienced social problems due to a lack of ability to interact with peers and adults and had few or no friends. Student's present levels of performance noted he continued to show aggressive, defiant, impulsive

disruptive and inappropriate behaviors both inside and outside of the school setting. Student was very bright, however, he performed in the below-average range. Although Student came to school daily, when he harmed other children, it resulted in loss of class time due to office referrals, loss of recess time and suspensions. Student spent most of his free time in office to avoid unwanted physical contact with others. Student's behavior impacted his academics. As a result, the IEP team determined Student had difficulty accessing grade level curriculum which required academic and behavioral supports to help him develop more appropriate social interaction and behavior overall. The IEP team determined Student's eligibility as other health impairment due to impulsive behaviors within both home and school settings.

The IEP team created goals for self-regulation, writing sentences, and math. To support these goals, the IEP team offered specialized academic instruction. As further behavior support, the IEP team offered a full-time special circumstance instructional assistant, to provide intensive behavior assistance for the entire school day.

The IEP team developed targeted accommodations to support Student's behavior:

- preferential seating to limit distraction,
- scheduled brain brakes,
- visual schedules,
- access to sensory strategies and programs for self-regulation monitored by the occupational therapist,
- noise-reducing headphones, and
- chunking of academic assignments to support mastery of skills being taught.

Pending completion of an educationally related mental health service assessment, Student received school counseling available to all general education students.

Student's placement remained in the general education classroom, subject to the services provided in the IEP. Parents consented to the IEP in its entirety. The IEP team prepared a behavior intervention plan for Student's behavior base upon functional behavior data, and input from Parents and teacher. The data collected from the functional behavior assessment determined Student's targeted behaviors included:

- physical aggression, defined as engaging in acts that involve physically harming others, such as hitting, kicking, pushing, pinching, and throwing objects at others. Student exhibited physically aggressive behavior one time per day, for one-minute in duration in class, on the playground, and in lines. Student's physical aggression and inappropriate behaviors occurred during unstructured time, non-preferred activities, close proximity to peers, peer interactions, loud noises, transitions, denial by a peer, delay of an activity, or verbal instructions.
- socially unacceptable behaviors, defined as behaviors that are inappropriate, concerning and conduct that is unwanted and is reasonably interpreted to be demeaning, degrading, malicious or offensive, such as name calling, teasing, offensive language, inappropriate touching and verbally promoting violence. Student exhibited socially unacceptable behaviors twice per day, for two minutes in duration, in class, on the playground, in line, and during transitions.



- engaging in any action outside of those needed to complete a given instruction or task, in which Student was off task by not starting or stopping engaging in needed actions for at least 15 seconds, such as, getting out of his seat, showing off, or seeking excessive attention. Student was off task for between twelve to twenty minutes, for between one to twelve minutes during whole class instruction. Student's off task behaviors occurred during non-preferred academic tasks, when denied preferred activities, and due to impulsiveness.
- eloping more than six feet from a designated area or path of entrance without permission, such as fleeing, running, bolting, leaving his chair or assigned area for the nearest exit to leave the classroom, and moving towards a setting that was prohibited, dangerous, problematic that compromised his safety. Student eloped one time per week, for a duration of 10 minutes to 90 minutes. Student's elopement occurred due to loud noises, non-preferred activities, or his perception of a threatening environment.

The IEP team determined Student had not shown the ability to appropriately deal with his emotions and feelings and could not tolerate stressful situations. Student did not possess the ability to appropriately use problem-solving strategies when encountering frustrating and stressful situations.

The behavior intervention plan included a series of behavior replacement strategies, problem solving steps, modeling the skill needed, positive behavior reinforcements and feedback. Reactive strategies included prompting to utilize the replacement behavior, using a prompt hierarchy, utilizing a first/then strategy, and restatement of available reinforcements.

The behavior intervention plan included a very detailed series of instructions for Student's special circumstance instructional aide, administrators, and other school personnel regarding elopements. Parents consented to the behavior intervention plan.

Student showed some progress working with his special circumstance instructional aide, Student's maladaptive behavior continued. When presented with non-preferred tasks, Student went off-task and often eloped. Student enjoyed the social part of school, but if something about another child bothered him, his demeanor would change. Between February and May 2023, Corona-Norco logged over 100 incidents in which Student continued to demonstrate problem behaviors, generally daily, ranging from disruptive behavior, disrespect to defiance and inappropriate language, and physicality.

On May 1, 2023, Corona-Norco held an amendment IEP team meeting to review the educationally related mental health service assessment. The assessment report noted that the current intervention support taught Student behavior skills, but Student was unable to apply them.

The educationally related mental health assessor determined Student presented significant and serious maladaptive behaviors which interfered with his education performance and interactions with others. Student exhibited characteristics associated

with social maladjustment, conduct disorder, and oppositional defiant disorder. Student was not a candidate for educationally related mental health services, as he required even more intensive services to support his needs. The IEP team discussed adding more intensive social-work counseling services, known as WRAP.

On May 12, 2023, Corona-Norco held a follow-up amendment IEP team meeting to discuss the WRAP services provided to Student. Student required counseling in the home to bridge the gap between home and school in addition to services in the school setting. The IEP team added two hours per week of WRAP services at school, and one hour per week in the home. WRAP services provided more intensive support than educationally related mental health services. Parent consented to the May 12, 2023 IEP amendment.

On July 14, 2023, Student put his arm around another child's neck when the child did not give him a ball. Another disciplinary incident occurred on July 18, 2023, in which Student kicked another child in the face causing potential vision damage to that child. Student's action was unprovoked and his behavior unexpected in these situations. Ryan Garcia, Principal at Ronald Regan, reported the child's eye was damaged and necessitated optic care. The child now requires glasses. Student received a two-day suspension.

On July 24, 2023, Corona-Norco held another amendment IEP team meeting to discuss additional social emotional behavior supports and a possible change of placement for Student. The IEP team offered a change in Student's placement to its intensive intervention program located at Sierra Vista Elementary School. Parents did not consent to a change in placement to the intensive intervention program. Student remained in the general education classroom.

On July 31, 2023, Student received another two-day suspension for punching a child in the nose, hitting him across his face and in the back of his head, leaving physical marks. Student's assault was unprovoked and initiated by Student. Garcia reported the child also experienced eye damage and required an ice pack on a developing black eye.

On August 4, 2023, Student was suspended for five days for causing physical injury by punching another child in the face on the playground.

In total, Student received 30 behavior referrals between July 15, 2022, and September 5, 2023, for reasons ranging from physical contact to causing or attempting to cause physical injury.

On September 5, 2023, Corona-Norco held Student's first manifestation determination review. Based upon the altercations described above, the IEP team determined Student's conduct was caused by or had a direct and substantial relationship to his disability; Student acted impulsively. Student's conduct, however, was not a result of a failure to implement Student's IEP.

The IEP team allowed Student to return to his regular placement. The IEP team agreed to reconvene to update Student's behavior intervention plan. Parents did not dispute the findings of this manifestation determination review.

The law provides that school personnel may remove a student to an interim alternative educational setting for not more than 45 school days, regardless of whether the student's behavior is determined to be a manifestation of the student's disability under special circumstances. (20 U.S.C. § 1415(k)(1)(G).)

On September 25, 2023, Corona-Norco held a second manifestation determination review due to a new incident on September 20, 2023, in which Student inflicted serious bodily harm to another person while at school. Student left his desk, ran to a female student, and punched her in the face with his fist injuring the child's eye.

The IEP team again determined that Student's behavior was a manifestation of his disability. This time, however, due to Student's extreme behaviors and concern for safety, Corona-Norco determined Student's behavior was very dangerous, its likelihood to occur again was extremely high and may result in even more violent behavior. Corona-Norco placed Student in a 45-day interim education setting in the intensive intervention program at Sierra Vista.

Student entered the intensive program on October 3, 2023. As expected, Student's aggressive behaviors continued. Student randomly selected his targets and displayed no discernable antecedents to his physical aggression.

On Student's first day in the intensive intervention program, Student motioned another child to come closer, at which point Student punched the child in the eye.

On October 4, 2023, Student

- twice eloped from class;
- spit water at another child;
- threw a Chromebook on the floor;
- flipped over a child's desk; and
- forcefully kicked cabinets in the calming area.

Student's behavior required the use of physical control on Student for his safety. Corona-Norco prepared a behavior intervention report, necessary when a child is physically restrained.

On October 5, 2023, Student

- eloped from the classroom;
- pushed another child off a stool;
- slapped his aide in the face, and
- physically hit the crisis prevention intervention staff members.

Physical restraint was required to transport Student and keep Student and staff safe. Upon leaving the classroom, Student gestured to kiss another child.

On October 6, 2023, Student kicked another child in the forehead.

On October 9, 2023, Student had an altercation with another child. Later, Student would not comply with his aide's directive of "no" and began hitting and attempting to bite the aide.

On October 10, 2023, during math class, Student stabbed his aide in the hand with a pencil and threw a chair across the classroom.

On October 16, 2023, during lunch recess, Student threw a rock at the back of another child's head.

On October 18, 2023, Student hit and kicked staff, and threw items across the classroom towards peers. Due to Student's escalated state and concern for student and staff safety, child control restrain was necessary. Corona-Norco logged a behavior intervention report.

Also on October 18, 2023, Student told children in his class that he was going to “cut off your face” and stated he “had a gun at home.” These comments initiated a threat assessment and Corona-Norco’s safety plan protocols. When interviewed, Student stated he did not have access to a gun at home, but he did have access to knives which he could “sneak one and bring it to school.” Corona-Norco notified law enforcement which conducted a wellness check at the home. As result, the safety plan increased, requiring Parents to check Student’s backpack before getting on the bus, and staff checking his backpack upon arrival at school in the morning.

On October 19, 2023, at the end of recess, Student took the handle of a jump rope and poked a child in the eye.

#### SUBSTANTIAL LIKELYHOOD OF SIGNIFICANT RISK OF INJURY IF RETURNED TO THE GENERAL EDUCATION PLACEMENT

Ryan Garcia, as Principal, administered student discipline at Ronald Regan. Garcia also attended Student’s IEPs team meetings while Student attended Ronald Regan.

Garcia presented as a credible witness. As Principal, Garcia observed Student’s behavior on campus and handled Student’s behavior discipline. Garcia spoke to Student on most of Student’s interviews following a behavior incident. Garcia observed Student excited at his maladaptive behavior. Student boasted about hurting others. He smiled during interviews, exhibited no empathy, and showed no remorse for his actions. He noted that Student’s behaviors were impulsive and unprovoked.

Garcia opined that Student’s IEP was comprehensive in supports, and the behavior intervention plan implemented with fidelity. Student’s behavior, however, was always unpredictable. Student exhibited no discernable antecedents to his aggression.

Garcia emphatically believed there was a 100 percent probability that Student would continue to present a significant risk of injury to himself or others if returned to Ronald Regan at this time.

Cynthia Zsembik was Student's initial second grade general education teacher. Zsembik, an experienced special education teacher, implemented Student's IEP and behavior plan with fidelity, during the short time Student remained in her classroom. Zsembik noted that Student required adult support throughout the day. Without support, Student became frustrated, got angry and became aggressive. To counteract Student's aggression, additional classroom supports were added. Student sat in a separate section of the classroom for breaks or working alone. Student was placed at the back of lines with his aide to avoid contact with other children. An arms distance space was created between Student and others, with Student's aide sitting next to him. Despite these precautions, Student kicked a child in the face with no warning or provocation. Student was transferred to another track, after little more than a week in Zsembik's classroom.

While Zsembik's interactions with Student were limited in time, she possessed significant teaching experience and was well versed in Student's IEP and behavior intervention plan. Zsembik expressed similar observations to those of Garcia. During an aggressive episode, Student showed no emotion. There was no antecedent, no build up to Student's behavior. In her words, "you could not see it coming."

Zsembik opined Student required a mental health placement which can provide more extensive and intensive behavior support than can be provided in the regular school setting. If Student returned to Ronald Regan, he would be dangerous without intensive mental health support.



Corona-Norco transferred Student to another classroom in a different track. Student entered Preethi Pulianda's education second-grade classroom at the end of July 2023. Pulianda was credentialed educator, with strong intervention skills for students with diverse learning needs. Pulianda utilized variety of teaching methodologies, student-centered learning, holistic learning, and differentiated instruction.

Pulianda found that when in a good mood, Student liked to interact in class, but when in a bad mood, Student became aggressive quickly, without an antecedent. Even with Student's trained one-to-one aide throughout the day, sometimes with two aides present, Student's behavior swings required Pulianda to be always on guard.

As noted above, on July 31, 2023, during Student's first week in the new classroom, Student assaulted another child and received a two-day suspension. To maintain safety for the other students in class, Student could not work with other children due to his aggressive behavior. Student sat in a separate space in the classroom with his aide in an area he called his spaceship. He verbally participated in group activities from his spaceship. The other students in the class were aware of Student's aggressive behaviors; peers were afraid of Student and worried he would hit them.

Pulianda testimony was credible and supported by her strong intensive intervention experience. Pulianda noted Student was not provoked to violence. Student's behavior was unpredictable. Student moved quickly and sought out quiet children, which resulted in injuries. Pulianda opined that if Student returned to the general education classroom, it was 100 percent likely Student would injure a peer or staff member again.

Andrew Croulet, Student's resource specialist and special education caseload manager worked with Student since his initial January 13, 2023 IEP in the first grade. As a resource specialist, Croulet provided resource services, and implemented research-based intervention and instructional practices. As Student's case manager, Croulet monitored Student's goals and attended each of Student's IEP team meetings.

Student's resource class had between three-to-five students, three adults, plus Student's one-to-one aide. Despite the student/adult ratio, Croulet, like Pulianda, maintained an arms-length distance buffer between Student and others, as there were no apparent antecedents to Student's aggression. Likewise, Croulet described Student's behavior as unpredictable and unprovoked aggression usually directed towards females.

Croulet worked with Student to create "zones of regulation" to control Student's behavior and identify Student's moods. It remained difficult to identify Student's moods because Student did not utilize the zones appropriately or independently use strategies. Student was unable to follow classroom rules or expectations.

Croulet reported that Student's IEP and behavior intervention plan were implemented with fidelity. He did not see improvement in Student's behavior. Croulet opined there was no doubt in his mind that that if Student returned to Ronald Regan, Student would continue to injure others. Student showed no empathy; he identified excitement with anger. Student showed no remorse for his actions. Instead, Student smiled and asked how badly he hurt the person.

The input from Kari Burns, and Sherly Walker, both closely associated with Student at Sierra Vista, provided even more telling evidence.

Burns, the Principal at Sierra Vista, was qualified school administrator with a bachelor's degree in diversified education, a master's degree in education, a multiple subject teaching credential, and an administrative services credential. Burns was very involved with the intensive intervention program at Sierra Vista. As Principal, Burns handled Student's major discipline, and attended his IEP team meetings.

Sheryl Walker was Student's second grade teacher and case carrier in the intensive intervention program. As an intensive intervention teacher, Walker worked with students who displayed social and academic needs outside of the general education classroom setting. Walker presented as a highly qualified teacher for the intensive intervention program. Walker held a master's degree in human behavior, a master's degree in education, and a mild/moderate teaching credential. Walker had experience supervising behavior interventionists in both the home and school settings. Walker created goals, positive reinforcement and social-emotional strategies, and evidence-based intervention for high-needs students.

Walker and Burns both acknowledged that most students exhibited more severe behaviors when entering the intensive intervention program. Walker's responses to Student's behavior varied based upon the severity of the behavior. Minor infractions were not reported and were handled in the classroom through corrective teaching.

Burns saw Student every day on campus. Burns found Student a good kid, but highly impulsive. If a behavior antecedent could be detected, Student could be redirected. The antecedents, however, were subtle cues in Student's appearance, detected only by well-trained intensive intervention staff.

Burns indicated that Student was working on changing his behavior. He was making progress and did not initiate as many physical altercations as before. Student made academic progress as well. That being said however, Burns opined that Student's behavior remained atypical of peers in a general education classroom. Student could not be sufficiently supported in a larger general education setting.

Burns opined that it was highly likely that Student would continue to injure others if he returned to the general education setting and emphasized this opinion by noting it was also highly likely that Student would continue to engage in behavior altercations in the intensive intervention program as well. Student was not ready for reintegration.

As an intervention specialist, Walker's testimony carried substantial weight. Walker saw progress in Student's behavior. Student did not engage in as many physical altercations, and the intensity of Student's behavior was decreasing. Staff began to identify antecedents in Student's non-verbal cues. Nevertheless, Walker opined that Student's impulse control remained unregulated. Student's behavior was not provoked by others, and he always required adult supervision to avoid incidents. Student was not ready to return to general education. Student still needed to learn to control his impulses before he returned. Without these controls, Walker believed there was a high likelihood Student would continue to injure others.

Based upon their first-hand interactions with Student, each witness credibly established Student's maladaptive behaviors were unpredictable and unprovoked. Student's mood changed quickly and antecedents to Student's aggression were obscure. Each witness described Student's aggression in which he injured both children and staff without concern or remorse. Each witness, believed that Student's behavior

posed a significant risk of injury to himself and others, and if returned to the general education classroom, there was a substantial risk, if not a 100 percent probability, that Student would continue to injure others.

The evidence also established that Corona-Norco made considerable attempts to modify Student's behavior in the general education setting to no avail. Student's behavior intervention plan provided Student with behavior skills, but Student was unable to apply them. Student requires more behavioral support than is available in his regular classroom at Sierra Vista.

A special circumstance as relates to an interim alternate education setting requires a determination of the infliction of serious bodily injury to another. ((20 U.S.C. § 1415(k)(7)(D), as further defined in 18 U.S.C. §1365(h)(3).) As indicated at the onset of this Decision, the determination of serious bodily injury was made at the September 25, 2023 manifestation determination review and was not appealed by Student. Student is currently attending the intensive intervention program at Sierra Vista as part of the 45-school day interim alternate education placement which is scheduled to end on December 4, 2023.

The procedure for extending an interim alternate education does not require special circumstance finding of serious bodily injury. Instead, the statutory provision only requires that the school district believes returning the child to his original placement is substantially likely to result in injury to the child or to others. (34 C.F.R. § 300.532(b)(3).)

Corona-Norco overwhelmingly established that Student's aggression was constant and increased in intensity throughout the school year thus far. His behavior in the intensive intervention program, while improving, was replete with significant acts of physical aggression resulting in injury to himself and others. As stated by Walker, Student has not yet learned to control his impulses. Without these controls, there is a high likelihood Student would continue injure others.

The evidence also established that Corona-Norco made considerable attempts to modify Student's behavior in the general education setting to no avail. Student's behavior intervention plan provided Student with behavior skills, but Student was unable to apply them. Student requires more behavioral support than is available in his regular classroom at Sierra Vista.

## IEP IMPLEMENTATION IN THE INTERIM ALTERNATE EDUCATION SETTING

Burns described the intensive intervention program at Sierra Vista. The intensive intervention program was a targeted program for students with severe behaviors and difficulty self-regulating. The intensive intervention program was designed as a temporary placement to develop social skills needed to gradually reintegrate and return the student to the general education setting. The program utilized Boys Town, an intervention strategy program which included teaching of coping and social skills, use of interpersonal problem-solving skills, perception, and processing of social information, managing emotions, self-monitoring, and making

behavioral adjustments as setting changed. The intensive intervention program at Sierra Vista contained three classrooms, serving grades one through six. Each classroom utilized grade level curriculum.

Student's classroom had four students ranging from first to third grades. The class contained Walker and four paraeducators, plus a registered behavior technician assigned as Student's one-to-one aide. All teachers maintained mild/moderate special education teaching credentials. The entire staff was trained in Crisis Prevention Intervention, and Boys Town. The intensive intervention program had additional behavior supports embedded in the program, including a full-time counselor, daily group sessions, zones of regulation, and visual supports.

As Student's teacher, Walker utilized the general education curriculum at a slower pace in a smaller classroom setting due to behaviors. She taught students individually and in small group settings. Walker explained that Student's academics would catch up when his behaviors were controlled. Once his behaviors were controlled, Student could gradually mainstream back to the comprehensive campus with paraeducator support.

Student's January 13, 2023 IEP as amended on May 12, 2023, offered goals for self-regulation, writing sentences, and math, supported by specialized academic instruction. Behavior support included a full-time special circumstance instructional assistant, and a behavior intervention plan. WRAP counseling services were provided both at home and at school. The detailed behavior intervention plan developed as part of Student's IEP was included.

The IEP contained targeted accommodations to support Student's behavior:

- preferential seating to limit distraction,
- scheduled brain brakes,
- visual schedules,
- access to sensory strategies and programs for self-regulation monitored by the occupational therapist,
- noise-reducing headphones, and
- chunking of academic assignments to support mastery of skills being taught.

Corona-Norco implemented the January 13, 2023, as amended on May 12, 2023, as Student's last agreed upon IEP.

As Student's case manager, Walker implemented Student's IEP and behavior intervention plan. Walker reported Student's IEP was fully implemented and he received all services. The behavior intervention plan implemented with fidelity.

Corona-Norco established that the intensive intervention program at Sierra Vista was an appropriate interim education setting for Student, and that Student's current IEP and behavior plan could be implemented with fidelity within that setting.

(This space intentionally left blank. Text continues on following page.)



The evidence also established that Corona-Norco made considerable attempts to modify Student's behavior to no avail. Student's behavior intervention plan provided Student with behavior skills, but Student was unable to apply them. Student requires more intensive behavioral support than is available in his regular classroom at Sierra Vista.

Corona-Norco may extend Student's temporary placement in the intensive intervention program at Sierra Vista for an additional 45-school days.

## LEGAL CONCLUSIONS

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.

Corona-Norco proved it is entitled to maintain Student's conduct continues to constitute a substantial likelihood of injury to himself and others if returned to the general education placement. Corona-Norco is entitled to maintain Student in interim alternate education placement in its intensive intervention program at Sierra Vista for an additional 45-days.

Corona-Norco prevailed on the only issue considered during this hearing.

(This space intentionally left blank. Text continues on following page.)

## ORDER

1. Corona-Norco proved it is entitled to maintain Student' in its intensive intervention program at Sierra Vista, as an interim alternate education setting for an additional 45-school days upon completion of the current interim alternate education placement on December 4, 2023.

## RIGHT TO APPEAL

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.

Judith L. Pasewark

Administrative Law Judge

Office of Administrative Hearings