BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL DISTRICT.

CASE NO. 2024050089

DECISION

NOVEMBER 7, 2024

On May 2, 2024, Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Corona-Norco Unified School District, called Corona-Norco. OAH continued this matter for good cause on June 11, 2024. Administrative Law Judge Cynthia Fritz, called ALJ, heard this matter by videoconference on October 1, 2, 3, and 8, 2024.

Attorney Michelle Wilkolaski represented Student. Parent attended the hearing for a half day on October 1, 2024, and on October 3, 2024, on Student's behalf. Parent authorized Wilkolaski to proceed in her absence for the remainder of the hearing.

Attorneys Summer Dalessandro and Jasey Mahon represented Corona-Norco. Special Education Local Plan Area Director Dawn Rust attended all hearing days on Corona-Norco's behalf.

At the parties' request, the ALJ continued this matter to October 25, 2024, for closing briefs. The record was closed, and the matter submitted on October 25, 2024.

PRELIMINARY MATTERS

STUDENT'S TWO ADDITIONAL ISSUES ARGUED IN HER CLOSING BRIEF WILL NOT BE DECIDED.

In Student's October 25, 2024 closing brief, Student raised two additional issues not listed in the September 23, 2024, Order Following Prehearing Conference. The issues are:

1. Did Corona-Norco deny Student a free appropriate public education, called FAPE, by failing to develop an individualized education program, called IEP, that was reasonably calculated to enable Student to receive educational benefit?

2. Did Corona-Norco deny Student a FAPE by failing to develop an IEP that was reasonably calculated to enable Student to receive behavioral support?

On May 2, 2024, Student filed a complaint that alleged the above two issues. Additionally, on September 18, 2024, Student filed a prehearing conference statement that alleged the above issues.

On September 23, 2024, OAH held a prehearing conference, and the administrative law judge clarified the issues. The September 23, 2024, Order Following Prehearing Conference identified the final issues for hearing. After a discussion with the parties on the record regarding, among other matters, the issues to be adjudicated in the hearing, Administrative Law Judge Charles Marson issued the Order Following Prehearing Conference.

The two issues listed above were not included in the Order. The Order specifically stated,

> "A party believing that an issue has been misstated or improperly omitted shall promptly file a notice in writing stating its concern and referring to supporting portions of the complaint, allowing enough time for the issue to be decided before the hearing. No motion to amend the issues may be made for the first time at the hearing."

Student did not file a notice in writing before the hearing stating any concerns about misstated or improperly omitted issues.

On the first day of hearing, the undersigned ALJ clarified the issues in this matter and read through the issues for hearing as stated in the September 23, 2024, Order Following Prehearing Conference. Neither party objected to the issues. At no time during the hearing did Student request the above additional issues be included as issues for hearing.

Accordingly, Corona-Norco did not have sufficient notice of the two additional issues for hearing. Therefore, any allegations regarding the two additional issues will not be determined in this Decision. Student is not prejudiced because she can refile and allege these issues. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.)

STUDENT'S TWO ISSUES WITHDRAWN IN HER CLOSING BRIEF ARE DISMISSED WITH PREJUDICE

In Student's October 25, 2024 closing brief, Student requested withdrawal of two issues. As listed in the September 23, 2024 Order Following Prehearing Conference, Student requested Issue Three, regarding one-to-one aide support and applied behavior analysis services, be withdrawn.

Neither state or federal special education statutes or regulations, nor the California Administrative Procedures Act, address requests to withdraw issues, be it before, during, or after the due process hearing has commenced. However, Code of Civil Procedure section 581 addresses such motions in the context of state civil proceedings.

Code of Civil Procedure, section 581, subdivision (b)(1), states that an action may be dismissed

> "with or without prejudice, upon written request of the plaintiff to the clerk, filed with papers in this case, or by oral or written request to the court at any time before the actual commencement of trial, upon payment of costs, if any." (Code Civ. Proc., § 581, subd. (b)(1).)

Section 581, subdivision (c), declares that "A plaintiff may dismiss his or her complaint, or any cause of actions asserted in it, in its entirety, or as to any defendants, with or without prejudice prior to the actual commencement of trial." (Code Civ. Proc., § 581, subd. (c).)

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Section 581, subdivision (e), reads,

> "After the actual commencement of a trial, the court shall dismiss a complaint, or causes of action asserted in it, in its entirety, or as to any defendants, with prejudice, if the plaintiff requests a dismissal, unless all affected parties to the trial consent to dismissal without prejudice or by court order dismissing the same without prejudice on a showing of good cause." (Code Civ. Proc., § 581, subd. (e).)

The facts meet the legal criteria for dismissing these two issues with prejudice. Code of Civil Procedure section 581, subdivision (a)(6) states, "

> A trial shall be deemed to actually commence at the beginning of opening statement or argument of any party or his or her counsel, or if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence." (Code Civ. Proc., § 581, subd. (a)(6).)

Here, the parties completed opening statements, called witnesses, introduced evidence, and rested their cases over the course of a four-day hearing. Student requested the withdrawal of these two issues in her closing brief, after the hearing ended. Student did not provide any information that the parties agreed to the dismissal of these two issues without prejudice.

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Student's request to withdraw the two issues is granted. The two issues,

> "Did Corona-Norco deny Student a FAPE in the 2023-2024 school year, from January 29, 2024, to May 2, 2024, by failing to offer a legally compliant IEP, specifically because it did not contain adequate one-to-one aide or Applied [sic] Behavior [sic] analysis support"

are dismissed with prejudice.

The ALJ removed these two issues from the below Issues section, but all other issues are otherwise unchanged from how they appeared in the September 23, 2024, Order Following Prehearing Conference.

ISSUES

1. Did Corona-Norco deny Student a FAPE in the 2023-2024 school year, from January 29, 2024, to May 2, 2024, by failing to assess her in all areas of suspected disability, namely, in the areas of specific learning disability and mental health?

2. Did Corona-Norco deny Student a FAPE in the 2023-2024 school year, from January 29, 2024, to May 2, 2024, by declining Parent's request to assess in the areas of specific learning disability and mental health?

3. Did Corona-Norco deny Student a FAPE in the 2023-2024 school year, from January 29, 2024, to May 2, 2024, by offering an IEP that was not legally compliant, specifically because it did not contain any provision for ameliorating Student's regression; or parent training?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called 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 IDEA are to ensure:

- all children with disabilities have available to them 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 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.Ed2d 387] (*Schaffer*); and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student filed this matter 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 nine years old and in fourth grade at the time of hearing. Student resided with Parent within Corona-Norco's geographic boundaries at all relevant times. Student is eligible for special education under the category of specific learning disability.

ISSUE 1: DID CORONA-NORCO DENY STUDENT A FAPE IN THE 2023-2024 SCHOOL YEAR, FROM JANUARY 29, 2024, TO MAY 2, 2024, IN THE AREAS OF SPECIFIC LEARNING DISABILITY AND MENTAL HEALTH?

Student contends Corona-Norco denied her a FAPE because it failed to assess her for a specific learning disability and in mental health from January 29, 2024, through May 2, 2024. Corona-Norco contends Student's New York school district assessed her for special education in March 2023, which included testing for specific learning disability and mental health, and reassessment was unnecessary. Additionally, no Corona-Norco staff, outside services providers, or Parent, requested assessments during the relevant time in this matter.

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).) 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 considering the child's circumstances. (*Board of Education of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000].)

A local educational agency must evaluate a special education student in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4) (2006); Ed. Code, § 56320, subd. (f).) California law refers to evaluations as assessments and the terms assessment and evaluation will be used in this Decision interchangeably. (Ed. Code, § 56302.5) A disability is "suspected," and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O v. Paso Robles Unified. Sch. Dist.* (9th Cir. 2016) 822 F.3d 1105, 1119-1121 (*Timothy O.*).)

Once a child becomes special education eligible, the IDEA requires a special education student to be assessed no more frequently than once a year, but at least once every three years, unless the parent and school district agree otherwise. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b) (2006); Ed. Code, § 56381, subd. (a)(2).) A reassessment must be conducted if the school district determines that the educational or related service needs, including improved academic achievement and functional performance of the student, warrant a reassessment, including concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. (*Timothy O.*, *supra*, 822 F.3d at pp. 119-1121 [citing *Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, and ***N.B. v. Hellgate Elementary Sch. Dist.*** (9th Cir. 2008) 541 F.3d 1202] (*Hellgate*).) School districts are not required to conduct assessments for students transferring from out-of-state unless determined to be necessary by the local educational agency. (Ed. Code, § 56325, subd. (a)(3).)

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Student's New York school district completed psychoeducational and occupational therapy assessments of Student in March 2023 to determine if she was special education eligible. The assessments included testing for

- cognitive ability,
- academic achievement,
- social emotional,
- behavioral, and
- occupational therapy.

Student had low-average cognitive ability, with relative strength in fluid reasoning and weaknesses with visual and auditory working memory and long-term memory. Student had significant weaknesses in all academic subjects and showed a risk of dyslexia. Student also demonstrated behavioral issues in unstructured times at school, and difficulty with grapho-motor skills such as completing written tasks, reversing letters and numbers, and poor legibility.

Student's New York school district found Student eligible for special education under the category of "learning disability" in March 2023. It offered Student a small self-contained special education classroom to deliver her specialized academic instruction, 30 minutes weekly of individual counseling services, and 30 minutes weekly of individual occupational therapy services.

In January 2024, Student moved from New York to California. On January 29, 2024, Student enrolled in third grade at Corona-Norco and started on February 2, 2024, at Jefferson Elementary School. Student disenrolled from Jefferson on March 5, 2024, and began at a different Corona-Norco elementary school, John Adams, on March 14, 2024. Student continued at John Adams through May 2, 2024.

Unless Corona-Norco determined that an assessment was warranted; was on notice of a suspected disability; or, Parent, Student's teachers, or service providers requested an assessment; Corona-Norco had no duty to conduct reassessments until March 2026, because her last assessments were completed in March 2023. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b) (2006); Ed. Code, § 56381, subd. (a)(2).)

STUDENT FAILED TO ESTABLISH THAT SHE REQUIRED, OR SOMEONE REQUESTED, A SPECIFIC LEARNING DISABILITY ASSESSMENT

Student maintains that Student's low academic testing results coupled with Student's teacher and Parent concerns should have triggered Corona-Norco to reassess Student for a specific learning disability. Corona-Norco contends Student did not require reassessment in a specific learning disability and no one requested Student be reassessed during the time in question.

In California, a specific learning disability is one of 13 categories under which a student may demonstrate a degree of impairment requiring special education. (Cal. Code Regs., tit. 5, § 3030, subds. (a), (b)(1)-(13).) A specific learning disability is defined as a disorder in one or more of the basic psychological processes involved in understanding or using written or spoken language, which may manifest itself in the imperfect ability to

- listen,
- think,
- speak,
- read,
- write,
- spell, or

- perform mathematical calculations. (20 U.S.C. § 1401 (30)(A); 34 C.F.R. § 300.8(c)(1) (2017); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

The basic psychological processes include

- attention,
- visual processing,
- auditory processing,
- phonological processing,
- sensory-motor skills,
- cognitive abilities including association, conceptualization, and expression. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

The term "specific learning disability" includes conditions such as

- perceptual disabilities,
- brain injury,
- minimal brain dysfunction,
- dyslexia, and
- developmental aphasia.

It does not include learning problems that are primarily the result of

- visual, hearing, or motor disabilities,
- intellectual disability,
- emotional disturbance, or
- environmental, cultural, or economic disadvantage. (20 U.S.C. § 1401(30)(C); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

Student failed to establish the statutory conditions necessary to trigger Corona-Norco's obligation to reassess Student for specific learning disability from January 29, 2024, through May 2, 2024. Corona-Norco became aware that Student was a special education student on February 13, 2024, when Parent told Student's teacher, Diane Garrido-Lecca, that Student had an IEP. Although Parent claimed that she discussed Student's special education eligibility with an administrative assistant, Angelica Leal, upon enrollment, Leal denied any knowledge of that conversation. Additionally, Parent failed to disclose on any enrollment documentation that Student was a special education student. Thus, at the time of Student's enrollment, Corona-Norco was unaware of Student's status as a special education student and placed her in a general education third-grade classroom.

Diane Garrido-Lecca, Student's credentialed third-grade Corona-Norco general education teacher, informally tested Student upon entry into her classroom at Jefferson. Garrido-Lecca used iReady, a computer program that determined the level of each student's basic reading and math skills. The testing showed Student scored at a kindergarten level for reading and math. Garrido-Lecca also noted Student had illegible handwriting.

From January 29, 2024, through March 13, 2024, Garrido-Lecca did not believe it was necessary to reassess Student for specific learning disability. Garrido-Lecca was not concerned at that time with the results of Student's informal testing because half the children in her classroom were performing at the same level as Student; and she was new to the school and not in her classroom for a long enough period to get to the assessment process when she was informed of Student's special education status. Once informed, she did not think it was warranted to reassess Student since she had been already had an IEP in place.

When Garrido-Lecca became aware that Student was special education qualified, she informed the school special education resource specialist. Student transferred to John Adams on March 14, 2024, to participate in its special day class. Thus, Student attended Garrido-Lecca's classroom for 18 days before transferring to John Adams.

Garrido-Lecca was a credible witness. Garrido-Lecca was intimately familiar with Student's educational performance from day-to-day interactions with Student in her classroom while at Jefferson. She had good recall of Student in her class and appeared calm and genuine in her responses to questions. She was consistent with all other Corona-Norco witnesses that opined on this issue and had 16 years of expertise as an elementary school teacher. She corroborated some of Parent's testimony and appeared unbiased. Further, Garrido-Lecca's informal testing of Student coupled with her knowledge and observations of Student in her classroom identified similar areas of need as Student's New York school district's IEP identified. Thus, no new suspected disability or areas of need were known. Garrido-Lecca's opinion was also corroborated by other documentary and testimonial evidence. Accordingly, her opinion was persuasive and given great weight.

The Coordinator of Special Education Lori Gerhart established that a school district requires some time to work with the new student first, to determine appropriate areas of need to assess, if any. Gerhart's opinion was undisputed, reasonable, and persuasive, and given substantial weight.

No Corona-Norco staff, outside services providers, or Parent requested assessments related to specific learning disability from January 29, 2024, through March 13, 2024, while Student attended Jefferson. No Corona-Norco staff member or outside service provider believed a reassessment was required.

Student failed to present any persuasive evidence establishing that Corona-Norco needed to reassess her for specific learning disability while at Jefferson. Parent conceded she did not request assessment in specific learning disability but argued that her repeated communications to Corona-Norco about Student's academic difficulties in February and March of 2024, while Student attended Jefferson, should have triggered a new specific learning disability assessment.

Parent's concerns, however, were consistent with Student's prior testing in New York and did not trigger concerns as to any new suspected areas of need. Student was already special education eligible for a learning disability. Corona-Norco knew about Student's eligibility by February 13, 2024, and received her New York IEP on February 26, 2024, and was aware of her academic weaknesses at Jefferson, which were like her academic weaknesses stated in her previous New York IEP. No new areas of suspected disability emerged that would trigger a reassessment. No one requested reassessment of Student that would trigger reassessment. Thus, Student's argument fails.

Student entered John Adams' special day class on March 14, 2024. Debra Buchanan, a credentialed special education teacher and education specialist, provided Student's specialized academic instruction in the special day class and was her case carrier. The John Adams special day class had a small class size, a high adult-to-student ratio, and embedded services to support students with a specific learning disability.

Buchanan worked with Student daily at school and had personal knowledge of Student's education abilities at that time. On March 24, 2024, Buchanan tested Student's math and reading using the iReady test, and Student tested at a kindergarten level, like the testing done by Garrido-Lecca and the testing completed by Student's

New York school district. Thus, specific learning disability was not required to be reassessed because there were no new areas of need known. Buchanan opined that a specific learning disability reassessment was unnecessary.

No other John Adams' staff endorsed reassessment of Student for a specific learning disability.

At hearing, Buchanan had good recall of working with Student, answered questions readily, and provided insightful opinions. Buchanan had intimate knowledge of Student's educational performance from the day-to-day interactions with Student in her classroom. Buchanan displayed a professional and open demeanor, and her testimony was consistent with all other John Adams' staff that testified regarding this issue. Thus, Buchanan's opinions were credible and persuasive and given great weight.

Parent argued that her communicated concerns about Student's academic performance while at John Adams should have triggered a reassessment for specific learning disability, through May 2, 2024. However, for the same reasons already stated, this argument fails. Parent's concerns were familiar to Corona-Norco as they were in line with Student's known disabilities. Nothing about Parent's concerns raised any belief that Student had a different suspected learning disability or suspected new area of need to warrant reassessment for a specific learning disability. No one, including Parent, asked for a reassessment while Student was at John Adams for the period at issue. Thus, Parent's opinion was unconvincing.

On April 19, 2024, Corona-Norco held an IEP team meeting for Student. Student made progress on her academic goals since entering Corona-Norco. By the end of the 2023-2024 school year, Student passed all of her classes for third grade. Nothing during

Student's time at John Adams through May 2, 2024, suggested a need for a specific learning disability reassessment. Parent's vague, uncorroborated, and conclusory statements were insufficient to establish that Corona-Norco needed to reassess Student for a specific learning disability.

Student failed to meet her burden of proof by a preponderance of the evidence that Corona-Norco denied her a FAPE from January 29, 2024, through May 2, 2024, for failing to assess in specific learning disability.

STUDENT FAILED TO ESTABLISH THAT SHE REQUIRED, OR SOMEONE REQUESTED, A MENTAL HEALTH ASSESSMENT

Student failed to establish the conditions necessary to trigger Corona-Norco's obligation to reassess Student for mental health, or that anyone, including Parent, requested a mental health assessment from January 29, 2024, through May 2, 2024. Student maintains that two behavior incidents while at Jefferson should have prompted Corona-Norco to assess Student for mental health functioning. Corona-Norco disagrees.

The Legislature intended that children with serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions. (Ed. Code, § 56520, subd. (b)(1).) Student's psychoeducational assessment with a social emotional functioning component had been completed in March 2023. Neither Parent nor Student's teachers or service providers requested a mental health assessment of Student from January 29, 2024, through May 2, 2024.

Shortly after Student started at Jefferson, Garrido-Lecca addressed Student about cursing at other students on the playground. Despite the counseling, Student's behavior persisted, prompting Garrido-Lecca to contact Parent. Afterward, the cursing stopped, and Garrido-Lecca believed her efforts; counseling, redirection, and parental involvement, successfully improved Student's behavior without need for additional interventions. Consequently, Garrido-Lecca did not consider a mental health assessment necessary at that time.

On February 23, 2024, Student kicked another student while standing in line outside the classroom. When the other student kicked her back, she attempted to choke the student. Following this incident, Student received a one-day in-school suspension. Vice Principal Johanna Sandoval met with Student and Student appeared remorseful, demonstrating insight into her actions.

Based on this interaction, Sandoval did not believe a mental health assessment was warranted, as this single incident did not suggest deeper behavior concerns. Although Sandoval was unaware of the cursing incidents, she still believed that a mental health assessment was unnecessary upon being informed at hearing of Student's cursing. In Sandoval's view, there was no established pattern of serious behavior issues to justify further evaluation. Garrido-Lecca agreed that this incident also did not warrant a mental health assessment, but suggested Student receive counseling. Parent also did not believe Student had mental health issues and did not ask for a mental health assessment.

Sandoval had extensive experience in disciplining students and providing support and resources to address behavior issues in her position as vice principal. Additionally, Sandoval has a special education credential and previously worked with

special education students in prior positions as an educational specialist and program specialist. As vice principal, Sandoval frequently dealt with incidents involving foul language and physical altercations and was well-versed in addressing such matters. Confident, professional, and knowledgeable in her testimony, she analyzed the incident, and carefully considered Student's individual needs and Student's capacity to understand and change her behavior. Sandoval's thoughtful approach, combined with her expertise in discipline and special education, and consistency with Garrido-Lecca's opinion, made her a persuasive and credible authority in determining that a further mental health assessment was unnecessary at that time. Sandoval's opinion on this issue was given great weight.

Additionally, as already stated, Garrido-Lecca was closely familiar with Student's daily behaviors and observed her conduct regularly while at Jefferson. Knowledgeable, impartial, and aligned with the vice principal, Garrido-Lecca shared the same opinion as Sandoval that a mental health assessment was unnecessary at that time. Garrido-Lecca's consistent judgment, combined with her daily insights into Student's behavior, made her a credible and persuasive voice in this determination. Garrido-Lecca's opinion on this issue was given substantial weight.

Since the February 23, 2024 incident, no further behavior incidents occurred at Jefferson. At John Adams, from March 14, 2024, through May 2, 2024, Student had no behavior or discipline issues. Diane Medina, John Adams school psychologist, observed Student in her classroom and on the playground and did not see any behavior issues.

Buchanan's undisputed testimony demonstrated that Student was sweet, kind, helpful to other students, got along with her peers, participated in activities at school without incident, did not have any behavioral issues or incidents, and did not require

any assessments at that time. Buchanan's opinion, as previously stated was reliable, backed by her personal knowledge as her teacher, uncontested, and consistent with other witnesses. Her opinion was given considerable weight. The evidence overwhelmingly demonstrated that Student's behavior improved at John Adams, and she did not have any disciplinary or behavioral incidents there.

Student further argued that Parent's concern over Student's behavior while at Corona-Norco should have triggered a mental health assessment. This argument is similarly misplaced. Parent's primary concerns focused on Student's academic performance, with behavior concerns limited to the incidents already discussed. Beyond those incidents, Parent expressed no further concerns about Student's behavior, did not believe Student had mental health issues, and did not want Student reassessed for behavior.

Thus, Student's argument that a mental health assessment was warranted based on two incidents in February 2024 without a recurring pattern of serious behaviors was unpersuasive and not supported by any persuasive testimony or documentary evidence, including Parent.

Student failed to meet her burden of proving by a preponderance of the evidence that Corona-Norco denied her a FAPE from January 29, 2024, through May 2, 2024, for failing to assess in mental health.

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ISSUE 2: DID CORONA-NORCO DENY STUDENT A FAPE IN THE 2023-2024 SCHOOL YEAR, FROM JANUARY 29, 2024, TO MAY 2, 2024, BY DECLINING PARENT'S REQUEST TO ASSESS IN THE AREAS OF SPECIFIC LEARNING DISABILITY AND MENTAL HEALTH?

Student contends that Corona-Norco failed to respond to Parent's requests for assessment in specific learning disability and mental health from January 29, 2024, through May 2, 2024. Corona-Norco denies that Parent requested assessments during that time.

Student failed to present any evidence that Parent requested assessments in specific learning disability or mental health. Neither any witness nor any document presented demonstrated that Parent requested these assessments during that time. In fact, Parent stated she did not request assessments, did not believe Student had mental health issues, and did not want Student further assessed in behavior. Parent appeared surprised at hearing that Student's complaint requested assessments. Student conceded in her closing brief that Parent did not directly request assessments from Corona-Norco at that time.

Parent argued at hearing that she reached out numerous times to Corona-Norco staff expressing concerns of Student's academic and behavior challenges and this should have triggered assessments. Parent's testimony contradicted itself, as she testified that she did not want Student further assessed in specific areas and then maintained that her concerns should have triggered assessments. These inconsistencies made Parent's testimony on this issue less persuasive and given less weight.

Further, as stated in Issue One, the evidence presented, including Parent's communications, did not establish that Corona-Norco was required to assess Student in specific learning disability and mental health at that time.

In Student's closing brief, Student maintained that Parent was not trained in special education and did not have the knowledge needed to directly ask for specific assessments. Thus, Parent's concerns should have triggered Parent requested assessments. This argument fails. Parent initiated Student's March 2023 assessments in New York. Thus, Parent knew how to request assessments from a school district and did not make any requests to Corona-Norco. The evidence overwhelmingly established Parent never requested assessments from Corona-Norco during that time.

Student failed to meet her burden of proof by a preponderance of the evidence that Corona-Norco denied Student a FAPE from January 29, 2024, to May 2, 2024, by declining Parent's request to assess in specific learning disability and mental health.

ISSUE 3: DID CORONA-NORCO DENY STUDENT A FAPE IN THE 2023-2024 SCHOOL YEAR, FROM JANUARY 29, 2024, THROUGH MAY 2, 2024, BY FAILING TO OFFER A LEGALLY COMPLIANT IEP, SPECIFICALLY BECAUSE IT DID NOT CONTAIN ANY PROVISION FOR AMELIORATING STUDENT'S REGRESSION, OR PARENT TRAINING?

Student contends that Corona-Norco should have offered provisions to deal with Student's regression while at Jefferson and offered Parent training. Corona-Norco contends that Student did not regress, and Parent did not require training for Student to receive a FAPE.

Parents and school personnel develop an IEP for a special education 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 (2007), 300.321 (2006), and 300.501 (2006.) An IEP provides a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and nondisabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a)(1)(A).)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview Sch. Dist*. (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid*.) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.

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STUDENT FAILED TO PROVE THAT CORONA-NORCO NEEDED TO OFFER PROVISIONS FOR AMELIORATING STUDENT'S REGRESSION

Student maintained different theories that Corona-Norco was required to provide provisions for ameliorating Student's regression. During hearing, Student focused on Corona-Norco's failure to offer Student extended school year services due to alleged regression at Jefferson. In her closing brief, Student contended Corona-Norco failed to provide Student any special education placement or services while she attended Jefferson, which was "bound to cause regression." Thus, Student maintained Corona-Norco should have offered her services and supports to ameliorate it.

Corona-Norco maintained that Student did not regress and failed to establish that it should have provided any services or supports to ameliorate any regression, including extended school year services.

As to Corona-Norco's failure to offer extended school year services to ameliorate Student's regression, Student failed to meet her burden of proof. School districts must provide a student extended school year necessary to provide a FAPE. (34 C.F.R.(a)(2) (2006).) Extended school year services are special education and related services that are provided beyond the normal school year, in accordance with the student's IEP, and at no cost to parents. (34 C.F.R. § 300.106(b) (2006).) In California, extended school year services

> "shall be provided for each student with exceptional needs who has disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the child's educational programming may cause regression, when coupled with limited recoupment capacity,

rendering it impossible or unlikely the will child attain the level of self-sufficiency and independence that otherwise would be expected in view of their disabling condition." (Cal. Code Regs. Tit. 5 § 3043.)

Extended school year services are required where necessary to prevent serious regression over the summer months. (Hoeft v. Tucson Unified School Dist. (9th Cir. 1992) 967 F.2d 1298, 1301.) Extended school year services "are only necessary to a FAPE when the benefits a disabled child gain during the regular school year will be significantly jeopardized if the student is not provided with an educational program during the summer months." (Hellgate, supra, 541 F.3d at pp 1211-1212, quoting MM ex rel. DM v. Sch. Dist. of Greenville County (4th Cir. 2002) 303 F.3d 523, 537-538.)

During the time at issue, Corona-Norco did not offer Student extended school year services for summer 2024. However, Student missed the point. Student failed to prove that Student was at risk of regression over the extended summer break due to her disability. Student presented no evidence regarding the FAPE standards for determining whether a student is entitled to extended school year placement.

Student further failed to set forth any evidence regarding an analysis of likelihood of regression or limited recoupment capacity and that the educational benefits accrued during the regular school year would be significantly jeopardized if Student were not provided with additional weeks of instruction during the summer break. Student failed to present any evidence that Student could not regain skills lost over the break that would be expected based upon her disability in a short amount of time. Student failed to prove that Student was in a crucial stage of learning such that an interruption in school may cause loss of skills.

Instead, Student argued that she regressed while at Jefferson and presumed she should have been offered extended school year because she suffered actual regression. However, that is not the legal standard for a school district to offer extended school year services for a FAPE. Extended school year services are not intended to compensate for regression that actually occurred during the school year, and a petitioner does not have to prove regression to establish the need for extended school year. It is a predictive standard. Is the student likely to suffer regression during extended school breaks with no education? No evidence was presented to support this. Thus, Student's argument fails.

Rather, Student seemed to be arguing that she is entitled to relief because she suffered regression. The law requiring a regression analysis is rooted in the COVID-19 pandemic standards which required schools to determine if a student actually suffered regression, or learning loss. In that case, if regression occurred, Student could be awarded compensatory education.

In its March 12, 2020 guidance, the Office of Special Education and Rehabilitation Services, called OSERS, stated that an IEP team would be required to make an individualized determination as to whether compensatory services were needed to make up for any skills that may have been lost during school closure due to the COVID-19 pandemic. (OSERS, March 12, 2020, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak*, Answer to Questions A-1, A-2, and A-3.) OSERS reiterated this in additional

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guidance dated March 16, 2020. (OSERS, March 16, 2020, *Fact Sheet Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students*.) In its subsequent March 21, 2020 guidance, OSERS stated:

> "Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services … IEP teams … must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations." (OSERS, March 21, 2020, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, pp. 2-3.)

California Department of Education, in its March 20, 2020 guidance, stated: "[O]nce the regular school session resumes, [districts] should plan to make individualized determinations, in collaboration with the IEP team, regarding whether or not compensatory services may be needed for a student." (Calif. Dep't. of Ed., March 20, 2020, *Special Education Guidance for COVID-19, COVID-19 School Closures and Services to Students with Disabilities*.)

As part of SB 98, enacted on June 29, 2020, Education Code section 43509, subdivision (f) required the California Department of Education to develop a plan, which would include what additional supports will be provided for pupils with exceptional needs served across the full continuum of placements during the period in which distance learning was provided. It must include how the school district will address learning loss, regression, that resulted from COVID-19 during the 2019-2020 and 2020-2021 school years.

Student did not meet this standard, as she attended school in person rather than through a distance learning model. Additionally, the events cited in Student's allegations took place after the relevant law was no longer in effect. Therefore, Student failed to meet her burden of proof under this theory.

Further, Student failed to demonstrate the need for services and supports to address any alleged regression. Garrido-Lecco's testimony and Student's assessment scores did not demonstrate the need to address any regression. While Student had two behavioral incidents at Jefferson, behavior issues during unstructured time were also noted in Student's New York IEP. Further, although Parent initially believed Student was not behaving like herself while at Jefferson, Parent conceded she returned to "normal" at John Adams. Multiple Corona-Norco witnesses agreed additional services and supports were unnecessary to address any alleged regression. And Student conceded in her closing brief that Student's academic and behavior significantly improved at John Adams. Thus, Student did not meet her burden of proof under any theory presented.

To the extent Student intended to argue a failure to implement the IEP, this issue was not an issue in this case and neither presented nor adjudicated. Accordingly, Student failed to prove by the preponderance of the evidence that Corona-Norco denied Student a FAPE for failing to offer an IEP that contained any provision for ameliorating Student's regression.

PARENT TRAINING

Student contends Corona-Norco denied Student a FAPE for failing to offer Parent any training from January 29, 2024, to May 2, 2024. Corona-Norco contends there was no evidence that Parent needed training for Student to access her education.

Related services required to assist a student with exceptional needs to benefit from special education may include parent training. (Ed. Code, § 56363, subd. (b)(11).) Parent training means assisting a parent to understand the special needs of the student, providing the parent with information about child development, and helping the parent acquire necessary skills to facilitate implementation of the student's IEP. (34 C.F.R. § 300.34(c)(8)(i)-(iii) (2006).)

Student argued in her closing brief that Corona-Norco should have offered parent training in assistive technology devices; behavior modification techniques; applied behavior analysis; and support programs, practices, exercises, or routines that Parent could reinforce at home. Student did not offer any evidence that Parent needed training of any sort for Student to receive a FAPE, including in assistive technology devices; behavior modification techniques; applied behavior analysis; and support programs, practices, exercises, or routines that Parent could reinforce at home.

In addition to failing to submit any evidence of what parent training was needed, Student failed to submit any evidence of the type, amount, or duration of training that should have been offered to Parent during the relevant time at issue in this matter. Student did not present any evidence establishing that Parent needed training for Student to access her education. Student presented no evidence that Student had been deprived an educational benefit because of an alleged failure to provide Parent training. Student failed to present evidence of why Parent required training for Student to receive a FAPE. No Corona-Norco witness testified that parental training was necessary to provide Student a FAPE. And Parent did not testify that she required training of any sort from Corona-Norco. Further, Student's New York IEP did not offer Parent any training.

Student failed to meet her burden on this issue. Student failed to prove by a preponderance of the evidence that Corona-Norco denied her a FAPE because it did not offer Parent training from January 29, 2024, through May 2, 2024.

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:

Student failed to prove by a preponderance of the evidence that Corona-Norco denied Student a FAPE in the 2023-2024 school year, from January 29, 2024, to May 2, 2024, by failing to assess Student in all areas of suspected disability, namely, in the categories of specific learning disability and mental health.

Corona-Norco prevailed on Issue 1.

ISSUE 2:

Student failed to prove by a preponderance of the evidence that Corona-Norco denied Student a FAPE in the 2023-2024 school year, from January 29, 2024, to May 2, 2024, by declining Parent's request to assess in specific learning disability and mental health.

Corona-Norco prevailed on Issue 2.

ISSUE 3:

Student failed to prove by a preponderance of the evidence that Corona-Norco denied Student a FAPE by failing to offer a legally compliant IEP, specifically because it did not contain any provision for ameliorating Student's regression, or parent training.

Corona-Norco prevailed on Issue 3.

ORDER

All of Student's requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings