

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CORONA-NORCO UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

CASE NO. 2024120668

EXPEDITED DECISION

JANUARY 28, 2025

On December 18, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Corona-Norco Unified School District, called Corona-Norco, naming Parents on behalf of Student. The complaint contained expedited and non-expedited hearing claims. OAH set the expedited and non-expedited matters for separate hearings. The expedited claims proceeded to hearing with no continuances. This Decision addresses only the expedited claims.

Administrative Law Judge Jennifer Kelly heard this matter by videoconference on January 14 and 15, 2025. The Administrative Law Judge is called ALJ.

Attorneys Summer Dalessandro and Jennifer Aardema represented Corona-Norco. Administrative Special Education Local Plan Area Director Dawn Rust attended all hearing days on Corona-Norco's behalf. Parents represented Student and attended all hearing days on Student's behalf.

On January 15, 2025, the last day of hearing, the record was closed, and the matter was submitted for decision. The ALJ allowed the parties to file closing arguments by January 22, 2025, but did not continue the matter. Corona-Norco and Student filed closing arguments.

EXPEDITED ISSUES

1. Is maintaining Student's current placement at Foothill Elementary School substantially likely to result in injury to Student or others?
2. Is Corona-Norco's proposed placement of Student at the intensive intervention program at Sierra Vista Elementary School an appropriate interim alternative educational setting for Student for not more than 45 school days?

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JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as 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 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, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; 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).) Corona-Norco requested the 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 seven years old and in first grade at the time of hearing. Student resided with Parents within Corona-Norco's geographic borders at all relevant times. Student was eligible for special education under the categories of emotional disability and other health impairment due to a medical diagnosis of attention deficit hyperactivity disorder.

ISSUE 1: IS MAINTAINING STUDENT IN HIS CURRENT EDUCATIONAL PLACEMENT SUBSTANTIALLY LIKELY TO RESULT IN INJURY TO STUDENT OR OTHERS?

Corona-Norco contends maintaining Student's educational placement at Foothill Elementary School, called Foothill Elementary, is substantially likely to result in injury to Student or others. As a result, Corona-Norco argues that an interim alternative educational setting for Student for up to 45 school days is appropriate.

Student disagrees that his behaviors are likely to result in injury to Student or others. Accordingly, Student disagrees that placement in an interim alternative educational setting is warranted.

Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq. (2006) govern the discipline of special education students. (Ed. Code, § 48915.5.) A student receiving special education services may be

suspended or expelled from school as provided by federal law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 48015.5, subd. (a).) If a special education student violates a code of student conduct, school personnel may remove the student from his educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are also not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1); and (d)(3) (2006).)

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(e) (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).)

In conducting a manifestation determination, the team analyzes the child's behavior as demonstrated across settings and times. (34 C.F.R. § 300.530(e); Assistance to States for the Education of Children with Disabilities, et al. [71 Fed. Reg. 46,540, 46,720 (August 14, 2006) (Comments on 2006 Regulations)].) All relevant information in the student's file, including the IEP, observations by teachers, and any relevant information from the parents must be reviewed as part of the manifestation determination process. (34 C.F.R. § 300.530(e); Comments on 2006 Regulations, *supra*, 71 Fed. Reg. 46, 721.) The appropriateness of manifestation determination reviews conducted by Corona-Norco are not at issue in this expedited matter and are included in this Decision for context only.

Parents and local educational agencies may request an expedited due process hearing on claims based on a disciplinary change of educational placement under title 20 United States Code section 1415(k). (20 U.S.C. § 1415(k).) An expedited hearing must be conducted within 20 school days of the date the due process hearing request is filed and a decision must be rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c) (2006).) The rules for a due process hearing under title 20 United States Code section 1415(k), must be consistent with those for other IDEA hearings. (34 C.F.R. § 300.532(c)(1)(a) (2006).)

A school district may request a due process hearing to authorize a change of placement if the district believes that maintaining the current placement of the child is substantially likely to result in injury to the child, or to others. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) Conduct that has been found substantially likely to result in injury includes

- hitting,
- kicking,
- shoving,
- biting,
- climbing on classroom furniture and cabinets,
- shouting obscenities,
- throwing objects at people,

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- running out of the classroom, and
- banging on the doors. (*Capistrano Unified Sch. Dist.* (2015) OAH case number 2015120782; *Long Beach Unified Sch. Dist. v. Student* (2008) OAH case number 2008030017.)

OAH decisions are not binding precedent, but may be persuasive. (Cal. Code Regs., tit. 5, § 3085.)

Behaviors that have been found likely to result in injury include:

- According to *Fort Bragg Unified Sch. Dist. v. Parent on behalf of Student* (2008) OAH case number 2008100507:
 - Hitting an adult in the back,
 - lunging at, and trying to punch and hit the teacher, and
 - yelling at and threatening people;
- According to *Fullerton Joint Union High Sch. Dist. v. Student* (2007) OAH case number 2007040584:
 - Throwing desks,
 - knocking over a computer,
 - yelling and screaming, and
 - hitting, kicking, punching, and biting adults; and
- According to *Lancaster Elementary Sch. Dist. v. Student* (2006) OAH case number 2006030771)
 - Throwing objects,
 - kicking other children,
 - punching and kicking school staff,
 - eloping from school,

- knocking over another child,
- screaming, and
- destroying property.

There is no requirement that a student or other person was injured to conclude a student was substantially likely to cause injury to self or others. (*See, e.g., Light v. Parkway C-2 Sch. Dist.* (8th Cir. 1994) 41 F.3d 1223, 1228 (Eighth Circuit Court of Appeal rejected contention that a child must first inflict serious harm before that child can be deemed substantially likely to cause injury; *Capistrano Unified Sch. Dist., supra*, OAH case number 2015120782 (actual injury was not required).)

The hearing officer deciding whether maintaining the current placement of the child with a disability is substantially likely to result in injury to the child, or to others, may:

- return the child with a disability to the placement from which the child was removed, or
- order a change in placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in the injury to the child or to others. (20 U.S.C. § 1415(k)(3)(B)(II); 34 C.F.R. § 300.532(b)(2) (2006).)

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STUDENT'S BEHAVIORS RESULTING IN INJURY, OR SUBSTANTIAL LIKELIHOOD OF INJURY, TO SELF AND OTHERS AND FIRST MANIFESTATION DETERMINATION MEETING

Corona-Norco proved that Student's aggressive behaviors at Foothill Elementary were substantially likely to result in injury to self or others. As discussed below, Student's uncontrollable behaviors included

- hitting,
- kicking and scratching other children and adults,
- eloping, screaming and yelling,
- destroying property, and
- throwing items.

At the time of hearing, Student had received 18 school day suspensions.

Parents enrolled Student in Foothill Elementary pursuant to an intradistrict transfer for the 2024-2025 school year. The previous school year when Student was in kindergarten, Corona-Norco found Student eligible for special education under the category of other health impairment. Student's February 27, 2024, IEP placed Student in a general education classroom. Student received:

- 1,440 minutes weekly intensive individual services, called a behavior aide, to support Student's behavioral needs; and
- 15 minutes two times weekly specialized academic instruction in a separate classroom.

Corona-Norco also offered Student a behavior intervention plan targeting Student's behaviors of protesting, physical aggression, and verbal aggression. Prior to his enrollment, Foothill Elementary was aware that Student had an IEP and a history of maladaptive behaviors.

Corona-Norco placed Student in Jennifer Skelskey's general education first-grade classroom. Skelskey had 19 years of elementary school teacher experience, with the last 12 years teaching first grade. Skelskey had a calm and professional demeanor at hearing. She had good recall, answered questions thoroughly, and was a persuasive witness.

Skelskey's demeanor and expressions at hearing showed genuine distress at the events that occurred in her classroom. In late July 2024, Skelskey learned that Student would be in her classroom and had an IEP. Skelskey reviewed Student's IEP and behavior intervention plan. Foothill Elementary provided Skelskey with Kevlar sleeves, which are protective sleeves placed on one's forearms to prevent injury caused by biting and scratching.

Student was supported throughout the school day by a behavior aide trained as a Registered Behavior Technician, referred to as a behavior aide. A Registered Behavior Technician is a paraprofessional who works under the supervision of a Board-Certified Behavior Analyst to implement behavioral interventions to students with behavioral challenges.

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During the first semester of the 2024-2025 school year Student engaged in frequent and aggressive behaviors resulting in injury to staff and students. Student's behaviors included:

- destroying property,
- attacking adults, including Student's behavior aide, the principal and assistant principal, and the school security guard,
- hitting other students in the classroom and on the playground,
- scratching, hitting, and kicking adults,
- yelling and running around the classroom,
- throwing chairs and other items,
- pounding his fists and swiping items off counters, and
- running out of the classroom.

The incidents reported in this Decision were violations of Foothill Elementary's student code of conduct, and each resulted in a behavior report. Principal Brenda Pearson or an administrative designee called one or both Parents after each reported incident. Principal Pearson either spoke to Parents, left a voicemail message, sent an email message, or sent a message on Class Dojo. Class Dojo was a confidential message website Foothill Elementary used to communicate with school parents.

From the beginning of the 2024-2025 school year, Principal Pearson responded almost daily to classroom and playground disruptions caused by Student's maladaptive behaviors. At the time of the expedited hearing, Pearson spent eight to 15 hours weekly observing and interacting with Student, or assisting staff in responding to Student's behavior incidents.

Pearson was a highly qualified educator with 12 years-experience as a school principal. She worked at Foothill Elementary as a school principal starting in the 2024-2025 school year. Pearson held a master's degree in educational leadership and an administrative credential. She held a multi-subject teaching credential and previously worked as an elementary school teacher for 18 years. Pearson's substantial experience in her vocation, detailed recollection of Student and the incidents at issue, and measured demeanor rendered her testimony persuasive. Pearson's testimony was afforded substantial weight.

Pearson was familiar with Student from seeing him daily during snack breaks and observations, attending IEP team meetings, and helping staff when Student became dysregulated. Pearson was fond of Student. Pearson described Student as a great kid who was smart, artistic, and interested in maps and gems. Pearson made a snack drawer in her office specifically for Student. Student came to Pearson's office most school days to get a snack for him and his behavior aide. Pearson offered detailed and persuasive testimony about the considerable efforts taken by Pearson and staff to support Student and address his behavior challenges. When Student's emotions became elevated, he could not follow directions and became aggressive. Pearson or Assistant Principal Patricia Kremar were frequently called to help control Student and help him de-escalate. Pearson spent between one to three hours daily with Student.

On August 14, 2024, the second day of the 2024-2025 school year, Student did not want to return from the playground to the classroom. He told his behavior aide, "Tomorrow I am going to bring a gun and kill everyone." Skelskey called Principal Pearson to help de-escalate Student. Corona-Norco suspended Student for three days.

On August 27, 2024, Student was angry when his behavior aide took away his scissors because he was using them inappropriately by waving them in his behavior aide's face. Student became extremely agitated, screamed, and flipped his desk to the ground. He physically attacked his behavior aide, striking her with a closed fist on the leg and chest and attempting to grab her neck. Skelskey evacuated the classroom to protect the other students. Student's behavior aide remained with Student and tried to help him de-escalate. While Skelskey was out of the classroom, Student flipped desks to the ground, threw a ball bin across the room, and destroyed property. During the August 27, 2024 incident, Skelskey put on Kevlar gloves because she was fearful of being harmed by Student. At hearing, Skelskey was visibly upset recounting this event. Student was referred to the main office for a conference with Assistant Principal Kremer.

On August 30, 2024, Student was upset when he did not receive a Pack Paw during recess, a slip of paper given to students who modeled good behavior on the playground. Student refused to sit down and work on his writing journal. He threw the journal, screamed, pounded his fists, hit his behavior aide in the chest with a closed fist, and tried to scratch her. Skelskey called administration for assistance. Principal Pearson removed Student from the classroom and helped him de-escalate.

On September 3, 2024, Student's class had indoor recess due to inclement weather. Skelskey gave Student a five-minute warning before he transitioned back to classwork as set forth in his behavior intervention plan. Student became upset that he had to stop his activity and return to classwork. He refused to return to his seat. He sat on the carpet, thrashed his legs, and spun his body in circles. He ran to the back of the classroom, picked up a chair, and threw it to the ground. He slammed a pencil box down, protested loudly, hit his behavior aide in the chest, and stabbed her with a pencil.

The following day, September 4, 2024, Student again refused to transition from indoor recess to schoolwork. Student hit his behavior aide, scratched her in the chest, and used a pencil to stab her in the leg. Corona-Norco suspended Student for two-days.

On September 13, 2024, Pearson, Skelskey, Parents, school psychologist Sarah Davis, and a resource specialist met for a manifestation determination review and a subsequent IEP team meeting. The manifestation determination team reviewed Student's disciplinary incidents and determined Student's behaviors were a direct manifestation of his disability, and not due to Foothill Elementary's failure to implement Student's IEP. The manifestation determination team determined the IEP team should develop, review, and/or modify Student's existing behavior intervention plan. Foothill Elementary conducted an IEP team meeting immediately after the manifestation determination review.

The September 13, 2024 IEP team reviewed and discussed revisions and additions to Student's behavior intervention plan. The IEP team revised Student's behavior intervention plan to describe the predictors for Student's behaviors as:

- not being given access to a preferred direction or task,
- peers not accepting his requests for interactions,
- being asked to wait, and
- preferred activities coming to an end.

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The IEP team discussed and offered behavior intervention strategies to support Student's behaviors, including:

- speaking to Student in a calm voice,
- preparing Student ahead of time for changes in his routine,
- priming Student about expectations before beginning different activities,
- reminding Student of the consequences for not meeting reviewed expectations,
- cuing Student to use previously taught coping strategies when he became escalated,
- allowing Student to take a break in an alternative place on campus,
- utilizing a token economy,
- providing choices of activities, and
- using an emotion chart to check in with Student throughout the day.

The IEP team developed two new behavior goals. The new behavior goals addressed Student's behaviors of verbal and physical aggression. The IEP team substantially revised Student's behavior intervention plan by adding environmental changes to remove the likelihood of Student's maladaptive behaviors. The IEP team developed reinforcement procedures for establishing, maintaining, and generalizing the replacement behaviors. The IEP team also updated Student's behavior intervention plan to include strategies to employ if Student's problem behaviors reoccur.

Corona-Norco requested permission to conduct an educationally related mental health services assessment and an updated psychoeducational assessment. Parents agreed to these assessments. The IEP team also recommended that Student receive general education counseling services available to all students pending the results of the educationally related mental health services assessment. Parents consented to the September 13, 2024 IEP amendment on October 4, 2024.

CONTINUED BEHAVIORS AND SUSPENSIONS, AND MANIFESTATION DETERMINATION REVIEW MEETINGS

From September 13, 2024, through November 7, 2024, Student continued to act aggressively towards staff and peers. On September 13, 2024, the same day as the first manifestation determination meeting, Student pushed, hit, and scratched his behavior aide and a security guard outside the classroom. Student's behavior aide took Student to Assistant Principal Kremar's office. Student's behaviors continued to escalate. Principal Pearson heard items crashing to the floor and went into Kremar's office. Pearson attempted to help Student de-escalate by using a calm voice. Student threw items and forcibly scratched Pearson's arm breaking the skin and causing bleeding. At the time of hearing, Pearson had a three-inch scar from the assault. Corona-Norco gave Student a three-day suspension.

On September 20, 2024, Student and another student were involved in an altercation at recess over a ball. The other student punched Student, and in response Student punched the other student in the face. Corona-Norco suspended Student for one day.

On September 25, 2024, Student was angry when he arrived at school. Student hit Assistant Principal Kremar and his behavior aide multiple times and tried to kick them. Kremar and Student's behavior aide helped Student calm down and took him to the cafeteria. After school breakfast, he became upset when he was not allowed to go to his classroom. Student hit Kremar multiple times in the face and tried to scratch her. Student also hit the security guard. Student spent the remainder of the school day in the main office.

On October 9, 2024, Student threw pencils around the classroom and stood on chairs and desks. Student screamed and pounded his fists against the desk, and hit and kicked his behavior aide repeatedly. Student then picked up a chair, lifted it over his head, and threw the chair across the classroom. Skelskey explained that Student's peers audibly gasped and appeared frightened.

On October 11, 2024, Student stuck his tongue out at another student during recess. The other student told Student's behavior aide about the incident. Student became angry and chased after the other student. Another adult intervened and tried to block Student, but Student was able to go around the adult and hit his peer twice. Student was given a one day in-school suspension.

On October 14, 2024, Student became angry when he was not allowed to attend a school activity that day. Assistant Principal Kremar met with Student and explained why he could not participate in the activity. Student hit and swiped items off a table. He threw items across the office, smashed objects, and dumped the contents from a small refrigerator. Principal Pearson entered the room to assist Kremar, at which time Student ran at her and hit and scratched her arm.

On October 22, 2024, Student became upset after being asked to complete classwork. Student lifted a chair over his head and attempted to throw it. Student's behavior aide was able to intervene and stop Student from throwing the chair. Student then eloped from the classroom, and was followed by his behavior aide. When Student's behavior aide caught up with Student, Student bit her arm. Student was taken to the school office to de-escalate. Upon learning that he could not eat lunch with his class, he scratched Kremar and hit Pearson and the security guard. Student then eloped from the office to the cafeteria, but was blocked by Pearson and Kremar. Student remained escalated, and hit and kicked Pearson, Kremar, and the security guard. Corona-Norco suspended Student for three days.

On October 28, 2024, Student verbally protested completing his work and began yelling. Student pounded his desk with his fists, pulled apart a pair of scissors and threw them across the table, nearly hitting another student.

On November 7, 2024, Student was angry at his behavior aide and hit her several times. He then stated, "I'm going to shoot you with a gun." Corona-Norco suspended Student for one day.

Corona-Norco convened additional manifestation determination meetings on October 11, 21, and 30, 2024, to determine if Student's conduct in September and October resulting in 13 days suspension were a manifestation of his disability. The manifestation determination members included Principal Pearson or Assistant Principal Kremar, Parents, school psychologist Davis, general education teacher Skelskey, and a special education teacher.

At each of these manifestation determination meetings the members reviewed relevant information in Student's file, including his IEP, observations of Student's teachers, and relevant information from Parents. Corona-Norco's staff determined Student's conduct in September and October 2024 resulting in 13 days suspension was caused by or had a direct and substantial relationship to his disability. Corona-Norco's staff did not find Student's conduct in question was the direct result of a failure to implement the February 27, 2024 IEP.

Parents did not appeal the determinations made at the manifestation determination review meetings held on September 13, 2024, and October 11, 21, and 30, 2024.

NOVEMBER 7 AND 14, 2024 IEP TEAM MEETINGS AND PROPOSED CHANGE OF PLACEMENT

On November 7, 2024, Student was suspended for one day after threatening to physically attack his behavior aide and threatening to shoot her with a gun. That same day, Corona-Norco convened an IEP team meeting to review the results of an educationally related mental health services assessment and a psychoeducational assessment, and to conduct Student's annual program review. The IEP team consisted of Parents, Skelskey, a resource specialist, school psychologists Davis and White, and Principal Pearson.

Corona-Norco's school psychologist Davis presented the results of a supplemental psychoeducational assessment and report dated November 7, 2024. Based on the review of records, interviews, observations, and behavioral rating scales, Davis determined Student met eligibility criteria under the category of emotional disability. Davis presented her findings to the November 7, 2024 IEP team.

The November 7, 2024 IEP team also considered the results of an educationally related mental health assessment and report dated November 7, 2024 by school psychologist Belinda White. White did not testify at hearing. However, both school psychologist Davis and Principal Pearson agreed with White's assessment findings and recommendations that Student needed educationally related mental health services to address his social and emotional needs.

The November 7, 2024 IEP team determined Student met the eligibility criteria for emotional disability and agreed to change Student's primary disability category from other health impairment to emotional disability. The November 7, 2024 IEP team reviewed Student's present levels of performance and progress on his current goals. The team discussed proposed goals in behavior-physical aggression, access to preferred items or activities, protest language, and executive functioning-work completion. The IEP team also reviewed and updated Student's behavior intervention plan.

The IEP team discussed a possible change of placement for Student to the intensive intervention program at Sierra Vista Elementary School, called Sierra Vista. Corona-Norco's IEP team members shared that the program was designed to provide intensive behavioral support and structure while in a comprehensive elementary school environment. The November 7, 2024, IEP offered Student placement in a special day class at Sierra Vista with a behavior aide, individual and group counseling, and transportation. The IEP team determined Student continued to require a behavior intervention plan and modified his behavior intervention plan.

Parents did not consent to the November 7, 2024 IEP.

On November 13, 2024, Student pushed another student into a door and attacked multiple staff members, including Pearson. At hearing, Pearson described the incident in detail. Student returned to the classroom after recess highly escalated. Student's behavior aide offered Student a longer recess to help him de-escalate. Student refused and pushed another student into a metal doorframe.

Pearson arrived to help de-escalate Student. Student calmed down and said he was not ready to talk. They walked outside towards a staircase and Pearson sat down on the steps. Student unexpectedly and rapidly yelled and attacked Pearson. He forcefully placed his fingers over her face and eyes and grabbed her hair. Pearson feared Student would scratch her eyes. School staff immediately stepped in and pulled Student off Pearson. Pearson sustained a scratch over her eyelid and was shaken by the incident. Student remained escalated and continued to attack staff members for approximately 20 minutes.

Corona-Norco convened another manifestation determination meeting on November 14, 2024, to address the earlier incident that occurred on November 7, 2024. The team agreed that the conduct in question was caused by or had a direct and substantial relationship to Student's disability. Immediately following the manifestation determination review, Corona-Norco convened an IEP amendment meeting to discuss Student's behaviors and modify his behavior intervention plan. Parents did not consent to the November 14, 2024 IEP amendment.

On December 2, 2024, Student engaged in protest behaviors, including yelling, pounding on the table, and throwing his papers. His behavior aide utilized strategies from Student's behavior intervention plan, including offering a break outside the classroom or a snack. Student, however, ran across the classroom, punched another

student in the back of the head, and struck another student with a pencil box. Skelskey evacuated the other students from the classroom. Student then hit and threatened to kill his behavior aide, overturned chairs and threw them across the classroom. When Skelskey returned to the classroom 45 minutes later, she found desks flipped, supply boxes emptied, and materials and Skelskey's computer knocked over. Student was suspended for three days.

Corona-Norco convened a manifestation determination meeting on December 6, 2024, to review the December 2, 2024 incident. The team agreed that the conduct was caused by or had a direct and substantial relationship to Student's disability. Following the December 6, 2024 manifestation determination meeting, the IEP team met to discuss Student's behavior and modifications to his behavior intervention plan. At the time, Student had been suspended 17 days. Corona-Norco reiterated its offer of placement in the intensive intervention program at Sierra Vista to address Student's behaviors.

On December 20, 2024, Student became escalated when his "goodie bag" tore open on the playground. Pearson arrived and offered Student a break to help him calm down. Student refused and threw a plastic water bottle at Pearson, hitting her on the forehead. Pearson and the security guard were able to direct Student to the calming room on campus to help him de-escalate. Student punched Pearson in the face resulting in bleeding and a gash on the side of her nose. Pearson immediately began crying because of the pain. Pearson left the room to call Student's Parents, and when she returned Student was attempting to hit staff members with a wooden rod he pulled from the classroom window. Student was suspended for the remainder of the day.

At hearing, Corona-Norco offered suspension notices, substantiated by Skelskey, Pearson, and Davis's testimony, in support of Corona-Norco's contention Student's behavior was substantially likely to result in injury to himself or others. Skelskey, Pearson, and Davis's testimony was consistent in describing Student's escalating behaviors and the substantial likelihood Student would injure himself or others. Each witness was familiar with Student, had personal knowledge of Student and his conduct, and was experienced in their vocations. Each witness was deliberate and careful in their testimony and expressed a sincere belief that Student was a danger to himself, students, and adults at Foothill Elementary.

Based upon their first-hand interactions with Student, Skelskey, Pearson, and Davis persuasively showed that Student's maladaptive behaviors were unpredictable and unprovoked. Student's mood changed quickly. Each witness described Student's aggression in which he injured both children and staff. School staff and students were afraid of Student and concerned he could cause greater harm to himself or others if he remained at Foothill Elementary. At hearing, Skelskey and Pearson explained there were numerous other behavioral incidents that occurred for which Student could have been suspended but was not. Each witness believed that Student's behavior posed a significant risk of injury to himself and others.

The evidence also established that Corona-Norco made considerable attempts to modify Student's behavior in the general education setting, but were unsuccessful. Corona-Norco modified Student's behavior intervention plan throughout the semester and added strategies designed to address Student's behaviors, including transition warnings, coping techniques, and reduced classroom demands, but these were insufficient to mitigate Student's conduct. Student's behavior intervention plan provided Student with behavior skills, but Student was unable to apply them in

the general education setting. Pearson convincingly explained that even with implementation of the behavior intervention plan and support of a behavior aide and additional adults on campus including the school psychologist, and a behavior specialist, Foothill Elementary could not keep Student or other children and adults safe.

Corona-Norco documented other incidents where Student engaged in aggressive behaviors of hitting and kicking, throwing items, and yelling and screaming from August 2024 through December 2024. Although Corona-Norco's witnesses did not testify specifically as to each of these other incidents, both Skelskey and Pearson credibly described them as incidences when Corona-Norco could not ensure safety because Student escalated quickly and forcefully. Pearson explained there were so many behavioral incidents that she was required to prioritize the most serious ones because of time constraints.

Parents each testified at hearing. Neither Parent disputed that Student engaged in the maladaptive behaviors described by Skelskey, Pearson, and Davis. Student engaged in similar behaviors at home and Parents conveyed genuine concern and distress about Student's behaviors. Mother conceded Student's behaviors were frequent and sometimes violent but believed Foothill Elementary's staff were not sufficiently trained to help Student. She believed Student should be placed in a special day class at Foothill Elementary with support from a special education teacher. Father expressed concern that Student was not being provided sufficient help by Corona-Norco, but did not offer specifics. Father's demeanor conveyed sincere concern and frustration about Student's behaviors. Although Parents are caring and involved Parents, they did not successfully rebut Corona-Norco's showing that Student's continued placement at Foothill Elementary would substantially likely result in injury to Student or others.

Corona-Norco met its burden of proving by a preponderance of the evidence that Student's behavior, including punching, hitting, kicking, destroying and throwing property, yelling, screaming, scratching, and eloping, coupled with his assaults on other students and staff, posed a substantial risk of future injury to others. Corona-Norco established that maintaining Student's placement at Foothill Elementary would substantially likely result in injury to Student or others. Student's assaultive behaviors were violent and unpredictable. His physical aggression resulted in injuries to school staff and other students. Student's aggression and lack of impulse control also placed his own safety at risk at Foothill Elementary. The evidence proved that the risk of Student injuring staff and students, and himself, at Foothill Elementary is substantial.

Accordingly, Corona-Norco proved by a preponderance of the evidence that maintaining Student's current placement at Foothill Elementary is substantially likely to result in injury to Student, or to others, such that an interim alternative educational setting is appropriate.

ISSUE 2: IS CORONA-NORCO'S PROPOSED PLACEMENT OF STUDENT AT THE INTENSIVE INTERVENTION PROGRAM AT SIERRA VISTA ELEMENTARY SCHOOL AN APPROPRIATE INTERIM ALTERNATIVE EDUCATIONAL SETTING FOR STUDENT FOR NOT MORE THAN 45 SCHOOL DAYS?

Corona-Norco seeks permission to make an interim change of Student's placement from the general education classroom at Foothill Elementary to an intensive intervention special day class at Sierra Vista for not more than 45 school days. Corona-

Norco contends Student requires placement in a special day class with a small student-to-teacher ratio, and intensive behavioral supports to support Student's behavioral and social-emotional needs, participate in the general education curriculum, and progress towards meeting his IEP goals.

Student contends Corona-Norco should consider other settings, including a special day class at Foothill Elementary.

As found in Issue 1, maintaining Student's placement at Foothill Elementary is substantially likely to result in injury to Student or to others. After carefully considering the options, the undersigned determined it is appropriate to order a change of Student's placement to an interim alternative educational setting for not more than 45 school days.

If the ALJ deciding the case determines that maintaining the current placement of the child is substantially likely to result in injury to the child or others, the ALJ may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days. (20 U.S.C. § 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 300.532(b)(2)(ii) (2006).) The interim alternative educational setting must enable the child to participate in the general education curriculum and progress towards meeting his IEP goals. (20 U.S.C. § 1415(k)(1)(D); 34 C.F.R. § 300.530(d)(i).) The interim alternative educational setting must enable the child to receive, as appropriate, a functional behavior assessment, and behavioral intervention services and modifications, that are designed to address the child's behavior violations so that they do not reoccur. (34 C.F.R. § 300.530(d)(ii) (2006).)

The student's IEP team determines the interim alternative educational setting. (20 U.S.C. § 1415(k)(2).) The IDEA does not require parental consent to placement in the interim alternative educational setting, or that a school district must place a student in the interim alternative educational setting preferred by the parents. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

Corona-Norco established by a preponderance of the evidence that placement at the intensive intervention program at Sierra Vista is an appropriate interim alternative educational setting for Student not more than 45 school days. Student's increasingly unpredictable and aggressive behaviors require an educational setting that is secure and safe, and with behavioral and therapeutic supports and services that can meet his significant social-emotional and behavioral needs.

Corona-Norco's witnesses Pearson, Davis, and Sierra Vista Principal Kari Burns offered persuasive testimony establishing the intensive intervention program at Sierra Vista is appropriate for Student's interim alternative educational setting. Although Parents preferred that Student remain in a special day class at Foothill Elementary, the evidence did not prove this is an appropriate interim alternative educational setting to address Student's behavioral needs.

Pearson was familiar with the intensive intervention program at Sierra Vista. Pearson described the program to Parents at the November 7, 2024 IEP team meeting and answered their questions. At hearing, she established that Foothill Elementary could not currently support Student due to the intensity and frequency of his behaviors. She further persuasively opined that the small class size in the intensive intervention program, together with staffs' specialized behavior training and weekly individual and

group counseling services, will provide the support necessary for Student to learn behavioral and social skills in a safe environment, while also progressing academically in the general education curriculum.

Davis was a school psychologist for Corona-Norco for more than 13 years. She held a master's degree in education and a pupil personnel services credential in school psychology. Davis's responsibilities included

- conducting psychoeducational assessments,
- consulting with staff about behavioral interventions,
- administering functional behavior assessments,
- writing goals, and
- developing behavior intervention plans.

Davis had extensive experience assessing student behaviors, developing behavior intervention plans, and delivering direct behavioral intervention services to students. Davis was knowledgeable in strategies to reduce a student's behaviors.

Davis was familiar with Student's needs. She

- reviewed his educational records and prior assessments,
- conducted a psychoeducational assessment and November 7, 2024 written report,
- observed Student across formal and informal settings,
- met with school staff working with Student,
- wrote IEP behavior goals for Student,
- revised his behavior intervention plan, and
- attended Student's IEP team meetings.

She was knowledgeable about programs within Corona-Norco that could support Student's needs. Accordingly, Davis's testimony was persuasive and given substantial weight.

Davis established that further modifying Student's behavior intervention plan would not alleviate Student's problem behaviors at Foothill Elementary. Student requires a change in setting with a smaller student-to-adult ratio, imbedded counseling support, and staff trained in behavior intervention strategies. Foothill Elementary does not have a program with the behavior supports Student requires. Although Foothill Elementary has a special day class, it is designed for students who function below grade level and is not designed for students with significant behavioral challenges. Student requires a small, structured setting with immediate feedback and strategies to address his behavioral challenges.

Principal Burns described the intensive intervention program at Sierra Vista. Burns was a qualified school administrator with a bachelor's degree in diversified education and a master's degree in education. She held a multiple subject teaching credential and an administrative services credential. Burns was the principal of Sierra Vista since the 2022-2023 school year. Previously she worked as an assistant principal for Corona-Norco and a teacher on special assignment.

Burns oversees the intensive intervention program at Sierra Vista. The intensive intervention program targets students with severe behaviors and difficulty self-regulating. The program was designed as a temporary placement to develop social

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skills needed to reintegrate and return the student to the general education setting. The intensive intervention program utilizes the Boys Town “Teaching Social Skills to Youth” intervention strategy program which teaches:

- coping and social skills,
- use of interpersonal problem-solving skills, perception, and processing information,
- managing emotions,
- self-monitoring, and
- making behavioral adjustments as settings changed.

Teachers and paraeducators use proactive teaching, corrective strategies, effective praise, and self-correction to help students perceive and process social information, manage emotions, self-monitor, and make behavioral adjustments. Students practice the skills daily and are provided positive reinforcements and rewards throughout the school day.

The program at Sierra Vista consists of three classrooms supporting students between first and sixth grades. Each classroom utilizes grade-level curriculum. The classroom for students in first through third grade has a maximum of ten students and is staffed by a special education teacher and four behaviorally trained paraprofessionals. In addition, some students in the program have behavior aides. All teachers maintain mild-to-moderate special education teaching credentials. The program has additional behavior supports embedded in the program. A full-time counselor or social worker provides individual and group counseling on a weekly basis. A full-time school psychologist is onsite for crisis counseling. An onsite administrator provides behavior support and supervision to each class.

Teachers and staff in the intensive intervention program are certified by the Crisis Prevention Institute. The Crisis Prevention Institute teaches non-restrictive verbal de-escalation strategies to keep students safe and prevent escalation of behaviors. The Crisis Prevention Institute provides strategies for staff to safely and effectively respond to hostile or physically aggressive behaviors. Teachers and staff are required to renew their certifications through the Crisis Prevention Institute every two years and to participate in an annual program on best practices for implementing behavior interventions.

The intensive intervention program has a dedicated quiet space to support and teach students to self-regulate. The quiet space room is connected to the intensive intervention classroom. If students become overstimulated, they can request to take a break in the room. The quiet room has weighted stuff animals and other sensory items. There are no objects which students could use to hurt themselves.

In their closing brief, Parents did not disagree the intensive intervention program could be beneficial for Student, but requested certain modifications, such as a behavior aide during transportation, daily counseling, and no physical restraints. These issues are not before OAH in this Decision.

The intensive intervention program has credentialed staff to implement Student's IEP goals and accommodations, and to deliver the instruction, services, and supports offered in Student's IEP to ensure Student continues to receive a FAPE. A preponderance of the evidence proved the intensive intervention program, with the behavioral and therapeutic supports and services embedded in the program, is an appropriate interim alternative educational setting for Student. Corona-Norco proved

by preponderance of the evidence that the proposed placement at the intensive intervention program at Sierra Vista is an appropriate interim alternative educational setting for Student for not more than 45 school days.

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:

Maintaining Student's placement at Foothill Elementary would substantially likely result in injury to Student or others, such that an interim alternative educational setting is appropriate.

Corona-Norco prevailed on Issue 1.

ISSUE 2:

Corona-Norco's proposed placement at the intensive intervention program at Sierra Vista is an appropriate interim alternative educational setting for not more than 45 school days.

Corona-Norco prevailed on Issue 2.

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ORDER

Corona-Norco may place Student at the intensive intervention program at Sierra Vista as an appropriate interim alternative educational setting for not more than 45 school days from the date of this Order.

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.

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings