

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024050848

ORDER FOLLOWING EXPEDITED PREHEARING
CONFERENCE FOR HEARING BY VIDEOCONFERENCE
GRANTING MOTION TO RECESS, MOTION TO CONTINUE
UNEXPEDITED HEARING, MOTION TO LIMIT ISSUES, AND
DISMISSING ISSUE 2

JUNE 10, 2024

On June 10, 2024, Administrative Law Judge Deborah Myers-Cregar, Office of Administrative Hearings, held an expedited prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Tania Whiteleather, Attorney at Law, appeared on behalf of Student. Christopher Fernandes and Jennifer Aardema, Attorneys at Law, appeared on behalf of Corona-Norco Unified School District, called Corona-Norco. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

EXPEDITED DUE PROCESS HEARING

After discussion and consideration of the motion to recess, and the parties' and witnesses' summer availability, the expedited hearing will take place on June 18, 20, and July 9, 2024, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. The parties anticipate it will take five days to complete the hearing. Additional hearing dates will be discussed with the ALJ during the hearing.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at

<https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena>.

EXPEDITED ISSUES AND PROPOSED RESOLUTIONS

The ALJ has slightly altered the statement of some expedited issues as allowed by the holdings in *J.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified Sch. Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].) No change in substance has been made. A party believing that an issue has been misstated or omitted shall promptly file a notice in writing stating its concern and citing relevant allegations in the complaint by page and lines.

The expedited issues at the due process hearing, and proposed resolutions, as alleged in the complaint and clarified by the parties and the ALJ during the expedited PHC are:

EXPEDITED ISSUES

1. Did Corona-Norco violate title 20 United States Code section 1415(k) by failing to conduct an appropriate manifestation determination on March 12, 2024, by:
 - a. Preventing meaningful parental participation by failing to translate necessary documents into Spanish;
 - b. Failing to consider pending assessments when determining Student's conduct was not a manifestation of his disability?
2. Did Corona-Norco violate title 20 United States Code section 1415(k) by failing to offer an appropriate interim alternative educational setting at the manifestation determination on March 12, 2024, by:

- a. Predetermining the interim alternative educational setting for Student by making the determination before the manifestation determination meeting without discussion with Parents and review of pending and outside assessments;
- b. Failing to consider supplementary aides and services in his present placement as the least restrictive setting before suspending and expelling him?

A party must immediately file a written objection with OAH if the expedited issues as described above do not reflect the party's understanding of the expedited issues as clarified at the PHC. The ALJ will address any objections on the first day of hearing.

EXPEDITED PROPOSED RESOLUTIONS

The expedited proposed resolutions requested by Student include a determination that Corona-Norco failed to conduct an appropriate manifestation determination. Student seeks a ruling that Corona-Norco reached inappropriate conclusions about his conduct and disability, and inappropriately suspended and later expelled him on May 7, 2024.

Additionally, Student seeks a determination that the interim alternative educational setting was inappropriate and not the least restrictive environment. Student seeks an order he be returned to his previous placement with additional services.

Corona-Norco filed its response to Student's complaint on June 3, 2024. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

EXHIBITS

The parties shall serve their exhibits on each other in compliance with Education Code section 56505, subdivision (e)(7). The parties shall upload their exhibits electronically according to the Order Setting Procedures for Filing Exhibits Electronically. Timely uploading electronic hearing exhibits five business days before the first day of hearing constitutes that party's timely exchange of evidence in compliance with Education Code section 56505, subdivision (e)(7). If further assistance is needed, please contact OAH at OAHSEOps@dgs.ca.gov.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged as required by Education Code section 56505, subdivision (e)(7) shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

IDENTIFYING EXHIBITS AND PAGE NUMBERS

Each exhibit must be identified by a letter and number. Student must use the letter S before the number to identify Student's exhibits. Corona-Norco must use the letter D before the number to identify its exhibits. For example, S-1 means Student's exhibit 1 and D-1 means Corona-Norco's exhibit 1. A cover sheet with this identifying letter and number should be the first page of each exhibit. The electronic evidence program will automatically number the exhibits and additional page numbering or bates stamping should not be added.

CONTENT

Each exhibit must consist of one document. Separate documents may not be combined into one exhibit. Emails or letters may be consolidated into one exhibit if they are part of a single chain of messages. Exhibits should be in chronological order.

Parties should include resumes or curriculum vitae for each witness expected to testify as an expert.

Corona-Norco's exhibits must include a copy of the school calendar for each school year in question.

Electronic copies of exhibits filed with OAH shall be filed by 5:00 PM at least five business days before the first day of hearing. Please refer to the General Order OAH issued with the Scheduling Order that contains the Order Setting Procedures for Filing Exhibits Electronically. It includes instructions for how to file exhibits electronically. Beginning three business days before the hearing, the electronic evidence system will not allow parties to upload exhibits unless permitted by the ALJ during the hearing at the ALJ's discretion.

WITNESSES

The parties shall serve their list of witnesses on each other in compliance with Education Code section 56505. No party shall be permitted to call any witnesses not timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

Parties are responsible for ensuring that all participants are familiar with and follow the Instructions for Joining the Online Due Process Hearing provided with this Order. Participants who have not previously used the Zoom application, may find

informative instructions on at by visiting, Getting Started with Zoom at <https://support.zoom.us/hc/en-us/categories/200101697>.

The parties are responsible for ensuring that witnesses join the virtual hearing room at the designated date and time to testify. Witnesses are required to join the due process hearing by computer and appear by videoconference unless they do not have the necessary computer equipment. If a witness does not have the necessary equipment, the ALJ may permit the witnesses to appear by audio only or by telephone. "Audio only" means using a computer without video. A witness's inability to attend the hearing by videoconference will be discussed at the start of the hearing.

The parties are responsible for producing their own witnesses unless otherwise ordered by the ALJ. Parties shall make witnesses under their control reasonably available. The parties must schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order.

The ALJ has discretion to limit the number of witnesses and the time allowed for testimony. Education Code, section 56505.1, subdivision (h), empowers the ALJ to set a reasonable limit on the length of the hearing after consideration of four factors. The first two factors are the issues to be heard and the complexity of facts to be proven. The second two factors are the ability of the parties or their representatives to present their respective cases and the parties' estimates of the time needed to present their cases.

MEET AND CONFER

The parties are encouraged to review and shorten their witness and exhibit lists before the hearing. Evidence may be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties are ordered to meet and confer no later than June 13, 2024, to discuss scheduling witnesses and how much time each witness will take. The parties shall discuss any issues related to counsel and witnesses appearing by videoconference for hearing, electronically viewing exhibits during the hearing, and subpoenas, if any. The parties should attempt to eliminate duplicate exhibits from their hearing exhibits. The parties shall discuss whether they can produce a written stipulation as to pertinent facts, contentions, resolutions and the authenticity and admissibility of documents to shorten the length of time needed for the hearing.

As part of the meet and confer process, Corona-Norco shall inform Student which proposed witnesses are District employees. Corona-Norco shall also identify the witnesses on Student's list that require a subpoena. Corona-Norco agrees to accept service for a witness under its control who is employed and working. Corona-Norco will inform Student immediately if the witness is employed but not working so Student may subpoena those witnesses and provide Student with the witness's most recent contact information.

PARTICIPANT INFORMATION FORM

Both parties have an ongoing obligation to ensure that OAH has current information on the Participant Information Form filed with OAH and shall file an updated Form as necessary. The Participant Information Form is not served upon the opposing party. The ongoing obligation to ensure that the Participant Information Form filed with OAH is current does not change the parties' statutory obligation to timely disclose their witnesses to the other party(s) at least five business days prior to hearing. The parties must file an updated Participant Information Form to inform OAH of any changes, additions, or deletions, including the required information no later than 5:00 PM at least two business days before the first day of hearing.

Any contact information provided shall be used for the limited purpose of issuing subpoenas or for contacting a witness to attend the hearing. Any contact information shall not be disclosed to any other person.

EVIDENCE PRESENTATION

In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62.) In this case, Student requested the hearing and bears the burden of proof. Student's case-in-chief shall be presented first, followed by Corona-Norco, unless otherwise ordered.

WITNESS LISTS

The parties must provide a joint proposed witness list to the ALJ on the first day of hearing. The list should include the first and last name of the witness, which party is calling the witness to testify, and include dates and time estimates of each witness's expected testimony. In the event an agreement cannot be reached, each party shall prepare a separate written list. Student must have witnesses available in case there is no agreement.

At the beginning of the hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses. The ALJ will finalize the witness schedule. Parties must be prepared at the end of each day to discuss the witnesses to be presented the next day and the estimated time for the testimony of each witness.

SCOPE OF WITNESS EXAMINATION

Each witness will be called to testify only once, except for rebuttal purposes. All parties must examine a witness on all issues when the witness is first called to testify. Requiring a witness to appear only once takes priority over the order in which parties present their case-in-chief.

AUDIO ONLY OR TELEPHONIC TESTIMONY

Whether a witness may appear by audio only or telephone instead of videoconference is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Any party seeking to present a witness by audio only or telephone shall request permission to do so before the hearing. Any party seeking to present a witness who cannot access exhibits electronically must inform the ALJ at the beginning of the hearing. Neither party is requesting audio only or telephonic testimony.

ELECTRONIC RECORDINGS

AUDIO RECORDING

A party may request permission to make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon the following conditions:

1. the OAH recording is the only official recording;
2. the parties shall turn their recording device on and off at the same time that the ALJ is on and off the record to avoid recording conversations while off the record;

3. operation of the party's recording mechanism will not be allowed to delay the hearing;
4. a party's recording may not be given, provided, or played to a witness, or potential witness;
5. the recording is subject to the same confidentiality as the due process hearing; and
6. participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording.

Student's and District's requests to make an audio recording of the hearing is granted.

VIDEO RECORDING

No party, witness, or anyone else may videorecord any part of the proceedings or stream live through any means.

RECORDINGS AS EXHIBITS

Recordings may not be uploaded electronically without the ALJ's permission. The parties may upload a recording and transcript of the March 12, 2024 manifestation determination into CaseCenter by filing the electronic cop with OAH by 5:00 PM at least five business days before the first day of hearing. Please refer to the General Order OAH issued with the Scheduling Order that contains the Order Setting Procedures for Filing Exhibits Electronically. It includes instructions for how to file exhibits electronically. Beginning three business days before the hearing, the electronic evidence system will not allow parties to upload exhibits unless permitted by the ALJ during the hearing at the ALJ's discretion.

The ALJ has discretion to admit or exclude evidence in the form of a recording. Any request to submit a recording shall be considered at the time of hearing.

The ALJ may grant or deny the request or grant the request subject to certain conditions. The party offering the recording must establish that all or a part of the recording is relevant. The ALJ may request a transcript of the portion of the recording requested or have the party offering the recording to provide an exact identifiable portion of the recording the party seeks to admit. The identities of any person speaking on the portion of the tape being introduced must be established. An ALJ may allow the opposing party to offer additional portions of a recording to establish the context, or to rebut, the recording.

COMPENSATORY EDUCATION OR REIMBURSEMENT

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education. Documents offered as evidence to support a request for reimbursement must be separated by vendor.

MOTIONS

MOTION TO RECESS

On June 5, 2024, Corona-Norco filed a motion to recess on June 19, 2024, as a national holiday. The motion was filed more than three business days before the PHC and was timely filed. Student did not oppose the motion. While June 19, 2024 is not a recognized OAH holiday, upon consideration, the motion is granted.

MOTION TO CONTINUE THE UNEXPEDITED PHC AND HEARING

At the PHC, the parties discussed the July 1, 2024 unexpedited PHC and July 9, 2024 unexpedited due process hearing dates. The July 9, 2024, expedited hearing date conflicts with the July 9, 2024 unexpedited hearing date. The expedited hearing will take priority and the unexpedited hearing dates will be continued to allow for the expedited hearing to be completed and the Decision issued. The unexpedited prehearing conference will be August 16, 2024, at 10:00 a.m. The unexpedited hearing will be August 27, through 29, 2024, starting at 9:30 a.m.

MOTION TO LIMIT EXPEDITED AND NON-EXPEDITED ISSUES

On June 5, 2024, Corona-Norco filed a motion to limit Student's issues in both the expedited and unexpedited due process hearings. On February 6, 2024, Corona-Norco's governing board approved a settlement agreement between the parties which contained a waiver of all education claims releasing Corona-Norco from the 2023-2024 school year up to February 6, 2024. On November 30, 2023, Student was suspended for carrying a knife at school. At the Student's December 6, 2023 IEP team meeting, the IEP team recommended expulsion. In the settlement agreement, Corona-Norco agreed to place his suspension on hold, and implement his IEP at a different middle school. On May 22, 2024, Student filed the due process request. Corona-Norco seeks to limit the issues from February 6, 2024 to May 22, 2024, the date Student filed the due process request.

Student asserted she did not receive the settlement agreement until the June 10, 2024 PHC and was given leave to respond by June 12, 2024, by 5:00 p.m. Student timely filed her opposition. Student does not dispute the existence of the settlement and waivers. Rather, Student asserted the settlement agreement is invalid because Parents

were not represented by counsel when they entered into the settlement agreement. Student asserts the settlement agreement should have been translated into Spanish.

For the expedited hearing, the March 12, 2024 manifestation determination is not affected by the settlement agreement.

For the non-expedited hearing, the time frame of the issues will be limited to February 6, 2024, the date the board approved the settlement agreement, to May 22, 2024, the date of filing. The settlement agreement was translated into Spanish and signed by the parties. Parents admitted they had the right to consult an attorney, and knowingly entered into the settlement agreement voluntarily without coercion or duress. Parents declared they read the document and understood its terms.

MOTION TO DISMISS NON-IDEA CLAIMS

In Corona-Norco's June 3, 2024 response to Student's complaint, and at the PHC, Corona-Norco requested Issue 2 of the complaint be dismissed because the claims were not brought under the IDEA. At the PHC, Student did not object to those claims being dismissed. Issue 2 in the due process complaint is dismissed.

STIPULATIONS

Stipulations to pertinent facts, contentions, resolutions and authenticity and admissibility of documents are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in writing prior to the start of the hearing.

CONDUCT OF PARTICIPANTS AND HEARING ROOM DECORUM

All participants to the videoconference should observe the same decorum as in an in-person due process hearing. Participants must conduct themselves in a

professional and courteous manner at all times. Cellular phones, telephones and computer notifications must be shut off or set to silent during the hearing unless the ALJ grants permission otherwise. Participants should appear from a private location, unless otherwise ordered. Participants should take reasonable efforts to minimize background noise and maintain adequate room lighting. Use of virtual background images are at the discretion of the ALJ. Witnesses are prohibited from reading exhibits, documents, notes, text messages, telephones or computers while testifying, unless permitted to do so by the ALJ. The parties, their representative and witnesses are prohibited from passing notes to, exchanging electronic messages with, or signaling the witness in any way while the witness is testifying.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

A Spanish language interpreter is needed. OAH will provide the interpreter.

Neither party has requested a reasonable accommodation. A party or participant in this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable accommodation is available on OAH's website at: <https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Request-Reasonable-Accommodations-for-OAH-Legal-Proceedings>.

HEARING OPEN TO THE PUBLIC

The hearing is open to the public. Special education hearings are closed to the public unless a student requests the hearing to be open to the public.

An ALJ may restrict attendance because of the physical limitations of the hearing facility or take other action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., Tit. 1, § 1030.) Government Code, section 11425.20 empowers the ALJ to order an open hearing to be closed or make other protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the case.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

ORDER

1. Corona-Norco's motion to recess the hearing on June 19, 2024 is granted.
The expedited due process hearing will be held on June 18 and 20, and July 9, 2024, and shall continue day by day as needed.
2. Corona-Norco's motion to limit issues is granted. Issues in the unexpedited due process hearing will be limited to February 6, 2024, through the date of filing.

3. The parties' request to continue the unexpedited due process hearing is granted. The unexpedited prehearing conference will be held on August 16, 2024, at 10:00 a.m., and the unexpedited due process hearing will be held on August 27, through 29, 2024.
4. Issue 2 of Student's complaint is dismissed as outside of OAH's jurisdiction.

Deborah Myers Cregar

Deborah Myers-Cregar

Administrative Law Judge

Office of Administrative Hearings