BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020010925

ORDER FOLLOWING PREHEARING CONFERENCE; ORDER REGARDING RESOLUTION SESSION FOR NON-EXPEDITED MATTER

On February 10, 2020, Administrative Law Judge Judith L. Pasewark, Office of Administrative Hearings, held a telephonic prehearing conference. The Administrative Law Judge is called an ALJ; the Office of Administrative Hearings is called OAH; and a prehearing conference is called a PHC.

Mother made no appearance on behalf of Student. The ALJ called the telephone number provided by Mother three times between the scheduled PHC time of 3:00 p.m. and 3:15 p.m. No one answered the telephone nor was there any room left on the answering machine to leave a message. Given the history of this matter apparent in the prehearing motions and declarations of the parties, the ALJ held the PHC conference in

Mother's absence. Summer D. Dalessandro and Christopher J. Fernandes, Attorneys at Law, appeared on behalf of Corona-Norco Unified School District. Corona-Norco Unified School District is referred to as Corona-Norco. The PHC was recorded. Based upon discussion with the attorneys, the ALJ issues the following order:

LOCATION

The hearing shall take place on February 19 and 20, 2020, beginning at 9:30 a.m. on the first day, and 9:00 a.m. thereafter, and continue day to day at the discretion of the ALJ. The hearing will be held at Corona-Norco Unified School District located at 2820 Clark Avenue, Norco, California 92860.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

Counsel for Corona-Norco has verbally assured the ALJ that the facilities to be used for this case comply with the law and shall file the required certification of compliance no later than February 13, 2020 at 5:00 PM. Corona-Norco shall inform OAH within two days of the date of this Order if it is unable to provide facilities which comply with this Order.

Before the beginning of the hearing, Corona-Norco shall ensure that the hearing room is configured into a courtroom setting and shall contain:

- a table for Student and his representatives;

- a table for Corona-Norco's legal representative and special education representative;
- a table for the witness; and
- a table near an electrical outlet for the ALJ.

The same hearing room shall be used for each day of hearing and shall be available at least one hour before the beginning of the hearing each day. The hearing room shall be locked following the hearing each night. Corona-Norco shall ensure that the hearing room and access to it are in compliance with the all laws governing accessibility of government facilities to persons with disabilities.

ISSUES AND PROPOSED RESOLUTIONS

The issues at the expedited due process hearing, and proposed resolutions, as alleged in the complaint are:

ISSUES

1. Did Corona-Norco fail to comply with Title 20 United States Code section 1415(k)(1)(E) by:
   a. Failing to determine that Student's behavior on October 22, 2019 was caused by or had a direct and substantial relationship to Student's disability; or
   b. Failing to determine that Student's behavior on October 22, 2019 was a direct result of Corona-Norco's failure to implement Student's individualized educational program.

PROPOSED RESOLUTIONS

The resolutions requested by Student include:

1. an order overturning the findings of the manifestation determination review held on October 29, 2019;
2. an order requiring Corona-Norco to train its special education staff to understand its duty to implement Student's individualized education plan; and
3. compensatory education.

Corona-Norco filed its response to Student's complaint on February 6, 2020. (*M.C. v. Antelope Valley Unified School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

EXHIBITS

BINDERS

Exhibits shall be pre-marked and placed in three-ring binders before the hearing. Exhibit binders shall include a tab for each exhibit. Each binder shall contain a detailed table of contents which clearly identifies the tabs and documents. Binders should not be so full that the ALJ and witnesses cannot easily turn to the exhibit tabs and pages in the binders. Multiple binders may be submitted if necessary.

TAB AND PAGE NUMBERS

The parties must place a letter followed by a number on each tab to identify each exhibit. 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 Corona-Norco's exhibits. For example, S-1 means Student's exhibit tab 1 and D-1 means Corona-Norco's exhibit tab 1. Parties may either number each page within each tabbed exhibit or number each page in the binder consecutively beginning with the first page of the first exhibit through the last page of the last exhibit. For example, if there are 100 total

pages in the binder the first page of the first exhibit is 1 and the last page of the last exhibit in the binder is 100.

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 in the binders should be in chronological order.

Parties should include resumes or curriculum vitae for each witness who is expected to testify as an expert. Parties must exchange resumes not later than 24 hours before the witness is scheduled to testify and provide a copy to the ALJ before the witness testifies.

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

COPIES OF BINDERS

The parties must serve copies of their evidence binders on each other. This exchange is required by Education Code section 56505, subdivision (e)(7). Each party must bring two additional sets of their exhibit binders to the hearing. One set will be used by the ALJ, and the other set will be used by witnesses. The parties may not serve exhibits on OAH before the hearing.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

WITNESSES

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. Neither party will be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. Education Code, section 56505.1, subd. (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 February 13, 2020, to discuss the availability of witnesses, the order of witnesses and the length of witness testimony. The parties should attempt to eliminate duplicate exhibits from their binders. Parties may discuss whether they can produce a written stipulation stating basic facts to shorten the length of time needed for the hearing.

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.

WITNESS LISTS

The parties must provide a joint proposed witness list to the ALJ on the first day of hearing. The list should include dates and time estimates of expected testimony. In the event an agreement cannot be reached, each party shall prepare a separate written list. Corona-Norco 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 direct and cross-examination of 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 each witness.

SCOPE OF WITNESS EXAMINATION

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

TELEPHONIC TESTIMONY

Neither party has requested telephonic testimony.

Whether a witness may appear by telephone 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 telephone shall request permission to do so before the hearing. The party offering the witness must provide the witness with a complete set of exhibit binders from all parties before the witness testifies. The binders must be exact paper copies of all of each party's exhibits. Electronic copies are not acceptable. The party presenting the witness shall ensure the witness testifies from a private location with no other persons present. The party offering telephonic testimony shall ensure that the witness has telephone equipment that allows testimony at a volume that allows clear transmission of what the witness is saying, allows the witness' testimony to make a clear recording, and allows the witness to hear objections and rulings.

ELECTRONIC RECORDINGS

AUDIO RECORDING

Each party may make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon certain conditions. The conditions are:

- the OAH recording is the only official recording;
- the parties shall turn the 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;
- the recording device will be removed by the party recording during any recess where the party leaves the room;
- operation of the party's recording mechanism will not be allowed to delay the hearing;

- a parties' recording may not be given, provided or played to a witness, or potential witness; and
- the recording is subject to the same confidentiality as the due process hearing.

VIDEO RECORDING

No party, witness or anyone else may make any video recording of any part of the proceedings.

RECORDINGS AS EXHIBITS

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 recording requested. 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

On January 27, 2020, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH. Student named Corona-Norco as respondent(s). Student's complaint contained both expedited and non-expedited issues.

On February 6, 2020, Corona-Norco filed a filed a motion to (1) dismiss Student's complaint for failure to attend a resolution session; (2) strike irrelevant allegations contained in the complaint; and (3) sanctions. On February 6, 2020, Mother filed an opposition to Corona-Norco's motion. On February 6, 2020, Student filed a motion to require Corona-Norco to set a new date for resolution session. On February 7, 2020, Corona-Norco filed a reply to Student's opposition and request for a new resolution date.

On February 10, 2020, prior to the ruling on motions as part of the PHC, Corona-Norco withdrew that portion of its motion which requested dismissal of Student's complaint.

APPLICABLE LAW

A local educational agency is required to meet with the parents and Student's relevant Individualized Education Program team members within 15 days of receiving Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006). The meeting, called a resolution session, can be waived in writing by both parties or if they agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not attend the resolution session, and it was not waived, there is no due process hearing until the resolution session waived or held. (34 C.F.R. § 300.510(b)(3).) The respondent can request the case be dismissed after the 30-day period, if it documented reasonable

efforts to hold the resolution session and the parents did not attend. (34 C.F.R. §300.510(b)(4).)

For expedited hearings, a resolution meeting must occur unless the parents and the local educational agency agree to waive the resolution meeting or agree to use the mediation process. The resolution meeting must occur within seven days of receiving notice of the expedited due process complaint. (34 C.F.R. 300.532(c)(3).)

The 45-day timeline for the due process hearing starts the day after a resolution meeting, unless the parties agree in writing to waive the resolution meeting. (34 C.F.R. § 300.513(b) & (c).) If the Local Education Agency fails to hold the resolution meeting within 15 days of receiving notice of the due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. (34 C.F.R. § 300.510(b)(5).)

DISCUSSION

To comply with expedited hearing timelines, on January 29, 2019, Corona-Norco sent Mother a letter scheduling a resolution session on February 3, 2020. Mother did not respond to the letter or appear at the resolution session. Mother's failure to appear for resolution session is similar to her previous failures to appear in two prior OAH filings involving the same issues in OAH Case Number 2019110054, filed on October 31, 2019 and withdrawn by Student on November 22, 2019, and OAH Case Number 2019111029, filed on November 26, 2019 and withdrawn by Student on January 15, 2020. Corona-Norco has shown reasonable attempts to schedule a resolution session for the expedited hearing. In lieu of dismissal of the expedited issue, Corona-Norco has withdrawn its request to dismiss Student's complaint, and has elected to allow Student

to proceed to hearing on the expedited hearing in order to obtain finality to Student's expedited issue which occurred on October 29, 2019.

Student's request to reset a resolution session is granted as to the non-expedited issue of Student's complaint. Although Corona-Norco has demonstrated good cause to dismiss Student's complaint in its totality, the 30-day statutory time frame provided for non-expedited issues has not yet expired. Therefore, Corona-Norco is ordered to schedule a resolution session on or before February 27, 2020, which shall be completed within the original 30-day timeline of Student's complaint. Absent good cause, in the event of Mother's failure to appear at the new resolution session, Corona-Norco may file a new or supplemental motion to dismiss the non-expedited issue of Student's complaint, which will comply with the 30-day timeline for dismissal.

Corona-Norco's motion to strike allegations contained in Student's complaint is denied. Student's complaint contains factual allegations and contentions which may or may not be admissible at hearing. Mother is advised that the issue involved in the expedited hearing is limited and irrelevant, immaterial, and slanderous opinions will not be admitted into evidence.

Corona-Norco's motion for sanctions is reserved until the completion of both the expedited and non-expedited hearings for further consideration, or until dismissal of Student's complaint, in its totality, with prejudice.

All existing dates for the non-expedited hearing remain in full force and effect.

No further prehearing motions for the expedited hearing are pending or contemplated. Any motion that was not filed three business days before the PHC, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

CONDUCT OF COUNSEL AND HEARING ROOM DECORUM

Counsel, all parties, and all witnesses must conduct themselves in a professional and courteous manner at all times. Cellular phones must be shut off or set to vibrate during the hearing unless the ALJ grants permission otherwise.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

Neither party has requested an interpreter or indicated a need for special accommodations.

A party or participant to 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/Accommodations-at-OAH.

HEARING OPEN TO THE PUBLIC

At Student's request, the hearing will be open to the public. The parties, should inform the ALJ if Student expects any group or members of the press to be present during the hearing. No one may record any part of the hearing, and all electronic devices must be off or silent in the hearing room unless permitted by the ALJ.

Parents should be aware that by opening the hearing, District employees who are not witnesses, or other people that Parents might not know, may attend the hearing. Persons disclosed on either party's witness list, with the exception of District's

representative, will be excluded from the hearing until their testimony has been completed. The parties shall confer as to the seating requirements for members of the public. The parties shall immediately notify each other and OAH if they are aware that there will be media attending the hearing.

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 particular case. The ALJ may also exclude persons whose actions impede the orderly conduct of the hearing, 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. (Tit. 1, Cal. Code Regs., § 1030.)

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 at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 p.m. 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.

IT IS SO ORDERED.

DocuSigned by:
Judith Pasewark
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Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings