BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

LEMOORE UNION ELEMENTARY SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2022080193

ORDER DENYING STUDENT'S MOTION TO RESTORE HEARING ISSUE'S ORIGINAL WORDING

APRIL 20, 2023

Lemoore Union Elementary school district filed a request for due process hearing with the Office Of Administrative Hearings, called OAH, on August 5, 2022. On January 31, 2023, Lemoore amended its complaint to extend the case to consider the individualized educational program amendments through January 30, 2023. The original wording of the issue stated that the IEP in question was "for the 2022-23 school year." The issue was slightly restated and the phrase "for the 2022-23 school year" was eliminated from the issue for clarification.

On April 17, 2023, the undersigned held a prehearing conference in this matter. During that prehearing conference, the fact that the issue might be clarified was

discussed and the parties were instructed to raise any concerns that the issue did not capture discussions during the prehearing conference or reflect the allegations in the complaint, and make any concerns known in writing prior to the first day of hearing citing to the sections of the complaint that supported their position. Similarly, the prehearing conference order directed the parties to promptly file notice in writing prior to the first day of hearing if they believed an issue had been misstated or improperly omitted.

On April 18th 2023, student filed a "Motion to Clarify/Correct the Issue in Dispute." Student argues that a party requesting the hearing is limited to the issues alleged in the complaint unless the other party has consented. Student cites to "28 USC section 1415(f)(3)(b)" (*sic);* Ed. Code §56502 subdivision (i); and *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62, without additional analysis. Student's motion requests that the issue "reflect correctly the issue and the proposed resolution as stated in Petition's (*sic*) amended complaint." Lemoore opposed the motion on April 19, 2023. Student replied to Lemoore's opposition brief on April 20, 2023.

APPLICABLE LAW

Special education laws require that when a child is receiving special education and related services, a school district has an obligation to file for a due process hearing to seek permission to provide a service that is a necessary element of a free, appropriate public education if a parent refuses to consent to the provision of the service. (20 U.S.C 1415(f); Ed. Code 56346(f); I.R. v. Los Angeles Unified School District (9th Cir. 2015) 805 F. 3d 1164, 1168.) California Education Code section 56501 allows a school district to file a complaint when when "there is a disagreement between a parent or guardian and a local educational agency regarding the availability of a program appropriate for the child . . ." (Ed. Code, § 56501, subds. (a)(1), (4).)

In evaluating an IEP, it is not appropriate to critique it with the benefit of hindsight. Rather, it must be evaluated to determine whether the goals and methods proposed were, objectively, reasonably calculated to ensure that the child would receive educational benefit when the IEP was developed. An IEP is "a snapshot, not a retrospective." (*Anchorage School District v. M.P.* (9th Cir. 2012) 689 F. 3d 1047, 1057, citing *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

Administrative Law Judges are permitted to clarify and reorder issues so long as no substantive change is made in the issue to be heard during the hearing. Reorganization and restatement of the issues is permitted so long as the merits of all issues presented are addressed. (*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.)

ISSUE CLARIFICATION

The Administrative Law Judge's clarification of the issue does not change the substance of the issue Lemoore pled. Nor does it add issues to the complaint to which Student has not consented. Instead, it slightly restates the issue to clarify how it must be analyzed given the nature of the claim.

In this case, Lemoore believes the most current IEP offered to Student would have given her a free, appropriate public education. Parent disagreed and refused consent. Lemoore seeks a determination that their IEP offer constituted a free, appropriate public education or FAPE, such that OAH would issue an order allowing the district to implement it without parental consent. This case will only consider whether the IEP offer met the procedural and substantive requirements of the Individuals with Disabilities Education Act, or IDEA, when it was offered; and then, as of the date of the hearing, whether it continues to meet Student's needs such that Lemoore may

implement it without parental consent. The issue has been properly restated to clarify what will be analyzed in this case.

The elimination of the phrase "for the 2022-23 school year" does not change the issue, as OAH does not have jurisdiction to consider whether the IEP would meet Student's needs at a date beyond the hearing, because there is no way of proving or disproving what Student's needs would be in the future with certainty. Facts and circumstances could change after the hearing, altering whether the offer remained appropriate.

This is not a Student filed case. Student, twice, asserts her reservation of rights for "issues and periods not covered by the complaint." Student has every right to file whatever claims she deems meritorious. Thus far, however, no Student claims have been filed. As discussed in the prehearing conference, in this case, the only issue being considered is the one filed by Lemoore. The case will be strictly limited to consideration of the issues of whether the offer made constituted FAPE, and whether, at the time of hearing, as the offer stands, it would be appropriate to implement it without parental consent.

Student's request to restore the issue to its original wording is denied.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings