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 GRANTING REQUEST FOR RECONSIDERATION AND GRANTING REQUEST FOR CONTINUANCE

MARCH 7, 2023

On August 5, 2022, Lemoore Union Elementary School District filed a request for due process hearing with the Office of Administrative Hearings, referred to as OAH, naming Student as respondent. Between August 18, 2022 and December 5, 2022 Parent was granted three continuances to secure counsel. The third order granting the continuance stated no further continuances for the purposes of securing counsel would be granted. At the prehearing conference on January 27, 2023, Parent requested another continuance as she had not been able to find an attorney. That request was denied.

On January 31, 2021 OAH granted Lemoore's motion to amend its complaint. As a result, pursuant to the requirements of the Individuals with Disabilities Education Act or IDEA, timelines to complete the hearing were reset. (20 U.S.C. § 1415 (c)(2)(E)(ii).) The hearing was scheduled for March 7, 2023.

On March 2, 2023, Parent filed another request for continuance stating that Disability Rights California had "indicated its availability" to help her if the hearing was continued to April 24, 2023 or after. No confirmation from an attorney was attached and no notice of representation filed. On March 2, 2023, the undersigned Administrative Law Judge issued an order denying Student's request for continuance.

On March 6, 2023, at approximately 2:15 PM, Parent filed another request for continuance. This request was accompanied by a letter from Senior Disability Rights California Attorney Taymore Ravandi stating that Disability Rights California would represent Student in the case, if the case could be moved to a date of April 24, 2023, or later. Ravandi stated that Disability Rights California had no resources available to represent Student prior to that date. OAH treated this motion as a request for reconsideration of the March 2, 2023 order, vacated the first day of hearing on March 7, 2023, and directed Lemoore to file any reply by 9:00 AM, March 7, 2023.

Lemoore filed a timely opposition, stating that:

- Student did not support the latest motion with sworn declarations;
- No Notice of representation has been filed;
- No proof of unavailability was provided;
- Lemoore is entitled to efficient determination of special education disputes;

- Lemoore is obligated to resolve the long-standing dispute with parent without unnecessary delay;
- This is the fifth request for continuance in this case;
- Continuance will delay the determination of Student's educational program beyond the date of her next annual IEP, prejudicing Student;
- Lemoore has spent "an ongoing inordinate amount of legal fees" since August 2022 preparing for the due process hearing which has been continued four times previously;
- The request is untimely. The request should have been filed prior to the February 24, 2023 prehearing conference.
- Parent has neither served evidence on Lemoore, nor met and conferred as previously ordered;
- The motion does not establish "anything new or different" from the motion filed March 2, 2023 justifying reconsideration of the prior order.

REQUEST FOR RECONSIDERATION

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time, generally within ten days. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

The inclusion of a letter from Disability Rights California confirming its intention to represent Student, should OAH agree to continue the hearing to April 24, 2023 or after, offers new facts, circumstances or law to support reconsideration. Although the

letter is not a sworn declaration, it is signed by a member of the bar. OAH accepts Ravandi's representations as to his office's resources as an officer of the court. The motion for reconsideration is granted.

REQUEST FOR CONTINUANCE

A due process hearing must be conducted, and a decision rendered, within 45 days of receipt of the due process notice, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

This case pushes the boundaries of OAH's consideration of continuance requests. Parent has made and been denied several requests for continuance after the December 5, 2022 order stating no further continuance requests would be granted to seek counsel. However, circumstances have changed since that order was issued.

First, Lemoore reset the timelines by filing a request to amend its complaint in late January of 2023. While Lemoore characterizes this as another request for continuance, counting it as one of the five noted in its opposition, it was a delay that was chosen by Lemoore. Lemoore is entitled to efficient resolution of its claims. In this case, however, it chose to reset the timelines of the case in late January of 2023 by adding new claims to those previously filed. Absent the request to amend the complaint, the case would have gone to hearing on February 7, 2023.

Second, unlike prior requests for continuance, Student's March 6, 2023 request for continuance demonstrates counsel has been secured. Ravandi's representation that Disability Rights California will provide representation for the case if the hearing is continued to April 24, 2023 or after is accepted based on his status as an officer of the court. Assertions of other unsubstantiated facts in the supplied letter have not been considered in the deliberations regarding this motion, such as those alleging a disability on the part of Parent. Furthermore, Disability Rights California should not presume that future requests for continuance to OAH will be granted without details regarding unavailability.

While the request is untimely, in cases where Parent has secured counsel, and no prejudice has been demonstrated by the additional delay, the balance of the equities weighs in favor of Parent having counsel, especially when Lemoore is represented. Lemoore further argues that Parent has not complied with prehearing requirements. While the failure to comply with orders is not excused, it is expected that situation will immediately improve with representation.

Lemoore has offered no evidence of prejudice caused by the continuance. It refers to inordinate legal fees, but did not offer evidence of amount. It speaks of prejudice to Student, but that prejudice has not been established. Whether the IEP offered provided FAPE is the subject of the request for due process hearing.

ORDER

1. Student's request for reconsideration is Granted.
2. Student's request for continuance is Granted.
3. A prehearing conference will be held on April 17, 2023 at 1:00 PM. Prehearing conference statements and all motions shall be due three business days prior

to the date of the prehearing conference. Participant information sheets for mediation and prehearing conferences must be filed two business days prior to the date of the scheduled event.

4. The hearing shall be held on April 25, 26 and 27, 2023. The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed, Mondays and Fridays included, at the discretion of the Administrative Law Judge. The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses, if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness.
5. There shall be no further continuances granted in this case absent sworn evidence of an emergency preventing the attendance at hearing by an attorney, party, or other hearing participant.
6. The parties are encouraged to discuss settlement prior to the date of the prehearing conference.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings