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 DENYING REQUEST TO RESCIND CONTINUANCE

MARCH 20, 2023

On March 7, 2023, the undersigned Administrative Law Judge issued an order granting self-represented Student another continuance, as Parent had secured counsel. On March 10, 2023, Lemoore Union Elementary School District filed a Motion for reconsideration of that ruling. OAH did not receive a reply to the motion from Student.

APPLICABLE LAW

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.)

MOTION FOR RECONSIDERATION

Lemoore was given a shortened amount of time to respond to Student's last-minute request for reconsideration of the continuance denial. That continuance was granted. While Lemoore's request for reconsideration of that order does not include any information that was unavailable at the time their opposition was filed, reconsideration is granted to consider the expanded information provided.

CONTINUANCE

PROCEDURAL FAIRNESS

The overriding considerations in any order contemplating a continuance of hearing in an IDEA case are procedural fairness and prejudice to the opposing party. For purposes of this reconsideration, the undersigned accepts as true all representations by Lemoore regarding prior inquiries from potential counsel for Student regarding this case. The primary difference here, and the reason the prior order granting the continuance will not be disturbed, is that in the most recent instance, Student has presented assurance of representation at hearing. It is noted that, on the same day Lemoore filed its request for reconsideration of the continuance, Student's new counsel filed notice of Disability Rights California's representation.

In each of the prior instances described by Lemoore, except one, the potential attorneys identified were inquiring about the possibility of representing Student in the

case. They had not committed to representation. In the other instance Student requested a continuance to be represented by an attorney familiar with the case. That attorney withdrew prior to hearing. It is notable that Student's March 2, 2023 request for continuance was denied because the representation regarding Disability Rights California's intentions were unclear. It was only when Disability Rights California confirmed its intention to represent that Student's request for continuance was granted.

Lemoore offers no persuasive authority establishing that Student should be foreclosed from having counsel at hearing because of the delay. Lemoore cites a few selected quotes from American Jurisprudence articles, and civil cases that are not described or analogized to this situation in any way. Civil procedure rules are not generally applicable in this forum. This is an administrative hearing. Lemoore also cites to some orders from prior special education cases. However, again, only selected information about the cases is offered and no analysis analogizing the cases to the one under consideration were presented. Special education cases are very fact specific.

Lemoore reiterates arguments made in its earlier opposition to Student's request for reconsideration of the continuance denial. Those will not be addressed for a second time in this order. The undersigned's determinations of those arguments has not changed.

PREJUDICE

Lemoore raises two elements of prejudice with additional facts which have been considered here. Lemoore expresses concern that Student has been on home/hospital instruction since August of 2020 with the program's limited five hours of instruction per week. Lemoore filed this case on August 5, 2022.

It is reasonable to conclude that the case proceeds because Student questions the adequacy of Lemoore's FAPE offer since the case did not settle during mediation. Lemoore's case asks OAH to determine whether its offer constitutes FAPE. Lemoore has not demonstrated prejudice to the Student based solely on the fact that Student receives education in the home/hospital program. The adequacy of the offered individualized educational program or IEP has not been established. The IEP's adequacy is the subject of this hearing.

Lemoore also raises concerns regarding its financial prejudice due to the hearing delay, the need to re-notice its witnesses, and to re-prepare for hearing when it was ready to begin on March 7, 2023. Lemoore has not quantified this prejudice but excuses its lack of quantification by arguing that no amount would have been persuasive. Absent evidence of the prejudice, the undersigned is unable to address that contention.

Finally, Lemoore mentions in a single sentence that the continuance will impact a witness who is scheduled to be on vacation between April 25 to 28th. No declaration from the witness was provided. The lack of availability was confirmed in Rho-Ng's declaration, and it is accepted as a representation by an officer of the court. The witness was not identified and neither the expected length of testimony nor the likelihood of this witness being called was discussed. Regardless, if the witness is required for the hearing, arrangements for him to testify the following week can be made. Lemoore's most recent hearing estimate was six days.

CONCLUSION

As stated in the prior order, when balancing the equities in this matter, it is reasonable to continue the case a few more weeks to allow an unrepresented Student to have counsel in a case brought against her by a school district. Student should have the

opportunity to present her concerns about the free, appropriate public education, or FAPE, offer at issue in this case with the assistance of an attorney, when Lemoore has the assistance of an attorney in presenting its case. All dates set in this matter are confirmed.

As stated in the prior order, the parties are reminded: There shall be no further continuances granted in this case absent sworn evidence of an emergency preventing the attendance at hearing by a currently participating attorney, party, or other indispensable hearing participant. 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