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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
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8 A.A. and L.A. on their own behalf and on
9 behalf of A.A. Jr.,

10 Plaintiffs,

11 v.

12 CLOVIS UNIFIED SCHOOL DISTRICT,
13 CLOVIS SELPA, MARY BASS in her
14 personal and official capacities as SELPA
ADMINISTRATOR and DIRECTOR OF
SPECIAL EDUCATION for CLOVIS USD
and DOES 1-10,

15 Defendant.

CASE NO. 1:13-CV-1043-AWI-SMS

ORDER GRANTING PLAINTIFFS'
MOTION FOR EXTENSION OF TIME TO
CONDUCT DISCOVERY

Docs. 66, 69

16
17 Plaintiffs A.A. and L.A., on behalf of A.A. Jr. (collectively "Plaintiffs") bring this action
18 against Clovis Unified School District ("CUSD"), the Clovis Special Education Local Plan Area
19 ("SELPA"), Mary Bass, in her official capacity as SELPA Administrator and Director of Special
20 Education for CUSD, and Does 1-10 (collectively "Defendants"). Plaintiffs allege that Defendants
21 failed to provide A.A. Jr. an appropriate education as required by federal law, and discriminated
22 against him on the basis of his disability in violation of federal and state law.

23 Plaintiffs initiated this action in July 2013. Doc. 1. The Court extended the initial
24 scheduling conference several times due to Defendants' motion to dismiss pending under
25 submission. Docs. 30, 32, 34, 35. A scheduling order setting discovery deadlines was entered in
26 February 2015. Doc. 48. Pursuant to that order, non-expert discovery was due by January 4, 2016.
27 Plaintiffs' motion for an extension of time to conduct discovery, filed on January 12, 2016, is
28 presently before the Court. Docs. 66, 69.

1 I. RULE 16

2 Federal Rule of Civil Procedure Rule 16 states that a “schedule may be modified only for
3 good cause and with the judge’s consent. Fed. R. Civ. P. 16(b)(4). The “good cause” standard
4 “primarily considers the diligence of the party seeking amendment.” *Johnson v. Mammoth*
5 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). However “the existence or degree of
6 prejudice to the party opposing the modification might supply additional reasons to deny a
7 motion.” *Id.* “The schedule may be modified ‘if it cannot reasonably be met despite the diligence
8 of the party seeking the extension.’” *Zivkovic v. Southern California Edison Co.*, 302 F.3d 1080,
9 1087 (9th Cir. 2002) (*quoting Johnson*, 975 F.2d at 607).

10 II. DISCUSSION

11 Here, Plaintiffs have met their burden to show good cause to modify the scheduling order.
12 Defendants argue that Plaintiffs have not been diligent in pursuing their claims in this action.
13 Plaintiffs did not serve their first set of written discovery until August 2015, two years after
14 commencing the action, Plaintiff did not file this motion to extend the discovery deadlines until
15 the deadlines had already passed. However, these delays are excusable.

16 The operative complaint in this action was not filed until July 2015, after two motions to
17 dismiss and a motion to supplement were litigated over the course of almost two years. Doc. 55.
18 The parties allege that, since then, Defendants have changed counsel and requested extensions,
19 and the parties have met and conferred among each other and with the Court. During an informal
20 telephonic conference with the Court on December 9, 2015, Plaintiffs raised the issue of the
21 imminent discovery deadline. Doc. 62. Plaintiffs’ counsel allege that the Court advised “that we
22 should table [the issue of scheduling] until the following month” when a further informal
23 conference was to be held. Doc. 66-1 at 5:3-6. Plaintiffs’ counsel interpreted that to mean that the
24 pending deadlines were “off the table” until the discovery matters were resolved.” Doc. 66-1 at
25 5:5-8. The Court did not issue an order vacating or amending the scheduling order.

26 Plaintiffs’ misunderstanding is reasonable. A further informal conference was held on
27 January 7, 2016, after which the parties were directed to meet for an in-chambers conference to
28 address continuing discovery issues. Docs. 64, 65. The Court observed in the in-chambers

1 discovery conference that both parties appear to be very unclear and in disagreement as to what
2 issues remain in this action and, thus, what issues are discoverable. See Doc. 70.

3 An extension of discovery deadlines may be inconvenient, but Defendants have not
4 demonstrated that an extension could cause them prejudice. It would be extremely severe for the
5 Court to deny Plaintiffs' request given the parties' confusion over the remaining issues in this
6 action, Plaintiffs' reasonable misunderstanding of the Court's comments regarding the discovery
7 deadlines, the complexity of this case, Plaintiff's sufficient diligence in pursuing their action,
8 including gathering discovery, in this Court, the limited amount of discovery conducted thus far,
9 and the lack of prejudice caused to Defendants by the extension. There have been no prior
10 modifications of the scheduling order. Plaintiffs request a six-month extension. This is reasonable
11 amount of time and will be granted.

12 III. ORDER

13 For the foregoing reasons, Plaintiffs' motion for an extension of time to conduct discovery
14 is GRANTED as follows: The parties are ordered to complete all discovery pertaining to non-
15 experts on or before August 19, 2016, and all discovery pertaining to experts on or before
16 September 23, 2016. All pre-trial and trial dates set forth in the February 26, 2015 scheduling
17 order are VACATED. The Court will issue an amended scheduling order. Counsel are to meet and
18 confer regarding said proposed amended scheduling and notify Courtroom Deputy Michelle
19 Rooney in writing on or before March 4, 2016 of their joint acceptance or alternative suggestions.

20
21 IT IS SO ORDERED.

22 Dated: February 17, 2016

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE