

1 **I. Background**

2 A.V. asserts he has Attention Deficit Hyperactivity Disorder, Combined Type. (Doc. 7 at 2).
3 He alleges he “is a disabled student under Section 504 of the Rehabilitation act and has a suspected
4 disability under the IDEA.” (*Id.*) Plaintiff asserts he was “was consistently and regularly disciplined
5 for behavioral incidents but the District failed to record his classroom removals.” (*Id.* at 3) For
6 example, Plaintiff contends that during the 2014-2015 school year, he “had been removed from school
7 or classes in excess of 10-days due to behavioral issues” by October 2014. (*Id.*)

8 Plaintiff participated in two special education administrative hearings, and contends
9 “Defendant District failed to provide an assessment plan within statutory guidelines, failed to provide
10 parent with procedural rights, failed to translate documents and failed to hold a legally compliant
11 Manifestation Determination under both Section 504 and the IDEA.” (Doc. 7 at 3) He now appeals
12 the decisions rendered by the administrative law judge.

13 Plaintiff reports that Gloria Zepeda attended IEPs and Early Resolution Sessions as an
14 employee of Plaintiff’s counsel, Nicole Amey. (Doc. 72) According to Plaintiff, Ms. Zepeda “is an
15 advocate and translator for plaintiffs’ attorney and worked in that capacity during due process hearings
16 and during this instant lawsuit.” (*Id.* at 2) After Defendant scheduled the deposition of Ms. Zepeda,
17 Plaintiff’s counsel requested that Defendant agree to not question Ms. Zepeda about conversations she
18 had with Plaintiff or Plaintiff’s mother while the attorney was present or other information protected
19 by the attorney-client privilege. (*See id;* *see also* Doc. 80 at 2) However, the parties were not able to
20 come to a formal agreement. Accordingly, Plaintiff seeks a protective order regarding the scope of the
21 deposition, and prohibiting questions “on communications or impressions made from conversations
22 with the plaintiffs.” (Doc. 72 at 2)

23 Defendant filed its objection to the motion on June 3, 2016. (Doc. 80) In addition, in the
24 opposition, the Defendant notified the Court of an additional dispute related to the deposition of
25 Plaintiff. (*See id.* at 3) Because raising the issue is not appropriate in the opposition, the Court
26 declines to consider the dispute related to the deposition of Plaintiff A.V., and instead focuses solely
27 on the issue addressed by both parties and raised by Plaintiff in his motion: the scope of Ms. Zepeda’s
28 deposition.

1 **II. Legal Standard**

2 The Court may issue a protective order to shield any party from undue burdens arising from
3 discovery. Fed. R. Civ. P. 26(c). Specifically, Rule 26 provides:

4 The court may, for good cause, issue an order to protect a party or person from
5 annoyance, embarrassment, oppression, or undue burden or expense, including one or
6 more of the following:

- 7 (A) forbidding the disclosure or discovery;
- 8 (B) specifying terms, including time and place, for the disclosure or discovery;
- 9 (C) prescribing a discovery method other than the one selected by the party seeking
10 discovery;
- 11 (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or
12 discovery to certain matters;
- 13 (E) designating the persons who may be present while the discovery is conducted;
- 14 (F) requiring that a deposition be sealed and opened only on court order;
- 15 (G) requiring that a trade secret or other confidential research, development, or
16 commercial information not be revealed or be revealed only in a specified way; and
- 17 (H) requiring that the parties simultaneously file specified documents or information
18 in sealed envelopes, to be opened as the court directs.

19 Fed. R. Civ. P. 26(c). The Ninth Circuit determined this Rule provides the Court with “extensive
20 control” over the discovery process, and “authoriz[es] courts to make any order which justice requires”
21 to protect the parties. *United States v. CBS, Inc.*, 666 F.2d 364, 369 (9th Cir. 1982) (internal quotation
22 marks omitted).

23 **III. Discussion and Analysis**

24 As an initial matter, Plaintiff does not object to the deposition of Ms. Zepeda in its entirety, but
25 seeks to prevent Defendant from asking questions that would violate the attorney-client privilege. (*See*
26 *generally* Doc. 72) Accordingly, “Plaintiff seeks an order denying or limiting defendants’ deposition of
27 Gloria Zepeda and prohibiting the Defendant’s counsel from asking Gloria Zepeda about any
28 communications, theories of the case, investigations, communications with the attorney and
impressions of the case and observations made about the Plaintiffs.” (*Id.* at 4)

The purpose of the attorney-client privilege is to “encourage full and frank communication
between attorneys and their clients and thereby promote broader public interests in the observance of
law and administration of justice.” *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). To achieve
this purpose, “[c]lients must be able to consult their lawyers candidly, and the lawyers in turn must be
able to provide candid legal advice.” *United States v. Christensen*, 801 F.3d 970, 1007 (9th Cir. 2015).
The privilege therefore protects not only the lawyer’s provision of legal advice, “but also the giving of

1 information to the lawyer to enable him to give sound and informed advice.” *Upjohn*, 449 U.S. at 390.

2 The attorney-client privilege may be extended to a third party in limited circumstances, such as
3 where the attorney needs an interpreter to understand the client. *See United States v. Kovel*, 296 F.2d
4 918, 922 (2nd Cir. 1961) Defendant does not dispute that the attorney-client privilege applies to the
5 services provided by Ms. Zepeda as a Spanish-language interpreter between Plaintiff, his mother, and
6 their attorney. (*See Doc. 8 at 3*) To the contrary, Defendant agrees to “not inquire about direct and
7 indirect communications or observations” made by Ms. Zepeda. (*Id.*) However, Defendant maintains
8 it should not be required to produce a list regarding the “deposition topics or questions” in advance of
9 the deposition. (*Id.* at 2-3)

10 Indeed, the Federal Rules of Civil Procedure do not require advance disclosure of topics or
11 questions to be posed during the course of the deposition. It is sufficient that Defendant is precluded
12 from invading the attorney-client privilege.

13 **IV. Conclusion and Order**

14 As the parties agree, communications between plaintiffs and their counsel, which were
15 translated by Ms. Zepeda, as well as her observations during those meetings, are protected by the
16 attorney-client privilege.¹ Accordingly, Plaintiff has established good cause for a protective order that
17 prevents Defendant from posing questions to Ms. Zepeda regarding these communications and
18 observations. However, Plaintiff fails to demonstrate good cause to require Defendant from providing
19 in advance a list of the topics to be discussed or questions that will be asked at the deposition. Based
20 upon the foregoing, **IT IS HEREBY ORDERED**: Plaintiff’s motion for a protective order is
21 **GRANTED IN PART** as follows:

- 22 1. Defendant **SHALL NOT** question Gloria Zepeda regarding any communications made
23 between Plaintiff, Concepcion Varela and their counsel; or her observations and
24 impressions during the meetings in which she acted as an interpreter;
- 25 2. Plaintiff’s request for a list of all deposition topics and questions to be posed by
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27 ¹Thus, questions related to the substance of Ms. Zepeda’s personal knowledge which gave rise to her testimony at the
28 underlying administrative, are permitted. Likewise, questions related to meetings where Ms. Zepeda acted as an interpreter
but where she did not interpret for counsel, are permitted.

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Defendant is **DENIED**; and

3. The parties are **ORDERED** to meet and confer regarding the dispute related to the deposition of Plaintiff. If the parties are unable to come to an agreement, they **SHALL** file a written request for a telephonic conference with Magistrate Judge Thurston prior to filing a properly noticed motion regarding the discovery dispute.

IT IS SO ORDERED.

Dated: June 20, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE