

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

J.M., a minor, by and through his guardian
ad litem Farrah McWilliams,

Plaintiff,

v.

TULARE CITY SCHOOL DISTRICT,

Defendant.

Case No. 1:21-cv-01766-AWI-EPG

**ORDER GRANTING FARAH
MCWILLIAMS’ APPLICATION FOR
APPOINTMENT AS GUARDIAN AD
LITEM FOR J.M., A MINOR**

(ECF No. 10)

On December 14, 2021, J.M., a minor, filed this action against the Tulare City School District asserting claims under the IDEA, Section 504, and Title II of the Americans with Disabilities Act. (ECF No. 1). Before the Court is Farrah McWilliams’ application to be appointed as guardian ad litem for J.M. (ECF No. 10.) For the following reasons, the Court will grant the application.

I. LEGAL STANDARDS

Under Federal Rule of Civil Procedure 17(c)(2), “[a] minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem.” Fed. R. Civ. P. 17(c)(2). Local Rule 202 further states, in pertinent part:

- (a) **Appointment of Representative or Guardian.** Upon commencement of an action or upon initial appearance in defense of an action by or on behalf of a minor or incompetent person, the attorney representing the minor or incompetent person shall present (1) appropriate evidence of the appointment

1 of a representative for the minor or incompetent person under state law or (2) a
2 motion for the appointment of a guardian ad litem by the Court, or, (3) a
3 showing satisfactory to the Court that no such appointment is necessary to
4 ensure adequate representation of the minor or incompetent person. See Fed.
5 R. Civ. P. 17(c).

6 . . .

7 (c) **Disclosure of Attorney's Interest.** When the minor or incompetent is
8 represented by an attorney, it shall be disclosed to the Court by whom and the
9 terms under which the attorney was employed; whether the attorney became
10 involved in the application at the instance of the party against whom the
11 causes of action are asserted, directly or indirectly; whether the attorney
12 stands in any relationship to that party; and whether the attorney has received
13 or expects to receive any compensation, from whom, and the amount.

14 E.D. Cal. L.R. 202.

15 The decision to appoint a guardian ad litem “must normally be left to the sound discretion
16 of the trial court.” *United States v. 30.64 Acres of Land*, 795 F.2d 796, 804 9th Cir. 1986). Fit
17 parents are presumed to act in the best interests of their children. *Troxel v. Granville*, 530 U.S. 57,
18 66 (2000); *Doe v. Heck*, 327 F.3d 492, 521 (7th Cir. 2003). Generally, there is no inherent
19 conflict of interest when a minor is represented by a parent who is a party to the lawsuit and who
20 has the same interests as the child. *Burke v. Smith*, 252 F.3d 1260, 1264 (11th Cir. 2001); *see also*
21 *Brown v. Alexander*, 2015 WL 7350183 at *2 (N.D. Cal. Nov. 20, 2015) (“In general, a parent
22 who is also a party to the lawsuit is presumed to be a suitable guardian ad litem, and so the court
23 often appoints the parent as guardian ad litem upon receipt of an ex parte application without
24 exercising much discretion.”) (citation omitted).

25 **II. SUMMARY OF APPLICATION**

26 The application states that J.M. is a minor child and was born on July 31, 2016. Mrs.
27 McWilliams is J.M.’s mother, primary caretaker, and education rights holder. Mrs. McWilliams
28 resides in Tulare, California, and is fully competent to act as J.M.’s guardian ad litem. Mrs.
McWilliams does not have any interests adverse to J.M., is not connected in business with the
adverse party, and is fully competent and responsible to prosecute the proposed action for J.M.
(ECF No. 10 at 1.)

Mrs. McWilliams has retained Daniel Shaw to represent J.M. in this matter. Mrs.
McWilliams retained the Shaw Firm to appeal Office of Administrative Hearings Case No.

1 202103770 in part, as well as to raise additional claims under Section 504 and Title II of the
2 American's with Disabilities Act. (ECF No. 10 at 1-2.) Mrs. McWilliams is solely responsible for
3 paying attorneys' fees and costs. Mrs. McWilliam agreed to pay a retainer upfront. The Shaw
4 Firm will bill between \$150-\$500 dollars per hour, depending on the attorney or paralegal
5 working on the case. J.M. is a minor and cannot contract with a law firm, and will never be
6 responsible to pay any attorney's fees or costs associated with this case. The Shaw Firm will be
7 compensated in this matter if J.M. is deemed the prevailing party. The Shaw Firm bills on an
8 hourly basis and is not taking any percentage of the compensatory damages sought in this case.
9 All causes of action include prevailing party attorneys' fees. Mr. Shaw did not become involved
10 in this matter at the instance of the defendant and he stands in no relationship to any party, other
11 than as the attorney for Mrs. McWilliams and J.M. (*Id.* at 2.)

12 Mr. Shaw also filed a declaration in support of the application. (ECF No. 10-1.) Mr.
13 Shaw's declaration explains that the vast majority of his firm's clients cannot afford their fees. As
14 a result, The Shaw Firm's contracts are set up so that clients do not pay fees unless The Shaw
15 Firm requests they do so. The Shaw Firm can serve children with disabilities and their parents in
16 this manner because special education law provides for prevailing party attorneys' fees. (*Id.* at 1.)
17 Otherwise, very few parents would be able to access the courts and seek the protections afforded
18 under special education law and related civil rights laws. The majority of Mr. Shaw's clients do
19 not pay any attorneys' fees or costs upon disposition of the case. Any remaining fees after
20 disposition of the case are waived. The Shaw Firm operates in this manner because, as a parent of
21 a child with special needs, Mr. Shaw does not believe parents should be subject to paying
22 expensive fees to get their children help (*Id.* at 2.)

23 Mrs. McWilliams retained Mr. Shaw to appeal the order issued in OAH Case No.
24 2021030770 and to bring claims under Section 504 and Title II. Mrs. McWilliams paid a retainer
25 in the amount of \$25,000.00. Under the terms of her agreement with Mr. Shaw, Mrs. McWilliams
26 is responsible for paying attorneys' fees and costs associated with the appeal, but will only
27 required to pay additional attorneys' fees and costs if The Shaw Firm makes that request. If they
28 do not succeed in the case, The Shaw Firm will likely never get paid in full. Mr. Shaw cannot tell
the Court when and what amount his office will ever get paid in this case, but he will only be paid

1 in full if the Court awards attorneys' fees or pursuant to a settlement which will require the
2 approval of the Court. (ECF No. 10-1 at 2.) If there is a settlement, Mr. Shaw's fees would be
3 agreed upon and would require the Court's approval. (*Id.* at 3.)

4 **III. DISCUSSION**

5 J.M. is a minor and lacks capacity to sue under California law. Therefore, appointment of
6 a guardian ad litem is necessary and appropriate. The application complies with Local Rule
7 202(c)'s requirements for disclosure of the attorney's interests. There does not appear to be any
8 conflict of interest between Plaintiff and the proposed guardian ad litem. Additionally, as
9 Plaintiff's parent, Mrs. McWilliams is presumed to act in the minor plaintiff's best interests and
10 there is nothing to undermine that presumption. The Court will follow the general presumption
11 and allow Plaintiff's parent to act as guardian ad litem.

12 **IV. CONCLUSION AND ORDER**

13 For the foregoing reasons, it is HEREBY ORDERED that Farrah McWilliams'
14 application (ECF No. 10) to be appointed as guardian ad litem for J.M. is GRANTED. Farrah
15 McWilliams shall serve as guardian ad litem for Plaintiff in this action.

16 IT IS SO ORDERED.

17
18 Dated: January 10, 2022

19 /s/ Eric P. Gray
20 UNITED STATES MAGISTRATE JUDGE
21
22
23
24
25
26
27
28