

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT on behalf of STUDENT,

vs.

PASADENA UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2009061090

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PASADENA UNIFIED SCHOOL DISTRICT,

vs.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009060747

ORDER GRANTING REQUEST FOR  
RECONSIDERATION AND ORDER OF  
CONTINUANCE TO TRIAL SETTING  
CONFERENCE

On June 12, 2009, South Pasadena Unified School District filed a Request for Due Process Hearing (District's Complaint), naming Student as the sole respondent. This matter was designated as OAH Case No. 2009060747.

On June 22, 2009, Student filed a Request for Due Process Hearing (Student's Complaint), naming South Pasadena Unified School District as the respondent. This matter was designated as OAH Case No. 2009061090.

On June 23, 2009, Student filed a Motion to Consolidate OAH Case Number 2009060747 [District's Complaint] with OAH Case No. 2009061090 [Student's Complaint] and to continue all dates set in both matters to mediation in September and due process hearing in October, 2009.

On June 24, 2009, OAH issued a Scheduling Order and Notice of Due Process Hearing and Mediation on the Student's Complaint (OAH Case Number N2009061090), setting the following dates: Mediation for July 27, 2009; Prehearing Conference for August 10, 2009, at 10:00 a.m.; and the Due Process Hearing for August 17, 2009.

On June 26, 2009, District opposed the motion for continuance as inappropriate because it unnecessarily delays a speedy resolution.

On June 26, 2009, the undersigned administrative law judge issued an order consolidating the above-entitled matters but denying the motion for continuance because of an insufficient showing of good cause. The consolidation order stated that the consolidated cases' timelines would be governed by the Student's complaint, case no. 2009061090, and the dates set by the June 24 Scheduling Order would apply to the consolidated cases.

On July 13, 2009, Student attempted to file a Motion to Reconsider Denial of Motion to Continue with OAH. However, the papers were not timely processed and, accordingly, Student resubmitted the papers on July 21, 2009.

The District has not filed an opposition to the motion to reconsider.

### 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. (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.)

Education Code sections 56502, subdivision (f), and 56505, subdivision (f)(1)(C)(3), require that a hearing be conducted and a decision rendered within 45 days of receipt of the complaint unless an extension is granted. Speedy resolution of due process hearings is mandated by law and continuance of due process hearings may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(1)(C)(3).)

### DISCUSSION

The consolidated matters concern the Student's triennial IEP of June 2, 2009, and the IEP team's conclusion that Student no longer qualifies for special education and related services.

Student's parents disagreed with the IEP team's recommendations and conclusions and requested several independent educational evaluations [IEEs]. District seeks a determination that it is not obligated to fund the requested IEEs and that Student is no longer eligible for special education and related services.

Student asserts that the District failed to properly assess Student and that the IEP team erred in concluding Student is no longer eligible. Student requests determinations that the District fund the requested IEEs by reimbursing parents and that Student is eligible for special education and related services.

The triennial IEP team utilized a psychoeducational assessment report prepared by the school psychologist, Nancy Zuckerman Goldstein, dated May 29, 2009 (Attachment 6<sup>1</sup>). The school psychologist administered a battery of tests, personally observed Student in the classroom (1 hour, 15 minutes), and again observed the Student on a different date during “rug time.” The school psychologist’s summary of her observations take up more than a single-spaced page of her six-page report.

The school psychologist’s report recommended that Student be placed in general education. Consistent therewith, the IEP team concluded that Student no longer qualifies for special education and related services.

Parents arranged for an observation by their retained expert for June 17, 2009. This was confirmed in a June 12, 2009, e-mail from the principal of Student’s elementary school (Attachment1).

In a June 15, 2009 e-mail to Parent (Attachment 2), the principal unilaterally cancelled the observation noting the unusual end-of-school-year activities and the fact that the Student’s teacher was in the midst of packing and preparing to move because of being laid off. The principal recommended that the observation be scheduled “. . . at a more ‘typical’ time, when regular instructional activities are occurring.” The principal offered to arrange an observation for late September.

Parents retained the services of Kenneth L. Herman, Ph.D., a licensed psychologist and marriage and family therapist. In his declaration (Attachment 5), Dr. Herman states that observation of the Student during academic work time in the classroom and unstructured social situations is necessary to obtain the most accurate diagnostic information regarding various alleged disorders.

The Student cites Education Code section 56329(b), which states that an independent educational assessment must include an opportunity to observe the student in the current educational placement and setting if the public agency observed the student in it assessment.

The Student is entitled to have an IEE which includes observation of Student. The District’s school psychologist conducted two observations, which she described in her report. It is reasonable to conclude that these observations were considered by the school psychologist in making her recommendation that general education placement was most appropriate for Student. In obtaining an IEE, Student is entitled to the same opportunity.

Accordingly, the motion for reconsideration is granted because the Student has presented additional evidence in support of new facts. The Student has also demonstrated good cause and, upon reconsideration, the motion to continue is granted.

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<sup>1</sup> The Motion for Reconsideration includes six attachments.

ORDER

1. Student's request for reconsideration is granted.
2. Upon reconsideration, Student's motion for continuance is granted.
3. All presently scheduled dates [including the mediation of July 27, 2009] are vacated and continued to a telephonic Trial Setting Conference scheduled for Monday, July 27, 2009, at 10:00 a.m.
4. Counsel for the parties shall be available for the Trial Setting Conference, which will schedule new dates in accordance with this ruling, providing sufficient time for observation by Student's expert.

Dated: July 23, 2009

/s/

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CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings