

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

BALDWIN PARK UNIFIED SCHOOL  
DISTRICT,

v.

FRANCISCO & EUNICE GONZALEZ,  
PARENT(S) ON BEHALF OF AARON  
GONZALEZ, STUDENT.

OAH CASE NO. 2010080694

PARENT ON BEHALF OF STUDENT,

v.

BALDWIN PARK UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010090527

Primary Case

ORDER GRANTING MOTION FOR  
RECONSIDERATION AND TO  
CONSOLIDATE AND VACATING AND  
CONTINUING PHC & DPH

On August 19, 2010, District filed a Request for Due Process Hearing (complaint) in OAH case number 2010080694 (First Case), naming Student. First Case is set for hearing on October 5, 6, and 7, 2010 per an Order granting a continuance for good cause dated September 13, 2010.

On September 14, 2010 Parent's attorney on behalf of Student filed a Request for Due Process Hearing and for Mediation in OAH case number 2010090527 (Second Case), naming District. A prehearing conference was set for November 3, 2010 and the due process hearing set for November 9, 2010. On September 14, 2010, Student also filed a Motion to Consolidate First Case with Second Case. Student did not request a continuance of the hearing dates in First Case, nor did the parties offer evidence that the parties were waiving their right to a resolution session in Second Case. Student's Motion was therefore denied on September 16, 2010.

On September 22, 2010, Student filed a Notice of Waiver of Resolution Session and a Motion to Consolidate. On the same date District filed a Response to Student's Notice of Waiver and Motion to Consolidate in which District did not oppose consolidation. District did, however, oppose continuance of the Due Process Hearing dates set in First Case. District also filed a Notice of Waiver of Resolution Session.

Student's September 22, 2010 Motion to Consolidate is deemed a Motion for Reconsideration and, for the reasons discussed below, reconsideration and consolidation are granted.

#### APPLICABLE LAW

OAH 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.)

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

#### DISCUSSION

Here, both parties have filed a Notice of Waiver of Resolution Session within six days after Student's original motion for consolidation was denied for lack of evidence of waiver of the resolution session by both parties. Student's September 22, 2010 Motion to Consolidate is in actuality a motion for reconsideration based upon new facts, namely the parties' waivers of the resolution period. Student's motion for reconsideration is timely and is granted.

Regarding consolidation, the First Case and Second Case involve a common question of law or fact. District's case seeks an Order finding that District's November 13, 2009 psychoeducational assessment of Student was appropriate and that, based upon that report, District appropriately concluded at Student's November 18, 2009 and May 21, 2009 IEP team meetings that Student was no longer eligible for special education services, including one-on-one behavior support. Student's complaint alleges that the November 13, 2009 psychoeducational assessment was inappropriate and therefore District's determination at the November 18, 2009 IEP team meeting that Student was thereafter ineligible for special education was a denial of a free and appropriate public education (FAPE). Student further alleges that District denied Student FAPE at the May 21, 2010 and September 2010 IEP team meetings by continuing to fail to find Student eligible for special education. Student further alleges that District failed to provide Student any related services from November 2009 through approximately February 2010.

Both cases involve a common question of law and/or fact. Consolidation of the matters furthers the interest of judicial economy by saving time and by preventing inconsistent rulings. District does not oppose consolidation, but does oppose continuing the due process hearing dates scheduled in First Case. Therefore, consolidation is appropriate.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2010090527 (Second Case) are vacated.
3. The Prehearing Conference in the consolidated cases shall be held on **September 29, 2010, at 1:30 p.m.** PHC statements shall be filed and served not later than **close of business on September 28, 2010.**<sup>1</sup>
4. The hearing dates as set in OAH Case Number 2010080694 (First Case) shall govern this consolidated case. The Due Process Hearing in the consolidated case shall be held on **October 5, 6, and 7, 2010** starting at 9:30 a.m. on the first day.
5. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2010090527 (Second Case).

Dated: September 23, 2010

/s/

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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> The Parties may choose to agree between themselves to waive the statutory time lines for exchange of documents and witness lists, and to number exhibits for hearing with letters and numbers instead of numbers with prefixes of "S" for Student and "D" District.