BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

GILROY UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2020030234

and

GILROY UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2019100814

ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING REQUEST TO UNCONSOLIDATE CASES

MARCH 9, 2020

On March 6, 2020, the undersigned Administrative Law Judge, called ALJ, ordered the consolidation of the Office of Administrative Hearings, called OAH, case numbers 2020030234, with 2019100814, and designating Student's case, case number 2020030234, as the primary case in this matter.

On March 9, 2020, after that order had been issued, OAH received Gilroy's opposition to Student's motion to consolidate, and a motion for reconsideration of the undersigned ALJ's March 6, 2020 order granting consolidation.

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, generally within ten days. (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.)

DISCUSSION

Gilroy requests reconsideration of the March 6, 2020 order granting consolidation, and contends that it was not given proper due process in this matter because:

- it did not have three business days to file an opposition to Student's motion to consolidate;
- Student's motion was untimely and no good cause was given by counsel for filing an untimely motion;

- the lack of commonality of issues to any reasonable degree does not warrant consolidation; and

- Gilroy is prejudiced by consolidation because it has expending time and expense preparing for the upcoming March 10, 2020 hearing.

Since Gilroy timely filed the motion for reconsideration and alleged new facts, the motion for reconsideration is granted.

Here, on March 5, 2020, Student filed a due process hearing request naming Gilroy and concurrently filed a motion to consolidate OAH case number 2020030324 with OAH case number 2019100814. As such, the motion to consolidate is deemed timely filed because consolidation would not have been possible until Student's case was filed.

On March 5, 2020, the undersigned ordered Gilroy to file a responsive pleading to Student's motion to consolidate by March 6, 2020, at 3:00 p.m., because the due process hearing was set for March 10, 2020. While the custom and practice of OAH is to allow three business days to respond to a pending motion, there is nothing in the law or in any regulations that precludes an ALJ from advancing the time to respond to a motion Setting a responsive deadline is within the discretion of the ALJ. Under the circumstances, the order advancing the time to respond was warranted because of the upcoming March 10, 2020 hearing date in this matter.

On March 6, 2020, Gilroy failed to respond to Student's motion to consolidate. Additionally, in its motion for reconsideration, it failed to acknowledge the March 5, 2020 order advancing the date to respond, or explain why it did not respond on March 6, 2020. Dublin could have filed a short pleading on March 6, 2020, requesting more time to respond but failed to do so. Thus, without any opposition on file, the

undersigned ALJ granted Student's motion to consolidate on March 6, 2020, and it was issued on Monday, March 9, 2020. Thus, Gilroy was given appropriate due process in this matter.

Gilroy also argued that the issues in both complaints are not common "to a reasonable degree" to warrant consolidation, and it is prejudiced by consolidation because it has expending time and expense preparing for the upcoming hearing. Gilroy's interpretation of the consolidation impact, however, is unpersuasive. Here, both complaints involve a common question of law or fact. Specifically, Gilroy requests that OAH determine if the January 29, 2019 individual education program, called IEP, offer is legally compliant. Student contends in her complaint, among other issues, that the January 29, 2019 IEP offer is not appropriate. Thus, consolidation precludes inconsistent rulings. Additionally, consolidation furthers the interests of judicial economy because the issues in the two matters overlap, as well as the presentation of evidence and witnesses regarding the challenged January 19, 2019 IEP offer. Accordingly, consolidation is appropriate. Moreover, there is no prejudice to Gilroy by ordering consolidation, as it gives it more time to prepare for the upcoming hearing, not less time.

ORDER

1. The motion for reconsideration is granted.

2. The request to unconsolidate OAH case number 2020020324 with OAH case number 2019100814 is denied.

3. All dates set in cases number 2020020324 are confirmed.

IT IS SO ORDERED.



Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings