BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT and HORIZON CHARTER SCHOOL.	OAH Case No. 2014120055
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2014080831 ORDER RECONSIDERING CONSOLIDATION ORDER AND DENYING RECONSIDERATION

On December 3, 2014, the undersigned administrative law judge issued an order after a telephonic prehearing conference held on December 1, 2014, granting Student's motion to consolidate her request for a due process hearing (complaint) with Sacramento City Unified School District's case against Student. On December 5, 2014, Horizon Charter School filed a motion for reconsideration based on its lack of participation in the telephone conference and opposition to the consolidation. On December 8, 2014, Student filed a reply to the motion.

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.)

DISCUSSION AND ORDER

Horizon's motion for reconsideration is supported by a declaration under penalty of perjury from its legal counsel Anne Sherlock. Horizon alleges new facts and circumstances in support of the request for reconsideration, as follows: Horizon, a public charter school, was closed for the Thanksgiving holiday from November 21, to December 1, 2014, and did not timely receive notice of Student's complaint or her motion to consolidate the cases. The record shows that Student's complaint was served solely on Horizon and not on its attorney, who was yet to be designated. On December 1, 2014, when Horizon's school resumed, it notified Ms. Sherlock, who contacted OAH on December 4, 2014, after the consolidation order had issued.

OAH waited a reasonable amount of time after November 21, 2014, to rule on the motion. Although Horizon was named as a party to Student's complaint, the telephone conference held on December 1, 2014, was in connection with Sacramento's case only. Horizon was not invited to, and did not participate in that conference because it was not a party to that action. However, had Horizon filed a timely response in Student's case, it would have argued in opposition to consolidation of the cases on grounds discussed below.

Based on the foregoing, Horizon's motion for the ALJ to reconsider the consolidation order is granted. The facts establish that Horizon was without sufficient opportunity to respond to Student's request to consolidate. The ALJ reconsiders the order as follows, considering Horizon's opposition to consolidation, and Student's reply.

Reconsideration Does Not Change the Consolidation Order

On August 25, 2014, Sacramento filed a request for a due process hearing (complaint) with OAH naming Student, and bearing OAH Case Number 2014080831 (Sacramento's case). On September 5, 2014, OAH granted a continuance of that matter. Prior to the consolidation order, Sacramento's case was set for a due process hearing to begin on December 9, 2014. Sacramento's case involves the legality of its assessments of Student beginning in January 2013, including January 2013 psychoeducational and speech and language assessments, and May 2014 psychoeducational and behavior assessments. In addition, Sacramento claims Student has no right to demand that it fund an independent educational evaluation in the area of occupational therapy since Student did not request Sacramento to conduct such an assessment (and Horizon conducted that assessment).

On November 21, 2014, Student filed a complaint naming both Sacramento and Horizon as local educational agencies with which Student has problems (Student's case). On December 2, 2014, after the PHC held in Sacramento's case, OAH designated Student's case as OAH Case Number 2014120055, and issued a scheduling order setting the matter for a due process hearing to begin on January 15, 2015. The order granting consolidation continued the hearing dates in both cases.

As to Sacramento, Student's case claims that Sacramento's January 2013 and May 2014 assessments were not in compliance with legal requirements, and that Sacramento failed to otherwise assess her in specified areas of need. In addition, Student avers that Sacramento

denied her a free appropriate public education during the 2012-2013, 2013-2014, and 2014-2015 school years based on about 15 substantive and procedural violations.[1]

As to Horizon, Student's complaint claims that Horizon denied her a FAPE during the 2013-2014 school year based on about six substantive and procedural violations, all of which are the same as or similar to the claims listed against Sacramento. Only one claim is slightly different: Student claims Sacramento failed to provide her with adequate mental health services, whereas she claims that Horizon failed to provide her with counseling services.

The underlying facts show that Student enrolled in Horizon at the beginning of the 2013-2014 school year, for sixth grade, and remained there until late February 2014, when she returned to Sacramento. It is unclear from Student's complaint whether her claims against both Sacramento and Horizon for that school year are overlapping or involve theories of joint and several liability for the same school year.

Horizon argues that OAH should reconsider and deny Student's motion for consolidation of her case with Sacramento's case because it would be prejudicial to require Horizon to expend time and resources to attend a hearing litigating large periods of time, over three school years, most of which are irrelevant to its involvement with Student.

However, Student's motion to consolidate two cases involving public agencies does not involve issues of joinder or bifurcation of parties to an action, which necessitates an evaluation of different factors. Regarding joinder of a party, there is no specific provision in the Education Code or pertinent federal law. OAH looks to the requirements of the California Code of Civil Procedure (CCP) as a guideline, including the definition of a "necessary party" under CCP Section 389, subdivision (a). Should Horizon believe it is not a necessary party to the consolidated action, or that Student's case against it should otherwise be bifurcated, Horizon may bring an appropriate motion for dismissal or bifurcation.

In the present matter, Horizon claims, without substantiation, that the two cases do not involve the same facts and witnesses. However, Student disagrees and her representations have support in her complaint, where it is apparent both Sacramento and Horizon witnesses may have material testimony about what Student's needs were while attending Sacramento, then attending Horizon, and then upon return to Sacramento. Horizon has presented nothing to change the ALJ's determination that consolidation of Sacramento's case with Student's case is in the interests of judicial economy.

Accordingly, Horizon's request for reconsideration is denied and the Order After Prehearing Conference Granting Consolidation and Continuance and Setting New Dates,

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[1] Student's complaint contains many mistakes, some of which may have been typographical and others which may have been intentional. For example, her first problem begins with the 2013-2014 school year, and does not list the 2012-2013 school year. But in the facts in support of the problem, she complains of the January 2013 assessments, which occurred during the prior school year. Thus, she is either complaining about something outside the scope of her problem, but using it factually in some fashion, or she has erred in delineating the school years at issue. Interpreting Student's complaint consistent with Sacramento's complaint regarding the same assessments leads to the latter conclusion.

dated December 3, 2014, remains in effect. The consolidated matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: December 11, 2014

/S/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings