

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIALTO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014040982

ORDER DENYING REQUEST FOR
RECONSIDERATION

On October 13, 2014, the undersigned administrative law judge issued an order denying District's motion to consolidate the hearing on Student's due process hearing request against Rialto Unified School District, Office of Administrative Hearings case number 2014040982, filed April 21, 2014 (Student's Case), with the hearing on District's due process hearing request against Student, OAH case number 2014100452, filed October 10, 2014 (District's Case). In that same order, the ALJ also denied an oral motion by District at the prehearing conference of October 10, 2014, for a third continuance of Student's Case. On October 13, 2014, District filed a motion for reconsideration of the order as to both motions. On October 14, 2014, Student filed a non-opposition to consolidation and continuance to the dates proposed by District.

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.)

DISCUSSION AND ORDER

District alleges no new facts, law or circumstances in support of reconsideration of the motion for consolidation. The sworn declaration of District's counsel is devoid of explanation as to why District waited until ten days prior to the start of hearing in Student's Case, scheduled for October 20, 2014, to file District's Case and seek consolidation. The filing of District's Case and the request for consolidation at the eleventh hour appear untimely, and require explanation, in light of the facts that: (i) Student's case was filed on

April 21, 2014, almost six months ago, and (ii) the currently scheduled dates were expressly requested by the parties at a prehearing conference on August 18, 2014, almost two months ago. The declaration also fails to provide any new facts, law or evidence as to why the two cases should be consolidated. District's Case involves an individualized education program created months after the period of time at issue in Student's Case. Accordingly, District's request for reconsideration of the order denying consolidation is denied

District does allege new facts in support of reconsideration of the continuance request, that is, that two of District's witnesses left District employment on October 9, 2014, and that District's counsel was not informed of the unavailability of these witnesses until the PHC on October 10, 2014. However, although the declaration states that the witnesses are essential to District's defense and that District's attorney had no earlier knowledge concerning witness unavailability, it fails to satisfactorily explain why counsel did not confirm the availability of essential witnesses prior to a PHC scheduled months ago. The declaration also fails to explain why the witnesses are essential to District's defense, or why facts essential to District's defense cannot be established through other testimonial or documentary evidence. Upon reconsideration, Student's motion for reconsideration of the order denying a third continuance request is denied.

IT IS SO ORDERED.

DATE: October 15, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings