

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL  
DISTRICT, CALIFORNIA MONTESSORI  
PROJECT, SACRAMENTO COUNTY  
CHILD AND FAMILY MENTAL  
HEALTH, AND YUBA COUNTY  
SPECIAL EDUCATION LOCAL PLAN  
AREA.

OAH CASE NO. 2011030849

ORDER GRANTING REQUEST FOR  
CONTINUANCE AND SETTING DUE  
PROCESS HEARING ON EXPEDITED  
PORTION OF CASE

On March 21, 2011, the California Montessori Project (Montessori) filed a motion to continue the expedited hearing date of April 6, 2011, to April 7, 2011, on the grounds that its counsel is traveling back to California on April 6, 2011. Student, San Juan Unified School District, Sacramento County Child and Family Mental Health, and Yuba County Special Education Local Plan Area did not file a response. Montessori's motion states that Student does not oppose its motion to continue.

APPLICABLE LAW

A child with a disability has procedural rights when faced with a change in educational placement caused by a violation of a code of student conduct. (34 C.F.R. §§ 300.530, 300.532, 300.536 (2006).) Within 10 school days of a decision by a school district to change the placement of a child with a disability based upon a violation of a code of conduct, the district must convene an Individualized Education Program (IEP) meeting with the purpose of determining whether the conduct was a manifestation of the student's disability. (34 C.F.R. § 300.530(e) (2006).) If the IEP team determines that the conduct was not a manifestation of the disability, then the school district may apply relevant disciplinary procedures applicable to children without disabilities, except that the district must continue to provide educational services and, when appropriate, perform a functional behavioral assessment of the student. (34 C.F.R. § 300.530(c), (d)(i), (ii) (2006).) If the IEP team determines that the conduct was a manifestation of the disability, then the school district must conduct a functional behavioral assessment or review an existing behavioral

intervention plan, and return the student to his or her educational placement, unless special circumstances apply. (34 C.F.R. § 300.530(f)(1) (2006).)

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination conducted by the district, may request and is entitled to receive an expedited due process hearing. (34 C.F.R. § 300.532(a) (2006).) The procedural right that affords the parties an expedited due process hearing is mandatory and does not allow the Office of Administrative Hearings (OAH) to make exceptions. (34 C.F.R. § 300.532(c)(2).) In such event, “(T)he [state education agency] SEA or [local education agency] LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed.” (34 C.F.R. § 300.532(c)(2) (2006).) In California, OAH is the hearing office that assumes this responsibility for the California Department of Education. (Ed. Code, § 56504.5, subd. (a).)

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

## DISCUSSION AND ORDER

Student filed his request for an expedited hearing on March 14, 2011. This matter is currently scheduled for hearing on April 6, 2011. The parties have not provided OAH with the school calendar applicable to Student’s current school. Accordingly, counting school days in a regular manner, this matter is set for hearing on the 17th day of the 20 day time line for OAH to conduct the due process hearing on the expedited portion of this matter. Continuing the expedited due process hearing to April 7, 2011, will still allow the matter to be heard within the 20 day time line.

Accordingly, there being no opposition, Montessori’s motion to continue is granted. This matter is set as follows:

1. The expedited mediation in this matter shall take place on March 30, 2011.
2. The prehearing conference in the expedited portion of the matter shall take place on April 4, 2011, at 1:30 P.M.

3. The due process hearing in the expedited portion of this matter is continued to April 7, 2011, at 9:30 A.M.

4. All dates in the unexpedited portion of this matter shall remain as calendared.

IT IS SO ORDERED.

Dated: March 25, 2011

/s/

---

BOB VARMA  
Administrative Law Judge  
Office of Administrative Hearings