

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. MT. DIABLO UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011080095
MT. DIABLO UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011061023 ORDER GRANTING REQUEST FOR RECONSIDERATION; ORDER GRANTING REQUEST FOR CONTINUANCE, AND SETTING MEDIATION, PREHEARING CONFERENCE AND DUE PROCESS HEARING

On August 4, 2011, the undersigned administrative law judge issued an order granting Student's motion to consolidate the Requests for Due Process Hearing (complaints) filed by Student and the Mt. Diablo Unified School District (District). The order also found that Student's complaint requested an expedited hearing and set dates for the expedited matter. On August 11, Student filed a motion for reconsideration to set aside the expedited hearing dates because Student's complaint did not request an expedited hearing due to the parties' interim agreement. The District did not submit a response.

On August 12, 2011, the parties filed a joint request to continue the dates in order to schedule additional days of hearing and mediation when counsel for the parties were available.

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.)

Federal law regulates the circumstances and processes under which students eligible for special education may be disciplined by school districts. (See 20 U.S.C. § 1415(k).) School districts are prohibited from expelling a student with a disability for misbehavior that is a manifestation of the disability. (*Doe v. Maher* (9th Cir. 1986) 793 F.2d 1470.) The school must conduct a review meeting to determine whether the conduct in question was a manifestation of the student's disability. (20 U.S.C. § 1415(k)(1)(E).)

The parent of a student with a disability who disagrees with either a school's decision to change the student's educational placement as a disciplinary measure, or the manifestation determination may appeal by requesting a due process hearing. (20 U.S.C. § 1415(k)(3)(A).) An expedited hearing shall be held within 20 school days of the date the hearing is requested. A decision shall be made by the hearing officer within 10 school days thereafter. (20 U.S.C. § 1415(k)(4)(B).)

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) (2006); 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, the Office of Administrative Hearings (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

Reconsideration and Request to Unexpedite Hearing

Student alleges new facts, circumstances, or law in support of the request reconsideration as Student provided facts, not alleged in the complaint, that grounds for an expedited hearing request do not presently exist between the parties. Accordingly, Student's motion for reconsideration is granted.

Regarding the request to unexpedite the hearing, Student established that presently an expedited matter for hearing does not exist because of the parties' July 14, 2011 interim agreement. Because of the parties' interim agreement, grounds do not exist for an expedited hearing.

Continuance

As to the parties' joint request for a continuance, the parties established good cause to continue the initially set dates by OAH to permit the parties to participate in mediation and schedule four days of hearing. Accordingly, the parties' continuance request is granted.

ORDER

1. Student's motion for reconsideration is granted.
2. Student's motion to unexpedite the hearing request is granted.
3. The parties' continuance request is granted. All dates are vacated. This matter will be set as follows:

Mediation:	August 23, 2011, at 9:30 AM
Prehearing Conference:	September 7, 2011, at 1:30 PM
Due Process Hearing:	September 12, 2011, at 1:30 PM
	September 13-15, 2011 at 9:00 AM

Dated: August 15, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings