

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CALIFORNIA MONTESSORI PROJECT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012071005

ORDER DENYING REQUEST TO  
ACCELERATE EXPEDITED  
HEARING TIME LINE

On July 27, 2012, the California Montessori Project (Montessori) filed a request for an expedited due process hearing (expedited complaint).<sup>1</sup> In its expedited complaint, Montessori requests that the matter be deemed to have been filed on July 20, 2012. Montessori bases its request on the grounds that on July 20, 2012, it filed a motion in limine for a 45-day placement of student in an interim alternative educational setting (IAES), or in the alternative a request for an expedited hearing, in OAH Case No. 2012070210.

The Individuals with Disabilities Education Act (IDEA) affords a local educational agency (LEA) an expedited procedure for the temporary removal of student who is a danger to himself or others from his current placement. An LEA “that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.” (20 U.S.C § 1415(k)(3)(A).) A hearing officer shall “shall hear, and make a determination regarding” the LEA’s claim and may order a change of placement to an IAES for 45 days if he or she determines “that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.” (20 U.S.C. § 1415(k)(3)(B)(i), (ii)(II).) Title 20 United States Code section 1415(k) sets out a specific process under which expedited hearings are requested, and pursuant to which, expedited hearings are to be conducted with 20 school days of the request, and a written decision to be rendered within 10 school days of the hearing.

OAH Case No. 2012070210 is a non-expedited matter filed by Montessori. The IDEA does not have a process that allows for an IAES to be determined through a motion in limine.

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<sup>1</sup> Montessori’s facsimile cover sheet is dated July 24, 2012, however the expedited complaint is signed by Montessori’s legal counsel on July 26, 2012, as is the proof of service. Furthermore, the Montessori facsimile date and time stamp state that the expedited complaint was sent on July 26, 2012, at approximately 3:58 p.m. However, the Office of Administrative Hearings’ (OAH) automated facsimile system confirms that the expedited complaint was received at approximately 5:40 p.m. on July 26, 2012. Accordingly, the expedited complaint was deemed filed on July 27, 2012.

Such a determination requires an evidentiary hearing. Montessori cannot convert a non-expedited matter into an expedited matter through a motion. As was determined by OAH in a July 26, 2012 order in OAH Case No. 2012070210, Montessori was required to file a separate stand-alone expedited complaint. It did so on July 27, 2012. Montessori fails to provide legal authority that would allow it to relate back its July 27, 2012, filing of an expedited complaint to a motion in a non-expedited matter.

Accordingly, Montessori's request to reset the filing date of the instant action to July 20, 2012, is denied. The date for mediation, prehearing conference and due process hearing for the expedited hearing shall be determined based upon the filing date of July 27, 2012. All currently set dates in this matter are confirmed.

IT IS SO ORDERED.

Dated: August 2, 2012

/s/

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BOB N. VARMA  
Presiding Administrative Law Judge  
Office of Administrative Hearings