

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010110317

ORDER ON STUDENT’S MOTION TO
BIFURCATE EXPEDITED HEARING

On November 4, 2010, Student filed a due process hearing request naming Poway Unified School District (District) as the respondent. Student alleged nine issues. Issues One through Five were general FAPE claims going back to 2008, Issues Six through Eight addressed the appropriateness of a placement in an interim alternative educational setting (IAES) at an IEP team meeting on March 5, 2010, and Issue Nine was a remedy request. The factual allegations recite that Student was placed in the IAES as an alternative to expulsion through December of 2010, and that as of the date of filing Student was attending school in the IAES. OAH set the matter for hearing as a non-expedited matter. On November 8, 2010, Student filed a motion to “bifurcate” Issues Six through Eight and set them as an expedited hearing under title 34 Code of Federal Regulations, part 300.532(a) and (c). No opposition was received. As discussed below, Student’s request is granted.

As part of the IDEA procedural protections related to imposition of school discipline, a student may request an expedited due process hearing on the issues of change of placement to an IAES as a result of school discipline. (20 U.S.C. § 1415(k)(3)(A), (k)(4)(B); 34 C.F.R. §§ 300.532(a) & (c).) An expedited due process hearing must be held within 20 school days of the date of filing. (34 C.F.R. §§ 300.532(c)(2).)

Here, Student filed the due process hearing request on November 4, 2010, and Issues Six, Seven, and Eight involve a challenge to IAES placement. Accordingly, Student is entitled to an expedited hearing if requested. District schools are not in session on November 11-12, 2010 and November 22-26, 2010.¹ Thus, a hearing must be held prior to December 13, 2010, which is 20 school days from November 4, 2010.

¹ See <http://www.powayusd.com/calendars/>.

Accordingly, an expedited due process hearing will be held on Issues Six, Seven, and Eight, on December 9, 2010, with a telephonic prehearing conference on December 1, 2010 at 1:30 p.m. OAH will issue a new scheduling order that includes the expedited hearing dates. All other dates previously calendared for the non-expedited hearing remain in effect.

IT IS SO ORDERED.

Dated: November 15, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings