

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEW HAVEN UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012110880

ORDER GRANTING REQUEST FOR  
CONTINUANCE OF EXPEDITED  
HEARING AND SETTING  
PREHEARING CONFERENCE AND  
EXPEDITED DUE PROCESS  
HEARING

On December 5, 2012, the New Haven Unified School District (District) filed a request to continue the expedited hearing in this matter, currently set for December 26 through 28, 2012. District bases its request on the grounds that counsel, District representative and essential witnesses are not available on the currently scheduled hearing dates. The Office of Administrative Hearings (OAH) did not receive a response from Student.

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 OAH to make exceptions. (34 C.F.R. § 300.532(c)(2).) In such event, “(T)he SEA or 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).)

In light of the strict time requirements for expedited hearings, continuances are disfavored and rarely entertained. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party’s excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of

other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Student's request for a due process hearing was filed on November 28, 2012. The expedited portion of this matter must be heard within 20 school days. In its request for continuance, District has submitted a sworn declaration of Sarah Wiford, District's Director of Special Education. Ms. Wiford sets out the school calendar and the declaration includes a copy of District's academic calendar. Based upon the declaration and supporting documentation, District is on holiday break from December 24, 2012, through January 4, 2013. Accordingly, those days are not counted in the 20 school day time line. A continuance of this matter to January 7, 2013, will not run afoul of the mandate that an expedited hearing occur within 20 school days of the filing of the request for due process. Finally, Student has not opposed the request. Accordingly, the request to continue the expedited portion of this matter is granted.

The expedited hearing dates of December 26 through 28, 2012, are vacated. District has not asked to continue the expedited prehearing conference in this matter. The expedited portion of this matter will be set as follows:

Expedited Mediation	December 12, 2012, at 12:00 PM
Expedited Prehearing Conference:	December 19, 2012, at 1:30 PM
Expedited Due Process Hearing:	January 7, 2013, at 1:30 PM, and January 8 – 9, 2013, at 9:00 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The non-expedited portion of this matter will remain as calendared.

IT IS SO ORDERED.

Dated: December 11, 2012

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