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. 2011010207 ORDER FOLLOWING TRIAL SETTING CONFERENCE, GRANTING MOTION TO CONTINUE AND SETTING DUE PROCESS HEARING

On May 6, 2011, Parent, on behalf of Student, filed a motion to continue the due process hearing in this matter. The hearing, previously continued from April 26, 2011, was set for May 10 and 11, 2011. Student did not serve the New Haven Unified School District (District) and the Office of Administrative Hearings (OAH) provided District with a copy upon request by District. On May 6, 2011, District filed an opposition to Student's request to continue.

On May 9, 2011, a trial setting conference (TSC) was held before Administrative Law Judge Bob N. Varma, to address Student's motion to continue. Parent appeared on behalf of Student. Melanie D. Seymour, Attorney at Law, appeared on behalf of District. The TSC was not recorded.

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).)

Parent requests a continuance of the due process hearing to October 2011 on the ground that she requires additional time to find legal representation. District objects on the grounds that Parent has had sufficient time to find representation, this matter has been pending since January 2011, has previously been continued and any delay will impact District's ability to procure its witnesses.

This matter was filed in January 2011, however, on February 25, 2011, it was closed when Student's former attorney withdrew from the case and dismissed it, without authorization from Parent. The matter was reopened and assigned new hearing dates. The matter was then continued for a short period of time to allow Parent to serve subpoenas on witnesses.

Parent stated that she did not understand the complexity of special education litigation until the first day of the hearing, April 26, 2011, at which point a continuance was granted. During the TSC, Parent provided facts showing that she has been making reasonable effort to obtain legal counsel since April 26, 2011. Accordingly, Student established good cause for a continuance. However, Student did not establish good cause to continue this matter until October 2011.

District provided facts supporting its inability to procure witnesses during the summer break. A school district's summer break is generally not good cause for a continuance. However, in this case, because the motion was brought by Student, District's calendar was given consideration in ordering new dates. Accordingly, Student's motion is granted and this matter is set as follows:

Due Process Hearing:	September 6 – 7, 2011, starting at 10:30 AM on September 6, 2011

No further continuances will be granted without a substantial showing of good cause.

IT IS SO ORDERED.

Dated: May 10, 2011

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings