

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013120164

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

On December 12, 2013, the San Mateo-Foster City School District (District) filed a request to continue the expedited hearing in this matter currently set for December 30, 2013. District bases its request on the grounds that essential witnesses are not available on the currently scheduled hearing date. The Office of Administrative Hearings (OAH) did not receive a response from Student.

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 for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) However, when a matter is filed as an expedited due process hearing case, OAH has to hold a due process hearing within 20 school days of the filing of the case. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).) When a school district believes that maintaining a student's current placement is substantially likely to result in injury to the student or others, it may, as here, request an expedited hearing. (20 U.S.C. § 1415(k)(3)(A).) The hearing is requested by filing a complaint. 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 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. The District's request for an expedited due process hearing was filed on November 27, 2013. The expedited hearing must be heard within 20 school days. In its request for continuance, the District has submitted a sworn declaration of Molly Barton, assistant superintendent of student services for the District. Ms. Barton sets out the school calendar in her declaration and attaches a copy of the calendar. Based upon the declaration and supporting documentation, the District is on holiday break from December 20, 2013, through January 3, 2014. Additionally, the District was on holiday November 28 through 29, 2013. Accordingly, those days are not counted in the 20 school day time line. A continuance of this matter to January 7, 2014, 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 hearing is granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference: December 30, 2013, at 10:00 AM

Due Process Hearing: January 7 through 8, 2014, at 9:30 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

Dated: December 18, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings