BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2026010230

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE

FEBRUARY 13, 2026

On February 13, 2026, Administrative Law Judge Alexa Hohense, Office of Administrative Hearings, held a telephonic prehearing conference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Parent, assisted by Stepparent, appeared on behalf of Student. Attorney Ernest Bell appeared on behalf of Capistrano Unified School District, called Capistrano. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

On February 11, 1026, Capistrano moved to continue the prehearing conference and due process hearing based on the unavailability of Capistrano's attorney and its representative through May 7, 2026. On February 11, 2026, Student filed an opposition to the motion. The unexpedited due process hearing is scheduled to begin on February 24, 2026.

The motion was not filed three days before the PHC. However, Capistrano established good cause for the late filing because, after the expedited hearing ended last week, the parties were attempting through February 11, 2026, to negotiate a hearing continuance date, and in fact had agreed on a mediation date.

The motion, supported by the sworn declaration of Capistrano's attorney, establishes that Capistrano's attorney is scheduled to represent clients before OAH in hearings on earlier-filed cases through April, and that Capistrano's representative is scheduled to be in other OAH due process hearings through May 7, 2026. Capistrano's Spring Recess is from April 6 through 10, 2026.

Student opposes a continuance on the ground that the firm representing Capistrano has dozens of special education attorneys that can step in for the current attorney or its preferred representative. In addition, Student is not in school pending the resolution of the unexpedited due process hearing.

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.) As a result, continuances are disfavored. 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. (Ed. Code, § 56505, subd. (f)(3).)

OAH considers all relevant facts and circumstances, including the proximity of the hearing date, previous continuances or delays, and the length of continuance requested. OAH considers 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, and the impact of granting a continuance on other pending hearings. OAH may consider 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 or imposing conditions on the continuance, and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

The parties were given an opportunity to be heard on the motion at the PHC.

Here, although there are many attorneys in the law firm representing Capistrano, attorney Bell represented Capistrano in the expedited due process hearing and cannot be readily replaced for the second, unexpedited hearing in the same case. However, Mr. Bell is available on April 21, 2026. There is no need to delay the unexpedited hearing beyond April 21, 2026, to accommodate the same district representative, as a new district representative will have Capistrano's audio record of the expedited hearing, the Expedited Decision, the guidance of Mr. Bell, and sufficient time to familiarize themselves with the case and assist Mr. Bell.

A continuance to April 21, 2026, is not unduly prejudicial to Student. It allows self-represented Parent time to explore retaining an attorney to represent Student, and to prepare with the benefit of the Expedited Decision. Capistrano continues to make a program that complies with Student's IEP available to him, and Parent's refusal to send Student to school is Parent's choice, and not a result of prejudice to Student.

The unavailability of Capistrano's attorney due to excusable circumstance is good cause for a continuance. The request for continuance is granted for good cause. All previously scheduled dates are vacated. The case will proceed as follows:

MEDIATION DATE is February 20, 2026, from 9:00 AM to 12:30 PM.
MEDIATION will occur via telephone or videoconference.
PREHEARING CONFERENCE will be held on April 10, 2026, at 1:00 pm.

All other prehearing matters will be addressed at the April 10, 2026 PHC. All prehearing motions must be filed three business days before the PHC.

DUE PROCESS HEARING will be held April 21, through 23, 2026.

The hearing will be conducted via telephone or videoconference and will begin at 9:30 AM and end at 3:30 PM on all days, unless otherwise ordered. The hearing will continue day to day at the discretion of the ALJ.

The parties must immediately notify all potential witnesses of the hearing dates, and must subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed.

SETTLEMENT

The parties must immediately inform OAH in writing if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If the parties reach a settlement within five days of the scheduled start of the due process hearing, the parties must also inform OAH of the settlement by telephone at (916) 263-0880.

If a full and final written settlement agreement is reached after 5:00 PM the day before the hearing, the parties must leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at https://www.applications.dgs.ca.gov/oah/oahsftweb.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties must provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

Failure to comply with this order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This order contains all rulings made at the PHC.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings