BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024070103

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

OCTOBER 25, 2024

On July 2, 2024, Student filed a Request to Continue The Due Process Hearing with the Office of Administrative Hearings, naming Capistrano Unified School District. The Office of Administrative Hearings is called OAH. The due process hearing is scheduled to commence on November 5, 2024.

On October 23, 2024, Student filed a Motion to Continue the Due Process Hearing on the grounds that Student's attorney is currently in hearing in OAH case number 2024070499, and that hearing is anticipated to go through November 12, 2024.

Student's attorney requests a brief continuance of the due process hearing dates after November 12, 2024. On October 24, 2024, Capistrano Unified School District filed a Non-Opposition to Student's motion.

In this case, Student's attorney contends OAH Case No. 2024070499 overlaps with the hearing dates in this case.

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, or other excusable circumstances;
- A party is unavailable because of death, illness, or other excusable circumstances;
- A party's attorney is unavailable because of death, illness, or other excusable circumstances;
- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice;
- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a

reasonable opportunity to prepare for trial regarding the new party's involvement;

- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

In this case, Student's attorney is unavailable due to ongoing litigation that conflicts with this due process hearing dates. Because Student has established an excusable circumstance for good cause, the request is granted. All previously scheduled dates are vacated. The new due dates are:

PREHEARING CONFERENCE will be held on November 8, 2024, at 10:00 AM.

DUE PROCESS HEARING will be held on November 19, 20, and 21, 2024.

The prehearing conference, and due process hearing will be held by videoconference or telephone, unless otherwise ordered. The due process hearing will begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, Mondays and Fridays included, at the discretion of the Administrative Law Judge. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference. Late motions will only be considered if good cause is established for the late filing.

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing.

IT IS SO ORDERED.

Thanayi Lindsey
Thanayi Lindsey (Oct 25, 2024 11:14 PDT)

Thanayi Lindsey

Administrative Law Judge

Office of Administrative Hearings