BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CAPISTRANO UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018030344 ORDER FOLLOWING PREHEARING CONFERENCE; ORDER GRANTING MOTION FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On March 26, 2018, a telephonic prehearing conference was held before Administrative Law Judge Rommel Cruz, Office of Administrative Hearings. Ernest Bell, Attorney at Law, appeared on behalf of Capistrano Unified School District. Parents did not appear on behalf of Student.[1] The PHC was recorded.

Based upon discussion with District, the ALJ issues the following order:

Continuance

On March 21, 2018, District filed a motion to reschedule the prehearing conference and to continue the due process hearing to April 12, 2018. District contends that good cause exists to continue the due process hearing due to District's representative and staff witnesses being unavailable until that time. District's Spring recess is scheduled for April 2 to 6, 2018. At the PHC, District's counsel informed the ALJ that District had filed an amended motion to continue earlier that day, requesting a longer continuance of the due process hearing to May 10, 2018.[2] District stated that two witnesses, occupational therapist Anne Braun and educational specialist Giovana Constantino were out on personal leave and maternity leave, respectively, and would not be available until then.

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.

[1] OAH attempted to reach Parents and left two voice messages, one at 12:56 p.m. and the other at 1:06 p.m., providing the main number of the OAH San Diego Office for Parents to call should they wish to participate in telephonic PHC. Parents did not contact OAH prior to or during the PHC.

[2] The written amended motion to continue had not been received by the ALJ by the time of the PHC.

§ 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. (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 request is granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference:	April 30, 2018, at 10:00 a.m.
Due Process Hearing:	May 10, 2018, at 9:30 a.m., on the first day and May 15, 2018, [3] at 9:00 a.m., continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall 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, as applicable.

IT IS SO ORDERED.

DATE: March 26, 2018

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Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings

[3] OAH added May 15, 2018, as a hearing day as OAH's preference is to schedule hearings for at least two days. Parties can discuss further hearing dates at the PHC.