BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

CAPISTRANO UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2023040124

OAH CASE NUMBER 2023040122

ORDER GRANTING REQUEST TO CONTINUE DUE PROCESS HEARING, ONLY

AUGUST 25, 2023

On August 22, 2023, Student filed a request to continue the due process hearing in this matter with the Office of Administrative Hearings, called OAH. Also on August 22, 2023, Capistrano Unified School District filed notice it did not oppose Student's request to continue.

This matter was initially filed on April 3, 2023. On May 11, 2023, OAH granted the parties' request to schedule mediation, and continued the hearing of this matter to August 29 through 31, 2023. The prehearing conference in this matter was completed on August 18, 2023.

Student contends the hearing should be continued because Student's counsel is presently in another due process hearing in OAH Case number 2023020915, with witnesses scheduled through August 30, 2023. Student requests that hearing of this matter be continued to October 24 through 26, 2023. Student submitted a sworn declaration identifying 12 other OAH due process cases in which Student's counsel is lead hearing counsel, with one or more hearings set for every week through October 19, 2023. Capistrano's attorney in this matter is also the attorney for the school district in conflicting Case number 2023020915.

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).)

Student established good cause to continue the due process hearing. With respect to scheduling, the hearing dates added to the hearing already in progress in Case number 2023020915 take precedence over the scheduled hearing dates in this matter. However, Student did not establish good cause to continue the hearing dates in this matter to the requested dates of October 24 through 26, 2023. Due process hearings not yet started are scheduled in the order in which each case was filed. Case number 2023060362, scheduled for October 3 through 5, 2023, was filed on June 12, 2023, more than two months after Student filed this case. The hearing of this case takes precedence over the scheduled hearing dates in the later filed case. Accordingly, good cause is shown to continue this case to October 3 through 5, 2023.

ORDER

Student's request to continue the due process hearing in this matter is granted. The previously scheduled due process hearing dates of August 29 through 31, 2023 are vacated.

DUE PROCESS HEARING will be held on October 3 through 5, 2023.

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.

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.



Robert G. Martin
Administrative Law Judge
Office of Administrative Hearings