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 2024050784

ORDER GRANTING STUDENT'S REQUEST FOR CONTINUANCE OF DUE PROCESS HEARING

OCTOBER 24, 2024

On May 17, 2024, Student filed a due process hearing request, referred to as a complaint, with the Office of Administrative Hearings, naming Capistrano Unified School District, called Capistrano. The Office of Administrative Hearings is referred to as OAH. On June 20, 2024, OAH granted the parties' joint request to continue the matter. On September 27, 2024, OAH granted Student's' request to continue the hearing, the second continuance for this matter. The hearing is scheduled to begin on October 29, 2024.

On October 22, 2024, Student filed a request for a continuance of the due process hearing on the grounds its attorney of record is unavailable for hearing on

October 29, 2024, because he currently is in hearing in another case pending before OAH, designated as case number 2024070499. Student's continuance request was supported by a sworn declaration under penalty of perjury by Student's attorney. The hearing in OAH case number 2024070499 is expected to conclude on November 12, 2024. Further, Student's expert witness, Dr. Lisa Grajewski, is unavailable to testify until December 11, 2024.

On October 23, 2024, Capistrano filed a statement of non-opposition to Student's motion to continue.

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 for a continuance of the due process hearing based on the unavailability of his attorney of record. All previously scheduled dates are vacated. The new dates are:

DUE PROCESS HEARING: December 10, 11, and 12, 2024.

The 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 ALJ.

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.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings