

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL  
DISTRICT,

OAH Case No. 2014010758

CAPISTRANO UNIFIED SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014040197

ORDER FOLLOWING STATUS  
CONFERENCE, SETTING  
PREHEARING CONFERENCE AND  
DUE PROCESS HEARING

On January 22, 2014, Student filed a request for a hearing naming Capistrano Unified School District (Capistrano). The Office of Administrative Hearings scheduled a mediation on February 26, a prehearing conference on March 10, and the hearing to begin on March 18, 2014. On February 19, 2014, OAH granted the parties' joint request for a continuance of the prehearing conference and hearing and scheduled the matter on their requested dates in April 2014. On February 20, 2014, OAH issued a notice of cancelled mediation as requested by Capistrano.

On April 1, 2014, Capistrano filed a request for a hearing naming Student. At a prehearing conference on April 7, 2014, OAH granted Capistrano's motion to consolidate the cases. The prehearing conference addressed both cases and, as agreed to by the parties, the hearing was to begin on April 15, 2014.

On April 14, 2014, OAH staff called the parties about the status of the hearing. An assistant in the office of Capistrano's attorney informed OAH that the parties were working on a settlement agreement. On the morning of April 15, the day the hearing was to begin, Capistrano's attorney left a voicemail message that the matter had settled pending approval of Capistrano's Board. During the afternoon of April 15, the parties submitted a letter to OAH with the same information, and requested that the hearing dates be vacated and a status conference be scheduled after May 19, 2014. OAH continued the hearing to the afternoon of April 16, 2014, giving the parties the courtesy of additional time to submit a copy of the executed settlement agreement so that the hearing could be vacated.

Late the afternoon of April 15, 2014, the parties submitted another letter stating that the parties reached a “tentative settlement,” pending approval of Capistrano’s Board, and requested that OAH vacate the hearing dates and schedule a status conference around May 19, 2014. Included in the letter were copies of the signature page of a document with the signatures of all parties and counsel. There was nothing in the portion of the document submitted to OAH stating that it was a “tentative agreement” or contingent upon anything other than the Board’s approval. OAH reasonably concluded that the parties reached a complete settlement of this case. Based on this, OAH vacated the hearing dates and scheduled a status conference on June 4, 2014, almost three weeks after the May 15, 2014 board meeting.

On May 30 and June 2, 2014, OAH staff left messages with both parties requesting information about the status of the settlement. On June 3, OAH received information from an assistant of Capistrano’s attorney that the Board approved the settlement agreement and Student’s attorney was notified. OAH conducted a status conference on June 4, 2014. During the status conference, Student’s attorney stated that the agreement provided that Student would dismiss the case upon Student’s admission into a placement. However, Student was not accepted into the placement. This was the first time the parties informed OAH that the settlement was contingent upon anything other than the approval of Capistrano’s Board.

Student’s attorney further stated that the agreement provided that if Student was not admitted into the chosen placement, the parties would hold a hearing on or after September 22, 2014, to allow time to find another placement. Prior to the status conference, the parties did not attempt to find a mutually agreeable date for the hearing to begin. In an effort to give the parties time to find a placement for Student in order to resolve this case, OAH again extended professional courtesy to the parties and scheduled another status conference for July 9, 2014. The parties were instructed that if the case was not dismissed prior to that date, the parties must be prepared to set dates for the hearing.

On the morning of July 9, 2014, OAH staff spoke with Capistrano’s attorney who stated that he expected Student’s attorney to have already submitted a request to dismiss the case. OAH staff left a voice mail message for Student’s attorney, who never responded. OAH conducted a second status conference the afternoon of July 9. The parties informed OAH that no placement was found for Student. Student’s attorney stated that the parties were working with the regional center to determine if a desired placement was available, and they anticipated knowing “by August 1 or sometime in August.” The parties requested that the hearing be scheduled the week of September 29, 2014, over nine months from the filing of Student’s case.

Student’s case has been pending since January and District’s case, since April 2014. The attorneys misled or misrepresented to OAH that this case was settled on April 15. Both Robin Champlin, attorney for Student, and Ernest Bell, attorney for Capistrano, are experienced practitioners who know that OAH would not have vacated the hearing dates if it

knew that the settlement was not a final settlement, or was contingent on anything or than the Board's approval. No further continuance shall be granted without a compelling showing of good cause based on extraordinary circumstances.

This matter is scheduled as follows:

|                       |                                                                                                                                                                         |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Prehearing Conference | July 25, 2014, at 3:00 p.m.                                                                                                                                             |
| Hearing               | August 5 through 7, 2014, beginning at 9:30 a.m. on August 5, and continuing day to day, Monday through Thursday, as required by order of the Administrative Law Judge. |

It is ordered.

Dated: July 14, 2014

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/s/  
JUDITH A. KOPEC  
Division Presiding Administrative Law Judge  
Office of Administrative Hearings