

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. 2014110407

CAPISTRANO UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015010493

ORDER DENYING REQUEST FOR
CONTINUANCE; ORDER SETTING
MEDIATION DATE OF JUNE 24, 2015

On June 11, 2015, the parties filed a joint request with the Office of Administrative Hearings to continue the hearing dates in this matter, set at the May 11, 2015 Prehearing Conference for June 29, 2015 through July 2, 2015, based upon the unavailability of Student's attorney, Timothy A. Adams, due to a family vacation. The parties also request a continuance to participate in mediation.

Student filed his due process complaint on November 3, 2014, and District its hearing request on January 14, 2015. OAH consolidated the matters on January 21, 2015. OAH has granted three previous continuances in this consolidated matter, permitted Student to amend his complaint that reset the hearing timelines, and scheduled four mediations that the parties have cancelled. The last scheduled and cancelled mediation was for June 11, 2015, on a date that the parties agreed to at the May 11, 2015 PHC.

At the May 11, 2015 PHC, attorneys for the parties agreed upon the hearing dates, with the caveat that District's attorney, Ernest L. Bell, needed to check with District to ensure its availability. The parties' June 11, 2015 continuance request does not include any declaration that District witnesses will be unavailable during the set hearing dates.

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. § 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:

☒ Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. Mr. Adams' declaration that sets forth his unavailability for the month of July 2015, does not state when the trip was planned and why this trip was not discussed at the May 11, 2015 PHC. Further, Mr. Adams' declaration does not state why it took a month to raise this concern with OAH. As to District, no declaration is provided, as required by the May 11, 2015 PHC order, as to District witness unavailability, or why this concern was not brought to OAH's attention sooner. Finally, the parties' desire to participate in mediation is not reason by itself to continue this matter as the parties have had six months to mediate this dispute. OAH will grant the parties' request for mediation on June 24, 2015, at 9:30 a.m., but all other dates remain as the parties' continuance request is denied.

IT IS SO ORDERED.

DATE: June 12, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings