

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015040373

ORDER DENYING REQUEST FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On June 10, 2015, a status conference was held in this matter. Parent appeared on behalf of Student. Alesia Mithaiwala, attorney at law, appeared on behalf of the Capistrano Unified School District. The prehearing conference and due process hearing dates in this matter had previously been vacated on the grounds that the parties had reached a final settlement agreement.

During the status conference the parties informed the undersigned that the school board for Capistrano had approved the settlement agreement; however, a term in the settlement agreement required the school board for the Santa Ana School District to also approve the settlement agreement. Santa Ana is not a party to this case, and the Office of Administrative Hearings has no jurisdiction over Santa Ana in this matter.

Capistrano has been informed that Santa Ana's board will consider the settlement agreement on July 28, 2015. Accordingly, Capistrano moved to continue the status conference in this matter.

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 for continuance is denied. Because the parties' settlement agreement is dependent upon the act of a third party, Santa Ana, in order for the settlement to be enforceable, the parties do not have a full and final settlement agreement. Accordingly, OAH cannot set this matter for a continued status conference. However, having considered all facts presented, OAH will set a prehearing conference and due process hearing on dates that will allow the parties to get Santa Ana's board's approval. Accordingly, this matter is set as follows:

Prehearing Conference:	August 3, 2015, at 3:00 PM
Due Process Hearing:	August 11 – 13, 2015, at 9:30 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DATE: June 10, 2015

/s/

BOB N. VARMA
Division Presiding Administrative Law Judge
Office of Administrative Hearings